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ROBINSON, JR. on behalf of themselves and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

ARTHUR BARNES, JOSEPH D.
ORNELAS and RODNEY ALAN
ROBINSON, JR. on behalf of themselves
and all others similarly situated,

Plaintiffs,

vs.

TARGET CORPORATION, a
Minnesota Corporation; and DOES 1
through 10, inclusive,

Defendant.

) Lead Case No. CIVDS2007761 [consolidated with
) Case Nos. CIVDS2012750 and CIVDS2004578]

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR DAMAGES AND
PENALTIES**

1. FAILURE TO PAY OVERTIME
COMPENSATION IN VIOLATION OF
LABOR CODE §§ 510, 558, 1194, 1198;
2. FAILURE TO PROVIDE ITEMIZED
WAGE STATEMENTS AND PAYROLL
RECORDS IN VIOLATION OF LABOR
CODE
§§ 226, 1174, 1175;
3. FAILURE TO PAY REPORTING TIME
PAY IN VIOLATION OF 8 CAL. C.
REGS. § 11010 *ET SEQ.*; AND IWC
WAGE ORDER NO. 7.
4. FAILURE TO PAY WAITING TIME
PENALTIES IN VIOLATION OF
LABOR CODE §§ 201-203;
5. VIOLATION OF LABOR CODE § 2802;
6. PRIVATE ATTORNEYS GENERAL
ACTION COMPLAINT FOR
VIOLATION OF LABOR CODE § 2698,
ET SEQ.;
7. UNLAWFUL BUSINESS PRACTICES IN
VIOLATION OF BUS. & PROF. CODE §
17200, *ET SEQ.*; AND
8. OVERTIME COMPENSATION AND
LIQUIDATED DAMAGES UNDER THE
FAIR LABOR STANDARDS ACT OF
1938, 29 U.S.C. § 201, *ET SEQ.*

DEMAND FOR JURY TRIAL

1 Plaintiffs ARTHUR BARNES, JOSEPH D. ORNELAS and RODNEY ALAN
2 ROBINSON, JR. ("Representative Plaintiffs" or "Plaintiffs") allege as follows:

3 **PARTIES**

4 1. Representative Plaintiffs Arthur Barnes, Joseph D. Ornelas and Rodney Alan
5 Robinson, Jr. are individuals who reside in California and are/were employed by defendant Target
6 Corporation (hereinafter referred to as "Defendant" or "Target") in its California Distribution
7 Centers during the Class Period.

8 2. Representative Plaintiffs are informed and believe, and based on such information
9 and belief, allege that at all times mentioned herein, Target was and is a corporation organized
10 under the laws of the State of Minnesota and authorized to do business and does business
11 throughout the State of California and throughout the County of San Bernardino.

12 3. Representative Plaintiffs are unaware of the true names and capacities, whether
13 corporate or individual, or otherwise, of defendants named as DOES 1 through 10, inclusive.
14 Pursuant to California Code of Civil Procedure section 474, Representative Plaintiffs will seek
15 leave of court to amend this complaint to state said defendants' true names and capacities when the
16 same have been ascertained. Representative Plaintiffs are informed and believe and based on such
17 information and belief allege that said fictitiously-named defendants are responsible in some
18 manner for the injuries and damages to Representative Plaintiffs and the putative class and
19 aggrieved employees as further alleged herein.

20 4. This is a Class Action and Representative Action Complaint, pursuant to California
21 Code of Civil Procedure section 382 and the Private Attorneys General Act of 2004 (hereinafter
22 "PAGA") , on behalf of the Representative Plaintiffs, all other persons similarly situated, and all
23 aggrieved employees who worked for Target at one of its California Distribution Centers from
24 March 21, 2019 through August 11, 2019 as a non-exempt hourly employee (hereafter "AWS Class
25 Members") for: (i) failure to pay overtime compensation in violation of Labor Code sections 510,
26 558, 1194, 1198 and the Fair Labor Standards Act 29 U.S.C. § 201 *et seq.* ("FLSA"); (ii) failure to
27 provide adequate itemized wage statements and accurate payroll records in violation of Labor Code
28 section 226, 1174, 1175; (iii) failure to pay waiting time penalties in violation of Labor Code

1 section 203; (iv) unlawful business practices under Business and Professions Code section 17200,
2 *et seq.*; and (v) civil penalties pursuant to Labor Code section 2698 *et seq.*

3 5. From March 21, 2019 through August 11, 2019 (hereinafter the “AWS Class
4 Period”), Target had a consistent policy of failing to provide to its California Distribution Center
5 non-exempt hourly employees, itemized wage statements and accurate payroll records that
6 included the correct gross wages earned, the correct net wages earned, and the correct hourly rates
7 in effect during the pay period and the corresponding correct number of hours worked at each
8 hourly rate, including straight, overtime and double time hours and rates. During the AWS Class
9 Period Target utilized Alternative Workweek Schedules (hereinafter “AWS”) that Representative
10 Plaintiffs contend were invalid as a matter of law.

11 6. This action also seeks damages and penalties on behalf of the Representative
12 Plaintiffs, all other persons similarly situated, and all aggrieved employees who have worked for
13 Target at one of its seven California Distribution Centers from March 21, 2019 as a non-exempt
14 hourly employee (hereafter “MyTime Class Members”) for (i) failure to reimburse for necessary
15 business expenses in violation of Labor Code section 2802, for the use of their personal cellular
16 telephones for Target’s business without reimbursement; (ii) failure to pay reporting time pay in
17 violation of 8 Cal. C. Regs. § 11010 *et seq.* and IWC Wage Order No. 7, for failure to pay
18 reporting time pay when employees were required to regularly check their schedules through the
19 MyTime application throughout the workweek, and when the Class Members were required to
20 report to work via the MyTime application and then not put to work for at least half of their
21 regularly scheduled shift; and (iii) civil penalties pursuant to Labor Code section 2698 *et seq.*

22 7. For the period from March 21, 2019 to the filing of the complaint and through to the
23 present (hereinafter the “MyTime Class Period”), Target had a consistent policy of requiring the
24 Class Members to utilize their personal cellular telephones for Target’s business and failed to
25 reimburse the Class Members for such use in violation of Labor Code section 2802. Target
26 developed and instituted a mandatory cellular phone application (hereinafter the “MyTime App”) for
27 use in scheduling the putative Class Members. Target had a consistent policy of requiring the
28 Class Members to continually monitor their schedules, without compensation, as they can be

1 changed at a moment's notice. Target also had a consistent policy requiring the Class Members to
2 report for work by checking the MyTime App, only to reschedule or eliminate a shift the Class
3 Members were otherwise scheduled for, including without informing the Class Members through
4 the MyTime App until minutes or hours before the shift was originally scheduled to begin. On
5 these occasions it was Target's uniform policy and practice to not pay the Class Members any
6 reporting time pay.

7 8. This is also a collective action seeking recovery for Representative Plaintiffs, and all
8 others similarly situated, for unpaid overtime, liquidated damages, interest, attorneys' fees and
9 costs, pursuant to section 16(b) of the Fair Labor Standards Act ("FLSA"), 29 U.S.C section
10 216(b). As a result of Target's conduct, Representative Plaintiffs bring a collective action under
11 section 216(b) of the FLSA against Target on behalf of themselves and all other similarly situated
12 individuals that worked for Target at one of its seven California Distribution Centers during the
13 FLSA Collective Action Period of March 21, 2019 to August 11, 2019.

14 9. Representative Plaintiffs on behalf of themselves and all class members, pursuant to
15 Business and Professions Code sections 17200-17208, also seeks injunctive relief, restitution, and
16 disgorgement of all benefits Target enjoyed from its failure to correctly pay overtime wages for all
17 hours worked, failure to reimburse business expenses, failure to pay reporting time pay, and
18 injuries suffered as a result of the Target's failure to timely pay all wages due.

19 VENUE AND JURISDICTION

20 10. Venue is proper under California Code of Civil Procedure section 395 and under
21 California Government Code section 12965(b), in that the majority of Representative Plaintiffs'
22 injuries were incurred within the County of San Bernardino, the actions giving rise to
23 Representative Plaintiffs' complaint arose within the County of San Bernardino, and Defendant
24 Target is located in the County of San Bernardino.

25 11. Representative Plaintiffs and the members of the Class have been damaged in an
26 amount according to proof at the time of trial but still in excess of the minimum jurisdiction of this
27 Court.

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STATEMENT OF FACTS

12. Representative Plaintiff Arthur Barnes (hereinafter “Barnes”) was hired by Target as a “Warehouse Worker” in Target’s T-3806 Distribution Center located in Rialto, California. Representative Plaintiff Barnes worked for Target as a “Warehouse Worker” in the T-3806 Distribution Center during the Class Periods and has since terminated his employment with Target.

13. Representative Plaintiff Joseph Ornelas (hereinafter “Ornelas”) was hired by Target as a “Mechanic” in Target’s T-553 Distribution Center located in Fontana, California. Representative Plaintiff Ornelas worked for Target as a “Mechanic” in the T-553 Distribution Center during the Class Periods.

14. Representative Plaintiff Rodney Alan Robinson Jr. (hereinafter “Robinson”) worked for Target as a “Warehouse Worker” in Target’s T-555 Distribution Center located in Woodland, California. Representative Plaintiff Robinson worked for Target as a “Warehouse Worker” in the T-555 Distribution Center during the Class Periods.

15. During the entire period of their employment with Target, Representative Plaintiffs have been dedicated and exemplary employees, and performed their duties for Target in a diligent and thorough manner.

16. While employed with Target, Representative Plaintiffs, the putative Class Members and aggrieved employees were regularly required to work shifts in excess of 8 hours without the payment of overtime after 8 hours of work in a workday/shift during the AWS Class Period.

17. Target had a consistent policy of failing to pay overtime wages after 8 hours of work in a workday/shift performed by Target’s non-exempt hourly California Distribution Center employees in violation of California law during the AWS Class Period.

18. Furthermore, Target’s wage statements that were issued for all work performed between March 21, 2019 and August 11, 2019 listed the incorrect rates of pay, hours worked and incorrect earnings as a result of its failure to pay overtime after 8 hours of work in a workday/shift. Thus, the total gross and net earnings, as well as straight time and overtime hours listed on the employees’ pay stubs are incorrect as they do not include the correct number of straight or overtime hours as Target did not pay overtime after 8 hours in a day/shift even though employees

1 were regularly scheduled to work 10 hour and 12 hour shifts.

2 19. Furthermore, while employed with Target, Target's company-wide policy for its
3 Distribution Center employees in California is that they are required to use their personal cellular
4 telephones (i.e. smart telephones) to check their work schedules (i.e. whether they have been
5 scheduled to work a particular work day or work shift by Target or to come into work early),
6 request time off of work, and other timekeeping/payroll functions. First, Representative Plaintiffs
7 and the putative class were required to download a Target mobile application to their cellular
8 telephones called "MyTime" and referred to by Target and the employees as the "Target MyTime
9 App." Once the employees have downloaded the Target MyTime App, they are required to check
10 the App weekly, and during the "busy season" (the October through December holiday season)
11 daily to determine whether Target has either "scheduled up" (added a day/shift to the employee's
12 set schedule) or "scheduled down" (removed a day/shift from the employee's set schedule) the
13 employee for a given work week. A failure to check the App and miss a shift that has been added
14 to an employee's schedule results in a "no call/no show" which is grounds for termination of
15 employment from Target.

16 20. When the Target's employees were scheduled down, the change to their schedules
17 often came without warning, at times minutes or hours before the scheduled down shift was
18 otherwise set to begin, and after the employees had already begun traveling or arrived at Target's
19 distribution centers only to be sent home without being put to work. Furthermore, the requirement
20 that the employees check the MyTime App as often as daily for changes constitutes reporting for
21 work, as it prevented the putative Class Members from being able to reasonably schedule their
22 lives outside of work and unlawfully provided Target with a large force of contingent labor without
23 the requisite reporting time pay compensation paid to the putative Class Members. If Target
24 employees missed a newly added or rescheduled shift because they did not check the MyTime App
25 frequently enough they were subject to discipline or termination.

26 21. Prior to adding the MyTime App, Target utilized a call-in number and updated the
27 call-in line once a week to inform employees if a shift had been added/removed from their
28 schedule. Prior to introducing the MyTime App, Target distribution center employees could call in

1 to the “call-in line” on Wednesday of each week, punch in their employee identification number
2 and the line would inform them if their schedule for the week had been changed in any fashion. To
3 update schedules in “real time” and give the company more flexibility in the scheduling of
4 employee work shifts, Target discontinued the call-in line and, during the MyTime Class Period,
5 updates employees’ schedules in “real time” and continuously, which requires employees to
6 consistently check the MyTime App on their personal cellular telephones. However, Target does
7 not reimburse employees for the data usage required for downloading and using the MyTime App
8 on their personal cellular telephones in violation of Labor Code § 2802. Nor does Target
9 compensate employees with reporting-time pay for time spent checking their schedules or for time
10 spent traveling to the worksite to report to work only to find out that their scheduled shift was
11 canceled.

12 CLASS ACTION ALLEGATIONS

13 22. Representative Plaintiffs bring this action on behalf of themselves and all others
14 similarly situated as a class action pursuant to Section 382 of the Code of Civil Procedure.

15 23. Representative Plaintiffs seek to represent Classes composed of and defined as
16 follows:

17 24. **The AWS Class.** All non-exempt team members who worked for Target under an
18 alternative workweek schedule at one of Target’s seven California distribution centers from March
19 21, 2019, through August 11, 2019.

20 25. Included in the AWS Class, Representative Plaintiffs also seek to represent a Sub-
21 Class composed of and defined as follows:

22 26. **Failure to Pay Overtime Sub-Class.** All persons who are employed or have been
23 employed by Target at Target’s California Distribution Centers in a non-exempt position that are or
24 were not paid overtime (including double time) for all work after 8 hours in a day/shift from March
25 21, 2019 to August 11, 2019.

26 27. Included in the AWS Class, Representative Plaintiffs also seek to represent a Sub-
27 Class composed of and defined as follows:

28 28. **Waiting Time Penalties Sub-Class.** All persons who are employed or were

1 employed by Target at Target's California Distribution Centers in a non-exempt position from
2 March 21, 2019 to August 11, 2019 that did not receive all wages owed to them at the time of their
3 termination.

4 29. Included in the AWS Class, Representative Plaintiffs also seek to represent a Sub-
5 Class composed of and defined as follows:

6 30. **Itemized Wage Statement Sub-Class.** All persons who are employed or have been
7 employed by Target at Target's California Distribution Centers in a non-exempt position from
8 March 21, 2019 to August 11, 2019, that did not receive an itemized wage statements and accurate
9 payroll records for the work performed during the AWS Class Period that listed the correct straight
10 and/ or overtime hours that the employee worked in the pay period, and/or the correct gross and/or
11 net wages earned.

12 31. Representative Plaintiffs also seek to represent a Class composed of and defined as
13 follows:

14 32. **The MyTime Class.** All non-exempt team members who worked for Target at one
15 of Target's seven California distribution centers from March 21, 2019, to the present.

16 33. Representative Plaintiffs also seek to represent a Class composed of and defined as
17 follows:

18 34. **The Reporting Time Pay Class.** All non-exempt team members who worked for
19 Target at one of Target's seven California distribution centers from March 21, 2019, to the present
20 who were forced to check the MyTime application daily to confirm whether a schedule change had
21 taken place, or who reported for work based on the MyTime App but were not furnished with work
22 equal to at least half of their scheduled day's work.

23 35. This action has been brought and may properly be maintained as a class action
24 under the provisions of Section 382 of the California Code of Civil Procedure because there is a
25 well-defined community of interest in the litigation and the proposed Classes are easily
26 ascertainable.

27 **A. Numerosity**

28 36. The potential members of the Classes as defined are so numerous that joinder of all

1 the members of the Classes is impracticable. While the precise number of class members for each
2 Class has not been determined at this time, Representative Plaintiffs are informed and believe that
3 Target currently employs, and during the Class Periods employed, thousands of employees, in non-
4 exempt positions in its California Distribution Centers, including but not limited to warehouse
5 workers, operations team members, utility attendants, packers, fulfillment center team members,
6 and maintenance mechanics, in California, who are or have been affected by Target's unlawful and
7 uniform policies during the Class Period of: (1) failing to pay for all overtime worked after 8 hours
8 in a day/shift; (2) utilizing an unlawful and/or improper alternative workweek schedule; (3) failing
9 to pay all wages at termination; (4) failure to provide accurate itemized wage statements and
10 payroll records; (5) failure to reimburse all business expenses; and (6) failure to pay reporting time
11 pay.

12 37. Upon information and belief, Representative Plaintiffs allege that the Target's
13 employment records will provide information as to the number of all members of the Classes.
14 Joinder of all members of the proposed Classes is not practicable.

15 **B. Commonality**

16 38. There are questions of law and fact common to the Classes that predominate over
17 any questions affecting only individual Class members. These common questions of law and fact
18 include, without limitation:

- 19 (a) Whether the alternative workweek schedules Target utilized at its California
20 Distribution Centers were lawfully implemented and if not does Target owe
21 the putative AWS Class Members statutory overtime and related penalties;
- 22 (b) Whether Target violated Labor Code sections 201-203 by failing to pay
23 overtime wages due and owing at the time of termination of employment for
24 the putative AWS Class Members;
- 25 (c) Whether Target violated Labor Code sections 226, 1174, and 1175 for the
26 failure to furnish the AWS putative Class Members with complete and
27 accurate itemized wage statements and payroll records; and
- 28 (d) Whether Target violated Labor Code section 2802 by failing to reimburse

necessary and foreseeable business expenses incurred by the MyTime putative Class Members.

(e) Whether Target failed to pay reporting time pay in violation of 8 Cal. C. Regs. § 11010 *et seq.* and IWC Wage Order No. 7 by requiring the putative Class Members to report for work based on the MyTime App and then not putting them to work for at least half of their scheduled day's work.

C. Typicality

39. The claims of Representative Plaintiffs are typical of the claims of the Classes. Representative Plaintiffs and all members of the Classes sustained injuries and damages arising out of and caused by Target's common course of conduct in violation of the law as alleged therein.

D. Adequacy of Representation

40. Representative Plaintiffs will fairly and adequately represent and protect the interests of the members of the Classes. Counsel who represents Representative Plaintiffs is competent and experienced.

E. Superiority of Class Action

41. A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all Class Members is not practicable, and questions of law and fact common to the Classes predominate over any questions affecting only individual members of the Classes. Each member of each class has been damaged and is entitled to recovery by reason of Target's illegal policy and/or practice of failing to properly compensate and/or reimburse the Class Members as alleged above.

42. Class action treatment will allow those similarly situated persons to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system. Representative Plaintiffs are unaware of any difficulties that are likely to be encountered in the management of this action that would preclude its maintenance as a class action.

FLSA COLLECTIVE ACTION ALLEGATIONS

43. Representative Plaintiffs bring the Eighth Cause of Action, the FLSA claim, as an "opt-in" collective action pursuant to 29 U.S.C section 216(b), on behalf of themselves and all

1 other persons similarly situated in California only. The period covered by the collective action is
2 from March 21, 2019 to August 11, 2019. The FLSA Collective Action members which
3 Representative Plaintiffs seek to represent are composed of and defined as follows:

4 **All persons who are employed or have been employed by Target in a California**
5 **Distribution Center in a non-exempt position that were not paid overtime for**
6 **all of the time that they worked at any time from March 21, 2019 to August 11,**
7 **2019 (hereinafter "FLSA Collective Action Members").**

8 44. Representative Plaintiffs believe that the FLSA Collective Action Members consist
9 of thousands of individuals.

10 45. During this litigation, Representative Plaintiffs may find it appropriate or necessary
11 to amend the definition of those covered by the FLSA Collective Action. Representative Plaintiffs
12 reserve their right to continue to refine the FLSA Collective Action definition.

13 46. Representative Plaintiffs and the FLSA Collective Action Members are similarly
14 situated in that they were/are all non-exempt employees subject to Target's common practice,
15 policy, or plan of willfully and unlawfully failing to pay all overtime wages and liquidate damages
16 due to them under the FLSA.

17 **FIRST CAUSE OF ACTION**

18 **(FAILURE TO PAY OVERTIME COMPENSATION IN VIOLATION OF LABOR CODE**

19 **§§ 510, 558, 1194, and 1198)**

20 **(By Representative Plaintiffs Against Defendant Target Corporation and Does 1 through 10,**
21 **inclusive)**

22 47. Representative Plaintiffs hereby re-allege and incorporate all preceding paragraphs
23 as though fully set forth herein.

24 48. Target had a consistent policy, from March 21, 2019 to August 11, 2019, of failing
25 to pay overtime wages to its hourly non-exempt Distribution Center employees at its California
26 Distribution Centers in violation of California state wage and hour laws by having employees work
27 without the payment of overtime after 8 hours of work in a day/shift. Target utilized unlawful and
28 invalid alternative workweek schedules in order to avoid paying lawfully earned overtime,

1 including double time. This practice systematically undercompensated members of the AWS Class
2 throughout the AWS Class Period.

3 49. As a result of the unlawful acts of Target, Representative Plaintiffs, the putative
4 Class Members, and aggrieved employees have been deprived of their full overtime wages in
5 amounts to be determined at trial, and are entitled to the recovery of such amounts, plus interest
6 and penalties thereon, attorneys' fees, and costs, pursuant to Labor Code sections 218.5, 510, 558,
7 1194, and 1198.

8 **SECOND CAUSE OF ACTION**

9 **(FAILURE TO PROVIDE ITEMIZED WAGE STATEMENTS AND PAYROLL**

10 **RECORDS IN VIOLATION OF LABOR CODE § 226, 1174, 1175)**

11 **(By Representative Plaintiffs Against Defendant Target Corporation and Does 1 through 10,**
12 **inclusive)**

13 50. Representative Plaintiffs hereby re-allege and incorporate all preceding paragraphs
14 as though fully set forth herein.

15 51. Section 226 of the California Labor Code requires Target to provide itemized wage
16 statements at the time of payment of wages which include but are not limited to the following: the
17 correct gross wages earned; the correct total hours worked by the employee; the correct net wages
18 earned; the inclusive dates of the period for which the employee is paid; and all applicable hourly
19 rates in effect during the pay period and the corresponding correct number of hours worked at each
20 hourly rate by the employee.

21 52. Target also failed to keep and provide accurate payroll records as required by Labor
22 Code sections 226, 1174 and/or 1175 which include but are not limited to the following: the correct
23 gross wages earned by employees; the correct total hours worked by employees; the correct net
24 wages earned by employees; all applicable hourly rates in effect during the pay period for each
25 employee, and the correct number of hours worked at each hourly rate by employees.

26 53. Representative Plaintiffs contend that they and the putative AWS Class Members
27 have been injured by Target's failure to provide all of the requisite information on its itemized
28 wage statements in that such failure, *inter alia*, masks possible and actual underpayments to

1 Target's employees; and make it difficult for Target's employees to verify that they have in fact
2 been paid the proper amounts owing for all hours worked. Said conduct was done knowingly and
3 intentionally since Target is aware of California law and that it is not paying its employees for all
4 overtime hours worked with the design to harm Representative Plaintiffs and the putative AWS
5 Class Members.

6 **THIRD CAUSE OF ACTION**

7 **(FAILURE TO PAY REPORTING TIME PAY IN VIOLATION OF**

8 **8 CAL. C. REGS. § 11010 *ET SEQ.* AND IWC WAGE ORDER NO. 7)**

9 **(By Representative Plaintiffs Against Defendant Target Corporation and Does 1 through 10,**
10 **inclusive)**

11 54. Representative Plaintiffs hereby re-allege and incorporate all preceding paragraphs
12 as though fully set forth herein.

13 55. California Code of Regulations section 11010 *et seq.* and IWC Wage Order No. 7
14 mandates that when an employer requires an employee to report for work and then fails to put them
15 to work for at least half of their scheduled day's work, the employer must pay wages for half the
16 usual or scheduled day's work, but in no event for less than two hours nor more than four hours, to
17 the employee.

18 56. With respect to what constitutes "report for work," the court in *Ward v. Tilly's, Inc.*,
19 31 Cal. App. 5th 1167, 1185 (2019) held that "an employee need not necessarily physically appear
20 at the workplace to 'report for work.' Instead, 'report[ing] for work' within the meaning of the
21 wage order is best understood as presenting oneself *as ordered*. 'Report for work,' in other words,
22 does not have a single meaning, but instead is defined by the party who directs the manner in
23 which the employee is to present himself or herself for work—this is, by the employer....[I]f the
24 employer directs employees to present themselves for work by logging on to a computer remotely
25 ..., then the employee 'reports for work....'"

26 57. Target required the putative Class Members to report for work by instructing them
27 to frequently check the MyTime App, sometimes as often as daily, but often failed to put them to
28 work for at least half of their scheduled day's work without the payment of reporting time pay

1 when shifts were suddenly rescheduled or eliminated. During the MyTime class period from
2 March 21, 2019, to the present, Target required the Representative Plaintiffs and the putative Class
3 Members at its seven California distribution centers to report for work without receiving reporting
4 time pay. The Representative Plaintiffs and the putative Class Members were required to check the
5 MyTime App as often as daily and when a shift was removed, rescheduled, or shortened without
6 proper notice they received no reporting time pay under Target's uniform compensation policies
7 and practices. Furthermore, at times Representative Plaintiffs and the putative Class Members
8 would receive a change in their schedules removing or rescheduling a previously scheduled shift
9 minutes before that shift was otherwise scheduled to begin, and after the Representative Plaintiffs
10 and putative Class Members had already left for their worksite or had already arrived at their
11 worksite, only to be sent home without being put to work and without the payment of reporting
12 time pay. Similarly, the Representative Plaintiffs and putative Class Members had no choice but to
13 frequently check the MyTime App because if they missed a shift or were late to a shift due to a
14 suddenly added or rescheduled shift they were subject to discipline or termination. Requiring
15 employees to monitor an app that can change their schedule moments before it is to begin (with no
16 notification) triggers the reporting time pay requirements.

17 58. During the Reporting Time Pay Class Period, Representative Plaintiffs and the
18 putative Class Members have been required to present themselves for work and subsequently have
19 been sent home without being put to work for at least half their scheduled shift or receiving proper
20 reporting time pay. By failing to pay reporting time pay to these putative Class members Target
21 has violated California law.

22 **FOURTH CAUSE OF ACTION**

23 **(FAILURE TO PAY WAITING TIME PENALTIES**

24 **IN VIOLATION OF LABOR CODE § 201-203)**

25 **(By Representative Plaintiffs Against Defendant Target Corporation and Does 1 through 10,**
26 **inclusive)**

27 59. Representative Plaintiffs hereby re-allege and incorporate all preceding paragraphs
28 as though fully set forth herein.

60. California Labor Code section 201 requires an employer who discharges an employee to pay all compensation due and owing to that employee immediately upon discharge.

61. California Labor Code section 203 provides that if an employer willfully fails to pay compensation promptly upon separation from employment, as required by either sections 201 or 202, then the employer is liable for waiting time penalties in the form of continued compensation for up to 30 work days.

62. Target willfully failed and refused to timely pay overtime compensation to putative Class Members, such as Representative Plaintiff Arthur Barnes, whose employment terminated. As a result, Target is liable to these putative Class Members for waiting time penalties, together with costs, under Labor Code sections 201-203.

FIFTH CAUSE OF ACTION

(FAILURE TO REIMBURSE FOR BUSINESS EXPENSES)

IN VIOLATION OF LABOR CODE § 2802)

(By Representative Plaintiffs Against Defendant Target Corporation and Does 1 through 10,
inclusive)

63. Representative Plaintiffs reallege each paragraph of this Complaint as though fully set forth.

64. California Labor Code § 2802, requires Target to “indemnify his or her employees for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful”. Cal Lab Code § 2802.

65. With respect to requiring employees to utilize their personal cellular telephones for the company's business, the court in *Cochran v. Schwan's Home Service*, 228 Cal. App. 4th 1137 (2014) held that, "when employees must use their personal cell phones for work-related calls, Labor Code section 2802 requires the employer to reimburse them. Whether the employees have cell phone plans with unlimited minutes or limited minutes, the reimbursement owed is a reasonable percentage of their cell phone bills." *Id.* at 1140.

1 66. Here, Target's company-wide policy for its distribution center employees in
2 California is that they are required to use their personal cellular telephones (*i.e.* smart telephones)
3 to check their work schedules (*i.e.* whether they have been scheduled to work a particular work
4 day or work shift by Target), request time off of work, and other timekeeping/payroll functions.
5 First, employees are required to download a Target mobile application to their cellular telephones
6 called "MyTime" and referred to by Target and the putative MyTime Class Members as the
7 "Target MyTime App." Once the employees have downloaded the Target MyTime App, they are
8 required to check the App weekly, and during the "busy season" (the October through December
9 holiday season) daily to determine whether Target has either "scheduled up" (added a day/shift to
10 the employee's set schedule) or "scheduled down" (removed a day/shift from the employee's set
11 schedule) the employee for a given work week. A failure to check the App and miss a shift that
12 has been added to an employee's schedule results in a "no call/no show" which is grounds for
13 termination of employment from Target. Prior to adding the MyTime App, Target utilized a call-
14 in number and updated the call-in line once a week to inform employees if a shift had been
15 added/removed from their schedule. Prior to introducing the MyTime App, Target distribution
16 center employees in California could call in to the "call-in line" on Wednesday of each week,
17 punch in their employee identification number and the line would inform them if their schedule for
18 the week had been changed in any fashion. To update schedules in "real time" and give the
19 company more flexibility in the scheduling of employee work shifts, Target discontinued the call-
20 in line and now updates employees' schedules in "real time" and continuously which requires
21 employees to consistently check the MyTime App on their personal cellular telephones. However,
22 Target does not reimburse employees for the data usage of downloading and using the MyTime
23 App on their personal cellular telephones in violation of Labor Code § 2802.

24 67. During the MyTime Class Period, Representative Plaintiffs and the putative
25 members of the Class have been required to personally incur and pay for these expenses in the
26 discharge of their employment duties, all without reimbursement from Target.

27 68. Target has a policy of regularly and consistently refusing to reimburse
28 Representative Plaintiffs and the members of the MyTime Class for such expenses, in violation of

1 California law.

2 **SIXTH CAUSE OF ACTION**

3 **(VIOLATION OF LABOR CODE § 2698, *ET SEQ.*)**

4 **(By Representative Plaintiffs Against Defendant Target Corporation and Does 1 through 10,**
5 **inclusive)**

6 69. Representative Plaintiffs hereby re-allege and incorporates all preceding paragraphs
7 as though fully set forth herein.

8 70. California Labor Code section 2698 *et. seq.* provides employees with a private right
9 of action to remedy an employer's failure to comply with Labor Code sections designated in Labor
10 Code section 2699.5. Labor Code sections 201, 202, 203, 204, 223, 226, 510, 511, 558, 1194,
11 1197, 1198 and 2802, and the IWC Wage Orders all of which Target has violated as alleged above
12 and as stated in Exhibits "A," "B" and "C" Plaintiffs' Notices to the Labor Workforce
13 Development Agency which are incorporated by reference. Penalties for violations under Labor
14 Code section 2699(f)(2) are one hundred dollars (\$100.00) for each aggrieved employee per pay
15 period for the initial violation, and two hundred dollars (\$200.00) per subsequent violation for each
16 aggrieved employee per pay period, when the Labor Code has not provided otherwise.

17 71. Representative Plaintiffs have exhausted the administrative prerequisites to file a
18 claim under Labor Code section 2698 *et seq.* by sending notices by certified mail and via
19 electronic submission to the California Labor Workforce and Development Agency on August 16,
20 2019, February 11, 2020, and March 2, 2020 along with copies to Target. (Attached hereto as
21 Exhibit "A," "B" and "C") It has been over 65 days since each mailing/submission and
22 Representative Plaintiffs have not received confirmation from the LWDA that it will not
23 investigate the complaint within the time limits set forth in Labor Code section 2699.3(a)(2).

24 72. As the administrative process has been exhausted under Labor Code section 2699.3,
25 Representative Plaintiffs seek to recover, on behalf of themselves and others similarly situated,
26 civil penalties to be distributed according to statute.

27 73. As provided for in Labor Code section 2699.3(d), Representative Plaintiffs are
28 entitled to recover civil penalties, on behalf of themselves and others similarly situated, for the

1 one-year period beginning with the Section 2699 demand letter, the necessary precursor to this
2 claim.

3 74. Labor Code section 2699(g)(1) provides for attorneys' fees and costs to the
4 prevailing employees for disputes under the Labor Code. Representative Plaintiffs thus seek to
5 recover attorneys' fees and costs expended in recovering these penalties on behalf of themselves
6 and others similarly situated.

7 75. As a result of Target's unlawful conduct, Representative Plaintiffs and putative
8 Class Members have suffered damages in an amount, subject to proof, as they were not paid all
9 wages due. The precise amount of unpaid wages is not presently known to Representative
10 Plaintiffs but can be determined directly from Target's records.

11 76. As a result of these violations, Representative Plaintiff and the members of the Class
12 have been damaged in an amount according to proof at the time of trial, but still in excess of the
13 minimum jurisdiction of this Court.

14 **SEVENTH CAUSE OF ACTION**

15 **(UNLAWFUL BUSINESS PRACTICES**

16 **IN VIOLATION OF BUS. & PROF. CODE § 17200, *ET SEQ.*)**

17 **(By Representative Plaintiffs Against Defendant Target Corporation and Does 1 through 10,**
18 **inclusive)**

19 77. Representative Plaintiffs hereby re-allege and incorporates all preceding paragraphs
20 as though fully set forth herein.

21 78. Target's failure to correctly pay overtime compensation and reimburse necessary
22 business expenses as alleged herein, constitutes unlawful activity prohibited by Business and
23 Professions Code section 17200, *et seq.*, including but not limited to Sections 17200, 17202, and
24 17203.

25 79. The actions of Target in failing to pay Representative Plaintiffs and the putative
26 class members in a lawful manner as alleged herein constitute false, unfair, fraudulent and/or
27 deceptive business practices, within the meaning of Business and Professions Code section 17200,
28 *et seq.*

80. As a result of its unlawful acts, Target has reaped and continue to reap unfair benefits at the expense of Representative Plaintiffs and the putative class members. Target should be enjoined from this activity and made to disgorge these ill-gotten gains and restore to Representative Plaintiffs and putative class members the wrongfully withheld wages and expenses pursuant to Business and Professions Code section 17203. Representative Plaintiffs are informed and believe, and thereon allege that Target is unjustly enriched through its failure to pay legal overtime compensation, reimburse necessary business expenses, pay reporting time pay, and use of an unlawful and unauthorized AWS.

81. Representative Plaintiffs are informed and believe, and thereon allege, that they and the putative class members are prejudiced by Target's unfair practices.

82. As a direct and proximate result of the unfair business practices of Target, Representative Plaintiffs are entitled to equitable and injunctive relief, including full restitution and/or disgorgement of all wages, which have been unlawfully withheld from Representative Plaintiffs and the putative class members, as a result of the business acts and practices described therein and enjoin Target to cease and desist from engaging in the practices described therein.

83. Representative Plaintiffs allege that if Target is not enjoined from the conduct set forth in this complaint, it will continue to fail to reimburse necessary business expenses, including reimbursement for the use of its employees' cellular telephones without compensation.

EIGHTH CAUSE OF ACTION

(FAILURE TO PAY OVERTIME AND LIQUIDATED DAMAGES IN VIOLATION OF

THE FLSA, 29 U.S.C. §§ 201 *ET SEQ.*, 29 U.S.C. § 216(b))

(By Representative Plaintiffs Against Defendant Target Corporation and Does 1 through 10,
inclusive)

84. Target had a uniform practice and policy of not compensating the FLSA Collective Action Members overtime for all hours worked in excess of 40 hours in a workweek.

85. As a result of the unlawful acts of Target, Representative Plaintiffs and the FLSA Collective Action Members have been deprived of overtime wages when they worked in excess of 40 hours in a workweek in violation of the FLSA.

1 86. Attached hereto as Exhibit D is the consent to join forms signed by Representative
2 Plaintiffs in this action pursuant to § 16(b) of the FLSA, 29 U.S.C. section 216(b) and 256. It is
3 likely that other individuals will sign consent forms and join as plaintiffs on this claim in the future.

4 87. At all relevant times, Target, pursuant to its uniform, systematic and non-
5 individualized policies and practices, willfully failed and refused to pay overtime in accordance
6 with the law to those covered by the FLSA Collective Action for their hours worked in excess of
7 40 per week.

8 88. By failing to compensate Representative Plaintiffs and the FLSA Collective Action
9 Members for all overtime work performed in excess of 40 hours in a workweek, Target has
10 violated FLSA, 29 U.S.C. § 201 et seq., including 29 U.S.C. § 207(a)(1) and § 215(a).

11 89. The foregoing conduct, as alleged, constitutes a willful violation of the FLSA within
12 the meaning of 29 U.S.C. § 255(a).

13 90. Representative Plaintiffs, on behalf of themselves and the FLSA Collective Action
14 Members, seek recovery of their attorneys' fees and costs of action to be paid by Target, as
15 provided by the FLSA.

16 91. Representative Plaintiffs, on behalf of themselves and the FLSA Collective Action
17 Members, seek damages in the amount of their respective unpaid overtime compensation,
18 liquidated damages as provided by the FLSA, interest, and such other legal and equitable relief as
19 this Court deems just and proper.

20 92. At all-times relevant to this Complaint, from March 21, 2019 to August 11, 2019,
21 Representative Plaintiffs and the FLSA Collective Action Members, as alleged herein claim that,
22 Target willfully failed to pay overtime compensation owed to Representative Plaintiffs and the
23 FLSA Collective Action Members for all of his/her/their overtime hours worked in excess of 40
24 hours per workweek, in violation of 29 U.S.C. § 207(a); and,

25 93. The aforementioned conduct of Target, and each of them, constitutes multiple and
26 repeated violations of 29 U.S.C. § 207(a); based thereon, Representative Plaintiffs pray for and
27 seek judgment and appropriate orders in favor of Representative Plaintiffs and those in the FLSA
28 Collective Action identified above against Target, as follows: For the recovery of the balance of

1 overtime compensation owed to Representative Plaintiffs and the FLSA Collective Action
2 Members plus liquidated damages, attorney's fees and costs pursuant to 29 U.S.C. § 216(b), in an
3 amount according to proof; for an award of pre-judgment interest; for costs of suit; for interest as
4 allowed by law; and, for such other relief as may be proper.

5 94. WHEREFORE, Representative Plaintiffs, on behalf of themselves and all members
6 of the proposed FLSA Collection Action that they seek to represent, prays for relief as follows:

- 7 a. For an order certifying that the eighth cause of action of this complaint may
8 be maintained as a collective action pursuant to 29 U.S.C. § 216(b) and that
9 prompt notice of this action be issued to potential members of the opt-in
10 FLSA Collective Action, apprising them of the pendency of this action, and
11 permitting them to assert timely FLSA claims;
- 12 b. Designation of the Representative Plaintiffs as representatives for the FLSA
13 claims and Representative Plaintiffs' attorneys as Counsel for the FLSA
14 Collective Action;
- 15 c. Appropriate equitable relief to remedy Target's violations of the FLSA,
16 including but not necessarily limited to an order enjoining Target from
17 continuing its unlawful practices;
- 18 d. All unpaid overtime as calculated by the applicable provisions of the FLSA
19 at 29 U.S.C. §§ 201 *et seq.*, and applicable regulations promulgated in the
20 Code of Federal Regulations and/or opinions and directives of the
21 Department of Labor;
- 22 e. All appropriate federal statutory penalties;
- 23 f. An award of liquidated damages pursuant to the FLSA, and according to
24 proof;
- 25 g. Pre-Judgment and post-Judgment interest, as provided by law;
- 26 h. Such other equitable relief as the Court may deem just and proper;
- 27 i. Attorneys' fees and costs of suit, including expert fees as permitted by the
28 FLSA and/or federal law.

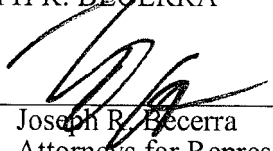
1 PRAYER FOR CALIFORNIA STATE LAW CLAIMS

2 THEREFORE, Representative Plaintiffs pray for judgment against defendant Target
3 Corporation, and Does 1 through 10, and each of them, as follows:

- 4 1. For compensatory damages in a sum according to proof;
- 5 2. For unpaid wages pursuant to the California Labor Code as set forth above;
- 6 3. For damages and/or penalties, an award of costs and reasonable attorney's fees
7 pursuant to the California Labor Code as set forth above;
- 8 4. For damages and/or penalties, an award of costs and reasonable attorney's fees
9 pursuant to the California Labor Code and Business and Professions Code § 17200 *et seq.*;
- 10 5. For prejudgment interest pursuant to California Civil Code section 3287 and/or
11 section 3288;
- 12 6. For attorneys' fees, interests and costs of suit pursuant to Labor Code sections
13 218.5, 1194(a), 2802, 2699(g)(1) and Code of Civil Procedure section 1021.5;
- 14 7. For civil penalties pursuant to Labor Code §2699(f);
- 15 8. That Target be found to have engaged in unfair competition in violation of
16 California Business and Professions Code section 17200, *et seq.*;
- 17 9. That Target be ordered and enjoined to make restitution to Representative Plaintiffs
18 due to its unfair competition, pursuant to California Business and Professions Code sections 17203
19 and 17204;
- 20 10. That Target further be enjoined to cease and desist from unfair competition in
21 violation of California Business and Professions Code section 17200, *et seq.*; and
- 22 11. For such other and further relief as the Court deems just and proper.

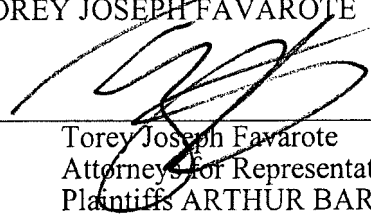
23 Dated: October 19 2020

BECERRA LAW FIRM
JOSEPH R. BECERRA

24
25 By: 
26 Joseph R. Becerra
27 Attorneys for Representative
28 Plaintiffs ARTHUR BARNES,
JOSEPH D. ORNELAS and
RODNEY ALAN ROBINSON, JR.

1 Dated: October 19, 2020

GLEASON & FAVAROTE, LLP
TOREY JOSEPH FAVAROTE

2
3 By: 

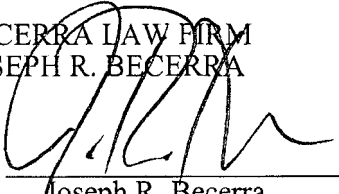
Torey Joseph Favarote
Attorneys for Representative
Plaintiffs ARTHUR BARNES,
JOSEPH D. ORNELAS and
RODNEY ALAN ROBINSON, JR.

DEMAND FOR JURY TRIAL

Representative Plaintiffs hereby demand a trial by jury.

Dated: October 19, 2020

BECERRA LAW FIRM
JOSEPH R. BECERRA

By: 
Joseph R. Becerra
Attorneys for Representative
Plaintiffs ARTHUR BARNES,
JOSEPH D. ORNELAS and
RODNEY ALAN ROBINSON, JR.

Dated: October 19, 2020

GLEASON & FAVAROTE, LLP
TOREY JOSEPH FAVAROTE

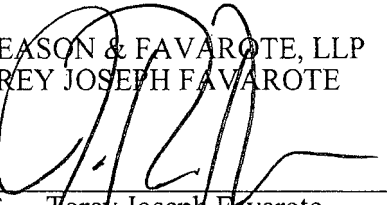
By: 
Torey Joseph Favarote
Attorneys for Representative
Plaintiffs ARTHUR BARNES,
JOSEPH D. ORNELAS and
RODNEY ALAN ROBINSON, JR.

EXHIBIT A



BECERRA
L A W F I R M
EMPLOYMENT LAW ADVOCATES

DIRECT DIAL: (213) 542-8501
DIRECT FACSIMILE: (213) 542-5556
JBECERRA@JRBECERRALAW.COM

August 16, 2019

SENT VIA CERTIFIED MAIL

TARGET CORPORATION
c/o C T Corporation System
Agent for Service of process
818 W. 7th St., Ste. 930
Los Angeles, CA 90017

**SENT VIA ELECTRONIC
SUBMISSION**

DEPARTMENT OF INDUSTRIAL
RELATIONS
Accounting Unit
455 Golden Gate Avenue, 10th Floor
San Francisco, CA 94102

Re: CALIFORNIA LABOR CODE § 2699.3 PAGA NOTICE
Joseph D. Ornelas and Rodney Alan Robinson, Jr. v. Target Corporation

To Whom It May Concern:

I am writing on behalf of the aggrieved employees Joseph D. Ornelas and Rodney Alan Robinson, Jr. This notice is being made to the California Labor & Workforce Development Agency ("LWDA") pursuant to the requirement of Labor Code section 2699.3, to notify the LWDA that Mr. Ornelas and Mr. Robinson (hereinafter collectively referred to as the "PAGA Representatives"), as well as other aggrieved current and former non-exempt employees that worked for Target Corporation (hereinafter the "Employer" or "Target") in one of its Distribution Centers in California (the "Aggrieved Employees") from March 21, 2019 to the present and continuing were: (1) not paid overtime after 8 hours of work in a day in violation of Labor Code §§ 510, 558, 1198, and 1199; (2) not timely paid for all wages in violation of Labor Code §§ 201, 202, 203, 204, 223, 510, 558, 1194, and 1198 and the Industrial Welfare Commission ("IWC") Wage Orders; (3) not provided accurate itemized wage statements in violation of Labor Code § 226(a); and (4) not paid all wages due at the time of termination in violation of Labor Code §§ 201-203.

The PAGA Representatives' claim for unpaid overtime is in part based on Target's usage and reliance on Alternative Workweek Schedules ("AWS") that purportedly enabled Target to avoid paying overtime for employees working shifts in excess of 8 hours. Most of the Aggrieved Employees, including the PAGA Representatives, worked an AWS of either 4 days a week, 10

hours a day (“4/10 Schedule”) or 3 days a week, 12 hours a day (“3/12 Schedule”) and were not paid overtime after 8 hours in a day. The PAGA Representatives challenge the validity of Target AWS’s as the company failed to adhere to all procedural requirements prior to implementing these AWS.

An employer has the burden of establishing all of the required elements if it seeks to rely on an AWS to evade its obligation to pay employees overtime after 8 hours of work in a day. Maldonado v. Epsilon Plastics, Inc., 22 Cal. App. 5th 1308 (2018). First, the proposal for the AWS must be in the form of a written agreement and must designate a regularly scheduled alternative workweek in which the specified number of workdays and work hours are regularly recurring. Id.; IWC Wage Orders § 3(C)(1). The employer may propose a single work schedule that would become the standard schedule for workers in the work unit, or a menu of work schedule options, from which each employee in the unit would be entitled to choose. Wage Orders § 3(C)(1). If the employer proposes a menu of work schedule options, the employee may, with the approval of the employer, move from one menu option to another. Wage Orders § 3(C)(1). In order to be valid, the proposed AWS must be adopted in a secret ballot election, before the performance of work, by at least a two-thirds (2/3) vote of the affected employees in the work unit. Id.; Wage Orders § 3(C)(2), see also Labor Code § 511. The PAGA Representatives contend that Target failed to follow all of these requirements.

Prior to the secret ballot vote, the employer is required to make a disclosure in writing to the affected employees, which must include the effects of the proposed arrangement on the employees’ wages, hours and benefits. Wage Orders § 3(C)(3). The disclosure shall include meetings, duly noticed and held at least 14 days prior to voting, for the specific purpose of discussing the effects of the alternative workweek schedule. Id., Wage Orders § 3(C)(3). The employer must also provide the disclosure “in a non-English language, as well as in English, if at least 5% of the affected employees primarily speak that non-English language.” Wage Orders § 3(C)(3). The employer shall mail the written disclosures to employees who do not attend the meeting. The Wage Order clearly provides that the employer’s “failure to comply with this paragraph shall make the election null and void.” Wage Orders § 3(C)(3). The PAGA Representatives contend that Target failed to follow all of these requirements as well.

The Wage Orders and Labor Code § 511 also provide that only secret ballots may be cast by affected employees in the work unit, and the results of the election must be reported by the employer to the Office of Policy, Research and Legislation within 30 days after results are final. Additionally, the employer cannot intimidate or coerce employees to vote either in support of or in opposition to the proposed alternative workweek schedule. Wage Orders § 3(C)(8).

The PAGA Representatives challenge the validity of Target’s AWS’s. Employees that work pursuant to an AWS for Target were and are improperly denied overtime, including double time, after 8 hours of work in a day as required by state law.

The PAGA Representatives’ claim for violation of Labor Code § 203 is derivative of the unpaid overtime claim described above. It is a fundamental policy of California law that employees who are discharged or who resign are owed their final wages immediately, or within 72 hours, as prescribed by Labor Code Sections 201 and 202. (Davis v. Morris, 37 Cal.App.2d

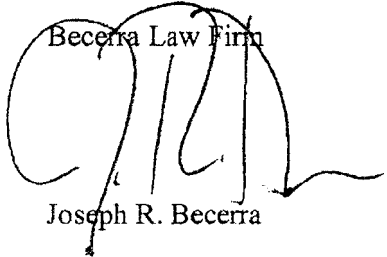
August 16, 2019
Department Of Industrial Relations
Page 3

269, 274 (1940).) Labor Code Section 203 provides for a penalty of daily wages for up to 30 calendar days. This 30-day period is calculated using a daily rate of pay – and multiplying by 30. (Mamika v. Barca, 68 Cal.App.4th 487, 493-94 (1998).) Section 203 does not require that the employer intended the action; merely that the action occurred and was within the employer's control. (8 C.C.R. § 13520; see also Davis v. Morris, 37 Cal.App.2d 269 (1940).) In other words, the PAGA Representatives need not establish that Target intended to underpay its employees. Rather, the PAGA Representatives need only prove that Target could have paid them all unpaid wages earned and failed to do so.

This letter sets forth the specific provisions of the California Labor Code and IWC Wage Orders that have been violated by Target and the facts and theories supporting those violations pursuant to California Labor Code section 2699.3.

Very truly yours,

Becerra Law Firm



Joseph R. Becerra

EXHIBIT B



BECERRA
L A W F I R M
EMPLOYMENT LAW ADVOCATES

DIRECT DIAL: (213) 542-8501
DIRECT FACSIMILE: (213) 542-5556
JBECERRA@JRBECERRALAW.COM

February 11, 2020

SENT VIA CERTIFIED MAIL

TARGET CORPORATION
c/o C T Corporation System
Agent for Service of process
818 W. 7th St., Ste. 930
Los Angeles, CA 90017

**SENT VIA ELECTRONIC
SUBMISSION**

DEPARTMENT OF INDUSTRIAL
RELATIONS
Accounting Unit
455 Golden Gate Avenue, 10th Floor
San Francisco, CA 94102

Re: CALIFORNIA LABOR CODE § 2699.3 PAGA NOTICE
Joseph D. Ornelas and Rodney Alan Robinson, Jr. v. Target Corporation

To Whom It May Concern:

I am writing on behalf of the aggrieved employees Joseph D. Ornelas and Rodney Alan Robinson, Jr. This notice is being made to the California Labor & Workforce Development Agency ("LWDA") pursuant to the requirement of Labor Code section 2699.3, to notify the LWDA that Mr. Ornelas and Mr. Robinson (hereinafter collectively referred to as the "PAGA Representatives"), as well as other aggrieved current and former non-exempt employees that worked for Target Corporation (hereinafter the "Employer" or "Target") in one of its Distribution Centers in California (the "Aggrieved Employees") from approximately March 21, 2019 to the present and continuing were: (1) not reimbursed for all necessary business expenses incurred in violation of Labor Code § 2802 and the IWC Wage Orders; (2) not paid for all hours worked in violation of Labor Code §§ 201, 202, 204, 223, 1194, 1197, 1198 and the IWC Wage Orders; and (3) not paid for all wages due at the time of termination in violation of Labor Code § 203 while employed by Target.

The PAGA Representatives and aggrieved employees are employed in Target's distribution centers located throughout the State of California.

The PAGA Representatives' and aggrieved employees' claim for unpaid wages and unreimbursed business expenses in violation of Labor Code § 2802 is based on Target's

requirement that all aggrieved employees download and utilize an application on their personal cell phones in order to check their work schedules that fluctuate depending on Target's business needs, request vacation time, and other work related obligations that Target imposes on them. The aggrieved employees are required to check the required app during their off-work hours to determine if they are required to work an additional shift and/or whether their scheduled shift has been cancelled. Aggrieved employees are not paid for this time and are not compensated these wages at the time of termination.

I. FAILURE TO REIMBURSE FOR BUSINESS EXPENSES

Labor Code § 2802 requires that an employer indemnify its employees for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge or his or her duties, or of his or her obedience to the directions of the employer. Lab. Code § 2802. With respect to requiring employees to utilize their personal cell phones for the company's business, the court in *Cochran v. Schwan's Home Service*, 228 Cal. App. 4th 1137 (2014) held that, **"when employees must use their personal cell phones for work-related calls, Labor Code section 2802 requires the employer to reimburse them. Whether the employees have cell phone plans with unlimited minutes or limited minutes, the reimbursement owed is a reasonable percentage of their cell phone bills."** *Id.* at 1140. **"To show liability under section 2802, an employee need only show that he or she was required to use a personal cell phone to make work-related calls, and he or she was not reimbursed."** *Id.* at 1145. Thus, even if an employee does not incur an *extra* expense that he or she would not have otherwise incurred absent the job, reimbursement is still required. **"Otherwise, the employer would receive a windfall because it would be passing its operating expenses on the employee."** *Id.* at 1144.

Cochran further explained that while a driver with an unlimited data plan is not incurring an *extra* expense for use of their smart phone, he or she is still *actually* incurring a work expense because the driver is using their personal phone for work purposes. *Id.* at 1143–45. If an employer is not required to pay a percentage of the bill to reflect that usage, the employer is able to shift their operating costs to the employee, relying on the data plans of their employees rather than having to pay for the data plans on their own. *Id.* at 1144.

Here, Target's company-wide policy for its distribution center employees in California is that they are required to use their personal cell phone (*i.e.* smart phones) to check their work schedules (*i.e.* whether they have been scheduled to work a particular work day or work shift by Target), request time off of work, and other timekeeping/payroll functions. First, aggrieved employees are required to download a Target application to their phones called "MyTime" and referred to by Target and the aggrieved employees as the "Target MyTime App." Once the employees have downloaded the Target MyTime App, they are required to check the App weekly, and during the "busy season" (the October through December holiday season) daily to determine whether Target has either "scheduled up" (added a day/shift to the employee's set schedule) or "scheduled down" (removed a day/shift from the employee's set schedule) the employee for a given work week. A failure to check the App and to miss a shift that has been added to an employee's schedule results in a "no call/no show" which is grounds for termination of employment from Target. Prior to adding the MyTime App, Target utilized a call-in number and updated the call-in line once a week to inform employees if a shift had been added/removed

from their schedule. Prior to introducing the MyTime App, Target distribution center employees could call in to the "call-in line" on Wednesday of each week, punch in their employee identification number and the line would inform them if their schedule for the week had been changed in any fashion. To update schedules in "real time" and give the company more flexibility in the scheduling of employee work shifts, Target discontinued the call-in line and now updates employees' schedules in "real time" and continuously which requires employees to consistently check the MyTime App on their personal cell phones. However, Target does not reimburse employees for the data usage of downloading and using the MyTime App on their personal cell phones in violation of Labor Code § 2802.

II. Failure to Pay all Wages and Wages Due at Termination

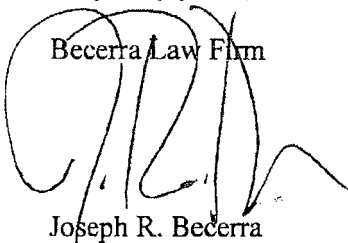
As set forth above, the aggrieved employees were required to check the MyTime App while off duty to determine whether Target had either "scheduled up" or "scheduled down" their work shift. In violation of Labor Code §§ 201, 202, 203 204, 223, 1194, 1197, and 1198 aggrieved employees were not compensated for any of this time. Additionally, this time also is compensable reporting time pay and a failure by Target to compensate employees for such reporting time pay violates 8 Cal. C. Regs. § 11010 *et seq.* ("If an employee is required to report to work a second time in any one workday and is furnished less than two (2) hours of work on the second reporting, said employee shall be paid for two (2) hours at the employee's regular rate of pay, which shall not be less than the minimum wage.") This is another policy violation that is suffered by all aggrieved employees.

As a result of the foregoing, at the time of separation of employment, aggrieved employees are not compensated for all hours worked in violation of Labor Code § 203.

This letter sets forth the specific provisions of the California Labor Code and the IWC Wage Orders that have been violated by Target and the facts and theories supporting those violations pursuant to California Labor Code § 2699.3.

Very truly yours,

Becerra Law Firm

A handwritten signature in black ink, appearing to read "J. Becerra", is written over the printed name "Joseph R. Becerra". The signature is stylized with a large, looping initial "J" and a long horizontal stroke extending to the right.

Joseph R. Becerra

EXHIBIT C



BECERRA
L A W F I R M
EMPLOYMENT LAW ADVOCATES

DIRECT DIAL: (213) 542-8501
DIRECT FACSIMILE (213) 542-5556
JBECERRA@JRBECERRALAW.COM

March 2, 2020

SENT VIA CERTIFIED MAIL

TARGET CORPORATION
c/o C T Corporation System
Agent for Service of process
818 W. 7th St., Ste. 930
Los Angeles, CA 90017

**SENT VIA ELECTRONIC
SUBMISSION**

DEPARTMENT OF INDUSTRIAL
RELATIONS
Accounting Unit
455 Golden Gate Avenue, 10th Floor
San Francisco, CA 94102

Re: CALIFORNIA LABOR CODE § 2699.3 PAGA NOTICE
Arthur Barnes v. Target Corporation

To Whom It May Concern:

I am writing on behalf of the aggrieved employee Arthur Barnes who worked as an hourly non-exempt employee at one of Target's Distribution Centers in San Bernadino County, T-3806. This notice is being made to the California Labor & Workforce Development Agency ("LWDA") pursuant to the requirement of Labor Code section 2699.3, to notify the LWDA that Mr. Barnes (hereinafter referred to as the "PAGA Representative"), as well as other aggrieved current and former non-exempt employees that worked for Target Corporation (hereinafter the "Employer" or "Target") in one of its Distribution Centers in California (the "Aggrieved Employees") from March 21, 2019 to August 11, 2019 were: (1) not paid overtime after 8 hours of work in a day in violation of Labor Code §§ 510, 558, 1198, and 1199; (2) not timely paid for all wages in violation of Labor Code §§ 201, 202, 203, 204, 223, 510, 558, 1194, and 1198 and the Industrial Welfare Commission ("IWC") Wage Orders; (3) not provided accurate itemized wage statements in violation of Labor Code § 226(a); and (4) not paid all wages due at the time of termination in violation of Labor Code §§ 201-203.

The PAGA Representative's claim for unpaid overtime is in part based on Target's usage and reliance on Alternative Workweek Schedules ("AWS") that purportedly enabled Target to avoid paying overtime for employees working shifts in excess of 8 hours. Most of the Aggrieved Employees, including the PAGA Representative, worked an AWS of either 4 days a week, 10

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hours a day ("4/10 Schedule") or 3 days a week, 12 hours a day ("3/12 Schedule") and were not paid overtime after 8 hours in a day. The PAGA Representative challenges the validity of Target's AWS as the company failed to adhere to all procedural requirements prior to implementing these AWS.

An employer has the burden of establishing all the required elements if it seeks to rely on an AWS to evade its obligation to pay employees overtime after 8 hours of work in a day. Maldonado v. Epsilon Plastics, Inc., 22 Cal. App. 5th 1308 (2018). First, the proposal for the AWS must be in the form of a written agreement and must designate a regularly scheduled alternative workweek in which the specified number of workdays and work hours are regularly recurring. *Id.*; IWC Wage Orders § 3(C)(1). The employer may propose a single work schedule that would become the standard schedule for workers in the work unit, or a menu of work schedule options, from which each employee in the unit would be entitled to choose. Wage Orders § 3(C)(1). If the employer proposes a menu of work schedule options, the employee may, with the approval of the employer, move from one menu option to another. Wage Orders § 3(C)(1). In order to be valid, the proposed AWS must be adopted in a secret ballot election, before the performance of work, by at least a two-thirds (2/3) vote of the affected employees in the work unit. *Id.*; Wage Orders § 3(C)(2), see also Labor Code § 511. The PAGA Representative contends that Target failed to follow all these requirements.

Prior to the secret ballot vote, the employer is required to make a disclosure in writing to the affected employees, which must include the effects of the proposed arrangement on the employees' wages, hours and benefits. Wage Orders § 3(C)(3). The disclosure shall include meetings, duly noticed and held at least 14 days prior to voting, for the specific purpose of discussing the effects of the alternative workweek schedule. *Id.*, Wage Orders § 3(C)(3). The employer must also provide the disclosure "in a non-English language, as well as in English, if at least 5% of the affected employees primarily speak that non-English language." Wage Orders § 3(C)(3). The employer shall mail the written disclosures to employees who do not attend the meeting. The Wage Order clearly provides that the employer's "failure to comply with this paragraph shall make the election null and void." Wage Orders § 3(C)(3). The PAGA Representative contends that Target failed to follow all these requirements as well.

The Wage Orders and Labor Code § 511 also provide that only secret ballots may be cast by affected employees in the work unit, and the results of the election must be reported by the employer to the Office of Policy, Research and Legislation within 30 days after results are final.

In all of its AWS elections Target allowed employees to vote by absentee ballots. However, there is not a provision in the Wage Orders or Labor Code § 511 which allows employees in the defined work unit to vote by "absentee ballot." The relevant portions of the Wage Orders expressly disallows for absentee voting as the regulation state: "In order to be valid... The election shall be held during regular working hours at the employees' worksite." It follows that if the election must occur "at the employees' worksite," only ballots cast "at the employees' worksite" are valid. Given that the Wage Orders expressly states "[i]n order to be valid" the voting must take place "during regular working hours at the employees' worksite" Target's use of absentee ballots in its AWS elections renders those elections invalid.

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Additionally, the employer cannot intimidate or coerce employees to vote either in support of or in opposition to the proposed alternative workweek schedule which Target did at some of the Distribution Center AWS elections in question. Wage Orders § 3(C)(8).

The PAGA Representative challenges the validity of Target's AWS. Employees that work pursuant to an AWS for Target were and are improperly denied overtime, including double time, after 8 hours of work in a day as required by state law.

The PAGA Representative's claim for violation of Labor Code § 203 is derivative of the unpaid overtime claim described above. It is a fundamental policy of California law that employees who are discharged or who resign are owed their final wages immediately, or within 72 hours, as prescribed by Labor Code Sections 201 and 202. (*Davis v. Morris*, 37 Cal.App.2d 269, 274 (1940).) Labor Code Section 203 provides for a penalty of daily wages for up to 30 calendar days. This 30-day period is calculated using a daily rate of pay – and multiplying by 30. (*Mamika v. Barca*, 68 Cal.App.4th 487, 493-94 (1998).) Section 203 does not require that the employer intended the action; merely that the action occurred and was within the employer's control. (8 C.C.R. § 13520; *see also Davis v. Morris*, 37 Cal.App.2d 269 (1940).) In other words, the PAGA Representative needs not establish that Target intended to underpay its employees. Rather, the PAGA Representative needs only prove that Target could have paid them all unpaid wages earned and failed to do so.

At Distribution Center (T-3806) where Mr. Barnes worked, Target held new AWS elections in February and March of 2019. This was a location where two-thirds (2/3) of the employees that were in the defined work unit for an AWS election that was held over a decade ago did not vote in favor of the proposed AWS, which as a matter of law invalidated the AWS election.

Following the new elections at T-3806 in February and March of 2019, two-thirds (2/3) of the employees voted in favor of the AWS. These new elections went into effect on April 7, 2019 for employees working a 3/12 schedule and April 9, 2019 for employees working a 4/10 schedule. Although Target conducted new AWS elections for its employees at T-3806, the employees at this location continued to work the same 4/10 and 3/12 AWS prior to, during and immediately following the new elections, without the payment of daily overtime. Thus, the employees were working the exact same AWS schedules that they were being asked to vote on again. Labor Code § 511 and the IWC Wage Orders, specifically provide that employees cannot work the AWS schedule that they are voting on prior to the election, but this is exactly what Target did in the new elections at T-3806. Thus, the new AWS elections for T-3806 are invalid for this reason as well.

On August 11, 2019, Target discontinued using the AWS schedules at all DCs in California, including the "new" AWS at T-3806, and began paying employees overtime after 8 hours of work.

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This letter sets forth the specific provisions of the California Labor Code and IWC Wage Orders that have been violated by Target and the facts and theories supporting those violations pursuant to California Labor Code section 2699.3.

Very truly yours,

Becerra Law Firm

A handwritten signature in black ink, appearing to be 'J. Becerra', written over a horizontal line.

Joseph R. Becerra

EXHIBIT D

CONSENT TO JOIN FORM

Consent to join under the Fair Labor Standards Act

I work or worked for Target Corporation, in California as a non-exempt employee at one of its seven distribution centers between March 21, 2019 and August 11, 2019.

I consent to join the Fair Labor Standards Act collective action entitled *Arthur Barnes et al. v. Target Corporation*, San Bernardino County Superior Court, Case No. CIVDS2007761 to recover unpaid overtime wages, liquidated damages and interest under the federal Fair Labor Standards Act, 29 U.S.C. §216 (b).

I choose to be represented in this matter by the named plaintiffs Arthur Barnes, Rodney Alan Robinson, Jr. and Joseph D. Ornelas and their counsel (Becerra Law Firm and Gleason & Favarote, LLP) in this action.

Name: _____

Address: _____

Number/Street

City

State

Zip Code

Signature: _____ Dated: _____

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PROOF OF SERVICE

I, Thomas Steinhart, declare:

I am and was at the time of the service mentioned in this declaration, employed in the County of Los Angeles, California. I am over the age of 18 years and not a party to the within action. My business address is Gleason & Favarote, LLP, 4014 Long Beach Blvd., Suite 300, Long Beach, CA 90807.

On October 19, 2020, I served a copy(ies) of the following document(s):

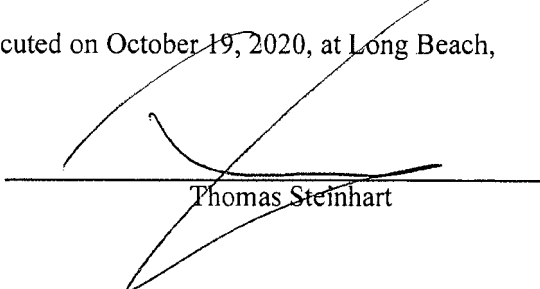
JOINT STIPULATION TO (1) CONSOLIDATE RELATED ACTIONS WITH THIS ACTION
AND (2) FOR LEAVE TO FILE FIRST AMENDED COMPLAINT; [PROPOSED] ORDER

on the parties to this action by placing them in a sealed envelope(s) addressed as follows:

Attorney	Party(ies) Served	Method of Service
JEFFREY D. WOHL RYAN D. DERRY PAUL A. HOLTON ANNA M. SKAGGS PAUL HASTINGS LLP 101 California Street, 48th Floor San Francisco, California 94111 Tel: (415) 856-7000 Fax: (415) 856-7100 jeffwohl@paulhastings.com ryanderry@paulhastings.com paulholton@paulhastings.com annaskaggs@paulhastings.com meredithmitchell@paulhastings.com	Attorneys for Defendant TARGET CORPORATION	By email per service agreement

☒ [BY ELECTRONIC TRANSMISSION] I caused said document to be sent by electronic transmission to the e-mail address indicated for the party(ies) listed above.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct, and that this declaration was executed on October 19, 2020, at Long Beach, California.



Thomas Steinhart