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25 behalf of herself and all others similarly  
26 situated

27 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
28 **COUNTY OF SAN BERNARDINO**

ALICIA RODRIGUEZ , an individual, on  
behalf of himself and all others similarly  
situated,

Plaintiff,

v.

MARSHALLS OF CA, LLC; and DOES 1  
through 10, inclusive,

Defendant.

Case No.

**CLASS ACTION COMPLAINT FOR:**

1. **GENDER DISCRIMINATION;**
2. **FAILURE TO PAY MINIMUM WAGES;**
3. **FAILURE TO PROVIDE REST BREAKS;**
4. **FAILURE TO FURNISH TIMELY AND ACCURATE WAGE STATEMENTS; and**
5. **VIOLATION OF CALIFORNIA'S UNFAIR COMPETITION ACT, BUS. & PROF. CODE §17200, et seq.**

**DEMAND FOR JURY TRIAL**

1 Plaintiff Alicia Rodriguez (“Plaintiff”) is informed and believe, and on that basis alleges,  
2 as follows:

3 **NATURE OF THE ACTION**

4 1. This is a California state-wide class action for gender discrimination and wage  
5 and labor violations arising out of, among other things, Defendant Marshalls of CA, LLC’s  
6 (“Defendant” or “Marshalls”) policy and practice of conducting security checks anytime its  
7 employees leave a store with a purse or bag, without providing compensation for that time. This  
8 practice disproportionately effects Defendant’s female employees, as they carry purses or bags in  
9 significantly greater frequency than Defendant’s male employees.

10 2. This also an action for failing to provide rest breaks, minimum wages and other  
11 Labor Code requirements as to all Defendant’s non-exempt employees. As set forth herein,  
12 Class members are to undergo uncompensated security checks whenever leaving the store, and  
13 are also required to clock out if they want to leave the premises for rest breaks. This violates  
14 California law that rest break time is to be paid time, free of an employer’s control.

15 3. Plaintiff seeks among other things, all wages, restitutionary disgorgement, and  
16 statutory penalties, on behalf of the class and sub-class alleged herein.

17 **PARTIES**

18 4. Plaintiff Alicia Rodriguez was, at all relevant times, a resident and citizen of the  
19 State of California.

20 5. Defendant Marshalls of CA, LLC (“Defendant” or “Marshalls”) is a company  
21 authorized to conduct and actually conducting business in the State of California.

22 6. Plaintiff is currently ignorant of the true names and capacities, whether individual,  
23 corporate, associate, or otherwise, of the Defendants sued herein under the fictitious names Does  
24 1 through 10, inclusive, and therefore sue such Defendants by such fictitious names. Plaintiff  
25 will seek leave to amend this complaint to allege the true names and capacities of said fictitiously  
26 named Defendants when their true names and capacities have been ascertained. Plaintiff is  
27 informed and believes and thereon alleges that each of the fictitiously named Defendants is  
28 legally responsible in some manner for the events and occurrences alleged herein, and for the

1 damages suffered by the Class.

2 7. Plaintiff is informed and believes and thereon alleges that all Defendants,  
3 including the fictitious Doe Defendants, were at all relevant times acting as actual agents,  
4 conspirators, ostensible agents, alter egos, partners and/or joint venturers and/or employees of all  
5 other Defendants, and that all acts alleged herein occurred within the course and scope of said  
6 agency, employment, partnership, and joint venture, conspiracy or enterprise, and with the  
7 express and/or implied permission, knowledge, consent authorization and ratification of their co-  
8 Defendant; however, each of these allegations are deemed “alternative” theories whenever not  
9 doing so would result in a contradiction with other allegations.

10 **JURISDICTION AND VENUE**

11 8. This Court has jurisdiction over the entire action by virtue of the fact that this is a  
12 civil action wherein the matter in controversy, exclusive of interest and costs, exceeds the  
13 jurisdictional minimum of the Court. The acts and omissions complained of in this action took  
14 place in the State of California, or at least one Defendant resides in the state of California.  
15 Venue is proper because this is a class action, the acts and/or omissions complained of took  
16 place, in whole or in part within the venue of this Court, and/or one or more Defendant resides  
17 within the venue of this court.

18 **FACTUAL ALLEGATIONS**

19 9. Defendant operates a chain of retail department stores throughout California.

20 10. Plaintiff and the Class worked as non-exempt employees at Defendant’s stores.  
21 Plaintiff has worked for Defendant or its affiliates in various non-exempt positions for  
22 approximately 17 years, and is currently employed as a stockroom coordinator at Defendant’s in  
23 Ontario, California store at the Ontario Mills Mall.

24 11. At all relevant times, Defendant had a policy applicable to all Class members of  
25 requiring security checks, also referred to as bag checks, whenever employees leave Defendant’s  
26 stores with a purse, bag, or container, including when Class members leave the store following a  
27 shift, or for a meal or rest break. Employees clock-out in Defendant’s break room in the back of  
28 the store, and the security checks happen at the front of Defendant’s stores. The security checks

1 are done after class members clock-out, and are off-the-clock, uncompensated time when done  
2 following a shift or during a meal break. Class members are required to undergo these security  
3 checks, which are done for the benefit of Defendant. The security checks can only be done by a  
4 manager or other authorized person. Class members regularly have to wait for the person to  
5 conduct the security check. Class members are also often exiting the store at the same time as,  
6 for example, when a shift ends, requiring that they wait for the security check person to complete  
7 inspections of other employees. The security checks regularly take 10-15 minutes.

8 12. Defendant's female employees are more likely to carry a purse, bag or container  
9 than their male counterparts. Defendant's practice of conducting a security check on those  
10 employees carrying purse, bags, or containers, disproportionately impacts Defendant's female  
11 employees, and deprives them of pay and other employee rights, including rest breaks.

12 13. Defendant does not permit Class members to leave the premises for a rest break  
13 unless they clock-out and go through a security check. Requiring employees to clock out for rest  
14 breaks in order to leave Defendant's premises violates California law that employees are to  
15 receive paid rest breaks, free of Defendant's control.

16 14. Plaintiff is a long-term employee of Defendant, and was subject to each of the  
17 practices alleged herein. Plaintiff regularly brought her purse or bag with her to work, and was  
18 subjected to security checks without compensation.

19 15. Defendant's conduct, as alleged herein, has caused Plaintiff and Class members  
20 damages including, but not limited to, loss of wages and compensation. Defendant is liable to  
21 Plaintiff and the Class for failing to pay minimum wages, failing to provide rest breaks, and  
22 unfair competition.

23 16. Plaintiff is a member of and seeks to be the representative for the Class of  
24 similarly situated employees who all have been exposed to, have suffered, and/or were permitted  
25 to work under, Defendant's unlawful employment practices as alleged herein.

26 **CLASS DEFINITIONS AND CLASS ALLEGATIONS**

27 17. Plaintiff brings this action on behalf of herself, and on behalf of all others  
28 similarly situated, and as a member of the Class defined as follows:

1           **Class:** All residents of California who formerly or currently worked for  
2 Defendant as non-exempt employees at any time beginning August 11,  
3 2016 through the date notice is mailed to the Class.

4           **Gender Discrimination Sub-Class:** All female residents of California  
5 who formerly or currently worked for Defendant as non-exempt  
6 employees at any time beginning August 11, 2016 through the date  
7 notice is mailed to the Sub-Class.

8           18. Plaintiff reserves the right to amend or otherwise alter the class and/or sub-class  
9 definition presented to the Court at the appropriate time, or to propose or eliminate sub-classes,  
10 in response to facts learned through discovery, legal arguments advanced by Defendant or  
11 otherwise.

12           19. This action has been brought and may be properly maintained as a class action  
13 pursuant to California's class action statute and other applicable law, as follows:

14           20.     **Numerosity of the Class:** Members of the Class are so numerous that their  
15 individual joinder is impracticable. The precise number of Class members and their addresses  
16 are known to Plaintiff or will be known to Plaintiff through discovery. Class members may be  
17 notified of the pendency of this action by mail, electronic mail, the Internet, or published notice.

18           21.     **Existence of Predominance of Common Questions of Fact and Law:**  
19 Common questions of law and fact exist as to all members of the Class and/or subclass. These  
20 questions predominate over any questions affecting only individual Class and/or subclass  
21 members. These common legal and factual questions include:

- 22           a. Whether Defendants' policy of conducting security checks on employees any time  
23 they leave the store with a purse, bag, or container disparately impacts Defendant's  
24 female employees.
- 25           b. Whether Defendant engaged in a pattern or practice of requiring Plaintiff and the  
26 members of the Class to perform work off-the-clock without proper compensation;
- 27           c. Whether Defendant engaged in a pattern or practice of failing to pay Plaintiff and the  
28 members of the Class minimum wage for time spent during security checks;

- 1 d. Whether Defendant violated and Labor Code § 226.7 and the applicable IWC Wage  
2 Order by engaging in a pattern or practice of failing to properly provide and  
3 compensate Plaintiff and the members of the Class with rest breaks;
- 4 e. Whether Defendant violated Labor Code §226 by failing to provide timely and  
5 accurate wage statements;
- 6 f. Whether Defendant engaged in unfair practice and violated California Business and  
7 Professions Code § 17200 by failing to provide and/or compensate Plaintiff and the  
8 members of the Class for all time worked or provide paid rest breaks;
- 9 g. The nature and extent of class-wide injury and measure of damages for the injury.

10 22. **Typicality:** Plaintiff's claims are typical of the claims of the members of the  
11 classes and subclasses she represents because Plaintiff was exposed and subjected to the same  
12 unlawful business practices employed by Defendant during the liability period. Plaintiff and the  
13 members of the class she represents sustained the same types of damages and losses.

14 23. **Adequacy:** Plaintiff is an adequate representatives of the class and/or subclass  
15 she seeks to represent because their interests do not conflict with the interests of the members of  
16 the classes and subclasses Plaintiff seeks to represent. Plaintiff has retained counsel competent  
17 and experienced in complex class action litigation and Plaintiff intends to prosecute this action  
18 vigorously. The interests of members of each class and subclass will be fairly and adequately  
19 protected by Plaintiff and their counsel.

20 24. **Superiority and Substantial Benefit:** The class action is superior to other  
21 available means for the fair and efficient adjudication of Plaintiff and the Class and/or Subclass  
22 members' claims. The violations of law were committed by Defendant in a uniform manner and  
23 class members were exposed to the same unlawful practices. The damages suffered by each  
24 individual Class and/or Subclass members may be limited. Damages of such magnitude are  
25 small given the burden and expense of individual prosecution of the complex and extensive  
26 litigation necessitated by Defendant's conduct. Further, it would be virtually impossible for the  
27 Class and Subclass members to redress the wrongs done to them on an individual basis. Even if  
28 members of the Class and/or Subclass themselves could afford such individual litigation, the

1 court system could not. Individualized litigation increases the delay and expense to all parties  
2 and the court system, due to the complex legal and factual issues of the case. By contrast, the  
3 class action device presents far fewer management difficulties, and provides the benefits of  
4 single adjudication, economy of scale, and comprehensive supervision by a single court.

5 25. The Class and/or Subclass should also be certified because:

6 a. The prosecution of separate actions by individual members of the Class would  
7 create a risk of inconsistent or varying adjudications with respect to individual Class members  
8 which would establish incompatible standards of conduct for Defendant;

9 b. The prosecution of separate actions by individual members of the Class would  
10 create a risk of adjudication with respect to them, which would, as a practical matter, be  
11 dispositive of the interests of the other Class members not parties to the adjudications, or  
12 substantially impair or impede their ability to protect their interests; and

13 c. Defendant has acted or refused to act on grounds generally applicable to the  
14 Class, and/or the general public, thereby making appropriate final and injunctive relief with  
15 respect to the Classes as a whole.

16 **FIRST CAUSE OF ACTION**  
17 **GENDER DISCRIMINATION**

18 **(Violation of Labor Code §§ 510, 1194, 1194.2, 1197; Wage Order No. 7-2001, §4)**  
19 **(Against All Defendants)**

20 26. Plaintiff re-alleges and incorporates all preceding paragraphs as if fully set forth  
21 herein.

22 27. This cause of action is brought on behalf of the Gender Discrimination Sub-Class.

23 28. Plaintiff is a person of the female gender. California Government Code section  
24 12940(a) prohibits discrimination on the basis of gender.

25 29. Defendant's policy of conducting security checks on its employees carrying  
26 purses or bags disparately impacts Defendant's female employees. The practice results in  
27 Defendant's female employees being disproportionately detained for security, off-the-clock,  
28 without compensation for this time.

29 30. Defendant's policy regarding security checks, although facially neutral, had the

1 effect of discriminating against Defendant's female employees because it disparately impacts  
2 them, to their detriment. Among other things, Defendant's policy results in the disparate loss  
3 of wages by Plaintiff and the Sub-Class.

4 31. There is no adequate business justification for Defendant's policy. Defendant  
5 could easily make the security check time on-the-clock time, and thereby obviate the  
6 discriminatory impact on the Class' loss of wages.

7 32. Defendant's policy has caused and continues to cause injury to Plaintiff and the  
8 Class, including but not limited to, loss of wages.

9 **SECOND CAUSE OF ACTION**  
10 **FAILURE TO PAY MINIMUM WAGES**  
11 **(Violation of Labor Code §§ 510, 1194, 1194.2, 1197; Wage Order No. 7-2001, §4)**  
12 **(Against All Defendants)**

13 33. Plaintiff re-alleges and incorporates all preceding paragraphs as if fully set forth  
14 herein.

15 34. This cause of action is brought on behalf of the Class.

16 35. Labor Code § 1197 provides: "The minimum wage for employees fixed by the  
17 commission is the minimum wage to be paid to employees, and the payment of a less wage than  
18 the minimum so fixed is unlawful."

19 36. Labor Code § 1194, subdivision (a) provides: "Notwithstanding any agreement to  
20 work for a lesser wage, an employee receiving less than the legal minimum wage or the legal  
21 overtime compensation applicable to the employee is entitled to recover in a civil action the  
22 unpaid balance of the full amount of this minimum wage or overtime compensation, including  
23 interest thereon, reasonable attorney's fees, and costs of suit."

24 37. Labor Code § 1194.2 provides in relevant part: "In any action under Section  
25 1193.6 or Section 1194 to recover wages because of the payment of a wage less than the  
26 minimum wage fixed by an order of the commission, an employee shall be entitled to recover  
27 liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon."

28 38. Pursuant to IWC Wage Order No. 7-2001, at all times material hereto, "hours  
worked" includes "the time during which an employee is subject to the control of an employer,



1 and includes all the time the employee is suffered or permitted to work, where or not required to  
2 do so.”

3 39. Plaintiff and Class members were required to undergo security checks anytime  
4 they wanted to leave Defendant’s store with a bag, purse or container, including when they  
5 wanted to leave the store after clocking out for a meal break or following their shift. The hours  
6 Plaintiff and Class members spent during security checks were “hours worked” under California  
7 law, requiring that Plaintiff and Class members be paid at least minimum wage for this time.  
8 Plaintiff and the Class were not paid for this time, in violation of California’s minimum wage  
9 laws.

10 40. At all times relevant during the liability period, under the provisions of Wage  
11 Order No. 7-2001, Plaintiff and each Class member should have received not less than the  
12 minimum wage in a sum according to proof for the time worked, but not compensated.

13 41. For all hours that Plaintiff and the Class members worked, they are entitled to not  
14 less than the California minimum wage and, pursuant to Labor Code § 1194.2(a) liquidated  
15 damages in an amount equal to the unpaid minimum wages and interest thereon. Pursuant to  
16 Labor Code § 1194, Plaintiff and the Class members are also entitled to their attorneys’ fees,  
17 costs and interest according to proof.

18 42. At all times relevant during the liability period, Defendants willfully failed and  
19 refused, and continues to willfully fail and refuse, to pay Plaintiff and Class members the  
20 amounts owed.

21 43. As a direct and proximate result of Defendants’ violation of Labor Code §§ 510  
22 and 1197, Plaintiff and other Class members have suffered irreparable harm and money  
23 damages entitling them to damages, injunctive relief or restitution. Plaintiff, on behalf of  
24 themselves and on behalf of the Class, seeks damages and all other relief allowable including all  
25 wages due while working as Defendants’ drivers, attorneys’ fees, liquidated damages,  
26 prejudgment interest, and as to those employees no longer employed by Defendants, waiting  
27 time penalties pursuant to Labor Code § 200 *et seq.*

28 44. Plaintiff and the Class members are entitled to back pay, pre-judgment interest,

1 liquidated damages, statutory penalties, attorneys' fees and costs, and for Plaintiff and the Class  
2 of members no longer employed, waiting time penalties pursuant to Labor Code § 1194.

3 **THIRD CAUSE OF ACTION**  
4 **UNLAWFUL FAILURE TO PROVIDE REST PERIODS**  
5 **(Violation of Labor Code §§ 226.7, 512, and 1194; IWC Wage Order No. 4-2001, §12)**

6 45. Plaintiff re-alleges and incorporate all preceding paragraphs as if fully set forth  
7 herein.

8 46. This cause of action is brought on behalf of the Class.

9 47. California Labor Code § 226.7(a) provides, "No employer shall require any  
10 employee to work during any meal or rest period mandated by an applicable order of the  
11 Industrial Welfare Commission."

12 48. IWC Order No.7-2001(12)(A) provides, in relevant part: "Every employer shall  
13 authorize and permit all employees to take rest periods, which insofar as practicable shall be in  
14 the middle of each work period. The authorized rest period time shall be based on the total  
15 hours worked daily at the rate of ten (10) minutes net rest time per four hours or major fraction  
16 thereof. However, a rest period need not be authorized for employees whose total daily work  
17 times is less than three and one-half hours. Authorized rest period time shall be counted as  
18 hours worked for which there shall be no deduction from wages."

19 49. IWC Order No.74-2001 (12)(B) further provides, "If an employer fails to provide  
20 an employee with a rest period in accordance with the applicable provisions of this order, the  
21 employer shall pay the employee one (1) hour of pay at the employee's regular rate of  
22 compensation for each workday that the rest period is not provided."

23 50. As alleged herein, Defendant does not permit Class members to leave the  
24 premises for a rest break unless they clock-out. This means that Class members cannot leave  
25 Defendant's premises for a paid rest break. This violates California law that rest break time is  
26 to be paid time, free of an employer's control.

27 51. By its actions, Defendant violated § 12 of IWC Wage Order No. 7-2001 and  
28 California Labor Code § 226.7, and are liable to Plaintiff and the Class.





1 competition within the meaning of the UCL. Defendant's conduct, as alleged herein, constitutes  
2 unlawful, unfair, and/or fraudulent business practices under the UCL.

3 65. Defendant's unlawful conduct under the UCL includes, but is not limited to,  
4 violating the statutes and regulations alleged herein; failure to pay Class members wages and  
5 compensation they earned through labor provided; and employees fundamental right to be paid  
6 wages in a timely fashion for their work; and failing to otherwise compensate Class members,  
7 as alleged herein. Defendant's fraudulent conduct includes, but is not limited to, issuing wage  
8 statements containing false and/or misleading information about the time the Class members  
9 worked and the amount of wages or compensation due. Defendant's unfair conduct is  
10 implementing policies and practices which deprived Class members of minimum wage for all  
11 hours worked, and legally-mandated rest breaks.

12 66. Plaintiff has standing to assert this claim because she has suffered injury in fact  
13 and has lost money as a result of Defendant's conduct.

14 67. Plaintiff and the Class seek restitutionary disgorgement from Defendant in  
15 connection with its unlawful, unfair, and/or fraudulent conduct alleged herein.

16 **PRAYER**

17 WHEREFORE, Plaintiff, on behalf of herself and all others similarly situated and also  
18 on behalf of the general public, pray for judgment against Defendant as follows:

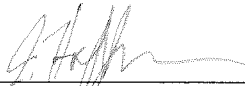
- 19 A. An order that this action may proceed and be maintained as a class action;  
20 B. For all unpaid minimum wages and liquidated damages due to Plaintiff and each  
21 Class member on their minimum wage claim;  
22 C. For one hour of wages due to Plaintiff and each Class member for rest breaks;  
23 D. For all statutory penalties including, but not limited to, under Labor Code §§ 223  
24 and 226(e);  
25 E. For all wages and penalties under California Labor Code §226.7(c);  
26 F. For all wages and penalties under California Labor Code §226(e);  
27 G. For restitutionary disgorgement pursuant to the UCL;  
28 H. Prejudgment interest at the maximum legal rate;

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- I. Reasonable attorneys' fees;
- J. Accounting of Defendant's records for the liability period;
- K. General, special and consequential damages, to the extent allowed by law;
- L. Costs of suit; and
- M. Such other relief as the Court may deem just and proper.

DATED: July 2, 2018

**HAFFNER LAW PC**

By:   
\_\_\_\_\_  
Joshua H. Haffner  
Attorneys for Plaintiff and others  
Similarly situated

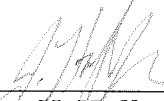
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**DEMAND FOR JURY TRIAL**

Plaintiff demands a trial by jury for herself and the Class members on all claims so triable.

DATED: July 2, 2018

**HAFFNER LAW PC**

By:   
\_\_\_\_\_  
Joshua H. Haffner  
Attorneys for Plaintiff and others  
Similarly situated

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Class Action Alleges Marshalls Policy of Unpaid Security Checks 'Disproportionately' Affects Female Employees](#)

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