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UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

JACQUELINE AHUMADA,  
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.

GIORGIO ARMANI  
CORPORATION, a New York  
corporation; and DOES 1 through 10,  
inclusive,

Defendants.

Case No.: 24CV1175 RSH DEB

**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);

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- (9) Civil Penalties for Violations of California Labor Code, Pursuant to PAGA, §§ 2698, *et seq.*
- (10) Violation of California Business & 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 Jacqueline Ahumada, individually and on behalf of all other  
2 members of the public similarly situated, and as an aggrieved employee and on  
3 behalf of all aggrieved employees, alleges as follows:

#### 4 **JURISDICTION AND VENUE**

5 1. This class action is brought pursuant to Rule 23 of the Federal Rules  
6 of Civil Procedure to recover wages and all other available relief on behalf of  
7 Plaintiff and all similarly situated current and former non-exempt, hourly paid  
8 employees of Defendants, and a non-class representative enforcement action  
9 brought pursuant to the Labor Code Private Attorneys General Act of 2004,  
10 California Labor Code sections 2698, *et seq.* (“PAGA”) to recover civil penalties  
11 and any other available relief on behalf of Plaintiff, the State of California, and  
12 other current and former employees who worked for Defendants in California as  
13 non-exempt, hourly paid employees and received at least one wage statement and  
14 against whom one or more violations of any provision in Division 2 Part 2  
15 Chapter 1 of the Labor Code or any provision regulating hours and days of work  
16 in the applicable Industrial Welfare Commission (“IWC”) Wage Order were  
17 committed, as set forth in this complaint.

18 2. This Court has original jurisdiction over this action pursuant to 28  
19 U.S.C. § 1332(d) and based on 28 U.S.C. §§ 1441, 1446.

20 3. Venue is proper in this Court, because this case was originally filed  
21 in the Superior Court of California for the County of San Diego. Venue properly  
22 lies in the United States District Court for the Southern District of California  
23 pursuant to 28 U.S.C. §§ 84(a), 1391(b), and 1441(a).

24 4. The PAGA statute authorizes aggrieved employees to sue directly as  
25 the proxy of the State of California for civil penalties for violations of various  
26 provisions in the California Labor Code.

#### 27 **THE PARTIES**

28 5. Plaintiff Jacqueline Ahumada is a resident of National City, in San

1 Diego County, California. Defendants employed Plaintiff as an hourly paid,  
2 non-exempt employee from approximately March 2023 to August 2023.  
3 Plaintiff worked for Defendants as a Retail Sales Associate at their store in San  
4 Ysidro, California. During her employment, Plaintiff typically worked seven (7)  
5 hours or more per day and five (5) days per week. Plaintiff's primary job duties  
6 included, without limitation, cashiering, providing customer service, making  
7 sales, restocking inventory, maintaining customer relationships, and  
8 communicating sales and promotions to customers via text messages.

9 6. GIORGIO ARMANI CORPORATION was and is, upon  
10 information and belief, a New York corporation, and at all times hereinafter  
11 mentioned, an employer whose employees are engaged throughout this county  
12 and the State of California.

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

17 8. Plaintiff is informed and believes, and thereon alleges, that DOES 1  
18 through 10 were the partners, agents, owners, or managers of GIORGIO  
19 ARMANI CORPORATION, at all relevant times.

20 9. Plaintiff is informed and believes, and thereon alleges, that each and  
21 all of the acts and omissions alleged herein was performed by, or is attributable  
22 to, GIORGIO ARMANI CORPORATION and/or DOES 1 through 10  
23 (collectively, "Defendants" or "GIORGIO ARMANI"), each acting as the agent,  
24 employee, alter ego, and/or joint venturer of, or working in concert with, each of  
25 the other co-Defendants and was acting within the course and scope of such  
26 agency, employment, joint venture, or concerted activity with legal authority to  
27 act on the others' behalf. The acts of any and all Defendants were in accordance  
28 with, and represent, the official policy of Defendants.

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

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

8                           **GENERAL ALLEGATIONS**

9           12. Defendants design, manufacture, distribute, and retail fashion and  
10 lifestyle products including apparel, accessories, eyewear, watches, jewelry,  
11 home interiors, fragrances and cosmetics, with 10 store locations in California.  
12 Upon information and belief, Defendants maintain a single, centralized Human  
13 Resources (“HR”) department at their company headquarters in New York City,  
14 New York, which is responsible for the recruiting and hiring of new employees,  
15 and communicating and implementing Defendants’ company-wide policies,  
16 including timekeeping policies and meal and rest period policies, to employees  
17 throughout California.

18           13. In particular, Plaintiff and class members, on information and belief,  
19 received the same standardized documents and/or written policies. Upon  
20 information and belief, the usage of standardized documents and/or written  
21 policies, including new-hire documents, indicate that Defendants dictated  
22 policies at the corporate level and implemented them company-wide, regardless  
23 of their employees’ assigned locations or positions. Upon information and  
24 belief, Defendants set forth uniform policies and procedures in several  
25 documents provided at an employee’s time of hire.

26           14. Upon information and belief, Defendants maintain a centralized  
27 Payroll department at their company headquarters in New York City, New York,  
28 which processes payroll for all non-exempt, hourly paid employees working for

1 Defendants at their various locations in California, including Plaintiff and class  
2 members. Based upon information and belief, Defendants issue the same  
3 formatted wage statements to all non-exempt, hourly paid employees in  
4 California, irrespective of their work locations. Upon information and belief,  
5 Defendants process payroll for departing employees in the same manner  
6 throughout the State of California, regardless of the manner in which each  
7 employee's employment ends.

8 15. Defendants continue to employ non-exempt or hourly paid  
9 employees in California.

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

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

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

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

28 20. Plaintiff is informed and believes, and thereon alleges, that

1 Defendants knew or should have known that Plaintiff and class members were  
2 entitled to meal periods in accordance with the California Labor Code and  
3 applicable IWC Wage Order or payment of one (1) additional hour of pay at their  
4 regular rates of pay when they were not provided with timely, uninterrupted,  
5 thirty (30) minute meal periods and that Plaintiff and class members were not  
6 provided with all meal periods or payment of one (1) additional hour of pay at  
7 their regular rates of pay when they did not receive a timely, uninterrupted, thirty  
8 (30) minute meal period.

9       21. Plaintiff is informed and believes, and thereon alleges, that  
10 Defendants knew or should have known that Plaintiff and class members were  
11 entitled to rest periods in accordance with the California Labor Code and  
12 applicable IWC Wage Order or payment of one (1) additional hour of pay at their  
13 regular rates of pay when they were not authorized and permitted to take a  
14 compliant rest period and that Plaintiff and class members were not authorized  
15 and permitted to take compliant rest periods or provided with payment of one (1)  
16 additional hour of pay at their regular rates of pay when they were not authorized  
17 and permitted to take a compliant rest period.

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

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

28       24. Plaintiff is informed and believes, and thereon alleges, that

1 Defendants knew or should have known that Plaintiff and class members were  
2 entitled to timely payment of all wages earned upon termination of employment.  
3 In violation of the California Labor Code, Plaintiff and class members did not  
4 receive payment of all wages due, including, but not limited to, overtime wages,  
5 minimum wages, and/or meal and rest period premiums, within permissible time  
6 periods.

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

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

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

26 28. Plaintiff is informed and believes, and thereon alleges, that at all  
27 times herein mentioned, Defendants knew or should have known that they had a  
28 duty to compensate Plaintiff and class members for all hours worked, and that

Defendants had the financial ability to pay such compensation, but willfully, knowingly, and intentionally failed to do so, and falsely represented to Plaintiff and class members that they were properly denied wages, all in order to increase Defendants' profits.

### **PAGA REPRESENTATIVE ALLEGATIONS**

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

30. PAGA defines an "aggrieved employee" in Labor Code section 2699(c)(1) as "any person who was employed by the alleged violator and personally suffered each of the violations alleged."

31. Plaintiff and other current and former employees of Defendants are "aggrieved employees" as defined by Labor Code section 2699(c)(1) in that they are all Defendants' current or former employees and each of the alleged violations were committed against them.

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

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

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

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

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

1 (c) The employer may cure the alleged violation within thirty-  
2 three (33) calendar days of the postmark date of the notice  
3 sent by the aggrieved employee or representative. The  
4 employer shall give written notice within that period of time  
5 by certified mail to the aggrieved employee or representative  
6 and by online filing with the LWDA if the alleged violation is  
7 cured, including a description of actions taken, and no civil  
8 action pursuant to Section 2699 may commence. If the  
9 alleged violation is not cured within the 33-day period, the  
10 aggrieved employee may commence a civil action pursuant to  
11 Section 2699.

12 34. On June 20, 2024, Plaintiff provided written notice by online filing  
13 to the LWDA and by Certified Mail to Defendants of the specific provisions of  
14 the California Labor Code alleged to have been violated, including facts and  
15 theories to support the alleged violations, in accordance with California Labor  
16 Code section 2699.3. Plaintiff's written notice was accompanied with the  
17 applicable filing fee of seventy-five dollars (\$75). The LWDA PAGA  
18 Administrator confirmed receipt of Plaintiff's written notice and assigned  
19 Plaintiff PAGA Case Number LWDA-CM-1035378-24. A true and correct copy  
20 of Plaintiff's written notice to the LWDA and Defendants is attached hereto as  
21 "Exhibit 1."

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

26 36. Thus, Plaintiff has satisfied the administrative prerequisites under  
27 California Labor Code sections 2699.3(a) and 2699.3(c) to recover civil penalties  
28 against Defendants for violations of California Labor Code sections 201, 202,

204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

37. 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 “[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law.”

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

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

40. Pursuant to PAGA, and in particular, California Labor Code sections 1194.5, 2699(a), 2699(k), 2699.3(a), 2699.3(c), and 2699.5, and section 558, Plaintiff, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties and injunctive relief for herself, all other aggrieved employees, and the State of California against Defendants for violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

### **CLASS ACTION ALLEGATIONS**

41. Plaintiff brings this action on her own behalf, as well as on behalf of

each and all other persons similarly situated, and thus seeks class certification under Rule 23 of the Federal Rules of Civil Procedure.

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

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

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

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

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

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

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

47. This action is brought and properly may be maintained as a class action pursuant to the provisions of Federal Rules of Civil Procedure 23(a)(1)-(4) and 23(b)(1), (b)(2), or (b)(3) and satisfies the requirements thereof.

48. According to Defendants' removal papers, there are at least 752 non-exempt, hourly paid employees working for Defendants across California during the relevant period. Thus, it is reasonable to presume that the members of the class are so numerous that joinder of all members is impracticable. The disposition of their claims in a class action will provide substantial benefits to the parties and the Court.

49. Plaintiff's claims are typical of those of the class members, because Plaintiff suffered the violations set forth in this First Amended Complaint.

1           50. Plaintiff will adequately protect the interests of class members.  
2 Plaintiff has no interests that are adverse to or conflict with class members and is  
3 committed to the vigorous prosecution of this action. To that end, Plaintiff has  
4 retained counsel who is competent and experienced in handling class actions on  
5 behalf of employees.

6           51. A class action is superior to all other available methods for the fair  
7 and efficient adjudication of this controversy since joinder of all members is  
8 impracticable. Furthermore, as the amount suffered by individual class members  
9 may be relatively small, the expense and burden of individual litigation make it  
10 impossible for members of the Class to individually redress the wrongs done to  
11 them. There will be no difficulty in the management of this case as a class  
12 action.

13           52. There are common questions of law and fact as to class members  
14 that predominate over questions affecting only individual members, including,  
15 but not limited to:

- 16           (a) Whether Defendants required Plaintiff and class members to  
17 work over eight (8) hours per day, over twelve (12) hours per  
18 day, or over forty (40) hours per week and failed to pay all  
19 legally required overtime compensation to Plaintiff and class  
20 members;
- 21           (b) Whether Defendants failed to pay Plaintiff and class members  
22 at least minimum wages for all hours worked;
- 23           (c) Whether Defendants failed to provide Plaintiff and class  
24 members with meal periods;
- 25           (d) Whether Defendants failed to authorize and permit Plaintiff  
26 and class members to take rest periods;
- 27           (e) Whether Defendants provided Plaintiff and class members  
28 with complete and accurate wage statements as required by

California Labor Code section 226(a);

(f) Whether Defendants maintained accurate payroll records as required by California Labor Code section 1174(d);

(g) 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;

(h) 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;

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

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

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

### **FIRST CAUSE OF ACTION**

#### **Violation of California Labor Code §§ 510 and 1198—Unpaid Overtime (Against all Defendants)**

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

54. 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

1 employees. The employment of any employee . . . under conditions of labor  
2 prohibited by the order is unlawful.”

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

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

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

19 58. California Labor Code section 510 codifies the right to overtime  
20 compensation at one and one-half (1 ½) times the regular rate of pay for hours  
21 worked in excess of eight (8) hours in a day or forty (40) hours in a week or for  
22 the first eight (8) hours worked on the seventh (7th) day of work, and to overtime  
23 compensation at twice the employee’s regular rate of pay for hours worked in  
24 excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on  
25 the seventh (7th) day of work.

26 59. During the relevant time period, Defendants willfully failed to pay  
27 all overtime wages owed to Plaintiff and class members. During the relevant  
28 time period, Plaintiff and class members were not paid overtime premiums for all

1 of the hours they worked in excess of eight (8) hours in a day, in excess of  
2 twelve (12) hours in a day, and/or in excess of forty (40) hours in a week,  
3 because all hours worked were not recorded.

4 60. First, during the relevant time period, Defendants had, and continue  
5 to have, a company-wide policy and/or practice of discouraging and impeding  
6 Plaintiff and class members from recording hours worked that were outside of  
7 their scheduled shifts in order to limit the amount of overtime employees could  
8 accrue. On information and belief, this policy of limiting overtime, coupled with  
9 Defendants' practices of understaffing and assigning heavy workloads (*see*  
10 *infra*), led Plaintiff and class members to work off-the-clock outside of their  
11 scheduled shift times in order to complete their assigned tasks. For example,  
12 approximately once per week, at Defendants' management's direction, Plaintiff  
13 was required to complete closing tasks after clocking out from her shifts, such as  
14 restocking inventory, folding clothes, and cleaning. Additionally, Defendants  
15 required Plaintiff and class members to communicate new sales and promotions  
16 to their customers via the WhatsApp mobile application to maximize their sales  
17 and meet the sales quotas; Defendants instructed Plaintiff to handle these  
18 communications off the clock. This off-the-clock work could have been  
19 recorded by Defendants, but they refused to do so to avoid the payment of  
20 additional wages to Plaintiff and class members.

21 61. Second, Defendants had, and continue to have, a company-wide  
22 security policy and/or practice requiring employees to leave the store premises  
23 together in pairs and/or groups for closing shifts. After clocking out at the end of  
24 their shifts, Plaintiff and class members were required to wait for all other  
25 employees to complete their own duties, such as managers balancing the  
26 registers, before they were released and could leave Defendants' premises  
27 together. For example, Plaintiff would clock out and then have to wait until her  
28 manager finished tallying store funds. As a result, Plaintiff and class members

1 were subject to Defendants' control after they had clocked out from their shifts,  
2 but were not compensated for this time.

3 62. Third, Defendants, on a company-wide basis, had a policy of  
4 requiring employees to undergo mandatory security checks when exiting the  
5 premises for loss prevention purposes. As a result of Defendants' policy,  
6 Plaintiff and class members were required to undergo security screenings after  
7 clocking out at the end of a shift or at the beginning of a meal period before  
8 Defendants permitted them to leave the premises. For example, before Plaintiff  
9 was permitted to leave the premises for her meal period and at the end of her  
10 shift, Plaintiff was required to wait off-the-clock for a managerial employee to  
11 check her bag. Although Defendants' requirement that Plaintiff and class  
12 members undergo security checks was mandatory, Defendants did not  
13 compensate them for the time they spent off-the-clock after shifts or during  
14 unpaid meal periods undergoing these checks while under Defendants' control.

15 63. Fourth, as stated, Defendants had, and continue to have, company-  
16 wide policies and/or practices of understaffing their locations, such that there  
17 were too few employees on duty to handle the workload and attend to customers,  
18 while also pressuring employees to meet sales quotas. Defendants' policies  
19 and/or practices resulted in a failure to provide Plaintiff and class members with  
20 adequate meal period coverage, and thus, Plaintiff and class members were not  
21 always afforded uninterrupted 30-minute meal periods during shifts when they  
22 were entitled to receive a meal period. Defendants also had a practice of failing  
23 to adhere to a schedule for meal periods, which further caused Plaintiff and class  
24 members to not be relieved of their duties for compliant meal periods. For  
25 example, Plaintiff and class members worked through their meal periods or had  
26 them interrupted to communicate with customers and send them promotion and  
27 sales updates.

28 64. Fifth, on information and belief, Defendants had, and continue to

1 have, a policy and/or practice of requiring that Plaintiff and class members carry  
2 company-issued radios and respond to requests at all times. As a result,  
3 Defendants' management sometimes contacted Plaintiff and class members on  
4 the radios during unpaid meal periods to discuss work-related matters.  
5 Defendants knew or should have known that Plaintiff and class members were  
6 performing work while off-the-clock in order to meet Defendants' expectations,  
7 but failed to compensate them for this time.

8 65. Sixth, on information and belief, because Defendants frowned upon  
9 employees accruing meal period penalties, Defendants' management pressured  
10 Plaintiff and class members to record compliant meal periods, regardless of  
11 whether they had received a compliant meal period or not, in order to strictly  
12 limit the meal penalties that Defendants would otherwise owe. Thus, Defendants  
13 did not record all hours worked during meal periods, and Plaintiff and class  
14 members performed work during meal periods for which they were not paid.

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

23 67. Defendants' failure to pay Plaintiff and class members the balance  
24 of overtime compensation as required by California law, violates the provisions  
25 of California Labor Code sections 510 and 1198. Pursuant to California Labor  
26 Code section 1194, Plaintiff and class members are entitled to recover from  
27 Defendants their unpaid overtime compensation, as well as interest, costs, and  
28 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)**

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

69. 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”).

70. As set forth above, as a result of Defendants’ policy of limiting the amount of overtime employees could accrue, Defendants required Plaintiff and class members to perform work off-the-clock after their scheduled shifts to complete work-related tasks, such as restocking inventory, folding clothes, cleaning, and communicating promotions and sales to customers via messages. Further, Defendants implemented company-wide security and loss prevention practices and/or policies, including requiring employees to wait for coworkers to complete their closing duties before being allowed to leave the store premises and to undergo mandatory security checks when exiting the premises. Defendants failed to track this time that Plaintiff and class members spent working off-the-clock, and Plaintiff and class members received no compensation for this time.

71. Further, as also stated, due to Defendants’ policies and/or practices of understaffing their locations while assigning heavy workloads, including

1 pressure to meet sales quotas, failing to adhere to a schedule for meal periods,  
2 and requiring employees to respond to radio communications, Plaintiff and class  
3 members were impeded from taking all uninterrupted meal periods to which they  
4 were entitled and were required to work off-the-clock during meal periods, have  
5 their meal periods interrupted, and/or were otherwise not relieved of all duties  
6 during unpaid meal periods. Moreover, as stated, in order to prevent employees  
7 from accruing meal period penalties, upon information and belief, Defendants'  
8 management pressured Plaintiff and class members to record compliant meal  
9 periods, even when meal periods were missed, short, and/or interrupted. Thus,  
10 Defendants systematically failed to pay Plaintiff and class members for actual  
11 hours worked during unpaid meal periods because these hours were not always  
12 correctly recorded.

13 72. Defendants did not pay minimum wages for all hours worked by  
14 Plaintiff and class members. To the extent that these off-the-clock hours did not  
15 qualify for overtime premium payment, Defendants did not pay at least minimum  
16 wages for those hours worked off-the-clock in violation of California Labor  
17 Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

18 73. Defendants' failure to pay Plaintiff and class members minimum  
19 wages violates California Labor Code sections 1182.12, 1194, 1197, 1197.1, and  
20 1198. Pursuant to California Labor Code section 1194.2, Plaintiff and class  
21 members are entitled to recover from Defendants liquidated damages in an  
22 amount equal to the wages unlawfully unpaid and interest thereon.

### 23 **THIRD CAUSE OF ACTION**

#### 24 **Violations of California Labor Code §§ 226.7, 512(a), 516, and 1198—Meal** 25 **Period Violations** 26 **(Against all Defendants)**

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

1           75. At all relevant times herein set forth, California Labor Code section  
2 512(a) provides that an employer may not require, cause, or permit an employee  
3 to work for a period of more than five (5) hours per day without providing the  
4 employee with a meal period of not less than thirty (30) minutes, except that if  
5 the total work period per day of the employee is not more than six (6) hours, the  
6 meal period may be waived by mutual consent of both the employer and the  
7 employee. Under California law, first meal periods must start after no more than  
8 five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042  
9 (2012).

10           76. At all relevant times herein set forth, California Labor Code sections  
11 226.7, 512(a), 516, and 1198 provide that no employer shall require an employee  
12 to work during any meal period mandated by an applicable order of the IWC.

13           77. At all relevant times herein set forth, Labor Code sections 226.7 and  
14 512(a), and the applicable IWC Wage Order also require employers to provide a  
15 second meal period of not less than thirty (30) minutes if an employee works  
16 over ten (10) hours per day or to pay an employee one (1) additional hour of pay  
17 at the employee's regular rate, except that if the total hours worked is no more  
18 than twelve (12) hours, the second meal period may be waived by mutual  
19 consent of the employer and the employee only if the first meal period was not  
20 waived.

21           78. As stated, Defendants had, and continue to have, company-wide  
22 policies and/or practices of understaffing while assigning heavy workloads,  
23 including pressuring employees to meet sales quotas, which has resulted in a lack  
24 of meal period coverage and prevented Plaintiff and class members from taking  
25 all timely, uninterrupted meal periods to which they were entitled. Moreover,  
26 Defendants' management erroneously informed Plaintiff and class members that  
27 they were not entitled to a meal period when they worked shifts of less than  
28 seven (7) hours. Further, as stated, Defendants had a company-wide practice

1 and/or policy of failing to adhere to a schedule for meal periods, which further  
2 caused Plaintiff and class members to not be relieved of their duties for  
3 compliant meal periods. Additionally, as set forth above, pursuant to  
4 Defendants' loss prevention policy, Plaintiff and class members were required to  
5 submit to off-the-clock security checks after clocking out for their meal periods,  
6 resulting in shortened meal periods.

7 79. As a result, Plaintiff and class members had to work through all or  
8 part of their meal periods, had their meal periods interrupted, and/or had to wait  
9 extended periods of time before taking meal periods. For example, as stated,  
10 Plaintiff sometimes had to forgo and work through her meal periods. As a  
11 further example, Defendants' management instructed Plaintiff to communicate  
12 promotions and sales to customers via phone messages off the clock, including  
13 during unpaid meal periods. Additionally, Plaintiff took her meal periods late,  
14 after the fifth hour of work, due to the lack of coverage and heavy workload.

15 80. Moreover, as stated, Defendants had, and continue to have, a  
16 company-wide policy and/or practice of requiring that Plaintiff and class  
17 members respond to requests on company-issued radios, including during meal  
18 periods. As a result, Defendants' management contacted Plaintiff and class  
19 members on these radios during meal periods to discuss work-related matters and  
20 assign tasks.

21 81. Further, as stated, on information and belief, because Defendants  
22 frowned upon employees accruing meal period penalties, Defendants'  
23 management pressured Plaintiff and class members to record compliant meal  
24 periods, even when they did not receive a compliant meal period, in order to  
25 strictly limit the meal penalties that Defendants would otherwise owe. Plaintiff  
26 and class members did not sign valid meal period waivers on days that they were  
27 entitled to meal periods and were not relieved of all duties.

28 82. At all times herein mentioned, Defendants knew or should have

1 known that, as a result of these policies, Plaintiff and class members were  
2 prevented from being relieved of all duties and required to perform some of their  
3 assigned duties during meal periods. Defendants further knew or should have  
4 known that Defendants did not pay Plaintiff and class members meal period  
5 premiums when meal periods were missed, shortened, interrupted, and/or late.

6 83. Moreover, Defendants engaged in a company-wide practice and/or  
7 policy of not paying meal period premiums owed when compliant meal periods  
8 are not provided. Because of this practice and/or policy, Plaintiff and class  
9 members have not received premium pay for missed, late, and interrupted meal  
10 periods. As a result, Defendants failed to provide Plaintiff and class members  
11 compliant meal periods in violation of California Labor Code sections 226.7,  
12 512(a), and 516 and failed to pay the full meal period premiums due.

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

#### 18 **FOURTH CAUSE OF ACTION**

#### 19 **Violation of California Labor Code §§ 226.7, 516, and 1198—Rest Period**

#### 20 **Violations**

#### 21 **(Against all Defendants)**

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

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

27 87. At all relevant times, the applicable IWC Wage Order provides that  
28 "[e]very employer shall authorize and permit all employees to take rest periods,

1 which insofar as practicable shall be in the middle of each work period” and that  
2 the “rest period time shall be based on the total hours worked daily at the rate of  
3 ten (10) minutes net rest time per four (4) hours or major fraction thereof” unless  
4 the total daily work time is less than three and one-half (3 ½) hours.

5 88. At all relevant times, California Labor Code section 226.7 provides  
6 that no employer shall require an employee to work during any rest period  
7 mandated by an applicable order of the California IWC. To comply with its  
8 obligation to authorize and permit rest periods under California Labor Code  
9 section 226.7 and the applicable IWC Wage Order, an employer must “relinquish  
10 any control over how employees spend their break time, and relieve their  
11 employees of all duties—including the obligation that an employee remain on  
12 call. A rest period, in short, must be a period of rest.” *Augustus v. ABM Security*  
13 *Services, Inc.*, 2 Cal. 5th 257, 273 (2016). California Labor Code section 226.7  
14 and the applicable IWC Wage Order also provide that rest periods shall be  
15 counted as hours worked for which there shall be no deduction from wages.

16 89. Pursuant to the applicable IWC Wage Order and California Labor  
17 Code section 226.7(c), Plaintiff and class members are entitled to recover from  
18 Defendants one (1) additional hour of pay at their regular rates of pay for each  
19 work day that a required rest period was not authorized and permitted.

20 90. During the relevant time period, Defendants regularly failed to  
21 authorize and permit Plaintiff and class members to take a ten (10) minute rest  
22 period per each four (4) hour period worked or major fraction thereof. As with  
23 meal periods, Defendants’ company-wide practices, including understaffing and  
24 assigning heavy workloads, including pressure to meet sales quotas, prevented  
25 Plaintiff and class members from being relieved of all duty to take rest periods.  
26 Additionally, Defendants failed to adhere to a schedule for rest periods, which,  
27 coupled with Defendants’ failure to provide adequate rest period coverage,  
28 further led to Plaintiff and class members not being authorized and permitted to

1 take rest periods. Moreover, as stated, Defendants had, and continue to have, a  
2 policy and/or practice of requiring that Plaintiff and class members carry a  
3 company-issued radio to respond to requests from management at all times,  
4 including during rest periods.

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

13 92. As a result of Defendants' practices and policies, Plaintiff and class  
14 members worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in  
15 excess of 10 hours without receiving all uninterrupted rest periods to which they  
16 were entitled. For example, Plaintiff missed her rest periods approximately three  
17 (3) times per week due to the lack of coverage and heavy workload.

18 93. Defendants have also engaged in a company-wide practice and/or  
19 policy of not paying rest period premiums owed when compliant rest periods are  
20 not authorized and permitted. Because of this practice and/or policy, Plaintiff  
21 and class members have not received premium pay for all missed rest periods.

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

27 //

28 //

**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)**

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

96. 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.

97. 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 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).

98. Because Defendants did not record the time Plaintiff and Subclass members spent working off the clock and deducted time from their meal periods that were missed and/or interrupted (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 and Subclass members in compliance with sections 226(a)(1) and 226(a)(5). For the same reason, Defendants failed to accurately list the total number of hours worked by Plaintiff and Subclass members, in

1 violation of section 226(a)(2), and failed to list the applicable hourly rates of pay  
2 in effect during the pay period and the corresponding accurate number of hours  
3 worked at each hourly rate, in violation of section 226(a)(9).

4 99. The wage statement deficiencies also include, among other things,  
5 failing to list the number of piece-rate units earned and any applicable piece rate  
6 if the employee is paid on a piece-rate basis; failing to list all deductions; failing  
7 to list the inclusive dates of the period for which employees were paid; failing to  
8 list the name of the employee and only the last four digits of his or her social  
9 security number or an employee identification number other than a social  
10 security number; failing to list the name and address of the legal entity that is the  
11 employer; and/or failing to state all hours worked as a result of not recording or  
12 stating hours worked off-the-clock.

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

25 101. California Labor Code section 1198 provides that the maximum  
26 hours of work and the standard conditions of labor shall be those fixed by the  
27 Labor Commissioner and as set forth in the applicable IWC Wage Order.  
28 Section 1198 further provides that “[t]he employment of any employees for

1 longer hours than those fixed by the order or under conditions of labor prohibited  
2 by the order is unlawful.” Pursuant to the applicable IWC Wage Order,  
3 employers are required to keep accurate time records showing when the  
4 employee begins and ends each work period and meal period. During the  
5 relevant time period, Defendants engaged in company-wide practices and/or  
6 policies of failing to record actual hours worked, and thereby failed to keep  
7 accurate records of work period and meal period start and end times for Plaintiff  
8 and Subclass members, in violation of section 1198.

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

### 13 SIXTH CAUSE OF ACTION

#### 14 Violation of California Labor Code §§ 201 and 202—Wages Not Timely 15 Paid Upon Termination 16 (Against all Defendants)

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

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

23 105. At all times relevant herein set forth, Labor Code sections 201 and  
24 202 provide that if an employer discharges an employee, the wages earned and  
25 unpaid at the time of discharge are due and payable immediately, and that if an  
26 employee voluntarily leaves his or her employment, his or her wages shall  
27 become due and payable not later than seventy-two (72) hours thereafter, unless  
28 the employee has given seventy-two (72) hours previous notice of his or her

1 intention to quit, in which case the employee is entitled to his or her wages at the  
2 time of quitting.

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

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

15 **SEVENTH CAUSE OF ACTION**

16 **Violation of California Labor Code § 204—Failure to Timely Pay Wages**  
17 **During Employment**  
18 **(Against all Defendants)**

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

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

24 110. At all times relevant herein set forth, Labor Code section 204  
25 provides that all wages earned by any person in any employment between the  
26 first (1st) and the fifteenth (15th) days, inclusive, of any calendar month, other  
27 than those wages due upon termination of an employee, are due and payable  
28 between the sixteenth (16th) and the twenty-sixth (26th) day of the month during

1 which the labor was performed.

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

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

14 113. During the relevant time period, Defendants willfully failed to pay  
15 Plaintiff and class members all wages due including, but not limited to, overtime  
16 wages, minimum wages, and/or meal and rest period premiums, within the time  
17 periods specified by California Labor Code section 204.

18 114. Defendants' failure to pay Plaintiff and class members all wages due  
19 violates Labor Code section 204. Plaintiff and class members are therefore  
20 entitled to recover from Defendants the statutory penalty wages pursuant to  
21 California Labor Code section 210.

22 **EIGHTH CAUSE OF ACTION**

23 **Violation of California Labor Code § 2802—Unpaid Business-Related**  
24 **Expenses**  
25 **(Against all Defendants)**

26 115. Plaintiff incorporates by reference and re-alleges as if fully stated  
27 herein each and every allegation set forth above. At all times herein set forth,  
28 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 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 provide and maintain hand tools and equipment customarily required by the trade or craft.”

116. 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 were required to use their personal mobile devices for work-related tasks, including responding to calls from management and contacting customers with sales and promotions via messages on the WhatsApp mobile application. Although Defendants required Plaintiff and class members to utilize their personal mobile devices and/or mobile data to carry out their work-related responsibilities, Defendants failed to reimburse them for these costs.

117. Defendants could have provided Plaintiff and class members with the actual equipment for use on the job, such as company mobile devices. Or, Defendants could have reimbursed employees for the costs of their mobile device usage. Instead, Defendants passed these operating costs off onto Plaintiff and class members. At all relevant times, Plaintiff did not earn at least two (2) times the minimum wage.

118. Defendants' company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred and passing on their operating costs to Plaintiff 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.

119. 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)**

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

121. 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, 204, 1174(d), and 1198. 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 226(a), 226.7, 510, 512(a), 516, 1182.12, 1194, 1197, 1197.1, and 2802.

122. 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 1182.12, 1194, 1197, 1197.1, and 1198, and the applicable IWC Wage Order for

Defendants' failure to compensate Plaintiff and other aggrieved employees with at least minimum wages for all hours worked, as alleged herein;

- (c) Violation of Labor Code sections 226.7, 512(a), 516, and 1198, and the applicable IWC Wage Order for Defendants' failure to provide Plaintiff and other aggrieved employees with meal periods, as alleged herein;
- (d) Violation of Labor Code sections 226.7, 516, and 1198, and the applicable IWC Wage Order for Defendants' failure to authorize and permit Plaintiff and other aggrieved employees to take rest periods, as alleged herein;
- (e) Violation of Labor Code sections 226(a) and 1198, and the applicable IWC Wage Order for failure to provide accurate and complete wage statements to Plaintiff and other aggrieved employees, as alleged herein;
- (f) Violation of Labor Code sections 1174(d) and 1198, and the applicable IWC Wage Order for failure to maintain payroll records, as alleged herein;
- (g) Violation of Labor Code sections 201 and 202 for failure to pay all earned wages upon termination, as alleged herein;
- (h) Violation of Labor Code section 204 for failure to pay all earned wages during employment, as alleged herein;
- (i) Violation of Labor Code section 1198 and the applicable IWC Wage Order for failure to provide suitable seating, as set forth below; and
- (j) Violation of Labor Code section 2802 for failure to reimburse Plaintiff and other aggrieved employees for all business expenses necessarily incurred, as alleged herein.

1 123. At all relevant times herein, California Labor Code section 1198  
2 makes it illegal to employ an employee under conditions of labor that are  
3 prohibited by the applicable wage order. California Labor Code section 1198  
4 requires that “. . . the standard conditions of labor fixed by the commission shall  
5 be the . . . standard conditions of labor for employees. The employment of any  
6 employee . . . under conditions of labor prohibited by the order is unlawful.”

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

10 125. Defendants’ stores are generally similar in their layout and design  
11 and there was, and continues to be, space behind cash wraps to allow for the  
12 presence and use of a seat or stool by Plaintiff and other aggrieved employees  
13 (with reasonable or no modification to these work areas) during the performance  
14 of their work duties. Defendants could have provided Plaintiff and other  
15 aggrieved employees with a seat or stool at their cash wraps, but instead denied  
16 employees seating and forced Plaintiff and other aggrieved employees to stand  
17 throughout the day.

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

25 127. Defendants violated California Labor Code section 1198 and  
26 California Code of Regulations, Title 8, section 11070(14)(A) because Plaintiff  
27 and other aggrieved employees were not allowed to sit, even when the nature of  
28 their work would reasonably permit the use of seats, nor were they provided with

1 suitable seats. Defendants' management did not inform Plaintiff and other  
2 aggrieved employees that they were allowed to sit down, provide any means for  
3 them to sit down, or mention any policy regarding sitting.

4 128. As a result of Defendants' company-wide policy and/or practice of  
5 prohibiting employees from sitting during their shifts and company-wide failure  
6 to provide suitable seating, Plaintiff and other aggrieved employees were forced  
7 to stand during shifts and denied seats. Defendants' failure to provide suitable  
8 seating to Plaintiff and other aggrieved employees violates California Labor  
9 Code section 1198 and IWC Wage Order No. 7-2001, subdivision 14(A).  
10 Plaintiff and other aggrieved employees are therefore entitled to recover civil  
11 penalties pursuant to Labor Code sections 2699(a), (f), and (k).

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

18 130. During the relevant time period, Defendants violated California  
19 Labor Code section 1198 and California Code of Regulations, Title 8, section  
20 11070(14)(B), because Plaintiff and other aggrieved employees were not allowed  
21 to sit, even during lulls in their work duties, nor were they provided with suitable  
22 seats in reasonable proximity to their work areas.

23 131. Defendants' California stores are generally similar in their layout  
24 and design and there was, and continues to be, space near their work areas (with  
25 reasonable or no modification to these work areas) to allow for the presence and  
26 use of a seat or stool by Plaintiff and other aggrieved employees during lulls in  
27 operation. Defendants could have provided Plaintiff and other aggrieved  
28 employees with a seat or stool in their work areas, but instead denied, and

1 continue to deny, employees seating, forcing them to stand throughout the day.

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

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

20 **TENTH CAUSE OF ACTION**

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

22 **Unlawful Business Practices**

23 **(Against all Defendants)**

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

26 135. Defendants are "persons" as defined by California Business &  
27 Professions Code section 17201, as they are corporations, firms, partnerships,  
28 joint stock companies, and/or associations.

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

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

10 138. A violation of California Business & Professions Code sections  
11 17200, *et seq.* may be predicated on the violation of any state or federal law. In  
12 the instant case, Defendants' policies and practices have violated state law in at  
13 least the following respects:

- 14 (a) Requiring non-exempt, hourly paid employees, including  
15 Plaintiff and class members, to work overtime without paying  
16 them proper compensation in violation of California Labor  
17 Code sections 510 and 1198, and the applicable IWC Wage  
18 Order, as alleged herein;
- 19 (b) Failing to pay at least minimum wage to Plaintiff and class  
20 members in violation of California Labor Code sections  
21 1182.12, 1194, 1197, 1197.1, and 1198, and the applicable  
22 IWC Wage Order, as alleged herein;
- 23 (c) Failing to provide all meal periods to Plaintiff and class  
24 members in violation of California Labor Code sections  
25 226.7, 512(a), 516, and 1198, and the applicable IWC Wage  
26 Order, as alleged herein;
- 27 (d) Failing to authorize and permit Plaintiff and class members to  
28 take all rest periods in violation of California Labor Code

1 sections 226.7, 516, and 1198, and the applicable IWC Wage  
2 Order, as alleged herein;

3 (e) Failing to provide Plaintiff and class members with accurate  
4 wage statements and failing to maintain accurate payroll  
5 records in violation of California Labor Code sections 226(a),  
6 1174(d), and 1198, and the applicable IWC Wage Order, as  
7 alleged herein;

8 (f) Failing timely to pay all earned wages to Plaintiff and class  
9 members in violation of California Labor Code section 204,  
10 as alleged herein; and

11 (g) Failing to reimburse Plaintiff and class members for all  
12 business expenses necessarily incurred in violation of  
13 California Labor Code section 2802, as alleged herein.

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

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

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28 //

**ELEVENTH CAUSE OF ACTION**

**Violation of California Business & Professions Code §§ 17200, *et seq.* –  
Unfair Business Practices  
(Against all Defendants)**

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

142. Defendants are “persons” as defined by California Business & Professions Code section 17201, as they are corporations, firms, partnerships, joint stock companies, and/or associations.

143. Defendants’ conduct, as alleged herein, has been, and continues to be, unfair, 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’ unfair business practices. Plaintiff seeks to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure section 1021.5.

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

145. A violation of California Business & Professions Code sections 17200, *et seq.* may be predicated on any unfair business practice. In the instant

1 case, Defendants' policies and practices have violated the spirit of California's  
2 meal and rest period laws and constitute acts against the public policy behind  
3 these laws.

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

12 **REQUEST FOR JURY TRIAL**

13 Plaintiff requests a trial by jury.

14 **PRAYER FOR RELIEF**

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

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

21 **Class Certification**

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

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

27 5. That the Court declare, adjudge, and decree that Defendants violated  
28 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 damages as may be appropriate;

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

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

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

**As to the Second Cause of Action**

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

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

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

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

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

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

**As to the Third Cause of Action**

16. That the Court declare, adjudge, and decree that Defendants violated

1 California Labor Code sections 226.7, 512(a), 516, and 1198, and the applicable  
2 IWC Wage Order by willfully failing to provide all meal periods to Plaintiff and  
3 class members;

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

7 18. For all actual, consequential, and incidental losses and damages,  
8 according to proof;

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

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

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

14 22. For such other and further relief as the Court may deem equitable  
15 and appropriate.

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

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

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

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

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

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

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

3           29. For such other and further relief as the Court may deem equitable  
4 and appropriate.

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

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

10          31. For all actual, consequential, and incidental losses and damages,  
11 according to proof;

12          32. For injunctive relief pursuant to California Labor Code section  
13 226(h);

14          33. For statutory penalties pursuant to California Labor Code section  
15 226(e);

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

18          35. For such other and further relief as the Court may deem equitable  
19 and appropriate.

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

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

26          37. For all actual, consequential and incidental losses and damages,  
27 according to proof;

28          38. For waiting time penalties according to proof pursuant to California

1 Labor Code section 203 for all employees who have left Defendants' employ;

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

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

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

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

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

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

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

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

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

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

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

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

28 49. For unpaid business-related expenses and such general and special

1 damages as may be appropriate;

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

4 51. For all actual, consequential, and incidental losses and damages,  
5 according to proof;

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

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

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

11 54. That the Court declare, adjudge and decree that Defendants violated  
12 the following California Labor Code provisions as to Plaintiff and other  
13 aggrieved employees: 510 and 1198 (by failing to pay all overtime  
14 compensation); 1182.12, 1194, 1197, 1197.1, and 1198 (by failing to pay at least  
15 minimum wages for all hours worked); 226.7, 512(a), 516, and 1198 (by failing  
16 to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize and  
17 permit all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate  
18 wage statements and maintain accurate payroll records); 201 and 202 (by failing  
19 to timely pay all earned wages upon termination); 204 (by failing to timely pay  
20 all earned wages during employment); 1198 and the applicable IWC Wage Order  
21 (by failing to provide suitable seating); and 2802 (by failing to reimburse  
22 business expenses);

23 55. For civil penalties pursuant to the California Labor Code, including  
24 sections 210, 226.3, 256, 558, 1174.5, 2699(a), (f), and (k), for violations of  
25 California Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516,  
26 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802;

27 56. For injunctive relief pursuant to California Labor Code sections  
28 1194.5 and/or 2699(k) to bring Defendants into compliance with the

requirements of California Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802;

57. For attorneys' fees and costs pursuant to California Labor Code section 2699(k)(1), and any and all other relevant statutes, for Defendants' violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802;

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

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

#### **As to the Tenth Cause of Action**

60. 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 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, 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.*;

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

62. 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.*;

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

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

**As to the Eleventh Cause of Action**

65. 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.*;

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

67. 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.*;

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

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

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1           70. For such other and further relief as the Court may deem equitable  
2 and appropriate.

3  
4 Dated: August 28, 2024

Respectfully submitted,  
Capstone Law APC

6  
7 By: Roxanna Tabatabaeepour  
Roxanna Tabatabaeepour  
8 Ryan Tish  
Alexander Wallin

9 Attorneys for Plaintiff Jacqueline  
10 Ahumada  
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**EXHIBIT “1”**



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June 20, 2024

VIA ONLINE SUBMISSION

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

Subject: *Jacqueline Ahumada v. Giorgio Armani Corporation*

Dear PAGA Administrator:

This office represents Jacqueline Ahumada in connection with her claims under the California Labor Code. Ms. Ahumada was an employee of GIORGIO ARMANI CORPORATION ("GAC").

The employer may be contacted directly at the address below:

GIORGIO ARMANI CORPORATION  
335 MADISON AVENUE, 28TH FL  
NEW YORK, NY 10017

Ms. Ahumada 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"). Ms. Ahumada seeks relief on behalf of herself, the State of California, and other persons who are or were employed by GAC 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.

GAC employed Ms. Ahumada as a non-exempt Retail Sales Associate from approximately March 2023 to August 2023. Ms. Ahumada worked at GAC's retail store location in San Ysidro, California. During her employment, Ms. Ahumada typically worked six (6) hours or more per day and five (5) days per week. Ms. Ahumada's job duties included, without limitation, cashiering, providing customer service, making sales, restocking inventory, maintaining customer relationships, and communicating sales and promotions to customers via text message.

GAC has committed one or more of the following Labor Code violations against Ms. Ahumada, the facts and theories of which follow, making her an “aggrieved employee” pursuant to California Labor Code section 2699(c):<sup>1</sup>

**GAC’s Company-Wide and Uniform Payroll and HR Practices**

GIORGIO ARMANI CORPORATION is a New York corporation. GAC designs, manufactures, distributes, and retails fashion and lifestyle products including apparel, accessories, eyewear, watches, jewelry, home interiors, fragrances and cosmetics, with 10 store locations in California. Upon information and belief, GAC maintains a single, centralized Human Resources (HR) department at its corporate headquarters in New York City, New York, for all non-exempt, hourly paid employees working for GAC in California, including Ms. Ahumada and other aggrieved employees. At all relevant times, GAC issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Ms. Ahumada and other aggrieved employees, regardless of their location or position.

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

GAC willfully failed to pay all overtime wages owed to Ms. Ahumada and other aggrieved employees. During the relevant time period, Ms. Ahumada 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.

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<sup>1</sup> These facts, theories, and claims are based on Ms. Ahumada’s experience and counsel’s review of those records currently available relating to Ms. Ahumada’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, Ms. Ahumada reserves the right to supplement this letter with additional facts, theories, and claims if she becomes aware of them subsequent to the submission of this letter.

First, during the relevant time period, GAC had, and continues to have, a company-wide policy and/or practice of discouraging and impeding Ms. Ahumada 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 policy of limiting overtime, coupled with GAC's practices of understaffing and assigning heavy workloads (*see infra*), led Ms. Ahumada and other aggrieved employees to work off-the-clock outside of their scheduled shift times in order to complete their assigned tasks. For example, approximately once per week, at GAC's management's direction, Ms. Ahumada was required to complete closing tasks after clocking out from her shifts, such as restocking inventory, folding clothes, and cleaning, which took 30 minutes each occurrence. Additionally, GAC required Ms. Ahumada and other aggrieved employees to communicate new sales and promotions to their customers via the WhatsApp mobile application to maximize their sales and meet the sales quotas; GAC instructed Ms. Ahumada to handle these communications off the clock. This off-the-clock work could have been recorded by GAC, but they refused to do so to avoid the payment of additional wages to Ms. Ahumada and other aggrieved employees.

Second, GAC had, and continues to have, a company-wide security policy and/or practice requiring employees to leave the store premises together in pairs and/or groups for closing shifts. After clocking out at the end of their shifts, Ms. Ahumada and other aggrieved employees were required to wait for all other employees to complete their own duties, such as managers balancing the registers, before they were released and could leave GAC's premises together. For example, Ms. Ahumada would clock out and then have to wait until her manager finished tallying store funds. As a result, Ms. Ahumada and other aggrieved employees were subject to GAC's control after they had clocked out from their shifts, but were not compensated for this time.

Third, GAC, on a company-wide basis, had a policy of requiring employees to undergo mandatory security checks when exiting the premises for loss prevention purposes. As a result of GAC's policy, Ms. Ahumada and other aggrieved employees were required to undergo security screenings after clocking out at the end of a shift or at the beginning of a meal period before GAC permitted them to leave the premises. For example, before Ms. Ahumada was permitted to leave the premises for her meal period and at the end of her shift, Ms. Ahumada was required to wait off-the-clock for a managerial employee to check her bag. Although GAC's requirement that Ms. Ahumada and other aggrieved employees undergo security checks was mandatory, GAC did not compensate them for the time they spent off-the-clock after shifts or during unpaid meal periods undergoing these checks while under GAC's control.

Fourth, as stated, GAC had, and continues to have, company-wide policies and/or practices of understaffing its locations, such that there were too few employees on duty to handle the workload and attend to customers, while also pressuring employees to meet sales quotas. GAC's policies and/or practices resulted in a failure to provide Ms. Ahumada and other aggrieved employees with adequate meal period coverage, and thus, Ms. Ahumada and other aggrieved employees were not always afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period. GAC also had a practice of failing to adhere to a schedule for meal periods, which further caused Ms. Ahumada and other aggrieved employees to not be relieved of their duties for compliant meal periods. For example, Ms. Ahumada and other aggrieved employees worked through their meal periods or had them interrupted to communicate with customers and send them promotion and sales updates.

Fifth, on information and belief, GAC had, and continues to have, a policy and/or practice of requiring that Ms. Ahumada and other aggrieved employees carry company-issued radios and

respond to requests at all times. As a result, GAC's management sometimes contacted Ms. Ahumada and other aggrieved employees on the radios during unpaid meal periods to discuss work-related matters. GAC knew or should have known that Ms. Ahumada and other aggrieved employees were performing work while off-the-clock in order to meet GAC's expectations, but failed to compensate them for this time.

Sixth, on information and belief, because GAC frowned upon employees accruing meal period penalties, GAC's management pressured Ms. Ahumada and other aggrieved employees to record compliant meal periods, regardless of whether they had received a compliant meal period or not, in order to strictly limit the meal penalties that GAC would otherwise owe. Thus, GAC did not record all hours worked during meal periods, and Ms. Ahumada and other aggrieved employees performed work during meal periods for which they were not paid.

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

Furthermore, GAC did not pay other aggrieved employees the correct overtime rates for the recorded overtime hours that they generated. In addition to an hourly wage, GAC paid other aggrieved employees commissions, incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, GAC failed to incorporate all remunerations, including commissions, incentive pay, and/or nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rates. Therefore, during times when other aggrieved employees worked overtime and received these other forms of pay, GAC failed to pay all overtime wages by paying a lower overtime rate than required.

GAC's failure to pay Ms. Ahumada 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. Ms. Ahumada 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 GAC's policy of limiting the amount of overtime employees could accrue, GAC required Ms. Ahumada and other aggrieved employees to perform work off-the-clock after their scheduled shifts to complete work-related tasks, such as restocking inventory, folding clothes, cleaning, and communicating promotions and sales to customers via phone. Further, GAC implemented company-wide security and loss prevention practices and/or policies, including

requiring employees to wait for coworkers to complete their closing duties before being allowed to leave the store premises and to undergo mandatory security checks when exiting the premises. GAC failed to track this time that Ms. Ahumada and other aggrieved employees spent working off-the-clock, and Ms. Ahumada and other aggrieved employees received no compensation for this time.

Further, as also stated, due to GAC's policies and/or practices of understaffing its locations while assigning heavy workloads, including pressure to meet sales quotas, failing to adhere to a schedule for meal periods, and requiring employees to respond to radio communications, Ms. Ahumada 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, have their meal periods interrupted, and/or were otherwise not relieved of all duties during unpaid meal periods. Moreover, as stated, in order to prevent employees from accruing meal period penalties, upon information and belief, GAC's management pressured Ms. Ahumada and other aggrieved employees to record compliant meal periods, even when meal periods were missed, short, and/or interrupted. Thus, GAC systematically failed to pay Ms. Ahumada and other aggrieved employees for actual hours worked during unpaid meal periods because these hours were not always correctly recorded.

Thus, GAC did not pay minimum wages for all hours worked by Ms. Ahumada and other aggrieved employees. To the extent that these off-the-clock hours did not qualify for overtime premium payment, GAC 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, GAC regularly failed to pay at least minimum wages to Ms. Ahumada 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. Ms. Ahumada 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.

As stated, GAC had, and continues to have, company-wide policies and/or practices of understaffing while assigning heavy workloads, including pressuring employees to meet sales quotas, which has resulted in a lack of meal period coverage and prevented Ms. Ahumada and other aggrieved

employees from taking all timely, uninterrupted meal periods to which they were entitled. Moreover, GAC's management erroneously informed Ms. Ahumada and other aggrieved employees that they were not entitled to a meal period when they worked shifts of less than seven (7) hours. Further, as stated, GAC had a company-wide practice and/or policy of failing to adhere to a schedule for meal periods, which further caused Ms. Ahumada and other aggrieved employees to not be relieved of their duties for compliant meal periods. Additionally, as set forth above, pursuant to GAC's loss prevention policy, Ms. Ahumada and other aggrieved employees were required to submit to off-the-clock security checks after clocking out for their meal periods, resulting in shortened meal periods.

As a result, Ms. Ahumada and other aggrieved employees had to work through all or part of their meal periods, had their meal periods interrupted, and/or had to wait extended periods of time before taking meal periods. For example, as stated, Ms. Ahumada sometimes had to forgo and work through her meal periods. As a further example, GAC's management instructed Ms. Ahumada to communicate promotions and sales to customers via phone messages off the clock, including during unpaid meal periods. Additionally, Ms. Ahumada took her meal periods late, after the fifth hour of work, due to the lack of coverage and heavy workload.

Moreover, as stated, GAC had, and continues to have, a company-wide policy and/or practice of requiring that Ms. Ahumada and other aggrieved employees respond to requests on company-issued radios, including during meal periods. As a result, GAC's management contacted Ms. Ahumada and other aggrieved employees on these radios during meal periods to discuss work-related matters and assign tasks.

Further, as stated, on information and belief, because GAC frowned upon employees accruing meal period penalties, GAC's management pressured Ms. Ahumada and other aggrieved employees to record compliant meal periods, even when they did not receive a compliant meal period, in order to strictly limit the meal penalties that GAC would otherwise owe. Moreover, GAC did not provide other aggrieved employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. Ms. Ahumada 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 herein mentioned, GAC knew or should have known that, as a result of these policies, Ms. Ahumada and other aggrieved employees were prevented from being relieved of all duties and required to perform some of their assigned duties during meal periods. GAC further knew or should have known that GAC did not pay Ms. Ahumada and other aggrieved employees meal period premiums when meal periods were missed, shortened, interrupted, and/or late.

Furthermore, GAC engaged in a company-wide practice and/or policy of not paying all meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Ms. Ahumada and other aggrieved employees have not received premium pay for missed, late, and interrupted meal periods. Alternatively, to the extent that GAC did pay other aggrieved employees premium pay for missed, late, and interrupted meal periods, GAC did not pay other aggrieved employees at the correct rate of pay for premiums because GAC systematically failed to include all forms of compensation, such as commissions, incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, GAC failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Ms. Ahumada 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, GAC regularly failed to authorize and permit Ms. Ahumada 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, GAC's company-wide practices, including understaffing and assigning heavy workloads, including pressure to meet sales quotas, prevented Ms. Ahumada and other aggrieved employees from being relieved of all duty to take rest periods. Additionally, GAC failed to adhere to a schedule for rest periods, which, coupled with GAC's failure to provide adequate rest period coverage, further led to Ms. Ahumada and other aggrieved employees not being authorized and permitted to take rest periods. Moreover, as stated, GAC had, and continues to have, policies and/or practices of requiring that Ms. Ahumada and other aggrieved employees carry a company-issued radio to respond to requests from management at all times, including during rest periods, and undergo mandatory security checks when exiting the premises on their rest breaks.

Furthermore, on information and belief, GAC maintained and implemented a company-wide on-premises rest period policy, which effectively required that Ms. Ahumada and/or other aggrieved employees remain on the premises during their rest periods. Because Ms. Ahumada and/or other aggrieved employees were restricted from leaving GAC'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, GAC effectively maintained control over Ms. Ahumada and/or other aggrieved employees during rest periods.

As a result of GAC's practices and policies, Ms. Ahumada 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, Ms. Ahumada missed her rest periods approximately three (3) times per week due to the lack of coverage and heavy workload.

GAC also has engaged in a company-wide practice and/or policy of not paying all rest period premiums owed when compliant rest periods are not authorized or permitted. Because of this practice and/or policy, Ms. Ahumada and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that GAC did pay other aggrieved employees

one (1) additional hour of premium pay for missed rest periods, GAC did not pay other aggrieved employees at the correct rate of pay for premiums because GAC failed to include all forms of compensation, such as commissions, incentive pay, nondiscretionary bonuses, and/or other forms of remuneration in the regular rate of pay.

Accordingly, GAC failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Ms. Ahumada 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. GAC has not provided Ms. Ahumada 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, GAC has knowingly and intentionally provided Ms. Ahumada and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, GAC issued uniform wage statements to Ms. Ahumada 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, GAC violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

Because GAC did not record the time Ms. Ahumada and other aggrieved employees spent working off-the-clock and deducted time from their meal periods that were missed and/or interrupted (and therefore time for which they should have been paid), GAC did not list the correct amount of gross wages and net wages earned by Ms. Ahumada and other aggrieved employees, in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, GAC failed to accurately list the total number of the hours worked by Ms. Ahumada 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 GAC did not calculate other aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages, meal and rest period premiums, and/or paid sick leave, GAC 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). GAC 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.

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), GAC willfully failed to maintain accurate payroll records for Ms. Ahumada 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, GAC engaged in company-wide practices and/or policies of failing to record actual hours worked, and thereby failed to keep accurate records of work period start and end times for Ms. Ahumada and other aggrieved employees in violation of section 1198. Furthermore, in light of GAC’s failure to provide other aggrieved employees with second 30-minute meal periods to which they were entitled, GAC kept no records of meal start and end times for second meal periods.

Because GAC failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Ms. Ahumada 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, Ms. Ahumada 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.

Ms. Ahumada 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, GAC failed to pay Ms. Ahumada 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.

Ms. Ahumada 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.

GAC willfully failed to pay Ms. Ahumada and other aggrieved employees who are no longer employed by GAC all their earned wages, 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 GAC's employ.

Ms. Ahumada 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 § 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. Effective January 1, 2024, California Labor Code section 246(b)(4) requires employers to provide no less than 40 hours or five (5) days of paid sick leave (or equivalent paid leave or paid time off) in each year of the employee's employment. 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, GAC paid other aggrieved employees commissions, incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, GAC failed to incorporate all remunerations, including commissions, 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, GAC failed to pay all sick leave benefits by paying a lower sick leave pay rate than required. Specifically, GAC paid other aggrieved employees sick leave based on their hourly rate of pay instead of their regular rate of pay.

GAC'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 § 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.*

GAC'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 Ms. Ahumada and other aggrieved employees (with reasonable or no modification to these work areas) during the performance of their work duties. GAC could provide Ms. Ahumada and other aggrieved employees with a seat or stool at its cash wraps, but instead denies employees seating and forces Ms. Ahumada and other aggrieved employees to stand throughout the day.

Ms. Ahumada and 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, GAC systematically, and on a

company-wide basis, does not provide seats or stools at or near the cash wraps, forcing Ms. Ahumada and other aggrieved employees to stand throughout their work shifts.

GAC violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11070(14)(A) because Ms. Ahumada and 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. GAC's management did not inform Ms. Ahumada and 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 GAC's company-wide policy and/or practice of prohibiting employees from sitting during their shifts and company-wide failure to provide suitable seating, Ms. Ahumada and other aggrieved employees were forced to stand during shifts and denied seats. GAC's failure to provide suitable seating to Ms. Ahumada and other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order No. 7-2001, subdivision 14(A).

Ms. Ahumada and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, and seek injunctive relief to bring GAC 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.*

GAC'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 Ms. Ahumada and other aggrieved employees during lulls in operation. GAC could have provided Ms. Ahumada and 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.

GAC did not provide Ms. Ahumada and other aggrieved employees with seats or stools in reasonable proximity to their work areas to allow them to use seats when it would not interfere with the

performance of their duties for times when they were not engaged in active duties that require standing. In other words, to the extent Ms. Ahumada and other aggrieved employees engaged in duties in which the nature of the work required standing, GAC denied them the use of seats nearby during lulls in their work duties. Moreover, GAC did not inform Ms. Ahumada and other aggrieved employees of their rights to a seat or stool under California law.

As a result of GAC'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, Ms. Ahumada and other aggrieved employees were forced to stand during shifts and denied seats. GAC's failure to provide suitable seating to Ms. Ahumada and other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order No. 7-2001, subdivision 14(B).

Ms. Ahumada and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, and seek injunctive relief to bring GAC 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."

During the relevant time period, GAC, on a company-wide basis, required that Ms. Ahumada 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, Ms. Ahumada and other aggrieved employees were required to use their personal mobile devices for work-related tasks, including responding to calls from management and contacting customers with sales and promotions via messages on the WhatsApp mobile application. Although GAC required Ms. Ahumada and other aggrieved employees to utilize their personal mobile devices and/or mobile data to carry out their work-related responsibilities, GAC failed to reimburse them for these costs.

GAC could have provided Ms. Ahumada and other aggrieved employees with the actual equipment for use on the job, such as company mobile devices. Or, GAC could have reimbursed employees for the costs of their mobile device usage. Instead, GAC passed these operating costs off onto Ms. Ahumada and other aggrieved employees. At all relevant times, Ms. Ahumada did not earn at least two (2) times the minimum wage.

Thus, GAC 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. Ms. Ahumada 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.” GAC, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Ms. Ahumada’s and other aggrieved employees’ rights by violating various sections of the California Labor Code.

Accordingly, Ms. Ahumada seeks the remedies set forth in Labor Code section 558 for herself, 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, Ms. Ahumada, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties and injunctive relief for herself, all other aggrieved employees, and the State of California against GAC for violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 246, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

Therefore, on behalf of all aggrieved employees, Ms. Ahumada 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,

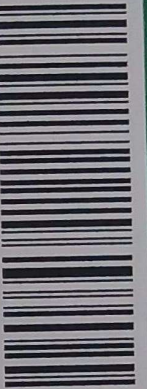


Ninel Kocharyan

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Capstone Law, APC  
4875 Century Park, East, 1000  
Los Angeles, CA. 90067

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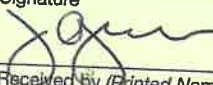
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