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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF KERN

ANITA MILLER and YVETTE
SANCHEZ, individually, and on behalf of
other members of the general public
similarly situated, and as aggrieved
employees pursuant to the Private Attorneys
General Act ("PAGA"),

Plaintiffs,

vs.

RACK ROOM SHOES, INC., a North
Carolina corporation; OFF BROADWAY
SHOES, INC., a North Carolina
corporation; and DOES 1 through 10,
inclusive,

Defendants.

Case No.: BCV-22-101870

**SECOND AMENDED CLASS ACTION
COMPLAINT & ENFORCEMENT
ACTION UNDER THE PRIVATE
ATTORNEYS GENERAL ACT,
CALIFORNIA LABOR CODE §§ 2698, ET
SEQ.**

- (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime);
- (2) Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 (Unpaid Minimum Wages);
- (3) Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 (Failure to Provide Meal Periods);
- (4) Violation of California Labor Code §§ 226.7, 516, and 1198 (Failure to Authorize and Permit Rest Periods);
- (5) Violation of California Labor Code §§ 226(a), 1174(d), and 1198 (Non-Compliant Wage Statements and Failure to Maintain Payroll Records);
- (6) Violation of California Labor Code §§ 201 and 202 (Wages Not Timely Paid Upon Termination);
- (7) Violation of California Labor Code § 204 (Failure to Timely Pay Wages During Employment);

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- (8) Violation of California Labor Code § 2802 (Unreimbursed Business Expenses);
- (9) Civil Penalties for Violations of California Labor Code, Pursuant to PAGA, §§ 2698, *et seq.*;
- (10) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unlawful Business Practices); and
- (11) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unfair Business Practices)

Jury Trial Demanded

1 Plaintiffs Anita Miller and Yvette Sanchez, individually and on behalf of all other
2 members of the public similarly situated, and as aggrieved employees and on behalf of all
3 aggrieved employees, allege as follows:

4 JURISDICTION AND VENUE

5 1. This class action is brought pursuant to California Code of Civil Procedure
6 section 382 and California Labor Code sections 2698, *et seq.* (“PAGA”) to recover civil
7 penalties and any other available relief on behalf of Plaintiff, the State of California, and other
8 current and former employees who worked for Defendants in California as non-exempt, hourly
9 paid employees and received at least one wage statement and against whom one or more
10 violations of any provision in Division 2 Part 2 Chapter 1 of the Labor Code or any provision
11 regulating hours and days of work in the applicable Industrial Welfare Commission (“IWC”)
12 Wage Order were committed, as set forth in this complaint. The monetary damages, penalties,
13 and restitution sought by Plaintiffs exceed the minimal jurisdiction limits of the Superior Court
14 and will be established according to proof at trial. This Court has jurisdiction over this action
15 pursuant to the California Constitution, Article VI, section 10. The statutes under which this
16 action is brought do not specify any other basis for jurisdiction. Plaintiffs’ share of damages,
17 penalties, and other relief sought in this action does not exceed \$75,000.

18 2. This Court has jurisdiction over Defendants because Defendants are either
19 citizens of California, have sufficient minimum contacts in California, or otherwise
20 intentionally avail themselves of the California market so as to render the exercise of jurisdiction
21 over them by the California courts consistent with traditional notions of fair play and substantial
22 justice.

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

26 THE PARTIES

27 4. Plaintiff Anita Miller is a resident of Bakersfield, in Kern County, California.
28 Defendants employed Plaintiff Miller as an hourly paid, non-exempt employee on and off from

1 approximately March 2008 to March 2022, including as a non-exempt Assistant Manager from
2 February 2021 to March 2022. Plaintiff Miller worked for Defendants at their retail store
3 located in Arvin, California. During her employment, Plaintiff Miller typically worked eight
4 (8) or more hours per day and five (5) days per week. Plaintiff Miller's primary job duties
5 included, without limitation, opening and closing the store, managing the sales floor, and
6 reporting inventory.

7 5. Plaintiff Yvette Sanchez is a resident of Fontana, in San Bernardino County,
8 California. Defendants employed Plaintiff Sanchez as an hourly paid, non-exempt Manager-in-
9 Training from approximately September 2017 to August 29, 2018. Plaintiff Sanchez worked
10 for Defendants at Defendants' retail stores in Turlock, California and in Ontario, California.
11 During her employment, Plaintiff Sanchez typically worked six (6) or more hours per day and
12 four (4) to five (5) days per week. Plaintiff Sanchez's primary job duties included, without
13 limitation, unpacking and restocking merchandise, operating the cash register, sales reporting,
14 and interviewing employee applicants.

15 6. RACK ROOM SHOES, INC. was and is, upon information and belief, a North
16 Carolina corporation, and at all times hereinafter mentioned, an employer whose employees are
17 engaged throughout this county and the State of California.

18 7. OFF BROADWAY SHOES, INC. was and is, upon information and belief, a
19 North Carolina corporation, and at all times hereinafter mentioned, an employer whose
20 employees are engaged throughout this county and the State of California.

21 8. Plaintiffs are unaware of the true names or capacities of the Defendants sued
22 herein under the fictitious names DOES 1 through 10, but will seek leave of this Court to amend
23 the complaint and serve such fictitiously named Defendants once their names and capacities
24 become known.

25 9. Plaintiffs are informed and believe, and thereon allege, that DOES 1 through 10
26 were the partners, agents, owners, or managers of RACK ROOM SHOES, INC. and OFF
27 BROADWAY SHOES, INC. at all relevant times.

28 10. Plaintiffs are informed and believe, and thereon allege, that each and all of the

1 acts and omissions alleged herein was performed by, or is attributable to, RACK ROOM
2 SHOES, INC.; OFF BROADWAY SHOES, INC.; and/or DOES 1 through 10 (collectively,
3 “Defendants” or “RRS”), each acting as the agent, employee, alter ego, and/or joint venturer of,
4 or working in concert with, each of the other co-Defendants and was acting within the course
5 and scope of such agency, employment, joint venture, or concerted activity with legal authority
6 to act on the others’ behalf. The acts of any and all Defendants were in accordance with, and
7 represent, the official policy of Defendants.

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

12 12. Plaintiffs are informed and believe, and thereon allege, that each of said
13 Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts,
14 omissions, occurrences, and transactions alleged herein.

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

25 14. Plaintiffs are informed and believe, and thereon allege, that at all relevant times,
26 Defendants, and each of them, have acted as joint employers with respect to Plaintiffs and class
27 members because Defendants have:

28 (a) jointly exercised meaningful control over the work performed by

1 Plaintiffs and class members;

2 (b) jointly exercised meaningful control over Plaintiffs' and class members'
3 wages, hours, and working conditions, including the quantity, quality
4 standards, speed, scheduling, and operative details of the tasks performed
5 by Plaintiffs and class members;

6 (c) jointly required that Plaintiffs and class members perform work which is
7 an integral part of Defendants' businesses; and

8 (d) jointly exercised control over Plaintiffs and class members as a matter of
9 economic reality in that Plaintiffs and class members were dependent on
10 Defendants, who shared the power to set the wages of Plaintiffs and class
11 members and determined their working conditions, and who jointly
12 reaped the benefits from the underpayment of their wages and
13 noncompliance with other statutory provisions governing their
14 employment.

15 15. Plaintiffs are informed and believe, and thereon allege, that at all relevant times
16 there has existed a unity of interest and ownership between Defendants such that any
17 individuality and separateness between the entities has ceased.

18 16. RACK ROOM SHOES, INC.; OFF BROADWAY SHOES, INC.; and DOES 1
19 through 10 are therefore alter egos of each other.

20 17. Adherence to the fiction of the separate existence of Defendants would permit an
21 abuse of the corporate privilege, and would promote injustice by protecting Defendants from
22 liability for the wrongful acts committed by them under the name RACK ROOM SHOES.

23 18. Plaintiffs further allege, upon information and belief, that Defendants RACK
24 ROOM SHOES, INC.; and BROADWAY SHOE WAREHOUSE, INC. are alter egos of each
25 other for the following reasons:

26 (a) According to RACK ROOM SHOES, INC.'s website¹, RACK ROOM
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28 ¹ More to Love | Rack Room Shoes | Off Broadway Shoes, "Two Brands, One Family"
<https://www.rackroomshoes.com/more-to-love> (last accessed July 20, 2022).

1 SHOES, INC.'s website, RACK ROOM SHOES, INC. and OFF
2 BROADWAY SHOES, INC. operate as one entity, identifying as "Two
3 Brands, One Family";

4 (b) According to RACK ROOM SHOES, INC.'s website, in-store or online
5 rewards, gift cards, and returns are accepted at RACK ROOM SHOES,
6 INC. and OFF BROADWAY SHOES, INC. locations, and both stores'
7 online orders use the same packaging and can be fulfilled from either
8 entity depending on product availability; and

9 (c) On information and belief, RACK ROOM SHOES, INC. and OFF
10 BROADWAY SHOES, INC. utilize the same standardized employment
11 forms and issue the same employment policies.

12 **GENERAL ALLEGATIONS**

13 19. Defendants are American footwear retailers that own and operate more than 19
14 Rack Room Shoes and Off Broadway Shoe Warehouse store locations in California. Upon
15 information and belief, Defendants maintain a single, centralized Human Resources ("HR")
16 department at their company headquarters in Charlotte, North Carolina, which is responsible
17 for the recruiting and hiring of new employees, and communicating and implementing
18 Defendants' company-wide policies, including timekeeping policies and meal and rest period
19 policies, to employees throughout California.

20 20. In particular, Plaintiffs and class members, on information and belief, received
21 the same standardized documents and/or written policies. Upon information and belief, the
22 usage of standardized documents and/or written policies, including new-hire documents,
23 indicate that Defendants dictated policies at the corporate level and implemented them
24 company-wide, regardless of their employees' assigned locations or positions. Upon
25 information and belief, Defendants set forth uniform policies and procedures in several
26 documents provided at an employee's time of hire.

27 21. Upon information and belief, Defendants maintain a centralized Payroll
28 department at their company headquarters in Charlotte, North Carolina, which processes payroll

1 for all non-exempt, hourly paid employees working for Defendants at their various locations
2 and jobsites in California, including Plaintiffs and class members. Based upon information and
3 belief, Defendants issue the same formatted wage statements to all non-exempt, hourly paid
4 employees in California, irrespective of their work locations. Upon information and belief,
5 Defendants process payroll for departing employees in the same manner throughout the State
6 of California, regardless of the manner in which each employee's employment ends.

7 22. Defendants continue to employ non-exempt or hourly paid employees in
8 California.

9 23. Plaintiffs are informed and believe, and thereon allege, that at all times herein
10 mentioned, Defendants were advised by skilled lawyers and other professionals, employees and
11 advisors knowledgeable about California labor and wage law, employment and personnel
12 practices, and about the requirements of California law.

13 24. Plaintiffs are informed and believe, and thereon allege, that Plaintiffs and class
14 members were not paid for all hours worked because all hours worked were not recorded.

15 25. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
16 should have known that Plaintiffs and class members were entitled to receive certain wages for
17 overtime compensation and that they were not receiving certain wages for overtime
18 compensation.

19 26. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
20 should have known that Plaintiffs and class members were entitled to be paid at a regular rate
21 of pay, and corresponding rates of pay for overtime wages and/or meal and rest period
22 premiums, that included as eligible income all remuneration required by law, including but not
23 limited to, all income derived from incentive pay, nondiscretionary bonuses, and/or other forms
24 of compensation, but failed to include all forms of remuneration in calculating the regular rate
25 of pay for Plaintiffs and class members.

26 27. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
27 should have known that Plaintiffs and class members were entitled to receive at least minimum
28 wages for compensation and that they were not receiving at least minimum wages for work that

1 was required to be done off-the-clock. In violation of the California Labor Code, Plaintiffs and
2 class members were not paid at least minimum wages for work done off-the-clock.

3 28. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
4 should have known that Plaintiffs and class members were entitled to meal periods in
5 accordance with the California Labor Code and applicable IWC Wage Order or payment of one
6 (1) additional hour of pay at their regular rates of pay when they were not provided with timely,
7 uninterrupted, thirty (30) minute meal periods and that Plaintiffs and class members were not
8 provided with all meal periods or payment of one (1) additional hour of pay at their regular rates
9 of pay when they did not receive a timely, uninterrupted, thirty (30) minute meal period.

10 29. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
11 should have known that Plaintiffs and class members were entitled to rest periods in accordance
12 with the California Labor Code and applicable IWC Wage Order or payment of one (1)
13 additional hour of pay at their regular rates of pay when they were not authorized and permitted
14 to take a compliant rest period. In violation of the California Labor Code, Plaintiffs and class
15 members were not authorized and permitted to take compliant rest periods, nor did Defendants
16 provide Plaintiffs and class members with payment of one (1) additional hour of pay at their
17 regular rates of pay when they were not authorized and permitted to take a compliant rest period.

18 30. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
19 should have known that Plaintiff Miller and class members were entitled to receive complete
20 and accurate wage statements in accordance with California law. In violation of the California
21 Labor Code, Plaintiff Miller and class members were not provided complete and accurate wage
22 statements.

23 31. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
24 should have known that they had a duty to maintain accurate and complete payroll records in
25 accordance with the California Labor Code and applicable IWC Wage Order, but willfully,
26 knowingly, and intentionally failed to do so.

27 32. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
28 should have known that Plaintiffs and class members were entitled to timely payment of all

1 wages earned upon termination of employment. In violation of the California Labor Code,
2 Plaintiffs and class members did not receive payment of all wages due, including, but not limited
3 to, overtime wages, minimum wages, and/or meal and rest period premiums, within permissible
4 time periods.

5 33. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
6 should have known that Plaintiffs and class members were entitled to timely payment of wages
7 during their employment. In violation of the California Labor Code, Plaintiffs and class
8 members did not receive payment of all wages, including, but not limited to, overtime wages,
9 minimum wages, and/or meal and rest period premiums, within permissible time periods.

10 34. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
11 should have known that they were prohibited from issuing instruments for the payment of wages
12 that were not payable in cash on demand, without discount and with authorization, but did so,
13 in violation of the California Labor Code.

14 35. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
15 should have known that Plaintiff Miller and/or class members were entitled to the portion of
16 wages previously paid and subsequently unlawfully deducted by Defendants.

17 36. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
18 should have known that Plaintiff Miller and/or class members were entitled to payment of wages
19 as designated by statute. In violation of the California Labor Code, Defendants secretly paid
20 Plaintiff Miller and/or class members lower wages than required by statute while purporting to
21 pay them proper wages.

22 37. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
23 should have known that Plaintiff Miller and class members were entitled to suitable resting
24 facilities to cease work and recover during meal or rest periods, but failed to provide suitable
25 resting facilities.

26 38. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
27 should have known that Plaintiff Miller and class members were entitled to suitable seating
28 and/or were entitled to sit when it did not interfere with the performance of their duties and also

1 have seats nearby to use during a lull in tasks that do require moving about or standing. In
2 violation of the California Labor Code and applicable IWC Wage Order, Defendants failed to
3 provide Plaintiff Miller and class members with suitable seating.

4 39. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
5 should have known that Plaintiffs and class members were entitled to receive full reimbursement
6 for all business-related expenses and costs they incurred during the course and scope of their
7 employment and that they did not receive full reimbursement of applicable business-related
8 expenses and costs incurred.

9 40. Plaintiffs are informed and believe, and thereon allege, that at all times herein
10 mentioned, Defendants knew or should have known that Defendants had a duty to provide
11 Plaintiffs and class members with written notice of the material terms of their employment with
12 Defendants as required by the California Wage Theft Prevention Act, but failed to do so.

13 41. Plaintiffs are informed and believe, and thereon allege, that at all times herein
14 mentioned, Defendants knew or should have known that they had a duty to compensate
15 Plaintiffs and class members for all hours worked, and that Defendants had the financial ability
16 to pay such compensation, but willfully, knowingly, and intentionally failed to do so, and falsely
17 represented to Plaintiffs and class members that they were properly denied wages, all in order
18 to increase Defendants' profits.

19 **PAGA REPRESENTATIVE ALLEGATIONS**

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

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

1 44. Plaintiff Miller and other current and former employees of Defendants are
2 “aggrieved employees” as defined by Labor Code section 2699(c) in that they are all
3 Defendants’ current or former employees and one or more of the alleged violations were
4 committed against them.

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

- 8 (a) The aggrieved employee or representative shall give written notice by
9 online filing with the LWDA and by certified mail to the employer of the
10 specific provisions of the California Labor Code alleged to have been
11 violated, including the facts and theories to support the alleged violation.
- 12 (b) An aggrieved employee’s notice filed with the LWDA pursuant to
13 2699.3(a) and any employer response to that notice shall be accompanied
14 by a filing fee of seventy-five dollars (\$75).
- 15 (c) The LWDA shall notify the employer and the aggrieved employee or
16 representative by certified mail that it does not intend to investigate the
17 alleged violation (“LWDA Notice”) within sixty (60) calendar days of the
18 postmark date of the aggrieved employee’s notice. Upon receipt of the
19 LWDA Notice, or if no LWDA Notice is provided within sixty-five (65)
20 calendar days of the postmark date of the aggrieved employee’s notice,
21 the aggrieved employee may commence a civil action pursuant to
22 California Labor Code section 2699 to recover civil penalties.

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

- 27 (a) The aggrieved employee or representative shall give written notice by
28 online filing with the LWDA and by certified mail to the employer of the

specific provisions of the California Labor Code alleged to have been violated (other than those listed in Section 2699.5), including the facts and theories to support the alleged violation.

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

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

47. On August 25, 2022, Plaintiff Miller provided written notice by online filing to the LWDA and by Certified Mail to Defendants of the specific provisions of the California Labor Code alleged to have been violated, including facts and theories to support the alleged violations, in accordance with California Labor Code section 2699.3. Plaintiff Miller's written notice was accompanied with the applicable filing fee of seventy-five dollars (\$75). The LWDA PAGA Administrator confirmed receipt of Plaintiff Miller's written notice and assigned Plaintiff PAGA Case Number LWDA-CM-904134-22. A true and correct copy of Plaintiff Miller's written notice to the LWDA and Defendants is attached hereto as "Exhibit 1."

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

49. Thus, Plaintiff Miller has satisfied the administrative prerequisites under California Labor Code section 2699.3(a) and 2699.3(c) to recover civil penalties against

Defendants for violations of California Labor Code sections 201, 202, 204, 212, 213, 221, 223, 224, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

50. 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 “[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law.”

51. Defendants, at all times relevant to this complaint, were employers or persons acting on behalf of an employer(s) who violated Plaintiff Miller’s and other aggrieved employees’ rights by violating various sections of the California Labor Code as set forth above.

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

53. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a), 2699.3(a), 2699.3(c), and 2699.5, and section 558, Plaintiff Miller, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for herself, all other aggrieved employees, and the State of California against Defendants for violations of California Labor Code sections 201, 202, 204, 212, 213, 221, 223, 224, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

CLASS ACTION ALLEGATIONS

54. Plaintiffs bring this action on their own behalf, as well as on behalf of each and all other persons similarly situated, and thus seek class certification under California Code of Civil Procedure section 382.

1 55. All claims alleged herein arise under California law for which Plaintiffs seek
2 relief authorized by California law.

3 56. Plaintiffs' proposed class consists of and is defined as follows:

4 All persons who worked for Defendants as non-exempt, hourly
5 paid employees in California, within four years prior to the filing
of the initial complaint until the date of trial ("Class").

6 57. Plaintiffs' proposed subclass consists of and is defined as follows:

7 All persons who worked for Defendants as non-exempt, hourly
8 paid employees in California and who received at least one wage
statement within one (1) year prior to the filing of the initial
9 complaint until the date of trial ("Subclass").

10 58. Members of the Class and Subclass are referred to herein as "class members."

11 59. Plaintiffs reserve the right to redefine the Class and Subclass and to add
12 additional subclasses as appropriate based on further investigation, discovery, and specific
13 theories of liability.

14 60. There are common questions of law and fact as to class members that
15 predominate over questions affecting only individual members, including, but not limited to:

16 (a) Whether Defendants required Plaintiffs and class members to work over
17 eight (8) hours per day, over twelve (12) hours per day, or over forty (40)
18 hours per week and failed to pay all legally required overtime
19 compensation to Plaintiffs and class members;

20 (b) Whether Defendants failed to include all forms of remuneration in the
21 "regular rate" of pay as required by law for purposes of paying overtime
22 wages and/or meal and rest period premiums to Plaintiffs and class
23 members;

24 (c) Whether Defendants failed to pay Plaintiffs and class members at least
25 minimum wages for all hours worked;

26 (d) Whether Defendants failed to provide Plaintiffs and class members with
27 meal periods;

28 (e) Whether Defendants failed to authorize and permit Plaintiffs and class

members to take rest periods;

- (f) Whether Defendants provided Plaintiff Miller and class members with complete and accurate wage statements as required by California Labor Code section 226(a);
- (g) Whether Defendants maintained accurate payroll records as required by California Labor Code section 1174(d);
- (h) Whether Defendants failed to pay earned overtime wages, minimum wages, and/or meal and rest period premiums due to Plaintiffs and class members upon their discharge;
- (i) Whether Defendants failed to timely pay overtime wages, minimum wages, and/or meal and rest period premiums to Plaintiffs and class members during their employment;
- (j) Whether Defendants issued instruments for the payment of wages that were not payable in cash on demand and without discount, in violation of Labor Code sections 212 and 213;
- (k) Whether Defendants unlawfully deducted a portion of wages previously paid to Plaintiff Miller and/or class members, in violation of California Labor Code sections 221 and 224;
- (l) Whether Defendants secretly paid Plaintiff and/or class members lower wages than required by statute while purporting to pay the proper wages, in violation of California Labor Code section 223;
- (m) Whether Defendants failed to provide Plaintiff Miller and class members suitable resting facilities;
- (n) Whether Defendants failed to provide Plaintiff Miller and class members with suitable seating;
- (o) Whether Defendants failed to reimburse Plaintiffs and class members for necessary and required business-related expenditures and/or losses incurred by them in the scope of their employment;

- 1 (p) Whether Defendants failed to provide written notice of information
2 material to Plaintiffs' and class members' employment with Defendants;
3 (q) Whether Defendants engaged in unlawful and unfair business practices in
4 violation of California Business & Professions Code sections 17200, *et*
5 *seq.*; and
6 (r) The appropriate amount of damages, restitution, or monetary penalties
7 resulting from Defendants' violations of California law.

8 61. There is a well-defined community of interest in the litigation and the class
9 members are readily ascertainable:

- 10 (a) Numerosity: The class members are so numerous that joinder of all
11 members would be unfeasible and impractical. The membership of the
12 entire class is unknown to Plaintiffs at this time; however, the class is
13 estimated to be greater than one hundred (100) individuals and the
14 identity of such membership is readily ascertainable by inspection of
15 Defendants' employment records.
16 (b) Typicality: Plaintiffs are qualified to, and will, fairly and adequately
17 protect the interests of each class member with whom they have a well-
18 defined community of interest, and Plaintiffs' claims (or defenses, if any)
19 are typical of all class members as demonstrated herein.
20 (c) Adequacy: Plaintiffs are qualified to, and will, fairly and adequately
21 protect the interests of each class member with whom they have a well-
22 defined community of interest and typicality of claims, as demonstrated
23 herein. Plaintiffs acknowledge that they have an obligation to make
24 known to the Court any relationship, conflicts or differences with any
25 class member. Plaintiffs' attorneys, the proposed class counsel, are
26 versed in the rules governing class action discovery, certification, and
27 settlement. Plaintiffs have incurred, and throughout the duration of this
28 action, will continue to incur costs and attorneys' fees that have been, are,

1 and will be necessarily expended for the prosecution of this action for the
2 substantial benefit of each class member.

3 (d) Superiority: The nature of this action makes the use of class action
4 adjudication superior to other methods. A class action will achieve
5 economies of time, effort, and expense as compared with separate
6 lawsuits, and will avoid inconsistent outcomes because the same issues
7 can be adjudicated in the same manner and at the same time for the entire
8 class.

9 (e) Public Policy Considerations: Employers in the State of California
10 violate employment and labor laws every day. Current employees are
11 often afraid to assert their rights out of fear of direct or indirect retaliation.
12 Former employees are fearful of bringing actions because they believe
13 their former employers might damage their future endeavors through
14 negative references and/or other means. Class actions provide the class
15 members who are not named in the complaint with a type of anonymity
16 that allows for the vindication of their rights while simultaneously
17 protecting their privacy.

18 **FIRST CAUSE OF ACTION**

19 **Violation of California Labor Code §§ 510 and 1198—Unpaid Overtime**

20 **(Against all Defendants)**

21 62. Plaintiffs incorporate by reference and re-allege as if fully stated herein each and
22 every allegation set forth above.

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

28 64. California Labor Code section 1198 and the applicable IWC Wage Order provide

1 that it is unlawful to employ persons without compensating them at a rate of pay either time-
2 and-one-half or two-times that person's regular rate of pay, depending on the number of hours
3 worked by the person on a daily or weekly basis.

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

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

13 67. 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 seventh
16 (7th) day of work, and to overtime compensation at twice the employee's regular rate of pay for
17 hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on
18 the seventh (7th) day of work.

19 68. During the relevant time period, Defendants willfully failed to pay all overtime
20 wages owed to Plaintiffs and class members. During the relevant time period, Plaintiffs and
21 class members were not paid overtime premiums for all of the hours they worked in excess of
22 eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40)
23 hours in a week, because all hours worked were not recorded.

24 69. First, Defendants had a company-wide policy and/or practice of improperly
25 rounding employee clock-in and clock-out duration times to the nearest quarter-hour in their
26 timekeeping system. Defendants' rounding policy resulted in the failure to compensate
27 Plaintiffs and class members fully for all hours worked, causing Plaintiffs and class members
28 to not be paid overtime wages for all of the overtime hours they actually worked. Upon

1 information and belief, Defendants’ rounding policy was, and continues to be, unfair and has,
2 over time, resulted in the underpayment of wages to Plaintiffs and class members. To the extent
3 Defendants’ rounding policy took away time worked that was eligible for overtime, Plaintiffs
4 and class members were denied overtime pay for all hours worked. Alternatively, Defendants
5 had, and continue to have, a company-wide policy and/or practice of failing to correctly record
6 hours worked by their employees. Instead, on information and belief, Defendants’ policy and/or
7 practice is to simply pay employees, including Plaintiffs and class members, for the hours they
8 are scheduled to work. Because Defendants failed to accurately record their actual hours
9 worked, Plaintiffs and class members were not paid for all hours worked before or after their
10 scheduled shifts.

11 70. Second, during the relevant time period, Defendants had, and continue to have,
12 a company-wide policy and/or practice of discouraging and impeding Plaintiffs and class
13 members (on threat of discipline) from recording hours worked that were outside of their
14 scheduled shifts in order to limit the amount of overtime employees could accrue. On
15 information and belief, this policy of limiting overtime, coupled with Defendants’ practices of
16 understaffing and assigning heavy workloads (*see infra*), led Plaintiffs and class members to
17 work off-the-clock before and after their scheduled shift times in order to complete their
18 assigned tasks. For example, Plaintiff Miller was required to open the store, disarm the store
19 alarm, and turn on point of sale (“POS”) registers before she clocked in for her shift. When she
20 did not work an opening shift, she would be required to wait off-the-clock for other employees
21 to finish using the register in order to clock in on the POS system. As a further example, Plaintiff
22 Miller was required to clock out at the end of her scheduled shift and continue working—
23 completing customer transactions, cleaning the sales floor, setting the alarm, and closing the
24 store. Additionally, Plaintiff Sanchez would clock out at the end of her scheduled shift and
25 continue working, handling inventory and completing end-of-shift sales and shipping reports.
26 This off-the-clock work could have been recorded by Defendants, but they refused to do so to
27 avoid the payment of additional wages to Plaintiffs and class members.

28 71. Moreover, Defendants required Plaintiffs and class members to perform work-

1 related tasks off-the-clock, including, but not limited to, reviewing training modules,
2 undergoing health screenings, and/or responding to phone calls and text messages from their
3 supervisors. For example, Plaintiff Miller spent time at home reviewing online training modules
4 regarding company policies and was not paid for this time. Also, Defendants implemented, on
5 a company-wide basis, an employer-imposed requirement that Plaintiff Miller and class
6 members undergo mandatory COVID-19 temperature checks and/or health screenings before
7 clocking in for their scheduled shifts. For example, Plaintiff Miller was required to fill out a
8 health screening form and undergo a daily temperature check, before being permitted to clock
9 in for her shift. Finally, Plaintiffs and class members were required to respond to their personal
10 mobile devices on their days off. For example, on information and belief, Plaintiffs responded
11 to phone calls and text messages from their supervisors regarding employee scheduling and
12 work assignments. Thus, Defendants failed to track all hours Plaintiffs and class members spent
13 performing work-related tasks before and after their scheduled shifts and Plaintiffs and class
14 members received no compensation for this time.

15 72. Third, as stated, Defendants had, and continue to have, a company-wide policy
16 and/or practice of understaffing while assigning heavy workloads, including pressuring
17 employees to meet sales quotas and rewards signup goals. Defendants' policies and/or practices
18 resulted in a failure to provide Plaintiffs and class members with adequate meal period coverage,
19 and thus, Plaintiffs and class members were not always afforded uninterrupted 30-minute meal
20 periods during shifts when they were entitled to receive a meal period. Furthermore, Defendants
21 had a company-wide practice of failing to adhere to a schedule for meal periods, which further
22 caused Plaintiffs and class members to not be relieved of their duties for compliant meal periods.
23 For example, Plaintiff Miller's meal periods were interrupted when her coworkers had questions
24 or needed assistance with customer transactions. On other occasions, Plaintiff Miller missed
25 her meal periods entirely due to the heavy workload. Thus, Plaintiffs and class members missed
26 meal periods and/or had meal periods cut short or interrupted in order to complete their assigned
27 workloads and meet Defendants' expectations. Defendants did not compensate Plaintiffs and
28 class members for the time they spent working off the clock during meal periods.

1 73. Fourth, Defendants had, and continue to have, a policy and/or practice of
2 requiring that Plaintiff Miller and class members carry and respond to a company-issued radio
3 at all times. As a result, Defendants' management contacted Plaintiff Miller and class members
4 on their company-issued radio during unpaid meal periods to discuss work-related matters. For
5 example, Plaintiff Miller was required to spend time during her meal periods answering radio
6 calls and responding to requests from management and coworkers regarding loss prevention.
7 Defendants knew or should have known that Plaintiff Miller and class members were
8 performing work while off-the-clock in order to meet Defendants' expectations, but failed to
9 compensate them for this time.

10 74. Fifth, upon information and belief, because Defendants frowned upon employees
11 accruing meal period penalties, Defendants adjusted employee time records to reflect compliant
12 meal periods and/or would automatically deduct 30-minute meal periods from Plaintiffs' and
13 class members' time records even when meal periods were missed, short, and/or interrupted.
14 Thus, Defendants did not record all hours worked during meal periods, and Plaintiffs and class
15 members performed work during meal periods for which they were not paid.

16 75. Defendants knew or should have known that, as a result of these company-wide
17 practices and/or policies, Plaintiffs and class members were performing their assigned duties
18 off-the-clock and during meal periods, and were suffered or permitted to perform work for
19 which they were not paid. Because Plaintiffs and class members sometimes worked shifts of
20 eight (8) hours a day or more, or forty (40) hours a week or more, some of this off-the-clock
21 work qualified for overtime premium pay. Therefore, Plaintiffs and class members were not
22 paid overtime wages for all of the overtime hours they actually worked.

23 76. Furthermore, Defendants did not pay Plaintiffs and class members the correct
24 overtime rate for the recorded overtime hours that they generated. In addition to an hourly
25 wage, Defendants paid Plaintiffs and class members incentive pay, nondiscretionary bonuses,
26 and/or other forms of remuneration. However, in violation of the California Labor Code, on
27 information and belief, Defendants failed to incorporate all compensation, including incentive
28 pay, nondiscretionary bonuses, and/or other forms of remuneration, into the calculation of the

1 regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during times
2 when Plaintiffs and class members worked overtime and received these other forms of pay,
3 Defendants failed to pay all overtime wages by paying a lower overtime rate than required.

4 77. Defendants' failure to pay Plaintiffs and class members the balance of overtime
5 compensation, as required by California law, violates the provisions of California Labor Code
6 sections 510 and 1198. Pursuant to California Labor Code section 1194, Plaintiffs and class
7 members are entitled to recover their unpaid overtime compensation, as well as interest, costs,
8 and attorneys' fees.

9 **SECOND CAUSE OF ACTION**

10 **Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198—Unpaid** 11 **Minimum Wages** 12 **(Against all Defendants)**

13 78. Plaintiffs incorporate by reference and re-allege as if fully stated herein each and
14 every allegation set forth above.

15 79. At all relevant times, California Labor Code sections 1182.12, 1194, 1197,
16 1197.1, and 1198 provide that the minimum wage for employees fixed by the IWC is the
17 minimum wage to be paid to employees, and the payment of a wage less than the minimum so
18 fixed is unlawful. Compensable work time is defined in IWC Wage Order No. 7-2001 as "the
19 time during which an employee is subject to the control of an employer, and includes all the
20 time the employee is suffered or permitted to work, whether or not required to do so." Cal.
21 Code Regs. tit. 8, § 11070(2)(G) (defining "Hours Worked").

22 80. First, as stated, during the relevant time period, Defendants had a policy of
23 rounding Plaintiffs' and class members' hourly clock-in and clock-out duration times to the
24 nearest quarter-hour in their timekeeping system, resulting in the failure to compensate
25 Plaintiffs and class members fully for all hours worked. Alternatively, Defendants had a
26 company-wide policy and/or practice of only paying Plaintiffs and class members for their
27 scheduled shifts, rather than their actual hours worked, because Defendants failed to correctly
28 track hours worked outside of their scheduled shifts.

1 81. Second, as set forth above, due to Defendants' restrictions on overtime accrual,
2 Defendants systematically failed to pay Plaintiffs and class members for actual hours worked
3 before and after their scheduled shifts, including opening/closing the store, waiting to clock into
4 the POS system, disarming/arming the store alarm, cleaning, completing customer transactions,
5 handling inventory, and/or completing end-of-shift sales and shipping reports. Furthermore, as
6 stated, Defendants required Plaintiffs and class members to perform work-related tasks off-the-
7 clock, such as reviewing training modules, undergoing health screenings, and/or responding to
8 phone calls and text messages from their supervisors.

9 82. Third, as stated above, due to Defendants' company-wide practices of
10 understaffing, assigning heavy workloads, failure to adhere to a schedule for meal periods,
11 subsequent lack of meal period coverage, and/or requirement that employees to carry and use
12 their company-issued radio to communicate with management during unpaid meal periods,
13 Plaintiffs and class members were impeded from taking all uninterrupted meal periods to which
14 they were entitled and were required to work during their meal periods, time for which they
15 were not paid. Moreover, as stated, in order to prevent employees from accruing meal period
16 penalties, upon information and belief, Defendants' management adjusted employee time
17 records to reflect compliant meal periods and/or automatically deducted 30-minute meal periods
18 from Plaintiffs' and class members' time records even when meal periods were missed, short,
19 and/or interrupted. Thus, Defendants systematically failed to pay Plaintiffs and class members
20 for actual hours worked during unpaid meal periods because these hours were not always
21 correctly recorded.

22 83. Thus, Defendants did not pay minimum wages for all hours worked by Plaintiffs
23 and class members. To the extent that these off-the-clock hours did not qualify for overtime
24 premium payment, Defendants did not pay at least minimum wages for those hours worked off-
25 the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

26 84. As a result, Defendants regularly failed to pay at least minimum wages to
27 Plaintiffs and class members for all of the hours they worked in violation of California Labor
28 Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Pursuant to California Labor Code

1 section 1194.2, Plaintiffs and class members are entitled to recover liquidated damages in an
2 amount equal to the wages unlawfully unpaid and interest thereon.

3 **THIRD CAUSE OF ACTION**

4 **Violations of California Labor Code, §§ 226.7, 512(a), 516, and 1198—Meal Period** 5 **Violations** 6 **(Against all Defendants)**

7 85. Plaintiffs incorporate by reference and re-allege as if fully stated herein each and
8 every allegation set forth above.

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

16 87. At all relevant times herein set forth, California Labor Code sections 226.7,
17 512(a), 516, and 1198 provide that no employer shall require an employee to work during any
18 meal period mandated by an applicable order of the IWC.

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

25 89. As stated above, Defendants had, and continue to have, company-wide policies
26 and/or practices of understaffing their store locations which, combined with heavy workloads
27 and a failure to adhere to a schedule for meal periods, has resulted in a lack of meal period
28 coverage and prevented Plaintiffs and class members from taking all timely, uninterrupted meal

1 periods to which they were entitled. Moreover, as stated, Defendants had, and continue to have,
2 a company-wide policy and/or practice of requiring that Plaintiff Miller and class members
3 carry a company-issued radio to respond to requests at all times, including during meal periods.
4 As a result, Defendants' management contacted Plaintiff Miller and class members on their
5 company-issued radios during unpaid meal periods to discuss work-related matters.

6 90. As a result, Plaintiffs and class members had to work through all or part of their
7 meal periods, had their meal periods interrupted, and/or had to wait extended periods of time
8 before taking meal periods. For example, Plaintiff Miller missed her meal periods entirely or
9 took her meal periods late, after having worked in excess of five (5) hours into her shift, in order
10 to meet the store's customer demand. Moreover, Plaintiff Miller's meal periods were
11 interrupted by customers and Defendants' managers or coworkers calling her on the company-
12 provided radio about their loss prevention concerns.

13 91. Moreover, Defendants did not provide Plaintiff Miller and class members with
14 second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day.
15 During her employment, Plaintiff Miller worked shifts in excess of ten (10) hours or more hours
16 per day but was not provided an uninterrupted second 30-minute meal period. Plaintiffs and
17 class members did not sign valid meal period waivers on days that they were entitled to meal
18 periods and were not relieved of all duties.

19 92. At all times mentioned herein, Defendants knew or should have known that as a
20 result of their policies, Plaintiffs and class members were not actually relieved of all duties to
21 take timely, uninterrupted meal periods. Defendants further knew or should have known that
22 they did not pay Plaintiffs and class members meal period premiums when meal periods were
23 late, interrupted, shortened, or missed.

24 93. As set forth above, on information and belief, Defendants had a company-wide
25 policy and/or practice of rounding or underreporting employee clock-in and clock-out time
26 durations in their timekeeping system, which prevented Plaintiffs and class members from
27 receiving all meal period premiums when they took late and/or shortened meal periods. As
28 stated, Defendants' rounding policy rounded employees' clock-in and clock-out times in their

1 timekeeping system to the nearest quarter (0.25) of an hour. To the extent that Defendants'
2 timekeeping system reported that Plaintiffs and class members were provided with timely, full
3 30-minute meal periods when, in fact, the meal periods were taken after the fifth hour of work
4 or were less than 30 minutes, Plaintiffs and class members were entitled to a meal period
5 penalty. Thus, Plaintiffs and class members did not receive meal period penalties for these
6 improperly rounded meal periods. Alternatively, on information and belief, because Defendants
7 frowned upon employees accruing meal period penalties, Defendants' management would
8 adjust employees' time records to reflect compliant meal periods and/or would automatically
9 deduct 30-minute meal periods from Plaintiffs' and class members' time records even when
10 meal periods were missed, short, and/or interrupted.

11 94. Furthermore, Defendants engaged in a company-wide practice and/or policy of
12 not paying all meal period premiums owed when compliant meal periods are not provided.
13 Because of this practice and/or policy, Plaintiffs and class members have not received premium
14 pay for missed, late, and interrupted meal periods. Alternatively, on information and belief, to
15 the extent that Defendants did pay Plaintiffs and class members premium pay for missed, late,
16 and interrupted meal periods, Defendants did not pay Plaintiffs and class members at the correct
17 rate of pay for premiums because Defendants systematically failed to include all forms of
18 compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of
19 remuneration, in the regular rate of pay. As a result, Defendants failed to provide Plaintiffs and
20 class members compliant meal periods in violation of California Labor Code sections 226.7,
21 512(a), and 516, and failed to pay the full meal period premiums due.

22 95. Defendants' conduct violates the applicable IWC Wage Order, and California
23 Labor Code sections 226.7, 512(a), 516, and 1198. Plaintiffs and class members are therefore
24 entitled to recover from Defendants one (1) additional hour of pay at the employee's regular
25 rate of compensation for each work day that the meal period was not provided.

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FOURTH CAUSE OF ACTION
Violation of California Labor Code §§ 226.7, 516, and 1198—Rest Period Violations
(Against all Defendants)

96. Plaintiffs incorporate by reference and re-allege as if fully stated herein each and every allegation set forth above.

97. At all relevant times herein set forth, the applicable IWC Wage Order and California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiffs’ and class members’ employment by Defendants.

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

99. At all relevant times, California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must “relinquish any control over how employees spend their break time, and relieve their employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest.” *Augustus v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 269-270 (2016). Pursuant to the applicable IWC Wage Order and California Labor Code section 226.7(c), Plaintiffs and class members are entitled to recover from Defendants one (1) additional hour of pay at their regular rates of pay for each work day that a required rest period was not authorized and permitted.

100. Defendants regularly failed to authorize and permit Plaintiffs and class members to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, Defendants’ company-wide practices of understaffing and

1 assignment of heavy workloads prevented Plaintiffs and class members from being relieved of
2 all duty to take their rest periods. Additionally, Defendants failed to schedule rest periods,
3 which, coupled with Defendants' failure to provide adequate rest period coverage, further led
4 to Plaintiffs and class members not being authorized and permitted to take compliant rest
5 periods. Moreover, as stated, Defendants had, and continue to have, a policy and/or practice of
6 requiring that Plaintiff Miller and class members carry a company-issued radio to respond to
7 requests from management at all times, including during rest periods.

8 101. Furthermore, upon information and belief, Defendants maintained a company-
9 wide on-premises rest period policy, which mandated that Plaintiffs and/or class members
10 remain on Defendants' premises during their rest periods. Because Plaintiffs and/or class
11 members were restricted from leaving the premises during rest periods, they were denied the
12 ability to use their rest periods freely for their own purposes, such as running personal errands.
13 Thus, Defendants effectively maintained control over Plaintiffs and/or class members during
14 rest periods.

15 102. As a result of Defendants' practices and policies, Plaintiffs and class members
16 worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without
17 receiving all uninterrupted 10-minute rest periods to which they were entitled. For example,
18 Plaintiff Miller would miss her rest periods to meet customer demand and due to a lack of rest
19 period coverage. Plaintiff Miller's rest periods were also interrupted by managers wanting
20 discuss work-related tasks, either in person or over the radio. As a further example, Plaintiff
21 Sanchez missed her rest periods or would have them interrupted in order to help handle customer
22 returns.

23 103. Defendants have also engaged in a systematic, company-wide practice and/or
24 policy of not paying rest period premiums owed when rest periods are not authorized and
25 permitted. Because of this practice and/or policy, Plaintiffs and class members have not
26 received premium pay for all missed rest periods. Alternatively, on information and belief, to
27 the extent that Defendants did pay Plaintiffs and class members one (1) additional hour of
28 premium pay for missed rest periods, Defendants did not pay Plaintiffs and class members at

1 the correct rate of pay for premiums because Defendants failed to include all forms of
2 compensation, such incentive pay, nondiscretionary bonuses, and/or other forms of
3 remuneration, in the regular rate of pay. As a result, Defendants denied Plaintiffs and class
4 members rest periods and failed to pay them rest period premiums due, in violation of Labor
5 Code sections 226.7, 516, and the applicable IWC Wage Order.

6 104. Defendants' conduct violates the applicable IWC Wage Order and California
7 Labor Code sections 226.7, 516, and 1198. Plaintiffs and class members are therefore entitled
8 to recover from Defendants one (1) additional hour of pay at the employee's regular rate of
9 compensation for each work day that a compliant rest period was not authorized and permitted.

10 **FIFTH CAUSE OF ACTION**

11 **Violation of California Labor Code §§ 226(a), 1174(d), and 1198—Non-Compliant Wage** 12 **Statements and Failure to Maintain Accurate Payroll Records** 13 **(Against all Defendants)**

14 105. Plaintiffs incorporate by reference and re-allege as if fully stated herein each and
15 every allegation set forth above.

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

21 107. At all relevant times, Defendants have knowingly and intentionally provided
22 Plaintiff Miller and Subclass members with uniform, incomplete, and inaccurate wage
23 statements. For example, Defendants issued uniform wage statements to Plaintiff Miller and
24 Subclass members that fail to correctly list: gross wages earned; total hours worked; net wages
25 earned; and all applicable hourly rates in effect during the pay period, including rates of pay for
26 overtime wages and/or meal and rest period premiums, and the corresponding number of hours
27 worked at each hourly rate. Specifically, Defendants violated sections 226(a)(1), 226(a)(2),
28 226(a)(5), and 226(a)(9).

1 108. Because Defendants did not record the time Plaintiff Miller and Subclass
2 members spent working off the clock, improperly rounded their total hours worked, and
3 deducted time from their records for meal periods that were interrupted and/or missed (and
4 therefore time for which they should have been paid), Defendants did not list the correct amount
5 of gross wages and net wages earned by Plaintiff Miller and Subclass members in compliance
6 with sections 226(a)(1) and 226(a)(5). For the same reason, Defendants failed to accurately list
7 the total number of hours worked by Plaintiff Miller and Subclass members in violation of
8 section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay
9 period and corresponding accurate number of work hours worked at each hourly rate in violation
10 of section 226(a)(9).

11 109. Moreover, on information and belief, because Defendants did not calculate
12 Plaintiff Miller's and Subclass members' regular rate of pay correctly for purposes of paying
13 overtime wages and/or meal and rest period premiums, Defendants did not list the correct
14 amount of gross wages in compliance with section 226(a)(1). For the same reason, Defendants
15 failed to list the correct amount of net wages in violation of section 226(a)(5). Defendants also
16 failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct
17 rates of pay for overtime wages and/or meal and rest premiums, in violation of section 226(a)(9).

18 110. The wage statement deficiencies also include, without limitation, failing to list
19 the number of piece-rate units earned and any applicable piece rate if the employee is paid on a
20 piece-rate basis; failing to list all deductions; failing to list the inclusive dates of the period for
21 which employees were paid; failing to list the name of the employee and only the last four digits
22 of his or her social security number or an employee identification number other than a social
23 security number; failing to list the name and address of the legal entity that is the employer,
24 and/or failing to state all hours worked as a result of not recording or stating hours worked off-
25 the-clock.

26 111. California Labor Code section 1174(d) provides that "[e]very person employing
27 labor in this state shall . . . [k]eep a record showing the names and addresses of all employees
28 employed and the ages of all minors" and "[k]eep, at a central location in the state or at the

1 plants or establishments at which employees are employed, payroll records showing the hours
2 worked daily by and the wages paid to, and the number of piece-rate units earned by and any
3 applicable piece rate paid to, employees employed at the respective plants or establishments. . .
4 .” At all relevant times, and in violation of Labor Code section 1174(d), Defendants willfully
5 failed to maintain accurate payroll records for Plaintiff Miller and Subclass members showing
6 the daily hours they worked and the wages paid thereto as a result of failing to record the off-
7 the-clock hours that they worked and improperly rounding Plaintiff Miller’s and Subclass
8 members’ total hours worked.

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

23 113. Plaintiff Miller and Subclass members are entitled to recover from Defendants
24 the greater of their actual damages caused by Defendants’ failure to comply with California
25 Labor Code section 226(a), or an aggregate penalty not exceeding four thousand dollars
26 (\$4,000) per employee.

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SIXTH CAUSE OF ACTION
Violation of California Labor Code §§ 201 and 202—Wages Not Timely Paid Upon
Termination
(Against all Defendants)

114. Plaintiffs incorporate by reference and re-allege as if fully stated herein each and every allegation set forth above.

115. This cause of action is dependent upon, and wholly derivative of, the overtime wages, minimum wages, and/or meal and rest period premiums that were not timely paid to Plaintiffs and those class members no longer employed by Defendants upon their termination.

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

117. Defendants willfully failed to pay Plaintiffs and those class members 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.

118. Defendants' failure to pay Plaintiffs and class members 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. Plaintiffs and class members are therefore entitled to recover from Defendants the statutory penalty wages for each day they were not paid, at their regular rate of pay, up to a thirty (30) day maximum pursuant to California Labor Code section 203.

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SEVENTH CAUSE OF ACTION
Violation of California Labor Code § 204—Failure to Timely Pay Wages During
Employment
(Against all Defendants)

119. Plaintiffs incorporate by reference and re-allege as if fully stated herein each and every allegation set forth above.

120. This cause of action is dependent upon, and wholly derivative of, the overtime wages, minimum wages, and/or meal and rest period premiums that were not timely paid to Plaintiffs and class members by Defendants during their employment.

121. At all times relevant herein set forth, Labor Code section 204 provides that all wages earned by any person in any employment between the first (1st) and the fifteenth (15th) days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the sixteenth (16th) and the twenty-sixth (26th) day of the month during which the labor was performed.

122. At all times relevant herein, Labor Code section 204 provides that all wages earned by any person in any employment between the sixteenth (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 first (1st) and the tenth (10th) day of the following month.

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

124. During the relevant time period, Defendants willfully failed to pay Plaintiffs and class members all wages due including, but not limited to, overtime wages, minimum wages, and/or meal and rest period premiums, within the time periods specified by California Labor Code section 204.

125. Defendants' failure to timely pay Plaintiffs and class members all wages due violates Labor Code section 204. Plaintiffs and class members are therefore entitled to recover from Defendants the statutory penalty wages pursuant to California Labor Code section 210.

EIGHTH CAUSE OF ACTION

Violation of California Labor Code § 2802—Unpaid Business-Related Expenses (Against all Defendants)

126. Plaintiffs incorporate by reference and re-allege as if fully stated herein each and every allegation set forth above.

127. At all times herein set forth, California Labor Code section 2802 provides that an employer must reimburse employees for all necessary expenditures and losses incurred by the employee in the performance of his or her 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."

128. First, Defendants had a company-wide policy of requiring Plaintiffs and class members to utilize their own personal mobile devices, including, but not limited to, cellular phones, and/or mobile data to carry out their job duties, but Defendants failed to reimburse them for the costs of their work-related mobile device expenses. Plaintiffs and class members were required to use their personal mobile devices for work-related tasks, including responding to calls or text messages from Defendants' management. Additionally, Plaintiff Miller used her personal cellular phone to download two (2) mobile applications to be used for generating store reports and undergoing online training on company policies. Plaintiff Sanchez was required to communicate with Defendants' supervisors using her personal cellular phone regarding work assignments. Although Defendants required Plaintiffs and class members to utilize their

1 personal mobile devices and/or mobile data to carry out their work-related duties, Defendants
2 failed to reimburse them for these costs.

3 129. Second, during the relevant time period, Defendants had a company-wide policy
4 of requiring Plaintiffs and class members to utilize their own personal vehicles or obtain
5 alternate transportation to carry out company business, but failed to reimburse them for all costs
6 of travel, including mileage. For example, Plaintiff Miller was required to travel to Defendants'
7 other stores to pick up inventory for her store; as a further example, Plaintiff Sanchez was
8 required to drive to a local FedEx after work to send out merchandise. Although Defendants
9 required Plaintiffs and class members to use their own personal vehicles or obtain alternate
10 transportation to complete their work-related duties, Defendants did not reimburse them for
11 their travel expenses.

12 130. Defendants could have provided Plaintiffs and class members with the actual
13 tools for use on the job, such as company mobile devices and company vehicles. Or, Defendants
14 could have reimbursed employees for the costs of their mobile device expenses, travel expenses,
15 and mileage. Instead, Defendants passed these operating costs off onto Plaintiffs and class
16 members. At all relevant times, Plaintiffs did not earn at least two (2) times the minimum wage.

17 131. Defendants' company-wide policy and/or practice of passing on their operating
18 costs to Plaintiffs and class members violates California Labor Code section 2802. Defendants
19 have intentionally and willfully failed to reimburse Plaintiffs and other class members for
20 necessary business-related expenses and costs.

21 132. Plaintiffs and class members are entitled to recover from Defendants their
22 business-related expenses incurred during the course and scope of their employment, plus
23 interest.

24 **NINTH CAUSE OF ACTION**

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

26 **(Against all Defendants)**

27 133. Plaintiff Miller incorporates by reference and re-alleges as if fully stated herein
28 each and every allegation set forth above.

1 134. California Labor Code §§ 2698, et seq. (“PAGA”) permits Plaintiff Miller to
2 recover civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code
3 section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 204, 212, 213, 221,
4 223, 224, 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, and 2802. Labor Code
5 section 2699.3(c) permits aggrieved employees, including Plaintiff Miller, to recover civil
6 penalties for violations of those Labor Code sections not found in section 2699.5, including
7 sections 516, 1182.12, and 2810.5.

8 135. Defendants’ conduct, as alleged herein, violates numerous sections of the
9 California Labor Code, including, but not limited to, the following:

- 10 (a) Violation of Labor Code sections 510 and 1198, and the applicable IWC
11 Wage Order for Defendants’ failure to compensate Plaintiff Miller and
12 other aggrieved employees with all required overtime pay, as alleged
13 herein;
- 14 (b) Violation of Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198,
15 and the applicable IWC Wage Order for Defendants’ failure to
16 compensate Plaintiff Miller and other aggrieved employees with at least
17 minimum wages for all hours worked, as alleged herein;
- 18 (c) 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 Miller and other aggrieved employees with meal periods, as alleged
21 herein;
- 22 (d) Violation of Labor Code sections 226.7, 516, and 1198, and the applicable
23 IWC Wage Order for Defendants’ failure to authorize and permit Plaintiff
24 Miller and other aggrieved employees to take rest periods, as alleged
25 herein;
- 26 (e) 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 Miller and other aggrieved employees, as alleged

herein;

- (f) Violation of Labor Code sections 1174(d) and 1198, and the applicable IWC Wage Order for failure to maintain payroll records, as alleged herein;
- (g) Violation of Labor Code sections 201 and 202 for failure to pay all earned wages upon termination, as alleged herein;
- (h) Violation of Labor Code section 204 for failure to pay all earned wages during employment, as alleged herein;
- (i) Violation of Labor Code sections 212 and 213 for issuing instruments for the payment of wages that were not payable in cash on demand and without discount, as set forth below;
- (j) Violation of Labor Code sections 221 and 224 for unlawfully deducting a portion of wages previously paid to other aggrieved employees, as set forth below;
- (k) Violation of Labor Code section 223 for secretly paying other aggrieved employees lower wages than required by statute, while purporting to pay the proper wages, as set forth below;
- (l) Violation of Labor Code section 1198 and the applicable IWC Wage Order for failure to provide suitable resting facilities, as set forth below;
- (m) Violation of Labor Code section 1198 and the applicable IWC Wage Order for failure to provide suitable seating, as set forth below;
- (n) Violation of Labor Code section 2802 for failure to reimburse Plaintiff Miller and other aggrieved employees for all business expenses necessarily incurred, as alleged herein; and
- (o) Violation of Labor Code section 2810.5(a)(1)(A)-(C) for failure to provide written notice of information material to Plaintiff Miller's and other aggrieved employees' employment with Defendants, as set forth below.

136. At all times relevant herein, California Labor Code section 212 prohibits employers from issuing any instruments for the payment of wages unless such instruments are negotiable and payable in cash on demand and without discount, at some established place of business in the state, the name and address of which must appear on the instrument. California Labor Code section 212 further prohibits employers from issuing payment of wages due in the form of any scrip, coupon, cards, or other thing redeemable, in merchandise or purporting to be payable or redeemable otherwise than in money.

137. California Labor Code section 213 permits employers to pay employees via direct deposit so long as the employee authorizes payment via direct deposit.

138. Under California law, employers are permitted to fulfill their wage payment obligations to employees by using payroll debit cards, but only so long as the employee is given the choice as to whether to accept a payroll debit card as a form of payment. *Johnson v. Sunrise Senior Living Management, Inc.*, No. 16 CV 00443 BRO RAOx, 2016 WL 8929249, *9 (C.D. Cal. May 5, 2016). In *Johnson*, the court stated that the Division of Labor Standards Enforcement (“DLSE”) decision deeming payroll debit card program permissible relied heavily on:

... [T]he fact that the pay programs were optional, thereby allowing an employee to either participate in the program or receive his or her pay in some other way, such as direct deposit. Specifically, the DLSE opined that “[t]he success of the described procedure, in practice, will of course require that ... it is presented as an *alternative* method for wage payment for which [the employees’] participation is optional.” The DLSE also stated, “[i]t is significant that the program does not mandate employee participation in the Money Network Service and that it is designed to provide an alternative for employees receiving their wage payment. Employees are also given the option of having their pay direct deposited into an account of their choosing. . . .” (internal citations omitted).

139. In addition, California law only permits employers to utilize payroll debit card programs if they provide employees with effective access to their wages without discount. The DLSE has interpreted California Labor Code sections 212 and 213 as permitting employer use of payroll debit cards where the following requirements are satisfied:

... (1) [T]he “wages [are] payable at some established place of

business in the state and there be at least 30 days of sufficient funds for payment,”; (2) the employees are “fully informed of the service and procedures and that it is represented as an alternative method for wage payment for which their participation is optional,”; (3) the employees receive “an itemized wage statement,”; and (4) “at least one transaction per pay period [is] without fee.”

Ortiz v. Randstad North America, L.P., No. C-13-5050 MMC, 2015 WL 6202298 at 3.

140. Further, the DLSE notes that the Labor Code manifests:

... [A] strong public policy that prohibits an employer (or its agent) from imposing conditions or obstacles which interfere with or prevent an employee’s (*sic*) from promptly receiving their due wages *in full*. The imposition of a fee in order to readily *access* one’s earned and paid wage under a payroll card program which is designed to discharge the employer’s wage payment obligations could impermissibly interfere with an employee’s receipt of page wages by creating a financial condition which would have the *effect* of reducing or discounting wages because such fee would be charged against the same account in which wages are deposited.” (emphases in original)

DLSE opinion letter 2008.07.07. The DLSE has also acknowledged that payroll service providers “effectively act as agents of the client employers in discharging the employer’s wage payment obligations.” *Id.* In a second opinion letter, the DLSE stated that “[w]hile the Labor Code does not purport to regulate the specific arrangements between employers and payroll service providers, both an employer and, under the express language in Labor Code § 212- their agent, must comply with its requirements.” *DLSE opinion letter 2008.07.07-2.*

141. During the relevant time period, Defendants had a practice and/or policy of automatically issuing payroll debit cards to departing employees without giving them the option to elect their form of payment for their final wages. For example, Plaintiff Miller received her final wages on a payroll debit card without a choice of an alternate method of payment, such as a written check. Instead, Defendants automatically enrolled Plaintiff Miller in their payroll debit card program for the purpose of issuing Plaintiff Miller’s final wages to her without prior, voluntary approval from Plaintiff Miller.

142. Moreover, under Defendants’ payroll debit card program, on information and belief, other aggrieved employees did not have easy access to the entirety of their wages without incurring a fee. For example, other aggrieved employees were unable to withdraw their entire

1 wages in at least one transaction without incurring a fee and/or encountered \$3.00 ATM fees
2 each time they utilized an out-of-network ATM to withdraw funds from their payroll debit cards,
3 which resulted in a discount in their pay.

4 143. Thus, Defendants' payroll debit card program was and continues to be unlawful
5 as it does not give employees the choice as to whether they would like to receive their wages
6 on a payroll debit card or via some other payment method and did not give Plaintiff Miller
7 and/or other aggrieved employees easy access to the entirety of their wages without discount
8 and without delay.

9 144. California courts recognize a policy favoring the full and prompt payment of
10 wages to employees. Defendants' payroll card program is inconsistent with this policy because
11 it presents a number of obstacles and hurdles that, together, make it difficult for Plaintiff Miller
12 and/or other aggrieved employees to access their entire wages without discount and without
13 delay, in violation of California Labor Code sections 212 and 213. Plaintiff Miller and other
14 aggrieved employees are therefore entitled to recover civil penalties pursuant to Labor Code
15 sections 225.5 and/or 2699(a), (f), and (g).

16 145. At all times relevant herein, California Labor Code section 221 provides that it
17 shall be unlawful for any employer to collect or receive from an employee any part of wages
18 theretofore paid by said employer to said employee. California Labor Code section 224 also
19 provides in pertinent part that it is lawful to withhold a portion of the employee's wages if "a
20 deduction is expressly authorized in writing by the employee."

21 146. During the relevant time period, Defendants unlawfully deducted a portion of
22 wages previously paid to other aggrieved employees in violation of California Labor Code
23 section 221. On information and belief, Defendants systematically, and on a company-wide
24 basis, provided other aggrieved employees with payroll debit cards as payment of their wages.
25 Under Defendants' payroll debit card program, other aggrieved employees were assessed
26 various fees in connection with their use of the payroll debit cards. For example, other
27 aggrieved employees were required to pay per-transaction fees, ATM fees, and/or other fees to
28 obtain and/or spend their earned and due wages. The fees charged to other aggrieved employees

1 resulted in a discount of their wages.

2 147. Defendants' payroll debit card program, which resulted in a discount of wages
3 to employees, is tantamount to taking deductions from other aggrieved employees' paychecks
4 without their written authorization and therefore constitutes an unlawful deduction of wages, in
5 violation of Labor Code sections 221 and 224. Other aggrieved employees are therefore entitled
6 to recover civil penalties pursuant to Labor Code sections 225.5 and/or 2699(a), (f), and (g).

7 148. At all times, California Labor Code section 223 makes it unlawful for an
8 employer to secretly pay wages lower than required by statute while purporting to pay legal
9 wages.

10 149. During the relevant time period, Defendants willfully and systematically issued
11 payroll debit cards to other aggrieved employees that discounted their wages by charging
12 various fees in connection with the use of the payroll debit cards. Defendants' payroll debit
13 card program resulted in the payment of less than statutorily required wages to other aggrieved
14 employees. In doing so, Defendants acted with the intent to deprive other aggrieved employees
15 of statutory wages, including, but not limited to, overtime wages and/or minimum wages, to
16 which they were entitled to under California law. Thus, Defendants paid other aggrieved
17 employees lower wages than those they were entitled to while purporting that other aggrieved
18 employees were properly paid.

19 150. Defendants' failure to pay other aggrieved employees the correct designated
20 wage, while purporting to pay legal wages, is a violation of California Labor Code section 223.
21 Other aggrieved employees are therefore entitled to recover civil penalties pursuant to Labor
22 Code sections 225.5 and/or 2699(a), (f), and (g).

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

28 152. California Code of Regulations, Title 8, section 11070(13)(B) provides that

1 “[s]uitable resting facilities shall be provided in an area separate from the toilet rooms and shall
2 be available to employees during work hours.”

3 153. Defendants’ California stores are generally similar in their layout and design and
4 there was, and continues to be, space that allows for a resting facility that employees may use
5 to cease work and recover during meal or rest periods. Defendants could have provided Plaintiff
6 Miller and other aggrieved employees with a resting facility within their stores, with reasonable
7 or no modification, but instead denied, and continue to deny, employees suitable areas to rest
8 (e.g., a breakroom). As a result, Plaintiff Miller and other aggrieved employees were forced to
9 adjust to areas not conducive to resting, such as areas not designated or reserved for their rest,
10 such as in the management office, storage rooms, or in their personal vehicles.

11 154. Defendants did not provide Plaintiff Miller and other aggrieved employees with
12 suitable resting facilities during their work hours, particularly during meal or rest periods. In
13 other words, during the times when Plaintiff Miller and other aggrieved employees were legally
14 allowed to forgo assigned tasks, as in during a meal or rest period, Defendants denied them
15 suitable areas within their stores to cease work and recover. Moreover, Defendants did not
16 inform Plaintiff Miller and other aggrieved employees of their rights to suitable resting facilities
17 under California law.

18 155. As a result of Defendants’ company-wide policy and/or practice of denying
19 employees suitable areas to rest within their stores and company-wide failure to provide suitable
20 resting facilities in their stores, Plaintiff Miller and other aggrieved employees were forced to
21 adjust to areas not conducive to resting or search for facilities outside their stores to cease work
22 and recover. Defendants’ failure to provide suitable resting facilities to Plaintiff Miller and
23 other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order
24 No. 7-2001, subdivision 13(B).

25 156. Plaintiff Miller and other aggrieved employees are therefore entitled to recover
26 civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

27 157. California Code of Regulations, Title 8, section 11070(14)(A) provides that “[a]ll
28 working employees shall be provided with suitable seats when the nature of the work reasonably

1 permits the use of seats.”

2 158. Defendants' California stores are generally similar in their layout and design and
3 there was, and continues to be, space behind cash wraps to allow for the presence and use of a
4 seat or stool by Plaintiff Miller and other aggrieved employees (with reasonable or no
5 modification to these work areas) during the performance of their work duties. Defendants
6 could have provided Plaintiff Miller and other aggrieved employees with a seat or stool at cash
7 wraps, but instead denied employees seating and forced Plaintiff Miller and other aggrieved
8 employees to stand throughout the day.

9 159. Plaintiff Miller and other aggrieved employees spent a portion of their day behind
10 or at these cash wraps. The nature of the work of an employee performing cashier duties can
11 reasonably be accomplished from a seated position. However, as set forth herein, Defendants
12 systematically, and on a company-wide basis, do not provide seats or stools at or near the cash
13 wraps, forcing Plaintiff Miller and other aggrieved employees to stand throughout their work
14 shifts.

15 160. Defendants violated California Labor Code section 1198 and California Code of
16 Regulations, Title 8, section 11070(14)(A) because Plaintiff Miller and other aggrieved
17 employees were not allowed to sit, even when it would not have interfered with the performance
18 of their duties, nor were they provided with suitable seats. Defendants' management did not
19 inform Plaintiff Miller and other aggrieved employees that they were allowed to sit down,
20 provide any means for them to sit down, or mention any policy regarding sitting.

21 161. As a result of Defendants' company-wide policy and/or practice of prohibiting
22 employees from sitting during their shifts and company-wide failure to provide suitable seating,
23 Plaintiff Miller and other aggrieved employees were forced to stand during shifts and denied
24 seats. Defendants' failure to provide suitable seating to Plaintiff Miller and other aggrieved
25 employees violates California Labor Code section 1198 and IWC Wage Order No. 7-2001,
26 subdivision 14(A). Plaintiff Miller and other aggrieved employees are therefore entitled to
27 recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

28 162. California Code of Regulations, Title 8, section 11070(14)(B) provides that

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

5 163. 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 Miller and other aggrieved employees were not allowed to sit, even during lulls in their
8 work duties, nor were they provided with suitable seats in reasonable proximity to their work
9 areas.

10 164. Defendants’ California stores are generally similar in their layout and design and
11 there was, and continues to be, space near their work areas (with reasonable or no modification
12 to these work areas) to allow for the presence and use of a seat or stool by Plaintiff Miller and
13 other aggrieved employees during lulls in operation. Defendants could have provided Plaintiff
14 Miller and other aggrieved employees with a seat or stool in their work areas, but instead denied,
15 and continue to deny, employees seating, forcing them to stand throughout the day.

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

24 166. As a result of Defendants’ company-wide policy and/or practice of prohibiting
25 employees from sitting at any time, even when they were not engaged in active duties requiring
26 standing, and company-wide failure to provide seats in reasonable proximity to their work areas,
27 Plaintiff Miller and other aggrieved employees were forced to stand during shifts and denied
28 seats. Defendants’ failure to provide suitable seating to Plaintiff Miller and other aggrieved

employees violates California Labor Code section 1198 and IWC Wage Order No. 7-2001, subdivision 14(B). Plaintiff Miller and other aggrieved employees are therefore entitled to recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

167. At all relevant times herein, 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 containing basic and material payroll information, including, among other things, 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. Labor Code § 2810.5(a)(1)(A)-(C).

168. At all relevant times, on information and belief, Defendants failed, on a company-wide basis, to provide written notice to Plaintiff Miller and other aggrieved employees that lists the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). Defendants' failure to provide Plaintiff Miller and other aggrieved employees with written notice of basic information regarding their employment with Defendants is in violation of Labor Code section 2810.5. Plaintiff Miller and other aggrieved employees are therefore entitled to recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

TENTH CAUSE OF ACTION

Violation of California Business & Professions Code §§ 17200, *et seq.* –

Unlawful Business Practices

(Against all Defendants)

169. Plaintiffs incorporate by reference and re-allege as if fully stated herein each and every allegation set forth above.

170. Defendants are "persons" as defined by California Business & Professions Code

1 sections 17201, as they are corporations, firms, partnerships, joint stock companies, and/or
2 associations.

3 171. Defendants' conduct, as alleged herein, has been, and continues to be, unfair,
4 unlawful and harmful to Plaintiffs, class members, and to the general public. Plaintiffs have
5 suffered injury in fact and have lost money as a result of Defendants' unlawful business
6 practices. Plaintiffs seek to enforce important rights affecting the public interest within the
7 meaning of Code of Civil Procedure section 1021.5.

8 172. Defendants' activities, as alleged herein, are violations of California law, and
9 constitute unlawful business acts and practices in violation of California Business & Professions
10 Code sections 17200, *et seq.*

11 173. A violation of California Business & Professions Code sections 17200, *et seq.*
12 may be predicated on the violation of any state or federal law. In the instant case, Defendants'
13 policies and practices have violated state law in at least the following respects:

- 14 (a) Requiring non-exempt, hourly paid employees, including Plaintiffs and
15 class members, to work overtime without paying them proper
16 compensation in violation of California Labor Code sections 510 and
17 1198, and the applicable IWC Wage Order, as alleged herein;
- 18 (b) Failing to include all forms of remuneration in the "regular rate" of pay
19 as required by law for purposes of paying overtime wages and/or meal
20 and rest period premiums to Plaintiffs and class members, in violation of
21 California Labor Code sections 226.7, 510, and 1198, and the applicable
22 IWC Wage Order, as alleged herein;
- 23 (c) Failing to pay at least minimum wage to Plaintiffs and class members in
24 violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1,
25 and 1198, and the applicable IWC Wage Order, as alleged herein;
- 26 (d) Failing to provide uninterrupted meal periods to Plaintiffs and class
27 members in violation of California Labor Code sections 226.7, 512(a),
28 516, and 1198, and the applicable IWC Wage Order, as alleged herein;

- 1 (e) Failing to authorize and permit Plaintiffs and class members to take
2 uninterrupted rest periods in violation of California Labor Code sections
3 226.7, 516, and 1198, and the applicable IWC Wage Order, as alleged
4 herein;
- 5 (f) Failing to provide Plaintiff Miller and class members with accurate wage
6 statements and failing to maintain accurate payroll records in violation of
7 California Labor Code sections 226(a), 1174(d), and 1198, and the
8 applicable IWC Wage Order, as alleged herein;
- 9 (g) Failing to timely pay all earned wages to Plaintiffs and class members in
10 violation of California Labor Code section 204, as alleged herein;
- 11 (h) Issuing instruments to Plaintiff Miller and class members for the payment
12 of wages that were not payable in cash on demand and without discount,
13 in violation of California Labor Code sections 212 and 213, as set forth
14 below;
- 15 (i) Failing to reimburse Plaintiffs and class members for all business
16 expenses necessarily incurred in violation of California Labor Code
17 section 2802, as alleged herein; and
- 18 (j) Failing to provide written notice of information material to Plaintiffs' and
19 class members' employment with Defendants in violation of California
20 Labor Code section 2810.5(a)(1)(A)-(C), as set forth below.

21 174. At all times relevant herein, California Labor Code section 212 prohibits
22 employers from issuing any instruments for the payment of wages unless such instruments are
23 negotiable and payable in cash on demand and without discount. California Labor Code section
24 213 permits employers to pay employees via direct deposit so long as the employee authorizes
25 payment via direct deposit.

26 175. Under California law, employers are permitted to fulfill their wage payment
27 obligations to employees by using payroll debit cards, but only so long as the employee is given
28 the choice as to whether to accept a payroll debit card as a form of payment. *Johnson v. Sunrise*

1 *Senior Living Management, Inc.*, No. 16 CV 00443 BRO RAOx, 2016 WL 8929249, *9 (C.D.
2 Cal. May 5, 2016). In *Johnson*, the court stated that the Division of Labor Standards
3 Enforcement (“DLSE”) decision deeming payroll debit card program permissible relied heavily
4 on:

5 . . . [T]he fact that the pay programs were optional, thereby
6 allowing an employee to either participate in the program or
7 receive his or her pay in some other way, such as direct deposit.
8 Specifically, the DLSE opined that “[t]he success of the described
9 procedure, in practice, will of course require that . . . it is
10 presented as an *alternative* method for wage payment for which
11 [the employees’] participation is optional.” The DLSE also stated,
“[i]t is significant that the program does not mandate employee
participation in the Money Network Service and that it is designed
to provide an alternative for employees receiving their wage
payment. Employees are also given the option of having their pay
direct deposited into an account of their choosing. . . .” (internal
citations omitted).

12 176. In addition, California law only permits employers to utilize payroll debit card
13 programs if they provide employees with effective access to their wages without discount. The
14 DLSE has interpreted Labor Code sections 212 and 213 as permitting employer use of payroll
15 debit cards where the following requirements are satisfied:

16 . . . (1) [T]he “wages [are] payable at some established place of
17 business in the state and there be at least 30 days of sufficient
18 funds for payment,”; (2) the employees are “fully informed of the
19 service and procedures and that it is represented as an alternative
20 method for wage payment for which their participation is
optional,”; (3) the employees receive “an itemized wage
statement,”; and (4) “at least one transaction per pay period [is]
without fee.”

21 *Ortiz v. Randstad North America, L.P.*, No. C-13-5050 MMC, 2015 WL 6202298 at 3.

22 177. Further, the DLSE notes that the Labor Code manifests:

23 . . . [A] strong public policy that prohibits an employer (or its
24 agent) from imposing conditions or obstacles which interfere with
25 or prevent an employee’s (*sic*) from promptly receiving their due
26 wages *in full*. The imposition of a fee in order to readily *access*
27 one’s earned and paid wage under a payroll card program which
28 is designed to discharge the employer’s wage payment obligations
could impermissibly interfere with an employee’s receipt of page
wages by creating a financial condition which would have the
effect of reducing or discounting wages because such fee would
be charged against the same account in which wages are
deposited.” (Emphases in original)

1 *DLSE opinion letter* 2008.07.07. The DLSE has also acknowledged that payroll service
2 providers “effectively act as *agents* of the client employers in discharging the employer’s wage
3 payment obligations.” *Id.* In a second opinion letter, the DLSE stated that “[w]hile the Labor
4 Code does not purport to regulate the specific arrangements between employers and payroll
5 service providers, both an employer and, under the express language in Labor Code § 212- their
6 *agent*, must comply with its requirements.” *DLSE opinion letter* 2008.07.07-2.

7 178. During the relevant time period, Defendants had a practice and/or policy of
8 automatically issuing payroll debit cards to departing employees without giving them the option
9 to elect their form of payment for their final wages. For example, Plaintiff Miller received her
10 final wages on a payroll debit card without a choice of an alternate method of payment, such as
11 a written check. Instead, Defendants automatically enrolled Plaintiff Miller in their payroll
12 debit card program for the purpose of issuing Plaintiff Miller’s final wages to her without prior,
13 voluntary approval from Plaintiff Miller. Thus, Defendants’ payroll debit card program was
14 and continues to be unlawful as it does not give employees the choice as to whether they would
15 like to receive their wages on a payroll debit card or via some other payment method.

16 179. California courts recognize a policy favoring the full and prompt payment of
17 wages to employees. Defendants’ payroll card program is inconsistent with this policy because
18 Defendants’ program is involuntary and denies Plaintiff Miller and class members of easy
19 access to the entirety of their wages. Thus, Defendants’ company-wide payroll debit card
20 program violates California Labor Code sections 212 and 213.

21 180. At all relevant times herein, California’s Wage Theft Prevention Act was enacted
22 to ensure that employers provide employees with basic information material to their
23 employment relationship at the time of hiring, and to ensure that employees are given written
24 and timely notice of any changes to basic information material to their employment. Codified
25 at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the
26 time of hiring, an employer must provide written notice to employees containing basic and
27 material payroll information, including, among other things, the rate(s) of pay and basis thereof,
28 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. Labor Code § 2810.5(a)(1)(A)-(C).

181. At all relevant times, on information and belief, Defendants failed, on a company-wide basis, to provide written notice to Plaintiffs and class members that lists the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). Defendants' failure to provide Plaintiffs and class members with written notice of basic information regarding their employment with Defendants is in violation of California Labor Code section 2810.5(a)(1)(A)-(C).

182. As a result of the violations of California law herein described, Defendants unlawfully gained an unfair advantage over other businesses. Plaintiffs and class members have suffered pecuniary loss by Defendants' unlawful business acts and practices alleged herein.

183. Pursuant to California Business & Professions Code sections 17200, *et seq.*, Plaintiffs and class members are entitled to restitution of the wages withheld and retained by Defendants during a period that commences four years prior to the filing of this complaint; a permanent injunction requiring Defendants to pay all outstanding wages due to Plaintiffs and class members; and an award of attorneys' fees pursuant to California Code of Civil Procedure section 1021.5 and other applicable laws; and an award of costs.

ELEVENTH CAUSE OF ACTION

Violation of California Business & Professions Code §§ 17200, *et seq.* –

Unfair Business Practices

(Against all Defendants)

184. Plaintiffs incorporate by reference and re-allege as if fully stated herein each and every allegation set forth above.

185. Defendants are "persons" as defined by California Business & Professions Code section 17201, as they are corporations, firms, partnerships, joint stock companies, and/or associations.

186. Defendants' conduct, as alleged herein, has been, and continues to be, unfair, and

1 harmful to Plaintiffs, class members, and to the general public. Plaintiffs have suffered injury
2 in fact and have lost money as a result of Defendants' unfair business practices. Plaintiffs seek
3 to enforce important rights affecting the public interest within the meaning of Code of Civil
4 Procedure section 1021.5.

5 187. Defendants' activities, namely Defendants' company-wide practice and/or policy
6 of not paying Plaintiffs and class members all meal and rest period premiums due to them under
7 California Labor Code section 226.7, deprived Plaintiffs and class members of the
8 compensation guarantee and enhanced enforcement implemented by section 226.7. The
9 statutory remedy provided by section 226.7 is a "dual-purpose" remedy intended primarily to
10 compensate employees, and secondarily to shape employer conduct." *Safeway, Inc. v. Superior*
11 *Court*, 238 Cal. App. 4th 1138, 1149 (2015). The statutory benefits of section 226.7 were
12 guaranteed to Plaintiffs and class members as part of their employment with Defendants, and
13 thus Defendants' practice and/or policy of denying these statutory benefits constitutes an unfair
14 business practice in violation of California Business & Professions Code sections 17200, *et seq.*
15 (*Id.*)

16 188. A violation of California Business & Professions Code sections 17200, *et seq.*
17 may be predicated on any unfair business practice. In the instant case, Defendants' policies and
18 practices have violated the spirit of California's meal and rest period laws and constitute acts
19 against the public policy behind these laws.

20 189. Pursuant to California Business & Professions Code sections 17200, *et seq.*,
21 Plaintiffs and class members are entitled to restitution for the class-wide loss of the statutory
22 benefits implemented by California Labor Code section 226.7 withheld and retained by
23 Defendants during a period that commences four years prior to the filing of this complaint; a
24 permanent injunction requiring Defendants to pay all statutory benefits implemented by
25 California Labor Code section 226.7 due to Plaintiffs and class members; an award of attorneys'
26 fees pursuant to California Code of Civil Procedure section 1021.5 and other applicable laws;
27 and an award of costs.

28 ///

1 **REQUEST FOR JURY TRIAL**

2 Plaintiffs request a trial by jury.

3 **PRAYER FOR RELIEF**

4 Plaintiffs, on behalf of all others similarly situated, pray for relief and judgment against
5 Defendants, jointly and severally, as follows:

6 1. For damages, unpaid wages, penalties, injunctive relief, and attorneys' fees in
7 excess of twenty-five thousand dollars (\$25,000), exclusive of interest and costs. Plaintiffs
8 reserve the right to amend their prayer for relief to seek a different amount.

9 **Class Certification**

10 2. That this case be certified as a class action;

11 3. That Plaintiffs be appointed as the representatives of the Class and Subclass;

12 4. That counsel for Plaintiffs be appointed as class counsel.

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

14 5. That the Court declare, adjudge, and decree that Defendants violated California
15 Labor Code sections 510 and 1198 and the applicable IWC Wage Order by willfully failing to
16 pay all overtime wages due to Plaintiffs and class members;

17 6. For general unpaid wages at overtime wage rates and such general and special
18 damages as may be appropriate;

19 7. For pre-judgment interest on any unpaid overtime compensation commencing
20 from the date such amounts were due, or as otherwise provided by law;

21 8. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to
22 California Labor Code section 1194(a); and

23 9. For such other and further relief as the Court may deem equitable and
24 appropriate.

25 **As to the Second Cause of Action**

26 10. That the Court declare, adjudge and decree that Defendants violated California
27 Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 and the applicable IWC Wage
28 Order by willfully failing to pay minimum wages to Plaintiffs and class members;

11. For general unpaid wages and such general and special damages as may be appropriate;

12. For pre-judgment interest on any unpaid compensation from the date such amounts were due, or as otherwise provided by law;

13. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to California Labor Code section 1194(a);

14. For liquidated damages pursuant to California Labor Code section 1194.2; and

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

As to the Third Cause of Action

16. That the Court declare, adjudge, and decree that Defendants violated California Labor Code sections 226.7, 512(a), 516, and 1198 and the applicable IWC Wage Order by willfully failing to provide all meal periods to Plaintiffs and class members;

17. That the Court make an award to the Plaintiffs and class members of one (1) hour of pay at each employee's regular rate of pay for each workday that a meal period was not provided;

18. For all actual, consequential, and incidental losses and damages, according to proof;

19. For premiums pursuant to California Labor Code section 226.7(c);

20. For pre-judgment interest on any unpaid meal period premiums from the date such amounts were due, or as otherwise provided by law;

21. For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5, or as otherwise provided by law; and

22. For such other and further relief as the Court may deem equitable and appropriate.

As to the Fourth Cause of Action

23. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 226.7, 516, and 1198 and the applicable IWC Wage Order by willfully

1 failing to authorize and permit Plaintiffs and class members to take all rest periods;

2 24. That the Court make an award to the Plaintiffs and class members of one (1) hour
3 of pay at each employee's regular rate of pay for each workday that a rest period was not
4 authorized and permitted;

5 25. For all actual, consequential, and incidental losses and damages, according to
6 proof;

7 26. For premiums pursuant to California Labor Code section 226.7(c);

8 27. For pre-judgment interest on any unpaid rest period premiums from the date such
9 amounts were due, or as otherwise provided by law;

10 28. For attorneys' fees pursuant to California Code of Civil Procedure section
11 1021.5, or as otherwise provided by law; and

12 29. For such other and further relief as the Court may deem equitable and
13 appropriate.

14 **As to the Fifth Cause of Action**

15 30. That the Court declare, adjudge and decree that Defendants violated the
16 recordkeeping provisions of California Labor Code section 226(a) and the applicable IWC
17 Wage Order as to Plaintiff Miller and Subclass members, and willfully failed to provide accurate
18 itemized wage statements thereto;

19 31. For all actual, consequential, and incidental losses and damages, according to
20 proof;

21 32. For injunctive relief pursuant to California Labor Code section 226(h);

22 33. For statutory penalties pursuant to California Labor Code section 226(e);

23 34. For attorneys' fees and costs pursuant to California Labor Code section
24 226(e)(1); and

25 35. For such other and further relief as the Court may deem equitable and
26 appropriate.

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As to the Sixth Cause of Action

36. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 201 and 202 by willfully failing to pay overtime wages, minimum wages, and/or meal and rest period premiums owed at the time of termination of the employment of Plaintiffs and other terminated class members;

37. For all actual, consequential and incidental losses and damages, according to proof;

38. For waiting time penalties according to proof pursuant to California Labor Code section 203 for all employees who have left Defendants' employ;

39. For pre-judgment interest on any unpaid wages from the date such amounts were due, or as otherwise provided by law;

40. For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5, or as otherwise provided by law; and

41. For such other and further relief as the Court may deem equitable and appropriate.

As to the Seventh Cause of Action

42. That the Court declare, adjudge and decree that Defendants violated California Labor Code section 204 by willfully failing to timely pay Plaintiffs and class members overtime wages, minimum wages, and/or meal and rest period premiums during their employment;

43. For all actual, consequential and incidental losses and damages, according to proof;

44. For statutory penalties according to proof pursuant to California Labor Code section 210;

45. For pre-judgment interest on any unpaid wages from the date such amounts were due, or as otherwise provided by law;

46. For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5, or as otherwise provided by law; and

47. For such other and further relief as the Court may deem equitable and

appropriate.

As to the Eighth Cause of Action

48. That the Court declare, adjudge and decree that Defendants violated California Labor Code section 2802 by willfully failing to reimburse and/or indemnify all business-related expenses and costs incurred by Plaintiffs and class members;

49. For unpaid business-related expenses and such general and special damages as may be appropriate;

50. For pre-judgment interest on any unpaid business-related expenses from the date such amounts were due, or as otherwise provided by law;

51. For all actual, consequential, and incidental losses and damages, according to proof;

52. For attorneys' fees and costs pursuant to California Labor Code section 2802(c), or as otherwise provided by law; and

53. For such other and further relief as the Court may deem equitable and appropriate.

As to the Ninth Cause of Action

54. That the Court declare, adjudge and decree that Defendants violated the following California Labor Code provisions as to Plaintiff Miller and/or other aggrieved employees: 510 and 1198 (by failing to pay all overtime compensation); 1182.12, 1194, 1197, 1197.1, and 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512(a), 516, and 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize and permit all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage statements and maintain accurate payroll records); 201 and 202 (by failing to timely pay all earned wages upon termination); 204 (by failing to timely pay all earned wages during employment); 212 and 213 (by failing to make earned wages accessible without discount); 221 and 224 (by collecting and/or receiving wages already paid); 223 (by secretly paying wages lower than required by statute); 1198 and the applicable IWC Wage Order (by failing to provide suitable resting facilities); 1198 and the applicable IWC Wage Order (by failing to provide

suitable seating); 2802 (by failing to reimburse business expenses); and 2810.5 (by failing to provide notice of material terms of employment);

55. For civil penalties pursuant to the California Labor Code, including sections 210, 225.5, 226.3, 256, 558, 1174.5, 2699(a), (f), and (g), for violations of California Labor Code sections 201, 202, 204, 212, 213, 221, 223, 224, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5;

56. For attorneys' fees and costs pursuant to California Labor Code section 2699(g)(1), and any and all other relevant statutes, for Defendants' violations of California Labor Code sections 201, 202, 204, 212, 213, 221, 223, 224, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5;

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

58. For such other and further relief as the Court may deem equitable and appropriate.

As to the Tenth Cause of Action

54. That the Court declare, adjudge and decree that Defendants' conduct of failing to provide Plaintiffs and class members all overtime wages due to them, failing to provide Plaintiffs and class members all minimum wages due to them, failing to provide Plaintiffs and class members all meal periods, failing to authorize and permit Plaintiffs and class members to take all rest periods, failing to provide Plaintiff Miller and class members accurate and complete wage statements, failing to maintain accurate payroll records for Plaintiff Miller and class members, failing to timely pay Plaintiffs and class members all earned wages during employment, failing to provide access to wages upon demand and without discount, failing to reimburse Plaintiffs and class members for business-related expenses, and failing to provide written notice of material terms of employment, constitutes an unlawful business practice in violation of California Business and Professions Code sections 17200, *et seq.*;

55. For restitution of unpaid wages to Plaintiffs and all class members and prejudgment interest from the day such amounts were due and payable;

56. For the appointment of a receiver to receive, manage and distribute any and all

1 funds disgorged from Defendants and determined to have been wrongfully acquired by
2 Defendants as a result of violations of California Business & Professions Code sections 17200,
3 *et seq.*;

4 57. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
5 California Code of Civil Procedure section 1021.5; and

6 58. For such other and further relief as the Court may deem equitable and
7 appropriate.

8 **As to the Eleventh Cause of Action**

9 59. That the Court declare, adjudge and decree that Defendants' conduct of denying
10 Plaintiffs and class members the statutory benefits guaranteed under California Labor Code
11 section 226.7 constitutes an unfair business practice in violation of California Business and
12 Professions Code sections 17200, *et seq.*;

13 60. For restitution of the statutory benefits under California Labor Code section
14 226.7 unfairly withheld from Plaintiffs and class members and prejudgment interest from the
15 day such amounts were due and payable;

16 61. For the appointment of a receiver to receive, manage and distribute any and all
17 funds disgorged from Defendants and determined to have been wrongfully acquired by
18 Defendants as a result of violations of California Business & Professions Code sections 17200,
19 *et seq.*;

20 62. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
21 California Code of Civil Procedure section 1021.5;

22 63. For pre-judgment and post-judgment interest as provided by law; and

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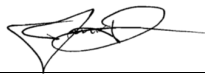
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1 64. For such other and further relief as the Court may deem equitable and
2 appropriate.

3
4 Dated: March 9, 2023

Respectfully submitted,

5
6 Capstone Law APC

7 By: 

8 Robert Drexler
9 Molly DeSario
Jonathan Lee

10 Attorneys for Plaintiffs Anita Miller and
11 Yvette Sanchez
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EXHIBIT “1”



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ANTHONY CASTILLO
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August 25, 2022

VIA ONLINE SUBMISSION

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

Subject: *Anita Miller v. Rack Room Shoes, Inc., et al.*

Dear PAGA Administrator:

This office represents Anita Miller in connection with her claims under the California Labor Code. Ms. Miller was an employee of RACK ROOM SHOES, INC. and/or OFF BROADWAY SHOES, INC. For the purpose of this letter, Ms. Miller collectively refers to these entities as "RACK ROOM."

The employers may be contacted directly at the addresses below:

RACK ROOM SHOES, INC.
8310 TECHNOLOGY DR
CHARLOTTE, NC 28262

OFF BROADWAY SHOES, INC.
8310 TECHNOLOGY DR
CHARLOTTE, NC 28262

Ms. Miller 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"). Ms. Miller seeks relief on behalf of herself, the State of California, and other persons who are or were employed by RACK ROOM in California as a non-exempt, hourly paid employee 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.

RACK ROOM employed Ms. Miller as an hourly paid, non-exempt employee on and off from approximately March 2008 to March 2022, including as a non-exempt Assistant Manager from February 2021 to March 2022. Ms. Miller worked at the Rack Room Shoes retail store located in Arvin, California. During her employment, Ms. Miller typically worked eight (8) or more hours per day and five (5) days per week. Ms. Miller's job duties included, without limitation, opening and closing the store, managing the sales floor, and reporting inventory.

RACK ROOM has committed one or more of the following Labor Code violations against Ms. Miller, the facts and theories of which follow, making her an "aggrieved employee" pursuant to

California Labor Code section 2699(c):¹

RACK ROOM's Company-Wide and Uniform Payroll and HR Practices

RACK ROOM SHOES, INC. and OFF BROADWAY SHOES, INC. are both North Carolina corporations. Together, RACK ROOM owns and operates more than 500 stores in 36 states under the Rack Room Shoes and Off Broadway Shoe Warehouse brands, including 19 Rack Room Shoes and Off Broadway Shoe Warehouse store locations in California. Upon information and belief, RACK ROOM maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Charlotte, North Carolina, for all non-exempt, hourly paid employees working for RACK ROOM in California, including Ms. Miller and other aggrieved employees. At all relevant times, RACK ROOM issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Ms. Miller and other aggrieved employees, regardless of their location or position.

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

RACK ROOM willfully failed to pay all overtime wages owed to Ms. Miller and other aggrieved employees. During the relevant time period, Ms. Miller 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 (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.

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

First, RACK ROOM had a company-wide policy and/or practice of improperly rounding employee clock-in and clock-out duration times to the nearest quarter-hour in its timekeeping system. RACK ROOM's rounding policy resulted in the failure to compensate Ms. Miller and other aggrieved employees fully for all hours worked, causing Ms. Miller and other aggrieved employees to not be paid overtime wages for all of the overtime hours they actually worked. Upon information and belief, RACK ROOM's rounding policy was, and continues to be, unfair and has, over time, resulted in the underpayment of wages to Ms. Miller and other aggrieved employees. To the extent RACK ROOM's rounding policy took away time worked that was eligible for overtime, Ms. Miller and other aggrieved employees were denied overtime pay for all hours worked. Alternatively, RACK ROOM had, and continues to have, a company-wide policy and/or practice of failing to correctly record hours worked by its employees. Instead, on information and belief, RACK ROOM's policy and/or practice is to simply pay employees, including Ms. Miller and other aggrieved employees, for the hours they are scheduled to work. Because RACK ROOM failed to accurately record their actual hours worked, Ms. Miller and other aggrieved employees were not paid for all hours worked before or after their scheduled shifts.

Second, during the relevant time period, RACK ROOM had, and continues to have, a company-wide policy and/or practice of discouraging and impeding Ms. Miller and other aggrieved employees (on threat of discipline) from recording hours worked that were outside of their scheduled shifts in order to limit the amount of overtime employees could accrue. On information and belief, this policy of limiting overtime, coupled with RACK ROOM's practices of understaffing and assigning heavy workloads (*see infra*), led Ms. Miller and other aggrieved employees to work off-the-clock before and after their scheduled shift times in order to complete their assigned tasks. For example, Ms. Miller was required to open the store, disarm the store alarm, and turn on point of sale ("POS") registers before she clocked in for her shift. When she did not work an opening shift, she would be required to wait off-the-clock for other employees to finish using the register in order to clock in on the POS system. As a further example, Ms. Miller was pressured to clock out at the end of her scheduled shift and continue working—completing customer transactions, cleaning the sales floor, setting the alarm, and closing the store. Similarly, other aggrieved employees were required to clock out at the end of their scheduled shifts and continue working, handling inventory and completing end-of-shift sales and shipping reports. This off-the-clock work could have been recorded by RACK ROOM, but it refused to do so to avoid the payment of additional wages to Ms. Miller and other aggrieved employees.

Moreover, RACK ROOM required Ms. Miller and other aggrieved employees to perform work-related tasks off-the-clock, including, but not limited to, reviewing training modules, undergoing health screenings, and/or responding to phone calls and text messages from their supervisors. For example, Ms. Miller spent time at home reviewing online training modules regarding company policies and was not paid for this time. Also, RACK ROOM implemented, on a company-wide basis, an employer-imposed requirement that Ms. Miller and other aggrieved employees undergo mandatory COVID-19 temperature checks and/or health screenings before clocking in for their scheduled shifts. For example, Ms. Miller was required to fill out a health screening form and undergo a daily temperature check, before being permitted to clock in for her shift. Finally, Ms. Miller and other aggrieved employees were required to respond to their personal mobile devices on their days off. For example, on information and belief, Ms. Miller responded to phone calls and text messages from her supervisor regarding employee scheduling and work assignments. Thus, RACK ROOM failed to track all hours Ms. Miller and other aggrieved employees spent performing work-related tasks before and after their scheduled shifts and Ms. Miller and other aggrieved employees received no compensation for this time.

Third, as stated, RACK ROOM had, and continues to have, a company-wide policy and/or practice of understaffing while assigning heavy workloads, including pressuring employees to meet sales quotas and rewards signup goals. RACK ROOM's policies and/or practices resulted in a failure to provide Ms. Miller and other aggrieved employees with adequate meal period coverage, and thus, Ms. Miller and other aggrieved employees were not always afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period. Furthermore, RACK ROOM had a company-wide practice of failing to adhere to a schedule for meal periods, which further caused Ms. Miller and other aggrieved employees to not be relieved of their duties for compliant meal periods. For example, Ms. Miller's meal periods were interrupted when her coworkers had questions or needed assistance with customer transactions. On other occasions, Ms. Miller missed her meal periods entirely due to the heavy workload. Thus, Ms. Miller and other aggrieved employees missed meal periods and/or had meal periods cut short or interrupted in order to complete their assigned workloads and meet RACK ROOM's expectations. RACK ROOM did not compensate Ms. Miller and other aggrieved employees for the time they spent working off the clock during meal periods.

Fourth, RACK ROOM had, and continues to have, a policy and/or practice of requiring that Ms. Miller and other aggrieved employees carry and respond to a company-issued radio at all times. As a result, RACK ROOM's management contacted Ms. Miller and other aggrieved employees on their company-issued radios during unpaid meal periods to discuss work-related matters. For example, Ms. Miller was required to spend time during her meal periods answering radio calls and responding to requests from management and coworkers regarding loss prevention. RACK ROOM knew or should have known that Ms. Miller and other aggrieved employees were performing work while off-the-clock in order to meet RACK ROOM's expectations, but failed to compensate them for this time.

Fifth, upon information and belief, because RACK ROOM frowned upon employees accruing meal period penalties, RACK ROOM adjusted employee time records to reflect compliant meal periods and/or would automatically deduct 30-minute meal periods from Ms. Miller's and other aggrieved employees' time records even when meal periods were missed, short, and/or interrupted. Thus, RACK ROOM did not record all hours worked during meal periods, and Ms. Miller and other aggrieved employees performed work during meal periods for which they were not paid.

RACK ROOM knew or should have known that, as a result of these company-wide practices and/or policies, Ms. Miller and other aggrieved employees were performing their assigned duties off-the-clock and during meal periods, and were suffered or permitted to perform work for which they were not paid. Because Ms. Miller 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, Ms. Miller and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked.

Furthermore, RACK ROOM did not pay Ms. Miller and other aggrieved employees the correct overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage, RACK ROOM paid Ms. Miller and other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, on information and belief, RACK ROOM 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 Ms. Miller and other aggrieved employees worked overtime and received these other forms of pay, RACK ROOM failed to pay all overtime wages by paying a lower overtime rate than required.

RACK ROOM's failure to pay Ms. Miller and other aggrieved employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198. Ms. Miller 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 IWC Wage Order No. 7-2001 as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." Cal. Code. Regs. tit. 8, § 11070(2)(G) (defining "Hours Worked").

First, as stated, during the relevant time period, RACK ROOM had a policy of rounding Ms. Miller's and other aggrieved employees' hourly clock-in and clock-out duration times to the nearest quarter-hour in its timekeeping system, resulting in the failure to compensate Ms. Miller and other aggrieved employees fully for all hours worked. Alternatively, RACK ROOM had a company-wide policy and/or practice of only paying Ms. Miller and other aggrieved employees for their scheduled shifts, rather than their actual hours worked, because RACK ROOM failed to correctly track hours worked outside of their scheduled shifts.

Second, as set forth above, due to RACK ROOM's restrictions on overtime accrual, RACK ROOM systematically failed to pay Ms. Miller and other aggrieved employees for actual hours worked before and after their scheduled shifts, including opening/closing the store, waiting to clock into the POS system, disarming/arming the store alarm, cleaning, completing customer transactions, handling inventory, and/or completing end-of-shift sales and shipping reports. Furthermore, as stated, RACK ROOM required Ms. Miller and other aggrieved employees to perform work-related tasks off-the-clock, such as reviewing training modules, undergoing health screenings, and/or responding to phone calls and text messages from their supervisors.

Third, as stated above, due to RACK ROOM's company-wide practices of understaffing, assigning heavy workloads, failure to adhere to a schedule for meal periods, subsequent lack of meal period coverage, and requirement that employees to carry and use their company-issued radio to communicate with management during unpaid meal periods, Ms. Miller and other aggrieved employees were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work during their meal periods, time for which they were not paid. Moreover, as stated, in order to prevent employees from accruing meal period penalties, upon information and belief, RACK ROOM's management adjusted employee time records to reflect compliant meal periods and/or automatically deducted 30-minute meal periods from Ms. Miller's and other aggrieved employees' time records even when meal periods were missed, short, and/or interrupted. Thus, RACK ROOM systematically failed to pay Ms. Miller and other aggrieved employees for actual hours worked during unpaid meal periods because these hours were not always correctly recorded.

Thus, RACK ROOM did not pay minimum wages for all hours worked by Ms. Miller and other aggrieved employees. To the extent that these off-the-clock hours did not qualify for overtime premium payment, RACK ROOM 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, RACK ROOM regularly failed to pay at least minimum wages to Ms. Miller and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Ms. Miller 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.

As stated above, RACK ROOM had, and continues to have, company-wide policies and/or practices of understaffing its store locations which, combined with heavy workloads and a failure to adhere to a schedule for meal periods, has resulted in a lack of meal period coverage and prevented Ms. Miller and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. Moreover, as stated, RACK ROOM had, and continues to have, a company-wide policy and/or practice of requiring that Ms. Miller and other aggrieved employees carry a company-issued radio to respond to requests at all times, including during meal periods. As a result, RACK ROOM's management contacted Ms. Miller and other aggrieved employees on their company-issued radios during unpaid meal periods to discuss work-related matters.

As a result, Ms. Miller 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, Ms. Miller missed her meal periods entirely or took her meal periods late, after having worked in excess of five (5) hours into her shift, in order to meet the store's customer demand. Moreover, Ms. Miller's meal periods were interrupted by customers and RACK ROOM's managers or coworkers calling her on the company-provided radio about their loss prevention concerns.

Moreover, RACK ROOM did not provide Ms. Miller and other aggrieved employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. During her employment, Ms. Miller worked shifts in excess of ten (10) hours or more hours per day but was not provided an uninterrupted second 30-minute meal period. Ms. Miller and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

At all times mentioned herein, RACK ROOM knew or should have known that as a result of its policies, Ms. Miller and other aggrieved employees were not actually relieved of all duties to take timely, uninterrupted meal periods. RACK ROOM further knew or should have known that it did not pay Ms. Miller and other aggrieved employees meal period premiums when meal periods were late, interrupted, shortened, or missed.

As set forth above, on information and belief, RACK ROOM had a company-wide policy and/or practice of rounding or underreporting employee clock-in and clock-out time durations in its timekeeping system to the nearest quarter (0.25) of an hour, which prevented Ms. Miller and other aggrieved employees from receiving all meal period premiums when they took late and/or shortened meal periods. To the extent that RACK ROOM's timekeeping system reported that Ms. Miller and other aggrieved employees were provided with timely, full 30-minute meal periods when, in fact, the meal periods were taken after the fifth hour of work or were less than 30 minutes, Ms. Miller and other aggrieved employees were entitled to a meal period penalty. Thus, Ms. Miller and other aggrieved employees did not receive meal period penalties for these improperly rounded meal periods. Alternatively, on information and belief, because RACK ROOM frowned upon employees accruing meal period penalties, RACK ROOM's management would adjust employees' time records to reflect compliant meal periods and/or would automatically deduct 30-minute meal periods from Ms. Miller's and other aggrieved employees' time records even when meal periods were missed, short, and/or interrupted.

Furthermore, RACK ROOM engaged in a company-wide practice and/or policy of not paying all meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Ms. Miller and other aggrieved employees have not received premium pay for missed, late, and interrupted meal periods. Alternatively, on information and belief, to the extent that RACK ROOM did pay Ms. Miller and other aggrieved employees premium pay for missed, late, and interrupted meal periods, RACK ROOM did not pay Ms. Miller and other aggrieved employees at the correct rate of pay for premiums because RACK ROOM 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, RACK ROOM failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Ms. Miller 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, RACK ROOM regularly failed to authorize and permit Ms. Miller 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, RACK ROOM’s company-wide practices of understaffing and assignment of heavy workloads prevented Ms. Miller and other aggrieved employees from being relieved of all duty to take their rest periods. Additionally, RACK ROOM failed to schedule rest periods, which, coupled with RACK ROOM’s failure to provide adequate rest period coverage, further led to Ms. Miller and other aggrieved employees not being authorized and permitted to take compliant rest periods. Moreover, as stated, RACK ROOM had, and continues to have, a policy and/or practice of requiring that Ms. Miller and other aggrieved employees carry a company-issued radio to respond to requests from management at all times, including during rest periods.

Furthermore, upon information and belief, RACK ROOM maintained a company-wide on-premises rest period policy, which mandated that Ms. Miller and/or other aggrieved employees remain on RACK ROOM’s premises during their rest periods. Because Ms. Miller and/or 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, RACK ROOM effectively maintained control over Ms. Miller and/or other aggrieved employees during rest periods.

As a result of RACK ROOM’s practices and policies, Ms. Miller 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, Ms. Miller would miss her rest periods to meet customer demand and due to a lack of rest period coverage. Ms. Miller’s rest periods were also interrupted by managers wanting discuss work-related tasks, either in person or over the radio.

RACK ROOM has also engaged in a systematic, company-wide practice and/or policy of not paying rest period premiums owed when rest periods are not authorized and permitted. Because of this practice and/or policy, Ms. Miller and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, on information and belief, to the extent that RACK ROOM did pay Ms. Miller and other aggrieved employees one (1) additional hour of premium pay for missed rest periods, RACK ROOM did not pay Ms. Miller and other aggrieved employees at the correct rate of pay for premiums because RACK ROOM 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, RACK ROOM failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Ms. Miller 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. RACK ROOM has not provided Ms. Miller 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, RACK ROOM has knowingly and intentionally provided Ms. Miller and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, RACK ROOM issued uniform wage statements to Ms. Miller 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, RACK ROOM violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

Because RACK ROOM did not record the time Ms. Miller and other aggrieved employees spent working off-the-clock, improperly rounded their total hours worked, and deducted time from their records for meal periods that were missed and/or interrupted (and therefore time for which they should have been paid), RACK ROOM did not list the correct amount of gross wages and net wages earned by Ms. Miller and other aggrieved employees, in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, RACK ROOM failed to accurately list the total number of the hours worked by Ms. Miller 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).

Moreover, on information and belief, because RACK ROOM did not calculate Ms. Miller's and other aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages and/or meal and rest period premiums, RACK ROOM did not list the correct amount of gross wages in compliance with section 226(a)(1) and did not list the correct amount of net wages in violation of section 226(a)(5). RACK ROOM 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, without limitation, failing to list the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list the inclusive dates of the period for which aggrieved employees were paid; failing to list the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number; failing to list the name and address of the legal entity that is the employer; and/or failing to state all hours worked as a result of not recording or stating hours worked off-the-clock.

California Labor Code section 1174(d) provides that “[e]very person employing labor in this state shall . . . [k]eep a record showing the names and addresses of all employees employed and the ages of all minors” and “[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. . . .” Labor Code section 1174.5 provides that employers are subject to a \$500 civil penalty if they fail to maintain accurate and complete records as required by section 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d), RACK ROOM willfully failed to maintain accurate payroll records for Ms. Miller 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 and improperly rounding Ms. Miller’s and other aggrieved employees’ total hours 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, RACK ROOM engaged in company-wide practices and/or policies of failing to record actual hours worked (including falsifying 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 work period and meal period start and end times for Ms. Miller and other aggrieved employees in violation of section 1198. Furthermore, in light of RACK ROOM’s failure to provide Ms. Miller and other aggrieved employees with second 30-minute meal periods to which they were entitled, RACK ROOM kept no records of meal start and end times for second meal periods.

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

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

Ms. Miller 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 her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

RACK ROOM willfully failed to pay Ms. Miller and other aggrieved employees who are no longer employed by RACK ROOM 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 RACK ROOM's employ.

Ms. Miller 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 §§ 212 and 213 – Unlawful Direct Deposit and Discount of Wages

California Labor Code section 212 prohibits employers from issuing any instruments for the payment of wages unless such instruments are negotiable and payable in cash on demand and without discount. California Labor Code section 213 permits employers to pay employees via direct deposit so long as the employee authorizes payment via direct deposit. Under California law, employers are also permitted to fulfill their wage payment obligations to employees by using payroll debit cards, but only under certain circumstances. Employer use of payroll debit cards is permitted only so long as the employee is given the choice as to whether to accept a payroll debit card as a form of payment. *Johnson v. Sunrise Senior Living Management, Inc.*, No. 16 CV 00443 BRO RAOx, 2016 WL 8929249, *9 (C.D. Cal. May 5, 2016). In *Johnson*, the court stated that the Division of Labor Standards Enforcement ("DLSE") decision deeming payroll debit card program permissible relied heavily on:

... [T]he fact that the pay programs were optional, thereby allowing an employee to either participate in the program or receive his or her pay in some other way, such as direct deposit. Specifically, the DLSE opined that "[t]he success of the described procedure, in practice, will of course require that ... it is presented as an *alternative* method for wage payment for which [the employees'] participation is optional." The DLSE also stated, "[i]t is

significant that the program does not mandate employee participation in the Money Network Service and that it is designed to provide an alternative for employees receiving their wage payment. Employees are also given the option of having their pay direct deposited into an account of their choosing. . . .” (internal citations omitted).

In addition, employers can only utilize payroll debit card programs if they provide employees with effective access to their wages without discount. The DLSE has interpreted Labor Code sections 212 and 213 as permitting employer use of payroll debit cards where the following requirements are satisfied:

- (1) [T]he “wages [are] payable at some established place of business in the state and there be at least 30 days of sufficient funds for payment,”
- (2) the employees are “fully informed of the service and procedures and that it is represented as an alternative method for wage payment for which their participation is optional,”
- (3) the employees receive “an itemized wage statement,” and
- (4) “at least one transaction per pay period [is] without fee.”

Ortiz v. Randstad North America, L.P., No. C-13-5050 MMC, 2015 WL 6202298 at 3.

Further, the DLSE notes that the Labor Code manifests:

. . . [A] strong public policy that prohibits an employer (or its agent) from imposing conditions or obstacles which interfere with or prevent an employee’s (sic) from promptly receiving their due wages in *full*. The imposition of a fee in order to readily *access* one’s earned and paid wages under a payroll card program which is designed to discharge the employer’s wage payment obligations could impermissibly interfere with an employee’s receipt of paid wages by creating a financial condition which would have the *effect* of reducing or discounting wages because such fee would be charged against the same account in which wages are deposited. (emphases in original)

DLSE opinion letter 2008.07.07. The DLSE has also acknowledged that payroll service providers “effectively act as agents of the client employers in discharging the employer’s wage payment obligations.” *Id.* In a second opinion letter, the DLSE stated that “[w]hile the Labor Code does not purport to regulate the specific arrangements between employers and payroll service providers, both an employer and, under the express language in Labor Code § 212- their *agent*, must comply with its requirements.” *DLSE opinion letter* 2008.07.07-2.

During the relevant time period, RACK ROOM had a practice and/or policy of automatically issuing payroll debit cards to departing employees without giving them the option to elect their form of payment for their final wages. For example, Ms. Miller received her final wages on a payroll debit card without a choice of an alternate method of payment, such as a written check. Instead, RACK ROOM automatically enrolled Ms. Miller in its payroll debit card program for the purpose of issuing Ms. Miller’s final wages to her without prior, voluntary approval from Ms. Miller.

Moreover, under RACK ROOM’s payroll debit card program, on information and belief, other aggrieved employees did not have easy access to the entirety of their wages without incurring a fee. For example, other aggrieved employees were unable to withdraw their entire wages in at least one

transaction without incurring a fee and/or encountered \$3.00 ATM fees each time they utilized an out-of-network ATM to withdraw funds from their payroll debit cards, which resulted in a discount in their pay.

Thus, RACK ROOM's payroll debit card program was and continues to be unlawful as it does not give employees the choice as to whether they would like to receive their wages on a payroll debit card or via some other payment method and did not give Ms. Miller and/or other aggrieved employees easy access to the entirety of their wages without discount and without delay.

California courts recognize a policy favoring the full and prompt payment of wages to employees. RACK ROOM's payroll card program is inconsistent with this policy because it presents a number of obstacles and hurdles that, together, make it difficult for Ms. Miller and/or other aggrieved employees to access their entire wages without discount and without delay, in violation of California Labor Code sections 212 and 213. Ms. Miller and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 225.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 221 and 224 – Unlawful Deductions

California Labor Code section 221 provides that it shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee. California Labor Code section 224 also provides in pertinent part that it is lawful to withhold a portion of the employee's wages if "a deduction is expressly authorized in writing by the employee."

During the relevant time period, RACK ROOM unlawfully deducted a portion of wages previously paid to other aggrieved employees in violation of California Labor Code section 221. On information and belief, RACK ROOM systematically, and on a company-wide basis, provided other aggrieved employees with payroll debit cards as payment of their wages. Under RACK ROOM's payroll debit card program, other aggrieved employees were assessed various fees in connection with their use of the payroll debit cards. For example, other aggrieved employees were required to pay per-transaction fees, ATM fees, and/or other fees to obtain and/or spend their earned and due wages. The fees charged to other aggrieved employees resulted in a discount of their wages.

RACK ROOM's payroll debit card program, which resulted in a discount of wages to employees, is tantamount to taking deductions from other aggrieved employees' paychecks without their written authorization and therefore constitutes an unlawful deduction of wages, in violation of California Labor Code sections 221 and 224. Other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 225.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 223 – Secret Payment of Lower Wages

California Labor Code section 223 makes it unlawful for an employer to secretly pay wages lower than required by statute while purporting to pay legal wages.

During the relevant time period, RACK ROOM willfully and systematically issued payroll debit cards to other aggrieved employees that discounted their wages by charging various fees in connection with the use of the payroll debit cards. RACK ROOM's payroll debit card program resulted in the payment of less than statutorily required wages to other aggrieved employees. In doing so, RACK ROOM acted with the intent to deprive other aggrieved employees of statutory

wages, including, but not limited to, overtime wages and/or minimum wages, to which they were entitled to under California law. Thus, RACK ROOM paid other aggrieved employees lower wages than those they were entitled to while purporting that other aggrieved employees were properly paid.

RACK ROOM's failure to pay other aggrieved employees the correct designated wage, while purporting to pay legal wages, is a violation of California Labor Code section 223. Other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 225.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11070 Subdivision 13(B) – Failure to Provide Suitable Resting Facilities

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(13)(B) provides that "[s]uitable resting facilities shall be provided in an area separate from the toilet rooms and shall be available to employees during work hours."

RACK ROOM's California stores are generally similar in their layout and design and there was, and continues to be, space that allows for a resting facility that employees may use to cease work and recover during meal or rest periods. RACK ROOM could have provided Ms. Miller and other aggrieved employees with a resting facility within its stores, with reasonable or no modification, but instead denied, and continues to deny, employees suitable areas to rest (e.g., a breakroom). As a result, Ms. Miller and other aggrieved employees were forced to adjust to areas not conducive to resting, such as areas not designated or reserved for their rest, such as in the management office, storage rooms, or in their personal vehicles.

RACK ROOM did not provide Ms. Miller and other aggrieved employees with suitable resting facilities during their work hours, particularly during rest or meal periods. In other words, during the times when Ms. Miller and other aggrieved employees were legally allowed to forgo assigned tasks, as in during a meal or rest period, RACK ROOM denied them suitable areas within its stores to cease work and recover. Moreover, RACK ROOM did not inform Ms. Miller and other aggrieved employees of their rights to suitable resting facilities under California law.

As a result of RACK ROOM's company-wide policy and/or practice of denying employees suitable areas to rest within its stores and company-wide failure to provide suitable resting facilities in its stores, Ms. Miller and other aggrieved employees were forced to adjust to areas not conducive to resting or search for facilities outside their stores to cease work and recover. RACK ROOM's failure to provide suitable resting facilities to Ms. Miller and other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order No. 7-2001, subdivision 13(B).

Ms. Miller and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, and seek injunctive relief to bring RACK ROOM into compliance with California's resting facilities 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(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.*

RACK ROOM’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 Ms. Miller and other aggrieved employees (with reasonable or no modification to these work areas) during the performance of their work duties. RACK ROOM could provide Ms. Miller and other aggrieved employees with a seat or stool at its cash wraps, but instead denies employees seating and forces Ms. Miller and other aggrieved employees to stand throughout the day.

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

RACK ROOM violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11070(14)(A) because Ms. Miller 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. RACK ROOM’s management did not inform Ms. Miller 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 RACK ROOM’s company-wide policy and/or practice of prohibiting employees from sitting during their shifts and company-wide failure to provide suitable seating, Ms. Miller and other aggrieved employees were forced to stand during shifts and denied seats. RACK ROOM’s failure to provide suitable seating to Ms. Miller and other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order No. 7-2001, subdivision 14(A).

Ms. Miller and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, and seek injunctive relief to bring RACK ROOM 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 her 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 she must perform tasks requiring standing, the employee would be entitled to a seat under subdivision 14(B) during “lulls in operation.” *Id.*

RACK ROOM'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 Ms. Miller and other aggrieved employees during lulls in operation. RACK ROOM could have provided Ms. Miller and other aggrieved employees with a seat or stool in its work areas, but instead denied, and continues to deny, employees seating, forcing them to stand throughout the day.

RACK ROOM did not provide Ms. Miller 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 Ms. Miller and other aggrieved employees engaged in duties in which the nature of the work required standing, RACK ROOM denied them the use of seats nearby during lulls in their work duties. Moreover, RACK ROOM did not inform Ms. Miller and other aggrieved employees of their rights to a seat or stool under California law.

As a result of RACK ROOM'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, Ms. Miller and other aggrieved employees were forced to stand during shifts and denied seats. RACK ROOM's failure to provide suitable seating to Ms. Miller and other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order No. 7-2001, subdivision 14(B).

Ms. Miller and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, and seek injunctive relief to bring RACK ROOM 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 her 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."

First, during the relevant time period, RACK ROOM, on a company-wide basis, required Ms. Miller and other aggrieved employees to use their own personal mobile devices, including, but not limited to, cellular phones, and/or mobile data to carry out their job duties, but failed to reimburse them for the cost of their work-related mobile device expenses. Ms. Miller and other aggrieved employees were required to use their personal mobile devices for work-related tasks, including responding to calls or text messages from RACK ROOM's management. Additionally, Ms. Miller used her personal cellular phone to download two (2) mobile applications to be used for generating store reports and undergoing online training on company policies. Although RACK ROOM required Ms. Miller and other aggrieved employees to utilize their personal mobile devices and/or mobile data to carry out their work-related responsibilities, RACK ROOM failed to reimburse them for these costs.

Second, during the relevant time period, RACK ROOM had a company-wide policy of requiring Ms. Miller and other aggrieved employees to utilize their own personal vehicles or obtain alternate transportation to carry out company business, but failed to reimburse them for all costs of travel, including mileage. For example, Ms. Miller was required to travel to other RACK ROOM stores to pick up inventory for her store, and other aggrieved employees were required to drive to local FedEx stores after work to send out merchandise. Although RACK ROOM required Ms. Miller and other aggrieved employees to use their own personal vehicles or obtain alternate transportation to complete their work-related duties, RACK ROOM did not reimburse them for their travel expenses.

RACK ROOM could have provided Ms. Miller and other aggrieved employees with the actual equipment and tools for use on the job, such as company mobile devices and company vehicles. Or, RACK ROOM could have reimbursed employees for their mobile device usage, mileage, and travel expenses. Instead, RACK ROOM passed these operating costs off onto Ms. Miller and other aggrieved employees. At all relevant times, Ms. Miller did not earn at least two (2) times the minimum wage.

Thus, RACK ROOM 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. Ms. Miller 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, RACK ROOM failed, on a company-wide basis, to provide written notice to other aggrieved employees that lists the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). RACK ROOM's failure to provide other aggrieved employees with written notice of basic information regarding their employment with RACK ROOM is in violation of Labor Code section 2810.5.

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

Accordingly, Ms. Miller seeks the remedies set forth in Labor Code section 558 for herself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 1194.5, 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Ms. Miller, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties and injunctive relief for herself, all other aggrieved employees, and the State of California against RACK ROOM for violations of California Labor Code sections 201, 202, 204, 212, 213, 221, 223, 224, 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, Ms. Miller seeks all applicable penalties related to these violations of the California Labor Code pursuant to PAGA.

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

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

Best Regards,


Anthony Castillo

Copy: RACK ROOM SHOES, INC. (via U.S. Certified Mail); OFF BROADWAY SHOES, INC.
(via U.S. Certified Mail)

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

CERTIFIED MAIL



7021 1970 0001 8870 3815

RACK ROOM SHOES, INC.
8310 TECHNOLOGY DR
CHARLOTTE, NC 28262

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

RACK ROOM SHOES, INC.
8310 TECHNOLOGY DR
CHARLOTTE, NC 28262

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent
☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 17?

If YES, enter delivery address below:

☐ Yes
☐ No

3. Service type

- ☐ Adult Signature Restricted Delivery
- ☐ Adult Signature Restricted Delivery
- ☐ Certified Mail Restricted Delivery
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

Article Number (Transfer from service label)
7021 1970 0001 8870 3815

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

Domestic Return Receipt

7021 1970 0001 8870 3815

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com

OFFICIAL USE

Certified Mail Fee

Postmark
Here

RACK ROOM
V.

Extra Services & Fees (check box, add fee as appropriate)
☐ Return Receipt (hardcopy) \$
☐ Return Receipt (electronic) \$
☐ Certified Mail Restricted Delivery \$
☐ Adult Signature Required \$
☐ Adult Signature Restricted Delivery \$

Postage

Total

Sent

Street

City/State

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

See Reverse for Instructions

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

CERTIFIED MAIL®



7021 1970 0001 8870 3808

OFF BROADWAY SHOES, INC.
8310 TECHNOLOGY DR
CHARLOTTE, NC 28262

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:
**OFF BROADWAY SHOES, INC.
8310 TECHNOLOGY DR
CHARLOTTE, NC 28262**

COMPLETE THIS SECTION ON DELIVERY

- A. Signature
X
- B. Received by (Printed Name) C. Date of Delivery
- D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No



9590 9402 7420 2055 3565 59

2. Article Number (Transfer from service label)

7021 1970 0001 8870 3808

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

Domestic Return Receipt

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com.

OFFICIAL USE

Certified Mail Fee

Extra Services & Fees (check box, add fee as appropriate)

- ☐ Return Receipt (hardcopy)
- ☐ Return Receipt (electronic)
- ☐ Certified Mail Restricted Delivery
- ☐ Adult Signature Required
- ☐ Adult Signature Restricted Delivery

Postage

OFF BROADWAY SHOES, INC.
8310 TECHNOLOGY DR
CHARLOTTE, NC 28262

7021 1970 0001 8870 3808

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

See Reverse for Instructions

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

RACK ROOM SHOES, INC.
8310 TECHNOLOGY DR
CHARLOTTE, NC 28262



9590 9402 7420 2055 3565 42

2 Article Number (Transfer from service label)

7021 1970 0001 8870 3815

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X *W. Pountney*

☒ Agent

☐ Addressee

B. Received by (Printed Name)

W Pountney

C. Date of Delivery

8/30/22

D. Is delivery address different from item 1?

☒ Yes

If YES, enter delivery address below:

☐ No

3. Service Type

☐ Adult Signature

☐ Adult Signature Restricted Delivery

☒ Certified Mail®

☐ Certified Mail Restricted Delivery

☐ Collect on Delivery

☐ Collect on Delivery Restricted Delivery

☐ Priority Mail Express®

☐ Registered Mail™

☐ Registered Mail Restricted Delivery

☐ Signature Confirmation™

☐ Signature Confirmation Restricted Delivery

Mail

Mail Restricted Delivery

(00)

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

Domestic Return Receipt

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

OFF BROADWAY SHOES, INC.
8310 TECHNOLOGY DR
CHARLOTTE, NC 28262



9590 9402 7420 2055 3565 59

2. Article Number (Transfer from service label)

7021 1970 0001 8870 3808

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X *W. Pinterdexter*

☒ Agent

☐ Addressee

B. Received by (Printed Name)

W. Pinterdexter

C. Date of Delivery

9/3/22

D. Is delivery address different from item 1?

☒ Yes

If YES, enter delivery address below:

☐ No

3. Service Type

☐ Adult Signature

☐ Adult Signature Restricted Delivery

☒ Certified Mail®

☐ Certified Mail Restricted Delivery

☐ Collect on Delivery

☐ Collect on Delivery Restricted Delivery

☐ Priority Mail Express®

☐ Registered Mail™

☐ Registered Mail Restricted Delivery

☐ Signature Confirmation™

☐ Signature Confirmation Restricted Delivery

il Restricted Delivery

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

Domestic Return Receipt

PROOF OF SERVICE

I am employed in the State of California, County of Los Angeles. I am over the age of 18 and not a party to the within suit; my business address is 1875 Century Park East, Suite 1000 Los Angeles, California 90067.

On **March 9, 2023**, I served the document described as: **SECOND AMENDED CLASS ACTION COMPLAINT & ENFORCEMENT ACTION UNDER THE PRIVATE ATTORNEYS GENERAL ACT, CALIFORNIA LABOR CODE §§ 2698, ET SEQ.** on the interested parties in this action by sending ☐ the original [or] ☒ a true copy thereof ☒ to interested parties as follows [or] ☐ as stated on the attached service list:

Monte Grix
Margeaux M. Pelusi
Laraya M. Parnell
Hirschfeld Kraemer LLP
456 Montgomery Street, Suite 2200
San Francisco, CA 94104
MGrix@hkemploymentlaw.com
MPelusi@hkemploymentlaw.com
LParnell@hkemploymentlaw.com

Attorneys for Defendants
RACK ROOM SHOES, INC. and OFF
BROADWAY SHOES, INC.

☐ **BY MAIL (ENCLOSED IN A SEALED ENVELOPE):** I deposited the envelope(s) for mailing in the ordinary course of business at Los Angeles, California. I am “readily familiar” with this firm’s practice of collection and processing correspondence for mailing. Under that practice, sealed envelopes are deposited with the U.S. Postal Service that same day in the ordinary course of business with postage thereon fully prepaid at Los Angeles, California.

☐ **BY E-MAIL:** I hereby certify that this document was served from Los Angeles, California, by e-mail delivery on the parties listed herein at their most recent known e-mail address or e-mail of record in this action.

☐ **BY FAX:** I hereby certify that this document was served from Los Angeles, California, by facsimile delivery on the parties listed herein at their most recent fax number of record in this action.

☒ **BY ELECTRONIC SERVICE:** I caused the document(s) to be transmitted electronically via One Legal eService to the individuals listed above, as they exist on that database. This will constitute service of the document(s).

☐ **BY OVERNIGHT DELIVERY:** I am “readily familiar” with this firm’s practice of collection and processing correspondence for overnight delivery. Under that practice, overnight packages are enclosed in a sealed envelope with a packing slip attached thereto fully prepaid. The packages are picked up by the carrier at our offices or delivered by our office to a designated collection site.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on **March 9, 2023** at Los Angeles, California.

Sophia Flores
Type/Print Name


Signature