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ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

11/06/2023 at 02:26:00 PM
Clerk of the Superior Court
By Lee McAlister, Deputy Clerk

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

SIERRA PULLUM, individually and on behalf
of all others similarly situated and the State of
California under the Private Attorneys General
Act,

Plaintiffs,

vs.

ARIZONA LEATHER COMPANY, INC. and
DOES 1 through 50, inclusive,

Defendants.

Case No. 37-2023-00038544-CU-OE-CTL

*Assigned to the Hon. Kenneth J. Medel
Dept. 66*

CLASS ACTION

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT**

1. Minimum Wage Violations
2. Failure to Pay All Overtime Wages
3. Meal Period Violations
4. Rest Period Violations
5. Failure to Pay for Authorized Rest
Periods/Non-Productive Time
6. Paid Sick Leave Violations
7. Untimely Payment of Wages
8. Wage Statement Violations
9. Waiting Time Penalties
10. Failure to Reimburse Business Expenses
11. Unfair Competition
12. Civil Penalties under the Private Attorneys
General Act (Labor Code §§ 2698 *et seq.*)

1 Plaintiff SIERRA PULLUM, individually and on behalf of all others similarly situated and the
2 State of California under the Private Attorneys General Act (“Plaintiff”) brings this FIRST
3 AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT against Defendants
4 ARIZONA LEATHER COMPANY, INC. and DOES 1 through 50, inclusive (collectively
5 “Defendants”), alleging as follows:

6 **INTRODUCTION**

7 1. This is a class action brought under California Code of Civil Procedure section 382 for
8 Defendants’ violations of the California Labor Code and Business and Professions Code.

9 2. Defendants underpaid the class members’ wages by paying a draw against the
10 employees’ commissions without separately compensating for rest periods.

11 3. Defendants also failed to maintain compliant sick leave, meal period, and rest period
12 policies and practices, resulting in a failure to pay all wages and premium owed to the aggrieved
13 employees at the lawful rate.

14 4. Defendants’ employment policies, practices, and payroll administration systems
15 enabled and facilitated these violations on a company-wide basis with respect to the aggrieved
16 employees.

17 **JURISDICTION & VENUE**

18 5. Jurisdiction of this action is proper in this Court under Article VI, Section 10 of the
19 California Constitution as the causes of action are premised upon violations of California law.

20 6. The monetary damages and restitution sought exceed the minimal jurisdiction limits of
21 the Superior Court.

22 7. This Court has jurisdiction over Defendants because, upon information and belief,
23 Defendants have sufficient minimum contacts in California, or otherwise intentionally avail
24 themselves to the California economy so as to render the exercise of jurisdiction over them by the
25 California courts consistent with traditional notions of fair play and substantial justice.

26 8. Venue is proper in this Court under Code of Civil Procedure sections 393(a), 395,
27 and/or 395.5 because, upon information and belief, Defendants conduct business and committed some
28 of the alleged violations in this county.

PARTIES

A. Plaintiff Sierra Pullum

9. Plaintiff Pullum is an individual over 18 years of age who worked for Defendants in California as a non-exempt employee from about February 2018 to June 2023. Plaintiff worked as a Sales Manager.

10. The State of California, via the Labor and Workforce Development Agency (“LWDA”), is the real party in interest in this action. (*Kim v. Reins Int’l California, Inc.* (2020) 9 Cal. 5th 73, 81 [The “government entity on whose behalf the plaintiff files suit is always the real party in interest.”])

B. Defendants

11. Defendant Arizona Leather Company, Inc. is a California corporation that maintains operations and conducts business throughout the State of California, including in this county.

12. The true names and capacities, whether individual, corporate, or otherwise, of the parties sued as DOES 1 through 50, are presently unknown, unascertainable, or uncertain, and are sued by such fictitious names under Code of Civil Procedure section 474. Upon information and belief, each of DOES 1 through 50 constitutes a legal employer or is otherwise legally responsible in some manner for the acts and omissions alleged herein. This Complaint may be amended to reflect their true names and capacities once ascertained.

13. Upon information and belief, Defendants in this action are employers, co-employers, joint employers, and/or part of an integrated employer enterprise, as each of the Defendants exercised control over the wages, hours, and working conditions of the employees, suffered and permitted them to work, and otherwise engaged them as employees under California law.

14. Upon information and belief, at least some of the Defendants have common ownership, common management, interrelationship of operations, and centralized control over labor relations and are therefore part of an integrated enterprise and thus jointly and severally responsible for the acts and omissions alleged herein, including pursuant to Labor Code sections 558, 558.1, and 1197.1.

15. Upon information and belief, Defendants acted in all respects pertinent to this action as an alter-ego, agent, servant, joint employer, joint venturer, co-conspirator, partner, in an integrated

enterprise, or in some other capacity on behalf of all other co-defendants, such that the acts and omissions of each defendant may be legally attributable to all others.

CLASS ALLEGATIONS

16. This action is brought individually and on behalf of the following class pursuant to Code of Civil Procedure section 382:

- a. All current and former non-exempt employees who worked for Defendants in California at any time from four years (plus the additional 178-day statutory tolling period under Emergency Rule 9) prior to the filing of this action through date of class certification.

17. Plaintiff reserves the right to establish various subclass definitions as appropriate at the class certification stage, according to proof.

18. The class is ascertainable and shares a well-defined community of interest in this litigation:

- a. Numerosity: The class is estimated to exceed 50 individuals, although the precise membership of the entire class is unknown at this time. The class is so numerous that joinder of all class members is impracticable. The identities of class members are ascertainable by inspection of Defendants' employment and payroll records.
- b. Typicality: Plaintiff's claims are typical of the claims of the other class members. They were subject to the same policies and practices of Defendants, which resulted in losses to the class. Proof of common unlawful business practices, which Plaintiff experienced, will establish the right of the class to recover on the causes of action alleged herein.
- c. Adequacy: Plaintiff is an adequate class representative; will take all necessary steps to protect the class members' interests adequately and fairly; has no interest antagonistic to other class members; and is represented by attorneys who have substantial experience prosecuting, defending, resolving, and

litigating wage and hour class, collective, and representative actions in California state and federal courts.

d. Superiority: A class action is superior to other means for adjudicating this dispute. Individual joinder is impractical. Class treatment will allow for common issues to be resolved in a single forum, simultaneously, and without duplication of effort and expense.

e. Public Policy Considerations: Certification of this lawsuit as a class action advances the State of California's strong public interest in ensuring its approximately millions of employed residents are properly paid the wages they earned for the hours they worked. Class actions provide a mechanism for enforcement of labor laws and allow for vindication of employee rights by unnamed class members.

19. Common questions of law and fact as to the class members predominate over questions affecting only individual members. The common questions of law and fact exist as to whether the employment policies and practices formulated by Defendants and applied to the class members constitute violations of California law.

GENERAL ALLEGATIONS

20. Plaintiff and class members worked for Defendants and were compensated on a commissions-only basis as nonexempt employees.

21. Defendants paid Plaintiff and class members a draw against commissions but did not separately compensate Plaintiff and class members for paid rest periods. Defendants omitted this paid non-productive time from Plaintiff and class members' wage statements in violation of Labor Code 226.2(a)(1) and the applicable IWC Wage Orders.

22. As a result of the above violations, Defendants also unlawfully deducted wages from Plaintiff and class members. To the extent Defendants argue the money paid to class members as a draw against commissions effectively operates as compensation for rest period compensation or otherwise reduces the contractual commission rate, that policy and practice violates California law, as a loan for time spent resting is not compensation for a rest period. *See, e.g., Vaquero v. Stoneledge*

1 *Furniture, LLC* (2017) 9 Cal. App. 5th 98. Further, Plaintiff believes and alleges that Defendants
2 unlawfully deducted wages from Plaintiff and class members for delivery or invoice issues outside of
3 the class members' control.

4 23. Additionally, Defendants failed to provide Plaintiff and class members with paid sick
5 leave. Aside from the 2020 COVID Supplemental sick pay, Plaintiff and class members did not receive
6 any paid sick leave to utilize throughout their employment. In fact, when Plaintiff or class members
7 became ill, Defendants, through their supervisors, encouraged the class members to continue to work
8 while "taking it easy," or else stay home unpaid.

9 24. Defendants also failed to pay meal and rest period premiums to Plaintiff and class
10 members when the class members suffered late, short, missed, or interrupted meal and rest periods
11 due to short staffing and customer volume.

12 25. For example, Defendants only scheduled two employees per showroom, which did not
13 enable the scheduled employees to timely relieve each other for due meal or rest periods unless there
14 were less than two customers in the store. Additionally, Plaintiff also worked several shifts by herself,
15 making an off-duty meal or rest break impossible. Defendants did not pay Plaintiff or class members
16 premiums for deficient meal or rest periods.

17 26. Further, Defendants required Plaintiff and class members to complete several work
18 tasks off-the-clock to complete sales. For example, Plaintiff often needed to answer customer inquiries
19 at her home, off-shift, via cell phone and email. Moreover, due to Defendants' failure to keep track of
20 employee hours, Plaintiff and class members also worked several unrecorded shifts that extended
21 beyond store-closure to assist customers that walked in near closing time. Defendants did not
22 compensate Plaintiff and class members for hours worked in either of these scenarios.

23 27. To the extent the above off-clock work resulted in overtime hours worked for either
24 Plaintiff or class members, Plaintiff further believes and alleges that Defendants failed to pay those
25 overtime wages.

26 28. Finally, Defendants also required Plaintiff and class members to incur personal
27 expenses in furtherance of the class members' job duties. Plaintiff and class members needed to utilize
28 their personal cell phones, computers, and home internet to complete the abovementioned customer

1 contact work. Plaintiff and class members also had to use their personal vehicles and gas mileage to
2 drive out to customer homes and measure to fit furniture for customer purchases. Defendants did not
3 reimburse Plaintiff or class members for any of these expenses.

4 29. Because of these violations, Defendants failed to provide accurate itemized wage
5 statements to class members that included the accurate gross or net wages earned, as the employees
6 earned paid non-productive, sick leave, regular, overtime, and premium wages that Defendants failed
7 to pay. Additionally, Defendants also failed to list the correct employer on Plaintiff and class members'
8 wage statements.

9 30. Finally, Defendants also subject Plaintiff and class members to an unlawful
10 employment condition. Defendants maintained a policy and practice of paying a draw against
11 commissions but failing to pay for non-productive time, which is an employment condition that
12 violates California law.

13 31. These violations create derivative liability for failure to pay all wages owed each
14 payday or upon separation of employment.

15 **FIRST CAUSE OF ACTION**

16 **MINIMUM WAGE VIOLATIONS**

17 **Violation of Labor Code §§ 1194, 1194.2 and 1197**

18 **(All Claims Alleged by Plaintiff and Class Members Against All Defendants)**

19 32. All outside paragraphs of this Complaint are incorporated into this section.

20 33. This cause of action is brought pursuant to the IWC Wage Orders and Labor Code
21 §§ 1182.12, 1194, 1194.2, 1197, 1197.1 and 1198 and the IWC Wage Orders (the "Hours and Days
22 of Work" and "Minimum Wages" sections of the applicable orders), which require non-exempt
23 employees be timely paid at least the state or local minimum wage (if higher) for each hour of work,
24 and further provide a private right of action for an employer's failure to pay all minimum wages (plus
25 liquidated damages).

26 34. Defendants willfully failed in their affirmative obligation to pay Plaintiff and class
27 members at least the lawful minimum wage for each hour worked in violation of Labor Code sections
28 1182.12, 1194, 1194.2, 1197, 1197.1 and 1198 and the IWC Wage Orders (the "Hours and Days of

1 Work” and “Minimum Wages” sections of the applicable orders), including payment at the lawful
2 local and county minimum wage ordinances in effect. As a result, Defendants are liable for all
3 associated damages, including liquidated damages for the minimum wage violations pursuant to Labor
4 Code § 1194.2.

5 35. Defendants’ unlawful acts and omissions deprived Plaintiff and class members of
6 minimum, regular and overtime wages in amounts to be determined at trial. Plaintiff and class
7 members are entitled to recover the full amount of the unpaid wages, plus liquidated damages in an
8 amount equal to the wages unlawfully unpaid (and interest thereon), in addition to interest, attorneys’
9 fees, and costs to the extent permitted by law, including under Labor Code sections 1194 and 1194.2.

10 **SECOND CAUSE OF ACTION**

11 **FAILURE TO PAY ALL OVERTIME WAGES**

12 **Violation of Labor Code §§ 510 and 1194**

13 36. All outside paragraphs of this Complaint are incorporated into this section.

14 37. This cause of action is brought pursuant to the IWC Wage Orders and Labor Code
15 §§ 204, 510, 558, 1194, and 1198, which require non-exempt employees be timely paid overtime
16 wages all overtime hours worked, and which further provide a private right of action for an employer’s
17 failure to pay all overtime compensation for overtime hours worked.

18 38. Defendants failed in their affirmative obligation to pay Plaintiff and class members no
19 less than one and one-half times their respective “regular rate of pay” for all hours worked in excess
20 of eight hours in one day, 40 hours in one week, or the first eight hours worked on the seventh day of
21 work in any one workweek, and no less than twice their respective “regular rate of pay” for all hours
22 over 12 hours in one day and any work in excess of eight hours on any seventh day of a workweek for
23 such hours worked, in violation of Labor Code sections 204, 510, 558, 1194, and 1198 and the IWC
24 Wage Orders (the “Hours and Days of Work” sections of the applicable orders).

25 39. Plaintiff and class members are entitled to recover the full amount of the unpaid
26 overtime, in addition to interest, statutory and civil penalties, and attorneys’ fees, and costs to the
27 extent permitted by law.

1 **THIRD CAUSE OF ACTION**

2 **MEAL PERIOD VIOLATIONS**

3 **Violation of Labor Code §§ 226.7 and 512**

4 40. All outside paragraphs of this Complaint are incorporated into this section.

5 41. This cause of action is brought pursuant to the IWC Wage Orders and Labor Code
6 §§ 226.7, 558 and 512, which require non-exempt employees be provided complaint meal periods (or
7 meal period premiums in lieu thereof), and which further provide a private right of action for an
8 employer's failure to lawfully provide all meal periods and/or pay meal period premiums at the lawful
9 regular rate of compensation.

10 42. Defendants willfully failed in their affirmative obligation to consistently provide
11 Plaintiff and class members compliant, duty-free meal periods of not less than 30 minutes beginning
12 before the fifth hour of hour for each work period of more than five hours per day and a second duty-
13 free meal period of not less than 30 minutes beginning before the tenth hour of hour of work in
14 violation of Labor Code sections 226.7, 512, 558, 1198 and the IWC Wage Orders (the "Meal Periods"
15 sections of the applicable orders).

16 43. Further, Defendants willfully failed in their affirmative obligation to consistently pay
17 Plaintiff and class members one additional hour of pay at the respective regular rate of compensation
18 for each workday that a fully compliant meal period was not provided, in violation of Labor Code
19 sections 226.7, 512, 558, and 1198 and the IWC Wage Orders (the "Meal Periods" sections of the
20 applicable orders).

21 44. Plaintiff and class members are entitled to recover the full amount of the meal period
22 premiums owed, in addition to interest, statutory and civil penalties, and attorneys' fees, and costs to
23 the extent permitted by law.

24 **FOURTH CAUSE OF ACTION**

25 **REST PERIOD VIOLATIONS**

26 **Violation of Labor Code §§ 226.7 and 516**

27 45. All outside paragraphs of this Complaint are incorporated into this section.
28

46. This cause of action is brought pursuant to the IWC Wage Orders and Labor Code §§ 226.7 and 516, which require non-exempt employees be authorized to take complaint rest periods (or rest period premiums in lieu thereof), and which further provide a private right of action for an employer's failure to lawfully provide all rest periods and/or pay rest period premiums at the lawful regular rate of compensation.

47. Defendants willfully failed in their affirmative obligation to consistently authorize and permit Plaintiff and class members to receive compliant, duty-free rest periods of not less than ten (10) minutes for every four hours worked (or major fraction thereof) in violation of Labor Code sections 226.7, 516, 558, and 1198 and the IWC Wage Orders (the “Rest Periods” sections of the applicable orders).

48. Further, Defendants willfully failed in their affirmative obligation to consistently pay Plaintiff and class members one additional hour of pay at the respective regular rate of compensation for each workday that a fully compliant rest period was not provided, in violation of Labor Code sections 226.7, 516, 558, and 1198 and the IWC Wage Orders.

FIFTH CAUSE OF ACTION

FAILURE TO PAY FOR AUTHORIZED REST PERIODS/NON-PRODUCTIVE TIME

49. All outside paragraphs of this Complaint are incorporated into this section.

50. Because Plaintiff and class members were not separately compensated for rest periods (a rate required by statute) and non-productive time, Plaintiff and class members are owed wages for this time.¹

51. The IWC Wage Orders state Plaintiff and class members must be paid for all “hours worked” for time they are “subject to the control of the employer, and includes all the time the employee is suffered or permitted to work.” Cal. Code Regs., tit. 8, § 11040, subd. 2(k).

52. The IWC Wage Orders state rest periods are “hours worked for which there will be no deduction from wages.” Cal. Code Regs., tit. 8, § 11040, subd. 12(a).

¹ See *Vaquero v. Stoneledge Furniture, LLC* (2017) 9 Cal. App. 5th 98; *Bluford v. Safeway Stores, Inc.* (2013) 216 Cal. App. 4th 864, 872.

1 53. Labor Code section 226.2 applies to employees who are compensated in whole, or in
2 part, on a piece-rate basis. Section 226.2(a)(1) requires employers to compensate employees for “rest
3 and recovery periods and other non-productive time spent separate from any piece rate compensation.”

4 54. Non-productive time must be compensated at a rate no less than the applicable state or
5 local minimum wage. Cal. Lab. Code § 226.2(a)(4).

6 55. Rest and recovery periods must be compensated the *higher* of (1) an average hourly
7 rate taken by dividing an employee’s total compensation for the workweek (exclusive of overtime and
8 rest and recovery compensation) by the employee’s total hours worked or (2) the applicable minimum
9 wage. Cal. Lab. Code § 226.2(a)(3)(A).

10 56. Section 226.2 expressly requires that any employees paid in whole or in part on a piece
11 rate basis must receive at least minimum wage for all hours worked as well as any required overtime
12 compensation.

13 57. Defendants willfully failed in their affirmative obligation to pay Plaintiff and class
14 members at least the lawful minimum wage for each hour worked (including all non-productive time)
15 in violation of Labor Code sections 226.2, 1182.12, 1194, 1197, 1197.1 and 1198 and the IWC Wage
16 Orders (the “Hours and Days of Work” and “Minimum Wages” sections of the applicable orders),
17 including payment at the lawful local and county minimum wage ordinances in effect.

18 58. Defendants also failed in their affirmative obligation to pay Plaintiff and class members
19 for rest periods at the rate required by section 226.2(a)(3)(A), resulting in unpaid wages to Plaintiff
20 and class members.

21 59. Defendants’ unlawful acts and omissions deprived Plaintiff and class members of
22 minimum, regular and overtime, and premium wages in amounts to be determined at trial. Plaintiff
23 and class members are entitled to recover the full amount of the unpaid wages, plus liquidated damages
24 in an amount equal to the wages unlawfully unpaid (and interest thereon), in addition to interest,
25 attorneys’ fees, and costs to the extent permitted by law, including under Labor Code sections 1194
26 and 1194.2.

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Supplemental Sick Leave wages to class members at the correct rate in violation of Labor Code sections 246, 248.1, 248.2, and 248 *et seq.*

65. Pursuant to Labor Code section 248.1, Defendants were required to provide up to 80 hours of Covid-19 Supplemental Paid Sick Leave to employees for the period of April 20, 2020, to December 31, 2020. Labor Code section 248.2 required Defendants to provide up to 80 hours of Covid-19 Supplemental Paid Sick Leave for the period of January 1, 2021, through at least September 30, 2021. Labor Code section 248.6 extended Covid sick leave protections and requires employers to provide up to 80 hours of Covid-19 Supplemental Paid Sick Leave for the period of January 1, 2022, to September 30, 2022, and may be extended thereafter.

66. Under Labor Code section 248.1, employees must be paid for Covid-19 Supplemental Paid Sick Leave at the highest of the following: (1) the regular rate of pay for the last pay period, (2) state minimum wage, (3) local minimum wage.

67. Under Labor Code section 248.2, non-exempt employees must be paid supplemental paid sick leave according to the highest of the following four methods:

(I) Calculated in the same manner as the regular rate of pay for the workweek in which the covered employee uses COVID-19 supplemental paid sick leave, whether or not the employee actually works overtime in that workweek.

(II) Calculated by dividing the covered employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment.

(III) The state minimum wage.

(IV) The local minimum wage to which the covered employee is entitled.

68. Labor Code section 248.6 requires employers to pay supplemental sick leave using either method (I) or (II), as identified above.

69. On information and belief, Defendants failed to pay Covid-19 Supplemental Sick Leave in the manner described above because Defendants failed to include in their sick leave calculation the additional remuneration received by class members.

70. As a result, Defendants violated the Labor Code and are liable to Plaintiff and class members for underpaid sick leave wages, in addition to interest, attorneys' fees, and costs.

SEVENTH CAUSE OF ACTION

UNTIMELY PAYMENT OF WAGES

Violation of Labor Code §§ 204, 210, 218

71. All outside paragraphs of this Complaint are incorporated into this section.

72. This cause of action is brought pursuant to the IWC Wage Orders and Labor Code §§ 204, 204b, and 210 which require non-exempt employees be timely paid all wages owed each pay period, and which further provide a private right of action for an employer's failure to comply with this obligation. Labor Code § 218 authorizes individuals to sue directly for wages and penalties due under these sections, including Labor Code § 210(c)'s statutory late payment penalties.

73. Defendants willfully failed in their affirmative obligation to timely pay all wages, including paid sick leave and meal and rest premiums, earned by Plaintiff and class members twice during each calendar month on days designated in advance by the employer as regular paydays (for employees paid on a non-weekly basis) and on the regularly-scheduled weekly payday for weekly employees, if any, in violation of Labor Code sections 204 and 204b and the IWC Wage Orders (the "Minimum Wages" sections of the applicable orders).

74. Plaintiff and class members are entitled to recover the full amount of the unpaid wages, in addition to a statutory penalty in the amount of \$100 for the initial violation for each failure to pay each employee and \$200 for all subsequent violations and for all willful or intentional violations for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld under provided in Labor Code § 210, in addition to interest, attorneys' fees, and costs to the extent permitted by law.

EIGHTH CAUSE OF ACTION

WAGE STATEMENT VIOLATIONS

Violation of Labor Code § 226

75. All outside paragraphs of this Complaint are incorporated into this section.

76. This cause of action is brought by a wage statement subclass pursuant to Labor Code § 226(a) which requires non-exempt employees be provided accurate itemized wage statements each

1 pay period, and which further provide a private right of action for an employer's failure to comply
2 with this obligation.

3 77. Defendants knowingly and intentionally failed in their affirmative obligation to provide
4 accurate itemized wage statements to Plaintiff and class members resulting in injury to Plaintiff and
5 class members. Specifically, the wage statements issued to Plaintiff and class members did not
6 accurately state each pay period all of the information required by Labor Code § 226(a)(1)-(9).

7 78. Defendants' unlawful acts and omissions deprived Plaintiff and class members of
8 accurate itemized wage statements, causing confusion and concealing wage and premium
9 underpayments.

10 79. As a result, Plaintiff and class members are entitled to recover the statutory penalty of
11 \$50 per employee for the initial pay period in which a violation occurred and \$100 per employee for
12 each violation in a subsequent pay period, up to an aggregate penalty of \$4,000 per employee, in
13 addition to interest, attorneys' fees, and costs to the extent permitted by law, including under Labor
14 Code section 226(e).

15 **NINTH CAUSE OF ACTION**

16 **WAITING TIME PENALTIES**

17 **Violation of Labor Code §§ 201 *et seq.***

18 80. All outside paragraphs of this Complaint are incorporated into this section.

19 81. This cause of action is brought by a waiting time subclass pursuant to Labor Code
20 §§ 201 through 203, which require an employer to timely pay all wages earned upon termination of
21 employment, and which further provide a private right of action to recover statutory waiting time
22 penalties each day an employer fails to comply with this obligation, up to a maximum of 30 days
23 wages.

24 82. Defendants willfully failed and continue to fail in their affirmative obligation to pay all
25 wages earned and unpaid to Plaintiff and class members immediately upon termination of employment
26 or within 72 hours thereafter for employees who did not provide at least 72 hours prior notice of his
27 or her intention to quit, and further failed to pay those sums for 30 days thereafter in violation of Labor
28 Code sections 201 through 203 and the IWC Wage Orders.

83. Plaintiff and class members are entitled to recover a waiting time penalty for a period of up to 30 days, in addition to interest, attorneys' fees, and costs to the extent permitted by law.

TENTH CAUSE OF ACTION

FAILURE TO REIMBURSE BUSINESS EXPENSES

Violation of Labor Code § 2802

84. All outside paragraphs of this Complaint are incorporated into this section.

85. Defendants willfully failed in their affirmative obligation to reimburse Plaintiff and a reimbursement subclass for all necessary expenditures, losses, expenses, and costs incurred by them in direct discharge of the duties of their employment, in violation of Labor Code section 2802.

86. Defendants' unlawful acts and omissions deprived Plaintiff and class members of lawful reimbursements for business expenses in amounts to be determined at trial. Plaintiff and class members are entitled to recover the amount unreimbursed expenses of Plaintiff and class members in addition to interest, attorneys' fees, and costs to the extent permitted by law, including under Labor Code section 2802.

ELEVENTH CAUSE OF ACTION

UNFAIR COMPETITION

Violation of Business and Professions Code §§ 17200 *et seq.*

87. All outside paragraphs of this Complaint are incorporated into this section.

88. Defendants have engaged and continue to engage in unfair and/or unlawful business practices in the State of California in violation of California Business and Professions Code § 17200 by committing the foregoing wage and hour violations alleged throughout this Complaint.

89. Defendants' dependance on these unfair and/or unlawful business practices deprived Plaintiff and continue to deprive other class members of compensation to which they are legally entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage to Defendants over competitors who have been and/or are currently employing workers in compliance with California's wage and hour laws. These failures constitute unlawful, deceptive, and unfair business acts and practices in violation of Business and Professions Code section 17200 *et seq.*

90. Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged in this Complaint, and Plaintiff, as an individual and on behalf of others similarly situated, seeks full restitution of the moneys as necessary and according to proof to restore all monies withheld, acquired, and/or converted by Defendants pursuant to Business and Professions Code §§ 17203 and 17208.

91. Plaintiff does not have an adequate remedy at law for past or future violations, to the extent the statute of limitations on each of the alleged causes of action do not extend to the four year limitation provided under the UCL or to the extent the underlying Labor Code and IWC Wage Order violations do not provide a private right of action.

92. Plaintiff and class members are entitled to injunctive relief against Defendants, restitution, and other equitable relief to return all funds over which Plaintiff and class members have an ownership interest and to prevent future damage and the public interest under Business and Professions Code § 17200 *et seq.* Plaintiff and class members are further entitled to recover interest, attorneys' fees, and costs to the extent permitted by law, including under Code of Civil Procedure § 1021.5.

TWELFTH CAUSE OF ACTION

CIVIL PENALTIES UNDER THE PRIVATE ATTORNEYS GENERAL ACT

Violation of Labor Code §§ 2698 *et seq.*

(By Plaintiff on Behalf of the State and the Aggrieved Employees Against All Defendants)

93. All outside paragraphs of this Complaint are incorporated into this section.

94. Plaintiff brings this cause of action as a proxy for the State of California on behalf of the following “aggrieved employees” pursuant to the Private Attorneys General Act (“PAGA”), codified as Labor Code section 2698 *et seq.*:

a. All current and former non-exempt employees who worked for Defendants in California at any time from one year prior to the postmark date of the initial PAGA notice through date of trial.

95. Plaintiff reserves the right to amend, supplement, or add to this description of the aggrieved employees, according to proof.

1 96. The State of California, via the Labor and Workforce Development Agency
2 (“LWDA”), is the real party in interest in this action with respect to this cause of action. (*Kim v. Reins*
3 *Int’l California, Inc.* (2020) 9 Cal. 5th 73, 81 [The “government entity on whose behalf the plaintiff
4 files suit is always the real party in interest.”])

5 97. Labor Code section 2699(a) provides: “Notwithstanding any other provision of law,,
6 any provision of this code that provides for a civil penalty to be assessed and collected by the Labor
7 and Workforce Development Agency or any of its departments, divisions, commissions, boards,
8 agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil
9 action brought by an aggrieved employee on behalf of himself or herself and other current or former
10 employees pursuant to the procedures specified in Section 2699.3. “

11 98. Labor Code section 2699(f) provides: “For all provisions of this code except those for
12 which a civil penalty is specifically provided, there is established a civil penalty for a violation of these
13 provisions, as follows: ... (2) If, at the time of the alleged violation, the person employs one or more
14 employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay period
15 for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for
16 each subsequent violation.”

17 99. Any allegations regarding violations of the IWC Wage Orders are enforceable as
18 violations of Labor Code section 1198, which states: “[t]he employment of any employee for longer
19 hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

20 100. Labor Code section 2699.3 sets forth the procedure for commencing an action for civil
21 penalties under the PAGA.

22 101. On or about September 1, 2023, Plaintiff paid the requisite PAGA filing fee and
23 provided written notice (by online electronic filing with the LWDA and by certified mail to
24 Defendants) of Defendants’ alleged Labor Code violations, including the facts and theories to support
25 the alleged violations.

26 102. A true and correct copy of Plaintiff’s written PAGA notice, entitled “Notice of Labor
27 Code Violations” is attached hereto as Exhibit 1 and incorporated by reference as though fully set
28 forth herein (the “PAGA notice”).

1 103. To date, neither Plaintiff nor Plaintiff's counsel has received a response to Plaintiff's
2 written PAGA notice from the LWDA.

3 104. Within 33 calendar days of the postmark date of the notice sent by Plaintiff, neither
4 Plaintiff nor Plaintiff's counsel has received written notice by certified mail from any defendant
5 providing a description of any actions taken to cure the alleged violations.

6 105. Now that at least 65 days have passed from Plaintiff notifying Defendants of these
7 violations, without notice of cure from Defendants or notice from the LWDA of its intent to investigate
8 the alleged allegations and issue the appropriate citations to Defendants, Plaintiff exhausted all
9 prerequisites and commenced this civil action under Labor Code section 2699 *et seq.*

10 106. As set forth in the PAGA notice attached as Exhibit 1 and incorporated into this
11 Complaint, Defendants committed the following violations and are liable for all corresponding civil
12 penalties:

- 13 a. ***Unpaid Hours Worked/Non-Productive, Rest, and Recovery Periods.***
14 Violation of Labor Code §§ 226.2; IWC Wage Orders.
- 15 b. ***Unlawful Wage Deductions.*** Violation of Labor Code §§ 221 through 225.
- 16 c. ***Unpaid Overtime.*** Violation of Labor Code §§ 510, 1194, 1198; IWC Wage
17 Orders.
- 18 d. ***Unpaid Paid Sick Leave.*** Violation of Labor Code §§ 246 through 248.7.
- 19 e. ***Unpaid Meal Period Premium Wages.*** Violation of Labor Code §§ 226.7, 512,
20 1198; IWC Wage Orders.
- 21 f. ***Unpaid Rest Period Premium Wages.*** Violation of Labor Code §§ 226.7, 516,
22 1198; IWC Wage Orders.
- 23 g. ***Untimely Payment of Wages During Employment.*** Violation of Labor Code
24 §§ 204, 204b, 210.
- 25 h. ***Untimely Payment of Wages Upon Separation of Employment.*** Violation of
26 Labor Code §§ 201, 202, 203, 256.
- 27 i. ***Non-Compliant Wage Statements.*** Violation of Labor Code §§ 226, 226.3.

- j. ***Non-Compliant Wage Statements/Piece-Rate.*** Violation of Labor Code §§ 226, 226.2, 226.3.
- k. ***Unreimbursed Employee Expenses.*** Violation of Labor Code §§ 2802, 2804.
- l. ***Failure to Maintain Accurate Records.*** Violation of Labor Code § 1174; IWC Wage Orders.
- m. ***Unlawful Employment Condition.*** Violation of Labor Code § 432.5.

107. Plaintiff seeks to collect all recoverable civil penalties for the Labor Code violations alleged in this Complaint and the PAGA notice (including amendments thereto) against Defendants pursuant to Labor Code section 2699(a) and (f), in addition to attorneys' fees, costs, and interest to the extent permitted by law, including under Labor Code section 2699(g).

PRAYER

Plaintiff prays for judgment as follows:

- a. For certification of this action as a class action;
- b. For appointment of Plaintiff as the class representative;
- c. For appointment of above-captioned counsel for Plaintiff as Class Counsel;
- d. For division of class members into appropriate classes and/or subclasses according to proof;
- e. For recovery of damages in amount according to proof;
- f. For all recoverable pre- and post-judgment interest;
- g. For recovery of all civil and statutory penalties and liquidated damages;
- h. For disgorgement of all amounts wrongfully obtained;
- i. For this action to be maintained as a representative action under the PAGA;
- j. For Plaintiff and counsel of record to be provided with all enforcement capability as if the action were brought by the State of California or the California Division of Labor Enforcement;
- k. For recovery of all civil penalties and other recoverable amounts under the PAGA;
- l. For restitution and injunctive relief;

- 1 m. For reasonable attorneys' fees and costs of suit, including expert fees, to the extent
2 permitted by law, including (without limitation) under Labor Code §§ 218.5, 226,
3 1194, 2802, 2699, and Code of Civil Procedure section 1021.5; and
4 n. For such other relief the Court deems just and proper.

5
6 Dated: November 6, 2023

Ferraro Vega Employment Lawyers, Inc.

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8 

Nicholas J. Ferraro

Attorneys for Plaintiff Sierra Pullum

EXHIBIT 1

Notice of Labor Code Violations

FERRARO VEGA

SAN DIEGO EMPLOYMENT LAWYERS

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September 1, 2023

NOTICE OF LABOR CODE VIOLATIONS CALIFORNIA LABOR CODE SECTIONS 2698 *et seq.*

VIA CERTIFIED U.S. MAIL
- Electronic Return Receipt -

Arizona Leather Company, Inc.
4325 Schaeffer Ave.
Chino, California 91710

- PAGA Notice & Filing Fee -
Submitted electronically to the Labor and
Workforce Development Agency

Dear LWDA Officer and Company Representatives:

This letter serves as written notice under Labor Code section 2699.3 on behalf of **SIERRA PULLUM** (“Plaintiff(s)”) and all other “aggrieved employees” of the following “Defendant(s)”:

ARIZONA LEATHER COMPANY, INC.

Defendant(s) shall mean and include the foregoing in addition to any other related employer entities, individuals under Labor Code sections 558 and 558.1, and all others who may be later added upon further investigation and discovery as liable employers.

This office serves as legal counsel for Plaintiff. If the California Labor and Workforce Development Agency (“LWDA”) does not investigate the facts, allegations, and violations set forth in this notice within the statutorily prescribed 65-day period under Labor Code section 2699.3, Plaintiff intends to commence a civil action against Defendants as a proxy and agent of the State of California under the Private Attorneys General Act (“PAGA”). “PAGA allows an ‘aggrieved employee’—a person affected by at least one Labor Code violation committed by an employer—to pursue penalties for all the Labor Code violations committed by that employer.” *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal. App. 5th 745, 751; *Kim v. Reins International California, Inc.* (2020) 9 Cal. 73, 79. Plaintiff maintains standing to pursue these claims against Defendants, as Plaintiff experienced one or more of the alleged violations

during the relevant statutory period, which continue through the present date. *Cf. Johnson v. Maxim Healthcare Servs., Inc.*, 281 Cal. Rptr. 3d 478, 481 (Cal. Ct. App. 2021).

Through this notice, Plaintiff requests that Defendants complete an internal investigation and audit of the wage and hour and employment practices at issue and make a good faith effort to correct any violations. Plaintiff attempts to identify the non-compliant policies and practices affecting the aggrieved employees so that the parties may resolve the underlying damages and penalties in judgment or settlement approved by the Superior Court of California under Labor Code section 2699(k). Defendants are notified that any attempt to resolve this case should be conducted in coordination with Plaintiff's counsel to protect the interests of Plaintiff, the aggrieved employees, and the State of California via the LWDA. Plaintiff advises Defendants this letter should be also considered a reasonable attempt at settlement of this matter, subject to an exchange of additional documents and information. *Graham v. Daimler Chrysler Corp.* (2004) 24 Cal. 4th 553, 561.

- BACKGROUND -

Defendants employed Plaintiff during the PAGA Period in the position of Sales Manager from about February 2018 to June 2023. During their employment Plaintiff and the other aggrieved employees were subject to the wage and hour and employment protections set forth in the California Labor Code and IWC Wage Orders.

Through this notice, Plaintiff informs the LWDA of the Labor Code violations set forth herein. The “aggrieved employees” include Plaintiff and the following individuals:

All current and former non-exempt employees who worked for Defendants in the State of California during one-year period preceding the date of this notice through the current date and the date of trial in any pending action (the “aggrieved employees” and the “PAGA Period”).

Plaintiff reserves the right to expand or narrow the definition of the “aggrieved employees” in the forthcoming civil action. Furthermore, Plaintiff seeks all recoverable civil penalties for Defendants’ violations and reserves the right to supplement this notice as further investigation is completed and further facts, witnesses, and violations are uncovered.

- PAGA CLAIMS -

Unpaid Hours Worked/Non-Productive, Rest, and Recovery Periods **Violation of Labor Code §§ 226.2; IWC Wage Orders**

Defendants violated Labor Code sections 226.2 and the “Hours and Days of Work,” “Minimum Wages,” and “Rest Periods” sections of the applicable IWC Wage Orders with respect to the aggrieved employees.

Labor Code section 226.2(a)(1) also requires employers to compensate employees for “rest and recovery periods and other non-productive time spent separate from any piece rate compensation.” Under Labor Code section 226.2(a)(3), rest and recovery periods must be paid at an hourly rate that is no less than the higher of (i) an average hourly rate taken by dividing an employee’s total compensation for the workweek (exclusive of overtime and rest and recovery compensation) by the employee’s total hours worked and (ii) the applicable minimum wage. Under Labor Code section 226.2(a)(4), other nonproductive time must be paid at an hourly rate that is no less than the applicable minimum wage.

Furthermore, the “Hours and Days of Work,” “Minimum Wages,” and “Rest Periods” sections of the applicable IWC Wage Orders—as addressed in *Vaquero v. Stoneledge Furniture, LLC* (2017) 9 Cal. App. 5th 98—require employers to separately compensate all employees, not just piece-rate employees, for all hours worked, including rest periods and nonproductive time, to comply with California’s minimum wage obligations.

Defendants committed a similar violation to the one set forth in *Vaquero*, paying employees a draw against commissions without separately compensating for the paid rest periods. As a result, Defendants committed a Labor Code violation in each respective pay period and are liable for Labor Code penalties accordingly. An illustrative example of a wage statement showing Plaintiff’s draw against commissions, along with an omission of payment for 10-minute rest periods each day (i.e., paid nonproductive time) appears on Plaintiff’s wage statement dated June 1, 2023, to June 15, 2023:

Earnings and Hours	Qty	Rate	Current	YTD Amount
Commission	1.00	9,238.14	9,238.14	41,522.61
Advance				6,000.00
	1.00		9,238.14	47,522.61

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, as provided under Labor Code sections 558 (\$50/\$100), 1197.1 (\$100/\$250), 1199 / “Penalties” section of the IWC Wage Orders) (\$50/\$100), and 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Unlawful Wage Deductions **Violation of Labor Code §§ 221 through 225**

In addition to the foregoing unlawful wage deductions, Defendants violated Labor Code sections 221 through 225 with respect to the aggrieved employees.

Labor Code section 221 renders it “unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee.” Labor Code

section 222 renders it illegal to unlawfully withhold any part of wages agreed upon from the employee. Labor Code section 223 states “[w]here any statute or contract requires an employer to maintain the designated wage scale, it shall be unlawful to secretly pay a lower wage while purporting to pay the wage designated by statute or by contract.”

Defendants maintained an unlawful policy and practice of deducting wages and earnings from Plaintiff and the aggrieved employees. To the extent Defendants argue the money paid to aggrieved employees as a draw against commissions effectively operates as compensation for rest period compensation or otherwise reduces the contractual commission rate, that policy and practice violates the foregoing sections of the Labor Code, as a loan for time spent resting is not compensation for a rest period. *See, e.g., Vaquero v. Stoneledge Furniture, LLC.* (2017) 9 Cal. App. 5th 98. Additionally, as seen in the below note on Plaintiff's commissions sheet, Plaintiff alleges that Defendants unlawfully deducted customer delivery issues from her wages.

05-15557	3/21/2023 STRAUB(VOID-CH	\$0.00	\$0.00	\$0.00	\$0.00	###	###	\$0.00	\$0.00
		(\$3,973.09)	(\$2,178.00)	\$0.00	\$0.00	45.2	7	(\$1,986.54)	(\$139.06)
		\$56,786.27	\$21,983.25	\$7,060.00	\$255.90	48.4	9.681	\$28,393.14	\$2,805.05

05-15663 - No Commission- Customer balance owed is \$4219.00. Delivery company got paperwork from store saying \$0.00 balance. Customer kept furniture without paying balance. Also balance on this order is \$4219.00 and customer deposit is \$2000.00. Wrong amount on the order when sent to delivery company.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, as provided under Labor Code sections 225.5 (\$100/\$200), and 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Unpaid Overtime **Violation of Labor Code §§ 510, 1194, 1198; IWC Wage Orders**

Defendants violated Labor Code sections 510, 1194, and 1198, along with the “Hours and Days of Work” sections of the applicable IWC Wage Orders with respect to the aggrieved employees.

Labor Code section 510 requires “[a]ny work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee;” and “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;” and “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.” Labor Code section 1194 renders it unlawful for an employee to receive less than the legal overtime rate for overtime hours worked in California. Labor Code section 1198

renders “employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]” unlawful. The IWC Wage Orders further require payment of overtime wages for all overtime hours worked, including the “Hours and Days of Work” sections.

Defendants failed to pay Plaintiff and the aggrieved employees overtime wages and the lawful rate of pay for overtime hours worked, resulting in unpaid overtime wages. Plaintiff and aggrieved employees regularly worked 42+ hour weeks with no overtime pay. Defendants expected Plaintiff and aggrieved employees to open and close the store according to regular hours, but also stay late to close deals if customers stayed past closing time. However, Defendants did not provide or utilize any timekeeping system for its employees and therefore these longer shifts often went unrecorded. This expectation and practice resulted in Defendants’ failure to pay overtime in several pay periods.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, as provided under Labor Code sections 558 (\$50/\$100), 1199 / “Penalties” section of the IWC Wage Orders) (\$50/\$100), and 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Unpaid Paid Sick Leave **Violation of Labor Code §§ 246 through 248.7**

Defendants violated Labor Code sections 246 through 248.7 with respect to the aggrieved employees.

Labor Code section 246 requires employers to provide paid sick leave to its workforce on the terms set forth in the statute. Employers must comply with the accrual, use, and notice provisions of Labor Code sections 246, 246.5, 247, and must further ensure that they maintain the paid sick leave records required by Labor Code section 247.5. Employers have the option of providing 24 hours of paid sick leave to employees or to allow employees to accrue paid sick leave each pay period. If an employer chooses the accrual method, employees must accrue sick leave at a rate of one hour for every thirty hours worked in a given pay period as set forth in Labor Code section 246(b)(1). Under the accrual method, employees must begin accruing paid sick leave at the commencement of employment.

Employers must pay sick leave in accordance with one of the three permissible methods provided in Labor Code section 246(l): (1) “the same manner as the regular rate of pay for the workweek;” (2) “by dividing the employee’s total wages, not including overtime premium pay, by the employee’s total hours worked in the full pay periods of the prior 90 days;” or (3) “for exempt employee ... in the same manner as the employer calculates wages for other forms of paid leave time.” Labor Code sections 248.6 and 248.7 similarly require paid sick leave to be paid at a regular rate-based calculation in excess of the base hourly rate and at the lawful accrual rate.

Under Labor Code section 246(i), employers must provide employees “with written notice of the amount of paid sick leave available ... for use on either the employee’s itemized wage statement ... or in a separate writing provided on the designated pay date with the employee’s payment of wages.”

Defendants failed to comply with California’s paid sick leave laws with respect to the aggrieved employees. Outside of supplemental COVID sick pay in 2020, Plaintiff and the aggrieved employees did not receive any paid sick leave. When Plaintiff or aggrieved employees fell ill, Defendants would either encourage them to come into work and “take it easier,” or to stay home from work, without pay. Due to Defendants’ categorical failure to provide any sick leave, Plaintiff and aggrieved employees often had to work through, and despite, their sicknesses. To the extent paid, it was not paid at the regular rate of pay inclusive of all commission earnings.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees as provided under Labor Code section 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Unpaid Meal Period Premium Wages **Violation of Labor Code §§ 226.7, 512, 1198; IWC Wage Orders**

Defendants violated Labor Code sections 226.7, 512, and 1198, along with the related sections of the IWC Wage Orders with respect to the aggrieved employees.

Labor Code section 512 and the IWC Wage Orders require that employers provide an uninterrupted 30-minute meal period after no more than five hours of work and a second meal period after no more than 10 hours of work. *See Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, 1049. Labor Code section 226.7 requires that if a meal period is late, missed, short, or interrupted, the employer must pay one additional hour of pay at the employee’s “regular rate” of compensation. *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858, 862 (“We hold that the terms are synonymous: “regular rate of compensation” under section 226.7(c), like “regular rate of pay” under section 510(a), encompasses all nondiscretionary payments, not just hourly wages”). “[T]ime records showing noncompliant meal periods raise a rebuttable presumption of meal period violations, including at the summary judgment stage.” *Donohue v. AMN Services, LLC* (2021) 11 Cal. 5th 58, 61. Labor Code section 1198 renders “employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]” unlawful. The IWC Wage Orders, including Section 11 (Meal Periods), further require one uninterrupted 30-minute meal period after no more than five hours of work and a second meal period after no more than 10 hours of work and an additional hour of pay at the employee’s regular rate of compensation for each workday that a compliant meal period is not provided. Pursuant to Section 11(A) of the IWC Wage Orders, the California Supreme Court has held that the on-duty meal period exception

is “exceedingly narrow” and applies only when (1) “the nature of the work prevents the employee from being relieved of all duty” and (2) *both* “the employer and employee have agreed, in writing, to the on-duty meal period.” *Augustus v. AMB Security Services, Inc.* (2016) 2 Cal. 5th 257, 266-276 (emphasis added). If these two requirements are not met, then the employer owes the employee one hour of premium pay for each non-compliant meal period taken under the purported on-duty meal arrangement. *Naranjo v. Spectrum Security Services, Inc.* (2019) 40 Cal. 5th 444, 459.

Due to short staffing, employee responsibilities, and customer volume, Plaintiff and aggrieved employees often suffered short, late, missed, and/or interrupted meal periods. Specifically, each store was only staffed by two employees at a time, which only provides for employee break time when there are fewer than two customers. Additionally, when the second employee was unable to join her, Plaintiff occasionally staffed a store by herself. On those shifts, Plaintiff alone was responsible for the entire store’s operation and customer experience, and she was unable to take breaks to rest or eat. When Plaintiff and the aggrieved employees suffered these deficient meal periods, Defendants did not pay the associated meal period premiums to aggrieved employees. The nature of this practice was due to prioritizing sales over compliance with the Wage Orders and Labor Code.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees as provided under Labor Code section 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Unpaid Rest Period Premium Wages **Violation of Labor Code §§ 226.7, 516, 1198; IWC Wage Orders**

Defendants violated Labor Code sections 226.7, 516, and 1198, and the related sections of the IWC Wage Orders with respect to Plaintiff and the aggrieved employees.

Labor Code sections 226.7 and 516 and the IWC Wage Orders require that employers authorize and permit an uninterrupted 10-minute rest period for each four-hour period (or major fraction thereof) that an employee works. Labor Code section 226.7 requires that if a rest period is non-compliant, the employer must pay one additional hour of pay at the employee’s “regular rate” of compensation. *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858, 862 (“We hold that the terms are synonymous: “regular rate of compensation” under section 226.7(c), like “regular rate of pay” under section 510(a), encompasses all nondiscretionary payments, not just hourly wages”). Labor Code section 1198 renders “employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]” unlawful. The IWC Wage Orders, including Section 12 (Rest Periods), further require one uninterrupted 10-minute rest period for each four-hour period (or major fraction thereof) worked and an additional hour of pay at the employee’s regular rate of compensation for each workday that a compliant rest period is not authorized or permitted.

First, Defendants did not compensate employees for paid rest periods under the commission plan. Second, for the same reasons stated for meal periods above, Plaintiff and the aggrieved employees were often unable to take sufficient rest periods. Therefore, Defendants also did not compensate Plaintiff or aggrieved employees for one rest period premium each time a paid rest period was not provided.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, as provided under Labor Code section 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Untimely Payment of Wages During Employment **Violation of Labor Code §§ 204, 204b, 210**

Defendants violated Labor Code sections 204 and/or 204b and 210, as applicable, with respect to Plaintiff and the aggrieved employees.

Labor Code section 204(a) requires payment of “all wages” for non-exempt employees at least twice each calendar month. Labor Code section 204(d) states all wages due must be paid “not more than seven calendar days following the close of the payroll period.” Labor Code section 204b applies to employees paid on a weekly basis and also requires the payment for all labor within the required pay periods. Labor Code section 210 provides “every person who fails to pay the wages of an employee as provided in Section ... 204 ... shall be subject to a civil penalty” of \$100 for an initial violation and \$200 plus 25% of the amount unlawfully withheld for a subsequent violation.

Because Defendants failed to pay all wages and premiums in each pay period in which such wages were earned at the lawful rate, Defendants violated Labor Code section 204 and/or 204b (for weekly employees, as applicable). Specifically, Defendants did not separately compensate aggrieved employees for nonproductive time, and Defendants did not properly pay aggrieved employees all due sick pay, overtime, and premiums. Defendants violated Labor Code sections 204 and 204b by failing to pay all wages and premiums owed on the regular pay days scheduled each pay period within seven calendar days of the close of the payroll period, as a result of the policies and practices set forth in this notice.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees as provided under Labor Code section 2699 (\$100/\$200) per violation per pay period per employee, and Labor Code section 210 (\$100/\$200) per violation per pay period, along with all other civil penalties permitted by law.

Untimely Payment of Wages Upon Separation of Employment
Violation of Labor Code §§ 201, 202, 203, 256

Defendants violated Labor Code sections 201, 202, and 203 with respect to the aggrieved employees by failing to pay all wages and premiums owed upon termination of employment.

Labor Code section 201 requires that if an employer fires an employee, the wages must be paid immediately. Labor Code section 202 requires that if an employee quits without providing 72 hours' notice, his or her wages must be paid no later than 72 hours thereafter. Labor Code section 202 states that if an employee provides 72 hours' notice, the final wages are payable upon his or her final day of employment. Labor Code section 203 requires an employer who fails to comply with Labor Code sections 201 or 202 to pay a waiting time penalty for each employee, up to a period of 30 days additional compensation.

Defendants failed to pay all wages and premiums owed to aggrieved employees during their employment as set forth in this notice, and also failed to timely pay those amounts to departing employees upon separation of employment. Specifically, Defendants did not separately compensate aggrieved employees for nonproductive time, and Defendants did not properly pay aggrieved employees all due sick pay, overtime, and premiums. Defendants did not pay waiting time penalties for the late payments. As a result, Defendants violated Labor Code sections 201, 202, and 203.

As a result, Plaintiff may recover civil penalties on behalf of aggrieved employees and the State of California as provided under Labor Code section 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Non-Compliant Wage Statements
Violation of Labor Code §§ 226, 226.3

Defendants violated Labor Code sections 226(a) and 226.3 with respect to the aggrieved employees by failing to furnish itemized wage statements each pay period that accurately list all information required by Labor Code section 226(a)(1) through (9).

Labor Code section 226(a) requires an employer to furnish wage statements to employees semimonthly or at the time of each payment of wages, "an accurate itemized statement in writing showing:" (1) gross wages earned, (2) total hours worked, (3) the number of piece rate units earned and applicable piece-rate in effect, (4) all deductions, (5) net wages earned, (6) the inclusive dates of the pay period, (7) the name of the employee and last four digits of SSN or an EIN, (8) the name and address of the legal name of the employer, and (9) all applicable hourly rates in effect during the pay period and the number of hours worked at each hourly rate by the employee.

Defendants failed to provide accurate itemized wage statements to the aggrieved employees each pay period as a result of the policies and practices set forth in this notice. Defendants

violated Labor Code section 226(a)(1) and (5) by not listing the correct “gross wages earned” or “net wages earned,” as the employees earned wages and premiums that were not paid, resulting in an inaccurate reflection, and recording of “gross wages earned” on those wage statements.

Further, in violation of Labor Code section 226(a)(8), Defendants failed to state on employee wage statements the proper name and address of the employer. Defendants listed “Arizona Leather Co., Inc.” when the correct employer is “Arizona Leather Company, Inc.”

Likewise, in violation of Labor Code section 226(a)(9), Defendants failed to state on employee wage statements each pay period the applicable hourly rates in effect and the number of hours worked at that rate, as Defendants failed to pay all wages and premiums owed to employees. The amounts stated are instead depreciated and underpaid, resulting in an inaccurate reflection on the pay stub.

Finally, the wage statements also failed to separate out and pay for rest periods. Hence, rest period or other nonproductive time was not included as a payment category on the paystubs, in violation of the foregoing subdivisions.

Plaintiff and other aggrieved employees cannot promptly and easily determine from the wage statement alone the wages paid or earned without reference to other documents or information. Indeed, these wage statement violations are significant because they sow confusion among Plaintiff and other aggrieved employees with respect to what amounts were owed and paid, at what rates, the number of hours worked, and how those amounts were or should be calculated. The wage statements reflect a false statement of earnings and concealed the underlying problems and underpayments of employee wages.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, as provided under Labor Code sections 226.3 (\$250/\$1,000) and 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Non-Compliant Wage Statements/Piece-Rate **Violation of Labor Code §§ 226, 226.2, 226.3**

In addition to the foregoing wage statement violations Defendants also violated Labor Code sections 226.2 with respect to the aggrieved employees by failing to furnish itemized wage statements each pay period that accurately list all information required by that statute.

Labor Code sections 226.2(a)(2)(A) and (B) state that wage statements for employees compensated on a piece-rate-basis must, in addition to listing the items specified in section 226(a), also state the total hours of compensable rest and recovery periods and other non-productive time, the applicable rates of compensation, and the wages paid for those periods.

Defendants failed to provide accurate itemized wage statements to the aggrieved employees each pay period as a result of the policies and practices set forth in this notice. The wage statements failed to separate out and pay for rest periods. Hence, rest period or other nonproductive time was not included as a payment category on the paystubs.

Plaintiff and other aggrieved employees cannot promptly and easily determine from the wage statement alone the wages paid or earned without reference to other documents or information. Indeed, these wage statement violations are significant because they sow confusion among Plaintiff and other aggrieved employees with respect to what amounts were owed and paid, at what rates, the number of hours worked, and how those amounts were or should be calculated. The wage statements reflect a false statement of earnings and concealed the underlying problems and underpayments of employee wages.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, as provided under Labor Code sections 226.3 (\$250/\$1,000) and 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Unreimbursed Employee Expenses **Violation of Labor Code §§ 2802, 2804**

Defendants violated Labor Code section 2802 with respect to the aggrieved employees by failing to reimburse the aggrieved employees for all necessary expenditures or losses incurred as part of their job duties.

Labor Code section 2802 requires an employer to “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, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.” *See, e.g., Espinoza v. West Coast Tomato Growers, LLC*, 2016 WL 4468175 at *4, n.2 (S.D. Cal. Aug. 24, 2016, No. 14-CV-2984 W (KSC)).

Labor Code section 2804 affirms that “[a]ny contract or agreement, express or implied, made by any employee to waive the benefits of this article or any part thereof, is null and void, and this article shall not deprive any employee or his personal representative of any right or remedy to which he is entitled under the laws of this State.”

Defendants required Plaintiff and the aggrieved employees to incur costs for work-related purposes without full reimbursement. In direct consequence of their job duties, Plaintiff and the aggrieved employees unavoidably and necessarily incurred these losses, expenditures, costs, and as a matter of policy and practice. Defendants often required Plaintiff and aggrieved employees to travel, using their personal cars, to customer homes to measure and fit furniture for purchase. Additionally, to close sales in accordance with Defendants’ standards, Plaintiff and aggrieved employees often answered customer service calls and emails from the aggrieved

employees' personal phones and computers at home. Defendants did not reimburse Plaintiff or the aggrieved employees for the gas mileage, phone usage, home internet, or computer usage.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, as provided under Labor Code section 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Failure to Maintain Accurate Records
Violation of Labor Code § 1174; IWC Wage Orders

Defendants violated Labor Code sections 1174 and the IWC Wage Orders by failing to maintain accurate employee payroll records with respect to Plaintiff and other aggrieved employees.

Labor Code section 1174 requires that employers maintain accurate “payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments.” Section 7(A) of the IWC Wage Orders, which may be enforced through Labor Code section 1198, mandates similar recordkeeping obligations.

Because of the policies and practices set forth in this notice, including the failure to accurately account for wages earned or hours worked, Defendants failed to accurately maintain records in accordance with Labor Code section 1174 and the IWC Wage Orders.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, as provided under Labor Code section 1174.5 (\$500) and 2699 (\$100/\$200), along with all other civil penalties permitted by law.

Unlawful Employment Condition
Violation of Labor Code § 432.5

Defendants violated Labor Code section 432.5 with respect to Plaintiff and other aggrieved employees by requiring that they agree to an unlawful term or condition in writing during their employment.

Labor Code section 432.5 states that “[n]o employer, or agent, manager, superintendent, or officer thereof, shall require any employee or applicant for employment to agree, in writing, to any term or condition which is known by such employer, or agent, manager, superintendent, or officer thereof to be prohibited by law.”

Defendants' unlawful policy and practice of paying a draw against commission, but failing to pay for nonproductive time, is an unlawful employment condition that violates California law. Accordingly, Defendants are liable for the civil penalty in each affected pay period.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, as provided under Labor Code section 2699 (\$100/\$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Attorneys' Fees and Costs
Labor Code § 2699(g)

Plaintiff has been compelled to retain the services of counsel to protect the interests of other aggrieved employees and the State of California. Plaintiff continues to incur attorneys' fees and costs, which are recoverable under California law, including Labor Code section 2699(g).

- LITIGATION HOLD NOTICE -

This letter imposes a duty upon all defendants and their respective employees, officers, directors, executives, attorneys, human resource and payroll personnel, accountants, and other agents to preserve all physical and electronic evidence, including electronically stored information and emails, which relate to the employment of Plaintiff and the aggrieved employees specified in this notice. Evidence includes, but is not limited to, Defendants' written employment and payroll policies and handbooks; the aggrieved employees' personnel files and payroll records, such as paystubs, time records, wage statements, compensation reports, as well as the underlying electronically data in Excel or similar format. Memoranda and internal and external correspondence relating to the subject matter of this notice shall also be maintained. Failure to preserve and retain relevant evidence may constitute spoliation of evidence and result in an adverse inference or sanctions.

If you have any questions regarding the scope of your obligations to preserve evidence, please consult your legal counsel and always err on the side of caution. Periodic or regularly scheduled purges or deletions of information covered by this hold must be suspended immediately.

- CONCLUSION -

If the LWDA does not pursue enforcement, Plaintiff intends to bring representative claims on behalf of the State of California and the aggrieved employees seeking civil penalties for violations of the Labor Code and the IWC Wage Orders, along with attorneys' fees, costs, interest, and other appropriate relief.

Please advise if the LWDA intends to investigate any of the factual or legal allegations set forth in this notice. Defendants may contact Plaintiff's counsel with any questions regarding this letter or the forthcoming lawsuit.

Sincerely,

A handwritten signature in blue ink that reads "Nicholas J. Ferraro". The signature is written in a cursive, flowing style.

Nicholas J. Ferraro

REJ

Cc Plaintiff Sierra Pullum

Erica M. Sorosky, Counsel for Defendants
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