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Attorneys for GLORIA GUTIERREZ,
on behalf of herself and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SANTA CLARA

GLORIA GUTIERREZ, an individual, on
behalf of the State of California and all
similarly-aggrieved employees,

Plaintiff,

vs.

BOOT BARN HOLDINGS, INC., a
California corporation; BOOT BARN, INC., a
California corporation, and DOES 1 through
100, inclusive,

Defendants.

Case No. 22CV393305

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

DEMAND FOR JURY TRIAL

1 GLORIA GUTIERREZ, an individual (“Ms. Gutierrez,” or “Plaintiff”), brings this action
2 against Defendants BOOT BARN HOLDINGS, INC., a California corporation, (“BBH”), BOOT
3 BARN, INC., a California corporation (“Boot Barn”), and DOES 1 through 100, inclusive,
4 (collectively “Defendants”) and alleges on information and belief as follows:

5 **INTRODUCTION AND FACTS**

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. Defendants operate retail stores focusing on a variety of Western clothing brands.
9 They do so in California and across the Country.

10 3. Around March 2020 through at least February 2021 and, on information and belief,
11 through the present, Defendants paid non-exempt California employees, including Plaintiff,
12 additional wages in addition to their base hourly pay. These payments include shift differential pay,
13 typically \$2 per hour, for hours worked outside of regular business hours or undesirable shifts, such
14 as Sundays and holidays. It also includes SPIFF and other forms of incentive pay which are
15 additional forms of compensation based on the employee’s or their store’s sales. Plaintiff refers to
16 these non-hourly wages collectively as “Additional Pay.”

17 4. During Plaintiff’s employment with Defendants, she took paid sick time off during
18 pay periods where she also received Additional Pay. She also received meal and rest premium
19 payments for missed, delayed, or otherwise improperly provided meal and rest breaks during pay
20 periods where she also received Additional Pay.

21 5. Pursuant to California law, sick pay and premium pay for missed meal and rest
22 periods must be paid at the employee’s “regular rate” of pay. Cal. Labor Code §§ 226.7, 246. State
23 legislatures define “regular rate” very broadly to include all remuneration for employment paid to,
24 or on behalf of, the employee, unless specifically excluded. Defendants’ Additional Pay (i.e. shift
25 differential pay, and SPIFF pay) are not gifts or discretionary bonuses. Thus, they must be included
26 in the regular rate. Yet, despite earning Additional Pay in addition to her base hourly pay, that
27 additional remuneration was not included (and/or was not fully or properly included) in the
28 calculation of Plaintiff’s sick pay or her premium pay for missed meal and rest periods. On

1 information and belief, this was all carried out through a company-wide practice and policy and
2 occurred for other non-exempt California employees.

3 6. Relatedly, Plaintiff received Additional Pay in the same pay periods that she worked
4 overtime. Boot Barn attempts to include some forms of Additional Pay in computing non-exempt
5 California employees' regular rates for overtime purposes, but it does not fully or appropriately
6 factor in all forms of Additional Pay when calculating overtime regular rates. As such, it fails to pay
7 adequate overtime wages to California workers in violations of Labor Code section 510.

8 **JURISDICTION & VENUE**

9 7. This Court has subject matter jurisdiction to hear this case because the civil penalties
10 sought herein resulting from Defendants' conduct exceeds the jurisdictional minimum of this Court.

11 8. Venue is proper pursuant to Code of Civil Procedure, section 395.5, among other
12 sections. The wrongful conduct and liability complained of in this Complaint arose, at least in part,
13 in this County as some of the transactions that are the subject of this lawsuit occurred here and
14 Defendants have conducted and continue to conduct business in this County.

15 **PARTIES**

16 9. Ms. Gutierrez is and at all relevant times was a resident of Gilroy, California (Santa
17 Clara County). Since 2019, she has been an employee of Defendants. Plaintiff's job position was as
18 a sales associate at one of Defendant's store locations in Northern California.

19 10. BBH and Boot Barn are California corporations with its principal place of business
20 in Irvine, CA. On information and belief, Defendants are authorized to carry out and do carry out
21 business in this County and is subject to personal jurisdiction in this County. On information and
22 belief, Defendants miscalculate the pay rate for employees in this State and County and are similarly-
23 aggrieved as Plaintiff.

24 11. Plaintiff does not know the true names and/or capacities, whether individual, partners,
25 or corporate, of the Defendants sued herein as DOES 1 through 100, inclusive, and for that reason
26 sues said Defendants under fictitious names. Plaintiff will seek leave to amend this Complaint when
27 the true names and capacities of these Defendants have been ascertained. Plaintiff is informed and
28

believes and thereon alleges that these Defendants are responsible in whole or in part for violation of the Labor Code sections described in this Complaint.

12. At all times mentioned, Defendants were the agents, alter egos, servants, joint venturers, joint employers, or employees for each other. Defendants acted with the consent of the other Co-Defendants and acted within the course, purpose, and scope of their agency, service, or employment. All conduct was ratified by Defendants, and each of them.

GENERAL ALLEGATIONS

13. As described above, Boot Barn fails to properly account for Additional Pay its nonexempt California employees receive when paying several forms of wages that must be paid at employees' "regular rates." This includes sick pay, meal and rest premium pay, and overtime.

14. These failures to pay wages trigger derivative penalties like failure to pay all wages due upon termination for former employees (Labor Code section 201-203) and wage statement violations for wage statements that list incorrect rates of pay, gross pay, and net pay (Labor Code sections 226 and 226.3).

15. Defendants' violations implicate multiple Labor Code sections including, but not limited to: 201, 202, 203, 210, 216, 225.5, 226, 226.2, 226.3, 226.7, 246, 510, 512, 558, 1174, 1194, and 2698.

FIRST CAUSE OF ACTION

(Against All Defendants)

Civil Penalties Under the California Private Attorneys General Act ("PAGA")

16. Plaintiff incorporates by reference every allegation contained above.

17. PAGA permits aggrieved employees, like Plaintiff, to recover civil penalties for violations of numerous Labor Code sections on behalf of the State of California. (See Lab. Code, § 2699.5.) Plaintiff is aggrieved because she suffered one or more of the above mentioned violations of the Labor Code during her tenure with Boot Barn.

18. Defendants' conduct, as alleged above, violates numerous sections of the California Labor Code, including, but not limited to, the following:

- a. Labor Code sections 201, 202, and 203, for failure to timely pay Plaintiff and other similarly-aggrieved employees all earned wages;

- b. Labor Code sections 1194 and 1197, for failure to pay Plaintiff and other similarly-aggrieved employees all earned wages;
- c. Labor Code sections 510 and 1198, for failure to compensate Plaintiff and other similarly-aggrieved employees with all required overtime pay at the proper rate;
- d. Labor Code sections 226.7 and 512, for failure to provide all required meal and rest premium pay at the proper rate to Plaintiff and other similarly-aggrieved employees;
- e. Labor Code section 246 for failure to pay sick leave wages at the proper rate of pay to Plaintiff and other similarly-aggrieved employees;
- f. Labor Code sections 226, 226.3 for failure to provide accurate wage statements to Plaintiffs and other similarly-aggrieved employees; and
- g. Labor Code sections 226, 226.2, and 1174, for failure to maintain accurate employment records related to Plaintiff and other similarly-aggrieved employees' work.

19. Plaintiff has complied with all administrative requirements and pre-conditions contained within Labor Code section 2699.3. Plaintiff's counsel electronically submitted the Initial PAGA Notice on November 9, 2021, to the Labor and Workforce Development Agency ("LWDA"). A copy of the notice was also provided to Defendants. The required 65-day period passed without any notice from the LWDA stating an intention to investigate the claims provided in the notice.

20. The submission of the LWDA Notice triggers equitable and other forms of tolling for Plaintiff's claims. Boot Barn has notice of the claims in light of the Notice which was sent to Boot Barn and its counsel.

21. In addition, Defendants and Does 1-100 may be held personally liable for civil penalties under PAGA as owners, executives, and agents if they violated or caused to be violated any of the Labor Code sections identified above.

PRAYER FOR RELIEF

Plaintiff prays for judgment against Defendants, as follows:

1. For civil penalties according to proof;
2. For costs of suit;

3. For reasonable attorneys' fees; and
4. For such other and further relief as this Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury.

Respectfully submitted:
Dated: January 14, 2022

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