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and all others similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**COUNTY OF LOS ANGELES**

MARIA MICHEL, individually and on behalf of  
all others similarly situated,

Plaintiff,

v.

VALLEY THRIFT STORE, INC. a limited  
liability company; and DOES 1-20, inclusive,

Defendants.

Case No.: 20STCV25886

Assigned to: The Hon. Ann I. Jones,  
Dept.: SSC-11

**SECOND AMENDED CLASS ACTION  
COMPLAINT FOR DAMAGES AND  
ENFORCEMENT UNDER THE PRIVATE  
ATTORNEYS GENERAL ACT:**

1. Failure to Pay Overtime Wages (Labor Code §§ 510, 558, 1194 *et seq.*, 1197.1, 1198, IWC Wage Order);
2. Unfair Business Practices (Business and Professions Code §§ 17200, *et seq.*);
3. Failure to Provide Suitable Seating (California Labor Code § 1198, IWC Wage Order); and
4. Civil Penalties Under the Private Attorneys General Act (California Labor Code §§ 2698, *et seq.*).

**JURY TRIAL REQUESTED**

Plaintiff Maria Michel brings this action on behalf of herself, on behalf of all other similarly-situated members of the public, and on behalf of aggrieved employees pursuant to the California Private Attorneys General Act, and alleges the following:

## **I. INTRODUCTION**

1. Plaintiff Maria Michel (“Plaintiff”) brings this class action and representative action to remedy wage-and-hour violations by Defendant Valley Thrift Store, Inc. and Does 1 through 20 (collectively, the “Defendants”). For at least four years prior to the filing of this Complaint and through the present, Defendants have engaged in a uniform policy and systematic scheme of wage abuse against Plaintiff and other non-exempt employees of Defendants in violation of applicable California laws, including, without limitation, failing to include all required compensation, including non-discretionary bonuses, when calculating overtime, and failing to provide suitable seating.

## **II. THE PARTIES**

2. **Defendant Valley Thrift Store, Inc.** (“Valley Thrift”) operates several thrift stores in the Southern California. Valley Thrift conducted and continues to conduct substantial business in the state of California. At all times mentioned herein, Defendant Valley Thrift was and is an employer covered by the California Labor Code and the California Industrial Welfare Commission Wage Orders.

3. Plaintiff is unaware and ignorant of the true names and capacities of Defendants sued herein as **Does 1 through 20**, inclusive, and for that reason sues said Defendants by such fictitious names (the “Doe Defendants”).

4. At all times herein relevant, Defendant Valley Thrift and the Doe Defendants, and each of them, were the agents, partners, joint-venturers, joint employers, alter-egos, representatives, servants, employees, successors-in-interest, co-conspirators and assigns, each of the other, and at times relevant hereto were acting with the course and scope of their authority as such agents, partners, joint-venturers, joint employers, alter-egos, representatives, servants, employees, successors-in-interest, co-conspirators and assigns, and all acts or omissions alleged herein were duly committed with the ratification, knowledge, permission, encouragement, authorization, and consent of each Defendant

designated herein. Plaintiff is informed and believes, and based thereon alleges that the acts of each Defendant are legally attributable to the other Defendants.

5. Plaintiff is informed and believes, and based thereon alleges that each of the Doe Defendants is legally responsible for the events and happenings referred to in this Complaint, and unlawfully caused the injuries and damages to Plaintiff and the other class members as alleged in this Complaint. Plaintiff will file and serve an amendment to this Complaint alleging the true names and capacities of the Doe Defendants when such true names, capacities, and involvement is ascertained.

6. **Plaintiff Maria Michel** has been employed by Valley Thrift Store as a general laborer since February 12, 2012 to the present in Azusa, California. As a general laborer her job duties generally consisted of sorting, folding, and hanging clothes from large carts filled with donated items. Plaintiff was a full-time employee and regularly worked overtime — i.e., more than eight hours in a day or more than 40 hours in a week. Despite the fact that the nature of this work reasonably permits Plaintiff the use of seats, Defendants failed to provide Plaintiff with seats. As a result, Defendants required Plaintiff to stand for eight to nine hours per day. At all times relevant to this Complaint, Defendants employed Plaintiff as a non-exempt employee and Defendants paid Plaintiff in whole or in part on an hourly basis. Specifically, during the relevant time period, Defendants initially paid Plaintiff \$10.75 per hour, but subsequently received a raise to earn \$11.00 per hour and then \$12.00 per hour. In addition, Defendants paid Plaintiff non-discretionary monthly and yearly bonuses based on defined sales targets. Plaintiff is an individual residing in the County of Los Angeles, California.

7. Plaintiff brings this class action on behalf of herself and a **Class**, defined as: All current and former persons employed by Defendants in California as non-exempt employees at any time during the period beginning four years prior to the filing of this Complaint and ending on the date as determined by the Court (the “Class Period”).

8. At all times relevant to this Complaint, Defendants exercised control over the wages, hours, and working conditions of Plaintiff and other Class members; suffered and permitted Plaintiff and other Class members to work; and otherwise engaged Plaintiff and other Class members to work, so as to create an employer-employee relationship between Defendants and Plaintiff and other Class

members. At all relevant times, Defendants were “employers” of Plaintiff within the meaning of all applicable California state laws.

### **III. JURISDICTION AND VENUE**

9. This class action is brought pursuant to California Code of Civil Procedure § 382. The monetary damages and restitution sought by Plaintiff exceed the minimal jurisdiction limits of the Superior Court and will be established according to proof at trial.

10. This Court has jurisdiction over this action under the California Constitution, Article VI, Section 10, which grants the Superior Court original jurisdiction in all causes except those given by statute to other courts. The statutes under which this action is brought do not specifically grant jurisdiction to any other court, and the issues are based solely on California statutes and law, including the California Labor Code, California Industrial Welfare Commission (“IWC”) Wage Orders, California Code of Civil Procedure, California Civil Code, the California Private Attorneys General Act (“PAGA”), and the California Business and Professions Code.

11. The California Superior Court has jurisdiction over Defendants, because they are citizens of California, have sufficient minimum contacts in California, and otherwise intentionally avail themselves to the California market, including establishing their principal place of business and transacting business in California.

12. Venue is proper in this Court, because Plaintiff was employed by Defendants in the County of Los Angeles, and Defendants transact business in the County of Los Angeles, including offering its services and operating work locations in the County.

### **IV. FACTUAL BACKGROUND**

13. At all relevant times set forth in this Complaint, Defendants employed Plaintiff and other Class members as hourly, non-exempt employees.

14. Plaintiff and each member of the Class were covered under one or more IWC Wage Orders, the California Labor Code provisions relating to wage-and-hour laws, and other applicable wage orders, regulations, and statutes, which imposed an obligation on the part of Defendants, among other things, to pay overtime wages, and to provide adequate seating.

15. Plaintiff is informed and believes, and based thereon alleges that Defendants engaged in a uniform policy and systematic scheme of wage abuse against its non-exempt employees, including, without limitation, failing to include all required compensation, including non-discretionary bonuses, when calculating overtime, and failing to provide suitable seating.

16. Plaintiff is informed and believes, and based thereon alleges that Defendants failed to provide Plaintiff and the other Class members with seats — despite the fact that the nature of work reasonably permits the use of seats. In doing so, Defendants harmed Plaintiff and other Class members, because they were required to stand for extended periods of time despite the fact that the nature of their work did not require that they remain standing at all times. In addition, Defendants had no policy, procedure, or practice for Plaintiff and other Class members to request a seat.

17. Plaintiff is informed and believes, and based thereon alleges that Defendants failed to provide Plaintiff and the other Class members wages, including overtime wages, for all hours worked, meaning the time during which Plaintiff and other Class members were subject to the control of Defendants, including all the time they were suffered or permitted to work. This was a result of Defendants failing to include all required compensation, including monthly and yearly sales bonuses, in calculating the overtime of Plaintiff and Class members. Specifically, Defendants have established a sales plan that provides a bonus to Plaintiff and Class members for meeting certain defined sales targets. Despite these bonuses being non-discretionary, Defendants did not include them when calculating Plaintiff's and Class members' regular rate of pay, which ultimately resulted in Defendants underpaying Plaintiffs and Class members.

## **V. CLASS ALLEGATIONS**

18. **Class Definition.** The named individual Plaintiff brings this action on her own behalf and on behalf of all similarly-situated persons as a class action under California Code of Civil Procedure § 382. Plaintiff proposes the following class ("Class"):

All current and former persons employed by Defendants in California as non-exempt employees at any time during the period beginning four years prior to the filing of this Complaint and ending on the date as determined by the Court (the "Class Period").

1           19. Plaintiff reserves the right to amend or modify the class description with greater  
2 particularity or further division into subclasses.

3           20. **Ascertainable Class.** The proposed Class is ascertainable, because the members can be  
4 identified and located using information contained in Defendants' payroll and personnel records.

5           21. **Numerosity.** The members of the Class are so numerous that joinder of all members  
6 would be impractical and unfeasible. While the precise number of Class members is currently  
7 unknown to Plaintiff, Plaintiff is informed and believes that the Class is estimated to be greater than  
8 100 individuals.

9           22. **Typicality.** Plaintiff's claims are typical of the Class. Plaintiff and members of the Class  
10 sustained injuries and damages arising out of, and caused by, Defendants common course of unlawful  
11 conduct.

12           23. **Adequacy of Representation.** The named Plaintiff is fully prepared to take all necessary  
13 steps to represent fairly and adequately the interests of the Class, and has retained counsel who is  
14 experienced in class action and wage-and-hour litigation of this nature. Plaintiff has the same interests  
15 in the litigation of this case as members of the Class, and is not subject to any individual defenses  
16 different from those conceivably applicable to the Class as a whole.

17           24. **Superiority.** A class action is superior to other available means for the fair and efficient  
18 adjudication of this controversy. Individual joinder of all employees is not practicable.

19           25. **Common Question of Law and Fact.** There are questions of law and fact common to  
20 the Class that predominates over any questions affecting only individual members of the Class. These  
21 common questions of law and fact, include, without limitation:

- 22           a. Whether Defendants failed to pay Plaintiff and the other Class members overtime  
23 compensation when Plaintiff and the other Class members worked in excess of  
24 eight hours in a day or forty in a workweek;
- 25           b. Whether Defendants failed to pay Plaintiff and the other Class members overtime  
26 compensation at double their regular rate of pay when Plaintiff and the other Class  
27 members worked in excess of twelve hours in a day or in excess of eight on the  
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- seventh consecutive day of work in a workweek;
- c. Whether Defendants included all required compensation in calculating the overtime rate of Plaintiff and the other Class members;
- d. Whether Defendants have engaged in a pattern and/or practice of failing to provide Plaintiff and Class members with suitable seating;
- e. Whether Defendants acted with malice, oppression, or fraud;
- f. Whether Defendants violated California Labor Code §§ 510, 512, 551, 552, 1194 *et seq.*, 1197, and 1198;
- g. Whether Defendants violated Industrial Welfare Commission Orders;
- h. Whether Defendants engaged in unfair business practices in violation of California Business & Professions Code §§ 17200, *et seq.*; and
- i. The nature and extent of the injury suffered by Plaintiff and the other Class members and the measure of damages for the injury.

26. The nature of this action and the format of laws available to Plaintiff and members of the Class make the class action format a particularly efficient and an appropriate procedure to redress the wrongs alleged herein. If each member of the Class were required to file an individual lawsuit, the corporate Defendants would necessarily gain an unconscionable advantage since they would be able to exploit and overwhelm the limited resources of each individual plaintiff with their vastly superior financial and legal resources. Requiring each Class member to pursue an individual remedy would also discourage the assertion of lawful claims by employees who would be disinclined to file an action against their former or current employer for real and justifiable fear of retaliation and permanent damage to their careers at subsequent employment.

27. Plaintiff is unaware of any difficulties in managing this case that should preclude class action.

## **VI. PAGA REPRESENTATIVE ACTION ALLEGATIONS**

28. At all relevant times, PAGA was applicable to Plaintiff and her employment with Defendants. PAGA provides for a civil penalty to be assessed and collected by the Labor and

Workforce Development Agency (“LWDA”) for violations of the California Labor Code. As an alternative, these civil penalties may be recovered through a civil action brought by an aggrieved employee on behalf of herself and other current or former employees.

29. Plaintiff and other employees of Defendants are “aggrieved employees” as defined by PAGA, because they are all current or former employees of Defendants, and one or more of the alleged violations were committed against them.

30. On or about April 28, 2020, Plaintiff gave written notice of Defendants’ violations of various provisions of the California Labor Code and the applicable IWC Wage Order to (a) the LWDA by filing with the LWDA through the LWDA website and (b) to Defendants by certified mail.

31. The LWDA did not provide notice of its intention to investigate Defendants’ violations within 65 calendar days of the April 28, 2020 notice.

32. In doing so, Plaintiff has satisfied the administrative prerequisites under PAGA to recover civil penalties against Defendants, in addition to the other remedies, for violations of California Labor Code §§ 510, 551, 552, 1194 *et seq.*, 1197, and 1198.

## **VII. CAUSES OF ACTION**

### **FIRST CAUSE OF ACTION**

#### **Failure to Pay Overtime Wages**

(Violation of Labor Code §§ 510, 558, 1194 *et seq.*, 1197.1, 1198, IWC Wage Order)  
(By Plaintiff and the Class Against Each Defendant)

33. Plaintiff incorporates by reference and re-alleges paragraphs set forth above as though set forth fully herein. Plaintiff alleges as follows as a class action and a representative cause of action on behalf of herself and all Class members.

34. California Labor Code § 204, the IWC Wage Orders, and other applicable laws and regulations, provide that an employer must timely pay its employees for all hours worked.

35. California Labor Code § 510 provides that employees in California shall not be employed more than eight hours per workday or forty hours per workweek unless they receive additional compensation beyond their regular wages in amounts specified by law.

36. California Labor Code § 510 further provides that employees in California shall not be employed more than twelve hours per workday unless they receive wages at double their regular rate of pay.

37. California Labor Code § 1194 establishes an employee's right to recover unpaid wages, including overtime compensation and interest, and the cost of suit. California Labor Code § 1198 further provides that the employment of an employee for longer than those fixed by the IWC Wage Orders is unlawful.

38. Defendants maintained and enforced policies and practices of refusing to pay Plaintiff and Class members for all hours worked. Defendants employed Plaintiff and Class members for more than eight hours per day and more than 40 hours per workweek during the operative timeframe, but Defendants failed to pay Plaintiff and Class members the correct applicable overtime rate for the number of overtime hours they worked as required by the California Labor Code and the applicable IWC Wage Order.

39. Defendants maintained and enforced policies and practices of refusing to pay Plaintiff and Class members for all hours worked. Defendants employed Plaintiff and Class members for more than twelve hours per day and more than eight hours on the seventh consecutive day of work in a workweek, but Defendants failed to pay Plaintiff and Class members the correct applicable overtime rate for the number of overtime hours they worked as required by the California Labor Code and the applicable IWC Wage Order.

40. Defendants failed to include all required compensation, including monthly and yearly sales bonuses, in calculating the overtime of Plaintiff and Class members. And Defendants have established a sales plan that provides a bonus to Plaintiff and Class members for meeting certain defined sales targets. Despite these bonuses being non-discretionary, Defendants did not include them when calculating Plaintiff's and Class members' regular rate of pay, which ultimately resulted in Defendants underpaying Plaintiffs and Class members.

41. Defendants thus required Plaintiff and Class members to work under conditions prohibited by order of the IWC, in violation of those orders.

42. Defendants deprived Plaintiff and Class members of their rightfully earned minimum wage compensation, including overtime compensation, as a direct and proximate result of Defendants' failure to pay said compensation. Under California Labor Code § 1194, Plaintiff and Class members are entitled to recover such amounts, plus interest thereon, reasonable attorneys' fees, and costs.

43. Defendants owe Plaintiff and Class members overtime wages, have failed and refused, and continues to fail and refuse, to pay the overtime wages owed. Additionally, Defendants did not include all the required compensation in calculating the overtime rate of Plaintiff and the other Class members.

44. Defendants' failure to pay Plaintiff and Class members such premium overtime compensation and their miscalculation of the regular rate of pay violates the provisions of California Labor Code § 510 and § 1198, and the applicable IWC Wage Order and is therefore unlawful. Pursuant to California Labor Code § 1194, Plaintiff and Class members are entitled to recover unpaid overtime compensation, as well as interest, costs, and attorneys' fees. In addition, under California Labor Code § 1194.2, Plaintiff and Class members are entitled to recover liquidated damages in an amount equal to the minimum wages unlawfully unpaid, and interest thereon. Plaintiff and Class members are further entitled to attorneys' fees pursuant to California Code of Civil Procedure § 1021.5, and pursuant to Labor Code §2699(g)(1).

## **SECOND CAUSE OF ACTION**

### **Unfair Business Practices**

(Violation of California Business and Professions Code § 17200, *et seq.*)  
(By Plaintiff and the Class Against Each Defendant)

45. Plaintiff incorporates by reference and re-alleges paragraphs set forth above as though set forth fully herein. Plaintiff alleges as follows in her capacity as a representative of all similarly situated members of the class.

46. A violation of California Business and Professions Code §§ 17200, *et seq.*, may be predicated on the violation of any state or federal law. Defendants' policies, activities, and actions as alleged herein, are violations of California law and constitute unlawful business acts and practices in

violation of California Business and Professions Code §§ 17200, *et seq.* Defendants have engaged and continue to engage in unfair and unlawful business practices in California by practicing, employing, and utilizing the employment practices outlined above and below in violation of the applicable IWC Wage Order and California Labor Code.

47. Plaintiff and Class members have also been personally aggrieved by Defendants' unlawful and unfair business acts and practices alleged herein by the loss of money and/or property.

48. Defendants' conduct, as alleged in this Complaint, has been, and continues to be, unfair, unlawful, and harmful to Plaintiff and Class members, Defendants' competitors, and the public. Plaintiff seeks to enforce important rights affecting the public interest within the meaning of the California Code of Civil Procedure § 1021.5.

49. Pursuant to California Business and Professions Code §§ 17200, *et seq.*, Plaintiff and Class members are entitled to restitution of the wages withheld and retained by Defendants during the Class Period; an award of attorneys' fees pursuant to California Labor Code § 1194; and California Code of Civil Procedure § 1021.5; interest; and an award of costs.

### **THIRD CAUSE OF ACTION**

#### **Suitable Seating Requirement**

(Violation of California Labor Code § 1198, IWC Wage Order)

(By Plaintiff and the Class Against Each Defendant)

81. Plaintiff incorporates by reference and re-alleges paragraphs set forth above as though set forth fully herein. Plaintiff alleges as follows in her capacity as a representative of all similarly situated members of the Class.

82. California Labor Code § 1198 does not permit an employer to employ a worker "under conditions of labor that are prohibited by an applicable wage order." *Id.* The applicable wage order at issue is Wage Order 7-2001 ("Seating Wage Order"). Section 14 of that order provides that: (A) all working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats. (B) When employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties.

83. Defendants knowingly and intentionally failed to furnish Plaintiff and other Class

members with suitable seating requirements as required by California Labor Code § 1198 and IWC Wage Order 7-2001. As a result, Defendants are liable to Plaintiff and to the Class for the amounts provided by Labor Code § 226(b) and for penalties, and attorneys' fees.

#### **FOURTH CAUSE OF ACTION**

##### **Private Attorney General Act**

(California Labor Code §§ 2698, *et seq.* [PAGA])

(By Plaintiff and Similarly Aggrieved Employees Against Defendant)

84. Plaintiff incorporates by reference and re-alleges paragraphs set forth above as though set forth fully herein. Plaintiff alleges as follows as representative cause of action on behalf of herself and all Class members.

85. PAGA authorizes an aggrieved employee, on behalf of herself or other current or former employees, to bring a civil action to recover civil penalties against his or her employer pursuant to the procedures specified in California Labor Code § 2699.3. Plaintiff is an aggrieved employee within the meaning of PAGA, and pursuant to PAGA, Plaintiff is entitled to recover civil penalties on behalf of herself and other similarly aggrieved persons who are, or were employed, by Defendants and against whom one or more of the alleged violations were committed. If the employee prevails as private attorney general, the employer may be subject to civil penalties, of which the aggrieved employee is entitled to 25 percent.

86. Plaintiff has complied with the procedures for bringing suit under PAGA. Specifically, on or about April 28, 2020 Plaintiff gave written notice of Defendants' violations — including the facts and theories to support the violations — of various provisions of the California Labor Code and the applicable IWC Wage Order to (a) the LWDA by filing with the LWDA through the LWDA website and (b) to Defendants by certified mail.

87. Pursuant to California Labor Code § 2699.3, the LWDA must give written notice by certified mail to the parties that it intends to investigate the alleged violations of the California Labor Code within 60 days of the date of the complainant's written notice and more than 65 days have passed since the notice and the LWDA did not provide the parties notice that it intended to

investigate his claims.

88. During the applicable time period preceding the filing of Plaintiff's notice to the LWDA, Defendants violated California Labor Code §§ 510, 1194, and 1198, and the applicable IWC Wage Order provisions, as alleged in more detail above.

89. Pursuant to California Labor Code §§ 2699(a) and (f), and 2699.5, and 2699(g)(1), Plaintiff and similarly aggrieved employees are entitled to an award of reasonable attorneys' fees and costs. To that end, Plaintiff seeks all relief entitled under PAGA for any penalties assessed against Defendants as a result of Defendants' California Labor Code violations, plus attorneys' fees and costs.

**VIII. PRAYER FOR RELIEF**

Wherefore, Plaintiff, individually and on behalf of all other members of the Class, and on behalf of aggrieved employees pursuant to PAGA, pray for an award and judgment against Defendants jointly and severally, as follows:

1. For compensatory damages;
2. For general damages;
3. For applicable penalties;
4. For injunctive relief on applicable causes of action;
5. For an award of interest, including prejudgment interest, at the legal rate;
6. For an award of attorneys' fees on the applicable causes of action;
7. For costs of suit incurred; and
8. For such other and further relief as the Court deems appropriate.

**DEMAND FOR JURY TRIAL**

Plaintiff hereby demands a jury trial in this matter on all matters triable to a jury.

DATED: February 9, 2021

**KJT LAW GROUP, LLP**  
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