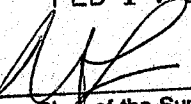


ENDORSED
FILED
ALAMEDA COUNTY

FEB 17 2021

By  Deputy Clerk
Clerk of the Superior Court

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*Attorneys for Plaintiff, on behalf of the State of California
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SUPERIOR COURT OF CALIFORNIA

COUNTY OF ALAMEDA

GENEVIEVE SALAZAR, on behalf of the State
of California and Aggrieved Employees,

Plaintiffs,

vs.

ROSS STORES, INC. d/b/a/ ROSS DRESS FOR
LESS

Defendant.

Case No.: **RG 21090579**

**COMPLAINT FOR PENALTIES
PURSUANT TO SECTIONS 2699(a) AND
(f) OF THE CALIFORNIA LABOR CODE
PRIVATE ATTORNEYS GENERAL ACT
AND DEMAND FOR JURY TRIAL**

Filed By Fax

1 Plaintiff Genevieve Salazar (“Plaintiff”), on behalf of the State of California and Aggrieved
2 Employees, complains and alleges as follows:

3 **INTRODUCTION**

4 1. Plaintiff Genevieve Salazar, individually and on behalf of all others similarly situated,
5 brings this enforcement action against Defendant Ross Stores, Inc. d/b/a/ Ross Dress for Less
6 (“Defendant” or “Ross”) on behalf of individuals who have worked for Defendant as non-exempt
7 hourly employees and have been subject to Defendant’s overtime and sick leave policies and practices
8 (the “Aggrieved Employees”). Throughout the relevant time period, Plaintiff and similarly situated
9 workers have been denied overtime pay and have instead been compensated for overtime hours with
10 sick/leave pay at the rate of their hourly wage. This case implicates Defendant’s longstanding policies
11 and practices, which fails to properly compensate non-exempt employees for overtime work and fails
12 to properly provide sick pay.

13 2. Defendant’s conduct violates the Labor Code by knowingly and willfully utilizing
14 Plaintiff and Aggrieved Employees’ accrued sick pay to compensate them for overtime hours worked,
15 instead of paying overtime wages. Plaintiff and Aggrieved Employees bring these claims to challenge
16 Defendant’s policies and practices of: (1) failing to pay overtime wages to Plaintiff and Aggrieved
17 Employees; (2) failing to compensate Plaintiff and Aggrieved Employees for all hours worked; (3)
18 failure to properly provide sick pay to Plaintiff and Aggrieved Employees under Cal. Labor Code Sec.
19 246; (4) failing to provide accurate, timely, and compliant itemized wage statements to Plaintiff and
20 Aggrieved Employees; and (5) failing to timely pay all wages owed to Plaintiff and Aggrieved
21 Employees during employment and following separation from employment.

22 3. Plaintiff files this action to recover all penalties on behalf of herself and Aggrieved
23 Employees. Plaintiff seeks to remedy the sweeping practices Defendant has integrated into its time
24 tracking and payroll policies across their stores throughout California that have deprived Plaintiff and
25 Aggrieved Employees of their lawfully-earned wages.

26 **PARTIES**

27 4. Plaintiff Genevieve Salazar is an individual over the age of eighteen, and at all times
28 relevant to this Complaint was a resident of the State of California, County of Los Angeles. Plaintiff

1 was employed as a non-exempt operations associate by Defendant at the Ross Dress for Less in City
2 of Industry, California, from May 2016 through September 2020.

3 5. Plaintiff is informed, believes, and thereon alleges that Ross Stores, Inc. is a Delaware
4 corporation with its principal place of business located in Dublin, California, and is registered to do
5 business in California. Ross Stores, Inc. may be served with process by serving its registered agent, C
6 T Corporation System, 818 West Seventh Street, Suite 930, Los Angeles, California 90017.

7 6. Plaintiff is informed, believes, and thereon alleges that Defendant owns, operates,
8 and/or manages retail stores throughout California and the United States, commonly referred to as
9 Ross Dress for Less. Plaintiff is informed, believes, and thereon alleges that Defendant employs
10 Aggrieved Employees, among other hourly employees, throughout the State of California.

11 7. Plaintiff is informed, believes, and thereon alleges that Defendant directly controls the
12 operations of its agents, managers, and employees throughout all of its stores in California.

13 8. At all material times, Defendant has done business under the laws of California, has
14 had places of business in California, including in this County, and has employed Aggrieved Employees
15 in this County and elsewhere in California. Defendant is “person[s]” as defined in Labor Code § 18,
16 and “employer[s]” as that term is used in the Labor Code and the IWC Wage Orders regulating wages,
17 hours, and working conditions.

18 **JURISDICTION AND VENUE**

19 9. This Court has jurisdiction over Plaintiff’s claims for penalties pursuant to the PAGA.
20 The Court also has jurisdiction over Defendant because Defendant does business in the State of
21 California, is authorized to do business in California, and is registered with the California Secretary
22 of State.

23 10. Venue is proper in this judicial district pursuant to Code of Civil Procedure §§ 393
24 and/or 395.5. Defendant conducts business, has job sites, and employs Aggrieved Employees in this
25 County; as a result, the causes of action asserted arose in whole or in part in this County.

26 **FACTUAL ALLEGATIONS**

27 11. Defendant operates a chain of retail stores throughout the United States and California.
28 Defendant employs hundreds of hourly non-exempt workers similarly situated to Plaintiff across these

1 facilities.

2 12. Plaintiff worked at the Ross Dress for Less store in the City of Industry, California as
3 a non-exempt employee from May 2016 through September 2020. Plaintiff was paid at an hourly rate
4 of approximately \$15.37. On average, Plaintiff worked 45 hours per week. Plaintiff regularly worked
5 in excess of 8 hours per shift.

6 13. Aggrieved Employees work at Ross Dress for Less stores throughout California. They
7 report to a facility owned, operated, or managed by Defendant to perform their jobs.

8 14. Defendant pays Aggrieved Employees on an hourly rate basis.

9 15. Upon information and belief, Aggrieved Employees worked more than 8 hours a day
10 and more than forty hours in at least one workweek during the year before this Complaint was filed.

11 16. Plaintiff and Aggrieved Employees perform their jobs under Defendant's supervision
12 and using materials and technology approved and supplied by Defendant.

13 17. Plaintiff and Aggrieved Employees are required to follow and abide by common work,
14 time, pay, and overtime policies and procedures in the performance of their jobs.

15 18. At the end of each pay period, Plaintiff and Aggrieved Employees receive wages from
16 Defendant that are determined by common systems and methods that Defendant selects and controls.

17 19. Defendant's common course of wage-and-hour abuse includes routinely failing to pay
18 Plaintiff and Aggrieved employees at the applicable overtime rates for overtime hours worked. In
19 particular, Defendant routinely compensates Plaintiff and Aggrieved Employees for overtime hours
20 worked in excess of eight in one day and forty in one week by designating those hours as sick time
21 and paying Plaintiff and Aggrieved Employees for those overtime hours at the employees' regular
22 hourly rate using the employees' accrued "sick pay." Defendant, failed to properly record and pay
23 overtime hours that Plaintiff and Aggrieved Employees worked.

24 20. Defendants' use of "sick pay" to compensate Plaintiff and Aggrieved Employees for
25 overtime hours worked results in a failure to properly compensate Plaintiff and Aggrieved Employees
26 for all hours worked and in a failure to provide Aggrieved Employees, including Plaintiff, accurate
27 itemized wage statements as required by California law. The wage statements Defendant provides are
28 not accurate because they do not reflect the actual overtime hours worked by Plaintiff and Aggrieved

1 Employees, and they do not reflect the actual “sick pay” accrued by Plaintiff and Aggrieved
2 Employees.

3 21. Defendant’s conduct is willful, is carried out in bad faith, and causes significant
4 damages to non-exempt hourly employees in an amount to be determined at trial.

5
6 **FIRST CAUSE OF ACTION**
Penalties Pursuant to Labor Code § 2699(a)

7 22. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth
8 herein.

9 23. Labor Code § 2699(a) provides:

10 Notwithstanding any other provision of law, any provision of this code
11 that provides for a civil penalty to be assessed and collected by the Labor
12 and Workforce Development Agency or any of its departments, divisions,
13 commissions, boards, agencies or employees, for a violation of this code,
may, as an alternative, be recovered through a civil action brought by an
aggrieved employee on behalf of himself or herself and other current or
former employees.

14 24. Labor Code § 203 provides, in relevant part:

15 If an employer willfully fails to pay, without abatement or reduction, in
16 accordance with Sections 201, 201.5, 202, and 205.5, any wages of an
17 employee who is discharged or who quits, the wages of the employee shall
18 continue as a penalty from the due date thereof at the same rate until paid
or until an action therefore is commenced; but the wages shall not continue
for more than 30 days.

19 25. Labor Code § 226(a) provides:

20 Every employer shall, semimonthly or at the time of each payment of
21 wages, furnish each of his or her employees, either as a detachable part of
22 the check, draft, or voucher paying the employee's wages, or separately
when wages are paid by personal check or cash, an accurate itemized
23 statement in writing showing (1) gross wages earned, (2) total hours worked
by the employee, except for any employee whose compensation is solely
24 based on a salary and who is exempt from payment of overtime under
subdivision (a) of Section 515 or any applicable order of the Industrial
25 Welfare Commission, (3) the number of piece-rate units earned and any
applicable piece rate if the employee is paid on a piece-rate basis, (4) all
26 deductions, provided that all deductions made on written orders of the
employee may be aggregated and shown as one item, (5) net wages earned,
27 (6) the inclusive dates of the period for which the employee is paid, (7) the
name of the employee and his or her social security number, (8) the name
28 and address of the legal entity that is the employer, and (9) all applicable

hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

26. Labor Code § 226.3 provides:

Any employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the records required in subdivision (a) of Section 226. The civil penalties provided for in this section are in addition to any other penalty provided by law. In enforcing this section, the Labor Commissioner shall take into consideration whether the violation was inadvertent, and in his or her discretion, may decide not to penalize an employer for a first violation when that violation was due to a clerical error or inadvertent mistake.

27. Labor Code § 246(i) provides as follows:

An employer shall provide an employee with written notice that sets forth the amount of paid sick leave available, or paid time off leave an employer provides in lieu of sick leave, for use on either the employee's itemized wage statement described in Section 226 or in a separate writing provided on the designated pay date with the employee's payment of wages.

28. Labor Code § 248.5(b)(3) provides as follows:

If a violation of this article results in other harm to the employee or person, such as discharge from employment, or otherwise results in a violation of the rights of the employee or person, the administrative penalty shall include a sum of fifty dollars (\$50) for each day or portion thereof that the violation occurred or continued, not to exceed an aggregate penalty of four thousand dollars (\$4,000).

29. Defendants' use of "sick pay" to compensate Plaintiff and Aggrieved Employees for overtime hours worked results in a failure to properly compensate Plaintiff and Aggrieved Employees for all hours worked and in a failure to provide Aggrieved Employees, including Plaintiff, accurate itemized wage statements as required by California law. The wage statements Defendant provides are not accurate because they do not reflect the actual overtime hours worked by Plaintiff and Aggrieved Employees, and they do not reflect the actual "sick pay" accrued by Plaintiff and Aggrieved Employees.

30. Plaintiff seeks civil penalties pursuant to Labor Code § 2699(a) for each failure by Defendant, as alleged above, to timely pay all wages owed to Plaintiff and Aggrieved Employees in

1 compliance with Labor Code §§ 201-202 in the amounts established by Labor Code § 203. Plaintiff
2 seeks such penalties as an alternative to the penalties available under Labor Code § 203, as prayed
3 for herein.

4 31. Plaintiff also seeks civil penalties pursuant to Labor Code § 2699(a) for each failure
5 by Defendant, alleged above, to provide Plaintiff and Aggrieved Employees an accurate, itemized
6 wage statement in compliance with Labor Code § 226(a) in the amounts established by Labor Code
7 § 226(e). Plaintiff seeks such penalties as an alternative to the penalties available under Labor Code
8 § 226(e), as prayed for herein.

9 32. Plaintiff also seeks civil penalties pursuant to Labor Code § 2699(a) for each failure
10 by Defendant, alleged above, to provide Plaintiff and Aggrieved Employees an accurate, itemized
11 wage statement in compliance with Labor Code § 246 in the amounts established by Labor Code §
12 248.5.

13 33. Plaintiff also seeks civil penalties pursuant to Sections 225.5, 226.3, and 256 of the
14 California Labor Code.

15 34. Defendant committed, and continues to commit, the acts alleged herein in conscious
16 disregard of the Plaintiff and the Aggrieved Employees' rights. Plaintiff and Aggrieved Employees
17 are thus entitled to recover penalties, attorneys' fees, and costs of suit.

18 35. Pursuant to Labor Code § 2699.3(a)(1) and (2), Plaintiff provided the Labor and
19 Workforce Development Agency ("LWDA") with notice of her intention to file this claim on
20 December 7, 2020. Sixty-five calendar days have passed without notice from the LWDA. Plaintiff
21 satisfied the administrative prerequisites to commence this civil action in compliance with §
22 2699.3(a).

23 36. Plaintiff seeks the aforementioned penalties on behalf of the State, other Aggrieved
24 Employees, and herself as set forth in Labor Code § 2699(g)(i).

25 37. Defendant is liable to Plaintiff, Aggrieved Employees, and the State of California for
26 the civil penalties set forth in this Complaint. Plaintiff is also entitled to an award of attorneys' fees
27 and costs as set forth below.

28 38. Wherefore, Plaintiff requests relief as hereinafter provided.

SECOND CAUSE OF ACTION
Penalties Pursuant to Labor Code § 2699(f)

39. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth herein.

40. Labor Code § 2699(f) provides:

For all provisions of this code except those for which a civil penalty is specifically provided, there is established a civil penalty for a violation of these provisions, as follows: . . . (2) If, at the time of the alleged violation, the person employs one or more employees, the civil penalty is one 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.

41. To the extent that any violation alleged herein does not carry penalties under Labor Code § 2699(a), Plaintiff seeks civil penalties pursuant to Labor Code § 2699(f) for Plaintiff and Aggrieved Employees for each pay period in which he or she was aggrieved, in the amounts established by Labor Code § 2699(f) for each of the California Labor Code violations: § 510 (failure to pay overtime wages), § 204 (failure to compensate for all hours worked), § 246 (failure to properly provide sick pay), and §§ 225.5 and 256 (failure to timely pay all wages owed during employment and following separation from employment).

42. Pursuant to Labor Code § 2699.3(a)(1) and (2), Plaintiff has provided the LWDA with notice of her intention to file this claim on December 7, 2020. Sixty-five calendar days have passed without notice from the LWDA. Plaintiff satisfied the administrative prerequisites to commence this civil action in compliance with § 2699.3(a).

43. Plaintiff seeks the aforementioned penalties on behalf of the State, other Aggrieved Employees, and themselves as set forth in Labor Code § 2699(g)(i).

44. Defendant is liable to Plaintiff, Aggrieved Employees, and the State of California for the civil penalties set forth in this Complaint. Plaintiff is also entitled to an award of attorneys' fees and costs as set forth below.

45. Wherefore, Plaintiff requests relief as hereinafter provided.

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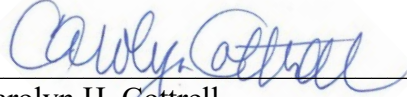
1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff, on behalf of the State of California and Aggrieved Employees,
3 requests the following relief:

- 4 1. For an order awarding civil penalties to the full extent provided for by the PAGA;
5 2. For an award of reasonable attorneys' fees as provided by the California Labor Code,
6 including Labor Code § 2699(g)(1); California Code of Civil Procedure §1021.5;
7 and/or any other applicable law;
8 3. For all costs of suit; and
9 4. For such other and further relief as this Court deems just and proper.

10
11
12 Date: February 11, 2021

Respectfully submitted,



Carolyn H. Cottrell
Ori Edelstein
SCHNEIDER WALLACE
COTTRELL KONECKY LLP

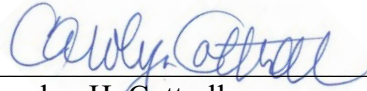
*Attorneys for Plaintiff, on behalf of the State of
California and Aggrieved Employees*

1 **DEMAND FOR JURY TRIAL**

2 Plaintiff hereby demands a jury trial on all claims and issues for which Plaintiff is entitled to
3 a jury.

4 Respectfully submitted,

5 Date: February 11, 2021

6 

7 Carolyn H. Cottrell
8 Ori Edelstein
9 SCHNEIDER WALLACE
COTTRELL KONECKY LLP

10 *Attorneys for Plaintiff, on behalf of the State of*
11 *California and Aggrieved Employees*