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**SUPERIOR COURT OF STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE**

ANAYELI GUTIERREZ, as an individual
and on behalf of other similarly situated
employees,

Plaintiff,

vs.

H MART BUENA PARK, LLC, a California
corporation, and DOES 1-50, inclusive,

Case No.: 30-2021-01183505-CU-OE-CXC

Assigned for all purposes to: Judge Randall J. Sherman

Dept: CX105

**PRIVATE ATTORNEY GENERAL ACT
CLAIMS**

COMPLAINT FOR:

**1. VIOLATION OF THE
CALIFORNIA LABOR CODE PRIVATE
ATTORNEYS GENERAL ACT OF 2004
(CAL. LAB. CODE §§ 2698, ET. SEQ.)**

[JURY DEMAND]

1 Plaintiff Anayeli Gutierrez (“Plaintiff” or “Ms. Gutierrez”) makes the following
2 allegations against Defendant H Mart Buena Park, LLC (referred to herein as “H Mart” or
3 “Defendant” or “Defendants”):

4 **GENERAL ALLEGATIONS**

5 **Parties and Venue.**

6 1. Plaintiff Ms. Gutierrez is, and at all relevant times was, a citizen and resident in the
7 County of Orange in the State of California.

8 2. Plaintiff is informed and believes and on that basis alleges that at all relevant times
9 Defendant H Mart Buena Park, LLC (“H Mart” “Defendant” or “Defendants”) is a California
10 corporation doing business in the State of California with a principal place of business located at
11 5111 Beach Boulevard, Buena Park, California 90621.

12 3. In light of the facts that the wrongful acts of this defendant occurred and the causes
13 against them arose in Orange County, State of California, jurisdiction and venue is proper in
14 Orange County Superior Court.

15 **Doe Allegations.**

16 4. Plaintiff does not presently know the true names and capacities of defendant named as
17 Doe 1 through Doe 50, inclusive. Plaintiff will amend this complaint, setting forth the true
18 names and capacities of these fictitious defendants, when they are ascertained. Plaintiff are
19 informed and believes and on that basis alleges that each of the fictitious defendants have
20 participated in the acts alleged in this complaint to have been done by the named defendants.

21 **Vicarious Liability.**

22 5. Unless otherwise indicated, each defendant herein sued is the agent, co-conspirator, joint
23 venturer, partner, and/or employee of every other defendant and, as alleged, has been acting
24 within the course and scope of said agency, conspiracy, joint venture, partnership, and/or
25 employment, with the knowledge and/or consent of co-defendants, and each of them. Plaintiff is
26 informed and believes and thereon alleges that each defendant has authorized and/or ratified the
27 wrongful activities of each of the remaining defendants.

1 **COMMON ALLEGATIONS TO ALL CAUSES OF ACTION**

2 6. Plaintiff worked as a non-exempt employee at Defendants. Plaintiff worked as a
3 general laborer that performed many duties such as preparing food, general laborer tasks and
4 customer service. Defendants are a wholesale, retail and manufacturing company.

5 **Defendants Did Not Compensate Employees for Work Time or at End of Employment**

6 7. Defendants had a policy, practice and pattern of failing to compensate employees for
7 all hours worked, including hours that were not properly paid as overtime and minimum wages
8 to Plaintiff, Class and Subclass Members as a result of requiring workers to undergo pre-shift
9 preparation activities before clocking-in, and post-shift tasks after clocking out and off-the-clock
10 work after the shift ended and off-the-clock work during meal breaks and on-call and on-
11 premises meal breaks as these meal breaks were subject to employer's control. These wages
12 amounted to minimum wages or overtime wages that were never paid during employment or at
13 the end of employment.

14 8. Plaintiff is informed and on that basis believes that all other Aggrieved Employees of
15 Defendants were under the same circumstances and conditions of employment as them.
16 Specifically, all other similarly situated employees were subjected pre-shift preparation activities
17 before clocking-in, and post-shift tasks after clocking out and off-the-clock work after the shift
18 ended and off-the-clock work during meal breaks and on-call and on-premises meal breaks as
19 these meal breaks were subject to employer's control.

20 **Defendants Did Not Provide All Meal Breaks and Rest Breaks**

21 9. Typically, Plaintiff would work above 6-hour work shifts at Defendants. During these
22 work shifts, Plaintiff would be required to do many work duty tasks. During these shifts it would
23 be very busy where they would not be authorized or permitted to take all of their legally
24 compliant entitled uninterrupted 10-minute rest breaks each four hours or majority fraction
25 thereof or a 30 minute uninterrupted meal break every five hours at a reasonably practicable time
26 during their shifts when they worked more than a six, ten and twelve hour shifts. Moreover,
27 Defendants had a policy, pattern or practice of requiring or pressuring its employees to take late,
28 short, on-premises, on-call, interrupted, or no 10-minute rest breaks and/or 30-minute meal

breaks at a reasonably practicable time. Defendants would not compensate Plaintiff for all of their missed, short, late, on-premises, on-call, or interrupted meal breaks or rest periods throughout their employment nor were they paid all of premium wages for the missed, short, late, on-premises, on-call, or interrupted meal breaks and rest periods that should have been paid.

10. Plaintiff is informed and on that basis believes that all other aggrieved similarly situated employees of Defendants were under the same circumstances and conditions of employment as them. Specifically, all other similarly situated employees were not authorized or permitted to take all of their legally compliant entitled uninterrupted 10-minute rest breaks each four hours or a 30-minute uninterrupted meal break every five hours at a reasonably practicable time during their shifts when they worked more than a six hour shifts. Moreover, Defendants had a policy, pattern or practice of requiring or pressuring its employees to take late, short, on-premises, on-call, interrupted or no 10-minute rest breaks or 30-minute meal breaks at a reasonably practicable time. Defendants would not compensate the other employees for all of their missed, on-premises, on-call, short, late or interrupted meal breaks or rest periods throughout their employment nor were they paid all of its premium wages for the missed, short, on-premises, on-call, late or interrupted meal breaks and rest periods that should have been paid. Defendants would not compensate the other employees for all of their missed, short, on-premises, on-call, late or interrupted meal breaks or rest periods throughout their employment nor were they paid all of their premium wages for the missed, on-premises, on-call, short, late or interrupted meal breaks and rest periods that should have been paid.

Defendants Provided Inaccurate Wage Statements

11. Furthermore, throughout Plaintiff's employment, their paystubs did not accurately reflect their applicable total hours worked, net wages earned, gross wages earned, and actual applicable wage rate all in violation of California Labor Code Section 226(a), specifically sections 1--9. Due to the fact that Defendants either did not provide any paystubs or excluded the hours worked, hours worth of work, gross and net wages earned that should have been reflected on their paystubs for off-the-clock work time and work during meal and rest periods or on-call and on-premises meal or rest breaks. Therefore, their paystubs did not accurately reflect the total

1 hours worked, net wages earned, gross wages earned, accurately depict deductions that should
2 have been taken out and actual applicable wage rate corresponding with the total hours worked.

3 12. Plaintiff is informed and on that basis believes that the Class, Subclass and all other
4 similarly situated employees of Defendants were under the same circumstances and conditions of
5 employment as them. Specifically, all other similarly situated employees were not provided with
6 accurate itemized wages statements and received paystubs that did not reflect their applicable
7 total hours worked, gross wages earned, net wages earned, depict deductions, and actual
8 applicable wage rates corresponding with the total hours worked by virtue of excluding hourly
9 rate, hours worked and hours worth of work on their paystubs or the actual applicable wage rate
10 corresponding with the total hours worked.

11 13. On September 10, 2020, Plaintiff sent H Mart a request for personnel records and
12 documents pursuant to California Labor Code section 432 and 1198.5. Defendant failed to
13 respond to this request.

14 **FIRST CAUSE OF ACTION**

15 **(For Violation of the Labor Code Private Attorneys General Act)** 16 **(Labor Code §§ 2698, et seq. By Plaintiff Against All Defendants and DOES 1-50)**

17 14. Plaintiffs hereby incorporates all of the allegations set forth in each of the paragraphs
18 above and below by reference as though set forth in full in this cause of action.

19 15. Pursuant to Labor Code § 2699(a), any provision of the Labor Code that provides for a
20 civil penalty to be assessed and collected by the Labor and Workforce Development Agency
21 (“LWDA”) or any of its departments, divisions, commissions, boards, agencies or employees for
22 violation of the code may, as an alternative, be recovered through a civil action brought by an
23 aggrieved employee on behalf of herself and other current or former employees pursuant to the
24 procedures specified in Labor Code § 2699.3.

25 16. For all provisions of the Labor Code except those for which a civil penalty is specifically
26 provided, Labor Code § 2699(f) imposes upon Defendants a penalty of one hundred dollars
27 (\$100.00) for each aggrieved employee per pay period for the initial violation and two hundred
28 dollars (\$200.00) for each aggrieved employee per pay period for each subsequent pay period in
which Defendants violated these provisions of the Labor Code.

1 17. Defendants' conduct violates numerous Labor Code sections including, but not limited to
2 the following:

3 (a) Violation of Labor Code § 210 for Defendants unlawful receipt of wages from Plaintiff's
4 and other aggrieved employees, as herein alleged;

5 (b) Violation of Labor Code § 221 for Defendants failure to provide Plaintiff's and other
6 aggrieved employees all required meal periods, and Defendants' failure to provide
7 Plaintiff and other aggrieved employees with minimum and overtime wages, as herein
8 alleged;

9 (c) Violation of Labor Code §§ 510, 1194 and Wage Orders 7 and 8 Section 3 for
10 Defendants failure to provide Plaintiffs and other aggrieved employees all required meal
11 periods, and Defendants' failure to provide Plaintiff and other aggrieved employees with
12 minimum wages, as herein alleged;

13 (d) Violation of Labor Code §§ 510, 1194 and Wage Orders 7 and 8 Section 3 for
14 Defendants failure to provide Plaintiffs and other aggrieved employees all required meal
15 periods, and Defendants' failure to provide Plaintiff and other aggrieved employees with
16 overtime wages, as herein alleged;

17 (e) Violation of Labor Code §§ 226.7, 512, 1198 and Wage Orders 7 and 8 Section 11 for
18 Defendants failure to provide Plaintiffs and other aggrieved employees all required meal
19 periods, and Defendants' failure to provide Plaintiff and other aggrieved employees with
20 one hour of pay of Plaintiffs and other aggrieved employees' regular rate of
21 compensation for each meal period that was not provided, as herein alleged;

22 (f) Violation of Labor Code §§ 226.7, 512, 1198 and Wage Orders 7 and 8 Section 12 for
23 Defendants failure to provide Plaintiffs and other aggrieved employees all required rest
24 periods, and Defendants' failure to provide Plaintiffs and other aggrieved employees with
25 one hour of pay of Plaintiffs and other aggrieved employees' regular rate of
26 compensation for each rest period that was not provided, as herein alleged; and
27
28

1 (g) Violation of Labor Code §§ 226, 226.3, 1198 and Wage Orders 7 and 8 Section 7 for
2 failure to maintain records and provide accurate itemized wage statements to Plaintiffs
3 and other aggrieved employees as herein alleged;

4 (h) Violation of Labor Code §§ 201, 202, and 203 for failure to pay all wages upon
5 termination, resignation or end of employment as a result of failing to pay minimum
6 wages and overtime wages for all hours worked.

7 (i) Violation of Labor Code §§ 432 and 1198.5.

8 18. Further, Labor Code § 558(a) provides “any employer or other person acting on behalf of
9 an employer who violates, or causes to be violated, a section of this chapter or any provisions
10 regulating hours and days of work in any order of the IWC shall be subject to a civil penalty as
11 follows: (1) For any violation, fifty dollars (\$50) for each underpaid employee for each pay
12 period for which the employee was underpaid in addition to an amount sufficient to recover
13 underpaid wages, (2) For each subsequent violation, one hundred dollars (\$100) for each
14 underpaid employee for each pay period for which the employee was underpaid in addition to an
15 amount sufficient to recover unpaid wages. (3) Wages recovered pursuant to this section shall be
16 paid to the affected employee.” Labor Code § 558(c) provides “the civil penalties provided for in
17 this section are in addition to any other civil or criminal penalty provided by law.”

18 19. Plaintiffs are “aggrieved employee” because they were employed by the alleged violator
19 and had or ore more of the alleged violations committed against her, and therefore is properly
20 suited to represent the interests of all other aggrieved employees.

21 20. On October 9, 2020, Plaintiff sent Defendants by certified mail notice of the facts
22 and theories of its Labor Code violations. Plaintiffs submitted this notice to the Labor Workforce
23 Development Agency via online along with a payment of \$75.00. Plaintiff’s statute of limitations
24 to file a Private Attorney General Act claim was tolled pending the 65 calendar day exhaustion
25 period. (See Cal. Lab. Code § 2699.3(d). Plaintiffs have therefore exhausted the procedural
26 requirements under Labor Code § 2699.3 as to Defendants and is therefore able to pursue a claim
27 for penalties on behalf of herself and all other aggrieved employees under PAGA.

1 21. Labor Code §§ 2698, et seq. imposes upon Defendants, a penalty of one hundred dollars
2 (\$100.00) for each aggrieved employee per pay period for the initial violation and two hundred
3 dollars (\$200.00) for each aggrieved employee per pay period for each subsequent pay period in
4 which Defendants violated the Labor Code.

5 22. Pursuant to Labor Code §§ 2699(a), 2699.3 and 2699.5, Plaintiff on behalf of all other
6 aggrieved employees is entitled to recover civil penalties against Defendants for violations of the
7 Labor Code sections cited above.

8 23. The California Supreme Court has held that a representative action does not need to meet
9 the class certification requirements because it is strictly a state enforcement action. *Arias v.*
10 *Superior Court*, 46 Cal.4th 969, 970-75 (2009).

11 24. Defendants' conduct as alleged herein, has been and continues to be unfair, unlawful
12 and harmful to Plaintiff and the general public. Plaintiff seeks to enforce important rights
13 affecting the public interest within the meaning of Code of Civil Procedure § 1021.5.
14

15 PRAYER FOR RELIEF

16 WHEREFORE, Plaintiff prays individually and on behalf of the proposed Class and
17 Subclass, prays for judgment against Defendants as follows:

18 Eleventh Causes of Action:

19 34. For civil penalties against Defendants on behalf of all aggrieved employees pursuant to
20 Labor Code §§ 2698, et seq.;

21 35. For reasonable attorney's fees and costs of suit to the extent permitted by law, including
22 pursuant to Code of Civil Procedure § 1021.5 and Labor Code §§ 2698, et seq.; and

23 36. For such relief as the Court deems just and proper
24

25 As to All Causes of Action:

26 37. For reasonable attorneys' fees and costs incurred

27 38. Interest accrued to date under the California Labor Code, including under Sections 226.7;

28 39. For such other and further relief as this Court may deem just and proper.

1 Dated: February 9, 2021

Jackson Law, APC

2
3 By:/s/ Armond M. Jackson
4 Armond M. Jackson
Attorneys for Plaintiff Anayeli Gutierrez

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6 **DEMAND FOR JURY TRIAL**

7 Plaintiff Anayeli Gutierrez demands a jury trial in the above captioned matter.

8 Dated: February 9, 2021

Jackson Law, APC

9
10 By:/s/ Armond M. Jackson
11 Armond M. Jackson
12 Attorneys for Plaintiff Anayeli Gutierrez
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