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8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 FOR THE COUNTY OF SANTA CLARA

11 22CV404762

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

15
16 Plaintiff,

17 vs.

18 ZUMIEZ INC., a Washington
corporation; ZUMIEZ
19 DISTRIBUTION LLC, a Washington
limited liability company; ZUMIEZ
20 SERVICES INC., a Washington
corporation; and DOES 1 through 10,
21 inclusive,

22 Defendants.

Case No.:

**COMPLAINT – PAGA ENFORCEMENT
ACTION**

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

Jury Trial Demanded

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

3 **JURISDICTION AND VENUE**

4 1. This is an enforcement action under the Labor Code Private Attorneys General
5 Act of 2004, California Labor Code sections 2698, *et seq.* (“PAGA”) to recover civil penalties
6 and any other available relief on behalf of Plaintiff, the State of California, and other current
7 and former employees who worked for Defendants in California as a non-exempt, hourly paid
8 employee and received at least one wage statement and against whom one or more violations
9 of any provision in Division 2 Part 2 Chapter 1 of the Labor Code or any provision regulating
10 hours and days of work in the applicable Industrial Welfare Commission (“IWC”) Wage
11 Order were committed, as set forth in this complaint, at any time between one year prior to the
12 filing of the pre-filing written notice to the Labor and Workforce Development Agency
13 (“LWDA”) in this case on August 5, 2022, until judgment (“non-party Aggrieved
14 Employees”). Plaintiff’s share of civil penalties sought in this action does not exceed
15 \$75,000.

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

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

1 civil penalties attributable to violations personally suffered are less than \$75,000. *Id.* at 1122.

2 4. Venue is proper in this Court because Defendants employ or employed persons
3 within the County of Santa Clara and have violated the requirements of the California Labor
4 Code and applicable IWC Wage Order in this county which give rise to the penalties sought in
5 this action. Cal. Code Civ. P. § 393. Specifically, Defendants have violated the requirements
6 of the California Labor Code and applicable IWC Wage Order in at least four (4)
7 locations within the County of Santa Clara, including Defendants' stores located in Santa
8 Clara (2855 Stevens Creek Boulevard, Suite 2485, Santa Clara, California 95050-6743);
9 Milpitas (527 Great Mall Drive, Milpitas, California 95035); and San Jose (One Eastridge
10 Mall, Suite 245, San Jose, California 95122; 925 Blossom Hill Road, Suite 1300, San Jose,
11 California 95123-1246). Pursuant to California Civil Code of Procedure section 393, venue is
12 proper for the recovery of a penalty imposed by statute in the county in which the cause, or
13 some part of the cause, arose. Because Defendants have employees in Santa Clara County,
14 and Plaintiff could bring an action filed under PAGA in any county in which an aggrieved
15 employee worked and Labor Code violations occurred, venue is proper. *Crestwood*
16 *Behavioral Health, Inc. v. Superior Court of Alameda County*, 60 Cal. App. 5th 1069 (2021).

17 5. California Labor Code sections 2698, *et seq.*, the "Labor Code Private
18 Attorneys General Act of 2004" ("PAGA"), authorize aggrieved employees to sue as private
19 attorneys general their current or former employers for various civil penalties for violations of
20 various provisions in the California Labor Code.

21 THE PARTIES

22 6. Plaintiff Seana Neihart is a resident of Upland, in San Bernardino County,
23 California. Defendants employed Plaintiff as an hourly paid, non-exempt employee from
24 approximately September 2019 to August 2022. Plaintiff worked as a 2nd Assistant Manager
25 for Defendants at their retail store located in Rancho Cucamonga, California. During her
26 employment, Plaintiff typically worked eight (8) to ten (10) hours per day, four (4) to five (5)
27 days per week. At the time Plaintiff's employment with Defendants ended, she was
28 compensated approximately \$16.98 per hour. Plaintiff's primary job duties included, without

1 limitation, ringing up customer transactions, answering customer questions, making sales, and
2 unpacking and organizing merchandise.

3 7. ZUMIEZ INC. was and is, upon information and belief, a Washington
4 corporation, and at all times hereinafter mentioned, an employer whose employees are
5 engaged throughout this county, the State of California.

6 8. ZUMIEZ DISTRIBUTION LLC was and is, upon information and belief, a
7 Washington limited liability company, and at all times hereinafter mentioned, an employer
8 whose employees are engaged throughout this county, the State of California.

9 9. ZUMIEZ SERVICES INC. was and is, upon information and belief, a
10 Washington corporation, and at all times hereinafter mentioned, an employer whose
11 employees are engaged throughout this county, the State of California.

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

16 11. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10
17 were the partners, agents, owners, or managers of ZUMIEZ INC., ZUMIEZ DISTRIBUTION
18 LLC, and ZUMIEZ SERVICES INC. at all relevant times.

19 12. Plaintiff is informed and believes, and thereon alleges, that each and all of the
20 acts and omissions alleged herein was performed by, or is attributable to, ZUMIEZ INC.,
21 ZUMIEZ DISTRIBUTION LLC, ZUMIEZ SERVICES INC. and/or DOES 1 through 10
22 (collectively, “Defendants” or “ZUMIEZ”), each acting as the agent, employee, alter ego,
23 and/or joint venturer of, or working in concert with, each of the other co-Defendants and was
24 acting within the course and scope of such agency, employment, joint venture, or concerted
25 activity with legal authority to act on the others’ behalf. The acts of any and all Defendants
26 were in accordance with, and represent, the official policy of Defendants.

27 13. At all relevant times, Defendants, and each of them, ratified each and every act
28 or omission complained of herein. At all relevant times, Defendants, and each of them, aided

1 and abetted the acts and omissions of each and all the other Defendants in proximately causing
2 the damages herein alleged.

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

6 15. Under California law, Defendants are jointly and severally liable as employers
7 for the violations alleged herein because they have each exercised sufficient control over the
8 wages, hours, working conditions, and employment status of Plaintiff and other non-party
9 Aggrieved Employees. Each Defendant had the power to hire and fire Plaintiff and other non-
10 party Aggrieved Employees, supervised and controlled their work schedule and/or conditions
11 of employment, determined their rate of pay, and maintained their employment records.
12 Defendants suffered or permitted Plaintiff and other non-party Aggrieved Employees to work
13 and/or “engaged” Plaintiff and other non-party Aggrieved Employees so as to create a
14 common-law employment relationship. As joint employers of Plaintiff and other non-party
15 Aggrieved Employees, Defendants are jointly and severally liable for the civil penalties
16 available to Plaintiff and other non-party Aggrieved Employees under the law.

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

- 20 (a) jointly exercised meaningful control over the work performed by
21 Plaintiff and other non-party Aggrieved Employees;
- 22 (b) jointly exercised meaningful control over Plaintiff’s and other non-party
23 Aggrieved Employees’ wages, hours, and working conditions, including
24 the quantity, quality standards, speed, scheduling, and operative details
25 of the tasks performed by Plaintiff and other non-party Aggrieved
26 Employees;
- 27 (c) jointly required that Plaintiff and other non-party Aggrieved Employees
28 perform work which is an integral part of Defendants’ businesses; and

1 (d) jointly exercised control over Plaintiff and other non-party Aggrieved
2 Employees as a matter of economic reality in that Plaintiff and other
3 non-party Aggrieved Employees were dependent on Defendants, who
4 shared the power to set the wages of Plaintiff and other non-party
5 Aggrieved Employees and determined their working conditions, and
6 who jointly reaped the benefits from the underpayment of their wages
7 and noncompliance with other statutory provisions governing their
8 employment.

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

12 18. ZUMIEZ INC., ZUMIEZ DISTRIBUTION LLC, ZUMIEZ SERVICES INC.,
13 and/or DOES 1 through 10 are therefore alter egos of each other.

14 19. Adherence to the fiction of the separate existence of Defendants would permit
15 an abuse of the corporate privilege, and would promote injustice by protecting Defendants
16 from liability for the wrongful acts committed by them under the name ZUMIEZ.

17 20. Plaintiff further alleges, upon information and belief, that the Defendants
18 ZUMIEZ INC., ZUMIEZ DISTRIBUTION LLC, and ZUMIEZ SERVICES INC. are alter
19 egos of each other for the following reasons:

20 (a) According to the most recent “Statement of Information” forms filed
21 with the California Secretary of State, ZUMIEZ INC., ZUMIEZ
22 DISTRIBUTION LLC, and ZUMIEZ SERVICES INC. have the same
23 mailing address, which is “4001 204TH ST SW, LYNNWOOD, WA
24 98036”;

25 (b) According to the most recent “Statement of Information” forms filed
26 with the California Secretary of State, ZUMIEZ INC. and ZUMIEZ
27 SERVICES INC. have the same entity address, which is “4001 204TH
28 ST SW, LYNNWOOD, WA 98036”;

- 1 (c) According to the most recent “Statement of Information” form filed
2 with the California Secretary of State, ZUMIEZ INC. and ZUMIEZ
3 SERVICES INC. share common officers, including Chief Executive
4 Officer, Richard [Rick] Brooks; Chief Financial Officer, Chris Visser;
5 and Secretary, Chris Work;
- 6 (d) According to the most recent “Statement of Information” forms filed
7 with the California Secretary of State, ZUMIEZ INC. is the managing
8 entity of ZUMIEZ DISTRIBUTION LLC;
- 9 (e) According to the California Secretary of State’s website, ZUMIEZ
10 INC., ZUMIEZ DISTRIBUTION LLC, and ZUMIEZ SERVICES INC.
11 share the same agent for service of process, “CT CORPORATION
12 SYSTEM”; and
- 13 (f) On information and belief, ZUMIEZ INC., ZUMIEZ DISTRIBUTION
14 LLC, and ZUMIEZ SERVICES INC. utilize the same standardized
15 employment forms and issue the same employment policies.

16 **PAGA REPRESENTATIVE ALLEGATIONS**

17 21. Defendants are a specialty retailer of apparel, footwear, accessories, and other
18 goods for young men and women. Defendants own and operate approximately 90 retail stores
19 in California. Upon information and belief, Defendants maintain a single, centralized Human
20 Resources (HR) department at their corporate headquarters in Lynnwood, Washington, for all
21 non-exempt, hourly paid employees working for Defendants in California, which is
22 responsible for the recruiting and hiring of new employees, and communicating and
23 implementing Defendants’ company-wide policies, including timekeeping policies and meal
24 and rest period policies, to employees throughout California.

25 22. In particular, Plaintiff and other non-party Aggrieved Employees, on
26 information and belief, received the same standardized documents and/or written policies.
27 Upon information and belief, the usage of standardized documents and/or written policies,
28 including new-hire documents, indicate that Defendants dictated policies at the corporate level

1 and implemented them company-wide, regardless of their employees' assigned locations or
2 positions. Upon information and belief, Defendants set forth uniform policies and procedures
3 in several documents provided at an employee's time of hire.

4 23. Upon information and belief, Defendants maintain a centralized Payroll
5 department at their corporate headquarters in Lynnwood, Washington, which processes
6 payroll for all non-exempt, hourly paid employees working for Defendants at their various
7 locations and jobsites in California, including Plaintiff and other non-party Aggrieved
8 Employees. Based upon information and belief, Defendants issue the same formatted wage
9 statements to all non-exempt, hourly paid employees in California, irrespective of their work
10 locations. Upon information and belief, Defendants process payroll for departing employees
11 in the same manner throughout the State of California, regardless of the manner in which each
12 employee's employment ends.

13 24. Defendants continue to employ non-exempt or hourly paid employees in
14 California.

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

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

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

26 28. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
27 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
28 be paid at a regular rate of pay, and corresponding rates of pay for overtime wages and/or

1 meal and rest period premiums, that included as eligible income all remuneration required by
2 law, including but not limited to, all income derived from commissions, incentive pay,
3 nondiscretionary bonuses, and/or other forms of compensation, but failed to include all forms
4 of remuneration in calculating the regular rate of pay for Plaintiff and other non-party
5 Aggrieved Employees.

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

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

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

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

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

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

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

22 36. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
23 should have known that they were prohibited from issuing instruments for the payment of
24 wages that were not payable in cash on demand, without discount and with authorization, but
25 did so, in violation of the California Labor Code.

26 37. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
27 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to one
28 day's rest in seven. In violation of the California Labor Code, Defendants required Plaintiff

1 and other non-party Aggrieved Employees to work more than six consecutive days without a
2 day of rest, where the total hours worked exceeded 30 hours in any week or six hours in any
3 one day thereof.

4 38. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
5 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
6 suitable seating and/or were entitled to sit when it did not interfere with the performance of
7 their duties and also have seats nearby to use during a lull in tasks that do require moving
8 about or standing. In violation of the California Labor Code and applicable IWC Wage Order,
9 Defendants failed to provide Plaintiff and other non-party Aggrieved Employees with suitable
10 seating.

11 39. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
12 should have known that other non-party Aggrieved Employees were entitled to be paid
13 reporting time pay when they reported to work for their usual or scheduled shift but were put
14 to work for less than half of the usual or scheduled shift. In violation of the California Labor
15 Code, Defendants did not pay other non-party Aggrieved Employees all reporting time pay
16 due.

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

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

28 42. At all times herein set forth, PAGA provides that any provision of law under

1 the Labor Code and applicable IWC Wage Order that provides for a civil penalty to be
2 assessed and collected by the LWDA for violations of the California Labor Code and
3 applicable IWC Wage Order may, as an alternative, be recovered by aggrieved employees in a
4 civil action brought on behalf of themselves and other current or former employees pursuant
5 to procedures outlined in California Labor Code section 2699.3.

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

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

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

- 15 (a) The aggrieved employee shall give written notice by online filing
16 (hereinafter “Employee’s Notice”) to the LWDA and by certified mail
17 to the employer of the specific provisions of the California Labor Code
18 alleged to have been violated, including the facts and theories to support
19 the alleged violations.
- 20 (b) An aggrieved employee’s notice filed with the LWDA pursuant to
21 2699.3(a) and any employer response to that notice shall be
22 accompanied by a filing fee of seventy-five dollars (\$75).
- 23 (c) The LWDA shall provide notice (hereinafter “LWDA Notice”) to the
24 employer and the aggrieved employee by certified mail that it does not
25 intend to investigate the alleged violation within sixty (60) calendar
26 days of the postmark date of the Employee’s Notice. Upon receipt of
27 the LWDA Notice, or if the LWDA Notice is not provided within sixty-
28 five (65) calendar days of the postmark date of the Employee’s Notice,

1 the aggrieved employee may commence a civil action pursuant to
2 California Labor Code section 2699 to recover civil penalties in addition
3 to any other penalties to which the employee may be entitled.

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

- 8 (a) The aggrieved employee or representative shall give written notice by
9 online filing to 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 (other than those listed in Section 2699.5), including the facts
12 and theories to support the alleged violation.
- 13 (b) An aggrieved employee's notice filed with the LWDA pursuant to
14 2699.3(c) and any employer response to that notice shall be
15 accompanied by a filing fee of seventy-five dollars (\$75).
- 16 (c) The employer may cure the alleged violation within thirty-three (33)
17 calendar days of the postmark date of the notice. The employer shall
18 give written notice by certified mail within that period of time to the
19 aggrieved employee or representative and the agency if the alleged
20 violation is cured, including a description of actions taken, and no civil
21 action pursuant to Section 2699 may commence. If the alleged violation
22 is not cured within the 33-day period, the employee may commence a
23 civil action pursuant to Section 2699.

24 47. On August 5, 2022, Plaintiff provided written notice by online filing to the
25 LWDA and by certified mail to Defendants of the specific provisions of the California Labor
26 Code alleged to have been violated, including facts and theories to support the alleged
27 violations, in accordance with California Labor Code section 2699.3. Plaintiff's written
28 notice was accompanied with the applicable filing fee of seventy-five dollars (\$75). The

1 LWDA PAGA Administrator has confirmed receipt of Plaintiff's written notice and assigned
2 Plaintiff PAGA Case Number LWDA-CM-899926-22. A true and correct copy of Plaintiff's
3 written notice to the LWDA and Defendants dated August 5, 2022, is attached hereto as
4 "Exhibit 1."

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

8 49. Thus, Plaintiff has satisfied the administrative prerequisites under California
9 Labor Code sections 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
10 violations of California Labor Code sections 201, 202, 204, 212, 213, 226(a), 226.7, 510,
11 512(a), 516, 551, 552, 1174(d), 1182.12, 1194, 1197, 1198, and 2802.

12 50. Labor Code section 558(a) provides "[a]ny employer or other person acting on
13 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
14 provision regulating hours and days of work in any order of the Industrial Welfare
15 Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty
16 dollars (\$50) for each underpaid employee for each pay period for which the employee was
17 underpaid. . . . (2) For each subsequent violation, one hundred dollars (\$100) for each
18 underpaid employee for each pay period for which the employee was underpaid. . . ." Labor
19 Code section 558(c) provides "[t]he civil penalties provided for in this section are in addition
20 to any other civil or criminal penalty provided by law." Plaintiff, acting in the public interest
21 as a private attorney general, seeks assessment and collection of civil penalties under Labor
22 Code section 558 for herself, all other non-party Aggrieved Employees, and the State of
23 California against Defendants for violations of Labor Code sections 510, 512(a), 516, 551,
24 552, 1198, and the applicable IWC Wage Order. Plaintiff, acting in the public interest as a
25 private attorney general, does not seek the recovery of unpaid wages under Labor Code
26 section 558 from Defendants for violations of Labor Code sections 510, 512(a), 516, 551, 552,
27 1198, and the applicable IWC Wage Order.

28 51. Defendants, at all times relevant to this complaint, were employers or persons

1 acting on behalf of an employer(s) who violated Plaintiff's and other non-party Aggrieved
2 Employees' rights by violating various sections of the California Labor Code as set forth
3 above.

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

7 53. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a),
8 2699.3(a), 2699.3(c), 2699.5, and section 558, Plaintiff, acting in the public interest as a
9 private attorney general, seeks assessment and collection of civil penalties for herself, all other
10 non-party Aggrieved Employees, and the State of California against Defendants for violations
11 of California Labor Code sections 201, 202, 204, 212, 213, 226(a), 226.7, 510, 512(a), 516,
12 551, 552, 1174(d), 1182.12, 1194, 1197, 1198, and 2802.

13 **FIRST CAUSE OF ACTION**

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

15 **(Against all Defendants)**

16 54. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
17 and every allegation set forth above.

18 55. California Labor Code §§ 2698, *et seq.* ("PAGA") permits Plaintiff to recover
19 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code
20 section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 204, 212, 213,
21 226(a), 226.7, 510, 512(a), 551, 552, 1174(d), 1194, 1197, 1198, and 2802. Labor Code
22 section 2699.3(c) permits aggrieved employees, including Plaintiff, to recover civil penalties
23 for violations of those Labor Code sections not found in section 2699.5, including sections
24 516 and 1182.12.

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

- 27 (a) Violation of Labor Code sections 510 and 1198, and the applicable IWC
28 Wage Order for Defendants' failure to compensate Plaintiff and other

1 non-party Aggrieved Employees with all required overtime pay, as set
2 forth below;

3 (b) Violation of Labor Code sections 226.7, 510, and 1198, and the
4 applicable IWC Wage Order for Defendants' failure to include all forms
5 of remuneration in the "regular rate" of pay as required by law for
6 purposes of paying overtime wages and/or meal and rest period
7 premiums, to Plaintiff and other non-party Aggrieved Employees, as set
8 forth below;

9 (c) Violation of Labor Code sections 1182.12, 1194, 1197, and 1198, and
10 the applicable IWC Wage Order for Defendants' failure to compensate
11 Plaintiff and other non-party Aggrieved Employees with at least
12 minimum wages for all hours worked, as set forth below;

13 (d) Violation of Labor Code sections 226.7, 512(a), 516, and 1198, and the
14 applicable IWC Wage Order for Defendants' failure to provide Plaintiff
15 and other non-party Aggrieved Employees with meal periods, as set
16 forth below;

17 (e) Violation of Labor Code sections 226.7, 516, and 1198, and the
18 applicable IWC Wage Order for Defendants' failure to authorize and
19 permit Plaintiff and other non-party Aggrieved Employees to take rest
20 periods, as set forth below;

21 (f) Violation of Labor Code sections 226(a) and 1198, and the applicable
22 IWC Wage Order for failure to provide accurate and complete wage
23 statements to Plaintiff and other non-party Aggrieved Employees, as set
24 forth below;

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

28 (h) Violation of Labor Code sections 204 for failure to pay all earned wages

during employment, as set forth below;

- (i) Violation of Labor Code section 201 and 202 for failure to pay all earned wages upon termination, as set forth below;
- (j) Violation of Labor Code sections 212 and 213 for issuing instruments for the payment of wages that were not payable in cash on demand, without discount, and with prior authorization, as set forth below;
- (k) Violation of Labor Code sections 551 and 552 for failure to provide one day's rest in seven to Plaintiff and other non-party Aggrieved Employees, as set forth below;
- (l) Violation of Labor Code section 1198 and the applicable IWC Wage Order for failing to provide suitable seating to Plaintiff and other non-party Aggrieved Employees, as set forth below;
- (m) Violation of Labor Code section 1198 and the applicable IWC Wage Order for failure to pay reporting time pay when other non-party Aggrieved Employees were put to work for less than half of their usual or scheduled shifts, as set forth below; and
- (n) Violation of Labor Code sections 2802 for failure to reimburse Plaintiff and other non-party Aggrieved Employees for all business expenses necessarily incurred, as set forth below.

FAILURE TO PAY OVERTIME

VIOLATION OF LABOR CODE SECTIONS 510 AND 1198

57. 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.”

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

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

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

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

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

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

25 63. First, during the relevant time period, Defendants had, and continue to have, a
26 company-wide policy and/or practice of requiring Plaintiff and other non-party Aggrieved
27 Employees to perform tasks while off-the-clock, such as completing training modules,
28 attending mandatory meetings, and/or performing opening and closing duties. Defendants

1 required Plaintiff and other non-party Aggrieved Employees to complete and review training
2 materials from home, on their off-days, but did not compensate them for this time. For
3 example, Plaintiff was required to review training modules on Defendants' sales strategy,
4 called the "Seven Steps," at home and during her off-days, and was expected to implement the
5 strategy to make sales. Plaintiff spent at least 5-6 hours completing Defendants' requisite
6 training at home, but was not paid for this time. Furthermore, Defendants required other non-
7 party Aggrieved Employees to attend mandatory meetings at Defendants' other store
8 locations, but did not compensate them for their time spent attending these meetings.

9 64. Furthermore, on information and belief, during opening shifts, other non-party
10 Aggrieved Employees were required to unlock the doors and disarm the store alarm before
11 clocking in for their shifts. As a further example, after closing shifts, other non-party
12 Aggrieved Employees were required to clock out and then travel a 1/2 mile to make bank
13 deposits, time for which they are not paid. At all times, Plaintiff and/or other non-party
14 Aggrieved Employees remained under the control of Defendants. Thus, Defendants failed to
15 track all of the time spent working before and after scheduled shifts, and Plaintiff and/or other
16 non-party Aggrieved Employees received no compensation for this time.

17 65. Second, during the relevant period, Defendants had a company-wide loss
18 prevention policy requiring employees to undergo mandatory security checks by a managerial
19 employee when entering the store premises before clocking in for a shift or after returning
20 from a meal period, and when exiting the store premises after clocking out at the end of a shift
21 or when leaving for a meal period. Although Defendants' requirement that Plaintiff and other
22 non-party Aggrieved Employees undergo security checks was mandatory, Defendants did not
23 compensate them for the time it took them to wait and undergo these checks. For example,
24 Plaintiff was required to wait up to ten (10) minutes for a manager to become free to check her
25 personal belongings prior to clocking in at the beginning of her shifts, after clocking out for
26 meal periods, before clocking back in after returning from meal periods, and after clocking out
27 at the end of her shifts. Defendants also had a company-wide security policy requiring
28 employees to leave the premises in pairs. After clocking out at the end of their shifts, other

1 non-party Aggrieved Employees were required to wait for at least one other employee to
2 complete his or her closing duties before they could leave Defendants' premises. For
3 example, on information and belief, other non-party Aggrieved Employees would wait 15-20
4 minutes off-the-clock for a manager to complete his or her closing duties, including
5 accompanying them to make bank deposits, before being relieved of their work duties.

6 66. As a result of these loss prevention and security policies and/or practices,
7 Plaintiff and other non-party Aggrieved Employees were subject to Defendants' control before
8 and after their shifts and during their meal periods, but were not always compensated for this
9 time. This off-the-clock work could have been recorded by Defendants, but they refused to do
10 so to avoid payment of additional wages to Plaintiff and other non-party Aggrieved
11 Employees. Thus, Defendants failed to track all of the time that employees spent performing
12 work-related tasks outside of their scheduled shifts and during meal periods, and Plaintiff and
13 other non-party Aggrieved Employees received no compensation for this time.

14 67. Third, Defendants had, and continue to have, a uniform practice and/or policy
15 of strictly staffing their locations based on the labor hours allocated by corporate for each
16 location. For example, on information and belief, Plaintiff's store was allocated 114 payroll
17 hours per week, which was apportioned among staff members according to the amount they
18 generate in sales. Defendants' uniform use of labor budgets, combined with the assignment of
19 heavy workloads and sales goals (*see infra*), has resulted in chronic understaffing and a failure
20 to provide Plaintiff and other non-party Aggrieved Employees with adequate meal period
21 coverage, because there were too few employees on duty to handle the heavy workload and
22 attend to customers. Because Defendants did not employ or staff a sufficient number of
23 employees to meet customer demand, there was no one available to relieve employees needing
24 meal period coverage, and Plaintiff and other non-party Aggrieved Employees were not
25 always afforded uninterrupted 30-minute meal periods during shifts when they were entitled
26 to receive a meal period. Moreover, Defendants have had a practice of failing to schedule
27 meal periods and/or failing to adhere to a schedule for meal periods, which has further caused
28 Plaintiff and other non-party Aggrieved Employees to not be relieved of their duties for

1 compliant meal periods. Consequently, Plaintiff and other non-party Aggrieved Employees
2 were required to work through and/or had their unpaid meal periods interrupted in order to
3 complete their assigned duties and handle customer demand, time for which they were not
4 paid.

5 68. Fourth, in conjunction with understaffing their stores, Defendants have a
6 requirement that a managerial employee be present on-premises at all times and prohibiting
7 managers from leaving the premises unless another manager was also on duty, resulting in a
8 lack of meal period coverage for managerial employees. At the same time, the labor budgets
9 Defendants implemented did not always allow for more than one manager to be on the
10 schedule at all times. As a result, Plaintiff and other non-party Aggrieved Employees were
11 sometimes the only managers on duty, and were expected to supervise the store and respond
12 to employee and customer questions at all times, including during their meal periods. Because
13 managerial employees are effectively prohibited from leaving Defendants' premises for meal
14 periods without coverage, and because there are too few employees and other managers on
15 duty to handle the workload and attend to customers, Plaintiff and other non-party Aggrieved
16 Employees have been denied uninterrupted 30-minute meal periods, and are required to work
17 through and/or to return early from meal periods. For example, Plaintiff's meal periods were
18 interrupted and/or cut short several times per week to resolve issues for other employees.

19 69. Fifth, because Defendants frowned upon employees accruing meal period
20 penalties, Defendants pressured employees to clock out for meal periods, on threat of
21 discipline, even when they did not receive a compliant meal period, in order to strictly limit
22 the meal penalties that Defendants would otherwise owe. For example, other non-party
23 Aggrieved Employees would be pressured to clock out and continue working in order to meet
24 their sales goals. Thus, Defendants did not record all hours worked during meal periods, and
25 other non-party Aggrieved Employees performed work during meal periods for which they
26 were not paid.

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

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

7 71. Furthermore, Defendants did not pay Plaintiff and other non-party Aggrieved
8 Employees the correct overtime rates for the recorded overtime hours that they generated. In
9 addition to an hourly wage, Defendants paid Plaintiff and other non-party Aggrieved
10 Employees commissions, incentive pay, nondiscretionary bonuses, and/or other forms of
11 remuneration. However, in violation of the California Labor Code, Defendants failed to
12 incorporate all remunerations, including commissions, incentive pay, and/or nondiscretionary
13 bonuses, into the calculation of the regular rate of pay for purposes of calculating the overtime
14 wage rates. Therefore, during times when Plaintiff and other non-party Aggrieved Employees
15 worked overtime and received these other forms of pay, Defendants failed to pay all overtime
16 wages by paying a lower overtime rate than required.

17 72. Defendants' failure to pay Plaintiff and other non-party Aggrieved Employees
18 the balance of overtime compensation as required by California law, violates the provisions of
19 California Labor Code sections 510 and 1198. Plaintiff and other non-party Aggrieved
20 Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections
21 558 and/or 2699(a), (f), and (g).

22 **FAILURE TO PAY MINIMUM WAGES**

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

24 73. At all relevant times, California Labor Code sections 1182.12, 1194, 1197, and
25 1198 provide that the minimum wage for employees fixed by the IWC is the minimum wage
26 to be paid to employees, and the payment of a wage less than the minimum so fixed is
27 unlawful. Compensable work time is defined in IWC Wage Order No. 7-2001 as "the time
28 during which an employee is subject to the control of an employer, and includes all the time

1 the employee is suffered or permitted to work, whether or not required to do so.” Cal. Code.
2 Regs. tit. 8, § 11070(2)(G) (defining “Hours Worked”).

3 74. As stated, during the relevant time period, Defendants have required Plaintiff
4 and/or other non-party Aggrieved Employees to perform work off-the-clock outside of their
5 scheduled shifts, such as reviewing trainings and attending meetings, performing opening and
6 closing duties, undergoing security checks, and waiting to leave the premises in pairs.
7 Defendants failed to track this time Plaintiff and/or other non-party Aggrieved Employees
8 spent working off-the-clock, and thus, Plaintiff and/or other non-party Aggrieved Employees
9 received no compensation for this time.

10 75. Additionally, as set forth above, due to Defendants’ company-wide policies
11 and/or practices of utilizing labor budgets, understaffing, assignment of heavy workloads,
12 failure to schedule and/or adhere to a schedule for meal periods, and subsequent lack of meal
13 period coverage, Plaintiff and other non-party Aggrieved Employees have been impeded from
14 taking all uninterrupted meal periods to which they were entitled and were required to work
15 off-the-clock. As stated, in conjunction with these policies, Defendants have a requirement
16 that a managerial employee be present in the store premises at all times, which has
17 exacerbated the lack of meal period coverage. Further, to limit the meal penalties that
18 Defendants would otherwise owe, Defendants pressured other non-party Aggrieved
19 Employees to clock out for meal periods, but required them to continue working, time for
20 which they were not paid.

21 76. Thus, Defendants did not pay minimum wages for all hours worked by Plaintiff
22 and other non-party Aggrieved Employees. To the extent that these off-the-clock hours did
23 not qualify for overtime premium payment, Defendants did not pay at least minimum wages
24 for those hours worked off-the-clock in violation of California Labor Code sections 1182.12,
25 1194, 1197, and 1198.

26 77. Defendants’ failure to pay Plaintiff and other non-party Aggrieved Employees
27 minimum wages violates California Labor Code sections 1182.12, 1194, 1197, and 1198.
28 Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil

penalties pursuant to Labor Code sections 2699(a), (f), and (g).

FAILURE TO PROVIDE AND RECORD MEAL PERIODS

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

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

79. At all relevant times herein set forth, California Labor Code section 512(a) provides that 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 a 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).

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

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

82. First, as stated, Defendants had, and continue to have, company-wide policies and/or practices of understaffing pursuant to their labor budget practices, while simultaneously assigning heavy workloads and sales goals (*see infra*), and failing to schedule meal periods and/or adhere to a schedule for meal periods, which has resulted in a lack of meal period coverage and prevented Plaintiff and other non-party Aggrieved Employees from

1 taking all timely, uninterrupted meal periods to which they were entitled. In conjunction with
2 understaffing their stores, as stated, Defendants have a requirement that a managerial
3 employee be present on-premises at all times, but Defendants' labor budgets do not always
4 allow for more than one manager to be on the schedule at all times. As a result, Plaintiff and
5 other managerial employees were sometimes the only managers on duty, and would have their
6 meal periods interrupted or would work through them in order to assist their coworkers and
7 customers. For example, several times per week, Plaintiff was required to work through her
8 meal periods due to the heavy workload and lack of coverage.

9 83. Second, as stated, Defendants expected employees to meet daily sales goals
10 under threat of discipline, up to and including termination. For example, on information and
11 belief, Plaintiff was expected to meet sales goals—a certain dollar amount per transaction and
12 per hour, as well as a certain number of merchandise units per transaction. The failure to meet
13 expectations set by an “average” employee can result in a write-up, and several cumulative
14 write-ups can result in termination. Accordingly, Plaintiff and other non-party Aggrieved
15 Employees have been forced to work in excess of five (5) hours before taking a meal period,
16 had their meal periods interrupted, and/or had to forgo their meal periods altogether in order to
17 complete their assigned workloads and meet sales expectations. For example, Plaintiff
18 worked through her meal periods at least once per month in order to complete the tasks and
19 duties Defendants assigned to her, such as making sales to customers and assisting coworkers.
20 In addition, as stated, Plaintiff and other non-party Aggrieved Employees had their meal
21 periods cut short due to mandatory security checks of their personal belongings when they
22 exited the store during their meal periods and when they re-entered.

23 84. Third, as stated, because Defendants frown upon employees accruing meal
24 period penalties, Defendants management pressured employees to clock out for meal periods
25 to reflect compliant meal periods, upon threat of discipline, in order to strictly limit the meal
26 penalties that would need to be paid by Defendants. For example, Plaintiff was told by her
27 managers to clock out before her fifth hour of work in order to record a compliant meal
28 period, but was pressured not to take her meal period until later in the day, due to lack of meal

1 period coverage.

2 85. Also, Defendants did not provide Plaintiff and other non-party Aggrieved
3 Employees with second 30-minute meal periods on days that they worked in excess of ten (10)
4 hours in one day. For example, Plaintiff would work in excess of ten (10) hours per day on
5 occasion and during holidays, and was not provided her second meal period during these
6 shifts. Plaintiff and other non-party Aggrieved Employees did not sign valid meal period
7 waivers on days that they were entitled to meal periods and were not relieved of all duties.

8 86. At all times mentioned herein, Defendants knew or should have known that as a
9 result of their policies and/or practices, Plaintiff and other non-party Aggrieved Employees
10 were not actually relieved of all duties to take timely, uninterrupted meal periods. Defendants
11 further knew or should have known that they did not pay Plaintiff and other non-party
12 Aggrieved Employees meal period premiums when meal periods were late, interrupted,
13 shortened, and/or missed.

14 87. Furthermore, Defendants engaged in a company-wide practice and/or policy of
15 not paying meal period premiums owed when compliant meal periods are not provided.
16 Because of this practice and/or policy, Plaintiff and other non-party Aggrieved Employees
17 have not received premium pay for missed, late, shortened, and interrupted meal periods.
18 Alternatively, to the extent that Defendants did pay Plaintiff and other non-party Aggrieved
19 Employees premium pay for missed, late, shortened, and interrupted meal periods, Defendants
20 did not pay Plaintiff and other non-party Aggrieved Employees the correct rate of pay for
21 premiums because Defendant systematically failed to include all forms of compensation such
22 as commissions, incentive pay, nondiscretionary bonuses, and/or other forms of remuneration,
23 in the regular rate of pay.

24 88. Defendants' conduct violates the applicable IWC Wage Order, and California
25 Labor Code sections 226.7, 512(a), 516, and 1198. Plaintiff and other non-party Aggrieved
26 Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections
27 558 and/or 2699(a), (f), and (g).

28 //

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

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

90. 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.

91. 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).

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

93. During the relevant time period, Defendants regularly failed to authorize and permit Plaintiff and other non-party Aggrieved Employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, Defendants' policies and/or practices of understaffing and the assignment of heavy workloads resulted in a lack of rest period coverage and prevented Plaintiff and other non-party

1 Aggrieved Employees from being relieved of all duty in order to take compliant rest periods.
2 Defendants also failed to schedule rest periods at all, which, coupled with Defendants' failure
3 to provide adequate rest period coverage, further led to Plaintiff and other non-party
4 Aggrieved Employees not being authorized and permitted to take rest periods.

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

13 95. As a result of Defendants' practices and policies, Plaintiff and other non-party
14 Aggrieved Employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in
15 excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they
16 were entitled. For example, Plaintiff missed nearly all of her rest periods because there was
17 an expectation that employees would work through their rest periods.

18 96. Defendants also have engaged in a company-wide practice and/or policy of not
19 paying all rest period premiums owed when compliant rest periods are not authorized and
20 permitted. Because of this practice and/or policy, Plaintiff and other non-party Aggrieved
21 Employees have not received premium pay for all missed rest periods. Alternatively, to the
22 extent that Defendants did pay Plaintiff and other non-party Aggrieved Employees one (1)
23 additional hour of premium pay for missed rest periods, Defendants did not pay Plaintiff and
24 other non-party Aggrieved Employees at the correct rate of pay for premiums because
25 Defendants failed to include all forms of compensation, such as commissions, incentive pay,
26 nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

27 97. Accordingly, Defendants failed to authorize and permit all compliant rest
28 periods and failed to pay the full rest period premiums due. Defendants' conduct violates the

1 applicable IWC Wage Order and California Labor Code sections 226.7, 516, and 1198.

2 Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil
3 penalties pursuant to Labor Code sections 558 and/or 2699(a), (f), and (g).

4 **FAILURE TO PROVIDE AND MAINTAIN COMPLIANT WAGE STATEMENTS**
5 **VIOLATION OF LABOR CODE SECTIONS 226(a), 1174(d), AND 1198**

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

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

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

101. Additionally, because Defendants did not calculate Plaintiff's and other non-party Aggrieved Employees' regular rate of pay correctly for purposes of paying overtime wages and/or meal and rest period premiums, Defendants 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). Defendants 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).

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

103. 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), Defendants willfully failed to maintain accurate payroll records for Plaintiff and other non-party 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.

104. California Labor Code section 1198 provides that the maximum hours of work

1 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as
2 set forth in the applicable IWC Wage Order. Section 1198 further provides that “[t]he
3 employment of any employees for longer hours than those fixed by the order or under
4 conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC
5 Wage Order, employers are required to keep accurate time records showing when the
6 employee begins and ends each work period and meal period. During the relevant time
7 period, Defendants failed, on a company-wide basis, to keep accurate records of work period
8 and meal period start and stop times for Plaintiff and other non-party Aggrieved Employees,
9 in violation of section 1198. Furthermore, in light of Defendants’ failure to provide Plaintiff
10 and other non-party Aggrieved Employees with second 30-minute meal periods to which they
11 were entitled, Defendants kept no records of meal start and end times for second meal periods.

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

15 **FAILURE TO PAY WAGES DURING EMPLOYMENT**

16 **VIOLATION OF LABOR CODE SECTION 204**

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

25 107. At all relevant times herein, California Labor Code section 204 also requires
26 that all wages earned for labor in excess of the normal work period shall be paid no later than
27 the payday for the next regular payroll period. Alternatively, at all relevant times herein,
28 Labor Code section 204 provides that the requirements of this section are deemed satisfied by

1 the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not
2 more than seven (7) calendar days following the close of the payroll period.

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

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

9 **FAILURE TO PAY WAGES UPON TERMINATION**

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

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

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

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

28 //

1 **UNLAWFUL DIRECT DEPOSIT AND DISCOUNT OF WAGES**

2 **VIOLATION OF LABOR CODE SECTIONS 212 AND 213**

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

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

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

19 ... [T]he fact that the pay programs were optional, thereby
20 allowing an employee to either participate in the program or
21 receive his or her pay in some other way, such as direct deposit.
22 Specifically, the DLSE opined that “[t]he success of the described
23 procedure, in practice, will of course require that ... it is
24 presented as an *alternative* method for wage payment for which
25 [the employees’] participation is optional.” The DLSE also stated,
26 “[i]t is significant that the program does not mandate employee
27 participation in the Money Network Service and that it is designed
28 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).

116. 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 Labor Code sections 212 and 213 as permitting employer use of

1 payroll debit cards where the following requirements are satisfied:

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

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

11 117. Further, the DLSE notes that the Labor Code manifests:

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

23 *DLSE opinion letter* 2008.07.07. The DLSE has also acknowledged that payroll service
24 providers “effectively act as agents of the client employers in discharging the employer’s
25 wage payment obligations.” *Id.* In a second opinion letter, the DLSE stated that “[w]hile the
26 Labor Code does not purport to regulate the specific arrangements between employers and
27 payroll service providers, both an employer and, under the express language in Labor Code
28 § 212- their *agent*, must comply with its requirements.” *DLSE opinion letter* 2008.07.07-2.

118. During the relevant time period, Defendants had an agreement with a payroll
service provider for the issuance of payroll cards to employees, including other non-party
Aggrieved Employees, to discharge their wage payment obligations to their employees. On
information and belief, 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, on information and belief, other non-party
Aggrieved Employees have received their final wages on a payroll debit card without a choice

1 of an alternative method, such as a written check. Instead, Defendants automatically enrolled
2 other non-party Aggrieved Employees in their payroll debit card program for the purpose of
3 issuing their final wages to them. Thus, Defendants' payroll debit card program was and
4 continues to be unlawful as it does not give employees the choice as to whether they would
5 like to receive their final wages on a payroll debit card or via some other payment method.

6 119. California courts recognize a policy favoring the full and prompt payment of
7 wages to employees. Defendants' payroll card program is inconsistent with this policy.
8 Because Defendants' company-wide payroll debit card program is involuntary and denies
9 other non-party Aggrieved Employees of easy access to the entirety of their wages, the
10 program violates California Labor Code sections 212 and 213. Other non-party Aggrieved
11 Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections
12 225.5 and/or 2699(a), (f), and (g).

13 **FAILURE TO PROVIDE ONE DAY'S REST IN SEVEN**

14 **VIOLATION OF LABOR CODE SECTIONS 551 and 552**

15 120. At all relevant times herein, California Labor Code section 551 provides that
16 every person employed in any occupation of labor is entitled to one day's rest in seven.
17 Additionally, California Labor Code section 552 prohibits employers from requiring
18 employees to work more than six consecutive days without a day of rest.

19 121. At all relevant times herein set forth, California Labor Code section 556
20 exempts an employer from the day-of-rest requirement when the total hours worked by an
21 employee do not exceed 30 hours in any week or six hours in any one day thereof.

22 122. During the relevant time period, Defendants required Plaintiff and other non-
23 party Aggrieved Employees to work approximately six (6) or more hours per day and seven
24 (7) consecutive days in a workweek. For example, approximately once or twice per month,
25 and more often during the holiday season, Plaintiff worked seven (7) consecutive days without
26 being afforded the opportunity to take one day's rest. Because Plaintiff and other non-party
27 Aggrieved Employees worked over thirty (30) hours per week and over six (6) hours in any
28 one day in a workweek, they were not exempt from the day-of-rest requirement. To the extent

1 that Plaintiff and other non-party Aggrieved Employees signed purported waivers of their
2 right to a day's rest in seven, such waivers are invalid.

3 123. Thus, during the relevant time period, and in violation of California Labor
4 Code sections 551 and 552, Defendants caused Plaintiff and other non-party Aggrieved
5 Employees to work more than six days in seven. Plaintiff and other non-party Aggrieved
6 Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections
7 558 and/or 2699(a), (f), and (g).

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

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

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

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

28 127. Plaintiff and other non-party Aggrieved Employees spent a substantial portion

1 of their day behind and next to cash wraps and service counters. The nature of the work of an
2 employee performing cashier and customer service duties can reasonably be accomplished
3 from a seated position. However, Defendants systematically, and on a company-wide basis,
4 did not provide seats or stools at or near the cash wraps or service counters, forcing Plaintiff
5 and other non-party Aggrieved Employees to stand throughout their work shifts.

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

13 129. As a result of Defendants' company-wide policy and/or practice of prohibiting
14 employees from sitting during their shifts and company-wide failure to provide suitable
15 seating, Plaintiff and other non-party Aggrieved Employees were forced to stand during shifts
16 and denied seats. Defendants' failure to provide suitable seating to Plaintiff and other non-
17 party Aggrieved Employees violated and continues to violate California Labor Code section
18 1198 and IWC Wage Order No. 7-2001, subdivision 14(A).

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

21 **FAILURE TO PROVIDE SUITABLE SEATING**

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

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

1 order is unlawful.”

2 132. California Code of Regulations, Title 8, section 11070 subdivision 14(B)
3 provides that “[w]hen employees are not engaged in the active duties of their employment and
4 the nature of the work requires standing, an adequate number of suitable seats shall be placed
5 in reasonable proximity to the work area and employees shall be permitted to use such seats
6 when it does not interfere with the performance of their duties.”

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

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

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

28 136. As a result of Defendants’ 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, Plaintiff and other non-party Aggrieved Employees were forced to stand during shifts and denied seats. Defendants' failure to provide suitable seating to Plaintiff and other non-party Aggrieved Employees violated and continues to violate California Labor Code section 1198 and IWC Wage Order No. 7-2001, subdivision 14(B).

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

FAILURE TO PAY REPORTING TIME PAY

VIOLATION OF LABOR CODE SECTION 1198

138. 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.”

139. California Code of Regulations, Title 8, section 11070(5)(A) provides that “[e]ach workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee’s usual or scheduled day’s work, the employee shall be paid for half the usual or scheduled day’s work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee’s regular rate of pay, which shall not be less than the minimum wage.” The “primary purpose of the reporting time regulation” is “to guarantee at least partial compensation for employees who report to work expecting to work a specified number of hours, and who are deprived of that amount because of inadequate scheduling or lack of proper notice by the employer.” *Aleman v. AirTouch Cellular*, 209 Cal. App. 4th 556 (2012).

140. During the relevant time period, Defendants violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11070(5)(A), because Defendants failed to pay other non-party Aggrieved Employees reporting time pay when they

1 reported to work for their usual or scheduled shift but were put to work for less than half of
2 the usual or scheduled day's work.

3 141. During the relevant period, Defendants had a company-wide practice of
4 sending other non-party Aggrieved Employees home early from their shifts, including before
5 they had worked at least half of their usual or scheduled shift, but would not pay other non-
6 party Aggrieved Employees for half of their usual or scheduled shift. For example, on
7 information and belief, when scheduled to work an eight (8) hour shift, other non-party
8 Aggrieved Employees were sent home before four (4) hours had elapsed because business was
9 slow and pursuant to labor budget limitations, but were only paid for the time that they had
10 worked. Although other non-party Aggrieved Employees would report to work based on the
11 schedule that Defendants provided to them, Defendants would send them home before they
12 had worked at least half of their usual or scheduled shifts without giving them reporting time
13 pay.

14 142. Accordingly, other non-party Aggrieved Employees were not properly
15 compensated with reporting time pay in violation of California Labor Code section 1198 and
16 California Code of Regulations, Title 8, section 11070(5)(A). Other non-party Aggrieved
17 Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections
18 2699(a), (f), and (g).

19 **FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES**

20 **VIOLATION OF LABOR CODE SECTION 2802**

21 143. At all times herein set forth, California Labor Code section 2802 provides that
22 an employer must reimburse employees for all necessary expenditures and losses incurred by
23 the employee in the performance of his or her job. The purpose of Labor Code section 2802 is
24 to prevent employers from passing off their cost of doing business and operating expenses on
25 to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144
26 (2014). IWC Wage Order No. 7-2001 provides that: "[w]hen tools or equipment are required
27 by the employer or are necessary to the performance of a job, such tools and equipment shall
28 be provided and maintained by the employer, except that an employee whose wages are at

1 least two (2) times the minimum wage provided herein may be required to provide and
2 maintain hand tools and equipment customarily required by the trade or craft.”

3 144. During the relevant time period, Defendants, on a company-wide basis,
4 required Plaintiff and other non-party Aggrieved Employees to use their own personal
5 vehicles to carry out company business, but failed to reimburse them for all costs of travel,
6 including mileage. For example, at least three (3) times per week, Plaintiff was required to
7 drive to the bank about 1/2 mile away to make bank drops. As another example, about 4-5
8 times, Plaintiff was required to drive to a nearby store to purchase and pick up basic supplies
9 such as batteries and toilet paper. In addition, Plaintiff was required to drive to other
10 Defendants’ locations about four (4) miles away to pick up retail shelving equipment such as
11 racks, pegs, and shelves. Lastly, Plaintiff was required to drive about 9-10 miles to attend a
12 company training on snowboard-building. Although Defendants required Plaintiff and other
13 non-party Aggrieved Employees to utilize their personal vehicles to carry out their work-
14 related responsibilities (including conducting bank drops, obtaining store supplies, and
15 attending trainings), Defendants failed to reimburse them for their mileage or travel expenses.

16 145. Additionally, during the relevant time period, Defendants had a company-wide
17 policy of requiring Plaintiff and other non-party Aggrieved Employees to utilize their own
18 personal mobile devices, including cellular phones, and/or mobile data, to carry out their job
19 duties, but Defendants failed to reimburse them for the costs of their work-related mobile
20 device expenses. For example, Plaintiff was sometimes required to access a website, Infor
21 Workforce Management, on her personal cellular phone in order to clock in and clock out for
22 her shifts. Plaintiff and other non-party Aggrieved Employees were not compensated for the
23 cost of the mobile data used to access the timekeeping website. Although Defendants required
24 Plaintiff and other non-party Aggrieved Employees to utilize their personal mobile devices
25 and mobile data to carry out their work-related responsibilities, Defendants failed to reimburse
26 them for these costs.

27 146. Defendants could have provided Plaintiff and other non-party Aggrieved
28 Employees with the actual equipment for use on the job, such as company vehicles and

1 company mobile devices, to be used for fulfilling work-related tasks. Or, Defendants could
2 have reimbursed employees for the costs of their travel, mileage, and mobile device usage.
3 Instead, Defendants passed these operating costs off onto Plaintiff and other non-party
4 Aggrieved Employees. At all relevant times, Plaintiff did not earn at least two (2) times the
5 minimum wage.

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

11 **REQUEST FOR JURY TRIAL**

12 Plaintiff requests a trial by jury.

13 **PRAYER FOR RELIEF**

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

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

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

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

wages during employment); 201 and 202 (by failing to timely pay all earned wages upon termination); 212 and 213 (by failing to make earned wages accessible without discount); 551 and 552 (by failing to provide one day's rest in seven); 1198 and the applicable IWC Wage Order (by failing to provide suitable seating); 1198 (by failing to provide reporting time pay); and 2802 (by failing to reimburse business expenses);

3. For civil penalties, pursuant to California Labor Code 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, 226(a), 226.7, 510, 512(a), 516, 551, 552, 1174(d), 1182.12, 1194, 1197, 1198, and 2802;

4. 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, 226(a), 226.7, 510, 512(a), 516, 551, 552, 1174(d), 1182.12, 1194, 1197, 1198, and 2802;

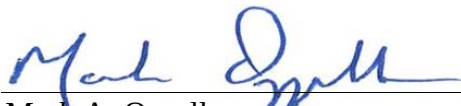
5. For pre-judgment and post-judgment interest as provided by law; and

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

Dated: October 14, 2022

Respectfully submitted,

Capstone Law APC

By: 
Mark A. Ozzello
Brandon K. Brouillette
Joseph Hakakian

Attorneys for Plaintiff Seana Neihart

EXHIBIT “1”



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SAIRAH BUDHWANI
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August 5, 2022

VIA ONLINE SUBMISSION

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

Subject: *Seana Neihart v. Zumiez Inc., et al.*

Dear PAGA Administrator:

This office represents Seana Neihart in connection with her claims under the California Labor Code. Ms. Neihart was an employee of ZUMIEZ INC.; ZUMIEZ DISTRIBUTION LLC; and/or ZUMIEZ SERVICES INC. For the purpose of this letter, Ms. Neihart collectively refers to these entities as "ZUMIEZ."

The employers may be contacted directly at the addresses below:

ZUMIEZ INC.
4001 204TH ST SW
LYNNWOOD, WA 98036

ZUMIEZ DISTRIBUTION LLC
4001 204TH ST SW
LYNNWOOD, WA 98036

ZUMIEZ DISTRIBUTION LLC
1346 RAILROAD ST
CORONA, CA 92882

ZUMIEZ SERVICES INC.
4001 204TH ST SW
LYNNWOOD, WA 98036

Ms. Neihart 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. Neihart seeks relief on behalf of herself, the State of California, and other persons who are or were employed by ZUMIEZ as a non-exempt, hourly paid employee in California and who received at least one wage statement ("aggrieved employees"). This letter is sent in compliance with the notice and reporting requirements of California Labor Code section 2699.3.

ZUMIEZ has employed Ms. Neihart as an hourly paid, non-exempt employee from approximately September 2019 to the present. Ms. Neihart works for ZUMIEZ as a 2nd Assistant Manager at its retail store location in Rancho Cucamonga, California. Ms. Neihart typically works eight (8) to ten (10) hours per day, four (4) to five (5) days per week, from approximately 9:00 a.m. to 5:00 p.m. (opening shift) or from 1:00 p.m. to 10:00 p.m. (closing shift). Ms. Neihart is compensated approximately \$16.98 per hour. Her job duties include, without limitation, ringing up customer transactions, answering customer questions, making sales, and unpacking and organizing merchandise.

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

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

ZUMIEZ INC. and ZUMIEZ SERVICES INC. are Washington corporations, and ZUMIEZ DISTRIBUTION LLC is a Washington limited liability company. Together, they operate retail store locations throughout the United States, including approximately 90 ZUMIEZ store locations in California. Upon information and belief, ZUMIEZ maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Lynnwood, Washington, or Corona, California, for all non-exempt, hourly paid employees working for ZUMIEZ in California, including Ms. Neihart and other aggrieved employees. At all relevant times, ZUMIEZ issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Ms. Neihart and other aggrieved employees, regardless of their location or position.

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

ZUMIEZ willfully failed to pay all overtime wages owed to Ms. Neihart and other aggrieved employees. During the relevant time period, Ms. Neihart 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. Neihart’s experience and counsel’s review of those records currently available relating to Ms. Neihart’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. Neihart 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, during the relevant time period, ZUMIEZ has a company-wide policy and/or practice of requiring Ms. Neihart and other aggrieved employees to perform tasks while off-the-clock, such as completing training modules or attending mandatory meetings, undergoing COVID-19 temperature checks and health screenings, and/or performing opening and closing duties. ZUMIEZ has required Ms. Neihart and other aggrieved employees to complete and review training materials from home, on their off-days, but did not compensate them for this time. For example, Ms. Neihart was required to review training modules on ZUMIEZ's sales strategy, called the "Seven Steps," at home and during her off-days, and was expected to implement the strategy to make sales. Ms. Neihart spent at least 5-6 hours completing ZUMIEZ's requisite training at home, but was not paid for this time. Furthermore, ZUMIEZ required other aggrieved employees to attend mandatory meetings at other ZUMIEZ store locations, but did not compensate them for their time spent attending these meetings.

Furthermore, ZUMIEZ implemented, on a company-wide basis, an employer-imposed requirement that Ms. Neihart and other aggrieved employees undergo mandatory COVID-19 temperature checks and health screenings before clocking in for their scheduled shifts. Prior to her shift, Ms. Neihart was required to spend 2-3 minutes per instance filling out a health screening form and having her temperature checked, before being permitted to clock in for her shift. Even though ZUMIEZ required these health screenings, ZUMIEZ did not provide Ms. Neihart and other aggrieved employees a mechanism to record this time worked so they could be compensated for the time spent undergoing mandatory temperature checks and/or health screenings. Moreover, during opening shifts, on information and belief, other aggrieved employees were required to unlock the doors and disarm the store alarm before clocking in for their shifts. As a further example, after closing shifts, other aggrieved employees were required to clock out and then travel a 1/2 mile to make bank deposits, time for which they are not paid. At all times, Ms. Neihart and/or other aggrieved employees remained under the control of ZUMIEZ. Thus, ZUMIEZ failed to track all of the time spent working before and after scheduled shifts, and Ms. Neihart and/or other aggrieved employees received no compensation for this time.

Second, during the relevant period, ZUMIEZ has had a company-wide loss prevention policy requiring employees to undergo mandatory security checks by a managerial employee when entering the store premises before clocking in for a shift or after returning from a meal period, and when exiting the store premises after clocking out at the end of a shift or when leaving for a meal period. Although ZUMIEZ's requirement that Ms. Neihart and other aggrieved employees undergo security checks was mandatory, ZUMIEZ did not compensate them for the time it took them to wait and undergo these checks. For example, Ms. Neihart was required to wait up to ten (10) minutes for a manager to become free to check her personal belongings prior to clocking in at the beginning of her shifts, after clocking out for meal periods, before clocking back in after returning from meal periods, and after clocking out at the end of her shifts. ZUMIEZ also has a company-wide security policy requiring employees to leave the premises in pairs. After clocking out at the end of their shifts, other aggrieved employees are required to wait for at least one other employee to complete his or her closing duties before they can leave ZUMIEZ's premises. For example, on information and belief, other aggrieved employees would wait 15-20 minutes off-the-clock for a manager to complete his or her closing duties, including accompanying them to make bank deposits, before being relieved of their work duties.

As a result of these loss prevention and security policies and/or practices, Ms. Neihart and other aggrieved employees were subject to ZUMIEZ's control before and after their shifts and during their meal periods, but were not always compensated for this time. This off-the-clock work could have been recorded by ZUMIEZ, but it refused to do so to avoid payment of additional wages to Ms. Neihart and other aggrieved employees. Thus, ZUMIEZ failed to track all of the time that employees spent performing work-related tasks outside of their scheduled shifts and during meal periods, and Ms. Neihart and other aggrieved employees received no compensation for this time.

Third, ZUMIEZ had, and continues to have, a uniform practice and/or policy of strictly staffing its locations based on the labor hours allocated by corporate for each location. For example, on information and belief, Ms. Neihart's store is allocated 114 payroll hours per week, which is apportioned among staff members according to the amount they generate in sales. ZUMIEZ's uniform use of labor budgets, combined with the assignment of heavy workloads and sales goals (*see infra*), has resulted in chronic understaffing and a failure to provide Ms. Neihart and other aggrieved employees with adequate meal period coverage, because there are too few employees on duty to handle the heavy workload and attend to customers. Because ZUMIEZ did not employ or staff a sufficient number of employees to meet customer demand, there was no one available to relieve employees needing meal period coverage, and Ms. Neihart and other aggrieved employees are not always afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period. Moreover, ZUMIEZ has had a practice of failing to schedule meal periods and/or adhere to a schedule for meal periods, which has further caused Ms. Neihart and other aggrieved employees to not be relieved of their duties for compliant meal periods. Consequently, Ms. Neihart and other aggrieved employees have been required to work through and/or had their unpaid meal periods interrupted in order to complete their assigned duties and handle customer demand, time for which they are not paid.

Fourth, in conjunction with understaffing its stores, ZUMIEZ has a requirement that a managerial employee be present on-premises at all times and prohibits managers from leaving the premises unless another manager was also on duty, resulting in a lack of meal period coverage for managerial employees. At the same time, the labor budgets ZUMIEZ implemented did not always allow for more than one manager to be on the schedule at all times. As a result, Ms. Neihart and other aggrieved employees are sometimes the only managers on duty, and are expected to supervise the store and respond to employee and customer questions at all times, including during their meal periods. Because managerial employees are effectively prohibited from leaving ZUMIEZ's premises for meal periods without coverage, and because there are too few employees and other managers on duty to handle the workload and attend to customers, Ms. Neihart and other aggrieved employees have been denied uninterrupted 30-minute meal periods, and are required to work through and/or to return early from meal periods. For example, Ms. Neihart's meal periods have been interrupted and/or cut short several times per week to resolve issues for employees.

Fifth, because ZUMIEZ frowned upon employees accruing meal period penalties, ZUMIEZ has pressured Ms. Neihart and other aggrieved employees to clock out for meal periods, on threat of discipline, even when they did not receive a compliant meal period, in order to strictly limit the meal penalties that ZUMIEZ would otherwise owe. For example, other aggrieved employees would be pressured to clock out and continue working in order to meet their sales goals. Thus, ZUMIEZ did not record all hours worked during meal periods, and other aggrieved employees performed work during meal periods for which they were not paid.

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

Furthermore, ZUMIEZ did not pay Ms. Neihart and other aggrieved employees the correct overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage, ZUMIEZ paid Ms. Neihart and other aggrieved employees commissions, incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, ZUMIEZ failed to

incorporate all compensation, including commissions, 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. Neihart and other aggrieved employees worked overtime and received these other forms of pay, ZUMIEZ failed to pay all overtime wages by paying a lower overtime rate than required.

ZUMIEZ's failure to pay Ms. Neihart 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. Neihart and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

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

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

First, as stated, during the relevant time period, ZUMIEZ has required Ms. Neihart and/or other aggrieved employees to perform work off-the-clock outside of their scheduled shifts, such as reviewing trainings and attending meetings, undergoing temperature checks and health screenings, performing opening and closing duties, undergoing security checks, and waiting to leave the premises in pairs. ZUMIEZ failed to track this time Ms. Neihart and other aggrieved employees spent working off-the-clock, and thus, Ms. Neihart and/or other aggrieved employees received no compensation for this time.

Second, as set forth above, due to ZUMIEZ's company-wide policies and/or practices of utilizing labor budgets, understaffing, assignment of heavy workloads, failure to schedule and/or adhere to a schedule for meal periods, and subsequent lack of meal period coverage, Ms. Neihart and other aggrieved employees have been impeded from taking all uninterrupted meal periods to which they were entitled and were required to work off-the-clock. As stated, in conjunction with these policies, ZUMIEZ has a requirement that a managerial employee be present in the store premises at all times, which has exacerbated the lack of meal period coverage. Further, to limit the meal penalties that ZUMIEZ would otherwise owe, ZUMIEZ pressured other aggrieved employees to clock out for meal periods, but required them to continue working, time for which they were not paid.

Thus, ZUMIEZ did not pay at least minimum wages for all hours worked by Ms. Neihart and other aggrieved employees. Also, to the extent that these off-the-clock hours did not qualify for overtime premium payment, ZUMIEZ 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, ZUMIEZ regularly failed to pay at least minimum wages to Ms. Neihart 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. Neihart and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f)-(g).

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

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

First, as stated, ZUMIEZ had, and continues to have, company-wide policies and/or practices of understaffing pursuant to its labor budget practices, while simultaneously assigning heavy workloads and sales goals (*see infra*), and failing to schedule meal periods and/or adhere to a schedule for meal periods, which has resulted in a lack of meal period coverage and prevented Ms. Neihart and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. In conjunction with understaffing its stores, as stated, ZUMIEZ has a requirement that a managerial employee be present on-premises at all times, but ZUMIEZ's labor budgets do not always allow for more than one manager to be on the schedule at all times. As a result, Ms. Neihart and other managerial employees are sometimes the only managers on duty, and would have their meal periods interrupted or would work through them in order to assist their coworkers and customers. For example, several times per week, Ms. Neihart is required to work through her meal periods to due to the heavy workload and lack of coverage.

Second, as stated, ZUMIEZ expects employees to meet daily sales goals under threat of discipline, up to and including termination. For example, on information and belief, Ms. Neihart is expected to meet sales goals—a certain dollar amount per transaction and per hour, as well as a certain number of merchandise units per transaction. The failure to meet expectations set by an "average" employee can result in a write-up, and several cumulative write-ups can result in termination. Accordingly, Ms. Neihart and other aggrieved employees have been forced to work in excess of five (5) hours before taking a meal period, had their meal periods interrupted, and/or had to forgo their meal periods altogether in order to complete their assigned workloads and meet sales expectations. For example, Ms. Neihart works through her meal periods at least once per month in order to complete the tasks and duties ZUMIEZ assigned to her, such as making sales to customers and assisting coworkers. In addition, as stated, Ms. Neihart and other aggrieved employees had their meal periods cut short due to mandatory security checks of their personal belongings when they exited the store during their meal periods and when they re-entered.

Third, as stated, because ZUMIEZ frowns upon employees accruing meal period penalties, ZUMIEZ's management has pressured employees to clock out for meal periods to reflect compliant meal periods, upon threat of discipline, in order to strictly limit the meal penalties that would need to be paid by ZUMIEZ. For example, Ms. Neihart has been told by her managers to clock out before her fifth hour of work in order to record a compliant meal period, but was pressured not to take her meal period until later in the day, due to lack of meal period coverage.

Also, ZUMIEZ did not provide Ms. Neihart and other aggrieved employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. For example, Ms. Neihart would work in excess of ten (10) hours per day on occasion and during holidays, and was not provided her second meal period during these shifts. Ms. Neihart 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.

ZUMIEZ knew or should have known that as a result of its company-wide policies and/or practices, Ms. Neihart and other aggrieved employees were not actually relieved of all duties to take timely, uninterrupted meal periods. ZUMIEZ further knew or should have known that it did not pay Ms. Neihart and other aggrieved employees meal period premiums when meal periods were missed, late, short, and/or interrupted.

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

Accordingly, ZUMIEZ failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Ms. Neihart 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, ZUMIEZ regularly failed to authorize and permit Ms. Neihart 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, ZUMIEZ's company-wide policies and/or practices of understaffing and the assignment of heavy workloads resulted in a lack of rest period coverage and prevented Ms. Neihart and other aggrieved employees from being relieved of all duty in order to take compliant rest periods. ZUMIEZ also failed to schedule rest periods at all, which, coupled with ZUMIEZ's failure to provide adequate rest period coverage, further led to Ms. Neihart and other

aggrieved employees not being authorized and permitted to take rest periods.

Furthermore, upon information and belief, ZUMIEZ maintained a company-wide on-premises rest period policy, which mandated that Ms. Neihart and other aggrieved employees remain on ZUMIEZ's premises during their rest periods. Because Ms. Neihart and other aggrieved employees were restricted from leaving the premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes, such as getting food or running personal errands. Thus, ZUMIEZ effectively maintained control over Ms. Neihart and other aggrieved employees during rest periods.

As a result of ZUMIEZ's practices and policies, Ms. Neihart 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. Neihart has missed nearly all of her rest periods because there is an expectation that employees will work through their rest periods.

ZUMIEZ also has engaged in a company-wide practice and/or policy of not paying all rest period premiums owed when compliant rest periods are not authorized and permitted. Because of this practice and/or policy, Ms. Neihart and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that ZUMIEZ did pay Ms. Neihart and other aggrieved employees one (1) additional hour of premium pay for missed rest periods, ZUMIEZ did not pay Ms. Neihart and other aggrieved employees at the correct rate of pay for premiums because ZUMIEZ failed to include all forms of compensation, such as commissions, incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, ZUMIEZ failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Ms. Neihart 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. ZUMIEZ has not provided Ms. Neihart 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, ZUMIEZ has knowingly and intentionally provided Ms. Neihart and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, ZUMIEZ issued uniform wage statements to Ms. Neihart 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, ZUMIEZ violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

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

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

The wage statement deficiencies also include, among other things, failing to list the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list the inclusive dates of the period for which aggrieved employees were paid; failing to list the name of the employee and only the last four digits of her 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 the hours they worked off-the-clock.

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

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

Because ZUMIEZ failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Ms. Neihart 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. Neihart 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. Neihart 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, ZUMIEZ failed to pay Ms. Neihart 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. Neihart 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 her or her employment, her 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 her or her intention to quit, in which case the employee is entitled to her or her wages at the time of quitting.

ZUMIEZ willfully failed to pay other aggrieved employees who are no longer employed by ZUMIEZ 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 ZUMIEZ's employ.

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. ZUMIEZ 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, ZUMIEZ had an agreement with a payroll service provider for the issuance of payroll cards to employees, including other aggrieved employees, to discharge its wage payment obligations to its employees. On information and belief, ZUMIEZ 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, on information and belief, other aggrieved employees have received their final wages on a payroll debit card without a choice of an alternative method, including a written check. Instead, ZUMIEZ automatically enrolled other aggrieved employees in its payroll debit card payment for the purpose of issuing their final wages to them. Thus, ZUMIEZ’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 final wages on a payroll debit card or via some other payment method.

California courts recognize a policy favoring the full and prompt payment of wages to employees. ZUMIEZ’s payroll card program is inconsistent with this policy. Because ZUMIEZ’s company-wide payroll debit card program is involuntary and denies other aggrieved employees of easy access to the entirety of their wages, the program violates California Labor Code sections 212 and 213. 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 §§ 551 and 552 – Failure to Provide One Day’s Rest in Seven

California Labor Code section 551 provides that every person employed in any occupation of labor is entitled to one day’s rest in seven. California Labor Code section 552 prohibits employers from requiring employees to work more than six consecutive days without a day of rest. California Labor Code section 556 exempts an employer from the day-of-rest requirement when the total hours worked by an employee do not exceed 30 hours in any week or six (6) hours in any one day thereof.

During the relevant period, ZUMIEZ required Ms. Neihart and other aggrieved employees to work approximately six (6) or more hours per day and seven (7) consecutive days in a workweek. For example, approximately once or twice per month, and more often during the holiday season, Ms. Neihart worked seven (7) consecutive days without being afforded the opportunity to take one day’s rest. Because Ms. Neihart and other aggrieved employees worked over thirty (30) hours per week and over six (6) hours in any one day in a workweek, they were not exempt from the day-of-rest requirement. To the extent that Ms. Neihart and other aggrieved employees signed purported waivers of their right to a day’s rest in seven, such waivers are invalid.

Thus, ZUMIEZ caused Ms. Neihart and other aggrieved employees to work more than six days in seven, in violation of Labor Code sections 551 and 552. Ms. Neihart 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 § 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.*

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

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

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

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

ZUMIEZ'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. Neihart and other aggrieved employees during lulls in operation. ZUMIEZ could provide Ms. Neihart and other aggrieved employees with a seat or stool at in its work areas, but instead denies employees seating and forces other Ms. Neihart and other aggrieved employees to stand throughout the day.

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

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

Ms. Neihart and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, and seek injunctive relief to bring ZUMIEZ 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 5(A) – Failure to Pay Reporting Time Pay

California Labor Code section 1198 dictates that no employer may employ an employee under conditions of labor that are prohibited by the applicable IWC wage order. California Labor Code section 1198 further 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(5)(A) provides that “[e]ach workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee’s usual or scheduled day’s work, the employee shall be paid for half the usual or scheduled day’s work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee’s regular rate of pay, which shall not be less than the minimum wage.” The “primary purpose of the reporting time regulation” is “to guarantee at least partial compensation for employees who report to work expecting to work a specified number of hours, and who are deprived of that amount because of inadequate scheduling or lack of proper notice by the employer.” *Aleman v. AirTouch Cellular*, 209 Cal. App. 4th 556 (2012).

During the relevant time period, ZUMIEZ violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11070(5)(A), because ZUMIEZ failed to pay other aggrieved employees reporting time pay when they reported to work for their scheduled shift but were put to work for less than half of the usual or scheduled day’s work.

ZUMIEZ had a company-wide practice of sending other aggrieved employees home early from their shifts, including before they had worked at least half of their usual or scheduled shift, but would not pay other aggrieved employees for half of their usual or scheduled shift. For example, on information and belief, when scheduled to work an eight (8) hour shift, other aggrieved employees were sent home before four (4) hours had elapsed because business was slow and pursuant to labor budget limitations, but were only paid for the time that they had worked. Although other aggrieved employees would report to work based on the schedule that ZUMIEZ provided to them, ZUMIEZ would send them home before they had worked at least half of their scheduled shifts without giving them reporting time pay.

Accordingly, other aggrieved employees were not properly compensated with reporting time pay in violation of California Labor Code section 1198 and California Code of Regulations, Title 8, section 11070(5)(A).

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 § 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 her 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.”

During the relevant time period, ZUMIEZ, on a company-wide basis, required Ms. Neihart and other aggrieved employees to use their own personal vehicles to carry out company business, but failed to reimburse them for all costs of travel, including mileage. For example, at least three (3) times per week, Ms. Neihart is required to drive to the bank about 1/2 mile away to make bank drops. As another example, about 4-5 times, Ms. Neihart has been required to drive to a nearby store to purchase and pick up basic supplies such as batteries and toilet paper. In addition, Ms. Neihart has been required to drive to other ZUMIEZ locations about four (4) miles away to pick up retail shelving equipment such as racks, pegs, and shelves. Lastly, Ms. Neihart has been required to drive about 9-10 miles to attend a company training on snowboard-building. Although ZUMIEZ required Ms. Neihart and other aggrieved employees to utilize their personal vehicles to carry out their work-related responsibilities (including conducting bank drops, obtaining store supplies, and attending trainings), ZUMIEZ failed to reimburse them for their mileage or travel expenses.

Additionally, during the relevant time period, ZUMIEZ had a company-wide policy of requiring Ms. Neihart and other aggrieved employees to utilize their own personal mobile devices, including cellular phones, and/or mobile data, to carry out their job duties, but ZUMIEZ failed to reimburse them for the costs of their work-related mobile device expenses. For example, Ms. Neihart is sometimes required to access a website, Infor Workforce Management, on her personal cellular phone in order to clock in and clock out for her shifts. Ms. Neihart and other aggrieved employees were not compensated for the cost of the mobile data used to access the timekeeping website. Although ZUMIEZ required Ms. Neihart and other aggrieved employees to utilize their personal mobile devices and mobile data to carry out their work-related responsibilities, ZUMIEZ failed to reimburse them for these costs.

ZUMIEZ could have provided Ms. Neihart and other aggrieved employees with the actual equipment for use on the job, such as company vehicles and company mobile devices, to be used for fulfilling work-related tasks, or, ZUMIEZ could have reimbursed employees for the costs of their travel, mileage, and mobile device usage. Instead, ZUMIEZ passed these operating costs off onto Ms. Neihart and other aggrieved employees. At all relevant times, Ms. Neihart did not earn at least two (2) times the minimum wage.

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

California Labor Code § 558(a)

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

Accordingly, Ms. Neihart seeks the remedies set forth in Labor Code section 558 for himself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 1194.5, 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Ms. Neihart,

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 ZUMIEZ for violations of California Labor Code sections 201, 202, 204, 212, 213, 226(a), 226.7, 510, 512(a), 516, 551, 552, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

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

Pre-Litigation Demand

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

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

1. ZUMIEZ shall pay Ms. Neihart and all other aggrieved employees employed by ZUMIEZ at any time during the past three years from the date of this notice unpaid wages and compensation for the above-referenced violations.
2. ZUMIEZ shall comply with all California labor laws and ensure that its non-exempt employees are paid overtime wages and minimum wages for all hours worked, provided lawful meal and rest periods, and paid reporting time pay.
3. ZUMIEZ shall conduct a survey or interview all current and former aggrieved employees in California who worked for ZUMIEZ in the past three years to obtain information from them regarding the above-referenced violations, including, but not limited to: the number of meal periods which were not provided; the number of rest periods which were not authorized and permitted; and the number of employees who were required to pay for travel expenses, mileage, mobile device usage, or other expenditures in the discharge of their duties, with the investigation to be completed within 60 days.
4. ZUMIEZ shall pay Ms. Neihart and each aggrieved employee one hour of pay at her or her regular rate of pay for each work day he or she was not provided one or more meal periods, as required by Labor Code sections 226.7, 512(a), 516, and 1198. ZUMIEZ also shall pay Ms. Neihart and each aggrieved employee one hour of pay at his or her regular rate of pay for each work day he or she was not authorized and permitted one or more rest periods, as required by Labor Code sections 226.7, 516, and 1198.
5. ZUMIEZ shall reimburse Ms. Neihart and all aggrieved employees who were required to pay for any business expenses incurred for ZUMIEZ's benefit, including, but not limited to, costs of travel expenses, mileage, and mobile device usage, as required by Labor Code section 2802.
6. ZUMIEZ shall pay accrued legal interest to Ms. Neihart and all aggrieved employees at the rate of 10% per annum for said unpaid wages.
7. ZUMIEZ shall provide Ms. Neihart and all aggrieved employees employed by ZUMIEZ at any time during the past three years from the date of this notice corrected wage statements that include the requisite information set forth in Labor Code section 226(a).

8. ZUMIEZ shall pay each aggrieved employee unpaid wages and compensation for violations arising from its unlawful use of payroll debt cards, including unlawful direct deposit and discount of wages (Labor Code sections 212 and 213).
9. ZUMIEZ shall provide Ms. Neihart and all aggrieved employees who worked over thirty (30) hours per week and over six (6) hours per day in a workweek with one day's rest in seven, as required by Labor Code sections 551 and 552.
10. ZUMIEZ shall provide aggrieved employees who are required to report for work and do report but are not put to work or are furnished less than half their usual or scheduled day's work, with pay for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the aggrieved employee's regular rate of pay.
11. ZUMIEZ shall implement and provide suitable seating to Ms. Neihart and all aggrieved employees.
12. ZUMIEZ shall pay waiting time penalties, equal to 30 days of pay, to each former aggrieved employee who was not paid all wages due as described herein.
13. ZUMIEZ shall pay all penalties arising from the violations of the Labor Code and IWC Wage Order sections referenced above and pursuant to PAGA, Labor Code sections 2698, *et seq.*, including, but not limited to, penalties under Labor Code sections 210, 226.3, 256, 558, 1174.5, 1197.1, and 2699, and Wage Order No. 7-2001, section 20.

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

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

Best Regards,



Sairah Budhwani

Copy: ZUMIEZ INC. (via U.S. Certified Mail); ZUMIEZ DISTRIBUTION LLC (via U.S. Certified Mail); ZUMIEZ SERVICES INC. (via U.S. Certified Mail)