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ELECTRONICALLY FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT
10/23/2024 5:00 PM
By: Leanne Landeros, DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

JENNY PEREZ, 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.

THE SALVATION ARMY, a California
nonprofit corporation; THE SALVATION
ARMY SERVICES, INC., a California
nonprofit corporation; and DOES 1 through
10, inclusive,

Defendants.

Case No.: CIVSB2424847

**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 § 227.3 (Failure to Pay Vested Vacation Time Upon Termination);
- (7) Violation of California Labor Code §§ 201 and 202 (Wages Not Timely Paid Upon Termination);
- (8) Violation of California Labor Code § 204 (Failure to Timely Pay Wages During Employment);

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- (9) Violation of California Labor Code § 2802 (Unreimbursed Business Expenses);
- (10) Civil Penalties for Violations of California Labor Code, Pursuant to PAGA, §§ 2698, *et seq.*;
- (11) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unlawful Business Practices); and
- (12) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unfair Business Practices)

Jury Trial Demanded

1 Plaintiff Jenny Perez, 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,
9 hourly paid employees and received at least one wage statement and against whom one or
10 more violations of any provision in Division 2 Part 2 Chapter 1 of the Labor Code or any
11 provision regulating hours and days of work in the applicable Industrial Welfare Commission
12 (“IWC”) Wage Order were committed, as set forth in this complaint. The monetary damages,
13 penalties, and restitution sought by Plaintiff exceed the minimal jurisdiction limits of the
14 Superior Court and will be established according to proof at trial. This Court has jurisdiction
15 over this action pursuant to the California Constitution, Article VI, section 10. The statutes
16 under which this action is brought do not specify any other basis for jurisdiction. Plaintiff’s
17 share of damages, penalties, and other relief sought in this action does not exceed \$75,000.

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

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

3. Venue is proper in this Court, because Defendants employ persons within the County of San Bernardino, and have violated the requirements of the California Labor Code and applicable IWC Wage Order in this county which give rise to the penalties sought in this action. Cal. Code Civ. P. § 393. Specifically, Defendants have violated the requirements of the California Labor Code and applicable IWC Wage Order in at least six locations within the County of San Bernardino, including Defendants' locations in San Bernardino (2911 S. E Street, San Bernardino, California 92408); Hemet (1400 W. Florida Avenue, Hemet, California 92543); Rancho Cucamonga (12769 Foothill Blvd., Rancho Cucamonga, California 91739); Fontana (17079 Valley Boulevard, Suite #D, Fontana, California 92335); Victorville (14716 7th Street, Victorville, California 92395); and Redlands (801 W. Colton Avenue, Redlands, California 92374). Pursuant to California Civil Code of Procedure section 393, venue is proper for the recovery of a penalty or forfeiture imposed by statute in the county in which the cause, or some part of the cause, arose. Because Defendants have employees in San Bernardino County and Plaintiff could bring this action to recover penalties in San Bernardino County, venue is proper.

THE PARTIES

4. Plaintiff Jenny Perez is a resident of Oakland, in Alameda County, California. Defendants employed Plaintiff as an hourly paid, non-exempt employee from approximately January 2021 to February 2024. Plaintiff worked for Defendants as an Assistant Manager at their stores in Alameda and Oakland, California. During her employment, Plaintiff typically worked eight (8) hours or more per day and five (5) days or more per week. Plaintiff's primary job duties included, without limitation, cashiering; providing customer service; and tagging, restocking, and organizing merchandise.

5. THE SALVATION ARMY was and is, upon information and belief, a California nonprofit corporation, and at all times hereinafter mentioned, an employer whose

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

6. THE SALVATION ARMY SERVICES, INC. was and is, upon information and belief, a California nonprofit corporation, and at all times hereinafter mentioned, an employer whose employees are engaged throughout this county and the State of California.

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

8. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10 were the partners, agents, owners, or managers of THE SALVATION ARMY and THE SALVATION ARMY SERVICES, INC, at all relevant times.

9. Plaintiff is informed and believes, and thereon alleges, that each and all of the acts and omissions alleged herein was performed by, or is attributable to, THE SALVATION ARMY; THE SALVATION ARMY SERVICES, INC.; and/or DOES 1 through 10 (collectively, “Defendants” or “TSA”), each acting as the agent, employee, alter ego, and/or joint venturer of, or working in concert with, each of the other co-Defendants and was acting within the course and scope of such agency, employment, joint venture, or concerted activity with legal authority to act on the others’ behalf. The acts of any and all Defendants were in accordance with, and represent, the official policy of Defendants.

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

11. 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.

12. Under California law, Defendants are jointly and severally liable as employers for the violations alleged herein because they have each exercised sufficient control over the

1 wages, hours, working conditions, and employment status of Plaintiff and class members.
2 Each Defendant had the power to hire and fire Plaintiff and class members, supervised and
3 controlled their work schedule and/or conditions of employment, determined their rate of pay,
4 and maintained their employment records. Defendants suffered or permitted Plaintiff and
5 class members to work and/or “engaged” Plaintiff and class members so as to create a
6 common-law employment relationship. As joint employers of Plaintiff and class members,
7 Defendants are jointly and severally liable for the civil penalties and all other relief available
8 to Plaintiff and class members under the law.

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

- 12 (a) jointly exercised meaningful control over the work performed by
13 Plaintiff and class members;
- 14 (b) jointly exercised meaningful control over Plaintiff’s and class members’
15 wages, hours, and working conditions, including the quantity, quality
16 standards, speed, scheduling, and operative details of the tasks
17 performed by Plaintiff and class members;
- 18 (c) jointly required that Plaintiff and class members perform work which is
19 an integral part of Defendants’ businesses; and
- 20 (d) jointly exercised control over Plaintiff and class members as a matter of
21 economic reality in that Plaintiff and class members were dependent on
22 Defendants, who shared the power to set the wages of Plaintiff and class
23 members and determined their working conditions, and who jointly
24 reaped the benefits from the underpayment of their wages and
25 noncompliance with other statutory provisions governing their
26 employment.

27 14. Plaintiff is informed and believes, and thereon alleges, that at all relevant times
28 there has existed a unity of interest and ownership between Defendants such that any

1 individuality and separateness between the entities has ceased.

2 15. THE SALVATION ARMY; THE SALVATION ARMY SERVICES, INC.;
3 and DOES 1 through 10 are therefore alter egos of each other.

4 16. Adherence to the fiction of the separate existence of Defendants would permit
5 an abuse of the corporate privilege, and would promote injustice by protecting Defendants
6 from liability for the wrongful acts committed by them under the name TSA.

7 17. Plaintiff further alleges, upon information and belief, that Defendants THE
8 SALVATION ARMY and THE SALVATION ARMY SERVICES, INC. are alter egos of
9 each other for the following reasons:

- 10 (a) On the California Secretary of State's website
11 (<https://bizfileonline.sos.ca.gov/>), THE SALVATION ARMY and THE
12 SALVATION ARMY SERVICES, INC. share the same principal
13 address and mailing address of "30840 HAWTHORNE BLVD, ATTN:
14 LEGAL DEPT, RANCHO PALOS VERDES, CA 90275";
- 15 (b) On the California Secretary of State's website, THE SALVATION
16 ARMY and THE SALVATION ARMY SERVICES, INC. share the
17 same agent for service of process, "CORPORATION COGENCY
18 GLOBAL INC.";
- 19 (c) According to their most recent "Statement of Information" forms filed
20 with the California Secretary of State, THE SALVATION ARMY and
21 THE SALVATION ARMY SERVICES, INC. share the same officers,
22 including, but not limited to:
- 23 (i) Chief Executive Officer Douglas Riley;
24 (ii) Secretary Terry O. Hughes; and
25 (iii) Chief Financial Officer Kelly Pontsler; and
- 26 (d) On information and belief, THE SALVATION ARMY and THE
27 SALVATION ARMY SERVICES, INC. utilize the same standardized
28 employment forms and issue the same employment policies.

GENERAL ALLEGATIONS

18. Defendants are a non-profit company providing aid for disaster relief, rehabilitation, and anti-human trafficking efforts. Defendants sell donated goods at approximately 67 thrift store locations across California. Upon information and belief, Defendants maintain a single, centralized Human Resources (“HR”) department at their company headquarters in Rancho Palos Verdes, California, 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.

19. 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.

20. Upon information and belief, Defendants maintain a centralized Payroll department at their company headquarters in Rancho Palos Verdes, California, 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.

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

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

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

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

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

25. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiff and class members were entitled to be paid at a regular rate of pay, and corresponding rates of pay for overtime wages and/or meal and rest period premiums, that included as eligible income all remuneration required by law, including but not limited to, all income derived from incentive pay, nondiscretionary bonuses, and/or other forms of compensation, but failed to include all forms of remuneration in calculating the regular rate of pay for Plaintiff and class members.

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

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

1 period.

2 28. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
3 should have known that Plaintiff and class members were entitled to rest periods in
4 accordance with the California Labor Code and applicable IWC Wage Order or payment of
5 one (1) additional hour of pay at their regular rates of pay when they were not authorized and
6 permitted to take a compliant rest period and that Plaintiff and class members were not
7 authorized and permitted to take compliant rest periods or provided with payment of one (1)
8 additional hour of pay at their regular rates of pay when they were not authorized and
9 permitted to take a compliant rest period.

10 29. 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 complete and
12 accurate wage statements in accordance with California law. In violation of the California
13 Labor Code, Plaintiff and class members were not provided complete and accurate wage
14 statements.

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

19 31. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
20 should have known that they were required to pay departing employees all vested vacation
21 wages that were owed to them at the end of their employment. In violation of the California
22 Labor Code, Defendants failed to pay Plaintiff and class members all vested vacation time at
23 the end of their employment, causing a forfeiture of vested vacation wages.

24 32. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
25 should have known that Plaintiff and class members were entitled to timely payment of all
26 wages earned upon termination of employment. In violation of the California Labor Code,
27 Plaintiff and class members did not receive payment of all wages due, including, but not
28 limited to, overtime wages, minimum wages, meal and rest period premiums, vested vacation

1 wages, and/or sick leave pay, within permissible time periods.

2 33. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
3 should have known that Plaintiff and class members were entitled to timely payment of wages
4 during their employment. In violation of the California Labor Code, Plaintiff and class
5 members did not receive payment of all wages, including, but not limited to, overtime wages,
6 minimum wages, meal and rest period premiums, and/or sick leave pay, within permissible
7 time periods.

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

14 35. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
15 should have known that Plaintiff and class members were entitled to one day's rest in seven. In
16 violation of the California Labor Code, Defendants required Plaintiff and class members to work
17 more than six consecutive days without a day of rest, where the total hours worked exceeded 30
18 hours in any week or six hours in any one day thereof.

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

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

business-related expenses and costs incurred.

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

PAGA REPRESENTATIVE ALLEGATIONS

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

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

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

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

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

violation.

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

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

- (a) The aggrieved employee or representative shall give written notice by online filing with the LWDA and by certified mail to the employer of the specific provisions of the California Labor Code alleged to have been violated (other than those listed in Section 2699.5), including the facts and theories to support the alleged violation.
- (b) An aggrieved employee's notice filed with the LWDA pursuant to 2699.3(c) and any employer response to that notice shall be accompanied by a filing fee of seventy-five dollars (\$75).
- (c) The employer may cure the alleged violation within thirty-three (33) calendar days of the postmark date of the notice sent by the aggrieved employee or representative. The employer shall give written notice within that period of time by certified mail to the aggrieved employee or

1 representative and by online filing with the LWDA if the alleged
2 violation is cured, including a description of actions taken, and no civil
3 action pursuant to Section 2699 may commence. If the alleged violation
4 is not cured within the 33-day period, the aggrieved employee may
5 commence a civil action pursuant to Section 2699.

6 44. On August 7, 2024, Plaintiff provided written notice by online filing to the
7 LWDA and by Certified Mail to Defendants of the specific provisions of the California Labor
8 Code alleged to have been violated, including facts and theories to support the alleged
9 violations, in accordance with California Labor Code section 2699.3. Plaintiff's written
10 notice was accompanied with the applicable filing fee of seventy-five dollars (\$75). The
11 LWDA PAGA Administrator confirmed receipt of Plaintiff's written notice and assigned
12 Plaintiff PAGA Case Number LWDA-CM-1044136-24. A true and correct copy of Plaintiff's
13 written notice to the LWDA and Defendants is attached hereto as "Exhibit 1."

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

17 46. Thus, Plaintiff has satisfied the administrative prerequisites under California
18 Labor Code sections 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
19 violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 227.3, 246, 510,
20 512(a), 516, 551, 552, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

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

1 to any other civil or criminal penalty provided by law.”

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

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

8 50. Pursuant to PAGA, and in particular, California Labor Code sections 1194.5.
9 2699(a), 2699(k), 2699.3(a), 2699.3(c), and 2699.5, and section 558, Plaintiff, acting in the
10 public interest as a private attorney general, seeks assessment and collection of civil penalties
11 and injunctive relief for herself, all other aggrieved employees, and the State of California
12 against Defendants for violations of California Labor Code sections 201, 202, 204, 226(a),
13 226.7, 227.3, 246, 510, 512(a), 516, 551, 552, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198,
14 and 2802.

15 **CLASS ACTION ALLEGATIONS**

16 51. Plaintiff brings this action on her own behalf, as well as on behalf of each and
17 all other persons similarly situated, and thus seeks class certification under California Code of
18 Civil Procedure section 382.

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

21 53. Plaintiff’s proposed class consists of and is defined as follows:

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

24 54. Plaintiff’s proposed subclass consists of and is defined as follows:

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

28 55. Members of the Class and Subclass are referred to herein as “class members.”

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

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

- 6 (a) Whether Defendants required Plaintiff and class members to work over
7 eight (8) hours per day, over twelve (12) hours per day, or over forty
8 (40) hours per week and failed to pay all legally required overtime
9 compensation to Plaintiff and class members;
- 10 (b) Whether Defendants failed to include all forms of remuneration in the
11 regular rate of pay as required by law for purposes of paying overtime
12 wages and/or meal and rest period premiums to Plaintiff and class
13 members;
- 14 (c) Whether Defendants failed to pay Plaintiff and class members at least
15 minimum wages for all hours worked;
- 16 (d) Whether Defendants failed to provide Plaintiff and class members with
17 meal periods;
- 18 (e) Whether Defendants failed to authorize and permit Plaintiff and class
19 members to take rest periods;
- 20 (f) Whether Defendants provided Plaintiff and class members with
21 complete and accurate wage statements as required by California Labor
22 Code section 226(a);
- 23 (g) Whether Defendants maintained accurate payroll records as required by
24 California Labor Code section 1174(d);
- 25 (h) Whether Defendants failed to pay Plaintiff and class members all vested
26 vacation time as wages at their final rate in accordance with the terms
27 and conditions of Defendants' employment contract and/or policy;
- 28 (i) Whether Defendants failed to pay earned overtime wages, minimum

wages, meal and rest period premiums, sick leave pay, and/or vested vacation wages, due to Plaintiff and class members upon their discharge;

(j) Whether Defendants failed timely to pay overtime wages, minimum wages, meal and rest period premiums, and/or sick leave pay due to Plaintiff and class members during their employment;

(k) Whether Defendants failed to properly calculate the regular rate of pay upon which Plaintiff's and class members' sick leave rate of pay was based;

(l) Whether Defendants failed to provide Plaintiff and class members one day's rest in seven;

(m) Whether Defendants failed to provide Plaintiff and class members with suitable seating;

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

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

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

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

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

Defendants' employment records.

- (b) Typicality: Plaintiff is qualified to, and will, fairly and adequately protect the interests of each class member with whom she has a well-defined community of interest, and Plaintiff's claims (or defenses, if any) are typical of all class members as demonstrated herein.
- (c) Adequacy: Plaintiff is qualified to, and will, fairly and adequately protect the interests of each class member with whom she has a well-defined community of interest and typicality of claims, as demonstrated herein. Plaintiff acknowledges that she has an obligation to make known to the Court any relationship, conflicts or differences with any class member. Plaintiff's attorneys, the proposed class counsel, are versed in the rules governing class action discovery, certification, and settlement. Plaintiff has incurred, and throughout the duration of this action, will continue to incur costs and attorneys' fees that have been, are, and will be necessarily expended for the prosecution of this action for the substantial benefit of each class member.
- (d) Superiority: The nature of this action makes the use of class action adjudication superior to other methods. A class action will achieve economies of time, effort, and expense as compared with separate lawsuits, and will avoid inconsistent outcomes because the same issues can be adjudicated in the same manner and at the same time for the entire class.
- (e) Public Policy Considerations: Employers in the State of California violate employment and labor laws every day. Current employees are often afraid to assert their rights out of fear of direct or indirect retaliation. Former employees are fearful of bringing actions because they believe their former employers might damage their future endeavors through negative references and/or other means. Class

actions provide the class members who are not named in the complaint with a type of anonymity that allows for the vindication of their rights while simultaneously protecting their privacy.

FIRST CAUSE OF ACTION

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

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

60. Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable IWC Wage Order. California Labor Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.”

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

62. Specifically, the applicable IWC Wage Order provides that Defendants are and were required to pay Plaintiff and class members 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) for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek.

63. The applicable IWC Wage Order further provides that Defendants are and were required to pay Plaintiff and class members 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.

64. California Labor Code section 510 codifies the right to overtime compensation

1 at one and one-half (1 ½) times the regular rate of pay for hours worked in excess of eight (8)
2 hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the
3 seventh (7th) day of work, and to overtime compensation at twice the employee's regular rate
4 of pay for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours
5 in a day on the seventh (7th) day of work.

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

11 66. First, during the relevant time period, Defendants had, and continue to have, a
12 company-wide policy and/or practice of discouraging and impeding Plaintiff and class
13 members from recording hours worked that were outside of their scheduled shifts in order to
14 limit the amount of overtime employees could accrue. On information and belief, this policy
15 of limiting overtime, coupled with Defendants' practices of understaffing and assigning heavy
16 workloads (*see infra*), led Plaintiff and class members to work off-the-clock outside of their
17 scheduled shift times in order to complete their assigned tasks. For example, when Plaintiff
18 arrived 15 minutes prior to her scheduled shift-start time, Defendants' management
19 immediately required her to begin working—cleaning the sales floor, organizing inventory,
20 and discussing daily work assignments—and prevented her from clocking in. Additionally,
21 Defendants required Plaintiff and class members to perform work-related tasks before
22 clocking in and after clocking out from their shifts. For example, Plaintiff was required to
23 perform opening and closing tasks before clocking in or after clocking out for her shifts,
24 including unlocking or locking doors, and deactivating or activating the security alarm, which
25 would take at least five (5) minutes, each instance. As a further example, after clocking out
26 from her shifts, Defendants' management required Plaintiff to complete closing tasks, such as
27 cleaning, closing registers, and preparing deposits.

28 67. Moreover, Defendants' managers contacted Plaintiff and class members on

1 their personal mobile devices about work-related matters when they were not scheduled to
2 work, but did not compensate them for this time. For example, Defendants' managers called
3 Plaintiff twice a week, on her personal cellular phone, outside of her scheduled shifts, to
4 discuss details such as sales goals, inventory, and scheduling for up to 35 minutes each
5 instance. Thus, Defendants failed to track the time that employees spent performing work-
6 related tasks outside their scheduled shifts, and Plaintiff and class members received no
7 compensation for this time.

8 68. Second, Defendants had, and continue to have, company-wide policies and/or
9 practices of understaffing their locations, such that there were too few employees on duty to
10 handle the workload and attend to customers, while also pressuring employees to meet certain
11 productivity expectations such as sales goals. Defendants' policies and/or practices resulted
12 in a failure to provide Plaintiff and class members with adequate meal period coverage, and
13 thus, Plaintiff and class members were not always afforded uninterrupted 30-minute meal
14 periods during shifts when they were entitled to receive a meal period. Defendants also had a
15 practice of failing to adhere to a schedule for meal periods, which further caused Plaintiff and
16 class members to not be relieved of their duties for compliant meal periods. For example,
17 Plaintiff would work through all or part of her meal periods in order to assist customers and
18 provide coverage to the understaffed store, or would have her meal periods interrupted in
19 order to answer questions from Defendants' management regarding organizing inventory.
20 Consequently, Plaintiff and class members were required to work through their meal periods
21 and/or had their meal periods interrupted in order to provide coverage, handle customer
22 demand, and complete their assigned duties, time for which they were not paid.

23 69. Third, on information and belief, because Defendants frowned upon employees
24 accruing meal period penalties, Defendants pressured Plaintiff and class members to clock out
25 for meal periods, on threat of discipline, and/or adjusted their time records to reflect compliant
26 meal periods, even when they did not receive a compliant meal period. For example, when
27 Plaintiff was too busy with her workload to take a compliant meal period, she would clock out
28 for her meal period and continue working off the clock, or her manager would require her to

1 submit a time change request form at the end of her shift, resulting in her meal period clock-in
2 and clock-out times being changed to reflect compliant meal periods. Thus, Defendants did not
3 record all hours worked during meal periods and Plaintiff and class members performed work
4 during meal periods for which they were not paid.

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

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

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

underpayment of overtime wages to Plaintiff and class members on a company-wide basis.

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

SECOND CAUSE OF ACTION

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

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

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

76. As set forth above, as a result of Defendants' policy of limiting the amount of overtime employees could accrue, Defendants required Plaintiff and class members to perform work off-the-clock outside their scheduled shifts, such as cleaning the sales floor, organizing inventory, communicating with management, and performing opening and closing duties. Defendants failed to track this time that Plaintiff and class members spent working off-the-clock, and Plaintiff and class members received no compensation for this time.

77. Further, as also stated, due to Defendants' policies and/or practices of understaffing their locations while assigning heavy workloads, including pressure to meet productivity expectations such as sales goals, and failing to adhere to a schedule for meal

1 periods, Plaintiff and class members were impeded from taking all uninterrupted meal periods
2 to which they were entitled and were required to work off-the-clock during meal periods, have
3 their meal periods interrupted, and/or were otherwise not relieved of all duties during unpaid
4 meal periods. Moreover, as stated, on information and belief, in order to limit meal penalties
5 that Defendants would otherwise owe, Defendants pressured Plaintiff and class members to
6 clock out for meal periods, on threat of discipline, and/or adjusted employee time records to
7 reflect compliant meal periods, even when they did not receive a compliant meal period.
8 Thus, Defendants systematically failed to pay Plaintiff and class members for actual hours
9 worked during unpaid meal periods because these hours were not always correctly recorded.

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

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

20 **THIRD CAUSE OF ACTION**

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

22 **Violations**

23 **(Against all Defendants)**

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

26 81. At all relevant times herein set forth, California Labor Code section 512(a)
27 provides that an employer may not require, cause, or permit an employee to work for a period
28 of more than five (5) hours per day without providing the employee with a meal period of not

1 less than thirty (30) minutes, except that if the total work period per day of the employee is
2 not more than six (6) hours, the meal period may be waived by mutual consent of both the
3 employer and the employee. Under California law, first meal periods must start after no more
4 than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012).

5 82. At all relevant times herein set forth, California Labor Code sections 226.7,
6 512(a), 516, and 1198 provide that no employer shall require an employee to work during any
7 meal period mandated by an applicable order of the IWC.

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

15 84. As stated, Defendants had, and continue to have, company-wide policies and/or
16 practices of understaffing while assigning heavy workloads, including pressuring employees
17 to meet productivity expectations, including sales goals, which has resulted in a lack of meal
18 period coverage and prevented Plaintiff and class members from taking all timely,
19 uninterrupted meal periods to which they were entitled. Further, as stated, Defendants had a
20 company-wide practice and/or policy of failing to adhere to a schedule for meal periods,
21 which further caused Plaintiff and class members to not be relieved of their duties for
22 compliant meal periods.

23 85. As a result, Plaintiff and class members had to work through all or part of their
24 meal periods, had their meal periods interrupted, and/or had to wait extended periods of time
25 before taking meal periods. For example, as stated, Plaintiff missed her meal periods once a
26 month to assist and provide coverage on the sales floor. Furthermore, Defendants'
27 management interrupted Plaintiff's meal periods by asking her questions regarding organizing
28 inventory and assisting customers. Additionally, Plaintiff took her meal periods late twice a

1 week, after the fifth hour of work, due to the lack of coverage and daily requirement to unload
2 50 cases of materials.

3 86. Further, as stated, on information and belief, in order to limit meal penalties
4 that Defendants would otherwise owe, Defendants pressured Plaintiff and class members to
5 clock out for meal periods to reflect compliant meal periods, on threat of discipline, and/or
6 adjusted employee time records even when they did not receive a compliant meal period. For
7 example, as stated above, Defendants' management pressured Plaintiff to record compliant
8 meal periods or submit timesheet correction forms to reflect that she had received compliant
9 meal periods on shifts when she had not, in fact, received these timely, uninterrupted meal
10 periods.

11 87. Moreover, Defendants did not provide Plaintiff and class members with second
12 30-minute meal periods on days that they worked in excess of 10 hours in one day. For
13 example, during the relevant time period, Plaintiff worked shifts in excess of 10 hours in one
14 day at least twice per week and never took a second meal period. Plaintiff and class members
15 did not sign valid meal period waivers on days that they were entitled to meal periods and
16 were not relieved of all duties. Plaintiff and class members did not sign valid meal period
17 waivers on days that they were entitled to meal periods and were not relieved of all duties.

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

24 89. Moreover, Defendants engaged in a company-wide practice and/or policy of
25 not paying meal period premiums owed when compliant meal periods are not provided.
26 Because of this practice and/or policy, Plaintiff and class members have not received premium
27 pay for missed, late, and interrupted meal periods. Alternatively, to the extent that Defendants
28 did pay Plaintiff and class members premium pay for missed, late, and interrupted meal

1 periods, Defendants did not pay Plaintiff and class members at the correct rate of pay for
2 premiums because Defendants systematically failed to include all forms of compensation,
3 such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the
4 regular rate of pay. As a result, Defendants failed to provide Plaintiff and class members
5 compliant meal periods in violation of California Labor Code sections 226.7, 512(a), and 516
6 and failed to pay the full meal period premiums due.

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

11 **FOURTH CAUSE OF ACTION**

12 **Violation of California Labor Code §§ 226.7, 516, and 1198—Rest Period Violations** 13 **(Against all Defendants)**

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

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

19 93. At all relevant times, the applicable IWC Wage Order provides that "[e]very
20 employer shall authorize and permit all employees to take rest periods, which insofar as
21 practicable shall be in the middle of each work period" and that the "rest period time shall be
22 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
23 hours or major fraction thereof" unless the total daily work time is less than three and one-half
24 (3 ½) hours.

25 94. At all relevant times, California Labor Code section 226.7 provides that no
26 employer shall require an employee to work during any rest period mandated by an applicable
27 order of the California IWC. To comply with its obligation to authorize and permit rest
28 periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an

1 employer must “relinquish any control over how employees spend their break time, and
2 relieve their employees of all duties—including the obligation that an employee remain on
3 call. A rest period, in short, must be a period of rest.” *Augustus v. ABM Security Services,*
4 *Inc.*, 2 Cal. 5th 257, 273 (2016). California Labor Code section 226.7 and the applicable IWC
5 Wage Order also provide that rest periods shall be counted as hours worked for which there
6 shall be no deduction from wages.

7 95. Pursuant to the applicable IWC Wage Order and California Labor Code section
8 226.7(c), Plaintiff and class members are entitled to recover from Defendants one (1)
9 additional hour of pay at their regular rates of pay for each work day that a required rest
10 period was not authorized and permitted.

11 96. During the relevant time period, Defendants regularly failed to authorize and
12 permit Plaintiff and class members to take a ten (10) minute rest period per each four (4) hour
13 period worked or major fraction thereof. As with meal periods, Defendants’ company-wide
14 practices, including understaffing and assigning heavy workloads, prevented Plaintiff and
15 class members from being relieved of all duty to take rest periods. Additionally, Defendants
16 failed to adhere to a schedule for rest periods, which, coupled with Defendants’ failure to
17 provide adequate rest period coverage, further led to Plaintiff and class members not being
18 authorized and permitted to take rest periods.

19 97. Furthermore, on information and belief, Defendants maintained and
20 implemented a company-wide on-premises rest period policy, which effectively required that
21 Plaintiff and/or class members remain on the premises during their rest periods. Because
22 Plaintiff and/or class members were restricted from leaving Defendants’ premises during rest
23 periods, they were denied the ability to use their rest periods freely for their own purposes,
24 such as completing personal errands. Thus, Defendants effectively maintained control over
25 Plaintiff and/or class members during rest periods.

26 98. As a result of Defendants’ practices and policies, Plaintiff and class members
27 worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without
28 receiving all uninterrupted rest periods to which they were entitled. For example, Plaintiff

missed her rest periods twice per week to assist with customer returns, respond to questions about donations, and due to the lack of coverage. Additionally, when Plaintiff was able to take her rest periods, they were interrupted to assist other employees with sales transactions and to handle donation deliveries.

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

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

FIFTH CAUSE OF ACTION

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

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

102. At all relevant times herein set forth, California Labor Code section 226(a) provides that every employer shall furnish each of his or her employees an accurate and

1 complete itemized wage statement in writing, including, but not limited to, the name and
2 address of the legal entity that is the employer, the inclusive dates of the pay period, total
3 hours worked, and all applicable rates of pay.

4 103. At all relevant times, Defendants have knowingly and intentionally provided
5 Plaintiff and Subclass members with uniform, incomplete, and inaccurate wage statements.
6 For example, Defendants issued uniform wage statements to Plaintiff and Subclass members
7 that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all
8 applicable hourly rates in effect during the pay period, including rates of pay for overtime
9 wages, meal and rest period premiums, and/or paid sick leave, and the corresponding number
10 of hours worked at each hourly rate. Specifically, Defendants violated sections 226(a)(1),
11 226(a)(2), 226(a)(5), and 226(a)(9).

12 104. First, because Defendants did not record the time Plaintiff and Subclass
13 members spent working off the clock and deducted time from their meal periods that were
14 missed and/or interrupted (and therefore time for which they should have been paid),
15 Defendants did not list the correct amount of gross wages and net wages earned by Plaintiff
16 and Subclass members in compliance with sections 226(a)(1) and 226(a)(5). For the same
17 reason, Defendants failed to accurately list the total number of hours worked by Plaintiff and
18 Subclass members, in violation of section 226(a)(2), and failed to list the applicable hourly
19 rates of pay in effect during the pay period and the corresponding accurate number of hours
20 worked at each hourly rate, in violation of section 226(a)(9).

21 105. Second, because Defendants did not calculate Plaintiffs' and Subclass
22 members' regular rate of pay correctly for purposes of paying overtime wages, meal and rest
23 period premiums, and/or paid sick leave, Defendants did not list the correct amount of gross
24 wages in compliance with section 226(a)(1). For the same reason, Defendants failed to list the
25 correct amount of net wages in violation of section 226(a)(5). Defendants also failed to
26 correctly list all applicable hourly rates in effect during the pay period, namely, correct rates
27 of pay for overtime wages, meal and rest period premiums, and/or paid sick leave, in violation
28 of section 226(a)(9).

106. 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 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.

107. 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” At all relevant times, and in violation of Labor Code section 1174(d), Defendants willfully failed to maintain accurate payroll records for Plaintiff and Subclass members 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.

108. 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, Defendants 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 if or when meal periods were actually taken), and thereby failed

1 to keep accurate records of work period and meal period start and end times for Plaintiff and
2 Subclass members, in violation of section 1198. Furthermore, in light of Defendants' failure
3 to provide Plaintiff and Subclass members with second 30-minute meal periods to which they
4 were entitled, Defendants kept no records of meal start and end times for second meal periods.

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

9 **SIXTH CAUSE OF ACTION**

10 **Violation of California Labor Code § 227.3—Failure to Pay All Vested Vacation Time** 11 **Upon Termination** 12 **(Against all Defendants)**

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

15 111. At all relevant times herein set forth, California Labor Code section 227.3
16 provides that whenever a contract of employment or employer policy provides for paid
17 vacations, and an employee is terminated without having taken his or her vested vacation
18 time, all vested vacation shall be paid to him or her as wages at his or her final rate in
19 accordance with such contract of employment or employer policy respecting eligibility or time
20 served.

21 112. During the relevant time period, Defendants had a company-wide policy and
22 practice of failing to pay Plaintiff and class members vested vacation wages that were owed to
23 them at the end of their employment, in violation of California Labor Code section 227.3.
24 Specifically, Defendants failed to properly calculate and pay all earned vested vacation time
25 due to the hours Plaintiff and class members worked off-the-clock pursuant to their company-
26 wide policies and/or practices.

27 113. Defendants' failure to pay Plaintiff and class members all vested vacation
28 wages at the end of their employment has caused a forfeiture of vested vacation wages, in

1 violation of California Labor Code section 227.3. Plaintiff and class members are therefore
2 entitled to recover from Defendants their unpaid vested vacation wages due to them, plus
3 interest.

4 **SEVENTH CAUSE OF ACTION**

5 **Violation of California Labor Code §§ 201 and 202—Wages Not Timely Paid Upon** 6 **Termination** 7 **(Against all Defendants)**

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

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

17 116. On information and belief, Defendants have a company-wide practice and/or
18 policy of paying departing employees their final wages late, instead of adhering to the time
19 requirements set forth in Labor Code sections 201 and 202. For example, Plaintiff voluntarily
20 resigned from her employment with Defendants on or about February 2, 2024. However, on
21 information and belief, Defendants did not provide Plaintiff with her final wages, including
22 vacation wages, until February 14th and February 16th, 2024. Thus, Defendants failed to pay
23 Plaintiff her final wages within seventy-two (72) hours of her leaving Defendants' employ, in
24 violation of California Labor Code section 202.

25 117. Additionally, Defendants willfully failed to pay Plaintiff and class members
26 who are no longer employed by Defendants the earned and unpaid wages set forth above,
27 including but not limited to, overtime wages, minimum wages, meal and rest period
28 premiums, vested vacation wages, and/or sick leave pay, either at the time of discharge, or

1 within seventy-two (72) hours of their leaving Defendants' employ.

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

8 **EIGHTH CAUSE OF ACTION**

9 **Violation of California Labor Code § 204—Failure to Timely Pay Wages During**
10 **Employment**

11 **(Against all Defendants)**

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

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

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

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

27 123. At all times relevant herein, Labor Code section 204 provides that all wages
28 earned for labor in excess of the normal work period shall be paid no later than the payday for

1 the next regular payroll period. Alternatively, at all times relevant herein, Labor Code section
2 204 provides that the requirements of this section are deemed satisfied by the payment of
3 wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than
4 seven (7) calendar days following the close of the payroll period.

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

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

12 **NINTH CAUSE OF ACTION**

13 **Violation of California Labor Code § 2802—Unpaid Business-Related Expenses** 14 **(Against all Defendants)**

15 126. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
16 and every allegation set forth above. At all times herein set forth, California Labor Code
17 section 2802 provides that an employer must reimburse employees for all necessary
18 expenditures and losses incurred by the employee in the performance of his or her job. The
19 purpose of Labor Code section 2802 is to prevent employers from passing off their cost of
20 doing business and operating expenses on to their employees. *Cochran v. Schwan's Home*
21 *Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order, IWC Wage
22 Order No. 7-2001, provides that: "[w]hen tools or equipment are required by the employer or
23 are necessary to the performance of a job, such tools and equipment shall be provided and
24 maintained by the employer, except that an employee whose wages are at least two (2) times
25 the minimum wage provided herein may provide and maintain hand tools and equipment
26 customarily required by the trade or craft."

27 127. During the relevant time period, Defendants, on a company-wide basis,
28 required that Plaintiff and class members use their own personal vehicles to carry out

1 company business. For example, three (3) times a week, Plaintiff was required to travel 20
2 miles roundtrip to make bank deposits for the store. Although Defendants required Plaintiff
3 and class members to utilize their personal vehicles to carry out their work-related
4 responsibilities, Defendants failed to reimburse them for their mileage or travel expenses.

5 128. Defendants could have provided Plaintiff and class members with company
6 vehicles, or, Defendants could have reimbursed employees for the cost of their mileage and
7 travel expenses. Instead, Defendants passed these operating costs onto Plaintiff and class
8 members.

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

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

17 **TENTH CAUSE OF ACTION**

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

19 **(Against all Defendants)**

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

22 132. California Labor Code §§ 2698, *et seq.* ("PAGA") permits Plaintiff to recover
23 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code
24 section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 204, 551, 552,
25 1174(d), and 1198. Labor Code section 2699.3(c) permits aggrieved employees, including
26 Plaintiff, to recover civil penalties for violations of those Labor Code sections not found in
27 section 2699.5, including sections 226(a), 226.7, 227.3, 246, 510, 512(a), 516, 1182.12, 1194,
28 1197, 1197.1, and 2802.

1 133. Defendants' conduct, as alleged herein, violates numerous sections of the
2 California Labor Code, including, but not limited to, the following:

- 3 (a) Violation of Labor Code sections 510 and 1198, and the applicable IWC
4 Wage Order for Defendants' failure to compensate Plaintiff and other
5 aggrieved employees with all required overtime pay, as alleged herein;
- 6 (b) Violation of Labor Code sections 226.7, 510, and 1198, and the
7 applicable IWC Wage Order for Defendants' failure to include all forms
8 of remuneration in the regular rate of pay as required by law for
9 purposes of paying overtime wages and/or meal and rest period
10 premiums to Plaintiff and other aggrieved employees, as alleged herein;
- 11 (c) Violation of Labor Code sections 1182.12, 1194, 1197, 1197.1, and
12 1198, and the applicable IWC Wage Order for Defendants' failure to
13 compensate Plaintiff and other aggrieved employees with at least
14 minimum wages for all hours worked, as alleged herein;
- 15 (d) Violation of Labor Code sections 226.7, 512(a), 516, and 1198, and the
16 applicable IWC Wage Order for Defendants' failure to provide Plaintiff
17 and other aggrieved employees with meal periods, as alleged herein;
- 18 (e) Violation of Labor Code sections 226(a) and 1198, and the applicable
19 IWC Wage Order for failure to provide accurate and complete wage
20 statements to Plaintiff and other aggrieved employees, as alleged herein;
- 21 (f) Violation of Labor Code sections 1174(d) and 1198, and the applicable
22 IWC Wage Order for failure to maintain payroll records, as alleged
23 herein;
- 24 (g) Violation of Labor Code sections 201 and 202 for failure to pay all
25 earned wages upon termination, as alleged herein;
- 26 (h) Violation of Labor Code section 204 for failure to pay all earned wages
27 during employment, as alleged herein;
- 28 (i) Violation of Labor Code section 227.3 for failure to pay all vested

vacation time upon termination, as alleged herein;

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

(k) Violation of Labor Code section 551 and 552 for failure to provide Plaintiff and other aggrieved employees one day's rest in seven, as set forth below;

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

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

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

135. During the relevant time period, on information and belief, Defendants did not pay Plaintiff and other aggrieved employees the correct sick leave rates of pay. Defendants failed to correctly use either method of calculation under Labor Code section 246(l) to determine Plaintiff's and other aggrieved employees' sick leave rates of pay. As stated, in addition to an hourly wage, Defendants paid Plaintiff and other aggrieved employees incentive

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

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

14 137. At all relevant times herein, California Labor Code section 551 provides that
15 every person employed in any occupation of labor is entitled to one day's rest in seven.
16 Additionally, California Labor Code section 552 prohibits employers from requiring
17 employees to work more than six consecutive days without a day of rest.

18 138. At all relevant times herein set forth, California Labor Code section 556
19 exempts an employer from the day-of-rest requirement when the total hours worked by an
20 employee do not exceed 30 hours in any week or six hours in any one day thereof.

21 139. During the relevant time period, on information and belief, Defendants
22 scheduled Plaintiff and other aggrieved employees to work six (6) or more hours per day and
23 seven (7) consecutive days in a workweek. Because Plaintiff and other aggrieved employees
24 worked over 30 hours per week and over six (6) hours per day in any one day in a workweek,
25 they were not exempt from the day-of-rest requirement. To the extent that Plaintiff and other
26 aggrieved employees may have signed purported waivers of their right to a day's rest in seven,
27 such waivers are invalid.

28 140. Thus, during the relevant time period, and in violation of Labor Code sections

1 551 and 552, Defendants caused Plaintiff and other aggrieved employees to work more than
2 six days in seven. Plaintiff and other aggrieved employees are therefore entitled to recover
3 civil penalties pursuant to Labor Code sections 558 and/or 2699(a), (f), and (k).

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

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

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

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

26 145. Defendants violated California Labor Code section 1198 and California Code
27 of Regulations, Title 8, section 11070(14)(A) because Plaintiff and other aggrieved employees
28 were not allowed to sit, even when the nature of their work would reasonably permit the use

1 of seats, nor were they provided with suitable seats. Defendants' management did not inform
2 Plaintiff and other aggrieved employees that they were allowed to sit down, provide any
3 means for them to sit down, or mention any policy regarding sitting.

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

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

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

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

28 150. Defendants did not provide Plaintiff and other aggrieved employees with seats

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

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

16 **ELEVENTH CAUSE OF ACTION**

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

18 **Unlawful Business Practices**

19 **(Against all Defendants)**

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

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

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

1 meaning of Code of Civil Procedure section 1021.5.

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

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

- 8 (a) Requiring non-exempt, hourly paid employees, including Plaintiff and
9 class members, to work overtime without paying them proper
10 compensation in violation of California Labor Code sections 510 and
11 1198, and the applicable IWC Wage Order, as alleged herein;
- 12 (b) Failing to include all forms of remuneration in the regular rate of pay as
13 required by law for purposes of paying overtime wages and/or meal and
14 rest period premiums to Plaintiffs and class members, in violation of
15 California Labor Code sections 226.7, 510, and 1198, and the applicable
16 IWC Wage Order, as alleged herein;
- 17 (c) Failing to pay at least minimum wage to Plaintiff and class members in
18 violation of California Labor Code sections 1182.12, 1194, 1197,
19 1197.1, and 1198, and the applicable IWC Wage Order, as alleged
20 herein;
- 21 (d) Failing to provide all meal periods to Plaintiff and class members in
22 violation of California Labor Code sections 226.7, 512(a), 516, and
23 1198, and the applicable IWC Wage Order, as alleged herein;
- 24 (e) Failing to authorize and permit Plaintiff and class members to take all
25 rest periods in violation of California Labor Code sections 226.7, 516,
26 and 1198, and the applicable IWC Wage Order, as alleged herein;
- 27 (f) Failing to provide Plaintiff and class members with accurate wage
28 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;

- (g) Failing to pay all vested vacation wages to Plaintiff and class members upon termination in violation of California Labor Code section 227.3, as alleged herein;
- (h) Failing timely to pay all earned wages to Plaintiff and class members in violation of California Labor Code section 204, as alleged herein;
- (i) Failing to properly calculate the sick leave paid to Plaintiff and class members in violation of Labor Code section 246(l), as set forth below;
- (j) Failing to provide one day's rest in seven to Plaintiff and class members in violation of California Labor Code sections 551 and 552, as set forth below; and
- (k) Failing to reimburse Plaintiff and class members for all business expenses necessarily incurred in violation of California Labor Code section 2802, as alleged herein.

157. At all relevant times herein, California Labor Code sections 245.5, 246, 246.5, 247, 247.5, 248.5, and 249 provide employees who have worked in California for 30 or more days from the commencement of employment with paid sick days, to be accrued at least one hour for every 30 hours worked. Effective January 1, 2024, California Labor Code section 246(b)(4) requires employers to provide no less than 40 hours or five (5) days of paid sick leave (or equivalent paid leave or paid time off) in each year of the employee's employment. Further, Labor Code section 246(l) provides that an employer shall calculate paid sick leave by using one of two calculations: 1) "[p]aid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek[;]" or 2) "[p]aid sick time for nonexempt employees shall be calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment."

1 158. During the relevant time period, on information and belief, Defendants did not
2 pay Plaintiff and class members the correct sick leave rates of pay. In addition to an hourly
3 wage, Defendants paid Plaintiff and class members incentive pay, nondiscretionary bonuses,
4 and/or other forms of remuneration. However, in violation of the California Labor Code,
5 Defendants failed to incorporate all remunerations, including incentive pay, and/or
6 nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes of
7 calculating the sick leave rate. Therefore, during times when Plaintiff and class members took
8 sick leave and received these other forms of pay, Defendants failed to pay all sick leave
9 benefits by paying a lower sick leave rate than required. Specifically, Defendants paid
10 Plaintiff and class members sick leave based on their hourly rate of pay instead of their regular
11 rate of pay.

12 159. Defendants' failure to properly calculate the sick leave rates of pay based on all
13 remuneration paid has resulted in an underpayment of sick leave benefits to Plaintiff and class
14 members on a company-wide basis, in violation of Labor Code section 246(l).

15 160. At all relevant times herein, California Labor Code section 551 provides that
16 every person employed in any occupation of labor is entitled to one day's rest in seven.
17 Additionally, California Labor Code section 552 prohibits employers from requiring
18 employees to work more than six consecutive days without a day of rest.

19 161. At all relevant times herein set forth, California Labor Code section 556
20 exempts an employer from the day-of-rest requirement when the total hours worked by an
21 employee do not exceed 30 hours in any week or six hours in any one day thereof.

22 162. During the relevant time period, on information and belief, Defendants
23 scheduled Plaintiff and class members to work six (6) or more hours per day and seven (7)
24 consecutive days in a workweek. Because Plaintiff and class members worked over 30 hours
25 per week and over six (6) hours per day in any one day in a workweek, they were not exempt
26 from the day-of-rest requirement. To the extent that Plaintiff and class members may have
27 signed purported waivers of their right to a day's rest in seven, such waivers are invalid.
28 Thus, Defendants willfully caused Plaintiff and class members to work more than six days in

seven, in violation of Labor Code sections 551 and 552.

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

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

TWELFTH CAUSE OF ACTION

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

Unfair Business Practices

(Against all Defendants)

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

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

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

168. Defendants' activities, namely Defendants' company-wide practice and/or policy of not paying Plaintiff and class members all meal and rest period premiums due to them under Labor Code section 226.7, deprived Plaintiff and class members of the

1 compensation guarantee and enhanced enforcement implemented by section 226.7. The
2 statutory remedy provided by section 226.7 is a “‘dual-purpose’ remedy intended primarily to
3 compensate employees, and secondarily to shape employer conduct.” *Safeway, Inc. v.*
4 *Superior Court*, 238 Cal. App. 4th 1138, 1149 (2015). The statutory benefits of section 226.7
5 were guaranteed to Plaintiff and class members as part of their employment with Defendants,
6 and thus Defendants’ practice and/or policy of denying these statutory benefits constitutes an
7 unfair business practice in violation of California Business & Professions Code sections
8 17200, *et seq.* (*Id.*)

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

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

20 **REQUEST FOR JURY TRIAL**

21 Plaintiff requests a trial by jury.

22 **PRAYER FOR RELIEF**

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

25 1. For damages, unpaid wages, penalties, injunctive relief, and attorneys’ fees in
26 excess of twenty-five thousand dollars (\$25,000), exclusive of interest and costs. Plaintiff
27 reserves the right to amend her prayer for relief to seek a different amount.
28

1 **Class Certification**

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

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

- 6 5. That the Court declare, adjudge, and decree that Defendants violated California
- 7 Labor Code sections 510 and 1198, and the applicable IWC Wage Order by willfully failing to
- 8 pay all overtime wages due to Plaintiff and class members;
- 9 6. For general unpaid wages at overtime wage rates and such general and special
- 10 damages as may be appropriate;
- 11 7. For pre-judgment interest on any unpaid overtime compensation commencing
- 12 from the date such amounts were due, or as otherwise provided by law;
- 13 8. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to
- 14 California Labor Code section 1194(a); and
- 15 9. For such other and further relief as the Court may deem equitable and
- 16 appropriate.

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

- 18 10. That the Court declare, adjudge and decree that Defendants violated California
- 19 Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198, and the applicable IWC Wage
- 20 Order by willfully failing to pay minimum wages to Plaintiff and class members;
- 21 11. For general unpaid wages and such general and special damages as may be
- 22 appropriate;
- 23 12. For pre-judgment interest on any unpaid compensation from the date such
- 24 amounts were due, or as otherwise provided by law;
- 25 13. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to
- 26 California Labor Code section 1194(a);
- 27 14. For liquidated damages pursuant to California Labor Code section 1194.2; and
- 28 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 proof;

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

27. For pre-judgment interest on any unpaid rest period premiums from the date

such amounts were due, or as otherwise provided by law;

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

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

As to the Fifth Cause of Action

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

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

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

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

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

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

As to the Sixth Cause of Action

36. That the Court declare, adjudge and decree that Defendants violated California Labor Code section 227.3 by willfully failing to pay vested vacation wages owed at the time of termination of the employment of Plaintiff and other terminated class members;

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

38. For prejudgment interest on any unpaid wages from the date of such amounts were due, or as otherwise provided by law;

39. For attorneys' fees and costs pursuant to California Labor Code section 1021.5, or as otherwise provided by law; and

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

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

4 41. That the Court declare, adjudge and decree that Defendants violated California
5 Labor Code sections 201 and 202 by willfully failing to pay overtime wages, minimum wages,
6 meal and rest period premiums, vested vacation wages, and/or sick leave pay, owed at the
7 time of termination of the employment of Plaintiff and other terminated class members;

8 42. For all actual, consequential and incidental losses and damages, according to
9 proof;

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

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

14 45. For attorneys' fees pursuant to California Code of Civil Procedure section
15 1021.5, or as otherwise provided by law; and

16 46. For such other and further relief as the Court may deem equitable and
17 appropriate.

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

19 47. That the Court declare, adjudge and decree that Defendants violated California
20 Labor Code section 204 by willfully failing to timely pay Plaintiff and class members
21 overtime wages, minimum wages, meal and rest period premiums, and/or sick leave pay,
22 during their employment;

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

25 49. For statutory penalties according to proof pursuant to California Labor Code
26 section 210;

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

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

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

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

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

9 54. For unpaid business-related expenses and such general and special damages as
10 may be appropriate;

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

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

15 57. For attorneys' fees and costs pursuant to California Labor Code section
16 2802(c), or as otherwise provided by law; and

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

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

20 59. That the Court declare, adjudge and decree that Defendants violated the
21 following California Labor Code provisions as to Plaintiff and other aggrieved employees:
22 510 and 1198 (by failing to pay all overtime compensation); 226.7, 510, and 1198 (by failing
23 to include all forms of remuneration in the regular rate of pay for purposes of paying overtime
24 wages and/or meal and rest period premiums); 1182.12, 1194, 1197, 1197.1, and 1198 (by
25 failing to pay at least minimum wages for all hours worked); 226.7, 512(a), 516, and 1198 (by
26 failing to provide all meal periods); 226(a), 1174(d), and 1198 (by failing to provide accurate
27 wage statements and maintain accurate payroll records); 201 and 202 (by failing to timely pay
28 all earned wages upon termination); 204 (by failing to timely pay all earned wages during

employment); 227.3 (by failing to pay all vested vacation time upon termination); 246 (by failing to properly calculate sick leave pay); 551 and 552 (by failing to provide one day's rest in seven); 1198 and the applicable IWC Wage Order (by failing to provide suitable seating); 2802 (by failing to reimburse business expenses); and 2810.5 (by failing to provide notice of material terms of employment);

60. For civil penalties pursuant to the California Labor Code, including sections 210, 226.3, 248.5, 256, 558, 1174.5, 2699(a), (f), and (k), for violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 227.3, 246, 510, 512(a), 516, 551, 552, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802;

61. For injunctive relief pursuant to California Labor Code sections 1194.5 and/or 2699(k) to bring Defendants into compliance with the requirements of California Labor Code sections 201, 202, 204, 226(a), 226.7, 227.3, 246, 510, 512(a), 516, 551, 552, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802;

62. For attorneys' fees and costs pursuant to California Labor Code section 2699(k)(1), and any and all other relevant statutes, for Defendants' violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 227.3, 246, 510, 512(a), 516, 551, 552, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802;

63. For pre-judgment and post-judgment interest as provided by law; 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 failing to provide Plaintiff and class members all overtime wages due to them, failing to include all forms of remuneration in the regular rate of pay for purposes of paying overtime wages and/or meal and rest period premiums to Plaintiff and class members, failing to provide Plaintiff and class members all minimum wages due to them, failing to provide Plaintiff and class members all meal periods, failing to authorize and permit Plaintiff and class members to take all rest periods, failing to provide Plaintiff and class members accurate and complete wage

1 statements, failing to maintain accurate payroll records for Plaintiff and class members, failing
2 to pay Plaintiff and class members all vested vacation wages, failing to timely pay Plaintiff
3 and class members all earned wages during employment, failing to properly calculate
4 Plaintiff's and class members' sick leave pay, failing to provide one day's rest in seven, and
5 failing to reimburse Plaintiff and class members for business-related expenses, constitutes an
6 unlawful business practice in violation of California Business and Professions Code sections
7 17200, *et seq.*;

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

10 67. For the appointment of a receiver to receive, manage, and distribute any and all
11 funds disgorged from Defendants and determined to have been wrongfully acquired by
12 Defendants as a result of violations of California Business & Professions Code sections
13 17200, *et seq.*;

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

16 69. For such other and further relief as the Court may deem equitable and
17 appropriate.

18 **As to the Twelfth Cause of Action**

19 70. That the Court declare, adjudge and decree that Defendants' conduct of denying
20 Plaintiff and class members the statutory benefits guaranteed under section 226.7 constitutes
21 an unfair business practice in violation of California Business and Professions Code sections
22 17200, *et seq.*;

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

26 72. For the appointment of a receiver to receive, manage, and distribute any and all
27 funds disgorged from Defendants and determined to have been wrongfully acquired by
28 Defendants as a result of violations of California Business & Professions Code sections

1 17200, *et seq.*;

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

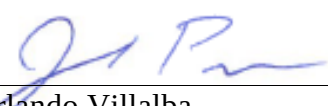
4 74. For pre-judgment and post-judgment interest as provided by law; and

5 75. For such other and further relief as the Court may deem equitable and
6 appropriate.

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8 Dated: October 23, 2024

Respectfully submitted,

9 Capstone Law APC

10
11 By: 

Orlando Villalba

Helga Hakimi

Joseph D. Parsons

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13 Attorneys for Plaintiff Jenny Perez
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