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Attorneys for Plaintiff and the Aggrieved Employees

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA**

FIONA MARSH, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

BURBERRY LIMITED., a New York
corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No.: **22CV016122**

**REPRESENTATIVE ACTION COMPLAINT
UNDER THE PRIVATE ATTORNEYS
GENERAL ACT OF 2004**

DEMAND OVER \$25,000.00

ELECTRONICALLY FILED
Superior Court of California,
County of Alameda
08/12/2022 at 05:16:04 PM
By: Angela Linhares,
Deputy Clerk

1 Plaintiff Fiona Marsh (“Plaintiff”) hereby submits this Representative Action Complaint
2 (“Complaint”) against Defendant Burberry Limited (“Defendant”), and Does 1 through 50
3 (collectively, “Defendants”), individually, and on behalf of herself and all aggrieved employees
4 of Defendant, for penalties for violations of the California Labor Code as follows:

5 **INTRODUCTION**

6 1. This representative action is within the Court’s jurisdiction under California
7 Labor Code sections 201, 202, 203, 204, 226, 226.7, 246, 510, 512, 558, 1194, 1197, 1197.1,
8 2698, *et seq.*, and the applicable Wage Orders of the Industrial Welfare Commission (“IWC”).

9 2. This Complaint challenges systemic illegal employment practices resulting in
10 violations of the California Labor Code against individuals who worked for Defendant.

11 3. Plaintiff is informed and believes, and based thereon alleges, that Defendants,
12 jointly and severally, have acted intentionally and with deliberate indifference and conscious
13 disregard to the rights of all employees by failing to: (a) provide itemized accurate wage
14 statements; (b) pay overtime wages based on the correct regular rate of pay; (c) pay meal and rest
15 period premium pay at the regular rate of pay; and (d) pay sick pay at the regular rate of pay, and
16 all wages due at termination.

17 **JURISDICTION AND VENUE**

18 4. The Court has jurisdiction over the violations of the California Labor Code
19 sections 201, 202, 203, 204, 226, 226.7, 246, 510, 512, 558, 1194, 1197, 1197.1, 2698, *et seq.*,
20 and the applicable IWC Wage Orders.

21 5. Venue is proper in Alameda County because Plaintiff worked for Defendants in
22 Alameda County, California.

23 **PARTIES**

24 6. Plaintiff was employed by Defendants as a Floor Supervisor from about February
25 17, 2018. Plaintiff works as an hourly non-exempt employee.

26 7. Plaintiff was and is the victims of the policies, practices, and customs of
27 Defendant complained of in this action in ways that have deprived her of the rights guaranteed
28 by California Labor Code sections 201, 202, 203, 204, 226, 226.7, 246, 510, 512, 558, 1194,

1 1197, 1197.1, 2698, *et seq.*, and the applicable IWC Wage Orders.

2 8. Plaintiff is informed and believes, and based thereon alleges, that Burberry
3 Limited was and is a New York corporation which operates as a luxury fashion company
4 throughout the United States, including Alameda County, California.

5 9. Plaintiff is informed and believes, and based thereon alleges, that at all times
6 herein mentioned Does 1 through 50, are and were corporations, business entities, individuals,
7 and partnerships, licensed to do business and actually doing business in the State of California.
8 As such, and based upon all the facts and circumstances incident to Defendants' business,
9 Defendants are subject to the California Labor Code and the applicable IWC Wage Orders.

10 10. Plaintiff does not know the true names or capacities, whether individual, partner
11 or corporate, of the defendants sued herein as Does 1 through 50, inclusive, and for that reason,
12 said defendants are sued under such fictitious names, and Plaintiff prays for leave to amend this
13 complaint when the true names and capacities are known. Plaintiff is informed and believes and
14 based thereon alleges that each of said fictitious defendants was responsible in some way for the
15 matters alleged herein and proximately caused Plaintiff and members of the general public and
16 aggrieved employees to be subject to the illegal employment practices, wrongs and injuries
17 complained of herein.

18 11. At all times herein mentioned, each defendant participated in the doing of the acts
19 hereinafter alleged to have been done by the named Defendant; and furthermore, Defendants,
20 and each of them, were the agents, servants and employees of each of the other defendants, as
21 well as the agents of all Defendants, and at all times herein mentioned, were acting within the
22 course and scope of said agency and employment.

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

1 Defendants.

2 13. At all times herein mentioned, Defendants, and each of them, were members of,
3 and engaged in, a joint venture, partnership and common enterprise, and acting within the course
4 and scope of, and in pursuance of, said joint venture, partnership and common enterprise.

5 14. At all times herein mentioned, the acts and omissions of various Defendants, and
6 each of them, concurred and contributed to the various acts and omissions of each and all of the
7 other Defendants in proximately causing the violations as herein alleged. At all times herein
8 mentioned, Defendants, and each of them, ratified each and every act or omission complained of
9 herein. At all times herein mentioned, Defendants, and each of them, aided and abetted the acts
10 and omissions of each and all of the other Defendants in proximately causing the violations as
11 herein alleged.

12 **FIRST CAUSE OF ACTION**

13 **VIOLATION OF LABOR CODE § 2698, *ET SEQ.***

14 **(BY PLAINTIFF AND AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS)**

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

17 16. Plaintiff brings this cause of action as a proxy for the State of California and in
18 this capacity, seeks penalties on behalf of all Aggrieved Employees from October 30, 2021,
19 through the present, for Defendants' violations of Labor Code sections 201, 202, 203, 204, 226,
20 226.7, 246, 510, 512, 558, 1194, 1197, 1197.1, 2698, *et seq.*, as identified above, for failing to:
21 (a) provide itemized accurate wage statements; (b) pay overtime wages based on the correct
22 regular rate of pay; (c) pay meal and rest period premium pay at the regular rate of pay; and (d)
23 pay sick pay at the regular rate of pay, and all wages due at termination.

24 17. Specifically, Defendant failed to pay overtime wages based on the correct regular
25 rate of pay. Plaintiff and Aggrieved Employees earned additional non-discretionary
26 remuneration, including, but not limited to commissions and/or bonuses, in work weeks in which
27 Plaintiff and Aggrieved Employees also earned overtime wages. Defendant, however, failed to
28

factor such non-discretionary remuneration into the regular rate of pay for purposes of paying overtime wages to Plaintiff and Aggrieved Employees. Rather, Defendant paid Plaintiff and Aggrieved Employees only 1.5x their base rate of pay for the overtime rate. Therefore, Defendant owes Plaintiff and Aggrieved Employees additional overtime pay.

18. Further, Defendant's paid meal and rest period premium for missed meal and rest periods at the at the base rate of pay as Defendants failed to include any non-discretionary remuneration earned into the calculation of the regular rate. Whenever Plaintiff and Aggrieved Employees received meal and rest period premium pay during workweeks in which they earned non-discretionary remuneration, the meal and rest period premium was paid at the base rate of pay. Thus, Plaintiff and Aggrieved Employees are owed additional meal and rest break premium pay based on the correct, higher regular rate of pay. As a result of the foregoing violations, Defendants failed to pay Plaintiff and Aggrieved Employees all wages owed upon separation of employment due to the underpayment of wages and unpaid missed meal/rest period premiums.

19. Additionally, Plaintiff and Aggrieved Employees were not paid sick pay at the regular rate of pay. Specifically, when Plaintiff and Aggrieved Employees earned non-discretionary remuneration, thus increasing the regular rate of pay, sick pay was paid at the base rate of pay rather than the regular rate of pay. At the termination of Plaintiff and Aggrieved Employees' employment, they were not paid all final wages owed, including all their sick pay wages.

20. Finally, as a result of Defendants' failure to pay proper overtime wages, sick pay wages, and meal/rest period premiums, in violation as identified above, the wage statements issued to Plaintiff and Aggrieved employees failed to identify the correct gross wages earned, net wages earned, and correct hourly rates of pay. As a separate violation, Defendants issued wage statements which included each respective employee's complete social security number, rather than simply the last four digits.

21. On or about June 8, 2022, Plaintiff sent written notice to the California Labor & Workforce Development Agency ("LWDA") of Defendants' violation of Labor Code sections

201, 202, 203, 204, 226, 226.7, 246, 510, 512, 558, 1194, 1197, 1197.1, pursuant to Labor Code section 2698, *et seq.*, the Private Attorneys General Act (“PAGA”). Plaintiff also sent written notice of said Labor Code violations to Defendant via certified mail pursuant to Labor Code section 2699.3. As of the date of the filing of this Complaint, the LWDA has not provided written notice regarding whether it intends to investigate the Labor Code violations set forth in Plaintiff’s written notice.

22. As such, pursuant to Labor Code section 2699(a), Plaintiff seeks recovery of any and all applicable civil penalties for Defendants’ violation of Labor Code sections 201, 202, 203, 204, 226, 226.7, 246, 510, 512, 558, 1194, 1197, 1197.1, 2698, *et seq.* for the time period described above, on behalf of herself and other Aggrieved Employees.

PRAYER FOR RELIEF

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

1. Upon the First Cause of Action, for civil penalties according to proof pursuant to the PAGA, Labor Code §226.3, and for costs and attorneys’ fees;
2. On all causes of action for attorneys’ fees and costs as provided by Labor Code §2699 and California Code of Civil Procedure section 1021.5; and
3. For such other and further relief as the Court may deem just and proper.

DATED: August 12, 2022

DIVERSITY LAW GROUP, P.C.

By: 

Larry W. Lee

Shalom “Christine” Choo

Attorneys for Plaintiff and the Aggrieved
Employees