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May 15, 2023

LWDA
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612
(***Via Online Submission***)

Ross Dress For Less, Inc.
5130 Hacienda Drive
Dublin, CA 94568
(***Via Certified Mail, Return Receipt Requested***)
#9489 0090 0027 6362 4880 63

C T Corporation System
Agent for Service of Process for:
Ross Dress For Less, Inc.
28 Liberty Street
New York, NY 10005
(***Via Certified Mail, Return Receipt Requested***)
#9489 0090 0027 6362 4880 70

C T Corporation System
Agent for Service of Process for:
Ross Dress For Less, Inc.
330 N Brand Blvd., Suite 700
Glendale, CA 91203
(***Via Certified Mail, Return Receipt Requested***)
#9489 0090 0027 6362 4880 87

Ross Stores, Inc.
5130 Hacienda Drive
Dublin, CA 94568
(***Via Certified Mail, Return Receipt Requested***)
#9489 0090 0027 6362 4880 94

C T Corporation System
Agent for Service of Process for:
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28 Liberty Street
New York, NY 10005
(***Via Certified Mail, Return Receipt Requested***)
#9489 0090 0027 6362 4881 00

C T Corporation System
Agent for Service of Process for:
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330 N Brand Blvd., Suite 700
Glendale, CA 91203
(***Via Certified Mail, Return Receipt Requested***)
#9489 0090 0027 6362 4881 17

Ross Dress For Less, Inc.
5130 Hacienda Drive
Dublin, CA 94568
(***Via Certified Mail, Return Receipt Requested***)
#9489 0090 0027 6362 4881 24

dd's Discounts
16000 Woodruff Avenue
Bellflower, CA 90706-4904
(***Via Certified Mail, Return Receipt Requested***)
#9489 0090 0027 6362 4881 31

Re: ***Luisa Meraz. et al. v. Ross Dress for Less, Inc, et al.***
Amended Notice of Labor Code Violations and PAGA Penalties
LWDA Case No.: LWDA-CM-942219-23

To Whom It May Concern:

Please be advised that my office has been retained by Desiree Moreno and Luisa Meraz ("Employees") to pursue a Labor Code Private Attorneys General Act of 2004 ("PAGA") representative action (Cal. Lab. Code §§ 2699, *et seq.*) against Employees' former employers, Ross Dress for Less, Inc.; Ross Stores, Inc.; and dd's Discounts ("Employers"). The purpose of this letter is to comply with PAGA and set forth the facts and theories of California Labor Code violations which we allege Employers engaged in with respect to Employees and all of Employers' Aggrieved Employees.

This letter amends Desiree Moreno's LWDA notice letter sent on March 15, 2023, including but not limited to by adding Employee Luisa Meraz.

Employees wishes to pursue this action on behalf of Employees as aggrieved employees, on behalf of the State of California, as well as on behalf of all other persons who worked for Employers in California as a non-exempt or hourly-paid employee at any time within the applicable statutory period (hereafter, the "Aggrieved Employees").

Employees and the Aggrieved Employees suffered the Labor Code violations described below.

Employees' Employment with Employer

Employers own/owned and operate/operated an industry, business, and establishment within the State of California, including Los Angeles County and Tulare County. As such, and based upon all the facts and circumstances incident to Employers' business in California, Employers are subject to the California Labor Code, Wage Orders issued by the Industrial Welfare Commission ("IWC"), and the California Business & Professions Code.

Employee Desiree Moreno is a California resident who worked for Defendants in Los Angeles County, California as an hourly-paid, non-exempt employee from approximately September 2022 to approximately October 2022.

Employee Luisa Meraz is a resident of Dinuba, California who worked for Employers in Tulare County, California as an hourly-paid, non-exempt employee from approximately June 2016 through approximately March 2023.

During Employees' employment for Employers, Employers paid Employees an hourly wage and classified Employees as non-exempt from overtime. Employers typically scheduled Employees to work at least five days in a workweek and at least eight hours per day, but Employees also worked more than eight hours in a workday and more than forty (40) hours in a workweek.

Throughout Employees' employment, Employers failed to pay for all hours worked (including minimum, straight time, and overtime wages), failed to provide Employees with legally compliant meal periods, failed to authorize and permit Employees to take rest periods, failed to timely pay all final wages to Employees when Employers terminated Employees' employment, failed to furnish accurate wage statements to Employees, and failed to indemnify Employees for business expenditures. As discussed below, Employees' experience working for Employers was typical and illustrative.

Failure to Pay for All Hours Worked, Including Minimum, Straight Time, and Overtime Wages

Under California law, an employer must pay for all hours worked by an employee. "Hours worked" is the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

In addition, Labor Code § 510 provides that employees in California shall not be employed more than eight hours in any workday or forty (40) hours in a workweek unless they receive additional compensation beyond their regular wages in amounts specified by law.

Labor Code §§ 1194 and 1198 also provide that employees in California shall not be employed more than eight hours in any workday unless they receive additional compensation beyond their regular wages in amounts specified by law. Additionally, Labor Code § 1198 states that the employment of an employee for longer hours than those fixed by the IWC is unlawful.

Throughout the statutory period, Employers failed to pay Employees and the Aggrieved Employees for all hours worked, including minimum, straight time, and overtime wages. Employer required Employee and the Aggrieved Employees to work "off-the-clock," uncompensated, by, for example, requiring Employees and the Aggrieved Employees to perform work during uncompensated meal periods and rest periods, and requiring Employees and the Aggrieved Employees to perform work before clocking in and/or after clocking out. Some of this unpaid work should have been paid at the overtime rate. In failing to pay for all hours worked (including also failing to pay at the correct regular rate of pay), Employers also failed to maintain accurate records of the hours Employees and the Aggrieved Employees worked.

As a result, Employers are liable to Employees and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 1197.1, and 2699(f)(2) for failing to pay for all hours worked, including minimum, straight time, and overtime wages.

Failure to Provide Meal Periods

Under California law, employers have an affirmative obligation to relieve employees of all duty in order to take their first 30-minute, duty-free meal periods no later than the start of sixth hour of work in a workday, and to allow employees to take their second 30-minute, duty-free meal period no later than the start of the eleventh hour of work in the workday. Further, employees are entitled to be paid one hour of additional wages for each workday they were not provided with all required meal period(s).

Despite these legal requirements, Employers wrongfully failed to provide Employees and the Aggrieved Employees with their legally mandated 30-minute, uninterrupted, and duty-free meal period in a manner required by law. Employers also continued to assert control over Employees and the Aggrieved Employees by, among other things, requiring, pressuring, or encouraging them to perform work tasks which could not be completed without working in lieu of taking mandatory meal periods, or by denying Employees and the Aggrieved Employees permission to take a meal period under the conditions required by law, and without properly compensating Employees and the Aggrieved Employees for meal periods that were not provided as required by law. Employers also did not inform Employees of Employees' right to, nor permitted Employees to take, all of Employees' second meal periods when Employees worked at least ten hours of work in a workday and otherwise unlawfully pressured Employees to waive such breaks. Accordingly, Employers failed to provide meal periods to Employees and the Aggrieved Employees in compliance with California law.

Employees and the Aggrieved Employees are thus entitled to be paid one hour of additional wages for each workday he or she was not provided with all required meal period(s). Employers, however, regularly failed to pay Employees and the Aggrieved Employees the additional wages to which they were entitled for meal periods and that were not provided (including also failing to pay at the correct regular rate of pay).

As a result, Employers are liable to Employees and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210 and 2699(f)(2) for failing to provide meal periods and pay meal period premium wages.

Failure to Authorize and Permit Rest Periods

Employers are required by California law to authorize and permit breaks of ten uninterrupted minutes for each four hours of work or major fraction of four hours (i.e. more than two hours). Thus, for example, if an employee's work time is six hours and ten minutes, the employee is entitled to two rest breaks. Each failure to authorize rest breaks as so required is itself a violation of California's rest break laws.

Throughout the statutory period, Employers have wrongfully failed to authorize and permit Employees and the Aggrieved Employees to take legally compliant rest periods in a manner required by law. Employers regularly required Employees and the Aggrieved Employees to work in excess of four consecutive hours a day without Employers authorizing and permitting Employees to take a 10-minute, uninterrupted, duty-free rest period for every four hours of work (or major fraction of four hours), or without compensating Employees and the Aggrieved Employees for rest periods that were not authorized or permitted. Instead, Employers continued to assert control over Employees and the Aggrieved Employees by requiring, pressuring, or encouraging them to perform work tasks which could not be completed without working in lieu of taking mandatory rest periods, or by denying Employees and the Aggrieved Employees permission to take a rest period. Accordingly, Employers failed to authorize and permit Employees and the Aggrieved Employees to take rest periods in compliance with California law.

Employees and the Aggrieved Employees are thus entitled to be paid one hour of additional wages for each workday he or she was not authorized and permitted to take all required rest period(s). Employers, however, regularly failed to pay Employees and the Aggrieved Employees the additional wages to which they were entitled for rest periods and that they were not authorized and permitted to take (including also failing to pay at the correct regular rate of pay).

As a result, Employers are liable to Employees and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210 and 2699(f)(2) for failing to authorize and permit rest periods and pay rest period premium wages.

Failure to Pay All Earned Wages Twice Per Month

Based on its failure to pay Employees and the Aggrieved Employees for all wages as discussed above, Employers also violated Labor Code § 204.

Labor Code § 204 requires employers to pay employees all earned wages two times per month. Throughout the statute of limitations period applicable to this cause of action, employees were entitled to be paid twice a month at their regular rates, including all meal period premium wages owed, rest period premium wages owed, and wages owed for overtime hours worked. However, during all such times, Employers failed and refused to pay the employees all wages due, and failed to pay those wages twice a month, in that employees were not paid all wages for all meal periods not provided by Employers, all wages for all rest periods not authorized and permitted by Employers, and all wages for all hours worked. As a result, Employers owes employees the legally required wages for unpaid wages, and Employees and the Aggrieved Employees suffered damages in those amounts.

Moreover, Employers are liable to Employees and the Aggrieved Employees for the civil penalties provided for in Labor Code § 210 for failing to pay all earned wages twice per month.

Failure to Maintain Accurate Records of Hours Worked and Meal Periods

Employees seek penalties under California Labor Code § 1174(d). Pursuant to California Labor Code § 1174.5, any person, including any entity, employing labor who willfully fails to maintain accurate and complete records required by California Labor Code § 1174 is subject to a penalty under § 1174.5. Pursuant to the applicable IWC Order § 7(A)(3), every employer shall keep time records showing when the employee begins and ends each work period. Meal periods and total hours worked daily shall also be recorded. Employers, however, failed to maintain accurate records of hours worked and all meal periods taken or missed by Employees and the Aggrieved Employees.

Employers' failure to provide and maintain records required by the California Labor Code and the applicable IWC Wage Orders deprived Employees and the Aggrieved Employees the ability to know, understand and question the accuracy and frequency of meal periods, and the accuracy of their hours worked stated in Employers' records. Therefore, Employees and the Aggrieved Employees had no way to dispute the resulting failure to pay wages, all of which resulted in an unjustified economic enrichment to Employers. As a direct result, Employees and the Aggrieved Employees have suffered and continue to suffer, substantial losses related to the use and enjoyment of such wages, lost interest on such wages and expenses and attorney's fees in seeking to compel Employers to fully perform their obligation under state law, all to their respective damage in amounts according to proof at trial. As a result of Employers' knowing failure to comply with the California Labor Code and applicable IWC Wage Orders, Employees and the Aggrieved Employees have also suffered an injury in that they were prevented from knowing, understanding, and disputing the wage payments paid to them.

Failure to Timely Pay All Wages at Termination

Labor Code §§ 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (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.

Within the applicable statute of limitations, the employment of Employees and many other Aggrieved Employees ended, i.e., was terminated by quitting or being discharged, and the employment of others will be terminated. However, during the relevant time period, Employers failed, and continues to fail to pay Employees and terminated Aggrieved Employees, without abatement, all wages required to be paid by Labor Code sections 201 and 202 either at the time of discharge, or within seventy-two (72) hours of their leaving Employers' employment. These unpaid wages include wages for unpaid work time (including minimum, straight time, and overtime wages), missed meal period premium wages, and missed rest period premium wages.

Employers' conduct violates Labor Code §§ 201 and 202. Labor Code § 203 provides that if an employer willfully fails to pay wages owed, in accordance with sections 201 and 202, then the wages of the employee shall continue as a penalty wage from the due date, and at the same rate until paid or until an action is commenced; but the wages shall not continue for more than thirty (30) days.

Accordingly, Employees and the Aggrieved Employees are entitled to recover from Employers their additionally accruing wages for each day they were not paid, at their regular hourly rate of pay, up to thirty (30) days maximum pursuant to Labor Code § 203.

Moreover, Employers are liable to Employees and the Aggrieved Employees for the civil penalties provided for in Labor Code § 2699(f)(2) for failing to timely pay all wages at termination.

Failure to Furnish Accurate Itemized Wage Statements

Labor Code § 226(a) provides that every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees an accurate itemized wage statement in writing showing nine pieces of information, including: (1) gross wages earned, (2) total hours worked by the employee, (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. An employee is presumed to suffer an injury if this information is missing. (Lab. Code § 226(e)(2)(B)(iii).)

The statute further provides: "An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars ($50) for the initial pay period in which a violation occurs and one hundred dollars ($100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars ($4,000), and is entitled to an award of costs and reasonable attorney's fees." (Lab. Code § 226(e)(1).)

Throughout the statutory period, Employers failed to, and continue to fail to timely furnish Employees and the Aggrieved Employees with accurate, itemized wage statements showing all applicable hourly rates, and all gross and net wages earned (including correct hours worked, correct wages for meal periods that were not provided in accordance with California law, and correct wages for rest periods that were not authorized and permitted to take in accordance with California law).

Because Employers violated Labor Code § 226, Employees and similarly Aggrieved Employees suffered injury and damage to their statutorily protected rights. Accordingly, Employees and similarly Aggrieved Employees are entitled to recover from Employers the greater of their actual damages caused by Employers' failure to comply with Labor Code § 226(a), or an aggregate penalty not exceeding four thousand dollars ($4,000) per employee. Moreover, Employers are liable to Employees and the Aggrieved Employees for the civil penalties provided for in Labor Code § 226.3 for failing to timely furnish accurate itemized wage statements.

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Failure to Indemnify for Necessary Expenditures

Labor Code § 2802(a) provides that employers shall indemnify his or her employees for all necessary business expenditures or losses that have been incurred by the employees in direct discharge of his or her duties. Throughout the statute of limitations period applicable to this cause of action, Defendants wrongfully required Plaintiff and the Aggrieved Employees to pay expenses that they incurred in direct discharge of their duties for Defendants. Plaintiff and the Aggrieved Employees regularly paid out-of-pocket for necessary employment-related expenses, including, without limitation, use of personal cell phone. Plaintiff and the Aggrieved Employees incurred substantial expenses as a direct result of performing their job duties for Defendants, but Defendants failed to indemnify Plaintiff and the Aggrieved Employees for these employment-related expenses.

As a result, Defendants are liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 2802 and 2699(f)(2) for failing to indemnify Plaintiff and the Aggrieved Employees for necessary business expenditures.

Action for Civil Penalties Under PAGA

In light of the above, Employees allege that Employers violated the following provisions of the Labor Code with respect to the Aggrieved Employees:

1. Labor Code § 204, 510, 1194, 1197, and 1198 by failing to pay for all hours worked, including minimum wages, straight time wages, and overtime wages;
2. Labor Code § 226.7 and applicable Wage Orders by failing to provide meal periods;
3. Labor Code § 226.7 and applicable Wage Orders by failing to authorize and permit rest periods;
4. Labor Code § 204 by failing to pay all earned wages two times per month;
5. California Labor Code § 1174.5 and applicable Wage Orders by failing to maintain accurate records of hours worked and meal periods taken or missed;
6. Labor Code §§ 201 to 203 by willfully failing to pay all wages owed at termination;
7. Labor Code § 226 by failing to provide accurate itemized wage statements; and
8. Labor Code § 2802 by failing to indemnify for necessary expenditures.

Therefore, on behalf of all Aggrieved Employees, Employees seek applicable penalties related to the violations alleged above pursuant to the PAGA. These include, but are not limited to, penalties under Labor Code §§ 210, 226.3, 1174.5, 1197.1, and 2699.

Employees have placed Employers on notice by mailing a certified copy of this correspondence, as indicated on the first page. Thank you for your attention to this matter. If you have any questions, please do not hesitate to contact me.

Sincerely,

WILSHIRE LAW FIRM

John G. Yslas, Esq.