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Via Online Filing

California Labor & Workforce
Development Agency
455 Golden Gate Avenue, 10th Floor
San Francisco, California 94102

Via USPS First Class

Barbara Rentler, CEO
ROSS STORES, INC.
5130 Hacienda Drive
Dublin, California 94568

Via Certified Mail

CT Corporation System
Registered Agent for
ROSS STORES, INC.
330 N. Brand Blvd., Suite 700
Glendale, California 91203

Via USPS First Class

Michael J. Hartshorn, CEO
ROSS DRESS FOR LESS, INC.
5130 Hacienda Drive
Dublin, California 94568

Via Certified Mail

CT Corporation System
Registered Agent for
ROSS DRESS FOR LESS, INC.
330 N. Brand Blvd., Suite 700
Glendale, California 91203

Re: Notice Pursuant to the Private Attorneys General Act, California Labor Code § 2699.3 (the "PAGA")

Dear Sir(s) and/or Madam:

Please be advised that the representative Melinda Outzen ("Plaintiff") has retained Whitehead Employment Law to represent her and other similarly situated current and former employees (the "Aggrieved Employees") against Ross Stores, Inc., a Delaware corporation, Ross Dress For Less, Inc., a Virginia corporation, and Does 1-25 (hereinafter "Defendants") regarding claims of violations of the California Labor Code, the Industrial Welfare Commission Wage Orders, and other applicable California employment laws.

Ross Stores, Inc. and Ross Dress For Less, Inc., operating under the brand name Ross Dress for Less, is an American chain of discount department stores headquartered in Dublin, California. It is the largest off-price retailer in the U.S.; as of 2018, Ross operates 1,483 stores in 37 U.S. states, the District of Columbia and Guam, covering much of the country.

Defendants currently or formerly employed Plaintiff and other Aggrieved Employees, who work or have worked as non-exempt, hourly, full-time and part-time employees, including but not limited to the following job titles: Retail Sales Associates, Stock Associates, Area Supervisors, Store Protection Specialists, Assistant Store Managers, Field Leaderships, Store Managers, or other similarly situated positions (the "Covered Positions"). This notice formally serves to notify

Defendants of Plaintiff's intent to file a PAGA action complaint against Defendants and bring causes of action for violations of the PAGA including, but not limited to claims for Defendants' failure to provide compliant rest/meal breaks; failure to compensate for every hour worked; failure to pay overtime; failure to maintain accurate records of all hours worked; failure to reimburse job-related expenses; failure to furnish accurately itemized wage statements; and failure to timely pay all wages due to Aggrieved Employees who ceased employment with Defendants during the statutory period upon their separation or termination of employment.

Based upon these violations, as further detailed below, Defendants violated numerous provisions of California's Labor Code including, but not limited to, violations of Labor Codes 201-203, 204, 226(a), 226.7, 510, 512, 1174 (d), 1194(a), 2802, and Industrial Welfare Commission Wage Order No 7-2001 (IWC No. 7).

Melinda Outzen, who is 37 years old, was employed by Defendants starting on approximately June 1, 2013, until approximately March 15, 2021, as a full-time, hourly compensated, non-exempt Retail Sales Associate whose job duties included handling merchandise, running the cash register, customer service duties, filling the shelves, assisting customers, cleaning tasks, and expediting merchandise, among other duties. She worked at the store located at 902 Sepulveda Boulevard, Harbor City, California 90710. Her rate of pay was \$16.00 per hour.

During the relevant statutory period, Plaintiff and the Aggrieved Employees were routinely prohibited from receiving proper, timely, and compliant meal and rest breaks. Defendant's work locations were routinely understaffed, with Defendant demanding unreasonable amounts of work to be completed daily. Defendant required Plaintiff and the Aggrieved Employees to always be on call during their meal and rest breaks, making their breaks uninterrupted. Supervisors would routinely interrupt Plaintiff's and the Aggrieved Employees' meal breaks either in person or via call or text to come back on shift to assist customers on the sales floor while on break. Often if Plaintiff and the Aggrieved Employees were even able to take a meal break, they were untimely or less than thirty minutes in length. This made it impossible for Plaintiff and the Aggrieved Employees to have a duty-free uninterrupted meal break. Defendant rarely provided rest breaks for Plaintiff and the Aggrieved Employees, and when Plaintiff and the Aggrieved Employees attempted to take a rest break, they would be instructed by management to return to work soon after. Additionally, Plaintiff and certain of the Aggrieved Employees were asked by their supervisors to go to a store, such as Starbucks, while on their meal and rest breaks to purchase food or various other non-work-related items for management as Plaintiff and certain of the Aggrieved Employees' "break." Defendant has never recorded nor paid Plaintiff and the Aggrieved Employees for the time they worked during their breaks nor the premium pay to which they are/were entitled for the missed and non-compliant rest and meal breaks. Further, at no time have Plaintiff or the Aggrieved Employees validly waived their rest and meal break periods.

Defendant also intentionally failed to properly pay such employees all of the overtime wages that they were due. Due to Plaintiff and the Aggrieved Employees working off the clock during lunch breaks, in many instances because of the unrecorded hours worked, their shifts exceeded 8 hours a day or over 40 hours in a week.

Further, during the relevant statutory period, Plaintiff and the Aggrieved Employees were required to utilize their personal cell phones for work related duties and work-related communications on and off the clock. Utilization of their personal cell phones was an essential part of the job. Plaintiff and the Aggrieved Employees were required by Defendants to use their personal cell phones to communicate with their co-workers and supervisors regarding work schedules, or to

search for products and inventory. Defendants required Plaintiff and the Aggrieved Employees to use their personal cell phones to look up products for clients to see what the client is talking about, or to show customers if they are searching for a certain item. Defendants would call and text Plaintiff and the Aggrieved Employees personal phones to convey any messages or information during the workday when working in different departments. Defendants also called and sent text messages to Plaintiff and the Aggrieved Employees while they were off the clock, regarding scheduling changes, customer inquiries, and regarding shift coverage requests. At no time have Defendants ever reimbursed Plaintiff or the Aggrieved Employees for the expenses they incurred for the utilization of their personal cell phones for these daily work-related communications.

Plaintiff is informed and believes, and thereon alleges that the above-described violations are ongoing, systematic and uniform. If Defendants fail to cure these alleged violations, Plaintiff will bring an action against Defendants under the PAGA to recover civil penalties as provided by California law.¹

Due to the foregoing-described actions, Defendants have unlawfully failed to timely pay all wages due pursuant to Labor Code § 204 and have unlawfully failed to pay all wages due upon termination to those Aggrieved Employees who ceased their employment relationship with Defendants during the statutory period.

Rest/M meal Break Violations

Under Labor Code § 226.7 “(a) *No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.*

(b) If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each work day that the meal or rest period is not provided.”

Further, under Labor Code § 512 (a) “*An employer shall not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An*

¹ Without limitation, Plaintiff, if permitted, will seek any and all penalties otherwise capable of being collected by the Labor & Workforce Development Agency (“LWDA”). This includes each of the following, as is set forth in Labor Code § 2699.5, which states:

The provisions of subdivision (a) of § 2699.3 apply to any alleged violation of the following provisions: subdivision (k) of § 96, § s 98.6, 201, 201.3, 201.5, 201.7, 202, 203, 203.1, 203.5, 204, 204a, 204b, 204.1, 204.2, 205, 205.5, 206, 206.5, 208, 209, and 212, subdivision (d) of § 213, § s 221, 222, 222.5, 223, and 224, paragraphs (1) to (5), inclusive, (7), and (9) of subdivision (a) of § 226, § s 226.7, 227, 227.3, 230, 230.1, 230.2, 230.3, 230.4, 230.7, 230.8, and 231, subdivision (c) of § 232, subdivision (c) of § 232.5, § s 233, 234, 351, 353, and 403, subdivision (b) of § 404, § s 432.2, 432.5, 432.7, 435, 450, 510, 511, 512, 513, 551, 552, 601, 602, 603, 604, 750, 751.8, 800, 850, 851, 851.5, 852, 921, 922, 923, 970, 973, 976, 1021, 1021.5, 1025, 1026, 1101, 1102, 1102.5, and 1153, subdivisions (c) and (d) of § 1174, § s 1194, 1197, 1197.1, 1197.5, and 1198, subdivision (b) of § 1198.3, § s 1199, 1199.5, 1290, 1292, 1293, 1293.1, 1294, 1294.1, 1294.5, 1296, 1297, 1298, 1301, 1308, 1308.1, 1308.7, 1309, 1309.5, 1391, 1391.1, 1391.2, 1392, 1683, and 1695, subdivision (a) of § 1695.5, § s 1695.55, 1695.6, 1695.7, 1695.8, 1695.9, 1696, 1696.5, 1696.6, 1697.1, 1700.25, 1700.26, 1700.31, 1700.32, 1700.40, and 1700.47, § s 1735, 1771, 1774, 1776, 1777.5, 1811, 1815, 2651, and 2673, subdivision (a) of § 2673.1, § s 2695.2, 2800, 2801, 2802, 2806, and 2810, subdivision (b) of § 2929, and § s 3073.4, 6310, 6311, and 6399.7.

employer shall not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.”

Per the IWC Wage Order No. 7, Section 12(A) & B “12. REST PERIODS (A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 1/2) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages. (B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that the rest period is not provided.”

As stated, during the relevant statutory period, the Plaintiff and the Aggrieved Employees, were rarely ever able to take Labor Code compliant, timely and duty-free rest breaks. Plaintiff and Aggrieved Employees were rarely provided uninterrupted meal breaks due to Defendants’ unreasonable work expectations and severe under staffing. Plaintiff and the Aggrieved Employees would be lucky to receive complaint meal breaks once to twice a week. Defendants actively failed to relinquish control to permit Plaintiff and the Aggrieved Employees opportunities for lawful breaks. Defendants have not paid premium pay penalties for the missed and non-compliant rest and meal breaks. This is a clear violation of the provisions of the Labor Code and the IWC No. 7 which set forth California employers’ affirmative obligation to provide timely, duty-free rest and meal break periods.

Pursuant to §512 of the Labor Code and Section 12 (B) of IWC No. 7, Plaintiff and the Aggrieved Employees are owed premium pay penalties for each missed rest and meal break for which they were not paid during the statutory period. Plaintiff will bring an action against Defendants under the PAGA to recover civil penalties as provided by California law.

Failure to Compensate Employees For Every Hour Worked

Labor Code § 204 (a) states “*All wages, other than those mentioned in §§ 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays.*”

Under Labor Code §1194 (a) “*Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.*”

Labor Code §§ 204 and 1194 (a) have been violated and Plaintiff and the Aggrieved Employees are entitled payment for all hours worked, including time worked off the clock. Plaintiff will bring an action against Defendants under the PAGA to recover civil penalties as provided by California law.

Failure to Pay Overtime Pay

Labor Code § 510 (a) provides, “*Eight hours of labor constitutes a day’s work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and*

the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee."

As indicated above, the Plaintiff and the Aggrieved Employees often worked through and during rest break and meal break periods while off the clock, and also on their own time when sent on errands by management, which meant they were working more than an eight-hour shift most of the time but were not paid overtime wages. Plaintiff and the Aggrieved Employees were working more than eight hours in a day and more than forty hours in a week throughout the relevant statutory period.

Labor Code § 510 (a) has been violated Plaintiff and certain of the Aggrieved Employees are entitled to unpaid overtime for all hours worked. Plaintiff will bring an action against Defendants under the PAGA to recover civil penalties as provided by California law.

Failure To Maintain Records of Hours Worked

Labor Code § 1174(d) provides, *"Every person employing labor in this state shall:... (d) Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments...shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned."*

As indicated above, Plaintiff and the Aggrieved Employees were often required to work during their rest or meal breaks due to Defendants' operational policies and practices. The time Plaintiff and the Aggrieved Employees spent working while off the clock is/was not ever tracked or recorded by the Defendants in violation of Lab. Cod. § 1174(d).

Failure to Furnish Accurate Wage Statements

As a direct consequence of Defendants' unlawful business and compensation practices under the Labor Code and IWC No. 7, Plaintiff and the Aggrieved Employees were/are not provided with accurately itemized wage statements.

At all times relevant, Labor Code § 226 requires Defendant to *"furnish each of [its] employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an itemized statement in writing showing: (1) gross wages earned, (2) total hours worked by the employee, ... (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee."*

As indicated above, Plaintiff and the Aggrieved Employees often work/worked during their rest and meal breaks, worked off the clock at the beginning of their shifts, and often on their own personal time while off the clock. Due to Defendants' unlawful instructions and practices demanding that Plaintiff and the Aggrieved Employees continue working while off the clock and such time and hours work was never recorded by Defendants. Consequently, such hours worked, including overtime hours and corresponding correct rates of pay and premium pay for non-compliant rest and

meal breaks is and was not reflected on the Plaintiff and Aggrieved Employees' wage statements during the statutory period.

In failing to account and compensate with accuracy, all of the hours worked by the Plaintiff and the Aggrieved Employees, and by failing to accurately set forth the net and gross wages earned, Defendants violated the wage statement requirements of Labor Code § 226 by failing to accurately record the Plaintiff and the Aggrieved Employees' respective (1) gross wages earned, (2) net wages earned, and (3) all applicable hourly rates and the corresponding number of hour worked at each applicable hourly rate.

Failure to Timely Pay all Wages Due Upon Separation or Termination of Employment

At all times relevant, Labor Code § 201 provides that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.

At all times relevant, Labor Code § 202 provides that if employees not having a written contract for a definite period quits their employment, their wages shall become due and payable no later than 72 hours thereafter, unless the employee has given 72 hours advance notice of their intention to quit, in which case the employee is entitled to their wages at the time of quitting.

At all times relevant, Labor Code § 203 provides that an employer who willfully fails to pay, without abatement or reduction, in accordance with §§ 201 and 202, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced, but the wages shall not continue for more than 30 days.

During the statutory period, when Plaintiff and certain of the Aggrieved Employees' employment relationships with Defendants terminated, Defendants failed to pay them all of their earned wages (as set forth above), immediately upon their discharge or within 72 hours thereafter. In addition, Defendants have failed to pay the waiting time penalties to which such Aggrieved Employees are lawfully entitled under Labor Code § 203.

To date, Defendants have failed to pay certain of the Aggrieved Employees all of their earned wages, overtime, accrued interest thereon, and failed to remit the Labor Code penalties to be imposed as a consequence of said violations of the Labor Code. Plaintiff will bring an action against Defendants under the PAGA to recover civil penalties as provided by California law.

Failure To Reimburse Work Related Expenses

Labor Code § 2802(a) provides, "*An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.*"

As described above, the Plaintiff and the Aggrieved Employees daily utilize or utilized their personal cell phones in the course of performing their work-related duties without being reimbursed for these work-related cell phone expenses by Defendants. Defendants have violated Labor Code § 2802 and the Plaintiff and the Aggrieved Employees are owed reimbursement of these work-related expenses incurred. Plaintiff will bring an action against Defendants under the PAGA to recover civil penalties as provided by California law.

Conclusion

In sum, as has been factually alleged, Defendants violated among other statutes and regulations Labor Code §§ 201-203, 204, 226, 226.7, 510, 512, 1174(d), 1194 (a) and 2802, and IWC No. 7. Plaintiff on her own behalf and on behalf of all similarly situated Aggrieved Employees, seeks to recover civil penalties as provided under Labor Code 2699.

Plaintiff requests the LWDA to investigate the above claims and to provide notice of the investigation under the PAGA's provisions. Alternatively, Plaintiff requests the agency inform her if it does not intend to investigate these violations so that she may bring a civil action under the PAGA for the violations alleged herein.

Should you have any questions or comments regarding the foregoing, or any aspect of this matter, please do not hesitate to contact our offices.

Sincerely,

WHITEHEAD EMPLOYMENT LAW

A handwritten signature in cursive script, reading "Meghan N. Higday".

Meghan N. Higday, Esq.

MNH/anb