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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

AMY MCCORMACK, individually and on
behalf of other aggrieved employees,

Plaintiff,

v.

STERLING JEWELERS INC., a corporation;
SIGNET JEWELERS LTD., a corporation;
and DOES 1 through 50,

Defendants.

Case No. 37-2022-00017578-CU-OE-CTL

Representative Action Complaint

1. Failure to Pay All Minimum Wages
2. Failure to Pay All Overtime Wages
3. Meal Period Premium Violations
4. Rest Period Premium Violations
5. Paid Sick Leave Violations
6. Supplemental Paid Sick Leave Violations
7. Failure to Reimburse Business Expenses
8. Untimely Payment of Wages
9. Wage Statement Violations
10. Failure to Pay All Wages Upon Separation
11. Recordkeeping Violations

1 Plaintiff AMY MCCORMACK (“Plaintiff”), individually as the State of California’s
2 designated proxy under the Private Attorneys General Act (“PAGA”), and on behalf of other
3 current and former aggrieved employees, brings this representative action against Defendants
4 STERLING JEWELERS INC., a corporation registered to do business in California,
5 SIGNET JEWELERS LTD., and DOES 1 through 50 (collectively, “Defendants”), alleging as
6 follows:

7 INTRODUCTION

8 1. This case is filed by Plaintiff, an aggrieved employee, seeking civil penalties
9 against Defendants for violations of the California Labor Code.

10 2. Plaintiff was an employee of Defendants, Sterling Jewelers Inc. and Signet
11 Jewelers Ltd. Plaintiff’s allegations concerning Sterling Jewelers involve the policies and
12 practices at Jared the Galleria of Jewelry store locations. Sterling Jewelers maintained a policy
13 and practice of unpaid, off-the-clock work during uncompensated meal periods. She and other
14 aggrieved employees were required to be available on the salesfloor, to communicate with
15 customers, and complete various tasks, but were required to clock out. As a result, Sterling
16 Jewelers deprived Plaintiff and other aggrieved employees of minimum, regular, and overtime
17 wages for these hours worked, along with meal period premiums.

18 3. Separately, Plaintiff seeks to recover rest period premiums for non-compliant rest
19 periods for aggrieved employees at Sterling Jewelers.

20 4. Additionally, Plaintiff seeks to recover cell phone reimbursements for employees
21 who worked at the Sterling Jewelers Jared locations, because Plaintiff alleges that they were
22 required to use their personal devices to communicate with jewelry-purchasing clients, and post
23 to social media, among other requirements.

24 5. With respect to Signet Jewelers, Signet Jewelers is the parent company of Sterling
25 Jewelers, and also, on information and belief, operates Kay Jewelers, Zales, Jared, Banter by
26 Piercing Pagoda, Diamonds Direct, JamesAllen.com, Rocksbox, Peoples Jewelers, H. Samuel,
27 and Ernest Jones. Plaintiff’s allegations against Signet Jewelers address a Signet-wide policy and
28 practice of payroll administration across these different locations, whereby Signet failed to pay

1 meal and rest period premiums and paid sick leave at the lawful hourly rate of pay and/or
2 compensation, instead electing to pay those earnings at a straight time base hourly rate, contrary
3 to California law.

4 6. In connection with Plaintiff's employment and the employment of others within
5 the State of California, Defendants committed numerous systemic Labor Code violations for
6 which Plaintiff now seeks to receive civil penalties pursuant to Labor Code § 2698 *et seq.*

7 **JURISDICTION & VENUE**

8 7. Jurisdiction of this action is proper in this Court under Article VI, Section 10 of
9 the California Constitution.

10 8. Plaintiff is informed and believes that her *individual* PAGA claims do not arise to
11 the necessary amount in controversy to implicate traditional jurisdiction under 28 U.S.C. section
12 1332(a) or jurisdiction under the Class Action Fairness Act.

13 9. Venue as to each defendant is proper in this judicial district because Defendants
14 employed Plaintiff and aggrieved employees in this county, and committed some of the alleged
15 Labor Code violations in this county.

16 **PARTIES**

17 10. Plaintiff worked for Defendants in San Diego County from August 1, 2020 to
18 July 9, 2021, as an hourly, non-exempt employee, in the positions of Jared Jewelry Specialist and
19 Jared Jewelry Specialist Manager.

20 11. Defendant STERLING JEWELERS, INC. does business and employs aggrieved
21 employees throughout California, including in San Diego County.

22 12. Defendant SIGNET JEWELERS, LTD. does business and employs aggrieved
23 employees throughout California, including in San Diego County.

24 13. The true names and capacities, whether individual, corporate, or otherwise, of the
25 parties sued as DOES 1 through 50, are presently uncertain to Plaintiff, who sues them by such
26 fictitious names under Code of Civil Procedure section 474. Plaintiff is informed, believes, and
27 alleges that each of the fictitiously-named defendants is responsible in some manner for the acts
28 and omissions alleged herein.

14. Plaintiff is informed, believes, and alleges that all defendants in this action are employers and/or joint employers and part of an integrated employer enterprise, as each defendant exercises control over the wages, hours, and working conditions of Plaintiff and the aggrieved employees, suffers and permits them to work, and engages the workforce creating a common law employment relationship. Additionally, all defendants have common ownership, common management, interrelationship of operations, and centralized control over labor relations and are therefore part of an integrated enterprise and thus jointly and severally responsible for the acts and omissions alleged herein.

15. Plaintiff is informed, believes, and alleges that each defendant acted in all respects pertinent to this action as an alter-ego, agent, servant, joint employer, joint venturer, co-conspirator, partner, in an integrated enterprise, or in some other capacity on behalf of all other co-defendants, such that the acts and omissions of each defendant are legally attributable to all others.

16. Plaintiff is informed, believes, and alleges that the above-mentioned defendants violated and/or caused to be violated Labor Code and IWC Wage Order provisions and/or regulating minimum wages and days of work and other provisions of the Labor Code with respect to the aggrieved employees. As a result, they may be held personally liable under Labor Code sections 558, 558.1, and 1197.1. (*See, e.g., Atempa v. Pedrazzani* (2018) 27 Cal. App. 5th 809.)

PAGA ALLEGATIONS

17. Plaintiff seeks to recover civil penalties as an individual aggrieved employee, on behalf of the State of California and the “aggrieved employees,” defined as: all current and former non-exempt hourly employees who worked for Defendants in the State of California at any time from March 1, 2021 through the current date and the date of final judgment in any pending action.

18. The State of California, via the Labor and Workforce Development Agency (“LWDA”), is the real party in interest in this action with respect to the PAGA claims. (*Kim v. Reins Int’l California, Inc.* (2020) 9 Cal. 5th 73, 81 [The “government entity on whose behalf the plaintiff files suit is always the real party in interest.”])

1 19. Plaintiff is an “aggrieved employee” because Plaintiff was employed by
2 Defendants and personally experienced one or more of the alleged violations. Therefore, Plaintiff
3 is properly suited to act on behalf of the State of California and collect civil penalties for violations
4 committed against all other current and former aggrieved employees of Defendants. (See, e.g.,
5 *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal. App. 5th 745, 751 [“PAGA allows
6 an “aggrieved employee”—a person affected by one Labor Code violation committed by an
7 employer—to pursue penalties for all the Labor Code violations committed by that employer.”])

8 20. “Notwithstanding any other provision of law, any provision of this code that
9 provides for a civil penalty to be assessed and collected by the Labor and Workforce Development
10 Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a
11 violation of this code, may, as an alternative, be recovered through a civil action brought by an
12 aggrieved employee on behalf of himself or herself and other current or former employees
13 pursuant to the procedures specified in Section 2699.3.” (Labor Code § 2699(a)).

14 21. On March 1, 2022, Plaintiff gave written notice by online filing with the LWDA
15 and by certified mail to Defendants of the specific provisions of the Labor Code alleged to have
16 been violated, including the facts and theories to support the alleged violations (the “PAGA
17 Notice”). Plaintiff paid the requisite filing fee to the LWDA. A copy of the PAGA Notice is
18 attached hereto as Exhibit 1 and incorporated by reference.

19 22. Within 33 calendar days of the postmark date of the notice sent by Plaintiff,
20 Defendants did not give written notice by certified mail to Plaintiff providing a description of any
21 actions taken to cure the alleged violations.

22 23. Now that at least 65 days have passed from Plaintiff notifying Defendants of these
23 violations, without any notice of cure from Defendants or notice from the LWDA of its intent to
24 investigate the alleged allegations and issue the appropriate citations to Defendant, Plaintiff
25 exhausted all prerequisites and commences this civil action under Labor Code § 2699.

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24. Any allegations regarding violations of the IWC Wage Orders are enforceable as violations of Labor Code section 1198, which states: “[t]he employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

GENERAL ALLEGATIONS

25. Sterling Jewelers undercompensated employees because it forced employees to work through their off-the-clock meal periods. Sterling Jewelers required employees to clock out for meal periods, but employees would not be compensated for that time. This resulted in unpaid regular and overtime wages to Plaintiff and the aggrieved employees.

26. Though employees did sometimes receive their meal periods, Sterling Jewelers had a pattern and practice of failing to consistently provide all timely, off-duty 30-minute meal periods to employees within the first five hours of work, and timely second off-duty 30-minute meal periods to the extent they worked shifts of 10 hours or more, in violation of Labor Code sections 226.7, 512 and section 11 of the applicable IWC Wage Orders. (*Donohue v. AMN Services, LLC* (2021) 11 Cal. 5th 58, 61 [“[T]ime records showing noncompliant meal periods raise a rebuttable presumption of meal period violations, including at the summary judgment stage”].) Plaintiff’s time records establish meal period violations without a corresponding meal period premium payment (although Sterling Jewelers did pay some meal period premiums). Plaintiff’s time records reveal instances of Sterling Jewelers’ agents editing her time records to make it appear as though her meal periods were compliant (i.e., not short or late). Plaintiff is informed and believes this practice applies to certain aggrieved employees.

27. During some of the times when employees of Sterling Jewelers were clocked out for a meal period, they were still forced to work during the meal periods. Sterling Jewelers required employees to complete various non-sales tasks, including cold calling 10 customers each day, writing thank you notes, training videos and quizzes, communicating with existing customers, and posting to their personal social media accounts, among other activities. The tasks required of certain aggrieved employees made it incredibly difficult to consistently take duty-free meal and rest periods. Additionally, employees were forced to clock out for meal periods and

1 continue making themselves available to customers or else they would be penalized by being
2 taken out of the sales “rotation” and would lose out on sales (*i.e.*, commissions). Sterling Jewelers
3 operated under a system whereby salespeople were assigned to customers to fairly spread out the
4 ability to earn commissions. However, whenever an employee took a meal period or a rest period,
5 they would be taken out of the sales “rotation” and would essentially be placed at the back of the
6 line rather than simply returning to their place in line once the break was over. As a result, certain
7 aggrieved often clocked out for lunch and would remain on the sales floor so they would not lose
8 their place in the rotation.

9 28. When Defendant Sterling Jewelers did not provide fully compliant meal periods,
10 it failed to pay Plaintiff and certain aggrieved employees a meal period premium at the regular
11 rate of compensation, in violation of Labor Code section 226.7. (*See e.g., Ferra v. Loews*
12 *Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858, 863 [“We hold that the terms are synonymous:
13 “regular rate of compensation” under section 226.7(c), like “regular rate of pay” under section
14 510(a), encompasses all nondiscretionary payments, not just hourly wages.”]). Furthermore,
15 during the times when Defendants Sterling Jewelers and Signet Jewelers paid meal period
16 premiums to Plaintiff and the aggrieved employees, they paid such premiums at employees’
17 straight time hourly rate and failed to factor in the additional remuneration earned by Plaintiff and
18 aggrieved employees, such as bonuses, commissions, and incentives. Defendants’ failure to pay
19 meal period premiums at the correct rate is a widespread payroll issue. Plaintiff alleges that both
20 Sterling Jewelers Inc. and Signet Jewelers Ltd. failed to pay meal period premiums at the regular
21 rate of compensation.

22 29. Moreover, though employees were able to take some rest periods, Sterling
23 Jewelers had a pattern and practice of failing to authorize or permit ten-minute rest periods for
24 every four hours of work or major fraction thereof as required by Labor Code section 226.7 and
25 516 and section 12 of the applicable IWC Wage Order. Plaintiff and certain aggrieved employees
26 were unable to take all the rest periods to which they were entitled due to the same limitations
27 employees faced with respect to meal periods (*i.e.*, inability to take rest periods due to numerous
28 required tasks). In the same manner as described above, Plaintiff and certain aggrieved employees

1 would be taken out of the “rotation” each time they took a rest period, thereby discouraging
2 employees from taking rest periods at all. Further, Sterling Jewelers had a policy and practice of
3 not paying rest period premiums to employees who were unable to take rest periods.

4 30. To the extent either of the Defendants did pay rest period premiums, Plaintiff
5 alleges the premiums were underpaid because they were paid at the straight time rate and not the
6 regular rate of compensation, which would have factored in employees’ commissions, bonuses,
7 incentives, and other compensation. (*Loews Hollywood Hotel*, 11 Cal. 5th at 863.) Plaintiff
8 alleges that both Sterling Jewelers Inc. and Signet Jewelers Ltd. failed to pay rest period premiums
9 at the regular rate of compensation.

10 31. In pay periods where Defendants provided Plaintiff and aggrieved employees with
11 remuneration in addition to their respective base hourly rate for hours worked (*e.g.*, bonuses,
12 commissions, etc.), Defendants failed to properly calculate and pay paid sick leave at the
13 appropriate rate of pay, in violation of Labor Code § 246. One example of this violation occurs
14 on Plaintiff’s wage statement dated July 2, 2021. During that pay period, Plaintiff was paid
15 commissions and incentives and used 8 hours of sick leave. She was paid sick leave at her straight
16 time hourly rate of \$19.75 rather than one of the methods required by statute (*i.e.*, failed to factor
17 in commissions/incentives). Plaintiff alleges that both Sterling Jewelers Inc. and Signet Jewelers
18 Ltd. failed to pay sick leave at a rate under one of the methods authorized by statute.

19 32. Defendants also failed to pay Covid-19 Supplemental Sick Leave at a rate
20 authorized by statute because when paying such leave because Defendants failed to factor in
21 employees’ commissions, bonuses, incentives, and other compensation. On information and
22 belief, Defendants instead paid Supplemental Sick Leave at employees’ straight time hourly rate
23 rather than by one of the methods authorized by Labor Code sections 248.2 and 248.6. Plaintiff
24 alleges that both Sterling Jewelers Inc. and Signet Jewelers Ltd. failed to pay Covid-19
25 supplemental sick leave under one of the methods authorized by statute.

26 33. Defendant Sterling Jewelers did not maintain a lawful reimbursement policy, in
27 violation of Labor Code section 2802. Sterling Jewelers required Plaintiff and the aggrieved
28 employees to incur costs for work-related purposes, including expenses associated with their cell

1 phones, data, and/or cell phone apps. For example, employees were required employees to make
2 social media posts during their shift to their personal social media accounts and employees used
3 their own cell phones to access their social media accounts, to take photos, and to access Jared
4 photos from an app. Plaintiff and the aggrieved employees were also required to use their cell
5 phones to text guests about their orders, to answer questions, etc. Plaintiff also incurred expenses
6 associated with using apps to text customers and to post on social media. As such and in direct
7 consequence of their job duties, Plaintiff and the aggrieved employees necessarily incurred losses,
8 expenditures, costs and expenses that were unreimbursed in violation of Labor Code sections
9 2800 and 2802.

10 34. With respect to the unpaid wages and premiums owed to Plaintiff and the
11 aggrieved employees, both Defendants failed to pay those wages on time each pay period or upon
12 separation of employment. Because Defendants did not pay Plaintiff and the aggrieved
13 employees for all wages/premiums owed each pay period their employment (*i.e.*, overtime, sick
14 leave pay, supplemental sick leave pay, meal and rest period premiums), Defendants failed to
15 timely pay all wages owed on time each pay day or upon separation of employment (or within
16 72 hours thereof, as applicable), in violation of Labor Code sections 201 through 203 (waiting
17 time) and 204 and 204b (paydays).

18 35. Defendants equally failed in their affirmative obligation to provide accurate
19 itemized wage statements each pay period to Plaintiff and the aggrieved employees. Defendants
20 issued wage statements to Plaintiff and, on information and belief, other employees, which
21 contain at least several types of violations. First, on each wage statement furnished, Defendants
22 failed to accurately state the “gross wages earned” and “net wages earned” in violation of Labor
23 Code § 226(a)(1) and (5), as Plaintiff and certain employees earned regular and overtime wages,
24 but were underpaid due to the off-the-clock hours worked during meal periods and were not paid
25 for sick leave and meal and rest period premiums payments at the lawful rate, resulting in an
26 inaccurate itemization of gross and net wages earned on those wage statements. Second, on each
27 wage statement furnished to Plaintiff and, on information and belief, other employees, Defendants
28 failed to accurately state “all applicable hourly rates in effect during the pay period and the

1 corresponding number of hours worked at each hourly rate by the employee” in violation of Labor
2 Code § 226(a)(9), as the wage statements issued to Plaintiff and the aggrieved employees do not
3 accurately list the actual hours worked by employees (due to off the clock work), but instead list
4 deflated hours and wages, and list the incorrect hourly rates for paid sick leave, overtime, meal
5 and rest period premiums, as such amounts were not paid at the lawful regular rate of pay. Third,
6 Defendants inaccurately listed total hours worked during the pay period in violation of Labor
7 Code § 226(a)(2), as Plaintiff and the aggrieved employees worked off-the-clock during
8 uncompensated meal periods.

9 36. Defendants’ wage statement issues described above rendered the wage statements
10 inaccurate and confusing to Plaintiff and the aggrieved employees, concealing the underpayments
11 and presenting a false portrayal of accuracy on the wage statements relied upon by Plaintiff and
12 the aggrieved employees as the sole documentary evidence of their respective earnings. Plaintiff
13 and, on information and belief, other employees were misinformed and misled by the wage
14 statements wages, hours, rates, and earnings. Defendants’ wage statement violations were
15 knowing and intentional as a matter of law with respect to Plaintiff and the aggrieved employees
16 given that the legal obligation was not disputed, the wage statement and wage laws are clear and
17 unambiguous as written, and because Defendants nevertheless failed to comply despite the means
18 and ability to do so.

19 37. Because of the violations set forth in this Complaint, including Defendants’ failure
20 to accurately maintain records of pay for all hours worked at the appropriate lawful rates of pay
21 (*i.e.*, unrecorded off-the-clock hours), Defendants violated Labor Code section 1174 and the IWC
22 Wage Orders by failing to maintain records showing accurate daily hours worked at the
23 corresponding wage rate, and the wages paid to each employee.

24 38. As a further result of the foregoing regular rate violations, Defendants failed to
25 pay all overtime wages, paid sick leave wages, and Labor Code § 226.7 premiums due to Plaintiff
26 and the aggrieved employees upon separation of employment, or within 72 hours thereof.
27 Defendants have thus violated Labor Code § 201, which requires that if an employer fires an
28 employee all wages must be paid immediately; and, Labor Code § 202, which requires that if an

1 employee quits without providing at least 72 hours' notice, his or her final wages must be paid no
2 later than 72 hours thereafter; or, if at least 72 hours' notice is provided, then the employer must
3 pay the wages immediately upon the employee's final day of employment. Defendants have thus
4 violated Labor Code §§ 201 and 202 because they failed to pay all paid sick leave wages and
5 premium pay during the PAGA Period at the "regular rate" resulting in underpayments. As a
6 result, Defendants are also liable for civil penalties associated with Labor Code §§ 201
7 through 203.

8 **FIRST CAUSE OF ACTION**
9 **CIVIL PENALTIES FOR FAILURE TO PAY ALL REGULAR AND**
10 **MINIMUM WAGES (PAGA)**

11 **Labor Code §§ 2698, *et seq.***

12 39. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

13 40. Plaintiff brings this claim for civil penalties against Defendant Sterling
14 Jewelers Inc.

15 41. Labor Code section 2699(a) provides: "Notwithstanding any other provision of
16 law, any provision of this code that provides for a civil penalty to be assessed and collected by
17 the Labor and Workforce Development Agency or any of its departments, divisions,
18 commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative,
19 be recovered through a civil action brought by an aggrieved employee on behalf of himself or
20 herself and other current or former employees pursuant to the procedures specified in Section
21 2699.3."

22 42. Labor Code section 2699(f) provides: "For all provisions of this code except those
23 for which a civil penalty is specifically provided, there is established a civil penalty for a violation
24 of these provisions, as follows: ... (2) If, at the time of the alleged violation, the person employs
25 one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved
26 employee per pay period for the initial violation and two hundred dollars (\$200) for each
27 aggrieved employee per pay period for each subsequent violation."
28

1 43. Labor Code § 204(a) states that all wages earned are due and payable twice during
2 each calendar month on days designated in advance by the employer as regular pay days.
3 Overtime wages are to be paid no later than the payday for the next regular payroll period. (Labor
4 Code § 204(b)(1).) Labor Code § 210 states that, “every person who fails to pay the wages of an
5 employee as provided in Section...204...shall be subject to a civil penalty” of \$100 for an initial
6 violation and \$200 plus 25% of the amount unlawfully withheld for a subsequent violation.

7 44. Labor Code section 558(a) provides: “Any employer or other person acting on
8 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
9 provision regulating hours and days of work in any order of the Industrial Welfare Commission
10 shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for
11 each underpaid employee for each pay period for which the employee was underpaid in addition
12 to an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one
13 hundred dollars (\$100) for each underpaid employee for each pay period for which the employee
14 was underpaid in addition to an amount sufficient to recover underpaid wages.”

15 45. Labor Code section 1197 states, “[t]he minimum wage for employees fixed by the
16 commission is the minimum wage to be paid to employees, and the payment of a lower wage than
17 the minimum so fixed is unlawful.” The “Minimum Wages” section of the applicable IWC Wage
18 Order further provides that “[e]very employer shall pay to each employee, on the established
19 payday for the period involved, not less than the applicable minimum wage for all hours worked
20 in the payroll period, whether the remuneration is measured by time, piece, commission, or
21 otherwise.”

22 46. Labor Code section 1197.1(a) provides: “Any employer or other person acting
23 either individually or as an officer, agent, or employee of another person, who pays or causes to
24 be paid to any employee a wage less than the minimum fixed by an applicable state or local law,
25 or by an order of the commission, shall be subject to a civil penalty ... and any applicable penalties
26 imposed pursuant to Section 203 as follows: (1) For any initial violation that is intentionally
27 committed, one hundred dollars (\$100) for each underpaid employee for each pay period for
28 which the employee is underpaid ... and any applicable penalties imposed pursuant to Section

203. (2) For each subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed.”

47. Defendant willfully failed in its affirmative obligation to pay Plaintiff and aggrieved employees at least the lawful minimum wage for all hours worked in violation of Labor Code sections 1182.12, 1197 and 1198 and the IWC Wage Orders (the “Hours and Days of Work” and “Minimum Wages” sections of the applicable orders).

48. As a result, Defendant violated the Labor Code and IWC Wage Orders and is liable to Plaintiff, the aggrieved employees and the State of California for civil penalties as required by Labor Code sections 558, 1197.1, and 2699(a) and (f)(2), in addition to interest, attorneys’ fees, and costs to the extent permitted by law, including under Labor Code section 2699(g).

SECOND CAUSE OF ACTION

CIVIL PENALTIES FOR FAILURE TO PAY ALL OVERTIME (PAGA)

Labor Code §§ 2698, *et seq.*

49. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

50. Plaintiff brings this claim for civil penalties against Defendant Sterling Jewelers Inc.

51. Defendant failed in its affirmative obligation to pay Plaintiff and aggrieved employees no less than one and one-half times their respective “regular rate of pay” for all hours worked in excess of eight hours in one day, 40 hours in one week, or the first eight hours worked on the seventh day of work in any one workweek, and no less than twice their respective “regular rate of pay” for all hours over 12 hours in one day and any work in excess of eight hours on any seventh day of a workweek in violation of Labor Code sections 510 and 1198 and the IWC Wage Orders and the IWC Wage Orders (the “Hours and Days of Work” sections of the applicable orders).

52. As a result, Defendant violated the Labor Code and IWC Wage Orders and is liable to Plaintiff, the aggrieved employees and the State of California for civil penalties as required by

1 Labor Code sections 558 and 2699(a) and (f)(2), in addition to interest, attorneys' fees, and costs
2 to the extent permitted by law, including under Labor Code section 2699(g).

3 **THIRD CAUSE OF ACTION**

4 **CIVIL PENALTIES FOR MEAL PERIOD VIOLATIONS (PAGA)**

5 **Labor Code § 226.7**

6 53. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

7 54. Plaintiff brings this claim for civil penalties against Defendants Sterling
8 Jewelers Inc. and Signet Jewelers Ltd.

9 55. Defendants willfully failed in their affirmative obligation to consistently provide
10 Plaintiff and aggrieved employees compliant, duty-free meal periods of not less than 30 minutes
11 beginning before the fifth hour of hour for each work period of more than five hours per day and
12 a second duty-free meal period of not less than 30 minutes beginning before the tenth hour of
13 hour of work in violation of Labor Code sections 226.7, 512, 1198 and the IWC Wage Orders
14 (the "Meal Periods" sections of the applicable orders).

15 56. Further, Defendants willfully failed in their affirmative obligation to consistently
16 pay Plaintiff and aggrieved employees one additional hour of pay at the respective regular rate
17 of compensation for each workday that a fully compliant meal period was not provided, in
18 violation of Labor Code sections 226.7 and the IWC Wage Orders.

19 57. As a result, Defendants violated the Labor Code and IWC Wage Orders and are
20 liable to Plaintiff, the aggrieved employees and the State of California for civil penalties as
21 required by Labor Code sections 558 and 2699(a) and (f)(2), in addition to interest, attorneys'
22 fees, and costs to the extent permitted by law, including under Labor Code section 2699(g).

23 **FOURTH CAUSE OF ACTION**

24 **CIVIL PENALTIES FOR REST PERIOD VIOLATIONS (PAGA)**

25 **Labor Code § 226.7**

26 58. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

27 59. Plaintiff brings this claim for civil penalties against Defendants Sterling
28 Jewelers Inc. and Signet Jewelers Ltd.

60. Defendants willfully failed in their affirmative obligation to consistently authorize and permit Plaintiff and aggrieved employees to receive compliant, duty-free rest periods of not less than ten (10) minutes for every four hours worked (or major fraction thereof) in violation of Labor Code sections 226.7, 516, 1198 and the IWC Wage Orders (the “Rest Periods” sections of the applicable orders).

61. Further, Defendants willfully failed in their affirmative obligation to consistently pay Plaintiff and aggrieved employees one additional hour of pay at the respective regular rate of compensation for each workday that a fully compliant rest period was not provided, in violation of Labor Code sections 226.7 and the IWC Wage Orders.

62. As a result, Defendants violated the Labor Code and IWC Wage Orders and are liable to Plaintiff, the aggrieved employees and the State of California for civil penalties as required by Labor Code sections 558 and 2699(a) and (f)(2), in addition to interest, attorneys' fees, and costs to the extent permitted by law, including under Labor Code section 2699(g).

FIFTH CAUSE OF ACTION
CIVIL PENALTIES FOR
PAID SICK LEAVE VIOLATIONS (PAGA)
Labor Code § 246, *et seq.*

63. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

64. Plaintiff brings this claim for civil penalties against Defendants Sterling Jewelers Inc. and Signet Jewelers Ltd.

65. Defendants knowingly and intentionally failed in their affirmative obligation to pay paid sick leave to Plaintiff and the aggrieved employees in violation of Labor Code sections 246 through 248.5.

66. Labor Code section 246(b)(1) requires that employees accrue sick leave at the commencement of employment at a rate of 1 hour for every thirty hours worked. Section 246(c) entitles employees to use any accrued sick leave beginning on their 90th day of employment.

67. Labor Code section 246(l) governs how Defendants were required to calculate paid sick leave:

1 [A]n employer shall calculate paid sick leave using any of the following
2 calculations:

3 (1) Paid sick time for nonexempt employees shall be calculated in
4 the same manner as the regular rate of pay for the workweek in
5 which the employee uses paid sick time, whether or not the
6 employee actually works overtime in that workweek.

7 (2) Paid sick time for nonexempt employees shall be calculated by
8 dividing the employee's total wages, not including overtime
9 premium pay, by the employee's total hours worked in the full pay
10 periods of the prior 90 days of employment.

11 (3) Paid sick time for exempt employees shall be calculated in the
12 same manner as the employer calculates wages for other forms of
13 paid leave time.

14 68. Labor Code section 246(i) requires employers to provide employees with written
15 notice every pay period "that sets forth the amount of paid sick leave available, or paid time off
16 in lieu of sick leave." The notice can either be on the employees' wage statements or a separate
17 written notice.

18 69. Defendants failed to pay sick leave to Plaintiff and the aggrieved employees at the
19 correct rate, which should have factored in employees' commissions, bonuses, and other forms
20 of remuneration. Defendants instead paid sick leave at the straight time hourly rate.

21 70. As a result, Defendants violated the Labor Code and are liable to Plaintiff, the
22 aggrieved employees and the State of California for civil penalties as required by Labor Code
23 section 2699(a) and (f)(2), in addition to interest, attorneys' fees, and costs to the extent permitted
24 by law, including under Labor Code section 2699(g). Plaintiff is also entitled to penalties under
25 Labor Code section 248.5. Plaintiff and the aggrieved employees are entitled to recover to these
26 amounts in addition to interest, attorneys' fees, and costs to the extent permitted by law.
27
28

SIXTH CAUSE OF ACTION

**CIVIL PENALTIES FOR SUPPLEMENTAL PAID SICK LEAVE
VIOLATIONS (PAGA)**

Labor Code § 246 *et seq.*

CIVIL PENALTIES FOR SUPPLEMENTAL PAID SICK LEAVE VIOLATIONS (PAGA)

Labor Code § 246 *et seq.*

71. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

72. Plaintiff brings this claim for civil penalties against Defendants Sterling Jewelers Inc. and Signet Jewelers Ltd.

73. Defendants knowingly and intentionally failed in their affirmative obligation to provide notice of and provide and pay Covid-19 Supplemental Sick Leave to Plaintiff and the aggrieved employees in violation of Labor Code sections 246, 247, 247.5, 248.2, and 248.6.

74. Pursuant to Labor Code section 248.2, Defendants were required to provide up to 80 hours of Covid-19 Supplemental Paid Sick Leave for the period of January 1, 2021 through at least September 30, 2021. Labor Code section 248.6 extended Covid sick leave protections and requires employers to provide up to 80 hours of Covid-19 Supplemental Paid Sick Leave for the period of January 1, 2022 to September 30, 2022, and may be extended thereafter.

75. Under Labor Code section 248.2, non-exempt employees must be paid Covid-19 supplemental paid sick leave according to the highest of the following four methods: (1) the regular rate of pay for the workweek in which the employee uses COVID-19 supplemental paid sick leave, (2) the employee's total wages in a 90-day period divided by total hours worked, (3) the state minimum wage, or (4) the local minimum wage.

76. Labor Code section 248.6 requires employers to pay Covid-19 supplemental sick leave under either one of the following methods (1) regular rate of pay or (2) the employee's total wages in a 90-day period divided by total hours worked.

77. As with paid sick leave, Defendants failed to pay Covid-19 Supplemental Sick Leave at the correct rate because Defendants failed to factor in employees' commissions, bonuses, and other forms of remuneration. Defendants instead paid such sick leave at the straight time hourly rate rather than one of the methods authorized by statute.

1 78. As a result, Defendants violated the Labor Code and are liable to Plaintiff, the
2 aggrieved employees and the State of California for civil penalties as required by Labor Code
3 section 2699(a) and (f)(2), in addition to interest, attorneys' fees, and costs to the extent permitted
4 by law, including under Labor Code section 2699(g). Plaintiff is also entitled to penalties under
5 Labor Code section 248.5. Plaintiff and the aggrieved employees are entitled to recover to these
6 amounts in addition to interest, attorney's fees and costs to the extent permitted by law.

7 **SEVENTH CAUSE OF ACTION**

8 **CIVIL PENALTIES FOR FAILURE TO REIMBURSE**
9 **BUSINESS EXPENSES (PAGA)**

10 **Labor Code § 2802**

11 79. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

12 80. Plaintiff brings this claim for civil penalties against Sterling Jewelers Inc.

13 81. Defendant willfully failed in its affirmative obligation to reimburse Plaintiff and
14 aggrieved employees for all necessary expenditures, losses, expenses and costs incurred by them
15 in direct discharge of the duties of their employment, in violation of Labor Code section 2802.

16 82. As a result, Defendant violated the Labor Code and is liable to Plaintiff, the
17 aggrieved employees and the State of California for civil penalties as required by Labor Code
18 section 2699(a) and (f)(2), in addition to interest, attorneys' fees, and costs to the extent permitted
19 by law, including under Labor Code section 2699(g).

20 **EIGHTH CAUSE OF ACTION**

21 **CIVIL PENALTIES FOR**
22 **UNTIMELY PAYMENT OF WAGES (PAGA)**

23 **Labor Code § 204, *et seq.***

24 83. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

25 84. Plaintiff brings this claim for civil penalties against Defendants Sterling
26 Jewelers Inc. and Signet Jewelers Ltd.

27 85. Defendants willfully failed in their affirmative obligation to timely pay all wages
28 and premiums earned by Plaintiff and aggrieved employees twice during each calendar month on

1 days designated in advance by the employer as regular paydays (for employees paid on a non-
2 weekly basis) and on the regularly-scheduled weekly payday for any weekly employees, as
3 applicable, in violation of Labor Code sections 204 and 204b and the IWC Wage Orders (the
4 “Minimum Wages” sections of the applicable orders).

5 86. As a result, Defendant violated the Labor Code and IWC Wage Orders and are
6 liable to Plaintiff, the aggrieved employees and the State of California for civil penalties as
7 required by Labor Code sections 558 and 2699(a) and (f)(2), in addition to interest, attorneys’
8 fees, and costs to the extent permitted by law, including under Labor Code section 2699(g).

9 **NINTH CAUSE OF ACTION**
10 **CIVIL PENALTIES FOR**
11 **WAGE STATEMENT VIOLATIONS (PAGA)**
12 **Labor Code § 226**

13 87. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

14 88. Plaintiff brings this claim for civil penalties against Defendants Sterling
15 Jewelers Inc. and Signet Jewelers Ltd.

16 89. Labor Code section 226.3 provides: “Any employer who violates subdivision (a)
17 of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250)
18 per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee
19 for each violation in a subsequent citation, for which the employer fails to provide the employee
20 a wage deduction statement or fails to keep the records required in subdivision (a) of Section 226.
21 The civil penalties provided for in this section are in addition to any other penalty provided by
22 law.”

23 90. Defendants knowingly and intentionally failed in their affirmative obligation
24 provide accurate itemized wage statements to Plaintiff and aggrieved employees, resulting in to
25 Plaintiff and the aggrieved employees. Specifically, the wage statements issued to Plaintiff and
26 the aggrieved employees did not accurately state each pay period all of the information required
27 by Labor Code section 226(a)(1)-(9).
28

91. Defendants' unlawful acts and omissions deprived Plaintiff and aggrieved employees of accurate itemized wage statements, causing confusion and concealing wage and premium underpayments.

92. As a result, Defendants violated the Labor Code and IWC Wage Orders and are liable to Plaintiff, the aggrieved employees and the State of California for civil penalties as required by Labor Code sections 226.3 and 2699(a) and (f)(2), in addition to interest, attorneys' fees, and costs to the extent permitted by law, including under Labor Code section 2699(g).

TENTH CAUSE OF ACTION

FAILURE TO TIMELY PAY ALL WAGES UPON SEPARATION OF EMPLOYMENT (PAGA)

Labor Code §§ 201 through 203

93. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

94. Plaintiff brings this claim for civil penalties against Defendants Sterling Jewelers Inc. and Signet Jewelers Ltd.

95. Defendants willfully failed in their affirmative obligation to pay all wages earned and unpaid to Plaintiff and aggrieved employees immediately upon termination of employment or within 72 hours thereafter for employees who did not provide at least 72 hours prior notice of his or her intention to quit, and further failed to pay those sums for 30 days thereafter in violation of Labor Code sections 201 through 203 and the IWC Wage Orders. The wages remaining unpaid are those due to Defendants' failure to pay employees for all hours worked, for sick leave at the correct rate, and for meal and rest period premiums.

96. As a result, Defendants violated the Labor Code and IWC Wage Orders and are liable to Plaintiff, the aggrieved employees and the State of California for civil penalties as required by Labor Code sections 558 and 2699(a) and (f)(2), in addition to interest, attorneys' fees, and costs to the extent permitted by law, including under Labor Code section 2699(g).

///

ELEVENTH CAUSE OF ACTION
RECORDKEEPING VIOLATIONS (PAGA)

Labor Code § 1174

97. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

98. Plaintiff brings this claim for civil penalties against Sterling Jewelers Inc.

99. Labor Code section 1174 provides: “Every person employing labor in this state shall: ...(d) Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than three years.”

100. Labor Code section 1174.5 provides: “Any person employing labor who willfully fails to maintain the records required by subdivision (c) of Section 1174 or accurate and complete records required by subdivision (d) of Section 1174 ..., shall be subject to a civil penalty of five hundred dollars (\$500).”

101. Defendant willfully failed in its affirmative obligation to maintain accurate records showing the hours worked daily and wages paid to the aggrieved employees, in violation of Labor Code sections 1174, 1198 and the IWC Wage Orders (the “Records” sections of the applicable orders).

102. As a result, Defendant violated the Labor Code and is liable to Plaintiff, the aggrieved employees, and the State of California for civil penalties as required by Labor Code section 1174.5, in addition to attorneys’ fees, costs, and interest to the extent permitted by law, including under Labor Code section 2699(g).

PRAYER FOR RELIEF

Plaintiff prays for judgment as follows:

a. For an award of all civil penalties under the Labor Code section 2698 *et seq.*;

Exhibit 1

FERRARO VEGA

SAN DIEGO EMPLOYMENT LAWYERS

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March 1, 2022

NOTICE OF LABOR CODE VIOLATIONS
CALIFORNIA LABOR CODE SECTIONS 2698 *et seq.*

VIA EMAIL & CERTIFIED U.S. MAIL

- Electronic Return Receipt -

Sterling Jewelers Inc.
Jared the Galleria of Jewelry
375 Ghent Road
Akron, OH 44333

Signet Jewelers Ltd.
375 Ghent Road
Akron, OH 44333

- PAGA Notice & Filing Fee -
Submitted electronically to the California
Labor and Workforce Development
Agency on **03/1/2022**

Dear Labor Enforcement Officer and Company Representatives:

This letter serves as written notice on behalf of AMY MCCORMACK (“Claimant”), and all other “aggrieved employees” under California Labor Code section 2699.3 against STERLING JEWELERS INC. and SIGNET JEWELERS LTD. along with any other related employer entities, including those who may be later added upon further investigation (collectively, “Defendants”).

If the California Labor and Workforce Development Agency (“LWDA”) does not investigate the facts, allegations, and violations set forth in this notice within the statutorily prescribed period under Labor Code section 2699.3, Claimant shall seek and recover civil penalties as a proxy and agent of the State of California on behalf of other aggrieved employees under the California Private Attorneys General Act (“PAGA”).

“PAGA allows an ‘aggrieved employee’—a person affected by at least one Labor Code violation committed by an employer—to pursue penalties for all the Labor Code violations committed by that employer.” *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal. App. 5th 745, 751; *see also Kim v. Reins International California, Inc.* (2020) 9 Cal. 73, 79.

FACTUAL STATEMENT

Defendant Sterling Jewelers Inc. is an American specialty jewelry company headquartered in Akron, Ohio and employing aggrieved employees like Claimant in the State of California (including San Diego County) in hourly, non-exempt positions where employees are entitled to wage and hour protections under the California Labor Code and IWC Wage Orders. Sterling Jewelers Inc. does business as Jared the Galleria of Jewelry. Signet Jewelers Ltd. is the world's largest retailer of diamonds and is headquartered in Akron, Ohio. Sterling Jewelers is a subsidiary of Signet Jewelers.

Defendants engaged, suffered and permitted Claimant and the other "aggrieved employees," as defined below, to work, exercised control over their respective wages, hours, and working conditions, and at all times were an agent and/or ostensible agent of any other employers, and the joint employer of Claimant and the aggrieved employees. Defendants legally employed Claimant and the other aggrieved employees under California law.

Additionally, Defendants and their agents remain liable under Labor Code sections 558, 558.1, 1197.1 and 2699 *et seq.* based on the acts and omissions set forth herein.

Claimant worked for Defendants from August 1, 2020 to July 9, 2021 as a Jared Jewelry Specialist and Jared Jewelry Specialist Manager. Throughout her employment, Claimant worked as an hourly, non-exempt employee. In addition to her hourly pay, Claimant earned commissions based on her sale of Defendants' goods as well as the sale of Extended Service Plans and Jewelry Replacement Plans. Claimant also earned bonuses and incentives for assisting with the packing of orders that customers placed online and picked up in the store.

Through this notice, Claimant informs the LWDA of the Labor Code violations set forth herein. The aggrieved employees who Claimant seeks to represent include the following individuals:

All current and former non-exempt hourly employees who worked for Defendants in the State of California during one-year period preceding the date of this notice through the current date and the date of final judgment in any pending action (the "aggrieved employees" and the "PAGA Period").

Claimant seeks all recoverable civil penalties for Defendants' violations and reserves the right to supplement this notice as further investigation is completed and further facts, witnesses, and violations are uncovered. Claimant reserves the right to expand or narrow the definition of the "aggrieved employees" in the forthcoming civil action.

Overtime and Minimum Wage Violations
Violation of Labor Code §§ 200, 201-204, 210, 510, 558, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1199; IWC Wage Orders

Defendants failed to pay for all hours worked and failed to pay overtime based on the lawful regular rate of pay, in violation of Labor Code sections 201-204, 210, 510, 558, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1199, applicable local minimum wage ordinances, and the related sections of the applicable IWC Wage Orders, including sections 3 and 4 and the standing Minimum Wage Order. Claimant and the aggrieved employees were not paid at their lawful overtime rate (*i.e.*, time and a half or double time based on their regular rate of pay) for all overtime hours worked in excess of 8 hours in a workday, 40 hours in a workweek, or for any hours on any seventh consecutive day of work, to the extent Claimant or other aggrieved worked on a seventh consecutive workday or other such hours as further investigation may reveal.

Labor Code section 204(a) states that all wages earned are due and payable twice during each calendar month on days designated in advance by the employer as regular pay days. Overtime wages are to be paid no later than the payday for the next regular payroll period. (Labor Code § 204(b)(1).) Labor Code § 210 states that, “every person who fails to pay the wages of an employee as provided in Section...204...shall be subject to a civil penalty” of \$100 for an initial violation and \$200 plus 25% of the amount unlawfully withheld for a subsequent violation.

Labor Code section 1197 states, “[t]he minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful.” The “Minimum Wages” section of the applicable IWC Wage Order further provides that “[e]very employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission, or otherwise.”

Labor Code section 510 requires “[a]ny work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee;” and “any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee;” and “any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.”

Labor Code sections 558 and 1197.1 contain civil penalties for violating this provision of those provisions of the IWC Wage Orders, including sections 3 and 4 and the standing Minimum Wage Order. Labor Code section prohibits payment of a wage less than the legal overtime compensation applicable to the employee. Labor Code section 1198 renders “employment of

any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]” unlawful and Labor Code section 1199 renders payment of wages contrary to the forging Labor Code and Wage Order provisions unlawful.

Defendants undercompensated the aggrieved employees because employees were forced to work through their meal periods for a variety of reasons (discussed in meal period section below). Defendants required employees to clock out for meal periods, but employees would be required to perform various work-related tasks although they were clocked out and were not compensated for that time. This resulted in unpaid regular and overtime wages to Claimant and the aggrieved employees.

As a result, Claimant and aggrieved employees may recover civil penalties on behalf of herself, the State of California and the aggrieved employees as provided under Labor Code §§ 225.5 (\$100/\$200), 558 (\$50/\$100), 1197.1 (\$100/\$250) and 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Underpaid Meal Period Premiums **Violation of Labor Code §§ 226.7, 512, 1198; IWC Wage Orders**

Defendants failed to pay meal period premiums at the lawful regular rate of compensation to Claimant and other aggrieved employees in violation of Labor Code sections 226.7, 512 and 1198, and the related sections of the IWC Wage Orders, including section 11.

Labor Code section 512 requires that employers provide a 30-minute, uninterrupted meal period after no more than five hours of work and a second meal period after no more than 10 hours of work. *See Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, 1049. Labor Code section 226.7 requires that if a meal period is late, missed, short, or interrupted, the employer must pay for an hour of pay at the employee’s “regular rate” of compensation. *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858, 862 (“We hold that the terms are synonymous: “regular rate of compensation” under section 226.7(c), like “regular rate of pay” under section 510(a), encompasses all nondiscretionary payments, not just hourly wages”). “[T]ime records showing noncompliant meal periods raise a rebuttable presumption of meal period violations, including at the summary judgment stage.” *Donohue v. AMN Services, LLC* (2021) 11 Cal. 5th 58, 61. Labor Code section 1198 renders “employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]” unlawful.

Defendants failed to provide Claimant and other aggrieved employees compliant meal periods throughout the PAGA Period. As an initial matter, Claimant’s time records establish meal period violations without a corresponding meal period premium payment (although Defendants did pay some meal period premiums). Claimant’s time records reveal instances of Defendants’ agents editing her time records to make it appear as though her meal periods were compliant (*i.e.*, not short or late). On information and belief, Claimant alleges that the aggrieved employees faced similar issues.

Even during times when the aggrieved employees were clocked out for a meal period, they were still forced to work during the meal periods to ensure completion of the numerous requirements imposed upon them and because they would be penalized by being taken out of the “rotation” in relation to sales. Defendants required employees to undertake various tasks (in addition to their sales tasks), including cold calling 10 customers each day, writing thank you notes, completing work-related training videos and quizzes, communicating with existing customers, and posting to their personal social media accounts about Jared the Galleria of Jewelry, among other tasks. The numerous tasks required of the aggrieved employees made it incredibly difficult to consistently take duty-free meal periods. Additionally, employees were forced to clock out for meal periods and continue making themselves available to customers or else they would be penalized by being taken out of the sales rotation and would lose out on sales (*i.e.*, commissions). Defendants operated under a system whereby salespeople would be assigned to customers in an effort to fairly spread out the ability to earn commissions. Employees would essentially be placed in a hypothetical “line” and would be assigned to assist customers based on the order of the “line.” This cycle would repeat throughout the day. However, whenever an employee took a meal period or a rest period, they would be *taken out* of the sales “rotation” and would essentially be placed at the back of the line rather than simply returning to their place in line once the break was over. Forcing people to start at the back of the rotation was meant to drive sales and discourage people from taking their breaks. As a result, the aggrieved employees often clocked out for lunch and would remain on the sales floor so they would not lose their place in the rotation.

Moreover, when Defendants owed and/or paid meal period premiums, Defendants failed to pay the meal period premiums at the “regular rate of compensation” in violation of Labor Code section 226.7. Instead, Defendants paid meal period premiums at Claimant and the other aggrieved employees’ straight time hourly rate and failed to factor in the additional remuneration earned by Claimant and the aggrieved employees, such as bonuses, commissions, and incentives. As an example, Claimant’s wage statement dated June 13, 2021 shows that Claimant was paid a meal period premium at her straight time hourly rate of \$19.75. Defendants should have paid the meal period premium at the regular rate of compensation, which must factor in the commissions and incentives earned by Claimant during the same pay period. Defendants’ underpayment of meal period premiums is widespread payroll issue that impacted other aggrieved employees.

As a result, Claimant may recover civil penalties on behalf of herself, the State of California and the aggrieved employees as provided under Labor Code § 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Underpaid Rest Period Premiums
Violation of Labor Code §§ 226.7, 516, 1198; IWC Wage Orders

Defendants failed to pay rest period premiums at the lawful regular rate of compensation to Claimant and other aggrieved employees in violation of Labor Code sections 226.7, 516 and 1198, and the related sections of the IWC Wage Orders, including section 12.

Labor Code sections 226.7 and 516, along with the IWC Wage Orders, require that employers authorize and permit a 10-minute, uninterrupted rest period for each four-hour period (or major fraction thereof) that an employee works. Labor Code section 226.7 requires that if a meal period is non-compliant, the employer must pay for an hour of pay at the employee's "regular rate" of compensation. *See Ferra v. Loews Hollywood Hotel*, 11 Cal. 5th at 862. Labor Code section 1198 renders "employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]" unlawful. Defendants required Claimant and other aggrieved employees to effectively waive or otherwise forego their rest periods contrary to the law.

For the same reasons as discussed above in the meal period section, Claimant and the aggrieved employees were unable to take all the rest periods to which they were entitled. Defendants had a policy and practice of not paying rest period premiums to employees who were unable to take rest periods. To the extent Defendants did pay rest period premiums, Claimant is informed and believes that Defendants failed to pay such premiums at the regular rate of compensation, which would have factored in employees' additional remuneration, such as bonuses, commissions, incentives, and other payments.

As a result, Claimant may recover civil penalties on behalf of herself, the State of California and the aggrieved employees as provided under Labor Code section 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Underpaid Paid Sick Leave
Violation of Labor Code §§ 246 through 248.5

Defendants violated Labor Code section 246 because they failed to calculate and pay Claimant and the aggrieved employees paid sick leave at an hourly rate using one of the three permissible methods of calculation set forth in Labor Code sections 246(l)(1) to (3). Under Labor Code section 246 *et seq.*, employers are required to provide paid sick leave to all employees. Employers have the option of providing 24 hours of paid sick leave to employees or to allow employees to accrue paid sick leave each pay period. Cal. Lab. Code § 246. If an employer chooses the accrual method, employees must accrue sick leave at a rate of one (1) hour for every thirty (30) hours worked in a given pay period. Cal. Lab. Code § 246(b)(1). Under the accrual method, employees must begin accruing paid sick leave at the commencement of employment. Cal. Lab. Code § 246(b)(1).

Additionally, employers are required to pay sick leave in accordance with one of the permissible methods provided in Labor Code § 246(l)(1)-(3):

(l) For the purposes of this section, an employer shall calculate paid sick leave using any of the following calculations:

(1) Paid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek.

(2) Paid sick time for nonexempt employees shall be calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment.

(3) Paid sick time for exempt employees shall be calculated in the same manner as the employer calculates wages for other forms of paid leave time.

The third option is not applicable because this case involves non-exempt employees. Defendants were required to pay paid sick time under the method set forth in options one or two.

As an initial matter, Claimant is informed, believes, and alleges that Defendants failed to provide paid sick leave in accordance with California law, rendering Defendants liable for an associated civil penalty with respect to every employee and every pay period during the PAGA period.

Defendants also failed to pay Claimant and the aggrieved employees' sick leave in a manner permitted by statute. On Claimant's wage statement dated July 2, 2021, she used 8 hours of sick leave for which she was paid at her straight time hourly rate of \$19.75:

Description	Dates	Hours	Rate	Amount	YTD Hours	YTD Amount
Commission - Mont			0		0	3,048.49
LTC Bonus			0		0	500.00
Break Violation	06/13/2021 - 06/26/2021	1	19.75	19.75	10	191.50
Commission - ESP	06/13/2021 - 06/26/2021	0	0	64.25	0	896.26
Holiday			0		24	442.00
Commission - JRP	06/13/2021 - 06/26/2021	0	0	5.00	0	22.13
Overtime	06/13/2021 - 06/19/2021	0.08	30.43	2.44		
Overtime	06/20/2021 - 06/26/2021	0.33	30.71	10.14	38.9	1,314.43
Regular Hourly	06/13/2021 - 06/26/2021	69.2	19.75	1,366.70	945.22	18,229.12
Ship from Store Inc	06/13/2021 - 06/19/2021	0	0	3.00		
Ship from Store Inc	06/20/2021 - 06/26/2021	0	0	20.00	0	23.00
Sick	06/13/2021 - 06/26/2021	8	19.75	158.00	22.42	442.80
Commission - Watc			0		0	13.17
Vacation			0		8	158.00
Commission - Week	06/13/2021 - 06/26/2021	0	0	36.51	0	713.29

Defendants violated California law by failing to factor in Claimant's commissions and other forms of remuneration into her sick leave rate of pay for this pay period or otherwise pay her sick leave in a manner permitted by statute. The failure to calculate and pay paid sick leave at one of the lawful rates set forth in Labor Code § 246(l)(1)-(3) was applied as a matter of

common policy and practice to Claimant and the aggrieved employees in those pay periods where they earned additional payments, bonuses, commissions, or other forms of non-excludable remuneration and also received paid sick leave.

As a result, Claimant may recover civil penalties on behalf of herself, the State of California and the aggrieved employees as provided under Labor Code § 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law. Claimant is also entitled to penalties under Labor Code section 248.5.

Underpaid Covid Supplemental Paid Sick Leave **Violation of Labor Code §§ 246 through 248.6**

Defendants violated Labor Code section 248.2 and 248.6 because they failed to calculate and pay Claimant and the aggrieved employees' paid sick leave at the lawful hourly rate. Labor Code 248.2 required employers to provide up to 80 hours of Covid-19 Supplemental Paid Sick Leave for the period of January 1, 2021 through September 30, 2021. Labor Code section 248.6 extended Covid sick leave protections and requires employers to provide up to 80 hours of Covid-19 Supplemental Paid Sick Leave for the period of January 1, 2022 to September 30, 2022, and may be extended thereafter. Employers must comply with the calculation and payment methods of these Covid supplemental sick leave laws.

Under Labor Code sections 248.2, non-exempt employees must be paid supplemental paid sick leave according to the highest of the following four methods:

(I) Calculated in the same manner as the regular rate of pay for the workweek in which the covered employee uses COVID-19 supplemental paid sick leave, whether or not the employee actually works overtime in that workweek.

(II) Calculated by dividing the covered employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment.

(III) The state minimum wage.

(IV) The local minimum wage to which the covered employee is entitled.

Labor Code section 248.6 requires employers to pay supplemental sick leave using either method I or II identified above.

On information and belief, Defendants violated California law by failing to pay Covid Supplemental Paid Sick Leave at the correct rate. For the same reasons discussed in the Paid Sick Leave section above, Defendants failed to pay Covid-19 Supplemental Sick Leave at a rate authorized by statute. When paying such leave, Defendants failed to factor in employees' commissions, bonuses, incentives, and other compensation when paying sick leave. On information and belief, Defendants instead paid Supplemental Sick Leave at employees' straight time hourly rate rather than by one of the methods authorized by Labor Code sections 248.2 and 248.6.

The failure to calculate and pay paid sick leave at one of the lawful rates set forth in Labor Code §§ 248.2 and 248.6 was applied as a matter of common policy and practice to Claimant and the aggrieved employees in those pay periods where they earned bonuses, commissions, or other forms of non-excludable remuneration and also received statutory paid sick leave. Defendants further failed to maintain the proper records required by the paid sick leave statutes.

As a result, Claimant may recover civil penalties on behalf of herself, the State of California and the aggrieved employees as provided under Labor Code § 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law. Claimant is also entitled to penalties under Labor Code section 248.5.

Failure to Reimburse Necessary Expenses
Violation of Labor Code §§ 2800, 2802

Defendants failed in their affirmative legal obligation to reimburse Claimant and other aggrieved employees for all necessary work-related costs and expenses as a matter of policy and practice in violation of Labor Code section 2802, which states:

An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.

Defendants required Claimant and the aggrieved employees to incur costs for work-related purposes, including expenses associated with their cell phones, data, and/or cell phone apps. Defendants required Claimant and the other aggrieved employees to use their personal cell phones for work-related purposes. For example, Defendants required employees to make social media posts during their shift to their personal social media accounts and employees used their own cell phones to access their social media accounts, to take photos, and to access Jared photos from an app. Claimant and the aggrieved employees were also required to use their cell phones to text guests about their orders, to answer questions, etc. Claimant and the aggrieved employees were not able to use another means to text the guests as the tablets in the stores were not text message compatible. Claimant also incurred expenses associated with using apps to text customers and to post on social media. As such and in direct consequence of their job duties, Claimant and the aggrieved employees unavoidably and necessarily incurred losses, expenditures, costs and expenses that were unreimbursed in violation of Labor Code sections 2800 and 2802.

To the extent Defendants argue that the expenses were reimbursable only upon request and preapproval, Labor Code section 2802's mandate is absolute: the element of constructive

knowledge “does not appear in the statute” and written policies or handbooks do not “affect the significance of a failure to comply with that statutory duty ... the rights afforded by section[] 2802 may not be subject to negotiation or waiver.” *Espinoza v. West Coast Tomato Growers, LLC* (S.D. Cal. 2016) Case No. 14-CF-2984 at n.2; *Park v. Joong-Ang Daily News Cal., Inc.* (2nd App. Dist., Div. 7, 2017) No. B268678 n.7 (unpublished, citing published authority). Labor Code section 2804 further affirms that “[a]ny 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 under the laws of this State.” In other words, if—as here—employees incur “necessary expenses” or “losses” for the benefit of their employer, then the employees are unconditionally entitled to receive reimbursement for those expenses. Labor Code § 2804 prohibits waiver of these rights.

Such a pattern, practice and uniform administration of corporate policy as described herein is unlawful and creates an entitlement to recover by Claimant, the aggrieved employees and the State of California in a civil action for all civil penalties recoverable for violations of Labor Code section 2802, including those set forth in Labor Code section 2699 (\$100/\$200) per violation per pay period per employee, along with the recovery of attorney’s fees and costs of suit.

Untimely Payment of Wages During Employment **Violation of Labor Code §§ 204, 204b, 210**

Defendants violated Labor Code sections 204 and 204b requiring payment of all wages on regularly scheduled paydays with respect to Claimant and other aggrieved employees by failing to pay all wages owed on the regular pay days scheduled each pay period. To the extent that Defendants made or make any retroactive payments to Claimant or other aggrieved employees, such amounts are untimely in violation of these payday statutes.

Because Defendants failed to pay all wages in each pay period in which such wages were earned at the lawful rate for overtime, meal/rest premiums and other forms of remuneration, Defendants violated Labor Code section 204 and/or 204b (for weekly employees), which requires timely payment of wages of wages each regular scheduled pay period. Labor Code section 204 requires payment of “all wages” for non-exempt employees at least twice each calendar month. Labor Code section 204b applies to employees paid on a weekly basis and also requires the payment for all labor within the required pay periods. Labor Code section 210 provides that, “every person who fails to pay the wages of an employee as provided in Section...204...shall be subject to a civil penalty” of \$100 for an initial violation and \$200 plus 25% of the amount unlawfully withheld for a subsequent violation.

As explained above, Defendants underpaid Claimant and other aggrieved employees’ regular, overtime, sick, and premium pay, including at the lawful regular rate of compensation/pay. Defendants are separately liable for not paying the full amount owed to Claimant and other aggrieved employees each payday in violation of Labor Code sections 204 and/or 204b.

As a result, Claimant may recover civil penalties on behalf of herself, the State of California and the aggrieved employees as provided under Labor Code section 2699 (\$100/\$200) per violation per pay period per employee, Labor Code section 210 (\$100/\$200) per violation per pay period, along with all other civil penalties permitted by law.

Untimely Payment of Wages Upon Separation of Employment
Violation of Labor Code §§ 201, 202, 203

Defendants violated Labor Code sections 201, 202 and 203 requiring timely payment of all wages upon separation and waiting time penalties in lieu thereof with respect to aggrieved employees by failing to pay all wages and premiums owed upon termination of employment.

Labor Code section 201 requires that if an employer fires an employee, the wages must be paid immediately. Labor Code section 202 requires that if an employee quits without providing 72 hours' notice, his or her wages must be paid no later than 72 hours thereafter. Labor Code section 202 states that if an employee provides 72 hours' notice, the final wages are payable upon his or her final day of employment. Labor Code section 203 requires an employer who fails to comply with Labor Code sections 201 or 202 to pay a waiting time penalty for each employee, up to a period of 30 days.

Because Defendants failed to pay all wages and premiums owed to the aggrieved employees during their employment and failed to properly pay regular and overtime wages at the lawful respective rates, Defendants failed to timely pay all wages owed upon separation of employment in violation of Labor Code sections 201, 202 and 203.

As a result, Claimant may recover civil penalties on behalf of herself, the State of California and the aggrieved employees as provided under Labor Code § 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Non-Compliant Wage Statements
Violation of Labor Code §§ 226, 226.3

Defendants violated Labor Code section 226 with respect to Claimant and other aggrieved employees by failing to furnish itemized wage statements each pay period that accurately list all information required by Labor Code section 226(a)(1) through (9).

Labor Code section 226(a) requires an employer to furnish wage statements to employees semimonthly or at the time of each payment of wages, "an accurate itemized statement in writing showing:" (1) gross wages earned, (2) total hours worked, (3) the number of piece rate units earned and applicable piece rate in effect, (4) all deductions, (5) net wages earned, (6) the inclusive dates of the pay period, (7) the name of the employee and last four digits of SSN or an EIN, (8) the name and address of the legal name of the employer, and (9) all applicable hourly rates in effect during the pay period and the number of hours worked at each hourly

rate by the employee.¹ An employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of \$250 per employee per violation for the initial citation and \$1,000 per employee for each violation in a subsequent citation, in addition to other penalties allowed by law.

Throughout the relevant statutory period, as a result of the foregoing violations identified in this notice—unpaid regular and overtime wages and premiums—Defendants violated Labor Code section 226(a)(1) by not listing the correct “gross wages earned,” as the employees earned regular wages, overtime, and premiums, but were instead underpaid, resulting in an inaccurate reflection and recording of “gross wages earned” on those wage statements. Defendants also violated Labor Code section 226(a)(5) with respect to “net wages earned” for the same reasons, as the “net wages earned” are depreciated and underpaid resulting in an inaccurate reflection on the pay stub.

Similarly, in violation of Labor Code section 226(a)(9), the hourly rates and corresponding hours worked at those rates are incorrectly listed on Claimant and the aggrieved employees’ wage statements. The hourly rates on the wage statements are inaccurate with respect to overtime hours that were not paid (as a result of off the clock work), meal period and rest period premiums, and paid sick leave hours, as those hours were paid at the improper rates and reflected as such on the wage statements of the aggrieved employees.

Claimant and other aggrieved employees cannot promptly and easily determine from the wage statement alone the wages paid or earned without reference to other documents or information. Indeed, these wage statement violations are significant because they sowed confusion among Claimant and other aggrieved employees with respect to what amounts were owed and paid, at what rates, the number of hours worked, and how those amounts were calculated. The wage statements reflect a false statement of earnings and concealed the underlying problems and underpayments throughout the relevant period.

Thus, Claimant may recover civil penalties on behalf of herself, the State of California and the aggrieved employees as provided under Labor Code sections 226.3 (\$250/\$1,000) and/or 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

¹ See generally *Lopez v. Friant & Associates, LLC* (2017) 15 Cal. App. 5th 773, 787-88 (“Consistent with the PAGA statutory framework and the plain language of section 226(e), we hold a plaintiff seeking civil penalties under PAGA for a violation of section 226(a) does not have to satisfy the “injury” and “knowing and intentional” requirements of section 226(e)(1)”); see also *Kastler v. Oh My Green, Inc.* (N.D. Cal., Oct. 25, 2019) Case No. 19-CV-02411-HSG (“Injuries from a failure to provide an accurate pay statement include ‘possibility of not being paid overtime, employee confusion over whether they received all wages owed them, difficulty and expense involved in reconstructing pay records, and forcing employees to make mathematical computations to analyze whether the wages paid in fact compensated them for all hours worked’) (rejecting *Maldonado* defense for class claims).

Failure to Maintain Accurate Records
Violation of Labor Code §§ 1174, 1174.5, 1198; IWC Wage Orders

Because of the violations set forth in this notice, including Defendants' failure to accurately maintain records of pay for all hours worked at the appropriate lawful rates of pay, Defendants violated Labor Code section 1174 and the IWC Wage Orders by failing to maintain accurate payroll records showing all hourly rates in effect and hours worked at those rates, and the wages paid to each employee. As a result, Defendants are liable for a civil penalty of \$500 per employee to Claimant and each aggrieved employee pursuant to Labor Code section 1174.5.

Attorneys' Fees and Costs
Labor Code § 2699(g)

Claimant was compelled to retain the services of counsel to file this court action to protect her interests, the interests of other aggrieved employees, and the State of California. Claimant has thereby incurred and will continue to incur attorneys' fees and costs, which are recoverable on all PAGA causes of action under Labor Code section 2699(g).

Notice of Demand for Defendants To Change Policies and Practices

Claimant intends to pursue legal action against Defendants based on the violations set forth in this notice. Defendants are hereby notified that any attempt to resolve this case must be conducted in coordination with Claimant's counsel to protect the interests of Claimant, the aggrieved employees, and the State of California via the LWDA. Any and all settlements releasing liability require Court approval in connection with Claimant and their counsel to fully release liability and resolve the claims alleged in this notice. Claimant will establish that (1) her lawsuit was a catalyst in motivating Defendants to change their policies and practices and provide the relief sought through this action, (2) that the forthcoming lawsuit has merit and is based on undisputed violations for which Defendants will be liable at trial, and (3) that Claimant has hereby notified Defendants of their violations and considers this notice an attempt to resolve the matter. *See Tipton-Whittingham v. City of Los Angeles* (2004) 34 Cal.4th 604, 608 (citing *Graham v. Daimler-Chrysler Corp.* (2004) 34 Cal. 4th 553 (authorizing an award of catalyst attorneys' fees)).

As the PAGA representative, Claimant has a duty to file this case at the earliest opportunity. Defendants may contact Claimant's counsel with any questions regarding this letter or the forthcoming lawsuit.

CONCLUSION

If the LWDA does not pursue enforcement, Claimant will bring representative claims on behalf of the State of California and the aggrieved employees seeking all recoverable civil penalties for violations of the Labor Code and the IWC Wage Orders, along with attorneys' fees, costs, interest, and other appropriate relief.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in cursive script that reads "Lauren Vega".

Lauren N. Vega

Cc Claimant
 Nicholas J. Ferraro, Esq.

Emily Papania, Esq.
epapania@vorys.com
Counsel for Defendants