

ON 3/10/2025

By /s/ Ashlee Nelson
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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN MATEO

DANIEL RATHJEN, 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.

CENTRAL NETWORK RETAIL GROUP,
LLC, a Delaware limited liability company;
and DOES 1 through 10, inclusive,

Defendants.

Case No.: 24-CIV-07515

**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);

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- (8) Violation of California Labor Code § 2802 (Unreimbursed Business Expenses);
- (9) Civil Penalties for Violations of California Labor Code, Pursuant to PAGA, §§ 2698, *et seq.*;
- (10) Violation of California Business & 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 Daniel Rathjen, individually and on behalf of all other members of the public
2 similarly situated, and as an aggrieved employee and on behalf of all aggrieved employees,
3 alleges as follows:

4 JURISDICTION AND VENUE

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

18 2. This Court has jurisdiction over Defendants because Defendants are either
19 citizens of California, have sufficient minimum contacts in California, or otherwise
20 intentionally avail themselves of the California market so as to render the exercise of jurisdiction
21 over them by the California courts consistent with traditional notions of fair play and substantial
22 justice.

23 3. Venue is proper in this Court because Defendants employ persons in this county,
24 and employed Plaintiff in this county, and thus a substantial portion of the transactions and
25 occurrences related to this action occurred in this county.

26 THE PARTIES

27 4. Plaintiff Daniel Rathjen is a resident of Redwood City, in San Mateo County,
28 California. Defendants employed Plaintiff as an hourly paid, non-exempt employee from

1 approximately November 2023 to June 2024. Plaintiff worked for Defendants as a Nursery
2 Associate at their location in Redwood City, California. During his employment, Plaintiff
3 typically worked five (5) hours or more per day and four (4) days or more per week. Plaintiff's
4 primary job duties included, without limitation, assisting customers with plant selection,
5 maintaining and caring for plants, stocking and organizing the nursery area, and cashiering.

6 5. CENTRAL NETWORK RETAIL GROUP, LLC was and is, upon information
7 and belief, a Delaware limited liability company, and at all times hereinafter mentioned, an
8 employer whose employees are engaged throughout this county and the State of California.

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

13 7. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10
14 were the partners, agents, owners, or managers of CENTRAL NETWORK RETAIL GROUP,
15 LLC at all relevant times.

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

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

28 10. Plaintiff is informed and believes, and thereon alleges, that each of said

Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts, omissions, occurrences, and transactions alleged herein.

GENERAL ALLEGATIONS

11. Defendants are a multi-format, multi-brand retailer operating hardware stores, home centers, and lumberyards with 14 Outdoor Supply Hardware-branded store locations in California. Upon information and belief, Defendants maintain a single, centralized Human Resources (“HR”) department at their company headquarters in Collierville, Tennessee, which is responsible for the recruiting and hiring of new employees, and communicating and implementing Defendants’ company-wide policies, including timekeeping policies and meal and rest period policies, to employees throughout California.

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

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

14. Defendants continue to employ non-exempt or hourly paid employees in California.

15. Plaintiff is informed and believes, and thereon alleges, that at all times herein

1 mentioned, Defendants were advised by skilled lawyers and other professionals, employees and
2 advisors knowledgeable about California labor and wage law, employment and personnel
3 practices, and about the requirements of California law.

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

6 17. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
7 should have known that Plaintiff and class members were entitled to receive certain wages for
8 overtime compensation and that they were not receiving certain wages for overtime
9 compensation.

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

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

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

1 rest period.

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

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

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

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

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

26 26. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
27 should have known that Plaintiff and class members were entitled to the portion of wages
28 previously paid and subsequently unlawfully deducted by Defendants.

1 27. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
2 should have known that Plaintiff and/or class members were entitled to payment of wages as
3 designated by statute. In violation of the California Labor Code, Defendants secretly paid
4 Plaintiff and/or class members lower wages than required by statute while purporting to pay
5 them proper wages.

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

12 29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
13 should have known that Plaintiff and class members were entitled to receive full reimbursement
14 for all business-related expenses and costs they incurred during the course and scope of their
15 employment and that they did not receive full reimbursement of applicable business-related
16 expenses and costs incurred.

17 30. Plaintiff is informed and believes, and thereon alleges, that at all times herein
18 mentioned, Defendants knew or should have known that they had a duty to compensate Plaintiff
19 and class members for all hours worked, and that Defendants had the financial ability to pay
20 such compensation, but willfully, knowingly, and intentionally failed to do so, and falsely
21 represented to Plaintiff and class members that they were properly denied wages, all in order to
22 increase Defendants' profits.

23 **PAGA REPRESENTATIVE ALLEGATIONS**

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

1 former employees pursuant to procedures outlined in California Labor Code section 2699.3.

2 32. PAGA defines an “aggrieved employee” in Labor Code section 2699(c)(1) as
3 “any person who was employed by the alleged violator and personally suffered each of the
4 violations alleged.”

5 33. Plaintiff and other current and former employees of Defendants are “aggrieved
6 employees” as defined by Labor Code section 2699(c)(1) in that they are all Defendants’ current
7 or former employees and each of the alleged violations were committed against them.

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

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

15 (b) An aggrieved employee’s notice filed with the LWDA pursuant to
16 2699.3(a) and any employer response to that notice shall be accompanied
17 by a filing fee of seventy-five dollars (\$75).

18 (c) The LWDA shall notify the employer and the aggrieved employee or
19 representative by certified mail that it does not intend to investigate the
20 alleged violation (“LWDA Notice”) within sixty (60) calendar days of the
21 postmark date of the aggrieved employee’s notice. Upon receipt of the
22 LWDA Notice, or if no LWDA Notice is provided within sixty-five (65)
23 calendar days of the postmark date of the aggrieved employee’s notice,
24 the aggrieved employee may commence a civil action pursuant to
25 California Labor Code section 2699 to recover civil penalties.

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

- 1 (a) The aggrieved employee or representative shall give written notice by
2 online filing with the LWDA and by certified mail to the employer of the
3 specific provisions of the California Labor Code alleged to have been
4 violated (other than those listed in Section 2699.5), including the facts
5 and theories to support the alleged violation.
- 6 (b) An aggrieved employee's notice filed with the LWDA pursuant to
7 2699.3(c) and any employer response to that notice shall be accompanied
8 by a filing fee of seventy-five dollars (\$75).
- 9 (c) The employer may cure the alleged violation within thirty-three (33)
10 calendar days of the postmark date of the notice sent by the aggrieved
11 employee or representative. The employer shall give written notice
12 within that period of time by certified mail to the aggrieved employee or
13 representative and by online filing with the LWDA if the alleged violation
14 is cured, including a description of actions taken, and no civil action
15 pursuant to Section 2699 may commence. If the alleged violation is not
16 cured within the 33-day period, the aggrieved employee may commence
17 a civil action pursuant to Section 2699.

18 36. On December 11, 2024, Plaintiff provided written notice by online filing to the
19 LWDA and by Certified Mail to Defendants of the specific provisions of the California Labor
20 Code alleged to have been violated, including facts and theories to support the alleged
21 violations, in accordance with California Labor Code section 2699.3. Plaintiff's written notice
22 was accompanied with the applicable filing fee of seventy-five dollars (\$75). The LWDA
23 PAGA Administrator confirmed receipt of Plaintiff's written notice and assigned Plaintiff
24 PAGA Case Number LWDA-CM-1066702-24. A true and correct copy of Plaintiff's written
25 notice to the LWDA and Defendants is attached hereto as "Exhibit 1."

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

38. Thus, Plaintiff has satisfied the administrative prerequisites under California Labor Code sections 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for violations of California Labor Code sections 201, 202, 204, 212, 213, 221, 223, 224, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

39. 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.”

40. 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.

41. 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.

42. 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 himself, all other aggrieved employees, and the State of California against Defendants for violations of California Labor Code sections 201, 202, 204, 212, 213, 221, 223, 224, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

CLASS ACTION ALLEGATIONS

43. Plaintiff brings this action on his own behalf, as well as on behalf of each and all

1 other persons similarly situated, and thus seeks class certification under California Code of Civil
2 Procedure section 382.

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

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

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

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

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

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

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

16 49. There are common questions of law and fact as to class members that
17 predominate over questions affecting only individual members, including, but not limited to:

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

1 and accurate wage statements as required by California Labor Code
2 section 226(a);

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

5 (g) Whether Defendants failed to pay earned overtime wages, minimum
6 wages, and/or meal and rest period premiums due to Plaintiff and class
7 members upon their discharge;

8 (h) Whether Defendants failed timely to pay overtime wages, minimum
9 wages, and/or meal and rest period premiums due to Plaintiff and class
10 members during their employment;

11 (i) Whether Defendants issued instruments for the payment of wages that
12 were not payable in cash, on demand, without discount, and with prior
13 authorization, in violation of California Labor Code sections 212 and 213;

14 (j) Whether Defendants unlawfully deducted a portion of wages previously
15 paid to Plaintiff and class members, in violation of California Labor Code
16 sections 221 and 224;

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

20 (l) Whether Defendants failed to provide Plaintiff and class members with
21 suitable seating;

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

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

28 (o) The appropriate amount of damages, restitution, or monetary penalties

1 resulting from Defendants' violations of California law.

2 50. There is a well-defined community of interest in the litigation and the class
3 members are readily ascertainable:

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

10 (b) Typicality: Plaintiff is qualified to, and will, fairly and adequately protect
11 the interests of each class member with whom he has a well-defined
12 community of interest, and Plaintiff's claims (or defenses, if any) are
13 typical of all class members as demonstrated herein.

14 (c) Adequacy: Plaintiff is qualified to, and will, fairly and adequately protect
15 the interests of each class member with whom he has a well-defined
16 community of interest and typicality of claims, as demonstrated herein.
17 Plaintiff acknowledges that he has an obligation to make known to the
18 Court any relationship, conflicts or differences with any class member.
19 Plaintiff's attorneys, the proposed class counsel, are versed in the rules
20 governing class action discovery, certification, and settlement. Plaintiff
21 has incurred, and throughout the duration of this action, will continue to
22 incur costs and attorneys' fees that have been, are, and will be necessarily
23 expended for the prosecution of this action for the substantial benefit of
24 each class member.

25 (d) Superiority: The nature of this action makes the use of class action
26 adjudication superior to other methods. A class action will achieve
27 economies of time, effort, and expense as compared with separate
28 lawsuits, and will avoid inconsistent outcomes because the same issues

1 can be adjudicated in the same manner and at the same time for the entire
2 class.

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

12 **FIRST CAUSE OF ACTION**

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

14 **(Against all Defendants)**

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

17 52. Labor Code section 1198 makes it illegal to employ an employee under
18 conditions of labor that are prohibited by the applicable wage order. California Labor Code
19 section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall
20 be the . . . standard conditions of labor for employees. The employment of any employee . . .
21 under conditions of labor prohibited by the order is unlawful.”

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

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

1 worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek.

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

7 56. California Labor Code section 510 codifies the right to overtime compensation
8 at one and one-half (1 ½) times the regular rate of pay for hours worked in excess of eight (8)
9 hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the seventh
10 (7th) day of work, and to overtime compensation at twice the employee's regular rate of pay for
11 hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on
12 the seventh (7th) day of work.

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

18 58. First, during the relevant time period, Defendants had, and continue to have, a
19 company-wide policy and/or practice of discouraging and impeding Plaintiff and class members
20 from recording hours worked that were outside of their scheduled shifts in order to limit the
21 amount of overtime employees could accrue. On information and belief, this policy of limiting
22 overtime, coupled with Defendants' practices of understaffing and assigning heavy workloads,
23 led Plaintiff and class members to work off-the-clock outside of their scheduled shift times in
24 order to complete their assigned tasks. For example, Plaintiff was required to work prior to
25 clocking in for his shift, assisting customers or discussing his work assignments for the day with
26 Defendants' management. As a further example, Plaintiff was required to continue working
27 after clocking out from his shifts, such as assisting customers. Plaintiff and class members were
28 not permitted to record this time spent working before and after their scheduled shifts. Thus,

1 Defendants failed to track all of the time that employees spent performing work-related tasks
2 before and after their shifts, and Plaintiff and class members received no compensation for this
3 time.

4 59. Second, Defendants had, and continue to have, a company-wide security policy
5 and/or practice requiring employees to leave the store premises together in pairs and/or groups
6 on closing shifts. After clocking out at the end of their shifts, Plaintiff and class members were
7 required to wait for all other employees to complete their own duties, such as the manager
8 closing the store, before they were released and could leave Defendants' premises together. For
9 example, Plaintiff would clock out and then have to wait for his manager to complete a sweep
10 of the store to make sure no one was still in the store and then lock all doors, which Plaintiff
11 and class members helped with, before being able to leave the premises. As a result, Plaintiff
12 and class members were subject to Defendants' control after they had clocked out from their
13 shifts, but were not compensated for this time.

14 60. Third, Defendants had, and continue to have, a company-wide policy and/or
15 practice of understaffing and/or single-staffing certain positions at their locations, such that
16 there were too few employees on duty to handle the workload and attend to customers.
17 Defendants' policy and/or practice resulted in a failure to provide Plaintiff and class members
18 with adequate meal period coverage, and thus, Plaintiff and class members were not always
19 afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive
20 a meal period. Defendants also had a practice of failing to schedule meal periods, which further
21 caused Plaintiff and class members to not be relieved of their duties for compliant meal periods.
22 For example, Defendants' other employees interrupted Plaintiff's meal periods by asking him
23 questions and requesting that he return to his department to assist customers. Similarly,
24 Defendants' management would interrupt other class members during their meal periods with
25 work-related questions and/or ask them to return from a meal period early. Consequently,
26 Plaintiff and class members were required to work through their meal periods and/or had their
27 unpaid meal periods interrupted in order to complete their assigned duties and handle customer
28 demand, time for which they were not paid.

1 61. Fourth, Defendants had, and continue to have, a policy and/or practice of
2 requiring that Plaintiff and class members carry a company-issued radio and respond to it at all
3 times, including during meal periods. For example, Plaintiff regularly had his meal periods
4 interrupted by calls to his radio from Defendants' management or other employees contacting
5 him to either report to the nursery department for customer assistance or assign him tasks to
6 complete after his meal period, which he was required to respond to immediately. Similarly,
7 other class members were also required to respond to their radios at all times, including during
8 their unpaid meal periods. Thus, Plaintiff and class members had their meal periods interrupted
9 in order to meet Defendants' expectations, and Defendants did not pay Plaintiff and class
10 members for the time they continued to perform tasks during meal periods.

11 62. Further, on information and belief, because Defendants frowned upon employees
12 accruing meal period premiums, Defendants' management pressured employees to clock out for
13 meal periods to reflect compliant meal periods, regardless of whether they had received a
14 compliant meal period or not. Additionally, Defendants' company-wide timekeeping system
15 prevented Plaintiff and class members from recording all hours worked when their meal periods
16 were shortened or interrupted, because the system locked Plaintiff and class members out once
17 they clocked out for a meal period, and would not permit them to clock back in from a meal
18 period before 30 minutes had elapsed. Thus, Defendants did not record all hours worked during
19 meal periods, and Plaintiff and class members performed work during meal periods for which
20 they were not paid.

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

28 64. Defendants' failure to pay Plaintiff and class members the balance of overtime

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

5 **SECOND CAUSE OF ACTION**

6 **Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198—Unpaid** 7 **Minimum Wages** 8 **(Against all Defendants)**

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

11 66. At all relevant times, California Labor Code sections 1182.12, 1194, 1197,
12 1197.1, and 1198 provide that the minimum wage for employees fixed by the IWC is the
13 minimum wage to be paid to employees, and the payment of a wage less than the minimum so
14 fixed is unlawful. Compensable work time is defined in IWC Wage Order No. 7-2001 as "the
15 time during which an employee is subject to the control of an employer, and includes all the
16 time the employee is suffered or permitted to work, whether or not required to do so." Cal.
17 Code Regs. Tit. 8, § 11070(2)(H) (defining "Hours Worked").

18 67. As set forth above, as a result of Defendants' policy of limiting the amount of
19 overtime employees could accrue, Defendants required Plaintiff and class members to perform
20 work off-the-clock before and after their scheduled shifts to complete work-related tasks, such
21 as assisting customers and discussing work assignments with Defendants' management.
22 Further, Defendants implemented a company-wide security practice and/or policy requiring
23 employees to wait for coworkers to complete their closing duties before being allowed to leave
24 the store premises. Defendants failed to track and/or record this time that Plaintiff and class
25 members spent working off-the-clock, and Plaintiff and class members received no
26 compensation for this time.

27 68. Further, as also stated, due to Defendants' policies and/or practices of
28 understaffing and/or single-staffing certain positions at their locations while assigning heavy

workloads, and failing to schedule meal periods, Plaintiff and class members 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 also stated, Defendants had a company-wide policy and/or practice of requiring that Plaintiff and class members carry a company-issued radio at all times and respond to any calls to these radios at all times, including during meal periods.

69. Furthermore, as stated, in order to prevent employees from accruing meal period premiums, upon information and belief, Defendants' management adjusted Plaintiff's and class members' time records to reflect compliant meal periods, even when meal periods were missed, short, and/or interrupted. Additionally, as stated, Defendants' company-wide timekeeping system prevented Plaintiff and class members from entering time worked during meal periods because the system locked out Plaintiff and class members for a full 30 minutes. Thus, Defendants systematically failed to pay Plaintiff and class members for actual hours worked during unpaid meal periods because these hours were not always correctly recorded.

70. Defendants did not pay minimum wages for all hours worked by Plaintiff and class members. To the extent that these off-the-clock hours did not qualify for overtime premium payment, Defendants 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.

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

THIRD CAUSE OF ACTION

Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198—Meal Period

Violations

(Against all Defendants)

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

1 and every allegation set forth above.

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

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

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

18 76. First, during the relevant period, as stated, Defendants had, and continue to have,
19 company-wide policies and/or practices of understaffing and/or single-staffing certain positions
20 at their locations, assigning heavy workloads, and failing to schedule meal periods, which
21 resulted in a lack of meal period coverage and prevented Plaintiff and class members from
22 taking all timely meal periods to which they were entitled. As a result, Plaintiff and class
23 members were forced to work in excess of five (5) hours before taking a meal period, had their
24 meal periods interrupted, and/or had to forgo their meal periods altogether. Additionally, as
25 stated, Defendants had a company-wide policy and/or practice of requiring that Plaintiff and
26 class members carry a company-issued radio to respond to requests at all times, including during
27 meal periods. For example, Plaintiff missed his meal periods due to the demanding workload
28 and lack of coverage. Further, Plaintiff took his meal periods late, after having worked in excess

1 of five (5) hours into his shift, in order to complete his assigned duties or meet customer demand.

2 77. Second, as set forth above, on information and belief, because Defendants
3 frowned upon employees accruing meal period premiums, Defendants' management pressured
4 employees to clock out for meal periods to reflect compliant meal periods regardless of whether
5 they had received a compliant meal period or not, in order to strictly limit the meal period
6 premiums that would need to be paid by Defendants. Also, as stated, Defendants' company-
7 wide timekeeping system prevented Plaintiff and class members from recording all hours
8 worked when their meal periods were shortened or interrupted, because the system locked
9 Plaintiff and class members out once they clocked out for a meal period, and would not permit
10 them to clock back in from a meal period before 30 minutes had elapsed. For example, Plaintiff
11 was unable to record when his meal periods were interrupted or shortened by other employees
12 requesting assistance on the sales floor or by communications on his company-issued radio
13 because Defendants' timekeeping system would not let him clock back in before 30 minutes
14 had elapsed.

15 78. At all times herein mentioned, Defendants knew or should have known that, as a
16 result of these policies, Plaintiff and class members were prevented from being relieved of all
17 duties and required to perform some of their assigned duties during meal periods. Defendants
18 further knew or should have known that Defendants did not pay Plaintiff and class members
19 meal period premiums when meal periods were missed, shortened, interrupted, and/or late.

20 79. Moreover, Defendants engaged in a company-wide practice and/or policy of not
21 paying meal period premiums owed when compliant meal periods are not provided. Because
22 of this practice and/or policy, Plaintiff and class members have not received premium pay for
23 missed, late, and interrupted meal periods. As a result, Defendants failed to provide Plaintiff
24 and class members compliant meal periods in violation of California Labor Code sections 226.7,
25 512(a), and 516 and failed to pay the full meal period premiums due.

26 80. Defendants' conduct violates the applicable IWC Wage Order, and California
27 Labor Code sections 226.7, 512(a), 516, and 1198. Plaintiff and class members are therefore
28 entitled to recover from Defendants one (1) additional hour of pay at the employee's regular

1 rate of compensation for each work day that the meal period was not provided.

2 **FOURTH CAUSE OF ACTION**

3 **Violation of California Labor Code §§ 226.7, 516, and 1198—Rest Period Violations**

4 **(Against all Defendants)**

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

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

10 83. At all relevant times, the applicable IWC Wage Order provides that "[e]very
11 employer shall authorize and permit all employees to take rest periods, which insofar as
12 practicable shall be in the middle of each work period" and that the "rest period time shall be
13 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
14 hours or major fraction thereof" unless the total daily work time is less than three and one-half
15 (3 ½) hours.

16 84. At all relevant times, California Labor Code section 226.7 provides that no
17 employer shall require an employee to work during any rest period mandated by an applicable
18 order of the California IWC. To comply with its obligation to authorize and permit rest periods
19 under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer
20 must "relinquish any control over how employees spend their break time, and relieve their
21 employees of all duties—including the obligation that an employee remain on call. A rest
22 period, in short, must be a period of rest." *Augustus v. ABM Security Services, Inc.*, 2 Cal. 5th
23 257, 273 (2016). Pursuant to the applicable IWC Wage Order and California Labor Code
24 section 226.7(c), Plaintiff and class members are entitled to recover from Defendants one (1)
25 additional hour of pay at their regular rates of pay for each work day that a required rest period
26 was not authorized and permitted.

27 85. During the relevant time period, Defendants regularly failed to authorize and
28 permit Plaintiff and class members to take a ten (10) minute rest period per each four (4) hour

1 period worked or major fraction thereof. As with meal periods, Defendants' policies and/or
2 practices of understaffing and/or single-staffing certain positions, and assigning heavy
3 workloads, prevented Plaintiff and class members from being relieved of all duty in order to
4 take their rest periods. Defendants also failed to schedule rest periods, which, coupled with
5 Defendants' failure to provide adequate rest period coverage, further led to Plaintiff and class
6 members not being authorized and permitted to take compliant rest periods. In addition, as with
7 meal periods, Defendants' company-wide practice of requiring that Plaintiff and class members
8 carry a company-issued radio and respond to questions and requests at all times further
9 prevented Plaintiff and class members from being able to take uninterrupted rest periods.

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

17 87. As a result of Defendants' practices and policies, Plaintiff and class members
18 worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without
19 receiving all uninterrupted rest periods to which they were entitled. For example, Plaintiff had
20 to forgo his rest periods due to the lack of rest period coverage and to handle the heavy
21 workload. When Plaintiff was able to take his rest periods, the rest periods were interrupted by
22 other employees calling Plaintiff for assistance, including on his company-issued radio.

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

27 89. Defendants' conduct violates the applicable IWC Wage Order and California
28 Labor Code sections 226.7, 516, and 1198. Plaintiff and class members are therefore entitled

1 to recover from Defendants one (1) additional hour of pay at the employee's regular rate of
2 compensation for each work day that a compliant rest period was not authorized and permitted.

3 **FIFTH CAUSE OF ACTION**

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

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

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

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

21 93. Because Defendants did not accurately record the time Plaintiff and Subclass
22 members spent working off-the-clock and deducted time from their records for meal periods
23 that were interrupted and/or missed (and therefore time for which they should have been paid),
24 Defendants did not list the correct amount of gross wages and net wages earned by Plaintiff and
25 Subclass members in compliance with sections 226(a)(1) and 226(a)(5). For the same reason,
26 Defendants failed to accurately list the total number of hours worked by Plaintiff and Subclass
27 members in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay
28 in effect during the pay period and corresponding accurate number of work hours worked at

1 each hourly rate in violation of section 226(a)(9).

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

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

23 96. California Labor Code section 1198 provides that the maximum hours of work
24 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set
25 forth in the applicable IWC Wage Order. Section 1198 further provides that “[t]he employment
26 of any employees for longer hours than those fixed by the order or under conditions of labor
27 prohibited by the order is unlawful.” Pursuant to the applicable IWC Wage Order, employers
28 are required to keep accurate time records showing when the employee begins and ends each

1 work period. During the relevant time period, Defendants engaged in company-wide practices
2 and/or policies of failing to record actual hours worked (including falsifying time records by
3 recording that compliant meal periods were taken regardless of if or when meal periods were
4 actually taken), and thereby failed to keep accurate records of work period and meal period start
5 and end times for Plaintiff and Subclass members, in violation of section 1198.

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

10 **SIXTH CAUSE OF ACTION**

11 **Violation of California Labor Code §§ 201 and 202—Wages Not Timely Paid Upon** 12 **Termination** 13 **(Against all Defendants)**

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

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

23 100. On information and belief, Defendants have a company-wide practice or policy
24 of paying departing employees their final wages late, instead of adhering to the time
25 requirements set forth in Labor Code sections 201 and 202. For example, Plaintiff was
26 terminated on or around June 6, 2024; however, he did not receive his final pay until
27 approximately one week later. Thus, Defendants failed to pay Plaintiff and class members their
28 final wages immediately, in violation of California Labor Code section 201.

101. In addition, Defendants willfully failed to pay Plaintiff and class members who are no longer employed by Defendants 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 Defendants' employ.

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

SEVENTH CAUSE OF ACTION

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

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

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

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

106. At all times relevant herein, Labor Code section 204 provides that all wages earned by any person in any employment between the sixteenth (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 first (1st) and the tenth (10th) day of the following month.

107. At all times relevant herein, Labor Code section 204 provides 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, at all times relevant herein, 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.

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

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

EIGHTH CAUSE OF ACTION

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

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

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

1 hand tools and equipment customarily required by the particular trade or craft.” IWC Wage
2 Order No. 7-2001 further provides that: “[w]hen uniforms are required by the employer to be
3 worn by the employee as a condition of employment, such uniforms shall be provided and
4 maintained by the employer.”

5 112. First, during the relevant time period, Defendants, on a company-wide basis,
6 required that Plaintiff and class members use their own personal mobile devices, including, but
7 not limited to, cellular phones, and/or mobile data to carry out their job duties but failed to
8 reimburse them for the costs of their work-related mobile device expenses. For example,
9 Defendants required Plaintiff and class members to download various mobile applications, such
10 as “Mobile Lookup - Eagle,” in order to search inventory at Defendants’ various stores and
11 placing orders for customers. In addition, Defendants required Plaintiff and class members to
12 download the “When I Work” mobile application in order to view their work schedules, which
13 was subject to changes by Defendants. Although Defendants required Plaintiff and class
14 members to utilize their personal mobile devices to carry out their work-related responsibilities,
15 Defendants failed to reimburse them for this cost.

16 113. Second, during the relevant time period, Defendants required Plaintiff and class
17 members to wear uniforms bearing the “Outdoor Supply Hardware” company logo, including
18 uniform shirts. However, Defendants did not provide their employees with sufficient uniforms
19 to wear for their shifts throughout the week. For example, Defendants only provided Plaintiff
20 and class members with one (1) shirt at the time of hire. Because Defendants failed to provide
21 their employees with an adequate number of uniforms in relation to their scheduled shifts and
22 for the tasks they were required to perform, Plaintiff and class members were required to wash
23 their uniform items more frequently than other clothing and/or separately from their regular
24 clothing, thus incurring additional laundry expenses for the upkeep of their uniforms. Thus,
25 Defendants failed to provide and maintain uniforms they required Plaintiff and class members
26 to wear during their shifts and forced them to incur the costs of maintaining employee uniforms.

27 114. Defendants could have provided Plaintiff and class members with the actual
28 equipment for use on the job, such as company mobile devices as well as an adequate number

1 of uniform items; or Defendants could have reimbursed employees for the costs of their mobile
2 device usage and laundering expenses or provided a uniform maintenance allowance. Instead,
3 Defendants passed these operating costs onto Plaintiff and class members. At all relevant times,
4 Plaintiff did not earn at least two (2) times the minimum wage.

5 115. Defendants' company-wide policy and/or practice of not reimbursing employees
6 for expenses necessarily incurred and passing on their operating costs to Plaintiff and class
7 members violates California Labor Code section 2802. Defendants have intentionally and
8 willfully failed to reimburse Plaintiff and class members for necessary business-related
9 expenses and costs.

10 116. Pursuant to California Labor Code section 2802, Plaintiff and class members are
11 entitled to recover from Defendants their business-related expenses incurred during the course
12 and scope of their employment, plus interest, costs, and attorneys' fees.

13 **NINTH CAUSE OF ACTION**

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

15 **(Against all Defendants)**

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

18 118. California Labor Code §§ 2698, *et seq.* ("PAGA") permits Plaintiff to recover
19 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code section
20 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 204, 212, 213, 221, 223,
21 224, 1174(d), and 1198. Labor Code section 2699.3(c) permits aggrieved employees, including
22 Plaintiff, to recover civil penalties for violations of those Labor Code sections not found in
23 section 2699.5, including sections 226(a), 226.7, 510, 512(a), 516, 1182.12, 1194, 1197, 1197.1,
24 and 2802.

25 119. Defendants' conduct, as alleged herein, violates numerous sections of the
26 California Labor Code, including, but not limited to, the following:

- 27 (a) Violation of Labor Code sections 510 and 1198, and the applicable IWC
28 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 sections 212 and 213 for issuing instruments for the payment of wages that were not payable in cash on demand, without discount, and with prior authorization, as set forth below;
- (j) Violation of Labor Code sections 221 and 224 for unlawfully deducting a portion of wages previously paid to Plaintiff and other aggrieved employees, as set forth below;
- (k) Violation of Labor Code section 223 for secretly paying Plaintiff and

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

- 3 (l) Violation of Labor Code section 1198 and the applicable IWC Wage
4 Order for failure to provide suitable seating, as set forth below; and
5 (m) Violation of Labor Code section 2802 for failure to reimburse Plaintiff
6 and other aggrieved employees for all business expenses necessarily
7 incurred, as alleged herein.

8 120. At all relevant times herein, California Labor Code section 212 prohibits
9 employers from issuing any instruments for the payment of wages unless such instruments are
10 negotiable and payable in cash on demand and without discount. California Labor Code section
11 213 permits employers to pay employees via direct deposit so long as the employee authorizes
12 payment via direct deposit. Under California law, employers are also permitted to fulfill their
13 wage payment obligations to employees by using payroll debit cards, but only under certain
14 circumstances. Employer use of payroll debit cards is permitted only so long as the employee
15 is given the choice as to whether to accept a payroll debit card as a form of payment. Johnson
16 v. Sunrise Senior Living Management, Inc., No. 16 CV 00443 BRO RAOx, 2016 WL 8929249,
17 *9 (C.D. Cal. May 5, 2016). In Johnson, the court stated that the Division of Labor Standards
18 Enforcement (“DLSE”) decision deeming payroll debit card program permissible relied heavily
19 on:

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

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

1 where the following requirements are satisfied:

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

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

7
8 122. Further, the DLSE notes that the Labor Code manifests:

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

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

20 123. During the relevant time period, Defendants had an agreement with a payroll
21 service provider, Rapid Pay Card, for the issuance of payroll debit cards to employees, including
22 Plaintiff and other aggrieved employees, to discharge their wage payment obligations to their
23 employees. On information and belief, Defendants had a practice and/or policy of automatically
24 issuing payroll debit cards to departing employees without giving them the option to elect their
25 form of payment for their final wages. For example, Plaintiff received his final wages on a
26 payroll debit card without a choice of an alternate method of payment, such as a written check.
27 Instead, Defendants automatically enrolled Plaintiff in their payroll debit card program for the
28

1 purpose of issuing Plaintiff's final wages to him without prior, voluntary approval from
2 Plaintiff.

3 124. Moreover, under Defendants' payroll debit card program, Plaintiff and other
4 aggrieved employees did not have easy access to the entirety of their wages without incurring a
5 fee. For example, Plaintiff and other aggrieved employees were unable to withdraw their wages
6 without incurring a fee and were subjected to transaction fees when withdrawing their wages
7 from an out-of-network ATM, which resulted in a discount in their pay. Thus, Defendants'
8 payroll debit card program was and continues to be unlawful as it did not give Plaintiff and
9 other aggrieved employees access to their entire wages without discount and without delay.

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

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

22 127. During the relevant time period, Defendants unlawfully deducted a portion of
23 wages previously paid to Plaintiff and other aggrieved employees in violation of California
24 Labor Code section 221. On information and belief, Defendants systematically, and on a
25 company-wide basis, provided Plaintiff and other aggrieved employees with payroll debit cards
26 as payment of their wages and/or final wages. Under Defendants' payroll debit card program,
27 Plaintiff and other aggrieved employees were assessed various fees in connection with their use
28 of the payroll debit cards. For example, as described above, Plaintiff and other aggrieved

1 employees were required to pay out-of-network ATM withdrawal fees and/or other fees to
2 obtain and/or spend their earned and due wages. The fees charged to Plaintiff and other
3 aggrieved employees resulted in a discount of their wages.

4 128. Defendants' practice which resulted in a discount of wages to employees, is
5 tantamount to taking deductions from Plaintiff's and other aggrieved employees' paychecks
6 without their written authorization and therefore constitutes an unlawful deduction of wages, in
7 violation of Labor Code sections 221 and 224. Plaintiff and other aggrieved employees are
8 therefore entitled to recover civil penalties pursuant to Labor Code sections 225.5 and/or
9 2699(a), (f), and (k).

10 129. At all times, California Labor Code section 223 makes it unlawful for an
11 employer to secretly pay wages lower than required by statute while purporting to pay legal
12 wages.

13 130. During the relevant time period, Defendants willfully and systematically issued
14 payroll debit cards to Plaintiff and other aggrieved employees that discounted their wages by
15 charging various fees in connection with the use of the payroll debit cards. Defendants' payroll
16 debit card program resulted in the payment of less than statutorily required wages to Plaintiff
17 and other aggrieved employees. Thus, Defendants paid Plaintiff and other aggrieved employees
18 lower wages than those they were entitled to while purporting that Plaintiff and other aggrieved
19 employees were properly paid.

20 120. Defendants' failure to pay Plaintiff and other aggrieved employees the correct
21 designated wage, while purporting to pay legal wages, is a violation of California Labor Code
22 section 223. Plaintiff and other aggrieved employees are therefore entitled to recover civil
23 penalties pursuant to Labor Code sections 225.5 and/or 2699(a), (f), and (k).

24 121. At all relevant times herein, California Labor Code section 1198 makes it illegal
25 to employ an employee under conditions of labor that are prohibited by the applicable IWC
26 Wage Order. California Labor Code section 1198 requires that ". . . the standard conditions of
27 labor fixed by the commission shall be the . . . standard conditions of labor for employees. The
28 employment of any employee . . . under conditions of labor prohibited by the order is unlawful."

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

4 123. Defendants’ California stores are generally similar in their layout and design and
5 there was, and continues to be, space behind cash wraps to allow for the presence and use of a
6 seat or stool by Plaintiff and other aggrieved employees (with reasonable or no modification to
7 these work areas) during the performance of their work duties. Defendants could have provided
8 Plaintiff and other aggrieved employees with a seat or stool at their cash wraps, but instead
9 denied employees seating and forced Plaintiff and other aggrieved employees to stand
10 throughout the day.

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

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

23 126. As a result of Defendants’ company-wide policy and/or practice of prohibiting
24 employees from sitting during their shifts and company-wide failure to provide suitable seating,
25 Plaintiff and other aggrieved employees were forced to stand during shifts and denied seats.
26 Defendants’ failure to provide suitable seating to Plaintiff and other aggrieved employees
27 violates California Labor Code section 1198 and IWC Wage Order No. 7-2001, subdivision
28 14(A). Plaintiff and other aggrieved employees are therefore entitled to recover civil penalties

1 pursuant to Labor Code sections 2699(a), (f), and (k).

2 127. California Code of Regulations, Title 8, section 11070(14)(B) provides that
3 “[w]hen employees are not engaged in the active duties of their employment and the nature of
4 the work requires standing, an adequate number of suitable seats shall be placed in reasonable
5 proximity to the work area and employees shall be permitted to use such seats when it does not
6 interfere with the performance of their duties.”

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

11 129. Defendants’ California stores are generally similar in their layout and design and
12 there was, and continues to be, space near their work areas (with reasonable or no modification
13 to these work areas) to allow for the presence and use of a seat or stool by Plaintiff and other
14 aggrieved employees during lulls in operation. Defendants could have provided Plaintiff and
15 other aggrieved employees with a seat or stool in their work areas, but instead denied, and
16 continue to deny, employees seating, forcing them to stand throughout the day.

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

25 131. As a result of Defendants’ company-wide policy and/or practice of prohibiting
26 employees from sitting at any time, even when they were not engaged in active duties requiring
27 standing, and company-wide failure to provide seats in reasonable proximity to their work areas,
28 Plaintiff and other aggrieved employees were forced to stand during shifts and denied seats.

Defendants' failure to provide suitable seating to aggrieved employees violates California Labor Code section 1198 and IWC Wage Order No. 7-2001, subdivision 14(B). Plaintiff and other aggrieved employees are therefore entitled to recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (k).

TENTH CAUSE OF ACTION

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

Unlawful Business Practices

(Against all Defendants)

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

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

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

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

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

- (a) Requiring non-exempt, hourly paid employees, including Plaintiff and class members, to work overtime without paying them proper compensation in violation of California Labor Code sections 510 and 1198, and the applicable IWC Wage Order, as alleged herein;

- (b) Failing to pay at least minimum wage to Plaintiff and class members in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198, and the applicable IWC Wage Order, as alleged herein;
- (c) Failing to provide all meal periods to Plaintiff and class members in violation of California Labor Code sections 226.7, 512(a), 516, and 1198, and the applicable IWC Wage Order, as alleged herein;
- (d) Failing to authorize and permit Plaintiff and class members to take all rest periods in violation of California Labor Code sections 226.7, 516, and 1198, and the applicable IWC Wage Order, as alleged herein;
- (e) Failing to provide Plaintiff and class members with accurate wage statements and failing to maintain accurate payroll records in violation of California Labor Code sections 226(a), 1174(d), and 1198, and the applicable IWC Wage Order, as alleged herein;
- (f) Failing timely to pay all earned wages to Plaintiff and class members in violation of California Labor Code section 204, as alleged herein;
- (g) Issuing instruments to Plaintiff and class members for the payment of wages that were not payable in cash, on demand, without discount, and with prior authorization, in violation of California Labor Code sections 212 and 213, as set forth below;
- (h) Collecting or receiving wages already paid from Plaintiff and class members in violation of California Labor Code sections 221 and 224, as set forth below;
- (i) Failing to pay the statutorily designated wage scale in violation of California Labor Code section 223, as set forth below; and
- (j) Failing to reimburse Plaintiff and class members for all business expenses necessarily incurred in violation of California Labor Code section 2802, as alleged herein.

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

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

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

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

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

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

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

140. Further, the DLSE notes that the Labor Code manifests:

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

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

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

142. Moreover, under Defendants' payroll debit card program, Plaintiff and class members did not have easy access to the entirety of their wages without incurring a fee. For example, Plaintiff and class members were unable to withdraw their wages without incurring a fee and were subjected to transaction fees when withdrawing their wages from an out-of-network ATM, which resulted in a discount in their pay. Thus, Defendants' payroll debit card program was and continues to be unlawful as it did not give Plaintiff and class members access

1 to their entire wages without discount and without delay.

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

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

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

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

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

28 148. During the relevant time period, Defendants willfully and systematically issued

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

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

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

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

17 **ELEVENTH CAUSE OF ACTION**

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

19 **Unfair Business Practices**

20 **(Against all Defendants)**

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

23 153. Defendants are "persons" as defined by California Business & Professions Code
24 section 17201, as they are corporations, firms, partnerships, joint stock companies, and/or
25 associations.

26 154. Defendants' conduct, as alleged herein, has been, and continues to be, unfair, and
27 harmful to Plaintiff, class members, and to the general public. Plaintiff has suffered injury in
28 fact and has lost money as a result of Defendants' unfair business practices. Plaintiff seeks to

1 enforce important rights affecting the public interest within the meaning of Code of Civil
2 Procedure section 1021.5.

3 155. Defendants' activities, namely Defendants' company-wide practice and/or policy
4 of not paying Plaintiff and class members all meal and rest period premiums due to them under
5 Labor Code section 226.7, deprived Plaintiff and class members of the compensation guarantee
6 and enhanced enforcement implemented by section 226.7. The statutory remedy provided by
7 section 226.7 is a "dual-purpose" remedy intended primarily to compensate employees, and
8 secondarily to shape employer conduct." *Safeway, Inc. v. Superior Court*, 238 Cal. App. 4th
9 1138, 1149 (2015). The statutory benefits of section 226.7 were guaranteed to Plaintiff and
10 class members as part of their employment with Defendants, and thus Defendants' practice
11 and/or policy of denying these statutory benefits constitutes an unfair business practice in
12 violation of California Business & Professions Code sections 17200, *et seq.* (*Id.*)

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

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

24 **REQUEST FOR JURY TRIAL**

25 Plaintiff requests a trial by jury.

26 **PRAYER FOR RELIEF**

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

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

4 **Class Certification**

5 2. That this case be certified as a class action;

6 3. That Plaintiff be appointed as the representative of the Class and Subclass;

7 4. That counsel for Plaintiff be appointed as class counsel.

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

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

12 6. For general unpaid wages at overtime wage rates and such general and special
13 damages as may be appropriate;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

As to the Fourth Cause of Action

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

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

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

1 proof;

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

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

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

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

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

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

14 31. For all actual, consequential, and incidental losses and damages, according to
15 proof;

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

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

18 34. For attorneys' fees and costs pursuant to California Labor Code section
19 226(e)(1); and

20 35. For such other and further relief as the Court may deem equitable and
21 appropriate.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 50. For pre-judgment interest on any unpaid business-related expenses from the date
2 such amounts were due pursuant to California Labor Code section 2802(b), or as otherwise
3 provided by law;

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

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

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

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

11 54. That the Court declare, adjudge and decree that Defendants violated the
12 following California Labor Code provisions as to Plaintiff and other aggrieved employees: 510
13 and 1198 (by failing to pay all overtime compensation); 1182.12, 1194, 1197, 1197.1, and 1198
14 (by failing to pay at least minimum wages for all hours worked); 226.7, 512(a), 516, and 1198
15 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize and permit
16 all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage statements and
17 maintain accurate payroll records); 201 and 202 (by failing to timely pay all earned wages upon
18 termination); 204 (by failing to timely pay all earned wages during employment); 212 and 213
19 (by failing to make earned wages accessible without discount, and with authorization); 221 and
20 224 (by collecting and/or receiving wages already paid); 223 (by secretly paying wages lower
21 than required by statute); 1198 and the applicable IWC Wage Order (by failing to provide
22 suitable seating); and 2802 (by failing to reimburse business expenses);

23 55. For civil penalties pursuant to the California Labor Code, including sections 210,
24 225.5, 226.3, 256, 558, 1174.5, 2699(a), (f), and (k), for violations of California Labor Code
25 sections 201, 202, 204, 212, 213, 221, 223, 224, 226(a), 226.7, 510, 512(a), 516, 1174(d),
26 1182.12, 1194, 1197, 1197.1, 1198, and 2802;

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

sections 201, 202, 204, 212, 213, 221, 223, 224, 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, 212, 213, 221, 223, 224, 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; failing to provide access to wages upon demand, without discount, and with authorization; unlawfully deducting a portion of wages previously paid; secretly paying a lower wage; 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

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

Dated: March 10, 2025

Respectfully submitted,

Capstone Law APC

By:



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EXHIBIT “1”



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December 11, 2024

VIA ONLINE SUBMISSION

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

Subject: *Daniel Rathjen v. Central Network Retail Group, LLC*

Dear PAGA Administrator:

This office represents Daniel Rathjen in connection with his claims under the California Labor Code. Mr. Rathjen was an employee of CENTRAL NETWORK RETAIL GROUP, LLC ("CNRG").

The employer may be contacted directly at the address below:

CENTRAL NETWORK RETAIL GROUP, LLC
4100 S HOUSTON LEVEE RD
COLLIERVILLE, TN 38017

Mr. Rathjen intends to seek civil penalties, attorneys' 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. Rathjen seeks relief on behalf of himself, the State of California, and other persons who are or were employed by CNRG 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.

CNRG employed Mr. Rathjen as an hourly paid, non-exempt employee from approximately November 2023 to June 2024. Mr. Rathjen worked for CNRG as a Nursery Associate at its Redwood City, California location. During his employment, Mr. Rathjen typically worked five (5) hours or more per day and four (4) days or more per week. By the end of his employment, Mr. Rathjen was compensated approximately \$20.00 per hour. His job duties included, without limitation, assisting customers with plant selection, maintaining and caring for plants, stocking and organizing the nursery area, and cashiering.

CNRG committed each of the following Labor Code violations against Mr. Rathjen, the facts and theories of which follow, making him an “aggrieved employee” pursuant to California Labor Code section 2699(c)(1):¹

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

CENTRAL NETWORK RETAIL GROUP, LLC is a Delaware limited liability company and is a multi-format, multi-brand retailer operating hardware stores, home centers, and lumberyards with 14 Outdoor Supply Hardware-branded store locations in California. Upon information and belief, CNRG maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Collierville, Tennessee, for all non-exempt, hourly paid employees working for CNRG in California, including Mr. Rathjen and other aggrieved employees. At all relevant times, CNRG issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Rathjen and other aggrieved employees, regardless of their location or position.

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

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

¹ These facts, theories, and claims are based on Mr. Rathjen’s experience and counsel’s review of those records currently available relating to Mr. Rathjen’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. Rathjen 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.

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.

First, during the relevant time period, CNRG had, and continues to have, a company-wide policy and/or practice of discouraging and impeding Mr. Rathjen 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 CNRG's practices of understaffing and assigning heavy workloads, led Mr. Rathjen and other aggrieved employees to work off-the-clock outside of their scheduled shift times in order to complete their assigned tasks. For example, at least twice a week and for up to 10 minutes, Mr. Rathjen was required to work prior to clocking in for his shift, assisting customers or discussing his work assignments for the day with CNRG's management. As a further example, approximately once per week, Mr. Rathjen was required to continue working after clocking out from his shifts, such as assisting customers. Mr. Rathjen and other aggrieved employees were not permitted to record this time spent working before and after their scheduled shifts. Thus, CNRG failed to track all of the time that employees spent performing work-related tasks before and after their shifts, and Mr. Rathjen and other aggrieved employees received no compensation for this time.

Second, CNRG 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 on closing shifts. After clocking out at the end of their shifts, Mr. Rathjen and other aggrieved employees were sometimes required to wait for all other employees to complete their own duties, such as the manager closing the store, before they were released and could leave CNRG's premises together. For example, Mr. Rathjen would clock out and then have to wait up to 20 minutes for his manager to complete a sweep of the store to make sure no one was still in the store and then lock all doors, which Mr. Rathjen and other aggrieved employees helped with, before being able to leave the premises. As a result, Mr. Rathjen and other aggrieved employees were subject to CNRG's control after they had clocked out from their shifts, but were not compensated for this time.

Third, CNRG had, and continues to have, a company-wide policy and/or practice of understaffing and/or single-staffing certain positions at its locations, such that there were too few employees on duty to handle the workload and attend to customers. CNRG's policy and/or practice resulted in a failure to provide Mr. Rathjen and other aggrieved employees with adequate meal period coverage, and thus, Mr. Rathjen and other aggrieved employees were not always afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period. CNRG also had a practice of failing to schedule meal periods, which further caused Mr. Rathjen and other aggrieved employees to not be relieved of their duties for compliant meal periods. For example, other employees sometimes interrupted Mr. Rathjen's meal periods by asking him questions and requesting that he return to his department to assist customers. Similarly, CNRG's management would interrupt other aggrieved employees during their meal periods with work-related questions and/or ask them to return from a meal period early. Consequently, Mr. Rathjen and other aggrieved employees were required to work through their meal periods 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.

Fourth, CNRG had, and continues to have, a policy and/or practice of requiring that Mr. Rathjen and other aggrieved employees carry a company-issued radio and respond to it at all times, including during meal periods. For example, Mr. Rathjen regularly had his meal periods interrupted by calls to his radio from CNRG's management or other employees contacting him to either report to the nursery department for customer assistance or assign him tasks to complete after his meal period,

which he was required to respond to immediately. Similarly, other aggrieved employees were also required to respond to their radios at all times, including during their unpaid meal periods. Thus, Mr. Rathjen and other aggrieved employees had their meal periods interrupted in order to meet CNRG's expectations, and CNRG did not pay Mr. Rathjen and other aggrieved employees for the time they continued to perform tasks during meal periods.

Further, on information and belief, because CNRG frowned upon employees accruing meal period penalties, CNRG's management pressured employees to clock out for meal periods to reflect compliant meal periods, regardless of whether they had received a compliant meal period or not. Additionally, CNRG's company-wide timekeeping system prevented Mr. Rathjen and other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted, because the system locked Mr. Rathjen and other aggrieved employees out 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. Thus, CNRG did not record all hours worked during meal periods, and Mr. Rathjen and other aggrieved employees performed work during meal periods for which they were not paid.

CNRG knew or should have known that as a result of these company-wide practices and/or policies, Mr. Rathjen 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. Rathjen and other aggrieved employees worked shifts of eight (8) hours or more a day, or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium pay. Therefore, Mr. Rathjen and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked.

CNRG's failure to pay Mr. Rathjen 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. Rathjen and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring CNRG into compliance with the applicable IWC Wage Order and Labor Code sections 510 and 1198, pursuant to Labor Code sections 558 and/or 2699(a), (f), and (k).

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)(H) (defining "Hours Worked").

As set forth above, as a result of CNRG's policy of limiting the amount of overtime employees could accrue, CNRG required Mr. Rathjen and other aggrieved employees to perform work off-the-clock before and after their scheduled shifts to complete work-related tasks, such as assisting customers and discussing work assignments with CNRG's management. Further, CNRG implemented a company-wide security practice and/or policy requiring employees to wait for coworkers to complete their closing duties before being allowed to leave the store premises. CNRG failed to track and/or

record this time that Mr. Rathjen and other aggrieved employees spent working off-the-clock, and Mr. Rathjen and other aggrieved employees received no compensation for this time.

Further, as also stated, due to CNRG's policies and/or practices of understaffing and/or single-staffing certain positions at its locations while assigning heavy workloads, and failing to schedule meal periods, Mr. Rathjen 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 also stated, CNRG had a company-wide policy and/or practice of requiring that Mr. Rathjen and other aggrieved employees carry a company-issued radio at all times and respond to any calls to these radios at all times, including during meal periods.

Furthermore, as stated, in order to prevent employees from accruing meal period penalties, upon information and belief, CNRG's management adjusted Mr. Rathjen's and other aggrieved employees' time records to reflect compliant meal periods, even when meal periods were missed, short, and/or interrupted. Additionally, as stated, CNRG's company-wide timekeeping system prevented Mr. Rathjen and other aggrieved employees from entering time worked during meal periods because the system locked out Mr. Rathjen and other aggrieved employees for a full 30 minutes. Thus, CNRG systematically failed to pay Mr. Rathjen and other aggrieved employees for actual hours worked during unpaid meal periods because these hours were not always correctly recorded.

CNRG did not pay at least minimum wages for all hours worked by Mr. Rathjen and other aggrieved employees. Also, to the extent that these off-the-clock hours did not qualify for overtime premium payment, CNRG 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, CNRG regularly failed to pay at least minimum wages to Mr. Rathjen 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. Rathjen and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring CNRG into compliance with the applicable IWC Wage Order and Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f), and (k).

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

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

hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

First, during the relevant period, as stated, CNRG had, and continues to have, company-wide policies and/or practices of understaffing and/or single-staffing certain positions at its locations, assigning heavy workloads, and failing to schedule meal periods, which resulted in a lack of meal period coverage and prevented Mr. Rathjen and other aggrieved employees from taking all timely meal periods to which they were entitled. As a result, Mr. Rathjen and other aggrieved employees were forced to work in excess of five (5) hours before taking a meal period, had their meal periods interrupted, and/or had to forgo their meal periods altogether. Additionally, as stated, CNRG had a company-wide policy and/or practice of requiring that Mr. Rathjen and other aggrieved employees carry a company-issued radio to respond to requests at all times, including during meal periods. For example, Mr. Rathjen sometimes missed his meal periods due to the demanding workload and lack of coverage. Further, Mr. Rathjen took his meal periods late, after having worked in excess of five (5) hours into his shift, in order to complete his assigned duties or meet customer demand.

Second, as set forth above, on information and belief, because CNRG frowned upon employees accruing meal period penalties, CNRG's management pressured employees to clock out for meal periods to reflect compliant meal periods regardless of whether they had received a compliant meal period or not, in order to strictly limit the meal penalties that would need to be paid by CNRG. Also, as stated, CNRG's company-wide timekeeping system prevented Mr. Rathjen and other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted, because the system locked Mr. Rathjen and other aggrieved employees out 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. Rathjen was unable to record when his meal periods were interrupted or shortened by other employees requesting assistance on the sales floor or by communications on his company-issued radio because CNRG's timekeeping system would not let him clock back in before 30 minutes had elapsed.

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

Moreover, CNRG engaged in a company-wide practice and/or policy of not paying meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Mr. Rathjen and other aggrieved employees have not received premium pay for all missed, late, and interrupted meal periods.

Accordingly, CNRG failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Mr. Rathjen and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring CNRG into compliance with the applicable IWC Wage Order and Labor Code sections 226.7, 512(a), 516, and 1198, pursuant to Labor Code sections 558 and/or 2699(a), (f), and (k).

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, CNRG regularly failed to authorize and permit Mr. Rathjen 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, CNRG's policies and/or practices of understaffing and/or single-staffing certain positions, and assigning heavy workloads, prevented Mr. Rathjen and other aggrieved employees from being relieved of all duty in order to take their rest periods. CNRG also failed to schedule rest periods, which, coupled with CNRG's failure to provide adequate rest period coverage, further led to Mr. Rathjen and other aggrieved employees not being authorized and permitted to take compliant rest periods. In addition, as with meal periods, CNRG's company-wide practice of requiring that Mr. Rathjen and other aggrieved employees carry a company-issued radio and respond to questions and requests at all times further prevented Mr. Rathjen and other aggrieved employees from being able to take uninterrupted rest periods.

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

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

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

practice and/or policy, Mr. Rathjen and other aggrieved employees have not received premium pay for all missed rest periods.

Accordingly, CNRG failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Mr. Rathjen and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring CNRG into compliance with the applicable IWC Wage Order and Labor Code sections 226.7, 516, and 1198, pursuant to Labor Code sections 558 and/or 2699(a), (f), and (k).

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. CNRG has not provided Mr. Rathjen 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, CNRG has knowingly and intentionally provided Mr. Rathjen and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, CNRG issued uniform wage statements to Mr. Rathjen 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, and the corresponding number of hours worked at each hourly rate. Specifically, CNRG violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

Because CNRG did not record the time Mr. Rathjen 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), CNRG did not list the correct amount of gross wages and net wages earned by Mr. Rathjen and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, CNRG failed to accurately list the total number of hours worked by Mr. Rathjen 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).

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; 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), CNRG willfully failed to maintain accurate payroll records for Mr. Rathjen 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, CNRG engaged in company-wide practices and/or policies of failing to record actual hours worked (including falsifying time records by recording that compliant meal periods were taken regardless of if or when meal periods were actually taken), and thereby failed to keep accurate records of work period and meal period start and end times for Mr. Rathjen and other aggrieved employees, in violation of section 1198.

Because CNRG failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Mr. Rathjen 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. Rathjen 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. Rathjen and other aggrieved employees are entitled to recover civil penalties, attorneys’ fees, costs, and interest thereon, and seek injunctive relief to bring CNRG into compliance with the applicable IWC Wage Order and Labor Code sections 226(a), 1174(d), and 1198, pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f), and (k).

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, CNRG failed to pay Mr. Rathjen 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. Rathjen and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring CNRG into compliance with Labor Code section 204, pursuant to Labor Code sections 210 and/or 2699(a), (f), and (k).

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, CNRG has a company-wide practice or policy of paying departing employees their final wages late, instead of adhering to the time requirements set forth in Labor Code sections 201 and 202. For example, Mr. Rathjen was terminated on or around June 6, 2024; however, he did not receive his final pay until approximately one week later. Thus, CNRG failed to pay Mr. Rathjen and other aggrieved employees their final wages immediately, in violation of California Labor Code section 201.

In addition, CNRG willfully failed to pay Mr. Rathjen and other aggrieved employees who are no longer employed by CNRG 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 CNRG' employ.

Mr. Rathjen and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring CNRG into compliance with Labor Code sections 201 and 202, pursuant to Labor Code sections 256 and/or 2699(a), (f), and (k).

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

California Labor Code section 212 prohibits employers from issuing any instruments for the payment of wages unless such instruments are negotiable and payable in cash on demand and without discount. California Labor Code section 213 permits employers to pay employees via direct deposit so long as the employee authorizes payment via direct deposit. Under California law, employers are also permitted to fulfill their wage payment obligations to employees by using payroll debit cards, but only under certain circumstances. Employer use of payroll debit cards is permitted only so long as the employee is given the choice as to whether to accept a payroll debit card as a form of payment. *Johnson v. Sunrise Senior Living Management, Inc.*, No. 16 CV 00443 BRO RAOx, 2016 WL 8929249, *9 (C.D. Cal. May 5, 2016). In *Johnson*, the court stated that the Division of Labor

Standards Enforcement (“DLSE”) decision deeming payroll debit card program permissible relied heavily on:

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

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

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

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

Further, the DLSE notes that the Labor Code manifests:

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

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

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

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

California courts recognize a policy favoring the full and prompt payment of wages to employees. CNRG's payroll card program is inconsistent with this policy because CNRG's program denies Mr. Rathjen and other aggrieved employees to access their entire wages without discount and without delay, in violation of California Labor Code sections 212 and 213. Mr. Rathjen and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring CNRG into compliance with Labor Code sections 212 and 213, pursuant to Labor Code sections 225.5 and/or 2699(a), (f), and (k).

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

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

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

CNRG's practice, which resulted in a discount of wages to employees, is tantamount to taking deductions from Mr. Rathjen's and other aggrieved employees' paychecks without their written authorization and therefore constitutes an unlawful deduction of wages, in violation of Labor Code sections 221 and 224. Mr. Rathjen and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring CNRG into

compliance with Labor Code sections 221 and 224, pursuant to Labor Code sections 225.5 and/or 2699(a), (f), and (k).

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

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

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

CNRG's failure to pay Mr. Rathjen and other aggrieved employees the correct designated wage, while purporting to pay legal wages, is a violation of California Labor Code section 223. Mr. Rathjen and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring CNRG into compliance with Labor Code section 223, pursuant to Labor Code sections 225.5 and/or 2699(a), (f), and (k).

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.*

CNRG'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. Rathjen and other aggrieved employees (with reasonable or no modification to these work areas) during the performance of their work duties. CNRG could provide Mr. Rathjen and other aggrieved

employees with a seat or stool at its cash wraps, but instead denies employees seating and forces Mr. Rathjen and other aggrieved employees to stand throughout the day.

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

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

Mr. Rathjen and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring CNRG into compliance with the applicable IWC Wage Order and Labor Code section 1198, pursuant to Labor Code sections 1194.5 and/or 2699(a), (f), and (k).

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.*

CNRG'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. Rathjen and other aggrieved employees during lulls in operation. CNRG could have provided Mr. Rathjen 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.

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

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

Mr. Rathjen and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring CNRG into compliance with the applicable IWC Wage Order and Labor Code section 1198, pursuant to Labor Code sections 1194.5 and/or 2699(a), (f), and (k).

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

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

First, during the relevant time period, CNRG, on a company-wide basis, required that Mr. Rathjen 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, CNRG required Mr. Rathjen and other aggrieved employees to download various mobile applications, such as "Mobile Lookup - Eagle," in order to search inventory at CNRG's various stores and placing orders for customers. In addition, CNRG required Mr. Rathjen and other aggrieved employees to download the "When I

Work” mobile application in order to view their work schedules, which was subject to changes by CNRG. Although CNRG required Mr. Rathjen and other aggrieved employees to utilize their personal mobile devices to carry out their work-related responsibilities, CNRG failed to reimburse them for this cost.

Second, during the relevant time period, CNRG required Mr. Rathjen and other aggrieved employees to wear uniforms bearing the “Outdoor Supply Hardware” company logo, including uniform shirts. However, CNRG did not provide its employees with sufficient uniforms to wear for their shifts throughout the week. For example, CNRG only provided Mr. Rathjen and other aggrieved employees with one (1) shirt at the time of hire. Because CNRG failed to provide its employees with an adequate number of uniforms in relation to their scheduled shifts and for the tasks they were required to perform, Mr. Rathjen and other aggrieved employees were required to wash their uniform items more frequently than other clothing and/or separately from their regular clothing, thus incurring additional laundry expenses for the upkeep of their uniforms. Thus, CNRG failed to provide and maintain uniforms they required Mr. Rathjen and other aggrieved employees to wear during their shifts and forced them to incur the costs of maintaining employee uniforms.

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

Thus, CNRG 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. Rathjen and other aggrieved employees are entitled to recover civil penalties, attorneys’ fees, costs, and interest thereon, and seek injunctive relief to bring CNRG into compliance with the applicable IWC Wage Order and Labor Code section 2802, pursuant to Labor Code sections 2699(a), (f), and (k).

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

Accordingly, Mr. Rathjen 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(k), 2699.3(a) and 2699.3(c), 2699.5, and 558, Mr. Rathjen, 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 CNRG for violations of California Labor Code sections 201, 202, 204, 212, 213, 221, 223, 224, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

Therefore, on behalf of all aggrieved employees, Mr. Rathjen seeks all applicable civil 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 black ink, appearing to read "Ninel", is positioned above the printed name.

Ninel Kocharyan

Copy: CENTRAL NETWORK RETAIL GROUP, LLC (via U.S. Certified Mail)

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1875 Century Park East
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Los Angeles, CA 90067

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PROOF OF SERVICE

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

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

Eleno Nunez Gonzalez (SBN 332555)

egonzalez@ohaganmeyer.com

Vincent Fisher (SBN 276334)

vfisher@ohaganmeyer.com

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

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

☐ **BY FAX:** I hereby certify that this document was served from Los Angeles, California, by facsimile delivery on the parties listed herein at their most recent fax number of record in this action.

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

Xochitl Tapia

Type/Print Name

Signature

