

Bevin Allen Pike (SBN 221936)
Bevin.Pike@capstonelawyers.com
Daniel S. Jonathan (SBN 262209)
Daniel.Jonathan@capstonelawyers.com
Trisha K. Monesi (SBN 303512)
Trisha.Monesi@capstonelawyers.com
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, California 90067
Telephone: (310) 556-4811
Facsimile: (310) 943-0396

Attorneys for Plaintiff Karina Topete

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

22CV407922

KARINA TOPETE, as an aggrieved
employee pursuant to the Private Attorneys
General Act ("PAGA"), on behalf of the
State of California and other aggrieved
employees,

Plaintiff,

vs.

CLAIRE'S BOUTIQUES, INC., a
Michigan corporation; CLAIRE'S
STORES, INC., a Delaware corporation;
and DOES 1 through 10, inclusive,

Defendants.

Case No.:

**COMPLAINT – PAGA ENFORCEMENT
ACTION**

- (1) Claim for Civil Penalties Pursuant to
PAGA § 2699 for Violations of California
Labor Code and IWC Wage Order No.
7-2001, subdivision 14(A); and
- (2) Claim for Civil Penalties Pursuant to
PAGA § 2699 for Violations of California
Labor Code and IWC Wage Order No.
7-2001, subdivision 14(B).

Jury Trial Demanded

1 Plaintiff Karina Topete, as an aggrieved employee and on behalf of the State of
2 California and all other aggrieved employees, alleges as follows:

3 JURISDICTION AND VENUE

4 1. This is an enforcement action under the Labor Code Private Attorneys General
5 Act of 2004, California Labor Code sections 2698, *et seq.* (“PAGA”) to recover civil penalties
6 on behalf of the Plaintiff, the State of California, and other current and former employees who
7 worked for Defendants in California as a non-exempt employee at a California retail store
8 location and who suffered violations of Industrial Welfare Commission (“IWC”) Wage Order
9 No. 7-2001 subdivision 14(A) and/or (B) as set forth in this complaint at any time between one
10 year prior to the filing of the pre-filing written notice to the Labor and Workforce Development
11 Agency (“LWDA”) in this case on September 18, 2022, until judgment (“non-party Aggrieved
12 Employees”). Plaintiff’s share of civil penalties sought in this action does not exceed \$75,000.

13 2. This Court has jurisdiction over this action pursuant to the California
14 Constitution, Article VI, section 10. The overall amount in controversy exceeds \$25,000. The
15 statute under which this action is brought does not specify any other basis for jurisdiction.

16 3. This Court has jurisdiction over all Defendants because, on information and
17 belief, Defendants are either citizens of California, have sufficient minimum contacts in
18 California, and otherwise intentionally avail themselves of the California market so as to render
19 the exercise of jurisdiction over them by the California courts consistent with traditional notions
20 of fair play and substantial justice. Also, Plaintiff and all other non-party Aggrieved Employees
21 were employed by Defendants in California.

22 4. There is no basis for federal diversity jurisdiction in this action given that the
23 State of California, as the real party in interest in this action, is not a “citizen” for purposes of
24 satisfying diversity jurisdiction. *Urbino v. Orkin Servs. of Cal.*, 726 F.3d 1118, 1123 (9th Cir.
25 Cal. 2013). *Urbino* also holds that civil penalties cannot be aggregated to satisfy the amount in
26 controversy requirement for federal diversity jurisdiction in this action, and that diversity
27 jurisdiction cannot be established when Plaintiff’s share of the civil penalties attributable to
28 violations personally suffered are less than \$75,000. *Id.* at 1122.

5. Venue is proper in this Court because Defendants employ or employed persons within the County of Santa Clara, and have violated the requirements of the California Labor Code and applicable IWC Wage Order in this county which give rise to the penalties sought in this action. Cal. Code Civ. P. § 393. Specifically, Defendants have violated the requirements of the California Labor Code and applicable IWC Wage Order in at least five (5) locations within the County of Santa Clara, including Defendants' stores located in Gilroy (681 Leavesley Road, Suite 95, Gilroy, California 95020); Milpitas (447 Great Mall Drive, Suite 134, Milpitas, California 95035); San Jose (925 Blossom Hill Road, Suite #1547, San Jose, California 95123 and 2200 Eastridge Loop, Space #2043, San Jose, California 95129); and Santa Clara (2855 Stevens Creek Boulevard, #2-327, Santa Clara, California 95050). Pursuant to California Civil Code of Procedure section 393, venue is proper for the recovery of a penalty imposed by statute in the county in which the cause, or some part of the cause, arose. Because Defendants have employees in Santa Clara County, and Plaintiff could bring an action filed under PAGA in any county in which an aggrieved employee worked and Labor Code violations occurred, venue is proper. *Crestwood Behavioral Health, Inc. v. Superior Court of Alameda County*, 60 Cal. App. 5th 1069 (2021).

6. California Labor Code sections 2698, *et seq.*, the “Labor Code Private Attorneys General Act of 2004” (“PAGA”), authorize aggrieved employees to sue as private attorneys general their current or former employers for various civil penalties for violations of various provisions in the California Labor Code. Labor Code section 1198 makes a violation of a Wage Order such as subdivision 14(A) or 14(B) a violation of the Labor Code.

THE PARTIES

7. Plaintiff Karina Topete worked for Defendants as a non-exempt employee from approximately May 2019 to June 2022. Plaintiff worked for Defendants at their store located at 1165-T Colusa Avenue, Yuba City, California 95992. During her employment, Plaintiff worked in various positions, including Third Key, Assistant Manager, and Store Manager. Plaintiff typically worked seven (7) to eight (8) hours per day and five (5) days per week. Plaintiff's job duties included, without limitation, operating the cash register and performing

1 customer transactions, conducting ear piercings on customers, training employees, ordering
2 supplies, attending weekly management conference calls, and providing customer service.

3 8. Defendant CLAIRE’S BOUTIQUES, INC. was and is, upon information and
4 belief, a Michigan corporation doing business in California, and at all times hereinafter
5 mentioned, an employer whose employees are engaged throughout this county, the State of
6 California, or the various states of the United States of America.

7 9. Defendant CLAIRE’S STORES, INC. was and is, upon information and belief,
8 a Delaware corporation doing business in California, and at all times hereinafter mentioned, an
9 employer whose employees are engaged throughout this county, the State of California, or the
10 various states of the United States of America.

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

15 11. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10
16 are the partners, agents, owners, shareholders, managers, or employees of CLAIRE’S
17 BOUTIQUES, INC. and CLAIRE’S STORES, INC. at all relevant times.

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

26 13. At all relevant times, Defendants, and each of them, ratified each and every act
27 or omission complained of herein. At all relevant times, Defendants, and each of them, aided
28 and abetted the acts and omissions of each and all the other Defendants in proximately causing

1 the damages herein alleged.

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

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

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

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

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

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

11 18. CLAIRE'S BOUTIQUES, INC.; CLAIRE'S STORES, INC.; and/or DOES 1
12 through 10 are therefore alter egos of each other.

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

16 20. Plaintiff further alleges, upon information and belief, that the Defendants
17 CLAIRE'S BOUTIQUES, INC. and CLAIRE'S STORES, INC. are alter egos of each other for
18 the following reasons:

19 (a) On the California Secretary of State's website
20 (<https://bizfileonline.sos.ca.gov/>) and Florida Division of Corporations
21 website (<https://dos.myflorida.com/>), CLAIRE'S BOUTIQUES, INC.
22 and CLAIRE'S STORES, INC. have the same mailing address, "3 SW
23 129TH AVENUE PEMBROKE PINES, FL 33027".

24 (b) According to their most recent "Statement of Information" forms filed
25 with the California Secretary of State and "Annual Report" forms filed
26 with Florida Division of Corporations, CLAIRE'S BOUTIQUES, INC.
27 and CLAIRE'S STORES, INC. share the same officers, including, but not
28 limited to, Ryan Vero, Brendan McKeough, and Michael Schwindle; and

(c) On information and belief, CLAIRE'S BOUTIQUES, INC. and CLAIRE'S STORES, INC. utilize the same standardized employment forms and issue the same employment policies.

PAGA REPRESENTATIVE ALLEGATIONS

21. Defendants are a specialty retailer of jewelry and accessories for young women, teens, tweens, and kids. Defendants operate approximately 1400 store locations in the United States, including approximately 130 retail store locations in California.

22. Upon information and belief, Defendants maintain a single, centralized Human Resources (HR) department at their corporate headquarters in Pembroke Pines, Florida, or Hoffman Estates, Illinois, for all non-exempt, hourly paid employees working for Defendants in California, which is responsible for the recruiting and hiring of new employees, and communicating and implementing Defendants' company-wide policies to employees throughout California.

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

24. Plaintiff alleges that Defendants' California retail stores are generally similar in their layout and design and that there is space behind each cash wrap (with reasonable or no modification to these work areas) to allow for the presence and use of a seat or stool by Defendants' employees during the performance of their work duties. Defendants could have provided Plaintiff and other non-party Aggrieved Employees with a seat or stool at or near cash wraps, with reasonable or no modification to these work areas, but instead denied them seating and forced Plaintiff and other non-party Aggrieved Employees to stand throughout the day.

25. Plaintiff and other non-party Aggrieved Employees have spent a substantial

1 portion of their day behind Defendants' cash wraps. The nature of the work of an employee
2 performing cashier and/or customer service duties can reasonably be accomplished from a
3 seated position. However, as set forth herein, Defendants have not and do not provide Plaintiff
4 and other non-party Aggrieved Employees with seats or stools at or near each cash wrap.

5 26. Defendants continue to employ non-exempt employees at retail store locations
6 throughout California.

7 27. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
8 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
9 suitable seating and/or were entitled to sit when it did not interfere with the performance of their
10 cashier and/or customer service duties. In violation of the California Labor Code and applicable
11 IWC Wage Order, Defendants failed to provide Plaintiff and other non-party Aggrieved
12 Employees suitable seating.

13 28. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
14 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
15 have seats in reasonable proximity to their work area and be permitted to use such seats when
16 it did not interfere with the performance of their duties during a lull in tasks that do require
17 moving about or standing. In violation of the California Labor Code and applicable IWC Wage
18 Order, Defendants failed to provide Plaintiff and other non-party Aggrieved Employees suitable
19 seating.

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

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

1 31. Plaintiff and other current and former California employees of Defendants are
2 “aggrieved employees” as defined by Labor Code section 2699(c) in that they are all
3 Defendants’ current or former California employees who experienced violations of IWC Wage
4 Order No. 7-2001, subdivisions 14(A) and 14(B).

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

8 (a) The aggrieved employee or representative shall give written notice by
9 online filing with the LWDA and by certified mail to the employer of the
10 specific provisions of the California Labor Code alleged to have been
11 violated, including the facts and theories to support the alleged violation.

12 (b) An aggrieved employee’s notice filed with the LWDA pursuant to
13 2699.3(a) and any employer response to that notice shall be accompanied
14 by a filing fee of seventy-five dollars (\$75).

15 (c) The LWDA shall notify the employer and the aggrieved employee or
16 representative by certified mail that it does not intend to investigate the
17 alleged violation (“LWDA Notice”) within sixty (60) calendar days of the
18 postmark date of the aggrieved employee’s notice. Upon receipt of the
19 LWDA Notice, or if no LWDA Notice is provided within sixty-five (65)
20 calendar days of the postmark date of the aggrieved employee’s notice,
21 the aggrieved employee may commence a civil action pursuant to
22 California Labor Code section 2699 to recover civil penalties.

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

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

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

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

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

34. On September 16, 2022, Plaintiff 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's written notice was accompanied with the applicable filing fees of seventy-five dollars (\$75). That same day, the LWDA PAGA Administrator confirmed receipt of Plaintiff's written notice and assigned Plaintiff PAGA Case Number LWDA-CM-908659-22. A true and correct copy of Plaintiff's written notice to the LWDA and Defendants is attached hereto as "Exhibit 1."

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

36. Thus, Plaintiff has 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 section 1198.

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

38. As set forth below, Defendants have violated provisions of both the Labor Code sections regulating hours and days of work as well as the applicable IWC Wage Order, specifically, Labor Code section 1198 and California Code of Regulations, Title 8, section 11070(14)(A)-(B).

39. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a), 2699.3(a), 2699.3(c), and 2699.5, Plaintiff, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for herself, all other non-party Aggrieved Employees, and the State of California against Defendants for violations of California Labor Code section 1198.

FIRST CAUSE OF ACTION

FAILURE TO PROVIDE SUITABLE SEATING

VIOLATION OF LABOR CODE SECTION 1198 AND CALIFORNIA CODE OF REGULATIONS, TITLE 8, SECTION 11070(14)(A)

(By Plaintiff on Behalf of the State of California and Aggrieved Employees Against all Defendants)

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

41. California Labor Code §§ 2698, *et seq.* ("PAGA") permits Plaintiff to recover civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code section 2699.5. Section 2699.5 enumerates Labor Code section 1198, among others. Defendants' conduct, as alleged herein, violates section 1198 of the California Labor Code, by failing to provide suitable seating to Plaintiff and other non-party Aggrieved Employees as set forth below.

42. At all relevant times herein, California Labor Code section 1198 makes it illegal

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

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

8 44. During the relevant time period, Defendants violated California Labor Code
9 section 1198 and California Code of Regulations, Title 8, section 11070(14)(A), because
10 Plaintiff and other non-party Aggrieved Employees were not allowed to sit, even when the
11 nature of their work would reasonably permit the use of seats, nor were they provided with
12 suitable seats. As employees assigned cashier duties, a substantial amount of Plaintiff’s and
13 other non-party Aggrieved Employees’ tasks, including operating the cash register, scanning
14 items, and bagging items, could have been performed from a seated position. Plaintiff and other
15 non-party Aggrieved Employees could have handled transactions and provided customer
16 service while seated.

17 45. Defendants could have placed seats or stools at or near each cash wrap for use
18 by Plaintiff and other non-party Aggrieved Employees with reasonable or no modification to
19 these work areas. However, on a company-wide basis, Defendants did not provide seats or
20 stools at or near each cash wrap. Defendants’ management did not inform Plaintiff and other
21 non-party Aggrieved Employees that they were allowed to sit down, provide any means for
22 them to sit down, or mention any policy regarding sitting.

23 46. For example, during her employment, when Plaintiff performed cashiering duties
24 at the cash wrap, she was required to stand the entire time because Defendants did not provide
25 seating behind the cash wraps. Other aggrieved employees similarly were not permitted to sit
26 while performing cash register duties because Defendants did not provide seats or stools at the
27 cash wraps.

28 47. As a result of Defendants’ company-wide policy and/or practice prohibiting

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

6 48. Plaintiff and other non-party Aggrieved Employees and the State of California
7 are therefore entitled to recover civil penalties pursuant to Labor Code sections 2699(a), (f), and
8 (g).

9 **SECOND CAUSE OF ACTION**

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 **(By Plaintiff on Behalf of the State of California and Aggrieved Employees Against all**
14 **Defendants)**

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

17 50. California Labor Code §§ 2698, *et seq.* ("PAGA") permits Plaintiff to recover
18 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code section
19 2699.5. Section 2699.5 enumerates Labor Code section 1198, among others. Defendants'
20 conduct, as alleged herein, violates section 1198 of the California Labor Code, by failing to
21 provide suitable seating to Plaintiff and other non-party Aggrieved Employees as set forth
22 below.

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

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

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

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

10 54. Defendants did not provide Plaintiff and other non-party Aggrieved Employees
11 with seats or stools in reasonable proximity to their work to allow them to use seats when it
12 would not interfere with the performance of their duties for times when they were not engaged
13 in active duties that require standing. In other words, to the extent Plaintiff and other non-party
14 Aggrieved Employees engaged in duties in which the nature of the work required standing,
15 Defendants denied them the use of seats nearby when they were not engaged in those duties.
16 Even though the layout of Defendants’ workplaces could accommodate seats or stools with
17 reasonable or no modification to Defendants’ workplaces, Defendants have, on a company-wide
18 basis, denied Plaintiff and other non-party Aggrieved Employees suitable seating altogether.

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

26 56. Plaintiff and other non-party Aggrieved Employees and the State of California
27 are therefore entitled to recover civil penalties pursuant to Labor Code sections 2699(a), (f), and
28 (g).

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1 2699(a), (f)-(g) to bring Defendants into compliance with California's seating requirements;

2 11. For attorneys' fees and costs pursuant to California Labor Code section
3 2699(g)(1), and any and all other relevant statutes, for Defendants' violations of California
4 Labor Code section 1198;

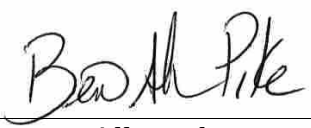
5 12. For pre-judgment and post-judgment interest as provided by law; and

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

8
9 Dated: November 23, 2022

Respectfully submitted,

10 Capstone Law APC

11
12 By: 

13 Bevin Allen Pike
14 Daniel S. Jonathan
15 Trisha K. Monesi

16 Attorneys for Plaintiff Karina Topete
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EXHIBIT “1”

NINEL KOCHARYAN
310.712.8146 Direct
Ninel.Kocharyan@capstonelawyers.com

September 16, 2022

VIA ONLINE SUBMISSION

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

Subject: *Karina Topete v. Claire's Boutiques, Inc., et al.*

Dear PAGA Administrator:

This office represents Karina Topete in connection with her claims under the California Labor Code, and this letter is sent in compliance with the notice requirements of the California Labor Code Private Attorneys General Act, California Labor Code section 2699.3. Ms. Topete was an employee of CLAIRE'S BOUTIQUES, INC. and/or CLAIRE'S STORES INC. For the purpose of this letter, Ms. Topete collectively refers to these entities as "CLAIRES."

The employers may be contacted directly at the addresses below:

CLAIRE'S BOUTIQUES, INC.
3 SW 129TH AVE
PEMBROKE PINES, FL 33027

CLAIRE'S STORES INC.
2400 WEST CENTRAL ROAD
HOFFMAN ESTATES IL 60192

Ms. Topete 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. Topete seeks relief on behalf of herself, the State of California, and other persons who are or were employed by CLAIRES as a non-exempt employee in a California retail store location ("aggrieved employees"). This letter is sent in compliance with the notice and reporting requirements of California Labor Code section 2699.3.

CLAIRES employed Ms. Topete as a non-exempt employee from approximately May 2019 to June 2022. Ms. Topete worked for CLAIRES at its Claire's store in Yuba City, California. During her employment, Ms. Topete worked in various positions, including Third Key, Assistant Manager, and Store Manager. Ms. Topete typically worked 7.5-8 hours per day and five (5) days per week. Ms. Topete's job duties included, without limitation, operating the cash register and performing customer transactions, conducting ear piercings on customers, training employees, ordering supplies, attending weekly management conference calls, and providing customer service.

CLAIRES committed one or more of the following Labor Code violations against Ms. Topete, the facts and theories of which follow, making her an “aggrieved employee” pursuant to California Labor Code section 2699(c).¹ Ms. Topete’s relevant claims are as follows:

CLAIRES’ Company-Wide and Uniform HR Practices

CLAIRE’S BOUTIQUES, INC. is a Michigan corporation. CLAIRE’S STORES INC. is a Florida corporation. Together, CLAIRE’S BOUTIQUES, INC. and CLAIRE’S STORES INC. own and operate a chain of retail fashion accessory stores throughout the United States under the Claire’s and Icing store brands. CLAIRE’S operates approximately 1441 retail locations in the United States, including approximately 130 locations in California. Upon information and belief, CLAIRE’S maintains a centralized Human Resources (HR) department at its corporate headquarters in either Pembroke Pines, Florida or Hoffman Estates, Illinois, for all non-exempt employees working for CLAIRE’S at retail stores in California, including Ms. Topete and other aggrieved employees. CLAIRE’S maintained uniform practices with respect to its provision of seats (or lack thereof) in its retail stores for all non-exempt employees in California, including Ms. Topete and other aggrieved employees, regardless of their location or position.

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.*

¹ These facts, theories, and claims are based on Ms. Topete’s experience and counsel’s review of those records currently available relating to Ms. Topete’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. Topete 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.

CLAIRES California retail stores are generally similar in their layout and design and there was, and continues to be, space at cash wraps to allow for the presence and use of a seat or stool by Ms. Topete and other aggrieved employees during the performance of their work duties. CLAIREs could have provided Ms. Topete and other aggrieved employees with a suitable seat at cash wraps, with reasonable or no modification to these work areas, but instead denied and continues to deny them seats altogether or denies them suitable seats. As a result, Ms. Topete and other aggrieved employees are and have been forced to stand throughout the day. In addition, CLAIREs failed to expressly advise Ms. Topete and other aggrieved employees that they could utilize seats while performing their duties.

During her employment, Ms. Topete performed cashiering duties at the cash wrap and spent a significant portion of her day behind the cash wrap. Other aggrieved employees similarly spent a portion of their day at cash wraps performing cash register duties. The nature of the work of an employee performing cashier and/or customer service duties can reasonably be accomplished from a seated position. Ms. Topete and other aggrieved employees could have provided customer service, handled cash register transactions, and performed other similar tasks at cash wraps at any of CLAIREs' stores while seated without interfering with their ability to perform their job duties. However, as set forth herein, CLAIREs systematically, and on a company-wide basis, does not provide seats or does not provide suitable seats at cash wraps and expressly prohibits employees from sitting while working, forcing Ms. Topete and other aggrieved employees, to stand throughout their work shifts.

CLAIREs violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11070(14)(A) because Ms. Topete and other aggrieved employees were not allowed to sit, even when the nature of their work would reasonably permit the use of seats, nor were they provided with suitable seats. CLAIREs' management did not inform Ms. Topete and other aggrieved employees that they were allowed to sit down and, instead, advised employees not to sit while working.

As a result of CLAIREs' company-wide policy and/or practice of prohibiting employees from sitting during their shifts and company-wide failure to provide suitable seating, Ms. Topete and other aggrieved employees were forced to stand during shifts and denied seats. CLAIREs' failure to provide suitable seating to Ms. Topete and other aggrieved employees violates California Labor Code section 1198 and Industrial Welfare Commission ("IWC") Wage Order No. 7-2001, subdivision 14(A).

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

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

California Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable wage order. California Labor Code section 1198 requires that "... the standard conditions of labor fixed by the commission shall be the ... standard conditions of labor for employees. The employment of any employee ... under conditions of labor prohibited by the order is unlawful." California Code of Regulations, Title 8, section 11070(14)(B) provides that

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

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

As stated, CLAIRES’ California retail stores are generally similar in their layout and design and there was, and continues to be, space near their work areas to allow for the presence and use of a seat or stool by Ms. Topete and other aggrieved employees during lulls in operations. For example, Ms. Topete experienced lulls in her work at various times during a typical shift, especially when the store was not busy. During these lulls, when Ms. Topete was not actively performing tasks that require standing, Ms. Topete could have taken a moment to sit and rest her legs, back, and feet if seating was provided. CLAIRES could provide Ms. Topete and other aggrieved employees with a suitable seat or stool in its work areas, with reasonable or no modification to these work areas, but instead denies employees seating and forces Ms. Topete and other aggrieved employees to stand throughout the day.

CLAIRES did not provide Ms. Topete and other aggrieved employees with suitable 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. Topete and other aggrieved employees engaged in duties in which the nature of the work required standing, CLAIRES denied them the use of seats nearby during lulls in their work duties. Moreover, CLAIRES’ management did not inform Ms. Topete and other aggrieved employees that they were allowed to sit down at all.

As a result of CLAIRES’ 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 suitable seats in reasonable proximity to their work areas, Ms. Topete and other aggrieved employees were forced to stand during shifts and denied seats. CLAIRES’ failure to provide suitable seating to Ms. Topete and other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order No. 7-2001, subdivision 14(B).

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

Ms. Topete, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for herself, all other aggrieved employees, and the State of California against CLAIRES for violations of California Labor Code section 1198.

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

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

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

Best Regards,

A handwritten signature in black ink, appearing to read "Ninel", is positioned below the "Best Regards," text.

Ninel Kocharyan

Copy: CLAIRE'S BOUTIQUES, INC. (via U.S. Certified Mail); CLAIRE'S STORES INC. (via U.S. Certified Mail)