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7 Attorneys for Plaintiff MILDRED ANN STEPHENSON,
on behalf of the general public as private attorney general

8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA
10

11 MILDRED ANN STEPHENSON, individually
and on behalf of all others similarly situated,

12
13 Plaintiffs,

14 v.

15 SAFEWAY INC., an Arizona Corporation, and
DOES 1 through 50, inclusive,

16
17 Defendants.

Case No.
Assigned for all Purposes to:
Hon.
Dept.

**PAGA REPRESENTATIVE ACTION
COMPLAINT PURSUANT TO THE
PRIVATE ATTORNEYS GENERAL
ACT (LABOR CODE §§2698 *et seq*)**

COMES NOW Plaintiff MILDRED ANN STEPHENSON, (“Plaintiff”), on behalf the general public and all non-exempt aggrieved employees, acting on behalf of the California Attorney General as private attorney general, asserts claims against Defendants SAFEWAY INC., and DOES 1-50, inclusive (collectively “Defendants”) as follows:

I. INTRODUCTION

1. This is a representative action for recovery of penalties under the Private Attorneys General Act of 2004 (“PAGA”), Cal. Lab. Code sections 2698 *et seq.* PAGA permits “aggrieved employees” to bring a lawsuit as a representative action on behalf of the general public as private attorney general and all other current and former aggrieved employees, to recover civil penalties and address an employer’s violations of the California Labor Code.

2. In this case, Defendants violated various provisions of the California Labor Code. As set forth below, Defendants implemented policies and practices which led to unpaid wages resulting from Defendant’s: (a) failure to accurately pay overtime wages as required by Labor Code §§ 510 and 1194 (b) failure to pay timely wages required by Labor Code §§ 203, 204 and (c) failure to provide accurate itemized wage statements as required by Labor Code § 226. As a result of these unpaid wages enumerated under Labor Code §2699.5, Plaintiff seeks penalties under Labor Code 2698, *et. seq.* on behalf of the general public as private attorney general and all other aggrieved employees.

II. JURISDICTION AND VENUE

3. The California Superior Court has jurisdiction over this action pursuant to California Constitution Article VI, Section 10, which grants the Superior Court “original jurisdiction in all cases except those given by statute to other trial courts.” The statutes under which this action is brought do not give jurisdiction to any other court.

4. This Court has jurisdiction over Defendants because, upon information and belief, each Defendant either has sufficient minimum contacts in California, or otherwise intentionally avails itself of the California market so as to render the exercise of jurisdiction over it by the California Courts consistent with traditional notions of fair play and substantial justice.

5. Venue as to each Defendant is proper in this judicial district pursuant to Code of

1 Civil Procedure section 395. Defendants are operating and doing business throughout, California,
2 and each Defendant is within the jurisdiction of this Court for service of process purposes. The
3 unlawful acts alleged herein have a direct effect on Plaintiff and all other aggrieved employees
4 within the State of California. Defendants employ numerous aggrieved employees throughout
5 California.

6 6. Defendants operate at various store locations throughout the state of California,
7 including. On information and belief, Defendants have conducted business within the State of
8 California during the purported liability period and continue to conduct business throughout the
9 State of California. The unlawful acts alleged herein have had a direct effect on Plaintiff, and the
10 similarly situated non-exempt aggrieved employees within Los Angeles County and throughout
11 the State of California.

12 7. The California Superior Court also has jurisdiction in this matter because on
13 information and belief there are no federal questions at issue, as the issues herein are based solely
14 on California statutes and law, including the California Labor Code, the IWC Wage Orders, the
15 California Code of Civil Procedure, the California Civil Code, and the California Business and
16 Professions Code.

17 8. On information and belief, during the statutory liability period and continuing to
18 the present ("liability period"), Defendant consistently maintained and enforced against
19 Defendant's Non-Exempt Employees ("Aggrieved Employees"), among others, the following
20 unlawful practices and policies, in violation of California state wage and hour laws (a) failure to
21 pay overtime wages as required by Labor Code §§ 510 and 1194 (b) failure to pay timely wages
22 required by Labor Code §§ 203, 204 and (c) failure to provide accurate itemized wage statements
23 as required by Labor Code § 226.

24 9. On information and belief, during the statutory liability period and continuing to
25 the present, Defendants have had a consistent policy of failing to pay overtime for hours worked
26 in excess of forty hours in a workweek or more than 8 hours in a workday.

27 10. On information and belief, during the statutory liability period and continuing to
28 the present, Defendants have had a consistent policy of failing to provide accurate itemized wage

1 statements.

2 11. On information and belief, during the statutory liability period and continuing to
3 the present, Defendants have had a consistent policy of failing timely pay wages upon
4 termination.

5 12. Plaintiff on behalf of the general public as private attorney general and all other
6 aggrieved employees bring this action pursuant to Labor Code 2698, *et. seq.* for violations
7 enumerated under 2699.5 as follows: sections 201-204, 226, 226.3, 510, 558, 1174, 1174.5, 1175,
8 1194, 1197, 1197.1, and, seeking penalties, interest, attorneys' fees and costs.

9 **III. PARTIES**

10 **A. Plaintiff**

11 13. Plaintiff, MILDRED ANN STEPHENSON, was at all times relevant to this
12 action, a resident of California. Plaintiff was employed by Defendants in approximately April
13 2016 through August 2020, as a Non-Exempt Employee, working as a Cashier.

14 14. As Defendants' employee, Plaintiff, and all other aggrieved employees were
15 regularly required to and subsequently suffered from Defendants':

- 16 i. failure to pay overtime in violation of Labor Code §§ 510, 1194, 1197;
- 17 ii. failure to maintain accurate time record including pursuant to Labor Code
18 sections 1174.5 and the applicable IWC Wage Orders;
- 19 iii. failure provided accurate itemized wage statements pursuant to Labor Code
20 section 226;
- 21 iv. failure to pay all wages owed upon separation from the Defendants'
22 employ pursuant to Labor Code §§ 201-204

23 15. Plaintiff seeks penalties under Labor Code 2698, *et. seq.* on behalf of the general
24 public as private attorney general and all other aggrieved employees.

25 **B. Defendants**

26 16. Defendants SAFEWAY INC., own and operates a chain of supermarkets in the
27 United States, including California. Plaintiff estimates there are in excess of one hundred Non-
28 Exempt Employees who work or have worked for Defendants over the last year.

17. Other than identified herein, Plaintiff is unaware of the true names, capacities, relationships and extent of participation in the conduct alleged herein, of the defendants sued as DOES 1 through 50, but is informed and believes and thereon alleges that said defendants are legally responsible for the wrongful conduct alleged herein and therefore sues these defendants by such fictitious names. Plaintiff will amend this complaint when their true names and capabilities are ascertained

18. Plaintiff is informed and believes and thereon alleges that each Defendant, directly or indirectly, or through agents or other persons, employed Plaintiff and other members of the Representative Group , and exercised control over their wages, hours, and working conditions. Plaintiff is informed and believes and thereon alleges that each defendant acted in all respects pertinent to this action as the agent of the other defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each defendant are legally attributable to the other defendants.

IV. GENERAL ALLEGATIONS

19. At all times set forth herein, Defendants employed Plaintiff and other persons in the capacity of non-exempt positions, however titled, throughout the state of California.

20. Plaintiff is informed and believes Aggrieved Employees have at all times pertinent hereto been Non-Exempt within the meaning of the California Labor Code and the implementing rules and regulations of the IWC California Wage Orders.

21. Defendants continue to employ Non-Exempt Employees, however titled, in California and implement a uniform set of policies and practices to all non-exempt employees, regardless of the location they were employed as they were charged with providing customer service throughout Defendants' grocery store business.

22. Plaintiff is informed and believes, and thereon alleges, that Defendants are and were advised by skilled lawyers and other professionals, employees, and advisors with knowledge of the requirements of California's wage and employment laws.

23. During the relevant timeframe, Defendants compensated Plaintiff and Aggrieved Employees based upon an hourly rate.

1 24. Upon information and belief, Defendants failed to pay overtime wages based on
2 the correct, higher regular rate of pay as Plaintiff and Aggrieved Employees earned additional
3 non-discretionary incentive pay in work weeks in which Plaintiff and Aggrieved Employees also
4 earned overtime wages.

5 25. During the relevant time period, Defendants failed to accurately calculate bonuses,
6 incentives and other forms of remunerations into Plaintiff's and Aggrieved Employees' regular
7 rates of pay for overtime purposes. As a result Defendants only paid Plaintiff and Aggrieved
8 Employees at 1.5x their base rate of pay for the overtime rate. Therefore Defendants ow Plaintiff
9 and Aggrieved Employees additional overtime pay.

10 26. Upon information and belief, Defendants failed to provide accurate itemized wage
11 statements to Plaintiff and Aggrieved Employees as the wage statements provided failed to
12 accurately account for the correct overtime pay. Further, Defendants failed to include pay rates
13 and hours for items listed on employee paystubs such as "Reto-Contract" pay and "Neighborhood
14 Superhero FLSA Ad".

15 27. Plaintiff is informed and believes, and thereon alleges, that at all times herein
16 mentioned, Defendants knew that at the time of termination of employment (or within 72 hours
17 thereof for resignations without prior notice as the case may be) they had a duty to accurately
18 compensate Plaintiff and Aggrieved Employees for all wages owed for overtime wages and that
19 Defendants had the financial ability to pay such compensation, but willfully, knowingly,
20 recklessly, and/or intentionally failed to do so in part because of the above-specified violations

21 28. Upon information and belief, Defendants failed to keep accurate records pursuant
22 to Labor Code § 1174.5.

23 29. Upon information and belief, Defendants knew and or should have known that it is
24 improper to implement policies and commit unlawful acts such as:

- 25 (a) failing to accurately pay overtime wages;
- 26 (b) failing to provide accurate itemized wage statements;
- 27 (c) failing to timely pay wages; and
- 28 (d) conducting and engaging in unfair business practices.

30. In addition to the violations above, and on information and belief, Defendants knew they had a duty to compensate Plaintiff and Aggrieved Employees for the allegations asserted herein and that Defendants had the financial ability to pay such compensation, but willfully, knowingly, recklessly, and/or intentionally failed to do so.

31. Plaintiff and Aggrieved Employees they seek to represent are covered by, and Defendants are required to comply with, applicable California Labor Codes, Industrial Welfare Commission Occupational Wage Orders (hereinafter “IWC Wage Orders”) and corresponding applicable provisions of California Code of Regulations, Title 8, section 11000 *et seq.*

V. REPRESENTATIVE CLAIMS

THE PRIVATE ATTORNEYS GENERAL ACT- LABOR CODE §§ 2698 et seq.

32. Plaintiff incorporates by reference and re-alleges each and every allegation contained above, as though fully set forth herein.

33. On May 25, 2021, Plaintiff complied with notice requirements pursuant to Labor Code section 2699.3. A copy of the letter sent to the LWDA is attached hereto as **Exhibit A**, indicating that the LWDA and Defendants were put on notice of the claims alleged here and that the notice requirement has been satisfied. Sixty five days have passed and the LWDA has not indicated intent to investigate the claims. Therefore, Plaintiff may proceed with this action in a representative capacity. The substance and violations set forth in this Complaint of which the LWDA was provided timely notice, Plaintiff has also sent a copy of this PAGA Representative Action Complaint to the LWDA.

34. Plaintiff is an aggrieved employee as defined in Labor Code Section 2699(a). Plaintiff brings this cause of action on behalf the general public and all non-exempt aggrieved employees, acting on behalf of the California Attorney General as private attorney general.

35. Pursuant to Labor Code section 2699(a) Plaintiffs seek to recover civil penalties and wages due and owing for which Defendants are liable due to numerous Labor Code violations as set forth in this Complaint, including without limitation Labor Code section 201-204, 226, 226.3, 510, 558, 1174, 1174.5, 1175, 1194, 1197, 1197.1, and 2698 *et seq.*, applicable IWC Wage Orders and California Code of Regulations, Title 8, section 11000 *et. seq.*

1 36. At all times relevant, Plaintiff and all other aggrieved employees regularly
2 performed non-exempt work in excess of 50% of the time, and thus, were subject to the meal and
3 rest break requirements of the applicable IWC wage order and the Labor Code.

4 37. At all relevant times, Defendants failed to accurately calculate bonuses earned and
5 other forms of remuneration into the employees' regular rates of pay for overtime purposes,
6 resulting in an inaccurate payment of overtime to Plaintiff and Aggrieved Employees.

7 38. On information and belief, Defendants also failed to timely pay wages upon
8 Plaintiff and Aggrieved employees' separation from Defendants' employ pursuant to Labor Code
9 §§ 201-204.

10 39. Labor Code §§201-202 requires an employer who discharges an employee to pay
11 compensation due and owing to said employee immediately upon discharge and that if an
12 employee voluntarily leaves his or her employment, his or her wages shall become due and
13 payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-
14 two (72) hours previous notice of his or her intention to quit, in which case the employee is
15 entitled to his or her wages on their last day of work.

16 40. Labor Code §203 provides that if an employer willfully fails to pay compensation
17 promptly upon discharge, as required by Labor Code §§201-202, the employer is liable for
18 waiting time penalties in the form of continued compensation for up to thirty (30) work days.

19 41. During the relevant time period, Defendants willfully failed and refused, and
20 continue to willfully fail and refuse, to pay Plaintiff and Aggrieved Employees their wages,
21 earned and unpaid, either at the time of discharge, or within seventy-two (72) hours of their
22 voluntarily leaving Defendants' employ. These wages include overtime wages.

23 42. IWC Wage Orders require Defendants to maintain time records showing, among
24 others, when the employee begins and ends each work period, meal periods, split shift intervals
25 and total daily hours worked in an itemized wage statement, and must show all deductions and
26 reimbursements from payment of wages, and accurately report total hours worked by Plaintiff and
27 the Class. On information and belief, Defendants have failed to record all or some of the items
28 delineated in Industrial Wage Orders and Labor Code §226.

43. Defendants violated Labor Code § 226(a) as to Plaintiff and Class Members by failing to accurately account for overtime payments made to Plaintiff and Class Members and by failing to list the applicable rate and hours with respect to “Reto-Contract” pay and “Neighborhood Superhero FLSA Ad”. Therefore, Plaintiff and Aggrieved employees have been injured as they were unable to determine whether they had been paid correctly for all overtime hours worked per pay period among other things.

44. Pursuant to Labor Code section 226.3, 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.

45. Additionally, Defendants have no accurate records relating to aggrieved employees' work periods, meal periods, total daily hours worked, total hours worked per payroll period and applicable pay rates, in violation of Wage Order. Similarly, Defendants failed to maintain accurate records relating to hours worked daily in violation of Labor Code sections 1174(d), 1174.5.

46. As a result of Defendants' unlawful conduct, Plaintiff and Aggrieved employees are entitled to penalties to the extent they were not paid at the prevailing wage rate for all hours worked.

47. Plaintiff and the Representative Aggrieved Employees are entitled to recover Penalties and attorneys' fees and costs under Labor Code section 2698, et. seq.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendants, as follows:

1. For penalties according to proof, pursuant to Labor Code §§ 2698 et seq.;
2. For reasonable attorneys' fees and costs; and
3. For such other and further relief as the Court deems proper.

1 Dated: May 25, 2021

JAMES HAWKINS APLC

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By: _____

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JAMES R. HAWKINS, ESQ.

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GREGORY MAURO, ESQ.

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MICHAEL CALVO, ESQ.

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Attorneys for Plaintiff MILDRED ANN

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STEPHENSON, and members of the general
public

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