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ALAMEDA COUNTY

January 04, 2021

CLERK OF
THE SUPERIOR COURT
By Nicole Hall, Deputy

CASE NUMBER:

RG21084368

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ROBERT LACOUR

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA
UNLIMITED JURISDICTION

ROBERT LACOUR, on behalf of himself, all
others similarly situated, and the general
public,

Plaintiff,

vs.

MARSHALLS OF CA, I.I.C., a Virginia
limited liability company; MARSHALLS OF
MA, INC., a Massachusetts corporation; THE
TJX COMPANIES, INC., a Delaware
corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No.

REPRESENTATIVE ACTION

COMPLAINT

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

JURY TRIAL DEMANDED

COMES NOW, Plaintiff ROBERT LACOUR (“Plaintiff”), on behalf of himself, all others similarly situated, and the general public, complains and alleges as follows:

INTRODUCTION

1. Plaintiff brings this representative action against Defendants MARSHALLS OF CA, LLC, a Virginia limited liability company; MARSHALLS OF MA, INC., a Massachusetts corporation; THE TJX COMPANIES, INC, a Delaware corporation, and DOES 1 through 50, inclusive (collectively referred to as “Defendants”) for alleged violations of the Labor Code and Business and Professions Code. As set forth below, Plaintiff alleges that Defendants have:

- (1) failed to provide him and all other similarly situated individuals with meal periods;
- (2) failed to provide them with rest periods;
- (3) failed to pay them premium wages for missed meal and/or rest periods;
- (4) failed to pay them premium wages for missed meal and/or rest periods at the regular rate of pay;
- (5) failed to pay them at least minimum wage for all hours worked;
- (6) failed to pay them overtime wages at the correct rate;
- (7) failed to pay them double time wages at the correct rate;
- (8) failed to reimburse them for all necessary business expenses;
- (9) failed to provide them with accurate written wage statements; and
- (10) failed to pay them all of their final wages following separation of employment.

JURISDICTION AND VENUE

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

3. Venue is proper in Alameda County because Defendant THE TJX COMPANIES, INC. is incorporated under the laws of Delaware, does business in Alameda County, and has surrendered its registration of a California place of business with the California Secretary of State.

1 As such, venue is proper in any county in California.

2 **PARTIES**

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

5 5. Plaintiff is informed and believes, and thereupon alleges that Defendant
6 MARSHALLS OF CA, LLC is, and at all relevant times mentioned herein, a Virginia limited
7 liability company doing business in the State of California.

8 6. Plaintiff is informed and believes, and thereupon alleges that Defendant
9 MARSHALLS OF MA, INC. is, and at all relevant times mentioned herein, a Massachusetts
10 corporation doing business in the State of California.

11 7. Plaintiff is informed and believes, and thereupon alleges that Defendant THE TJX
12 COMPANIES, INC. is, and at all relevant times mentioned herein, a Delaware corporation doing
13 business in the State of California.

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

22 9. Plaintiff is informed and believes, and thereupon alleges that, at all relevant times
23 mentioned herein, some or all of the defendants were the representatives, agents, employees,
24 partners, directors, associates, joint venturers, principals or co-participants of some or all of the
25 other defendants, and in doing the things alleged herein, were acting within the course and scope of
26 such relationship and with the full knowledge, consent and ratification by such other defendants.

27 10. Plaintiff is informed and believes, and thereupon alleges that, at all relevant times
28 mentioned herein, some of the defendants pursued a common course of conduct, acted in concert

1 and conspired with one another, and aided and abetted one another to accomplish the occurrences,
2 acts and omissions alleged herein.

3 **GENERAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

4 11. Plaintiff worked for Defendants as a non-exempt, hourly employee from
5 approximately July 21, 2009 through May 2019.

6 **Security Check and Off-the-Clock**

7 12. Plaintiff and the aggrieved employees were required to utilize the general entrance
8 to the venues and required to go through a security check at the time of leaving the venues where
9 they worked. The security check required Plaintiff and the aggrieved employees to first wait in a
10 general purpose line where anyone who wanted to exit the venues were required to go through a
11 security screening.

12 13. Plaintiff and the aggrieved employees were allowed to pass through the security
13 check only upon displaying any container, lunch pale, and/or or bag, including any fast food bag
14 and/or purse. During events, security personnel would look inside the container, lunch pale, and/or
15 bag to ensure that Plaintiff and the aggrieved employees were not taking any items from
16 Defendants.

17 14. Plaintiff and the aggrieved employees were required to spend at least five to fifteen
18 minutes each time they went through the security check – time that was not paid by Defendants.
19 During the peak business times of the year, around Christmas, store associates would work “double
20 coverage,” which meant that the line of sales associates going through a security check at the end
21 of the day would be substantially longer, requiring between twenty-five (25) and thirty (30)
22 minutes to line up and get through a security check.

23 15. Plaintiff and the aggrieved employees were required to clock out first at the end of
24 each work shift prior to going through the security check. The station where Plaintiff and aggrieved
25 employees would clock out was located in the back of the store, while the security check was
26 conducted at the entrance to the store. Plaintiff and the aggrieved employees were required to walk
27 approximately five (5) to eight (8) minutes from the back of the store, where they clocked-out, to
28 the entrance of the store, where they were to line up and undergo a security check before leaving.

18. The time spent by Plaintiff and the aggrieved employees to wait for the manager to perform his or her closing duties before they were permitted to leave the store could be anywhere from five to ten minutes – time which was unpaid by Defendants.

Clock In Process

REPRESENTATIVE ACTION COMPLAINT

22. Frequently, Plaintiff and the aggrieved employees would encounter login errors or computer crashes that would require them to restart the entire boot up process. The entire time spent booting up the computer would not be accurately recorded and therefore resulted in Plaintiff and the aggrieved employees not being paid for all hours worked while waiting for the computer the boot up.

23. The machine errors were so frequent while trying to clock in that Plaintiff and the aggrieved employees began alerting the on-site manager that the machine was not working upon it presenting problems. The manager, such as Janet Bailey or Cynthia Sikora, would tell Plaintiff and the aggrieved employees that the manager would fix their clock in time manually; however, often the manager would be on the sales floor planning or setting up entire projects, and it was altogether unclear when, if at all, Plaintiff and the aggrieved employees had their clock in times fixed, if at all. Plaintiff and the aggrieved employees, unable to verify if their clock in times were accurate, often felt shorted on their paychecks.

24. The machines errors while clocking in were so frequent that eventually, after years of dealing with the faulty clock in computer, a second machine was put in.

25. After logging in, Plaintiff and the aggrieved employees would punch in. It is only upon punching in that time was recognized as the actual start time for each workday and when Plaintiff and the aggrieved employees would begin to be paid by Defendants.

26. Accordingly, by the time Plaintiff and the aggrieved employees clocked in, fifteen to thirty minutes or more may have already passed – all of which were not properly recorded as time worked and which resulted in Plaintiff and the aggrieved employees not being paid for all hours worked by Defendants.

27. Plaintiff and the aggrieved employees would typically have a scheduled start time on

1 or around 7:00 a.m., although the store didn't open to the public until 9:30 a.m.. However, Plaintiff
2 and the aggrieved employees were unable to enter the store once they arrived for work as they did
3 not have a key to the store. Plaintiff and the aggrieved employees were made to wait at the entrance,
4 as employees with different start times began to pile up at the entrance. The manager, who began
5 working upstairs, could not hear Plaintiff and the aggrieved employees knocking. They would have
6 to wait there as they would have to wait for a manager to unlock the door and let them in.

7 28. The time spent waiting for a manager to unlock the door and let them in could be
8 anywhere from ten to twenty minutes – time which was unpaid by Defendants.

9 **Off-the-Clock Work**

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

13 30. Plaintiff and the aggrieved employees regularly started work before they had clocked
14 in and were not paid for this time. Upon letting Plaintiff and aggrieved employees into the store at
15 the beginning of their shift, store managers such as Janet Bailey and Cynthia Sikora would
16 frequently talk to Plaintiff and aggrieved employees about what needed to be done for the upcoming
17 workday, sometimes directing Plaintiff and the aggrieved employees to look at store installations
18 and/or stations that needed to be set up, moved, or dealt with in some manner. Plaintiff and the
19 aggrieved employees tried to communicate that they needed to clock in but were simply interrupted
20 or ignored. Plaintiff and the aggrieved employees were required to listen to management talk,
21 patiently waiting until they had finished so that they could go to the back and clock in. Managers
22 frequently kept Plaintiff and the aggrieved employees from clocking in while they talked for five (5)
23 to eight (8) minutes at a time.

24 31. Additionally, Plaintiff and the aggrieved employees were required to maintain their
25 work uniform. Plaintiff and the aggrieved employees were required by Defendants' to purchase a
26 collared shirt and khaki pants as a precondition of their employment. Plaintiff and the aggrieved
27 employees were required to do laundry every few days to ensure they maintained a professional,
28 neat appearance as required by Defendants. Defendants did not compensate Plaintiff and the

1 aggrieved employees for the time they spent maintaining their uniform.

2 32. As a result of performing off-the-clock work that was directed, permitted or
3 otherwise encouraged by Defendants, Plaintiff and the aggrieved employees should have been paid
4 for this time. Instead, Defendants only paid Plaintiff and the aggrieved employees based on the
5 time they were clocked in for their shifts and did not pay Plaintiff and the aggrieved employees for
6 any of the time spent working off-the-clock.

7 33. Defendants knew or should have known that Plaintiff and the aggrieved employees
8 were performing work before and after their scheduled work shifts and failed to pay Plaintiff and
9 the aggrieved employees for these hours.

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

12 35. As a result of Defendants' policies and practices, Plaintiff and the aggrieved
13 employees were not paid for all hours worked.

14 **Missed and Shortened Meal Periods**

15 36. Plaintiff and the aggrieved employees members were not provided with meal
16 periods of at least thirty (30) minutes for each five (5) hour work period due to (1) Defendants'
17 policy of not scheduling each meal period as part of each work shift; (2) chronically understaffing
18 each work shift with not enough workers; (3) imposing so much work on each employee such that
19 it made it unlikely that an employee would be able to take their breaks if they wanted to finish their
20 work on time; and (4) no formal written meal and rest period policy that encouraged employees to
21 take their meal and rest periods.

22 37. Plaintiff and the aggrieved employees carried walkie talkies on their person at all
23 times during a typical workday. Sometimes, Plaintiff and the aggrieved employees would receive
24 questions concerning a product via the walkie talkie while they were taking their lunch break.
25 Plaintiff and the aggrieved employees would have to respond to the question or problem over the
26 walkie talkie, a process which might take up to five minutes depending on the issue.

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

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

Missed Rest Periods

39. Plaintiff and the aggrieved employees were not provided with rest periods of at least ten (10) minutes for each four (4) hour work period, or major fraction thereof, due to (1) Defendants' policy of not scheduling each rest period as part of each work shift; (2) chronically understaffing each work shift with not enough workers; (3) imposing so much work on each employee such that it made it unlikely that an employee would be able to take their breaks if they wanted to finish their work on time; and (4) no formal written meal and rest period policy that encouraged employees to take their meal and rest periods.

40. Plaintiff and the aggrieved employees carried walkie talkies on their person at all times during a typical workday. Frequently, about two or three times a week, Plaintiff and the aggrieved employees were asked questions relating to a product while they were on their rest breaks. Instead of calling another store to ask questions concerning a product's availability, price, quality, or location, a process which could take as long as ten minutes due to being put on hold or needing to be transferred, defendants' would simply interrupt Plaintiff and the aggrieved employees while they were on break to ask a pressing question. This was seen as more convenient because Plaintiff and the aggrieved employees might have been able to give an answer faster than another store would be able to.

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

Expense Reimbursement

42. Plaintiff and the aggrieved employees were required to utilize their own personal cell phone to perform their job duties. Specifically, if a customer did not speak English, Plaintiff and

1 the aggrieved employees were directed by Defendants' to use Google translate to facilitate the
2 interaction. Additionally, Defendants required Plaintiff and the aggrieved employees frequently use
3 their personal cell phones to look up product information pertaining to a specific item that was
4 being requested, whether it be for the item's availability, location, type, and/or size, etc.

5 43. Plaintiff and the aggrieved employees were not reimbursed for business expenses
6 incurred in the use of their personal cellphones.

7 44. In addition, Plaintiff and the aggrieved employees vwere required by Defendants to
8 pick up food with their personal vehicles in order to celebrate reaching certain sales goals. In order
9 to encourage a team spirit and better sales, Defendants' would sometimes provide sandwiches to
10 staff for a party to celebrate their achievements. Defendants' directed Plaintiff and the aggrieved
11 employees to pick the sandwiches up using their personal vehicles. Subway, the most common
12 sandwich vendor that was used to celebrate, was approximately two (2) to three (3) miles from the
13 worksite.

14 45. Defendants failed to reimburse Plaintiff and the aggrieved employees for mileage
15 incurred by them when going to the store to pick up sandwiches, although they were directed and
16 required to do so.

17 46. Finally, Defendants required that Plaintiff and the aggrieved employees to purchase
18 uniforms as a precondition of their employment. Plaintiff and the aggrieved employees were
19 required to purchase a collared shirt and khaki pants, and were never reimbursed for the costs
20 incurred for purchasing their uniform as required by Defendants. Further, Defendants required that
21 Plaintiff and the aggrieved employees maintain their uniform so that they appeared neat and
22 professional looking while on the job. Defendants did not provide any stipend, or any help
23 whatsoever for Plaintiff and the aggrieved employees to maintain their uniform, which was a
24 necessary precondition of their employment required by Defendants.

25 47. As a result of Defendants' policies, Plaintiff and the aggrieved employees were not
26 reimbursed for necessary business expenses that they incurred.

27 **Wage Statements**

28 48. Plaintiff and the aggrieved employees were not provided with accurate wage

1 statements as mandated by law pursuant to Labor Code section 226.

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

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

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

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

15 **FIRST CAUSE OF ACTION**

16 **CIVIL PENALTIES**

17 **(Lab. Code §§ 2698, *et seq.*)**

18 53. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged
19 herein.

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

21 55. Labor Code sections 2699(a) and (g) authorize an aggrieved employee, of behalf of
22 himself and other current and former employees, to bring a representative civil action to recover
23 civil penalties pursuant to the procedures specified in Labor Code section 2699.3 that may, but need
24 not, be brought or maintained as a class action pursuant to Code of Civil Procedure section 382.

25 56. Plaintiff, as a former employee against whom Defendants committed one or more of
26 the alleged Labor Code violations during the applicable limitations period, is an aggrieved
27 employee within the meaning of Labor Code section 2699(c).

28 57. Plaintiff has complied with the procedures for bringing suit specified in Labor Code

1 section 2699.3.

2 58. Pursuant to Labor Code sections 2699(a) and (f), Plaintiff seeks the following civil
3 penalties for Defendants' violations of Labor Code sections 201, 202, 203, 204, 223, 226(a), 226.7,
4 510, 512, 1194, 1197, and 1198:

- 5 A. For violations of Labor Code sections 201, 202, 203, 212, 226.7, 1194, and
6 1198, \$100 for each employee per pay period for each initial violation and
7 \$200 for each employee per pay period for each subsequent violation
8 (penalties set by Labor Code section 2699(f)(2));
- 9 B. For violations of Labor Code section 203, a penalty in an amount not
10 exceeding 30 days pay as waiting time (penalties set by Labor Code section
11 256).
- 12 C. For violations of Labor Code section 204, \$100 for each employee for each
13 initial violation that was neither willful nor intentional, \$200 for each
14 employee, plus 25% of the amount unlawfully withheld from each employee,
15 for each initial violation that was either willful or intentional, and \$200 for
16 each employee, plus 25% of the amount unlawfully withheld from each
17 employee, for each subsequent violation, regardless of whether the
18 subsequent violation was either willful or intentional (penalties set by Labor
19 Code section 210);
- 20 D. For violations of Labor Code section 223, \$100 for each employee for each
21 initial violation that was neither willful nor intentional, \$200 for each
22 employee, plus 25% of the amount unlawfully withheld from each employee,
23 for each initial violation that was either willful or intentional, and \$200 for
24 each employee, plus 25% of the amount unlawfully withheld from each
25 employee, for each subsequent violation, regardless of whether the
26 subsequent violation was either willful or intentional (penalties set by Labor
27 Code section 225.5);
- 28 E. For violations of Labor Code section 226(a), if this action is deemed to be an

1 initial citation, \$250 for each employee for each violation. Alternatively, if an
2 initial citation or its equivalent occurred before the filing of this action,
3 \$1,000 for each employee for each violation (penalties set by Labor Code
4 section 226.3);

5 F. For violations of Labor Code sections 510 and 512, \$50 for each employee
6 for each initial pay period for which the employee was underpaid, and \$100
7 for each employee for each subsequent pay period for which the employee
8 was underpaid (penalties set by Labor Code section 558); and

9 G. For violations of Labor Code section 1197, \$100 for each aggrieved
10 employee for each initial violation of Labor Code section 1197 that was
11 intentional, and \$250 for each aggrieved employee per pay period for each
12 subsequent violation of Labor Code section 1197, regardless of whether the
13 initial violation was intentional (penalties set by Labor Code section 1197.1).

14 59. Pursuant to Labor Code section 2699(g), Plaintiff seeks awards of reasonable costs
15 and attorneys' fees in connection with his claims for civil penalties.

16
17 **PRAYER FOR RELIEF**

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

- 20 (1) Pre-judgment interest;
21 (2) Statutory penalties;
22 (3) Civil penalties;
23 (4) Costs of suit;
24 (5) Reasonable attorneys' fees; and
25 (6) Such other relief as the Court deems just and proper.

26
27 **DEMAND FOR JURY TRIAL**

28 Plaintiff, on behalf of himself, all other similarly situated, and the general public, hereby

1 demands a jury trial on all issues so triable.

2 Dated: January 4, 2021

SETAREH LAW GROUP

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DocuSigned by:

Shaun Setareh

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SHAUN SETAREH

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THOMAS SEGAL

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FARRAH GRANT

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ROBERT LACOUR

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