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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA

22CV403852

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

Plaintiff,

vs.

FLOOR AND DECOR OUTLETS OF
AMERICA, INC., a Delaware
corporation; FLOOR & DECOR
HOLDINGS, INC., a Delaware
corporation; and DOES 1 through 10,
inclusive,

Defendants.

Case No.:

**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 Rafael Navarro, 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
9 of 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
11 Order were committed, as set forth in this complaint, at any time between one year prior to the
12 filing of the pre-filing written notice to the Labor and Workforce Development Agency
13 (“LWDA”) in this case on July 26, 2022, 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
22 notions of fair play and substantial justice. There is no basis for federal diversity jurisdiction
23 in this action given that the State of California, as the real party in interest in this action, is not
24 a “citizen” for purposes of satisfying diversity jurisdiction. *Urbino v. Orkin Servs. of Cal.*,
25 726 F.3d 1118, 1123 (9th Cir. Cal. 2013). *Urbino* also holds that civil penalties cannot be
26 aggregated to satisfy the amount in controversy requirement for federal diversity jurisdiction
27 in this action, and that diversity jurisdiction cannot be established when Plaintiff’s share of the
28 civil penalties attributable to violations personally suffered are less than \$75,000. *Id.* at 1122.

4. Venue is proper in this Court because Defendants employ or employed persons within the County of Santa Clara and have violated the requirements of the California Labor Code and applicable IWC Wage Order in this county which give rise to the penalties sought in this action. Cal. Code Civ. P. § 393. Specifically, Defendants have violated the requirements of the California Labor Code and applicable IWC Wage Order in at least one location within the County of Santa Clara, including Defendants' store located in Milpitas (1665 North McCarthy Boulevard, Milpitas, California 95035-2584). Pursuant to California Civil Code of Procedure section 393, venue is proper for the recovery of a penalty imposed by statute in the county in which the cause, or some part of the cause, arose. Because Defendants have employees in Santa Clara County, and Plaintiff could bring an action filed under PAGA in any county in which an aggrieved employee worked and Labor Code violations occurred, venue is proper. *Crestwood Behavioral Health, Inc. v. Superior Court of Alameda County*, 60 Cal. App. 5th 1069 (2021).

5. California Labor Code sections 2698, *et seq.*, the “Labor Code Private Attorneys General Act of 2004” (“PAGA”), 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 Rafael Navarro is a resident of Oxnard, in Ventura County, California. Defendants employed Plaintiff as an hourly paid, non-exempt employee from approximately October 2021 to March 2022. Plaintiff worked as a Cashier for Defendants at their warehouse store located in Oxnard, California. Plaintiff typically worked nine (9) or more hours per day, five (5) days per week. At the time Plaintiff's employment with Defendants ended, he was compensated approximately \$16.50 per hour. Plaintiff's job duties included, without limitation, ringing up customer transactions, providing customer service, and ensuring balanced cash registers at end of day.

7. On information and belief, Defendants required some employees, including Plaintiff, to execute an arbitration agreement at the time of their hire or during their

1 employment. On further information and belief, Defendants' arbitration agreement was and is
2 both procedurally and substantively unconscionable. Specifically, Defendants presented
3 employees with an "Agreement for Arbitration of Disputes for California Only" ("Arbitration
4 Agreement") during the onboarding process, which had to be reviewed and acknowledged
5 immediately. Specifically, the Arbitration Agreement was one of several documents
6 presented to new employees for signature during the orientation process, including the
7 Associate Handbook; Acknowledgment and Receipt of F&D's Attendance and Tardy Policy;
8 California Meal Period Waiver; and Acknowledgment and Receipt of F&D's Vacation, Sick
9 Time and Holiday Pay Policy, among other documents. Also, employees did not have a
10 meaningful opportunity to negotiate the terms of the Arbitration Agreement. Rather, it was
11 provided to Defendants' employees for them to sign on a take-it or leave-it basis, along with
12 all of the other on-boarding documents. Further, Defendants did not set forth in the agreement
13 or otherwise provide employees with the rules which will govern the arbitration, instead
14 forcing employees to seek this information out on their own ("If you wish to have copies of
15 the rules for employment arbitrations provided by JAMS, please inform the Company in
16 writing and the Company will provide them to you . . . , and you may also obtain such rule[s]
17 directly from JAMS at www.jamsadr.com.").

18 8. FLOOR AND DECOR OUTLETS OF AMERICA, INC. was and is, upon
19 information and belief, a Delaware corporation, and at all times hereinafter mentioned, an
20 employer whose employees are engaged throughout this county, the State of California.

21 9. FLOOR & DECOR HOLDINGS, INC. was and is, upon information and
22 belief, a Delaware corporation, and at all times hereinafter mentioned, an employer whose
23 employees are engaged throughout this county, the State of California.

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

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

1 were the partners, agents, owners, or managers of FLOOR AND DECOR OUTLETS OF
2 AMERICA, INC. and FLOOR & DECOR HOLDINGS, INC. at all relevant times.

3 12. 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, FLOOR AND
5 DECOR OUTLETS OF AMERICA, INC.; FLOOR & DECOR HOLDINGS, INC.; and/or
6 DOES 1 through 10 (collectively, “Defendants” or “FLOOR AND DECOR”), each acting as
7 the agent, employee, alter ego, and/or joint venturer of, or working in concert with, each of the
8 other co-Defendants and was acting within the course and scope of such agency, employment,
9 joint venture, or concerted activity with legal authority to act on the others’ behalf. The acts
10 of any and all Defendants were in accordance with, and represent, the official policy of
11 Defendants.

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

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

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

1 available to Plaintiff and other non-party Aggrieved Employees under the law.

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

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

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

25 18. FLOOR AND DECOR OUTLETS OF AMERICA, INC.; FLOOR & DECOR
26 HOLDINGS, INC.; and/or DOES 1 through 10 are therefore alter egos of each other.

27 19. Adherence to the fiction of the separate existence of Defendants would permit
28 an abuse of the corporate privilege, and would promote injustice by protecting Defendants

1 from liability for the wrongful acts committed by them under the name FLOOR AND
2 DECOR.

3 20. Plaintiff further alleges, upon information and belief, that the Defendants
4 FLOOR AND DECOR OUTLETS OF AMERICA, INC. and FLOOR & DECOR
5 HOLDINGS, INC. are alter egos of each other for the following reasons:

6 (a) According to FLOOR & DECOR HOLDINGS, INC.’s SEC Form 10-K
7 filing for 2021¹, FLOOR AND DECOR OUTLETS OF AMERICA, INC.
8 is a wholly owned subsidiary of FLOOR & DECOR HOLDINGS, INC.;
9 and

10 (b) According to the most recent “Statement of Information” form filed
11 with the California Secretary of State and the SEC Form 10-K filing,
12 FLOOR AND DECOR OUTLETS OF AMERICA, INC. and FLOOR &
13 DECOR HOLDINGS, INC. have the same entity and mailing address,
14 which is 2500 Windy Ridge Pkwy SE, Atlanta, Georgia 30339”;

15 (c) According to the most recent “Statement of Information” form filed
16 with the California Secretary of State and the SEC Form 10-K filing,
17 FLOOR AND DECOR OUTLETS OF AMERICA, INC. and FLOOR &
18 DECOR HOLDINGS, INC. share common officers, including Chief
19 Executive Officer, Thomas Taylor; Chief Financial Officer, Trevor
20 Lang; and Executive Vice President, Secretary and General Counsel,
21 David Christopherson; and

22 (d) On information and belief, FLOOR AND DECOR OUTLETS OF
23 AMERICA, INC. and FLOOR & DECOR HOLDINGS, INC. utilize the
24 same standardized employment forms and issue the same employment
25 policies.

26 //

27 ¹ 10-K “Annual Report :: Floor & Decor Holdings, Inc. (FND),”
28 <https://ir.flooranddecor.com/sec-filings/annual-reports###document-665-0001507079-22-000009-2> (last accessed Sept. 22, 2022).

1 **PAGA REPRESENTATIVE ALLEGATIONS**

2 21. Defendants own and operate approximately 25 locations in California. Upon
3 information and belief, Defendants maintain a single, centralized Human Resources (HR)
4 department at their corporate headquarters in Atlanta, Georgia, for all non-exempt, hourly paid
5 employees working for Defendants in California, which is responsible for the recruiting and
6 hiring of new employees, and communicating and implementing Defendants' company-wide
7 policies, including timekeeping policies and meal and rest period policies, to employees
8 throughout California.

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

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

25 24. Defendants continue to employ non-exempt or hourly paid employees in
26 California.

27 25. Plaintiff is informed and believes, and thereon alleges, that at all times herein
28 mentioned, Defendants were advised by skilled lawyers and other professionals, employees

1 and advisors knowledgeable about California labor and wage law, employment and personnel
2 practices, and about the requirements of California law.

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

6 27. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
7 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
8 receive certain wages for overtime compensation and that they were not receiving certain
9 wages for overtime compensation.

10 28. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
11 should have known that other non-party Aggrieved Employees were entitled to be paid at a
12 regular rate of pay, and corresponding rates of pay for overtime wages and/or meal and rest
13 period premiums, that included as eligible income all remuneration required by law, including
14 but not limited to, all income derived from incentive pay, nondiscretionary bonuses, and/or
15 other forms of compensation, but failed to include all forms of remuneration in calculating the
16 regular rate of pay for other non-party Aggrieved Employees.

17 29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
18 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
19 receive at least minimum wages for compensation and that they were not receiving at least
20 minimum wages for work that was required to be done off-the-clock. In violation of the
21 California Labor Code, Plaintiff and other non-party Aggrieved Employees were not paid at
22 least minimum wages for work done off-the-clock.

23 30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
24 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
25 meal periods in accordance with the California Labor Code and applicable IWC Wage Order
26 or payment of one (1) additional hour of pay at their regular rates of pay when they were not
27 provided with timely, uninterrupted, thirty (30) minute meal periods and that Plaintiff and
28 other non-party Aggrieved Employees were not provided with all meal periods or payment of

one (1) additional hour of pay at their regular rates of pay when they did not receive a timely, uninterrupted, thirty (30) minute meal period.

31. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiff and other non-party Aggrieved Employees were entitled to rest periods in accordance with the California Labor Code and applicable IWC Wage Order or payment of one (1) additional hour of pay at their regular rates of pay when they were not authorized and permitted to take a compliant rest period. In violation of the California Labor Code, Plaintiff and other non-party Aggrieved Employees were not authorized and permitted to take compliant rest periods, nor did Defendants provide Plaintiff and other non-party Aggrieved Employees with payment of one (1) additional hour of pay at their regular rates of pay when they were not authorized and permitted to take a compliant rest period.

32. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiff and other non-party Aggrieved Employees were entitled to receive complete and accurate wage statements in accordance with California law. In violation of the California Labor Code, Plaintiff and other non-party Aggrieved Employees were not provided complete and accurate wage statements.

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

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

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

1 timely payment of all wages earned upon termination of employment. In violation of the
2 California Labor Code, Plaintiff and other non-party Aggrieved Employees did not receive
3 payment of all wages due, including, but not limited to, overtime wages, minimum wages,
4 and/or meal and rest period premiums, within permissible time periods.

5 36. 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 their full wages due without having to execute a release of claims. In violation of the
8 California Labor Code, Defendants required Plaintiff and other non-party Aggrieved
9 Employees to release their claims for unpaid wages as a condition to receiving their
10 paychecks.

11 37. 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 suitable seating and/or were entitled to sit when it did not interfere with the performance of
14 their duties and also have seats nearby to use during a lull in tasks that do require moving
15 about or standing. In violation of the California Labor Code and applicable IWC Wage Order,
16 Defendants failed to provide Plaintiff and other non-party Aggrieved Employees with suitable
17 seating.

18 38. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
19 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
20 receive reimbursement for all business-related expenses and costs they incurred during the
21 course and scope of their employment and that they did not receive reimbursement of
22 applicable business-related expenses and costs incurred.

23 39. Plaintiff is informed and believes, and thereon alleges, that at all times herein
24 mentioned, Defendants knew or should have known that Defendants had a duty to provide
25 Plaintiff and other non-party Aggrieved Employees with written notice of the material terms of
26 their employment with Defendants as required by the California Wage Theft Prevention Act,
27 but failed to do so.

28 40. Plaintiff is informed and believes, and thereon alleges, that at all times herein

mentioned, Defendants knew or should have known that they had a duty to compensate Plaintiff and other non-party Aggrieved Employees for all hours worked, and that Defendants had the financial ability to pay such compensation, but willfully, knowingly, and intentionally failed to do so, and falsely represented to Plaintiff and other non-party Aggrieved Employees that they were properly denied wages, all in order to increase Defendants' profits.

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

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

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

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

- (a) The aggrieved employee shall give written notice by online filing (hereinafter "Employee's Notice") to the LWDA and by certified mail to the employer of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations.
- (b) An aggrieved employee's notice filed with the LWDA pursuant to 2699.3(a) and any employer response to that notice shall be accompanied by a filing fee of seventy-five dollars (\$75).

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

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

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

19 (b) An aggrieved employee’s notice filed with the LWDA pursuant to
20 2699.3(c) and any employer response to that notice shall be
21 accompanied by a filing fee of seventy-five dollars (\$75).

22 (c) The employer may cure the alleged violation within thirty-three (33)
23 calendar days of the postmark date of the notice. The employer shall
24 give written notice by certified mail within that period of time to the
25 aggrieved employee or representative and the agency if the alleged
26 violation is cured, including a description of actions taken, and no civil
27 action pursuant to Section 2699 may commence. If the alleged violation
28 is not cured within the 33-day period, the employee may commence a

1 civil action pursuant to Section 2699.

2 46. On July 26, 2022, Plaintiff provided written notice by online filing to the
3 LWDA and by certified mail to Defendants of the specific provisions of the California Labor
4 Code alleged to have been violated, including facts and theories to support the alleged
5 violations, in accordance with California Labor Code section 2699.3. Plaintiff's written
6 notice was accompanied with the applicable filing fee of seventy-five dollars (\$75). The
7 LWDA PAGA Administrator has confirmed receipt of Plaintiff's written notice and assigned
8 Plaintiff PAGA Case Number LWDA-CM-897774-22. A true and correct copy of Plaintiff's
9 written notice to the LWDA and Defendants dated July 26, 2022, is attached hereto as
10 "Exhibit 1."

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

14 48. Thus, Plaintiff has satisfied the administrative prerequisites under California
15 Labor Code sections 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
16 violations of California Labor Code sections 201, 202, 204, 206.5, 226(a), 226.7, 510, 512(a),
17 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

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

1 California against Defendants for violations of Labor Code sections 510, 512(a), 516, 1198,
2 and the applicable IWC Wage Order. Plaintiff, acting in the public interest as a private
3 attorney general, does not seek the recovery of unpaid wages under Labor Code section 558
4 from Defendants for violations of Labor Code sections 510, 512(a), 516, 1198, and the
5 applicable IWC Wage Order.

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

10 51. 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 52. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a),
14 2699.3(a), 2699.3(c), 2699.5, and section 558, Plaintiff, acting in the public interest as a
15 private attorney general, seeks assessment and collection of civil penalties for himself, all
16 other non-party Aggrieved Employees, and the State of California against Defendants for
17 violations of California Labor Code sections 201, 202, 204, 206.5, 226(a), 226.7, 510, 512(a),
18 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, 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 53. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
23 and every allegation set forth above.

24 54. California Labor Code §§ 2698, *et seq.* ("PAGA") permits Plaintiff to recover
25 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code
26 section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 204, 206.5, 226(a),
27 226.7, 510, 512(a), 1174(d), 1194, 1197, 1198, and 2802. Labor Code section 2699.3(c)
28 permits aggrieved employees, including Plaintiff, to recover civil penalties for violations of

1 those Labor Code sections not found in section 2699.5, including sections 516, 1182.12, and
2 2810.5.

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

- 5 (a) Violation of Labor Code sections 510 and 1198, and the applicable IWC
6 Wage Order for Defendants' failure to compensate Plaintiff and other
7 non-party Aggrieved Employees with all required overtime pay, as set
8 forth below;
- 9 (b) Violation of Labor Code sections 226.7, 510, and 1198, and the
10 applicable IWC Wage Order for Defendants' failure to include all forms
11 of remuneration in the "regular rate" of pay as required by law for
12 purposes of paying overtime wages and/or meal and rest period
13 premiums to other non-party Aggrieved Employees, as set forth below;
- 14 (c) Violation of Labor Code sections 1182.12, 1194, 1197, and 1198, and
15 the applicable IWC Wage Order for Defendants' failure to compensate
16 Plaintiff and other non-party Aggrieved Employees with at least
17 minimum wages for all hours worked, as set forth below;
- 18 (d) Violation of Labor Code sections 226.7, 512(a), 516, and 1198, and the
19 applicable IWC Wage Order for Defendants' failure to provide Plaintiff
20 and other non-party Aggrieved Employees with meal periods, as set
21 forth below;
- 22 (e) Violation of Labor Code sections 226.7, 516, and 1198, and the
23 applicable IWC Wage Order for Defendants' failure to authorize and
24 permit Plaintiff and other non-party Aggrieved Employees to take rest
25 periods, as set forth below;
- 26 (f) Violation of Labor Code sections 226(a) and 1198, and the applicable
27 IWC Wage Order for failure to provide accurate and complete wage
28 statements to Plaintiff and other non-party Aggrieved Employees, as set

1 forth below;

2 (g) Violation of Labor Code sections 1174(d) and 1198, and the applicable
3 IWC Wage Order for failure to maintain payroll records, as set forth
4 below;

5 (h) Violation of Labor Code sections 204 for failure to pay all earned wages
6 during employment, as set forth below;

7 (i) Violation of Labor Code section 201 and 202 for failure to pay all
8 earned wages upon termination, as set forth below;

9 (j) Violation of Labor Code section 206.5 for requiring Plaintiff and other
10 non-party Aggrieved Employees to execute a release of claims as a
11 condition to receiving wages due to them, as set forth below;

12 (k) Violation of Labor Code section 1198 and the applicable IWC Wage
13 Order for failing to provide suitable seating to Plaintiff and other non-
14 party Aggrieved Employees, as set forth below;

15 (l) Violation of Labor Code sections 2802 for failure to reimburse Plaintiff
16 and other non-party Aggrieved Employees for all business expenses
17 necessarily incurred, as set forth below; and

18 (m) Violation of Labor Code section 2810.5 for failure to provide notice of
19 material terms of employment, as set forth below.

20 **FAILURE TO PAY OVERTIME**

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

22 56. Labor Code section 1198 makes it illegal to employ an employee under
23 conditions of labor that are prohibited by the applicable wage order. California Labor Code
24 section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall
25 be the . . . standard conditions of labor for employees. The employment of any employee . . .
26 under conditions of labor prohibited by the order is unlawful.”

27 57. California Labor Code section 1198 and the applicable IWC Wage Order
28 provide that it is unlawful to employ persons without compensating them at a rate of pay

1 either time-and-one-half or two-times that person's regular rate of pay, depending on the
2 number of hours worked by the person on a daily or weekly basis.

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

8 59. The applicable IWC Wage Order further provides that Defendants are and were
9 required to pay Plaintiff and other non-party Aggrieved Employees working more than twelve
10 (12) hours in a day, overtime compensation at a rate of two (2) times their regular rate of pay.
11 An employee's regular rate of pay includes all remuneration for employment paid to, or on
12 behalf of, the employee, including nondiscretionary bonuses and incentive pay.

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

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

25 62. First, during the relevant period, Defendants had, and continue to have, a
26 company-wide policy of discouraging and impeding Plaintiff and other non-party Aggrieved
27 Employees from recording hours worked that were outside of their scheduled shifts in order to
28 limit the amount of overtime employees could accrue. As stated in Defendants' Associate

1 Handbook, “Non-exempt (hourly) associates may not work more than their regularly
2 scheduled daily or weekly hours without prior authorization from their manager” or otherwise
3 associates “may be subject to disciplinary action, up to and including termination of
4 employment.” This policy of limiting overtime, coupled with Defendants’ practices of
5 understaffing and assignment of heavy workloads (*see infra*), led Plaintiff and other non-party
6 Aggrieved Employees to work off-the-clock outside their scheduled shift times. For example,
7 at least once per week, Plaintiff was required to spend several minutes speaking to managers
8 about work-related matters before he clocked in. Moreover, once or twice per week during
9 closing shifts, Plaintiff was required to balance the cash registers after he clocked out, which
10 took approximately 20 minutes if another associate was there to help, and up to 45 minutes if
11 he had to do it alone. As a further example, when Plaintiff attended new employee training,
12 management required him to clock out after eight (8) hours had passed and to complete the
13 remaining 30-45 minutes of training off-the-clock. This off-the-clock work could have been
14 recorded by Defendants, but they refused to do so to avoid payment of additional wages to
15 Plaintiff and other non-party Aggrieved Employees. Thus, Defendants failed to track all of
16 the time that employees spent performing work-related tasks outside of their scheduled shifts,
17 and Plaintiff and other non-party Aggrieved Employees received no compensation for this
18 time.

19 63. Additionally, on information and belief, Defendants’ management had a practice
20 of improperly adjusting employees’ timesheets when they had accrued unauthorized overtime
21 hours in order to avoid payment of additional wages to Plaintiff and other non-party Aggrieved
22 Employees. On information and belief, on several occasions when Plaintiff worked more than
23 eight (8) hours, Defendants’ management altered Plaintiff’s timesheets by shaving 10-20
24 minutes off them in order to avoid paying overtime wages.

25 64. Second, Defendants had, and continue to have, a uniform practice and/or policy
26 of understaffing their locations which resulted in a lack of adequate meal period coverage,
27 because there were too few employees on duty to handle the heavy workload. Also, Defendants
28 have systematically, and on a company-wide basis, understaffed their locations by adopting a

1 single-staffing model for some positions, thereby failing to provide adequate meal period
2 coverage to permit those employees to take compliant meal periods. Moreover, Defendants had
3 a practice of failing to schedule meal periods, which further caused Plaintiff and other non-
4 party Aggrieved Employees to not be relieved of their duties for compliant meal periods. As a
5 result of this inadequate meal period coverage, Plaintiff and other non-party Aggrieved
6 Employees were not always afforded uninterrupted 30-minute meal periods during shifts when
7 they were entitled to receive a meal period. Consequently, Plaintiff and other non-party
8 Aggrieved Employees were required to work through and/or had their unpaid meal periods
9 interrupted in order to complete their assigned duties, time for which they were not paid.

10 65. In conjunction with understaffing their facilities, Defendants had a company-
11 wide practice and/or policy of requiring that Plaintiff and other non-party Aggrieved
12 Employees carry and respond to a company-issued radio at all times. As a result, Defendants'
13 management contacted Plaintiff and other non-party Aggrieved Employees on their company-
14 issued radios during unpaid meal periods to discuss work-related matters. For example,
15 Plaintiff would have his meal periods interrupted and/or shortened to discuss work-related tasks
16 with Defendants' managers. Defendants knew or should have known that Plaintiff and other
17 non-party Aggrieved Employees were performing work while off- the-clock in order to meet
18 Defendants' expectations, but failed to compensate them for this time.

19 66. Third, because Defendants frowned upon employees accruing meal period
20 penalties, Defendants pressured Plaintiff and other non-party Aggrieved Employees to clock
21 out for meal periods, on threat of discipline, and/or adjusted their time records to reflect
22 compliant meal periods, even when they did not receive a compliant meal period, in order to
23 strictly limit meal penalties that Defendants would otherwise owe. For example, at least two (2)
24 times during his employment, Plaintiff was told by managers to clock out before his fifth hour
25 of work in order to record a compliant meal period but pressured not to take his meal period
26 until later in the day due to lack of meal coverage. Thus, Plaintiff and other non-party
27 Aggrieved Employees performed work during meal periods for which they were not paid.

28 67. Fourth, in order to similarly prevent Plaintiff and other non-party Aggrieved

1 Employees from incurring meal period penalties that Defendants would otherwise owe,
2 Defendants' timekeeping system prevented Plaintiff and other non-party Aggrieved Employees
3 from recording all hours worked when their meal periods were shortened or interrupted, because
4 the system locked out Plaintiff and other non-party Aggrieved Employees once they clocked
5 out for a meal period, and would not permit them to clock back in from a meal period until 30
6 minutes had elapsed. Thus, Defendants' timekeeping system further prevented Plaintiff and
7 other non-party Aggrieved Employees from recording all hours worked when their meal
8 periods were shortened or interrupted.

9 68. Defendants knew or should have known that, as a result of these company-wide
10 practices and/or policies, Plaintiff and other non-party Aggrieved Employees were performing
11 their assigned duties off-the-clock before and after their shifts and during meal periods, and
12 were suffered or permitted to perform work for which they were not paid. Because Plaintiff
13 and other non-party Aggrieved Employees worked shifts of eight (8) hours a day or more, or
14 forty (40) hours a week or more, some of this off-the-clock work qualified for overtime
15 premium pay. Therefore, Plaintiff and other non-party Aggrieved Employees were not paid
16 overtime wages for all of the overtime hours they actually worked.

17 69. Furthermore, Defendants did not pay other non-party Aggrieved Employees the
18 correct overtime rates for the recorded overtime hours that they generated. In addition to an
19 hourly wage, Defendants paid other non-party Aggrieved Employees incentive pay,
20 nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the
21 California Labor Code, Defendants failed to incorporate all remunerations, including incentive
22 pay and/or nondiscretionary bonuses, into the calculation of the regular rate of pay for
23 purposes of calculating the overtime wage rates. Therefore, during times when other non-
24 party Aggrieved Employees worked overtime and received these other forms of pay,
25 Defendants failed to pay all overtime wages by paying a lower overtime rate than required.

26 70. Defendants' failure to pay Plaintiff and other non-party Aggrieved Employees
27 the balance of overtime compensation as required by California law, violates the provisions of
28 California Labor Code sections 510 and 1198. Plaintiff and other non-party Aggrieved

1 Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections
2 558 and/or 2699(a), (f), and (g).

3 **FAILURE TO PAY MINIMUM WAGES**

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

5 71. At all relevant times, California Labor Code sections 1182.12, 1194, 1197, and
6 1198 provide that the minimum wage for employees fixed by the IWC is the minimum wage
7 to be paid to employees, and the payment of a wage less than the minimum so fixed is
8 unlawful. Compensable work time is defined in IWC Wage Order No. 7-2001 as “the time
9 during which an employee is subject to the control of an employer, and includes all the time
10 the employee is suffered or permitted to work, whether or not required to do so.” Cal. Code.
11 Regs. tit. 8, § 11070(2)(G) (defining “Hours Worked”).

12 72. As stated above, due to Defendants’ policy of limiting the amount of overtime
13 employees could accrue, Defendants required Plaintiff and other non-party Aggrieved
14 Employees to perform work off-the-clock before and after their scheduled shifts, such as
15 speaking to managers about work-related matters, balancing cash registers during closing shifts,
16 and attending trainings. Defendants failed to track this time Plaintiff and other non-party
17 Aggrieved Employees spent working off-the-clock, and thus, Plaintiff and other non-party
18 Aggrieved Employees no compensation for this time. Furthermore, as stated above,
19 Defendants had, and continue to have, a company-wide policy of adjusting or shaving down
20 Plaintiff’s and other non-party Aggrieved Employees’ hourly clock-in and clock-out times in
21 their timekeeping system, resulting in the failure to compensate Plaintiff and other non-party
22 Aggrieved Employees fully for all hours worked and the failure to pay them minimum wages
23 for all hours actually worked.

24 73. Additionally, as set forth above, due to Defendants’ company-wide policies
25 and/or practices of understaffing and/or single-staffing, assignment of heavy workloads, failure
26 to adhere to a schedule for meal periods, requirement that employees to carry and use their
27 company-issued radio to communicate with supervisors during unpaid meal periods, and/or
28 subsequent lack of meal period coverage, Plaintiff and other non-party Aggrieved Employees

1 were impeded from taking all uninterrupted meal periods to which they were entitled and were
2 required to work off-the-clock. Further, to limit the meal penalties that Defendants would
3 otherwise owe, Defendants pressured Plaintiff and other non-party Aggrieved Employees to
4 clock out for meal periods and/or adjusted employee time records to reflect compliant meal
5 periods, but required them to continue working, time for which they were not paid. Also, as set
6 forth above, Defendants systematically failed to pay Plaintiff and other non-party Aggrieved
7 Employees for actual hours worked during unpaid meal periods, because Defendants'
8 timekeeping system locked out Plaintiff and other non-party Aggrieved Employees for 30
9 minutes when they clocked out for a meal period and would not permit them to clock back in
10 from a meal period until 30 minutes had elapsed.

11 74. Thus, Defendants did not pay minimum wages for all hours worked by Plaintiff
12 and other non-party Aggrieved Employees. To the extent that these off-the-clock hours did
13 not qualify for overtime premium payment, Defendants did not pay at least minimum wages
14 for those hours worked off-the-clock in violation of California Labor Code sections 1182.12,
15 1194, 1197, and 1198.

16 75. Defendants' failure to pay Plaintiff and other non-party Aggrieved Employees
17 minimum wages violates California Labor Code sections 1182.12, 1194, 1197, and 1198.
18 Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil
19 penalties pursuant to Labor Code sections 2699(a), (f), and (g).

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

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

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

25 77. At all relevant times herein set forth, California Labor Code section 512(a)
26 provides that an employer may not require, cause, or permit an employee to work for a period
27 of more than five (5) hours per day without providing the employee with a meal period of not
28 less than thirty (30) minutes, except that if the total work period per day of the employee is

1 not more than six (6) hours, the meal period may be waived by mutual consent of both the
2 employer and the employee. Under California law, first meal periods must start after no more
3 than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012).

4 78. At all relevant times herein set forth, California Labor Code sections 226.7,
5 512(a), 516, and 1198 provide that no employer shall require an employee to work during any
6 meal period mandated by an applicable order of the IWC.

7 79. At all relevant times herein set forth, Labor Code sections 226.7, 512(a), 1198,
8 and the applicable IWC Wage Order also require employers to provide a second meal period
9 of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay
10 an employee one (1) additional hour of pay at the employee's regular rate, except that if the
11 total hours worked is no more than twelve (12) hours, the second meal period may be waived
12 by mutual consent of the employer and the employee only if the first meal period was not
13 waived.

14 80. First, during the relevant time period, as stated, Defendants had, and continue to
15 have, company-wide policies and/or practices of understaffing their locations and adopting a
16 single-staffing model for some of their positions, which, combined with the assignment of heavy
17 workloads and failure to adhere to a schedule for meal periods, resulted in a lack of meal period
18 coverage and prevented Plaintiff and other non-party Aggrieved Employees from taking all
19 timely, uninterrupted meal periods to which they were entitled. As a result, Plaintiff and other
20 non-party Aggrieved Employees had to work through all or part of their meal periods, had their
21 meal periods interrupted, and/or had to wait extended periods of time before taking meal
22 periods. For example, Plaintiff regularly received his meal periods late because he was often
23 the only cashier on shift and there were an inadequate number of employees to take over his job
24 duties while he took his meal periods.

25 81. Second, as stated, Defendants had, and continue to have, a company-wide policy
26 and/or practice of requiring that Plaintiff and other non-party Aggrieved Employees carry a
27 company-issued radio to respond to requests at all times, including during meal periods. As a
28 result, Plaintiff's meal periods were interrupted almost every day by Defendants' management

1 asking him questions over the radio. Also, Plaintiff's meal periods were occasionally shortened
2 by management requiring him to go back to work due to an inadequate number of employees on
3 a shift.

4 82. Third, because Defendants frowned upon employees accruing meal period
5 penalties, Defendants' management pressured employees to clock out for meal periods to reflect
6 compliant meal periods, upon threat of discipline, and/or adjusted employee time records
7 regardless of whether they had received a compliant meal period or not, in order to strictly limit
8 meal penalties that would need to be paid by Defendants. Furthermore, as stated, Defendants'
9 company-wide timekeeping system prevented Plaintiff and other non-party Aggrieved
10 Employees from recording all hours worked when their meal periods were interrupted or
11 shortened, because the system locked out Plaintiff and other non-party Aggrieved Employees
12 once they clocked out for a meal period, and would not permit them to clock back in from a
13 meal period before 30 minutes had elapsed.

14 83. Fourth, Defendants did not provide other non-party Aggrieved Employees with
15 second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day.
16 Plaintiff and other non-party Aggrieved Employees did not sign valid meal period waivers on
17 days that they were entitled to meal periods and were not relieved of all duties.

18 84. Moreover, Defendants had a company-wide policy of requiring all newly hired
19 employees to sign blanket meal period waivers at or near their time of hire. Defendants took the
20 position that non-exempt, hourly paid employees had waived their rights to first and/or second
21 meal periods for the entirety of their employment and, on that basis, did not provide them with
22 all meal periods to which they were entitled. Moreover, Defendants' meal period waiver form
23 requires employees provide written notice should they wish to revoke the waiver. Defendants'
24 presumption that meal periods would not be provided for shifts in excess of five (5) hours but
25 less than six (6) hours, and for shifts in excess of ten (10) hours but less than twelve (12) hours
26 due to blanket meal period waivers signed at or near the time of hire, and imposition on
27 employees to revoke the waivers in writing, discouraged and impeded Plaintiff and other non-
28 party Aggrieved Employees from taking all meal periods to which they were entitled.

1 85. Furthermore, an employer’s obligation to provide a meal period is only
2 “triggered” when the employer “employs an employee for a work period of more than five hours
3 per day.” *Brinker*, 53 Cal. 4th at 1039 (“If an employer engages, suffers, or permits anyone to
4 work for a full five hours, its meal break obligation is triggered.”).

5 [A]fter the meal break obligation is triggered . . . an employer is put to a
6 choice: it must (1) afford an off-duty meal period; (2) consent to a mutually
7 agreed-upon waiver if one hour or less will end the shift; or (3) obtain
8 written agreement to an on-duty meal period if circumstances permit.
Failure to do one of these will render the employer liable for premium pay.

9 *Id.* (citing Cal. Labor Code § 226.7; Wage Order No. 5, subd. 11(A), (B)). That Defendants
10 required Plaintiff and other non-party Aggrieved Employees to sign meal period waivers
11 simultaneously at or near their time of hire (as opposed to on a specific work day) renders them
12 invalid and unenforceable, because Defendants’ obligation to provide Plaintiff and other non-
13 party Aggrieved Employees with meal periods did not arise until they had employed them for a
14 full five (5) hours.

15 86. At all times mentioned herein, Defendants knew or should have known that as a
16 result of their policies and/or practices, Plaintiff and other non-party Aggrieved Employees
17 were not actually relieved of all duties to take timely, uninterrupted meal periods. Defendants
18 further knew or should have known that they did not pay Plaintiff and other non-party
19 Aggrieved Employees meal period premiums when meal periods were late, interrupted,
20 shortened, and/or missed. For example, Defendants’ company-wide timekeeping system
21 prompts employees to attest to whether store management had provided them with the
22 opportunity to take a compliant meal period. Specifically, in order to clock out for the day,
23 Plaintiff and other non-party Aggrieved Employees were required to agree or disagree with the
24 question, “I hereby certify that I was provided with meal periods in accordance with Floor &
25 Decor’s meal and rest period policy.” Per Defendants’ “Kronos California Meal and Rest
26 Period Attestation (Training For Associates)” policy, Defendants ask associates to “[p]lease
27 answer these questions honestly” and that “managers are there to help [them] identify ways...to
28 take lunch and breaks in the future.” Nevertheless, on information and belief, management

1 instructed Plaintiff and other non-party Aggrieved Employees to agree that they had received
2 compliant meal periods even when they had not. Plaintiff was pressured to change his answer
3 from “Disagree” to “Agree” at least three (3) times per week due to management pressure.
4 Sometimes, management would change Plaintiff’s answer to “Agree” if he did not.

5 87. Furthermore, Defendants engaged in a company-wide practice and/or policy of
6 not paying all meal period premiums owed when compliant meal periods are not provided.
7 Because of this practice and/or policy, Plaintiff and other non-party Aggrieved Employees
8 have not received premium pay for missed, late, shortened, and interrupted meal periods.
9 Alternatively, to the extent that Defendants did pay Plaintiff and other non-party Aggrieved
10 Employees premium pay for missed, late, shortened, and interrupted meal periods, Defendants
11 did not pay other non-party Aggrieved Employees the correct rate of pay for premiums
12 because Defendant systematically failed to include all forms of compensation such as
13 incentive pay and/or nondiscretionary bonuses, and/or other forms of remuneration, in the
14 regular rate of pay.

15 88. Defendants’ conduct violates the applicable IWC Wage Order, and California
16 Labor Code sections 226.7, 512(a), 516, and 1198. Plaintiff and other non-party Aggrieved
17 Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections
18 558 and/or 2699(a), (f), and (g).

19 **FAILURE TO AUTHORIZE AND PERMIT REST PERIODS**

20 **VIOLATION OF LABOR CODE SECTIONS 226.7, 516, AND 1198**

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

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

1 (3 ½) hours.

2 91. At all relevant times, California Labor Code section 226.7 provides that no
3 employer shall require an employee to work during any rest period mandated by an applicable
4 order of the California IWC. To comply with its obligation to authorize and permit rest
5 periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an
6 employer must “relinquish any control over how employees spend their break time, and
7 relieve their employees of all duties—including the obligation that an employee remain on
8 call. A rest period, in short, must be a period of rest.” *Augustus v. ABM Security Services,*
9 *Inc.*, 2 Cal. 5th 257, 269-270 (2016).

10 92. Pursuant to the applicable IWC Wage Order and California Labor Code section
11 226.7(c), Plaintiff and other non-party Aggrieved Employees are entitled to recover from
12 Defendants one (1) additional hour of pay at their regular rates of pay for each work day that a
13 required rest period was not authorized and permitted.

14 93. During the relevant time period, Defendants regularly failed to authorize and
15 permit Plaintiff and other non-party Aggrieved Employees to take a ten (10) minute rest
16 period per each four (4) hour period worked or major fraction thereof. As with meal periods,
17 Defendants’ policies and/or practices of understaffing and/or single-staffing and assignment of
18 heavy workloads resulted in a lack of rest period coverage and prevented Plaintiff and other
19 non-party Aggrieved Employees from being relieved of all duty in order to take compliant rest
20 periods. Defendants also failed to schedule rest periods, which, coupled with Defendants’
21 failure to provide adequate rest period coverage, further led to Plaintiff and other non-party
22 Aggrieved Employees not being authorized and permitted to take compliant rest periods.
23 Further, as stated, Defendants had, and continue to have, a policy and/or practice of requiring
24 that Plaintiff and other non-party Aggrieved Employees carry a company-issued radio to
25 respond to requests from management at all times, including during rest periods.

26 94. Furthermore, Defendants maintained a company-wide on-premises rest period
27 policy, which effectively mandated that Plaintiff and other non-party Aggrieved Employees
28 remain on Defendants’ premises during their rest periods. Because Plaintiff and other non-

1 party Aggrieved Employees were restricted from leaving the premises during rest periods,
2 they were denied the ability to use their rest periods freely for their own purposes, such as
3 running personal errands. Thus, Defendants effectively maintained control over Plaintiff and
4 other non-party Aggrieved Employees during rest periods.

5 95. As a result of Defendants' practices and policies, Plaintiff and other non-party
6 Aggrieved Employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in
7 excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they
8 were entitled. For example, Plaintiff had to forego at least one rest period per shift, and often
9 had to forego two rest periods during each shift because the store was busy, did not have
10 coverage, and there was an expectation that employees would work through their rest periods.
11 When Plaintiff was provided with rest periods, they were regularly interrupted by his
12 managers asking him questions over the radio.

13 96. Defendants have also engaged in a systematic, company-wide practice and/or
14 policy of not paying rest period premiums owed when compliant rest periods are not
15 authorized and permitted. As with meal periods, Defendants' company-wide timekeeping
16 system prompts employees to attest to whether store management had provided them with the
17 opportunity to take compliant rest periods. Specifically, in order to clock out for the day,
18 Plaintiff and other non-party Aggrieved Employees were required to agree or disagree with
19 the question, "I hereby certify that I was authorized and permitted to take rest periods in
20 accordance with Floor & Decor's meal and rest period policy." Because Defendants frowned
21 upon employees accruing rest period penalties, on information and belief, Defendants
22 pressured Plaintiff and other non-party Aggrieved Employees to agree that they received all
23 for their rest periods and/or changed their responses from "Disagree" to "Agree," regardless of
24 whether Plaintiff and other non-party Aggrieved Employees had received compliant rest
25 periods or not, in order to strictly limit rest period penalties that Defendants would otherwise
26 owe. Because of this practice and/or policy, Plaintiff and other non-party Aggrieved
27 Employees have not received premium pay for all missed rest periods. Alternatively, to the
28 extent that Defendants did pay other non-party Aggrieved Employees one (1) additional hour

1 of premium pay for missed rest periods, Defendants did not pay other non-party Aggrieved
2 Employees at the correct rate of pay for premiums because Defendants failed to include all
3 forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms
4 of remuneration, in the regular rate of pay.

5 97. Accordingly, Defendants failed to authorize and permit all compliant rest
6 periods and failed to pay the full rest period premiums due. Defendants' conduct violates the
7 applicable IWC Wage Order and California Labor Code sections 226.7, 516, and 1198.
8 Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil
9 penalties pursuant to Labor Code sections 558 and/or 2699(a), (f), and (g).

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

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

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

17 99. During the relevant time period, Defendants have knowingly and intentionally
18 provided Plaintiff and other non-party Aggrieved Employees with uniform, incomplete, and
19 inaccurate wage statements. For example, Defendants issued uniform wage statements to
20 Plaintiff and other non-party Aggrieved Employees that fail to correctly list: gross wages
21 earned; total hours worked; net wages earned; and all applicable hourly rates in effect during
22 the pay period, including rates of pay for overtime wages and/or meal and rest period
23 premiums, and the corresponding number of hours worked at each hourly rate. Specifically,
24 Defendants violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

25 100. Because Defendants did not record the time Plaintiff and other non-party
26 Aggrieved Employees spent working off-the-clock and deducted time from their records for
27 meal periods that were interrupted and/or missed (and therefore time for which they should
28 have been paid), Defendants did not list the correct amount of gross wages and net wages

1 earned by Plaintiff and other non-party Aggrieved Employees in compliance with section
2 226(a)(1) and section 226(a)(5), respectively. For the same reason, Defendants failed to
3 accurately list the total number of hours worked by Plaintiff and other non-party Aggrieved
4 Employees, in violation of section 226(a)(2), and failed to list the applicable hourly rates of
5 pay in effect during the pay period and the corresponding accurate number of hours worked at
6 each hourly rate, in violation of section 226(a)(9).

7 101. Additionally, because Defendants did not calculate other non-party Aggrieved
8 Employees' regular rate of pay correctly for purposes of paying overtime wages and/or meal
9 and rest period premiums, Defendants did not list the correct amount of gross wages in
10 compliance with section 226(a)(1) and did not list the correct amount of net wages in violation
11 of section 226(a)(5). Defendants also failed to correctly list all applicable hourly rates in
12 effect during the pay period, namely, correct rates of pay for overtime wages and/or meal and
13 rest period premiums, in violation of section 226(a)(9).

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

22 103. California Labor Code section 1174(d) provides that “[e]very person employing
23 labor in this state shall . . . [k]eep a record showing the names and addresses of all employees
24 employed and the ages of all minors” and “[k]eep, at a central location in the state or at the
25 plants or establishments at which employees are employed, payroll records showing the hours
26 worked daily by and the wages paid to, and the number of piece-rate units earned by and any
27 applicable piece rate paid to, employees employed at the respective plants or
28 establishments. . . .” Labor Code section 1174.5 provides that employers are subject to a \$500

1 civil penalty if they fail to maintain accurate and complete records as required by section
2 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d),
3 Defendants willfully failed to maintain accurate payroll records for Plaintiff and other non-
4 party Aggrieved Employees showing the daily hours they worked and the wages paid thereto
5 as a result of failing to record the off-the-clock hours that they worked.

6 104. California Labor Code section 1198 provides that the maximum hours of work
7 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as
8 set forth in the applicable IWC Wage Order. Section 1198 further provides that “[t]he
9 employment of any employees for longer hours than those fixed by the order or under
10 conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC
11 Wage Order, employers are required to keep accurate time records showing when the
12 employee begins and ends each work period and meal period. During the relevant time
13 period, Defendants failed, on a company-wide basis, to keep accurate records of work period
14 and meal period start and stop times for Plaintiff and other non-party Aggrieved Employees, in
15 violation of section 1198. As stated, Defendants engaged in a company-wide practice and/or
16 policy of falsifying Plaintiff’s and other non-party Aggrieved Employees’ time records by
17 recording that compliant meal periods were taken regardless of if or when meal periods were
18 actually taken, and thereby failed to keep accurate records of meal start and end times for
19 Plaintiff and other non-party Aggrieved Employees. Furthermore, in light of Defendants’
20 failure to provide other non-party Aggrieved Employees with second 30-minute meal periods to
21 which they were entitled, Defendants kept no records of meal start and end times for second
22 meal periods.

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

26 **FAILURE TO PAY WAGES DURING EMPLOYMENT**

27 **VIOLATION OF LABOR CODE SECTION 204**

28 106. At all relevant times herein set forth, California Labor Code section 204

1 requires that all wages earned by any person in any employment between the 1st and the 15th
2 days, inclusive, of any calendar month, other than those wages due upon termination of an
3 employee, are due and payable between the 16th and the 26th day of the month during which
4 the labor was performed. Labor Code section 204 further provides that all wages earned by
5 any person in any employment between the 16th and the last day, inclusive, of any calendar
6 month, other than those wages due upon termination of an employee, are due and payable
7 between the 1st and the 10th day of the following month.

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

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

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

20 **FAILURE TO PAY WAGES UPON TERMINATION**

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

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

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

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

**REQUIRING RELEASE OF CLAIMS FOR WAGES DUE
VIOLATION OF LABOR CODE SECTION 206.5**

113. At all relevant times herein set forth, California Labor Code section 206.5 prohibits employers from requiring employees to execute releases of a claim or right "on account of wages due, or to become due, or made as an advance on wages to be earned, unless payment of those wages has been made. A release required or executed in violation of the provisions of this section shall be null and void as between the employer and the employee."

114. During the relevant time period, Defendants required Plaintiff and other non-party Aggrieved Employees to release their claims for meal and rest period violations as a condition to receiving their paychecks. For example, as stated, Defendants required Plaintiff and other non-party Aggrieved Employees to attest that they received compliant meal and rest periods. Defendants' "Kronos California Meal and Rest Period Attestation (Training For Associates)" policy states, "Please note: **You MUST complete these questions to be clocked out for the day.** If you do not complete these questions, you will **not be timed out for the day** and will have a missing punch." (emphasis in original). Defendants compelled Plaintiff and other non-party Aggrieved Employees to sign these false verifications when they, in fact, had not received all meal and rest periods and, thus, all meal and rest period premiums

1 they were owed.

2 115. Defendants' policy and practice of requiring Plaintiff and other non-party
3 Aggrieved Employees to release their claims for unpaid wages as a condition to receiving
4 their paychecks is in violation of California Labor Code section 206.5. Plaintiff and other
5 non-party Aggrieved Employees are therefore entitled to recover civil penalties pursuant to
6 Labor Code sections 2699(a), (f), and (g).

7 **FAILURE TO PROVIDE SUITABLE SEATING**
8 **VIOLATION OF LABOR CODE SECTION 1198 AND CALIFORNIA CODE OF**
9 **REGULATIONS, TITLE 8, SECTION 11070(14)(A)**

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

16 117. California Code of Regulations, Title 8, section 11070(14)(A) provides that
17 “[a]ll working employees shall be provided with suitable seats when the nature of the work
18 reasonably permits the use of seats.”

19 118. Defendants' California stores are generally similar in their layout and design
20 and there was, and continues to be, space behind cash wraps to allow for the presence and use
21 of a seat or stool by Plaintiff and other non-party Aggrieved Employees (with reasonable or no
22 modification to these work areas) during the performance of their work duties. Defendants
23 could have provided Plaintiff and other non-party Aggrieved Employees with a seat or stool at
24 cash wraps, but instead denied them seating and forced Plaintiff and other non-party
25 Aggrieved Employees to stand throughout the day.

26 119. Plaintiff and other non-party Aggrieved Employees spent a substantial portion
27 of their day behind or at these cash wraps. The nature of the work of an employee performing
28 cashier duties at cash wraps can reasonably be accomplished from a seated position.

1 However, Defendants systematically, and on a company-wide basis, do not provide seats or
2 stools at or near the cash wraps, forcing Plaintiff and other non-party Aggrieved Employees to
3 stand throughout their work shifts.

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

11 121. As a result of Defendants' company-wide policy and/or practice of prohibiting
12 employees from sitting during their shifts and company-wide failure to provide suitable
13 seating, Plaintiff and other non-party Aggrieved Employees were forced to stand during shifts
14 and denied seats. Defendants' failure to provide suitable seating to Plaintiff and other non-
15 party Aggrieved Employees violated and continues to violate California Labor Code section
16 1198 and IWC Wage Order No. 7-2001, subdivision 14(A).

17 122. Plaintiff and other non-party Aggrieved Employees are therefore entitled to
18 recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

19 **FAILURE TO PROVIDE SUITABLE SEATING**

20 **VIOLATION OF LABOR CODE SECTION 1198 AND CALIFORNIA CODE OF**
21 **REGULATIONS, TITLE 8, SECTION 11070(14)(B)**

22 123. At all relevant times herein, California Labor Code section 1198 makes it
23 illegal to employ an employee under conditions of labor that are prohibited by the applicable
24 IWC Wage Order. California Labor Code section 1198 requires that “. . . the standard
25 conditions of labor fixed by the commission shall be the . . . standard conditions of labor for
26 employees. The employment of any employee . . . under conditions of labor prohibited by the
27 order is unlawful.”

28 124. California Code of Regulations, Title 8, section 11070 subdivision 14(B)

1 provides that “[w]hen employees are not engaged in the active duties of their employment and
2 the nature of the work requires standing, an adequate number of suitable seats shall be placed
3 in reasonable proximity to the work area and employees shall be permitted to use such seats
4 when it does not interfere with the performance of their duties.”

5 125. During the relevant time period, Defendants violated California Labor Code
6 section 1198 and California Code of Regulations, Title 8, section 11070(14)(B), because
7 Plaintiff and other non-party Aggrieved Employees were not allowed to sit, even during lulls
8 in their work duties, nor were they provided with suitable seats in reasonable proximity to
9 their work areas.

10 126. Defendants’ California stores are generally similar in their layout and design
11 and there was, and continues to be, space near their work areas (with reasonable or no
12 modification to these work areas) to allow for the presence and use of a seat or stool by
13 Plaintiff and other non-party Aggrieved Employees during lulls in operation. Defendants
14 could have provided Plaintiff and other non-party Aggrieved Employees with a seat or stool in
15 their work areas, but instead denied Plaintiff and other non-party Aggrieved Employees
16 suitable seating altogether and effectively forced Plaintiff and other non-party Aggrieved
17 Employees to stand throughout the day.

18 127. Defendants did not provide Plaintiff and other non-party Aggrieved Employees
19 with seats or stools in reasonable proximity to their work areas to allow them to use seats
20 when it would not interfere with the performance of their duties for times when they were not
21 engaged in active duties that require standing. In other words, to the extent Plaintiff and other
22 non-party Aggrieved Employees engaged in duties in which the nature of the work required
23 standing, Defendants denied them the use of seats nearby during lulls in their work duties.
24 Moreover, Defendants did not inform Plaintiff and other non-party Aggrieved Employees of
25 their rights to a seat or stool under California law.

26 128. As a result of Defendants’ company-wide policy and/or practice of prohibiting
27 employees from sitting at any time, even when they were not engaged in active duties
28 requiring standing, and company-wide failure to provide seats in reasonable proximity to their

1 work areas, Plaintiff and other non-party Aggrieved Employees were forced to stand during
2 shifts and denied seats. Defendants' failure to provide suitable seating to Plaintiff and other
3 non-party Aggrieved Employees violated and continues to violate California Labor Code
4 section 1198 and IWC Wage Order No. 7-2001, subdivision 14(B).

5 129. Plaintiff and other non-party Aggrieved Employees are therefore entitled to
6 recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

7 **FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES**

8 **VIOLATION OF LABOR CODE SECTION 2802**

9 130. At all times herein set forth, California Labor Code section 2802 provides that
10 an employer must reimburse employees for all necessary expenditures and losses incurred by
11 the employee in the performance of his or her job. The purpose of Labor Code section 2802 is
12 to prevent employers from passing off their cost of doing business and operating expenses on
13 to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144
14 (2014). IWC Wage Order No. 7-2001 provides that: "[w]hen uniforms are required by the
15 employer to be worn by the employee as a condition of employment, such uniforms shall be
16 provided and maintained by the employer."

17 131. During the relevant time period, Defendants expected Plaintiff and other non-
18 party Aggrieved Employees to "present themselves in a neat, business-like manner at all times,"
19 requiring all clothing to be "clean, hemmed, wrinkle-free and in good repair at the start of every
20 shift," and adhere to grooming and cleanliness standards. Plaintiff and other non-party
21 Aggrieved Employees were thus required to report to work wearing clean uniform vests bearing
22 Defendants' company logo. However, Defendants did not provide their employees with
23 sufficient uniform vests to wear for their shifts throughout the week. For example, Defendants
24 only provided Plaintiff and other non-party Aggrieved Employees with one (1) uniform vest at
25 or around the time of hire. Because Defendants failed to provide Plaintiff and other non-party
26 Aggrieved Employees with an adequate number of uniform vests in relation to their scheduled
27 shifts, Plaintiff and other non-party Aggrieved Employees had to wash their uniforms more
28 frequently than they otherwise do laundry, and incur expenses in doing so. For example, due to

1 having only one uniform vest to wear for every shift, Plaintiff had to wash his uniform vest
2 more frequently than his regular clothing, thus incurring additional laundry expenses for the
3 upkeep of his uniform. Thus, Defendants failed to maintain uniforms they required Plaintiff
4 and other non-party Aggrieved Employees to wear during their shifts and forced them to incur
5 the cost of maintaining employee uniforms.

6 132. Defendants could have provided Plaintiff and other non-party Aggrieved
7 Employees with an adequate number of uniform vests and/or access to laundering services.
8 Or, Defendants could have reimbursed employees for their laundering expenses or provided a
9 uniform maintenance allowance. Instead, Defendants passed these operating costs off onto
10 Plaintiff and other non-party Aggrieved Employees.

11 133. Defendants' company-wide policy and/or practice of not reimbursing
12 employees for expenses necessarily incurred and passing on their operating costs to Plaintiff
13 and other non-party Aggrieved Employees violates California Labor Code section 2802.
14 Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil
15 penalties pursuant to Labor Code sections 2699(a), (f), and (g).

16 **FAILURE TO PROVIDE WRITTEN NOTICE OF MATERIAL TERMS OF**
17 **EMPLOYMENT**

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

19 134. California's Wage Theft Prevention Act was enacted to ensure that employers
20 provide employees with basic information material to their employment relationship at the
21 time of hiring, and to ensure that employees are given written and timely notice of any
22 changes to basic information material to their employment. Codified at California Labor
23 Code section 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an
24 employer must provide written notice to employees containing basic and material payroll
25 information, including, among other things, the rate(s) of pay and basis thereof, whether paid
26 by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for
27 overtime, the regular payday designated by the employer, and any allowances claims as part
28 of the minimum wage, including meal or lodging allowances. Labor Code § 2810.5(a)(1)(A)-

1 (C).

2 135. During the relevant time period, Defendants failed to provide Plaintiff and
3 other non-party Aggrieved Employees with written notice that lists all the requisite
4 information set forth in Labor Code section 2810.5(a)(1)(A)-(C).

5 136. Defendants' failure to provide Plaintiff and other non-party Aggrieved
6 Employees with written notice of basic information regarding their employment with
7 Defendants is in violation of California Labor Code section 2810.5. Plaintiff and other non-
8 party Aggrieved Employees are therefore entitled to recover civil penalties pursuant to Labor
9 Code sections 2699(a), (f), and (g).

10 **REQUEST FOR JURY TRIAL**

11 Plaintiff requests a trial by jury.

12 **PRAYER FOR RELIEF**

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

15 1. For civil penalties and attorneys' fees in excess of twenty-five thousand dollars
16 (\$25,000). Plaintiff reserves the right to amend his prayer for relief to seek a different
17 amount.

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

19 2. That the Court declare, adjudge and decree that Defendants violated the
20 following California Labor Code provisions as to Plaintiff and/or other non-party Aggrieved
21 Employees: 510 and 1198 (by failing to pay all overtime compensation); 226.7, 510, and 1198
22 (by failing to include all forms of remuneration in the "regular rate" of pay for purposes of
23 paying overtime wages and/or meal and rest period premiums); 1182.12, 1194, 1197, and
24 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512(a), 516,
25 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize and
26 permit all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage
27 statements and maintain accurate payroll records); 204 (by failing to timely pay all earned
28 wages during employment); 201 and 202 (by failing to timely pay all earned wages upon

1 termination); 206.5 (by requiring employees to release claims as a condition to receive
2 paychecks); 1198 and the applicable IWC Wage Order (by failing to provide suitable seating);
3 2802 (by failing to reimburse business expenses); and 2810.5 (by failing to provide written
4 notice of information material to employment);

5 3. For civil penalties, pursuant to California Labor Code sections 210, 226.3, 256,
6 558, 1174.5, 2699(a), (f), and (g), for violations of California Labor Code sections 201, 202,
7 204, 206.5, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802,
8 and 2810.5;

9 4. For attorneys' fees and costs pursuant to California Labor Code section
10 2699(g)(1), and any and all other relevant statutes, for Defendants' violations of California
11 Labor Code sections 201, 202, 204, 206.5, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12,
12 1194, 1197, 1197.1, 1198, 2802, and 2810.5;

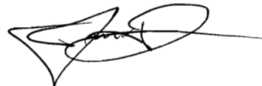
13 5. For pre-judgment and post-judgment interest as provided by law; and

14 6. For such other and further relief as the Court may deem equitable and
15 appropriate.

16
17 Dated: September 30, 2022

Respectfully submitted,

Capstone Law APC

19
20 By: 

21 Robert Drexler
22 Molly DeSario
23 Jonathan Lee

24 Attorneys for Plaintiff Rafael Navarro
25
26
27
28

EXHIBIT “1”



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July 26, 2022

VIA ONLINE SUBMISSION

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

Subject: *Rafael Navarro v. Floor and Decor Outlets of America, Inc., et al.*

Dear PAGA Administrator:

This office represents Rafael Navarro in connection with his claims under the California Labor Code. Mr. Navarro was an employee of FLOOR AND DECOR OUTLETS OF AMERICA, INC. and/or FLOOR & DECOR HOLDINGS, INC. For the purpose of this letter, Mr. Navarro collectively refers to these entities as "FND."

The employers may be contacted directly at the addresses below:

FLOOR AND DECOR OUTLETS OF
AMERICA, INC.
2500 WINDY RIDGE PKWY SE
ATLANTA, GA 30339

FLOOR & DECOR HOLDINGS, INC.
2500 WINDY RIDGE PKWY SE
ATLANTA, GA 30339

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

FND employed Mr. Navarro as an hourly paid, non-exempt employee from approximately October 2021 to March 2022. Mr. Navarro worked for FND as a Cashier at its warehouse store located in Oxnard, California. During his employment, Mr. Navarro typically worked nine (9) or more hours per day, five (5) days per week, from 11:30 a.m. to 8:30 p.m. Mr. Navarro was compensated approximately \$16.50 per hour at the time his employment ended with FND. His job duties included, without limitation, ringing up customer transactions, answering customer questions, and ensuring balanced cash registers at end of day.

FND committed one or more of the following Labor Code violations against Mr. Navarro the facts and theories of which follow, making his an “aggrieved employee” pursuant to California Labor Code section 2699(c):¹

FND’s Company-Wide and Uniform Payroll and HR Practices

FLOOR AND DECOR OUTLETS OF AMERICA, INC. and FLOOR & DECOR HOLDINGS, INC. are both Delaware corporations. Together, they operate 160 total warehouse-format store locations, 2 design studios, and 4 distribution warehouses throughout the United States, including approximately 26 FND locations in California. Upon information and belief, FND maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Atlanta, Georgia, for all non-exempt, hourly paid employees working for FND in California, including Mr. Navarro and other aggrieved employees. At all relevant times, FND issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Navarro and other aggrieved employees, regardless of its location or position.

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

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

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

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

¹ These facts, theories, and claims are based on Mr. Navarro’s experience and counsel’s review of those records currently available relating to Mr. Navarro’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, Mr. Navarro reserves the right to supplement this letter with additional facts, theories, and claims if he becomes aware of them subsequent to the submission of this letter.

(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 period, FND had, and continues to have, a company-wide policy of discouraging and impeding Mr. Navarro and other aggrieved employees from recording hours worked that were outside of their scheduled shifts in order to limit the amount of overtime employees could accrue. As stated in FND's Associate Handbook, "Non-exempt (hourly) associates may not work more than their regularly scheduled daily or weekly hours without prior authorization from their manager" or otherwise associates "may be subject to disciplinary action, up to and including termination of employment." This policy of limiting overtime, coupled with FND's understaffing and assignment of heavy workloads (*see infra*), led Mr. Navarro and other aggrieved employees to work off-the-clock outside their scheduled shift times. For example, at least once per week, Mr. Navarro was required to spend several minutes speaking to managers about work-related matters before he clocked in. Moreover, once or twice per week during closing shifts, Mr. Navarro was required to balance the cash registers after he clocked out, which took approximately 20 minutes if another associate was there to help, and up to 45 minutes if he had to do it alone. As a further example, when Mr. Navarro attended new employee training, management required him to clock out after eight (8) hours had passed and to complete the remaining 30-45 minutes of training off-the-clock. This off-the-clock work could have been recorded by FND, but it refused to do so to avoid payment of additional wages to Mr. Navarro and other aggrieved employees. Thus, FND failed to track all of the time that employees spent performing work-related tasks outside of their scheduled shifts, and Mr. Navarro and other aggrieved employees received no compensation for this time.

Additionally, on information and belief, FND's management had a practice of improperly adjusting employees' timesheets when they had accrued unauthorized overtime hours in order to avoid payment of additional wages to Mr. Navarro and other aggrieved employees. On information and belief, on several occasions when Mr. Navarro worked more than eight (8) hours, management altered Mr. Navarro's timesheets by shaving 10-20 minutes off them in order to avoid paying overtime.

Further, during the relevant time period, FND only provided Mr. Navarro and other aggrieved employees with one (1) access point to its timekeeping system, which forced Mr. Navarro and other aggrieved employees to sometimes wait in line off-the-clock and under FND's control, time for which they were not paid.

Second, FND had, and continues to have, a uniform practice and/or policy of understaffing its locations which resulted in a lack of adequate meal period coverage, because there were too few employees on duty to handle the heavy workload. Also, FND has systematically, and on a company-wide basis, understaffed its locations by adopting a single-staffing model for some positions, thereby failing to provide adequate meal period coverage to permit those employees to take compliant meal periods. Moreover, FND had a practice of failing to adhere to a schedule for meal periods, which further caused Mr. Navarro and other aggrieved employees to not be relieved of their duties for compliant meal periods. As a result of this inadequate meal period coverage, Mr. Navarro and other aggrieved employees were not always afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period. Consequently, Mr. Navarro and other aggrieved employees were required to work through and/or had their unpaid meal periods interrupted in order to complete their assigned duties, time for which they were not paid.

In conjunction with understaffing its facilities, FND had a company-wide practice and/or policy of requiring that Mr. Navarro and other aggrieved employees carry and respond to a company-issued radio at all times. As a result, FND's management contacted Mr. Navarro and other aggrieved employees on their company-issued radios during unpaid meal periods to discuss work-related matters. For example, Mr. Navarro would have his meal periods interrupted and/or shortened to discuss work-related tasks with FND's managers. FND knew or should have known that Mr. Navarro and other aggrieved employees were performing work while off-the-clock in order to meet FND's expectations, but failed to compensate them for this time.

Third, because FND frowned upon employees accruing meal period penalties, FND pressured Mr. Navarro and other aggrieved employees to clock out for meal periods, on threat of discipline, and/or adjusted their time records to reflect compliant meal periods, even when they did not receive a compliant meal period, in order to strictly limit meal penalties that FND would otherwise owe. For example, at least two (2) times during his employment, Mr. Navarro was told by managers to clock out before his fifth hour of work in order to record a compliant meal period but pressured not to take his meal period until later in the day due to lack of meal coverage. Thus, Mr. Navarro and other aggrieved employees performed work during meal periods for which they were not paid.

Fourth, to prevent Mr. Navarro and other aggrieved employees from incurring meal period penalties that FND would otherwise owe, FND's timekeeping system prevented Mr. Navarro and other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted, because the system locked out Mr. Navarro and other aggrieved employees once they clocked out for a meal period, and would not permit them to clock back in from a meal period until 30 minutes had elapsed. Thus, FND's timekeeping system further prevented Mr. Navarro and other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted.

FND knew or should have known that as a result of these company-wide practices and/or policies, Mr. Navarro and other aggrieved employees were performing assigned duties off-the-clock during meal periods and before and after their shifts, and were suffered or permitted to perform work for which they were not paid. Because Mr. Navarro and other aggrieved employees worked shifts of eight (8) hours a day or more, or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium pay. Therefore, Mr. Navarro and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked.

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

FND's failure to pay Mr. Navarro and other aggrieved employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198. Mr. Navarro and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

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

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

First, as stated, during the relevant time period, as a result of FND’s policy of limiting the amount of overtime employees could accrue, FND required Mr. Navarro and other aggrieved employees to perform work off-the-clock before and after their scheduled shifts, such as speaking to managers about work-related matters, balancing cash registers during closing shifts, attending trainings, and waiting in line to clock-in at an inadequate number of timekeeping machines. FND failed to track this time Mr. Navarro and other aggrieved employees spent working off-the-clock, and thus, Mr. Navarro and other aggrieved employees received no compensation for this time. Furthermore, as stated above, FND had, and continues to have, a company-wide policy of adjusting or shaving down Mr. Navarro’s and other aggrieved employees’ hourly clock-in and clock-out times in its timekeeping system, resulting in the failure to compensate Mr. Navarro and other aggrieved employees fully for all hours worked and the failure to pay them minimum wages for all hours actually worked.

Second, as set forth above, due to FND’s company-wide policies and/or practices of understaffing and/or single-staffing, assignment of heavy workloads, failure to adhere to a schedule for meal periods, requirement that employees to carry and use their company-issued radio to communicate with supervisors during unpaid meal periods, and/or subsequent lack of meal period coverage, Mr. Navarro 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. Further, to limit the meal penalties that FND would otherwise owe, FND pressured Mr. Navarro and other aggrieved employees to clock out for meal periods and/or adjusted employee time records to reflect compliant meal periods, but required them to continue working, time for which they were not paid. Also, as set forth above, FND systematically failed to pay Mr. Navarro and other aggrieved employees for actual hours worked during unpaid meal periods, because FND’s timekeeping system locked out Mr. Navarro and other aggrieved employees for 30 minutes when they clocked out for a meal period and would not permit them to clock back in from a meal period until 30 minutes had elapsed.

Thus, FND did not pay at least minimum wages for all hours worked by Mr. Navarro and other aggrieved employees. Also, to the extent that these off-the-clock hours did not qualify for overtime premium payment, FND 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, FND regularly failed to pay at least minimum wages to Mr. Navarro and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Mr. Navarro and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f)-(g).

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

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

First, during the relevant time period, as stated, FND had, and continues to have, a company-wide policies and/or practices of understaffing its locations and adopting a single-staffing model for some of its positions, which, combined with the assignment of heavy workloads and failure to adhere to a schedule for meal periods, resulted in a lack of meal period coverage and prevented Mr. Navarro and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. As a result, Mr. Navarro 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, Mr. Navarro regularly received his meal periods late because he was often the only cashier on shift and there were an inadequate number of employees to take over his job duties while he took his meal periods.

Second, as stated, FND had, and continues to have, a company-wide policy and/or practice of requiring that Mr. Navarro and other aggrieved employees carry a company-issued radio to respond to requests at all times, including during meal periods. As a result, Mr. Navarro's meal periods were interrupted almost every day by FND's management asking him questions over the radio. Also, his meal periods were occasionally shortened by management requiring him to go back to work due to an inadequate number of employees.

Third, because FND frowned upon employees accruing meal period penalties, FND's management pressured employees to clock out for meal periods to reflect compliant meal periods, upon threat of discipline, and/or adjusted employee time records regardless of whether they had received a compliant meal period or not, in order to strictly limit meal penalties that would need to be paid by FND. Furthermore, as stated, FND's company-wide timekeeping system prevented Mr. Navarro and other aggrieved employees from recording all hours worked when their meal periods were interrupted or shortened, because the system locked out Mr. Navarro and other aggrieved employees once they clocked out for a meal period, and would not permit them to clock back in from a meal period before 30 minutes had elapsed.

Fourth, FND did not provide other aggrieved employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. Mr. Navarro 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.

Moreover, FND had a company-wide policy of requiring all newly hired employees to sign blanket meal period waivers at or near their time of hire. FND took the position that non-exempt, hourly paid employees had waived their rights to first and/or second meal periods for the entirety of their employment and, on that basis, did not provide them with all meal periods to which they were entitled. Moreover, FND's meal period waiver form requires employees provide written notice should they wish to revoke the waiver. FND's presumption that meal periods would not be provided for shifts in excess of five (5) hours but less than six (6) hours, and for shifts in excess of ten (10) hours but less than twelve (12) hours due to blanket meal period waivers signed at or near the time of hire, and imposition on employees to revoke the waivers in writing, discouraged and impeded Mr. Navarro and other aggrieved employees from taking all meal periods to which they were entitled.

Furthermore, an employer's obligation to provide a meal period is only "triggered" when the employer "employs an employee for a work period of more than five hours per day." *Brinker*, 53 Cal. 4th at 1039 ("If an employer engages, suffers, or permits anyone to work for a full five hours, its meal break obligation is triggered.").

[A]fter the meal break obligation is triggered . . . an employer is put to a choice: it must (1) afford an off-duty meal period; (2) consent to a mutually agreed-upon waiver if one hour or less will end the shift; or (3) obtain written agreement to an on-duty meal period if circumstances permit. Failure to do one of these will render the employer liable for premium pay.

Id. (citing Cal. Labor Code § 226.7; Wage Order No. 5, subd. 11(A), (B)). FND required Mr. Navarro and other aggrieved employees to sign meal period waivers simultaneously at or near their time of hire (as opposed to on a specific work day) renders them invalid and unenforceable, because FND's obligation to provide Mr. Navarro and aggrieved employees with meal periods did not arise until they had employed them for a full five (5) hours.

FND knew or should have known that as a result of its company-wide policies and/or practices, Mr. Navarro and other aggrieved employees were not actually relieved of all duties to take timely, uninterrupted meal periods. FND further knew or should have known that it did not pay Mr. Navarro and other aggrieved employees meal period premiums when meal periods were missed, late, shortened, and/or interrupted. For example, FND's company-wide timekeeping system prompts employees to attest to whether store management had provided them with the opportunity to take a compliant meal period. Specifically, in order to clock out for the day, Mr. Navarro and other aggrieved employees were required to agree or disagree with the question, "I hereby certify that I was provided with meal periods in accordance with Floor & Decor's meal and rest period policy." Per FND's "Kronos California Meal and Rest Period Attestation (Training For Associates)" policy, FND asks associates to "[p]lease answer these questions honestly" and that "managers are there to help [them] identify ways...to take lunch and breaks in the future." Nevertheless, on information and belief, management instructed Mr. Navarro and other aggrieved employees to agree that they had received compliant meal periods even when they had not. Mr. Navarro was pressured to change his answer from "Disagree" to "Agree" at least three (3) times per week due to management pressure. Sometimes, management would change Mr. Navarro's answer to "Agree" if he did not.

Furthermore, FND engaged in a company-wide practice and/or policy of not paying all meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Mr. Navarro and other aggrieved employees have not received premium pay for missed, interrupted, shortened, or late meal periods. Alternatively, to the extent that FND did pay other aggrieved employees premium pay for missed, late, interrupted and shortened meal periods, FND did not pay other aggrieved employees at the correct rate of pay for premiums because FND systematically failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, FND failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Mr. Navarro and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

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

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

To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must "relinquish any control over how employees spend their break time, and relieve their employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest." *Augustus, et al. v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 269-270 (2016).

During the relevant time period, FND regularly failed to authorize and permit Mr. Navarro 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, FND's company-wide policies and/or practices of understaffing and/or single-staffing and assigning of heavy workloads resulted in a lack of rest period coverage and prevented Mr. Navarro and other aggrieved employees from being relieved of all duty in order to take compliant rest periods. FND also failed to schedule rest periods, which, coupled with FND's failure to provide adequate rest period coverage, further led to Mr. Navarro and other aggrieved employees not being authorized and permitted to take rest periods. Further, as stated, FND had, and continues to have, a policy and/or practice of requiring that Mr. Navarro and other aggrieved employees carry a company-issued radio to respond to requests from management at all times, including during rest periods.

Moreover, FND maintained a company-wide on-premises rest period policy, which mandated that Mr. Navarro and other aggrieved employees remain on FND's premises during their rest periods. Because Mr. Navarro and other aggrieved employees were restricted from leaving the premises

during rest periods, they were denied the ability to use their rest periods freely for their own purposes, such as running personal errands. Thus, FND effectively maintained control over Mr. Navarro and other aggrieved employees during rest periods.

As a result of FND's practices and policies, Mr. Navarro and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled. For example, Mr. Navarro had to forego at least one rest period per shift, and often had to forego two rest periods during each shift because the store was busy, did not have coverage, and there was an expectation that employees would work through their rest periods. When Mr. Navarro was provided with rest periods, they were regularly interrupted by managers asking him questions over the radio.

FND also has engaged in a company-wide practice and/or policy of not paying all rest period premiums owed when compliant rest periods are not authorized and permitted. As with meal periods, FND's company-wide timekeeping system prompts employees to attest to whether store management had provided them with the opportunity to take compliant rest periods. Specifically, in order to clock out for the day, Mr. Navarro and other aggrieved employees were required to agree or disagree with the question, "I hereby certify that I was authorized and permitted to take rest periods in accordance with Floor & Decor's meal and rest period policy." Because FND frowned upon employees accruing rest period penalties, on information and belief, FND pressured Mr. Navarro and other aggrieved employees to agree that they received all for their rest periods and/or changed their responses from "Disagree" to "Agree," regardless of whether Mr. Navarro and other aggrieved employees had received compliant rest periods or not, in order to strictly limit rest period penalties that FND would otherwise owe. Because of this practice and/or policy, Mr. Navarro and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that FND did pay other aggrieved employees one (1) additional hour of premium pay for missed rest periods, FND did not pay other aggrieved employees at the correct rate of pay for premiums because FND failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, FND failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Mr. Navarro and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

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

California Labor Code section 226(a) requires employers to make, keep and provide true, accurate, and complete employment records. FND has not provided Mr. Navarro 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, FND has knowingly and intentionally provided Mr. Navarro and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, FND issued uniform wage statements to Mr. Navarro 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/or meal and rest period premiums, and the corresponding number of hours worked at each hourly rate. Specifically, FND violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

Because FND did not record the time Mr. Navarro 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), FND did not list the correct amount of gross wages and net wages earned by Mr. Navarro and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, FND failed to accurately list the total number of hours worked by Mr. Navarro 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).

In addition, because FND did not calculate other aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages and/or meal and rest period premiums, FND did not list the correct amount of gross wages earned by other aggrieved employees in compliance with section 226(a)(1) and did not list the correct amount of net wages earned by other aggrieved employees in violation of section 226(a)(5). FND also failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct rates of pay for overtime wages and/or meal and rest period premiums, in violation of section 226(a)(9).

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 his 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 the hours they 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), FND willfully failed to maintain accurate payroll records for Mr. Navarro 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, FND failed, on a company-wide basis, to keep accurate records of work period and meal period start and stop times for Mr. Navarro and other aggrieved employees, in violation of section 1198. As stated, FND engaged in a company-wide practice and/or policy of falsifying Mr. Navarro’s and other aggrieved employees’ time records by recording that compliant meal periods were taken regardless of if or when meal periods were actually taken, and thereby failed to keep accurate records of meal start and end times for Mr. Navarro and other aggrieved employees. Furthermore, in light of FND’s failure to provide other aggrieved employees with second 30-minute meal periods to which they were entitled, FND kept no records of meal start and end times for second meal periods.

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

Mr. Navarro and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f)-(g).

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

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

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

Mr. Navarro and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, pursuant to Labor Code sections 210 and/or 2699(a), (f)-(g).

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

California Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or his employment, his or his 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 his intention to quit, in which case the employee is entitled to his or his wages at the time of quitting.

FND willfully failed to pay Mr. Navarro and other aggrieved employees who are no longer employed by FND 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 FND's employ.

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

Violation of California Labor Code § 206.5 – Release of Claims for Wages Due

California Labor Code section 206.5 prohibits employers from requiring employees to execute releases of a claim or right "on account of wages due, or to become due, or made as an advance on wages to be earned, unless payment of those wages has been made. A release required or executed in violation of the provisions of this section shall be null and void as between the employer and the employee."

During the relevant time period, FND required Mr. Navarro and other aggrieved employees to release their claims for meal and rest period violations as a condition to receiving their paychecks. For example, as stated, FND required Mr. Navarro and other aggrieved employees to attest that they received compliant meal and rest periods. FND's "Kronos California Meal and Rest Period Attestation (Training For Associates)" policy states, "Please note: **You MUST complete these questions to be clocked out for the day. If you do not complete these questions, you will not be times out for the day and will have a missing punch.**" (Emphasis in original). FND compelled Mr. Navarro and other aggrieved employees to sign these false verifications when they, in fact, had not received all meal and rest periods and, thus, all meal and rest period premiums they were owed. FND's policy and practice of requiring Mr. Navarro and other aggrieved employees to release their claims for unpaid wages as a condition to receiving their paychecks is in violation of California Labor Code section 206.5.

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

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11070 Subdivision 14(A) – Failure to Provide Suitable Seating

California Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable wage order. California Labor Code section 1198 requires that "... the standard conditions of labor fixed by the commission shall be the ... standard conditions of labor for employees. The employment of any employee ... under conditions of labor prohibited by

the order is unlawful.” California Code of Regulations, Title 8, section 11070(14)(A) provides that “[a]ll working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats.”

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

FND’s California stores are generally similar in their layout and design and there was, and continues to be, space behind cash wraps to allow for the presence and use of a seat or stool by Mr. Navarro and other aggrieved employees (with reasonable or no modification to these work areas) during the performance of their work duties. FND could provide Mr. Navarro and other aggrieved employees with a seat or stool at its cash wraps, but instead denies employees seating and forces other Mr. Navarro and other aggrieved employees to stand throughout the day.

Mr. Navarro and other aggrieved employees spent a substantial portion of their day behind or at these cash wraps. The nature of the work of an employee performing cashier duties at cash wraps can reasonably be accomplished from a seated position. However, as set forth herein, FND systematically, and on a company-wide basis, does not provide seats or stools at or near the cash wraps, forcing Mr. Navarro and other aggrieved employees to stand throughout their work shifts.

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

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

Mr. Navarro and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, and seek injunctive relief to bring FND into compliance with California’s seating requirements, pursuant to Labor Code sections 1194.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11070 Subdivision 14(B) – Failure to Provide Suitable Seating

California Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable wage order. California Labor Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.” California Code of Regulations, Title 8, section 11070(14)(B) provides that “[w]hen employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties.”

The IWC states that subdivision 14(B) applies during “lulls in operation” when an employee, while still on the job, is not then actively engaged in any duties. *Kilby v. CVS Pharmacy, Inc.*, 368 P.3d 554, 565 (Cal. 2016), citing IWC, 1976 Wage Orders, Summary of Basic Provisions, Seats. When taken together, an employee is entitled to a seat under subdivision 14(A) if his or his actual tasks at a discrete location make seated work feasible, while working there. *Id.* However, if other job duties take the employee to a different location where he or he must perform tasks requiring standing, the employee would be entitled to a seat under subdivision 14(B) during “lulls in operation.” *Id.*

FND’s California stores are generally similar in their layout and design and there was, and continues to be, space near their work areas (with reasonable or no modification to these work areas) to allow for the presence and use of a seat or stool by Mr. Navarro and other aggrieved employees during lulls in operation. FND could provide Mr. Navarro and other aggrieved employees with a seat or stool at in its work areas, but instead denies employees seating and forces other Mr. Navarro and other aggrieved employees to stand throughout the day.

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

As a result of FND’s company-wide policy and/or practice of prohibiting employees from sitting at any time, even when they were not engaged in active duties requiring standing, and company-wide failure to provide seats in reasonable proximity to their work areas, Mr. Navarro and other aggrieved employees were forced to stand during shifts and denied seats. FND’s failure to provide suitable seating to Mr. Navarro and other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order No. 7-2001, subdivision 14(B).

Mr. Navarro and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, and seek injunctive relief to bring FND into compliance with California’s seating requirements, pursuant to Labor Code sections 1194.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

California Labor Code section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or his job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order, IWC Wage Order No. 7-2001, provides that: “[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft.” IWC Wage Order No. 7-2001 further provides that: “[w]hen uniforms are required by the employer to be worn by the employee as a condition of employment, such uniforms shall be provided and maintained by the employer.”

First, during the relevant time period, FND, on a company-wide basis, required Mr. Navarro and other aggrieved employees to use their own personal vehicles to attend company orientations and/or trainings, but failed to reimburse them for all costs of travel, including mileage. For example, for three days, Mr. Navarro was required to drive to a location 25 minutes away from his home to attend new employee orientation. This trip was 15 minutes longer than his commute to the FND store location where he worked. Although FND required Mr. Navarro and other aggrieved employees to utilize their personal vehicles to carry out their work-related responsibilities, FND failed to reimburse them for their mileage or travel expenses.

Second, during the relevant time period, FND expected Mr. Navarro and other aggrieved employees to “present themselves in a neat, business-like manner at all times,” requiring all clothing to be “clean, hemmed, wrinkle-free and in good repair at the start of every shift,” and adhere to grooming and cleanliness standards. Mr. Navarro and other aggrieved employees were thus required to report to work wearing clean uniform vests bearing the FND company logo. However, FND did not provide its employees with sufficient uniform vests to wear for their shifts throughout the week. For example, FND only provided Mr. Navarro and other aggrieved employees with one (1) uniform vest at or around the time of hire. Because FND failed to provide Mr. Navarro and other aggrieved employees with an adequate number of uniform vests in relation to their scheduled shifts, Mr. Navarro and other aggrieved employees had to wash their uniforms more frequently than they otherwise do laundry, and incur expenses in doing so. For example, due to having only one uniform vest to wear for every shift, Mr. Navarro’s and other aggrieved employees had to wash their uniform items separately from, and more frequently than their regular clothing, thus incurring additional laundry expenses for the upkeep of their uniforms. Thus, FND failed to maintain uniforms they required Mr. Navarro and other aggrieved employees to wear during their shifts and forced them to incur the cost of maintaining employee uniforms.

FND could have provided Mr. Navarro and/or other aggrieved employees with the actual equipment for use on the job, such as company vehicles, and an adequate number of uniform vests and access to laundering services. Or, FND could have reimbursed employees for the costs of travel, mileage, and laundering expenses or provided a uniform maintenance allowance. Instead, FND passed these operating costs off onto Mr. Navarro and/or other aggrieved employees. At all relevant times, Mr. Navarro did not earn at least two (2) times the minimum wage.

Thus, FND had, and continues to have, a company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred in violation of California Labor Code section 2802. Mr. Navarro and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

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

California's Wage Theft Prevention Act was enacted to ensure that employers provide employees with basic information material to their employment relationship at the time of hiring, and to ensure that employees are given written and timely notice of any changes to basic information material to their employment. Codified at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an employer must provide written notice to employees of the rate(s) of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, the regular payday designated by the employer, and any allowances claims as part of the minimum wage, including meal or lodging allowances. Effective January 1, 2015, an employer's written notice pursuant to section 2810.5 must also include a statement that the employee may accrue and use sick leave; has a right to request and use accrued paid sick leave; may not be terminated or retaliated against for using or requesting the use of accrued paid sick leave; and has the right to file a complaint against an employer who retaliates.

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

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

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." FND, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Mr. Navarro's and other aggrieved employees' rights by violating various sections of the California Labor Code.

Accordingly, Mr. Navarro seeks the remedies set forth in Labor Code section 558 for himself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 1194.5, 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Mr. Navarro, acting in the public interest as a private attorney general, seeks assessment and

collection of civil penalties and injunctive relief for himself, all other aggrieved employees, and the State of California against FND for violations of California Labor Code sections 201, 202, 204, 206.5, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

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

Pre-Litigation Demand

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

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

1. FND shall pay Mr. Navarro and all other aggrieved employees employed by FND at any time during the past three years from the date of this notice unpaid wages and compensation for the above-referenced violations.
2. FND shall comply with all California labor laws and ensure that its non-exempt employees are paid overtime wages and minimum wages for all hours worked and provided lawful meal and rest periods.
3. FND shall conduct a survey or interview all current and former aggrieved employees in California who worked for FND in the past three years to obtain information from them regarding the above-referenced violations, including, but not limited to: the number of meal periods which were not provided; the number of rest periods which were not authorized and permitted; and the number of employees who were required to pay for travel expenses, mileage, uniform maintenance costs, or other expenditures in the discharge of their duties, with the investigation to be completed within 60 days.
4. FND shall pay each aggrieved employee one hour of pay at his or his regular rate of pay for each work day he or she was not provided one or more meal periods, as required by Labor Code sections 226.7, 512(a), 516, and 1198. FND also shall pay each aggrieved employee one hour of pay at his or his regular rate of pay for each work day he or she was not authorized and permitted one or more rest periods, as required by Labor Code sections 226.7, 516, and 1198.
5. FND shall reimburse Mr. Navarro and all aggrieved employees who were required to pay for any business expenses incurred for FND's benefit, including, but not limited to, costs of travel expenses, mileage, and uniform maintenance costs, as required by Labor Code section 2802.
6. FND shall pay accrued legal interest to Mr. Navarro and all aggrieved employees at the rate of 10% per annum for said unpaid wages.

7. FND shall provide Mr. Navarro and all aggrieved employees employed by FND at any time during the past three years from the date of this notice corrected wage statements that include the requisite information set forth in Labor Code section 226(a).
8. FND shall cease the practice of requiring aggrieved employees to release their claims for unpaid wages as a condition to receiving their paychecks (Labor Code section 206.5).
9. FND shall implement and provide suitable seating to all aggrieved employees.
10. FND shall provide all aggrieved employees written notice of basic information regarding their employment that includes the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C).
11. FND shall pay waiting time penalties, equal to 30 days of pay, to each former aggrieved employee who was not paid all wages due as described herein.
12. FND shall pay all penalties arising from the violations of the Labor Code and IWC Wage Order sections referenced above and pursuant to PAGA, Labor Code sections 2698, *et seq.*, including, but not limited to, penalties under Labor Code sections 210, 226.3, 256, 558, 1174.5, 1197.1, and 2699, and Wage Order No. 7-2001, section 20.

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

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

Best Regards,



Sairah Budhwani

Copy: FLOOR AND DECOR OUTLETS OF AMERICA, INC. (via U.S. Certified Mail); FLOOR & DECOR HOLDINGS, INC. (via U.S. Certified Mail)

Capstone
LAW APC
1875 Century Park East, Suite 1000
Los Angeles, California 90067

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2500 WINDY RIDGE PKWY SE
ATLANTA, GA 30339

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- Print your name and address on the reverse so that we can return the card to you.
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ATLANTA, GA 30339



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PS Form 3811, July 2015 PSN 7530-02-000-9053

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B. Received by (Printed Name) C. Date of Delivery
D. Is delivery address different from item 1? ☐ Yes
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ATLANTA, GA 30339

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

See Reverse for Instructions

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1. Article Addressed to:

FLOOR & DECOR HOLDINGS, INC.
2500 WINDY RIDGE PKWY SE
ATLANTA, GA 30339

9590 9402 5816 0034 8457 34

2. Article Number (Transfer from service label)

7021 1970 0000 2660 0702

COMPLETE THIS SECTION ON DELIVERY

A. Signature

☐ Agent
☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

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If YES, enter delivery address below: ☐ No

3. Service Type

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- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
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- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

FLOOR & DECOR HOLDINGS, INC.
2500 WINDY RIDGE PKWY SE
ATLANTA, GA 30339



9590 9402 5816 0034 8457 34

2. Article Number (Transfer from service label)

7021 1970 0000 2660 0702

PS Form 3811, July 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

CC-1925

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CC-1925

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

3. Service Type

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1. Article Addressed to:

FLOOR AND DECOR OUTLETS OF
AMERICA, INC.
2500 WINDY RIDGE PKWY SE
ATLANTA, GA 30339



9590 9402 5816 0034 8457 41

2. Article Number (Transfer from service label)

7021 1970 0000 2660 0696

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COMPLETE THIS SECTION ON DELIVERY

A. Signature

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CC-1925

☐ Agent☐ Addressee

B. Received by (Printed Name)

CC-1925

C. Date of Delivery

8/22

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

3. Service Type

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