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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

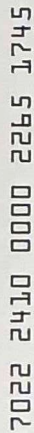
Best Regards,

A handwritten signature in black ink, reading "Sairah Budhwani". The signature is fluid and cursive, with a long horizontal flourish extending from the end of the name.

Sairah Budhwani

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

Los Angeles, CA. 90067



OFFICIAL USE

PS Form 3800, April 2015 PSN 7530-02-000-9047

Domestic Return Receipt

3. Service Type	☐ Priority Mail Express®
☐ Adult Signature	☐ Registered Mail™
☐ Adult Signature Restricted Delivery	☐ Registered Mail Restricted Delivery
☐ Certified Mail®	☐ Signature Confirmation™
☐ Certified Mail Restricted Delivery	☐ Signature Confirmation Restricted Delivery
☐ Collect on Delivery	☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

Capstone Law, APC
1875 Century Park, East, 1000
Los Angeles, CA. 90067



7022 2410 0000 2265 1738

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☒ Return Receipt (hardcopy) \$

☐ Return Receipt (electronic) \$

Postmark

1616 HOLDINGS, INC.
701 MARKET ST. STE 300
PHILADELPHIA, PA 19106

1616 HOLDINGS, INC.
701 MARKET ST. STE 300
PHILADELPHIA, PA 19106

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the receipt to you.

1616 HOLDINGS, INC.
701 MARKET ST. STE 300
PHILADELPHIA, PA 19106



9590 9402 8803 4005 5740 40

2. 7022 2410 0000 2265 1738

Restricted Delivery

(over \$500)

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

COMPLETE THIS SECTION ON DELIVERY

A. Signature

☒

Agent

☐

Addressee

B. Received by (Printed Name)

C. Date of Delivery

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

3. Service Type

☐ Adult Signature

☐ Adult Signature Restricted Delivery

☒ Certified Mail[®]

☐ Certified Mail Restricted Delivery

☐ Collect on Delivery

☐ Delivery Restricted Delivery

☐ Restricted Delivery

☐ Priority Mail Express[®]

☐ Registered Mail[™]

☐ Registered Mail Restricted Delivery

☐ Signature Confirmation[™]

☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt