

1 Mark A. Ozzello (SBN 116595)  
Mark.Ozzello@capstonelawyers.com  
2 Brandon K. Brouillette (SBN 273156)  
Brandon.Brouillette@capstonelawyers.com  
3 John E. Stobart (SBN 248741)  
John.Stobart@capstonelawyers.com  
4 Joseph Hakakian (SBN 323011)  
Joseph.Hakakian@capstonelawyers.com  
5 Capstone Law APC  
1875 Century Park East, Suite 1000  
6 Los Angeles, California 90067  
Telephone: (310) 556-4811  
7 Facsimile: (310) 943-0396

8 Attorneys for Plaintiff Mitzi Geiger  
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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11 FOR THE COUNTY OF SAN BERNARDINO  
12

13 MITZI GEIGER, individually, and on  
14 behalf of other members of the general  
15 public similarly situated, and as an  
aggrieved employee pursuant to the Private  
Attorneys General Act ("PAGA"),

16 Plaintiff,

17 vs.

18 PARTY CITY CORPORATION, a  
19 Delaware corporation; and DOES 1 through  
10, inclusive,

20 Defendants.  
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**FILED**  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN BERNARDINO  
SAN BERNARDINO DISTRICT

**APR 29 2022**

By   
ANGELINE GARCIA, Deputy

Case No.: CIVSB2202760

**FIRST AMENDED CLASS ACTION  
COMPLAINT & ENFORCEMENT  
ACTION UNDER THE PRIVATE  
ATTORNEY GENERAL ACT,  
CALIFORNIA LABOR CODE §§ 2698, ET  
SEQ.**

- (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime);
- (2) Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 (Unpaid Minimum Wages);
- (3) Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 (Failure to Provide Meal Periods);
- (4) Violation of California Labor Code §§ 226.7, 516, and 1198 (Failure to Authorize and Permit Rest Periods);
- (5) Violation of California Labor Code §§ 226(a), 1174(d), and 1198 (Non-Compliant Wage Statements and Failure to Maintain Payroll Records);
- (6) Violation of California Labor Code §§ 201 and 202 (Wages Not Timely Paid Upon Termination);
- (7) Violation of California Labor Code § 204 (Failure to Timely Pay Wages During Employment);

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- (8) Violation of California Labor Code § 2802 (Unreimbursed Business Expenses);
- (9) Civil Penalties for Violations of California Labor Code, Pursuant to PAGA §§ 2698, *et seq.*;
- (10) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unlawful Business Practices); and
- (11) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unfair Business Practices)

**Jury Trial Demanded**

1 Plaintiff Mitzi Geiger, individually and on behalf of all other members of the public  
2 similarly situated and as an aggrieved employee and on behalf of all aggrieved employees,  
3 alleges as follows:

#### 4 JURISDICTION AND VENUE

5 1. This class action is brought pursuant to California Code of Civil Procedure  
6 section 382 and California Labor Code sections 2698, *et seq.* (“PAGA”) to recover civil  
7 penalties and any other available relief on behalf of Plaintiff, the State of California, and other  
8 current and former employees who worked for Defendants in California as non-exempt,  
9 hourly paid employees and received at least one wage statement and against whom one or  
10 more violations of any provision in Division 2 Part 2 Chapter 1 of the Labor Code or any  
11 provision regulating hours and days of work in the applicable Industrial Welfare Commission  
12 (“IWC”) Wage Order were committed, as set forth in this complaint. The monetary damages,  
13 penalties, and restitution sought by Plaintiff exceed the minimal jurisdiction limits of the  
14 Superior Court and will be established according to proof at trial. This Court has jurisdiction  
15 over this action pursuant to the California Constitution, Article VI, section 10. The statutes  
16 under which this action is brought do not specify any other basis for jurisdiction. Plaintiff’s  
17 share of damages, penalties, and other relief sought in this action does not exceed \$75,000.

18 2. This Court has jurisdiction over Defendants because Defendants are either  
19 citizens of California, have sufficient minimum contacts in California, or otherwise  
20 intentionally avail themselves of the California market so as to render the exercise of  
21 jurisdiction over them by the California courts consistent with traditional notions of fair play  
22 and substantial justice.

23 3. Venue is proper in this Court, because Defendants employ persons within the  
24 County of San Bernardino, and have violated the requirements of the California Labor Code  
25 and applicable Wage Order in this county which give rise to the penalties sought in this  
26 action. Cal. Code Civ. P. § 393. Specifically, Defendants have violated the requirements of  
27 the California Labor Code and applicable Wage Order in several stores within the County of  
28 San Bernardino, including Defendants’ stores in Chino (3850 Grand Avenue, Chino,

1 California 91710); Rancho Cucamonga (11098 Foothill Boulevard, Rancho Cucamonga,  
2 California 91730); Redlands (27588 West Lugonia Avenue, Redlands, California 92374);  
3 Rialto (1295 West Renaissance Parkway, Rialto, California 92376); Upland (338 South  
4 Mountain Avenue, Upland, California 91786); and Victorville (12410 Amargosa Road,  
5 Victorville, California 92392). Pursuant to California Civil Code of Procedure section 393,  
6 venue is proper for the recovery of a penalty or forfeiture imposed by statute in the county in  
7 which the cause, or some part of the cause, arose. Because Defendants have employees in San  
8 Bernardino County and Plaintiff could bring this action to recover penalties in San Bernardino  
9 County, venue is proper. *Id.*

10 4. Further, venue is proper in this Court because Defendants are non-California  
11 citizens and have their principal place of business in New Jersey, and because they have not  
12 filed a statement with the California Secretary of State designating a county in which they  
13 maintain a principal place of business in accordance with California Corporations Code  
14 sections 16959 and 18200. Cal. Code Civ. P. § 395.2. Thus, Defendants have no right to any  
15 particular venue and Plaintiff may file this complaint in any county in California. *See Juneau*  
16 *Spruce Corp. v. International Longshoremen's & Warehousemen's Union*, 37 Cal.2d 760,  
17 763-764 (1951); *see also, Easton v. Sup.Ct. (Schneider Bros., Inc.)*, 12 Cal. App. 3d 243, 246-  
18 247 (1970). Cal. Code Civ. P. § 395.5.

## 19 THE PARTIES

20 5. Plaintiff Mitzi Geiger is a resident of Lake Elsinore, in Riverside County,  
21 California. Defendants employed Plaintiff as an hourly paid, non-exempt Seasonal Sales  
22 Associate from approximately August to October 2021. Plaintiff worked for Defendants at  
23 their retail store located in Murrieta, California. During her employment, Plaintiff typically  
24 worked five (5) or more hours per day and five (5) or more days per week. Plaintiff's primary  
25 job duties included, without limitation, cleaning the bathrooms, stocking shelves with  
26 merchandise, unloading inventory from trucks, and cashiering.

27 6. PARTY CITY CORPORATION was and is, upon information and belief, a  
28 Delaware corporation, and at all times hereinafter mentioned, an employer whose employees

are engaged throughout this county and the State of California.

7. Plaintiff is unaware of the true names or capacities of the Defendants sued herein under the fictitious names DOES 1 through 10, but will seek leave of this Court to amend the complaint and serve such fictitiously named Defendants once their names and capacities become known.

8. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10 were the partners, agents, owners, or managers of PARTY CITY CORPORATION at all relevant times.

9. Plaintiff is informed and believes, and thereon alleges, that each and all of the acts and omissions alleged herein was performed by, or is attributable to, PARTY CITY CORPORATION and/or DOES 1 through 10 (collectively, “Defendants” or “PARTY CITY”), each acting as the agent, employee, alter ego, and/or joint venturer of, or working in concert with, each of the other co-Defendants and was acting within the course and scope of such agency, employment, joint venture, or concerted activity with legal authority to act on the others’ behalf. The acts of any and all Defendants were in accordance with, and represent, the official policy of Defendants.

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

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

#### **GENERAL ALLEGATIONS**

12. Defendants own and operate more than 89 Party City and Halloween City store locations in California. Upon information and belief, Defendants maintain a single, centralized Human Resources (“HR”) department at their company headquarters in Rockaway, New Jersey, which is responsible for the recruiting and hiring of new employees, and

1 communicating and implementing Defendants' company-wide policies, including timekeeping  
2 policies and meal and rest period policies, to employees throughout California.

3 13. In particular, Plaintiff and class members, on information and belief, received  
4 the same standardized documents and/or written policies. Upon information and belief, the  
5 usage of standardized documents and/or written policies, including new-hire documents,  
6 indicate that Defendants dictated policies at the corporate level and implemented them  
7 company-wide, regardless of their employees' assigned locations or positions. Upon  
8 information and belief, Defendants set forth uniform policies and procedures in several  
9 documents provided at an employee's time of hire.

10 14. Upon information and belief, Defendants maintain a centralized Payroll  
11 department at their company headquarters in Rockaway, New Jersey, which processes payroll  
12 for all non-exempt, hourly paid employees working for Defendants at their various locations  
13 and jobsites in California, including Plaintiff and class members. Based upon information and  
14 belief, Defendants issue the same formatted wage statements to all non-exempt, hourly paid  
15 employees in California, irrespective of their work locations. Upon information and belief,  
16 Defendants process payroll for departing employees in the same manner throughout the State  
17 of California, regardless of the manner in which each employee's employment ends.

18 15. Defendants continue to employ non-exempt or hourly paid employees in  
19 California.

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

24 17. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and class  
25 members were not paid for all hours worked because all hours worked were not recorded.

26 18. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or  
27 should have known that Plaintiff and class members were entitled to receive certain wages for  
28 overtime compensation and that they were not receiving certain wages for overtime

1 compensation.

2         19. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or  
3 should have known that Plaintiff and class members were entitled to receive at least minimum  
4 wages for compensation and that they were not receiving at least minimum wages for work  
5 that was required to be done off-the-clock. In violation of the California Labor Code, Plaintiff  
6 and class members were not paid at least minimum wages for work done off-the-clock.

7         20. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or  
8 should have known that Plaintiff and class members were entitled to meal periods in  
9 accordance with the California Labor Code and applicable IWC Wage Order or payment of  
10 one (1) additional hour of pay at their regular rates of pay when they were not provided with  
11 timely, uninterrupted, thirty (30) minute meal periods and that Plaintiff and class members  
12 were not provided with all meal periods or payment of one (1) additional hour of pay at their  
13 regular rates of pay when they did not receive a timely, uninterrupted, thirty (30) minute meal  
14 period.

15         21. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or  
16 should have known that Plaintiff and class members were entitled to rest periods in  
17 accordance with the California Labor Code and applicable IWC Wage Order or payment of  
18 one (1) additional hour of pay at their regular rates of pay when they were not authorized and  
19 permitted to take a compliant rest period. In violation of the California Labor Code, Plaintiff  
20 and class members were not authorized and permitted to take compliant rest periods, nor did  
21 Defendants provide Plaintiff and class members with payment of one (1) additional hour of  
22 pay at their regular rates of pay when they were not authorized and permitted to take a  
23 compliant rest period.

24         22. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or  
25 should have known that Plaintiff and class members were entitled to receive complete and  
26 accurate wage statements in accordance with California law. In violation of the California  
27 Labor Code, Plaintiff and class members were not provided complete and accurate wage  
28 statements.

1           23. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or  
2 should have known that they had a duty to maintain accurate and complete payroll records in  
3 accordance with the California Labor Code and applicable IWC Wage Order, but willfully,  
4 knowingly, and intentionally failed to do so.

5           24. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or  
6 should have known that Plaintiff and class members were entitled to timely payment of all  
7 wages earned upon termination of employment. In violation of the California Labor Code,  
8 Plaintiff and class members did not receive payment of all wages due, including, but not  
9 limited to, overtime wages, minimum wages, and/or meal and rest period premiums, within  
10 permissible time periods.

11           25. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or  
12 should have known that Plaintiff and class members were entitled to timely payment of wages  
13 during their employment. In violation of the California Labor Code, Plaintiff and class  
14 members did not receive payment of all wages, including, but not limited to, overtime wages,  
15 minimum wages, and/or meal and rest period premiums, within permissible time periods.

16           26. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or  
17 should have known that they were prohibited from issuing instruments for the payment of  
18 wages that were not payable in cash on demand, without discount and with authorization, but  
19 did so, in violation of the California Labor Code.

20           27. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or  
21 should have known that Plaintiff and/or class members were entitled to the portion of wages  
22 previously paid and subsequently unlawfully deducted by Defendants.

23           28. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or  
24 should have known that Plaintiff and/or class members were entitled to payment of wages as  
25 designated by statute. In violation of the California Labor Code, Defendants secretly paid  
26 Plaintiff and/or class members lower wages than required by statute while purporting to pay  
27 them proper wages.

28           29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or

1 should have known that Plaintiff and class members were entitled to receive itemized wage  
2 statements or separate written statements showing the amount of paid sick leave available, or  
3 paid time off provided in lieu of sick leave. In violation of the California Labor Code,  
4 Defendants failed to provide Plaintiff and class members with written itemized wage  
5 statements or separate written statements showing this information.

6 30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or  
7 should have known that Plaintiff and class members were entitled to one day's rest in seven.  
8 In violation of the California Labor Code, Defendants required Plaintiff and class members to  
9 work more than six consecutive days without a day of rest, where the total hours worked  
10 exceeded 30 hours in any week or six hours in any one day thereof.

11 31. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or  
12 should have known that Plaintiff and class members were entitled to suitable resting facilities  
13 to cease work and recover during meal or rest periods. In violation of the California Labor  
14 Code applicable IWC Wage Order, Defendants failed to provide Plaintiff and class members  
15 with suitable resting facilities.

16 32. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or  
17 should have known that Plaintiff and class members were entitled to suitable seating and/or  
18 were entitled to sit when it did not interfere with the performance of their duties and also have  
19 seats nearby to use during a lull in tasks that do require moving about or standing. In  
20 violation of the California Labor Code applicable IWC Wage Order, Defendants failed to  
21 provide Plaintiff and class members with suitable seating.

22 33. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or  
23 should have known that Plaintiff and class members were entitled to receive full  
24 reimbursement for all business-related expenses and costs they incurred during the course and  
25 scope of their employment and that they did not receive full reimbursement of applicable  
26 business-related expenses and costs incurred.

27 34. Plaintiff is informed and believes, and thereon alleges, that at all times herein  
28 mentioned, Defendants knew or should have known that Defendants had a duty to provide

1 Plaintiff and class members with written notice of the material terms of their employment with  
2 Defendants as required by the California Wage Theft Prevention Act, but failed to do so.

3 35. Plaintiff is informed and believes, and thereon alleges, that at all times herein  
4 mentioned, Defendants knew or should have known that they had a duty to compensate  
5 Plaintiff and class members for all hours worked, and that Defendants had the financial ability  
6 to pay such compensation, but willfully, knowingly, and intentionally failed to do so, and  
7 falsely represented to Plaintiff and class members that they were properly denied wages, all in  
8 order to increase Defendants' profits.

### 9 **PAGA REPRESENTATIVE ALLEGATIONS**

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

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

19 38. Plaintiff and other current and former employees of Defendants are "aggrieved  
20 employees" as defined by Labor Code section 2699(c) in that they are all Defendants' current  
21 or former employees and one or more of the alleged violations were committed against them.

22 39. Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved  
23 employee, including Plaintiff, may pursue a civil action arising under PAGA after the  
24 following requirements have been met:

- 25 (a) The aggrieved employee or representative shall give written notice by  
26 online filing with the LWDA and by certified mail to the employer of  
27 the specific provisions of the California Labor Code alleged to have  
28 been violated, including the facts and theories to support the alleged

violation.

- (b) An aggrieved employee's notice filed with the LWDA pursuant to 2699.3(a) and any employer response to that notice shall be accompanied by a filing fee of seventy-five dollars (\$75).
- (c) The LWDA shall notify the employer and the aggrieved employee or representative by certified mail that it does not intend to investigate the alleged violation ("LWDA's Notice") within sixty (60) calendar days of the postmark date of the aggrieved employee's notice. Upon receipt of the LWDA Notice, or if no LWDA Notice is provided within sixty-five (65) calendar days of the postmark date of the aggrieved employee's notice, the aggrieved employee may commence a civil action pursuant to California Labor Code section 2699 to recover civil penalties.

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

- (a) The aggrieved employee or representative shall give written notice by online filing with the LWDA and by certified mail to the employer of the specific provisions of the California Labor Code alleged to have been violated (other than those listed in Section 2699.5), including the facts and theories to support the alleged violation.
- (b) An aggrieved employee's notice filed with the LWDA pursuant to 2699.3(c) and any employer response to that notice shall be accompanied by a filing fee of seventy-five dollars (\$75).
- (c) The employer may cure the alleged violation within thirty-three (33) calendar days of the postmark date of the notice sent by the aggrieved employee or representative. The employer shall give written notice within that period of time by certified mail to the aggrieved employee or

1 representative and by online filing with the LWDA if the alleged  
2 violation is cured, including a description of actions taken, and no civil  
3 action pursuant to Section 2699 may commence. If the alleged violation  
4 is not cured within the 33-day period, the aggrieved employee may  
5 commence a civil action pursuant to Section 2699.

6 41. On February 22, 2022, Plaintiff provided written notice by online filing to the  
7 LWDA and by Certified Mail to Defendants of the specific provisions of the California Labor  
8 Code alleged to have been violated, including facts and theories to support the alleged  
9 violations, in accordance with California Labor Code section 2699.3. Plaintiff's written  
10 notice was accompanied with the applicable filing fee of seventy-five dollars (\$75). The  
11 LWDA PAGA Administrator confirmed receipt of Plaintiff's written notice and assigned  
12 Plaintiff PAGA Case Number LWDA-CM-869594-22. A true and correct copy of Plaintiff's  
13 written notice to the LWDA and Defendants is attached hereto as "Exhibit 1."

14 42. As of the filing date of this complaint, over 65 days have passed since Plaintiff  
15 sent the notice described above to the LWDA, and the LWDA has not responded that it  
16 intends to investigate Plaintiff's claims and Defendants have not cured the violations.

17 43. Thus, Plaintiff has satisfied the administrative prerequisites under California  
18 Labor Code section 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for  
19 violations of California Labor Code sections 201, 202, 204, 212, 213, 221, 223, 224, 226(a),  
20 226.7, 246, 510, 512(a), 516, 551, 552, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802,  
21 and 2810.5.

22 44. Labor Code section 558(a) provides "[a]ny employer or other person acting on  
23 behalf of an employer who violates, or causes to be violated, a section of this chapter or any  
24 provision regulating hours and days of work in any order of the Industrial Welfare  
25 Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty  
26 dollars (\$50) for each underpaid employee for each pay period for which the employee was  
27 underpaid. . . . (2) For each subsequent violation, one hundred dollars (\$100) for each  
28 underpaid employee for each pay period for which the employee was underpaid. . . ." Labor

Code section 558(c) provides “[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law.”

45. Defendants, at all times relevant to this complaint, were employers or persons acting on behalf of an employer(s) who violated Plaintiff’s and other aggrieved employees’ rights by violating various sections of the California Labor Code as set forth above.

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

47. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a), 2699.3(a), 2699.3(c), and 2699.5, and section 558, Plaintiff, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for herself, all other aggrieved employees, and the State of California against Defendants for violations of California Labor Code sections 201, 202, 204, 212, 213, 221, 223, 224, 226(a), 226.7, 246, 510, 512(a), 516, 551, 552, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

#### **CLASS ACTION ALLEGATIONS**

48. Plaintiff brings this action on her own behalf, as well as on behalf of each and all other persons similarly situated, and thus seeks class certification under California Code of Civil Procedure section 382.

49. All claims alleged herein arise under California law for which Plaintiff seeks relief authorized by California law.

50. Plaintiff’s proposed class consists of and is defined as follows:

All persons who worked for Defendants as non-exempt, hourly paid employees in California, within four years prior to the filing of the initial complaint<sup>1</sup> until the date of trial (“Class”).

51. Plaintiff’s proposed subclass consists of and is defined as follows:

All persons who worked for Defendants as non-exempt, hourly paid employees in California and who received at least one wage statement within one (1) year prior to the filing of the initial

<sup>1</sup> Subject to applicable tolling rules and period(s) of tolling, which include, but are not limited to, tolling under Emergency Rule 9 of the California Rules of Court.

complaint until the date of trial (“Subclass”).

52. Members of the Class and Subclass are referred to herein as “class members.”

53. Plaintiff reserves the right to redefine the Class and Subclass and to add additional subclasses as appropriate based on further investigation, discovery, and specific theories of liability.

54. There are common questions of law and fact as to class members that predominate over questions affecting only individual members, including, but not limited to:

- (a) Whether Defendants required Plaintiff and class members to work over eight (8) hours per day, over twelve (12) hours per day, or over forty (40) hours per week and failed to pay all legally required overtime compensation to Plaintiff and class members;
- (b) Whether Defendants failed to pay Plaintiff and class members at least minimum wages for all hours worked;
- (c) Whether Defendants failed to provide Plaintiff and class members with meal periods;
- (d) Whether Defendants failed to authorize and permit Plaintiff and class members to take rest periods;
- (e) Whether Defendants provided Plaintiff and class members with complete and accurate wage statements as required by California Labor Code section 226(a);
- (f) Whether Defendants maintained accurate payroll records as required by California Labor Code section 1174(d);
- (g) Whether Defendants failed to pay earned overtime wages, minimum wages, and/or meal and rest period premiums due to Plaintiff and class members upon their discharge;
- (h) Whether Defendants failed to timely pay overtime wages, minimum wages, and/or meal and rest period premiums to Plaintiff and class members during their employment;

- (i) Whether Defendants issued instruments for the payment of wages that were not payable in cash on demand and without discount, in violation of Labor Code sections 212 and 213;
- (j) Whether Defendant unlawfully deducted a portion of wages previously paid to Plaintiff and/or class members, in violation of California Labor Code sections 221 and 224;
- (k) Whether Defendant secretly paid Plaintiff and/or class members lower wages than required by statute while purporting to pay the proper wages, in violation of California Labor Code section 223;
- (l) Whether Defendants provided Plaintiff and class members with written notice of paid sick leave available, or paid time off, as required by California Labor Code section 246;
- (m) Whether Defendants failed to provide Plaintiff and class members one day's rest in seven;
- (n) Whether Defendants failed to provide Plaintiff and class members suitable resting facilities;
- (o) Whether Defendants failed to provide Plaintiff and class members with suitable seating;
- (p) Whether Defendants failed to reimburse Plaintiff and class members for necessary and required business-related expenditures and/or losses incurred by them in the scope of their employment;
- (q) Whether Defendants failed to provide written notice of information material to Plaintiff's and class members' employment with Defendants;
- (r) Whether Defendants engaged in unlawful and unfair business practices in violation of California Business & Professions Code sections 17200, *et seq.*; and
- (s) The appropriate amount of damages, restitution, or monetary penalties resulting from Defendants' violations of California law.

1           55.     There is a well-defined community of interest in the litigation and the class  
2 members are readily ascertainable:

- 3           (a)     Numerosity: The class members are so numerous that joinder of all  
4 members would be unfeasible and impractical. The membership of the  
5 entire class is unknown to Plaintiff at this time; however, the class is  
6 estimated to be greater than one hundred (100) individuals and the  
7 identity of such membership is readily ascertainable by inspection of  
8 Defendants' employment records.
- 9           (b)     Typicality: Plaintiff is qualified to, and will, fairly and adequately  
10 protect the interests of each class member with whom she has a well-  
11 defined community of interest, and Plaintiff's claims (or defenses, if  
12 any) are typical of all class members as demonstrated herein.
- 13          (c)     Adequacy: Plaintiff is qualified to, and will, fairly and adequately  
14 protect the interests of each class member with whom she has a well-  
15 defined community of interest and typicality of claims, as demonstrated  
16 herein. Plaintiff acknowledges that she has an obligation to make  
17 known to the Court any relationship, conflicts or differences with any  
18 class member. Plaintiff's attorneys, the proposed class counsel, are  
19 versed in the rules governing class action discovery, certification, and  
20 settlement. Plaintiff has incurred, and throughout the duration of this  
21 action, will continue to incur costs and attorneys' fees that have been,  
22 are, and will be necessarily expended for the prosecution of this action  
23 for the substantial benefit of each class member.
- 24          (d)     Superiority: The nature of this action makes the use of class action  
25 adjudication superior to other methods. A class action will achieve  
26 economies of time, effort, and expense as compared with separate  
27 lawsuits, and will avoid inconsistent outcomes because the same issues  
28 can be adjudicated in the same manner and at the same time for the

entire class.

(e) Public Policy Considerations: Employers in the State of California violate employment and labor laws every day. Current employees are often afraid to assert their rights out of fear of direct or indirect retaliation. Former employees are fearful of bringing actions because they believe their former employers might damage their future endeavors through negative references and/or other means. Class actions provide the class members who are not named in the complaint with a type of anonymity that allows for the vindication of their rights while simultaneously protecting their privacy.

### **FIRST CAUSE OF ACTION**

#### **Violation of California Labor Code §§ 510 and 1198—Unpaid Overtime (Against all Defendants)**

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

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

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

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

1 workweek.

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

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

13       62. During the relevant time period, Defendants willfully failed to pay all overtime  
14 wages owed to Plaintiff and class members. During the relevant time period, Plaintiff and  
15 class members were not paid overtime premiums for all of the hours they worked in excess of  
16 eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40)  
17 hours in a week, because all hours worked were not recorded.

18       63. First, during the relevant period, Defendants had, and continue to have, a  
19 company-wide policy of discouraging and impeding Plaintiff and class members from  
20 recording hours worked that were outside of their scheduled shifts in order to limit the amount  
21 of overtime employees could accrue. This policy of limiting overtime, coupled with  
22 Defendants' use of labor budgets and assignment of heavy workloads (*see infra*), led Plaintiff  
23 and class members to work off-the-clock before and after their scheduled shift times. For  
24 example, Plaintiff was instructed by Defendants' management to arrive to work, prior to her  
25 scheduled shift start-time, in order to assist with setting up the store and restocking inventory.  
26 When this occurred, Plaintiff was required to sign-in and list on her timesheet her scheduled  
27 shift start-time, not when she actually began working. As a further example, Plaintiff was  
28 pressured to clock out at the end of her scheduled shift and continue working—stocking

1 shelves, assisting customers, and unloading inventory from trucks. Further, when Plaintiff  
2 and class members drove to work at Defendants' other store locations to cover additional  
3 shifts, they were not compensated for their travel time. For example, when Plaintiff was  
4 temporarily assigned to work at the Temecula and West Covina store locations, she would  
5 drive from home or from her Murrieta store location, but was not paid for this travel time.  
6 This off-the-clock work could have been recorded by Defendants, but they refused to do so to  
7 avoid payment of additional wages to Plaintiff and class members. Thus, Defendants failed to  
8 track all of the time that employees spent performing work-related tasks before and after their  
9 scheduled shifts, and Plaintiff and class members received no compensation for this time.

10         64.     Second, on information and belief, Defendants had, and continue to have, a  
11 company-wide policy and/or practice of strictly staffing their store locations based on the  
12 labor hours allocated by each location's labor or payroll budget set by corporate. Defendants'  
13 uniform use of labor budgets, combined with the assignment of heavy workloads, resulted in  
14 chronic understaffing and a lack of adequate meal period coverage, because there were too  
15 few employees on duty to handle the workload and attend to customers. Defendants also had  
16 a practice of failing to schedule meal periods, which further caused Plaintiff and class  
17 members to not be relieved of their duties for compliant meal periods. As a result of this lack  
18 of meal period coverage, Plaintiff and class members were not always afforded 30-minute  
19 meal periods during shifts when they were entitled to receive a meal period and instead  
20 continued to work during unpaid meal periods.

21         65.     Third, Defendants had, and continue to have, a policy and/or practice of  
22 requiring that Plaintiff and class members carry and respond to a company-issued radio at all  
23 times. As a result, Defendants' management contacted Plaintiff and class members on their  
24 company-issued radios during unpaid meal periods to discuss work-related matters. For  
25 example, Plaintiff was required to spend time during her meal periods answering radio calls  
26 and responding to management's requests. Defendants knew or should have known that  
27 Plaintiff and class members were performing work while off-the-clock in order to meet  
28 Defendants' expectations, but failed to compensate them for this time.

1           66.     Furthermore, upon information and belief, because Defendants frowned upon  
2 employees accruing meal period penalties, Defendants adjusted employee time records to  
3 reflect compliant meal periods and/or would automatically deduct 30-minute meal periods  
4 from Plaintiff's and class members' time records even when meal periods were missed, short,  
5 and/or interrupted. Thus, Defendants did not record all hours worked during meal periods,  
6 and Plaintiff and class members performed work during meal periods for which they were not  
7 paid.

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

15           68.     Defendants' failure to pay Plaintiff and class members the balance of overtime  
16 compensation, as required by California law, violates the provisions of California Labor Code  
17 sections 510 and 1198. Pursuant to California Labor Code section 1194, Plaintiff and class  
18 members are entitled to recover their unpaid overtime compensation, as well as interest, costs,  
19 and attorneys' fees.

## 20                                   **SECOND CAUSE OF ACTION**

### 21           **Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198—Unpaid** 22                                   **Minimum Wages** 23                                   **(Against all Defendants)**

24           69.     Plaintiff incorporates by reference and re-alleges as if fully stated herein each  
25 and every allegation set forth above.

26           70.     At all relevant times, California Labor Code sections 1182.12, 1194, 1197,  
27 1197.1, and 1198 provide that the minimum wage for employees fixed by the IWC is the  
28 minimum wage to be paid to employees, and the payment of a wage less than the minimum so

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

5 71. As set forth above, due to Defendants’ restrictions on overtime accrual,  
6 Defendants systematically failed to pay Plaintiff and class members for actual hours worked  
7 before and after their scheduled shifts, because these hours were not accurately recorded. As  
8 stated, because Defendants discouraged and impeded Plaintiff and class members from  
9 recording hours worked that were outside of their scheduled shifts, Plaintiff and class  
10 members were required to work off-the-clock before and after their scheduled shift start and  
11 end times, including setting up the store, restocking inventory, assisting customers, unloading  
12 inventory from trucks, and driving to Defendants’ other store locations to cover shifts.  
13 Additionally, as stated above, due to Defendants’ company-wide practices of utilizing labor  
14 budgets, assignment of heavy workloads, failure to schedule meal periods, subsequent lack of  
15 meal period coverage, and requirement that employees to carry and use their company-issued  
16 radios to communicate with management during unpaid meal periods, Plaintiff and class  
17 members were impeded from taking all uninterrupted meal periods to which they were entitled  
18 and were required to work during their meal periods, time for which they were not paid.

19 72. Moreover, as stated, in order to prevent employees from accruing meal period  
20 penalties, upon information and belief, Defendants’ management adjusted employee time  
21 records to reflect compliant meal periods and/or automatically deducted 30-minute meal  
22 periods from Plaintiff’s and class members’ time records even when meal periods were  
23 missed, short, and/or interrupted. Thus, Defendants systematically failed to pay Plaintiff and  
24 class members for actual hours worked during unpaid meal periods because these hours were  
25 not always correctly recorded.

26 73. Thus, Defendants did not pay minimum wages for all hours worked by Plaintiff  
27 and class members. To the extent that these off-the-clock hours did not qualify for overtime  
28 premium payment, Defendants did not pay at least minimum wages for those hours worked

1 off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and  
2 1198.

3 74. As result, Defendants regularly failed to pay at least minimum wages to  
4 Plaintiff and class members for all of the hours they worked in violation of California Labor  
5 Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Pursuant to California Labor Code  
6 section 1194.2, Plaintiff and class members are entitled to recover liquidated damages in an  
7 amount equal to the wages unlawfully unpaid and interest thereon.

### 8 **THIRD CAUSE OF ACTION**

#### 9 **Violations of California Labor Code, §§ 226.7, 512(a), 516, and 1198—Meal Period**

#### 10 **Violations**

#### 11 **(Against all Defendants)**

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

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

21 77. At all relevant times herein set forth, California Labor Code sections 226.7,  
22 512(a), 516, and 1198 provide that no employer shall require an employee to work during any  
23 meal period mandated by an applicable order of the IWC.

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

1 mutual consent of the employer and the employee only if the first meal period was not waived.

2 79. As stated above, Defendants had, and continue to have, company-wide policies  
3 and/or practices of understaffing their store locations due to labor budgeting, which, combined  
4 with heavy workloads and a failure to schedule meal periods, has resulted in a lack of meal  
5 period coverage and prevented Plaintiff and class members from taking all timely,  
6 uninterrupted meal periods to which they were entitled. Moreover, as stated, Defendants had,  
7 and continue to have, a company-wide policy and/or practice of requiring that Plaintiff and  
8 class members carry a company-issued radio to respond to requests at all times, including  
9 during meal periods. As a result, Defendants' management contacted Plaintiff and class  
10 members on their company-issued radios during unpaid meal periods to discuss work-related  
11 matters.

12 80. As a result, Plaintiff and class members had to work through all or part of their  
13 meal periods, had their meal periods interrupted, and/or had to wait extended periods of time  
14 before taking meal periods. For example, Plaintiff missed her meal periods entirely or took  
15 her meal periods late, after having worked in excess of five (5) hours into her shift, in order to  
16 meet the store's customer demand. Moreover, Plaintiff's meal periods were interrupted by  
17 customers and Defendants' managers calling her on the company-provided radio.

18 81. Plaintiff and class members did not sign valid meal period waivers on days that  
19 they were entitled to meal periods and were not relieved of all duties.

20 82. At all times mentioned herein, Defendants knew or should have known that as a  
21 result of their policies, Plaintiff and class members were not actually relieved of all duties to  
22 take timely, uninterrupted meal periods. Defendants further knew or should have known that  
23 they did not pay Plaintiff and class members meal period premiums when meal periods were  
24 late, interrupted, shortened, or missed. As set forth above, on information and belief, because  
25 Defendants frowned upon employees accruing meal period penalties, Defendants'  
26 management would adjust employees' time records to reflect compliant meal periods and/or  
27 would automatically deduct 30-minute meal periods from Plaintiff's and class members' time  
28 records even when meal periods were missed, short, and/or interrupted.

83. Furthermore, Defendants 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, Plaintiff and class members have not received premium pay for missed, late, and interrupted meal periods. As a result, Defendants failed to provide Plaintiff and class members compliant meal periods in violation of California Labor Code sections 226.7, 512(a), and 516 and failed to pay the full meal period premiums due.

84. Defendants' conduct violates the applicable IWC Wage Order, and California Labor Code sections 226.7, 512(a), 516, and 1198. Plaintiff and class members are therefore entitled to recover from Defendants one (1) additional hour of pay at the employee's regular rate of compensation for each work day that the meal period was not provided.

#### **FOURTH CAUSE OF ACTION**

##### **Violation of California Labor Code §§ 226.7, 516, and 1198—Rest Period Violations (Against all Defendants)**

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

86. 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 Plaintiff's and class members' employment by Defendants.

87. 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.

88. 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

1 employer must “relinquish any control over how employees spend their break time, and  
2 relieve their employees of all duties—including the obligation that an employee remain on  
3 call. A rest period, in short, must be a period of rest.” *Augustus v. ABM Security Services,*  
4 *Inc.*, 2 Cal. 5th 257, 269-270 (2016). Pursuant to the applicable IWC Wage Order and  
5 California Labor Code section 226.7(c), Plaintiff and class members are entitled to recover  
6 from Defendants one (1) additional hour of pay at their regular rates of pay for each work day  
7 that a required rest period was not authorized and permitted.

8 89. Defendants regularly failed to authorize and permit Plaintiff and class members  
9 to take a ten (10) minute rest period per each four (4) hour period worked or major fraction  
10 thereof. As with meal periods, Defendants’ company-wide practices of understaffing and  
11 assignment of heavy workloads prevented Plaintiff and class members from being relieved of  
12 all duty to take their rest periods. Additionally, Defendants failed to schedule rest periods,  
13 which, coupled with Defendants’ failure to provide adequate rest period coverage, further led  
14 to Plaintiff and class members not being authorized and permitted to take compliant rest  
15 periods. Moreover, as stated, Defendants had, and continue to have, a policy and/or practice  
16 of requiring that Plaintiff and class members carry a company-issued radio to respond to  
17 requests from management at all times, including during rest periods.

18 90. Furthermore, upon information and belief, Defendants maintained a company-  
19 wide on-premises rest period policy, which mandated that Plaintiff and class members remain  
20 on Defendants’ premises during their rest periods. Because Plaintiff and class members were  
21 restricted from leaving the premises during rest periods, they were denied the ability to use  
22 their rest periods freely for their own purposes, such as running personal errands or grabbing  
23 something to eat. Thus, Defendants effectively maintained control over Plaintiff and class  
24 members during rest periods.

25 91. As a result of Defendants’ practices and policies, Plaintiff and class members  
26 worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without  
27 receiving all uninterrupted 10-minute rest periods to which they were entitled. For example,  
28 Plaintiff would miss her rest periods to meet customer demand and due to a lack of rest period

1 coverage. Plaintiff's rest periods were also interrupted by supervisors to discuss work-related  
2 tasks, either in person or over the radio.

3 92. Defendants have also engaged in a systematic, company-wide practice and/or  
4 policy of not paying rest period premiums owed when rest periods are not authorized and  
5 permitted. As a result, Defendants denied Plaintiff and class members rest periods and failed  
6 to pay them rest period premiums due, in violation of Labor Code sections 226.7, 516, and the  
7 applicable IWC Wage Order.

8 93. Defendants' conduct violates the applicable IWC Wage Order and California  
9 Labor Code sections 226.7, 516, and 1198. Plaintiff and class members are therefore entitled  
10 to recover from Defendants one (1) additional hour of pay at the employee's regular rate of  
11 compensation for each work day that a compliant rest period was not authorized and  
12 permitted.

### 13 **FIFTH CAUSE OF ACTION**

#### 14 **Violation of California Labor Code §§ 226(a), 1174(d), and 1198—Non-Compliant Wage** 15 **Statements and Failure to Maintain Accurate Payroll Records** 16 **(Against all Defendants)**

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

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

24 96. At all relevant times, Defendants have knowingly and intentionally provided  
25 Plaintiff and Subclass members with uniform, incomplete, and inaccurate wage statements.  
26 For example, Defendants issued uniform wage statements to Plaintiff and Subclass members  
27 that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all  
28 applicable hourly rates in effect during the pay period, including rates of pay for overtime

1 wages, and the corresponding number of hours worked at each hourly rate. Specifically,  
2 Defendants violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

3 97. Because Defendants did not record the time Plaintiff and Subclass members  
4 spent working off the clock and deducted time from their records for meal periods that were  
5 interrupted and/or missed (and therefore time for which they should have been paid),  
6 Defendants did not list the correct amount of gross wages and net wages earned by Plaintiff  
7 and Subclass members in compliance with sections 226(a)(1) and 226(a)(5). For the same  
8 reason, Defendants failed to accurately list the total number of hours worked by Plaintiff and  
9 Subclass members in violation of section 226(a)(2), and failed to list the applicable hourly  
10 rates of pay in effect during the pay period and corresponding accurate number of work hours  
11 worked at each hourly rate in violation of section 226(a)(9).

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

20 99. California Labor Code section 1174(d) provides that “[e]very person employing  
21 labor in this state shall . . . [k]eep a record showing the names and addresses of all employees  
22 employed and the ages of all minors” and “[k]eep, at a central location in the state or at the  
23 plants or establishments at which employees are employed, payroll records showing the hours  
24 worked daily by and the wages paid to, and the number of piece-rate units earned by and any  
25 applicable piece rate paid to, employees employed at the respective plants or  
26 establishments. . . .” At all relevant times, and in violation of Labor Code section 1174(d),  
27 Defendants willfully failed to maintain accurate payroll records for Plaintiff and Subclass  
28 members showing the daily hours they worked and the wages paid thereto as a result of failing

1 to record the off-the-clock hours that they worked.

2 100. California Labor Code section 1198 provides that the maximum hours of work  
3 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as  
4 set forth in the applicable IWC Wage Order. Section 1198 further provides that “[t]he  
5 employment of any employees for longer hours than those fixed by the order or under  
6 conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC  
7 Wage Order, employers are required to keep accurate time records showing when the  
8 employee begins and ends each work period and meal period. During the relevant time  
9 period, Defendants engaged in company-wide practices and/or policies of failing to record  
10 actual hours worked (including falsifying time records by recording that compliant meal  
11 periods were taken regardless of if or when meal periods were actually taken), and thereby  
12 failed to keep accurate records of work period and meal period start and stop times for  
13 Plaintiff and Subclass members, in violation of section 1198.

14 101. Plaintiff and Subclass members are entitled to recover from Defendants the  
15 greater of their actual damages caused by Defendants’ failure to comply with California Labor  
16 Code section 226(a), or an aggregate penalty not exceeding four thousand dollars (\$4,000) per  
17 employee.

## 18 **SIXTH CAUSE OF ACTION**

### 19 **Violation of California Labor Code §§ 201 and 202—Wages Not Timely Paid Upon** 20 **Termination** 21 **(Against all Defendants)**

22 102. Plaintiff incorporates by reference and re-alleges as if fully stated herein each  
23 and every allegation set forth above.

24 103. This cause of action is dependent upon, and wholly derivative of, the overtime  
25 wages, minimum wages, and/or meal and rest period premiums that were not timely paid to  
26 Plaintiff and those class members no longer employed by Defendants upon their termination.

27 104. At all times relevant herein set forth, Labor Code sections 201 and 202 provide  
28 that if an employer discharges an employee, the wages earned and unpaid at the time of

1 discharge are due and payable immediately, and that if an employee voluntarily leaves his or  
2 her employment, his or her wages shall become due and payable not later than seventy-two  
3 (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of  
4 his or her intention to quit, in which case the employee is entitled to his or her wages at the  
5 time of quitting.

6 105. Defendants willfully failed to pay Plaintiff and those class members who are no  
7 longer employed by Defendants the earned and unpaid wages set forth above, including but  
8 not limited to, overtime wages, minimum wages, and/or meal and rest period premiums, either  
9 at the time of discharge, or within seventy-two (72) hours of their leaving Defendants'  
10 employ.

11 106. Defendants' failure to pay Plaintiff and class members who are no longer  
12 employed by Defendants their wages earned and unpaid at the time of discharge, or within  
13 seventy-two (72) hours of their leaving Defendants' employ, violates Labor Code sections 201  
14 and 202. Plaintiff and class members are therefore entitled to recover from Defendants the  
15 statutory penalty wages for each day they were not paid, at their regular rate of pay, up to a  
16 thirty (30) day maximum pursuant to California Labor Code section 203.

## 17 SEVENTH CAUSE OF ACTION

### 18 Violation of California Labor Code § 204—Failure to Timely Pay Wages During 19 Employment 20 (Against all Defendants)

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

23 108. This cause of action is dependent upon, and wholly derivative of, the overtime  
24 wages, minimum wages, and/or meal and rest period premiums, that were not timely paid to  
25 Plaintiff and class members by Defendants during their employment.

26 109. At all times relevant herein set forth, Labor Code section 204 provides that all  
27 wages earned by any person in any employment between the first (1st) and the fifteenth (15th)  
28 days, inclusive, of any calendar month, other than those wages due upon termination of an

1 employee, are due and payable between the sixteenth (16th) and the twenty-sixth (26th) day of  
2 the month during which the labor was performed.

3 110. At all times relevant herein, Labor Code section 204 provides that all wages  
4 earned by any person in any employment between the sixteenth (16th) and the last day,  
5 inclusive, of any calendar month, other than those wages due upon termination of an  
6 employee, are due and payable between the first (1st) and the tenth (10th) day of the following  
7 month.

8 111. At all times relevant herein, Labor Code section 204 provides that all wages  
9 earned for labor in excess of the normal work period shall be paid no later than the payday for  
10 the next regular payroll period. Alternatively, at all times relevant herein, Labor Code section  
11 204 provides that the requirements of this section are deemed satisfied by the payment of  
12 wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than  
13 seven (7) calendar days following the close of the payroll period.

14 112. During the relevant time period, Defendants willfully failed to pay Plaintiff and  
15 class members all wages due including, but not limited to, overtime wages, minimum wages,  
16 and/or meal and rest period premiums, within the time periods specified by California Labor  
17 Code section 204.

18 113. Defendants' failure to timely pay Plaintiff and class members all wages due  
19 violates Labor Code section 204. Plaintiff and class members are therefore entitled to recover  
20 from Defendants the statutory penalty wages pursuant to California Labor Code section 210.

## 21 **EIGHTH CAUSE OF ACTION**

### 22 **Violation of California Labor Code § 2802—Unpaid Business-Related Expenses** 23 **(Against all Defendants)**

24 114. Plaintiff incorporates by reference and re-alleges as if fully stated herein each  
25 and every allegation set forth above.

26 115. At all times herein set forth, California Labor Code section 2802 provides that  
27 an employer must reimburse employees for all necessary expenditures and losses incurred by  
28 the employee in the performance of his or her job. The purpose of Labor Code section 2802 is

1 to prevent employers from passing off their cost of doing business and operating expenses on  
2 to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144  
3 (2014). The applicable wage order, IWC Wage Order No. 7-2001, provides that: “[w]hen  
4 tools or equipment are required by the employer or are necessary to the performance of a job,  
5 such tools and equipment shall be provided and maintained by the employer, except that an  
6 employee whose wages are at least two (2) times the minimum wage provided herein may be  
7 required to provide and maintain hand tools and equipment customarily required by the trade  
8 or craft.”

9       116. First, Defendants had a company-wide policy of requiring Plaintiff and class  
10 members to utilize their own personal vehicles or obtain alternate transportation to carry out  
11 company business, but failed to reimburse them for all costs of travel, including mileage. For  
12 example, Plaintiff was required to travel to Defendants’ stores in Temecula and West Covina  
13 to pick up inventory or to cover shifts at these other locations. Although Defendants required  
14 Plaintiff and class members to use their own personal vehicles or obtain alternate  
15 transportation to complete their work-related duties, Defendants did not reimburse them for  
16 their travel expenses.

17       117. Second, during the relevant time period, Defendants had a company-wide  
18 policy of requiring Plaintiff and class members to utilize their own personal mobile devices,  
19 including, but not limited to, cellular phones, and/or mobile data to carry out their job duties,  
20 but Defendants failed to reimburse them for the costs of their work-related mobile device  
21 expenses. Plaintiff and class members were required to use their personal mobile devices for  
22 work-related tasks, including responding to calls or text messages from Defendants’  
23 management. For example, Plaintiff used her personal cellular phone to photograph re-  
24 stocked inventory and send those pictures to her supervisor. Although Defendants required  
25 Plaintiff and class members to utilize their personal mobile devices and/or mobile data to  
26 carry out their work-related duties, Defendants failed to reimburse them for these costs.

27       118. Third, during the relevant time period, Defendants required Plaintiff and class  
28 members to wear uniforms bearing the company logo, including an apron. However,

Defendants did not provide their employees with sufficient uniforms to wear for their shifts throughout the week. For example, Defendants only provided Plaintiff and class members with one branded apron at the time of hire. Because Defendants failed to provide Plaintiff and class members with an adequate number of uniform items in relation to their scheduled shifts and for the tasks they were required to perform, Plaintiff and class members had to wash their uniforms more frequently than they otherwise do laundry, and incur expenses in doing so. Thus, Defendants failed to maintain the uniforms they required Plaintiff and class members to wear during their shifts and forced employees to incur the cost of maintaining them.

119. Defendants could have provided Plaintiff and class members with the actual tools for use on the job, such as company vehicles and company mobile devices, as well as an adequate number of uniforms and/or access to laundering services. Or, Defendants could have reimbursed employees for the costs of their travel, mileage, mobile device expenses, and laundering expenses or provided a uniform maintenance allowance. Instead, Defendants passed these operating costs off onto Plaintiff and class members. At all relevant times, Plaintiff did not earn at least two (2) times the minimum wage.

120. Defendants' company-wide policy and/or practice of passing on their operating costs to Plaintiff and class members violates California Labor Code section 2802. Defendants have intentionally and willfully failed to reimburse Plaintiff and other class members for necessary business-related expenses and costs.

121. Plaintiff and class members are entitled to recover from Defendants their business-related expenses incurred during the course and scope of their employment, plus interest.

## **NINTH CAUSE OF ACTION**

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

#### **(Against all Defendants)**

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

123. California Labor Code §§ 2698, *et seq.* ("PAGA") permits Plaintiff to recover

1 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code  
2 section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 204, 212, 213, 221,  
3 223, 224, 226(a), 226.7, 510, 512(a), 551, 552, 1174(d), 1194, 1197, 1197.1, 1198, and 2802.  
4 Labor Code section 2699.3(c) permits aggrieved employees, including Plaintiff, to recover  
5 civil penalties for violations of those Labor Code sections not found in section 2699.5,  
6 including sections 246, 516, 1182.12, and 2810.5.

7 124. Defendants' conduct, as alleged herein, violates numerous sections of the  
8 California Labor Code, including, but not limited to, the following:

- 9 (a) Violation of Labor Code sections 510 and 1198, and the applicable IWC  
10 Wage Order for Defendants' failure to compensate Plaintiff and other  
11 aggrieved employees with all required overtime pay, as alleged herein;
- 12 (b) Violation of Labor Code sections 1182.12, 1194, 1197, 1197.1, and  
13 1198, and the applicable IWC Wage Order for Defendants' failure to  
14 compensate Plaintiff and other aggrieved employees with at least  
15 minimum wages for all hours worked, as alleged herein;
- 16 (c) Violation of Labor Code sections 226.7, 512(a), 516, and 1198, and the  
17 applicable IWC Wage Order for Defendants' failure to provide Plaintiff  
18 and other aggrieved employees with meal periods, as alleged herein;
- 19 (d) Violation of Labor Code sections 226.7, 516, and 1198, and the  
20 applicable IWC Wage Order for Defendants' failure to authorize and  
21 permit Plaintiff and other aggrieved employees to take rest periods, as  
22 alleged herein;
- 23 (e) Violation of Labor Code sections 226(a), 1174(d), and 1198, and the  
24 applicable IWC Wage Order for failure to provide accurate and  
25 complete wage statements to Plaintiff and other aggrieved employees, as  
26 alleged herein;
- 27 (f) Violation of Labor Code sections 1174(d) and 1198, and the applicable  
28 IWC Wage Order for failure to maintain payroll records, as alleged

herein;

- (g) Violation of Labor Code sections 201 and 202 for failure to pay all earned wages upon termination, as alleged herein;
- (h) Violation of Labor Code section 204 for failure to pay all earned wages during employment, as alleged herein;
- (i) Violation of Labor Code sections 212 and 213 for issuing instruments for the payment of wages that were not payable in cash on demand, without discount, and with prior authorization, as set forth below;
- (j) Violation of Labor Code sections 221 and 224 for unlawfully deducting a portion of wages previously paid to other aggrieved employees, as set forth below;
- (k) Violation of Labor Code section 223 for secretly paying other aggrieved employees lower wages than required by statute, while purporting to pay the proper wages, as set forth below;
- (l) Violation of Labor Code section 246 for failure to provide Plaintiff and other aggrieved employees with written notice of paid sick leave available, or paid time off, as set forth below;
- (m) Violation of Labor Code section 551 and 552 for failure to provide Plaintiff and other aggrieved employees one day's rest in seven, as set forth below;
- (n) Violation of Labor Code section 1198 and the applicable IWC Wage Order for failure to provide suitable resting facilities, as set forth below;
- (o) Violation of Labor Code section 1198 and the applicable IWC Wage Order for failure to provide suitable seating to Plaintiff and other aggrieved employees, as set forth below;
- (p) Violation of Labor Code section 2802 for failure to reimburse Plaintiff and other aggrieved employees for all business expenses necessarily incurred, as alleged herein; and

1 (q) Violation of Labor Code section 2810.5(a)(1)(A)-(C) for failure to  
2 provide written notice of information material to other aggrieved  
3 employees' employment with Defendants, as set forth below.

4 125. At all times relevant herein, California Labor Code section 212 prohibits  
5 employers from issuing any instruments for the payment of wages unless such instruments are  
6 negotiable and payable in cash on demand and without discount, at some established place of  
7 business in the state, the name and address of which must appear on the instrument.  
8 California Labor Code section 212 further prohibits employers from issuing payment of wages  
9 due in the form of any scrip, coupon, cards, or other thing redeemable, in merchandise or  
10 purporting to be payable or redeemable otherwise than in money.

11 126. California Labor Code section 213 permits employers to pay employees via  
12 direct deposit so long as the employee authorizes payment via direct deposit.

13 127. Under California law, employers are permitted to fulfill their wage payment  
14 obligations to employees by using payroll debit cards, but only so long as the employee is  
15 given the choice as to whether to accept a payroll debit card as a form of payment. *Johnson v.*  
16 *Sunrise Senior Living Management, Inc.*, No. 16 CV 00443 BRO RAOx, 2016 WL 8929249,  
17 \*9 (C.D. Cal. May 5, 2016). In *Johnson*, the court stated that the Division of Labor Standards  
18 Enforcement ("DLSE") decision deeming payroll debit card program permissible relied  
19 heavily on:

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

128. In addition, California law only permits employers to utilize payroll debit card  
programs if they provide employees with effective access to their wages without discount.

1 The DLSE has interpreted California Labor Code sections 212 and 213 as permitting  
2 employer use of payroll debit cards where the following requirements are satisfied:

3 . . . (1) [T]he “wages [are] payable at some established place of  
4 business in the state and there be at least 30 days of sufficient  
5 funds for payment,”; (2) the employees are “fully informed of the  
6 service and procedures and that it is represented as an alternative  
7 method for wage payment for which their participation is  
8 optional,”; (3) the employees receive “an itemized wage  
9 statement,”; and (4) “at least one transaction per pay period [is]  
10 without fee.”

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

12 129. Further, the DLSE notes that the Labor Code manifests:

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

24 *DLSE opinion letter 2008.07.07.* The DLSE has also acknowledged that payroll service  
25 providers “effectively act as agents of the client employers in discharging the employer’s  
26 wage payment obligations.” *Id.* In a second opinion letter, the DLSE stated that “[w]hile the  
27 Labor Code does not purport to regulate the specific arrangements between employers and  
28 payroll service providers, both an employer and, under the express language in Labor Code  
§ 212- their agent, must comply with its requirements.” *DLSE opinion letter 2008.07.07.2.*

130. During the relevant time period, Defendants had a practice and/or policy of  
automatically issuing payroll debit cards to new employees without giving them the option to  
elect their form of payment for their wages. For example, Plaintiff received her wages on a  
payroll debit card without a choice of an alternate method of payment, such as a written  
check. Instead, Defendants automatically enrolled Plaintiff in their payroll debit card program  
for the purpose of issuing Plaintiff’s wages to her without prior, voluntary approval from  
Plaintiff. Thus, Defendants’ payroll debit card program was and continues to be unlawful as it

1 does not give employees the choice as to whether they would like to receive their wages on a  
2 payroll debit card or via some other payment method.

3 131. Moreover, under Defendants' payroll debit program, on information and belief,  
4 Defendants did not permit other aggrieved employees to have easy access to the entirety of  
5 their wages without incurring a fee. For example, other aggrieved employees were unable to  
6 withdraw their entire wages in at least one transaction without incurring a fee and/or  
7 encountered \$3.00 ATM fees each time they utilized an out-of-network ATM to withdraw  
8 funds from their payroll debit cards, which resulted in a discount in their pay. Consequently,  
9 these undisclosed payroll debit card fees resulted in a discount in pay to other aggrieved  
10 employees. In sum, Defendants' payroll debit card program presented a number of obstacles  
11 and hurdles that combined, made it difficult for Plaintiff and/or other aggrieved employees to  
12 access their entire wages without discount and without delay.

13 132. California courts recognize a policy favoring the full and prompt payment of  
14 wages to employees. Defendants' payroll card program denies Plaintiff and other aggrieved  
15 employees of easy access to the entirety of their wages; thus, the program violates California  
16 Labor Code sections 212 and 213. Plaintiff and other aggrieved employees are therefore  
17 entitled to recover civil penalties pursuant to Labor Code sections 225.5 and/or 2699(a), (f),  
18 and (g).

19 133. At all times relevant herein, California Labor Code section 221 provides that it  
20 shall be unlawful for any employer to collect or receive from an employee any part of wages  
21 theretofore paid by said employer to said employee. California Labor Code section 224 also  
22 provides in pertinent part that it is lawful to withhold a portion of the employee's wages if "a  
23 deduction is expressly authorized in writing by the employee."

24 134. During the relevant time period, Defendants unlawfully deducted a portion of  
25 wages previously paid to other aggrieved employees in violation of California Labor Code  
26 section 221. On information and belief, Defendants systematically, and on a company-wide  
27 basis, provided Plaintiff and other aggrieved employees with payroll debit cards as payment of  
28 as payment of their wages. Under Defendants' payroll debit card program, other aggrieved

1 employees were assessed various fees in connection with their use of the payroll debit cards.  
2 For example, other aggrieved employees were required to pay per-transaction fees, ATM fees,  
3 and/or other fees to obtain and/or spend their earned and due wages. The fees charged to  
4 other aggrieved employees resulted in a discount of their wages.

5 135. Defendants' payroll debit card program, which resulted in a discount of wages  
6 to employees, is tantamount to taking deductions from other aggrieved employees' paychecks  
7 without their written authorization and therefore constitutes an unlawful deduction of wages,  
8 in violation of Labor Code sections 221 and 224. Other aggrieved employees are therefore  
9 entitled to recover civil penalties pursuant to Labor Code sections 225.5 and/or 2699(a), (f),  
10 and (g).

11 136. At all times, California Labor Code section 223 makes it unlawful for an  
12 employer to secretly pay wages lower than required by statute while purporting to pay legal  
13 wages.

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

24 138. Defendants' failure to pay other aggrieved employees the correct designated  
25 wage, while purporting to pay legal wages, is a violation of California Labor Code section  
26 223. Other aggrieved employees are therefore entitled to recover civil penalties pursuant to  
27 Labor Code sections 225.5 and/or 2699(a), (f), and (g).

28 139. California's Healthy Workplaces, Healthy Families Act of 2014 was enacted to

1 provide employees who have worked in California for 30 or more days from the  
2 commencement of employment with paid sick days, to be accrued at least one hour for every  
3 30 hours worked. Employers must provide no less than 24 hours or three (3) days of paid sick  
4 leave (or equivalent paid leave or paid time off) in each year of the employee's employment.  
5 Codified at California Labor Code sections 245.5, 246, 246.5, 247, 247.5, 248.5, and 249,  
6 section 246(i) provides that an employer must provide an employee with written notice that  
7 sets forth the amount of paid sick leave available, or paid time off that an employer provides  
8 in lieu of sick leave, for use on either the employee's itemized wage statement or in a separate  
9 written statement provided on the designated pay date with the employee's wages.

10 140. During the relevant time period, Defendants have failed to provide Plaintiff and  
11 other aggrieved employees written notice on wage statements and/or other separate written  
12 statements that listed the amount of paid sick leave (or equivalent paid leave or paid time off)  
13 available to them. Defendants' ongoing and systematic failure to provide written notice of  
14 sick leave benefits to Plaintiff and other aggrieved employees violates California Labor Code  
15 section 246(i). Plaintiff and other aggrieved employees are therefore entitled to recover civil  
16 penalties pursuant to Labor Code sections 248.5 and/or 2699(a), (f), and (g).

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

21 142. At all relevant times herein set forth, California Labor Code section 556  
22 exempts an employer from the day-of-rest requirement when the total hours worked by an  
23 employee do not exceed 30 hours in any week or six hours in any one day thereof.

24 143. During the relevant time period, on information and belief, Defendants  
25 scheduled Plaintiff and other aggrieved employees to work six (6) or more hours per day and  
26 seven (7) consecutive days in a workweek. For example, Plaintiff once worked approximately  
27 11 consecutive days without being afforded the opportunity to take one day's rest. Because  
28 Plaintiff and other non-party Aggrieved Employees worked over 30 hours per week and over

1 six (6) hours in any one day in a workweek, they were not exempt from the day-of-rest  
2 requirement. To the extent that Plaintiff and other aggrieved employees may have signed  
3 purported waivers of their right to a day's rest in seven, such waivers are invalid.

4 144. Thus, during the relevant time period, and in violation of Labor Code sections  
5 551 and 552, Defendants caused Plaintiff and other aggrieved employees to work more than  
6 six days in seven. Plaintiff and other non-party Aggrieved Employees are therefore entitled to  
7 recover civil penalties pursuant to Labor Code sections 558 and/or 2699(a), (f), and (g).

8 145. At all relevant times herein, California Labor Code section 1198 makes it  
9 illegal to employ an employee under conditions of labor that are prohibited by the applicable  
10 wage order. California Labor Code section 1198 requires that “. . . the standard conditions of  
11 labor fixed by the commission shall be the . . . standard conditions of labor for employees.  
12 The employment of any employee . . . under conditions of labor prohibited by the order is  
13 unlawful.” California Code of Regulations, Title 8, section 11070(13)(B) provides that  
14 “[s]uitable resting facilities shall be provided in an area separate from the toilet rooms and  
15 shall be available to employees during work hours.”

16 146. Defendants' California stores are generally similar in their layout and design  
17 and there was, and continues to be, space that allows for a resting facility that employees may  
18 use to cease work and recover during meal or rest periods. Defendants could have provided  
19 Plaintiff and other aggrieved employees with a suitable resting facility within their stores, with  
20 reasonable or no modification, but instead denied, and continue to deny, employees suitable  
21 areas to rest (e.g., a breakroom with seats). As a result, Plaintiff and other aggrieved  
22 employees were forced to adjust to areas not conducive to resting, such as sitting on the  
23 ground or floor of the store premises, or search for areas outside of the store which are not  
24 designated or reserved for their rest, such as in their personal vehicles.

25 147. Defendants did not provide Plaintiff and other aggrieved employees with  
26 suitable resting facilities during their work hours, particularly during rest or meal periods.  
27 During the times when Plaintiff and other aggrieved employees were legally allowed to forgo  
28 assigned tasks, as in during a rest or meal period, Defendant denied them any area within their

1 stores to cease work and recover. Moreover, Defendants did not inform Plaintiff and other  
2 aggrieved employees of their rights to suitable resting facilities under California law.

3 148. As a result of Defendants' company-wide failure to provide suitable resting  
4 facilities in their stores, Plaintiff and other aggrieved employees were forced to adjust to areas  
5 not conducive to resting or search for facilities outside their store to cease work and recover.  
6 Defendants' failure to provide suitable resting facilities to Plaintiff and other aggrieved  
7 employees violates California Labor Code section 1198 and IWC Wage Order No. 7-2001,  
8 subdivision 13(B). Plaintiff and other aggrieved employees are therefore entitled to recover  
9 civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

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

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

19 151. Plaintiff alleges that Defendants' California stores are generally similar in their  
20 layout and design and there was, and continues to be, space behind cash wraps to allow for the  
21 presence and use of a seat or stool by Plaintiff and other aggrieved employees (with  
22 reasonable or no modification to these work areas) during the performance of their work  
23 duties. Defendants could have provided Plaintiff and other aggrieved employees with a seat  
24 or stool at their cashier stands, but instead denied them seating and forced Plaintiff and other  
25 aggrieved employees to stand throughout the day.

26 152. Plaintiff and other aggrieved employees spent a portion of their day behind or  
27 at these cash wraps. The nature of the work of an employee performing cashier duties can  
28 reasonably be accomplished from a seated position. However, Defendants systematically, and

1 on a company-wide basis, did not provide seats or stool at or near the cash wraps, forcing  
2 Plaintiff and other aggrieved employees to stand throughout their work shifts.

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

9 154. As a result of Defendants' company-wide policy and/or practice prohibiting  
10 employees from sitting during their shifts and company-wide failure to provide suitable  
11 seating, Plaintiff and other aggrieved employees were forced to stand during shifts and denied  
12 seats. Defendants' failure to provide suitable seating to Plaintiff and other aggrieved  
13 employees violates California Labor Code section 1198 and IWC Wage Order No. 7-2001,  
14 subdivision 14(A). Plaintiff and other aggrieved employees are therefore entitled to recover  
15 civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

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

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

27 157. As stated, Plaintiff alleges that Defendants' California stores are generally  
28 similar in their layout and design and there was, and continues to be, space near their work

1 areas (with reasonable or no modification to these work areas) to allow for the presence and  
2 use of a seat or stool by Plaintiff and other aggrieved employees during lulls in operation.  
3 Defendants could have provided Plaintiff and other aggrieved employees with a seat or stool  
4 in their work areas, but instead denied Plaintiff and other aggrieved employees suitable  
5 seating altogether and effectively forced Plaintiff and other aggrieved employees to stand  
6 throughout the day.

7 158. Defendants did not provide Plaintiff and other aggrieved employees with  
8 suitable seats or stools in reasonable proximity to their work areas to allow them to use seats  
9 when it would not interfere with the performance of their duties for times when they were not  
10 engaged in active duties that require standing. In other words, to the extent Plaintiff and other  
11 aggrieved employees engaged in duties in which the nature of the work required standing,  
12 Defendants denied them the use of suitable seats nearby during lulls in their work duties.  
13 Moreover, Defendants did not inform Plaintiff and other aggrieved employees of their rights  
14 to a seat or stool under California law.

15 159. As a result of Defendants' company-wide policy and/or practice of prohibiting  
16 employees from sitting at any time, even when engaged in active duties requiring standing,  
17 and company-wide failure to provide seats in reasonable proximity to their work areas,  
18 Plaintiff and other aggrieved employees were forced to stand during shifts and denied seats.  
19 Defendants' failure to provide suitable seating violated California Labor Code section 1198  
20 and IWC Wage Order No. 7-2001 subdivision (14)(B). Plaintiff and other aggrieved  
21 employees are therefore entitled to recover civil penalties pursuant to Labor Code sections  
22 2699(a), (f), and (g).

23 160. At all relevant times herein, California's Wage Theft Prevention Act was  
24 enacted to ensure that employers provide employees with basic information material to their  
25 employment relationship at the time of hiring, and to ensure that employees are given written  
26 and timely notice of any changes to basic information material to their employment. Codified  
27 at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the  
28 time of hiring, an employer must provide written notice to employees containing basic and

1 material payroll information, including, among other things, the rate(s) of pay and basis  
2 thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise,  
3 including any rates for overtime, the regular payday designated by the employer, and any  
4 allowances claims as part of the minimum wage, including meal or lodging allowances. Labor  
5 Code § 2810.5(a)(1)(A)-(C).

6 161. At all relevant times, on information and belief, Defendants failed, on a  
7 company-wide basis, to provide written notice to Plaintiff and other aggrieved employees that  
8 lists the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C).  
9 Defendants' failure to provide Plaintiff and other aggrieved employees with written notice of  
10 basic information regarding their employment with Defendants is in violation of Labor Code  
11 section 2810.5. Plaintiff and other aggrieved employees are therefore entitled to recover civil  
12 penalties pursuant to Labor Code sections 2699(a), (f), and (g).

#### 13 **TENTH CAUSE OF ACTION**

#### 14 **Violation of California Business & Professions Code §§ 17200, *et seq.* –**

#### 15 **Unlawful Business Practices**

#### 16 **(Against all Defendants)**

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

19 163. Defendants are "persons" as defined by California Business & Professions  
20 Code sections 17201, as they are corporations, firms, partnerships, joint stock companies,  
21 and/or associations.

22 164. Defendants' conduct, as alleged herein, has been, and continues to be, unfair,  
23 unlawful and harmful to Plaintiff, class members, and to the general public. Plaintiff has  
24 suffered injury in fact and has lost money as a result of Defendants' unlawful business  
25 practices. Plaintiff seeks to enforce important rights affecting the public interest within the  
26 meaning of Code of Civil Procedure section 1021.5.

27 165. Defendants' activities, as alleged herein, are violations of California law, and  
28 constitute unlawful business acts and practices in violation of California Business &

1 Professions Code sections 17200, *et seq.*

2 166. A violation of California Business & Professions Code sections 17200, *et seq.*  
3 may be predicated on the violation of any state or federal law. In the instant case, Defendants'  
4 policies and practices have violated state law in at least the following respects:

- 5 (a) Requiring non-exempt, hourly paid employees, including Plaintiff and  
6 class members, to work overtime without paying them proper  
7 compensation in violation of California Labor Code sections 510 and  
8 1198, and the applicable IWC Wage Order, as alleged herein;
- 9 (b) Failing to pay at least minimum wage to Plaintiff and class members in  
10 violation of California Labor Code sections 1182.12, 1194, 1197,  
11 1197.1, and 1198, and the applicable IWC Wage Order, as alleged  
12 herein;
- 13 (c) Failing to provide uninterrupted meal periods to Plaintiff and class  
14 members in violation of California Labor Code sections 226.7, 512(a),  
15 516, and 1198, and the applicable IWC Wage Order, as alleged herein;
- 16 (d) Failing to authorize and permit Plaintiff and class members to take  
17 uninterrupted rest periods in violation of California Labor Code sections  
18 226.7, 516, and 1198, and the applicable IWC Wage Order, as alleged  
19 herein;
- 20 (e) Failing to provide Plaintiff and class members with accurate wage  
21 statements and failing to maintain accurate payroll records in violation  
22 of California Labor Code sections 226(a), 1174(d), and 1198, and the  
23 applicable IWC Wage Order, as alleged herein;
- 24 (f) Failing to timely pay all earned wages to Plaintiff and class members in  
25 violation of California Labor Code section 204, as alleged herein;
- 26 (g) Issuing instruments to Plaintiff and class members for the payment of  
27 wages that were not payable in cash on demand and without discount, in  
28 violation of California Labor Code sections 212 and 213, as set forth

below;

- (h) Failing to provide written notice of paid sick leave benefits available in violation of California Labor Code section 246, as set forth below;
- (i) Failing to provide one day's rest in seven to Plaintiff and class members in violation of California Labor Code sections 551 and 552, as set forth below;
- (j) Failing to reimburse Plaintiff and class members for all business expenses necessarily incurred in violation of California Labor Code sections 2802, as alleged herein; and
- (k) Failing to provide written notice of information material to Plaintiff's and class members' employment with Defendants in violation of California Labor Code section 2810.5(a)(1)(A)-(C), as set forth below.

167. At all times relevant herein, California Labor Code section 212 prohibits employers from issuing any instruments for the payment of wages unless such instruments are negotiable and payable in cash on demand and without discount. California Labor Code section 213 permits employers to pay employees via direct deposit so long as the employee authorizes payment via direct deposit.

168. Under California law, employers are permitted to fulfill their wage payment obligations to employees by using payroll debit cards, but only so long as the employee is given the choice as to whether to accept a payroll debit card as a form of payment. *Johnson v. Sunrise Senior Living Management, Inc.*, No. 16 CV 00443 BRO RAOx, 2016 WL 8929249, \*9 (C.D. Cal. May 5, 2016). In *Johnson*, the court stated that the Division of Labor Standards Enforcement ("DLSE") decision deeming payroll debit card program permissible relied heavily on:

... [T]he fact that the pay programs were optional, thereby allowing an employee to either participate in the program or receive his or her pay in some other way, such as direct deposit. Specifically, the DLSE opined that "[t]he success of the described procedure, in practice, will of course require that ... it is presented as an *alternative* method for wage payment for which [the employees'] participation is optional." The DLSE also stated,

1 “‘[i]t is significant that the program does not mandate employee  
2 participation in the Money Network Service and that it is designed  
3 to provide an alternative for employees receiving their wage  
4 payment. Employees are also given the option of having their pay  
direct deposited into an account of their choosing. . . .” (internal  
citations omitted).

5 169. In addition, California law only permits employers to utilize payroll debit card  
6 programs if they provide employees with effective access to their wages without discount.  
7 The DLSE has interpreted Labor Code sections 212 and 213 as permitting employer use of  
8 payroll debit cards where the following requirements are satisfied:

9 . . . (1) [T]he “wages [are] payable at some established place of  
10 business in the state and there be at least 30 days of sufficient  
11 funds for payment,”; (2) the employees are “fully informed of the  
12 service and procedures and that it is represented as an alternative  
13 method for wage payment for which their participation is  
optional,”; (3) the employees receive “an itemized wage  
statement,”; and (4) “at least one transaction per pay period [is]  
without fee.”

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

15 170. Further, the DLSE notes that the Labor Code manifests:

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

22 *DLSE opinion letter* 2008.07.07. The DLSE has also acknowledged that payroll service  
23 providers “effectively act as *agents* of the client employers in discharging the employer’s  
24 wage payment obligations.” *Id.* In a second opinion letter, the DLSE stated that “[w]hile the  
25 Labor Code does not purport to regulate the specific arrangements between employers and  
26 payroll service providers, both an employer and, under the express language in Labor Code  
27 § 212- their *agent*, must comply with its requirements.” *DLSE opinion letter* 2008.07.07.2.

28 171. During the relevant time period, Defendants had a practice and/or policy of

1 automatically issuing payroll debit cards to new employees without giving them the option to  
2 elect their form of payment for their wages. For example, Plaintiff received her wages on a  
3 payroll debit card without a choice of an alternate method of payment, such as a written  
4 check. Instead, Defendants automatically enrolled Plaintiff in their payroll debit card program  
5 for the purpose of issuing Plaintiff's wages to her without prior, voluntary approval from  
6 Plaintiff. Thus, Defendants' payroll debit card program was and continues to be unlawful as it  
7 does not give employees the choice as to whether they would like to receive their wages on a  
8 payroll debit card or via some other payment method.

9 172. California courts recognize a policy favoring the full and prompt payment of  
10 wages to employees. Defendants' payroll card program is inconsistent with this policy  
11 because Defendants' program is involuntary and denies Plaintiff and class members of easy  
12 access to the entirety of their wages. Thus, Defendants' company-wide payroll debit card  
13 program violates California Labor Code sections 212 and 213.

14 173. California's Healthy Workplaces, Healthy Families Act of 2014 was enacted to  
15 provide employees who have worked in California for 30 or more days from the  
16 commencement of employment with paid sick days, to be accrued at least one hour for every  
17 30 hours worked. Pursuant to California Labor Code section 246(b)(4), employers must  
18 provide no less than 24 hours or three (3) days of paid sick leave (or equivalent paid leave or  
19 paid time off) in each year of the employee's employment. Codified at California Labor Code  
20 sections 245.5, 246, 246.5, 247, 247.5, 248.5, and 249, section 246(i) provides that an  
21 employer must provide an employee with written notice that sets forth the amount of paid sick  
22 leave available, or paid time off that an employer provides in lieu of sick leave, for use on  
23 either the employee's itemized wage statement or in a separate written statement provided on  
24 the designated pay date with the employee's wages. The penalties described in this article for  
25 a violation of this subdivision shall be in lieu of the penalties for a violation of Section 226.

26 174. During the relevant time period, Defendants failed, on a company-wide basis,  
27 to provide Plaintiff and class members written notice on wage statements and/or other separate  
28 written statements that listed the amount of paid sick leave (or equivalent paid leave or paid

1 time off) available to them. Defendants' ongoing and systematic failure to provide written  
2 notice of sick leave benefits to Plaintiff and class members violates California Labor Code  
3 section 246(i).

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

8 176. At all relevant times herein set forth, California Labor Code section 556  
9 exempts an employer from the day-of-rest requirement when the total hours worked by an  
10 employee do not exceed 30 hours in any week or six hours in any one day thereof.

11 177. During the relevant time period, Defendants scheduled Plaintiff and class  
12 members to work six (6) or more hours per day and seven (7) consecutive days in a  
13 workweek. For example, Plaintiff once worked approximately 11 consecutive days without  
14 being afforded the opportunity to take one day's rest. Because Plaintiff and class members  
15 worked over 30 hours per week and over six (6) hours per day in any one day in a workweek,  
16 they were not exempt from the day-of-rest requirement. To the extent that Plaintiff and class  
17 members may have signed purported waivers of their right to a day's rest in seven, such  
18 waivers are invalid. Thus, Defendants willfully caused Plaintiff and class members to work  
19 more than six days in seven, in violation of Labor Code sections 551 and 552.

20 178. At all relevant times herein, California's Wage Theft Prevention Act was  
21 enacted to ensure that employers provide employees with basic information material to their  
22 employment relationship at the time of hiring, and to ensure that employees are given written  
23 and timely notice of any changes to basic information material to their employment. Codified  
24 at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the  
25 time of hiring, an employer must provide written notice to employees containing basic and  
26 material payroll information, including, among other things, the rate(s) of pay and basis  
27 thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise,  
28 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. Labor Code § 2810.5(a)(1)(A)-(C).

179. At all relevant times, on information and belief, Defendants failed, on a company-wide basis, to provide written notice to Plaintiff and class members that lists the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). Defendants' failure to provide Plaintiff and class members with written notice of basic information regarding their employment with Defendants is in violation of California Labor Code section 2810.5(a)(1)(A)-(C).

180. As a result of the violations of California law herein described, Defendants unlawfully gained an unfair advantage over other businesses. Plaintiff and class members have suffered pecuniary loss by Defendants' unlawful business acts and practices alleged herein.

181. Pursuant to California Business & Professions Code sections 17200, *et seq.*, Plaintiff and class members are entitled to restitution of the wages withheld and retained by Defendants during a period that commences four years prior to the filing of this complaint; a permanent injunction requiring Defendants to pay all outstanding wages due to Plaintiff and class members; and an award of attorneys' fees pursuant to California Code of Civil Procedure section 1021.5 and other applicable laws; and an award of costs.

## **ELEVENTH CAUSE OF ACTION**

### **Violation of California Business & Professions Code §§ 17200, *et seq.* –**

#### **Unfair Business Practices**

#### **(Against all Defendants)**

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

183. Defendants are "persons" as defined by California Business & Professions Code section 17201, as they are corporations, firms, partnerships, joint stock companies, and/or associations.

184. Defendants' conduct, as alleged herein, has been, and continues to be, unfair,

1 and harmful to Plaintiff, class members, and to the general public. Plaintiff has suffered  
2 injury in fact and has lost money as a result of Defendants' unfair business practices. Plaintiff  
3 seeks to enforce important rights affecting the public interest within the meaning of Code of  
4 Civil Procedure section 1021.5.

5 185. Defendants' activities, namely Defendants' company-wide practice and/or  
6 policy of not paying Plaintiff and class members all meal and rest period premiums due to  
7 them under California Labor Code section 226.7, deprived Plaintiff and class members of the  
8 compensation guarantee and enhanced enforcement implemented by section 226.7. The  
9 statutory remedy provided by section 226.7 is a "'dual-purpose' remedy intended primarily to  
10 compensate employees, and secondarily to shape employer conduct." *Safeway, Inc. v.*  
11 *Superior Court*, 238 Cal. App. 4th 1138, 1149 (2015). The statutory benefits of section 226.7  
12 were guaranteed to Plaintiff and class members as part of their employment with Defendants,  
13 and thus Defendants' practice and/or policy of denying these statutory benefits constitutes an  
14 unfair business practice in violation of California Business & Professions Code sections  
15 17200, *et seq.* (*Id.*)

16 186. A violation of California Business & Professions Code sections 17200, *et seq.*  
17 may be predicated on any unfair business practice. In the instant case, Defendants' policies  
18 and practices have violated the spirit of California's meal and rest period laws and constitute  
19 acts against the public policy behind these laws.

20 187. Pursuant to California Business & Professions Code sections 17200, *et seq.*,  
21 Plaintiff and class members are entitled to restitution for the class-wide loss of the statutory  
22 benefits implemented by California Labor Code section 226.7 withheld and retained by  
23 Defendants during a period that commences four years prior to the filing of this complaint; a  
24 permanent injunction requiring Defendants to pay all statutory benefits implemented by  
25 California Labor Code section 226.7 due to Plaintiff and class members; an award of  
26 attorneys' fees pursuant to California Code of Civil Procedure section 1021.5 and other  
27 applicable laws; and an award of costs.

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**REQUEST FOR JURY TRIAL**

Plaintiff requests a trial by jury.

**PRAYER FOR RELIEF**

Plaintiff, on behalf of all others similarly situated, prays for relief and judgment against Defendants, jointly and severally, as follows:

1. For damages, unpaid wages, penalties, injunctive relief, and attorneys’ fees in excess of twenty-five thousand dollars (\$25,000), exclusive of interest and costs. Plaintiff reserves the right to amend her prayer for relief to seek a different amount.

**Class Certification**

- 2. That this case be certified as a class action;
- 3. That Plaintiff be appointed as the representative of the Class and Subclass;
- 4. That counsel for Plaintiff be appointed as class counsel.

**As to the First Cause of Action**

5. That the Court declare, adjudge, and decree that Defendants violated California Labor Code sections 510 and 1198 and the applicable IWC Wage Order by willfully failing to pay all overtime wages due to Plaintiff and class members;

6. For general unpaid wages at overtime wage rates and such general and special damages as may be appropriate;

7. For pre-judgment interest on any unpaid overtime compensation commencing from the date such amounts were due, or as otherwise provided by law;

8. For reasonable attorneys’ fees and for costs of suit incurred herein pursuant to California Labor Code section 1194(a); and

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

**As to the Second Cause of Action**

10. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 and the applicable IWC Wage Order by willfully failing to pay minimum wages to Plaintiff and class members;

1           11.     For general unpaid wages and such general and special damages as may be  
2 appropriate;

3           12.     For pre-judgment interest on any unpaid compensation from the date such  
4 amounts were due, or as otherwise provided by law;

5           13.     For reasonable attorneys' fees and for costs of suit incurred herein pursuant to  
6 California Labor Code section 1194(a);

7           14.     For liquidated damages pursuant to California Labor Code section 1194.2; and

8           15.     For such other and further relief as the Court may deem equitable and  
9 appropriate.

10                           **As to the Third Cause of Action**

11           16.     That the Court declare, adjudge, and decree that Defendants violated California  
12 Labor Code sections 226.7, 512(a), 516, and 1198 and the applicable IWC Wage Order by  
13 willfully failing to provide all meal periods to Plaintiff and class members;

14           17.     That the Court make an award to the Plaintiff and class members of one (1)  
15 hour of pay at each employee's regular rate of pay for each workday that a meal period was  
16 not provided;

17           18.     For all actual, consequential, and incidental losses and damages, according to  
18 proof;

19           19.     For premiums pursuant to California Labor Code section 226.7(c);

20           20.     For pre-judgment interest on any unpaid meal period premiums from the date  
21 such amounts were due, or as otherwise provided by law;

22           21.     For attorneys' fees pursuant to California Code of Civil Procedure section  
23 1021.5, or as otherwise provided by law; and

24           22.     For such other and further relief as the Court may deem equitable and  
25 appropriate.

26                           **As to the Fourth Cause of Action**

27           23.     That the Court declare, adjudge and decree that Defendants violated California  
28 Labor Code sections 226.7, 516, and 1198 and the applicable IWC Wage Order by willfully

1 failing to authorize and permit Plaintiff and class members to take all rest periods;

2       24. That the Court make an award to the Plaintiff and class members of one (1) hour  
3 of pay at each employee's regular rate of pay for each workday that a rest period was not  
4 authorized and permitted;

5       25. For all actual, consequential, and incidental losses and damages, according to  
6 proof;

7       26. For premiums pursuant to California Labor Code section 226.7(c);

8       27. For pre-judgment interest on any unpaid rest period premiums from the date  
9 such amounts were due, or as otherwise provided by law;

10       28. For attorneys' fees pursuant to California Code of Civil Procedure section  
11 1021.5, or as otherwise provided by law; and

12       29. For such other and further relief as the Court may deem equitable and  
13 appropriate.

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

15       30. That the Court declare, adjudge and decree that Defendants violated the  
16 recordkeeping provisions of California Labor Code section 226(a) and the applicable IWC  
17 Wage Order as to Plaintiff and Subclass members, and willfully failed to provide accurate  
18 itemized wage statements thereto;

19       31. For all actual, consequential, and incidental losses and damages, according to  
20 proof;

21       32. For injunctive relief pursuant to California Labor Code section 226(h);

22       33. For statutory penalties pursuant to California Labor Code section 226(e);

23       34. For attorneys' fees and costs pursuant to California Labor Code section  
24 226(e)(1); and

25       35. For such other and further relief as the Court may deem equitable and  
26 appropriate.

27                   **As to the Sixth Cause of Action**

28       36. That the Court declare, adjudge and decree that Defendants violated California

1 Labor Code sections 201 and 202 by willfully failing to pay overtime wages, minimum wages,  
2 and/or meal and rest period premiums owed at the time of termination of the employment of  
3 Plaintiff and other terminated class members;

4 37. For all actual, consequential and incidental losses and damages, according to  
5 proof;

6 38. For waiting time penalties according to proof pursuant to California Labor  
7 Code section 203 for all employees who have left Defendants' employ;

8 39. For pre-judgment interest on any unpaid wages from the date such amounts  
9 were due, or as otherwise provided by law;

10 40. For attorneys' fees pursuant to California Code of Civil Procedure section  
11 1021.5, or as otherwise provided by law; and

12 41. For such other and further relief as the Court may deem equitable and  
13 appropriate.

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

15 42. That the Court declare, adjudge and decree that Defendants violated California  
16 Labor Code section 204 by willfully failing to timely pay Plaintiff and class members  
17 overtime wages, minimum wages, and/or meal and rest period premiums during their  
18 employment;

19 43. For all actual, consequential and incidental losses and damages, according to  
20 proof;

21 44. For statutory penalties according to proof pursuant to California Labor Code  
22 section 210;

23 45. For pre-judgment interest on any unpaid wages from the date such amounts  
24 were due, or as otherwise provided by law;

25 46. For attorneys' fees pursuant to California Code of Civil Procedure section  
26 1021.5, or as otherwise provided by law; and

27 47. For such other and further relief as the Court may deem equitable and  
28 appropriate.

**As to the Eighth Cause of Action**

48. That the Court declare, adjudge and decree that Defendants violated California Labor Code section 2802 by willfully failing to reimburse and/or indemnify all business-related expenses and costs incurred by Plaintiff and class members;

49. For unpaid business-related expenses and such general and special damages as may be appropriate;

50. For pre-judgment interest on any unpaid business-related expenses from the date such amounts were due, or as otherwise provided by law;

51. For all actual, consequential, and incidental losses and damages, according to proof;

52. For attorneys' fees and costs pursuant to California Labor Code section 2802(c), or as otherwise provided by law; and

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

**As to the Ninth Cause of Action**

54. That the Court declare, adjudge and decree that Defendants violated the following California Labor Code provisions as to Plaintiff and/or other aggrieved employees: 510 and 1198 (by failing to pay all overtime compensation); 1182.12, 1194, 1197, 1197.1, and 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512(a), 516, and 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize and permit all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage statements and maintain accurate payroll records); 201 and 202 (by failing to timely pay all earned wages upon termination); 204 (by failing to timely pay all earned wages during employment); 212 and 213 (by failing to make earned wages accessible without discount); 221 and 224 (by collecting and/or receiving wages already paid); 223 (by secretly paying wages lower than required by statute); 246 (by failing to provide written notice of paid sick leave or paid time off available); 551 and 552 (by failing to provide one day's rest in seven); 1198 and the applicable IWC Wage Order (by failing to provide suitable resting facilities);

1 1198 and the applicable IWC Wage Order (by failing to provide suitable seating); 2802 (by  
2 failing to reimburse business expenses); and 2810.5 (by failing to provide notice of material  
3 terms of employment);

4 55. For civil penalties pursuant to the California Labor Code, including sections  
5 210, 225.5, 226.3, 248.5, 256, 558, 1174.5, 2699(a), (f), and (g), for violations of California  
6 Labor Code sections 201, 202, 204, 212, 213, 221, 223, 224, 226(a), 246, 510, 512(a), 516,  
7 551, 552, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802 and 2810.5;

8 56. For attorneys' fees and costs pursuant to California Labor Code section  
9 2699(g)(1), and any and all other relevant statutes, for Defendants' violations of California  
10 Labor Code sections 201, 202, 204, 212, 213, 221, 223, 224, 226(a), 246, 510, 512(a), 516,  
11 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5;

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

13 58. For such other and further relief as the Court may deem equitable and  
14 appropriate.

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

16 59. That the Court declare, adjudge and decree that Defendants' conduct of failing  
17 to provide Plaintiff and class members all overtime wages due to them, failing to provide  
18 Plaintiff and class members all minimum wages due to them, failing to provide Plaintiff and  
19 class members all meal periods, failing to authorize and permit Plaintiff and class members to  
20 take all rest periods, failing to provide Plaintiff and class members accurate and complete  
21 wage statements, failing to maintain accurate payroll records for Plaintiff and class members,  
22 failing to timely pay Plaintiff and class members all earned wages during employment, failing  
23 to provide access to wages upon demand and without discount, failing to provide Plaintiff and  
24 class members with written notice of paid sick leave or paid time off available, failing to  
25 provide one day's rest in seven, failing to reimburse Plaintiff and class members for business-  
26 related expenses, and failing to provide written notice of material terms of employment,  
27 constitutes an unlawful business practice in violation of California Business and Professions  
28 Code sections 17200, *et seq.*;

1           60.     For restitution of unpaid wages to Plaintiff and all class members and  
2     prejudgment interest from the day such amounts were due and payable;

3           61.     For the appointment of a receiver to receive, manage and distribute any and all  
4     funds disgorged from Defendants and determined to have been wrongfully acquired by  
5     Defendants as a result of violations of California Business & Professions Code sections  
6     17200, *et seq.*;

7           62.     For reasonable attorneys' fees and costs of suit incurred herein pursuant to  
8     California Code of Civil Procedure section 1021.5; and

9           63.     For such other and further relief as the Court may deem equitable and  
10    appropriate.

11                               **As to the Eleventh Cause of Action**

12           64.     That the Court declare, adjudge and decree that Defendants' conduct of denying  
13     Plaintiff and class members the statutory benefits guaranteed under California Labor Code  
14     section 226.7 constitutes an unfair business practice in violation of California Business and  
15     Professions Code sections 17200, *et seq.*;

16           65.     For restitution of the statutory benefits under California Labor Code section  
17     226.7 unfairly withheld from Plaintiff and class members and prejudgment interest from the  
18     day such amounts were due and payable;

19           66.     For the appointment of a receiver to receive, manage and distribute any and all  
20     funds disgorged from Defendants and determined to have been wrongfully acquired by  
21     Defendants as a result of violations of California Business & Professions Code sections  
22     17200, *et seq.*;

23           67.     For reasonable attorneys' fees and costs of suit incurred herein pursuant to  
24     California Code of Civil Procedure section 1021.5;

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

26     //

27     //

28     //

1           69.     For such other and further relief as the Court may deem equitable and  
2 appropriate.

3  
4 Dated: April 29, 2022

Respectfully submitted,

5  
6 Capstone Law APC

7 By:  

8 Mark A. Ozzello

Brandon K. Brouillette

9 John E. Stobart

Joseph Hakakian

10 Attorneys for Plaintiff Mitzi Geiger  
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# EXHIBIT 1



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

MAO SHIOKURA  
310.712.8030 Direct  
Mao.Shiokura@capstonelawyers.com

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February 22, 2022

VIA ONLINE SUBMISSION

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

Subject: *Mitzi Geiger v. Party City Corporation*

Dear PAGA Administrator:

This office represents Mitzi Geiger in connection with her claims under the California Labor Code. Ms. Geiger was an employee of PARTY CITY CORPORATION ("PARTY CITY").

The employer may be contacted directly at the address below:

PARTY CITY CORPORATION  
25 GREEN POND ROAD SUITE 1  
ROCKAWAY NJ 07866

Ms. Geiger intends to seek civil penalties, attorney's fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 ("PAGA"). Ms. Geiger seeks relief on behalf of herself, the State of California, and other persons who are or were employed by PARTY CITY in California as a non-exempt, hourly paid employee 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.

PARTY CITY employed Ms. Geiger as a non-exempt, hourly paid Seasonal Sales Associate from approximately August to October 2021. Ms. Geiger worked for PARTY CITY at its retail store located in Murrieta, California. She typically worked five (5) hours or more per day and five (5) or more days per week. At the time her employment ended, Ms. Geiger was compensated approximately \$15.00 per hour. Her job duties included, without limitation, cleaning the bathrooms, stocking shelves with merchandise, unloading inventory from trucks, and cashiering.

PARTY CITY has committed one or more of the following Labor Code violations against Ms. Geiger, the facts and theories of which follow, making her an "aggrieved employee" pursuant to California Labor Code section 2699(c):<sup>1</sup>

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<sup>1</sup> These facts, theories, and claims are based on Ms. Geiger's experience and counsel's review of those records currently available relating to Ms. Geiger'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

### **PARTY CITY's Company-Wide and Uniform Payroll and HR Practices**

PARTY CITY CORPORATION is a Delaware corporation. Upon information and belief, PARTY CITY owns and operates more than 89 Party City and Halloween City store locations in California. Upon information and belief, PARTY CITY maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Rockaway, New Jersey, for all non-exempt, hourly paid employees working for PARTY CITY in California, including Ms. Geiger and other aggrieved employees. At all relevant times, PARTY CITY issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Ms. Geiger and other aggrieved employees, regardless of their location or position.

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

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

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

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

First, during the relevant time period, PARTY CITY had a company-wide policy and/or practice of discouraging and impeding Ms. Geiger 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. This policy of limiting overtime, coupled with PARTY CITY's use of labor budgets and assignment of heavy workloads (*see infra*), led Ms. Geiger and other aggrieved employees to work off-the-clock before and after their scheduled shift times. For example, three (3) times per week, Ms. Geiger was instructed by PARTY CITY's management to arrive to work one (1) hour prior to her scheduled shift start-time, in order to assist with setting up the store and restocking inventory. When this occurred, PARTY CITY required Ms. Geiger to sign-in and list on her timesheet her scheduled shift start-time, not when she actually began working. As a further example, once per week, Ms. Geiger was pressured to clock out at

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(because the aggrieved employee was not aware of the law's requirements, the employer misinformed its employee of the law's requirements, or because the employer effectively hid the violations). Thus, Ms. Geiger reserves the right to supplement this letter with additional facts, theories, and claims if she becomes aware of them subsequent to the submission of this letter.

the end of her scheduled shift and continue working—stocking shelves, assisting customers, and unloading inventory from trucks—for up to two (2) hours. Further, when Ms. Geiger and other aggrieved employees drove to work at PARTY CITY’s other store locations to cover additional shifts, they were not compensated for their travel time. For example, when Ms. Geiger was temporarily assigned to work at the Temecula and West Covina store locations, she would drive from home or from her Murrieta store location, spending half an hour or more roundtrip, but was not paid for this travel time. Finally, PARTY CITY had a company-wide security policy requiring employees to leave the store premises in pairs. On information and belief, after clocking out at the end of their shifts, other aggrieved employees were required to wait for each other before they could leave PARTY CITY’s premises together. As a result of these security policies and/or practices, other aggrieved employees were subject to PARTY CITY’s control after they had clocked out for their shifts, but were not compensated for this time.

This off-the-clock work could have been recorded by PARTY CITY, but it refused to do so to avoid payment of additional wages to Ms. Geiger and other aggrieved employees. Thus, PARTY CITY failed to track all of the time that employees spent performing work-related tasks before and after their scheduled shifts, and Ms. Geiger and other aggrieved employees received no compensation for this time.

Second, on information and belief, PARTY CITY had, and continues to have, a company-wide policy and/or practice of strictly staffing its store locations based on the labor hours allocated by each location’s labor or payroll budget set by corporate. PARTY CITY’s uniform use of labor budgets, combined with the assignment of heavy workloads, resulted in chronic understaffing and a lack of adequate meal period coverage, because there were too few employees on duty to handle the workload and attend to customers. PARTY CITY also had a practice of failing to schedule meal periods, which further caused Ms. Geiger and other aggrieved employees to not be relieved of their duties for compliant meal periods. As a result of this lack of meal period coverage, Ms. Geiger and other aggrieved employees were not always afforded 30-minute meal periods during shifts when they were entitled to receive a meal period and instead continued to work during unpaid meal periods.

Third, PARTY CITY had, and continues to have, a policy and/or practice of requiring that Ms. Geiger and other aggrieved employees carry and respond to a company-issued radio at all times. As a result, PARTY CITY’s management contacted Ms. Geiger and other aggrieved employees on their company-issued radios during unpaid meal periods to discuss work-related matters. For example, Ms. Geiger was required to spend time during her meal periods answering radio calls and responding to management’s requests. PARTY CITY knew or should have known that Ms. Geiger and other aggrieved employees were performing work while off-the-clock in order to meet PARTY CITY’s expectations, but failed to compensate them for this time.

Furthermore, upon information and belief, because PARTY CITY frowned upon employees accruing meal period penalties, PARTY CITY adjusted employee time records to reflect compliant meal periods and/or would automatically deduct 30-minute meal periods from Ms. Geiger’s and other aggrieved employees’ time records even when meal periods were missed, short, and/or interrupted. Thus, PARTY CITY did not record all hours worked during meal periods, and Ms. Geiger and other aggrieved employees performed work during meal periods for which they were not paid.

PARTY CITY knew or should have known that, as a result of these company-wide practices and/or policies, Ms. Geiger and other aggrieved employees were performing their assigned duties off-the-clock before and after their shifts and during meal periods, and were suffered or permitted to perform work for which they were not paid. Because Ms. Geiger 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, PARTY CITY did not pay other aggrieved employees the correct overtime rates for the recorded overtime hours that they generated. In addition to an hourly wage, PARTY CITY paid other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, PARTY CITY failed to incorporate all remunerations, including incentive pay and/or nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rates. Therefore, during times when other aggrieved employees worked overtime and received these other forms of pay, PARTY CITY failed to pay all overtime wages by paying a lower overtime rate than required.

PARTY CITY's failure to pay Ms. Geiger 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. Ms. Geiger 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 PARTY CITY's restrictions on overtime accrual, PARTY CITY systematically failed to pay Ms. Geiger and other aggrieved employees for actual hours worked before and after their scheduled shifts, because these hours were not accurately recorded. As stated, because PARTY CITY discouraged and impeded Ms. Geiger and other aggrieved employees from recording hours worked that were outside of their scheduled shifts, Ms. Geiger and other aggrieved employees were required to work off-the-clock before and after their scheduled shift start and end times, including setting up the store, restocking inventory, assisting customers, unloading inventory from trucks, driving to other store locations to cover shifts, and waiting for other employees to complete closing duties to leave the store premises in pairs. Additionally, as stated above, due to PARTY CITY's company-wide practices of utilizing labor budgets, assignment of heavy workloads, failure to schedule meal periods, subsequent lack of meal period coverage, and requirement that employees to carry and use their company-issued radios to communicate with management during unpaid meal periods, Ms. Geiger and other aggrieved employees were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work during their meal periods, time for which they were not paid.

Moreover, as stated, in order to prevent employees from accruing meal period penalties, upon information and belief, PARTY CITY's management adjusted employee time records to reflect compliant meal periods and/or automatically deducted 30-minute meal periods from Ms. Geiger's and other aggrieved employees' time records even when meal periods were missed, short, and/or interrupted. Thus, PARTY CITY systematically failed to pay Ms. Geiger and other aggrieved employees for actual hours worked during unpaid meal periods because these hours were not always correctly recorded.

Thus, PARTY CITY did not pay minimum wages for all hours worked by Ms. Geiger and other aggrieved employees. To the extent that these off-the-clock hours did not qualify for overtime premium payment, PARTY CITY 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, PARTY CITY regularly failed to pay at least minimum wages to Ms. Geiger and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Ms. Geiger 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 stated above, PARTY CITY had, and continues to have, company-wide policies and/or practices of understaffing its store locations due to labor budgeting, which, combined with heavy workloads and a failure to schedule meal periods, has resulted in a lack of meal period coverage and prevented Ms. Geiger and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. Moreover, as stated, PARTY CITY had, and continues to have, a company-wide policy and/or practice of requiring that Ms. Geiger and other aggrieved employees carry a company-issued radio to respond to requests at all times, including during meal periods. As a result, PARTY CITY's management contacted Ms. Geiger and other aggrieved employees on their company-issued radios during unpaid meal periods to discuss work-related matters.

As a result, Ms. Geiger and other aggrieved employees had to work through all or part of their meal periods, had their meal periods interrupted, and/or had to wait extended periods of time before taking meal periods. For example, Ms. Geiger often missed her meal periods entirely or took her meal periods late, after having worked in excess of five (5) hours into her shift, in order to meet the store's customer demand. Moreover, Ms. Geiger's meal periods were interrupted by customers and PARTY CITY's managers calling her on the company-provided radio.

Also, PARTY CITY 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. Ms. Geiger 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.

At all times mentioned herein, PARTY CITY knew or should have known that as a result of its policies, Ms. Geiger and other aggrieved employees were not actually relieved of all duties to take timely, uninterrupted meal periods. PARTY CITY further knew or should have known that it did not pay Ms. Geiger and other aggrieved employees meal period premiums when meal periods were late, interrupted, shortened, and/or missed. As set forth above, on information and belief, because PARTY CITY frowned

upon employees accruing meal period penalties, PARTY CITY's management would adjust employees' time records to reflect compliant meal periods and/or would automatically deduct 30-minute meal periods from Ms. Geiger's and other aggrieved employees' time records even when meal periods were missed, short, and/or interrupted.

Furthermore, PARTY CITY 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, Ms. Geiger and other aggrieved employees have not received premium pay for missed, late, and interrupted meal periods. Alternatively, to the extent that PARTY CITY did pay other aggrieved employees for missed, late, and interrupted meal periods, PARTY CITY did not pay other aggrieved employees at the correct rate of pay for premiums because PARTY CITY 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, PARTY CITY failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Ms. Geiger 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, PARTY CITY regularly failed to authorize and permit Ms. Geiger 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, PARTY CITY's policies and/or practices of understaffing and assignment of heavy workloads prevented Ms. Geiger and other aggrieved employees from being relieved of all duty in order to take their rest periods. PARTY CITY also failed to schedule rest periods, which, coupled with PARTY CITY's failure to provide adequate rest period coverage, further led to Ms. Geiger and other aggrieved employees not being authorized and permitted to take compliant rest periods. Moreover, as stated, PARTY CITY had, and continues to have, a policy and/or practice of requiring that Ms. Geiger and other aggrieved employees carry a company-issued radio to respond to requests from management at all times, including during rest periods.

Furthermore, upon information and belief, PARTY CITY maintained a company-wide on-premises rest period policy, which mandated that Ms. Geiger and other aggrieved employees remain on PARTY CITY's premises during their rest periods. Because Ms. Geiger and 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 or grabbing something to eat. Thus, PARTY CITY effectively maintained control over Ms. Geiger and other aggrieved employees during rest periods.

As a result of PARTY CITY's practices and policies, Ms. Geiger and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled. For example, approximately five (5) times per week, Ms. Geiger would miss her rest periods to meet customer demand and due to a lack of rest period coverage. Ms. Geiger's rest periods were also interrupted by supervisors to discuss work-related tasks, either in person or over the radio.

PARTY CITY 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 or permitted. Because of this practice and/or policy, Ms. Geiger and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that PARTY CITY did pay other aggrieved employees one (1) additional hour of premium pay for missed rest periods, PARTY CITY did not pay other aggrieved employees at the correct rate of pay for premiums because PARTY CITY 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, PARTY CITY failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Ms. Geiger 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. PARTY CITY has not provided Ms. Geiger and other aggrieved employees with properly itemized wage statements. Labor Code section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wage statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or \$50 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not to exceed \$4,000. Further, Labor Code section 226.3 provides that any employer who violates section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

During the relevant time period, PARTY CITY has knowingly and intentionally provided Ms. Geiger and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, PARTY CITY issued uniform wage statements to Ms. Geiger 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, PARTY CITY violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

Because PARTY CITY did not record the time Ms. Geiger and other aggrieved employees spent working off-the-clock and deducted time from their records for meal periods that were missed and/or interrupted (and therefore time for which they should have been paid), PARTY CITY did not list the correct amount

of gross wages and net wages earned by Ms. Geiger and other aggrieved employees, in compliance with section 226(a)(1) and 226(a)(5), respectively. For the same reason, PARTY CITY failed to accurately list the total number of the hours worked by Ms. Geiger 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).

Furthermore, because PARTY CITY did not calculate other aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages and/or meal and rest period premiums, PARTY CITY did not list the correct amount of gross wages earned by other aggrieved employees in compliance with section 226(a)(1) and did not list the correct amount of net wages earned by other aggrieved employees in violation of section 226(a)(5). PARTY CITY 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, without limitation, 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 hours 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), PARTY CITY willfully failed to maintain accurate payroll records for Ms. Geiger 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, PARTY CITY 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 Ms. Geiger and other aggrieved employees in violation of section 1198. Furthermore, in light of PARTY CITY's failure to provide other aggrieved employees with second 30-minute meal periods to which they were entitled, PARTY CITY kept no records of meal start and end times for second meal periods.

Because PARTY CITY failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Ms. Geiger and other aggrieved employees have been prevented from verifying, solely from information on the wage statements themselves, that they were paid correctly and in full. Instead, Ms. Geiger and other aggrieved employees have had to look to

sources outside of the wage statements themselves and reconstruct time records to determine whether in fact they were paid correctly and the extent of underpayment, thereby causing them injury.

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

Ms. Geiger 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.

PARTY CITY willfully failed to pay Ms. Geiger and other aggrieved employees who are no longer employed by PARTY CITY 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 PARTY CITY's employ.

Ms. Geiger 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 §§ 212 and 213 – Unlawful Direct Deposit and Discount of Wages**

California Labor Code section 212 prohibits employers from issuing any instruments for the payment of wages unless such instruments are negotiable and payable in cash on demand and without discount. California Labor Code section 213 permits employers to pay employees via direct deposit so long as the employee authorizes payment via direct deposit. Under California law, employers are also permitted to

fulfill their wage payment obligations to employees by using payroll debit cards, but only under certain circumstances. Employer use of payroll debit cards is permitted only so long as the employee is given the choice as to whether to accept a payroll debit card as a form of payment. *Johnson v. Sunrise Senior Living Management, Inc.*, No. 16 CV 00443 BRO RAOx, 2016 WL 8929249, \*9 (C.D. Cal. May 5, 2016). In *Johnson*, the court stated that the Division of Labor Standards Enforcement (“DLSE”) decision deeming payroll debit card program permissible relied heavily on:

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

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

- (1) [T]he “wages [are] payable at some established place of business in the state and there be at least 30 days of sufficient funds for payment,”
- (2) the employees are “fully informed of the service and procedures and that it is represented as an alternative method for wage payment for which their participation is optional,”
- (3) the employees receive “an itemized wage statement,” and
- (4) “at least one transaction per pay period [is] without fee.”

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

Further, the DLSE notes that the Labor Code manifests:

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

*DLSE opinion letter* 2008.07.07. The DLSE has also acknowledged that payroll service providers “effectively act as *agents* of the client employers in discharging the employer’s wage payment obligations.” *Id.* In a second opinion letter, the DLSE stated that “[w]hile the Labor Code does not purport to regulate the specific arrangements between employers and payroll service providers, both an employer and, under the express language in Labor Code § 212- their *agent*, must comply with its requirements.” *DLSE opinion letter* 2008.07.07.2.

During the relevant time period, PARTY CITY had a practice and/or policy of automatically issuing payroll debit cards to employees without giving them the option to elect their form of payment for their wages. For example, Ms. Geiger received her wages on a payroll debit card without a choice of an alternate method of payment, such as a written check. Instead, PARTY CITY automatically enrolled Ms. Geiger in its payroll debit card program for the purpose of issuing Ms. Geiger's wages to her without prior, voluntary approval from Ms. Geiger.

Moreover, under PARTY CITY's payroll debit card program, on information and belief, other aggrieved employees did not have easy access to the entirety of their wages without incurring a fee. For example, other aggrieved employees were unable to withdraw their entire wages in at least one transaction without incurring a fee and/or encountered \$3.00 ATM fees each time they utilized an out-of-network ATM to withdraw funds from their payroll debit cards, which resulted in a discount in their pay. In sum, PARTY CITY's payroll debit card program presented a number of obstacles and hurdles that combined, made it difficult for Ms. Geiger and/or other aggrieved employees to access their entire wages without discount and without delay.

Thus, PARTY CITY's payroll debit card program was and continues to be unlawful as it does not give departing employees the choice as to whether they would like to receive their wages on a payroll debit card or via some other payment method and did not give Ms. Geiger and/or other aggrieved employees easy access to the entirety of their wages without delay.

California courts recognize a policy favoring the full and prompt payment of wages to employees. PARTY CITY's payroll card program is inconsistent with this policy because PARTY CITY's program is involuntary and denies Ms. Geiger and other aggrieved employees of easy access to the entirety of their wages. Thus, PARTY CITY's company-wide payroll debit card program violates California Labor Code sections 212 and 213. Ms. Geiger and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 225.5 and/or 2699(a), (f)-(g).

#### **Violation of California Labor Code §§ 221 and 224 – Unlawful Deductions**

California Labor Code section 221 provides that it shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee. California Labor Code section 224 also provides in pertinent part that it is lawful to withhold a portion of the employee's wages if "a deduction is expressly authorized in writing by the employee."

During the relevant time period, PARTY CITY unlawfully deducted a portion of wages previously paid to other aggrieved employees in violation of California Labor Code section 221. On information and belief, PARTY CITY systematically, and on a company-wide basis, provided other aggrieved employees with payroll debit cards as payment of their wages. Under PARTY CITY's payroll debit card program, other aggrieved employees were assessed various fees in connection with their use of the payroll debit cards. For example, other aggrieved employees were required to pay per-transaction fees, ATM fees, and/or other fees to obtain and/or spend their earned and due wages. The fees charged to other aggrieved employees resulted in a discount of their wages.

PARTY CITY's payroll debit card program, which resulted in a discount of wages to employees, is tantamount to taking deductions from other aggrieved employees' paychecks without their written authorization and therefore constitutes an unlawful deduction of wages, in violation of Labor Code sections 221 and 224. Other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 225.5 and/or 2699(a), (f)-(g).

### **Violation of California Labor Code § 223 – Secret Payment of Lower Wages**

California Labor Code section 223 makes it unlawful for an employer to secretly pay wages lower than required by statute while purporting to pay legal wages.

During the relevant time period, PARTY CITY willfully and systematically issued payroll debit cards to other aggrieved employees that discounted their wages by charging various fees in connection with the use of the payroll debit cards. PARTY CITY's payroll debit card program resulted in the payment of less than statutorily required wages to other aggrieved employees. In doing so, PARTY CITY acted with the intent to deprive other aggrieved employees of statutory wages, including, but not limited to, overtime wages and/or minimum wages, to which they were entitled to under California law. Thus, PARTY CITY paid other aggrieved employees lower wages than those they were entitled to while purporting that other aggrieved employees were properly paid.

PARTY CITY's failure to pay other aggrieved employees the correct designated wage, while purporting to pay legal wages, is a violation of California Labor Code section 223. Other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 225.5 and/or 2699(a), (f)-(g).

### **Violation of California Labor Code § 246 – Failure to Provide Written Notice of Paid Sick Leave**

California's Healthy Workplaces, Healthy Families Act of 2014 was enacted to provide employees who have worked in California for 30 or more days from the commencement of employment with paid sick days, to be accrued at least one hour for every 30 hours worked. Employers must provide no less than 24 hours or three (3) days of paid sick leave (or equivalent paid leave or paid time off) in each year of the employee's employment. Codified at California Labor Code sections 245.5, 246, 246.5, 247, 247.5, 248.5, and 249, section 246(i) provides that an employer must provide an employee with written notice that sets forth the amount of paid sick leave available, or paid time off that an employer provides in lieu of sick leave, for use on either the employee's itemized wage statement or in a separate written statement provided on the designated pay date with the employee's wages.

During the relevant time period, PARTY CITY has failed to provide Ms. Geiger and other aggrieved employees written notice on wage statements and/or other separate written statements that listed the amount of paid sick leave (or equivalent paid leave or paid time off) available to them. PARTY CITY's ongoing and systematic failure to provide written notice of sick leave benefits to Ms. Geiger and other aggrieved employees violates California Labor Code section 246(i).

Ms. Geiger and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 248.5 and/or 2699(f)-(g).

### **Violation of California Labor Code §§ 551 and 552 – Failure to Provide One Day's Rest in Seven**

California Labor Code section 551 provides that every person employed in any occupation of labor is entitled to one day's rest in seven. California Labor Code section 552 prohibits employers from requiring employees to work more than six consecutive days without a day of rest. California Labor Code section 556 exempts an employer from the day-of-rest requirement when the total hours worked by an employee do not exceed 30 hours in any week or six (6) hours in any one day thereof.

During the relevant period, PARTY CITY required Ms. Geiger and other aggrieved employees to work approximately six (6) or more hours per day and seven (7) consecutive days in a workweek. For example, Ms. Geiger once worked approximately 11 consecutive days without being afforded the opportunity to take one day's rest. Because Ms. Geiger and other aggrieved employees worked over thirty (30) hours

per week and over six (6) hours in any one day in a workweek, they were not exempt from the day-of-rest requirement. To the extent that Ms. Geiger and other aggrieved employees signed purported waivers of their right to a day's rest in seven, such waivers are invalid.

Thus, PARTY CITY caused Ms. Geiger and other aggrieved employees to work more than six days in seven, in violation of Labor Code sections 551 and 552. Ms. Geiger 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 § 1198 and California Code of Regulations Title 8, Section 11070 Subdivision 13(B) – Failure to Provide Suitable Resting Facilities**

California Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable wage order. California Labor Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.” California Code of Regulations, Title 8, section 11070(13)(B) provides that “[s]uitable resting facilities shall be provided in an area separate from the toilet rooms and shall be available to employees during work hours.”

PARTY CITY's California stores are generally similar in their layout and design and there was, and continues to be, space that allows for a resting facility that employees may use to cease work and recover during meal or rest periods. PARTY CITY could have provided Ms. Geiger and other aggrieved employees with a suitable resting facility within its stores, with reasonable or no modification, but instead denied, and continues to deny, employees suitable areas to rest (e.g., a breakroom with seats). As a result, Ms. Geiger and other aggrieved employees were forced to adjust to areas not conducive to resting, such as sitting on the ground or floor of the store premises, or search for areas outside of the store which are not designated or reserved for their rest, such as in their personal vehicles.

PARTY CITY did not provide Ms. Geiger and other aggrieved employees with suitable resting facilities during their work hours, particularly during rest or meal periods. In other words, during the times when Ms. Geiger and other aggrieved employees were legally allowed to forgo assigned tasks, as in during a meal or rest period, PARTY CITY denied them any area within their stores to cease work and recover. Moreover, PARTY CITY did not inform Ms. Geiger and other aggrieved employees of their rights to suitable resting facilities under California law.

As a result of PARTY CITY's company-wide failure to provide suitable resting facilities in its stores, Ms. Geiger and other aggrieved employees were forced to adjust to areas not conducive to resting or search for facilities outside their stores to cease work and recover. PARTY CITY's failure to provide suitable resting facilities to Ms. Geiger and other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order No. 7-2001, subdivision 13(B).

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

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

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

employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.” California Code of Regulations, Title 8, section 11070(14)(A) provides that “[a]ll working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats.”

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

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

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

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

As a result of PARTY CITY’s company-wide policy and/or practice of prohibiting employees from sitting during their shifts and company-wide failure to provide suitable seating, Ms. Geiger and other aggrieved employees were forced to stand during shifts and denied seats. PARTY CITY’s failure to provide suitable seating to Ms. Geiger and other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order No. 7-2001, subdivision 14(A).

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

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

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

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

PARTY CITY’s California stores are generally similar in their layout and design and there was, and continues to be, space near their work areas (with reasonable or no modification to these work areas) to allow for the presence and use of a seat or stool by Ms. Geiger and other aggrieved employees during lulls in operation. PARTY CITY could have provided Ms. Geiger and other aggrieved employees with a seat or stool in its work areas, but instead denied, and continues to deny, employees seating, forcing them to stand throughout the day.

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

As a result of PARTY CITY’s company-wide policy and/or practice of prohibiting employees from sitting at any time, even when they were not engaged in active duties requiring standing, and company-wide failure to provide seats in reasonable proximity to their work areas, Ms. Geiger and other aggrieved employees were forced to stand during shifts and denied seats. PARTY CITY’s failure to provide suitable seating to Ms. Geiger and other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order No. 7-2001, subdivision 14(B).

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

### **Violation of California Labor Code § 2802 – Unreimbursed Business Expenses**

California Labor Code section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order, IWC Wage Order 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, PARTY CITY had a company-wide policy of requiring Ms. Geiger and other aggrieved employees to utilize their own personal vehicles or obtain alternate transportation to carry out company business, but failed to reimburse them for all costs of travel, including mileage. For example, Ms. Geiger was required to drive to PARTY CITY's stores in Temecula and West Covina, approximately 10 or more miles roundtrip, to pick up inventory or to cover shifts at these other locations. Although PARTY CITY required Ms. Geiger and other aggrieved employees to utilize their own vehicles or obtain alternate transportation to carry out their work-related responsibilities, PARTY CITY did not reimburse them for their travel expenses.

Second, during the relevant time period, PARTY CITY, on a company-wide basis, required Ms. Geiger and other aggrieved employees to use their own personal mobile devices, including, but not limited to cellular phones, and/or mobile data to carry out their job duties, but failed to reimburse them for the cost of their work-related mobile device expenses. Ms. Geiger and other aggrieved employees were required to use their personal mobile devices for work-related tasks, including responding to calls or text messages from PARTY CITY's management. Specifically, Ms. Geiger used her personal cellular phone to photograph re-stocked inventory and send those pictures to her supervisor. Although PARTY CITY required Ms. Geiger and other aggrieved employees to utilize their personal mobile devices and/or mobile data to carry out their work-related responsibilities, PARTY CITY failed to reimburse them for these costs.

Third, during the relevant time period, PARTY CITY expected Ms. Geiger and other aggrieved employees to wear uniforms bearing the company logo, including an apron. However, PARTY CITY did not provide its employees with sufficient uniforms to wear for their shifts throughout the week. For example, PARTY CITY only provided Ms. Geiger and other aggrieved employees with one branded apron at the time of hire. Because PARTY CITY failed to provide Ms. Geiger and other aggrieved employees with an adequate number of uniform items in relation to their scheduled shifts and for the tasks they were required to perform, Ms. Geiger and other aggrieved employees were forced to wash their uniforms more frequently than they would otherwise do laundry and incur expenses in doing so. Thus, PARTY CITY failed to maintain the uniforms it required Ms. Geiger and other aggrieved employees to wear during their shifts and forced them to incur the cost of maintaining employee uniforms.

PARTY CITY could have provided Ms. Geiger and other aggrieved employees with the actual tools for use on the job, such as company vehicles and company mobile devices, as well as an adequate number of uniforms and/or access to laundering services. Or, PARTY CITY could have reimbursed employees for their mileage; travel expenses; mobile device usage; and costs of their laundering expenses or provided a uniform maintenance allowance. Instead, PARTY CITY passed these operating costs off onto Ms. Geiger and other aggrieved employees. At all relevant times, Ms. Geiger did not earn at least two (2) times the minimum wage.

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

**Violation of California Labor Code § 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.

At all relevant times, on information and belief, PARTY CITY failed, on a company-wide basis, to provide written notice to Ms. Geiger and other aggrieved employees that lists the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). PARTY CITY's failure to provide Ms. Geiger and other aggrieved employees with written notice of basic information regarding their employment with PARTY CITY is in violation of Labor Code section 2810.5.

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

**California Labor Code § 558(a)**

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

Accordingly, Ms. Geiger seeks the remedies set forth in Labor Code section 558 for herself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 1194.5, 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Ms. Geiger, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties and injunctive relief for herself, all other aggrieved employees, and the State of California against PARTY CITY for violations of California Labor Code sections 201, 202, 204, 212, 213, 221, 223, 224, 226(a), 226.7, 246, 510, 512(a), 516, 551, 552, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

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

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

Mao Shiokura  
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 "Mao Shiokura", with a stylized flourish at the end.

Mao Shiokura

Copy: PARTY CITY CORPORATION (via U.S. Certified Mail)

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I am employed in the State of California, County of Los Angeles. I am over the age of 18 and not a party to the within suit; my business address is 1875 Century Park East, Suite 1000, Los Angeles, California 90067. My electronic address is matthew.krout@capstonelawyers.com.

**FIRST AMENDED CLASS ACTION COMPLAINT & ENFORCEMENT ACTION  
UNDER THE PRIVATE ATTORNEY GENERAL ACT, CALIFORNIA LABOR CODE  
§§ 2698, *ET SEQ.***

CSC – Lawyers Incorporating Service  
Agent for Service of Process for  
Party City Corporation  
2710 Gateway Oaks Dr, Suite 150N  
Sacramento, California 95833

☒ **BY PERSONAL SERVICE:** I personally cause the document to delivered by hand, in an enclosed in a sealed envelope, to the offices of the addressee(s) named herein via attorney messenger service ProLegal/ProCourier.

[ ] **BY OVERNIGHT DELIVERY:** I am “readily familiar” with this firm’s practice of collection and processing correspondence for overnight delivery. Under that practice, overnight packages are enclosed in a sealed envelope with a packing slip attached thereto fully prepaid. The packages are picked up by the carrier at our offices or delivered by our office to a designated collection site.

Executed this **April 29, 2022**, at Los Angeles, California.

Signature