

Nicholas J. Ferraro (State Bar No. 306528)
Lauren N. Vega (State Bar No. 306525)
Mariela R. Romo (State Bar No. 341657)
Ferraro Vega Employment Lawyers, Inc.
3333 Camino del Rio South, Suite 300
San Diego, California 92108
(619) 693-7727 main / (619) 350-6855 fax
nick@ferrarovega.com / lauren@ferrarovega.com
mariela@ferrarovega.com

Attorneys for Plaintiff Leilani Angeles

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

LEILANI ANGELES, on behalf of others
similarly situated and the State of California
under the Private Attorneys General Act,

Plaintiffs,

vs.

GUESS? RETAIL, INC.; GUESS?, INC., and
DOES 1 through 50, inclusive,

Defendants.

Case No. 24CU027119C

**REPRESENTATIVE ACTION
COMPLAINT**

1. Civil Penalties under the Private Attorneys
General Act (Labor Code §§ 2698 *et seq.*)

1 Plaintiff LEILANI ANGELES, on behalf of all others similarly situated and the State of
2 California under the Private Attorneys General Act (“Plaintiff”) brings this REPRESENTATIVE
3 ACTION COMPLAINT against Defendants GUESS? RETAIL, INC.; GUESS?, INC., and DOES 1
4 through 50, inclusive (collectively “Defendants”), alleging as follows:

5 **INTRODUCTION**

6 1. This is a representative action complaint brought under the California Private Attorneys
7 General Act (Labor Code sections 2968 et seq.)

8 2. Defendants failed to compensate Plaintiff and aggrieved employees for all hours
9 suffered or permitted to work in violation of the applicable IWC Wage Order.

10 3. Defendants’ underpayment of wages was facilitated by their company-wide practices
11 of time-shaving and requiring employees to complete work while off-the-clock.

12 4. Defendants also underpaid the aggrieved employees’ wages by failing to include all
13 forms of remuneration, including bonuses, into the regular rate of pay calculation for overtime, sick
14 pay, and premiums.

15 5. Defendants failed to provide, authorize, and/or permit Plaintiff and the aggrieved
16 employees to take compliant meal and rest periods to which they were entitled. Further, Defendants
17 did not pay Plaintiff and the aggrieved employees’ meal or rest period premiums.

18 6. Defendants failed to reimburse Plaintiff and aggrieved employees for necessary
19 expenses incurred in furtherance of the aggrieved employees’ job duties.

20 7. Defendants’ employment policies, practices, and payroll administration systems
21 enabled and facilitated these violations on a company-wide basis with respect to the aggrieved
22 employees.

23 8. Defendants are further liable for derivative claims for wage statements, untimely
24 payment, and other associated violations.

25 9. Plaintiff seeks to recover the underpaid damages, plus associated penalties, interests,
26 attorney’s fees and costs.

1 **JURISDICTION & VENUE**

2 10. Jurisdiction of this action is proper in this Court under Article VI, Section 10 of the
3 California Constitution as the causes of action are premised upon violations of California law.

4 11. The monetary damages and restitution sought exceed the minimal jurisdiction limits of
5 the Superior Court.

6 12. This Court has jurisdiction over Defendants because, upon information and belief,
7 Defendants have sufficient minimum contacts in California, or otherwise intentionally avail
8 themselves to the California economy so as to render the exercise of jurisdiction over them by the
9 California courts consistent with traditional notions of fair play and substantial justice.

10 13. Venue is proper in this Court under Code of Civil Procedure sections 393(a), 395,
11 and/or 395.5 because, upon information and belief, Defendants conducted business and committed
12 some of the alleged violations in this County.

13 **PARTIES**

14 **A. Plaintiff Leilani Angeles**

15 14. Plaintiff Angeles is an individual over 18 years of age who worked for Defendants in
16 California as a non-exempt employee from about November 2022 to August 2024. Plaintiff worked
17 as an Assistant Manager.

18 15. The State of California, via the Labor and Workforce Development Agency
19 (“LWDA”), is the real party in interest in this action. (*Kim v. Reins Int’l California, Inc.* (2020) 9
20 Cal. 5th 73, 81 [The “government entity on whose behalf the plaintiff files suit is always the real party
21 in interest.”]) To the extent permitted by law, including pursuant *Balderas v. Fresh Start Harvesting,*
22 *Inc.*, Court of Appeals Case No. B326759 (2nd App. Dist.) ____ Cal. App. 5th ____ (Mar. 20, 2024,
23 *as modified* Apr. 18, 2024), the PAGA claim is brought exclusively as a representative action and does
24 not include arbitrable claims.

25 **B. Defendants**

26 16. Defendant GUESS? RETAIL, INC. is a Delaware corporation that maintains
27 operations and conducts business throughout the State of California, including in this county.
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1
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3 17. Defendant GUESS?, INC. is a Delaware corporation that maintains operations and
4 conducts business throughout the State of California, including in this county.

5 18. The true names and capacities, whether individual, corporate, or otherwise, of the
6 parties sued as DOES 1 through 50, are presently unknown, unascertainable, or uncertain, and are sued
7 by such fictitious names under Code of Civil Procedure section 474. Upon information and belief,
8 each of DOES 1 through 50 constitutes a legal employer or is otherwise legally responsible in some
9 manner for the acts and omissions alleged herein. This Complaint may be amended to reflect their
10 true names and capacities once ascertained.

11 19. Upon information and belief, Defendants in this action are employers, co-employers,
12 joint employers, and/or part of an integrated employer enterprise, as each of the Defendants exercised
13 control over the wages, hours, and working conditions of the employees, suffered and permitted them
14 to work, and otherwise engaged them as employees under California law.

15 20. Upon information and belief, at least some of the Defendants have common ownership,
16 common management, interrelationship of operations, and centralized control over labor relations and
17 are therefore part of an integrated enterprise and thus jointly and severally responsible for the acts and
18 omissions alleged herein, including pursuant to Labor Code sections 558, 558.1, and 1197.1.

19 21. Upon information and belief, Defendants acted in all respects pertinent to this action as
20 an alter-ego, agent, servant, joint employer, joint venturer, co-conspirator, partner, in an integrated
21 enterprise, or in some other capacity on behalf of all other co-defendants, such that the acts and
22 omissions of each defendant may be legally attributable to all others.

23 **GENERAL ALLEGATIONS**

24 22. Plaintiff and aggrieved employees worked for Defendants as non-exempt employees
25 and were compensated on an hourly basis.

26 23. Defendants maintained an unlawful policy and practice of requiring Plaintiff and
27 aggrieved employees to undergo bag searches at the end of each shift, while off-the-clock.
28 Specifically, as an Assistant Manager, Plaintiff was not only required to have her bag checked off the

1 clock, but she was also required to check all the other employees' bags. Further, Defendants
2 maintained an unlawful policy and practice of requiring Plaintiff and aggrieved employees to complete
3 off-the-clock work when they assisted "virtual customers" to help Defendants meet its daily sales
4 goals. Plaintiff received text messages and voice recordings from "virtual customers" to her personal
5 cell phone, outside of her scheduled work hours. Plaintiff responded to "virtual customer" requests
6 for assistance about twice per week while off-the-clock and without pay. Additionally, Defendants
7 engaged in time-shaving practices to avoid paying Plaintiff and aggrieved employees for time that
8 exceeded their scheduled shift. As a result, Defendants would alter Plaintiff and other aggrieved
9 employees' time records to remove any additional time worked beyond their scheduled shifts, even if
10 Plaintiff and aggrieved employees actually worked more. Due to this policy and practice of time-
11 shaving and requirement to complete off-the-clock work, all hours worked were not directly
12 compensated, resulting in the underpayment of regular and overtime wages to Plaintiff and aggrieved
13 employees.

14 24. Defendants failed to pay Plaintiff and aggrieved employees overtime wages at the
15 "regular rate of pay" for overtime hours worked, resulting in unpaid overtime wages. For example,
16 during the pay period from June 26, 2022, to July 9, 2022, Plaintiff earned \$165.00 in additional
17 remuneration labeled "OPT OFF" in the same period she earned overtime wages. However,
18 Defendants failed to properly include the additional remuneration payment in Plaintiff's overtime rate,
19 as the 0.07 overtime hours were paid at 1.5x Plaintiff's base rate of \$15.00 rather than 1.5x her "regular
20 rate of pay." Defendants committed the same "regular rate of pay" and overtime violations against
21 Plaintiff and aggrieved employees as a matter of common payroll administration and company policy
22 in a manner susceptible to common proof.

23 25. Defendants did not provide Plaintiff and aggrieved employees with all sick leave
24 accrued based upon the actual hours that they worked. Because of Defendants' unlawful policy of
25 time-shaving and requirement of Plaintiff and aggrieved employees to complete off-the-clock work as
26 discussed above, Plaintiff and aggrieved employees worked overtime hours that were not accounted
27 for when calculating an employee's accrued paid sick leave. Additionally, Defendant failed to
28

1 calculate and pay paid sick leave at the regular rate of pay in those pay periods where they earned
2 additional payments, commissions, bonuses, or other forms of non-excludable remuneration.

3 26. Further, due to understaffing and the high demands of the job, Plaintiff and aggrieved
4 employees suffered many short, missed, late, and/or interrupted meal periods. Defendants maintained
5 a policy requiring at least one manager to be on the sales floor at all times. Consequently, when only
6 one manager was scheduled, that manager was unable to take their legally mandated meal period.
7 Additionally, due to understaffing, if an employee was late or absent, Plaintiff and other aggrieved
8 employees were forced to take late or shortened meal breaks in order to maintain the same staffing
9 levels on the floor. This policy deprived Plaintiff and other aggrieved employees of their right to
10 uninterrupted, unpaid meal breaks. Defendants failed to pay the aggrieved employees all meal
11 premiums owed when they experienced such non-compliant meal periods. To the extent that
12 Defendants paid any meal period premiums, the premiums were not paid at the regular rate of
13 compensation because the premium did not factor in bonuses or other forms of remuneration, instead
14 electing to pay Plaintiff and aggrieved employees at their base hourly rate.

15 27. Similarly, Plaintiff and aggrieved employees were not authorized and permitted to take
16 all rest periods to which they were entitled. Plaintiff and other aggrieved employees rarely, if at all,
17 took all their rest periods. For similar reasons as their noncompliant meal periods, due to understaffing
18 and work demands, Plaintiff and other aggrieved employees were required to work through their rest
19 periods. Defendants did not provide adequate staffing to allow Plaintiff to take rest periods, nor did
20 they schedule or instruct her to take them. Plaintiff almost never received more than one rest period
21 on days she worked eight hours, and on some days, she received no rest period at all. Moreover, only
22 employees of a similar rank to Plaintiff had access to a pin number that was required to complete
23 customer merchandise returns. If Plaintiff was on her rest break, but a customer requested a return,
24 Plaintiff's break would be interrupted because she was required to return to work and complete that
25 transaction. Likewise, if more than two customers were in the store and only one employee was on
26 the floor, Plaintiff would be required to end her break prematurely to ensure that each customer had
27 assistance. Defendants failed to pay the aggrieved employees all rest premiums owed when they
28 experienced such non-compliant rest periods. To the extent that Defendants paid any rest period

1 premiums, the premiums were not paid at the regular rate of compensation because the premium did
2 not factor in bonuses or other forms of remuneration, instead electing to pay Plaintiff and aggrieved
3 employees at their base hourly rate.

4 28. Defendants also required Plaintiff and aggrieved employees to incur necessary, work-
5 related expenses, without reimbursements. Specifically, Plaintiff and aggrieved employees were
6 required to use their personal cell phones to assist “virtual customers.” Plaintiff and aggrieved
7 employees were required to communicate with virtual customers regarding sales and promotions via
8 their own personal devices. Further, Plaintiff and other aggrieved employees communicated with one
9 another, for work purposes like discussing promotions and store issues, via group chats on their
10 personal cell phones. Plaintiff specifically, received approximately ten texts per day regarding store
11 front operations. Thus, in direct consequence of their job duties, Plaintiff and aggrieved employees
12 were required to use their personal cell phones for work-related purposes. Defendants did not
13 reimburse Plaintiff and aggrieved employees for these necessary expenses.

14 29. These violations create derivative liability for failure to timely pay all wages owed each
15 payday or upon separation of employment.

16 30. As a result of the foregoing issues, Defendants failed to provide accurate itemized wage
17 statements to Plaintiff and aggrieved employees each pay period as a result of the policies set forth
18 above. Defendants failed to list the correct “gross wages earned” as employees earned wages and
19 premiums that were not paid, resulting in an inaccurate reflection and recording of “gross wages
20 earned” on those wage statements. Likewise, Defendants failed to state on employee wage statements
21 each pay period the applicable hourly rates in effect and the number of hours worked at that rate as
22 Defendants failed to pay all wages and premiums owed to employees. The amounts stated are instead
23 depreciated and underpaid, resulting in an inaccurate reflection on the pay stub.

24 31. Further, Defendants’ wage statements failed to accurately list employees’ “total hours
25 worked” because of Defendants’ unlawful practice of time-shaving and requiring Plaintiff and
26 aggrieved employees to complete off-the-clock work. Thus, Plaintiff and aggrieved employees
27 cannot promptly and easily determine from the wage statement alone the wages paid or earned without
28 reference to other documents or information. These wage statement violations are significant because

1 they create confusion among Plaintiff and aggrieved employees with respect to what amounts were
2 owed and paid, at what rate, the number of hours worked, and how those amounts were or should
3 be calculated. The wage statements reflect a false statement of earnings and conceal the
4 underpayments of employee wages.

5 **FIRST CAUSE OF ACTION**

6 **CIVIL PENALTIES UNDER THE PRIVATE ATTORNEYS GENERAL ACT**

7 **Violation of Labor Code §§ 2698 *et seq.***

8 **(By Plaintiff on Behalf of the State and the Aggrieved Employees Against All Defendants)**

9 32. All outside paragraphs of this Complaint are incorporated into this section.

10 33. Plaintiff brings this cause of action as a proxy for the State of California on behalf of
11 the following “aggrieved employees” pursuant to the Private Attorneys General Act (“PAGA”),
12 codified as Labor Code section 2698 *et seq.*:

13 a. All current and former non-exempt employees who worked for Defendants in
14 California at any time from one year prior to the postmark date of the initial
15 PAGA notice through date of trial.

16 34. Plaintiff reserves the right to amend, supplement, or add to this description of the
17 aggrieved employees, according to proof.

18 35. The State of California, via the Labor and Workforce Development Agency
19 (“LWDA”), is the real party in interest in this action with respect to this cause of action. (*Kim v. Reins*
20 *Int’l California, Inc.* (2020) 9 Cal. 5th 73, 81 [The “government entity on whose behalf the plaintiff
21 files suit is always the real party in interest.”])

22 36. Labor Code section 2699(a) provides: “Notwithstanding any other provision of law,,
23 any provision of this code that provides for a civil penalty to be assessed and collected by the Labor
24 and Workforce Development Agency or any of its departments, divisions, commissions, boards,
25 agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil
26 action brought by an aggrieved employee on behalf of the employee and other current or former
27 employees against whom a violation of the same provision was committed pursuant to the procedures
28 specified in Section 2699.3. “

37. Any allegations regarding violations of the IWC Wage Orders are enforceable as violations of Labor Code section 1198, which states: “[t]he employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

38. Labor Code section 2699.3 sets forth the procedure for commencing an action for civil penalties under the PAGA.

39. On or about **October 2, 2024**, Plaintiff paid the requisite PAGA filing fee and provided written notice (by online electronic filing with the LWDA and by certified mail to Defendants) of Defendants’ alleged Labor Code violations, including the facts and theories to support the alleged violations.

40. A true and correct copy of Plaintiff’s written PAGA notice, entitled “Notice of Labor Code Violations” is attached hereto as Exhibit 1 and incorporated by reference as though fully set forth herein (the “PAGA notice”).

41. To date, neither Plaintiff nor Plaintiff’s counsel has received a response to Plaintiff’s written PAGA notice from the LWDA.

42. Within 33 calendar days of the postmark date of the notice sent by Plaintiff, neither Plaintiff nor Plaintiff’s counsel has received written notice by certified mail from any defendant providing a description of any actions taken to cure the alleged violations.

43. Now that at least 65 days have passed from Plaintiff notifying Defendants of these violations, without notice of cure from Defendants or notice from the LWDA of its intent to investigate the alleged allegations and issue the appropriate citations to Defendants, Plaintiff exhausted all prerequisites and commenced this civil action under Labor Code section 2699 *et seq.*

44. As set forth in the PAGA notice attached as Exhibit 1 and incorporated into this Complaint, Defendants committed the following violations and are liable for all corresponding civil penalties:

- a. ***Unpaid Hours Worked/Minimum Wage.*** Violation of Labor Code §§ 1194, 1197, 1198; IWC Wage Orders.
- b. ***Unpaid Overtime.*** Violation of Labor Code §§ 510, 1194, 1198; IWC Wage Orders.

- c. ***Unpaid Paid Sick Leave.*** Violation of Labor Code §§ 246 through 248.7.
- d. ***Unpaid Meal Period Premium Wages.*** Violation of Labor Code §§ 226.7, 512, 1198; IWC Wage Orders.
- e. ***Unpaid Rest Period Premium Wages.*** Violation of Labor Code §§ 226.7, 516, 1198; IWC Wage Orders.
- f. ***Untimely Payment of Wages During Employment.*** Violation of Labor Code §§ 204, 204b, 210.
- g. ***Untimely Payment of Wages Upon Separation of Employment.*** Violation of Labor Code §§ 201, 202, 203, 256.
- h. ***Non-Compliant Wage Statements.*** Violation of Labor Code §§ 226, 226.3.
- i. ***Unreimbursed Employee Expenses.*** Violation of Labor Code §§ 2802, 2804.
- j. ***Failure to Maintain Accurate Records.*** Violation of Labor Code § 1174; IWC Wage Orders.

45. Plaintiff seeks to collect all recoverable civil penalties for the Labor Code violations alleged in this Complaint and the PAGA notice (including amendments thereto) against Defendants pursuant to Labor Code section 2699(a) and (f), in addition to attorneys' fees, costs, and interest to the extent permitted by law, including under Labor Code section 2699(k).

PRAYER

Plaintiff prays for judgment as follows:

- a. For recovery of damages in amount according to proof;
- b. For all recoverable pre- and post-judgment interest;
- c. For this action to be maintained as a representative action under the PAGA;
- d. For Plaintiff and counsel of record to be provided with all enforcement capability as if the action were brought by the State of California or the California Division of Labor Enforcement;
- e. For recovery of all civil penalties and other recoverable amounts under the PAGA;

- 1 f. For reasonable attorneys' fees and costs of suit, including expert fees, to the extent
2 permitted by law, associated with the PAGA claims pursuant to Labor Code § 2699,
3 and Code of Civil Procedure section 1021.5 and any other applicable sections; and
4 g. For such other relief the Court deems just and proper.

5
6 Dated: December 9, 2024

Ferraro Vega Employment Lawyers, Inc.

7 

8 Nicholas J. Ferraro

9 *Attorneys for Plaintiff Leilani Angeles*

EXHIBIT 1

Notice of Labor Code Violations

FERRARO VEGA
SAN DIEGO EMPLOYMENT LAWYERS

Nicholas J. Ferraro
nick@ferrarovega.com
Lauren N. Vega
lauren@ferrarovega.com

ATTORNEYS AT LAW
3333 Camino del Rio South, Suite 300
San Diego, California 92108

619-693-7727
619-350-6855 fax
ferrarovega.com

October 2, 2024

NOTICE OF LABOR CODE VIOLATIONS
CALIFORNIA LABOR CODE SECTIONS 2698 *et seq.*

VIA CERTIFIED U.S. MAIL
- Electronic Return Receipt -

GUESS? RETAIL, INC.
1444 S. ALAMEDA STREET
LOS ANGELES, California 90021

- PAGA Notice & Filing Fee -
Submitted electronically to the Labor and
Workforce Development Agency

GUESS?, INC.
1444 S. ALAMEDA STREET
LOS ANGELES, California 90021

Dear LWDA Officer and Company Representatives:

This letter serves as written notice under Labor Code section 2699.3 on behalf of **LEILANI ANGELES** (“Plaintiff(s)”) and all other “aggrieved employees” of the following “Defendant(s)”:

GUESS? RETAIL, INC.; GUESS? INC.

Defendant(s) shall mean and include the foregoing in addition to any other related employer entities, individuals under Labor Code sections 558 and 558.1, and all others who may be later added upon further investigation and discovery as liable employers.

This office serves as legal counsel for Plaintiff. If the California Labor and Workforce Development Agency (“LWDA”) does not investigate the facts, allegations, and violations set forth in this notice within the statutorily prescribed 65-day period under Labor Code section 2699.3, Plaintiff intends to commence a civil action against Defendants as a proxy and agent of the State of California under the Private Attorneys General Act (“PAGA”). “PAGA allows an ‘aggrieved employee’—a person affected by at least one Labor Code violation committed by an employer—to pursue penalties for all the Labor Code violations committed by that employer.” *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal. App. 5th 745, 751; *Kim v.*

Reins International California, Inc. (2020) 9 Cal. 73, 79. Plaintiff maintains standing to pursue these claims against Defendants as an aggrieved employee.

Through this notice, Plaintiff requests that Defendants complete an internal investigation and audit of the wage and hour and employment practices at issue and make a good faith effort to correct any violations. Plaintiff attempts to identify the non-compliant policies and practices affecting the aggrieved employees so that the parties may resolve the underlying damages and penalties in judgment or settlement approved by the Superior Court of California under Labor Code section 2699(k). Defendants are notified that any attempt to resolve this case should be conducted in coordination with Plaintiff's counsel to protect the interests of Plaintiff, the aggrieved employees, and the State of California via the LWDA. Plaintiff advises Defendants this letter should be also considered a reasonable attempt at settlement of this matter, subject to an exchange of additional documents and information. *Graham v. Daimler Chrysler Corp.* (2004) 24 Cal. 4th 553, 561.

- BACKGROUND -

Defendants employed Plaintiff during the PAGA Period in the position of Assistant Manager from about November 2022 to August 2024. During their employment Plaintiff and the other aggrieved employees were subject to the wage and hour and employment protections set forth in the California Labor Code and IWC Wage Orders.

Through this notice, Plaintiff informs the LWDA of the Labor Code violations set forth herein. The “aggrieved employees” include Plaintiff and the following individuals:

All current and former employees who worked for Defendants in the State of California during one-year period preceding the date of this notice through the current date and the date of trial in any pending action (the “aggrieved employees” and the “PAGA Period”).

Plaintiff reserves the right to expand or narrow the definition of the “aggrieved employees” in the forthcoming civil action. Furthermore, Plaintiff seeks all recoverable civil penalties for Defendants’ violations and reserves the right to supplement this notice as further investigation is completed and further facts, witnesses, and violations are uncovered.

- PAGA CLAIMS -

Unpaid Hours Worked/Minimum Wage Violation of Labor Code §§ 1194, 1197, 1198; IWC Wage Orders

Defendants violated Labor Code sections 1194, 1197, and 1198, along with the California Minimum Wage Order, the applicable local minimum wage ordinances, and the “Hours and

Days of Work” and “Minimum Wages” sections of the applicable IWC Wage Orders with respect to the aggrieved employees.

Labor Code section 1194 renders it unlawful for an employee to receive less than the legal minimum wage for hours worked in California. Labor Code section 1197 further mandates that “[t]he minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful.” Labor Code section 1198 renders “employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]” unlawful. The California Minimum Wage Order and the applicable sections of the IWC Wage Orders further require payment of minimum wages for all hours worked. The “Minimum Wages” sections of the applicable IWC Wage Order provide that “[e]very employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission, or otherwise.” The foregoing California wage laws require payment of “not less than the applicable minimum wage *for all hours worked* in the payroll period” and California law does not allow averaging of pay over the hours worked in the pay period, even if the total pay results in an average above the minimum wage. *Armenta v. Osmose, Inc.* (2005) 135 Cal. App. 3d 314, 324.

The California Supreme Court has held “time spent on the employer’s premises waiting for, and undergoing, required exit searches of packages, bags, or personal technology devices voluntarily brought to work purely for personal convenience was compensable as ‘hours worked’ within the meaning of wage order No. 7-2001” reasoning that “[a]ccording to the ‘hours worked’ control clause in the wage order, such employee[s] must be paid. *Frlekin v. Apple Inc.* (2020) 8 Cal 5th 1038.

Defendants failed to pay Plaintiff and the aggrieved employees at the lawful minimum wage rate for all hours worked, resulting in unpaid minimum wages.

First, Defendants maintained a policy and practice of requiring Plaintiff and aggrieved employees to undergo bag searches at the end of each shift, while off-the-clock, resulting in unpaid minimum wages. Specifically, as an Assistant Manager, Plaintiff was not only required to have her bag checked off the clock, but she was also required to check all the other employees’ bags. This occurred every shift and every pay period Plaintiff and the other aggrieved employees worked, resulting in unpaid wages.

Second, Plaintiff and other aggrieved employees completed work off-the-clock when they assisted “virtual customers” to help Defendants meet its daily sales goals. Plaintiff received text messages and voice recordings from “virtual customers” to her personal cell phone, outside of her scheduled work hours. Plaintiff responded to “virtual customer” requests for assistance about twice per week while off-the-clock and without pay.

Third, upon information and belief, Defendants engaged in time-shaving practices to avoid paying Plaintiff and aggrieved employees for time that exceeded their scheduled shift. As a result, Defendant would alter Plaintiff and other aggrieved employees' time records to remove any additional time worked beyond their scheduled shifts, even if Plaintiff and aggrieved employees actually worked more. Defendants routinely shaved time off employees' time records, without notifying the aggrieved employees, thereby depriving them of their earned wages.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, up to the maximum amount allowed as set forth under the Labor Code.

Unpaid Overtime **Violation of Labor Code §§ 510, 1194, 1198; IWC Wage Orders**

Defendants violated Labor Code sections 510, 1194, and 1198, along with the "Hours and Days of Work" sections of the applicable IWC Wage Orders with respect to the aggrieved employees.

Labor Code section 510 requires "[a]ny work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee;" and "any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee;" and "any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee." Labor Code section 1194 renders it unlawful for an employee to receive less than the legal overtime rate for overtime hours worked in California. Labor Code section 1198 renders "employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]" unlawful. The IWC Wage Orders further require payment of overtime wages for all overtime hours worked, including the "Hours and Days of Work" sections.

Defendants failed to pay Plaintiff and the aggrieved employees overtime wages and the lawful rate of pay for overtime hours worked, resulting in unpaid overtime wages.

First, as described in the "Unpaid Hours Worked/Minimum Wages" section above, due to Defendant's practice of failing to compensate Plaintiff and the aggrieved employees for off-the-clock time spent undergoing mandatory bag checks, Plaintiff and aggrieved employees who worked at least 8 hours in a workday, or 40 hours in a workweek, worked unpaid overtime.

Second, Defendants engaged in time-shaving practices by requiring Plaintiff and other aggrieved employees to work off the clock at the end of their shifts. To the extent that

Defendants' unlawful practice of time shaving resulted in removing hours worked over 8 hours in a day or 40 hours in a week, this resulted in unpaid overtime.

Third, upon information and belief, Defendant failed to pay overtime at the "regular rate of pay." Defendant paid Plaintiff and the aggrieved employees' bonuses and other forms of non-excludable remuneration which Defendant failed to include in the overtime rates in the pay periods when employees worked overtime hours.

During periods when employees earned additional compensation, such as bonuses, Defendant unlawfully paid overtime to Plaintiff and the aggrieved employees, at 1.5x their base rate of pay. For each overtime hour worked during the period in which Plaintiff and the aggrieved employees earned the additional forms of remuneration, Defendant should have (but failed to) pay overtime "at a rate no less than one and one-half times the regular rate of pay for an employee" and "twice the regular rate of pay" for double time hours as required by the plan language of Labor Code section 510(a) and the IWC Wage Orders. An illustrative example of the regular rate of pay violation is found on Plaintiff's wage statement with the pay date of July 15, 2022:

GUESS? RETAIL, INC.
800-224-8377 EXT 5525
1444 SOUTH ALAMEDA STREET
LOS ANGELES, CA 90021

CO. RTW FILE DEPT. CLOCK VCHR. NO.
365023 007089 F1-08 0000282603 1
30010

Earnings Statement

Period Beginning: 06/26/2022
Period Ending: 07/09/2022
Pay Date: 07/15/2022

LEILANI ANGELES

Filing Status: Single/Married filing separately
Exemptions/Allowances:
Federal: Standard Withholding Table

Social Security Number: XXX-XX-XXXX

Earnings	rate	hours	this period	year to date
Regular	15.0000	39.97	599.55	7,849.97
Overtime	22.5714	0.07	1.58	4.96
OPT OFF	15.0000	11.00	165.00	291.00
Gift Certificate				60.00
HOLIDAY				29.85
Mismeal Penalt				15.00
Gross Pay			\$766.13	8,250.78

Other Benefits and Information	this period	total to date
Tot Work Hours	40.04	
Totl Hrs Worked	40.04	
Sick Balance		16.00

Important Notes
IF NO CA Sppl Used IS LISTED YOU HAVE USED ZERO HRS

Extract from Plaintiff's Wage Statement with a Pay Date of 07/15/2022

Here, Plaintiff earned additional remuneration labeled "OPT OFF" in the same pay period that she earned overtime wages. However, the "OPT OFF" earnings were not factored into her overtime rate. Instead, she was paid at a rate of 1.5x her base hourly rate, rather than 1.5x the regular rate of pay. Defendant committed this "regular rate of pay" violation against the other aggrieved employees as well, when employees earned forms of pay like bonuses and commissions required to be included in the regular rate but were not, as a matter of payroll administration and company policy.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, up to the maximum amount allowed as set forth under the Labor Code.

Unpaid Paid Sick Leave
Violation of Labor Code §§ 246 through 248.7

Defendants violated Labor Code sections 246 through 248.7 with respect to the aggrieved employees.

Labor Code section 246 requires employers to provide paid sick leave to its workforce on the terms set forth in the statute. Employers must comply with the accrual, use, and notice provisions of Labor Code sections 246, 246.5, 247, and must further ensure that they maintain the paid sick leave records required by Labor Code section 247.5. Employers have the option of providing 24 hours of paid sick leave to employees or to allow employees to accrue paid sick leave each pay period. If an employer chooses the accrual method, employees must accrue sick leave at a rate of one hour for every thirty hours worked in a given pay period as set forth in Labor Code section 246(b)(1). Under the accrual method, employees must begin accruing paid sick leave at the commencement of employment.

Employers must pay sick leave in accordance with one of the three permissible methods provided in Labor Code section 246(l): (1) “the same manner as the regular rate of pay for the workweek;” (2) “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;” or (3) “for exempt employee ... in the same manner as the employer calculates wages for other forms of paid leave time.” Labor Code sections 248.6 and 248.7 similarly require paid sick leave to be paid at a regular rate-based calculation in excess of the base hourly rate and at the lawful accrual rate.

Under Labor Code section 246(i), employers must provide employees “with written notice of the amount of paid sick leave available ... for use on either the employee’s itemized wage statement ... or in a separate writing provided on the designated pay date with the employee’s payment of wages.”

Defendant failed to comply with California’s paid sick leave laws with respect to the aggrieved employees. First, Defendant failed to provide Plaintiff and aggrieved employees with all sick leave accrued. Plaintiff and aggrieved employees worked off the clock, overtime hours that were not accounted for when calculating an employee’s accrued paid sick leave. As a result, Plaintiff and other aggrieved employees were not awarded the total accrued sick leave time they had earned.

Moreover, upon information and belief, Defendant failed to pay sick leave at the correct rate because they failed to factor in bonuses, commissions, and/or other forms of remuneration,

as required by section 246. Instead, Defendant paid sick leave to Plaintiff and the aggrieved employees at their base hourly rate, resulting in inaccurate sick leave accrual.

The failure to calculate and pay paid sick leave at one of the lawful rates set forth in Labor Code § 246(l)(1)-(3) and 247 *et seq.* was applied as a matter of common policy and practice to aggrieved employees in those periods where they earned additional payments, commissions, bonuses, or other forms of non-excludable remuneration and also received paid sick leave.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, up to the maximum amount allowed as set forth under the Labor Code.

Unpaid Meal Period Premium Wages
Violation of Labor Code §§ 226.7, 512, 1198; IWC Wage Orders

Defendants violated Labor Code sections 226.7, 512, and 1198, along with the related sections of the IWC Wage Orders with respect to the aggrieved employees.

Labor Code section 512 and the IWC Wage Orders require that employers provide an uninterrupted 30-minute meal period after no more than five hours of work and a second meal period after no more than 10 hours of work. *See Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, 1049. Labor Code section 226.7 requires that if a meal period is late, missed, short, or interrupted, the employer must pay one additional hour of pay at the employee's "regular rate" of compensation. *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858, 862 ("We hold that the terms are synonymous: "regular rate of compensation" under section 226.7(c), like "regular rate of pay" under section 510(a), encompasses all nondiscretionary payments, not just hourly wages"). "[T]ime records showing noncompliant meal periods raise a rebuttable presumption of meal period violations, including at the summary judgment stage." *Donohue v. AMN Services, LLC* (2021) 11 Cal. 5th 58, 61. Labor Code section 1198 renders "employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]" unlawful. The IWC Wage Orders, including Section 11 (Meal Periods), further require one uninterrupted 30-minute meal period after no more than five hours of work and a second meal period after no more than 10 hours of work and an additional hour of pay at the employee's regular rate of compensation for each workday that a compliant meal period is not provided. Pursuant to Section 11(A) of the IWC Wage Orders, the California Supreme Court has held that the on-duty meal period exception is "exceedingly narrow" and applies only when (1) "the nature of the work prevents the employee from being relieved of all duty" and (2) *both* "the employer and employee have agreed, in writing, to the on-duty meal period." *Augustus v. AMB Security Services, Inc.* (2016) 2 Cal. 5th 257, 266-276 (emphasis added). If these two requirements are not met, then the employer owes the employee one hour of premium pay for each non-compliant meal period taken under the purported on-duty meal arrangement. *Naranjo v. Spectrum Security Services, Inc.* (2019) 40 Cal. 5th 444, 459.

Plaintiff and other employees experienced missed, late, short, and interrupted meal periods due to understaffing and the high demands of the job. Nonetheless, Defendants had a policy and practice of avoiding and failing to pay all meal premiums to Plaintiff and other aggrieved employees.

First, Defendants maintained a policy requiring at least one manager to be on the sales floor at all times. Consequently, when only one manager was scheduled, that manager was unable to take their legally mandated meal period. Additionally, due to understaffing, if an employee was late or absent, Plaintiff and other aggrieved employees were forced to take late or shortened meal breaks in order to maintain the same staffing levels on the floor. This policy deprived Plaintiff and other aggrieved employees of their right to uninterrupted, unpaid meal breaks. By failing to provide the required meal periods and by not compensating employees at the premium rate for missed breaks, Defendants violated California's meal period provisions.

Second, to the extent that Defendants ever paid a meal period premium, Defendant failed to pay Plaintiff and other aggrieved employees a meal period premium at the “regular rate of compensation” because premiums paid did not factor in all forms of non-excludable remuneration including bonuses and commissions.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, up to the maximum amount allowed as set forth under the Labor Code.

Unpaid Rest Period Premium Wages **Violation of Labor Code §§ 226.7, 516, 1198; IWC Wage Orders**

Defendants violated Labor Code sections 226.7, 516, and 1198, and the related sections of the IWC Wage Orders with respect to Plaintiff and the aggrieved employees.

Labor Code sections 226.7 and 516 and the IWC Wage Orders require that employers authorize and permit an uninterrupted 10-minute rest period for each four-hour period (or major fraction thereof) that an employee works. Labor Code section 226.7 requires that if a rest period is non-compliant, the employer must pay one additional hour of pay at the employee’s “regular rate” of compensation. *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858, 862 (“We hold that the terms are synonymous: “regular rate of compensation” under section 226.7(c), like “regular rate of pay” under section 510(a), encompasses all nondiscretionary payments, not just hourly wages”). Labor Code section 1198 renders “employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]” unlawful. The IWC Wage Orders, including Section 12 (Rest Periods), further require one uninterrupted 10-minute rest period for each four-hour period (or major fraction thereof) worked and an additional hour of pay at the employee’s regular rate of compensation for each workday that a compliant rest period is not authorized or permitted.

Defendant failed to provide Plaintiff and the aggrieved employees with compliant rest periods. For similar reasons as their noncompliant meal periods, due to understaffing and work demands, Plaintiff and other aggrieved employees were required to work through their rest periods. Defendant did not provide adequate staffing to allow Plaintiff to take rest periods, nor did they schedule or instruct her to take them. Plaintiff almost never received more than one rest period on days she worked eight hours, and on some days, she received no rest period at all. Moreover, only employees of a similar rank to Plaintiff had access to a pin number that was required to complete customer merchandise returns. If Plaintiff was on her rest break, but a customer requested a return, Plaintiff's break would be interrupted because she was required to return to work and complete that transaction. Likewise, if more than two customers were in the store and only one employee was on the floor, Plaintiff would be required to end her break prematurely to ensure that each customer had assistance. Despite these noncompliant rest periods, Defendant did not pay Plaintiff and the aggrieved employees the required rest period premiums.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, up to the maximum amount allowed as set forth under the Labor Code.

Untimely Payment of Wages During Employment **Violation of Labor Code §§ 204, 204b, 210**

Defendants violated Labor Code sections 204 and/or 204b and 210, as applicable, with respect to Plaintiff and the aggrieved employees.

Labor Code section 204(a) requires payment of "all wages" for non-exempt employees at least twice each calendar month. Labor Code section 204(d) states all wages due must be paid "not more than seven calendar days following the close of the payroll period." Labor Code section 204b applies to employees paid on a weekly basis and also requires the payment for all labor within the required pay periods. Labor Code section 210 provides "every person who fails to pay the wages of an employee as provided in Section ... 204 ... shall be subject to a civil penalty" of \$100 for an initial violation and \$200 plus 25% of the amount unlawfully withheld for a subsequent violation.

Because Defendants failed to pay all wages and premiums in each pay period in which such wages were earned at the lawful rate, Defendants violated Labor Code section 204 and/or 204b (for weekly employees, as applicable). Defendants violated Labor Code sections 204 and 204b by failing to pay all wages and premiums owed on the regular pay days scheduled each pay period within seven calendar days of the close of the payroll period, as a result of the policies and practices set forth in this notice. Indeed, Defendants failed to pay all premiums, overtime, regular, sick leave, and other earnings on time each payday.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, up to the maximum amount allowed as set forth under the Labor Code.

Untimely Payment of Wages Upon Separation of Employment
Violation of Labor Code §§ 201, 202, 203, 256

Defendants violated Labor Code sections 201, 202, and 203 with respect to the aggrieved employees by failing to pay all wages and premiums owed upon termination of employment.

Labor Code section 201 requires that if an employer fires an employee, the wages must be paid immediately. Labor Code section 202 requires that if an employee quits without providing 72 hours' notice, his or her wages must be paid no later than 72 hours thereafter. Labor Code section 202 states that if an employee provides 72 hours' notice, the final wages are payable upon his or her final day of employment. Labor Code section 203 requires an employer who fails to comply with Labor Code sections 201 or 202 to pay a waiting time penalty for each employee, up to a period of 30 days additional compensation.

Defendants failed to pay all wages and premiums owed to aggrieved employees during their employment as set forth in this notice, and also failed to timely pay those amounts to departing employees upon separation of employment. Defendants did not pay waiting time penalties for the late payments. As a result, Defendants violated Labor Code sections 201, 202, and 203. Plaintiff and, on information and belief, other aggrieved employees were not paid their wages upon termination of their employment. Plaintiff specifically, who had given Defendants two weeks notice of her last day of work, was not paid her wages until at least three days after her termination of employment in clear violation of Labor Code section 201.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, up to the maximum amount allowed as set forth under the Labor Code.

Non-Compliant Wage Statements
Violation of Labor Code §§ 226, 226.3

Defendants violated Labor Code sections 226(a) and 226.3 with respect to the aggrieved employees by failing to furnish itemized wage statements each pay period that accurately list all information required by Labor Code section 226(a)(1) through (9).

Labor Code section 226(a) requires an employer to furnish wage statements to employees semimonthly or at the time of each payment of wages, "an accurate itemized statement in writing showing:" (1) gross wages earned, (2) total hours worked, (3) the number of piece rate units earned and applicable piece-rate in effect, (4) all deductions, (5) net wages earned, (6) the inclusive dates of the pay period, (7) the name of the employee and last four digits of SSN or an EIN, (8) the name and address of the legal name of the employer, and (9) all applicable

hourly rates in effect during the pay period and the number of hours worked at each hourly rate by the employee.

Defendants failed to provide accurate itemized wage statements to the aggrieved employees each pay period as a result of the policies and practices set forth in this notice. Defendants violated Labor Code section 226(a)(1) and (5) by not listing the correct “gross wages earned” or “net wages earned,” as the employees earned wages and premiums that were not paid, resulting in an inaccurate reflection, and recording of “gross wages earned” on those wage statements. Likewise, in violation of Labor Code section 226(a)(9), Defendants failed to state on employee wage statements each pay period the applicable hourly rates in effect and the number of hours worked at that rate, as Defendants failed to pay all wages and premiums owed to employees. The amounts stated are instead depreciated and underpaid, resulting in an inaccurate reflection on the pay stub.

Plaintiff and other aggrieved employees cannot promptly and easily determine from the wage statement alone the wages paid or earned without reference to other documents or information. Indeed, these wage statement violations are significant because they sow confusion among Plaintiff and other aggrieved employees with respect to what amounts were owed and paid, at what rates, the number of hours worked, and how those amounts were or should be calculated. The wage statements reflect a false statement of earnings and concealed the underlying problems and underpayments of employee wages.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, up to the maximum amount allowed as set forth under the Labor Code.

Unreimbursed Employee Expenses **Violation of Labor Code §§ 2802, 2804**

Defendants violated Labor Code section 2802 with respect to the aggrieved employees by failing to reimburse the aggrieved employees for all necessary expenditures or losses incurred as part of their job duties.

Labor Code section 2802 requires an employer to “indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.” *See, e.g., Espinoza v. West Coast Tomato Growers, LLC*, 2016 WL 4468175 at *4, n.2 (S.D. Cal. Aug. 24, 2016, No. 14-CV-2984 W (KSC)).

Labor Code section 2804 affirms that “[a]ny contract or agreement, express or implied, made by any employee to waive the benefits of this article or any part thereof, is null and void, and this article shall not deprive any employee or his personal representative of any right or remedy to which he is entitled under the laws of this State.”

Defendants required Plaintiff and the aggrieved employees to incur costs for work-related purposes without full reimbursement. In direct consequence of their job duties, Plaintiff and the aggrieved employees unavoidably and necessarily incurred these losses, expenditures, costs, and as a matter of policy and practice.

Specifically, Plaintiff and aggrieved employees were required to use their personal cell phones to assist “virtual customers.” Plaintiff and aggrieved employees were required to communicate with virtual customer regarding sales and promotions via their own personal devices and were not reimbursed for such use. Further, Plaintiff and other aggrieved employees communicated with one another, for work purposes like discussing promotions and store issues, via group chats on their personal cell phones. They were not reimbursed for such use. Plaintiff specifically, received approximately ten (10) texts per day regarding store front operations.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, up to the maximum amount allowed as set forth under the Labor Code.

Failure to Maintain Accurate Records
Violation of Labor Code § 1174; IWC Wage Orders

Defendants violated Labor Code sections 1174 and the IWC Wage Orders by failing to maintain accurate employee payroll records with respect to Plaintiff and other aggrieved employees.

Labor Code section 1174 requires that employers maintain accurate “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.” Section 7(A) of the IWC Wage Orders, which may be enforced through Labor Code section 1198, mandates similar recordkeeping obligations.

Because of the policies and practices set forth in this notice, including the failure to accurately account for wages earned or hours worked, Defendants failed to accurately maintain records in accordance with Labor Code section 1174 and the IWC Wage Orders.

As a result, Plaintiff may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, up to the maximum amount allowed as set forth under the Labor Code.

Attorneys' Fees and Costs
Labor Code § 2699(g)

Plaintiff has been compelled to retain the services of counsel to protect the interests of other aggrieved employees and the State of California. Plaintiff continues to incur attorneys' fees and costs, which are recoverable under California law, including Labor Code section 2699(g).

- LITIGATION HOLD NOTICE -

This letter imposes a duty upon all defendants and their respective employees, officers, directors, executives, attorneys, human resource and payroll personnel, accountants, and other agents to preserve all physical and electronic evidence, including electronically stored information and emails, which relate to the employment of Plaintiff and the aggrieved employees specified in this notice. Evidence includes, but is not limited to, Defendants' written employment and payroll policies and handbooks; the aggrieved employees' personnel files and payroll records, such as paystubs, time records, wage statements, compensation reports, as well as the underlying electronically data in Excel or similar format. Memoranda and internal and external correspondence relating to the subject matter of this notice shall also be maintained. Failure to preserve and retain relevant evidence may constitute spoliation of evidence and result in an adverse inference or sanctions.

If you have any questions regarding the scope of your obligations to preserve evidence, please consult your legal counsel and always err on the side of caution. Periodic or regularly scheduled purges or deletions of information covered by this hold must be suspended immediately.

- CONCLUSION -

If the LWDA does not pursue enforcement, Plaintiff intends to bring representative claims on behalf of the State of California and the aggrieved employees seeking civil penalties for violations of the Labor Code and the IWC Wage Orders, along with attorneys' fees, costs, interest, and other appropriate relief.

Please advise if the LWDA intends to investigate any of the factual or legal allegations set forth in this notice. Defendants may contact Plaintiff's counsel with any questions regarding this letter or the forthcoming lawsuit.

Sincerely,



Mariela Romo

Cc Plaintiff Leilani Angeles

Guess? Inc. Human Resources
USLOA@guess.com