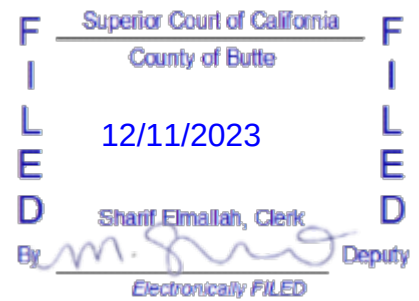




1 TIMOTHY B. DEL CASTILLO (SBN: 277296)

tdc@castleemploymentlaw.com

2 LISA L. BRADNER (SBN: 197952)

lb@castleemploymentlaw.com

3 DANIEL E. RICHARDSON (SBN: 289327)

dr@castleemploymentlaw.com

4 **CASTLE LAW: CALIFORNIA EMPLOYMENT COUNSEL, PC**

5 2999 Douglas Blvd, Suite 180

6 Roseville, CA 95661

Telephone: (916) 245-0122

7 Attorneys for Plaintiffs

8 ELLENA SORNOSO on behalf of herself

9 and all others similarly situated

10
11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 FOR THE COUNTY OF BUTTE

13
14 ELLENA SORNOSO,

15 Plaintiff,

16 v.

17 THE BUCKLE, INC., a Nebraska
18 Corporation, and Does 1-20,

19 Defendants.

Case No. [23CV03464](#)

**COMPLAINT FOR CIVIL PENALTIES
PURSUANT TO PRIVATE ATTORNEY
GENERAL ACT, LABOR CODE §2698 *et seq.***

1 Plaintiff ELLENA SORNOSO (“Plaintiff”) on behalf of herself and all others similarly situated,
2 hereby files this Complaint against Defendants THE BUCKLE, INC., a Nebraska Corporation, and Does
3 1-20 (collectively referred to as “Defendants”). Plaintiff alleges the following on information and belief:
4

5 **INTRODUCTION**

6 1. This is a representative action brought by Plaintiff seeking damages for failure to provide
7 meal and rest periods, failure to pay overtime and minimum wages, failure to provide accurate wage
8 statements, failure to reimburse for business expenses, failure to keep accurate time records, failure to
9 timely pay wages at termination, and derivative civil penalties. Plaintiff seeks these damages and
10 penalties, plus interest and attorney’s fees, on behalf of herself and similarly situated employees.

11 2. During all relevant times, Plaintiff and similarly situated employees worked for
12 Defendant as a non-exempt employee. Defendants failed to provide Plaintiff and similarly situated
13 employees with meal and rest periods, failed to pay minimum wages and premium overtime wages,
14 failed to provide accurate wage statements, failed to keep accurate time records, failed to timely pay
15 final wages, and failed to reimburse for business expenses, in violation of the California Labor Code.

16 **JURISDICTION AND VENUE**

17 3. This Court has jurisdiction pursuant to California Labor Code §§ 2698 *et seq.* The amount
18 in controversy exceeds the jurisdictional minimum of this court.

19 4. Jurisdiction and venue are proper because Plaintiff was employed by Defendant, and the
20 claims and causes of action arise, within the County of Butte, State of California. Defendants are subject
21 to personal jurisdiction in California.

22 **THE PARTIES**

23 5. ELLENA SORNOSO (“Plaintiff”) is a female, who was employed in Butte County,
24 California by THE BUCKLE, INC. as a non-exempt assistant store manager of the Chico store from
25 March 21, 2023, and as a store manager from May 23, 2023, until she was terminated on June 28, 2023.

26 6. Plaintiff is informed and believes, and thereon alleges, that Defendant THE BUCKLE,
27 INC. (“THE BUCKLE”) is a Nebraska Corporation with its principal place of business in Kearney,
28 Nebraska, and is engaged in business in California. THE BUCKLE is a clothing and accessory retailer.

1 7. Plaintiff is further informed and believes, and thereon alleges, that each of the Defendants
2 herein was, at all times relevant to this action, the agent, employee, or joint employer or joint venturer
3 of the remaining defendants and was acting within the course and scope of that relationship. Plaintiff is
4 further informed and believes, and thereon alleges, that each of the Defendants herein gave consent to,
5 ratified and authorized the acts alleged herein to each of the remaining defendants. The true names and
6 capacities of the defendants named herein Does 1 through 20, inclusive, whether individual, corporate,
7 associate, or otherwise are unknown to Plaintiff, who therefore sues such defendants by fictitious names
8 pursuant to California Code of Civil Procedure section 474. Plaintiff will amend this complaint to show
9 such true names and capacities of Does 1 through 20, inclusive, when they have been determined.

10 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

11 8. On October 2, 2023, Plaintiff filed her Labor Code § 2699.3 Private Attorney General
12 Act (“PAGA”) notice with the California Labor & Workforce Development Agency (“LWDA”). The
13 LWDA did not respond to Plaintiff’s PAGA notice within 65 days of the original Notice, thus Plaintiff
14 has fully exhausted her administrative remedies.

15 **GENERAL ALLEGATIONS**

16 9. Plaintiff worked at THE BUCKLE as a non-exempt employee from approximately
17 March 21, 2023 until June 28, 2023. During her employment, Plaintiff, and other aggrieved employees,
18 were made to suffer numerous violations of the California Labor Code. Plaintiff and other aggrieved
19 employees were paid on an hourly basis, plus commissions.

20 10. Plaintiff and similarly situated employees regularly used their cell phones for business
21 purposes. Plaintiff received and made frequent work-related phone calls, text messages, and emails, on
22 personal cell phones, including with customers of Defendant. Plaintiff and similarly situated employees
23 were not adequately reimbursed for this use of their personal cell phones and cell phone plans for
24 business purposes. Plaintiff and similarly situated non-exempt employees also received phone calls
25 during non-work hours and were required to respond and were expected to use an app on their phones
26 to select favorite new merchandise and share it across their personal social media platforms as free
27 advertising for the employer. Plaintiff and similarly situated employees were not paid for this time and
28 were expected to use their personal time and personal devices to advertise for the company. In addition,

1 Plaintiff and similarly situated employees were required to wear The Buckle merchandise during work
2 hours and to training meetings but were not reimbursed for the purchase of these uniforms.

3 11. Defendant also did not allow Plaintiff and similarly situated non-exempt employees to
4 take their statutorily required meal and rest periods. Defendants failed to provide meal and rest periods
5 to Plaintiff and similarly situated employees for every 4 hours worked or major fraction thereof.
6 Defendants were aware, and at all times knew or had reason to know non-exempt employees were being
7 deprived of timely, complete, and uninterrupted meal periods, particularly store managers who were
8 engaged in training new employees and could not leave the new employees in the store alone.

9 12. Plaintiff and similarly situated non-exempt employees regularly worked more than 8
10 hours per day or 40 hours per week. However, Defendant failed to pay premium overtime pay at the
11 regular rate.

12 13. As a result of these violations, Defendant did not provide Plaintiff and similarly situated
13 employees legally compliant wage statements noting, among other things, total hours worked, gross
14 wages earned, the applicable hourly rates in effect during the pay period and the corresponding number
15 of hours worked at each hourly rate, and the legal name of the employer.

16 14. Defendant also did not provide Plaintiff and similarly situated aggrieved employees all
17 wages owed immediately upon their termination or within seventy-two (72) hours of their separation
18 from employment.

19 15. Defendant's management staff were aware this was occurring, as evidenced by the large
20 amount of meal premiums paid, and did not ensure meal and/ or rest periods were provided to Plaintiff
21 and similarly situated employees in compliance with California law. In addition, the meal premiums
22 paid were paid only at the base rate of pay, and not the employees' regular rate to include commission
23 payments.

24 16. Defendant's uniform policies and practices to not provide Plaintiff and similarly situated
25 employees meal and rest periods, not pay all minimum and overtime wages earned, not pay all wages
26 owed at termination or resignation, and not to provide compliant wage statements, are evidenced by
27 Defendant's business records.

1 17. Defendant, as a matter of corporate policy, practice, and procedure, intentionally,
2 knowingly, and systematically failed to reimburse and indemnify Plaintiff and other Class Members for
3 required business expenses incurred in direct consequence of discharging their duties on behalf of
4 Defendants.

5
6 **FIRST CAUSE OF ACTION**
7 **CIVIL PENALTIES PURSUANT TO PAGA § 2698 ET SEQ.**

8 18. Plaintiff incorporates by reference and re-alleges all paragraphs set forth the above as
9 though fully set forth herein.

10 19. Plaintiff brings this cause of action as a proxy for the State of California and in this
11 capacity, seek penalties on behalf of all Aggrieved Employees for Defendant's violations of the
12 California Labor Code, including but not necessarily limited to, those Labor Code violations identified
13 above.

14 20. On or about October 2, 2023, Plaintiff sent written notice to the LWDA regarding
15 Defendant's violations of the California Labor Code, pursuant to Labor Code section 2698, *et seq.*,
16 PAGA. As of the date of the filing of this Complaint, the LWDA has not informed Plaintiff whether the
17 LWDA intends to investigate Plaintiff's PAGA claims. As such, Plaintiff has exhausted her
18 administrative remedies under PAGA and may proceed in this Court.

19 21. Plaintiff is thus entitled to recover civil penalties on behalf of the State of California and
20 all Aggrieved Employees for all violations of the Labor Code from October 2, 2022, through trial on
21 this matter.

22 Defendant's conduct, as alleged herein, violated various sections of the California labor Code,
23 including but not limited to, the following:

24 22. During the period Plaintiff and similarly situated employees were employed by
25 Defendant they were entitled to be paid at least the State's minimum wage rate for each hour that they
26 worked. *See, e.g.*, IWC Wage Order MW-2014, MW-2017; IWC Wage Order No. 7-2001, section (4);
27 Cal. Lab. Code §§ 1194, 1197.1. For the reasons stated above, Defendant did not pay Plaintiff and
28 similarly situated employees at least minimum wage for all hours worked. Thus, Plaintiff and similarly

1 situated employees were not paid at least the applicable state minimum wage for all hours worked in
2 violation of the Labor Code.

3 23. California Labor Code sections 510 and 1194 require employers to pay employees
4 overtime for any work in excess of eight (8) hours in one workday and any work in excess of forty (40)
5 hours in any one workweek. Employers must also pay overtime for the first eight (8) hours worked on
6 the seventh day of work in any one workweek. Finally, employers must pay double time for all hours
7 worked in excess of twelve (12) hours in any workday and for all hours worked in excess of eight (8)
8 hours on the seventh day of work in any one workweek. As stated above, Plaintiff and similarly situated
9 employees worked over eight (8) hours per day and forty (40) hours per week and were not paid overtime
10 wages. Plaintiff and all similarly situated employees are entitled to recover all unpaid overtime wages.

11 24. California Labor Code section 1174(d) requires employers to keep “payroll records
12 showing the hours worked daily by and the wages paid to . . . employees . . . These records shall be kept
13 in accordance with rules established for this purpose by the commission, but in any case, shall be kept
14 on file for not less than three years.” Defendant did not keep accurate information regarding all hours
15 worked by Plaintiff and similarly situated employees, largely by failing to accurately record all time
16 worked on their time records. This was in violation of the California Labor Code.

17 25. California Labor Code section 226.7 and IWC Wage Order No. 7-2001, section 11(A)
18 require employers to provide employees meal periods of thirty (30) minutes per five (5) hours worked.
19 For the reasons stated above, Plaintiff and similarly situated employees were not authorized and
20 permitted to take legally compliant meal periods pursuant to California law. Defendant also failed to
21 pay meal period premiums for its failure to provide meal periods.

22 26. California Labor Code section 226 requires employers to furnish employees with “an
23 accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the
24 employee, . . . (3) the number of piece-rate units earned and any applicable piece rate if the employee is
25 paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the
26 employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the
27 period for which the employee is paid, (7) the name of the employee and only the last four digits of his
28 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” For the reasons stated above, Defendant failed to comply with these requirements with respect to Plaintiff and similarly situated employees in violation of the California Labor Code.

27. California Labor Code sections 201–203 require that all wages, including minimum wages and meal and rest period premiums, be paid to employees upon separation and/or termination of employment. Here, for the reasons stated above, Plaintiff and similarly situated employees did not receive all final wages due and owing to them at the time of termination or seventy-two (72) hours thereafter as required by Labor Code sections 201–203. This is in violation of the California Labor Code.

28. Labor Code section 2802(a) states that “An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.” For the reasons stated above, Defendant failed to pay required reimbursements to Plaintiff and similarly situated employees for required business expenses in violation of the Labor Code.

29. Pursuant to *Huff v. Securitas Sec. Servs. USA, Inc.*, 23 Cal. App. 5th 745, 761, 233 Cal. Rptr. 3d 502, 513 (Ct. App. 2018), reh’g denied (June 13, 2018), review denied (Aug. 8, 2018), Plaintiff intends to seek civil penalties for all violations of the California Labor Code, whether they experienced them personally or not.

DAMAGES

WHEREFORE Plaintiff requests relief as follows:

1. A jury trial;
 2. For an award of Civil Penalties pursuant to Labor Code section 2698 *et seq.*, payable 75% to the State of California, and 25% to Plaintiffs and other aggrieved employees;
 3. For an award to Plaintiffs of costs of suit incurred herein and reasonable attorney’s fees;
- and

1 4. For an award to Plaintiffs of such other and further relief as the Court deems just and
2 proper.

3
4 Dated: December 8, 2023

Castle Law: California Employment Counsel, PC

5
6
7 By:



Timothy B. Del Castillo
Lisa L. Bradner
Daniel E. Richardson
Attorneys for Plaintiff
ELLENA SORNOSO and all others similarly situated