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Attorneys for Plaintiff
 Samantha Santos

SUPERIOR COURT OF CALIFORNIA
 COUNTY OF LOS ANGELES

SAMANTHA SANTOS, on behalf of herself and all aggrieved employees, Plaintiff, v. ZALE DELAWARE, INC., and DOES 1 to 100, Defendants.	) NO. 22BBCV01049)) COMPLAINT)) 1. PAGA Penalties) 2. Wrongful Termination Under FEHA))))
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PRELIMINARY ALLEGATIONS

1. Plaintiff Samantha Santos is a resident of Los Angeles County.
2. Defendant Zale Delaware, Inc. is an Ohio corporation that is authorized to do business in Los Angeles County.
3. Plaintiff does not know the names and capacities of Does 1 to 100 and therefore use fictitious names. Plaintiff will amend pursuant to Code of Civil Procedure section 474 when the

names and capacities of the Doe defendants are known.

3. Defendants operate an extensive network of jewelry stores under the name Zales, and it also operates Banter by Piercing Pagoda, which has jewelry kiosks inside shopping centers.

4. Plaintiff worked at the Piercing Pagoda kiosk in the Burbank Town Center from November 2017 to February 16, 2022.

5. During that that time, Defendants' locations did not provide suitable seating for Plaintiff and the aggrieved employees.

6. Pursuant to Paragraph 14 of Wage Order 4 provides the following: (a) All working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats.

7. Subparagraph (a) of Paragraph 14 applies to Plaintiff and the aggrieved employees. The nature of their work is retail sales. Plaintiff and the aggrieved employees are in one location at the kiosk so they do not need to move around. Thus, the nature of their work reasonably permitted the use of seats.

8. Paragraph 14 of Wage Order 4 also provides: (b) When employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties.

9. Subparagraph (b) of Paragraph 14 also applies to Plaintiff and the aggrieved employees; when they are not interacting with customers they were not provided with suitable seats to use during the time periods that customers were not present.

10. On September 9, 2022 Plaintiff sent a letter by certified mail to Zale Delaware, Inc. and uploaded the letter to the Labor and Workforce Development Agency portal.

11. Since it has been more than 65 days, pursuant to Labor Code section 2699.3(a)(2) Plaintiff may now proceed with a case for PAGA penalties based on the suitable seating violations.

12. Further, Plaintiff and the aggrieved employees were not paid overtime at the correct regular rate of pay, as Defendants did not factor in shift differentials and non-discretionary bonuses into the regular rate, leading to underpayment of overtime in violation of Sections 558 and 1197.1

13. Next, Plaintiff and the aggrieved employees were not able to take 30-minute meal periods in violation of paragraph 11 of Wage Order 4 and Labor Code section 512(a). As a result, PAGA penalties apply.

14. Subsequently, Plaintiff and the aggrieved employees were not able to take 10-minute rest periods in violation of paragraph 12 of Wage Order 4. As a result, PAGA penalties apply.

15. Further, if premium pay for any missed breaks and sick pay was paid to Plaintiff and the aggrieved employees, it was not paid at the correct regular rate of pay implicating PAGA penalties.

16. Finally, Plaintiff and the aggrieved employees were required to use their own phones to help with Defendants' marketing, and had to use their own vehicles to transport items for Defendants. There was no reimbursement for these costs, leading to additional PAGA penalties.

17. The next aspect is that Plaintiff identifies as gay, and is therefore a member of a protected class under FEHA.

18. FEHA provides that it is unlawful to retaliate against an employee for complaining about discriminatory conduct.

19. Plaintiff was systematically discriminated against by another employee, Samantha Vasquez, based on Plaintiff's sexual orientation.

20. Plaintiff complained to Defendants about the discriminatory conduct but did nothing to stop it once they were apprised.

21. Then Samantha Vasquez falsely claimed to Defendants that she was the victim, when in fact Samantha Vasquez was the issue.

22. Defendants then wrongfully terminated Plaintiff based on Samantha Vasquez's false allegation, which was in fact retaliation for complaining about the discriminatory conduct.

23. Retaliation is prohibited under FEHA as provided in Government Code section 12940, subdivision (h). The protected activity element may be established by evidence that the plaintiff threatened to file a discrimination charge, by a showing that the plaintiff mistakenly, but reasonably and sincerely believed he was opposing discrimination, or by evidence an employer believed the plaintiff was a potential witness in another employee's FEHA action." (*Rope v. Auto-Chlor System of Washington, Inc.* (2013) 220 Cal.App.4th 635, 652.)

1 FIRST CAUSE OF ACTION

2 PAGA PENALTIES

3 Against All Defendants

4 24. Plaintiff incorporates by reference paragraphs 1 to 23 of the complaint.

5 25. The PAGA penalties for the suitable seating violations are contained in Labor Code 2699.

6 26. The PAGA penalties for the regular rate of pay for overtime violations are contained in
7 Labor Code sections 558, 1197.1, and 2699.

8 27. The PAGA penalties for the meal break violations are contained in Labor Code sections 558
9 and 2699.

10 28. The PAGA penalties for the rest break violations are contained in Labor Code section 2699.

11 29. The PAGA penalties for not paying premium pay and sick pay at the correct regular rate are
12 contained in Labor Code section 2699.

13 30. The PAGA penalties for the unreimbursed work expenses are in Labor Code section 2699.

14 31. Plaintiff is also entitled to attorney fees and costs under Labor Code section 2699(g).

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16 SECOND CAUSE OF ACTION

17 WRONGFUL TERMINATION UNDER FEHA

18 Against All Defendants

19 32. Plaintiff incorporates by reference paragraphs 1 to 23 of the complaint.

20 33. As stated in CACI No. 2505, Plaintiff complained to Defendants about the discriminatory
21 conduct she was enduring.

22 34. Plaintiff was ultimately wrongfully terminated for making the complaints.

23 35. Plaintiff's protected activity of complaining about the discriminatory conduct was a
24 substantial motivating reason for the wrongful termination.

25 36. Plaintiff was harmed as a result, and the decision to wrongfully terminate was a substantial
26 factor in causing harm.

27 37. On November 15, 2022 Plaintiff obtained a right-to-sue letter from DFEH.

28 38. Plaintiff is entitled to back pay, front pay, general damages, and attorney fees.

1 PRAYER

2 First Cause of Action

3 1. All applicable PAGA penalties

4 2. Attorney fees and costs

5 3. Other relief the court deems proper

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7 Second Cause of Action

8 1. Back pay

9 2. Front pay

10 3. General damages

11 4. Attorney fees and costs

12 5. Other relief the court deems proper

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14 Date: November 15, 2022

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/s/ Adam Rose

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Attorney for Plaintiff

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Samantha Santos

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