

SUMMONS
(CITACION JUDICIAL)

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):

TVI, INC., d.b.a. SAVERS, a Washington corporation; and DOES 1 through 50, Inclusive;

E-FILED

2/24/2021 1:01 PM

Clerk of Court

Superior Court of CA,
County of Santa Clara

21CV376407

Reviewed By: R. Walker

Envelope: 5905130

YOU ARE BEING SUED BY PLAINTIFF:

(LO ESTÁ DEMANDANDO EL DEMANDANTE):

DEBBIE FELIX, an individual, in her representative capacity on behalf of the State of California and fellow Aggrieved Employees,

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.courtinfo.ca.gov/selfhelp/espanol/), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.courtinfo.ca.gov/selfhelp/espanol/) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:
(El nombre y dirección de la corte es):

Santa Clara Superior Court
191 N. First Street
San Jose, CA 95113

21CV376407
CASE NUMBER:
(Número del Caso):

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Jean-Claude Lapuyade, Esq. SBN:248676 Tel: (619) 599-8292 Fax: (619) 599-8291

JCL Law Firm, APC - 3990 Old Town Avenue, Suite C204, San Diego, CA 92110

DATE:

(Fecha) 2/24/2021 1:01 PM

Clerk of Court

Clerk, by _____

(Secretario)

R. Walker

, Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

1. as an individual defendant.
2. as the person sued under the fictitious name of (specify):

3. on behalf of (specify):

under: CCP 416.10 (corporation) CCP 416.60 (minor)
 CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
 CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
 other (specify):

4. by personal delivery on (date):



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ATTORNEYS FOR PLAINTIFF

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SANTA CLARA

DEBBIE FELIX, an individual, in her
representative capacity on behalf of the State of
California and fellow Aggrieved Employees,

Plaintiffs,

vs.

TVI, INC., d.b.a. SAVERS, a Washington
corporation; and DOES 1 through 50, Inclusive;

DEFENDANTS.

Case No. **21CV376407**

**REPRESENTATIVE ACTION
COMPLAINT FOR:**

- 1. VIOLATIONS OF THE PRIVATE
ATTORNEY GENERAL ACT AT
LABOR CODE SETIONS 2698 *ET SEQ.*

DEMAND FOR JURY TRIAL

1 Plaintiff DEBBIE FELIX (“PLAINTIFF”) an individual, in her representative capacity on
2 behalf of the himself, the State of California, and fellow current and former AGGRIEVED
3 EMPLOYEES, defined *supra*, against TVI, INC. d.b.a. SAVERS® (“DEFENDANT”), alleges on
4 information and belief, except for her own acts and knowledge which are based on personal
5 knowledge, the following:

6 **INTRODUCTION**

7 1. PLAINTIFF brings this representative action pursuant to the Private Attorneys General
8 Act of 2004, California Labor Code § 2698, *et seq.* (“PAGA”) on behalf of other current and former
9 aggrieved employees of DEFENDANTS for engaging in a pattern and practice of wage and hour
10 violations under the California Labor Code.

11 2. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANT decreased
12 their employment-related costs by systematically violating California wage and hour laws.

13 3. DEFENDANT’s systematic pattern of wage and hour and IWC Wage Order violations
14 toward PLAINTIFF and other aggrieved employees in California include, *inter alia*:

- 15 a. Failure to provide compliant meal and rest periods;
- 16 b. Failure to allow employees to take duty-free, off-the-premises rest periods;
- 17 c. Failure to pay all minimum, regular and overtime wages;
- 18 d. Failure to pay the correct rate of overtime pay;
- 19 e. Failure to provide suitable seating;
- 20 f. Failure to maintain true and accurate records;
- 21 g. Failure to provide accurate itemized wage statements;
- 22 h. Failure to pay employees wages for time spent getting their bags checked; and
- 23 i. Failure to timely pay wages due during, and upon termination of employment.

24 4. PLAINTIFF brings this representative action against DEFENDANTS on behalf of himself
25 and all other aggrieved employees of DEFENDANTS in California seeking all civil penalties and
26 unpaid wages permitted pursuant to California Labor Code § 2699, *et seq.*

1 5. PLAINTIFF reserves the right to name additional representatives throughout the State of
2 California.

3 **THE PARTIES**

4 6. Defendant TVI, INC. d.b.a. SAVERS® (“DEFENDANT”) is a Washington corporation
5 that at all relevant times mentioned herein conducted and continues to conduct substantial business in
6 the state of California, county of Orange, City of Yorba Linda, owns, operates and/or manages
7 SAVERS®, a chain of second hand clothing stores throughout California.

8 7. PLAINTIFF was been employed by DEFENDANT at the San Jose SAVERS® store
9 location, as a non-exempt cashier, paid on an hourly basis and entitled to certain non-discretionary flat-
10 sum incentive awards, bonuses, overtime pay and legally compliant meal and rest periods from
11 approximately February 2014 and approximately December 2019.

12 8. PLAINTIFF brings this action in her representative capacity on behalf of the State of
13 California and on behalf of all of DEFENDANT’s current and former non-exempt employees employed
14 in California who suffered one or more Labor Code violations enumerated in Labor Code §§ 2698 *et*
15 *seq.* (hereinafter “AGGRIEVED EMPLOYEES”) and who worked for DEFENDANT between April
16 6, 2019 and the present (“PAGA PERIOD”).

17 9. PLAINTIFF is an “AGGRIEVED EMPLOYEE” within the meaning of Labor Code §
18 2699(c) because she was employed by DEFENDANT and suffered one or more of the alleged Labor
19 Code violations committed by DEFENDANT.

20 10. PLAINTIFF and all other AGRIEVED EMPLOYEES are, and at all relevant times were,
21 employees of DEFENDANT, within the meanings set forth in the California Labor Code and the
22 applicable Industrial Welfare Commission Wage Order.

23 11. Each of the fictitiously named defendants participated in the acts alleged in this
24 Complaint. The true names and capacities of the defendants named as DOES 1 THROUGH 50,
25 inclusive, are presently unknown to PLAINTIFF. PLAINTIFF will amend this Complaint, setting forth
26 the true names and capacities of these fictitiously named defendants when their true names are
27 ascertained. PLAINTIFF is informed and believes, and on that basis alleges, that each of the fictitious
28 defendants have participated in the acts alleged in this Complaint.

1 12. DEFENDANT, including DOES 1 THROUGH 50 (hereinafter collectively
2 “DEFENDANTS”), were PLAINTIFF’s employers or persons acting on behalf of PLAINTIFF’s
3 employer, within the meaning of California Labor Code § 558, who violated or caused to be violated,
4 a section of Part 2, Chapter 1 of the California Labor Code or any provision regulating hours and days
5 of work in any order of the Industrial Welfare Commission and, as such, are subject to civil penalties
6 for each underpaid employee, as set forth in Labor Code § 558, at all relevant times.

7 13. DEFENDANTS were PLAINTIFF’s employers or persons acting on behalf of
8 PLAINTIFF’s employer either individually or as an officer, agent, or employee of another person,
9 within the meaning of California Labor Code § 1197.1, who paid or caused to be paid to any employee
10 a wage less than the minimum fixed by California state law, and as such, are subject to civil penalties
11 for each underpaid employee.

JOINT EMPLOYER

12
13 14. The Private Attorney General Act (“PAGA”), permits an aggrieved employee to enforce
14 any provision of the California Labor Code that provides for a civil penalty. (*Lab. Code* § 2699(a).)

15 15. Section 558 of the California Labor Code provides that “any employer *or other person*
16 acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any
17 provision regulating hours and days of work in any order of the Industrial Welfare Commissions shall
18 be subject to a civil penalty...” (*Lab. Code* § 558(a).);

19 16. Section 1197.1 of the Labor Code provides that “[a]ny employer *or other person* acting
20 either individually or as an officer, agent, or employee of another person, who pays or causes to be paid
21 to any employee a wage less than the minimum fixed by an applicable state or local law, or by an order
22 of the commission shall be subject to a civil penalty...” (*Lab. Code* § 1197.1(a).)

23 17. Interpreting Sections 558 and 1197.1 of the Labor Code, California courts have held that
24 a corporate employer’s owners, officers and directors, are subject to civil penalties for the employer’s
25 failure to pay appropriate wages to its employees, and, since liability under either 558 or 1197.1 does
26 not depend on a finding of an alter ego, no alter ego allegations or findings are necessary. *Atempa v.*
27 *Pedrazzani*, (2018) 27 Cal.App.5th 809; see generally *Ochoa-Hernandez v. Cjaders Food, Inc.* (2009
28 WL 1404694); *Thurman v. Bayshore Management, Inc.* (2017) 203 Cal.App.4th 1112, 1145-1146.

1 18. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS, and each
2 of them, are subject to civil penalties for their failure to pay PLAINTIFF and the aggrieved employees
3 the appropriate wages as complained of herein and proximately caused the complaints, injuries, and
4 damages alleged herein.

5 19. At all relevant times, each Defendant, whether named or fictitious, was the agent,
6 employee or other person acting on behalf of each other Defendant, and, in participating in the acts
7 alleged in this Complaint, acted within the scope of such agency or employment and ratified the acts
8 of the other.

9 20. Each Defendant, whether named or fictitious, exercised control over PLAINTIFF's
10 wages, working hours, and/or working conditions.

11 21. Each Defendant, whether named or fictitious, acted in all respects pertinent to this action
12 as the agent of the other DEFENDANTS, carried out a joint scheme, business plan or policy, and the
13 acts of each Defendant are legally attributable to the other DEFENDANTS.

14 **JURISDICTION AND VENUE**

15 1. This Court has jurisdiction over this Action pursuant to California Code of Civil
16 Procedure, Section 410.10. This Court has jurisdiction over PLAINTIFF's claims for civil penalties
17 under the Private Attorney General Act of 2004, California Labor Code §2698, *et seq.*

18 22. Venue is proper in this Court pursuant to California Code of Civil Procedure, Sections
19 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANTS, resides in this County,
20 and DEFENDANTS (i) currently maintains and at all relevant times maintained offices and facilities
21 in this County and/or conducts substantial business in this County, and (ii) committed the wrongful
22 conduct herein alleged in this County against members of the CALIFORNIA CLASS.

23 **THE CONDUCT**

24 23. In violation of the applicable sections of the California Labor Code and the requirements
25 of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a matter of company
26 policy, practice and procedure, intentionally, knowingly and systematically failed to provide legally
27 complaint meal and rest period, failed to accurately compensate PLAINTIFF and the other
28 AGGRIEVED EMPLOYEEES for missed meal and rest periods, failed to pay PLAINTIFF and the other

1 AGGRIEVED EMPLOYEES for all time worked, and failed to issue to PLAINTIFF and the
2 AGGRIEVED EMPLOYEES with accurate itemized wage statements showing, among other things,
3 all applicable hourly rates in effect during the pay periods and the corresponding amount of time
4 worked at each hourly rate. DEFENDANTS' uniform policies and practices are intended to
5 purposefully avoid the accurate and full payment for all time worked as required by California law
6 which allows DEFENDANTS to illegally profit and gain an unfair advantage over competitors who
7 comply with the law. To the extent equitable tolling operates to toll claims by the AGGRIEVED
8 EMPLOYEES against DEFENDANTS, the PAGA PERIOD should be adjusted accordingly.

9 **A. Meal Period Violations**

10 24. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS were
11 required to pay PLAINTIFF and AGGRIEVED EMPLOYEES for all their time worked, meaning the
12 time during which an employee is subject to the control of an employer, including all the time the
13 employee is suffered or permitted to work. From time-to-time during the PAGA PERIOD,
14 DEFENDANTS required PLAINTIFF and AGGRIEVED EMPLOYEES to work without paying them
15 for all the time they were under DEFENDANTS' control. Specifically, as a result of PLAINTIFF's
16 demanding work requirements and DEFENDANTS' under staffing, DEFENDANTS required
17 PLAINTIFF to work while clocked out during what was supposed to be PLAINTIFF's off-duty meal
18 break. PLAINTIFF was from time to time interrupted by work assignments while clocked out for what
19 should have been PLAINTIFF's off-duty meal break. Indeed, there were many days where
20 PLAINTIFF did not even receive a partial lunch. As a result, the PLAINTIFF and other AGGRIEVED
21 EMPLOYEES forfeited minimum wage and overtime wages by regularly working without their time
22 being accurately recorded and without compensation at the applicable minimum wage and overtime
23 rates. DEFENDANTS' uniform policy and practice not to pay PLAINTIFF and other AGGRIEVED
24 EMPLOYEES for all time worked is evidenced by DEFENDANTS' business records.

25 25. From time-to-time during the PAGA PERIOD, as a result of their rigorous work schedules
26 and DEFENDANTS' inadequate staffing practices, PLAINTIFF and other AGGRIEVED
27 EMPLOYEES were from time to time unable to take thirty (30) minute off duty meal breaks and were
28 not fully relieved of duty for their meal periods. PLAINTIFF and other AGGRIEVED EMPLOYEES

1 were required from time to time to perform work as ordered by DEFENDANTS for more than five (5)
2 hours during some shifts without receiving a meal break. Further, DEFENDANTS from time to time
3 failed to provide PLAINTIFF and AGGRIEVED EMPLOYEES with a second off-duty meal period
4 for some workdays in which these employees were required by DEFENDANTS to work ten (10) hours
5 of work from time to time. The nature of the work performed by the PLAINTIFF and the AGGRIEVED
6 EMPLOYEES does not qualify for limited and narrowly construed “on-duty” meal period exception.
7 PLAINTIFF and other members of the AGGRIEVED EMPLOYEES therefore forfeited meal breaks
8 without additional compensation and in accordance with DEFENDANTS’ strict corporate policy and
9 practice. DEFENDANTS failed to maintain adequate staffing levels while increasing the production
10 levels for each employee at the busy airports they provided services for.

11 **B. Rest Period Violations**

12 26. From time-to-time during the PAGA PERIOD, PLAINTIFF and other AGGRIEVED
13 EMPLOYEES were also required from time to time to work in excess of four (4) hours without being
14 provided ten (10) minute rest periods as a result of their rigorous work schedule and DEFENDANTS’
15 inadequate staffing . Further, for the same reasons these employees were denied their first rest periods
16 of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours from time to
17 time, a first and second rest period of at least ten (10) minutes for some shifts worked of between six
18 (6) and eight (8) hours from time to time, and a first, second and third rest period of at least ten (10)
19 minutes for some shifts worked of ten (10) hours or more from time to time. When they were provided
20 rest breaks, PLAINTIFF and other employees were required to remain on the premises and remain on
21 duty during those breaks. PLAINTIFF and other AGGRIEVED EMPLOYEES were also not provided
22 with one-hour wages in lieu thereof. As a result of their rigorous work schedules and DEFENDANTS’
23 inadequate staffing, PLAINTIFF and other AGGRIEVED EMPLOYEES were from time to time
24 denied their proper rest periods by DEFENDANTS and DEFENDANTS’ managers.

25 **C. Overtime Regular Rate Violation**

26 27. From time-to-time during the PAGA PERIOD, DEFENDANTS failed and continue to fail
27 to accurately calculate and pay PLAINTIFF and the other AGGRIEVED EMPLOYEES for their
28 overtime hours worked. As a result, PLAINTIFF and the other AGGRIEVED EMPLOYEES forfeited

1 wages due them for working overtime without compensation at the correct overtime rates.
2 DEFENDANTS' uniform policy and practice to not pay the AGGRIEVED EMPLOYEES the correct
3 overtime rate for all overtime worked in accordance with applicable law is evidenced by
4 DEFENDANTS' business records.

5 28. State law provides that employees must be paid overtime at one-and-one-half times their
6 "regular rate of pay." PLAINTIFF and other AGGRIEVED EMPLOYEES were compensated at an
7 hourly rate plus flat-sum incentive pay that was tied to specific elements of an employee's performance.

8 29. The second component of PLAINTIFF'S and other AGGRIEVED EMPLOYEES'
9 compensation was DEFENDANTS' flat-sum non-discretionary incentive program that paid
10 PLAINTIFF and other AGGRIEVED EMPLOYEES flat-sum incentive wages based on their
11 performance for DEFENDANTS. The flat-sum non-discretionary bonus program provided all
12 employees paid on an hourly basis with flat-sum bonus compensation when the employees met the
13 various performance goals set by DEFENDANTS. These flat-sum incentive payments included gift
14 cards, and were also sometimes identified as "HLLWNBNS" in the wage statements issued by
15 DEFENDANTS to PLAINTIFF and the other AGGRIEVED EMPLOYEES.

16 30. However, from-time-to-time, when calculating the regular rate of pay, in those pay periods
17 where PLAINTIFF and other AGGRIEVED EMPLOYEES worked overtime and earned this flat-sum
18 non-discretionary bonus, DEFENDANTS failed to accurately include the flat-sum non-discretionary
19 bonus compensation as part of the employees' "regular rate of pay" and/or calculated all hours worked
20 rather than just all non-overtime hours worked. Management and supervisors described the
21 incentive/bonus program to potential and new employees as part of the compensation package. As a
22 matter of law, the incentive compensation received by PLAINTIFF and other AGGRIEVED
23 EMPLOYEES must be included in the "regular rate of pay." The failure to do so has resulted in a
24 systematic underpayment of overtime compensation to PLAINTIFF and other AGGRIEVED
25 EMPLOYEES by DEFENDANTS.

26 31. In violation of the applicable sections of the California Labor Code and the requirements
27 of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a matter of company
28 policy, practice and procedure, intentionally and knowingly failed to compensate PLAINTIFF and the

1 other members of the AGGRIEVED EMPLOYEES at the correct rate of pay for all overtime worked.
2 This uniform policy and practice of DEFENDANTS is intended to purposefully avoid the payment of
3 the correct overtime compensation as required by California law which allowed DEFENDANTS to
4 illegally profit and gain an unfair advantage over competitors who complied with the law. To the extent
5 equitable tolling operates to toll claims by the AGGRIEVED EMPLOYEES against DEFENDANTS,
6 the PAGA PERIOD should be adjusted accordingly.

7 **D. Wage Statement Violations**

8 32. California Labor Code Section 226 requires an employer to furnish its employees an
9 accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked, (3) the
10 number of piece-rate units earned and any applicable piece-rate, (4) all deductions, (5) net wages
11 earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the
12 employee and only the last four digits of the employee's social security number or an employee
13 identification number other than a social security number, (8) the name and address of the legal entity
14 that is the employer and, (9) all applicable hourly rates in effect during the pay period and the
15 corresponding number of hours worked at each hourly rate by the employee.

16 33. From time to time during the PAGA PERIOD, when PLAINTIFF and other
17 AGGRIEVED EMPLOYEES missed meal and rest breaks, or were paid inaccurate missed meal and
18 rest period premiums, or were paid overtime in the same pay period where they earned a non-
19 discretionary incentive award, DEFENDANTS also failed to provide PLAINTIFF and the other
20 members of the AGGRIEVED EMPLOYEES with complete and accurate wage statements which
21 failed to show, among other things, all applicable hourly rates in effect during the pay period and the
22 corresponding amount of time worked at each hourly rate, correct rates of pay for penalty payments or
23 missed meal and rest periods.

24 34. For instance, for the pay period between October 6, 2019 and October 19, 2019,
25 PLAINTIFF received remuneration from DEFENDANTS described as "FLSA SUPP OT" in the gross
26 amount of \$2.33. DEFENDANTS violated California Labor Code Section 226 by failing to list the
27 applicable hourly rate and the corresponding number of hours worked at the applicable hourly rate for
28 this line item of remuneration described as "FLSA SUPP OT". PLAINTIFF, and all those similarly

1 situated members of the CALIFORNIA CLASS, suffered damage as a result of DEFENDANTS'
2 aforementioned violation because she could not promptly and easily determine from the wage statement
3 alone the applicable hourly rate and the corresponding number of hours worked at the applicable hourly
4 rate for this line item of remuneration described as "FLSA SUPP OT".

5 35. As a result, DEFENDANTS issued PLAINTIFF and the other AGGRIEVED
6 EMPLOYEES with wage statements that violate Cal. Lab. Code § 226. Further, DEFENDANTS'
7 violations are knowing and intentional, were not isolated or due to an unintentional payroll error due
8 to clerical or inadvertent mistake.

9 **E. Suitable Seating Violations**

10 36. PLAINTIFF further alleges that the station counters in DEFENDANT's stores provide
11 ample space behind each counter area to allow for the presence and use of a stool or seat by
12 DEFENDANT's employees' during the performance of their work duties. DEFENDANT's
13 employees' working at DEFENDANT's stores spend a very substantial portion, and, in many
14 workdays, the vast majority of their working time behind these counters. The nature of the position
15 can reasonably be accomplished while using a seat/stool.

16 37. In violation of the applicable sections of the California Labor Code and the requirements
17 of the applicable Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as a matter of
18 company policy, practice and procedure, intentionally, knowingly and systematically failed to provide
19 PLAINTIFF and the other Aggrieved Employees suitable seating when the nature of these employees'
20 work reasonably permitted sitting.

21 38. DEFENDANT knew or should have known that PLAINTIFF and other Aggrieved
22 Employees were entitled to suitable seating and/or were entitled to sit when it did not interfere with the
23 performance of their duties, and that DEFENDANT did not provide suitable seating and/or did not
24 allow them to sit when it did not interfere with the performance of their duties. By reason of this conduct
25 applicable to PLAINTIFF and all Aggrieved Employees, DEFENDANT violated California Labor
26 Code Section 1198 and Wage Order 4-2001, Section 14 by failing to provide suitable seats.

27
28 ///

1 **F. Off the Clock Work – Bag Checks**

2 39. PLAINTIFF and CALIFORNIA CLASS MEMBERS would clock out of
3 DEFENDANTS’s timekeeping system, in order to perform additional work for DEFENDANT as
4 required to meet DEFENDANT’s job requirements. Specifically, during the PAGA PERIOD,
5 DEFENDANT engaged in the practice of requiring PLAINTIFF and AGGRIEVED EMPLOYEES to
6 perform work off the clock after clocking out in that DEFENDANT, as a condition of employment,
7 required these employees from time to time to wait and submit to loss prevention inspections after
8 clocking out at the end of each scheduled shift, and if they left the store during off duty meal periods,
9 for which DEFENDANT did not provide compensation for the time spent waiting for and submitting
10 to DEFENDANT’s loss prevention inspections off the clock.

11 40. As a result, PLAINTIFF and other AGGRIEVED EMPLOYEES forfeited minimum
12 wage, overtime wage compensation, and meal break wages, by working without their time being
13 correctly recorded and without compensation at the applicable rates. DEFENDANT’s policy and
14 practice not to pay PLAINTIFF and other AGGRIEVED EMPLOYEES for all time worked is
15 evidenced in DEFENDANT’s business records.

16 **FIRST CAUSE OF ACTION**

17 **For Civil Penalties Pursuant to Private Attorneys General Act (“PAGA”)**

18 **[Cal. Lab. Code §§ 2698, et seq.]**

19 **(By PLAINTIFF and AGGRIEVED EMPLOYEES and Against All DEFENDANTS)**

20 41. PLAINTIFF and the AGGRIEVED EMPLOYEES reallege and incorporate by this
21 reference, as though fully set forth herein, the prior paragraphs of this Complaint.

22 42. PAGA is a mechanism by which the State of California itself can enforce state labor laws
23 through the employee suing under the PAGA who do so as the proxy or agent of the state's labor law
24 enforcement agencies. An action to recover civil penalties under PAGA is fundamentally a law
25 enforcement action designed to protect the public and not to benefit private parties. The purpose of the
26 PAGA is not to recover damages or restitution, but to create a means of "deputizing" citizens as private
27 attorneys general to enforce the Labor Code. In enacting PAGA, the California Legislature specified
28 that "it was ... in the public interest to allow aggrieved employees, acting as private attorneys general

1 to recover civil penalties for Labor Code violations ..." Stats. 2003, ch. 906, § 1. Accordingly, PAGA
2 claims cannot be subject to arbitration.

3 43. PLAINTIFF brings this Representative Action on behalf of the State of California with
4 respect to himself and all other current and former AGGRIEVED EMPLOYEES employed by
5 DEFENDANTS during the PAGA PERIOD.

6 44. At all relevant times, for the reasons described herein, and others, PLAINTIFF and the
7 AGGRIEVED EMPLOYEES were aggrieved employees of DEFENDANTS within the meaning of
8 Labor Code Section 2699(c).

9 45. Labor Code Sections 2699(a) and (g) authorize an AGGRIEVED EMPLOYEE, like
10 PLAINTIFF, on behalf of himself and other current or former employees, to bring a civil action to
11 recover civil penalties pursuant to the procedures specified in Labor Code Section 2699.3

12 46. PLAINTIFF complied with the procedures for bringing suit specified in Labor Code
13 Section 2699.3. By certified letter, return receipt requested, dated October 22, 2020, PLAINTIFF gave
14 written notice to the Labor and Workforce Development Agency ("LWDA") and to DEENDANTS of
15 the specific provisions of the Labor Code alleged to have been violated, including the facts and theories
16 to support the alleged violations.

17 47. As of the date of this complaint, more than sixty-five (65) days after serving the LWDA
18 with notice of DEFENDANTS' violations, the LWDA has not provided any notice by certified mail of
19 its intent to investigate the DEFENDANTS' alleged violations as mandated by Labor Code Section
20 2699.3(a)(2)(A). Accordingly, pursuant to Labor Code Section 2699.3(a)(2)A, PLAINTIFF may
21 commence and is authorized to pursue this cause of action.

22 48. To the extent that it applies, PLAINTIFF invokes the tolling permitted pursuant to the
23 California State Judicial Counsel amended Rule of Court, Emergency Rule Number 9, tolled the statute
24 of limitation and statutes of repose from April 6, 2020 to either (a) August 3, 2020 for statutes of
25 limitation and repose for civil causes of action that are 180 days or less, of (b) October 1, 2020 for
26 statutes of limitation and repose for civil causes of action that exceed 180 days.

27 49. Pursuant to Labor Code Sections 2699(a) and (f), PLAINTIFF and the AGGRIEVED
28 EMPLOYEES are entitled to civil penalties for DEFENDANTS' violations of Labor Code Section 201,

1 202, 203, 204, 210, 218.5, 218.6, 226, 226.3, 226.7, 510, 512, 558, 1174(d), 1174.5, 1194, 1194.2,
2 1197, 1197.1, 1198, 1199, and 2804 in the following amounts:

3 a. For violation of Labor Code Sections 201, 202, 203, and 204, one
4 hundred dollars (\$100) for each AGGRIEVED EMPLOYEE per pay period
5 for the initial violation and two hundred dollars (\$200) for AGGIEVED
6 EMPLOYEE per pay period for each subsequent violation [penalty per
7 Labor Code Section 2699(f)(2)];

8 b. For violations of Labor Code Section 226(a), a civil penalty in the
9 amount of two hundred fifty dollars (\$250) for each AGGRIEVED
10 EMOPLOYEE for any initial violation and one thousand dollars for each
11 subsequent violation [penalty per Labor Code Section 226.3];

12 c. For violations of Labor Code Sections 204, a civil penalty in the
13 amount of one hundred dollars (\$100) for each AGGRIEVED EMPLOYEE
14 for any initial violation and two hundred dollars (\$200) for AGGIEVED
15 EMPLOYEE for each subsequent violation [penalty per Labor Code
16 Section 210];

17 d. For violations of Labor Code Sections 226.7, 510 and 512, a civil
18 penalty in the amount of fifty dollars (\$50) for each underpaid
19 AGGRIEVED EMPLOYEE for the initial violation and hundred dollars
20 (\$100) for each underpaid AGGIEVED EMPLOYEE for each subsequent
21 violation [penalty per Labor Code Section 558];

22 e. For violations of Labor Code Section 2269(a), a civil penalty in the
23 amount of two hundred fifty dollars (\$250) per AGGRIEVED EMPLOYEE
24 per violation in an initial citation and one thousand dollars (\$1,000) per
25 AGGRIEVED EMPLOYEE for each subsequent violation [penalty per
26 Labor Code Section 226.3];

27 f. For violations of Labor Code Section 1174(d), a civil penalty in the
28 amount of five hundred (\$500) dollars for per AGGRIEVED EMPLOYEE

1 [penalty per Labor Code Section 1174.5].

2 g. For violations of Labor Code Sections 1194, 1194.2, 1197, 1198 and
3 1199, a civil penalty in the amount of one hundred dollars (\$100) per
4 AGGRIEVED EMPLOYEE per pay period for the initial violation and two
5 hundred dollars fifty (\$250) per AGGRIEVED EMPLOYEE per pay period
6 for each subsequent violation [penalty per Labor Code Section].

7 2. For all provisions of the Labor Code for which civil penalty is not specifically provided,
8 Labor Code § 2699(f) imposes upon Defendant a penalty of one hundred dollars (\$100) for each
9 AGGRIEVED EMPLOYEE per pay period for the initial violation and two hundred dollars (\$200) for
10 each AGGRIEVED EMPLOYEE per pay period for each subsequent violation. PLAINTIFF and the
11 AGGRIEVED EMPLOYEES are entitled to an award of reasonable attorney's fees and costs in
12 connection with their claims for civil penalties pursuant to Labor Code Section 2699(g)(1).

13 **PRAYER FOR RELIEF**

14 WHEREFORE, PLAINTIFF prays for judgment against DEFENDANTS as follows:

15 (a) For reasonable attorney's fees and costs of suit to the extent permitted by law, including
16 pursuant to Labor Code § 2699, *et seq.*;

17 (b) For civil penalties to the extent permitted by law pursuant to the Labor Code under the
18 Private Attorneys General Act; and

19 (c) For such other relief as the Court deems just and proper.

20
21 Dated: February 24, 2021

Respectfully Submitted,
JCL LAW FIRM, APC


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23 By: 
24 Jean-Claude Lapuyade, Esq.
25 Attorneys for PLAINTIFF
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1 **DEMAND FOR JURY TRIAL**

2 PLAINTIFF demands a jury trial on all issues triable to a jury.

3
4 Dated: February 24, 2021

Respectfully Submitted,
JCL LAW FIRM, APC

5
6 By: 
7 Jean-Claude Lapuyade, Esq.
8 Attorneys for PLAINTIFF
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