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Superior Court of California,
County of San Diego
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Clerk of the Superior Court
By N. Argamosa ,Deputy Clerk

Attorneys for Plaintiff,
Anakaren Luis on behalf of
herself, all aggrieved employees, and the State
of California as a Private Attorneys General

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

Anakaren Luis, individuals, on behalf of
herself, all aggrieved employees, and the State
of California as a Private Attorneys General,

Plaintiff,

vs.

Zale Delaware, Inc., a Delaware corporation,
and DOES 1-50, inclusive,

Defendant.

Case No.: 25CU000285N

REPRESENTATIVE ACTION

**Violation of the Private Attorneys General
Act of 2004, Cal. Labor Code §2698 *et seq.***

Plaintiff Anakaren Luis brings this PAGA representative action complaint on behalf of
herself, all aggrieved employees, and the State of California as a Private Attorneys General, and
alleges as follows:

NATURE OF THE ACTION

1. Plaintiff Anakaren Luis worked as an employee for Defendant Zale Delaware, Inc. and
Does 1-50 (collectively “Defendant”). Defendant operates fine jewelry stores and kiosks. Plaintiff

Anakaren Luis worked for Defendant a key sales associate on an hourly, non-exempt basis until February 27, 2024.

2. Plaintiff brings this action pursuant to the Private Attorneys General Act of 2004 (“PAGA”), Cal. Labor Code §2698 *et seq.*, on a representative basis. All current and former hourly, nonexempt employees of Defendant within one year of serving notice on the LWDA to the present are aggrieved employees.

3. Defendant failed to comply with California Labor Code requirements due to erroneous, willful and intentional employment practices and policies. Plaintiff brings this representative action on behalf of herself, all other similarly situated aggrieved employees, and the State of California, based upon the claims articulated below. Plaintiff provided notice of their claims pursuant to §2698 *et. seq.*, to the Labor and Workforce and Development Agency (“LWDA”) as illustrated by the attached Exhibit, the content of which is expressly incorporated herein. The LWDA has not provided any notice to Plaintiff following the exhaustion of the 65-day notice period required by 2699.3(a)(2)(B). Accordingly, Plaintiff now brings this Complaint for civil penalties under the Private Attorneys General Act (“PAGA”), Labor Code §2698 *et seq.*

4. Defendant has had a consistent policy and/or practice of: (1) failing to pay for all hours worked, including overtime hours worked; (2) failing to pay all wages owed twice per month; (3) failing to pay minimum wage; (4) failing to pay wages due upon termination; (5) failing to provide rest breaks; (6) failing to provide timely and uninterrupted meal breaks; (7) failing to provide suitable resting facilities; (8) failing to provide potable drinking water; (9) failing to reimburse for required business expenses; (10) failing to provide accurate itemized wage statements and violating record keeping requirements. Defendant is therefore liable for civil penalties under the Cal. Labor Code, including the Private Attorney General Act (“PAGA”), Labor Code §2698 *et seq.*, as described more fully herein.

THE PARTIES

5. Plaintiff Anakaren Luis is a resident of the State of California, County of San Diego, and worked for Defendant as a key sales associate on an hourly, non-exempt basis until February 27, 2024.

1 **PAGA REPRESENTATIVE ACTION ALLEGATIONS**

2 12. During the relevant time period, Defendant committed various violations of the
3 California Labor Code as alleged below in more detail. Defendant enforces multiple policies that
4 violate state law, which are intended to increase profits to the detriment of aggrieved employees.

5 13. This representative action represents over one hundred current and former aggrieved
6 employees.

7 14. For at least one (1) year prior to the date of service notice on the LWDA, and continuing
8 to the present, Defendant engaged in unlawful employment practices that resulted in violations of
9 numerous Labor Code sections, as set forth more fully below.

10 15. Plaintiff and all current and former hourly, nonexempt employees within one year of
11 filing this action to the present are aggrieved employees within the meaning of Labor Code 2699,
12 *et seq.* (See Labor code §2699(c).)

13 16. Defendant, and each of them, has committed the following violations of the California
14 Labor Code:

15 **Failure to Pay For All Hours Worked, Including Overtime Hours Worked**

16 (Cal. Lab. Code §§218, 510, 558, 1194, 1197, 1198, 1199, 2698 *et seq.*, Wage Order 7)

17 17. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
18 incorporate said paragraphs herein by reference.

19 18. The Wage Orders define “hours worked” as “the time during which an employee is
20 subject to the control of an employer, and including all the time the employee is suffered or
21 permitted to work, whether or not required to do so.” Defendant has been engaged in many
22 unlawful employment practices which resulted in underpayment for hours worked each pay period,
23 including overtime hours worked, as more fully set forth below. Defendant has also failed to pay
24 the required minimum wage for all hours worked and has failed to pay all wages owed twice per
25 month.

26 19. Plaintiff and aggrieved employees have been employed under conditions prohibited by
27 the wage order, and thus Defendant has also violated §§1198 and 1199. Defendant is liable for
28 civil penalties pursuant to Labor Code §§558 and 2699 *et seq.*

1 20. Off-the-Clock Hours Worked. Plaintiff and aggrieved employees frequently worked
2 off the clock and were routinely subjected to periods wherein they were under the Defendant's
3 control but not compensated for their time. For example, Plaintiff would frequently be assigned
4 off-the-clock work which included tasks such as disarming the security alarm, depositing money
5 at the bank, and cleaning.

6 **Failure to Pay All Wages Owed Twice Per Month**
7 (Cal. Lab. Code §§204, 210, and 2698 *et seq.*)

8 21. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
9 incorporate said paragraphs herein by reference.

10 22. Defendant was required to pay Plaintiff and aggrieved employees all wages earned
11 twice during each calendar month pursuant to Labor Code §204(a).

12 23. Defendant failed to pay all wages earned to employees as a result of the unlawful
13 employment policies and practices discussed herein. As a result of these practices, employees were
14 underpaid for hours worked, including overtime and penalty wages, and this underpayment
15 resulted in a failure to pay all wages owed twice per month.

16 24. Due to these failures, Defendant is liable under Labor Code §204, 210 and 2698 *et seq.*
17 for failure to pay wages as required by law.

18 **Failure to Pay Minimum Wage**
19 (Cal. Labor Code §§ 200, 218.5, 226, 558, 1194, 1194.2, 1197, 1197.2, 1198, 1199, 2698 *et seq.*)

20 25. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
21 incorporate said paragraphs herein by reference.

22 26. Pursuant to Labor Code sections 1194, 1194.2 and 1197, it is unlawful for an employer
23 to suffer or permit a California employee to work without paying wages at the proper minimum
24 wage for all time worked as required by the applicable IWC Wage Order.

25 27. Defendant failed to pay Plaintiff and aggrieved employees for all hours worked as a
26 result of Defendant's practices described above. Based on Defendant's unlawful conduct
27 described herein, and because Plaintiff and the aggrieved employees were paid at or near minimum
28 wage, employer's failure to pay for all hours worked, including overtime, resulted in a payment of
less than the minimum wage for all hours worked, in violation of Labor Code §1197, 1197.1, 1199

1 and the Wage Orders. Defendant is liable for civil penalties pursuant to Labor Code §§558 and
2 2699 *et seq.*

3 **Failure to Pay Wages Due Upon Termination**

4 (Cal. Lab. Code §§201, 202, 203, 256 and 2698 *et seq.*)

5 28. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
6 incorporate said paragraphs herein by reference.

7 29. An employee who is discharged must be paid all of his or her wages, including accrued
8 vacation, immediately at the time of termination. (Labor Code Sections 201 and 227.3.) As set
9 forth above, Defendant knowingly and willfully failed to pay all compensation due and owing to
10 Plaintiff at the time employment terminated.

11 30. Defendant willfully failed to pay employees who are no longer employed by it all
12 compensation due upon termination of employment as required by Cal. Lab. Code §§201 and 202.
13 Plaintiff and similarly situated individuals are now entitled to recover up to thirty (30) days' pay
14 as waiting time under the terms of §203. Moreover, Defendant is liable for civil penalties pursuant
15 to Cal. Lab. Code § 2698 *et. Seq.*

16 **Failure to Provide Rest Breaks**

17 Cal. Labor Code §§226, 226.7, 512, 558, 1198, 2350, 2698 *et seq.* and 8 CCR §3457

18 31. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
19 incorporate said paragraphs herein by reference.

20 32. Defendant failed to maintain a compliant rest period policy and practice that provides
21 its employees with off-duty rest periods as required by California law. Plaintiff reports that
22 employees frequently missed rest periods as a result of Defendant's staffing and business practices,
23 and that rest breaks were not scheduled into daily shifts.

24 33. Plaintiff reports that she and her coworkers never received rest periods as a result of
25 Defendant's staffing and business practices, requiring that they work straight through their shifts.
26 Moreover, although Plaintiff and her coworkers were provided with restrooms on-site at the mall,
27 due to Defendant's staffing and business practices, workers were often left at the kiosk alone which
28 prevented them from being able to use the restroom or take any rest breaks during their shifts.

1 34. Rest periods were either less than ten minutes, not provided, interrupted or late, “on
2 duty,” or not scheduled before and after a meal period for shifts greater than six hours, as
3 prescribed by California law because Defendant: (1) did not account for all hours worked that were
4 unaccounted for on their timecard; (2) did not adequately inform and train employees about their
5 rights to rest breaks and premium payments for non-compliant rest breaks; (3) did not adequately
6 inform and train employees about when, where and how to take timely and uninterrupted ten-
7 minute rest breaks; (4) because Defendant did not staff enough people to schedule all timely and
8 uninterrupted ten-minute rest breaks; and/or (5) because management at various levels, affecting
9 all hourly, non-exempt employees, refused to offer, permit, or enforce a lawfully compliant rest
10 break policy.

11 35. The rest period requirement obligates employers to permit and authorize employees to
12 take off-duty rest periods, meaning employers must relieve employees of all duties and relinquish
13 control over how employees spend their time. *Augustus v. ABM Security Services, Inc.*, (2016) 5
14 Cal.5th 257, 269. Defendant must pay employees an additional hour of wages at the employee’s
15 regular rate of pay for each missed or improper rest period (e.g., less than 10 minutes, interrupted
16 rest period, rest period(s) at improper time(s) during shift(s). Lab. Code §226.7; applicable IWC
17 Wage Order, §12(B) (“If an employer fails to provide an employee a rest period in accordance
18 with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of
19 pay at the employee’s regular rate of compensation for each work day that the rest period is not
20 provided”). Moreover, under California law rest periods must be a “net” ten minutes in a suitable
21 rest area. (*Id.* at 268) (relying on January 3, 1986, and February 22, 2002, DLSE Letters wherein
22 the DLSE ruled that the net ten-minute language for rest periods means ten minutes of time in a
23 rest area and cannot include time it takes to get to and from the rest area). The employer must show
24 that it clearly articulates the right to a net ten minutes, which means it must clearly communicate
25 what “net” ten minutes means (i.e., regardless of what happens along the way to and from a rest
26 area, employees are entitled to a full ten minutes of rest in the rest area). *Id.*; *see also*, *Bufile v.*
27 *Dollar Fin. Grp., Inc.*, (2008) 162 Cal. App. 4th 1193, 1199 (the “onus is on the employer to
28 clearly communicate the authorization and permission [to take rest periods] to their employees.”).

1 36. Defendant did not authorize or permit all of its hourly employees to take at least a ten-
2 minute rest period in which they were relieved of all duties, for every 4 hours of work, or major
3 fraction thereof, as required by Cal. Lab. Code §226.7, §512 and the Wage Orders. When breaks
4 were missed Defendant failed to pay the 1-hour penalty, as required. Because Defendant violated
5 the Wage Order, Defendant is liable under Labor Code §1198. As a result of these violations,
6 Defendant is liable for civil penalties pursuant to Cal. Labor Code §2698 *et. Seq.*

7 **Failure to Provide Timely and Uninterrupted Meal Breaks**

8 Cal. Labor Code §§226, 226.7, 512, 558, 1198, 2698 *et seq.*

9 37. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
10 incorporate said paragraphs herein by reference.

11 38. Labor Code §512 provides, “[a]n employer may not employ an employee for a work
12 period of more than five hours per day without providing the employee with a meal period of not
13 less than 30 minutes...” Labor Code §226.7(a) provides, “[n]o employer shall require an employee
14 to work during any meal... period mandated by an applicable order of the Industrial Welfare
15 Commission.” Paragraph 11 of the Wage Order provides, in pertinent part, “[u]nless an employee
16 is relieved of all duty during a 30-minute meal period, the meal period shall be considered an ‘on
17 duty’ meal period and counted as time worked.”

18 39. Defendant failed to permit Plaintiff and others to take timely, off-duty, meal breaks of
19 “not less than 30 minutes” for each five consecutive hours of work in violation of Labor Code
20 §§226.7 and 512. Defendant failed to pay all penalty pay to Plaintiff or aggrieved employees for
21 noncompliant meal periods. As a derivative claim, Plaintiff alleges that pay statements were
22 inaccurate, failing to include required meal period penalties, thus failing to meet the requirements
23 of Labor Code §226(a). As a result of these violations, Defendant is liable for civil penalties
24 pursuant to Cal. Labor Code §558 and §2698 *et. Seq.*

25 40. In this case, Plaintiff and Plaintiff’s coworkers would often miss their meal periods.
26 When meal periods were provided, they were often interrupted or taken late.

27 41. Full, uninterrupted, off-duty, thirty-minute meal periods were not provided because
28 Defendant: (1) did not account for all hours worked that were unaccounted for on their timecard;

1 (2) did not adequately inform and train employees about their rights to meal periods and premium
2 payments for non-compliant meal periods; (3) did not adequately inform and train employees about
3 when, where and how to take timely and uninterrupted thirty-minute meal periods; (4) because
4 Defendant did not staff enough people to schedule all timely and uninterrupted thirty-minute meal
5 periods; (5) because management at various levels, affecting all hourly, non-exempt employees,
6 refused to offer, permit, or enforce a lawfully compliant meal period policy; and/or (6) because
7 Defendant unlawfully shaved and/or rounded clock in and clock out times for meal periods.
8 Employees were not paid a premium payment, paid as an hour's wage when meal periods were
9 not given to them in compliance with California law.

10 **Failure to Provide Suitable Resting Facilities**

11 (Cal. Labor Code §§ 226.7, 1198, 2698 *et seq*)

12 42. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
13 incorporate said paragraphs herein by reference.

14 43. Per section 13 of all applicable IWC Wage Orders, employees shall be provided with
15 suitable resting facilities. Section 13(B) of the Wage Orders provides: "Suitable resting facilities
16 shall be provided in an area separate from the toilet rooms and shall be available to employees
17 during work hours."

18 44. Defendant's locations/facilities are generally similar in layout and design, and there
19 was, and continue to be, space that allows for a resting facility that employees may use to cease
20 work and recover during meal or rest periods. Defendant could have provided employees with a
21 resting facility within the facilities/locations with reasonable or no modification, but instead denied
22 and continue to deny, employees with suitable areas to rest (e.g. a breakroom).

23 45. Defendant did not provide employees with suitable resting facilities during their hours
24 of work, particularly during meal and/or rest periods. Defendant's failure to provide suitable
25 resting facilities to aggrieved employees violated and continues to violate the applicable Wage
26 Order, section 13(B) and the California Labor Code, including but not limited to section 1198.
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employees in any way for their mileage and business-related expenses as required by the Labor Code.

Failure to Provide Accurate Itemized Wage Statements & Violation of Record Keeping

Requirements

(Cal. Labor Code §§ 226, 246, 248, 1174, 1174.5, 2699 *et seq*)

53. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and incorporate said paragraphs herein by reference.

54. Defendant knowingly and intentionally failed to provide timely, accurate, itemized wage statements to Plaintiff and the aggrieved employees in accordance with Labor Code §§ 226 and keep accurate records as required by §1174(d).

55. The statements provided to Plaintiff and aggrieved employees, and the records maintained by Defendant, have not accurately reflected actual gross wages earned, including pay for all hours worked and the accurate rate of pay for all hours worked and pay for meal and rest period premium wages.

56. §226 (a) requires:

A. An employer, semimonthly or at the time of each payment of wages, shall furnish to his or her employee, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately if wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except as provided in subdivision (j), (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 only 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, if the employer is

1 a farm labor contractor, as defined in subdivision (b) of Section 1682, the name
2 and address of the legal entity that secured the services of the employer, and (9)
3 all applicable hourly rates in effect during the pay period and the corresponding
4 number of hours worked at each hourly rate by the employee...

5 57. Such failures called injury to Plaintiff and others, by, among other things, impeding
6 them from knowing the total hours worked, and the amount of wages to which they are and were
7 entitled. Defendant knowingly and intentionally failed to accurately itemize the gross wages
8 earned, net wages earned, and total hours worked. Defendant is liable for civil penalties pursuant
9 to Labor Code § 2698 et seq.

10 58. Finally, Defendant has violated Labor Code §432.5 for forcing Plaintiff and aggrieved
11 employees to sign employment-related contracts and documents that contained unlawful terms of
12 employment, including invalid meal period waivers resulting from a noncompliant meal period
13 policy and/or practice.

14 **FIRST CAUSE OF ACTION**

15 **Against Defendant for Violation of the Private Attorneys General Act (“PAGA”)**

16 **(California Labor Code §2698 et seq.)**

17 59. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
18 incorporate said paragraphs herein by reference.

19 60. Plaintiff is an “aggrieved employee” under PAGA, as they were employed by
20 Defendant during the applicable statutory period and suffered one or more of the Labor Code
21 violations set forth herein. Accordingly, Plaintiff seeks to recover on behalf of herself and all other
22 current and former aggrieved employees of Defendant, the civil penalties provided by PAGA, plus
23 reasonable attorneys’ fees and costs.

24 61. Plaintiff seeks to recover the PAGA civil penalties through a representative action
25 permitted by PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal.
26 4th 969. Therefore, class certification of the PAGA claims brought herein is not required.

27 62. Plaintiff seeks civil penalties pursuant to PAGA for violations of the following Labor
28 Code provisions:

- a. Failure to Pay For All Hours Worked, Including Overtime Hours Worked (Cal. Labor Code §§218, 510, 558, 1194, 1197, 1198, 1199, 2698 *et seq.*, Wage Order 7);
- b. Failure to Pay All Wages Owed Twice Per Month (Cal. Lab. Code §§204, 210, and 2698 *et seq.*);
- c. Failure to Pay Minimum Wage (Cal. Labor Code §§ 200, 218.5, 226, 558, 1194, 1194.2, 1197, 1197.2, 1198, 1199, 2698 *et seq.*);
- d. Failure to Pay Wages Due Upon Termination (Cal. Lab. Code §§201, 202, 203, 256 and 2698 *et seq.*)
- e. Failure to Provide Rest Breaks (Cal. Lab. Code §§2226, 226.7, 512, 558, 1198, 2350, 2698 *et seq.* and 8 CCR §3457);
- f. Failure to Provide Timely and Uninterrupted Meal Breaks (Cal. Labor Code §§ 226, 226.7, 512, 558, 1198, 2699 *et seq.*);
- g. Failure to Suitable Resting Facilities (Cal. Labor Code §§ 226.7, 1198, 2698 *et seq.*);
- h. Failure to Provide Potable Drinking Water (Cal. Labor Code §2441);
- i. Failure to Reimburse for Required Business Expenses (Cal. Lab. Code §§1198, 2802, 2699 *et seq.*);
- j. Failure to Provide Accurate Itemized Wage Statements & Violation of Record Keeping Requirements (Cal. Labor Code §§ 226, 246, 248, 1174, 1174.5, 2699 *et seq.*);

63. With respect to violations of Labor Code §226(a), Labor Code §226.3 imposes a civil penalty in addition to any other penalty provided by law of two hundred fifty dollars (\$250) per aggrieved employee for the first violation, and one thousand dollars (\$1,000) per aggrieved employee for each subsequent violation of Labor Code §226(a).

64. With respect to violations of Labor Code §512, Labor Code §558 imposes a civil penalty in addition to any other penalty provided by law of fifty dollars (\$50) for initial violations for each underpaid employee for each pay period for which the employee was underpaid, and one

1 hundred dollars (\$100) for subsequent violations for each underpaid employee for each pay period
2 for which the employee was underpaid.

3 65. Labor Code §2698 *et seq.* imposes a civil penalty of one hundred dollars (\$100) per
4 pay period, per aggrieved employee for initial violations, and two hundred dollars (\$200) per pay
5 period, per aggrieved employee for subsequent violations for all Labor Code provisions for which
6 a civil penalty is not specifically provided.

7 66. Plaintiff and the other current and former employees of Defendant is aggrieved
8 employees. They were or are employed by Defendant, and each of them, and the violations alleged
9 herein were committed against them. Plaintiff brings this action on behalf of herself and all other
10 current and former aggrieved employees.

11 67. At the time of each violation, Defendant employed one or more employees.

12 68. As a result of the aforesaid wrongful and illegal conduct of Defendant, and each of
13 them, Plaintiff and aggrieved employees are entitled to civil penalties in an amount to be
14 determined at trial, pre-judgment interest, costs and attorneys' fees.

15 69. Plaintiff has complied with all procedural requirements of Labor Code §2699.3 prior
16 to filing this Complaint. By the Notice attached as Exhibit 1, submitted online to the Labor and
17 Workforce Development Agency ("LWDA") and served by certified mail upon Defendant,
18 Plaintiff through counsel notified the LWDA and Defendant of the specific Labor Code provisions
19 that Defendant has violated. The LWDA did not respond to Plaintiff's Notice within the statutory
20 timeframe, and Plaintiff has therefore exhausted administrative remedies. Pursuant to Labor Code
21 §2699.3, Plaintiff may now pursue their PAGA claims in this action on behalf of aggrieved
22 employees and the State of California.

23 **PRAYER FOR RELIEF**

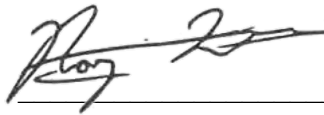
24 WHEREFORE, Plaintiff, individually and on behalf of the aggrieved employees, prays for
25 judgement against Defendant as follows:

26 1. An award of civil penalties pursuant to PAGA and the Cal. Labor Code in an amount to be
27 determined at trial, but at least the jurisdictional amount of this Court;
28

- 1 2. An award of reasonable attorneys' fees and costs pursuant to California Labor Code §2699(g)
2 and/or other applicable law;
3 3. For civil penalties as provided under Labor Code §§226.3 and 558, and/or other applicable
4 law;
5 4. Pre-judgement and post-judgement interest as provided by law; and
6 5. Such other and further relief that the Court may deem just and proper.
7

8 DATED: January 2, 2025

KOUL LAW FIRM, APC

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11 BY: Nazo Koulloukian, Esq.
12 Attorneys for Plaintiff Anakaren Luis, and all
13 aggrieved employees
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EXHIBIT 1



Nazo@Koullaw.com

P (213) 761 – 5484

F (818) 561 – 3938

3435 WILSHIRE BLVD

SUITE 1710

LOS ANGELES, CA 90010

www.koullaw.com

October 28, 2024

Via E-filing:

California Labor & Workforce
Development Agency
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102

Via Certified U.S. Mail:

Zale Delaware, Inc.
375 Ghent Road
Akron, OH 44333

Re: PAGA Notice Pursuant to California Labor Code §2699
Claimants: Anakaren Luis
Employer: Zale Delaware, Inc.

Dear Sir or Madam:

Claimant Anakaren Luis has retained Nazo Koulloukian, Esq. of the Koul Law Firm, APC, to represent her, and all other aggrieved employees, for wage and hour claims against her former employer, Zale Delaware, Inc. (hereafter “Employer”). Claimant worked for Employer as a key sales associate on an hourly, non-exempt basis until February 27, 2024.

Employer has violated, and/or has caused to be violated, several Labor Code provisions and is therefore liable for civil penalties under Cal. Labor Code §2698 *et seq.* We request that your agency investigate the claims alleged below or permit Claimant to seek civil penalties under the Private Attorney General Act (“PAGA”), Labor Code §2698 *et seq.*, on behalf of the Labor and Workforce and development Agency (“LWDA”) and the State of California in a representative action. This letter will serve as notice of these allegations pursuant to Cal. Lab. Code §2699.3.

Failure to Pay for All Hours Worked, Including Overtime Hours Worked

(Cal. Labor Code §§218, 510, 558, 1194, 1197, 1198, 1199, 2698 *et seq.*, Wage Order 7)

The Wage Orders define “hours worked” as “the time during which an employee is subject to the control of an employer, and including all the time the employee is suffered or permitted to work, whether or not required to do so.” Employer has been engaged in many unlawful employment practices which resulted in underpayment for hours worked each pay period, including overtime hours worked, as more fully set forth below. Employer has also failed to pay

the required minimum wage for all hours worked and has failed to pay all wages owed twice per month.

Claimant and aggrieved employees have been employed under conditions prohibited by the wage order, and thus Employer has also violated §§1198 and 1199. Employer is liable for civil penalties pursuant to Labor Code §§558 and 2699 *et seq.*

Off-the-Clock Hours Worked

Claimant and aggrieved employees frequently worked off the clock and were routinely subjected to periods wherein they were under the Employer's control but not compensated for their time. For example, Claimant would frequently be assigned off-the-clock work which included tasks such as disarming the security alarm, depositing money at the bank, and cleaning.

Failure to Pay All Wages Owed Twice Per Month

(Cal. Lab. Code §§204, 210, and 2698 *et seq.*)

Employer was required to pay Claimant and aggrieved employees all wages earned twice during each calendar month pursuant to Labor Code §204(a).

Employer failed to pay all wages earned to employees as a result of the unlawful employment policies and practices discussed herein. As a result of these practices, employees were underpaid for hours worked, including overtime and penalty wages, and this underpayment resulted in a failure to pay all wages owed twice per month.

Due to these failures, Employer is liable under Labor Code §204, 210 and 2698 *et seq.* for failure to pay wages as required by law.

Failure to Pay Minimum Wage

(Cal. Labor Code §§ 200, 218.5, 226, 558, 1194, 1194.2, 1197, 1197.2, 1198, 1199, 2698 *et seq.*)

Pursuant to Labor Code sections 1194, 1194.2 and 1197, it is unlawful for an employer to suffer or permit a California employee to work without paying wages at the proper minimum wage for all time worked as required by the applicable IWC Wage Order.

Employer failed to pay Claimant and aggrieved employees for all hours worked as a result of Employer's practices described above. Based on Employer's unlawful conduct described herein, and because Claimant and the aggrieved employees were paid at or near minimum wage, employer's failure to pay for all hours worked, including overtime, resulted in a payment of less than the minimum wage for all hours worked, in violation of Labor Code §1197, 1197.1, 1199 and the Wage Orders. Employer is liable for civil penalties pursuant to Labor Code §§558 and 2699 *et seq.*

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Failure to Pay Wages Due Upon Termination

(Cal. Lab. Code §§201, 202, 203, 256 and 2698 *et seq.*)

An employee who is discharged must be paid all of his or her wages, including accrued vacation, immediately at the time of termination. (Labor Code Sections 201 and 227.3.) As set forth above, Employer knowingly and willfully failed to pay all compensation due and owing to Claimant at the time employment terminated.

Employer willfully failed to pay employees who are no longer employed by it all compensation due upon termination of employment as required by Cal. Lab. Code §§201 and 202. Claimant and similarly situated individuals are now entitled to recover up to thirty (30) days' pay as waiting time under the terms of §203. Moreover, Employer is liable for civil penalties pursuant to Cal. Lab. Code § 2698 *et. seq.*

Failure to Provide Rest Breaks

(Cal. Labor Code §§226, 226.7, 512, 558, 1198, 2350, 2698 *et seq.*, and 8 CCR §3457)

Employer failed to maintain a compliant rest period policy and practice that provides its employees with off-duty rest periods as required by California law. Claimant reports that employees frequently missed rest periods as a result of Employer's staffing and business practices, and that rest breaks were not scheduled into daily shifts.

Claimant reports that she and her coworkers never received rest periods as a result of Employer's staffing and business practices, requiring that they work straight through their shifts. Moreover, although Claimant and her coworkers were provided with restrooms on-site at the mall, due to Employer's staffing and business practices, workers were often left at the kiosk alone which prevented them from being able to use the restroom or take any rest breaks during their shifts.

Rest periods were either less than ten minutes, not provided, interrupted or late, "on duty," or not scheduled before and after a meal period for shifts greater than six hours, as prescribed by California law because Employer: (1) did not account for all hours worked that were unaccounted for on their timecard; (2) did not adequately inform and train employees about their rights to rest breaks and premium payments for non-compliant rest breaks; (3) did not adequately inform and train employees about when, where and how to take timely and uninterrupted ten-minute rest breaks; (4) because Employer did not staff enough people to schedule all timely and uninterrupted ten-minute rest breaks; and/or (5) because management at various levels, affecting all hourly, non-exempt employees, refused to offer, permit, or enforce a lawfully compliant rest break policy.

The rest period requirement obligates employers to permit and authorize employees to take off-duty rest periods, meaning employers must relieve employees of all duties and relinquish control over how employees spend their time. *Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5th 257, 269. Employers must pay employees an additional hour of wages at the employee's regular rate of pay for each missed or improper rest period (e.g., less than 10 minutes, interrupted

rest period, rest period(s) at improper time(s) during shift(s). Lab. Code §226.7; applicable IWC Wage Order, §12(B) (“If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each work day that the rest period is not provided”). Moreover, under California law rest periods must be a “net” ten minutes in a suitable rest area. (*Id.* at 268) (relying on January 3, 1986, and February 22, 2002, DLSE Letters wherein the DLSE ruled that the net ten-minute language for rest periods means ten minutes of time in a rest area and cannot include time it takes to get to and from the rest area). The employer must show that it clearly articulates the right to a net ten minutes, which means it must clearly communicate what “net” ten minutes means (i.e., regardless of what happens along the way to and from a rest area, employees are entitled to a full ten minutes of rest in the rest area). *Id.*; *see also*, *Bufile v. Dollar Fin. Grp., Inc.*, (2008) 162 Cal. App. 4th 1193, 1199 (the “onus is on the employer to clearly communicate the authorization and permission [to take rest periods] to their employees.”).

Employer did not authorize or permit all of its hourly employees to take at least a ten-minute rest period in which they were relieved of all duties, for every 4 hours of work, or major fraction thereof, as required by Cal. Lab. Code §226.7, §512 and the Wage Orders. When breaks were missed Employer failed to pay the 1-hour penalty, as required. Because Employer violated the Wage Order, Employer is liable under Labor Code §1198. As a result of these violations, Employer is liable for civil penalties pursuant to Cal. Labor Code §2698 *et. seq.*

Failure to Provide Timely and Uninterrupted Meal Breaks

(Cal. Labor Code §§226, 226.7, 512, 558, 1198, 2698 *et seq.*)

Labor Code §512 provides, “[a]n employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes...” Labor Code §226.7(a) provides, “[n]o employer shall require an employee to work during any meal... period mandated by an applicable order of the Industrial Welfare Commission.” Paragraph 11 of the Wage Order provides, in pertinent part, “[u]nless an employee is relieved of all duty during a 30-minute meal period, the meal period shall be considered an ‘on duty’ meal period and counted as time worked.”

Employer failed to permit Claimant and others to take timely, off-duty, meal breaks of “not less than 30 minutes” for each five consecutive hours of work in violation of Labor Code §§226.7 and 512. Employer failed to pay all penalty pay to Claimant or aggrieved employees for noncompliant meal periods. As a derivative claim, Claimant alleges that pay statements were inaccurate, failing to include required meal period penalties, thus failing to meet the requirements of Labor Code §226(a). As a result of these violations, Employers are liable for civil penalties pursuant to Cal. Labor Code §558 and §2698 *et. seq.*

In this case, Claimant and Claimant’s coworkers would often miss their meal periods. When meal periods were provided, they were often interrupted or taken late.

Full, uninterrupted, off-duty, thirty-minute meal periods were not provided because Employer: (1) did not account for all hours worked that were unaccounted for on their timecard; (2) did not adequately inform and train employees about their rights to meal periods and premium payments for non-compliant meal periods; (3) did not adequately inform and train employees about when, where and how to take timely and uninterrupted thirty-minute meal periods; (4) because Employer did not staff enough people to schedule all timely and uninterrupted thirty-minute meal periods; (5) because management at various levels, affecting all hourly, non-exempt employees, refused to offer, permit, or enforce a lawfully compliant meal period policy; and/or (6) because Employer unlawfully shaved and/or rounded clock in and clock out times for meal periods. Employees were not paid a premium payment, paid as an hour's wage when meal periods were not given to them in compliance with California law.

Failure to Provide Suitable Resting Facilities

(Cal. Labor Code §§ 226.7, 1198, 2698 *et seq.*)

Per section 13 of all applicable IWC Wage Orders, employees shall be provided with suitable resting facilities. Section 13(B) of the Wage Orders provides: "Suitable resting facilities shall be provided in an area separate from the toilet rooms and shall be available to employees during work hours."

Employer's locations/facilities are generally similar in layout and design, and there was, and continue to be, space that allows for a resting facility that employees may use to cease work and recover during meal or rest periods. Employer could have provided employees with a resting facility within the facilities/locations with reasonable or no modification, but instead denied and continue to deny, employees with suitable areas to rest (e.g. a breakroom).

Employer did not provide employees with suitable resting facilities during their hours of work, particularly during meal and/or rest periods. Employer's failure to provide suitable resting facilities to aggrieved employees violated and continues to violate the applicable Wage Order, section 13(B) and the California Labor Code, including but not limited to section 1198.

Failure to Provide Potable Drinking Water

(Cal. Labor Code §2441)

California Labor Code §2441 requires employers to provide fresh, free, and pure drinking water for employees, at reasonable and convenient times and places. 8 CCR §3395 requires the provision of "potable drinking water meeting the requirements of §§1524, 3363, and 3457, as applicable, including but not limited to the requirements that it be fresh, pure, suitably cool, and provided to employees free of charge." 8 CCR § 3457(c) further requires the provision of potable drinking water and single-use cups.

In addition to not being provided with a resting facility, Claimant and her coworkers were not provided with any drinking water during their shifts.

Pursuant to §2441, “Any violation of this section is punishable for each offense by a fine of not less than fifty dollars (\$50), nor more than two hundred dollars (\$200), or by imprisonment for not more than 30 days, or by both the fine and imprisonment.” Pursuant to Cal. Labor Code §6712, “any employer who fails to provide the facilities required by the field sanitation standard shall be assessed a civil penalty...of not less than seven hundred fifty dollars (\$750) for each violation.”

Failure to Reimburse for Required Business Expenses

(Cal. Labor Code §§1198, 2802, 2699 *et seq.*)

Labor Code §2802 requires employers to indemnify employees for necessary expenditures or losses incurred by employees in direct consequence of the discharge of duties. Accordingly, Employers are liable for civil penalties under PAGA §2699 *et seq.*

Claimant and aggrieved employees are required to use their personal vehicles for business-related purposes. For example, Claimant was required to use her personal vehicle to drive to the bank to make a money deposit for Employer. Regardless Employer did not reimburse its employees in any way for their mileage and business-related expenses as required by the Labor Code.

Failure to Provide Accurate Itemized Wage Statements & Violation of Record Keeping Requirements

(Cal. Labor Code §§ 226, 246, 248, 1174, 1174.5, 2699 *et seq.*)

Employer knowingly and intentionally failed to provide timely, accurate, itemized wage statements to Claimant and the aggrieved employees in accordance with Labor Code §§ 226 and keep accurate records as required by §1174(d).

The statements provided to Claimant and aggrieved employees, and the records maintained by Employer, have not accurately reflected actual gross wages earned, including pay for all hours worked and the accurate rate of pay for all hours worked and pay for meal and rest period premium wages.

§226 (a) requires:

An employer, semimonthly or at the time of each payment of wages, shall furnish to his or her employee, either as a detachable part of the check, draft, or voucher paying the employee’s wages, or separately if wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except as provided in subdivision (j), (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 only 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, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of 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...

Such failures called injury to Claimant and others, by, among other things, impeding them from knowing the total hours worked, and the amount of wages to which they are and were entitled. Employer knowingly and intentionally failed to accurately itemize the gross wages earned, net wages earned, and total hours worked. Employer is liable for civil penalties pursuant to Labor Code § 2698 *et seq.*

Finally, Employer has violated Labor Code §432.5 for forcing Claimant and aggrieved employees to sign employment-related contracts and documents that contained unlawful terms of employment, including invalid meal period waivers resulting from a noncompliant meal period policy and/or practice.

Conclusion

Employer has violated a number of California wage and hour laws. Claimant respectfully requests that the agency investigate the above allegations and hereby provides notice of the allegations pursuant to PAGA's provisions. Alternatively, Claimant requests that the agency inform her if it does not intend to investigate these violations so that she may pursue her claims as a representative action in civil court.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Nazo Koulloukian', with a stylized flourish at the end.

Nazo Koulloukian, Esq.
Attorneys for Claimant