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

ROSALINDA MARCHBANKS-POWELL, on
behalf of herself and other current and former
employees,

Plaintiff,

v.

DESTINATION XL GROUP, INC., a
Delaware corporation;
CASUAL MALE STORE, LLC, a Delaware
limited liability company;
and DOES 1 through 50, inclusive,

Defendants.

Case No.: 24CU006636C

**CLASS ACTION AND
REPRESENTATIVE ACTION
COMPLAINT FOR DAMAGES AND
PENALTIES FOR:**

**(1) VIOLATION OF LABOR CODE
SECTIONS 226.7 AND 512;**

**(2) VIOLATION OF LABOR CODE
SECTIONS 1194 and 510;**

**(3) VIOLATION OF LABOR CODE
SECTION 226;**

**(4) VIOLATION OF LABOR CODE
SECTIONS 201-204;**

**(5) VIOLATION OF LABOR CODE
SECTION 2698 *et. seq.*;**

**(6) BUSINESS AND PROFESSIONS
CODE SECTION 17200 *et seq.***

DEMAND FOR JURY TRIAL

1 Plaintiff Rosalinda Marchbanks-Powell (“Plaintiff”) hereby submits her Class Action
2 and Representative Action Complaint for Damanges and Penalties against Defendants
3 Destination XL Group, Inc., Casual Male Store, LLC, and DOES 1 through 50, inclusive
4 (collectively, “Defendants”), on behalf of herself and other current and former employees of
5 Defendants for meal period and rest break wages, minimum and overtime wages, and penalties
6 as follows:

7 **INTRODUCTION**

8 1. This class action and representative action is brought pursuant to Labor Code §§
9 201 to 204, 226, 226.7, 510, 512, 1194, 2698 *et seq.* (the Private Attorneys General Act of
10 2004 (“PAGA”)); Industrial Welfare Commission (“IWC”) Wage Order 7-2001 (codified as
11 California Code of Regulations Title 8 § 11070), and Business and Professions Code § 17200
12 *et seq.* (Unfair Competition Law (“UCL”)).

13 2. This Complaint challenges Defendants’ systemic illegal employment practices
14 resulting in violations of the stated provisions of the Labor Code and corresponding IWC
15 Wage Order against the identified class of employees and group of aggrieved employees.

16 3. Plaintiff is informed and believes and thereon alleges Defendants joint and
17 severally acted intentionally and with deliberate indifference and conscious disregard to the
18 rights of all employees in (1) failing to provide all meal periods and rest breaks, (2) failing to
19 pay all minimum and overtime wages, (3) failing to reimburse for all necessary business-
20 related costs and expenses, (4) failing to provide accurate wage statements, and (5) failing to
21 pay all wages due and owing upon termination of employment.

22 4. This Complaint is timely filed, in accordance with the limitations period
23 provided by Code of Civ. Pro. section 340(a). On June 13, 2024, Plaintiff provided written
24 notice to the LWDA and Defendants of the specific provisions of the Labor Code she contends
25 were violated, and the theories supporting the contentions. To date, she has not received a
26 response.

27 **JURISDICTION AND VENUE**

28 5. This class action is brought pursuant to California Code of Civil Procedure §

382. This representative action is brought pursuant to PAGA. The monetary damages sought by Plaintiff exceed the minimal jurisdictional limits of the Superior Court and will be established according to proof at trial.

6. This Court has jurisdiction over this action pursuant to California Constitution, Article VI, Section 10, which grants the Superior Court original jurisdiction in all causes except those given by statute to other courts. The statutes under which this action is brought do not specify any other basis for jurisdiction.

7. This Court has jurisdiction over the violations of PAGA and Labor Code §§ 201 to 204, 226, 226.7, 510, 512, 1194, and the IWC Wage Order.

8. This Court has jurisdiction over all Defendants because, upon information and belief, each party has sufficient minimum contacts in California, or otherwise intentionally avails itself of California law so as to render the exercise of jurisdiction over it by the California courts consistent with traditional notions of fair play and substantial justice.

9. Venue is proper in this Court because, upon information and belief, the named Defendants transact business and/or have offices in this county, and the acts and omissions alleged herein took place in this county.

PARTIES

10. Plaintiff is an individual residing in the State of California. Plaintiff was formerly employed by Defendants in a non-exempt, hourly-paid position during the relevant time period.

11. Defendant Destination XL Group, Inc. is a corporation organized and existing under the laws of Delaware, licensed to do business and actually doing business in the State of California, including the County of San Diego.

12. Defendant Casual Male Store, LLC is a limited liability company organized and existing under the laws of Delaware, licensed to do business and actually doing business in the State of California, including the County of San Diego.

13. Plaintiff does not know the true names or capacities, whether individual, partner or corporate, of Defendants sued herein as DOES 1 through 50, inclusive, and for that reason,

1 said Defendants are sued under such fictitious names, and Plaintiff prays for leave to amend
2 this complaint when the true names and capacities are known. Plaintiff is informed and
3 believes and thereon alleges that each of Defendants designated as a DOE was responsible in
4 some way for the matters alleged herein and proximately caused Plaintiff and members of the
5 general public and the group of aggrieved employees to be subject to the illegal employment
6 practices, wrongs and injuries complained of herein.

7 **14.** At all times herein mentioned, Defendants, and each of them, were agents,
8 partners, joint venturers, representatives, servants, employees, successors-in-interest, co-
9 conspirators and assigns, each of the other, and at all times relevant hereto were acting within
10 the course and scope of their authority as such agents, partners, joint venturers, representatives,
11 servants, employees, successors, co-conspirators and assigns, and that all acts or omissions
12 alleged herein were duly committed with ratification, knowledge, permission, encouragement,
13 authorization and consent of each Defendant designated herein.

14 **15.** As such, and based upon all the facts and circumstances incident to Defendants’
15 business in California, Defendants are subject to Labor Code §§ 201 to 204, 226, 226.7, 510,
16 512, 1194, PAGA, and the IWC Wage Order.

17 **CLASS ACTION ALLEGATIONS**

18 **16. Definition:** Plaintiff seeks class certification pursuant to California Code of
19 Civil Procedure § 382 of a class of all non-exempt employees of Defendants who worked in
20 California during the period from April 6, 2020¹ to the present, including the following
21 Subclasses:

22 a) **Meal Period Subclass:** all non-exempt employees of Defendants who
23 worked one or more shifts in excess of six (6) hours in California during
24 the period from April 6, 2020 to the present;

25 **As an alternative to Subclass (a):** all non-exempt employees of Defendants
26 who worked one or more shifts in excess of six (6) hours in California

27 ¹ Pursuant to Emergency Rule 9 of the Judicial Council of California’s emergency rules
28 related to the COVID-19 pandemic, “[n]otwithstanding any other law, the statutes of
limitations and repose for civil causes of action that exceed 180 days are tolled from April 6,
2020, until October 1, 2020.”

without receiving a 30-minute break during which they were relieved of all duties, during the period from April 6, 2020 to the present;

- b) **Rest Break Subclass:** all non-exempt employees of Defendants who worked one or more shifts of three and one-half (3.5) hours or more in California during the period from April 6, 2020 to the present;

As an alternative to Subclass (b): all non-exempt employees of Defendants who worked one or more shifts of three and one-half (3.5) hours or more in California without receiving all required paid 10-minute breaks during which they were relieved of all duties, during the period April 6, 2020 to the present;

- c) **Overtime Subclass:** all non-exempt employees of Defendants who worked one or more shifts in excess of eight (8) hours in a day or forty (40) hours in a workweek in California during the period from April 6, 2020 to the present;

As an alternative to Subclass (c): all non-exempt employees of Defendants who worked one or more shifts in excess of eight (8) hours in a day or forty (40) hours in a workweek in California and were not properly paid all overtime wages during the period from April 6, 2020 to the present;

- d) **Minimum Wage Subclass** all Defendants' non-exempt employees who worked in California and were not properly paid all minimum wages during the period from April 6, 2020 to the present;

- e) **Wage Statement Subclass:** all Defendants' non-exempt employees who worked in California and received an itemized wage statement during the period of August 19, 2021 to the present;

- f) **Terminated Employee Subclass:** all Defendants' non-exempt employees who worked in California and who were not properly paid all wages on termination or within 72 hours thereof during the period of August 19, 2021 to the present;

1 **17. Numerosity:** The members of the Class are so numerous that joinder of all
2 members would be impractical, if not impossible. The identities of the members of the Class
3 are readily ascertainable by objective, easily understood terms contained within the Class and
4 Subclass definitions, and by review of Defendants' records, including payroll records.

5 **18. Adequacy of Representation:** Plaintiff is fully prepared to take all necessary
6 steps to represent fairly and adequately the interests of the Class defined above. Plaintiff's
7 attorneys are ready, willing and able to fully and adequately represent the Class and Plaintiff.
8 Plaintiff's attorneys have prosecuted and settled wage-and-hour class actions in the past and
9 currently have a number of wage-and-hour class actions pending in California courts.

10 **19.** Defendants administered a corporate policy, practice and/or procedure of (1)
11 failing to pay all minimum and overtime wages; (2) failing to provide meal periods and rest
12 breaks; (3) failing to provide accurate wage statements; (4) failing to timely pay all wages due
13 and owing upon termination of employment; and (5) engaging in unfair business practices.
14 Plaintiff alleges this corporate conduct is accomplished with the advance knowledge and
15 designed intent to willfully withhold appropriate wages for work performed members of the
16 Class.

17 **20. Common Question of Law and Fact:** There are predominant common
18 questions of law and fact and a community of interest amongst Plaintiff and the claims of the
19 Class concerning whether Defendants' policies and practices regularly denied Class Members
20 minimum and overtime wages, meal periods and rest breaks, accurate wage statements, and
21 wages upon termination of employment.

22 **21. Typicality:** The claims of Plaintiff are typical of the claims of all members of
23 the Class. Plaintiff is a member of the Class and has suffered the alleged violations of Labor
24 Code §§ 201 to 204, 226, 226.7, 510, 512, 1194, IWC Wage Order 7-2001, and the UCL.
25 Plaintiff worked at least one shift in excess of six hours during which she was not provided all
26 duty-free, legally mandated meal periods. Plaintiff worked at least one shift of 3.5 hours or
27 greater during which she was not authorized and permitted all duty-free, legally mandated rest
28 breaks. Plaintiff worked at least one shift in excess of eight hours and one workweek in excess

1 *-of 40 hours during which she was not paid all minimum and overtime wages, and was not
2 paid all overtime wages at the correct rate of pay. Plaintiff received wage statements during her
3 employment. Plaintiff's employment terminated during the statutory period and Plaintiff was
4 not timely paid all wages due and owing her upon termination.

5 **22.** The Labor Code upon which Plaintiff bases her claims is broadly remedial in
6 nature. These laws and labor standards serve an important public interest in establishing
7 minimum working conditions and standards in California. These laws and labor standards
8 protect the average working employee from exploitation by employers who may seek to take
9 advantage of superior economic and bargaining power in setting onerous terms and conditions
10 of employment.

11 **23.** The nature of this action and the format of laws available to Plaintiff and
12 members of the Class identified herein make the class action format a particularly efficient and
13 appropriate procedure to redress the wrongs alleged herein. If each employee were required to
14 file an individual lawsuit, the corporate Defendants would necessarily gain an unconscionable
15 advantage since it would be able to exploit and overwhelm the limited resources of each
16 individual plaintiff with their vastly superior financial and legal resources. Requiring each
17 Class Member to pursue an individual remedy would also discourage the assertion of lawful
18 claims by employees who would be disinclined to file an action against their former and/or
19 current employer for real and justifiable fear of retaliation and permanent damage to their
20 careers at subsequent employment.

21 **24.** The prosecution of separate actions by the individual Class Members, even if
22 possible, would create a substantial risk of (a) inconsistent or varying adjudications with
23 respect to individual Class Members against the Defendants and which would establish
24 potentially incompatible standards of conduct for the Defendants, and/or (b) adjudications with
25 respect to individual Class Members which would, as a practical matter, be dispositive of the
26 interest of the other Class Members not parties to the adjudications or which would
27 substantially impair or impede the ability of the Class Members to protect their interests.
28 Further, the claims of the individual members of the Classes are not sufficiently large to

warrant vigorous individual prosecution considering all of the concomitant costs and expenses.

25. Such a pattern, practice and administration of corporate policy regarding illegal employee compensation described herein is unlawful and creates an entitlement to recovery by Plaintiff and the Class identified herein, in a civil action, for the unpaid balance of the full amount of minimum and overtime wages, meal period and rest break premiums, and penalties, including interest thereon, attorneys' fees and costs of suit, as well as consequential damages.

26. Proof of a common business practice or factual pattern, which Plaintiff experienced and is representative of, will establish the right of each Class Member to recovery on the causes of action alleged herein.

27. The Class is commonly entitled to a specific fund with respect to the compensation illegally and unfairly retained by Defendants. This action is brought for the benefit of the entirety of all Class and will result in the creation of a common fund.

FIRST CAUSE OF ACTION

VIOLATION OF LABOR CODE SECTION 226.7

REGARDING MEAL PERIOD AND REST BREAK WAGES

(AGAINST ALL DEFENDANTS BY PLAINTIFF ON BEHALF OF THE CLASS AND SUBCLASSES (a), (b), (e), and (f))

28. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 29 as though fully set forth herein.

29. In accordance with the mandates of the California Labor Code and the applicable IWC Wage Order, Plaintiff and the Class and Subclasses (a), (b), (e), and (f) had the right to take a 10-minute rest break for every four (4) hours worked or major fraction thereof, and a 30-minute meal period for every five (5) hours worked.

30. As a pattern and practice, Defendants regularly did not provide Plaintiff and the Class and Subclasses (a), (b), (e), and (f) with all required meal periods and rest breaks and did not provide proper compensation for this failure. Defendants failed to relieve Plaintiff and the Class and Subclasses (a), (b), (e), and (f) of duty for meal periods and rest breaks, and failed to pay meal period and rest break premium wages at the correct regular rate of pay. Plaintiff and

the Class and Subclasses (a), (b), (e), and (f) were required to take on-duty meal and rest breaks, in violation of law, where they worked during their meal and meal breaks. Further, meal periods were short, late, and/or missing, and improperly recorded.

31. Defendants' policy of failing to provide Plaintiff and the Class and Subclasses (a), (b), (e), and (f) with all legally-mandated meal periods and rest breaks is a violation of California law.

32. Defendants willfully failed to pay employees whom they did provide the opportunity to take meal periods and rest breaks the premium compensation set out in Labor Code § 226.7 and the applicable IWC Wage Order, and Plaintiff and the Class and Subclasses (a), (b), (e), and (f) are owed wages for meal period and rest break premiums as set forth above.

33. Such a pattern, practice and administration of corporate policy as described herein is unlawful and creates an entitlement to recovery by Plaintiff and the Class and Subclasses (a), (b), (e), and (f) identified herein, in a civil action, for the balance of the unpaid premium compensation pursuant to Labor Code § 226.7 and the applicable IWC Wage Order, including interest, attorneys' fees, and costs of suit.

SECOND CAUSE OF ACTION

VIOLATION OF LABOR CODE SECTION 1194

REGARDING OVERTIME AND MINIMUM WAGES

(AGAINST ALL DEFENDANTS BY PLAINTIFF ON BEHALF OF THE CLASS AND

SUBCLASSES (c), (d), (e), and (f)

34. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 33 as though fully set forth herein.

35. At all times relevant herein, Defendants were required to compensate their non-exempt employees' minimum wages for all hours worked and overtime wages for all hours worked over eight (8) hours in a day or forty (40) hours in a workweek.

36. As a pattern and practice, Defendants regularly failed to compensate Plaintiff and the Class and Subclasses (c), (d), (e), and (f) for all hours worked, including preliminary

1 and postliminary time spent working before and after the scheduled shift (including opening
2 and closing work), time spent working through recorded meal periods, and “unauthorized”
3 overtime, as well as providing unlawful comp time. Defendants also failed to pay Plaintiff and
4 the Class and Subclasses (c), (d), (e), and (f) for overtime worked at the correct regular rate of
5 pay, because they failed to properly include all wages, such as earned commissions, in the
6 regular rate calculation.

7 **37.** This resulted in Plaintiff and the Class and Subclasses (c), (d), (e), and (f)
8 receiving total wages in an amount less than minimum wage and, when applicable, deprived
9 Plaintiff and the Class and Subclasses (c), (d), (e), and (f) of overtime wages.

10 **38.** Such a pattern, practice and administration of corporate policy regarding illegal
11 employee compensation as described herein is unlawful and creates an entitlement to recovery
12 by Plaintiff and the Class and Subclasses (c), (d), (e), and (f) in a civil action, for the unpaid
13 balance of the full amount of minimum and overtime wages owing, including liquidated
14 damages, interest, attorneys’ fees, and costs of suit according to the mandate of California
15 Labor Code § 1194.

16 **THIRD CAUSE OF ACTION**

17 **VIOLATION OF LABOR CODE SECTION 226**

18 **REGARDING RECORD KEEPING**

19 **(AGAINST ALL DEFENDANTS BY PLAINTIFF ON BEHALF OF**

20 **THE CLASS AND ALL SUBCLASSES**

21 **39.** Plaintiff re-alleges and incorporates by reference paragraphs 1 through 38 as
22 though fully set forth herein.

23 **40.** At all times relevant herein, Defendants were required to maintain accurate
24 records pursuant to the mandate of Labor Code § 226.

25 **41.** In violation of Labor Code § 226, Defendants failed in their affirmative
26 obligation to keep *accurate* records for their California employees. For example, Defendants
27 failed to maintain and provide wage statements reflecting how commissions for Plaintiff and
28 the Class were calculated at time of hire, during employment, or with each payment or non-

1 payment of commission. Further, as a result of Defendants' various Labor Code violations,
2 Defendants failed to keep accurate records of Plaintiff and the Class and Subclasses' gross
3 wages earned, total hours worked, net wages earned, and all applicable hourly rates and the
4 number of hours worked at each hourly rate. Plaintiff received at least one such wage statement
5 during her employment with Defendants.

6 **42.** Such a pattern, practice and uniform administration of corporate policy as
7 described herein is unlawful and creates an entitlement to recovery by the Plaintiff and the
8 Class and Subclasses identified herein, in a civil action, for all damages and/or penalties
9 pursuant to Labor Code § 226, including interest thereon, penalties, reasonable attorneys' fees,
10 and costs of suit.

11 **FOURTH CAUSE OF ACTION**

12 **VIOLATION OF LABOR CODE SECTIONS 201 to 204**

13 **REGARDING WAITING TIME PENALTIES**

14 **(AGAINST ALL DEFENDANTS BY PLAINTIFF ON BEHALF OF**
15 **THE CLASS AND ALL SUBCLASSES)**

16 **43.** Plaintiff re-alleges and incorporates by reference paragraphs 1 through 42 as
17 though fully set for herein.

18 **44.** At all times relevant herein, Defendants were required to pay their employees
19 all wages owed in a timely fashion at the end of employment pursuant to California Labor
20 Code §§ 201 to 204.

21 **45.** As a result of Defendants' alleged Labor Code violations alleged above,
22 Defendants regularly failed to pay Plaintiff and the Class and all Subclasses their final wages
23 pursuant to Labor Code §§ 201 to 204 and accordingly owe waiting time penalties pursuant to
24 Labor Code § 203.

25 **46.** The conduct of Defendants and their agents and employees as described herein
26 was willfully done in violation of Plaintiff and the Class and all Subclasses' rights, and done by
27 managerial employees of Defendants.

28 **47.** Defendants' willful failure to provide Plaintiff and the Class and all Subclasses

1 the wages due and owing them upon separation from employment results in a continuation of
2 wages up to thirty (30) days from the time the wages were due. Therefore, Plaintiff and Class
3 Members who have separated from employment are entitled to compensation pursuant to
4 Labor Code § 203.

5 **FIFTH CAUSE OF ACTION**

6 **FOR VIOLATION OF PAGA**

7 **(AGAINST ALL DEFENDANTS BY PLAINTIFF ON BEHALF OF ALL AGGRIEVED**
8 **EMPLOYEES)**

9 **48.** Plaintiff re-alleges and incorporates by reference paragraphs 1 through 47 as
10 though fully set forth herein.

11 **49.** PAGA expressly establishes that any provision of the California Labor Code
12 which provides for a civil penalty to be assessed and collected by the LWDA, or any of its
13 departments, divisions, commissions, boards, agencies or employees for a violation of the
14 California Labor Code, may be recovered through a civil action brought by an aggrieved
15 employee on behalf of himself or herself, and other current or former employees.

16 **50.** On June 13, 2024, Plaintiff provided written notice to the LWDA and
17 Defendants of the specific provisions of the Labor Code she contends were violated, and the
18 facts and theories supporting her contentions. To date, she has not received a response.

19 **51.** Plaintiff and the other non-exempt employees are “aggrieved employees” as
20 defined by California Labor Code § 2699(c) in that they are all current or former employees of
21 Defendants, and one or more of the alleged violations was committed against them.

22 **Failure to Pay Minimum and Overtime Wages**

23 **52.** At all times relevant herein, Defendants were required to compensate their non-
24 exempt employees minimum wages for all hours worked and overtime wages for all hours
25 worked in excess of eight (8) hours in a workday and forty (40) hours in a workweek, pursuant
26 to the mandate of Labor Code §§ 510, 1194, 1197, 1197.1, and 1198.

27 **53.** During the relevant time period, Defendants regularly failed to compensate
28 Plaintiff and aggrieved employees for all hours worked, including preliminary and

1 postliminary time spent working before and after the scheduled shift (including opening and
2 closing work), time spent working through recorded meal periods, and “unauthorized”
3 overtime, as well as providing unlawful comp time. Defendants also failed to pay Plaintiff and
4 aggrieved employees for overtime worked at the correct regular rate of pay, because they failed
5 to properly include all wages, such as earned commissions, in the regular rate calculation.

6 **Failure to Provide Meal Periods and Rest Breaks**

7 **54.** In accordance with the mandates of the California Labor Code and the
8 applicable IWC Wage Order, Plaintiff and other aggrieved employees had the right to take a
9 10-minute rest break for every four (4) hours worked or major fraction thereof, and a 30-
10 minute meal period for every five (5) hours worked.

11 **55.** As a pattern and practice, Defendants regularly did not provide Plaintiff and
12 aggrieved employees with all required meal periods and rest breaks and did not provide proper
13 compensation for this failure. Defendants failed to relieve Plaintiff and other aggrieved
14 employees of duty for meal periods and rest breaks, and failed to pay meal period and rest
15 break premium wages at the correct regular rate of pay. Plaintiff and other aggrieved
16 employees were required to take on-duty meal and rest breaks, in violation of law, where they
17 worked during their meal and meal breaks. Further, meal periods were short, late, and/or
18 missing, and improperly recorded.

19 **Failure to Timely Pay Wages During Employment and Upon Termination**

20 **56.** At all times relevant herein, Defendants were required to pay their employees
21 all wages owed in a timely fashion at the end of employment pursuant to California Labor
22 Code §§ 201 to 203.

23 **57.** Further, Defendants were required to pay their employees all wages owed in a
24 timely fashion during employment, pursuant to the mandate of California Labor Code section
25 204. Section 204 requires that all wages earned by any person in any employment between the
26 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon
27 termination of an employee, are due and payable between the 16th and the 26th day of the
28 month during which the labor was performed, and that all wages earned by any person in any

1 employment between the 16th and the last day, inclusive, of any calendar month, other than
2 those wages due upon termination of an employee, are due and payable between the 1st and the
3 10th day of the following month. California Labor Code section 204 also requires that all
4 wages earned for labor in excess of the normal work period shall be paid no later than the
5 payday for the next regular payroll period.

6 **58.** As a result of Defendants' Labor Code violations alleged above, Defendants
7 failed to pay Plaintiff and the other aggrieved employees all wages due to them within any time
8 period specified by California Labor Code section 204.

9 **59.** As a result of Defendants' Labor Code violations alleged above, Defendants
10 further failed to pay Plaintiff and the other aggrieved former employees their final wages
11 pursuant to Labor Code §§ 201 to 203, and accordingly owe waiting time penalties pursuant to
12 Labor Code § 203.

13 **Failure to Provide Complete and Accurate Wage Statements**

14 **60.** At all times relevant herein, Defendants were required to keep *accurate* records
15 regarding their California employees pursuant to the mandate of Labor Code §§ 226 and
16 1174(d).

17 **61.** In violation of Labor Code § 226, Defendants failed in their affirmative
18 obligation to keep *accurate* records for their California employees. For example, Defendants
19 failed to maintain and provide wage statements reflecting how commissions for Plaintiff and
20 other aggrieved employees were calculated at time of hire, during employment, or with each
21 payment or non-payment of commission. Further, as a result of Defendants' various Labor
22 Code violations, Defendants failed to keep accurate records of Plaintiff and other aggrieved
23 employees' gross wages earned, total hours worked, net wages earned, all applicable hourly
24 rates and the number of hours worked at each hourly rate, and the name and address of the
25 legal employer. Plaintiff received at least one such wage statement during her employment
26 with Defendants.
27
28

Penalties

62. Pursuant to California Labor Code § 2699, Plaintiff, individually and on behalf of other current and former aggrieved employees, requests and is entitled to recover from Defendants, and each of them, civil penalties, interest, attorneys' fees and costs pursuant, as well as all statutory penalties against Defendants, and each of them, including but not limited to:

63. Penalties under California Labor Code § 2699 in the amount of one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.

64. Penalties under California Labor Code § 210 in the amount of a hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation, and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation, plus 25% of the amount unlawfully withheld;

65. Penalties under Labor Code § 226.3 in the amount of two hundred fifty dollars (\$250) per employee per initial violation and one thousand dollars (\$1,000) per employee for each subsequent violation;

66. Penalties under Labor Code § 558 in the amount of fifty dollars (\$50) for each aggrieved employee per pay period for the initial violation, and one hundred dollars (\$100) for each aggrieved employee per pay period for each subsequent violation;

67. Penalties under Labor Code § 1197.1 in the amount of a hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation, and two hundred fifty dollars (\$250) for each aggrieved employee per pay period for each subsequent violation;

68. Any and all additional penalties and sums as provided by the Labor Code and/or other statutes; and

69. Attorneys' fees and costs as permitted by law.

1 **FIFTH CAUSE OF ACTION**

2 **FOR VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTION 17200 *et seq.***

3 **(AGAINST ALL DEFENDANTS BY PLAINTIFF ON BEHALF OF**

4 **THE CLASS AND ALL SUBCLASSES)**

5 **70.** Plaintiff re-alleges and incorporates by reference paragraphs 1 through 69 as
6 though fully set for herein.

7 **71.** Defendants, and each of them, have engaged and continue to engage in unfair
8 and unlawful business practices in California by practicing, employing and utilizing the
9 employment practices outlined above, inclusive, to wit, by knowingly denying employees: (1)
10 all overtime and minimum wages, (2) all meal period and rest break wages, (3) wages for all
11 recorded hours worked, (4) accurate wage statements, and (5) all wages due and owing upon
12 termination of employment.

13 **72.** Defendants' utilization of such business practices constitutes unfair, unlawful
14 competition and provides an unfair advantage over Defendants' competitors.

15 **73.** The acts complained of herein occurred within the last four years preceding the
16 filing of the complaint in this action.

17 **74.** Defendants have engaged in unlawful, deceptive and unfair business practices,
18 as proscribed by California Business and Professions Code § 17200 *et seq.*, including those set
19 forth above, thereby depriving Plaintiff and the Class and Subclasses the minimum working
20 condition standards and conditions due to them under the California laws and IWC Wage
21 Orders as specifically described therein.

22 **75.** Plaintiff seeks, on her own behalf, and on behalf of other members of the Class
23 and Subclasses who are similarly situated, full restitution of monies, as necessary and
24 according to proof, to restore any and all monies withheld, acquired and/or converted by the
25 Defendants by means of the unfair practices complained of herein.

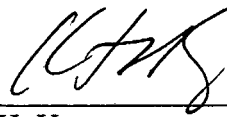
26 **PRAYER FOR RELIEF**

27 WHEREFORE, Plaintiff prays for judgment for herself and all others on whose behalf
28 this suit is brought against Defendants, jointly and severally, as follows:

1. For an order certifying the proposed Class;
2. For an order appointing Plaintiff as the representative of the Class as described herein;
3. For an order appointing counsel for Plaintiff as counsel for the Class;
4. Upon the First Cause of Action, for all meal period and rest break wages owed, and for costs and attorney's fees;
5. Upon the Second Cause of Action, for all minimum wages owed and overtime wages owed, and for costs and attorney's fees;
6. Upon the Third Cause of Action, for damages or penalties pursuant to statute as set forth in California Labor Code § 226, and for costs and attorneys' fees;
7. Upon the Fourth Cause of Action, for all minimum wages owed, for waiting time wages according to proof pursuant to California Labor Code §203, and for costs and attorney's fees;
8. Upon the Fifth Cause of Action, for civil penalties pursuant to statute as set forth in Labor Code § 2698 *et seq.*, for Defendants' violations of Labor Code §§ 201, 202, 203, 204, 218.5, 226(a), 226.3, 226.7, 510, 512(a), 558, 1174(d), 1194, 1197, 1197.1, and 1198, and for costs and attorney's fees;
9. Upon the Sixth Cause of Action, for restitution to Plaintiff and other similarly affected members of the general public of all funds unlawfully acquired by Defendants by means of any acts or practices declared by this Court to be in violation of Business and Professions Code § 17200 *et seq.*; for an injunction to prohibit Defendants to engage in the unfair business practices complained of herein, for an injunction requiring Defendants to give notice to persons to whom restitution is owing of the means by which to file for restitution; and
10. On all causes of action for attorneys' fees, interest, and costs as provided by California Labor Code §§ 210, 218.5, 218.6, 226, 1194, 2699, and Code of Civil Procedure § 1021.5, and for such other and further relief the Court may deem just and proper.

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2 DATED: August 19, 2024

YOON LAW, APC

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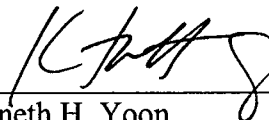
5 Kenneth H. Yoon
6 Attorneys for Plaintiff
7 Rosalinda Marchbanks-Powell

8 **DEMAND FOR JURY TRIAL**

9 Plaintiff, for herself and the Class and aggrieved employees, hereby demands a jury trial
10 as provided by California law.

11 DATED: August 19, 2024

YOON LAW, APC

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14 Kenneth H. Yoon
15 Attorneys for Plaintiff
16 Rosalinda Marchbanks-Powell