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OPINIONS AND ORDERS

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ORDER DENYING PETITION FOR REVIEW, SUPREME COURT OF CALIFORNIA (FEBRUARY 14, 2024)

IN THE SUPREME COURT OF CALIFORNIA
EN BANC

VITAMIN SHOPPE INDUSTRIES LLC,

Petitioner,

v.

SUPERIOR COURT OF ALAMEDA COUNTY,

Respondent,

WENDY RINCON, on behalf of the State of California and Aggrieved Employees,

Real Party in Interest.

S283010

Court of Appeal, First Appellate District, Division Two - No. A169059

Before: GUERRERO, Chief Justice.

The petition for review is denied.

/s/ Guerrero
Chief Justice

ORDER DENYING REQUEST FOR STAY, COURT OF APPEAL OF THE STATE OF CALIFORNIA (NOVEMBER 28, 2023)

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA FIRST APPELLATE DISTRICT DIVISION TWO

VITAMIN SHOPPE INDUSTRIES LLC,

Petitioner,

v.

SUPERIOR COURT OF ALAMEDA COUNTY,

Respondent,

WENDY RINCON, on behalf of the State of California and Aggrieved Employees,

Real Party in Interest.

A169059

(Alameda County Sup. Ct. No. 23CV033934)

Before: STEWART, P.J.

BY THE COURT:

The request for immediate stay and petition for writ of mandate or other appropriate relief are denied.

Dated: November 28, 2023

/s/ Stewart, P.J.

ORDER DENYING MOTION FOR STAY, SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA (OCTOBER 26, 2023)

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF ALAMEDA
Rene C. Davidson Courthouse

WENDY RINCON,

Plaintiff/Petitioner(s),

v.

VITAMIN SHOPPE INDUSTRIES, LLC,

Defendant/Respondent(s).

No. 23CV033934

Date: 10/26/2023
Time: 2:00 PM
Dept: 22

Before: JEFFREY BRAND, Judge.

ORDER RE: HEARING ON MOTION FOR STAY OF PROCEEDINGS

Defendant's request to stay this action pursuant to Code of Civil Procedure § 1281.4 is DENIED.

BACKGROUND

On May 22, 2023, Plaintiff Wendy Rincon ("Rincon") filed a complaint for civil penalties pursuant to California's Private Attorneys General Act ("PAGA") against Defendant Vitamin Shoppe Industries, LLC ("Defendant"). The Rincon Action was initially assigned to the Honorable Judge Desautels, who granted in part Defendant's Motion to compel arbitration of Rincon's claims. (8/23/23 Order.) Judge Desautels continued the hearing on Defendant's request for a stay pending arbitration and the Rincon Action was reassigned to the undersigned based upon an earlier-filed case: *Jessica Reyes Whitt v. Vitamin Shoppe Industries, LLC*, Alameda County Superior Court Case No. 23CV025341 (the "Whitt Action").

In the moving papers, Defendant argues that Rincon's "individual claims" should be dismissed under *Viking River Cruises* or, in the alternative, stayed pending arbitration. (6/30/23 MPA, pp. 19-21.)

In opposition, Rincon argues against a stay. Rincon argues that a stay would "decrease the enforcement of the Labor Code and undermine PAGA's intended purpose because the stay would delay the State's and aggrieved employees' ability to pursue their claims." (8/10/23 Opposition, p. 5.) Rincon also argues that a stay "will allow Defendant to continue to engage in the unlawful and harmful conduct alleged by Plaintiff," and it "will be more difficult to locate and reach" aggrieved employees, percipient witnesses, and corporate administrators if a stay is granted. (Opposition, p. 6.)

LEGAL FRAMEWORK

A trial court shall stay an action while a motion to compel arbitration is determined "and, if arbitration of such controversy is ordered, until an arbitration is had in accordance with the order to arbitration or until such earlier time as the court specifies." (Code Civ. Proc., § 1281.4.)

DISCUSSION

Here, Defendant seeks a stay pursuant to Code of Civil Procedure § 1281.4 only. (6/30/23 Motion to Compel Arbitration.) The Court declines to stay this action. (*Jarboe v. Hanlees Auto Group* (2020) 53 Cal.App.5th 539, 557 ["Accordingly, we conclude the trial court did not abuse its discretion in declining to stay the PAGA action pending the arbitration of Jarboe's individual claims."].)

Rincon argues that "the only real dispute is whether the non-individual claims . . . must be dismissed or stayed." (MPA, p. 19.) At this point, the law is fairly well settled that a PAGA plaintiff does not lose standing merely because the plaintiff's individual PAGA claim must be arbitrated. (*See* MPA, p. 20, fn. 5, citing *Piplack v. In-N-Out Burgers* (2023) 88 Cal.App.5th 1281, review granted (June 14, 2023), review dismissed (Sept. 12, 2023); *Million Seifu v. Lyft, Inc.* (2023) 89 Cal.App.5th 1129 review granted (June 14, 2023), review dismissed (Sept. 12, 2023); *see also Adolph v. Uber Technologies, Inc.* (2023) 14 Cal.5th 1104.)

On reply, Defendant argues that if Rincon loses at arbitration (i.e., if the arbitrator finds that Rincon did not suffer a Labor Code violation), then Rincon would lose standing to pursue the representative PAGA claim.

(Reply, p. 4.) While this may be true, it does not extinguish the representative PAGA claim, which may be asserted by a different aggrieved employee or the State. (Lab. Code, § 2699, subd. (a); *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal.App.5th 745, 761.)

Therefore, the Court declines to stay this action pursuant to Code of Civil Procedure § 1281.4.

Clerk is directed to serve copies of this order, with proof of service, to counsel and to self-represented parties of record.

The Court orders counsel to obtain a copy of this order from the eCourt portal.

Case Management Conference is scheduled for 02/26/2024 at 02:00 PM in Department 22 at Rene C. Davidson Courthouse.

/s/ Jeffrey Brand
Judge

Dated : 10/26/2023

ORDER GRANTING MOTION TO COMPEL ARBITRATION, SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA (AUGUST 23, 2023)

SUPERIOR COURT OF CALIFORNIA,
COUNTY OF ALAMEDA
Rene C. Davidson Courthouse

WENDY RINCON,

Plaintiff/Petitioner(s),

v.

VITAMIN SHOPPE INDUSTRIES, LLC,

Defendant/Respondent(s).

No. 23CV033934

Date: 08/23/2023
Time: 2:30 PM
Dept: 16

Before: TARA DESAUTELS, Judge.

ORDER RE: HEARING ON MOTION TO COMPEL ARBITRATION FILED BY VITAMIN SHOPPE INDUSTRIES, LLC (DEFENDANT)

The Motion to Compel Arbitration filed by Vitamin Shoppe Industries, LLC on 06/30/2023 is Granted in Part.

Defendant's motion to compel arbitration to stay is GRANTED IN PART. The motion to compel arbitration is GRANTED. The motion to stay is CONTINUED to be heard in connection with the related case.

Background

Plaintiff Wendy Rincon was employed by Defendant Vitamin Shoppe Industries, LLC from approximately August 2020 to August 2022. Plaintiff alleges that Defendant systematically violated California labor law with respect to its non-exempt, hourly workers employed as store managers, assistant managers, and keyholders in the State of California. Plaintiff brings this PAGA enforcement action for civil penalties on behalf of the State of California and the aggrieved employees.

In its original motion, filed on June 30, 2023, Vitamin Shoppe moved to compel arbitration of Plaintiff's individual PAGA claims and asked the Court to dismiss—or, in the alternative, to stay—her non-individual, representative PAGA claims. After the California Supreme Court's July 17, 2023 ruling in *Adolph v. Uber*, however, Defendant is no longer arguing for dismissal of Plaintiff's non-individual PAGA claims. (See Reply at p. 2.)

Plaintiff does not oppose the motion to compel arbitration of her individual claims. (*See* Opp'n at p. 1, n. 1.) Plaintiff does oppose Defendant's motion to stay her non-individual claims.

Discussion

Defendant's unopposed motion to compel arbitration of Plaintiff's individual claims is granted. "Where

a plaintiff has brought a PAGA action comprising individual and non-individual claims, an order compelling arbitration of the individual claims does not strip the plaintiff of standing as an aggrieved employee to litigate claims on behalf of other employees under PAGA." (*Adolph v. Uber Techs., Inc.* (2023) 14 Cal.5th 1104, 532 P.3d 682, 686.) A trial court, however, "may exercise its discretion to stay the non-individual claims pending the outcome of the arbitration pursuant to section 1281.4 of the Code of Civil Procedure." (*Adolph*, 532 P.3d at p. 692.) "Following the arbitrator's decision, any party may petition the court to confirm or vacate the arbitration award under section 1285 of the Code of Civil Procedure." (*Ibid.*) The arbitrator's finding on Plaintiff's status as an "aggrieved employee" for PAGA purposes—if confirmed and reduced to a final judgment—will be binding. (*See ibid.*)

Plaintiff recognizes the Court's discretion to stay the non-individual claims but argues that any delay with prejudice the interests of the state—and the aggrieved employees—in enforcing the state's labor laws. Plaintiff also argues that witnesses may be more difficult to reach after the time arbitration will take.

The court grants Defendant's requests for judicial notice of court filings and rulings. They are immaterial to the Court's ruling on the MTC; however, the court does find that 23CV033934 and 23CV025341, both filed within Alameda County, are related despite the failure to file notice of related case pursuant to the California Rules of Court, Rule 3.300. 23CV033934 will therefore be reassigned to Dept. 22 to follow the older case of 23CV025341. Dept. 22 will determine whether or not the remaining non-individual, repre-

sentative PAGA claims will be stayed. The motion to stay will be continued per the below for that purpose.

Order

Defendant's motion to compel arbitration of Plaintiff's individual PAGA claims is GRANTED. The motion to stay Plaintiff's remaining non-individual, representative PAGA claims is CONTINUED to be heard in Dept. 22 on 9/26/23 at 2:00 PM.

Clerk is directed to serve copies of this order, with proof of service, to counsel and to self-represented parties of record.

The Court orders counsel to obtain a copy of this order from the eCourt portal.

/s/ Tara Desautels
Judge

Dated: 08/23/2023

RINCON COMPLAINT
(MAY 22, 2023)

Carolyn H. Cottrell (SBN 166977)
Ori Edelstein (SBN 268145)
Philippe M. Gaudard (SBN 331744)
SCHNEIDER WALLACE
COTTRELL KONECKY LLP
2000 Powell Street, Suite 1400
Emeryville, California 94608
Telephone: (415) 421-7100
Facsimile: (415) 421-7105
ccottrell@schneiderwallace.com
oedelstein@schneiderwallace.com
pgaudard@schneiderwallace.com
Attorneys for Plaintiff, on behalf of the State of California and Aggrieved Employees

SUPERIOR COURT OF CALIFORNIA
COUNTY OF ALAMEDA

WENDY RINCON on behalf of the State of California and Aggrieved Employees,

Plaintiff,

v. Case No. 23CV033934

VITAMIN SHOPPE INDUSTRIES, LLC; and DOES 1 through 100, inclusive,

Defendant(s).

COMPLAINT FOR PENALTIES PURSUANT TO SECTIONS 2699(A) AND (F) OF THE CALIFORNIA LABOR CODE PRIVATE ATTORNEYS GENERAL ACT

DEMAND FOR JURY TRIAL

Plaintiff Wendy Rincon ("Plaintiff"), on behalf of the State of California and Aggrieved Employees, complains and alleges as follows:

INTRODUCTION

1. Plaintiff brings this enforcement action against Vitamin Shoppe Industries, LLC ("Defendant"), on behalf of the State of California and the Aggrieved Employees to collect statutory penalties as a result of Defendant's systematic violations of California labor law with respect to Defendant's non-exempt, hourly workers employed as store managers, assistant man-

agers, and keyholders in the State of California ("Aggrieved Employees").

2. Plaintiff and Aggrieved Employees are current and former non-exempt, hourly workers who have worked for Defendant in California.[1]

3. This action stems from Defendant's policies and practices of: (1) failing to compensate Plaintiff and Aggrieved Employees for all hours worked; (2) failing to pay Plaintiff and Aggrieved Employees minimum wage for all hours worked; (3) failing to pay Plaintiff and Aggrieved Employees overtime wages; (4) failing to authorize and permit Plaintiff and Aggrieved Employees to take meal periods to which they are entitled by law, and failing to pay premium compensation for missed meal periods; (5) failing to authorize and permit Plaintiff and Aggrieved Employees to take rest periods to which they are entitled by law, and failing to pay premium compensation for missed rest periods; (6) failing to provide Plaintiff and Aggrieved Employees true and accurate itemized wage statements; (7) failing to reimburse Plaintiff and Aggrieved Employees for necessary business expenses; and (8) failing to timely pay Plaintiff and Aggrieved Employees full wages during employment and upon separation from employment.

4. Plaintiff, on behalf of the State of California, seeks to recover penalties and reasonable attorneys' fees for these violations pursuant to Sections 2699(a)

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[1] Although Plaintiff is a former employee, the Aggrieved Employees include current and former employees. For ease of discussion, the allegations herein are made in the present tense.

and (f) of the California Labor Code Private Attorneys General Act ("PAGA").

PARTIES

5. Plaintiff is an individual over the age of eighteen, and at all times mentioned in this Complaint was employed by Defendant as a resident of the State of California.

6. Plaintiff was employed by Defendant as a health enthusiast from approximately August 2020 to January 2021, as a key holder from approximately February 2021 to October 2021, and as an assistant manager from approximately November 2021 to August 2022. Plaintiff worked for Defendant in Irvine, California.

7. The Aggrieved Employees are all current and former non-exempt, hourly employees who work for Defendant as health enthusiasts, sales associates, key holders, store managers, assistant managers, and other employees with similar job duties in the State of California.

8. Plaintiff is informed, believes, and thereon alleges that Vitamin Shoppe Industries, LLC is a New York limited liability corporation headquartered in Secaucus, New Jersey. Vitamin Shoppe is registered to do business in California, does business in California and employs and employed hourly, non-exempt employees, including Plaintiff and Aggrieved Employees in California.

9. Defendant employs and/or employed Plaintiff and Aggrieved Employees because Defendant, directly or indirectly, controls the employment terms, pay prac-

tices, timekeeping practices, and daily work of Plaintiff and Aggrieved Employees.

10. Plaintiff is informed, believes, and thereon alleges that each and every one of the acts and omissions alleged herein were performed by, and/or attributable to, Defendant, and that said acts and failures to act were within the course and scope of said agency, employment and/or direction and control.

11. At all material times, Defendant has done business under the laws of California, has had places of business in California, including in this County, and has employed Aggrieved Employees in this County and elsewhere throughout California. Defendant is a "person" as defined in Cal. Lab. Code § 18 and an "employer" as that term is used in the Labor Code, the IWC Wage Orders regulating wages, hours, and working conditions.

JURISDICTION AND VENUE

12. Venue is proper in this County pursuant to Cal. Code Civ. Proc. §§ 393(a) and/or 395.5. Defendant conducts business and employs Aggrieved Employees in this County, and therefore the liability and the cause or some part of the cause arose in this County.

13. This Court has jurisdiction over Plaintiff's claims for penalties pursuant to the PAGA. The Court also has jurisdiction over Defendant because it is authorized to do business in the State of California, and because Defendant does in fact do business and employ workers in the State of California.

FACTUAL ALLEGATIONS

14. Plaintiff worked for Defendant as a health enthusiast from approximately August 2020 to January 2021, as a key holder from approximately February 2021 to October 2021, and as an assistant manager from approximately November 2021 to August 2022. Plaintiff worked for Defendant in Irvine, California. Plaintiff's primary duties as a health enthusiast included but were not limited to stocking shelves with inventory, helping customers in-store, working the store telephone, and checking out customers at the register. When Plaintiff worked as a key holder and assistant manager, her primary duties included but were not limited to coordinating and supervising team members, opening and closing the store, receiving shipments, accepting and organizing inventory, reviewing sales records and metrics, and assisting and checking out customers. Plaintiff was at all times classified as an hourly, non-exempt employee and was paid hourly rates between approximately $13.50 to $18.68. Although Plaintiff's shifts varied in length, when Plaintiff worked as a health enthusiast, she was usually scheduled to work eight or nine hours per shift, five shifts per week, for a total of approximately 40 to 45 hours per week. As a key holder and assistant manager, Plaintiff was usually scheduled to work eight to ten hours per shift, five shifts per week, for a total of approximately 40 to 50 hours or more per week.

15. Defendant employs and has employed hundreds, if not thousands, of hourly, non-exempt workers similar to Plaintiff in California, including but not limited to health enthusiasts, sales associates, key holders, store managers, assistant managers, and other employees with similar job duties.

16. Defendant employs Aggrieved Employees in a similar manner throughout California, including in this County, and Aggrieved Employees perform work materially similar to Plaintiff. Defendant pays Aggrieved Employees, including Plaintiff, on an hourly rate basis.

17. Plaintiff is informed, believes, and thereon alleges that the policies and practices of Defendant has at all relevant times been similar for Plaintiff and Aggrieved Employees, regardless of facility or location in California.

18. Aggrieved Employees are required to follow and abide by common work, time, and pay policies and procedures in the performance of their jobs and duties.

19. At the end of each pay period, Aggrieved Employees receive wages from Defendant that are determined by common systems and methods that Defendant select and control.

20. Defendant regularly fails to provide Plaintiff and Aggrieved Employees compliant meal and rest periods. Defendant's policies, practices, and procedures require Plaintiff and Aggrieved Employees to routinely skip their meal and rest periods, yet do not provide them with requisite premium payments for missed meal and rest periods.

21. Plaintiff and Aggrieved Employees are routinely denied compliant meal periods for at least three reasons: (1) Defendant does not provide an adequate number of staff so that Plaintiff and Aggrieved Employees can get relief from their duties to take meal periods; (2) Defendant requires Plaintiff and Aggrieved Employees to remain on duty during their meal periods and to be available to assist customers in the store or help other coworkers; and (3) Plaintiff and

Aggrieved Employees are often too busy with customers to have time to take bona fide meal periods.

22. Further, since the beginning of the COVID-19 pandemic, Defendant has had issues keeping its stores properly staffed, causing Defendant to send employees to the most understaffed stores and resulting in many stores, like Plaintiff's, to have just enough staff members on duty to remain open. Due to this shifting of employees, Defendant's stores often have the minimal number of staff on duty and Plaintiff and Aggrieved Employees cannot get the relief they need to take compliant meal and rest periods.

23. When Plaintiff and Aggrieved Employees do attempt to take a meal period, they are not provided duty-free, uninterrupted, and timely thirty-minute meal periods during which they should be completely relieved of any duty, by the end of the fifth hour of work. When Plaintiff did take a meal period, it was interrupted, untimely, and/or short, *i.e.*, she was constantly pulled from the break room to assist with associates and customers, their meal periods were after their fifth hour of work, or they were less than 30 minutes.

24. Additionally, Plaintiff and Aggrieved Employees are routinely denied compliant rest periods. Much like the reasons that Plaintiff and Aggrieved Employees are denied compliant meal periods, Plaintiff and Aggrieved Employees do not receive compliant rest periods because they are too busy to find the time for rest periods, Defendant is too understaffed for Plaintiff and Aggrieved Employees to be relieved from their duties, and Defendant requires that Plaintiff and Aggrieved Employees cut their rest periods short to assist with customers and sales associates.

25. Plaintiff is informed, believes, and thereon alleges that Defendant utilizes and applies these meal and rest period policies and practices across all Defendant's facilities throughout California.

26. Further, Defendant maintains a policy and/or practice of failing to properly compensate Plaintiff and the Aggrieved Employees for work related tasks performed while "off-the-clock." As mentioned above, Defendant requires Plaintiff and Aggrieved Employees to clock out for thirty-minute meal periods even though they are on-call, and they continue to work. This policy results in Plaintiff and Aggrieved Employees working up to 30 minutes of unpaid, off-the-clock work every shift.

27. Further, Defendant also requires Plaintiff and Aggrieved Employees to perform uncompensated and unrecorded work outside of their scheduled shifts. Defendant requires Aggrieved Employees to clock out at the end of their shifts but still requires that they complete their assignments for the day, assist with customers, and/or remain available to receive, take inventory of, and organize incoming shipments of products. For example, Plaintiff estimates she spent up to four hours per week receiving and organizing shipments of inventory after clocking out at the end of her shift.

28. Moreover, Plaintiff and Aggrieved Employees work up to approximately one additional hour off-the-clock per week which they spend calling and texting with supervisors and coworkers about various work-related issues that arise at Defendant's stores concerning customers, vendors, and/or scheduling. However, Defendant refuses to record this time as hours worked, and therefore does not compensate Plaintiff and

Aggrieved Employees for all hours worked. Additionally, Defendant requires Plaintiff and Aggrieved Employees to complete further miscellaneous tasks from home on their days off while off-the-clock, such as, *inter alia*, drafting employee performance reviews.

29. Throughout the relevant time period, Plaintiff and Aggrieved Employees have been denied proper payment for all hours worked, including overtime and minimum wages, for time spent working off-the-clock. For instance, Plaintiff and Aggrieved Employees do not receive overtime compensation for time spent working off-the-clock outside of their scheduled shifts and during noncompliant meal periods when the hours worked are in excess of eight hours per day and/or 40 hours per week. However, Defendant fails to pay for any of this work time, including the required overtime premiums, in violation of California laws.

30. As a result of these policies and/or practices, Plaintiff and Aggrieved Employees are denied compensation for all hours worked, including minimum wages and overtime.

31. Plaintiff is informed, believes, and thereon alleges that Defendant utilizes the same or substantially similar timekeeping mechanisms throughout all its facilities in California.

32. Defendant's common course of wage-and-hour abuse includes routinely failing to maintain true and accurate records of the hours worked by Plaintiff and Aggrieved Employees. Defendant fails to record hours that Plaintiff and Aggrieved Employees work off-the-clock, as well as non-compliant meal and rest periods.

33. Defendant's failure to record all hours worked results in Defendant's failure to provide Plaintiff and

Aggrieved Employees with itemized and accurate wage statement as required by California law. Plaintiff and Aggrieved Employees receive wage statements that do not reflect all hours worked, including overtime and premiums for non-compliant meal and rest periods.

34. Defendant also fails to provide Plaintiff and Aggrieved Employees reimbursement for all necessary expenditures or losses incurred by Plaintiff and Aggrieved Employees in direct consequence of the discharge of their duties, or as a result of their obedience to the directions of Defendant. Defendant regularly requires Plaintiff and Aggrieved Employees to pay out-of-pocket expenses necessary to perform their daily work assignments. For example, Plaintiff was required to use her personal cell phone to look up ingredients and products for customers. Plaintiff also used her personal home computer and home internet data to sign off on and finalize staff reviews.

35. Further, Defendant does not provide Plaintiff and Aggrieved Employees who are former employees of Defendant with full and timely payment of all wages owed upon separation from employment. At the time their employment ends, Plaintiff and Aggrieved Employees are owed wages for all time worked, overtime, and missed meal and rest periods, whether their termination was voluntary or involuntary; yet Defendant has failed to provide Plaintiff and Aggrieved Employees with such payments within the required time period. As a result, and pursuant to California laws, Defendant is subject to waiting time penalties.

36. Plaintiff is informed, believes, and thereon alleges that Defendant is well aware that its policies and practices deprive Plaintiff and Aggrieved Employees of substantial pay for all time worked, including over-

time compensation and minimum wages, and that its workers do not receive legally compliant meal and rest periods. Thus, Defendant's denial of wages, compliant meal and rest periods, and premium payments is and/or was deliberate and willful.

37. Plaintiff is informed, believes, and thereon alleges that Defendant's unlawful conduct has been widespread, repeated, and consistent as to Aggrieved Employees throughout California.

38. Defendant's conduct was willful, carried out in bad faith, and triggers significant civil penalties in an amount to be determined at trial.

FIRST CAUSE OF ACTION

Penalties Pursuant to Cal. Lab. Code § 2699(f) for Violations of Cal. Lab. Code §§ 204, 1194, and 1198 (Failure to Pay for all Hours Worked)

39. Plaintiff realleges and incorporates the foregoing paragraphs as though fully set forth herein.

40. Plaintiff alleges that Defendant willfully engages in a policy and practice of not compensating Aggrieved Employees for all hours worked or spent in Defendant's control. Defendant regularly requires Aggrieved Employees to perform uncompensated off-the-clock work.

41. Cal. Lab. Code § 200 defines wages as "all amounts for labor performed employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis or method of calculation."

42. Cal. Lab. Code § 204(a) provides that "[a]ll wages . . . earned by any person in any employment

are due and payable twice during each calendar month. . . . "

43. Cal. Lab. Code § 1194(a) provides as follows:

> Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorneys' fees, and costs of suit.

44. IWC Wage Orders, 7-2001(2)(G), defines hours worked 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."

45. Cal. Lab. Code § 1198 makes it unlawful for employers to employ employees under conditions that violate the Wage Order.

46. In violation of California law, Defendant knowingly and willfully refuses to provide Aggrieved Employees with compensation for all time worked. Defendant intentionally and willfully requires Plaintiff and Aggrieved Employees to perform tasks while off-the-clock outside of their scheduled shifts and to remain on duty during their scheduled shifts, including during rest periods and while clocked out for meal periods. Plaintiff and Aggrieved Employees are regularly required to work off-the-clock, time which Defendant neither records nor compensates them for. Defendant does not account for this off-the-clock work when compensating Plaintiff and Aggrieved Employees, result-

ing in widespread under-compensation of Aggrieved Employees.

47. Therefore, Defendant committed, and continues to commit, the acts alleged herein knowingly and willfully, and in conscious disregard of the Aggrieved Employees' rights.

48. Cal. Lab. Code § 2699(f)(2) provides a civil penalty of one hundred dollars ($100) for each Aggrieved Employee per pay period for the initial violation of a Labor Code provision that does not provide a civil penalty if, at the time of the violation, the employer employs one or more employees. Cal. Lab. Code § 2699(f)(2) provides a civil penalty of two hundred dollars ($200) for each Aggrieved Employee per pay period for each subsequent violation of a Labor Code provision that does not provide a civil penalty if, at the time of the violation, the employer employs one or more employees.

49. Plaintiff seeks to recover civil penalties from Defendant for its failure to pay for all hours worked in violation of Cal. Lab. Code §§ 204, 1194, and 1198 throughout California on behalf of themselves, the State of California, and other Aggrieved Employees pursuant to Cal. Lab. Code § 2699(f).

50. Plaintiff also seeks civil penalties pursuant to Cal. Lab. Code § 2699(a) for the unlawful conduct alleged herein, on behalf of the State, other Aggrieved Employees, and herself, for Defendant's violations of Labor Code provisions including but not limited to Cal. Lab. Code § 558(a).

51. On January 5, 2023, Plaintiff gave written notice to the LWDA and to Defendant of her intent to pursue civil penalties for Defendant's failure to pay

for all hours worked in violation of Cal. Lab. Code §§ 204, 558(a), and 1194 pursuant to the PAGA. Over 65 days have passed since Plaintiff provided the LWDA with notice, yet, Plaintiff has not received a response from the LWDA or Defendant. Accordingly, pursuant to Cal. Lab. Code § 2699.3(2)(a), Plaintiff has satisfied the administrative prerequisites to commence a PAGA action.

52.Defendant is liable to Plaintiff, the State of California, and Aggrieved Employees for the civil penalties set forth in this Complaint, with interest thereon. Plaintiff is also entitled to an award of attorneys' fees and costs as set forth below.

53. Wherefore, Plaintiff requests relief as hereinafter provided.

SECOND CAUSE OF ACTION

Penalties Pursuant to Cal. Lab. Code § 2699(f) for Violations of Cal. Lab. Code §§ 1182.12, 1194, and 1197 (Failure to Pay Minimum Wage)

54. Plaintiff realleges and incorporates the foregoing paragraphs as though fully set forth herein.

55. During the applicable statutory period, Cal. Lab. Code §§ 1182.12 and 1197, and the Minimum Wage Order were in full force and effect, and required that Defendant's hourly employee receive the minimum wage for all hours worked irrespective of whether nominally paid on a piece rate, or any other basis, at the rate of fourteen dollars ($14.00) commencing January 1, 2021; and at the rate of fifteen dollars ($15.00) commencing January 1, 2022.

56. IWC Wage Order 7-2001(2)(G) defines hours worked 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."

57. Cal. Lab. Code § 1194 provides as follows:

> Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorneys' fees, and costs of suit.

58.Cal. Lab. Code § 1198 makes it unlawful for employers to employ employees under conditions that violate the Wage Orders.

59. Because of Defendant's policies and practices with regard to compensating Plaintiff and Aggrieved Employees, Defendant has failed to pay minimum wages as required by law. For instance, Plaintiff and the Aggrieved Employees frequently perform work off-the-clock and during noncompliant meal periods for which they are compensated below the statutory minimum wage, as determined by the IWC.

60. Cal. Lab. Code § 2699(f)(2) provides a civil penalty of one hundred dollars ($100) for each Aggrieved Employee per pay period for the initial violation of a Labor Code provision that does not provide a civil penalty if, at the time of the violation, the employer employs one or more employees. Cal. Lab. Code § 2699 (f)(2) provides a civil penalty of two hundred dollars

($200) for each Aggrieved Employee per pay period for each subsequent violation of a Labor Code provision that does not provide a civil penalty if, at the time of the violation, the employer employs one or more employees.

61. Plaintiff seeks to recover civil penalties from Defendant for its failure to pay minimum wages in violation of Cal. Lab. Code §§ 1182.12, 1194, and 1197 throughout California on behalf of herself, the State of California, and other Aggrieved Employees pursuant to Cal. Lab. Code § 2699(f).

62. On January 5, 2023, Plaintiff gave written notice to the LWDA and to Defendant of her intent to pursue civil penalties for Defendant's failure to pay minimum wages in violation of Cal. Lab. Code §§ 558(a) and 1194 pursuant to the PAGA. Over 65 days have passed since Plaintiff provided the LWDA with notice, yet, Plaintiff has not received a response from the LWDA or Defendant. Accordingly, pursuant to Cal. Lab. Code § 2699.3(2)(a), Plaintiff has satisfied the administrative prerequisites to commence a PAGA action.

63. Defendant is liable to Plaintiff, the State of California, and Aggrieved Employees for the civil penalties set forth in this Complaint, with interest thereon. Plaintiff is also entitled to an award of attorneys' fees and costs as set forth below.

64. Wherefore, Plaintiff requests relief as hereinafter provided.

THIRD CAUSE OF ACTION

Penalties Pursuant to Cal. Lab. Code § 2699(f) for Violations of Cal. Lab. Code §§ 510 and 1194 (Failure to Pay Overtime Wages)

65. Plaintiff realleges and incorporates the foregoing paragraphs as though fully set forth herein.

66. Defendant does not properly compensate Aggrieved Employees with appropriate overtime premiums, as required by California law. For instance, Plaintiff and Aggrieved Employees do not receive overtime compensation for time spent working off-the-clock outside of their scheduled shifts and during noncompliant meal periods when the hours worked are in excess of eight (8) hours per day and forty (40) hours per week.

67. Cal. Lab. Code § 510(a) provides as follows:

> Eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee.

68. Cal. Lab. Code § 1194(a) provides as follows:

> Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal

> overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorneys' fees, and costs of suit.

69. Cal. Lab. Code § 200 defines wages as "all amounts of labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis or other method of calculation." All such wages are subject to California's overtime requirements, including those set forth above.

70. Defendant's policies and practices of requiring Aggrieved Employees to perform work off-the-clock are unlawful and result in overtime violations. As a result of these unlawful policies and practices, Aggrieved Employees have worked overtime hours for Defendant without being paid overtime premiums in violation of the Labor Code, the applicable IWC Wage Orders, and other applicable law.

71. Defendant knowingly and willfully refuses to perform its obligations to compensate Aggrieved Employees for all premium wages for overtime work.

72. Cal. Lab. Code § 2699(f)(2) provides a civil penalty of one hundred dollars ($100) for each Aggrieved Employee per pay period for the initial violation of a Labor Code provision that does not provide a civil penalty if, at the time of the violation, the employer employs one or more employees. Cal. Lab. Code § 2699(f)(2) provides a civil penalty of two hundred dollars ($200) for each Aggrieved Employee per pay period for each subsequent violation of a Labor Code provision that

does not provide a civil penalty if, at the time of the violation, the employer employs one or more employees.

73. Plaintiff seeks to recover civil penalties from Defendant for its failure to pay overtime wages in violation of Cal. Lab. Code §§ 510 and 1194 and the applicable wage orders throughout California on behalf of herself, the State of California, and other Aggrieved Employees pursuant to Cal. Lab. Code § 2699(f).

74. On January 5, 2023, Plaintiff gave written notice to the LWDA and to Defendant of her intent to pursue civil penalties for Defendant's failure to pay overtime wages in violation of Cal. Lab. Code §§ 510, 558(a), and 1194 pursuant to the PAGA. Over 65 days have passed since Plaintiff provided the LWDA with notice, yet, Plaintiff has not received a response from the LWDA or Defendant. Accordingly, pursuant to Cal. Lab. Code § 2699.3(2)(a), Plaintiff has satisfied the administrative prerequisites to commence a PAGA action.

75. Defendant is liable to Plaintiff, the State of California, and Aggrieved Employees for the civil penalties set forth in this Complaint, with interest thereon. Plaintiff is also entitled to an award of attorneys' fees and costs as set forth below.

76. Wherefore, Plaintiff requests relief as hereinafter provided.

FOURTH CAUSE OF ACTION

Penalties Pursuant to Cal. Lab. Code § 2699(f) for Violations of Cal. Lab. Code §§ 226.7 and 512 (Meal Periods)

77. Plaintiff realleges and incorporates the foregoing paragraphs as though fully set forth herein.

78. Cal. Lab. Code §§ 226.7 and 512 and the applicable Wage Orders requires Defendant to authorize and permit meal periods to its employees. Cal. Lab. Code §§ 226.7 and 512 and the applicable Wage Orders prohibit employers from employing an employee for more than five hours without a meal period of not less than thirty minutes. Unless the employee is relieved of all duty during the thirty-minute meal period, the employee is considered "on duty" and the meal period is counted as time worked under the applicable Wage Orders.

79. Cal. Lab. Code § 512(a) provides:

> An employer shall not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer shall not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 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.

80. Under Cal. Lab. Code § 226.7(b) and the applicable Wage Orders, an employer who fails to authorize, permit, and/or make available a required meal period must, as compensation, pay the employee one hour of pay at the employee's regular rate of compensation for each workday that the meal period was not authorized and permitted.

81. Despite these requirements, Defendant knowingly and willfully refuses to perform its obligation to authorize and permit and/or make available to Plaintiff and Aggrieved Employees the ability to take the off-duty meal periods to which they are entitled.

82. Plaintiff and Aggrieved Employees are routinely denied compliant meal periods for at least three reasons: (1) Defendant does not provide an adequate number of staff so that Plaintiff and Aggrieved Employees can get relief from their duties to take meal periods; (2) Defendant requires Plaintiff and Aggrieved Employees to remain on duty and available to assist customers in the store or help other coworkers; and (3) Plaintiff and Aggrieved Employees are often too busy with customers to have time to take bona fide meal periods. As such, Defendant does not provide Plaintiff and Aggrieved Employees with duty-free, uninterrupted, and timely thirty-minute meal periods during which Plaintiff and Aggrieved Employees should be completely relieved of any duty, by the end of the fifth hour of work. Plaintiff is informed, believes, and thereon allege that this policy and practice applies to all Aggrieved Employees.

83. Defendant also fails to pay Plaintiff and Aggrieved Employees one hour of pay for each off-duty meal period that they are denied. Defendant's conduct described herein violates Cal. Lab. Code §§ 226.7 and 512.

84. On information and belief, Defendant's conduct has been substantially the same at all relevant times and to all Aggrieved Employees throughout the state of California.

85. Cal. Lab. Code § 2699(f)(2) provides a civil penalty of one hundred dollars ($100) for each Aggrieved Employee per pay period for the initial violation of a Labor Code provision that does not provide a civil penalty if, at the time of the violation, the employer employs one or more employees. Cal. Lab. Code § 2699(f)(2) provides a civil penalty of two hundred dollars ($200) for each Aggrieved Employee per pay period for each subsequent violation of a Labor Code provision that does not provide a civil penalty if, at the time of the violation, the employer employs one or more employees.

86. Plaintiff seeks to recover civil penalties from Defendant for its violations of the meal period requirements of Cal. Lab. Code §§ 226.7 and 512 throughout California on behalf of herself, the State of California, and other Aggrieved Employees pursuant to Cal. Lab. Code § 2699(f).

87. Plaintiff also seeks civil penalties pursuant to Cal. Lab. Code § 2699(f) for the unlawful conduct alleged herein, on behalf of the State, other Aggrieved Employees, and herself, for Defendant's violations of Labor Code provisions including but not limited to Cal. Lab. Code §§ 512.

88. On January 5, 2023, Plaintiff gave written notice to the Labor and Workforce Development Agency ("LWDA") and to Defendant of her intent to pursue civil penalties for Defendant's violations of the meal period requirements of Cal. Lab. Code §§ 226.7, 512, and 558 pursuant to the PAGA. Over 65 days have passed since Plaintiff provided the LWDA with notice, yet, Plaintiff has not received a response from the LWDA or Defendant. Accordingly, pursuant to Cal. Lab. Code § 2699.3(2)(a), Plaintiff has satisfied the administrative prerequisites to commence a PAGA action.

89. Defendant is liable to Plaintiff, the State of California, and Aggrieved Employees for the civil penalties set forth in this Complaint, with interest thereon. Plaintiff is also entitled to an award of attorneys' fees and costs as set forth below.

90. Wherefore, Plaintiff requests relief as hereinafter provided.

FIFTH CAUSE OF ACTION

Penalties Pursuant to Cal. Lab. Code § 2699(f) for Violations of Cal. Lab. Code § 226.7 (Rest Periods)

91. Plaintiff realleges and incorporates the foregoing paragraphs as though fully set forth herein.

92. Cal. Lab. Code § 226.7 and the applicable Wage Orders requires Defendant to authorize and permit rest periods to their employees. Cal. Lab. Code § 226.7 and the applicable Wage Orders require employers to authorize and permit employees to take ten minutes of net rest time per four hours or major fraction thereof of work, and to pay employees their full wages

during those rest periods. Unless the employee is relieved of all duty during the ten-minute rest period, the employee is considered "on duty" and the rest period is counted as time worked under the applicable Wage Orders.

93. Under Cal. Lab. Code § 226.7(b) and the applicable Wage Orders, an employer must pay an employee denied a required rest period one hour of pay at the employee's regular rate of compensation for each workday that the rest period was nor authorized and permitted and/or not made available.

94. Despite these requirements, Defendant knowingly and willfully refuses to perform its obligation to authorize and permit and/or make available to Plaintiff and Aggrieved Employees the ability to take the off-duty rest periods to which they are entitled. Much like the reasons that Plaintiff and Aggrieved Employees are denied compliant meal periods, Plaintiff and Aggrieved Employees do not receive compliant rest periods because they are too busy to find the time for rest periods, Defendant is too understaffed for Plaintiff and Aggrieved Employees to be relieved from their duties, and Defendant requires that Plaintiff and Aggrieved Employees cut their rest periods short to assist with customers and coworkers.

95. As a result of Defendant's policies and practices, Plaintiff and Aggrieved Employees are routinely denied the opportunity to take legally compliant rest periods. Plaintiff is informed, believes, and thereon alleges that this policy and practice applies to all Aggrieved Employees.

96. Defendant also fails to pay Plaintiff and Aggrieved Employees one hour of pay for each off-duty

rest period that they are denied. Defendant's conduct described herein violates Cal. Lab. Code § 226.7.

97. On information and belief, Defendant's conduct has been substantially the same at all relevant times for all Aggrieved Employees throughout the state of California.

98. Cal. Lab. § 2699(f)(2) provides a civil penalty of one hundred dollars ($100) for each Aggrieved Employee per pay period for the initial violation of a Labor Code provision that does not provide a civil penalty if, at the time of the violation, the employer employs one or more employees. Cal. Lab. Code § 2699 (f)(2) provides a civil penalty of two hundred dollars ($200) for each Aggrieved Employee per pay period for each subsequent violation of a Labor Code provision that does not provide a civil penalty if, at the time of the violation, the employer employs one or more employees.

99. Plaintiff seeks to recover civil penalties from Defendant for its violations of the rest period requirements of Cal. Lab. Code § 226.7 throughout California on behalf of herself, the State of California, and other Aggrieved Employees pursuant to Cal. Lab. Code § 2699(f).

100. Plaintiff also seeks civil penalties pursuant to Cal. Lab. Code § 2699(a) for the unlawful conduct alleged herein, on behalf of the State, other Aggrieved Employees, and herself, for Defendant's violations of Labor Code provisions including but not limited to Cal. Lab. Code § 558(a).

101. On January 5, 2023, Plaintiff gave written notice to the Labor and Workforce Development Agency ("LWDA") and to Defendant of her intent to

pursue civil penalties for Defendant's violations of the meal period and rest period requirements of Cal. Lab. Code §§ 226.7 and 558(a) pursuant to the PAGA. Over 65 days have passed since Plaintiff provided the LWDA with notice, yet, Plaintiff has not received a response from the LWDA or Defendant. Accordingly, pursuant to Cal. Lab. Code § 2699.3(2)(a), Plaintiff has satisfied the administrative prerequisites to commence a PAGA action.

102. Defendant is liable to Plaintiff, the State of California, and Aggrieved Employees for the civil penalties set forth in this Complaint, with interest thereon. Plaintiff is also entitled to an award of attorneys' fees and costs as set forth below.

103. Wherefore, Plaintiff requests relief as hereinafter provided.

SIXTH CAUSE OF ACTION

Penalties Pursuant to Cal. Lab. Code § 2699(a) for Violations of Cal. Lab. Code § 226 (Accurate, Itemized Wage Statements)

104. Plaintiff realleges and incorporates the foregoing paragraphs as though fully set forth herein.

105. Defendant does not provide Plaintiff and the Aggrieved Employees with accurate itemized wage statements as required by California law, as a result of the meal and rest period, off-the-clock work, and overtime violations set forth above, and Defendant's failure to provide premium pay for the missed meal and rest periods.

106. Cal. Lab. Code § 226(a) provides:

An employer, semimonthly or at the time of each payment of wages, shall furnish to his or her employee, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately if wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except as provided in subdivision (j), (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, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (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 . . . The deductions made from payment of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement and the record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California.

107. The IWC Wage Orders also establish this requirement. (*See* IWC Wage Order 7-2001).

108. Cal. Lab. Code § 226(e)(1) provides:

> An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damage or fifty dollars ($50) for the initial pay period in which a violation occurs and one hundred dollars ($100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars ($4,000), and is entitled to an award of costs and reasonable attorney's fees.

109. Due to the failure to pay one hour of premium pay to Plaintiff and the Aggrieved Employees for each missed or noncompliant meal or rest period, along with the off-the-clock work, and overtime violations, the wage statements Defendant provides its employees, including the Aggrieved Employees, do not reflect the actual gross wages earned, actual net wages earned, actual hours worked, or the appropriate applicable hourly rates. Accordingly, Defendant has knowingly and willfully failed to provide timely, accurate itemized wage statements to Plaintiff and the Aggrieved Employees in accordance with Cal. Lab. Code § 226 and the IWC Wage Orders.

110. On information and belief, Defendant's conduct has been substantially the same at all relevant times throughout the state of California.

111. Cal. Lab. Code § 2699(a) permits an Aggrieved Employee to recover any civil penalty to be

assessed and collected by the LWDA for a violation of the Labor Code on behalf of herself and other current or former employees pursuant to the procedures set forth in Cal. Lab. Code § 2699.3. Cal. Lab. Code § 2699 (a) provides:

> Notwithstanding any other provision of law, any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies or employees, for a violation of this code, may, as an alternative, be recovered through a civil action brought by an Aggrieved Employee on behalf of himself or herself and other current or former employees.

112. Plaintiff seeks to recover civil penalties from Defendant pursuant to Cal. Lab. Code § 2699(a) for each failure by Defendant, alleged above, to provide Plaintiff and Aggrieved Employees an accurate, itemized wage statement in compliance with Cal. Lab. Code § 226(a) in the amounts established by Cal. Lab. Code § 226(e). Plaintiff seeks such penalties as an alternative to the penalties available under Cal. Lab. Code § 226(e), as prayed for herein.

113. Plaintiff also seeks civil penalties pursuant to Cal. Lab. Code § 2699(a) for each failure by Defendant, alleged above, to provide Plaintiff and Aggrieved Employees an accurate, itemized wage statement in compliance with Cal. Lab. Code § 226(a) in the amounts established by Cal. Lab. Code § 226.3. In addition, Plaintiff seeks penalties in the amount established by Cal. Lab. Code § 226(e)(1).

114. On January 5, 2023, Plaintiff gave written notice to the LWDA and to Defendant of her intent to pursue civil penalties for Defendant's failure to provide accurate, itemized wage statements in violation of Cal. Lab. Code §§ 226 and 558(a) pursuant to the PAGA. Over 65 days have passed since Plaintiff provided the LWDA with notice, yet, Plaintiff has not received a response from the LWDA or Defendant. Accordingly, pursuant to Cal. Lab. Code § 2699.3(2)(a), Plaintiff has satisfied the administrative prerequisites to commence a PAGA action.

115. Defendant is liable to Plaintiff, the State of California, and Aggrieved Employees for the civil penalties set forth in this Complaint, with interest thereon. Plaintiff is also entitled to an award of attorneys' fees and costs as set forth below.

116. Wherefore, Plaintiff requests relief as hereinafter provided.

SEVENTH CAUSE OF ACTION

Penalties Pursuant to Cal. Lab. Code § 2699(f) for Violations of Cal. Lab. Code § 2802 (Business Expenditures)

117. Plaintiff realleges and incorporates the foregoing paragraphs as though fully set forth herein.

118. Defendant fails to reimburse Plaintiff and Aggrieved Employees for all business expenses incurred while on the job. Defendant requires Plaintiff and Aggrieved Employees use their personal cellphone to look up information on ingredients and products for customers and use their personal computers and home internet data to finalize staff reviews and schedules.

However, Defendant does not reimburse their workers for these expenditures.

119. Cal. Lab. Code § 2802(a) provides as follows:

> An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.

120. Cal. Lab. Code § 2699(f)(2) provides a civil penalty of one hundred dollars ($100) for each Aggrieved Employee per pay period for the initial violation of a Labor Code provision that does not provide a civil penalty if, at the time of the violation, the employer employs one or more employees. Cal. Lab. Code § 2699 (f)(2) provides a civil penalty of two hundred dollars ($200) for each Aggrieved Employee per pay period for each subsequent violation of a Labor Code provision that does not provide a civil penalty if, at the time of the violation, the employer employs one or more employees.

121. Plaintiff seeks to recover civil penalties from Defendant for its failure to reimburse necessary business expenses in violation of Cal. Lab. Code § 2802 and the applicable wage orders throughout California on behalf of the State of California and other Aggrieved Employees pursuant to Cal. Lab. Code § 2699(f).

122. On January 5, 2023, Plaintiff gave written notice to the LWDA and to Defendant of her intent to

pursue civil penalties for Defendant's violations of Cal. Lab. Code § 2802 pursuant to the PAGA. Over 65 days have passed since Plaintiff provided the LWDA with notice, yet, Plaintiff has not received a response from the LWDA or Defendant. Accordingly, pursuant to Cal. Lab. Code § 2699.3(2)(a), Plaintiff has satisfied the administrative prerequisites to commence a PAGA action.

123. Defendant is liable to the State of California and Aggrieved Employees for the civil penalties set forth in this Complaint, with interest thereon. Plaintiff is also entitled to an award of attorneys' fees and costs as set forth below.

124. Wherefore, Plaintiff requests relief as hereinafter provided.

EIGHTH CAUSE OF ACTION

Penalties Pursuant to Cal. Lab. Code § 2699(a) for Violations of Cal. Lab. Code §§ 201-203 (Waiting Time Penalties)

125. Plaintiff realleges and incorporates the foregoing paragraphs as though fully set forth herein.

126. Defendant does not provide Plaintiff and Aggrieved Employees with their full wages when due under California law after their employment with Defendant ends, as a result of the meal and rest period, off-the-clock work, and overtime violations set forth above and Defendant's failure to provide premium pay for the missed meal and rest periods.

127. Cal. Lab. Code § 201 provides:

> If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.

128. Cal. Lab. Code § 202 provides:

> If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 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.

129. Cal. Lab. Code § 203 provides, in relevant part:

> If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.

130. Plaintiff and many Aggrieved Employees have left their employment with Defendant during the statutory period, at which time Defendant owed them unpaid wages for premium pay for missed or non-compliant meal and rest periods.

131. Defendant willfully refused and continue to refuse to pay Plaintiff and the Aggrieved Employees all the wages that are due and owing them, in the form

of minimum wages, overtime wages, meal and rest period premium pay, and other wages due and owing, upon the end of their employment. As a result of Defendant's actions, Plaintiff and the Aggrieved Employees have suffered and continue to suffer substantial losses, including lost earnings, and interest.

132. Defendant's willful failure to pay Plaintiff and the Aggrieved Employees the wages due and owing them constitutes a violation of Cal. Lab. Code §§ 201-203. In addition, § 203 provides that an employee's wages will continue as a penalty up to thirty days from the time the wages were due. Plaintiff seeks to recover PAGA penalties, costs, and attorneys' fees pursuant to this section.

133. On information and belief, Defendant's conduct has been substantially the same at all relevant times throughout the state of California.

134. Cal. Lab. Code § 2699(a) permits an Aggrieved Employee to recover any civil penalty to be assessed and collected by the LWDA for a violation of the Labor Code on behalf of himself or herself and other current or former employees pursuant to the procedures set forth in Cal. Lab. Code § 2699.3. Cal. Lab. Code § 2699(a) provides:

> Notwithstanding any other provision of law, any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies or employees, for a violation of this code, may, as an alternative, be recovered through a civil action brought by an Aggrieved Employee on behalf of

himself or herself and other current or former employees.

135. Plaintiff seeks civil penalties pursuant to Cal. Lab. Code § 2699(a) for each failure by Defendant, as alleged above, to timely pay all wages owed to Plaintiff and Aggrieved Employees in compliance with Cal. Lab. Code §§ 201-202 in the amounts established by Cal. Lab. Code § 203. Plaintiff seeks such penalties as an alternative to the penalties available under Cal. Lab. Code § 203, as prayed for herein.

136. Plaintiff also seeks civil penalties pursuant to Cal. Lab. Code § 2699(a) for the unlawful conduct alleged herein, on behalf of the State, other Aggrieved Employees, and herself, for Defendant's violations of Labor Code provisions including but not limited to Cal. Lab. Code §§ 256 and 558(a).

137. On January 5, 2023, Plaintiff gave written notice to the LWDA and to Defendant of her intent to pursue civil penalties for Defendant's failure to pay wages when due after the end employment with Defendant in violation of Cal. Lab. Code §§ 201-203 and 558(a) pursuant to the PAGA. Over 65 days have passed since Plaintiff provided the LWDA with notice, yet, Plaintiff has not received a response from the LWDA or Defendant. Accordingly, pursuant to Cal. Lab. Code § 2699.3(2)(a), Plaintiff has satisfied the administrative prerequisites to commence a PAGA action.

138. Defendant is liable to Plaintiff, the State of California, and Aggrieved Employees for the civil penalties set forth in this Complaint, with interest thereon. Plaintiff is also entitled to an award of attorneys' fees and costs as set forth below.

139. Wherefore, Plaintiff requests relief as hereinafter provided.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief as follows:

1. For the Court to declare, adjudge, and decree that Defendant have violated the California Labor Code as alleged herein;
2. For an order awarding the State of California, Plaintiff, and Aggrieved Employees civil penalties provided under the PAGA;
3. For interest as provided by applicable law;
4. For an award of reasonable attorneys' fees as provided by the Cal. Lab. Code § 2699(g)(1); Cal. Code Civ. Proc. § 1021.5; and/or any other applicable law;
5. For all costs of suit; and
6. For such other and further relief as this Court deems just and proper.

Respectfully Submitted,

/s/ Carolyn H. Cottrell
Ori Edelstein
Philippe M. Gaudard
SCHNEIDER WALLACE
COTTRELL KONECKY LLP

Attorneys for Plaintiff, on behalf of the State of California and Aggrieved Employees

Date: May 22, 2023

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial on all claims and issues for which Plaintiff is entitled to a jury.

Respectfully Submitted,

/s/ Carolyn H. Cottrell
Ori Edelstein
Philippe M. Gaudard
SCHNEIDER WALLACE
COTTRELL KONECKY LLP

Attorneys for Plaintiff, on behalf of the State of California and Aggrieved Employees

Date: May 22, 2023

THE VITAMIN SHOPPE
DISPUTE RESOLUTION PROGRAM,
RULES OF DISPUTE RESOLUTION

Dispute Resolution Program
Rules of Dispute Resolution

Summary Description

It is our goal that your workplace disputes or claims be handled responsibly and on a prompt basis. In furtherance of this goal, Vitamin Shoppe has established an internal Dispute Resolution Program. This program has two steps:

Step 1. In Step 1, you may choose to take advantage of our Open Door policy and Complaint Procedures to solve problems and disputes internally, through dialog with your supervisor, manager, human resources representative or our confidential EthicsPoint Hotline (866-293- 3369). Regardless of whether you exercise this Step 1 right, if your problem is not resolved to your satisfaction, and you wish to pursue the dispute, the dispute must be resolved pursuant to Step 2.

Step 2. In Step 2, the Covered Claim is submitted to a neutral arbitrator who will rule on the merits of your Covered Claim. However, once a Notice of Intent

to Arbitrate is filed but before you proceed to arbitration, either you or The Vitamin Shoppe may refer the dispute to nonbinding mediation. Nonbinding mediation is an attempt by the parties to resolve their dispute with the aid of a neutral third party not employed by The Vitamin Shoppe. If nonbinding mediation does not resolve the dispute or if that option is not selected by either party, the arbitrator will resolve the dispute. Any decision issued by the arbitrator is final and binding on both you and The Vitamin Shoppe.

The goal of the Dispute Resolution Program is always to resolve workplace disputes or claims on a fair and prompt basis. The Dispute Resolution Program does not change any substantive rights, but simply moves the venue for the dispute out of the courtroom and into arbitration. The Vitamin Shoppe believes that the Dispute Resolution Program will benefit everyone alike by encouraging prompt, fair and cost-effective solutions to workplace issues.

Scope of the Dispute Resolution Program

The Dispute Resolution Program covers all Vitamin Shoppe Health Enthusiasts.

These Rules of Dispute Resolution govern procedures for the resolution and arbitration of all workplace disputes or claims covered under the Dispute Resolution Program (including any covered claims that are based on events prior to the rollout of this Program). This is a mutual agreement to arbitrate Covered Claims (as defined below). The Company and you agree that the procedures provided in these Rules will be the sole method used to resolve any Covered Claim as of the Effective Date of the Rules, regardless of when the dispute or claim arose. The Company and

you agree to accept an arbitrator's award as the final, binding and exclusive determination of all Covered Claims. These Rules do not preclude any employee from filing a charge with a state, local or federal administrative agency such as the National Labor Relations Board or the Equal Employment Opportunity Commission. Employment or continued employment after the Effective Date as well as the mutuality of this Program constitutes consent to be bound by the Dispute Resolution Program by both The Vitamin Shoppe and the Health Enthusiast, both during and after termination of employment.

The Dispute Resolution Program is an agreement to arbitrate pursuant to the Federal Arbitration Act, 9 U.S.C. Sections 1–14, or if that Act is held to be inapplicable for any reason, the arbitration law in the state of New York will apply. The parties acknowledge that the Company is engaged in transactions involving interstate commerce.

NO COVERED CLAIM MAY BE INITIATED OR MAINTAINED ON A CLASS, COLLECTIVE OR REPRESENTATIVE ACTION BASIS EITHER IN COURT OR UNDER THESE RULES, INCLUDING IN ARBITRATION. ANY COVERED CLAIM PURPORTING TO BE BROUGHT AS A CLASS ACTION, COLLECTIVE ACTION OR REPRESENTATIVE ACTION WILL BE DECIDED UNDER THESE RULES AS AN INDIVIDUAL CLAIM. THE EXCLUSIVE PROCEDURE FOR THE RESOULTION OF ALL CLAIMS THAT MAY OTHERWISE BE BROUGHT ON A CLASS, COLLECTIVE OR REPRESENTATIVE ACTION BASIS, WHETHER PARTICIPATION IS ON AN OPT-IN OR OPT-OUT BASIS, IS THROUGH THESE RULES, INCLUDING FINAL AND BINDING

ARBITRATION, ON AN INDIVIDUAL BASIS. A PERSON COVERED BY THESE RULES MAY NOT PARTICIPATE AS A CLASS OR COLLECTIVE ACTION REPRESENTATIVE OR A CLASS, COLLECTIVE OR REPRESENTATIVE ACTION MEMBER OR BE ENTITLED TO A RECOVERY FROM A CLASS, COLLECTIVE OR REPRESENTATIVE ACTION. ANY ISSUE CONCERNING THE VALIDITY OF THIS CLASS ACTION, COLLECTIVE ACTION AND REPRESENTATIVE ACTION WAIVER MUST BE DECIDED BY A COURT, AND AN ARBITRATOR DOES NOT HAVE AUTHORITY TO CONSIDER THE ISSUE OF THE VALIDITY OF THIS WAIVER. IF FOR ANY REASON THIS CLASS, COLLECTIVE AND REPRESENTATIVE ACTION WAIVER (OR ANY PART) IS FOUND TO BE UNENFORCEABLE, THE CLASS, COLLECTIVE OR REPRESENTATIVE CLAIM MAY ONLY BE HEARD IN COURT AND MAY NOT BE ARBITRATED UNDER THESE RULES. AN ARBITRATOR APPOINTED UNDER THESE RULES SHALL NOT CONDUCT A CLASS, OR COLLECTIVE OR REPRESENTATIVE ACTION ARBITRATION, SHALL NOT CONSOLIDATE CLAIMS AND SHALL NOT ALLOW YOU TO SERVE AS A REPRESENTATIVE OF OTHERS IN AN ARBITRATION CONDUCTED UNDER THESE RULES.

If any court of competent jurisdiction declares that any part of the Dispute Resolution Program, including these Rules, is invalid, illegal or unenforceable (other than as noted for the class action, collective action and representative action waiver above), such declaration will not affect the legality, validity or enforceability of the remaining parts, and each provision

of the Dispute Resolution Program will be valid, legal and enforceable to the fullest extent permitted by law.

Nothing in these Rules changes or in any manner modifies the parties' employment relationship of employment-at-will; that is, the parties can each end the relationship at any time for any reason with or without cause. The Arbitrator has no authority to alter the at- will nature of your employment.

Nothing in these Rules shall prevent either party from seeking injunctive relief in aid of arbitration from any court of competent jurisdiction in aid of arbitration or to maintain the status quo pending arbitration such as to prevent violation of contractual non-compete or non-solicitation agreements, or the use or disclosure of trade secrets or confidential information in advance of the arbitration.

The Vitamin Shoppe may from time to time modify or discontinue the Dispute Resolution Program by giving covered employees ninety (90) calendar days notice; however, any such modification or rescission shall be applied prospectively only. An employee shall complete the processing of any dispute pending at the time of an announced change, under the terms of the procedure as it existed when the dispute was initially submitted to the Dispute Resolution Program.

What is a covered claim?

Arbitration applies to any "Covered Claim" whether arising before or after the Effective Date of the Rules. A Covered Claim is any claim asserting the violation or infringement of a legally protected right, whether based on statutory or common law, brought by an existing or former employee or job applicant, arising

out of or in any way relating to the Health Enthusiast's employment, the terms or conditions of employment, or an application for employment, including the denial of employment, unless specifically excluded as noted in "What is Not a Covered Claim" below. Covered Claims include:

- Discrimination or harassment on the basis of race, sex, religion, national origin, age, disability or other unlawful basis (for example, in some jurisdictions protected categories include sexual orientation, familial status, etc.).
- Retaliation for complaining about discrimination or harassment.
- Violations of any common law or constitutional provision, federal, state, county, municipal or other governmental statute, ordinance, regulation or public policy relating to workplace health and safety, voting, state service letters, wages, commissions, bonuses, minimum wage and overtime, pay days, holiday pay, vacation pay, sick pay, severance/ separation pay, payment at termination.
- Violations of any common law or other constitutional provision, federal, state, county, municipal or other governmental statute, ordinance, regulation or public policy. The following list reflects examples of some, but not all such laws. This list is not intended to be all inclusive but simply representative: Consolidated Omnibus Budget Reconciliation Act (COBRA), Davis Bacon Act, Drug Free Workplace Act of 1988, Electronic Commu-

nications Privacy Act of 1986, Employee Polygraph Protection Act of 1988, Fair Credit Reporting Act, Fair Labor Standards Act, Family and Medical Leave Act of 1993, Federal Omnibus Crime Control and Safe Streets Act of 1968, The Hate Crimes Prevention Act of 1999, The Occupational Safety and Health Act, Omnibus Transportation Employee Testing Act of 1991, Privacy Act of 1993, Portal to Portal Act, The Taft-Hartley Act, Veterans Reemployment Rights Act, Worker Adjustment and Retraining Notification Act (WARN).

- Personal injuries except those covered by workers' compensation or those covered by an employee welfare benefit plan, state disability insurance law, pension plan or retirement plan which are subject to the Employee Retirement Income Security Act of 1974 (ERISA) other than claims for breach of fiduciary duty (which shall be arbitrable).
- Retaliation for filing a protected claim for benefits (such as workers' compensation) or exercising your protected rights under any statute.
- Claims to remedy violation of contractual non-compete or non-solicitation agreements, or the use or disclosure of trade secrets or confidential information, except that these Rules do not prevent either party from seeking immediate and temporary injunctive relief in court in connection with violation of contractual non-compete or non-solicitation

agreements or the use or disclosure of trade secrets or confidential information.

- Claims for benefits under the Executive Severance Policy.
- Breach of any express or implied contract, breach of a covenant of good faith and fair dealing, and claims of wrongful termination or constructive discharge.
- Exceptions to the employment-at-will doctrine under applicable law.
- Breach of any common law duty of loyalty, or its equivalent.
- Any common law claim, including but not limited to defamation, tortious interference, intentional infliction of emotional distress or "whistleblowing".

What is not a covered claim?

- Claims for workers' compensation benefits, except for claims of retaliation.
- Claims for benefits under a written employee pension or welfare benefit plan, including claims covered under ERISA and state disability insurance laws.
- Claims for benefits or eligibility under any stock option incentive plan, equity grant or agreement.
- Claims for unemployment compensation benefits.
- Claims which, by federal law may not be subject to mandatory binding pre-dispute arbi-

tration, such as certain claims under the Dodd-Frank Wall Street Reform Act

- Matters within the jurisdiction of the National Labor Relations Board.
- Representative claims under California's Private Attorneys General Act of 2004, California Labor Code Section 2698, et seq., but only to the extent federal law prohibits enforcement of the representative action waiver (as set forth elsewhere in this document) with respect to these types of claims.

Dispute Resolution Procedures

Any Covered Claim between the Company and you must be resolved through the procedures described in the following steps.

Step 1: Use the Open Door Policy and/or the Complaint Procedures

If you have a workplace dispute or claim arising out of or in any way related with your employment or application for employment with the Company, you may, but do not have to, begin the dispute resolution process by reviewing the dispute with your supervisor, manager, human resources representative or our confidential EhticsPoint Hotline (866-293-3369). The Vitamin Shoppe believes it is helpful for Health Enthusiasts to initiate the discussion of all workplace issues through the Open Door Policy. Most workplace issues are usually resolved in this manner. Applicants should contact the human resources representative for the location where they applied.

Step 2: Arbitration and Optional Non-Binding Mediation

If the dispute is not resolved through Step 1 or Step 1 is not utilized and the claim is a Covered Claim, you must initiate arbitration in order to pursue the matter further. You initiate arbitration by following the process below:

1. Complete the Notice of Intent to Arbitrate Form (a copy of the form is attached to these Rules). Alternatively, you may include the following information in a letter:

- The nature of the dispute, the date the disputed act occurred and a summary of the factual and general legal basis for the claim.
- Your name, work location and contact information.
- The remedy sought, or the desired resolution of the dispute.
- Your signature.

The nature of the claim must be specified so that all parties, including the arbitrator, have a clear understanding of the dispute.

2. Submit one copy of the Notice of Intent to Arbitrate Form to the American Arbitration Association (the "AAA") along with a check made payable to the AAA in the amount of $150 (your share of the arbitration service cost) to the appropriate case management center of the AAA certified or registered mail, return receipt requested. You may file electronically at https://apps.adr.org/webfile/ by submitting a copy of the Notice of Intent to Arbitrate and payment. Any ques-

tions regarding filing may be directed to AAA by contacting 877-495-4185 or casefiling@adr.org. The Company will pay to the AAA the balance of the arbitration fee. If your state law does not allow for payment of a fee to access arbitration, the fee will be waived or, if you mistakenly send a fee payment, it will be refunded. The appropriate case management center of the AAA will be the case management center for the state in which you are located.

3. Send one copy of the Notice of Intent to Arbitrate Form to the General Counsel. Notice sent to any other location will not be effective until the date it is received by the General Counsel. The address is: General Counsel, Vitamin Shoppe Industries Inc., 300 Harmon Meadow Blvd, Secaucus, New Jersey 07094; fax 201.552.6464.

4. Keep a copy of the Notice of Intent to Arbitrate Form.

The filing of the Notice of Intent to Arbitrate initiates the arbitration process. You have the responsibility to initiate the process if you are bringing any Covered Claim against the Company. If you do not timely initiate Step 2, Notice of Intent to Arbitrate, as defined herein, you will forfeit the right to pursue the Covered Claim. If your dispute with the Company is not a Covered Claim, you will be informed by the Company of this fact and the dispute will not proceed to arbitration.

The Company must initiate the arbitration process if it has a Covered Claim against a Health Enthusiast. Covered Claims that the Company may have against you must be submitted to the AAA and the Health Enthusiast on a Notice of Intent to Arbitrate within

the time period allowed by law applicable to the Covered Claim. If the Company initiates the arbitration, the Company will pay the entire arbitration fee.

Deadline for Filing Notice of Intent to Arbitrate

If you have pursued a claim with the EEOC or an equivalent state agency, and you are not bared by applicable law from prosecuting your claim through arbitration after the agency has dismissed it, you must file your Notice of Intent to Arbitrate within ninety (90) days after the date on the EEOC "Notice of Right-to-Sue" letter or within the applicable statute of limitations for claims filed with any equivalent state agency. The Notice of Intent to Arbitrate must be received within the time period allowed by law applicable to the Covered Claim at issue, just as the requirement applies if you were proceeding in court. This is commonly referred to as a statute of limitations and is the period of time that is provided by law for bringing a claim. If you do not timely initiate Step 2, Notice of Intent to Arbitrate, the right to pursue the Covered Claim and have the dispute heard by an arbitrator will be lost.

Optional Mediation

Once a Notice of Intent to Arbitrate is filed, but prior to the scheduling of the date for the arbitration hearing, either you or the Company may elect to submit the dispute to nonbinding mediation. If the Company initiates mediation, the Company will pay the entire cost of the mediation. Mediation is required only if you or the Company decides to pursue mediation. Mediation does not affect either party's right to arbitrate unless both parties agree to resolve the issue

on a mutually agreeable basis at the mediation. The mediator does not have authority to decide the dispute. The mediator's role is to assist the parties to see if a mutually acceptable resolution may be found prior to proceeding to binding arbitration. If you, at your sole discretion, initiate mediation, you will be responsible for one-half of the cost of mediation as set out in the Mediation Procedures below. Notice of a desire to refer the dispute to mediation must be delivered in writing by the party initiating the mediation to the other party and to the AAA. After the date for the arbitration hearing is set, the dispute may be referred to mediation only if both parties agree to mediate and upon the allocation of the cost of such mediation.

Nonbinding mediation is an attempt by the parties to resolve their dispute with the aid of a neutral third party not employed by the Company. The mediator's role is advisory. The mediator may offer suggestions and question the parties, but resolution of the dispute rests with the parties themselves. Nonbinding mediation is a process that seeks to find common ground for the voluntary settlement of covered claims. Proceedings at the nonbinding mediation level are confidential and private.

The mediator may meet with the parties jointly or separately in order to facilitate settlement. While there is some variation among the methods of different mediators, most mediations begin with a joint meeting of both parties and the mediator. The mediator normally gives each party an opportunity to explain the dispute, including the reasons that support each party's position. The joint session is followed by private, confidential caucuses between the mediator and each party.

If you have questions about the mediation process or about the potential cost of mediation, please contact the AAA.

Mediation and Arbitration Procedures Mediation Procedures

If the parties agree to non-binding mediation, it will be conducted pursuant to the Employment Arbitration Rules and Mediation Procedures of AAA then in effect, which may be found <here>.

Arbitration Procedures

Arbitration will also be conducted pursuant to AAA's Employment Arbitration Rules, which may be found <here>, as modified by these Rules, including the following:

1. The Company will pay the arbitrator's fees and the arbitration filing and administrative fees, less the Health Enthusiast's initial payment for the applicable filing fee;

2. The arbitrator will be selected in accordance with AAA rules;

3. The arbitrator shall have the authority to issue an award or partial award without conducting a hearing on the grounds that there is no claim on which relief can be granted or that there is no genuine issue of material fact to resolve at a hearing, consistent with Rules 12 and 56 of the Federal Rules of Civil Procedure ("FRCP");

4. Each party will be entitled to only one interrogatory limited to the identification of potential witnesses, in a form consistent with Rule 33 of the FRCP;

5. Each party will be entitled to only 25 requests for production of documents, in a form consistent with Rule 34 of the FRCP;

6. Each party will be entitled to a maximum of two (2) eight-hour days of depositions of witnesses in a form consistent with Rule 30 of the FRCP;

7. The arbitrator will decide all disputes related to discovery and to the agreed limits on discovery and may allow additional discovery upon a showing of substantial need by either party or upon a showing of an inability to pursue or defend certain claims;

8. The arbitrator must issue an award in writing, setting forth in summary form the reasons for the arbitrator's determination; and

9. The arbitrator's authority shall be limited to deciding the case submitted by the party bringing the arbitration. Therefore, no decision by any arbitrator shall serve as precedent in other arbitrations, except in a dispute between the same parties to preclude the same claim from being re-arbitrated.

Miscellaneous Procedural Matters

- The arbitrator must interpret these Rules to secure a speedy and cost effective resolution of the arbitration. The arbitrator has no authority to decide upon the validity of the class action, collective or representative action waiver.
- If there is a difference between these Rules and the AAA Employment Arbitration Rules, these Rules will apply.

- Procedures not addressed by these Rules or the AAA Employment Arbitration Rules will be resolved by agreement of the parties. If the parties are unable to agree, the procedural issue will be determined by the arbitrator. The arbitrator cannot, however, deviate from the requirements of these Rules.
- If there are conflicts between the requirements of the Dispute Resolution Program and other Company publications or statements by Company representatives, the provisions of these Rules are controlling. These Rules constitute the sole agreement between the Company and its Health Enthusiasts concerning the requirements of the Dispute Resolution Program and, except as provided in the Scope of Dispute Resolution section above, may not be modified by written or oral statements of any Company representative.

Judicial Proceedings and Exclusion of Liability

- Neither the AAA nor any arbitrator is a necessary party in any judicial proceeding relating to the proceedings under these Rules.
- Neither the AAA nor any arbitrator will be liable to any party for any act or omission in connection with any arbitration within the scope of these Rules.
- You and the Company will be deemed to have consented that judgment upon the arbitration award may be entered and enforced in any federal or state court having jurisdiction.

- Initiation of, participation in, or removal of a legal proceeding does not constitute waiver of the right or obligation to arbitrate under these Rules.

Enforcement

Any dispute concerning these Rules, whether as to applicability, meaning, enforceability, or any claim that all or part of the Rules is void or voidable (except any dispute regarding the validity of the class action, collective action or representative action waiver contained in these Rules), is subject to arbitration under these Rules. Either you or the Company may bring an action in court to compel arbitration, to enforce an arbitration award, or to dismiss any lawsuit seeking to resolve disputes that are covered by these Rules.

Definitions

"Effective Date" is the date announced by the Company as the effective date of the Rules.

"Health Enthusiast" or "you" means any employee, former employee, or applicant for employment, of the Company on or after the announced Effective Date.

The "parties" means both the Company and the employee as noted above.

The "Rules" means of these Dispute Resolution.

"Vitamin Shoppe" or the "Company" means Vitamin Shoppe, Inc. and all present and past subsidiaries, and affiliated companies, and their officers, directors, employees, managers, supervisors and all agents in their personal or official capacities.