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ORIGINAL FILED  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF LOS ANGELES

MAR 13 2014

Sherri R. Carter, Executive Officer/Clerk  
By: Trudi Massarotti, Deputy

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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
11 FOR THE COUNTY OF LOS ANGELES – CENTRAL CIVIL WEST

BY FAX

12 VIOLA HUBBS, individually, and on  
13 behalf of other members of the general  
public similarly situated,

14 Plaintiff,

15 vs.

16 BIG LOTS STORES, INC., an Ohio  
17 corporation; PNS STORES, INC., an Ohio  
18 corporation; and DOES 1 through 10,  
inclusive,

19 Defendants.

Case No.: BC 535754

[Assigned to: Honorable Lee Smalley Edmon,  
Dept. 322]

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

- (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime);
- (2) Violation of California Labor Code §§ 1194, 1197, and 1197.1 (Unpaid Minimum Wages);
- (3) Violation of California Labor Code §§ 226.7 & 512(a) (Unpaid Meal Period Premiums);
- (4) Violation of California Labor Code § 226.7 (Unpaid Rest Period Premiums);
- (5) Violation of California Labor Code § 226(a) (Non-Compliant Wage Statements);
- (6) Violation of California Labor Code §§ 201 and 202 (Wages Not Timely Paid Upon Termination);
- (7) Violation of California Labor Code § 204 (Wages Not Paid During Employment);
- (8) Violation of Labor Code §§ 1197 and 1198 and California Code of Regulations Title 8, Section 11070 Subdivision 4(C)

(Failure to Compensate for Split Shifts);  
(9) Violation of Labor Code §§ 2698, *et seq.*  
("PAGA"); and  
(10) Violation of California Business &  
Professions Code §§ 17200, *et seq.*

**Jury Trial Demanded**

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1 Plaintiff Viola Hubbs ("Plaintiff"), individually and on behalf of all other members of  
2 the public similarly situated, and as an aggrieved employee alleges as follows:

### 3 INTRODUCTION

4 1. This class action and enforcement action is brought pursuant to California Code  
5 of Civil Procedure section 382 and the Labor Code Private Attorneys General Act of 2004,  
6 California Labor Code section 2698 et seq. ("PAGA") to recover wages, penalties, and all  
7 other available relief on behalf of Plaintiff, the State of California, and all other persons who  
8 are or were employed by Defendants in a California "Big Lots" retail stores as a non-exempt,  
9 hourly-paid employee and who suffered one or more of the Labor Code violations set forth in  
10 this complaint. The monetary damages and restitution sought by Plaintiff exceed the minimal  
11 jurisdiction limits of the Superior Court and will be established according to proof at trial.

12 2. Defendants operate a number of retail stores across California and employ  
13 various persons in non-exempt, hourly-paid positions.

14 3. As set forth more fully below, Defendants have violated various sections of the  
15 California Labor Code and applicable Industrial Welfare Commission Wage Order including,  
16 but not limited to, meal breaks, rest breaks, overtime and minimum wages.

### 17 JURISDICTION AND VENUE

18 4. The wages, civil penalties, monetary damages and restitution sought by  
19 Plaintiff exceed the minimal jurisdiction limits of the Superior Court and will be established  
20 according to proof at trial. This Court has jurisdiction over this action pursuant to the  
21 California Constitution, Article VI, section 10. The statutes under which this action is brought  
22 do not specify any other basis for jurisdiction.

23 5. This Court has jurisdiction over all Defendants because, upon information and  
24 belief, Defendants are either citizens of California, have sufficient minimum contacts in  
25 California, or otherwise intentionally avail themselves of the California market so as to render  
26 the exercise of jurisdiction over them by the California courts consistent with traditional  
27 notions of fair play and substantial justice.

28 6. Venue is proper in this Court because Defendants employ persons in this

1 county and employed Plaintiff in this county, and thus a substantial portion of the transactions  
2 and occurrences related to this action occurred in this county.

3 7. California Labor Code sections 2699 *et seq.*, the “Labor Code Private Attorneys  
4 Generals Act” (“PAGA”), authorizes aggrieved employees to sue directly for various civil  
5 penalties under the California Labor Code.

6 8. On February 10, 2014, Plaintiff timely provided notice to the California Labor  
7 and Workforce Development Agency (“LWDA”) and to Defendants BIG LOTS STORES,  
8 INC. and PNS STORES, INC., pursuant to California Labor Code section 2699.3.

### 9 THE PARTIES

10 9. Plaintiff VIOLA HUBBS is a resident of Los Angeles, California.

11 10. Defendant BIG LOTS STORES, INC. (“BIG LOTS”) is, upon information and  
12 belief, an Ohio corporation doing business in California, and at all times hereinafter  
13 mentioned, an employer whose employees are engaged throughout this county, the State of  
14 California, and/or the various states of the United States of America.

15 11. Defendant PNS STORES, INC. (“PNS STORES”) is, upon information and  
16 belief, an Ohio corporation doing business in California, and at all times hereinafter  
17 mentioned, an employer whose employees are engaged throughout this county, the State of  
18 California, and/or the various states of the United States of America.

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

23 13. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10  
24 are the partners, agents, owners, shareholders, managers or employees of BIG LOTS and/or  
25 PNS STORES at all relevant times.

26 14. Plaintiff is informed and believes, and thereon alleges, that each and all of the  
27 acts and omissions alleged herein was performed by, or is attributable to, BIG LOTS, PNS  
28 STORES, and/or DOES 1 through 10 (collectively “Defendants”), each acting as the agent for

1 the other, with legal authority to act on the other's behalf. The acts of any and all Defendants  
2 were in accordance with, and represent, the official policy of Defendants.

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

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

#### 10 **CLASS ACTION ALLEGATIONS**

11 17. Plaintiff brings this action on her own behalf, as well as on behalf of each and  
12 all other persons similarly situated, and thus, seeks class certification under California Code of  
13 Civil Procedure section 382.

14 18. All claims alleged herein arise under California law for which Plaintiff seeks  
15 relief authorized by California law.

16 19. Plaintiff's proposed class consists of and is defined as follows:

17 All individuals who worked for Defendants in a California "Big  
18 Lots" retail stores in a non-exempt, hourly-paid position, at any  
19 time during the period from four years prior to the filing of this  
20 Complaint until the date of certification ("Class").

20 20. Plaintiff's proposed subclass consists of and is defined as follows:

21 All individuals who worked for Defendants in a California "Big  
22 Lots" retail stores in a non-exempt, hourly-paid position, at any  
23 time during the period from one year prior to the filing of this  
24 Complaint until the date of certification ("Subclass").

24 21. Members of the Class, Subclass and Cashier Subclass will hereinafter be  
25 referred to as "class members."

26 22. Plaintiff reserves the right to redefine the Class and Subclass and to add  
27 additional subclasses as appropriate based on further investigation, discovery, and specific  
28 theories of liability.

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

- 3           (a)    Whether Defendants required Plaintiff and class members to work off-  
4 the-clock without payment;
- 5           (b)    Whether Defendants required Plaintiff and class members to work over  
6 eight (8) hours per day, over twelve (12) hours per day, and/or over  
7 forty (40) hours per week and failed to pay legally required overtime  
8 compensation to Plaintiff and class members;
- 9           (c)    Whether Defendants failed to pay at least minimum wages for all hours  
10 worked by Plaintiff and class members;
- 11          (d)    Whether Defendants deprived Plaintiff and class members of meal  
12 periods or required Plaintiff and class members to work during meal  
13 periods without compensation;
- 14          (e)    Whether Defendants deprived Plaintiff and class members of rest  
15 periods or required Plaintiff and class members to work during rest  
16 periods without compensation;
- 17          (f)    Whether Defendants complied with wage reporting as required by  
18 California Labor Code section 226(a);
- 19          (g)    Whether Defendants failed to pay earned overtime wages, minimum  
20 wages, and meal and rest period premiums due to Plaintiff and class  
21 members upon their discharge;
- 22          (h)    Whether Defendants failed timely to pay overtime wages, minimum  
23 wages, and meal and rest period premiums to Plaintiff and class  
24 members during their employment;
- 25          (i)    Whether Defendants paid one hour of minimum wages when Plaintiff  
26 and class members were required to work split-shifts;
- 27          (j)    Whether Defendants engaged in unfair business practices in violation of  
28 California Business & Professions Code sections 17200, *et seq.*; and

1 (k) The appropriate amount of damages, restitution, or monetary penalties  
2 resulting from Defendants' violations of California law.

3 24. There is a well-defined community of interest in the litigation and the class  
4 members are readily ascertainable:

5 (a) Numerosity: The class members are so numerous that joinder of all  
6 members would be unfeasible and impractical. The membership of the  
7 entire class is unknown to Plaintiff at this time; however, the class is  
8 estimated to be greater than one hundred (100) individuals and the  
9 identity of such membership is readily ascertainable by inspection of  
10 Defendants' employment records.

11 (b) Typicality: Plaintiff is qualified to, and will, fairly and adequately  
12 protect the interests of each class member with whom she has a well-  
13 defined community of interest, and Plaintiff's claims (or defenses, if  
14 any) are typical of all class members as demonstrated herein.

15 (c) Adequacy: Plaintiff is qualified to, and will, fairly and adequately  
16 protect the interests of each class member with whom she has a well-  
17 defined community of interest and typicality of claims, as demonstrated  
18 herein. Plaintiff acknowledges that she has an obligation to make  
19 known to the Court any relationship, conflicts or differences with any  
20 class member. Plaintiff's attorneys, the proposed class counsel, are  
21 versed in the rules governing class action discovery, certification, and  
22 settlement. Plaintiff has incurred, and throughout the duration of this  
23 action, will continue to incur costs and attorneys' fees that have been,  
24 are, and will be necessarily expended for the prosecution of this action  
25 for the substantial benefit of each class member.

26 (d) Superiority: The nature of this action makes the use of class action  
27 adjudication superior to other methods. A class action will achieve  
28 economies of time, effort and expense as compared with separate

1 lawsuits, and will avoid inconsistent outcomes because the same issues  
2 can be adjudicated in the same manner and at the same time for the  
3 entire class.

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

### 13 GENERAL ALLEGATIONS

14 25. Defendants operate a chain of retail stores under the name “Big Lots,”  
15 advertised as “North America's largest broadline closeout retailer.” Defendants’ stores feature  
16 merchandise from “everyday consumables and housewares to toys and seasonal goods.”

17 26. According to the company’s website, BIG LOTS was originally incorporated in  
18 1967 as Consolidated International, Inc. “Big Lots,” as a name, has existed since 1985 and  
19 now operates more than 1,400 retail stores serving 48 states. According to their 2012 annual  
20 report, Defendants’ owned and operated 173 “Big Lots” stores in California as of February 2,  
21 2013.

22 27. Defendants employed Plaintiff Viola Hubbs as a non-exempt, hourly-paid  
23 employee/Cashier from July 2010 to August 2013 at one of Defendants’ Los Angeles,  
24 California “Big Lots” retail stores.

25 28. Defendants continue to employ non-exempt, hourly-paid employees in various  
26 locations throughout California.

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

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

3 30. Plaintiff is informed and believes, and thereon alleges, that class members were  
4 not paid for all hours worked because all hours worked were not recorded.

5 31. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or  
6 should have known that Plaintiff and class members were entitled to receive certain wages for  
7 overtime compensation and that they were not receiving certain wages for overtime  
8 compensation.

9 32. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or  
10 should have known that Plaintiff and class members were entitled to receive at least minimum  
11 wages for compensation and that, in violation of the California Labor Code, they were not  
12 receiving at least minimum wages for work done off-the-clock.

13 33. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or  
14 should have known that Plaintiff and class members were entitled to receive all meal periods  
15 or payment of one (1) additional hour of pay at Plaintiff and class members' regular rates of  
16 pay when they did not receive a timely uninterrupted meal period, and that they did not  
17 receive all meal periods or payment of one (1) additional hour of pay at Plaintiff and class  
18 members' regular rates of pay when they did not receive a timely uninterrupted meal period.

19 34. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or  
20 should have known that Plaintiff and class members were entitled to receive all rest periods or  
21 payment of one (1) additional hour of pay at Plaintiff and class members' regular rates of pay  
22 when a rest period was missed, and that they did not receive all rest periods or payment of one  
23 (1) additional hour of pay at Plaintiff and class members' regular rates of pay when a rest  
24 period was missed.

25 35. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or  
26 should have known that Plaintiff and class members were entitled to receive complete and  
27 accurate wage statements in accordance with California law. In violation of the California  
28 Labor Code, Plaintiff and class members were not provided complete and accurate wage

1 statements.

2 36. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or  
3 should have known that Plaintiff and class members were entitled to timely payment of wages  
4 during their employment. In violation of the California Labor Code, Plaintiff and class  
5 members did not receive payment of all wages, including, but not limited to, overtime wages,  
6 minimum wages, and meal and rest period premium wages, within permissible time periods.

7 37. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or  
8 should have known that Plaintiff and class members were entitled to timely payment of wages  
9 upon termination of employment. In violation of the California Labor Code, Plaintiff and  
10 class members did not receive payment of all unpaid wages, including, but not limited to,  
11 overtime wages, minimum wages, and meal and rest period premium wages, within  
12 permissible time periods.

13 38. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or  
14 should have known that Plaintiff and class members were entitled to receive an additional  
15 hour of pay at minimum wage for working split-shifts. In violation of the California Labor  
16 Code, Plaintiff and class members were not paid all split shift premium wages.

17 39. Plaintiff is informed and believes, and thereon alleges, that at all times herein  
18 mentioned, Defendants knew or should have known that they had a duty to compensate  
19 Plaintiff and class members, and that Defendants had the financial ability to pay such  
20 compensation but willfully, knowingly, and intentionally failed to do so, and falsely  
21 represented to Plaintiff and class members that they were properly denied wages, all in order  
22 to increase Defendants' profits.

23 40. At all times herein set forth, PAGA was applicable to Plaintiff's employment  
24 by Defendants.

25 41. At all times herein set forth, PAGA provides that any provision of law under  
26 the California Labor Code that provides for a civil penalty to be assessed and collected by the  
27 LWDA for violations of the California Labor Code may, as an alternative, be recovered  
28 through a civil action brought by an aggrieved employee on behalf of himself and other

1 current or former employees pursuant to procedures outlined in California Labor Code section  
2 2699.3.

3 42. Pursuant to PAGA, a civil action under PAGA may be brought by an  
4 “aggrieved employee,” who is any person that was employed by the alleged violator and  
5 against whom one or more of the alleged violations was committed.

6 43. Plaintiff was employed by Defendants and the alleged violations were  
7 committed against her during her time of employment and she is, therefore, an aggrieved  
8 employee. Plaintiff and other employees are “aggrieved employees” as defined by California  
9 Labor Code section 2699(c) in that they are all current or former employees of Defendants,  
10 and one or more of the alleged violations were committed against them.

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

- 14 a) The aggrieved employee shall give written notice by certified mail  
15 (hereinafter “Employee’s Notice”) to the LWDA and the employer of  
16 the specific provisions of the California Labor Code alleged to have  
17 been violated, including the facts and theories to support the alleged  
18 violations.
- 19 b) The LWDA shall provide notice (hereinafter “LWDA Notice”) to the  
20 employer and the aggrieved employee by certified mail that it does not  
21 intend to investigate the alleged violation within thirty (30) calendar  
22 days of the postmark date of the Employee’s Notice. Upon receipt of  
23 the LWDA Notice, or if the LWDA Notice is not provided within thirty-  
24 three (33) calendar days of the postmark date of the Employee’s Notice,  
25 the aggrieved employee may commence a civil action pursuant to  
26 California Labor Code section 2699 to recover civil penalties in addition  
27 to any other penalties to which the employee may be entitled.

28 45. On February 10, 2014 Plaintiff provided written notice by certified mail to the

1 LWDA and Defendants BIG LOTS STORES, INC. and PNS STORES, INC. of the specific  
2 provisions of the California Labor Code alleged to have been violated, including the facts and  
3 theories to support the alleged violations, pursuant to California Labor Code section 2699.3.

4 46. As of the filing date of this complaint, over 33 days have passed since Plaintiff  
5 sent the LWDA Notices described above and the LWDA has not stated that it intends to  
6 investigate Plaintiff's claims. Thus, Plaintiff has satisfied the administrative prerequisites  
7 under California Labor Code section 2699.3(a) to recover civil penalties and unpaid wages  
8 against Defendants, in addition to other remedies, for violations of California Labor Code  
9 sections 201, 202, 203, 204, 210, 226(a), 226.7, 510, 512(a), 1194, 1197, 1197.1, and 1198.

#### 10 **FIRST CAUSE OF ACTION**

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

##### 12 **(Against all Defendants)**

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

15 48. California Labor Code section 1198 makes it illegal to employ an employee  
16 under conditions of labor that are prohibited by the applicable wage order. California Labor  
17 Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission  
18 shall be the . . . standard conditions of labor for employees. The employment of any employee  
19 . . . under conditions of labor prohibited by the order is unlawful.”

20 49. California Labor Code section 1198 and the applicable Industrial Welfare  
21 Commission (“IWC”) Wage Order provide that it is unlawful to employ persons without  
22 compensating them at a rate of pay either time-and-one-half or two-times that person's regular  
23 rate of pay, depending on the number of hours worked by the person on a daily or weekly  
24 basis.

25 50. Specifically, the applicable IWC Wage Order provides that Defendants are and  
26 were required to pay Plaintiff and class members employed by Defendants, and working more  
27 than eight (8) hours in a day or more than forty (40) hours in a workweek, at the rate of time-  
28 and-one-half for all hours worked in excess of eight (8) hours in a day or more than forty (40)

1 hours in a workweek.

2 51. California Labor Code section 510 codifies the right to overtime compensation  
3 at one-and-one-half times the regular hourly rate for hours worked in excess of eight (8) hours  
4 in a day or forty (40) hours in a week or for the first eight (8) hours worked on the seventh day  
5 of work, and to overtime compensation at twice the regular hourly rate for hours worked in  
6 excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on the seventh day  
7 of work.

8 52. During the relevant time period, Plaintiff and class members worked in excess  
9 of eight (8) hours in a day and/or in excess of forty (40) hours in a week. For example,  
10 Defendants had a policy and/or practice of requiring Plaintiff and class members to clock-out  
11 and then wait for a manager to unlock the door and release them at the end of closing shifts.  
12 In addition, Defendants had a policy and/or practice of failing to staff a sufficient number of  
13 employees at its stores and failing to take efforts to relieve Plaintiff and class members of all  
14 duties such that they could take compliant meal periods. As a result, Plaintiff and class  
15 members had to work through some or all of their meal periods or have their meal periods  
16 interrupted to return to work. Because Plaintiff and class members sometimes worked shifts  
17 of eight (8) hours a day or more or forty (40) hours a week or more, some of this off-the-clock  
18 work qualified for overtime premium pay.

19 53. Defendants' failure to pay Plaintiff and class members the unpaid balance of  
20 overtime compensation, as required by California law, violates the provisions of California  
21 Labor Code sections 510 and 1198, and is therefore unlawful.

22 54. Pursuant to California Labor Code section 1194, Plaintiff and class members  
23 are entitled to recover their unpaid overtime compensation, as well as interest, costs, and  
24 attorneys' fees.

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1           61. At all relevant times herein set forth, the applicable IWC Wage Order(s) and  
2 California Labor Code sections 226.7 and 512(a) were applicable to Plaintiff and the other  
3 class members' employment by Defendants and each of them.

4           62. At all relevant times herein set forth, California Labor Code section 226.7  
5 provides that no employer shall require an employee to work during any meal period  
6 mandated by an applicable order of the IWC.

7           63. At all relevant times herein set forth, California Labor Code section 512(a)  
8 provides that an employer may not require, cause, or permit an employee to work for a period  
9 of more than five (5) hours per day without providing the employee with a meal period of not  
10 less than thirty (30) minutes, except that if the total work period per day of the employee is  
11 not more than six (6) hours, the meal period may be waived by mutual consent of both the  
12 employer and the employee.

13           64. During the relevant time period, Plaintiff and class members scheduled to work  
14 for a period of time no longer than six (6) hours, and who did not waive their legally mandated  
15 meal periods by mutual consent, were required to work for periods longer than five (5) hours  
16 without a meal period of not less than thirty (30) minutes.

17           65. Pursuant to the applicable IWC Wage Order(s) and California Labor Code  
18 section 226.7(b), Plaintiff and class members are entitled to recover from Defendants one (1)  
19 additional hour of pay at the employee's regular hourly rate of compensation for each work  
20 day that the meal period was not provided.

21           66. During the relevant time period, Defendants willfully required Plaintiff and  
22 class members to take late meal periods and failed to compensate Plaintiff and class members  
23 for late meal periods. Defendants failed to staff a sufficient number of employees and did not  
24 take efforts to relieve Plaintiff and class members of all duties such that they could take  
25 timely, compliant meal periods. Due to Defendants' practice of understaffing their stores,  
26 Plaintiff and class members were frequently not permitted to take timely meal periods. For  
27 example, on days when Plaintiff was scheduled to work more than six (6) hours, Defendants  
28 required that she continue working past her fifth hour of work before being permitted to take

1 her thirty (30) minute meal period because the store was busy and there was inadequate break  
2 coverage.

3 67. Moreover, Defendants maintained a uniform unlawful meal break policy  
4 insofar as it failed to provide for the timing of first meal breaks. As a result, Plaintiff and  
5 class members had to wait beyond their fifth hour of work before being permitted to take their  
6 meal breaks.

7 68. Defendants also had a policy and/or practice of not paying meal period  
8 premiums when compliant meal periods were not provided. As a result, Defendants failed to  
9 provide Plaintiff and class members all compliant meal periods and failed to pay the full meal  
10 period premiums due in violation of California Labor Code sections 226.7 and 512.  
11 Defendants' conduct violates applicable IWC Wage Order(s), and California Labor Code  
12 sections 226.7 and 512(a).

13 69. Pursuant to the applicable IWC Wage Order(s) and California Labor Code  
14 section 226.7(b), Plaintiff and class members are entitled to recover from Defendants one (1)  
15 additional hour of pay at the employee's regular hourly rate of compensation for each work  
16 day that the meal period was not provided.

#### 17 **FOURTH CAUSE OF ACTION**

#### 18 **Violation of California Labor Code § 226.7**

#### 19 **(Against all Defendants)**

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

22 71. At all relevant times herein set forth, the applicable IWC Wage Order and  
23 California Labor Code section 226.7 were applicable to Plaintiff and class members'  
24 employment by Defendants.

25 72. At all relevant times, California Labor Code section 226.7 provides that no  
26 employer shall require an employee to work during any rest period mandated by an applicable  
27 order of the California IWC.

28 73. At all relevant times, the applicable IWC Wage Order provides that "[e]very

1 employer shall authorize and permit all employees to take rest periods, which insofar as  
2 practicable shall be in the middle of each work period” and that the “rest period time shall be  
3 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)  
4 hours or major fraction thereof” unless the total daily work time is less than three and one-half  
5 (3½) hours.

6 74. Pursuant to the applicable IWC Wage Order and California Labor Code section  
7 226.7(b), Plaintiff and class members are entitled to recover from Defendants one (1)  
8 additional hour of pay at the employee’s regular hourly rate of compensation for each work  
9 day that the rest period was not provided.

10 75. During the relevant time period, Defendants required Plaintiff and class  
11 members to work four (4) or more hours without authorizing or permitting a ten (10) minute  
12 rest period per each four (4) hour period worked. As with meal periods, Defendants did not  
13 schedule a sufficient number of employees or coordinate their schedules such that Plaintiff  
14 and class members were relieved of all duty in order to take compliant rest periods. Instead,  
15 Plaintiff and class members simply had to work through their shifts without all rests period.  
16 For example, Plaintiff frequently had to work through her ten (10) minute afternoon rest periods  
17 when she worked an eight (8) hour shift, because there was inadequate break coverage. At the  
18 same time Defendants implemented a systematic, company-wide policy to not pay rest period  
19 premiums.

20 76. As a result, Defendants failed to pay Plaintiff and class members the full rest  
21 period premiums in violation of California Labor Code section 226.7. Defendants’ conduct  
22 violates the applicable IWC Wage Orders and California Labor Code section 226.7.

23 77. Pursuant to the applicable IWC Wage Order and California Labor Code section  
24 226.7(b), Plaintiff and class members are entitled to recover from Defendants one (1)  
25 additional hour of pay at the employee’s regular hourly rate of compensation for each work  
26 day that the rest period was not provided.

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1 **FIFTH CAUSE OF ACTION**

2 **Violation of California Labor Code § 226(a)—Non-Compliant Wage Statements**

3 **(Against all Defendants)**

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

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

10 80. Defendants have intentionally and willfully failed to provide employees with  
11 complete and accurate wage statements. The deficiencies include, among other things, failing  
12 to list gross wages earned, failing to list total hours worked by employees, failing to list the  
13 number of piece-rate units earned and any applicable piece rate if the employee is paid on a  
14 piece-rate basis, failing to list all deductions, failing to list net wages earned, failing to list the  
15 inclusive dates of the period for which the employee is paid, failing to list the name of the  
16 employee and only the last four digits of his or her social security number or an employee  
17 identification number other than a social security number, failing to list the name and address of  
18 the legal entity that is the employer, failing to list all applicable hourly rates in effect during the  
19 pay period and the corresponding number of hours worked at each hourly rate and/or failing to  
20 state all hours worked as a result of not recording or stating the hours they worked off-the-  
21 clock.

22 81. As a result of Defendants' violation of California Labor Code section 226(a),  
23 Plaintiff and class members have suffered injury and damage to their statutorily protected  
24 rights.

25 82. Specifically, Plaintiff and class members have been injured by Defendants'  
26 intentional violation of California Labor Code section 226(a) because they were denied both  
27 their legal right to receive, and their protected interest in receiving, accurate, itemized wage  
28 statements under California Labor Code section 226(a). In addition, because Defendants

1 failed to provide the accurate number of total hours worked on wage statements, Plaintiff has  
2 been prevented by Defendants from determining if all hours worked were paid and the extent  
3 of the underpayment. Plaintiff has had to file this lawsuit, conduct discovery, reconstruct time  
4 records, and perform computations in order to analyze whether in fact Plaintiff was paid  
5 correctly and the extent of the underpayment, thereby causing Plaintiff to incur expenses and  
6 lost time. Plaintiff would not have had to engage in these efforts and incur these costs had  
7 Defendants provided the accurate number of total hours worked. This has also delayed  
8 Plaintiff's ability to demand and recover the underpayment of wages from Defendants.

9 83. Plaintiff and class members are entitled to recover from Defendants the greater  
10 of their actual damages caused by Defendants' failure to comply with California Labor Code  
11 section 226(a), or an aggregate penalty not exceeding four thousand dollars (\$4,000) per  
12 employee.

### 13 **SIXTH CAUSE OF ACTION**

#### 14 **Violation of California Labor Code §§ 201 and 202 – Wages Not Timely Paid Upon** 15 **Termination** 16 **(Against all Defendants)**

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

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

26 86. During the relevant time period, Defendants willfully failed to pay Plaintiff and  
27 class members who are no longer employed by Defendants the earned and unpaid wages set  
28 forth above, including but not limited to, overtime wages, minimum wages, and meal and rest

1 period premium wages, either at the time of discharge, or within seventy-two (72) hours of  
2 their leaving Defendants' employ.

3 87. Defendants' failure to pay those class members who are no longer employed by  
4 Defendants their wages earned and unpaid at the time of discharge, or within seventy-two (72)  
5 hours of their leaving Defendants' employ, is in violation of California Labor Code sections  
6 201 and 202.

7 88. California Labor Code section 203 provides that if an employer willfully fails  
8 to pay wages owed, in accordance with sections 201 and 202, then the wages of the employee  
9 shall continue as a penalty from the due date, and at the same rate until paid or until an action  
10 is commenced; but the wages shall not continue for more than thirty (30) days.

11 89. Plaintiff and class members are entitled to recover from Defendants the  
12 statutory penalty wages for each day they were not paid, at their regular hourly rate of pay, up  
13 to a thirty (30) day maximum pursuant to California Labor Code section 203.

#### 14 **SEVENTH CAUSE OF ACTION**

##### 15 **Violation of California Labor Code § 204 – Wages Not Timely Paid During Employment** 16 **(Against all Defendants)**

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

19 91. This cause of action is dependent upon, and wholly derivative of, the overtime  
20 wages, minimum wages, and meal and rest period premium wages that were not timely paid  
21 during Plaintiff and class members' employment.

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

27 93. At all times herein set forth, California Labor Code section 204 provides that  
28 all wages earned by any person in any employment between the 16th and the last day,

1 inclusive, of any calendar month, other than those wages due upon termination of an  
2 employee, are due and payable between the 1st and the 10th day of the following month.

3 94. At all times herein set forth, California Labor Code section 204 provides that  
4 all wages earned for labor in excess of the normal work period shall be paid no later than the  
5 payday for the next regular payroll period.

6 95. During the relevant time period, Defendants willfully failed to pay Plaintiff and  
7 class members all wages due to them including, but not limited to, overtime wages, minimum  
8 wages, and meal and rest period premium wages, within any time period specified by  
9 California Labor Code section 204.

10 96. Plaintiff and the class members are entitled to recover all statutory penalties  
11 and remedies available for violations of California Labor Code section 204.

## 12 **EIGHTH CAUSE OF ACTION**

### 13 **Violation of California Labor Code §§ 1197 and 1198 - Failure to Compensate for Split** 14 **Shifts**

#### 15 **(Against all Defendants)**

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

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

23 99. The applicable wage order, California Code of Regulations, Title 8, section  
24 11070(4)(C) provides that “When an employee works a split shift, one (1) hour’s pay at the  
25 minimum wage shall be paid in addition to the minimum wage for that workday, except when  
26 the employee resides at the place of employment.” California Code of Regulations, Title 8,  
27 defines a split shift as “a work schedule, which is interrupted by non-paid non-working  
28 periods established by the employer, other than bona fide rest or meal periods.”



- 1 (b) Violation of Labor Code sections 1194, 1197, and 1197.1 for  
2 Defendants' failure to compensate Plaintiff and all aggrieved employees  
3 with at least minimum wages for all hours worked as stated herein;  
4 (c) Violation of Labor Code sections 226.7 and 512(a) for Defendants'  
5 failure to provide Plaintiff and other aggrieved employees with meal or  
6 rest periods or compensation in lieu thereof, as stated herein;  
7 (d) Violation of Labor Code section 226(a) for failure to provide accurate  
8 wage statements to Plaintiff and other aggrieved employees as stated  
9 herein;  
10 (e) Violation of Labor Code section 204 for failure to pay all earned wages  
11 during employment as stated herein;  
12 (f) Violation of Labor Code sections 201, 202, and 203 for failure to pay all  
13 earned wages upon termination as stated herein;  
14 (g) Violation of Labor Code section 1198 and the applicable IWC Wage  
15 Order for failing to pay one (1) hour of minimum wages when Plaintiff  
16 and aggrieved employees were required to work split shifts, as set forth  
17 more fully below; and  
18 (h) Violation of Labor Code section 1198 and the applicable IWC Wage  
19 Order for failing to provide seats, as set forth more fully below.

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

25 109. California Code of Regulations, Title 8, section 11050(4)(C) provides that "All  
26 working employees shall be provided with suitable seats when the nature of the work  
27 reasonably permits the use of seats. When employees are not engaged in the active duties of  
28 their employment and the nature of the work requires standing, an adequate number of

1 suitable seats shall be placed in reasonable proximity to the work area and employees shall be  
2 permitted to use such seats when it does not interfere with the performance of their duties.”

3 Although Plaintiff and aggrieved employees who performed mostly cashier work were  
4 performing work that reasonably permitted the use of seats, BIG LOTS refused to provide  
5 seats in violation of the applicable wage order and California Labor Code section 1198.

6 110. California Labor Code section 210 provides: “In addition to, and entirely  
7 independent and apart from, any other penalty provided in this article, every person who fails  
8 to pay the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2,  
9 205, 205.5, and 1197.5, shall be subject to a civil penalty as follows: (1) For any initial  
10 violation, one hundred dollars (\$100) for each failure to pay each employee. (2) For each  
11 subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for  
12 each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.”

13 111. Labor Code section 558(a) provides “[a]ny employer or other person acting on  
14 behalf of an employer who violates, or causes to be violated, a section of this chapter or any  
15 provision regulating hours and days of work in any order of the Industrial Welfare  
16 Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty  
17 dollars (\$50) for each underpaid employee for each pay period for which the employee was  
18 underpaid in addition to an amount sufficient to recover underpaid wages. (2) For each  
19 subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay  
20 period for which the employee was underpaid in addition to an amount sufficient to recover  
21 underpaid wages. (3) Wages recovered pursuant to this section shall be paid to the affected  
22 employee.” Labor code section 558(c) provides “[t]he civil penalties provided for in this  
23 section are in addition to any other civil or criminal penalty provided by law.”

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

27 As set forth above, Defendants have violated numerous provisions of both the Labor  
28 Code sections regulating hours and days of work as well as the applicable order of the IWC.

1 Accordingly, Plaintiff seeks the remedies set forth in Labor Code section 558 for herself, the  
2 State of California, and all other aggrieved employees.

3 113. Pursuant to PAGA, and in particular California Labor Code sections 2699(a),  
4 2699.3, 2699.5 and 558, Plaintiff, acting in the public interest as private attorneys general,  
5 seeks assessment and collection of unpaid wages and civil penalties for Plaintiff, all other  
6 aggrieved employees, and the State of California against Defendants, in addition to other  
7 remedies, for violations of California Labor Code sections 201, 202, 203, 204, 210, 226(a),  
8 226.7, 510, 512(a), 1194, 1197, 1197.1, and 1198.

9 **TENTH CAUSE OF ACTION**

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

11 **(Against all Defendants)**

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

14 115. Defendants' conduct, as alleged herein, has been, and continues to be, unfair,  
15 unlawful and harmful to Plaintiff, class members, and to the general public. Plaintiff seeks to  
16 enforce important rights affecting the public interest within the meaning of Code of Civil  
17 Procedure section 1021.5.

18 116. Defendants' activities, as alleged herein, are violations of California law, and  
19 constitute unlawful business acts and practices in violation of California Business &  
20 Professions Code sections 17200, *et seq.*

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

- 24 (a) Requiring non-exempt employees, including Plaintiff and class  
25 members, to work overtime without paying them proper  
26 compensation in violation of California Labor Code sections 510 and  
27 1198 and the applicable IWC Order;
- 28 (b) Failing to pay at least minimum wage to Plaintiff and class members

1 in violation of California Labor Code sections 1194, 1197 and 1197.1  
2 and the applicable IWC Order;

3 (c) Failing to provide uninterrupted meal and rest periods or to pay  
4 premium wages for missed meal and rest periods to Plaintiff and  
5 class members in violation of California Labor Code sections 226.7  
6 and 512 and the applicable IWC Order;

7 (d) Failing to provide Plaintiff and class members with accurate wage  
8 statements in violation of California Labor Code section 226(a) and  
9 the applicable IWC Order; and

10 (e) Failing to reimburse Plaintiff and class members with one hour of  
11 minimum wages when they were required to work split-shifts in  
12 violation of California Labor Code section 1198 and the applicable  
13 IWC Order; and

14 (f) Failing timely to pay all earned wages to Plaintiff and class members  
15 in violation of California Labor Code section 204 and the applicable  
16 IWC Order.

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

### 23 **REQUEST FOR JURY TRIAL**

24 Plaintiff requests a trial by jury.

### 25 **PRAYER FOR RELIEF**

26 Plaintiff, on behalf of all others similarly situated, prays for relief and judgment  
27 against Defendants, jointly and severally, as follows:

28 1. For damages, unpaid wages, penalties, injunctive relief, and attorneys' fees in

1 excess of twenty-five thousand dollars (\$25,000), exclusive of interest and costs. Plaintiff  
2 reserves the right to amend her prayer for relief to seek a different amount.

3 **Class Certification**

- 4 2. That this case be certified as a class action;  
5 3. That Plaintiff be appointed as the representative of the Class and Subclass;  
6 4. That counsel for Plaintiff be appointed as class counsel.

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

8 5. That the Court declare, adjudge, and decree that Defendants violated California  
9 Labor Code sections 510 and 1198 and applicable IWC Wage Orders by willfully failing to  
10 pay all overtime wages due to Plaintiff and class members;

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

13 7. For pre-judgment interest on any unpaid overtime compensation commencing  
14 from the date such amounts were due;

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

17 9. For such other and further relief as the Court may deem equitable and  
18 appropriate.

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

20 10. That the Court declare, adjudge and decree that Defendants violated California  
21 Labor Code sections 1194, 1197 and 1197.1 by willfully failing to pay minimum wages to  
22 Plaintiff and class members;

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

25 12. For pre-judgment interest on any unpaid compensation from the date such  
26 amounts were due;

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

1           14. For liquidated damages pursuant to California Labor Code section 1194.2; and  
2           15. For such other and further relief as the Court may deem equitable and  
3 appropriate.

4                                   **As to the Third Cause of Action**

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

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

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

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

14           20. For pre-judgment interest on any unpaid meal period premiums from the date  
15 such amounts were due; and

16           21. For such other and further relief as the Court may deem equitable and  
17 appropriate.

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

19           22. That the Court declare, adjudge and decree that Defendants violated California  
20 Labor Code section 226.7 and applicable IWC Wage Orders by willfully failing to provide all  
21 rest periods to Plaintiff and class members;

22           23. That the Court make an award to the Plaintiff and class members of one (1) hour  
23 of pay at each employee's regular rate of compensation for each workday that a rest period  
24 was not provided;

25           24. For all actual, consequential, and incidental losses and damages, according to  
26 proof;

27           25. For premiums pursuant to California Labor Code section 226.7(b);

28           26. For pre-judgment interest on any unpaid rest period premiums from the date

1 such amounts were due; and

2 27. For such other and further relief as the Court may deem equitable and  
3 appropriate.

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

5 28. That the Court declare, adjudge and decree that Defendants violated the  
6 recordkeeping provisions of California Labor Code section 226(a) and applicable IWC Wage  
7 Orders as to Plaintiff and class members, and willfully failed to provide accurate itemized  
8 wage statements thereto;

9 29. For all actual, consequential and incidental losses and damages, according to  
10 proof;

11 30. For injunctive relief pursuant to California Labor Code section 226(h);

12 31. For statutory penalties pursuant to California Labor Code section 226(e); and

13 32. For such other and further relief as the Court may deem equitable and  
14 appropriate.

15 **As to the Sixth Cause of Action**

16 33. That the Court declare, adjudge and decree that Defendants violated California  
17 Labor Code sections 201, 202 and 203 by willfully failing to pay overtime wages, minimum  
18 wages, and meal and rest period premiums owed at the time of termination of the employment  
19 of Plaintiff and other terminated class members;

20 34. For all actual, consequential and incidental losses and damages, according to  
21 proof;

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

24 36. For pre-judgment interest on any unpaid wages from the date such amounts  
25 were due; and

26 37. For such other and further relief as the Court may deem equitable and  
27 appropriate.

28 **As to the Seventh Cause of Action**



1 following California Labor Code sections as to Plaintiff and aggrieved employees: 510 and  
2 1198 (by failing to pay all overtime wages); 1194, 1197, and 1197.1 (by failing to pay at least  
3 minimum wages for all hours worked); 226.7 and 512(a) (by failing to provide meal or rest  
4 periods or compensation in lieu thereof); 226(a) (by failing to provide accurate wage  
5 statements); 201, 202, 203 (by failing timely to pay all unpaid wages upon termination), and  
6 204 (by failing timely to pay all earned wages during employment); and 1198 (by failing to  
7 pay split shift premiums and failing to provide suitable seating);

8 51. For civil penalties and unpaid wages pursuant to California Labor Code  
9 sections 2699(a) and/or 2699(f) and (g) and 558, plus costs and attorneys' fees, for violations  
10 of California Labor Code sections 201, 202, 203, 204, 210, 226(a), 226.7, 510, 512(a), 1194,  
11 1197, 1197.1, and 1198; and

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

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

15 53. That the Court declare, adjudge and decree that Defendants violated California  
16 Business and Professions Code sections 17200, *et seq.* by failing to provide Plaintiff and class  
17 members all overtime wages due to them, failing to provide Plaintiff and class members all  
18 minimum wages due to them, failing to provide all meal and rest periods, failing to provide  
19 accurate wage statements, failing timely to pay all earned wages during employment and upon  
20 termination, and failing to pay split shift premiums;

21 54. For restitution of unpaid wages to Plaintiff and all class members and  
22 prejudgment interest from the day such amounts were due and payable;

23 55. For the appointment of a receiver to receive, manage and distribute any and all  
24 funds disgorged from Defendants and determined to have been wrongfully acquired by  
25 Defendants as a result of violations of California Business & Professions Code sections 17200  
26 *et seq.*;

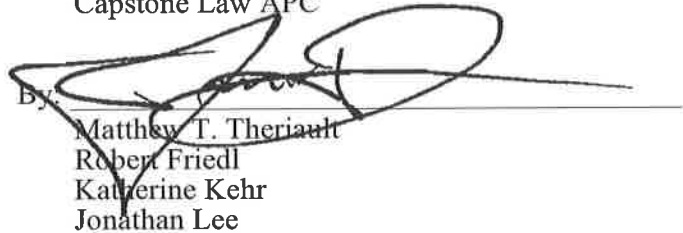
27 56. For reasonable attorneys' fees and costs of suit incurred herein pursuant to  
28 California Code of Civil Procedure section 1021.5; and

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

3 Dated: March 13, 2014

Respectfully submitted,

Capstone Law APC

5  
6 By  Matthew T. Theriault  
Robert Friedl  
Katherine Kehr  
Jonathan Lee

9 Attorneys for Plaintiff Viola Hubbs

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