

1 Ari E. Moss (SBN 238579)
Jeremy F. Bollinger (SBN 240132)
2 Dennis F. Moss (SBN 77512)
MOSS BOLLINGER LLP
3 15300 Ventura Blvd., Ste. 207
Sherman Oaks, California 91403
4 Telephone: (310) 982-2984
Facsimile: (818) 963-5954
5 ari@mossbollinger.com
jeremy@mossbollinger.com
6 dennis@mossbollinger.com

7 Attorneys for Plaintiff
MAGDA CASTRO

8 *Additional counsel on next page*

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10 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**
11 **COUNTY OF KERN**

12 **MAGDA CASTRO**, an individual, on behalf
13 of herself, all others similarly situated, and the
State of California,¹

14 Plaintiffs,

15 vs.

16 **ROSS DRESS FOR LESS, INC. and DOES**
17 **1-50,**

18 Defendants.

Case No. BCV-21-101490

**THIRD AMENDED COMPLAINT FOR
CIVIL PENALTIES PURSUANT TO
PRIVATE ATTORNEYS GENERAL ACT
OF 2004 (LABOR CODE §§ 2698 ET SEQ.)**

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27 ¹ The Third Amended Complaint adds Steven Diaz as a named plaintiff.
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1 DAVID YEREMIAN & ASSOCIATES, INC.

David Yeremian (SBN 226337)

2 david@yeremianlaw.com

880 E Broadway

3 Glendale, CA 91205

Telephone: (818) 962-6465

4 Fax: (818) 962-6469

5 D.LAW, INC.

Emil Davtyan (SBN 299363)

6 Emil@d.law

Alvin B. Lindsay (SBN 220236)

7 a.lindsay@d.law

880 E Broadway

8 Glendale, CA 91205

Telephone: (818) 962-6465

9 Fax: (818) 962-6469

10 Joseph M. Hekmat (SBN 265229)

HEKMAT LAW GROUP

11 2121 Avenue of the Stars, Ste. 800

12 Los Angeles, CA 90067

Tel.: (424) 888-4529

13 Fax: (424) 270-0242

14 Attorneys for Plaintiff STEVEN DIAZ

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1 Plaintiffs Magda Castro and Steven Diaz (“PLAINTIFFS”), on behalf of themselves, all
2 current and former hourly employees of Defendants Ross Dress For Less, Inc. and DMSI Staffing,
3 LLC who worked in Ross’s distribution centers, and on behalf of the State of California, hereby
4 complains and alleges as follows:

5 **INTRODUCTION**

6 1. This is a representative action by PLAINTIFFS on behalf of themselves, other
7 similarly situated California employees who worked in Ross’s California distribution centers, and
8 the State of California against Defendant Ross Dress For Less, Inc., DMSI Staffing, LLC, and Doe
9 Defendants 1-50 (collectively, “DEFENDANTS”), pursuant to the California Private Attorneys
10 General Act, Labor Code sections 2698 *et seq.* (“PAGA”) to recover civil penalties [75% payable
11 to the Labor & Workforce Development Agency (“LWDA”) and 25% payable to aggrieved
12 employees] for failure to pay all minimum and overtime wages, failure to provide adequate meal
13 breaks, failure to pay meal break premiums, failure to pay meal and rest break premiums at the
14 regular rate of compensation, failure to pay sick leave at the regular rate of pay, failure to keep
15 accurate records, failure to provide accurate wage statements, and failure to timely pay all wages
16 upon cessation of employment to DEFENDANTS’ employees in Ross’s distribution centers in
17 California.

18 **JURISDICTION AND VENUE**

19 2. This Court has jurisdiction over PLAINTIFFS’ claims for penalties pursuant to
20 PAGA.

21 3. Venue is proper in this Judicial district and the County of Kern pursuant to
22 California Code of Civil Procedure § 395.5 because DEFENDANTS employed PLAINTIFF
23 CASTRO in Ross’s distribution center located in the County of Kern, including in the city of
24 Shafter, and the acts, omissions, and conduct alleged by PLAINTIFFS herein occurred in this
25 county.

26 **PARTIES**

27 4. Defendant ROSS DRESS FOR LESS, INC. (“ROSS”) is a Virginia corporation that
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operates clothing retail stores and warehouses throughout California, including in Kern County.

5. Defendant DMSI STAFFING, LLC (“DMSI”) is a North Carolina limited liability company and is believed to have its California principal office located in of Riverside, California. DMSI has been listed as the employer on the wage statements issued to PLAINTIFF DIAZ and he was jointly employed by DMSI and ROSS during the relevant period.

6. PLAINTIFF CASTRO worked as an hourly paid employee of DEFENDANTS for over five years until her termination in February 2021. PLAINTIFF DIAZ worked as an hourly paid employee of DEFENDANTS at DEFENDANTS’ warehouse in Riverside, California, during the relevant time period.

7. PLAINTIFFS are informed and believe that DOES 1 through 50 are corporations, individuals, limited liability partnerships, limited liability companies, general partnerships, sole proprietorships or are other business entities or organizations of a nature not currently known to PLAINTIFFS.

8. PLAINTIFFS are unaware of the true names of Defendant DOES 1 through 50. PLAINTIFFS sue said Defendants by said fictitious name, and will amend this complaint when the true names and capacities are ascertained or when such facts pertaining to liability are ascertained, or as permitted by law or by the Court. PLAINTIFFS are informed and believe that each of the fictitiously named Defendants is in some manner responsible for the events and allegations set forth in this complaint.

9. PLAINTIFFS are informed and believe, and thereon allege, that at all times herein mentioned each Defendant, including all Defendants sued under fictitious names, was the employee, or representative of each of the remaining Defendants, and in doing the things hereinafter alleged, was at times acting within the course and scope of this employment, and at other times, acting in his or her own individual capacity. In the alternative, each of the individually named Defendants acted in concert and in furtherance of a fraudulent plan and scheme and each actively participated in the wrongful acts alleged in this complaint and jointly employed PLAINTIFFS and the other similarly aggrieved employees.

1 **FACTUAL BACKGROUND**

2 10. At all relevant times, DEFENDANTS employed PLAINTIFFS and other similarly
3 employed individuals at Ross's distribution centers subject to Labor Code sections 510, 1194 and
4 1197.

5 11. During the one-year period before PLAINTIFFS, respectively, notified
6 DEFENDANTS and the LWDA of their claims, PLAINTIFFS and other similarly employed
7 individuals at Ross's distribution centers were required to undergo off-the-clock security checks
8 before and after their scheduled shift. Employees were also required to clock out before going
9 through a security screening at the end of their shifts and when they left DEFENDANTS' premises
10 for their meal and rest periods and before returning to work after a break period. These security
11 screenings were mandatory.

12 12. More specifically, DEFENDANTS failed to pay PLAINTIFFS and similarly
13 Aggrieved Employees all wages due and owing for pre-shift hours worked in the form of
14 mandatory security checks. PLAINTIFF DIAZ was scheduled to work, on average, five days per
15 week, with scheduled hours that varied. During each shift, PLAINTIFF DIAZ and upon
16 information and belief the other Aggrieved Employees were required by DEFENDANTS to first
17 pass through a security terminal in which their baggage was checked and they had to then walk
18 through a metal detector. If the metal detector signaled the presence of metal, then the Aggrieved
19 Employee would be subject to an additional screening in that they had to empty their pockets,
20 amongst potentially other safety precautions. DEFENDANTS instituted this security check station
21 before each Aggrieved Employee would be able to clock in for their shift.

22 13. Because PLAINTIFFS regularly worked 8-hour shifts, DEFENDANTS also owe
23 PLAINTIFFS and other similarly employed individuals at Ross's distribution centers who also
24 worked 8-hour shifts compensation at their overtime rate for the off-the-clock work performed
25 when the time spent in a mandatory security screening caused their total work time to exceed 8
26 hours.

27 14. In addition, to the extent DEFENDANTS' policies regarding mandatory security
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1 screenings prevented PLAINTIFFS and other similarly employed individuals from leaving the
2 premises of Ross's distribution centers in order to receive a full 30 minutes of break time for a
3 meal period on shifts over 5 hours (as alleged below) or a 10-minute rest period, the time during
4 which PLAINTIFFS and other similarly employed individuals were restricted to DEFENDANTS'
5 premises would also be compensable. Because PLAINTIFFS and other similarly employed
6 individuals at Ross's distribution centers were required to clock out for that time, DEFENDANTS
7 did not pay them for that time. As a result, DEFENDANTS owe PLAINTIFFS and other similarly
8 employed individuals at Ross's distribution centers minimum wages and/or overtime wages (if any
9 one of those 30 minutes caused their total work time to exceed 8 hours for that day or 40 hours for
10 that week) for those meal periods.

11 15. Labor Code section 512 generally provides, in relevant part, "an employer may not
12 employ an employee for a work period of more than five hours per day without providing the
13 employee with a meal period of not less than 30 minutes..." *see also* Section 11 of the applicable
14 Wage Orders, including Wage Order 7. Employees are, therefore, entitled to one additional hour
15 of pay at the employee's regular rate of pay for every day that a meal period was not provided or is
16 provided late. *See id.*; Lab. Code § 226.7(c). The Division of Labor Standards Enforcement
17 ("DLSE") has advised with regard to meal periods, "an employer has an affirmative obligation to
18 ensure that workers are actually relieved of all duty, not performing any work, and ... free to leave
19 the employer's premises." Dept. of Industrial Relations, DLSE Opn. Letter No. 2002.01.28 (Jan.
20 28, 2002) p. 1.

21 16. As alleged above, DEFENDANTS required PLAINTIFFS and other similarly
22 employed individuals at Ross's distribution centers to undergo security screenings when leaving
23 their premises and when returning to their premises, but were not compensated for that time.
24 Because DEFENDANTS did not provide additional time for these employees to undergo the
25 security screening when leaving the distribution centers for their meal periods, PLAINTIFFS and
26 similarly employed individuals at Ross's distribution centers would receive less than 30 minutes of
27 break time for their meal period when they left DEFENDANTS' premises for their meal period.

1 Accordingly, PLAINTIFFS and similarly employed individuals at Ross’s distribution centers had
2 to remain on premises for their meal periods in order to get the full 30 minutes of break time to
3 which they are entitled under California law. In both situations, DEFENDANTS failed to pay
4 PLAINTIFFS and similarly employed individuals at Ross’s distribution centers the additional hour
5 of pay as a premium for these violations.

6 17. Wage Order 7-2001(11) provides: “If an employer fails to provide an employee a
7 meal period in accordance with the applicable provisions of this order, the employer shall pay the
8 employee one (1) hour of pay at the employee’s **regular rate of compensation** for each workday
9 that the meal period is not provided.” Wage Order 7-2001(11)(B), (12)(B) (same re rest periods)
10 (emphasis added); *see also* Labor Code § 226.7(c) (“If an employer fails to provide an employee a
11 meal or rest or recovery period in accordance with a state law, ..., the employer shall pay the
12 employee one additional hour of pay at the employee’s **regular rate of compensation** for each
13 work day that the meal or rest period is not provided.” (Emphasis added)).

14 18. DEFENDANTS paid PLAINTIFFS and similarly employed individuals at Ross’s
15 distribution centers one hour of pay at the employee’s **base hourly rate** when compensating those
16 employees for violations of the meal and rest period requirements, including in periods when the
17 employee earned a shift differential or other form of non-discretionary compensation such as an
18 attendance bonus or a Blue Chip bonus (as referenced on the employee’s wage statements), which
19 are required to be factored into an employee’s regular rate of compensation.

20 19. At all relevant times, PLAINTIFFS and similarly employed individuals at Ross’s
21 distribution centers were entitled to “paid sick days” pursuant to the California Healthy
22 Workplaces, Healthy Families Act of 2014 and California Labor Code sections 245 *et seq.*

23 20. Further, Labor Code section 246(1) requires that employers pay sick time pay to
24 non-exempt employees at the employee’s “regular rate of pay.” Employers may either calculate
25 “paid sick days” for non-exempt employees in California at the regular rate of pay for the
26 workweek in which the employee uses paid sick time or by dividing the employee’s total wages,
27 not including overtime premium pay, by the employee’s total hours worked in the full pay periods
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1 of the prior 90 days of employment. Lab. Code § 246(l)(1-2). The “regular rate of pay” includes all
2 remuneration for employment paid to the employee and includes, but is not limited to, shift
3 differentials and non-discretionary incentive bonuses.

4 21. During the one-year period before PLAINTIFFS notified DEFENDANTS and the
5 LWDA of her claims, PLAINTIFFS and similarly employed individuals at Ross’s distribution
6 centers accrued and took paid sick leave. However, DEFENDANTS failed to include such non-
7 discretionary remuneration, including shift differentials, when determining the “regular rate of
8 pay” for PLAINTIFFS and similarly employed individuals at Ross’s distribution centers for
9 purposes of sick time pay when PLAINTIFFS and similarly employed individuals at Ross’s
10 distribution centers were paid sick time pay and other non-discretionary compensation (such as
11 shift differentials and attendance or Blue Chip bonuses and the like) in the same relevant period.
12 Instead, DEFENDANTS only paid PLAINTIFFS and similarly employed individuals at Ross’s
13 distribution centers paid sick leave at their base hourly rate, rather than at their “regular rate of
14 pay.”

15 22. At all relevant times, DEFENDANTS employed PLAINTIFFS and other similarly
16 employed individuals subject to Industrial Welfare Commission (“IWC”) Wage Orders, including
17 Wage Order 7. Section 7 of the Wage Order 7 provides in relevant part:

18 Every employer shall keep accurate information with respect to each employee
19 including the following... (3) Time records showing when the employee begins and
20 ends each work period. Meal periods, split shift intervals and total daily hours
worked shall also be recorded.

21 23. DEFENDANTS maintain time records that show only when an employee clocked
22 in and out using DEFENDANTS’ time clock system. However, DEFENDANTS’ timekeeping
23 system fails to capture the additional time worked alleged above. The time records fail to show the
24 amount of time PLAINTIFFS and similarly employed individuals at Ross’s distribution centers
25 spent undergoing security screenings at the beginning and end of their shifts and when they left
26 and returned to the premises for their meal periods. Accordingly, DEFENDANTS failed to keep
27 accurate records of employees’ meal periods and start and end of shift times, thereby violating
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1 section 7 of Wage Order 7.

2 24. DEFENDANTS followed an intentional and calculated practice of failing to pay
3 Aggrieved Employees all duly owed wages. Thus, Aggrieved Employees worked longer hours
4 than recorded by DEFENDANTS. This off-the-clock work also resulted in overtime hours
5 accruing earlier than when DEFENDANTS started paying them in a work shift. DEFENDANTS
6 therefore unlawfully deducted wages earned by and owed to the Aggrieved Employees, in
7 violation of Labor Code § 221. DEFENDANTS' common policy and/or practice of understating
8 the hours worked by Aggrieved Employees has given rise to further ongoing violations of Labor
9 Code § 221.

10 25. PLAINTIFFS and similarly employed Californians received wage statements that
11 did not list all wages earned, including the minimum and overtime wages, the correct amount of
12 meal and rest break period premium wages discussed above, as required by Labor Code section
13 226. As the above infractions explain, PLAINTIFFS and similarly employed persons were entitled
14 to premium wages that were not paid and, therefore, are entitled to penalty payments pursuant to
15 Labor Code section 226. *Azpeitia v. Tesoro Ref. & Mktg. Co. LLC*, No. 17-CV-00123-JST, 2017
16 WL 3115168, at *8 (N.D. Cal. July 21, 2017) ("the payments required by section 226.7 should be
17 considered wages, and that the Plaintiffs may therefore bring a derivative claim under section
18 226.").

19 26. Moreover, PLAINTIFFS and other similarly employed persons were entitled to
20 minimum and overtime wages for off-the-clock work in the form of security checks.
21 DEFENDANTS' employees were deprived of such wages and received wage statements that did
22 not state all hours worked. Such an omission gives rise to an inference of injury under Labor Code
23 Section 226 (*Maldonado v. Epsilon Plastics, Inc.*, (2018) 22 Cal.App.5th 1308, 1337) and entitles
24 PLAINTIFFS and other similarly employed individuals to penalty payments pursuant to Labor
25 Code section 226.

26 27. PLAINTIFFS (and other similarly employed individuals at Ross's distribution
27 centers) have ceased their employment at Ross. Upon the cessation of that employment
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relationship (and as prescribed by statute), PLAINTIFFS (and the others whose employment has ended) did not receive all wages owed. Namely, said former employees (including PLAINTIFFS) did not receive all of the minimum, overtime, premium and sick pay wages to which they were entitled. *Brewer v. Gen. Nutrition Corp.*, No. 11-CV-3587 YGR, 2015 WL 5072039, at *19 (N.D. Cal. Aug. 27, 2015) (denying defendant’s motion for summary judgment because “the premium payments due under section 226.7 are to be considered “wages” for purposes of sections 203 and 226.”); *Castillo v. Bank of Am. Nat’l Ass’n*, No. SACV170580DOCKESX, 2018 WL 1409314, at *6 (C.D. Cal. Feb. 1, 2018) (“This Court agrees with the majority of courts that meal and rest premiums are wages for the purposes of waiting time penalties.”); *Karl v. Zimmer Biomet Holdings, Inc.*, No. C 18-04176 WHA, 2018 WL 5809428, at *10–11 (N.D. Cal. Nov. 6, 2018); *Murphy v. Kenneth Cole Prods.*, 40 Cal.4th 1094, 1103 (2007) (sick pay is a form of wages). Therefore, DEFENDANTS have violated and continue to violate Labor Code sections 201 and 202, because they have not paid the aforementioned wage premiums/pay and owe penalties pursuant to PAGA for each pay period in which they failed to pay PLAINTIFFS and other former employees their final wages.

28. When DEFENDANTS hired PLAINTIFFS, DEFENDANTS required them to sign a Dispute Resolution Agreement (“Agreement”) as a condition of her employment. The Agreement contained a purported waiver of PLAINTIFFS’ right to bring any claim related to their employment on a representative basis, which necessarily includes any claim brought under the Private Attorneys General Act of 2004, Labor Code Section 2698 et. seq. Such a provision is unenforceable as a matter of settled California law.

29. Section 4 of the Agreement provides:

4. The arbitration, including all discovery, motions, and other procedures, will be conducted in accordance with the Federal Rules of Civil Procedure (“FRCP”), except as otherwise provided in this Agreement. A copy of the FRCP can be obtained or viewed here for free: <http://www.us.court.gov/uscourts/rules/civil-procedure.pdf>. All Covered Disputes²

² A “Covered Dispute,” is any dispute “...arising out of or related to your employment with Ross or its termination” and is further defined in the Alternative Dispute Resolution Agreement as (footnote continued)

1 must be arbitrated in an individual capacity and each party waives all its rights to pursue
2 any Covered Dispute in arbitration or in court as a class, collective, **representative** or
3 consolidated basis, collectively referred to as a “Class Action” for the purposes of this
4 Agreement. In addition, neither party can join any Class Action or participate as a member
5 of a Class Action instituted by someone else in court or in arbitration in order to pursue any
6 Covered Dispute

7 (Emphasis added.) Similarly situated aggrieved employees of DEFENDANTS were required to
8 sign the same or similar Agreements.

9 30. Labor Code section 432.5 provides: “No employer, or agent, manager,
10 superintendent, or officer thereof, shall require any employee or applicant for employment to
11 agree, in writing, to any term or condition which is known by such employer, or agent, manager,
12 superintendent, or officer thereof to be prohibited by law.”

13 31. It is well settled that agreements purporting to waive an employee’s right to a trial
14 of PAGA claims is contrary to California law and unenforceable. *See Iskanian v. CLS*
15 *Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348 384 (“We conclude that where, as here, an
16 employment agreement compels the waiver of representative claims under the PAGA, it is
17 contrary to public policy and unenforceable as a matter of state law.”); *Juarez v. Wash Depot*
18 *Holdings, Inc.* (2018) 24 Cal. App. 5th 1197, 1202–03 (“court properly concluded that the PAGA
19 waiver set forth in the handbook is unenforceable as against public policy”); *Lawson v. ZB, N.A.*
20 (2017) 18 Cal. App. 5th 705, 725, as modified (Dec. 21, 2017) (same).

21 32. Moreover, the California Supreme Court has ruled that a court cannot compel

22 including “any and all disputes both between you and Ross and between you and any other Ross
23 Associate, agent, or employee of Ross, arising out of or related to your employment with or
24 separation of employment from Ross regardless of who initiates the claim. Covered Disputes
25 include, but are not limited to, disputes related to the use of trade secrets, unfair competition,
26 compensation, termination, retaliation, whistleblower claims, workers’ compensation retaliation
27 claims, harassment, discrimination, and claims based on the Civil Rights Act of 1964, the American
28 with Disabilities Act, the Age Discrimination in Employment Act, Family Medical Leave Act, the
Employee Retirement Income Security Act, Fair Labor Standards Act and all similar state statutes
and all related common law claims. Covered Disputes does not include claims for workers’
compensation benefits, state disability benefits and unemployment insurance benefits or any other
claims not subject to arbitration as a matter of controlling law.”

1 arbitration of an aggrieved employee’s individual PAGA claim because there is no such thing as an
2 individual PAGA claim. *Kim v. Reins Int’l California, Inc.* (2020) 9 Cal. 5th 73, 86-87 (“There is
3 no individual component to a PAGA action because ‘every PAGA action ... is a representative
4 action on behalf of the state.’”)

5 33. DEFENDANTS know or should know that the Dispute Resolution Agreement
6 contains an unlawful PAGA waiver as *Iskanian* has been the law since 2014 and courts have
7 directly addressed this issue with Ross in its attempt to enforce the Agreement against other
8 employees. *See, e.g., Hernandez v. Ross Stores, Inc.* (2016) 7 Cal. App. 5th 171, 177 (“the contract
9 signed by Hernandez included an arbitration clause. It required that all disputes ‘arising out of or
10 relating to the employment relationship’ including violations of the ‘Fair Labor Standards Act’
11 must be resolved only through arbitration. It further provided ‘there will be no right or authority
12 for any dispute to be brought, heard or arbitrated as a class action, private attorney general, or in a
13 representative capacity on behalf of any person.’ Such waiver is unenforceable, as stated in
14 *Iskanian*.”)

15 34. By continuing to require their employees to sign mandatory arbitration agreements
16 that DEFENDANTS know contains an unlawful PAGA waiver, DEFENDANTS have violated and
17 continue to violate Labor Code § 432.5. In doing so, DEFENDANTS deter their employees from
18 pursuing PAGA claims that they otherwise are entitled to pursue in court.

19 **COMPLIANCE WITH NOTIFICATION REQUIREMENTS**

20 35. On March 23, 2020, PLAINTIFF DIAZ, through his counsel, submitted online a
21 letter to the California Labor and Workforce Development Agency (“LWDA”) informing it that
22 he wanted to file a claim for civil penalties under the PAGA alleging, *inter alia*, that
23 DEFENDANTS had violated the following Labor Code sections: 201, 202, 203, 204, 226, 226.7,
24 510, 512, 558, 1174, 1174.5, 1185, 1194, 1194.1, 1194.2, 1197, 1197.1, 1199, and 2698 et seq.
25 (the “Diaz PAGA Letter”). On April 23, 2021, PLAINTIFF CASTRO, through her counsel,
26 submitted online a letter to the LWDA informing it that DEFENDANTS failed to pay minimum
27 and overtime wages; failed to provide adequate meal, failed to pay meal premiums, failed to pay
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1 meal and rest break premiums at the correct regular rate of compensation, failed to pay sick
2 leave pay at the regular rate of pay, failure to keep accurate records, failed to provide accurate
3 wage statements; and failed to timely pay all wages upon separation of employment, in violation
4 of California law (the “Castro PAGA Letter”). Because the PAGA Letters alleged violations of
5 Labor Code sections listed in Labor Code § 2699.5, PLAINTIFFS were required to give 65 days’
6 notice before filing their Complaints. PLAINTIFF DIAZ filed his Complaint on June 8, 2020,
7 more than 65 days after the submission of his March 23, 2020, PAGA Letter. PLAINTIFF
8 CASTRO filed her original Complaint on June 30, 2021, more than 65 days after the submission
9 of her April 23, 2021, PAGA letter. Lab. Code § 2699.3(a)(2)(A). On June 18, 2021,
10 PLAINTIFF CASTRO, through her counsel, submitted an Amended letter to the LWDA giving
11 notice of her additional claim DEFENDANTS’ violation of Labor Code § 432.5 (the “Amended
12 Castro PAGA Letter”). Because the Amended PAGA Letter only added a claim for violations of
13 a Labor Code section listed in Labor Code § 2699.5, PLAINTIFF CASTRO was required to give
14 65 days’ notice before amending her Complaint. Lab. Code § 2699.3(a)(2)(A).

15 36. To date, more than 65 days after the March 23, 2020, and April 23, 2021, PAGA
16 Letters were submitted and more than 65 days after the June 18, 2021, Amended Castro PAGA
17 Letter was submitted, the LWDA has not responded.

18 37. The PAGA Letters and the Amended Castro PAGA Letter outlined PLAINTIFFS’
19 claims for violations of the California Labor Code and the applicable wage orders on behalf of
20 herself, the State of California and other aggrieved employees.

21 38. Accordingly, PLAINTIFFS exhausted administrative remedies as required by
22 Labor Code § 2699.3.

23 **FIRST CAUSE OF ACTION**

24 **CIVIL PENALTIES UNDER PAGA**

25 **(By PLAINTIFF and Aggrieved Employees against DEFENDANTS)**

26 39. PLAINTIFF incorporates all of the foregoing paragraphs of this complaint as if
27 fully alleged herein.

1 40. Under the Private Attorneys General Act, Labor Code §§ 2698-99 (“PAGA”),
2 private parties may recover civil penalties for violations of the California Labor Code, including
3 sections 201-203 (including 201.3), 204, 210, 218, 218.6, 221, 225.5, 226, 226.3, 226.7, 245, 246,
4 256, 432.5, 510, 512, 551, 552, 558, 558.1, 1174, 1174.5, 1175, 1194, 1194.1, 1194.2, 1197,
5 1197.1, 1198, 1199, 2800, 2802, 2810.5, and the Industrial Welfare Commission’s (“IWC”) Wage
6 Orders, including IWC Wage Order 7. PAGA penalties are in addition to any other relief available
7 under the Labor Code.

8 41. As set forth above, DEFENDANTS violated the California Labor Code by
9 consistently failing to employ PLAINTIFF and similarly employed individuals in compliance with
10 California law.

11 42. At all times relevant to this action, PLAINTIFF and similarly employed individuals
12 were employees of DEFENDANTS entitled to the benefits of the IWC Wage Orders, including
13 Wage Order 7.

14 FAILURE TO PAY MINIMUM AND OVERTIME WAGES

15 43. At all times relevant hereto, California Labor Code §§ 510, 1194(a) and 1197 and
16 the applicable wage orders, including Wage Order 7, have required DEFENDANTS to pay their
17 employees the applicable minimum wage for all hours worked and overtime wages for all hours
18 worked over 8 hours in a day and over 40 hours in a week.

19 44. PLAINTIFFS and the other similarly employed individuals were not paid by
20 DEFENDANTS, during the relevant period, the applicable minimum and overtime wages for all
21 hours worked because DEFENDANTS required PLAINTIFFS and others to undergo off-the-clock
22 security checks before and after their scheduled shifts for which DEFENDANTS did not pay them,
23 as alleged above.

24 45. By failing to pay PLAINTIFFS and other similarly employed individuals who
25 underwent the off-the-clock mandatory security screenings, DEFENDANTS willfully breached
26 their obligations under Labor Code §§ 510, 1194(a) and 1197 and Section 4 of the applicable wage
27 orders, including Wage Order 7.

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47. Pursuant to Labor Code sections 226.7 and 512, and the applicable wage orders, PLAINTIFFS and other similarly employed individuals were entitled to a meal period of at least 30 minutes for each workday they worked more than 5 hours in any workday, and one additional hour of pay for every day that a timely meal period was not provided. Further, the DLSE has advised with regard to meal periods, “an employer has an affirmative obligation to ensure that workers are actually relieved of all duty, not performing any work, and ... free to leave the employer’s premises.” Dept. of Industrial Relations, DLSE Opn. Letter No. 2002.01.28 (Jan. 28, 2002) p. 1.

49. DEFENDANTS failed to provide PLAINTIFFS and similarly employed individuals the additional hour of pay required by Labor Code Section 226.7 and the applicable wage orders for the meal and rest period violations alleged herein. PLAINTIFFS is informed and believes and thereon alleges that at all relevant times within the relevant period, DEFENDANTS maintained and continue to maintain a policy or practice of not paying additional pay to employees for meal

1 and/or rest period violations *and at the correct regular rate of compensation* to factor in all forms
2 of incentive pay, including shift differentials or other forms of non-discretionary compensation,
3 including but not limited to, an attendance bonus or a “Blue Chip” bonus, as alleged above.

4 FAILURE TO PAY SICK LEAVE AT THE REGULAR RATE OF PAY

5 50. At all relevant times, PLAINTIFFS and similarly employed individuals at Ross’s
6 distribution centers were entitled to “paid sick days” pursuant to the California Healthy
7 Workplaces, Healthy Families Act of 2014 and California Labor Code sections 245 *et seq.*

8 51. Labor Code section 246(l) requires that employers pay sick time pay to non-exempt
9 employees at the employee’s “regular rate of pay.” Employers may either calculate “paid sick
10 days” for non-exempt employees in California at the regular rate of pay for the workweek in which
11 the employee uses paid sick time or by dividing the employee’s total wages, not including
12 overtime premium pay, by the employee’s total hours worked in the full pay periods of the prior 90
13 days of employment. Lab. Code § 246(l)(1-2). The “regular rate of pay” includes all remuneration
14 for employment paid to the employee and includes, but is not limited to, shift differentials and
15 non-discretionary incentive bonuses, such as those paid to PLAINTIFFS.

16 52. DEFENDANTS failed to include such non-discretionary remuneration, including
17 shift differentials, when determining the “regular rate of pay” for PLAINTIFFS and similarly
18 employed individuals at Ross’s distribution centers for purposes of sick time pay when
19 PLAINTIFFS and similarly employed individuals at Ross’s distribution centers were paid sick
20 time pay and other non-discretionary compensation (such as shift differentials and attendance or
21 Blue Chip bonuses and the like) in the same relevant period, as required by Labor Code § 246.

22 FAILURE TO KEEP ACCURATE RECORDS

23 53. At all relevant times, DEFENDANTS employed PLAINTIFFS and other similarly
24 employed individuals subject to Wage Order 7. Section 7 of Wage Order 7 provides in relevant
25 part:

26 Every employer shall keep accurate information with respect to each employee
27 including the following... (3) Time records showing when the employee begins and
28

ends each work period. Meal periods, split shifts intervals and total daily hours worked shall also be recorded.

54. As alleged above, DEFENDANTS' time records fail to show the amount of time PLAINTIFFS and similarly employed individuals at Ross's distribution centers spent undergoing security screenings at the beginning and end of their shifts and when they left and returned to the premises for their meal periods. Accordingly, DEFENDANTS failed to keep accurate records of employees' meal periods and start and end of shift times, thereby violating section 7 of Wage Order 7.

FAILURE TO FURNISH ACCURATE ITEMIZED WAGE STATEMENTS

55. At all relevant times, DEFENDANTS were required to provide PLAINTIFFS and similarly employed individuals with accurate itemized wage statements. Lab. Code § 226.

56. As alleged above, by failing to list all hours worked (on account of off-the-clock work such as mandatory security screenings) and by failing to list all wages earned and proper rates of pay, including minimum and overtime wages, and the correct amount of meal and rest break period premium wages discussed above, in wage statements provided to PLAINTIFFS and similarly employed individuals, DEFENDANTS violated Labor Code section 226.

FAILURE TO TIMELY PAY ALL WAGES UPON CESSATION OF EMPLOYMENT

57. Pursuant to Labor Code section 201, PLAINTIFFS and other similarly employed individuals were entitled upon cessation of employment with DEFENDANTS to timely payment of all wages earned and unpaid prior to termination and/or discharge, including layoff. Employees who were discharged were entitled to payment of all wages earned and unpaid prior to discharge immediately upon termination. Pursuant to section 202, employees who voluntarily terminated their employment with DEFENDANTS were entitled to timely payment of all wages earned and unpaid within 72 hours of giving notice of their resignation.

58. As alleged above, DEFENDANTS failed to timely pay PLAINTIFF and other similarly employed persons all wages earned and unpaid prior to termination in accordance with Labor Code sections 201 and 202. PLAINTIFFS is informed and believes and thereon alleges that at all relevant times within the applicable limitations period, DEFENDANTS maintained and

1 continue to maintain a policy or practice of not paying terminated or quitting employees all their
2 final wages earned and due under Labor Code sections 201 and 202.

3 59. DEFENDANTS' failure to pay PLAINTIFFS and other similarly employed
4 individuals all wages earned prior to termination in accordance with Labor Code sections 201 and
5 202 was willful. DEFENDANTS had the ability to pay all wages earned by employees prior to
6 termination in accordance with Labor Code sections 201 and 202, but intentionally adopted
7 policies or practices incompatible with the requirements of Labor Code sections 201 and 202.

8 60. Pursuant to Labor Code section 203, PLAINTIFFS and other similarly employed
9 persons were entitled to continuation of their wages, from the day their earned and unpaid wages
10 were due upon termination until paid, up to a maximum of 30 days. DEFENDANTS did not
11 comply with their obligations under section 203.

12 VIOLATION OF LABOR CODE § 432.5

13 61. By requiring and continuing to require PLAINTIFFS and DEFENDANTS' other
14 employees to sign mandatory arbitration agreements, such as the Dispute Resolution Agreement
15 described above, that DEFENDANTS know contains an unlawful PAGA waiver, DEFENDANTS
16 violated and continue to violate Labor Code § 432.5, which provides that "[n]o employer, or agent,
17 manager, superintendent, or officer thereof, shall require any employee or applicant for
18 employment to agree, in writing, to any term or condition which is known by such employer, or
19 agent, manager, superintendent, or officer thereof to be prohibited by law."

20 62. DEFENDANTS know or should know that the Dispute Resolution Agreement
21 contains an unlawful PAGA waiver as *Iskanian* has been the law since 2014 and courts have
22 directly addressed this issue with Ross in its attempt to enforce the Agreement against other
23 employees. *See, e.g., Hernandez v. Ross Stores, Inc.* (2016) 7 Cal. App. 5th 171, 177.

24 VIOLATION OF LABOR CODE § 221

25 63. Labor Code § 221 provides, "It shall be unlawful for any employer to collect or
26 receive from an employee any part of wages theretofore paid by said employer to said employee."
27 Additionally, pursuant to California Labor Code § 204, other applicable laws and regulations, and
28

1 public policy, an employer must timely pay its employees for all hours worked. DEFENDANTS
2 failed to do so. These unlawful deductions equate to additional unpaid wage violations giving rise
3 to PAGA penalties, and Labor Code § 221 is an enumerated provision under Labor Code § 2699.5.
4 Labor Code § 2699.3 allows “(a) A civil action by an aggrieved employee pursuant to subdivision
5 (a) or (f) of Section 2699 alleging a violation of any provision listed in Section 2699.5” to
6 commence upon satisfaction of its written notice requirements. Additionally, Labor Code § 2699.5
7 provides, in pertinent part that “[t]he provisions of subdivision (a) of Section 2699.3 apply to any
8 alleged violation of the following provisions: [Labor Code §§] 204,... 221, ...510, 512,... 1194,
9 1197, 1197.1 and 1198...1199,” and these provisions of the Code allow for recovery of civil
10 penalties pursuant to the PAGA in this action.

11 64. DEFENDANTS unlawfully received and/or collected wages from PLAINTIFFS
12 and the Aggrieved Employees by implementing a policy understating the hours worked by
13 Employees, by requiring off the clock work, and by automatically deducting time for meal periods
14 when they were not lawfully provided or requiring PLAINTIFFS and the Aggrieved Employees to
15 respond to radio communications and work requirements while off-duty.

16 65. As such, DEFENDANTS are liable for PAGA penalties resulting from these
17 unlawful deductions and PLAINTIFFS are entitled to recover, and hereby seeks through this
18 representative action, all civil and statutory penalties authorized for violations of California Labor
19 Code §§ 221, 1197, 1197.1, 1198 and Sections 2(K), 4, and 20 of the applicable IWC Wage
20 Order(s), and PLAINTIFFS seek all civil and statutory penalties available and applicable under
21 Labor Code §§ 221, 1197, 1197.1, 1199, 2699(f)(2), and 2699.5, and also attorneys’ fees and costs
22 pursuant to Labor Code § 2699(g)(1). PLAINTIFFS have fully complied with procedures specified
23 in Labor Code § 2699.3.

24 VIOLATION OF LABOR CODE § 2802

25 66. Labor Code § 2802 provides: An employer shall indemnify his or her employee for
26 all necessary expenditures or losses incurred by the employee in direct consequence of the
27 discharge of his or her duties, or of his or her obedience to the directions of the employer...”
28

67. Aggrieved persons employed as a Loss Prevention Employee incurred mileage for drive time using their personal vehicles that was necessary and used for the benefit of Defendants' business-related activities. Defendants did not reimburse these Loss Prevention Employees for the mileage expenses they incurred in performing these duties.

68. As a result of these violations, Plaintiffs seek penalties under PAGA on behalf of all Loss Prevention employees similarly aggrieved.

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFFS, on behalf of THEMSELVES and all other current and former employees of DEFENDANTS' who worked at Ross's distribution centers in California, and the State of California, prays for relief and judgment against DEFENDANTS as follows:

1. Civil penalties under Labor Code section 2699 (75% payable to the LWDA and 25% payable to aggrieved employees);
2. Costs;
3. Reasonable attorney's fees; and
4. Such other and further relief as this Court may deem just and proper.

Dated: May 20, 2024

MOSS BOLLINGER LLP
YEREMIAN & ASSOCIATES, INC.
D.LAW, INC.
HEKMAT LAW GROUP

By: 
Jeremy F. Bollinger
Attorneys for Plaintiffs MAGDA CASTRO and
STEVEN DIAZ

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PROOF OF SERVICE
STATE OF CALIFORNIA, COUNTY OF KERN

Castro v. Ross Dress For Less, Inc.
Case No. BCV-21-101490

I am employed in the State of California, County of Los Angeles. I am over the age of 18 and not a party to the within suit; my business address is 15300 Ventura Boulevard, Suite 207, Sherman Oaks, CA 91403.

On June 6, 2024, I served the document(s) described as

**THIRD AMENDED COMPLAINT FOR CIVIL PENALTIES PURSUANT TO PRIVATE
ATTORNEYS GENERAL ACT OF 2004 (LABOR CODE §§ 2698 ET SEQ.)**

on the interested parties in this action by sending ☐ the original [or] ☒ a true copy thereof
☒ to interested parties as follows [or] ☐ as stated on the attached service list:

Gregory D. Wolflick, Esq.
Theodore S. Khachaturian
Wolflick, Khachaturian & Bouayad, APC
130 N. Brand Blvd
Suite 410
Glendale, CA 91203
Phone: (818) 243-8300
Facsimile: (818) 243-0122
e-mail: greg@wolfsim.com; theo@wolfsim.com
Attorneys for Defendant Ross Dress for Less, Inc.

DAVID YEREMIAN & ASSOCIATES, INC.
David Yeremian
david@yeremianlaw.com
880 E Broadway
Glendale, CA 91205
Telephone: (818) 962-6465
Fax: (818) 962-6469

D.LAW, INC.
Emil Davtyan
Emil@d.law
Alvin B. Lindsay
a.lindsay@d.law
880 E Broadway
Glendale, CA 91205
Telephone: (818) 962-6465
Fax: (818) 962-6469
Attorneys for Plaintiff Steven Diaz

☐ **BY MAIL (ENCLOSED IN A SEALED ENVELOPE):** I deposited the envelope(s) for mailing in the ordinary course of business at Los Angeles, California. I am “readily familiar” with this firm’s practice of collection and processing correspondence for mailing. Under that practice, sealed envelopes are deposited with the U.S. Postal Service that same

PROOF OF SERVICE

day in the ordinary course of business with postage thereon fully prepaid at Los Angeles, California.

☒ **BY ELECTRONIC TRANSMISSION:** Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the document(s) to be sent to the respective e-mail address(es) of the party(ies) as stated above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

☐ **BY OVERNIGHT DELIVERY:** I am "readily familiar" with this firm's practice of collection and processing correspondence for overnight delivery. Under that practice, overnight packages are enclosed in a sealed envelope with a packing slip attached thereto fully prepaid. The packages are picked up by the carrier at our offices or delivered by our office to a designated collection site.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed June 6, 2024 at Sherman Oaks, California.

Jeremy Bollinger
Type or Print Name


Signature