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9
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 FOR THE COUNTY OF SAN BERNARDINO
12

13 RHONDA PRINGLE, as an aggrieved
employee pursuant to the Private
14 Attorneys General Act ("PAGA"), on
behalf of the State of California and
15 other non-party Aggrieved
Employees,

16
17 Plaintiff,

18 vs.

19 FIVE BELOW, INC., a Pennsylvania
corporation; 1616 HOLDINGS, INC.,
20 a Pennsylvania corporation; and
DOES 1 through 10, inclusive,
21
22
23 Defendants.

ELECTRONICALLY FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT
4/28/2025 12:39 PM
By: Jocelin Acosta, DEPUTY

Case No.: CIVSB2512006

**COMPLAINT – PAGA ENFORCEMENT
ACTION**

(1) Claim for Civil Penalties for Violations of
California Labor Code, Pursuant to PAGA,
§§ 2698, *et seq.*

Jury Trial Demanded

1 Plaintiff Rhonda Pringle, as an aggrieved employee and on behalf of the State of
2 California and all other non-party Aggrieved Employees, alleges as follows:

3 JURISDICTION AND VENUE

4 1. This is an enforcement action under the Labor Code Private Attorneys General
5 Act of 2004, California Labor Code sections 2698, *et seq.* (“PAGA”) to recover civil penalties
6 and any other available relief on behalf of Plaintiff, the State of California, and other current
7 and former employees who worked for Defendants in California as a non-exempt, hourly paid
8 employee and received at least one wage statement and against whom one or more violations of
9 any provision in Division 2 Part 2 Chapter 1 of the Labor Code or any provision regulating
10 hours and days of work in the applicable Industrial Welfare Commission (“IWC”) Wage Order
11 were committed, as set forth in this complaint, at any time between one year prior to the filing
12 of the pre-filing written notice to the Labor and Workforce Development Agency (“LWDA”) in
13 this case on February 14, 2025, until judgment (“non-party Aggrieved Employees”).
14 Plaintiff’s share of civil penalties sought in this action does not exceed \$75,000.

15 2. This Court has jurisdiction over this action pursuant to the California
16 Constitution, Article VI, section 10. The statute under which this action is brought does not
17 specify any other basis for jurisdiction.

18 3. This Court has jurisdiction over all Defendants because, on information and
19 belief, Defendants are either citizens of California, have sufficient minimum contacts in
20 California, or otherwise intentionally avail themselves of the California market so as to render
21 the exercise of jurisdiction over them by the California courts consistent with traditional notions
22 of fair play and substantial justice. There is no basis for federal diversity jurisdiction in this
23 action given that the State of California, as the real party in interest in this action, is not a
24 “citizen” for purposes of satisfying diversity jurisdiction. *Urbino v. Orkin Servs. of Cal.*, 726
25 F.3d 1118, 1123 (9th Cir. Cal. 2013). *Urbino* also holds that civil penalties cannot be aggregated
26 to satisfy the amount in controversy requirement for federal diversity jurisdiction in this action,
27 and that diversity jurisdiction cannot be established when Plaintiff’s share of the civil penalties
28 attributable to violations personally suffered are less than \$75,000. *Id.* at 1122.

4. Venue is proper in this Court because Defendants employ persons in this county, and employed Plaintiff in this county, and thus a substantial portion of the transactions and occurrences related to this action occurred in this county.

5. California Labor Code sections 2698, *et seq.*, the “Labor Code Private Attorneys General Act of 2004,” authorize aggrieved employees to sue as private attorneys general their current or former employers for various civil penalties for violations of various provisions in the California Labor Code.

THE PARTIES

6. Plaintiff Rhonda Pringle is a resident of Rialto, in San Bernardino County, California. Defendants employed Plaintiff as an hourly paid, non-exempt employee from approximately October 2024 to December 2024 as a Support Lead at their store located in San Bernardino, California (4060 East Highland Avenue, San Bernardino, California 92346). During her employment, Plaintiff typically worked five (5) to eight (8) hours per day and two (2) to four (4) days per week. At the time her employment ended, Plaintiff was compensated approximately \$16.50 per hour. Her job duties included, without limitation, operating the cash register, providing customer service, stocking merchandise, maintaining the store's appearance, and cashing out registers at the end of the day.

7. FIVE BELOW, INC. was and is, upon information and belief, a Pennsylvania corporation, and at all times hereinafter mentioned, an employer whose employees are engaged throughout this county and the State of California.

8. 1616 HOLDINGS, INC. was and is, upon information and belief, a Pennsylvania corporation, and at all times hereinafter mentioned, an employer whose employees are engaged throughout this county and the State of California.

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

10. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10

1 were the partners, agents, owners, or managers of FIVE BELOW, INC. and/or 1616
2 HOLDINGS, INC., at all relevant times.

3 11. Plaintiff is informed and believes, and thereon alleges, that each and all of the
4 acts and omissions alleged herein was performed by, or is attributable to, FIVE BELOW, INC.;
5 1616 HOLDINGS, INC.; and/or DOES 1 through 10 (collectively, “Defendants” or “FIVE
6 BELOW”), each acting as the agent, employee, alter ego, and/or joint venturer of, or working
7 in concert with, each of the other co-Defendants and was acting within the course and scope of
8 such agency, employment, joint venture, or concerted activity with legal authority to act on the
9 others’ behalf. The acts of any and all Defendants were in accordance with, and represent, the
10 official policy of Defendants.

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

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

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

1 15. Plaintiff is informed and believes, and thereon alleges, that at all relevant times,
2 Defendants, and each of them, have acted as joint employers with respect to Plaintiff and other
3 non-party Aggrieved Employees because Defendants have:

- 4 (a) jointly exercised meaningful control over the work performed by Plaintiff
5 and other non-party Aggrieved Employees;
6 (b) jointly exercised meaningful control over Plaintiff's and other non-party
7 Aggrieved Employees' wages, hours, and working conditions, including
8 the quantity, quality standards, speed, scheduling, and operative details
9 of the tasks performed by Plaintiff and other non-party Aggrieved
10 Employees;
11 (c) jointly required that Plaintiff and other non-party Aggrieved Employees
12 perform work which is an integral part of Defendants' businesses; and
13 (d) jointly exercised control over Plaintiff and other non-party Aggrieved
14 Employees as a matter of economic reality in that Plaintiff and other non-
15 party Aggrieved Employees were dependent on Defendants, who shared
16 the power to set the wages of Plaintiff and other non-party Aggrieved
17 Employees and determined their working conditions, and who jointly
18 reaped the benefits from the underpayment of their wages and
19 noncompliance with other statutory provisions governing their
20 employment.

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

24 17. FIVE BELOW, INC.; 1616 HOLDINGS, INC.; and/or DOES 1 through 10 are
25 therefore alter egos of each other.

26 18. Adherence to the fiction of the separate existence of Defendants would permit an
27 abuse of the corporate privilege, and would promote injustice by protecting Defendants from
28 liability for the wrongful acts committed by them under the name "FIVE BELOW."

1 19. Plaintiff further alleges, upon information and belief, that the Defendants FIVE
2 BELOW, INC. and 1616 HOLDINGS, INC. are alter egos of each other for the following
3 reasons:

4 (a) On the California Secretary of State's website
5 (<https://bizfileonline.sos.ca.gov/>), FIVE BELOW, INC. and 1616
6 HOLDINGS, INC. have the same principal address, "701 MARKET
7 STREET, SUITE 300, PHILADELPHIA, PA 19106";

8 (b) On the California Secretary of State's website, FIVE BELOW, INC. and
9 1616 HOLDINGS, INC. have the same mailing address, "1800 ROUTE
10 130 NORTH, BURLINGTON, NJ 08016";

11 (c) According to their most recent "Statement of Information" forms filed
12 with the California Secretary of State, FIVE BELOW, INC. and 1616
13 HOLDINGS, INC. share the same officers, including, but not limited to:
14 Kenneth R. Buell, who serves as the Chief Executive Officer; Kristy
15 Chipman, who serves as the Chief Financial Officer; and Ronald
16 Masciantonio, who serves as the Secretary;

17 (d) On the California Secretary of State's website, FIVE BELOW, INC. and
18 1616 HOLDINGS, INC. share the same agent for service of process,
19 "CSC – LAWYERS INCORPORATING SERVICE"; and

20 (e) On information and belief, FIVE BELOW, INC. and 1616 HOLDINGS,
21 INC. utilize the same standardized employment forms and issue the same
22 employment policies.

23 **PAGA REPRESENTATIVE ALLEGATIONS**

24 20. Defendants are a discount specialty retailer that offers merchandise for teen and
25 pre-teen customers and have approximately 144 stores in California. Upon information and
26 belief, Defendants maintain a single, centralized Human Resources (HR) department at their
27 corporate headquarters in Philadelphia, Pennsylvania, for all non-exempt, hourly paid
28 employees working for Defendants in California, which is responsible for the recruiting and

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

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

11 22. Upon information and belief, Defendants maintain a centralized Payroll
12 department at their corporate headquarters in Philadelphia, Pennsylvania, which processes
13 payroll for all non-exempt, hourly paid employees working for Defendants at their various
14 locations in California, including Plaintiff and other non-party Aggrieved Employees. Based
15 upon information and belief, Defendants issue the same formatted wage statements to all non-
16 exempt, hourly paid employees in California, irrespective of their work locations. Upon
17 information and belief, Defendants process payroll for departing employees in the same manner
18 throughout the State of California, regardless of the manner in which each employee's
19 employment ends.

20 23. Defendants continue to employ non-exempt or hourly paid employees in
21 California.

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

26 25. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and other
27 non-party Aggrieved Employees were not paid for all hours worked because all hours worked
28 were not recorded.

1 26. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
2 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
3 receive certain wages for overtime compensation and that they were not receiving certain wages
4 for overtime compensation.

5 27. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
6 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
7 receive at least minimum wages for compensation and that they were not receiving at least
8 minimum wages for work that was required to be done off-the-clock. In violation of the
9 California Labor Code, Plaintiff and other non-party Aggrieved Employees were not paid at
10 least minimum wages for work done off-the-clock.

11 28. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
12 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
13 meal periods in accordance with the California Labor Code and applicable IWC Wage Order or
14 payment of one (1) additional hour of pay at their regular rates of pay when they were not
15 provided with timely, uninterrupted, thirty (30) minute meal periods and that Plaintiff and other
16 non-party Aggrieved Employees were not provided with all meal periods or payment of one (1)
17 additional hour of pay at their regular rates of pay when they did not receive a timely,
18 uninterrupted, thirty (30) minute meal period.

19 29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
20 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to rest
21 periods in accordance with the California Labor Code and applicable IWC Wage Order or
22 payment of one (1) additional hour of pay at their regular rates of pay when they were not
23 authorized and permitted to take a compliant rest period and that Plaintiff and other non-party
24 Aggrieved Employees were not authorized and permitted to take compliant rest periods or
25 provided with payment of one (1) additional hour of pay at their regular rates of pay when they
26 were not authorized and permitted to take a compliant rest period.

27 30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
28 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to

1 receive complete and accurate wage statements in accordance with California law. In violation
2 of the California Labor Code, Plaintiff and other non-party Aggrieved Employees were not
3 provided complete and accurate wage statements.

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

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

14 33. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
15 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
16 timely payment of all wages earned upon termination of employment. In violation of the
17 California Labor Code, Plaintiff and other non-party Aggrieved Employees did not receive
18 payment of all wages due, including, but not limited to, overtime wages, minimum wages,
19 and/or meal and rest period premiums, within permissible time periods.

20 34. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
21 should have known that they were prohibited from issuing instruments that were improper forms
22 of payment, in that Defendants paid wages to Plaintiff and other non-party Aggrieved Employees
23 using a non-sufficient funds instrument. In violation of the California Labor Code, Defendants
24 did not allow Plaintiff and other non-party Aggrieved Employees to access their entire wages
25 without discount and without delay, because Defendants had insufficient funds for the payment
26 of wages.

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

1 Plaintiff and other non-party Aggrieved Employees with written notice of the material terms of
2 their employment with Defendants as required by the California Wage Theft Prevention Act, but
3 failed to do so.

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

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

16 38. PAGA defines an "aggrieved employee" in Labor Code section 2699(c)(1) as
17 "any person who was employed by the alleged violator and personally suffered each of the
18 violations alleged."

19 39. Plaintiff and other current and former employees of Defendants are "aggrieved
20 employees" as defined by Labor Code section 2699(c)(1) in that they are all Defendants' current
21 or former employees and each of the alleged violations were committed against them.

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

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

1 the alleged violations.

2 (b) An aggrieved employee's notice filed with the LWDA pursuant to
3 2699.3(a) and any employer response to that notice shall be accompanied
4 by a filing fee of seventy-five dollars (\$75).

5 (c) The LWDA shall provide notice (hereinafter "LWDA Notice") to the
6 employer and the aggrieved employee by certified mail that it does not
7 intend to investigate the alleged violation within sixty (60) calendar days
8 of the postmark date of the Employee's Notice. Upon receipt of the
9 LWDA Notice, or if the LWDA Notice is not provided within sixty-five
10 (65) calendar days of the postmark date of the Employee's Notice, the
11 aggrieved employee may commence a civil action pursuant to California
12 Labor Code section 2699 to recover civil penalties in addition to any other
13 penalties to which the employee may be entitled.

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

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

22 (b) An aggrieved employee's notice filed with the LWDA pursuant to
23 2699.3(c) and any employer response to that notice shall be accompanied
24 by a filing fee of seventy-five dollars (\$75).

25 (c) The employer may cure the alleged violation within thirty-three (33)
26 calendar days of the postmark date of the notice. The employer shall give
27 written notice by certified mail within that period of time to the aggrieved
28 employee or representative and the agency if the alleged violation is

1 cured, including a description of actions taken, and no civil action
2 pursuant to Section 2699 may commence. If the alleged violation is not
3 cured within the 33-day period, the employee may commence a civil
4 action pursuant to Section 2699.

5 42. On February 14, 2025, Plaintiff provided written notice by online filing to the
6 LWDA and by certified mail to Defendants of the specific provisions of the California Labor
7 Code alleged to have been violated, including facts and theories to support the alleged
8 violations, in accordance with California Labor Code section 2699.3. Plaintiff's written notice
9 was accompanied with the applicable filing fee of seventy-five dollars (\$75). The LWDA
10 PAGA Administrator has confirmed receipt of Plaintiff's written notice and assigned Plaintiff
11 PAGA Case Number LWDA-CM-1080246-25. A true and correct copy of Plaintiff's written
12 notice to the LWDA and Defendants are attached hereto as "Exhibit 1."

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

16 44. Thus, Plaintiff has satisfied the administrative prerequisites under California
17 Labor Code sections 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
18 violations of California Labor Code sections 201, 202, 204, 212, 226(a), 226.7, 510, 512(a),
19 516, 1174(d), 1182.12, 1194, 1197, 1198, and 2810.5.

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

1 general, seeks assessment and collection of civil penalties under Labor Code section 558 for
2 herself, all other non-party Aggrieved Employees, and the State of California against
3 Defendants for violations of Labor Code sections 510, 512(a), 516, and 1198, and the applicable
4 IWC Wage Order. Plaintiff, acting in the public interest as a private attorney general, does not
5 seek the recovery of unpaid wages under Labor Code section 558 from Defendants for violations
6 of Labor Code sections 510, 512(a), 516, and 1198, and the applicable IWC Wage Order.

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

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

13 48. Pursuant to PAGA, and in particular, California Labor Code sections 1194.5,
14 2699(a), 2699(k), 2699.3(a), 2699.3(c), 2699.5, and section 558, Plaintiff, acting in the public
15 interest as a private attorney general, seeks assessment and collection of civil penalties and
16 injunctive relief for herself, all other non-party Aggrieved Employees, and the State of
17 California against Defendants for violations of California Labor Code sections 201, 202, 204,
18 212, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198, and 2810.5.

19 **FIRST CAUSE OF ACTION**

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

21 **(Against all Defendants)**

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

24 50. California Labor Code sections 2698, *et seq.* permit Plaintiff to recover civil
25 penalties for the violation(s) of the Labor Code sections enumerated in Labor Code section
26 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 204, 212, 1174(d), and 1198.
27 Labor Code section 2699.3(c) permits aggrieved employees, including Plaintiff, to recover civil
28 penalties for violations of those Labor Code sections not found in section 2699.5, including

sections 226(a), 226.7, 510, 512(a), 516, 1182.12, 1194, 1197, and 2810.5.

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

- (a) Violation of Labor Code sections 510 and 1198, and the applicable IWC Wage Order for Defendants' failure to compensate Plaintiff and other non-party Aggrieved Employees with all required overtime pay, as set forth below;
- (b) Violation of Labor Code sections 1182.12, 1194, 1197, and 1198, and the applicable IWC Wage Order for Defendants' failure to compensate Plaintiff and other non-party Aggrieved Employees with at least minimum wages for all hours worked, as set forth below;
- (c) Violation of Labor Code sections 226.7, 512(a), 516, and 1198, and the applicable IWC Wage Order for Defendants' failure to provide Plaintiff and other non-party Aggrieved Employees with meal periods, as set forth below;
- (d) Violation of Labor Code sections 226.7, 516, and 1198, and the applicable IWC Wage Order for Defendants' failure to authorize and permit Plaintiff and other non-party Aggrieved Employees to take rest periods, as set forth below;
- (e) Violation of Labor Code sections 226(a) and 1198, and the applicable IWC Wage Order for failure to provide accurate and complete wage statements to Plaintiff and other non-party Aggrieved Employees, as set forth below;
- (f) Violation of Labor Code sections 1174(d) and 1198, and the applicable IWC Wage Order for failure to maintain payroll records, as set forth below;
- (g) Violation of Labor Code sections 204 for failure to pay all earned wages during employment, as set forth below;

- 1 (h) Violation of Labor Code sections 201 and 202 for failure to pay all earned
2 wages upon termination, as set forth below;
- 3 (i) Violation of Labor Code section 212 for failure to issue instruments that
4 had sufficient funds for payment of wages, as set forth below; and
- 5 (j) Violation of Labor Code section 2810.5(a)(1)(A)-(C) for failure to
6 provide written notice of information material to Plaintiff's and other
7 non-party Aggrieved Employees' employment with Defendants, as set
8 forth below.

9 **FAILURE TO PAY OVERTIME**

10 **VIOLATION OF LABOR CODE SECTIONS 510 AND 1198**

11 52. Labor Code section 1198 makes it illegal to employ an employee under
12 conditions of labor that are prohibited by the applicable IWC Wage Order. California Labor
13 Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission
14 shall be the . . . standard conditions of labor for employees. The employment of any employee
15 . . . under conditions of labor prohibited by the order is unlawful.”

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

20 54. Specifically, the applicable IWC Wage Order provides that Defendants are and
21 were required to pay Plaintiff and other non-party Aggrieved Employees working more than
22 eight (8) hours in a day or more than forty (40) hours in a workweek, at the rate of time and
23 one-half (1 ½) for all hours worked in excess of eight (8) hours in a day or more than forty (40)
24 hours in a workweek.

25 55. The applicable IWC Wage Order further provides that Defendants are and were
26 required to pay Plaintiff and other non-party Aggrieved Employees working more than twelve
27 (12) hours in a day, overtime compensation at a rate of two (2) times their regular rate of pay.
28 An employee's regular rate of pay includes all remuneration for employment paid to, or on

1 behalf of, the employee, including nondiscretionary bonuses and incentive pay.

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

8 57. During the relevant time period, Defendants willfully failed to pay all overtime
9 wages owed to Plaintiff and other non-party Aggrieved Employees. During the relevant time
10 period, Plaintiff and other non-party Aggrieved Employees were not paid overtime premiums
11 for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12)
12 hours in a day, and/or in excess of forty (40) hours in a week, because all hours worked were
13 not recorded.

14 58. First, during the relevant time period, because Defendants' timekeeping system
15 was integrated with the company's point-of-sale ("POS") system, Plaintiff and other non-party
16 Aggrieved Employees would sometimes have to wait to clock in for the start of their shifts
17 because other employees were using the POS system to handle customer transactions and/or
18 clock in or out. For instance, Plaintiff was sometimes required to wait several minutes off-the-
19 clock and under Defendants' control until a POS monitor was available for clocking-in. Thus,
20 Plaintiff and other non-party Aggrieved Employees performed work that was not recorded, time
21 for which they were not paid.

22 59. Second, during the relevant time period, upon information and belief, Defendants
23 had, and continue to have, company-wide policies and/or practices of strictly staffing their stores
24 based on the labor hours allocated by each location's labor or payroll budget set by the corporate
25 office. Defendants' uniform use of labor budgeting and understaffing resulted in a failure to
26 provide Plaintiff and other non-party Aggrieved Employees with adequate meal period coverage,
27 such that there were too few employees on duty to handle the workload and attend to customers.
28 Because Defendants did not employ or staff a sufficient number of employees to meet customer

1 demand, there was no one available to relieve employees needing meal period coverage, and
2 Plaintiff and other non-party Aggrieved Employees were not always afforded uninterrupted 30-
3 minute meal periods during shifts when they were entitled to receive a meal period.

4 60. In addition, Defendants had, and continue to have, a company-wide policy
5 requiring that at least one “Manager on Duty” (MOD), such as a Support Lead, be present in the
6 store at all times, yet Defendants would sometimes only schedule one MOD per shift, due to labor
7 budget restrictions. For example, during the relevant time period, Plaintiff was sometimes the
8 only managerial employee during certain shifts and, as such, was the only employee on duty who
9 could authorize returns and exchanges. Thus, while clocked out for her meal periods, Plaintiff
10 was required to remain on the premises as the MOD and had her meal periods interrupted or cut
11 short about four (4) times to handle these customer transactions. Defendants’ policies combined
12 to create a de facto on-premises meal period policy (*see infra*) and a lack of meal period coverage.
13 As a further example, on about three (3) occasions, Plaintiff worked through her unpaid meal
14 periods due to heavy customer demand and the lack of meal period coverage. Defendants also
15 had a practice of failing to adhere to a schedule for meal periods, which further caused Plaintiff
16 and other non-party Aggrieved Employees to not be relieved of their duties for compliant meal
17 periods. Defendants did not pay Plaintiff and other non-party Aggrieved Employees for the time
18 they continued to perform tasks during their meal periods.

19 61. Third, on information and belief, in conjunction with Defendants’ policy and/or
20 practice of understaffing, Defendants maintained and implemented a company-wide on-premises
21 meal period policy for certain employees, which effectively required that Plaintiff and other non-
22 party Aggrieved Employees remain on the work premises during meal periods. Because Plaintiff
23 and other non-party Aggrieved Employees were restricted from leaving the store premises during
24 meal periods, they were denied the ability to use their meal periods freely for their own purposes,
25 such as running personal errands. Thus, Defendants effectively maintained control over Plaintiff
26 and other non-party Aggrieved Employees during meal periods.

27 62. Defendants knew or should have known that as a result of these company-wide
28 practices and/or policies, Plaintiff and other non-party Aggrieved Employees were performing

1 their assigned duties outside of their shifts and during meal periods, and were suffered or
2 permitted to perform work for which they were not paid. Because Plaintiff and other non-party
3 Aggrieved Employees worked shifts of eight (8) hours or more a day or forty (40) hours a week
4 or more, some of this off-the-clock work qualified for overtime premium pay. Therefore,
5 Plaintiff and other non-party Aggrieved Employees were not paid overtime wages for all of the
6 overtime hours they actually worked.

7 63. Defendants' failure to pay Plaintiff and other non-party Aggrieved Employees
8 the balance of overtime compensation as required by California law, violates the provisions of
9 California Labor Code sections 510 and 1198. Plaintiff and other non-party Aggrieved
10 Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections 558
11 and/or 2699(a), (f), and (k).

12 **FAILURE TO PAY MINIMUM WAGES**

13 **VIOLATION OF LABOR CODE SECTIONS 1182.12, 1194, 1197, AND 1198**

14 64. At all relevant times, California Labor Code sections 1182.12, 1194, 1197, and
15 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment
16 of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in
17 Wage Order No. 7-2001 as "the time during which an employee is subject to the control of an
18 employer, and includes all the time the employee is suffered or permitted to work, whether or not
19 required to do so." Cal. Code Regs. Tit. 8, § 11070(2)(H) (defining "Hours Worked").

20 65. As set forth above, because Defendants' timekeeping system was integrated with
21 the company's POS system, Plaintiff and other non-party Aggrieved Employees were sometimes
22 required to wait for an available POS monitor to clock in for the start of their shifts, but were not
23 compensated for this time. As also stated above, due to Defendants' policies and/or practices of
24 labor budgeting, resultant understaffing while assigning heavy workloads, requirement that
25 certain (managerial) employees stay on the work premises during meal periods, failing to adhere
26 to a schedule for meal periods, and subsequent lack of meal period coverage, Plaintiff and other
27 non-party Aggrieved Employees were impeded from taking all uninterrupted meal periods to
28 which they were entitled and were required to work off-the-clock during meal periods, have their

1 meal periods interrupted, and/or were otherwise not relieved of all duties during unpaid meal
2 periods. Defendants did not pay Plaintiff and other non-party Aggrieved Employees for the time
3 they continued to perform tasks during meal periods.

4 66. Defendants did not pay minimum wages for all hours worked by Plaintiff and
5 other non-party Aggrieved Employees. To the extent that these off-the-clock hours did not
6 qualify for overtime premium payment, Defendants did not pay at least minimum wages for
7 those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194,
8 1197, and 1198.

9 67. Defendants' failure to pay Plaintiff and other non-party Aggrieved Employees
10 minimum wages violates California Labor Code sections 1182.12, 1194, 1197, and 1198.
11 Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil
12 penalties pursuant to Labor Code sections 2699(a), (f), and (k).

13 **FAILURE TO PROVIDE AND RECORD MEAL PERIODS**

14 **VIOLATION OF LABOR CODE SECTIONS 226.7, 512(a), 516, AND 1198**

15 68. At all relevant times herein set forth, the applicable IWC Wage Order and
16 California Labor Code sections 226.7, 512(a), 516, and 1198 were applicable to Plaintiff's and
17 non-party Aggrieved Employees' employment by Defendants.

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

25 70. At all relevant times herein set forth, California Labor Code sections 226.7,
26 512(a), 516, and 1198 provide that no employer shall require an employee to work during any
27 meal period mandated by an applicable order of the IWC.

28 71. At all relevant times herein set forth, Labor Code sections 226.7, 512(a), 1198,

1 and the applicable IWC Wage Order also require employers to provide a second meal period of
2 not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an
3 employee one (1) additional hour of pay at the employee's regular rate, except that if the total
4 hours worked is no more than twelve (12) hours, the second meal period may be waived by
5 mutual consent of the employer and the employee only if the first meal period was not waived.

6 72. First, during the relevant time period, as stated, Defendants had, and continue to
7 have, company-wide policies and/or practices of understaffing due to labor budgeting and/or
8 limited payroll allocation, which, combined with the assigning of heavy workloads, has resulted
9 in a lack of meal period coverage and prevented Plaintiff and other non-party Aggrieved
10 Employees from taking all timely, uninterrupted meal periods to which they were entitled.
11 Further, as stated, Defendants had a company-wide practice and/or policy of failing to adhere
12 to a schedule for meal periods, which further caused Plaintiff and other non-party Aggrieved
13 Employees to not be relieved of their duties for compliant meal periods.

14 73. As a result, Plaintiff and other non-party Aggrieved Employees had to work
15 through all or part of their meal periods, had their meal periods interrupted, and/or had to wait
16 extended periods of time before taking meal periods. For example, as stated, Plaintiff worked
17 straight through her meal periods about three (3) times, and had her meal periods interrupted
18 and/or cut short about four (4) times due to the lack of coverage and heavy workload. For the
19 same reasons, on information and belief, Plaintiff has also had to take her meal periods late,
20 after the fifth hour of work.

21 74. Second, as also stated, on information and belief, Defendants maintained and
22 implemented a company-wide on-premises meal period policy of requiring that at least one (1)
23 MOD be present at all times at the store, resulting in an on-premises meal period policy for certain
24 employees. This policy effectively required that Plaintiff and other non-party Aggrieved
25 Employees remain on the work premises during the meal periods. Because Plaintiff and other
26 non-party Aggrieved Employees were restricted from leaving the store premises during meal
27 periods, they were denied the ability to use their meal periods freely for their own purposes. For
28 example, during the relevant time period, Plaintiff was required to process returns and exchanges

1 for customers while clocked out for a meal period due to her inability to leave the store unattended
2 by a managerial employee. Thus, Defendants effectively maintained control over Plaintiff and
3 other non-party Aggrieved Employees during meal periods.

4 75. Third, Defendants did not provide Plaintiff and other non-party Aggrieved
5 Employees with second 30-minute meal periods on days that they worked in excess of 10 hours
6 in one day. During her employment, Plaintiff worked shifts in excess of ten (10) or more hours
7 per day but was not provided a second 30-minute meal period. Plaintiff and other non-party
8 Aggrieved Employees did not sign valid meal period waivers on days that they were entitled to
9 meal periods and were not relieved of all duties.

10 76. At all times herein mentioned, Defendants knew or should have known that, as a
11 result of these policies, Plaintiff and other non-party Aggrieved Employees were prevented from
12 being relieved of all duties and required to perform some of their assigned duties during meal
13 periods. Defendants further knew or should have known that Defendants did not pay Plaintiff
14 and other non-party Aggrieved Employees meal period premiums when meal periods were late,
15 interrupted, shortened, or missed.

16 77. Moreover, Defendants engaged in a company-wide practice and/or policy of not
17 paying meal period premiums owed when compliant meal periods are not provided. Because
18 of this practice and/or policy, Plaintiff and other non-party Aggrieved Employees have not
19 received premium pay for all missed, late, and interrupted meal periods. As a result, Defendants
20 failed to provide Plaintiff and other non-party Aggrieved Employees compliant meal periods in
21 violation of California Labor Code sections 226.7, 512(a), and 516 and failed to pay the full
22 meal period premiums due.

23 78. Defendants' conduct violates the applicable IWC Wage Order, and California
24 Labor Code sections 226.7, 512(a), 516, and 1198. Plaintiff and other non-party Aggrieved
25 Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections 558
26 and/or 2699(a), (f), and (k).

27 //

28 //

FAILURE TO AUTHORIZE AND PERMIT REST PERIODS
VIOLATION OF LABOR CODE SECTIONS 226.7, 516, AND 1198

79. At all relevant times herein set forth, the applicable IWC Wage Order and California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiff's and other non-party Aggrieved Employees' employment by Defendants.

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

81. At all relevant times, California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must "relinquish any control over how employees spend their break time, and relieve their employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest." *Augustus v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 273 (2016).

82. Pursuant to the applicable IWC Wage Order and California Labor Code section 226.7(c), Plaintiff and other non-party Aggrieved Employees are entitled to recover from Defendants one (1) additional hour of pay at their regular rates of pay for each work day that a required rest period was not authorized and permitted.

83. During the relevant time period, Defendants regularly failed to authorize and permit Plaintiff and other non-party Aggrieved Employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, Defendants' company-wide practices, including utilizing a labor budget, resultant understaffing, and assigning heavy workloads, prevented Plaintiff and other non-party Aggrieved Employees

1 from being relieved of all duties to take rest periods. Additionally, Defendants failed to adhere
2 to a schedule for rest periods, which, coupled with Defendants' failure to provide adequate rest
3 period coverage, further led to Plaintiff and other non-party Aggrieved Employees not being
4 authorized and permitted to take rest periods.

5 84. Furthermore, during the relevant time period, upon information and belief,
6 Defendants maintained and implemented a company-wide on-premises rest period policy,
7 which effectively required that Plaintiff and other non-party Aggrieved Employees remain on
8 the premises during their rest periods. Because Plaintiff and other non-party Aggrieved
9 Employees were restricted from leaving the premises during rest periods, they were denied the
10 ability to use their rest periods freely for their own purposes, such as running personal errands.
11 Thus, Defendants effectively maintained control over Plaintiff and other non-party Aggrieved
12 Employees during rest periods.

13 85. As a result of Defendants' practices and policies, Plaintiff and other non-party
14 Aggrieved Employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess
15 of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were
16 entitled. For example, Plaintiff regularly had to work through her rest periods or had her rest
17 periods interrupted and/or cut short to assist other employees and customers, due to heavy
18 workload, and because she had no coverage.

19 86. Defendants have also engaged in a company-wide practice and/or policy of not
20 paying rest period premiums owed when compliant rest periods are not authorized and
21 permitted. Because of this practice and/or policy, Plaintiff and other non-party Aggrieved
22 Employees have not received premium pay for all missed rest periods. As a result, Defendants
23 denied Plaintiff and other non-party Aggrieved Employees rest periods and failed to pay them
24 rest period premiums due, in violation of Labor Code sections 226.7 and 516, and the applicable
25 IWC Wage Order.

26 87. Defendants' conduct violates the applicable IWC Wage Order and California
27 Labor Code sections 226.7, 516, and 1198. Plaintiff and other non-party Aggrieved Employees
28 are therefore entitled to recover civil penalties pursuant to Labor Code sections 558 and/or

1 2699(a), (f), and (k).

2 **FAILURE TO PROVIDE AND MAINTAIN COMPLIANT WAGE STATEMENTS**

3 **VIOLATION OF LABOR CODE SECTIONS 226(a), 1174(d), AND 1198**

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

9 89. During the relevant time period, Defendants have knowingly and intentionally
10 provided Plaintiff and other non-party Aggrieved Employees with uniform, incomplete, and
11 inaccurate wage statements. For example, Defendants issued uniform wage statements to
12 Plaintiff and other non-party Aggrieved Employees that fail to correctly list: gross wages
13 earned; total hours worked; net wages earned; and all applicable hourly rates in effect during
14 the pay period, including rates of pay for overtime wages, and the corresponding number of
15 hours worked at each hourly rate. Specifically, Defendants violated sections 226(a)(1),
16 226(a)(2), 226(a)(5), and 226(a)(9).

17 90. Because Defendants did not record the time Plaintiff and other non-party
18 Aggrieved Employees spent working off-the-clock and deducted time from their records for
19 meal periods that were interrupted and/or missed (and therefore time for which they should have
20 been paid), Defendants did not list the correct amount of gross wages and net wages earned by
21 Plaintiff and other non-party Aggrieved Employees in compliance with section 226(a)(1) and
22 section 226(a)(5), respectively. For the same reason, Defendants failed to accurately list the
23 total number of hours worked by Plaintiff and other non-party Aggrieved Employees, in
24 violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during
25 the pay period and the corresponding accurate number of hours worked at each hourly rate, in
26 violation of section 226(a)(9).

27 91. The wage statement deficiencies also include, among other things, failing to list
28 the number of piece-rate units earned and any applicable piece rate if the employee is paid on a

1 piece-rate basis; failing to list all deductions; failing to list the inclusive dates of the period for
2 which aggrieved employees were paid; failing to list the name of the employee and only the last
3 four digits of his or her social security number or an employee identification number other than
4 a social security number; failing to list the name and address of the legal entity that is the
5 employer; and/or failing to state all hours worked as a result of not recording or stating hours
6 worked off-the-clock.

7 92. California Labor Code section 1174(d) provides that “[e]very person employing
8 labor in this state shall . . . [k]eep a record showing the names and addresses of all employees
9 employed and the ages of all minors” and “[k]eep, at a central location in the state or at the
10 plants or establishments at which employees are employed, payroll records showing the hours
11 worked daily by and the wages paid to, and the number of piece-rate units earned by and any
12 applicable piece rate paid to, employees employed at the respective plants or
13 establishments” Labor Code section 1174.5 provides that employers are subject to a \$500
14 civil penalty if they fail to maintain accurate and complete records as required by section
15 1174(d). At all relevant times, and in violation of Labor Code section 1174(d), Defendants
16 willfully failed to maintain accurate payroll records for Plaintiff and other non-party Aggrieved
17 Employees showing the daily hours they worked and the wages paid thereto as a result of failing
18 to record the off-the-clock hours that they worked.

19 93. California Labor Code section 1198 provides that the maximum hours of work
20 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set
21 forth in the applicable IWC Wage Order. Section 1198 further provides that “[t]he employment
22 of any employees for longer hours than those fixed by the order or under conditions of labor
23 prohibited by the order is unlawful.” Pursuant to the applicable IWC Wage Order, employers
24 are required to keep accurate time records showing when the employee begins and ends each
25 work period and meal period. During the relevant time period, Defendants engaged in company-
26 wide practices and/or policies of failing to record actual hours worked, and thereby failed, on a
27 company-wide basis, to keep accurate records of work period and meal period start and end
28 times for Plaintiff and other non-party Aggrieved Employees, in violation of section 1198.

Furthermore, in light of Defendants' failure to provide Plaintiff and other non-party Aggrieved Employees with second 30-minute meal periods to which they were entitled, Defendants kept no records of meal start and end times for second meal periods.

94. Defendants' conduct violates California Labor Code sections 226(a), 1174(d), and 1198. Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f), and (k).

FAILURE TO PAY WAGES DURING EMPLOYMENT

VIOLATION OF LABOR CODE SECTION 204

95. At all relevant times herein set forth, California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed. Labor Code section 204 further provides that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month.

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

97. During the relevant time period, Defendants willfully failed to pay Plaintiff and other non-party Aggrieved Employees all wages due to them including, but not limited to, overtime wages, minimum wages, and/or meal and rest period premiums, within any time period specified by California Labor Code section 204.

98. Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections 210 and/or 2699(a), (f), and (k).

1 **FAILURE TO PAY WAGES UPON TERMINATION**

2 **VIOLATION OF LABOR CODE SECTIONS 201 AND 202**

3 99. At all times relevant herein set forth, Labor Code sections 201 and 202 provide
4 that if an employer discharges an employee, the wages earned and unpaid at the time of
5 discharge are due and payable immediately, and that if an employee voluntarily leaves his or
6 her employment, his or her wages shall become due and payable not later than seventy-two (72)
7 hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his
8 or her intention to quit, in which case the employee is entitled to his or her wages at the time of
9 quitting.

10 100. On information and belief, Defendants have a company-wide practice or policy of
11 paying departing employees their final wages late, instead of adhering to the time requirements
12 set forth in Labor Code sections 201 and 202. For example, Plaintiff resigned from her
13 employment on or around December 1, 2024, yet Defendants did not make the first of three final
14 payments until about a week later, and the next two final payments near the end of December
15 2024. Thus, Defendants failed to pay Plaintiff her final wages within the requisite time limit, in
16 violation of California Labor Code section 202.

17 101. Additionally, Defendants willfully failed to pay Plaintiff and other non-party
18 Aggrieved Employees who are no longer employed by Defendants the earned and unpaid wages
19 set forth above, including but not limited to, overtime wages, minimum wages, and/or meal and
20 rest period premiums, either at the time of discharge, or within seventy-two (72) hours of their
21 leaving Defendants' employ.

22 102. Defendants' failure to pay Plaintiff and those non-party Aggrieved Employees
23 who are no longer employed by Defendants their wages earned and unpaid at the time of
24 discharge, or within seventy-two (72) hours of their leaving Defendants' employ, violates Labor
25 Code sections 201 and 202. Plaintiff and other non-party Aggrieved Employees are therefore
26 entitled to recover civil penalties pursuant to Labor Code sections 256 and/or 2699(a), (f), and
27 (k).

28 //

1 **PAYMENT OF WAGES BY NON-SUFFICIENT FUNDS INSTRUMENT**

2 **VIOLATION OF LABOR CODE SECTION 212**

3 103. At all times relevant herein, California Labor Code section 212 prohibits
4 employers from issuing any instruments for the payment of wages unless such instruments are
5 negotiable and payable in cash, on demand, and without discount. Moreover, at the time of the
6 issuance of payment and for a reasonable time thereafter, which must be at least 30 days, the
7 maker or drawer must have sufficient funds in, or credit, arrangement, or understanding with
8 the drawee for its payment.

9 104. During the relevant time period, Defendants had a practice and/or policy of
10 issuing paychecks that were improper forms of payment, in that Defendants paid wages to
11 Plaintiff and other non-party Aggrieved Employees by a non-sufficient funds instrument. For
12 example, upon information and belief, Plaintiff and other non-party Aggrieved Employees
13 received their final wages via checks which bounced when Plaintiff and other non-party
14 Aggrieved Employees attempted to redeem them within 30 days of their issuance. Thus,
15 Defendants' practice was, and continues to be, unlawful as it did not give Plaintiff and other
16 non-party Aggrieved Employees easy access to the entirety of their wages without discount and
17 without delay and the drawer had insufficient funds for the payment of wages.

18 105. California courts recognize a policy favoring the full and prompt payment of
19 wages to employees. Defendants' practice is inconsistent with this policy because it did not
20 allow Plaintiff and other non-party Aggrieved Employees to access their entire wages without
21 discount and without delay, in violation of California Labor Code section 212. Plaintiff and
22 other non-party Aggrieved Employees are therefore entitled to recover civil penalties pursuant
23 to Labor Code sections 225.5 and/or 2699(a), (f), and (k).

24 **FAILURE TO PROVIDE WRITTEN NOTICE OF MATERIAL TERMS OF**

25 **EMPLOYMENT**

26 **VIOLATION OF LABOR CODE SECTION 2810.5(a)(1)(A)-(C)**

27 106. California's Wage Theft Prevention Act was enacted to ensure that employers
28 provide employees with basic information material to their employment relationship at the time

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

9 107. Defendants failed to provide Plaintiff and other non-party Aggrieved Employees
10 written notice that lists the requisite information set forth in Labor Code section
11 2810.5(a)(1)(A)-(C). Defendants' failure to provide Plaintiff and other non-party Aggrieved
12 Employees with written notice of basic information regarding their employment with
13 Defendants is in violation of Labor Code section 2810.5.

14 108. Plaintiff and other non-party Aggrieved Employees are therefore entitled to
15 recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (k).

16 **REQUEST FOR JURY TRIAL**

17 Plaintiff requests a trial by jury.

18 **PRAYER FOR RELIEF**

19 Plaintiff, on behalf of all other non-party Aggrieved Employees, prays for relief and
20 judgment against Defendants, jointly and severally, as follows:

21 1. For civil penalties, injunctive relief, and attorneys' fees in excess of twenty-five
22 thousand dollars (\$25,000). Plaintiff reserves the right to amend her prayer for relief to seek a
23 different amount.

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

25 2. That the Court declare, adjudge and decree that Defendants violated the
26 following California Labor Code provisions as to Plaintiff and other non-party Aggrieved
27 Employees: 510 and 1198 (by failing to pay all overtime compensation); 1182.12, 1194, 1197,
28 and 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512(a), 516,

1 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize and
2 permit all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage
3 statements and maintain accurate payroll records); 204 (by failing to timely pay all earned wages
4 during employment); 201 and 202 (by failing to timely pay all earned wages upon termination);
5 212 (by failing to issue instruments that had sufficient funds for payment of wages); and 2810.5
6 (by failing to provide written notice of information material to employment);

7 3. For civil penalties, pursuant to California Labor Code sections 210, 226.3, 256,
8 558, 1174.5, 2699(a), (f), and (k), for violations of California Labor Code sections 201, 202,
9 204, 212, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198, and 2810.5;

10 4. For injunctive relief pursuant to California Labor Code sections 1194.5 and/or
11 2699(k) to bring Defendants into compliance with the requirements of the applicable IWC Wage
12 Order and California Labor Code sections 201, 202, 204, 212, 226(a), 226.7, 510, 512(a), 516,
13 1174(d), 1182.12, 1194, 1197, 1198, and 2810.5;

14 5. For attorneys' fees and costs pursuant to California Labor Code section
15 2699(k)(1), and any and all other relevant statutes, for Defendants' violations of California
16 Labor Code sections 201, 202, 204, 212, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12,
17 1194, 1197, 1198, and 2810.5;

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

19 7. For such other and further relief as the Court may deem equitable and
20 appropriate.
21

22 Dated: April 28, 2025

Respectfully submitted,

Capstone Law APC

24 By: 

25 Bevin Allen Pike
26 Daniel S. Jonathan
27 Trisha K. Monesi
28 Shealene P. Mancuso

Attorneys for Plaintiff Rhonda Pringle

EXHIBIT “1”

SAIRAH BUDHWANI
310.712.8154 Direct
Sairah.Budhwani@capstonelawyers.com

February 14, 2025

VIA ONLINE SUBMISSION

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

Subject: *Rhonda Pringle v. Five Below, Inc., et al.*

Dear PAGA Administrator:

This office represents Rhonda Pringle in connection with her claims under the California Labor Code. Ms. Pringle was an employee of FIVE BELOW, INC. and/or 1616 HOLDINGS, INC. For the purpose of this letter, Ms. Pringle collectively refers to these entities as “FIVE BELOW.”

The employers may be contacted directly at the addresses below:

FIVE BELOW, INC.
701 MARKET STREET
SUITE 300
PHILADELPHIA, PA 19106

1616 HOLDINGS, INC.
701 MARKET STREET
SUITE 300
PHILADELPHIA, PA 19106

Ms. Pringle intends to seek civil penalties, attorneys’ fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 (“PAGA”). Ms. Pringle seeks relief on behalf of herself, the State of California, and other persons who are or were employed by FIVE BELOW as a non-exempt, hourly paid employee in California and who received at least one wage statement (“aggrieved employees”). This letter is sent in compliance with the notice and reporting requirements of California Labor Code section 2699.3.

FIVE BELOW employed Ms. Pringle as an hourly paid, non-exempt employee from approximately October 2024 to December 2024. Ms. Pringle worked for FIVE BELOW as a Support Lead at its store located in San Bernardino, California (4060 East Highland Avenue, San Bernardino, California 92346). During her employment, Ms. Pringle typically worked five (5) to eight (8) hours per day, and two (2) to four (4) days per week. At the time Ms. Pringle’s employment with FIVE BELOW ended, she earned approximately \$16.50 per hour. Her job duties included, without limitation, operating the cash register, providing customer service, stocking merchandise, maintaining the store’s appearance, and cashing out registers at the end of the day.

FIVE BELOW has committed each of the following Labor Code violations against Ms. Pringle, the facts and theories of which follow, making her an “aggrieved employee” pursuant to California Labor Code section 2699(c)(1):¹

FIVE BELOW’s Company-Wide and Uniform Payroll and HR Practices

FIVE BELOW, INC. and 1616 HOLDINGS, INC. are Pennsylvania corporations. Together, they are a discount specialty retail chain that offers merchandise for teen and pre-teen customers and have approximately 144 stores in California. Upon information and belief, FIVE BELOW maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Philadelphia, Pennsylvania, for all non-exempt, hourly paid employees working for FIVE BELOW in California, including Ms. Pringle and other aggrieved employees. At all relevant times, FIVE BELOW issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Ms. Pringle and other aggrieved employees, regardless of their location or position.

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

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

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

FIVE BELOW willfully failed to pay all overtime wages owed to Ms. Pringle and other aggrieved employees. During the relevant time period, Ms. Pringle and other aggrieved employees were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in

¹ These facts, theories, and claims are based on Ms. Pringle’s experience and counsel’s review of those records currently available relating to Ms. Pringle’s employment. Discovery conducted in litigation of wage and hour claims such as these often reveals additional claims that the aggrieved employee was not initially aware of (because the aggrieved employee was not aware of the law’s requirements, the employer misinformed its employee of the law’s requirements, or because the employer effectively hid the violations). Thus, Ms. Pringle reserves the right to supplement this letter with additional facts, theories, and claims if she becomes aware of them subsequent to the submission of this letter.

excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they worked were not recorded.

First, during the relevant time period, because FIVE BELOW's timekeeping system was integrated with the company's point-of-sale ("POS") system, Ms. Pringle and other aggrieved employees would sometimes have to wait to clock in for the start of their shifts because other employees were using the POS system to handle customer transactions and/or clock in or out. For instance, Ms. Pringle was sometimes required to wait several minutes off-the-clock and under FIVE BELOW's control until a POS monitor was available for clocking-in. Thus, Ms. Pringle and other aggrieved employees performed work that was not recorded, time for which they were not paid.

Second, during the relevant time period, upon information and belief, FIVE BELOW had, and continues to have, company-wide policies and/or practices of strictly staffing its stores based on the labor hours allocated by each location's labor or payroll budget set by the corporate office. FIVE BELOW's uniform use of labor budgeting and understaffing resulted in a failure to provide Ms. Pringle and other aggrieved employees with adequate meal period coverage, such that there were too few employees on duty to handle the workload and attend to customers. Because FIVE BELOW did not employ or staff a sufficient number of employees to meet customer demand, there was no one available to relieve employees needing meal period coverage, and Ms. Pringle and other aggrieved employees were not always afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period.

In addition, FIVE BELOW had, and continues to have, a company-wide policy requiring that at least one "Manager on Duty" (MOD), such as a Support Lead, be present in the store at all times, yet FIVE BELOW would sometimes only schedule one MOD per shift, due to labor budget restrictions. For example, during the relevant time period, Ms. Pringle was sometimes the only managerial employee during certain shifts and, as such, was the only employee on duty who could authorize returns and exchanges. Thus, while clocked out for her meal periods, Ms. Pringle was required to remain on the premises as the MOD and had her meal periods interrupted or cut short about four (4) times to handle these customer transactions. FIVE BELOW's policies combined to create a de facto on-premises meal period policy (*see infra*) and a lack of meal period coverage. As a further example, on about three (3) occasions, Ms. Pringle worked through her unpaid meal periods due to heavy customer demand and the lack of meal period coverage. FIVE BELOW also had a practice of failing to adhere to a schedule for meal periods, which further caused Ms. Pringle and other aggrieved employees to not be relieved of their duties for compliant meal periods. FIVE BELOW did not pay Ms. Pringle and other aggrieved employees for the time they continued to perform tasks during their meal periods.

Third, on information and belief, in conjunction with FIVE BELOW's policy and/or practice of understaffing, FIVE BELOW maintained and implemented a company-wide on-premises meal period policy for certain employees, which effectively required that Ms. Pringle and other aggrieved employees remain on the work premises during meal periods. Because Ms. Pringle and other aggrieved employees were restricted from leaving the store premises during meal periods, they were denied the ability to use their meal periods freely for their own purposes, such as running personal errands. Thus, FIVE BELOW effectively maintained control over Ms. Pringle and other aggrieved employees during meal periods.

FIVE BELOW knew or should have known that as a result of these company-wide practices and/or policies, Ms. Pringle and other aggrieved employees were performing their assigned duties off-the-

clock outside of their shifts and during meal periods, and were suffered or permitted to perform work for which they were not paid. Because Ms. Pringle and other aggrieved employees worked shifts of eight (8) hours or more a day, or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium pay. Therefore, Ms. Pringle and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked.

FIVE BELOW's failure to pay Ms. Pringle and other aggrieved employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198. Ms. Pringle and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring FIVE BELOW into compliance with the applicable IWC Wage Order and Labor Code sections 510 and 1198, pursuant to Labor Code sections 558 and/or 2699(a), (f), and (k).

Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 – Unpaid Minimum Wages

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in IWC Wage Order No. 7-2001 as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." Cal. Code Regs. tit. 8, § 11070(2)(H) (defining "Hours Worked").

As stated above, because FIVE BELOW's timekeeping system was integrated with the company's POS system, Ms. Pringle and other aggrieved employees were sometimes required to wait for an available POS monitor to clock in for the start of their shifts, but were not compensated for this time. As also stated above, due to FIVE BELOW's policies and/or practices of labor budgeting, resultant understaffing while assigning heavy workloads, requirement that certain (managerial) employees stay on the work premises during meal periods, failing to adhere to a schedule for meal periods, and subsequent lack of meal period coverage, Ms. Pringle and other aggrieved employees were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work off-the-clock during meal periods, have their meal periods interrupted, and/or were otherwise not relieved of all duties during unpaid meal periods. FIVE BELOW did not pay Ms. Pringle and other aggrieved employees for the time they continued to perform tasks during meal periods.

FIVE BELOW did not pay at least minimum wages for all hours worked by Ms. Pringle and other aggrieved employees. To the extent that these off-the-clock hours did not qualify for overtime premium payment, FIVE BELOW did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

Accordingly, FIVE BELOW regularly failed to pay at least minimum wages to Ms. Pringle and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Ms. Pringle and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring FIVE BELOW into compliance with the applicable IWC Wage Order and Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f), and (k).

Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 – Failure to Provide Meal Periods

California Labor Code sections 226.7, 512(a), 516, and 1198, and the applicable IWC Wage Order require employers to provide meal periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012). Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

First, as stated, FIVE BELOW had, and continues to have, company-wide policies and/or practices of understaffing due to labor budgeting and/or limited payroll allocation, which, combined with the assigning of heavy workloads, has resulted in a lack of meal period coverage and prevented Ms. Pringle and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. Further, as stated, FIVE BELOW had a company-wide practice and/or policy of failing to adhere to a schedule for meal periods, which further caused Ms. Pringle and other aggrieved employees to not be relieved of their duties for compliant meal periods.

As a result, Ms. Pringle and other aggrieved employees had to work through all or part of their meal periods, had their meal periods interrupted, and/or had to wait extended periods of time before taking meal periods. For example, as stated, Ms. Pringle worked straight through her meal periods about three (3) times, and had her meal periods interrupted and/or cut short about four (4) times due to the lack of coverage and heavy workload. For the same reasons, on information and belief, Ms. Pringle has also had to take her meal periods late, after the fifth hour of work.

Second, as stated, on information and belief, FIVE BELOW maintained and implemented a company-wide on-premises meal period policy of requiring that at least one (1) MOD be present at all times at the store, resulting in an on-premises meal period policy for certain employees. This policy effectively required that Ms. Pringle and other aggrieved employees remain on the work premises during the meal periods. Because Ms. Pringle and other aggrieved employees were restricted from leaving the store premises during meal periods, they were denied the ability to use their meal periods freely for their own purposes. For example, during the relevant time period, Ms. Pringle was required to process returns and exchanges for customers while clocked out for a meal period due to her inability to leave the store unattended by a managerial employee. Thus, FIVE BELOW effectively maintained control over Ms. Pringle and other aggrieved employees during meal periods.

Third, Ms. Pringle and other aggrieved employees worked shifts in excess of ten (10) hours without receiving an uninterrupted second 30-minute meal period. For example, during her employment, Ms. Pringle worked shifts in excess of ten (10) or more hours per day, but was not provided a second 30-

minute meal period. Ms. Pringle and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

At all times herein mentioned, FIVE BELOW knew or should have known that, as a result of these policies, Ms. Pringle and other aggrieved employees were prevented from being relieved of all duties and required to perform some of their assigned duties during meal periods. FIVE BELOW further knew or should have known that FIVE BELOW did not pay Ms. Pringle and other aggrieved employees meal period premiums when meal periods were missed, shortened, interrupted, and/or late.

Furthermore, FIVE BELOW engaged in a company-wide practice and/or policy of not paying all meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Ms. Pringle and other aggrieved employees have not received premium pay for all missed, late, and interrupted meal periods.

Accordingly, FIVE BELOW failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Ms. Pringle and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring FIVE BELOW into compliance with the applicable IWC Wage Order and Labor Code sections 226.7, 512(a), 516, and 1198, pursuant to Labor Code sections 558 and/or 2699(a), (f), and (k).

Violation of California Labor Code §§ 226.7, 516, and 1198 – Failure to Authorize and Permit Rest Periods

California Labor Code sections 226.7, 516, and 1198, and the applicable IWC Wage Order require employers to provide rest periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. The applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the total daily work time is less than three and one-half (3 ½) hours.

To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must "relinquish any control over how employees spend their break time, and relieve their employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest." *Augustus, et al. v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 273 (2016).

During the relevant time period, FIVE BELOW regularly failed to authorize and permit Ms. Pringle and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, FIVE BELOW's company-wide policies and practices, including utilizing a labor budget and resultant understaffing, as well as assigning heavy workloads, prevented Ms. Pringle and other aggrieved employees from being relieved of all duty to take rest periods. Additionally, FIVE BELOW failed to adhere to a schedule for rest periods, which, coupled with FIVE BELOW's failure to provide adequate rest period coverage, further led to Ms. Pringle and other aggrieved employees not being authorized and permitted to take rest periods.

Furthermore, upon information and belief, during the relevant time period, FIVE BELOW maintained and implemented a company-wide on-premises rest period policy, which effectively required that Ms. Pringle and other aggrieved employees remain on the work premises during their rest periods. Because Ms. Pringle and other aggrieved employees were restricted from leaving the store premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes, such as running personal errands. Thus, FIVE BELOW effectively maintained control over Ms. Pringle and other aggrieved employees during rest periods.

As a result of FIVE BELOW's practices and policies, Ms. Pringle and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted rest periods to which they were entitled. For example, Ms. Pringle regularly had to work through her rest periods or had her rest periods interrupted and/or cut short to assist other employees and customers, due to heavy workload, and because she had no coverage.

FIVE BELOW has also engaged in a company-wide practice and/or policy of not paying rest period premiums owed when compliant rest periods are not authorized and permitted. Because of this practice and/or policy, Ms. Pringle and other aggrieved employees have not received premium pay for all missed rest periods.

Accordingly, FIVE BELOW failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Ms. Pringle and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring FIVE BELOW into compliance with the applicable IWC Wage Order and Labor Code sections 226.7, 516, and 1198, pursuant to Labor Code sections 558 and/or 2699(a), (f), and (k).

Violation of California Labor Code §§ 226(a), 1174(d), and 1198 – Non-Compliant Wage Statements and Failure to Maintain Accurate Payroll Records

California Labor Code section 226(a) requires employers to make, keep and provide true, accurate, and complete employment records. FIVE BELOW has not provided Ms. Pringle and other aggrieved employees with properly itemized wage statements. Labor Code section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wage statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or \$50 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not to exceed \$4,000. Further, Labor Code section 226.3 provides that any employer who violates section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

During the relevant time period, FIVE BELOW has knowingly and intentionally provided Ms. Pringle and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, FIVE BELOW issued uniform wage statements to Ms. Pringle and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all applicable hourly rates in effect during the pay period, including rates of pay for overtime wages, and the corresponding number of hours worked at each hourly rate. Specifically, FIVE BELOW violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

Because FIVE BELOW did not record the time Ms. Pringle and other aggrieved employees spent working off-the-clock and deducted time from their records for meal periods that were interrupted and/or missed (and therefore time for which they should have been paid), FIVE BELOW did not list the correct amount of gross wages and net wages earned by Ms. Pringle and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, FIVE BELOW failed to accurately list the total number of hours worked by Ms. Pringle and other aggrieved employees, in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and the corresponding accurate number of hours worked at each hourly rate, in violation of section 226(a)(9).

The wage statement deficiencies also include, among other things, failing to list the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list the inclusive dates of the period for which aggrieved employees were paid; failing to list the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number; failing to list the name and address of the legal entity that is the employer; and/or failing to state all hours worked as a result of not recording or stating hours worked off-the-clock.

California Labor Code section 1174(d) provides that “[e]very person employing labor in this state shall . . . [k]eep a record showing the names and addresses of all employees employed and the ages of all minors” and “[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments” Labor Code section 1174.5 provides that employers are subject to a \$500 civil penalty if they fail to maintain accurate and complete records as required by section 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d), FIVE BELOW willfully failed to maintain accurate payroll records for Ms. Pringle and other aggrieved employees showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked.

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Order. Section 1198 further provides that “[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, FIVE BELOW engaged in company-wide practices and/or policies of failing to record actual hours worked, and thereby failed to keep accurate records of work period and meal period start and end times for Ms. Pringle and other aggrieved employees, in violation of section 1198. Furthermore, in light of FIVE BELOW’s failure to provide Ms. Pringle and other aggrieved employees with second 30-minute meal periods to which they were entitled, FIVE BELOW kept no records of meal start and end times for second meal periods.

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

time records to determine whether in fact they were paid correctly and the extent of underpayment, thereby causing them injury.

Ms. Pringle and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring FIVE BELOW into compliance with the applicable IWC Wage Order and Labor Code sections 226(a), 1174(d), and 1198, pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f), and (k).

Violation of California Labor Code § 204 – Failure to Timely Pay Wages During Employment

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, California Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

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

Ms. Pringle and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring FIVE BELOW into compliance with Labor Code section 204, pursuant to Labor Code sections 210 and/or 2699(a), (f), and (k).

Violation of California Labor Code §§ 201 and 202 – Failure to Timely Pay Final Wages Upon Termination

California Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

On information and belief, FIVE BELOW has a company-wide practice or policy of paying departing employees their final wages late, instead of adhering to the time requirements set forth in Labor Code sections 201 and 202. For example, Ms. Pringle resigned from her employment on or around December 1, 2024, yet FIVE BELOW did not make the first of three final payments until about a week later, and the next two final payments near the end of December 2024. Thus, FIVE BELOW failed to pay Ms. Pringle her final wages within the requisite time limit, in violation of California Labor Code section 202.

In addition, FIVE BELOW willfully failed to pay Ms. Pringle and other aggrieved employees who are no longer employed by FIVE BELOW all their earned wages, including, but not limited to, overtime wages, minimum wages, and/or meal and rest period premiums, either at the time of discharge, or within seventy-two (72) hours of their leaving FIVE BELOW's employ.

Ms. Pringle and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring FIVE BELOW into compliance with Labor Code sections 201 and 202, pursuant to Labor Code sections 256 and/or 2699(a), (f), and (k).

Violation of California Labor Code § 212 – Payment of Wages by Non-Sufficient Funds Instrument

California Labor Code section 212 prohibits employers from issuing any instruments for the payment of wages unless such instruments are negotiable and payable in cash, on demand, and without discount. Moreover, at the time of the issuance of payment and for a reasonable time thereafter, which must be at least 30 days, the maker or drawer must have sufficient funds in, or credit, arrangement, or understanding with the drawee for its payment.

During the relevant time period, FIVE BELOW had a practice and/or policy of issuing paychecks that were improper forms of payment, in that FIVE BELOW paid wages to Ms. Pringle and other aggrieved employees by a non-sufficient funds instrument. For example, upon information and belief, Ms. Pringle and other aggrieved employees received their final wages via checks which bounced when Ms. Pringle and other aggrieved employees attempted to redeem them within 30 days of their issuance. Thus, FIVE BELOW's practice was, and continues to be, unlawful as it did not give Ms. Pringle and other aggrieved employees easy access to the entirety of their wages without discount and without delay and the drawer had insufficient funds for the payment of wages.

California courts recognize a policy favoring the full and prompt payment of wages to employees. FIVE BELOW's practice is inconsistent with this policy because it did not allow Ms. Pringle and other aggrieved employees to access their entire wages without discount and without delay, in violation of California Labor Code section 212.

Ms. Pringle and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring FIVE BELOW into compliance with Labor Code section 212, pursuant to Labor Code sections 203.1, 225.5, and/or 2699(a), (f), and (k).

Violation of California Labor Code § 2810.5(a)(1)(A)-(C) – Failure to Provide Notice of Material Terms of Employment

California's Wage Theft Prevention Act was enacted to ensure that employers provide employees with basic information material to their employment relationship at the time of hiring, and to ensure that employees are given written and timely notice of any changes to basic information material to their employment. Codified at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an employer must provide written notice to employees of the rate(s) of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, the regular payday designated by the employer, and any allowances claims as part of the minimum wage, including meal or lodging allowances. Effective January 1, 2015, an employer's written notice pursuant to section 2810.5 must also include a statement that the employee may accrue and use sick leave; has a right to request and

use accrued paid sick leave; may not be terminated or retaliated against for using or requesting the use of accrued paid sick leave; and has the right to file a complaint against an employer who retaliates.

FIVE BELOW failed to provide Ms. Pringle and other aggrieved employees written notice that lists the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). FIVE BELOW's failure to provide Ms. Pringle and other aggrieved employees with written notice of basic information regarding their employment with FIVE BELOW is in violation of Labor Code section 2810.5.

Ms. Pringle and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring FIVE BELOW into compliance with Labor Code section 2810.5, pursuant to Labor Code sections 2699(a), (f), and (k).

California Labor Code § 558(a)

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

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

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

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

Sairah Budhwani
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, CA 90067
(310) 556-4811

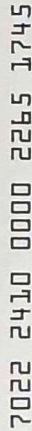
Best Regards,

A handwritten signature in black ink, reading "Sairah Budhwani" in a cursive script.

Sairah Budhwani

Copy: FIVE BELOW, INC. (via U.S. Certified Mail); 1616 HOLDINGS, INC. (via U.S. Certified Mail)

Los Angeles, CA. 90067



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