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8

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 FOR THE COUNTY OF SAN MATEO
11 UNLIMITED JURISDICTION
12

13 ADAN ORTIZ, on behalf of himself, all others
14 similarly situated, and the general public,

15 *Plaintiff,*

16 vs.

17 STAFFMARK HOLDINGS, INC., an Ohio
corporation; STAFFMARK INVESTMENT,
18 LLC, an Ohio Limited Liability Company;
WALMART, INC., an Arkansas Corporation;
19 and DOES 1 through 50, inclusive,

20 *Defendants.*
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Electronically
FILED

by Superior Court of California, County of San Mateo

ON 4/21/2020

By /s/ Mia Marlowe
Deputy Clerk

Case No. 20-CIV-01733

REPRESENTATIVE ACTION COMPLAINT

1. Civil Penalties (Lab. Code §§ 2698 *et seq.*);

JURY TRIAL DEMANDED

COMES NOW, Plaintiff ADAN ORTIZ ("Plaintiff"), on behalf of himself, all others similarly situated, and the general public, complains and alleges as follows:

INTRODUCTION

1. Plaintiff brings this class action against Defendant STAFFMARK HOLDINGS, INC., an Ohio corporation; STAFFMARK INVESTMENT, LLC, an Ohio Limited Liability Company; WALMART, INC., an Arkansas corporation; and DOES 1 through 50, inclusive (collectively referred to as "Defendants") for alleged violations of the Labor Code and Business and Professions Code. As set forth below, Plaintiff alleges that Defendants have

- (1) failed to provide him and all other aggrieved employees with meal periods;
- (2) failed to provide them with rest periods;
- (3) failed to pay them premium wages for missed meal and/or rest periods;
- (4) failed to pay them premium wages for missed meal and/or rest periods at the regular rate of pay;
- (5) failed to pay them at least minimum wage for all hours worked;
- (6) failed to pay them overtime wages at the correct rate;
- (7) failed to pay them double time wages at the correct rate;
- (8) failed to pay them overtime and/or double time wages by failing to include all applicable remuneration in calculating the regular rate of pay;
- (9) failed to provide them with accurate written wage statements; and
- (10) failed to pay them all of their final wages following separation of employment.

Based on these alleged Labor Code violations, Plaintiff now brings this class and representative action to recover unpaid wages, restitution and related relief on behalf of himself, all others similarly situated, and the general public.

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction to hear this case because the monetary damages and restitution sought by Plaintiff from Defendants conduct exceeds the minimal jurisdiction of the Superior Court of the State of California.

3. Venue is proper in the County of San Mateo pursuant to Code of Civil Procedure sections 395(a) and 395.5 in that liability arose this county because at least some of the transactions that are the subject matter of this Complaint occurred therein and/or each defendant is found, maintains offices, transacts business and/or has an agent therein.

PARTIES

4. Plaintiff ADAN ORTIZ is, and at all relevant times mentioned herein, an individual residing in the State of California.

5. Plaintiff is informed and believes, and thereupon alleges that Defendant STAFFMARK HOLDINGS, INC. is, and at all relevant times mentioned herein, an Ohio corporation doing business in the State of California.

6. Plaintiff is informed and believes, and thereupon alleges that Defendant STAFFMARK INVESTMENT, LLC, is, and at all relevant times mentioned herein, an Ohio Limited Liability Company doing business in the State of California.

7. Plaintiff is informed and believes, and thereupon alleges that Defendant WALMART, INC. is, and at all relevant times mentioned herein, an Arkansas corporation doing business in the State of California.

8. Plaintiff is ignorant of the true names and capacities of the defendants sued herein as DOES 1 through 50, inclusive, and therefore sues these defendants by such fictitious names. Plaintiff will amend this Complaint to allege the true names and capacities of the DOE defendants when ascertained. Plaintiff is informed and believes, and thereupon alleges that each of the fictitiously named defendants are responsible in some manner for the occurrences, acts and omissions alleged herein and that Plaintiff's alleged damages were proximately caused by these defendants, and each of them. Plaintiff will amend this complaint to allege both the true names and capacities of the DOE defendants when ascertained.

9. Plaintiff is informed and believes, and thereupon alleges that, at all relevant times mentioned herein, some or all of the defendants were the representatives, agents, employees, partners, directors, associates, joint venturers, principals or co-participants of some or all of the other defendants, and in doing the things alleged herein, were acting within the course and scope of

1 such relationship and with the full knowledge, consent and ratification by such other defendants.

2 10. Plaintiff is informed and believes, and thereupon alleges that, at all relevant times
3 mentioned herein, some of the defendants pursued a common course of conduct, acted in concert
4 and conspired with one another, and aided and abetted one another to accomplish the occurrences,
5 acts and omissions alleged herein.

6 **GENERAL ALLEGATIONS**

7 11. Plaintiff worked for Defendants as a non-exempt, hourly employee from
8 approximately October 9, 2019 through the present.

9 **Off-the-Clock Work**

10 12. Plaintiff and the aggrieved employees were not paid all wages earned as Defendants
11 directed, permitted or otherwise encouraged Plaintiff and the aggrieved employees to perform off-
12 the-clock work.

13 13. Specifically, Plaintiff and the aggrieved employees have hours shaved from their
14 paychecks that are not reflective of the actual hours that they worked. Defendants have a practice
15 of shorting employees on their hours through their timekeeping system. Plaintiff and the aggrieved
16 employees frequently receive checks that are incorrectly calculated to reflect that they worked fewer
17 hours than they actually did. Defendants have made it difficult for employees to rebut these claims
18 as they maintain their records on an online system that is not possible for employees to access.
19 Plaintiff and the aggrieved employees have brought their dissatisfaction with their paychecks not
20 being reflective of the actual amount of hours that they worked to the attention of management on
21 numerous occasions, however nothing has been done to remedy the situation.

22 14. Defendants knew or should have known that Plaintiff and the aggrieved employees
23 were performing work before and after their scheduled work shifts and failed to pay Plaintiff and
24 the aggrieved employees for these hours.

25 15. Defendants were aware of this practice and directed, permitted or otherwise
26 encouraged Plaintiff and the aggrieved employees to perform off-the-clock work.

27 16. As a result of Defendants' policies and practices, Plaintiff and the aggrieved
28 employees were not paid for all hours worked.

Security Check Points

17. Plaintiff and the aggrieved employees are made to pass through a security check point after they clock out for the day before they can go home. Plaintiff and the aggrieved employees are further made to stand by and wait for security to go through their bags if the metal detectors go off while they are passing through the security check. Furthermore, Plaintiff and the aggrieved employees are required to show their personal cell phones to the security officers upon leaving to confirm that the phone belongs to the employee. This process could take Plaintiff and the aggrieved employees anywhere from 1-5 minutes per day, all time which was unpaid by Defendants.

18. Furthermore, in the event that their phone is out of battery at the time of their security check, Plaintiff and the aggrieved employees would be made to charge their phones at the security checkpoint until the security officers can check them. This process could take up to fifteen minutes each time, all time that was unpaid and uncompensated by Defendants.

Meal Periods

19. Plaintiff and the aggrieved employees were not provided with meal periods of at least thirty (30) minutes for each five (5) hour work period due to (1) Defendants' policy of not releasing employees for their meal periods until they finish whatever task they are attending to at the time; (2) understaffing each work shift with not enough workers; (3) long lines to clock out for meal periods resulting in shortened meal periods; and (4) pressure from Defendants on employees to finish all of their work before clocking out for their meal periods.

20. Plaintiff and the aggrieved employees would frequently not be afforded their meal periods until after their fifth hour of work due to Defendants policies that employees were not to clock out for their meal periods until their work was finished. Often, Plaintiff and the aggrieved employees would be tasked with work that would occupy them for at least thirty minutes after their fifth hour worked. Plaintiff and the aggrieved employees were not provided with any sort of meal period premiums on these occasions.

21. As a result of Defendants' policy, Plaintiff and the aggrieved employees were regularly not provided with uninterrupted meal periods of at least thirty (30) minutes for each five

1 (5) hours worked due to complying with Defendants' productivity requirements that required
2 Plaintiff and the aggrieved employees to work through their meal periods in order to complete
3 their assignments on time.

4 **Missed Rest Periods**

5 22. Plaintiff and the aggrieved employees were not provided with rest periods of at least
6 ten (10) minutes for each four (4) hour work period, or major fraction thereof, due to (1)
7 Defendants' policy of not scheduling each rest period as part of each work shift; (2) understaffing
8 each work shift with not enough workers; (3) imposing so much work on each employee such that
9 it made it unlikely that an employee would be able to take their breaks if they wanted to finish their
10 work on time; and (4) Defendants policy that all rest breaks must be taken in the employee break
11 room.

12 23. Plaintiff and the aggrieved employees would be released for their rest breaks by
13 their supervisors twice per shift. Plaintiff and the aggrieved employees would then be made to
14 walk to the break room, a walk that would take them five minutes each way. This functionally
15 resulted in Plaintiff and the aggrieved employees only being afforded about five minutes per break
16 period.

17 24. As a result of Defendants' policy, Plaintiff and the aggrieved employees were
18 regularly not provided with uninterrupted rest periods of at least ten (10) minutes for each four (4)
19 hours worked due to complying with Defendants' productivity requirements that required Plaintiff
20 and the aggrieved employees to work through their rest periods in order to complete their
21 assignments on time.

22 **Regular Rate of Pay**

23 25. The regular rate of pay under California law includes all remuneration for
24 employment paid to, on behalf of, the employee. This requirement includes, but is not limited, to,
25 commissions and non-discretionary bonuses.

26 26. During the applicable limitations period, Defendants violated the rights of Plaintiff
27 and the aggrieved employees under the above-referenced Labor Code sections by failing to pay
28 them overtime wages for all overtime hours worked in violation of Labor Code §§ 510, 1194, and

1 1198 as a result of not correctly calculating their regular rate of pay to include all applicable
2 remuneration, including, but not limited to, non-discretionary bonuses and/or shift differential pay.

3 **Wage Statements**

4 1. Plaintiff and the aggrieved employees were not provided with accurate wage
5 statements as mandated by law pursuant to Labor Code section 226.

6 2. Defendants failed to comply with Labor Code section 226(a)(1) as “gross wages
7 earned” were not accurately reflected in that: all hours worked, including overtime, were not
8 included.

9 3. Defendants failed to comply with Labor Code section 226(a)(2) as “total hours
10 worked by the employee” were not accurately reflected in that: all hours worked, including
11 overtime, were not included.

12 4. Defendants failed to comply with Labor Code section 226(a)(5) as “net wages
13 earned” were not accurately reflected in that: all hours worked, including overtime, were not
14 included.

15 5. Defendants failed to comply with Labor Code section 226(a)(9) as “all applicable
16 hourly rates in effect during the pay period and the corresponding number of hours worked at each
17 hourly rate by the employee” were not accurately reflected in that: all hours worked, including
18 overtime, were not included.

19 **FIRST CAUSE OF ACTION**

20 **CIVIL PENALTIES**

21 **(Lab. Code §§ 2698 *et seq.*)**

22 6. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged
23 herein.

24 7. During the applicable limitations period, Defendants have violated Labor Code
25 sections 201, 202, 203, 204, 223, 226(a), 226.7, 510, 512, 1194, 1197, and 1198.

26 8. Labor Code sections 2699(a) and (g) authorize an aggrieved employee, on behalf of
27 herself and other current and former employees, to bring a representative civil action to recover
28 civil penalties pursuant to the procedures set forth in Labor Code section 2699.3 that may, but need

1 not, be brought or maintained as a class action pursuant to Code of Civil Procedure section 382.

2 9. Plaintiff, a former employee against who Defendants committed one or more of the
3 alleged Labor Code violations during the applicable limitations period, is an aggrieved employee
4 within the meaning of Labor Code section 2699(c).

5 10. Plaintiff has complied with the procedures for bringing suit specified in Labor Code
6 section 2699.3.

7 11. Pursuant to Labor Code sections 2699(a) and (f), Plaintiff seeks the following civil
8 penalties for Defendants' violations of Labor Code sections 201, 202, 203, 204, 223, 226(a), 226.7,
9 227.3, 510, 512, 1194, 1197, 1198 and 2802:

- 10 A. For violations of Labor Code sections 201, 202, 203, 212, 226.7, 227.3, 1194,
11 1198 and 2802, \$100 for each employee per pay period for each initial
12 violation and \$200 for each employee per pay period for each subsequent
13 violation (penalties set by Labor Code section 2699(f)(2));
- 14 B. For violations of Labor Code section 203, a penalty in an amount not
15 exceeding thirty days pay as waiting time (penalties set by Labor Code
16 section 256);
- 17 C. For violations of Labor Code section 204, \$100 for each employee for each
18 initial violation that was neither willful nor intentional, \$200 for each
19 employee, plus 25% of the amount unlawfully withheld from each employee,
20 for each initial violation that was either willful or intentional, and \$200 for
21 each employee, plus 25% of the amount unlawfully withheld from each
22 employee, for each subsequent violation, regardless of whether the
23 subsequent violation was either willful or intentional (penalties set by Labor
24 Code section 210);
- 25 D. For violations of Labor Code section 223, \$100 for each employee for each
26 initial violation that was neither willful nor intentional, \$200 for each
27 employee, plus 25% of the amount unlawfully withheld from each employee,
28 for each initial violation that was either willful or intentional, and \$200 for

1 each employee, plus 25% of the amount unlawfully withheld from each
2 employee, for each subsequent violation, regardless of whether the
3 subsequent violation was either willful or intentional (penalties set by Labor
4 Code section 225.5);

5 E. For violations of Labor Code section 226(a), if this action is deemed to be an
6 initial citation, \$250 for each employee for each violation. Alternatively, if
7 an initial citation or its equivalent occurred before the filing of this action,
8 \$1,000 for each employee for each violation (penalties set by Labor Code
9 section 226.3);

10 F. For violation of Labor Code sections 510 and 512, \$50 for each employee for
11 each initial pay period for which the employee was underpaid, and \$100 for
12 each employee for each subsequent pay period for which the employee was
13 underpaid (penalties set by Labor Code section 558);

14 G. For violations of Labor Code section 1197, \$100 for each aggrieved
15 employee for each initial violation of Labor Code section 1197 that was
16 intentional, and \$250 for each aggrieved employee per pay period for each
17 subsequent violation of Labor Code section 1197, regardless of whether the
18 initial violation was intentional (penalties set by Labor Code section 1197.1);

19 H. Pursuant to Labor Code section 2699(g), Plaintiff seeks award of reasonable
20 attorneys' fees and costs in connection with her claims for civil penalties.

21 **PRAYER FOR RELIEF**

22 WHEREFORE, Plaintiff, on behalf of himself, all others similarly situated, and the general
23 public, prays for relief and judgment against Defendants as follows:

- 24 (1) Pre-judgment interest;
25 (2) Statutory penalties;
26 (3) Civil penalties;
27 (4) Costs of suit;
28 (5) Reasonable attorneys' fees; and

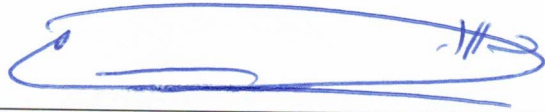
1 (6) Such other relief as the Court deems just and proper.

2 **DEMAND FOR JURY TRIAL**

3 Plaintiff, on behalf of himself, all other similarly situated, and the general public, hereby
4 demands a jury trial on all issues so triable.

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6 Dated: April 13, 2020

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10 SHAUN SETAREH
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12 FARRAH GRANT
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ADAN ORTIZ