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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SANTA CLARA**

AIDA CUKIC, individual, in her representative
capacity on behalf of the State of California and
fellow Aggrieved Employees,

Plaintiffs,

v.

THE NEIMAN MARCUS GROUP LLC, a
Delaware Limited Liability Company; and
DOES 1 through 50, Inclusive;

Defendants.

Case No. 25CV457630

REPRESENTATIVE ACTION
COMPLAINT FOR:

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

PLAINTIFF AIDA CUKIC ("Plaintiff") individual, in her representative capacity on behalf of the State of California and fellow current and former AGGRIEVED EMPLOYEES, acting as a private attorney general under the Labor Code Private Attorney General Action of 2004, § 2699, et seq. ("PAGA") only, alleges on information and belief, except for their own acts and knowledge which are based on personal knowledge, the following:

INTRODUCTION

1. PLAINTIFF brings this representative action pursuant to the Private Attorneys General Act of 2004, California Labor Code § 2698, *et seq.* ("PAGA") on behalf of other current and former aggrieved employees of DEFENDANT for engaging in a pattern and practice of wage and hour violations under the California Labor Code. Plaintiff seeks only to recover PAGA civil

1 penalties for himself, and on behalf of all current and former aggrieved employees that worked for
2 DEFENDANT. PLAINTIFF does not seek to recover anything other than penalties as
3 permitted by California Labor Code § 2699. To the extent that statutory violations are mentioned
4 for wage violations, PLAINTIFF does not seek underlying general and/or special damages for those
5 violations in this action, but simply the civil penalties permitted by California Labor Code § 2699.
6 Notwithstanding, PLAINTIFF is not abandoning his right to pursue his individual claims for, *inter*
7 *alia*, Defendant's alleged wage violations, and/or general or special damages arising from those
8 violations, and they fully intend to, at a future date, pursue claims for those individual claims and
9 damages.

10 2. Accordingly, PLAINTIFF seeks to obtain all applicable relief for DEFENDANT'S
11 violations under PAGA and solely for the relief as permitted by PAGA – that is, penalties and any
12 other relief the Court deems proper pursuant to the PAGA. Nothing in this complaint should be
13 construed as attempting to obtain any relief that would not be available in a PAGA-only action.

14 3. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANT
15 decreased its employment-related costs by systematically violating California wage and hour laws.

16 4. DEFENDANT's systematic pattern of wage and hour and IWC Wage Order
17 violations toward PLAINTIFF and other aggrieved employees in California include, *inter alia*:

- 18 a. Failure to provide compliant meal and rest periods;
- 19 b. Failure to allow employees to take duty-free, off-the-premises rest periods;
- 20 c. Failure to pay all minimum and regular wages;
- 21 d. Failure to pay all overtime and double time wages;
- 22 e. Failure to maintain true and accurate records;
- 23 f. Failure to provide accurate itemized wage statements;
- 24 g. Failure to reimburse employees for required business expenses;
- 25 h. Failure to pay overtime, double time, meal and rest period premiums, and sick
26 pay at the regular rate of pay;
- 27 i. Failure to timely pay wages due during, and upon termination of employment.

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5. PLAINTIFF brings this representative action against DEFENDANT on behalf of herself and all other aggrieved employees of DEFENDANT in California seeking all civil penalties and unpaid wages permitted pursuant to California Labor Code § 2699, *et seq.*

6. PLAINTIFF reserves the right to name additional representatives throughout the State of California.

THE PARTIES

7. Defendant THE NEIMAN MARCUS GROUP LLC (“DEFENDANT”) is a Delaware limited liability company that at all relevant times herein owns and operates luxury department stores in the County of Santa Clara, California.

8. Plaintiff was employed by DEFENDANT as a non-exempt employee from September 18, 2002 to October 19, 2024, paid in part on an hourly and commission basis, and entitled to the legally required meal and rest periods and payment of minimum wages, reimbursement for business expenses, and overtime wages due for all time worked.

9. PLAINTIFF brings this action in her representative capacity on behalf of the State of California and on behalf of all of DEFENDANT’s current and former non-exempt and/or sales persons and/or commission-based California employees (hereinafter “AGGRIEVED EMPLOYEES”) between November 20, 2023 and the present (“PAGA PERIOD”).

10. PLAINTIFF is an “AGGRIEVED EMPLOYEES” within the meaning of Labor Code § 2699(c) because they were employed by DEFENDANT during the PAGA PERIOD, and suffered one or more of the alleged Labor Code violations committed by DEFENDANT.

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

12. Each of the fictitiously named defendants participated in the acts alleged in this Complaint (“Complaint”). The true names and capacities of the defendants named as DOES 1 THROUGH 50, inclusive, are presently unknown to PLAINTIFF. PLAINTIFF will amend this Complaint, setting forth the true names and capacities of these fictitiously named defendants when their true names are ascertained. PLAINTIFF is informed and believes, and on that basis alleges,

1 that each of the fictitious defendants have participated in the acts alleged in this Complaint.

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

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

14 **JOINT EMPLOYER**

15 15. The Private Attorney General Act (“PAGA”), permits an aggrieved employee to
16 enforce any provision of the California Labor Code that provides for a civil penalty. (*Lab. Code* §
17 2699(a).)

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

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

26 18. Interpreting Sections 558 and 1197.1 of the Labor Code, California courts have held
27 that a corporate employer’s owners, officers and directors, are subject to civil penalties for the
28 employer’s failure to pay appropriate wages to its employees, and, since liability under either 558

1 or 1197.1 does not depend on a finding of an alter ego, no alter ego allegations or findings are
2 necessary. *Atempa v. Pedrazzani*, (2018) 27 Cal.App.5th 809, 818; *see generally Ochoa-Hernandez*
3 *v. Cjaders Foods, Inc.*, 2009 WL 1404694, at *4 (N.D. Cal. May 19, 2009); *Thurman v. Bayshore*
4 *Mgmt., Inc.* (2012) 203 Cal.App.4th 1112, 1145-1146.

5 19. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANT, and
6 each of them, are subject to civil penalties for their failure to pay PLAINTIFF and the aggrieved
7 employees the appropriate wages as complained of herein and proximately caused the complaints,
8 injuries, and damages alleged herein.

9 20. At all relevant times, each Defendant, whether named or fictitious, was the agent,
10 employee or other person acting on behalf of each other Defendant, and, in participating in the acts
11 alleged in this Complaint, acted within the scope of such agency or employment and ratified the
12 acts of the other.

13 21. Each Defendant, whether named or fictitious, exercised control over PLAINTIFF'S
14 wages, working hours, and/or working conditions.

15 22. Each Defendant, whether named or fictitious, acted in all respects pertinent to this
16 action as the agent of the other DEFENDANT, carried out a joint scheme, business plan or policy,
17 and the acts of each Defendant are legally attributable to the other DEFENDANT.

18 **JURISDICTION AND VENUE**

19 23. This Court has jurisdiction over this Action pursuant to California Code of Civil
20 Procedure, Section 410.10 and California Business & Professions Code, Section 17203. This Court
21 has jurisdiction over PLAINTIFFS' claims for civil penalties under the Private Attorney General
22 Act of 2004, California Labor Code §2698, *et seq.*

23 24. Venue is proper in this Court pursuant to California Code of Civil Procedure,
24 Sections 395 and 395.5, because PLAINTIFFS worked in this County for DEFENDANT, resides
25 in this County, and DEFENDANT (i) currently maintains and at all relevant times maintained
26 offices and facilities in this County and/or conducts substantial business in this County, and
27 (ii) committed the wrongful conduct herein alleged in this County against PLAINTIFF and the
28 AGGRIEVED EMPLOYEES.

THE CONDUCT

25. In violation of the applicable sections of the California Labor Code and the requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as a matter of company policy, practice and procedure, intentionally, knowingly and systematically failed to provide legally compliant meal and rest periods, failed to accurately compensate PLAINTIFF and the AGGRIEVED EMPLOYEES for missed meal and rest periods, failed to pay PLAINTIFF and the AGGRIEVED EMPLOYEES for all time worked, failed compensate PLAINTIFF for off-the-clock work, failed to pay PLAINTIFF and the AGGRIEVED EMPLOYEES overtime at the regular rate, failed to compensate PLAINTIFF and AGGRIEVED EMPLOYEES meal and rest premiums at the regular rate, failed to pay PLAINTIFFS and AGGRIEVED EMPLOYEES sick pay at the regular rate, and failed to issue to PLAINTIFF and the AGGRIEVED EMPLOYEES with accurate itemized wage statements showing, among other things, all applicable hourly rates in effect during the pay periods and the corresponding amount of time worked at each hourly rate. DEFENDANT's uniform policies and practices are intended to purposefully avoid the accurate and full payment for all time worked as required by California law which allows DEFENDANT to illegally profit and gain an unfair advantage over competitors who comply with the law. To the extent equitable tolling operates to toll claims by the AGGRIEVED EMPLOYEES against DEFENDANT, the PAGA PERIOD should be adjusted accordingly.

A. Meal Period Violations

26. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was required to pay PLAINTIFF and AGGRIEVED EMPLOYEES for all their time worked, meaning the time during which an employee is subject to the control of an employer, including all the time the employee is suffered or permitted to work. From time-to-time during the PAGA PERIOD, DEFENDANT required PLAINTIFF and AGGRIEVED EMPLOYEES to work without paying them for all the time they were under DEFENDANT's control. Specifically, as a result of PLAINTIFF'S demanding work requirements and DEFENDANT's understaffing, DEFENDANT required PLAINTIFF to work while clocked out during what was supposed to be PLAINTIFFS' off-duty meal break. PLAINTIFF was from time to time interrupted by work assignments while

1 clocked out for what should have been PLAINTIFF'S off-duty meal break. Indeed, there were
2 many days where PLAINTIFF did not even receive a partial lunch. As a result, PLAINTIFF and
3 AGGRIEVED EMPLOYEES forfeited minimum and overtime wages by regularly working
4 without their time being accurately recorded and without compensation at the applicable minimum
5 wage and overtime rates. DEFENDANT's uniform policy and practice not to pay PLAINTIFF and
6 AGGRIEVED EMPLOYEES for all time worked is evidenced by DEFENDANT'S business
7 records.

8 27. From time-to-time during the PAGA PERIOD, as a result of their rigorous work
9 schedules, being required to assist and advise customers, and DEFENDANT's inadequate staffing
10 practices, PLAINTIFF and AGGRIEVED EMPLOYEES were from time to time unable to take
11 thirty (30) minute off-duty meal breaks and were not fully relieved of duty for their meal periods.
12 PLAINTIFF and AGGRIEVED EMPLOYEES were required from time to time to perform work
13 as ordered by DEFENDANT for more than five (5) hours during some shifts without receiving a
14 meal break. Further, DEFENDANT from time to time failed to provide PLAINTIFF and
15 AGGRIEVED EMPLOYEES with a second off-duty meal period for some workdays in which
16 these employees were required by DEFENDANT to work ten (10) hours of work from time to time.
17 The nature of the work performed by PLAINTIFF and AGGRIEVED EMPLOYEES does not
18 qualify for limited and narrowly construed "on-duty" meal period exception. When they were
19 provided with meal periods, PLAINTIFF and AGGRIEVED EMPLOYEES were, from time to
20 time, required to remain on duty, on call, and required to maintain cordless communication devices
21 on them during meal periods. Further, PLAINTIFF and AGGRIEVED EMPLOYEES were
22 required to respond to communications received on said cordless communication devices during
23 what was supposed to be their duty-free meal periods. PLAINTIFF and AGGRIEVED
24 EMPLOYEES therefore forfeited meal breaks without additional compensation and in accordance
25 with DEFENDANT's strict corporate policy and practice.

26 **B. Rest Period Violations**

27 28. From time-to-time during the PAGA PERIOD, PLAINTIFF and AGGRIEVED
28 EMPLOYEES were also required from time to time to work in excess of four (4) hours without

1 being provided ten (10) minute rest periods as a result of their rigorous work schedule, being
2 required to assist and advise customers, and DEFENDANT's inadequate staffing. Further, for the
3 same reasons these employees were denied their first rest periods of at least ten (10) minutes for
4 some shifts worked of at least two (2) to four (4) hours from time to time, a first and second rest
5 period of at least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours
6 from time to time, and a first, second and third rest period of at least ten (10) minutes for some
7 shifts worked of ten (10) hours or more from time to time. When they were provided with rest
8 breaks, PLAINTIFF and other AGGRIEVED EMPLOYEES were, from time to time, required to
9 remain on duty, on call, and required to maintain cordless communication devices on them during
10 rest periods. Further, PLAINTIFF and AGGRIEVED EMPLOYEES were required to respond to
11 communications received on said cordless communication devices during what was supposed to be
12 their duty-free rest periods. PLAINTIFF and AGGRIEVED EMPLOYEES were also not provided
13 with one-hour wages *in lieu* thereof. As a result of their rigorous work schedules, being required
14 to assist and advise customers, and DEFENDANT's inadequate staffing, PLAINTIFF and
15 AGGRIEVED EMPLOYEES were from time to time denied their proper rest periods by
16 DEFENDANT and DEFENDANT's managers.

17 29. In addition, for those AGGRIEVED EMPLOYEES, including PLAINTIFF, who
18 were paid on a commission-based compensation plan, DEFENDANT failed to compensate
19 PLAINTIFF and AGGRIEVED EMPLOYEES for their rest periods as required by the applicable
20 Wage Order and Labor Code. DEFENDANT did not have a policy or practice which paid for off-
21 duty rest periods to PLAINTIFF and the AGGRIEVED EMPLOYEES. As a result,
22 DEFENDANT's failure to provide PLAINTIFF and the AGGRIEVED EMPLOYEES with all the
23 legally required paid rest periods is evidenced by DEFENDANT's business records.

24 **C. Unreimbursed Business Expenses**

25 30. DEFENDANT as a matter of corporate policy, practice, and procedure,
26 intentionally, knowingly, and systematically failed to reimburse and indemnify PLAINTIFF and
27 other AGGRIEVED EMPLOYEES for required business expenses they incurred in direct
28 consequence of discharging their duties on behalf of DEFENDANT. Under California Labor Code

1 Section 2802, employers are required to indemnify employees for all expenses incurred in the
2 course and scope of their employment. Cal. Lab. Code § 2802 expressly states that "an employer
3 shall indemnify his or her employee for all necessary expenditures or losses incurred by the
4 employee in direct consequence of the discharge of his or her duties, or of his or her obedience to
5 the directions of the employer, even though unlawful, unless the employee, at the time of obeying
6 the directions, believed them to be unlawful."

7 31. From time-to-time during the PAGA PERIOD, PLAINTIFF and other
8 AGGRIEVED EMPLOYEES were required by DEFENDANT to use their personal cell phones as
9 a result of and in furtherance of their job duties as employees for DEFENDANT. But for the use
10 of their own personal cell phones, PLAINTIFF and the AGGRIEVED EMPLOYEES could not
11 complete their essential job duties. Notwithstanding, DEFENDANT did not reimburse or
12 indemnify PLAINTIFF or AGGRIEVED EMPLOYEES for the cost associated with the use of their
13 personal cell phones for DEFENDANT's benefit. Specifically, PLAINTIFF and AGGRIEVED
14 EMPLOYEES were required by DEFENDANT to use their personal cell phones for work related
15 issues, including but not limited to, communications for work-related issues. As a result, in the
16 course of their employment with DEFENDANT, PLAINTIFF and the AGGRIEVED
17 EMPLOYEES incurred unreimbursed business expenses which included, but were not limited to,
18 costs related to the use of their personal cell phones, all on behalf of and for the benefit of
19 DEFENDANT.

20 **D. Wage Statement Violations**

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

1 33. From time to time during the PAGA PERIOD, when PLAINTIFF and other
2 AGGRIEVED EMPLOYEES missed meal and rest breaks, or were paid inaccurate missed meal
3 and rest period premiums, or were paid non-discretionary incentive and/or bonus compensation, or
4 were not paid for all hours worked, DEFENDANT also failed to provide PLAINTIFFS and other
5 AGGRIEVED EMPLOYEES with complete and accurate wage statements which failed to show,
6 among other things, the total hours worked and all applicable hourly rates in effect during the pay
7 period and the corresponding amount of time worked at each hourly rate, correct rates of pay for
8 penalty payments or missed meal and rest periods.

9 34. In addition to the violations described above, DEFENDANT, from time to time,
10 failed to provide PLAINTIFF and AGGRIEVED EMPLOYEES with wage statements that comply
11 with Cal. Lab. Code § 226. As a result, DEFENDANT issued PLAINTIFF and the other
12 AGGRIEVED EMPLOYEES with wage statements that violate Cal. Lab. Code § 226. Further,
13 DEFENDANT's violations are knowing and intentional, were not isolated or due to an
14 unintentional payroll error due to clerical or inadvertent mistake.

15 **E. Off-the-Clock Work Resulting in Minimum Wage and Overtime Violations**

16 35. During the PAGA PERIOD, from time-to-time DEFENDANT failed and continue
17 to fail to accurately pay PLAINTIFF and the other AGGRIEVED EMPLOYEES for all hours
18 worked. Specifically, DEFENDANT from time-to-time required PLAINTIFF and the
19 AGGRIEVED EMPLOYEES to perform off-the-clock work. Notwithstanding, from time-to-time
20 DEFENDANT failed to pay PLAINTIFF and other AGGRIEVED EMPLOYEES necessary wages
21 for performing work at DEFENDANT's direction, request, and benefit, while off-the clock.

22 36. During the PAGA PERIOD, from time-to-time DEFENDANT required
23 PLAINTIFF and AGGRIEVED EMPLOYEES to perform off-the-clock work, including but not
24 limited to, responding to communications from DEFENDANT's customers. Further, during the
25 PAGA PERIOD, DEFENDANT engaged in the practice of requiring PLAINTIFF and other
26 AGGRIEVED EMPLOYEES to perform work off the clock after clocking out in that
27 DEFENDANT, as a condition of employment, required these employees from time to time to wait
28 and submit to loss prevention inspections after clocking out at the end of each scheduled shift, and

1 if they left the store during off duty meal periods, for which DEFENDANT did not provide
2 compensation for the time spent waiting for and submitting to DEFENDANT's loss prevention
3 inspections off the clock. This resulted in PLAINTIFF and other AGGRIEVED EMPLOYEES to
4 have to work while off-the-clock.

5 37. DEFENDANT directed and directly benefited from the uncompensated off-the-
6 clock work performed by PLAINTIFF and the other AGGRIEVED EMPLOYEES.

7 38. DEFENDANT controlled the work schedules, duties, protocols, applications,
8 assignments and employment conditions of PLAINTIFF and the other AGGRIEVED
9 EMPLOYEES.

10 39. DEFENDANT were able to track the amount of time PLAINTIFF and the other
11 AGGRIEVED EMPLOYEES spent working; however, DEFENDANT failed to document, track,
12 or pay PLAINTIFF and the other AGGRIEVED EMPLOYEES all wages earned and owed for all
13 the work they performed, including off-the-clock work.

14 40. PLAINTIFF and the other AGGRIEVED EMPLOYEES were subject to the
15 requirements of the California Labor Code.

16 41. DEFENDANT's policies and practices deprived PLAINTIFF and the other
17 AGGRIEVED EMPLOYEES of all minimum, regular, overtime, and double time wages owed for
18 the off-the-clock work activities. Because PLAINTIFF and the other AGGRIEVED EMPLOYEES
19 typically worked over forty (40) hours in a workweek, and more than eight (8) hours per day,
20 DEFENDANT's policies and practices also deprived them of overtime pay.

21 42. DEFENDANT knew or should have known that PLAINTIFF and the AGGRIEVED
22 EMPLOYEES off-the-clock work was compensable under the law.

23 43. As a result, PLAINTIFF and the other AGGRIEVED EMPLOYEES forfeited wages
24 due them for all hours worked at DEFENDANT's direction, control and benefit for the time spent
25 assisting customers from home. DEFENDANT's uniform policy and practice to not pay
26 PLAINTIFF and the AGGRIEVED EMPLOYEES wages for all hours worked in accordance with
27 applicable law is evidenced by DEFENDANT's business records.

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1 **F. Regular Rate Violation – Overtime, Sick Pay and Meal and Rest Period**
2 **Premiums**

3 44. From time-to-time during the PAGA PERIOD, DEFENDANT failed and continue
4 to fail to accurately calculate and pay PLAINTIFF and the AGGRIEVED EMPLOYEES for their
5 overtime hours worked, meal and rest period premiums, and sick pay. As a result, PLAINTIFF and
6 the other AGGRIEVED EMPLOYEES forfeited wages due to them for working overtime without
7 compensation at the correct overtime, meal and rest period premiums, and sick pay rates.
8 DEFENDANT's uniform policy and practice not to pay the PLAINTIFF and the AGGRIEVED
9 EMPLOYEES the correct overtime rate for all overtime worked, meal and rest period premiums,
10 and sick pay in accordance with applicable law is evidenced by DEFENDANT's business records.

11 45. State law provides that employees must be paid overtime at one-and-one half times
12 their "regular rate of pay." PLAINTIFF and other AGGRIEVED EMPLOYEES were compensated
13 at an hourly rate commission.

14 46. The second component of PLAINTIFF'S and other AGGRIEVED EMPLOYEES
15 compensation was DEFENDANT's non-discretionary incentive program that paid PLAINTIFF and
16 other AGGRIEVED EMPLOYEES incentive wages based on their performance for
17 DEFENDANT. The non-discretionary bonus program provided all employees paid on an hourly
18 basis with bonus, and/or incentive compensation when the employees met the various performance
19 goals set by DEFENDANT. Further, DEFENDANT paid shift differentials to PLAINTIFF and
20 AGGRIEVED EMPLOYEES.

21 47. However, from time-to-time, when calculating the regular rate of pay, in those pay
22 periods where PLAINTIFF and the AGGRIEVED EMPLOYEES worked overtime, or were paid
23 meal and/or rest period premiums, and earned this non-discretionary bonus, incentive, or shift
24 differential DEFENDANT failed to accurately include the non-discretionary bonus compensation
25 and/or incentive and/or shift differential paid as part of the employees' "regular rate of pay" and/or
26 calculated all hours worked rather than just all non-overtime hours worked. Further, when
27 calculating the regular rate of pay in order to pay sick pay to PLAINTIFF and the AGGRIEVED
28 EMPLOYEES, DEFENDANT failed to include the incentive compensation and/or shift differential

1 as part of the employees' "regular rate of pay" for purposes of calculating sick pay. Management
2 and supervisors described the incentive/bonus program to potential and new employees as part of
3 the compensation package. As a matter of law, the incentive compensation and shift differentials
4 received by PLAINTIFF and other AGGRIEVED EMPLOYEES must be included in the "regular
5 rate of pay." The failure to do so has resulted in a systematic underpayment of overtime, meal and
6 rests period premiums, and sick pay to PLAINTIFF and other AGGRIEVED EMPLOYEES by
7 DEFENDANT.

8 48. As a matter of law, the incentive, commission, and shift differential compensation
9 received by PLAINTIFF and other AGGRIEVED EMPLOYEES must be included and correctly
10 calculated into the "regular rate of pay" for purposes of overtime compensation, meal and rest
11 period premiums, and sick pay. DEFENDANT's failure to do so has resulted in DEFENDANT's
12 systematic underpayment of overtime compensation, meal and rest period premiums, and sick pay
13 to PLAINTIFF and AGGRIEVED EMPLOYEES. Specifically, California Labor Code Section 246
14 mandates that paid sick time for non-employees shall be calculated in the same manner as the
15 regular rate of pay for the workweek in which the non-exempt employee uses paid sick time,
16 whether or not the employee actually works overtime in that workweek. DEFENDANT's conduct,
17 as articulated herein, by failing to include the incentive compensation and shift differentials as part
18 of the "regular rate of pay" for purposes of sick pay compensation was in violation of Cal. Lab.
19 Code § 246.

20 49. In violation of the applicable sections of the California Labor Code and the
21 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as a
22 matter of company policy, practice, and procedure, intentionally, and knowingly failed to
23 compensate PLAINTIFF and the AGGRIEVED EMPLOYEES at the correct rate of pay for all
24 overtime, meal and rest period premiums, and/or sick pay compensation. This uniform policy and
25 practice of DEFENDANT is intended to purposefully avoid the payment of the correct overtime,
26 meal and rest period premiums, and/or sick pay compensation as required by California law which
27 allowed DEFENDANT to illegally profit and gain an unfair advantage over competitors who

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1 complied with the law. To the extent equitable tolling operates to toll claims by the AGGRIEVED
2 EMPLOYEES against DEFENDANT, the PAGA PERIOD should be adjusted accordingly.

3 **FIRST CAUSE OF ACTION**

4 **For Civil Penalties Pursuant to Private Attorneys General Act ("PAGA")**

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

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

7 50. PLAINTIFF and the AGGRIEVED EMPLOYEES reallege and incorporate by this
8 reference, as though fully set forth herein, the prior paragraphs of this Complaint.

9 51. PAGA is a mechanism by which the State of California itself can enforce state labor
10 laws through the employee suing under the PAGA who do so as the proxy or agent of the state's
11 labor law enforcement agencies. An action to recover civil penalties under PAGA is fundamentally
12 a law enforcement action designed to protect the public and not to benefit private parties. The
13 purpose of the PAGA is not to recover damages or restitution, but to create a means of "deputizing"
14 citizens as private attorneys general to enforce the Labor Code. In enacting PAGA, the California
15 Legislature specified that "it was ... in the public interest to allow aggrieved employees, acting as
16 private attorneys general to recover civil penalties for Labor Code violations ..." Stats. 2003, ch.
17 906, § 1. Accordingly, PAGA claims cannot be subject to arbitration.

18 52. PLAINTIFF brings this Representative Action on behalf of the State of California
19 with respect to herself and all other current and former AGGRIEVED EMPLOYEES as defined
20 hereinabove.

21 53. At all relevant times, for the reasons described herein, and others, PLAINTIFF and
22 the AGGRIEVED EMPLOYEES were aggrieved employees of DEFENDANT within the meaning
23 of Labor Code Section 2699(c).

24 54. Labor Code Sections 2699(a) and (g) authorize an AGGRIEVED EMPLOYEE, like
25 PLAINTIFF, on behalf of herself and other current or former employees, to bring a civil action to
26 recover civil penalties pursuant to the procedures specified in Labor Code Section 2699.3.

27 55. PLAINTIFF complied with the procedures for bringing suit specified in Labor Code
28 Section 2699.3. By certified letter, return receipt requested, dated November 20, 2024, Plaintiff

1 gave written notice to the Labor and Workforce Development Agency (“LWDA”) via electronic
2 submission and to DEFENDANT of the specific provisions of the Labor Code alleged to have been
3 violated, including the facts and theories to support the alleged violations. See **Exhibit #1**, attached
4 hereto and incorporated by this reference herein.

5 56. As of the filing date of the original Complaint and the operative Complaint, more
6 than sixty-five (65) days after serving the LWDA with notice of DEFENDANT’s violations, the
7 LWDA has not provided any notice by certified mail of its intent to investigate DEFENDANT’s
8 alleged violations as mandated by Labor Code Section 2699.3(a)(2)(A). Accordingly, pursuant to
9 Labor Code Section 2699.3(a)(2)A, PLAINTIFF may commence and is authorized to pursue this
10 cause of action.

11 57. Pursuant to Labor Code Sections 2699(a) and (f), PLAINTIFF and the
12 AGGRIEVED EMPLOYEES are entitled to civil penalties for DEFENDANT’s violations of Labor
13 Code Section 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.2, 226.3, 226.7, 246, 510, 512,
14 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1199, 2802, and 2804 in the following
15 amounts:

16 j. For violation of Labor Code Sections 201, 202, 203, and 204, civil penalties per
17 Labor Code Section 2699(f)(2);

18 k. For violations of Labor Code Section 226(a), civil penalties per Labor Code Section
19 226.3;

20 l. For violations of Labor Code Sections 204, civil penalties per Labor Code Section
21 210;

22 m. For violations of Labor Code Sections 226.7, 510 and 512, civil penalties per Labor
23 Code Section 558;

24 n. For violations of Labor Code Section 2269(a), civil penalties per Labor Code
25 Section 226.3;

26 o. For violations of Labor Code Sections 1194, 1197, 1198 and 1199, civil penalties
27 per the California Labor Code.

28 ///

1 p. For all provisions of the Labor Code for which civil penalty is not specifically
2 provided, Labor Code § 2699(f) imposes upon Defendant the recoverable civil penalties.

3 58. PLAINTIFF and the AGGRIEVED EMPLOYEES are entitled to an award of
4 reasonable attorney's fees and costs in connection with their claims for civil penalties pursuant to
5 Labor Code Section 2699(g)(1).

6 **PRAYER FOR RELIEF**

7 WHEREFORE, PLAINTIFF pray for judgment against DEFENDANT as follows:

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

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

12 (c) For such other relief as the Court deems just and proper.
13

14 Dated: January 27, 2025

Respectfully Submitted,

15 **BARVIE LAW, APC**

16
17 By: Nicole Barvie
18 Nicole Barvie, Esq.
19 Attorney for PLAINTIFF
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EXHIBIT 1

Barvié

— LAW —

November 20, 2024

VIA ONLINE FILING TO LWDA and CERTIFIED MAIL TO DEFENDANT

Labor & Workforce Development Agency Attn. PAGA Administrator 1515 Clay Street, Ste. 801 Oakland, CA 94612 PAGA@dir.ca.gov https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html <i>Via Online Electronic Submission</i>	The Neiman Marcus Group, LLC. <i>Attn: Legal Dept.</i> 1618 Main Street, Dallas, TX 75201 <i>Via Certified Mail</i>
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Re: Notice of Violation of California Labor Code Sections 2698 et seq.

Dear Sir/Madam:

Our offices represent Plaintiff Aida Cukic (“Plaintiff”), and other aggrieved employees in a proposed lawsuit against The Neiman Marcus Group, LLC. a Delaware Corporation (“Defendant”). Plaintiff has been employed by Defendant in California beginning September 2002 to October 2024 as a non-exempt employee, entitled to payment of all wages and the legally required meal and rest breaks, as well as certain non-discretionary incentive payments. Defendant, however, unlawfully failed to record and pay Plaintiff and other aggrieved employees for all of their time worked, and for all of their meal breaks and rest breaks. Defendant also failed to correctly calculate Plaintiff’s regular rate of pay for purposes of payment of overtime, premium pay, and sick time pay. Further, Defendant failed to timely pay Plaintiff and other aggrieved employees for earned wages. As a consequence of the aforementioned violations, Plaintiff further contends that Defendant failed to provide accurate wage statements to her, and other aggrieved employees, in violation of California Labor Code section 2698, *et seq.*

Plaintiff seeks to represent a group of aggrieved employees defined as all non-exempt employees who worked for Defendant during the relevant claim period.





A true and correct copy of the proposed Complaint by Plaintiff against Defendant, which (1) identifies the alleged violations, (2) details the facts and theories which support the alleged violations, (3) details the specific work performed by Plaintiff, (4) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to Plaintiff, and (5) sets forth the illegal practices used by Defendant, is attached hereto. This information provides notice to the Labor and Workforce Development Agency of the facts and theories supporting the alleged violations for the agency's reference. Plaintiff therefore incorporates the allegations of the attached Complaint into this letter as if fully set forth herein. If the agency needs any further information, please do not hesitate to ask.

This notice is provided to enable Plaintiff to proceed with the Complaint against Defendant as authorized by California Labor Code section 2695, *et seq.* The lawsuit consists of other aggrieved employees. As counsel, our intention is to vigorously prosecute the claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Statute of 2004 on behalf of Plaintiff and all aggrieved California employees.

Your earliest response to this notice is appreciated. If you have any questions or concerns, please do not hesitate to contact me at the above number and address.

Sincerely,

Nicole Barvié
Attorney for Plaintiff

Enclosure: Plaintiff's Complaint.

BARVIE LAW, APC

Nicole Barvie (State Bar #282352)

550 W B Street, Fourth Floor

San Diego, CA 92101

Telephone: (858) 255 0928

Facsimile: (858) 3578592

nicole@barvielaw.com

Attorneys for PLAINTIFF

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SANTA CLARA

AIDA CUKIC, individual, in her representative capacity on behalf of the State of California and fellow Aggrieved Employees,

PLAINTIFFS,

vs.

THE NEIMAN MARCUS GROUP LLC, a Delaware Limited Liability Company; and DOES 1 through 50, Inclusive;

DEFENDANT.

Case No.

**REPRESENTATIVE ACTION
COMPLAINT FOR:**

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

1 PLAINTIFF AIDA CUKIC (“Plaintiff”) individual, in her representative capacity on behalf of
2 the State of California and fellow current and former AGGRIEVED EMPLOYEES, alleges on
3 information and belief, except for their own acts and knowledge, which are based on personal
4 knowledge, the following:

5 INTRODUCTION

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

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

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

- 14 a. Failure to provide compliant meal and rest periods;
- 15 b. Failure to allow employees to take duty-free, off-the-premises rest periods;
- 16 c. Failure to pay all minimum and regular wages;
- 17 d. Failure to pay all overtime and double time wages;
- 18 e. Failure to maintain true and accurate records;
- 19 f. Failure to provide accurate itemized wage statements;
- 20 g. Failure to reimburse employees for required business expenses;
- 21 h. Failure to pay overtime, double time, meal and rest period premiums, and sick pay
22 at the regular rate of pay;
- 23 i. Failure to timely pay wages due during, and upon termination of employment.

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

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

THE PARTIES

6. Defendant THE NEIMAN MARCUS GROUP LLC (“DEFENDANT”) is a Delaware limited liability company that at all relevant times herein owns and operates luxury department stores in the County of Santa Clara, California.

7. Plaintiff was employed by DEFENDANT as a non-exempt employee from September 18, 2002 to October 19, 2024, paid in part on an hourly and commission basis, and entitled to the legally required meal and rest periods and payment of minimum wages, reimbursement for business expenses, and overtime wages due for all time worked.

8. PLAINTIFF brings this action in her representative capacity on behalf of the State of California and on behalf of all of DEFENDANT's current and former non-exempt and/or sales persons and/or commission-based California employees (hereinafter "AGGRIEVED EMPLOYEES") between November 20, 2023 and the present ("PAGA PERIOD").

9. PLAINTIFF is an “AGGRIEVED EMPLOYEES” within the meaning of Labor Code § 2699(c) because they were employed by DEFENDANT during the PAGA PERIOD, and suffered one or more of the alleged Labor Code violations committed by DEFENDANT.

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

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

12. DEFENDANT, including DOES 1 THROUGH 50 (hereinafter collectively “DEFENDANT”), was PLAINTIFF’s employers or persons acting on behalf of PLAINTIFF’s

1 employer, within the meaning of California Labor Code § 558, who violated or caused to be violated,
2 a section of Part 2, Chapter 1 of the California Labor Code or any provision regulating hours and days
3 of work in any order of the Industrial Welfare Commission and, as such, are subject to civil penalties
4 for each underpaid employee, as set forth in Labor Code § 558, at all relevant times.

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

10 **JOINT EMPLOYER**

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

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

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

21 17. Interpreting Sections 558 and 1197.1 of the Labor Code, California courts have held that
22 a corporate employer’s owners, officers and directors, are subject to civil penalties for the employer’s
23 failure to pay appropriate wages to its employees, and, since liability under either 558 or 1197.1 does
24 not depend on a finding of an alter ego, no alter ego allegations or findings are necessary. *Atempa v.*
25 *Pedrazzani*, (2018) 27 Cal.App.5th 809, 818; *see generally Ochoa-Hernandez v. Cjaders Foods, Inc.*,
26 2009 WL 1404694, at *4 (N.D. Cal. May 19, 2009); *Thurman v. Bayshore Mgmt., Inc.* (2012) 203
27 Cal.App.4th 1112, 1145-1146.

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

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

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

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

14 **JURISDICTION AND VENUE**

15 22. This Court has jurisdiction over this Action pursuant to California Code of Civil
16 Procedure, Section 410.10 and California Business & Professions Code, Section 17203. This Court
17 has jurisdiction over PLAINTIFFS' claims for civil penalties under the Private Attorney General Act
18 of 2004, California Labor Code §2698, *et seq.*

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

25 **THE CONDUCT**

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

1 compliant meal and rest periods, failed to accurately compensate PLAINTIFF and the AGGRIEVED
2 EMPLOYEES for missed meal and rest periods, failed to pay PLAINTIFF and the AGGRIEVED
3 EMPLOYEES for all time worked, failed compensate PLAINTIFF for off-the-clock work, failed to
4 pay PLAINTIFF and the AGGRIEVED EMPLOYEES overtime at the regular rate, failed to
5 compensate PLAINTIFF and AGGRIEVED EMPLOYEES meal and rest premiums at the regular
6 rate, failed to pay PLAINTIFFS and AGGRIEVED EMPLOYEES sick pay at the regular rate, and
7 failed to issue to PLAINTIFF and the AGGRIEVED EMPLOYEES with accurate itemized wage
8 statements showing, among other things, all applicable hourly rates in effect during the pay periods
9 and the corresponding amount of time worked at each hourly rate. DEFENDANT's uniform policies
10 and practices are intended to purposefully avoid the accurate and full payment for all time worked as
11 required by California law which allows DEFENDANT to illegally profit and gain an unfair advantage
12 over competitors who comply with the law. To the extent equitable tolling operates to toll claims by
13 the AGGRIEVED EMPLOYEES against DEFENDANT, the PAGA PERIOD should be adjusted
14 accordingly.

15 **A. Meal Period Violations**

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

1 DEFENDANT's uniform policy and practice not to pay PLAINTIFF and AGGRIEVED
2 EMPLOYEES for all time worked is evidenced by DEFENDANT'S business records.

3 26. From time-to-time during the PAGA PERIOD, as a result of their rigorous work
4 schedules, being required to assist and advise customers, and DEFENDANT's inadequate staffing
5 practices, PLAINTIFF and AGGRIEVED EMPLOYEES were from time to time unable to take thirty
6 (30) minute off-duty meal breaks and were not fully relieved of duty for their meal periods.
7 PLAINTIFF and AGGRIEVED EMPLOYEES were required from time to time to perform work as
8 ordered by DEFENDANT for more than five (5) hours during some shifts without receiving a meal
9 break. Further, DEFENDANT from time to time failed to provide PLAINTIFF and AGGRIEVED
10 EMPLOYEES with a second off-duty meal period for some workdays in which these employees were
11 required by DEFENDANT to work ten (10) hours of work from time to time. The nature of the work
12 performed by PLAINTIFF and AGGRIEVED EMPLOYEES does not qualify for limited and
13 narrowly construed "on-duty" meal period exception. When they were provided with meal periods,
14 PLAINTIFF and AGGRIEVED EMPLOYEES were, from time to time, required to remain on duty,
15 on call, and required to maintain cordless communication devices on them during meal periods.
16 Further, PLAINTIFF and AGGRIEVED EMPLOYEES were required to respond to communications
17 received on said cordless communication devices during what was supposed to be their duty-free meal
18 periods. PLAINTIFF and AGGRIEVED EMPLOYEES therefore forfeited meal breaks without
19 additional compensation and in accordance with DEFENDANT's strict corporate policy and practice.

20 **B. Rest Period Violations**

21 27. From time-to-time during the PAGA PERIOD, PLAINTIFF and AGGRIEVED
22 EMPLOYEES were also required from time to time to work in excess of four (4) hours without being
23 provided ten (10) minute rest periods as a result of their rigorous work schedule, being required to
24 assist and advise customers, and DEFENDANT's inadequate staffing. Further, for the same reasons
25 these employees were denied their first rest periods of at least ten (10) minutes for some shifts worked
26 of at least two (2) to four (4) hours from time to time, a first and second rest period of at least ten (10)
27 minutes for some shifts worked of between six (6) and eight (8) hours from time to time, and a first,
28 second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or

1 more from time to time. When they were provided with rest breaks, PLAINTIFF and other
2 AGGRIEVED EMPLOYEES were, from time to time, required to remain on duty, on call, and
3 required to maintain cordless communication devices on them during rest periods. Further,
4 PLAINTIFF and AGGRIEVED EMPLOYEES were required to respond to communications received
5 on said cordless communication devices during what was supposed to be their duty-free rest periods.
6 PLAINTIFF and AGGRIEVED EMPLOYEES were also not provided with one-hour wages *in lieu*
7 thereof. As a result of their rigorous work schedules, being required to assist and advise customers,
8 and DEFENDANT's inadequate staffing, PLAINTIFF and AGGRIEVED EMPLOYEES were from
9 time to time denied their proper rest periods by DEFENDANT and DEFENDANT's managers.

10 28. In addition, for those AGGRIEVED EMPLOYEES, including PLAINTIFF, who were
11 paid on a commission-based compensation plan, DEFENDANT failed to compensate PLAINTIFF
12 and AGGRIEVED EMPLOYEES for their rest periods as required by the applicable Wage Order and
13 Labor Code. DEFENDANT did not have a policy or practice which paid for off-duty rest periods to
14 PLAINTIFF and the AGGRIEVED EMPLOYEES. As a result, DEFENDANT's failure to provide
15 PLAINTIFF and the AGGRIEVED EMPLOYEES with all the legally required paid rest periods is
16 evidenced by DEFENDANT's business records.

17 **D. Unreimbursed Business Expenses**

18 29. DEFENDANT as a matter of corporate policy, practice, and procedure, intentionally,
19 knowingly, and systematically failed to reimburse and indemnify PLAINTIFF and other
20 AGGRIEVED EMPLOYEES for required business expenses they incurred in direct consequence of
21 discharging their duties on behalf of DEFENDANT. Under California Labor Code Section 2802,
22 employers are required to indemnify employees for all expenses incurred in the course and scope of
23 their employment. Cal. Lab. Code § 2802 expressly states that "an employer shall indemnify his or
24 her employee for all necessary expenditures or losses incurred by the employee in direct consequence
25 of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even
26 though unlawful, unless the employee, at the time of obeying the directions, believed them to be
27 unlawful."
28

1 30. From time-to-time during the PAGA PERIOD, PLAINTIFF and other AGGRIEVED
2 EMPLOYEES were required by DEFENDANT to use their own personal vehicles and personal cell
3 phones as a result of and in furtherance of their job duties as employees for DEFENDANT. But for
4 the use of their own personal vehicles and personal cell phones, PLAINTIFF and the AGGRIEVED
5 EMPLOYEES could not complete their essential job duties. Notwithstanding, DEFENDANT did not
6 reimburse or indemnify PLAINTIFF or AGGRIEVED EMPLOYEES for the cost associated with the
7 use of their own personal vehicles and personal cell phones for DEFENDANT's benefit. Specifically,
8 PLAINTIFF and AGGRIEVED EMPLOYEES were required by DEFENDANT to use their personal
9 vehicles and personal cell phones for work related issues, including but not limited to, communications
10 for work-related issues and traveling to perform work-related tasks such as transporting merchandise.
11 As a result, in the course of their employment with DEFENDANT, PLAINTIFF and the AGGRIEVED
12 EMPLOYEES incurred unreimbursed business expenses which included, but were not limited to, costs
13 related to the use of their personal vehicles and personal cell phones, all on behalf of and for the benefit
14 of DEFENDANT.

15 **E. Wage Statement Violations**

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

24 32. From time to time during the PAGA PERIOD, when PLAINTIFF and other
25 AGGRIEVED EMPLOYEES missed meal and rest breaks, or were paid inaccurate missed meal and
26 rest period premiums, or were paid non-discretionary incentive and/or bonus compensation, or were
27 not paid for all hours worked, DEFENDANT also failed to provide PLAINTIFFS and other
28 AGGRIEVED EMPLOYEES with complete and accurate wage statements which failed to show,

1 among other things, the total hours worked and all applicable hourly rates in effect during the pay
2 period and the corresponding amount of time worked at each hourly rate, correct rates of pay for
3 penalty payments or missed meal and rest periods.

4 33. In addition to the violations described above, DEFENDANT, from time to time, failed
5 to provide PLAINTIFF and AGGRIEVED EMPLOYEES with wage statements that comply with Cal.
6 Lab. Code § 226. As a result, DEFENDANT issued PLAINTIFF and the other AGGRIEVED
7 EMPLOYEES with wage statements that violate Cal. Lab. Code § 226. Further, DEFENDANT's
8 violations are knowing and intentional, were not isolated or due to an unintentional payroll error due
9 to clerical or inadvertent mistake.

10 **F. Off-the-Clock Work Resulting in Minimum Wage and Overtime Violations**

11 34. During the PAGA PERIOD, from time-to-time DEFENDANT failed and continue to fail
12 to accurately pay PLAINTIFF and the other AGGRIEVED EMPLOYEES for all hours worked.
13 Specifically, DEFENDANT from time-to-time required PLAINTIFF and the AGGRIEVED
14 EMPLOYEES to perform off-the-clock work. Notwithstanding, from time-to-time DEFENDANT
15 failed to pay PLAINTIFF and other AGGRIEVED EMPLOYEES necessary wages for performing
16 work at DEFENDANT's direction, request, and benefit, while off-the clock.

17 35. During the PAGA PERIOD, from time-to-time DEFENDANT required PLAINTIFF and
18 AGGRIEVED EMPLOYEES to perform off-the-clock work, including but not limited to, responding
19 to communications from DEFENDANT's customers. Further, during the PAGA PERIOD,
20 DEFENDANT engaged in the practice of requiring PLAINTIFF and other AGGRIEVED
21 EMPLOYEES to perform work off the clock after clocking out in that DEFENDANT, as a condition
22 of employment, required these employees from time to time to wait and submit to loss prevention
23 inspections after clocking out at the end of each scheduled shift, and if they left the store during off
24 duty meal periods, for which DEFENDANT did not provide compensation for the time spent waiting
25 for and submitting to DEFENDANT's loss prevention inspections off the clock. This resulted in
26 PLAINTIFF and other AGGRIEVED EMPLOYEES to have to work while off-the-clock.

27 36. DEFENDANT directed and directly benefited from the uncompensated off-the-clock
28 work performed by PLAINTIFF and the other AGGRIEVED EMPLOYEES.

1 37. DEFENDANT controlled the work schedules, duties, protocols, applications,
2 assignments and employment conditions of PLAINTIFF and the other AGGRIEVED EMPLOYEES.

3 38. DEFENDANT were able to track the amount of time PLAINTIFF and the other
4 AGGRIEVED EMPLOYEES spent working; however, DEFENDANT failed to document, track, or
5 pay PLAINTIFF and the other AGGRIEVED EMPLOYEES all wages earned and owed for all the
6 work they performed, including off-the-clock work.

7 39. PLAINTIFF and the other AGGRIEVED EMPLOYEES were subject to the
8 requirements of the California Labor Code.

9 40. DEFENDANT's policies and practices deprived PLAINTIFF and the other AGGRIEVED
10 EMPLOYEES of all minimum, regular, overtime, and double time wages owed for the off-the-clock
11 work activities. Because PLAINTIFF and the other AGGRIEVED EMPLOYEES typically worked
12 over forty (40) hours in a workweek, and more than eight (8) hours per day, DEFENDANT's policies
13 and practices also deprived them of overtime pay.

14 41. DEFENDANT knew or should have known that PLAINTIFF and the AGGRIEVED
15 EMPLOYEES off-the-clock work was compensable under the law.

16 42. As a result, PLAINTIFF and the other AGGRIEVED EMPLOYEES forfeited wages due
17 them for all hours worked at DEFENDANT's direction, control and benefit for the time spent assisting
18 customers from home. DEFENDANT's uniform policy and practice to not pay PLAINTIFF and the
19 AGGRIEVED EMPLOYEES wages for all hours worked in accordance with applicable law is
20 evidenced by DEFENDANT's business records.

21 43. **Regular Rate Violation – Overtime, Sick Pay and Meal and Rest Period Premiums**

22 44. From time-to-time during the PAGA PERIOD, DEFENDANT failed and continue to fail
23 to accurately calculate and pay PLAINTIFF and the AGGRIEVED EMPLOYEES for their overtime
24 hours worked, meal and rest period premiums, and sick pay. As a result, PLAINTIFF and the other
25 AGGRIEVED EMPLOYEES forfeited wages due to them for working overtime without compensation
26 at the correct overtime, meal and rest period premiums, and sick pay rates. DEFENDANT's uniform
27 policy and practice not to pay the PLAINTIFF and the AGGRIEVED EMPLOYEES the correct
28

1 overtime rate for all overtime worked, meal and rest period premiums, and sick pay in accordance with
2 applicable law is evidenced by DEFENDANT's business records.

3 45. State law provides that employees must be paid overtime at one-and-one half times their
4 "regular rate of pay." PLAINTIFF and other AGGRIEVED EMPLOYEES were compensated at an
5 hourly rate commission.

6 46. The second component of PLAINTIFF'S and other AGGRIEVED EMPLOYEES
7 compensation was DEFENDANT's non-discretionary incentive program that paid PLAINTIFF and
8 other AGGRIEVED EMPLOYEES incentive wages based on their performance for DEFENDANT.
9 The non-discretionary bonus program provided all employees paid on an hourly basis with bonus, and/or
10 incentive compensation when the employees met the various performance goals set by DEFENDANT.
11 Further, DEFENDANT paid shift differentials to PLAINTIFF and AGGRIEVED EMPLOYEES.

12 47. However, from time-to-time, when calculating the regular rate of pay, in those pay periods
13 where PLAINTIFF and the AGGRIEVED EMPLOYEES worked overtime, or were paid meal and/or
14 rest period premiums, and earned this non-discretionary bonus, incentive, or shift differential
15 DEFENDANT failed to accurately include the non-discretionary bonus compensation and/or incentive
16 and/or shift differential paid as part of the employees' "regular rate of pay" and/or calculated all hours
17 worked rather than just all non-overtime hours worked. Further, when calculating the regular rate of
18 pay in order to pay sick pay to PLAINTIFF and the AGGRIEVED EMPLOYEES, DEFENDANT failed
19 to include the incentive compensation and/or shift differential as part of the employees' "regular rate of
20 pay" for purposes of calculating sick pay. Management and supervisors described the incentive/bonus
21 program to potential and new employees as part of the compensation package. As a matter of law, the
22 incentive compensation and shift differentials received by PLAINTIFF and other AGGRIEVED
23 EMPLOYEES must be included in the "regular rate of pay." The failure to do so has resulted in a
24 systematic underpayment of overtime, meal and rests period premiums, and sick pay to PLAINTIFF and
25 other AGGRIEVED EMPLOYEES by DEFENDANT.

26 48. As a matter of law, the incentive, commission, and shift differential compensation
27 received by PLAINTIFF and other AGGRIEVED EMPLOYEES must be included and correctly
28 calculated into the "regular rate of pay" for purposes of overtime compensation, meal and rest period

1 premiums, and sick pay. DEFENDANT's failure to do so has resulted in DEFENDANT's systematic
2 underpayment of overtime compensation, meal and rest period premiums, and sick pay to PLAINTIFF
3 and AGGRIEVED EMPLOYEES. Specifically, California Labor Code Section 246 mandates that paid
4 sick time for non-employees shall be calculated in the same manner as the regular rate of pay for the
5 workweek in which the non-exempt employee uses paid sick time, whether or not the employee actually
6 works overtime in that workweek. DEFENDANT's conduct, as articulated herein, by failing to include
7 the incentive compensation and shift differentials as part of the "regular rate of pay" for purposes of sick
8 pay compensation was in violation of Cal. Lab. Code § 246.

9 49. In violation of the applicable sections of the California Labor Code and the requirements
10 of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as a matter of company
11 policy, practice, and procedure, intentionally, and knowingly failed to compensate PLAINTIFF and the
12 AGGRIEVED EMPLOYEES at the correct rate of pay for all overtime, meal and rest period premiums,
13 and/or sick pay compensation. This uniform policy and practice of DEFENDANT is intended to
14 purposefully avoid the payment of the correct overtime, meal and rest period premiums, and/or sick pay
15 compensation as required by California law which allowed DEFENDANT to illegally profit and gain
16 an unfair advantage over competitors who complied with the law. To the extent equitable tolling
17 operates to toll claims by the AGGRIEVED EMPLOYEES against DEFENDANT, the PAGA PERIOD
18 should be adjusted accordingly.

19 **FIRST CAUSE OF ACTION**

20 **For Civil Penalties Pursuant to Private Attorneys General Act ("PAGA")**

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

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

23 50. PLAINTIFF and the AGGRIEVED EMPLOYEES reallege and incorporate by this
24 reference, as though fully set forth herein, the prior paragraphs of this Complaint.

25 51. PAGA is a mechanism by which the State of California itself can enforce state labor laws
26 through the employee suing under the PAGA who do so as the proxy or agent of the state's labor law
27 enforcement agencies. An action to recover civil penalties under PAGA is fundamentally a law
28 enforcement action designed to protect the public and not to benefit private parties. The purpose of the

1 PAGA is not to recover damages or restitution, but to create a means of "deputizing" citizens as private
2 attorneys general to enforce the Labor Code. In enacting PAGA, the California Legislature specified
3 that "it was ... in the public interest to allow aggrieved employees, acting as private attorneys general to
4 recover civil penalties for Labor Code violations ..." Stats. 2003, ch. 906, § 1. Accordingly, PAGA
5 claims cannot be subject to arbitration.

6 52. PLAINTIFF brings this Representative Action on behalf of the State of California with
7 respect to herself and all other current and former AGGRIEVED EMPLOYEES as defined hereinabove.

8 53. At all relevant times, for the reasons described herein, and others, PLAINTIFF and the
9 AGGRIEVED EMPLOYEES were aggrieved employees of DEFENDANT within the meaning of Labor
10 Code Section 2699(c).

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

14 55. PLAINTIFF complied with the procedures for bringing suit specified in Labor Code
15 Section 2699.3. By certified letter, return receipt requested, dated November 20, 2024, Plaintiff gave
16 written notice to the Labor and Workforce Development Agency ("LWDA") via electronic submission
17 and to DEFENDANT of the specific provisions of the Labor Code alleged to have been violated,
18 including the facts and theories to support the alleged violations. See Exhibit #1, attached hereto and
19 incorporated by this reference herein.

20 56. As of the filing date of the original Complaint and the operative Complaint, more than
21 sixty-five (65) days after serving the LWDA with notice of DEFENDANT's violations, the LWDA has
22 not provided any notice by certified mail of its intent to investigate DEFENDANT's alleged violations
23 as mandated by Labor Code Section 2699.3(a)(2)(A). Accordingly, pursuant to Labor Code Section
24 2699.3(a)(2)A, PLAINTIFF may commence and is authorized to pursue this cause of action.

25 57. Pursuant to Labor Code Sections 2699(a) and (f), PLAINTIFF and the AGGRIEVED
26 EMPLOYEES are entitled to civil penalties for DEFENDANT's violations of Labor Code Section 201,
27 201.3, 202, 203, 204, 210, 218.5, 218.6, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174(d), 1174.5,
28 1194, 1197, 1197.1, 1197.14, 1198, 1199, 2802, and 2804 in the following amounts:

- 1 a. For violation of Labor Code Sections 201, 202, 203, and 204, civil
2 penalties per Labor Code Section 2699(f)(2);
- 3 b. For violations of Labor Code Section 226(a), civil penalties per Labor
4 Code Section 226.3;
- 5 c. For violations of Labor Code Sections 204, civil penalties per Labor
6 Code Section 210;
- 7 d. For violations of Labor Code Sections 226.7, 510 and 512, civil
8 penalties per Labor Code Section 558;
- 9 e. For violations of Labor Code Section 2269(a), civil penalties per Labor
10 Code Section 226.3;
- 11 f. For violations of Labor Code Sections 1194, 1197, 1198 and 1199, civil
12 penalties per the California Labor Code.
- 13 g. For all provisions of the Labor Code for which civil penalty is not
14 specifically provided, Labor Code § 2699(f) imposes upon Defendant
15 the recoverable civil penalties.
- 16 58. PLAINTIFF and the AGGRIEVED EMPLOYEES are entitled to an award of reasonable
17 attorney's fees and costs in connection with their claims for civil penalties pursuant to Labor Code
18 Section 2699(g)(1).

19 **PRAYER FOR RELIEF**

20 WHEREFORE, PLAINTIFF pray for judgment against DEFENDANT as follows:

- 21 (a) For reasonable attorney's fees and costs of suit to the extent permitted by law, including
22 pursuant to Labor Code § 2699, *et seq.*;
- 23 (b) For civil penalties to the extent permitted by law pursuant to the Labor Code under the
24 Private Attorneys General Act; and
- 25 (c) For such other relief as the Court deems just and proper.

26 Dated: January __, 2025

Respectfully Submitted,

27 **BARVIE LAW, APC**

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By: _____
Nicole Barvie, Esq.

Attorney for PLAINTIFF

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