

NICHOLAS & TOMASEVIC, LLP

Craig M. Nicholas (SBN 178444)

Shaun Markley (SBN 291785)

Jake Schulte (SBN 293733)

225 Broadway, 19th Floor

San Diego, California 92101

Tel: (619) 325-0492

Fax: (619) 325-0496

Email: cnicholas@nicholaslaw.org

Email: smarkley@nicholaslaw.org

Email: jschulte@nicholaslaw.org

GLICK LAW GROUP, PC

Noam Glick (SBN 251582)

225 Broadway, 19th Floor

San Diego, California 92101

Tel: (619) 382-3400

Fax: (619) 393-0154

Email: noam@glicklawgroup.com

Attorneys for Plaintiff,

ALLISON DEWSE

SUPERIOR COURT FOR THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

ALLISON DEWSE, an individual, on behalf
of herself and similarly aggrieved current and
former employees;

Plaintiff,

vs.

ALBERTSONS COMPANIES, INC., a
Delaware corporation, THE VONS
COMPANIES, INC., a Michigan corporation,
and DOES 1-100, inclusive;

Defendants.

CASE NO.: 37-2022-00001512-CU-OE-CTL

**COMPLAINT FOR ENFORCEMENT OF
CALIFORNIA'S PRIVATE ATTORNEYS
GENERAL ACT ("PAGA"), LABOR CODE §§
2698 ET SEQ**

DEMAND FOR JURY TRIAL.

1 Plaintiff Allison Dewse (“Plaintiff”) brings this action against Defendants Albertsons
2 Companies, Inc. (“Albertsons”) and The Vons Companies, Inc. (“Vons”) (collectively,
3 “Defendants”), on behalf of herself and similarly aggrieved current and former employees. Plaintiff
4 alleges on information and belief as follows:

5 **I. INTRODUCTION**

6 1. This is an action by Plaintiff to recover civil penalties from Defendants under
7 California’s Private Attorneys General Act (“PAGA”).

8 2. To disincentivize working non-exempt employees over 8 hours in a day or 40 in a
9 week, and to ensure workers are fully compensated for their extra labor, California requires
10 employers to pay overtime at one and one-half times the worker’s “regular rate.” See Labor Code §
11 510 and Wage Order 7, 3(A). The regular rate is not straight time rate (i.e., his or her normal hourly
12 wage rate). Instead, the regular rate changes from pay period to pay period and accounts for non-
13 hourly compensation like incentive payments. The per-hour value of non-hourly pay must be
14 determined so that the employee’s regular rate of pay—and, derivatively, the employee’s overtime
15 pay rate—reflects all the various forms of regular compensation that the employee earned in the
16 relevant pay period. See *Alvarado v. Dart Container Corp. of California* (2018) 4 Cal. 5th 542, 554,
17 and see California’s Division of Labor Standards Enforcement (“DLSE”) Enforcement Policies and
18 Interpretations Manual (2002), § 49.1.2 (defining the “regular rate”).

19 3. At the outset of the pandemic, like many employers of essential workers, Defendants
20 began incentivizing its workforce, and potential employees, with “APPRECIATION PAY” – usually
21 \$2.00 of additional compensation for every hour worked during the height of the pandemic. Despite
22 the clear mandate in California to pay overtime at employees’ “regular rates” and not their straight
23 time hourly rates, Defendants failed to account for its appreciation pay program when calculating
24 the regular rate for purposes of paying overtime wages.

25 4. Defendants also fail to properly pay overtime wages to employees receiving shift
26 differential pay. With this form of pay, Defendants incentivize employees with extra compensation,
27 typically an additional \$0.50 per hour, for working undesirable shifts (e.g., Sundays, holidays,
28 outside of regular business hours). Contrary to California law, however, Defendants do not

1 sufficiently adjust the regular rate, by taking the weighted average of the multiple pay forms,
2 resulting in underpayment of overtime wages.

3 5. Like the hundreds of other non-exempt hourly employees working for Defendants
4 since the start of pandemic, Plaintiff worked overtime during pay periods that she also received
5 appreciation pay with no corresponding increase to her regular rate to account for the additional
6 hourly pay. Further, during the relevant statutory period, Plaintiff worked overtime during pay
7 periods where she received shift differential pay. Like with appreciation pay, Defendants failed to
8 adequately increase Plaintiff's regular rate to account for shift differential pay.

9 6. These practices robbed Plaintiff and her fellow employees of overtime wages. It also
10 meant that Defendants incorrectly listed pay rates and total earnings on these individuals' wage
11 statements and failed to pay them all wages due upon separation.

12 7. Still further, despite requiring Plaintiff and her fellow employees to purchase personal
13 protective equipment ("PPE") during the pandemic, Defendants failed to reimburse these purchases.
14 Plaintiff and her fellow employees reasonably incurred these business expenses at Defendants'
15 behest for purposes of keeping its employees and customers safe.

16 8. Defendants' employment practices are illegal and violate PAGA.

17 **II. JURISDICTION AND VENUE**

18 9. This action is within the Court's jurisdiction under California Labor Code sections
19 2698 *et seq.* Defendants committed the above-mentioned Labor Code violations in this county and
20 employs other aggrieved employees in this county.

21 10. Venue is proper in this judicial district, pursuant to California Code of Civil
22 Procedure section 395, as Defendants conduct business within San Diego County and many of the
23 acts complained of, including the violations of PAGA, were carried out in this county.

24 **III. PARTIES**

25 11. Plaintiff is, and at all times herein mentioned was, an individual residing in the
26 County of San Diego, California. From approximately December 2019 through November 2020,
27 Defendants employed Plaintiff as a non-exempt, full-time employee, specializing in cake decoration,
28 at a Vons grocery store, located at 1201 Avocado Ave., El Cajon, California 92020.

1 12. Albertsons is, and at all times mentioned was, a corporation organized and existing
2 under and by virtue of the laws of the State of Delaware, with its principal place of business in Boise,
3 Idaho. Albertsons employs hundreds and possibly thousands of non-exempt employees in California
4 and does substantial business in this State and in this County.

5 13. Vons is, and at all times mentioned was, a corporation organized and existing under
6 and by virtue of the laws of the State of Michigan, with its principal place of business in Pleasanton,
7 California. Vons employs hundreds and possibly thousands of non-exempt employees in California
8 and does substantial business in this State and in this County.

9 14. Plaintiff does not know the true names and capacities of defendants sued as DOES 1
10 through 100, inclusive, and therefore sues them by fictitious names. Plaintiff is informed and
11 believes DOES 1 through 100, inclusive, are in some way responsible for the events and the
12 employees' damages described in this Complaint. Plaintiff will seek leave to amend this Complaint
13 when the true names and capacities of these defendants have been ascertained.

14 IV. GENERAL ALLEGATIONS

15 A. **Defendants Fail to Adjust the Regular Rate, Robbing Employees of Required** 16 **Overtime Wages**

17 15. As set forth above in the Introduction, around March 2020 through June 2020,
18 Defendants issued "appreciation pay" to non-exempt workers. These payments were additional
19 hourly compensation, usually \$2 per hour worked. They showed up on wage statements as
20 "APPRECIATION PAY," "APPRECPAY," or similar titles.

21 16. Defendants issued these payments in recognition of the additional risk that employees
22 undertook working in an essential industry during a pandemic where their lives were at risk.
23 Defendants also issued these payments to attract, retain, and incentivize employees in a competitive
24 labor market. Defendants' non-exempt employees expected these wages weekly, and they were paid
25 pursuant to either a formal written plan or an implied promise to continue the payments so long as
26 the workers continued working during the pandemic. These bonuses were announced to employees
27 to induce them to work more steadily or more rapidly or more efficiently or to remain employed by
28 Defendants. Such payments must be included in the regular rate.

1 17. Defendants also incentivize employees with extra compensation in the form of shift
2 differently pay, typically an additional \$0.50 per hour, for working undesirable shifts (e.g., Sundays,
3 holidays, outside of regular business hours). Like with appreciation pay, Defendants fail to properly
4 pay overtime wages to employees receiving shift differential pay during the same pay period.
5 Defendants do not properly adjust the regular rate, by taking the weighted average of the multiple
6 pay forms (i.e., standard hourly rate and shift differential pay), which results in underpayment of
7 overtime wages.

8 18. Defendants' employees like Plaintiff worked overtime during the same pay periods
9 that they received appreciation pay.

10 19. Defendants' employees like Plaintiff received shift differential pay in the same pay
11 periods that they worked overtime.

12 20. Defendants failed to adjust Plaintiff's and similarly situated employees' regular rates,
13 to account for incentive payments and shift differential pay, during pay periods where these
14 employees worked overtime.

15 **B. Defendants Fail to Timely Pay Wages**

16 21. Plaintiff's employment ended with Defendants on or around November 2020. Other
17 employees have likewise separated from Defendants' employ during the relevant statutory period.
18 The above-mentioned failure to pay wages means that Defendants failed to pay wages to Plaintiff
19 and her fellow terminated employees that were due and owing upon separation.

20 **C. Defendants Fail to Provide Complaint Pay Stubs**

21 22. Defendants fail to provide Plaintiff and similarly situated employees with accurate
22 itemized wage statements at the end of each pay period. Namely, Defendants do not provide wage
23 statements showing accurate "hourly rates in effect during the pay period and the corresponding
24 number of hours worked at each hourly rate." Labor Code, § 226.

25 23. In addition, Defendants' wage statements fail to accurately reflect overtime pay,
26 gross wages, and net wages as a result of the above-mentioned violations of California law resulting
27 in underpaid wages. *Id.*

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

2
3
4
5
6

7
8
9

0

- 1
- 2
- 3

4
5

- 6
7
8
9
20
21

22
23
24
25
26
27
28

1 Administrator to respond to the amended notice ran on January 3, 2022. Plaintiff received no
2 response.

3 29. Pursuant to PAGA and, in particular, California Labor Code sections 2699, 2699.3,
4 and 2699.5, Plaintiff is entitled to and hereby seeks to recover civil penalties against Defendants, in
5 addition to reasonable attorney fees and costs, on behalf of himself and all other similarly aggrieved
6 current and former employees of Defendants.

7 **VI. PRAYER FOR RELIEF**

8 WHEREFORE, Plaintiff, on behalf of herself and for all similarly-aggrieved employees,
9 prays for judgment against Defendants, as follows:

- 10 1. For a declaration that Defendants violated the rights of Plaintiff and similarly-
11 aggrieved employees under the California Labor Code and an injunction against
12 ongoing violations;
- 13 2. For civil penalties under PAGA;
- 14 3. For costs of suit and expenses, including attorneys' fees allowed under the law,
15 including but not limited to California Labor Code section 1194(a); California Code
16 of Civil Procedure section 1021.5; and PAGA; and
- 17 4. For such other relief as this Court may deem just and proper.

18 **VII. REQUEST FOR JURY TRIAL**

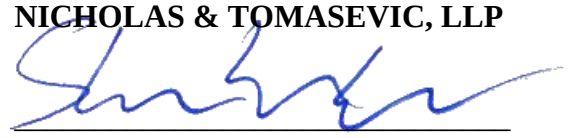
19 Plaintiff hereby requests a Trial by Jury.

20 Respectfully submitted:

21 DATED: January 12, 2022

NICHOLAS & TOMASEVIC, LLP

22 By:


Craig M. Nicholas (SBN 178444)
Shaun Markley (SBN 291785)
Jake Schulte (SBN 293733)
225 Broadway, 19th Floor
San Diego, California 92101
Tel: (619) 325-0492 | Fax: (619) 325-0496
Email: cnicholas@nicholaslaw.org
Email: smarkley@nicholaslaw.org
Email: jschulte@nicholaslaw.org

23 Attorneys for Plaintiff,
24 ALLISON DEWSE
25
26
27
28