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August 4, 2025

VIA ONLINE SUBMISSION

California Labor & Workforce Development Agency
ATTN: PAGA Administrator
(https://dir.govfa.net/411)

Subject: *Caitlin Robertson v. Hot Topic, Inc., et al.*

Dear PAGA Administrator:

This office represents Caitlin Robertson in connection with her claims under the California Labor Code. Ms. Robertson was an employee of HOT TOPIC, INC.; HOT TOPIC TENNESSEE, INC.; HOT TOPIC MERCHANDISING, INC.; and/or HOT TOPIC ADMINISTRATION, INC. For the purpose of this letter, Ms. Robertson collectively refers to these entities as "HOT TOPIC."

The employers may be contacted directly at the addresses below:

HOT TOPIC, INC.
18305 E SAN JOSE AVE
CITY OF INDUSTRY, CA 91748

HOT TOPIC TENNESSEE, INC.
18305 E SAN JOSE AVE
CITY OF INDUSTRY, CA 91748

HOT TOPIC MERCHANDISING, INC.
18305 E SAN JOSE AVE
CITY OF INDUSTRY, CA 91748

HOT TOPIC ADMINISTRATION, INC.
18305 E SAN JOSE AVE
CITY OF INDUSTRY, CA 91748

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

HOT TOPIC employed Ms. Robertson as an hourly paid, non-exempt employee from approximately December 2023 to May 2025. Ms. Robertson worked for HOT TOPIC as an Assistant Manager at its retail store location in Pleasanton, California. During her employment, Ms. Robertson typically worked eight (8) hours or more per day and five (5) days per week. Her job duties included, without limitation, opening and closing the store, training and hiring staff, handling promotion changes, overseeing daily operations, and keeping record of inventory.

HOT TOPIC committed each of the following Labor Code violations against Ms. Robertson, the facts and theories of which follow, making her an "aggrieved employee" pursuant to California Labor Code section 2699(c)(1): [1]

**HOT TOPIC's Company-Wide and Uniform Payroll and HR Practices**

HOT TOPIC, INC.; HOT TOPIC TENNESSEE, INC.; HOT TOPIC MERCHANDISING, INC.; and HOT TOPIC ADMINISTRATION, INC. are California corporations. Together, they are an American fast-fashion company specializing in counterculture-related clothing and accessories, as well as licensed music. Upon information and belief, HOT TOPIC maintains a single, centralized Human Resources (HR) department at its corporate headquarters in City of Industry, California, for all non-exempt, hourly paid employees working for HOT TOPIC in California, including Ms. Robertson and other aggrieved employees. At all relevant times, HOT TOPIC issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Ms. Robertson and other aggrieved employees, regardless of their location or position.

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

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[1] These facts, theories, and claims are based on Ms. Robertson's experience and counsel's review of those records currently available relating to Ms. Robertson'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. Robertson 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.

HOT TOPIC willfully failed to pay all overtime wages owed to Ms. Robertson and other aggrieved employees. During the relevant time period, Ms. Robertson and other aggrieved employees were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they worked were not recorded.

First, during the relevant time period, HOT TOPIC had, and continues to have, a company-wide policy and/or practice of discouraging and impeding Ms. Robertson and other aggrieved employees from recording hours worked that were outside of their scheduled shifts in order to limit the amount of overtime employees could accrue. On information and belief, this limitation on overtime accrual was based on a company-wide policy of staffing locations strictly based on the labor hours or labor budget set by corporate. This policy of limiting overtime, coupled with HOT TOPIC's policies and/or practices of understaffing and/or single-staffing and assignment of heavy workloads (*see infra*), led Ms. Robertson and other aggrieved employees to work off-the-clock outside of their scheduled shift times. For example, at least two (2) times per month, before Ms. Robertson clocked in for her shifts, she worked off-the-clock preparing weekly reports and training shifts for staff. As another example, Ms. Robertson regularly received phone calls and text messages from HOT TOPIC's management on her days off pertaining to expectations for the following shift and other work-related matters. Ms. Robertson estimates spending 1-2 hours per week responding to these phone calls and text messages.

Additionally, HOT TOPIC had, and continues to have, a company-wide security policy where only managerial employees were issued keys to lock and unlock the stores. After clocking out at the end of their closing shifts, Ms. Robertson and other aggrieved employees were required to wait for other employees to complete their tasks before they could leave HOT TOPIC's premises together. For example, Ms. Robertson sometimes had to wait up to 10 minutes after clocking out for other employees to complete their closing duties before they could all leave for the day. Thus, HOT TOPIC failed to track this time spent working outside of their scheduled shifts, and Ms. Robertson and other aggrieved employees received no compensation for this time.

Second, as stated, upon information and belief, HOT TOPIC 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 the corporate office. On information and belief, HOT TOPIC's uniform use of labor budgeting and understaffing, including adopting a single-staffing model for some of its positions, such as store managers, while assigning heavy workloads, including pressuring employees to meet the store's overall sales goal, resulted in a failure to provide Ms. Robertson and other aggrieved employees with adequate meal period coverage, because there were too few employees on duty to handle the workload. HOT TOPIC's policies and/or practices resulted in a failure to provide Ms. Robertson and other aggrieved employees with adequate meal period coverage, and thus, Ms. Robertson and other aggrieved employees were not always afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period. HOT TOPIC also had a practice of failing to adhere to a schedule for meal periods which, in conjunction with the assignment of heavy workloads, further caused Ms. Robertson and other aggrieved employees to not be relieved of their duties for compliant meal periods. For example, due to lack of coverage and heavy workload, HOT TOPIC's management and other employees interrupted Ms. Robertson's meal periods to ask questions or discuss work-related matters. Thus, Ms. Robertson and other aggrieved employees were not always afforded compliant, uninterrupted thirty (30) minute meal periods during shifts in which they were entitled to receive meal periods.

Third, in conjunction with understaffing its stores, HOT TOPIC had a requirement that a managerial employee be present on the sales floor at all times and prohibited managers from leaving the premises unless another managerial employee was also on duty, resulting in a lack of meal period coverage for managerial employees. At the same time, the labor budgets HOT TOPIC implemented did not always allow for more than one manager to be on the schedule at all times. As a result, Ms. Robertson and other aggrieved employees were sometimes the only managers on duty, and were expected to supervise the store at all times. Because managerial employees were effectively prohibited from leaving HOT TOPIC's premises for meal periods without coverage, and because there were too few employees and other managers on duty to handle the workload and attend to customers and other employees, Ms. Robertson and other aggrieved employees were denied uninterrupted 30-minute meal periods, and were required to work through and/or to return early from meal periods. Thus, HOT TOPIC effectively maintained control over Ms. Robertson and managerial employees during unpaid meal periods.

Fourth, during the relevant time period, on information and belief, because HOT TOPIC frowned upon employees accruing meal period premiums, HOT TOPIC's management pressured Ms. Robertson and other aggrieved employees to record compliant meal periods, even when they did not receive a compliant meal period. Thus, HOT TOPIC did not record all hours worked during meal periods, and Ms. Robertson and other aggrieved employees performed work during meal periods for which they were not paid.

HOT TOPIC knew or should have known that as a result of these company-wide practices and/or policies, Ms. Robertson 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. Robertson and other aggrieved employees worked shifts of eight (8) hours or more a day, or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium pay. Therefore, Ms. Robertson and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked.

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

For example, HOT TOPIC paid Ms. Robertson and other aggrieved employees incentive pay and/or nondiscretionary bonuses which were listed on Ms. Robertson's and other aggrieved employees' wage statements as "BONUS SUPP PAY." During pay periods that Ms. Robertson and other aggrieved employees were paid overtime wages, HOT TOPIC did not incorporate the incentive pay and/or nondiscretionary bonuses into Ms. Robertson's and other aggrieved employees' regular rate of pay and, as a result, paid them at incorrect and lower rates of pay for overtime hours worked. Specifically, HOT TOPIC paid Ms. Robertson and other aggrieved employees 1.5 times their hourly rate of pay instead of 1.5 times their regular rate of pay. HOT TOPIC's failure to properly calculate the overtime rates of pay based on all remuneration paid has resulted in an underpayment of overtime wages to Ms. Robertson and other aggrieved employees on a company-wide basis.

HOT TOPIC's failure to pay Ms. Robertson 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. Robertson and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring HOT TOPIC into compliance with the applicable IWC Wage Order and Labor Code sections 510 and 1198, pursuant to Labor Code sections 558 and/or 2699(a), (f), and (k).

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

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

First, as set forth above, as a result of HOT TOPIC's policies and/or practices of limiting the amount of overtime employees could accrue, understaffing and/or single-staffing, and assigning heavy workloads, including pressure to meet store sales goals, HOT TOPIC required Ms. Robertson and other aggrieved employees to perform work-related tasks while off-the-clock outside of their shifts, including preparing weekly reports, preparing training shifts for staff, responding to phone calls and text messages, and waiting for other employees to complete their duties before locking the store and leaving for the day. HOT TOPIC failed to track this time Ms. Robertson and other aggrieved employees spent working off-the-clock, and Ms. Robertson and other aggrieved employees received no compensation for this time.

Second, as also stated, due to HOT TOPIC's policies and/or practices of utilizing labor budgets, understaffing (including adopting a single-staffing model for certain positions), assigning heavy workloads, failing to adhere to a schedule for meal periods, and/or policy requiring managerial employees to stay on store premises during meal periods, Ms. Robertson and other aggrieved employees were prevented from taking all uninterrupted meal periods to which they were entitled and were required to work off-the-clock during meal periods, have their meal periods interrupted, and/or were otherwise not relieved of all duties during unpaid meal periods.

Third, as stated above, because HOT TOPIC frowned upon employees accruing meal period premiums, HOT TOPIC's management pressured employees to record compliant meal periods regardless of whether they had received a compliant meal period or not. Thus, HOT TOPIC did not record all hours worked during meal periods, and Ms. Robertson and other aggrieved employees performed work during meal periods for which they were not paid.

HOT TOPIC did not pay at least minimum wages for all hours worked by Ms. Robertson and other aggrieved employees. To the extent that these off-the-clock hours did not qualify for overtime premium payment, HOT TOPIC 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, HOT TOPIC regularly failed to pay at least minimum wages to Ms. Robertson 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. Robertson and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring HOT TOPIC into compliance with the applicable IWC Wage Order and Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f), and (k).

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

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

First, during the relevant time period, as stated, HOT TOPIC had, and continues to have, company-wide policies and/or practices of understaffing and/or single-staffing its locations while utilizing labor budgets, which, combined with the assignment of heavy workloads, including pressuring employees to meet store sales goals, resulted in a lack of meal period coverage and prevented Ms. Robertson and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. Further, as stated, HOT TOPIC had a company-wide practice and/or policy of failing to adhere to a schedule for meal periods, which further caused Ms. Robertson and other aggrieved employees to not be relieved of their duties for compliant meal periods. In conjunction with understaffing its stores, as stated, HOT TOPIC had a requirement that a managerial employee be present on the sales floor at all times, but HOT TOPIC's labor budgets did not always allow for more than one managerial employee to be on the schedule at all times. As a result, Ms. Robertson and other aggrieved employees were sometimes the only managers on duty, and would have their meal periods interrupted or would work through them in order to assist their coworkers and customers.

As a result, Ms. Robertson 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, as stated, HOT TOPIC's management and other employees frequently interrupted Ms. Robertson's meal periods to ask questions and discuss work-related matters as she was sometimes the only manager on duty. Additionally, Ms. Robertson took her meal periods late, after the fifth hour of work, due to the lack of coverage and failure to adhere to a schedule for meal periods.

Second, as also stated, because HOT TOPIC frowned upon employees accruing meal period premiums, HOT TOPIC's managers pressured Ms. Robertson and other aggrieved employees to record compliant meal periods, regardless of whether they had received a compliant meal period or not. For example, Ms. Robertson's manager told her to clock out before the fifth hour and record her meal period even if she could not take her meal period. Thus, HOT TOPIC systematically failed to accurately record meal periods.

Third, HOT TOPIC did not provide Ms. Robertson and other aggrieved employees with second 30-minute meal periods on days that they worked in excess of 10 hours in one day. During her employment, Ms. Robertson sometimes worked shifts in excess of ten (10) or more hours per day but was not always provided a second 30-minute meal period. Ms. Robertson and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

At all times herein mentioned, HOT TOPIC knew or should have known that, as a result of these policies, Ms. Robertson and other aggrieved employees were prevented from being relieved of all duties and required to perform some of their assigned duties during meal periods. HOT TOPIC further knew or should have known that HOT TOPIC did not pay Ms. Robertson and other aggrieved employees meal period premiums when meal periods were missed, shortened, interrupted, and/or late.

Furthermore, HOT TOPIC engaged in a company-wide practice and/or policy of not paying meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Ms. Robertson and other aggrieved employees have not received premium pay for missed, late, and interrupted meal periods. Alternatively, to the extent that HOT TOPIC did pay Ms. Robertson and other aggrieved employees premium pay for missed, late, and interrupted meal periods, HOT TOPIC did not pay Ms. Robertson and other aggrieved employees at the correct rate of pay for meal period premiums because HOT TOPIC 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, HOT TOPIC failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Ms. Robertson and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring HOT TOPIC into compliance with the applicable IWC Wage Order and Labor Code sections 226.7, 512(a), 516, and 1198, pursuant to Labor Code sections 558 and/or 2699(a), (f), and (k).

**<u>Violation of California Labor Code §§ 226.7, 516, and 1198 – Failure to Authorize and Permit Rest Periods</u>**

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, 273 (2016).

During the relevant time period, HOT TOPIC regularly failed to authorize and permit Ms. Robertson 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, HOT TOPIC's company-wide practices, including labor budgeting and/or limited payroll allocation, understaffing/single-staffing, and assigning heavy workloads, prevented Ms. Robertson and other aggrieved employees from being relieved of all duties to take rest periods. Additionally, HOT TOPIC failed to adhere to a schedule for rest periods, which, coupled with HOT TOPIC's failure to provide adequate rest period coverage, further led to Ms. Robertson and other aggrieved employees not being authorized and permitted to take rest periods.

Furthermore, upon information and belief, during the relevant time period, HOT TOPIC maintained a company-wide on-premises rest period policy, which effectively required that Ms. Robertson and/or other aggrieved employees remain on the work premises during their rest periods. Because Ms. Robertson and/or 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, HOT TOPIC effectively maintained control over Ms. Robertson and/or other aggrieved employees during rest periods.

As a result of HOT TOPIC's practices and policies, Ms. Robertson and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled. For example, Ms. Robertson regularly missed her rest periods due to the lack of rest period coverage, heavy workload, and HOT TOPIC's failure to adhere to a schedule for rest periods for employees.

HOT TOPIC 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 and permitted. Because of this practice and/or policy, Ms. Robertson and other aggrieved employees have not received premium pay for all noncompliant rest periods. Alternatively, to the extent that HOT TOPIC did pay Ms. Robertson and other aggrieved employees one (1) additional hour of premium pay for noncompliant rest periods, HOT TOPIC did not pay Ms. Robertson and other aggrieved employees at the correct rate of pay for premiums because HOT TOPIC 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, HOT TOPIC failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Ms. Robertson and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring HOT TOPIC into compliance with the applicable IWC Wage Order and Labor Code sections 226.7, 516, and 1198, pursuant to Labor Code sections 558 and/or 2699(a), (f), and (k).

**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. HOT TOPIC has not provided Ms. Robertson 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, HOT TOPIC has knowingly and intentionally provided Ms. Robertson and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, HOT TOPIC issued uniform wage statements to Ms. Robertson 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, HOT TOPIC violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

Because HOT TOPIC did not accurately record the time Ms. Robertson and other aggrieved employees spent working off-the-clock and deducted time from their records for meal periods that were interrupted and/or missed (and therefore time for which they should have been paid), HOT TOPIC did not list the correct amount of gross wages and net wages earned by Ms. Robertson and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, HOT TOPIC failed to accurately list the total number of hours worked by Ms. Robertson 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).

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

The wage statement deficiencies also include, among other things, failing to list the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list the inclusive dates of the period for which aggrieved employees were paid; failing to list the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number; failing to list the name and address of the legal entity that is the employer; and/or failing to state all hours worked as a result of not recording or stating 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), HOT TOPIC willfully failed to maintain accurate payroll records for Ms. Robertson 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, HOT TOPIC 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. Robertson and other aggrieved employees, in violation of section 1198. Furthermore, in light of HOT TOPIC's failure to provide Ms. Robertson and other aggrieved employees with second 30-minute meal periods to which they were entitled, HOT TOPIC kept no records of meal start and end times for second meal periods.

Because HOT TOPIC failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Ms. Robertson 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. Robertson 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. Robertson and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring HOT TOPIC into compliance with the applicable IWC Wage Order and Labor Code sections 226(a), 1174(d), and 1198, pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f), and (k).

**<u>Violation of California Labor Code § 204 – Failure to Timely Pay Wages During Employment</u>**

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, HOT TOPIC failed to pay Ms. Robertson 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. Robertson and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring HOT TOPIC into compliance with Labor Code section 204, pursuant to Labor Code sections 210 and/or 2699(a), (f), and (k).

**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, HOT TOPIC has a company-wide practice and/or policy of paying departing employees their final wages late, instead of adhering to the time requirements set forth in Labor Code sections 201 and 202. For example, HOT TOPIC terminated Ms. Robertson on or about May 13, 2025; however, on information and belief, HOT TOPIC did not provide Ms. Robertson with her final wages until the following day and with her vested vacation wages until a week later. Thus, HOT TOPIC failed to pay Ms. Robertson her final wages immediately, in violation of California Labor Code section 201.

Additionally, during the relevant time period, HOT TOPIC willfully failed to pay Ms. Robertson and other aggrieved employees who are no longer employed by HOT TOPIC 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 HOT TOPIC's employ.

Ms. Robertson and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring HOT TOPIC into compliance with Labor Code sections 201 and 202, pursuant to Labor Code sections 256 and/or 2699(a), (f), and (k).

**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 Industrial Welfare Commission ("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." 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.*

HOT TOPIC's California retail stores are generally similar in their layout and design, and there was, and continues to be, space at the cashwraps to allow for the presence and use of a seat or stool by Ms. Robertson and other aggrieved employees during the performance of their work duties at these cashwraps. However, HOT TOPIC designed its cashwraps to require Ms. Robertson and other aggrieved employees to stand while performing their work duties at those locations. HOT TOPIC could have designed its cashwraps in a manner that allowed Ms. Robertson and other aggrieved employees to sit while performing their duties and could have placed suitable seats or stools at or near each cashwrap for use by Ms. Robertson and other aggrieved employees. Instead, HOT TOPIC designed its cashwraps to require Ms. Robertson and other aggrieved employees to stand at the work area(s) and did not provide suitable seats or stools they could use while working at the cashwrap. In addition, HOT TOPIC prohibited Ms. Robertson and other aggrieved employees from sitting while working, and HOT TOPIC's management did not inform Ms. Robertson and other aggrieved employees that they could utilize seats while performing their duties.

During her employment, Ms. Robertson performed cashiering duties at the cashwrap and spent a significant portion of her day behind the cashwrap. Other aggrieved employees similarly spent a portion of their day at cashwraps performing cash register duties. The nature of the work of an employee performing cashier and/or customer service duties can reasonably be accomplished from a seated position. Ms. Robertson and other aggrieved employees could have provided customer service, handled cash register transactions, and performed other similar tasks at cashwraps at any of HOT TOPIC's retail stores while seated without affecting the quality and effectiveness of the performance of their job duties. However, as stated, HOT TOPIC, on a company-wide basis, designed cashwraps to require employees to stand while performing their cashier duties and did not provide suitable seats at cashwraps, forcing Ms. Robertson and other aggrieved employees to stand throughout their work shifts.

HOT TOPIC violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11070(14)(A) because Ms. Robertson and other aggrieved employees were not allowed to sit, even when the nature of their work would reasonably permit the use of seats, nor were they provided with suitable seats. HOT TOPIC's management did not inform Ms. Robertson 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. HOT TOPIC's failure to provide suitable seating to Ms.

Robertson and other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order No. 7-2001, subdivision 14(A).

Ms. Robertson and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring HOT TOPIC into compliance with the applicable IWC Wage Order and Labor Code section 1198, pursuant to Labor Code sections 1194.5 and/or 2699(a), (f), and (k).

**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 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." 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 placed within reasonable proximity to their work area under subdivision 14(B) during "lulls in operation." *Id.*

HOT TOPIC has not placed an adequate number of suitable seats within reasonable proximity to the work areas of employees who perform duties whose nature require standing and therefore has not permitted employees to use those seats when not actively engaged in performing their standing duties (i.e., during "lulls in operation"), even though sitting would not interfere with the performance of their job duties.

During her employment, Ms. Robertson experienced lulls in her work at various times during a typical shift, especially when the store was not busy during weekday evenings. During these lulls, when Ms. Robertson was not actively performing tasks (the nature of which require standing), Ms. Robertson could have taken a moment to sit and rest his legs, back, and feet if seating was provided. HOT TOPIC could provide Ms. Robertson and other aggrieved employees with a suitable seat or stool in its work areas but instead denies employees seating and forces Ms. Robertson and other aggrieved employees to stand throughout the day. Moreover, HOT TOPIC did not inform Ms. Robertson and other aggrieved employees of their rights to a seat or stool under California law. HOT TOPIC's failure to provide suitable seating to Ms. Robertson and other aggrieved employees within reasonable proximity of their work areas and failure to permit them to use those seats when not actively engaged in their standing duties violates California Labor Code section 1198 and IWC Wage Order No. 7-2001, subdivision 14(B).

Ms. Robertson and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring HOT TOPIC into compliance with the applicable IWC Wage Order and Labor Code section 1198, pursuant to Labor Code sections 1194.5 and/or 2699(a), (f), and (k).

**<u>Violation of California Labor Code § 2802 – Unreimbursed Business Expenses</u>**

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

First, during the relevant time period, Ms. Robertson and other aggrieved employees were required to use their personal mobile devices, including, but not limited to, cellular phones, and/or mobile data to carry out their job duties, but HOT TOPIC failed to fully reimburse them for the costs of their work-related mobile device expenses. For example, Ms. Robertson was required to use her personal cellular phone to respond to calls and text messages from her manager or coworkers to discuss work-related matters. Further, Ms. Robertson was required to take photos and videos on her personal phone and download and use a social media mobile application, "Instagram," to post on her store's Instagram page. Although HOT TOPIC required Ms. Robertson and other aggrieved employees to utilize their personal mobile devices and/or mobile data to carry out their work-related responsibilities, HOT TOPIC failed to fully reimburse them for these costs.

Second, during the relevant time period, HOT TOPIC, on a company-wide basis, required that Ms. Robertson and other aggrieved employees use their own personal vehicles to carry out company business, but failed to reimburse them for their costs of travel, including mileage. For example, twice per month, Ms. Robertson was required to use her personal vehicle and drive a couple of miles roundtrip to a nearby bank to exchange large-denomination bills for smaller bills and coins. As a further example, on one (1) occasion Ms. Robertson drove approximately 60 miles roundtrip to HOT TOPIC's other store location to drop off inventory. Although HOT TOPIC required Ms. Robertson and other aggrieved employees to utilize their personal vehicles to carry out their work-related responsibilities, HOT TOPIC failed to reimburse them for their mileage or travel expenses.

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

Thus, HOT TOPIC had, and continues to have, a company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred in violation of California Labor Code section 2802. Ms. Robertson and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring HOT TOPIC into compliance with the applicable IWC Wage Order and Labor Code section 2802, pursuant to Labor Code sections 2699(a), (f), and (k).

**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." HOT TOPIC, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Ms. Robertson's and other aggrieved employees' rights by violating various sections of the California Labor Code.

Accordingly, Ms. Robertson 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(k), 2699.3(a), 2699.3(c), 2699.5, and 558, Ms. Robertson, 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 HOT TOPIC for violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

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

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


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


Best Regards,

Ninel

Ninel Kocharyan

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