

FILED
OCT - 5 2021

K. BIEKER CLERK OF THE COURT
SUPERIOR COURT OF CALIFORNIA
COUNTY OF CONTRA COSTA

By _____
T. Schrader, Deputy Clerk

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PER LOCAL RULE, THIS
CASE IS ASSIGNED TO
DEPT 39, FOR ALL
PURPOSES

SUMMONS ISSUED

Attorneys for Plaintiff and the Aggrieved Employees

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF CONTRA COSTA**

YASMINE TABRANI, as an individual and
on behalf of all others similarly situated,

Plaintiff,

vs.

TORRID LLC, a California limited
liability company; and DOES 1 through
50, inclusive,

Defendants.

Case No. **C21-02128**

**REPRESENTATIVE ACTION COMPLAINT
FOR VIOLATION OF LABOR CODE § 2698,
ET SEQ**

DEMAND OVER \$25,000.00

By Fax
Ace Attorney Service
1880 Broadway #340
Oakland, CA
94607

1 Plaintiff Yasmine Tabrani (“Plaintiff”) hereby submits this Representative Action
2 Complaint (“Complaint”) against Defendant Torrid LLC (“Defendant”) and Does 1 through 50
3 (hereinafter collectively referred to as “Defendants”) on behalf of herself and other aggrieved
4 employees of Defendant for penalties pursuant to the Private Attorneys General Act (“PAGA”)
5 for Defendant’s violations of the California Labor Code, as follows:

6 **INTRODUCTION**

7 1. This representative action is within the Court’s jurisdiction under California
8 Labor Code sections 201, 202, 203, 204, 226, 226.7, 510, 512, 558, 1194, 1197, 1197.1, 2698,
9 and the applicable Wage Orders of the California Industrial Welfare Commission (“IWC”).

10 2. This complaint challenges systemic illegal employment practices resulting in
11 violations of the California Labor Code against individuals who worked for Defendants.

12 3. Plaintiff is informed and believes and based thereon alleges that Defendants
13 jointly and severally have acted intentionally and with deliberate indifference and conscious
14 disregard to the rights of all employees by: (a) failing to pay employees minimum and/or
15 overtime wages for time spent undergoing security checks after they were clocked-out at the end
16 of their shift, in violation of Labor Code sections 201-204, 510, 558, 1194 and 1197; (b) failing
17 to pay overtime wages at the correct regular rate of pay that included all non-discretionary
18 remuneration, in violation of Labor Code sections 201-204, 510, 558, and 1194; (c) failing to pay
19 meal and rest period premium wages at the correct regular rate of pay that included all non-
20 discretionary remuneration, in violation of Labor Code sections 201-204, 226.7 and 512; (d)
21 failing to provide accurate wage statements, in violation of Labor Code section 226(a); and (e)
22 failing to pay all earned wages upon termination, in violation of Labor Code sections 201, 202
23 and 203.

24 4. Plaintiff is informed and believes, and based thereon alleges, that Defendants
25 have engaged in, among other things a system of willful violations of the California Labor Code
26 by creating and maintaining policies, practices and customs that knowingly deny employees the
27 above stated rights and benefits.

28 5. The policies, practices and customs of defendants described above and below

1 have resulted in unjust enrichment of Defendants and an unfair business advantage over
2 businesses that routinely adhere to the strictures of the California Labor Code.

3 **JURISDICTION AND VENUE**

4 6. The Court has jurisdiction over the violations of the California Labor Code
5 sections 201, 202, 203, 204, 226, 226.7, 510, 512, 558, 1194, 1197, 1197.1 and 2698.

6 7. Venue is proper in Contra Costa County because Plaintiff worked at Defendant's
7 store located in Brentwood, California. In addition, Defendant does business in California,
8 including maintaining retail locations in the County of Contra Costa.

9 **PARTIES**

10 8. Plaintiff was employed by Defendant as an assistant manager during the
11 approximate period of April 7, 2021 through July 16, 2021. For the entire duration of Plaintiff's
12 employment, Plaintiff was a non-exempt employee.

13 9. Plaintiff was and is the victim of the policies, practices, and customs of Defendant
14 complained of in this action in ways that have deprived her of the rights guaranteed by California
15 Labor Code sections 201, 202, 203, 204, 226, 226.7, 510, 512, 558, 1194, 1197, 1197.1, and
16 2698.

17 10. Plaintiff is informed and believes, and based thereon alleges, that Defendant
18 Torrid LLC is a California limited liability company, which operates retail stores throughout the
19 United States, including locations in the State of California and in the County of Contra Costa.

20 11. Plaintiff is informed and believes, and based thereon alleges, that at all times
21 herein mentioned Defendant and Does 1 through 50, are and were corporations, business entities,
22 individuals, and partnerships, licensed to do business and actually doing business in the State of
23 California. As such, and based upon all the facts and circumstances incident to Defendants'
24 business, Defendants are subject to California Labor Code sections 201, 202, 203, 204, 226,
25 226.7, 510, 512, 558, 1194, 1197, 1197.1 and 2698.

26 12. Plaintiff does not know the true names or capacities, whether individual, partner
27 or corporate, of the defendants sued herein as Does 1 through 50, inclusive, and for that reason,
28 said defendants are sued under such fictitious names, and Plaintiff prays for leave to amend this

1 complaint when the true names and capacities are known. Plaintiff is informed and believes and
2 based thereon alleges that each of said fictitious defendants was responsible in some way for the
3 matters alleged herein and proximately caused Plaintiff and other aggrieved employees to be
4 subject to the illegal employment practices, wrongs and injuries complained of herein.

5 13. At all times herein mentioned, each of said Defendants participated in the doing
6 of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the
7 Defendants, and each of them, were the agents, servants and employees of each of the other
8 Defendants, as well as the agents of all Defendants, and at all times herein mentioned, were
9 acting within the course and scope of said agency and employment.

10 14. Plaintiff is informed and believes, and based thereon alleges, that at all times
11 material hereto, each of the Defendants named herein was the agent, employee, alter ego and/or
12 joint venturer of, or working in concert with each of the other co-Defendants and was acting
13 within the course and scope of such agency, employment, joint venture, or concerted activity.
14 To the extent said acts, conduct, and omissions were perpetrated by certain Defendants, each of
15 the remaining Defendants confirmed and ratified said acts, conduct, and omissions of the acting
16 Defendants.

17 15. At all times herein mentioned, Defendants, and each of them, were members of,
18 and engaged in, a joint venture, partnership and common enterprise, and acting within the course
19 and scope of, and in pursuance of, said joint venture, partnership and common enterprise.

20 16. At all times herein mentioned, the acts and omissions of various Defendants, and
21 each of them, concurred and contributed to the various acts and omissions of each and all of the
22 other Defendants in proximately causing the injuries and damages as herein alleged. At all times
23 herein mentioned, Defendants, and each of them, ratified each and every act or omission
24 complained of herein. At all times herein mentioned, Defendants, and each of them, aided and
25 abetted the acts and omissions of each and all of the other Defendants in proximately causing the
26 damages as herein alleged.

27
28 **FIRST CAUSE OF ACTION**

VIOLATION OF LABOR CODE § 2698 ET SEQ.

(BY PLAINTIFF AND AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS)

17. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as though fully set forth herein.

18. Plaintiff brings this cause of action for violation of PAGA as a proxy for the State of California and in this capacity, seeks penalties on behalf of all Aggrieved Employees from July 26, 2020, through the present, for Defendant's violations of Labor Code sections 201, 202, 203, 204, 226, 226.7, 510, 512, 558, 1194, 1197, and 1197.1. Plaintiff alleges that, as a matter of policy and practice, Defendant failed to: (a) pay employees minimum and/or overtime wages for time spent undergoing security checks after they were clocked-out at the end of their shift, in violation of Labor Code sections 201-204, 510, 558, 1194 and 1197; (b) pay overtime wages at the correct regular rate of pay that included all non-discretionary remuneration, in violation of Labor Code sections 201-204, 510, 558, and 1194; (c) pay meal and rest period premium wages at the correct regular rate of pay that included all non-discretionary remuneration, in violation of Labor Code sections 201-204, 226.7 and 512; (d) provide accurate wage statements, in violation of Labor Code section 226(a); and (e) pay all earned wages upon termination, in violation of Labor Code sections 201, 202 and 203.

19. Defendant suffered and permitted Plaintiff and Aggrieved Employees to work without payment of wages for all hours worked in a workday and workweek. Specifically, Defendant required non-exempt retail store employees in the State of California to submit to daily security checks after clocking out at the end of their shift. Plaintiff and Aggrieved Employees did not receive the payment of wages, including regular and overtime wages, for such time.

20. Additionally, Defendant failed to pay meal and rest period premium compensation at the regular rate of pay to Plaintiff and Aggrieved Employees who earned non-discretionary incentives, including bonuses. During workweeks when non-exempt retail store employees earned non-discretionary incentives and meal/rest period premium pay, the non-discretionary incentives should have been factored into the regular rate of compensation for

1 purposes of paying meal/rest period premium pay. Defendant, however, paid the meal/rest period
2 premium at the base rate of pay.

3 21. Relatedly, Defendant paid overtime wages based on the incorrect regular rate of
4 pay. Specifically, for the purpose of determining the applicable overtime rate, Defendant failed
5 to include non-discretionary incentives in the calculation of the regular rate of pay. Thus, when
6 non-exempt retail store employees worked overtime and earned non-discretionary incentives in
7 the same workweek, the employees were paid overtime based on a lower, base rate that did not
8 take into account additional items of non-discretionary remuneration. As such, Plaintiff and
9 Aggrieved Employees are owed additional overtime and meal/rest period premiums based on the
10 correct, higher regular rate of pay.

11 22. As a result of the underpayment and/or nonpayment of wages and meal/rest
12 period premiums, the wage statements provided to Plaintiff and Aggrieved Employees displayed
13 inaccurate rates of pay, net and gross wages earned, and total hours worked, in violation of Labor
14 Code section 226(a).

15 23. Based on the above-stated Labor Code violations, Plaintiff is an “aggrieved
16 employee” as defined in Labor Code § 2699(a). As such, Plaintiff will bring this cause of action
17 on behalf of the State of California for violations committed against all similarly situated
18 Aggrieved Employees of Defendant.

19 24. On or about July 26, 2021, Plaintiff sent written notice to the California Labor &
20 Workforce Development Agency (“LWDA”) of Defendant’s violations of Labor Code sections
21 201, 202, 203, 204, 226, 226.7, 510, 512, 558, 1194, 1197, and 1197.1, pursuant to PAGA. As of
22 the date of the filing of this Complaint, the LWDA has yet to provide notice to Plaintiff as to
23 whether it intends to investigate the violations provided for in the written notice. In addition to
24 the LWDA, Plaintiff also sent his written notice to Defendants via certified mail according to
25 Labor Code section 2699.3.

26 25. As such, pursuant to Labor Code section 2699(a), Plaintiff will seek recovery of
27 any and all applicable civil penalties for Defendant’s violation of Labor Code sections 201, 202,
28 203, 204, 226, 226.7, 510, 512, 558, 1194, 1197, and 1197.1, for the time period described

1 above, on behalf of himself and other Aggrieved Employees.

2 **PRAYER FOR RELIEF**

3 WHEREFORE, Plaintiff prays for judgment for herself and all others on whose behalf
4 this suit is brought against Defendants, jointly and severally, as follows:

5 1. Upon the First Cause of Action, for penalties pursuant to California Labor Code
6 section 2698 *et seq.*, and for costs and attorneys' fees;

7 2. On all causes of action for attorneys' fees and costs as provided by California
8 Labor Code section 2699, and Code of Civil Procedure section 1021.5; and

9 3. For such other and further relief the Court may deem just and proper.
10

11 DATED: October 4, 2021

DIVERSITY LAW GROUP, P.C.

12
13 By: _____

Larry W. Lee

Kristen M. Agnew

14 Attorneys for Plaintiff and the Aggrieved
15 Employees
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