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11 Attorneys for Representative Plaintiff
12 and the Aggrieved Employees

13 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **IN AND FOR THE COUNTY OF SAN MATEO**

15 YVONNE COVARRUBIAS and
16 ATIEH ZAHABI individually, and on
17 behalf of all other similarly situated
18 aggrieved employees,

19 Plaintiffs,

20 vs.

21 MACY'S WEST STORES, INC., and
22 DOES 1 through 100, inclusive,

23 Defendants.

Case No. CIV537692

**FIRST AMENDED PRIVATE ATTORNEYS
GENERAL ACT COMPLAINT FOR CIVIL
PENALTIES**

[CAL. LAB. CODE § 2699]

[DEMAND FOR JURY TRIAL]

Representative Plaintiffs allege as follows:

PRELIMINARY STATEMENT

1. This is a representative action seeking unpaid civil penalties under the Labor Code Private Attorneys' General Act of 2004, codified as California Labor Code section 2698, *et seq.* ("PAGA"). Plaintiffs Yvonne Covarrubias and Atieh Zahabi ("Plaintiffs") bring this action on behalf of themselves as aggrieved employees and on behalf of all other persons similarly situated ("Aggrieved Employees") who are or have been employed by Macy's West Stores, Inc. and/or Does 1 through 100, inclusive (collectively "Defendant" or "Macy's") as non-exempt retail store employees within the State of California at any time after March 8, 2015.

**ENDORSED FILED
SAN MATEO COUNTY**

AUG 12 2016

Clerk of the Superior Court
By JORDAN MAXWELL
DEPUTY CLERK

2. The "Relevant Time Period" is designated as the time from March 8, 2015 through the date of trial and is based upon the allegation that Defendant's violations of California's wage and hour laws, as described more fully below, have been ongoing during that time.

3. During the Relevant Time Period, Defendant has had a consistent policy of, *inter alia*, (1) requiring its non-exempt retail store employees, including Plaintiffs and Aggrieved Employees, to remain at work, under the control of Macy's, after completion of these workers' ordinary duties, without paying these employees' wages (including overtime wages) for all compensable time, (2) requiring its non-exempt retail store employees, including Plaintiffs and Aggrieved Employees, to submit to mandatory security checks of their persons and/or belongings without paying them compensation (including unpaid overtime and/or compensation for working through paid and/or unpaid meal and/or rest periods), (3) willfully failing to pay compensation owing in a prompt and timely manner to Plaintiffs and/or Aggrieved Employees whose employment with Macy's was terminated, (4) willfully failing to provide Plaintiffs and Aggrieved Employees with accurate semimonthly itemized statements of the total number of hours each of them worked, the applicable deductions and the applicable hourly rates in effect during the applicable pay period, and (5) willfully failing to provide meal periods and/or rest periods to Plaintiffs and/or Aggrieved Employees.

INTRODUCTION

4. Plaintiffs are informed and believe and, based thereon, allege that, within the Relevant Time Period, Defendant Macy's operated approximately 850 retail establishments across the United States, Puerto Rico and Guam. In doing so, Macy's has employed thousands of individuals as non-exempt retail employees in recent years alone to work at locations within the State of California, employment positions which enjoy an entitlement to full, uninterrupted and statutorily-mandated meal and rest periods, as well as other benefits of employment as set forth herein.

5. Despite actual knowledge of these facts and legal mandates, Macy's has and continues to enjoy an advantage over its competition and a resultant disadvantage to its workers by electing not to sufficiently offer meal and rest periods to its California non-exempt retail employees,

1 by not providing them all regular and/or overtime pay (as a result thereof) when due and/or when
2 certain Aggrieved Employees' employment with Macy's terminated, and by willfully failing to
3 provide Plaintiffs and Aggrieved Employees with accurate semi-monthly itemized wage statements.

4 6. Plaintiffs are informed and believe and, based thereon, allege that officers of Macy's
5 knew of these facts and legal mandates yet, nonetheless, repeatedly authorized and/or ratified the
6 violation of the laws cited herein.

7 7. Despite Macy's knowledge of Plaintiffs' and Aggrieved Employees' entitlement to
8 these benefits of employment, Macy's failed to provide same, for all applicable work periods, in
9 violation of California state statutes, California Industrial Welfare Commission Wage Order No. 7,
10 and Title 8 of the California Code of Regulations. This action is brought to redress and end this long-
11 time pattern of unlawful conduct.

12 **JURISDICTION AND VENUE**

13 8. This Court has jurisdiction over Plaintiffs' and Aggrieved Employees' claims for civil
14 penalties sought herein under the California Labor Code.

15 9. Venue as to Defendant is proper in this judicial district pursuant to California Code of
16 Civil Procedure section 395(a). Defendant maintains locations within San Mateo County, transacts
17 business, has agents, and is otherwise within this Court's jurisdiction for purposes of service of
18 process. The unlawful acts alleged herein have a direct effect on Plaintiffs and those similarly
19 situated within the State of California and County of San Mateo. Defendant operates facilities and
20 has employed numerous Aggrieved Employees in the County of San Mateo, as well as within other
21 counties across the State of California.

22 **PLAINTIFFS**

23 10. Plaintiff Yvonne Covarrubias is a natural person and was, during the relevant time
24 period identified herein, employed by Defendant as a non-exempt retail store employee at one or
25 more of Defendant's California locations.

26 11. At all times herein relevant, Plaintiff Covarrubias was and is now an individual within
27 the category of Aggrieved Employees further described and defined herein.
28

12. Plaintiff Atieh Zahabi is a natural person and was, during the relevant time period identified herein, employed by Defendant as a non-exempt retail store employee at one or more of Defendant's California locations.

13. At all times herein relevant, Plaintiff Zahabi was and is now an individual within the category of Aggrieved Employees further described and defined herein.

14. As used throughout this Complaint, the term "Aggrieved Employees" refers to the named Plaintiffs herein as well as each and every person employed by Defendant in California as a non-exempt retail store worker during the relevant time period.

15. Plaintiffs bring this action on behalf of themselves and as a representative action, pursuant to California Labor Code section 2699, on behalf of all Aggrieved Employees similarly situated and proximately damaged by the unlawful conduct described herein.

DEFENDANTS

16. At all times herein relevant, Defendant Macy's West Stores, Inc. was/is a corporation and/or other form of business entity, duly licensed, located and doing business in, but not limited to, the County of San Mateo, in the State of California.

17. Plaintiffs are informed and believe and, based thereon, allege that Defendant Macy's directly or indirectly employs and, since March 8, 2015, has employed and/or exercised control over the wages, hours and working conditions of Plaintiffs and Aggrieved Employees within various California counties, including, but not limited to, the County of San Mateo.

18. Those Defendants identified as Does 1 through 100, inclusive, are and were, at all relevant times herein-mentioned, business affiliates, successors- and/or predecessors-in-interest, officers, directors, partners, and/or managing agents of some or each of the remaining defendants. Plaintiffs are informed and believe and, on that basis, allege that, at all relevant times herein-mentioned, each of the defendants identified as Does 1 through 100, inclusive, employed, and/or exercised control over the wages, hours, and/or working conditions of Plaintiffs and Aggrieved Employees at various California locations, as identified in the preceding paragraph.

19. Plaintiffs are unaware of the true names and capacities of those defendants sued herein as Does 1 through 100, inclusive and, therefore, sues these Defendants by such fictitious

1 names. Plaintiffs will seek leave of court to amend this Complaint when such names are ascertained.
2 Plaintiffs are informed and believe and, on that basis, allege that each of the fictitiously-named
3 defendants is/was responsible in some manner for, gave consent to, ratified, and/or authorized the
4 conduct herein-alleged and that Plaintiffs' and Aggrieved Employees' damages, as herein-alleged,
5 were proximately caused thereby.

6 20. Plaintiffs are informed and believe and, on that basis, allege that, at all relevant times
7 herein-mentioned, each of the Defendants was the agent and/or employee of each of the remaining
8 Defendants and, in doing the acts herein alleged, was acting within the course and scope of such
9 agency and/or employment.

10 REPRESENTATIVE ACTION ALLEGATIONS

11 21. Plaintiffs bring this action on behalf of themselves and as a representative action on
12 behalf of the following category of Aggrieved Employees:

13 *All persons who are and/or were employed as non-exempt retail employees by*
14 *Macy's West Stores, Inc., in one or more of Macy's California retail stores between*
15 *March 8, 2015 and the present.*

16 22. Defendants and their officers and directors are excluded from the category of
17 Aggrieved Employees defined in the preceding paragraph.

18 COMMON FACTUAL ALLEGATIONS

19 23. Defendant Macy's has, for years, knowingly failed to properly compensate Plaintiffs
20 and the Aggrieved Employees for all wages earned and due (including, but not necessarily limited to,
21 overtime wages and/or compensation for missed meal and/or rest periods). Moreover, Defendant has
22 failed to provide Plaintiffs and the Aggrieved Employees with net ten minute rest periods for work
23 shifts exceeding four hours or a major fraction thereof, and has failed to provide uninterrupted,
24 unrestricted meal periods of at least 30 minutes for work shifts exceeding five hours. Defendant has
25 declined to pay these wages, even upon an Aggrieved Employee's termination or resignation from
26 employment, in blatant violation of California Labor Code §§ 201-204, inclusive. More than 30 days
27 have passed since certain Aggrieved Employees have left Defendant's employ.

28 24. Defendant also failed to provide Plaintiffs and Aggrieved Employees with accurate
semimonthly itemized statements of the total number of hours worked by each, and all applicable

1 hourly rates in effect during each pay period, in violation of California Labor Code § 226. In doing
2 so, Defendant has not only failed to pay its workers the full amount of compensation due, it has, until
3 now, effectively shielded itself from its employees' scrutiny for its unlawful conduct by concealing
4 the magnitude (e.g., the full number of hours worked) and financial impact of its wrongdoing.

5 25. As a direct and proximate result of Defendant's unlawful conduct, as set forth herein,
6 Plaintiffs and Aggrieved Employees have sustained damages, as described above; including loss of
7 earnings for uncompensated hours worked, missed meal periods, and missed rest periods, in an
8 amount to be established at trial. As a further direct and proximate result of Defendant's unlawful
9 conduct, as set forth herein, Plaintiffs and Aggrieved Employees are entitled to recover
10 penalties/wages (pursuant to California Labor Code §§ 201-204) for failure to provide semimonthly
11 itemized wage statements of hours worked and all applicable hourly rates (pursuant to California
12 Labor Code § 226) in an amount to be established at trial. As a further direct and proximate result of
13 Defendant's unlawful conduct, as set forth herein, Plaintiffs and Aggrieved Employees are also
14 entitled to recover attorneys' fees, litigation costs, and restitution of ill-gotten gains, pursuant to
15 statute.

16 26. Plaintiffs complied with the procedures for bringing suit specified in California Labor
17 Code § 2699.3. By letter dated March 8, 2016, Plaintiffs gave written notice, by certified mail, to the
18 Labor and Workforce Development Agency ("LWDA") and Defendant of the specific provisions of
19 the California Labor Code alleged to have been violated, including the facts and theories to support
20 these violations.

21 **FIRST CAUSE OF ACTION**
22 **PRIVATE ATTORNEYS GENERAL ACT CLAIM**
23 **(California Labor Code §§ 2699)**

24 27. Plaintiffs incorporate in this cause of action each and every allegation of the
25 preceding paragraphs, with the same force and effect as though fully set forth herein.

26 28. California Labor Code § 2699(a) states:

27 Notwithstanding any other provision of the law, any provision of this code that
28 provides for a civil penalty to be assessed and collected by the Labor and Workforce
Development Agency or any of its departments, divisions, commissions, boards,
agencies, or employees, for a violation of this code, may, as an alternative, be
recovered through a civil action brought by an aggrieved employee on behalf of
himself or herself and other current or former employees...

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1 Dated: August 8, 2016

2 SCOTT COLE & ASSOCIATES, APC

3
4 By: 

5 Jeremy A. Graham, Esq.
6 Attorneys for the Representative Plaintiffs
7 and the Aggrieved Employees

8 **JURY DEMAND**

9 Plaintiffs and the Aggrieved Employees hereby demand trial by jury of all issues trial as of
10 right by jury.

11
12 Dated: August 8, 2016

13 SCOTT COLE & ASSOCIATES, APC

14
15 By: 

16 Jeremy A. Graham, Esq.
17 Attorneys for the Representative Plaintiffs
18 and the Aggrieved Employees
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