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June 20, 2024

VIA ONLINE SUBMISSION

California Labor & Workforce Development Agency
ATTN: PAGA Administrator
(<https://dir.govfa.net/308>)

Subject: *Jacqueline Ahumada v. Giorgio Armani Corporation*

Dear PAGA Administrator:

This office represents Jacqueline Ahumada in connection with her claims under the California Labor Code. Ms. Ahumada was an employee of GIORGIO ARMANI CORPORATION ("GAC").

The employer may be contacted directly at the address below:

GIORGIO ARMANI CORPORATION
335 MADISON AVENUE, 28TH FL
NEW YORK, NY 10017

Ms. Ahumada intends to seek civil penalties, attorney's fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 ("PAGA"). Ms. Ahumada seeks relief on behalf of herself, the State of California, and other persons who are or were employed by GAC in California as a non-exempt, hourly paid employee and who received at least one wage statement ("aggrieved employees"). This letter is sent in compliance with the notice and reporting requirements of California Labor Code section 2699.3.

GAC employed Ms. Ahumada as a non-exempt Retail Sales Associate from approximately March 2023 to August 2023. Ms. Ahumada worked at GAC's retail store location in San Ysidro, California. During her employment, Ms. Ahumada typically worked six (6) hours or more per day and five (5) days per week. Ms. Ahumada's job duties included, without limitation, cashiering, providing customer service, making sales, restocking inventory, maintaining customer relationships, and communicating sales and promotions to customers via text message.

GAC has committed one or more of the following Labor Code violations against Ms. Ahumada, the facts and theories of which follow, making her an “aggrieved employee” pursuant to California Labor Code section 2699(c):¹

GAC’s Company-Wide and Uniform Payroll and HR Practices

GIORGIO ARMANI CORPORATION is a New York corporation. GAC designs, manufactures, distributes, and retails fashion and lifestyle products including apparel, accessories, eyewear, watches, jewelry, home interiors, fragrances and cosmetics, with 10 store locations in California. Upon information and belief, GAC maintains a single, centralized Human Resources (HR) department at its corporate headquarters in New York City, New York, for all non-exempt, hourly paid employees working for GAC in California, including Ms. Ahumada and other aggrieved employees. At all relevant times, GAC issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Ms. Ahumada and other aggrieved employees, regardless of their location or position.

Upon information and belief, GAC maintains a centralized Payroll department at its corporate headquarters in New York City, New York, which processes payroll for all non-exempt, hourly paid employees working for GAC in California, including Ms. Ahumada and other aggrieved employees. Further, GAC issues the same formatted wage statements in the same manner for all non-exempt, hourly paid employees working in California, including Ms. Ahumada and other aggrieved employees, irrespective of their location, position, or manner in which each employee’s employment ended. In other words, GAC utilized the same methods and formulas when calculating wages due to Ms. Ahumada and other aggrieved employees in California.

Violation of California Labor Code §§ 510 and 1198 – Unpaid Overtime

California Labor Code sections 510 and 1198 and the applicable Industrial Welfare Commission (“IWC”) Wage Order require employers to pay employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek at the rate of time-and-one-half (1 ½) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek. The applicable IWC Wage Order further provides that employers are required to pay employees working more than twelve (12) hours in a day overtime compensation at a rate of two (2) times their regular rate of pay. An employee’s regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

GAC willfully failed to pay all overtime wages owed to Ms. Ahumada and other aggrieved employees. During the relevant time period, Ms. Ahumada and other aggrieved employees were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they worked were not recorded.

¹ These facts, theories, and claims are based on Ms. Ahumada’s experience and counsel’s review of those records currently available relating to Ms. Ahumada’s employment. Discovery conducted in litigation of wage and hour claims such as these often reveals additional claims that the aggrieved employee was not initially aware of (because the aggrieved employee was not aware of the law’s requirements, the employer misinformed its employee of the law’s requirements, or because the employer effectively hid the violations). Thus, Ms. Ahumada reserves the right to supplement this letter with additional facts, theories, and claims if she becomes aware of them subsequent to the submission of this letter.

First, during the relevant time period, GAC had, and continues to have, a company-wide policy and/or practice of discouraging and impeding Ms. Ahumada and other aggrieved employees from recording hours worked that were outside of their scheduled shifts in order to limit the amount of overtime employees could accrue. On information and belief, this policy of limiting overtime, coupled with GAC's practices of understaffing and assigning heavy workloads (*see infra*), led Ms. Ahumada and other aggrieved employees to work off-the-clock outside of their scheduled shift times in order to complete their assigned tasks. For example, approximately once per week, at GAC's management's direction, Ms. Ahumada was required to complete closing tasks after clocking out from her shifts, such as restocking inventory, folding clothes, and cleaning, which took 30 minutes each occurrence. Additionally, GAC required Ms. Ahumada and other aggrieved employees to communicate new sales and promotions to their customers via the WhatsApp mobile application to maximize their sales and meet the sales quotas; GAC instructed Ms. Ahumada to handle these communications off the clock. This off-the-clock work could have been recorded by GAC, but they refused to do so to avoid the payment of additional wages to Ms. Ahumada and other aggrieved employees.

Second, GAC had, and continues to have, a company-wide security policy and/or practice requiring employees to leave the store premises together in pairs and/or groups for closing shifts. After clocking out at the end of their shifts, Ms. Ahumada and other aggrieved employees were required to wait for all other employees to complete their own duties, such as managers balancing the registers, before they were released and could leave GAC's premises together. For example, Ms. Ahumada would clock out and then have to wait until her manager finished tallying store funds. As a result, Ms. Ahumada and other aggrieved employees were subject to GAC's control after they had clocked out from their shifts, but were not compensated for this time.

Third, GAC, on a company-wide basis, had a policy of requiring employees to undergo mandatory security checks when exiting the premises for loss prevention purposes. As a result of GAC's policy, Ms. Ahumada and other aggrieved employees were required to undergo security screenings after clocking out at the end of a shift or at the beginning of a meal period before GAC permitted them to leave the premises. For example, before Ms. Ahumada was permitted to leave the premises for her meal period and at the end of her shift, Ms. Ahumada was required to wait off-the-clock for a managerial employee to check her bag. Although GAC's requirement that Ms. Ahumada and other aggrieved employees undergo security checks was mandatory, GAC did not compensate them for the time they spent off-the-clock after shifts or during unpaid meal periods undergoing these checks while under GAC's control.

Fourth, as stated, GAC had, and continues to have, company-wide policies and/or practices of understaffing its locations, such that there were too few employees on duty to handle the workload and attend to customers, while also pressuring employees to meet sales quotas. GAC's policies and/or practices resulted in a failure to provide Ms. Ahumada and other aggrieved employees with adequate meal period coverage, and thus, Ms. Ahumada and other aggrieved employees were not always afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period. GAC also had a practice of failing to adhere to a schedule for meal periods, which further caused Ms. Ahumada and other aggrieved employees to not be relieved of their duties for compliant meal periods. For example, Ms. Ahumada and other aggrieved employees worked through their meal periods or had them interrupted to communicate with customers and send them promotion and sales updates.

Fifth, on information and belief, GAC had, and continues to have, a policy and/or practice of requiring that Ms. Ahumada and other aggrieved employees carry company-issued radios and

respond to requests at all times. As a result, GAC's management sometimes contacted Ms. Ahumada and other aggrieved employees on the radios during unpaid meal periods to discuss work-related matters. GAC knew or should have known that Ms. Ahumada and other aggrieved employees were performing work while off-the-clock in order to meet GAC's expectations, but failed to compensate them for this time.

Sixth, on information and belief, because GAC frowned upon employees accruing meal period penalties, GAC's management pressured Ms. Ahumada and other aggrieved employees to record compliant meal periods, regardless of whether they had received a compliant meal period or not, in order to strictly limit the meal penalties that GAC would otherwise owe. Thus, GAC did not record all hours worked during meal periods, and Ms. Ahumada and other aggrieved employees performed work during meal periods for which they were not paid.

GAC knew or should have known that, as a result of these company-wide practices and/or policies, Ms. Ahumada and other aggrieved employees were performing their assigned duties off-the-clock after their shifts and during meal periods, and were suffered or permitted to perform work for which they were not paid. Because Ms. Ahumada and other aggrieved employees sometimes worked shifts of eight (8) hours a day or more, or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium pay.

Furthermore, GAC did not pay other aggrieved employees the correct overtime rates for the recorded overtime hours that they generated. In addition to an hourly wage, GAC paid other aggrieved employees commissions, incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, GAC failed to incorporate all remunerations, including commissions, incentive pay, and/or nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rates. Therefore, during times when other aggrieved employees worked overtime and received these other forms of pay, GAC failed to pay all overtime wages by paying a lower overtime rate than required.

GAC's failure to pay Ms. Ahumada and other aggrieved employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198. Ms. Ahumada and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 – Unpaid Minimum Wages

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in IWC Wage Order No. 7-2001 as "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." Cal. Code Regs. tit. 8, § 11070(2)(G) (defining "Hours Worked").

As set forth above, as a result of GAC's policy of limiting the amount of overtime employees could accrue, GAC required Ms. Ahumada and other aggrieved employees to perform work off-the-clock after their scheduled shifts to complete work-related tasks, such as restocking inventory, folding clothes, cleaning, and communicating promotions and sales to customers via phone. Further, GAC implemented company-wide security and loss prevention practices and/or policies, including

requiring employees to wait for coworkers to complete their closing duties before being allowed to leave the store premises and to undergo mandatory security checks when exiting the premises. GAC failed to track this time that Ms. Ahumada and other aggrieved employees spent working off-the-clock, and Ms. Ahumada and other aggrieved employees received no compensation for this time.

Further, as also stated, due to GAC's policies and/or practices of understaffing its locations while assigning heavy workloads, including pressure to meet sales quotas, failing to adhere to a schedule for meal periods, and requiring employees to respond to radio communications, Ms. Ahumada and other aggrieved employees were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work off-the-clock during meal periods, have their meal periods interrupted, and/or were otherwise not relieved of all duties during unpaid meal periods. Moreover, as stated, in order to prevent employees from accruing meal period penalties, upon information and belief, GAC's management pressured Ms. Ahumada and other aggrieved employees to record compliant meal periods, even when meal periods were missed, short, and/or interrupted. Thus, GAC systematically failed to pay Ms. Ahumada and other aggrieved employees for actual hours worked during unpaid meal periods because these hours were not always correctly recorded.

Thus, GAC did not pay minimum wages for all hours worked by Ms. Ahumada and other aggrieved employees. To the extent that these off-the-clock hours did not qualify for overtime premium payment, GAC did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

Accordingly, GAC regularly failed to pay at least minimum wages to Ms. Ahumada and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Ms. Ahumada and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 – Failure to Provide Meal Periods

California Labor Code sections 226.7, 512(a), 516, and 1198 and the applicable IWC Wage Order require employers to provide meal periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012). Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

As stated, GAC had, and continues to have, company-wide policies and/or practices of understaffing while assigning heavy workloads, including pressuring employees to meet sales quotas, which has resulted in a lack of meal period coverage and prevented Ms. Ahumada and other aggrieved

employees from taking all timely, uninterrupted meal periods to which they were entitled. Moreover, GAC's management erroneously informed Ms. Ahumada and other aggrieved employees that they were not entitled to a meal period when they worked shifts of less than seven (7) hours. Further, as stated, GAC had a company-wide practice and/or policy of failing to adhere to a schedule for meal periods, which further caused Ms. Ahumada and other aggrieved employees to not be relieved of their duties for compliant meal periods. Additionally, as set forth above, pursuant to GAC's loss prevention policy, Ms. Ahumada and other aggrieved employees were required to submit to off-the-clock security checks after clocking out for their meal periods, resulting in shortened meal periods.

As a result, Ms. Ahumada and other aggrieved employees had to work through all or part of their meal periods, had their meal periods interrupted, and/or had to wait extended periods of time before taking meal periods. For example, as stated, Ms. Ahumada sometimes had to forgo and work through her meal periods. As a further example, GAC's management instructed Ms. Ahumada to communicate promotions and sales to customers via phone messages off the clock, including during unpaid meal periods. Additionally, Ms. Ahumada took her meal periods late, after the fifth hour of work, due to the lack of coverage and heavy workload.

Moreover, as stated, GAC had, and continues to have, a company-wide policy and/or practice of requiring that Ms. Ahumada and other aggrieved employees respond to requests on company-issued radios, including during meal periods. As a result, GAC's management contacted Ms. Ahumada and other aggrieved employees on these radios during meal periods to discuss work-related matters and assign tasks.

Further, as stated, on information and belief, because GAC frowned upon employees accruing meal period penalties, GAC's management pressured Ms. Ahumada and other aggrieved employees to record compliant meal periods, even when they did not receive a compliant meal period, in order to strictly limit the meal penalties that GAC would otherwise owe. Moreover, GAC did not provide other aggrieved employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. Ms. Ahumada and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

At all times herein mentioned, GAC knew or should have known that, as a result of these policies, Ms. Ahumada and other aggrieved employees were prevented from being relieved of all duties and required to perform some of their assigned duties during meal periods. GAC further knew or should have known that GAC did not pay Ms. Ahumada and other aggrieved employees meal period premiums when meal periods were missed, shortened, interrupted, and/or late.

Furthermore, GAC engaged in a company-wide practice and/or policy of not paying all meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Ms. Ahumada and other aggrieved employees have not received premium pay for missed, late, and interrupted meal periods. Alternatively, to the extent that GAC did pay other aggrieved employees premium pay for missed, late, and interrupted meal periods, GAC did not pay other aggrieved employees at the correct rate of pay for premiums because GAC systematically failed to include all forms of compensation, such as commissions, incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, GAC failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Ms. Ahumada and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 516, and 1198 – Failure to Authorize and Permit Rest Periods

California Labor Code sections 226.7, 516, and 1198 and the applicable IWC Wage Order require employers to provide rest periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. The applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the total daily work time is less than three and one-half (3 ½) hours.

To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must "relinquish any control over how employees spend their break time, and relieve their employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest." *Augustus, et al. v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 273 (2016).

During the relevant time period, GAC regularly failed to authorize and permit Ms. Ahumada and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, GAC's company-wide practices, including understaffing and assigning heavy workloads, including pressure to meet sales quotas, prevented Ms. Ahumada and other aggrieved employees from being relieved of all duty to take rest periods. Additionally, GAC failed to adhere to a schedule for rest periods, which, coupled with GAC's failure to provide adequate rest period coverage, further led to Ms. Ahumada and other aggrieved employees not being authorized and permitted to take rest periods. Moreover, as stated, GAC had, and continues to have, policies and/or practices of requiring that Ms. Ahumada and other aggrieved employees carry a company-issued radio to respond to requests from management at all times, including during rest periods, and undergo mandatory security checks when exiting the premises on their rest breaks.

Furthermore, on information and belief, GAC maintained and implemented a company-wide on-premises rest period policy, which effectively required that Ms. Ahumada and/or other aggrieved employees remain on the premises during their rest periods. Because Ms. Ahumada and/or other aggrieved employees were restricted from leaving GAC's premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes, such as completing personal errands. Thus, GAC effectively maintained control over Ms. Ahumada and/or other aggrieved employees during rest periods.

As a result of GAC's practices and policies, Ms. Ahumada and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted rest periods to which they were entitled. For example, Ms. Ahumada missed her rest periods approximately three (3) times per week due to the lack of coverage and heavy workload.

GAC also has engaged in a company-wide practice and/or policy of not paying all rest period premiums owed when compliant rest periods are not authorized or permitted. Because of this practice and/or policy, Ms. Ahumada and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that GAC did pay other aggrieved employees

one (1) additional hour of premium pay for missed rest periods, GAC did not pay other aggrieved employees at the correct rate of pay for premiums because GAC failed to include all forms of compensation, such as commissions, incentive pay, nondiscretionary bonuses, and/or other forms of remuneration in the regular rate of pay.

Accordingly, GAC failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Ms. Ahumada and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226(a), 1174(d), and 1198 – Non-Compliant Wage Statements and Failure to Maintain Accurate Payroll Records

California Labor Code section 226(a) requires employers to make, keep and provide true, accurate, and complete employment records. GAC has not provided Ms. Ahumada and other aggrieved employees with properly itemized wage statements. Labor Code section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wage statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or \$50 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not to exceed \$4,000. Further, Labor Code section 226.3 provides that any employer who violates section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

During the relevant time period, GAC has knowingly and intentionally provided Ms. Ahumada and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, GAC issued uniform wage statements to Ms. Ahumada and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all applicable hourly rates in effect during the pay period, including rates of pay for overtime wages, meal and rest period premiums, and/or paid sick leave, and the corresponding number of hours worked at each hourly rate. Specifically, GAC violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

Because GAC did not record the time Ms. Ahumada and other aggrieved employees spent working off-the-clock and deducted time from their meal periods that were missed and/or interrupted (and therefore time for which they should have been paid), GAC did not list the correct amount of gross wages and net wages earned by Ms. Ahumada and other aggrieved employees, in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, GAC failed to accurately list the total number of the hours worked by Ms. Ahumada and other aggrieved employees, in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and the corresponding accurate number of hours worked at each hourly rate, in violation of section 226(a)(9).

Also, because GAC did not calculate other aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages, meal and rest period premiums, and/or paid sick leave, GAC did not list the correct amount of gross wages in compliance with section 226(a)(1) and did not list the correct amount of net wages in violation of section 226(a)(5). GAC also failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct rates of pay for overtime wages, meal and rest period premiums, and/or paid sick leave, in violation of section 226(a)(9).

The wage statement deficiencies also include, without limitation, failing to list the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list the inclusive dates of the period for which aggrieved employees were paid; failing to list the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number; failing to list the name and address of the legal entity that is the employer; and/or failing to state all hours worked as a result of not recording or stating hours worked off-the-clock.

California Labor Code section 1174(d) provides that “[e]very person employing labor in this state shall . . . [k]eep a record showing the names and addresses of all employees employed and the ages of all minors” and “[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments” Labor Code section 1174.5 provides that employers are subject to a \$500 civil penalty if they fail to maintain accurate and complete records as required by section 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d), GAC willfully failed to maintain accurate payroll records for Ms. Ahumada and other aggrieved employees showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked.

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Order. Section 1198 further provides that “[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, GAC engaged in company-wide practices and/or policies of failing to record actual hours worked, and thereby failed to keep accurate records of work period start and end times for Ms. Ahumada and other aggrieved employees in violation of section 1198. Furthermore, in light of GAC’s failure to provide other aggrieved employees with second 30-minute meal periods to which they were entitled, GAC kept no records of meal start and end times for second meal periods.

Because GAC failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Ms. Ahumada and other aggrieved employees have been prevented from verifying, solely from information on the wage statements themselves, that they were paid correctly and in full. Instead, Ms. Ahumada and other aggrieved employees have had to look to sources outside of the wage statements themselves and reconstruct time records to determine whether in fact they were paid correctly and the extent of underpayment, thereby causing them injury.

Ms. Ahumada and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f)-(g).

Violation of California Labor Code § 204 – Failure to Timely Pay Wages During Employment

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment

between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, California Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

During the relevant time period, GAC failed to pay Ms. Ahumada and other aggrieved employees all wages due to them, including, but not limited to, overtime wages, minimum wages, meal and rest period premiums, and/or sick leave pay, within any time period specified by California Labor Code section 204.

Ms. Ahumada and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 210 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 201 and 202 – Failure to Timely Pay Final Wages Upon Termination

California Labor Code sections 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.

GAC willfully failed to pay Ms. Ahumada and other aggrieved employees who are no longer employed by GAC all their earned wages, including, but not limited to, overtime wages, minimum wages, meal and rest period premiums, and/or sick leave pay, either at the time of discharge, or within seventy-two (72) hours of their leaving GAC's employ.

Ms. Ahumada and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 256 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 246 – Failure to Properly Calculate Paid Sick Leave

At all relevant times herein, California Labor Code sections 245.5, 246, 246.5, 247, 247.5, 248.5, and 249 provide employees who have worked in California for 30 or more days from the commencement of employment with paid sick days, to be accrued at least one hour for every 30 hours worked. Effective January 1, 2024, California Labor Code section 246(b)(4) requires employers to provide no less than 40 hours or five (5) days of paid sick leave (or equivalent paid leave or paid time off) in each year of the employee's employment. Labor Code section 246(l) provides that an employer shall calculate paid sick leave by using one of two calculations: 1) "[p]aid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek[;]" or 2) "[p]aid sick time for nonexempt employees shall be calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment."

During the relevant time period, GAC paid other aggrieved employees commissions, incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, GAC failed to incorporate all remunerations, including commissions, incentive pay, and/or nondiscretionary bonuses into the calculation of the regular rate of pay for purposes of calculating the sick leave pay rate. Therefore, during times when other aggrieved employees took sick leave and received these other forms of pay, GAC failed to pay all sick leave benefits by paying a lower sick leave pay rate than required. Specifically, GAC paid other aggrieved employees sick leave based on their hourly rate of pay instead of their regular rate of pay.

GAC's failure to properly calculate the sick leave rates of pay based on all remuneration paid has resulted in an underpayment of sick leave benefits to other aggrieved employees on a company-wide basis in violation of Labor Code section 246(l).

Other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 248.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11070 Subdivision 14(A) – Failure to Provide Suitable Seating

California Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable IWC Wage Order. California Labor Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.” California Code of Regulations, Title 8, section 11070(14)(A) provides that “[a]ll working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats.”

“The ‘nature of the work’ refers to an employee’s tasks performed at a given location for which a right to a suitable seat is claimed, rather than a ‘holistic’ consideration of the entire range of an employee’s duties anywhere on the jobsite during a complete shift. If the tasks being performed at a given location reasonably permit sitting, and provision of a seat would not interfere with performance of any other tasks that may require standing, a seat is called for.” *Kilby v. CVS Pharmacy, Inc.*, 368 P.3d 554, 558 (Cal. 2016). “Whether the nature of the work reasonably permits sitting is a question to be determined objectively based on the totality of the circumstances. An employer’s business judgment and the physical layout of the workplace are relevant but not dispositive factors. The inquiry focuses on the nature of the work, not an individual employee’s characteristics.” *Id.* The burden of proof to show suitable seating is not available is on the employer. *Id.* at 568. In other words, the employer must show that compliance is “infeasible because no suitable seating exists.” *See id.*

GAC's California stores are generally similar in their layout and design and there was, and continues to be, space behind cash wraps to allow for the presence and use of a seat or stool by Ms. Ahumada and other aggrieved employees (with reasonable or no modification to these work areas) during the performance of their work duties. GAC could provide Ms. Ahumada and other aggrieved employees with a seat or stool at its cash wraps, but instead denies employees seating and forces Ms. Ahumada and other aggrieved employees to stand throughout the day.

Ms. Ahumada and other aggrieved employees spent a substantial portion of their day behind or at these cash wraps. The nature of the work of an employee performing cashier duties can reasonably be accomplished from a seated position. However, as set forth herein, GAC systematically, and on a

company-wide basis, does not provide seats or stools at or near the cash wraps, forcing Ms. Ahumada and other aggrieved employees to stand throughout their work shifts.

GAC violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11070(14)(A) because Ms. Ahumada and other aggrieved employees were not allowed to sit, even when the nature of the work would reasonably permit the use of seats, nor were they provided with suitable seats. GAC's management did not inform Ms. Ahumada and other aggrieved employees that they were allowed to sit down, provide any means for them to sit down, or mention any policy regarding sitting.

As a result of GAC's company-wide policy and/or practice of prohibiting employees from sitting during their shifts and company-wide failure to provide suitable seating, Ms. Ahumada and other aggrieved employees were forced to stand during shifts and denied seats. GAC's failure to provide suitable seating to Ms. Ahumada and other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order No. 7-2001, subdivision 14(A).

Ms. Ahumada and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, and seek injunctive relief to bring GAC into compliance with California's seating requirements, pursuant to Labor Code sections 1194.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11070 Subdivision 14(B) – Failure to Provide Suitable Seating

California Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable IWC Wage Order. California Labor Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.” California Code of Regulations, Title 8, section 11070(14)(B) provides that “[w]hen 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.”

The IWC states that subdivision 14(B) applies during “lulls in operation” when an employee, while still on the job, is not then actively engaged in any duties. *Kilby v. CVS Pharmacy, Inc.*, 368 P.3d 554, 565 (Cal. 2016), citing IWC, 1976 Wage Orders, Summary of Basic Provisions, Seats. When taken together, an employee is entitled to a seat under subdivision 14(A) if his or her actual tasks at a discrete location make seated work feasible, while working there. *Id.* However, if other job duties take the employee to a different location where he or she must perform tasks requiring standing, the employee would be entitled to a seat under subdivision 14(B) during “lulls in operation.” *Id.*

GAC's California stores are generally similar in their layout and design and there was, and continues to be, space near their work areas (with reasonable or no modification to these work areas) to allow for the presence and use of a seat or stool by Ms. Ahumada and other aggrieved employees during lulls in operation. GAC could have provided Ms. Ahumada and other aggrieved employees with a seat or stool in its work areas, but instead denied, and continues to deny, employees seating, forcing them to stand throughout the day.

GAC did not provide Ms. Ahumada and other aggrieved employees with seats or stools in reasonable proximity to their work areas to allow them to use seats when it would not interfere with the

performance of their duties for times when they were not engaged in active duties that require standing. In other words, to the extent Ms. Ahumada and other aggrieved employees engaged in duties in which the nature of the work required standing, GAC denied them the use of seats nearby during lulls in their work duties. Moreover, GAC did not inform Ms. Ahumada and other aggrieved employees of their rights to a seat or stool under California law.

As a result of GAC's company-wide policy and/or practice of prohibiting employees from sitting at any time, even when they were not engaged in active duties requiring standing, and company-wide failure to provide seats in reasonable proximity to their work areas, Ms. Ahumada and other aggrieved employees were forced to stand during shifts and denied seats. GAC's failure to provide suitable seating to Ms. Ahumada and other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order No. 7-2001, subdivision 14(B).

Ms. Ahumada and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, and seek injunctive relief to bring GAC into compliance with California's seating requirements, pursuant to Labor Code sections 1194.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

California Labor Code section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order, IWC Wage Order No. 7-2001, provides that: "[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft."

During the relevant time period, GAC, on a company-wide basis, required that Ms. Ahumada and other aggrieved employees use their own personal mobile devices, including, but not limited to, cellular phones, and/or mobile data to carry out their job duties, but failed to reimburse them for the costs of their work-related mobile device expenses. For example, Ms. Ahumada and other aggrieved employees were required to use their personal mobile devices for work-related tasks, including responding to calls from management and contacting customers with sales and promotions via messages on the WhatsApp mobile application. Although GAC required Ms. Ahumada and other aggrieved employees to utilize their personal mobile devices and/or mobile data to carry out their work-related responsibilities, GAC failed to reimburse them for these costs.

GAC could have provided Ms. Ahumada and other aggrieved employees with the actual equipment for use on the job, such as company mobile devices. Or, GAC could have reimbursed employees for the costs of their mobile device usage. Instead, GAC passed these operating costs off onto Ms. Ahumada and other aggrieved employees. At all relevant times, Ms. Ahumada did not earn at least two (2) times the minimum wage.

Thus, GAC had, and continues to have, a company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred in violation of California Labor Code section 2802. Ms. Ahumada and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

California Labor Code § 558(a)

California Labor Code section 558(a) provides “[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid” Labor Code section 558(c) provides that “[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law.” GAC, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Ms. Ahumada’s and other aggrieved employees’ rights by violating various sections of the California Labor Code.

Accordingly, Ms. Ahumada seeks the remedies set forth in Labor Code section 558 for herself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 1194.5, 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Ms. Ahumada, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties and injunctive relief for herself, all other aggrieved employees, and the State of California against GAC for violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 246, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

Therefore, on behalf of all aggrieved employees, Ms. Ahumada seeks all applicable penalties related to these violations of the California Labor Code pursuant to PAGA.

Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

Ninel Kocharyan
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, CA 90067
(310) 556-4811

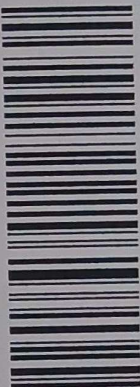
Best Regards,



Ninel Kocharyan

Copy: GIORGIO ARMANI CORPORATION (via U.S. Certified Mail)

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