

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: David Sotelo

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Attorneys for Plaintiff,
Rebecca Mendez, on behalf of
himself and all aggrieved employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

Rebecca Mendez, an individual, on behalf
of herself and all aggrieved employees,

Plaintiffs,

vs.

Enesco Properties, LLC DBA Things
Remembered, a limited liability company,
and DOES 1-50, inclusive,

Defendants.

Case No.: **20STCV13164**

REPRESENTATIVE ACTION

COMPLAINT

**Violation of the Private Attorneys
General Act of 2004, Cal. Labor Code
§2698 et seq.**

Plaintiff Rebecca Mendez, on behalf of herself, the State of California, and all
aggrieved employees, brings this PAGA representative action complaint and alleges as
follows:

1 **NATURE OF THE ACTION**

2 1. This is an Action brought pursuant to Labor Code §2698 *et seq.*, on behalf of
3 the State of California, Plaintiff and the following group of individuals: All hourly
4 employees who were employed by Defendants within the State of California who worked
5 one or more pay periods at least one (1) year prior to the date of the letter sent to the
6 Labor Workforce Development Agency and Defendant giving notice of these PAGA
7 claims and continuing to the present (hereafter “aggrieved employees”).

8 2. Defendants failed to comply with California Labor Code requirements due to
9 erroneous, willful and intentional employment practices and policies. Prior to bringing
10 this PAGA action, Plaintiff provided notice of the claims pursuant to §2698 *et. seq.*, to
11 the Labor and Workforce and Development Agency (“LWDA”) as illustrated by the
12 attached Exhibit. The LWDA has not provided any notice to Plaintiff following the
13 exhaustion of the required notice period required by 2699.3(a)(2)(B). Accordingly,
14 Plaintiff now brings this Complaint for civil penalties under the Private Attorneys
15 General Act (“PAGA”), Labor Code §2698 *et seq.*

16 3. Defendants have had a consistent policy and/or practice of: (1) failure to
17 provide suitable seating; (2) failure to provide rest breaks; (3) failure to provide timely,
18 uninterrupted meal breaks; (4) failure to pay for all hours worked, including overtime
19 hours worked and work performed during meal periods and security searches; (5) failure
20 to timely pay all wages owed, including willfully failing to pay wages due upon
21 termination and failure to pall all wages owed twice per month; and (6) failure to provide
22 accurate itemized wage statements. Defendants are therefore liable for civil penalties
23 under the Cal. Labor Code, including the Private Attorney General Act (“PAGA”), Labor
24 Code §2698 *et seq.*, as described more fully herein.

25 **THE PARTIES**

26 7. Plaintiff Rebecca Mendez is a resident of the State of California and lives in
27 Long Beach, California. Plaintiff was employed as an hourly, nonexempt employee of
28

1 defendant Enesco Properties, LLC DBA Things Remembered, where she worked as a
2 sales lead earning at or near minimum wage.

3 8. Defendant Enesco Properties, LLC DBA Things Remembered, is a Delaware
4 corporation doing business in California with the capacity to sue and to be sued, and
5 doing business, in the county of Los Angeles, State of California.

6 9. Plaintiff is unaware of the true names, capacities, relationships, and extent of
7 participation in the conduct alleged herein, of the Defendants sued as DOES 1 through
8 50, but is informed and believes and thereon alleges that said Defendants are legally
9 responsible for the wrongful conduct alleged herein and therefore sues these Defendants
10 by such fictitious names, Plaintiff will amend this complaint when their true names and
11 capabilities are ascertained.

12 10. Plaintiff is informed and believes and thereon alleges that each Defendants,
13 directly or indirectly, or through agents or other persons, employed Plaintiff and
14 aggrieved employees of the representative class, and exercised control over their wages,
15 hours, and working conditions. Plaintiff is informed and believes and thereon allege that
16 each Defendant acted in all respects pertinent to this action as the agent of the other
17 Defendants, carried out a joint scheme, business plan or policy in all respects pertinent
18 hereto, and the acts of each Defendant is legally attributable to the other Defendants.

19 **JURISDICTION AND VENUE**

20 11. Venue is proper in this judicial district because Defendants conduct business in
21 this county and each Defendant has legal obligations to Plaintiff and many of the
22 aggrieved employees in this case that arose in this county.

23 12. The statutory penalties sought by Plaintiff exceeds the minimal jurisdictional
24 limits of the Superior Court and will be established according to proof at trial. Based on
25 information, investigation and analysis, Plaintiff alleges that the amount in controversy,
26 including claims for monetary damages, penalties and attorney's fees is more than
27 twenty-five thousand dollars (\$25,000).
28

1 13. The California Superior Court has jurisdiction in this matter because Plaintiff
2 is a resident of California and Defendants are incorporated in and/or qualified to do
3 business in California and regularly conduct business in California. Further, there is no
4 federal question at issue as the claims herein are based solely on California law.

5 **PAGA REPRESENTATIVE ACTION ALLEGATIONS**

6 14. This is a representative action, pursuant to Labor Code §2698 *et seq.*, on behalf
7 of the following individuals: All persons who are employed or have been employed as an
8 hourly, nonexempt employee of Defendants in the state of California who worked one or
9 more pay periods since one (1) year prior to the date of the letter sent to the Labor
10 Workforce Development Agency and Defendants giving notice of these PAGA claims and
11 continuing to the present. (hereafter “aggrieved employees”).

12 15. During the relevant time-period, Defendants committed various violations of
13 the California Labor Code as alleged below in more detail. Defendants enforce multiple
14 policies that violate state law, which are intended to increase profits to the detriment of
15 aggrieved employees.

16 16. This representative action represents over one hundred current and former
17 aggrieved employees, earning at or near minimum wage.

18 17. This action is ideally suited and manageable as a PAGA representative action.
19 The identities of the aggrieved employees can be ascertained by reviewing existing
20 business records. For example, the identities of the aggrieved employees who were not
21 properly paid all wages owed can be ascertained by reviewing Defendants’ timecards and
22 wage statements. The same is true for the identities of aggrieved employees who
23 experienced meal break violations, rest break violations, seating violations and pay stub
24 violations. Documentary evidence in Defendants’ possession identifies both the employee
25 and the damages owed. The identities of the aggrieved employees who did not receive
26 accurate wage statements can be determined by reviewing the wage statements
27 themselves.
28

1 18. Defendants, and each of them, have committed the following violations of the
2 California Labor Code:

3 **Failure To Provide Suitable Seating**

4 19. Labor Code § 1198 states, in pertinent part, "The employment of any
5 employee... under conditions of labor prohibited by the [Wage Order] is unlawful."

6 20. IWC Wage Order 7-2001 §14 (A) provides that all working employees shall
7 be provided with suitable seats when the nature of the work reasonably permits the use of
8 seats.

9 21. IWC Wage Order 7-2001 §14 (B) when employees in active duties
10 employment and the nature of the work requires standing, an adequate number of suitable
11 seats shall be permitted to use such seats when it does not interfere with the performance
12 of their duties.

13 22. Defendants failed to provide Plaintiff and aggrieved employees with suitable
14 seating during their employment as required by section 14 of the applicable Wage Order.
15 For example, Plaintiff and other aggrieved employees were not provided with seating
16 during shifts in which they worked long hours while standing in Defendants' locations,
17 whether as a cashier, or various positions which would reasonably permit the use of
18 seating.

19 23. The work performed at the counter includes customer service, completing
20 paperwork, and other common tasks that can be performed while seated and the location
21 of the tasks to be performed made it feasible to do so while seated. Moreover, Plaintiff
22 alleges that the work performed by a cashier includes, but is not limited to, cashiering,
23 providing customer service, and other everyday tasks which could be performed while
24 seated and the location of the tasks to be performed made it feasible to do so while
25 seated.

26 24. As a result of these violations, Defendants are liable for civil penalties
27 pursuant to Cal. Labor Code §2698 *et seq.*, and all available remedies to the extent
28 allowed by law for the alleged violations.

Rest Break Violations

25. California Labor Code § 226.7 provides that it is unlawful to require any employee to work during rest period mandated by an applicable order of the IWC.

26. As required by section 12(A) of Wage Order 7-2001, “(e)very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.”

27. Defendants violated Labor Code §226.7 by failing to permit aggrieved employees to take a 10-minute rest break for each four hours of work, or major fraction thereof, and requiring them to work through those rest periods. Plaintiff and aggrieved employees were frequently scheduled to work 8-hour shifts, but they were frequently the only employee working in the store and often missed breaks.

28. When Plaintiff and aggrieved employees did receive some rest breaks, they were forced to remain available for customers while on break. Claimant frequently worked 8-hour shifts, and her only break was a meal period. However, even meal periods were not compliant with California law, as set forth below. In addition, she and the aggrieved employees were systematically denied the second rest break as required by Cal. Lab. Code §226.7, §512 and section 11(A) of Wage Order 7-2001.

29. Defendant failed to pay Plaintiff and similarly situated employees all premium compensation (one hour of pay at the employee’s regular rate of pay for missed or untimely rest periods) mandated by Labor Code §226.7 (b) for these missed rest periods.

1 30. Plaintiff further alleges that the pay statements were inaccurate, failing to
2 include required rest period penalties, thus failing the requirements of Labor Code
3 §226(a).

4 31. As a result of these violations, Defendants are liable for civil penalties
5 pursuant to Cal. Labor Code §2698 *et. seq.* Plaintiff also seeks attorneys' fees and costs
6 pursuant to Labor Code § 2699(g)(1).

7 **Failure to Provide Timely, Uninterrupted Meal Breaks**

8 32. Labor Code §512 provides, "[a]n employer may not employ an employee for a
9 work period of more than five hours per day without providing the employee with a meal
10 period of not less than 30 minutes..." Labor Code §558 (a) states that "[a]ny employer or
11 other person acting on behalf of an employer who violates, or causes to be violated, a
12 section of this chapter or any provision regulating hours and days of work in any order of
13 the Industrial Welfare Commission shall be subject to a civil penalty."

14 33. Labor Code §226.7(a) provides, "[n]o employer shall require an employee to
15 work during any meal... period mandated by an applicable order of the Industrial
16 Welfare Commission." Paragraph 11(A) of the Wage Orders provides, in pertinent part,
17 "[u]nless an employee is relieved of all duty during a 30 minute meal period, the meal
18 period shall be considered an 'on duty' meal period and counted as time worked."

19 34. Defendants failed to permit Plaintiff and aggrieved employees to take timely,
20 off-duty, uninterrupted meal breaks of "not less than 30 minutes" for each five
21 consecutive hours of work in violation of Labor Code §§226.7 and 512.

22 35. Plaintiff further alleges that pay statements were inaccurate, failing to include
23 required meal period penalties, thus failing the requirements of Labor Code §226(a).

24 36. As described above, Plaintiff was often the only employee working at the time
25 in Defendants' store and was unable to take compliant meal or rest breaks. When Plaintiff
26 was able to take a meal period, she was frequently interrupted as she had to remain
27 available to assist customers. Breaks were fully non-compliant because she was unable to
28 leave Defendants' place of business and was thus under the employer's control for the

entire period she was off the clock. As a result of these violations, Defendants are liable for civil penalties pursuant to Cal. Labor Code §558 and §2698 *et. seq.* Plaintiff also seeks attorneys' fees and costs pursuant to Labor Code §§558 and 2699(g)(1).

Work Performed During Meal Periods

37. Defendant failed to permit Plaintiff and others to take duty-free meal breaks of "not less than 30 minutes" for each five consecutive hours of work in violation of Labor Code §§226.7 and 512. As explained above, Plaintiff and aggrieved employees were regularly denied meal periods. When meal periods were provided, they were frequently interrupted.

38. Plaintiff and aggrieved employees have been employed under conditions prohibited by the wage order, and thus Defendant has violated §1198. Defendants are liable for civil penalties pursuant to Labor Code § 2698 *et seq.* Plaintiff also seeks attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Underpayment of Wages, Including Overtime & Penalty Wages

39. IWC Wage Order broadly 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."

40. Labor Code § 510 and California IWC Wage Order 7 §3(A)(1)(a) require employers to pay employees one-and-one-half (1-1/2) times the regular hourly rate of all those hours worked in excess of eight (8) hours in one workday and in excess of forty (40) hours in one workweek, and for the first eight (8) hours worked on the seventh day of work in any one workweek.

41. Labor Code § 510 and California IWC Wage Order 7 § 3(A)(1)(b) further require employers to pay employees two (2) times the regular rate of pay for hours worked in excess of twelve (12) hours per day and, on the seventh consecutive workday, any work in excess of eight (8) hours.

42. Labor Code §1198 prohibits Defendants from employing Plaintiff and aggrieved employees under conditions prohibited by the wage order.

1 43. Plaintiff and aggrieved employees were required to undergo off the clock bag
2 and security checks. This was required by Defendants in connection with the job, and
3 employees were under the control of Defendants while they were being checked.
4 Accordingly, this time is uncompensated hours worked.

5 44. Defendants unlawful meal break practices, described above and incorporated
6 by reference herein, resulted in underpayment of wages for time spent working when
7 employees were clocked out for lunch. Plaintiff and aggrieved employees were frequently
8 working alone in the store and were not permitted to leave the location for a meal period.
9 They remained under Defendants' control. Further, employees were required to respond
10 to customers if they needed assistance during employee's lunch periods. Plaintiff states
11 this happened frequently.

12 45. As applied, Defendants' policy clearly results in a failure to compensate
13 employees for all hours and overtime hours worked. As a result of these practices,
14 employer has violated Cal. Labor Code §§218, 510, 558, 1194, 1198 and Industrial
15 Welfare Commission Wage Order 16(3)(A)(1) for failure to pay overtime. Although
16 Plaintiff does not seek repayment of wages under §558, Plaintiff may still hold Defendant
17 is liable for civil penalties pursuant to Cal. Labor Code §558 and 2698 et seq. Plaintiff
18 also seeks attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

19 **Underpayment of Wages- Failure To Pay Legally Required Minimum Wage**

20 46. Labor Code 1197 states "[t]he minimum wage for employees fixed by the
21 commission or by any applicable state or local law, is the minimum wage to be paid to
22 employees, and the payment of a lower wage than the minimum so fixed is unlawful."

23 47. Labor Code 1182.12 sets forth the minimum wage permissible for all
24 industries.

25 48. Labor Code 1197.1 imposes a civil penalty upon any "employer ... who pays
26 or causes to be paid to any employee a wage less than the minimum" wage.

27 49. When employees earning minimum wage do not receive payment for all hours
28 worked, the result is that they are earning less than the statutory minimum wages for all

1 hours worked in violation of Labor Code 1197. Defendants' policies and practices,
2 including that requiring employees to go through unpaid security checks and work while
3 clocked out for lunch result in a failure to pay for all hours worked, including overtime
4 hours worked.

5 50. As a result of these practices, Defendant has violated Cal. Labor Code
6 §§1182.12, 1194, and 1197, and the Industrial Welfare Commission Wage Order for
7 failure to pay the lawful minimum wage for all hours worked, including overtime hours
8 worked. Defendant is liable for civil penalties pursuant to Cal. Labor Code §558, 1197.1,
9 1174.5 and 2698 *et seq.* Plaintiff also seeks attorneys' fees and costs pursuant to Labor
10 Code §§558 and 2699(g)(1).

11 **Failure to Timely Pay All Wages Owed**

12 51. At the conclusion of Plaintiff's employment, Plaintiff was not paid in a timely
13 fashion all wages due, as required by Labor Code §203. Plaintiff is informed and
14 believes, and based thereon alleges, that the other aggrieved employees who separated
15 from the company, whether voluntary or involuntary, were also denied payment of wages
16 in a timely manner, including overtime, as required by §203.

17 52. As set forth above, due to Defendant's unlawful employment practices,
18 Defendant knowingly and willfully failed to pay all compensation, including penalty
19 wages, due and owing to Plaintiff at the time employment terminated.

20 53. Defendant willfully failed to pay aggrieved employees who are no longer
21 employed by Defendant all compensation due upon termination of employment required
22 by Cal. Lab. Code §§201 and 202. Pursuant to §§203 and 256.

23 54. Plaintiff and aggrieved employees are now also entitled to recover up to thirty
24 (30) days of wages due to Defendant's "willful" failure to comply with the statutory
25 requirements of §§201 and 202 of the Labor Code.

26 55. Pursuant to Labor Code §204(a) Defendant was required to pay Plaintiff and
27 aggrieved employees all wages earned twice during each calendar month. Defendant
28 failed to pay all wages earned to employees as a result of the unlawful employment

1 policies and practices. Plaintiff and aggrieved were underpaid for hours worked,
2 including penalty wages, and this underpayment resulted in a failure to pay all wages
3 owed twice per month.

4 56. As a result of these practices Defendant has violated §§201-204 and 256.
5 Defendant is liable for civil penalties pursuant to Cal. Lab. Code § 2698 *et. seq.* Plaintiff
6 also seeks attorneys' fees and costs pursuant to Labor Code §§558 and 2699(g)(1).

7 **Failure to Provide Accurate Itemized Wage Statements**

8 57. California Labor Code § 226(a) provides that "[e]very employer shall,
9 semimonthly or at the time of each payment of wages, furnish each of his or her
10 employees...an accurate itemized statement in writing showing (1) gross wages earned,
11 (2) total hours worked..., (3) the number of piece-rate units earned and any applicable
12 piece rate if the employee is paid on a piece-rate basis, (4) all deductions ... , (5) net
13 wages earned, (6) the inclusive dates of period for which the employee is paid, (7) the
14 name of the employee and his or her social security number..., (8) the name and address
15 of the legal entity that is the employer, and (9) all applicable hourly rates in effect during
16 the pay period and the corresponding number of hours worked at each hourly rate by the
17 employee."

18 58. Labor Code § 226.3 provides, "[a]ny employer who violates subdivision (a) of
19 Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars
20 (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000)
21 per employee for each violation in a subsequent citation, for which the employer fails to
22 provide the employee a wage deduction statement or fails to keep the records required in
23 subdivision (a) of Section 226. The civil penalties provided for in this section are in
24 addition to any other penalty provided by law."

25 59. Labor Code § 1174 provides that "[e]very employer employing labor in this
26 state shall ... (c) [k]eep a record showing the names and addresses of all employees
27 employed and the ages of all minors [and] (d) [k]eep at a central location in the state or at
28 the plants or establishments at which employees are employed, payroll records showing

1 the hours worked daily by and the wages paid to, and the number of piece-rate units
2 earned by and any applicable piece rate paid to, employees employed at the respective
3 plants or establishments. These records shall be kept in accordance with rules established
4 for this purpose by the commission, but in any case, shall be kept on file for not less than
5 two years.”

6 60. Defendant is liable for civil penalties under §226.3 for violation of §226(a).
7 Plaintiff alleges on information and belief that Defendants knowingly and intentionally
8 failed to furnish aggrieved employees with accurate itemized statements for each pay
9 period that they worked and failed to maintain accurate payroll records of the aggrieved
10 employees as mandated by Labor Code § 226. Defendants failed to issue wage statements
11 that have accurately reflected actual gross wages earned, including meal/rest premiums
12 and total hours worked. Further, based on and as a result of the above mentioned Labor
13 Code violations, pay stubs failed to include the accurate total hours worked, accurate
14 overtime hours worked, and meal and rest period penalties.

15 61. Because Plaintiff’s pay stubs are prepared by Defendants, upon information
16 and belief, Plaintiff alleges that Defendants issued inaccurate paystubs to all aggrieved
17 employees. As a result of these violations, Defendants are liable for civil penalties
18 pursuant to Cal. Labor Code §§226.3, 558, 1174.5, and 2698 et. seq. Plaintiff also seeks
19 attorneys’ fees and costs pursuant to Labor Code §§558 and 2699(g)(1).

20 62. Through this representative action, Plaintiff will advance the interests of
21 hundreds of current and former employees, such that joinder is impracticable. These
22 current and former employees can be readily identified through a review of Defendants’
23 payroll records and the records of the company that handles payroll for Defendants.

24 63. Plaintiff seeks to recover the PAGA civil penalties through a representative
25 action permitted by PAGA and the California Supreme Court in *Arias v. Superior Court*
26 (2009) 46 Cal. 4th 969. Therefore, class certification of the PAGA claims brought herein
27 is not required.

28 ///

**Against All Defendants for Violation of the Private Attorneys General Act
("PAGA")**

64. Plaintiff reasserts and incorporates the paragraphs referenced above as if fully set forth herein.

66. Plaintiff seeks to recover the PAGA civil penalties through a representative action permitted by PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal. 4th 969. Therefore, class certification of the PAGA claims brought herein is not required.

a. failure to provide proper and adequate seating in violation of Labor Code §1198 and Wage Order 7-2001, §14

c. failure to pay the legally required minimum wage in violation of Labor Code §1182.12, 1194, 1197, 1198 and 2698 et seq;

PAGA COMPLAINT - 13

1 e. failure to timely pay all wages owed in violation of Labor Code §§201-203,
2 2698 et seq;

3 f. failure to furnish and maintain accurate payroll records in violation of
4 Labor Code §226(a) and 246(i).

5 68. With respect to violations of Labor Code §226(a), Labor Code §226.3 imposes
6 a civil penalty in addition to any other penalty provided by law of two hundred fifty
7 dollars (\$250) per aggrieved employee for the first violation, and one thousand dollars
8 (\$1,000) per aggrieved employee for each subsequent violation of Labor Code §226(a).

9 69. With respect to violations of Labor Code §§227.3, 510 and 512, Labor Code
10 §558 imposes a civil penalty in addition to any other penalty provided by law of fifty
11 dollars (\$50) for initial violations for each underpaid employee for each pay period for
12 which the employee was underpaid in addition to an amount sufficient to recover
13 underpaid wages, and one hundred dollars (\$100) for subsequent violations for each
14 underpaid employee for each pay period for which the employee was underpaid in
15 addition to an amount sufficient to recover underpaid wages. Moreover, although
16 Plaintiff is not seeking unpaid wages pursuant to §558, Plaintiff seeks civil penalties
17 pursuant to Labor Code §558(a)(1-2).

18 70. Labor Code §1194 permits “any employee receiving less than the legal
19 minimum wage or the legal overtime compensation applicable to the employee is entitled
20 to recover in a civil action the unpaid balance of the full amount of this minimum wage
21 or overtime compensation, including interest thereon, reasonable attorney’s fees, and
22 costs of suit.”

23 71. With respect to violations of Labor Code §1197.1, employers are liable for
24 “one hundred dollars (\$100) for each underpaid employee for each pay period for which
25 the employee is underpaid... and two hundred fifty dollars (\$250) for each underpaid
26 employee for each pay period for which the employee is underpaid regardless of whether
27 the initial violation was intentionally committed.” Labor Code §1197.1(a)(1-2).

1 72. With respect to violations of Labor Code §218, Labor Code §218.5 (a) states,
2 “In any action brought for the nonpayment of wages, fringe benefits, or health and
3 welfare or pension fund contributions, the court shall award reasonable attorney’s fees
4 and costs to the prevailing party if any party to the action requests attorney’s fees and
5 costs upon the initiation of the action.” Plaintiff demands attorney’s fees and costs in
6 connection with the claims herein.

7 73. Labor Code §2698 *et seq.* imposes a civil penalty of one hundred dollars
8 (\$100) per pay period, per aggrieved employee for initial violations, and two hundred
9 dollars (\$200) per pay period, per aggrieved employee for subsequent violations for all
10 Labor Code provisions for which a civil penalty is not specifically provided.

11 74. Plaintiff and the other current and former employees of Defendants are
12 aggrieved employees. They were or are employed by Defendants, and each of them, and
13 the violations alleged herein were committed against them. Plaintiff brings this action on
14 behalf of himself, the State of California, and all other current and former aggrieved
15 employees.

16 75. At the time of each violation, Defendants employed one or more employees.

17 76. As a result of the aforesaid wrongful and illegal conduct of Defendants, and
18 each of them, Plaintiff and aggrieved employees are entitled to civil penalties in an
19 amount to be determined at trial, pre-judgment interest, costs and attorneys’ fees.

20 77. Plaintiff has complied with all procedural requirements of Labor Code §2699.3
21 prior to filing this Complaint. By the attached notice letter, submitted online to the Labor
22 and Workforce Development Agency (“LWDA”) and served by certified mail upon
23 Defendant, Plaintiff through counsel notified the LWDS and Defendants of the specific
24 Labor Code that Defendants have violated. The LWDS did not respond to Plaintiff’s
25 notice within the statutory timeframe, and Plaintiff has therefore exhausted administrative
26 remedies. Pursuant to Labor Code §2699.3, Plaintiff may now pursue his PAGA claims
27 in this action.

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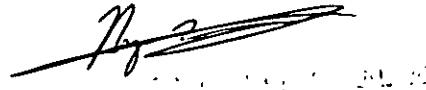
1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff, individually and on behalf of the State of California and
3 all aggrieved employees, prays for judgement against Defendants as follows:

- 4 1. An award of civil penalties pursuant to PAGA and the Cal. Labor Code §§ 226.3,
5 558, 1197.1, and 2698 *et seq.*, in an amount to be determined at trial, but at least the
6 jurisdictional amount of this Court;
- 7 2. An award of reasonable attorneys' fees and costs pursuant to California Labor Code
8 §218.5, 558, 1194, and 2699(g) and/or other applicable Labor Code sections and laws;
- 9 3. Pre-judgement and post-judgement interest as provided by law; and
- 10 4. Such other and further relief that the Court may deem just and proper.

11 DATED: April 2, 2020

12 **KOUL LAW FIRM**
13 **LAW OFFICES OF SAHAG MAJARIAN II**

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15 BY: Nazo Koulloukian, Esq.
16 Attorneys for Plaintiff Rebecca Mendez
17 and all aggrieved employees
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EXHIBIT 1



Nazo@Koullaw.com

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3435 WILSHIRE BLVD

SUITE 1710

LOS ANGELES, CA 90010

www.koullaw.com

January 28, 2020

Via E-filing:

California Labor & Workforce
Development Agency
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102

Via Certified U.S. Mail:

Enesco Properties, LLC DBA Things Remembered
5500 Avion Park Drive
Highland Heights, OH 44143

Re: PAGA Notice Pursuant to California Labor Code §2698 *et seq.*

Claimant: Rebecca Mendez

Employer: Enesco Properties, LLC DBA Things Remembered

Dear Sir or Madam:

Rebecca Mendez ("Claimant") has retained Nazo Koulloukian, Esq. of the KOUL LAW FIRM and Sahag Majarian, Esq. of Law Offices of Sahag Majarian II, to represent her, and all other aggrieved employees, for conditions of employment and wage and hour claims against her former employer, Enesco Properties, LLC DBA Things Remembered, which operates numerous locations throughout California (hereafter "Employer.")

Claimant worked for Employer as a sales lead earning approximately \$12.50 per hour until July 3, 2019. Employer has violated, and/or has caused to be violated, several Labor Code provisions, and it is therefore liable for civil penalties under Cal. Labor Code §2698 *et seq.* We request that your agency investigate the claims alleged below, or permit claimant to seek civil penalties under the Private Attorney General Act ("PAGA"), Labor Code §2698 *et seq.*, on behalf of the Labor and Workforce and Development Agency ("LWDA") and the State of California in a representative action. This letter will serve as notice of these allegations pursuant to Cal. Lab. Code §2699.3.

Failure To Provide Suitable Seating

(Lab. Code section 1198 and Wage Order 7-2001, section 14)

Labor Code section 1198 states, in pertinent part, "The employment of any employee... under conditions of labor prohibited by the [Wage Order] is unlawful."

Section 14 of the applicable Wage Order provides that:

- (A) All working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats.
- (B) When employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties.

Employer failed to provide Claimant and aggrieved employees with suitable seating during their employment as required by section 14 of the applicable Wage Order. For example, Claimant and other aggrieved employees were not provided with seating during shifts in which they worked long hours while standing in Employer's locations, whether as a cashier, or different positions which would reasonably permit the use of seating. The work performed at the counter includes customer service, completing paperwork, and other common tasks that can be performed while seated and the location of the tasks to be performed made it feasible to do so while seated. Moreover, Claimant alleges upon information and belief that the work performed by a cashier includes, but is not limited to, cashiering, providing customer service, and other everyday tasks which could be performed while seated and the location of the tasks to be performed made it feasible to do so while seated.

Accordingly, Claimant, on behalf of herself and aggrieved employees, will pursue civil penalties under Labor Code §2698 *et seq.*, and all available remedies to the extent allowed by law for the alleged violations.

Failure to Provide Rest Breaks

Cal. Labor Code §§226, 226.7, 512, 558, 2698 *et seq.*

Employer has failed to maintain a compliant rest period policy and practice that provides its employees with off-duty rest periods as required by California law.

Claimant and aggrieved employees were frequently scheduled to work 8-hour shifts, but they were frequently the only employee working in the store and often missed breaks. When Claimant and aggrieved employees did receive breaks, they were forced to remain

available for customers while on break. Claimant frequently worked 8-hour shifts, and her only break was a meal period. However, even meal periods were not compliant with California law, as set forth below.

Employer did not authorize or permit all of its hourly employees to take at least a ten minute rest period in which they were relieved of all duties, for every 4 hours of work, or major fraction thereof, as required by Cal. Lab. Code §226.7, §512 and Wage Order 7-2001 12(A).

Employer failed to pay claimants and similarly situated employees all premium compensation (one hour of pay at the employee's regular rate of pay for missed or untimely rest periods) mandated by Labor Code §226.7 (b) for these missed rest periods. As a derivative claim, claimants also allege that their pay statements were inaccurate, failing to include required rest period penalties, thus failing the requirements of Labor Code §226(a). As a result of these violations, Employer is liable for civil penalties pursuant to Cal. Labor Code §558 and §2698 *et seq.*

Failure to Provide Timely, Uninterrupted Meal Breaks

Cal. Labor Code §§226, 226.7, 512, 558, 2699 *et seq.*

During Claimant's employment, Employer failed to maintain a compliant meal period policy and practice. Employer failed to provide all of its hourly employees with their right to take an off-duty unpaid 30-minute meal period. Labor Code §512 provides, "[a]n employer may 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..." Labor Code §226.7(a) provides, "[n]o employer shall require an employee to work during any meal... period mandated by an applicable order of the Industrial Welfare Commission." Paragraph 11(A) of the Wage Orders provides, in pertinent part, "[u]nless an employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an 'on duty' meal period and counted as time worked."

As described above, Claimant was often the only employee working at the time in Employer's store and was unable to take compliant meal or rest breaks. When Claimant was able to take a meal period, she was frequently interrupted as she had to remain available to assist customers. Breaks were fully non-compliant because she was unable to leave Employer's place of business and was thus under the employer's control for the entire period she was off the clock.

Employer failed to permit claimant and aggrieved to take timely, off-duty, meal breaks of "not less than 30 minutes" for each five consecutive hours of work in violation of Labor Code §§226.7 and 512. As a derivative claim, claimant alleges that pay statements were inaccurate, failing to include required meal period penalties, thus failing the requirements

of Labor Code §226(a). As a result of these violations, Employer is liable for civil penalties pursuant to Cal. Labor Code §558 and §2698 *et seq.*

Failure to Pay For All Hours Worked, Including Overtime Hours Worked

(Cal. Labor Code §§218, 510, 558, 1194, 1197, 1197.1, 1198, 2699 *et seq.*)

Section 2(G) or Wage Order 7 “hours worked” as “the time during which an employee is subject to the control of an employer, and including all the time the employee is suffered or permitted to work, whether or not required to do so.” When employees like Claimant and her coworkers earning minimum wage do not receive payment for all hours worked, including as a result of spending time under the employer’s control donning and doffing required apparel, the result is that they are earning less than the statutory minimum wages for all hours worked in violation of Labor Code §1197, 1197.1, 1199 and Wage Order 7-2001 9(A)(1). Employer has been engaged in many unlawful employment practices which resulted in underpayment for hours worked each pay period, including overtime hours worked, as more fully set forth below:

Off-the-Clock Required Bag/Security Checks

Claimant and aggrieved employees were required to undergo off the clock bag and security checks. This was required by Employer in connection with the job, and employees were under the control of Employer while they were being checked. Accordingly, this time is uncompensated hours worked.

Work Performed During Unpaid Meal Periods

As described above, Employer failed to permit Claimant and others to take duty-free meal breaks of “not less than 30 minutes” for every five consecutive hours of work in violation of Labor Code §§226.7 and 512.

Claimant and aggrieved employees were frequently working alone in the store and were not permitted to leave the location for a meal period. They remained under Employer’s control. Further, employees were required to respond to customers if they needed assistance during employee’s lunch periods. Claimant states this happened frequently.

Claimant has also been employed under conditions prohibited by the wage order, and thus Employer has violated §1198. Employer is liable for civil penalties pursuant to Labor Code §§558 and 2699 *et seq.*

Failure to Timely Pay All Wages Owed

(Cal. Lab. Code §§201, 202, 203 and 2698 *et seq.*)

Failure to Pay Wages Due Upon Termination

As set forth above, due to Employer's unlawful employment practices, Employer knowingly and willfully failed to pay all compensation, including penalty wages, due and owing to Claimant at the time employment terminated. Employer willfully failed to pay aggrieved employees who are no longer employed by it all compensation due upon termination of employment as required by Cal. Lab. Code §§201 and 202. Pursuant to §§203 and 256, Claimant and similarly situated individuals are now also entitled to recover up to thirty (30) days of wages due to Employer's "willful" failure to comply with the statutory requirements of §§201 and 202 of the Labor Code. Moreover, because Employer violated §§201-203 and 256, Employer is liable for civil penalties pursuant to Cal. Lab. Code § 2698 *et. seq.*

Claimant believes that other employees who separated from the company, whether voluntary or involuntary, were also denied payment of wages in a timely manner as required by §203. Claimant will seek civil penalties pursuant to §558 (a)(3) for herself and other aggrieved employees for each violation of §203 and §256 and will seek civil penalties under PAGA pursuant to §2698 *et. seq.*, on behalf of the Labor and Workforce and Development Agency (LWDA) against Employer if authorized to file a representative action on behalf of the State of California.

Failure to Pay All Wages Owed Twice Per Month

Employer was required to pay Claimant and aggrieved employees all wages earned twice during each calendar month pursuant to Labor Code §204(a). Employer failed to pay all wages earned to employees as a result of the unlawful employment policies and practices discussed herein. As a result of these practices, Employees were underpaid for hours worked, including penalty wages, and this underpayment resulted in a failure to pay all wages owed twice per month.

Failure to Provide Accurate Itemized Wage Statements

(Cal. Labor Code §§ 226, 1174, 2699 *et seq*)

Employer knowingly and intentionally failed to provide timely, accurate, itemized wage statements to Claimant and the aggrieved employees, as well as maintain accurate records, in accordance with Labor Code §§ 226 and 1174. The statements provided to Claimant and aggrieved employees have not accurately reflected actual gross wages earned, including meal/rest premiums and total hours worked. Such failures caused injury

to Claimant and others, by, among other things, impeding them from knowing the total hours worked and the amount of wages to which they are and were entitled. Employer knowingly and intentionally failed to itemize the gross wages earned, net wages earned, and total hours worked. Employer is liable for civil penalties pursuant to Labor Code § 2699 *et seq.*

Conclusion

Employer has violated a number of California wage and hour laws. Claimant respectfully requests that the agency investigate the above allegations and hereby provides notice of the allegations pursuant to PAGA's provisions. Alternatively, Claimant requests that the agency inform her if it does not intend to investigate these violations so that she may pursue their claims as a representative action in civil court.

Sincerely,



Nazo Koulloukian, Esq.

Sahag Majarian, II, Esq.

Attorney for Claimant

cc:

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