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

ANNETTE CUENCA and CLAUDIA
JIMENEZ, on behalf of the State of California
and other aggrieved persons,

Plaintiffs,

vs.

LOS ANGELES APPAREL, INC. a California
corporation; and DOES 1 through 10, inclusive,

Defendants.

Case No.: **21STCV36053**

**PAGA REPRESENTATIVE ACTION
COMPLAINT:**

1. Civil Penalties Under PAGA [Cal. Lab.
Code § 2699, et seq.]

1 Plaintiffs ANNETTE CUENCA and CLAUDIA JIMENEZ (collectively, “Plaintiffs”),
2 based upon facts that either have evidentiary support or are likely to have evidentiary support
3 after a reasonable opportunity for further investigation and discovery, alleges as follows:

4 **INTRODUCTION & PRELIMINARY STATEMENT**

5 1. Plaintiffs bring this action against Defendant LOS ANGELES APPAREL, INC.
6 and DOES 1 through 10 (LOS ANGELES APPAREL, INC. and DOES 1 through 10 are
7 collectively referred to as “Defendants”) for civil penalties under the Private Attorneys General
8 Act of 2004, California Labor Code §§ 2698 *et seq.* (“PAGA”) stemming from Defendants’
9 failure to pay for all hours worked (minimum, straight time, and overtime wages), failure to
10 provide meal periods, failure to authorize and permit rest periods, failure to pay all earned wages
11 twice per month, failure to maintain accurate records of hours worked and meal periods, failure
12 to timely pay final wages, and failure to furnish accurate wage statements.

13 2. For over 50 years, California’s courts and legislature have recognized that this
14 State’s wage-and-hour laws serve a compelling public interest of fostering a stable job market.
15 Wages are not ordinary debts. Because of the economic position of the average worker and his
16 or her family, it is essential to the public welfare that employers obey the wage-and-hour laws so
17 that employees are promptly paid the minimum/overtime wages that the Legislature has required
18 for employees. So fundamental are California’s wage-and-hour laws that the Legislature has
19 criminalized certain types of violations. In extending extra protection to deter violations of these
20 underlying statutes—since Plaintiffs are not seeking general and/or special damages, restitution
21 or other damages other than civil penalties—California has enacted the PAGA to permit an
22 individual to bring an action for PAGA penalties only, which is the precise and sole nature of this
23 action.

24 3. All California employees during the relevant statutes of limitations who are or
25 were harmed by Defendants’ illegal practices are “Aggrieved Employees.” The Aggrieved
26 Employees worked for Defendants as hourly-paid or non-exempt employees within the
27 applicable statutory period.

28 4. Plaintiffs bring this action against Defendants seeking only to recover penalties on

1 behalf of all Aggrieved Employees that worked for Defendants, and on behalf of the State of
2 California. Plaintiffs do not seek to recover anything other than penalties as permitted by
3 California Labor Code Section 2699 at this time. To the extent that statutory violations are
4 mentioned for wage violations, Plaintiffs do not seek underlying general and/or special damages
5 for those violations, but simply penalties as permitted by California Labor Code Section 2699,
6 declaratory relief, and injunctive relief for himself and all Aggrieved Employees as permitted by
7 the PAGA.

8 5. Defendants own/owned and operate/operated an industry, business, and
9 establishment within the State of California, including Los Angeles County. As such, and based
10 upon all the facts and circumstances incident to Defendants' business in California, Defendants
11 are subject to the California Labor Code, Wage Orders issued by the Industrial Welfare
12 Commission ("IWC"), and the California Business & Professions Code.

13 6. On information and belief, Defendants, and each of them were on actual and
14 constructive notice of the improprieties alleged herein and intentionally refused to rectify their
15 unlawful policies. Defendants' violations, as alleged above, during all relevant times herein were
16 willful and deliberate.

17 7. At all relevant times, Defendants were and are legally responsible for all of the
18 unlawful conduct, policies, practices, acts and omissions as described in each and all of the
19 foregoing paragraphs as the employer of Plaintiffs and the Aggrieved Employees. Further,
20 Defendants are responsible for each of the unlawful acts or omissions complained of herein under
21 the doctrine of "respondeat superior".

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THE PARTIES

A. Plaintiffs

8. Plaintiff Annete Cuenca is a resident of Los Angeles County, California, who worked for Defendants in Los Angeles, California from approximately March 21, 2020 to approximately July 28, 2020.¹

9. Plaintiff Claudia Jimenez worked for Defendants in Los Angeles County, California, as an hourly-paid, non-exempt employee from approximately March 2020 to approximately December 11, 2020.

B. Defendants

10. Plaintiffs are informed and believe, and based upon that information and belief allege, that Defendant LOS ANGELES APPAREL, INC. is, and at all times herein mentioned, was:

- (a) A corporation qualified to do business and actually conducting business in numerous counties throughout the State of California, including in Los Angeles County; and,
- (b) The former employer of Plaintiffs, and the current and/or former employer of the Aggrieved Employees because Defendant LOS ANGELES APPAREL, INC. suffered and permitted Plaintiffs and the Aggrieved Employees to work, and/or controlled their wages, hours, or working conditions.

11. Plaintiffs do not know the true names or capacities of the persons or entities sued herein as Does 1-10, inclusive, and therefore sues said Defendants by such fictitious names. Each of the Doe Defendants was in some manner legally responsible for the damages suffered by Plaintiffs and the Aggrieved Employees as alleged herein. Plaintiffs will amend this complaint to set forth the true names and capacities of these Defendants when they have been ascertained,

¹ In response to the COVID-19 pandemic, the Judicial Council of California adopted Emergency Rule 9(a) (California Rules of Court), whereby “statutes of limitations and repose for civil causes of action that exceed 180 days are tolled from April 6, 2020 to October 1, 2020.”

1 together with appropriate charging allegations, as may be necessary.

2 12. At all times mentioned herein, the Defendants named as Does 1-10, inclusive, and
3 each of them, were residents of, doing business in, availed themselves of the jurisdiction of,
4 and/or injured a significant number of the Plaintiffs and the Aggrieved Employees in the State of
5 California.

6 13. Plaintiffs are informed and believe and thereon alleges that at all relevant times
7 each Defendant, directly or indirectly, or through agents or other persons, employed Plaintiffs
8 and the other employees and exercised control over their wages, hours, and working conditions.

9 Plaintiffs are informed and believes and thereon alleges that, at all relevant times, each
10 Defendant was the principal, agent, partner, joint venturer, officer, director, controlling
11 shareholder, subsidiary, affiliate, parent corporation, successor in interest and/or predecessor in
12 interest of some or all of the other Defendants, and was engaged with some or all of the other
13 Defendants in a joint enterprise for profit, and bore such other relationships to some or all of the
14 other Defendants so as to be liable for their conduct with respect to the matters alleged below.
15 Plaintiffs are informed and believes and thereon alleges that each Defendant acted pursuant to
16 and within the scope of the relationships alleged above, that each Defendant knew or should have
17 known about, and authorized, ratified, adopted, approved, controlled, aided and abetted the
18 conduct of all other Defendants.

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

20 14. Plaintiff Annete Cuenca is a resident of Los Angeles County, California, who
21 worked for Defendants in Los Angeles, California from approximately March 21, 2020 to
22 approximately July 28, 2020. At all times, Defendants paid Plaintiff Annete Cuenca an hourly
23 wage and classified her as non-exempt from overtime.

24 15. Plaintiff Claudia Jimenez worked for Defendants in Los Angeles County,
25 California, as an hourly-paid, non-exempt employee from approximately March 2020 to
26 approximately December 11, 2020. At all times, Defendants paid Plaintiff Claudia Jimenez an
27 hourly wage and classified her as non-exempt from overtime.

28 16. Throughout Plaintiffs' employment, Defendants committed numerous labor code

violations under state law. As discussed below, Plaintiffs' experience working for Defendants was typical and illustrative.

A. Failure to Pay for All Hours Worked, Including Minimum, Straight Time, and Overtime Wages

17. Under California law, an employer must pay for all hours worked by an employee. "Hours worked" is the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

18. Labor Code § 510 provides that employees in California shall not be employed more than eight hours in any workday or forty (40) hours in a workweek unless they receive additional compensation beyond their regular wages in amounts specified by law.

19. Labor Code §§ 1194 and 1198 also provide that employees in California shall not be employed more than eight hours in any workday unless they receive additional compensation beyond their regular wages in amounts specified by law. Additionally, Labor Code § 1198 states that the employment of an employee for longer hours than those fixed by the IWC is unlawful.

20. Throughout the statutory period, Defendant maintained a policy and practice of not paying Plaintiffs and the Aggrieved Employees for all hours worked, including minimum wages, straight time wages, and overtime wages. Defendant required Plaintiffs and the Aggrieved Employees to work "off-the-clock", uncompensated, by, for example, requiring Plaintiffs and the Aggrieved Employees to work unpaid during legally required meal periods. Some of this unpaid work should have been paid at the overtime rate. In failing to pay for all hours worked, Defendant also failed to maintain accurate records of the hours Plaintiffs and the Aggrieved Employees worked.

B. Failure to Provide Meal Periods

21. Under California law, employers have an affirmative obligation to relieve employees of all duty in order to take their first 30-minute, duty-free meal periods no later than the start of sixth hour of work in a workday, and to allow employees to take their second 30-minute, duty-free meal period no later than the start of the eleventh hour of work in the workday.

Further, employees are entitled to be paid one hour of additional wages for each workday they were not provided with all required meal period(s).

22. Despite these legal requirements, Defendant wrongfully failed to provide Plaintiffs and the Aggrieved Employees with legally compliant meal periods. Defendant regularly, but not always, required Plaintiffs and the Aggrieved Employees to work in excess of five consecutive hours a day without providing a 30-minute, uninterrupted, and duty-free meal period for every five hours of work, or without compensating Plaintiffs and the Aggrieved Employees for meal periods that were not provided by the end of the fifth hour of work or tenth hour of work. Instead, Defendant continued to assert control over Plaintiffs and the Aggrieved Employees by requiring, pressuring, or encouraging them to perform work tasks which could not be completed without working in lieu of taking mandatory meal periods, or by denying Plaintiffs and the Aggrieved Employees permission to take a meal period. Defendant also never informed Plaintiffs of the right to, nor permitted Plaintiffs to take, a second meal period when Plaintiffs worked at least ten hours in a workday. Accordingly, Defendants' policy and practice was not to provide meal periods to Plaintiffs and the Aggrieved Employees in compliance with California law.

23. Plaintiffs and the Aggrieved Employees are thus entitled to be paid one hour of additional wages for each workday he or she was not provided with all required meal period(s). Defendant, however, regularly failed to pay Plaintiffs and the Aggrieved Employees the additional wages to which they were entitled for meal periods and that were not provided.

C. Failure to Authorize and Permit Rest Periods

24. Employers are required by California law to authorize and permit breaks of ten uninterrupted minutes for each four hours of work or major fraction of four hours (i.e. more than two hours). Thus, for example, if an employee's work time is six hours and ten minutes, the employee is entitled to two rest breaks. Each failure to authorize rest breaks as so required is itself a violation of California's rest break laws.

25. Throughout the statutory period, Defendants wrongfully failed to authorize and permit Plaintiffs and the Aggrieved Employees to take legally compliant rest periods.

1 Defendants regularly, but not always, required Plaintiffs and the Aggrieved Employees to work
2 in excess of four consecutive hours a day without Defendants authorizing and permitting them to
3 take a 10-minute, uninterrupted, duty-free rest period for every four hours of work (or major
4 fraction of four hours), or without compensating Plaintiffs and the Aggrieved Employees for rest
5 periods that were not authorized or permitted. Instead, Defendants continued to assert control
6 over Plaintiffs and the Aggrieved Employees by requiring, pressuring, or encouraging them to
7 perform work tasks which could not be completed without working in lieu of taking mandatory
8 rest periods, or by denying Plaintiffs and the Aggrieved Employees permission to take a rest
9 period. Accordingly, Defendants' policy and practice was to not authorize and permit Plaintiffs
10 and the Aggrieved Employees to take rest periods in compliance with California law.

11 26. Plaintiffs and the Aggrieved Employees are thus entitled to be paid one hour of
12 additional wages for each workday he or she was not authorized and permitted to take all
13 required rest period(s). Defendants, however, regularly failed to pay Plaintiffs and the Aggrieved
14 Employees the additional wages to which they were entitled for rest periods and that they were
15 not authorized and permitted to take.

16 **D. Failure to Pay All Earned Wages Twice Per Month**

17 27. Based on Defendants' failure to pay Plaintiffs and the Aggrieved Employees for
18 all wages as discussed above, Defendants also violated Labor Code § 204.

19 28. Labor Code § 204 requires employers to pay employees all earned wages two
20 times per month. Throughout the statutory period, employees were entitled to be paid twice a
21 month at their regular rates, including all meal period premium wages owed, rest period premium
22 wages owed, and wages owed for overtime hours worked. However, during all such times,
23 Defendants systematically failed and refused to pay the employees all wages due, and failed to
24 pay those wages twice a month, in that employees were not paid all wages for all meal periods
25 not provided by Defendants, all wages for all rest periods not authorized and permitted by
26 Defendants, and all wages for all hours worked. As a result, Defendants owe employees the
27 legally required wages not paid, and Plaintiffs and the Aggrieved Employees suffered damages in
28 those amounts.

1 **E. Failure to Maintain Accurate Records of Hours Worked and Meal Periods**

2 29. Plaintiffs seek penalties under California Labor Code § 1174(d). Pursuant to
3 California Labor Code § 1174.5, any person, including any entity, employing labor who willfully
4 fails to maintain accurate and complete records required by California Labor Code § 1174 is
5 subject to a penalty under § 1174.5. Pursuant to the applicable IWC Order § 7(A)(3), every
6 employer shall keep time records showing when the employee begins and ends each work period.
7 Meal periods and total hours worked daily shall also be recorded.

8 30. Defendants, however, failed to maintain accurate records of hours worked and all
9 meal periods taken or missed by Plaintiffs and the Aggrieved Employees.

10 31. Defendants' failure to provide and maintain records required by the California
11 Labor Code and IWC Wage Orders deprived Plaintiffs and the Aggrieved Employees the ability
12 to know, understand and question the accuracy and frequency of meal periods, and the accuracy
13 of their hours worked stated in Defendants' records. Therefore, Plaintiffs and the Aggrieved
14 Employees had no way to dispute the resulting failure to pay wages, all of which resulted in an
15 unjustified economic enrichment to Defendants. As a direct result, Plaintiffs and the Aggrieved
16 Employees have suffered and continue to suffer, substantial losses related to the use and
17 enjoyment of such wages, lost interest on such wages and expenses and attorney's fees in seeking
18 to compel Defendants to fully perform its obligation under state law, all to their respective
19 damage in amounts according to proof at trial. As a result of Defendants' knowing failure to
20 comply with the California Labor Code and applicable IWC Wage Orders, Plaintiffs and the
21 Aggrieved Employees have also suffered an injury in that they were prevented from knowing,
22 understanding, and disputing the wage payments paid to them.

23 **F. Failure to Timely Pay All Wages at Termination**

24 32. Labor Code §§ 201 and 202 provide that if an employer discharges an employee,
25 the wages earned and unpaid at the time of discharge are due and payable immediately, and that
26 if an employee voluntarily leaves his or her employment, his or her wages shall become due and
27 payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-
28 two (72) hours previous notice of his or her intention to quit, in which case the employee is

entitled to his or her wages at the time of quitting.

33. Throughout the statutory period, the employment of Plaintiffs and many other Aggrieved Employees ended, i.e., was terminated by quitting or being discharged, and the employment of others will be terminated. However, during the relevant time period, Defendants failed, and continue to fail to pay Plaintiffs and terminated Aggrieved Employees, without abatement, all wages required to be paid by Labor Code sections 201 and 202 either at the time of discharge, or within seventy-two (72) hours of their leaving Defendants' employment. These unpaid wages include wages for unpaid work time (including minimum, straight time, and overtime wages), missed meal period premium wages, and missed rest period premium wages.

34. Defendants' conduct violates Labor Code §§ 201 and 202. Labor Code § 203 provides that if an employer willfully fails to pay wages owed, in accordance with sections 201 and 202, then the wages of the employee shall continue as a penalty wage from the due date, and at the same rate until paid or until an action is commenced; but the wages shall not continue for more than thirty (30) days.

35. Accordingly, Plaintiffs and the Aggrieved Employees are entitled to recover from Defendants their additionally accruing wages for each day they were not paid, at their regular hourly rate of pay, up to thirty (30) days maximum pursuant to Labor Code § 203

G. Failure to Furnish Accurate Itemized Wage Statements

36. Labor Code § 226(a) provides that every employer shall furnish each of his or her employees an accurate itemized wage statement in writing showing nine pieces of information, including: (1) gross wages earned, (2) total hours worked by the employee, (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 deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name 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. An employee is presumed to suffer an injury if this information is missing. (Labor Code § 226(e)(2)(B)(iii).)

37. The statute further provides: “An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney’s fees.” (Labor Code § 226(e)(1).)

38. Throughout the statutory period, Defendants failed to furnish Plaintiffs and the Aggrieved Employees with accurate, itemized wage statements showing all applicable hourly rates, and all gross and net wages earned (including correct hours worked, correct wages for meal periods that were not provided in accordance with California law, and correct wages for rest periods that were not authorized and permitted to take in accordance with California law).

39. Because Defendants violated Labor Code § 226, Plaintiffs and similarly Aggrieved Employees suffered injury and damage to their statutorily protected rights. Accordingly, Plaintiffs and similarly Aggrieved Employees are entitled to recover from Defendants the greater of their actual damages caused by Defendants’ failure to comply with Labor Code § 226(a), or an aggregate penalty not exceeding four thousand dollars (\$4,000) dollars per employee.

FIRST CAUSE OF ACTION

(Against all Defendants for Civil Penalties Under the Private Attorneys General Act of 2004, Cal. Lab. Code § 2698 et seq.)

40. Plaintiffs incorporate by reference and re-alleges all preceding paragraphs as though fully set forth herein.

41. At all times herein mentioned, Defendants were subject to the Labor Code of the State of California and the applicable IWC Orders.

42. California Labor Code § 2699(a) specifically provides for a private right of action to recover penalties for violations of the Labor Code: “Notwithstanding any other provision of

1 law, any provision of this code that provides for a civil penalty to be assessed and collected by
2 the Labor and Workforce Development Agency or any of its departments, divisions,
3 commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative,
4 be recovered through a civil action brought by an aggrieved employee on behalf of himself or
5 herself and other current or former employees pursuant to the procedures specified in Section
6 2699.3.”

7 43. Plaintiff Annette Cuenca has exhausted her administrative remedies pursuant to
8 California Labor Code § 2699.3. On July 27, 2021, she gave written notice by online filing to
9 the Labor and Workforce Development Agency (“LWDA”) and by certified mail to Defendants
10 of the specific provisions of the Labor Code that Defendants have violated against Plaintiff
11 Annette Cuenca and current and former Aggrieved Employees, including the facts and theories to
12 support the violations. Plaintiff Annette Cuenca also paid the filing fee on July 27, 2021 and her
13 PAGA case number is LWDA-CM- 839457-21 (*Annette Cuenca v. Los Angeles Apparel*).

14 44. Plaintiff Claudia Jimenez has also exhausted her administrative remedies pursuant
15 to California Labor Code § 2699.3. On February 10, 2021, she gave written notice by online
16 filing to the Labor and Workforce Development Agency (“LWDA”) and by certified mail to
17 Defendants of the specific provisions of the Labor Code that Defendants have violated against
18 Plaintiff Annette Cuenca and current and former Aggrieved Employees, including the facts and
19 theories to support the violations. Plaintiff Claudia Jimenez also paid the filing fee on February
20 10, 2021, and her PAGA case number is LWDA-CM- 821336-21 (*Claudia Jimenez v. Los*
21 *Angeles Apparel*).

22 45. The statute of limitations is tolled while a plaintiff exhausts her administrative
23 remedies with California’s LWDA prior to suit, which is required by the statute. (*See* Labor
24 Code § 2699.3(d).)

25 46. The statute of limitations is also tolled from April 6, 2020 to October 1, 2020
26 pursuant to Rule 9(a) of the Emergency Rules Related to COVID-19.

27 47. More than sixty-five (65) days has elapsed since Plaintiffs provided notice, but the
28 LWDA has not indicated that it intends to investigate Defendants’ Labor Code violations

discussed in either notice. Accordingly, Plaintiffs may commence a civil action to recover penalties under Labor Code § 2699 pursuant to § 2699.3 for the violations of the Labor Code described in this Complaint. These penalties include, but are not limited to, penalties under California Labor Code §§ 210, 226.3, 1174.5, 1197.1, and 2699(f)(2).

48. Based on the conduct described in this Complaint, Plaintiffs are entitled to an award of civil penalties on behalf of the State of California and similarly Aggrieved Employees of Defendants. The exact amount of the applicable penalties, in all, is in an amount to be shown according to proof at trial. These penalties are in addition to all other remedies permitted by law.

49. In addition, Plaintiffs seek an award of reasonable attorney's fees and costs pursuant to Labor Code § 2699(g)(1), which states, "Any employee who prevails in any action shall be entitled to an award of reasonable attorney's fees and costs."

PRAYER FOR RELIEF

Plaintiffs, on behalf of all similarly aggrieved employees, prays for relief and judgment against Defendants, jointly and severally, as follows:

1. That the Court declare, adjudge and decree that Defendants violated the California Labor Code by failing to pay for all hours worked (minimum, straight time, and overtime wages), failing to provide meal periods, failing to authorize and permit rest periods, failing to pay all earned wages twice per month, failing to maintain accurate records of hours worked and meal periods, failing to timely pay final wages, and failing to furnish accurate wage statements;

2. An award of civil penalties on behalf of himself and all similarly aggrieved employees pursuant to PAGA;

3. Pre-judgment and post-judgment interest at the maximum rate allowed;

4. Attorneys' fees and costs reasonably incurred;

5. Injunctive and declaratory relief to the extent allowed by PAGA; and,

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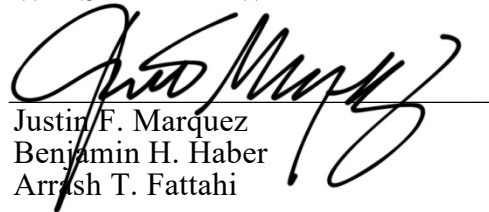
1 6. Such other and further relief that the Court deems proper.

2
3 Respectfully submitted,

4 Dated: September 30, 2021

WILSHIRE LAW FIRM

5
6 By:



Justin F. Marquez
Benjamin H. Haber
Arrish T. Fattahi

7
8 Attorneys for Plaintiffs Annette Cuenca and
9 Claudia Jimenez