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8

9
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 FOR THE COUNTY OF TULARE
12

13 SIDNEI PEARSON and MARISSA
FELLOWS, as aggrieved employees
14 pursuant to the Private Attorneys
General Act ("PAGA"), on behalf of
15 the State of California and other non-
party Aggrieved Employees,

16
17 Plaintiffs,

18 vs.

19 TORRID LLC, a California limited
liability company; TORRID
20 ADMINISTRATION, INC. a
California Corporation; TORRID
21 MERCHANDISING, INC. a
California corporation; TORRID
22 PARENT INC., a Delaware
Corporation; and DOES 1 through 10,
23 inclusive,

24 Defendants.
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ELECTRONICALLY FILED
Superior Court of California,
County of Tulare
02/24/2023
By: Nay Saelee,
Deputy Clerk

Case No.: VCU294831

**FIRST AMENDED COMPLAINT – PAGA
ENFORCEMENT ACTION**

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

Jury Trial Demanded

1 Plaintiffs Sidnei Pearson and Marissa Fellows, as aggrieved employees and on behalf
2 of the State of California and all other non-party Aggrieved Employees, allege as follows:

3 JURISDICTION AND VENUE

4 1. This is an enforcement action under the Labor Code Private Attorneys General
5 Act of 2004, California Labor Code sections 2698, *et seq.* (“PAGA”) to recover civil penalties
6 and any other available relief on behalf of Plaintiff, the State of California, and other current
7 and former employees who worked for Defendants in California as a non-exempt, hourly paid
8 employee and received at least one wage statement and against whom one or more violations
9 of any provision in Division 2 Part 2 Chapter 1 of the Labor Code or any provision regulating
10 hours and days of work in the applicable Industrial Welfare Commission (“IWC”) Wage
11 Order were committed, as set forth in this complaint, at any time between one year prior to the
12 filing of the pre-filing written notice to the Labor and Workforce Development Agency
13 (“LWDA”) in this case on October 21, 2022, until judgment (“non-party Aggrieved
14 Employees”). Plaintiffs’ share of civil penalties sought in this action does not exceed
15 \$75,000.

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

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

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

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

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

9 **THE PARTIES**

10 6. Plaintiff Sidnei Pearson is a resident of Visalia, in Tulare County, California.
11 Defendants employed Plaintiff Pearson as an hourly paid, non-exempt employee from
12 approximately June 2019 to February 2022. Plaintiff Pearson worked for Defendants as a
13 Sales Associate at their retail store located in Visalia, California. Plaintiff Pearson typically
14 worked four (4) to eight (8) or more hours per day and four (4) or more days per week. At the
15 time Plaintiff Pearson’s employment with Defendants ended, she was compensated
16 approximately \$15.00 per hour. Plaintiff Pearson’s job duties included, without limitation,
17 cashiering, maintaining the sales floor, providing customer service, and conducting inventory.

18 7. Plaintiff Marissa Fellows is a resident of Downey, in Los Angeles County,
19 California. Defendants have employed Plaintiff Fellows as an hourly paid, non-exempt
20 employee since August 2019. Plaintiff Fellows works for Defendants as a Key Holder at their
21 retail store located in Downey, California. Plaintiff Fellows typically works seven (7) to eight
22 (8) hours per day and five (5) days per week. Plaintiff Fellows’s job duties include, without
23 limitation, providing customer service, monitoring the sales floor, cashiering, performing
24 customer returns, and completing inventory.

25 8. TORRID LLC was and is, upon information and belief, a California limited
26 liability company, and at all times hereinafter mentioned, an employer whose employees are
27 engaged throughout this county and the State of California.

28 9. TORRID ADMINISTRATION, INC. was and is, upon information and belief,

1 a California corporation, and at all times hereinafter mentioned, an employer whose
2 employees are engaged throughout this county and the State of California.

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

6 11. TORRID PARENT INC. was and is, upon information and belief, a Delaware
7 corporation, and at all times hereinafter mentioned, an employer whose employees are
8 engaged throughout this county and the State of California.

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

13 13. Plaintiffs are informed and believe, and thereon allege, that DOES 1 through 10
14 were the partners, agents, owners, or managers of TORRID LLC; TORRID
15 ADMINISTRATION, INC.; TORRID MERCHANDISING, INC.; and TORRID PARENT
16 INC. at all relevant times.

17 14. Plaintiffs are informed and believe, and thereon allege, that each and all of the
18 acts and omissions alleged herein was performed by, or is attributable to, TORRID LLC;
19 TORRID ADMINISTRATION, INC.; TORRID MERCHANDISING, INC.; TORRID
20 PARENT INC.; and/or DOES 1 through 10 (collectively, "Defendants" or "TORRID"), each
21 acting as the agent, employee, alter ego, and/or joint venturer of, or working in concert with,
22 each of the other co-Defendants and was acting within the course and scope of such agency,
23 employment, joint venture, or concerted activity with legal authority to act on the others'
24 behalf. The acts of any and all Defendants were in accordance with, and represent, the official
25 policy of Defendants.

26 15. 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 16. Plaintiffs are informed and believe, and thereon allege, that each of said
3 Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts,
4 omissions, occurrences, and transactions alleged herein.

5 17. 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 Plaintiffs and other non-party
8 Aggrieved Employees. Each Defendant had the power to hire and fire Plaintiffs and other
9 non-party Aggrieved Employees, supervised and controlled their work schedule and/or
10 conditions of employment, determined their rate of pay, and maintained their employment
11 records. Defendants suffered or permitted Plaintiffs and other non-party Aggrieved
12 Employees to work and/or “engaged” Plaintiffs and other non-party Aggrieved Employees so
13 as to create a common-law employment relationship. As joint employers of Plaintiffs and
14 other non-party Aggrieved Employees, Defendants are jointly and severally liable for the civil
15 penalties available to Plaintiffs and other non-party Aggrieved Employees under the law.

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

- 19 (a) jointly exercised meaningful control over the work performed by
20 Plaintiffs and other non-party Aggrieved Employees;
- 21 (b) jointly exercised meaningful control over Plaintiffs’ 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 Plaintiffs and other non-party Aggrieved
25 Employees;
- 26 (c) jointly required that Plaintiffs and other non-party Aggrieved
27 Employees perform work which is an integral part of Defendants’
28 businesses; and

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

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

12 20. TORRID LLC; TORRID ADMINISTRATION, INC.; TORRID
13 MERCHANDISING, INC.; TORRID PARENT INC.; and/or DOES 1 through 10 are
14 therefore alter egos of each other.

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

18 22. Plaintiffs further allege, upon information and belief, that the Defendants
19 TORRID LLC; TORRID ADMINISTRATION, INC.; TORRID MERCHANDISING, INC.;
20 and TORRID PARENT INC. are alter egos of each other for the following reasons:

21 (a) On the California Secretary of State's website
22 (<https://bizfileonline.sos.ca.gov/>), TORRID LLC; TORRID
23 ADMINISTRATION, INC.; TORRID MERCHANDISING, INC.; and
24 TORRID PARENT INC. share the same principal address and mailing
25 address, "18501 E[AST] SAN JOSE AVE[NUE], CITY OF
26 INDUSTRY, CA 91748";

27 (b) On the California Secretary of State's website TORRID LLC; TORRID
28 MERCHANDISING, INC; and TORRID PARENT INC. share the same

agent for process, “CORPORATION SERVICE COMPANY WHICH WILL DO BUSINESS IN CALIFORNIA AS CSC - LAWYERS INCORPORATING SERVICE”;

(c) According to “Statement of Information” forms filed with the California Secretary of State’s website TORRID LLC; TORRID ADMINISTRATION, INC.; TORRID MERCHANDISING, INC.; and TORRID PARENT INC. share the same officers, directors, and/or managers, including, but not limited to, Elizabeth Munoz and Chinwe Abaelu; and

(d) On information and belief, TORRID LLC; TORRID ADMINISTRATION, INC.; TORRID MERCHANDISING, INC.; and TORRID PARENT INC. utilize the same standardized employment forms and issue the same employment policies.

PAGA REPRESENTATIVE ALLEGATIONS

23. Defendants operate approximately 57 stores offering plus-size clothing and accessories in California. Upon information and belief, Defendants maintain a single, centralized Human Resources (HR) department at their corporate headquarters in City of Industry, California, 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, including timekeeping policies and meal and rest period policies, to employees throughout California.

24. In particular, Plaintiffs and other non-party Aggrieved Employees, on information and belief, received the same standardized documents and/or written policies. Upon information and belief, the usage of standardized documents and/or written policies, including new-hire documents, 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.

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

10 26. Defendants continue to employ non-exempt or hourly paid employees in
11 California.

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

16 28. Plaintiffs are informed and believe, and thereon allege, that Plaintiffs and other
17 non-party Aggrieved Employees were not paid for all hours worked because all hours worked
18 were not recorded.

19 29. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
20 should have known that Plaintiffs and other non-party Aggrieved Employees were entitled to
21 receive certain wages for overtime compensation and that they were not receiving certain
22 wages for overtime compensation.

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

1 regular rate of pay for other non-party Aggrieved Employees.

2 31. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
3 should have known that Plaintiffs and other non-party Aggrieved Employees were entitled to
4 receive at least minimum wages for compensation and that they were not receiving at least
5 minimum wages for work that was required to be done off-the-clock. In violation of the
6 California Labor Code, Plaintiffs and other non-party Aggrieved Employees were not paid at
7 least minimum wages for work done off-the-clock.

8 32. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
9 should have known that Plaintiffs and other non-party Aggrieved Employees were entitled to
10 meal periods in accordance with the California Labor Code and applicable IWC Wage Order
11 or payment of one (1) additional hour of pay at their regular rates of pay when they were not
12 provided with timely, uninterrupted, thirty (30) minute meal periods and that Plaintiffs and
13 other non-party Aggrieved Employees were not provided with all meal periods or payment of
14 one (1) additional hour of pay at their regular rates of pay when they did not receive a timely,
15 uninterrupted, thirty (30) minute meal period.

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

25 34. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
26 should have known that Plaintiffs and other non-party Aggrieved Employees were entitled to
27 receive complete and accurate wage statements in accordance with California law. In
28 violation of the California Labor Code, Plaintiffs and other non-party Aggrieved Employees

1 were not provided complete and accurate wage statements.

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

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

12 37. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
13 should have known that Plaintiff Pearson and other non-party Aggrieved Employees were
14 entitled to timely payment of all wages earned upon termination of employment. In violation
15 of the California Labor Code, Plaintiff Pearson and other non-party Aggrieved Employees did
16 not receive payment of all wages due, including, but not limited to, overtime wages, minimum
17 wages, meal and rest period premiums, and/or reporting time pay, within permissible time
18 periods.

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

26 39. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
27 should have known that Plaintiff Pearson and other non-party Aggrieved Employees were
28 entitled to be paid reporting time pay when they reported to work for their usual or scheduled

1 shift but were put to work for less than half of the usual or scheduled shift. In violation of the
2 California Labor Code and applicable IWC Wage Order, Defendants did not pay Plaintiff
3 Pearson and other non-party Aggrieved Employees all reporting time pay due.

4 40. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
5 should have known that Plaintiff Pearson and other non-party Aggrieved Employees were
6 entitled to receive split shift premium pay when Defendants required Plaintiff Pearson and
7 other non-party Aggrieved Employees to return to work for an additional shift in the same
8 day, after having been clocked out for more than an hour. In violation of the California Labor
9 Code and applicable IWC Wage Order, Defendants did not pay Plaintiff Pearson and other
10 non-party Aggrieved Employees all split-shift premiums due.

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

16 42. Plaintiffs are informed and believe, and thereon allege, that at all times herein
17 mentioned, Defendants knew or should have known that Defendants had a duty to provide
18 Plaintiff Fellows and other non-party Aggrieved Employees with written notice of the material
19 terms of their employment with Defendants as required by the California Wage Theft
20 Prevention Act, but failed to do so.

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

27 44. At all times herein set forth, PAGA provides that any provision of law under
28 the Labor Code and applicable IWC Wage Order that provides for a civil penalty to be

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

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

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

11 47. Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved
12 employee, including Plaintiffs, 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 online filing
15 (hereinafter “Employee’s Notice”) to the LWDA and by certified mail
16 to the employer of the specific provisions of the California Labor Code
17 alleged to have been violated, including the facts and theories to support
18 the alleged violations.
- 19 (b) An aggrieved employee’s notice filed with the LWDA pursuant to
20 2699.3(a) and any employer response to that notice shall be
21 accompanied by a filing fee of seventy-five dollars (\$75).
- 22 (c) The LWDA shall provide notice (hereinafter “LWDA Notice”) to the
23 employer and the aggrieved employee by certified mail that it does not
24 intend to investigate the alleged violation within sixty (60) calendar
25 days of the postmark date of the Employee’s Notice. Upon receipt of
26 the LWDA Notice, or if the LWDA Notice is not provided within sixty-
27 five (65) calendar days of the postmark date of the Employee’s Notice,
28 the aggrieved employee may commence a civil action pursuant to

California Labor Code section 2699 to recover civil penalties in addition to any other penalties to which the employee may be entitled.

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

- (a) The aggrieved employee or representative shall give written notice by online filing to 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. The employer shall give written notice by certified mail within that period of time to the aggrieved employee or representative and the agency 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 employee may commence a civil action pursuant to Section 2699.

49. On October 21, 2022, Plaintiff Pearson 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 Pearson's written notice was accompanied with the applicable filing fee of seventy-five dollars (\$75). The LWDA PAGA Administrator has confirmed receipt of Plaintiff Pearson's written notice

1 and assigned Plaintiff Pearson PAGA Case Number LWDA-CM-915289-22. A true and
2 correct copy of Plaintiff Pearson's written notice to the LWDA and Defendants dated October
3 21, 2022, is attached hereto as "Exhibit 1."

4 50. On December 19, 2022, Plaintiff Fellows provided written notice by online
5 filing to the LWDA and by certified mail to Defendants of the specific provisions of the
6 California Labor Code alleged to have been violated, including facts and theories to support
7 the alleged violations, in accordance with California Labor Code section 2699.3. Plaintiff
8 Fellows's written notice was accompanied with the applicable filing fee of seventy-five
9 dollars (\$75). The LWDA PAGA Administrator has confirmed receipt of Plaintiff Fellows's
10 written notice and assigned Plaintiff Fellows PAGA Case Number LWDA-CM- 925182-22.
11 A true and correct copy of Plaintiff Fellows's written notice to the LWDA and Defendants
12 dated December 19, 2022, is attached hereto as "Exhibit 2."

13 51. As of the filing date of this amended complaint, over 65 days have passed since
14 Plaintiffs sent the written notices described above, and the LWDA has not responded that it
15 intends to investigate Plaintiffs' claims, and Defendants have not cured the violations.

16 52. Thus, Plaintiffs have satisfied the administrative prerequisites under California
17 Labor Code sections 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
18 violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516,
19 1174(d), 1182.12, 1194, 1197, 1198, 2802, and 2810.5.

20 53. Labor Code section 558(a) provides "[a]ny employer or other person acting on
21 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
22 provision regulating hours and days of work in any order of the Industrial Welfare
23 Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty
24 dollars (\$50) for each underpaid employee for each pay period for which the employee was
25 underpaid. . . . (2) For each subsequent violation, one hundred dollars (\$100) for each
26 underpaid employee for each pay period for which the employee was underpaid. . . ." Labor
27 Code section 558(c) provides "[t]he civil penalties provided for in this section are in addition
28 to any other civil or criminal penalty provided by law." Plaintiffs, acting in the public interest

1 as private attorneys general, seek assessment and collection of civil penalties under Labor
2 Code section 558 for themselves, all other non-party Aggrieved Employees, and the State of
3 California against Defendants for violations of Labor Code sections 510, 512(a), 1198, and the
4 applicable IWC Wage Order. Plaintiffs, acting in the public interest as private attorneys
5 general, do not seek the recovery of unpaid wages under Labor Code section 558 from
6 Defendants for violations of Labor Code sections 510, 512(a), 516, and 1198, and the
7 applicable IWC Wage Order.

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

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

15 56. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a),
16 2699.3(a), 2699.3(c), 2699.5, and section 558, Plaintiffs, acting in the public interest as
17 private attorneys general, seek assessment and collection of civil penalties for themselves, all
18 other non-party Aggrieved Employees, and the State of California against Defendants for
19 violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516,
20 1174(d), 1182.12, 1194, 1197, 1198, 2802, and 2810.5.

21 **FIRST CAUSE OF ACTION**

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

23 **(Against all Defendants)**

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

26 58. California Labor Code §§ 2698, *et seq.* ("PAGA") permits Plaintiffs to recover
27 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code
28 section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 204, 226(a), 226.7,

1 510, 512(a), 1174(d), 1194, 1197, 1198, and 2802. Labor Code section 2699.3(c) permits
2 aggrieved employees, including Plaintiffs, to recover civil penalties for violations of those
3 Labor Code sections not found in section 2699.5, including sections 516, 1182.12, and 2810.5.

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

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

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

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

6 (h) Violation of Labor Code section 204 for failure to pay all earned wages
7 during employment, as set forth below;

8 (i) Violation of Labor Code sections 201 and 202 for failure to pay all
9 earned wages upon termination, as set forth below;

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

13 (k) Violation of Labor Code section 1198 and the applicable IWC Wage
14 Order for failure to pay reporting time pay when Plaintiff Pearson and
15 other non-party Aggrieved Employees were put to work for less than
16 half of their usual or scheduled shifts, as set forth below;

17 (l) Violation of Labor Code section 1198 and the applicable IWC Wage
18 Order for failure to pay split-shift premiums when Plaintiff Pearson and
19 other non-party Aggrieved Employees returned to work for an
20 additional shift in the same day, after having been clocked out for more
21 than an hour, as set forth below;

22 (m) Violation of Labor Code section 2802 for failure to reimburse Plaintiffs
23 and other non-party Aggrieved Employees for all business expenses
24 necessarily incurred, as set forth below; and

25 (n) Violation of Labor Code section 2810.5(a)(1)(A)-(C) for failure to
26 provide written notice of information material to Plaintiff Fellows's and
27 other non-party Aggrieved Employees' employment with Defendants, as
28 set forth below.

1 **FAILURE TO PAY OVERTIME**

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

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

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

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

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

22 64. California Labor Code section 510 codifies the right to overtime compensation
23 at one and one-half (1 ½) times the regular rate of pay for hours worked in excess of eight (8)
24 hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the
25 seventh (7th) day of work, and to overtime compensation at twice the employee’s regular rate
26 of pay for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours
27 in a day on the seventh (7th) day of work.

28 65. During the relevant time period, Defendants willfully failed to pay all overtime

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

6 66. First, during the relevant time period, Defendants had, and continue to have a
7 company-wide policy and/or practice of requiring Plaintiffs and other non-party Aggrieved
8 Employees to perform tasks while off-the-clock, such as waiting to clock in, performing
9 closing duties, responding to phone calls from supervisors, answering work-related questions,
10 resolving any work-related issues, waiting to obtain personal belongings from storage lockers,
11 and undergoing security checks (*see infra*). For example, Plaintiff Pearson was required to
12 wait for a point of sale (“POS”) register for approximately two (2) minutes or more before
13 clocking in. As a further example, Defendants’ management instructed Plaintiff Pearson to
14 clock out and continue working, performing closing tasks, locking the gate, and throwing
15 away trash, approximately twice per week, but Defendants did not compensate her for this
16 time. Moreover, Plaintiff Pearson and other non-party Aggrieved Employees were required to
17 respond to their personal mobile devices and complete other work-related tasks on their days
18 off. For example, four (4) times per week while off-the-clock, Plaintiff Pearson was required
19 to respond to phone calls regarding scheduling and work assignments for (5) minutes or more
20 per instance; Plaintiff Fellows is required to respond to phone calls regarding inventory and
21 work assignments outside of her shifts. Other non-party Aggrieved Employees were also
22 required to drive to make deposits or pick up change at the bank, which could take
23 approximately 10 minutes and occurred twice per week. Thus, Defendants failed to track this
24 time spent working before or after scheduled shifts, and Plaintiffs and other non-party
25 Aggrieved Employees received no compensation for this time.

26 67. Second, during the relevant time period, on a company-wide basis, Defendants
27 implemented, an employer-imposed requirement that other non-party Aggrieved Employees
28 undergo mandatory COVID-19 temperature checks and/or health screenings before clocking

1 in for their scheduled shifts. Prior to each shift, other non-party Aggrieved Employees were
2 required to spend up to five (5) minutes waiting and/or undergoing the temperature check,
3 before being permitted to clock in for their shift. Even though Defendants required these
4 temperature checks and/or health screenings, Defendants did not provide other non-party
5 Aggrieved Employees with a mechanism to record this time worked so they could be
6 compensated for the time spent undergoing mandatory temperature checks and/or health
7 screenings.

8 68. Third, during the relevant time period, Defendants had a company-wide loss
9 prevention policy requiring employees to wait after clocking out at the end of a shift for
10 managers to unlock the storage locker so they could retrieve their personal belongings and
11 undergo mandatory security checks by a managerial employee before leaving the store
12 premises. Although Defendants required that Plaintiffs and other non-party Aggrieved
13 Employees undergo mandatory security checks, Defendants did not compensate them for the
14 time it took them to wait to retrieve their personal belongings and/or undergo these checks.
15 As a result of these loss prevention and security policies and/or practices, Plaintiffs and other
16 non-party Aggrieved Employees were subject to Defendants' control after their shifts, but
17 were not compensated for this time.

18 69. Fourth, on information and belief, Defendants had, and continue to have, a
19 uniform practice and/or policy of staffing their locations strictly based on the labor hours or
20 labor budget set by the corporate office. Defendants' use of a labor budget resulted in
21 understaffing, such that there were too few employees on duty to handle the heavy workloads
22 and provide meal period coverage. As a result of this lack of meal period coverage, Plaintiffs
23 and other non-party Aggrieved Employees were not always provided uninterrupted 30-minute
24 meal periods during shifts when they were entitled to receive a meal period. For example,
25 Plaintiff Pearson was sometimes forced to forgo meal periods in order to complete the tasks
26 and duties Defendants assigned to her, including completing inventory. In addition, Plaintiff
27 Pearson would have her meal periods interrupted and cut short twice per week to respond to
28 customer service issues, handle employee questions, answer the store phone line, and

1 complete work assignments. Similarly, Plaintiff Fellows has her meal periods interrupted and
2 cut short four times per week to process customer returns, address customers' and employees'
3 questions, train employees, and complete work assignments. Consequently, Plaintiffs and
4 other non-party Aggrieved Employees were required to work through and/or had their meal
5 periods interrupted in order to complete their assigned duties, time for which they were not
6 paid.

7 70. Fifth, in conjunction with understaffing their locations, Defendants have a
8 requirement that a managerial employee be present on the floor at all times and prohibits
9 managerial employees from leaving the premises unless another managerial employee is also
10 on duty, resulting in a lack of meal period coverage for managerial employees. As a result,
11 Plaintiff Fellows and other non-party Aggrieved Employees are sometimes the only
12 managerial employees on duty, and are expected to supervise the store at all times. Because
13 managerial employees have been effectively prohibited from leaving Defendants' premises for
14 meal periods without coverage, and because there are too few employees and other managerial
15 employees on duty to handle the workload and attend to customers, Plaintiff Fellows and other
16 non-party Aggrieved Employees have been denied uninterrupted 30-minute meal periods, and
17 have been required to work through and/or to return early from meal periods.

18 71. Sixth, on information and belief, because Defendants frowned upon employees
19 accruing meal period penalties, Defendants adjusted and/or automatically deducted 30-minute
20 meal periods from Plaintiff Pearson's and other non-party Aggrieved Employees' time records
21 to reflect compliant meal periods, even when they did not receive a compliant meal period, in
22 order to strictly limit meal penalties that Defendants would otherwise owe. Thus, Defendants
23 did not record all hours worked during meal periods, and Plaintiff Pearson and other non-party
24 Aggrieved Employees performed work during meal periods for which they were not paid.

25 72. Defendants knew or should have known that as a result of these company-wide
26 practices and/or policies, Plaintiffs and other non-party Aggrieved Employees were
27 performing assigned duties off-the-clock before and after their shifts and during meal periods,
28 and were suffered or permitted to perform work for which they were not paid. Because

1 Plaintiffs and other non-party Aggrieved Employees worked shifts of eight (8) hours a day or
2 more, or forty (40) hours a week or more, some of this off-the-clock work qualified for
3 overtime premium pay. Therefore, Plaintiffs and other non-party Aggrieved Employees were
4 not paid overtime wages for all of the overtime hours they actually worked.

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

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

20 **FAILURE TO PAY MINIMUM WAGES**

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

22 75. At all relevant times, California Labor Code sections 1182.12, 1194, 1197, and
23 1198 provide that the minimum wage for employees fixed by the IWC is the minimum wage
24 to be paid to employees, and the payment of a wage less than the minimum so fixed is
25 unlawful. Compensable work time is defined by the applicable wage order, IWC Wage Order
26 No. 7-2001, as "the time during which an employee is subject to the control of an employer,
27 and includes all the time the employee is suffered or permitted to work, whether or not
28 required to do so." Cal. Code Regs. tit. 8, § 11070(2)(G) (defining "Hours Worked").

1 76. First, as set forth above, Defendants required Plaintiffs and other non-party
2 Aggrieved Employees to work off-the-clock, including, but not limited to, waiting to clock in,
3 performing closing duties, responding to communications on their personal mobile devices,
4 traveling to make bank deposits or pick up change, submitting to mandatory pre-shift COVID-
5 19 temperature checks and health screenings, answering work-related questions, and/or
6 resolving any work-related issues, but were not compensated for this time. Additionally, as
7 set forth above, Plaintiffs and other non-party Aggrieved Employees were required to wait to
8 obtain personal belongings from storage lockers and/or undergo security checks while off-the-
9 clock, but Defendants did not compensate them for this time.

10 77. Second, as stated above, due to Defendants' uniform practices of utilizing labor
11 budgets, understaffing, assignment of heavy workloads, and subsequent lack of meal period
12 coverage, Plaintiffs and other non-party Aggrieved Employees were impeded from taking all
13 uninterrupted meal periods to which they were entitled and were required to work during their
14 meal periods, time for which they were not paid. As set forth above, on information and
15 belief, in order to limit meal penalties that Defendants would otherwise owe, Defendants
16 adjusted and/or automatically deducted 30-minute meal periods from Plaintiff Pearson's and
17 other non-party Aggrieved Employees' time records to reflect compliant meal periods. Thus,
18 Defendants systematically failed to pay Plaintiffs and other non-party Aggrieved Employees
19 for actual hours worked during unpaid meal periods.

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

25 79. Defendants' failure to pay Plaintiffs and other non-party Aggrieved Employees
26 minimum wages violates California Labor Code sections 1182.12, 1194, 1197, and 1198.
27 Plaintiffs and other non-party Aggrieved Employees are therefore entitled to recover civil
28 penalties pursuant to Labor Code sections 2699(a), (f), and (g).

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

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

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

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

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

84. As stated, Defendants had, and continue to have, company-wide policies and/or practices of understaffing their stores pursuant to their labor budget practices, while assigning heavy workloads and failing to schedule meal periods, resulting in a failure to provide Plaintiffs and other non-party Aggrieved Employees with adequate meal period coverage. Because Defendants understaffed their locations, there was no one available to relieve Plaintiffs and other non-party Aggrieved Employees and provide them with meal period

1 coverage. In conjunction with understaffing their locations, as stated above, Defendants have
2 a requirement that a managerial employee be present on the sales floor at all times, but
3 Defendants' labor budgets do not always allow for more than one manager to be on the
4 schedule at all times. As a result, Plaintiff Fellows and other managerial employees are
5 sometimes the only managers on duty, and would have their meal periods interrupted or would
6 work through them in order to assist their coworkers and customers.

7 85. Defendants' company-wide practices and policies prevented Plaintiffs and other
8 non-party Aggrieved Employees from taking all compliant meal periods to which they were
9 entitled. As a result, Plaintiffs and other non-party Aggrieved Employees were forced to work
10 in excess of five (5) hours before taking a meal period, had their meal periods interrupted,
11 and/or had to forgo their meal periods altogether in order to complete their assigned
12 workloads. For example, Plaintiff Pearson took her meal periods late at least four (4) times
13 per month and was sometimes forced to forego meal periods altogether to complete the tasks
14 and duties Defendants assigned to her. In addition, Plaintiff Pearson would have her meal
15 periods interrupted and cut short approximately twice a week to respond to customer service
16 issues, handle employee questions, answer the store phone line, and complete work
17 assignments. As a further example, Plaintiff Fellows consistently takes her meal periods late
18 after having worked at least five (5) hours. In addition, Plaintiff Fellows has her meal periods
19 interrupted and cut short approximately four times a week to respond to customer service
20 issues, handle employee questions, train employees, and complete work assignments.

21 86. Furthermore, as stated, on information and belief, because Defendants frowned
22 upon employees accruing meal period penalties, Defendants' management would adjust
23 Plaintiff Pearson's and other non-party Aggrieved Employees' time records to reflect
24 compliant meal periods, regardless of whether they had received a compliant meal period or
25 not, in order to strictly limit meal penalties that would need to be paid by Defendants.

26 87. Moreover, Defendants did not provide Plaintiff Fellows and other non-party
27 Aggrieved Employees with second uninterrupted 30-minute meal periods on days that they
28 worked in excess of ten (10) hours in one day. For example, Plaintiff Fellows's second meal

1 periods have been interrupted for the same reasons as her first meal periods. Plaintiffs and
2 other non-party Aggrieved Employees did not sign valid meal period waivers on days that
3 they were entitled to meal periods and were not relieved of all duties.

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

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

18 90. Thus, Defendants failed to provide Plaintiffs and other non-party Aggrieved
19 Employees compliant meal periods and failed to pay the full meal period premiums due.
20 Defendants' conduct violates the applicable IWC Wage Order, and California Labor Code
21 sections 226.7, 512(a), 516, and 1198. Plaintiffs and other non-party Aggrieved Employees
22 are therefore entitled to recover civil penalties pursuant to Labor Code sections 558 and/or
23 2699(a), (f), and (g).

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

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

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

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

7 93. At all relevant times, California Labor Code section 226.7 provides that no
8 employer shall require an employee to work during any rest period mandated by an applicable
9 order of the California IWC. To comply with its obligation to authorize and permit rest
10 periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an
11 employer must “relinquish any control over how employees spend their break time, and
12 relieve their employees of all duties—including the obligation that an employee remain on
13 call. A rest period, in short, must be a period of rest.” *Augustus v. ABM Security Services,*
14 *Inc.*, 2 Cal. 5th 257, 273 (2016).

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

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

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

8 97. Moreover, as stated, Defendants have a requirement that a managerial
9 employee be present on the sales floor at all times, but Defendants' labor budgets do not
10 always allow for more than one manager to be on the schedule at all times. As a result,
11 Plaintiff Fellows and other non-party Aggrieved Employees are sometimes the only
12 managerial employees on duty, and have their rest periods interrupted or work through them
13 in order to assist their coworkers and customers.

14 98. As a result of Defendants' practices and policies, Plaintiffs and other non-party
15 Aggrieved Employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in
16 excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they
17 were entitled. For example, due to Defendants' understaffing and assignment of heavy
18 workloads, Plaintiff Pearson missed her rest periods altogether approximately four (4) or more
19 times per week, and had her rest periods interrupted or cut short multiple times per week.
20 Instead of authorizing and permitting Plaintiff Pearson to take all rest periods she was entitled
21 to, Defendants required Plaintiff Pearson to spend that time resolving customer service issues
22 and/or responding to calls on the store phone line. As a further example, Plaintiff Fellows has
23 missed her rest periods altogether approximately three (3) times per week, and has had her rest
24 periods interrupted or cut short multiple times per week.

25 99. Defendants also have engaged in a company-wide practice and/or policy of not
26 paying all rest period premiums owed when compliant rest periods are not authorized and
27 permitted. Because of this practice and/or policy, Plaintiffs and other non-party Aggrieved
28 Employees have not received premium pay for all missed rest periods. Alternatively, to the

1 extent that Defendants did pay other non-party Aggrieved Employees one (1) additional hour
2 of premium pay for missed rest periods, Defendants did not pay other non-party Aggrieved
3 Employees at the correct rate of pay for premiums because Defendants failed to include all
4 forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms
5 of remuneration, in the regular rate of pay.

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

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

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

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

26 103. Because Defendants did not record the time Plaintiffs and other non-party
27 Aggrieved Employees spent working off-the-clock and deducted time from their records for
28 meal periods that were interrupted and/or missed (and therefore time for which they should

1 have been paid), Defendants did not list the correct amount of gross wages and net wages
2 earned by Plaintiffs and other non-party Aggrieved Employees in compliance with section
3 226(a)(1) and section 226(a)(5), respectively. For the same reason, Defendants failed to
4 accurately list the total number of hours worked by Plaintiffs and other non-party Aggrieved
5 Employees, in violation of section 226(a)(2), and failed to list the applicable hourly rates of
6 pay in effect during the pay period and the corresponding accurate number of hours worked at
7 each hourly rate, in violation of section 226(a)(9).

8 104. Also, because Defendants did not calculate other non-party Aggrieved
9 Employees' regular rate of pay correctly for purposes of paying overtime wages and/or meal
10 and rest period premiums, Defendants did not list the correct amount of gross wages in
11 compliance with section 226(a)(1). For the same reason, Defendants also failed to list the
12 correct amount of net wages in violation of section 226(a)(5). Defendants also failed to
13 correctly list all applicable hourly rates in effect during the pay period, namely, correct
14 overtime rates of pay, in violation of section 226(a)(9).

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

23 106. California Labor Code section 1174(d) provides that “[e]very person employing
24 labor in this state shall . . . [k]eep a record showing the names and addresses of all employees
25 employed and the ages of all minors” and “[k]eep, at a central location in the state or at the
26 plants or establishments at which employees are employed, payroll records showing the hours
27 worked daily by and the wages paid to, and the number of piece-rate units earned by and any
28 applicable piece rate paid to, employees employed at the respective plants or

1 establishments. . . .” Labor Code section 1174.5 provides that employers are subject to a \$500
2 civil penalty if they fail to maintain accurate and complete records as required by section
3 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d),
4 Defendants willfully failed to maintain accurate payroll records for Plaintiffs and other non-
5 party Aggrieved Employees showing the daily hours they worked and the wages paid thereto
6 as a result of failing to record the off-the-clock hours that they worked.

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

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

25 **FAILURE TO PAY WAGES DURING EMPLOYMENT**

26 **VIOLATION OF LABOR CODE SECTION 204**

27 109. At all relevant times herein set forth, California Labor Code section 204
28 requires that all wages earned by any person in any employment between the 1st and the 15th

1 days, inclusive, of any calendar month, other than those wages due upon termination of an
2 employee, are due and payable between the 16th and the 26th day of the month during which
3 the labor was performed. Labor Code section 204 further provides that all wages earned by
4 any person in any employment between the 16th and the last day, inclusive, of any calendar
5 month, other than those wages due upon termination of an employee, are due and payable
6 between the 1st and the 10th day of the following month.

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

13 111. During the relevant time period, Defendants willfully failed to pay Plaintiffs
14 and other non-party Aggrieved Employees all wages due to them within any time period
15 specified by California Labor Code section 204 including, but not limited to, overtime wages,
16 minimum wages, meal and rest period premiums, and/or reporting time pay.

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

19 **FAILURE TO PAY WAGES UPON TERMINATION**

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

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

28 114. Defendants willfully failed to pay Plaintiff Pearson and other non-party

1 Aggrieved Employees who are no longer employed by Defendants the earned and unpaid
2 wages set forth above, including but not limited to, overtime wages, minimum wages, meal
3 and rest period premiums, and/or reporting time pay, either at the time of discharge, or within
4 seventy-two (72) hours of their leaving Defendants' employ.

5 115. Defendants' failure to pay Plaintiff Pearson and those non-party Aggrieved
6 Employees who are no longer employed by Defendants their wages earned and unpaid at the
7 time of discharge, or within seventy-two (72) hours of their leaving Defendants' employ,
8 violates Labor Code sections 201 and 202. Plaintiff Pearson and other non-party Aggrieved
9 Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections
10 256 and/or 2699(a), (f), and (g).

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

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

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

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

1 and forced Plaintiffs and other non-party Aggrieved Employees to stand throughout the day.

2 119. Plaintiffs and other non-party Aggrieved Employees spent a substantial portion
3 of their day behind or at these cash wraps or workstations. The nature of the work of an
4 employee performing cashier and merchandising duties can reasonably be accomplished from
5 a seated position. However, Defendants systematically, and on a company-wide basis, do not
6 provide seats or stools at or near the cash wraps or other workstations, forcing Plaintiffs and
7 other non-party Aggrieved Employees to stand throughout their work shifts.

8 120. Defendants violated California Labor Code section 1198 and California Code
9 of Regulations, Title 8, section 11070(14)(A), because Plaintiffs and other non-party
10 Aggrieved Employees were not allowed to sit, even when the nature of their work would
11 reasonably permit the use of seats, nor were they provided with suitable seats. Defendants'
12 management did not inform Plaintiffs and other non-party Aggrieved Employees that they
13 were allowed to sit down, provide any means for them to sit down, or mention any policy
14 regarding sitting.

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

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

23 **FAILURE TO PROVIDE SUITABLE SEATING**

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

26 123. At all relevant times herein, California Labor Code section 1198 makes it
27 illegal to employ an employee under conditions of labor that are prohibited by the applicable
28 IWC Wage Order. California Labor Code section 1198 requires that “. . . the standard

1 conditions of labor fixed by the commission shall be the . . . standard conditions of labor for
2 employees. The employment of any employee . . . under conditions of labor prohibited by the
3 order is unlawful.”

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

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

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

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

1 Employees of their rights to a seat or stool under California law.

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

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

11 **FAILURE TO PAY REPORTING TIME PAY**

12 **VIOLATION OF LABOR CODE SECTION 1198**

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

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

28 132. During the relevant time period, Defendants violated California Labor Code

1 section 1198 and California Code of Regulations, Title 8, section 11070(5)(A), because
2 Defendants failed to pay Plaintiff Pearson and other non-party Aggrieved Employees
3 reporting time pay when they reported to work for their usual or scheduled shift but were put
4 to work for less than half of the usual or scheduled day's work.

5 133. Defendants had a company-wide practice of sending Plaintiff Pearson and other
6 non-party Aggrieved Employees home early from their shifts, including before they had
7 worked at least half of their usual or scheduled shift, but would not pay Plaintiff Pearson and
8 other non-party Aggrieved Employees for half of their usual or scheduled shift. For example,
9 on two occasions when Plaintiff Pearson reported to work for her scheduled shift, Defendants'
10 management sent her home within the first hour of clocking in because business was slow or
11 to limit overtime accrual. On information and belief, when this would occur, Defendants did
12 not pay Plaintiff Pearson and other non-party Aggrieved Employees for at least half of their
13 scheduled day's work or the minimum reporting time pay when they were subject to work for
14 less than half of their usual or scheduled shift.

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

20 **FAILURE TO PAY SPLIT-SHIFT PAY**

21 **VIOLATION OF LABOR CODE SECTION 1198**

22 135. California Labor Code section 1198 provides that no employer may employ an
23 employee under conditions of labor that are prohibited by the applicable IWC wage order.
24 California Labor Code section 1198 further requires that “. . . the standard conditions of labor
25 fixed by the commission shall be the . . . standard conditions of labor for employees. The
26 employment of any employee . . . under conditions of labor prohibited by the order is
27 unlawful.”

28 136. California Code of Regulations, Title 8, section 11070(4)(C) provides that,

1 “When an employee works a split shift, one (1) hour’s pay at the minimum wage shall be paid
2 in addition to the minimum wage for that workday, except when the employee resides at the
3 place of employment.” California Code of Regulations, Title 8, defines a split shift as “a
4 work schedule, which is interrupted by non-paid non-working periods established by the
5 employer, other than bona fide rest or meal periods.”

6 137. Defendants willfully violated California Labor Code section 1198 and
7 California Code of Regulations, Title 8, section 11070(4)(C), because Defendants failed to
8 pay Plaintiff Pearson and other non-party Aggrieved Employees a split-shift premium when
9 they returned to work for an additional shift in the same day, after having been clocked out for
10 several hours. For example, Defendants scheduled Plaintiff Pearson for an early morning shift
11 to perform inventory and then also scheduled her to work a closing shift in the evening, with
12 more than six (6) hours in between each shift. When this occurred, Defendants did not always
13 pay Plaintiff Pearson and other non-party Aggrieved Employees an additional hour at
14 minimum wage.

15 138. Defendants’ failure to provide Plaintiff Pearson and other non-party Aggrieved
16 Employees with split-shift pay when they returned to work for an additional shift in the same
17 day, after having been clocked out for more than an hour, violates California Labor Code
18 section 1198 and California Code of Regulations Title 8, Section 11070(4)(C). Plaintiff
19 Pearson and other non-party Aggrieved Employees are therefore entitled to recover civil
20 penalties pursuant to Labor Code sections 2699(a), (f), and (g).

21 **FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES**

22 **VIOLATION OF LABOR CODE SECTION 2802**

23 139. At all times herein set forth, California Labor Code section 2802 provides that
24 an employer must reimburse employees for all necessary expenditures and losses incurred by
25 the employee in the performance of his or her job. The purpose of Labor Code section 2802 is
26 to prevent employers from passing off their cost of doing business and operating expenses on
27 to their employees. *Cochran v. Schwan’s Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144
28 (2014). The applicable wage order, IWC Wage Order No. 7-2001, provides that: “[w]hen the

1 employer requires the use of tools or equipment or they are necessary to the performance of a
2 job, such tools and equipment shall be provided and maintained by the employer, except that
3 an employee whose wages are at least two (2) times the minimum wage may provide and
4 maintain hand tools and equipment customarily required by the particular trade or craft.”

5 140. During the relevant time period, Defendants, on a company-wide basis,
6 required Plaintiffs and other non-party Aggrieved Employees to use their own personal mobile
7 devices, including, but not limited to cellular phones, and/or mobile data to carry out their job
8 duties, but failed to reimburse them for the cost of their work-related mobile device expenses.
9 Plaintiffs and other non-party Aggrieved Employees were required to use their personal
10 mobile devices for work-related tasks, including responding to calls or text messages from
11 Defendants’ management. Although Defendants required Plaintiffs and other non-party
12 Aggrieved Employees to utilize their personal mobile devices and/or mobile data to carry out
13 their work-related responsibilities, Defendants failed to reimburse them for these costs.

14 141. Additionally, Defendants had a company-wide policy of requiring other non-
15 party Aggrieved Employees to utilize their own personal vehicles or obtain alternate
16 transportation to carry out company business, but failed to reimburse them for all costs of
17 travel, including mileage. For example, other non-party Aggrieved Employees were required
18 to drive to nearby banks to make deposits or pick up change for POS registers. Although
19 Defendants required other non-party Aggrieved Employees to utilize their own vehicles or
20 obtain alternate transportation to carry out their work-related responsibilities, Defendants did
21 not reimburse them for their travel expenses.

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

28 143. Defendants’ company-wide policy and/or practice of not reimbursing

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

5 **FAILURE TO PROVIDE WRITTEN NOTICE OF MATERIAL TERMS OF**
6 **EMPLOYMENT**

7 **VIOLATION OF LABOR CODE SECTION 2810.5(a)(1)(A)-(C)**

8 144. California's Wage Theft Prevention Act was enacted to ensure that employers
9 provide employees with basic information material to their employment relationship at the
10 time of hiring, and to ensure that employees are given written and timely notice of any
11 changes to basic information material to their employment. Codified at California Labor
12 Code section 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an
13 employer must provide written notice to employees containing basic and material payroll
14 information, including, among other things, the rate(s) of pay and basis thereof, whether paid
15 by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for
16 overtime, the regular payday designated by the employer, and any allowances claims as part
17 of the minimum wage, including meal or lodging allowances. Labor Code § 2810.5(a)(1)(A)-
18 (C).

19 145. At all relevant times, on information and belief, Defendants failed, on a
20 company-wide basis, to provide written notice to Plaintiff Fellows and other non-party
21 Aggrieved Employees that lists the requisite information set forth in Labor Code section
22 2810.5(a)(1)(A)-(C).

23 146. Defendants' failure to provide Plaintiff Fellows and other non-party Aggrieved
24 Employees with written notice of basic information regarding their employment with
25 Defendants is in violation of California Labor Code section 2810.5. Plaintiff Fellows and
26 other non-party Aggrieved Employees are therefore entitled to recover civil penalties pursuant
27 to Labor Code sections 2699(a), (f), and (g).

28 //

1 **REQUEST FOR JURY TRIAL**

2 Plaintiffs request a trial by jury.

3 **PRAYER FOR RELIEF**

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

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

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

10 2. That the Court declare, adjudge and decree that Defendants violated the
11 following California Labor Code provisions as to Plaintiffs and/or other non-party Aggrieved
12 Employees: 510 and 1198 (by failing to pay all overtime compensation); 226.7, 510, and 1198
13 (by failing to include all forms of remuneration in the "regular rate" of pay for purposes of
14 paying overtime wages and/or meal and rest period premiums); 1182.12, 1194, 1197, and
15 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512(a), 516, and
16 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize and
17 permit all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage
18 statements and maintain accurate payroll records); 201 and 202 (by failing to timely pay all
19 earned wages upon termination); 204 (by failing to timely pay all earned wages during
20 employment); 1198 and the applicable IWC Wage Order (by failing to provide suitable
21 seating); 1198 and the applicable IWC Wage Order (by failing to provide reporting time pay);
22 1198 and the applicable IWC Wage Order (by failing to provide split-shift pay); 2802 (by
23 failing to reimburse business expenses); and 2810.5 (by failing to provide written notice of
24 information material to employment).

25 3. For civil penalties, pursuant to California Labor Code sections 210, 226.3, 256,
26 558, 1174.5, 2699(a), (f), and (g), for violations of California Labor Code sections 201, 202,
27 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198, 2802, and 2810.5;

28 4. For attorneys' fees and costs pursuant to California Labor Code section

1 2699(g)(1), and any and all other relevant statutes, for Defendants' violations of California
2 Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194,
3 1197, 1198, 2802, and 2810.5;

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

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

7
8 Dated: February 24, 2023

Respectfully submitted,

9 Capstone Law APC

10
11 By: 

12 Robert Drexler

Molly DeSario

13 Jonathan Lee

14 Attorneys for Plaintiffs Sidnei Pearson and
15 Marissa Fellows
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EXHIBIT “1”



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JEZZETTE RON
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October 21, 2022

VIA ONLINE SUBMISSION

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

Subject: *Sidnei Pearson v. Torrid LLC, et al.*

Dear PAGA Administrator:

This office represents Sidnei Pearson in connection with her claims under the California Labor Code. Ms. Pearson was an employee of TORRID LLC; TORRID ADMINISTRATION, INC.; TORRID MERCHANDISING, INC.; and/or TORRID PARENT, INC. For the purpose of this letter, Ms. Pearson collectively refers to these entities as "TORRID."

The employers may be contacted directly at the addresses below:

TORRID LLC
18501 EAST SAN JOSE AVENUE
CITY OF INDUSTRY, CA 91748

TORRID ADMINISTRATION, INC.
18501 EAST SAN JOSE AVE
CITY OF INDUSTRY, CA 91748

TORRID MERCHANDISING, INC.
18501 EAST SAN JOSE AVE
CITY OF INDUSTRY, CA 91748

TORRID PARENT INC.
18501 EAST SAN JOSE AVE
CITY OF INDUSTRY, CA 91748

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

TORRID employed Ms. Pearson as a non-exempt, hourly paid Sales Associate from approximately June 2019 to February 2022. Ms. Pearson worked for TORRID at its retail store located in Visalia, California. She typically worked four (4) to eight (8) hours per day and four (4) days per week. At the time her employment ended, Ms. Pearson was compensated approximately \$15.00 per hour. Her job duties included, without limitation, cashiering, providing customer service, maintaining the sales floor, and conducting inventory.

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

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

TORRID LLC is a California limited liability corporation. TORRID PARENT INC. is a Delaware corporation. TORRID ADMINISTRATION, INC. and TORRID MERCHANDISING, INC. are California corporations. Together, they operate at least 57 stores offering plus-size clothing and accessories in California. Upon information and belief, TORRID maintains a single, centralized Human Resources (HR) department at its corporate headquarters in City of Industry, California, for all non-exempt, hourly paid employees working for TORRID in California, including Ms. Pearson and other aggrieved employees. At all relevant times, TORRID issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Ms. Pearson and other aggrieved employees, regardless of their location or position.

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

Violation of California Labor Code §§ 510 and 1198 – Unpaid Overtime

California Labor Code sections 510 and 1198 and the applicable Industrial Welfare Commission (“IWC”) Wage Order require employers to pay employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek at the rate of time-and-one-half (1 ½) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek. The applicable IWC Wage Order further provides that employers are required to pay employees working more than twelve (12) hours in a day overtime compensation at a rate of two (2) times their regular rate of pay. An employee’s regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

TORRID willfully failed to pay all overtime wages owed to Ms. Pearson and other aggrieved employees. During the relevant time period, Ms. Pearson and other aggrieved employees were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in

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

excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they worked were not recorded.

First, during the relevant time period, TORRID had a company-wide policy and/or practice of requiring Ms. Pearson and other aggrieved employees to perform tasks off-the-clock, such as waiting to clock in, performing closing duties, and responding to phone calls from supervisors. For example, Ms. Pearson was required to wait for a point of sale (“POS”) register approximately two (2) minutes or more before clocking in. As a further example, TORRID’s management instructed Ms. Pearson to clock out and continue working, performing closing tasks, locking the gate, and throwing away trash approximately twice per week, but TORRID did not compensate her for this time. Moreover, Ms. Pearson and other aggrieved employees were required to respond to their personal mobile devices and complete other work-related tasks on their days off. For example, four (4) times per week while off-the-clock, Ms. Pearson was required to respond to phone calls regarding scheduling and work assignments for (5) minutes or more per instance. Other aggrieved employees were also required to drive to make deposits or pick up change at the bank, which could take approximately 10 minutes and occurred twice per week. Thus, TORRID failed to track this time spent working before or after scheduled shifts, and Ms. Pearson and other aggrieved employees received no compensation for this time.

Second, during the relevant period, TORRID implemented, on a company-wide basis, an employer-imposed requirement that other aggrieved employees undergo mandatory COVID-19 temperature checks and/or health screenings before clocking in for their scheduled shifts. Prior to each shift, other aggrieved employees were required to spend up to five (5) minutes waiting and/or undergoing the temperature check, before being permitted to clock in for their shift. Even though TORRID required these temperature checks and/or health screenings, TORRID did not provide other aggrieved employees with a mechanism to record this time worked so they could be compensated for the time spent undergoing mandatory temperature checks and/or health screenings.

Third, during the relevant period, TORRID had a company-wide loss prevention policy requiring employees to undergo mandatory security checks by a managerial employee before leaving the store premises after clocking out at the end of a shift. Although TORRID required that Ms. Pearson and other aggrieved employees undergo mandatory security checks, TORRID did not compensate them for the time it took them to wait and undergo these checks. As a result of these loss prevention and security policies and/or practices, Ms. Pearson and other aggrieved employees were subject to TORRID’s control after their shifts, but were not compensated for this time.

Fourth, TORRID had, and continues to have, a uniform practice and/or policy of staffing its locations strictly based on the labor hours or labor budget set by the corporate office. TORRID’s use of labor budget resulted in understaffing, such that there were too few employees on duty to handle the heavy workloads and provide meal period coverage. As a result of this lack of meal period coverage, Ms. Pearson and other aggrieved employees were not always provided uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period. For example, Ms. Pearson was sometimes forced to forgo meal periods in order to complete the tasks and duties TORRID assigned to her, including completing inventory. In addition, Ms. Pearson would have her meal periods interrupted and cut short twice per week to respond to customer service issues, handle employee questions, answer the store phone line, and complete work assignments. Consequently, Ms. Pearson and other aggrieved employees were required to work through and/or had their unpaid meal periods interrupted in order to complete their assigned duties, time for which they were not paid.

Fifth, on information and belief, because TORRID frowned upon employees accruing meal period penalties, TORRID adjusted and/or automatically deducted 30-minute meal periods from Ms. Pearson's and other aggrieved employees' time records to reflect compliant meal periods, even when they did not receive a compliant meal period, in order to strictly limit meal penalties that TORRID would otherwise owe. Thus, Ms. Pearson and other aggrieved employees performed work during meal periods for which they were not paid. Thus, TORRID did not record all hours worked during meal periods, and Ms. Pearson and other aggrieved employees performed work during meal periods for which they were not paid.

TORRID knew or should have known that, as a result of these company-wide practices and/or policies, Ms. Pearson and other aggrieved employees were performing their assigned duties off-the-clock before and after their shifts and during meal periods, and were suffered or permitted to perform work for which they were not paid. Because Ms. Pearson and other aggrieved employees worked shifts of eight (8) hours a day or more, or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium pay.

Furthermore, TORRID did not pay other aggrieved employees the correct overtime rates for the recorded overtime hours that they generated. In addition to an hourly wage, TORRID paid other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, TORRID failed to incorporate all remunerations, including incentive pay and/or nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rates. Therefore, during times when other aggrieved employees worked overtime and received these other forms of pay, TORRID failed to pay all overtime wages by paying a lower overtime rate than required.

TORRID's failure to pay Ms. Pearson and other aggrieved employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198. Ms. Pearson and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

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

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

As stated above, TORRID required Ms. Pearson and other aggrieved employees to work off-the-clock, including, but not limited to, waiting to clock in, performing closing duties, responding to communications on their personal mobile devices, traveling to make bank deposits or pick up change, and/or submitting to mandatory pre-shift COVID-19 temperature checks and health screenings, but were not compensated for this time. Additionally, as set forth above, Ms. Pearson and other employees were required to wait and undergo security checks while off-the-clock, but TORRID did not compensate them for this time.

Moreover, as stated above, due to TORRID's uniform practices of utilizing labor budgets, understaffing, assignment of heavy workloads, and subsequent lack of meal period coverage, Ms. Pearson and other aggrieved employees were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work during their meal periods, time for which they were not paid. As set forth above, on information and belief, in order to limit meal penalties that TORRID would otherwise owe, TORRID adjusted and/or automatically deducted 30-minute meal periods from Ms. Pearson's and other aggrieved employee's time records to reflect compliant meal periods. As set forth above, on information and belief, TORRID systematically failed to pay Ms. Pearson and other aggrieved employees for actual hours worked during unpaid meal periods.

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

Accordingly, TORRID regularly failed to pay at least minimum wages to Ms. Pearson and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Ms. Pearson and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f)-(g).

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

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

As stated, TORRID had, and continues to have, a company-wide policy and/or practice of understaffing its stores pursuant to its labor budget practices, while assigning heavy workloads, resulting in a failure to provide Ms. Pearson and other aggrieved employees with adequate meal period coverage. Because TORRID understaffed its locations, there was no one available to relieve Ms. Pearson and other aggrieved employees and provide them with meal period coverage.

TORRID's company-wide practices and policies prevented Ms. Pearson and other aggrieved employees from taking all compliant meal periods to which they were entitled. As a result, Ms. Pearson and other aggrieved employees were forced to work in excess of five (5) hours before taking a meal period, had their meal periods interrupted, and/or had to forgo their meal periods altogether in

order to complete their assigned workloads. For example, Ms. Pearson took her meal periods late at least four (4) times per month and was sometimes forced to forego meal periods altogether to complete the tasks and duties TORRID assigned to her. In addition, Ms. Pearson would have her meal periods interrupted and cut short approximately twice a week to respond to customer service issues, handle employee questions, answer the store phone line, and complete work assignments.

Furthermore, as stated, on information and belief, because TORRID frowned upon employees accruing meal period penalties, TORRID's management would adjust Ms. Pearson's and other aggrieved employees' time records to reflect compliant meal periods, regardless of whether they had received a compliant meal period or not, in order to strictly limit meal penalties that would need to be paid by TORRID.

Moreover, TORRID did not provide other aggrieved employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. Ms. Pearson and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

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

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

Accordingly, TORRID failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Ms. Pearson and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 516, and 1198 – Failure to Authorize and Permit Rest Periods

California Labor Code sections 226.7, 516, and 1198 and the applicable IWC Wage Order require employers to provide rest periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. The applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the total daily work time is less than three and one-half (3 ½) hours.

To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must “relinquish any control over how employees spend their break time, and relieve their employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest.” *Augustus, et al. v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 269-270 (2016).

During the relevant time period, TORRID regularly failed to authorize and permit Ms. Pearson and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, TORRID’s company-wide policies and/or practices of understaffing and assignment of heavy workloads prevented Ms. Pearson and other aggrieved employees from being relieved of all duty in order to take their rest periods. TORRID also failed to schedule rest periods, which, coupled with TORRID’s failure to provide adequate rest period coverage, further led to Ms. Pearson and other aggrieved employees not being authorized and permitted to take compliant rest periods. Moreover, Ms. Pearson and other aggrieved employees were expected to respond to the store phone line during rest periods.

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

As a result of TORRID’s practices and policies, Ms. Pearson and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled. For example, due to TORRID’s understaffing and assignment of heavy workloads, Ms. Pearson missed her rest periods altogether approximately four (4) or more times per week, and had her rest periods interrupted or cut short multiple times per week. Instead of TORRID authorizing and permitting Ms. Pearson to take all rest periods she was entitled to, TORRID required Ms. Pearson to spend that time resolving customer service issues and/or responding to calls on the store phone line.

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

Accordingly, TORRID failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Ms. Pearson and other aggrieved employees are entitled to civil penalties, attorney’s fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226(a), 1174(d), and 1198 – Non-Compliant Wage Statements and Failure to Maintain Accurate Payroll Records

California Labor Code section 226(a) requires employers to make, keep and provide true, accurate, and complete employment records. TORRID has not provided Ms. Pearson and other aggrieved employees with properly itemized wage statements. Labor Code section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wage statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or \$50 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not to exceed \$4,000. Further, Labor Code section 226.3 provides that any employer who violates section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

During the relevant time period, TORRID has knowingly and intentionally provided Ms. Pearson and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, TORRID issued uniform wage statements to Ms. Pearson and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all applicable hourly rates in effect during the pay period, including rates of pay for overtime wages and/or meal and rest period premiums, and the corresponding number of hours worked at each hourly rate. Specifically, TORRID violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

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

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

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

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

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

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

Ms. Pearson and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f)-(g).

Violation of California Labor Code § 204 – Failure to Timely Pay Wages During Employment

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, California Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

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

Ms. Pearson and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 210 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 201 and 202 – Failure to Timely Pay Final Wages Upon Termination

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

TORRID willfully failed to pay Ms. Pearson and other aggrieved employees who are no longer employed by TORRID all their earned wages, including, but not limited to, overtime wages, minimum wages, and/or meal and rest period premiums, either at the time of discharge, or within seventy-two (72) hours of their leaving TORRID's employ.

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

Violation of California Labor Code § 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.*

TORRID's California stores are generally similar in their layout and design and there was, and continues to be, space behind cash wraps and other workstations to allow for the presence and use of a seat or stool by Ms. Pearson and other aggrieved employees (with reasonable or no modification to these work areas) during the performance of their work duties. TORRID could have provided Ms. Pearson and other aggrieved employees with a seat or stool at its cash wraps and other workstations, but instead denied, and continues to deny, employees seating, forcing them to stand throughout the day.

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

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

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

Ms. Pearson and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, and seek injunctive relief to bring TORRID 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 subdivision (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.” 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.*

TORRID’s California stores are generally similar in their layout and design and there was, and continues to be, space near their work areas (with reasonable or no modification to these work areas) to allow for the presence and use of a seat or stool by Ms. Pearson and other aggrieved employees during lulls in operation. TORRID could have provided Ms. Pearson and other aggrieved employees with a seat or stool in its work areas, but instead denied, and continues to deny, employees seating, forcing them to stand throughout the day.

TORRID did not provide Ms. Pearson and other aggrieved employees with seats or stools in reasonable proximity to their work areas to allow them to use seats when it would not interfere with the performance of their duties for times when they were not engaged in active duties that require standing. In other words, to the extent Ms. Pearson and other aggrieved employees engaged in duties in which the nature of the work required standing, TORRID denied them the use of seats nearby during lulls in their work duties. Moreover, TORRID did not inform Ms. Pearson and other aggrieved employees of their rights to a seat or stool under California law.

As a result of TORRID’s company-wide policy and/or practice of prohibiting employees from sitting at any time, even when they were not engaged in active duties requiring standing, and company-wide failure to provide seats in reasonable proximity to their work areas, Ms. Pearson and other aggrieved employees were forced to stand during shifts and denied seats. TORRID’s failure to provide suitable seating to Ms. Pearson and other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order No. 7-2001, subdivision 14(B).

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

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11070 Subdivision 5(A) – Failure to Pay Reporting Time Pay

California Labor Code section 1198 dictates that no employer may employ an employee under conditions of labor that are prohibited by the applicable IWC wage order. California Labor Code section 1198 further requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.”

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

During the relevant time period, TORRID violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11070(5)(A), because TORRID failed to pay Ms. Pearson and other aggrieved employees reporting time pay when they reported to work for their scheduled shift, but were put to work for less than half of the usual or scheduled day's work. TORRID had a company-wide practice of sending Ms. Pearson and other aggrieved employees home early from their shifts, including before they had worked at least half of their usual or scheduled shift, but would not pay Ms. Pearson and other aggrieved employees for half of their usual or scheduled shift. For example, on two occasions when Ms. Pearson reported to work for her scheduled shift, TORRID's management sent her home within the first hour of clocking in because business was slow or to limit overtime accrual. On information and belief, when this would occur, TORRID did not pay Ms. Pearson and other aggrieved employees for at least half of their scheduled day's work or the minimum reporting time pay when they were subject to work for less than half of their usual or scheduled shift.

Accordingly, Ms. Pearson and other aggrieved employees were not properly compensated with reporting time pay in violation of California Labor Code section 1198 and California Code of Regulations, Title 8, section 11070(5)(A). Ms. Pearson and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11070 Subdivision 4(C) – Failure to Pay Split-Shift Premiums

California Labor Code section 1198 provides that no employer may employ an employee under conditions of labor that are prohibited by the applicable IWC wage order. California Labor Code section 1198 further requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.”

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

TORRID willfully violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11070(4)(C), because TORRID failed to pay Ms. Pearson and other aggrieved employees a split-shift premium when they returned to work for an additional shift in the same day, after having been clocked out for several hours. For example, TORRID scheduled Ms. Pearson for an early morning shift to perform inventory and then also scheduled her to work a closing shift in the evening, with more than six (6) hours in between each shift. When this occurred, TORRID did not always pay Ms. Pearson and other aggrieved employees an additional hour at minimum wage. Accordingly, TORRID required Ms. Pearson and other aggrieved employees to work split shifts but failed to pay them an additional hour at minimum wage, in violation of California Labor Code section 1198.

TORRID's failure to provide Ms. Pearson and other aggrieved employees with split-shift pay when they returned to work for an additional shift in the same day, after having been clocked out for several hours, violates California Labor Code section 1198 and California Code of Regulations Title

8, Section 11070(4)(C). Ms. Pearson and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

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

During the relevant time period, TORRID, on a company-wide basis, required Ms. Pearson and other aggrieved employees to use their own personal mobile devices, including, but not limited to cellular phones, and/or mobile data to carry out their job duties, but failed to reimburse them for the cost of their work-related mobile device expenses. Ms. Pearson and other aggrieved employees were required to use their personal mobile devices for work-related tasks, including responding to calls or text messages from TORRID's management. Although TORRID required Ms. Pearson and other aggrieved employees to utilize their personal mobile devices and/or mobile data to carry out their work-related responsibilities, TORRID failed to reimburse them for these costs.

Additionally, TORRID had a company-wide policy of requiring other aggrieved employees to utilize their own personal vehicles or obtain alternate transportation to carry out company business, but failed to reimburse them for all costs of travel, including mileage. For example, other aggrieved employees were required to drive to nearby banks to make deposits or pick up change for POS registers. Although TORRID required other aggrieved employees to utilize their own vehicles or obtain alternate transportation to carry out their work-related responsibilities, TORRID did not reimburse them for their travel expenses.

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

Thus, TORRID had, and continues to have, a company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred in violation of California Labor Code section 2802. Ms. Pearson and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

California Labor Code § 558(a)

California Labor Code section 558(a) provides "[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid

employee for each pay period for which the employee was underpaid. . . . (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid. . . .” Labor Code section 558(c) provides that “[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law.” TORRID, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Ms. Pearson’s and other aggrieved employees’ rights by violating various sections of the California Labor Code.

Accordingly, Ms. Pearson seeks the remedies set forth in Labor Code section 558 for herself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 1194.5, 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Ms. Pearson, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties and injunctive relief for herself, all other aggrieved employees, and the State of California against TORRID for violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

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

Pre-Litigation Demand

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

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

1. TORRID shall pay Ms. Pearson and all other aggrieved employees employed by TORRID at any time during the past three years from the date of this notice unpaid wages and compensation for the above-referenced violations.
2. TORRID shall comply with all California labor laws and ensure that its non-exempt employees are paid overtime wages and minimum wages for all hours worked, provided lawful meal and rest periods, and paid reporting time pay.
3. TORRID shall conduct a survey or interview all current and former aggrieved employees in California who worked for TORRID in the past three years to obtain information from them regarding the above-referenced violations, including, but not limited to: the number of meal periods which were not provided; the number of rest periods which were not authorized and permitted; and the number of employees who were required to pay for mobile device expenses, mileage or travel expenses, or other expenditures in the discharge of their duties, with the investigation to be completed within 60 days.
4. TORRID shall pay each aggrieved employee one hour of pay at his or her regular rate of pay for each work day he or she was not provided one or more meal periods, as required by Labor Code sections 226.7, 512(a), 516, and 1198. TORRID also shall pay each aggrieved employee one hour of pay at his or her regular rate of pay for each work day he or she was

not authorized and permitted one or more rest periods, as required by Labor Code sections 226.7, 516, and 1198.

5. TORRID shall reimburse those aggrieved employees who were required to pay for any business expenses incurred for TORRID's benefit, including, but not limited to, travel expenses, mileage, and costs of mobile device expenses, as required by Labor Code section 2802.
6. TORRID shall pay accrued legal interest to all aggrieved employees at the rate of 10% per annum for said unpaid wages.
7. TORRID shall provide Ms. Pearson and all aggrieved employees employed by TORRID at any time during the past three years from the date of this notice corrected wage statements that include the requisite information set forth in Labor Code section 226(a).
8. TORRID shall pay waiting time penalties, equal to 30 days of pay, to each former aggrieved employee who was not paid all wages due as described herein.
9. TORRID shall implement and provide suitable seating to all aggrieved employees.
10. TORRID shall pay all penalties arising from the violations of the Labor Code and IWC Wage Order sections referenced above and pursuant to PAGA, Labor Code sections 2698, *et seq.*, including, but not limited to, penalties under Labor Code sections 210, 226.3, 256, 558, 1174.5, 1197.1, and 2699, and Wage Order No. 7-2001, section 20.

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

Jezzette Ron
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, CA 90067
(310) 929-5455

Best Regards,

A handwritten signature in dark ink, appearing to read "J. Ron". The signature is stylized with a large, looped "J" and a cursive "Ron".

Jezzette Ron

Copy: TORRID LLC (via U.S. Certified Mail); TORRID ADMINISTRATION, INC. (via U.S. Certified Mail); TORRID MERCHANDISING, INC. (via U.S. Certified Mail); TORRID PARENT INC. (via U.S. Certified Mail)

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



7022 2410 0000 2406 3461

TORRID LLC
18501 EAST SAN JOSE AVENUE
CITY OF INDUSTRY, CA 91748

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
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TORRID LLC
18501 EAST SAN JOSE AVENUE
CITY OF INDUSTRY, CA 91748



2. A859010407775067242874516688

7022 2410 0000 2406 3461

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

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

B. Received by (Printed Name)

☐ Agent
☐ Addressee

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
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- ☐ Certified Mail®
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- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

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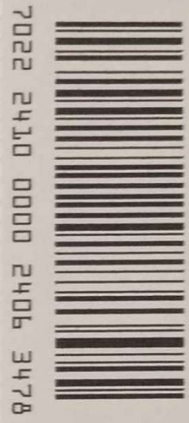
\$

TORRID LLC
18501 EAST SAN JOSE AVENUE
CITY OF INDUSTRY, CA 91748

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

See Reverse for Instructions

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



7022 2410 0000 2406 3478

TORRID ADMINISTRATION, INC.
18501 EAST SAN JOSE AVE
CITY OF INDUSTRY, CA 91748

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TORRID ADMINISTRATION, INC.
18501 EAST SAN JOSE AVE
CITY OF INDUSTRY, CA 91748

COMPLETE THIS SECTION ON DELIVERY

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

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



2. A088000402171506121720145 18605
7022 2410 0000 2406 3478

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

Domestic Return Receipt

7022 2410 0000 2406 3478

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☒ Return Receipt (hardcopy) \$
☐ Return Receipt (electronic) \$
☐ Restricted Mail Restricted Postage \$

TORRID ADMINISTRATION, INC.
18501 EAST SAN JOSE AVE
CITY OF INDUSTRY, CA 91748

Instructions

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



7022 2410 0000 2406 3492

TORRID MERCHANDISING, INC.
18501 EAST SAN JOSE AVE
CITY OF INDUSTRY, CA 91748

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
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TORRID MERCHANDISING, INC.
18501 EAST SAN JOSE AVE
CITY OF INDUSTRY, CA 91748



2. Address: 18501 East San Jose Ave, City of Industry, CA 91748

7022 2410 0000 2406 3492

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent

B. Received by (Printed Name)

☐ Addressee

C. Date of Delivery

D. Is delivery address different from item 1?

If YES, enter delivery address below:

☐ Yes
☐ No

Service Type

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

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TORRID MERCHANDISING, INC.
18501 EAST SAN JOSE AVE
CITY OF INDUSTRY, CA 91748

7022 2410 0000 2406 3492

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

CERTIFIED MAIL®



7022 2410 0000 2406 3485

TORRID PARENT INC.
18501 EAST SAN JOSE AVE
CITY OF INDUSTRY, CA 91748

SENDER: COMPLETE THIS SECTION

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

TORRID PARENT INC.
18501 EAST SAN JOSE AVE
CITY OF INDUSTRY, CA 91748

COMPLETE THIS SECTION ON DELIVERY

A. Signature
X

☐ Agent
☐ Addressee

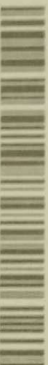
B. Received by (Printed Name)

C. Date of Delivery

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

Service Type

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



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

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PEX 151

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TORRID PARENT INC.
18501 EAST SAN JOSE AVE
CITY OF INDUSTRY, CA 91748

Instructions

EXHIBIT “2”



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

NINEL KOCHARYAN
310.712.8146 Direct
Ninel.Kocharyan@capstonelawyers.com

December 19, 2022

VIA ONLINE SUBMISSION

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

Subject: *Marissa Fellows v. Torrid LLC, et al.*

Dear PAGA Administrator:

This office represents Marissa Fellows in connection with her claims under the California Labor Code. Ms. Fellows is an employee of TORRID LLC; TORRID ADMINISTRATION, INC.; TORRID MERCHANDISING, INC.; and/or TORRID PARENT, INC. For the purpose of this letter, Ms. Fellows collectively refers to these entities as "TORRID."

The employers may be contacted directly at the addresses below:

TORRID LLC
18501 EAST SAN JOSE AVENUE
CITY OF INDUSTRY, CA 91748

TORRID ADMINISTRATION, INC.
18501 EAST SAN JOSE AVE
CITY OF INDUSTRY, CA 91748

TORRID MERCHANDISING, INC.
18501 EAST SAN JOSE AVE
CITY OF INDUSTRY, CA 91748

TORRID PARENT INC.
18501 EAST SAN JOSE AVE
CITY OF INDUSTRY, CA 91748

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

TORRID has employed Ms. Fellows as a non-exempt, hourly paid employee since August 2019. Ms. Fellows works as a Key Holder at the Torrid store located in Downey, California. She typically works seven (7) to eight (8) hours per day and five (5) days per week. Her job duties include, without limitation, providing customer service, monitoring the sales floor, managing employees, cashiering, performing customer returns, and completing inventory.

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

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

TORRID LLC is a California limited liability corporation. TORRID PARENT INC. is a Delaware corporation. TORRID ADMINISTRATION, INC. and TORRID MERCHANDISING, INC. are California corporations. Together, they operate at least 57 stores offering plus-size clothing and accessories in California. Upon information and belief, TORRID maintains a single, centralized Human Resources (HR) department at its corporate headquarters in City of Industry, California, for all non-exempt, hourly paid employees working for TORRID in California, including Ms. Fellows and other aggrieved employees. At all relevant times, TORRID issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Ms. Fellows and other aggrieved employees, regardless of their location or position.

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

Violation of California Labor Code §§ 510 and 1198 – Unpaid Overtime

California Labor Code sections 510 and 1198 and the applicable Industrial Welfare Commission (“IWC”) Wage Order require employers to pay employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek at the rate of time-and-one-half (1 ½) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek. The applicable IWC Wage Order further provides that employers are required to pay employees working more than twelve (12) hours in a day overtime compensation at a rate of two (2) times their regular rate of pay. An employee’s regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

TORRID willfully failed to pay all overtime wages owed to Ms. Fellows and other aggrieved employees. During the relevant time period, Ms. Fellows and other aggrieved employees were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in

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

excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they worked were not recorded.

First, during the relevant time period, TORRID had, and continues to have, a company-wide policy and/or practice of requiring Ms. Fellows and other aggrieved employees to perform tasks off-the-clock, such as answering work-related questions, resolving work-related issues, waiting to obtain personal belonging from storage lockers, and undergoing security checks (*see infra*). For example, Ms. Fellows is required to respond to phone calls regarding inventory and work assignments outside of her shifts. Other aggrieved employees have also been required to drive to make deposits or pick up change at the bank, which could take approximately 10 minutes and occurred twice per week; wait for a point of sale (“POS”) register approximately two (2) minutes or more before clocking in; and complete closing duties such as locking the gate and throwing away trash. Thus, TORRID has failed to track this time spent working before or after scheduled shifts, and Ms. Fellows and other aggrieved employees have received no compensation for this time.

Second, during the relevant period, TORRID implemented, on a company-wide basis, an employer-imposed requirement that other aggrieved employees undergo mandatory COVID-19 temperature checks and/or health screenings before clocking in for their scheduled shifts. Prior to each shift, other aggrieved employees were required to spend up to five (5) minutes waiting and/or undergoing the temperature check, before being permitted to clock in for their shift. Even though TORRID required these temperature checks and/or health screenings, TORRID did not provide other aggrieved employees with a mechanism to record this time worked so they could be compensated for the time spent undergoing mandatory temperature checks and/or health screenings.

Third, during the relevant period, TORRID has a company-wide loss prevention policy requiring employees to wait after clocking out at the end of a shift for managers to unlock the storage locker so they could retrieve their personal belongings and undergo mandatory security checks by a managerial employee before leaving the store premises. Although TORRID requires that Ms. Fellows and other aggrieved employees undergo mandatory security checks, TORRID does not compensate them for the time it takes them to wait to retrieve their personal belongings and undergo these checks. As a result of these loss prevention and security policies and/or practices, Ms. Fellows and other aggrieved employees are subject to TORRID’s control after their shifts, but are not compensated for this time.

Fourth, on information and belief, TORRID had, and continues to have, a uniform practice and/or policy of staffing its locations strictly based on the labor hours or labor budget set by the corporate office. TORRID’s use of labor budgets resulted in understaffing such that there were too few employees on duty to handle the heavy workloads and provide meal period coverage. As a result of this lack of meal period coverage, Ms. Fellows and other aggrieved employees have not always been provided uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period. For example, Ms. Fellows has her meal periods interrupted and cut short four times per week to process customer returns, address customers’ and employees’ questions, train employees, and complete work assignments. Consequently, Ms. Fellows and other aggrieved employees are required to work through and/or have their unpaid meal periods interrupted in order to complete their assigned duties, time for which they are not paid.

Fifth, in conjunction with understaffing its locations, TORRID has a requirement that a managerial employee be present on the floor at all times and prohibits managerial employees from leaving the premises unless another managerial employee is also on duty, resulting in a lack of meal period coverage for managerial employees. As a result, Ms. Fellows and other aggrieved employees are sometimes the only managerial employees on duty, and are expected to supervise the store at all

times. Because managerial employees have been effectively prohibited from leaving TORRID's premises for meal periods without coverage, and because there are too few employees and other managerial employees on duty to handle the workload and attend to customers, Ms. Fellows and other aggrieved employees have been denied uninterrupted 30-minute meal periods, and have been required to work through and/or to return early from meal periods.

Sixth, on information and belief, because TORRID frowns upon employees accruing meal period penalties, TORRID has adjusted and/or automatically deducted 30-minute meal periods from other aggrieved employees' time records to reflect compliant meal periods, even when they did not receive a compliant meal period, in order to strictly limit meal penalties that TORRID would otherwise owe. Thus, other aggrieved employees have performed work during meal periods for which they were not paid. Thus, TORRID has not recorded all hours worked during meal periods, and other aggrieved employees have performed work during meal periods for which they were not paid.

TORRID knows or should have known that, as a result of these company-wide practices and/or policies, Ms. Fellows and other aggrieved employees have performed their assigned duties off-the-clock before and after their shifts and during meal periods, and were suffered or permitted to perform work for which they were not paid. Because Ms. Fellows and other aggrieved employees work shifts of eight (8) hours a day or more, or forty (40) hours a week or more, some of this off-the-clock work qualifies for overtime premium pay.

Furthermore, TORRID did not pay other aggrieved employees the correct overtime rates for the recorded overtime hours that they generated. In addition to an hourly wage, TORRID paid other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, TORRID failed to incorporate all remunerations, including incentive pay and/or nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rates. Therefore, during times when other aggrieved employees worked overtime and received these other forms of pay, TORRID failed to pay all overtime wages by paying a lower overtime rate than required.

TORRID's failure to pay Ms. Fellows and other aggrieved employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198. Ms. Fellows and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

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

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

As stated above, TORRID has required Ms. Fellows and other aggrieved employees to work off-the-clock, including, but not limited to, responding to communications on their personal mobile devices, resolving work-related issues, waiting to obtain personal belongings from storage lockers, waiting to clock in, performing closing duties, traveling to make bank deposits or pick up change, and/or

submitting to mandatory pre-shift COVID-19 temperature checks and health screenings, but were not compensated for this time. Additionally, as set forth above, Ms. Fellows and other employees are required to wait and undergo security checks while off-the-clock, but TORRID does not compensate them for this time.

Moreover, as stated above, due to TORRID's uniform practices of utilizing labor budgets, understaffing its locations, assignment of heavy workloads, and subsequent lack of meal period coverage, Ms. Fellows and other aggrieved employees are impeded from taking all uninterrupted meal periods to which they are entitled and are required to work during their meal periods, time for which they are not paid. As set forth above, on information and belief, in order to limit meal penalties that TORRID would otherwise owe, TORRID has adjusted and/or automatically deducted 30-minute meal periods from other aggrieved employee's time records to reflect compliant meal periods. Thus, TORRID has systematically failed to pay Ms. Fellows and other aggrieved employees for actual hours worked during unpaid meal periods.

Thus, TORRID has not paid minimum wages for all hours worked by Ms. Fellows and other aggrieved employees. To the extent that these off-the-clock hours did not qualify for overtime premium payment, TORRID did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

Accordingly, TORRID regularly failed to pay at least minimum wages to Ms. Fellows and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Ms. Fellows and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f)-(g).

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

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

As stated, TORRID had, and continues to have, company-wide policies and/or practices of understaffing its stores pursuant to its labor budget practices, while assigning heavy workloads and failing to schedule meal periods, which has resulted in a lack of meal period coverage and has prevented Ms. Fellows and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. In conjunction with understaffing its locations, as stated above,

TORRID has a requirement that a managerial employee be present on the sales floor at all times, but TORRID's labor budgets do not always allow for more than one manager to be on the schedule at all times. As a result, Ms. Fellows and other managerial employees are sometimes the only managers on duty, and have their meal periods interrupted or work through them in order to assist their coworkers and customers.

TORRID's company-wide practices and policies have prevented Ms. Fellows and other aggrieved employees from taking all compliant meal periods to which they were entitled. As a result, Ms. Fellows and other aggrieved employees have been forced to work in excess of five (5) hours before taking a meal period, have their meal periods interrupted, and/or have to forgo their meal periods altogether in order to complete their assigned workloads. For example, Ms. Fellows consistently takes her meal periods late after having worked at least five (5) hours. In addition, Ms. Fellows has had her meal periods interrupted and cut short approximately four times a week to respond to customer service issues, handle employee questions, train employees, and complete work assignments.

Furthermore, as stated, on information and belief, because TORRID frowns upon employees accruing meal period penalties, TORRID's management has adjusted other aggrieved employees' time records to reflect compliant meal periods, regardless of whether they had received a compliant meal period or not, in order to strictly limit meal penalties that would need to be paid by TORRID.

Moreover, TORRID has not provided Ms. Fellows and other aggrieved employees with second uninterrupted 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. For example, Ms. Fellows's second meal periods have been interrupted for the same reasons as her first meal periods. Ms. Fellows and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

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

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

Accordingly, TORRID failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Ms. Fellows and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 516, and 1198 – Failure to Authorize and Permit Rest Periods

California Labor Code sections 226.7, 516, and 1198 and the applicable IWC Wage Order require employers to provide rest periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. The applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the total daily work time is less than three and one-half (3 ½) hours.

To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must "relinquish any control over how employees spend their break time, and relieve their employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest." *Augustus, et al. v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 269-270 (2016).

During the relevant time period, TORRID has regularly failed to authorize and permit Ms. Fellows and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, TORRID's company-wide policies and/or practices of understaffing and assigning heavy workloads have prevented Ms. Fellows and other aggrieved employees from being relieved of all duty in order to take their rest periods. TORRID also has failed to schedule rest periods, which, coupled with TORRID's failure to provide adequate rest period coverage, has further led to Ms. Fellows and other aggrieved employees not being authorized and permitted to take compliant rest periods. Moreover, other aggrieved employees are expected to respond to the store phone line during rest periods.

Moreover, TORRID has maintained a company-wide on-premises rest period policy, which mandates that Ms. Fellows and other aggrieved employees remain on TORRID's premises during their rest periods. Because Ms. Fellows and other aggrieved employees are restricted from leaving the premises during rest periods, they are denied the ability to use their rest periods freely for their own purposes, such as running personal errands. Thus, TORRID effectively maintains control over Ms. Fellows and other aggrieved employees during rest periods.

Furthermore, as stated, TORRID has a requirement that a managerial employee be present on the sales floor at all times, but Defendants' labor budgets do not always allow for more than one manager to be on the schedule at all times. As a result, Ms. Fellows and other aggrieved employees are sometimes the only managerial employees on duty, and have their rest periods interrupted or work through them in order to assist their coworkers and customers.

As a result of TORRID's practices and policies, Ms. Fellows and other aggrieved employees have worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled. For example, due to TORRID's understaffing and assignment of heavy workloads, Ms. Fellows has missed her rest periods altogether approximately three (3) times per week, and has had her rest periods interrupted or cut short multiple times per week.

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

Accordingly, TORRID failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Ms. Fellows and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226(a), 1174(d), and 1198 – Non-Compliant Wage Statements and Failure to Maintain Accurate Payroll Records

California Labor Code section 226(a) requires employers to make, keep and provide true, accurate, and complete employment records. TORRID has not provided Ms. Fellows and other aggrieved employees with properly itemized wage statements. Labor Code section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wage statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or \$50 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not to exceed \$4,000. Further, Labor Code section 226.3 provides that any employer who violates section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

During the relevant time period, TORRID has knowingly and intentionally provided Ms. Fellows and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, TORRID issued uniform wage statements to Ms. Fellows and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all applicable hourly rates in effect during the pay period, including rates of pay for overtime wages and/or meal and rest period premiums, and the corresponding number of hours worked at each hourly rate. Specifically, TORRID violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

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

Furthermore, because TORRID did not calculate other aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages and/or meal and rest period premiums, TORRID did not list the correct amount of gross wages in compliance with section 226(a)(1) and did not list the

correct amount of net wages in violation of section 226(a)(5). TORRID also failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct rates of pay for overtime wages and/or meal and rest period premiums, in violation of section 226(a)(9).

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

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

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

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

Ms. Fellows and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f)-(g).

Violation of California Labor Code § 204 – Failure to Timely Pay Wages During Employment

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, California Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

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

Ms. Fellows and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 210 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 201 and 202 – Failure to Timely Pay Final Wages Upon Termination

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

TORRID willfully failed to pay other aggrieved employees who are no longer employed by TORRID all their earned wages, including, but not limited to, overtime wages, minimum wages, meal and rest period premiums, and/or reporting time pay, either at the time of discharge, or within seventy-two (72) hours of their leaving TORRID's employ.

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

Violation of California Labor Code § 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.*

TORRID’s California stores are generally similar in their layout and design and there was, and continues to be, space behind cash wraps and other workstations to allow for the presence and use of a seat or stool by Ms. Fellows and other aggrieved employees (with reasonable or no modification to these work areas) during the performance of their work duties. TORRID could have provided Ms. Fellows and other aggrieved employees with a seat or stool at its cash wraps and other workstations, but instead denied, and continues to deny, employees seating, forcing them to stand throughout the day.

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

TORRID has violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11070(14)(A) because Ms. Fellows and other aggrieved employees have not been allowed to sit, even when it would not have interfered with the performance of their duties, nor have they been provided with suitable seats. TORRID’s management has not informed Ms. Fellows and other aggrieved employees that they were allowed to sit down, provide any means for them to sit down, or mention any policy regarding sitting.

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

Ms. Fellows and other aggrieved employees are therefore entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, and seek injunctive relief to bring TORRID 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.*

TORRID’s California stores are generally similar in their layout and design and there was, and continues to be, space near their work areas (with reasonable or no modification to these work areas) to allow for the presence and use of a seat or stool by Ms. Fellows and other aggrieved employees during lulls in operation. TORRID could have provided Ms. Fellows and other aggrieved employees with a seat or stool in its work areas, but instead denied, and continues to deny, employees seating, forcing them to stand throughout the day.

TORRID has not provided Ms. Fellows and other aggrieved employees with seats or stools in reasonable proximity to their work areas to allow them to use seats when it would not interfere with the performance of their duties for times when they were not engaged in active duties that require standing. In other words, to the extent Ms. Fellows and other aggrieved employees have engaged in duties in which the nature of the work required standing, TORRID has denied them the use of seats nearby during lulls in their work duties. Moreover, TORRID has not informed Ms. Fellows and other aggrieved employees of their rights to a seat or stool under California law.

As a result of TORRID’s company-wide policy and/or practice of prohibiting employees from sitting at any time, even when they were not engaged in active duties requiring standing, and company-wide failure to provide seats in reasonable proximity to their work areas, Ms. Fellows and other aggrieved employees have been forced to stand during shifts and denied seats. TORRID’s failure to provide suitable seating to Ms. Fellows and other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order No. 7-2001, subdivision 14(B).

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

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11070 Subdivision 5(A) – Failure to Pay Reporting Time Pay

California Labor Code section 1198 dictates that no employer may employ an employee under conditions of labor that are prohibited by the applicable IWC wage order. California Labor Code section 1198 further requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.”

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

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

TORRID has a company-wide practice of sending other aggrieved employees home early from their shifts, including before they had worked at least half of their usual or scheduled shift, but does not pay other aggrieved employees for half of their usual or scheduled shift.

Accordingly, other aggrieved employees were not properly compensated with reporting time pay in violation of California Labor Code section 1198 and California Code of Regulations, Title 8, section 11070(5)(A). Other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11070 Subdivision 4(C) – Failure to Pay Split-Shift Premiums

California Labor Code section 1198 provides that no employer may employ an employee under conditions of labor that are prohibited by the applicable IWC wage order. California Labor Code section 1198 further requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.”

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

TORRID has willfully violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11070(4)(C), because TORRID has failed to pay other aggrieved

employees a split-shift premium when they returned to work for an additional shift in the same day, after having been clocked out for several hours.

TORRID's failure to provide other aggrieved employees with split-shift pay when they returned to work for an additional shift in the same day, after having been clocked out for several hours, violates California Labor Code section 1198 and California Code of Regulations Title 8, Section 11070(4)(C). Other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

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

During the relevant time period, TORRID, on a company-wide basis, requires Ms. Fellows and other aggrieved employees to use their own personal mobile devices, including, but not limited to cellular phones, and/or mobile data to carry out their job duties, but has failed to reimburse them for the cost of their work-related mobile device expenses. Ms. Fellows and other aggrieved employees are required to use their personal mobile devices for work-related tasks, including responding to calls or text messages from TORRID's management. Although TORRID requires Ms. Fellows and other aggrieved employees to utilize their personal mobile devices and/or mobile data to carry out their work-related responsibilities, TORRID has failed to reimburse them for these costs.

Additionally, TORRID has a company-wide policy of requiring other aggrieved employees to utilize their own personal vehicles or obtain alternate transportation to carry out company business, but has failed to reimburse them for all costs of travel, including mileage. For example, other aggrieved employees are required to drive to nearby banks to make deposits or pick up change for POS registers. Although TORRID requires other aggrieved employees to utilize their own vehicles or obtain alternate transportation to carry out their work-related responsibilities, TORRID does not reimburse them for their travel expenses.

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

Thus, TORRID had, and continues to have, a company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred in violation of California Labor Code section 2802. Ms. Fellows and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code § 2810.5(a)(1)(A)-(C) – Failure to Provide Notice of Material Terms of Employment

California’s Wage Theft Prevention Act was enacted to ensure that employers provide employees with basic information material to their employment relationship at the time of hiring, and to ensure that employees are given written and timely notice of any changes to basic information material to their employment. Codified at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an employer must provide written notice to employees of the rate(s) of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, the regular payday designated by the employer, and any allowances claims as part of the minimum wage, including meal or lodging allowances. Effective January 1, 2015, an employer’s written notice pursuant to section 2810.5 must also include a statement that the employee may accrue and use sick leave; has a right to request and use accrued paid sick leave; may not be terminated or retaliated against for using or requesting the use of accrued paid sick leave; and has the right to file a complaint against an employer who retaliates.

At all relevant times, on information and belief, TORRID failed, on a company-wide basis, to provide written notice to Ms. Fellows and other aggrieved employees that lists the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). TORRID’s failure to provide Ms. Fellows and other aggrieved employees with written notice of basic information regarding their employment with TORRID is in violation of Labor Code section 2810.5.

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

California Labor Code § 558(a)

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

Accordingly, Ms. Fellows seeks the remedies set forth in Labor Code section 558 for herself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 1194.5, 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Ms. Fellows, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties and injunctive relief for herself, all other aggrieved employees, and the State of California against TORRID for violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

Therefore, on behalf of all aggrieved employees, Ms. Fellows 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) 929-5455

Best Regards,

A handwritten signature in cursive script, appearing to read "Ninel", enclosed within a light gray rectangular border.

Ninel Kocharyan

Copy: TORRID LLC (via U.S. Certified Mail); TORRID ADMINISTRATION, INC. (via U.S. Certified Mail); TORRID MERCHANDISING, INC. (via U.S. Certified Mail); TORRID PARENT INC. (via U.S. Certified Mail)

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



7022 2410 0000 2406 4363

CERTIFIED MAIL

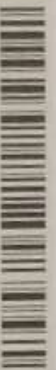
TORRID LLC
18501 EAST SAN JOSE AVENUE
CITY OF INDUSTRY, CA 91748

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
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TORRID LLC
18501 EAST SAN JOSE AVENUE
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9590 9402 1512 5362 2475 87



COMPLETE THIS SECTION ON DELIVERY

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

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

4. Service Type

- | | |
|--|--|
| ☐ Adult Signature
☐ Adult Signature Restricted Delivery
☐ Certified Mail
☐ Certified Mail Restricted Delivery
☐ Collect on Delivery
☐ Collect on Delivery Restricted Delivery
☐ Insured Mail
☐ Registered Mail
☐ Registered Mail Restricted Delivery
☐ Return Receipt for Merchandise
☐ Signature Confirmation
☐ Signature Confirmation Restricted Delivery | ☐ Priority Mail Express®
☐ Registered Mail™
☐ Registered Mail Restricted Delivery
☐ Return Receipt for Merchandise
☐ Signature Confirmation™
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|--|--|

PS Form 3811, July 2015 PSN 7530-02-000-9053

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Signature (Place here) ☐ Return Receipt (Place here) ☐ Certified Mail Restricted Delivery ☐

FOR USE BY POSTMAN

TORRID LLC
18501 EAST SAN JOSE AVENUE
CITY OF INDUSTRY, CA 91748

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



7022 2410 0000 2406 4390

TORRID ADMINISTRATION, INC.
18501 EAST SAN JOSE AVE
CITY OF INDUSTRY, CA 91748

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18501 EAST SAN JOSE AVE
CITY OF INDUSTRY, CA 91748

9590 9402 1512 5362 2475 70



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PS Form 3811, July 2016 PSN 7530-02-000-8053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

B. Received by (Printed Name)

C. Date of Delivery

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

- | | |
|--|---|
| ☐ Actual Signature | ☐ Priority Mail Express® |
| ☐ Actual Signature Restricted Delivery | ☐ Registered Mail™ |
| ☐ Certified Mail® | ☐ Registered Mail Restricted Delivery |
| ☐ Certified Mail Restricted Delivery | ☐ Return Receipt for Merchandise |
| ☐ Collect on Delivery | ☐ Signature Confirmation™ |
| ☐ Collect on Delivery Restricted Delivery | ☐ Signature Confirmation Restricted Delivery |
| ☐ Insured Mail | |
| ☐ Insured Mail Restricted Delivery | |

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Fee Type

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Extra Services & Fees (Listed first, add fee as appropriate)

☒ Return Receipt (hardcopy)

☐ Return Receipt (electronic)

Postmark

TORRID ADMINISTRATION, INC.
18501 EAST SAN JOSE AVE
CITY OF INDUSTRY, CA 91748

7022 2410 0000 2406 4390

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



7022 2410 0000 2406 4406

TORRID MERCHANDISING, INC.
18501 EAST SAN JOSE AVE
CITY OF INDUSTRY, CA 91748

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
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TORRID MERCHANDISING, INC.
18501 EAST SAN JOSE AVE
CITY OF INDUSTRY, CA 91748



9590 9402 7420 2056 3562 38

2. Article Number (Transfer from service label)

7022 2410 0000 2406 4406

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

B. Received by (Printed Name)

☐ Agent
☐ Addressee

C. Date of Delivery

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

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Insured Mail
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery
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- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Signature Confirmation™
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PS Form 3811, July 2020 PSN 7530-02-000-9053

TORRID MERCHANDISING, INC.
18501 EAST SAN JOSE AVE
CITY OF INDUSTRY, CA 91748

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

7022 2410 0000 2406 4413



TORRID PARENT INC.
18501 EAST SAN JOSE AVE
CITY OF INDUSTRY, CA 91748

SENDER: COMPLETE THIS SECTION

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TORRID PARENT INC.
18501 EAST SAN JOSE AVE
CITY OF INDUSTRY, CA 91748

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

1. Received by (Printed Name)

C. Date of Delivery

☐ Agent
☐ Addressee

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

Service Type

- | | |
|--|---|
| ☐ Adult Signature | ☐ Priority Mail Express® |
| ☐ Adult Signature Restricted Delivery | ☐ Registered Mail™ |
| ☐ Certified Mail® | ☐ Registered Mail Restricted Delivery |
| ☐ Certified Mail Restricted Delivery | ☐ Return Receipt for Merchandise |
| ☐ Collect on Delivery | ☐ Signature Confirmation™ |
| ☐ Collect on Delivery Restricted Delivery | ☐ Signature Confirmation Restricted Delivery |
| ☐ Insured Delivery | |



9590 9402 1512 5362 2475 25

2. Article Number (Transfer from service label)
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PS Form 3811, July 2015 PSN 7530-02-000-9053

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1. Delivery Point (Printed Name)
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3. Delivery Point (Printed Name)

TORRID PARENT INC.
18501 EAST SAN JOSE AVE
CITY OF INDUSTRY, CA 91748

Postmark

PROOF OF SERVICE

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

On **February 24, 2023**, I served the document described as: **FIRST AMENDED COMPLAINT – PAGA ENFORCEMENT ACTION** on the interested parties in this action by sending ☐ the original [or] ☒ a true copy thereof ☒ to interested parties as follows [or] ☐ as stated on the attached service list:

CSC - LAWYERS INCORPORATING
SERVICE
2710 Gateway Oaks Drive
Sacramento, CA 95833

Registered Agent for Defendants
TORRID LLC, TORRID PARENT INC., and
TORRID MERCHANDISING, INC.

MAI DOAN
18501 San Jose Ave
City of Industry, CA 91748

Registered Agent for Defendants
TORRID ADMINISTRATION, INC.

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

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

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

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

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

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on **February 24, 2023**, at Los Angeles, California.

Sophia Flores
Type/Print Name


Signature