

Orlando Villalba (SBN 232165)
Orlando.Villalba@capstonelawyers.com
Helga Hakimi (SBN 257381)
Helga.Hakimi@capstonelawyers.com
Roxanna Tabatabaeepour (SBN 260187)
Roxanna.Taba@capstonelawyers.com
Ryan Tish (SBN 274284)
Ryan.Tish@capstonelawyers.com
Alexander Wallin (SBN 320420)
Alexander.Wallin@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 Madison Key

E-FILED
5/1/2023 3:03 PM
Clerk of Court
Superior Court of CA,
County of Santa Clara
23CV415615
Reviewed By: R. Walker

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

MADISON KEY, 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.

AE RETAIL WEST LLC, a Delaware
limited liability company;
AMERICAN EAGLE OUTFITTERS,
INC., a Delaware corporation; AE
CORPORATE SERVICES CO., a
Delaware corporation; and DOES 1
through 10, inclusive,

Defendants.

Case No.: **23CV415615**

**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 Madison Key, 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 February 23, 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 two (2) locations
7 within the County of Santa Clara, including Defendants' retail stores located in Milpitas (454
8 Great Mall Drive, Milpitas, California 95035) and Santa Clara (2855 Stevens Creek
9 Boulevard, Suite 2479, Santa Clara, California 95050). Pursuant to California Civil Code of
10 Procedure section 393, venue is proper for the recovery of a penalty imposed by statute in the
11 county in which the cause, or some part of the cause, arose. Because Defendants have
12 employees in Santa Clara County, and Plaintiff could bring an action filed under PAGA in any
13 county in which an aggrieved employee worked and Labor Code violations occurred, venue is
14 proper. *Crestwood Behavioral Health, Inc. v. Superior Court of Alameda County*, 60 Cal.
15 App. 5th 1069 (2021).

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

20 **THE PARTIES**

21 6. Plaintiff Madison Key is a resident of San Bernardino, in San Bernadino
22 County, California. Defendants employed Plaintiff as an hourly paid, non-exempt employee
23 from approximately October 2019 to November 2022. Plaintiff worked as a Seasonal
24 Associate, Business Associate, and Senior Business Associate for Defendants at their retail
25 store located in Riverside, California. Plaintiff typically worked four (4) hours per day or
26 more, and three (3) to six (6) days per week. At the time Plaintiff's employment with
27 Defendants ended, she was compensated approximately \$16.25 per hour. Plaintiff's job duties
28 included, without limitation, cashiering, providing customer service, conducting inventory,

1 training other Business Associates, processing shipments, cleaning the store, and completing
2 floor sets before the store opened or after closing.

3 7. AE RETAIL WEST LLC was and is, upon information and belief, a Delaware
4 limited liability company, and at all times hereinafter mentioned, an employer whose
5 employees are engaged throughout this county, the State of California.

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

9 9. AE CORPORATE SERVICES CO. was and is, upon information and belief, a
10 Delaware corporation, and at all times hereinafter mentioned, an employer whose employees
11 are engaged throughout this county, the State of California.

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

16 11. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10
17 were the partners, agents, owners, or managers of AE RETAIL WEST LLC; AMERICAN
18 EAGLE OUTFITTERS, INC.; and AE CORPORATE SERVICES CO., at all relevant times.

19 12. Plaintiff is informed and believes, and thereon alleges, that each and all of the
20 acts and omissions alleged herein was performed by, or is attributable to, AE RETAIL WEST
21 LLC; AMERICAN EAGLE OUTFITTERS, INC.; AE CORPORATE SERVICES CO.; and/or
22 DOES 1 through 10 (collectively, "Defendants" or "AMERICAN EAGLE"), each acting as
23 the agent, employee, alter ego, and/or joint venturer of, or working in concert with, each of the
24 other co-Defendants and was acting within the course and scope of such agency, employment,
25 joint venture, or concerted activity with legal authority to act on the others' behalf. The acts
26 of any and all Defendants were in accordance with, and represent, the official policy of
27 Defendants.

28 13. At all relevant times, Defendants, and each of them, ratified each and every act

1 or omission complained of herein. At all relevant times, Defendants, and each of them, aided
2 and abetted the acts and omissions of each and all the other Defendants in proximately causing
3 the damages herein alleged.

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

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

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

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

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

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

13 18. AE RETAIL WEST LLC; AMERICAN EAGLE OUTFITTERS, INC.; AE
14 CORPORATE SERVICES CO.; and/or DOES 1 through 10 are therefore alter egos of each
15 other.

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

19 20. Plaintiff further alleges, upon information and belief, that the Defendants AE
20 RETAIL WEST LLC; AMERICAN EAGLE OUTFITTERS, INC.; and AE CORPORATE
21 SERVICES CO. are alter egos of each other for the following reasons:

22 (a) According to AMERICAN EAGLE OUTFITTERS, INC.'s SEC Form
23 10-K filing for 2023¹, AE RETAIL WEST LLC and AE CORPORATE
24 SERVICES CO. are subsidiaries of AMERICAN EAGLE
25 OUTFITTERS, INC.;

26 (b) On the California Secretary of State's website
27

28 ¹ 10-K Annual Report 03/13/2023, "American Eagle Outfitter, Inc. – Financials & Filings" <https://investors.ae.com/financials-filings/sec-filings/> (last accessed April 26, 2023).

(<https://bizfileonline.sos.ca.gov/>), AE RETAIL WEST LLC and AE CORPORATE SERVICES CO. have the same principal address and mailing address, “77 HOT METAL STREET, PITTSBURGH, PA 15203”;

(c) According to the California Secretary of State’s website, AE RETAIL WEST LLC and AE CORPORATE SERVICES CO. share the same agent for service of process, C T CORPORATION SYSTEM; and

(d) On information and belief, AE RETAIL WEST LLC; AMERICAN EAGLE OUTFITTERS, INC.; and AE CORPORATE SERVICES CO. utilize the same standardized employment forms and issue the same employment policies.

PAGA REPRESENTATIVE ALLEGATIONS

21. Defendants operate stores offering high-quality, on-trend clothing, accessories, and personal care products, including approximately 50 retail store locations in California. Upon information and belief, Defendants maintain a single, centralized Human Resources (HR) department at their corporate headquarters in Pittsburgh, Pennsylvania, for all non-exempt, hourly paid employees working for Defendants in California, which is responsible for the recruiting and hiring of new employees, and communicating and implementing Defendants’ company-wide policies, including timekeeping policies and meal and rest period policies, to employees throughout California.

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

23. Upon information and belief, Defendants maintain a centralized Payroll

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

9 24. Defendants continue to employ non-exempt or hourly paid employees in
10 California.

11 25. Plaintiff is informed and believes, and thereon alleges, that at all times herein
12 mentioned, Defendants were advised by skilled lawyers and other professionals, employees
13 and advisors knowledgeable about California labor and wage law, employment and personnel
14 practices, and about the requirements of California law.

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

18 27. 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 certain wages for overtime compensation and that they were not receiving certain
21 wages for overtime compensation.

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

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

7 30. 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 meal periods in accordance with the California Labor Code and applicable IWC Wage Order
10 or payment of one (1) additional hour of pay at their regular rates of pay when they were not
11 provided with timely, uninterrupted, thirty (30) minute meal periods and that Plaintiff and
12 other non-party Aggrieved Employees were not provided with all meal periods or payment of
13 one (1) additional hour of pay at their regular rates of pay when they did not receive a timely,
14 uninterrupted, thirty (30) minute meal period.

15 31. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
16 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
17 rest periods in accordance with the California Labor Code and applicable IWC Wage Order or
18 payment of one (1) additional hour of pay at their regular rates of pay when they were not
19 authorized and permitted to take a compliant rest period and that Plaintiff and other non-party
20 Aggrieved Employees were not authorized and permitted to take compliant rest periods or
21 provided with payment of one (1) additional hour of pay at their regular rates of pay when
22 they were not authorized and permitted to take a compliant rest period.

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

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

1 should have known that they had a duty to maintain accurate and complete payroll records in
2 accordance with the Labor Code and applicable IWC Wage Order, but willfully, knowingly,
3 and intentionally failed to do so.

4 34. 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 timely payment of wages during their employment. In violation of the California Labor Code,
7 Plaintiff and other non-party Aggrieved Employees did not receive payment of all wages,
8 including, but not limited to, overtime wages, minimum wages, meal and rest period
9 premiums, reporting time pay, and/or sick leave pay, within permissible time periods.

10 35. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
11 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
12 timely payment of all wages earned upon termination of employment. In violation of the
13 California Labor Code, Plaintiff and other non-party Aggrieved Employees did not receive
14 payment of all wages due, including, but not limited to, overtime wages, minimum wages,
15 meal and rest period premiums, reporting time pay, and/or sick leave pay, within permissible
16 time periods.

17 36. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
18 should have known that Plaintiff and/or other non-party Aggrieved Employees were entitled
19 to receive sick leave benefits to be paid at a regular rate of pay, that included, as eligible
20 income, all income derived from incentive pay, nondiscretionary bonuses, and/or other forms
21 of compensation, but failed to include all forms of remuneration in calculating the regular rate
22 of pay for sick leave pay.

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

1 38. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
2 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
3 be paid reporting time pay when they reported to work for their usual or scheduled shift but
4 were put to work for less than half of the usual or scheduled shift. In violation of the
5 California Labor Code and applicable IWC Wage Order, Defendants did not pay Plaintiff and
6 other non-party Aggrieved Employees all reporting time pay due.

7 39. 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 reimbursement for all business-related expenses and costs they incurred during the
10 course and scope of their employment and that they did not receive reimbursement of
11 applicable business-related expenses and costs incurred.

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

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

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

27 43. Plaintiff and other current and former employees of Defendants are "aggrieved
28 employees" as defined by Labor Code section 2699(c) in that they are all Defendants' current

1 or former employees and one or more of the alleged violations were committed against them.

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

- 5 (a) The aggrieved employee shall give written notice by online filing
6 (hereinafter “Employee’s Notice”) to the LWDA and by certified mail
7 to the employer of the specific provisions of the California Labor Code
8 alleged to have been violated, including the facts and theories to support
9 the alleged violations.
- 10 (b) An aggrieved employee’s notice filed with the LWDA pursuant to
11 2699.3(a) and any employer response to that notice shall be
12 accompanied by a filing fee of seventy-five dollars (\$75).
- 13 (c) The LWDA shall provide notice (hereinafter “LWDA Notice”) to the
14 employer and the aggrieved employee by certified mail that it does not
15 intend to investigate the alleged violation within sixty (60) calendar
16 days of the postmark date of the Employee’s Notice. Upon receipt of
17 the LWDA Notice, or if the LWDA Notice is not provided within sixty-
18 five (65) calendar days of the postmark date of the Employee’s Notice,
19 the aggrieved employee may commence a civil action pursuant to
20 California Labor Code section 2699 to recover civil penalties in addition
21 to any other penalties to which the employee may be entitled.

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

- 26 (a) The aggrieved employee or representative shall give written notice by
27 online filing to the LWDA and by certified mail to the employer of the
28 specific provisions of the California Labor Code alleged to have been

1 violated (other than those listed in Section 2699.5), including the facts
2 and theories to support the alleged violation.

3 (b) An aggrieved employee's notice filed with the LWDA pursuant to
4 2699.3(c) and any employer response to that notice shall be
5 accompanied by a filing fee of seventy-five dollars (\$75).

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

14 46. On February 23, 2023, Plaintiff provided written notice by online filing to the
15 LWDA and by certified mail to Defendants of the specific provisions of the California Labor
16 Code alleged to have been violated, including facts and theories to support the alleged
17 violations, in accordance with California Labor Code section 2699.3. Plaintiff's written
18 notice was accompanied with the applicable filing fee of seventy-five dollars (\$75). The
19 LWDA PAGA Administrator has confirmed receipt of Plaintiff's written notice and assigned
20 Plaintiff PAGA Case Number LWDA-CM-938144-23. A true and correct copy of Plaintiff's
21 written notice to the LWDA and Defendants dated February 23, 2023, is attached hereto as
22 "Exhibit 1."

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

26 48. Thus, Plaintiff has satisfied the administrative prerequisites under California
27 Labor Code sections 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
28 violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 246, 248, 510,

1 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198, and 2802.

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

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

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

25 52. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a),
26 2699.3(a), 2699.3(c), 2699.5, and section 558, Plaintiff, acting in the public interest as a
27 private attorney general, seeks assessment and collection of civil penalties for herself, all other
28 non-party Aggrieved Employees, and the State of California against Defendants for violations

of California Labor Code sections 201, 202, 204, 226(a), 226.7, 246, 248, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198, and 2802.

FIRST CAUSE OF ACTION

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

(Against all Defendants)

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

54. 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, 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1198, and 2802. 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 246, 248, 516, and 1182.12.

55. 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

1 minimum wages for all hours worked, as set forth below;

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

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

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

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

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

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

21 (j) Violation of Labor Code sections 246 and 248 for failure to properly
22 calculate the sick leave paid to other non-party Aggrieved Employees,
23 as set forth below;

24 (k) Violation of Labor Code section 1198 and the applicable IWC Wage
25 Order for failing to provide suitable seating to other non-party
26 Aggrieved Employees, as set forth below;

27 (l) Violation of Labor Code section 1198 and the applicable IWC Wage
28 Order for failure to pay reporting time pay when Plaintiff and other non-

1 party Aggrieved Employees were put to work for less than half of their
2 usual or scheduled shifts, as set forth below; and

3 (m) Violation of Labor Code sections 2802 for failure to reimburse Plaintiff
4 and other non-party Aggrieved Employees for all business expenses
5 necessarily incurred, as set forth below.

6 **FAILURE TO PAY OVERTIME**

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

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

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

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

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

27 60. California Labor Code section 510 codifies the right to overtime compensation
28 at one and one-half (1 ½) times the regular rate of pay for hours worked in excess of eight (8)

1 hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the
2 seventh (7th) day of work, and to overtime compensation at twice the employee's regular rate
3 of pay for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours
4 in a day on the seventh (7th) day of work.

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

11 62. First, during the relevant time period, Defendants had, and continue to have, a
12 company-wide policy and/or practice of discouraging and impeding Plaintiff and other non-
13 party Aggrieved Employees from recording hours worked that were outside of their scheduled
14 shifts in order to limit the amount of overtime employees could accrue. This policy of
15 limiting overtime, coupled with Defendants' use of labor budgets, understaffing, and
16 assignment of heavy workloads (*see infra*), led Plaintiff and other non-party Aggrieved
17 Employees to work off-the-clock before and after their scheduled shift times. Consequently,
18 on information and belief, Plaintiff and other non-party Aggrieved Employees performed
19 work prior to the start of their shifts or after the end of their shifts, but were unable to record
20 this time. For example, Plaintiff was required to scan shipments, fold and put clothing away,
21 and clean the store, but, upon information and belief, when Plaintiff attempted to clock in as
22 soon as she reported to work, Defendants' management would not allow her to clock in until
23 five (5) minutes before the start of her scheduled shift, causing her to work off-the-clock for
24 up to 15 minutes. As a further example, throughout her employment, Defendants'
25 management required Plaintiff to remain at the store and perform closing duties for up to 15
26 minutes per instance, after she had already clocked out for the day. Finally, Plaintiff was
27 frequently required to travel to other store locations to cover shifts, but was not allowed to
28 record the time she spent driving to and from these stores, which could be a two-hour

1 roundtrip. Thus, during these times, Plaintiff performed work for Defendants, but was not
2 permitted to record this time spent working.

3 63. Second, during the relevant period, Defendants had a company-wide security
4 policy where only managerial employees possessed keys to lock and unlock the store, causing
5 Plaintiff and other non-party Aggrieved Employees to wait off-the-clock for the store to open
6 on days they were the first to arrive. On about six (6) occasions, Defendants' management
7 updated Plaintiff's schedule without notifying her, causing her to arrive for her shifts earlier
8 than needed and to wait up to one (1) hour for a managerial employee to arrive and unlock the
9 store. Even though Defendants required that Plaintiff and other non-party Aggrieved
10 Employees adhere to the provided schedules, Defendants did not compensate them for the
11 time they spent waiting when reporting to work according to the schedule. As a result of this
12 security policy, Plaintiff and other non-party Aggrieved Employees were subject to
13 Defendants' control before their shifts, but were not compensated for this time.

14 64. Third, Defendants had, and continue to have, a uniform practice and/or policy
15 of staffing their locations strictly based on the labor hours or labor budget set by the corporate
16 office. Defendants' use of labor budgets resulted in understaffing, such that there were too
17 few employees on duty to handle the heavy workloads and provide meal period coverage. As
18 a result of this lack of meal period coverage, Plaintiff and other non-party Aggrieved
19 Employees were not always afforded uninterrupted 30-minute meal periods during shifts when
20 they were entitled to receive a meal period. Moreover, Defendants have a policy and/or
21 practice of failing to schedule meal periods, which further caused Plaintiff and other non-party
22 Aggrieved Employees to not be relieved for uninterrupted 30-minute meal periods during
23 shifts when they were entitled to receive a meal period. For example, Plaintiff would have her
24 meal periods interrupted and cut short once per week to respond to increased customer service
25 demand and assist at the registers. Consequently, Plaintiff and other non-party Aggrieved
26 Employees were required to work through and/or had their unpaid meal periods interrupted in
27 order to complete their assigned duties, time for which they were not paid.

28 65. Fourth, in conjunction with understaffing their store locations, Defendants had

1 a requirement that a managerial employee be present on the floor at all times and prohibited
2 managers from leaving the premises unless another manager was also on duty, resulting in a
3 lack of meal period coverage for managerial employees. At the same time, the labor budgets
4 Defendants implemented did not always allow for more than one manager to be on the
5 schedule at all times. As a result, Plaintiff and other non-party Aggrieved Employees were
6 sometimes the only managers on duty, and were expected to supervise the store and respond
7 to customer complaints at all times. Because managerial employees were effectively
8 prohibited from leaving Defendants' premises for meal periods without coverage, and because
9 there were too few employees and other managers on duty to handle the workload and attend
10 to customers, Plaintiff and other non-party Aggrieved Employees were denied uninterrupted
11 30-minute meal periods, and were required to work through and/or to return early from meal
12 periods, but were not paid for this time spent working.

13 66. Fifth, on information and belief, because Defendants frowned upon employees
14 accruing meal period penalties, Defendants' management adjusted their time records to reflect
15 compliant meal periods regardless of whether they had received a compliant meal period or
16 not, in order to strictly limit the meal penalties that Defendants would otherwise owe. In
17 addition, Defendants' company-wide timekeeping system prevented Plaintiff and other non-
18 party Aggrieved Employees from recording all hours worked when their meal periods were
19 shortened or interrupted, because the system locked out Plaintiff and other non-party
20 Aggrieved Employees once they clocked out for a meal period, and did not permit them to
21 clock back in from a meal period before 30 minutes elapsed. Thus, Defendants did not record
22 all hours worked during meal periods, and Plaintiff and other non-party Aggrieved Employees
23 performed work during meal periods for which they were not paid.

24 67. Defendants knew or should have known that, as a result of these company-wide
25 practices and/or policies, Plaintiff and other non-party Aggrieved Employees were performing
26 their assigned duties off-the-clock before and after their shifts and during meal periods, and
27 were suffered or permitted to perform work for which they were not paid. Because Plaintiff
28 and other non-party Aggrieved Employees sometimes worked shifts of eight (8) hours a day or

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

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

14 69. Defendants' failure to pay Plaintiff and other non-party Aggrieved Employees
15 the balance of overtime compensation as required by California law, violates the provisions of
16 California Labor Code sections 510 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 PAY MINIMUM WAGES**

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

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

28 71. As set forth above, as a result of Defendants' policy of limiting the amount of

1 overtime employees could accrue, pursuant to their labor budget practices, Defendants
2 required Plaintiff and other non-party Aggrieved Employees to perform work off-the-clock
3 before and after their scheduled shifts. As stated, Plaintiff and other non-party Aggrieved
4 Employees were prevented from recording time worked prior to the start of their scheduled
5 shifts or time worked after the end of their scheduled shifts. Defendants required Plaintiff and
6 other non-party Aggrieved Employees to work off the clock completing tasks, such as
7 scanning shipments, folding and putting away clothing, cleaning the store, waiting for the
8 store to open, and traveling to other store locations. However, Defendants failed to track all
9 of this time Plaintiff and other non-party Aggrieved Employees spent working off-the-clock,
10 and thus, Plaintiff and other non-party Aggrieved Employees received no compensation for
11 this time.

12 72. Moreover, as stated above, due to Defendants' policies and/or practices of
13 utilizing labor budgets, understaffing their locations, assigning heavy workloads, failing to
14 schedule meal periods, and requiring managerial employees to stay on the work premises
15 during meal periods, Plaintiff and other non-party Aggrieved Employees were forced to
16 forego meal periods, have their meal periods interrupted, and/or were otherwise not relieved
17 of all duties during meal periods. Also, as stated, in order to prevent employees from accruing
18 meal period penalties, upon information and belief, Defendants' management adjusted their
19 time records to reflect compliant meal periods. In addition, as stated, Defendants' company-
20 wide timekeeping system prevented Plaintiff and other non-party Aggrieved Employees from
21 entering time worked during meal periods because the system locked out Plaintiff and other
22 non-party Aggrieved Employees for a full 30 minutes. Thus, Defendants systematically failed
23 to pay Plaintiff and other non-party Aggrieved Employees for actual hours worked during
24 unpaid meal periods because these hours were not always correctly recorded.

25 73. Thus, Defendants did not pay minimum wages for all hours worked by Plaintiff
26 and other non-party Aggrieved Employees. To the extent that these off-the-clock hours did
27 not qualify for overtime premium payment, Defendants did not pay at least minimum wages
28 for those hours worked off-the-clock in violation of California Labor Code sections 1182.12,

1194, 1197, and 1198.

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

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

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

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

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

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

79. As stated, Defendants had, and continue to have, a company-wide policy and/or

1 practice of understaffing their stores pursuant to their labor budget practices, while assigning
2 heavy workloads, resulting in a failure to provide Plaintiff and other non-party Aggrieved
3 Employees with adequate meal period coverage. Because Defendants understaffed their
4 locations, there was no one available to relieve Plaintiff and other non-party Aggrieved
5 Employees and provide them with meal period coverage. Moreover, as stated above, due to
6 Defendants' policies and/or practices of failing to schedule meal periods and requiring
7 managerial employees to stay on the work premises during meal periods, Plaintiff and other
8 non-party Aggrieved Employees were forced to forego meal periods, have their meal periods
9 interrupted, and/or were otherwise not relieved of all duties during meal periods.

10 80. Defendants' company-wide practices and policies prevented Plaintiff and other
11 non-party Aggrieved Employees from taking all compliant meal periods to which they were
12 entitled. As a result, Plaintiff and other non-party Aggrieved Employees were forced to work
13 in excess of five (5) hours before taking a meal period, had their meal periods interrupted,
14 and/or had to forgo their meal periods altogether in order to complete their assigned
15 workloads. For example, Plaintiff sometimes took her meal periods late to complete the tasks
16 and duties Defendants assigned to her. In addition, Plaintiff's meal periods would be
17 interrupted and cut short approximately once a week in order to return to work and assist at
18 the registers or with the fitting rooms, due to increased customer foot traffic.

19 81. Furthermore, as stated, on information and belief, because Defendants frowned
20 upon employees accruing meal period penalties, Defendants' management would adjust
21 Plaintiff's and other non-party Aggrieved Employees' time records to reflect compliant meal
22 periods, regardless of whether they had received a compliant meal period or not, in order to
23 strictly limit meal penalties that would need to be paid by Defendants. Also, as stated,
24 Defendants' company-wide timekeeping system prevented Plaintiff and other non-party
25 Aggrieved Employees from recording when their meal periods were shortened or interrupted,
26 because the system locked out Plaintiff and other non-party Aggrieved Employees once they
27 clocked out for a meal period, and would not permit them to clock back in from a meal period
28 before 30 minutes had elapsed.

1 82. Moreover, Defendants did not provide other non-party Aggrieved Employees
2 with second 30-minute meal periods on days that they worked in excess of ten (10) hours in
3 one day. Plaintiff and other non-party Aggrieved Employees did not sign valid meal period
4 waivers on days that they were entitled to meal periods and were not relieved of all duties.

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

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

19 85. Defendants' conduct violates the applicable IWC Wage Order, and California
20 Labor Code sections 226.7, 512(a), 516, and 1198. Plaintiff and other non-party Aggrieved
21 Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections
22 558 and/or 2699(a), (f), and (g).

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

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

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

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

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

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

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

18 90. During the relevant time period, Defendants regularly failed to authorize and
19 permit Plaintiff and other non-party Aggrieved Employees to take a ten (10) minute rest
20 period per each four (4) hour period worked or major fraction thereof. As with meal periods,
21 Defendants’ company-wide policies and/or practices of understaffing and assignment of heavy
22 workloads prevented Plaintiff and other non-party Aggrieved Employees from being relieved
23 of all duty in order to take their rest periods. Defendants also failed to schedule rest periods,
24 which, coupled with Defendants’ failure to provide adequate rest period coverage, further led
25 to Plaintiff and other non-party Aggrieved Employees not being authorized and permitted to
26 take compliant rest periods. Moreover, Plaintiff and other non-party Aggrieved Employees
27 were required to carry and wear a company-issued radio/headset during their rest periods to
28 respond to requests from management and other employees, resulting in interrupted rest

1 periods.

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

9 92. As a result of Defendants' practices and policies, Plaintiff and other non-party
10 Aggrieved Employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in
11 excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they
12 were entitled. For example, due to Defendants' understaffing and assignment of heavy
13 workloads, Plaintiff had to forgo majority of her rest periods. When Plaintiff was able to take
14 her rest periods, they were interrupted by her supervisor on her company-issued radio.

15 93. Defendants have also engaged in a systematic, company-wide practice and/or
16 policy of not paying rest period premiums owed when rest periods are not authorized and
17 permitted. Because of this practice and/or policy, Plaintiff and other non-party Aggrieved
18 Employees have not received premium pay for all missed rest periods. Alternatively, to the
19 extent that Defendants did pay other non-party Aggrieved Employees one (1) additional hour
20 of premium pay for missed rest periods, Defendants did not pay other non-party Aggrieved
21 Employees at the correct rate of pay for premiums because Defendants failed to include all
22 forms of compensation, such as commissions, shift differential pay, incentive pay,
23 nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

24 94. Accordingly, Defendants failed to authorize and permit all compliant rest
25 periods and failed to pay the full rest period premiums due. Defendants' conduct violates the
26 applicable IWC Wage Order and California Labor Code sections 226.7, 516, and 1198.
27 Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil
28 penalties pursuant to Labor Code sections 558 and/or 2699(a), (f), and (g).

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

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

96. During the relevant time period, Defendants have knowingly and intentionally provided Plaintiff and other non-party Aggrieved Employees with uniform, incomplete, and inaccurate wage statements. For example, Defendants issued uniform wage statements to Plaintiff and other non-party 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, meal and rest period premiums, and/or paid sick leave, and the corresponding number of hours worked at each hourly rate. Specifically, Defendants violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

97. Because Defendants did not record the time Plaintiff and other non-party 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), Defendants did not list the correct amount of gross wages and net wages earned by Plaintiff and other non-party Aggrieved Employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, Defendants failed to accurately list the total number of hours worked by Plaintiff and other non-party 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).

98. Furthermore, because Defendants did not calculate other non-party Aggrieved Employees' regular rate of pay correctly for purposes of paying overtime wages, meal and rest period premiums, and/or paid sick leave, Defendants did not list the correct amount of gross

1 wages in compliance with section 226(a)(1) and did not list the correct amount of net wages in
2 violation of section 226(a)(5). Defendants also failed to correctly list all applicable hourly
3 rates in effect during the pay period, namely, correct rates of pay for overtime wages, meal
4 and rest period premiums, and/or paid sick leave, in violation of section 226(a)(9).

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

13 100. California Labor Code section 1174(d) provides that “[e]very person employing
14 labor in this state shall . . . [k]eep a record showing the names and addresses of all employees
15 employed and the ages of all minors” and “[k]eep, at a central location in the state or at the
16 plants or establishments at which employees are employed, payroll records showing the hours
17 worked daily by and the wages paid to, and the number of piece-rate units earned by and any
18 applicable piece rate paid to, employees employed at the respective plants or
19 establishments. . . .” Labor Code section 1174.5 provides that employers are subject to a \$500
20 civil penalty if they fail to maintain accurate and complete records as required by section
21 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d),
22 Defendants willfully failed to maintain accurate payroll records for Plaintiff and other non-party
23 Aggrieved Employees showing the daily hours they worked and the wages paid thereto as a
24 result of failing to record the off-the-clock hours that they worked.

25 101. California Labor Code section 1198 provides that the maximum hours of work
26 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as
27 set forth in the applicable IWC Wage Order. Section 1198 further provides that “[t]he
28 employment of any employees for longer hours than those fixed by the order or under

1 conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC
2 Wage Order, employers are required to keep accurate time records showing when the
3 employee begins and ends each work period and meal period. During the relevant time
4 period, Defendants engaged in company-wide practices and/or policies of failing to record
5 actual hours worked (including falsifying time records by recording that compliant meal
6 periods were taken regardless of if or when meal periods were actually taken), and thereby
7 failed to keep accurate records of work period and meal period start and end times for Plaintiff
8 and other non-party Aggrieved Employees in violation of section 1198. Furthermore, in light
9 of Defendants’ failure to provide other non-party Aggrieved Employees with second 30-
10 minute meal periods to which they were entitled, Defendants kept no records of meal start and
11 end times for second meal periods.

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

15 **FAILURE TO PAY WAGES DURING EMPLOYMENT**
16 **VIOLATION OF LABOR CODE SECTION 204**

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

25 104. At all relevant times herein, California Labor Code section 204 also requires
26 that all wages earned for labor in excess of the normal work period shall be paid no later than
27 the payday for the next regular payroll period. Alternatively, at all relevant times herein,
28 Labor Code section 204 provides that the requirements of this section are deemed satisfied by

1 the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not
2 more than seven (7) calendar days following the close of the payroll period.

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

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

9 **FAILURE TO PAY WAGES UPON TERMINATION**

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

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

18 108. For example, Plaintiff provided Defendants with a two-week notice of her
19 intent to resign from her employment, and her last date of work was November 3, 2022.
20 However, on information and belief, on November 3, 2022, Defendants did not provide
21 Plaintiff with her final pay. Upon information and belief, Defendants have, and continue to
22 have, a policy and/or practice of withholding vested vacation wages, retroactive overtime
23 wages, and other wages owed to former employees and did not issue all of Plaintiff's wages
24 due until November 14, 2022. Thus, Defendants failed to pay Plaintiff her final wages within
25 the requisite time limit, in violation of California Labor Code section 202.

26 109. Additionally, Defendants willfully failed to pay Plaintiff and other non-party
27 Aggrieved Employees who are no longer employed by Defendants the earned and unpaid
28 wages set forth above, including but not limited to, overtime wages, minimum wages, meal

1 and rest period premiums, paid sick leave, reporting time pay, and/or sick leave pay, either at
2 the time of discharge, or within seventy-two (72) hours of their leaving Defendants' employ.

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

9 **FAILURE TO PROPERLY CALCULATE SICK LEAVE RATES OF PAY**

10 **VIOLATION OF LABOR CODE SECTION 246 AND 248**

11 111. At all relevant times herein, California Labor Code sections 245.5, 246, 246.5,
12 247, 247.5, 248.5, and 249 provide employees who have worked in California for 30 or more
13 days from the commencement of employment with paid sick days, to be accrued at least one
14 hour for every 30 hours worked. Pursuant to California Labor Code section 246(b)(4),
15 employers must provide no less than 24 hours or three (3) days of paid sick leave (or
16 equivalent paid leave or paid time off) in each year of the employee's employment. Further,
17 Labor Code section 246(l) provides that an employer shall calculate paid sick leave by using
18 one of two calculations: 1) "[p]aid sick time for nonexempt employees shall be calculated in
19 the same manner as the regular rate of pay for the workweek in which the employee uses paid
20 sick time, whether or not the employee actually works overtime in that workweek[;]" or 2)
21 "[p]aid sick time for nonexempt employees shall be calculated by dividing the employee's
22 total wages, not including overtime premium pay, by the employee's total hours worked in the
23 full pay periods of the prior 90 days of employment."

24 112. At all relevant times here, California Labor Code section 248.6 provides
25 covered employees with COVID-19 supplemental paid sick leave. California Labor Code
26 section 248.6(b)(3)(A), provides each hour of COVID-19 supplemental paid sick leave shall
27 be compensated at a rate equal to the following: 1) "[c]alculated in the same manner as the
28 regular rate of pay for the workweek in which the employee uses paid sick time, whether or

not the employee actually works overtime in that workweek[;]" or 2) "[c]alculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total nonovertime hours worked in the full pay periods occurring within the prior 90 days of employment; provided that, for nonexempt employees paid by piece rate, commission or other method that uses all hours to determine the regular rate of pay, total wages, not including overtime premium pay, shall be divided by all hours, to determine the correct amount of COVID-19 supplemental paid sick leave under this subdivision."

113. During the relevant time period, Defendants did not pay other non-party Aggrieved Employees the correct sick leave rates of pay. In addition to an hourly wage, Defendants paid other non-party Aggrieved Employees commissions, shift differential pay, incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, Defendants failed to incorporate all remunerations, including commissions, shift differential pay, incentive pay, and/or nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes of calculating the sick leave rate. Therefore, during times when other non-party Aggrieved Employees took sick leave and received these other forms of pay, Defendants failed to pay all sick leave benefits by paying a lower sick leave rate than required. Specifically, Defendants paid other non-party Aggrieved Employees sick leave based on their hourly rate of pay instead of their regular rate of pay.

114. Defendants' failure to properly calculate the sick leave rates of pay based on all remuneration paid has resulted in an underpayment of sick leave benefits to Plaintiff and/or other non-party Aggrieved Employees on a company-wide basis in violation of California Labor Code sections 246(l) and 248.6(b)(3)(A).

115. Other non-party Aggrieved Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections 248.5 and/or 2699(a), (f), and (g).

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

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

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

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

9 118. Defendants’ California stores are generally similar in their layout and design
10 and there was, and continues to be, space behind cash wraps and near the store entrance/exit to
11 allow for the presence and use of a seat or stool by Plaintiff and other non-party Aggrieved
12 Employees (with reasonable or no modification to these work areas) during the performance
13 of their work duties. Defendants could have provided Plaintiff and other non-party Aggrieved
14 Employees with a seat or stool at cash wraps and the store entrance/exit, but instead denied
15 them seating and forced Plaintiff and other non-party Aggrieved Employees to stand
16 throughout the day.

17 119. Plaintiff and other non-party Aggrieved Employees spent a portion of their day
18 behind these cash wraps or store’s entrance/exit. The nature of the work of an employee
19 performing cashier and greeter duties can reasonably be accomplished from a seated position.
20 However, Defendants systematically, and on a company-wide basis, do not provide seats or
21 stools at or near the cash wraps or the store entrance/exit, forcing Plaintiff and other non-party
22 Aggrieved Employees to stand throughout their work shifts.

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

1 sitting.

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

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

10 **FAILURE TO PROVIDE SUITABLE SEATING**

11 **VIOLATION OF LABOR CODE SECTION 1198 AND CALIFORNIA CODE OF**
12 **REGULATIONS, TITLE 8, SECTION 11070 SUBDIVISION 14(B)**

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

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

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

1 126. Defendants' California stores are generally similar in their layout and design
2 and there was, and continues to be, space near their work areas (with reasonable or no
3 modification to these work areas) to allow for the presence and use of a seat or stool by
4 Plaintiff and other non-party Aggrieved Employees during lulls in operation. Defendants
5 could have provided Plaintiff and other non-party Aggrieved Employees with a seat or stool in
6 their work areas, but instead denied Plaintiff and other non-party Aggrieved Employees
7 suitable seating altogether and effectively forced Plaintiff and other non-party Aggrieved
8 Employees to stand throughout the day.

9 127. Defendants did not provide Plaintiff and other non-party Aggrieved Employees
10 with seats or stools in reasonable proximity to their work areas to allow them to use seats
11 when it would not interfere with the performance of their duties for times when they were not
12 engaged in active duties that require standing. In other words, to the extent Plaintiff and other
13 non-party Aggrieved Employees engaged in duties in which the nature of the work required
14 standing, Defendants denied them the use of seats nearby during lulls in their work duties.
15 Moreover, Defendants did not inform Plaintiff and other non-party Aggrieved Employees of
16 their rights to a seat or stool under California law.

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

24 129. 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 **FAILURE TO PAY REPORTING TIME PAY**

27 **VIOLATION OF LABOR CODE SECTION 1198**

28 130. California Labor Code section 1198 makes it illegal to employ an employee

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

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

15 132. During the relevant time period, Defendants violated California Labor Code
16 section 1198 and California Code of Regulations, Title 8, section 11070(5)(A), because
17 Defendants failed to pay Plaintiff and other non-party Aggrieved Employees reporting time
18 pay when they reported to work for their usual or scheduled shift but were put to work for less
19 than half of the usual or scheduled day’s work.

20 133. Defendants had a company-wide practice of sending Plaintiff and other non-
21 party Aggrieved Employees home early from their shifts, including before they had worked at
22 least half of their usual or scheduled shift, but would not pay Plaintiff and other non-party
23 Aggrieved Employees for half of their usual or scheduled shift. For example, on a few
24 occasions when Plaintiff reported to work for her scheduled shift, Defendants’ management
25 sent her home immediately because business was slow. On information and belief, when this
26 would occur, Defendants did not pay Plaintiff and other non-party Aggrieved Employees for
27 at least half of their scheduled day’s work or the minimum reporting time pay when they were
28 subject to work for less than half of their usual or scheduled shift.

1 134. Accordingly, Plaintiff and other non-party Aggrieved Employees were not
2 properly compensated with reporting time pay in violation of California Labor Code section
3 1198 and California Code of Regulations, Title 8, section 11070(5)(A). Plaintiff and other
4 non-party Aggrieved Employees are therefore entitled to recover civil penalties pursuant to
5 Labor Code sections 2699(a), (f), and (g).

6 **FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES**

7 **VIOLATION OF LABOR CODE SECTION 2802**

8 135. At all times herein set forth, California Labor Code section 2802 provides that
9 an employer must reimburse employees for all necessary expenditures and losses incurred by
10 the employee in the performance of his or her job. The purpose of Labor Code section 2802 is
11 to prevent employers from passing off their cost of doing business and operating expenses on
12 to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144
13 (2014). The applicable wage order, IWC Wage Order No. 7-2001 provides that: “[w]hen tools
14 or equipment are required by the employer or are necessary to the performance of a job, such
15 tools and equipment shall be provided and maintained by the employer, except that an
16 employee whose wages are at least two (2) times the minimum wage provided herein may be
17 required to provide and maintain hand tools and equipment customarily required by the trade
18 or craft.”

19 136. During the relevant time period, Defendants, on a company-wide basis,
20 required Plaintiff and other non-party Aggrieved Employees to use their own personal mobile
21 devices, including, but not limited to cellular phones, and/or mobile data to carry out their job
22 duties, but failed to reimburse them for the cost of their work-related mobile device expenses.
23 For example, Plaintiff was required to download a mobile application on her personal mobile
24 device, “UKG Workforce Central,” and to regularly use her mobile data to view her scheduled
25 shifts and request time off. Plaintiff was also required to download a mobile application,
26 “Real Rewards American Eagle,” and to regularly use her mobile data to record her goals and
27 tasks during her shifts. Additionally, Plaintiff was required to download a mobile application,
28 “AE + Aerie,” and to regularly use her mobile data to look up various items for customers to

1 confirm availability. Finally, Plaintiff and other non-party Aggrieved Employees were
2 required to use their personal mobile devices for work-related tasks, including contacting
3 other employees regarding shift coverage. Although Defendants required Plaintiff and other
4 non-party Aggrieved Employees to utilize their personal mobile devices and/or mobile data to
5 carry out their work-related responsibilities, Defendants failed to reimburse them for these
6 costs.

7 137. Additionally, Defendants had a company-wide policy of requiring Plaintiff and
8 other non-party Aggrieved Employees to utilize their own personal vehicles or obtain alternate
9 transportation to carry out company business, but failed to reimburse them for all costs of
10 travel, including mileage. For example, Plaintiff and other non-party Aggrieved Employees
11 were required to drive to various store locations to cover shifts on as-needed basis. Although
12 Defendants required Plaintiff and other non-party Aggrieved Employees to utilize their own
13 vehicles or obtain alternate transportation to carry out their work-related responsibilities,
14 Defendants did not reimburse them for their travel expenses.

15 138. Defendants could have provided Plaintiff and other non-party Aggrieved
16 Employees with the actual tools for use on the job, such as company mobile devices and
17 company vehicles, or, Defendants could have reimbursed employees for their mobile device
18 usage, mileage, and travel expenses. Instead, Defendants passed these operating costs off onto
19 Plaintiff and other non-party Aggrieved Employees. At all relevant times, Plaintiff did not
20 earn at least two (2) times the minimum wage.

21 139. Defendants' company-wide policy and/or practice of not reimbursing
22 employees for expenses necessarily incurred and passing on their operating costs to Plaintiff
23 and other non-party Aggrieved Employees violates California Labor Code section 2802.
24 Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil
25 penalties pursuant to Labor Code sections 2699(a), (f), and (g).

26 **REQUEST FOR JURY TRIAL**

27 Plaintiff requests a trial by jury.

28 //

1 **PRAYER FOR RELIEF**

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

4 1. For civil penalties and attorneys' fees in excess of twenty-five thousand dollars
5 (\$25,000). Plaintiff reserves the right to amend her prayer for relief to seek a different
6 amount.

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

8 2. That the Court declare, adjudge and decree that Defendants violated the
9 following California Labor Code provisions as to Plaintiff and/or other non-party Aggrieved
10 Employees: 510 and 1198 (by failing to pay all overtime compensation); 226.7, 510, and 1198
11 (by failing to include all forms of remuneration in the "regular rate" of pay for purposes of
12 paying overtime wages and/or meal and rest period premiums); 1182.12, 1194, 1197, and
13 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512(a), 516,
14 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize and
15 permit all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage
16 statements and maintain accurate payroll records); 204 (by failing to timely pay all earned
17 wages during employment); 201 and 202 (by failing to timely pay all earned wages upon
18 termination); 246 and 248 (by failing to properly calculate sick leave pay); 1198 and the
19 applicable IWC Wage Order (by failing to provide suitable seating); 1198 and the applicable
20 IWC Wage Order (by failing to provide reporting time pay); and 2802 (by failing to reimburse
21 business expenses);

22 3. For civil penalties, pursuant to California Labor Code sections 210, 226.3,
23 248.5, 256, 558, 1174.5, 2699(a), (f), and (g), for violations of California Labor Code sections
24 201, 202, 204, 226(a), 226.7, 246, 248, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198,
25 and 2802;

26 4. For attorneys' fees and costs pursuant to California Labor Code section
27 2699(g)(1), and any and all other relevant statutes, for Defendants' violations of California
28 Labor Code sections 201, 202, 204, 226(a), 226.7, 246, 248, 510, 512(a), 516, 1174(d),

1 1182.12, 1194, 1197, 1198, and 2802;

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

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

5

6 Dated: May 1, 2023

Respectfully submitted,

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Capstone Law APC

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By: Roxanna Tabatabaeepour

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Orlando Villalba

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Helga Hakimi

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Roxanna Tabatabaeepour

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Ryan Tish

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Alexander Wallin

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Attorneys for Plaintiff Madison Key

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EXHIBIT “1”



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

NINEL KOCHARYAN
310.712.8146 Direct
Ninel.Kocharyan@capstonelawyers.com

February 23, 2023

VIA ONLINE SUBMISSION

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

Subject: *Madison Key v. AE Retail West LLC, et al.*

Dear PAGA Administrator:

This office represents Madison Key in connection with her claims under the California Labor Code. Ms. Key was an employee of AE RETAIL WEST LLC; AE CORPORATE SERVICES CO.; and/or AMERICAN EAGLE OUTFITTERS, INC. For the purpose of this letter, Ms. Key collectively refers to these entities as "AE RETAIL."

The employers may be contacted directly at the addresses below:

AE RETAIL WEST LLC
77 HOT METAL STREET
PITTSBURGH, PA 15203

AE CORPORATE SERVICES CO.
77 HOT METAL STREET
PITTSBURGH, PA 15203

AMERICAN EAGLE OUTFITTERS, INC.
77 HOT METAL STREET
PITTSBURGH, PA 15203

Ms. Key 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. Key seeks relief on behalf of herself, the State of California, and other persons who are or were employed by AE RETAIL 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.

AE RETAIL employed Ms. Key as a non-exempt, hourly paid Seasonal Associate, Business Associate, and Senior Business Associate from approximately October 2019 to November 2022. Ms. Key worked for AE RETAIL at its retail store located in Riverside, California. She typically worked four (4) to eight (8) hours per day and three (3) to six (6) days per week. At the time her employment ended, Ms. Key was compensated approximately \$16.25 per hour. Her job duties included, without limitation, cashiering, providing customer service, conducting inventory, training other Business Associates, processing shipments, cleaning the store, and completing floor sets before the store opened or after closing.

AE RETAIL has committed one or more of the following Labor Code violations against Ms. Key, the

facts and theories of which follow, making her an “aggrieved employee” pursuant to California Labor Code section 2699(c):¹

AE RETAIL’s Company-Wide and Uniform Payroll and HR Practices

AE RETAIL WEST LLC is a Delaware limited liability company. AE CORPORATE SERVICES CO. and AMERICAN EAGLE OUTFITTERS, INC. are Delaware corporations. Together, they operate at least 50 stores offering high-quality, on-trend clothing, accessories, and personal care products in California. Upon information and belief, AE RETAIL maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Pittsburgh, Pennsylvania, for all non-exempt, hourly paid employees working for AE RETAIL in California, including Ms. Key and other aggrieved employees. At all relevant times, AE RETAIL issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Ms. Key and other aggrieved employees, regardless of their location or position.

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

AE RETAIL willfully failed to pay all overtime wages owed to Ms. Key and other aggrieved employees. During the relevant time period, Ms. Key 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, AE RETAIL had, and continues to have, a company-wide policy and/or practice of discouraging and impeding Ms. Key and other aggrieved employees from recording hours worked that were outside of their scheduled shifts in order to limit the amount of overtime

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

employees could accrue. This policy of limiting overtime, coupled with AE RETAIL's use of labor budgets, understaffing, and assignment of heavy workloads (*see infra*), led Ms. Key and other aggrieved employees to work off-the-clock before and after their scheduled shift times. Consequently, on information and belief, Ms. Key and other aggrieved employees performed work prior to the start of their shifts or after the end of their shifts, but were unable to record this time. For example, Ms. Key was required to scan shipments, fold and put clothing away, and clean the store, but, upon information and belief, when Ms. Key attempted to clock in as soon as she reported to work, AE RETAIL's management would not allow her to clock in until five (5) minutes before the start of her scheduled shift, causing her to work off-the-clock for up to 15 minutes. As a further example, throughout her employment, AE RETAIL's management required Ms. Key to remain at the store and perform closing duties for up to 15 minutes per instance, after she had already clocked for the day. Finally, Ms. Key was frequently required to travel to other store locations to cover shifts, but was not allowed to record the time she spent driving to and from these stores, which could be a two-hour roundtrip. Thus, during these times, Ms. Key performed work for AE RETAIL, but was not permitted to record this time spent working.

Second, during the relevant period, AE RETAIL had a company-wide security policy where only managerial employees possessed keys to lock and unlock the store, causing Ms. Key and other aggrieved employees to wait off-the-clock for the store to open on days they were the first to arrive. On about six (6) occasions, AE RETAIL management updated Ms. Key's schedule without notifying her, causing her to arrive for her shifts earlier than needed and to wait up to one (1) hour for a managerial employee to arrive and unlock the store. Even though AE RETAIL required that Ms. Key and other aggrieved employees adhere to the provided schedules, AE RETAIL did not compensate them for the time they spent waiting when reporting to work according to the schedule. As a result of this security policy, Ms. Key and other aggrieved employees were subject to AE RETAIL's control before their shifts, but were not compensated for this time.

Third, AE RETAIL had, and continues to have, a uniform practice and/or policy of staffing its locations strictly based on the labor hours or labor budget set by the corporate office. AE RETAIL's use of labor budget resulted in understaffing, such that there were too few employees on duty to handle the heavy workloads and provide meal period coverage. As a result of this lack of meal period coverage, coupled with a company-wide policy and/or practice of failing to schedule meal periods, further caused Ms. Key and other aggrieved employees to not be relieved for uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period. For example, Ms. Key would have her meal periods interrupted and cut short once per week to respond to increased customer service demand and assist at the registers. Consequently, Ms. Key and other aggrieved employees were required to work through and/or had their unpaid meal periods interrupted in order to complete their assigned duties, time for which they were not paid.

Fourth, in conjunction with understaffing its store locations, AE RETAIL had a requirement that a managerial employee be present on the floor at all times and prohibited managers from leaving the premises unless another manager was also on duty, resulting in a lack of meal period coverage for managerial employees. At the same time, the labor budgets AE RETAIL implemented did not always allow for more than one manager to be on the schedule at all times. As a result, Ms. Key and other aggrieved employees were sometimes the only managers on duty, and were expected to supervise the store and respond to customer complaints at all times. Because managerial employees were effectively prohibited from leaving AE RETAIL'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, Ms. Key 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, but were not paid for this time spent working.

Fifth, on information and belief, because AE RETAIL frowned upon employees accruing meal period penalties, AE RETAIL's management adjusted their time records to reflect compliant meal periods regardless of whether they had received a compliant meal period or not, in order to strictly limit the meal penalties that AE RETAIL would otherwise owe. In addition, AE RETAIL's company-wide timekeeping system prevented Ms. Key and other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted, because the system locked out Ms. Key and other aggrieved employees once they clocked out for a meal period, and did not permit them to clock back in from a meal period before 30 minutes elapsed. Thus, AE RETAIL did not record all hours worked during meal periods, and Ms. Key and other aggrieved employees performed work during meal periods for which they were not paid.

AE RETAIL knew or should have known that, as a result of these company-wide practices and/or policies, Ms. Key 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. Key and other aggrieved employees worked shifts of eight (8) hours a day or more, or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium pay.

Furthermore, AE RETAIL did not pay other aggrieved employees the correct overtime rates for the recorded overtime hours that they generated. In addition to an hourly wage, AE RETAIL paid other aggrieved employees commissions, shift differential pay, incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, AE RETAIL failed to incorporate all remunerations, including commissions, shift differential pay, 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, AE RETAIL failed to pay all overtime wages by paying a lower overtime rate than required.

AE RETAIL's failure to pay Ms. Key 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. Key and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

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

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

As set forth above, as a result of AE RETAIL's policy of limiting the amount of overtime employees could accrue, pursuant to its labor budget practices, AE RETAIL required Ms. Key and other aggrieved employees perform work off-the-clock before and after their scheduled shifts. As stated, Ms. Key and other aggrieved employees were prevented from recording time worked prior to the start of their scheduled shifts or time worked after the end of their scheduled shifts. AE RETAIL required Ms. Key and other aggrieved employees to work off the clock completing tasks, such as scanning shipments, folding and putting away clothing, cleaning the store, waiting for the store to open, and traveling to other store locations. However, AE RETAIL failed to track all of this time Ms. Key and other aggrieved

employees spent working off-the-clock, and thus, Ms. Key and other aggrieved employees received no compensation for this time.

Moreover, as stated above, due to AE RETAIL's policies and/or practices of utilizing a labor budget, understaffing its locations, assigning heavy workloads, failing to schedule meal periods, and requiring managerial employees to stay on the work premises during meal periods, Ms. Key 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. Also, as stated, in order to prevent employees from accruing meal period penalties, upon information and belief, AE RETAIL's management adjusted their time records to reflect compliant meal periods. In addition, as stated, AE RETAIL's company-wide timekeeping system prevented Ms. Key and other aggrieved employees from entering time worked during meal periods because the system locked out Ms. Key and other aggrieved employees for a full 30 minutes. Thus, AE RETAIL systematically failed to pay Ms. Key and other aggrieved employees for actual hours worked during unpaid meal periods because these hours were not always correctly recorded.

Thus, AE RETAIL did not pay minimum wages for all hours worked by Ms. Key and other aggrieved employees. To the extent that these off-the-clock hours did not qualify for overtime premium payment, AE RETAIL 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, AE RETAIL regularly failed to pay at least minimum wages to Ms. Key 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. Key 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, AE RETAIL had, and continues to have, a company-wide policy and/or practice of understaffing its stores pursuant to its labor budget practices, while assigning heavy workloads, resulting in a failure to provide Ms. Key and other aggrieved employees with adequate meal period coverage. Because AE RETAIL understaffed its locations, there was no one available to relieve Ms. Key and other aggrieved employees and provide them with meal period coverage. Moreover, as stated above, due to AE RETAIL's policies and/or practices of failing to schedule meal periods and requiring managerial employees to stay on the work premises during meal periods, Ms. Key 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.

AE RETAIL's company-wide practices and policies prevented Ms. Key and other aggrieved employees from taking all compliant meal periods to which they were entitled. As a result, Ms. Key and other aggrieved employees were forced to work in excess of five (5) hours before taking a meal period, had their meal periods interrupted, and/or had to forgo their meal periods altogether in order to complete their assigned workloads. For example, Ms. Key sometimes took her meal periods late to complete the tasks and duties AE RETAIL assigned to her. In addition, Ms. Key's meal periods would be interrupted and cut short approximately once a week in order to return to work and assist at the registers or with the fitting rooms, due to increased customer foot traffic.

Furthermore, as stated, on information and belief, because AE RETAIL frowned upon employees accruing meal period penalties, AE RETAIL's management would adjust Ms. Key's and other aggrieved employees' time records to reflect compliant meal periods, regardless of whether they had received a compliant meal period or not, in order to strictly limit meal penalties that would need to be paid by AE RETAIL. Also, as stated, AE RETAIL's company-wide timekeeping system prevented Ms. Key and other aggrieved employees from recording when their meal periods were shortened or interrupted, because the system locked out Ms. Key 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, AE RETAIL 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. Key and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

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

Furthermore, AE RETAIL 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. Key and other aggrieved employees have not received premium pay for missed, late, and interrupted meal periods. Alternatively, to the extent that AE RETAIL did pay other aggrieved employees for missed, late, and interrupted meal periods, AE RETAIL did not pay other aggrieved employees at the correct rate of pay for premiums because AE RETAIL systematically failed to include all forms of compensation, such as commissions, shift differential pay, incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, AE RETAIL failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Ms. Key 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, AE RETAIL regularly failed to authorize and permit Ms. Key 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, AE RETAIL’s company-wide policies and/or practices of understaffing and assignment of heavy workloads prevented Ms. Key and other aggrieved employees from being relieved of all duty in order to take their rest periods. AE RETAIL also failed to schedule rest periods, which, coupled with AE RETAIL’s failure to provide adequate rest period coverage, further led to Ms. Key and other aggrieved employees not being authorized and permitted to take compliant rest periods. Moreover, Ms. Key and other aggrieved employees were required to carry and wear a company-issued radio/headset during their rest periods to respond to requests from management and other employees, resulting in interrupted rest periods.

Furthermore, AE RETAIL maintained a company-wide on-premises rest period policy, which mandated that Ms. Key and other aggrieved employees remain on or near AE RETAIL’s premises during their rest periods. Because Ms. Key and other aggrieved employees were effectively 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, AE RETAIL effectively maintained control over Ms. Key and other aggrieved employees during rest periods.

As a result of AE RETAIL’s practices and policies, Ms. Key and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled. For example, due to AE RETAIL’s understaffing and assignment of heavy workloads, Ms. Key had to forgo majority of her rest periods. When Ms. Key was able to take her rest periods, they were interrupted by her supervisor on her company-issued radio.

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

Accordingly, AE RETAIL failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Ms. Key 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. AE RETAIL has not provided Ms. Key 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, AE RETAIL has knowingly and intentionally provided Ms. Key and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, AE RETAIL issued uniform wage statements to Ms. Key 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, meal and rest period premiums, and/or paid sick leave, and the corresponding number of hours worked at each hourly rate. Specifically, AE RETAIL violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

Because AE RETAIL did not record the time Ms. Key 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), AE RETAIL did not list the correct amount of gross wages and net wages earned by Ms. Key and other aggrieved employees, in compliance with sections 226(a)(1) and 226(a)(5), respectively. For the same reason, AE RETAIL failed to accurately list the total number of the hours worked by Ms. Key and other aggrieved employees, in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and the corresponding accurate number of hours worked at each hourly rate, in violation of section 226(a)(9).

Furthermore, because AE RETAIL did not calculate other aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages, meal and rest period premiums, and/or paid sick leave, AE RETAIL 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). AE RETAIL 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), AE RETAIL willfully failed to maintain accurate payroll records for Ms. Key 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, AE RETAIL engaged in company-wide practices and/or policies of failing to record actual hours worked (including falsifying time records by recording that compliant meal periods were taken regardless of if or when meal periods were actually taken), and thereby failed to keep accurate records of work period and meal period start and end times for Ms. Key and other aggrieved employees in violation of section 1198. Furthermore, in light of AE RETAIL’s failure to provide other aggrieved employees with second 30-minute meal periods to which they were entitled, AE RETAIL kept no records of meal start and end times for second meal periods.

Because AE RETAIL failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Ms. Key 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. Key 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. Key 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, AE RETAIL failed to pay Ms. Key and other aggrieved employees all wages due to them, including, but not limited to, overtime wages, minimum wages, meal and rest period premiums, paid sick leave, and/or reporting time pay, within any time period specified by California Labor Code section 204.

Ms. Key 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.

For example, Ms. Key provided AE RETAIL with a two-week notice of her intent to resign from her employment, and her last date of work was November 3, 2022. However, on information and belief, on November 3, 2022, AE RETAIL did not provide Ms. Key with her final pay. Upon information and belief, AE RETAIL has, and continues to have, a policy and/or practice of withholding vested vacation wages, retroactive overtime wages, and other wages owed to former employees and did not issue all of Ms. Key's wages due until November 14, 2022. Thus, AE RETAIL failed to pay Ms. Key her final wages within the requisite time limit, in violation of California Labor Code section 202.

Additionally, AE RETAIL willfully failed to pay Ms. Key and other aggrieved employees who are no longer employed by AE RETAIL the earned and unpaid wages set forth above, including but not limited to, overtime wages, minimum wages, meal and rest period premiums, paid sick leave, and/or reporting time pay, either at the time of discharge, or within seventy-two (72) hours of their leaving AE RETAIL's employ.

Ms. Key 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 §§ 246 and 248 – Unpaid Sick Leave

At all relevant times herein, California Labor Code sections 245.5, 246, 246.5, 247, 247.5, 248.5, and 249 provide employees who have worked in California for 30 or more days from the commencement of employment with paid sick days, to be accrued at least one hour for every 30 hours worked. Pursuant to California Labor Code section 246(b)(4), employers must provide no less than 24 hours or three (3) days of paid sick leave (or equivalent paid leave or paid time off) in each year of the employee's employment. Further, Labor Code section 246(l) provides that an employer shall calculate paid sick leave by using one of two calculations: 1) "[p]aid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek[;]" or 2) "[p]aid sick time for nonexempt employees shall be calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment."

At all relevant times here, California Labor Code section 248.6 provides covered employees with COVID-19 supplemental paid sick leave. California Labor Code section 248.6(b)(3)(A), provides each hour of COVID-19 supplemental paid sick leave shall be compensated at a rate equal to the following: 1) "[c]alculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek[;]" or 2) "[c]alculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total nonovertime hours worked in the full pay periods occurring within the prior 90 days of employment; provided that, for nonexempt employees paid by piece rate, commission or other method that uses all hours to determine the regular rate of pay, total wages, not including overtime premium pay, shall be divided by all hours, to determine the correct amount of COVID-19 supplemental paid sick leave under this subdivision."

During the relevant time period, AE RETAIL did not pay other aggrieved employees the correct sick leave rates of pay. In addition to an hourly wage, AE RETAIL paid other aggrieved employees commissions, shift differential pay, incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, AE RETAIL failed to incorporate all remunerations, including commissions, shift differential pay, incentive pay, and/or nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes of calculating the sick leave rate. Therefore, during times when other aggrieved employees took sick leave and received these other forms of pay, AE RETAIL failed to pay all sick leave benefits by paying a lower sick leave rate than required. Specifically, AE RETAIL paid other aggrieved employees sick leave based on their hourly rate of pay instead of their regular rate of pay.

AE RETAIL's failure to properly calculate the sick leave rates of pay based on all remuneration paid has resulted in an underpayment of sick leave benefits to other aggrieved employees on a company-wide basis in violation of Labor Code sections 246(l) and 248.6(b)(3)(A). Other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 248.5 and/or 2699(a), (f)-(g).

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

California Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable wage order. California Labor Code section 1198 requires that "... the standard conditions of labor fixed by the commission shall be the ... standard conditions of labor for employees. The employment of any employee ... under conditions of labor prohibited by the order is unlawful." California Code of Regulations, Title 8, section 11070(14)(A) provides that "[a]ll working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats."

"The 'nature of the work' refers to an employee's tasks performed at a given location for which a right to a suitable seat is claimed, rather than a 'holistic' consideration of the entire range of an employee's duties anywhere on the jobsite during a complete shift. If the tasks being performed at a given location reasonably permit sitting, and provision of a seat would not interfere with performance of any other tasks that may require standing, a seat is called for." *Kilby v. CVS Pharmacy, Inc.*, 368 P.3d 554, 558 (Cal. 2016). "Whether the nature of the work reasonably permits sitting is a question to be determined objectively based on the totality of the circumstances. An employer's business judgment and the physical layout of the workplace are relevant but not dispositive factors. The inquiry focuses on the nature of the work, not an individual employee's characteristics." *Id.* The burden of proof to show suitable seating is not available is on the employer. *Id.* at 568. In other words, the employer must show that compliance is "infeasible because no suitable seating exists." *See id.*

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

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

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

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

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

California Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable wage order. California Labor Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.” California Code of Regulations, Title 8, section 11070 subdivision (14)(A) provides that “[a]ll working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats.” California Code of Regulations, Title 8, section 11070(14)(B) provides that “[w]hen employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties.”

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

AE RETAIL'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. Key and other aggrieved employees during lulls in operation. AE RETAIL could have provided Ms. Key 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.

AE RETAIL did not provide Ms. Key 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. Key and other aggrieved employees engaged in duties in which the nature of the

work required standing, AE RETAIL denied them the use of seats nearby during lulls in their work duties. Moreover, AE RETAIL did not inform Ms. Key and other aggrieved employees of their rights to a seat or stool under California law.

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

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

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

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

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

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

AE RETAIL had a company-wide practice of sending Ms. Key and other aggrieved employees home early from their shifts, including before they had worked at least half of their usual or scheduled shift, but would not pay Ms. Key and other aggrieved employees for half of their usual or scheduled shift. For example, on a few occasions when Ms. Key reported to work for her scheduled shift, AE RETAIL's management sent her home immediately because business was slow. On information and belief, when this would occur, AE RETAIL did not pay Ms. Key and other aggrieved employees for at least half of their scheduled day's work or the minimum reporting time pay when they were subject to work for less than half of their usual or scheduled shift.

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

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

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

During the relevant time period, AE RETAIL, on a company-wide basis, required Ms. Key and other aggrieved employees to use their own personal mobile devices, including, but not limited to cellular phones, and/or mobile data to carry out their job duties, but failed to reimburse them for the cost of their work-related mobile device expenses. For example, Ms. Key was required to download a mobile application on her personal mobile device, “UKG Workforce Central,” and to regularly use her mobile data to view her scheduled shifts and request time off. Ms. Key was also required to download a mobile application, “Real Rewards American Eagle,” and to regularly use her mobile data to record her goals and tasks during her shifts. Additionally, Ms. Key was required to download a mobile application, “AE + Aerie,” and to regularly use her mobile data to look up various items for customers to confirm availability. Finally, Ms. Key and other aggrieved employees were required to use their personal mobile devices for work-related tasks, including contacting other employees regarding shift coverage. Although AE RETAIL required Ms. Key and other aggrieved employees to utilize their personal mobile devices and/or mobile data to carry out their work-related responsibilities, AE RETAIL failed to reimburse them for these costs.

Additionally, AE RETAIL had a company-wide policy of requiring Ms. Key and other aggrieved employees to utilize their own personal vehicles or obtain alternate transportation to carry out company business, but failed to reimburse them for all costs of travel, including mileage. For example, Ms. Key and other aggrieved employees were required to drive to various store locations to cover shifts on as-needed basis. Although AE RETAIL required Ms. Key and other aggrieved employees to utilize their own vehicles or obtain alternate transportation to carry out their work-related responsibilities, AE RETAIL did not reimburse them for their travel expenses.

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

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

California Labor Code § 558(a)

California Labor Code section 558(a) provides “[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil

penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid. . . . (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid. . . .” Labor Code section 558(c) provides that “[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law.” AE RETAIL, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Ms. Key’s and other aggrieved employees’ rights by violating various sections of the California Labor Code.

Accordingly, Ms. Key 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. Key, 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 AE RETAIL for violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 246, 248, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

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

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

1. AE RETAIL shall pay Ms. Key and all other aggrieved employees employed by AE RETAIL at any time during the past three years from the date of this notice unpaid wages and compensation for the above-referenced violations.
2. AE RETAIL shall comply with all California labor laws and ensure that its non-exempt employees are paid overtime wages and minimum wages for all hours worked, provided lawful meal and rest periods, and paid reporting time pay.
3. AE RETAIL shall conduct a survey or interview all current and former aggrieved employees in California who worked for AE RETAIL in the past three years to obtain information from them regarding the above-referenced violations, including, but not limited to: the number of meal periods which were not provided; the number of rest periods which were not authorized and permitted; and the number of employees who were required to pay for mobile device expenses, mileage or travel expenses, or other expenditures in the discharge of their duties, with the investigation to be completed within 60 days.
4. AE RETAIL 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. AE RETAIL 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. AE RETAIL shall reimburse those aggrieved employees who were required to pay for any business expenses incurred for AE RETAIL's benefit, including, but not limited to, costs of mobile device expenses, travel expenses, and mileage, as required by Labor Code section 2802.
6. AE RETAIL shall pay accrued legal interest to all aggrieved employees at the rate of 10% per annum for said unpaid wages.
7. AE RETAIL shall provide Ms. Key and all aggrieved employees employed by AE RETAIL at any time during the past three years from the date of this notice corrected wage statements that include the requisite information set forth in Labor Code section 226(a).
8. AE RETAIL shall pay waiting time penalties, equal to 30 days of pay, to each former aggrieved employee who was not paid all wages due as described herein.
9. AE RETAIL shall properly calculate aggrieved employees' rates of pay for overtime wages, meal and period premiums, and paid sick leave based on all remuneration paid, pursuant to Labor Code sections 226.7, 510, 246(l), and 248.6(b)(3)(A).
10. AE RETAIL shall implement and provide suitable seating to all aggrieved employees.
11. AE RETAIL shall provide aggrieved employees who are required to report for work and do report but are not put to work or are furnished less than half their usual or scheduled day's work, with pay for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the aggrieved employee's regular rate of pay.
12. AE RETAIL 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:

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

Best Regards,



Ninel Kocharyan

Copy: AE RETAIL WEST LLC (via U.S. Certified Mail); AE CORPORATE SERVICES CO. (via U.S. Certified Mail); AMERICAN EAGLE OUTFITTERS, INC. (via U.S. Certified Mail)

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

CERTIFIED MAIL



7022 2410 0000 2406 4796

AE RETAIL WEST LLC
77 HOT METAL STREET
PITTSBURGH, PA 15203

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- Complete items 1, 2, and 3.
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AE RETAIL WEST LLC
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PITTSBURGH, PA 15203



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- ☐ Collect on Delivery Restricted Delivery
- ☐ Restricted Delivery
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77 HOT METAL STREET
PITTSBURGH, PA 15203

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

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Key v. AG RETAIL

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77 HOT METAL STREET
PITTSBURGH, PA 15203

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AE CORPORATE SERVICES CO.
77 HOT METAL STREET
PITTSBURGH, PA 15203



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A. Signature

X

☐ Agent
☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

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



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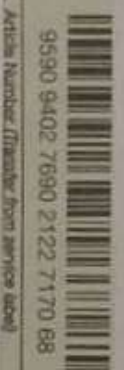
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PITTSBURGH, PA 15203

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- D. Is delivery address different from item 1? ☐ Yes ☐ No
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| ☐ Restricted Delivery | |

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