

Orlando Villalba (SBN 232165)
Orlando.Villalba@capstonelawyers.com
Helga Hakimi (SBN 257381)
Helga.Hakimi@capstonelawyers.com
Roxanna Tabatabaeepour (SBN 260187)
Roxanna.Taba@capstonelawyers.com
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, California 90067
Telephone: (310) 556-4811
Facsimile: (310) 943-0396

Attorneys for Plaintiff Zareyah Thompson

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA CLARA

23CV412334

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

Plaintiff,

vs.

BIG 5 CORP., a Delaware
corporation; BIG 5 SPORTING
GOODS CORPORATION, a
Delaware corporation; and DOES 1
through 10, inclusive,

Defendants.

Case No.:

**COMPLAINT – PAGA ENFORCEMENT
ACTION**

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

Jury Trial Demanded

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

3 JURISDICTION AND VENUE

4 1. This is an enforcement action under the Labor Code Private Attorneys General
5 Act of 2004, California Labor Code sections 2698, *et seq.* (“PAGA”) to recover civil penalties
6 and any other available relief on behalf of Plaintiff, the State of California, and other current
7 and former employees who worked for Defendants in California as a non-exempt, hourly paid
8 employee and received at least one wage statement and against whom one or more violations
9 of any provision in Division 2 Part 2 Chapter 1 of the Labor Code or any provision regulating
10 hours and days of work in the applicable Industrial Welfare Commission (“IWC”) Wage
11 Order were committed, as set forth in this complaint, at any time between one year prior to the
12 filing of the pre-filing written notice to the Labor and Workforce Development Agency
13 (“LWDA”) in this case on January 6, 2023, until judgment (“non-party Aggrieved
14 Employees”). Plaintiff’s share of civil penalties sought in this action does not exceed
15 \$75,000.

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

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

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

2 4. Venue is proper in this Court because Defendants employ or employed persons
3 within the County of Santa Clara and have violated the requirements of the California Labor
4 Code and applicable IWC Wage Order in this county which give rise to the penalties sought in
5 this action. Cal. Code Civ. P. § 393. Specifically, Defendants have violated the requirements
6 of the California Labor Code and applicable IWC Wage Order in at least eight (8) locations
7 within the County of Santa Clara, including Defendants' retail stores located in Campbell
8 (1600 West Campbell Avenue, Campbell, California 95008), Morgan Hill (150 Cochrane
9 Road, Morgan Hill, California 95037), San Jose (3132 Stevens Creek Boulevard, San Jose,
10 California 95117; 1472 Monterey Road, San Jose, California 95112; 2249 Tully Road, San
11 Jose, California 95122; 946 Blossom Hill Road, San Jose, California 95123), Santa Clara
12 (3064 Scott Boulevard, Santa Clara, California 95054), and Sunnyvale (721 Sunnyvale-
13 Saratoga Road, Sunnyvale, California 94087). Pursuant to California Civil Code of Procedure
14 section 393, venue is proper for the recovery of a penalty imposed by statute in the county in
15 which the cause, or some part of the cause, arose. Because Defendants have employees in
16 Santa Clara County, and Plaintiff could bring an action filed under PAGA in any county in
17 which an aggrieved employee worked and Labor Code violations occurred, venue is proper.
18 *Crestwood Behavioral Health, Inc. v. Superior Court of Alameda County*, 60 Cal. App. 5th
19 1069 (2021).

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

24 THE PARTIES

25 6. Plaintiff Zareyah Thompson is a resident of Pinole, in Contra Costa County,
26 California. Defendants employed Plaintiff as an hourly paid, non-exempt employee from
27 approximately April 2021 to October 2021 and from February 2022 to July 2022. Plaintiff
28 worked as a Cashier for Defendants at their retail store located in Pinole, California. Plaintiff

1 typically worked six (6) hours per day or more, and four (4) days per week. At the time
2 Plaintiff's employment with Defendants ended, she was compensated approximately \$15.25
3 per hour. Plaintiff's job duties included, without limitation, ringing up customers
4 transactions, answering customers' questions, administering fishing licenses, and organizing
5 merchandise on the sales floor.

6 7. On information and belief, Defendants required some employees, including
7 Plaintiff, to execute an arbitration agreement at the time of their hire or during their
8 employment. On further information and belief, Defendants' arbitration agreement was and is
9 both procedurally and substantively unconscionable. Specifically, Defendants presented
10 employees with a "Mutual Agreement to Arbitrate Claims" ("Arbitration Agreement") during
11 the onboarding process, which had to be reviewed and acknowledged immediately.
12 Specifically, the Arbitration Agreement was one of several documents presented to new
13 employees for signature during the orientation process, including Employee Handbook
14 Acknowledgment; Shoplifting Policy; and Post Offer Background Questionnaire, among other
15 documents. Also, employees did not have a meaningful opportunity to negotiate the terms of
16 the Arbitration Agreement. Rather, it was provided to Defendants' employees for them to
17 sign on a take-it or leave-it basis, along with all of the other on-boarding documents.

18 8. BIG 5 CORP. was and is, upon information and belief, a Delaware corporation,
19 and at all times hereinafter mentioned, an employer whose employees are engaged throughout
20 this county, the State of California.

21 9. BIG 5 SPORTING GOODS CORPORATION was and is, upon information
22 and belief, a Delaware corporation, and at all times hereinafter mentioned, an employer whose
23 employees are engaged throughout this county, the State of California.

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

28 11. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10

1 were the partners, agents, owners, or managers of BIG 5 CORP. and BIG 5 SPORTING
2 GOODS CORPORATION, at all relevant times.

3 12. Plaintiff is informed and believes, and thereon alleges, that each and all of the
4 acts and omissions alleged herein was performed by, or is attributable to, BIG 5 CORP.; BIG
5 5 SPORTING GOODS CORPORATION; and/or DOES 1 through 10 (collectively,
6 “Defendants” or “BIG 5”), each acting as the agent, employee, alter ego, and/or joint venturer
7 of, or working in concert with, each of the other co-Defendants and was acting within the
8 course and scope of such agency, employment, joint venture, or concerted activity with legal
9 authority to act on the others’ behalf. The acts of any and all Defendants were in accordance
10 with, and represent, the official policy of Defendants.

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

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

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

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

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

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

24 18. BIG 5 CORP.; BIG 5 SPORTING GOODS CORPORATION; and/or DOES 1
25 through 10 are therefore alter egos of each other.

26 19. Adherence to the fiction of the separate existence of Defendants would permit
27 an abuse of the corporate privilege, and would promote injustice by protecting Defendants
28 from liability for the wrongful acts committed by them under the name BIG 5.

1 20. Plaintiff further alleges, upon information and belief, that the Defendants BIG 5
2 CORP. and BIG 5 SPORTING GOODS CORPORATION are alter egos of each other for the
3 following reasons:

4 (a) On the California Secretary of State's website
5 (<https://bizfileonline.sos.ca.gov/>), BIG 5 CORP. and BIG 5 SPORTING
6 GOODS CORPORATION have the same principal address and mailing
7 address, "2525 E. EL SEGUNDO BOULEVARD EL SEGUNDO, CA
8 90245";

9 (b) According to their most recent "Statement of Information" forms filed
10 with the California Secretary of State, BIG 5 CORP. and BIG 5
11 SPORTING GOODS CORPORATION share the same officers,
12 managers, and/or members, including, but not limited to:

13 i. Steven G. Miller, who serves as Chief Executive Officer for
14 BIG 5 CORP. and BIG 5 SPORTING GOODS
15 CORPORATION;

16 ii. Barry D. Emerson, who serves as Chief Financial Officer for
17 BIG 5 CORP. and BIG 5 SPORTING GOODS
18 CORPORATION; and

19 iii. Ian R. Landgreen, who serves as Secretary for BIG 5 CORP.
20 and BIG 5 SPORTING GOODS CORPORATION;

21 (c) According to the California Secretary of State's website, BIG 5 CORP.
22 and BIG 5 SPORTING GOODS CORPORATION share the same agent
23 for service of process, CORPORATION SERVICE COMPANY
24 WHICH WILL DO BUSINESS IN CALIFORNIA AS CSC -
25 LAWYERS INCORPORATING SERVICE (C0168406); and

26 (d) On information and belief, BIG 5 CORP. and BIG 5 SPORTING
27 GOODS CORPORATION utilize the same standardized employment
28 forms and issue the same employment policies.

1 **PAGA REPRESENTATIVE ALLEGATIONS**

2 21. Defendants are a leading sporting goods retailer in the western United States,
3 operating 431 stores under the “BIG 5 Sporting Goods” name, including approximately 221
4 retail store locations in California. Upon information and belief, Defendants maintain a
5 single, centralized Human Resources (HR) department at their corporate headquarters in El
6 Segundo, California, for all non-exempt, hourly paid employees working for Defendants in
7 California, which is responsible for the recruiting and hiring of new employees, and
8 communicating and implementing Defendants’ company-wide policies, including timekeeping
9 policies and meal and rest period policies, to employees throughout California.

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

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

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

28 25. Plaintiff is informed and believes, and thereon alleges, that at all times herein

1 mentioned, Defendants were advised by skilled lawyers and other professionals, employees
2 and advisors knowledgeable about California labor and wage law, employment and personnel
3 practices, and about the requirements of California law.

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

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

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

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

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

1 other non-party Aggrieved Employees were not provided with all meal periods or payment of
2 one (1) additional hour of pay at their regular rates of pay when they did not receive a timely,
3 uninterrupted, thirty (30) minute meal period.

4 31. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
5 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
6 rest periods in accordance with the California Labor Code and applicable IWC Wage Order or
7 payment of one (1) additional hour of pay at their regular rates of pay when they were not
8 authorized and permitted to take a compliant rest period. In violation of the California Labor
9 Code, Plaintiff and other non-party Aggrieved Employees were not authorized and permitted
10 to take compliant rest periods, nor did Defendants provide Plaintiff and other non-party
11 Aggrieved Employees with payment of one (1) additional hour of pay at their regular rates of
12 pay when they were not authorized and permitted to take a compliant rest period.

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

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

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

28 35. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or

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

6 36. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
7 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
8 receive their full wages due without having to execute a release of claims. In violation of the
9 California Labor Code, Defendants required Plaintiff and other non-party Aggrieved
10 Employees to release their claims for unpaid wages as a condition to receiving their
11 paychecks.

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

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

25 39. At all times herein set forth, PAGA provides that any provision of law under
26 the Labor Code and applicable IWC Wage Order that provides for a civil penalty to be
27 assessed and collected by the LWDA for violations of the California Labor Code and
28 applicable IWC Wage Order may, as an alternative, be recovered by aggrieved employees in a

1 civil action brought on behalf of themselves and other current or former employees pursuant
2 to procedures outlined in California Labor Code section 2699.3.

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

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

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

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

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

5 (a) The aggrieved employee or representative shall give written notice by
6 online filing to the LWDA and by certified mail to the employer of the
7 specific provisions of the California Labor Code alleged to have been
8 violated (other than those listed in Section 2699.5), including the facts
9 and theories to support the alleged violation.

10 (b) An aggrieved employee's notice filed with the LWDA pursuant to
11 2699.3(c) and any employer response to that notice shall be
12 accompanied by a filing fee of seventy-five dollars (\$75).

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

21 44. On January 6, 2023, Plaintiff provided written notice by online filing to the
22 LWDA and by certified mail to Defendants of the specific provisions of the California Labor
23 Code alleged to have been violated, including facts and theories to support the alleged
24 violations, in accordance with California Labor Code section 2699.3. Plaintiff's written
25 notice was accompanied with the applicable filing fee of seventy-five dollars (\$75). The
26 LWDA PAGA Administrator has confirmed receipt of Plaintiff's written notice and assigned
27 Plaintiff PAGA Case Number LWDA-CM-927975-23. A true and correct copy of Plaintiff's
28 written notice to the LWDA and Defendants dated January 6, 2023, is attached hereto as

1 “Exhibit 1.”

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

5 46. Thus, Plaintiff has satisfied the administrative prerequisites under California
6 Labor Code sections 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
7 violations of California Labor Code sections 201, 202, 204, 206.5, 226(a), 226.7, 510, 512(a),
8 516, 1174(d), 1182.12, 1194, 1197, and 1198.

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

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

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

50. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a), 2699.3(a), 2699.3(c), 2699.5, and section 558, Plaintiff, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for herself, all other non-party Aggrieved Employees, and the State of California against Defendants for violations of California Labor Code sections 201, 202, 204, 206.5, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, and 1198.

FIRST CAUSE OF ACTION

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

(Against all Defendants)

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

52. California Labor Code §§ 2698, *et seq.* (“PAGA”) permits Plaintiff to recover civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 204, 206.5, 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, and 1198. Labor Code section 2699.3(c) permits aggrieved employees, including Plaintiff, to recover civil penalties for violations of those Labor Code sections not found in section 2699.5, including sections 516 and 1182.12.

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

- (a) Violation of Labor Code sections 510 and 1198, and the applicable IWC Wage Order for Defendants' failure to compensate Plaintiff and other non-party Aggrieved Employees with all required overtime pay, as set forth below;
- (b) Violation of Labor Code sections 226.7, 510, and 1198, and the applicable IWC Wage Order for Defendants' failure to include all forms

of remuneration in the “regular rate” of pay as required by law for purposes of paying overtime wages and/or meal and rest period premiums to other non-party Aggrieved Employees, as set forth below;

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

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

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

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

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

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

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

(j) Violation of Labor Code section 206.5 for requiring Plaintiff and other non-party Aggrieved Employees to execute a release of claims as a

1 condition to receiving wages due to them, as set forth below; and
2 (k) Violation of Labor Code section 1198 and the applicable IWC Wage
3 Order for failing to provide suitable seating to Plaintiff and other non-
4 party Aggrieved Employees, as set forth below.

5 **FAILURE TO PAY OVERTIME**

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

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

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

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

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

26 58. California Labor Code section 510 codifies the right to overtime compensation
27 at one and one-half (1 ½) times the regular rate of pay for hours worked in excess of eight (8)
28 hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the

seventh (7th) day of work, and to overtime compensation at twice the employee's regular rate of pay for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on the seventh (7th) day of work.

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

60. First, Defendants had, and continue to have, a company-wide policy and/or practice requiring Plaintiff and other non-party Aggrieved Employees to perform various work-related tasks while off-the-clock before their shifts. For example, because Defendants' timekeeping system was integrated with the company's point-of-sale ("POS") system, Plaintiff and other non-party Aggrieved Employees would often have to wait to clock in for the start of their shifts, because other employees were using the POS system to handle customer transactions. For instance, Plaintiff was often required to wait several minutes under Defendants' control until a POS machine was available for clocking-in, time for which she was not paid. As another example, on some occasions, after reporting to work on time, Plaintiff was forced to wait for approximately 10-15 minutes until a manager or keyholder employee arrived at the store, before being able to enter Defendants' store and clock in, because there was no one available to open the doors for her. Thus, Defendants failed to track this time spent working off-the-clock before their scheduled shifts, and Plaintiff and other non-party Aggrieved Employees received no compensation for this time they remained under Defendants' control.

61. Second, Defendants had, and continue to have, a company-wide security policy and/or practice of requiring employees working closing shifts to leave the store premises together in pairs and/or groups. After clocking out at the end of their shifts, Plaintiff and other non-party Aggrieved Employees were required to wait for all other employees to complete their own closing duties before they were released by a managerial employee and could leave

1 Defendants' premises together. For example, Plaintiff would often clock out at her scheduled
2 shift-end time, and then have wait for several minutes until her supervisor had completed his or
3 her closing tasks and locked up the store premises, before being released and able to leave the
4 premises. Defendants also had a company-wide loss prevention policy of requiring employees
5 to undergo mandatory security checks by a managerial employee when exiting the premises
6 after clocking out at the end of a shift. Although Defendants' requirement that Plaintiff and
7 other non-party Aggrieved Employees undergo security screenings was mandatory, Defendants
8 did not compensate them for the time it took to wait and undergo these checks. For example,
9 before Plaintiff was permitted to leave the premises at the end of her shift, Plaintiff was required
10 to wait up to 10 minutes off-the-clock for her supervisor to check her bag and personal
11 belongings. As a result of these policies and/or practices, Plaintiff and other non-party
12 Aggrieved Employees were subject to Defendants' control after they had clocked out for their
13 shifts, but were not compensated for this time.

14 62. Third, on information and belief, Defendants had, and continues to have, a
15 company-wide policy and/or practice of strictly staffing their store locations based on the labor
16 hours allocated by each location's labor or payroll budget set by corporate. On information and
17 belief, Defendants' uniform use of labor budgets resulted in chronic understaffing and a lack of
18 adequate meal period coverage, because there were too few employees on duty to handle the
19 workload and attend to customers. As a result of this lack of meal period coverage, Plaintiff and
20 other non-party Aggrieved Employees were not always afforded uninterrupted 30-minute meal
21 periods during shifts when they were entitled to receive a meal period. Moreover, Defendants
22 had a practice of failing to schedule meal periods and/or adhere to a schedule for meal periods,
23 which further caused Plaintiff and other non-party Aggrieved Employees to not be relieved of
24 their duties for compliant meal periods. Consequently, Plaintiff and other non-party Aggrieved
25 Employees were required to work through meal periods and/or had their unpaid meal periods
26 interrupted in order to complete their assigned duties and handle customer demand, time for
27 which they were not paid.

28 63. In addition, Defendants' company-wide timekeeping system prevented Plaintiff

1 and other non-party Aggrieved Employees from recording all hours worked when their meal
2 periods were shortened or interrupted, because the system locked out Plaintiff and other non-
3 party Aggrieved Employees once they clocked out for a meal period, and would not permit them
4 to clock back in from a meal period until 30 minutes had elapsed. Thus, Defendants'
5 timekeeping system further prevented Plaintiff and other non-party Aggrieved Employees from
6 recording all hours worked when their meal periods were shortened or interrupted.

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

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

24 66. Defendants' failure to pay Plaintiff and other non-party Aggrieved Employees
25 the balance of overtime compensation as required by California law, violates the provisions of
26 California Labor Code sections 510 and 1198. Plaintiff and other non-party Aggrieved
27 Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections
28 558 and/or 2699(a), (f), and (g).

1 **FAILURE TO PAY MINIMUM WAGES**

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

3 67. At all relevant times, California Labor Code sections 1182.12, 1194, 1197, and
4 1198 provide that the minimum wage for employees fixed by the IWC is the minimum wage
5 to be paid to employees, and the payment of a wage less than the minimum so fixed is
6 unlawful. Compensable work time is defined in IWC Wage Order No. 7-2001 as “the time
7 during which an employee is subject to the control of an employer, and includes all the time
8 the employee is suffered or permitted to work, whether or not required to do so.” Cal. Code
9 Regs. tit. 8, § 11070(2)(G) (defining “Hours Worked”).

10 68. First, as set forth above, Defendants had a company-wide policy and/or practice
11 requiring Plaintiff and other non-party Aggrieved Employees to perform various work-related
12 tasks while off-the-clock before and after their shifts, including waiting to clock in for the start
13 of their shifts because other employees were using the POS system, waiting for manager or
14 keyholder employees to arrive and open the store, waiting to leave the store premises in pairs
15 after closing, and undergoing mandatory security checks. Thus, Defendants failed to track this
16 time Plaintiff and other non-party Aggrieved Employees spent working off-the-clock, and
17 Plaintiff and other non-party Aggrieved Employees received no compensation for this time.

18 69. Second, as set forth above, due to Defendants’ uniform practices of utilizing
19 labor budgets, understaffing, assignment of heavy workloads, failure to schedule meal periods
20 and/or adhere to a schedule for meal periods, and subsequent lack of meal period coverage,
21 Plaintiff and other non-party Aggrieved Employees were forced to forego meal periods, have
22 their meal periods interrupted, and/or were otherwise not relieved of all duties during meal
23 periods. Moreover, as stated, Defendants systematically failed to pay Plaintiff and other non-
24 party Aggrieved Employees for actual hours worked during unpaid meal periods, because
25 Defendants’ timekeeping system locked out Plaintiff and other non-party Aggrieved Employees
26 for 30 minutes when they clocked out for a meal period.

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

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

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

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

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

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

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

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

1 not waived.

2 76. As stated, Defendants had, and continue to have, company-wide policies and/or
3 practices of understaffing locations due to labor budgeting and/or limited payroll allocation,
4 which, combined with the assignment of heavy workloads, and failure to schedule meal periods
5 and/or adhere to a schedule for meal periods, has resulted in a lack of meal period coverage and
6 prevented Plaintiff and other non-party Aggrieved Employees from taking all timely,
7 uninterrupted meal periods to which they were entitled. As a result, Plaintiff and other non-
8 party Aggrieved Employees had to work through all or part of their meal periods, had their meal
9 periods interrupted, and/or had to wait extended periods of time before taking meal periods.

10 77. For example, according to Plaintiff's timesheets, on May 15, 2022, she clocked
11 in at the start of her shift at 2:07 p.m. and clocked out at the end of her shift at 7:51 p.m.,
12 working a total of five (5) hours and 44 minutes, without clocking out for a meal period. As
13 further examples, according to Plaintiff's timesheets, on July 26, 2021, May 29, 2022, and July
14 15, 2022, she worked shifts of more than five (5) hours on each of those days, without clocking
15 out for a meal period.

16 78. Also, as stated, Defendants' company-wide timekeeping system prevented
17 Plaintiff and other non-party Aggrieved Employees from recording all hours worked when their
18 meal periods were shortened or interrupted, because the system locked out Plaintiff and other
19 non-party Aggrieved Employees once they clocked out for a meal period, and would not permit
20 them to clock back in from a meal period before 30 minutes had elapsed.

21 79. Additionally, Defendants did not provide other non-party Aggrieved Employees
22 with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one
23 day. Plaintiff and other non-party Aggrieved Employees did not sign valid meal period waivers
24 on days that they were entitled to meal periods and were not relieved of all duties.

25 80. Moreover, Defendants had a company-wide policy of requiring all newly hired
26 employees to sign blanket meal period waivers at or near their time of hire. Defendants took
27 the position that non-exempt, hourly paid employees had waived their rights to first and/or
28 second meal periods for the entirety of their employment and, on that basis, did not provide

1 them with all meal periods to which they were entitled. Defendants’ presumption that meal
2 periods would not be provided for shifts in excess of five (5) hours but less than six (6) hours
3 and for shifts in excess of ten (10) hours but less than twelve (12) hours, due to blanket meal
4 period waivers signed at or near the time of hire, discouraged and impeded Plaintiff and other
5 non-party Aggrieved Employees from taking all meal periods to which they were entitled.

6 81. Furthermore, an employer’s obligation to provide a meal period is only
7 “triggered” when the employer “employs an employee for a work period of more than five hours
8 per day.” *Brinker*, 53 Cal. 4th at 1039 (“If an employer engages, suffers, or permits anyone to
9 work for a full five hours, its meal break obligation is triggered.”).

10 [A]fter the meal break obligation is triggered . . . an employer is put to a
11 choice: it must (1) afford an off-duty meal period; (2) consent to a mutually
12 agreed-upon waiver if one hour or less will end the shift; or (3) obtain
written agreement to an on-duty meal period if circumstances permit.
Failure to do one of these will render the employer liable for premium pay.

13 *Id.* (citing Cal. Labor Code § 226.7; Wage Order No. 5, subd. 11(A), (B)). That Defendants
14 required Plaintiff and other non-party Aggrieved Employees to sign meal period waivers
15 simultaneously at or near their time of hire (as opposed to on a specific work day) renders them
16 invalid and unenforceable, because Defendants’ obligation to provide Plaintiff and other non-
17 party Aggrieved Employees with meal periods did not arise until they had employed them for a
18 full five (5) hours.

19 82. Additionally, Defendants’ “CA Second Meal Period Waiver Election Form” is
20 unlawful insofar as it fails to correctly inform employees of the requirements for waiving
21 second meal periods. Under California Law, the second meal period may be waived by *only if*
22 the first meal period was not waived. However, Defendants’ written meal period policy states in
23 relevant part: “I understand that hourly employees who work more than ten paid hours in a day
24 are entitled to a second 30-minute, uninterrupted unpaid meal period. I have been advised that I
25 am allowed to waive this meal period for workdays when I work more than ten hours but not
26 more than twelve hours.” Notably absent from Defendants’ written policy is any mention that
27 the second meal period may be waived only if the first meal period was not waived, and is
28 therefore facially invalid.

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

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

15 85. Defendants' conduct violates the applicable IWC Wage Order, and California
16 Labor Code sections 226.7, 512(a), 516, and 1198. Plaintiff and other non-party Aggrieved
17 Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections
18 558 and/or 2699(a), (f), and (g).

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

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

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

1 (3 ½) hours.

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

10 89. Pursuant to the applicable IWC Wage Order and California Labor Code section
11 226.7(c), Plaintiff and other non-party Aggrieved Employees are entitled to recover from
12 Defendants one (1) additional hour of pay at their regular rates of pay for each work day that a
13 required rest period was not authorized and permitted.

14 90. During the relevant time period, Defendants regularly failed to authorize and
15 permit Plaintiff and other non-party Aggrieved Employees to take a ten (10) minute rest
16 period per each four (4) hour period worked or major fraction thereof. As with meal periods,
17 Defendants’ company-wide practices of utilizing labor budgets and/or limited payroll allocation,
18 understaffing, and assignment of heavy workloads resulted in a lack of rest period coverage and
19 prevented Plaintiff and other non-party Aggrieved Employees from being relieved of all duty in
20 order to take compliant rest periods. Defendants also failed to schedule rest periods, which
21 further led to Plaintiff and other non-party Aggrieved Employees not being authorized and
22 permitted to take rest periods.

23 91. Furthermore, Defendants maintained a company-wide on-premises rest period
24 policy, which mandated that Plaintiff and other non-party Aggrieved Employees remain on
25 Defendants’ premises during their rest periods. Specifically, Defendants’ managers required
26 Plaintiff to remain on Defendants’ premises during her second rest period in case they wanted
27 her to return to the store to assist customers walking in. Because Plaintiff and other non-party
28 Aggrieved Employees were restricted from leaving the premises during rest periods, they were

1 denied the ability to use their rest periods freely for their own purposes, such as running
2 personal errands. Thus, Defendants effectively maintained control over Plaintiff and other non-
3 party Aggrieved Employees during rest periods.

4 92. As a result of Defendants' practices and policies, Plaintiff and other non-party
5 Aggrieved Employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in
6 excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they
7 were entitled. For example, approximately twice per week, Plaintiff missed her rest periods
8 because the store was busy and Defendants did not provide sufficient coverage.

9 93. Defendants have also engaged in a systematic, company-wide practice and/or
10 policy of not paying rest period premiums owed when rest periods are not authorized and
11 permitted. Because of this practice and/or policy, Plaintiff and other non-party Aggrieved
12 Employees have not received premium pay for all missed rest periods. Alternatively, to the
13 extent that Defendants did pay other non-party Aggrieved Employees one (1) additional hour
14 of premium pay for missed rest periods, Defendants did not pay other non-party Aggrieved
15 Employees at the correct rate of pay for premiums because Defendants 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 94. Accordingly, Defendants failed to authorize and permit all compliant rest
19 periods and failed to pay the full rest period premiums due. Defendants' conduct violates the
20 applicable IWC Wage Order and California Labor Code sections 226.7, 516, and 1198.
21 Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil
22 penalties pursuant to Labor Code sections 558 and/or 2699(a), (f), and (g).

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

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

1 applicable rates of pay.

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

10 97. Because Defendants did not record the time Plaintiff and other non-party
11 Aggrieved Employees spent working off-the-clock and deducted time from their records for
12 meal periods that were interrupted and/or missed (and therefore time for which they should
13 have been paid), Defendants did not list the correct amount of gross wages and net wages
14 earned by Plaintiff and other non-party Aggrieved Employees in compliance with section
15 226(a)(1) and section 226(a)(5), respectively. For the same reason, Defendants failed to
16 accurately list the total number of hours worked by Plaintiff and other non-party Aggrieved
17 Employees, in violation of section 226(a)(2), and failed to list the applicable hourly rates of
18 pay in effect during the pay period and the corresponding accurate number of hours worked at
19 each hourly rate, in violation of section 226(a)(9).

20 98. Additionally, because Defendants did not calculate other non-party Aggrieved
21 Employees' regular rate of pay correctly for purposes of paying overtime wages and/or meal
22 and rest period premiums, Defendants did not list the correct amount of gross wages in
23 compliance with section 226(a)(1) and did not list the correct amount of net wages in violation
24 of section 226(a)(5). Defendants also failed to correctly list all applicable hourly rates in
25 effect during the pay period, namely, correct rates of pay for overtime wages and/or meal and
26 rest period premiums, in violation of section 226(a)(9).

27 99. The wage statement deficiencies also include, among other things, failing to list
28 the number of piece-rate units earned and any applicable piece rate if the employee is paid on

1 a piece-rate basis; failing to list all deductions; failing to list the inclusive dates of the period
2 for which aggrieved employees were paid; failing to list the name of the employee and only
3 the last four digits of his or her social security number or an employee identification number
4 other than a social security number; failing to list the name and address of the legal entity that
5 is the employer; and/or failing to state all hours worked as a result of not recording or stating
6 the hours worked off-the-clock.

7 100. California Labor Code section 1174(d) provides that “[e]very person employing
8 labor in this state shall . . . [k]eep a record showing the names and addresses of all employees
9 employed and the ages of all minors” and “[k]eep, at a central location in the state or at the
10 plants or establishments at which employees are employed, payroll records showing the hours
11 worked daily by and the wages paid to, and the number of piece-rate units earned by and any
12 applicable piece rate paid to, employees employed at the respective plants or
13 establishments. . . .” Labor Code section 1174.5 provides that employers are subject to a \$500
14 civil penalty if they fail to maintain accurate and complete records as required by section
15 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d),
16 Defendants willfully failed to maintain accurate payroll records for Plaintiff and other non-
17 party Aggrieved Employees showing the daily hours they worked and the wages paid thereto
18 as a result of failing to record the off-the-clock hours that they worked.

19 101. California Labor Code section 1198 provides that the maximum hours of work
20 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as
21 set forth in the applicable IWC Wage Order. Section 1198 further provides that “[t]he
22 employment of any employees for longer hours than those fixed by the order or under
23 conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC
24 Wage Order, employers are required to keep accurate time records showing when the
25 employee begins and ends each work period and meal period. During the relevant time
26 period, Defendants engaged in company-wide practices and/or policies of failing to record
27 actual hours worked, and thereby failed to keep accurate records of work period and meal
28 period start and stop times for Plaintiff and other non-party Aggrieved Employees, in violation

1 of section 1198. Furthermore, in light of Defendants' failure to provide other non-party
2 Aggrieved Employees with second 30-minute meal periods to which they were entitled,
3 Defendants kept no records of meal start and end times for second meal periods.

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

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

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

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

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

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

1 **FAILURE TO PAY WAGES UPON TERMINATION**

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

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

10 108. On information and belief, Defendants had a company-wide practice or policy of
11 paying departing employees their final wages on the next regular pay cycle, instead of adhering
12 to the time requirements set forth in Labor Code sections 201 and 202. For example, Plaintiff
13 provided written notice of her immediate resignation on or about July 21, 2022; however,
14 Defendants did not provide Plaintiff with her final paycheck until July 26, 2022. Thus,
15 Defendants failed to pay Plaintiff her final wages within seventy-two (72) hours from providing
16 her resignation of employment, in violation of Labor Code section 202.

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

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

28 //

1 **REQUIRING RELEASE OF CLAIMS FOR WAGES DUE**

2 **VIOLATION OF LABOR CODE SECTION 206.5**

3 111. At all relevant times herein set forth, California Labor Code section 206.5
4 prohibits employers from requiring employees to execute releases of a claim or right “on
5 account of wages due, or to become due, or made as an advance on wages to be earned, unless
6 payment of those wages has been made. A release required or executed in violation of the
7 provisions of this section shall be null and void as between the employer and the employee.”

8 112. During the relevant time period, on information and belief, Defendants required
9 Plaintiff and other non-party Aggrieved Employees to release their claims for unpaid wages as
10 a condition to receiving their paychecks. For example, on information and belief, Defendants
11 required Plaintiff and other non-party Aggrieved Employees to sign verifications on their
12 timesheets that their timesheets were accurate and correct. Defendants compelled Plaintiff
13 and other non-party Aggrieved Employees to sign these false verifications when they, in fact,
14 had not received all earned and unpaid wages, including overtime wages, minimum wages,
15 and/or meal and rest period premiums. Defendants’ policy and practice of requiring Plaintiff
16 and other non-party Aggrieved Employees to release their claims for unpaid wages as a
17 condition to receiving their paychecks is in violation of California Labor Code section 206.5.
18 Plaintiff 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 PROVIDE SUITABLE SEATING**

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

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

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

4 115. Defendants’ California stores are generally similar in their layout and design
5 and there was, and continues to be, space behind cash wraps to allow for the presence and use
6 of a seat or stool by Plaintiff and other non-party Aggrieved Employees (with reasonable or no
7 modification to these work areas) during the performance of their work duties. Defendants
8 could have provided Plaintiff and other non-party Aggrieved Employees with a seat or stool at
9 cash wraps, but instead denied them seating and forced Plaintiff and other non-party
10 Aggrieved Employees to stand throughout the day.

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

18 117. As a result of Defendants’ company-wide policy and/or practice of prohibiting
19 employees from sitting during their shifts and company-wide failure to provide suitable
20 seating, Plaintiff and other non-party Aggrieved Employees were forced to stand during shifts
21 and denied seats. Defendants’ failure to provide suitable seating to Plaintiff and other non-
22 party Aggrieved Employees violated and continues to violate California Labor Code section
23 1198 and IWC Wage Order No. 7-2001, subdivision 14(A).

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

26 //

27 //

28 //

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

119. At all relevant times herein, California Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable IWC 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.”

120. California Code of Regulations, Title 8, section 11070 subdivision 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.”

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

122. Defendants’ 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 Plaintiff and other non-party Aggrieved Employees during lulls in operation. Defendants could have provided Plaintiff and other non-party Aggrieved Employees with a seat or stool in their work areas, but instead denied Plaintiff and other non-party Aggrieved Employees suitable seating altogether and effectively forced Plaintiff and other non-party Aggrieved Employees to stand throughout the day.

123. Defendants did not provide Plaintiff and other non-party Aggrieved Employees

1 with seats or stools in reasonable proximity to their work areas to allow them to use seats
2 when it would not interfere with the performance of their duties for times when they were not
3 engaged in active duties that require standing. In other words, to the extent Plaintiff and other
4 non-party Aggrieved Employees engaged in duties in which the nature of the work required
5 standing, Defendants denied them the use of seats nearby during lulls in their work duties.
6 Moreover, Defendants did not inform Plaintiff and other non-party Aggrieved Employees of
7 their rights to a seat or stool under California law.

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

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

17 **REQUEST FOR JURY TRIAL**

18 Plaintiff requests a trial by jury.

19 **PRAYER FOR RELIEF**

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

22 1. For civil penalties and attorneys' fees in excess of twenty-five thousand dollars
23 (\$25,000). Plaintiff reserves the right to amend her prayer for relief to seek a different
24 amount.

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

26 2. That the Court declare, adjudge and decree that Defendants violated the
27 following California Labor Code provisions as to Plaintiff and/or other non-party Aggrieved
28 Employees: 510 and 1198 (by failing to pay all overtime compensation); 226.7, 510, and 1198

(by failing to include all forms of remuneration in the “regular rate” of pay for purposes of paying overtime wages and/or meal and rest period premiums); 1182.12, 1194, 1197, and 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512(a), 516, and 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize and permit all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage statements and maintain accurate payroll records); 204 (by failing to timely pay all earned wages during employment); 201 and 202 (by failing to timely pay all earned wages upon termination); 206.5 (by requiring employees to release claims as a condition to receive paychecks); and 1198 and the applicable IWC Wage Order (by failing to provide suitable seating);

3. For civil penalties, pursuant to California Labor Code sections 210, 226.3, 256, 558, 1174.5, 2699(a), (f), and (g), for violations of California Labor Code sections 201, 202, 204, 206.5, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, and 1198;

4. For attorneys’ fees and costs pursuant to California Labor Code section 2699(g)(1), and any and all other relevant statutes, for Defendants’ violations of California Labor Code sections 201, 202, 204, 206.5, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, and 1198;

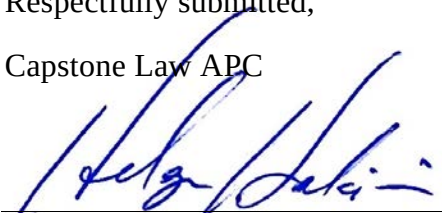
5. For pre-judgment and post-judgment interest as provided by law; and

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

Dated: March 13, 2023

Respectfully submitted,

Capstone Law APC

By: 

Orlando Villalba

Helga Hakimi

Roxanna Tabatabaeepour

Attorneys for Plaintiff Zareyah Thompson

EXHIBIT “1”



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

ALEXANDER LIMA
310.712.8154 Direct
Alexander.Lima@capstonelawyers.com

January 6, 2023

VIA ONLINE SUBMISSION

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

Subject: *Zareyah Thompson v. Big 5 Corp., et al.*

Dear PAGA Administrator:

This office represents Zareyah Thompson in connection with her claims under the California Labor Code. Ms. Thompson was an employee of BIG 5 CORP. and/or BIG 5 SPORTING GOODS CORPORATION. For the purposes of this letter, Ms. Thompson collectively refers to these entities as "BIG 5."

The employers may be contacted directly at the addresses below:

BIG 5 CORP.
2525 E. EL SEGUNDO BOULEVARD
EL SEGUNDO, CA 90245

BIG 5 SPORTING GOODS CORPORATION
2525 E. EL SEGUNDO BOULEVARD
EL SEGUNDO, CA 90245

Ms. Thompson 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. Thompson seeks relief on behalf of herself, the State of California, and other persons who are or were employed by BIG 5 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.

BIG 5 employed Ms. Thompson as a non-exempt Cashier from approximately April 2021 to October 2021 and from February 2022 to July 2022. Ms. Thompson worked at BIG 5's retail store located in Pinole, California. During her employment, Ms. Thompson typically worked six (6) hours or more per day, and four (4) days per week. Ms. Thompson's job duties included, without limitation, ringing up customer transactions, answering customers' questions, administering fishing licenses, and organizing merchandise on the sales floor.

BIG 5 has committed one or more of the following Labor Code violations against Ms. Thompson, the facts and theories of which follow, making her an “aggrieved employee” pursuant to California Labor Code section 2699(c):¹

BIG 5’s Company-Wide and Uniform Payroll and HR Practices

BIG 5 CORP. and BIG 5 SPORTING GOODS CORPORATION are Delaware corporations. BIG 5 is leading sporting goods retailer in the western United States, operating 431 stores under the “Big 5 Sporting Goods” name, including approximately 221 retail store locations California. Upon information and belief, BIG 5 maintains a single, centralized Human Resources (HR) department at its corporate headquarters in El Segundo, California, for all non-exempt, hourly paid employees working for BIG 5 in California, including Ms. Thompson and other aggrieved employees. At all relevant times, BIG 5 issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Ms. Thompson and other aggrieved employees, regardless of their location or position.

Upon information and belief, BIG 5 maintains a centralized Payroll department at its corporate headquarters in El Segundo, California, which processes payroll for all non-exempt, hourly paid employees working for BIG 5 in California, including Ms. Thompson and other aggrieved employees. Further, BIG 5 issues the same formatted wage statements in the same manner for all non-exempt, hourly paid employees working in California, including Ms. Thompson and other aggrieved employees, irrespective of their location, position, or manner in which each employee’s employment ended. In other words, BIG 5 utilized the same methods and formulas when calculating wages due to Ms. Thompson 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.

BIG 5 willfully failed to pay all overtime wages owed to Ms. Thompson and other aggrieved employees. During the relevant time period, Ms. Thompson 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. Thompson’s experience and counsel’s review of those records currently available relating to Ms. Thompson’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. Thompson 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, BIG 5 had, and continues to have, a company-wide policy and/or practice requiring Ms. Thompson and other aggrieved employees to perform various work-related tasks while off-the-clock before and after their shifts. For example, because BIG 5's timekeeping system was integrated with the company's point-of-sale ("POS") system, Ms. Thompson and other aggrieved employees would often have to wait to clock in for the start of their shifts, because other employees were using the POS system to handle customer transactions. For instance, Ms. Thompson was often required to wait several minutes under BIG 5's control until a POS machine was available for clocking-in, time for which she was not paid. As another example, on some occasions, after reporting to work on time, Ms. Thompson was forced to wait for approximately 10-15 minutes until a manager or keyholder employee arrived at the store, before being able to enter BIG 5's store and clock in, because there was no one available to open the doors for her. Thus, BIG 5 failed to track this time spent working off-the-clock before their scheduled shifts, and Ms. Thompson and other aggrieved employees received no compensation for this time they remained under BIG 5's control.

Second, BIG 5 had, and continues to have, a company-wide security policy and/or practice of requiring employees to leave the store premises together in pairs and/or groups. After clocking out at the end of their shifts, Ms. Thompson and other aggrieved employees were required to wait for all other employees to complete their own duties before they were released by a managerial employee and could leave BIG 5's premises together. For example, Ms. Thompson would often clock out at her scheduled shift-end time, and then have wait for several minutes until her supervisor had completed his or her closing tasks and locked up the store premises, before being released and able to leave the premises. BIG 5 also had a company-wide loss prevention policy of requiring employees to undergo mandatory security checks by a managerial employee when exiting the premises after clocking out at the end of a shift. Although BIG 5's requirement that Ms. Thompson and other aggrieved employees undergo security screenings was mandatory, BIG 5 did not compensate them for the time it took to wait and undergo these checks. For example, before Ms. Thompson was permitted to leave the premises at the end of her shift, Ms. Thompson was required to wait up to 10 minutes off-the-clock for her supervisor to check her bag and personal belongings. As a result of these policies and/or practices, Ms. Thompson and other aggrieved employees were subject to BIG 5's control after they had clocked out for their shifts, but were not compensated for this time.

Third, on information and belief, BIG 5 had, and continues to have, a company-wide policy and/or practice of strictly staffing its store locations based on the labor hours allocated by each location's labor or payroll budget set by corporate. On information and belief, BIG 5's uniform use of labor budgets resulted in chronic understaffing and a lack of adequate meal period coverage, because there were too few employees on duty to handle the workload and attend to customers. As a result of this lack of meal period coverage, Ms. Thompson and other aggrieved employees were not always afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period. Moreover, BIG 5 had a practice of failing to schedule meal periods and/or adhere to a schedule for meal periods, which further caused Ms. Thompson and other aggrieved employees to not be relieved of their duties for compliant meal periods. Consequently, Ms. Thompson and other aggrieved employees were required to work through meal periods and/or had their unpaid meal periods interrupted in order to complete their assigned duties and handle customer demand, time for which they were not paid.

In addition, BIG 5's company-wide timekeeping system prevented Ms. Thompson and other aggrieved employees from recording all hours worked when their meal periods were shortened or

interrupted, because the system locked out Ms. Thompson and other aggrieved employees once they clocked out for a meal period, and would not permit them to clock back in from a meal period until 30 minutes had elapsed. Thus, BIG 5's timekeeping system further prevented Ms. Thompson and other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted.

BIG 5 knew or should have known that, as a result of these company-wide practices and/or policies, Ms. Thompson 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. Thompson and other aggrieved employees sometimes 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, BIG 5 did not pay other aggrieved employees the correct overtime rates for the recorded overtime hours that they generated. In addition to an hourly wage, BIG 5 paid other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, BIG 5 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, BIG 5 failed to pay all overtime wages by paying a lower overtime rate than required.

BIG 5's failure to pay Ms. Thompson 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. Thompson 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").

First, as set forth above, BIG 5 had a company-wide policy and/or practice requiring Ms. Thompson and other aggrieved employees to perform various work-related tasks while off-the-clock before and after their shifts, including waiting to clock in for the start of their shifts because other employees were using the POS system, waiting for manager or keyholder employees to arrive and open the store, waiting to leave the premises in pairs, and undergoing mandatory security checks. Thus, BIG 5 failed to track this time Ms. Thompson and other aggrieved employees spent working off-the-clock, and Ms. Thompson and other aggrieved employees received no compensation for this time.

Second, as set forth above, due to BIG 5's uniform practices of utilizing labor budgets, understaffing, assignment of heavy workloads, failure to schedule meal periods and/or adhere to a schedule for meal periods, and subsequent lack of meal period coverage, Ms. Thompson and other aggrieved employees were forced to forego meal periods, have their meal periods interrupted, and/or were

otherwise not relieved of all duties during meal periods. Moreover, as stated, BIG 5 systematically failed to pay Ms. Thompson and other aggrieved employees for actual hours worked during unpaid meal periods, because BIG 5's timekeeping system locked out Ms. Thompson and other aggrieved employees for 30 minutes when they clocked out for a meal period.

Thus, BIG 5 did not pay minimum wages for all hours worked by Ms. Thompson and other aggrieved employees. To the extent that these off-the-clock hours did not qualify for overtime premium payment, BIG 5 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, BIG 5 regularly failed to pay at least minimum wages to Ms. Thompson 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. Thompson 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, BIG 5 had, and continues to have, a company-wide policy and/or practice of understaffing locations due to labor budgeting and/or limited payroll allocation, which, combined with the assignment of heavy workloads, and failure to schedule meal periods and/or adhere to a schedule for meal periods, has resulted in a lack of meal period coverage and prevented Ms. Thompson and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. As a result, Ms. Thompson and other aggrieved employees had to work through all or part of their meal periods, had their meal periods interrupted, and/or had to wait extended periods of time before taking meal periods.

For example, according to Ms. Thompson's timesheets, on May 15, 2022, she clocked in at the start of her shift at 2:07 p.m. and clocked out at the end of her shift at 7:51 p.m., working a total of five (5) hours and 44 minutes, without clocking out for a meal period. As further examples, according to Ms. Thompson's timesheets, on July 26, 2021, May 29, 2022, and July 15, 2022, she worked shifts of more than five (5) hours on each of those days, without clocking out for a meal period.

Also, as stated, BIG 5's company-wide timekeeping system prevented Ms. Thompson and other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted, because the system locked out Ms. Thompson and other aggrieved employees once they clocked out for a meal period, and would not permit them to clock back in from a meal period before 30 minutes had elapsed.

Moreover, BIG 5 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. Thompson 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.

Moreover, BIG 5 had a company-wide policy of requiring all newly hired employees to sign blanket meal period waivers at or near their time of hire. BIG 5 took the position that non-exempt, hourly paid employees had waived their rights to first and/or second meal periods for the entirety of their employment and, on that basis, did not provide them with all meal periods to which they were entitled. BIG 5's presumption that meal periods would not be provided for shifts in excess of five (5) hours but less than six (6) hours and/or for shifts in excess of ten (10) hours but less than twelve (12) hours, due to blanket meal period waivers signed at or near the time of hire, discouraged and impeded Ms. Thompson and other aggrieved employees from taking all meal periods to which they were entitled.

Furthermore, an employer's obligation to provide a meal period is only "triggered" when the employer "employs an employee for a work period of more than five hours per day." *Brinker*, 53 Cal. 4th at 1039 ("If an employer engages, suffers, or permits anyone to work for a full five hours, its meal break obligation is triggered.").

[A]fter the meal break obligation is triggered . . . an employer is put to a choice: it must (1) afford an off-duty meal period; (2) consent to a mutually agreed-upon waiver if one hour or less will end the shift; or (3) obtain written agreement to an on-duty meal period if circumstances permit. Failure to do one of these will render the employer liable for premium pay.

Id. (citing Cal. Labor Code § 226.7; Wage Order No. 5, subd. 11(A), (B)). That BIG 5 required Ms. Thompson and other aggrieved employees to sign meal period waivers simultaneously at or near their time of hire (as opposed to on a specific work day) renders them invalid and unenforceable, because BIG 5's obligation to provide Ms. Thompson and other aggrieved employees with meal periods did not arise until they had employed them for a full five (5) hours.

Additionally, BIG 5's "CA Second Meal Period Waiver Election Form" is unlawful insofar as it fails to correctly inform employees of the requirements for waiving second meal periods. Under California Law, the second meal period may be waived by *only if* the first meal period was not waived. However, BIG 5's written meal period policy states in relevant part: "I understand that hourly employees who work more than ten paid hours in a day are entitled to a second 30-minute, uninterrupted unpaid meal period. I have been advised that I am allowed to waive this meal period for workdays when I work more than ten hours but not more than twelve hours." Notably absent from BIG 5's written policy is any mention that the second meal period may be waived only if the first meal period was not waived, and is therefore facially invalid.

At all times mentioned herein, BIG 5 knew or should have known that as a result of its policies, Ms. Thompson and other aggrieved employees were not actually relieved of all duties to take timely,

uninterrupted meal periods. BIG 5 further knew or should have known that it did not pay Ms. Thompson and other aggrieved employees meal period premiums when meal periods were late, interrupted, shortened, and/or missed.

Furthermore, BIG 5 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. Thompson and other aggrieved employees have not received premium pay for missed, late, and interrupted meal periods. Alternatively, to the extent that BIG 5 did pay other aggrieved employees for missed, late, and interrupted meal periods, BIG 5 did not pay other aggrieved employees at the correct rate of pay for premiums because BIG 5 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, BIG 5 failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Ms. Thompson 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, BIG 5 regularly failed to authorize and permit Ms. Thompson 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, BIG 5's company-wide practices of utilizing labor budgets and/or limited payroll allocation, understaffing, and assignment of heavy workloads resulted in a lack of rest period coverage and prevented Ms. Thompson and other aggrieved employees from being relieved of all duty in order to take compliant rest periods. BIG 5 also failed to schedule rest periods, which further led to Ms. Thompson and other aggrieved employees not being authorized and permitted to take rest periods.

Furthermore, BIG 5 maintained a company-wide on-premises rest period policy, which mandated that Ms. Thompson and other aggrieved employees remain on BIG 5's premises during their rest periods. Specifically, BIG 5's managers required Ms. Thompson to remain on BIG 5's premises

during her second rest period in case they wanted her to return to the store to assist customers walking in. Because Ms. Thompson 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, BIG 5 effectively maintained control over Ms. Thompson and other aggrieved employees during rest periods.

As a result of BIG 5's practices and policies, Ms. Thompson 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, approximately twice per week, Ms. Thompson missed her rest periods because the store was busy and BIG 5 did not provide sufficient coverage.

BIG 5 also has engaged in a company-wide practice and/or policy of not paying rest period premiums owed when compliant rest periods are not authorized or permitted. Because of this practice and/or policy, Ms. Thompson and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that BIG 5 did pay other aggrieved employees one (1) additional hour of premium pay for missed rest periods, BIG 5 did not pay other aggrieved employees at the correct rate of pay for premiums because BIG 5 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, BIG 5 failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Ms. Thompson 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. BIG 5 has not provided Ms. Thompson 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, BIG 5 has knowingly and intentionally provided Ms. Thompson and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, BIG 5 issued uniform wage statements to Ms. Thompson 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, BIG 5 violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

Because BIG 5 did not record the time Ms. Thompson 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), BIG 5 did not list the correct amount of gross wages and net wages earned by Ms. Thompson and other aggrieved employees, in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, BIG 5 failed to accurately list the total number of the hours worked by Ms. Thompson 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).

Also, because BIG 5 did not calculate other aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages and/or meal and rest period premiums, BIG 5 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). BIG 5 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), BIG 5 willfully failed to maintain accurate payroll records for Ms. Thompson 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, BIG 5 engaged in company-wide practices and/or policies of failing to record actual hours worked, and thereby failed to keep accurate records of work period and meal period start and end times for Ms. Thompson and other aggrieved employees in violation of section 1198. Furthermore, in light of BIG 5's failure to provide other aggrieved employees with second 30-minute meal periods to which they were entitled, BIG 5 kept no records of meal start and end times for second meal periods.

Because BIG 5 failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Ms. Thompson 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. Thompson 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. Thompson 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, BIG 5 failed to pay Ms. Thompson 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. Thompson 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.

On information and belief, BIG 5 had a company-wide practice or policy of paying departing employees their final wages on the next regular pay cycle, instead of adhering to the time requirements set forth in Labor Code sections 201 and 202. For example, Ms. Thompson provided written notice of her immediate resignation on or about July 21, 2022; however, BIG 5 did not provide Ms. Thompson with her final paycheck until July 26, 2022. Thus, BIG 5 failed to pay Ms. Thompson her final wages within seventy-two (72) hours from providing her resignation of employment, in violation of Labor Code section 202.

Additionally, BIG 5 willfully failed to pay Ms. Thompson and other aggrieved employees who are no longer employed by BIG 5 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 BIG 5's employ.

Ms. Thompson 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 § 206.5 – Release of Claims for Wages Due

California Labor Code section 206.5 prohibits employers from requiring employees to execute releases of a claim or right “on account of wages due, or to become due, or made as an advance on wages to be earned, unless payment of those wages has been made. A release required or executed in violation of the provisions of this section shall be null and void as between the employer and the employee.”

During the relevant time period, on information and belief, BIG 5 required Ms. Thompson and other aggrieved employees to release their claims for unpaid wages as a condition to receiving their paychecks. For example, on information and belief, BIG 5 required Ms. Thompson and other aggrieved employees to sign verifications on their timesheets, that their timesheets were accurate and correct. BIG 5 compelled Ms. Thompson and other aggrieved employees to sign these false verifications when they, in fact, had not received all earned and unpaid wages, including overtime wages, minimum wages, and/or meal and rest period premiums. BIG 5's policy and practice of requiring Ms. Thompson and other aggrieved employees to release their claims for unpaid wages as a condition to receiving their paychecks is in violation of California Labor Code section 206.5.

Ms. Thompson and other aggrieved employees are entitled to 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 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.

BIG 5’s California stores are generally similar in their layout and design and there was, and continues to be, space behind cash wraps to allow for the presence and use of a seat or stool by Ms. Thompson and other aggrieved employees (with reasonable or no modification to these work areas) during the performance of their work duties. BIG 5 could provide Ms. Thompson and other aggrieved employees with a seat or stool at its cash wraps, but instead denies employees seating and forces other aggrieved employees to stand throughout the day.

Ms. Thompson and other aggrieved employees spent a substantial portion of their day behind or at these cash wraps. The nature of the work of an employee performing cashier duties can reasonably be accomplished from a seated position. However, as set forth herein, BIG 5 systematically, and on a company-wide basis, does not provide seats or stools at or near the cash wraps, forcing Ms. Thompson and other aggrieved employees to stand throughout their work shifts.

BIG 5 violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11070(14)(A) because Ms. Thompson 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. BIG 5’s management did not inform Ms. Thompson 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 BIG 5’s company-wide policy and/or practice of prohibiting employees from sitting during their shifts and company-wide failure to provide suitable seating, Ms. Thompson and other aggrieved employees were forced to stand during shifts and denied seats. BIG 5’s failure to provide suitable seating to Ms. Thompson and other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order No. 7-2001, subdivision 14(A).

Ms. Thompson and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, and seek injunctive relief to bring BIG 5 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.*

BIG 5’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. Thompson and other aggrieved employees during lulls in operation. BIG 5 could have provided Ms. Thompson 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.

BIG 5 did not provide Ms. Thompson 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. Thompson and other aggrieved employees engaged in duties in which the nature of the work required standing, BIG 5 denied them the use of seats nearby during lulls in their work duties. Moreover, BIG 5 did not inform Ms. Thompson and other aggrieved employees of their rights to a seat or stool under California law.

As a result of BIG 5’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. Thompson and other aggrieved employees were forced to stand during shifts and denied seats. BIG 5’s failure to provide suitable seating to Ms. Thompson and other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order No. 7-2001, subdivision 14(B).

Ms. Thompson and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, and seek injunctive relief to bring BIG 5 into compliance with California’s seating requirements, pursuant to Labor Code sections 1194.5 and/or 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.” BIG 5, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Ms. Thompson’s and other aggrieved employees’ rights by violating various sections of the California Labor Code.

Accordingly, Ms. Thompson 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. Thompson, 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 BIG 5 for violations of California Labor Code sections 201, 202, 204, 206.5, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, and 1198.

Therefore, on behalf of all aggrieved employees, Ms. Thompson 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. Thompson's reasonable attempt to settle her dispute with BIG 5 prior to litigation. Pursuant to *Graham v. Daimler Chrysler Corp.*, 34 Cal. 4th 553 (2004), this notice serves to inform BIG 5 of Ms. Thompson's aforementioned grievances and the proposed remedies as detailed below, while affording BIG 5 a reasonable opportunity to satisfy Ms. Thompson's demands.

Demand is hereby made that BIG 5 shall, within 30 calendar days of this notice, agree, in writing to the following corrective actions:

1. BIG 5 shall pay Ms. Thompson and all other aggrieved employees employed by BIG 5 at any time during the past three years from the date of this notice unpaid wages and compensation for the above-referenced violations.
2. BIG 5 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 and provided lawful meal and rest periods.
3. BIG 5 shall conduct a survey or interview all current and former aggrieved employees in California who worked for BIG 5 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; and the number of rest periods which were not authorized and permitted, with the investigation to be completed within 60 days.
4. BIG 5 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. BIG 5 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. BIG 5 shall pay accrued legal interest to Ms. Thompson and all aggrieved employees at the rate of 10% per annum for said unpaid wages.
6. BIG 5 shall provide Ms. Thompson and all aggrieved employees employed by BIG 5 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).
7. BIG 5 shall cease the practice of requiring aggrieved employees to release their claims for unpaid wages as a condition for receiving their paychecks (Labor Code section 206.5).
8. BIG 5 shall implement and provide suitable seating to all aggrieved employees.

9. BIG 5 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.
10. BIG 5 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:

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

Best Regards,

A handwritten signature in black ink, appearing to read 'Alexander Lima', followed by three dots.

Alexander Lima

Copy: BIG 5 CORP. (via U.S. Certified Mail); BIG 5 SPORTING GOODS CORPORATION (via U.S. Certified Mail)

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

CERTIFIED MAIL



7022 2410 0000 2406 2792

BIG 5 CORP.
2525 E. EL SEGUNDO BOULEVARD
EL SEGUNDO, CA 90245

SENDER: COMPLETE THIS SECTION

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

BIG 5 CORP.
2525 E. EL SEGUNDO BOULEVARD
EL SEGUNDO, CA 90245

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent
☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

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

Service Type

■ About Signature

■ About Signature Restricted Delivery

■ Certified Mail®

■ Certified Mail Restricted Delivery

■ Collect on Delivery

■ Collect on Delivery Restricted Delivery

■ Restricted Delivery

☐ Priority Mail Express®

☐ Registered Mail™

☐ Registered Mail Restricted Delivery

☐ Signature Confirmation™

☐ Signature Confirmation Restricted Delivery

☐ Signature Confirmation Restricted Delivery

2. A9660304027706/2722-13 179-56

7022 2410 0000 2406 2792

PS Form 3811, July 2020 PSN 7530-02-000-9063

Domestic Return Receipt

7022 2410 0000 2406 2792

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

OFFICIAL USE

Certified Mail Fee

PSN 7530-02-000-9063

For delivery information, visit our website at www.usps.com

1. Certified Mail Fee \$ _____

2. Return Receipt Fee \$ _____

3. Signature Confirmation Fee \$ _____

4. Certified Mail Restricted Delivery Fee \$ _____

5. Signature Confirmation Restricted Delivery Fee \$ _____

6. Signature Confirmation Restricted Delivery Fee \$ _____

7. Signature Confirmation Restricted Delivery Fee \$ _____

8. Signature Confirmation Restricted Delivery Fee \$ _____

9. Signature Confirmation Restricted Delivery Fee \$ _____

10. Signature Confirmation Restricted Delivery Fee \$ _____

11. Signature Confirmation Restricted Delivery Fee \$ _____

12. Signature Confirmation Restricted Delivery Fee \$ _____

13. Signature Confirmation Restricted Delivery Fee \$ _____

14. Signature Confirmation Restricted Delivery Fee \$ _____

15. Signature Confirmation Restricted Delivery Fee \$ _____

16. Signature Confirmation Restricted Delivery Fee \$ _____

17. Signature Confirmation Restricted Delivery Fee \$ _____

18. Signature Confirmation Restricted Delivery Fee \$ _____

19. Signature Confirmation Restricted Delivery Fee \$ _____

20. Signature Confirmation Restricted Delivery Fee \$ _____

21. Signature Confirmation Restricted Delivery Fee \$ _____

22. Signature Confirmation Restricted Delivery Fee \$ _____

23. Signature Confirmation Restricted Delivery Fee \$ _____

24. Signature Confirmation Restricted Delivery Fee \$ _____

25. Signature Confirmation Restricted Delivery Fee \$ _____

26. Signature Confirmation Restricted Delivery Fee \$ _____

27. Signature Confirmation Restricted Delivery Fee \$ _____

28. Signature Confirmation Restricted Delivery Fee \$ _____

29. Signature Confirmation Restricted Delivery Fee \$ _____

30. Signature Confirmation Restricted Delivery Fee \$ _____

31. Signature Confirmation Restricted Delivery Fee \$ _____

32. Signature Confirmation Restricted Delivery Fee \$ _____

33. Signature Confirmation Restricted Delivery Fee \$ _____

34. Signature Confirmation Restricted Delivery Fee \$ _____

35. Signature Confirmation Restricted Delivery Fee \$ _____

36. Signature Confirmation Restricted Delivery Fee \$ _____

37. Signature Confirmation Restricted Delivery Fee \$ _____

38. Signature Confirmation Restricted Delivery Fee \$ _____

39. Signature Confirmation Restricted Delivery Fee \$ _____

40. Signature Confirmation Restricted Delivery Fee \$ _____

41. Signature Confirmation Restricted Delivery Fee \$ _____

42. Signature Confirmation Restricted Delivery Fee \$ _____

43. Signature Confirmation Restricted Delivery Fee \$ _____

44. Signature Confirmation Restricted Delivery Fee \$ _____

45. Signature Confirmation Restricted Delivery Fee \$ _____

46. Signature Confirmation Restricted Delivery Fee \$ _____

47. Signature Confirmation Restricted Delivery Fee \$ _____

48. Signature Confirmation Restricted Delivery Fee \$ _____

49. Signature Confirmation Restricted Delivery Fee \$ _____

50. Signature Confirmation Restricted Delivery Fee \$ _____

51. Signature Confirmation Restricted Delivery Fee \$ _____

52. Signature Confirmation Restricted Delivery Fee \$ _____

53. Signature Confirmation Restricted Delivery Fee \$ _____

54. Signature Confirmation Restricted Delivery Fee \$ _____

55. Signature Confirmation Restricted Delivery Fee \$ _____

56. Signature Confirmation Restricted Delivery Fee \$ _____

57. Signature Confirmation Restricted Delivery Fee \$ _____

58. Signature Confirmation Restricted Delivery Fee \$ _____

59. Signature Confirmation Restricted Delivery Fee \$ _____

60. Signature Confirmation Restricted Delivery Fee \$ _____

61. Signature Confirmation Restricted Delivery Fee \$ _____

62. Signature Confirmation Restricted Delivery Fee \$ _____

63. Signature Confirmation Restricted Delivery Fee \$ _____

64. Signature Confirmation Restricted Delivery Fee \$ _____

65. Signature Confirmation Restricted Delivery Fee \$ _____

66. Signature Confirmation Restricted Delivery Fee \$ _____

67. Signature Confirmation Restricted Delivery Fee \$ _____

68. Signature Confirmation Restricted Delivery Fee \$ _____

69. Signature Confirmation Restricted Delivery Fee \$ _____

70. Signature Confirmation Restricted Delivery Fee \$ _____

71. Signature Confirmation Restricted Delivery Fee \$ _____

72. Signature Confirmation Restricted Delivery Fee \$ _____

73. Signature Confirmation Restricted Delivery Fee \$ _____

74. Signature Confirmation Restricted Delivery Fee \$ _____

75. Signature Confirmation Restricted Delivery Fee \$ _____

76. Signature Confirmation Restricted Delivery Fee \$ _____

77. Signature Confirmation Restricted Delivery Fee \$ _____

78. Signature Confirmation Restricted Delivery Fee \$ _____

79. Signature Confirmation Restricted Delivery Fee \$ _____

80. Signature Confirmation Restricted Delivery Fee \$ _____

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

CERTIFIED MAIL



7022 2410 0000 2406 2785

BIG 5 SPORTING GOODS
CORPORATION
2525 E. EL SEGUNDO BOULEVARD
EL SEGUNDO, CA 90245

SENDER: COMPLETE THIS SECTION

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

BIG 5 SPORTING GOODS
CORPORATION
2525 E. EL SEGUNDO BOULEVARD
EL SEGUNDO, CA 90245

COMPLETE THIS SECTION ON DELIVERY

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

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

Service Type

- ☐ Adult Signature
☐ Adult Signature Restricted Delivery
☐ Certified Mail
☐ Certified Mail Restricted Delivery
☐ Collect on Delivery
☐ Insured Mail
☐ Registered Mail
☐ Registered Mail Restricted Delivery
☐ Signature ConfirmationSM
☐ Signature ConfirmationSM Restricted Delivery
☐ Priority Mail Express[®]
☐ Registered MailSM
☐ Registered Mail Restricted Delivery
☐ Signature ConfirmationSM
☐ Signature ConfirmationSM Restricted Delivery
☐ Restricted Delivery

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

Domestic Return Receipt

7022 2410 0000 2406 2785

U.S. Postal ServiceSM
CERTIFIED MAIL[®] RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com.

OFFICIAL USE

Certified Mail Fee

Extra Services & Fees (If any fee, add fee as appropriate)
☒ Return Receipt (hardcopy) \$
☐ Insured (over \$500) \$
☐ Restricted Mail Restricted Delivery \$

Postmark
Date

BIG 5 SPORTING GOODS
CORPORATION
2525 E. EL SEGUNDO BOULEVARD
EL SEGUNDO, CA 90245