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Attorneys for Plaintiff EVAN REED,
as an individual on behalf of himself and on behalf of all others similarly
situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO

EVAN REED, as an individual on behalf
of himself and on behalf of all others
similarly situated,

Plaintiff,

v.

WILLIAMS-SONOMA STORES, INC., a
California Corporation; WILLIAMS-
SONOMA, INC., a Delaware Corporation
and DOES 1-100, inclusive,

Defendants.

Case No.: CGC-22-598118

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

- 1. Recovery of Unpaid Minimum Wages and Liquidated Damages**
- 2. Failure to Provide Meal Periods or Compensation in Lieu Thereof**
- 3. Failure to Provide Rest Periods or Compensation in Lieu Thereof**
- 4. Failure to Furnish Accurate Itemized Wage Statements**
- 5. Failure to Reimburse Business Expenses and**
- 6. Failure to Timely Pay All Wages Due Upon Separation of Employment**
- 7. Unfair Competition and**
- 8. Violation of Private Attorneys General Act (PAGA) of 2004**

DEMAND FOR JURY TRIAL

**ELECTRONICALLY
FILED**
*Superior Court of California,
County of San Francisco*
05/16/2022
Clerk of the Court
BY: KAREN VALDES
Deputy Clerk

1 Plaintiff, EVAN REED (“PLAINTIFF REED” or “PLAINTIFF”), as an individual on behalf
2 of himself and on behalf of all other similarly situated Class Members (defined below), the State of
3 California, and on behalf of Aggrieved Employees (defined below), hereby files this Complaint
4 against Defendants WILLIAMS-SONOMA STORES, INC., a California Corporation;
5 WILLIAMS-SONOMA, INC., a Delaware Corporation; and DOES 1-100, inclusive (collectively
6 referred to as “DEFENDANTS”). PLAINTIFF is informed and believes and thereon alleges as
7 follows:

8 **JURISDICTION AND VENUE**

9 1. This court possesses original subject matter jurisdiction over this matter. Venue is
10 proper in the County of San Francisco, California, pursuant to California Code of Civil Procedure
11 section 395.5 because DEFENDANTS maintain a principal office in San Francisco, California, and
12 DEFENDANTS transact business within this judicial district. *See also Crestwood Behavioral*
13 *Health, Inc. v. Superior Court* (2021) 60 Cal.App.5th 1069 (venue in a PAGA action is proper in
14 any county where the defendants committed Labor Code violations against some of its employees).

15 **THE PARTIES**

16 2. Defendant WILLIAMS-SONOMA STORES, INC., is a California Corporation that,
17 at all relevant times, was authorized to do business within the State of California and is doing
18 business in the State of California.

19 3. Defendant WILLIAMS-SONOMA, INC., is a Delaware Corporation that, at all
20 relevant times, was authorized to do business within the State of California and is doing business in
21 the State of California.

22 4. DEFENDANTS are a retail company headquartered in San Francisco that sell
23 kitchen and home furnishings through retail stores located throughout the United States and other
24 countries.

25 5. PLAINTIFF REED is, and at all relevant times, was an individual domiciled in the
26 State of California and a citizen of the State of California who worked as a non-exempt employee
27 for DEFENDANTS in the State of California.

28 6. PLAINTIFF REED was employed by DEFENDANTS and worked as a stock

1 associate at one of DEFENDANTS' retail locations in San Luis Obispo from in or around December
2 2020 through in or around May 2021.

3 7. The true names and capacities of the DOE Defendants sued herein as DOES 1
4 through 100, inclusive, are currently unknown to PLAINTIFF, who therefore sues each such
5 Defendant by said fictitious names. Each of the DEFENDANTS designated herein as a DOE is
6 legally responsible for the unlawful acts alleged herein. PLAINTIFF will seek leave of Court to
7 amend this Complaint to reflect the true names and capacities of the Doe Defendants when such
8 identities become known.

9 8. PLAINTIFF is further informed and believes that, at all relevant times, each
10 Defendant was the principal, agent, partner, joint venturer, joint employer, officer, director,
11 controlling shareholder, subsidiary, affiliate, parent corporation, successor in interest and/or
12 predecessor in interest of some or all of the other DEFENDANTS, and was engaged with some or
13 all of the other defendants in a joint enterprise for profit, and bore such other relationships to some
14 or all of the other DEFENDANTS so as to be liable for their conduct with respect to the matters
15 alleged in this complaint. PLAINTIFF is further informed and believes and thereon alleges that each
16 Defendant acted pursuant to and within the scope of the relationships alleged above, and that at all
17 relevant times, each Defendant knew or should have known about, authorized, ratified, adopted,
18 approved, controlled, aided and abetted the conduct of all other DEFENDANTS.

19 **JOINT LIABILITY**

20 9. Under California law, the definition of the term "to employ" is broadly construed
21 under the applicable IWC Wage Order(s) to have three alternative definitions, including: (1) to
22 exercise control over the wages, hours or working conditions; (2) to suffer of permit to work; or (3)
23 to engage, thereby creating a common law employment relationship. See *Martinez v. Combs*, 49
24 Cal.4th 35, 64 (2010). One reason that the IWC defined "employer" in terms of exercising control
25 was to reach situations in which multiple entities control different aspects of the employment
26 relationship. Supervision of the work, in the specific sense of exercising control over how services
27 are properly performed, is properly viewed as one of the "working conditions" mentioned in the
28 wage order. *Id.* at 76. A joint employer relationship exists when one entity (such as a temporary

1 employment agency) hires and pays a worker, and the other entity supervises the work. *Id.*

2 10. During PLAINTIFF's employment by DEFENDANTS, PLAINTIFF and the Class
3 Members (defined below) and the Aggrieved Employees (defined below) were jointly employed by
4 DEFENDANTS for purposes of the Wage Orders, under the alternative definitions of "to employ"
5 adopted by the California Supreme Court in *Martinez*, supra. As discussed below, these
6 DEFENDANTS (1) exercised control over wages, hours and working conditions of PLAINTIFF,
7 Class Members and Aggrieved Employees; (2) suffered or permitted PLAINTIFF, Class Members
8 and Aggrieved Employees to work for them; and, (3) engaged PLAINTIFF, Class Members and
9 Aggrieved Employees to work for them.

10 11. PLAINTIFF is informed and believes, and thereon alleges that at all relevant times
11 DEFENDANTS operated as a single integrated enterprise with common ownership and centralized
12 human resources. As a result, DEFENDANTS utilized the same unlawful policies and practices and
13 subjected all of the Class Members and Aggrieved Employees to these same policies and practices.

14 12. PLAINTIFF is informed and believes, and thereon alleges that at all times relevant
15 to this Complaint, DEFENDANTS were the joint employers of PLAINTIFF, Class Members and
16 the Aggrieved Employees upon whose behalf PLAINTIFF brings these allegations and causes of
17 action, in that DEFENDANTS, exercised sufficient control over their wages, hours and working
18 conditions, and/or suffered or permitted them to work so as to be considered their joint employers.
19 Specifically, upon information and belief, PLAINTIFF alleges that DEFENDANTS created a
20 uniform set of policies, practices and/or procedures concerning, inter alia, hourly and overtime pay,
21 time-keeping practices, meal and rest periods, and other working conditions that were distributed
22 to, and/or applied to PLAINTIFF, Class Members and Aggrieved Employees, and further that
23 DEFENDANTS uniformly compensated and controlled the wages of PLAINTIFF, Class Members
24 and Aggrieved Employees in a uniform manner. Based on information and belief, DEFENDANTS
25 collectively represented to PLAINTIFF, Class Members and Aggrieved Employees that each was
26 an "at-will" employee of DEFENDANTS, and that DEFENDANTS collectively retained the right
27 to terminate their employment with or without cause. Upon information and belief, DEFENDANTS
28 further collectively represented to PLAINTIFF, Class Members and Aggrieved Employees in

1 writing the details of their compensation, and the manner in which they were to take meal and rest
2 periods, the procedures required by DEFENDANTS collectively for recordation of hours worked
3 and the policies applicable to PLAINTIFF, Class Members and Aggrieved Employees by which
4 DEFENDANTS collectively would evaluate their wage rates.

5 13. Thus, DEFENDANTS collectively exercised the right to control the wages, hours
6 and working conditions of PLAINTIFF, Class Members and Aggrieved Employees. As such,
7 DEFENDANTS collectively held the right to control virtually every aspect of PLAINTIFF's, Class
8 Members', and Aggrieved Employees' employment, including the instrumentality that resulted in
9 the illegal conduct for which PLAINTIFF seeks relief in this Complaint.

10 14. PLAINTIFF is informed and believes that DEFENDANTS exercised the same
11 control over, applied the same policies and practices, and engaged in the same acts and omissions
12 with regard to the other Class Members and Aggrieved Employees.

13 **CLASS ALLEGATIONS**

14 15. PLAINTIFF brings this action on behalf of himself, and all others similarly situated
15 as a class action pursuant to Code of Civil Procedure section 382. The class PLAINTIFF seeks to
16 represent is defined as follows and referred to collectively as the "Class" or "Class Members": "All
17 current and former non-exempt employees that worked directly or via a staffing agency for
18 DEFENDANTS in California at any time within the four years prior to the filing of the initial
19 Complaint."

- 20 a. **Numerosity.** While the exact number of Class Members is unknown to
21 PLAINTIFF at this time, the Class is so numerous that the individual joinder of
22 all members is impractical under the circumstances of this case. PLAINTIFF is
23 informed and believes the Class consists of at least 100 individuals.
- 24 b. **Common Questions of Law and Fact.** This lawsuit is suitable for class
25 treatment because common questions of law and fact predominate over
26 individual issues. Common questions include, but are not limited to, the
27 following: (1) whether DEFENDANTS understated hours worked and failed to
28 pay all amounts due to PLAINTIFF and the Class Members for wages earned,

1 including minimum wages, under California law, as a result of DEFENDANTS'
2 automatic deduction policy, mandated off-the-clock, payment of wages based
3 on scheduled hours instead of actual hours worked, and unlawful meal period
4 policies and practices; (2) whether DEFENDANTS provided PLAINTIFF and
5 the Class Members with all meal periods or premium payments in lieu thereof
6 in compliance with California law; (3) whether DEFENDANTS provided
7 PLAINTIFF and the Class Members with all rest periods or premium payments
8 in lieu thereof, in compliance with California law; (4) whether DEFENDANTS
9 provided PLAINTIFF and the Class Members with accurate, itemized wage
10 statements in compliance with California law, displaying, including but not
11 limited to, all hours worked and the correct name and address of the legal entity
12 that is the employer; (5) whether DEFENDANTS failed to reimburse
13 PLAINTIFF and the Class Members for all business expenses; (6) whether
14 DEFENDANTS failed to timely pay all wages owed upon separation of
15 employment; and (7) whether DEFENDANTS violated California Business and
16 Professions Code sections 17200, *et seq.*

17 c. **Ascertainable Class.** The proposed Class is ascertainable as its members can
18 be identified and located using information in DEFENDANTS' business,
19 payroll and personnel records.

20 d. **Typicality.** PLAINTIFF's claims are typical of the claims of the Class
21 Members. PLAINTIFF suffered a similar injury as the other Class Members as
22 a result of DEFENDANTS' common practices regarding, *inter-alia*, failure to
23 calculate and pay all owed minimum wages, failure to provide proper meal and
24 rest periods or premium compensation in lieu thereof, failure to provide accurate
25 wage statements, failure to reimburse business expenses and failure to timely
26 pay wages upon separation of employment.

27 e. **Adequacy.** PLAINTIFF will fairly and adequately protect the interests of the
28 Class Members. PLAINTIFF has no interests adverse to the interests of the other

1 Class Members. Counsel who represent PLAINTIFF are competent and
2 experienced in litigating similar class action cases and are California lawyers in
3 good standing. Counsel for PLAINTIFF have the experience and resources to
4 vigorously prosecute this case.

- 5 f. **Superiority.** A class action is superior to other available means for the fair and
6 efficient adjudication of this controversy since individual joinder of all members
7 of the Class is impractical. Class action treatment will permit a large number of
8 similarly situated persons to prosecute their common claims in a single forum
9 simultaneously, efficiently, and without the unnecessary duplication of effort
10 and expense that numerous individual actions would engender. Furthermore, as
11 the damages suffered by each individual Class Member may be relatively small,
12 the expenses and burden of individual litigation would make it difficult or
13 impossible for individual members of the Class to redress the wrongs done to
14 them, while an important public interest will be served by addressing the matter
15 as a class action. The cost to the court system of adjudication of such
16 individualized litigation would be substantial. Individualized litigation would
17 also present the potential for inconsistent or contradictory judgments. Finally,
18 the alternative of filing a claim with the California Labor Commissioner is not
19 superior, given the lack of discovery in such proceedings, the fact that there are
20 fewer available remedies, and the losing party has the right to a trial de novo in
21 the Superior Court.

22 **FACTUAL ALLEGATIONS**

23 16. During the four-year period preceding filing of this complaint, PLAINTIFF, and
24 each of the Class Members, were employed by DEFENDANTS in the State of California as non-
25 exempt employees. During the PAGA Period (defined below) PLAINTIFF and the Aggrieved
26 Employees (defined below) were employed by DEFENDANTS in the State of California as non-
27 exempt employees. At all times referenced herein, DEFENDANTS exercised control over
28 PLAINTIFF, Class Members and Aggrieved Employees and suffered and/or permitted them to

1 work.

2 17. PLAINTIFF was employed by DEFENDANTS as a non-exempt employee during
3 the relevant time period. PLAINTIFF worked as a stock associate at DEFENDANTS' retail location
4 in San Luis Obispo from in or around December 2020 through in or around May 2021.

5 18. PLAINTIFF was typically scheduled to work shifts that lasted over five (5) hours per
6 day, five (5) days per week.

7 19. **Meal Periods.** PLAINTIFF, Class Members and Aggrieved Employees regularly
8 worked shifts of five and one half (5 ½) hours or more and were entitled to at least one thirty-minute
9 uninterrupted meal period. However, PLAINTIFF, Class Members and Aggrieved Employees did
10 not receive a timely thirty-minute meal period or were required to work through purported meal
11 periods. PLAINTIFF, Class Members and Aggrieved Employees were not adequately informed,
12 authorized, instructed about, nor permitted an opportunity to take lawful meal periods per California
13 law. PLAINTIFF, Class Members and Aggrieved Employees were consistently unable to take
14 timely, off duty, thirty-minute, uninterrupted meal periods, often being forced to take late meal
15 periods (i.e. after the fifth hour of work), interrupted meal periods, and/or work through part or all
16 their meal periods due to the nature and constraints of their job duties, understaffing, and/or
17 commentary from supervisors pressuring them to take non-compliant meal breaks or skip meal
18 breaks completely. For example, PLAINTIFF's scheduled shift regularly started at 10:00 am, but at
19 times was unable to take a timely meal break due to his assigned workload or due to his need to
20 assist customers. Moreover, during the holiday season, PLAINTIFF was rarely afforded a timely
21 meal period. Based on information and belief, other Class Members and Aggrieved Employees were
22 also regularly unable to take timely, duty-free meal periods, and/or were interrupted during their
23 meal periods.

24 20. PLAINTIFF, Class Members and Aggrieved Employees were deprived of a timely
25 thirty-minute meal period due to in part to DEFENDANTS' faulty time-keeping system. When
26 clocking out for a meal period, PLAINTIFF, Class Members and Aggrieved Employees were
27 required to clock out using DEFEDANTS' computerized time-keeping system which was often slow
28 and/or inaccurate. For example, at times, PLAINTIFF attempted to clock out for a meal period but

1 had to wait at least five (5) to ten (10) minutes for the system to load or record the clock out time.
2 At other times, the system inaccurately recorded the clock out time under a different employee's
3 time records. PLAINTIFF, Class Members and Aggrieved Employees experienced the same issues
4 when clocking back in for a meal period. Because PLAINTIFF, Class Members and Aggrieved
5 Employees were required to wait for the time-keeping system to load, they were denied a full thirty
6 (30) minute meal period that was uninterrupted and free of DEFENDANTS' control.

7 21. Based on information and belief, DEFENDANTS also implemented a policy and/or
8 practice of automatically deducting at least thirty minutes per shift for these short, interrupted and/or
9 otherwise unlawful meal periods, despite having actual and/or constructive knowledge that
10 PLAINTIFF, Class Members and Aggrieved Employees did not receive compliant meal periods.

11 22. Based on further information and belief, DEFENDANTS rounded the start and end
12 times of PLAINTIFF's, Class Members' and Aggrieved Employees' meal periods resulting in
13 PLAINTIFF, Class Members and Aggrieved Employees not being paid for all time worked as well
14 as late or shortened meal periods. Based on further information and belief, DEFENDANTS' time
15 keeping system inaccurately recorded the true start and end times of meal periods, yet
16 DEFENDANTS systematically deducted thirty (30) minutes per shift irrespective of whether a full
17 thirty (30) minute meal period was provided.

18 23. Based on information and belief, Aggrieved Employees that worked shifts of more
19 than ten hours did not receive a second legally compliant thirty (30) minute meal period before the
20 end of the tenth hour of work. Based on information and belief, DEFENDANTS only provided a
21 single meal period per shift, regardless of the number of hours worked, and that single meal period
22 was non-compliant.

23 24. PLAINTIFF is further informed and believes and thereon alleges that
24 DEFENDANTS had actual and/or constructive knowledge that its time-rounding and auto-
25 deduction policies and practices resulted in the denial of lawful meal periods owed to PLAINTIFF,
26 Class Members and Aggrieved Employees in violation of California's meal period laws.

27 25. Based on information and belief, DEFENDANTS did not have a lawful written meal
28 break policy, nor did DEFENDANTS have a compliant policy in practice.

1 26. Moreover, DEFENDANTS failed to pay PLAINTIFF, Class Members and
2 Aggrieved Employees an additional hour of wages at their respective regular rates of pay for each
3 workday a proper meal period was not provided, as required by California law. *Brinker, supra*, 53
4 Cal.4th 1004. As such, DEFENDANTS failed to pay a meal period premium at all for each workday
5 a lawful meal period was not provided, and even if and when a meal premium was paid,
6 DEFENDANTS failed to pay the proper meal period premium for failure to incorporate all non-
7 discretionary remuneration, including but not limited to, non-discretionary bonus pay, shift
8 differential pay, and/or other non-discretionary compensation into the regular rate for purposes of
9 calculating the owed meal period premium at the correct regular rate of compensation.

10 27. For example, during the pay period of 05/03/21 – 05/16/21, PLAINTIFF received a
11 meal period premium at his base hourly rate of \$14 per hour. In the same pay period, PLAINTIFF
12 also earned a non-discretionary “Wellness Vaccine Incentive” of \$100. This non-discretionary
13 compensation was not factored into the regular rate of pay for purposes of calculating the owed meal
14 period premium. Based on information and belief, DEFENDANTS failed to incorporate all non-
15 discretionary compensation into the regular rate of pay for purposes of paying the owed meal period
16 premiums to Class Members and Aggrieved Employees.

17 28. **Rest periods.** DEFENDANTS did not properly authorize and provide PLAINTIFF
18 and other Class Members and Aggrieved Employees with lawful rest periods at a rate of every four
19 (4) hours worked or major fraction thereof.

20 29. PLAINTIFF, Class Members and Aggrieved Employees were not adequately
21 informed, authorized, instructed about, nor permitted an opportunity to take proper rest periods per
22 California law.

23 30. Based on information and belief, any purported rest periods were interrupted, cut
24 short, on duty, and/or late due to the nature and constraints of PLAINTIFF’s, Class Members’ and
25 Aggrieved Employees’ job duties (including but not limited to the need to assist customers),
26 understaffing, and/or commentary from supervisors pressuring them to skip rest periods completely
27 or otherwise take non-compliant rest periods. For example, on days when PLAINTIFF’s assigned
28 store was busy, PLAINTIFF was not afforded a full ten-minute uninterrupted rest period. Instead,

1 PLAINTIFF was allowed to take a rest period of five minutes or less and was later provided a
2 separate rest period of five minutes or less a few hours later. Based on information and belief,
3 DEFENDANTS failed to provide other Class Members and Aggrieved Employees with ten-minute
4 uninterrupted rest periods in compliance with California law.

5 31. Based on information and belief, PLAINTIFF, Class Members and Aggrieved
6 Employees were pressured to complete their work duties according to a designated schedule such
7 that rest breaks were only taken once jobs were completed/if time permitted.

8 32. Based on information and belief, DEFENDANTS did not have a lawful policy,
9 instruction, or practice as to the taking, timing, or duty-free nature of rest periods.

10 33. Despite not providing lawful rest periods, DEFENDANTS failed to pay PLAINTIFF,
11 Class Members and Aggrieved Employees with an additional hour of pay at the regular rate of
12 compensation for each missed, or otherwise unlawful rest period.

13 34. **Unpaid Minimum Wages.** DEFENDANTS failed to compensate all hours worked,
14 including all owed minimum and overtime wages. As explained above, PLAINTIFF, Class
15 Members and Aggrieved Employees were regularly required to perform off-the-clock work by
16 virtue of DEFENDANTS' automatic-deduction policy for meal periods. On information and belief,
17 the work time reported by PLAINTIFF, Class Members and Aggrieved Employees was rounded
18 and automatically deducted for at least 30 minutes of wages every day they worked for
19 DEFENDANTS for meal periods that were short, not taken, interrupted, or not relieved of all duties
20 and employer control.

21 35. Based on information and belief, DEFENDANTS had and continue to have a
22 continuous policy of paying PLAINTIFF, Class Members and Aggrieved Employees for scheduled
23 hours, rather than actual hours worked due to DEFENDANTS' mandated off-the-clock work.
24 PLAINTIFF, Class Members and Aggrieved Employees were required to perform pre-shift and
25 post-shift off-the-clock work. For example, prior to clocking in to work, PLAINTIFF, Class
26 Members and Aggrieved Employees were required to undergo pre-shift temperature screenings.
27 PLAINTIFF, Class Members and Aggrieved Employees were also required to answer COVID-
28 related screening questions prior to clocking in to work. The temperature screenings and

1 questionnaire took at least a few minutes to complete. This work time was not recorded and was not
2 compensated, depriving PLAINTIFF, Class Members and Aggrieved Employees of minimum
3 wages for all hours worked.

4 36. Additionally, when PLAINTIFF was scheduled to work the closing shift,
5 PLAINTIFF, Class Members and Aggrieved Employees were required to remain on
6 DEFENDANTS' premises for at least 5-10 minutes after clocking out of work due to
7 DEFENDANTS' policy that all closing shift employees leave the store at the same time. For
8 example, once PLAINTIFF completed his duties at the end of a shift, PLAINTIFF was required to
9 clock out of work, but was not allowed to leave the premises until all other employees completed
10 their duties and clocked out of work to ensure that all employees left DEFENDANTS' store at the
11 same time, depriving PLAINTIFF, Class Members and Aggrieved Employees of minimum wages
12 owed for time spent subjected to DEFENDANTS' control and restricted to DEFENDANTS
13 premises.

14 37. Moreover, PLAINTIFF, Class Members and Aggrieved Employees were not
15 compensated for time spent waiting for DEFENDANTS' time keeping system to load and/or
16 accurately record punch times. At times, PLAINTIFF was required to wait at least 10-15 minutes
17 for DEFENDANTS' time keeping system to load prior to clocking in at the beginning of a shift
18 and/or upon clocking back in to work after a meal period. During this time, PLAINTIFF was
19 subjected to DEFENDANTS' control, but such time was not recorded and was not compensated.
20 PLAINTIFF, Class Members and Aggrieved Employees had the same issue upon clocking out of
21 work to take a meal period and at the end of a shift.

22 38. Based on information and belief, DEFENDANTS failed to pay Aggrieved
23 Employees for time they were required to spend completing orientation, trainings, policy
24 questionnaires, and/or time spent completing the onboarding process including but not limited to
25 reviewing various documents and policies provided by DEFENDANTS. Based on information and
26 belief, this work time was completed off-the-clock and was not compensated.

27 39. DEFENDANTS' time rounding, automatic deduction policies and practices as well
28 as mandated off-the-clock work described herein resulted in a failure to account for all hours worked

1 and deprived PLAINTIFF, Class Members and Aggrieved Employees of all owed minimum wages.

2 40. Based on information and belief, DEFENDANTS had actual and/or constructive
3 knowledge that its time rounding, auto-deduction policies, failure to provide full 30-minute off-duty
4 meal periods, and other off-the-clock work policies and practices described herein resulted in
5 violations of California's minimum wage laws and other violations described below.

6 41. **Inaccurate Wage Statements.** During the relevant period, DEFENDANTS failed to
7 provide PLAINTIFF, Class Members and Aggrieved Employees with accurate wage statements that
8 complied with Labor Code section 226. DEFENDANTS provided wage statements that failed to
9 indicate the total wages earned (including meal and rest period premiums), and total hours worked
10 by PLAINTIFF, Class Members and Aggrieved Employees (by virtue of the time rounding,
11 automatic deduction for meal periods and other off-the-clock work described herein). Accordingly,
12 DEFENDANTS violated Labor Code § 226 by providing wage statements that were inaccurate and
13 failed to include all of the statutorily required information.

14 42. Separately, DEFENDANTS violated Labor Code section 226 because the wage
15 statements issued by DEFENDANTS failed to list the correct name and address of the legal entity
16 that is the employer. For example, PLAINTIFF's wage statement dated 06/04/21 lists "Williams-
17 Sonoma Stores, Inc." as the legal entity that is the employer. However, documents in PLAINTIFF's
18 personnel file indicate that "Williams-Sonoma, Inc." is the employer. Based on information and
19 belief, DEFENDANTS issued wage statements to Class Members and Aggrieved Employees that
20 also failed to list the correct name and address of the legal entity that is the employer.

21 43. As a result, PLAINTIFF, Class Members and Aggrieved Employees have suffered
22 injury as they could not easily determine whether they received all wages owed to them and whether
23 they were paid for all hours worked. Moreover, as a result of DEFENDANTS' failure to list the
24 correct legal entity that is the employer, PLAINTIFF, Class Members and Aggrieved Employees
25 have suffered injury as there was confusion as to which entity to contact regarding any question(s)
26 they had about wages paid and unpaid.

27 44. **Failure to reimburse Business Expenses.** DEFENDANTS also failed to
28 compensate PLAINTIFF, Class Members and Aggrieved Employees for business-related expenses

1 incurred in direct consequence of the discharge of their duties or of their obedience to the directions
2 of the employer. PLAINTIFF, Class Members and Aggrieved Employees were improperly required
3 to provide and maintain work tools that are supposed to be the responsibility of the employer. Based
4 on information and belief, DEFENDANTS shifted its costs of doing business onto PLAINTIFF,
5 Class Members and Aggrieved Employees by requiring them to pay for business expenses, including
6 but not limited to, use of their personal mobile phone, data plan usage and charges. For example,
7 PLAINTIFF received calls and messages to his personal phone from managers and/or supervisors
8 for work related purposes, including but not limited to, messages related to scheduling and assigned
9 shifts. Moreover, PLAINTIFF, Class Members and Aggrieved Employees were required to use their
10 phone during work hours in order to look up merchandise for customers and/or check stock levels
11 on particular products. PLAINTIFF, Class Members and Aggrieved Employees used their personal
12 phone for work-related purposes on a daily basis.

13 45. DEFENDANTS' failure to provide PLAINTIFF, Class Members and Aggrieved
14 Employees with full reimbursement for all reasonable expenses associated with carrying out their
15 duties required that PLAINTIFF, Class Members and Aggrieved Employees subsidize and/or carry
16 the burden of business expenses in violation of Labor Code section 2802.

17 46. **Untimely Payment of Final Wages.** DEFENDANTS failed to timely pay
18 PLAINTIFF, Class Members and Aggrieved Employees all wages that were due and owing upon
19 termination or resignation. Labor Code sections 201 and 202, together require employers to pay all
20 wages immediately upon discharge and/or within 72 hours of an employees' resignation. Upon
21 separation of employment, PLAINTIFF's and other Class Members' final paychecks were not
22 timely provided. Based on information and belief, DEFENDANTS did not pay PLAINTIFF's final
23 wages in accordance with the timing requirements set forth in Labor Code sections 201 and 202.
24 Based on further information and belief, DEFENDANTS have a policy and/or practice of providing
25 final wages to Class Members and Aggrieved Employees on the regular pay day without regard to
26 the timing requirements delineated in Labor Code sections 201 and 202. Likewise, DEFENDANTS
27 fail to timely pay all final wages owed to Class Members and Aggrieved Employees that are
28 employed in a temporary or seasonal position.

47. Moreover, PLAINTIFF's, Class Members' and Aggrieved Employees' final paychecks, once provided, did not include all wages owed as they were devoid of, including but not limited to, all owed minimum wages and premium wages for unlawful meal and rest breaks, and/or all owed vacation pay. Aggrieved Employees' final wages, once received, also failed to include all owed overtime wages, vacation pay, and all owed sick leave and/or paid time off at the properly accrued rates.

48. PLAINTIFF is informed and believes and alleges thereon that DEFENDANTS engaged in these same herein described unlawful practices with regard to all of the Class Members and Aggrieved Employees (described below), and that DEFENDANTS applied these same herein described unlawful practices to all of its employees that it applied to PLAINTIFF.

FIRST CAUSE OF ACTION

**Recovery of Unpaid Minimum Wages and Liquidated Damages
(By PLAINTIFF and Class Members Against All DEFENDANTS)**

49. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

50. Pursuant to California Labor Code sections 1194 and 1197, and the Industrial Wage Commission (“IWC”) Wage Orders, an employer must pay its employees for all hours worked, up to 40 hours per week or 8 hours per day, at a regular time rate no less than the mandated minimum wage. Payment to an employee of less than the applicable minimum wage for all hours worked in a payroll period is unlawful.

51. DEFENDANTS violated California's minimum wage laws by failing to compensate PLAINTIFF and the Class Members for all hours worked by virtue of, among other things, DEFENDANTS' auto-deduction policy and practice for meal periods, paying for scheduled hours instead of actual hours worked, and off the-clock work.

52. DEFENDANTS had and continue to have a continuous policy of failing to pay PLAINTIFF and Class Members for all hours worked.

53. Pursuant to Labor Code sections 1194 and 1194.2, PLAINTIFF and the Class Members are entitled to recover all unpaid minimum time wages and liquidated damages thereon, plus attorney's fees and costs, in an amount to be proved at trial.

SECOND CAUSE OF ACTION

**Failure to Provide Meal Periods or Compensation in Lieu Thereof
(By PLAINTIFF and Class Members Against All DEFENDANTS)**

54. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

55. Pursuant to Labor Code section 512 and all applicable IWC Wage Orders, DEFENDANTS were required to provide PLAINTIFF and the Class Members with one 30-minute meal break free from all duties and employer control for all shifts longer than 5 hours, and a second 30-minute meal break free from all duties for all shifts longer than 10 hours. Meal periods can be waived, but only under the following circumstances: (1) if an employee's total work period in a day is over five (5) hours but no more than six (6) hours, the required meal period may be waived by mutual consent of the employer and employee, and (2) if an employee's total work period in a day is over ten (10) hours but no more than twelve (12) hours, the required second meal period may be waived by mutual consent of the employer and employee, but only if the first meal period was not waived. Employers covered by the Wage Orders have an obligation to both (1) relieve their employees for at least one meal period for shifts over five hours (see above), and (2) to record having done so. If the employer fails to properly record a valid meal period, it is presumed no meal period was provided.

56. PLAINTIFF and the Class Members were regularly unable to take timely, off duty, thirty-minute, uninterrupted meal periods, often being forced to take late meal periods and/or work through part or all of their meal periods due to the nature and constraints of their job duties (including but not limited to their need to assist customers), and/or commentary from DEFENDANTS pressuring them to take non-compliant breaks or skip breaks completely and/or were otherwise subjected to DEFENDANTS control during part or all of said meal periods, including but not limited to, on days in which PLAINTIFF and Class Members were required to remain on DEFENDANTS' premises during part of their meal period while they waited for DEFENDANTS' faulty time keeping system to record the clock out time for a meal period and the clock-in time after the purported meal period.

57. Based on information and belief, DEFENDANTS had and continue to have a continuous policy of clocking out PLAINTIFF and Class Members for 30 minutes for meal periods not taken and/or interrupted and/or otherwise not relieved of all duties and employer control during

1 said meal periods, rendering the unpaid time compensable under California law.

2 58. Based on information and belief, DEFENDANTS had actual and/or constructive
3 knowledge that PLAINTIFF and the Class Members did not receive compliant meal periods. Based
4 on further information and belief, DEFENDANTS rounded the start and end times of employee
5 meal periods resulting in PLAINTIFF and the Class Members receiving late or shortened meal
6 periods. PLAINTIFF is further informed and believes and thereon alleges that DEFENDANTS had
7 actual or constructive knowledge that its time-rounding and auto-deduction policies and practices
8 resulted in the denial of meal periods owed to PLAINTIFF and Class Members, in violation of
9 California's meal period laws.

10 59. Moreover, DEFENDANTS failed to pay PLAINTIFF and the Class Members an
11 additional hour of wages at their regular rate(s) of compensation for each workday a proper meal
12 period was not provided. Additionally, when a meal premium was paid, DEFENDANTS failed to
13 include all non-discretionary compensation into the regular rate of compensation for purposes of
14 determining the owed meal premium.

15 60. DEFENDANTS failed to provide PLAINTIFF and the Class Members with all
16 required meal periods, or with proper compensation in lieu thereof. As a result, under Labor Code
17 section 226.7, PLAINTIFF and the Class Members are entitled to one additional hour's pay at the
18 employee's regular rate of compensation for each day a meal period was missed, late or interrupted,
19 all in an amount to be proved at trial.

20 **THIRD CAUSE OF ACTION**

21 **Failure to Provide Rest Periods or Compensation in Lieu Thereof** 22 **(By PLAINTIFF and Class Members Against All DEFENDANTS)**

23 61. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

24 62. Labor Code section 226.7 and all applicable IWC Wage Orders require an employer
25 to authorize or permit an employee to take a rest period of ten (10) net minutes for every four hours
26 worked or major fraction thereof. Such rest periods must be in the middle of the four-hour period
27 "insofar as practicable." In *Brinker v. Restaurant Corp.*, 53 Cal.4th 1004 (2012),
28 the California Supreme Court held that employees are entitled to a 10-minute paid rest period for
shifts from 3 ½ to 6 hours in a length, two 10-minute rest periods for shifts more than 6 hours up to

1 10 hours, and three 10-minute rest periods for shifts of more than 10 hours up to 14 hours. (*Id.* at
2 1029). The rest period requirement obligates employers to permit and authorize employees to take
3 off-duty rest periods, meaning employers must relieve employees of all duties and relinquish control
4 over how employees spend their time. *Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5th
5 257. If the employer fails to provide any required rest period, the employer must pay the employee
6 one hour of pay at the employee's regular rate of compensation for each workday the employer did
7 not provide at least one legally required rest period, pursuant to Labor Code section 226.7.

8 63. PLAINTIFF and the Class Members did not receive compliant, timely 10-minute rest
9 periods every four (4) hours worked or major fraction thereof. Any purported rest periods were
10 interrupted, cut short, and/or late due to the nature and constraints of their job duties, and/or
11 commentary from DEFENDANTS pressuring them to skip breaks completely/take short or
12 otherwise non-compliant rest periods. Based on information and belief, PLAINTIFF and the Class
13 Members were pressured to complete their work and/or assist customers such that rest periods were
14 only taken once tasks were completed/as time permitted.

15 64. Moreover, based on information and belief, DEFENDANTS failed to pay a rest
16 period premium to PLAINTIFF and other Class Members for each workday in which there was a
17 missed or otherwise unlawful rest period. Based on further information and belief, when a rest
18 premium was paid, DEFENDANTS failed to include all non-discretionary compensation into the
19 regular rate of compensation for purposes of determining the owed rest premium.

20 65. DEFENDANTS are therefore liable to PLAINTIFF and the Class Members for one
21 hour of additional pay at the regular rate of compensation for each workday that a required rest
22 period was not provided, pursuant to California Labor Code section 226.7 and the applicable Wage
23 Order, plus pre-judgment interest.

24 **FOURTH CAUSE OF ACTION**
25 **Failure to Furnish Accurate Itemized Wage Statements**
26 **(By PLAINTIFF and Class Members Against All DEFENDANTS)**

27 66. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

28 67. Pursuant to California Labor Code § 226, subdivision (a), PLAINTIFF and the Class
Members were entitled to receive, semimonthly or at the time of each payment of wages, an itemized

1 wage statement accurately stating the following:

2 (1) gross wages earned, (2) total hours worked by the employee,
3 except for any employee whose compensation is solely based on a
4 salary and who is exempt from payment of overtime under
5 subdivision (a) of Section 515 or any applicable order of the Industrial
6 Welfare Commission, (3) the number of piece-rate units earned and
7 any applicable piece rate if the employee is paid on a piece-rate basis,
8 (4) all deductions, provided that all deductions made on written orders
9 of the employee may be aggregated and shown as one item, (5) net
10 wages earned, (6) the inclusive dates of the period for which the
11 employee is paid, (7) the name of the employee and his or her social
12 security number, except that by January 1, 2008, only the last four
13 digits of his or her social security number or an employee
14 identification number other than a social security number may be
15 shown on the itemized statement, (8) the name and address of the
16 legal entity that is the employer, and (9) all applicable hourly rates in
17 effect during the pay period and the corresponding number of hours
18 worked at each hourly rate by the employee.

11 68. During the relevant time period, DEFENDANTS intentionally failed to provide
12 PLAINTIFF and the Class Members with complete and accurate wage statements in compliance
13 with Labor Code § 226, because they do not accurately reflect the total number of hours worked.

14 69. Notably, due to DEFENDANTS' unlawful policies of automatically deducting meal
15 periods, rounding time entries, and uncompensated off-the-clock work, wage statements provided
16 by DEFENDANTS fail to reflect the true total hours PLAINTIFF and the Class Members worked,
17 a requirement of Labor Code § 226.

18 70. Moreover, as DEFENDANTS failed to provide lawful meal and rest periods to
19 PLAINTIFF and Class Members, the wage statements issued by DEFENDANTS failed to correctly
20 set forth (a) the gross wages earned, in violation of Labor Code section 226(a)(1); (b) the total hours
21 worked by the employee in violation of Labor Code section 226(a)(2); (c) the net wages earned, in
22 violation of Labor Code section 226(a)(5); and (d) all applicable hourly rates in effect during the
23 pay period and the corresponding number of hours worked at each hourly rate by the employee in
24 violation of Labor Code section 226(a)(9).

25 71. DEFENDANTS knowingly and intentionally failed to provide PLAINTIFF and the
26 Class Members with proper, itemized wage statements as the wage statements provided by
27 DEFENDANTS did not accurately reflect the total hours worked per pay period due to
28

1 DEFENDANTS' automatic deduction policy and/or practice for unlawful meal periods and off-the-
2 clock work policies and practices.

3 72. Separately, DEFENDANTS failed to provide Class Members with wage statements
4 that listed the correct name and address of the legal entity that is the employer.

5 73. As a result of DEFENDANTS' unlawful conduct, PLAINTIFF and the Class
6 Members have suffered injury. The absence of accurate information on their wage statements has
7 prevented earlier challenges to DEFENDANTS' unlawful pay practices, will require discovery and
8 mathematical computations to determine the amount of wages owed, and will cause difficulty and
9 expense in attempting to reconstruct time and pay records. DEFENDANTS' conduct led to the
10 submission of inaccurate information about wages and amounts deducted from wages to state and
11 federal government agencies. As a result, PLAINTIFF and the Class Members are required to
12 participate in this lawsuit and create more difficulty and expense for PLAINTIFF and the Class
13 Members from having to reconstruct time and pay records than if DEFENDANT had complied with
14 its legal obligations.

15 74. Pursuant to California Labor Code section 226(e), PLAINTIFF and the Class
16 Members are entitled to recover fifty dollars per employee for the initial pay period in which a
17 Section 226 violation occurred and one hundred dollars per employee per violation for each
18 subsequent pay period, not to exceed an aggregate penalty of four thousand dollars per employee.

19 75. Pursuant to California Labor Code § 226(h), PLAINTIFF and the Class Members are
20 entitled to bring an action for injunctive relief to ensure DEFENDANTS' compliance with
21 California Labor Code § 226(a). Injunctive relief is warranted because DEFENDANTS continue to
22 provide currently employed Class Members with inaccurate wage statements in violation of
23 California Labor Code § 226(a). Currently employed Class Members have no adequate legal remedy
24 for the continuing injuries that will be suffered as a result of DEFENDANTS' ongoing unlawful
25 conduct. Injunctive relief is the only remedy available for ensuring DEFENDANTS' compliance
26 with California Labor Code § 226(a).

27 76. Pursuant to California Labor Code §§ 226(e) and 226(h), PLAINTIFF and the Class
28 Members are entitled to recover the full amount of penalties due under Section 226(e), reasonable

1 attorneys' fees, and costs of suit.

2 **FIFTH CAUSE OF ACTION**
3 **Failure to Reimburse Business Expenses**
4 **(By PLAINTIFF and Class Members Against All DEFENDANTS)**

5 77. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

6 78. Pursuant to California Labor Code section 2802, PLAINTIFF and the Class Members
7 were entitled to be reimbursed for all reasonable expenses associated with carrying out orders
8 and/or carrying out the duties assigned by DEFENDANTS.

9 79. PLAINTIFF and the Class Members were improperly required to pay for business
10 expenses that are legally the responsibility of the employer, including but not limited to, cell
11 phone/data plan usage and charges.

12 80. DEFENDANTS' failure to provide PLAINTIFF and the Class Members with full
13 reimbursement for all reasonable expenses associated with carrying out their duties required that
14 PLAINTIFF and the Class Members subsidize and/or carry the burden of business expenses in
15 violation of Labor Code section 2802.

16 81. As a result of DEFENDANTS' unlawful conduct, PLAINTIFF and the Class
17 Members have suffered injury in that they were not completely reimbursed as mandated by
18 California law.

19 82. Pursuant to California Labor Code section 2802, PLAINTIFF and the Class Members
20 are entitled to recover the full amount of reimbursable expenses due, in addition to reasonable
21 attorneys' fees, and costs of suit.

22 **SIXTH CAUSE OF ACTION**
23 **Failure to Timely Pay All Wages Due Upon Separation of Employment**
24 **(By PLAINTIFF and Class Members Against All DEFENDANTS)**

25 83. PLAINTIFF incorporates all preceding paragraphs as if fully set forth herein.

26 84. California Labor Code section 201(a) provides, in relevant part, that "[i]f an
27 employer discharges an employee, the wages earned and unpaid at the time of discharge are due and
28 payable immediately."

85. California Labor Code section 202(a) provides, in relevant part, that "[i]f an
employee not having a written contract for a definite period quits his or her employment, his or her

1 wages shall become due and payable not later than 72 hours thereafter, unless the employee has
2 given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled
3 to his or her wages at the time of quitting.”

4 86. Based in information and belief, DEFENDANTS failed to timely pay PLAINTIFF
5 and the Class Members all wages that were due and owing upon termination or resignation, as
6 described herein. Upon separation of employment, PLAINTIFF and the Class Members’ final
7 paychecks were not timely provided, and PLAINTIFF and the Class Members’ final paychecks,
8 once provided, did not include all remuneration owed as it was devoid of, including but not limited
9 to, all owed minimum wages, premium wages and vacation pay. Under Labor Code section 203,
10 PLAINTIFF and the Class Members who no longer are employed with DEFENDANTS are entitled
11 to recover waiting time penalties of up to 30 days’ pay, plus attorney’s fees and costs, in an amount
12 to be proved at trial.

13 **SEVENTH CAUSE OF ACTION**

14 **Unfair Competition**

15 **((By PLAINTIFF and Class Members Against All Defendants))**

16 87. PLAINTIFF incorporates all preceding paragraphs as if fully alleged herein.

17 88. The unlawful conduct of DEFENDANTS alleged herein constitutes unfair
18 competition within the meaning of California Business and Professions Code section 17200. This
19 unfair conduct includes all unlawful conduct alleged herein, including but not limited to:
20 DEFENDANTS’ failure to pay minimum wages by virtue of its illegal policies and practices;
21 DEFENDANTS’ failure to authorize or permit, or provide, all required meal and rest periods or pay
22 proper premiums in lieu thereof; DEFENDANTS’ failure to furnish complete and accurate itemized
23 wage statements; DEFENDANTS’ failure to reimburse business expenses; and DEFENDANTS’
24 failure to timely pay wages upon separation of employment.

25 89. Due to DEFENDANTS’ unfair and unlawful business practices in violation of the
26 California Labor Code, DEFENDANTS have gained a competitive advantage over other
27 comparable companies doing business in the State of California that comply with their obligations
28 to authorize or permit rest and meal periods or pay proper meal and rest period premiums in lieu
thereof, to provide complete and accurate itemized wage statements, to reimburse employees for all

1 business expenses, to pay all owed minimum wages, and to timely pay all wages due during and
2 upon separation of employment of their employees.

3 90. As a result of DEFENDANTS' unfair competition as alleged herein, PLAINTIFF
4 and the Class Members have suffered injury in fact and lost money or property, as described in more
5 detail above. Pursuant to California Business and Professions Code section 17200, *et seq.*,
6 PLAINTIFF and Class Members are entitled to restitution of all wages and other monies rightfully
7 belonging to them that DEFENDANTS failed to pay and wrongfully retained by means of their
8 unlawful and unfair business practices.

9 91. PLAINTIFF also seeks an injunction against DEFENDANTS on behalf of the Class
10 Members, enjoining DEFENDANTS and any and all persons acting in concert with them from
11 engaging in each of the unlawful practices and policies set forth herein.

12 **EIGHTH CAUSE OF ACTION**

13 **Violation of the Private Attorneys General Act of 2004**

14 **(By PLAINTIFF, Aggrieved Employees, and the State of California Against All 15 DEFENDANTS)**

16 92. PLAINTIFF incorporates all preceding paragraphs as if full alleged herein.

17 93. PLAINTIFF brings this action under the Private Attorneys General Act of 2004,
18 Labor Code sections 2698, *et seq.*, ("PAGA"), as a representative action on behalf of the State of
19 California and all Aggrieved Employees, regarding violations of the California Labor Code as set
20 forth herein as to all Aggrieved Employees. Said "Aggrieved Employees" include:

21 All current and former non-exempt employees that worked either
22 directly or via a staffing agency for DEFENDANTS in California at
23 any time from one year and sixty-five days prior to the filing of the
24 initial complaint through the present ("PAGA Period").

25 94. PLAINTIFF is an "aggrieved employee," as that term is defined under Labor Code
26 section 2699(c), as he was employed by DEFENDANTS during the applicable statutory limitations
27 period and suffered one or more of the Labor Code violations set forth herein. Accordingly,
28 PLAINTIFF seeks to recover on behalf of himself, the State of California, and all other Aggrieved
Employees, the civil penalties provided by PAGA, plus reasonable attorney's fees and costs.

1 PLAINTIFF has standing to bring a PAGA cause of action on behalf of the State and all Aggrieved
2 Employees, as he was jointly employed by DEFENDANTS and is thereby affected by one or more
3 of the alleged violations. *See Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal.App.5th
4 745, 757. A PAGA plaintiff has authority to seek penalties for all known violations committed by
5 the employer – regardless of whether Plaintiff experienced all violations personally. *Id.* at 760-761

6 **COMPLIANCE WITH PAGA’S NOTIFICATION REQUIREMENTS**

7 95. On March 9, 2022, PLAINTIFF, through his counsel, gave written notice by online
8 filing with the California Labor and Workforce Development Agency (“LWDA”) informing it that
9 DEFENDANTS failed to comply with California’s labor laws with regard to the allegations alleged
10 in this Complaint (“PAGA Letter”).

11 96. The PAGA Letter outlined PLAINTIFF’s claims for violations of the California
12 Labor Code and the applicable wage orders on behalf of himself, the State of California and other
13 Aggrieved Employees. Attached hereto as **Exhibit 1** is a true and correct copy of the PAGA Letter
14 also sent to DEFENDANTS via certified mail.

15 97. The LWDA did not provide notice of its intention to investigate DEFENDANTS’
16 violations after expiration of the 65-day waiting time period, or at any time. To the extent any of the
17 alleged violations were curable, DEFENDANTS failed to cure within the time allotted by PAGA.
18 Accordingly, PLAINTIFF has exhausted the administrative remedies as required by Labor Code
19 section 2699.3. Consequently, PLAINTIFF’s right to file the instant lawsuit has duly accrued.

20 98. PLAINTIFF seeks to recover the PAGA civil penalties through a representative
21 action permitted by PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46
22 Cal.4th 969. Therefore, class certification of the PAGA cause of action is not required.

23 99. From one year prior to PLAINTIFF’s filing of the required PAGA notice with the
24 LWDA, and continuing through the present, as alleged herein, DEFENDANTS violated the California
25 Labor Code sections 201-203, 204, 216, 221-223, 226, 226.7, 233, 234, 245-248.5, 432.5, 432.7,
26 510, 512, 558, 558.1, 1024.5, 1174, 1194, 1197, 1197.1, 1198, 1199, 2802, 2810.5, and all relevant
27 sections of the applicable Wage Orders, as to PLAINTIFF and Aggrieved Employees. These
28 violations subject DEFENDANTS to civil penalties as set forth in the foregoing statutes as well

1 as other provisions of the Labor Code, including without limitation, Labor Code sections 203,
2 210, 225.5, 226, 226.3, 256, 558, 558.1, 1174.5, 1197.1 and 2699.

3 100. As set forth above, DEFENDANTS have committed numerous violations of the
4 California Labor Code due to including but not limited to their failure to pay all owed minimum
5 wages, failure to provide lawful meal and rest periods or compensation in lieu thereof, failure to
6 provide accurate wage statements, failure to reimburse business expenses, and failure to pay all
7 wages owed upon separation of employment as alleged above. PAGA penalties are in addition to
8 any other relief available under the Labor Code.

9 101. Additionally, DEFENDANTS have violated the following Labor Code sections and
10 provisions of the applicable Wage Order as to PLAINTIFF and Aggrieved Employees.

11 102. **Record Keeping Violations.** California Labor Code § 1174 requires employers to
12 keep “accurate and complete” payroll records showing, among other things, the hours worked daily
13 by all non-exempt employees. All applicable Wage Orders § 7 similarly requires employers to keep
14 time records reflecting the times during which all owed meal periods were provided each day.

15 103. Due to DEFENDANTS’ automatic meal break deductions, failure to relieve
16 employees of all duties and employer control during meal periods, time rounding, and other off-the-
17 clock work policies and practices described above, DEFENDANTS failed, and continue to fail, to
18 keep accurate and complete records as required by law, including but not limited to the following
19 records: total daily hours worked, applicable rates of pay, time records showing when PLAINTIFF
20 and other Aggrieved Employees began and ended each work period, time records of meal periods,
21 shift start times and end times, and accurate itemized wage statements.

22 104. DEFENDANTS’ failure to keep “accurate and complete” payroll records for
23 PLAINTIFF and other Aggrieved Employees violates Labor Code §§ 1174, 1198, 1199, and all
24 applicable Wage Orders, section 7. These violations subject DEFENDANTS to civil penalties under
25 Labor Code §§ 558.1, 226.6, 1174.5 and 2699. Each violation of each Labor Code section and
26 Wage Order provision results in a *separate* civil penalty, for each Aggrieved Employee for each pay
27
28

1 period during which the referenced statutes and Wage Order provisions were violated.¹

2 105. **Unpaid Overtime Wages.** California law requires employers to pay overtime equal
3 to one and one-half times the regular hourly rate of pay for each hour worked beyond eight (8) hours
4 per workday and each hour worked beyond forty (40) hours per work week. Lab. Code section 510;
5 IWC Wage Order 7-2001, (and all applicable IWC Wage Orders) section 3. Employers must pay
6 overtime equal to double the regular hourly rate of pay for each hour worked beyond twelve (12)
7 hours per workday and for all hours worked in excess of eight (8) hours on the seventh consecutive
8 day or work in a work week. *Ibid.*

9 106. DEFENDANTS violated California’s overtime laws by, among other things, failing
10 to correctly calculate, or record at all, the total number of hours worked by Aggrieved Employees
11 due to DEFENDANTS’ automatic deduction for meal periods, time rounding policies and practices
12 (for meal periods, start shift times and end times, and mandated pre-shift and post-shift off-the-clock
13 work described above, and other off-the-clock work described above resulted in the failure to
14 account for all hours worked and thus the denial of minimum wages as well as overtime wages owed
15 to Aggrieved Employees who worked more than eight (8) hours in a day or more than forty hours
16 in a week.

17 107. Based on information and belief, DEFENDANTS failed to incorporate all non-
18 discretionary remuneration, including but not limited to, shift differential pay, bonus pay, and/or
19 other non-discretionary pay into the regular rate of pay used to calculate the owed overtime rate(s),
20 resulting in the miscalculation and underpayment of overtime wages owed to Aggrieved Employees.

21 108. Based on further information and belief, DEFENDANTS failed to properly blend
22 multiple rates of regular pay in calculating the owed overtime rate(s), resulting in the miscalculation
23 and underpayment of overtime wages owed to Aggrieved Employees.

24 109. Based on information and belief, DEFENDANTS failed to pay twice the regular rate

25 ¹ Labor Code § 2699(f)(2) (establishing that the civil penalty is “for each aggrieved employee per pay period”); Labor
26 Code § 558 (establishing that the civil penalty is “for each underpaid employee for each pay period for which the
27 employee was underpaid”); All applicable wage orders, § 20 (establishing that “[i]n addition to any other civil
28 penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes
to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each
pay period during which the employee was underpaid”) (emphasis added).

1 of pay for time worked beyond twelve (12) hours per workday and for time worked beyond eight
2 (8) hours on the seventh consecutive day of work in a work week, in violation of California overtime
3 laws.

4 110. This conduct results in violations of Labor Code sections 218.5, 510, 558, 558.1,
5 1198-1199, and IWC Wage Order 7-2001, section 12(A). These violations subject DEFENDANTS
6 to civil penalties under Labor Code sections 558, 558.1, 218.5, and 2699, and the applicable Wage
7 Order, including but not limited to Wage Order 7-2001, section 20.

8 111. **Failure to Provide Suitable Resting Facilities:** Per section 13 of all applicable IWC
9 Wage Orders, including but not limited to Wage Order 7, employees shall be provided with suitable
10 resting facilities. Section 13(B) of the Wage Orders provides: "Suitable resting facilities shall be
11 provided in an area separate from the toilet rooms and shall be available to employees during work
12 hours."

13 112. Based on information and belief, DEFENDANTS' retail locations are generally
14 similar in layout and design, and there was, and continues to be, space that allows for a resting
15 facility that employees may use to cease work and recover during meal or rest periods.
16 DEFENDANTS could have provided PLAINTIFF and Aggrieved Employees with a suitable resting
17 facility within the retail locations with reasonable or no modification, but instead denied and
18 continues to deny, employees with suitable areas to rest (e.g. a breakroom).

19 113. DEFENDANTS did not provide PLAINTIFF and Aggrieved Employees with
20 suitable resting facilities during their hours of work, particularly during meal and/or rest periods.
21 Moreover, DEFENDANTS did not inform PLAINTIFF and other Aggrieved Employees of their
22 right to suitable resting facilities under California law.

23 114. DEFENDANTS' failure to provide suitable resting facilities to PLAINTIFF and
24 Aggrieved Employees violated and continues to violate the applicable Wage Order, including but
25 not limited to IWC Wage Order 7-2001, section 13(B) and the California Labor Code, including but
26 not limited to section 1198.

27 115. **Seating Violations:** Per section 14(A-B) of all applicable IWC Wage Orders,
28 employees shall be provided with suitable seats when the nature of the work reasonably permits the

1 use of seats and when they are not actively engaged in the work duties that would not permit them
2 to be seated.

3 116. IWC Wage Order 7-2001 (and all applicable IWC Wage Orders), Section 14(A-B)
4 provides:

5 (A) All working employees shall be provided with suitable seats when
6 the nature of the work reasonably permits the use of seats.

7 (B) When employees are not engaged in the active duties of their
8 employment and the nature of the work requires standing, an adequate
9 number of suitable seats shall be placed in reasonable proximity to
10 the work area and employees shall be permitted to use such seats
11 when it does not interfere with the performance of their duties.

12 117. Suitable seating is one of the worker protections covered by California's Wage
13 Orders, which have the same dignity as statutes, are remedial in nature and are to be broadly
14 construed to effectuate the goal of protecting the comfort and welfare of employees. *Brinker*
15 *Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004, 1027 (2012).

16 118. Based on information and belief, DEFENDANTS failed to provide Aggrieved
17 Employees with suitable seating, and when such employees were not engaged in duties which
18 required them to stand, no seating was placed in reasonable proximity to their workstations.

19 119. Moreover, the nature of the work reasonably permitted the use of seats for at least
20 part of the time that Aggrieved Employees were working. Lastly, there were periods of time when
21 Aggrieved Employees were not engaged in active duties of their employment, yet there were no
22 suitable seats in reasonable proximity to the work area and use of seats would not interfere with the
23 performance of their duties.

24 120. PLAINTIFF and the other Aggrieved Employees worked in various positions. The
25 nature of PLAINTIFF's and the other Aggrieved Employees' work reasonably permitted the use of
26 seats. However, based on information and belief, DEFENDANTS failed to provide suitable
27 seating in reasonable proximity to PLAINTIFF and the other Aggrieved Employees' work areas in
28 violation of IWC Wage Order 7-2001 (and all applicable wage orders), section 14 (A-B) and Labor

1 Code sections 1198 and 1199, subjecting DEFENDANTS to civil penalties under Labor Code
2 sections 1199 and 2699. Each violation of each Labor Code section and IWC Wage Order
3 provision, for each Aggrieved Employee, results in a separate civil penalty.²

4 **121. Refusal to Make Payment.** Labor Code section 216 declares unlawful an
5 employer's refusal to pay wages due and payable and/or the denial of the validity of any claim to
6 wages due. DEFENDANTS violated and continue to violate this section by failing to pay
7 PLAINTIFF and other Aggrieved Employees for all hours worked at the proper wage rate and by
8 failing to pay an additional hour of pay for each meal/rest period not provided or that was otherwise
9 unlawful. *Gould v. Maryland Sound Industries, Inc.* (1995) 31 Cal.App.4th 1137, 1154-1155. These
10 violations subject DEFENDANTS to civil penalties under Labor Code section 225.5. Each violation
11 results in a *separate* civil penalty, for each Aggrieved Employee, for each pay period during which
12 the statute provisions were violated.³

13 **122. Statutory Wage Violations.** California Labor Code section 223 makes it unlawful
14 for an employer to secretly pay wages lower than required by statute while purporting to pay legal
15 wages. As described above, DEFENDANTS willfully and systematically denied PLAINTIFF and
16 other Aggrieved Employees of all earned minimum and overtime compensation for all hours worked
17 which resulted in the payment of less than statutorily required wages. DEFENDANTS acted with
18 the intent to deprive them of statutory wages, including, but not limited to, overtime wages and
19 minimum wages, to which they were entitled to under California law. Thus, DEFENDANTS paid
20 PLAINTIFF and other Aggrieved Employees lower wages than those they were entitled to while
21 purporting that PLAINTIFF and other Aggrieved Employees were properly paid. As a result,
22 PLAINTIFF and other Aggrieved Employees are entitled to recover penalties, attorney's fees, costs,
23 and interest thereon, pursuant to Labor Code § 2699(f)-(g).

24 **123. Standard Conditions of Labor Violations:** Together, Labor Code sections 1198
25

26 ² See Lab. Code §2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period").

27 ³ Labor Code § 225.5 (establishing that "[i]n addition to, and entirely independent and apart from, any other penalty
28 provided in this article, every person who unlawfully withholds wages due any employee in violation of sections 212,
216, 221, 222, or 223 shall be subject to a civil penalty...for each failure to pay each employee") (emphasis added).

1 and 1199 make unlawful any employment of any employee under conditions of labor prohibited by
2 the Wage Orders, and any violation, refusal, or neglect to comply with any provision within Part 4,
3 Chapter 1 of the Labor Code, including sections 1174, 1197, and 1198, or order or ruling of the
4 commission. Therefore, DEFENDANTS' violations with respect to meal periods, rest periods,
5 record keeping provisions, minimum wages, overtime wages, suitable resting facilities, and suitable
6 seating result in separate violations of sections 1198 and 1199, which subject DEFENDANTS to
7 civil penalties under Labor Code sections 1197.1 and 2699.

8 124. **Unlawful Agreements/ Unlawful Criminal History Inquiries.** Unlawful
9 Agreements. Labor Code section 432.5 provides that "no employer...shall require any employee or
10 applicant for employment to agree, in writing, to any term or condition which is known by such
11 employer...to be prohibited by law." Based on information and belief, DEEFENDANTS
12 required/continue to require Aggrieved Employees to agree in writing to submit to unlawful criminal
13 and/or financial checks as a condition of obtaining and/or continuing employment.

14 125. The California Labor Code places certain procedural and substantive limits on an
15 employers' ability to conduct employee background checks and on how employers can use the
16 information they obtain through those background checks. Labor Code section 1024.5 states that
17 employers, except for financial institutions, may order a credit check only if the individual works
18 (or is applying to work) in certain positions (e.g., managerial positions, financially-related positions,
19 and certain government positions). Additionally, the Investigative Consumer Reporting Agencies
20 Act (ICRAA- CA Civil Code section 1786, *et seq.*) and the Fair Credit Reporting Act (FCRA - 15
21 U.S.C. section 1681, *et seq.*) mandate several requirements prior to and following an employee
22 background check, including but not limited to identifying an appropriate reason for the background
23 check, a separate consent form with required disclosures and certain formatting requirements,
24 additional forms such as a summary of rights, a way by which to request a copy of the report, as
25 well as proper notice of adverse actions taken, among other statutory requirements.

26 126. Based on information and belief, DEFENDANTS ordered unlawful financial credit
27 checks on Aggrieved Employees, in violation of Labor Code section 1024.5, and required them to
28 provide ongoing written consent to the unlawful credit checks as a condition of employment, in

1 violation of California and Federal law, which results in a violation of Labor Code section 432.5.

2 127. Based on information and belief, DEFENDANTS required Aggrieved Employees to
3 submit and/or agree to submit in writing to unlawful criminal background checks which failed to
4 abide by the requirements set forth in Cal. Civ. Code section 1786 *et. seq.*, and 15 U.S.C. section
5 1681, *et. seq.*, including but not limited to by failing to provide a clear and conspicuous disclosure,
6 failing to provide disclosures free of extraneous information, failing to provide a lawful purpose for
7 the background check, failing to provide a summary of rights under the ICRAA and/or the FCRA,
8 failing to provide a way by which the individual could request a copy of the report, and failing to
9 properly obtain authorization or consent to such a background check, and thus was an unlawful
10 background check.

11 128. Based on further information and belief, DEFENDANTS also required Aggrieved
12 Employees to agree in writing to provide DEFENDANTS with ongoing consent to conduct
13 background checks throughout the duration of employment, in violation of the ICRAA and/or FCRA
14 and/or other applicable laws, resulting in a further violation of Labor Code section 432.5, by
15 requiring applicants and employees to agree to an unlawful provision as a condition of employment.

16 129. Based on further information and belief, DEFENDANTS knew that requiring
17 PLAINTIFF and Aggrieved Employees to agree to unlawful criminal and/or financial background
18 checks as a condition of obtaining and/or holding employment was unlawful.

19 130. By requiring that PLAINTIFF and other Aggrieved Employees sign off on the illegal
20 background and/or financial checks, DEFENDANTS violated Labor Code section 432.5.

21 131. Unlawful Inquires into Criminal History. Labor Code section 432.7 prohibits an
22 employer from asking applicants about past arrest(s) unless they resulted in conviction(s) and even
23 then, certain limitations apply. Based on information and belief, DEFENDANTS asked Aggrieved
24 Employees about arrests not resulting in convictions on its employment application, in violation of
25 California law.

26 132. Upon information and belief, DEFENDANTS, in violation of California law,
27 including but not limited to the Fair Chance Act/the California Fair Employment and Housing Act
28 (“FEHA”), asked Aggrieved Employees about convictions prior to extending an offer of

1 employment and/or otherwise impermissibly inquired into criminal history on its employment
2 application in violation of California law.

3 133. By asking about arrests not resulting in convictions, DEFENDANTS violated Labor
4 Code section 432.7. By asking about convictions at the application phase or prior to extending an
5 employment offer, DEFENDANTS violated California's Fair Chance Act, and thereby violated
6 Labor Code section 432.5 by unlawfully requiring Aggrieved Employees to agree in writing to
7 disclose arrests and/or convictions as a condition of employment.

8 134. **Sick Leave Violations.** DEFENDANTS violated California's paid sick leave laws
9 including Labor Code section 245-248.5 and 233-234. DEFENDANTS either failed to provide sick
10 leave pay to PLAINTIFF and other Aggrieved Employees or failed to properly accrue paid sick
11 leave due to DEFENDANTS' failure to account for actual hours worked (by virtue of
12 DEFENDANTS' meal period auto-deduction, and time rounding practices, and other off-the-clock
13 work described herein), and/or failure to incorporate all forms of non-discretionary remuneration
14 into the sick pay calculation.

15 135. DEFENDANTS further failed to give Aggrieved Employees notice of their paid sick
16 leave rights – or thereby putting their entitlement to sick leave in a Labor Code section 2810.5
17 notice. In addition, based on information and belief, DEFENDANTS failed to maintain accurate
18 records of used sick leave and the balance of paid sick leave left to the employees, which affected
19 Aggrieved Employees' intelligent exercise of their paid sick leave.

20 136. But for this failure, PLAINTIFF and other Aggrieved Employees would have used
21 their paid sick leave at least prior to their respective separations, for as on several occasions
22 thereafter, he or she would have been entitled to use the banked sick leave and earn appropriate
23 compensation.

24 137. In violation of Labor Code section 247.5, DEFENDANTS failed to maintain records
25 documenting the hours worked and paid sick days accrued and used by PLAINTIFF and all
26 Aggrieved Employees, permitting the presumption that PLAINTIFF and all Aggrieved Employees
27 were entitled to the maximum number of hours accruable.

28 138. Upon information and belief, DEFENDANTS failed and continue to fail to comply

1 with Labor Code section 246, by failing to provide Aggrieved Employees with a Labor Code section
2 226 wage statement, or separate writing containing the amount of paid sick leave available, or paid
3 time off leave an employer provides in lieu of sick leave, at the time it pays wages.

4 139. These practices violated California's sick leave laws, Labor Code section 245, *et seq.*

5 140. On information and belief, PLAINTIFF alleges that all of these practices were
6 experienced and continue to be experienced by other Aggrieved Employees.

7 141. Accordingly, PLAINTIFF seeks all appropriate relief under the PAGA, including but
8 not limited to injunctive relief, attorney's fees, declaratory relief, and penalties as permitted by law.

9 142. Under the provisions of PAGA and the following Labor Code sections, 201-203, 204,
10 216, 221-223, 226, 226.7, 233, 234, 245-248.5, 432.5, 432.7, 510, 512, 558, 558.1, 1024.5, 1174,
11 1194, 1197, 1197.1, 1198, 1199, 2802, 2810.5, and all relevant sections of the applicable Wage
12 Orders, as well as all interpretations of these laws by California Courts and administrative bodies,
13 as well as any other law that is enforceable through PAGA, DEFENDANTS are liable for all
14 statutorily-specified penalties recoverable under PAGA as enumerated in the relevant California
15 Labor Code provisions listed herein, or for default PAGA penalties under Labor Code section
16 2699(f) for any violation of a Labor Code section without a specified civil penalty. Pursuant to Labor
17 Code section 2699(g), and/or any and all other applicable laws, PLAINTIFF is entitled to recover
18 civil penalties, costs, plus reasonable attorney's fees and costs, all in an amount to be proved.

19 **PRAYER FOR RELIEF**

20 WHEREFORE, PLAINTIFF prays for relief and judgment, on behalf of himself, the Class
21 Members, the Aggrieved Employees and the State of California, as follows:

- 22 1. For an order that the action be certified as a class action;
- 23 2. For an order that PLAINTIFF be appointed as class representative;
- 24 3. For an order that counsel for PLAINTIFF be appointed as class counsel;
- 25 4. For compensatory damages according to proof;
- 26 5. For liquidated damages according to proof;
- 27 6. For penalties according to proof;
- 28 7. For an order requiring DEFENDANTS to make restitution of all amounts wrongfully

- 1 withheld from PLAINTIFF and the Class Members;
- 2 8. For an order finding DEFENDANTS have engaged in unfair competition in violation of
- 3 section 17200, *et seq.*, of the California Business and Professions Code;
- 4 9. For an order enjoining DEFENDANTS from further acts of unfair competition;
- 5 10. For pre-judgment interest as permitted by law;
- 6 11. For civil penalties according to proof, including PAGA penalties (75% payable to the
- 7 LWDA and 25% payable to Aggrieved Employees;
- 8 12. For attorney's fees and costs reasonably incurred; and
- 9 13. For such other and further relief that the Court deems just and proper.
- 10

11 Dated: May 16, 2022

CROSNER LEGAL, PC

12

13 By:  _____

14 Michael R. Crosner, Esq.

15 Zachary M. Crosner, Esq.

16 Blake R. Jones, Esq.

17 Attorneys for Plaintiff,

18 EVAN REED

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1 **DEMAND FOR JURY TRIAL**

2 PLAINTIFF demands a trial by jury on all claims so triable.

3
4 Dated: May 16, 2022

CROSNER LEGAL, PC

5 By: _____

6 Michael R. Crosner, Esq.

7 Zachary M. Crosner, Esq.

8 Blake R. Jones, Esq.

9 Attorneys for Plaintiff,

10 EVAN REED

EXHIBIT

1



CROSNER LEGAL

Public Interest Rights

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March 9, 2022

VIA ONLINE FILING ONLY:

PAGAfilings@dir.ca.gov
California Labor & Workforce
Development Agency
ATTN: PAGA Administrator
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102

VIA U.S. CERTIFIED MAIL:

CSC-Lawyers Incorporating Service
Agent for Service of Process for:
Williams-Sonoma Stores, Inc.
2710 Gateway Oaks Drive, Ste 150N
Sacramento CA 95833

CSC-Lawyers Incorporating Service
Agent for Service of Process for:
Williams-Sonoma, Inc.
2710 Gateway Oaks Drive, Ste 150N
Sacramento CA 95833

NOTICE OF PRIVATE ATTORNEYS GENERAL ACT CLAIM

To: California Labor and Workforce Development Agency; Williams-Sonoma Stores, Inc.; and Williams-Sonoma, Inc.
Date: March 9, 2022
Subject: *Evan Reed v. Williams-Sonoma Stores, Inc. et. al.*

Introduction

This office represents COMPLAINANT, Evan Reed (hereinafter "COMPLAINANT") in connection with COMPLAINANT's claims under the California Labor Code. COMPLAINANT was, at all relevant times herein mentioned, an employee of the following entities and individual managing agents of said entity: Williams-Sonoma Stores, Inc., and Williams-Sonoma, Inc., (hereinafter, this entity and its managing agents are referred to collectively as "EMPLOYER"). EMPLOYER may be contacted directly at the addresses listed above.

Pursuant to California Labor Code sections 2699.3 and 2699.5, COMPLAINANT, on behalf of COMPLAINANT, and on behalf of all current and former non-exempt employees employed by EMPLOYER within one year of the date of this notice (“NON-EXEMPT AGGRIEVED EMPLOYEES”), and on behalf of all current and former exempt employees employed by EMPLOYER within one year of the date of this notice (“EXEMPT AGGRIEVED EMPLOYEES”), hereby gives written notice (“NOTICE”) of COMPLAINANT’s claims against EMPLOYER. This NOTICE is being provided via online filing to the California Labor and Workforce Development Agency (“LWDA”) and EMPLOYER via certified mail to its Agent(s) for Service of Process as provided to the California Secretary of State.

This NOTICE also serves to demonstrate COMPLAINANT’s reasonable attempt at settlement with EMPLOYER. If EMPLOYER is interested in settling this matter before a lawsuit is filed, EMPLOYER may contact Crosner Legal, P.C. at the address listed at the close of this NOTICE. This settlement attempt is in compliance with relevant California law. *Graham v. Daimler Chrysler Corp.* (2004) 24 Cal.4th 553, 561.

This NOTICE is sent in compliance with the reporting requirements of California Labor Code sections 2699, 2699.3 and 2699.5. This NOTICE further reserves any and all rights by COMPLAINANT to amend this notice to include, amend, or add further charges upon discovery of new violations of any of the provisions of the California Labor Code. In addition, to the extent that entities and/or other individuals are named and charged with violations of the Labor Code—making them liable on an individual basis as permitted by numerous Labor Code sections including, but not limited to sections 558.1 and 1197.1—COMPLAINANT reserves any and all rights to add, substitute, or change the name of employer entities and/or individuals responsible for the violations at issue. Any further amendments and changes to this notice shall relate back to the date of this NOTICE. Consequently, EMPLOYER is on notice that COMPLAINANT continues its investigation, with the full intent to amend and/or change this notice, to add any undiscovered violations of *any* of the provisions of the California Labor Code—to the extent that are applicable to this case—and to change and/or add the identities of any entities and/or individuals responsible for the violations contained herein. For violations that are curable under § 2699.3(c) and that EMPLOYER intends to cure within the statutory time period set forth in §§ 2699 and 2699.3(c), the EMPLOYER shall provide notice including a description of actions taken to cure. If the alleged violation is not cured within the statutory time period, COMPLAINANT will commence a civil action pursuant to section 2699. For all other violations that are not curable, an action pursuant to 2699(a) and 2699(f) will commence after the requirements under 2699.3 are fulfilled.

Based on the following summary of the facts and theories upon which COMPLAINANT will base COMPLAINANT’s claims, COMPLAINANT requests that the LWDA regard this NOTICE as written notice of COMPLAINANT’s intent to seek civil penalties against EMPLOYER. The specific provisions of California law that EMPLOYER has violated, requiring this NOTICE, include but are not limited to: California Labor Code sections 201-203, 204, 216, 221-223, 226, 226.7, 245-248.5, 432.5, 432.7, 510, 512, 558, 558.1, 1024.5, 1174, 1194, 1197, 1197.1, 1198, 1198.3, 1199, 2802, 2810.5 and all applicable Wage Orders.

**The Named Entities Are Joint Employers of COMPLAINANT and NON-EXEMPT
AGGRIEVED EMPLOYEES AND EXEMPT AGGRIEVED EMPLOYEES**

California courts have recognized that the definition of “employer” for purposes of enforcement of the California Labor Code goes beyond the concept of traditional employment to reach irregular working arrangements for the purpose of preventing evasion and subterfuge of California’s labor laws. *Martinez v. Combs* (2010) 49 Cal.4th 35, 65. As such, anyone who directly or indirectly, or through an agent or any other person, engages, suffers, or permits any person to work or exercises control over the wages, hours, or working conditions of any person, may be liable for violations of the California Labor Code as to that person.

COMPLAINANT is informed and believes and thereon alleges that at all relevant times EMPLOYER and unknown entities operated as a single integrated enterprise with common ownership and centralized human resources as set forth herein. Under California law, in determining whether two defendant entities are liable as an integrated enterprise, courts consider four factors: (1) centralized control of labor relations; (2) interrelation of operations; (3) common management; and (4) common ownership or financial control. *Laird v. Capital Cities/Abc, Inc.* (1998) 68 Cal.App.4th 727, 737 (overruled on other grounds, *Reid v. Google, Inc.* (2010) 50 Cal. 4th 512 (2010).)

COMPLAINANT is informed and believes and hereon asserts that EMPLOYER and unknown entities must be classified as joint employers of COMPLAINANT for purposes of liability for civil penalties under PAGA, as the aforementioned entities engaged, suffered and permitted COMPLAINANT to perform services from which they benefited, and furthermore that the aforementioned entities had the right to exercise control over the wages, hours and/or working conditions of COMPLAINANT at all relevant times herein, so as to be considered the joint employers of COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES.

By reason of their status as joint employers of COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES, they are each liable for civil penalties for violation of the California Labor Code and applicable Wage Orders as to COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES.

Individual Liability Under Labor Code Section 558.1

Labor Code section 558.1 permits joint and several liability as to both an individual and employer for violations of Labor Code sections 203, 226, 226.7, 1194, and 2802. EMPLOYER, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES’ and EXEMPT AGGRIEVED EMPLOYEES’ rights by violating various sections of the California Labor Code. The California Legislature defines “other person acting on behalf of an employer” as “a *natural person* who is an owner, director, officer, or managing agent of the employer.” The “managing

agent” definition mirrors that found in California’s punitive damages statute (subdivision (b) of section 3294 of the Civil Code). Under that statute and supporting case law, “managing agents” are all employees who exercise substantial independent authority and judgment in their corporate decision-making such that their decisions ultimately determine corporate policy. *White v. Ultramar, Inc.* (1999) 21 Cal. 4th 563, 566-67. For the reasons set forth above and others, at all relevant times, the above-listed individuals meet the criteria of managing agents under California law, and therefore, may be held liable under California Labor Code sections 558 and 558.1 for violations of Labor Code sections 203, 226, 226.7, 1194 and 2802 as further described in detail below.

COMPLAINANT intends to further name any unknown individuals responsible for violations arising under Labor Code sections 558 and 558.1 after further discovery. COMPLAINANT will ask the Court to relate the amendment of the PAGA charge and the operative complaint to the date of filing of these charges. COMPLAINANT asks and demands that EMPLOYER put these individuals on notice immediately to provide them as much notice possible to mount in defense. In the alternative, COMPLAINANT also offers to EMPLOYER to place those individuals on notice if EMPLOYER voluntarily provides their contact information.

General Information

EMPLOYER owns, operates, or otherwise manages retail companies that sell kitchen and home furnishings through retail stores located throughout the United States and other countries. At all times mentioned herein, EMPLOYER conducted and continues to conduct substantial business in the State of California. At all times mentioned herein, EMPLOYER was and is an employer covered by the Labor Code and the applicable California Industrial Welfare Commission (“IWC”) Wage Order. While EMPLOYER may operate successful companies/have a noble mission, EMPLOYER does not comply with California labor law.

COMPLAINANT worked for EMPLOYER as a non-exempt stock associate at one of EMPLOYER’s retail locations in San Luis Obispo, California, from in or around December 2020 through in or around May 2021. COMPLAINANT was typically scheduled to work shifts that lasted over five (5) hours per day, five (5) days per week.

Among other things, EMPLOYER (1) failed and continues to fail to keep accurate and complete time records for COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES; (2) failed and continues to fail to pay COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES for all hours worked; (3) failed and continues to fail to pay COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES at least minimum wages for all hours worked and overtime/regular rates for corresponding work; (4) failed and continues to fail to pay proper overtime wages for failure to incorporate all non-discretionary compensation into the overtime premium pay calculations; (5) failed and continues to fail to provide COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES with proper meal or rest breaks, and/or compensate COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES an additional hour of premium pay at the employee’s regular rate of compensation for missed/improper meal and/or rest

periods; (6) refused and continues to refuse to make and/or falsely denied the amount of payments due to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES, including but not limited to, owed sick pay; (7) failed and continues to fail to place COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES on proper notice of their workplace rights, including but not limited to owed sick pay; (8) failed and continues to fail to provide legally compliant wage statements to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES; (9) made unlawful deductions from COMPLAINANT's and NON-EXEMPT AGGRIEVED EMPLOYEES' and EXEMPT AGGRIEVED EMPLOYEES' paychecks; (10) failed and continues to fail to timely pay wages to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES during employment and/or upon separation of employment; (11) failed and continues to fail to reimburse COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES for business expenses incurred on behalf of EMPLOYER; (12) failed and continues to fail to provide suitable resting facilities and suitable seating; (13) conducted and continues to conduct illegal background criminal and/or financial checks as a condition of COMPLAINANT's and NON-EXEMPT AGGRIEVED EMPLOYEES' and EXEMPT EMPLOYEES' hire or maintaining their employment; and (14) required and continues to require COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to disclose arrests not resulting in convictions and/or to disclose convictions prior to extending an offer or employment and/or otherwise impermissibly inquired and continues to inquire into COMPLAINANT's, NON-EXEMPT AGGRIEVED EMPLOYEES, and/or EXPEMPT AGGRIEVED EMPLOYEES' criminal history on their employment applications and sign off on same as a condition of employment. Further descriptions of the above-mentioned violations and others are explained below.

Labor Code Violations

Recordkeeping Requirement Violations: California Labor Code section 1174 requires employers to keep "accurate and complete" payroll records showing, among other things, the hours worked daily by COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES. The applicable IWC Wage Order(s), including but not limited to Wage Order 7-2001, section 7 similarly requires employers to keep time records reflecting the times during which all owed meal periods were provided each day.

At all relevant times, EMPLOYER failed, and continues to fail, to keep accurate and complete payroll records as required by law, including but not limited to the following records: total daily hours worked, applicable rates of pay, time records showing when COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES began and ended each work period, time records of meal periods, and accurate itemized wage statements.

EMPLOYER failed and continues to fail to keep accurate and complete records showing total hours worked by COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES by virtue of EMPLOYER's time rounding, automatic meal break deductions, and practices, and other off-the-clock work policies and practices described below.

EMPLOYER further failed and continues to fail to keep accurate and complete records showing total hours worked by virtue of EMPLOYER's failure to relieve COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES of all duties and EMPLOYER's control for unpaid meal periods, resulting in unpaid hours worked.

EMPLOYER further failed and continues to fail, to record the true start and end times of COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES' work shifts.

EMPLOYER further failed and continues to fail, to record the true start and end times of COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES' meal periods.

Additionally, EMPLOYER failed, and continues to fail to keep accurate records and issue accurate wage statements by not documenting accrued sick time for COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES.

EMPLOYER's failure to keep "accurate and complete" payroll records for COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES violates Labor Code sections 1174, 1198, 1199, and Wage Order 7-2001, section 7. These violations subject EMPLOYER to civil penalties under Labor Code sections 558.1, 226.6, 1174.5 and 2699. Each violation of each Labor Code section and Wage Order provision, for each NON-EXEMPT AGGRIEVED EMPLOYEE, results in a separate civil penalty.¹

Meal Period Violations: California law requires employers to provide employees a duty-free, uninterrupted thirty (30) minute meal period when an employee works more than five (5) hours in a workday, and it must be provided within the first five (5) hours the employee works. Lab. Code section 512 (and all applicable IWC Wage Orders), section 11(A) and (C); *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004. Employers must also provide employees with a second duty-free, uninterrupted thirty (30) minute meal period when an employee works more than (10) hours in a workday, and it must be provided before the end of the 10th hour of work. *Ibid.* Meal periods can be waived, but only under the following circumstances: (1) if an employee's total work period in a day is over five (5) hours but no more than six (6) hours, the required meal period may be waived by mutual consent of the employer and employee, and (2) if an employee's total work period in a day is over ten (10) hours but no more than twelve (12) hours, the required second meal period may be waived by mutual consent of the employer and employee, but only if the first meal period was not waived. *Ibid.*

Employers covered by any and all applicable IWC Wage Orders have an obligation to both (1) relieve their employees for at least one meal period for shifts over five hours (see above), and (2) to record having done so. If the employer fails to properly record a valid meal period, it is presumed that no meal period was provided. IWC Wage Order 7-2001, section 7(A)(3) ("Meal periods . . . shall also be recorded"); *Brinker, supra*, 53 Cal.4th 1004, 1052-1053, citing section 7(A)(3) ("If an

¹ See Lab. Code section 2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period").

employer's records show no meal period for a given shift over five hours, a rebuttable presumption arises that the employee was not relieved of duty and no meal period was provided").

Employers must pay employees an additional hour of wages at the employees' regular rate of pay for each missed or improper meal period (e.g., less than 30 minutes, interrupted meal period, first meal period provided after five (5) hours, second meal period provided after 10 hours). Lab. Code section 226.7; all applicable IWC Wage Orders, section 11(B) ("If an employer fails to provide an employee a meal period in accordance with the applicable provision of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided"); *Brinker, supra*, 53 Cal.4th 1004.

COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES consistently worked shifts of five and a one-half (5 ½) hours or more.

COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES did not receive legally compliant thirty (30) minute first meal breaks. COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES were consistently unable to take timely, off duty, thirty-minute, uninterrupted meal periods, often being forced to take late meal periods, interrupted meal periods and/or work through part or all their meal periods due to the nature and constraints of their job duties, understaffing, and/or commentary from supervisors pressuring them to take non-compliant meal breaks and/or skip meal breaks completely. For example, COMPLAINANT's scheduled shift regularly started at 10:00 am, but at times was unable to take a timely meal break due to his assigned workload or due to his need to assist customers. Moreover, during the holiday season, COMPLAINANT was rarely afforded a timely meal period. Based on information and belief, other NON-EXEMPT AGGRIEVED EMPLOYEES were also regularly unable to take timely, duty-free meal periods, and/or were interrupted during their meal periods.

Moreover, NON-EXEMPT AGGRIEVED EMPLOYEES were consistently suffered and permitted to take meal periods past the fifth hour of work and/or had their meal periods interrupted and/or cut short due to their need to assist customers, complete assigned job duties, and/or due to EMPLOYER's faulty time-keeping system. When clocking out for a meal period, COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES were required to clock out using EMPLOYER's computerized time-keeping system which was often slow and/or inaccurate. For example, at times COMPLAINANT attempted to clock out for a meal period but had to wait at least five (5) to ten (10) minutes for the system to load or record the clock out time. At other times, the system inaccurately recorded the clock out time under a different employee's time records. COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES experienced the same issues when clocking back in for a meal period. Because COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES were required to wait for the time-keeping system to load, they were denied a full thirty (30) minute meal period that was uninterrupted and free of EMPLOYER's control.

Despite failing to provide lawful meal periods, EMPLOYER implemented a policy and/or practice of automatically deducting at least thirty minutes per shift for these missed/unlawful meal periods,

despite having actual and/or constructive knowledge that COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES did not receive compliant meal periods.

Based on information and belief, EMPLOYER implemented policies and practices that failed to relieve COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES of all duties and EMPLOYER's control during unpaid meal breaks.

Based on information and belief, EMPLOYER had actual and/or constructive knowledge that its policies and practices resulted in the denial of uninterrupted meal periods owed to COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES, in violation of California's meal period laws.

EMPLOYER also failed to keep accurate records of the start and end times of COMPLAINANT's and NON-EXEMPT AGGRIEVED EMPLOYEES' meal periods. Based on further information and belief, EMPLOYER illegally rounded the start and end times of meal periods resulting in COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES not being paid for all time worked as well as late and/or shortened meal periods. *See Donohue v. AMN Services, LLC* (2021) 11 Cal.5th 58. Based on further information and belief, EMPLOYER's time keeping system inaccurately recorded the true start and end times of COMPLAINANT's and other NON-EXEMPT AGGRIEVED EMPLOYEES' meal periods, yet EMPLOYER systematically deducted thirty (30) minutes per shift irrespective of whether a full thirty (30) minute meal period was provided.

Based on further information and belief, EMPLOYER did not have a written meal break policy, nor did EMPLOYER have any sort of compliant policy in practice. Liability for the aggrieved employees can be established by evidence that an employer adopted a uniform corporate break policy that failed to give full effect to California law and the applicable Wage Order requirements. The fact that employees may legally waive meal breaks does not affect this result. *Brinker, supra*, 53 Cal.4th 1004.

COMPLAINANT is further informed and believes and thereon alleges that EMPLOYER had actual and/or constructive knowledge that its time-rounding and auto-deduction policies and practices resulted in the denial of meal periods owed to COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES, in violation of California's meal period laws.

Moreover, based on information and belief, NON-EXEMPT AGGRIEVED EMPLOYEES who worked shifts of more than ten hours did not receive a second legally compliant thirty (30) minute second meal period before the end of the tenth hour of work. Based on further information and belief, EMPLOYER only provided a single meal period per shift, regardless of the number of hours worked, and that single meal period was non-compliant.

EMPLOYER failed to pay COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES an additional hour of wages at their respective regular rates of compensation for each workday a proper meal period was not provided. EMPLOYER either failed to pay a meal period premium at all for each workday a proper meal period was not provided and/or failed to pay

the proper meal period premium for failure to incorporate all non-discretionary remuneration, including but not limited to, shift differential pay, bonuses, and/or other non-discretionary compensation into the regular rate or compensation for purposes of calculating the owed meal period premium. For example, during the pay period of 05/03/21 – 05/16/21, COMPLAINANT received a meal period premium at his base hourly rate of \$14 per hour. In the same pay period, COMPLAINANT also earned a non-discretionary “Wellness Vaccine Incentive” of \$100. This non-discretionary compensation was not factored into the regular rate of pay for purposes of calculating the owed meal period premium. Based on information and belief, EMPLOYER failed to incorporate all non-discretionary compensation into the regular rate of pay for purposes of paying the correct meal period premium(s) to NON-EXEMPT AGGRIEVED EMPLOYEES.

The aforementioned conduct results in violations of Labor Code sections 226.7, 512, and 1198-1199, and IWC Wage Order No. 7-2001, section 11(A), (B) and (C) along with all applicable IWC Wage Orders. These violations subject EMPLOYER to civil penalties under Labor Code sections 558.1, 558 and 2699, and all applicable IWC Wage Orders, section 20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE for each pay period during which the referenced statutes and Wage Order provisions were violated.² EMPLOYER’s failure to provide valid meal periods, and the automatic deduction for meal periods that were not provided/valid, ultimately results in further violations, such as violations of Labor Code sections 1174, 1199, 226.6, discussed above, and other violations discussed below.

Rest Period Violations: California law requires employers to provide employees a paid, duty-free ten (10) minute rest period for each four (4) hours worked, or major fraction thereof. *See* applicable IWC Wage Order, including but not limited to No. 7-2001, section 12(A). In *Brinker v. Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004 (2012), the California Supreme Court held that employees are entitled to a 10-minute paid rest period for shifts from 3 ½ to 6 hours in a length, two 10-minute rest periods for shifts more than 6 hours up to 10 hours, and three 10-minute rest periods for shifts of more than 10 hours up to 14 hours. (*Id.* at 1029). The rest period requirement obligates employers to permit and authorize employees to take off-duty rest periods, meaning employers must relieve employees of all duties and relinquish control over how employees spend their time. *Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5th 257, 269. Employers must pay employees an additional hour of wages at the employee’s regular rate of pay for each missed or improper rest period (e.g., less than 10 minutes, interrupted rest period, rest period(s) at improper time(s) during shift(s)). Lab. Code section 226.7; IWC Wage Order No. 7-2001, section 12(B) (“If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that the rest period is not provided”).

² See Lab. Code section 2699(f)(2) (establishing that the civil penalty is “for each aggrieved employee per pay period”); Lab. Code section 558 (establishing that the civil penalty is “for each underpaid employee for each pay period for which the employee was underpaid”); IWC Wage Order 7-2001, section 20 (establishing that “[i]n addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid”).

EMPLOYER did not properly authorize and provide COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES with lawful rest periods at a rate of every four (4) hours worked or major fraction thereof, that insofar as practicable, are provided in the middle of the work period, as required by law.

COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES were not adequately informed, authorized, instructed about, nor permitted an opportunity to take proper rest periods per California law.

Any purported rest periods were interrupted, cut short, on duty, and/or late due to the nature and constraints of NON-EXEMPT AGGRIEVED EMPLOYEES' job duties, need to assist customers, understaffing, and/or commentary from supervisors pressuring them to skip rest breaks completely and/or take non-compliant rest periods. For example, on days when COMPLAINANT's assigned store was busy, COMPLAINANT was not afforded a full ten-minute uninterrupted rest period. Instead, COMPLAINANT was allowed to take a rest period of five minutes or less and was later provided a separate rest period of five minutes or less a few hours later. Based on information and belief, EMPLOYER failed to provide other NON-EXEMPT AGGRIEVED EMPLOYEES with ten-minute uninterrupted rest periods in compliance with California law.

Based on information and belief, COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES were pressured to complete their work duties according to a designated schedule such that rest breaks were only taken once jobs were completed/as time permitted.

Based on information and belief, EMPLOYER implemented policies and/or practices that failed to relieve NON-EXEMPT AGGRIEVED EMPLOYEES of all duties and EMPLOYER's control during rest breaks.

Based on information and belief, EMPLOYER had no policy in place nor instruction as to the taking, timing, or duty-free nature of rest periods. Furthermore, EMPLOYER failed to pay a rest period premium for each day in which there was a missed/improper rest period in violation of California law. *Bluford v. Safeway Stores, Inc.* (2013) 216 Cal. App. 4th 864, 872. Based on information and belief, EMPLOYER failed to pay COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES, an additional hour of wages at their respective regular rates of pay for each workday a proper rest period was not provided. EMPLOYER either failed to pay a rest period premium at all for each workday a proper rest period was not provided and/or failed to pay the proper rest period premium for failure to incorporate all non-discretionary remuneration, including but not limited to, shift differential pay, bonuses, and/or other non-discretionary compensation into the regular rate of compensation for purposes of calculating the owed rest period premium.

The aforementioned conduct results in violations of Labor Code sections 226.7, and 1198-1199, and IWC Wage Order 7-2001, section 12(A). These violations subject EMPLOYER to civil penalties under Labor Code section §§ 558 and 2699, and all applicable IWC Wage Orders, section

20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE for each pay period during which the referenced statutes and Wage Order provisions were violated.³

Failure to Provide Suitable Resting Facilities: Per section 13 of all applicable IWC Wage Orders, including but not limited to Wage Order 7, employees shall be provided with suitable resting facilities. Section 13(B) of the Wage Orders provides: “Suitable resting facilities shall be provided in an area separate from the toilet rooms and shall be available to employees during work hours.”

Based on information and belief, EMPLOYER’s retail locations are generally similar in 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. EMPLOYER could have provided COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES with a suitable resting facility within the restaurant with reasonable or no modification, but instead denied and continues to deny, employees with suitable areas to rest (e.g. a breakroom).

EMPLOYER did not provide COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES with suitable resting facilities during their hours of work, particularly during meal and/or rest periods. Moreover, EMPLOYER did not inform COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES of their right to suitable resting facilities under California law.

EMPLOYER’s failure to provide suitable resting facilities to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES violated and continues to violate the applicable Wage Order, including but not limited to IWC Wage Order 7-2001, section 13(B) and the California Labor Code, including but not limited to section 1198.

Minimum Wage Violations: “Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorneys’ fees, and costs of suit.” *Cal. Lab. Code* § 1194.

Labor Code section 1197 states the California requirement that employees must be paid at least the minimum wage fixed by the Commission, and any payment of less than the minimum wage is unlawful. The minimum wage standard applies to each hour employees worked for which they were not paid. Therefore, an employer’s failure to pay for any particular hour worked by an

³ See Lab. Code section 2699(f)(2) (establishing that the civil penalty is “for each aggrieved employee per pay period”); IWC Wage Order 7-2001, section 20 (establishing that “[i]n addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid”).

employee is unlawful even if averaging an employee's total pay over all hours worked, paid or not, results in an average hourly wage above minimum wage. *Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 324. Furthermore, "in any action under Section 98, 1193.6, 1194, or 1197.1 to recover wages because of the payment of a wage less than the minimum wage fixed by an order of the commission or by statute, an employee shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon..." *Cal. Lab. Code* § 1194.2.

EMPLOYER failed to compensate COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES for all hours worked by virtue of EMPLOYER's automatic deductions and time rounding policies, payment according to scheduled hours worked instead of actual time worked, mandated pre-shift/post shift/ and/or other off-the-clock work policies and/or practices and failure to relieve employees of all duties/employer control during unpaid meal periods or otherwise unlawful practices for missed or improper meal periods.

As explained above, COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES were consistently unable to take timely off duty, thirty-minute, uninterrupted meal periods. Based on information and belief, EMPLOYER implemented a policy and/or practice of automatically deducting at least thirty minutes per shift for meal periods and/or requiring COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES to clock out for at least thirty minutes per shift for meal periods, despite having actual and/or constructive knowledge that the purported meal periods were short, not taken, interrupted, or not relieved of all duties and employer control.

Based on further information and belief, EMPLOYER rounded the start and end times of employee meal periods and shift start and end times resulting in COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES not being paid for all time worked.

COMPLAINANT alleges on information and belief that EMPLOYER implemented a time-rounding system that as applied systematically deprived COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES of compensable time because the time-rounding system implemented by EMPLOYER would almost always, if not always, result in understating actual compensable work time. EMPLOYER's failure to pay for all time worked by virtue of its time-rounding practices resulted in the underpayment of minimum wages owed to COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES as well as unpaid overtime wages for those NON-EXEMPT AGGRIEVED EMPLOYEES who worked more than eight (8) hours in a day and/or forty hours in a week.

Based on information and belief, EMPLOYER had and continues to have a continuous policy of paying COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES for scheduled hours, rather than actual hours worked due to EMPLOYER's mandated off-the-clock work. COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES were required to perform pre-shift and post-shift off-the-clock work. For example, prior to clocking in to work, COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES were required to undergo pre-shift temperature screenings. COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES were also required to answer COVID-related screening questions

prior to clocking in to work. The temperature screenings and questionnaire took at least a few minutes to complete. This work time was not recorded and was not compensated, depriving COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES of minimum wages for all hours worked.

Additionally, when COMPLAINANT was scheduled to work the closing shift, COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES were required to remain on EMPLOYER's premises for at least 5-10 minutes after clocking out of work due to EMPLOYER's policy that all closing shift employees leave the store at the same time. For example, once COMPLAINANT completed his duties at the end of a shift, COMPLAINANT was required to clock out of work, but was not allowed to leave the premises until all other employees completed their duties and clocked out of work to ensure that all employees left EMPLOYER's store at the same time, depriving COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES of minimum wages owed for time spent subjected to EMPLOYER's control and restricted to EMPLOYER's premises.

Moreover, COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES were not compensated for time spent waiting for EMPLOYER's time keeping system to load and/or accurately record punch times. At times, COMPLAINANT was required to wait at least 10-15 minutes for EMPLOYER's time keeping system to load prior to clocking in at the beginning of a shift and/or upon clocking back in to work after a meal period. During this time, COMPLAINANT was subjected to EMPLOYER's control, but such time was not recorded and was not compensated. COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES had the same issue upon clocking out of work to take a meal period and at the end of a shift.

Based on information and belief, EMPLOYER failed to pay NON-EXEMPT AGGRIEVED EMPLOYEES for time they were required to spend completing orientation, trainings, policy questionnaires, and/or time spent completing the onboarding process including but not limited to reviewing various documents and policies provided by EMPLOYER. Based on information and belief, this work time was completed off-the-clock and was not compensated.

EMPLOYER's automatic deduction policies and practices as well as mandated off-the-clock work described herein resulted in a failure to account for all hours worked and deprived COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES of all owed minimum wages and overtime wages, and further resulted in record keeping violations.

Based on information and belief, EMPLOYER had actual and/or constructive knowledge that its time-rounding and auto-deduction policies and practices, failure to provide off-duty meal periods, and other mandated off-the-clock work described above resulted in the underpayment of minimum wages owed to COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES, in violation of California's minimum wage laws.

These violations subject EMPLOYER, to civil penalties under Labor Code sections 558, 558.1, 1197.1 and Wage Order and 7-2001, section 20. Each violation of each Labor Code section and

Wage Order provision results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE, for each pay period during which the referenced statutes and Wage Order provisions were violated.⁴

Overtime Violations: California law requires employers to pay overtime equal to one and one-half times the regular hourly rate of pay for each hour worked beyond eight (8) hours per workday and each hour worked beyond forty (40) hours per work week. Lab. Code section 510; IWC Wage Order 7-2001, (and all applicable IWC Wage Orders) section 3. Employers must pay overtime equal to double the regular hourly rate of pay for each hour worked beyond twelve (12) hours per workday and for all hours worked in excess of eight (8) hours on the seventh consecutive day or work in a work week. *Ibid.*

EMPLOYER violated California's overtime laws by, among other things, failing to correctly calculate, or record at all, the total number of hours worked by NON-EXEMPT AGGRIEVED EMPLOYEES and not paying proper overtime rates for overtime worked by virtue of same.

Namely, EMPLOYER's automatic deduction and time rounding policies and practices for meal periods, start shift times and end times, and mandated pre-shift and post-shift off-the-clock work described above, and other off-the-clock work described above resulted in the failure to account for all hours worked and thus the denial of minimum wages as well as overtime wages owed to NON-EXEMPT AGGRIEVED EMPLOYEES who worked more than eight (8) hours in a day or more than forty hours in a week.

Based on information and belief, EMPLOYER failed to pay twice NON-EXEMPT AGGRIEVED EMPLOYEES' regular rate(s) of pay for time worked beyond twelve (12) hours per workday and for time worked beyond eight (8) hours on the seventh consecutive day of work in a work week, in violation of California overtime laws.

Based on further information and belief, EMPLOYER failed to incorporate all non-discretionary remuneration, including but not limited to, shift differential pay, bonus pay, and/or other non-discretionary pay into the regular pay rate(s) of pay used to calculate the owed overtime rate(s), resulting in the miscalculation and underpayment of overtime wages owed to NON-EXEMPT AGGRIEVED EMPLOYEES.

Based on further information and belief, EMPLOYER failed to properly blend multiple rates of regular pay in calculating the owed overtime rate(s), resulting in the miscalculation and underpayment of overtime wages owed to NON-EXEMPT AGGRIEVED EMPLOYEES.

⁴ See Lab. Code section 1197.1(a) (establishing that the civil penalty is "for each underpaid employee for each pay period for which the employee was underpaid"); IWC Wage Order 7-2001, section 20 (establishing that "[i]n addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid").

This conduct results in violations of Labor Code sections 218.5, 510, 558, 558.1, 1198-1199, and IWC Wage Order 7-2001, section 12(A). These violations subject EMPLOYER to civil penalties under Labor Code sections 558, 558.1, 218.5, and 2699, and the applicable Wage Order, including but not limited to Wage Order 7-2001, section 20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE, for each pay period during which the referenced statutes and Wage Order provisions were violated.⁵

Violation of California Labor Code Sections 245-248.5: Based on information and belief, EMPLOYER failed to provide proper paid sick leave to COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES. EMPLOYER either failed to provide paid sick leave at all or improperly calculated the sick leave accrual and the sick leave rate of pay owed to COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES by failing to base the accrued sick leave hours on the correct number of hours worked (as a result of the rounding/ automatic deduction policies and practices for meal periods and shift start and end times/ or other required off-the-clock work described herein) and by failing to incorporate multiple rates of pay and/or all non-discretionary remuneration, including but not limited to, non-discretionary shift differential pay and bonuses, and/or other non-discretionary compensation into the sick leave pay rate calculation.

EMPLOYER further failed to provide notice of the correct sick leave amount balance available to COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES on their wage statements or other written statement.

EMPLOYER further failed to put them on notice of their paid sick leave rights—or thereby putting their entitlement to sick leave in a Labor Code section 2810.5 notice.

In addition, based on information and belief, EMPLOYER failed to maintain accurate records of used sick leave and the balance of paid sick leave left to NON-EXEMPT AGGRIEVED EMPLOYEES throughout the relevant time period.

Throughout the relevant time period, EMPLOYER failed to provide notice of the sick leave amount balance left for COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES, and thus affected their intelligent exercise of their paid sick leave. But for this failure, COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES would have used their paid sick leave at least prior to their respective separation, for as on several occasions thereafter, he or she would have been entitled to use the banked sick leave and earn appropriate compensation.

⁵ See Lab. Code section 2699(f)(2) (establishing that the civil penalty is “for each aggrieved employee per pay period”); Lab. Code section 558 (establishing that the civil penalty is “for each underpaid employee for each pay period for which the employee was underpaid”); IWC Wage Order, section 20 (establishing that “[i]n addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid”).

This illegal retention of paid sick leave is unlawful, and COMPLAINANT seeks all forms of injunctive relief, restitution, and declaratory relief as permitted by California law, on behalf of COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES.

In violation of Labor Code section 247.5, EMPLOYER failed to maintain records documenting the hours worked and paid sick days accrued and used by COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES, permitting the presumption that COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES were entitled to the maximum number of hours accruable under this article.

Upon information and belief, EMPLOYER further failed and continues to fail to comply with Labor Code section 246, by failing to provide all NON-EXEMPT AGGRIEVED EMPLOYEES with a Labor Code section 226 wage statement, or separate writing containing the amount of paid sick leave available, or paid time off leave an employer provides in lieu of sick leave, at the time it pays wages.

EMPLOYER also unlawfully retained and continues to retain paid sick leave that should have been paid and was not because of EMPLOYER's failure to properly institute a paid sick leave program.

On information and belief, COMPLAINANT alleges that all of these practices were experienced and continue to be experienced by NON-EXEMPT AGGRIEVED EMPLOYEES.

COMPLAINANT requests all appropriate relief under the PAGA and these statutes, including but not limited to the restitution of earned paid sick leave that could have been used, but was not due to EMPLOYER's sole failure to institute such a paid sick leave entitlement or paid sick leave bank as required by California law.

Accordingly, COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES are entitled to injunctive relief, attorney's fees, declaratory relief, restitution, and penalties as permitted by law. COMPLAINANT requests all relief pursuant to the aforementioned code provisions, including but not limited to Labor Code sections 233 and 234, which incorporates the paid sick leave requirements.

Refusal to Make Payment: Labor Code section 216 declares unlawful an employer's refusal to pay wages due and payable and/or denial of the validity of any claim to wages due.

EMPLOYER violated and continues to violate Labor Code section 216 by failing to pay COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES for all hours worked at the proper wage rate and by failing to pay COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES an additional hour of pay for each meal or rest period not provided or that was invalid. *Gould v. Maryland Sound Industries, Inc.* (1995) 31 Cal.App.4th 1137, 1154-1155.

These violations subject EMPLOYER to civil penalties under Labor Code section 225.5. Each violation results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE, for each pay period during which the statute provisions were violated.⁶

Wage Statement Violations: California law requires every employer semi-monthly or at the time of each payment of wages to furnish each of his or her employees with an accurate itemized wage statement in writing that contains the following: (1) gross wages earned; (2) total hours worked by the employee; (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; (4) all deductions; (5) net wages earned; (6) the inclusive dates of the period for which the employee is paid; (7) 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; (8) the name and address of the legal entity that is the employer; and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Cal. Lab. Code. section 226.

As EMPLOYER failed to provide COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES with lawful meal and rest periods and premium wages, the wage statements EMPLOYER issued to COMPLAINANT and non-exempt AGGRIEVED EMPLOYEES fail to correctly set forth (a) the gross wages earned, in violation of Labor Code section 226(a)(1); (b) the total hours worked by the employee in violation of Labor Code section 226(a)(2); (c) the net wages earned, in violation of Labor Code section 226(a)(5); and (d) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee, in violation of Labor Code section 226(a)(9).

EMPLOYER's wage statements that it provided to COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES failed to among other things, indicate earned gross and net wages earned during the pay period, the correct applicable rates of pay for all hours worked, and the "total hours worked" by the COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES (by virtue of the automatic deduction for meal periods, time-rounding policies and practices and other off-the-clock work policies and practices, all described in greater detail *supra*) which results in a violation of Labor Code section 226(a). Failure to list all hours worked on a wage statement, gives rise to an inference of injury under Labor Code Section 226 (*Maldonado v Epsilon Plastics, Inc.*, (2018) 22 Cal.App.5th 1308, 1337).

Employer's failure to accurately list all hours worked on all wage statements caused confusion to COMPLAINANT and caused and continues to cause confusion to the NON-EXEMPT AGGRIEVED EMPLOYEES over whether they received all wages owed to them. COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES were injured by EMPLOYER's failure to provide accurate wage statements.

⁶ Labor Code section 225.5 (establishing that "[i]n addition to, and entirely independent and apart from, any other penalty provided in this article, every person who unlawfully withholds wages due any employee in violation of sections 212, 216, 221, 222, or 223 shall be subject to a civil penalty...for each failure to pay each employee") (emphasis added).

Because of the violations detailed above, including but not limited to, not paying regular and overtime wages for all hours worked and failing to provide meal and rest break premiums, EMPLOYER violated California Labor Code section 226 by willfully failing to furnish COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES with accurate, itemized wage statements.

Separately, EMPLOYER violated Labor Code section 226 because the wage statements issued by EMPLOYER failed to list the correct name and address of the legal entity that is the employer. For example, COMPLAINANT's wage statement dated 06/04/21 lists "Williams-Sonoma Stores, Inc." as the legal entity that is the employer. However, documents in COMPLAINANT's personnel file indicate that "Williams-Sonoma, Inc." is the employer. Based on information and belief, EMPLOYER issued wage statements to NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES that also failed to list the correct name and address of the legal entity that is the employer. As a result, the wage statements provided to COMPLAINANT, NON-EXEMPT AGGRIEVED EMPLOYEES, and EXEMPT AGGRIEVED EMPLOYEES were not accurate and did not include all of the statutorily required information, including but not limited to the name and address of the legal entity that is the employer.

These violations subject EMPLOYER to civil penalties under Labor Code section 226. Each violation results in a *separate* civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE and EXEMPT AGGRIEVED EMPLOYEE, for each pay period during which the statute provisions were violated.⁷

Semimonthly Payment Violations: Labor Code section 204 requires that all earned wages must be paid to employees twice during each calendar month. EMPLOYER violated this section by failing to pay NON-EXEMPT AGGRIEVED EMPLOYEES for all hours worked and by failing to pay proper premium wage rates for all hours worked. These violations subject EMPLOYER to civil penalties under Labor Code § 210. Each violation results in a separate civil penalty, for each NON-EXEMPT AGGRIEVED EMPLOYEE for each pay period during which the statute provisions were violated.

Seating Violations: Per section 14(A-B) of all applicable IWC Wage Orders, employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats and when they are not actively engaged in the work duties that would not permit them to be seated.

IWC Wage Order 7-2001 (and all applicable IWC Wage Orders), Section 14(A-B) provides:

(A) All working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats.

(B) When 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

⁷ See Lab. Code section 226.3 (establishing that the civil penalty is "per employee per violation").

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.

Suitable seating is one of the worker protections covered by California's Wage Orders, which have the same dignity as statutes, are remedial in nature and are to be broadly construed to effectuate the goal of protecting the comfort and welfare of employees. *Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004, 1027 (2012).

Based on information and belief, EMPLOYER failed to provide NON-EXEMPT AGGRIEVED EMPLOYEES with suitable seating, and when such employees were not engaged in duties which required them to stand, no seating was placed in reasonable proximity to their workstations.

Moreover, the nature of the work reasonably permitted the use of seats for at least part of the time that NON-EXEMPT AGGRIEVED EMPLOYEES were working. Lastly, there were periods of time when NON-EXEMPT AGGRIEVED EMPLOYEES were not engaged in active duties of their employment, yet there were no suitable seats in reasonable proximity to the work area and use of seats would not interfere with the performance of their duties.

COMPLAINANT and the other NON-EXEMPT AGGRIEVED EMPLOYEES worked in various positions. The nature of COMPLAINANT's and the other NON-EXEMPT AGGRIEVED EMPLOYEES' work reasonably permitted the use of seats. However, based on information and belief, EMPLOYER failed to provide suitable seating in reasonable proximity to COMPLAINANT and the other NON-EXEMPT AGGRIEVED EMPLOYEES' work areas in violation of IWC Wage Order 7-2001 (and all applicable wage orders), section 14 (A-B) and Labor Code sections 1198 and 1199, subjecting EMPLOYER to civil penalties under Labor Code sections 1199 and 2699. Each violation of each Labor Code section and IWC Wage Order provision, for each NON-EXEMPT AGGRIEVED EMPLOYEE, results in a separate civil penalty.⁸

Standard Conditions of Labor Violations: Together, Labor Code sections 1198 and 1199 make unlawful any employment of any employee under conditions of labor prohibited by the Wage Orders, and any violation, refusal, or neglect to comply with any provision within Part 4, Chapter 1 of the Labor Code, including sections 1174, 1197, and 1198, or order or ruling of the commission.

Therefore, EMPLOYER's violations with respect to meal periods, rest periods, recordkeeping provisions, minimum wages, overtime wages, suitable seating, and suitable resting facilities, result in separate violations of sections 1198 and 1199, which subject EMPLOYER to civil penalties under Labor Code sections 1197.1 and 2699.

Statutory Wage Violations: California Labor Code section 223 makes it unlawful for an employer to secretly pay wages lower than required by statute while purporting to pay legal wages. As described above, EMPLOYER willfully and systematically denied COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES minimum wages and overtime wages which

⁸ See Lab. Code §2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period").

resulted in the payment of less than statutorily required wages to them. EMPLOYER acted with the intent to deprive them of statutory wages, including, but not limited to, overtime wages and minimum wages, to which they were entitled to under California law.

Thus, EMPLOYER paid COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES lower wages than those they were entitled to while purporting that COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES were properly paid. COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES are entitled to recover penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code section 2699(f)-(g).

Final Pay Violations: Labor Code section 201 requires employers to pay all wages earned and unpaid at the time of discharge, immediately upon discharge. California Labor Code section 201(a) provides, in relevant part, that "[i]f an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately." California Labor Code section 202(a) provides, in relevant part, that "[i]f an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 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." Pursuant to Labor Code section 203, an employer that willfully fails to pay wages due an employee who is terminated or resigns must pay (in addition to the unpaid wages) a penalty equal to the employee's daily wages for each day, not exceeding 30 days, that the wages are unpaid. This 30-day waiting time penalty is recoverable under the PAGA via Labor Code Section 256. See, *Iskanian v. CLS Transportation Los Angeles, LLC*, 59 Cal.4th 348 (2014); see also, *Caliber Bodyworks, Inc. v. Superior Court*, 134 Cal. App. 4th 365 (2005).

Based on information and belief, EMPLOYER failed to timely pay NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES all wages that were due and owing upon termination or resignation. Based on information and belief, EMPLOYER provides final wages to NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES on the regular pay day without regard to the timing requirements of Labor Code sections 201-202. Likewise, EMPLOYER fails to timely pay all final wages owed to NON-EXEMPT AGGRIEVED EMPLOYEES and/or EXEMPT AGGRIEVED EMPLOYEES upon termination or resignation of a temporary or seasonal position.

Upon separation of employment, NON-EXEMPT AGGRIEVED EMPLOYEES' and EXEMPT AGGRIEVED EMPLOYEES' final paychecks were not timely provided and/or were not timely provided with all owed vacation pay. Moreover, NON-EXEMPT AGGRIEVED EMPLOYEES' final paychecks, once provided, did not include all wages owed as they were devoid of, including but not limited to, all owed minimum wages, overtime wages, premium wages, vacation pay, and all owed sick leave and/or paid time off wages at the properly accrued rates.

These violations subject EMPLOYER to civil penalties under Labor Code sections 203, 210, and/or 256. Each violation results in a *separate* civil penalty, for each NON-EXEMPT

AGGRIEVED EMPLOYEE and each EXEMPT AGGRIEVED EMPLOYEE for each pay period during which the statute provisions were violated.⁹

Business Expense Violations: California law requires employers to indemnify their employees for all necessary expenditures incurred by the employee in direct consequence of the discharge of their duties or of their obedience to the directions of the employer. *See* Cal. Lab. Code § 2802(a) and all applicable Wage Orders, § 9 (b). Furthermore, “for purposes of [section 2802], the term ‘necessary expenditure or losses’ shall include all reasonable costs, including, but not limited to, attorneys’ fees incurred by the employee enforcing the rights granted by this section.”

Among other things, under California law, when 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 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. *See* applicable IWC Wage Order, § 9 (b).

Among other things, under California law, when employees must use their personal cellphones for work-related purposes, the employer must reimburse them for a reasonable percentage of their cell phone bills. *See Cochran v. Schwan’s Home Services, Inc.* (2014) 228 Cal.App.4th 1137, 1140. To show liability, an employee will only need to show that he or she was required to use their personal cellphone for work-related purposes and not reimbursed for the use. *Id.* 1144-1145. Further, “any contract or agreement, express or implied, made by any employee to waive the benefits of this article or any part thereof, is null and void, and this article shall not deprive any employee or his personal representative of any right or remedy to which he is entitled to under the laws of this State.” *See* Cal. Lab. Code § 2804.

COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES were improperly required to provide and maintain work tools that are supposed to be the responsibility of EMPLOYER.

At all relevant times hereto, EMPLOYER shifted its costs of doing business onto COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES by requiring them to pay for EMPLOYER’s business expenses, including but not limited to, use of COMPLAINANT’s and other NON-EXEMPT AGGRIEVED EMPLOYEES’ and EXEMPT AGGRIEVED EMPLOYEES’ mobile phone and data plan usage and charges. For example, COMPLAINANT received calls and messages to his personal phone from managers and/or supervisors for work related purposes, including but not limited to, messages related to scheduling and shift assignment(s). Moreover, COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES were required to use their phone during work hours in order to look up merchandise for customers and/or check stock levels on particular products. COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES used their personal

⁹ (establishing that “[i]n addition to, and entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, 1197.5, shall be subject to a civil penalty...for each failure to pay each employee”).

phone for work-related purposes on a daily basis.

COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES were improperly required to pay for business expenses that are supposed to be the responsibility of EMPLOYER, including but not limited to, cell phone/data plan charges incurred as a result of being required to use their personal cell phones for work-related purposes.

As a pattern and practice, EMPLOYER regularly failed to reimburse and indemnify COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES for business expenses. Pursuant to California Labor Code section 2802, COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES are entitled to be reimbursed for all reasonable expenses associated with carrying out orders by their EMPLOYER and/or carrying out the duties assigned by EMPLOYER.

As described herein, EMPLOYER regularly failed to reimburse and indemnify COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES for all reasonable expenses associated with carrying out their job duties. EMPLOYER's failure to provide COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES with full reimbursement for all reasonable expenses associated with carrying out their duties required that COMPLAINANT and NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES subsidize and/or carry the burden of business expenses in violation of Labor Code section 2802.

Unlawful Agreements/ Unlawful Criminal and Financial Background Checks:

Unlawful Financial and Criminal Background Checks:

The California Labor Code places certain procedural and substantive limits on employers' ability to conduct employee background checks and on how employers can use the information they obtain through those background checks. Labor Code section 1024.5 states that employers, except for financial institutions, may order a credit check only if the individual works (or is applying to work) in certain positions (e.g., managerial positions, financially-related positions, and certain government positions). Additionally, the Investigative Consumer Reporting Agencies Act (ICRAA- CA Civil Code section 1786, et seq.) and the Fair Credit Reporting Act (FCRA - 15 U.S.C. section 1681, et seq.) mandate several requirements prior to and following an employee background check, including but not limited to identifying an appropriate reason for the background check, a separate consent form with required disclosures and certain formatting requirements, additional forms such as a summary of rights, a way by which to request a copy of the report, as well as proper notice of adverse actions taken, among other statutory requirements.

Based on information and belief, EMPLOYER ordered unlawful financial credit checks on NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES, in violation of Labor Code section 1024.5, and required NON-EXEMPT AGGRIEVED EMPLOYEES and

EXEMPT AGGRIEVED EMPLOYEES to provide ongoing written consent to the unlawful credit checks as a condition of employment, in violation of California and Federal law, which results in a violation of Labor Code section 432.5.

Based on information and belief, EMPLOYER required NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to submit and/or agree to submit in writing to unlawful criminal background checks as a condition of obtaining and/or holding employment in violation of the ICRAA and the FCRA.

Based on information and belief, EMPLOYER required COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to a background check which failed to abide by the requirements set forth in CA Civil Code section 1786, *et seq.* and 15 U.S.C. section 1681, *et seq.*, including but not limited to by failing to provide a clear and conspicuous disclosure, failing to provide disclosures free of extraneous information, failing to provide a lawful purpose for the background check, failing to provide a summary of rights under the ICRAA and/or the FCRA, failing to provide a way by which the individual could request a copy of the report, and failing to properly obtain authorization or consent to such a background check, and thus was an unlawful background check.

By requiring NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to unlawful criminal and/or financial checks not in conformance with the applicable laws, EMPLOYER also violated Labor Code section 432.5.

Based on further information and belief, EMPLOYER also required NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to provide ongoing consent to EMPLOYER to conduct background checks throughout the duration of employment, in violation of the ICRAA and/or FCRA and/or other applicable laws, resulting in a further violation of Labor Code section 432.5, by requiring applicants and employees to agree to an unlawful provision as a condition of employment.

Based on further information and belief, EMPLOYER knew that requiring NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree to these unlawful criminal and/or financial background checks as a condition of obtaining and/or holding employment was unlawful.

By having NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES sign off on the illegal background and financial checks, EMPLOYER also violated Labor Code section 432.5 (stating that “no employer...shall require any employee or applicant for employment to agree, in writing, to any term or condition which is known by such employer...to be prohibited by law.”).

Unlawful Inquires into Criminal History

Labor Code section 432.7 prohibits an employer from asking applicants about past arrest(s) unless they resulted in conviction(s) and even then, certain limitations apply. Based on information and

belief, EMPLOYER asked NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES about arrests not resulting in convictions on its employment application, in violation of California law.

Upon information and belief, EMPLOYER, in violation of California law, including but not limited to the Fair Chance Act/the California Fair Employment and Housing Act ("FEHA"), asked NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES about convictions prior to extending an offer of employment and/or otherwise impermissibly inquired into criminal history on its employment application in violation of California law.

By asking about arrests not resulting in convictions, EMPLOYER violated Labor Code section 432.7. By asking about convictions at the application phase or prior to extending an employment offer, EMPLOYER violated California's Fair Chance Act, and thereby violated Labor Code section 432.5 by unlawfully requiring NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES to agree in writing to disclose arrests and/or convictions as a condition of employment.

As such, NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES continue to be subject to various unlawful provisions as a condition of employment.

Conclusion

EMPLOYER has violated the above-referenced California Labor Code provisions, and the applicable Wage Order (including but not limited to Wage Order 7), as well as other laws, and is liable for all applicable premium wages, statutory and civil penalties, interest, attorneys' fees, and costs. The civil penalties COMPLAINANT and other NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES seek to recover include, but are not limited to, the statutory and civil penalties specified above.

Labor Code section 2699.3 requires that a claimant send a certified letter (i.e. this NOTICE) to the employer in question and file an online claim to the LWDA setting forth the claims and the basis for the claims, thereby giving the LWDA an opportunity to investigate the claims and/or take any action it deems appropriate.

The purpose of this NOTICE is to satisfy the requirement created by Labor Code sections 2699, 2699.3(a), 2699.3(c), and 2699.5, prior to seeking penalties and premium wages allowed by law for the aforementioned statutory violations in a civil action. We look forward to determining whether the LWDA intends to take any action in reference to these claims. We kindly ask that you respond to this NOTICE according to the time frame contemplated by the code.

If the LWDA elects not to take any action with respect to any of the foregoing claims, COMPLAINANT will seek these penalties in a civil action, on behalf of COMPLAINANT and all NON-EXEMPT AGGRIEVED EMPLOYEES and EXEMPT AGGRIEVED EMPLOYEES of EMPLOYER within one year of the date of this letter as allowed by law.

Please advise if your office intends to investigate any of the factual and legal allegations and provide notice within sixty-five days of this NOTICE to our office and to that of other charged parties. Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

Zachary Crosner
Crosner Legal, PC
9440 Santa Monica Blvd., Ste. 301
Beverly Hills, CA 90210
Main: 310.496.5818
Fax: 310.510.6429
Email: zach@crosnerlegal.com

Thank you for your attention to this matter.

Best Regards,

A handwritten signature in black ink that reads "Zachary M. Crosner". The signature is written in a cursive, flowing style.

Zachary M. Crosner, Esq.
CROSNER LEGAL, PC

1 PROOF OF SERVICE
2 *EVAN REED V. WILLIAMS-SONOMA STORES, INC., et al.*
3 *San Francisco Superior Court Case No. CGC-22-598118*

4 At the time of service, I was over 18 years of age and not a party to this action. I am
5 employed in the County of Los Angeles, State of California. My business address is 9440 Santa
6 Monica Blvd., Ste. 301, Beverly Hills, CA 90210.

7 On May 16, 2022, I served true copies of the following document(s) described as

8 **FIRST AMENDED CLASS ACTION COMPLAINT**
9 on the interested parties in this action as follows:

10 SEE ATTACHED SERVICE LIST

11 ☐ BY ELECTRONIC TRANSMISSION. I transmitted copies of the above-referenced
12 document(s) on the interested parties in this action by electronic transmission. Said electronic
13 transmission was reported as complete and without error.

14 ☒ BY UNITED STATES POSTAL SERVICE. I enclosed the documents in electronic pdf
15 format and submitted them electronically into the mail provider, Letterstream, Inc.'s, online mail
16 portal (letterstream.com) to be mailed addressed to the entities and/or persons listed in the Service
17 List as set forth herein. I caused an envelope containing the documents to be placed for collection
18 and mailing and to be mailed by First Class Mail, following our law firm and Letterstream, Inc.'s
19 ordinary business practices. I am readily familiar with our business practices and the business
20 practices of Letterstream, Inc. for collecting and processing correspondence for mailing. On the
21 same day, that correspondence is placed for collection and mailing, it is deposited in the ordinary
22 course of business with the United States Postal Service, in a sealed envelope with postage fully
23 prepaid. Pursuant to that practice, the above-referenced document(s) were sealed in an envelope,
24 with postage paid, and deposited with a post office, mailbox, sub-post office, substation, mail chute,
25 or other facility or postal pickup/drop off regularly maintained by the United States Postal Service
26 or an affiliate thereof, at or near Phoenix, Arizona.

27 Executed on May 16, 2022, at Los Angeles, California.

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Maria Monterrey

PROOF OF SERVICE

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SERVICE LIST
EVAN REED V. WILLIAMS-SONOMA STORES, INC., et al.
San Francisco Superior Court Case No. CGC-22-598118

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