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Case #18CV322644
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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA**

JESUS CHAVEZ, as an individual and on
behalf of all others similarly situated,

Plaintiffs,

vs.

HUGO BOSS RETAIL, INC., a Delaware
corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No.: 18CV322644

[Assigned to the Hon. Brian C. Walsh, Dept. 1]

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR DAMAGES FOR:**

- (1) VIOLATION OF CAL. LABOR CODE §§
1194, 1197, AND 1197.1;**
- (2) VIOLATION OF CAL. LABOR CODE §§
510, 558, AND 1194;**
- (3) VIOLATION OF CAL. LABOR CODE §
226.7;**
- (4) VIOLATION OF CAL. LABOR CODE §§
226.7 AND 512;**
- (5) VIOLATION OF CAL. LABOR CODE §§
226(a);**
- (6) VIOLATION OF CAL. BUS. & PROF.
CODE § 17200, *ET SEQ.*;**
- (7) VIOLATION OF CAL. LABOR CODE §
2698, *ET SEQ.***

DEMAND OVER \$25,000.00

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1 Plaintiff Jesus Chavez ("Plaintiff") hereby submits this First Amended Class Action
2 Complaint ("Complaint") against Defendants Hugo Boss Retail, Inc. ("Hugo Boss" or the
3 "Company") and Does 1 through 50 (hereinafter collectively referred to as "Defendants") as an
4 individual and on behalf the class of all other similarly situated current and former employees of
5 Defendants for minimum wages, underpaid meal and rest period premium pay, unpaid overtime
6 based on the correct, higher regular rate of pay, penalties under the California Labor Code, and
7 for restitution as follows:

8 **INTRODUCTION**

9 1. This class action is within the Court's jurisdiction under California Labor Code
10 §§ 201-203, 226, 226.7, 510, 512, 558, 1194, 1197, 1197.1, and 2698, *et seq.*, and the applicable
11 Wage Orders of the California Industrial Welfare Commission ("IWC"), and the California
12 Unfair Competition Law (the "UCL"), Business and Professions Code § 17200, *et seq.*

13 2. This complaint challenges systemic illegal employment practices resulting in
14 violations of the California Labor Code and the UCL against individuals who worked for
15 Defendants.

16 3. Plaintiff is informed and believes, and based thereon alleges, that Defendants,
17 jointly and severally, have acted intentionally and with deliberate indifference and conscious
18 disregard to the rights of all employees in receiving minimum wages for all hours worked,
19 overtime paid at the correct, higher regular rate of pay, minimum wages for missed meal and rest
20 period premium pay, and accurate itemized wage statements.

21 4. Plaintiff is informed and believes, and based thereon alleges, that Defendants
22 have engaged in, among other things a system of willful violations of the California Labor Code
23 and the UCL by creating and maintaining policies, practices and customs that knowingly deny
24 employees the above stated rights and benefits.

25 5. The policies, practices and customs of defendants described above and below
26 have resulted in unjust enrichment of Defendants and an unfair business advantage over
27 businesses that routinely adhere to the strictures of the California Labor Code and the UCL.
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7. Venue is proper in this County because Plaintiff worked at Defendants' retail store located in Gilroy, California, which is located in the County of Santa Clara.

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1 13. At all times herein mentioned, each of said Defendants participated in the doing
2 of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the
3 Defendants, and each of them, were the agents, servants and employees of each of the other
4 Defendants, as well as the agents of all Defendants, and at all times herein mentioned, were
5 acting within the course and scope of said agency and employment.

6 14. Plaintiff is informed and believes, and based thereon alleges, that at all times
7 material hereto, each of the Defendants named herein was the agent, employee, alter ego and/or
8 joint venturer of, or working in concert with each of the other co-Defendants and was acting
9 within the course and scope of such agency, employment, joint venture, or concerted activity.
10 To the extent said acts, conduct, and omissions were perpetrated by certain Defendants, each of
11 the remaining Defendants confirmed and ratified said acts, conduct, and omissions of the acting
12 Defendants.

13 15. At all times herein mentioned, Defendants, and each of them, were members of,
14 and engaged in, a joint venture, partnership and common enterprise, and acting within the course
15 and scope of, and in pursuance of, said joint venture, partnership and common enterprise.

16 16. At all times herein mentioned, the acts and omissions of various Defendants, and
17 each of them, concurred and contributed to the various acts and omissions of each and all of the
18 other Defendants in proximately causing the injuries and damages as herein alleged. At all times
19 herein mentioned, Defendants, and each of them, ratified each and every act or omission
20 complained of herein. At all times herein mentioned, Defendants, and each of them, aided and
21 abetted the acts and omissions of each and all of the other Defendants in proximately causing the
22 damages as herein alleged.

23 CLASS ACTION ALLEGATIONS

24 17. **Definition:** The named individual Plaintiff seeks class certification, pursuant to
25 California Code of Civil Procedure § 382. Plaintiff proposes the following Classes and
26 Subclasses:

- 27 a. All non-exempt employees who were employed by Defendants in the State of
28 California at any time from January 31, 2014, through the present (the "Class")

- 1 b. All non-exempt employees who were employed by Defendants in the State of
2 California at any time from January 31, 2014, through the present and who were
3 paid less than the applicable minimum wage for all hours worked (the “Minimum
4 Wage Subclass”);
- 5 c. All non-exempt employees who were employed by Defendants in the State of
6 California at any time from January 31, 2014, through the present and who
7 received overtime pay and non-discretionary pay in the same pay period,
8 including without limitation, commissions (“Regular Rate Subclass”);
- 9 d. All non-exempt employees who were employed by Defendants in the State of
10 California at any time from January 31, 2014, through the present and who were
11 paid meal period premium pay at less than the applicable minimum wage (the
12 “Meal Period Minimum Wage Subclass”);
- 13 e. All non-exempt employees who were employed by Defendants in the State of
14 California at any time from January 31, 2014, through the present and who were
15 paid rest period premium pay at less than the applicable minimum wage (the
16 “Rest Period Minimum Wage Class”).

17 18. **Numerosity and Ascertainability:** The members of the Class are so numerous
18 that joinder of all members would be impractical, if not impossible. The identity of the members
19 of the Class is readily ascertainable by review of Defendants’ records, including payroll records.
20 Plaintiff is informed and believes, and based thereon alleges, that Defendants: (a) failed to pay
21 employees minimum wages for all hours worked in violation of Labor Code §§ 1194 and 1197;
22 (b) failed to pay employees all overtime wages owed at the correct, higher regular rate of pay
23 when taking into account all non-discretionary remuneration, including without limitation,
24 commissions, in violation of Labor Code §§ 510, 558, and 1194; (c) failed to pay employees at
25 least the minimum wage rate for missed meal and rest periods in violation of Labor Code §§
26 226.7 and 512; (d) failed to provide accurate, itemized wage statements in violation of Labor
27 Code § 226; and (e) engaged in unfair business practices in violation of the California Labor
28 Code, the applicable IWC Wage Orders, and the UCL.

1 19. **Adequacy of Representation:** The named Plaintiff is fully prepared to take all
2 necessary steps to represent fairly and adequately the interests of the class defined above.
3 Plaintiff's attorneys are ready, willing and able to fully and adequately represent the class and the
4 individual Plaintiff. Plaintiff's attorneys have prosecuted and settled wage-and-hour class
5 actions in the past and currently have a number of wage-and-hour class actions pending in
6 California state and federal courts.

7 20. Defendants uniformly administered a corporate policy, practice of: (a) failing to
8 pay employees minimum wages for all hours worked in violation of Labor Code §§ 1194 and
9 1197; (b) failing to pay employees all overtime wages owed at the correct, higher regular rate of
10 pay when taking into account all non-discretionary remuneration, including without limitation,
11 commissions, in violation of Labor Code §§ 510, 558, and 1194; (c) failing to pay employees at
12 least the minimum wage rate for missed meal and rest periods in violation of Labor Code §§
13 226.7 and 512; (d) failing to provide accurate, itemized wage statements in violation of Labor
14 Code § 226; and (e) engaging in unfair business practices in violation of the California Labor
15 Code, the applicable IWC Wage Orders, and the UCL.

16 21. Plaintiff is informed and believes, and based thereon alleges, that this corporate
17 conduct is accomplished with the advance knowledge and designed intent to willfully and
18 intentionally fail to accurately record proper rates of pay, hours worked, net wages, and
19 deductions.

20 22. Plaintiff is informed and believes, and based thereon alleges, that Defendants had
21 a consistent and uniform policy, practice and procedure of willfully failing to comply with Labor
22 Code §§ 201-203, 226, 226.7, 510, 512, 558, 1194, 1197 and 1197.1, and the UCL.

23 23. **Common Question of Law and Fact:** There are predominant common questions
24 of law and fact and a community of interest amongst Plaintiff and the claims of the Class
25 concerning Defendant's policy and practice of: (a) failing to pay employees minimum wages for
26 all hours worked in violation of Labor Code §§ 1194 and 1197; (b) failing to pay employees all
27 overtime wages owed at the correct, higher regular rate of pay when taking into account all non-
28 discretionary remuneration, including without limitation, commissions, in violation of Labor

1 Code §§ 510, 558, and 1194; (c) failing to pay employees at least the minimum wage rate for
2 missed meal and rest periods in violation of Labor Code §§ 226.7 and 512; (d) failing to provide
3 accurate, itemized wage statements in violation of Labor Code § 226; and (e) engaging in unfair
4 business practices in violation of the California Labor Code, the applicable IWC Wage Orders,
5 and the UCL.

6 24. **Typicality:** The claims of Plaintiff are typical of the claims of all members of the
7 Class in that Plaintiff suffered the harm alleged in this Complaint in a similar and typical manner
8 as the Class members. As with other non-exempt employees, Plaintiff was not paid the
9 applicable minimum wage for all hours worked. For example, on January 1, 2017, the minimum
10 wage became \$10.50 per hour. Nevertheless, Plaintiff was paid \$9.00 per hour in 2017. Further,
11 whenever Plaintiff was not provided with meal and rest periods and, therefore, was paid a meal
12 and/or rest period premium by Defendants, he was paid at the hourly rate of \$9.00. Again, \$9.00
13 is less than the state-mandated minimum wage of \$10.50 per hour. As such, Defendants are
14 underpaying Plaintiff for his missed meal and rest periods. Plaintiff was also not paid his
15 overtime based on the correct, higher regular rate of pay. California law requires that an
16 employer include all non-discretionary remuneration into the regular rate of pay for purposes of
17 calculating overtime, which would include non-discretionary commissions. Plaintiff worked
18 overtime and earned commissions in the same pay period. Nevertheless, Defendants did not
19 include the commissions into the regular rate of pay for purposes of paying overtime. Further,
20 given that Plaintiff was paid at the incorrect hourly rate below the minimum wage and/or the
21 incorrect lower overtime rate, Plaintiff's wage statements provided the incorrect hourly rate for
22 Plaintiff's regular rate of pay and overtime rate in violation of Labor Code § 226(a)(9). Also,
23 given that Plaintiff was underpaid for his missed meal and rest break premiums, these items
24 listed the incorrect rate of pay in violation of Section 226(a)(9). Therefore, Plaintiff is a member
25 of the Class and have suffered the alleged violations of California Labor Code §§ 201-203, 226,
26 226.7, 510, 512, 558, 1194, 1197 and 1197.1, and the UCL.

27 25. The California Labor Code and upon which Plaintiff bases these claims are
28 broadly remedial in nature. These laws and labor standards serve an important public interest in

1 establishing minimum working conditions and standards in California. These laws and labor
2 standards protect the average working employee from exploitation by employers who may seek
3 to take advantage of superior economic and bargaining power in setting onerous terms and
4 conditions of employment.

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

15 27. The prosecution of separate actions by the individual class members, even if
16 possible, would create a substantial risk of (a) inconsistent or varying adjudications with respect
17 to individual Class members against the Defendants and which would establish potentially
18 incompatible standards of conduct for the Defendants, and/or (b) adjudications with respect to
19 individual Class members which would, as a practical matter, be dispositive of the interest of the
20 other Class members not parties to the adjudications or which would substantially impair or
21 impede the ability of the Class members to protect their interests. Further, the claims of the
22 individual members of the Class are not sufficiently large to warrant vigorous individual
23 prosecution considering all of the concomitant costs and expenses.

24 28. Such a pattern, practice and uniform administration of corporate policy regarding
25 illegal employee compensation described herein is unlawful and creates an entitlement to
26 recovery by Plaintiff and the Class identified herein, in a civil action, for unpaid minimum
27 wages, overtime wages, applicable penalties, reasonable attorneys' fees, and costs of suit
28 according to the mandate of California Labor Code §§ 226, 558, 1194, 1197 and 1197.1, and

1 Code of Civil Procedure § 1021.5.

2 29. Proof of a common business practice or factual pattern, which the named Plaintiff
3 experienced and is representative of, will establish the right of each of the members of the
4 Plaintiff Class to recovery on the causes of action alleged herein.

5 30. The Plaintiff Class is commonly entitled to a specific fund with respect to the
6 compensation illegally and unfairly retained by Defendants. The Plaintiff Class is commonly
7 entitled to restitution of those funds being improperly withheld by Defendants. This action is
8 brought for the benefit of the entire class and will result in the creation of a common fund.

9 **FIRST CAUSE OF ACTION**

10 **VIOLATION OF LABOR CODE §§ 1194, 1197, AND 1197.1**

11 **(BY PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS)**

12 31. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 30 as
13 though fully set forth herein.

14 32. This cause of action is brought pursuant to Labor Code §§ 1194, 1197, and
15 1197.1, which require an employer to pay employees minimum wages for all hours worked less
16 than eight hours in a day and/or less than 40 hours in a workweek.

17 33. As a pattern and practice, Defendants suffered and permitted employees to work
18 without payment of minimum wages for all hours worked in a workday and workweek.
19 Specifically, Defendants failed to pay employees for all hours worked at hourly rates which meet
20 the State of California's applicable minimum wage. For example, with respect to Plaintiff, he
21 was paid \$9.00 per hour for work performed in 2017, even though California's minimum wage
22 for 2017 is \$10.50 per hour. Defendants had a uniform corporate pattern and practice and
23 procedure regarding the above practices in violation of Labor Code §§ 1194, 1197 and 1197.1.

24 34. Such a pattern, practice and uniform administration of corporate policy regarding
25 illegal employee compensation as described herein is unlawful and creates an entitlement to
26 recovery by Plaintiff and the Class in a civil action, for the unpaid balance of the full amount of
27 damages owed, including interest thereon, liquidated damages, penalties, attorneys' fees, and
28 costs of suit according to the mandate of California Labor Code §§ 1194, 1197 and 1197.1.

1 35. Plaintiff is informed and believes and based thereon alleges that Defendant
2 willfully failed to pay employees proper compensation for all hours worked. Plaintiff is
3 informed and believes and based thereon alleges that Defendant's willful failure to provide all
4 wages due and owing them upon separation from employment results in a continued payment of
5 wages up to thirty (30) days from the time the wages were due. Therefore, Plaintiff and other
6 members of the Class who have separated from employment are entitled to compensation
7 pursuant to Labor Code § 203.

8 **SECOND CAUSE OF ACTION**

9 **VIOLATION OF LABOR CODE §§ 510, 558, AND 1194**

10 **(BY PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS)**

11 36. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 35 as
12 though fully set forth herein.

13 37. At all relevant times, Defendant was required to compensate its employees proper
14 overtime wages for overtime hours worked pursuant to California Labor Code §§ 510, 558 and
15 1194. Plaintiff and the Class were and are employed by Defendant as non-exempt employees
16 and, thus, Plaintiff and the Class are entitled to overtime wages. During their employment with
17 Defendant, Plaintiff and the Class worked overtime hours. Specifically, Plaintiff and the Class
18 worked more than 8 hours in a workday and/or 40 hours in a workweek, without being paid the
19 proper amount of overtime pay. During their employment with Defendant, including during pay
20 periods wherein Plaintiff and the Class worked overtime, Plaintiff and the Class also earned
21 additional non-discretionary remuneration, including without limitation, commissions.
22 Defendant, as a corporate-wide practice and policy, did not calculate and/or factor such
23 remuneration into the regular rate of pay for purposes of calculating revised and increased
24 overtime pay, and as such, owes Plaintiff and the Class additional overtime pay.

25 38. Plaintiff is informed and believes and based thereon alleges that Defendant's
26 policy and practice of requiring overtime work and not paying for said work according to the
27 overtime mandates of California law is, and at all times herein mentioned was in violation of
28 California Labor Code §§ 510, 558, and 1194 and the IWC Wage Order(s). Defendant's

1 employment policies and practices wrongfully and illegally failed to compensate Plaintiff the
2 Class for overtime compensation earned as required by California law.

3 39. Plaintiff is informed and believes and based thereon alleges that Defendant
4 willfully failed to pay employees proper compensation for all hours worked. Plaintiff is
5 informed and believes and based thereon alleges that Defendant's willful failure to provide all
6 wages due and owing them upon separation from employment results in a continued payment of
7 wages up to thirty (30) days from the time the wages were due. Therefore, Plaintiff and other
8 members of the Class who have separated from employment are entitled to compensation
9 pursuant to Labor Code § 203.

10 40. Such a pattern, practice and uniform administration of corporate policy regarding
11 illegal employee compensation as described herein is unlawful and creates an entitlement to
12 recovery by Plaintiff and the Class in a civil action, for the unpaid balance of the full amount of
13 overtime premiums owing, including interest thereon, penalties, attorneys' fees, and costs of suit
14 according to the mandate of California Labor Code §§ 558 and 1194.

15 **THIRD CAUSE OF ACTION**

16 **VIOLATION OF LABOR CODE § 226.7**

17 **(BY PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS)**

18 41. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 40 as
19 though fully set forth herein.

20 42. This cause of action is brought pursuant to Labor Code § 226.7, which requires
21 employers to provide 10-minute off-duty rest breaks for every 4 hours worked, or major fraction
22 thereof. In the event that a rest break is not provided, Defendant must pay the employee one
23 hour of pay for each missed rest break.

24 43. As a pattern and practice, Defendants paid Plaintiff and Class Members less than
25 the applicable minimum wage for rest periods that Defendants failed to provide. For example,
26 with respect to Plaintiff, he was paid \$9.00 for missed rest breaks, which is less than the
27 applicable 2017 minimum wage of \$10.50 per hour. As such, Defendants have underpaid
28 Plaintiff for missed rest breaks. Plaintiff is informed and believes and based thereon alleges that

1 Defendants committed these violations class-wide to other employees.

2 44. Such a pattern, practice and uniform administration of corporate policy regarding
3 illegal employee compensation as described herein is unlawful and creates an entitlement to
4 recovery by Plaintiff and the Class in a civil action, for the unpaid balance of the full amount of
5 damages owed, including interest thereon, penalties, and costs of suit.

6 45. Plaintiff is informed and believes and based thereon alleges that Defendant
7 willfully failed to pay employees proper compensation for all hours worked. Plaintiff is
8 informed and believes and based thereon alleges that Defendant's willful failure to provide all
9 wages due and owing them upon separation from employment results in a continued payment of
10 wages up to thirty (30) days from the time the wages were due. Therefore, Plaintiff and other
11 members of the Class who have separated from employment are entitled to compensation
12 pursuant to Labor Code § 203.

13 **FOURTH CAUSE OF ACTION**

14 **VIOLATION OF LABOR CODE §§ 226.7 AND 512**

15 **(BY PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS)**

16 46. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 45 as
17 though fully set forth herein.

18 47. This cause of action is brought pursuant to Labor Code §§ 226.7 and 512, which
19 require an employer to provide 30-minute off-duty meal periods to employees within the first
20 five hours of work for shifts longer than five hours and a second 30-minute off-duty meal period
21 for shifts longer than 10 hours. If an employer fails to provide a meal period, the employer must
22 pay the employee one hour of pay for each missed meal break.

23 48. As a pattern and practice, Defendants paid Plaintiff and Class Members less than
24 the applicable minimum wage for meal periods that Defendants failed to provide. For example,
25 with respect to Plaintiff, he was paid \$9.00 for missed meal breaks, which is less than the
26 applicable 2017 minimum wage of \$10.50 per hour. As such, Defendants have underpaid
27 Plaintiff for missed meal breaks. Plaintiff is informed and believes and based thereon alleges
28 that Defendants committed these violations class-wide to other employees.

1 49. Such a pattern, practice and uniform administration of corporate policy regarding
2 illegal employee compensation as described herein is unlawful and creates an entitlement to
3 recovery by Plaintiff and the Class in a civil action, for the unpaid balance of the full amount of
4 damages owed, including interest thereon, penalties, and costs of suit.

5 50. Plaintiff is informed and believes and based thereon alleges that Defendant
6 willfully failed to pay employees proper compensation for all hours worked. Plaintiff is
7 informed and believes and based thereon alleges that Defendant's willful failure to provide all
8 wages due and owing them upon separation from employment results in a continued payment of
9 wages up to thirty (30) days from the time the wages were due. Therefore, Plaintiff and other
10 members of the Class who have separated from employment are entitled to compensation
11 pursuant to Labor Code § 203.

12 **FIFTH CAUSE OF ACTION**

13 **VIOLATION OF LABOR CODE § 226**

14 **(BY PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS)**

15 51. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 50 as
16 though fully set forth herein.

17 52. Defendants failed in their affirmative obligation to provide accurate itemized
18 wage statements. Defendants, as a matter of policy and practice, failed to provide accurate,
19 itemized wage statements to Plaintiff and the Class in violation of Labor Code § 226.

20 53. Plaintiff and the Class were paid hourly. As such, the wage statements should
21 have reflected the correct applicable hourly rates, pursuant to Labor Code § 226(a). The wage
22 statements provided to Plaintiff and the Class failed to identify such information, including
23 without limitation, the correct hourly rate for regular and overtime hours and for meal and rest
24 break premium pay at the applicable minimum wage. As such, the Company violated Labor
25 Code § 226(a).

26 54. Such a pattern, practice and uniform administration of corporate policy as
27 described herein is unlawful and creates an entitlement to recovery by the Plaintiff and the Class
28 identified herein, in a civil action, for all damages or penalties pursuant to Labor Code § 226,

1 including interest thereon, attorneys' fees, and costs of suit according to the mandate of
2 California Labor Code § 226.

3 **SIXTH CAUSE OF ACTION**

4 **VIOLATIONS OF THE UCL, BUSINESS & PROFESSIONS CODE § 17200, *ET SEQ.***

5 **(BY PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS)**

6 55. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 54 as
7 though fully set forth herein.

8 56. Defendants, and each of them, have engaged and continue to engage in unfair and
9 unlawful business practices in California by practicing, employing and utilizing the employment
10 practices outlined above, include, to wit, by: (a) failing to pay employees minimum wages for all
11 hours worked; (b) failing to pay overtime based on the correct, higher regular rate of pay; and (c)
12 failing to pay employees at the correct minimum wage rate of pay for meal and rest breaks that
13 Defendants failed to provide.

14 57. Defendants' utilization of such unfair and unlawful business practices constitutes
15 unfair, unlawful competition and provides an unfair advantage over Defendants' competitors.

16 58. Plaintiff seeks as an individual and on behalf of other members of the Class
17 similarly situated, full restitution of monies, as necessary and according to proof, to restore any
18 and all monies withheld, acquired and/or converted by the Defendants by means of the unfair
19 practices complained of herein.

20 59. Plaintiff is informed and believes, and based thereon alleges, that at all times
21 herein mentioned Defendants have engaged in unlawful, deceptive and unfair business practices,
22 as proscribed by California Business and Professions Code § 17200, *et seq.*, including those set
23 forth herein above thereby depriving Plaintiff and other members of the class the minimum
24 working condition standards and conditions due to them under the California laws as specifically
25 described therein.

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1 **SEVENTH CAUSE OF ACTION**

2 **VIOLATION OF CAL. LABOR CODE § 2698, *ET SEQ.***

3 **(BY PLAINTIFF AS PROXY FOR STATE OF CALIFORNIA AGAINST ALL**
4 **DEFENDANTS)**

5 60. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 59 as
6 though fully set forth herein.

7 61. Plaintiff brings this cause of action as a proxy for the State of California pursuant
8 to the Private Attorneys General Act (the “PAGA”), Labor Code § 2698, *et seq.*, and in this
9 capacity seeks penalties on behalf of the State and Aggrieved Employees as set forth in the
10 PAGA arising from Defendants’ violations of Labor Code §§ 201-203, 226, 226.7, 510, 512,
11 558, 1194, 1197 and 1197.1, from January 25, 2017, through the present. As alleged herein,
12 Plaintiff and Aggrieved Employees were not paid the applicable minimum wage for all hours
13 worked. For example, on January 1, 2017, the minimum wage became \$10.50 per hour.
14 Nevertheless, Plaintiff was paid \$9.00 per hour in 2017. Further, whenever Plaintiff and
15 Aggrieved Employees were not provided with meal and rest periods and, therefore, were paid
16 meal and/or rest period premiums by Defendants, Plaintiff and Aggrieved Employees were paid
17 at hourly rates less than California’s mandated minimum wage. As such, Defendants are
18 underpaying Plaintiff and Aggrieved Employees for their missed meal and rest periods. Plaintiff
19 and Aggrieved Employees were also not paid overtime based on the correct, higher regular rate
20 of pay. California law requires that an employer include all non-discretionary remuneration into
21 the regular rate of pay for purposes of calculating overtime, which would include non-
22 discretionary commissions. Plaintiff and Aggrieved Employees worked overtime and earned
23 commissions in the same pay period. Nevertheless, Defendants did not include the commissions
24 into the regular rate of pay for purposes of paying overtime. Further, given that Plaintiff and
25 Aggrieved Employees were paid at the incorrect hourly rate below the minimum wage and/or the
26 incorrect lower overtime rate, their wage statements provided the incorrect hourly rate for the
27 regular rate of pay and overtime rate in violation of Labor Code § 226(a)(9). Also, given that
28 Plaintiff and Aggrieved Employees were underpaid for missed meal and rest break premiums,

1 these items listed the incorrect rate of pay in violation of Section 226(a)(9). Therefore,
2 Defendants have violated California Labor Code §§ 201-203, 226, 226.7, 510, 512, 558, 1194,
3 1197 and 1197.1.

4 62. On or about January 25, 2018, Plaintiff sent written notice to the California Labor
5 & Workforce Development Agency ("LWDA") of Defendants' violations of Labor Code §§ 201-
6 203, 226, 226.7, 510, 512, 558, 1194, 1197 and 1197.1, pursuant to the PAGA.

7 63. As of the date of this filing, the LWDA has not provided written notice regarding
8 whether it intends to investigate the Labor Code violations set forth in Plaintiff's written notice
9 and thus allowing Plaintiff to proceed under PAGA against Defendants for said violations.
10 Therefore, Plaintiff may seek any and all applicable penalties under PAGA.

11 64. As such, pursuant to Labor Code § 2699(a), Plaintiff seeks recovery of any and all
12 applicable civil penalties for Defendants' violation of Labor Code §§ 201-203, 226, 226.7, 510,
13 512, 558, 1194, 1197 and 1197.1, for the time periods described above, as a proxy for the State
14 of California and on behalf of other Aggrieved Employees.

15 **PRAYER FOR RELIEF**

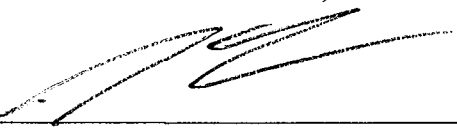
16 WHEREFORE, Plaintiff prays for judgment individually and all others on whose behalf
17 this suit is brought against Defendants, jointly and severally, as follows:

- 18 1. For an order certifying the proposed classes and subclasses;
- 19 2. For an order appointing Plaintiff as the representative of the classes and
20 subclasses as described herein;
- 21 3. For an order appointing Counsel for Plaintiff as class counsel;
- 22 4. Upon the First Cause of Action, for actual damages, liquidated damages and/or
23 penalties pursuant to statute as set forth in Labor Code §§ 201-203, 1194, 1197,
24 and 1197.1, and for costs and attorneys' fees;
- 25 5. Upon the Second Cause of Action, for damages and/or penalties pursuant to
26 Labor Code §§ 201-203, 510, 558, and 1194, and for costs and attorneys' fees;
- 27 6. Upon the Third Cause of Action, for damages and/or penalties pursuant to Labor
28 Code §§ 201-203, and 226.7, and for costs;

7. Upon the Fourth Cause of Action, for damages and/or penalties pursuant to Labor Code §§ 201-203, 226.7, and 512 and for costs;
8. Upon the Fifth Cause of Action, for penalties and/or damages pursuant to California Labor Code § 226, and for costs and attorneys' fees;
9. Upon the Sixth Cause of Action, for restitution to Plaintiff and other similarly effected members of the general public of all funds unlawfully acquired by Defendants by means of any acts or practices declared by this Court to be in violation of Business and Professions Code § 17200, *et seq.*;
10. Upon the Seventh Cause of Action, for penalties, attorneys' fees and costs as provided for in the PAGA;
11. On all causes of action for attorneys' fees and costs as provided by California Labor Code §§ 226, 1194, 1197, and 1197.1, and Code of Civil Procedure § 1021.5; and
12. For such other and further relief the Court may deem just and proper.

DATED: August 24, 2018

DIVERSITY LAW GROUP, P.C.

By: 

Larry W. Lee
Attorneys for Plaintiff and the Class

PROOF OF SERVICE

(Code of Civil Procedure Sections 1013a, 2015.5)

STATE OF CALIFORNIA]
]ss.
COUNTY OF LOS ANGELES]

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 515 S. Figueroa Street, Suite 1250, Los Angeles, California 90071.

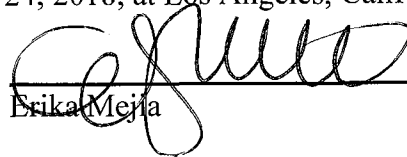
On August 24, 2018, I served the following document(s) described as: **FIRST AMENDED CLASS ACTION COMPLAINT FOR DAMAGES** on the interested parties in this action as follows:

Gregory G. Iskander
Littler Mendelson
1255 Treat Blvd., Suite 600
Walnut Creek, California 94597
*Attorney for Defendant Hugo Boss Retail,
Inc.*

Elisa Nadeau
Littler Mendelson
50 West San Fernando Street, 7th Floor
San Jose, CA 95113
*Attorney for Defendant Hugo Boss Retail,
Inc.*

 X BY ELECTRONIC SERVICE: Based on a court order I caused the above-entitled document(s) to be served through the Odyssey eFileCA E-Filing System at the website www.california.tylerhost.net, addressed to all parties appearing on the electronic service list for the above-entitled case. The service transmission was reported as complete and a copy of the filing receipt/confirmation will be filed, deposited, or maintained with the original document(s) in this office.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on August 24, 2018, at Los Angeles, California.


Brika Mejia