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County of San Joaquin
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9 **Attorneys for Plaintiff TABULAR GLOVER**

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **COUNTY OF SAN JOAQUIN**

12 **TABULAR GLOVER,**

13 **Plaintiff,**

14 **vs.**

15 **DOLLAR TREE DISTRIBUTION, INC.;**
16 **NICHOLAS HOYER; and DOES 1-10,**
17 **inclusive,**

18 **Defendants.**

Case No.: STK-CV-UOE-2021-0004034

FIRST AMENDED COMPLAINT FOR
DAMAGES AND PENALTIES FOR

1. **HARASSMENT**
2. **RETALIATION**
3. **FAILURE TO PREVENT**
HARASSMENT AND RETALIATION
4. **VIOLATIONS OF LABOR CODE § 2698**
ET SEQ. (PAGA)

JURY TRIAL DEMANDED

19 Plaintiff Tabular Glover (“Glover”) brings this action, as to his first cause of action, against
20 Dollar Tree Distribution, Inc. (“Dollar Tree”); Nicholas Hoyer (“Hoyer”); and Does 1-10, inclusive
21 as referred to herein, for compensatory damages, punitive damages, injunctive and declaratory
22 relief, interest, costs, and attorneys’ fees resulting from the defendants’ unlawful and tortious
23 conduct. Glover brings this action, as to his second and third causes of action against Dollar Tree
24 and Does 1-10 for compensatory damages, punitive damages, injunctive and declaratory relief,
25 interest, costs, and attorneys’ fees resulting from the defendants’ unlawful and tortious conduct.
26 Glover brings this action, as to his fourth cause of action, against Dollar Tree and Does 1-10 as a
27 proxy of the California Labor and Workforce Development Agency (“LWDA”) under the
28 California Labor Code Private Attorneys General Act of 2004 (“PAGA”) for civil penalties on

1 behalf of himself and former and other current employees of Dollar Tree, as well as statutory
2 attorneys' fees and costs. As grounds Glover therefore alleges:

3 **PARTIES**

4 1. Glover is and was at all times relevant herein an individual; a resident of California;
5 employed in Stockton County, California; and an "employee" as defined by Gov. Code § 12926(c).

6 2. Dollar Tree is and was at all times relevant herein a Virginia corporation qualified to
7 do business in California and an "employer" as defined by Gov. Code §§ 12926(d) and
8 12940(j)(4)(A).

9 3. Hoyer is and/or was at all times relevant herein an individual; a resident of
10 California; and a former "supervisor" with Dollar Tree, as defined by Gov. Code § 12926(t).

11 4. Dollar Tree and Does 1-10 are referred to collectively herein as "Defendants."

12 5. Glover is not aware of the true names and capacities of the defendants sued herein
13 as Does 1-10, whether individual, corporate, associate, or otherwise, and, therefore, sues such
14 defendants by these fictitious names. Glover will amend this complaint to allege their true names
15 and capacities when ascertained. Glover is informed and believes, and on that basis alleges, that
16 each of the fictitiously named defendants is responsible in some manner for the occurrences herein
17 alleged and that the injuries and damages herein alleged were legally caused by such defendants.
18 Unless otherwise indicated, each defendant was acting within the course and scope of said agency
19 and/or employment, with the knowledge and/or consent of said co-defendant.

20 **VENUE AND JURY TRIAL DEMAND**

21 6. Venue is proper in this Court because the unlawful acts alleged herein took place in
22 San Joaquin County and Glover's place of employment with Dollar Tree is located within San
23 Joaquin County.

24 7. Glover hereby demands a jury trial.

25 **GENERAL ALLEGATIONS**

26 8. Glover, an African American, has been employed by Dollar Tree in Stockton,
27 California, since May 2014.

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1 9. For the past several years, Dollar Tree has fostered a hostile work environment
2 based on race of its black employees and has failed to take all reasonable steps necessary to prevent
3 race harassment.

4 10. Dollar Tree's senior management has permitted employees, including supervisors,
5 to say "nigger" to black employees without taking appropriate remedial measures or conducting
6 independent investigations.

7 11. In January 2020, Hoyer, a supervisor with Dollar Tree at the time, used the epithet
8 "niggers" while speaking in the presence of Glover, a black co-worker, and at least three Dollar
9 Tree managers.

10 12. Dollar Tree took no action until Glover, offended by Hoyer's inexcusable use of the
11 n-word, called its corporate complaint hotline.

12 13. In response, Dollar Tree Human Resources Manager Gloria Reyes ("Reyes") told
13 Glover that he is being moved to a different shift.

14 14. Glover opposed this retaliation, stating that he's the victim, so he shouldn't have to
15 change shifts.

16 15. That same month, Hoyer told Glover that he needs to stay busy because Dollar
17 Tree's corporate management was "looking for black people that aren't doing anything."

18 16. Glover reported this racially offensive comment to Dollar Tree's Human Resources
19 Department.

20 17. On February 6, 2020, Dollar Tree manager Nicola Vangelatos ("Vangelatos") told
21 Glover and the other black employee who witnessed Hoyer use the n-word that "sometimes you
22 need to tell people to stop talking to you like that."

23 18. In doing so, Vangelatos ratified Hoyer's harassing conduct and effectively shifted
24 responsibility for Hoyer's harassment to the victims of the harassment, i.e., Glover and other black
25 employees.

26 19. A week later, on February 14, 2020, Reyes informed Glover that "we have
27 investigated the matter, and based on what we found we've taken appropriate action."

28 ///

1 20. However, Dollar Tree continued to employ Hoyer such that Glover was forced to
2 continue working with him.

3 21. In addition, Reyes included Vangelatos in the list of people to call with further
4 issues, despite Vangelatos' improper direction a week prior.

5 22. Critically, Dollar Tree could have prevented Hoyer's repeated race harassment
6 months earlier, near the end of 2019, when Glover reported that Hoyer drove up to Glover and
7 three black co-workers and told them, "There are too many black people in one spot - you all need
8 to separate."

9 23. Nevertheless, Dollar Tree did not take all reasonable steps necessary to
10 prevent the ongoing harassment.

11 24. On December 4, 2020, Glover filed a complaint with the Department of Fair
12 Employment & Housing ("DFEH") against Dollar Tree and Hoyer based on the unlawful conduct
13 described above. That same day, the DFEH issued Glover a right-to-sue notice, which was served
14 on Dollar Tree and Hoyer by certified mail.

15 **FIRST CAUSE OF ACTION**
16 **VIOLATION OF GOV. CODE § 12940(j)**
17 **(Harassment)**
 Against Defendants and Hoyer

18 25. Glover hereby realleges and incorporates by reference each and every allegation set
19 forth above as though fully set forth herein.

20 26. FEHA prohibits an employer from harassing an employee because of race, religious
21 creed, color, national origin, ancestry, physical disability, mental disability, medical condition,
22 genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual
23 orientation, or military and veteran status. Gov. Code § 12940(j).

24 27. Nevertheless, as set forth above, Defendants and Hoyer harassed Glover in violation
25 of FEHA.

26 28. As a result, Glover has been injured.

27 29. Defendants' and Hoyer's actions towards Glover are oppressive, fraudulent, and/or
28 malicious, thereby justifying an award of punitive damages against them.

30. Wherefore, Glover seeks damages as set forth below.

SECOND CAUSE OF ACTION
VIOLATION OF GOVERNMENT CODE § 12940(h)
(Retaliation)
Against Defendants

31. Glover hereby realleges and incorporates by reference each and every allegation set forth above as though fully set forth herein.

32. FEHA prohibits an employer from retaliating against an employee because the employee has opposed any practices forbidden under FEHA or because the employee has filed a complaint under FEHA. Gov. Code § 12940(h).

33. Nevertheless, as set forth above, Defendants retaliated against Glover in violation of FEHA.

34. As a result, Glover has been injured.

35. Defendants' actions towards Glover are oppressive, fraudulent, and/or malicious, thereby justifying an award of punitive damages against them.

36. Wherefore, Glover seeks damages as set forth below.

THIRD CAUSE OF ACTION
VIOLATION OF GOVERNMENT CODE §§ 12940(j)(1), (k)
(Failure to Prevent Harassment and Retaliation)
Against Defendants

37. Glover hereby realleges and incorporates by reference each and every allegation set forth above as though fully set forth herein.

38. FEHA requires an employer to take all reasonable steps necessary to prevent harassment and retaliation from occurring. Gov. Code §§ 12940(j)(1), (k).

39. Nevertheless, as set forth above, Defendants failed to prevent harassment against and retaliation against Glover.

40. As a result, Glover has been injured.

41. Defendants' actions towards Glover are oppressive, fraudulent, and/or malicious, thereby justifying an award of punitive damages against them.

42. Wherefore, Glover seeks damages as set forth below.

FOURTH CAUSE OF ACTION
VIOLATIONS OF LABOR CODE § 2698 *ET SEQ.*
(PAGA)
Against Defendants

43. Glover hereby realleges and incorporates by reference each and every allegation set forth above as though fully set forth herein.

44. Within the relevant time period, including within the past year, not including the statute-of-limitations tolling period effected by California Rules of Court, Emergency Rules Related to COVID-19, Emergency Rule 9, and the periods specified in Labor Code § 2699.3, and in accordance with a uniform policy applied to all of its current and former non-exempt California employees, Dollar Tree failed to pay overtime wages at the correct rate to its non-exempt California employees, current and former, including Glover, in violation of Labor Code §§ 510, 558, 1194, and 1198. Specifically, Dollar Tree has failed to include non-discretionary bonuses when calculating these individuals' "regular rate of pay" for purposes of overtime. Dollar Tree has failed and continues to fail to include non-discretionary bonuses paid pursuant to its "ARP program," identified on the wage statements Dollar Tree has furnished to its current and former non-exempt California employees and continues to furnish to its current non-exempt California employees as "ARPBON W," when calculating the "regular rate of pay" for purposes of overtime earned in the same period as the bonuses, in violation of Labor Code §§ 510, 558, 1194, and 1198. These bonuses are non-discretionary and based on set percentages of the non-exempt California employees' productivity metrics. Nevertheless, Dollar Tree has failed and continues to fail to include these non-discretionary bonuses when calculating the non-exempt California employees' regular rate of pay for purposes of calculating the correct overtime hourly rates for pay periods in which the employees worked overtime hours and also received the non-discretionary bonuses, again, in violation of Labor Code §§ 510, 558, 1194, and 1198.

Also within the relevant time period, including within the past year, not including the statute-of-limitations tolling period effected by California Rules of Court, Emergency Rules Related to COVID-19, Emergency Rule 9, and the periods specified in Labor Code § 2699.3, and in accordance with a uniform policy applied to all of its current and former non-exempt California

1 employees, Dollar Tree has failed to pay sick time at the correct rate to its non-exempt California
2 employees, current and former, in violation of Labor Code § 246, for the same reasons that it failed
3 to pay overtime at the correct rates, namely, Dollar Tree's failure to include non-discretionary
4 bonuses when calculating these individuals' "regular rate of pay" for purposes of paid sick time.

5 Also within the relevant time period, including within the past year, not including the
6 statute-of-limitations tolling period effected by California Rules of Court, Emergency Rules
7 Related to COVID-19, Emergency Rule 9, and the periods specified in Labor Code § 2699.3, and
8 in accordance with a uniform policy applied to all of its current and former non-exempt California
9 employees, and as a result of the overtime-rate and sick-rate violations set forth above, Dollar Tree
10 has failed to pay wages in a timely manner, in violation of Labor Code § 204, because it has yet to
11 compensate the non-exempt individuals in California to whom it underpaid overtime and paid sick
12 time – because, i.e., of Dollar Tree's failure to properly calculate the "regular rate of pay" in
13 regards to overtime and paid sick time – well beyond the deadline (i.e., several pay periods have
14 passed since these wages were payable in most instances) to pay such wages under Labor Code §
15 204, in violation of Labor Code § 204.

16 Also within the relevant time period, including within the past year, not including the
17 statute-of-limitations tolling period effected by California Rules of Court, Emergency Rules
18 Related to COVID-19, Emergency Rule 9, and the periods specified in Labor Code § 2699.3, and
19 in accordance with a uniform policy applied to all of its current and former non-exempt California
20 employees, and as a result of the overtime-rate and sick-rate violations set forth above, Dollar Tree
21 has failed to pay wages immediately upon termination, or within 72 hours of resignation, in
22 violation of Labor Code §§ 201 and 202, respectively, to former non-exempt California employees
23 to whom it undercompensated for overtime and/or sick time as a result of the overtime-rate and
24 sick-rate violations set forth above, not including Glover, because it did not compensate these
25 former non-exempt California employees for all overtime and paid sick time – because, i.e., of
26 Dollar Tree's failure to properly calculate the "regular rate of pay" in regards to overtime and paid
27 sick time – either immediately at the time of termination, in violation of Labor Code § 201, or
28 within 72 hours of resignation, in violation of Labor Code § 202. In fact, Dollar Tree continues to

1 withhold, to date, the balance of the compensation due these individuals for the underpayments as
2 to overtime and paid sick time. Pursuant to *Huff v. Securitas Security Services USA, Inc.*, (2018) 23
3 Cal.App.5th 745, 750, “PAGA allows an ‘aggrieved employee’ – a person affected by at least one
4 Labor Code violation committed by an employer – to pursue penalties for all the Labor Code
5 violations committed by that employer.” Accordingly, Glover hereby pursues penalties for these
6 violations of Labor Code §§ 201 and 202, which he did not personally suffer.

7 Also within the relevant time period, including within the past year, not including the
8 statute-of-limitations tolling period effected by California Rules of Court, Emergency Rules
9 Related to COVID-19, Emergency Rule 9, and the periods specified in Labor Code § 2699.3, and
10 in accordance with a uniform policy applied to all of its current and former non-exempt California
11 employees, and as a result of the overtime-rate and sick-rate violations set forth above, Dollar Tree
12 has failed to furnish complete and accurate wage statements to the non-exempt individuals in
13 California to whom it underpaid overtime and paid sick time – because, i.e., of Dollar Tree’s
14 failure to properly calculate the “regular rate of pay” in regards to overtime and paid sick time –
15 because the wage statements Dollar Tree furnished as to pay periods in which overtime and/or sick
16 time was paid at the incorrect rate fail to accurately show the following information:

- 17 a. Actual gross wages earned, in violation of Labor Code § 226(a)(1);
- 18 b. Actual total hours worked, in violation of Labor Code § 226(a)(2)
- 19 c. Actual net wages earned, in violation of Labor Code § 226(a)(5); and
- 20 d. Actual applicable hourly rates in effect during the pay period and the actual
corresponding number of hours worked at each hourly rate in violation of Labor
Code § 226(a)(9).

21 Also within the relevant time period, including within the past year, not including the
22 statute-of-limitations tolling period effected by California Rules of Court, Emergency Rules
23 Related to COVID-19, Emergency Rule 9, and the periods specified in Labor Code § 2699.3, and
24 in accordance with a uniform policy applied to all of its current and former non-exempt California
25 employees, Dollar Tree has failed to pay current and former non-exempt California employees, not
26 including Glover, for all hours worked, in violation of Labor Code § 218.5. Specifically, Dollar
27 Tree has caused, suffered, and permitted these individuals to work “off the clock” by requiring
28 them to “read” and “understand” a multi-page document regarding mandatory arbitration and to

1 “acknowledge” specific information in the multi-page document away from work and without any
2 compensation. In fact, Dollar Tree has caused, suffered, and permitted most, if not all, of these
3 individuals to perform this work at their personal residences. Dollar Tree has never compensated
4 those current and former non-exempt California employees, not including Glover, who received the
5 multi-page document at home or at another non-worksites mailing address and those, not including
6 Glover, who, in receipt of the multi-page document, followed Dollar Tree’s directions in the multi-
7 page document to read and understand the document and acknowledge specific information in the
8 document while away from work, or “off the clock,” for the time that Dollar Tree caused, suffered,
9 and permitted them to work in relation to the multi-page document and the directions contained
10 therein, in violation of § 218.5. These failures to compensate those individuals for all hours worked
11 also constitute minimum wage violations, in violation of Labor Code §§ 558, 1182.12, 1194,
12 1194.2, and 1197, because Dollar Tree has effectively compensated the individuals at an hourly
13 rate of \$0, far less than the minimum wage, for the work Dollar Tree caused, suffered, and
14 permitted in relation to the multi-page document. Some of these failures also constitute overtime
15 violations, in violation of Labor Code §§ 510, 558, 1194, and 1198, because some of the
16 uncompensated work that Dollar Tree caused, suffered, and permitted in relation to the multi-page
17 document should have been paid at overtime hourly rates, because some of the time was performed
18 in excess of 40 hours in a workweek and/or 8 hours in a workday, and/or was performed on the
19 seventh consecutive day of work in a workweek. These failures also constitute violations of Labor
20 Code § 204, because Dollar Tree has not compensated those individuals for the uncompensated
21 work that it caused, suffered, and permitted in relation to the multi-page document well beyond the
22 deadlines set forth in Labor Code § 204 (i.e., several pay periods have passed since these wages
23 were payable in most, if not all, instances) to pay such wages. These failures also constitute
24 violations of Labor Code §§ 201 and 202, to former non-exempt California employees whose
25 employment was terminated by Dollar Tree and who resigned from their employment with Dollar
26 Tree, respectively, because Dollar Tree has not, to date, compensated these individuals for the
27 uncompensated work that it caused, suffered, and permitted in relation to the multi-page document.
28 These failures also constitute violations of Labor Code § 226(a), because the wage statements

Dollar Tree furnished to the current and former non-exempt California employees as to pay periods in which it caused, suffered, and permitted the employees to work in relation to the multi-page document fail to accurately show the following information:

- a. Actual gross wages earned, in violation of Labor Code § 226(a)(1);
- b. Actual total hours worked, in violation of Labor Code § 226(a)(2)
- c. Actual net wages earned, in violation of Labor Code § 226(a)(5); and
- d. Actual applicable hourly rates in effect during the pay period and the actual corresponding number of hours worked at each hourly rate in violation of Labor Code § 226(a)(9).

45. Pursuant to the provisions of Labor Code § 2699.3, an aggrieved employee may pursue a civil action arising under PAGA after the following requirements have been met:

- a. The aggrieved employee shall give written notice by certified mail to the LWDA and the employer (hereinafter “Employee’s Notice”) of the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support the alleged violations;
- b. The LWDA shall provide notice (hereinafter “LWDA’s Notice”) to the employer and the aggrieved employee by certified mail that it does not intend to investigate the alleged violation within 60 calendar days of the postmark date of the Employee’s Notice. Upon receipt of the LWDA’s Notice, or if the LWDA does not provide notice within 65 calendar days of the postmark date of the Employee’s Notice, the aggrieved employee may commence a civil action pursuant to Labor § 2699 to recover civil penalties in addition to any other penalties to which the employee may be entitled.

46. On May 25, 2021, Glover provided written notice by online submission to the LWDA and by certified mail to Dollar Tree of its violations of the Labor Code set forth herein, including the facts and theories to support the alleged violations. As of the filing of this complaint, more than 65 days have passed without the LWDA providing written notice that it intends to investigate the allegations in May 25, 2021 notice. Accordingly, Glover has satisfied the administrative prerequisites under Labor Code § 2699.3 to bring a civil action to recover penalties against Dollar Tree under PAGA.

47. Wherefore, Glover seeks civil penalties under PAGA.

PRAYER FOR RELIEF

WHEREFORE, the following relief is sought:

As to the First through Third Causes of Action:

1. For compensatory, special, and general damages;
2. For injunctive and declaratory relief pursuant to Gov. Code § 12965, including, but not limited to, a cease-and-desist order requiring Defendants to halt their harassing and retaliatory practices; an order requiring Defendants to conduct training for all its employees, supervisors, and management on the requirements of the FEHA; and an order requiring Defendants to develop and promulgate an effective policy for preventing harassment and retaliation;
3. For punitive and/or exemplary damages;
4. For statutory attorneys' fees and costs, including those available under Gov. Code § 12965(b);
5. For prejudgment and post-judgment interest according to any applicable provision of law or as otherwise permitted by law, including but not limited to that available under Civ. Code § 3287; and
6. For such other and further relief as the court deems proper.

As to the Fourth Cause of Action:

1. For civil penalties recoverable under PAGA, including but not limited to those available under Labor Code §§ 226.3 and 2699(f); and
2. For statutory attorneys' fees and costs, including but not limited to those available under Code of Civil Procedure § 1021.5 and Labor Code § 2699(g);
3. For prejudgment and post-judgment interest according to any applicable provision of law or as otherwise permitted by law, including those available under Civil Code §§ 3287(a) and 3289(b); and
4. For such other and further relief as the court deems just and proper.

///

1 **DATED:** July 30, 2021

MAYALL HURLEY P.C.

2
3 By



NICHOLAS F. SCARDIGLI
Attorneys for Plaintiff
TABULAR GLOVER

PROOF OF SERVICE

I, the undersigned, certify and declare as follows:

I am over the age of eighteen years and not a party to this action. My business address is 2453 Grand Canal Boulevard, Stockton, California 95207 that is located in the county where the mailing and/or delivery below took place.

On July 30, 2021, I served the following document:

FIRST AMENDED COMPLAINT FOR DAMAGES AND PENALTIES

addressed to:

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☒ **BUSINESS PRACTICE TO ENTRUST DEPOSIT TO OTHERS:** I am readily familiar with the business practice at my place of business for collection and processing of correspondence for mailing with the United States Postal Service. Correspondence so collected and processed is deposited with the United States Postal Service that same day in the ordinary course of business. On the date specified below, at my place of business at Stockton, California a copy of the document described above was placed for deposit in the United States Postal Service in a sealed envelope, with postage fully prepaid addressed to the individuals and/or entities mentioned above; and that envelope was placed for collection and mailing on that date following ordinary business practice.

I certify and declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on July 30, 2021, at Stockton, California.


JULIE ZEYEN