

MAO SHIOKURA
310.712.8030 Direct
Mao.Shiokura@capstonelawyers.com

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VIA ONLINE SUBMISSION

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

Subject: *Jenny Perez v. The Salvation Army, et al.*

Dear PAGA Administrator:

This office represents Jenny Perez in connection with her claims under the California Labor Code. Ms. Perez was an employee of THE SALVATION ARMY and/or THE SALVATION ARMY SERVICES, INC. For the purpose of this letter, Ms. Perez collectively refers to these entities as “TSA.”

The employers may be contacted directly at the addresses below:

THE SALVATION ARMY
30840 HAWTHORNE BLVD.
RANCHO PALOS VERDES, CA 90275

THE SALVATION ARMY SERVICES, INC.
30840 HAWTHORNE BLVD.
RANCHO PALOS VERDES, CA 90275

Ms. Perez intends to seek civil penalties, attorneys’ fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 (“PAGA”). Ms. Perez seeks relief on behalf of herself, the State of California, and other persons who are or were employed by TSA as a non-exempt, hourly paid employee in California and who received at least one wage statement (“aggrieved employees”). This letter is sent in compliance with the notice and reporting requirements of California Labor Code section 2699.3.

TSA employed Ms. Perez as an hourly paid, non-exempt employee from approximately January 2021 to February 2024. Ms. Perez worked as an Assistant Manager at TSA’s retail thrift stores located in Alameda and Oakland, California. Ms. Perez typically worked eight (8) hours or more per day, and five (5) days or more per week. At the time Ms. Perez’s employment ended with TSA, she was compensated approximately \$18.02 per hour. Ms. Perez’s primary job duties included, without limitation, cashiering; providing customer service; and tagging, restocking, and organizing merchandise.

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

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

THE SALVATION ARMY and THE SALVATION ARMY SERVICES, INC. are California nonprofit corporations. Together they provide aid for disaster relief, rehabilitation, and anti-human trafficking efforts. TSA sells donated goods at approximately 67 thrift store locations across California. Upon information and belief, TSA maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Rancho Palos Verdes, California, for all non-exempt, hourly paid employees working for TSA in California, including Ms. Perez and other aggrieved employees. At all relevant times, TSA issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Ms. Perez and other aggrieved employees, regardless of their location or position.

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

Violation of California Labor Code §§ 510 and 1198 – Unpaid Overtime

California Labor Code sections 510 and 1198 and the applicable Industrial Welfare Commission (“IWC”) Wage Order require employers to pay employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek at the rate of time-and-one-half (1 ½) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek. The applicable IWC Wage Order further provides that employers are required to pay employees working more than twelve (12) hours in a day overtime compensation at a rate of two (2) times their regular rate of pay. An employee’s regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

TSA willfully failed to pay all overtime wages owed to Ms. Perez and other aggrieved employees. During the relevant time period, Ms. Perez and other aggrieved employees were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve

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

(12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they worked were not recorded.

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

Moreover, TSA's managers contacted Ms. Perez and other aggrieved employees on their personal mobile devices about work-related matters when they were not scheduled to work, but did not compensate them for this time. For example, TSA's managers called Ms. Perez twice a week, on her personal cellular phone, outside of her scheduled shifts, to discuss details such as sales goals, inventory, and scheduling for up to 35 minutes each instance. Thus, TSA failed to track the time that employees spent performing work-related tasks outside their scheduled shifts, and Ms. Perez and other aggrieved employees received no compensation for this time.

Second, TSA had, and continues to have, company-wide policies and/or practices of understaffing its locations, such that there were too few employees on duty to handle the workload and attend to customers, while also pressuring employees to meet certain productivity expectations such as sales goals. TSA's policies and/or practices resulted in a failure to provide Ms. Perez and other aggrieved employees with adequate meal period coverage, and thus, Ms. Perez and other aggrieved employees were not always afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period. TSA also had a practice of failing to adhere to a schedule for meal periods, which further caused Ms. Perez and other aggrieved employees to not be relieved of their duties for compliant meal periods. For example, Ms. Perez would work through all or part of her meal periods in order to assist customers and provide coverage to the understaffed store, or would have her meal periods interrupted in order to answer questions from TSA's management regarding organizing inventory. Consequently, Ms. Perez and other aggrieved employees were required to work through their meal periods and/or had their meal periods interrupted in order to provide coverage, handle customer demand, and complete their assigned duties, time for which they were not paid.

Third, on information and belief, because TSA frowned upon employees accruing meal period penalties, TSA pressured Ms. Perez and other aggrieved employees to clock out for meal periods, on threat of discipline, and/or adjusted their time records to reflect compliant meal periods, even when they did not receive a compliant meal period. For example, when Ms. Perez was too busy with her workload to take a compliant meal period, she would clock out for her meal period and continue working off the clock, or her manager would require her to submit a time change request form at the

end of her shift, resulting in her meal period clock-in and clock-out times being changed to reflect compliant meal periods. Thus, TSA did not record all hours worked during meal periods and Ms. Perez and other aggrieved employees performed work during meal periods for which they were not paid.

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

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

For example, TSA paid Ms. Perez and other aggrieved employees incentive pay and/or nondiscretionary bonuses, which were listed on Ms. Perez's and other aggrieved employees' wage statements as "Other Bonus." During the pay periods that Ms. Perez and other aggrieved employees were paid overtime wages, TSA did not incorporate these payments into Ms. Perez's and other aggrieved employees' regular rate of pay and, as a result, paid them at incorrect and lower rates of pay for overtime hours worked. Specifically, TSA paid Ms. Perez and other aggrieved employees 1.5 times their hourly rate of pay instead of 1.5 times their regular rate of pay. TSA's failure to properly calculate the overtime rates of pay based on all remuneration paid has resulted in an underpayment of overtime wages to Ms. Perez and other aggrieved employees on a company-wide basis.

TSA's failure to pay Ms. Perez and other aggrieved employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198. Ms. Perez and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f), and (k).

Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 – Unpaid Minimum Wages

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

As set forth above, as a result of TSA's policy of limiting the amount of overtime employees could accrue, TSA required Ms. Perez and other aggrieved employees 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. TSA failed to track this time that Ms. Perez and other aggrieved employees spent working off-the-clock, and Ms. Perez and other aggrieved employees received no compensation for this time.

Further, as also stated, due to TSA's policies and/or practices of understaffing its locations while assigning heavy workloads, including pressure to meet productivity expectations such as sales goals, and failing to adhere to a schedule for meal periods, Ms. Perez and other aggrieved employees were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work off-the-clock during meal periods, have their meal periods interrupted, and/or were otherwise not relieved of all duties during unpaid meal periods. Moreover, as stated, on information and belief, in order to limit meal penalties that TSA would otherwise owe, TSA pressured Ms. Perez and other aggrieved employees to clock out for meal periods, on threat of discipline, and/or adjusted employee time records to reflect compliant meal periods, even when they did not receive a compliant meal period. Thus, TSA systematically failed to pay Ms. Perez and other aggrieved employees for actual hours worked during unpaid meal periods because these hours were not always correctly recorded.

Thus, TSA did not pay at least minimum wages for all hours worked by Ms. Perez and other aggrieved employees. To the extent that these off-the-clock hours did not qualify for overtime premium payment, TSA did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

Accordingly, TSA regularly failed to pay at least minimum wages to Ms. Perez and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Ms. Perez and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f), and (k).

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

California Labor Code sections 226.7, 512(a), 516, and 1198, and the applicable IWC Wage Order require employers to provide meal periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012). Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

As stated, TSA had, and continues to have, company-wide policies and/or practices of understaffing while assigning heavy workloads, including pressuring employees to meet productivity expectations, including sales goals, which has resulted in a lack of meal period coverage and prevented Ms. Perez and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. Further, as stated, TSA had a company-wide practice and/or policy of failing to adhere to a schedule for meal periods, which further caused Ms. Perez and other aggrieved employees to not be relieved of their duties for compliant meal periods.

As a result, Ms. Perez and other aggrieved employees had to work through all or part of their meal periods, had their meal periods interrupted, and/or had to wait extended periods of time before taking meal periods. For example, as stated, Ms. Perez missed her meal periods once a month to assist and provide coverage on the sales floor. Furthermore, TSA's management interrupted Ms. Perez's meal periods by asking her questions regarding organizing inventory and assisting customers. Additionally, Ms. Perez took her meal periods late twice a week, after the fifth hour of work, due to the lack of coverage and daily requirement to unload 50 cases of materials.

Further, as stated, on information and belief, in order to limit meal penalties that TSA would otherwise owe, TSA pressured Ms. Perez and other aggrieved employees to clock out for meal periods to reflect compliant meal periods, on threat of discipline, and/or adjusted employee time records even when they did not receive a compliant meal period. For example, as stated above, TSA's management pressured Ms. Perez to record compliant meal periods or submit timesheet correction forms to reflect that she had received compliant meal periods on shifts when she had not, in fact, received these timely, uninterrupted meal periods.

Moreover, TSA did not provide Ms. Perez and other aggrieved employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. For example, during the relevant time period, Ms. Perez worked shifts in excess of 10 hours in one day and did not take a second meal period. Ms. Perez and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

At all times mentioned herein, TSA knew or should have known that as a result of its policies, Ms. Perez and other aggrieved employees were not actually relieved of all duties to take timely, uninterrupted meal periods. TSA further knew or should have known that it did not pay Ms. Perez and other aggrieved employees meal period premiums when meal periods were late, interrupted, shortened, and/or missed.

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

Accordingly, TSA failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Ms. Perez and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f), and (k).

Violation of California Labor Code §§ 226.7, 516, and 1198 – Failure to Authorize and Permit Rest Periods

California Labor Code sections 226.7, 516, and 1198, and the applicable IWC Wage Order require employers to provide rest periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. The applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the total daily work time is less than three and one-half (3 ½) hours.

To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must "relinquish any control over how employees spend their break time, and relieve their employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest." *Augustus, et al. v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 273 (2016).

During the relevant time period, TSA regularly failed to authorize and permit Ms. Perez and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, TSA's policies and/or practices, including understaffing and assigning heavy workloads prevented Ms. Perez and other aggrieved employees from being relieved of all duty in order to take compliant rest periods. Additionally, TSA failed to adhere to a schedule for rest periods, which, coupled with TSA's failure to provide adequate rest period coverage, further led to Ms. Perez and other aggrieved employees not being authorized and permitted to take rest periods.

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

As a result of TSA's practices and policies, Ms. Perez and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled. For example, Ms. Perez missed her rest periods twice per week to assist with customer returns and respond to questions about donations, due to the lack of rest period coverage. Additionally, when Ms. Perez was able to take her rest periods, they were often interrupted to assist other employees with sales transactions and to handle donation deliveries.

TSA has also engaged in a company-wide practice and/or policy of not paying all rest period premiums owed when compliant rest periods are not authorized and permitted. Because of this practice and/or policy, Ms. Perez and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that TSA did pay Ms. Perez and other aggrieved employees one (1) additional hour of premium pay for missed rest periods, TSA did not pay Ms.

Perez and other aggrieved employees at the correct rate of pay for premiums because TSA failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, TSA failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Ms. Perez and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f), and (k).

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

California Labor Code section 226(a) requires employers to make, keep, and provide true, accurate, and complete employment records. TSA has not provided Ms. Perez and other aggrieved employees with properly itemized wage statements. Labor Code section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wage statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or \$50 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not to exceed \$4,000. Further, Labor Code section 226.3 provides that any employer who violates section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

During the relevant time period, TSA has knowingly and intentionally provided Ms. Perez and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, TSA issued uniform wage statements to Ms. Perez and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; the address of the legal entity that is the employer; and all applicable hourly rates in effect during the pay period, including rates of pay for overtime wages, meal and rest period premiums, and/or paid sick leave, and the corresponding number of hours worked at each hourly rate. Specifically, TSA violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

First, because TSA did not record the time Ms. Perez and other aggrieved employees spent working off-the-clock and deducted time from their records for meal periods that were interrupted and/or missed (and therefore time for which they should have been paid), TSA did not list the correct amount of gross wages and net wages earned by Ms. Perez and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, TSA failed to accurately list the total number of hours worked by Ms. Perez and other aggrieved employees, in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and the corresponding accurate number of hours worked at each hourly rate, in violation of section 226(a)(9).

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

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

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

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

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Order. Section 1198 further provides that “[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, TSA engaged in company-wide practices and/or policies of failing to record actual hours worked (including falsifying time records by recording that compliant meal periods were taken regardless of if or when meal periods were actually taken), and thereby failed to keep accurate records of work period and meal period start and end times for Ms. Perez and other aggrieved employees, in violation of section 1198. Also, in light of TSA’s failure to provide Ms. Perez and other aggrieved employees with second 30-minute meal periods to which they were entitled, TSA kept no records of meal start and end times for second meal periods.

Because TSA failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Ms. Perez and other aggrieved employees have been prevented from verifying, solely from information on the wage statements themselves, that they were paid correctly and in full. Instead, Ms. Perez and other aggrieved employees have had to look to sources outside of the wage statements themselves and reconstruct time records to determine whether in fact they were paid correctly and the extent of underpayment, thereby causing them injury.

Ms. Perez and other aggrieved employees are entitled to recover civil penalties, attorneys’ fees, costs, and interest thereon pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f), and (k).

Violation of California Labor Code § 227.3 – Failure to Pay Vested Vacation Wages

California Labor Code section 227.3 provides that if a contract of employment or employer policy provides for paid vacations and an employer terminates an employee, all vested vacation shall be paid to the employee at the employee's final rate of pay, in accordance with such contract of employment or employer policy respecting eligibility or time served. Vacation time vests on a pro-rata basis and, upon termination, an employee is entitled to a pro rata share of vested vacation pay. An employer may not require an employee to forfeit earned but unused vacation pay.

During the relevant time period, TSA had a company-wide policy and practice of failing to pay Ms. Perez and other aggrieved employees all vested vacation wages that were owed to them at the end of their employment, in violation of California Labor Code section 227.3. Specifically, TSA failed to properly calculate and pay all earned vested vacation time due to the hours Ms. Perez and other aggrieved employees worked off-the-clock pursuant to its company-wide policies and/or practices.

TSA's failure to pay other Ms. Perez and aggrieved employees all vested vacation wages at the end of their employment has caused a forfeiture of vested vacation wages in violation of California Labor Code section 227.3. Ms. Perez and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f), and (k).

Violation of California Labor Code § 204 – Failure to Timely Pay Wages During Employment

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, California Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

During the relevant time period, TSA willfully failed to pay Ms. Perez and other aggrieved employees all wages due including, but not limited to, overtime wages, minimum wages, meal and rest period premiums, and/or sick leave pay, within the time periods specified by California Labor Code section 204.

Ms. Perez and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code sections 210 and/or 2699(a), (f), and (k).

Violation of California Labor Code §§ 201 and 202 – Failure to Timely Pay Final Wages Upon Termination

California Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72)

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

During the relevant time period, on information and belief, TSA had a company-wide practice or policy of paying departing employees their final wages late, instead of adhering to the time requirements set forth in Labor Code sections 201 and 202. For example, Ms. Perez voluntarily resigned from her employment with TSA on or about February 2, 2024. However, on information and belief, TSA did not provide Ms. Perez with her final wages, including vacation wages, until February 14th and February 16th, 2024. Thus, TSA failed to pay Ms. Perez her final wages within seventy-two (72) hours of her leaving TSA's employ, in violation of Labor Code section 202.

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

Ms. Perez and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code sections 256 and/or 2699(a), (f), and (k).

Violation of California Labor Code § 246 – Failure to Properly Calculate Paid Sick Leave

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

During the relevant time period, on information and belief, TSA did not pay Ms. Perez and other aggrieved employees the correct sick leave rates of pay. As stated, in addition to an hourly wage, TSA paid Ms. Perez and other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, TSA failed to incorporate all remunerations, including incentive pay and/or nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes of calculating the sick leave pay rate. Therefore, during times when Ms. Perez and other aggrieved employees took sick leave and received these other forms of pay, TSA failed to pay all sick leave benefits by paying a lower sick leave pay rate than required. Specifically, TSA paid Ms. Perez and other aggrieved employees sick leave based on their hourly rate of pay instead of their regular rate of pay.

TSA's failure to properly calculate the sick leave rates of pay based on all remuneration paid has resulted in an underpayment of sick leave benefits to Ms. Perez and other aggrieved employees on a company-wide basis in violation of Labor Code section 246(l).

Ms. Perez and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code sections 248.5 and/or 2699(a), (f), and (k).

Violation of California Labor Code §§ 551 and 552 – Failure to Provide One Day's Rest in Seven

California Labor Code section 551 provides that every person employed in any occupation of labor is entitled to one day's rest in seven. California Labor Code section 552 prohibits employers from requiring employees to work more than six consecutive days without a day of rest. California Labor Code section 556 exempts an employer from the day-of-rest requirement when the total hours worked by an employee do not exceed 30 hours in any week or six (6) hours in any one day thereof.

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

Thus, TSA caused Ms. Perez and other aggrieved employees to work more than six days in seven, in violation of Labor Code sections 551 and 552. Ms. Perez and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f), and (k).

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11070 Subdivision 14(A) – Failure to Provide Suitable Seating

California Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable wage order. California Labor Code section 1198 requires that "... the standard conditions of labor fixed by the commission shall be the ... standard conditions of labor for employees. The employment of any employee ... under conditions of labor prohibited by the order is unlawful." California Code of Regulations, Title 8, section 11070(14)(A) provides that "[a]ll working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats."

"The 'nature of the work' refers to an employee's tasks performed at a given location for which a right to a suitable seat is claimed, rather than a 'holistic' consideration of the entire range of an employee's duties anywhere on the jobsite during a complete shift. If the tasks being performed at a given location reasonably permit sitting, and provision of a seat would not interfere with performance of any other tasks that may require standing, a seat is called for." *Kilby v. CVS Pharmacy, Inc.*, 368 P.3d 554, 558 (Cal. 2016). "Whether the nature of the work reasonably permits sitting is a question to be determined objectively based on the totality of the circumstances. An employer's business judgment and the physical layout of the workplace are relevant but not dispositive factors. The inquiry focuses on the nature of the work, not an individual employee's characteristics." *Id.* The burden of proof to show suitable seating is not available is on the employer. *Id.* at 568. In other words, the employer must show that compliance is "infeasible because no suitable seating exists." *See id.*

TSA's California stores are generally similar in their layout and design and there was, and continues to be, space behind cash wraps to allow for the presence and use of a seat or stool by Ms. Perez and other aggrieved employees (with reasonable or no modification to these work areas) during the performance of their work duties. TSA could provide Ms. Perez and other aggrieved employees with a seat or stool at its cash wraps, but instead denies employees seating and forces other aggrieved employees to stand throughout the day.

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

TSA violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11070(14)(A) because Ms. Perez and other aggrieved employees were not allowed to sit, even when the nature of the work would reasonably permit the use of seats, nor were they provided with suitable seats. TSA's management did not inform Ms. Perez and other aggrieved employees that they were allowed to sit down, provide any means for them to sit down, or mention any policy regarding sitting.

As a result of TSA's company-wide policy and/or practice of prohibiting employees from sitting during their shifts and company-wide failure to provide suitable seating, Ms. Perez and other aggrieved employees were forced to stand during shifts and denied seats. TSA's failure to provide suitable seating to Ms. Perez and other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order No. 7-2001, subdivision 14(A).

Ms. Perez and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring TSA into compliance with California's seating requirements, pursuant to Labor Code sections 1194.5 and/or 2699(a), (f), and (k).

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11070 Subdivision 14(B) – Failure to Provide Suitable Seating

California Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable wage order. California Labor Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.” California Code of Regulations, Title 8, section 11070(14)(B) provides that “[w]hen employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties.”

The IWC states that subdivision 14(B) applies during “lulls in operation” when an employee, while still on the job, is not then actively engaged in any duties. *Kilby v. CVS Pharmacy, Inc.*, 368 P.3d 554, 565 (Cal. 2016), citing IWC, 1976 Wage Orders, Summary of Basic Provisions, Seats. When taken together, an employee is entitled to a seat under subdivision 14(A) if his or her actual tasks at a discrete location make seated work feasible, while working there. *Id.* However, if other job duties

take the employee to a different location where he or she must perform tasks requiring standing, the employee would be entitled to a seat under subdivision 14(B) during “lulls in operation.” *Id.*

TSA’s California stores are generally similar in their layout and design and there was, and continues to be, space near their work areas (with reasonable or no modification to these work areas) to allow for the presence and use of a seat or stool by Ms. Perez and other aggrieved employees during lulls in operation. TSA could have provided Ms. Perez and other aggrieved employees with a seat or stool in its work areas, but instead denied, and continues to deny, employees seating, forcing them to stand throughout the day.

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

As a result of TSA’s company-wide policy and/or practice of prohibiting employees from sitting at any time, even when they were not engaged in active duties requiring standing, and company-wide failure to provide seats in reasonable proximity to their work areas, Ms. Perez and other aggrieved employees were forced to stand during shifts and denied seats. TSA’s failure to provide suitable seating to Ms. Perez and other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order No. 7-2001, subdivision 14(B).

Ms. Perez and other aggrieved employees are entitled to recover civil penalties, attorneys’ fees, costs, and interest thereon, and seek injunctive relief to bring TSA into compliance with California’s seating requirements, pursuant to Labor Code sections 1194.5 and/or 2699(a), (f), and (k).

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

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

First, during the relevant time period, TSA, on a company-wide basis, required that Ms. Perez and other aggrieved employees use their own personal vehicles to carry out company business. For example, three (3) times a week, Ms. Perez was required to travel 20 miles roundtrip to make bank deposits for the store. Although TSA required Ms. Perez and other aggrieved employees to utilize their personal vehicles to carry out their work-related responsibilities, TSA failed to reimburse them for their mileage or travel expenses.

Second, during the relevant time period, TSA, on a company-wide basis, required that Ms. Perez and/or other aggrieved employees use their own personal mobile devices, including, but not limited to, cellular phones, and/or mobile data to carry out their job duties, but failed to reimburse them for the costs of their work-related mobile device expenses. For example, other aggrieved employees were required to use their personal mobile devices for work-related tasks. Although TSA required Ms. Perez and/or other aggrieved employees to utilize their personal mobile devices and/or mobile data to carry out their work-related responsibilities, TSA failed to reimburse them for these costs. Further, other aggrieved employees were required to provide and utilize their personal computers and/or home internet service plans in order to perform their job duties, but were not reimbursed for their costs.

Third, during the relevant time period, TSA had a company-wide policy of requiring Ms. Perez and/or other aggrieved employees to purchase supplies, tools, and/or equipment necessary for the performance of their duties, but failed to reimburse them for their out-of-pocket costs. For example, other aggrieved employees were required to purchase gloves and box cutters because TSA failed to provide them with the necessary supplies, tools, and/or equipment needed to complete their assigned duties. Although TSA required Ms. Perez and/or other aggrieved employees to purchase supplies, tools, and/or equipment to carry out their work-related responsibilities, TSA failed to reimburse them for their out-of-pocket costs.

TSA could have provided Ms. Perez and/or other aggrieved employees with the actual equipment for use on the job, such as company vehicles; company mobile devices; company computers; and supplies, tools, and/or equipment. Or, TSA could have reimbursed employees for the costs of their mileage; travel expenses; mobile device usage; home internet usage; and supplies, tools, and/or equipment expenses. Instead, TSA passed these operating costs off onto Ms. Perez and/or other aggrieved employees. At all relevant times, Ms. Perez and other aggrieved employees did not earn at least two (2) times the minimum wage.

Thus, TSA had, and continues to have, a company-wide policy and/or practice of passing not reimbursing employees for expenses necessarily incurred and on their operating costs to Ms. Perez and other aggrieved employees in violation of California Labor Code section 2802. Ms. Perez and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f), and (k).

California Labor Code § 558(a)

California Labor Code section 558(a) provides “[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid” Labor Code section 558(c) provides that “[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law.” TSA, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Ms. Perez’s and other aggrieved employees’ rights by violating various sections of the California Labor Code.

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

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

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

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

Best Regards,

A handwritten signature in black ink, appearing to read 'Mao Shiokura' with a stylized flourish at the end.

Mao Shiokura

Copy: THE SALVATION ARMY (via U.S. Certified Mail); THE SALVATION ARMY SERVICES, INC. (via U.S. Certified Mail)

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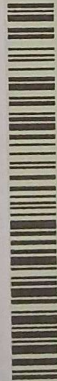
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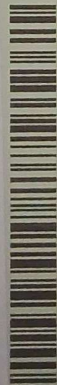
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