

Case Management Conference
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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF SAN JOAQUIN**
11

12 XIOMARA BRIDGES, an individual, on
13 behalf of the State of California as a private
14 attorney general, and on behalf of all others
similarly situated,

15 Plaintiff,

16 v.

17 DILLARD'S, INC, a Delaware corporation;
18 DILLARD STORE SERVICES, INC., an
19 Arizona corporation; and DOES 1 through 50,
inclusive,

20 Defendants.
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Case No.: STK-CV-UOE-2023-0009575

**REPRESENTATIVE ACTION
COMPLAINT FOR CIVIL PENALTIES
PURSUANT TO THE PRIVATE
ATTORNEYS GENERAL ACT OF 2004,
LAB. CODE, §§ 2699, *ET SEQ.***

1 Plaintiff Xiomara Bridges (“Plaintiff”), individually on behalf of the State of California as
2 an “aggrieved employee” acting as a private attorney general under California’s Private Attorneys
3 General Act of 2004, Labor Code sections 2698, *et seq.* (“PAGA”) on behalf of all others similarly
4 situated, for her Representative Action Complaint against Defendants Dillard’s, Inc. (“DDS”) and
5 Dillard Store Services, Inc. (“DSS”) (collectively, “Dillard’s”) and DOES 1 through 50, inclusive
6 (collectively with Dillard’s, “Defendants”), alleges as follows:

7 **INTRODUCTION**

8 1. This is a representative action brought pursuant to the PAGA, Labor Code sections
9 2698, *et seq.*, by Plaintiff, on behalf of the State of California, and on behalf of the aggrieved
10 employees, identified as all individuals who are or were employed as hourly, non-exempt employees
11 by Defendants DDS or DSS, and/or their predecessor or merged entities, within the State California
12 from April 26, 2022 through the date of judgment and/or approval of settlement herein (the
13 “Aggrieved Employees”),¹ seeking penalties for Defendants’ violations of Labor Code sections 201,
14 202, 203, 204, 210, 212, 225.5, 223, 226, 226.3, 226.7, 256, 450, 510, 512, 558, 558.1, 1174,
15 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2800, and 2802, and Industrial Welfare
16 Commission (“IWC”) Wage Order No. 7-2001.

17 2. Plaintiff and all Aggrieved Employees are ‘aggrieved employees’ within the meaning
18 of Labor Code sections 2699, *et seq.*

19 **JURISDICTION AND VENUE**

20 3. This Court has subject matter jurisdiction over this action pursuant to article VI,
21 section 10 of the California Constitution and Code of Civil Procedure section 410.10, by virtue of
22 the fact that this is a civil action in which the matter in controversy, exclusive of interest, exceeds
23 \$25,000, and because each cause of action asserted herein arises under the laws of the State of
24 California or is subject to adjudication in the courts of the State of California.

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27 ¹ Plaintiff reserves the right to amend or modify the definition of Aggrieved Employees identified
28 herein with greater specificity, and/or amend or modify into further divisions of subgroups, or by
limitation of issues, as necessary.

4. This Court has personal jurisdiction over Defendants because Defendants have caused injuries in the County of San Joaquin and the State of California through their acts, and by their violation of the California Labor Code and California state common law. Defendants transact at least \$500,000 dollars of business within the State of California.

5. Venue is proper in this judicial district pursuant to Code of Civil Procedure section 395, as Defendants operate and do business within the County of San Joaquin, State of California. Further, the unlawful acts alleged herein have a direct effect on Plaintiff and all of Defendants' employees within San Joaquin County.

THE PARTIES

6. Plaintiff is a citizen of the State of California, and worked for Defendants during the statutory time period applicable to her cause of action for penalties under the PAGA for the various Labor Code violations alleged herein (the “PAGA Period,” which, as alleged above, April 26, 2022 through the date of judgment and or approval of settlement herein.)

7. Plaintiff represents the State of California as well the Aggrieved Employees.

8. Plaintiff and the Aggrieved Employees, at all times pertinent hereto, are or were employees of Defendants during the PAGA Period.

9. Upon information and belief, Plaintiff and the Aggrieved Employees are covered by IWC Wage Order No. 7-2001.

10. Defendant DDS is a Delaware Corporation, with its principal place of business in Little Rock, Arkansas.

11. Defendant DSS is an Arizona Corporation, with its principal place of business in Little Rock, Arkansas.

12. The true names and capacities, whether individual, corporate, associate, or otherwise, of the defendants sued herein as DOES 1 through 50, inclusive, are currently unknown to Plaintiff, who therefore sues those defendants by such fictitious names under Code of Civil Procedure section 474. Plaintiff is informed and believes, and on that basis alleges, that each of DOE defendants is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will seek leave

1 of court to amend this Complaint to reflect the true names and capacities of the DOE defendants
2 when such identities become known.

3 13. Plaintiff is informed and believes, and on that basis alleges, that each Defendant
4 herein acted in all respects pertinent to this action as the agent of each of the other Defendants, and
5 carried out a joint scheme, business plan, or policy in all respects pertinent hereto, and the acts of
6 each Defendant are legally attributable to each of the other Defendants. Furthermore, Defendants,
7 in all respects, acted as the employer and/or joint employer of Plaintiff and the Aggrieved
8 Employees.

9 **FACTUAL BACKGROUND**

10 14. Plaintiff was employed by Defendants in California as an hourly, non-exempt
11 employee. Specifically, from her hire date in September 2022 until her date of separation in January
12 2023 (during the PAGA Period), Plaintiff worked as a Sales Associate at Defendants' Weberstown
13 Mall location in Stockton, California. Ms. Bridges was compensated for her work at approximately
14 \$17.00 per hour.

15 15. As alleged above, Plaintiff and the Aggrieved Employees are or were, at all times
16 relevant hereto, employed by the Defendants within the State of California.

17 16. Plaintiff and Aggrieved Employees are or were, at all times pertinent hereto, non-
18 exempt employees for the purposes of minimum wages, overtime, rest breaks, meal periods,
19 reimbursement of expenses, and the other underlying claims alleged herein.

20 17. Plaintiff alleges that Defendants did not fully compensate Plaintiff and Aggrieved
21 Employees (who worked in non-exempt hourly paid positions, including, but not limited to, sales
22 associates), because they regularly were required to perform pre and post-shift activities off-the-
23 clock, as well as during meal periods and rest breaks, were subject to inequitable rounding, and/or
24 were underpaid due to miscalculated premium and overtime payments.

25 18. California law requires employers to pay non-exempt employees for all hours
26 worked at the legal rate. Hours worked, as defined by the IWC, includes all time an employee is
27 subject to the employer's control and all time the employee is suffered or permitted to work,
28 regardless of whether the employee is required to work or not. (IWC Wage Order No. 7-2001, § 2.)

Defendants did not compensate, and in some situations, undercompensated Aggrieved Employees for all hours worked.

19. Here, Plaintiff and the Aggrieved Employees were required to work off-the-clock (as alleged in paragraph 17 above), and did not receive the minimum wage for each hour worked.

20. First, due to Defendants' top-down sales and operational pressures, coupled with their failure to schedule adequate staffing for store workflow, Plaintiff and Aggrieved Employees were compelled to perform pre-shift and post-shift duties off-the-clock, as well as during meal periods, resulting in uncompensated regular and overtime wages. Moreover, because Aggrieved Employees occasionally worked full-time schedules, such off-the-clock work resulted in unpaid overtime; and for these off-the-clock hours, not only did they not receive compensation at their straight time rate of pay, they received *no payment at all*.

21. Second, Plaintiff and Aggrieved Employees were also regularly working off-the-clock as a result of Defendants' uneven rounding practice, which further resulted in Defendants' failure to compensate for all hours worked by Plaintiff and Aggrieved Employees. Instead of paying Plaintiff and Aggrieved Employees for actual hours worked as recorded by employee punches, Defendants performed additional calculations, rounding the actual time entries to the nearest tenth (.1) of an hour. Through these policies and practices, Defendants artificially reduced the actual hours worked and ultimately disadvantaged and deprived Plaintiff and Aggrieved Employees of compensation for all hours worked.

22. Defendants' practice of rounding time in a manner detrimental to Plaintiff and the other Aggrieved Employees contravenes California's policies. (*See* Lab. Code, § 90.5, subd. (a).) Plaintiff's rounding claim is bolstered by *Troester v. Starbucks Corp.* (2018) 5 Cal.5th 829, which mandates that all hours worked by employees must be paid, and that any rounding policy must be fair.

In light of the Wage Order's remedial purposes requiring a liberal construction, its directive to compensate employees for all time worked, the evident priority it accorded that mandate notwithstanding customary employment arrangements, and its concern with small amounts of time, *we conclude that the de minimis doctrine has no application* under the circumstances presented here. *An employer that requires its employee to work minutes off the clock on a regular basis or as a*

1 *regular feature of its job may not evade the obligation to compensate that*
2 *employee for that time by invoking the de minimis doctrine.*

3 (*Id.* at pp. 847 [emphasis added].) Plaintiff regularly clocked in prior to her scheduled start time and
4 after the end of her scheduled shift. Thus, Plaintiff alleges, upon information and belief, that
5 Plaintiff's and Aggrieved Employees' time records will demonstrate that Defendants' rounding
6 policy resulted in the disproportionate docking of time to the detriment of Plaintiff and Aggrieved
7 Employees.

8 23. During the relevant period, Defendants have had a policy and/or practice of failing
9 to pay overtime wages to Plaintiff and Aggrieved Employees for all overtime hours they worked.
10 The work times of Plaintiff and Aggrieved Employees have been, and continue to be, greater than
11 eight (8) hours per day and/or forty (40) hours per week. Yet, because Defendants did not pay
12 Plaintiff and Aggrieved Employees wages for, *inter alia*, hours that were worked off the clock,
13 including work performed during meal periods and pre- and post-shift and also as a result of
14 Defendants' unlawful rounding policy, as discussed and alleged *infra*, Plaintiff and Aggrieved
15 Employees were deprived wages at overtime premium amounts attributable to overtime hours.
16 Additionally, if there was any overtime paid to Plaintiff and Aggrieved Employees, upon
17 information and belief, Defendants incorrectly calculated the regular rate for purposes of calculating
18 overtime; Defendants failed to include, *inter alia*, non-discretionary forms of pay in the regular rate
19 calculations for Aggrieved Employees, thus depriving them of the full and proper amount of
20 overtime pay.

21 24. Third, Plaintiff and Aggrieved Employees often worked during meal periods, as
22 described further, *infra*. To the extent Defendants interrupted Plaintiff's and Aggrieved Employees'
23 meal periods by requiring or pressuring them to return to work before completing their thirty (30)
24 minute meal periods, some of the unpaid meal period time constitutes off-the-clock hours resulting
25 in unpaid minimum and overtime wages owed to Plaintiff and Aggrieved Employees.

26 25. Labor Code section 1197 states that employees must be paid at least the minimum
27 wage fixed by the IWC, and any payment of less than the minimum wage is unlawful. Similarly,
28 Labor Code section 1194 entitles "any employee receiving less than the legal minimum wage...to

1 recover in a civil action the unpaid balance of the full amount of this minimum wage.” (Lab. Code.,
2 § 1194, subd. (a).) The applicable IWC Wage Order(s) also obligate employers to pay each
3 employee minimum wages for all hours worked.

4 26. These minimum wage standards apply to each hour employees worked for which
5 they were not paid. Therefore, an employer’s failure to pay for any particular hour of time worked
6 by an employee is unlawful, even if averaging an employee’s total pay over all hours worked, paid
7 or not, results in an average hourly wage above minimum wage. (*Armenta v. Osmose, Inc.* (2005)
8 135 Cal.App.4th 314, 324.)

9 27. Labor Code section 1194.2 authorizes employees to recover wages to recover
10 liquidated damages for violations of section 1194. Where an employee is not paid for all hours
11 worked under Labor Code section 1194, the employee may recover minimum wages and liquidated
12 damages for the time for which he or she received no compensation. (*Sillah v. Command Int’l Sec.*
13 *Servs.* (N.D.Cal. 2015) 154 F.Supp.3d 891 [holding that employees suing for failure to pay overtime
14 could recover liquidated damages under section 1194.2 if they also showed they were paid less than
15 minimum wage]; accord, *Andrade v. Arby’s Rest. Grp., Inc.* (N.D.Cal. Dec. 12, 2016, No. 15-cv-
16 03175 NC) 2016 U.S. Dist. LEXIS 172319, at *20-21.) Since Defendants failed to provide Plaintiff
17 and Aggrieved Employees with compensation for all hours worked, they are entitled to recover
18 liquidated damages under Labor Code section 1194.2 through the PAGA.

19 28. Labor Code section 1197.1 authorizes employees who are paid less than the
20 minimum wage fixed by an applicable state or local law, or by an order of the commission a civil
21 penalty, restitution of wages, and liquidated damages as follows: (1) for any initial violation that is
22 intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay
23 period for which the employee is underpaid, and (2) for each subsequent violation for the same
24 specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period
25 for which the employee is underpaid regardless of whether the initial violation is intentionally
26 committed. Accordingly, through PAGA, and to the extent permitted by law, Plaintiff and the
27 Aggrieved Employees are entitled to recovery for violations of Labor Code section 1197.1.

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1 29. Because Plaintiff and the Aggrieved Employees worked off-the-clock as discussed
2 *supra*, they also incurred overtime, which Defendants also failed to pay, and which hours are not
3 reflected in Defendants' time records.

4 30. Labor Code section 510 sets forth the California requirement that employees must
5 be paid overtime as follows:

6 Eight hours of labor constitutes a day's work. Any work in excess of eight hours in
7 one workday and any work in excess of 40 hours in any one workweek and the first
8 eight hours worked on the seventh day of work in any one workweek shall be
9 compensated at the rate of no less than one and one-half times the regular rate of pay
10 for an employee. Any work in excess of 12 hours in one day shall be compensated at
the rate of no less than twice the regular rate of pay for an employee. In addition, any
work in excess of eight hours on any seventh day of a workweek shall be
compensated at the rate of no less than twice the regular rate of pay of an employee.

11 (Lab. Code, § 510, subd. (a).)

12 31. The IWC Wage Order(s) likewise mirror Labor Code section 510's overtime
13 requirements, and apply here. Moreover, Labor Code section 1198 provides that "[t]he maximum
14 hours of work and the standard conditions of labor fixed by the commission shall be the maximum
15 hours of work and the standard conditions of labor for employees. The employment of any employee
16 for longer hours than those fixed by the order or under conditions of labor prohibited by the order
17 is unlawful."

18 32. In accordance with Labor Code section 1194, Plaintiff and Aggrieved Employees
19 could not agree to work for an amount less than the minimum wage and overtime compensation
20 required by state law. Thus, Plaintiff also seeks penalties on behalf of herself and the Aggrieved
21 Employees pursuant to Labor Code section 1199.

22 33. By their common policy of requiring Plaintiff and Aggrieved Employees to work in
23 excess of eight (8) hours in a workday and/or forty (40) hours in a workweek without compensating
24 them at the rate equal to one and one-half (1 ½) of their regular rate of pay, Defendants willfully
25 violated the provisions of Labor Code sections 510, 1194, and 1199, as well as IWC Wage Order
26 No. 7-2001. As a result, Plaintiff and the Aggrieved Employees also seek penalties for such
27 violations under the PAGA.

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1 34. Defendants further violated Labor Code section 212, subdivision (a)(1), by paying
2 wages earned by employees, including Plaintiff and Aggrieved Employees, on a debit card, which
3 required them to pay a fee to redeem their earned wages, and further did not permit employees to
4 redeem all wages earned in cash if the amount of wages on the employee's debit card was less than
5 the amount of whole bills which may be obtained from an ATM machine (*e.g.*, if an employee was
6 paid \$15.25, only \$10 could be retrieved from the ATM machine in cash).

7 35. Labor Code section 212, subdivision (a)(1), provides that the payment of wages shall
8 be made by "[a]ny order, check, draft, note, memorandum, or other acknowledgment of
9 indebtedness, unless it is negotiable and payable in cash, on demand, without discount at some
10 address of which must appear on the instrument, and at the time of its issuance and for a reasonable
11 time thereafter, which must be at least 30 days, the maker or drawer has sufficient funds in, or credit,
12 arrangement, or understanding with the drawee for its payment."

13 36. Here, Defendants issued wages to Plaintiff and Aggrieved Employees using non-cash
14 instruments, *e.g.*, Money Network Check Pay debit cards, which do not comply with requirements
15 under Labor Code section 212. Plaintiff and Aggrieved Employees were not apprised that such pay
16 cards were optional, or that withdrawing on them to access wage funds resulted in transaction fees
17 for multiple uses, or of the inability to access the entire amount of funds in cash from them due to
18 ATM constraints.

19 37. As a result, Defendants failed to pay Plaintiff and the Aggrieved Employees all
20 wages to which they are entitled without deduction and/or withheld wages, in violation of Labor
21 Code section 212.

22 38. Pursuant to Labor Code section 225.5, civil penalties may be recovered for violations
23 of Labor Code section 212 at the rate of one hundred dollars (\$100.00) per employee, per violation,
24 for each initial violation, and two hundred dollars (\$200.00) per employee, per violation, for each
25 subsequent—or any willful or intentional—violation of Labor Code section 212, plus 25 percent of
26 the amount of wages unlawfully withheld.

27 39. Plaintiff also alleges that there are compliance issues *vis-à-vis* meal breaks—some
28 are late, missed, short, or interrupted. Labor Code sections 226.7 and 512, as well as section 11 of

1 IWC Wage Order No. 7-2001, mandate the following for meal breaks: (1) no employer shall employ
2 any person for a work period of more than five (5) hours without a meal break of not less than 30
3 minutes (*see* IWC Wage Order No. 7-2001, § 11.A), and (2) an employer shall not employ an
4 employee for a work period of more than 10 hours per day without providing the employee with a
5 second meal period of not less than 30 minutes. (*See* Lab. Code, § 512.)

6 40. On February 25, 2021, in *Donohue v. AMN Services, LLC* (2021) 11 Cal.5th 58, the
7 California Supreme Court reversed the Fourth Appellate District court’s previous opinion and set
8 forth two clear rules: (1) employers are not permitted to round time records when determining if
9 employees are entitled to meal premium pay, and (2) it is the employer’s burden to show that
10 compliant meal periods were provided to employees if the time records show otherwise.

11 41. Plaintiff and Aggrieved Employees frequently performed work tasks while off-the-
12 clock and during their meal periods which were not duty-free and/or subject to rounding. As a result
13 of Defendants’ failure to provide lawful meal periods, Plaintiff and Aggrieved Employees did not
14 receive duty-free meal periods within the first five (5) hours of their work, and did not receive a
15 second duty-free meal period when working shifts of ten (10) hours or more.

16 42. Defendants violated Labor Code section 512 and the applicable Wage Order(s) by
17 requiring Plaintiff and Aggrieved Employees to work through their meal periods without receiving
18 proper compensation and without entering into legally compliant on-duty meal period agreements.

19 43. In addition to Defendants’ failure to provide timely, duty-free meal breaks, Plaintiff
20 and Aggrieved Employees were also not compensated by Defendants with one (1) hours’ worth of
21 pay at their regular rate of compensation for each non-compliant meal break, in accordance with
22 Code section 226.7. (*See Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal.5th 858.)

23 44. Furthermore, Defendants failed to provide Plaintiff and the Aggrieved Employees
24 with compensated, duty-free rest periods of not less than ten (10) minutes for every major fraction
25 of four hours worked as required by Labor Code section 226.7 and/or IWC Wage Order No. 7-2001.

26 45. Under the applicable IWC Wage Order(s), an employer must authorize and permit
27 each employee to take one ten (10) minute duty free rest period for every major fraction of four
28 hours worked. Labor Code section 226.7 provides that “[a]n employer shall not require an employee

1 to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or
2 applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational
3 Safety and Health Standards Board, or the Division of Occupational Safety and Health.” (Lab. Code,
4 § 226.7, subd. (b).) Thus, the Wage Orders set when and for how long the rest period must take
5 place and the Labor Code establishes that violations of the Wage Orders violate California law, and
6 set forth the premium pay employers must pay their employees when employers fail to provide rest
7 periods. (*See Ferra, supra*, 11 Cal.5th 858.)

8 46. The California Supreme Court explained that, in the context of rest breaks, employer
9 liability attaches from adopting an unlawful policy:

10 An employer is required to authorize and permit the amount of rest break time called
11 for under the wage order for its industry. If it does not - if, for example, it adopts a
12 uniform policy authorizing and permitting only one rest break for employees working
a seven-hour shift when two are required - ***it has violated the wage order and is
liable.***

13 (*Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1005.)

14 47. Since Defendants did not offer Plaintiff and the Aggrieved Employees the
15 opportunity to receive compliant off-duty rest periods, “the court may not conclude employees
16 voluntarily chose to skip . . . breaks.” (*Alberts v. Aurora Behavioral Health Care* (2015) 241
17 Cal.App.4th 388, 410 [“[i]f an employer fails to provide legally compliant meal or rest breaks, the
18 court may not conclude employees voluntarily chose to skip those breaks.”]; accord, *Brinker Rest.*
19 *Corp., supra*, 53 Cal.4th at p. 1033 [“No issue of waiver ever arises for a rest break that was required
20 by law but never authorized; if a break is not authorized, an employee has no opportunity to decline
21 to take it.”].)

22 48. Here, Defendants did not permit Plaintiff and Aggrieved Employees to leave the
23 premises during rest periods, as required by Labor Code section 226.7 and IWC Wage Order No 7-
24 2001. Specifically, Defendants did not have a legally compliant rest period policy in place that
25 would permit and make available duty free rest breaks, allowed to be taken off the premises,
26 whereby Defendant would relinquish control over its employees during the applicable period.

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1 49. Plaintiff and Aggrieved Employees were unlawfully prohibited from leaving the
2 premises during their shifts. For example, Plaintiff was aware that there was a gas station and taco
3 truck across the street, but she was not allowed to leave to visit them, even during her rest breaks.

4 50. As a result, Defendants retained control over Plaintiff and the Aggrieved Employees
5 during their rest periods. (*See Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, 269
6 [concluding that “during rest periods employers must relieve employees of all duties and relinquish
7 control over how employees spend their time.”].) In *Augustus*, the court expressly rejected the
8 employer’s assertion that it could provide an on-duty rest period to employees who worked as
9 security guards and further explained, “that employers [must] relinquish any control over how
10 employees spend their break time, and relieve their employees of all duties.” (*Id.* at p. 273.) Thus,
11 Defendants prevented Plaintiff and Aggrieved Employees from taking duty-free rest periods as
12 mandated by law by not permitting them to leave the premises.

13 51. In addition to failing to authorize and permit compliant rest breaks, Plaintiff and
14 Aggrieved Employees were not compensated with one (1) hours’ worth of pay at their regular rate
15 of compensation for each non-compliant meal break, in violation Labor Code section 226.7. (*See*
16 *Ferra, supra*, 11 Cal.5th 858.)

17 52. Defendants failed to provide suitable seating to Plaintiff and Aggrieved Employees
18 as required by Labor Code section 1198 and IWC Wage Order No. 7-2001, section 14. For example,
19 section 14 of Wage Order No. 7, which covers businesses in the “mercantile industry” such as
20 Dillard’s stores, states “[a]ll working employees shall be provided with suitable seats when the
21 nature of the work reasonably permits the use of seats.”

22 53. Further, that same section provides that “[w]hen employees are not engaged in the
23 active duties of their employment and the nature of the work requires standing, an adequate number
24 of suitable seats shall be placed in reasonable proximity to the work area and employees shall be
25 permitted to use such seats when it does not interfere with the performance of their duties.” (IWC
26 Wage Order No. 7-2001, § 14.) If the tasks being performed at a given location reasonably permit
27 sitting, and provision of a seat would not interfere with performance of any other tasks that may
28 require standing, a seat is called for. (*Kilby v. CVS Pharmacy, Inc.* (2016) 63 Cal.4th 1, 8.)

1 54. Plaintiff and Aggrieved Employees were required to work at cash registers without
2 suitable seating, even though the provision of such seats would not interfere with the performance
3 of other tasks requiring standing. Labor Code section 1198 provides the IWC with the authority to
4 set the standard conditions of labor for California employees, and specifies that “the employment of
5 any employee . . . under conditions of labor prohibited by the order is unlawful.” Here, Defendants
6 violated Labor Code section 1198 by failing to provide suitable seating under IWC Wage Order No.
7 7-2001, section 14.

8 55. As to Plaintiff and Aggrieved Employees, Defendants also failed to provide accurate
9 itemized wage statements in accordance with Labor Code section 226. Labor Code section 226
10 obligates employers, semi-monthly or at the time of each payment to furnish an itemized wage
11 statement in writing showing:

12 (1) gross wages earned, (2) total hours worked by the employee . . . , (3) the number
13 of piece-rate units earned and any applicable piece rate if the employee is paid on a
14 piece-rate basis, (4) all deductions, provided that all deductions made on written
15 orders of the employee may be aggregated and shown as one item, (5) net wages
16 earned, (6) the inclusive dates of the period for which the employee is paid, (7) the
17 name of the employee and only the last four digits of his or her social security number
18 or an employee identification number other than a social security number, (8) the
19 name and address of the legal entity that is the employer. . . , and (9) all applicable
20 hourly rates in effect during the pay period and the corresponding number of hours
21 worked at each hourly rate by the employee

22 (Lab. Code., § 226.7, subd. (a).)

23 56. Due to Defendants’ failure to pay Plaintiff and Aggrieved Employees minimum
24 wages and overtime wages for all hours worked (including, but not limited to, failure to capture and
25 pay for all hours worked due to rounding and off-the-clock work), failure to provide lawful meal
26 and rest breaks and pay all premiums owed thereon, and failure to reimburse necessarily incurred
27 business expenses, the wage statements issued by Defendants do not indicate the correct amount of
28 gross wages earned, total hours worked, all deductions, correct amount of net wages earned, or the
applicable and/or correct hourly rates in effect during each pay period and the corresponding number
of hours worked at each hourly rate in violation of Labor Code section 226, subdivision (a).

 57. In addition to the derivative aspect of Plaintiff’s wage statement claim, upon
information and belief, there also exists a standalone violation for Defendants’ lack of compliance

1 with Labor Code section 226, subdivision (a)'s requirement to list "the name and address of the
2 legal entity that is the employer." The wage statements issued by Defendants are thus fatally non-
3 compliant for failure to provide the correct name and address of the legal entity employer for
4 Plaintiff and Aggrieved Employees.

5 58. Thus, Defendants have violated Labor Code section 226, subdivision (a), with
6 respect to Plaintiff and all Aggrieved Employees.

7 59. As a result of Defendants' violation of Labor Code section 226, subdivision (a),
8 Plaintiff and Aggrieved Employees suffered injury because, among other things: (a) the violations
9 hindered them from determining the amounts of wages actually owed to them by Defendants; (b)
10 the violations required performing complicated mathematical computations on their own to
11 determine the amounts owed to them, which is obviously exponentially more difficult than if the
12 wage statements contained the accurate and required information; and (c) the wage statements
13 inaccurately understated the wages, hours, and wage rates to which they were entitled, which also
14 contributed to the difficulties in calculating proper amounts owed by Defendants as noted above.

15 60. In addition to violating Labor Code section 226, subdivision (a), Defendants also
16 knowingly and intentionally failed to provide Plaintiff and the Aggrieved Employees with accurate
17 itemized wage statements in violation of Labor Code section 226, subdivision (e). Defendants
18 undeniably knew that they were not providing Plaintiff and the other Aggrieved Employees with
19 wage statements that complied with California law. (*See Garnett v. ADT LLC* (E.D.Cal. Oct. 6,
20 2015) 139 F.Supp. 1121, 1131 [finding that the defendant knowingly and intentionally violated
21 Labor Code section 226 because the "[d]efendant knew that it was not providing total hours worked
22 to plaintiff or other employees paid on commission" even though it believed that employees paid
23 solely on commission or commission and salary "are exempt and therefore we do not record hours
24 on a wage statement."].)

25 61. Plaintiff and the Aggrieved Employees will prevail on their claim for PAGA
26 penalties under Labor Code section 226, subdivision (a). (*See Lopez v. Friant & Assocs., LLC* (2017)
27 15 Cal.App.4th 773, 788 [holding "a plaintiff seeking civil penalties under PAGA for a violation of
28 Labor Code section 226(a) does not have to satisfy the 'injury' and 'knowing and intentional'

requirements of section 226(e)(1).”]; *Willner v. Manpower Inc.* (N.D.Cal. 2014) 35 F.Supp.3d 1116, 1136 [To obtain judgment on a PAGA claim, “all [Plaintiffs] needs to establish is a violation of section 226(a), which she has done, as discussed above.”]; *McKenzie v. Fed Exp. Corp.* (C.D.Cal. 2011) 765 F.Supp.2d 1222, 1232 [holding that “for the purposes of recovering PAGA penalties, one need only prove a violation of Section 226(a), and need not establish a Section 226(e) injury.”]; *Aguirre v. Genesis Logistics* (C.D.Cal. July 3, 2013) 2013 U.S. Dist. LEXIS 189815, at *28 [“Plaintiffs do not need to establish a Cal. Lab. Code § 226(e) injury to recover penalties under § 2699(f) of PAGA.”].)

62. Following *Friant*, courts have found that employees can recover separate penalties under PAGA for a defendant’s violations of Labor Code section 226, subdivisions (a) and (e). (*See, e.g., Bell v. Home Depot U.S.A.* (E.D.Cal. Dec. 11, 2017) 2017 U.S. Dist. LEXIS 204493, at *5 [finding after *Friant* that “[t]o the extent the Court’s Order [granting summary judgment to Home Depot] was ambiguous, the Court now clarifies that it granted summary judgment on Plaintiffs’ derivative claim for [PAGA] penalties under section 226(e) . . . the Court’s Order should not be read to grant summary judgment on Plaintiffs’ claim for PAGA penalties based on violation of section 226(a).”].)

63. Further and in addition to the penalties outlined above, Labor Code section 226.3 provides that “[a]ny employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial violation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the required in subdivision (a) of Section 226.” As explained in detail above, Defendants failed to provide Plaintiff and Aggrieved Employees with accurate itemized wage statements.

64. Accordingly, Plaintiff and the other Aggrieved Employees may also recover Labor Code section 226.3 penalties for Defendants’ violations of Labor Code section 226, subdivision (a). (*See Finder v. Leprino Foods Co.* (E.D.Cal. Mar. 12, 2015; No. 1:13-CV-2059 AWI-BAM) 2015 WL 1137151, at *7 [“the weight of authority counsels that violations of Section 226.3 may be the basis of a PAGA claim.”]; *Pedroza v. PetSmart, Inc.* (C.D.Cal. June 14, 2012, No. ED CV 11-298

GHK DTB) 2012 WL 9506073, at *6 [“Lab. Code § 226.3 merely provides that failure to perform actions mandated by § 226(a) may trigger civil penalties.”].)

65. Moreover, California Labor sections 1174, subdivision (d), and 1174.5 require an employer to keep, 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 the wages paid to employees employed at the respective plants or establishments. These records shall be kept with rules established for this purpose by the commission but in any case, shall be kept on file for not less than two years. During the PAGA Period, Defendants failed to keep accurate and complete payroll records showing the actual hours worked daily and the wages earned by Plaintiff and Aggrieved Employees, including earned and unpaid minimum, overtime, and premium wages discussed herein.

66. Labor Code section 2802, subdivision (a), provides that an employer must reimburse employees for all necessary expenditures that the employee incurs in discharging his or her duties. There is a “strong public policy” in favor of indemnifying employees for expenses incurred in the course and scope of their employment. (*Edwards v. Arthur Andersen LLP* (2008) 44 Cal.4th 937, 952.) To further this public policy, reimbursed amounts must be clearly identifiable on the employee’s pay stub. (*Gattuso v. HarteHanks Shoppers, Inc.* (2007) 42 Cal.4th 554, 572.) “Necessary” in the context of expense reimbursement means reasonable under the circumstances; it does not mean, as it sometimes does in lay speech, inevitable. (*Id.* at p. 568.)

67. Plaintiff and Aggrieved Employees were required to use their personal cell phones for a variety of work activities, including communicating with co-workers and supervisors. Despite being required to use their personal cell phones for business activities, Defendants failed to reimburse Plaintiff and Aggrieved Employees for these necessary business expenses incurred, in violation of Labor Code section 2802. (*See* Lab. Code, § 2802, subd. (a) [“An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties.”]; *Cochran v. Schwan’s Home Service, Inc.* (2014) 228 Cal.App.4th 1137.)

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1 68. Therefore, because Plaintiff and Aggrieved Employees incurred necessary business
2 expenses in the scope of their employment but were not reimbursed, Defendants are liable under
3 Labor Code section 2802, subdivision (a).

4 69. As a result of Defendants' failure to pay Plaintiff and Aggrieved Employees for all
5 hours worked (including, but not limited to, failure to capture and pay for all hours worked due to
6 rounding and off-the-clock work), failure to provide lawful meal and rest breaks and pay premiums
7 owed thereon, and failure to reimburse necessary business expenses, Defendants violated and
8 continue to violate Labor Code section 203, which provides that "if an employer willfully fails to
9 pay...any wages of an employee who is discharged or who quits, the wages of the employee shall
10 continue as a penalty..." for up to 30 days. (*See Mamika v. Barca* (1998) 68 Cal.App.4th 487, 492.)

11 70. Due to Defendants' faulty pay policies, Plaintiff and those Aggrieved Employees
12 whose employment with Defendants concluded, were not compensated for each and every hour
13 worked at the appropriate rate. Defendants have failed to pay all Aggrieved Employees whose sums
14 were certain at the time of termination within seventy-two (72) hours of their resignation and have
15 failed to pay those sums for thirty (30) days thereafter.

16 71. Labor Code section 204 expressly requires employers who pay employees on a
17 weekly, biweekly, or semimonthly basis to pay all wages "not more than seven calendar days
18 following the close of the payroll period."

19 72. Due to Defendants' failure to pay Plaintiff and Aggrieved Employees with minimum
20 and overtime wages, along with meal period and rest break premiums and unreimbursed business
21 expenses, as described above, Defendants failed to timely pay employees within seven calendar
22 days following the close of payroll in accordance with Labor Code section 204 on a regular and
23 consistent basis. (*See Parson v. Golden State FC, LLC* (N.D.Cal. May 2, 2016, No. 1 6-cv-00405-
24 JST) 2016 U.S. Dist. LEXIS 58299, at *3-5 [finding after *Ling vs. P.F Chang's China Bistro, Inc.*
25 that a failure to pay rest period premiums can support claims under Labor Code sections 203 and
26 204].)

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28 ///

1 **FIRST CAUSE OF ACTION**

2 **(For Penalties Pursuant to the PAGA, Lab. Code, §§ 2699, *et seq.*,**
3 **for Violations of Lab. Code, §§ 201, 202, 203, 204, 210, 212, 225.5, 223, 226, 226.3, 226.7, 450,**
4 **510, 512, 558, 558.1, 1174, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2800, and 2802,**
5 **and IWC Wage Order No. 7-2001)**

6 **(By Plaintiff and Aggrieved Employees against All Defendants)**

7 73. Plaintiff, on behalf of herself and all Aggrieved Employees, realleges and
8 incorporates by reference the allegations contained in paragraphs 1-72 above as if fully set forth
9 herein.

10 74. Based on the above allegations, Defendants violated Labor Code sections 201, 202,
11 203, 204, 210, 212, 225.5, 223, 226, 226.3, 226.7, 450, 510, 512, 558, 558.1, 1174, 1182.12, 1194,
12 1194.2, 1197, 1197.1, 1198, 1199, 2800, and 2802, and IWC Wage Order No. 7-2001.

13 75. Under Labor Code sections 2699(f)(2) and 2699.5, Plaintiff and Aggrieved
14 Employees are entitled to penalties in an amount to be shown at the time of trial subject to the
15 following formula:

16 \$100 for the initial violation per employee per pay period; and

17 \$200 for each subsequent violation per employee per pay period.

18 These penalties shall be allocated seventy-five percent (75%) to the Labor and Workforce
19 Development Agency (LWDA) and twenty-five percent (25%) to Aggrieved Employees.

20 76. These penalties may be stacked separately for each of Defendants violations of the
21 California Labor Code. (*See, e.g., Hernandez v. Towne Park, Ltd.* (C.D.Cal. June 22, 2012, No. CV
22 12-02972 MMM (JCGx)) 2012 U.S. Dist. LEXIS 86975, at *59 fn. 77 [holding that although the
23 plaintiffs did not seek stacked PAGA penalties, that “PAGA penalties can be ‘stacked,’ *i.e.*, multiple
24 PAGA penalties can be assessed for the same pay period for different Labor Code violations.”];
25 *Friant, supra*, 15 Cal.App.5th at p. 778 [holding “a plaintiff seeking civil penalties under PAGA for
26 a violation of Labor Code section 226(a) does not have to satisfy the ‘injury’ and ‘knowing and
27 intentional’ requirements of section 226(e)(1)” and acknowledging that a plaintiff could recover
28 separately under PAGA for violations of Labor Code sections 226, subdivision (a) and 226,

subdivision (e)]; *accord, Schiller v. David's Bridal, Inc.* (E.D.Cal. July 14, 2010, No. 1:10-cv-00616 AWI SKO) 2010 U.S. Dist. LEXIS 81128, at *17; *Pulera v. F & B, Inc.* (E.D.Cal. Aug. 19, 2008, No. 2:08-cv-00275-MCE-DAD) 2008 U.S. Dist. LEXIS 72659, at * 2-3; *Smith v. Brinker Intern, Inc.* (N.D.Cal. May 5, 2010, No. C 10-0213 VRW) 2010 U.S. Dist. LEXIS 54110, at * 2-6.)

77. In addition, to the extent permitted by law, Defendants failed to provide Plaintiff and Aggrieved Employees with accurate itemized wage statements in compliance with Labor Code section 226, subdivision (a). Plaintiff seeks separate PAGA penalties for Defendants' violations of Labor Code sections 226, subdivision (a) and 226, subdivision (e). (*Friant, supra*, 15 Cal. App. 5th at p. 788; *Bell, supra*, 2017 U.S. Dist. LEXIS 204493, at *5 [finding after *Friant* that "[t]o the extent the Court's Order [granting summary judgment to Home Depot] was ambiguous, the Court now clarifies that it granted summary judgment on Plaintiffs' derivative claim for [PAGA] penalties under section 226(e) . . . the Court's Order should not be read to grant summary judgment on Plaintiffs' claim for PAGA penalties based on violation of section 226(a)."].) For violations of Labor Code section 226, subdivision (a), Plaintiff seeks the default penalty provided by Labor Code section 226.3. Labor Code section 226.3 provides that "[a]ny employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial violation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the required in subdivision (a) of Section 226." Accordingly, through PAGA and to the extent permitted by law Plaintiff and the Aggrieved Employees are entitled to recover penalties for violations of Labor Code section 226.3 and seeks default PAGA penalties for each of Defendants' numerous violations of Labor Code section 226, subdivision (e).

78. Labor Code section 210 provides that "in addition to, an entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections...204...shall be subject to a civil penalty as follows: (1) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25% of the amount unlawfully withheld." (Lab. Code, § 210,

1 subd. (a).) As a result of the faulty compensation policies and practices, Plaintiff and the Aggrieved
2 Employees are also entitled to recover penalties under Labor Code section 210 through PAGA.

3 79. A civil penalty against Defendants, pursuant to Labor Code section 1197.1,
4 authorizes a civil penalty, restitution of wages, and liquidate damages, in the amount of: “(1) for any
5 initial violation that is intentionally committed, one hundred dollars (\$100) for each underpaid
6 employee for each pay period for which the employee is underpaid . . . [and] (2) [f]or each
7 subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each
8 underpaid employee for each pay period for which the employee is underpaid regardless of whether
9 the initial violation is intentionally committed” (Lab. Code, § 1197.1, subd. (a).) Accordingly,
10 through PAGA and to the extent permitted by law Plaintiff and the Aggrieved Employees are
11 entitled to recover pursuant to Labor Code section 1197.1.

12 80. Plaintiff has fully and completely exhausted her administrative remedies under
13 PAGA prior to proceeding with this PAGA claim. On April 26, 2023, Plaintiff filed her PAGA
14 Notice online with the LWDA and sent a letter by certified mail to Defendants DDS and DSS, setting
15 forth the facts and theories of the violations alleged against Defendants, as prescribed by Labor
16 Code sections 2698, *et seq.* As required by the PAGA, Plaintiff submitted the \$75.00 filing fee to
17 the LWDA. Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), no notice was received
18 by Plaintiff from the LWDA evidencing its intention to investigate within sixty-five (65) calendar
19 days of the postmark date of the PAGA notice. Plaintiff is therefore entitled to commence and
20 proceed with a civil action pursuant to Labor Code section 2699.

21 81. Plaintiff was compelled to retain the services of counsel to file this action to protect
22 her interests and those of the Aggrieved Employees, and to assess and collect the wages and
23 penalties owed by Defendants. Plaintiff has thereby incurred attorneys’ fees and costs, which she is
24 also entitled to recover under Labor Code section 2699.

25 **RELIEF REQUESTED**

26 **WHEREFORE**, Plaintiff, on behalf of the State of California, prays for judgment against
27 Defendants as follows:
28

1 1. For penalties and other relief allowable under Labor Code sections 2699, *et seq.*,
2 because of Defendants' violation of Labor Code sections 201, 202, 203, 204, 210, 212, 225.5, 223,
3 226, 226.3, 226.7, 450, 510, 512, 558, 558.1, 1174, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198,
4 1199, 2800, 2802, and IWC Wage Order No. 7-2001.

5 2. For civil penalties against Defendants in the amounts of one hundred dollars (\$100)
6 for the initial violation and two hundred dollars (\$200) for each subsequent violation, as specified
7 in section 2699, subdivision (f)(2) of the Labor Code, for each and every pay period of Plaintiff and
8 Aggrieved Employees that occurred during the PAGA Period;

9 3. For civil penalties against Defendants pursuant to Labor Code section 1197.1 for the
10 initial violation that was committed, in the amounts of one hundred dollars (\$100) for each
11 underpaid employee for each pay period for which the employee was underpaid, and for each
12 subsequent violation, two hundred fifty dollars (\$250) for each subsequent violation for each pay
13 period for which the employee was underpaid, for each and every pay period of Plaintiff and
14 Aggrieved Employees that occurred during the PAGA Period;

15 4. For civil penalties against Defendants pursuant to Labor Code section 210 in the
16 amounts of one hundred dollars (\$100) for each initial violation that was committed for each
17 underpaid employee for each pay period for which the employee was underpaid, and for each
18 subsequent violation, two hundred dollars (\$200) for each underpaid employee for each pay period
19 for which the employee was underpaid, for each and every pay period of Plaintiff and Aggrieved
20 Employees that occurred during the PAGA Period;

21 5. For civil penalties against Defendants in the amounts of fifty dollars (\$50) for the
22 initial violation and one hundred dollars (\$100) for each subsequent violation by Defendants under
23 Labor Code section 226, subdivision (e) and 2699, subdivision (f), for each and every pay period of
24 Plaintiff and Aggrieved Employees that occurred during the PAGA Period;

25 6. For civil penalties against Defendants in the amounts of two hundred and fifty dollars
26 (\$250) for the initial violation and one thousand dollars (\$1,000) for each subsequent violation by
27 Defendants of Labor Code section 226, subdivision (a), for each and every pay period of Plaintiff
28

1 and all Aggrieved Employees during the PAGA Period, pursuant to Labor Code sections 226.3 and
2 2699, subdivision (f);

3 7. For an award of reasonable attorney's fees as specified in Labor Code section 2699,
4 subdivision (g), and Code of Civil Procedure section 1021.5;

5 8. For an award of all costs incurred by the undersigned counsel as provided for in
6 Labor Code section 2699, subdivision (g)(1); and

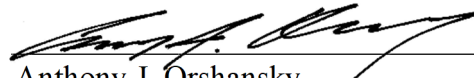
7 9. For all other relief as this Court deems just and proper.

8
9 Dated: September 6, 2023

Respectfully submitted,

10 COUNSELONE, PC

11
12 By:


13 Anthony J. Orshansky
14 Jennifer L. Connor
15 Attorneys for Plaintiff and Aggrieved
16 Employees
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