

1 **THE WAND LAW FIRM, P.C.**
 2 Aubry Wand (SBN 281207)
 3 100 Oceangate, Suite 1200
 4 Long Beach, CA 90802
 5 Telephone: (310) 590-4503
 6 Email: awand@wandlawfirm.com

7 **CUSTODIO & DUBEY, LLP**
 8 Miguel A. Custodio (SBN 248744)
 9 Robert Abiri (SBN 238681)
 10 445 S. Figueroa Street, Ste. 2520
 11 Los Angeles, CA 90071
 12 Telephone: (213) 593-9095
 13 Email: custodio@cd-lawyers.com
 14 rabiri@cd-lawyers.com

15 *Attorneys for Plaintiff*

16
 17 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
 18 **COUNTY OF SAN BERNARDINO**

19 **KIRSTEN CORBETT**, an individual, on
 20 behalf of the State of California,

21 Plaintiff,

22 v.

23 **G-III APPAREL GROUP, LTD.**, an entity of
 24 unknown form; **AM RETAIL GROUP, INC.**,
 25 a corporation; and **DOES 1 through 10**,
 26 inclusive,

27 Defendants.

FILED
 SUPERIOR COURT OF CALIFORNIA
 COUNTY OF SAN BERNARDINO

MAR 03 2023

BY *Abrianna Rodriguez*
 ABRIANNA RODRIGUEZ, DEPUTY

CIV SB 2305772

CASE NO.:

~~CIV SB 2305772~~

**REPRESENTATIVE ACTION
 COMPLAINT FOR VIOLATION OF THE
 CALIFORNIA PRIVATE ATTORNEYS
 GENERAL ACT OF 2004**

[California Labor Code § 2698, *et seq.*]

1. Plaintiff Kirsten Corbett ("Plaintiff") brings this representative action on behalf of the State of California, pursuant to the California Private Attorneys General Act of 2004 ("PAGA"), against G-III Apparel Group, Ltd. ("G-III"), AM Retail Group, Inc. ("AMRG"), and Does 1 through 10, inclusive (collectively, "Defendants"). Plaintiff makes the following allegations on information and belief, except as to allegations pertaining to Plaintiff individually, which are based on her personal knowledge.

INTRODUCTION

2. Defendants have implemented common policies and practices that have resulted in systematic violations of California's Labor Code and the applicable Industrial Welfare Commission ("IWC") Wage Order(s). Accordingly, Plaintiff, on behalf of the State of California, brings this representative action to recover civil penalties for the California Labor and Workforce Development Agency ("LWDA"), herself, and all other aggrieved employees—i.e., non-exempt employees who worked for Defendants in California during the statute of limitations period—predicated on, *inter alia*, Defendants' failure to provide legally compliant meal periods and rest breaks and failure to provide compensation for missed and otherwise unlawful meal periods and rest breaks, unpaid regular and overtime compensation, failure to timely pay wages, failure to pay all wages owed and due to discharged or quitting non-exempt employees, failure to maintain required records, failure to provide accurate itemized wage statements, failure to reimburse for employment-related expenses, and failure to provide suitable seating.

JURISDICTION AND VENUE

3. The Superior Court of the State of California has jurisdiction in this matter because Plaintiff is a resident of the State of California and Defendants regularly conduct business in the State of California. No federal question is at issue because Plaintiff's claims are based solely on California law.

4. Venue is proper in this judicial district and the County of San Bernardino because Plaintiff and other aggrieved employees performed work for Defendants in the County of San Bernardino, and a substantial portion of the unlawful actions and omissions, as alleged herein, occurred in the County of San Bernardino.

By Fax

THE PARTIES

5. Plaintiff is a resident of the State of California and was a non-exempt employee of Defendants who worked at their DKNY store at the Ontario Mills shopping center from approximately October 2021 to August 2022. Plaintiff also worked Defendants' Karl Lagerfeld store at the Ontario Mills shopping center at various times over the course of her employment at DKNY.

6. On information and belief, G-III is, and at all times relevant herein, has done business in the State of California as a retail clothing company. It owns popular brands names including Guess, DKNY, Calvin Klein, Tommy Hilfiger, Andrew Marc, Levi Strauss & Co., Dockers, Kenneth Cole, Karl Lagerfeld, Wilsons Leather, and G.H. Bass & Co.

7. On information and belief, AMRG is, and at all times material herein, has been a wholly owned subsidiary of G-III. AMRG is the entity that operates retail store locations that are owned by G-III.

8. On information and belief, and at all times material herein, there has been common ownership or financial control between Defendants. They were the alter egos, divisions, affiliates, integrated enterprises, joint employers, subsidiaries, parents, principals, related entities, co-conspirators, authorized agents, partners, joint venturers, and/or guarantors, actual or ostensible, of each other. Each Defendant was completely dominated by his, her or its co-Defendant, and each was the alter ego of the other.

9. Moreover, at all material times herein, there has been extensive interrelation of operations, common management, centralized control of labor relations, human resources, staffing issues, payroll, etc., with respect to Plaintiff and other aggrieved employees. For example, Plaintiff applied for a position with Karl Lagerfeld, but was ultimately assigned to work for DKNY, as part of the same employment application process. Plaintiff also seamlessly performed work for Defendants at their DKNY and Karl Lagerfeld stores for several days during her employment, during which time both stores were under the same management and implemented the same policies and procedures.¹

¹ Plaintiff also worked at Wilsons Leather prior to the statute of limitations period, and her experience there was similar, as it too was and is operated under Defendants' umbrella of brand names.

1 10. In short, Defendants jointly employed or exercised control over the wages, hours, and
2 working conditions of Plaintiff and other aggrieved employees, and all Defendants are jointly and
3 severally liable for the wage-and-hour violations experienced by Plaintiff and other aggrieved
4 employees.

5 11. The true names and capacities of Does 1 through 10, inclusive, are unknown to
6 Plaintiff at this time, and Plaintiff therefore sues such Defendants under fictitious names. Plaintiff is
7 informed and believes, and thereon alleges, that each Defendants designated as a Doe is in some
8 manner highly responsible for the occurrences alleged herein, and that Plaintiff and other aggrieved
9 employees' injuries and damages, as alleged herein, were proximately caused by the conduct of such
10 Doe Defendants. Plaintiff will seek leave of the Court to amend this Complaint to allege the true
11 names and capacities of such Doe Defendants when ascertained.

12 **REPRESENTATIVE ACTION ALLEGATIONS**

13 12. On December 13, 2022, Plaintiff gave written notice by certified mail, pursuant to
14 California Labor Code § 2699.3, to the LWDA and Defendants, of the specific provisions of the
15 California Labor Code and applicable IWC Wage Orders alleged to have been violated, including the
16 facts and theories to support the alleged violations. On December 19, 2022, Plaintiff gave
17 supplemental notice to the LWDA and Defendants with respect to her allegations that Defendants
18 have failed to provide suitable seating to her and other aggrieved employees. Within sixty-five (65)
19 calendar days of the postmark date of Plaintiff's December 19, 2022 supplemental notice letter, the
20 LWDA did not provide notice to Plaintiff that it intends to investigate the alleged violations. Nor did
21 Defendants respond to any of the allegations contained in Plaintiff's notice letters. Therefore,
22 Plaintiff has complied with all of the requirements set forth in California Labor Code § 2699.3 to
23 commence a representative action under the PAGA.

24 13. Plaintiff was a non-exempt employee of Defendants during the time period beginning
25 one year and 65 days prior to the filing of this Complaint to the present—i.e., the statute of
26 limitations period. Plaintiff also personally experienced violations of the California Labor Code
27 during her employment with Defendants, as alleged herein.

28 ///

FACTUAL ALLEGATIONS**Failure to Provide Required Meal Periods****[Cal. Lab. Code §§ 226.7, 512; IWC Wage Order No. 7-2001, § 11]**

14. During the statute of limitations period, as part of Defendants' unlawful policies and practices to minimize labor costs and maximize profits, Defendants have required, permitted or otherwise suffered Plaintiff and other aggrieved employees to perform work during their meal periods, to completely skip their meal periods, to take late and short meal periods, and Defendants have otherwise failed to provide the required meal periods to Plaintiff and other aggrieved employees as required under California Labor Code §§ 226.7, 512, and IWC Wage Order No. 7-2001, § 11.

15. Defendants have implemented several common policies and practices that have caused Plaintiff and other aggrieved employees to systematically miss and otherwise take non-compliant meal periods.

16. Defendants have implemented a policy of allotting a grossly insufficient maximum total staff hours per week at its stores, which causes aggrieved employees like Plaintiff to miss or otherwise take non-compliant meal periods because of insufficient staff to assist customers and still perform other required job duties. The number of staff hours assigned to the store was dictated by the store's conversion rate—i.e., the percentage of customers that ultimately make purchases. For example, if a store's conversion rate dipped below a certain percentage, regional management would cut the staff hours. Defendants monitor the conversion rate in real time and pressure employees to make sales if they are not meeting the conversion rate. In this way, Defendants are able to tether labor costs to their bottom-line profits. However, this is to the detriment of Plaintiff and other aggrieved employees, who constantly feared not meeting the conversion rate.

17. As a direct consequence of this conversion rate policy and understaffing, Plaintiff and other aggrieved employees had so much work to complete within their scheduled shifts that they are forced to skip their meal periods altogether, to take them after working longer than five (5) hours, to perform work during their meal periods, or return to work after taking less than a thirty (30) minute meal period.

18. When Plaintiff and other aggrieved employees were able to take meal periods, they

1 were systematically interrupted. In particular, Defendants required Plaintiff and other aggrieved
2 employees to carry walkie-talkies and/or cell phones on their person at all times, and consequently,
3 their meal periods were regularly interrupted and/or cut short because they would be forced to
4 communicate on these devices during meal periods.

5 19. Despite work conditions that systematically result in missed and non-compliant meal
6 periods, and in order to keep labor costs down, Defendants have implemented a policy and practice of
7 failing to pay meal period premium payments when owed and due. In short, Defendants have also
8 violated California Labor Code §§ 226.7 and § 11 of the applicable IWC Wage Order by failing to
9 compensate Plaintiff and other aggrieved employees who were not authorized and permitted to take a
10 complete, timely, uninterrupted meal period, one additional hour of compensation at the proper
11 regular rate of pay for each workday that such a meal period was not authorized or permitted.

12 **Failure to Provide Required Rest Breaks**

13 **[Cal. Lab. Code §§ 226.7, 512; IWC Wage Order No. 7-2001, § 12]**

14 20. During the statute of limitations period, as part of Defendants' unlawful policies and
15 practices to minimize labor costs and maximize profits, Defendants have failed to authorize and
16 permit Plaintiff and other aggrieved employees to take rest breaks as required under California Labor
17 Code §§ 226.7 and 512, and IWC Wage Order No. 7-2001, § 12.

18 21. The same common policies and practices that deprive Plaintiff and other aggrieved
19 employees from taking their meal periods, as alleged herein, similarly deprive them of their ability to
20 take their rest breaks. Namely, Defendants' deficient staffing policy and unreasonable sales
21 expectations (i.e., the conversion rate practice), forces Plaintiff and other aggrieved employees to skip
22 their rest breaks otherwise take non-compliant rest breaks. And when Plaintiff and other aggrieved
23 employees were able to take rest breaks, they were interrupted by virtue of the fact that they were
24 required to carry mobile communication devices on their person at all times. Additionally,
25 Defendants fail to adequately inform aggrieved employees of their rights to take rest breaks, by
26 among other methods, failing to provide proper training and failing to implement adequate schedules
27 regarding rest breaks.

28 22. Defendants further violated California Labor Code § 226.7 and IWC Wage Order No.

1 1-2001, § 12, by failing to pay Plaintiff and other aggrieved employees who were not provided with a
2 rest break, in accordance with the applicable wage order, one additional hour of compensation at the
3 proper regular rate of pay for each workday that a rest break was not provided.

4 **Failure to Pay Overtime Wages**

5 **[Cal. Lab. Code §§ 510, 1194, 1198; IWC Wage Order No. 7-2001, § 3]**

6 23. Pursuant to California Labor Code §§ 510, 1194, and IWC Wage Order No. 7-2001, §
7 3, Defendants are required to compensate Plaintiff and other aggrieved employees for all overtime,
8 which is calculated at one and one-half (1 ½) times the regular rate of pay for all hours worked in
9 excess of eight (8) hours per day and/or forty (40) hours per week, and for the first eight (8) hours on
10 the seventh consecutive workday, with double time for all hours worked in excess of twelve (12)
11 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh
12 consecutive day of work in any workweek.

13 24. During the statute of limitations period, Defendants failed to compensate Plaintiff and
14 other aggrieved employees for all overtime hours worked as required under the foregoing provisions
15 of the California Labor Code and IWC Wage Order by, among other methods, requiring, permitting
16 or suffering Plaintiff and other aggrieved employees to work off-the-clock, including *inter alia*,
17 during meal periods and rest breaks and mandatory attendance meetings, but not compensating them
18 for this time, inaccurately recording time in which Plaintiff and other aggrieved employees worked,
19 and other methods to be discovered. Defendants also failed to properly calculate Plaintiff's and other
20 aggrieved employees' regular rates of pay for the purposes of determining their overtime rates by,
21 *inter alia*, failing to include the value of meal period and rest break premium payments owed and
22 due, and other forms of remuneration required to be included in the calculation of the regular rate,
23 thereby failing to properly pay employees one and one-half times their regular rates at which they
24 were employed for hours worked over forty in a week and/or over 8 hours per day.

25 25. Defendants have knowingly and willfully refused to perform their obligations to
26 compensate Plaintiff and other aggrieved employees for all wages earned and all hours worked in
27 violation of California Labor Code §§ 510, 1194 and 1198 and IWC Wage Order No. 1-2001, § 3.

28 ///

Failure to Timely Pay Wages During Employment**[Cal. Lab. Code § 204]**

26. Pursuant to California Labor Code § 204, for all labor performed between the 1st and 15th days of any calendar month, Defendants are required to pay their nonexempt employees between the 16th and 26th day of the month during which the labor was performed. California Labor Code § 204 also provides that for all labor performed between the 16th and 26th days of any calendar month, Defendants are required to pay their non-exempt employees between the 1st and 10th day of the following calendar month. In addition, California Labor Code § 204 provides that all wages earned for labor in excess of the normal work period shall be paid no later than the payday of the next regular payroll period.

27. During the statute of limitations period, Defendants have knowingly and willfully failed to timely pay Plaintiff and other aggrieved employees all the wages for labor performed by the next regular payroll period as required by California Labor Code § 204.

Failure to Pay All Wages Due to Discharged and Quitting Employees**[Cal. Lab. Code §§ 201-203]**

28. Pursuant to California Labor Code §§ 201, 202 and 203, Defendants are required to pay all earned and unpaid wages to an employee who is discharged. California Labor Code § 201 mandates that if an employer discharges an employee, the employee's wages accrued and unpaid at the time of discharge are due and payable immediately.

29. Furthermore, pursuant to California Labor Code § 202, Defendants are required to pay all accrued wages due to an employee no later than 72 hours after the employee quits his or her employment, unless the employee provided 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or wages at the time of quitting.

30. California Labor Code § 203 provides that if an employer willfully fails to pay, in accordance with California Labor Code §§ 201 and 202, any wages of an employee who is discharged or who quits, the employer is liable for waiting time penalties in the form of continued compensation to the employee at the same rate for up to 30 workdays.

31. During the statute of limitations period, Defendants have willfully failed to pay

1 accrued wages and other compensation to Plaintiff and other aggrieved employees in accordance with
2 California Labor Code §§ 201 and 202. Because Defendants have failed and continue to fail to
3 properly compensate Plaintiff and other aggrieved employees for all hours worked when due,
4 overtime wages, and compensation for non-compliant meal periods and rest breaks, Defendants have
5 also willfully failed and continue to fail to pay accrued wages and other compensation to Plaintiff and
6 other aggrieved employees in accordance with California Labor Code §§ 201 and 202.

7 **Failure to Maintain Required Records**

8 **[Cal. Lab. Code §§ 226(a), 1174(d); IWC Wage Order No. 7-2001, § 7]**

9 32. During the relevant statute of limitations period, as part of Defendants' unlawful
10 payroll policies and practices to deprive Plaintiff and other aggrieved employees of all wages earned
11 and due, Defendants knowingly and intentionally failed to maintain records as required under
12 California Labor Code §§ 226(a) and 1174(d) and IWC Wage Order No. 7-2001, § 7, including but
13 not limited to, the following records: total daily hours worked by each employee; applicable rates of
14 pay; all deductions; meal periods; time records showing when each employee begins and ends each
15 work period; and accurate itemized statements. Defendants have also failed to properly inform
16 Plaintiff and other aggrieved employees of how many COVID-19 Supplemental Paid Sick leave
17 hours remain available on their wage statements or in a separate writing. Moreover, Defendants do
18 not provide non-exempt employees with proper meal periods and rest breaks, but omit from the wage
19 statements such compensation and/or remuneration owed and due. Additionally, Defendants require
20 non-exempt employees to work off-the-clock but fail to record this time or compensate them for this
21 time, which invariably results in inaccurate time and payroll records.

22 **Failure to Furnish Accurate Itemized Wage Statements**

23 **[Cal. Lab. Code § 226(a); IWC Wage Order No. 7-2001, § 7]**

24 33. During the relevant statute of limitations period, Defendants have routinely failed to
25 provide Plaintiff and other aggrieved employees with timely and accurate itemized wage statements.
26 Defendants' pay stubs violate California Labor Code § 226 in that Defendants have not provided
27 Plaintiff and other aggrieved employees with proper meal periods and rest breaks but failed to include
28 in their wage statements one (1) additional hour of compensation at their regular rates of pay for each

missed or non-compliant meal or rest period. *See Naranjo v. Spectrum Sec. Servs., Inc.* (2022) 13 Cal.5th 93, 972 (“failure to report premium pay for missed breaks can support monetary liability under section 226 for failure to supply an accurate itemized statement reflecting an employee’s gross wages earned, net wages earned, and credited hours worked.”). In addition, Defendants do not properly pay Plaintiff and other aggrieved employees proper overtime wages owed and due to them, resulting in accurate wage statements. Further, Defendants failed to accurately list and itemize COVID-19 supplemental paid sick leave on the wage statements for Plaintiff and other aggrieved employees and also failed to correctly pay them supplemental sick leave at their regular rates of pay. Defendants also suffer and permit Plaintiff and other aggrieved employees to work off-the-clock without compensation, yet such hours worked and compensation and/or remuneration is not listed on the wage statements.

34. During the statute of limitations, and in order to conceal their wage theft, Defendants knowingly and intentionally failed to provide Plaintiff and other aggrieved employees with timely and accurate itemized wage statements in accordance with California Labor Code § 226(a) IWC Wage Order No. 7-2001 § 7.

Failure to Indemnify Employees for Necessary Expenditures Incurred in Discharge of Duties
[Cal. Lab. Code § 2802]

35. California Labor Code § 2802(a) requires an employer to indemnify an employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of her his or her duties, or of his or her obedience to the directions of the employer.

36. Defendants have required Plaintiff and other aggrieved employees to use their own personal devices, including cellular phones, to perform work-related duties. For example, Plaintiff and other aggrieved employees used their personal cellular phones for work matters such as scheduling. They would also use their phones to text clients in order to generate business and use WhatsApp on their phones to book clients, communicate markdowns and prices, and otherwise conduct business such as “virtual streamers” (i.e., live video feeds from the store that were designed to generate real-time sales). In addition, Plaintiff and other aggrieved employees were required to make drop-offs (i.e., deposit cash at the bank), which required them to drive off-site in their personal

1 vehicles. Defendants did not reimburse Plaintiff and other aggrieved employees for this gas/mileage
2 or cellular phone usage.

3 **Failure to Provide COVID-19 Supplemental Sick Leave**

4 **[Cal. Lab. Code § 248.1(b)(3)(A); Cal. Lab. Code § 248.2]**

5 37. Defendants have failed to provide supplemental COVID-19 sick leave. As of March
6 29, 2021, Defendants employed 26 or more aggrieved employees. As such, Defendants were required
7 to provide 80 hours of COVID-19 supplemental paid sick leave, and compensate Plaintiff and other
8 aggrieved employees at their regular rates of pay for supplemental sick leave—i.e., the highest
9 regular rate of pay, taking into consideration non-discretionary bonuses, etc. *See* Cal. Lab. Code §
10 248.1(b)(3)(A). Defendants were obligated to provide COVID-19 supplemental sick leave in addition
11 to regular sick leave. *See* Cal. Lab. Code § 248.1(b)(2)(D). Further, Defendants are prohibited from
12 requiring aggrieved employees to use any other paid or unpaid leave, paid time off, or vacation time
13 provided by the hiring entity to the covered worker before the covered worker uses COVID-19
14 supplemental paid sick leave or in lieu of COVID-19 supplemental paid sick leave. *See* Cal. Lab.
15 Code § 248.1(b)(4). Defendants have failed to comply with the foregoing sections of the COVID-19
16 supplemental paid sick leave laws.

17 **Failure to Provide Suitable Seating**

18 **[IWC Wage Order No. 7-2001, § 14]**

19 38. Defendants have failed to provide for suitable seating for Plaintiff and other aggrieved
20 employees.

21 39. IWC Wage Order No. 7-2001, § 14 provides:

22 (A) All working employees shall be provided with suitable seats when the nature of
23 the work reasonably permits the use of seats.

24 (B) When employees are not engaged in the active duties of their employment and the
25 nature of the work requires standing, an adequate number of suitable seats shall be
26 placed in reasonable proximity to the work area and employees shall be permitted to
27 use such seats when it does not interfere with the performance of their duties.

28 40. Defendants have failed to provide suitable seating as required under the foregoing
section of the IWC Wage Order by not providing any seats or stools at the brick-and-mortar stores

1 where Plaintiff and other aggrieved employees worked. The nature of the work reasonably permits
2 the use of seats when sales associates and other employees assist customers while processing sales
3 transactions (i.e., using the cash register), and during down-time when customer assistance is not
4 required. To the extent the use of seats could interfere with their work duties, at all times herein, it is
5 and has been reasonable for Defendants to place seats in reasonable proximity to the cash registers
6 used by Plaintiff and other aggrieved employees when doing so would not interfere with their job
7 duties, but Defendants have failed to do so.

8 **FIRST CAUSE OF ACTION**

9 **VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT**

10 **[Cal. Lab. Code § 2698, *et seq.*]**

11 ***(Against all Defendants)***

12 41. Plaintiff incorporates herein by specific reference, as though fully set forth, the
13 allegations in paragraphs 1 through 40.

14 42. Plaintiff is an "aggrieved employee" within the meaning of California Labor Code §
15 2699(c), and a proper representative to bring a civil action on behalf of herself and other current and
16 former non-exempt employees of Defendants pursuant to the procedures specified in California
17 Labor Code § 2699.3, because Plaintiff was employed by Defendants and one or more of the alleged
18 California Labor Code violations was committed against Plaintiff during the statute of limitations
19 period.

20 43. Pursuant to California Labor Code § 2699, Plaintiff seeks to recover civil penalties
21 under the PAGA, for Defendants' violations of the provisions of the California Labor Code and IWC
22 Wage Order alleged herein.

23 44. All civil penalties sought and recovered under this action will be allocated as follows:
24 seventy-five (75) percent to the State of California and twenty-five (25) percent to Plaintiff and
25 aggrieved employees.

26 45. Plaintiff additionally seeks reasonable attorneys' fees and costs pursuant to California
27 Labor Code § 2699(g)(1).

28 ///

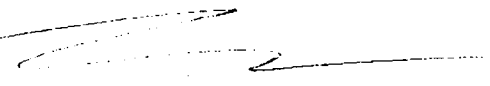
PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of herself and the State of California, prays for relief against Defendants as follows:

1. For civil penalties pursuant to California Labor Code § 2699 according to proof;
2. For reasonable attorneys' fees and costs pursuant to California Labor Code § 2699(g)(1), California Code of Civil Procedure § 1021.5, and/or any other applicable provisions providing for attorneys' fees and costs; and
3. For such further relief that the Court may deem just and proper.

DATED: February 24, 2023

THE WAND LAW FIRM, P.C.

By: 

Aubry Wand

CUSTODIO & DUBEY LLP

Miguel A. Custodio

Robert Abiri

Attorneys for Plaintiff