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and Jessica King

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

SEANA NEIHART and JESSICA
KING, as aggrieved employees
pursuant to the Private Attorneys
General Act (“PAGA”), on behalf of
the State of California and other non-
party Aggrieved Employees,

Plaintiffs,

vs.

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

Defendants.

Case No.: 22CV404762

**FIRST AMENDED COMPLAINT – PAGA
ENFORCEMENT ACTION**

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

Jury Trial Demanded

Plaintiffs Seana Neihart and Jessica King, as aggrieved employees and on behalf of the State of California and all other non-party Aggrieved Employees, allege as follows:

JURISDICTION AND VENUE

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

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

3. This Court has jurisdiction over all Defendants because, on information and belief, Defendants are either citizens of California, have sufficient minimum contacts in California, or otherwise intentionally avail themselves of the California market so as to render the exercise of jurisdiction over them by the California courts consistent with traditional notions of fair play and substantial justice. There is no basis for federal diversity jurisdiction in this action given that the State of California, as the real party in interest in this action, is not a “citizen” for purposes of satisfying diversity jurisdiction. *Urbino v. Orkin Servs. of Cal.*, 726 F.3d 1118, 1123 (9th Cir. Cal. 2013). *Urbino* also holds that civil penalties cannot be aggregated to satisfy the amount in controversy requirement for federal diversity jurisdiction in this action, and that diversity jurisdiction cannot be established when Plaintiffs’ 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 Plaintiffs 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 Neihart as an hourly paid, non-exempt employee
24 from approximately September 2019 to August 2022. Plaintiff Neihart worked as a 2nd
25 Assistant Manager for Defendants at their retail store located in Rancho Cucamonga,
26 California. During her employment, Plaintiff Neihart typically worked eight (8) to ten (10)
27 hours per day, four (4) to five (5) days per week. At the time Plaintiff Neihart's employment
28 with Defendants ended, she was compensated approximately \$16.98 per hour. Plaintiff

1 Neihart's primary job duties included, without limitation, ringing up customer transactions,
2 answering customer questions, making sales, and unpacking and organizing merchandise.

3 7. Plaintiff Jessica King is a resident of Orangevale, in Sacramento County,
4 California. Defendants have employed Plaintiff King as an hourly paid, non-exempt
5 employee since approximately November 2020. Plaintiff King worked as a Delivery Driver
6 and Sales Associate from approximately November 2020 to February 2022. Since February
7 2022, Plaintiff King has worked as a Sales Associate for Defendants at their retail store
8 located in Sacramento, California. Plaintiff King typically works four (4) or more hours per
9 day, two (2) or more days per week. Plaintiff King is compensated approximately \$15.00 per
10 hour. Plaintiff King's primary job duties have included, without limitation, picking up and
11 delivering merchandise, ringing up customer transactions, answering customer questions,
12 making sales, and unpacking and organizing merchandise.

13 8. ZUMIEZ INC. was and is, upon information and belief, a Washington
14 corporation, and at all times hereinafter mentioned, an employer whose employees are
15 engaged throughout this county, the State of California.

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

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

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

26 12. Plaintiffs are informed and believe, and thereon allege, that DOES 1 through 10
27 were the partners, agents, owners, or managers of ZUMIEZ INC., ZUMIEZ DISTRIBUTION
28 LLC, and ZUMIEZ SERVICES INC. at all relevant times.

1 13. Plaintiffs are informed and believe, and thereon allege, that each and all of the
2 acts and omissions alleged herein was performed by, or is attributable to, ZUMIEZ INC.,
3 ZUMIEZ DISTRIBUTION LLC, ZUMIEZ SERVICES INC., and/or DOES 1 through 10
4 (collectively, “Defendants” or “ZUMIEZ”), each acting as the agent, employee, alter ego,
5 and/or joint venturer of, or working in concert with, each of the other co-Defendants and was
6 acting within the course and scope of such agency, employment, joint venture, or concerted
7 activity with legal authority to act on the others’ behalf. The acts of any and all Defendants
8 were in accordance with, and represent, the official policy of Defendants.

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

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

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

27 17. Plaintiffs are informed and believe, and thereon allege, that at all relevant
28 times, Defendants, and each of them, have acted as joint employers with respect to Plaintiffs

1 and other non-party Aggrieved Employees because Defendants have:

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

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

23 19. ZUMIEZ INC., ZUMIEZ DISTRIBUTION LLC, ZUMIEZ SERVICES INC.,
24 and/or DOES 1 through 10 are therefore alter egos of each other.

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

28 21. Plaintiffs further allege, upon information and belief, that the Defendants

1 ZUMIEZ INC., ZUMIEZ DISTRIBUTION LLC, and ZUMIEZ SERVICES INC. are alter
2 egos of each other for the following reasons:

- 3 (a) According to the most recent “Statement of Information” forms filed
4 with the California Secretary of State, ZUMIEZ INC., ZUMIEZ
5 DISTRIBUTION LLC, and ZUMIEZ SERVICES INC. have the same
6 mailing address, which is “4001 204TH ST SW, LYNNWOOD, WA
7 98036”;
- 8 (b) According to the most recent “Statement of Information” forms filed
9 with the California Secretary of State, ZUMIEZ INC. and ZUMIEZ
10 SERVICES INC. have the same entity address, which is “4001 204TH
11 ST SW, LYNNWOOD, WA 98036”;
- 12 (c) According to the most recent “Statement of Information” form filed
13 with the California Secretary of State, ZUMIEZ INC. and ZUMIEZ
14 SERVICES INC. share common officers, including Chief Executive
15 Officer, Richard [Rick] Brooks; Chief Financial Officer, Chris Visser;
16 and Secretary, Chris Work;
- 17 (d) According to the most recent “Statement of Information” forms filed
18 with the California Secretary of State, ZUMIEZ INC. is the managing
19 entity of ZUMIEZ DISTRIBUTION LLC;
- 20 (e) According to the California Secretary of State’s website, ZUMIEZ
21 INC., ZUMIEZ DISTRIBUTION LLC, and ZUMIEZ SERVICES INC.
22 share the same agent for service of process, “CT CORPORATION
23 SYSTEM”; and
- 24 (f) On information and belief, ZUMIEZ INC., ZUMIEZ DISTRIBUTION
25 LLC, and ZUMIEZ SERVICES INC. utilize the same standardized
26 employment forms and issue the same employment policies.

27 **PAGA REPRESENTATIVE ALLEGATIONS**

28 22. Defendants are a specialty retailer of apparel, footwear, accessories, and other

1 goods for young men and women. Defendants own and operate approximately 90 retail stores
2 in California. Upon information and belief, Defendants maintain a single, centralized Human
3 Resources (HR) department at their corporate headquarters in Lynnwood, Washington, for all
4 non-exempt, hourly paid employees working for Defendants in California, which is
5 responsible for the recruiting and hiring of new employees, and communicating and
6 implementing Defendants' company-wide policies, including timekeeping policies and meal
7 and rest period policies, to employees throughout California.

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

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

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

26 26. Plaintiffs are informed and believe, and thereon allege, that at all times herein
27 mentioned, Defendants were advised by skilled lawyers and other professionals, employees
28 and advisors knowledgeable about California labor and wage law, employment and personnel

1 practices, and about the requirements of California law.

2 27. Plaintiffs are informed and believe, and thereon allege, that Plaintiffs and other
3 non-party Aggrieved Employees were not paid for all hours worked because all hours worked
4 were not recorded.

5 28. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
6 should have known that Plaintiffs and other non-party Aggrieved Employees were entitled to
7 receive certain wages for overtime compensation and that they were not receiving certain
8 wages for overtime compensation.

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

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

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

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

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

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

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

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

36. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or should have known that Plaintiff Neihart and other non-party Aggrieved Employees were

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

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

10 38. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
11 should have known that other non-party Aggrieved Employees were entitled to the portion of
12 wages previously paid and subsequently unlawfully deducted by Defendants.

13 39. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
14 should have known that other non-party Aggrieved Employees were entitled to payment of
15 wages as designated by statute. In violation of the California Labor Code, Defendants secretly
16 paid other non-party Aggrieved Employees lower wages than required by statute while
17 purporting to pay them proper wages.

18 40. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
19 should have known that Plaintiff Neihart and other non-party Aggrieved Employees were
20 entitled to one day's rest in seven. In violation of the California Labor Code, Defendants
21 required Plaintiff Neihart and other non-party Aggrieved Employees to work more than six
22 consecutive days without a day of rest, where the total hours worked exceeded 30 hours in any
23 week or six hours in any one day thereof.

24 41. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
25 should have known that Plaintiffs and other non-party Aggrieved Employees were entitled to
26 suitable seating and/or were entitled to sit when it did not interfere with the performance of
27 their duties and also have seats nearby to use during a lull in tasks that do require moving
28 about or standing. In violation of the California Labor Code and applicable IWC Wage Order,

1 Defendants failed to provide Plaintiffs and other non-party Aggrieved Employees with
2 suitable seating.

3 42. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
4 should have known that other non-party Aggrieved Employees were entitled to be paid
5 reporting time pay when they reported to work for their usual or scheduled shift but were put
6 to work for less than half of the usual or scheduled shift. In violation of the California Labor
7 Code, Defendants did not pay other non-party Aggrieved Employees all reporting time pay
8 due.

9 43. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
10 should have known that Plaintiffs and other non-party Aggrieved Employees were entitled to
11 receive reimbursement for all business-related expenses and costs they incurred during the
12 course and scope of their employment and that they did not receive reimbursement of
13 applicable business-related expenses and costs incurred.

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

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

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

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

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

- 7 (a) The aggrieved employee shall give written notice by online filing
8 (hereinafter “Employee’s Notice”) to the LWDA and by certified mail
9 to the employer of the specific provisions of the California Labor Code
10 alleged to have been violated, including the facts and theories to support
11 the alleged violations.
- 12 (b) An aggrieved employee’s notice filed with the LWDA pursuant to
13 2699.3(a) and any employer response to that notice shall be
14 accompanied by a filing fee of seventy-five dollars (\$75).
- 15 (c) The LWDA shall provide notice (hereinafter “LWDA Notice”) to the
16 employer and the aggrieved employee by certified mail that it does not
17 intend to investigate the alleged violation within sixty (60) calendar
18 days of the postmark date of the Employee’s Notice. Upon receipt of
19 the LWDA Notice, or if the LWDA Notice is not provided within sixty-
20 five (65) calendar days of the postmark date of the Employee’s Notice,
21 the aggrieved employee may commence a civil action pursuant to
22 California Labor Code section 2699 to recover civil penalties in addition
23 to any other penalties to which the employee may be entitled.

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

- 28 (a) The aggrieved employee or representative shall give written notice by

1 online filing to the LWDA and by certified mail to the employer of the
2 specific provisions of the California Labor Code alleged to have been
3 violated (other than those listed in Section 2699.5), including the facts
4 and theories to support the alleged violation.

5 (b) An aggrieved employee's notice filed with the LWDA pursuant to
6 2699.3(c) and any employer response to that notice shall be
7 accompanied by a filing fee of seventy-five dollars (\$75).

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

16 50. On August 5, 2022, Plaintiff Neihart provided written notice by online filing to
17 the LWDA and by certified mail to Defendants of the specific provisions of the California
18 Labor Code alleged to have been violated, including facts and theories to support the alleged
19 violations, in accordance with California Labor Code section 2699.3. Plaintiff Neihart's
20 written notice was accompanied with the applicable filing fee of seventy-five dollars (\$75).
21 The LWDA PAGA Administrator has confirmed receipt of Plaintiff Neihart's written notice
22 and assigned Plaintiff Neihart PAGA Case Number LWDA-CM-899926-22. On October 19,
23 2022, Plaintiff Neihart filed an amended written notice by online filing to the LWDA and by
24 certified mail to Defendants of the specific provisions of the California Labor Code alleged to
25 have been violated, supplementing and clarifying the facts and theories to support the alleged
26 violations set forth in her original LWDA notice, in accordance with California Labor Code
27 section 2699.3. True and correct copies of Plaintiff Neihart's written notices to the LWDA
28 and Defendants dated August 5, 2022, and October 19, 2022, are attached hereto as "Exhibit

1.”

51. On September 21, 2022, Plaintiff King provided written notice by online filing to the LWDA and by certified mail to Defendants of the specific provisions of the California Labor Code alleged to have been violated, including facts and theories to support the alleged violations, in accordance with California Labor Code section 2699.3. Plaintiff King’s written notice was accompanied with the applicable filing fee of seventy-five dollars (\$75). The LWDA PAGA Administrator has confirmed receipt of Plaintiff King’s written notice and assigned Plaintiff King PAGA Case Number LWDA-CM-909357-22. A true and correct copy of Plaintiff King’s written notice to the LWDA and Defendants dated September 21, 2022, is attached hereto as “Exhibit 2.”

52. As of the filing date of this complaint, over 65 days have passed since Plaintiffs sent the initial written notices described above, and the LWDA has not responded that it intends to investigate Plaintiffs’ claims, and Defendants have not cured the violations.

53. Thus, Plaintiffs have satisfied the administrative prerequisites under California Labor Code sections 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for violations of California Labor Code sections 201, 202, 204, 212, 213, 221, 223, 224, 226(a), 226.7, 510, 512(a), 516, 551, 552, 1174(d), 1182.12, 1194, 1197, 1198, and 2802.

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

1 California against Defendants for violations of Labor Code sections 510, 512(a), 516, 551,
2 552, 1198, and the applicable IWC Wage Order. Plaintiffs, acting in the public interest as
3 private attorneys general, do not seek the recovery of unpaid wages under Labor Code section
4 558 from Defendants for violations of Labor Code sections 510, 512(a), 516, 551, 552, 1198,
5 and the applicable IWC Wage Order.

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

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

13 57. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a),
14 2699.3(a), 2699.3(c), 2699.5, and section 558, Plaintiffs, acting in the public interest as
15 private attorneys general, seek assessment and collection of civil penalties for themselves, all
16 other non-party Aggrieved Employees, and the State of California against Defendants for
17 violations of California Labor Code sections 201, 202, 204, 212, 213, 226(a), 221, 223, 224,
18 226.7, 510, 512(a), 516, 551, 552, 1174(d), 1182.12, 1194, 1197, 1198, and 2802.

19 **FIRST CAUSE OF ACTION**

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

21 **(Against all Defendants)**

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

24 59. California Labor Code §§ 2698, *et seq.* ("PAGA") permits Plaintiffs to recover
25 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code
26 section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 204, 212, 213, 221,
27 223, 224, 226(a), 226.7, 510, 512(a), 551, 552, 1174(d), 1194, 1197, 1198, and 2802. Labor
28 Code section 2699.3(c) permits aggrieved employees, including Plaintiffs, to recover civil

1 penalties for violations of those Labor Code sections not found in section 2699.5, including
2 sections 516 and 1182.12.

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

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

statements to Plaintiffs and other non-party Aggrieved Employees, as set forth below;

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

(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 221 and 224 for unlawfully deducting a portion of wages previously paid to other non-party Aggrieved Employees, as set forth below;

(l) Violation of Labor Code section 223 for secretly paying other non-party Aggrieved Employees lower wages than required by statute, while purporting to pay the proper wages, as set forth below;

(m) Violation of Labor Code sections 551 and 552 for failure to provide one day's rest in seven to Plaintiff Neihart and other non-party Aggrieved Employees, as set forth below;

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

(o) 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

1 (p) Violation of Labor Code sections 2802 for failure to reimburse Plaintiffs
2 and other non-party Aggrieved Employees for all business expenses
3 necessarily incurred, as set forth below.

4 **FAILURE TO PAY OVERTIME**

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

6 61. Labor Code section 1198 makes it illegal to employ an employee under
7 conditions of labor that are prohibited by the applicable wage order. California Labor Code
8 section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall
9 be the . . . standard conditions of labor for employees. The employment of any employee . . .
10 under conditions of labor prohibited by the order is unlawful.”

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

15 63. Specifically, the applicable IWC Wage Order provides that Defendants are and
16 were required to pay Plaintiffs and other non-party Aggrieved Employees working more than
17 eight (8) hours in a day or more than forty (40) hours in a workweek, at the rate of time and
18 one-half (1 ½) for all hours worked in excess of eight (8) hours in a day or more than forty
19 (40) hours in a workweek.

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

25 65. California Labor Code section 510 codifies the right to overtime compensation
26 at one and one-half (1 ½) times the regular rate of pay for hours worked in excess of eight (8)
27 hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the
28 seventh (7th) day of work, and to overtime compensation at twice the employee’s regular rate

1 of pay for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours
2 in a day on the seventh (7th) day of work.

3 66. During the relevant time period, Defendants willfully failed to pay all overtime
4 wages owed to Plaintiffs and other non-party Aggrieved Employees. During the relevant time
5 period, Plaintiffs and other non-party Aggrieved Employees were not paid overtime premiums
6 for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12)
7 hours in a day, and/or in excess of forty (40) hours in a week, because all hours worked were
8 not recorded.

9 67. First, during the relevant time period, Defendants had, and continue to have, a
10 company-wide policy and/or practice of requiring Plaintiffs and other non-party Aggrieved
11 Employees to perform tasks while off-the-clock, such as reviewing trainings and attending
12 meetings, stocking merchandise, traveling to banks to make bank deposits after their shifts,
13 responding to phone communications from management on their days off, and performing
14 opening and closing duties. Defendants required Plaintiff Neihart and other non-party
15 Aggrieved Employees to complete and review training materials from home, on their off-days,
16 but did not compensate them for this time. For example, Plaintiff Neihart was required to
17 review training modules on Defendants' sales strategy, called the "Seven Steps," at home and
18 during her off-days, and was expected to implement the strategy to make sales. Plaintiff
19 Neihart spent at least 5-6 hours completing Defendants' requisite training at home, but was
20 not paid for this time. Furthermore, Defendants required other non-party Aggrieved
21 Employees to attend mandatory meetings at Defendants' other store locations, but did not
22 compensate them for their time spent attending these meetings.

23 68. Defendants also require Plaintiff King to continue working after she has
24 clocked out at the end of her shifts to complete tasks such as re-stocking footwear and other
25 merchandise left out on the sales floor back into the stockroom. This off-the-clock work could
26 take up to five (5) minutes per instance. As a further example, after closing shifts, Plaintiff
27 King and other non-party Aggrieved Employees have been required to clock out and then travel
28 about two (2) miles to make bank deposits, time for which they are not paid. Moreover,

1 Plaintiff King and other non-party Aggrieved Employees have been required to respond to
2 phone communications from management on their days off. For example, Defendants'
3 managers have texted Plaintiff King on her personal cellular phone, while off-the-clock, to
4 discuss sales from the previous day or incoming online orders.

5 69. Furthermore, Defendants implemented, on a company-wide basis, an employer-
6 imposed requirement that Plaintiff Neihart and other non-party Aggrieved Employees undergo
7 mandatory COVID-19 temperature checks and health screenings before clocking in for their
8 scheduled shifts. Prior to her shift, Plaintiff Neihart was required to spend 2-3 minutes per
9 instance filling out a health screening form and having her temperature checked, before being
10 permitted to clock in for her shift. Even though Defendants required these health screenings,
11 Defendants did not provide Plaintiff Neihart and other non-party Aggrieved Employees a
12 mechanism to record this time worked so they could be compensated for the time spent
13 undergoing mandatory temperature checks and/or health screenings. Moreover, on information
14 and belief, during opening shifts, other non-party Aggrieved Employees were required to
15 unlock the doors and disarm the store alarm before clocking in for their shifts. At all times,
16 Plaintiffs and other non-party Aggrieved Employees remained under the control of
17 Defendants. Thus, Defendants failed to track all of the time spent working before and after
18 scheduled shifts, and Plaintiffs and other non-party Aggrieved Employees received no
19 compensation for this time.

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

1 clocking out for meal periods, before clocking back in after returning from meal periods,
2 and/or after clocking out at the end of their shifts. Defendants also have a company-wide
3 security policy requiring employees to leave the premises in pairs. After clocking out at the
4 end of their shifts, other non-party Aggrieved Employees are required to wait for at least one
5 other employee to complete his or her closing duties before they can leave Defendants'
6 premises. For example, on information and belief, other non-party Aggrieved Employees are
7 required to wait off-the-clock for at least one other employee or a manager to complete his or
8 her closing duties, including sometimes accompanying them to make bank deposits, before
9 being relieved of their work duties.

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

18 72. Third, Defendants had, and continue to have, a company wide-policy and/or
19 practice of discouraging and limiting the amount of overtime employees could accrue. On
20 information and belief, this limitation on overtime accrual is based on a company-wide policy
21 of strictly staffing their locations based on the labor hours allocated by corporate for each
22 location. For example, on information and belief, Plaintiff Neihart's store was allocated 114
23 payroll hours per week, which was apportioned among staff members according to the amount
24 they generate in sales. These policies of limiting overtime and utilizing labor budgets,
25 combined with the assignment of heavy workloads, sales goals, and delivery scheduling (*see*
26 *infra*), has resulted in chronic understaffing and a failure to provide Plaintiffs and other non-
27 party Aggrieved Employees with adequate meal period coverage, because there were too few
28 employees on duty to handle the heavy workload, attend to customers, and/or meet delivery

1 expectations. Because Defendants did not employ or staff a sufficient number of employees
2 to meet customer demand, there was no one available to relieve employees needing meal
3 period coverage, and Plaintiffs and other non-party Aggrieved Employees were not always
4 afforded uninterrupted 30-minute meal periods during shifts when they were entitled to
5 receive a meal period. Moreover, Defendants had a practice of failing to schedule meal
6 periods and/or failing to adhere to a schedule for meal periods, which has further caused
7 Plaintiffs and other non-party Aggrieved Employees to not be relieved of their duties for
8 compliant meal periods. Consequently, Plaintiffs and other non-party Aggrieved Employees
9 were required to work through and/or had their unpaid meal periods interrupted in order to
10 complete their assigned duties and handle customer demand, time for which they were not
11 paid.

12 73. Moreover, Defendants have, systematically, and on a company-wide basis,
13 scheduled and dispatched their delivery drivers to complete numerous deliveries per day, which
14 included traveling to various distant locations, completing delivery paperwork, and returning
15 undelivered packages back to Defendants' stores before the end of their shifts, and to do so
16 without accruing overtime and without building in sufficient time to allow for 30-minute meal
17 periods, such that Plaintiff King and other non-party Aggrieved Employees were prevented
18 from taking all timely, uninterrupted 30-minute meal periods, and were also forced to work off-
19 the-clock during their meal periods to complete their assigned routes. Deliveries could take
20 longer than the time Defendants allotted for them, such that Plaintiff King and other non-party
21 Aggrieved Employees were unable to take compliant meal periods. For example, Plaintiff King
22 was expected to deliver about 40 packages and drive approximately 120 miles per day, without
23 accruing overtime. Along with varying delivery durations, travel time between delivery
24 locations could take longer than anticipated due to traffic conditions, which further impeded
25 Plaintiff King and other non-party Aggrieved Employees from taking compliant meal periods.
26 And, upon information and belief, Defendants had no mechanism in place to permit Plaintiff
27 King and other non-party Aggrieved Employees to take meal periods when the schedule was
28 thrown off because one or more of their deliveries took longer than the scheduled time, or if

1 travel time between locations was extended by traffic conditions. In addition, even when
2 Plaintiff King and other non-party Aggrieved Employees were able to take their meal periods,
3 Defendants pressured them to eat their meals while driving between customer sites. Thus,
4 Plaintiff King and other non-party Aggrieved Employees performed work during meal periods
5 and received no compensation for this time.

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

21 75. Fifth, because Defendants frowned upon employees accruing meal period
22 penalties, Defendants pressured employees to clock out for meal periods, on threat of
23 discipline, even when they did not receive a compliant meal period, in order to strictly limit
24 the meal penalties that Defendants would otherwise owe. For example, Plaintiff King and
25 other non-party Aggrieved Employees would be pressured to clock out and continue working
26 in order to deliver the assigned number of deliveries to be completed in a day and/or to meet
27 their sales goals. Thus, Defendants did not record all hours worked during meal periods, and
28 Plaintiff King and other non-party Aggrieved Employees performed work during meal periods

1 for which they were not paid.

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

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

20 78. Defendants' failure to pay Plaintiffs and other non-party Aggrieved Employees
21 the balance of overtime compensation as required by California law, violates the provisions of
22 California Labor Code sections 510 and 1198. Plaintiffs and other non-party Aggrieved
23 Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections
24 558 and/or 2699(a), (f), and (g).

25 **FAILURE TO PAY MINIMUM WAGES**

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

27 79. At all relevant times, California Labor Code sections 1182.12, 1194, 1197, and
28 1198 provide that the minimum wage for employees fixed by the IWC is the minimum wage

1 to be paid to employees, and the payment of a wage less than the minimum so fixed is
2 unlawful. Compensable work time is defined in IWC Wage Order No. 7-2001 as “the time
3 during which an employee is subject to the control of an employer, and includes all the time
4 the employee is suffered or permitted to work, whether or not required to do so.” Cal. Code.
5 Regs. Tit. 8, § 11070(2)(G) (defining “Hours Worked”).

6 80. As stated, during the relevant time period, Defendants have required Plaintiffs
7 and/or other non-party Aggrieved Employees to perform work off-the-clock outside of their
8 scheduled shifts, such as stocking merchandise and traveling to banks to make bank deposits
9 after their shifts, responding to phone communications from management on their days off,
10 reviewing trainings and attending meetings, undergoing temperature checks and health
11 screenings, performing opening and closing duties, undergoing security checks, and waiting to
12 leave the premises in pairs. Defendants failed to track this time Plaintiffs and/or other non-
13 party Aggrieved Employees spent working off-the-clock, and thus, Plaintiffs and/or other non-
14 party Aggrieved Employees received no compensation for this time.

15 81. Additionally, as set forth above, due to Defendants’ company-wide policies
16 and/or practices of restricting overtime accrual; utilizing labor budgets; understaffing;
17 assignment of heavy workloads, sales goals, and delivery expectations; failing to schedule
18 and/or adhere to a schedule for meal periods; and subsequent lack of meal period coverage,
19 Plaintiffs and other non-party Aggrieved Employees have been impeded from taking all
20 uninterrupted meal periods to which they were entitled and were required to work off-the-
21 clock. As stated, in conjunction with these policies, Defendants had a requirement that a
22 managerial employee be present on the store premises at all times, which exacerbated the lack
23 of meal period coverage. Further, in order to limit the meal penalties that Defendants would
24 otherwise owe, Defendants pressured Plaintiff King and other non-party Aggrieved
25 Employees to clock out for meal periods, but required them to continue working, time for
26 which they were not paid.

27 82. Thus, Defendants did not pay minimum wages for all hours worked by
28 Plaintiffs and other non-party Aggrieved Employees. To the extent that these off-the-clock

1 hours did not qualify for overtime premium payment, Defendants did not pay at least
2 minimum wages for those hours worked off-the-clock in violation of California Labor Code
3 sections 1182.12, 1194, 1197, and 1198.

4 83. Defendants' failure to pay Plaintiffs and other non-party Aggrieved Employees
5 minimum wages violates California Labor Code sections 1182.12, 1194, 1197, and 1198.
6 Plaintiffs and other non-party Aggrieved Employees are therefore entitled to recover civil
7 penalties pursuant to Labor Code sections 2699(a), (f), and (g).

8 **FAILURE TO PROVIDE AND RECORD MEAL PERIODS**
9 **VIOLATION OF LABOR CODE SECTIONS 226.7, 512(a), 516, AND 1198**

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

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

20 86. At all relevant times herein set forth, California Labor Code sections 226.7,
21 512(a), 516, and 1198 provide that no employer shall require an employee to work during any
22 meal period mandated by an applicable order of the IWC.

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

1 waived.

2 88. First, as stated, Defendants had, and continue to have, company-wide policies
3 and/or practices of understaffing pursuant to their labor budget practices, while
4 simultaneously assigning heavy workloads, sales goals, unmanageable delivery expectations,
5 and failing to schedule meal periods and/or adhere to a schedule for meal periods, which has
6 resulted in a lack of meal period coverage and prevented Plaintiffs and other non-party
7 Aggrieved Employees from taking all timely, uninterrupted meal periods to which they were
8 entitled. In conjunction with understaffing their stores, as stated, Defendants had a
9 requirement that a managerial employee be present on-premises at all times, but Defendants'
10 labor budgets did not always allow for more than one manager to be on the schedule at all
11 times. As a result, Plaintiff Neihart and other managerial employees were sometimes the only
12 managers on duty, and would have their meal periods interrupted or would work through them
13 in order to assist their coworkers and customers. For example, several times per week,
14 Plaintiff Neihart was required to work through her meal periods due to the heavy workload
15 and lack of coverage.

16 89. Second, in conjunction with their restriction on overtime accrual, as stated,
17 Defendants had, and continue to have, a company-wide policy and/or practice of assigning
18 heavy workloads and scheduling deliveries while allowing insufficient time for drivers to
19 actually complete the deliveries without accruing overtime, which prevented Plaintiff King and
20 other non-party Aggrieved Employees from taking all timely, uninterrupted meal periods to
21 which they were entitled. For example, Plaintiff King frequently worked through part or all of
22 her meal periods, in order to complete her deliveries within Defendants' expectations.

23 90. Third, as stated, Defendants expected employees to meet daily sales goals
24 under threat of discipline, up to and including termination. For example, on information and
25 belief, Plaintiff Neihart was expected to meet sales goals—a certain dollar amount per
26 transaction and per hour, as well as a certain number of merchandise units per transaction.
27 The failure to meet expectations set by an “average” employee can result in a write-up, and
28 several cumulative write-ups can result in termination.

1 91. Fourth, as stated, Defendants have had a loss prevention policy requiring
2 employees to undergo mandatory security checks by a managerial employee when entering or
3 exiting the premises. As result of Defendants' policy, Plaintiff Neihart and other non-party
4 Aggrieved Employees were required to undergo security screenings when entering or exiting
5 the premises before clocking in and/or after clocking out for their meal periods and had their
6 meal periods cut short.

7 92. Accordingly, Plaintiffs and other non-party Aggrieved Employees were forced
8 to work in excess of five (5) hours before taking a meal period, had their meal periods
9 interrupted, and/or had to forgo their meal periods altogether in order to complete their
10 assigned workloads and meet sales and/or delivery expectations. For example, Plaintiff
11 Neihart worked through her meal periods at least once per month in order to complete the
12 tasks and duties Defendants assigned to her, such as making sales to customers and assisting
13 coworkers. As a further example, Plaintiff King worked through many of her meal periods in
14 order to complete her assigned deliveries without accruing overtime. In addition, as stated,
15 Plaintiff Neihart and other non-party Aggrieved Employees had their meal periods cut short
16 due to mandatory security checks of their personal belongings when they exited the store
17 during their meal periods and when they re-entered.

18 93. Fifth, as stated, because Defendants frowned upon employees accruing meal
19 period penalties, Defendants management pressured employees to clock out for meal periods
20 to reflect compliant meal periods, upon threat of discipline, in order to strictly limit the meal
21 penalties that would need to be paid by Defendants. For example, Plaintiff Neihart was told
22 by her managers to clock out before her fifth hour of work in order to record a compliant meal
23 period, but was pressured not to take her meal period until later in the day, due to lack of meal
24 period coverage.

25 94. Also, Defendants did not provide Plaintiffs and other non-party Aggrieved
26 Employees with second 30-minute meal periods on days that they worked in excess of ten (10)
27 hours in one day. For example, Plaintiff Neihart would work in excess of ten (10) hours per
28 day on occasion and during holidays, and was not provided her second meal period during

1 these shifts. Plaintiffs and other non-party Aggrieved Employees did not sign valid meal
2 period waivers on days that they were entitled to meal periods and were not relieved of all
3 duties.

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

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

20 97. Defendants' conduct violates the applicable IWC Wage Order, and California
21 Labor Code sections 226.7, 512(a), 516, and 1198. Plaintiffs and other non-party Aggrieved
22 Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections
23 558 and/or 2699(a), (f), and (g).

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

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

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

1 99. At all relevant times, the applicable IWC Wage Order provides that “[e]very
2 employer shall authorize and permit all employees to take rest periods, which insofar as
3 practicable shall be in the middle of each work period” and that the “rest period time shall be
4 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
5 hours or major fraction thereof” unless the total daily work time is less than three and one-half
6 (3 ½) hours.

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

15 101. Pursuant to the applicable IWC Wage Order and California Labor Code section
16 226.7(c), Plaintiffs and other non-party Aggrieved Employees are entitled to recover from
17 Defendants one (1) additional hour of pay at their regular rates of pay for each work day that a
18 required rest period was not authorized and permitted.

19 102. During the relevant time period, Defendants regularly failed to authorize and
20 permit Plaintiffs and other non-party Aggrieved Employees to take a ten (10) minute rest
21 period per each four (4) hour period worked or major fraction thereof. As with meal periods,
22 Defendants’ policies and/or practices of restricting overtime, understaffing and, assigning
23 heavy workloads resulted in a lack of rest period coverage and prevented Plaintiffs and other
24 non-party Aggrieved Employees from being relieved of all duty in order to take compliant rest
25 periods. Defendants also failed to schedule rest periods at all, which, coupled with
26 Defendants’ failure to provide adequate rest period coverage, further led to Plaintiffs and other
27 non-party Aggrieved Employees not being authorized and permitted to take rest periods.

28 103. Furthermore, upon information and belief, Defendants maintained a company-

1 wide on-premises rest period policy, which mandated that Plaintiffs and other non-party
2 Aggrieved Employees remain on Defendants' premises during their rest periods. Because
3 Plaintiffs and other non-party Aggrieved Employees were restricted from leaving the premises
4 during rest periods, they were denied the ability to use their rest periods freely for their own
5 purposes, such as getting food or running personal errands. Thus, Defendants effectively
6 maintained control over Plaintiffs and other non-party Aggrieved Employees during rest
7 periods.

8 104. As a result of Defendants' practices and policies, Plaintiffs and other non-party
9 Aggrieved Employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in
10 excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they
11 were entitled. For example, Plaintiffs missed nearly all of their rest periods because there was
12 an expectation that employees would work through their rest periods.

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

22 106. Accordingly, Defendants failed to authorize and permit all compliant rest
23 periods and failed to pay the full rest period premiums due. Defendants' conduct violates the
24 applicable IWC Wage Order and California Labor Code sections 226.7, 516, and 1198.
25 Plaintiffs and other non-party Aggrieved Employees are therefore entitled to recover civil
26 penalties pursuant to Labor Code sections 558 and/or 2699(a), (f), and (g).

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28 //

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

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

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

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

26 110. Additionally, because Defendants did not calculate Plaintiffs' and other non-
27 party Aggrieved Employees' regular rate of pay correctly for purposes of paying overtime
28 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).

111. 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.

112. 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 Plaintiffs 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.

113. 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, Defendants failed, on a company-wide basis, to keep accurate records of work period and meal period start and stop times for Plaintiffs and other non-party Aggrieved Employees, in violation of section 1198. Furthermore, in light of Defendants’ failure to provide Plaintiffs and other non-party Aggrieved Employees with second 30-minute meal periods to which they were entitled, Defendants kept no records of meal start and end times for second meal periods.

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

FAILURE TO PAY WAGES DURING EMPLOYMENT
VIOLATION OF LABOR CODE SECTION 204

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

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

117. During the relevant time period, Defendants willfully failed to pay Plaintiffs

1 and other non-party Aggrieved Employees all wages due to them within any time period
2 specified by California Labor Code section 204 including, but not limited to, overtime wages,
3 minimum wages, meal and rest period premiums, and/or reporting time pay.

4 118. Plaintiffs and other non-party Aggrieved Employees are therefore entitled to
5 recover civil penalties pursuant to Labor Code sections 210 and/or 2699(a), (f), and (g).

6 **FAILURE TO PAY WAGES UPON TERMINATION**

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

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

15 120. During the relevant time period, on information and belief, Defendants had a
16 company-wide practice or policy of paying departing employees their final wages on the next
17 regular pay cycle, instead of adhering to the time requirements set forth in Labor Code sections
18 201 and 202. For example, Plaintiff Neihart voluntarily resigned on or about August 17, 2022;
19 however, Defendants did not provide Plaintiff Neihart with her final paycheck until about
20 September 3, 2022. Thus, Defendants failed to pay Plaintiff Neihart her final wages within
21 seventy-two (72) hours from the time she resigned, in violation of Labor Code section 202.

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

27 122. Defendants' failure to pay Plaintiff Neihart and other non-party Aggrieved
28 Employees who are no longer employed by Defendants their wages earned and unpaid at the

1 time of discharge, or within seventy-two (72) hours of their leaving Defendants' employ,
2 violates Labor Code sections 201 and 202. Plaintiff Neihart and other non-party Aggrieved
3 Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections
4 256 and/or 2699(a), (f), and (g).

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

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

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

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

16 125. Under California law, employers are permitted to fulfill their wage payment
17 obligations to employees by using payroll debit cards, but only so long as the employee is
18 given the choice as to whether to accept a payroll debit card as a form of payment. *Johnson*
19 *v. Sunrise Senior Living Management, Inc.*, No. 16 CV 00443 BRO RAOx, 2016 WL
20 8929249, *9 (C.D. Cal. May 5, 2016). In *Johnson*, the court stated that the Division of Labor
21 Standards Enforcement ("DLSE") decision deeming payroll debit card program permissible
22 relied heavily on:

23 . . . [T]he fact that the pay programs were optional, thereby
24 allowing an employee to either participate in the program or
25 receive his or her pay in some other way, such as direct deposit.
26 Specifically, the DLSE opined that "[t]he success of the
27 described procedure, in practice, will of course require that . . . it
28 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).

126. 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 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.

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

. . . [A] strong public policy that prohibits an employer (or its agent) from imposing conditions or obstacles which interfere with or prevent an employee’s (*sic*) from promptly receiving their due wages *in full*. The imposition of a fee in order to readily access one’s earned and paid wage under a payroll card program which is designed to discharge the employer’s wage payment obligations could impermissibly interfere with an employee’s receipt of wage 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.

128. During the relevant time period, Defendants had an agreement with a payroll service provider for the issuance of payroll cards to employees, including Plaintiff Neihart and other non-party Aggrieved Employees, to discharge their wage payment obligations to their

1 employees. On information and belief, Defendants had a practice and/or policy of
2 automatically issuing payroll debit cards to departing employees without giving them the
3 option to elect their form of payment for their final wages. For example, on information and
4 belief, Plaintiff Neihart received her final wages on a payroll debit card without a choice of an
5 alternative method, such as a written check. Instead, Defendants automatically enrolled
6 Plaintiff Neihart and other non-party Aggrieved Employees in their payroll debit card program
7 for the purpose of issuing their final wages to them. Thus, Defendants' payroll debit card
8 program was and continues to be unlawful as it does not give employees the choice as to
9 whether they would like to receive their final wages on a payroll debit card or via some other
10 payment method.

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

18 **COLLECTING OR RECEIVING WAGES ALREADY PAID**

19 **VIOLATION OF LABOR CODE SECTION 221 AND 224**

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

25 131. During the relevant time period, Defendants unlawfully deducted a portion of
26 wages previously paid to other non-party Aggrieved Employees in violation of California Labor
27 Code section 221. On information and belief, Defendants systematically, and on a company-
28 wide basis, provided other non-party Aggrieved Employees with payroll debit cards as payment

1 of their wages. Under Defendants' payroll debit card program, other non-party Aggrieved
2 Employees were assessed various fees in connection with their use of the payroll debit cards.

3 132. Defendants' payroll debit card program, which resulted in a discount of wages to
4 employees, is tantamount to taking deductions from other non-party Aggrieved Employees'
5 paychecks without their written authorization and therefore constitutes an unlawful deduction of
6 wages, in violation of Labor Code sections 221 and 224.

7 133. Defendants' conduct as alleged herein violates California Labor Code sections
8 221 and 224. Other non-party Aggrieved Employees are therefore entitled to recover civil
9 penalties pursuant to Labor Code sections 225.5 and/or 2699(a), (f), and (g).

10 **SECRET PAYMENT OF A LOWER WAGE**

11 **VIOLATION OF LABOR CODE SECTION 223**

12 134. At all times, California Labor Code section 223 makes it unlawful for an
13 employer to secretly pay wages lower than required by statute while purporting to pay legal
14 wages.

15 135. During the relevant time period, Defendants willfully and systematically issued
16 payroll debit cards to other non-party Aggrieved Employees that discounted their wages by
17 charging various fees in connection with the use of the payroll debit cards. Defendants' payroll
18 debit card program resulted in the payment of less than statutorily required wages to other non-
19 party Aggrieved Employees. In doing so, Defendants acted with the intent to deprive other non-
20 party Aggrieved Employees of statutory wages, including, but not limited to, overtime wages
21 and/or minimum wages, to which they were entitled to under California law. Thus, Defendants
22 paid other non-party Aggrieved Employees lower wages than those they were entitled to while
23 purporting that other non-party Aggrieved Employees were properly paid.

24 136. Defendants' failure to pay other non-party Aggrieved Employees the correct
25 designated wage, while purporting to pay legal wages, is a violation of California Labor Code
26 section 223. Other non-party Aggrieved Employees are therefore entitled to recover civil
27 penalties pursuant to Labor Code sections 225.5 and/or 2699(a), (f), and (g).

28 //

1 **FAILURE TO PROVIDE ONE DAY’S REST IN SEVEN**
2 **VIOLATION OF LABOR CODE SECTIONS 551 and 552**

3 137. At all relevant times herein, California Labor Code section 551 provides that
4 every person employed in any occupation of labor is entitled to one day’s rest in seven.
5 Additionally, California Labor Code section 552 prohibits employers from requiring
6 employees to work more than six consecutive days without a day of rest.

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

10 139. During the relevant time period, Defendants required Plaintiff Neihart and other
11 non-party Aggrieved Employees to work approximately six (6) or more hours per day and
12 seven (7) consecutive days in a workweek. For example, approximately once or twice per
13 month, and more often during the holiday season, Plaintiff Neihart worked seven (7)
14 consecutive days without being afforded the opportunity to take one day’s rest. Because
15 Plaintiff Neihart and other non-party Aggrieved Employees worked over thirty (30) hours per
16 week and over six (6) hours in any one day in a workweek, they were not exempt from the
17 day-of-rest requirement. To the extent that Plaintiff Neihart and other non-party Aggrieved
18 Employees signed purported waivers of their right to a day’s rest in seven, such waivers are
19 invalid.

20 140. Thus, during the relevant time period, and in violation of California Labor
21 Code sections 551 and 552, Defendants caused Plaintiff Neihart and other non-party
22 Aggrieved Employees to work more than six days in seven. Plaintiff Neihart and other
23 non-party Aggrieved Employees are therefore entitled to recover civil penalties pursuant to
24 Labor Code sections 558 and/or 2699(a), (f), and (g).

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

28 141. At all relevant times herein, California Labor Code section 1198 makes it

1 illegal to employ an employee under conditions of labor that are prohibited by the applicable
2 wage order. California Labor Code section 1198 requires that “. . . the standard conditions of
3 labor fixed by the commission shall be the . . . standard conditions of labor for employees.
4 The employment of any employee . . . under conditions of labor prohibited by the order is
5 unlawful.”

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

9 143. Defendants’ California retail stores are generally similar in their layout and
10 design and there was, and continues to be, space behind and next to cash wraps and service
11 counters, to allow for the presence and use of a seat or stool by Plaintiffs and other non-party
12 Aggrieved Employees (with reasonable or no modification to these work areas) during the
13 performance of their work duties. Defendants could have provided Plaintiffs and other non-
14 party Aggrieved Employees with a seat or stool at these work areas, but instead denied them
15 seating and forced Plaintiffs and other non-party Aggrieved Employees to stand throughout
16 the day.

17 144. Plaintiffs and other non-party Aggrieved Employees spent a substantial portion
18 of their day behind and next to cash wraps and service counters. The nature of the work of an
19 employee performing cashier and customer service duties can reasonably be accomplished
20 from a seated position. However, Defendants systematically, and on a company-wide basis,
21 did not provide seats or stools at or near the cash wraps or service counters, forcing Plaintiffs
22 and other non-party Aggrieved Employees to stand throughout their work shifts.

23 145. Defendants violated California Labor Code section 1198 and California Code
24 of Regulations, Title 8, section 11070(14)(A), because Plaintiffs and other non-party
25 Aggrieved Employees were not allowed to sit, even when it would not have interfered with
26 the performance of their duties, nor were they provided with suitable seats. Defendants’
27 management did not inform Plaintiffs and other non-party Aggrieved Employees that they
28 were allowed to sit down, provide any means for them to sit down, or mention any policy

1 regarding sitting.

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

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

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

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

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

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

1 151. Defendants' California retail stores are generally similar in their layout and
2 design and there was, and continues to be, space near their work areas (with reasonable or no
3 modification to these work areas) to allow for the presence and use of a seat or stool by
4 Plaintiffs and other non-party Aggrieved Employees during lulls in operation. Defendants
5 could have provided Plaintiffs and other non-party Aggrieved Employees with a seat or stool
6 in their work areas, but instead denied Plaintiffs and other non-party Aggrieved Employees
7 suitable seating altogether and effectively forced Plaintiffs and other non-party Aggrieved
8 Employees to stand throughout the day.

9 152. Defendants did not provide Plaintiffs and other non-party Aggrieved
10 Employees with seats or stools in reasonable proximity to their work areas to allow them to
11 use seats when it would not interfere with the performance of their duties for times when they
12 were not engaged in active duties that require standing. In other words, to the extent Plaintiffs
13 and other non-party Aggrieved Employees engaged in duties in which the nature of the work
14 required standing, Defendants denied them the use of seats nearby during lulls in their work
15 duties. Moreover, Defendants did not inform Plaintiffs and other non-party Aggrieved
16 Employees of their rights to a seat or stool under California law.

17 153. As a result of Defendants' company-wide policy and/or practice of prohibiting
18 employees from sitting at any time, even when they were not engaged in active duties
19 requiring standing, and company-wide failure to provide seats in reasonable proximity to their
20 work areas, Plaintiffs and other non-party Aggrieved Employees were forced to stand during
21 shifts and denied seats. Defendants' failure to provide suitable seating to Plaintiffs and other
22 non-party Aggrieved Employees violated and continues to violate California Labor Code
23 section 1198 and IWC Wage Order No. 7-2001, subdivision 14(B).

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

26 **FAILURE TO PAY REPORTING TIME PAY**

27 **VIOLATION OF LABOR CODE SECTION 1198**

28 155. California Labor Code section 1198 makes it illegal to employ an employee

1 under conditions of labor that are prohibited by the applicable wage order. California Labor
2 Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission
3 shall be the . . . standard conditions of labor for employees. The employment of any employee
4 . . . under conditions of labor prohibited by the order is unlawful.”

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

15 157. During the relevant time period, Defendants violated California Labor Code
16 section 1198 and California Code of Regulations, Title 8, section 11070(5)(A), because
17 Defendants failed to pay other non-party Aggrieved Employees reporting time pay when they
18 reported to work for their usual or scheduled shift but were put to work for less than half of
19 the usual or scheduled day’s work.

20 158. During the relevant period, Defendants had a company-wide practice of
21 sending other non-party Aggrieved Employees home early from their shifts, including before
22 they had worked at least half of their usual or scheduled shift, but would not pay other non-
23 party Aggrieved Employees for half of their usual or scheduled shift. For example, on
24 information and belief, when scheduled to work an eight (8) hour shift, other non-party
25 Aggrieved Employees were sent home before four (4) hours had elapsed because business was
26 slow and pursuant to labor budget limitations, but were only paid for the time that they had
27 worked. Although other non-party Aggrieved Employees would report to work based on the
28 schedule that Defendants provided to them, Defendants would send them home before they

1 had worked at least half of their usual or scheduled shifts without giving them reporting time
2 pay.

3 159. Accordingly, other non-party Aggrieved Employees were not properly
4 compensated with reporting time pay in violation of California Labor Code section 1198 and
5 California Code of Regulations, Title 8, section 11070(5)(A). Other non-party Aggrieved
6 Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections
7 2699(a), (f), and (g).

8 **FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES**

9 **VIOLATION OF LABOR CODE SECTION 2802**

10 160. At all times herein set forth, California Labor Code section 2802 provides that
11 an employer must reimburse employees for all necessary expenditures and losses incurred by
12 the employee in the performance of his or her job. The purpose of Labor Code section 2802 is
13 to prevent employers from passing off their cost of doing business and operating expenses on
14 to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144
15 (2014). IWC Wage Order No. 7-2001 provides that: "[w]hen tools or equipment are required
16 by the employer or are necessary to the performance of a job, such tools and equipment shall
17 be provided and maintained by the employer, except that an employee whose wages are at
18 least two (2) times the minimum wage provided herein may be required to provide and
19 maintain hand tools and equipment customarily required by the trade or craft."

20 161. During the relevant time period, Defendants, on a company-wide basis,
21 required Plaintiffs and other non-party Aggrieved Employees to use their own personal
22 vehicles to carry out company business, but failed to reimburse them for all costs of travel,
23 including mileage. For example, Plaintiff Neihart was required to drive to the bank about 1/2
24 mile away to make bank drops at least three (3) times per week, and Plaintiff King is required
25 to drive to the bank about 2 miles away to do the same when working closing shifts. As another
26 example, about 4-5 times, Plaintiff Neihart was required to drive to a nearby store to purchase
27 and pick up basic supplies such as batteries and toilet paper. In addition, Plaintiff Neihart was
28 required to drive to other Defendants' locations about four (4) miles away to pick up retail

1 shelving equipment such as racks, pegs, and shelves. Lastly, Plaintiff Neihart was required to
2 drive about 9-10 miles to attend a company training on snowboard-building. Although
3 Defendants required Plaintiff and other non-party Aggrieved Employees to utilize their
4 personal vehicles to carry out their work-related responsibilities (including conducting bank
5 drops, obtaining store supplies or equipment, and attending trainings), Defendants failed to
6 reimburse them for their mileage or travel expenses.

7 162. Additionally, during the relevant time period, Defendants had a company-wide
8 policy of requiring Plaintiffs and other non-party Aggrieved Employees to utilize their own
9 personal mobile devices, including cellular phones, and/or mobile data, to carry out their job
10 duties, but Defendants failed to reimburse them for the costs of their work-related mobile
11 device expenses. For example, Plaintiff Neihart was sometimes required to access a website,
12 Infor Workforce Management, on her personal cellular phone in order to clock in and clock
13 out for her shifts. As a further example, Plaintiff King was required to respond to text
14 messages from Defendants' managers to discuss work-related matters and was required to
15 download and utilize a mobile application, Discord, to obtain delivery routes for delivering
16 packages to customers. Plaintiffs and other non-party Aggrieved Employees were not
17 compensated for the cost of the mobile data used to access the mobile application or
18 timekeeping website. Although Defendants required Plaintiffs and other non-party Aggrieved
19 Employees to utilize their personal mobile devices and mobile data to carry out their work-
20 related responsibilities, Defendants failed to reimburse them for these costs.

21 163. Defendants could have provided Plaintiffs and other non-party Aggrieved
22 Employees with the actual equipment for use on the job, such as company vehicles and
23 company mobile devices, to be used for fulfilling work-related tasks. Or, Defendants could
24 have reimbursed employees for the costs of their travel, mileage, and mobile device usage.
25 Instead, Defendants passed these operating costs off onto Plaintiffs and other non-party
26 Aggrieved Employees. At all relevant times, Plaintiffs did not earn at least two (2) times the
27 minimum wage.

28 164. Defendants' company-wide policy and/or practice of not reimbursing

1 employees for expenses necessarily incurred and passing on their operating costs to Plaintiffs
2 and other non-party Aggrieved Employees violates California Labor Code section 2802.
3 Plaintiffs and other non-party Aggrieved Employees are therefore entitled to recover civil
4 penalties pursuant to Labor Code sections 2699(a), (f), and (g).

5 **REQUEST FOR JURY TRIAL**

6 Plaintiffs request a trial by jury.

7 **PRAYER FOR RELIEF**

8 Plaintiffs, on behalf of all other non-party Aggrieved Employees, pray for relief and
9 judgment against Defendants, jointly and severally, as follows:

10 1. For civil penalties and attorneys' fees in excess of twenty-five thousand dollars
11 (\$25,000). Plaintiffs reserve the right to amend their prayer for relief to seek a different
12 amount.

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

14 2. That the Court declare, adjudge and decree that Defendants violated the
15 following California Labor Code provisions as to Plaintiffs and/or other non-party Aggrieved
16 Employees: 510 and 1198 (by failing to pay all overtime compensation); 226.7, 510, and 1198
17 (by failing to include all forms of remuneration in the "regular rate" of pay for purposes of
18 paying overtime wages and/or meal and rest period premiums); 1182.12, 1194, 1197, and
19 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512(a), 516, and
20 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize and
21 permit all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage
22 statements and maintain accurate payroll records); 204 (by failing to timely pay all earned
23 wages during employment); 201 and 202 (by failing to timely pay all earned wages upon
24 termination); 212 and 213 (by failing to make earned wages accessible without discount); 221
25 and 224 (by collecting and/or receiving wages already paid); 223 (by secretly paying wages
26 lower than required by statute); 551 and 552 (by failing to provide one day's rest in seven);
27 1198 and the applicable IWC Wage Order (by failing to provide suitable seating); 1198 (by
28 failing to provide reporting time pay); and 2802 (by failing to reimburse business expenses);

1 3. For civil penalties, pursuant to California Labor Code sections 210, 225.5,
2 226.3, 256, 558, 1174.5, 2699(a), (f), and (g), for violations of California Labor Code sections
3 201, 202, 204, 212, 213, 221, 223, 224, 226(a), 226.7, 510, 512(a), 516, 551, 552, 1174(d),
4 1182.12, 1194, 1197, 1198, and 2802;

5 4. For attorneys' fees and costs pursuant to California Labor Code section
6 2699(g)(1), and any and all other relevant statutes, for Defendants' violations of California
7 Labor Code sections 201, 202, 204, 212, 213, 221, 223, 224, 226(a), 226.7, 510, 512(a), 516,
8 551, 552, 1174(d), 1182.12, 1194, 1197, 1198, and 2802;

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

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

12
13 Dated: February 8, 2023,

Respectfully submitted,

Capstone Law APC

14
15
16 By: _____


Orlando Villalba
Helga Hakimi
Roxanna Tabatabaeepour

Attorneys for Plaintiffs Seana Neihart and
Jessica King

EXHIBIT “1”



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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)

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

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PS Form 3800, April 2015 PSN 7530-02-000-9017 See Reverse for Instructions

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CORONA, CA 92882

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1346 RAILROAD ST
CORONA, CA 92882

9590 9402 7420 2055 3569 17

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4001 204TH ST SW
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4001 204TH ST SW
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1. Article Addressed to:

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4001 204TH ST SW
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ZUMIEZ DISTRIBUTION LLC
4001 204TH ST SW
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ZUMIEZ INC.
4001 204TH ST SW
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EXHIBIT “2”



1875 Century Park East, Suite 1000
Los Angeles, California 90067
310.556.4811 Main | 310.943.0396 Fax

SAIRAH BUDHWANI
310.929.5455 Direct
Sairah.Budhwani@capstonelawyers.com

October 19, 2022

VIA ONLINE SUBMISSION

California Labor & Workforce Development Agency
ATTN: PAGA Administrator
(<https://dir.tfaforms.net/310>)

Subject: *Seana Neihart v. Zumiez Inc., et al.*
LWDA Case No. LWDA-CM-899926-22 - AMENDED NOTICE

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." We previously provided notice of Ms. Neihart's claims to the California Labor and Workforce Development Agency ("LWDA") on August 5, 2022, and submitted the applicable filing fee pursuant to Labor Code section 2699.3(a)(1)(B). This amended notice supplements Ms. Neihart's prior LWDA notice and is intended to clarify the facts and theories supporting her claims.

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 employed Ms. Neihart as an hourly paid, non-exempt employee from approximately September 2019 to August 2022. Ms. Neihart worked for ZUMIEZ as a 2nd Assistant Manager at its retail store

location in Rancho Cucamonga, California. Ms. Neihart typically worked 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). At the time her employment ended, Ms. Neihart was compensated approximately \$16.98 per hour. Her primary job duties included, 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.

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.

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.

First, during the relevant time period, ZUMIEZ had, and continues to have, 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 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 half (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 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 had 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 were required to wait for at least one other employee to complete his or her closing duties before they could 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 was allocated 114 payroll hours per week, which was 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 were not always afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period. Moreover, ZUMIEZ had a practice of failing to schedule meal periods and/or adhere to a schedule for meal periods, which 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 were 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 were not paid.

Fourth, in conjunction with understaffing its stores, ZUMIEZ had a requirement that a managerial employee be present on-premises at all times and prohibiting 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 were sometimes the only managers on duty, and were expected to supervise the store and respond to employee and customer questions at all times, including during their meal periods. Because managerial employees were effectively prohibited from leaving ZUMIEZ's premises for meal periods without coverage, and because there were too few employees and other managers on duty to handle the workload and attend to customers, Ms. Neihart and other aggrieved employees were denied uninterrupted 30-minute meal periods, and were required to work through and/or to return early from meal periods. For example, Ms. Neihart's meal periods were 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 pressured 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 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 had a requirement that a managerial employee be present in the store premises at all times, which 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 had a requirement that a managerial employee be present on-premises at all times, but ZUMIEZ's labor budgets did 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 were 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 was required to work through her meal periods to due to the heavy workload and lack of coverage.

Second, as stated, ZUMIEZ expected employees to meet daily sales goals under threat of discipline, up to and including termination. For example, on information and belief, Ms. Neihart was 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 were 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 worked 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 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 was 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 missed nearly all of her rest periods because there was an expectation that employees would 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 in compliance with section 226(a)(1) and did not list the correct amount of net wages 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 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.

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

During the relevant time period, on information and belief, ZUMIEZ had a company-wide practice or policy of paying departing employees their final wages on the next regular pay cycle, instead of adhering to the time requirements set forth in Labor Code sections 201 and 202. For example, Ms. Neihart voluntarily resigned on or about August 17, 2022; however, ZUMIEZ did not provide Ms. Neihart with her final paycheck until about September 3, 2022. Thus, ZUMIEZ failed to pay Ms. Neihart her final wages within seventy-two (72) hours from the time she resigned, in violation of Labor Code section 202.

Additionally, ZUMIEZ willfully failed to pay Ms. Neihart and 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.

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

Violation of California Labor Code §§ 212 and 213 – Unlawful Direct Deposit and Discount of Wages

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

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

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

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

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

Further, the DLSE notes that the Labor Code manifests:

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

because such fee would be charged against the same account in which wages are deposited. (emphases in original)

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

During the relevant time period, ZUMIEZ had an agreement with a payroll service provider for the issuance of payroll cards to employees, including Ms. Neihart and 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, Ms. Neihart received her final wages on a payroll debit card without a choice of an alternative method, including a written check. Instead, ZUMIEZ automatically enrolled Ms. Neihart and 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 Ms. Neihart and other aggrieved employees of easy access to the entirety of their wages, the program violates California Labor Code sections 212 and 213. Ms. Neihart and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, pursuant to Labor Code sections 225.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 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 have provided Ms. Neihart and other aggrieved employees with a seat or stool at these work areas, but instead denied employees seating and forced 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, did 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 his or her actual tasks at a discrete location make seated work feasible, while working there. *Id.* However, if other job duties take the employee to a different location where 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 have provided Ms. Neihart and other aggrieved employees with a seat or stool at in its work areas, but instead denied employees seating and forced 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 usual or 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 his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan’s Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order, IWC Wage Order No. 7-2001, provides that: “[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft.”

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 was required to drive to the bank about a half (1/2) mile away to make bank drops. As another example, about 4-5 times, Ms. Neihart was required to drive to a nearby store to purchase and pick up basic supplies such as batteries and toilet paper. In addition, Ms. Neihart was 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 was 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 was 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 herself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 1194.5, 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Ms. 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.

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

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

Best Regards,

A handwritten signature in black ink that reads "Sairah Budhwani". The signature is fluid and cursive, with a small dot at the end.

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)

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

CERTIFIED MAIL®



7022 2410 0000 2406 3416

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

SENDER: COMPLETE THIS SECTION

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

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

COMPLETE THIS SECTION ON DELIVERY

- A. Signature ☐ Agent
X ☒ Addressee

B. Received by (Printed Name) C. Date of Delivery

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

Service Type

- | | |
|--|---|
| ☐ Adult Signature | ☐ Registered Mail Express® |
| ☐ Adult Signature Restricted Delivery | ☐ Registered Mail™ |
| ☐ Certified Mail® | ☐ Registered Mail Restricted Delivery |
| ☐ Certified Mail Restricted Delivery | ☐ Signature Confirmation™ |
| ☐ Collect on Delivery | ☐ Signature Confirmation Restricted Delivery |
| ☐ Collect on Delivery Restricted Delivery | |
| ☐ Insured Mail (over \$500) | |
| ☐ Mail Restricted Delivery | |

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- ☒ Return Receipt (hardcopy) \$ _____
☐ Return Receipt (electronic) \$ _____
☐ Certified Mail Restricted Delivery \$ _____

NE 14th St
Vancouver, WA

Postmark
Here

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

Instructions

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



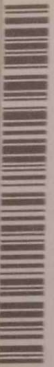
7022 2410 0000 2405 7521

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

SENDER: COMPLETE THIS SECTION

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- Print your name and address on the reverse so that we can return the card to you.
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ZUMIEZ DISTRIBUTION LLC
4001 204TH ST SW
LYNNWOOD, WA 98036



2. Address change: 06/20/2020 to 06/20/2020

7022 2410 0000 2405 7521

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

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

B. Received by (Printed Name)

☐ Agent
☐ Addressee

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

1. Service Type

☒ Adult Signature

☐ Adult Signature Restricted Delivery

☐ Certified Mail®

☐ Certified Mail Restricted Delivery

☐ Collect on Delivery

☐ Collect on Delivery Restricted Delivery

☐ Restricted Delivery

☐ Priority Mail Express®

☐ Registered Mail™

☐ Registered Mail Restricted Delivery

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

☒ Return Receipt (hardcopy)

☐ Return Receipt (electronic)

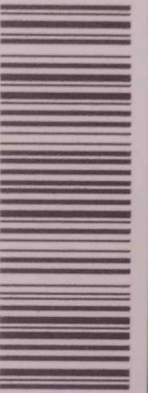
☐ Certified Mail Restricted Delivery

NEIKYAN V.
2020.11.11
Postmark
Here

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

7022 2410 0000 2405 7521

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



7022 2410 0000 2405 7514

ZUMIEZ DISTRIBUTION LLC
1346 RAILROAD ST
CORONA, CA 92882

SENDER: COMPLETE THIS SECTION

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- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece.

ZUMIEZ DISTRIBUTION LLC
1346 RAILROAD ST
CORONA, CA 92882

COMPLETE THIS SECTION ON DELIVERY

- A. Signature ☐ Agent ☐ Addressee
- B. Received by (Printed Name) C. Date of Delivery

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



2. AUGUST 10 2020 12:17:40 PM 7022 2410 0000 2405 7514

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

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

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☒ Return Receipt (hardcopy) \$

☐ Return Receipt (electronic) \$

☐ Certified Mail Restricted Delivery \$

Postmark

Los Angeles

Mark

ZUMIEZ DISTRIBUTION LLC
1346 RAILROAD ST
CORONA, CA 92882

Instructions

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

7022 2410 0000 2406 3423



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

SENDER: COMPLETE THIS SECTION

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

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

COMPLETE THIS SECTION ON DELIVERY

- A. Signature ☐ Agent ☒ Addressee
- B. Received by (Printed Name) C. Date of Delivery

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

Service Type

- ☐ Adult Signature Restricted Delivery
☐ Certified Mail®
☐ Collect on Delivery Restricted Delivery
☐ Insured Mail (500)
☐ Mail Restricted Delivery
- ☐ Priority Mail Express®
☐ Registered Mail™
☐ Registered Mail Restricted Delivery
☐ Signature Confirmation™
☐ Signature Confirmation Restricted Delivery

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

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

- ☒ Return Receipt (hardcopy)
☐ Return Receipt (electronic)
☐ Certified Mail Restricted Delivery

Postmark
Here

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

Instructions

SENDER: COMPLETE THIS SECTION

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- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece.

ZUMIEZ DISTRIBUTION LLC
1346 RAILROAD ST
CORONA, CA 92882



2. Article Number 7530-02-000-9053

7022 2410 0000 2405 7514

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

[Handwritten Signature]

☒ Agent

☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

10/24/22

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

Service Type

Adult Signature

☐ Adult Signature Restricted Delivery

☒ Certified Mail®

☐ Certified Mail Restricted Delivery

☐ Collect on Delivery

☐ Collect on Delivery Restricted Delivery

☐ Insured Mail

Mail Restricted Delivery

(0)

☐ Priority Mail Express®

☐ Registered Mail™

☐ Registered Mail Restricted Delivery

☐ Signature Confirmation™

☐ Signature Confirmation Restricted Delivery

SENDER: COMPLETE THIS SECTION

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



2. Article Number (Transfer from service label)

7022 2410 0000 2406 3416

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

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

1925

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

Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Insured Mail
- ☐ Mail Restricted Delivery

- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

SENDER: COMPLETE THIS SECTION

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



2. Article Number (Transfer from service label)

7022 2410 0000 2405 7521

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

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

10/25

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

Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Insured Mail
- ☐ Mail Restricted Delivery

- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

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SENDER: COMPLETE THIS SECTION

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



2. Article Number 7022 2410 0000 2406 3423

7022 2410 0000 2406 3423

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

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent

☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes

If YES, enter delivery address below: ☐ No

Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Insured Mail
- ☐ Mail Restricted Delivery (500)
- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

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PROOF OF SERVICE

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

On **February 8, 2023**, I served the document described as: **FIRST AMENDED COMPLAINT – PAGA ENFORCEMENT ACTION** on the interested parties in this action by sending ☐ the original [or] ☒ a true copy thereof ☒ to interested parties as follows [or] ☐ as stated on the attached service list:

Nathan W. Austin
Nathan.Austin@jacksonlewis.com
Keelia Lee
Keelia.Lee@jacksonlewis.com
Nicole Grandy
Nicole.Grandy@jacksonlewis.com
JACKSON LEWIS P.C.
400 Capitol Mall, Suite 1600
Sacramento, CA 95814
Telephone: 916-341-0404
Facsimile: 916-341-0141

Attorney's for Defendant:
ZUMIEZ INC., ZUMIEZ DISTRIBUTION,
LLC, and ZUMIEZ SERVICES, Inc.

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

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

☐ **BY PERSONAL SERVICE:** I delivered the document, enclosed in a sealed envelope, by hand to the counsel for Defendant.

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

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

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on **February 8, 2023** at Los Angeles, California.

Riley McIntire
Type/Print Name

Signature