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Maria Sanz

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO, CENTRAL DIVISION**

MARIA SANZ, an individual, on behalf of
herself and all other aggrieved employees

Plaintiff,

v.

STERLING JEWELERS, INC, a Delaware
corporation; SIGNET JEWELERS LIMITED, a
foreign corporation; ZALE DELAWARE, INC.,
a foreign corporation; and DOES 1 through 10,
Inclusive,

Defendants.

Case No.: 37-2022-00015148-CU-OE-CTL

**REPRESENTATIVE ACTION
COMPLAINT UNDER THE PRIVATE
ATTORNEY GENERAL ACT
("PAGA") FOR:**

1. Failure to Pay Sick Leave at the Correct Legal Rate;
2. Failure to Pay Overtime Premium Wages at the Correct Legal Rate;
3. Failure to pay Vacation Pay at the Correct Legal Rate;
4. Failure to pay Meal Break Premiums at the Correct Legal Rate;
5. Failure to Provide Meal Breaks or Compensation in Lieu Thereof;
6. Failure to Authorize and Permit Rest Beaks or Compensation in Lieu Thereof;
7. Failure to Provide a Written Commission Agreement;
8. Failure to Provide Accurate Wage Statements and Keep Adequate Records;
9. Failure to Pay all Wages due upon Termination of Employment.

1 Plaintiff Maria Sanz ("Plaintiff"), by and through her attorneys, alleges the following based
2 upon information and belief, the investigation of counsel, and personal knowledge as to the
3 allegations pertaining to herself.

4 **INTRODUCTION**

5 1. On behalf of herself and other aggrieved employees, Plaintiff brings this
6 representative action under the California Private Attorney General Act of 2004, as codified in Labor
7 Code §§ 2698, *et seq.* ("PAGA") against Defendant Sterling Jewelers Inc. ("Sterling"); Signet
8 Jewelers Limited, ("Signet"); and Does 1 through 10 inclusive (collectively "Defendants") for civil
9 penalties, interest, costs of suit and attorneys' fees, and all other appropriate relief, resulting from
10 Defendants' wage-and-hour violations and other unlawful conduct.

11 2. Defendants operate retail jewelry stores under a number of names in the State of
12 California, including, but not limited to, Jared The Galleria of Jewelry, Kay Jewelers, Zales and
13 Piercing Pagoda and employ numerous employees in those retail stores.

14 3. Employees at those retail stores are compensated through the payment of both hourly
15 wages and commissions. However, while employees regularly receive commissions, Defendants did
16 not include those amounts in their regular rate of pay when calculating overtime pay, sick and vacation
17 pay, as well as meal and rest period premiums when such premiums were actually paid. Defendants
18 also failed to provide employees with written commission agreements.

19 4. Further, Defendants regularly failed to provide employees with meal breaks, failed to
20 authorize and permit rest breaks, and failed to provide meal and rest break premiums in lieu of such
21 breaks.

22 5. Finally, Defendants failed to provide accurate wage statements and maintain adequate
23 records and failed to pay all wages owed upon termination of employment.

24 6. Upon information and belief, the above practices are still ongoing.

25 7. Plaintiff brings this action on behalf of herself and all other non-exempt employees
26 who are or were employed by Defendants at retail stores in the State of California from the period of
27 February 15, 2021 through the time of trial of this action and who have experienced one or more of
28 the violations alleged herein ("aggrieved employees").

1
2 **JURISDICTION AND VENUE**

3 8. This Court has jurisdiction over all causes of action asserted herein pursuant to the
4 California Constitution, Article VI, §10, because this case is a cause not given by statute to other
5 trial courts. The penalties sought by Plaintiff total more than this Court's jurisdictional minimum.

6 9. Plaintiff is a citizen of California because her domicile is in California.

7 10. This Court has jurisdiction over Defendants because they conduct substantial
8 business in California, employ numerous individuals in California, and have intentionally availed
9 themselves of the laws and markets of California through the operation of their business in
10 California.

11 11. Venue is proper in this Court because Defendants transact business in San Diego
12 County, and Defendants are otherwise within this Court's jurisdiction for purposes of service of
13 process. On information and belief, Defendants employ numerous individuals throughout San Diego
14 County. Furthermore, Plaintiff was employed by Defendants in San Diego County.

15 12. There is no federal question at issue here for removal under 28 U.S.C. §1331, as the
16 issues herein are based solely on California statutes and law, including the Labor Code, IWC Wage
17 Orders, and Code of Civil Procedure. Further, as a representative action under PAGA, the matter is
18 not subject for removal under 28 U.S.C. §1332(a)-(d). Plaintiff does not seek individual damages, but
19 rather civil penalties, and as such, does not seek damages on her own behalf in an amount greater than
20 \$75,000, or damages for a class in an amount greater than \$5 million.

21 **PARTIES**

22 13. Plaintiff MARIA SANZ is an individual over the age of eighteen years, and at all times
23 relevant herein was and is, a resident of the County of San Diego in the State of California.

24 14. Plaintiff worked as a non-exempt jewelry salesperson at a Jared The Galleria of
25 Jewelry ("Jared") retail store in San Diego, California, which is operated by Defendant Sterling, a
26 subsidiary of Defendant Signet. Plaintiff was employed by Defendants from in or around October
27 2013 through in or around September 30, 2021.

28 15. Defendant Sterling is a Delaware Corporation with its headquarters in the State of

1 Ohio.

2 16. Defendant Zale Delaware, Inc., is a foreign corporation.

3 17. Defendant Signet is a foreign corporation with its principal place of business in the
4 State of Ohio.

5 18. On information and belief, Defendants are doing business in the State of California,
6 including but not limited to the County of San Diego.

7 19. On information and belief, Defendants operate retail jewelry stores under a number of
8 names in the State of California, including, but not limited to, Jared The Galleria of Jewelry, Kay
9 Jewelers, Zales and Piercing Pagoda and employ numerous employees in those retail stores.

10 20. Plaintiff is ignorant to the true names and capacities of Defendants sued herein as
11 DOES 1 through 10, and therefore sue these Defendants by such fictitious names. Plaintiff will amend
12 this Complaint to allege the true names and capacities when they are ascertained.

13 21. Plaintiff believes and thereon alleges that each "Doe" Defendant is responsible in some
14 manner for the occurrences herein alleged, and Plaintiff's injuries and damages as herein alleged are
15 directly, proximately and/or legally caused by Defendants and their acts.

16 22. Plaintiffs are informed and believe and thereon allege that the aforementioned DOES
17 are somehow responsible for the acts alleged herein as the agents, employers, representatives or
18 employees of other named Defendants, and in doing the acts herein alleged were acting within the
19 scope of their agency, employment or representative capacity of said named Defendants.

20 23. The tortious acts and omissions alleged herein were performed by Defendants'
21 management level employees. Defendants allowed and/or condoned a continuing pattern of unlawful
22 practices in violation of the California Labor Code, and have caused, and will continue to cause,
23 Plaintiff's economic damage in an amount to be proven at trial.

24 **FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS**

25 24. Defendants operate retail jewelry stores under a number of names in the State of
26 California, including, but not limited to, Jared The Galleria of Jewelry, Kay Jewelers, Zales and
27 Piercing Pagoda. On information and belief, despite the numerous business names, the operations of
28 each store owned and operated by Defendants in the State of California are subject to the same

1 employment policies, practices, and procedures. All retail employees are provided with the same
2 employment manuals and, upon information and belief, their wage statements all say Sterling and/or
3 Signet.

4 25. Plaintiff began working for Defendants in or around October 2013. Throughout her
5 employment, she was a non-exempt employee and was compensated by the payment of hourly wages
6 and commissions.

7 26. When she was paid commissions, Defendants did not provide her with an explanation
8 of how those numbers were reached, but rather her wage statements listed just the type of commission
9 and the total amount she earned. As a result, Plaintiff could not determine from her wage statements
10 the basis for Defendants' payment of commissions. Further, Defendants never provided Plaintiff with
11 a written commission agreement as required by the Labor Code.

12 27. Additionally, despite paying Plaintiff commissions on a regular basis, Defendants did
13 not include such payments in their calculations of her regular rate of pay and therefore did not pay
14 Plaintiff the proper rates for overtime, sick pay and vacation pay.

15 28. Defendants also regularly failed to provide Plaintiff with timely and compliant meal
16 periods and failed to authorize or permit rest periods. Defendants also failed to provide any premium
17 payments in lieu thereof. On the rare occasions that Defendants may have paid a premium, it was not
18 paid at the proper rate of pay because Defendants did not include commissions when calculating her
19 regular rate of pay.

20 29. In or around October of 2021, Plaintiff's employment with Defendants ended.
21 Defendants failed to pay Plaintiff all money she was owed, as a result of not including commissions
22 in the regular rate of pay as alleged above.

23 30. Plaintiff is informed and believes that the above practices she experienced were not
24 unique to her but rather were companywide policies and practices at all retail stores in the State of
25 California and were suffered by all non-exempt employees.

26 31. Plaintiff is informed and believes that the unlawful wage and hour policies described
27 in this action are set centrally and are applicable through out the fleet of stores and jewelry selling
28 operations across California.

1 **PRIVATE ATTORNEY GENERAL ACT ALLEGATIONS**

2 32. Plaintiff was employed by Defendants during the statutory PAGA period and was
3 aggrieved by one or more of the violations of the California Labor Code described in this complaint.

4 33. Plaintiff was employed by Defendants when Defendants' policies violated California
5 wage and hour law during the statutory period.

6 34. Plaintiff, as an aggrieved employee, brings this action on her own behalf and on behalf
7 of other aggrieved current, former, and future employees of Defendants who work(ed) for Defendants
8 in the state of California, and who are/were subjected to the policies of the Defendants.

9 35. Defendants' systematic pattern of wage and hour violations toward Plaintiff and other
10 aggrieved employees in California include, *inter alia*:

- 11 a. Failure to Pay Sick Leave at the Correct Legal Rate;
12 b. Failure to Pay Overtime Premium Wages at the Correct Legal Rate;
13 c. Failure to pay Vacation Pay at the Correct Legal Rate;
14 d. Failure to pay Meal Break Premiums at the Correct Legal Rate;
15 e. Failure to Provide Meal Breaks or Compensation in Lieu Thereof;
16 f. Failure to Authorize and Permit Rest Beaks or Compensation in Lieu Thereof;
17 g. Failure to Provide a Written Commission Agreement;
18 h. Failure to Provide Accurate Wage Statements and Keep Adequate Records;
19 i. Failure to Pay all Wages due upon Termination of employment.

20 **Failure to Pay Sick Leave at the Correct Legal Rate:**

21 36. Pursuant to the California Healthy Workplaces Healthy Families Act, ARTICLE 1.5.
22 'Paid Sick Days' [sections §§ 245-249] requires employers to provide paid sick leave to employees.
23 Labor Code § 246(l)(1)-(2) mandates that sick leave be calculated in the same fashion that overtime
24 base rates are calculated for the pay period sick leave is used, or in a 90-day period in which the
25 sick leave is used. In either case, the rate should be calculated by dividing the sum of all wages by
26 total hours. However, Defendants refuse to include all wages earned (including commissions) in the
27 calculations, and instead pays sick leave at the employee's simple hourly rates. Plaintiff and other
28 aggrieved employees are therefore owed compensation for these improperly paid sick time hours.

1 37. In failing to pay the proper sick leave rate, Defendants also violated the requirement
2 under Labor Code § 246(i) to provide with the employee wage statements the number of hours
3 earned and used at the appropriate and accurate rates.

4 **Failure to Pay Overtime Premium Wages at the Correct Legal Rate:**

5 38. Defendants have a policy of requiring retail employees to work over eight hours in a
6 day and not paying overtime.

7 39. The fundamental right of an employee in the state of California to be paid wages in a
8 timely manner for their work is established by Labor Code § 204, while Labor Code § 1197 requires
9 employers to pay their employees the fixed minimum wage as set by the commission.

10 40. Pursuant to Labor Code § 200(a), wages includes all amounts for labor performed by
11 employees of every description, whether the amount is fixed or ascertained by the standard of time,
12 task, piece, commission basis, or other method of calculation. An employee is permitted to recover
13 any unpaid balance of the minimum wage or overtime compensation not paid for all hours worked
14 under Labor Code § 1194.

15 41. Labor Code section 510, and 1198 require overtime be paid after 8 hours in a day.
16 Wage Order 7, at item 20 provides for the same requirement. Labor Code section 1197.1 provides
17 penalties for failure to pay hours at rates less than allowed by the law. Labor Code § 210 provides
18 for an additional civil penalty, independent and apart from any other penalty.

19 42. Retail employees including Plaintiff have been and continue to be denied overtime
20 wages due to them and are therefore aggrieved employees.

21 **Failure to pay Vacation Pay at the Correct Legal Rate:**

22 43. Labor Code § 227.3 provides that “Unless otherwise provided by a collective-
23 bargaining agreement, whenever a contract of employment or employer policy provides for paid
24 vacations, and an employee is terminated without having taken off his vested vacation time, all
25 vested vacation shall be paid to him as wages at his final rate in accordance with such contract of
26 employment or employer policy respecting eligibility or time served; provided, however, that an
27 employment contract or employer policy shall not provide for forfeiture of vested vacation time
28 upon termination. The Labor Commissioner or a designated representative, in the resolution of any

1 dispute with regard to vested vacation time, shall apply the principles of equity and fairness.”

2 44. Plaintiff and certain other aggrieved employees have either resigned from
3 Defendants’ employ or had their employment terminated by Defendants. At all relevant times,
4 Defendants have had an established written policy, practice, or agreement to provide paid vacation
5 to their retail store employees employed in the State of California wherein employees receive
6 additional compensation in the form of vacation time, which they can use to take time off from
7 work with compensation. Upon resignation or termination, Defendants paid Plaintiff and the other
8 aggrieved employees vested vacation time at an hourly rate of pay that was lower than their final
9 regular hourly rates of pay, because Defendants failed to include earned commissions when
10 calculating the regular rate of pay, in violation of Labor Code § 227.3.

11 45. Plaintiff and other aggrieved employees are entitled to civil penalties pursuant to
12 Labor Code § 2699(f)(2) for Defendants’ failure to pay such vested, but unused vacation time
13 compensation at the correct rate upon resignation or termination, as set forth above, in violation of
14 Labor Code § 227.3.

15 **Failure to pay Meal Break Premiums at the Correct Legal Rate;**

16 46. Labor Code § 512(a) states, “An employer may not employ an employee for a work
17 period of more than five hours per day without providing the employee with a meal period of not
18 less than 30 minutes, except that if the total work period per day of the employee is no more than
19 six hours, the meal period may be waived by mutual consent of both the employer and employee.
20 An employer may not employ an employee for a work period of more than 10 hours per day without
21 providing the employee with a second meal period of not less than 30 minutes except that if the
22 total hours worked is no more than 12 hours, the second meal period may be waived by mutual
23 consent of the employer and the employee only if the first meal period was not waived.”

24 47. Section (A) of the “Meal Period” provision of IWC Wage Order 7 states, “No
25 employer shall employ any person for a work period of more than five (5) hours without a meal
26 period of not less than 30 minutes, except that when a work period of not more than six (6) hours
27 will complete the day’s work the meal period may be waived by mutual consent of the employer
28 and the employee. An employer may not employ an employee for a work period of more than ten

1 (10) hours per day without providing the employee with a second meal period of not less than 30
2 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may
3 be waived by mutual consent of the employer and the employee only if the first meal period was not
4 waived. Unless the employee is relieved of all duty during a 30 minute meal period, the meal
5 period shall be considered and ‘on duty’ meal period and counted as time worked.’” Section (D)
6 states “If an employer fails to provide an employee a meal period in accordance with the applicable
7 provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee’s
8 regular rate of compensation for each work day that the meal period is not provided.”

9 48. Labor Code §1198 states “The maximum hours of work and the standard conditions
10 of labor fixed by the commission shall be the maximum hours of work and the standard conditions
11 of labor for employees. The employment of any employee for longer hours than those fixed by the
12 order or under conditions of labor prohibited by the order is unlawful.”

13 49. Labor Code § 226.7 states: “(b) An employer shall not require an employee to work
14 during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable
15 regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and
16 Health Standards Board, or the Division of Occupational Safety and Health.”

17 50. On July 15, 2021, the California Supreme Court held in *Ferra v. Loews Hollywood*
18 *Hotel, LLC*, (2021) 11 Cal. 5th 858, that the term “regular rate of compensation” under § 226.7(c) is
19 equivalent to the term “regular rate of pay” under Labor code § 510(a). Accordingly, the meal and
20 rest break premiums owed must be paid at the same rate as would be required under Labor Code §
21 510(a). On the rare occasions that Defendants actually paid meal break premiums, those premiums
22 were only paid at the basic hourly rate and did not account for any commissions paid. Accordingly,
23 Defendants violated Labor Code § 226.7(c).

24 51. Labor Code § 558 states: “(a) Any employer or other person acting on behalf of an
25 employer who violates, or causes to be violated, a section of this chapter or any provision regulating
26 hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil
27 penalty as follows:

28 (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each

1 pay period for which the employee was underpaid in addition to an amount sufficient
2 to recover underpaid wages.

3 (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid
4 employee for each pay period for which the employee was underpaid in addition to
5 an amount sufficient to recover underpaid wages.”

6 **Failure to Provide Meal Breaks or Compensation in Lieu Thereof:**

7 52. Pursuant to Labor Code § 512, no employer shall employ any person for a work
8 period in excess of five (5) hours without providing a meal period of at least thirty (30) minutes. *See*
9 *also* IWC Wage Order No. 7, item 11. During this meal period of no less than thirty (30) minutes,
10 the employer must completely relinquish any and all control over the employee and the employee
11 must not engage in any work-related activity for the employer. *Brinker Restaurant Corp. v.*
12 *Superior Court* (2012) 53 Cal.4th 1004, 1040. If the employee performs any work for the employer
13 during the thirty (30) minute meal period, the employee has not been provided a meal period in
14 accordance with the law. *Id.* Additionally, California law does not permit an employer to employ an
15 individual for a work period in excess of ten (10) hours without providing a second meal period of
16 at least thirty (30) minutes. Labor Code § 512; IWC Wage Order No. 7, item 11. If the employer
17 fails to provide an employee with a legally compliant meal period, the employer shall pay the
18 employee one additional hour of pay at the employee's regular rate of compensation for each
19 workday that the meal period was not provided. Labor Code § 226.7; IWC Wage Order 7, item 11.

20 53. Plaintiff contends that as a policy, practice, guideline and/or procedure, Defendants
21 failed to provide meal breaks to their employees. Specifically, Defendants required workers to stay
22 on duty, answer work calls, help customers and be prepared to interrupt breaks to execute work
23 orders at all times during the day, without any exception for rest or meal breaks. Furthermore, when
24 meal periods were provided, they were often after the end of the fifth hour of work. As such,
25 Plaintiff and other aggrieved employees were not relieved of duty and not provided legally adequate
26 meal breaks. Consequently, Plaintiff is entitled to receive one additional hour of pay at her regular
27 rate of compensation for each day a compliant rest or meal period was not provided.

28 54. Labor Code § 558 states: “(a) Any employer or other person acting on behalf of an

1 employer who violates, or causes to be violated, a section of this chapter or any provision regulating
2 hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil
3 penalty as follows:

4 (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each
5 pay period for which the employee was underpaid in addition to an amount sufficient
6 to recover underpaid wages.

7 (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid
8 employee for each pay period for which the employee was underpaid in addition to
9 an amount sufficient to recover underpaid wages.”

10 **Failure to Authorize and Permit Rest Breaks or Compensation in Lieu Thereof:**

11 55. IWC Wage Order 7, item 12 requires employers to authorize and permit off-duty rest
12 periods during which an employee must be relieved of any and all work-related duties. *Augustus v.*
13 *ABM Security Services, Inc.* (2016) 2 Cal.5th 257, 269. Additionally, a lawful off-duty rest period is
14 not provided where an employer fails to relinquish control over how employees spend their time. *Id.*
15 Under Labor Code § 226.7, an employer is required to pay an employee one (1) additional hour of
16 pay at the employee’s regular rate of pay for each workday in which a lawful rest period was not
17 provided. *See also* IWC Wage Order 7.

18 56. As set forth above, Defendants consistently required Plaintiff and other current and
19 former aggrieved employees to work through rest periods. As such, employees were not relieved of
20 all duty on their scheduled breaks. For these reasons, Plaintiff and aggrieved employees of
21 Defendants have and are being denied legally sufficient rest breaks.

22 57. Labor Code section 558 states: “(a) Any employer or other person acting on behalf
23 of an employer who violates, or causes to be violated, a section of this chapter or any provision
24 regulating hours and days of work in any order of the Industrial Welfare Commission shall be
25 subject to a civil penalty as follows:

26 (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each
27 pay period for which the employee was underpaid in addition to an amount sufficient
28 to recover underpaid wages.

1 (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid
2 employee for each pay period for which the employee was underpaid in addition to
3 an amount sufficient to recover underpaid wages.”

4 **Failure to Provide a Written Commission Agreement:**

5 58. Labor Code § 2751 states in pertinent part that “(a)Whenever an employer enters into
6 a contract of employment with an employee for services to be rendered within this state and the
7 contemplated method of payment of the employee involves commissions, the contract shall be in
8 writing and shall set forth the method by which the commissions shall be computed and paid. (b)
9 The employer shall give a signed copy of the contract to every employee who is a party thereto and
10 shall obtain a signed receipt for the contract from each employee.”

11 59. Plaintiff and other aggrieved employees were regularly paid commissions on sales as
12 part of their compensation. However, in violation of Labor Code § 2751, Defendants did not
13 provide Plaintiff and other aggrieved employees with signed written contracts setting forth the
14 method by which the commissions shall be computed and paid. As a result, Plaintiff and other
15 aggrieved employees were harmed, in part because they were unable to determine whether
16 Defendants were properly paying them all commissions that they were entitled to.

17 **Defendants’ Failure to Provide Accurate Wage Statements:**

18 60. Labor Code § 226(a) states in pertinent part that every employer shall provide an
19 accurate itemized statement in writing with respect to each one of its employees showing: 1) gross
20 wages earned; 2) total hours worked by an employee, except for any employee whose compensation
21 is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of
22 Section 515 or any applicable order of the Industrial Welfare Commission; (3) the number of piece
23 rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; (4) all
24 deductions, provided that all deductions made on written orders of the employee may be aggregated
25 and shown as one item; (5) net wages earned; (6) the inclusive dates of the period for which the
26 employee is paid; (7) the name of the employee and the last four digits of his or her social security
27 number or an employee identification number other than a social security number; (8) the name and
28 address of the legal entity that is the employer...; and (9) all applicable hourly rates in effect during

1 the pay period and the corresponding number of hours worked at each hourly rate by the employee.

2 61. Labor Code § 226.3 provides that “Any employer who violates subdivision (a) of
3 Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per
4 employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each
5 violation in a subsequent citation for which the employer fails to provide the employee a wage
6 deduction statement or fails to keep the records required in subdivision (a) of Section 226.”

7 62. In addition, Labor Code § 226(e) imposes a penalty of the greater of all actual damages
8 or \$50 for the initial pay period in which a violation occurs and \$100 per employee for each violation
9 in a subsequent pay period, not exceeding an aggregate penalty of \$4,000, and Plaintiff is entitled to
10 an award of costs and reasonable attorney's fees.

11 63. Section (B) of the “Records” provision of the applicable IWC Wage Order states that
12 “Every employer shall semimonthly or at the time of each payment of wages furnish each employee,
13 either as a detachable part of the check, draft, or voucher paying the employee’s wages, or separately,
14 an itemized statement in writing showing: (1) all deductions; (2) the inclusive dates of the period for
15 which the employee is paid; (3) the name of the employee or the employee’s social security number;
16 and (4) the name of the employer, provided all deductions made on written orders of the employee
17 may be aggregated and shown as one item.”

18 64. Labor Code § 1174(d) provides that an employer must keep, at a central location in
19 the state or at the plants or establishments at which employees are employed, payroll records showing
20 the hours worked daily by and the wages paid to, employees employed at the respective
21 establishments. These records shall be kept on file for not less than three years. Labor Code § 1174.5
22 provides for a civil penalty of five hundred dollars (\$500) for an employer who willfully fails to
23 maintain the records pursuant to Labor Code section 1174(d).

24 65. Sections (7)(A)(4) and (5) of the “Records” provision of the applicable IWC Wage
25 Order provides that employers shall keep accurate information with respect to each employee,
26 including total wages paid each payroll period, total hours worked during the payroll period, and
27 applicable rates of pay, as well as time records showing when each employee begins and ends each
28 work period. The time records must also show meal periods, split shift intervals, and total daily hours

1 worked.

2 66. Defendants failed to maintain records as set forth in § 1174 of the Labor Code and the
3 “Records” section of IWC Wage Order 7 including but not limited to, accurately recording applicable
4 rates of pay. Due to Defendants not paying at the proper legal rates, Defendants do not record proper
5 hours and wages, and do not provide legally compliant wage statements accurately accounting for
6 hours, wages, deductions, etc.

7 67. In addition, on those wage statements that included commission payments, the
8 commissions were only itemized by type of commission earned and the amount. Not included in the
9 wage statements are the total amount sold during the pay period, or the percentage earned per sale.
10 As a result, Plaintiff could not determine the basis of her commission payments by looking at the face
11 of the wage statement, as required by Labor Code § 226(a).

12 **Defendants’ Failure to Pay All Wages Due at the Time of the Termination of Employment:**

13 68. Labor Code § 201 states “If an employer discharges an employee, the wages earned
14 and unpaid at the time of discharge are due and payable immediately.”

15 69. Labor Code § 202 states “If an employee not having a written contract for a definite
16 period quits his or her employment, his or her wages shall become due and payable not later than 72
17 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to
18 quit, in which case the employee is entitled to his or her wages at the time of quitting.”

19 70. Labor Code § 203(a) states, in relevant part; “If an employer willfully fails to pay,
20 without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 202, and 205.5, any
21 wages of an employee who is discharged or who quits, the wages of the employee shall continue as a
22 penalty from the due date thereof at the same rate until paid or until an action therefore is commenced;
23 but the wages shall not continue for more than 30 days.”

24 71. Labor Code § 204(a) states in pertinent part “All wages... earned by any person in any
25 employment are due and payable twice during each calendar month, on days designated in advance
26 by the employer as the regular paydays.”

27 72. Labor Code § 210(a) imposes a civil penalty for violation of Labor Code § 204 of one
28 hundred dollars (\$100) for the initial violation for each failure to pay each employee and two hundred

1 dollars (\$200) for each subsequent violation, plus 25 percent of the amount unlawfully withheld.

2 73. The “Minimum Wages” section of the applicable IWC Wage Order provides every
3 employer shall pay to each employee, on the established payday for the period involved, not less than
4 the applicable minimum wage for all hours worked in the payroll period.

5 74. Due to Defendants not paying correct legal rates as alleged above, Defendants do not
6 pay all wages. In addition, Defendants fail to pay meal and rest break premiums. Defendants failed
7 to pay Plaintiff all minimum, regular, overtime, and meal and rest period wages due and owing during
8 and upon termination of employment. Defendants willfully failed to pay all wages when required by
9 §§ 201 and 202 of the Labor Code. Therefore, Defendants owe waiting time penalties to all affected
10 employees including Plaintiff.

11 **FIRST CAUSE OF ACTION**

12 **PRIVATE ATTORNEY GENERAL ACT**

13 **(Against All Defendants)**

14 **[Cal. Labor Code §§ 2698-2699.5]**

15 75. Plaintiff re-alleges and incorporates by reference each and every allegation contained
16 in the preceding and subsequent paragraphs as though fully set forth herein.

17 76. Plaintiff is an “aggrieved employee” within the meaning of California Labor Code §
18 2699(c), and a proper representative to bring a civil action on behalf of herself and other current and
19 former employees of Defendants pursuant to the procedures specified in California Labor Code
20 §2699.3, because Plaintiff was employed by Defendants and the alleged violations of the California
21 Labor Code were committed against Plaintiff.

22 77. Pursuant to the PAGA, Labor Code §§ 2698-2699.5, Plaintiff seeks to recover civil
23 penalties, including but not limited to penalties under California Labor Code §§ 2699, 203, 210,
24 248.5, 558, 1197.1 and the applicable IWC Wage Order, from Defendants for the violations set forth
25 above, including but not limited to violations of California Labor Code §§ 200, 201, 202, 203, 204,
26 210, 226, 226.3, 226.7, 227.3, 510, 512, 558, 1174, 1174.5, 1175, 1194, 1194.2, 1197, 1197.1, and
27 1198.

28 78. Plaintiff seeks civil penalties pursuant to the PAGA for violations of the Labor Code,

1 including:

- 2 a. Failure to Pay Sick Leave at the Correct Legal Rate (Labor Code §§ 246(l)(1)-(2)
- 3 and 248.5);
- 4 b. Failure to Pay Overtime Premium Wages (Labor Code §§ 200, 204, 210, 510, 558,
- 5 1194, 1194.2, 1197, 1197.1 and 1198);
- 6 c. Failure to pay Vacation Pay at the Correct Legal Rate (Labor Code §§ 227.3);
- 7 d. Failure to pay Meal Break Premiums at the Correct Legal Rate (Labor Code §§
- 8 226.7, 512(a), 558, 1198, and IWC Wage Order 7);
- 9 e. Failure to Provide Meal Breaks (Labor Code §§ 226.7, 512, 558, and IWC Wage
- 10 Order 7);
- 11 f. Failure to Authorize and Permit Rest Breaks (Labor Code §§ 226.7, 558, and IWC
- 12 Wage Order 7);
- 13 g. Failure to Provide a Written Commission Agreement (Labor Code § 2751);
- 14 h. Failure to provide accurate wage statements (Labor Code §§ 226(a), 226(e)(1),
- 15 226.3, 1174, 1174.5, and the “Records” Section of the IWC Wage Order 7); and
- 16 i. Failure to pay all wages due upon termination of the employment relationship (Labor
- 17 Code §§ 201, 202, 203, 204, 1198, 2699 et seq., and the "Minimum Wages" Section
- 18 of IWC Wage Order 7).

19 79. Plaintiff is also entitled to an award of reasonable attorneys' fees and costs pursuant
20 to California Labor Code § 2699(g)(1).

21 80. Plaintiff has satisfied the requirements of Labor Code § 2699.3. On February 15th,
22 2022, Plaintiff sent notice to the California Labor and Workforce Development Agency (LWDA)
23 notifying them of the specific violations and the facts and theories supporting those violations.
24 Plaintiff also provided Defendants notice of this “PAGA Letter” by certified mail. Sixty-five days
25 have elapsed since Plaintiff notified the LWDA, and the LWDA has not provided notice that it
26 intends to investigate the claims.

27 81. Further, for certain violations, Labor Code § 2699.3 provides that “the employer may
28 cure the alleged violation within 33 calendar days of the postmark date of the notice sent by the

1 aggrieved employee or representative. The employer shall give written notice within that period of
2 time by certified mail to the aggrieved employee or representative and by online filing with the
3 agency if the alleged violation is cured, including a description of actions taken, and no civil action
4 pursuant to Section 2699 may commence. If the alleged violation is not cured within the 33-day
5 period, the employee may commence a civil action pursuant to Section 2699.” Lab. Code, §
6 2699.3(c)(2)(A). Labor Code § 2699(d) states that “[f]or purposes of this part, ‘cure’ means that the
7 employer abates each violation alleged by any aggrieved employee, the employer is in compliance
8 with the underlying statutes as specified in the notice required by this part, and any aggrieved
9 employee is made whole. A violation of paragraph (6) or (8) of subdivision (a) of Section 226 shall
10 only be considered cured upon a showing that the employer has provided a fully compliant,
11 itemized wage statement to each aggrieved employee for each pay period for the three-year period
12 prior to the date of the written notice sent pursuant to paragraph (1) of subdivision (c) of Section
13 2699.3.” Lab. Code, § 2699(d). Plaintiff has not received notice from Defendants that any of the
14 alleged violations were cured within the statutory period. Plaintiff has, therefore, exhausted her
15 administrative remedies as required by Labor Code §2699.3.

16 82. Attached as Exhibit 1 to this Complaint is Plaintiff’s PAGA Letter.

17 **WHEREFORE** Plaintiff prays for the following relief:

- 18 1. For civil penalties pursuant to the PAGA (Labor Code 2698 et seq.);
- 19 2. For costs of suit and attorneys’ fees as permitted by law, including those available
20 pursuant to Labor Code section 2699(g);
- 21 3. For an award of interest, including prejudgment interest, at the legal rate as permitted
22 by law;
- 23 4. For such other and further relief as the Court deems proper and just under all the
24 circumstances.

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28 ///

1 DATED: April 22, 2022

BEN TRAVIS LAW, APC

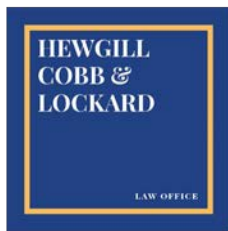
2 **HEWGILL COBB & LOCKARD, APC**

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Justin Hewgill, Esq.
Attorneys for Plaintiff

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EXHIBIT 1



HEWGILL, COBB & LOCKARD, APC
1620 FIFTH AVENUE, SUITE 325
SAN DIEGO, CA 92101
P: (619) 432-2520 | F: (619) 377-6026
HCL-LAWFIRM.COM

February 11, 2022

Via LWDA Website:

Labor & Workforce Development Agency
Attn: PAGA Administrator
1515 Clay Street, Suite 801
Oakland, CA 94612

Re: Maria Sanz v. Sterling Jewelers Inc., Signet Jewelers Limited and Does 1-10; Written Notice Under Labor Code § 2699.3

Dear PAGA Administrator:

My firm represents Maria Sanz ("Claimant"), who was a non-exempt employee, working at a Jared The Galleria of Jewelry ("Jared") retail store in San Diego, California, which is operated by Sterling Jewelers Inc. ("Sterling") a subsidiary of Signet Jewelers Limited ("Signet") (hereafter Sterling, Signet and Does 1-10 are referred to as Defendants).

This letter shall serve as my client's written notice to the Labor and Workforce Development Agency of the Labor Code violations she claims Defendants committed against her and all other current and former non-exempt retail store employees of Defendants in California. My client provides this written notice in accordance with the Labor Code Private Attorneys General Act of 2004 ("PAGA"), Labor Code §§ 2698, et seq. My client desires to file a civil action to enforce her rights under the Labor Code and seek compensation accordingly. Pursuant to Labor Code § 2699, and by way of this letter, my client also intends to represent all other current and former non-exempt employees of Defendants in California who have suffered at least one of the violations described herein during the relevant period.

A copy of this letter, along with the \$75.00 filing fee is being uploaded on the LWDA's website for this purpose contemporaneously with the certified mailing of this letter to Defendants.

FACTUAL BACKGROUND

Defendants Sterling and Signet operate retail jewelry stores under a number of names in the State of California, including, but not limited to, Jared The Galleria of Jewelry, Kay Jewelers, Zales and Piercing Pagoda. Despite the numerous business names, the operations of each store owned and operated by Sterling and Signet in the State of California are subject to the same employment policies, practices, and procedures. All retail employees are provided with the same employment manuals and, upon information and belief, their wage statements all say Sterling and/or Signet.

Claimant worked as a non-exempt jewelry salesperson at all relevant times. Claimant worked for Defendants from on or around October 2013 through on or around October 2021.

Defendants compensated Claimant at an hourly rate of pay. Claimant's pay started at \$10 per hour and she received raises throughout her employment, with her hourly rate upon termination at \$21 per hour. Defendants also compensated Claimant on a regular basis with commissions on sales.

Claimant worked five days a week during most weeks. Claimant regularly worked more than eight hours a day and more than 40 hours a week.

Defendants denied Claimant and other non-exempt employees in California specific rights afforded to them under the California Labor Code, and the applicable Industrial Welfare Commission Wage Order ("IWC Wage Order"). For example, Defendants failed to authorize and permit Claimant and similarly situated employees to take legally mandated rest breaks by failing to relieve them of all work-related duties during rest breaks. Similarly, Defendants failed to provide uninterrupted meal breaks, and failed to provide a second meal break when Claimant and similarly situated employees worked shifts of 10 or more hours.

Furthermore, despite Claimant and other aggrieved employees regularly earning commissions, Defendants did not include those commissions in the calculation of their regular rates of pay. Therefore, Defendants did not pay Claimant and other aggrieved employees overtime pay, sick and vacation pay and meal and rest break premiums at the correct hourly rates. Derivatively, Defendants failed to pay Claimant and similarly situated

employees all wages owed upon termination of employment and failed to and continues to fail to provide accurate wage statements and maintain accurate records as required by California law.

FACUAL BASES & LEGAL THEORIES

SUPPORTING ALLEGED VIOLATIONS OF THE LABOR CODE

Claimant alleges that Defendants' policies, procedures and workplace culture caused various and wide-ranging labor code provision violations, including but not limited to Labor Code §§ 200, 201, 202, 203, 204, 210, 226, 226.3, 226.7, 227.3, 510, 512, 558, 1174, 1174.5, 1175, 1194, 1194.2, 1197, 1197.1, and 1198.

1. Defendants failed to pay Claimant and similarly situated employees paid sick leave at the correct legal rate (Violation of Labor Code §§ 246(l)(1)-(2) and 248.5).

California Healthy Workplaces Healthy Families Act, ARTICLE 1.5. 'Paid Sick Days' [sections §§ 245-249] requires employers to provide paid sick leave to employees. Labor Code § 246(l)(1)-(2) mandates that sick leave be calculated in the same fashion that overtime base rates are calculated for the pay period sick leave is used, or in a 90-day period in which the sick leave is used. In either case, the rate should be calculated by dividing the sum of all wages by total hours. However, Defendants refuse to include all wages earned (including commissions) in the calculations, and instead pays sick leave at the employee's simple hourly rates. Claimant and similarly situated employees are therefore owed compensation for these improperly paid sick time hours.

In failing to pay the proper sick leave rate, Defendants also violated the requirement under Labor Code § 246(i) to provide with the employee wage statements the number of hours earned and used at the appropriate and accurate rates.

Claimant will seek all available remedies, including PAGA penalties as provided for by California law.

2. Defendants failed to pay Claimant and similarly situated employees overtime premium wages at the correct legal rate (Violation of Labor Code §§ 200, 204, 210, 510, 1194, 1194.2, 1197, 1197.1 and 1198).

The fundamental right of an employee in the state of California to be paid wages in a timely manner for their work is established by Labor Code § 204, while Labor Code § 1197 requires employers to pay their employees the fixed minimum wage as set by the commission. Pursuant to Labor Code § 1198, it is unlawful to employ persons for more than eight hours per day or forty hours per workweek without compensating them at the rate of pay either time and one half or two times that person's regular rate of pay depending on the number of hours worked. Pursuant to Labor Code § 200(a), wages includes all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis, or other method of calculation. An employee is permitted to recover any unpaid balance of the minimum wage or overtime compensation not paid for all hours worked under Labor Code § 1194. As required by Labor Code § 1197.1, an employer must pay a civil penalty if it causes an employee to be paid a wage lower than that of the fixed minimum. *See also* IWC Wage Order 7, item 20. Labor Code § 210 provides for an additional civil penalty, independent and apart from any other penalty.

An employee's "regular rate of pay" for purposes of Labor Code § 510 and the IWC wage orders is not the same as the employee's straight time rate (i.e., his or her normal hourly wage rate). Regular rate of pay, which can change from pay period to pay period, includes adjustments to the straight time rate, reflecting, among other things, shift differentials and the per-hour value of any non-hourly compensation the employee has earned. *Alvarado v Dart* (2019) 4 Cal 5th 542. Defendants, however, do not comply with the law by including commissions in the calculation of the regular rate of pay. Rather, they paid Claimant and other aggrieved employees overtime pay based on their basic hourly rates. Claimant and similarly situated employees are owed unpaid overtime premiums.

Labor Code § 558 states: "(a) Any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows:

(1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.

(2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.”

Claimant will seek all available remedies, including PAGA penalties as provided for by California law.

3. Defendants failed to pay Claimant and similarly situated employees vacation pay at the correct and legal “regular rate of pay.” (Violation of Labor Code § 227.3).

Labor Code § 227.3 provides that “Unless otherwise provided by a collective-bargaining agreement, whenever a contract of employment or employer policy provides for paid vacations, and an employee is terminated without having taken off his vested vacation time, all vested vacation shall be paid to him as wages at his final rate in accordance with such contract of employment or employer policy respecting eligibility or time served; provided, however, that an employment contract or employer policy shall not provide for forfeiture of vested vacation time upon termination. The Labor Commissioner or a designated representative, in the resolution of any dispute with regard to vested vacation time, shall apply the principles of equity and fairness.”

Claimant and certain other Aggrieved Employees have either resigned from Defendants’ employ or had their employment terminated by Defendants. At all relevant times, Defendants have had an established written policy, practice, or agreement to provide paid vacation to their retail store employees employed in the State of California wherein employees receive additional compensation in the form of vacation time, which they can use to take time off from work with compensation. Upon resignation or termination, Defendants paid Claimant and the other Aggrieved Employees vested vacation time at an hourly rate of pay that was lower than their final regular hourly rates of pay, because Defendants failed to include earned commissions when calculating the regular rate of pay, in violation of Labor Code § 227.3.

Claimant and other aggrieved employees are entitled to civil penalties pursuant to Labor Code § 2699(f)(2) for Defendant's failure to pay such vested, but unused vacation time compensation at the correct rate upon resignation or termination, as set forth above, in violation of Labor Code § 227.3.

Claimant will seek all available remedies, including PAGA penalties as provided for by California law.

4. Defendants failed to pay Claimant and similarly situated employees missed meal break premiums at the correct legal "regular rate of pay."

Labor Code § 512(a) states, "An employer may 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 employer may 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."

Section (A) of the "Meal Period" provision of IWC Wage Order 7 states, "No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee. An employer may not employ an employee for a work period of more than ten (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. Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered and 'on duty' meal period and counted as time worked.'" Section (D) states "If an employer fails to provide an employee a meal 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 work day that the meal period is not provided."

Labor Code §1198 states "The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful."

Labor Code § 226.7 states: "(b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health."

On July 15, 2021, the California Supreme Court held in *Ferra v. Loews Hollywood Hotel, LLC*, (2021) 11 Cal. 5th 858, that the term "regular rate of compensation" under § 226.7(c) is equivalent to the term "regular rate of pay" under Labor code § 510(a). Accordingly, the meal and rest break premiums owed must be paid at the same rate as would be required under Labor Code § 510(a). On the rare occasions that Defendants actually paid meal break premiums, those premiums were only paid at the basic hourly rate and did not account for any commissions paid. Accordingly, Defendants violated Labor Code § 226.7(c).

Labor Code § 558 states: "(a) Any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows:

- (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.

(2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.”

Claimant will seek all available remedies, including PAGA penalties as provided for by California law.

5. Defendants refused and failed to provide legally compliant meal periods or compensation in lieu thereof (Violation of Labor Code §§ 226.7 and 512 and IWC Wage Order #7-2001).

Pursuant to Labor Code § 512, no employer shall employ any person for a work period in excess of five (5) hours without providing a meal period of at least thirty (30) minutes. *See also* IWC Wage Order No. 7, item 11. During this meal period of no less than thirty (30) minutes, the employer must completely relinquish any and all control over the employee and the employee must not engage in any work-related activity for the employer. *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1040. If the employee performs any work for the employer during the thirty (30) minute meal period, the employee has not been provided a meal period in accordance with the law. *Id.* Additionally, California law does not permit an employer to employ an individual for a work period in excess of ten (10) hours without providing a second meal period of at least thirty (30) minutes. Labor Code § 512; IWC Wage Order No. 7, item 11. If the employer fails to provide an employee with a legally compliant meal period, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal period was not provided. Labor Code § 226.7; IWC Wage Order 7, item 11.

Claimant contends that as a policy, practice, guideline and/or procedure, Defendants failed to provide meal breaks to their employees. Specifically, Defendants required workers to stay on duty, answer work calls, help customers and be prepared to interrupt breaks to execute work orders at all times during the day, without any exception for rest or meal breaks. Furthermore, when meal periods were provided, they were often

after the end of the fifth hour of work. As such, Claimant and similarly situated employees were not relieved of duty and not provided legally adequate meal breaks. Consequently, Claimant is entitled to receive one additional hour of pay at her regular rate of compensation for each day a compliant rest or meal period was not provided.

Labor Code § 558 states: “(a) Any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows:

- (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.
- (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.”

Claimant will seek all available remedies, including PAGA penalties as provided for by California law.

6. Defendants refused and failed to authorize and permit legally compliant rest periods or compensation in lieu thereof (Violation of Labor Code § 226.7 and IWC Wage Order 7).

IWC Wage Order 7, item 12 requires employers to authorize and permit off-duty rest periods during which an employee must be relieved of any and all work-related duties. *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, 269. Additionally, a lawful off-duty rest period is not provided where an employer fails to relinquish control over how employees spend their time. *Id.* Under Labor Code § 226.7, an employer is required to pay an employee one (1) additional hour of pay at the employee’s regular rate of pay for each workday in which a lawful rest period was not provided. *See also* IWC Wage Order 7.

As set forth above, Defendants consistently required Claimant and other current

and former aggrieved employees to work through rest periods. As such, employees were not relieved of all duty on their scheduled breaks. For these reasons, Claimant and similarly situated employees of Defendants have and are being denied legally sufficient rest breaks.

Labor Code section 558 states: “(a) Any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows:

- (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.
- (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.”

Claimant will seek all available remedies, including PAGA penalties as provided for by California law.

7. Defendants failed to provide a written commission agreement. (Violation of Labor Code § 2751).

Labor Code § 2751 states in pertinent part that “(a) Whenever an employer enters into a contract of employment with an employee for services to be rendered within this state and the contemplated method of payment of the employee involves commissions, the contract shall be in writing and shall set forth the method by which the commissions shall be computed and paid. (b) The employer shall give a signed copy of the contract to every employee who is a party thereto and shall obtain a signed receipt for the contract from each employee.”

Claimant and other aggrieved employees were regularly paid commissions on sales as part of their compensation. However, in violation of Labor Code § 2751, Defendants did not provide Claimant and other aggrieved employees with signed written contracts setting

forth the method by which the commissions shall be computed and paid. As a result, Claimant and other aggrieved employees were harmed, in part because they were unable to determine whether Defendants were properly paying them all commissions that they were entitled to.

Claimant will seek all available remedies, including PAGA penalties as provided for by California law.

8. Defendants failed to provide accurate wage statements and maintain accurate records. (Labor Code §§ 226(a), 226(e)(1), 226.3, 1174, 1174.5, and the "Records" Section of the IWC Wage Order 7)

Labor Code § 226(a) states in pertinent part that every employer shall provide an accurate itemized statement in writing with respect to each one of its employees showing: 1) gross wages earned; 2) total hours worked by an employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission; (3) the number of piece rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item; (5) net wages earned; (6) the inclusive dates of the period for which the employee is paid; (7) the name of the employee and the last four digits of his or her social security number or an employee identification number other than a social security number; (8) the name and address of the legal entity that is the employer...; 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.

Labor Code § 226.3 provides that “Any employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation for which the employer fails to provide the employee a wage deduction statement or fails to keep the records required in subdivision (a) of Section 226.”

In addition, Labor Code § 226(e) imposes a penalty of the greater of all actual

damages or \$50 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of \$4,000, and Claimant is entitled to an award of costs and reasonable attorney's fees.

Section (B) of the "Records" provision of the applicable IWC Wage Order states that "Every employer shall semimonthly or at the time of each payment of wages furnish each employee, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately, an itemized statement in writing showing: (1) all deductions; (2) the inclusive dates of the period for which the employee is paid; (3) the name of the employee or the employee's social security number; and (4) the name of the employer, provided all deductions made on written orders of the employee may be aggregated and shown as one item."

Labor Code § 1174(d) provides that an employer must 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, employees employed at the respective establishments. These records shall be kept on file for not less than three years. Labor Code § 1174.5 provides for a civil penalty of five hundred dollars (\$500) for an employer who willfully fails to maintain the records pursuant to Labor Code section 1174(d).

Sections (7)(A)(4) and (5) of the "Records" provision of the applicable IWC Wage Order provides that employers shall keep accurate information with respect to each employee, including total wages paid each payroll period, total hours worked during the payroll period, and applicable rates of pay, as well as time records showing when each employee begins and ends each work period. The time records must also show meal periods, split shift intervals, and total daily hours worked.

Defendants failed to maintain records as set forth in § 1174 of the Labor Code and the "Records" section of IWC Wage Order 7 including but not limited to, accurately recording applicable rates of pay. Due to Defendants not paying at the proper legal rates, Defendants do not record proper hours and wages, and do not provide legally compliant wage statements accurately accounting for hours, wages, deductions, etc.

In addition, on those wage statements that included commission payments, the commissions were only itemized by type of commission earned and the amount. Not included in the wage statements are the total amount sold during the pay period, or the percentage earned per sale. As a result, Claimant could not determine the basis of her commission payments by looking at the face of the wage statement, as required by Labor Code § 226(a).

Claimant will seek all available remedies, including PAGA penalties as provided for by California law.

9. Defendants failed to pay all wages due on termination. (Labor Code §§ 201, 202, 203, 204, 1198, 2699 et seq., and the "Minimum Wages" Section of IWC Wage Order 7)

Labor Code § 201 states “If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.”

Labor Code § 202 states “If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.”

Labor Code § 203(a) states, in relevant part; “If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 202, and 205.5, 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.”

Labor Code § 204(a) states in pertinent part “All wages... 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.”

Labor Code § 210(a) imposes a civil penalty for violation of Labor Code § 204 of one hundred dollars (\$100) for the initial violation for each failure to pay each employee

and two hundred dollars (\$200) for each subsequent violation, plus 25 percent of the amount unlawfully withheld.

The “Minimum Wages” section of the applicable IWC Wage Order provides every employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period.

Due to Defendants not paying correct legal rates as alleged above, Defendants do not pay all wages. In addition, Defendants fail to pay meal and rest break premiums. Defendants failed to pay Claimant all minimum, regular, overtime, and meal and rest period wages due and owing during and upon termination of employment. Defendants willfully failed to pay all wages when required by §§ 201 and 202 of the Labor Code. Therefore, Defendants owe waiting time penalties to all affected employees including Claimant. Claimant will pursue all remedies for Defendants’ failure to pay timely wages on behalf of herself and other current and former aggrieved employees, including recovery of wages, attorney's fees, costs, and penalties to the extent allowed by law.

CONCLUSION

The facts and claims contained herein are based on the information available at the time of this writing. If Claimant becomes aware of additional claims, additional compensation owed or other violations to her or any other current and former employee of Defendants, she reserves the right to revise these facts and/or add any new claims by amending this written notice.

If you have any questions or concerns regarding the above, do not hesitate to contact us.

Sincerely,

A handwritten signature in black ink, appearing to read 'Justin Hewgill', with a stylized flourish at the end.

Justin Hewgill, Esq.

cc (by certified mail):

Sterling Jewelers Inc.
375 Ghent Road
Akron, OH 44333

CT Corporation System
Agent for Service of Process for Sterling Jewelers Inc.
330 N Brand Blvd, Ste 700
Glendale, CA 91203

Emily A. Papania
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