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July 15, 2024

VIA ONLINE SUBMISSION

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

Subject: *Marcos Mendiola v. Cotton On USA Inc.*

Dear PAGA Administrator:

This office represents Marcos Mendiola in connection with his claims under the California Labor Code. Mr. Mendiola was an employee of COTTON ON USA INC. ("COTTON ON").

The employer may be contacted directly at the address below:

COTTON ON USA INC.
ATTENTION: NATHAN LANE
16511 TROJAN WAY
LA MIRADA, CA 90638

Mr. Mendiola intends to seek civil penalties, attorney's fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 ("PAGA"). Mr. Mendiola seeks relief on behalf of himself, the State of California, and other persons who are or were employed by COTTON ON as a non-exempt, hourly paid employee in California 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.

COTTON ON employed Mr. Mendiola as an hourly paid, non-exempt Key Holder from approximately August 2023 to December 2023. Mr. Mendiola worked at COTTON ON's retail store located in Victorville, California. Mr. Mendiola typically worked six (6) hours or more per day, and four (4) or more days per week. At the time Mr. Mendiola's employment with COTTON ON ended, he was compensated approximately \$18.00 per hour. Mr. Mendiola's primary job duties included, without limitation, opening and closing the store, attending meetings, and providing customer service.

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

COTTON ON’s Company-Wide and Uniform Payroll and HR Practices

COTTON ON USA INC. is a Delaware corporation. COTTON ON is an Australian retail chain known for their fast-fashion clothing for men, women, and kids sold through their Cotton On, Cotton On Kids, Cotton On Body, and Typo brands. COTTON ON owns and operates approximately 1,300 store locations in the United States, including approximately 38 retail store locations in California. Upon information and belief, COTTON ON maintains a single, centralized Human Resources (HR) department at its corporate headquarters in La Mirada, California, for all non-exempt, hourly paid employees working for COTTON ON in California, including Mr. Mendiola and other aggrieved employees. At all relevant times, COTTON ON issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Mendiola and other aggrieved employees, regardless of their location or position.

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

COTTON ON willfully failed to pay all overtime wages owed to Mr. Mendiola and other aggrieved employees. During the relevant time period, Mr. Mendiola 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.

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

First, COTTON ON had, and continues to have, a company-wide policy and/or practice requiring Mr. Mendiola and other aggrieved employees to perform various work-related tasks while off-the-clock before and/or after their shifts. For example, Mr. Mendiola sometimes clocked out at the end of his shift but was required to continue working and complete processing shipments, taking up to one (1) hour per instance. As a further example, COTTON ON required Mr. Mendiola and other aggrieved employees to complete surveys and watch training videos online, which would take approximately three (3) hours to complete every quarter. Additionally, because COTTON ON's timekeeping system was integrated with the company's point-of-sale ("POS") system, other aggrieved employees would often have to wait to clock in for the start of their shifts, because other employees were using the POS system to handle customer transactions. For instance, other aggrieved employees were required to wait several minutes under COTTON ON's control until a POS machine was available for clocking-in, time for which they were not paid. Further, during this time, while other aggrieved employees waited to clock in for the start of their shift, approximately three (3) times per week, other aggrieved employees were required to complete tasks such as unlocking fitting room doors to allow customers into fitting rooms. Finally, other aggrieved employees sometimes clocked out at the end of their shift, but were required to continue working in order to reduce the number of customers waiting in line to checkout during a rush of customer foot traffic, taking up to 10 minutes per instance. Thus, COTTON ON failed to track all of the time that employees spent performing work-related tasks outside of their shifts, and Mr. Mendiola and other aggrieved employees received no compensation for this time.

In addition, due to COTTON ON's practice of scheduling some shifts outside of daytime business hours, other aggrieved employees could only enter COTTON ON's stores to clock in when other managerial or keyholder employees were available to open the doors. For example, on some occasions, after reporting to work on time, other aggrieved employees were forced to wait for approximately 5-10 minutes until a manager or keyholder employee arrived at the store, before being able to enter COTTON ON's store and clock in, because there was no one available to open the doors for them. As a result, other aggrieved employees were forced to work off-the-clock, but were not provided a means by COTTON ON to account for this time. Thus, COTTON ON failed to track this time spent working off-the-clock before their scheduled shifts, and other aggrieved employees received no compensation for this time they remained under COTTON ON's control.

Second, COTTON ON had, and continues to have, a company-wide security policy and/or practice of requiring employees to undergo mandatory security checks by a managerial employee when exiting the premises, either for loss prevention or safety purposes. As a result of COTTON ON's policy, Mr. Mendiola and other aggrieved employees were required to undergo security screenings after clocking out at the end of a shift before COTTON ON permitted them to leave the premises. For example, before Mr. Mendiola was permitted to leave the premises at the end of his shift, Mr. Mendiola was required to wait several minutes off-the-clock for his supervisor to check his bag and personal belongings. COTTON ON also had a company-wide policy of requiring employees to leave the store premises together in pairs and/or groups. After clocking out at the end of their shifts, other aggrieved employees were required to wait for all other employees to complete their own duties before they were released by a managerial employee and could leave COTTON ON's premises together. For example, other aggrieved employees would often clock out at their scheduled shift-end time, and then have wait for about 15 minutes until their supervisor had completed his or her closing tasks and locked up the store premises, before being released and able to leave the premises. As a result, Mr. Mendiola and other aggrieved employees were subject to COTTON ON's control after they had clocked out for their shifts, but were not compensated for this time.

Third, COTTON ON had, and continues to have, a company-wide policy and/or practice of strictly staffing its store locations based on the labor hours allocated by each location's labor or payroll budget set by the corporate office. For example, on information and belief, COTTON ON limited the allocation of

labor hours based on certain sales metrics, but this allotment was insufficient to staff the store locations during their hours of operation, meet customer demand, and provide adequate meal period coverage. COTTON ON's uniform use of labor budgets resulted in chronic understaffing and a lack of adequate meal period coverage, because there were too few employees on duty to handle the workload and attend to customers. As a result of this lack of meal period coverage, Mr. Mendiola and other aggrieved employees were not always afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period. Moreover, COTTON ON had a practice of failing to schedule meal periods, which further caused Mr. Mendiola and other aggrieved employees to not be relieved of their duties for compliant meal periods. Consequently, Mr. Mendiola and other aggrieved employees were required to work through and/or had their unpaid meal periods interrupted in order to complete their assigned duties and handle customer demand, time for which they were not paid.

In addition, COTTON ON's company-wide timekeeping system prevented Mr. Mendiola and other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted, because the system locked out Mr. Mendiola and other aggrieved employees once they clocked out for a meal period, and would not permit them to clock back in from a meal period until 30 minutes had elapsed. Thus, COTTON ON's timekeeping system further prevented Mr. Mendiola and other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted.

Further, on information and belief, because COTTON ON frowned upon employees accruing meal period penalties, COTTON ON's management pressured Mr. Mendiola 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 COTTON ON would otherwise owe. Thus, COTTON ON did not record all hours worked during meal periods, and Mr. Mendiola and other aggrieved employees performed work during meal periods for which they were not paid.

COTTON ON knew or should have known that, as a result of these company-wide practices and/or policies, Mr. Mendiola and other aggrieved employees were performing their assigned duties off-the-clock before and after their shifts and during meal periods, and were suffered or permitted to perform work for which they were not paid. Because Mr. Mendiola 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, COTTON ON did not pay Mr. Mendiola and/or other aggrieved employees the correct overtime rates for the recorded overtime hours that they generated. In addition to an hourly wage, COTTON ON paid Mr. Mendiola and/or other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, COTTON ON failed to incorporate all remunerations, including incentive pay and/or nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rates. Therefore, during times when Mr. Mendiola and/or other aggrieved employees worked overtime and received these other forms of pay, COTTON ON failed to pay all overtime wages by paying a lower overtime rate than required.

COTTON ON's failure to pay Mr. Mendiola and other aggrieved employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198. Mr. Mendiola 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 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”).

First, as set forth above, COTTON ON had a company-wide policy and/or practice requiring Mr. Mendiola and/or other aggrieved employees to perform various work-related tasks while off-the-clock before and after their shifts, including processing shipments, completing surveys, watching training videos, waiting to clock in for the start of their shifts and completing work tasks during this time because other employees were using the POS system, assisting customers after clocking out, waiting for manager or keyholder employees to arrive and open COTTON ON’s stores, waiting to leave the premises in pairs, and undergoing security checks. Thus, COTTON ON failed to track this time Mr. Mendiola and other aggrieved employees spent working off-the-clock, and Mr. Mendiola and other aggrieved employees received no compensation for this time.

Second, as set forth above, due to COTTON ON’s uniform practices of utilizing labor budgets, understaffing, assignment of heavy workloads, failure to schedule meal periods, and subsequent lack of meal period coverage, Mr. Mendiola and other aggrieved employees were forced to forgo meal periods, have their meal periods interrupted, and/or were otherwise not relieved of all duties during meal periods.

Moreover, as stated, COTTON ON systematically failed to pay Mr. Mendiola and other aggrieved employees for actual hours worked during unpaid meal periods, because COTTON ON’s timekeeping system locked out Mr. Mendiola and other aggrieved employees for 30 minutes when they clocked out for a meal period. Further, as stated, in order to prevent employees from accruing meal period penalties, upon information and belief, COTTON ON’s management pressured Mr. Mendiola and other aggrieved employees to record compliant meal periods, even when meal periods were missed, short, and/or interrupted. Thus, COTTON ON failed to pay Mr. Mendiola and other aggrieved employees for actual hours worked during unpaid meal periods because these hours were not always correctly recorded.

Thus, COTTON ON did not pay at least minimum wages for all hours worked by Mr. Mendiola and other aggrieved employees. To the extent that these off-the-clock hours did not qualify for overtime premium payment, COTTON ON 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, COTTON ON regularly failed to pay at least minimum wages to Mr. Mendiola and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Mr. Mendiola 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, COTTON ON had, and continues to have, a company-wide policy and/or practice of understaffing locations due to labor budgeting and/or limited payroll allocation, which, combined with the assignment of heavy workloads, and failure to schedule meal periods, has resulted in a lack of meal period coverage and prevented Mr. Mendiola and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. As a result, Mr. Mendiola 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, Mr. Mendiola was required to work through his meal periods or could not take his meal periods until after the fifth hour of his shift, due to the heavy workload and lack of coverage.

Also, as stated, COTTON ON's company-wide timekeeping system prevented Mr. Mendiola and other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted, because the system locked out Mr. Mendiola and other aggrieved employees once they clocked out for a meal period, and would not permit them to clock back in from a meal period before 30 minutes had elapsed. For example, Mr. Mendiola's meal periods were sometimes interrupted or cut short because he was required to assist new employees and answer their questions.

Moreover, COTTON ON did not provide Mr. Mendiola and/or other aggrieved employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. Mr. Mendiola and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

At all times mentioned herein, COTTON ON knew or should have known that as a result of its policies, Mr. Mendiola and other aggrieved employees were not actually relieved of all duties to take timely, uninterrupted meal periods. COTTON ON further knew or should have known that it did not pay Mr. Mendiola and other aggrieved employees meal period premiums when meal periods were late, interrupted, shortened, and/or missed. Further, as stated, on information and belief, because COTTON ON frowned upon employees accruing meal period penalties, COTTON ON's management pressured Mr. Mendiola 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 COTTON ON would otherwise owe.

Moreover, COTTON ON 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, Mr. Mendiola and other aggrieved employees have not received premium pay for missed, late, and interrupted meal periods. Alternatively, to the extent that COTTON ON did pay Mr. Mendiola and/or other aggrieved employees for missed, late, interrupted, and shortened meal periods, COTTON ON did not pay Mr. Mendiola and/or other aggrieved employees at the correct rate of pay for premiums because

COTTON ON systematically failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, COTTON ON failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Mr. Mendiola and other aggrieved employees are entitled to 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, COTTON ON regularly failed to authorize and permit Mr. Mendiola 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, COTTON ON's company-wide practices, including understaffing and assigning heavy workloads, prevented Mr. Mendiola and other aggrieved employees from being relieved of all duty to take rest periods. COTTON ON's management erroneously informed other aggrieved employees that they were only entitled to one (1) 10-minute rest period per shift, regardless of the shift length. Thus, COTTON ON also wholly failed to schedule compliant, timely rest periods, which further led to Mr. Mendiola and other aggrieved employees not being authorized and permitted to take rest periods.

Furthermore, on information and belief, COTTON ON maintained a company-wide on-premises rest period policy, which effectively required that Mr. Mendiola and other aggrieved employees remain on or near the premises during their rest periods. Because Mr. Mendiola and other aggrieved employees were effectively restricted from leaving the premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes, such as running personal errands. Thus, COTTON ON effectively maintained control over Mr. Mendiola and other aggrieved employees during rest periods.

As a result of COTTON ON's practices and policies, Mr. Mendiola 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 10-minute rest periods to which they were entitled. For example, Mr. Mendiola had to forgo his rest periods entirely due to lack of coverage and heavy workload.

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

and/or policy, Mr. Mendiola and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that COTTON ON did pay Mr. Mendiola and/or other aggrieved employees one (1) additional hour of premium pay for missed rest periods, COTTON ON did not pay Mr. Mendiola and/or other aggrieved employees at the correct rate of pay for premiums because COTTON ON failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, COTTON ON failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Mr. Mendiola and other aggrieved employees are entitled to 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. COTTON ON has not provided Mr. Mendiola 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, COTTON ON has knowingly and intentionally provided Mr. Mendiola and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, COTTON ON issued uniform wage statements to Mr. Mendiola and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; the name and address of the legal entity that is the employer; and all applicable hourly rates in effect during the pay period, including rates of pay for overtime wages and/or meal and rest period premiums, and the corresponding number of hours worked at each hourly rate. Specifically, COTTON ON violated sections 226(a)(1), 226(a)(2), 226(a)(5), 226(a)(8), and 226(a)(9).

First, because COTTON ON did not record the time Mr. Mendiola and other aggrieved employees spent working off-the-clock and deducted time from their records for meal periods that were interrupted and/or missed (and therefore time for which they should have been paid), COTTON ON did not list the correct amount of gross wages and net wages earned by Mr. Mendiola and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, COTTON ON failed to accurately list the total number of hours worked by Mr. Mendiola 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).

Second, because COTTON ON did not calculate Mr. Mendiola's and/or other aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages and/or meal and rest period premiums, COTTON ON did not list the correct amount of gross wages in compliance with section 226(a)(1). For the same reason, COTTON ON also failed to list the correct amount of net wages in violation of section 226(a)(5). COTTON ON also failed to correctly list all applicable hourly rates in

effect during the pay period, namely, correct rates of pay for overtime wages and/or meal and rest period premiums, in violation of section 226(a)(9).

Third, and separately from these violations, COTTON ON issued uniform wage statements to Mr. Mendiola and other aggrieved employees that failed to list the name and address of the legal entity of the actual employer in violation of 226(a)(8). The purpose of section 226(a)(8) is to provide California employees with transparency as to the true identity of their employer, to allow the employee to contact their employer during employment or in the future for various reasons, including filing an administrative claim, judicial claim, or other action to seek relief against their employer, to obtain unemployment benefits, etc. During the relevant time period, COTTON ON systematically, and on a company-wide basis, issued wage statements to Mr. Mendiola and other aggrieved employees that fail to list the employing entity's name and address. For example, on information and belief, COTTON ON uniformly failed to correctly list the employing entity's name and address on Mr. Mendiola's and other aggrieved employees' wage statements, including Mr. Mendiola's wage statements dated December 29, 2023.

The wage statement deficiencies also include, among other things, 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; 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), COTTON ON willfully failed to maintain accurate payroll records for Mr. Mendiola 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, COTTON ON 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 Mr. Mendiola and other aggrieved employees, in violation of section 1198. Furthermore, in light of COTTON ON's failure to provide Mr. Mendiola and/or other aggrieved employees with second 30-minute meal periods to which they were entitled, COTTON ON kept no records of meal start and end times for second meal periods.

Because COTTON ON failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Mr. Mendiola and other aggrieved employees have been prevented from verifying, solely from information on the wage statements themselves, that they were paid correctly and in full. Instead, Mr. Mendiola and other aggrieved employees have had to

look to sources outside of the wage statements themselves and reconstruct time records to determine whether in fact they were paid correctly and the extent of underpayment, thereby causing them injury.

Mr. Mendiola 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, COTTON ON failed to pay Mr. Mendiola and other aggrieved employees all wages due to them, including, but not limited to, overtime wages, minimum wages, and/or meal and rest period premiums, within any time period specified by California Labor Code section 204.

Mr. Mendiola 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.

On information and belief, COTTON ON has a company-wide practice and/or policy of paying departing employees their final wages on the next regular pay cycle, instead of adhering to the time requirements set forth in Labor Code sections 201 and 202. For example, Mr. Mendiola was terminated on or about December 27, 2023; however, COTTON did not provide Mr. Mendiola with his final paycheck until the next regularly scheduled pay day. Thus, COTTON ON failed to pay Mr. Mendiola his final wages immediately, in violation of California Labor Code section 201.

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

Mr. Mendiola 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 § 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 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.*

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

Mr. Mendiola 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, COTTON ON systematically, and on a company-wide basis, does not provide seats or stools at or near the cash wraps, forcing Mr. Mendiola and other aggrieved employees to stand throughout their work shifts.

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

Mr. Mendiola and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, and seek injunctive relief to bring COTTON ON 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 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.*

COTTON ON'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 Mr. Mendiola and other aggrieved employees during lulls in operation. COTTON ON could have provided Mr. Mendiola 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.

COTTON ON did not provide Mr. Mendiola 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 Mr. Mendiola and other aggrieved employees engaged in duties in which the nature of the work required standing, COTTON ON denied them the use of seats nearby during lulls in their work duties. Moreover, COTTON ON did not inform Mr. Mendiola and other aggrieved employees of their rights to a seat or stool under California law.

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

Mr. Mendiola and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, and seek injunctive relief to bring COTTON ON 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. 4-2001, 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.”

First, during the relevant time period, COTTON ON had a company-wide policy of requiring Mr. Mendiola and other aggrieved employees to utilize their own personal mobile devices, including, but not limited to, cellular phones, and/or mobile data to carry out their job duties, but COTTON ON failed to reimburse them for the costs of their work-related mobile device expenses. Mr. Mendiola and other aggrieved employees were required to use their personal mobile devices for work-related tasks, including responding to calls or text messages and/or checking merchandise inventory at other COTTON ON store locations. Specifically, Mr. Mendiola used his personal cellular phone to respond to calls or text messages from his managers to discuss other employees’ performance, address issues, and receive assignments. Although COTTON ON required Mr. Mendiola and other aggrieved employees to utilize their personal mobile devices and/or mobile data to carry out their work-related duties, COTTON ON failed to reimburse them for these costs.

Second, during the relevant time period, COTTON ON, on a company-wide basis, required that Mr. Mendiola and/or other aggrieved employees use their own personal vehicles to run company errands. For example, other aggrieved employees were required to use their personal vehicles and drive to the bank to complete a deposit or obtain change for the cash registers. Although COTTON ON required Mr. Mendiola and/or other aggrieved employees to utilize their personal vehicles to carry out their work-related responsibilities, COTTON ON failed to reimburse them for their mileage or travel expenses.

COTTON ON could have provided Mr. Mendiola and/or other aggrieved employees with the actual equipment for use on the job, such as company mobile devices and company vehicles, or, COTTON ON could have reimbursed employees for their mobile device usage, mileage, and/or travel expenses. Instead, COTTON ON passed these operating costs off onto Mr. Mendiola and other aggrieved employees. At all relevant times, Mr. Mendiola did not earn at least two (2) times the minimum wage.

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

Violation of California Labor Code § 2810.5(a)(1)(A)-(C) – Failure to Provide Notice of Material Terms of Employment

California’s Wage Theft Prevention Act was enacted to ensure that employers provide employees with basic information material to their employment relationship at the time of hiring, and to ensure that employees are given written and timely notice of any changes to basic information material to their employment. Codified at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an employer must provide written notice to employees of the rate(s) of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise,

including any rates for overtime, the regular payday designated by the employer, and any allowances claims as part of the minimum wage, including meal or lodging allowances. Effective January 1, 2015, an employer's written notice pursuant to section 2810.5 must also include a statement that the employee may accrue and use sick leave; has a right to request and use accrued paid sick leave; may not be terminated or retaliated against for using or requesting the use of accrued paid sick leave; and has the right to file a complaint against an employer who retaliates.

COTTON ON failed to provide Mr. Mendiola and other aggrieved employees written notice that lists the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). COTTON ON's failure to provide Mr. Mendiola and other aggrieved employees with written notice of basic information regarding their employment with COTTON ON is in violation of Labor Code section 2810.5.

Mr. Mendiola 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." COTTON ON, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Mr. Mendiola's and other aggrieved employees' rights by violating various sections of the California Labor Code.

Accordingly, Mr. Mendiola seeks the remedies set forth in Labor Code section 558 for himself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 1194.5, 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Mr. Mendiola, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties and injunctive relief for himself, all other aggrieved employees, and the State of California against COTTON ON 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, 2802, and 2810.5.

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

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

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

Best Regards,

A handwritten signature in cursive script, appearing to read "Ninel", written in black ink on a light background.

Ninel Kocharyan

Copy: COTTON ON USA INC. (via U.S. Certified Mail); Lindsay E. Hutner, Esq., Greenberg Traurig, LLP, 101 2nd Street, Suite 2200, San Francisco, CA 94105 (via U.S. Certified Mail)

CAPSTONE LAW, APC
1875 Century Park East
Suite #1000
Los Angeles, CA 90067



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COTTON ON USA INC.
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COTTON ON USA INC.
ATTENTION: NATHAN LANE
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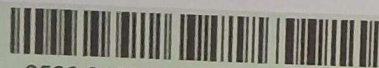
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