

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 Florilyn Sheene Marce

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO

FLORILYN SHEENE MARCE,
individually, and on behalf of other
members of the general public similarly
situated, and as an aggrieved employee
pursuant to the Private Attorneys General
Act ("PAGA"),

Plaintiff,

vs.

HARPER'S PHARMACY, INC., a
California corporation; and DOES 1
through 10, inclusive,

Defendants.

Case No.: 37-2023-00026259-CU-OE-CTL

**SECOND AMENDED CLASS ACTION
COMPLAINT & ENFORCEMENT
ACTION UNDER THE PRIVATE
ATTORNEYS GENERAL ACT,
CALIFORNIA LABOR CODE §§ 2698, ET
SEQ.**

- (1) Violation of California Labor Code §§ 226.7, 516, and 1198 (Failure to Authorize and Permit Rest Periods);
- (2) Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 (Failure to Provide Meal Periods);
- (3) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime);
- (4) Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 (Unpaid Minimum Wages);
- (5) Violation of California Labor Code §§ 226(a), 1174(d), and 1198 (Non-Compliant Wage Statements and Failure to Maintain Payroll Records);
- (6) Violation of California Labor Code §§ 201 and 202 (Wages Not Timely Paid Upon Termination);
- (7) Violation of California Labor Code § 204 (Failure to Timely Pay Wages During Employment);

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- (8) Civil Penalties for Violations of California Labor Code, Pursuant to PAGA, §§ 2698, *et seq.*;
- (9) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unlawful Business Practices); and
- (10) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unfair Business Practices)

Jury Trial Demanded

1 Plaintiff Florilyn Sheene Marce, individually and on behalf of all other members of the
2 public similarly situated, and as an aggrieved employee and on behalf of all aggrieved
3 employees, alleges as follows:

4 JURISDICTION AND VENUE

5 1. This class action is brought pursuant to California Code of Civil Procedure
6 section 382 and California Labor Code sections 2698, *et seq.* (“PAGA”) to recover civil
7 penalties and any other available relief on behalf of Plaintiff, the State of California, and other
8 current and former employees who worked for Defendants in California as non-exempt,
9 hourly paid employees and received at least one wage statement and against whom one or
10 more violations of any provision in Division 2 Part 2 Chapter 1 of the Labor Code or any
11 provision regulating hours and days of work in the applicable Industrial Welfare Commission
12 (“IWC”) Wage Order were committed, as set forth in this complaint. The monetary damages,
13 penalties, and restitution sought by Plaintiff exceed the minimal jurisdiction limits of the
14 Superior Court and will be established according to proof at trial. This Court has jurisdiction
15 over this action pursuant to the California Constitution, Article VI, section 10. The statutes
16 under which this action is brought do not specify any other basis for jurisdiction. Plaintiff’s
17 share of damages, penalties, and other relief sought in this action does not exceed \$75,000.

18 2. This Court has jurisdiction over Defendants because Defendants are either
19 citizens of California, have sufficient minimum contacts in California, or otherwise
20 intentionally avail themselves of the California market so as to render the exercise of
21 jurisdiction over them by the California courts consistent with traditional notions of fair play
22 and substantial justice. There is no basis for federal diversity jurisdiction in this action
23 because there is no complete diversity, and this case falls within the statutory exceptions to
24 “minimal diversity” jurisdiction under the Class Action Fairness Act, 28 U.S.C. § 1332(d)(4).
25 Upon information and belief, two-thirds or more of the class members and Defendants are
26 citizens of California and/or (a) two-thirds of the class members and Defendants are citizens
27 of California; (b) the alleged wage and hour violations occurred in California; (c) significant
28

relief is being sought against Defendants whose violations of California wage and hour laws form a significant basis for Plaintiff's claims; and (d) no other class action has been filed within the past three (3) years on behalf of the same proposed class against Defendants asserting the same or similar factual allegations.

3. Venue is proper in this Court, because Defendants employ persons within the County of San Diego, and have violated the requirements of the California Labor Code and applicable Wage Order in this county which give rise to the penalties sought in this action. Cal. Code Civ. P. § 393. Specifically, Defendants have violated the requirements of the California Labor Code and applicable Wage Order in at least one location within the County of San Diego, including Defendants' location in San Diego (4125 Sorrento Valley Blvd., Suite A, San Diego, California 92121). Pursuant to California Civil Code of Procedure section 393, venue is proper for the recovery of a penalty or forfeiture imposed by statute in the county in which the cause, or some part of the cause, arose. Because Defendants have employees in San Diego County and Plaintiff could bring this action to recover penalties in San Diego County, venue is proper.

THE PARTIES

4. Plaintiff Florilyn Sheene Marce is a resident of Anaheim, in Orange County, California. Defendants employed Plaintiff as an hourly paid, non-exempt employee from approximately July 2019 to April 2023. Plaintiff worked as a Specialty Filler, Specialty Filler II, and Pharmacy Technician II at one of Defendants' locations in Orange, California. During her employment, Plaintiff typically worked eight (8) or more hours per day and five (5) days per week. Plaintiff's primary job duties included, without limitation, packaging medication and medical supplies, cleaning equipment, performing quality assurance inspections, and writing quality assurance reports.

5. HARPER'S PHARMACY, INC. was and is, upon information and belief, a California corporation, and at all times hereinafter mentioned, an employer whose employees are engaged throughout this county and the State of California.

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

7. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10 were the partners, agents, owners, or managers of HARPER'S PHARMACY, INC. at all relevant times.

8. Plaintiff is informed and believes, and thereon alleges, that each and all of the acts and omissions alleged herein was performed by, or is attributable to, HARPER'S PHARMACY, INC. and/or DOES 1 through 10 (collectively, "Defendants" or "HP"), each acting as the agent, employee, alter ego, and/or joint venturer of, or working in concert with, each of the other co-Defendants and was acting within the course and scope of such agency, employment, joint venture, or concerted activity with legal authority to act on the others' behalf. The acts of any and all Defendants were in accordance with, and represent, the official policy of Defendants.

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

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

GENERAL ALLEGATIONS

11. Defendants provide various pharmaceutical services and intravenous therapy, with three (3) locations in California. Upon information and belief, Defendants maintain a single, centralized Human Resources (“HR”) department at their company headquarters in Orange, 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.

12. In particular, Plaintiff and class members, 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.

13. Upon information and belief, Defendants maintain a centralized Payroll department at their company headquarters in Orange, California, which processes payroll for all non-exempt, hourly paid employees working for Defendants at their various locations in California, including Plaintiff and class members. Based upon information and belief, Defendants issue the same formatted wage statements to all non-exempt, hourly paid employees in California, irrespective of their work locations. Upon information and belief, Defendants process payroll for departing employees in the same manner throughout the State of California, regardless of the manner in which each employee's employment ends.

14. Defendants continue to employ non-exempt or hourly paid employees in California.

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

16. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and class members were not paid for all hours worked because all hours worked were not recorded.

17. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiff and class members were entitled to rest periods in

1 accordance with the California Labor Code and applicable IWC Wage Order or payment of
2 one (1) additional hour of pay at their regular rates of pay when they were not authorized and
3 permitted to take a compliant rest period and that Plaintiff and class members were not
4 authorized and permitted to take compliant rest periods or provided with payment of one (1)
5 additional hour of pay at their regular rates of pay when they were not authorized and
6 permitted to take a compliant rest period.

7 18. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
8 should have known that Plaintiff and class members were entitled to meal periods in
9 accordance with the California Labor Code and applicable IWC Wage Order or payment of
10 one (1) additional hour of pay at their regular rates of pay when they were not provided with
11 timely, uninterrupted, thirty (30) minute meal periods and that Plaintiff and class members
12 were not provided with all meal periods or payment of one (1) additional hour of pay at their
13 regular rates of pay when they did not receive a timely, uninterrupted, thirty (30) minute meal
14 period.

15 19. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
16 should have known that Plaintiff and class members were entitled to receive certain wages for
17 overtime compensation and that they were not receiving certain wages for overtime
18 compensation.

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

24 21. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
25 should have known that Plaintiff and class members were entitled to receive complete and
26 accurate wage statements in accordance with California law. In violation of the California
27 Labor Code, Plaintiff and class members were not provided complete and accurate wage
28

1 statements.

2 22. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
3 should have known that they had a duty to maintain accurate and complete payroll records in
4 accordance with the California Labor Code and applicable IWC Wage Order, but willfully,
5 knowingly, and intentionally failed to do so.

6 23. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
7 should have known that Plaintiff and class members were entitled to timely payment of all
8 wages earned upon termination of employment. In violation of the California Labor Code,
9 Plaintiff and class members did not receive payment of all wages due, including, but not
10 limited to, overtime wages, minimum wages, and/or meal and rest period premiums, within
11 permissible time periods.

12 24. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
13 should have known that Plaintiff and class members were entitled to timely payment of wages
14 during their employment. In violation of the California Labor Code, Plaintiff and class
15 members did not receive payment of all wages, including, but not limited to, overtime wages,
16 minimum wages, and/or meal and rest period premiums, within permissible time periods.

17 25. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
18 should have known that Plaintiff and class members were entitled to suitable seating and/or
19 were entitled to sit when it did not interfere with the performance of their duties and also have
20 seats nearby to use during a lull in tasks that do require moving about or standing. In
21 violation of the California Labor Code and applicable IWC Wage Order, Defendants failed to
22 provide Plaintiff and class members with suitable seating.

23 26. Plaintiff is informed and believes, and thereon alleges, that at all times herein
24 mentioned, Defendants knew or should have known that Defendants had a duty to provide
25 Plaintiff and class members with written notice of the material terms of their employment with
26 Defendants as required by the California Wage Theft Prevention Act, but failed to do so.

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

mentioned, Defendants knew or should have known that they had a duty to compensate Plaintiff and class members for all hours worked, and that Defendants had the financial ability to pay such compensation, but willfully, knowingly, and intentionally failed to do so, and falsely represented to Plaintiff and class members that they were properly denied wages, all in order to increase Defendants' profits.

//

PAGA REPRESENTATIVE ALLEGATIONS

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

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

30. Plaintiff and other current and former employees of Defendants are "aggrieved employees" as defined by Labor Code section 2699(c) in that they are all Defendants' current or former employees and one or more of the alleged violations were committed against them.

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

- (a) The aggrieved employee or representative shall give written notice by online filing with the LWDA and by certified mail to the employer of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violation.

- 1 (b) An aggrieved employee's notice filed with the LWDA pursuant to
2 2699.3(a) and any employer response to that notice shall be
3 accompanied by a filing fee of seventy-five dollars (\$75).
- 4 (c) The LWDA shall notify the employer and the aggrieved employee or
5 representative by certified mail that it does not intend to investigate the
6 alleged violation ("LWDA Notice") within sixty (60) calendar days of
7 the postmark date of the aggrieved employee's notice. Upon receipt of
8 the LWDA Notice, or if no LWDA Notice is provided within sixty-five
9 (65) calendar days of the postmark date of the aggrieved employee's
10 notice, the aggrieved employee may commence a civil action pursuant
11 to California Labor Code section 2699 to recover civil penalties.

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

- 16 (a) The aggrieved employee or representative shall give written notice by
17 online filing with the LWDA and by certified mail to the employer of
18 the specific provisions of the California Labor Code alleged to have
19 been violated (other than those listed in Section 2699.5), including the
20 facts and theories to support the alleged violation.
- 21 (b) An aggrieved employee's notice filed with the LWDA pursuant to
22 2699.3(c) and any employer response to that notice shall be
23 accompanied by a filing fee of seventy-five dollars (\$75).
- 24 (c) The employer may cure the alleged violation within thirty-three (33)
25 calendar days of the postmark date of the notice sent by the aggrieved
26 employee or representative. The employer shall give written notice
27 within that period of time by certified mail to the aggrieved employee or
28

1 representative and by online filing with the LWDA if the alleged
2 violation is cured, including a description of actions taken, and no civil
3 action pursuant to Section 2699 may commence. If the alleged violation
4 is not cured within the 33-day period, the aggrieved employee may
5 commence a civil action pursuant to Section 2699.

6 33. On July 12, 2023, Plaintiff provided written notice by online filing to the
7 LWDA and by Certified Mail to Defendants of the specific provisions of the California Labor
8 Code alleged to have been violated, including facts and theories to support the alleged
9 violations, in accordance with California Labor Code section 2699.3. Plaintiff's written
10 notice was accompanied with the applicable filing fee of seventy-five dollars (\$75). The
11 LWDA PAGA Administrator confirmed receipt of Plaintiff's written notice and assigned
12 Plaintiff PAGA Case Number LWDA-CM-967903-23. A true and correct copy of Plaintiff's
13 written notice to the LWDA and Defendants is attached hereto as "Exhibit 1."

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

17 35. Thus, Plaintiff has satisfied the administrative prerequisites under California
18 Labor Code sections 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
19 violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516,
20 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2810.5.

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

Code section 558(c) provides “[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law.”

37. Defendants, at all times relevant to this complaint, were employers or persons acting on behalf of an employer(s) who violated Plaintiff’s and other aggrieved employees’ rights by violating various sections of the California Labor Code as set forth above.

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

39. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a), 2699.3(a), 2699.3(c), and 2699.5, and section 558, Plaintiff, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for herself, all other aggrieved employees, and the State of California against Defendants for violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2810.5.

CLASS ACTION ALLEGATIONS

40. Plaintiff brings this action on her own behalf, as well as on behalf of each and all other persons similarly situated, and thus seeks class certification under California Code of Civil Procedure section 382.

41. All claims alleged herein arise under California law for which Plaintiff seeks relief authorized by California law.

42. Plaintiff’s proposed class consists of and is defined as follows:

All persons who worked for Defendants as non-exempt, hourly paid employees in California, within four years prior to the filing of the initial complaint until the date of trial (“Class”).

43. Plaintiff’s proposed subclass consists of and is defined as follows:

All persons who worked for Defendants as non-exempt, hourly paid employees in California and who received at least one wage statement within one (1) year prior to the filing of the initial complaint until the date of trial (“Subclass”).

1 44. Members of the Class and Subclass are referred to herein as “class members.”

2 45. Plaintiff reserves the right to redefine the Class and Subclass and to add
3 additional subclasses as appropriate based on further investigation, discovery, and specific
4 theories of liability.

5 46. There are common questions of law and fact as to class members that
6 predominate over questions affecting only individual members, including, but not limited to:

- 7 (a) Whether Defendants failed to authorize and permit Plaintiff and class
8 members to take rest periods;
- 9 (b) Whether Defendants failed to provide Plaintiff and class members with
10 meal periods;
- 11 (c) Whether Defendants required Plaintiff and class members to work over
12 eight (8) hours per day, over twelve (12) hours per day, or over forty
13 (40) hours per week and failed to pay all legally required overtime
14 compensation to Plaintiff and class members;
- 15 (d) Whether Defendants failed to pay Plaintiff and class members at least
16 minimum wages for all hours worked;
- 17 (e) Whether Defendants provided Plaintiff and class members with
18 complete and accurate wage statements as required by California Labor
19 Code section 226(a);
- 20 (f) Whether Defendants maintained accurate payroll records as required by
21 California Labor Code section 1174(d);
- 22 (g) Whether Defendants failed to pay earned overtime wages, minimum
23 wages, and/or meal and rest period premiums due to Plaintiff and class
24 members upon their discharge;
- 25 (h) Whether Defendants failed timely to pay overtime wages, minimum
26 wages, and/or meal and rest period premiums due to Plaintiff and class
27 members during their employment;
- 28

- (i) Whether Defendants failed to provide Plaintiff and class members with suitable seating;
- (j) Whether Defendants failed to provide written notice of information material to Plaintiff's and class members' employment with Defendants;
- (k) Whether Defendants engaged in unlawful and unfair business practices in violation of California Business & Professions Code sections 17200, *et seq.*; and
- (l) The appropriate amount of damages, restitution, or monetary penalties resulting from Defendants' violations of California law.

47. There is a well-defined community of interest in the litigation and the class members are readily ascertainable:

- (a) Numerosity: The class members are so numerous that joinder of all members would be unfeasible and impractical. The membership of the entire class is unknown to Plaintiff at this time; however, the class is estimated to be greater than one hundred (100) individuals and the identity of such membership is readily ascertainable by inspection of Defendants' employment records.
- (b) Typicality: Plaintiff is qualified to, and will, fairly and adequately protect the interests of each class member with whom she has a well-defined community of interest, and Plaintiff's claims (or defenses, if any) are typical of all class members as demonstrated herein.
- (c) Adequacy: Plaintiff is qualified to, and will, fairly and adequately protect the interests of each class member with whom she has a well-defined community of interest and typicality of claims, as demonstrated herein. Plaintiff acknowledges that she has an obligation to make known to the Court any relationship, conflicts or differences with any class member. Plaintiff's attorneys, the proposed class counsel, are

versed in the rules governing class action discovery, certification, and settlement. Plaintiff has incurred, and throughout the duration of this action, will continue to incur costs and attorneys' fees that have been, are, and will be necessarily expended for the prosecution of this action for the substantial benefit of each class member.

(d) Superiority: The nature of this action makes the use of class action adjudication superior to other methods. A class action will achieve economies of time, effort, and expense as compared with separate lawsuits, and will avoid inconsistent outcomes because the same issues can be adjudicated in the same manner and at the same time for the entire class.

(e) Public Policy Considerations: Employers in the State of California violate employment and labor laws every day. Current employees are often afraid to assert their rights out of fear of direct or indirect retaliation. Former employees are fearful of bringing actions because they believe their former employers might damage their future endeavors through negative references and/or other means. Class actions provide the class members who are not named in the complaint with a type of anonymity that allows for the vindication of their rights while simultaneously protecting their privacy.

FIRST CAUSE OF ACTION

Violation of California Labor Code §§ 226.7, 516, and 1198—Rest Period Violations (Against all Defendants)

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

49. At all relevant times herein set forth, the applicable IWC Wage Order and California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiff's and class

members' employment by Defendants.

50. At all relevant times, 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.

51. At all relevant times, 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. 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 v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 273 (2016). Pursuant to the applicable IWC Wage Order and California Labor Code section 226.7(c), Plaintiff and class members are entitled to recover from Defendants one (1) additional hour of pay at their regular rates of pay for each work day that a required rest period was not authorized and permitted.

52. During the relevant time period, Defendants regularly failed to authorize and permit Plaintiff and class members to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. During the relevant period, Defendants had, and continue to have, a company-wide policy and/or practice of understaffing their locations while assigning heavy workloads, resulting in a failure to provide Plaintiff and class members with adequate rest period coverage. This lack of rest period coverage prevented Plaintiff and class members from being relieved of all duty to take rest periods. Additionally, Defendants failed to schedule rest periods, which, coupled with Defendants' failure to provide adequate rest period coverage, further led to Plaintiff and class members not being authorized and permitted

1 to take rest periods.

2 53. Furthermore, during the relevant time period, Defendants maintained and
3 implemented a written on-premises rest period policy, which mandated that Plaintiff and class
4 members remain on the premises during their rest periods. Specifically, Defendants' non-
5 compliant policy states: "You are required to remain on the work premises during your rest
6 break(s)." Because Plaintiff and class members were restricted from leaving Defendants'
7 premises during rest periods, they were denied the ability to use their rest periods freely for
8 their own purposes, such as completing personal errands. Thus, Defendants effectively
9 maintained control over Plaintiff and class members during rest periods.

10 54. As a result of Defendants' practices and policies, Plaintiff and class members
11 worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without
12 receiving all uninterrupted 10-minute rest periods to which they were entitled. For example,
13 throughout her employment, Plaintiff had to forego her rest periods at least twice per week in
14 order to complete her job duties. When Plaintiff was finally able to take her rest periods, they
15 were often late.

16 55. Defendants have also engaged in a company-wide practice and/or policy of not
17 paying rest period premiums owed when compliant rest periods are not authorized and
18 permitted. Because of this practice and/or policy, Plaintiff and class members have not
19 received premium pay for all missed rest periods. As a result, Defendants denied Plaintiff and
20 class members rest periods and failed to pay them rest period premiums due, in violation of
21 Labor Code sections 226.7 and 516, and the applicable IWC Wage Order.

22 56. Defendants' conduct violates the applicable IWC Wage Order and California
23 Labor Code sections 226.7, 516, and 1198. Plaintiff and class members are therefore entitled
24 to recover from Defendants one (1) additional hour of pay at the employee's regular rate of
25 compensation for each work day that a compliant rest period was not authorized and
26 permitted.

27 **SECOND CAUSE OF ACTION**

**Violations of California Labor Code §§ 226.7, 512(a), 516, and 1198—Meal Period
Violations
(Against all Defendants)**

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

58. 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).

59. 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.

60. At all relevant times herein set forth, 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.

61. As with rest periods, Defendants' company-wide practices, including understaffing and the assignment of heavy workloads, resulted in a failure to provide Plaintiff and class members with adequate meal period coverage. As a result of this lack of meal period coverage, Plaintiff and class members were not always afforded timely, uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period.

1 Additionally, Defendants, on a company-wide basis, had a practice of failing to schedule meal
2 periods which, in conjunction with the assignment of heavy workloads, further caused
3 Plaintiff and class members to not be relieved of their duties for compliant meal periods.
4 Thus, Plaintiff and class members missed meal periods or had them interrupted to complete
5 their assigned workloads.

6 62. As a result, Plaintiff and class members have had to work through all or part of
7 their meal periods, had their meal periods interrupted, and/or had to wait extended periods of
8 time before taking meal periods. For example, Plaintiff worked through her meal periods at
9 least twice and sometimes took her meal periods late, after having worked in excess of five (5)
10 hours or more into her shift, in order to complete her work assignments. Plaintiff and class
11 members did not sign valid meal period waivers on days that they were entitled to meal
12 periods and were not relieved of all duties.

13 63. At all times herein mentioned, Defendants knew or should have known that, as
14 a result of these policies, Plaintiff and class members were prevented from being relieved of
15 all duties and required to perform some of their assigned duties during meal periods.
16 Defendants further knew or should have known that Defendants did not pay Plaintiff and class
17 members meal period premiums when meal periods were late, interrupted, shortened, and/or
18 missed.

19 64. Moreover, Defendants engaged in a company-wide practice and/or policy of
20 not paying all meal period premiums owed when compliant meal periods are not provided.
21 Because of this practice and/or policy, Plaintiff and class members have not received premium
22 pay for missed, late, and interrupted meal periods. As a result, Defendants failed to provide
23 Plaintiff and class members compliant meal periods in violation of California Labor Code
24 sections 226.7, 512(a), and 516 and failed to pay the full meal period premiums due.

25 65. Defendants' conduct violates the applicable IWC Wage Order, and California
26 Labor Code sections 226.7, 512(a), 516, and 1198. Plaintiff and class members are therefore
27 entitled to recover from Defendants one (1) additional hour of pay at the employee's regular
28

1 rate of compensation for each work day that the meal period was not provided.

2 **THIRD CAUSE OF ACTION**

3 **Violation of California Labor Code §§ 510 and 1198—Unpaid Overtime**

4 **(Against all Defendants)**

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

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

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

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

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

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

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 72. During the relevant time period, Defendants willfully failed to pay all overtime
6 wages owed to Plaintiff and class members. During the relevant time period, Plaintiff and
7 class members were not paid overtime premiums for all of the hours they worked in excess of
8 eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40)
9 hours in a week, because all hours worked were not recorded.

10 73. During the relevant period, Defendants had a company-wide policy and/or
11 practice of requiring Plaintiff and class members to perform tasks off-the-clock before their
12 scheduled shifts. For example, Defendants implemented, on a company-wide basis, an
13 employer-imposed requirement that Plaintiff and class members undergo mandatory COVID-
14 19 temperature checks and/or health screenings before clocking in for their scheduled shifts.
15 Even though Defendants required these health screenings, Defendants did not compensate
16 Plaintiff and class members for the time spent undergoing mandatory temperature checks
17 and/or health screenings.

18 74. Defendants knew or should have known that as a result of these company-wide
19 practices and/or policies, Plaintiff and class members were performing their assigned duties
20 off-the-clock before their shifts, and were suffered or permitted to perform work for which
21 they were not paid. Because Plaintiff and class members sometimes worked shifts of eight (8)
22 hours or more a day, or forty (40) hours a week or more, some of this off-the-clock work
23 qualified for overtime premium pay. Therefore, Plaintiff and class members were not paid
24 overtime wages for all of the overtime hours they actually worked.

25 75. Defendants' failure to pay Plaintiff and class members the balance of overtime
26 compensation as required by California law, violates the provisions of California Labor Code
27 sections 510 and 1198. Pursuant to California Labor Code section 1194, Plaintiff and class
28

members are entitled to recover from Defendants their unpaid overtime compensation, as well as interest, costs, and attorneys' fees.

FOURTH CAUSE OF ACTION

Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198—Unpaid Minimum Wages (Against all Defendants)

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

77. At all relevant times, California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 provide that the minimum wage for employees fixed by the IWC is the minimum wage to be paid to employees, and the payment of a wage less 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").

78. As stated above, Defendants required Plaintiff and class members to perform work off-the-clock before their scheduled shifts, including submitting to off-the-clock mandatory COVID-19 temperature checks and/or health screenings.

79. Defendants did not pay minimum wages for all hours worked by Plaintiff and class members. To the extent that these off-the-clock hours did not qualify for overtime premium payment, Defendants 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.

80. Defendants' failure to pay Plaintiff and class members minimum wages violates California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Pursuant to California Labor Code section 1194.2, Plaintiff and class members are entitled to recover from Defendants liquidated damages in an amount equal to the wages unlawfully unpaid and

1 interest thereon.

2 **FIFTH CAUSE OF ACTION**

3 **Violation of California Labor Code §§ 226(a), 1174(d), and 1198—Non-Compliant Wage**
4 **Statements and Failure to Maintain Accurate Payroll Records**
5 **(Against all Defendants)**

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

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

13 83. At all relevant times, Defendants have knowingly and intentionally provided
14 Plaintiff and Subclass members with uniform, incomplete, and inaccurate wage statements.
15 For example, Defendants issued uniform wage statements to Plaintiff and Subclass members
16 that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all
17 applicable hourly rates in effect during the pay period, including rates of pay for overtime
18 wages, and the corresponding number of hours worked at each hourly rate. Specifically,
19 Defendants violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

20 84. Because Defendants did not accurately record the time Plaintiff and Subclass
21 members spent working off-the-clock, Defendants did not list the correct amount of gross
22 wages and net wages earned by Plaintiff and Subclass members in compliance with sections
23 226(a)(1) and 226(a)(5). For the same reason, Defendants failed to accurately list the total
24 number of hours worked by Plaintiff and Subclass members in violation of section 226(a)(2),
25 and failed to list the applicable hourly rates of pay in effect during the pay period and
26 corresponding accurate number of work hours worked at each hourly rate in violation of
27 section 226(a)(9).
28

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

9 86. California Labor Code section 1174(d) provides that “[e]very person employing
10 labor in this state shall . . . [k]eep a record showing the names and addresses of all employees
11 employed and the ages of all minors” and “[k]eep, at a central location in the state or at the
12 plants or establishments at which employees are employed, payroll records showing the hours
13 worked daily by and the wages paid to, and the number of piece-rate units earned by and any
14 applicable piece rate paid to, employees employed at the respective plants or
15 establishments” At all relevant times, and in violation of Labor Code section 1174(d),
16 Defendants willfully failed to maintain accurate payroll records for Plaintiff and Subclass
17 members showing the daily hours they worked and the wages paid thereto as a result of failing
18 to record the off-the-clock hours that they worked.

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

Subclass members, in violation of section 1198.

88. Plaintiff and Subclass members are entitled to recover from Defendants the greater of their actual damages caused by Defendants' failure to comply with California Labor Code section 226(a), or an aggregate penalty not exceeding four thousand dollars (\$4,000) per employee.

SIXTH CAUSE OF ACTION

Violation of California Labor Code §§ 201 and 202—Wages Not Timely Paid Upon Termination (Against all Defendants)

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

90. At all times relevant herein set forth, 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.

91. On information and belief, Defendants have a company-wide practice and/or policy of paying departing employees their final wages on the next regular pay cycle, instead of adhering to the time requirements set forth in Labor Code sections 201 and 202. For example, Defendants terminated Plaintiff on April 7, 2023; however, Defendants did not provide Plaintiff with her final pay until on or about April 13, 2023. Thus, Defendants failed to pay Plaintiff her final wages immediately, in violation of California Labor Code sections 201.

92. Additionally, Defendants willfully failed to pay Plaintiff and class members who are no longer employed by Defendants the earned and unpaid wages set forth above,

1 including but not limited to, overtime wages, minimum wages, and/or meal and rest period
2 premiums, either at the time of discharge, or within seventy-two (72) hours of their leaving
3 Defendants' employ.

4 93. Defendants' failure to pay Plaintiff and class members who are no longer
5 employed by Defendants their wages earned and unpaid at the time of discharge, or within
6 seventy-two (72) hours of their leaving Defendants' employ, violates Labor Code sections 201
7 and 202. Plaintiff and class members are therefore entitled to recover from Defendants the
8 statutory penalty wages for each day they were not paid, at their regular rate of pay, up to a
9 thirty (30) day maximum pursuant to California Labor Code section 203.

10 SEVENTH CAUSE OF ACTION

11 **Violation of California Labor Code § 204—Failure to Timely Pay Wages During** 12 **Employment** 13 **(Against all Defendants)**

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

16 95. This cause of action is dependent upon, and wholly derivative of, the overtime
17 wages, minimum wages, and/or meal and rest period premiums that were not timely paid to
18 Plaintiff and class members during their employment.

19 96. At all times relevant herein set forth, Labor Code section 204 provides that all
20 wages earned by any person in any employment between the first (1st) and the fifteenth (15th)
21 days, inclusive, of any calendar month, other than those wages due upon termination of an
22 employee, are due and payable between the sixteenth (16th) and the twenty-sixth (26th) day of
23 the month during which the labor was performed. Labor Code section 204 further provides
24 that all wages earned by any person in any employment between the sixteenth (16th) and the
25 last day, inclusive, of any calendar month, other than those wages due upon termination of an
26 employee, are due and payable between the first (1st) and the tenth (10th) day of the following
27 month.
28

1 97. At all times relevant herein, Labor Code section 204 provides that all wages
2 earned for labor in excess of the normal work period shall be paid no later than the payday for
3 the next regular payroll period. Alternatively, at all times relevant herein, Labor Code section
4 204 provides that the requirements of this section are deemed satisfied by the payment of
5 wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than
6 seven (7) calendar days following the close of the payroll period.

7 98. During the relevant time period, Defendants willfully failed to pay Plaintiff and
8 class members all wages due including, but not limited to, overtime wages, minimum wages,
9 and/or meal and rest period premiums, within the time periods specified by California Labor
10 Code section 204.

11 99. Defendants' failure to pay Plaintiff and class members all wages due violates
12 Labor Code section 204. Plaintiff and class members are therefore entitled to recover from
13 Defendants the statutory penalty wages pursuant to California Labor Code section 210.

14 **EIGHTH CAUSE OF ACTION**

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

16 **(Against all Defendants)**

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

19 101. California Labor Code §§ 2698, *et seq.* ("PAGA") permits Plaintiff to recover
20 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code
21 section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 204, 226(a), 226.7,
22 510, 512(a), 1174(d), 1194, 1197, 1197.1, and 1198. Labor Code section 2699.3(c) permits
23 aggrieved employees, including Plaintiff, to recover civil penalties for violations of those
24 Labor Code sections not found in section 2699.5, including sections 516, 1182.12, and 2810.5.

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

27 (a) Violation of Labor Code sections 226.7, 516, and 1198, and the
28

1 applicable IWC Wage Order for Defendants' failure to authorize and
2 permit Plaintiff and other aggrieved employees to take rest periods, as
3 alleged herein;

4 (b) Violation of Labor Code sections 226.7, 512(a), 516, and 1198, and the
5 applicable IWC Wage Order for Defendants' failure to provide Plaintiff
6 and other aggrieved employees with meal periods, as alleged herein;

7 (c) Violation of Labor Code sections 510 and 1198, and the applicable IWC
8 Wage Order for Defendants' failure to compensate Plaintiff and other
9 aggrieved employees with all required overtime pay, as alleged herein
10 and as set forth below;

11 (d) Violation of Labor Code sections 1182.12, 1194, 1197, 1197.1, and
12 1198, and the applicable IWC Wage Order for Defendants' failure to
13 compensate Plaintiff and other aggrieved employees with at least
14 minimum wages for all hours worked, as alleged herein and as set forth
15 below;

16 (e) Violation of Labor Code sections 226(a) and 1198, and the applicable
17 IWC Wage Order for failure to provide accurate and complete wage
18 statements to Plaintiff and other aggrieved employees, as alleged herein;

19 (f) Violation of Labor Code sections 1174(d) and 1198, and the applicable
20 IWC Wage Order for failure to maintain payroll records, as alleged
21 herein;

22 (g) Violation of Labor Code sections 201 and 202 for failure to pay all
23 earned wages upon termination, as alleged herein;

24 (h) Violation of Labor Code section 204 for failure to pay all earned wages
25 during employment, as alleged herein;

26 (i) Violation of Labor Code section 1198 for failing to provide suitable
27 seating to Plaintiff and other aggrieved employees, as set forth below;
28

1 and

2 (j) Violation of Labor Code section 2810.5(a)(1)(A)-(C) for failure to
3 provide written notice of information material to Plaintiff's and other
4 aggrieved employees' employment with Defendants, as set forth below.

5 103. As stated, as stated above, Defendants had, and continue to have, a company-
6 wide policy and/or practice of understaffing their locations, which, combined with the
7 assignment of heavy workloads and a failure to schedule meal periods, has resulted in a lack
8 of meal period coverage for Plaintiff and/or other aggrieved employees. Consequently, other
9 aggrieved employees worked through meal periods and/or had meal periods interrupted in
10 order to attend to their work duties. Defendants did not compensate other aggrieved
11 employees for the time they spent working off the clock during meal periods.

12 104. Defendants knew or should have known that as a result of these company-wide
13 practices and/or policies, other aggrieved employees were working off-the-clock during their
14 meal periods, and were suffered or permitted to perform work for which they were not paid.
15 Defendants' failure to compensate other aggrieved employees at least minimum wages for all
16 hours worked off-the-clock, as alleged herein, in violation of California Labor Code sections
17 1182.12, 1194, 1197, 1197.1, and 1198, and the applicable IWC Wage Order. To the extent
18 that these off-the-clock hours qualified for overtime premium payment, Defendants failed to
19 pay other aggrieved employees the balance of overtime compensation in violation of
20 California Labor Code sections 510 and 1198. Other aggrieved employees are therefore
21 entitled to recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

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

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

4 107. Plaintiff alleges that Defendants’ California locations are generally similar in
5 their layout and design and there was, and continues to be space behind counters to allow for
6 the presence and use of a seat or stool by Plaintiff and other aggrieved employees (with
7 reasonable or no modification to these work areas) during the performance of their work
8 duties. Defendants could have provided Plaintiff and other aggrieved employees with a seat
9 or stool at their counters, but instead denies employees seating and forces Plaintiff and other
10 aggrieved employees to stand throughout the day.

11 108. Plaintiff and other aggrieved employees spent a substantial portion of their day
12 behind or at these counters. The nature of the work of an employee performing pharmacy
13 technician duties at counters can reasonably be accomplished from a seated position.
14 However, Defendants systematically, and on a company-wide basis, did not provide seats or
15 stools at or near the counters, forcing Plaintiff and other aggrieved employees to stand
16 throughout their work shifts.

17 109. During the relevant time period, Defendants violated California Labor Code
18 section 1198 and California Code of Regulations, Title 8, section 11070(14)(A), because
19 Plaintiff and other aggrieved employees were not allowed to sit, even when the nature of the
20 work would reasonably permit the use of seats, nor were they provided with suitable seats.
21 Defendants’ management did not inform Plaintiff and other aggrieved employees that they
22 were allowed to sit down, provide any means for them to sit down, or mention any policy
23 regarding sitting.

24 110. As a result of Defendants’ company-wide policy and/or practice of prohibiting
25 employees from sitting during their shifts and failure to provide suitable seating, Plaintiff and
26 other aggrieved employees were forced to stand during shifts and denied seats. Defendants’
27 failure to provide suitable seating to Plaintiff and other aggrieved employees violated and
28

continues to violate California Labor Code section 1198 and IWC Wage Order No. 7-2001, subdivision 14(A). Plaintiff and other aggrieved employees are therefore entitled to recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

111. 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.”

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

113. As stated, Plaintiff alleges that Defendants’ California locations are generally similar in their layout and design and there was, and continues to be, space near their work areas (with reasonable or no modification to these work areas) to allow for the presence and use of a seat or stool by Plaintiff and other aggrieved employees during lulls in operation. Defendants could have provided Plaintiff and other aggrieved employees with a seat or stool in their work areas, but instead denied Plaintiff and other aggrieved employees suitable seating altogether and effectively forced Plaintiff and other aggrieved employees to stand throughout the day.

114. Defendants did not provide Plaintiff 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 Plaintiff and other aggrieved employees engaged in duties in which the nature of the work required standing, Defendants denied them the use of seats nearby during lulls in their work duties. Moreover, Defendants

1 did not inform Plaintiff and other aggrieved employees of their rights to a seat or stool under
2 California law.

3 115. As a result of Defendants' company-wide policy and/or practice prohibiting
4 employees from sitting at any time, even when they were not engaged in active duties
5 requiring standing, and company-wide failure to provide seats in reasonable proximity to their
6 work areas, Plaintiff and other aggrieved employees were forced to stand during shifts and
7 denied seats. Defendants' failure to provide suitable seating to Plaintiff and other aggrieved
8 employees violated and continues to violate California Labor Code section 1198 and IWC
9 Wage Order No. 7-2001, subdivision 14(B). Plaintiff and other aggrieved employees are
10 therefore entitled to recover civil penalties pursuant to Labor Code sections 2699(a), (f), and
11 (g).

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

23 117. At all relevant times, on information and belief, Defendants failed, on a
24 company-wide basis, to provide written notice to Plaintiff and other aggrieved employees that
25 lists all the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C).
26 Specifically, Defendants failed to provide Plaintiff and other aggrieved employees with the
27 hourly rate(s) of pay, including the overtime rate(s) of pay, in violation of section
28

1 2810.5(a)(1)(A). Instead, the wage theft form that Defendants provided to Plaintiff is blank
2 where the aforementioned wage information should be filled in.

3 118. Defendants' failure to provide Plaintiff and other aggrieved employees with
4 written notice of basic information regarding their employment with Defendants is in violation
5 of Labor Code section 2810.5. Plaintiff and other aggrieved employees are therefore entitled
6 to recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

7 **NINTH CAUSE OF ACTION**

8 **Violation of California Business & Professions Code §§ 17200, *et seq.* –**

9 **Unlawful Business Practices**

10 **(Against all Defendants)**

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

13 120. Defendants are "persons" as defined by California Business & Professions
14 Code section 17201, as they are corporations, firms, partnerships, joint stock companies,
15 and/or associations.

16 121. Defendants' conduct, as alleged herein, has been, and continues to be, unfair,
17 unlawful and harmful to Plaintiff, class members, and to the general public. Plaintiff has
18 suffered injury in fact and has lost money as a result of Defendants' unlawful business
19 practices. Plaintiff seeks to enforce important rights affecting the public interest within the
20 meaning of Code of Civil Procedure section 1021.5.

21 122. Defendants' activities, as alleged herein, are violations of California law, and
22 constitute unlawful business acts and practices in violation of California Business &
23 Professions Code sections 17200, *et seq.*

24 123. A violation of California Business & Professions Code sections 17200, *et seq.*
25 may be predicated on the violation of any state or federal law. In the instant case, Defendants'
26 policies and practices have violated state law in at least the following respects:

27 (a) Failing to authorize and permit Plaintiff and class members to take all
28

rest periods in violation of California Labor Code sections 226.7, 516, and 1198, and the applicable IWC Wage Order, as alleged herein;

- (b) Failing to provide all meal periods to Plaintiff and class members in violation of California Labor Code sections 226.7, 512(a), 516, and 1198, and the applicable IWC Wage Order, as alleged herein;
- (c) Requiring non-exempt, hourly paid employees, including Plaintiff and class members, to work overtime without paying them proper compensation in violation of California Labor Code sections 510 and 1198, and the applicable IWC Wage Order, as alleged herein;
- (d) Failing to pay at least minimum wage to Plaintiff and class members in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198, and the applicable IWC Wage Order, as alleged herein;
- (e) Failing to provide Plaintiff and class members with accurate wage statements and failing to maintain accurate payroll records in violation of California Labor Code sections 226(a), 1174(d), and 1198, and the applicable IWC Wage Order, as alleged herein;
- (f) Failing timely to pay all earned wages to Plaintiff and class members in violation of California Labor Code section 204, as alleged herein; and
- (g) Failing to provide written notice of information material to Plaintiff's and class members' employment with Defendants in violation of California Labor Code section 2810.5(a)(1)(A)-(C), as set forth below.

124. At all relevant times herein, California's Wage Theft Prevention Act was enacted to ensure that employers provide employees with basic information material to their employment relationship at the time of hiring, and to ensure that employees are given written and timely notice of any changes to basic information material to their employment. Codified at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the

1 time of hiring, an employer must provide written notice to employees containing basic and
2 material payroll information, including, among other things, the rate(s) of pay and basis
3 thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise,
4 including any rates for overtime, the regular payday designated by the employer, and any
5 allowances claims as part of the minimum wage, including meal or lodging allowances. Labor
6 Code § 2810.5(a)(1)(A)-(C).

7 125. During the relevant time period, Defendants failed to provide Plaintiff and class
8 members with written notice that lists all the requisite information set forth in Labor Code
9 section 2810.5(a)(1)(A)-(C). Specifically, Defendants failed to provide Plaintiff and class
10 members with the hourly rate(s) of pay, including the overtime rate(s) of pay, in violation of
11 section 2810.5(a)(1)(A). Instead, the wage theft form that Defendants provided to Plaintiff is
12 blank where the aforementioned wage information should be filled in.

13 126. Defendants' failure to provide Plaintiff and class members with written notice
14 of basic information regarding their employment with Defendants is in violation of California
15 Labor Code section 2810.5.

16 127. As a result of the violations of California law herein described, Defendants
17 unlawfully gained an unfair advantage over other businesses. Plaintiff and class members
18 have suffered pecuniary loss by Defendants' unlawful business acts and practices alleged
19 herein.

20 128. Pursuant to California Business & Professions Code sections 17200, *et seq.*,
21 Plaintiff and class members are entitled to restitution of the wages withheld and retained by
22 Defendants during a period that commences four years prior to the filing of this complaint; a
23 permanent injunction requiring Defendants to pay all outstanding wages due to Plaintiff and
24 class members; and an award of attorneys' fees pursuant to California Code of Civil
25 Procedure section 1021.5 and other applicable laws; and an award of costs.

26 **TENTH CAUSE OF ACTION**

27 **Violation of California Business & Professions Code §§ 17200, *et seq.* –**

1

2

3

5

8

13

24

1 134. Pursuant to California Business & Professions Code sections 17200, *et seq.*,
2 Plaintiff and class members are entitled to restitution for the class-wide loss of the statutory
3 benefits implemented by section 226.7 withheld and retained by Defendants during a period
4 that commences four years prior to the filing of this complaint; a permanent injunction
5 requiring Defendants to pay all statutory benefits implemented by section 226.7 due to
6 Plaintiff and class members; an award of attorneys' fees pursuant to California Code of Civil
7 Procedure section 1021.5 and other applicable laws; and an award of costs.

8 **REQUEST FOR JURY TRIAL**

9 Plaintiff requests a trial by jury.

10 **PRAYER FOR RELIEF**

11 Plaintiff, on behalf of all others similarly situated, prays for relief and judgment
12 against Defendants, jointly and severally, as follows:

13 1. For damages, unpaid wages, penalties, injunctive relief, and attorneys' fees in
14 excess of twenty-five thousand dollars (\$25,000), exclusive of interest and costs. Plaintiff
15 reserves the right to amend her prayer for relief to seek a different amount.

16 **Class Certification**

- 17 2. That this case be certified as a class action;
18 3. That Plaintiff be appointed as the representative of the Class and Subclass;
19 4. That counsel for Plaintiff be appointed as class counsel.

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

21 5. That the Court declare, adjudge and decree that Defendants violated California
22 Labor Code sections 226.7, 516, and 1198, and the applicable IWC Wage Order by willfully
23 failing to authorize and permit Plaintiff and class members to take all rest periods;

24 6. That the Court make an award to the Plaintiff and class members of one (1) hour
25 of pay at each employee's regular rate of pay for each workday that a rest period was not
26 authorized and permitted;

- 27 7. For all actual, consequential, and incidental losses and damages, according to
28

1 proof;

2 8. For premiums pursuant to California Labor Code section 226.7(c);

3 9. For pre-judgment interest on any unpaid rest period premiums from the date
4 such amounts were due, or as otherwise provided by law;

5 10. For attorneys' fees pursuant to California Code of Civil Procedure section
6 1021.5, or as otherwise provided by law; and

7 11. For such other and further relief as the Court may deem equitable and
8 appropriate.

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

10 12. That the Court declare, adjudge, and decree that Defendants violated California
11 Labor Code sections 226.7, 512(a), 516, and 1198, and the applicable IWC Wage Order by
12 willfully failing to provide all meal periods to Plaintiff and class members;

13 13. That the Court make an award to the Plaintiff and class members of one (1)
14 hour of pay at each employee's regular rate of pay for each workday that a meal period was
15 not provided;

16 14. For all actual, consequential, and incidental losses and damages, according to
17 proof;

18 15. For premiums pursuant to California Labor Code section 226.7(c);

19 16. For pre-judgment interest on any unpaid meal period premiums from the date
20 such amounts were due, or as otherwise provided by law;

21 17. For attorneys' fees pursuant to California Code of Civil Procedure section
22 1021.5, or as otherwise provided by law; and

23 18. For such other and further relief as the Court may deem equitable and
24 appropriate.

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

26 19. That the Court declare, adjudge, and decree that Defendants violated California
27 Labor Code sections 510 and 1198, and the applicable IWC Wage Order by willfully failing to
28

1 pay all overtime wages due to Plaintiff and class members;

2 20. For general unpaid wages at overtime wage rates and such general and special
3 damages as may be appropriate;

4 21. For pre-judgment interest on any unpaid overtime compensation commencing
5 from the date such amounts were due, or as otherwise provided by law;

6 22. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to
7 California Labor Code section 1194(a); and

8 23. For such other and further relief as the Court may deem equitable and
9 appropriate.

10 **As to the Fourth Cause of Action**

11 24. That the Court declare, adjudge and decree that Defendants violated California
12 Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198, and the applicable IWC Wage
13 Order by willfully failing to pay minimum wages to Plaintiff and class members;

14 25. For general unpaid wages and such general and special damages as may be
15 appropriate;

16 26. For pre-judgment interest on any unpaid compensation from the date such
17 amounts were due, or as otherwise provided by law;

18 27. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to
19 California Labor Code section 1194(a);

20 28. For liquidated damages pursuant to California Labor Code section 1194.2; and

21 29. For such other and further relief as the Court may deem equitable and
22 appropriate.

23 **As to the Fifth Cause of Action**

24 30. That the Court declare, adjudge and decree that Defendants violated the
25 recordkeeping provisions of California Labor Code section 226(a) and the applicable IWC
26 Wage Order as to Plaintiff and Subclass members, and willfully failed to provide accurate
27 itemized wage statements thereto;

1 31. For all actual, consequential, and incidental losses and damages, according to
2 proof;

3 32. For injunctive relief pursuant to California Labor Code section 226(h);

4 33. For statutory penalties pursuant to California Labor Code section 226(e);

5 34. For attorneys' fees and costs pursuant to California Labor Code section
6 226(e)(1); and

7 35. For such other and further relief as the Court may deem equitable and
8 appropriate.

9 //

10 **As to the Sixth Cause of Action**

11 36. That the Court declare, adjudge and decree that Defendants violated California
12 Labor Code sections 201 and 202 by willfully failing to pay overtime wages, minimum wages,
13 and/or meal and rest period premiums owed at the time of termination of the employment of
14 Plaintiff and other terminated class members;

15 37. For all actual, consequential and incidental losses and damages, according to
16 proof;

17 38. For waiting time penalties according to proof pursuant to California Labor
18 Code section 203 for all employees who have left Defendants' employ;

19 39. For pre-judgment interest on any unpaid wages from the date such amounts
20 were due, or as otherwise provided by law;

21 40. For attorneys' fees pursuant to California Code of Civil Procedure section
22 1021.5, or as otherwise provided by law; and

23 41. For such other and further relief as the Court may deem equitable and
24 appropriate.

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

26 42. That the Court declare, adjudge and decree that Defendants violated California
27 Labor Code section 204 by willfully failing to timely pay Plaintiff and class members
28

overtime wages, minimum wages, and/or meal and rest period premiums during their employment;

43. For all actual, consequential and incidental losses and damages, according to proof;

44. For statutory penalties according to proof pursuant to California Labor Code section 210;

45. For pre-judgment interest on any unpaid wages from the date such amounts were due, or as otherwise provided by law;

46. For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5, or as otherwise provided by law; and

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

As to the Eighth Cause of Action

48. That the Court declare, adjudge and decree that Defendants violated the following California Labor Code provisions as to Plaintiff and/or other aggrieved employees: 226.7, 516, and 1198 (by failing to authorize and permit all rest periods); 226.7, 512(a), 516, and 1198 (by failing to provide all meal periods); 510 and 1198 (by failing to pay all overtime compensation); 1182.12, 1194, 1197, 1197.1, and 1198 (by failing to pay at least minimum wages for all hours worked); 226(a), 1174(d), and 1198 (by failing to provide accurate wage statements and maintain accurate payroll records); 201 and 202 (by failing to timely pay all earned wages upon termination); 204 (by failing to timely pay all earned wages during employment); 1198 and the applicable IWC Wage Order (by failing to provide suitable seating); and 2810.5 (by failing to provide notice of material terms of employment);

49. For civil penalties pursuant to the California Labor Code, including sections 210, 226.3, 256, 558, 1174.5, 2699(a), (f), and (g), for violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2810.5;

1 50. For attorneys' fees and costs pursuant to California Labor Code section
2 2699(g)(1), and any and all other relevant statutes, for Defendants' violations of California
3 Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194,
4 1197, 1197.1, 1198, and 2810.5;

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

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

8 **As to the Ninth Cause of Action**

9 53. That the Court declare, adjudge and decree that Defendants' conduct of failing
10 to authorize and permit Plaintiff and class members to take all rest periods, failing to provide
11 Plaintiff and class members all meal periods, failing to provide Plaintiff and class members all
12 overtime wages due to them, failing to provide Plaintiff and class members all minimum
13 wages due to them, failing to provide Plaintiff and class members accurate and complete wage
14 statements, failing to maintain accurate payroll records for Plaintiff and class members, failing
15 to timely pay Plaintiff and class members all earned wages during employment, and failing to
16 provide written notice of material terms of employment, constitutes an unlawful business
17 practice in violation of California Business and Professions Code sections 17200, *et seq.*;

18 54. For restitution of unpaid wages to Plaintiff and all class members and
19 prejudgment interest from the day such amounts were due and payable;

20 55. For the appointment of a receiver to receive, manage, and distribute any and all
21 funds disgorged from Defendants and determined to have been wrongfully acquired by
22 Defendants as a result of violations of California Business & Professions Code sections
23 17200, *et seq.*;

24 56. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
25 California Code of Civil Procedure section 1021.5; and

26 57. For such other and further relief as the Court may deem equitable and
27 appropriate.
28

As to the Tenth Cause of Action

58. That the Court declare, adjudge and decree that Defendants' conduct of denying Plaintiff and class members the statutory benefits guaranteed under section 226.7 constitutes an unfair business practice in violation of California Business and Professions Code sections 17200, *et seq.*;

59. For restitution of the statutory benefits under section 226.7 unfairly withheld from Plaintiff and class members and prejudgment interest from the day such amounts were due and payable;

60. For the appointment of a receiver to receive, manage, and distribute any and all funds disgorged from Defendants and determined to have been wrongfully acquired by Defendants as a result of violations of California Business & Professions Code sections 17200, *et seq.*;

61. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Code of Civil Procedure section 1021.5;

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

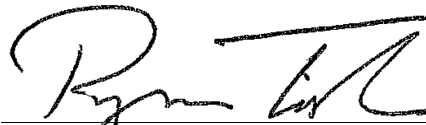
63. For such other and further relief as the Court may deem equitable and appropriate.

Dated: September 19, 2023

Respectfully submitted,

Capstone Law APC

By:



Roxana Tabatabaeepour

Ryan Tish

Alexander Wallin

Attorneys for Plaintiff Florilyn Sheene Marce

PROOF OF SERVICE

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

On **September 19, 2023**, I served the documents described as: **SECOND AMENDED CLASS ACTION COMPLAINT & ENFORCEMENT ACTION UNDER THE PRIVATE ATTORNEYS GENERAL ACT** on the interested parties in this action by sending ☐ the original [or] ☒ a true copy thereof ☒ to interested parties as follows [or] ☐ as stated on the attached service list:

Shannon Marie Jenkins
sjenkins@tldlaw.com

Attorneys for Defendant Harper's Pharmacy

Sara Yun
syun@tldlaw.com

Cami Foss
cfoss@tldlaw.com

TREDWAY LUMSDAINE & DOYLE LLP
2010 Main Street, Suite 1000
Irvine, CA 92614
Phone: 949-756-0684

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

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

☐ **BY OVERNIGHT DELIVERY:** I am "readily familiar" with this firm's practice of collection and processing correspondence for overnight delivery.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on **September 19, 2023**, at Los Angeles, California.

Trevor Beach
Type/Print Name

/s/Trevor Beach
Signature