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6

7
8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA

10 YAQUELIN C. GARCIA, on behalf of
herself, all others similarly situated,

11 Plaintiff,

12 vs.

13 PAYLESS SHOESOURCE, INC., a Missouri
14 corporation; and DOES 1 through 50,
15 inclusive,

16 Defendants.

Case No. 3:18-cv-7609

**DEFENDANT PAYLESS SHOESOURCE,
INC.'S NOTICE OF REMOVAL TO
FEDERAL COURT PURSUANT TO 28
U.S.C. §§ 1331, 1332, 1441, AND 1446**

Complaint Filed: November 15, 2018
(Alameda County Superior Court)

1 TO THE CLERK OF THE ABOVE ENTITLED COURT, AND TO PLAINTIFF
2 YAQUELIN C. GARCIA AND HER ATTORNEYS OF RECORD:

3 1. PLEASE TAKE NOTICE that Defendant PAYLESS SHOESOURCE, INC.
4 (“Defendant”), for itself only, hereby removes the state action described herein, filed in the Superior
5 Court of the State of California, County of Alameda, to the United States District Court for the
6 Northern District of California, pursuant to 28 U.S.C. §§ 1331, 1332(d), 1441, and 1446. A true and
7 correct copy of this notice will be filed contemporaneously with the Clerk of the Superior Court for
8 the State of California, County of Alameda, and notice of the removal will be provided to counsel
9 for Plaintiff Yaquelin C. Garcia (“Plaintiff”) in accordance with 28 U.S.C. § 1446(d). Defendant
10 makes the following allegations in support of its Notice of Removal:

11 **I. Statement of Jurisdiction**

12 2. This Court has original jurisdiction over this action for two reasons. First: (a) it raises
13 a federal question under 28 U.S.C. § 1331; (b) this Notice of Removal is filed within thirty days
14 (30) after Defendant was served with the Complaint; and (c) the State Court in which this action was
15 commenced is within this Court’s district and division.

16 3. Second, this Court also has original jurisdiction over this action pursuant to the Class
17 Action Fairness Act of 2005 (“CAFA”), which vests the United States district courts with original
18 jurisdiction of any civil action: (a) that is a class action with a putative class of more than a hundred
19 members; (b) in which any member of a class of plaintiffs is a citizen of a state different from any
20 defendant; and (c) in which the matter in controversy exceeds the sum or value of \$5,000,000,
21 exclusive of interest and costs. *See* 28 U.S.C. § 1332(d). CAFA authorizes removal of such actions
22 in accordance with 28 U.S.C. § 1446. As set forth below, this case meets all of CAFA’s
23 requirements for removal and is timely and properly removed by the filing of this Notice of
24 Removal.

25 **II. Venue and Intradistrict Assignment**

26 4. Venue lies in the Northern District of California pursuant to 28 U.S.C. §§ 84(a),
27 1441(a), and 1446(a). Plaintiff originally brought this action in the Superior Court of the State of
28 California, County of Alameda.

1 5. All civil actions that arise in the County of Alameda shall be assigned to the San
2 Francisco Division or the Oakland Division. Northern District Local Rule 3-2(c)(d), 3-5(b). Thus,
3 assignment to the San Francisco or Oakland Division is proper.

4 **III. Pleadings, Process, and Orders**

5 6. On November 15, 2018, Plaintiff filed an unverified Class Action Complaint against
6 Defendant and various Doe defendants in the Alameda County Superior Court entitled *Yaquelin C.*
7 *Garcia, on behalf of herself, all others similarly situated, Plaintiff, v. Payless ShoeSource, Inc., a*
8 *Missouri corporation; and DOES 1 through 50, inclusive, Defendants*, designated as Case No.
9 RG18928757 (hereinafter, the “Complaint”). (See Declaration of Alison Hightower in Support of
10 Defendant Payless ShoeSource, Inc’s Notice of Removal to Federal Court Pursuant to 28 U.S.C.
11 §§ 1331, 1332, 1441 and 1446 [“Hightower Decl.”], ¶ 2.)

12 7. The Complaint asserts the following causes of action: (a) Violation of 15 U.S.C.
13 §§ 1681b(b)(2)(A) (Fair Credit Reporting Act); (b) Violation of 15 U.S.C. §§ 1681d(a)(1) and
14 1681g(c) (Fair Credit Reporting Act); (c) Violation of California Civil Code § 1786 *et seq.*
15 (Investigative Consumer Reporting Agencies Act); (d) Violation of California Civil Code § 1785 *et*
16 *seq.* (Consumer Credit Reporting Agencies Act); (e) Failure to Provide Rest Periods (Lab. Code
17 §§ 204, 223, 226.7 and 1198); (f) Failure to Provide Accurate Written Wage Statements (Lab. Code
18 §§ 226(a)); (g) Failure to Timely Pay All Final Wages (Lab. Code §§ 201, 202 and 203); and (h)
19 Unfair Competition (Bus. & Prof. Code §§ 17200 *et seq.*). The allegations in the Complaint are
20 incorporated into this notice by reference without admitting the truth of any of them.

21 8. On November 19, 2018, Defendant was served the Complaint, along with copies of
22 the Civil Case Cover Sheet and Summons, through Defendant’s registered agent for service of
23 process, C.T. Corporation System. Attached hereto as **Exhibit A** is a true and correct copy of the
24 Summons and Complaint filed in Alameda County Superior Court and served by Plaintiff through
25 C.T. Corporation System. (Hightower Decl., ¶¶ 2-3.)

26 9. Attached hereto as **Exhibit B** is a true and correct copy of the Civil Case Cover Sheet
27 served by Plaintiff through C.T. Corporation System.

28

1 10. Attached hereto as **Exhibit C** is a true and correct copy of the Notice of Hearing
2 issued by Alameda County Superior Court. (Hightower Decl., ¶ 3.)

3 11. Attached hereto as **Exhibit D** is a true and correct copy of Plaintiff's Proof of Service
4 of Summons filed on November 27, 2018.

5 12. On December 18, 2018, Defendant filed an Answer in Alameda County Superior
6 Court. Attached hereto as **Exhibit E** is a true and correct copy of Defendant's Answer. (Hightower
7 Decl., ¶ 4.)

8 13. To Defendant's knowledge, no further process, pleadings, or orders related to this
9 case have been filed in the Alameda County Superior Court or served by any party other than as
10 described above. To Defendant's knowledge, no proceedings related hereto have been heard in the
11 Alameda County Superior Court. (Hightower Decl., ¶ 5.)

12 **IV. Timeliness of removal**

13 14. An action may be removed from state court by filing a notice of removal – together
14 with a copy of all process, pleadings, and orders served on the defendant – within thirty days of
15 defendant receiving the initial pleading. *See* 28 U.S.C. § 1446(b); *Murphy Bros., Inc. v. Mitchetti*
16 *Pipe Stringing, Inc.*, 526 U.S. 344, 346 (1999) (the thirty-day removal period runs from the service
17 of the summons and complaint).

18 15. Removal of this action is timely because this Notice of Removal has been filed within
19 thirty days from November 19, 2018, when Defendant was served with the Complaint. *See* 28 U.S.C.
20 § 1446(b). Because Plaintiff personally served the Summons and Complaint upon Defendant's agent
21 for service of process on November 19, 2018, the thirty-day period for removal ends December 19,
22 2018. As referenced above, this Notice of Removal also contains all process, pleadings and orders
23 that were served on Defendant, and the Answer filed and served by Defendant on December 18,
24 2018. (*See* Exhibits A-C.)

25 **V. Federal Question Jurisdiction**

26 16. A district court's federal question jurisdiction extends to those cases in which a "well-
27 plead complaint establish[es] either (1) that a federal law creates a cause of action or (2) that the
28 plaintiff's right to relief necessarily depends on the resolution of a substantial question of federal

1 law.” *Franchise Tax Bd. v. Construction Laborers*, 463 U.S. 1, 27-28 (1983). The question of
2 whether a claim arises under federal law must be determined by reference to the “well-pleaded
3 complaint.” *Id.* at 9-10.

4 17. Plaintiff presents federal questions to the Court by alleging violation of the Fair
5 Credit Reporting Act, 15 U.S.C. § 1681 et seq., in the first two causes of action. (See Ex. A,
6 Complaint, ¶¶ 1, 3, 17, 40, 42, 47, 48, 50-54, 58-66.)

7 18. Therefore, this this matter falls under 28 U.S.C. § 1331 and is removable without
8 regard to amount in controversy or citizenship of the parties.

9 VI. CAFA Jurisdiction

10 19. CAFA grants federal district courts original jurisdiction over civil class action
11 lawsuits filed under federal or state law in which any member of a class of plaintiffs is a citizen of a
12 state different from any defendant, and where the matter’s amount in controversy exceeds
13 \$5,000,000, exclusive of interest and costs. *See* 28 U.S.C. § 1332(d). CAFA authorizes removal of
14 such actions in accordance with 28 U.S.C. § 1446. As set forth below, this case meets each CAFA
15 requirement for removal, and is timely and properly removed by the filing of this Notice.

16 a. The Proposed Class Contains At Least 100 Members.

17 20. The provisions of CAFA do not apply to any class action where “the number of
18 members of all proposed plaintiff classes in the aggregate is less than 100.” 28 U.S.C.
19 § 1332(d)(5)(B). This requirement is easily met in the case at bar.

20 21. In her wage and hour claims under the California Labor Code and Business and
21 Professions Code, Plaintiff seeks to represent a class consisting of “[a]ll persons employed by
22 Defendants and/or any staffing agencies and/or any other third parties in hourly or non-exempt
23 positions in California” during the period beginning November 15, 2014, and continuing until
24 judgment is entered. (Complaint, ¶14.)

25 22. Since November 15, 2014, Defendant has employed approximately 9,110 non-exempt
26 employees in California. (*See* Declaration of David Brown in Support of Defendant Payless
27 ShoeSource Inc.’s Notice of Removal to Federal Court Pursuant to 28 U.S.C. §§ 1331, 1332, 1441
28 and 1446 [“Brown Decl.”], ¶ 5a.)

1 **b. Defendant Is Not A Governmental Entity.**

2 23. CAFA does not apply to class actions where “primary defendants are States, State
3 officials, or other governmental entities against whom the district court may be foreclosed from
4 ordering relief.” 28 U.S.C. § 1332(d)(5)(B).

5 24. Defendant is a corporation; it is not a state, state official or other government entity
6 exempt from CAFA.

7 **c. There Is Diversity Between At Least One Class Member And One Defendant.**

8 25. CAFA’s minimal diversity requirement is satisfied, *inter alia*, when “any member of
9 a class of plaintiffs is a citizen of a State different from any defendant.” 28 U.S.C. §§ 1332(d)(2)(A),
10 1453(b). Additionally, for removal purposes, diversity must exist both at the time the action was
11 commenced in state court and at the time of removal. *See Strotek Corp. v. Air Transp. Ass’n of Am.*,
12 300 F.3d 1129, 1131 (9th Cir. 2002). Minimal diversity of citizenship exists here because Plaintiff
13 and Defendant are citizens of different states.

14 26. For diversity purposes, a person is a “citizen” of the state in which he is domiciled.
15 *See Kanter v. Warner-Lambert Co.*, 265 F.3d 853, 857 (9th Cir. 2001) (confirming that person’s
16 domicile is the place he resides with the intention to remain).

17 27. Plaintiff alleges she is a resident of California. (Complaint, ¶8.) *See Albrecht v. Lund*,
18 845 F.2d 193, 194-95 (9th Cir. 1988) (finding citizenship requirement satisfied where plaintiff’s
19 complaint contained allegations consistent with diversity and plaintiff failed to contest the petition
20 for removal); *see also Anderson v. Watts*, 138 U.S. 694, 706 (“The place where a person lives is
21 taken to be his domicile until facts adduced establish the contrary.”).

22 28. Defendant is not a citizen of the State of California. “[A] corporation shall be deemed
23 to be a citizen of any State by which it has been incorporated and of the State where it has its
24 principal place of business.” 28 U.S.C. § 1332(c)(1). Payless ShoeSource, Inc. is a corporation
25 organized and incorporated under the laws of the State of Kansas. Defendant’s principal place of
26 business is also located in Kansas.

27 29. The Supreme Court has explained that a corporation’s principal place of business is
28 determined under the “nerve center” test. *See Hertz Corp. v. Friend*, 599 U.S. 77, 80-81 (2010).

1 Under the “nerve center” test, the principal place of business is the state where “a corporation’s
2 officers direct, control, and coordinate the corporation’s activities.” *Id.* The Supreme Court further
3 explained in *Hertz* that a corporation’s nerve center “should normally be the place where the
4 corporation maintains its headquarters” and that a corporation’s nerve center is a “single place.” *Id.*
5 at 93.

6 30. Under these criteria, Defendant’s principal place of business is in Topeka, Kansas.
7 Defendant maintains its corporate headquarters at 3231 SE 6th Ave., Topeka, Kansas, 66607-2260.
8 Accordingly, Topeka, Kansas is primarily where Payless ShoeSource’s corporate officers direct,
9 control, and coordinate Payless ShoeSource’s activities and make operational, executive,
10 administrative and policy-making decisions.

11 31. The presence of Doe defendants in this case has no bearing on diversity with respect
12 to removal. *See* 28 U.S.C. § 1441(a) (“For purposes of removal under this chapter, the citizenship of
13 defendants sued under fictitious names shall be disregarded.”); *Newcombe v. Adolf Coors Co.*, 157
14 F.3d 686, 690-91 (9th Cir. 1998).

15 32. Accordingly, the named Plaintiff is a citizen of a state different from Defendant, and
16 diversity exists for purposes of CAFA jurisdiction. *See* 28 U.S.C. §§ 1332(d)(2)(A), 1453.

17 **d. The Amount In Controversy Exceeds \$5,000,000.¹**

18 33. This Court has jurisdiction under CAFA, which authorizes the removal of class
19 actions in which, among the other factors mentioned above, the amount in controversy for all
20 putative class members exceeds \$5,000,000. 28 U.S.C. § 1332(d).

21 34. The removal statute requires a defendant seeking to remove a case to federal court to
22 file a notice “containing a short and plain statement of the grounds for removal.” 28 U.S.C.
23 § 1446(a). In *Dart Cherokee Basin Operating Co. v. Owens*, 135 S. Ct. 547, 554 (2014), the
24 Supreme Court recognized that “as specified in § 1446(a), a defendant’s notice of removal need
25 include only a plausible allegation that the amount in controversy exceeds the jurisdictional
26

27 ¹ The alleged damages calculations contained herein are for purposes of removal only. Defendant
28 expressly denies that Plaintiff or the putative class is entitled to any relief whatsoever, and Defendant
expressly reserves the right to challenge Plaintiff’s alleged damages in this case.

1 threshold.” Only if the plaintiff contests or the court questions the allegations of the notice of
2 removal is supporting evidence required. *Id.* at 554. “[T]he defendant’s amount-in-controversy
3 allegation should be accepted” just as a plaintiff’s amount-in-controversy allegation is accepted
4 when a plaintiff invokes federal court jurisdiction. *Id.* at 553.

5 35. Defendant denies the validity and merit of the entirety of Plaintiff’s alleged claims,
6 the legal theories upon which they are ostensibly based, and the alleged claims for monetary and
7 other relief that flow therefrom. For purposes of removal only, however, and without conceding that
8 Plaintiff or the putative class are entitled to any damages or penalties whatsoever, it is readily
9 apparent that the aggregated claims of the putative class establishes, by a preponderance of evidence,
10 that the amount in controversy exceeds the jurisdictional minimum of \$5,000,000.

11 36. For purposes of determining whether the amount in controversy has been satisfied,
12 the Court must presume that the Plaintiff will prevail on her claims. *Kenneth Rothschild Trust v.*
13 *Morgan Stanley Dean Witter*, 199 F. Supp. 2d 993, 1001 (C.D. Cal. 2002) (citing *Burns v. Windsor*
14 *Ins. Co.*, 31 F. 3d 1092, 1096 (11th Cir. 1994) (stating that the amount in controversy analysis
15 presumes that “plaintiff prevails on liability.”)). The ultimate inquiry is what amount is put “in
16 controversy” by plaintiff’s complaint, not what defendant might actually owe. *Lewis v. Verizon*
17 *Comm’s, Inc.*, 627 F.3d 395, 400 (9th Cir. 2010) (“The amount in controversy is simply an estimate
18 of the total amount in dispute, not a prospective assessment of defendant’s liability.”); *accord Ibarra*
19 *v. Manheim Invs., Inc.*, 775 F.3d 1193, 1198 n.1 (9th Cir. 2015) (explaining that even when the court
20 is persuaded the amount in controversy exceeds \$5,000,000, defendants “are still free to challenge
21 the actual amount of damages in subsequent proceedings and at trial” because they are only
22 estimating the amount in controversy).

23 37. Here, Plaintiff does not allege the amount in controversy in the Complaint as to the
24 putative class.

25 38. When, as here, the plaintiff’s complaint does not state the amount in controversy, the
26 defendant’s notice of removal may do so. Defendant’s notice of removal must simply include “a
27 plausible allegation that the amount in controversy exceeds the jurisdictional threshold.” *Dart*, 135
28 S. Ct. at 554.

1 39. Plaintiff alleges she and putative class members were not provided rest periods “due
2 to (1) Defendants’ policy of not scheduling each rest period as part of each work shift; (2)
3 chronically understaffing each work shift with not enough workers; (3) imposing so much work on
4 each employee such that it made it unlikely that an employee would be able to take their breaks if
5 they wanted to finish their work on time; and (4) no formal written meal and rest period policy that
6 encouraged employees to take their meal and rest periods.” (Complaint ¶ 25.)

7 40. Plaintiff alleges that she and the putative class “were **regularly** not provided with
8 uninterrupted rest periods...due to complying with Defendants’ productivity requirements,” and
9 further alleges they were not paid premium wages for missed rest periods. (Complaint ¶¶ 26-27
10 (emphasis added).)

11 41. Alleging a violation of California’s Unlawful Competition Law (“UCL”) may extend
12 the statute of limitations for Plaintiff’s and the putative class’ rest period claims from three to four
13 years from the filing of the Complaint. In this case, the UCL extends the statute of limitations to
14 November 15, 2014. *See* Cal. Bus. & Prof. Code § 17208; *Cortez v. Purolater Air Filtration*
15 *Products Co.*, 23 Cal. 4th 163, 178-79 (2000) (four-year statute of limitations for restitution of
16 wages under the UCL).

17 **e. Failure to Provide Rest Periods**

18 42. In the Fifth Cause of Action, Plaintiff alleges that “Defendants maintained a policy or
19 practice of not providing members of the Rest Period Sub-Class with net rest period of at least ten
20 minutes for each four hour work period, or major fraction thereof” (Complaint ¶ 102.) Plaintiff
21 alleges Defendant’s “written policies do not provide that employees may take a rest period for each
22 four hours worked” (Complaint ¶ 104.)

23 43. The Rest Period Sub-Class is defined as all hourly employee class members who
24 worked a shift of at least three and one-half hours since November 15, 2014. (Complaint ¶ 14.)

25 44. Plaintiff seeks premium wages for alleged missed rest periods, interest, costs of suit,
26 and attorneys’ fees. (Complaint ¶¶ 105-06.) Plaintiff seeks an additional hour’s pay per day as
27 compensation for the asserted failure to authorize and permit rest periods.
28

1 45. While Defendant denies the validity and merit of Plaintiff’s rest break claim, for
 2 purposes of removal only, based on a preliminary review of their records, Defendant employed
 3 approximately 9,110 non-exempt employees working approximately 435,983 workweeks during the
 4 statutory period from November 15, 2014 to December 12, 2018. (Brown Decl., ¶ 5a.) The majority
 5 of shifts equal or exceed three and one-half hours. (Brown Decl., ¶ 5d.) The average hourly rate for
 6 non-exempt employees during the class period is \$11.68 (Brown Decl., ¶ 5b.)

7 46. Using a conservative estimate of one missed rest period every other work week², the
 8 amount in controversy for the missed rest period claim totals **\$2,546,146**. (435,983 workweeks *
 9 0.5 violation per week * \$11.68 = \$2,546,146).

10 **f. Inaccurate Wage Statements**

11 47. Plaintiff’s Sixth Cause of Action alleges that “at all relevant times during the
 12 applicable limitations period, Defendants have failed to provide” wages statements in compliance
 13 with California law. (Complaint ¶ 100.) Plaintiff alleges she and the class members have been
 14 injured, and seeks all available statutory penalties, attorneys’ fees and costs. (Complaint ¶ 113.)

15 48. Labor Code Section 226(e) provides for a statutory penalty for violations of Labor
 16 Code § 226(a)’s wage statement requirements of \$50 or actual damages per employee for the initial
 17 pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay
 18 period, not exceeding an aggregate amount of \$4,000 per employee. Cal. Labor Code § 226(a). The
 19 statutory period for Labor Code § 226(e) penalties is one year. Cal. Code Civ. Proc. § 340.

20 49. Defendant paid its non-exempt employees weekly until January 1, 2018, when it
 21 began paying its non-exempt employees biweekly. For purposes of removal, based on a preliminary
 22 review of its records, Defendant estimates that it has employed 2,975 non-exempt employees in
 23 California during the one year prior to the filing of the Complaint in this action. (Brown Decl., ¶ 5e.)

24
 25 ² This is an extremely conservative estimate of missed rest periods relative to Plaintiffs’ Complaint
 26 allegation of a “policy or practice” of not providing rest breaks, and a failure to include written
 27 policies describing rest break requirements. It is well-established that a 100% violation rate could be
 28 assumed based on these allegation. (Complaint, ¶¶ 102, 104.) *See Mejia v. DHL Express (USA), Inc.*,
 2015 WL 2452755, *4 (May 21, 2015) (allegation of unlawful pattern or practice could support
 100% violation rate).

1 Of those 2,975, 1,555 are still employed (approximately 52%). The average weeks worked by non-
2 exempt employees since November 15, 2017 is approximately 28.

3 50. Defendant paid its nonexempt employees weekly prior to 2018, and has paid
4 biweekly since January 1, 2018. In total, non-exempt employees have received approximately
5 46,906 pay stubs since November 15, 2017.

6 51. Defendant denies the validity and merit of Plaintiff's wage statement claim.

7 52. However, for purposes of estimating the amount in controversy, assuming the current
8 employees worked only 28 weeks, the penalty for each employee would be \$1,350 (14 pay periods
9 in 28 weeks). Therefore, the amount in controversy for the Labor Code § 226(a) alone would be
10 **\$2,099,250** (1,555 * \$1,350).

11 **g. Waiting Time Penalties**

12 53. In her Seventh Cause of Action, Plaintiff seeks waiting time penalties pursuant to
13 California Labor Code § 203. (Complaint, ¶123.) The statute of limitations for Plaintiff's waiting
14 time penalty claim is three years. *See Pineda v. Bank of Am., N.A.*, 50 Cal. 4th 1389, 1395 (2010)
15 (“[N]o one disputes that when an employee sues to recover both unpaid final wages and the resulting
16 section 203 penalties, the suit is governed by the same three-year limitations period that would apply
17 had the employee sued to recover only the unpaid wages.”).

18 54. Plaintiff demands up to thirty days of pay as penalty for all employees who
19 terminated employment, with interest, attorneys' fees and costs. (Complaint, ¶¶ 123-24.) Penalties
20 under California Labor Code § 203(a) are calculated at an employee's final daily rate of pay (*i.e.*, the
21 employee's final wage rate times the employee's average shift length) times the number of days of
22 waiting-time penalties (up to 30 days). *Mamika v. Barca*, 68 Cal. App. 4th 487, 492-93 (1998).

23 55. Defendant denies the validity and merit of Plaintiff's waiting time penalties claims.

24 56. Between November 15, 2015 and December 12, 2018, approximately 6,748
25 employees have separated from Payless ShoeSource. (Brown Decl., ¶ 5c.)

26 57. The average hourly rate for nonexempt California employees who terminated
27 between November 15, 2015 and December 12, 2018 is at least \$11.68. (Brown Decl., ¶ 5b.)
28 Assuming an average shift length of 3 hours, the amount in controversy for the waiting time penalty

1 claim totals **\$7,093,497** (6,748 employees * \$11.68 per hour * 3 hours per day * 30 days =
2 \$7,093,497).

3 **h. Attorneys' Fees**

4 58. Plaintiff also seeks attorneys' fees and costs in her Complaint. (Complaint, ¶¶106,
5 113, 124, 147, Prayer for Relief.) It is well-settled that claims for statutory attorneys' fees are to be
6 included in the amount in controversy. *Fritsch v. Swift Transportation Co. of Arizona, LLC*, 899
7 F.3d 785 (9th Cir. 2018) ("Among other items, the amount in controversy includes damages
8 (compensatory, punitive, or otherwise), the costs of complying with an injunction, and attorneys'
9 fees awarded under fee-shifting statutes or contract."); see Cal. Labor Code § 226(e) (allowing
10 recovery of attorneys' fees in claim for inaccurate wage statements). The attorneys' fees benchmark
11 in the Ninth Circuit is twenty-five percent. *Paul, Johnson, Alston & Hunt v. Gaulty*, 886 F.2d 268,
12 272 (9th Cir. 1989) ("We note with approval that one court has concluded that the 'bench mark'
13 percentage for the fee award should be 25 percent.") (citation omitted); *Lo v. Oxnard Euro. Motors,*
14 *LLC*, No. 11CV1009 JLS (MDD), 2012 WL 1932283, at *3 (S.D. Cal. May 29, 2012) ("The Ninth
15 Circuit has accepted as a benchmark for an attorneys' fees awards a twenty-five percent of the
16 common fund recovery.") (citation omitted).

17 59. As discussed above, the amount in controversy for Plaintiff's claims is at least
18 \$11,738,893 (\$2,546,146 + \$2,099,250 + \$7,093,497). Taking into account attorneys' fees at the
19 benchmark percentage of twenty-five percent further increases the amount in controversy by
20 approximately \$2,934,723 for a total amount in controversy of at least **\$14,673,616**.

21 60. Removal of this action is therefore proper as the amount in controversy of Plaintiff's
22 claims is well in excess of the CAFA jurisdictional requirement of \$5 million. *See* 28 U.S.C.
23 § 1332(d)(2):

24 ///
25 ///
26 ///
27 ///
28 ///

Plaintiff's Claim	Amount in Controversy
Failure to Provide Rest Periods	\$2,546,146.
Failure to Provide Accurate Wage Statements	\$2,099,250
Waiting Time Penalties	\$7,093,497
Attorneys' Fees	\$2,934,723
Total	\$14,673,616

VII. Notice of Removal to Adverse Party and State Court

61. Following the filing of this Notice of Removal in the United States District Court for the Northern District of California, written notice of such filing will be given by the undersigned to Plaintiff's counsel of record, Shaun Setareh, Thomas Segal, and Farrah Grant, Setareh Law Group, and a copy of the Notice of Removal will be filed with the Clerk of the Alameda County Superior Court. (Hightower Decl., ¶ 6.)

62. By filing the Notice of Removal, Defendant does not waive any objections it may have as to service, jurisdiction, or venue, or any other defenses available at law, in equity or otherwise. Defendant intends no admission of fact or law by this Notice and expressly reserve all defenses and motions.

WHEREFORE, Defendant hereby removes this action from the Superior Court of the State of California, County of Alameda, to the United States District Court for the Northern District of California.

Dated: December 19, 2018

/s/ Alison S. Hightower
ALISON S. HIGHTOWER
LITTLER MENDELSON, P.C.
Attorneys for Defendant
PAYLESS SHOESOURCE, INC.

FIRMWIDE:161038201.1 093422.1000

EXHIBIT A



**Service of Process
Transmittal**

11/19/2018
CT Log Number 534439767

TO: Deborah Ortega
Collective Brands, Inc
3231 SE 6th Ave
Topeka, KS 66607-2260

RE: Process Served in California

FOR: Payless ShoeSource, Inc. (Domestic State: MO)

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

TITLE OF ACTION: YAQUELIN C. GARCIA, ETC., ET AL., PLTFS. vs. PAYLESS SHOESOURCE, INC., ETC., ET AL., DFTS.

DOCUMENT(S) SERVED: SUMMONS, COMPLAINT, ATTACHMENT(S)

COURT/AGENCY: Alameda County - Superior Court - Unlimited Jurisdiction, CA
Case # RG18928757

NATURE OF ACTION: Employee Litigation - COMPLAINT FOR FAILURE TO PROVIDE PROPER DISCLOSURE IN VIOLATION OF THE FCRA, FAILURE TO GIVE PROPER SUMMARY OF RIGHTS IN VIOLATION OF THE FCRA, ETC.

ON WHOM PROCESS WAS SERVED: C T Corporation System, Los Angeles, CA

DATE AND HOUR OF SERVICE: By Process Server on 11/19/2018 at 12:52

JURISDICTION SERVED : California

APPEARANCE OR ANSWER DUE: Within 30 calendar days after this summons and legal papers are served on you

ATTORNEY(S) / SENDER(S): Shaun Setareh
SETAREH LAW GROUP
315 South Beverly Drive, Suite 315
Beverly Hills, CA 90212
310-888-7771

ACTION ITEMS: SOP Papers with Transmittal, via UPS Next Day Air , 1ZX212780115501906
Image SOP
Email Notification, Deborah Ortega deborah.ortega@payless.com
Email Notification, Ramona Palmer-Eason rpalmer@payless.com

SIGNED: C T Corporation System
ADDRESS: 818 West Seventh Street
Los Angeles, CA 90017
TELEPHONE: 213-337-4615

SUM-100

**SUMMONS
(CITACION JUDICIAL)**

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**

PAYLESS SHOESOURCE, INC., a Missouri corporation; and DOES I through 50, inclusive,

**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

YAQUELIN C. GARCIA, on behalf of herself, all others similarly situated,

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)
**ENDORSED
FILED
ALAMEDA COUNTY**
NOV 15 2018
CLERK OF THE SUPERIOR COURT
By CURTIYAH GANTER
Deputy

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.
You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.
There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case.
¡AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.
Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted puede usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.
Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es): Rene C. Davidson Courthouse
1225 Fallon Street
Oakland, California 94612

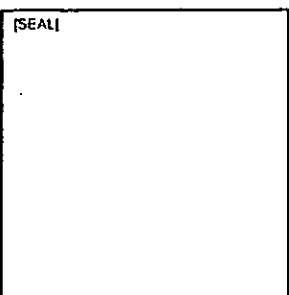
CASE NUMBER:
(Número de Caso): **18618928757**

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Shaun Setareh, Esq., 315 South Beverly Drive, Suite 315, Beverly Hills, California 90212, (310) 888-7771

CURTIYAH GANTER, Deputy
(Adjunto)

DATE: **NOV 15 2018** Chad Finke Clerk, by
(Fecha) (Secretario)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).



NOTICE TO THE PERSON SERVED: You are served
1. as an individual defendant.
2. as the person sued under the fictitious name of (specify):
3. on behalf of (specify): **PAYLESS SHOESOURCE, INC.**
under: CCP 416.10 (corporation) CCP 416.60 (minor)
 CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
 CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
 other (specify):
4. by personal delivery on (date):

1 Shaun Setareh (SBN 204514)
shaun@setarehlaw.com
2 Thomas Segal (SBN 222791)
thomas@setarehlaw.com
3 Farrah Grant (SBN 293898)
farrah@setarehlaw.com
4 SETAREH LAW GROUP
315 South Beverly Drive, Suite 315
5 Beverly Hills, California 90212
Telephone (310) 888-7771
6 Facsimile (310) 888-0109

7 Attorneys for Plaintiff
YAQUELIN C. GARCIA
8

**ENDORSED
FILED
ALAMEDA COUNTY**
NOV 15 2018
CLERK OF THE SUPERIOR COURT
By CURTIAH GANTER
Deputy

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 FOR THE COUNTY OF ALAMEDA
11 UNLIMITED JURISDICTION
12

13 YAQUELIN C. GARCIA, on behalf of
herself, all others similarly situated,
14

Plaintiff,

15 vs.

16 PAYLESS SHOESOURCE, INC., a Missouri
17 corporation; and DOES 1 through 50,
18 inclusive,
19

Defendants.
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Case No. **RG18928757**

CLASS ACTION

COMPLAINT

1. Violation of 15 U.S.C. §§ 1681b(b)(2)(A) (Fair Credit Reporting Act);
2. Violation of 15 U.S.C. §§ 1681d(a)(1) and 1681g(c) (Fair Credit Reporting Act);
3. Violation of California Civil Code § 1786 *et seq.* (Investigative Consumer Reporting Agencies Act);
4. Violation of California Civil Code § 1785 *et seq.* (Consumer Credit Reporting Agencies Act);
5. Failure to Provide Rest Periods (Lab. Code §§ 204, 223, 226.7 and 1198);
6. Failure to Provide Accurate Written Wage Statements (Lab. Code §§ 226(a));
7. Failure to Timely Pay All Final Wages (Lab. Code §§ 201, 202 and 203);
8. Unfair Competition (Bus. & Prof. Code §§ 17200 *et seq.*);

JURY TRIAL DEMANDED

1 COMES NOW, Plaintiff YAQUELIN C. GARCIA ("Plaintiff"), on behalf of herself, all
2 others similarly situated, complains and alleges as follows:

3 **INTRODUCTION**

4 1. Plaintiff brings this class action against Defendant PAYLESS SHOESOURCE,
5 INC., a Missouri corporation; and DOES 1 through 50, inclusive (collectively referred to as
6 "Defendants") for alleged violations of the Fair Credit Reporting Act ("FCRA") and similar
7 California laws.

8 2. Plaintiff alleges that Defendants routinely acquire consumer, investigative consumer
9 and/or consumer credit reports (referred to collectively as "credit and background reports") to
10 conduct background checks on Plaintiff and other prospective, current and former employees and
11 use information from credit and background reports in connection with their hiring process without
12 providing proper disclosures and obtaining proper authorization in compliance with the law.

13 3. Plaintiff, individually and on behalf of all others similarly situated current, former
14 and prospective employees, seeks compensatory and punitive damages due to Defendants'
15 systematic and willful violations of the FCRA (15 U.S.C. §§ 1681 *et seq.*), the California
16 Investigative Consumer Reporting Agencies Act ("ICRAA") (Cal. Civ. Code § 1786 *et seq.*); and
17 the California Consumer Credit Reporting Agencies Act ("CCRAA") (Cal. Civ. Code § 1785, *et*
18 *seq.*).

19 4. Plaintiff also brings this class action against Defendants for alleged violations of the
20 Labor Code and Business and Professions Code. As set forth below, Plaintiff alleges that
21 Defendants have:

- 22 (1) failed to provide her and all other similarly situated individuals with rest
23 periods;
- 24 (2) failed to pay them premium wages for missed rest periods;
- 25 (3) failed to provide them with accurate written wage statements; and
- 26 (4) failed to pay them all of their final wages following separation of
27 employment.

28 Based on these alleged Labor Code violations, Plaintiff now brings this class action to

1 recover unpaid wages, restitution and related relief on behalf of herself, all others similarly situated.

2 **JURISDICTION AND VENUE**

3 5. This Court has subject matter jurisdiction to hear this case because the monetary
4 damages and restitution sought by Plaintiff from Defendants conduct exceeds the minimal
5 jurisdiction of the Superior Court of the State of California.

6 6. Venue is proper in the County of Alameda pursuant to Code of Civil Procedure
7 sections 395(a) and 395.5 in that liability arose this county because at least some of the transactions
8 that are the subject matter of this Complaint occurred therein and/or each defendant is found,
9 maintains offices, transacts business and/or has an agent therein.

10 7. Venue is proper in Alameda County because Defendants' principal place of
11 business is in Kansas, is incorporated under the laws of Missouri, does business in Alameda
12 County, and has not registered a California place of business with the California Secretary of State.
13 As such, venue is proper in any county in California.

14 **PARTIES**

15 8. Plaintiff YAQUELIN C. GARCIA is, and at all relevant times mentioned herein, an
16 individual residing in the State of California.

17 9. Plaintiff is informed and believes, and thereupon alleges that Defendant PAYLESS
18 SHOESOURCE, INC. is, and at all relevant times mentioned herein, a Missouri corporation doing
19 business in the State of California.

20 10. Plaintiff is ignorant of the true names and capacities of the defendants sued herein as
21 DOES 1 through 50, inclusive, and therefore sues these defendants by such fictitious names.
22 Plaintiff will amend this Complaint to allege the true names and capacities of the DOE defendants
23 when ascertained. Plaintiff is informed and believes, and thereupon alleges that each of the
24 fictitiously named defendants are responsible in some manner for the occurrences, acts and
25 omissions alleged herein and that Plaintiff's alleged damages were proximately caused by these
26 defendants, and each of them. Plaintiff will amend this complaint to allege both the true names and
27 capacities of the DOE defendants when ascertained.

28 11. Plaintiff is informed and believes, and thereupon alleges that, at all relevant times

1 mentioned herein, some or all of the defendants were the representatives, agents, employees,
 2 partners, directors, associates, joint venturers, principals or co-participants of some or all of the
 3 other defendants, and in doing the things alleged herein, were acting within the course and scope of
 4 such relationship and with the full knowledge, consent and ratification by such other defendants.

5 12. Plaintiff is informed and believes, and thereupon alleges that, at all relevant times
 6 mentioned herein, some of the defendants pursued a common course of conduct, acted in concert
 7 and conspired with one another, and aided and abetted one another to accomplish the occurrences,
 8 acts and omissions alleged herein.

9 CLASS ALLEGATIONS

10 13. This action has been brought and may be maintained as a class action pursuant to
 11 Code of Civil Procedure section 382 because there is a well-defined community of interest among
 12 the persons who comprise the readily ascertainable classes defined below and because Plaintiff is
 13 unaware of any difficulties likely to be encountered in managing this case as a class action.

14 14. **Relevant Time Period:** The relevant time period is defined as the time period
 15 beginning four years prior to the filing of this action until judgment is entered.

16 **FCRA Class:** All of Defendants' current, former and prospective applicants for
 17 employment in the United States who applied for a job with Defendants at any time during
 18 the period for which a background check was performed beginning five years prior to the
 19 filing of this action and ending on the date that final judgment is entered in this action.

20 **ICRAA Class:** All of Defendants' current, former and prospective applicants for
 21 employment in California, at any time during the period beginning five years prior to the
 22 filing of this action and ending on the date that final judgment is entered into this action.

23 **CCRAA Class:** All of Defendants' current, former and prospective applicants for
 24 employment in California, at any time during the period beginning seven years prior to the
 25 filing of this action and ending on the date that final judgment is entered in this action.

26 **Hourly Employee Class:** All persons employed by Defendants and/or any staffing agencies
 27 and/or any other third parties in hourly or non-exempt positions in California during the
 28 **Relevant Time Period.**

Rest Period Sub-Class: All **Hourly Employee Class** members who worked a shift
 of at least three and one-half (3.5) hours during the **Relevant Time Period.**

Wage Statement Penalties Sub-Class: All **Hourly Employee Class** members
 employed by Defendants in California during the period beginning one year before
 the filing of this action and ending when final judgment is entered.

Waiting Time Penalties Sub-Class: All **Hourly Employee Class** members who

1 separated from their employment with Defendants during the period beginning three
2 years before the filing of this action and ending when final judgment is entered.

3 **UCL Class:** All **Hourly Employee Class** members employed by Defendants in California
4 during the **Relevant Time Period**.

5 15. **Reservation of Rights:** Pursuant to Rule of Court 3.765(b), Plaintiff reserves the
6 right to amend or modify the class definitions with greater specificity, by further division into sub-
7 classes and/or by limitation to particular issues.

8 16. **Numerosity:** The class members are so numerous that the individual joinder of each
9 individual class member is impractical. While Plaintiff does not currently know the exact number
10 of class members, Plaintiff is informed and believes, and thereupon alleges that the actual number
11 exceeds the minimum required for numerosity under California law.

12 17. **Commonality and Predominance:** Common questions of law and fact exist as to
13 all class members and predominate over any questions which affect only individual class members.
14 These common questions include, but are not limited to:

- 15 A. Whether Defendants failed to comply with the requirements of 15 U.S.C. §
16 7001 section 101(c)(1);
- 17 B. Whether Defendants willfully failed to provide the class with stand-alone
18 written disclosures before obtaining a credit or background report in
19 compliance with the statutory mandates;
- 20 C. Whether Defendants willfully failed to identify the name, address, telephone
21 number, and/or website of the investigative consumer reporting agency
22 conducting the investigation;
- 23 D. Whether Defendants willfully failed to identify the source of the credit report
24 to be performed;
- 25 E. Whether Defendants willfully failed to comply with the FCRA, ICRAA
26 and/or the CCRAA;
- 27 F. Whether Defendants maintained a policy or practice of failing to provide
28 employees with their rest periods;
- G. Whether Defendants failed to pay premium wages to class members when

1 they have not been provided with required rest periods;

2 H. Whether Defendants failed to provide class members with accurate written
3 wage statements as a result of providing them with written wage statements
4 with inaccurate entries for, among other things, amounts of gross and net
5 wages, and total hours worked;

6 I. Whether Defendants applied policies or practices that result in late and/or
7 incomplete final wage payments;

8 J. Whether Defendants are liable to class members for waiting time penalties
9 under Labor Code section 203;

10 K. Whether class members are entitled to restitution of money or property that
11 Defendants may have acquired from them through unfair competition;

12 18. **Typicality**: Plaintiff's claims are typical of the other class members' claims.

13 Plaintiff is informed and believes and thereupon alleges that Defendants have a policy or practice of
14 failing to comply with the Labor Code and Business and Professions Code as alleged in this
15 Complaint.

16 19. **Adequacy of Class Representative**: Plaintiff is an adequate class representative in
17 that he has no interests that are adverse to, or otherwise conflict with, the interests of absent class
18 members and is dedicated to vigorously prosecuting this action on their behalf. Plaintiff will fairly
19 and adequately represent and protect the interests of the other class members.

20 20. **Adequacy of Class Counsel**: Plaintiff's counsel are adequate class counsel in that
21 they have no known conflicts of interest with Plaintiff or absent class members, are experienced in
22 wage and hour class action litigation, and are dedicated to vigorously prosecuting this action on
23 behalf of Plaintiff and absent class members.

24 21. **Superiority**: A class action is vastly superior to other available means for fair and
25 efficient adjudication of the class members' claims and would be beneficial to the parties and the
26 Court. Class action treatment will allow a number of similarly situated persons to simultaneously
27 and efficiently prosecute their common claims in a single forum without the unnecessary
28 duplication of effort and expense that numerous individual actions would entail. In addition, the

1 monetary amounts due to many individual class members are likely to be relatively small and would
2 thus make it difficult, if not impossible, for individual class members to both seek and obtain relief.
3 Moreover, a class action will serve an important public interest by permitting class members to
4 effectively pursue the recovery of monies owed to them. Further, a class action will prevent the
5 potential for inconsistent or contradictory judgments inherent in individual litigation.

6 **GENERAL ALLEGATIONS**

7 22. When Plaintiff applied for employment with Defendant, Defendants required her to fill
8 out a disclosure and authorization form to perform a background investigation.

9 23. The disclosures provided by Defendants contained extraneous and superfluous language
10 that does not consist solely of the disclosure as required by federal and state laws.

11 24. Plaintiff was presented with disclosures that was incorporated into an employment
12 application, which violates the law requiring that it consist solely of the disclosure.

13 **Missed Rest Periods**

14 25. Plaintiff and the putative class members were not provided with rest periods of at
15 least ten (10) minutes for each four (4) hour work period, or major fraction thereof, due to (1)
16 Defendants' policy of not scheduling each rest period as part of each work shift; (2) chronically
17 understaffing each work shift with not enough workers; (3) imposing so much work on each
18 employee such that it made it unlikely that an employee would be able to take their breaks if they
19 wanted to finish their work on time; and (4) no formal written meal and rest period policy that
20 encouraged employees to take their meal and rest periods.

21 26. As a result of Defendants' policy, Plaintiff and the putative class were regularly not
22 provided with uninterrupted rest periods of at least ten (10) minutes for each four (4) hours worked
23 due to complying with Defendants' productivity requirements that required Plaintiff and the
24 putative class to work through their rest periods in order to complete their assignments on time.

25 27. When Plaintiff and the putative class were not provided with a rest period,
26 Defendants failed to pay them premium wages.

27 **Wage Statements**

28 28. Plaintiff and the putative class were not provided with accurate wage statements as

1 mandated by law pursuant to Labor Code section 226.

2 29. Defendants failed to comply with Labor Code section 226(a)(1) as “gross wages
3 earned” were not accurately reflected in that:

4 a. any and all premium wages for missed rest periods were not included.

5 30. Defendants failed to comply with Labor Code section 226(a)(2) as “total hours
6 worked by the employee” were not accurately reflected in that:

7 a. any and all premium wages for missed rest periods were not included.

8 31. Defendants failed to comply with Labor Code section 226(a)(5) as “net wages
9 earned” were not accurately reflected in that:

10 a. any and all premium wages for missed rest periods were not included.

11 32. Defendants failed to comply with Labor Code section 226(a)(9) as “all applicable
12 hourly rates in effect during the pay period and the corresponding number of hours worked at each
13 hourly rate by the employee” were not accurately reflected in that: all hours worked, including
14 overtime, were not included.

15 **FIRST CAUSE OF ACTION**

16 **FAILURE TO PROVIDE PROPER DISCLOSURE IN VIOLATION OF THE FCRA**

17 **(15 U.S.C. §§ 1681b(b)(2)(A))**

18 **(Plaintiff and FCRA Class Against All Defendants)**

19 33. Plaintiff incorporates the preceding paragraphs of this Complaint as if fully alleged
20 herein.

21 34. Defendants are “persons” as defined by Section 1681a(b) of the FCRA.

22 35. Plaintiff and class members are “consumers” within the meaning of Section 1681a(c)
23 of the FCRA because they are “individuals.”

24 36. Section 1681a(d)(1) of the FCRA defines “consumer report” as:

25 “The term “consumer report” means any written, oral, or other communication of
26 any information by a consumer reporting agency bearing on a consumer’s credit
27 worthiness, credit standing, credit capacity, character, general reputation, personal
28 characteristics, or mode of living which is used or expected to be used or collected in
whole or in part for the purpose of serving as a factor in establishing the consumer’s
eligibility for—

- 1 (A) credit or insurance to be used primarily for personal, family, or household
2 purposes;
- 3 (B) employment purposes; or
- 4 (C) any other purpose authorized under section 1681b of this title.”

5 Accordingly, a credit and background report qualifies as a consumer report.

6 37. Section 1681a(e) of the FCRA defines “investigative consumer report” as:

7 “The term ‘investigative consumer report’ means a consumer report or portion
8 thereof in which information on a consumer’s character, general reputation, personal
9 characteristics, or mode of living is obtained through personal interviews with
10 neighbors, friends, or associates of the consumer reported on or with others with
11 whom he is acquainted or who may have knowledge concerning any such items off
12 information. However, such information shall not include specific factual
13 information on a consumer’s credit record obtained directly from a creditor of the
14 consumer or from a consumer reporting agency when such information was obtained
15 directly from a creditor of the consumer or from the consumer.”

12 Accordingly, a credit and background report qualifies as an investigative consumer report.

13 38. Section 1681b(b)(2)(A) of the FCRA provides:

14 Conditions for furnishing and using consumer reports for employment purposes
15 Except as provided in subparagraph (B), a person may not procure a consumer
16 report, or cause a consumer report to be procured, for employment purposes with
17 respect to any consumer, unless—

- 17 (i) A *clear and conspicuous* disclosure has been made in writing to the
18 consumer at any time before the report is procured or caused to be procured,
19 in a document that *consists solely of the disclosure*, that a consumer report
20 may be obtained for employment purposes; and
- 21 (ii) The consumer has authorized in writing (which authorization may be made
22 on the document referred to in clause (i)) the procurement of the report by
23 that person. (Emphasis added.)

21 39. Section 1681b(b)(2)(A)(i) requires that a clear and conspicuous disclosure be made
22 in writing.

23 40. Because Defendants’ disclosures do not meet the requirement of 15 U.S.C. section
24 7001(c), the disclosures do not satisfy the written requirement.

25 41. Plaintiff alleges, upon information and belief, that in evaluating his and other class
26 members for employment, Defendants procured or caused to be procured credit and background
27 reports (i.e. a consumer report and/or investigative consumer report as defined by 15 U.S.C. section
28 1681a(d)(1)(B) and 15 U.S.C. section 1681a(e)).

1 42. The purported disclosures do not meet the requirements under the law because they
2 are embedded with extraneous information and are not clear and unambiguous disclosures in stand-
3 alone documents.

4 43. Under the FCRA, it is unlawful to procure or caused to be procured, a consumer
5 report or investigative consumer report for employment purposes unless the disclosure is made in a
6 document that consists solely of the disclosure and the consumer has authorized, in writing, the
7 procurement of the report. (15 U.S.C. § 1681b(b)(2)(A)-(ii).) The inclusion of a release and
8 other extraneous information therefore violates section 1681b(b)(2)(A) of the FCRA.

9 44. Although the disclosure and authorization may be combined in a single document,
10 the Federal Trade Commission (“FTC”) has warned that the form should not include any extraneous
11 information or be part of another document. For example, in response to an inquiry as to whether
12 the disclosure may be set forth within an application for employment or whether it must be included
13 in a separate document, the FTC stated:

14 “The disclosure may not be part of an employment application because the language
15 [of 15 U.S.C. section 1681b(b)(2)(A) is] intended to ensure that it appears
16 conspicuously in a document not encumbered by any other information. The reason
17 for requiring that the disclosure be in a stand-alone document is to prevent
18 consumers from being distracted by other information side-by-side within the
19 disclosure.”

20 45. The plain language of the statute also clearly indicates that the inclusion of a liability
21 release in a disclosure form violates the disclosure and authorization requirements of the FCRA,
22 because such a form would not consist “solely” of the disclosure. In fact, the FTC expressly warned
23 that the FCRA notice may not include extraneous information such as a release. In a 1998 opinion
24 letter, the FTC stated:

25 “[W]e note that your draft disclosure includes a waiver by the consumer of his or his
26 rights under the FCRA. The inclusion of such a waiver in a disclosure form will
27 violate section 604(b)(2)(A) of the FCRA, which requires that a disclosure consist
28 ‘solely’ of the disclosure that a consumer report may be obtained for employment
29 purposes.”

30 46. In a report dated July 2011, the FTC reiterated that “the notice [under 15 U.S.C.
31 section 1681b(b)(2)(A)] may not include extraneous or contradictory information, such as a request
32 for a consumer’s waiver of his or his rights under the FCRA.”

1 47. By including a release and other extraneous information, Defendants willfully
2 disregarded the FTC's regulatory guidance and violated section 1681b(b)(2)(A) of the FCRA.
3 Additionally, the inclusion of the extraneous provisions causes the disclosure to fail to be "clear and
4 conspicuous" and "clear and accurate" and therefore violates sections 1681b(b)(2)(A) and
5 1681d(a).

6 48. Defendants' conduct in violation of section 1681b(b)(2)(A) of the FCRA was and is
7 willful. Defendants acts in deliberate or reckless disregard of their obligations and the rights of
8 applicants and employees, including Plaintiff and class members. Defendants' willful conduct is
9 reflected by, among other things, the following facts:

- 10 A. Defendants are a large corporation with access to legal advice;
- 11 B. Defendants required a purported authorization to perform credit and
12 background checks in the process of employing the class members which,
13 although defective, evidences Defendants' awareness of and willful failure to
14 follow the governing laws concerning such authorizations;
- 15 C. The plain language of the statute unambiguously indicates that inclusion of a
16 liability release and other extraneous information in a disclosure form
17 violates the disclosure and authorization requirements; and
- 18 D. The FTC's express statements, pre-dating Defendants' conduct, which state
19 that it is a violation of section 1681b(b)(2)(A) of the FCRA to include a
20 liability waiver in the disclosure form.

21 49. Defendants required a liability release in the disclosure form, along with other
22 extraneous information, that releases all parties involved from any liability and responsibility for
23 releasing information they have about the Plaintiff to Defendants.

24 50. Based upon the facts likely to have evidentiary support after a reasonable
25 opportunity to further investigation and discovery, Plaintiff alleges that Defendants have a policy
26 and practice of procuring investigative consumer reports or causing investigative consumer reports
27 to be procured for applicants and employees without informing them of their right to request a
28 summary of their rights under the FCRA at the same time as the disclosure explaining that an

1 investigative consumer report may be made. Pursuant to that policy and practice, Defendants
2 procured investigative consumer reports or caused investigative consumer reports to be procured for
3 Plaintiff and class members, as described above, without informing class members of their rights to
4 request a written summary of their rights under the FCRA.

5 51. Accordingly, Defendants willfully violated and continue to violate the FCRA,
6 including but not limited to, sections 1681b(b)(2)(A) and 1681d(a). Defendants' willful conduct is
7 reflected by, among other things, the facts set forth above.

8 52. As a result of Defendants' unlawful procurement of credit and background reports by
9 way of their inadequate disclosures, as set forth above, Plaintiff and class members have been
10 injured, including but not limited to, having their privacy and statutory rights invaded in violation of
11 the FCRA.

12 53. Plaintiff, on behalf of herself and all class members, seek all available remedies
13 pursuant to 15 U.S.C. section 1681n, including statutory damages and/or actual damages, punitive
14 damages, injunctive and equitable relief and attorneys' fees and costs.

15 54. In the alternative to Plaintiff's allegation that these violations were willful, Plaintiff
16 alleges that the violations were negligent and seeks the appropriate remedy, if any, under 15 U.S.C.
17 section 1681o, including statutory damages and attorneys' fees and costs.

18 **SECOND CAUSE OF ACTION**

19 **FAILURE TO GIVE PROPER SUMMARY OF RIGHTS IN VIOLATION OF THE FCRA**

20 **(15 U.S.C. § 1681d(a)(1) and 1681g(c))**

21 **(Plaintiff and FCRA Class Against All Defendants)**

22 55. Plaintiff incorporates the preceding paragraphs of this Complaint as if fully alleged
23 herein.

24 56. Section 1681d(a) states:

25 (a) Disclosure of fact of preparation

26 A person may not procure or cause to be prepared an investigative consumer report
on any consumer unless—

27 (1) it is *clearly and accurately disclosed to the consumer* that an investigative
28 consumer report including information as to his character, general reputation,
personal characteristics, and mode of living, which are applicable, may be

1 made, and such disclosure

2 (A) is *made in a writing mailed, or otherwise delivered, to the consumer*, not
3 later than three days after the date on which the report was first requested,
and

4 (B) *includes a statement informing the consumer of his right to request the*
5 *additional disclosures* provided for under subsection (b) of this section and
6 *the written summary of the rights of the consumer prepared pursuant to*
7 *section 1681g(c) of this title; and*

8 (Emphasis added.)

9 57. Section 1681d(b) states:

10 (b) Disclosure on request of nature and scope of investigation
11 Any person who procures or causes to be prepared an investigative consumer report
12 on any consumer shall, upon written request made by the consumer within a
13 reasonable period of time after the receipt by her of the disclosure required by
14 subsection (a)(1), make a *complete and accurate disclosure of the nature and scope*
15 *of the investigation requested*. This disclosure shall be made in a writing mailed, or
16 after the date on which the request for such disclosure was received from the
17 consumer or such report was first requested, whichever is the later.
18 (Emphasis added.)

19 58. As previously alleged, because Defendants' disclosures do not meet the requirement
20 of Section 101(c)(1) of 15 U.S.C. section 7001, the disclosures do not satisfy the written
21 requirement.

22 59. Moreover, even if Defendants' disclosures are deemed to satisfy Section 101(c)(1),
23 Defendants did not comply with Section 1681d(a)(1)(b) because the disclosures fail to inform the
24 consumer of the right to have the person who procured the report provide a complete and accurate
25 disclosure of the nature and scope of the investigation requested.

26 60. Section 1681g(c) further provides for summary of rights to obtain and dispute
27 information in consumer reports and to obtain credit scores:

28 (c) Summary of rights to obtain and dispute information in consumer reports and to
obtain credit scores

(1) Commission
Summary of rights required

(A) In general
The Commission shall prepare a model summary of the rights of consumers
under this subchapter.

(B) Content of summary
The summary of rights prepared under subparagraph (A) shall include a
description of-

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- (i) the right of a consumer to obtain a copy of a consumer report under subsection (a) from each consumer reporting agency;
- (ii) the frequency and circumstances under which a consumer is entitled to receive a consumer report without charge under section 1681j of this title;
- (iii) the right of a consumer to dispute information in the file of the consumer under section 1681i of this title;
- (iv) the right of a consumer to obtain a credit score from a consumer reporting agency, and a description of how to obtain a credit score;
- (v) the method by which a consumer can contact, and obtain a consumer report from, a consumer reporting agency without charge, as provided in the regulations of the Bureau prescribed under section 211(c) of the Fair and Accurate Credit Transactions Act of 2003; and
- (vi) the method by which a consumer can contact, and obtain a consumer report from, a consumer reporting agency described in section 1681a(w) of this title, as provided in the regulations of the Bureau prescribed under section 1681j(a)(1)(C) of this title.

61. Defendants did not comply with 1681g(c)(B)(1) because the disclosures did not state the right of a consumer to obtain a copy of a consumer report from each consumer reporting agency.

62. Defendants did not comply with 1681g(c)(B)(2) because the disclosure did not state the frequency and circumstances under which a consumer is entitled to receive a consumer report without charge.

63. Defendants did not comply with 1681g(c)(B)(3) because the disclosure did not state the right of a consumer to dispute information in the file of the consumer.

64. Defendants did not comply with 1681g(c)(B)(4) because the disclosure did not state the right of a consumer to obtain a credit score from a consumer reporting agency and a description of how to obtain a credit score.

65. Defendants did not comply with 1681g(c)(B)(5) because the disclosure did not state the method by which a consumer can contact, and obtain a consumer report from, a consumer reporting agency without charge.

66. Defendants did not comply with 1681g(c)(B)(6) because the disclosure did not state the method by which a consumer can contact, and obtain a consumer report from, a consumer reporting agency described in section 1681a(w) of this title, as provided in the regulations of the

1 Bureau prescribed under section 1681j(a)(1)(C) of this title.

2 **THIRD CAUSE OF ACTION**

3 **FAILURE TO MAKE PROPER DISCLOSURE IN VIOLATION OF THE ICRAA**

4 **(Cal. Civ. Code §§ 1786 *et seq.*)**

5 **(Plaintiff and ICRAA Class Against All Defendants)**

6 67. Plaintiff incorporates the preceding paragraphs in the Complaint as if fully alleged
7 herein.

8 68. Defendants are “persons” as defined by section 1786.2(a) of the ICRAA.

9 69. Plaintiff and **ICRAA Class** members are “consumers” within the meaning of section
10 1786.2(b) of the ICRAA because they are “individuals.”

11 70. Section 1786.2(c) of the ICRAA defines “investigative consumer report” as:

12 “The term investigative consumer report means a consumer report in which
13 information on a consumer’s character, general reputation, personal characteristics,
or mode of living is obtained through any means.”

14 71. Accordingly, a background check qualifies as an investigative consumer report under
15 the ICRAA.

16 72. Section 1786.16(a)(2) of the ICRAA provides:

17 (2) If, at any time, an investigative consumer report is sought for employment
18 purposes other than suspicion of wrongdoing or misconduct by the subject of the
investigation, the person seeking the investigative consumer report may procure
19 the report, or cause the report to be made, only if all of the following apply:

20 (A) The person procuring or causing the report to be made has a permissible
purpose, as defined in Section 1786.12.

21 (B) The person procuring or causing the report to be made provides a *clear and*
22 *conspicuous* disclosure in writing to the consumer at any time before the
report is procured or caused to be made *in a document that consists solely of*
23 *the disclosure*, that:

24 (i) An investigative consumer report may be obtained.

25 (ii) The permissible purpose of the report is identified.

26 (iii) The disclosure may include information on the consumer’s character,
general reputation, personal characteristics, and mode of living.

27 (iv) Identifies the *name, address, and telephone number of the investigative*
28 *consumer reporting agency* conducting the investigation.

1 (v) Notifies the consumer in writing of the nature and scope of the
2 investigation requested, including a summary of the provisions of Section
1786.22.

3 (vi) *Notifies the consumer of the Internet Web site address of the*
4 *investigative consumer reporting agency* identified in clause (iv), or, *if*
5 *the agency has no Internet Web site address, the telephone number of*
6 *the agency*, where the consumer may find information about the
7 investigative reporting agency's privacy practices, including whether the
8 consumer's personal information will be sent outside the United States or
9 its territories and information that complies with subdivision (d) of Section
10 1786.20. This clause shall be operative on January 1, 2012.

(C) The consumer has authorized in writing the procurement of the report.

(Emphasis added.)

10 73. As previously alleged, because Defendants' disclosures do not meet the requirements
11 of section 101(c)(1) of 15 U.S.C. section 7001, the disclosures do not satisfy section 1786.16(a)(2)
12 of the ICRAA requirement that the disclosures be made in writing.

13 74. As described above, Plaintiff alleges that in evaluating his and other class members
14 for employment, Defendants procured or caused to be prepared investigative consumer report (e.g.
15 background checks) as described by Civil Code section 1786.2(c).

16 75. Because the purported disclosures are embedded with extraneous information and
17 are not clear and unambiguous disclosures in stand-alone documents, they do not meet the
18 requirements under the law.

19 76. Under the ICRAA, it is unlawful to procure or caused to be procured, a consumer
20 report or investigative consumer report for employment purposes unless the disclosure is made in a
21 document that consists solely of the disclosure and the consumer has authorized, in writing, the
22 procurement of the report. Cal. Civ. Code § 1786.16(a)(2)(B)-(C). The inclusion of the Release and
23 other extraneous information therefore violates section 1786.16(a)(2)(B) of the ICRAA.

24 77. The plain language of the statute clearly indicates that the inclusion of a liability
25 release in a disclosure form violates the disclosure and authorization requirements of the ICRAA
26 because such a form would not consist "solely" of the disclosure.

27 78. By including the Release and other extraneous information, Defendants willfully
28 violated section 1786.16(a)(2)(B) of the ICRAA. Additionally, the inclusion of the extraneous

1 provisions causes the disclosure to fail to be “clear and conspicuous” and thus violates section
2 1786.16(a)(2)(B).

3 79. Based upon facts that are likely to have evidentiary support after a reasonable
4 opportunity for investigation and discovery, Plaintiff alleges that Defendants have a policy and
5 practice of failing to provide adequate written disclosure to applicants and employees, before
6 procuring background checks or causing background checks to be procured, as described above.
7 Pursuant to that policy and practice, Defendants procured background checks or caused background
8 checks to be procured for Plaintiff and class members without first providing a written disclosure in
9 compliance with section 1786.16(a)(2)(B) of the ICRAA, as described above.

10 80. Defendants’ conduct in violation of Section 1786.16(a)(2)(B) of the ICRAA was and
11 is willful and/or grossly negligent. Defendants acted in deliberate or reckless disregard of their
12 obligations and the rights of applicants and employees, including Plaintiff and class members.
13 Defendants’ willful conduct is reflected by, among other things, the following facts:

- 14 (a) Defendants are large corporations with access to legal advice;
15 (b) Defendants required a purported authorization to perform credit and background
16 checks in the process of employing the class members which, although defective,
17 evidences Defendants’ awareness of and willful failure to follow the governing
18 laws concerning such authorizations; and
19 (c) The plain language of the statute unambiguously indicates that inclusion of a
20 liability release and other extraneous information in a disclosure form violates
21 the disclosure and authorization requirements, and that the disclosure form must
22 contain the name, address, phone number, and/or website address of the
23 investigative consumer reporting agency conducting the investigation.

24 81. As a result of Defendants’ illegal procurement of background reports by way of their
25 inadequate disclosures, as set forth above, Plaintiff and class members have been injured including,
26 but not limited to, having their privacy and statutory rights invaded in violation of the ICRAA.

27 82. Plaintiff, on behalf of herself and all class members, seeks all available remedies
28 pursuant to Civil Code section 1786.50, including statutory damages and/or actual damages,

1 punitive damages, and attorneys' fees and costs.

2 83. In the alternative to Plaintiff's allegation that these violations were willful or grossly
3 negligent, Plaintiff alleges that the violations were negligent and seeks the appropriate remedy, if
4 any, under Civil Code section 1786.50(a), including actual damages and attorneys' fees and costs.

5 **FOURTH CAUSE OF ACTION**

6 **FAILURE TO MAKE PROPER DISCLOSURE IN VIOLATION OF THE CCRAA**

7 **(Cal. Civ. Code §§ 1785 et seq.)**

8 **(Plaintiff and CCRAA Class Against All Defendants)**

9 84. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

10 85. Defendants are "persons" as defined by Section 1785.3(j) of the Consumer Credit
11 Reporting Agencies Act ("CCRAA").

12 86. Plaintiff and **CCRAA Class** members are "consumers" within the meaning Section
13 1785.3(b) of the CCRAA, because they are "natural individuals."

14 87. Section 1785.3(c) of the ICRAA defines "consumer credit report" as:

15 any written, oral, or other communication of any information by a consumer credit
16 reporting agency bearing on a consumer's credit worthiness, credit standing, or credit
17 capacity, which is used or is expected to be used, or collected in whole or in part, for
the purpose of serving as a factor in establishing the consumer's eligibility for: ... (2)
employment purposes...

18 Thus, a credit report qualifies as a consumer credit report under the CCRAA.

19 88. Section 1785.20.5(a) of the CCRAA provides, in relevant part:

20 Prior to requesting a consumer credit report for employment purposes, the user of the
21 report shall provide written notice to the person involved. The notice shall inform the
22 person that a report will be used, and *shall identify the specific basis under subdivision*
(a) of Section 1024.5 of the Labor Code for use of the report. The notice shall also
inform the person of the source of the report...

23 (Emphasis added.)

24 89. As described above, Plaintiff alleges that in evaluating his and other class
25 members for employment, Defendants procured or caused to be prepared consumer credit reports
26 (e.g. credit reports), as defined by Section 1785.3(c).

27 90. The disclosure provided by Defendants does not identify the specific basis under
28 subdivision (a) of Section 1024.5 of the Labor Code for use of the credit report. This omission

1 clearly violates Section 1785.20.5(a) of the CCRAA, as delineated above.

2 91. Based upon facts that are likely to have evidentiary support after a reasonable
3 opportunity for investigation and discovery, Plaintiff alleges that Defendants have a policy and
4 practice of failing to provide adequate written disclosures to applicants and employees, before
5 procuring credit reports or causing credit reports to be procured, as described above. Pursuant to
6 that policy and practice, Defendants procured credit reports or caused credit reports to be procured
7 for Plaintiff and class members without first providing a written notice in compliance with Section
8 1785.20.5(a) of the CCRAA, as described above.

9 92. Defendants' conduct in violation of Section 1785.20.5(a) of the CCRAA was and is
10 willful and/or grossly negligent. Defendants acted in deliberate or reckless disregard of their
11 obligations and the rights of applicants and employees, including Plaintiff and class members.
12 Defendants' willful conduct is reflected by, among other things, the following facts:

- 13 (a) Defendants are large corporations with access to legal advice;
- 14 (b) Defendants required a purported authorization to perform credit checks in the
15 process of employing the class members which, although defective,
16 evidences Defendants' awareness of and willful failure to follow the
17 governing laws concerning such authorizations; and
- 18 (c) The plain language of the statute unambiguously indicates that failure to
19 include the provisions identified above violates the CCRAA's notice
20 requirements, and that the notice must identify the specific basis under
21 subdivision (a) of Section 1024.5 of the Labor Code for use of the credit
22 report and must identify the source of any credit report.

23 93. As a result of Defendants' illegal procurement of credit reports by way of their
24 inadequate notice, as set forth above, Plaintiff and class members have been injured including, but
25 not limited to, having their privacy and statutory rights invaded in violation of the CCRAA.

26 94. Plaintiff, on behalf of herself and all class members, seeks all available remedies
27 pursuant to Civil Code section 1785.31, including statutory damages and/or actual damages,
28 punitive damages, injunctive relief, and attorneys' fees and costs.

1 95. In the alternative to Plaintiff's allegation that these violations were willful, Plaintiff
2 alleges that the violations were negligent and seeks the appropriate remedy, if any, under Civil
3 Code section 1785.31(a)(1), including but not limited to actual damages and attorneys' fees and
4 costs.

5 **FIFTH CAUSE OF ACTION**

6 **FAILURE TO PROVIDE REST PERIODS**

7 **(Lab. Code §§ 204, 223, 226.7 and 1198)**

8 **(Plaintiff and Rest Period Sub-Class)**

9 96. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged
10 herein.

11 97. At all relevant times, Plaintiff and the **Rest Period Sub-Class** members have been
12 non-exempt employees of Defendants entitled to the full rest period protections of both the Labor
13 Code and the applicable Wage Order.

14 98. Section 12 of the applicable Wage Order imposes an affirmative obligation on
15 employers to permit and authorize employees to take required rest periods at a rate of no less than
16 ten minutes of net rest time for each four hour work period, or major fraction thereof, that must be
17 in the middle of each work period insofar as practicable.

18 99. Labor Code section 226.7 and Section 12 of the applicable Wage Order both prohibit
19 employers from requiring employees to work during required rest periods and require employers to
20 pay non-exempt employees an hour of premium wages at the employees' regular rates of pay, on
21 each workday that the employee is not provided with the required rest period(s).

22 100. Compensation for missed rest periods constitutes wages within the meaning of Labor
23 Code section 200.

24 101. Labor Code section 1198 makes it unlawful to employ a person under conditions that
25 violate the Wage Order.

26 102. Plaintiff alleges that, at all relevant times during the applicable limitations period,
27 Defendants maintained a policy or practice of not providing members of the **Rest Period Sub-Class**
28 with net rest period of at least ten minutes for each four hour work period, or major fraction thereof,

1 as required by the applicable Wage Order.

2 103. At all relevant times, Defendants failed to pay Plaintiff and the **Rest Period Sub-**
3 **Class** members additional premium wages when required rest periods were not provided.

4 104. Specifically, Defendants written policies do not provide that employees may take a
5 rest period for each four hours worked, or major fraction thereof, and that rest periods should be
6 taken in the middle of each work period insofar as practicable.

7 105. Pursuant to Labor Code section 204, 218.6 and 226.7, Plaintiff, on behalf of herself
8 and **Rest Period Sub-Class** members, seek to recover unpaid premium wages, interest thereon, and
9 costs of suit.

10 106. Pursuant to Labor Code section 1194, Code of Civil Procedure section 1021.5, the
11 substantial benefit doctrine, and/or the common fund doctrine, Plaintiff, on behalf of herself and
12 **Rest Period Sub-Class** members, seek to recover reasonable attorneys' fees.

13 **SIXTH CAUSE OF ACTION**

14 **FAILURE TO PROVIDE ACCURATE WRITTEN WAGE STATEMENTS**

15 **(Lab. Code § 226)**

16 **(Plaintiff and Wage Statement Penalties Sub-Class)**

17 107. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged
18 herein.

19 108. Labor Code section 226(a) states:

20 "An employer, semimonthly or at the time of each payment of wages, shall furnish to
21 his or his employee, either as a detachable part of the check, draft, or voucher paying
22 the employee's wages, or separately if wages are paid by personal check or cash, an
23 accurate itemized statement in writing showing (1) gross wages earned, (2) total
24 hours worked by the employee, except as provided in subdivision (j), (3) the number
25 of piece-rate units earned and any applicable piece rate if the employee is paid on a
26 piece-rate basis, (4) all deductions, provided that all deductions made on written
27 orders of the employee may be aggregated and shown as one item, (5) net wages
28 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 his 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 and, beginning July 1, 2013, if
the employer is a temporary services employer as defined in Section 201.3, the rate

1 of pay and the total hours worked for each temporary services assignment. The
2 deductions made from payment of wages shall be recorded in ink or other indelible
3 form, properly dated, showing the month, day, and year, and a copy of the statement
4 and the record of the deductions shall be kept on file by the employer for at least
5 three years at the place of employment or at a central location within the State of
California. For purposes of this subdivision, 'copy' includes a duplicate of the
itemized statement provided to an employee or a computer-generated record that
accurately shows all of the information required by this subdivision."

6 109. The Division of Labor Standards Enforcement ("DLSE") has sought to harmonize
7 the "detachable part of the check" provision and the "accurate itemized statement in writing"
8 provision of Labor Code section 226(a) by allowing for electronic wage statements so long as each
9 employee retains the right to elect to receive a written paper stub or record and that those who are
10 provided with electronic wage statements retain the ability to easily access the information and
11 convert the electronic statements into hard copies at no expense to the employee. (DLSE Opinion
12 Letter July 6, 2006).

13 110. Plaintiff is informed and believes that, at all relevant times during the applicable
14 limitations period, Defendants have failed to provide **Wage Statement Penalties Sub-Class**
15 members with written wage statements as described above.

16 111. Plaintiff is informed and believes that Defendants' failure to provide his and **Wage**
17 **Statement Penalties Sub-Class** members with accurate written wage statements were intentional in
18 that Defendants have the ability to provide them with accurate wage statements but have
19 intentionally provided them with written wage statements that Defendants have known do not
20 comply with Labor Code section 226(a).

21 112. Plaintiff and **Wage Statement Penalties Sub-Class** members have suffered injuries,
22 in that Defendants have violated their legal rights to receive accurate wage statements and have
23 misled them about their actual rates of pay and wages earned. In addition, inaccurate information
24 on their wage statements have prevented immediate challenges to Defendants' unlawful pay
25 practices, has required discovery and mathematical computations to determine the amount of wages
26 owed, has caused difficulty and expense in attempting to reconstruct time and pay records, and/or
27 has led to the submission of inaccurate information about wages and deductions to federal and state
28 government agencies.

1 113. Pursuant to Labor Code section 226(e), Plaintiff, on behalf of herself and **Wage**
2 **Statement Penalties Sub-Class** members, seek the greater of actual damages or \$50.00 for the
3 initial pay period in which a violation of Labor Code section 226(a) occurred, and \$100.00 for each
4 subsequent pay period in which a violation of Labor Code section 226(a) occurred, not to exceed an
5 aggregate penalty of \$4000.00 per class member, as well as awards of reasonable attorneys' fees
6 and costs.

7 **SEVENTH CAUSE OF ACTION**

8 **FAILURE TO TIMELY PAY ALL FINAL WAGES**

9 **(Lab. Code §§ 201-203)**

10 **(Plaintiff and Waiting Time Penalties Sub-Class)**

11 114. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged
12 herein.

13 115. At all relevant times, Plaintiff and **Waiting Time Penalties Sub-Class** members
14 have been entitled, upon the end of their employment with Defendants, to timely payment of all
15 wages earned and unpaid before termination or resignation.

16 116. At all relevant times, pursuant to Labor Code section 201, employees who have been
17 discharged have been entitled to payment of all final wages immediately upon termination.

18 117. At all relevant times, pursuant to Labor Code section 202, employees who have
19 resigned after giving at least seventy-two (72) hours notice of resignation have been entitled to
20 payment of all final wages at the time of resignation.

21 118. At all relevant times, pursuant to Labor Code section 202, employees who have
22 resigned after giving less than seventy-two (72) hours notice of resignation have been entitled to
23 payment of all final wages within seventy-two (72) hours of giving notice of resignation.

24 119. During the applicable limitations period, Defendants failed to pay Plaintiff all of his
25 final wages in accordance with the Labor Code by failing to timely pay his all of his final wages.

26 120. Plaintiff is informed and believes that, at all relevant time during the applicable
27 limitations period, Defendants have failed to timely pay **Waiting Time Penalties Sub-Class**
28 members all of their final wages in accordance with the Labor Code.

1 121. Plaintiff is informed and believes that, at all relevant times during the applicable
2 limitations period, Defendants have maintained a policy or practice of paying **Waiting Time**
3 **Penalties Sub-Class** members their final wages without regard to the requirements of Labor Code
4 sections 201 or 202 by failing to timely pay them all final wages.

5 122. Plaintiff is informed and believes and thereupon alleges that Defendants' failure to
6 timely pay all final wages to his and **Waiting Time Penalties Sub-Class** members have been
7 willful in that Defendants have the ability to pay final wages in accordance with Labor Code
8 sections 201 and/or 202 but have intentionally adopted policies or practices that are incompatible
9 with those requirements.

10 123. Pursuant to Labor Code sections 203 and 218.6, Plaintiff, on behalf of herself and
11 **Waiting Time Penalties Sub-Class** members, seek waiting time penalties from the dates that their
12 final wages have first become due until paid, up to a maximum of thirty days, and interest thereon.

13 124. Pursuant to Code of Civil Procedure section 1021.5, the substantial benefit doctrine
14 and/or the common fund doctrine, Plaintiff, on behalf of herself and **Waiting Time Penalties Sub-**
15 **Class** members, seek awards of reasonable attorneys' fees and costs.

16 **EIGHTH CAUSE OF ACTION**

17 **UNFAIR COMPETITION**

18 **(Bus. & Prof. Code §§ 17200 et seq.)**

19 **(Plaintiff and UCL Class)**

20 125. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged
21 herein.

22 126. Business and Professions Code section 17200 defines "unfair competition" to
23 include any unlawful business practice.

24 127. Business and Professions Code section 17203-17204 allow a person who has lost
25 money or property as a result of unfair competition to bring a class action in accordance with Code
26 of Civil Procedure section 382 to recover money or property that may have been acquired from
27 similarly situated persons by means of unfair competition.

28 128. Federal and California laws require certain disclosures and proper authorization

1 before conducting background checks and obtaining information from credit and background
2 reports in connection with a hiring process.

3 129. Plaintiff and the **FCRA, ICRAA and CCRAA Class** re-alleges and incorporates by
4 reference the FIRST, SECOND, THIRD and FOURTH causes of action herein.

5 130. California law requires employers to pay hourly, non-exempt employees for all hours
6 they are permitted or suffered to work, including hours that the employer knows or reasonable
7 should know that employees have worked.

8 131. Plaintiff and the **UCL Class** members re-alleges and incorporates the FIFTH cause
9 of action herein.

10 132. Plaintiff lost money or property as a result of the aforementioned unfair competition.

11 133. Defendants have or may have acquired money by means of unfair competition.

12 134. Defendants have violated Federal and California laws through their policies and
13 practices of, *inter alia*, routinely acquiring consumer, investigative consumer and/or consumer
14 credit reports (referred to collectively as "credit and background reports") to conduct background
15 checks on Plaintiff and other prospective, current and former employees and use information from
16 credit and background reports in connection with their hiring process without providing proper
17 disclosures and obtaining proper authorization in compliance with the law.

18 135. Plaintiff is informed and believes and thereupon alleges that by committing the
19 Labor Code violations described in this Complaint, Defendants violated Labor Code sections 215,
20 216, 225, 226.6, 354, 408, 553, 1175 and 1199, which make it a misdemeanor to commit the Labor
21 Code violations alleged herein.

22 136. Defendants have committed criminal conduct through their policies and practices of,
23 *inter alia*, failing to comport with their affirmative obligations as an employer to provide non-
24 exempt employees with uninterrupted, duty-free meal periods of at least thirty minutes for each
25 work period of five or more hours, by failing to provide non-exempt employees with a paid ten-
26 minute rest period for every four hours worked or major fraction thereof, and by failing to pay non-
27 exempt employees premium wages when they were not provided with their meal and/or rest
28 periods. At all relevant times, Plaintiff and **UCL Class** members have been non-exempt employees

1 and entitled to the full protections of both the Labor Code and the applicable Wage Order.

2 137. Defendants' unlawful conduct as alleged in this Complaint amounts to and
3 constitutes unfair competition within the meaning of Business and Professions Code section 17200
4 *et seq.* Business and Professions Code sections 17200 *et seq.* protects against unfair competition
5 and allows a person who has suffered an injury-in-fact and has lost money or property as a result of
6 an unfair, unlawful or fraudulent business practice to seek restitution on his own behalf and on
7 behalf of similarly situated persons in a class action proceeding.

8 138. As a result of Defendants' violations of the Labor Code during the applicable
9 limitations period, Plaintiff has suffered an injury-in-fact and has lost money or property in the form
10 of earned wages. Specifically, Plaintiff has lost money or property as a result of Defendants'
11 conduct.

12 139. Plaintiff is informed and believes that other similarly situated persons have been
13 subject to the same unlawful policies or practices of Defendants.

14 140. Due to the unfair and unlawful business practices in violation of the Labor Code,
15 Defendants have gained a competitive advantage over other comparable companies doing business
16 in the State of California that comply with their legal obligations.

17 141. California's Unfair Competition Law ("UCL") permits civil recovery and injunctive
18 for "any unlawful, unfair or fraudulent business act or practice," including if a practice or act
19 violates or is considered unlawful under any other state or federal law.

20 142. Accordingly, pursuant to Business and Professions Code sections 17200 and 17203,
21 Plaintiffs request the issuance of temporary, preliminary and permanent injunctive relief enjoining
22 Defendants, and each of them, and their agents and employees, from further violations of the
23 FCRA, ICRAA and CCRAA; and upon a final hearing seek an order permanently enjoining
24 Defendants, and each of them, and their respective agents and employees, from further violations
25 of the FCRA, ICRAA and CCRAA.

26 143. Accordingly, pursuant to Bus. & Prof. Code sections 17200 and 17203, Plaintiffs
27 request the issuance of temporary, preliminary and permanent injunctive relief enjoining
28 Defendants, and each of them, and their agents and employees, from further violations of the Labor

1 Code and applicable Industrial Welfare Commission Wage Orders; and upon a final hearing seek
2 an order permanently enjoining Defendants, and each of them, and their respective agents and
3 employees, from further violations of the Labor Code and applicable Industrial Welfare
4 Commission Wage Orders.

5 144. Pursuant to Business and Professions Code section 17203, Plaintiff, on behalf of
6 herself and **FCRA Class, ICRAA Class, CCRAA Class and UCL Class** members, seek
7 declaratory relief and restitution of all monies rightfully belonging to them that Defendants did not
8 pay them or otherwise retained by means of its unlawful and unfair business practices.

9 145. Pursuant to Code of Civil Procedure section 1021.5, the substantial benefit doctrine
10 and/or the common fund doctrine, Plaintiff and **FCRA Class, ICRAA Class, CCRAA Class and**
11 **UCL Class** members are entitled to recover reasonable attorneys' fees in connection with their
12 unfair competition claims.

13 146. Pursuant to Business and Professions Code section 17203, Plaintiff, on behalf of
14 herself and **UCL Class** members, seek declaratory relief and restitution of all monies rightfully
15 belonging to them that Defendants did not pay them or otherwise retained by means of its unlawful
16 and unfair business practices.

17 147. Pursuant to Code of Civil Procedure section 1021.5, the substantial benefit doctrine
18 and/or the common fund doctrine, Plaintiff and **UCL Class** members are entitled to recover
19 reasonable attorneys' fees in connection with their unfair competition claims.

20 **PRAYER FOR RELIEF**

21 WHEREFORE, Plaintiff, on behalf of herself, all others similarly situated, prays for relief
22 and judgment against Defendants as follows:

- 23 (1) An order that the action be certified as a class action;
24 (2) An order that Plaintiff be appointed class representative;
25 (3) An order that counsel for Plaintiff be appointed class counsel;
26 (4) Unpaid wages;
27 (5) Actual damages;
28 (6) Liquidated damages;

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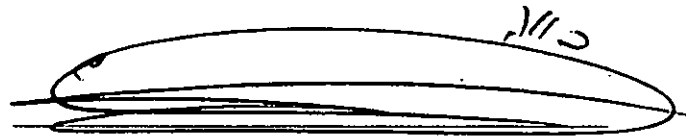
- (7) Restitution;
- (8) Declaratory relief;
- (9) Pre-judgment interest;
- (10) Statutory penalties;
- (11) Costs of suit;
- (12) Reasonable attorneys' fees; and
- (13) Such other relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff, on behalf of herself, all other similarly situated, hereby demands a jury trial on all issues so triable.

DATED: November 13, 2018

SETAREH LAW GROUP



SHAUN SETAREH
Attorneys for Plaintiff
YAQUÉLIN C. GARCIA

EXHIBIT B

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address). Shaun Setarch (SBN 204514) SETAREH LAW GROUP 315 South Beverly Drive, Suite 315 Beverly Hills, California 90212 TELEPHONE NO. (310) 888-7771 FAX NO (310) 888-0109 ATTORNEY FOR (Name): Yaquelin C. Garcia	FOR COURT USE ONLY ENDORSED FILED ALAMEDA COUNTY NOV 15 2018 CLERK OF THE SUPERIOR COURT By <u>CURTIYAH GANTER</u> Deputy
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Alameda STREET ADDRESS: 1225 Fallon Street MAILING ADDRESS: CITY AND ZIP CODE Oakland, California 94612 BRANCH NAME: Rene C. Davidson Courthouse	CASE NAME: Garcia v. Payless ShoeSource, Inc.
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less) <input type="checkbox"/> Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	CASE NUMBER: DC18928757 JUDGE: DEPT:

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PIP/D/W/D (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PIP/D/W/D (23) Non-PIP/D/W/D (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PIP/D/W/D tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input checked="" type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case is is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|---|---|
| a. <input checked="" type="checkbox"/> Large number of separately represented parties | d. <input checked="" type="checkbox"/> Large number of witnesses |
| b. <input checked="" type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. <input checked="" type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. <input checked="" type="checkbox"/> Substantial amount of documentary evidence | f. <input checked="" type="checkbox"/> Substantial postjudgment judicial supervision |
3. Remedies sought (check all that apply): a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive
4. Number of causes of action (specify): **Eight**
5. This case is is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: **November 14, 2018**
 Shaun Setarch, Esq.
 (TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

EXHIBIT C

Setareh Law Group
Attn: Setareh, Shaun
315 South Beverly Drive, Suite 315
beverly Hills, CA 90212

Payless Shoesource, Inc.

Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse

Garcia

Plaintiff/Petitioner(s)

VS.

Payless Shoesource, Inc.

Defendant/Respondent(s)

(Abbreviated Title)

No. RG18928757

NOTICE OF HEARING

To each party or to the attorney(s) of record for each party herein:

Notice is hereby given that the above-entitled action has been set for:

Complex Determination Hearing
Case Management Conference

You are hereby notified to appear at the following Court location on the date and time noted below:

Complex Determination Hearing:

DATE: 02/05/2019 TIME: 03:00 PM DEPARTMENT: 23

LOCATION: Administration Building, Fourth Floor
1221 Oak Street, Oakland

Case Management Conference:

DATE: 03/12/2019 TIME: 03:00 PM DEPARTMENT: 23

LOCATION: Administration Building, Fourth Floor
1221 Oak Street, Oakland

Pursuant to California Rules of Court, Rule 3.400 et seq. and Local Rule 3.250 (Unified Rules of the Superior Court, County of Alameda), the above-entitled matter is set for a Complex Litigation Determination Hearing and Initial Complex Case Management Conference.

Department 23 issues tentative rulings on DomainWeb (www.alameda.courts.ca.gov/domainweb). For parties lacking access to DomainWeb, the tentative ruling must be obtained from the clerk at (510) 267-6939. Please consult Rule 3.30(c) of the Unified Rules of the Superior Court, County of Alameda, concerning the tentative ruling procedures for Department 23.

Counsel or party requesting complex litigation designation is ordered to serve a copy of this notice on all parties omitted from this notice or brought into the action after this notice was mailed.

All counsel of record and any unrepresented parties are ordered to attend this Initial Complex Case Management Conference unless otherwise notified by the Court.

Failure to appear, comply with local rules or provide a Case Management Conference statement may result in sanctions. Case Management Statements may be filed by E-Delivery, by submitting directly to the E-Delivery Fax Number (510) 267-5732. No fee is charged for this service. For further information, go to **Direct Calendar Departments** at

<http://apps.alameda.courts.ca.gov/domainweb>.


All motions in this matter to be heard prior to Complex Litigation Determination Hearing must be scheduled for hearing in Department 23.

If the information contained in this notice requires change or clarification, please contact the courtroom clerk for Department 23 by e-mail at Dept.23@alameda.courts.ca.gov or by phone at (510) 267-6939.

TELEPHONIC COURT APPEARANCES at Case Management Conferences may be available by contacting CourtCall, an independent vendor, at least 3 business days prior to the scheduled conference. Parties can make arrangements by calling (888) 882-6878, or faxing a service request form to (888) 883-2946. This service is subject to charges by the vendor.

Dated: 11/19/2018

Chad Finke Executive Officer / Clerk of the Superior Court

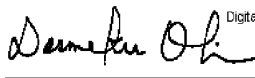
By  ^{Digital}

Deputy Clerk

CLERK'S CERTIFICATE OF MAILING

I certify that the following is true and correct: I am the clerk of the above-named court and not a party to this cause. I served this Notice by placing copies in envelopes addressed as shown hereon and then by sealing and placing them for collection, stamping or metering with prepaid postage, and mailing on the date stated below, in the United States mail at Alameda County, California, following standard court practices.

Executed on 11/20/2018.

By  ^{Digital}

Deputy Clerk

EXHIBIT D

FILED BY FAX POS-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Shaun Setareh (SBN 204514) Setareh Law Group 315 South Beverly Drive, Suite 315 Beverly Hills, CA 90212 TELEPHONE NO.: 310-888-7771 FAX NO. (Optional): 310-8880109 E-MAIL ADDRESS (Optional): ATTORNEY FOR (Name): Plaintiff: Yaquelin C. Garcia	ALAMEDA COUNTY November 27, 2018 CLERK OF THE SUPERIOR COURT By Shabra Iyamu, Deputy CASE NUMBER: RG18928757
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Alameda STREET ADDRESS: 1225 Fallon Street MAILING ADDRESS: CITY AND ZIP CODE: Oakland, Ca 94612 BRANCH NAME: Rene C. Davidson Courthouse	CASE NUMBER: RG18928757
PLAINTIFF/PETITIONER: Yaquelin C. Garcia DEFENDANT/RESPONDENT: Payless ShoeSource, Inc.	Ref. No. or File No.:

PROOF OF SERVICE OF SUMMONS

(Separate proof of service is required for each party served.)

1. At the time of service I was at least 18 years of age and not a party to this action.
2. I served copies of:
 - a. summons
 - b. complaint
 - c. Alternative Dispute Resolution (ADR) package
 - d. Civil Case Cover Sheet (served in complex cases only)
 - e. cross-complaint
 - f. other (specify documents):
3. a. Party served (specify name of party as shown on documents served):
 Payless ShoeSource, Inc.

 b. Person (other than the party in item 3a) served on behalf of an entity or as an authorized agent (and not a person under item 5b on whom substituted service was made) (specify name and relationship to the party named in item 3a):
 Gabriela Sanchez, Authorized to Accept Service of Process
4. Address where the party was served:
 C.T. Corporation System, 818 W. 7th Street, #930, Los Angeles, CA 90017
5. I served the party (check proper box)
 - a. by personal service. I personally delivered the documents listed in item 2 to the party or person authorized to receive service of process for the party (1) on (date): 11/19/2018 (2) at (time): 11:04am
 - b. by substituted service. On (date): at (time): I left the documents listed in item 2 with or in the presence of (name and title or relationship to person indicated in item 3):
 - (1) (business) a person at least 18 years of age apparently in charge at the office or usual place of business of the person to be served. I informed him or her of the general nature of the papers.
 - (2) (home) a competent member of the household (at least 18 years of age) at the dwelling house or usual place of abode of the party. I informed him or her of the general nature of the papers.
 - (3) (physical address unknown) a person at least 18 years of age apparently in charge at the usual mailing address of the person to be served, other than a United States Postal Service post office box. I informed him or her of the general nature of the papers.
 - (4) I thereafter mailed (by first-class, postage prepaid) copies of the documents to the person to be served at the place where the copies were left (Code Civ. Proc., § 415.20). I mailed the documents on (date): from (city): or a declaration of mailing is attached.
 - (5) I attach a declaration of diligence stating actions taken first to attempt personal service.

PLAINTIFF/PETITIONER: Yaquelin C. Garcia	CASE NUMBER: RG18928757
DEFENDANT/RESPONDENT: Payless ShoeSource, Inc.	

5. c. **by mail and acknowledgment of receipt of service.** I mailed the documents listed in item 2 to the party, to the address shown in item 4, by first-class mail, postage prepaid.
- (1) on (date): _____ (2) from (city): _____
- (3) with two copies of the *Notice and Acknowledgment of Receipt* and a postage-paid return envelope addressed to me. (*Attach completed Notice and Acknowledgment of Receipt.*) (Code Civ. Proc., § 415.30.)
- (4) to an address outside California with return receipt requested. (Code Civ. Proc., § 415.40.)
- d. **by other means** (specify means of service and authorizing code section):

Additional page describing service is attached.

6. The "Notice to the Person Served" (on the summons) was completed as follows:

- a. as an individual defendant.
- b. as the person sued under the fictitious name of (specify): _____
- c. as occupant.
- d. On behalf of (specify): **Payless ShoeSource, Inc.**
under the following Code of Civil Procedure section:
- | | |
|---|--|
| <input checked="" type="checkbox"/> 416.10 (corporation) | <input checked="" type="checkbox"/> 415.95 (business organization, form unknown) |
| <input type="checkbox"/> 416.20 (defunct corporation) | <input type="checkbox"/> 416.60 (minor) |
| <input type="checkbox"/> 416.30 (joint stock company/association) | <input type="checkbox"/> 416.70 (ward or conservatee) |
| <input type="checkbox"/> 416.40 (association or partnership) | <input type="checkbox"/> 416.90 (authorized person) |
| <input type="checkbox"/> 416.50 (public entity) | <input type="checkbox"/> 415.46 (occupant) |
| | <input type="checkbox"/> other: |

7. **Person who served papers**

- a. Name: **George Todd**
- b. Address: **645 W. 9th Street, #110-302, Los Angeles, CA 90015**
- c. Telephone number: **213-308-1759**
- d. **The fee for service was: \$ 27.20**

e. I am:

- (1) not a registered California process server.
- (2) exempt from registration under Business and Professions Code section 22350(b).
- (3) a registered California process server:
- (i) owner employee independent contractor.
- (ii) Registration No.: **2016159739**
- (iii) County: **Los Angeles**

8. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

or

9. I am a California sheriff or marshal and I certify that the foregoing is true and correct.

Date: 11/19/2018

George Todd
(NAME OF PERSON WHO SERVED PAPERS/SHERIFF OR MARSHAL)



(SIGNATURE)

EXHIBIT E

ENDORSED
FILED
ALAMEDA COUNTY

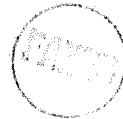
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SUE PESKO

1 ALISON S. HIGHTOWER, Bar No. 112429
LITTLER MENDELSON, P.C.
2 333 Bush Street, 34th Floor
San Francisco, CA 94104
3 Telephone: (415) 433-1940
Facsimile: (415) 399-8490
4 Email: ahightower@littler.com

5 Attorneys for Defendant
PAYLESS SHOESOURCE, INC.

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF ALAMEDA
10 UNLIMITED JURISDICTION



12 YAQUELIN C. GARCIA, on behalf of
herself, all others similarly situated,

13 Plaintiff,

14 vs.

15 PAYLESS SHOESOURCE, INC., a
16 Missouri corporation; and DOES 1 through
50, inclusive,

17 Defendants.

CASE NO. RG18928757

ANSWER TO COMPLAINT (CLASS
ACTION)

Complaint Filed November 15, 2018

1 Defendant PAYLESS SHOESOURCE, INC. (“Defendant”), through undersigned counsel,
2 answers the unverified Complaint of Plaintiff YAQUELIN C. GARCIA (“Plaintiff”).

3 **GENERAL DENIAL**

4 Pursuant to California Code of Civil Procedure § 431.30(d), Defendant hereby answers
5 Plaintiff’s unverified Complaint by generally denying each and every allegation contained therein,
6 by denying that Plaintiff has been damaged or has sustained any damages as a result of the conduct
7 alleged therein and by asserting the following separate and distinct additional defenses. Defendant
8 further denies that this case is appropriate for class treatment.

9 **ADDITIONAL DEFENSES**

10 Without admitting any of the allegations of the Complaint and without admitting or
11 acknowledging that Defendant bears any burden of proof as to any of them, Defendant asserts the
12 following additional defenses. Defendant intends to rely upon any additional defenses that become
13 available or apparent during pretrial proceedings and discovery in this action and hereby reserves the
14 right to amend this Answer to assert all such further defenses. Defendant also expressly denies the
15 existence of any alleged putative class of “similarly situated” individuals that Plaintiff purports to
16 represent in this lawsuit pursuant to California Code of Civil Procedure § 382, Federal Rule of Civil
17 Procedure 23, and California Business & Professions Code §§ 17203-17204. Defendant thus
18 expressly denies the existence of any such group each and every time it references “Plaintiff” as if
19 fully set forth therein. All defenses asserted are also asserted against the putative class, except where
20 the claim is asserted only on behalf of the named Plaintiff.

- 21 1. Plaintiff’s Complaint fails to state a claim upon which relief may be granted.
- 22 2. The Court lacks personal jurisdiction over Defendant to resolve the claims brought by
23 a nationwide class.
- 24 3. The Complaint and each purported cause of action therein are barred to the extent that
25 Plaintiff and/or putative class members entered into an arbitration agreement with Defendant and,
26 therefore, the exclusive remedy for her claims is through final and binding arbitration, and the
27 Complaint and each purported cause of action therein must be stayed pursuant to the Federal
28 Arbitration Act and California Code of Civil Procedure section 1281.4.

1 4. Plaintiff and/or putative class members have waived all rights to assert any claims
2 against Defendant in any manner or forum that violates the terms of her written dispute resolution
3 and arbitration agreement with Defendant.

4 5. Plaintiff's Complaint, and each and every cause of action contained therein, are
5 barred in whole or in part because, at all material times, Defendant acted reasonably, in good faith
6 and without malice based upon all relevant facts and circumstances known by Defendant at the time,
7 and did not at any time willfully or negligently fail to comply with the applicable law, including but
8 not limited to the Fair Credit Reporting Act ("FCRA"), the California Consumer Credit Reporting
9 Agencies Act ("CCRAA"), the California Investigative Consumer Reporting Agencies Act
10 ("ICRAA") and the California Labor Code.

11 6. Plaintiff's claims for statutory damages and penalties violate the Fourth, Fifth, Sixth,
12 Eighth, and Fourteenth Amendments to the U.S. Constitution and corresponding Articles of the
13 California Constitution because: (a) the penalties claimed are vastly disproportionate to the statutory
14 and/or actual damages claimed or available; (b) the award of penalties and/or statutory damages
15 would constitute an arbitrary and capricious taking of Defendant's property which is unjustified by
16 any rational governmental interest; (c) the award of penalties with wholly standardless discretion is
17 inconsistent with due process; and/or (d) the statutes, including but not limited to section 616 of the
18 FCRA (15 U.S.C. § 1681n), the CCRAA, and the ICRAA are unconstitutionally vague and
19 unjustifiably arbitrary.

20 7. Plaintiff's claims, and those of putative class members, are barred in whole or in part
21 to the extent that Plaintiff and putative class members did not suffer any cognizable injury nor
22 suffered any damages and have no standing pursuant to Article III of the United States Constitution.

23 8. Plaintiff's FCRA, ICRAA and CCRAA claims are barred in whole or in part because
24 notwithstanding Defendant's alleged non-compliance, Plaintiff otherwise was aware of her
25 purported statutory rights.

26 9. Plaintiff's FCRA, ICRAA and CCRAA claims, and those of certain putative class
27 members, are barred in whole or in part to the extent that they failed to read the disclosure
28 thoroughly or at all.

1 10. Plaintiff's FCRA, ICRAA and CCRAA claims, and those of certain putative class
2 members, are barred in whole or in part to the extent that they received multiple disclosures and at
3 least one of them complied with the law, including the FCRA, ICRAA and CCRAA.

4 11. Plaintiff's FCRA, ICRAA and CCRAA claims, and those of certain putative class
5 members, are barred in whole or in part to the extent that they received one or more disclosures that
6 substantially complied with the law, including the FCRA, ICRAA and CCRAA.

7 12. Plaintiff's FCRA, ICRAA and CCRAA claims, and those of certain putative class
8 members, are barred in whole or in part because Defendant did not adopt a reading of the law that
9 risked any violation of the FCRA, ICRAA and/or CCRAA, let alone an unjustifiably high risk of
10 doing so.

11 13. Plaintiff's substantive claims and her claims for damages (including but not limited to
12 Plaintiff's claims under sections 1785, *et seq.* and 1786, *et seq.* of the California Civil Code), which
13 seek to recover, among other things, punitive damages and/or penalties, violate the Fourth, Fifth,
14 Sixth, Eighth and Fourteenth Amendments to the U.S. Constitution and corresponding Articles of the
15 California Constitution. Defendant specifically alleges that sections 1785.20.5(a) and 1786.16(b) of
16 the California Civil Code are unconstitutionally vague and ambiguous.

17 14. Plaintiff's individual and class-wide claims are excluded from coverage by section
18 604 of the FCRA (15 U.S.C. § 1681b) and corresponding provisions of California law to the extent
19 Defendant obtained any background reports in connection with an investigation of compliance with
20 federal, state or local laws and regulations, the rules of self-regulatory organization or any pre-
21 existing policies (15 U.S.C. § 1681a(y)).

22 15. Plaintiff's claims, and those of putative class members, are subject to dismissal
23 because the screening reports Defendant received were not "consumer reports" within the meaning
24 of the CCRAA and the ICRAA.

25 16. Defendant alleges that it has complied with the FCRA, the CCRAA, and the ICRAA
26 in the handling of Plaintiff's consumer report and/or investigative consumer report and is, therefore,
27 entitled to each and every defense stated in and available under the FCRA, the CCRAA, and the
28 ICRAA and to all limitations of liability.

1 17. Plaintiff's FCRA, ICRAA and CCRAA claims are barred in whole or in part because
2 Plaintiff failed to comply fully or at all with procedures available and/or required under the FCRA,
3 the CCRAA, and the ICRAA to address Plaintiff's concerns and/or otherwise failed to take
4 reasonable steps to avoid harm.

5 18. Defendant maintained reasonable procedures to comply with applicable FCRA,
6 ICRAA and CCRAA law at all times relevant to Plaintiff's Complaint.

7 19. Plaintiff is not entitled to recover the equitable relief she seeks under the FCRA,
8 ICRAA and/or CCRAA because: (a) an adequate remedy at law exists; (b) Plaintiff lacks standing to
9 seek equitable relief; (c) equitable relief is only available to the Federal Trade Commission and
10 Consumer Financial Protection Bureau, not to private plaintiffs, and the Court lacks subject matter
11 jurisdiction to issue an injunction; (d) Plaintiff is not entitled to such relief for any claimed violation
12 of the ICRAA or the CCRAA because neither statute provides such relief as a remedy; and/or
13 (e) Plaintiff's claim for equitable relief is moot in any event.

14 20. Plaintiff is barred from recovering statutory damages under the ICRAA because the
15 ICRAA by its terms bars recovery of statutory damages in class actions.

16 21. The damages alleged by Plaintiff under California law are not reasonable and are thus
17 barred by California Civil Code § 3359.

18 22. Plaintiff's FCRA, ICRAA and CCRAA claims are barred in whole or in part because
19 Plaintiff seeks to recover for alleged harm that is outside of the applicable statute of limitations,
20 including but not limited to, 15 U.S.C. § 1681p of the FCRA, California Civil Code § 1786.52 of the
21 ICRAA, and California Civil Code § 1785.33 of the CCRAA.

22 23. Plaintiff's claims are barred in whole or in part by the applicable statute(s) of
23 limitation, including without limitation, Civil Procedure sections 338(a), 340(a) and 343, California
24 Labor Code section 203(b) and California Business and Professions Code section 17208.

25 24. Plaintiff's claims are barred in whole or in part by the equitable theories of estoppel,
26 waiver, and laches including but not limited to the extent that Plaintiff and/or other putative class
27 members worked any unpaid time and failed to report such unpaid time to Defendant and to the
28 extent that Plaintiff and/or other putative class members failed to take any rest break that was

1 provided by Defendant, and/or failed to report to Defendant any inability to take a rest break or
2 reported having taken rest breaks when, in fact, the rest breaks were not taken.

3 25. All of Plaintiff's claims on behalf of absent putative class members fail because
4 Plaintiff cannot meet her burden of demonstrating that each requirement of class certification,
5 including but not limited to ascertainability, adequacy, typicality, commonality, predominance, and
6 superiority, is met here, and because certifying a class in the circumstances of this case would violate
7 Defendant's rights to due process under the law. To the extent that class certification is nonetheless
8 granted at a future date, Defendant alleges and asserts each of the defenses previously stated herein
9 against each and every putative class member.

10 26. Adjudication of this action on a class-wide basis, as applied to the facts and
11 circumstances of this case, would constitute a denial of Defendant's rights to trial by jury and to
12 substantive and procedural due process, in violation of the Fourteenth Amendment of the United
13 States Constitution. *See, e.g., Wal-Mart v. Dukes*, 131 S. Ct. 2541 (2011).

14 27. Plaintiff's Complaint, and each and every cause of action contained therein, are
15 barred in whole or in part because Plaintiff did not suffer any cognizable damage or other harm as a
16 proximate result of any alleged act or omission of Defendant or its agents or employees.

17 28. Assuming that Plaintiff suffered or sustained any loss, damage or injury, which
18 Defendant specifically denies, such loss, damage or injury was proximately caused or contributed to
19 by the negligence or wrongful conduct of other parties, persons or entities, and that their negligence
20 or wrongful conduct was an intervening and superseding cause of the purported loss, damage or
21 injury of which Plaintiff complains.

22 29. Plaintiff's damages, if any, were caused by the negligence and/or acts or omissions of
23 third parties other than Defendant, whether or not parties to this action. By reason thereof,
24 Plaintiff's damages, if any, as against Defendant, must be reduced by the proportion of fault
25 attributable to such third parties, and to the extent that this is necessary, Defendant may be entitled to
26 partial indemnity from such third parties on a comparative fault basis.

27 30. Defendant alleges that, to the extent multiple penalties are sought for the same alleged
28 violations, such claims are barred by the prohibition on double recovery and would violate

1 Defendant's due process rights under the Fourteenth Amendment of the United States Constitution
2 and under the Constitution and laws of the State of California.

3 31. Plaintiff's prosecution of this action as a representative of the general public under
4 California Business and Professions Code § 17200, *et seq.*, as applied to the facts and circumstances
5 of this case, would constitute a denial of Defendant's substantive and procedural due process rights
6 under the Fourteenth Amendment of the United States Constitution and under the California
7 Constitution.

8 32. Plaintiff's claims under California Business and Professions Code § 17200, *et seq.*,
9 are barred because Plaintiff has an adequate remedy at law.

10 33. Pursuant to California Business and Professions Code § 17200, *et seq.*, Plaintiff's
11 claims for restitution are barred to the extent that these claims constitute damages or penalties of any
12 nature.

13 34. Plaintiff's claims seeking recovery in the form of restitution, disgorgement, or
14 injunctive relief under California Business and Professions Code § 17200, *et seq.*, are barred with
15 respect to any alleged violations that have been discontinued, ceased, or are not likely to recur.

16 35. Plaintiff's claims for injunctive relief fail because, as a former employee, Plaintiff
17 lacks standing to pursue injunctive relief.

18 36. Plaintiff and the putative class members have failed to exercise reasonable care to
19 mitigate their damages, if any, such as by reporting any unpaid work time and/or unpaid wages
20 and/or timely reporting any inability to take a rest break, and that if it is determined that they have
21 the right to any recovery against Defendant, such recovery should be reduced and/or eliminated by
22 such failure.

23 37. Plaintiff's claims, and those of certain putative class members, are barred in whole or
24 in part on the grounds of res judicata and/or collateral estoppel.

25 38. Plaintiff's Complaint, and each and every claim for relief therein, are barred in whole
26 or in part to the extent that Plaintiff and/or any of the other putative class members, or some of them,
27 by reason of their acts, conduct and/or omissions, consented to, encouraged, or voluntarily
28

1 participated in all actions taken, if any, including, but not limited to, the waiver of any rest periods
2 that were not taken.

3 39. Plaintiff's claims are barred to the extent that Plaintiff seeks to include employees in
4 the class who are exempt from rest break requirements pursuant to, but not limited to the
5 administrative, executive, outside, inside or commissioned sales, or combined exemptions, and any
6 other applicable exemptions found in the California Labor Code or the provisions of the California
7 Industrial Welfare Commission Wage Orders.

8 40. Defendant alleges that the claims for penalties, including, but not limited to penalties
9 predicated on Labor Code sections 201-204, are barred because (1) there are *bona fide* disputes as to
10 whether Defendant failed to timely pay all wages due, and (2) Defendant has not willfully failed to
11 pay such compensation, if any is owed.

12 41. Without conceding that Defendant violated the law, some or all of the disputed time
13 for which Plaintiff and/or the members of the alleged putative group she purports to represent seek to
14 recover (of wages purportedly owed) is not compensable pursuant to the doctrine of *de minimis non*
15 *curat lex*.

16 42. Defendant alleges that the Complaint cannot be maintained against Defendant to the
17 extent Plaintiff and/or any of the other putative class members secreted or absented themselves to
18 avoid payment of wages, thereby relieving Defendant of liability for penalties under Labor Code
19 section 203.

20 43. Defendant alleges that civil penalties predicated on Labor Code section 226.7 are
21 inappropriate to the extent that Plaintiff and/or any other allegedly aggrieved current or former
22 employees did not take rest breaks, it was the result of their failure to follow Defendant's reasonable
23 instructions.

24 44. To the extent Plaintiff and/or those persons she seeks to represent entered into one or
25 more settlements with Defendant or otherwise released Defendant from any liability as alleged in the
26 Complaint, their claims are barred in whole or in part by the doctrine of settlement, accord and
27 satisfaction.

28

1 45. The Complaint and each cause of action set forth therein, or some of them, are barred
2 to the extent the damages Plaintiff alleges in the Complaint are too speculative to be recoverable at
3 law.

4 46. Defendant is informed and believes that a reasonable opportunity for investigation
5 and discovery will reveal, and on that basis alleges, that the Complaint, and each purported cause of
6 action therein, or some of them, are barred by Plaintiff's own breach of duties owed to Defendant,
7 and/or the breaches of the members of the alleged putative class she purports to represent, under
8 California Labor Code sections 2853, 2854, 2856, 2857, 2858 and 2859.

9 47. Even assuming *arguendo* that Plaintiff and/or the members of the alleged putative
10 class she purports to represent are entitled to recover any wages under California law, including but
11 not limited to any unpaid premium pay, Defendant is entitled to a credit or offset for all
12 compensation or credits cumulatively provided that were not required under the law in order to
13 prevent a windfall to Plaintiff and/or the members of the alleged putative class she purports to
14 represent.

15 48. Defendant alleges that even assuming *arguendo* Defendant failed to comply with any
16 provision of the Labor Code, including Labor Code sections 201, 202, 203, 204, 223, 226, 226.7,
17 and/or 1198, Defendant substantially complied with the Labor Code, thus rendering an award of civil
18 penalties inappropriate under the circumstances, including civil penalties pursuant to the Wage
19 Order and Labor Code. For the same reason, should the Court find a violation of the Labor Code
20 occurred, and such violation gives rise to potential penalties, the Court must exercise its discretion
21 and significantly discount or eliminate any potential penalties owed by Defendant due to its good-
22 faith efforts to comply with the Labor Code and/or substantial compliance with the Labor Code.

23 49. The Complaint and each cause of action therein, or some of them, are barred to the
24 extent the applicable wage orders of the California Industrial Welfare Commission or the provisions
25 of the California Labor Code are unconstitutionally vague and ambiguous and violate Defendant's
26 rights under the United States and California Constitutions to, among other things, due process of
27 law.

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1 50. Defendant alleges that any alleged failure to provide Plaintiff and/or any of the other
2 putative class members with wage statements in conformity with Labor Code § 226(a) or any other
3 alleged violation of the California Labor Code was not knowing, intentional or willful and was not
4 brought to the attention of management, if any.

5 51. Defendant alleges that Plaintiff and/or any of the other putative class members
6 sustained no injury, as defined in Labor Code § 226(e)(2), from any alleged failure to provide wage
7 statements in conformity with Labor Code § 226(a) or from any other alleged violation of the
8 California Labor Code.

9 WHEREFORE, Defendant prays for judgment in its favor and against Plaintiff as follows:

- 10 1. That the Complaint be dismissed with prejudice;
- 11 2. That Plaintiff takes nothing by way of the Complaint;
- 12 3. That Defendant recover its attorney’s fees, costs and disbursements in this action; and
- 13 4. For such other and further relief as the Court deems just and proper.

14 DATED: December 18, 2018

Alison S. Hightower

ALISON S. HIGHTOWER
LITTLER MENDELSON, P.C.

Attorneys for Defendant
PAYLESS SHOESOURCE, INC.

20 FIRMWIDE:160919773.1 093422.1000

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POS-040

ATTORNEY OR PARTY WITHOUT ATTORNEY: STATE BAR NO: 112429 NAME: Alison S. Hightower FIRM NAME: Littler Mendelson, P.C. STREET ADDRESS: 333 Bush Street, 34th Floor CITY: San Francisco TELEPHONE NO.: 415.433.1940 E-MAIL ADDRESS: ahightower@littler.com ATTORNEY FOR (name): Payless ShoeSource, Inc.	FOR COURT USE ONLY ENDORSED FILED ALAMEDA COUNTY DEC 18 2018 SUE PESKO
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Alameda STREET ADDRESS: 1225 Fallon Street MAILING ADDRESS: CITY AND ZIP CODE: Oakland, CA 94612 BRANCH NAME: Rene C. Davidson Courthouse	CASE NUMBER: RG18928757
Plaintiff/Petitioner: Yaquelin C. Garcia	JUDICIAL OFFICER:
Defendant/Respondent: Payless ShoeSource, Inc., et al. PROOF OF SERVICE—CIVIL Check method of service (only one): <input type="checkbox"/> By Personal Service <input checked="" type="checkbox"/> By Mail <input type="checkbox"/> By Overnight Delivery <input type="checkbox"/> By Messenger Service <input type="checkbox"/> By Fax	DEPARTMENT:

**Do not use this form to show service of a summons and complaint or for electronic service.
See USE OF THIS FORM on page 3.**

- At the time of service I was over 18 years of age and not a party to this action.
- My residence or business address is:
Littler Mendelson, P.C., 333 Bush Street, 34th Floor, San Francisco, CA 94104 (business)
- The fax number from which I served the documents is (complete if service was by fax):
- On (date): December 18, 2018 I served the following documents (specify):
Answer To Complaint (Class Action)
 The documents are listed in the Attachment to Proof of Service—Civil (Documents Served) (form POS-040(D)).
- I served the documents on the person or persons below, as follows:
 - Name of person served; Shaun Setareh, Esq./Thomas Segal, Esq./Farrah Grant, Esq.
 - (Complete if service was by personal service, mail, overnight delivery, or messenger service.)
Business or residential address where person was served:
Setareh Law Group, 315 South Beverly Drive, Suite 315, Beverly Hills, CA 90212
 - (Complete if service was by fax.)
Fax number where person was served: The names, addresses, and other applicable information about persons served is on the Attachment to Proof of Service—Civil (Persons Served) (form POS-040(P)).
- The documents were served by the following means (specify):
 - By personal service. I personally delivered the documents to the persons at the addresses listed in Item 5. (1) For a party represented by an attorney, delivery was made (a) to the attorney personally; or (b) by leaving the documents at the attorney's office, in an envelope or package clearly labeled to identify the attorney being served, with a receptionist or an individual in charge of the office; or (c) if there was no person in the office with whom the notice or papers could be left, by leaving them in a conspicuous place in the office between the hours of nine in the morning and five in the evening. (2) For a party, delivery was made to the party or by leaving the documents at the party's residence with some person not younger than 18 years of age between the hours of eight in the morning and six in the evening.

CASE NAME: Garcia v. Payless ShoeSource, Inc., et al.	CASE NUMBER: RG18928757
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6. b. **By United States mail.** I enclosed the documents in a sealed envelope or package addressed to the persons at the addresses in item 5 and (*specify one*):
- (1) deposited the sealed envelope with the United States Postal Service, with the postage fully prepaid.
 - (2) placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.
- I am a resident or employed in the county where the mailing occurred. The envelope or package was placed in the mail at (*city and state*): San Francisco, CA
- c. **By overnight delivery.** I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses in item 5. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.
- d. **By messenger service.** I served the documents by placing them in an envelope or package addressed to the persons at the addresses listed in item 5 and providing them to a professional messenger service for service. (*A declaration by the messenger must accompany this Proof of Service or be contained in the Declaration of Messenger below.*)
- e. **By fax transmission.** Based on an agreement of the parties to accept service by fax transmission, I faxed the documents to the persons at the fax numbers listed in item 5. No error was reported by the fax machine that I used. A copy of the record of the fax transmission, which I printed out, is attached.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: December 18, 2018

Charisse Goodman
(TYPE OR PRINT NAME OF DECLARANT)


(SIGNATURE OF DECLARANT)

(If item 6d above is checked, the declaration below must be completed or a separate declaration from a messenger must be attached.)

DECLARATION OF MESSENGER

- By personal service.** I personally delivered the envelope or package received from the declarant above to the persons at the addresses listed in item 5. (1) For a party represented by an attorney, delivery was made (a) to the attorney personally; or (b) by leaving the documents at the attorney's office, in an envelope or package clearly labeled to identify the attorney being served, with a receptionist or an individual in charge of the office; or (c) if there was no person in the office with whom the notice or papers could be left, by leaving them in a conspicuous place in the office between the hours of nine in the morning and five in the evening. (2) For a party, delivery was made to the party or by leaving the documents at the party's residence with some person not younger than 18 years of age between the hours of eight in the morning and six in the evening.

At the time of service, I was over 18 years of age. I am not a party to the above-referenced legal proceeding.

I served the envelope or package, as stated above, on (*date*):

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

(NAME OF DECLARANT)

 _____
(SIGNATURE OF DECLARANT)

**PROOF OF SERVICE—CIVIL
 (Proof of Service)**

1 ALISON S. HIGHTOWER, Bar No. 112429
LITTLER MENDELSON, P.C.
2 333 Bush Street, 34th Floor
San Francisco, CA 94104
3 Telephone: (415) 433-1940
Facsimile: (415) 399-8490
4 Email: ahightower@littler.com

5 Attorneys for Defendant
6 PAYLESS SHOESOURCE, INC.

7
8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA

10 YAQUELIN C. GARCIA, on behalf of
herself, all others similarly situated,

11 Plaintiff,

12 vs.

13 PAYLESS SHOESOURCE, INC., a Missouri
14 corporation; and DOES 1 through 50,
15 inclusive,

16 Defendants.

Case No. 3:18-cv-7609

**DECLARATION OF ALISON S.
HIGHTOWER IN SUPPORT OF
DEFENDANT PAYLESS SHOESOURCE,
INC.'S NOTICE OF REMOVAL TO
FEDERAL COURT PURSUANT TO 28
U.S.C. §§ 1331, 1332, 1441, AND 1446**

Complaint Filed: November 15, 2018
(Alameda County Superior Court)

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1 I, Alison S. Hightower, declare as follows:

2 1. I am an attorney admitted to practice in the State of California and in this Court, and I
3 am a shareholder at the law firm of Littler Mendelson, P.C., counsel of record for Defendant Payless
4 ShoeSource, Inc. (“Defendant”) in this action. I make this declaration in support of Defendant’s
5 Notice of Removal to Federal Court Pursuant to 28 U.S.C. §§ 1331, 1332, 1441, and 1446 (“Notice
6 of Removal”). All of the information set forth herein is based on my personal and firsthand
7 knowledge and/or based on information and documents collected and retained by our firm in the
8 regular course of its business operations, and if called and sworn as a witness, I could and would
9 competently testify thereto.

10 2. On November 15, 2018, Plaintiff filed an unverified Class Action Complaint against
11 Defendant and various Doe defendants in the Alameda County Superior Court entitled *Yaquelin C.*
12 *Garcia, on behalf of herself, all others similarly situated, Plaintiff, v. Payless ShoeSource, Inc., a*
13 *Missouri corporation; and DOES 1 through 50, inclusive, Defendants*, designated as Case No.
14 RG18928757. Attached to Defendant’s Notice of Removal as **Exhibit A** is a true and correct copy of
15 the Summons and Plaintiff’s Complaint.

16 3. On November 19, 2018, Defendant was served the Complaint, along with copies of
17 the Civil Case Cover Sheet and Summons, through Defendant’s registered agent for service of
18 process, C.T. Corporation System. Attached to Defendant’s Notice of Removal as **Exhibit B** and
19 **Exhibit C** are true and correct copies of the Civil Case Cover Sheet and the Notice of Hearing issued
20 by Alameda County Superior Court, respectively. Attached to Defendant’s Notice of Removal as
21 **Exhibit D** is a true and correct copy of Plaintiff’s Proof of Service on Summons, which was filed
22 with Alameda County Superior Court on November 27, 2018.

23 4. On December 18, 2018, Defendant filed an Answer in the Alameda County Superior
24 Court. Attached to Defendant’s Notice of Removal as **Exhibit E** is a true and correct copy of
25 Defendant’s Answer.

26 5. To Defendant’s knowledge, no further process, pleadings, or orders related to this
27 case have been filed in the Alameda County Superior Court or served by any party other than as
28

1 described above. To Defendant’s knowledge, no proceedings related hereto have been heard in the
2 Alameda County Superior Court.

3 6. Written notice of the filing of the Notice of Removal will be given by the undersigned
4 to Plaintiff’s counsel of record, Shaun Setareh, Thomas Segal, and Farrah Grant, Setareh Law
5 Group, and a copy of the Notice of Removal will be filed with the Clerk of the Alameda County
6 Superior Court.

7 I declare under penalty of perjury under the laws of the United States of America that the
8 foregoing is true and correct.

9 Executed this 19th day of December 2018, at San Francisco, California.

10
11 /s/ Alison S. Hightower
12 Alison S. Hightower

13 FIRMWIDE:161077456.1 093422.1000
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1 ALISON S. HIGHTOWER, Bar No. 112429
LITTLER MENDELSON, P.C.
2 333 Bush Street, 34th Floor
San Francisco, CA 94104
3 Telephone: (415) 433-1940
Facsimile: (415) 399-8490
4 Email: ahightower@littler.com

5 Attorneys for Defendant
6 PAYLESS SHOESOURCE, INC.

7
8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA

10 YAQUELIN C. GARCIA, on behalf of
herself, all others similarly situated,

11 Plaintiff,

12 vs.

13 PAYLESS SHOESOURCE, INC., a Missouri
14 corporation; and DOES 1 through 50,
15 inclusive,

16 Defendants.

Case No. 3:18-cv-7609

**DECLARATION OF DAVID BROWN IN
SUPPORT OF DEFENDANT PAYLESS
SHOESOURCE, INC.'S NOTICE OF
REMOVAL TO FEDERAL COURT
PURSUANT TO 28 U.S.C. §§ 1331, 1332,
1441, AND 1446**

Complaint Filed: November 15, 2018
(Alameda County Superior Court)

1 I, David Brown, declare as follows:

2 1. I am the Payroll and Compliance Manager responsible for the payroll of
3 Payless ShoeSource, Inc. (“Payless”).

4 2. In my capacity as Payroll and Compliance Manager, I have access to, and
5 am authorized to review, time and payroll records for Payless’s non-exempt
6 employees in California.

7 3. In my capacity as Payroll and Compliance Manager for Payless, I also
8 have access to, and am authorized to review, current and historical electronic
9 employment data through current and previous electronic payroll and human resources
10 systems used by the Company. These systems track information regarding Payless’s
11 current and former non-exempt employees in California, including their names,
12 employee identification numbers, hourly wages, total compensation, job positions,
13 location, job status, dates of hire, and separation dates. Our human resources or
14 payroll personnel update the information when there is a change in status. Payless
15 uses the information in these systems to accurately record the dates of hire,
16 employment status, job position, dates of separation, pay rate, hours of work, and
17 location of its employees as these events occur. Human resources and payroll
18 personnel, myself included, rely on and use this data in these systems during the
19 course of business to obtain reliable employee information for various business
20 purposes.

21 4. At my direction the databases listed above were queried to identify all
22 employees working in non-exempt, hourly-paid job positions in California between
23 November 15, 2014 and December 12, 2018.

24 5. At my direction, the reports based on these queries were analyzed, I
25 personally reviewed the results of these analyses, which indicate the following:

26 a. Between November 15, 2014 and December 12, 2018, Payless has
27 employed approximately 9,110 non-exempt employees in California.
28

1 Those non-exempt employees have worked an aggregate total of
2 approximately 435,983 workweeks during that time period.

3 b. The average hourly rate for non-exempt Payless employees in California
4 for the period November 15, 2014 to December 12, 2018 is \$11.68.

5 c. Between November 15, 2015 and December 12, 2018, Payless has
6 separated approximately 6,748 non-exempt employees.

7 d. The average hourly rate for non-exempt Payless employees in California
8 who were separated between November 15, 2015 and December 12, 2018
9 is at least \$11.68 an hour. The average shift length for this time period is
10 at least 3.5 hours.

11 e. Payless has employed approximately 2,975 non-exempt employees in
12 California from November 15, 2017 to December 12, 2018.
13 Approximately 1,420 of these employees are no longer employed by
14 Payless. I am informed and believe that the average shift length for this
15 time period is at least 3.5 hours. The average number of weeks worked
16 during this time period is approximately 28.

17 I declare under penalty of perjury under the laws of the United States of
18 America that the foregoing is true and correct.

19 Executed this __th day of December, 2018.

20
21 _____
22 DAVID BROWN

23 FIRMWIDE:161186058.1 093422.1000

CIVIL COVER SHEET

The JS-CAND 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Yaquelin C. Garcia, on behalf of herself, all others similarly situated

(b) County of Residence of First Listed Plaintiff Unknown (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Shaun Setareh, Setareh Law Group 315 South Beverly Drive, Suite 315, Beverly Hills, CA 90212 Telephone: 310.888.7771

DEFENDANTS

Payless ShoeSource, Inc.

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known) Alison S. Hightower, Littler Mendelson, P.C. 333 Bush Street, 34th Floor, San Francisco, CA 94104 Telephone: 415.433.1940

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff 2 U.S. Government Defendant 3 Federal Question (U.S. Government Not a Party) 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from Another District (specify) 6 Multidistrict Litigation—Transfer 8 Multidistrict Litigation—Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 15 U.S.C. sections 1681b and 1681d

Brief description of cause:

Employee alleges violation of Fair Credit Reporting Act and related state laws, and wage and hour violations.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P. DEMAND \$

CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S), IF ANY (See instructions):

JUDGE

DOCKET NUMBER

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)

(Place an "X" in One Box Only) SAN FRANCISCO/OAKLAND SAN JOSE EUREKA-MCKINLEYVILLE

DATE 12/19/2018

SIGNATURE OF ATTORNEY OF RECORD

/s/ Alison S. Hightower

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-CAND 44

Authority For Civil Cover Sheet. The JS-CAND 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I. a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the “defendant” is the location of the tract of land involved.)
- c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section “(see attachment).”
- II. Jurisdiction.** The basis of jurisdiction is set forth under Federal Rule of Civil Procedure 8(a), which requires that jurisdictions be shown in pleadings. Place an “X” in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- (1) United States plaintiff. Jurisdiction based on 28 USC §§ 1345 and 1348. Suits by agencies and officers of the United States are included here.
 - (2) United States defendant. When the plaintiff is suing the United States, its officers or agencies, place an “X” in this box.
 - (3) Federal question. This refers to suits under 28 USC § 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 - (4) Diversity of citizenship. This refers to suits under 28 USC § 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS-CAND 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an “X” in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an “X” in one of the six boxes.
- (1) Original Proceedings. Cases originating in the United States district courts.
 - (2) Removed from State Court. Proceedings initiated in state courts may be removed to the district courts under Title 28 USC § 1441. When the petition for removal is granted, check this box.
 - (3) Remanded from Appellate Court. Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 - (4) Reinstated or Reopened. Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 - (5) Transferred from Another District. For cases transferred under Title 28 USC § 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 - (6) Multidistrict Litigation Transfer. Check this box when a multidistrict case is transferred into the district under authority of Title 28 USC § 1407. When this box is checked, do not check (5) above.
 - (8) Multidistrict Litigation Direct File. Check this box when a multidistrict litigation case is filed in the same district as the Master MDL docket. Please note that there is no Origin Code 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC § 553. Brief Description: Unauthorized reception of cable service.
- VII. Requested in Complaint.** Class Action. Place an “X” in this box if you are filing a class action under Federal Rule of Civil Procedure 23. Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction. Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS-CAND 44 is used to identify related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- IX. Divisional Assignment.** If the Nature of Suit is under Property Rights or Prisoner Petitions or the matter is a Securities Class Action, leave this section blank. For all other cases, identify the divisional venue according to Civil Local Rule 3-2: “the county in which a substantial part of the events or omissions which give rise to the claim occurred or in which a substantial part of the property that is the subject of the action is situated.”
- Date and Attorney Signature.** Date and sign the civil cover sheet.

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Payless ShoeSource Hit with FCRA, Rest Break Lawsuit in California](#)
