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19 RAFAEL RAMIREZ, and all others similarly situated

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO
(UNLIMITED JURISDICTION)

17 RAFAEL RAMIREZ, as an “aggrieved
18 employee” on behalf of himself and other
19 similarly situated “aggrieved employees” under
20 the Labor Code Private Attorneys General Act of
21 2004,

22 *Plaintiff,*

23 vs.

24 TAILORED SHARED SERVICES, LLC, a
25 Delaware limited liability company; and DOES
26 1–50, inclusive,

27 *Defendants.*

Case No.

**COMPLAINT FOR VIOLATIONS OF
THE LABOR CODE AND CIVIL
PENALTIES UNDER THE LABOR
CODE PRIVATE ATTORNEYS
GENERAL ACT OF 2004, LABOR
CODE §§ 2698, ET SEQ.**

JURY TRIAL DEMANDED



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Plaintiff, Rafael Ramirez (hereafter “Plaintiff” or “Ramirez”), on behalf of himself, the State of California, and the other Aggrieved Employees, complains and alleges as follows:

I. INTRODUCTION

1. Plaintiff brings this representative action based on alleged violations of the California Labor Code and Industrial Welfare Commission Order No. 7-2001 (hereafter “the Wage Order”), against Defendants Tailored Shared Services, LLC, and DOES 1-50, inclusive (collectively “Defendants”).

2. As set forth in more detail below, Plaintiff alleges that Defendants are liable to him, the State of California, and the Aggrieved Employees (defined below), for civil penalties and other related relief. These claims are based on Defendants’ failures to:

(A) Pay all wages, including minimum, regular, and overtime wages, earned for all hours worked at the correct rates of pay;

(B) Provide all meal periods;

(C) Authorize and permit all rest breaks;

(D) Pay premium wages for unprovided meal periods;

(E) Pay premium wages for unprovided rest breaks;

(F) Indemnify for necessary work-related expenditures;

(G) Issue only accurate and complete itemized wage statements;

(H) Timely pay wages during employment;

(I) Timely pay wages upon termination of employment;

(J) Maintain accurate employment records.

Accordingly, Plaintiff now seeks to recover civil penalties and related relief through this representative action.

II. THE PARTIES

3. Plaintiff Rafael Ramirez is resident of California.

4. Defendant Tailored Shared Services, LLC is a limited liability company organized and existing under the laws of Delaware and also a citizen of California based on Plaintiff’s information and belief.

5. Plaintiff is ignorant of the true names, capacities, relationships, and extents of participation in the conduct alleged herein of the Defendants sued as DOES 1-50, inclusive, but is informed and believes and thereon alleges that said Defendants are legally responsible for the



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wrongful conduct alleged herein and therefore sues these Defendants by such fictitious names. Plaintiff will amend the Complaint to allege the true names and capacities of the DOE Defendants when ascertained.

6. The “Aggrieved Employees” are all individuals the Defendants have employed or otherwise contracted with in California as hourly, non-exempt employees, including store leads, individuals performing work comparable to the aforementioned, and individuals in similar positions during the period beginning one year before the Plaintiff’s notice of October 13, 2023 to the California Labor and Workforce Development Agency and ending on the date judgment is entered.

7. Plaintiff is informed and believes and thereon alleges that, at all relevant times herein, all Defendants were the agents, employees and/or servants, masters or employers of the remaining defendants, and in doing the things hereinafter alleged, were acting within the course and scope of such agency or employment, and with the approval and ratification of each of the other Defendants.

8. At all relevant times, in perpetrating the acts and omissions alleged herein, Defendants, and each of them, acted pursuant to and in furtherance of a policy, practice, or a lack of a practice which resulted in Defendants not paying Plaintiff and the other Aggrieved Employees in accordance with applicable California labor laws as alleged herein.

9. Plaintiff is informed and believes and thereon alleges that each and every one of the acts and omissions alleged herein were performed by, and/or attributable to, all Defendants, each acting as agents and/or employees, and/or under the direction and control of each of the other defendants, and that said acts and failures to act were within the course and scope of said agency, employment, and/or direction and control.

III. FACTUAL ALLEGATIONS

10. IWC Wage Order 7-2001 (“the Wage Order”) applies to “all persons employed in the mercantile industry whether paid on a time, piece rate, commission, or other basis” Wage Order, § 1. The Wage Order defines “Mercantile Industry” to mean “any industry, business, or establishment operated for the purpose of purchasing, selling, or distributing goods are commodities at wholesale or retail; or for the purpose of renting goods or commodities.” Wage Order, § 2(H). At all relevant times during the applicable limitations period, the Tailored Brands “Employers, Ramirez, and all of the Aggrieved Employees were covered by the Wage Order



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1 because the Tailored Brands Employers operated, and Ramirez, and all of the Aggrieved
2 Employees worked for, one or more establishments operated as operated as clothing stores.
3 Accordingly, Ramirez and all of the other Aggrieved Employees are entitled to the protections
4 the Wage Order provides.

5 11. On approximately January 21, 2022, Defendants began to employ Ramirez in
6 Chino in the position of hourly, non-exempt store lead. Defendants continuously employed him
7 in that capacity until on or about October 14, 2022, when his employment ended.

8 12. At all relevant times, Defendants issued wages to Ramirez and all of the other
9 Aggrieved Employees on a biweekly (26 paychecks/year) basis and paid them by the hour. At all
10 relevant times, Defendants classified Ramirez and all of the other Aggrieved Employees as non-
11 exempt employees entitled to the protections of the Labor Code and the Wage Order.

12 13. Defendants failed to compensate Ramirez and all of the other Aggrieved
13 Employees for all hours worked at the applicable minimum or regular rates of pay. Defendants
14 failed to compensate Ramirez and all of the other Aggrieved Employees for all hours worked at
15 the applicable minimum or regular rates of pay. Ramirez and the Aggrieved Employees often
16 worked five (5) to six (6) days in a workweek, and between eight (8) to ten (12) hours per
17 workday. At all relevant times, Ramirez and the Aggrieved Employees worked over eight (8)
18 hours in one workday and over forty (40) hours in one workweek.

19 14. At all relevant times, Defendants required Ramirez and the Aggrieved Employees
20 to perform work while clocked-out and failed to compensate them for this time. Due to the
21 workload and failure to hire sufficient staff members, Defendants often requested that Ramirez
22 and the Aggrieved Employees continue to work after they had clocked-out, including for meal
23 periods. Additionally, Defendants directed Ramirez and the Aggrieved Employees who were
24 store leads to remain at their assigned store during meal periods unless another lead or manager
25 was present to cover for them. Because there was not always another manager or lead present and
26 because Defendants required the store leads to clock out for meal periods, the store leads took
27 their meal periods clocked out and on the premises. Also, Defendants often directed Ramirez and
28 the Aggrieved Employees to pick-up or drop-off store merchandise at other store locations after
they had clocked-out. Defendants failed to compensate Ramirez and the Aggrieved Employees
for this work performed off-the-clock.

15. At all relevant times, Defendants failed to provide Ramirez and all of the other



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1 Aggrieved Employees with all timely 30-minute, off-duty meal periods. Defendants also failed
2 to pay premium wages for days on which they failed to provide Ramirez and all of the other
3 Aggrieved Employees with meal periods as required by law. Due to the workload and failure to
4 hire sufficient staff members, Defendants denied Ramirez and the Aggrieved Employees their 30-
5 minute off-duty meal period within the first five hours of work. Defendants did not permit
6 Ramirez and the other Aggrieved Employees working as store leads and in similar positions to
7 leave the store unless there was another lead or manager present to cover for them. Therefore,
8 Ramirez and the Aggrieved Employees were forced to forego their meal and rest breaks because
9 there was no other lead or manager present to cover for them. Also, at all relevant times,
10 Defendants did not hire sufficient staff to allow Ramirez and the Aggrieved Employees to take
11 their timely meal and rest breaks. Defendants also denied 30-minute off-duty meal periods to
12 Ramirez and the Aggrieved Employees because they were often interrupted by Defendants who
13 required them to complete work tasks during meal breaks or to cut their meal-breaks short and
14 return to work.

15 16. At all relevant times, Defendants failed to authorize and permit Ramirez and all of
16 the other Aggrieved Employees to take ten-minute, off-duty, paid rest breaks every four hours
17 worked or major portion thereof. Due to the workload and failure to hire sufficient staff members,
18 Defendants often requested that Ramirez and the Aggrieved Employees continue to work during
19 rest breaks. Also, Defendants directed Ramirez and the Aggrieved Employees who were store
20 leads to remain at their assigned store during meal periods unless another lead or manager was
21 present to cover for them. Because there was not always another manager or lead present and
22 because Defendants required the store leads to take rest periods, the store leads took their rest
23 periods on the premises. Additionally, Defendants also denied 10-minute off-duty rest periods to
24 Ramirez and the Aggrieved Employees because they were often interrupted by Defendants who
25 required them to complete work tasks during rest breaks or to cut their rest-breaks short and return
26 to work. Defendants also failed to pay premium wages for days on which they failed to authorize
27 and permit Ramirez and all of the other Aggrieved Employees to take rest breaks as required by
28 law.

17. At all relevant times, Defendants required Ramirez and the Aggrieved Employees
to incur certain business expenses in the course of performing their duties. On several occasions,
Defendants required Ramirez and the Aggrieved Employees to drive ten (10) to fifteen (15) miles



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1 to the other store locations to pick-up or drop-off store merchandise. Defendants did not reimburse
2 Ramirez and the Aggrieved Employees for such mileage expenses. Defendants also required
3 Ramirez and all of the other Aggrieved Employees to supply mobile phones and uniforms to
4 perform their job duties. At all relevant times, Ramirez and the other Aggrieved Employees
5 received several phone calls and text messages from their supervisors during the workday about
6 work related matters. On a daily basis, Defendants repeatedly contacted Ramirez and the
7 Aggrieved Employees on their personal phones, in order to receive updates on the store and the
8 employees. Furthermore, at all relevant times, Defendants required Ramirez and the Aggrieved
9 Employees to buy different sets of formal clothing on their own, to be worn every day. The
10 uniforms they were required to purchase included button up shirts, dress pants, ties, formal shoes,
11 coats, and vests. However, Defendants did not provide these items and did not reimburse Ramirez
12 and the other Aggrieved Employees for these items.

12 18. At all relevant times, Defendants failed to issue to Ramirez and all of the other
13 Aggrieved Employees complete and accurate wage statements that state all hours worked at the
14 correct rates of pay, and all wages earned. Defendants knowingly and intentionally failed to state
15 on the wage statements they issued to Ramirez and all of the other Aggrieved Employees the
16 unpaid wages discussed above. The wage statements fail to state all minimum wages earned, all
17 regular wages earned, all meal period premium wages earned, all rest break premium wages
18 earned, and related compensation.

18 19. Defendants also failed to timely pay Ramirez and all of the other Aggrieved
19 Employees all earned wages as described above during and at the conclusion of employment.

20 20. Defendants failed to maintain accurate employee records of Ramirez and all of the
21 other Aggrieved Employees.

22 21. For the reasons stated herein, Plaintiff alleges that as a result of Defendants'
23 unlawful practices and policies, Plaintiff and the Aggrieved Employees were:

24 A. Not paid all wages earned, including, but not limited to, minimum, regular,
25 and overtime wages for work performed while clocked out;

26 B. Not provided with all off-duty meal periods;

27 C. Not authorized and permitted to take all rest break periods;

28 D. Not paid one hour's pay for each workday in which Defendants failed to
authorize and permit them to take one or more timely rest periods;



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1 E. Not paid one hour's pay for each workday in which Defendants failed to
2 provide them with one or more timely meal periods;

3 F. Not indemnified for all necessary business expenditures incurred during
4 the discharge of their duties;

5 G. Not provided with accurate and complete wage statements; and

6 H. Not timely paid all earned and unpaid wages during their employment with
7 Defendants and at the time such employment ended.

8 **IV. FIRST (AND ONLY) CAUSE OF ACTION**

9 **CIVIL PENALTIES**

10 **(Lab. Code §§ 2698, *et seq.*)**

11 **(By Plaintiff, on behalf of himself and the other Aggrieved Employees, against all
12 Defendants)**

13 22. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

14 23. At all relevant times, Plaintiff and the Aggrieved Employees have been non-
15 exempt employees entitled to the protections of both the Labor Code and the Wage Order.

16 **A. FAILURE TO PAY ALL WAGES EARNED FOR ALL HOURS WORKED AT
17 THE CORRECT RATES OF PAY**

18 24. Section 2 of the Wage Order defines "hours worked" as "the time during which an
19 employee is subject to the control of an employer, and includes all the time the employee is
20 suffered or permitted to work, whether or not required to do so."

21 25. Section 3 of the Wage Order states:

22 The following overtime provisions are applicable to employees 18 years of age or
23 over and to employees 16 or 17 years of age who are not required by law to attend
24 school and are not otherwise prohibited by law from engaging in the subject work.
25 Such employees shall not be employed more than eight (8) hours in any workday
26 or more than 40 in a workweek unless the employee receives one and one half
(1½) times such employee's regular rate of pay for all hours worked over 40 hours
in the workweek. Eight (8) hours of labor constitutes a day's work. Employment
beyond eight (8) hours in any workday or more than six (6) days in any workweek
is permissible provided the employee is compensated for such overtime at not less
than:

27 (a) One and one-half (1½) times the employee's regular rate of pay for all
28 hours worked in excess of eight (8) hours up to and including twelve (12)
hours in any workday, and for the first eight (8) hours worked on the



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seventh (7th) consecutive day of work in a workweek;

(b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek. The overtime rate of compensation required to be paid to a nonexempt full-time salaried employee shall be computed by using the employee's regular hourly salary as one fortieth (1/40) of the employee's weekly salary.

26. Section 4 of the Wage Order requires an employer to pay non-exempt employees at least the minimum wage set forth therein for all hours worked, which consists of all hours that an employer has actual or constructive knowledge that employees are working.

27. Labor Code section 510 states:

Eight hours of labor constitutes a day's work. Any 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. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee. Nothing in this section requires an employer to combine more than one rate of overtime compensation in order to calculate the amount to be paid to an employee for any hour of overtime work.

28. Labor Code section 1194 invalidates any agreement between an employer and an employee to work for less than the minimum wage required under the applicable Wage Order.

29. Labor Code section 1197 makes it unlawful for an employer to pay an employee less than the minimum wage required under the applicable Wage Order for all hours worked during a payroll period.

30. Labor Code section 1198 makes it unlawful for an employer to employ an employee under conditions that violate the Wage Order.

31. In conjunction, these provisions of the Labor Code require employers to pay non-exempt employees no less than their agreed-upon or statutorily mandated wage rates for all hours worked, including unrecorded hours when the employer knew or reasonably should have known that employees were working during those hours. (See *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 585.)



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32. At all relevant times during the applicable limitations period, Defendants failed to compensate Ramirez and all of the other Aggrieved Employees for all hours worked, including, but not limited to minimum, and regular wages for all hours they worked at the correct rates of pay.

33. Plaintiff is informed and believes and thereon alleges that, at all relevant times, Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants' failure to compensate Plaintiff and the other Aggrieved Employees for all hours worked as required by California law.

B. FAILURE TO PROVIDE MEAL PERIODS

34. In relevant part, California Labor Code § 1198 states:

The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

35. In relevant part, In relevant part, California Labor Code § 512 states:

An employer shall not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee.

An employer shall not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 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.

36. In relevant part, Section 11 of the Wage Order states:

Meal Periods:

(A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived



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by mutual consent of the employer and the employee.

(B) An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 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.

(C) Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. An "on duty" meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.

(D) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

(E) In all places of employment where employees are required to eat on the premises, a suitable place for that purpose shall be designated.

37. In relevant part, California Labor Code § 226.7 states:

(b) An employer shall not require an employee to work during a meal or rest period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.

(c) If an employer fails to provide an employee a meal period or rest period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest



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period is not provided.

38. Pursuant to California Labor Code § 512 and the Wage Order, Plaintiff and the Aggrieved Employees were entitled to uninterrupted meal periods of at least 30 minutes for each day they worked five or more hours. Pursuant to California Labor Code § 512, they were also entitled to a second 30-minute meal period when they worked more than 10 hours in a workday.

39. Pursuant to the Wage Order, Plaintiff and the Aggrieved Employees were entitled to be provided with net rest breaks of at least ten minutes for each four-hour period of work, or major fraction thereof.

40. Defendants intentionally failed to provide Plaintiff and the Aggrieved Employees with all required 30-minute duty free meal periods and 10-minute rest periods free from any work duties in accordance with the Wage Order.

41. At all relevant times, Defendants failed to provide Plaintiff and the Aggrieved Employees with all timely rest and meal periods. Furthermore, Defendants failed to pay premium wages for days on which they failed to provide Plaintiff and the other Aggrieved Employees with timely meal periods.

42. At all relevant times, due to the workload and failure to hire sufficient staff members, Defendants denied Ramirez and the Aggrieved Employees their 30-minute off-duty meal period within the first five hours of work. Defendants did not permit Ramirez and the other Aggrieved Employees working as store leads and in similar positions to leave the store unless there was another manager present to cover for them. Therefore, most times, Ramirez and the Aggrieved Employees were forced to forego their meal and rest breaks because there was no other employee present to cover for them. At all relevant times, Defendants did not hire sufficient staff to allow Ramirez and the Aggrieved Employees to take their timely meal and rest breaks. Defendants also denied 30-minute off-duty meal periods to Ramirez and the Aggrieved Employees because they were often interrupted by Defendants who required them to complete work tasks during meal breaks or to cut their meal-breaks short and return to work.

43. Plaintiff is informed and believes and thereon alleges that, at all relevant times within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy which resulted in Defendants not providing the and the Aggrieved Employees with all off-duty meal periods and rest breaks required by California law.



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1 **C. FAILURE TO AUTHORIZE AND PERMIT REST BREAKS**

2 44. In relevant part, California Labor Code § 1198 states:

3 The maximum hours of work and the standard conditions of labor
4 fixed by the commission shall be the maximum hours of work and
5 the standard conditions of labor for employees. The employment
6 of any employee for longer hours than those fixed by the order or
under conditions of labor prohibited by the order is unlawful.

7 45. In relevant part, Section 12 of the Wage Order states:

8 Rest Periods:

9 (A) Every employer shall authorize and permit all employees to take
10 rest periods, which insofar as practicable shall be in the middle of
11 each work period. The authorized rest period time shall be based
12 on the total hours worked daily at the rate of ten (10) minutes net
13 rest time per four (4) hours or major fraction thereof. However, a
14 rest period need not be authorized for employees whose total daily
work time is less than three and one-half (3 ½) hours. Authorized
rest period time shall be counted as hours worked for which there
shall be no deduction from wages.

15 (B) If an employer fails to provide an employee a rest period in
16 accordance with the applicable provisions of this order, the
17 employer shall pay the employee one (1) hour of pay at the
18 employee's regular rate of compensation for each workday
that the rest period is not provided.

19 46. In relevant part, California Labor Code § 226.7 states:

20 (b) An employer shall not require an employee to work during
21 a meal or rest period mandated pursuant to an applicable
22 statute, or applicable regulation, standard, or order of the
23 Industrial Welfare Commission, the Occupational Safety
24 and Health Standards Board, or the Division of
Occupational Safety and Health.

25 (c) If an employer fails to provide an employee a meal period
26 or rest period in accordance with a state law, including, but
27 not limited to, an applicable statute or applicable
regulation, standard, or order of the Industrial Welfare
Commission, the Occupational Safety and Health
Standards Board, or the Division of Occupational Safety



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and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided.

47. Pursuant to the Wage Order, Plaintiff and the Aggrieved Employees were entitled to be authorized and permitted to take net rest breaks of at least ten minutes for each four-hour period of work, or major fraction thereof.

48. Defendants intentionally failed to authorize and permit Plaintiff and the Aggrieved Employees to take all 10-minute rest periods free from any work duties in accordance with the Wage Order.

49. At all relevant times, Defendants failed to authorize and permit Plaintiff and the Aggrieved Employees to take all timely rest periods. Furthermore, Defendants failed to pay premium wages to Plaintiff and the Aggrieved Employees for days on which they failed to authorize and permit Plaintiff and the other Aggrieved Employees to take timely rest periods.

50. At all relevant times, due to high workload and low staffing levels, Defendants failed to authorize and permit Plaintiff and the Aggrieved Employees to take ten-minute, paid, duty-free rest breaks every four hours worked or major fraction thereof. Defendants did not seek an exemption from the rest period protections of the Wage Order from the California Division of Labor Standards Enforcement. Moreover, Defendants failed to pay Plaintiff and the Aggrieved Employees premium wages on workdays they failed to authorize and permit them to take 10-minute rest periods every four hours worked or major fraction thereof.

51. Plaintiff is informed and believes and thereon alleges that, at all relevant times within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy which resulted in Defendants not authorizing and permitting Plaintiff and the Aggrieved Employees to take all rest breaks required by California law.

D. FAILURE TO INDEMNIFY

52. In pertinent part, California Labor Code § 2802(a) states: "An employer shall indemnify his or her employee[s] for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her duties." Additionally, the Wage Order states,

(A) When uniforms are required by the employer to be worn by the employee as a condition of employment, such uniforms shall be provided and maintained by the employer.



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...

(B) When tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft.

Wage Order, § 9(A) and (B).

53. California Labor Code § 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

54. At all relevant times, Defendants required Plaintiff and the Aggrieved Employees to incur certain business expenses in the course of performing their duties. As described above, on several occasions, Defendants required Ramirez and the Aggrieved Employees to drive ten (10) to fifteen (15) miles to the other store locations to pick-up or drop-off store merchandise. Defendants did not reimburse Ramirez and the Aggrieved Employees for such mileage expenses. Defendants also required Ramirez and all of the other Aggrieved Employees to supply mobile phones and uniforms to perform their job duties. At all relevant times, Ramirez and the other Aggrieved Employees received several phone calls and text messages from their supervisors during the workday about work related matters. On a daily basis, Defendants repeatedly contacted Ramirez and the Aggrieved Employees on their personal phones, in order to receive updates on the store and the employees. Furthermore, at all relevant times, Defendants required Ramirez and the Aggrieved Employees to buy different sets of formal clothing on their own, to be worn every day. The uniforms they were required to purchase included button up shirts, dress pants, ties, formal shoes, coats, and vests. However, Defendants did not provide these items and did not reimburse Ramirez and the other Aggrieved Employees for these items.

55. Plaintiff is informed and believes and thereon alleges that, at all relevant times, Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants' failure to indemnify Plaintiff and the Aggrieved Employees for the reasonable expenses they incurred during the course of performing their duties.



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1 **E. FAILURE TO PROVIDE ACCURATE AND COMPLETE WRITTEN WAGE**
2 **STATEMENTS**

3 56. Pursuant to California Labor Code § 226(a), Plaintiff and the Aggrieved
4 Employees were entitled to receive, bi-weekly or at the time of each payment of wages, an
5 accurate itemized statement showing: a) gross wages earned; b) net wages earned; c) all applicable
6 hourly rates in effect during the pay period; and d) the corresponding number of hours worked at
each hourly rate by the employee.

7 57. Pursuant to California Labor Code § 226, an employee is deemed to suffer injury
8 if the employer fails to provide a wage statement. Also, an employee is deemed to suffer injury if
9 the employer fails to provide accurate and complete information as required by California Labor
10 Code § 226(a) and the employee cannot “promptly and easily determine” from the wage statement
11 alone one or more of the following:

12 A. The amount of the gross wages or net wages paid to the employee during
13 the pay period or any of the other information required to be provided on the itemized wage
14 statement pursuant to California Labor Code § 226(a);

15 B. Which deductions the employer made from gross wages to determine the
16 net wages paid to the employee during the pay period;

17 C. The name and address of the employer and, if the employer is a farm labor
18 contractor, as defined in subdivision (b) of Section 1682 of the California Labor Code, the name
and address of the legal entity that secured the services of the employer during the pay period;

19 D. The name of the employee and only the last four digits of his or his
20 social security number or an employee identification number other than a social security number;
21 and

22 E. The number of piece-rate units earned and the piece rate.

23 58. “Promptly and easily determine,” as stated in California Labor Code § 226(e),
24 means a reasonable person would be able to readily ascertain the information without reference
to other documents or information.

25 59. As alleged herein, at all relevant times during the applicable limitations period,
26 Defendants violated California Labor Code section 226 because they did not properly and
27 accurately itemize each employee’s gross wages earned, net wages earned, the total hours worked,
28 the corresponding number of hours worked at each rate by the employee and other requirements



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1 of California Labor Code section 226. Defendants failed to state in the wage statements they
2 issued to Plaintiff and the other Aggrieved Employees all their hours worked and wages earned,
3 including, but not limited to, regular and overtime wages for work they performed off-the-clock
4 after clocking-out (as described above).

5 60. Defendants' failure to provide Plaintiff and the other Aggrieved Employees with
6 accurate wage statements was knowing and intentional. Defendants had the ability to provide
7 Plaintiff and the other Aggrieved Employees with accurate wage statements but intentionally
8 provided wage statements that Defendants knew were not accurate.

9 61. As a result of being provided with inaccurate wage statements by Defendants,
10 Plaintiff and the other Aggrieved Employees have suffered injury. Their legal rights to receive
11 accurate wage statements were violated and they were misled about the amount of wages they
12 had actually earned and were owed. In addition, the absence of accurate information on their wage
13 statements prevented immediate challenges to Defendants' unlawful pay practices, has required
14 discovery and mathematical computations to determine the amounts of wages owed, has caused
15 difficulty and expense in attempting to reconstruct time and pay records and/or has led to the
16 submission of inaccurate information about wages to state and federal government agencies.
17 Further, Plaintiff and the other Aggrieved Employees were not able to ascertain from the wage
18 statements whether Defendants complied with their obligations under California Labor Code
19 section 226(a).

20 **F. UNTIMELY WAGES DURING EMPLOYMENT**

21 62. Labor Code § 204 states:

22 (a) All wages, other than those mentioned in Section 201,
23 201.3, 202, 204.1, or 204.2, earned by any person in any
24 employment are due and payable twice during each
25 calendar month, on days designated in advance by the
26 employer as the regular paydays. Labor performed
27 between the 1st and 15th days, inclusive, of any calendar
28 month shall be paid for between the 16th and the 26th day
of the month during which the labor was performed, and
labor performed between the 16th and the last day,
inclusive, of any calendar month, shall be paid for
between the 1st and 10th day of the following month. ...

(b) (1) Notwithstanding any other provision of this
section, all wages earned for labor in excess of the normal



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work period shall be paid no later than the payday for the next regular payroll period.

(2) An employer is in compliance with the requirements of subdivision (a) of Section 226 relating to total hours worked by the employee, if hours worked in excess of the normal work period during the current pay period are itemized as corrections on the paystub for the next regular pay period. Any corrections set out in a subsequently issued paystub shall state the inclusive dates of the pay period for which the employer is correcting its initial report of hours worked.

(c) However, when employees are covered by a collective bargaining agreement that provides different pay arrangements, those arrangements shall apply to the covered employees.

(d) The requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.

63. Defendants failed to compensate Plaintiff and the Aggrieved Employees for all hours worked at the correct rates of pay, including overtime. Defendants failed to provide Plaintiff and the Aggrieved Employees with all meal and rest periods in compliance with California laws. Defendants also failed to provide Plaintiff and the Aggrieved Employees with all premium wages on workdays they failed to provide them with one or more meal or rest periods in compliance with California laws. As a result, Defendants failed to timely pay all earned minimum, overtime, and premium wages due during employment within the time periods set by California Labor Code section 204.

G. UNTIMELY FINAL WAGES

64. Labor Code § 201 provides that all earned and unpaid wages of an employee who is discharged are due and payable immediately at the time of discharge.

65. Labor Code § 202 provides that all earned and unpaid wages of an employee who quits after providing at least 72-hours notice before quitting are due and payable at the time of quitting and that all earned and unpaid wages of an employee who quits without providing at least



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72-hours notice before quitting are due and payable within 72 hours.

66. By failing to pay earned minimum and premium wages to Plaintiff and the Aggrieved Employees, Defendants failed to timely pay them all earned and unpaid wages in violation of Labor Code § 201 or § 202.

67. Plaintiff is informed and believes that Defendants' failures to timely pay Plaintiff and the Aggrieved Employees all of their earned and unpaid wages (described above) have been willful in that, at all relevant times, Defendants have deliberately maintained policies and practices that violate the requirements of the Labor Code and the Wage Order, even though at all relevant times, they have had the ability to comply with those legal requirements.

H. FAILURE TO MAINTAIN ACCURATE EMPLOYMENT RECORDS

68. Labor Code § 1174 states:

Every person employing labor in this state shall:

...

- (c) Keep a record showing the names and addresses of all employees employed and the ages of all minors.
- (d) Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by 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. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.

69. Labor Code § 1174.5 states:

Any person employing labor who willfully fails to maintain the records required by subdivision (c) of Section 1174, or to allow any member of the commission or employees of the division to inspect records pursuant to subdivision (b) of Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).

70. Section 7 of the Wage Order states:

- (A) Every employer shall keep accurate information with respect to



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each employee including the following:

- (1) Full name, home address, occupation and social security number.
- (2) Birth date, if under 18 years, and designation as a minor.
- (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded.
- (4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the Employee.
- (5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.
- (6) When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.

71. Labor Code § 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

72. On information and belief, Defendants have willfully failed to maintain the records required by § 1174 and Wage Order, including, but not limited to, the total premium wages earned for missed meal and rest periods, and records pertaining to all unpaid hours worked by Plaintiff and the Aggrieved Employees.

73. Accordingly, Ramirez seeks an award of civil penalties against the Defendants on behalf of himself and all of the other Aggrieved Employees as follows: (1) \$500 for each aggrieved employee for each violation of Labor Code section 1174 (penalties set by Labor Code section 1174.5); and (2) \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

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I. CIVIL PENALTIES SOUGHT

74. Defendants paid wages to employees on regular intervals. Defendants failed to pay Plaintiff on such intervals for all wages earned and all hours worked. On information and belief, Plaintiff alleges that Defendants also failed to pay the Aggrieved Employees on such intervals for all wages earned and all hours worked.

75. During the applicable time period, Defendants violated California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, 2802, and related Labor Code statutes.

76. California Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on behalf of themselves and other current or former employees, to bring a civil action to recover civil penalties pursuant to the procedures specified in California Labor Code § 2699.3.

77. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff and the Aggrieved Employees are entitled to recover civil penalties for each of the Defendants' violations of California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, 2802, and related Labor Code statutes during the applicable limitations period in the following amounts:

A. For violations of California Labor Code § 204, one hundred dollars (\$100.00) for each aggrieved employee for each initial violation and two hundred dollars (\$200.00) for each aggrieved employee for each subsequent, willful or intentional violation (penalty amounts established by California Labor Code § 210).

B. For violations of California Labor Code § 226, two hundred fifty dollars (\$250.00) per employee for initial violation and one thousand dollars (\$1,000.00) per employee for each subsequent violation (penalty amounts established by California Labor Code § 226.3).

C. For violations of California Labor Code §§ 510 and 512, fifty dollars (\$50.00) for each aggrieved employee for each initial violation for pay period for which the employee was underpaid and one hundred dollars (\$100.00) for each underpaid employee for each pay period for which the employee was underpaid (penalty amounts established by California Labor Code § 558).

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1 D. For violations of California Labor Code § 1174, five hundred dollars
2 (\$500.00) for each Aggrieved Employee for each initial violation (penalty amounts established
3 by Labor Code § 1174.5).

4 E. For violations of California Labor Code § 1197, one hundred dollars
5 (\$100.00) for each Aggrieved Employee for each initial and intentional violation and two hundred
6 fifty dollars (\$250.00) for each Aggrieved Employee for each subsequent violation, per pay period
7 (regardless of whether the initial violations were intentionally committed) (penalty amounts
8 established by California Labor Code § 1197.1).

9 F. For violations of California Labor Code §§ 201, 202, 203, 226.7, 1194,
10 1198, and 2802, one hundred dollars (\$100.00) for each aggrieved employee per pay period for
11 each initial violation and two hundred dollars (\$200.00) for each aggrieved employee per pay
12 period for each subsequent violation (penalty amounts established by California Labor Code
13 § 2699(f)(2)).

14 **J. NOTICE TO THE STATE OF CALIFORNIA AND DEFENDANTS**

15 78. Plaintiff has complied with the procedures for bringing suit specified in California
16 Labor Code § 2699.3. By letter dated October 13, 2023, Plaintiff gave written notice by certified
17 mail to the Labor and Workforce Development Agency (“LWDA”) and Defendants of the specific
18 provisions of the California Labor Code alleged to have been violated, including the facts and
19 theories to support the alleged violations. A true and correct copy of Plaintiff’s letter to the LWDA
20 dated October 13, 2023, is attached hereto as Exhibit A. The LWDA has not responded to
21 Plaintiff’s letter.

22 79. Pursuant to California Labor Code § 2699(g), Plaintiff and the Aggrieved
23 Employees are entitled to an award of civil penalties, reasonable attorneys’ fees, and costs in
24 connection with their claims for civil penalties.

25 **V. PRAYER FOR RELIEF**

26 80. WHEREFORE, Plaintiff, on behalf of himself and the Aggrieved Employees,
27 prays for relief and judgment against Defendants as follows:

- 28 A. Civil penalties;
- 29 B. Costs of suit;
- 30 C. Reasonable attorneys’ fees; and
- 31 D. Such other relief as the Court deems just and proper.



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Respectfully submitted,

Dated: December 18, 2023

[Signature]

DAVID G. SPIVAK, Attorney for
Plaintiff, RAFAEL RAMIREZ, and all
others similarly situated



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EXHIBIT “A”



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SENT BY ELECTRONIC SUBMISSION, CERTIFIED MAIL, AND EMAIL

October 13, 2023

Attn: PAGA Administrator
Labor and Workforce Development Agency
Attn: PAGA Administrator
<http://dir.tflaforms.net>
Via Electronic Submission

Re: Rafael Ramirez / Tailored Brands

To Whom It May Concern:

Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code sections 2698, *et seq.*, Rafael Ramirez (hereafter “Ramirez” or “Complainant”) provides notice that Tailored Shared Services, LLC, and related entities (collectively “the Tailored Brands Employers” or “the Employers”) violated his rights and those of all other individuals the Tailored Brands Employers have employed or otherwise contracted with in California as hourly, non-exempt employees, including store leads, individuals performing work comparable to the aforementioned, and individuals in similar positions (hereafter the “Aggrieved Employees”) under Labor Code sections 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, 2802, and related employee protections. On behalf of himself and all other Aggrieved Employees, Ramirez hereby provides this notice to the Labor & Workforce Development Agency and the Tailored Brands Employers and their agents and representatives.

At all relevant times, the Tailored Brands Employers have employed persons, conducted business, and engaged in illegal payroll practices and policies, throughout California. Ramirez and all of the other Aggrieved Employees are “employees” within the meaning of Industrial Welfare Commission Order No. 7-2001 (hereafter “the Wage Order”) section 2, subdivision (E) and “Aggrieved Employees” within the meaning of Labor Code section 2699(c).

Statement of Facts

On approximately January 21, 2022, the Tailored Brands Employers began to employ Ramirez in Chino in the position of hourly, non-exempt store lead. The Tailored Brands Employers continuously employed him in that capacity until on or about October 14, 2022, when his employment ended.

At all relevant times, the Tailored Brands Employers issued wages to Ramirez and all of the other Aggrieved Employees on a biweekly (26 paychecks/year) basis and paid them by the hour. At all relevant times, the Tailored Brands Employers classified Ramirez and all of the other Aggrieved Employees as non-exempt employees entitled to the protections of the Labor Code and the Wage Order.

The Tailored Brands Employers failed to compensate Ramirez and all of the other Aggrieved Employees for all hours worked at the applicable minimum or regular rates of pay. The Employers failed to compensate Ramirez and all of the other Aggrieved Employees for all hours worked at the applicable minimum or regular rates of pay. Ramirez and the Aggrieved Employees often worked five (5) to six (6) days in a workweek, and between eight (8) to ten (12) hours per workday. At all relevant times, Ramirez and the Aggrieved Employees worked over eight (8) hours in one workday and over forty (40) hours in one workweek.

At all relevant times, the Employers required Ramirez and the Aggrieved Employees to perform work while clocked-out and failed to compensate them for this time. Due to the workload and failure to hire sufficient staff members, the Employers often requested that Ramirez and the Aggrieved Employees continue to work after they had clocked-out, including for meal periods. Additionally, the Employers directed Ramirez and the Aggrieved Employees who were store leads to remain at their assigned store during meal periods unless another lead or manager was present to cover for them. Because there was not always another manager or lead present and because the Employers required the store leads to clock out for meal periods, the store leads took their meal periods clocked out and on the premises. Also, the Employers often directed Ramirez and the Aggrieved Employees to pick-up or drop-off store merchandise at other store locations after they had clocked-out. The Employers failed to compensate Ramirez and the Aggrieved Employees for this work performed off-the-clock.

At all relevant times, the Employers failed to provide Ramirez and all of the other Aggrieved Employees with all timely 30-minute, off-duty meal periods. The Employers also failed to pay premium wages for days on which they failed to provide Ramirez and all of the other Aggrieved Employees with meal periods as required by law. Due to the workload and failure to hire sufficient staff members, the Employers denied Ramirez and the Aggrieved Employees their 30-minute off-duty meal period within the first five hours of work. The Employers did not permit Ramirez and the other Aggrieved Employees working as store leads and in similar positions to leave the store unless there was another lead or manager present to cover for them. Therefore, Ramirez and the Aggrieved Employees were forced to forego their meal and rest breaks because there was no other lead or manager present to cover for them. Also, at all relevant times, the Employers did not hire sufficient staff to allow Ramirez and the Aggrieved Employees to take their timely meal and rest breaks. The Employers also denied 30-minute off-duty meal periods to Ramirez and the Aggrieved Employees because they were often interrupted by the Employers who required them to complete work tasks during meal breaks or to cut their meal-breaks short and return to work.

At all relevant times, the Tailored Brands Employers failed to authorize and permit Ramirez and all of the other Aggrieved Employees to take ten-minute, off-duty, paid rest breaks every four hours worked or major portion thereof. Due to the workload and failure to hire sufficient staff members, the Employers often requested that Ramirez and the Aggrieved Employees continue to work during rest breaks. Also, the Employers directed Ramirez and the Aggrieved Employees who were store leads to remain at their assigned store during meal periods unless another lead or manager was present to cover for them. Because there was not always another manager or lead present and because the Employers required the store leads to take rest periods, the store leads took their rest periods on the premises. Additionally, the Employers also denied 10-minute off-duty rest periods to Ramirez and the Aggrieved Employees because they were often interrupted by the Employers who required them to complete work tasks during rest breaks or to cut their rest-breaks short and return to work. The Tailored Brands Employers also failed to pay premium wages for days on which they failed to authorize and permit Ramirez and all of the other Aggrieved Employees to take rest breaks as required by law.

At all relevant times, the Tailored Brands Employers required Ramirez and the Aggrieved Employees to incur certain business expenses in the course of performing their duties. On several occasions, the Employers required Ramirez and the Aggrieved

Employees to drive ten (10) to fifteen (15) miles to the other store locations to pick-up or drop-off store merchandise. The Employers did not reimburse Ramirez and the Aggrieved Employees for such mileage expenses. The Tailored Brands Employers also required Ramirez and all of the other Aggrieved Employees to supply mobile phones and uniforms to perform their job duties. At all relevant times, Ramirez and the other Aggrieved Employees received several phone calls and text messages from their supervisors during the workday about work related matters. On a daily basis, the Employers repeatedly contacted Ramirez and the Aggrieved Employees on their personal phones, in order to receive updates on the store and the employees. Furthermore, at all relevant times, the Employers required Ramirez and the Aggrieved Employees to buy different sets of formal clothing on their own, to be worn every day. The uniforms they were required to purchase included button up shirts, dress pants, ties, formal shoes, coats, and vests. However, the Tailored Brands Employers did not provide these items and did not reimburse Ramirez and the other Aggrieved Employees for these items.

At all relevant times, the Tailored Brands Employers failed to issue to Ramirez and all of the other Aggrieved Employees complete and accurate wage statements that state all hours worked at the correct rates of pay, and all wages earned. The Tailored Brands Employers knowingly and intentionally failed to state on the wage statements they issued to Ramirez and all of the other Aggrieved Employees the unpaid wages discussed above. The wage statements fail to state all minimum wages earned, all regular wages earned, all meal period premium wages earned, all rest break premium wages earned, and related compensation.

The Tailored Brands Employers also failed to timely pay Ramirez and all of the other Aggrieved Employees all earned wages as described above during and at the conclusion of employment.

The Tailored Brands Employers failed to maintain accurate employee records of Ramirez and all of the other Aggrieved Employees.

For the reasons stated herein, Ramirez alleges the following violations of the Labor Code and the Wage Order on behalf of himself and all of the other Aggrieved Employees:

- (a) The Tailored Brands Employers failed to pay Ramirez and all of the other Aggrieved Employees all wages earned for all hours worked at the correct rates of pay, including minimum, and regular wages;
- (b) The Tailored Brands Employers failed to provide Ramirez and all of the other Aggrieved Employees all meal periods in compliance with California law;
- (c) The Tailored Brands Employers failed to authorize and permit Ramirez and all of the other Aggrieved Employees to take rest breaks in compliance with California law;
- (d) The Tailored Brands Employers failed to compensate Ramirez and all of the other Aggrieved Employees at one hour's pay for each day in which the Tailored Brands Employers failed to provide them with one or more meal periods as required by law;
- (e) The Tailored Brands Employers failed to compensate Ramirez and all of the other Aggrieved Employees at one hour's pay for each day in which the Tailored Brands Employers failed to authorize and permit them to take one or more rest breaks as required by law;
- (f) The Tailored Brands Employers failed to indemnify Ramirez and all of the other Aggrieved Employees for all necessary business expenditures incurred during the discharge of their duties;
- (g) The Tailored Brands Employers knowingly and intentionally failed to issue to Ramirez and all of the other Aggrieved Employees accurate and complete wage statements;
- (h) The Tailored Brands Employers willfully failed to timely pay Ramirez and all of the other Aggrieved Employees all earned and unpaid wages during their employment with the Tailored Brands Employers and when their employment ended;
- (i) The Tailored Brands Employers failed to maintain accurate employment records pertaining to Ramirez and all of the other Aggrieved Employees.

Accordingly, Ramirez now seeks civil penalties on behalf of himself and all of the other Aggrieved Employees based on the Tailored Brands Employers' alleged violations of the Labor Code and the Wage Order.

The Wage Order

The Wage Order applies to "all persons employed in the mercantile industry whether paid on a time, piece rate, commission, or other basis." Wage Order, § 1. The Wage Order defines "Mercantile Industry" to mean, "any industry, business, or establishment operated for the purpose of purchasing, selling, or distributing goods or commodities at wholesale or retail; or for the purpose of renting goods or commodities." Wage Order, § 2(H). At all relevant times during the applicable limitations period, the Tailored Brands Employers, Ramirez, and all of the Aggrieved Employees were covered by the Wage Order because the Tailored Brands Employers operated, and Ramirez, and all of the Aggrieved Employees worked for, one or more establishments operated as retail clothing stores. Accordingly, Ramirez and all of the other Aggrieved Employees are entitled to the protections the Wage Order provides.

Failure To Pay Wages For All Hours Worked At The Correct

Rates of Pay

(Lab. Code §§ 510, 1194, 1197, and 1198)

Under Labor Code section 1197, "The minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful."

In relevant part, section 2(G) of the Wage Order states,

"Hours worked" means 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[.]

In relevant part, Labor Code section 1194 states:

- (a) Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal

overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit.

In relevant part, Labor Code section 510 states:

Any 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. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

In relevant part, Section 3 of the Wage Order states:

The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to attend school and are not otherwise prohibited by law from engaging in the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40 in a workweek unless the employee receives one and one half (1½) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day's work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

- (a) One and one-half (1½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including twelve (12) hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek;
- (b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek. The

overtime rate of compensation required to be paid to a nonexempt full-time salaried employee shall be computed by using the employee's regular hourly salary as one fortieth (1/40) of the employee's weekly salary.

Labor Code § 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

In conjunction, these provisions of the Labor Code require employers to pay employees no less than their agreed-upon or statutorily mandated wage rates for all hours worked, including hours spent working "off-the-clock" (before punching in or after punching out on a time clock) when the employer knew or reasonably should have known that employees were working during those hours. *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 585.

At all relevant times during the applicable limitations period, the Tailored Brands Employers failed to compensate Ramirez and all of the other Aggrieved Employees for all hours worked, including, but not limited to minimum, and regular wages for all hours they worked at the correct rates of pay. Due to the workload and failure to hire sufficient staff members, the Employers denied Ramirez and the Aggrieved Employees their 30-minute off-duty meal period within the first five hours of work. The Employers did not permit Ramirez and the other Aggrieved Employees working as store leads and in similar positions to leave the store unless there was another lead or manager present to cover for them. Therefore, Ramirez and the Aggrieved Employees were forced to forego their meal and rest breaks because there was no other lead or manager present to cover for them. Also, at all relevant times, the Employers did not hire sufficient staff to allow Ramirez and the Aggrieved Employees to take their timely meal and rest breaks. The Employers also denied 30-minute off-duty meal periods to Ramirez and the Aggrieved Employees because they were often interrupted by the Employers who required them to complete work tasks during meal breaks or to cut their meal-breaks short and return to work. Accordingly, Ramirez now seeks civil penalties on behalf of himself and all of the other Aggrieved Employees as follows:

1. \$50 for each aggrieved employee for each initial violation of Labor Code § 510, and \$100 for each aggrieved employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by Labor Code § 558);

2. \$100 for each aggrieved employee for each initial violation of Labor Code § 1194, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code § 2699(f)(2));
3. \$100 for each underpaid aggrieved employee for each initial violation of Labor Code § 1197, and \$250 for each underpaid aggrieved employee for each subsequent violation per pay period (regardless of whether the initial violations were intentionally committed), in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203 (penalties set by Labor Code § 1197.1) and
4. \$100 for each aggrieved employee for each initial violation of Labor Code § 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code § 2699(f)(2)).

Failure to Provide Meal Periods
(Lab. Code §§ 226.7, 512, and 1198)

In relevant part, section 2(G) of the Wage Order states,

“Hours worked” means 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.

In relevant part, Labor Code section 1198 states, “The employment of any employee ... under conditions of labor prohibited by the [Wage Order] is unlawful.”

In relevant part, Labor Code section 512 states:

An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less

than 30 minutes, except that if the total hours worked is no more than 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.

In relevant part, section 11 of the Wage Order states:

Meal Periods:

- (A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee.
- (B) An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 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.
- (C) Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. An "on duty" meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.
- (D) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

- (E) In all places of employment where employees are required to eat on the premises, a suitable place for that purpose shall be designated.

In addition, Labor Code section 226.7 states:

- (b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.
- (c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

At all relevant times, the Tailored Brands Employers failed to provide Ramirez and all of the other Aggrieved Employees with all timely meal periods. The Tailored Brands Employers denied Ramirez and all of the other Aggrieved Employees their 30-minute off-duty meal period within the first five hours of work. Furthermore, the Tailored Brands Employers failed to pay premium wages for days on which they failed to provide Ramirez and all of the other Aggrieved Employees with timely meal periods. Due to the workload and failure to hire sufficient staff members, the Employers denied Ramirez and the Aggrieved Employees their 30-minute off-duty meal period within the first five hours of work. The Employers did not permit Ramirez and the other Aggrieved Employees working as store leads and in similar positions to leave the store unless there was another manager present to cover for them. Therefore, most times, Ramirez and the Aggrieved Employees were forced to forego their meal and rest breaks because there was no other employee present to cover for them. At all relevant times, the Employers did not hire sufficient staff to allow Ramirez and the Aggrieved

Employees to take their timely meal and rest breaks. The Employers also denied 30-minute off-duty meal periods to Ramirez and the Aggrieved Employees because they were often interrupted by the Employers who required them to complete work tasks during meal breaks or to cut their meal-breaks short and return to work. Accordingly, Ramirez now seeks civil penalties for these Labor Code violations that the Tailored Brands Employers have committed against him and all of the other Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of Labor Code section 226.7, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2));
2. \$50 for each aggrieved employee for each initial violation of Labor Code section 512, and \$100 for each aggrieved employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by Labor Code section 558); and
3. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Failure to Authorize and Permit Rest Periods
(Lab. Code §§ 226.7 & 1198)

Section 2(G) of the Wage Order states,

“Hours worked” means 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.

In relevant part, Labor Code section 1198 states,

The employment of any employee . . . under conditions of labor prohibited by the [Wage Order] is unlawful.

Section 12 of the Wage Order provides, in relevant part:

Rest Periods:

- (A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized 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. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 ½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.
- (B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided.

In addition, Labor Code section 226.7 states:

- (b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.
- (c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

The Tailored Brands Employers failed to authorize and permit Ramirez and all of the other Aggrieved Employees to take ten-minute, paid, duty-free rest breaks every four hours worked or major fraction thereof. The Tailored Brands Employers did not seek an exemption from the rest period protections of the Wage Order from the California Division of Labor Standards Enforcement. Due to the workload and failure to hire sufficient staff members, the Employers often requested that Ramirez and the Aggrieved Employees continue to work during rest breaks. Also, the Employers directed Ramirez and the Aggrieved Employees who were store leads to remain at their assigned store during meal periods unless another lead or manager was present to cover for them. Because there was not always another manager or lead present and because the Employers required the store leads to take rest periods, the store leads took their rest periods on the premises. Additionally, the Employers also denied 10-minute off-duty rest periods to Ramirez and the Aggrieved Employees because they were often interrupted by the Employers who required them to complete work tasks during rest breaks or to cut their rest-breaks short and return to work. Moreover, the Tailored Brands Employers failed to pay Ramirez and all of the other Aggrieved Employees premium wages on workdays the Tailored Brands Employers failed to provide Ramirez and all of the other Aggrieved Employees with 10-minute rest periods every four hours worked or major fraction thereof. Accordingly, Ramirez now seeks civil penalties for these Labor Code violations that the Tailored Brands Employers have committed against him and all of the other Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of Labor Code section 226.7, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)); and
2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Failure to Reimburse for Expenses
(Lab. Code §§ 1198 and 2802)

In pertinent part, Labor Code § 2802(a) states, “An employer shall indemnify his or her employee[s] for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her duties.”

Additionally, the Wage Order states,

- (A) When uniforms are required by the employer to be worn by the employee as a condition of employment, such uniforms shall be provided and maintained by the employer.

...

- (B) When tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft.

Wage Order, §§ 9(A) and (B).

Labor Code Section 1198 prohibits an employer from employing any person under conditions that violate the Wage Order.

As described above, the Tailored Brands Employers required Ramirez and all of the other Aggrieved Employees to incur certain business expenses in the course of performing their duties. On several occasions, the Employers required Ramirez and the Aggrieved Employees to drive ten (10) to fifteen (15) miles to the other store locations to pick-up or drop-off store merchandise. The Employers did not reimburse Ramirez and the Aggrieved Employees for such mileage expenses. The Tailored Brands Employers also required Ramirez and all of the other Aggrieved Employees to supply mobile phones and uniforms to perform their job duties. At all relevant times, Ramirez and the other Aggrieved Employees received several phone calls and text messages from their supervisors during the workday about work related matters. On a daily basis, the Employers repeatedly contacted Ramirez and the Aggrieved Employees on their personal phones, in order to receive updates on the store and the employees. Furthermore, at all relevant times, the Employers required Ramirez and the Aggrieved Employees to buy different sets of formal clothing on their own, to be worn every day. The uniforms they were required to purchase included button up shirts, dress pants, ties, formal shoes, coats, and vests. However, the Tailored Brands Employers did not provide these items and did not reimburse Ramirez and the other Aggrieved Employees

for these items. Accordingly, Ramirez seeks civil penalties for these Labor Code violations that the Tailored Brands Employers have committed against him and all of the other Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of Labor Code section 2802, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)); and
2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Failure to Provide Accurate Wage Statements
(Lab. Code § 226)

Labor Code section 226(a) requires an employer to provide an employee, either semi-monthly or at the time of each wage payment, with an accurate and itemized written wage statement that shows:

1. Gross wages earned;
2. Total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission;
3. The number of piece rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis;
4. All deductions, provided that all deductions made on written orders of the Employee may be aggregated and shown as one item;
5. Net wages earned;
6. The inclusive dates of the period for which the employee is paid;

7. The name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement;
8. The name and address of the legal entity that is the employer; and
9. All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

At all relevant times during the applicable limitations period, the Tailored Brands Employers violated Labor Code section 226 because they did not properly and accurately itemize each Aggrieved Employee's gross wages earned, net wages earned, the total hours worked, the corresponding number of hours worked at each rate by the Aggrieved Employee and other requirements of Labor Code section 226. The Tailored Brands Employers failed to state in the wage statements they issued to Ramirez and all of the other Aggrieved Employees all their hours worked and wages earned, including, but not limited to, regular and overtime wages for work they performed off-the-clock after clocking-out (as described above). The Tailored Brands Employers knowingly and intentionally failed to state on the wage statements they issued to Ramirez and all of the other Aggrieved Employees the earned but unpaid wages described above. The wage statements do not state all minimum wages earned, all regular wages earned, all meal period premium wages earned, all rest break premium wages earned, and related compensation. Accordingly, Ramirez seeks civil penalties for the Labor Code violations that the Tailored Brands Employers have committed against him and all of the other Aggrieved Employees as follows: \$250 for each aggrieved employee for each initial violation of Labor Code section 226(a), and \$1,000 for each aggrieved employee for each subsequent violation (penalties set by Labor Code section 226.3).

Failure to Timely Pay Wages During Employment
(Lab. Code § 204)

Labor Code section 204 states all wages (other than those mentioned in Labor Code sections 201 and 202) earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as

the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. In addition, all wages for work performed in excess of the normal work period must be paid by no later than the following regular payday.

The Tailored Brands Employers failed to compensate Ramirez and all of the other Aggrieved Employees for wages earned, including minimum wages, regular wages, unprovided meal period premium wages, unprovided rest break premium wages, and related compensation, at the intervals stated above. As a result, the Tailored Brands Employers failed to timely pay all earned wages due during employment within the time periods set by Labor Code section 204. Accordingly, Ramirez now seeks civil penalties for the Labor Code violations that the Tailored Brands Employers have committed against him and all of the other Aggrieved Employees as follows: \$100 for each aggrieved employee for each initial violation of Labor Code section 204, and \$200 for each aggrieved employee for each subsequent violation, plus 25% of the amount unlawfully withheld from each aggrieved employee (penalties set by Labor Code section 210).

Failure to Timely Pay Wages Upon Termination of Employment
(Lab. Code §§ 201, 202, and 203)

Under Labor Code § 201, if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. Under § 202, if an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 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. Notwithstanding any other provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. *Id.* The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting. *Id.*

Under Labor Code § 203, if an employer willfully fails to pay without abatement or reduction, in accordance with §§ 201 and 202, the wages of an employee who is

discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.

The Tailored Brands Employers failed to pay Ramirez and all of the other Aggrieved Employees whose employment ended all of the earned but unpaid wages described above by the conclusion of their employment with Ramirez, including minimum wages, regular wages, unprovided meal period premium wages, unprovided rest break premium wages, and related compensation. Additionally, the Tailored Brands Employers failed to issue to Ramirez and all of the other Aggrieved Employees whose employment ended their final paychecks until the next regular pay day following the termination. By failing to pay Ramirez and all of the other Aggrieved Employees as set forth above at the end of employment, the Tailored Brands Employers are liable for violations of Labor Code §§ 201, 202, and 203. Accordingly, on behalf of himself and all of the other Aggrieved Employees, Ramirez seeks civil penalties from the Tailored Brands Employers as follows:

1. For violations of Labor Code § 201, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 201 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of § 201 occurred (penalties set by Labor Code § 2699(f)(2));
2. For violations of Labor Code § 202, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 202 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of § 202 occurred (penalties set by Labor Code § 2699(f)(2)); and
3. For violations of Labor Code § 203, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 203 occurred, and \$200 for per aggrieved employee per pay period in which subsequent violations of § 203 occurred (penalties set by Labor Code § 2699(f)(2)).

Failure to Maintain Accurate Employment Records
(Lab. Code §§ 1174 & 1198)

Labor Code section 1174, which also pertains to recordkeeping, states:

Every person employing labor in this state shall:

...

- (c) Keep a record showing the names and addresses of all employees employed and the ages of all minors.
- (d) Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by 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. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.

Labor Code section 1174.5 states:

Any person employing labor who willfully fails to maintain the records required by subdivision (c) of Section 1174 or accurate and complete records required by subdivision (d) of Section 1174, or to allow any member of the commission or employees of the division to inspect records pursuant to subdivision (b) of Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).

Section 7 of Wage Order states,

- (A) Every employer shall keep accurate information with respect to each employee including the following:
 - (1) Full name, home address, occupation, and social security number.
 - (2) Birth date, if under 18 years, and designation as a minor.

- (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded.
- (4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the Employee.
- (5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.
- (6) When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.

Labor Code section 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

The Tailored Brands Employers failed to compensate Ramirez and all of the other Aggrieved Employees for all hours worked at the correct rates of pay, including all minimum wages earned, all regular wages earned, all meal period premium wages earned, all rest break premium wages earned, and related compensation. As a result, the Tailored Brands Employers have failed to accurately maintain all records required by section 1174 and the Wage Order, including but not limited to Ramirez and all of the other Aggrieved Employees' total hours worked, total wages paid, and applicable hourly rates during each payroll period. Accordingly, Ramirez seeks civil penalties on behalf of himself and all of the other Aggrieved Employees as follows:

1. \$500 for each aggrieved employee for each violation of Labor Code section 1174 (penalties set by Labor Code section 1174.5); and

2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Conclusion

As noted above, this letter constitutes the required notice under the Labor Code Private Attorneys General Act of 2004. Please be advised that Rafael Ramirez will seek both reasonable attorneys' fees and costs under Labor Code section 2699(g)(1) in a civil action should the LWDA decline to pursue this matter. This letter also serves as a formal notice under the catalyst theory and Code of Civil Procedure section 1021.5 to resolve this matter before litigation.

Sincerely,



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cc: Rafael Ramirez

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