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ELECTRONICALLY FILED
Superior Court of California
County of Sacramento
07/10/2025
By: A. Gray Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO

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

Plaintiff,

vs.

SPORTSMAN'S WAREHOUSE
SOUTHWEST, INC., a California
corporation; SPORTSMAN'S
WAREHOUSE, INC., a Utah corporation;
SPORTSMAN'S WAREHOUSE
HOLDINGS, INC., a Delaware corporation;
and DOES 1 through 10, inclusive,

Defendants.

Case No.: 24CV001742

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

- (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime);
- (2) Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 (Unpaid Minimum Wages);
- (3) Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 (Failure to Provide Meal Periods);
- (4) Violation of California Labor Code §§ 226.7, 516, and 1198 (Failure to Authorize and Permit Rest Periods);
- (5) Violation of California Labor Code §§ 226(a), 1174(d), and 1198 (Non-Compliant Wage Statements and Failure to Maintain Payroll Records);
- (6) Violation of California Labor Code §§ 201 and 202 (Wages Not Timely Paid Upon Termination);
- (7) Violation of California Labor Code § 204 (Failure to Timely Pay Wages During Employment);
- (8) Violation of California Labor Code § 2802 (Unreimbursed Business Expenses);
- (9) Civil Penalties for Violations of California Labor Code, Pursuant to PAGA, §§ 2698, *et seq.*;
- (10) Violation of California Business &

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Professions Code §§ 17200, *et seq.*
(Unlawful Business Practices); and
(11) Violation of California Business &
Professions Code §§ 17200, *et seq.* (Unfair
Business Practices)

Jury Trial Demanded

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

4 JURISDICTION AND VENUE

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

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

1 form a significant basis for Plaintiff's claims; and (d) no other class action has been filed
2 within the past three (3) years on behalf of the same proposed class against Defendants
3 asserting the same or similar factual allegations.

4 3. Venue is proper in this Court, because Defendants employ persons within the
5 County of Sacramento, and have violated the requirements of the California Labor Code and
6 applicable IWC Wage Order in this county which give rise to the penalties sought in this
7 action. Cal. Code Civ. P. § 393. Specifically, Defendants have violated the requirements of
8 the California Labor Code and applicable IWC Wage Order in at least two locations within the
9 County of Sacramento, including Defendants' locations in Elk Grove (8217 Laguna
10 Boulevard, Elk Grove, California 95758) and Rancho Cordova (2344 Sunrise Boulevard,
11 Rancho Cordova, California 95670). Pursuant to California Civil Code of Procedure section
12 393, venue is proper for the recovery of a penalty or forfeiture imposed by statute in the
13 county in which the cause, or some part of the cause, arose. Because Defendants have
14 employees in Sacramento County and Plaintiff could bring this action to recover penalties in
15 Sacramento County, venue is proper.

16 **THE PARTIES**

17 4. Plaintiff Christopher Johnson is a resident of Corning, in Tehama County,
18 California. Defendants employed Plaintiff as an hourly paid, non-exempt employee from
19 approximately May 2019 to December 2023. Plaintiff worked for Defendants as a Sales
20 Associate, Hunting Lead, Department Manager, and Office Manager at their location in Chico,
21 California. During his employment, Plaintiff typically worked eight (8) hours or more per day
22 and five (5) days or more per week. Plaintiff's primary job duties included, without
23 limitation, assisting customers, merchandising, maintaining hunting department, conducting
24 firearm inventory, opening and closing the store, responding to Alcohol, Tobacco, and
25 Firearms compliance requests, training employees, completing payroll, accounting, and
26 tracking sales.

27 5. SPORTSMAN'S WAREHOUSE SOUTHWEST, INC. was and is, upon
28 information and belief, a California corporation, and at all times hereinafter mentioned, an

1 employer whose employees are engaged throughout this county and the State of California.

2 6. SPORTSMAN’S WAREHOUSE, INC. was and is, upon information and
3 belief, a Utah corporation, and at all times hereinafter mentioned, an employer whose
4 employees are engaged throughout this county and the State of California.

5 7. SPORTSMAN’S WAREHOUSE HOLDINGS, INC. was and is, upon
6 information and belief, a Delaware corporation, and at all times hereinafter mentioned, an
7 employer whose employees are engaged throughout this county and the State of California.

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

12 9. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10
13 were the partners, agents, owners, or managers of SPORTSMAN’S WAREHOUSE
14 SOUTHWEST, INC.; SPORTSMAN’S WAREHOUSE, INC.; and SPORTSMAN’S
15 WAREHOUSE HOLDINGS, INC. at all relevant times.

16 10. Plaintiff is informed and believes, and thereon alleges, that each and all of the
17 acts and omissions alleged herein was performed by, or is attributable to, SPORTSMAN’S
18 WAREHOUSE SOUTHWEST, INC.; SPORTSMAN’S WAREHOUSE, INC.;
19 SPORTSMAN’S WAREHOUSE HOLDINGS, INC.; and/or DOES 1 through 10 (collectively,
20 “Defendants” or “SPORTSMAN’S WAREHOUSE”), each acting as the agent, employee,
21 alter ego, and/or joint venturer of, or working in concert with, each of the other co-Defendants
22 and was acting within the course and scope of such agency, employment, joint venture, or
23 concerted activity with legal authority to act on the others’ behalf. The acts of any and all
24 Defendants were in accordance with, and represent, the official policy of Defendants.

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

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

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

14 14. Plaintiff is informed and believes, and thereon alleges, that at all relevant times,
15 Defendants, and each of them, have acted as joint employers with respect to Plaintiff and class
16 members because Defendants have:

- 17 (a) jointly exercised meaningful control over the work performed by
18 Plaintiff and class members;
- 19 (b) jointly exercised meaningful control over Plaintiff’s and class members’
20 wages, hours, and working conditions, including the quantity, quality
21 standards, speed, scheduling, and operative details of the tasks
22 performed by Plaintiff and class members;
- 23 (c) jointly required that Plaintiff and class members perform work which is
24 an integral part of Defendants’ businesses; and
- 25 (d) jointly exercised control over Plaintiff and class members as a matter of
26 economic reality in that Plaintiff and class members were dependent on
27 Defendants, who shared the power to set the wages of Plaintiff and class
28 members and determined their working conditions, and who jointly

1 reaped the benefits from the underpayment of their wages and
2 noncompliance with other statutory provisions governing their
3 employment.

4 15. Plaintiff is informed and believes, and thereon alleges, that at all relevant times
5 there has existed a unity of interest and ownership between Defendants such that any
6 individuality and separateness between the entities has ceased.

7 16. SPORTSMAN'S WAREHOUSE SOUTHWEST, INC.; SPORTSMAN'S
8 WAREHOUSE, INC.; SPORTSMAN'S WAREHOUSE HOLDINGS, INC.; and DOES 1
9 through 10 are therefore alter egos of each other.

10 17. Adherence to the fiction of the separate existence of Defendants would permit
11 an abuse of the corporate privilege, and would promote injustice by protecting Defendants
12 from liability for the wrongful acts committed by them under the name SPORTSMAN'S
13 WAREHOUSE.

14 18. Plaintiff further alleges, upon information and belief, that Defendants
15 SPORTSMAN'S WAREHOUSE SOUTHWEST, INC.; SPORTSMAN'S WAREHOUSE,
16 INC.; and SPORTSMAN'S WAREHOUSE HOLDINGS, INC. are alter egos of each other for
17 the following reasons:

- 18 (a) According to SPORTSMAN'S WAREHOUSE HOLDINGS, INC.'s
19 SEC Form 10-K filing¹, SPORTSMAN'S WAREHOUSE
20 SOUTHWEST, INC. and SPORTSMAN'S WAREHOUSE, INC. are
21 subsidiaries of SPORTSMAN'S WAREHOUSE HOLDINGS, INC;
22 (b) On the California Secretary of State's website
23 (<https://bizfileonline.sos.ca.gov/>) and the Utah Division of Corporations
24 and Commercial Code website (<https://secure.utah.gov/bes/>),
25 SPORTSMAN'S WAREHOUSE SOUTHWEST, INC.;
26 SPORTSMAN'S WAREHOUSE, INC.; and SPORTSMAN'S

27 ¹ 10-K Annual Report 04/13/2023, "SEC Filings | Sportsman's Warehouse Holdings,
28 Inc.," <https://investors.sportsmans.com/financial-information/sec-filings> (last accessed Jan.
30, 2024).

1 WAREHOUSE HOLDINGS, INC. share the same principal address
2 and/or mailing address, “1475 W. 9000 S. SUITE A., WEST JORDAN,
3 UT 84088”;

4 (c) According to their most recent “Statement of Information” forms filed
5 with the California Secretary of State, SPORTSMAN’S WAREHOUSE
6 SOUTHWEST, INC. and SPORTSMAN’S WAREHOUSE, INC. share
7 the officers, including, but not limited to, Jeff White and Joseph
8 Schneider;

9 (d) On the California Secretary of State’s website and the Utah Division of
10 Corporations and Commercial Code website, SPORTSMAN’S
11 WAREHOUSE SOUTHWEST, INC.; SPORTSMAN’S WAREHOUSE,
12 INC.; and SPORTSMAN’S WAREHOUSE HOLDINGS, INC. share
13 the same agent for service of process, C T CORPORATION SYSTEM;
14 and

15 (e) On information and belief, SPORTSMAN’S WAREHOUSE
16 SOUTHWEST, INC.; SPORTSMAN’S WAREHOUSE, INC.; and
17 SPORTSMAN’S WAREHOUSE HOLDINGS, INC. utilize the same
18 standardized employment forms and issue the same employment
19 policies.

20 **GENERAL ALLEGATIONS**

21 19. Defendants are an American outdoor sporting goods retailer which operates
22 approximately 17 store locations in California. Upon information and belief, Defendants
23 maintain a single, centralized Human Resources (“HR”) department at their company
24 headquarters in West Jordan, Utah, which is responsible for the recruiting and hiring of new
25 employees, and communicating and implementing Defendants’ company-wide policies,
26 including timekeeping policies and meal and rest period policies, to employees throughout
27 California.

28 20. In particular, Plaintiff and class members, on information and belief, received

1 the same standardized documents and/or written policies. Upon information and belief, the
2 usage of standardized documents and/or written policies, including new-hire documents,
3 indicate that Defendants dictated policies at the corporate level and implemented them
4 company-wide, regardless of their employees' assigned locations or positions. Upon
5 information and belief, Defendants set forth uniform policies and procedures in several
6 documents provided at an employee's time of hire.

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

15 22. Defendants continue to employ non-exempt or hourly paid employees in
16 California.

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

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

23 25. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
24 should have known that Plaintiff and class members were entitled to receive certain wages for
25 overtime compensation and that they were not receiving certain wages for overtime
26 compensation.

27 26. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
28 should have known that Plaintiff and class members were entitled to be paid at a regular rate

1 of pay, and corresponding rates of pay for overtime wages and/or meal and rest period
2 premiums, that included as eligible income all remuneration required by law, including but not
3 limited to, all income derived from incentive pay, nondiscretionary bonuses, and/or other
4 forms of compensation, but failed to include all forms of remuneration in calculating the
5 regular rate of pay for Plaintiff and class members.

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

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

19 29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
20 should have known that Plaintiff and class members were entitled to rest periods in
21 accordance with the California Labor Code and applicable IWC Wage Order or payment of
22 one (1) additional hour of pay at their regular rates of pay when they were not authorized and
23 permitted to take a compliant rest period and that Plaintiff and class members were not
24 authorized and permitted to take compliant rest periods or provided with payment of one (1)
25 additional hour of pay at their regular rates of pay when they were not authorized and
26 permitted to take a compliant rest period.

27 30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
28 should have known that Plaintiff and class members were entitled to receive complete and

1 accurate wage statements in accordance with California law. In violation of the California
2 Labor Code, Plaintiff and class members were not provided complete and accurate wage
3 statements.

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

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

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

19 34. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
20 should have known that they were prohibited from issuing instruments for the payment of
21 wages that were not payable in cash, on demand, without discount, and with authorization, but
22 did so, in violation of the California Labor Code.

23 35. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
24 should have known that Plaintiff and/or class members were entitled to the portion of wages
25 previously paid and subsequently unlawfully deducted by Defendants.

26 36. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
27 should have known that Plaintiff and/or class members were entitled to payment of wages as
28 designated by statute. In violation of the California Labor Code, Defendants secretly paid

1 Plaintiff and/or class members lower wages than required by statute while purporting to pay
2 them proper wages.

3 37. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
4 should have known that Plaintiff and/or class members were entitled to receive sick leave
5 benefits to be paid at a regular rate of pay, that included, as eligible income, all income
6 derived from incentive pay, nondiscretionary bonuses, and/or other forms of compensation. In
7 violation of the California Labor Code, Defendants failed to include all forms of remuneration
8 in calculating the regular rate of pay for sick leave pay.

9 38. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
10 should have known that they were not permitted to compel or coerce Plaintiff and class
11 members to patronize their business in the purchase of anything of value, but did in fact
12 require Plaintiff and class members to purchase various items, including uniform items, from
13 Defendants.

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

20 40. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
21 should have known that Plaintiff and class members were entitled to receive full
22 reimbursement for all business-related expenses and costs they incurred during the course and
23 scope of their employment and that they did not receive full reimbursement of applicable
24 business-related expenses and costs incurred.

25 41. Plaintiff is informed and believes, and thereon alleges, that at all times herein
26 mentioned, Defendants knew or should have known that they had a duty to compensate
27 Plaintiff and class members for all hours worked, and that Defendants had the financial ability
28 to pay such compensation, but willfully, knowingly, and intentionally failed to do so, and

1 falsely represented to Plaintiff and class members that they were properly denied wages, all in
2 order to increase Defendants' profits.

3 **PAGA REPRESENTATIVE ALLEGATIONS**

4 42. At all times herein set forth, PAGA provides that any provision of law under
5 the Labor Code and applicable IWC Wage Order that provides for a civil penalty to be
6 assessed and collected by the Labor and Workforce Development Agency ("LWDA") for
7 violations of the California Labor Code and applicable IWC Wage Order may, as an
8 alternative, be recovered by aggrieved employees in a civil action brought on behalf of
9 themselves and other current or former employees pursuant to procedures outlined in
10 California Labor Code section 2699.3.

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

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

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

- 20 (a) The aggrieved employee or representative shall give written notice by
21 online filing with the LWDA and by certified mail to the employer of
22 the specific provisions of the California Labor Code alleged to have
23 been violated, including the facts and theories to support the alleged
24 violation.
- 25 (b) An aggrieved employee's notice filed with the LWDA pursuant to
26 2699.3(a) and any employer response to that notice shall be
27 accompanied by a filing fee of seventy-five dollars (\$75).
- 28 (c) The LWDA shall notify the employer and the aggrieved employee or

1 representative by certified mail that it does not intend to investigate the
2 alleged violation (“LWDA Notice”) within sixty (60) calendar days of
3 the postmark date of the aggrieved employee’s notice. Upon receipt of
4 the LWDA Notice, or if no LWDA Notice is provided within sixty-five
5 (65) calendar days of the postmark date of the aggrieved employee’s
6 notice, the aggrieved employee may commence a civil action pursuant
7 to California Labor Code section 2699 to recover civil penalties.

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

- 12 (a) The aggrieved employee or representative shall give written notice by
13 online filing with the LWDA and by certified mail to the employer of
14 the specific provisions of the California Labor Code alleged to have
15 been violated (other than those listed in Section 2699.5), including the
16 facts and theories to support the alleged violation.
- 17 (b) An aggrieved employee’s notice filed with the LWDA pursuant to
18 2699.3(c) and any employer response to that notice shall be
19 accompanied by a filing fee of seventy-five dollars (\$75).
- 20 (c) The employer may cure the alleged violation within thirty-three (33)
21 calendar days of the postmark date of the notice sent by the aggrieved
22 employee or representative. The employer shall give written notice
23 within that period of time by certified mail to the aggrieved employee or
24 representative and by online filing with the LWDA if the alleged
25 violation is cured, including a description of actions taken, and no civil
26 action pursuant to Section 2699 may commence. If the alleged violation
27 is not cured within the 33-day period, the aggrieved employee may
28 commence a civil action pursuant to Section 2699.

1 47. On February 23, 2024, Plaintiff provided written notice by online filing to the
2 LWDA and by Certified Mail to Defendants of the specific provisions of the California Labor
3 Code alleged to have been violated, including facts and theories to support the alleged
4 violations, in accordance with California Labor Code section 2699.3. Plaintiff's written
5 notice was accompanied with the applicable filing fee of seventy-five dollars (\$75). The
6 LWDA PAGA Administrator confirmed receipt of Plaintiff's written notice and assigned
7 Plaintiff PAGA Case Number LWDA-CM-1012813-24. A true and correct copy of Plaintiff's
8 written notice to the LWDA and Defendants is attached hereto as "Exhibit 1."

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

12 49. Thus, Plaintiff has satisfied the administrative prerequisites under California
13 Labor Code section 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
14 violations of California Labor Code sections 201, 202, 203, 204, 210, 212, 213, 221, 223, 224,
15 226(a), 226.7, 227.3, 246, 450, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198,
16 and 2802.

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

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

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

4 53. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a),
5 2699.3(a), 2699.3(c), and 2699.5, and section 558, Plaintiff, acting in the public interest as a
6 private attorney general, seeks assessment and collection of civil penalties for himself, all
7 other aggrieved employees, and the State of California against Defendants for violations of
8 California Labor Code sections 201, 202, 203, 204, 210, 212, 213, 221, 223, 224, 226(a),
9 226.7, 227.3, 246, 450, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and
10 2802.

11 **CLASS ACTION ALLEGATIONS**

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

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

17 56. Plaintiff's proposed class consists of and is defined as follows:

18 All persons who worked for Defendants as non-exempt, hourly
19 paid employees in California, at any time from September 24,
20 2020, until the date of trial ("Class").

21 57. Plaintiff's proposed subclass consists of and is defined as follows:

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

26 58. Members of the Class and Subclass are referred to herein as "class members."

27 59. Plaintiff reserves the right to redefine the Class and Subclass and to add
28 additional subclasses as appropriate based on further investigation, discovery, and specific
theories of liability.

 60. There are common questions of law and fact as to class members that

predominate over questions affecting only individual members, including, but not limited to:

- (a) Whether Defendants required Plaintiff and class members to work over eight (8) hours per day, over twelve (12) hours per day, or over forty (40) hours per week and failed to pay all legally required overtime compensation to Plaintiff and class members;
- (b) Whether Defendants failed to include all forms of remuneration in the regular rate of pay as required by law for purposes of paying overtime wages and/or meal and rest period premiums to Plaintiff and class members;
- (c) Whether Defendants failed to pay Plaintiff and class members at least minimum wages for all hours worked;
- (d) Whether Defendants failed to provide Plaintiff and class members with meal periods;
- (e) Whether Defendants failed to authorize and permit Plaintiff and class members to take rest periods;
- (f) Whether Defendants provided Plaintiff and class members with complete and accurate wage statements as required by California Labor Code section 226(a);
- (g) Whether Defendants maintained accurate payroll records as required by California Labor Code section 1174(d);
- (h) Whether Defendants failed to pay earned overtime wages, minimum wages, and/or meal and rest period premiums due to Plaintiff and class members upon their discharge;
- (i) Whether Defendants failed timely to pay overtime wages, minimum wages, and/or meal and rest period premiums due to Plaintiff and class members during their employment;
- (j) Whether Defendants issued instruments for the payment of wages that were not payable in cash, on demand, without discount, and with prior

1 authorization in violation of California Labor Code sections 212 and
2 213;

3 (k) Whether Defendants unlawfully deducted a portion of wages previously
4 paid to Plaintiff and class members, in violation of California Labor
5 Code sections 221 and 224;

6 (l) Whether Defendants secretly paid Plaintiff and class members lower
7 wages than required by statute while purporting to pay the proper
8 wages, in violation of California Labor Code section 223;

9 (m) Whether Defendants compelled and/or coerced Plaintiff and class
10 members to patronize their business;

11 (n) Whether Defendants failed to reimburse Plaintiff and class members for
12 necessary and required business-related expenditures and/or losses
13 incurred by them in the scope of their employment;

14 (o) Whether Defendants engaged in unlawful and unfair business practices
15 in violation of California Business & Professions Code sections 17200,
16 *et seq.*; and

17 (p) The appropriate amount of damages, restitution, or monetary penalties
18 resulting from Defendants' violations of California law.

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

21 (a) Numerosity: The class members are so numerous that joinder of all
22 members would be unfeasible and impractical. The membership of the
23 entire class is unknown to Plaintiff at this time; however, the class is
24 estimated to be greater than one hundred (100) individuals and the
25 identity of such membership is readily ascertainable by inspection of
26 Defendants' employment records.

27 (b) Typicality: Plaintiff is qualified to, and will, fairly and adequately
28 protect the interests of each class member with whom he has a well-

1 defined community of interest, and Plaintiff's claims (or defenses, if
2 any) are typical of all class members as demonstrated herein.

3 (c) Adequacy: Plaintiff is qualified to, and will, fairly and adequately
4 protect the interests of each class member with whom he has a well-
5 defined community of interest and typicality of claims, as demonstrated
6 herein. Plaintiff acknowledges that he has an obligation to make known
7 to the Court any relationship, conflicts or differences with any class
8 member. Plaintiff's attorneys, the proposed class counsel, are versed in
9 the rules governing class action discovery, certification, and settlement.
10 Plaintiff has incurred, and throughout the duration of this action, will
11 continue to incur costs and attorneys' fees that have been, are, and will
12 be necessarily expended for the prosecution of this action for the
13 substantial benefit of each class member.

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

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

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3 **FIRST CAUSE OF ACTION**

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

5 **(Against all Defendants)**

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

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

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

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

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

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

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

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

10 69. During the relevant time period, Defendants had, and continue to have, a
11 company-wide policy and/or practice of discouraging and impeding Plaintiff and class
12 members from recording hours worked that were outside of their scheduled shifts in order to
13 limit the amount of overtime employees could accrue. On information and belief, this
14 limitation on overtime accrual was based on a company-wide policy of staffing locations
15 strictly based on the labor hours or labor budget set by corporate. This policy of limiting
16 overtime, coupled with Defendants' practices and/or policies of understaffing, assigning
17 heavy workloads, and requiring employees to obtain pre-approval of overtime hours from
18 Defendants' management, led Plaintiff and class members to work off-the-clock before and
19 after their scheduled shift times in order to complete assigned tasks. For example,
20 approximately twice per week and for 30 minutes each instance, Plaintiff was required to
21 work prior to the start of his scheduled shifts performing various tasks such as preparing the
22 store for opening, restocking, and handling payroll or inventory issues. As a further example,
23 approximately twice per week and up to one (1) hour each instance, Plaintiff was required to
24 work after clocking out from his shifts completing duties such as merchandising, cashiering,
25 reviewing inventory and payroll, and handling employee issues. Additionally, on information
26 and belief, Defendants' management would alter and/or falsify time records to shave off this
27 time Plaintiff spent working in order to limit overtime accrual. This off-the-clock work could
28 have been recorded by Defendants, but they refused to do so to avoid payment of additional

1 wages to Plaintiff and class members. Thus, Defendants failed to track the time employees
2 spent working off the clock, and Plaintiff and class members received no compensation for
3 this time.

4 70. Furthermore, Defendants had, and continue to have, a company-wide security
5 policy and/or practice of requiring managerial employees to leave the store premises together
6 in pairs and/or groups. After clocking out at the end of their closing shifts, Plaintiff and class
7 members were required to wait for all other managerial employees to complete their own
8 duties before they could leave Defendants' premises together. For example, Plaintiff would
9 often clock out at his scheduled shift-end time, and then have wait up to 30 minutes until all
10 other managerial employees completed their duties and clocked out, before being able to leave
11 the premises. As a result, Plaintiff and class members were subject to Defendants' control
12 after they had clocked out from their shifts, but were not compensated for this time.

13 71. Moreover, during the relevant time period, Defendants only provided Plaintiff
14 and class members with a single timekeeping machine at the front of the store, thus forcing
15 Plaintiff and class members to wait in line off-the-clock and under Defendants' control, time
16 for which they were not paid. For example, Plaintiff and class members would arrive early in
17 order to clock in for the start of their shifts, and were required to wait in a line to clock in.
18 Defendants' insufficient number of timekeeping machines forced Plaintiff and class members
19 to wait in line off-the-clock and under Defendants' control in order to clock in for their shifts,
20 time for which they were not paid.

21 72. Second, as stated, during the relevant time period, Defendants had, and
22 continue to have, a company-wide policy and/or practice of staffing their locations strictly
23 based on the labor hours or labor budget set by corporate. Defendants' use of a labor budget
24 resulted in chronic understaffing, such that there were too few employees on duty to handle
25 customer demand and provide meal period coverage. Moreover, Defendants also failed to
26 adhere to a schedule for meal periods, which further caused Plaintiff and class members to not
27 be relieved of their duties for compliant meal periods. As a result, Plaintiff and class members
28 were not afforded uninterrupted thirty (30) minute meal periods during shifts in which they

1 were entitled to receive meal periods. For example, Plaintiff worked through his meal periods
2 approximately 1-2 times per week and had his meal periods interrupted due to the lack of
3 coverage and the heavy workload. Consequently, Plaintiff and class members were required
4 to work through and/or had their unpaid meal periods interrupted in order to complete their
5 assigned duties and handle customer demand, time for which they were not paid.

6 73. Third, Defendants had a company-wide practice and/or policy of requiring that
7 Plaintiff and class members carry and respond to company-issued walkie-talkies at all times,
8 including during meal periods. For example, Plaintiff would often have his meal periods
9 interrupted and/or shortened when called on his company-issued walkie-talkie by other
10 employees needing assistance on the sales floor. Further, Defendants have a requirement that
11 a store manager be present on the floor at all times and prohibited store managers from
12 leaving the premises during their shifts. Thus, when Plaintiff was an acting store manager he
13 was expected to supervise the store and respond to customer complaints at all times, including
14 during meal periods. Because managerial employees were restricted from leaving the
15 premises during meal periods, Plaintiff and class members were denied the ability to use meal
16 periods freely for their own purposes, such as running personal errands. Thus, Defendants
17 effectively maintained control over Plaintiff and managerial employees during meal periods.
18 Defendants knew or should have known that Plaintiff and class members were performing
19 work while off-the-clock in order to meet Defendants' expectations, but failed to compensate
20 them for this time.

21 74. Fourth, on information and belief, because Defendants frowned upon
22 employees accruing meal period penalties, Defendants' management pressured Plaintiff and
23 class members to clock out for meal periods and/or adjusted Plaintiff's and class members'
24 time records to reflect compliant meal periods, even when they did not receive a compliant
25 meal period. Additionally, Defendants' company-wide timekeeping system prevented
26 Plaintiff and class members from recording all hours worked when their meal periods were
27 shortened or interrupted, because the system locked out employees once they clocked out for a
28 meal period, and would not permit them to clock back in from a meal period until 30 minutes

1 elapsed. Thus, Defendants did not record all hours worked during meal periods, and Plaintiff
2 and class members performed work during meal periods for which they were not paid.

3 75. Defendants knew or should have known that as a result of these company-wide
4 practices and/or policies, Plaintiff and class members were performing their assigned duties
5 off-the-clock before and after their shifts and during meal periods, and were suffered or
6 permitted to perform work for which they were not paid. Because Plaintiff and class members
7 worked shifts of eight (8) hours or more a day, or forty (40) hours a week or more, some of
8 this off-the-clock work qualified for overtime premium pay. Therefore, Plaintiff and class
9 members were not paid overtime wages for all of the overtime hours they actually worked.

10 76. Moreover, Defendants did not pay Plaintiff and class members the correct
11 overtime rates for the recorded overtime hours that they generated. In addition to an hourly
12 wage, Defendants paid Plaintiff and class members incentive pay, nondiscretionary bonuses,
13 and/or other forms of remuneration. However, in violation of the California Labor Code,
14 Defendants failed to incorporate all compensation, including incentive pay, nondiscretionary
15 bonuses, and/or other forms of remuneration, into the calculation of the regular rate of pay for
16 purposes of calculating the overtime wage rate. Therefore, during times when Plaintiff and
17 class members worked overtime and received these other forms of pay, Defendants failed to
18 pay all overtime wages by paying a lower overtime rate than required.

19 77. For example, Defendants paid Plaintiff and class members bonuses and
20 incentive payments, which were listed on Plaintiff's and class members' wage statements as
21 "Bonus," "Incentive Bonus," and "Gun Ad." During pay periods that Plaintiff and class
22 members were paid overtime wages, Defendants did not incorporate these payments into
23 Plaintiff's and class members' regular rate of pay and, as a result, paid them at incorrect and
24 lower rates of pay for overtime hours worked. Specifically, Defendants paid Plaintiff and
25 class members 1.5 times their hourly rate of pay instead of 1.5 times their regular rate of pay.
26 Defendants' failure to properly calculate the overtime rates of pay based on all remuneration
27 paid has resulted in an underpayment of overtime wages to Plaintiff and class members on a
28 company-wide basis.

78. Defendants' failure to pay Plaintiff and class members the balance of overtime compensation as required by California law, violates the provisions of California Labor Code sections 510 and 1198. Pursuant to California Labor Code section 1194, Plaintiff and class members are entitled to recover from Defendants their unpaid overtime compensation, as well as interest, costs, and attorneys' fees.

SECOND CAUSE OF ACTION

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

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

80. At all relevant times, California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 provide that the minimum wage for employees fixed by the IWC is the minimum wage to be paid to employees, and the payment of a wage less than the minimum so fixed is unlawful. Compensable work time is defined in IWC Wage Order No. 7-2001 as “the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.” Cal. Code Regs. Tit. 8, § 11070(2)(G) (defining “Hours Worked”).

81. As set forth above, as a result of Defendants' policies of limiting the amount of overtime employees could accrue pursuant to their labor budget practices, understaffing, and assigning heavy workloads, Defendants required Plaintiff and class members to perform work off-the-clock. As also stated, due to Defendants' practices of management altering and/or falsifying time records, Plaintiff and class members were prevented from recording the entire time worked outside of their scheduled shifts, and thus were not paid for this time. For example, Defendants required Plaintiff and class members to work off the clock before and after their scheduled shifts to complete tasks such as waiting in line to clock in, preparing the store for opening, restocking, handling payroll or inventory issues, merchandising, cashiering, handling employee issues, and waiting for other managerial employees to complete their

1 duties before being able to leave the store premises. However, Defendants failed to track all
2 of this time Plaintiff and class members spent working off-the-clock, and thus, Plaintiff and
3 class members received no compensation for this time.

4 82. Additionally, as set forth above, due to Defendants' policies and/or practices of
5 utilizing labor budgets, understaffing their locations, assigning heavy workloads, failing to
6 adhere to a schedule for meal periods, and/or requiring store manager employees to stay on
7 the store premises during meal periods, Plaintiff and class members were impeded from taking
8 all uninterrupted meal periods to which they were entitled and were required to work off-the-
9 clock during meal periods, including responding to calls on company-issued walkie-talkies,
10 time for which they were not paid.

11 83. Also, as stated above, on information and belief, because Defendants frowned
12 upon employees accruing meal period penalties, Defendants' managers pressured employees
13 to clock out for meal periods and/or adjusted Plaintiff's and class members' time records to
14 reflect compliant meal periods, even when they did not receive a compliant meal period.
15 Additionally, as stated, Defendants' company-wide timekeeping system prevented Plaintiff
16 and class members from entering time worked during meal periods because the system locked
17 out Plaintiff and class members for a full 30 minutes. Thus, Defendants systematically failed
18 to pay Plaintiff and class members for actual hours worked during unpaid meal periods
19 because these hours were not always correctly recorded.

20 84. Defendants did not pay minimum wages for all hours worked by Plaintiff and
21 class members. To the extent that these off-the-clock hours did not qualify for overtime
22 premium payment, Defendants did not pay at least minimum wages for those hours worked
23 off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and
24 1198.

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

1 interest thereon.

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3 **THIRD CAUSE OF ACTION**

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

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

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

16 88. At all relevant times herein set forth, California Labor Code sections 226.7,
17 512(a), 516, and 1198 provide that no employer shall require an employee to work during any
18 meal period mandated by an applicable order of the IWC.

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

26 90. First, during the relevant period, as stated, Defendants had, and continue to
27 have, company-wide policies and/or practices of understaffing their locations due to labor
28 budgeting and/or limited payroll allocation, assigning heavy workloads, and failing to adhere

1 to a schedule for meal periods, which resulted in a lack of meal period coverage and prevented
2 Plaintiff and class members from taking all timely meal periods to which they were entitled.
3 As a result, Plaintiff and class members were forced to work in excess of five (5) hours before
4 taking a meal period, had their meal periods interrupted, and/or had to forgo their meal
5 periods altogether. Additionally, as stated, Defendants had a company-wide policy and/or
6 practice of requiring that Plaintiff and class members carry a company-issued walkie-talkie to
7 respond to requests at all times, including during meal periods. For example, approximately
8 twice per week, Plaintiff missed his meal periods due to the demanding workload and lack of
9 coverage. Further, about twice per week, Plaintiff took his meal periods late, after having
10 worked in excess of five (5) hours into his shift, in order to complete his assigned duties or
11 meet customer demand. Moreover, as set forth above, Defendants have a requirement that
12 store managers be present on the floor at all times, including during meal periods. As a result,
13 Plaintiff and other managerial employees would have their meal periods interrupted or would
14 work through them in order to assist their coworkers and customers.

15 91. Second, as set forth above, on information and belief, because Defendants
16 frowned upon employees accruing meal period penalties, Defendants' management pressured
17 employees to clock out for meal periods and/or adjusted their time records to reflect compliant
18 meal periods regardless of whether they had received a compliant meal period or not, in order
19 to strictly limit the meal penalties that would need to be paid by Defendants. Also, as stated,
20 Defendants' company-wide timekeeping system prevented Plaintiff and class members from
21 recording when their meal periods were shortened or interrupted, because the system locked
22 out Plaintiff and class members once they clocked out for a meal period, and would not permit
23 them to clock back in from a meal period before 30 minutes had elapsed. For example,
24 Plaintiff was unable to record when his meal periods were interrupted or shortened by other
25 employees requesting assistance on the sales floor or communications on his company-issued
26 walkie-talkie.

27 92. Third, Defendants did not provide Plaintiff and class members with second 30-
28 minute meal periods on days that they worked in excess of 10 hours in one day. For example,

1 during the relevant time period, Plaintiff worked shifts in excess of 10 hours in one day and
2 did not always take a second meal period. Plaintiff and class members did not sign valid meal
3 period waivers on days that they were entitled to meal periods and were not relieved of all
4 duties.

5 93. At all times mentioned herein, Defendants knew or should have known that as a
6 result of their policies, Plaintiff and class members were prevented from being relieved of all
7 duties and required to perform some of their assigned duties during meal periods. Defendants
8 further knew or should have known that they did not pay Plaintiff and class members all meal
9 period premiums when meal periods were late, interrupted, shortened, and/or missed.

10 94. Furthermore, Defendants engaged in a company-wide practice and/or policy of
11 not paying meal period premiums owed when compliant meal periods are not provided.
12 Because of this practice and/or policy, Plaintiff and class members have not received premium
13 pay for all missed, late, and interrupted meal periods. Alternatively, to the extent that
14 Defendants did pay Plaintiff and class members premium pay for missed, late, and interrupted
15 meal periods, Defendants did not pay Plaintiff and class members at the correct rate of pay for
16 premiums because Defendants systematically failed to include all forms of compensation,
17 such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the
18 regular rate of pay. As a result, Defendants failed to provide Plaintiff and class members
19 compliant meal periods in violation of California Labor Code sections 226.7, 512(a), and 516
20 and failed to pay the full meal period premiums due.

21 95. Defendants' conduct violates the applicable IWC Wage Order, and California
22 Labor Code sections 226.7, 512(a), 516, and 1198. Plaintiff and class members are therefore
23 entitled to recover from Defendants one (1) additional hour of pay at the employee's regular
24 rate of compensation for each work day that the meal period was not provided.

25 **FOURTH CAUSE OF ACTION**

26 **Violation of California Labor Code §§ 226.7, 516, and 1198—Rest Period Violations** 27 **(Against all Defendants)**

28 96. Plaintiff incorporates by reference and re-alleges as if fully stated herein each

1 and every allegation set forth above.

2 97. At all relevant times herein set forth, the applicable IWC Wage Order and
3 California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiff's and class
4 members' employment by Defendants.

5 98. At all relevant times, the applicable IWC Wage Order provides that "[e]very
6 employer shall authorize and permit all employees to take rest periods, which insofar as
7 practicable shall be in the middle of each work period" and that the "rest period time shall be
8 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
9 hours or major fraction thereof" unless the total daily work time is less than three and one-half
10 (3 ½) hours.

11 99. At all relevant times, California Labor Code section 226.7 provides that no
12 employer shall require an employee to work during any rest period mandated by an applicable
13 order of the California IWC. To comply with its obligation to authorize and permit rest
14 periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an
15 employer must "relinquish any control over how employees spend their break time, and
16 relieve their employees of all duties—including the obligation that an employee remain on
17 call. A rest period, in short, must be a period of rest." *Augustus v. ABM Security Services,*
18 *Inc.*, 2 Cal. 5th 257, 273 (2016). Pursuant to the applicable IWC Wage Order and California
19 Labor Code section 226.7(c), Plaintiff and class members are entitled to recover from
20 Defendants one (1) additional hour of pay at their regular rates of pay for each work day that a
21 required rest period was not authorized and permitted.

22 100. During the relevant time period, Defendants regularly failed to authorize and
23 permit Plaintiff and class members to take a ten (10) minute rest period per each four (4) hour
24 period worked or major fraction thereof. As with meal periods, Defendants' company-wide
25 use of labor budgeting and/or limited payroll allocation, understaffing, and assigning heavy
26 workloads, resulted in a lack of rest period coverage and prevented Plaintiff and class
27 members from being relieved of all duty in order to take their rest periods. Defendants also
28 failed to adhere to a schedule for rest periods, which, coupled with Defendants' failure to

1 provide adequate rest period coverage, further led to Plaintiff and class members not being
2 authorized and permitted to take compliant rest periods. In addition, as with meal periods,
3 Defendants' company-wide practice of requiring that Plaintiff and class members carry a
4 company-issued walkie-talkie to respond to questions and requests prevented Plaintiff and
5 class members from being able to take rest periods.

6 101. Furthermore, Defendants maintained and implemented a company-wide on-
7 premises rest period policy, which mandated that Plaintiff and/or class members remain on the
8 premises during their rest periods. Because Plaintiff and/or class members were restricted
9 from leaving Defendants' premises during rest periods, they were denied the ability to use
10 their rest periods freely for their own purposes, such as completing personal errands. Thus,
11 Defendants effectively maintained control over Plaintiff and/or class members during rest
12 periods.

13 102. As a result of Defendants' practices and policies, Plaintiff and class members
14 worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without
15 receiving all uninterrupted rest periods to which they were entitled. For example, Plaintiff had
16 to forego some of his rest periods in order to handle the heavy workload and due to the lack of
17 coverage. When Plaintiff was able to take his rest periods, they were interrupted by other
18 employees calling Plaintiff for assistance, including on his company-issued walkie-talkie.

19 103. Defendants have also engaged in a systematic, company-wide practice and/or
20 policy of not paying rest period premiums owed when rest periods are not authorized and
21 permitted. Because of this practice and/or policy, Plaintiff and class members have not
22 received premium pay for all missed rest periods. Alternatively, to the extent that Defendants
23 did pay Plaintiff and class members one (1) additional hour of premium pay for missed rest
24 periods, Defendants did not pay Plaintiff and class members at the correct rate of pay for
25 premiums because Defendants failed to include all forms of compensation, such as incentive
26 pay, nondiscretionary bonuses, and/or other forms of remuneration. As a result, Defendants
27 denied Plaintiff and class members rest periods and failed to pay them rest period premiums
28 due, in violation of Labor Code sections 226.7 and 516, and the applicable IWC Wage Order.

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

FIFTH CAUSE OF ACTION

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

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

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

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

108. Because Defendants did not accurately record the time Plaintiff and Subclass members spent working off-the-clock and deducted time from their records for meal periods that were interrupted and/or missed (and therefore time for which they should have been paid), Defendants did not list the correct amount of gross wages and net wages earned by Plaintiff

1 and Subclass members in compliance with sections 226(a)(1) and 226(a)(5). For the same
2 reason, Defendants failed to accurately list the total number of hours worked by Plaintiff and
3 Subclass members in violation of section 226(a)(2), and failed to list the applicable hourly
4 rates of pay in effect during the pay period and corresponding accurate number of work hours
5 worked at each hourly rate in violation of section 226(a)(9).

6 109. In addition, because Defendants did not calculate Plaintiff's and Subclass
7 members' regular rate of pay correctly for purposes of paying overtime wages and/or meal and
8 rest period premiums, Defendants did not list the correct amount of gross wages in compliance
9 with section 226(a)(1). For the same reason, Defendants failed to list the correct amount of
10 net wages in violation of section 226(a)(5). Defendants also failed to correctly list all
11 applicable hourly rates in effect during the pay period, namely, correct rates of pay for
12 overtime wages and/or meal and rest period premiums, in violation of section 226(a)(9).

13 110. The wage statement deficiencies also include, without limitation, failing to list
14 the number of piece-rate units earned and any applicable piece rate if the employee is paid on
15 a piece-rate basis; failing to list all deductions; failing to list the inclusive dates of the period
16 for which employees were paid; failing to list the name of the employee and only the last four
17 digits of his or her social security number or an employee identification number other than a
18 social security number; failing to list the name and address of the legal entity that is the
19 employer; and/or failing to state all hours worked as a result of not recording or stating hours
20 worked off-the-clock. In addition, Defendants failed to provide Plaintiff and Subclass
21 members the option to elect to receive hard copies of their wage statements at any time and/or
22 failed to provide them with the ability to easily access the information and convert the wage
23 statements into hard copies at no expense to them.

24 111. California Labor Code section 1174(d) provides that "[e]very person employing
25 labor in this state shall . . . [k]eep a record showing the names and addresses of all employees
26 employed and the ages of all minors" and "[k]eep, at a central location in the state or at the
27 plants or establishments at which employees are employed, payroll records showing the hours
28 worked daily by and the wages paid to, and the number of piece-rate units earned by and any

1 applicable piece rate paid to, employees employed at the respective plants or
2 establishments” At all relevant times, and in violation of Labor Code section 1174(d),
3 Defendants willfully failed to maintain accurate payroll records for Plaintiff and Subclass
4 members showing the daily hours they worked and the wages paid thereto as a result of failing
5 to record the off-the-clock hours that they worked.

6 112. California Labor Code section 1198 provides that the maximum hours of work
7 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as
8 set forth in the applicable IWC Wage Order. Section 1198 further provides that “[t]he
9 employment of any employees for longer hours than those fixed by the order or under
10 conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC
11 Wage Order, employers are required to keep accurate time records showing when the
12 employee begins and ends each work period. During the relevant time period, Defendants
13 engaged in company-wide practices and/or policies of failing to record actual hours worked
14 (including falsifying time records by recording that compliant meal periods were taken
15 regardless of if or when meal periods were actually taken), and thereby failed to keep accurate
16 records of work period and meal period start and end times for Plaintiff and Subclass
17 members, in violation of section 1198. Furthermore, in light of Defendants’ failure to provide
18 Plaintiff and Subclass members with second 30-minute meal periods to which they were
19 entitled, Defendants kept no records of meal start and end times for second meal periods

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

24 SIXTH CAUSE OF ACTION

25 Violation of California Labor Code §§ 201 and 202—Wages Not Timely Paid Upon 26 Termination 27 (Against all Defendants)

28 114. Plaintiff incorporates by reference and re-alleges as if fully stated herein each

1 and every allegation set forth above.

2 115. This cause of action is dependent upon, and wholly derivative of, the overtime
3 wages, minimum wages, and/or meal and rest period premiums that were not timely paid to
4 Plaintiff and those class members no longer employed by Defendants upon their termination.

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

12 117. Defendants willfully failed to pay Plaintiff and class members who are no
13 longer employed by Defendants the earned and unpaid wages set forth above, including but
14 not limited to, overtime wages, minimum wages, and/or meal and rest period premiums, either
15 at the time of discharge, or within seventy-two (72) hours of their leaving Defendants'
16 employ.

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

23 **SEVENTH CAUSE OF ACTION**

24 **Violation of California Labor Code § 204—Failure to Timely Pay Wages During**
25 **Employment**
26 **(Against all Defendants)**

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

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

4 121. At all times relevant herein set forth, Labor Code section 204 provides that all
5 wages earned by any person in any employment between the first (1st) and the fifteenth (15th)
6 days, inclusive, of any calendar month, other than those wages due upon termination of an
7 employee, are due and payable between the sixteenth (16th) and the twenty-sixth (26th) day of
8 the month during which the labor was performed.

9 122. At all times relevant herein, Labor Code section 204 provides that all wages
10 earned by any person in any employment between the sixteenth (16th) and the last day,
11 inclusive, of any calendar month, other than those wages due upon termination of an
12 employee, are due and payable between the first (1st) and the tenth (10th) day of the following
13 month.

14 123. At all times relevant herein, Labor Code section 204 provides that all wages
15 earned for labor in excess of the normal work period shall be paid no later than the payday for
16 the next regular payroll period. Alternatively, at all times relevant herein, Labor Code section
17 204 provides that the requirements of this section are deemed satisfied by the payment of
18 wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than
19 seven (7) calendar days following the close of the payroll period.

20 124. During the relevant time period, Defendants willfully failed to pay Plaintiff and
21 class members all wages due including, but not limited to, overtime wages, minimum wages,
22 and/or meal and rest period premiums, within the time periods specified by California Labor
23 Code section 204.

24 125. Defendants' failure to pay Plaintiff and class members all wages due violates
25 Labor Code section 204. Plaintiff and class members are therefore entitled to recover from
26 Defendants the statutory penalty wages pursuant to California Labor Code section 210.

27 **EIGHTH CAUSE OF ACTION**

28 **Violation of California Labor Code § 2802—Unpaid Business-Related Expenses**

(Against all Defendants)

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

127. At all times herein set forth, California Labor Code section 2802 provides that an employer must reimburse employees for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order, IWC Wage Order No. 7-2001, provides that: "[w]hen the employer requires the use of tools or equipment or they 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 may provide and maintain hand tools and equipment customarily required by the particular trade or craft." IWC Wage Order No. 7-2001 further provides that: "[w]hen 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."

128. First, during the relevant time period, Defendants, on a company-wide basis, required that Plaintiff and class members use their own personal mobile devices, including, but not limited to, cellular phones, and/or mobile data to carry out their job duties but failed to reimburse them for the costs of their work-related mobile device expenses. For example, Plaintiff and class members would be contacted on their personal mobile devices by their managers to discuss work-related matters. Further, Plaintiff used his personal cellular phone to take and send photographs of the store to Defendants' management. Additionally, Defendants required Plaintiff and class members to download a mobile application, "Webex Meeting," in order to attend mandatory virtual meetings. Finally, Plaintiff used his personal cellular phone to communicate with Defendants' management via email. Although Defendants required Plaintiff and class members to utilize their personal mobile devices to carry out their work-related responsibilities, Defendants failed to reimburse them for this cost.

1 129. Second, during the relevant time period, Defendants, on a company-wide basis,
2 required that Plaintiff and class members use their own personal vehicles to run company
3 errands. For example, on a few occasions throughout his employment, Plaintiff was required
4 to use his personal vehicle and drive to one of Defendants' other store locations to pick up or
5 drop off inventory. Although Defendants required Plaintiff and class members to utilize their
6 personal vehicles to carry out their work-related responsibilities, Defendants failed to
7 reimburse them for their mileage or travel expenses.

8 130. Third, during the relevant time period, Defendants required Plaintiff and class
9 members to wear uniforms bearing the Sportsman's Warehouse company logo, including
10 uniform shirts. However, Defendants did not provide their employees with sufficient
11 uniforms to wear for their shifts throughout the week. For example, Defendants only provided
12 Plaintiff and class members with two (2) shirts at the time of hire. Because Defendants failed
13 to provide their employees with an adequate number of uniforms in relation to their scheduled
14 shifts and for the tasks they were required to perform, Plaintiff and class members were forced
15 to pay out-of-pocket for some of their uniform items. For example, Plaintiff spent
16 approximately \$44 out-of-pocket to purchase an additional four (4) uniform shirts from
17 Defendants. Since Defendants did not provide an adequate number of uniform components to
18 all employees, Plaintiff and class members were required to purchase additional uniform
19 items, such as shirts, directly from Defendants, and were not reimbursed for these costs.

20 131. Defendants could have provided Plaintiff and class members with the actual
21 equipment for use on the job, such as company mobile devices and company vehicles, as well
22 as an adequate number of uniform items; or Defendants could have reimbursed employees for
23 the costs of their mobile device usage, mileage, travel expenses, and additional uniforms.
24 Instead, Defendants passed these operating costs off onto Plaintiff and class members. At all
25 relevant times, Plaintiff did not earn at least two (2) times the minimum wage.

26 132. Defendants' company-wide policy and/or practice of not reimbursing
27 employees for expenses necessarily incurred and passing on their operating costs to Plaintiff
28 and class members violates California Labor Code section 2802. Defendants have

intentionally and willfully failed to reimburse Plaintiff and class members for necessary business-related expenses and costs.

133. Plaintiff and class members are entitled to recover from Defendants their business-related expenses incurred during the course and scope of their employment, plus interest.

NINTH CAUSE OF ACTION

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

(Against all Defendants)

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

135. California Labor Code §§ 2698, *et seq.* (“PAGA”) permits Plaintiff to recover civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 203, 204, 210, 212, 213, 221, 223, 224, 226(a), 226.7, 227.3, 450, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, and 2802. Labor Code section 2699.3(c) permits aggrieved employees, including Plaintiff, to recover civil penalties for violations of those Labor Code sections not found in section 2699.5, including sections 246, 516, and 1182.12.

136. Defendants’ conduct, as alleged herein, violates numerous sections of the California Labor Code, including, but not limited to, the following:

- (a) Violation of Labor Code sections 510 and 1198, and the applicable IWC Wage Order for Defendants’ failure to compensate Plaintiff and other aggrieved employees with all required overtime pay, as alleged herein;
- (b) Violation of Labor Code sections 226.7, 510, and 1198, and the applicable IWC Wage Order for Defendants’ failure to include all forms of remuneration in the regular rate of pay as required by law for purposes of paying overtime wages and/or meal and rest period premiums to Plaintiff and other aggrieved employees, as alleged herein;
- (c) Violation of Labor Code sections 1182.12, 1194, 1197, 1197.1, and

1 1198, and the applicable IWC Wage Order for Defendants' failure to
2 compensate Plaintiff and other aggrieved employees with at least
3 minimum wages for all hours worked, as alleged herein;

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

7 (e) Violation of Labor Code sections 226.7, 516, and 1198, and the
8 applicable IWC Wage Order for Defendants' failure to authorize and
9 permit Plaintiff and other aggrieved employees to take rest periods, as
10 alleged herein;

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

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

17 (h) Violation of Labor Code sections 201, 202, 203, and 227.3 for failure to
18 pay all earned wages and vested vacation upon termination, as alleged
19 herein;

20 (i) Violation of Labor Code section 204 for failure to pay all earned wages
21 during employment, as alleged herein;

22 (j) Violation of Labor Code sections 212 and 213 for issuing instruments
23 for the payment of wages that were not payable in cash on demand,
24 without discount, and with prior authorization, as set forth below;

25 (k) Violation of Labor Code sections 221 and 224 for unlawfully deducting
26 a portion of wages previously paid to Plaintiff and/or other aggrieved
27 employees, as set forth below;

28 (l) Violation of Labor Code section 223 for secretly paying Plaintiff and/or

1 other aggrieved employees lower wages than required by statute, while
2 purporting to pay the proper wages, as set forth below;

3 (m) Violation of Labor Code section 246 for failure to properly calculate the
4 sick leave paid to other aggrieved employees, as set forth below;

5 (n) Violation of Labor Code section 450 for compelling Plaintiff and other
6 aggrieved employees to patronize Defendants' or any other person's
7 business in the purchase of anything of value, as set forth below;

8 (o) Violation of Labor Code section 1198 and the applicable IWC Wage
9 Order for failure to provide suitable seating, as set forth below; and

10 (p) Violation of Labor Code section 2802 for failure to reimburse Plaintiff
11 and other aggrieved employees for all business expenses necessarily
12 incurred, as alleged herein.

13 137. At all relevant times herein set forth, California Labor Code section 212
14 prohibits employers from issuing any instruments for the payment of wages unless such
15 instruments are negotiable and payable in cash on demand and without discount. California
16 Labor Code section 213 permits employers to pay employees via direct deposit so long as the
17 employee authorizes payment via direct deposit. Under California law, employers are also
18 permitted to fulfill their wage payment obligations to employees by using payroll debit cards,
19 but only under certain circumstances. Employer use of payroll debit cards is permitted only
20 so long as the employee is given the choice as to whether to accept a payroll debit card as a
21 form of payment. *Johnson v. Sunrise Senior Living Management, Inc.*, No. 16 CV 00443
22 BRO RAOx, 2016 WL 8929249, *9 (C.D. Cal. May 5, 2016). In *Johnson*, the court stated
23 that the Division of Labor Standards Enforcement ("DLSE") decision deeming payroll debit
24 card program permissible relied heavily on:

25 . . . [T]he fact that the pay programs were optional, thereby allowing an
26 employee to either participate in the program or receive his or her pay in
27 some other way, such as direct deposit. Specifically, the DLSE opined
28 that "[t]he success of the described procedure, in practice, will of course
require that . . . it is presented as an *alternative* method for wage payment
for which [the employees'] participation is optional." The DLSE also

1 stated, “[i]t is significant that the program does not mandate employee
2 participation in the Money Network Service and that it is designed to
3 provide an alternative for employees receiving their wage payment.
4 Employees are also given the option of having their pay direct deposited
5 into an account of their choosing” (internal citations omitted).

6 138. In addition, employers can only utilize payroll debit card programs if they
7 provide employees with effective access to their wages without discount. The DLSE has
8 interpreted Labor Code sections 212 and 213 as permitting employer use of payroll debit cards
9 where the following requirements are satisfied:

10 . . . (1) [T]he “wages [are] payable at some established place of business
11 in the state and there be at least 30 days of sufficient funds for payment,”;
12 (2) the employees are “fully informed of the service and procedures and
13 that it is represented as an alternative method for wage payment for which
14 their participation is optional,”; (3) the employees receive “an itemized
15 wage statement,”; and (4) “at least one transaction per pay period [is]
16 without fee.”

17 *Ortiz v. Randstad North America, L.P.*, No. C-13-5050 MMC, 2015 WL 6202298 at 3.

18 139. Further, the DLSE notes that the Labor Code manifests:

19 . . . [A] strong public policy that prohibits an employer (or its agent) from
20 imposing conditions or obstacles which interfere with or prevent an
21 employee’s (sic) from promptly receiving their due wages in *full*. The
22 imposition of a fee in order to readily *access* one’s earned and paid wages
23 under a payroll card program which is designed to discharge the
24 employer’s wage payment obligations could impermissibly interfere with
25 an employee’s receipt of paid wages by creating a financial condition
26 which would have the *effect* of reducing or discounting wages because
27 such fee would be charged against the same account in which wages are
28 deposited. (emphases in original)

DLSE opinion letter 2008.07.07. The DLSE has also acknowledged that payroll service
providers “effectively act as agents of the client employers in discharging the employer’s
wage payment obligations.” *Id.* In a second opinion letter, the DLSE stated that “[w]hile the
Labor Code does not purport to regulate the specific arrangements between employers and
payroll service providers, both an employer and, under the express language in Labor Code
§ 212- their *agent*, must comply with its requirements.” *DLSE opinion letter* 2008.07.07-2.

 140. During the relevant time period, Defendants had an agreement with a payroll
service provider, U.S. Bank Focus, for the issuance of payroll debit cards to employees,
including Plaintiff and other aggrieved employees, to discharge their wage payment

1 obligations to their employees. On information and belief, Defendants had a practice and/or
2 policy of automatically issuing payroll debit cards to departing employees without giving
3 them the option to elect their form of payment for their final wages. For example, Plaintiff
4 received his final wages on a payroll debit card without a choice of an alternate method of
5 payment, such as a written check. Instead, Defendants automatically enrolled Plaintiff in their
6 payroll debit card program for the purpose of issuing Plaintiff's final wages to him without
7 prior, voluntary approval from Plaintiff.

8 141. Moreover, under Defendants' payroll debit card program, Plaintiff and/or other
9 aggrieved employees did not have easy access to the entirety of their wages without incurring
10 a fee. For example, Plaintiff and/or other aggrieved employees were unable to withdraw their
11 entire wages in at least one transaction without incurring a fee and/or were subjected to
12 transaction fees when withdrawing their wages from an out-of-network ATM, which resulted
13 in a discount in their pay. Thus, Defendants' payroll debit card program was, and continues to
14 be, unlawful as it did not give Plaintiff and other aggrieved employees access to their entire
15 wages without discount and without delay.

16 142. California courts recognize a policy favoring the full and prompt payment of
17 wages to employees. Defendants' payroll card program is inconsistent with this policy
18 because it presents a number of obstacles and hurdles that, together, make it difficult for
19 Plaintiff and other aggrieved employees to access their entire wages without discount and
20 without delay, in violation of California Labor Code sections 212 and 213. Plaintiff and other
21 aggrieved employees are therefore entitled to recover civil penalties pursuant to Labor Code
22 sections 225.5 and/or 2699(a), (f), and (g).

23 143. At all relevant times herein, California Labor Code section 221 provides that it
24 shall be unlawful for any employer to collect or receive from an employee any part of wages
25 theretofore paid by said employer to said employee. California Labor Code section 224 also
26 provides in pertinent part that it is lawful to withhold a portion of the employee's wages if "a
27 deduction is expressly authorized in writing by the employee."

28 144. During the relevant time period, Defendants unlawfully deducted a portion of

1 wages previously paid to Plaintiff and/or other aggrieved employees in violation of California
2 Labor Code section 221. On information and belief, Defendants systematically, and on a
3 company-wide basis, provided Plaintiff and other aggrieved employees with payroll debit
4 cards as payment of their wages and/or final wages. Under Defendants' payroll debit card
5 program, Plaintiff and/or other aggrieved employees were assessed various fees in connection
6 with their use of the payroll debit cards. For example, as described above, Plaintiff and/or
7 other aggrieved employees were required to pay out-of-network ATM withdrawal fees and/or
8 other fees to obtain and/or spend their earned and due wages. The fees charged to Plaintiff
9 and/or other aggrieved employees resulted in a discount of their wages.

10 145. Defendants' payroll debit card program, which resulted in a discount of wages
11 to employees, are tantamount to taking deductions from Plaintiff's and/or other aggrieved
12 employees' paychecks without their written authorization and therefore constitutes an
13 unlawful deduction of wages, in violation of Labor Code sections 221 and 224. Plaintiff
14 and/or other aggrieved employees are therefore entitled to recover civil penalties pursuant to
15 Labor Code sections 225.5 and/or 2699(a), (f), and (g).

16 146. At all relevant times herein, California Labor Code section 223 makes it
17 unlawful for an employer to secretly pay wages lower than required by statute while
18 purporting to pay legal wages.

19 147. During the relevant time period, Defendants willfully and systematically issued
20 payroll debit cards to Plaintiff and/or other aggrieved employees that discounted their wages
21 by charging various fees in connection with the use of the payroll debit cards. Defendants'
22 payroll debit card program resulted in the payment of less than statutorily required wages to
23 Plaintiff and/or other aggrieved employees. Thus, Defendants paid Plaintiff and/or other
24 aggrieved employees lower wages than those they were entitled to while purporting that
25 Plaintiff and/or other aggrieved employees were properly paid.

26 148. Defendants' failure to pay Plaintiff and/or other aggrieved employees the
27 correct designated wages, while purporting to pay legal wages, is a violation of California
28 Labor Code section 223. Plaintiff and/or other aggrieved employees are therefore entitled to

1 recover civil penalties pursuant to Labor Code sections 225.5 and/or 2699(a), (f), and (g).

2 149. At all relevant times herein, California Labor Code section 450 provides that an
3 employer may not “compel or coerce any employee, or applicant for employment, to patronize
4 his or her employer, or any other person, in the purchase of anything of value.” An employer
5 violates section 450 by forcing an employee to patronize the employer’s business in the
6 purchase of a company-provided good.

7 150. During the relevant time period, Defendants had a company-wide policy of not
8 providing a sufficient number of uniform items to Plaintiff and other aggrieved employees in
9 relation to the shifts they were scheduled to work. During his employment, Plaintiff was
10 scheduled to work five (5) days per week and Defendants provided him with only two (2)
11 shirts, forcing him to purchase additional shirts from Defendants.

12 151. Defendants’ conduct of compelling and/or coercing Plaintiff and other
13 aggrieved employees to purchase goods from them violates California Labor Code section
14 450. Plaintiff and other aggrieved employees are therefore entitled to recover civil penalties
15 pursuant to Labor Code sections 2699(a), (f), and (g).

16 152. At all relevant times herein, California Labor Code sections 245.5, 246, 246.5,
17 247, 247.5, 248.5, and 249 provide employees who have worked in California for 30 or more
18 days from the commencement of employment with paid sick days, to be accrued at least one
19 hour for every 30 hours worked. California Labor Code section 246(l) provides that an
20 employer shall calculate paid sick leave by using one of two calculations: 1) “[p]aid sick time
21 for nonexempt employees shall be calculated in the same manner as the regular rate of pay for
22 the workweek in which the employee uses paid sick time, whether or not the employee
23 actually works overtime in that workweek[;]” or 2) “[p]aid sick time for nonexempt
24 employees shall be calculated by dividing the employee’s total wages, not including overtime
25 premium pay, by the employee’s total hours worked in the full pay periods of the prior 90
26 days of employment.”

27 153. During the relevant time period, on information and belief, Defendants did not
28 pay other aggrieved employees the correct sick leave rates of pay. In addition to an hourly

1 wage, Defendants paid other aggrieved employees incentive pay, nondiscretionary bonuses,
2 and/or other forms of remuneration. However, in violation of the California Labor Code,
3 Defendants failed to incorporate all remunerations, including incentive pay, and/or
4 nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes of
5 calculating the sick leave pay rate. Therefore, during times when other aggrieved employees
6 took sick leave and received these other forms of pay, Defendants failed to pay all sick leave
7 benefits by paying a lower sick leave pay rate than required. Specifically, Defendants paid
8 other aggrieved employees sick leave based on their hourly rate of pay instead of their regular
9 rate of pay.

10 154. Defendants' failure to properly calculate the sick leave rates of pay based on all
11 remuneration paid has resulted in an underpayment of sick leave benefits to other aggrieved
12 employees on a company-wide basis in violation of California Labor Code section 246(l).
13 Other aggrieved employees are therefore entitled to recover civil penalties pursuant to Labor
14 Code sections 248.5 and/or 2699(a), (f), and (g).

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

21 156. California Code of Regulations, Title 8, section 11070(14)(A) provides that
22 "[a]ll working employees shall be provided with suitable seats when the nature of the work
23 reasonably permits the use of seats."

24 157. Defendants' stores are generally similar in their layout and design and there
25 was, and continues to be, space behind cash wraps to allow for the presence and use of a seat
26 or stool by other aggrieved employees (with reasonable or no modification to these work
27 areas) during the performance of their work duties. Defendants could have provided other
28 aggrieved employees with a seat or stool at their cash wraps, but instead denied employees

1 seating and forced other aggrieved employees to stand throughout the day.

2 158. Other aggrieved employees spent a substantial portion of their day behind or at
3 these cash wraps. The nature of the work of an employee performing cashier duties can
4 reasonably be accomplished from a seated position. However, as set forth herein, Defendants
5 systematically, and on a company-wide basis, do not provide seats or stools at or near the cash
6 wraps, forcing other aggrieved employees to stand throughout their work shifts.

7 159. Defendants violated California Labor Code section 1198 and California Code
8 of Regulations, Title 8, section 11070(14)(A) because other aggrieved employees were not
9 allowed to sit, even when the nature of their work would reasonably permit the use of seats,
10 nor were they provided with suitable seats. Defendants' management did not inform other
11 aggrieved employees that they were allowed to sit down, provide any means for them to sit
12 down, or mention any policy regarding sitting.

13 160. As a result of Defendants' company-wide policy and/or practice of prohibiting
14 employees from sitting during their shifts and company-wide failure to provide suitable
15 seating, other aggrieved employees were forced to stand during shifts and denied seats.
16 Defendants' failure to provide suitable seating to other aggrieved employees violates
17 California Labor Code section 1198 and IWC Wage Order No. 7-2001, subdivision 14(A).
18 Other aggrieved employees are therefore entitled to recover civil penalties pursuant to Labor
19 Code sections 2699(a), (f), and (g).

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

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

1 163. Defendants' California stores are generally similar in their layout and design
2 and there was, and continues to be, space near their work areas (with reasonable or no
3 modification to these work areas) to allow for the presence and use of a seat or stool by other
4 aggrieved employees during lulls in operation. Defendants could have provided other
5 aggrieved employees with a seat or stool in their work areas, but instead denied, and continue
6 to deny, employees seating, forcing them to stand throughout the day.

7 164. Defendants did not provide other aggrieved employees with seats or stools in
8 reasonable proximity to their work areas to allow them to use seats when it would not interfere
9 with the performance of their duties for times when they were not engaged in active duties
10 that require standing. In other words, to the extent other aggrieved employees engaged in
11 duties in which the nature of the work required standing, Defendants denied them the use of
12 seats nearby during lulls in their work duties. Moreover, Defendants did not inform other
13 aggrieved employees of their rights to a seat or stool under California law.

14 165. As a result of Defendants' company-wide policy and/or practice of prohibiting
15 employees from sitting at any time, even when they were not engaged in active duties
16 requiring standing, and company-wide failure to provide seats in reasonable proximity to their
17 work areas, other aggrieved employees were forced to stand during shifts and denied seats.
18 Defendants' failure to provide suitable seating to other aggrieved employees violates
19 California Labor Code section 1198 and IWC Wage Order No. 7-2001, subdivision 14(B).
20 Other aggrieved employees are therefore entitled to recover civil penalties pursuant to Labor
21 Code sections 2699(a), (f), and (g).

22 **TENTH CAUSE OF ACTION**

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

24 **Unlawful Business Practices**

25 **(Against all Defendants)**

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

28 167. Defendants are "persons" as defined by California Business & Professions

Code section 17201, as they are corporations, firms, partnerships, joint stock companies, and/or associations.

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

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

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

- (a) Requiring non-exempt, hourly paid employees, including Plaintiff and class members, to work overtime without paying them proper compensation in violation of California Labor Code sections 510 and 1198, and the applicable IWC Wage Order, as alleged herein;
- (b) Failing to include all forms of remuneration in the regular rate of pay as required by law for purposes of paying overtime wages and/or meal and rest period premiums to Plaintiff and class members, in violation of California Labor Code sections 226.7, 510, and 1198, and the applicable IWC Wage Order, as alleged herein;
- (c) Failing to pay at least minimum wage to Plaintiff and class members in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198, and the applicable IWC Wage Order, as alleged herein;
- (d) Failing to provide all meal periods to Plaintiff and class members in violation of California Labor Code sections 226.7, 512(a), 516, and

- 1 1198, and the applicable IWC Wage Order, as alleged herein;
- 2 (e) Failing to authorize and permit Plaintiff and class members to take all
- 3 rest periods in violation of California Labor Code sections 226.7, 516,
- 4 and 1198, and the applicable IWC Wage Order, as alleged herein;
- 5 (f) Failing to provide Plaintiff and class members with accurate wage
- 6 statements and failing to maintain accurate payroll records in violation
- 7 of California Labor Code sections 226(a), 1174(d), and 1198, and the
- 8 applicable IWC Wage Order, as alleged herein;
- 9 (g) Failing timely to pay all earned wages to Plaintiff and class members in
- 10 violation of California Labor Code section 204, as alleged herein;
- 11 (h) Issuing instruments to Plaintiff and class members for the payment of
- 12 wages that were not payable in cash, on demand, without discount, and
- 13 with prior authorization, in violation of California Labor Code sections
- 14 212 and 213, as set forth below;
- 15 (i) Collecting or receiving wages already paid from Plaintiff and/or class
- 16 members in violation of California Labor Code sections 221 and 224, as
- 17 set forth below;
- 18 (j) Failing to pay the statutorily designated wage scale in violation of
- 19 California Labor Code section 223, as set forth below;
- 20 (k) Compelling and/or coercing Plaintiff and class members to patronize
- 21 Defendants' business in violation of California Labor Code section 450,
- 22 as set forth below; and
- 23 (l) Failing to reimburse Plaintiff and class members for all business
- 24 expenses necessarily incurred in violation of California Labor Code
- 25 section 2802, as alleged herein.

26 171. At all times relevant herein, California Labor Code section 212 prohibits

27 employers from issuing any instruments for the payment of wages unless such instruments are

28 negotiable and payable in cash, on demand, and without discount. California Labor Code

1 section 213 permits employers to pay employees via direct deposit so long as the employee
2 authorizes payment via direct deposit.

3 172. Under California law, employers are permitted to fulfill their wage payment
4 obligations to employees by using payroll debit cards, but only so long as the employee is
5 given the choice as to whether to accept a payroll debit card as a form of payment. *Johnson v.*
6 *Sunrise Senior Living Management, Inc.*, No. 16 CV 00443 BRO RAOx, 2016 WL 8929249,
7 *9 (C.D. Cal. May 5, 2016). In *Johnson*, the court stated that the Division of Labor Standards
8 Enforcement (“DLSE”) decision deeming payroll debit card program permissible relied
9 heavily on:

10 . . . [T]he fact that the pay programs were optional, thereby
11 allowing an employee to either participate in the program or
12 receive his or her pay in some other way, such as direct deposit.
13 Specifically, the DLSE opined that “[t]he success of the described
14 procedure, in practice, will of course require that . . . it is
15 presented as an *alternative* method for wage payment for which
16 [the employees’] participation is optional.” The DLSE also stated,
“[i]t is significant that the program does not mandate employee
participation in the Money Network Service and that it is designed
to provide an alternative for employees receiving their wage
payment. Employees are also given the option of having their pay
direct deposited into an account of their choosing” (internal
citations omitted).

17 173. In addition, California law only permits employers to utilize payroll debit card
18 programs if they provide employees with effective access to their wages without discount.
19 The DLSE has interpreted Labor Code sections 212 and 213 as permitting employer use of
20 payroll debit cards where the following requirements are satisfied:

21 . . . (1) [T]he “wages [are] payable at some established place of
22 business in the state and there be at least 30 days of sufficient
23 funds for payment,”; (2) the employees are “fully informed of the
24 service and procedures and that it is represented as an alternative
25 method for wage payment for which their participation is
optional,”; (3) the employees receive “an itemized wage
statement,”; and (4) “at least one transaction per pay period [is]
without fee.”

26 *Ortiz v. Randstad North America, L.P.*, No. C-13-5050 MMC, 2015 WL 6202298 at 3.

27 174. Further, the DLSE notes that the Labor Code manifests:

28 . . . [A] strong public policy that prohibits an employer (or its

1 agent) from imposing conditions or obstacles which interfere with
2 or prevent an employee's (*sic*) from promptly receiving their due
3 wages *in full*. The imposition of a fee in order to readily *access*
4 one's earned and paid wage under a payroll card program which
5 is designed to discharge the employer's wage payment obligations
could impermissibly interfere with an employee's receipt of wage
payments by creating a financial condition which would have the
effect of reducing or discounting wages because such fee would
be charged against the same account in which wages are
deposited." (Emphases in original)

6 *DLSE opinion letter* 2008.07.07. The DLSE has also acknowledged that payroll service
7 providers "effectively act as *agents* of the client employers in discharging the employer's
8 wage payment obligations." *Id.* In a second opinion letter, the DLSE stated that "[w]hile the
9 Labor Code does not purport to regulate the specific arrangements between employers and
10 payroll service providers, both an employer and, under the express language in Labor Code
11 § 212- their *agent*, must comply with its requirements." *DLSE opinion letter* 2008.07.07-2.

12 175. During the relevant time period, Defendants had an agreement with a payroll
13 service provider, U.S. Bank Focus, for the issuance of payroll debit cards to employees,
14 including Plaintiff and class members, to discharge their wage payment obligations to their
15 employees. On information and belief, Defendants had a practice and/or policy of
16 automatically issuing payroll debit cards to departing employees without giving them the
17 option to elect their form of payment for their final wages. For example, Plaintiff received his
18 final wages on a payroll debit card without a choice of an alternate method of payment, such
19 as a written check. Instead, Defendants automatically enrolled Plaintiff in their payroll debit
20 card program for the purpose of issuing Plaintiff's final wages to him without prior, voluntary
21 approval from Plaintiff.

22 176. Moreover, under Defendants' payroll debit card program, Plaintiff and/or class
23 members did not have easy access to the entirety of their wages without incurring a fee. For
24 example, Plaintiff and/or class members were unable to withdraw their entire wages in at least
25 one transaction without incurring a fee and/or were subjected to transaction fees when
26 withdrawing their wages from an out-of-network ATM, which resulted in a discount in their
27 pay. Thus, Defendants' payroll debit card program was, and continues to be, unlawful as it
28 did not give Plaintiff and class members access to their entire wages without discount and

1 without delay.

2 177. California courts recognize a policy favoring the full and prompt payment of
3 wages to employees. Defendants' payroll card program is inconsistent with this policy
4 because Defendants' program is involuntary and denies Plaintiff and class members of easy
5 access to their wages. Thus, Defendants' company-wide payroll debit card program violates
6 California Labor Code sections 212 and 213.

7 178. At all times relevant herein, California Labor Code section 221 provides that it
8 shall be unlawful for any employer to collect or receive from an employee any part of wages
9 theretofore paid by said employer to said employee. California Labor Code section 224 also
10 provides in pertinent part that it is lawful to withhold a portion of the employee's wages if "a
11 deduction is expressly authorized in writing by the employee."

12 179. During the relevant time period, Defendants unlawfully deducted a portion of
13 wages previously paid to Plaintiff and/or class members in violation of California Labor Code
14 section 221. On information and belief, Defendants systematically, and on a company-wide
15 basis, provided Plaintiff and class members with payroll debit cards as payment of their wages
16 and/or final wages. Under Defendants' payroll debit card program, Plaintiff and/or class
17 members were assessed various fees in connection with their use of the payroll debit cards.
18 For example, as described above, Plaintiff and/or class members were required to pay out-of-
19 network ATM withdrawal fees and/or other fees to obtain and/or spend their earned and due
20 wages. The fees charged to Plaintiff and/or class members resulted in a discount of their
21 wages.

22 180. Defendants' practice, which resulted in a discount of wages to employees, is
23 tantamount to taking deductions from Plaintiff's and/or class members' paychecks without
24 their written authorization and therefore constitutes an unlawful deduction of wages, in
25 violation of California Labor Code sections 221 and 224.

26 181. At all times, California Labor Code section 223 makes it unlawful for an
27 employer to secretly pay wages lower than required by statute while purporting to pay legal
28 wages.

1 182. During the relevant time period, Defendants willfully and systematically issued
2 payroll debit cards to Plaintiff and/or class members that discounted their wages by charging
3 various fees in connection with the use of the payroll debit cards. Defendants' payroll debit
4 card program resulted in the payment of less than statutorily required wages to Plaintiff and/or
5 class members. Thus, Defendants paid Plaintiff and/or class members lower wages than those
6 they were entitled to while purporting that Plaintiff and/or class members were properly paid.

7 183. Defendants' failure to pay Plaintiff and/or class members the correct designated
8 wage, while purporting to pay legal wages, is a violation of California Labor Code section
9 223.

10 184. At all relevant times herein, California Labor Code section 450 provides that an
11 employer may not "compel or coerce any employee, or applicant for employment, to patronize
12 his or her employer, or any other person, in the purchase of anything of value." An employer
13 violates section 450 by forcing an employee to patronize the employer's business in the
14 purchase of a company-provided good.

15 185. As stated, Defendants had a company-wide policy of not providing a sufficient
16 number of uniform items to Plaintiff and class members in relation to the shifts they were
17 scheduled to work. During his employment, Plaintiff was scheduled to work five (5) days per
18 week and Defendants provided him with only two (2) shirts, forcing him to purchase
19 additional shirts from Defendants.

20 186. Defendants' conduct of compelling and/or coercing Plaintiff and class members
21 to purchase goods from them violates California Labor Code section 450.

22 187. As a result of the violations of California law herein described, Defendants
23 unlawfully gained an unfair advantage over other businesses. Plaintiff and class members
24 have suffered pecuniary loss by Defendants' unlawful business acts and practices alleged
25 herein.

26 188. Pursuant to California Business & Professions Code sections 17200, *et seq.*,
27 Plaintiff and class members are entitled to restitution of the wages withheld and retained by
28 Defendants during a period that commences four years prior to the filing of the initial

1 complaint; a permanent injunction requiring Defendants to pay all outstanding wages due to
2 Plaintiff and class members; and an award of attorneys' fees pursuant to California Code of
3 Civil Procedure section 1021.5 and other applicable laws; and an award of costs.

4 **ELEVENTH CAUSE OF ACTION**

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

6 **Unfair Business Practices**

7 **(Against all Defendants)**

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

10 190. Defendants are "persons" as defined by California Business & Professions
11 Code section 17201, as they are corporations, firms, partnerships, joint stock companies,
12 and/or associations.

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

18 192. Defendants' activities, namely Defendants' company-wide practice and/or
19 policy of not paying Plaintiff and class members all meal and rest period premiums due to
20 them under Labor Code section 226.7, deprived Plaintiff and class members of the
21 compensation guarantee and enhanced enforcement implemented by section 226.7. The
22 statutory remedy provided by section 226.7 is a "'dual-purpose' remedy intended primarily to
23 compensate employees, and secondarily to shape employer conduct." *Safeway, Inc. v.*
24 *Superior Court*, 238 Cal. App. 4th 1138, 1149 (2015). The statutory benefits of section 226.7
25 were guaranteed to Plaintiff and class members as part of their employment with Defendants,
26 and thus Defendants' practice and/or policy of denying these statutory benefits constitutes an
27 unfair business practice in violation of California Business & Professions Code sections
28 17200, *et seq.* (*Id.*)

193. A violation of California Business & Professions Code sections 17200, *et seq.* may be predicated on any unfair business practice. In the instant case, Defendants' policies and practices have violated the spirit of California's meal and rest period laws and constitute acts against the public policy behind these laws.

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

REQUEST FOR JURY TRIAL

Plaintiff requests a trial by jury.

PRAYER FOR RELIEF

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

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

Class Certification

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

As to the First Cause of Action

5. That the Court declare, adjudge, and decree that Defendants violated California Labor Code sections 510 and 1198, and the applicable IWC Wage Order by willfully failing to pay all overtime wages due to Plaintiff and class members;

6. For general unpaid wages at overtime wage rates and such general and special

1 damages as may be appropriate;

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

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

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

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

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

12 11. For general unpaid wages and such general and special damages as may be
13 appropriate;

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

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

18 14. For liquidated damages pursuant to California Labor Code section 1194.2; and

19 15. For such other and further relief as the Court may deem equitable and
20 appropriate.

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

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

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

28 18. For all actual, consequential, and incidental losses and damages, according to

1 proof;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 itemized wage statements thereto;

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

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

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

6 34. For attorneys' fees and costs pursuant to California Labor Code section
7 226(e)(1); and

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

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

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

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

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

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

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

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

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

26 42. That the Court declare, adjudge and decree that Defendants violated California
27 Labor Code section 204 by willfully failing to timely pay Plaintiff and class members
28 overtime wages, minimum wages, and/or meal and rest period premiums during their

1 employment;

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

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

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

8 46. For attorneys' fees pursuant to California Code of Civil Procedure section
9 1021.5, or as otherwise provided by law; and

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

12 **As to the Eighth Cause of Action**

13 48. That the Court declare, adjudge and decree that Defendants violated California
14 Labor Code section 2802 by willfully failing to reimburse and/or indemnify all business-
15 related expenses and costs incurred by Plaintiff and class members;

16 49. For unpaid business-related expenses and such general and special damages as
17 may be appropriate;

18 50. For pre-judgment interest on any unpaid business-related expenses from the
19 date such amounts were due, or as otherwise provided by law;

20 51. For all actual, consequential, and incidental losses and damages, according to
21 proof;

22 52. For attorneys' fees and costs pursuant to California Labor Code section
23 2802(c), or as otherwise provided by law; and

24 53. For such other and further relief as the Court may deem equitable and
25 appropriate.

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

27 54. That the Court declare, adjudge and decree that Defendants violated the
28 following California Labor Code provisions as to Plaintiff and/or other aggrieved employees:

510 and 1198 (by failing to pay all overtime compensation); 226.7, 510, and 1198 (by failing to include all forms of remuneration in the regular rate of pay for purposes of paying overtime wages and/or meal and rest period premiums); 1182.12, 1194, 1197, 1197.1, and 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512(a), 516, and 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize and permit all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage statements and maintain accurate payroll records); 201, 202, 203, and 227.3 (by failing to timely pay all earned wages and vested vacation upon termination); 204 (by failing to timely pay all earned wages during employment); 212 and 213 (by failing to make earned wages accessible upon demand and without discount); 221 and 224 (by collecting and/or receiving wages already paid); 223 (by secretly paying wages lower than required by statute); 246 (by failing to properly calculate sick leave pay); 450 (by compelling and/or coercing employees to patronize employer's business); 1198 and the applicable IWC Wage Order (by failing to provide suitable seating); and 2802 (by failing to reimburse business expenses);

55. For civil penalties pursuant to the California Labor Code, including sections 210, 225.5, 226.3, 248.5, 256, 558, 1174.5, 2699(a), (f), and (g), for violations of California Labor Code sections 201, 202, 203, 204, 210, 212, 213, 221, 223, 224, 226(a), 226.7, 227.3, 246, 450, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802;

56. For attorneys' fees and costs pursuant to California Labor Code section 2699(g)(1), and any and all other relevant statutes, for Defendants' violations of California Labor Code sections 201, 202, 203, 204, 210, 212, 213, 221, 223, 224, 226(a), 226.7, 227.3, 246, 450, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802;

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

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

As to the Tenth Cause of Action

59. That the Court declare, adjudge and decree that Defendants' conduct of failing to provide Plaintiff and class members all overtime wages due to them, failing to include all

forms of remuneration in the regular rate of pay for purposes of paying overtime wages and/or meal and rest period premiums to Plaintiff and class members, failing to provide Plaintiff and class members all minimum wages due to them, failing to provide Plaintiff and class members all meal periods, failing to authorize and permit Plaintiff and class members to take all rest periods, failing to provide Plaintiff and class members accurate and complete wage statements, failing to maintain accurate payroll records for Plaintiff and class members, failing to timely pay Plaintiff and class members all earned wages during employment, failing to provide access to wages upon demand and without discount, unlawfully deducting a portion of wages previously paid, secretly paying a lower wage, compelling and/or coercing Plaintiff and class members to patronize Defendants' business, and failing to reimburse Plaintiff and class members for business-related expenses, constitutes an unlawful business practice in violation of California Business and Professions Code sections 17200, *et seq.*;

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

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

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

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

As to the Eleventh Cause of Action

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

65. For restitution of the statutory benefits under section 226.7 unfairly withheld

1 from Plaintiff and class members and prejudgment interest from the day such amounts were
2 due and payable;

3 66. For the appointment of a receiver to receive, manage, and distribute any and all
4 funds disgorged from Defendants and determined to have been wrongfully acquired by
5 Defendants as a result of violations of California Business & Professions Code sections
6 17200, *et seq.*;

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

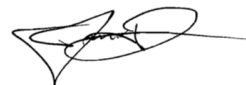
9 68. For pre-judgment and post-judgment interest as provided by law; and

10 69. For such other and further relief as the Court may deem equitable and
11 appropriate.

12
13 Dated: July 10, 2025

Respectfully submitted,

Capstone Law APC

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16 By: 

Robert Drexler
Jonathan Lee

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18 Attorneys for Plaintiff Christopher Johnson
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28

EXHIBIT “1”



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Los Angeles, California 90067
310.556.4811 Main | 310.943.0396 Fax

NINEL KOCHARYAN
310.712.8146 Direct
Ninel.Kocharyan@capstonelawyers.com

February 23, 2024

VIA ONLINE SUBMISSION

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

Subject: *Christopher Johnson v. Sportsman's Warehouse Southwest, Inc., et al.*

Dear PAGA Administrator:

This office represents Christopher Johnson in connection with his claims under the California Labor Code. Mr. Johnson was an employee of SPORTSMAN'S WAREHOUSE SOUTHWEST, INC.; SPORTSMAN'S WAREHOUSE, INC.; and/or SPORTSMAN'S WAREHOUSE HOLDINGS, INC. For the purpose of this letter, Mr. Johnson collectively refers to these entities as "SWS."

The employers may be contacted directly at the addresses below:

SPORTSMAN'S WAREHOUSE SOUTHWEST, INC.
1475 W. 9000 S. SUITE A.
WEST JORDAN, UT 84088

SPORTSMAN'S WAREHOUSE, INC.
1475 W. 9000 S. SUITE A.
WEST JORDAN, UT 84088

SPORTSMAN'S WAREHOUSE HOLDINGS, INC.
1475 WEST 9000 SOUTH, SUITE A
WEST JORDAN, UT 84088

Mr. Johnson intends to seek civil penalties, attorney's fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 ("PAGA"). Mr. Johnson seeks relief on behalf of himself, the State of California, and other persons who are or were employed by SWS in California as a non-exempt, hourly paid employee and who received at least one wage statement ("aggrieved employees"). This letter is sent in compliance with the notice and reporting requirements of California Labor Code section 2699.3.

SWS employed Mr. Johnson as a non-exempt Sales Associate, Hunting Lead, Department Manager, and Office Manager from approximately May 2019 to December 2023. Mr. Johnson worked at SWS's store located in Chico, California. During his employment, Mr. Johnson typically worked eight (8) hours or more per day and five (5) days per week. Mr. Johnson's job duties included, without limitation, assisting customers, merchandising, maintaining hunting department, conducting

firearm inventory, opening and closing the store, responding to Alcohol, Tobacco, and Firearms compliance requests, training employees, completing payroll, accounting, and tracking sales.

SWS has committed one or more of the following Labor Code violations against Mr. Johnson, the facts and theories of which follow, making him an “aggrieved employee” pursuant to California Labor Code section 2699(c):¹

SWS’s Company-Wide and Uniform Payroll and HR Practices

SPORTSMAN’S WAREHOUSE SOUTHWEST, INC. is a California corporation; SPORTSMAN’S WAREHOUSE, INC. is a Utah corporation; and SPORTSMAN’S WAREHOUSE HOLDINGS, INC. is a Delaware corporation. SWS is an American outdoor sporting goods retailer which operates approximately 17 store locations in California. Upon information and belief, SWS maintains a single, centralized Human Resources (HR) department at its corporate headquarters in West Jordan, Utah, for all non-exempt, hourly paid employees working for SWS in California, including Mr. Johnson and other aggrieved employees. At all relevant times, SWS issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Johnson and other aggrieved employees, regardless of their location or position.

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

Violation of California Labor Code §§ 510 and 1198 – Unpaid Overtime

California Labor Code sections 510 and 1198 and the applicable Industrial Welfare Commission (“IWC”) Wage Order require employers to pay employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek at the rate of time-and-one-half (1 ½) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek. The applicable IWC Wage Order further provides that employers are required to pay employees working more than twelve (12) hours in a day overtime compensation at a rate of two (2) times their regular rate of pay. An employee’s regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

¹ These facts, theories, and claims are based on Mr. Johnson’s experience and counsel’s review of those records currently available relating to Mr. Johnson’s employment. Discovery conducted in litigation of wage and hour claims such as these often reveals additional claims that the aggrieved employee was not initially aware of (because the aggrieved employee was not aware of the law’s requirements, the employer misinformed its employee of the law’s requirements, or because the employer effectively hid the violations). Thus, Mr. Johnson reserves the right to supplement this letter with additional facts, theories, and claims if he becomes aware of them subsequent to the submission of this letter.

SWS willfully failed to pay all overtime wages owed to Mr. Johnson and other aggrieved employees. During the relevant time period, Mr. Johnson and other aggrieved employees were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they worked were not recorded.

During the relevant time period, SWS had, and continues to have, a company-wide policy and/or practice of discouraging and impeding Mr. Johnson and other aggrieved employees from recording hours worked that were outside of their scheduled shifts in order to limit the amount of overtime employees could accrue. On information and belief, this limitation on overtime accrual was based on a company-wide policy of staffing locations strictly based on the labor hours or labor budget set by corporate. This policy of limiting overtime, coupled with SWS's practices and/or policies of understaffing, assigning heavy workloads, and requiring employees to obtain pre-approval of overtime hours from SWS's management, led Mr. Johnson and other aggrieved employees to work off-the-clock before and after their scheduled shift times in order to complete assigned tasks. For example, approximately twice per week and for 30 minutes each instance, Mr. Johnson was required to work prior to the start of his scheduled shifts performing various tasks, such as preparing the store for opening, restocking, and handling payroll or inventory issues. As a further example, approximately twice per week and up to one (1) hour each instance, Mr. Johnson was required to work after clocking out from his shifts completing duties, such as merchandising, cashiering, reviewing inventory and payroll, and handling employee issues. Additionally, on information and belief, SWS's management would alter and/or falsify time records to shave off this time Mr. Johnson spent working in order to limit overtime accrual. This off-the-clock work could have been recorded by SWS, but it refused to do so to avoid payment of additional wages to Mr. Johnson and other aggrieved employees. Thus, SWS failed to track the time employees spent working off the clock, and Mr. Johnson and other aggrieved employees received no compensation for this time.

Furthermore, SWS had, and continues to have, a company-wide security policy and/or practice of requiring managerial employees to leave the store premises together in pairs and/or groups. After clocking out at the end of their closing shifts, Mr. Johnson and other aggrieved employees were required to wait for all other managerial employees to complete their own duties before they could leave SWS's premises together. For example, Mr. Johnson would often clock out at his scheduled shift-end time, and then have wait up to 30 minutes until all other managerial employees completed their duties and clocked out, before being able to leave the premises. As a result, Mr. Johnson and other aggrieved employees were subject to SWS's control after they had clocked out from their shifts, but were not compensated for this time.

Moreover, during the relevant time period, SWS only provided Mr. Johnson and other aggrieved employees with a single timekeeping machine at the front of the store, thus forcing Mr. Johnson and other aggrieved employees to wait in line off-the-clock and under SWS's control, time for which they were not paid. For example, Mr. Johnson and other aggrieved employees would arrive early in order to clock in for the start of their shifts, and were required to wait in a line to clock in. SWS's insufficient number of timekeeping machines forced Mr. Johnson and other aggrieved employees to wait in line off-the-clock and under SWS's control in order to clock in for their shifts, time for which they were not paid.

Second, as stated, during the relevant time period, SWS had, and continues to have, a company-wide policy and/or practice of staffing its locations strictly based on the labor hours or labor budget set by corporate. SWS's use of a labor budget resulted in chronic understaffing, such that there were too few employees on duty to handle customer demand and provide meal period coverage. Moreover,

SWS also failed to adhere to a schedule for meal periods, which further caused Mr. Johnson and other aggrieved employees to not be relieved of their duties for compliant meal periods. As a result, Mr. Johnson and other aggrieved employees were not afforded uninterrupted thirty (30) minute meal periods during shifts in which they were entitled to receive meal periods. For example, Mr. Johnson worked through his meal periods approximately 1-2 times per week and had his meal periods interrupted due to the lack of coverage and the heavy workload. Consequently, Mr. Johnson and other aggrieved employees were required to work through and/or had their unpaid meal periods interrupted in order to complete their assigned duties and handle customer demand, time for which they were not paid.

Third, SWS had a company-wide practice and/or policy of requiring that Mr. Johnson and other aggrieved employees carry and respond to company-issued walkie-talkies at all times, including during meal periods. For example, Mr. Johnson would often have his meal periods interrupted and/or shortened when called on his company-issued walkie-talkie by other employees needing assistance on the sales floor. Further, SWS has a requirement that a store manager be present on the floor at all times and prohibited store managers from leaving the premises during their shifts. Thus, when Mr. Johnson was an acting store manager, he was expected to supervise the store and respond to customer complaints at all times, including during meal periods. Because managerial employees were restricted from leaving the premises during meal periods, Mr. Johnson and other aggrieved employees were denied the ability to use meal periods freely for their own purposes, such as running personal errands. Thus, SWS effectively maintained control over Mr. Johnson and managerial employees during meal periods. SWS knew or should have known that Mr. Johnson and other aggrieved employees were performing work while off-the-clock in order to meet SWS's expectations, but failed to compensate them for this time.

Fourth, on information and belief, because SWS frowned upon employees accruing meal period penalties, SWS's management pressured Mr. Johnson and other aggrieved employees to clock out for meal periods and/or adjusted Mr. Johnson's and other aggrieved employees' time records to reflect compliant meal periods, even when they did not receive a compliant meal period. Additionally, SWS's company-wide timekeeping system prevented Mr. Johnson and other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted, because the system locked out employees once they clocked out for a meal period, and would not permit them to clock back in from a meal period until 30 minutes elapsed. Thus, SWS did not record all hours worked during meal periods, and Mr. Johnson and other aggrieved employees performed work during meal periods for which they were not paid.

SWS knew or should have known that as a result of these company-wide practices and/or policies, Mr. Johnson and other aggrieved employees were performing their assigned duties off-the-clock before and after their shifts and during meal periods, and were suffered or permitted to perform work for which they were not paid. Because Mr. Johnson and other aggrieved employees worked shifts of eight (8) hours or more a day, or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium pay. Therefore, Mr. Johnson and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked.

Moreover, SWS did not pay Mr. Johnson and other aggrieved employees the correct overtime rates for the recorded overtime hours that they generated. In addition to an hourly wage, SWS paid Mr. Johnson and other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, SWS failed to incorporate all compensation, including incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, into the calculation of the regular rate of pay for purposes of calculating the overtime

wage rate. Therefore, during times when Mr. Johnson and other aggrieved employees worked overtime and received these other forms of pay, SWS failed to pay all overtime wages by paying a lower overtime rate than required.

For example, SWS paid Mr. Johnson and other aggrieved employees bonuses and incentive payments, which were listed on Mr. Johnson's and other aggrieved employees' wage statements as "Bonus," "Incentive Bonus," and "Gun Ad." During pay periods that Mr. Johnson and other aggrieved employees were paid overtime wages, SWS did not incorporate these payments into Mr. Johnson's and other aggrieved employees' regular rate of pay and, as a result, paid them at incorrect and lower rates of pay for overtime hours worked. Specifically, SWS paid Mr. Johnson and other aggrieved employees 1.5 times their hourly rate of pay instead of 1.5 times their regular rate of pay. SWS's failure to properly calculate the overtime rates of pay based on all remuneration paid has resulted in an underpayment of overtime wages to Mr. Johnson and other aggrieved employees on a company-wide basis.

SWS's failure to pay Mr. Johnson and other aggrieved employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198. Mr. Johnson and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

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

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

As set forth above, as a result of SWS's policies of limiting the amount of overtime employees could accrue pursuant to their labor budget practices, understaffing, and assigning heavy workloads, SWS required Mr. Johnson and other aggrieved employees to perform work off-the-clock. As also stated, due to SWS's practices of management altering and/or falsifying time records, Mr. Johnson and other aggrieved employees were prevented from recording the entire time worked outside of their scheduled shifts, and thus were not paid for this time. For example, SWS required Mr. Johnson and other aggrieved employees to work off the clock before and after their scheduled shifts to complete tasks such as waiting in line to clock in, preparing the store for opening, restocking, handling payroll or inventory issues, merchandising, cashiering, handling employee issues, and waiting for other managerial employees to complete their duties before being able to leave the store premises. However, SWS failed to track all of this time Mr. Johnson and other aggrieved employees spent working off-the-clock, and thus, Mr. Johnson and other aggrieved employees received no compensation for this time.

Additionally, as set forth above, due to SWS's policies and/or practices of utilizing labor budgets, understaffing their locations, assigning heavy workloads, failing to adhere to a schedule for meal periods, and/or requiring store manager employees to stay on the store premises during meal periods, Mr. Johnson and other aggrieved employees were impeded from taking all uninterrupted meal

periods to which they were entitled and were required to work off-the-clock during meal periods, including responding to calls on company-issued walkie-talkies, time for which they were not paid.

Also, as stated above, on information and belief, because SWS frowned upon employees accruing meal period penalties, SWS's managers pressured employees to clock out for meal periods and/or adjusted Mr. Johnson's and other aggrieved employees' time records to reflect compliant meal periods, even when they did not receive a compliant meal period. Additionally, as stated, SWS's company-wide timekeeping system prevented Mr. Johnson and other aggrieved employees from entering time worked during meal periods because the system locked out Mr. Johnson and other aggrieved employees for a full 30 minutes. Thus, SWS systematically failed to pay Mr. Johnson and other aggrieved employees for actual hours worked during unpaid meal periods because these hours were not always correctly recorded.

Thus, SWS did not pay minimum wages for all hours worked by Mr. Johnson and other aggrieved employees. To the extent that these off-the-clock hours did not qualify for overtime premium payment, SWS did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

Accordingly, SWS regularly failed to pay at least minimum wages to Mr. Johnson and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Mr. Johnson and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 – Failure to Provide Meal Periods

California Labor Code sections 226.7, 512(a), 516, and 1198 and the applicable IWC Wage Order require employers to provide meal periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012). Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

First, during the relevant period, as stated, SWS had, and continues to have, company-wide policies and/or practices of understaffing its locations due to labor budgeting and/or limited payroll allocation, assigning heavy workloads, and failing to adhere to a schedule for meal periods, which resulted in a lack of meal period coverage and prevented Mr. Johnson and other aggrieved employees from taking all timely meal periods to which they were entitled. As a result, Mr. Johnson and other aggrieved employees were forced to work in excess of five (5) hours before taking a meal period, had their meal periods interrupted, and/or had to forgo their meal periods altogether. Additionally, as

stated, SWS had a company-wide policy and/or practice of requiring that Mr. Johnson and other aggrieved employees carry a company-issued walkie-talkie to respond to requests at all times, including during meal periods. For example, approximately twice per week, Mr. Johnson missed his meal periods due to the demanding workload and lack of coverage. Further, about twice per week, Mr. Johnson took his meal periods late, after having worked in excess of five (5) hours into his shift, in order to complete his assigned duties or meet customer demand. Moreover, as set forth above, SWS has a requirement that store managers be present on the floor at all times, including during meal periods. As a result, Mr. Johnson and other managerial employees would have their meal periods interrupted or would work through them in order to assist their coworkers and customers.

Second, as set forth above, on information and belief, because SWS frowned upon employees accruing meal period penalties, SWS's management pressured employees to clock out for meal periods and/or adjusted their time records to reflect compliant meal periods regardless of whether they had received a compliant meal period or not, in order to strictly limit the meal penalties that would need to be paid by SWS. Also, as stated, SWS's company-wide timekeeping system prevented Mr. Johnson and other aggrieved employees from recording when their meal periods were shortened or interrupted, because the system locked out Mr. Johnson and other aggrieved employees once they clocked out for a meal period, and would not permit them to clock back in from a meal period before 30 minutes had elapsed. For example, Mr. Johnson was unable to record when his meal periods were interrupted or shortened by other employees requesting assistance on the sales floor or communications on his company-issued walkie-talkie.

Third, SWS did not provide Mr. Johnson and other aggrieved employees with second 30-minute meal periods on days that they worked in excess of 10 hours in one day. For example, during the relevant time period, Mr. Johnson worked shifts in excess of 10 hours in one day and did not always take a second meal period. Mr. Johnson and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

At all times mentioned herein, SWS knew or should have known that as a result of its policies, Mr. Johnson and other aggrieved employees were prevented from being relieved of all duties and required to perform some of their assigned duties during meal periods. SWS further knew or should have known that it did not pay Mr. Johnson and other aggrieved employees all meal period premiums when meal periods were late, interrupted, shortened, and/or missed.

Furthermore, SWS engaged in a company-wide practice and/or policy of not paying meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Mr. Johnson and other aggrieved employees have not received premium pay for all missed, late, and interrupted meal periods. Alternatively, to the extent that SWS did pay Mr. Johnson and other aggrieved employees premium pay for missed, late, and interrupted meal periods, SWS did not pay Mr. Johnson and other aggrieved employees at the correct rate of pay for premiums because SWS systematically failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay. As a result, SWS failed to provide Mr. Johnson and other aggrieved employees compliant meal periods in violation of California Labor Code sections 226.7, 512(a), and 516 and failed to pay the full meal period premiums due.

Accordingly, SWS failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Mr. Johnson and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 516, and 1198 – Failure to Authorize and Permit Rest Periods

California Labor Code sections 226.7, 516, and 1198 and the applicable IWC Wage Order require employers to provide rest periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. The applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the total daily work time is less than three and one-half (3 ½) hours.

To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must "relinquish any control over how employees spend their break time, and relieve their employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest." *Augustus, et al. v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 273 (2016).

During the relevant time period, SWS regularly failed to authorize and permit Mr. Johnson and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, SWS's company-wide use of labor budgeting and/or limited payroll allocation, understaffing, and assigning heavy workloads, resulted in a lack of rest period coverage and prevented Mr. Johnson and other aggrieved employees from being relieved of all duty in order to take their rest periods. SWS also failed to adhere to a schedule for rest periods, which, coupled with SWS's failure to provide adequate rest period coverage, further led to Mr. Johnson and other aggrieved employees not being authorized and permitted to take compliant rest periods. In addition, as with meal periods, SWS's company-wide practice of requiring that Mr. Johnson and other aggrieved employees carry a company-issued walkie-talkie to respond to questions and requests prevented Mr. Johnson and other aggrieved employees from being able to take rest periods.

Furthermore, SWS maintained and implemented a company-wide on-premises rest period policy, which mandated that Mr. Johnson and/or other aggrieved employees remain on the premises during their rest periods. Because Mr. Johnson and/or other aggrieved employees were restricted from leaving SWS's premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes, such as completing personal errands. Thus, SWS effectively maintained control over Mr. Johnson and/or other aggrieved employees during rest periods.

As a result of SWS's practices and policies, Mr. Johnson and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted rest periods to which they were entitled. For example, Mr. Johnson had to forego some of his rest periods in order to handle the heavy workload and due to the lack of coverage. When Mr. Johnson was able to take his rest periods, they were interrupted by other employees calling Mr. Johnson for assistance, including on his company-issued walkie-talkie.

SWS has also engaged in a systematic, company-wide practice and/or policy of not paying rest period premiums owed when rest periods are not authorized and permitted. Because of this practice

and/or policy, Mr. Johnson and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that SWS did pay Mr. Johnson and other aggrieved employees one (1) additional hour of premium pay for missed rest periods, SWS did not pay Mr. Johnson and other aggrieved employees at the correct rate of pay for premiums because SWS failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. As a result, SWS denied Mr. Johnson and other aggrieved employees rest periods and failed to pay them rest period premiums due, in violation of Labor Code sections 226.7 and 516, and the applicable IWC Wage Order.

Accordingly, SWS failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Mr. Johnson and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226(a), 1174(d), and 1198 – Non-Compliant Wage Statements and Failure to Maintain Accurate Payroll Records

California Labor Code section 226(a) requires employers to make, keep and provide true, accurate, and complete employment records. SWS has not provided Mr. Johnson and other aggrieved employees with properly itemized wage statements. Labor Code section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wage statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or \$50 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not to exceed \$4,000. Further, Labor Code section 226.3 provides that any employer who violates section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

During the relevant time period, SWS has knowingly and intentionally provided Mr. Johnson and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, SWS issued uniform wage statements to Mr. Johnson and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all applicable hourly rates in effect during the pay period, including rates of pay for overtime wages, meal and rest period premiums, and/or paid sick leave, and the corresponding number of hours worked at each hourly rate. Specifically, SWS violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

Because SWS did not accurately record the time Mr. Johnson and other aggrieved employees spent working off-the-clock and deducted time from their records for meal periods that were interrupted and/or missed (and therefore time for which they should have been paid), SWS did not list the correct amount of gross wages and net wages earned by Mr. Johnson and other aggrieved employees, in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, SWS failed to accurately list the total number of the hours worked by Mr. Johnson and other aggrieved employees, in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and the corresponding accurate number of hours worked at each hourly rate, in violation of section 226(a)(9).

Also, because SWS did not calculate Mr. Johnson's and other aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages, meal and rest period premiums, and/or paid sick leave, SWS did not list the correct amount of gross wages in compliance with section 226(a)(1)

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

The wage statement deficiencies also include, without limitation, failing to list the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list the inclusive dates of the period for which aggrieved employees were paid; failing to list the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number; failing to list the name and address of the legal entity that is the employer; and/or failing to state all hours worked as a result of not recording or stating hours worked off-the-clock. In addition, SWS failed to provide Mr. Johnson and other aggrieved employees the option to elect to receive hard copies of their wage statements at any time and/or failed to provide them with the ability to easily access the information and convert the wage statements into hard copies at no expense to them.

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

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Order. Section 1198 further provides that “[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, SWS engaged in company-wide practices and/or policies of failing to record actual hours worked (including falsifying time records by recording that compliant meal periods were taken regardless of if or when meal periods were actually taken), and thereby failed to keep accurate records of work period and meal period start and end times for Mr. Johnson and other aggrieved employees, in violation of section 1198. Furthermore, in light of SWS’s failure to provide Mr. Johnson and other aggrieved employees with second 30-minute meal periods to which they were entitled, SWS kept no records of meal start and end times for second meal periods.

Because SWS failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Mr. Johnson and other aggrieved employees have been prevented from verifying, solely from information on the wage statements themselves, that they were paid correctly and in full. Instead, Mr. Johnson and other aggrieved employees have had to look to sources outside of the wage statements themselves and reconstruct time records to determine whether in fact they were paid correctly and the extent of underpayment, thereby causing them injury.

Mr. Johnson and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f)-(g).

Violation of California Labor Code § 204 – Failure to Timely Pay Wages During Employment

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, California Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

During the relevant time period, SWS failed to pay Mr. Johnson and other aggrieved employees all wages due to them, including, but not limited to, overtime wages, minimum wages, meal and rest period premiums, and/or sick leave pay, within any time period specified by California Labor Code section 204.

Mr. Johnson and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 210 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 201 and 202 – Failure to Timely Pay Final Wages Upon Termination

California Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

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

Mr. Johnson and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 256 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 212 and 213 – Unlawful Direct Deposit and Discount of Wages

California Labor Code section 212 prohibits employers from issuing any instruments for the payment of wages unless such instruments are negotiable and payable in cash on demand and without discount. California Labor Code section 213 permits employers to pay employees via direct deposit so long as the employee authorizes payment via direct deposit. Under California law, employers are

also permitted to fulfill their wage payment obligations to employees by using payroll debit cards, but only under certain circumstances. Employer use of payroll debit cards is permitted only so long as the employee is given the choice as to whether to accept a payroll debit card as a form of payment. *Johnson v. Sunrise Senior Living Management, Inc.*, No. 16 CV 00443 BRO RAOx, 2016 WL 8929249, *9 (C.D. Cal. May 5, 2016). In *Johnson*, the court stated that the Division of Labor Standards Enforcement (“DLSE”) decision deeming payroll debit card program permissible relied heavily on:

... [T]he fact that the pay programs were optional, thereby allowing an employee to either participate in the program or receive his or her pay in some other way, such as direct deposit. Specifically, the DLSE opined that “[t]he success of the described procedure, in practice, will of course require that ... it is presented as an *alternative* method for wage payment for which [the employees’] participation is optional.” The DLSE also stated, “[i]t is significant that the program does not mandate employee participation in the Money Network Service and that it is designed to provide an alternative for employees receiving their wage payment. Employees are also given the option of having their pay direct deposited into an account of their choosing ...” (internal citations omitted).

In addition, employers can only utilize payroll debit card programs if they provide employees with effective access to their wages without discount. The DLSE has interpreted Labor Code sections 212 and 213 as permitting employer use of payroll debit cards where the following requirements are satisfied:

- (1) [T]he “wages [are] payable at some established place of business in the state and there be at least 30 days of sufficient funds for payment,”
- (2) the employees are “fully informed of the service and procedures and that it is represented as an alternative method for wage payment for which their participation is optional,”
- (3) the employees receive “an itemized wage statement,” and
- (4) “at least one transaction per pay period [is] without fee.”

Ortiz v. Randstad North America, L.P., No. C-13-5050 MMC, 2015 WL 6202298 at 3.

Further, the DLSE notes that the Labor Code manifests:

... [A] strong public policy that prohibits an employer (or its agent) from imposing conditions or obstacles which interfere with or prevent an employee’s (*sic*) from promptly receiving their due wages *in full*. The imposition of a fee in order to readily *access* one’s earned and paid wages under a payroll card program which is designed to discharge the employer’s wage payment obligations could impermissibly interfere with an employee’s receipt of paid wages by creating a financial condition which would have the *effect* of reducing or discounting wages because such fee would be charged against the same account in which wages are deposited. (emphases in original)

DLSE opinion letter 2008.07.07. The DLSE has also acknowledged that payroll service providers “effectively act as *agents* of the client employers in discharging the employer’s wage payment obligations.” *Id.* In a second opinion letter, the DLSE stated that “[w]hile the Labor Code does not

purport to regulate the specific arrangements between employers and payroll service providers, both an employer and, under the express language in Labor Code § 212- their *agent*, must comply with its requirements.” *DLSE opinion letter 2008.07.07-2*.

During the relevant time period, SWS had an agreement with a payroll service provider, U.S. Bank Focus, for the issuance of payroll debit cards to employees, including Mr. Johnson and other aggrieved employees, to discharge their wage payment obligations to their employees. On information and belief, SWS had a practice and/or policy of automatically issuing payroll debit cards to departing employees without giving them the option to elect their form of payment for their final wages. For example, Mr. Johnson received his final wages on a payroll debit card without a choice of an alternate method of payment, such as a written check. Instead, SWS automatically enrolled Mr. Johnson in their payroll debit card program for the purpose of issuing Mr. Johnson’s final wages to him without prior, voluntary approval from Mr. Johnson.

Moreover, under SWS’s payroll debit card program, Mr. Johnson and/or other aggrieved employees did not have easy access to the entirety of their wages without incurring a fee. For example, Mr. Johnson and/or other aggrieved employees were unable to withdraw their entire wages in at least one transaction without incurring a fee and/or were subjected to transaction fees when withdrawing their wages from an out-of-network ATM, which resulted in a discount in their pay. Thus, SWS’s payroll debit card program was, and continues to be, unlawful as it did not give Mr. Johnson and other aggrieved employees access to their entire wages without discount and without delay.

California courts recognize a policy favoring the full and prompt payment of wages to employees. SWS’s payroll card program is inconsistent with this policy because it presents a number of obstacles and hurdles that, together, make it difficult for Mr. Johnson and other aggrieved employees to access their entire wages without discount and without delay, in violation of California Labor Code sections 212 and 213. Mr. Johnson and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, pursuant to Labor Code sections 225.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 221 and 224 – Unlawful Deductions

California Labor Code section 221 provides that it shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee. California Labor Code section 224 also provides in pertinent part that it is lawful to withhold a portion of the employee’s wages only if “a deduction is expressly authorized in writing by the employee.”

During the relevant time period, SWS unlawfully deducted a portion of wages previously paid to Mr. Johnson and/or other aggrieved employees in violation of California Labor Code section 221. On information and belief, SWS systematically, and on a company-wide basis, provided Mr. Johnson and other aggrieved employees with payroll debit cards as payment of their wages and/or final wages. Under SWS’s payroll debit card program, Mr. Johnson and/or other aggrieved employees were assessed various fees in connection with their use of the payroll debit cards. For example, as described above, Mr. Johnson and/or other aggrieved employees were required to pay out-of-network ATM withdrawal fees and/or other fees to obtain and/or spend their earned and due wages. The fees charged to Mr. Johnson and/or other aggrieved employees resulted in a discount of their wages.

SWS’s payroll debit card program, which resulted in a discount of wages to employees, are tantamount to taking deductions from Mr. Johnson’s and/or other aggrieved employees’ paychecks

without their written authorization and therefore constitutes an unlawful deduction of wages, in violation of Labor Code sections 221 and 224. Mr. Johnson and/or other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 225.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 223 – Secret Payment of Lower Wages

California Labor Code section 223 makes it unlawful for an employer to secretly pay wages lower than required by statute while purporting to pay legal wages.

During the relevant time period, SWS willfully and systematically issued payroll debit cards to Mr. Johnson and/or other aggrieved employees that discounted their wages by charging various fees in connection with the use of the payroll debit cards. SWS's payroll debit card program resulted in the payment of less than statutorily required wages to Mr. Johnson and/or other aggrieved employees. Thus, SWS paid Mr. Johnson and/or other aggrieved employees lower wages than those they were entitled to while purporting that Mr. Johnson and/or other aggrieved employees were properly paid.

SWS's failure to pay Mr. Johnson and/or other aggrieved employees the correct designated wage, while purporting to pay legal wages, is a violation of California Labor Code section 223. Mr. Johnson and/or other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 225.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 246 – Failure to Properly Calculate Paid Sick Leave

At all relevant times herein, California Labor Code sections 245.5, 246, 246.5, 247, 247.5, 248.5, and 249 provide employees who have worked in California for 30 or more days from the commencement of employment with paid sick days, to be accrued at least one hour for every 30 hours worked. Labor Code section 246(l) provides that an employer shall calculate paid sick leave by using one of two calculations: 1) "[p]aid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek[;]" or 2) "[p]aid sick time for nonexempt employees shall be calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment."

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

SWS's failure to properly calculate the sick leave rates of pay based on all remuneration paid has resulted in an underpayment of sick leave benefits to other aggrieved employees on a company-wide basis in violation of Labor Code section 246(l).

Other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 248.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 450 – Compelling Patronization

Labor Code section 450 provides that an employer may not “compel or coerce any employee, or applicant for employment, to patronize his or her employer, or any other person, in the purchase of anything of value.” An employer violates section 450 by forcing an employee to patronize the employer's business in the purchase of a company-provided good.

During the relevant time period, SWS had a company-wide policy of not providing a sufficient number of uniform items to Mr. Johnson and other aggrieved employees in relation to the shifts they were scheduled to work. During his employment, Mr. Johnson was scheduled to work five (5) days per week and SWS provided him with only two (2) shirts, forcing him to purchase additional shirts from SWS.

SWS's conduct of compelling and/or coercing Mr. Johnson and other aggrieved employees to purchase goods from them is in violation of California Labor Code section 450. Mr. Johnson and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

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

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

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

SWS's California stores are generally similar in their layout and design and there was, and continues to be, space behind cash wraps to allow for the presence and use of a seat or stool by other aggrieved employees (with reasonable or no modification to these work areas) during the performance of their work duties. SWS could provide other aggrieved employees with a seat or stool at its cash wraps,

but instead denies employees seating and forces other aggrieved employees to stand throughout the day.

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

SWS violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11070(14)(A) because other aggrieved employees were not allowed to sit, even when the nature of the work would reasonably permit the use of seats, nor were they provided with suitable seats. SWS's management did not inform other aggrieved employees that they were allowed to sit down, provide any means for them to sit down, or mention any policy regarding sitting.

As a result of SWS's company-wide policy and/or practice of prohibiting employees from sitting during their shifts and company-wide failure to provide suitable seating, other aggrieved employees were forced to stand during shifts and denied seats. SWS's failure to provide suitable seating to other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order No. 7-2001, subdivision 14(A).

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

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

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

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

SWS's California stores are generally similar in their layout and design and there was, and continues to be, space near their work areas (with reasonable or no modification to these work areas) to allow for the presence and use of a seat or stool by other aggrieved employees during lulls in operation.

SWS could have provided other aggrieved employees with a seat or stool in its work areas, but instead denied, and continues to deny, employees seating, forcing them to stand throughout the day.

SWS did not provide other aggrieved employees with seats or stools in reasonable proximity to their work areas to allow them to use seats when it would not interfere with the performance of their duties for times when they were not engaged in active duties that require standing. In other words, to the extent other aggrieved employees engaged in duties in which the nature of the work required standing, SWS denied them the use of seats nearby during lulls in their work duties. Moreover, SWS did not inform other aggrieved employees of their rights to a seat or stool under California law.

As a result of SWS's company-wide policy and/or practice of prohibiting employees from sitting at any time, even when they were not engaged in active duties requiring standing, and company-wide failure to provide seats in reasonable proximity to their work areas, other aggrieved employees were forced to stand during shifts and denied seats. SWS's failure to provide suitable seating to other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order No. 7-2001, subdivision 14(B).

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

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

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

First, during the relevant time period, SWS, on a company-wide basis, required that Mr. Johnson and other aggrieved employees use their own personal mobile devices, including, but not limited to, cellular phones, and/or mobile data to carry out their job duties but failed to reimburse them for the costs of their work-related mobile device expenses. For example, Mr. Johnson and other aggrieved employees would be contacted on their personal mobile devices by their managers to discuss work-related matters. Further, Mr. Johnson used his personal cellular phone to take and send photographs of the store to SWS's management. Additionally, SWS required Mr. Johnson and other aggrieved employees to download a mobile application, "Webex Meeting," in order to attend mandatory virtual meetings. Finally, Mr. Johnson used his personal cellular phone to communicate with SWS's management via email. Although SWS required Mr. Johnson and other aggrieved employees to utilize their personal mobile devices to carry out their work-related responsibilities, SWS failed to reimburse them for this cost.

Second, during the relevant time period, SWS, on a company-wide basis, required that Mr. Johnson and other aggrieved employees use their own personal vehicles to run company errands. For example, on a few occasions throughout his employment, Mr. Johnson was required to use his personal vehicle and drive to one of SWS's other store locations to pick up or drop off inventory. Although SWS required Mr. Johnson and other aggrieved employees to utilize their personal vehicles to carry out their work-related responsibilities, SWS failed to reimburse them for their mileage or travel expenses.

Third, during the relevant time period, SWS required Mr. Johnson and other aggrieved employees to wear uniforms bearing the Sportsman's Warehouse company logo, including uniform shirts. However, SWS did not provide its employees with sufficient uniforms to wear for their shifts throughout the week. For example, SWS only provided Mr. Johnson and other aggrieved employees with two (2) shirts at the time of hire. Because SWS failed to provide their employees with an adequate number of uniforms in relation to their scheduled shifts and for the tasks they were required to perform, Mr. Johnson and other aggrieved employees were forced to pay out-of-pocket for some of their uniform items. For example, Mr. Johnson spent approximately \$44 out-of-pocket to purchase an additional four (4) uniform shirts from SWS. Since SWS did not provide an adequate number of uniform components to all employees, Mr. Johnson and other aggrieved employees were required to purchase additional uniform items, such as shirts, directly from SWS, and were not reimbursed for these costs.

SWS could have provided Mr. Johnson and other aggrieved employees with the actual equipment for use on the job, such as company mobile devices and company vehicles, as well as an adequate number of uniform items; or SWS could have reimbursed employees for the costs of their mobile device usage, mileage, travel expenses, and additional uniforms. Instead, SWS passed these operating costs off onto Mr. Johnson and other aggrieved employees. At all relevant times, Mr. Johnson did not earn at least two (2) times the minimum wage.

Thus, SWS had, and continues to have, a company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred in violation of California Labor Code section 2802. Mr. Johnson and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

California Labor Code § 558(a)

California Labor Code section 558(a) provides "[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid" Labor Code section 558(c) provides that "[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law." SWS, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Mr. Johnson's and other aggrieved employees' rights by violating various sections of the California Labor Code.

Accordingly, Mr. Johnson seeks the remedies set forth in Labor Code section 558 for himself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 1194.5, 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558,

Mr. Johnson, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties and injunctive relief for himself, all other aggrieved employees, and the State of California against SWS for violations of California Labor Code sections 201, 202, 204, 212, 213, 221, 223, 224, 226(a), 226.7, 246, 450, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

Therefore, on behalf of all aggrieved employees, Mr. Johnson seeks all applicable penalties related to these violations of the California Labor Code pursuant to PAGA.

Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

Ninel Kocharyan
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, CA 90067
(310) 556-4811

Best Regards,

A handwritten signature in cursive script, appearing to read "Ninel", is positioned above the typed name.

Ninel Kocharyan

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X

☐ Agent

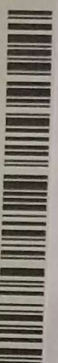
Received by (Printed Name)

☐ Addressee

C. Date of Delivery

Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

SPORTSMAN'S WAREHOUSE
HOLDINGS, INC.
1475 WEST 9000 SOUTH, SUITE A
WEST JORDAN, UT 84088



9590 9402 7690 2122 7187 75

2. Address Number (Transfer from service label)

7022 2410 0000 2406 0590

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail[®]
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Restricted Delivery

- ☐ Priority Mail Express[®]
- ☐ Registered Mail[™]
- ☐ Registered Mail Restricted Delivery
- ☐ Signature Confirmation[™]
- ☐ Signature Confirmation Restricted Delivery

PS Form 3811, July 2020 PSN 7530-02-000-9053

Domestic Return Receipt

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.

1

SPORTSMAN'S
WAREHOUSE, INC.
1475 W. 9000 S. SUITE A.
WEST JORDAN, UT 84088



9590 9402 7690 2122 7187 68

2. Article Number (Transfer from service label)

7022 2410 0000 2406 0576

PS Form 3811, July 2020 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

- ☐ Agent
- ☐ Addressee

Received by (Printed Name)

C. Date of Delivery

Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☐ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery

- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

Mail
Mail Restricted Delivery
(10)

Domestic Return Receipt

PROOF OF SERVICE

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

On **July 10, 2025**, I served the document described as **FIRST AMENDED CLASS ACTION COMPLAINT & ENFORCEMENT ACTION UNDER THE PRIVATE ATTORNEYS GENERAL ACT, CALIFORNIA LABOR CODE §§ 2698, ET SEQ.** on the interested parties in this action by sending ☐ the original [or] ☒ a true copy thereof ☒ to interested parties as follows [or] ☐ as stated on the attached service list:

MONTE K. GRIX (SBN 241050)
HIRSCHFELD KRAEMER LLP
233 Wilshire Boulevard, Suite 600
Santa Monica, CA 90401

ADAM R. MALDONADO (SBN 267002)
HIRSCHFELD KRAEMER LLP
456 Montgomery Street, Suite 2200
San Francisco, CA 94104

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

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

☒ **BY ELECTRONIC SERVICE:** I caused the document(s) to be transmitted electronically via One Legal eService to the individuals listed above, as they exist on that database. This will constitute service of the document(s).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on **July 10, 2025**, at Los Angeles, California.

Sophia Flores

Type/Print Name



Signature