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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

JUN 01 2022

BY


Stephanie Rando DEPUTY

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 FOR THE COUNTY OF SAN BERNARDINO

15 DENNIS GUTIERREZ, individually, and
16 on behalf of other members of the general
17 public similarly situated, and as an
18 aggrieved employee pursuant to the Private
19 Attorneys General Act ("PAGA"),

20 Plaintiff,

21 vs.

22 RITE AID CORPORATION, a Delaware
23 Corporation; THRIFTY PAYLESS, INC., a
24 California corporation; and DOES 1
25 through 10, inclusive,

26 Defendants.

Case No.: **CIV SB 2210918**

**CLASS ACTION COMPLAINT &
ENFORCEMENT ACTION UNDER THE
PRIVATE ATTORNEYS 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);
- (8) Violation of California Labor Code § 2802 (Unreimbursed Business Expenses);

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- (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 Dennis Gutierrez, individually and on behalf of all other members of the public
2 similarly situated, and as an aggrieved employee and on behalf of all other 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, hourly
9 paid employees and received at least one wage statement and against whom one or more
10 violations of any provision in Division 2 Part 2 Chapter 1 of the Labor Code or any provision
11 regulating hours and days of work in the applicable Industrial Welfare Commission (“IWC”)
12 Wage Order were committed, as set forth in this complaint. The monetary damages, penalties,
13 and restitution sought by Plaintiff exceed the minimal jurisdiction limits of the Superior Court
14 and will be established according to proof at trial. This Court has jurisdiction over this action
15 pursuant to the California Constitution, Article VI, section 10. The statutes under which this
16 action is brought do not specify any other basis for jurisdiction. Plaintiff’s share of damages,
17 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 jurisdiction
21 over them by the California courts consistent with traditional notions of fair play and substantial
22 justice. There is no basis for federal diversity jurisdiction in this action because there is no
23 complete diversity, and this case falls within the statutory exceptions to “minimal diversity”
24 jurisdiction under the Class Action Fairness Act, 28 U.S.C. § 1332(d)(4). Upon information
25 and belief, two-thirds or more of the class members and Defendants are citizens of California
26 and/or (a) two-thirds of the class members and Defendants are citizens of California; (b) the
27 alleged wage and hour violations occurred in California; (c) significant relief is being sought
28 against Defendants whose violations of California wage and hour laws form a significant basis

1 for Plaintiff's claims; and (d) no other class action has been filed within the past three (3) years
2 on behalf of the same proposed class against Defendants asserting the same or similar factual
3 allegations.

4 3. Venue is proper in this Court, because Defendants employ persons within the
5 County of San Bernardino, and have violated the requirements of the California Labor Code
6 and applicable Wage Order in this county which give rise to the penalties sought in this action.
7 Cal. Code Civ. P. § 393. Specifically, Defendants have violated the requirements of the
8 California Labor Code and applicable Wage Order in at least 30 store locations within the
9 County of San Bernardino, including Defendants' stores located in Apple Valley (19035 Bear
10 Valley Road, Apple Valley, California 92308; 21738 US Highway 18, Apple Valley, California
11 92307), Barstow (1380 Barstow Road, Barstow, California 92311), Blue Jay (27177 Highway
12 189, Suite E, Blue Jay, California 92317), N Chino Hills (4200 Chino Hills Parkway, Suite 500,
13 Chino Hills, California 91709; 15890 Soquel Canyon Parkway, Chino Hills, California 91709),
14 Colton (1133 North Mount Vernon Avenue, Colton, California 92324; 2025 East Washington
15 Street, Colton, California 92324), Fontana (9940 Sierra Avenue, Fontana, California 92335;
16 15331 Baseline Avenue, Fontana, California 92336), Hesperia (15510 Main Street, Hesperia,
17 California 92345; 17441 Main Street, Hesperia, California 92345), Loma Linda (25710 Barton
18 Road, Loma Linda, California 92354), Ontario (1050 North Mountain Avenue, Ontario,
19 California 91762; 1841 East 4th Street, Ontario, California 91764; 3000 South Archibald
20 Avenue, Ontario, California 91761), Phelan (4120 Phelan Road, Phelan, California 92371),
21 Rancho Cucamonga (9650 Baseline Road, Rancho Cucamonga, California 91701; 8760 19th
22 Street, Rancho Cucamonga, California 91701; 7339 Milliken Avenue, Suite 110, Rancho
23 Cucamonga, California 91730), Redlands (700 East Redlands Boulevard, Suite A, Redlands,
24 California 92373), San Bernardino (949 Kendall Drive, San Bernardino, California 92407; 2130
25 East Highland Avenue, San Bernardino, California 92404), Twentynine Palms (72253
26 Twentynine Palms Highway, Twentynine Palms, California 92277), Victorville (16120 Bear
27 Valley Road, Victorville, California 92395; 14629 7th Street, Victorville, California 92395;
28 14515 Mojave Drive, Suite B, Victorville, California 92394), Yucaipa (34420 Yucaipa

Boulevard, Yucaipa, California 92399; 11352 Bryant Street, Yucaipa, California 92399), and Yucca Valley (57701 29 Palms Highway, Yucca Valley, California 92284). Pursuant to California Civil Code of Procedure section 393, venue is proper for the recovery of a penalty or forfeiture imposed by statute in the county in which the cause, or some part of the cause, arose. Because Defendants have employees in San Bernardino County and Plaintiff could bring this action to recover penalties in San Bernardino County, venue is proper.

THE PARTIES

4. Plaintiff Dennis Gutierrez is a resident of Pico Rivera, in Los Angeles County, California. Defendants employed Plaintiff as an hourly paid, non-exempt Asset Protection Investigator from approximately May 2021 to September 2021. Plaintiff worked for Defendants at their Rite Aid store location at 2059 South Garey Avenue, Pomona, CA 91766. During his employment, Plaintiff typically worked eight (8) hours per day, and five (5) days per week. Plaintiff's primary job duties included, without limitation, monitoring the store, managing store incidents, filing police and incident reports, and enforcing loss prevention and security policies.

5. RITE AID CORPORATION was and is, upon information and belief, a Delaware corporation, and at all times hereinafter mentioned, an employer whose employees are engaged throughout this county, the State of California, or the various states of the United States of America.

6. THRIFTY PAYLESS, INC. was and is, upon information and belief, a California corporation, and at all times hereinafter mentioned, an employer whose employees are engaged throughout this county, the State of California, or the various states of the United States of America.

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 RITE AID CORPORATION and THRIFTY

1 PAYLESS, INC. at all relevant times.

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

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

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

17 12. Under California law, Defendants are jointly and severally liable as employers
18 for the violations alleged herein because they have each exercised sufficient control over the
19 wages, hours, working conditions, and employment status of Plaintiff and class members. Each
20 Defendant had the power to hire and fire Plaintiff and class members, supervised and controlled
21 their work schedule and/or conditions of employment, determined their rate of pay, and
22 maintained their employment records. Defendants suffered or permitted Plaintiff and class
23 members to work and/or “engaged” Plaintiff and class members so as to create a common-law
24 employment relationship. As joint employers of Plaintiff and class members, Defendants are
25 jointly and severally liable for the civil penalties and all other relief available to Plaintiff and
26 class members under the law.

27 13. Plaintiff is informed and believes, and thereon alleges, that at all relevant times,
28 Defendants, and each of them, have acted as joint employers with respect to Plaintiff and class

members because Defendants have:

- (a) jointly exercised meaningful control over the work performed by Plaintiff and class members;
- (b) jointly exercised meaningful control over Plaintiff's and class members' wages, hours, and working conditions, including the quantity, quality standards, speed, scheduling, and operative details of the tasks performed by Plaintiff and class members;
- (c) jointly required that Plaintiff and class members perform work which is an integral part of Defendants' businesses; and
- (d) jointly exercised control over Plaintiff and class members as a matter of economic reality in that Plaintiff and class members were dependent on Defendants, who shared the power to set the wages of Plaintiff and class members and determined their working conditions, and who jointly reaped the benefits from the underpayment of their wages and noncompliance with other statutory provisions governing their employment.

14. Plaintiff is informed and believes, and thereon alleges, that at all relevant times there has existed a unity of interest and ownership between Defendants such that any individuality and separateness between the entities has ceased.

15. RITE AID CORPORATION; THRIFTY PAYLESS, INC.; and/or DOES 1 through 10 are therefore alter egos of each other.

16. Adherence to the fiction of the separate existence of Defendants would permit an abuse of the corporate privilege, and would promote injustice by protecting Defendants from liability for the wrongful acts committed by them under the name RITE AID.

17. Plaintiff further alleges, upon information and belief, that Defendants RITE AID CORPORATION and THRIFTY PAYLESS, INC. are alter egos of each other for the following reasons:

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- (a) On the California Secretary of State's website (<https://bizfileonline.sos.ca.gov/search/business>), RITE AID CORPORATION and THRIFTY PAYLESS, INC. share the same entity and/or mailing address of "30 HUNTER LANE CAMP HILL PA 17011";
- (b) According to their most recent "Statement of Information" forms filed with the California Secretary of State, RITE AID CORPORATION and THRIFTY PAYLESS, INC. share the same Agent for Service of Process, C T CORPORATION SYSTEM (C0168406);
- (c) Based on the Statement of Information forms filed with the California Secretary of State, RITE AID CORPORATION and THRIFTY PAYLESS, INC. share the same officers and/or directors, including, but not limited to, Susan Lowell, who serves as Chief Executive Officer; Amanda Glover, who serves as Secretary; and Byron Purcell, who serves as Chief Executive Officer; and
- (d) On information and belief, RITE AID CORPORATION and THRIFTY PAYLESS, INC. utilize the same standardized employment forms and issue the same employment policies.

GENERAL ALLEGATIONS

18. Defendants operate approximately 526 Rite Aid store locations throughout California. Upon information and belief, Defendants maintain a single, centralized Human Resources ("HR") department at their corporate headquarters in Camp Hill, Pennsylvania, which is responsible for the recruiting and hiring of new employees, and communicating and implementing Defendants' company-wide policies, including timekeeping policies and meal and rest period policies, to employees throughout California.

19. In particular, Plaintiff and class members, on information and belief, received the same standardized documents and/or written policies. Upon information and belief, the usage of standardized documents and/or written policies, including new-hire documents, indicate that Defendants dictated policies at the corporate level and implemented them

1 company-wide, regardless of their employees' assigned locations or positions.

2 20. Upon information and belief, Defendants maintain a centralized Payroll
3 department at their corporate headquarters in Camp Hill, Pennsylvania, which processes payroll
4 for all non-exempt, hourly paid employees working for Defendants at their various locations
5 and jobsites in California, including Plaintiff and class members. Based upon information and
6 belief, Defendants issue the same formatted wage statements to all non-exempt, hourly paid
7 employees in California, irrespective of their work locations. Upon information and belief,
8 Defendants process payroll for departing employees in the same manner throughout the State
9 of California, regardless of the manner in which each employee's employment ends.

10 21. Defendants continue to employ non-exempt or hourly paid employees in
11 California.

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

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

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

22 25. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
23 should have known that Plaintiff and/or class members were entitled to be paid at a regular rate
24 of pay, and corresponding overtime rates of pay, that included as eligible income all
25 remuneration required by law, including but not limited to, all income derived from hazard pay,
26 incentive pay, nondiscretionary bonuses, and/or other forms of compensation, but failed to
27 include all forms of remuneration in calculating the regular rate of pay for Plaintiff and/or class
28 members.

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

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

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

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

26 30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
27 should have known that they had a duty to maintain accurate and complete payroll records in
28 accordance with the California Labor Code and applicable IWC Wage Order, but willfully,

1 knowingly, and intentionally failed to do so.

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

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

13 33. Plaintiff is informed and believes, and thereon alleges, that at all times herein
14 mentioned, that Defendants knew or should have known that they had a duty to cover the costs
15 and expenses Plaintiff and class members incurred obtaining mandatory physical examinations
16 and/or drug tests, but failed to do so.

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

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

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1 36. Plaintiff is informed and believes, and thereon alleges, that at all times herein
2 mentioned, Defendants knew or should have known that Defendants had a duty to provide
3 Plaintiff and class members with written notice of the material terms of their employment with
4 Defendants as required by the California Wage Theft Prevention Act, but failed to do so.

5 37. Plaintiff is informed and believes, and thereon alleges, that at all times herein
6 mentioned, that Defendants knew or should have known that they had a duty to provide Plaintiff
7 and class members with safety devices and safeguards to protect their life, health, and safety in
8 the workplace, but failed to do so.

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

15 **PAGA REPRESENTATIVE ALLEGATIONS**

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

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

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

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

4 (a) The aggrieved employee or representative shall give written notice by
5 online filing with the LWDA and by certified mail to the employer of the
6 specific provisions of the California Labor Code alleged to have been
7 violated, including the facts and theories to support the alleged violation.

8 (b) An aggrieved employee's notice filed with the LWDA pursuant to
9 2699.3(a) and any employer response to that notice shall be accompanied
10 by a filing fee of seventy-five dollars (\$75).

11 (c) The LWDA shall notify the employer and the aggrieved employee or
12 representative by certified mail that it does not intend to investigate the
13 alleged violation ("LWDA's Notice") within sixty (60) calendar days of
14 the postmark date of the aggrieved employee's notice. Upon receipt of
15 the LWDA Notice, or if no LWDA Notice is provided within sixty-five
16 (65) calendar days of the postmark date of the aggrieved employee's
17 notice, the aggrieved employee may commence a civil action pursuant to
18 California Labor Code section 2699 to recover civil penalties.

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

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

27 (b) An aggrieved employee's notice filed with the LWDA pursuant to
28 2699.3(c) and any employer response to that notice shall be accompanied

1 by a filing fee of seventy-five dollars (\$75).

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

11 44. On March 25, 2022, Plaintiff provided written notice by online filing to the
12 LWDA and by certified mail to Defendants of the specific provisions of the California Labor
13 Code alleged to have been violated, including facts and theories to support the alleged
14 violations, in accordance with California Labor Code section 2699.3. Plaintiff's written notice
15 was accompanied with the applicable filing fee of seventy-five dollars (\$75). The LWDA
16 PAGA Administrator confirmed receipt of Plaintiff's written notice and assigned Plaintiff
17 PAGA Case Number LWDA-CM-875517-22. A true and correct copy of Plaintiff's written
18 notice to the LWDA and Defendants is attached hereto as "Exhibit 1."

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

22 46. Thus, Plaintiff has satisfied the administrative prerequisites under California
23 Labor Code section 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
24 violations of California Labor Code sections 201, 202, 204, 222.5, 226(a), 226.7, 510, 512(a),
25 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, 2810.5, 6401, and 6403.

26 47. Labor Code section 558(a) provides "[a]ny employer or other person acting on
27 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
28 provision regulating hours and days of work in any order of the Industrial Welfare Commission

1 shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for
2 each underpaid employee for each pay period for which the employee was underpaid. . . . (2)
3 For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for
4 each pay period for which the employee was underpaid. . . .” Labor Code section 558(c)
5 provides “[t]he civil penalties provided for in this section are in addition to any other civil or
6 criminal penalty provided by law.”

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

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

13 50. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a),
14 2699.3(a), 2699.3(c), and 2699.5, and section 558, Plaintiff, acting in the public interest as a
15 private attorney general, seeks assessment and collection of civil penalties for himself, all other
16 aggrieved employees, and the State of California against Defendants for violations of California
17 Labor Code sections 201, 202, 204, 222.5, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12,
18 1194, 1197, 1197.1, 1198, 2802, 2810.5, 6401, and 6403.

19 **CLASS ACTION ALLEGATIONS**

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

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

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

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

28 ///

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

2 All persons who worked for Defendants as non-exempt, hourly
3 paid employees in California and who received at least one wage
4 statement within one (1) year prior to the filing of the initial
 complaint until the date of trial (“Subclass”).

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

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

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

- 11 (a) Whether Defendants required Plaintiff and class members to work over
12 eight (8) hours per day, over twelve (12) hours per day, or over forty (40)
13 hours per week and failed to pay all legally required overtime
14 compensation to Plaintiff and class members;
- 15 (b) Whether Defendants failed to properly calculate the “regular rate” of pay
16 on which Plaintiff’s and/or class members’ overtime rate of pay was
17 based;
- 18 (c) Whether Defendants failed to pay Plaintiff and class members at least
19 minimum wages for all hours worked;
- 20 (d) Whether Defendants failed to provide Plaintiff and class members meal
21 periods;
- 22 (e) Whether Defendants failed to authorize and permit Plaintiff and class
23 members to take rest periods;
- 24 (f) Whether Defendants provided Plaintiff and class members with complete
25 and accurate wage statements as required by California Labor Code
26 section 226(a);
- 27 (g) Whether Defendants maintained accurate payroll records as required by
28 California Labor Code section 1174(d);

- 1 (h) Whether Defendants failed to pay earned overtime wages, minimum
2 wages, and/or meal and rest period premiums due to Plaintiff and class
3 members upon their discharge;
- 4 (i) Whether Defendants failed to timely pay overtime wages, minimum
5 wages, and/or meal and rest period premiums due to Plaintiff and class
6 members during their employment;
- 7 (j) Whether Defendants failed to pay Plaintiff and class members for the
8 costs of mandatory drug testing and/or physical examinations;
- 9 (k) Whether Defendants failed to provide Plaintiff and/or class members with
10 suitable seating;
- 11 (l) Whether Defendants failed to reimburse Plaintiff and class members for
12 necessary and required business-related expenditures and/or losses
13 incurred by them in the scope of their employment;
- 14 (m) Whether Defendants failed to provide written notice of information
15 material to Plaintiff's and class members' employment with Defendants;
- 16 (n) Whether Defendants failed to provide Plaintiff and class members with
17 safety devices and safeguards, such as personal protective equipment;
- 18 (o) Whether Defendants engaged in unlawful and unfair business practices in
19 violation of California Business & Professions Code sections 17200, *et*
20 *seq.*; and
- 21 (p) The appropriate amount of damages, restitution, or monetary penalties
22 resulting from Defendants' violations of California law.

23 58. There is a well-defined community of interest in the litigation and the class
24 members are readily ascertainable:

- 25 (a) Numerosity: The class members are so numerous that joinder of all
26 members would be unfeasible and impractical. The membership of the
27 entire class is unknown to Plaintiff at this time; however, the class is
28 estimated to be greater than one hundred (100) individuals and the

identity of such membership is readily ascertainable by inspection of Defendants' employment records.

(b) Typicality: Plaintiff is qualified to, and will, fairly and adequately protect the interests of each class member with whom he has a well-defined community of interest, and Plaintiff's claims (or defenses, if any) are typical of all class members as demonstrated herein.

(c) Adequacy: Plaintiff is qualified to, and will, fairly and adequately protect the interests of each class member with whom he has a well-defined community of interest and typicality of claims, as demonstrated herein. Plaintiff acknowledges that he has an obligation to make known to the Court any relationship, conflicts or differences with any class member. Plaintiff's attorneys, the proposed class counsel, are versed in the rules governing class action discovery, certification, and settlement. Plaintiff has incurred, and throughout the duration of this action, will continue to incur costs and attorneys' fees that have been, are, and will be necessarily expended for the prosecution of this action for the substantial benefit of each class member.

(d) Superiority: The nature of this action makes the use of class action adjudication superior to other methods. A class action will achieve economies of time, effort, and expense as compared with separate lawsuits, and will avoid inconsistent outcomes because the same issues 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)

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

60. 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.”

61. 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.

62. 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 workweek.

63. The applicable IWC Wage Order further provides that Defendants are and were required to pay Plaintiff and class members 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 hazard pay, nondiscretionary bonuses and incentive pay.

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

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

12 66. First, during the relevant time period, Defendants had a company-wide policy
13 and/or practice of requiring Plaintiff and class members to perform tasks off-the-clock, such as
14 performing closing duties and responding to phone calls from supervisors. For example,
15 Defendants' management instructed Plaintiff to clock out and continue working, performing a
16 final walk-through of the store perimeter, waiting for employees to close the store, and escorting
17 those employees to their vehicles approximately twice per week, but Defendants did not
18 compensate him for this time. Moreover, Plaintiff and class members were required to respond
19 to their personal mobile devices and complete other work-related tasks on their days off. For
20 example, while off-the-clock, Plaintiff was required to respond to phone calls regarding security
21 incidents and other administrative issues for five (5) minutes per instance. Thus, Defendants
22 failed to track this time spent working after scheduled shifts, and Plaintiff and class members
23 received no compensation for this time.

24 67. Second, Defendants had, and continue to have, a uniform practice and/or policy
25 of staffing their locations strictly based on the labor hours or labor budget set by the corporate
26 office. Defendants' use of a labor budget resulted in chronic understaffing, such that there were
27 too few employees on duty to handle the heavy workloads and provide meal period coverage.
28 Also, Defendants have systematically, and on a company-wide basis, understaffed their

1 locations by adopting a single-staffing model for some of their positions, pursuant to their labor
2 budget practices, thereby failing to provide adequate meal period coverage to permit those
3 employees to take compliant meal periods. As a result of this lack of meal period coverage,
4 Plaintiff and class members were not always afforded uninterrupted 30-minute meal periods
5 during shifts when they were entitled to receive a meal period. For example, Plaintiff was
6 sometimes forced to forego meal periods in order to complete the tasks and duties Defendants
7 assigned to him, including handling store incidents involving theft, fire, and vandalism, and
8 drafting incident reports. In addition, Plaintiff would have his meal periods interrupted and cut
9 short several times a month to respond to phone calls and visits from the police to discuss store
10 thefts. Consequently, Plaintiff and class members were required to work through and/or had
11 their unpaid meal periods interrupted in order to complete their assigned duties, time for which
12 they were not paid.

13 68. Third, on information and belief, because Defendants frowned upon employees
14 accruing meal period penalties, Defendants adjusted Plaintiff's and class members' time records
15 to reflect compliant meal periods, even when they did not receive a compliant meal period, in
16 order to strictly limit meal penalties that Defendants would otherwise owe. Thus, Plaintiff and
17 class members performed work during meal periods for which they were not paid. Furthermore,
18 on information and belief, Defendants' company-wide timekeeping system prevented Plaintiff
19 and class members from recording all hours worked when their meal periods were shortened or
20 interrupted, because the system locked out Plaintiff and class members once they clocked out
21 for a meal period, and would not permit them to clock back in from a meal period before 30
22 minutes had elapsed. Thus, Defendants did not record all hours worked during meal periods,
23 and Plaintiff and class members performed work during meal periods for which they were not
24 paid.

25 69. Defendants knew or should have known that as a result of these company-wide
26 practices and/or policies, Plaintiff and class members were performing their assigned duties off-
27 the-clock before and after their shifts and during meal periods, and were suffered or permitted
28 to perform work for which they were not paid. Because Plaintiff and class members worked

1 shifts of eight (8) hours a day or more or forty (40) hours a week or more, some of this off-the-
2 clock work qualified for overtime premium pay. Therefore, Plaintiff and class members were
3 not paid overtime wages for all of the overtime hours they actually worked.

4 70. Defendants' failure to pay Plaintiff and class members the balance of overtime
5 compensation as required by California law, violates the provisions of California Labor Code
6 sections 510 and 1198. Pursuant to California Labor Code section 1194, Plaintiff and class
7 members are entitled to recover their unpaid overtime compensation, as well as interest, costs,
8 and attorneys' fees.

9 **SECOND CAUSE OF ACTION**

10 **Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198—Unpaid** 11 **Minimum Wages** 12 **(Against all Defendants)**

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

15 72. At all relevant times, California Labor Code sections 1182.12, 1194, 1197,
16 1197.1, and 1198 provide that the minimum wage for employees fixed by the IWC is the
17 minimum wage to be paid to employees, and the payment of a wage less than the minimum so
18 fixed is unlawful. Compensable work time is defined in IWC Wage Order No. 7-2001 as "the
19 time during which an employee is subject to the control of an employer, and includes all the
20 time the employee is suffered or permitted to work, whether or not required to do so." Cal.
21 Code Regs. Tit. 8, § 11070(2)(G) (defining "Hours Worked").

22 73. During the relevant time period, Defendants required Plaintiff and class members
23 to work off-the-clock, including, but not limited to, performing closing duties and responding
24 to communications on their personal mobile devices, but did not compensate them for this time.
25 Additionally, as set forth above, due to Defendants' uniform practices of utilizing labor budgets,
26 understaffing, assignment of heavy workloads, and subsequent lack of meal period coverage,
27 Plaintiff and class members were impeded from taking all uninterrupted meal periods to which
28 they were entitled and were required to work during their meal periods, time for which they

1 were not paid. Moreover, as stated above, on information and belief, in order to limit meal
2 penalties that Defendants would otherwise owe, Defendants adjusted employee time records to
3 reflect compliant meal periods. Furthermore, as set forth above, on information and belief,
4 Defendants systematically failed to pay Plaintiff and class members for actual hours worked
5 during unpaid meal periods, because Defendants' timekeeping system locked out Plaintiff and
6 class members for 30 minutes when they clocked out for a meal period.

7 74. Moreover, Defendants maintained and implemented a company-wide policy of
8 requiring employees to travel to a medical facility on their own time and using their own
9 personal vehicles or alternate transportation to undergo mandatory drug testing and/or physical
10 examinations. At all times, Defendants were in control of scheduling the date and time for the
11 testing and/or physical examinations, selecting the provider or facility where the testing and/or
12 physical examinations were to take place, and determining the scope of the testing and/or
13 physical examinations. For example, Defendants gave Plaintiff strict instructions to undergo
14 drug testing, and Plaintiff underwent the testing for the sole benefit of Defendants. Plaintiff
15 followed Defendants' instructions, spent approximately 45 minutes (20 miles roundtrip)
16 traveling to and from Defendants' designated medical facility, Quest Diagnostics, located in
17 Whittier, California, and spent approximately 1.25 hours waiting at the medical facility and
18 undergoing the requisite drug testing. However, Defendants did not compensate Plaintiff and
19 class members for the time they spent traveling to and from the medical facilities and
20 undergoing the mandatory drug testing and/or physical examinations.

21 75. Defendants did not pay minimum wages for all hours worked by Plaintiff and
22 class members. To the extent that these off-the-clock hours did not qualify for overtime
23 premium payment, Defendants did not pay at least minimum wages for those hours worked off-
24 the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

25 76. Defendants' failure to pay Plaintiff and class members minimum wages violates
26 California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Pursuant to California
27 Labor Code section 1194.2, Plaintiff and class members are entitled to recover liquidated
28 damages in an amount equal to the wages unlawfully unpaid and interest thereon.

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THIRD CAUSE OF ACTION
Violations of California Labor Code, §§ 226.7, 512(a), 516, and 1198—Meal Period
Violations
(Against all Defendants)

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

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

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

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

81. During the relevant time period, Defendants had, and continue to have, a company-wide policy and/or practice of single-staffing and understaffing their stores pursuant to their labor budget practices, while assigning heavy workloads, resulting in a failure to provide Plaintiff and class members with adequate meal period coverage. Because Defendants understaffed their locations, there was no one available to relieve Plaintiff and class members needing meal period coverage.

1 82. Defendants' practices and policies prevented Plaintiff and class members from
2 taking all compliant meal periods to which they were entitled. As a result, Plaintiff and class
3 members were forced to work in excess of five (5) hours before taking a meal period, had their
4 meal periods interrupted, and/or had to forgo their meal periods altogether in order to complete
5 their assigned workloads. For example, Plaintiff took his meal periods late at least five (5) times
6 during his employment and was sometimes forced to forego meal periods in order to complete
7 the tasks and duties Defendants assigned to him, including handling store incidents involving
8 shoplifting, theft, fire, and vandalism; drafting incident reports; and providing surveillance
9 documents to police. In addition, Plaintiff would have his meal periods interrupted and cut
10 short several times a month to respond to phone calls and visits from the police to discuss store
11 thefts.

12 83. Furthermore, as stated, on information and belief, because Defendants frowned
13 upon employees accruing meal period penalties, Defendants' management would adjust
14 Plaintiff's and class members' time records to reflect compliant meal periods, regardless of
15 whether they had received a compliant meal period or not, in order to strictly limit meal penalties
16 that would need to be paid by Defendants. Moreover, as stated, Defendants' company-wide
17 timekeeping system prevented Plaintiff and class members from recording all hours worked
18 when their meal periods were shortened or interrupted, because the system locked out Plaintiff
19 and class members once they clocked out for a meal period, and would not permit them to clock
20 back in from a meal period before 30 minutes had elapsed. Plaintiff and class members did not
21 sign valid meal period waivers on days that they were entitled to meal periods and were not
22 relieved of all duties.

23 84. At all times mentioned herein, Defendants knew or should have known that as a
24 result of their policies, Plaintiff and class members were not actually relieved of all duties to
25 take timely, uninterrupted meal periods. Defendants further knew or should have known that
26 they did not pay Plaintiff and class members meal period premiums when meal periods were
27 late, interrupted, shortened, and/or missed.

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85. 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.

86. 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)

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

88. At all relevant times herein set forth, the applicable IWC Wage Order and California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiff's and class members' employment by Defendants.

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

90. At all relevant times, California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must “relinquish any control over how employees spend their break time, and relieve their employees of all duties—including the obligation that an employee remain on call. A rest

period, in short, must be a period of rest.” *Augustus v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 269-270 (2016). Pursuant to the applicable IWC Wage Order and California Labor Code section 226.7(c), Plaintiff and class members are entitled to recover from Defendants one (1) additional hour of pay at their regular rates of pay for each work day that a required rest period was not authorized and permitted.

91. During the relevant time period, Defendants regularly failed to authorize and permit Plaintiff and class members to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, Defendants’ policies and/or practices, including single-staffing and/or understaffing while assigning heavy workloads, prevented Plaintiff and class members from being relieved of all duty in order to take compliant rest periods. Defendants also failed to schedule rest periods and/or adhere to a schedule for rest periods, which, coupled with Defendants’ failure to provide adequate rest period coverage, further led to Plaintiff and class members not being authorized and permitted to take rest periods. Moreover, Plaintiff and class members were expected to respond to the store phone line during rest periods.

92. Furthermore, upon information and belief, Defendants maintained a company-wide on-premises rest period policy, which mandated that Plaintiff and/or class members remain on Defendants’ premises during their rest periods. Because Plaintiff and/or class members 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 going home or running personal errands. Thus, Defendants effectively maintained control over Plaintiff and/or class members during rest periods.

93. As a result of Defendants’ practices and policies, Plaintiff and class members 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, Plaintiff missed his rest periods 2-4 times per week, or had his rest periods interrupted or cut short twice per week, due to Defendants’ practice of single-staffing or understaffing and assignment of heavy workloads, including resolving store incidents or responding to phone calls

1 on the store phone line.

2 94. Defendants also have engaged in a company-wide practice and/or policy of not
3 paying all rest period premiums owed when compliant rest periods are not authorized or
4 permitted. Because of this practice and/or policy, Plaintiff and class members have not received
5 premium pay for all missed rest periods.

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

10 **FIFTH CAUSE OF ACTION**

11 **Violation of California Labor Code §§ 226(a), 1174(d), and 1198—Non-Compliant Wage** 12 **Statements and Failure to Maintain Accurate Payroll Records** 13 **(Against all Defendants)**

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

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

21 98. At all relevant times, Defendants have knowingly and intentionally provided
22 Plaintiff and Subclass members with uniform, incomplete, and inaccurate wage statements. For
23 example, Defendants issued uniform wage statements to Plaintiff and Subclass members that
24 fail to correctly list: gross wages earned; total hours worked; net wages earned; the name of the
25 legal entity that is the employer; and all applicable hourly rates in effect during the pay period,
26 including rates of pay for overtime wages and/or meal and rest period premiums, and the
27 corresponding number of hours worked at each hourly rate. Specifically, Defendants violated
28 sections 226(a)(1), 226(a)(2), 226(a)(5), 226(a)(8), and 226(a)(9).

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

10 100. Additionally, and separately from these violations, Defendants issued uniform
11 wage statements to Plaintiff and class members that failed to correctly list the address of the
12 legal entity of the actual employer in violation of 226(a)(8). The purpose of section 226(a)(8)
13 is to provide California employees with transparency as to the true identity of their employer,
14 to allow the employee to contact their employer during employment or in the future for various
15 reasons, including filing an administrative claim, judicial claim, or other action to seek relief
16 against their employer, to obtain unemployment benefits, etc. This includes providing
17 employees with a physical address of the employer and not a Post Office Box. Plaintiff's and
18 class members' wage statements incorrectly list the employer's address as "P.O. Box 3165,
19 Harrisburg, PA 17105", but, according to the California Secretary of State's website,
20 Defendants' entity address should be "30 HUNTER LANE, CAMP HILL PA 17011."

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

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

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

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

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SIXTH CAUSE OF ACTION
Violation of California Labor Code §§ 201 and 202—Wages Not Timely Paid Upon
Termination
(Against all Defendants)

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

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

107. At all times relevant herein set forth, 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.

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

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

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SEVENTH CAUSE OF ACTION
Violation of California Labor Code § 204—Failure to Timely Pay Wages During
Employment
(Against all Defendants)

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

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

112. At all times relevant herein set forth, Labor Code section 204 provides that all wages earned by any person in any employment between the first (1st) and the fifteenth (15th) days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the sixteenth (16th) and the twenty-sixth (26th) day of the month during which the labor was performed. Labor Code section 204 further provides that all wages earned by any person in any employment between the sixteenth (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 first (1st) and the tenth (10th) day of the following month.

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

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

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

EIGHTH CAUSE OF ACTION

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

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

117. At all times herein set forth, California Labor Code section 2802 provides that an employer must reimburse employees 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."

118. First, as stated, Defendants had a company-wide policy of requiring Plaintiff and class members to travel to medical facilities on their own time and using their personal vehicles or obtain alternate transportation to obtain mandatory drug testing and/or physical examinations, but did not reimburse them for their travel expenses, including mileage. At all times, Defendants were in control of scheduling the date and time for the testing and/or physical examinations, selecting the provider or facility where the testing and/or physical examinations were to take place, and determining the scope of the testing and/or physical examinations. Defendants gave Plaintiff and class members strict instructions to obtain drug testing, and Plaintiff and class members underwent the testing for the sole benefit of Defendants. For example, as described above, Plaintiff followed Defendants' instructions, traveled 20 miles

1 roundtrip using his personal vehicle to and from the medical facility designated by Defendants,
2 Quest Diagnostics, in Whittier, California, and underwent the drug testing, but was not
3 reimbursed for his mileage to and from the medical facility. Although Defendants required
4 Plaintiff and class members to use their own vehicles or obtain alternate transportation to
5 undergo drug testing and/or physical examinations, Defendants never reimbursed them for their
6 travel expenses.

7 119. Second, during the relevant time period, Defendants, on a company-wide basis,
8 required Plaintiff and class members to use their own personal mobile devices, including, but
9 not limited to cellular phones, and/or mobile data to carry out their job duties, but failed to
10 reimburse them for the cost of their work-related mobile device expenses. Specifically, Plaintiff
11 was required to use his personal cellular phone to respond to calls from his managers regarding
12 work-related tasks, such as store incidents, or in order to call the police department during active
13 theft situations. Although Defendants required Plaintiff and class members to utilize their
14 personal mobile devices and/or mobile data to carry out their work-related responsibilities,
15 Defendants failed to reimburse them for these costs.

16 120. Third, during the relevant time period, Defendants, on a company-wide basis,
17 forced Plaintiff and class members to purchase tools, supplies, and/or other equipment necessary
18 for the completion of their work-related duties. For example, due to COVID-19, Plaintiff was
19 required to spend \$15.00 on four (4) face masks to wear at work because Defendants required
20 face masks to be worn in their stores, but failed to provide them. Although Defendants required
21 Plaintiff and class members to purchase and use their own tools, supplies, and/or equipment in
22 the performance of their duties, they did not reimburse Plaintiff and class members for these
23 expenses.

24 121. Defendants could have provided Plaintiff and class members with the actual tools
25 for use on the job, such as company vehicles and company mobile devices, and supplies and
26 tools (including face masks). Or, Defendants could have reimbursed employees for their
27 mileage; travel expenses; mobile device usage; and tool, supply, and/or equipment expenses.
28 Instead, Defendants passed these operating costs off onto Plaintiff and class members. At all

1 relevant times, Plaintiff did not earn at least two (2) times the minimum wage.

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

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

9 **NINTH CAUSE OF ACTION**

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

11 **(Against all Defendants)**

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

14 125. California Labor Code §§ 2698, *et seq.* ("PAGA") permits Plaintiff to recover
15 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code section
16 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 204, 222.5, 226(a), 510,
17 512(a), 1174(d), 1194, 1197, 1197.1, 1198, and 2802. Labor Code section 2699.3(c) permits
18 aggrieved employees, including Plaintiff, to recover civil penalties for violations of those Labor
19 Code sections not found in section 2699.5, including sections 516, 1182.12, 2810.5, 6401, and
20 6403.

21 126. Defendants' conduct, as alleged herein, violates numerous sections of the
22 California Labor Code, including, but not limited to, the following:

- 23 (a) Violation of Labor Code sections 510 and 1198, and the applicable IWC
24 Wage Order for Defendants' failure to compensate Plaintiff and/or other
25 aggrieved employees with all required overtime pay, and failure to
26 properly calculate the overtime rates paid to other aggrieved employees,
27 as alleged herein and set forth below;

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- 1 (b) Violation of Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198,
2 and the applicable IWC Wage Order for Defendants' failure to
3 compensate Plaintiff and/or other aggrieved employees with at least
4 minimum wages for all hours worked, as alleged herein and set forth
5 below;
- 6 (c) Violation of Labor Code sections 226.7, 512(a), 516, and 1198, and the
7 applicable IWC Wage Order for Defendants' failure to provide Plaintiff
8 and/or other aggrieved employees with meal periods, as alleged herein
9 and set forth below;
- 10 (d) Violation of Labor Code sections 226.7, 516, and 1198, and the applicable
11 IWC Wage Order for Defendants' failure to authorize and permit Plaintiff
12 and/or other aggrieved employees to take rest periods, as alleged herein
13 and set forth below;
- 14 (e) Violation of Labor Code sections 226(a), 1174(d), and 1198, and the
15 applicable IWC Wage Order for failure to provide accurate and complete
16 wage statements to Plaintiff and/or other aggrieved employees, as alleged
17 herein and set forth below;
- 18 (f) Violation of Labor Code sections 1174(d) and 1198, and the applicable
19 IWC Wage Order for failure to maintain payroll records, as alleged
20 herein;
- 21 (g) Violation of Labor Code sections 201 and 202 for failure to pay all earned
22 wages upon termination, as alleged herein;
- 23 (h) Violation of Labor Code section 204 for failure to pay all earned wages
24 during employment, as alleged herein;
- 25 (i) Violation of Labor Code section 222.5 for failing to compensate Plaintiff
26 and other aggrieved employees for mandatory physical examinations
27 and/or drug testing, as set forth below;

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- 1 (j) Violation of Labor Code section 1198 and the applicable IWC Wage
2 Order for failure to provide suitable seating, as set forth below;
- 3 (k) Violation of Labor Code section 2802 for failure to reimburse Plaintiff
4 and/or other aggrieved employees for all business expenses necessarily
5 incurred, as alleged herein and set forth below;
- 6 (l) Violation of Labor Code section 2810.5(a)(1)(A)-(C) for failure to
7 provide written notice of information material to Plaintiff's and other
8 aggrieved employees' employment with Defendants, as set forth below;
9 and
- 10 (m) Violation of Labor Code sections 6401 and 6403 for failure to provide
11 Plaintiff and other aggrieved employees with safety devices and safeguards
12 for the workplace, as set forth below.

13 127. During the relevant period, Defendants had a company-wide loss prevention
14 policy requiring employees to undergo mandatory security checks by a managerial employee
15 before leaving the store premises after clocking out at the end of a shift and/or after clocking
16 out for a meal period. Although Defendants' requirement that other aggrieved employees
17 undergo security checks was mandatory, Defendants did not compensate them for the time it
18 took them to wait and undergo these checks. Furthermore, Defendants also had a company-
19 wide security policy requiring employees to leave the store premises in pairs. On information
20 and belief, after clocking out at the end of their shifts, other aggrieved employees were required
21 to wait for each other before they could leave Defendants' premises together. As a result of
22 these loss prevention and security policies and/or practices, other aggrieved employees were
23 subject to Defendants' control after they had clocked out for meal periods and/or their shifts,
24 but were not compensated for this time.

25 128. As stated, Defendants knew or should have known that as a result of these
26 company-wide practices and/or policies, Plaintiff and/or other aggrieved employees were
27 performing their assigned duties off-the-clock before and after their shifts and during meal
28 periods, and were suffered or permitted to perform work for which they were not paid. Because

1 Plaintiff and/or other aggrieved employees worked shifts of eight (8) hours a day or more or
2 forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium
3 pay.

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

13 130. Specifically, Defendants paid other aggrieved employees hazard pay which was
14 listed on other aggrieved employees' wage statements as "HAZARD PAY." During pay periods
15 that other aggrieved employees were paid overtime wages, Defendants did not incorporate the
16 hazard pay, incentive pay, and/or nondiscretionary bonuses into other aggrieved employees'
17 regular rate of pay and, as a result, paid them at incorrect and lower rates of pay for overtime
18 hours worked. Specifically, Defendants paid other aggrieved employees 1.5 times their hourly
19 rate of pay instead of 1.5 times their regular rate of pay. Defendants' failure to properly
20 calculate the overtime rates of pay based on all remuneration paid has resulted in an
21 underpayment of overtime wages to other aggrieved employees on a company-wide basis.

22 131. Defendants' failure to compensate Plaintiff and/or other aggrieved employees
23 with all required overtime pay and failure to properly calculate the overtime rates paid to other
24 aggrieved employees, is in violation of California Labor Code sections 510 and 1198, and the
25 applicable IWC Wage Order. Additionally, Defendants' failure to compensate Plaintiff and/or
26 other aggrieved employees with at least minimum wages for all hours worked is in violation of
27 California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198, and the applicable IWC
28 Wage Order.

1 132. During the relevant time period, other aggrieved employees had their meal
2 periods cut short due to mandatory security checks of their personal belongings when they
3 exited the store during their meal periods. Also, Defendants did not provide other aggrieved
4 employees with second 30-minute meal periods on days that they worked in excess of ten (10)
5 hours in one day. Furthermore, as stated, Defendants engaged in a company-wide practice
6 and/or policy of not paying all meal period premiums owed when compliant meal periods are
7 not provided. Because of this practice and/or policy, Plaintiff and/or other aggrieved employees
8 have not received premium pay for missed, late, and interrupted meal periods. Alternatively, to
9 the extent that Defendants did pay other aggrieved employees for missed, late, and interrupted
10 meal periods, Defendants did not pay other aggrieved employees at the correct rate of pay for
11 premiums because Defendants systematically failed to include all forms of compensation, such
12 as hazard pay, incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in
13 the regular rate of pay.

14 133. Defendants' failure to provide meal periods to Plaintiff and/or other aggrieved
15 employees is in violation of California Labor Code sections 226.7, 512(a), 516, and 1198, and
16 the applicable IWC Wage Order.

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

26 135. Defendants' failure to authorize and permit Plaintiff and/or other aggrieved
27 employees to take rest periods is in violation of California Labor Code sections 226.7, 516, and
28 1198, and the applicable IWC Wage Order.

1 136. During the relevant time period, because Defendants did not calculate other
2 aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages
3 and/or meal and rest period premiums, Defendants did not list the correct amount of gross wages
4 earned by other aggrieved employees in compliance with section 226(a)(1) and did not list the
5 correct amount of net wages earned by other aggrieved employees in violation of section
6 226(a)(5). Defendants also failed to correctly list all applicable hourly rates in effect during the
7 pay period, namely, correct rates of pay for overtime wages and/or meal and rest period
8 premiums, in violation of section 226(a)(9). Defendants' conduct is in violation of California
9 Labor Code 226(a), 1174(d), and 1198.

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

13 138. During the relevant time period, Defendants implemented, on a company-wide
14 basis, an employer-imposed requirement that Plaintiff and other aggrieved employees undergo
15 mandatory drug testing and/or physical examinations, but required them to do so at their own
16 expense. As stated, Defendants had a company-wide policy requiring employees to travel to a
17 specified medical facility on their own time and use their own means of transportation to
18 undergo drug testing and/or physical examinations. At all times, Defendants were in control of
19 scheduling the date and time for the testing and/or physical examinations, selecting the
20 provider/facility where the testing and/or physical examinations were to take place, and
21 determining the scope of the testing and/or physical examinations.

22 139. As stated, Plaintiff was instructed by Defendants to travel to Quest Diagnostics,
23 a medical facility in Whittier, California, and obtain drug testing, and Plaintiff underwent the
24 testing for the sole benefit of Defendants. Plaintiff followed Defendants' instructions, traveled
25 for approximately 45 minutes and 20 miles roundtrip using his personal vehicle to and from
26 Defendants' designated medical facility, and spent approximately 1.25 hours waiting at the
27 medical facility and undergoing the requisite drug testing.

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

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

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

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

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1 144. Defendants' California stores are generally similar in their layout and design and
2 there was, and continues to be, space behind cash wraps to allow for the presence and use of a
3 seat or stool by other aggrieved employees (with reasonable or no modification to these work
4 areas) during the performance of their work duties. Defendants could provide other aggrieved
5 employees with a seat or stool at their cash wraps, but instead denied employees seating and
6 forced other aggrieved employees to stand throughout the day.

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

13 146. As a result of Defendants' company-wide policy and/or practice of prohibiting
14 employees from sitting during their shifts and company-wide failure to provide suitable seating,
15 other aggrieved employees were forced to stand during shifts and denied seats. Defendants'
16 failure to provide suitable seating to other aggrieved employees violates California Labor Code
17 section 1198 and IWC Wage Order No. 7-2001, subdivision 14(A).

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

23 148. During the relevant time period, Defendants violated California Labor Code
24 section 1198 and California Code of Regulations, Title 8, section 11070(14)(B), because other
25 aggrieved employees are not allowed to sit, even during lulls in their work duties, nor are they
26 provided with suitable seats in reasonable proximity to their work areas.

27 149. Defendants' California stores are generally similar in their layout and design and
28 there was, and continues to be, space near their work areas (with reasonable or no modification

1 to these work areas) to allow for the presence and use of a seat or stool by Plaintiff and/or other
2 aggrieved employees during lulls in operation. Defendants could have provided Plaintiff and/or
3 other aggrieved employees with a seat or stool in their work areas, but instead denied, and
4 continues to deny, employees seating, forcing them to stand throughout the day.

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

13 151. As a result of Defendants' company-wide policy and/or practice prohibiting
14 employees performing duties from sitting at any time, even when they are not engaged in active
15 duties requiring standing, and company-wide failure to provide seats in reasonable proximity to
16 their work areas, Plaintiff and/or other aggrieved employees were forced to stand during shifts
17 and denied seats. Defendants' failure to provide suitable seating to Plaintiff and other aggrieved
18 employees violated and continues to violate California Labor Code section 1198 and IWC Wage
19 Order 7-2001, subdivision 14(B).

20 152. During the relevant time period, Defendants expected other aggrieved employees
21 to report to work in clean and presentable uniforms bearing Defendants' logo, including uniform
22 collared or polo shirts. However, Defendants did not provide their employees with sufficient
23 uniforms to wear for their shifts throughout the week. Because Defendants failed to provide
24 other aggrieved employees with an adequate number of uniform items in relation to their
25 scheduled shifts, other aggrieved employees were forced to wash their uniforms more frequently
26 than they would otherwise do laundry and incur expenses in doing so. Thus, Defendants failed
27 to maintain the uniforms they required other aggrieved employees to wear during their shifts
28 and forced them to incur the cost of maintaining employee uniforms. Defendants' company-

1 wide policy and/or practice of not reimbursing employees for expenses necessarily incurred in
2 violation of California Labor Code section 2802.

3 153. At all relevant times herein, California's Wage Theft Prevention Act was enacted
4 to ensure that employers provide employees with basic information material to their
5 employment relationship at the time of hiring, and to ensure that employees are given written
6 and timely notice of any changes to basic information material to their employment. Codified
7 at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the
8 time of hiring, an employer must provide written notice to employees containing basic and
9 material payroll information, including, among other things, the rate(s) of pay and basis thereof,
10 whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including
11 any rates for overtime, the regular payday designated by the employer, and any allowances
12 claims as part of the minimum wage, including meal or lodging allowances. Labor Code
13 § 2810.5(a)(1)(A)-(C).

14 154. At all relevant times, on information and belief, Defendants failed, on a
15 company-wide basis, to provide written notice to Plaintiff and other aggrieved employees that
16 lists the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). Defendants'
17 failure to provide Plaintiff and other aggrieved employees with written notice of basic
18 information regarding their employment with Defendants is in violation of Labor Code section
19 2810.5.

20 155. At all relevant times herein, California Labor Code section 6401 provides that
21 employers must furnish and use safety devices and safeguards, and adopt and use practices,
22 means, methods, operations, and processes which are reasonably adequate to render the
23 employment and place of employment safe and healthy. California Labor Code Section 6401
24 further provides that an employer must do everything reasonably necessary to protect the life,
25 safety and health of their employees

26 156. During the relevant period, as stated above, Defendants failed to provide Plaintiff
27 and other aggrieved employees with personal protective equipment, such as face masks to keep
28 them safe in the workplace. Despite the fact that Defendants required Plaintiff and other

aggrieved employees to wear certain personal protective equipment, including face masks, while engaged in their work-related duties, Defendants failed to provide such reasonably necessary equipment to Plaintiff and other aggrieved employees to keep them safe.

157. Defendants' failure to provide Plaintiff and other aggrieved employees with safety devices and safeguards for the workplace violates Labor Code sections 6401 and 6403.

158. Therefore, Plaintiff and/or other aggrieved employees are therefore entitled to recover civil penalties pursuant to Labor Code section 2699(a), (f), and (g).

TENTH CAUSE OF ACTION

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

Unlawful Business Practices

(Against all Defendants)

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

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

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

162. Defendants' activities, as alleged herein, are violations of California law, and constitute unlawful business acts and practices in violation of California Business & Professions Code sections 17200, *et seq.*

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

///

- 1 (a) Requiring non-exempt, hourly paid employees, including Plaintiff and
2 class members, to work overtime without paying them proper
3 compensation in violation of California Labor Code sections 510 and
4 1198 and the applicable IWC Wage Order, as alleged herein;
- 5 (b) Failing to pay at least minimum wage to Plaintiff and class members in
6 violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1,
7 and 1198, and the applicable IWC Wage Order, as alleged herein;
- 8 (c) Failing to provide uninterrupted meal periods to Plaintiff and class
9 members in violation of California Labor Code sections 226.7, 512(a),
10 516, and 1198, and the applicable IWC Wage Order, as alleged herein;
- 11 (d) Failing to authorize and permit Plaintiff and class members to take
12 uninterrupted rest periods in violation of California Labor Code sections
13 226.7, 516, and 1198 and the applicable IWC Wage Order, as alleged
14 herein;
- 15 (e) Failing to provide Plaintiff and class members with accurate wage
16 statements and failing to maintain accurate payroll records in violation of
17 California Labor Code sections 226(a), 1174(d), and 1198, and the
18 applicable IWC Wage Order, as alleged herein;
- 19 (f) Failing timely to pay all earned wages to Plaintiff and class members in
20 violation of California Labor Code section 204, as alleged herein;
- 21 (g) Failing to pay the costs of mandatory drug testing and/or physical
22 examinations in violation of California Labor Code section 222.5, as set
23 forth below;
- 24 (h) Failing to reimburse Plaintiff and class members for all business expenses
25 necessarily incurred in violation of California Labor Code section 2802,
26 as alleged herein;
- 27 (i) Failing to provide written notice of information material to Plaintiff's and
28 class members' employment with Defendants in violation of California

1 Labor Code section 2810.5(a)(1)(A)-(C), as set forth below; and

2 (j) Failing to provide Plaintiff and class members with safety devices and
3 safeguards, such as personal protective equipment, in violation of
4 California Labor Code sections 6401 and 6403 as set forth below.

5 164. At all relevant times herein, California Labor Code section 222.5 requires
6 employers to pay for the costs an employee incurs for obtaining any medical or physical
7 examination taken pursuant to any law or regulation.

8 165. During the relevant time period, Defendants implemented, on a company-wide
9 basis, an employer-imposed requirement that Plaintiff and class members undergo mandatory
10 drug testing and/or physical examinations, but required them to do so at their own expense. As
11 stated, Defendants had a company-wide policy requiring that all employees, including Plaintiff
12 and class members, travel to a specified medical facility on their own time and use their own
13 means of transportation to undergo drug testing and/or physical examinations. At all times,
14 Defendants were in control of scheduling the date and time for the testing and/or physical
15 examinations, selecting the provider/facility where the testing and/or physical examinations
16 were to take place, and determining the scope of the testing and/or physical examinations.

17 166. As stated, Plaintiff was instructed by Defendants to travel to Quest Diagnostics,
18 a medical facility in Whittier, California, and obtain drug testing, and Plaintiff underwent the
19 testing for the sole benefit of Defendants. Plaintiff followed Defendants' instructions, traveled
20 for approximately 45 minutes and 20 miles roundtrip using his personal vehicle to and from
21 Defendants' designated medical facility, and spent approximately 1.25 hours waiting at the
22 medical facility and undergoing the requisite drug testing.

23 167. However, Defendants did not compensate Plaintiff and class members for the
24 time they spent traveling to and from the medical facilities, for the time they spent undergoing
25 the drug testing and/or physical examinations, or reimburse them for the travel expenses they
26 incurred getting to and from the medical facilities. Defendants' policy and/or practice of not
27 paying for all costs Plaintiff and class members incurred obtaining mandatory drug testing
28 and/or physical examinations is in violation of California Labor Code section 222.5.

1 168. At all relevant times herein, California's Wage Theft Prevention Act was enacted
2 to ensure that employers provide employees with basic information material to their
3 employment relationship at the time of hiring, and to ensure that employees are given written
4 and timely notice of any changes to basic information material to their employment. Codified
5 at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the
6 time of hiring, an employer must provide written notice to employees containing basic and
7 material payroll information, including, among other things, the rate(s) of pay and basis thereof,
8 whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including
9 any rates for overtime, the regular payday designated by the employer, and any allowances
10 claims as part of the minimum wage, including meal or lodging allowances. Labor Code
11 § 2810.5(a)(1)(A)-(C).

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

18 170. At all relevant times herein, California Labor Code section 6401 provides that
19 employers must furnish and use safety devices and safeguards, and adopt and use practices,
20 means, methods, operations, and processes which are reasonably adequate to render the
21 employment and place of employment safe and healthy. California Labor Code Section 6401
22 further provides that an employer must do everything reasonably necessary to protect the life,
23 safety, and health of their employees. California Labor Code section 6403(a) requires that
24 employers provide and use safety devices and safeguards reasonably adequate to render the
25 employment and place of employment safe.

26 171. During the relevant period, as stated above, Defendants failed to provide Plaintiff
27 and class members with personal protective equipment, such as face masks to keep them safe
28 in the workplace. Despite the fact that Defendants required Plaintiff and class members to wear

1 certain personal protective equipment, including face masks, while engaged in their work-
2 related duties, Defendants failed to provide such reasonably necessary equipment to Plaintiff
3 and class members to keep them safe. Thus, Defendants' failure to provide Plaintiff and class
4 members with safety devices and safeguards for the workplace violates Labor Code sections
5 6401 and 6403.

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

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

15 **ELEVENTH CAUSE OF ACTION**

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

17 **Unfair Business Practices**

18 **(Against all Defendants)**

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

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

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

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

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

179. Pursuant to California Business & Professions Code sections 17200, *et seq.*, Plaintiff and class members are entitled to restitution for the class-wide loss of the statutory benefits implemented by section 226.7 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 statutory benefits implemented by section 226.7 due to Plaintiff and class members; an award of attorneys’ fees pursuant to California Code of Civil Procedure section 1021.5 and other applicable laws; and an award of costs.

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

1 reserves the right to amend his prayer for relief to seek a different amount.

2 **Class Certification**

3 2. That this case be certified as a class action;

4 3. That Plaintiff be appointed as the representative of the Class and Subclass;

5 4. That counsel for Plaintiff be appointed as class counsel.

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

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

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

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

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

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

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

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

22 11. For general unpaid wages and such general and special damages as may be
23 appropriate;

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

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

28 ///

- 1 14. For liquidated damages pursuant to California Labor Code section 1194.2; and
2 15. For such other and further relief as the Court may deem equitable and
3 appropriate.

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

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

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

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

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

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

16 21. For attorneys' fees pursuant to California Code of Civil Procedure section
17 1021.5, or as otherwise provided by law; and

18 22. For such other and further relief as the Court may deem equitable and
19 appropriate.

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

21 23. That the Court declare, adjudge and decree that Defendants violated California
22 Labor Code sections 226.7, 516, and 1198, and the applicable IWC Wage Order by willfully
23 failing to authorize and permit Plaintiff and class members to take all rest periods;

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

27 25. For all actual, consequential, and incidental losses and damages, according to
28 proof;

- 1 26. For premiums pursuant to California Labor Code section 226.7(c);
- 2 27. For pre-judgment interest on any unpaid rest period premiums from the date such
- 3 amounts were due, or as otherwise provided by law;
- 4 28. For attorneys' fees pursuant to California Code of Civil Procedure section
- 5 1021.5, or as otherwise provided by law; and
- 6 29. For such other and further relief as the Court may deem equitable and
- 7 appropriate.

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

- 9 30. That the Court declare, adjudge and decree that Defendants violated the
- 10 recordkeeping provisions of California Labor Code section 226(a) and the applicable IWC
- 11 Wage Order as to Plaintiff and Subclass members, and willfully failed to provide accurate
- 12 itemized wage statements thereto;
- 13 31. For all actual, consequential, and incidental losses and damages, according to
- 14 proof;
- 15 32. For injunctive relief pursuant to California Labor Code section 226(h);
- 16 33. For statutory penalties pursuant to California Labor Code section 226(e);
- 17 34. For attorneys' fees and costs pursuant to California Labor Code section
- 18 226(e)(1); and
- 19 35. For such other and further relief as the Court may deem equitable and
- 20 appropriate.

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

- 22 36. That the Court declare, adjudge and decree that Defendants violated California
- 23 Labor Code sections 201 and 202 by willfully failing to pay overtime wages, minimum wages,
- 24 and/or meal and rest period premiums owed at the time of termination of the employment of
- 25 Plaintiff and other terminated class members;
- 26 37. For all actual, consequential and incidental losses and damages, according to
- 27 proof;
- 28 ///

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

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

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

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

As to the Seventh Cause of Action

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

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

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

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

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

47. For such other and further relief as the Court may deem equitable and 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;

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

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

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

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

9 **As to the Ninth Cause of Action**

10 54. That the Court declare, adjudge and decree that Defendants violated the
11 following California Labor Code provisions as to Plaintiff and/or other aggrieved employees:
12 510 and 1198 (by failing to pay all overtime compensation); 1182.12, 1194, 1197, 1197.1, and
13 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512(a), 516, and
14 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize and
15 permit all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage
16 statements and maintain accurate payroll records); 201 and 202 (by failing to timely pay all
17 earned wages upon termination); 204 (by failing to timely pay all earned wages during
18 employment); 222.5 (by failing to pay the costs of mandatory physical examinations and/or drug
19 testing); 1198 and the applicable IWC Wage Order (by failing to provide suitable seating); 2802
20 (by failing to reimburse business expenses); 2810.5 (by failing to provide notice of material
21 terms of employment); and 6401 and 6403 (by failing to provide safety devices and safeguards);

22 55. For civil penalties pursuant to the California Labor Code, including sections 210,
23 226.3, 256, 558, 1174.5, 1197.1, and/or 2699(a), (f), and (g), for violations of California Labor
24 Code sections 201, 202, 204, 222.5, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194,
25 1197, 1197.1, 1198, 2802, 2810.5, 6401, and 6403;

26 56. For attorneys' fees and costs pursuant to California Labor Code section
27 2699(g)(1), and any and all other relevant statutes, for Defendants' violations of California
28 Labor Code sections 201, 202, 204, 222.5, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12,

1194, 1197, 1197.1, 1198, 2802, 2810.5, 6401, and 6403;

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

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

As to the Tenth Cause of Action

59. That the Court declare, adjudge and decree that Defendants' conduct of failing to provide Plaintiff and class members all overtime wages due to them, failing to provide Plaintiff and class members all minimum wages due to them, failing to provide Plaintiff and class members all meal periods, failing to authorize and permit Plaintiff and class members to take all rest periods, failing to provide Plaintiff and class members accurate and complete wage statements, failing to maintain accurate payroll records for Plaintiff and class members, failing to timely pay Plaintiff and class members all earned wages during employment, failing to pay the costs of mandatory physical examinations and/or drug testing, failing to reimburse Plaintiff and class members for business-related expenses, failing to provide written notice of material terms of employment, and failing to provide Plaintiff and class members with safety devices and safeguards, constitutes an unlawful business practice in violation of California Business and Professions Code sections 17200, *et seq.*;

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

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

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

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

///

As to the Eleventh Cause of Action

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

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

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

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

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

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

Dated: May 31, 2022

Respectfully submitted,

Capstone Law APC

By: 

Bevin Allen Pike
Daniel S. Jonathan
Trisha K. Monesi

Attorneys for Plaintiff Dennis Gutierrez

EXHIBIT “1”



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March 25, 2022

VIA ONLINE SUBMISSION

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

Subject: *Dennis Gutierrez v. Thrifty Payless, Inc., et al.*

Dear PAGA Administrator:

This office represents Dennis Gutierrez in connection with his claims under the California Labor Code. Mr. Gutierrez was an employee of THRIFTY PAYLESS, INC. and/or RITE AID CORPORATION. For the purpose of this letter, Mr. Gutierrez collectively refers to these entities as "RITE AID."

The employers may be contacted directly at the addresses below:

THRIFTY PAYLESS, INC.
30 HUNTER LANE
CAMP HILL PA 17011

RITE AID CORPORATION
30 HUNTER LANE
CAMP HILL PA 17011

Mr. Gutierrez intends to seek civil penalties, attorney's fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 ("PAGA"). Mr. Gutierrez seeks relief on behalf of himself, the State of California, and other persons who are or were employed by RITE AID 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.

RITE AID employed Mr. Gutierrez as a non-exempt Asset Protection/Loss Prevention Specialist from approximately March 2021 to September 2021. Mr. Gutierrez worked at the RITE AID store located at 2059 S. Garey Ave. in Pomona, California. During his employment, Mr. Gutierrez typically worked eight (8) hours per day and five (5) days per week. Mr. Gutierrez's job duties included, without limitation, monitoring the store, managing store incidents, filing police and incident reports, and enforcing loss prevention and security policies.

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

¹ These facts, theories, and claims are based on Mr. Gutierrez's experience and counsel's review of those records currently available relating to Mr. Gutierrez's employment. Discovery conducted in litigation of wage

RITE AID's Company-Wide and Uniform Payroll and HR Practices

THRIFTY PAYLESS, INC. is a California corporation and RITE AID CORPORATION is a Delaware corporation. Together, RITE AID operates approximately 2,450 retail drugstore locations in the United States, including approximately 534 store locations in California, and at least two (2) distribution centers in California. Upon information and belief, RITE AID maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Camp Hill, Pennsylvania, for all non-exempt, hourly paid employees working for RITE AID in California, including Mr. Gutierrez and other aggrieved employees. At all relevant times, RITE AID issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Gutierrez and other aggrieved employees, regardless of their location or position.

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

RITE AID willfully failed to pay all overtime wages owed to Mr. Gutierrez and other aggrieved employees. During the relevant time period, Mr. Gutierrez 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, RITE AID had a company-wide policy and/or practice of requiring Mr. Gutierrez and other aggrieved employees to perform tasks off-the-clock, such as performing closing duties and responding to phone calls from supervisors. For example, RITE AID's management instructed Mr. Gutierrez to clock out and continue working, performing a final walk-through of the store perimeter, waiting for employees to close the store, and escorting those employees to their vehicles approximately twice per week, but RITE AID did not compensate him for this time. Moreover, Mr. Gutierrez and other aggrieved employees were required to respond to their personal mobile devices and complete other work-related tasks on their days off. For example, while off-the-clock, Mr. Gutierrez was required to respond

and hour claims such as these often reveals additional claims that the aggrieved employee was not initially aware of (because the aggrieved employee was not aware of the law's requirements, the employer misinformed its employee of the law's requirements, or because the employer effectively hid the violations). Thus, Mr. Gutierrez reserves the right to supplement this letter with additional facts, theories, and claims if he becomes aware of them subsequent to the submission of this letter.

to phone calls regarding security incidents and other administrative issues for five (5) minutes per instance. Thus, RITE AID failed to track this time spent working after scheduled shifts, and Mr. Gutierrez and other aggrieved employees received no compensation for this time.

Second, during the relevant period, RITE AID had a company-wide loss prevention policy requiring employees to undergo mandatory security checks by a managerial employee before leaving the store premises after clocking out at the end of a shift and/or after clocking out for a meal period. Although RITE AID's requirement that other aggrieved employees undergo security checks was mandatory, RITE AID did not compensate them for the time it took them to wait and undergo these checks. Furthermore, RITE AID also 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 RITE AID's premises together. As a result of these loss prevention and security policies and/or practices, other aggrieved employees were subject to RITE AID's control after they had clocked out for meal periods and/or their shifts, but were not compensated for this time.

Third, RITE AID had, and continues to have, a uniform practice and/or policy of staffing its locations strictly based on the labor hours or labor budget set by the corporate office. RITE AID's use of a labor budget resulted in chronic understaffing, such that there were too few employees on duty to handle the heavy workloads and provide meal period coverage. Also, RITE AID has systematically, and on a company-wide basis, understaffed its locations by adopting a single-staffing model for some of its positions, pursuant to its labor budget practices, thereby failing to provide adequate meal period coverage to permit those employees to take compliant meal periods. As a result of this lack of meal period coverage, Mr. Gutierrez and other aggrieved employees were not always afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period. For example, Mr. Gutierrez was sometimes forced to forego meal periods in order to complete the tasks and duties RITE AID assigned to him, including handling store incidents involving theft, fire, and vandalism, and drafting incident reports. In addition, Mr. Gutierrez would have his meal periods interrupted and cut short several times a month to respond to phone calls and visits from the police to discuss store thefts. Consequently, Mr. Gutierrez and other aggrieved employees were required to work through and/or had their unpaid meal periods interrupted in order to complete their assigned duties, time for which they were not paid.

Fourth, on information and belief, because RITE AID frowned upon employees accruing meal period penalties, RITE AID adjusted Mr. Gutierrez's and other aggrieved employees' time records to reflect compliant meal periods, even when they did not receive a compliant meal period, in order to strictly limit meal penalties that RITE AID would otherwise owe. Thus, Mr. Gutierrez and other aggrieved employees performed work during meal periods for which they were not paid. Furthermore, on information and belief, RITE AID's company-wide timekeeping system prevented Mr. Gutierrez and other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted, because the system locked out Mr. Gutierrez and other aggrieved employees once they clocked out for a meal period, and would not permit them to clock back in from a meal period before 30 minutes had elapsed. Thus, RITE AID did not record all hours worked during meal periods, and Mr. Gutierrez and other aggrieved employees performed work during meal periods for which they were not paid.

RITE AID knew or should have known that, as a result of these company-wide practices and/or policies, Mr. Gutierrez 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 Mr. Gutierrez and other aggrieved employees regularly 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, RITE AID did not pay other aggrieved employees the correct overtime rates for the recorded overtime hours that they generated. In addition to an hourly wage, RITE AID paid other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, RITE AID 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, RITE AID failed to pay all overtime wages by paying a lower overtime rate than required.

RITE AID's failure to pay Mr. Gutierrez and other aggrieved employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198. Mr. Gutierrez 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, RITE AID required Mr. Gutierrez and other aggrieved employees to work off-the-clock, including, but not limited to, performing closing duties, responding to communications on their personal mobile devices, submitting to off-the-clock security checks, and/or waiting for other employees to complete closing duties to leave the store premises in pairs, but did not compensate them for this time. Additionally, as set forth above, due to RITE AID's uniform practices of utilizing labor budgets, understaffing, assignment of heavy workloads, and subsequent lack of meal period coverage, Mr. Gutierrez 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 above, on information and belief, in order to limit meal penalties that RITE AID would otherwise owe, RITE AID adjusted employee time records to reflect compliant meal periods. Furthermore, as set forth above, on information and belief, RITE AID systematically failed to pay Mr. Gutierrez and other aggrieved employees for actual hours worked during unpaid meal periods, because RITE AID's timekeeping system locked out Mr. Gutierrez and other aggrieved employees for 30 minutes when they clocked out for a meal period.

Moreover, RITE AID maintained and implemented a company-wide policy of requiring employees to travel to a medical facility on their own time and using their own personal vehicles or alternate transportation to undergo mandatory drug testing and/or physical examinations. At all times, RITE AID was in control of scheduling the date and time for the testing and/or physical examinations, selecting the provider or facility where the testing and/or physical examinations were to take place, and determining the scope of the testing and/or physical examinations. For example, RITE AID gave Mr. Gutierrez strict instructions to undergo drug testing, and Mr. Gutierrez underwent the testing for the sole benefit of RITE AID. Mr. Gutierrez followed RITE AID's instructions, spent approximately 45 minutes traveling to and from RITE AID's designated medical facility, a Quest Diagnostics location, in Whittier, California, and spent approximately 1.25 hours waiting at the medical facility and undergoing the requisite drug testing. However, RITE AID did not compensate Mr. Gutierrez and other aggrieved employees for the time they spent traveling to and from the medical facilities and undergoing the mandatory drug testing and/or physical examinations.

Thus, RITE AID did not pay minimum wages for all hours worked by Mr. Gutierrez and other aggrieved employees. To the extent that these off-the-clock hours did not qualify for overtime premium payment, RITE AID 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, RITE AID regularly failed to pay at least minimum wages to Mr. Gutierrez and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Mr. Gutierrez 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, RITE AID had, and continues to have, a company-wide policy and/or practice of single-staffing and understaffing its stores pursuant to its labor budget practices, while assigning heavy workloads, resulting in a failure to provide Mr. Gutierrez and other aggrieved employees with adequate meal period coverage. Because RITE AID understaffed its locations, there was no one available to relieve Mr. Gutierrez and other aggrieved employees needing meal period coverage.

RITE AID's practices and policies prevented Mr. Gutierrez and other aggrieved employees from taking all compliant meal periods to which they were entitled. As a result, Mr. Gutierrez and other aggrieved employees were forced to work in excess of five (5) hours before taking a meal period, had their meal periods interrupted, and/or had to forgo their meal periods altogether in order to complete their assigned workloads. For example, Mr. Gutierrez took his meal periods late at least five (5) times during his employment and was sometimes forced to forego meal periods in order to complete the tasks and duties RITE AID assigned to him, including handling store incidents involving shoplifting, theft, fire, and vandalism; drafting incident reports; and providing surveillance documents to police. In addition, Mr. Gutierrez would have his meal periods interrupted and cut short several times a month to respond to phone calls and visits from the police to discuss store thefts. In addition, other aggrieved employees had their meal periods cut short due to mandatory security checks of their personal belongings when they exited the store during their meal periods.

Furthermore, as stated, on information and belief, because RITE AID frowned upon employees accruing meal period penalties, RITE AID's management would adjust Mr. Gutierrez's and other aggrieved employees' time records to reflect compliant meal periods, regardless of whether they had received a

compliant meal period or not, in order to strictly limit meal penalties that would need to be paid by RITE AID. Moreover, as stated, RITE AID's company-wide timekeeping system prevented Mr. Gutierrez and other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted, because the system locked out Mr. Gutierrez and other aggrieved employees once they clocked out for a meal period, and would not permit them to clock back in from a meal period before 30 minutes had elapsed.

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

Furthermore, RITE AID engaged in a company-wide practice and/or policy of not paying all meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Mr. Gutierrez and other aggrieved employees have not received premium pay for missed, late, and interrupted meal periods. Alternatively, to the extent that RITE AID did pay other aggrieved employees for missed, late, and interrupted meal periods, RITE AID did not pay other aggrieved employees at the correct rate of pay for premiums because RITE AID 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, RITE AID failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Mr. Gutierrez 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, RITE AID regularly failed to authorize and permit Mr. Gutierrez 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, RITE AID's policies and/or practices, including single-staffing and/or understaffing while assigning heavy workloads, prevented Mr. Gutierrez and other aggrieved employees from being relieved of all duty in order to take compliant rest periods. RITE AID also failed to schedule rest periods and/or adhere to a schedule for rest periods, which, coupled with RITE AID's failure to provide adequate rest period coverage, further led to Mr. Gutierrez and other aggrieved employees not being authorized and permitted to take rest periods. Moreover, Mr. Gutierrez and other aggrieved employees were expected to respond to the store phone line during rest periods.

Furthermore, upon information and belief, RITE AID maintained a company-wide on-premises rest period policy, which mandated that other aggrieved employees remain on RITE AID's premises during their rest periods. Because other aggrieved employees were restricted from leaving the premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes, such as going home or running personal errands. Thus, RITE AID effectively maintained control over other aggrieved employees during rest periods.

As a result of RITE AID's practices and policies, Mr. Gutierrez 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, Mr. Gutierrez missed his rest periods 2-4 times per week, or had his rest periods interrupted or cut short twice per week, due to RITE AID's practice of single-staffing or understaffing and assignment of heavy workloads, including resolving store incidents or responding to phone calls on the store phone line.

RITE AID 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, Mr. Gutierrez and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that RITE AID did pay other aggrieved employees one (1) additional hour of premium pay for missed rest periods, RITE AID did not pay other aggrieved employees at the correct rate of pay for premiums because RITE AID 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, RITE AID failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Mr. Gutierrez 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. RITE AID has not provided Mr. Gutierrez 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, RITE AID has knowingly and intentionally provided Mr. Gutierrez and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example,

RITE AID issued uniform wage statements to Mr. Gutierrez and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; the address of the legal entity that is the employer; 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, RITE AID violated sections 226(a)(1), 226(a)(2), 226(a)(5), 226(a)(8), and 226(a)(9).

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

Second, because RITE AID did not calculate other aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages and/or meal and rest period premiums, RITE AID 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). RITE AID 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).

Third, and separate from these violations, RITE AID issued uniform wage statements to Mr. Gutierrez and other aggrieved employees that failed to correctly list the address of the legal entity of the actual employer in violation of 226(a)(8). The purpose of section 226(a)(8) is to provide California employees with transparency as to the true identity of their employer, to allow the employee to contact their employer during employment in the future for various reasons, including filing an administrative claim, judicial claim, or other action to seek relief against their employer, to obtain unemployment benefits, etc. This includes providing employees with a physical address of the employer and not a Post Office Box. Mr. Gutierrez's and other aggrieved employees' wage statements incorrectly list the employer's address as "P.O. Box 3165, Harrisburg, PA 17105", but, according to the California Secretary of State's website, THRIFTY PAYLESS, INC.'s entity address should be "30 HUNTER LANE, CAMP HILL PA 17011." *See example paystub below.*

Pay Date: 08/05/2021 - Rwek2		DENNIS V GUTIERREZ	
Rite Aid			
PO Box 3165			
Harrisburg, PA 17105			
Work Location	STORE 06338	Pay Advice #	0 - seq 12335
Employee ID		Period Begin Date	07/18/2021
Base Pay Rate	\$20.0000	Period End Date	07/31/2021
Overtime Rate	\$30.0000	Pay Frequency	Bi-weekly
Employer	THRIFTY PAYLESS INC D/B/A Rite Aid		

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 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), RITE AID willfully failed to maintain accurate payroll records for Mr. Gutierrez 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, RITE AID engaged in company-wide practices and/or policies of failing to record actual hours worked (including falsifying time records by recording that compliant meal periods were taken regardless of if or when meal periods were actually taken), and thereby failed to keep accurate records of work period and meal period start and end times for Mr. Gutierrez and other aggrieved employees in violation of section 1198. Furthermore, in light of RITE AID’s failure to provide other aggrieved employees with second 30-minute meal periods to which they were entitled, RITE AID kept no records of meal start and end times for second meal periods.

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

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

Mr. Gutierrez 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.

RITE AID willfully failed to pay Mr. Gutierrez and other aggrieved employees who are no longer employed by RITE AID 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 RITE AID's employ.

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

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

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

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

As stated, Mr. Gutierrez was instructed by RITE AID to travel to Quest Diagnostics, a medical facility in Whittier, California, and obtain drug testing, and Mr. Gutierrez underwent the testing for the sole benefit of RITE AID. Mr. Gutierrez followed RITE AID's instructions, traveled for approximately 45 minutes and 20 miles roundtrip using his personal vehicle to and from RITE AID's designated medical facility, and spent approximately 1.25 hours waiting at the medical facility and undergoing the requisite drug testing.

However, RITE AID did not compensate Mr. Gutierrez and other aggrieved employees for the time they spent traveling to and from the medical facilities, for the time they spent undergoing the drug testing and/or physical examinations, or reimburse them for the travel expenses they incurred getting to and from the medical facilities. RITE AID's policy and/or practice of not paying for all costs Mr. Gutierrez and

other aggrieved employees incurred obtaining mandatory drug testing and/or physical examinations is in violation of California Labor Code section 222.5.

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

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11070 Subdivision 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.”

RITE AID'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. RITE AID could have provided Mr. Gutierrez and other aggrieved employees with a 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). As a result, Mr. Gutierrez and other aggrieved employees were forced to adjust to areas not conducive to resting, such as areas not designated or reserved for their rest, such as in the management office or in their personal vehicles.

RITE AID did not provide Mr. Gutierrez 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 Mr. Gutierrez and other aggrieved employees were legally allowed to forgo assigned tasks, as in during a meal or rest period, RITE AID denied them any area within their stores to cease work and recover. Moreover, RITE AID did not inform Mr. Gutierrez and other aggrieved employees of their rights to suitable resting facilities under California law.

As a result of RITE AID's company-wide policy and/or practice of denying employees any area to rest within their stores and company-wide failure to provide resting facilities in its stores, Mr. Gutierrez 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. RITE AID's failure to provide suitable resting facilities to Mr. Gutierrez and other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order No. 7-2001, subdivision 13(B).

Mr. Gutierrez and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, and seek injunctive relief to bring RITE AID 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.*

RITE AID’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 other aggrieved employees (with reasonable or no modification to these work areas) during the performance of their work duties. RITE AID could provide other aggrieved employees with a seat or stool at its cash wraps, but instead denies employees seating and forces other aggrieved employees to stand throughout the day.

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, RITE AID systematically, and on a company-wide basis, does not provide seats or stools at or near the cash wraps, forcing other aggrieved employees to stand throughout their work shifts.

RITE AID violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11070(14)(A) because 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. RITE AID’s management did not inform 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 RITE AID’s company-wide policy and/or practice of prohibiting employees from sitting during their shifts and company-wide failure to provide suitable seating, other aggrieved employees were forced to stand during shifts and denied seats. RITE AID’s failure to provide suitable seating to other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order No. 7-2001, subdivision 14(A).

Other aggrieved employees are therefore entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, and seek injunctive relief to bring RITE AID 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.*

RITE AID’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 Mr. Gutierrez and/or other aggrieved employees during lulls in operation. RITE AID could have provided Mr. Gutierrez and/or 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.

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

As a result of RITE AID’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, Mr. Gutierrez and/or other aggrieved employees were forced to stand during shifts and denied seats. RITE AID’s failure to provide suitable seating to Mr. Gutierrez and/or other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order No. 7-2001, subdivision 14(B).

Mr. Gutierrez and/or other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, and seek injunctive relief to bring RITE AID 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, as stated, RITE AID had a company-wide policy of requiring Mr. Gutierrez and other aggrieved employees to travel to medical facilities on their own time and using their personal vehicles or obtain alternate transportation to obtain mandatory drug testing and/or physical examinations, but did not reimburse them for their travel expenses, including mileage. At all times, RITE AID was in control of scheduling the date and time for the testing and/or physical examinations, selecting the provider or facility where the testing and/or physical examinations were to take place, and determining the scope of the testing and/or physical examinations. RITE AID gave Mr. Gutierrez and other aggrieved employees strict instructions to obtain drug testing and/or physical examinations, and Mr. Gutierrez and other aggrieved employees underwent the testing and/or physical examinations for the sole benefit of RITE AID. For example, as described above, Mr. Gutierrez followed RITE AID's instructions, traveled 20 miles roundtrip using his personal vehicle to and from the medical facility designated by RITE AID, Quest Diagnostics, in Whittier, California, and underwent the drug testing, but was not reimbursed for his mileage to and from the medical facility. Although RITE AID required Mr. Gutierrez and other aggrieved employees to use their own vehicles or obtain alternate transportation to undergo drug testing and/or physical examinations, RITE AID never reimbursed them for their travel expenses.

Second, during the relevant time period, RITE AID, on a company-wide basis, required Mr. Gutierrez 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. Specifically, Mr. Gutierrez was required to use his personal cellular phone to respond to calls from his managers regarding work-related tasks, such as store incidents, or in order to call the police department during active theft situations. Although RITE AID required Mr. Gutierrez and other aggrieved employees to utilize their personal mobile devices and/or mobile data to carry out their work-related responsibilities, RITE AID failed to reimburse them for these costs.

Third, during the relevant time period, RITE AID, on a company-wide basis, forced Mr. Gutierrez and other aggrieved employees to purchase tools, supplies, and/or other equipment necessary for the completion of their work-related duties. For example, due to COVID-19, Mr. Gutierrez was required to spend \$15.00 on four (4) face masks to wear at work because RITE AID required face masks to be worn in its stores, but failed to provide them. Although RITE AID required Mr. Gutierrez and other aggrieved employees to purchase and use their own tools, supplies, and/or equipment in the performance of their duties, it did not reimburse them for these expenses.

Fourth, during the relevant time period, RITE AID expected other aggrieved employees to report to work in clean and presentable uniforms bearing RITE AID's logo, including uniform collared or polo shirts. However, RITE AID did not provide its employees with sufficient uniforms to wear for their shifts throughout the week. Because RITE AID failed to provide other aggrieved employees with an adequate number of uniform items in relation to their scheduled shifts, other aggrieved employees were forced to wash their uniforms more frequently than they would otherwise do laundry and incur expenses in doing so. Thus, RITE AID failed to maintain the uniforms it required other aggrieved employees to wear during their shifts and forced them to incur the cost of maintaining employee uniforms.

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

Thus, RITE AID had, and continues to have, a company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred in violation of California Labor Code section 2802. Mr.

Gutierrez 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, RITE AID failed, on a company-wide basis, to provide written notice to Mr. Gutierrez and other aggrieved employees that lists the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). RITE AID's failure to provide Mr. Gutierrez and other aggrieved employees with written notice of basic information regarding their employment with RITE AID is in violation of Labor Code section 2810.5.

Mr. Gutierrez 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 §§ 6401 and 6403 – Failure to Provide Safety Devices and Safeguards

California Labor Code section 6401 provides that employers must furnish and use safety devices and safeguards, and adopt and use practices, means, methods, operations, and processes which are reasonably adequate to render the employment and place of employment safe and healthy. California Labor Code Section 6401 further provides that an employer must do everything reasonably necessary to protect the life, safety and health of its employees. California Labor Code section 6403(a) requires that employers provide and use safety devices and safeguards reasonably adequate to render the employment and place of employment safe.

During the relevant period, as stated above, RITE AID failed to provide Mr. Gutierrez and other aggrieved employees with personal protective equipment, such as face masks to keep them safe in the workplace. Despite the fact that RITE AID required Mr. Gutierrez and other aggrieved employees to wear certain personal protective equipment, including face masks, while engaged in their work-related duties, RITE AID failed to provide such reasonably necessary equipment to Mr. Gutierrez and other aggrieved employees to keep them safe.

RITE AID's failure to provide Mr. Gutierrez and other aggrieved employees with safety devices and safeguards for the workplace violates Labor Code sections 6401 and 6403. Mr. Gutierrez and other aggrieved employees are entitled to recover 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.” RITE AID, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Mr. Gutierrez’s and other aggrieved employees’ rights by violating various sections of the California Labor Code.

Accordingly, Mr. Gutierrez seeks the remedies set forth in Labor Code section 558 for himself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 1194.5, 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Mr. Gutierrez, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties and injunctive relief for himself, all other aggrieved employees, and the State of California against RITE AID for violations of California Labor Code sections 201, 202, 204, 222.5, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, 2810.5, 6401, and 6403.

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

Pre-Litigation Demand

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

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

1. RITE AID shall pay Mr. Gutierrez and all other aggrieved employees employed by RITE AID at any time during the past three years from the date of this notice unpaid wages and compensation for the above-referenced violations.
2. RITE AID shall comply with all California labor laws and ensure that its non-exempt employees are paid overtime wages and minimum wages for all hours worked and provided lawful meal and rest periods.
3. RITE AID shall conduct a survey or interview all current and former aggrieved employees in California who worked for RITE AID in the past three years to obtain information from them regarding the above-referenced violations, including, but not limited to: the number of meal periods which were not provided; the number of rest periods which were not authorized and permitted; and the number of employees who were required to pay for mandatory medical examinations; travel expenses; mileage; mobile device expenses; tools, supplies, and/or equipment costs; laundering expenses; or other expenditures in the discharge of their duties, with the investigation to be completed within 60 days.

4. RITE AID shall pay each aggrieved employee one hour of pay at his or her regular rate of pay for each work day he or she was not provided one or more meal periods, as required by Labor Code sections 226.7, 512(a), 516, and 1198. RITE AID also shall pay each aggrieved employee one hour of pay at his or her regular rate of pay for each work day he or she was not authorized and permitted one or more rest periods, as required by Labor Code sections 226.7, 516, and 1198.
5. RITE AID shall reimburse those aggrieved employees who were required to pay for any business expenses incurred for RITE AID's benefit, including, but not limited to, mandatory medical examinations; travel expenses; mileage, mobile device usage; tools, supplies, and/or equipment costs; laundering expenses; or other expenditures, as required by Labor Code sections 222.5 and 2802.
6. RITE AID shall pay accrued legal interest to all aggrieved employees at the rate of 10% per annum for said unpaid wages.
7. RITE AID shall provide Mr. Gutierrez and all aggrieved employees employed by RITE AID at any time during the past three years from the date of this notice corrected wage statements that include the requisite information set forth in Labor Code section 226(a).
8. RITE AID shall pay waiting time penalties, equal to 30 days of pay, to each former aggrieved employee who was not paid all wages due as described herein.
9. RITE AID shall implement and provide suitable seating and suitable resting facilities to all aggrieved employees.
10. RITE AID shall provide all aggrieved employees written notice of basic information regarding their employment that includes the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C).
11. RITE AID shall provide all aggrieved employees with safety devices and safeguards reasonably adequate to render the employment and place of employment safe, pursuant to Labor Code sections 6401 and 6403.
12. RITE AID shall pay all penalties arising from the violations of the Labor Code and IWC Wage Order sections referenced above and pursuant to PAGA, Labor Code sections 2698, *et seq.*, including, but not limited to, penalties under Labor Code sections 210, 226.3, 256, 558, 1174.5, 1197.1, and 2699, and IWC Wage Order No. 7-2001, section 20.

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

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: THRIFTY PAYLESS, INC. (via U.S. Certified Mail); RITE AID CORPORATION (via U.S. Certified Mail)

Capstone
LAW ^{APC}
1875 Century Park East, Ste 1000
Los Angeles, CA 90067

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City, State, ZIP+4®

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PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

Signature v.
Date and

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

**THIRTY PAYLESS, INC.
30 HUNTER LANE
CAMP HILL PA 17011**



9590 9402 6817 1074 4617 44

2. Article Number (Transfer from service label)

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PS Form 3811, July 2020 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

☒

B. Received by (Printed Name)

☐ Agent

☐ Addressee

C. Date of Delivery

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

3. Service Type

☐ Adult Signature

☐ Adult Signature Restricted Delivery

☒ Certified Mail®

☐ Certified Mail Restricted Delivery

☐ Collect on Delivery

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☐ Insured Mail

☐ Insured Mail Restricted Delivery (over \$500)

☐ Priority Mail Express®

☐ Registered Mail

☐ Registered Mail Restricted

☐ Signature Confirmation™

☐ Signature Confirmation Restricted Delivery

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SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

THRIFTY PAYLESS, INC.
30 HUNTER LANE
CAMP HILL PA 17011



9590 9402 6817 1074 4617 44

2. Article Number (Transfer from service label)

7021 1970 0001 3865 2644

PS Form 3811, July 2020 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY**A. Signature**

X

☐ Agent

☒ Addressee

B. Received by (Printed Name)**C. Date of Delivery**

3/30/22

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

3. Service Type

☐ Adult Signature

☐ Adult Signature Restricted Delivery

☒ Certified Mail®

☐ Certified Mail Restricted Delivery

☐ Collect on Delivery

☐ Collect on Delivery Restricted Delivery

☐ Insured Mail

☐ Insured Mail Restricted Delivery (over \$500)

☐ Priority Mail Express®

☐ Registered Mail™

☐ Registered Mail Restricted Delivery

☐ Signature Confirmation™

☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

RITE AID CORPORATION
30 HUNTER LANE
CAMP HILL PA 17011



9590 9402 6817 1074 4616 69

2. Article Number (Transfer from service label)

7021 1970 0001 3865 2637

PS Form 3811, July 2020 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY**A. Signature**

X

Randy Hoplogh

☐ Agent

☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery
3/30/22

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

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
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- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Insured Mail
- ☐ Insured Mail Restricted Delivery (over \$500)

- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt