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Attorneys for Plaintiffs MAXWELL ESPOSITO

on behalf of themselves and all other aggrieved employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA**FOR THE COUNTY OF LOS ANGELES**

MAXWELL ESPOSITO, an individual, on) **Case No.**
 behalf of themselves and all other aggrieved)
 employees;)

Plaintiff,

**COMPLAINT FOR ENFORCEMENT
 UNDER THE PRIVATE ATTORNEYS
 GENERAL ACT, CALIFORNIA LABOR
 CODE § 2698, ET SEQ.**

vs.

Violation of California Labor Code § 2698, et
 seq. (California Labor Code Private Attorneys
 General Act of 2004)

Saks & Company LLC, a California
 Corporation; and DOES 1-100;

Defendants.

Plaintiff MAXWELL ESPOSITO ("Representative Plaintiff", or "Plaintiff") alleges as
 follows:

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PARTIES

1. Representative Plaintiff is an individual who resides in California and was employed by defendant Saks & Company LLC, (hereinafter, "Defendant Saks," or the "Company") from on or about January 9, 2018 until on or about February 8, 2020.

2. Representative Plaintiffs are informed, believe, and thereupon alleges, that at all times mentioned herein Defendant Saks are and were a California Corporation, licensed to do business and actually doing business in the State of California.

3. Representative Plaintiff is unaware of the true names and capacities, whether corporate, individual, or otherwise, of defendants named as DOES 1 through 100, inclusive. Pursuant to California Code of Civil Procedure section 474, Representative Plaintiff will seek leave of court to amend this complaint to state said Defendants' true names and capacities when the same have been ascertained. Representative Plaintiff is informed and believes and based on such information and belief alleges that said fictitiously-named defendants are responsible in some manner for the injuries and damages to Representative Plaintiff, and other aggrieved employees as further alleged herein.

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VENUE AND JURISDICTION

4. Venue is proper under California Code of Civil Procedure section 395 and under California Government Code section 12965(b), in that Representative Plaintiff's injuries were incurred within the County of Los Angeles, the actions giving rise to Representative Plaintiff's complaint arose within the County of Los Angeles, and Defendant is located in the County of Los Angeles.

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STATEMENT OF FACTS

5. This is only a Private Attorney General Action Complaint, pursuant to California Labor Code section 2699 et seq., on behalf of Plaintiffs and all other persons similarly situated who worked for Defendants at their California locations as non-exempt hourly employees - (herein collectively identified as "other aggrieved employees") for:

- (i) failure to overtime and double time in violation of Labor Code sections 510, 1198 and the applicable Wage Orders;

- (ii) failure to provide rest and meal periods in violation of Labor Code sections 226.7, 512(a), 1198, and the applicable Wage Orders;
- (iii) failure to pay the minimum wage in violation of Labor Code 1182.12, 1194, 1197, 1197.1, 1198, and the applicable Wage Orders;
- (iv) failure to keep accurate payroll records and provide itemized wage statements in violation of Labor Code 226(a), 1174(d), 1198, and the applicable Wage Orders;
- (v) failure to pay all wages earned on time in violation of Labor Code sections 204;
- (vi) failure to pay all wages earned upon discharge or resignation in violation of Labor Code sections 201, 202, and 203;
- (vii) failure to provide basic information at the time of hiring and when changes occur to employment in violation of Labor Code 2810.5(a)(1)(A)-(C);
- (viii) failure to reimburse necessary, business-related expenses in violation of Labor Code sections 2800 and 2802;

6. Representative Plaintiff was hired by Defendant Saks as a Sales Associate. Plaintiff was hired on or about January 9, 2018, and worked for Defendants up until on or about February 8, 2020.

7. Defendant Saks has a consistent policy of failing to pay for straight and overtime hours worked by Defendant Saks' non-exempt hourly California employees in violation of California law. Defendant Saks failed to pay Representative Plaintiffs and other similarly aggrieved employees for all of the time in which they were under its control as stated above.

8. Defendant Saks failed to pay its aggrieved employees' overtime in accordance with state law when they worked in excess of 8 hours in a day and/or 40 hours within a workweek. Defendant Saks also failed to pay their aggrieved employees double time in accordance with California state law.

9. Representative Plaintiff and other aggrieved employees were frequently required to work during their meal periods and rest breaks. During so-called "working lunches" and missed breaks, employees had to finish tasks that they did not have time to finish during their regular shift

1 because of understaffing, insufficient scheduling, and/or other actions or inactions by Defendant
2 Saks.

3 10. Defendant Saks failed to provide Representative Plaintiff and other aggrieved
4 employees with meal periods in accordance with Labor Code Sections 512 and 226.7. Aggrieved
5 employees were often not afforded an opportunity to take an off-duty meal period of at least 30
6 minutes within the first five hours of their shift because of work demands, understaffing, and/or
7 other actions or inactions by Defendant Saks as can be evidenced by the employee records.

8 11. When aggrieved employees worked in excess of 10 hours in a day, they were not
9 offered an opportunity to take a second meal period in accordance with Labor Code section 512.

10 12. Representative Plaintiff and other aggrieved employees were not provided a
11 premium wage payment pursuant to Labor Code section 226.7 for their unprovided meal periods
12 and rest periods as they were not relieved of all duties and responsibilities as required by the law.
13 Defendant Saks failure to properly pay Representative Plaintiff and other aggrieved employees for
14 all hours worked in these instances violates Labor Code sections 201, 202, 203, 204, 223, 510,
15 1194 and 1198.

16 13. Defendants, being aware of these occurrences, still deducted 30 minutes from
17 Representative Plaintiff and other aggrieved employees pay on these days that they were required
18 to continue working without a legal meal period by altering and adjusting time-sheets and time-
19 cards.

20 14. Defendant Saks also failed to provide Plaintiff and other aggrieved employees with
21 a 10-minute rest break for every four hours of work, or every major fraction thereof, as employees
22 were forced to work extended periods without rest breaks due to understaffing, audits, meetings
23 and/or other actions or inactions by Defendant Saks. Defendant Saks also failed to provide their
24 employees with a premium wage payment pursuant to Labor Code section 226.7 when it failed to
25 provide its employees with legally adequate rest breaks.

26 15. Additionally, Defendant Saks required Representative Plaintiffs and other aggrieved
27 employees to work without appropriate compensation, including the payment of at least minimum
28 wage for such work time as described above in violation of Labor Code sections 201, 202, 203,

204, 223, 510, 1194, 1197, 1197.1 and 1198, and the Industrial Welfare Commission ("IWC") Wage Orders, Section 3.

16. California Labor Code section 226(a) provides that every employer shall furnish to each of its employees an accurate, itemized wage statement in writing, showing, among other things, all applicable hourly rates in effect during the pay period and the corresponding correct number of hours worked at each hourly rate by the employee. Defendant Saks' wage statements fail to comply with this section of the Labor Code as they list the incorrect rates of pay and the incorrect number of hours worked at each rate of pay.

17. The number of hours that the employees actually spent working for the Company, which are listed on the pay stubs, is incorrect because of the Defendant Saks' failure to properly compensate its employees for all of the time that they spent working under their employer's control due to its failure to pay for all work time, including, but not limited to, during "working lunches" missed rest breaks, and missed meal breaks.

18. Defendant Saks also failed to indemnify Plaintiff and other aggrieved employees for all necessary expenditures or losses incurred by the employee's in direct consequence of the discharge of their duties, or of their obedience to the directions of the Defendant Saks. This includes, but is not limited to; Personal vehicle use, personal cell phone use, travel expenses, and parking expenses.

19. Defendant Saks also failed to provide basic information to employees at the time of hiring or when changes occurred to their employment as required by California Labor Code 2810.5(a)(1)(A)-(C).

20. Plaintiff and all aggrieved employees who were separated from their employment with Defendant Saks, to whom Defendant Saks willfully failed to pay for all hours worked, as described herein, are also entitled to up to thirty days of wages pursuant to California Labor Code sections 201, 202 and 203.

21. Defendant Saks' failure to properly pay Plaintiff and other aggrieved employees for all hours worked in these instances violate Labor Code sections 201, 202, 203, 204, 223, 510, 558, 1194 and 1198 which requires that employees be timely paid all wages due to them. Defendant

1 Saks also knowingly underpaid Plaintiff and other aggrieved employees in violation of Labor Code
2 section 1194.2 as noted above, and caused Plaintiff and other aggrieved employees to work for
3 longer hours than those fixed by law in violation of Labor Code section 1199.

4 22. Plaintiffs filed their PAGA Notice on June 19, 2020, by furnishing copies of their
5 PAGA Notice to all named Defendants and their representative Agents for Service of Process, as
6 well as the California LWDA. As of September 9, 2020, more than 65-days after Plaintiffs' initial
7 PAGA Notice, Plaintiff has not received correspondence from the LWDA regarding their intent to
8 investigate Plaintiffs' claims.

9 **FIRST CAUSE OF ACTION**

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

11 **(By Plaintiff Against Defendants and Does 1 through 10, inclusive)**

12 23. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through
13 21, and each and every part thereof with the same force and effect as though fully set forth herein.

14 24. PAGA expressly establishes that any provisions of the California Labor Code which
15 provides for a civil penalty to be assessed and collected by the LWDA, or any of its departments,
16 divisions, commissions, boards, agencies or employees for a violation of the California Labor
17 Code, may be recovered through a civil action brought by an aggrieved employee on behalf of
18 himself or herself, and other current or former employees.

19 25. Whenever the LWDA, or any of its departments, divisions, commissions, boards,
20 agencies, or employees has discretion to assess a civil penalty, a court in a civil action is authorized
21 to exercise the same discretion, subject to the same limitations and conditions, to assess a civil
22 penalty.

23 26. Plaintiffs and the other hourly-paid or non-exempt employees, are "aggrieved
24 employees" within the meaning of California Labor Code section 2699(c) as they are all current or
25 former employees of Defendants, and one or more of the alleged violations was committed against
26 them.

27 **Failure to Pay Overtime**

28 27. Defendant Saks failure to pay legally required overtime wages to Plaintiff and the

1 other aggrieved employees is in violation of the applicable Wage Orders and constitutes unlawful
2 and/or unfair activity prohibited by California Labor Code sections 510 and 1198.

3 **Failure to Provide Meal Periods**

4 28. Defendant Saks failure to provide legally required meal periods to Plaintiff and the
5 other aggrieved employees is in violation of the applicable Wage Orders and constitutes unlawful
6 and/or unfair activity prohibited by California Labor Code sections 226.7 and 512(a).

7 **Failure to Provide Rest Periods**

8 29. Defendant Saks failure to provide legally required rest periods to Plaintiff and the
9 other aggrieved employees is in violation of the applicable Wage Orders and constitutes unlawful
10 and/or unfair activity prohibited by California Labor Code section 226.7.

11 **Failure to Pay Minimum Wage**

12 30. Defendant Saks failure to pay Plaintiff and the other aggrieved employees the
13 legally require minimum wage for all hours worked is in violation of the applicable Wage orders
14 and constitutes unlawful and/or unfair activity prohibited by California Labor Code sections
15 1182.12, 1194, 1197, and 1197.1.

16 **Failure to Keep Accurate and Provide Itemized Wage Statements**

17 31. Defendant Saks failure to keep accurate, and provide itemized wage statements to
18 Plaintiff and the other aggrieved employees in accordance with Labor Code section 226(a),
19 1174(d), and 1198 constitutes unlawful and/or unfair activity prohibited by California Labor Code
20 section 226(a), 1174(d), and 1198.

21 **Failure to Timely Pay Wages During Employment**

22 32. Defendant Saks failure to timely pay wages to Plaintiff and the other aggrieved
23 employees during employment in accordance with Labor Code section 204 constitutes unlawful
24 and/or unfair activity prohibited by California Labor Code section 204.

25 **Failure to Timely Pay Wages Upon Termination**

26 33. Defendant Saks failure to timely pay wages to Plaintiff and the other aggrieved
27 employees upon termination in accordance with Labor Code sections 201, 202, and 203 constitutes
28 unlawful and/or unfair activity prohibited by California Labor Code sections 201, 202, and 203.

Failure to Provide Basic Information at Hiring or When Changes Occur

34. Defendant Saks failure to provide Plaintiff and the other aggrieved employees with basic information at the time of hiring and when changes occurred to their employment constitutes unlawful and/or unfair activity prohibited by California Labor Code section 2810.5(a)(1)(A)-(C).

Failure to Reimburse Necessary Business-Related Expenses and Costs

35. Defendant Saks failure to reimburse Plaintiff and the other aggrieved employees for necessary business-related expenses and costs in accordance with California Labor Code sections 2800 and 2802 constitutes unlawful and/or unfair activity prohibited by California Labor Code sections 2800 and 2802.

36. Pursuant to California Labor Code section 2699, Plaintiffs, individually, and on behalf of all aggrieved employees, requests and is entitled to recover from Defendants and each of them, business expenses, unpaid wages, and/or untimely wages according to proof, interest, attorneys' fees and costs pursuant to California Labor Code section 218.5, as well as all statutory penalties against Defendants, and each of them, including but not limited to:

a. Penalties under California Labor Code section 2699 in the amount of a hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation, and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation;

b. Penalties under California Code of Regulations Title 8 section 11010, et seq. in the amount of fifty dollars (\$50) for each aggrieved employee per pay period for the initial violation, and one hundred dollars (\$100) for each aggrieved employee per pay period for each subsequent violation;

c. Penalties under California Labor Code section 210 in addition to, and entirely independent and apart from, any other penalties provided in the California Labor Code in the amount of a hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation, and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation; and

d. Any and all additional penalties and sums as provided by the California

1 Labor Code and/or other statutes.

2 37. Pursuant to California Labor Code section 2699(i), civil penalties recovered by
3 aggrieved employees shall be distributed as follows: seventy-five percent (75%) to the Labor and
4 Workforce Development Agency for the enforcement of labor laws and education of employers
5 and employees about their rights and responsibilities and twenty-five percent (25%) to the
6 aggrieved employees.

7 38. Further, Plaintiffs are entitled to seek and recover reasonable attorneys' fees and
8 costs pursuant to California Labor Code sections 210, 218.5 and 2699 and any other applicable
9 statute.

10 THEREFORE, Representative Plaintiffs and the individuals they seek to represent request
11 relief as described below:

12 **PRAYER**

13 THEREFORE, Representative Plaintiffs prays for judgment against Defendants, and Does 1
14 through 100, and each of them, as follows:

15 1. Statutory attorneys' fees and costs under PAGA and California Code of Civil
16 Procedure Section 1021.5;

17 2. Statutory penalties under PAGA;

18 3. Costs of suit; and

19 4. Such further relief as the Court deems just and proper.

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1 Dated: September 9, 2020

HAIG B. KAZANDJIAN LAWYERS, APC.

2
3 By:

4 Haig B. Kazandjian, Esq.,
5 Cathy Gonzalez, Esq.,
6 Kevin P. Crough, Esq.,
7 *Attorneys for Plaintiff*