

1 Plaintiff MONSERRAT LOPEZ (“PLAINTIFF”) an individual, in her representative
2 capacity on behalf the State of California, and fellow current and former AGGRIEVED
3 EMPLOYEES, defined *supra*, against ADIDAS AMERICA, INC. (“DEFENDANT”), alleges on
4 information and belief, except for her own acts and knowledge which are based on personal
5 knowledge, the following:

6 **INTRODUCTION**

7 1. PLAINTIFF brings this representative action pursuant to the Private Attorneys General
8 Act of 2004, California Labor Code § 2698, *et seq.* (“PAGA”) on behalf of the State of California and
9 other current and former aggrieved employees of DEFENDANT for engaging in a pattern and practice
10 of wage and hour violations under the California Labor Code.

11 2. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANT decreased
12 their employment-related costs by systematically violating California wage and hour laws.

13 3. DEFENDANT’s systematic pattern of wage and hour and IWC Wage Order violations
14 toward PLAINTIFF and other aggrieved employees in California include, *inter alia*:

- 15 a. Failure to provide compliant meal and rest periods;
- 16 b. Failure to allow employees to take duty-free, off-the-premises rest periods;
- 17 c. Failure to pay all minimum, regular and overtime wages;
- 18 d. Failure to provide suitable seating;
- 19 e. Failure to maintain true and accurate records;
- 20 f. Failure to provide accurate itemized wage statements;
- 21 g. Failure to pay employees wages for time spent getting their bags checked; and
- 22 h. Failure to timely pay wages due during, and upon termination of employment.

23 4. PLAINTIFF brings this representative action against DEFENDANT on behalf of other
24 aggrieved employees of DEFENDANT in California seeking all civil penalties and unpaid wages
25 permitted pursuant to California Labor Code § 2699, *et seq.*

26 5. PLAINTIFF reserves the right to name additional representatives throughout the State of
27 California.

1 **THE PARTIES**

2 6. DEFENDANT ADIDAS AMERICA, INC. (“DEFENDANT”) is an Oregon corporation
3 that at all relevant times mentioned herein conducted and continues to conduct substantial business in
4 the state of California, county of Ventura, owns, operates and/or manages a chain of athletic apparel
5 and equipment stores throughout California.

6 7. PLAINTIFF was employed by DEFENDANT at the Camarillo store location, as a non-
7 exempt cashier, paid on an hourly basis and entitled to overtime pay and legally compliant meal and
8 rest periods from approximately August of 2019 to August of 2020.

9 8. PLAINTIFF brings this action in her representative capacity on behalf of the State of
10 California and on behalf of all of DEFENDANT’s current and former non-exempt employees employed
11 in California who suffered one or more Labor Code violations enumerated in Labor Code §§ 2698 *et*
12 *seq.* (hereinafter “AGGRIEVED EMPLOYEES”) and who worked for DEFENDANT between
13 October 27, 2019 and the present (“PAGA PERIOD”).

14 9. PLAINTIFF is an “AGGRIEVED EMPLOYEE” within the meaning of Labor Code §
15 2699(c) because she was employed by DEFENDANT and suffered one or more of the alleged Labor
16 Code violations committed by DEFENDANT.

17 10. PLAINTIFF and all other AGRIEVED EMPLOYEES are, and at all relevant times were,
18 employees of DEFENDANT, within the meanings set forth in the California Labor Code and the
19 applicable Industrial Welfare Commission Wage Order.

20 11. Each of the fictitiously named defendants participated in the acts alleged in this
21 Complaint. The true names and capacities of the defendants named as DOES 1 THROUGH 50,
22 inclusive, are presently unknown to PLAINTIFF. PLAINTIFF will amend this Complaint, setting forth
23 the true names and capacities of these fictitiously named defendants when their true names are
24 ascertained. PLAINTIFF is informed and believes, and on that basis alleges, that each of the fictitious
25 defendants have participated in the acts alleged in this Complaint.

26 12. DEFENDANT, including DOES 1 THROUGH 50 (hereinafter collectively
27 “DEFENDANTS”), were PLAINTIFF’s employers or persons acting on behalf of PLAINTIFF’s
28 employer, within the meaning of California Labor Code § 558, who violated or caused to be violated,

1 a section of Part 2, Chapter 1 of the California Labor Code or any provision regulating hours and days
2 of work in any order of the Industrial Welfare Commission and, as such, are subject to civil penalties
3 for each underpaid employee, as set forth in Labor Code § 558, at all relevant times.

4 13. DEFENDANTS were PLAINTIFF’s employers or persons acting on behalf of
5 PLAINTIFF’s employer either individually or as an officer, agent, or employee of another person,
6 within the meaning of California Labor Code § 1197.1, who paid or caused to be paid to any employee
7 a wage less than the minimum fixed by California state law, and as such, are subject to civil penalties
8 for each underpaid employee.

9 **JOINT EMPLOYER**

10 14. The Private Attorney General Act (“PAGA”), permits an aggrieved employee to enforce
11 any provision of the California Labor Code that provides for a civil penalty. (*Lab. Code* § 2699(a).)

12 15. Section 558 of the California Labor Code provides that “any employer *or other person*
13 acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any
14 provision regulating hours and days of work in any order of the Industrial Welfare Commissions shall
15 be subject to a civil penalty...” (*Lab. Code* § 558(a).)

16 16. Section 1197.1 of the Labor Code provides that “[a]ny employer *or other person* acting
17 either individually or as an officer, agent, or employee of another person, who pays or causes to be paid
18 to any employee a wage less than the minimum fixed by an applicable state or local law, or by an order
19 of the commission shall be subject to a civil penalty...” (*Lab. Code* § 1197.1(a).)

20 17. Interpreting Sections 558 and 1197.1 of the Labor Code, California courts have held that
21 a corporate employer’s owners, officers and directors, are subject to civil penalties for the employer’s
22 failure to pay appropriate wages to its employees, and, since liability under either 558 or 1197.1 does
23 not depend on a finding of an alter ego, no alter ego allegations or findings are necessary. *Atempa v.*
24 *Pedrazzani*, (2018) 27 Cal.App.5th 809; see generally *Ochoa-Hernandez v. Cjaders Food, Inc.* (2009
25 WL 1404694); *Thurman v. Bayshore Management, Inc.* (2017) 203 Cal.App.4th 1112, 1145-1146.

26 18. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANTS, and each
27 of them, are subject to civil penalties for their failure to pay PLAINTIFF and the aggrieved employees
28

1 the appropriate wages as complained of herein and proximately caused the complaints, injuries, and
2 damages alleged herein.

3 19. At all relevant times, each DEFENDANTS, whether named or fictitious, was the agent,
4 employee or other person acting on behalf of each other DEFENDANTS, and, in participating in the
5 acts alleged in this Complaint, acted within the scope of such agency or employment and ratified the
6 acts of the other.

7 20. Each DEFENDANTS, whether named or fictitious, exercised control over PLAINTIFF's
8 wages, working hours, and/or working conditions.

9 21. Each DEFENDANTS, whether named or fictitious, acted in all respects pertinent to this
10 action as the agent of the other DEFENDANTS, carried out a joint scheme, business plan or policy,
11 and the acts of each DEFENDANTS are legally attributable to the other DEFENDANTS.

12 **JURISDICTION AND VENUE**

13 1. This Court has jurisdiction over this Action pursuant to California Code of Civil
14 Procedure, Section 410.10. This Court has jurisdiction over PLAINTIFF's claims for civil penalties
15 under the Private Attorney General Act of 2004, California Labor Code §2698, *et seq.*

16 22. Venue is proper in this Court pursuant to California Code of Civil Procedure, Sections
17 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANTS, resides in this County,
18 and DEFENDANTS (i) currently maintains and at all relevant times maintained offices and facilities
19 in this County and/or conducts substantial business in this County, and (ii) committed the wrongful
20 conduct herein alleged in this County against the AGGRIEVED EMPLOYEES.

21 **THE CONDUCT**

22 23. In violation of the applicable sections of the California Labor Code and the requirements
23 of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a matter of company
24 policy, practice and procedure, intentionally, knowingly and systematically failed to provide legally
25 complaint meal and rest period, failed to accurately compensate PLAINTIFF and the other
26 AGGRIEVED EMPLOYEES for missed meal and rest periods, failed to pay PLAINTIFF and the other
27 AGGRIEVED EMPLOYEES for all time worked, and failed to issue to PLAINTIFF and the
28 AGGRIEVED EMPLOYEES with accurate itemized wage statements showing, among other things,

1 all applicable hourly rates in effect during the pay periods and the corresponding amount of time
2 worked at each hourly rate. DEFENDANTS' uniform policies and practices are intended to
3 purposefully avoid the accurate and full payment for all time worked as required by California law
4 which allows DEFENDANTS to illegally profit and gain an unfair advantage over competitors who
5 comply with the law. To the extent equitable tolling operates to toll claims by the AGGRIEVED
6 EMPLOYEES against DEFENDANTS, the PAGA PERIOD should be adjusted accordingly.

7 **A. Meal Period Violations**

8 24. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANTS were
9 required to pay PLAINTIFF and AGGRIEVED EMPLOYEES for all their time worked, meaning the
10 time during which an employee is subject to the control of an employer, including all the time the
11 employee is suffered or permitted to work. From time-to-time during the PAGA PERIOD,
12 DEFENDANTS required PLAINTIFF and AGGRIEVED EMPLOYEES to work without paying them
13 for all the time they were under DEFENDANTS' control. Specifically, as a result of PLAINTIFF's
14 demanding work requirements and DEFENDANTS' under staffing, DEFENDANTS required
15 PLAINTIFF to work while clocked out during what was supposed to be PLAINTIFF's off-duty meal
16 break. PLAINTIFF was from time to time interrupted by work assignments while clocked out for what
17 should have been PLAINTIFF's off-duty meal break. Indeed, there were many days where
18 PLAINTIFF did not even receive a partial lunch. As a result, the PLAINTIFF and other AGGRIEVED
19 EMPLOYEES forfeited minimum wage and overtime wages by regularly working without their time
20 being accurately recorded and without compensation at the applicable minimum wage and overtime
21 rates. DEFENDANTS' uniform policy and practice not to pay PLAINTIFF and other AGGRIEVED
22 EMPLOYEES for all time worked is evidenced by DEFENDANTS' business records.

23 25. From time-to-time during the PAGA PERIOD, as a result of their rigorous work schedules
24 and DEFENDANTS' inadequate staffing practices, PLAINTIFF and other AGGRIEVED
25 EMPLOYEES were from time to time unable to take thirty (30) minute off duty meal breaks and were
26 not fully relieved of duty for their meal periods. PLAINTIFF and other AGGRIEVED EMPLOYEES
27 were required from time to time to perform work as ordered by DEFENDANTS for more than five (5)
28 hours during some shifts without receiving a meal break. Further, DEFENDANTS from time to time

1 failed to provide PLAINTIFF and AGGRIEVED EMPLOYEES with a second off-duty meal period
2 for some workdays in which these employees were required by DEFENDANTS to work ten (10) hours
3 of work from time to time. The nature of the work performed by the PLAINTIFF and the AGGRIEVED
4 EMPLOYEES does not qualify for limited and narrowly construed “on-duty” meal period exception.
5 PLAINTIFF and other members of the AGGRIEVED EMPLOYEES therefore forfeited meal breaks
6 without additional compensation and in accordance with DEFENDANTS’ strict corporate policy and
7 practice. DEFENDANTS failed to maintain adequate staffing levels while increasing the production
8 levels for each employee at the busy airports they provided services for.

9 **B. Rest Period Violations**

10 26. From time-to-time during the PAGA PERIOD, PLAINTIFF and other AGGRIEVED
11 EMPLOYEES were also required from time to time to work in excess of four (4) hours without being
12 provided ten (10) minute rest periods as a result of their rigorous work schedule and DEFENDANTS’
13 inadequate staffing . Further, for the same reasons these employees were denied their first rest periods
14 of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours from time to
15 time, a first and second rest period of at least ten (10) minutes for some shifts worked of between six
16 (6) and eight (8) hours from time to time, and a first, second and third rest period of at least ten (10)
17 minutes for some shifts worked of ten (10) hours or more from time to time. When they were provided
18 rest breaks, PLAINTIFF and other employees were required to remain on the premises and remain on
19 duty during those breaks. PLAINTIFF and other AGGRIEVED EMPLOYEES were also not provided
20 with one-hour wages in lieu thereof. As a result of their rigorous work schedules and DEFENDANTS’
21 inadequate staffing, PLAINTIFF and other AGGRIEVED EMPLOYEES were from time to time
22 denied their proper rest periods by DEFENDANTS and DEFENDANTS’ managers.

23 **C. Off the Clock Work – Security Checks**

24 27. PLAINTIFF and AGGRIEVED EMPLOYEES would clock out of DEFENDANTS’
25 timekeeping system, in order to perform additional work for DEFENDANTS as required to meet
26 DEFENDANTS’ job requirements. Specifically, during the PAGA PERIOD, DEFENDANTS engaged
27 in the practice of requiring PLAINTIFF and AGGRIEVED EMPLOYEES to perform work off the
28 clock after clocking out in that DEFENDANTS, as a condition of employment, required these

1 employees from time to time to wait and submit to loss prevention inspections after clocking out at the
2 end of each scheduled shift, and if they left the store during off duty meal periods, for which
3 DEFENDANTS did not provide compensation for the time spent waiting for and submitting to
4 DEFENDANTS' loss prevention inspections off the clock.

5 28. As a result, PLAINTIFF and other AGGRIEVED EMPLOYEES forfeited minimum
6 wage, overtime wage compensation, and meal break wages, by working without their time being
7 correctly recorded and without compensation at the applicable rates. DEFENDANTS' policy and
8 practice not to pay PLAINTIFF and other AGGRIEVED EMPLOYEES for all time worked is
9 evidenced in DEFENDANTS' business records.

10 **D. Wage Statement Violations**

11 29. California Labor Code Section 226 requires an employer to furnish its employees an
12 accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked, (3) the
13 number of piece-rate units earned and any applicable piece-rate, (4) all deductions, (5) net wages
14 earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the
15 employee and only the last four digits of the employee's social security number or an employee
16 identification number other than a social security number, (8) the name and address of the legal entity
17 that is the employer and, (9) all applicable hourly rates in effect during the pay period and the
18 corresponding number of hours worked at each hourly rate by the employee.

19 30. From time to time during the PAGA PERIOD, when PLAINTIFF and other
20 AGGRIEVED EMPLOYEES missed meal and rest breaks, or were paid inaccurate missed meal and
21 rest period premiums, or were not paid for all the time they spent working under DEFENDANTS'
22 control, DEFENDANTS also failed to provide PLAINTIFF and the other members of the
23 AGGRIEVED EMPLOYEES with complete and accurate wage statements which failed to show,
24 among other things, all hours worked and the penalty payments for missed meal and rest periods.

25 31. As a result, DEFENDANTS issued PLAINTIFF and the other AGGRIEVED
26 EMPLOYEES with wage statements that violate Cal. Lab. Code § 226. Further, DEFENDANTS'
27 violations are knowing and intentional, were not isolated or due to an unintentional payroll error due
28 to clerical or inadvertent mistake.

1 **E. Suitable Seating Violations**

2 32. PLAINTIFF further alleges that the station counters in DEFENDANTS' stores provide
3 ample space behind each counter area to allow for the presence and use of a stool or seat by
4 DEFENDANTS' employees during the performance of their work duties. DEFENDANTS' employees
5 working at DEFENDANTS' stores spend a very substantial portion, and, in many workdays, the vast
6 majority of their working time behind these counters. The nature of the position can reasonably be
7 accomplished while using a seat/stool.

8 33. In violation of the applicable sections of the California Labor Code and the requirements
9 of the applicable Industrial Welfare Commission ("IWC") Wage Order, DEFENDANTS as a matter of
10 company policy, practice and procedure, intentionally, knowingly and systematically failed to provide
11 PLAINTIFF and the other Aggrieved Employees suitable seating when the nature of these employees'
12 work reasonably permitted sitting.

13 34. DEFENDANTS knew or should have known that PLAINTIFF and other AGGRIEVED
14 EMPLOYEES were entitled to suitable seating and/or were entitled to sit when it did not interfere with
15 the performance of their duties, and that DEFENDANTS did not provide suitable seating and/or did
16 not allow them to sit when it did not interfere with the performance of their duties. By reason of this
17 conduct applicable to PLAINTIFF and all AGGRIEVED EMPLOYEES, DEFENDANTS violated
18 California Labor Code Section 1198 and Wage Order 4-2001, Section 14 by failing to provide suitable
19 seats.

20 **FIRST CAUSE OF ACTION**

21 **For Civil Penalties Pursuant to Private Attorneys General Act ("PAGA")**

22 **[Cal. Lab. Code §§ 2698, et seq.]**

23 **(By PLAINTIFF and AGGRIEVED EMPLOYEES and Against All DEFENDANTS)**

24 35. PLAINTIFF and the AGGRIEVED EMPLOYEES reallege and incorporate by this
25 reference, as though fully set forth herein, the prior paragraphs of this Complaint.

26 36. PAGA is a mechanism by which the State of California itself can enforce state labor laws
27 through the employee suing under the PAGA who do so as the proxy or agent of the state's labor law
28 enforcement agencies. An action to recover civil penalties under PAGA is fundamentally a law

1 enforcement action designed to protect the public and not to benefit private parties. The purpose of the
2 PAGA is not to recover damages or restitution, but to create a means of "deputizing" citizens as private
3 attorneys general to enforce the Labor Code. In enacting PAGA, the California Legislature specified
4 that "it was ... in the public interest to allow aggrieved employees, acting as private attorneys general
5 to recover civil penalties for Labor Code violations ..." Stats. 2003, ch. 906, § 1. Accordingly, PAGA
6 claims cannot be subject to arbitration.

7 37. PLAINTIFF brings this Representative Action on behalf of the State of California with
8 respect to herself and all other current and former AGGRIEVED EMPLOYEES employed by
9 DEFENDANTS during the PAGA PERIOD.

10 38. At all relevant times, for the reasons described herein, and others, PLAINTIFF and the
11 AGGRIEVED EMPLOYEES were aggrieved employees of DEFENDANTS within the meaning of
12 Labor Code Section 2699(c).

13 39. Labor Code Sections 2699(a) and (g) authorize an AGGRIEVED EMPLOYEE, like
14 PLAINTIFF, on behalf of herself and other current or former employees, to bring a civil action to
15 recover civil penalties pursuant to the procedures specified in Labor Code Section 2699.3

16 40. PLAINTIFF complied with the procedures for bringing suit specified in Labor Code
17 Section 2699.3. By certified letter, return receipt requested, dated October 27, 2020, PLAINTIFF gave
18 written notice to the Labor and Workforce Development Agency ("LWDA") and to DEENDANT of
19 the specific provisions of the Labor Code alleged to have been violated, including the facts and theories
20 to support the alleged violations. See Exhibit #1, attached hereto and incorporated by this reference
21 herein.

22 41. As of December 31, 2020, more than sixty-five (65) days after serving the LWDA with
23 notice of DEFENDANTS' violations, the LWDA has not provided any notice by certified mail of its
24 intent to investigate the DEFENDANTS' alleged violations as mandated by Labor Code Section
25 2699.3(a)(2)(A). Accordingly, pursuant to Labor Code Section 2699.3(a)(2)A, PLAINTIFF may
26 commence and is authorized to pursue this cause of action.

27 42. To the extent that it applies, PLAINTIFF invokes the tolling permitted pursuant to the
28 California State Judicial Counsel amended Rule of Court, Emergency Rule Number 9, tolled the statute

1 of limitation and statutes of repose from April 6, 2020 to either (a) August 3, 2020 for statutes of
2 limitation and repose for civil causes of action that are 180 days or less, or (b) October 1, 2020 for
3 statutes of limitation and repose for civil causes of action that exceed 180 days.

4 43. Pursuant to Labor Code Sections 2699(a) and (f), PLAINTIFF and the AGGRIEVED
5 EMPLOYEES are entitled to civil penalties for DEFENDANTS' violations of Labor Code Section 201,
6 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 1194, 1197, 1197.1, and 1198, in the following
7 amounts:

8 a. For violation of Labor Code Sections 201, 202, 203, and 204, one
9 hundred dollars (\$100) for each AGGRIEVED EMPLOYEE per pay period
10 for the initial violation and two hundred dollars (\$200) for AGGRIEVED
11 EMPLOYEE per pay period for each subsequent violation [penalty per
12 Labor Code Section 2699(f)(2)];

13 b. For violations of Labor Code Section 226(a), a civil penalty in the
14 amount of two hundred fifty dollars (\$250) for each AGGRIEVED
15 EMPLOYEE for any initial violation and one thousand dollars for each
16 subsequent violation [penalty per Labor Code Section 226.3];

17 c. For violations of Labor Code Sections 204, a civil penalty in the
18 amount of one hundred dollars (\$100) for each AGGRIEVED EMPLOYEE
19 for any initial violation and two hundred dollars (\$200) for AGGRIEVED
20 EMPLOYEE for each subsequent violation [penalty per Labor Code
21 Section 210];

22 d. For violations of Labor Code Sections 226.7, 510 and 512, a civil
23 penalty in the amount of fifty dollars (\$50) for each underpaid
24 AGGRIEVED EMPLOYEE for the initial violation and hundred dollars
25 (\$100) for each underpaid AGGRIEVED EMPLOYEE for each subsequent
26 violation [penalty per Labor Code Section 558];

27 e. For violations of Labor Code Section 2269(a), a civil penalty in the
28 amount of two hundred fifty dollars (\$250) per AGGRIEVED EMPLOYEE

1 per violation in an initial citation and one thousand dollars (\$1,000) per
2 AGGRIEVED EMPLOYEE for each subsequent violation [penalty per
3 Labor Code Section 226.3];

4 f. For violations of Labor Code Sections 1194, 1194.2, 1197, 1198 and
5 1199, a civil penalty in the amount of one hundred dollars (\$100) per
6 AGGRIEVED EMPLOYEE per pay period for the initial violation and two
7 hundred dollars fifty (\$250) per AGGRIEVED EMPLOYEE per pay period
8 for each subsequent violation [penalty per Labor Code Section].

9 44. For all provisions of the Labor Code for which civil penalty is not specifically provided,
10 Labor Code § 2699(f) imposes upon DEFENDANTS a penalty of one hundred dollars (\$100) for each
11 AGGRIEVED EMPLOYEE per pay period for the initial violation and two hundred dollars (\$200) for
12 each AGGRIEVED EMPLOYEE per pay period for each subsequent violation. PLAINTIFF and the
13 AGGRIEVED EMPLOYEES are entitled to an award of reasonable attorney’s fees and costs in
14 connection with their claims for civil penalties pursuant to Labor Code Section 2699(g)(1).

15 45. To the extent that any of the conduct and violations alleged herein did not affect
16 PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations that affected
17 other AGGRIEVED EMPLOYEES. (Carrington v. Starbucks Corp. (2018) 30 Cal.App.5th 504, 519;
18 See also Huff v. Securitas Security Services USA, Inc. (2018) 23 Cal. App. 5th 745, 751 [“PAGA
19 allows an “aggrieved employee”—a person affected by at least one Labor Code violation committed
20 by an employer—to pursue penalties for all the Labor Code violations committed by that employer.”],
21 Emphasis added, reh'g denied (June 13, 2018).)

22
23 **PRAYER FOR RELIEF**

24 WHEREFORE, PLAINTIFF prays for judgment against DEFENDANTS as follows:

25 (a) For reasonable attorney’s fees and costs of suit to the extent permitted by law, including
26 pursuant to Labor Code § 2699, *et seq.*;

27 (b) For civil penalties to the extent permitted by law pursuant to the Labor Code under the
28 Private Attorneys General Act; and

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EXHIBIT 1