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1 J. KIRK DONNELLY (179401)  
 2 LAW OFFICES OF J. KIRK DONNELLY, APC  
 3 4370 La Jolla Village Drive, Suite 800  
 4 San Diego, CA 92122  
 5 Tel. (858) 260-6170  
 6 kdonnelly@jkd-law.com

7 Attorneys for Plaintiff Kimberly George

8 LEWIS BRISBOIS BISGAARD & SMITH LLP  
 9 JOSEPH R. LORDAN, SB#265610  
 10 Email: [Joseph.Lordan@lewisbrisbois.com](mailto:Joseph.Lordan@lewisbrisbois.com)  
 11 VINCENT R. FISHER, SB# 276334  
 12 Email: [Vincent.Fisher@lewisbrisbois.com](mailto:Vincent.Fisher@lewisbrisbois.com)  
 13 333 Bush Street, Suite 1100  
 14 San Francisco, California 94104-2872  
 15 Telephone: 415.362.2580  
 16 Facsimile: 415.434.0882

17 Attorneys for Defendant  
 18 Retail Merchandising Solutions, Inc.

**FILED**  
ALAMEDA COUNTY

JAN 30 2018

CLERK OF THE SUPERIOR COURT  
By *Sydney R...* Deputy

19 **SUPERIOR COURT OF CALIFORNIA**  
 20 **IN AND FOR THE COUNTY OF ALAMEDA**

21 KIMBERLY GEORGE, individually, and on  
 22 behalf of all others similarly situated,

23 Plaintiffs,

24 vs.

25 RETAIL MERCHANDISING SOLUTIONS,  
 26 INC., and DOES 1 through 20, inclusive,

27 Defendants.

CASE NO. RG16828194

Assigned for All Purposes To:  
Hon. Brad Seligman  
Dept. 23

STIPULATION AND ~~PROPOSED~~ ORDER  
FOR LEAVE TO FILE FIRST AMENDED  
CLASS ACTION COMPLAINT

28 WHEREAS, plaintiff Kimberly George ("Plaintiff") and defendant Retail Merchandising  
 Solutions, Inc. ("Defendant," and collectively the "Parties"), mediated this matter on November  
 9, 2018, before Steven Rottman, Esq., and reached a tentative settlement;

WHEREAS, as part of the tentative settlement, the Parties agreed to resolve potential  
 claims of Plaintiff and other similarly aggrieved employees of Defendant under the Private  
 Attorneys General Act of 2004, California Labor Code sections 2698, *et seq.* ("PAGA"); and

1 WHEREAS, subject to the Court's approval, the Parties have agreed Plaintiff shall amend  
2 her Class Action Complaint to add a cause of action for violation of PAGA.

3 WHEREFORE, IT IS HEREBY STIPULATED by and between the Parties, through their  
4 respective counsel of record, subject to the Court's approval, as follows:

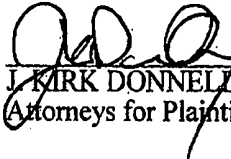
5 1. Plaintiff shall be granted leave of Court to file her First Amended Class Action  
6 Complaint, and true and correct copy of which is attached hereto as Exhibit 1;

7 2. Plaintiff's First Amended Class Action Complaint (Exhibit 1 hereto) shall be  
8 deemed filed and served on all parties as of the date of this Order.

9 3. Defendant RMSI's Answer to the initial Class Action Complaint shall be deemed  
10 responsive to the First Amended Class Action Complaint.

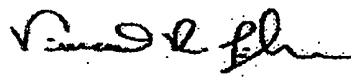
11  
12 Dated: January 26, 2018.

LAW OFFICES OF J. KIRK DONNELLY, APC

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15 J. KIRK DONNELLY  
Attorneys for Plaintiff KIMBERLY GEORGE

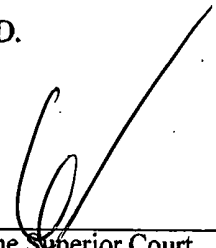
16 Dated: January 25, 2018

LEWIS BRISBOIS BISGAARD & SMITH, LLP

17   
18 JOSEPH LORDAN  
19 VINCENT FISHER  
20 Attorneys for Defendant RETAIL  
MERCHANDISING SOLUTIONS, INC.

21 PURSUANT TO STIPULATION, IT IS SO ORDERED.

22  
23  
24 Dated: 1/30, 2018

  
25 \_\_\_\_\_  
26 Judge of the Superior Court

# EXHIBIT 1

1 J. KIRK DONNELLY (SBN 179401)  
2 LAW OFFICES OF J. KIRK DONNELLY, APC  
3 4370 La Jolla Village Drive, Suite 800  
4 San Diego, CA 92122  
5 Tel. (858) 260-6170  
6 kdonnelly@jkd-law.com

7  
8 Counsel for Plaintiff KIMBERLY GEORGE

9 **SUPERIOR COURT OF CALIFORNIA**  
10 **IN AND FOR THE COUNTY OF ALAMEDA**

11 KIMBERLY GEORGE, individually, and on  
12 behalf of all others similarly situated,

13 Plaintiff,

14 vs. RETAIL MERCHANDISING  
15 SOLUTIONS, INC., and DOES 1 through 10,  
16 inclusive,

17 Defendants.

CASE NO. RG16828194

Assigned for All Purposes To:  
Hon. Brad Seligman  
Dept. 23

FIRST AMENDED CLASS ACTION  
COMPLAINT

JURY TRIAL DEMANDED



1           7.     Common Questions of Law and Fact. This lawsuit is suitable for class treatment  
2 because common questions of law and fact predominate over individual issues. Common  
3 questions include, but are not limited to, the following: (1) whether Defendant properly calculated  
4 and paid all amounts due to the class members for wages earned, including overtime wages, under  
5 California law, (2) whether Defendant violated the California Labor Code and/or IWC Wage  
6 Orders by withholding wages, including overtime wages, from the class members, (3) whether  
7 Defendant's policies regarding meal and rest breaks comply with California law, (4) whether  
8 Defendant violated the California Labor Code and/or IWC Wage Orders by failing to provide the  
9 class members with all required meal and rest breaks, and within the time frames mandated by  
10 California law, (5) whether Defendant properly compensated the class members for missed meal  
11 and rest breaks, (6) whether Defendant provided the class members with proper, itemized wage  
12 statements, (7) whether Defendant timely paid the class members all wages due upon termination  
13 of employment, (8) whether Defendant's failure to timely pay all wages due upon termination of  
14 employment was willful, (9) whether Defendant fully reimbursed the class members for  
15 reasonable and necessary expenses incurred in the performance of their job duties, and (10)  
16 whether Defendant violated California Business and Professions Code sections 17200, et seq.

17           8.     Numerosity. The plaintiff class is so numerous that the individual joinder of all  
18 members is impractical under the circumstances of this case. While the exact number of class  
19 members is unknown to Plaintiff, Plaintiff is informed and believes the class consists of at least  
20 100 individuals.

21           9.     Typicality. Plaintiff's claims are typical of the claims of the class members.  
22 Plaintiff suffered a similar injury as the other class members as a result of Defendant's common  
23 practices regarding the calculation and payment of wages, including overtime wages, provision of  
24 meal and rest breaks or compensation in lieu thereof, provision of wage statements,  
25 reimbursement of business expenses, and payment of wages due upon termination. In addition,  
26 Plaintiff will fairly and adequately protect the interests of the class members. Plaintiff has no  
27 interests adverse to the interests of the other class members.

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SIXTH CAUSE OF ACTION

(Failure to Reimburse Expenses – Labor Code § 2802)

26. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 25.

27. California Labor Code section 2802 provides an employer shall fully reimburse an employee for all reasonable and necessary expenses incurred in the performance of the employee’s job duties. Plaintiff and the class members regularly incurred expenses including, inter alia, automobile mileage and related expenses, in the performance of their job duties, which expenses were not fully reimbursed by Defendant.

28. Pursuant to Labor Code section 2802, Plaintiff and the class members are entitled to recover their unreimbursed business expenses, plus attorneys’ fees and costs, in an amount to be proved at trial.

SEVENTH CAUSE OF ACTION

(Violation of Unfair Competition Law – Bus. & Prof. Code §§ 17200, et seq.)

29. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 28.

30. Defendant’s failure, inter alia, to pay all wages earned, failure to pay all overtime wages earned, failure to provide all required meal and rest breaks or compensation in lieu thereof, and failure to reimburse business expenses incurred, all in violation of the Labor Code and Wage Orders, constitutes an unlawful, unfair or fraudulent business act or practice, in violation of Business & Professions Code sections 17200, et seq.

31. Pursuant to Business & Professions Code section 17203, Plaintiff and the class members are entitled to restitution of all unpaid wages, expenses, and other sums owed, plus attorney’s fees and costs, in an amount to be proved at trial.

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1 EIGHTH CAUSE OF ACTION

2 (Violation of Private Attorneys General Act – Labor Code §§ 2698, et seq.)

3 32. Plaintiff incorporates by reference the allegations contained in paragraphs 1  
4 through 31.

5 33. During the period beginning one-year period preceding the filing of the initial  
6 complaint in this action, Defendants violated Labor Code Sections 201-203, 204, 216, 221-  
7 224, 226, 226.7, 450, 512, 1174, 1194, 1197, 1198, 1199, 2441, 2802, 2810.5, and all  
8 applicable Wage Orders. These violations subject Defendants to civil penalties as set forth in  
9 the foregoing statutes as well as Labor Code Section 2699.

10 34. Plaintiff complied with the procedures for bringing suit specified in Labor Code  
11 Sections 2699.3 and 2699.5. By letter dated and postmarked November 17, 2017, Plaintiff  
12 gave written notice to the California Labor and Workforce Development Agency (“LWDA”)  
13 via electronic mail at [PAGAfilings@dir.ca.gov](mailto:PAGAfilings@dir.ca.gov), and via certified mail to all Defendants, of  
14 the specific provisions of the Labor Code and Wage Orders allegedly violated, including the  
15 facts and theories to support the alleged violations. A true and correct copy of Plaintiff’s  
16 November 17, 2017 letter along with proof of submission and mailing is attached hereto as  
17 Exhibit A and incorporated herein by this reference.

18 34. Under Labor Code Section 2699.3, the LWDA must give written notice by  
19 certified mail to the parties it intends to investigate the alleged violations within 63 days of the  
20 date of the complainant's written notice. As of January 26, 2018, the LWDA has not provided  
21 the parties any notice of its intention to investigate Plaintiff’s claims on behalf of herself and  
22 other aggrieved employees. As of January 26, 2018, Defendants have not responded to  
23 Plaintiff’s PAGA notices in an attempt to cure.

24 35. As alleged herein, Defendants violated Labor Code Sections 201-203, 204,  
25 216, 221-224, 226, 226.7, 450, 512, 1174, 1194, 1197, 1198, 1199, 2441, 2802, 2810.5,  
26 and all applicable Wage Orders. These violations subject Defendants to civil penalties as set  
27 forth in the foregoing statutes, which Plaintiff seeks on her behalf and on behalf of other  
28 aggrieved employees. Plaintiff seeks civil penalties in the amounts set forth in each statute

1 allegedly violated or, for all statutes that lack a specified penalty, Plaintiff seeks default  
2 penalties as provided by Labor Code Section 2699.

3 36. Under Labor Code section 2699(g), Plaintiff is entitled to an award of  
4 reasonable attorney's fees and costs in connection with her claims for civil penalties.

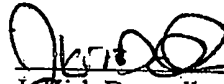
5 PRAYER

6 WHEREFORE, Plaintiff prays for judgment against each Defendant, jointly and severally,  
7 as follows:

- 8 1. For compensatory damages according to proof;  
9 2. For an order requiring Defendant to make restitution of all amounts wrongfully  
10 withheld from Plaintiff and the class;  
11 3. For civil penalties under California Labor Code sections 2698, *et seq.*;  
12 4. For pre-judgment interest as permitted by law;  
13 5. For reasonable attorney's fees and costs of suit; and  
14 6. For such other and further relief as the Court deems just and proper.

15  
16 Dated: January 28 2018

LAW OFFICES OF J. KIRK DONNELLY, APC

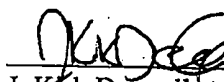
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19 J. Kirk Donnelly  
Attorneys for Plaintiff KIMBERLY GEORGE

20  
21 DEMAND FOR JURY TRIAL

22 PLAINTIFF KIMBERLY GEORGE demands a trial by jury for on all claims so  
23 triable.

24 Dated: January 28 2018

LAW OFFICES OF J. KIRK DONNELLY, APC

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27 J. Kirk Donnelly  
28 Attorneys for Plaintiff KIMBERLY GEORGE

# EXHIBIT A

# LAW OFFICES OF J. KIRK DONNELLY, APC

4370 La Jolla Village Drive, Suite 800 · San Diego, California 92122  
(858) 260-6170 · [www.jkd-law.com](http://www.jkd-law.com)

November 17, 2017

J. Kirk Donnelly  
[kdonnelly@jkd-law.com](mailto:kdonnelly@jkd-law.com)

## VIA EMAIL

California Labor & Workforce Development  
Agency  
ATTN: PAGA Administrator  
455 Golden Gate Avenue, 9th Floor  
San Francisco, CA 94102  
[PAGAFilings@dir.ca.gov](mailto:PAGAFilings@dir.ca.gov)

## VIA U.S. CERTIFIED MAIL

Rachel Lee  
Joseph Lordan  
Lewis Brisbois Bisgaard & Smith  
333 Bush Street, Suite 100  
San Francisco, CA 94104-2872  
Counsel for Retail Merchandising  
Solutions, Inc.

## VIA U.S. CERTIFIED MAIL

CT Corporation System  
Agent For Service of Process  
818 West Seventh St., Suite 930  
Los Angeles, CA 90017

Subject: *Kimberly George v. Retail Merchandising Solutions, Inc.*  
*Cal. Labor Code section 2699.3 Notice of Labor Code Violations*

Dear LWDA PAGA Administrator:

This office represents Kimberly George (“Complainant”) in connection with her claims under the California Labor Code. Complainant was an employee of Retail Merchandising Services, Inc. (“RMSI” or “Employer”).

Complainant intends to seek civil penalties, attorney’s fees, unpaid wages, 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”). This letter is sent in compliance with the reporting requirements of California Labor Code sections 2699.3 and 2699.5. This letter further reserves any and all rights by Complainant to amend this notice to include, amend, or add further charges upon discovery of new violations of any of the provisions of the California Labor Code. In addition, to the extent that entities and/or other individuals are named and charged with violations of the Labor Code—making them liable on an individual basis as permitted by numerous Labor Code Sections including, but not limited to 558, 558.1, and 1197.1—Complainant reserves any and all rights to add, substitute, or change the name of employer entities and/or individuals responsible for the violations at issue. Any further amendments and changes to this notice shall relate back to the date of this notice. Consequently, employer is on notice that Complainant continues its investigation, with the full intent to amend

and/or change this notice, to add any undiscovered violations of *any* of the provisions of the California Labor Code—to the extent that are applicable to this case—and to change and/or add the identities of any entities and/or individuals responsible for the violations contained herein. If Employer intends to cure the alleged violations within the statutory time period set forth in §§ 2699 and 2699.3(a), the employer shall provide notice including a description of actions taken to cure. If the alleged violation is not cured within the statutory time period, employee will commence a civil action pursuant to Section 2699.

Based on the following summary of the facts and theories upon which Complainant will base her claims, Complainant requests the LWDA regard this Notice as written notice of her intent to seek civil penalties against Employer. The specific provisions of the California Labor Code Employer has violated requiring this notice include, but are not limited to California Labor Code sections 201-203, 204, 216, 221-224, 226, 226.7, 450, 512, 1174, 1194, 1197, 1198, 1199, 2441, 2802, 2810.5, and all applicable Wage Orders. These violations subject Employer to civil penalties as set forth in (1) the foregoing statutes, (2) Labor Code sections 210, 225.5, 226.3, 256, 558, 1174.5, 1197.1, and 2699, and (3) IWC Wage Order 7-2001, section 20.

#### **Employer is Liable for All Temporary Agency Workers**

Labor Code section 2810.3 requires a client employer to share with a labor contractor all civil legal responsibility and civil liability for all workers supplied by that labor contractor in California for the payment of wages. Section 2810.3 prohibits a client employer from shifting to the labor contractor legal duties or liabilities under workplace safety provisions with respect to workers provided by the labor contractor. It defines a client employer as a business entity that obtains or is provided workers to perform labor within the usual course of business from a labor contractor. It defines a labor contractor as an individual or entity that supplies workers, either with or without a contract, to a client employer to perform labor within the client employer's usual course of business.

Pursuant to section 2810.3, if Employer secured temporary labor from a labor contractor, Employer shares in all legal responsibility and civil liability with its labor contractor(s), for all workers supplied by such labor contractor(s), for payment of wages.

#### **The Employer; Summary of Labor Code Violations**

Employer and its managing agent own, operate, or otherwise manage an enterprise providing merchandising and other related services to retailers throughout California and other parts of the United States. Employer was founded in 2000, and has over 2,000 employees nationwide. It is believed that at any given time Employer has approximately 900 persons employed and working as "merchandisers" and other similar positions, however titled, within California.

While Employer may be a successful company/may have a noble mission, it does not comply with California labor law. Among other things, Employer failed/fails to keep accurate and complete time records for employees; failed/fails to pay employees for all hours worked; failed/fails to pay employees at least minimum wage for all hours worked or overtime rates for overtime work; failed/fails to provide employees with proper meal, rest, and/or compensate

Complainant and similarly situated aggrieved employees an additional hour of premium pay for missed/improper meal and rest periods; failed/fails to pay all wages earned by employees on at least semimonthly paydays; took improper deductions from employees' pay; refused/refuses to make and/or falsely denied the amount of payments due to employees; failed/fails to provide proper and accurate wage statements to employees; failed/fails to provide proper notices regarding employee pay; and failed/fails to pay employees all earned and unpaid wages when they separated/separate from employment. Further descriptions of the above-mentioned violations and others are explained below.

### **Complainant and the Aggrieved Employees**

At all relevant times, Complainant was a non-exempt employee working for employer as a merchandiser. Throughout this time, she was paid an hourly rate for time counted by Employer as hours worked. She regularly drove her personal vehicle to and from distant sites where she was assigned to work, and accordingly incurred substantial travel time and travel expenses in furtherance of her duties for Employer.

At all relevant times, Complainant was an aggrieved employee as defined in Labor Code §2699(c) ("any person who was employed by the alleged violator who was employed by the alleged violator and against whom one or more of the violations was committed"). He seeks recovery for the Labor Code violations set forth herein on behalf of himself and other current and former employees, including but not limited to: non-exempt drivers, and other aggrieved employees who were employed by Employer in the State of California within one year of the filing of this Notice and who were subject to the same or similar Labor Code and IWC Wage Order violations as Complainant. Complainant believes and hereon alleges that Employer employs, at a minimum, approximately 900 similarly aggrieved non-exempt employees California at any given time.

### **Labor Code Violations**

**Failure to Pay Wages Due (Straight Time and Overtime):** California Labor Code section 1197 requires that employees must be paid at least the minimum wage fixed by the IWC for all hours worked. Employers must pay overtime equal to double the regular hourly rate of pay for each hour worked beyond twelve (12) hours per workday and for all hours worked in excess of eight (8) hours on the seventh consecutive day or work in a work week. The minimum wage standard applies to each hour employees worked for which they were not paid. An employer's failure to pay for any time worked by an employee is unlawful, even if averaging an employee's total pay over all hours worked, paid or not, results in an average hourly wage above minimum wage. California Labor Code section 510 and the IWC Wage Orders also require employers to pay overtime equal to one and one-half times the regular hourly rate of pay for each hour worked beyond eight (8) hours per workday and each hour worked beyond forty (40) hours per work week.

Complainant and other aggrieved employees did not have an assigned or regular workplace and instead traveled in their personal vehicles from their homes to assigned stores. Employer imposed a 45 minute/mile "deduction" – each way – on certain trips undertaken by Complainant



and other aggrieved employees. Accordingly, Employer failed to pay Complainant and other aggrieved employees for all compensable travel time, as some portion of such trips was "compulsory" travel time, in excess of a reasonable commuting time, and for which Employer was obligated to pay Complainant and other aggrieved employees. DLSE O.L. 2003.4.22; *Wilson v. Kiewit Pacific Company*, 2010 U.S. Dist. Lexis 133304 (N.D. Cal. Dec. 6, 2010).

Employer's failure to pay for such compulsory travel time incurred by Complainant and other aggrieved employees violates Labor Code sections 512, 1194-1199, and Wage Order 7-2001, section 7. These violations subject Employer to civil penalties under said sections and Labor Code section 2699. Each violation of each Labor Code section and Wage Order provision, for each aggrieved employee, results in a separate civil penalty

Recordkeeping Requirement Violations: California Labor Code section 1174 requires employers to keep "accurate and complete" payroll records showing, among other things, the hours worked daily by all non-exempt employees. IWC Wage Order 7-2001, section 7 similarly requires employers to keep time records showing when the employees begin and end each work period, and reflecting the time during which a meal period was provided each day.

At all relevant times, Employer has failed, and continues to fail, to keep the required time records. Employer did not provide and/or record all of Complainant and aggrieved employees time spent driving to and from assigned work locations in excess of a reasonable commuting distance.

Employer's failure to keep "accurate and complete" payroll records for Complainant and other aggrieved employees violates Labor Code sections 1174, 1198, 1199, and Wage Order 7-2001, section 7. These violations subject Employer to civil penalties under Labor Code sections 1174.5 and 2699. Each violation of each Labor Code section and Wage Order provision, for each aggrieved employee, results in a separate civil penalty.<sup>1</sup>

Meal Period Violations: California law requires employers to provide employees a duty-free, uninterrupted thirty (30) minute meal period when an employee works more than five (5) hours in a workday, and it must be provided within the first five (5) hours the employee works. Lab. Code 512; IWC Wage Order 7-2001, §11(A) and (C); *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4<sup>th</sup> 1004. Employers must also provide employees with a second duty-free, uninterrupted thirty (30) minute meal period when an employee works more than (10) hours in a workday, and it must be provided before the end of the 10<sup>th</sup> hour of work. *Ibid.* Meal periods can be waived, but only under the following circumstances: (1) if an employee's total work period in a day is over five (5) hours but no more than six (6) hours, the required meal period may be waived by mutual consent of the employer and employee, and (2) if an employee's total work period in a day is over ten (10) hours but no more than twelve (12) hours, the required second meal period may be waived by mutual consent of the employer and employee, but only if the first meal period was not waived. *Ibid.*

Employers covered by Industrial Welfare Commission ("IWC") Wage Order 7-2001 have an obligation to both (1) relieve their employees for at least one meal period for shifts over five

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<sup>1</sup> See Lab. Code §2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period").

hours (see above), *and* (2) to record having done so. If the employer fails to properly record a valid meal period, it is presumed that no meal period was provided. IWC Wage Order 2-2001, §7(A)(3) (“Meal periods . . . shall also be recorded”); *Brinker, supra*, 53 Cal.4<sup>th</sup> 1004, 1052-1053, citing §7(A)(3) (“If an employer’s records show no meal period for a given shift over five hours, a rebuttable presumption arises that the employee was not relieved of duty and no meal period was provided”).

Employers must pay employees an additional hour of wages at the employees’ regular rate of pay for each missed or improper (e.g., less than 30 minutes, interrupted meal period, first meal period provided after 5 hours, second meal period provided after 10 hours) meal period. Lab. Code §226.7; IWC Wage Order 7-2001, § 11(B) (“If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that the meal period is not provided”); *Brinker, supra*, 53 Cal.4<sup>th</sup> 1004.

Employer failed to maintain a company meal period policy compliant with California law and failed to provide Complainant and other aggrieved employees with proper meal periods, particularly on shifts where it simultaneously failed to compensate Complainant and other aggrieved employees for all compulsory and compensable travel time. Liability for a class of aggrieved employees can be established by evidence that an employer adopted a uniform corporate break policy that failed to give full effect to California law and the applicable wage orders requirements. The fact that employees may legally waive meal breaks does not affect this result. *Brinker, supra*, 53 Cal.4<sup>th</sup> 1004. Because Employer failed to fully and accurately calculate and record time spend by Complainant and aggrieved employees traveling to and from their assigned places of work, it also failed to provide Complainant and other aggrieved employees with all meal breaks required under California law. Employer failed to pay them premiums for such missed meal breaks in violation of California law. *Brinker, supra*, 53 Cal.4<sup>th</sup> 1004.

The aforementioned conduct results in violations of Labor Code sections 226.7, 512, and 1198-1199, and IWC Wage Order 7-2001, § 11(A) and (C). These violations subject Employer to civil penalties under Labor Code sections 558 and 2699, and Wage Order 7-2001, §20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each aggrieved employee for each pay period during which the referenced statutes and Wage Order provisions were violated.<sup>2</sup> Employer’s failure to provide valid meal periods, and the automatic deduction for meal periods that were not provided/valid, ultimately resulted/results in further violations, such as violation of Labor Code section 1174 discussed above, and other violations discussed below.

Rest Period Violations: California law requires employers to provide employees a paid, duty-free ten (10) minute rest period for each four (4) hours worked, or major fraction thereof. IWC

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<sup>2</sup> See Lab. Code §2699(f)(2) (establishing that the civil penalty is “for each aggrieved employee per pay period”); Lab. Code §558 (establishing that the civil penalty is “for each underpaid employee for each pay period for which the employee was underpaid”); IWC Wage Order 7-2001, § 20 (establishing that “[i]n addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty... for each underpaid employee for each pay period during which the employee was underpaid”).

Wage Order 7-2001, § 12(A). Employers must pay employees an additional hour of wages at the employee's regular rate of pay for each missed or improper (e.g., less than 10 minutes, interrupted rest period, rest period(s) at improper time(s) during shift(s)) rest period. Lab. Code §226.7; IWC Wage Order 7-2001, § 12(B) ("If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each work day that the rest period is not provided").

Employer did not maintain a company rest period policy and/or practice compliant with California law, and Employer frequently did not provide Complainant and other aggrieved employees with appropriate rest periods. Per Employer's policy and/or practice, Complainant and other aggrieved employees were not adequately informed and instructed about, and thereby were not afforded an adequate opportunity to take, proper rest breaks per California law. Further, Employer failed to pay Complainant and other aggrieved employees with an additional hour of pay at Complainant's and other aggrieved employees' regular rates of pay for each missed or improper rest period. Because Employer failed to fully and accurately calculate and record time spend by Complainant and aggrieved employees traveling to and from their assigned places of work, it also failed to provide Complainant and other aggrieved employees with all meal breaks required under California law. Employer failed to pay them premiums for such missed meal breaks in violation of California law. *Brinker, supra*, 53 Cal.4th 1004. Complainant and other aggrieved employees would not receive proper rest breaks, nor would they be separately compensated for said rest breaks in violation of California law. *Bluford v. Safeway Stores, Inc.* (2013) 216 Cal. App. 4th 864, 872.

The aforementioned conduct results in violations of Labor Code sections 226.7, and 1198-1199, and IWC Wage Order 7-2001, § 12(A). These violations subject Employer to civil penalties under Labor Code section 2699, and Wage Order 7-2001, § 20. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each aggrieved employee for each pay period during which the referenced statutes and Wage Order provisions were violated.<sup>3</sup>

Failure to Reimburse Reasonable and Necessary Business Expenses: under Labor Code section 2802, California law requires an employer to reimburse employees for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of their duties. Accordingly, an employer must fully reimburse employees for, inter alia, all expenses incurred by the employee for using his or her personal vehicle in furtherance of their job duties, as well as all expenses incurred in using his or her personal mobile phone in furtherance of their job duties. *Gattuso v. Harte Hanks Shoppers, Inc.*, 42 Cal.4th 554, 569-75 (2007); *Cochran v. Schwan's Home Service, Inc.*, 228 Cal.App.4th 1137 (2014).

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<sup>3</sup> See Lab. Code §2699(f)(2) (establishing that the civil penalty is "for each aggrieved employee per pay period"); IWC Wage Order 7-2001, § 20 (establishing that "[i]n addition to any other civil penalties provided by law, any employer or any other person acting on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall be subject to the civil penalty...for each underpaid employee for each pay period during which the employee was underpaid").

Employer did not fully and accurately record and reimburse all of Complainant and aggrieved employees driving expenses incurred driving their personal vehicles to and from assigned work locations in excess of a reasonable commuting distance. To the extent certain driving mileage and expenses were reimbursed by Employer, it did not provide full reimbursement for such expenses as required by Labor Code section 2802 and applicable law, as it did reimburse such mileage at the prevailing reimbursement rates established by the Internal Revenue Service.

Additionally, Employer did not reimburse Complainant and the aggrieved employees for use of their personal mobile phones for, inter alia, communicating with Employer, taking pictures and transmitting pictures of completed projects to Employer. At all relevant times, Employer did not maintain any policy regarding reimbursement for use of personal mobile phones.

The aforementioned conduct results in violations of Labor Code section 2802. These violations subject Employer to civil penalties under Labor Code section 2699. Each violation of each Labor Code section and Wage Order provision results in a *separate* civil penalty, for each aggrieved employee for each pay period during which the referenced statutes and Wage Order provisions were violated

Wage Statement Violations: California law requires every employer semi-monthly or at the time of each payment of wages to furnish each of his, her, or its employees with an accurate itemized wage statement in writing that contains the following: (1) gross wages earned; (2) total hours worked by the employee; (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; (4) all deductions; (5) net wages earned; (6) the inclusive dates of the period for which the employee is paid; (7) 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; (8) the name and address of the legal entity that is the employer; and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Lab. Code §226.

As a result of Employer's violations of various Labor Code and Wage Order provisions, as discussed herein, Employer failed to provide accurate wage statements with respect to multiple categories set forth in Labor Code section 226, and therefore Employer violated section 226. These violations subject Employer to civil penalties under Labor Code sections 226.3. Each violation results in a *separate* civil penalty, for each aggrieved employee, for each pay period during which the statute provisions were violated.<sup>4</sup>

Standard Conditions of Labor Violations: Together, Labor Code sections 1198 and 1199 make unlawful any employment of any employee under conditions of labor prohibited by the Wage Orders, and any violation, refusal, or neglect to comply with any provision within Part 4, Chapter 1 of the Labor Code, including sections 1174, 1197, and 1198, or order or ruling of the commission. Therefore, Employer's violations with respect to meal periods, rest periods, and minimum wage result in separate violations of sections 1198 and 1199, which subject Employer to civil penalties under Labor Code sections 1197.1 and 2699.

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<sup>4</sup> See Lab. Code §226.3 (establishing that the civil penalty is "per employee per violation").

Final Pay Violations: Labor Code section 201 requires employers to pay all wages earned and unpaid at the time of discharge, immediately upon discharge. Labor Code section 202 states similar provisions with respect to employees who resign. Employer still has not paid aggrieved employees all wages earned and unpaid at the time of discharge, in that Employer has not paid for: (1) certain time spent traveling in the course and scope of employment duties, and (2) an additional hour of pay for meal and rest periods not provided/valid. These violations subject Employer to civil penalties under Labor Code section 203, 210, and/or 256. Each violation results in a *separate* civil penalty, for each aggrieved employee for each pay period during which the statute provisions were violated.<sup>5</sup>

Employer has violated the above-referenced California Labor Code provisions, as well as other laws, and is liable for all applicable premium wages, statutory and civil penalties, interest, attorneys' fees, and costs. The civil penalties Complainant and other aggrieved employees seek to recover include, but are not limited to, the statutory and civil penalties specified above.

Labor Code § 2699.3 requires that a claimant send a certified letter to the employer in question and to the Labor Workforce Development Agency setting forth the claims and the basis for the claims, thereby giving the Labor Workforce Development Agency an opportunity to investigate the claims and/or take any action it deems appropriate.

The purpose of this letter is to satisfy the requirement created by Labor Code §§ 2699 and 2699.3(a) prior to seeking penalties and premium wages allowed by law for the aforementioned statutory violations in a civil action. We look forward to determining whether the Labor Workforce Development Agency intends to take any action in reference to these claims. We kindly ask that you respond to this notice according to the time frame contemplated by the code.

If the Labor Commissioner elects not to take any action with respect to any of the foregoing claims, Complainant will seek these penalties in a civil action, on behalf of himself and all other similarly situated California-based non-exempt aggrieved employees of Employer within one year of the date of this letter as allowed by law.

Please advise if your office intends to investigate any of the factual and legal allegations and provide notice within sixty days of this notice to our office and to that of other charged parties. Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

J. Kirk Donnelly  
Law Offices of J. Kirk Donnelly, APC  
4370 La Jolla Village Drive, Suite 800  
San Diego, CA 92122  
Main: 858-260-6170  
Email: [kdonnelly@jkd-law.com](mailto:kdonnelly@jkd-law.com)

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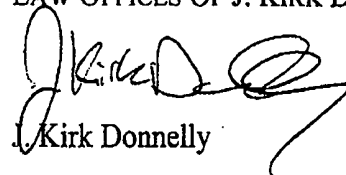
<sup>5</sup> (establishing that “[i]n addition to, and entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, 1197.5, shall be subject to a civil penalty...for each failure to pay each employee”).

November 17, 2017

Thank you for your attention to this matter.

Sincerely,

LAW OFFICES OF J. KIRK DONNELLY, APC

A handwritten signature in black ink, appearing to read "J. Kirk Donnelly", with a stylized flourish at the end.

J. Kirk Donnelly

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**Subject:** Thank you for submission of your PAGA Case.

**From:** LWDA DO NOT REPLY ([lwdadonotreply@dir.ca.gov](mailto:lwdadonotreply@dir.ca.gov))

**To:** [kdonnelly@kd-law.com](mailto:kdonnelly@kd-law.com);

**Date:** Friday, November 17, 2017 12:35 PM

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11/17/2017

LWDA Case No. LWDA-CM-367643-17

Item submitted: Initial PAGA Notice.

Thank you for your submission to the Labor and Workforce Development Agency. Please make a note of the LWDA Case No. above as you may need this number for future reference when filing any subsequent documents for this Case.

If you have questions or concerns regarding this submission or your case, please send an email to [pagainfo@dir.ca.gov](mailto:pagainfo@dir.ca.gov).

DIR PAGA Unit on behalf of  
Labor and Workforce Development Agency

Website: [http://labor.ca.gov/Private\\_Attorneys\\_General\\_Act.htm](http://labor.ca.gov/Private_Attorneys_General_Act.htm)

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SERVICE LIST

George v. Retail Merchandising Solutions, Inc.

Rachel J. Lee  
Joseph Lordan  
Vincent Fisher  
LEWIS BRISBOIS BISGAARD & SMITH LLP  
333 Bush St., Suite 1100  
San Francisco CA 94104-2872