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Superior Court of California

County of Stanislaus

Clerk of the Court

By: Joshua Teixeira, Deputy

\$435 PAID

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

13 **IN AND FOR THE COUNTY OF STANISLAUS**

14 MAYRA SANDOVAL, on behalf of the
15 State of California, as a private attorney
16 general,

17 Plaintiff,

18 vs.

19 ROSS DRESS FOR LESS, INC., a
20 Corporation; and DOES 1 through 50,
21 inclusive,

22 Defendants.

Case No. CV-20-002726

REPRESENTATIVE ACTION
COMPLAINT FOR:

1. Civil Penalties Pursuant to Labor Code
§ 2699, *et seq.* for violations of Labor
Code §§ 201, 202, 203, 204, 210, 226(a),
226.7, 510, 512, 558(a)(1)(2), 1194, 1197,
1197.1, 1198, 2802, and California Code
of Regulations, Title 8, Section 1 1070(14)
(Failure to Provide Seating).

This case has been assigned to Judge Silveira, Marie Sovey

Dept. 21

Department , for all purposes including Trial.

1 Plaintiff Mayra Sandoval (“PLAINTIFF”) on behalf of the people of the State of
2 California and as an “aggrieved employee” acting as a private attorney general under the Labor
3 Code Private Attorney General Act of 2004, § 2699, *et seq.* (“PAGA”) only, alleges on
4 information and belief, except for her own acts and knowledge which are based on personal
5 knowledge, the following:

6 7 INTRODUCTION

8 1. PLAINTIFF brings this action against Defendant Ross Dress For Less, Inc.
9 (“DEFENDANT”) seeking only to recover PAGA civil penalties for herself, and on behalf of
10 all current and former aggrieved employees that worked for DEFENDANT. PLAINTIFF does
11 **not seek to recover anything other than penalties as permitted by California Labor Code**
12 **§ 2699**. To the extent that statutory violations are mentioned for wage violations, PLAINTIFF
13 does not seek underlying general and/or special damages for those violations, but simply the
14 civil penalties permitted by California Labor Code § 2699.

15 2. California has enacted the PAGA to permit an individual to bring an action on
16 behalf of herself and on behalf of others for PAGA penalties *only*, which is the precise and sole
17 nature of this action.

18 3. Accordingly, PLAINTIFF seeks to obtain all applicable relief for
19 DEFENDANT’s violations under PAGA and solely for the relief as permitted by PAGA – that
20 is, penalties and any other relief the Court deems proper pursuant to the PAGA. Nothing in this
21 complaint should be construed as attempting to obtain any relief that would not be available in
22 a PAGA-only action.

23 24 THE PARTIES

25 4. Ross Dress for Less, Inc. (“DEFENDANT”) is a corporation that at all relevant
26 times mentioned herein conducted and continues to conduct substantial business in the state of
27 California.

28 5. DEFENDANT is an American chain of discount department stores headquartered

1 in Dublin, California.

2 6. PLAINTIFF was employed by DEFENDANT from June of 2017 to January of
3 2020 and was at all times classified by DEFENDANT as a non-exempt employee, paid on an
4 hourly basis, and entitled to the legally required meal and rest periods and payment of minimum
5 and overtime wages due for all time worked. PLAINTIFF worked at DEFENDANT's store
6 located at 3900 Sisk Road, Modesto, CA 95356.

7 7. PLAINTIFF, and such persons that may be added from time to time who satisfy
8 the requirements and exhaust the administrative procedures under the Private Attorney General
9 Act, brings this Representative Action on behalf of the State of California with respect to herself
10 and all individuals who worked for DEFENDANT in California and who were classified as
11 non-exempt employees ("AGGRIEVED EMPLOYEES") during the time period of April 15,
12 2019 until a date as determined by the Court (the "PAGA PERIOD").

13 8. PLAINTIFF, on behalf of herself and all AGGRIEVED EMPLOYEES presently
14 or formerly employed by DEFENDANT during the PAGA PERIOD, brings this representative
15 action pursuant to Labor Code § 2699, *et seq.* seeking fixed civil penalties for DEFENDANT's
16 violation of California Labor Code §§ 201, 202, 203, 204, 210, 226(a), 226.7, 510, 512,
17 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, and California Code of Regulations, Title 8,
18 Section 1 1070(14) (Failure to Provide Seating), and the applicable Wage Order. Based upon
19 the foregoing, PLAINTIFF and all AGGRIEVED EMPLOYEES are aggrieved employees
20 within the meaning of Labor Code § 2699, *et seq.*

21 9. The true names and capacities, whether individual, corporate, subsidiary,
22 partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently
23 unknown to PLAINTIFF who therefore sues these Defendants by such fictitious names pursuant
24 to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this Complaint to allege
25 the true names and capacities of Does 1 through 50, inclusive, when they are ascertained.
26 PLAINTIFF is informed and believes, and based upon that information and belief alleges, that
27 the Defendants named in this Complaint, including DOES 1 through 50, inclusive, are
28 responsible in some manner for one or more of the events and happenings that proximately

1 caused the injuries and damages hereinafter alleged.

2 10. The agents, servants and/or employees of the Defendants and each of them acting
3 on behalf of the Defendants acted within the course and scope of his, her or its authority as the
4 agent, servant and/or employee of the Defendants, and personally participated in the conduct
5 alleged herein on behalf of the Defendants with respect to the conduct alleged herein.
6 Consequently, the acts of each Defendant are legally attributable to the other Defendants and
7 all Defendants are jointly and severally liable to PLAINTIFF and the other AGGRIEVED
8 EMPLOYEES, for the loss sustained as a proximate result of the conduct of the Defendants'
9 agents, servants and/or employees.

10 THE CONDUCT

11
12 11. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
13 required to pay PLAINTIFF and AGGRIEVED EMPLOYEES for all their time worked,
14 meaning the time during which an employee is subject to the control of an employer, including
15 all the time the employee is suffered or permitted to work. DEFENDANT required PLAINTIFF
16 and AGGRIEVED EMPLOYEES to work without paying them for all the time they were under
17 DEFENDANT's control. Specifically, DEFENDANT required PLAINTIFF to work while
18 clocked out during what was supposed to be PLAINTIFF's off-duty meal break. PLAINTIFF
19 was from time to time interrupted by work assignments. Indeed there were many days where
20 PLAINTIFF did not even receive a partial lunch. As a result, the PLAINTIFF and other
21 AGGRIEVED EMPLOYEES forfeited minimum wage and overtime compensation by regularly
22 working without their time being accurately recorded and without compensation at the
23 applicable minimum wage and overtime rates. DEFENDANT's uniform policy and practice
24 not to pay PLAINTIFF and other AGGRIEVED EMPLOYEES for all time worked is evidenced
25 by DEFENDANT's business records.

26 12. As a result of their rigorous work schedules, PLAINTIFF and other AGGRIEVED
27 EMPLOYEES were from time to time unable to take thirty (30) minute off duty meal breaks
28 and were not fully relieved of duty for their meal periods. PLAINTIFF and other AGGRIEVED

1 EMPLOYEES were required to perform work as ordered by DEFENDANT for more than five
2 (5) hours during some shifts without receiving a meal break. Further, DEFENDANT failed to
3 provide PLAINTIFF and AGGRIEVED EMPLOYEES with a second off-duty meal period for
4 some workdays in which these employees were required by DEFENDANT to work ten (10)
5 hours of work. As a result, DEFENDANT's failure to provide PLAINTIFF and the
6 AGGRIEVED EMPLOYEES with legally required meal breaks is evidenced by
7 DEFENDANT's business records. PLAINTIFF and other AGGRIEVED EMPLOYEES
8 therefore forfeited meal breaks without additional compensation and in accordance with
9 DEFENDANT's strict corporate policy and practice. Neither PLAINTIFF nor the
10 AGGRIEVED EMPLOYEES were given the opportunity to take a timely meal period when
11 they were scheduled to work a shift of less than six (6) hours, but ultimately worked in excess
12 of six (6) hours. Simply put, it was not possible for PLAINTIFF and other AGGRIEVED
13 EMPLOYEES to decide whether or not to take a timely first meal period when DEFENDANT
14 scheduled these employees for a shift of six (6) hours or less such that these employees did not
15 know they were eligible for a meal period at the fifth hour of work. In such instances,
16 PLAINTIFF and the other AGGRIEVED EMPLOYEES were denied a timely meal period
17 within the first five (5) hours of their shift in violation of Labor Code sections 226.7 and 512.

18 13. During the PAGA PERIOD, PLAINTIFF and other AGGRIEVED EMPLOYEES
19 were also required from time to time to work in excess of four (4) hours without being provided
20 ten (10) minute rest periods. Further, these employees were denied their first rest periods of at
21 least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours from time to
22 time, a first and second rest period of at least ten (10) minutes for some shifts worked of
23 between six (6) and eight (8) hours from time to time, and a first, second and third rest period
24 of at least ten (10) minutes for some shifts worked of ten (10) hours or more from time to time.
25 PLAINTIFF and other AGGRIEVED EMPLOYEES were also not provided with one hour
26 wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFF and other
27 AGGRIEVED EMPLOYEES were from time to time denied their proper rest periods by
28 DEFENDANT and DEFENDANT's managers. Additionally, the applicable California Wage

1 Order requires employers to provide employees with off-duty rest periods, which the California
2 Supreme Court defined as time during which an employee is relieved from all work related
3 duties and free from employer control. In so doing, the Court held that the requirement under
4 California law that employers authorize and permit all employees to take rest period means that
5 employers must relieve employees of all duties and relinquish control over how employees
6 spend their time which includes control over the locations where employees may take their rest
7 period. Employers cannot impose controls that prohibit an employee from taking a brief walk -
8 five minutes out, five minutes back. Here, DEFENDANT's uniform policy restricted
9 PLAINTIFF and other AGGRIEVED EMPLOYEES from unconstrained walks and was
10 unlawful based on Defendant's rule which stated PLAINTIFF and other AGGRIEVED
11 EMPLOYEES could not leave the work premises during their rest period.

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

23 15. In the course of their employment PLAINTIFF and other AGGRIEVED
24 EMPLOYEES as a business expense, were required by DEFENDANT to use their own
25 personal cellular phones as a result of and in furtherance of their job duties as employees for
26 DEFENDANT but were not reimbursed or indemnified by DEFENDANT for the cost
27 associated with the use of their personal cellular phones for DEFENDANT's benefit.
28 Specifically, PLAINTIFF and other AGGRIEVED EMPLOYEES were required by

1 DEFENDANT to use their personal cell phones for work related issues. As a result, in the
2 course of their employment with DEFENDANT, PLAINTIFF and other AGGRIEVED
3 EMPLOYEES incurred unreimbursed business expenses which included, but were not limited
4 to, costs related to the use of their personal cellular phones all on behalf of and for the benefit
5 of DEFENDANT.

6 16. Further, PLAINTIFF alleges that the sales counters in DEFENDANT's California
7 stores are generally similar in their layout and design and that there is ample space behind each
8 counter area to allow for the presence and use of a stool or seat by DEFENDANT's non-exempt
9 employees during the performance of their work duties. DEFENDANT's non-exempt
10 employees working at DEFENDANT's locations spend a very substantial portion, and, in many
11 workdays, the vast majority of their working time behind these counters. The nature of the non-
12 exempt hourly employee position can reasonably be accomplished while using a seat/stool.

13 17. In violation of the applicable sections of the California Labor Code and the
14 requirements of the applicable Industrial Welfare Commission ("IWC") Wage Order,
15 DEFENDANT as a matter of company policy, practice and procedure, intentionally, knowingly
16 and systematically failed to provide PLAINTIFF and the other AGGRIEVED EMPLOYEES
17 suitable seating when the nature of these employees' work reasonably permitted sitting.

18 18. DEFENDANT knew or should have known that PLAINTIFF and other
19 AGGRIEVED EMPLOYEES were entitled to suitable seating and/or were entitled to sit when
20 it did not interfere with the performance of their duties, and that DEFENDANT did not provide
21 suitable seating and/or did not allow them to sit when it did not interfere with the performance
22 of their duties.

23 19. By reason of this conduct applicable to PLAINTIFF and all Aggrieved
24 Employees, DEFENDANT violated California Labor Code Section 1198 and Wage Order 4-
25 2001, Section 14 by failing to provide suitable seats.

26 20. From time to time, DEFENDANT also failed to provide PLAINTIFF and the
27 other AGGRIEVED EMPLOYEES with complete and accurate wage statements which failed
28 to show, among other things, the correct gross and net wages earned. Cal. Lab. Code § 226

1 provides that every employer shall furnish each of his or her employees with an accurate
2 itemized wage statement in writing showing, among other things, gross wages earned and all
3 applicable hourly rates in effect during the pay period and the corresponding amount of time
4 worked at each hourly rate. Aside, from the violations listed above in this paragraph,
5 DEFENDANT failed to issue to PLAINTIFF an itemized wage statement that lists all the
6 requirements under California Labor Code 226 *et seq.* As a result, DEFENDANT from time to
7 time provided PLAINTIFF and the other AGGRIEVED EMPLOYEES with wage statements
8 which violated Cal. Lab. Code § 226.

9 21. In violation of the applicable sections of the California Labor Code and the
10 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as
11 a matter of company policy, practice and procedure, intentionally, knowingly and systematically
12 failed to compensate PLAINTIFF and the other AGGRIEVED EMPLOYEES for missed meal
13 and rest periods. This uniform policy and practice of DEFENDANT is intended to purposefully
14 avoid the payment for all time worked as required by California law which allows
15 DEFENDANT to illegally profit and gain an unfair advantage over competitors who complied
16 with the law. To the extent equitable tolling operates to toll claims by the AGGRIEVED
17 EMPLOYEES against DEFENDANT, the PAGA PERIOD should be adjusted accordingly.

18 22. All of the conduct and violations alleged herein occurred during the PAGA
19 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect
20 PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations that
21 affected other AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.* 2018
22 AJDAR 12157 (Certified for Publication 12/19/18).

23 **JURISDICTION AND VENUE**

24 23. This Court has jurisdiction over this Action pursuant to California Code of Civil
25 Procedure, Section 410.10.

26 24. Venue is proper in this Court pursuant to California Code of Civil Procedure,
27 Sections 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANT, resides
28

1 in this County, and DEFENDANT (i) currently maintains and at all relevant times maintained
2 offices and facilities in this County and/or conducts substantial business in this County, and (ii)
3 committed the wrongful conduct herein alleged in this County against PLAINTIFF and the
4 AGGRIEVED EMPLOYEES.

5
6 **FIRST CAUSE OF ACTION**

7 **For Violation of the Private Attorneys General Act**

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

9 **(By PLAINTIFF and Against All Defendants)**

10 25. PLAINTIFF incorporates by reference the allegations set forth in paragraphs
11 1-24, *supra*, as though fully set forth at this point.

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

22 27. PLAINTIFF, and such persons that may be added from time to time who satisfy
23 the requirements and exhaust the administrative procedures under the Private Attorney General
24 Act, brings this Representative Action on behalf of the State of California with respect to herself
25 and all individuals who are or previously were employed by DEFENDANT in California and
26 who were classified as non-exempt employees (the "AGGRIEVED EMPLOYEES") during the
27 time period of April 15, 2019 until a date as determined by the Court (the "PAGA PERIOD").

28 28. On April 15, 2020, PLAINTIFF gave written notice by electronic mail to the

1 Labor and Workforce Development Agency (the "Agency") and by certified mail to the
2 employer of the specific provisions of this code alleged to have been violated as required by
3 Labor Code § 2699.3. See **Exhibit #1**, attached hereto and incorporated by this reference
4 herein. The statutory waiting period for PLAINTIFF to add these allegations to the Complaint
5 has expired. As a result, pursuant to Section 2699.3, PLAINTIFF may now commence a
6 representative civil action under PAGA pursuant to Section 2699 as the proxy of the State of
7 California with respect to all AGGRIEVED EMPLOYEES as herein defined.

8 29. The policies, acts and practices heretofore described were and are an unlawful
9 business act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the other
10 AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to properly record
11 and provide legally required meal and rest periods, (c) failed to pay minimum wages, (d) failed
12 to pay overtime wages, (e) failed to pay wages when due, (f) failed to reimburse necessary
13 business expenses incurred, and (g) failed to provide suitable seating, all in violation of the
14 applicable Labor Code sections listed in Labor Code Sections §§ 201, 202, 203, 204, 210,
15 226(a), 226.7, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, and California Code of
16 Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), and the applicable
17 Industrial Wage Order(s), and thereby gives rise to civil penalties as a result of such conduct.¹
18 PLAINTIFF hereby seeks recovery of only civil penalties as prescribed by the Labor Code
19 Private Attorney General Act of 2004 as the representative of the State of California for the
20 illegal conduct perpetrated on PLAINTIFF and the other AGGRIEVED EMPLOYEES.

21
22 **PRAYER FOR RELIEF**

23 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and
24 severally, as follows:

- 25 1. On behalf of the State of California and with respect to all AGGRIEVED
26 EMPLOYEES:

27
28 ¹Plaintiff specifically excludes and/or does not allege any claims under California Labor
Code §558(a)(3).

A) Recovery of civil penalties as prescribed by the Labor Code Private Attorneys General Act of 2004; and,

B) An award of attorneys' fees and cost of suit, as allowable under the law, including, but not limited to, pursuant to Labor Code §2699.

Dated: June 20, 2020 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: /s/ Norman Blumenthal
Norman B. Blumenthal
Attorneys for Plaintiff

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EXHIBIT 1

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

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WRITERS E-MAIL:

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WRITERS EXT:

1004

April 15, 2020
CA2110

VIA ONLINE FILING TO LWDA AND CERTIFIED MAIL TO DEFENDANT

Labor and Workforce Development Agency
Online Filing

Ross Dress for Less, Inc.
Certified Mail # 70142120000378196984
CT Corporation System
818 West Seventh Street, Suite 930
Los Angeles, CA 90017

Re: Notice Of Violations Of California Labor Code Sections §§ 201, 202, 203, 204 *et seq.*, 210, 226(a), 226.7, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 11070(14) (Failure to Provide Seating), Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant To California Labor Code Section 2699.5.

Dear Sir/Madam:

“Aggrieved Employees” refers to all individuals who are or previously were employed by Defendant Ross Dress for Less, Inc. in California and classified as non-exempt employees during the time period of April 15, 2019 until a date as determined by the Court. Our offices represent Plaintiff Mayra Sandoval (“Plaintiff”), and other Aggrieved Employees in a lawsuit against Defendant Ross Dress for Less, Inc. (“Defendant”). Plaintiff was employed by Defendant in California from June of 2017 to January of 2020 as a non-exempt employee entitled to the legally required meal and rest breaks and payment for all time worked under Defendant’s control. Defendant, however, unlawfully failed to record and pay Plaintiff and other Aggrieved Employees for, including but not limited to, all of their time worked, including minimum and overtime wages, for all of their missed meal and rest breaks, and for all of their time spent working off the clock. Moreover, when Defendant required Plaintiff and Aggrieved Employees to report for work, but “furnished less than half said employee’s usual or scheduled day’s work,” Defendant violated Cal. Code Regs., tit. 8 § 11040, subd. 5(A) by failing to pay Plaintiff and Aggrieved Employees for at least two (2) hours’ worth of work at their regular rate of pay. In addition, when Defendant required Plaintiff and Aggrieved Employees to respond to and engage in additional work, this resulted in a second reporting for work in a single workday, and Defendant failed to pay these employees reporting time pay as required by Cal. Code Regs., tit. 8, § 11040, subd.

5(B). Further, Defendant failed to advise Plaintiff and the other Aggrieved Employees of their right to take separately and hourly paid duty-free ten (10) minute rest periods. *See Vaquero v. Stoneledge Furniture, LLC*, 9 Cal. App. 5th 98, 110 (2017). Additionally, pursuant to Labor Code § 204 *et seq.*, Defendant failed to timely provide Plaintiff and other Aggrieved Employees with their wages. Plaintiff further contends that Defendant failed to provide accurate wage statements to her, and other Aggrieved Employees, in violation of California Labor Code section 226(a). Additionally, Plaintiff contends that Defendant failed to comply with Industrial Wage Order 7(A)(3) in that Defendant failed to keep time records showing when Plaintiff began and ended each shift and meal period. Plaintiff and other Aggrieved Employees perform tasks that reasonably permit sitting, and a seat would not interfere with their performance of any of their tasks that may require them to stand. Defendant fails to provide Plaintiff and other Aggrieved Employees with suitable seats. Said conduct, in addition to the foregoing, as well as the conduct alleged in the incorporated Complaint, violates Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 226(a), 226.7, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 11070(14) (Failure to Provide Seating), Violation of the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

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

This notice is provided to enable Plaintiff to proceed with the Complaint against Defendant as authorized by California Labor Code section 2699, *et seq.* The filing fee of \$75 is being mailed to the Department of Industrial Relations Accounting unit with an identification of the Plaintiff, the Defendant and the notice. The lawsuit consists of other Aggrieved Employees. As counsel, our intention is to vigorously prosecute the claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Statue of 2004 on behalf of Plaintiff and all Aggrieved Employees.

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

Respectfully,

/s/ Nicholas J. De Blouw

Nicholas J. De Blouw, Esq.

1 **BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP**

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Website: www.bamlawca.com

6 Attorneys for Plaintiff

7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

8 **IN AND FOR THE COUNTY OF STANISLAUS**

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10 MAYRA SANDOVAL, on behalf of the
11 State of California, as a private attorney
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15 ROSS DRESS FOR LESS, INC., a
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inclusive,

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18 Defendants.
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Case No. _____

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4 information and belief, except for her own acts and knowledge which are based on personal
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8 1. PLAINTIFF brings this action against Defendant Ross Dress For Less, Inc.
9 (“DEFENDANT”) seeking only to recover PAGA civil penalties for herself, and on behalf of
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11 **not seek to recover anything other than penalties as permitted by California Labor Code**
12 **§ 2699**. To the extent that statutory violations are mentioned for wage violations, PLAINTIFF
13 does not seek underlying general and/or special damages for those violations, but simply the
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16 behalf of herself and on behalf of others for PAGA penalties *only*, which is the precise and sole
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18 3. Accordingly, PLAINTIFF seeks to obtain all applicable relief for
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20 is, penalties and any other relief the Court deems proper pursuant to the PAGA. Nothing in this
21 complaint should be construed as attempting to obtain any relief that would not be available in
22 a PAGA-only action.

23 24 THE PARTIES

25 4. Ross Dress for Less, Inc. (“DEFENDANT”) is a corporation that at all relevant
26 times mentioned herein conducted and continues to conduct substantial business in the state of
27 California.

28 5. DEFENDANT is an American chain of discount department stores headquartered

1 in Dublin, California.

2 6. PLAINTIFF was employed by DEFENDANT from June of 2017 to January of
3 2020 and was at all times classified by DEFENDANT as a non-exempt employee, paid on an
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5 and overtime wages due for all time worked. PLAINTIFF worked at DEFENDANT's store
6 located at 3900 Sisk Road, Modesto, CA 95356.

7 7. PLAINTIFF, and such persons that may be added from time to time who satisfy
8 the requirements and exhaust the administrative procedures under the Private Attorney General
9 Act, brings this Representative Action on behalf of the State of California with respect to herself
10 and all individuals who worked for DEFENDANT in California and who were classified as
11 non-exempt employees ("AGGRIEVED EMPLOYEES") during the time period of April 13,
12 2019 until a date as determined by the Court (the "PAGA PERIOD").

13 8. PLAINTIFF, on behalf of herself and all AGGRIEVED EMPLOYEES presently
14 or formerly employed by DEFENDANT during the PAGA PERIOD, brings this representative
15 action pursuant to Labor Code § 2699, *et seq.* seeking fixed civil penalties for DEFENDANT's
16 violation of California Labor Code §§ 201, 202, 203, 204, 210, 226(a), 226.7, 510, 512,
17 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, and California Code of Regulations, Title 8,
18 Section 1 1070(14) (Failure to Provide Seating), and the applicable Wage Order. Based upon
19 the foregoing, PLAINTIFF and all AGGRIEVED EMPLOYEES are aggrieved employees
20 within the meaning of Labor Code § 2699, *et seq.*

21 9. The true names and capacities, whether individual, corporate, subsidiary,
22 partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently
23 unknown to PLAINTIFF who therefore sues these Defendants by such fictitious names pursuant
24 to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this Complaint to allege
25 the true names and capacities of Does 1 through 50, inclusive, when they are ascertained.
26 PLAINTIFF is informed and believes, and based upon that information and belief alleges, that
27 the Defendants named in this Complaint, including DOES 1 through 50, inclusive, are
28 responsible in some manner for one or more of the events and happenings that proximately

1 caused the injuries and damages hereinafter alleged.

2 10. The agents, servants and/or employees of the Defendants and each of them acting
3 on behalf of the Defendants acted within the course and scope of his, her or its authority as the
4 agent, servant and/or employee of the Defendants, and personally participated in the conduct
5 alleged herein on behalf of the Defendants with respect to the conduct alleged herein.
6 Consequently, the acts of each Defendant are legally attributable to the other Defendants and
7 all Defendants are jointly and severally liable to PLAINTIFF and the other AGGRIEVED
8 EMPLOYEES, for the loss sustained as a proximate result of the conduct of the Defendants'
9 agents, servants and/or employees.

10 THE CONDUCT

11
12 11. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
13 required to pay PLAINTIFF and AGGRIEVED EMPLOYEES for all their time worked,
14 meaning the time during which an employee is subject to the control of an employer, including
15 all the time the employee is suffered or permitted to work. DEFENDANT required PLAINTIFF
16 and AGGRIEVED EMPLOYEES to work without paying them for all the time they were under
17 DEFENDANT's control. Specifically, DEFENDANT required PLAINTIFF to work while
18 clocked out during what was supposed to be PLAINTIFF's off-duty meal break. PLAINTIFF
19 was from time to time interrupted by work assignments. Indeed there were many days where
20 PLAINTIFF did not even receive a partial lunch. As a result, the PLAINTIFF and other
21 AGGRIEVED EMPLOYEES forfeited minimum wage and overtime compensation by regularly
22 working without their time being accurately recorded and without compensation at the
23 applicable minimum wage and overtime rates. DEFENDANT's uniform policy and practice
24 not to pay PLAINTIFF and other AGGRIEVED EMPLOYEES for all time worked is evidenced
25 by DEFENDANT's business records.

26 12. As a result of their rigorous work schedules, PLAINTIFF and other AGGRIEVED
27 EMPLOYEES were from time to time unable to take thirty (30) minute off duty meal breaks
28 and were not fully relieved of duty for their meal periods. PLAINTIFF and other AGGRIEVED

1 EMPLOYEES were required to perform work as ordered by DEFENDANT for more than five
2 (5) hours during some shifts without receiving a meal break. Further, DEFENDANT failed to
3 provide PLAINTIFF and AGGRIEVED EMPLOYEES with a second off-duty meal period for
4 some workdays in which these employees were required by DEFENDANT to work ten (10)
5 hours of work. As a result, DEFENDANT's failure to provide PLAINTIFF and the
6 AGGRIEVED EMPLOYEES with legally required meal breaks is evidenced by
7 DEFENDANT's business records. PLAINTIFF and other AGGRIEVED EMPLOYEES
8 therefore forfeited meal breaks without additional compensation and in accordance with
9 DEFENDANT's strict corporate policy and practice. Neither PLAINTIFF nor the
10 AGGRIEVED EMPLOYEES were given the opportunity to take a timely meal period when
11 they were scheduled to work a shift of less than six (6) hours, but ultimately worked in excess
12 of six (6) hours. Simply put, it was not possible for PLAINTIFF and other AGGRIEVED
13 EMPLOYEES to decide whether or not to take a timely first meal period when DEFENDANT
14 scheduled these employees for a shift of six (6) hours or less such that these employees did not
15 know they were eligible for a meal period at the fifth hour of work. In such instances,
16 PLAINTIFF and the other AGGRIEVED EMPLOYEES were denied a timely meal period
17 within the first five (5) hours of their shift in violation of Labor Code sections 226.7 and 512.

18 13. During the PAGA PERIOD, PLAINTIFF and other AGGRIEVED EMPLOYEES
19 were also required from time to time to work in excess of four (4) hours without being provided
20 ten (10) minute rest periods. Further, these employees were denied their first rest periods of at
21 least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours from time to
22 time, a first and second rest period of at least ten (10) minutes for some shifts worked of
23 between six (6) and eight (8) hours from time to time, and a first, second and third rest period
24 of at least ten (10) minutes for some shifts worked of ten (10) hours or more from time to time.
25 PLAINTIFF and other AGGRIEVED EMPLOYEES were also not provided with one hour
26 wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFF and other
27 AGGRIEVED EMPLOYEES were from time to time denied their proper rest periods by
28 DEFENDANT and DEFENDANT's managers. Additionally, the applicable California Wage

1 Order requires employers to provide employees with off-duty rest periods, which the California
2 Supreme Court defined as time during which an employee is relieved from all work related
3 duties and free from employer control. In so doing, the Court held that the requirement under
4 California law that employers authorize and permit all employees to take rest period means that
5 employers must relieve employees of all duties and relinquish control over how employees
6 spend their time which includes control over the locations where employees may take their rest
7 period. Employers cannot impose controls that prohibit an employee from taking a brief walk -
8 five minutes out, five minutes back. Here, DEFENDANT's uniform policy restricted
9 PLAINTIFF and other AGGRIEVED EMPLOYEES from unconstrained walks and was
10 unlawful based on Defendant's rule which stated PLAINTIFF and other AGGRIEVED
11 EMPLOYEES could not leave the work premises during their rest period.

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

23 15. In the course of their employment PLAINTIFF and other AGGRIEVED
24 EMPLOYEES as a business expense, were required by DEFENDANT to use their own
25 personal cellular phones as a result of and in furtherance of their job duties as employees for
26 DEFENDANT but were not reimbursed or indemnified by DEFENDANT for the cost
27 associated with the use of their personal cellular phones for DEFENDANT's benefit.
28 Specifically, PLAINTIFF and other AGGRIEVED EMPLOYEES were required by

1 DEFENDANT to use their personal cell phones for work related issues. As a result, in the
2 course of their employment with DEFENDANT, PLAINTIFF and other AGGRIEVED
3 EMPLOYEES incurred unreimbursed business expenses which included, but were not limited
4 to, costs related to the use of their personal cellular phones all on behalf of and for the benefit
5 of DEFENDANT.

6 16. Further, PLAINTIFF alleges that the sales counters in DEFENDANT's California
7 stores are generally similar in their layout and design and that there is ample space behind each
8 counter area to allow for the presence and use of a stool or seat by DEFENDANT's non-exempt
9 employees during the performance of their work duties. DEFENDANT's non-exempt
10 employees working at DEFENDANT's locations spend a very substantial portion, and, in many
11 workdays, the vast majority of their working time behind these counters. The nature of the non-
12 exempt hourly employee position can reasonably be accomplished while using a seat/stool.

13 17. In violation of the applicable sections of the California Labor Code and the
14 requirements of the applicable Industrial Welfare Commission ("IWC") Wage Order,
15 DEFENDANT as a matter of company policy, practice and procedure, intentionally, knowingly
16 and systematically failed to provide PLAINTIFF and the other AGGRIEVED EMPLOYEES
17 suitable seating when the nature of these employees' work reasonably permitted sitting.

18 18. DEFENDANT knew or should have known that PLAINTIFF and other
19 AGGRIEVED EMPLOYEES were entitled to suitable seating and/or were entitled to sit when
20 it did not interfere with the performance of their duties, and that DEFENDANT did not provide
21 suitable seating and/or did not allow them to sit when it did not interfere with the performance
22 of their duties.

23 19. By reason of this conduct applicable to PLAINTIFF and all Aggrieved
24 Employees, DEFENDANT violated California Labor Code Section 1198 and Wage Order 4-
25 2001, Section 14 by failing to provide suitable seats.

26 20. From time to time, DEFENDANT also failed to provide PLAINTIFF and the
27 other AGGRIEVED EMPLOYEES with complete and accurate wage statements which failed
28 to show, among other things, the correct gross and net wages earned. Cal. Lab. Code § 226

1 provides that every employer shall furnish each of his or her employees with an accurate
2 itemized wage statement in writing showing, among other things, gross wages earned and all
3 applicable hourly rates in effect during the pay period and the corresponding amount of time
4 worked at each hourly rate. Aside, from the violations listed above in this paragraph,
5 DEFENDANT failed to issue to PLAINTIFF an itemized wage statement that lists all the
6 requirements under California Labor Code 226 *et seq.* As a result, DEFENDANT from time to
7 time provided PLAINTIFF and the other AGGRIEVED EMPLOYEES with wage statements
8 which violated Cal. Lab. Code § 226.

9 21. In violation of the applicable sections of the California Labor Code and the
10 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as
11 a matter of company policy, practice and procedure, intentionally, knowingly and systematically
12 failed to compensate PLAINTIFF and the other AGGRIEVED EMPLOYEES for missed meal
13 and rest periods. This uniform policy and practice of DEFENDANT is intended to purposefully
14 avoid the payment for all time worked as required by California law which allows
15 DEFENDANT to illegally profit and gain an unfair advantage over competitors who complied
16 with the law. To the extent equitable tolling operates to toll claims by the AGGRIEVED
17 EMPLOYEES against DEFENDANT, the PAGA PERIOD should be adjusted accordingly.

18 22. All of the conduct and violations alleged herein occurred during the PAGA
19 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect
20 PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations that
21 affected other AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.* 2018
22 AJDAR 12157 (Certified for Publication 12/19/18).

23 **JURISDICTION AND VENUE**

24 23. This Court has jurisdiction over this Action pursuant to California Code of Civil
25 Procedure, Section 410.10.

26 24. Venue is proper in this Court pursuant to California Code of Civil Procedure,
27 Sections 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANT, resides
28

1 in this County, and DEFENDANT (i) currently maintains and at all relevant times maintained
2 offices and facilities in this County and/or conducts substantial business in this County, and (ii)
3 committed the wrongful conduct herein alleged in this County against PLAINTIFF and the
4 AGGRIEVED EMPLOYEES.

5
6 **FIRST CAUSE OF ACTION**

7 **For Violation of the Private Attorneys General Act**

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

9 **(By PLAINTIFF and Against All Defendants)**

10 25. PLAINTIFF incorporates by reference the allegations set forth in paragraphs
11 1-24, *supra*, as though fully set forth at this point.

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

22 27. PLAINTIFF, and such persons that may be added from time to time who
23 satisfy the requirements and exhaust the administrative procedures under the Private
24 Attorney General Act, brings this Representative Action on behalf of the State of California
25 with respect to herself and all individuals who are or previously were employed by
26 DEFENDANT in California and who were classified as non-exempt employees (the
27 "AGGRIEVED EMPLOYEES") during the time period of April 13, 2019 until a date as
28 determined by the Court (the "PAGA PERIOD").

28. On April 13, 2019, PLAINTIFF gave written notice by electronic mail to the Labor and Workforce Development Agency (the "Agency") and by certified mail to the employer of the specific provisions of this code alleged to have been violated as required by Labor Code § 2699.3. See **Exhibit #1**, attached hereto and incorporated by this reference herein. The statutory waiting period for PLAINTIFF to add these allegations to the Complaint has expired. As a result, pursuant to Section 2699.3, PLAINTIFF may now commence a representative civil action under PAGA pursuant to Section 2699 as the proxy of the State of California with respect to all AGGRIEVED EMPLOYEES as herein defined.

29. The policies, acts and practices heretofore described were and are an unlawful business act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the other AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to properly record and provide legally required meal and rest periods, (c) failed to pay minimum wages, (d) failed to pay overtime wages, (e) failed to pay wages when due, (f) failed to reimburse necessary business expenses incurred, and (g) failed to provide suitable seating, all in violation of the applicable Labor Code sections listed in Labor Code Sections §§ 201, 202, 203, 204, 210, 226(a), 226.7, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, and California Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), and the applicable Industrial Wage Order(s), and thereby gives rise to civil penalties as a result of such conduct.¹ PLAINTIFF hereby seeks recovery of only civil penalties as prescribed by the Labor Code Private Attorney General Act of 2004 as the representative of the State of California for the illegal conduct perpetrated on PLAINTIFF and the other AGGRIEVED EMPLOYEES.

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and severally, as follows:

¹Plaintiff specifically excludes and/or does not allege any claims under California Labor Code §558(a)(3).

1 1. On behalf of the State of California and with respect to all AGGRIEVED
2 EMPLOYEES:

3 A) Recovery of civil penalties as prescribed by the Labor Code Private
4 Attorneys General Act of 2004; and,

5 B) An award of attorneys' fees and cost of suit, as allowable under the
6 law, including, but not limited to, pursuant to Labor Code §2699.

7
8 Dated: April 15, 2020 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP
9

10
11 By: /s/ Norman Blumenthal
12 Norman B. Blumenthal
13 Attorneys for Plaintiff
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