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9 MACY'S WEST STORES, INC.

10 UNITED STATES DISTRICT COURT

11 SOUTHERN DISTRICT OF CALIFORNIA

12 CRAIG TESSITORE and SARAH ) Case No. '18CV2343 DMS KSC  
13 MALLON, on behalf of themselves and )  
14 all others similarly situated, )  
15 )  
16 Plaintiffs, ) **NOTICE OF REMOVAL**  
17 )  
18 vs. )  
19 )  
20 )  
21 )  
22 MACY'S WEST STORES, INC., and )  
23 DOES 1 through 25, inclusive, )  
24 )  
25 Defendants. )  
26 )  
27 )  
28 )

29 PLEASE TAKE NOTICE that Defendant Macy's West Stores, Inc. ("Defendant")  
30 hereby removes this case from the Superior Court of the State of California for the  
31 County of San Diego to the United States District Court for the Southern District of  
32 California. In support of removal, Defendant states as follows:

33 ///

34 ///

35 ///

## **STATEMENT OF JURISDICTION**

On September 4, 2018, Plaintiffs Craig Tessitore and Sarah Mallon (“Plaintiffs”) filed a PAGA Representative and putative Class Action Complaint (“Complaint”) against Defendant in the Superior Court of the State of California for the County of San Diego, Case No. 37-2018-00044691-CU-OE-CTL (the “State Court Action”). Copies of the pleadings and papers of which Defendant is aware of being filed in the State Court Action are collected and attached as Exhibit A.

This case is removable under 28 U.S.C. § 1453(b), because it meets the requirements of the Class Action Fairness Act of 2005, Pub. L. No. 109-2, 119 Stat. 4 (codified in scattered sections of 28 U.S.C.) (hereinafter “CAFA”). A defendant’s notice of removal under CAFA need only contain a short and plain statement of the grounds for removal. *Dart Cherokee Basin Operating Co., LLC v. Owens*, 135 S. Ct. 547, 551-53, 190 L. Ed. 2d 495 (2014).

### **THIS CASE IS REMOVABLE UNDER 28 U.S.C. § 1453(b) BECAUSE IT QUALIFIES AS A “CLASS ACTION” THAT MEETS THE REQUIREMENTS OF 28 U.S.C. § 1332(d)(2)**

This case qualifies as a “class action” in which the putative class includes at least 100 members, the amount in controversy exceeds \$5,000,000, exclusive of interest and costs, and one or more members of the putative class and Defendant are citizens of different states. *See* 28 U.S.C. §§ 1332(d). Consequently, this action is removable pursuant to 28 U.S.C. § 1453, which provides that a “class action” may be removed to federal court in accordance with 28 U.S.C. § 1446(b).

#### **A. The Putative Class Includes At Least 100 Members**

Plaintiffs purport to bring this action “on behalf of themselves and all other similarly situated current and former sales employees.” (See Ex. A, Complaint ¶ 1.) Plaintiffs define the putative class as follows: “All current and former employees of Macy’s West, Inc., who were employed by Macy’s in California as commissioned sales employees at any time during the period commencing four (4) years preceding the filing

1 of this complaint up through the time of the final judgment in this matter.” (*Id.* ¶ 27.)  
 2 Based on the class definition, the proposed class contains at least 10,076 members.  
 3 Thus, the putative class easily exceeds the 100-member requirement imposed by CAFA.

4 **B. The Amount in Controversy Exceeds \$5,000,000**

5 “The amount in controversy is simply an estimate of the total amount in dispute,  
 6 not a prospective assessment of defendant’s liability.” *Lewis v. Verizon Commc’ns, Inc.*,  
 7 627 F.3d 395, 400 (9th Cir. 2010). “When the plaintiff’s complaint does not state the  
 8 amount in controversy, the defendant’s notice of removal may do so.” *Dart Cherokee*  
 9 *Basin Operating Co.*, 135 S. Ct. at 551.

10 Plaintiffs allege, *inter alia*, a claim for failure to pay wages upon termination of  
 11 employment pursuant to Labor Code §§201-203. (Ex. A, Complaint ¶¶ 49-53.)  
 12 Although Defendant denies the material allegations in the Complaint, the amount  
 13 placed in controversy by Plaintiffs’ class-based claim for failure to pay wages upon  
 14 termination exceeds \$5,000,000.

15 Labor Code §§201 and 202 require an employer to timely pay an employee all  
 16 wages earned and unpaid at or immediately following an employee’s termination from  
 17 employment. If the employer willfully fails to timely pay the employee, Labor Code  
 18 §203 provides for the assessment of a “waiting time penalty” equal to the amount of the  
 19 employee’s wages at his or her regular hourly rate for each day payment is late, up to a  
 20 maximum of 30 days. The statute of limitations for a claim for failure to pay wages at  
 21 termination is three years. *Pineda v. Bank of America, N.A.*, 50 Cal. 4th 1389, 1404  
 22 (2010).

23 Plaintiffs allege that Defendant failed to timely pay all wages to putative class  
 24 members following their termination of employment because, among other allegations,  
 25 it had previously deducted wages from their earned commissions pursuant to its “illegal  
 26 Price Adjustment Chargeback policy” and its “illegal Even Exchange Chargeback  
 27 policy” and did not pay them “these wages at the time of termination or resignation.”  
 28 (Ex. A, Complaint ¶¶ 51-52.) As they allege that Defendant’s policies in this regard

1 “were applied uniformly” to all such putative class members and that all such putative  
 2 class members “were subjected to” these policies (Complaint ¶¶ 29-30), “Plaintiffs  
 3 seek, on behalf of themselves and the Class, the penalties provided by Labor Code §203  
 4 in *the amount of 30 days of wages* for *each* former Sales Employee.” (*Id.* ¶ 53  
 5 (emphasis added).)

6 As Plaintiffs allege that Defendant’s purported failure to timely pay all wages to  
 7 putative class members following their termination of employment was part of a  
 8 “uniform practice” applying to all such putative class members, the Courts have held  
 9 that the amount placed in controversy should be determined by calculating the  
 10 maximum penalties available under Labor Code § 203. *Sanders v. Old Dominion*  
 11 *Freight Line, Inc.*, No. 17-cv-2340, 2018 U.S. Dist. LEXIS 38404, \*17 (S.D. Cal.  
 12 March 3, 2018) (“[d]efendant’s use of a 100% violation rate is reasonable because the  
 13 [complaint] seeks penalties for all employees who terminated employment”); *Motley v.*  
 14 *Express Pipe & Supply Co.*, No. SACV 17-1938, 2018 U.S. Dist. LEXIS 18761, \*13  
 15 (C.D. Cal. Feb. 5, 2018) (“use of maximum statutory penalties was reasonable and  
 16 supported based on class-wide allegations in the complaint”); *Ford v. CEC Entm’t, Inc.*,  
 17 No. CV 14-01420, 2014 U.S. Dist. Lexis 94059, \*9 (N.D. Cal. 2014) (a 100% violation  
 18 rate is reasonable based on the allegations in the complaint and “[b]ecause no averment  
 19 in the complaint supports an inference that these sums were paid”); *see also: Crummie*  
 20 *v. CertifiedSafety, Inc.*, No. 17-cv-03892, 2017 U.S. Dist. LEXIS 168326, \*6-10 (N.D.  
 21 Cal. Oct. 11, 2017) (assuming a 100% violation rate); *Franke v. Anderson*  
 22 *Merchandisers, LLC.*, CV 17-3241, 2017 U.S. Dist. LEXIS 119087, \*7-9 (C.D. Cal.  
 23 July 28, 2017) (same); *Mackall v. HealthSource Global Staffing, Inc.*, No. 16-cv-03810,  
 24 2016 U.S. Dist. LEXIS 119292, \*15-19 (N.D. Cal. Sept. 2, 2016) (same). The  
 25 maximum penalties available under Labor Code §203 are calculated “by multiplying the  
 26 30-day penalty period by the average hourly rate . . . , average hours worked in a day . .  
 27 . , and the total terminated employees within the limitation period.”

28 ///



1 *Lucas v. Michael Kors (USA) Inc.*, No. CV 18-1608, 2018 U.S. Dist. LEXIS 78510, \*  
 2 27 (C.D. Cal. May 9, 2018).

3 In this case, even conservative estimates of the penalties Plaintiffs seek for  
 4 Defendant's purported failure to pay all wages at termination, show that the amount in  
 5 controversy exceeds \$5,000,000. Since September 5, 2015, a total of 10,076 putative  
 6 class members left Defendant's employ, including 4,200 full-time employees and 5,876  
 7 part-time employees. The 4,200 full-time employees worked for an average hourly rate  
 8 of \$12.98 and worked on average 7.5 hours a day. The 5,876 part-time employees  
 9 worked for an average hourly rate of \$11.07 and worked on average between 12 hours  
 10 and 20 hours a week. Assuming conservatively that part-time employees only worked  
 11 on average 1 hour a day, the amount in controversy for Plaintiffs' failure to timely pay  
 12 all wages at termination is \$ **14,217,519.60** [(30 days x \$12.98 average hourly rate x 7.5  
 13 average hours worked in a day x 4,200 terminating full-time employees) + (30 days x  
 14 11.07 average hourly rate x 1 average hours worked in a day x 5,876 terminating part-  
 15 time employees).] As such, the amount in controversy for this claim alone – without  
 16 consideration of Plaintiffs' other class claims or their request for attorneys' fees –  
 17 clearly exceed the \$5,000,000 amount in controversy threshold for purposes of CAFA  
 18 jurisdiction.

19 **C. Plaintiffs and Defendant Are Citizens of Different States**

20 Plaintiffs are citizens of the State of California. Both Plaintiffs allege in the  
 21 Complaint that they are citizens of the State of California. (Ex. A, Complaint ¶ 5.)

22 For diversity jurisdiction purposes, a corporation is deemed to be a citizen of the  
 23 state in which it is incorporated as well as the state where it has its principal place of  
 24 business. 28 U.S.C. § 1332(c)(1); *Hertz Corp. v. Friend*, 559 U.S. 77, 92-93, 130 S. Ct.  
 25 1181, 175 L. Ed. 2d 1029 (2010) (holding “‘principal place of business’ is best read as  
 26 referring to the place where a corporation's officers direct, control, and coordinate the  
 27 corporation's activities. It is the place that Courts of Appeals have called the  
 28 corporation's ‘nerve center.’”).

1 Defendant is a citizen of the State of Ohio. At the time Plaintiff filed the State  
2 Court Action, Defendant was incorporated under the laws of the State of Ohio.  
3 Defendant is still incorporated under the laws of the state of Ohio. At the time Plaintiff  
4 filed the State Court Action, Defendant's principal place of business was in Cincinnati,  
5 Ohio. Defendant's principal place of business is still in Cincinnati, Ohio. Defendant is  
6 not incorporated under the laws of the State of California and does not have its principal  
7 place of business in California, either at the time Plaintiff filed the State Court Action or  
8 currently.

9 For purposes of removing a case from state court to federal court, the citizenship  
10 of Doe defendants is disregarded, and only named defendants are considered. 28 U.S.C.  
11 § 1441(b); *Soliman v. Philip Morris, Inc.*, 311 F.3d 966, 971 (9th Cir. 2002);  
12 *Newcombe v. Adolf Coors Co.*, 157 F.3d 686, 690 (9th Cir. 1998).

13 In accordance with 28 U.S.C. § 1332, there is complete diversity of citizenship  
14 because Plaintiffs (California) and Defendant (Ohio) are citizens of different States.  
15 *See* 28 U.S.C. § 1332(a)(1),(c)(1).

#### 16 **REMOVAL IS TIMELY**

17 This Notice of Removal is timely filed pursuant to 28 U.S.C. § 1446(b) in that it  
18 is being filed within 30 days of the service of the Summons and Complaint by  
19 Defendant. The Summons and Complaint were served on Defendant on September 14,  
20 2018. (*See Exhibit B*, Notice and Acknowledgement of Receipt of the Summons and  
21 Complaint, *et al.* signed and dated by Defendant on September 14, 2018).

#### 22 **VENUE**

23 Venue is proper in this district because San Diego County Superior Court is  
24 located within the federal Southern District of California and this is the "district and  
25 division embracing the place where such action is pending." 28 U.S.C. § 1441(a).

#### 26 **NOTICE TO PLAINTIFFS**

27 As required by 28 U.S.C. § 1446(d), Defendant will provide prompt written  
28 notice of the filing of this Notice of Removal to Plaintiffs.

**NOTICE TO THE SAN DIEGO SUPERIOR COURT**

As required by 28 U.S.C. § 1446(d), Defendant will promptly file this Notice of Removal with the Clerk of the San Diego County Superior Court.

WHEREFORE, pursuant to 28 U.S.C. §§ 1332, 1441, 1446, and 1453, Defendant removes this case from the Superior Court of the State of California, County of San Diego, to the United States District Court for the Southern District of California.

Respectfully submitted,  
Dated: October 12, 2018 GREENE & ROBERTS

By: /s/ Maria C. Roberts  
Maria C. Roberts  
Attorney for Defendant  
Macy's West Stores, Inc.

# Exhibit A

**SUMMONS**  
**(CITACION JUDICIAL)**

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)

**ELECTRONICALLY FILED**

Superior Court of California,  
County of San Diego

**09/04/2018** at 05:03:09 PM

Clerk of the Superior Court  
By Gen Dieu, Deputy Clerk

**NOTICE TO DEFENDANT:**

**(AVISO AL DEMANDADO):**

MACY'S WEST STORES, INC., and DOES 1 through 25,  
inclusive,

**YOU ARE BEING SUED BY PLAINTIFF:**

**(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

CRAIG TESSITORE and SARAH MALLON, on behalf of  
themselves and all others similarly situated,

**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](http://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](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://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 pueda 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](http://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](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.sucorte.ca.gov](http://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 o 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): San Diego County Superior Court  
330 W. Broadway  
San Diego, CA 92101

CASE NUMBER:

(Número del Caso): 37-2018-00044691-CU-DE-CTL

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):

Law Offices of Kirk D. Hanson, 2790 Truxtun Rd., Ste 140, San Diego, CA 92106 (619) 523-1992

DATE: 09/05/2018

(Fecha)

Clerk, by

(Secretario)

  
G. Dieu

Deputy

(Adjunto)

(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):

under: ☒ CCP 416.10 (corporation)

☐ CCP 416.20 (defunct corporation)

☐ CCP 416.40 (association or partnership)

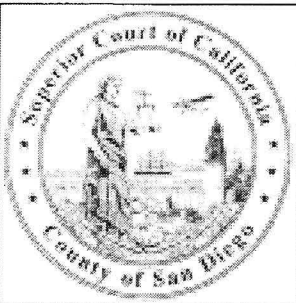
☐ other (specify):

☐ CCP 416.60 (minor)

☐ CCP 416.70 (conservatee)

☐ CCP 416.90 (authorized person)

4. ☒ by personal delivery on (date):





Kirk D. Hanson (SBN 167920)  
LAW OFFICES OF KIRK D. HANSON  
2790 Truxtun Rd., Ste. 140  
San Diego, CA 92106  
Tel: (619) 523-1992  
Fax: (619) 523-9002  
*hansonlaw@cox.net*

**ELECTRONICALLY FILED**  
Superior Court of California,  
County of San Diego  
**09/04/2018** at 05:03:09 PM  
Clerk of the Superior Court  
By Gen Dieu, Deputy Clerk

Attorneys for Plaintiffs Craig Tessitore  
and Sarah Mallon

**IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA,  
COUNTY OF SAN DIEGO**

CRAIG TESSITORE and SARAH  
MALLON, on behalf of themselves and  
all others similarly situated,

Plaintiffs,

vs.

MACY'S WEST STORES, INC., and  
DOES 1 through 25, inclusive,

Defendants.

**Case No. 37-2018-00044691-CU-OE-CTL**

**PAGA REPRESENTATIVE  
CLAIMS AND CLASS ACTION  
CLAIMS**

Plaintiffs Craig Tessitore and Sarah Mallon, on behalf of themselves and all  
others similarly situated, complain and allege as follows:

**I. INTRODUCTION AND GENERAL ALLEGATIONS**

1. Plaintiffs bring this action on behalf of themselves and all other  
similarly situated current and former sales employees, who were employed by  
Defendants MACY'S WEST STORES, INC. and/or DOES 1 through 25,  
inclusive, (collectively the "Defendants") in the State of California, for violations

COMPLAINT

1

1 of the California Labor Code and Wage Order No. 7-2001 stemming from  
 2 Defendants' (1) unlawful deduction of commission wages due to an unlawful  
 3 "Price Adjustment" chargeback policy and unlawful "Even Exchange" chargeback  
 4 policy, (2) failure to timely pay final wages upon termination of employment, and  
 5 (3) unfair competition. Plaintiffs each suffered from these violations.

6 2. Plaintiffs bring this lawsuit seeking monetary and injunctive relief  
 7 against Defendants and each of them, on behalf of themselves, the State of  
 8 California, the Aggrieved Employees, and the Class Members, to recover, among  
 9 other things, civil penalties, unpaid wages, interest, attorneys' fees, statutory  
 10 penalties, and costs and expenses pursuant to California Law.

## 11 **II. JURISDICTION**

12 3. This Court has jurisdiction over this matter pursuant to Labor Code §§  
 13 200, 201, 202, 203, 221, 223, and 2698 et seq., and Wage Order No. 7.

## 14 **III. VENUE**

15 4. Venue as to each Defendant is proper in this court, pursuant to Code  
 16 of Civil Procedure § 395(a), as each Defendant maintains offices, transacts  
 17 business, and/or has an agent in San Diego County, and each Defendant is  
 18 otherwise within this Court's jurisdiction for purposes of service of process. The  
 19 unlawful acts alleged herein have a direct effect on Plaintiffs and those similarly  
 20 situated within the State of California and within San Diego County. Defendants  
 21 employ the Aggrieved Employees and Class Members in San Diego County and  
 22 other counties in California.

## 23 **IV. PARTIES**

### 24 **Plaintiffs**

25 5. Plaintiff CRAIG TESSITORE resides in the State of California,  
 26 County of San Diego, and is a citizen of California. Mr. TESSITORE is currently  
 27 employed by Defendants in San Diego County, California, as a commissioned  
 28 sales employee. Plaintiff SARAH MALLON resides in the State of California,



County of Orange, and is a citizen of California. Ms. MALLON is a former employee of Defendants, and was employed by Defendants during the relevant statutory period in Orange County, California, as a commissioned sales employee. Plaintiffs, the Aggrieved Employees, and the Class Members are all current or former commissioned sales employees of Defendants classified by Defendants as "Draw vs. Commission Associates," "Base Plus Commission Associates" or otherwise classified by Defendants as commissioned sales employees and are collectively referred to herein as "Sales Employees."

**Defendants**

6. Upon information and belief, Defendant MACY'S WEST STORES, INC., is now, and at all relevant times has been, an Ohio Corporation, and does business throughout the State of California, including San Diego County.

7. Plaintiffs are ignorant of the true names, capacities, relationships, and extent of participation in the conduct herein alleged of Defendants sued herein as DOES 1 through 25, inclusive, but on information and belief allege that those Defendants are legally responsible for the payment of penalties and damages to Plaintiffs, the Aggrieved Employees, and the Class Members by virtue of Defendants' unlawful actions and practices and therefore sue these Defendants by such fictitious names. Plaintiffs will amend this complaint to allege the true names and capacities of the DOE Defendants when ascertained.

8. Plaintiffs are informed and believe and based thereon allege that Defendants, and each of them, acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are legally attributable to the other Defendants. On information and belief, a unity of interest and ownership between each Defendant exists such that all Defendants acted as a single employer of Plaintiffs, the Aggrieved Employees, and the Class Members.

1  
2 **V. PAGA REPRESENTATIVE ACTION ALLEGATIONS**

3 9. Plaintiff CRAIG TESSITORE hereby incorporates by reference  
4 Paragraphs 1 through 8 above as though fully set forth herein.

5 10. The following causes of action brought under the Labor Code Private  
6 Attorneys General Act ("PAGA", Lab. C. §§2698-2699.5) are pursued by Plaintiff  
7 CRAIG TESSITORE. Plaintiff TESSITORE is an Aggrieved Employee under  
8 PAGA as he was employed by Defendants during the applicable statutory period  
9 and suffered one or more of the Labor Code violations alleged herein. As such, he  
10 seeks to recover, on behalf of the State of California and the Aggrieved Employees  
11 of Defendants, all applicable civil penalties provided by PAGA. Moreover,  
12 Plaintiff TESSITORE seeks to recover the PAGA civil penalties through a  
13 representative action as permitted by California law. Therefore, Plaintiff  
14 TESSITORE is not required to seek class certification of the PAGA claims under  
15 Code of Civil Procedure § 382, nor does he seek class certification of such claims.

16 11. Pursuant to Labor Code § 2698 et seq., on June 15, 2018, Plaintiff  
17 TESSITORE submitted, via online service to the California Labor & Workforce  
18 Development Agency ("LWDA") and via certified mail to Defendants, a PAGA  
19 claim notice letter setting forth the violations by Defendants of various wage and  
20 hour rules as alleged herein, which notice letter included the facts and theories  
21 supporting the alleged violations. Over sixty-five (65) calendar days have passed  
22 since Plaintiff TESSITORE provided the LWDA with his PAGA claim notice  
23 letter on June 15, 2018, and there has been no response from the LWDA.  
24 Therefore, Plaintiff TESSITORE has exhausted the prefiling requirements of  
25 PAGA, and may now prosecute this PAGA representative action.

26 12. At all material times, Defendants and DOES 1 through 25 were and/or  
27 are the employers of the Aggrieved Employees or are persons acting on behalf of  
28



the employers of the Aggrieved Employees, within the meaning of California Labor Code § 558.1, with respect to Defendants' violation of Labor Code § 203.

### **FIRST CAUSE OF ACTION**

#### **PAGA Civil Penalties for Illegal Commission Chargeback Policies (Violation of Labor Code § 221)**

13. Plaintiff CRAIG TESSITORE hereby incorporates by reference Paragraphs 1 through 12 above as though fully set forth herein.

14. During Plaintiff TESSITORE's employment with Defendants, he was subjected to unlawful deductions from his earned commission wages under Defendants' illegal commission chargeback schemes. Under Defendants' "Price Adjustment" policy, Defendants deduct wages from the earned commissions of Plaintiff TESSITORE and the Aggrieved Sales Employees when a customer requests a monetary credit for already-purchased merchandise that Defendants subsequently reduce in price after the customer's purchase and after the Sales Employee has been paid commission on the sale (hereinafter referred to as the "Price Adjustment Chargeback policy"). Defendants' Price Adjustment Chargeback policy states:

A "Price Adjustment" occurs when, in accordance with our return policies, a customer requests and receives a credit due to merchandise going on sale after the original date of purchase. Price Adjustments are processed using the Price Adjustment function on the register. Because the Price Adjustment happens within the Eligible Return Period, the amount of the Price Adjustment is considered a Return and is applied against the Original Associate's Gross Sales and the Original Associate retains the remaining value of the original sale.

Likewise, Defendants' "Even Exchange" policy (hereinafter referred to as "Even Exchange Chargeback policy") deducts wages from the earned commissions of Plaintiff TESSITORE and the Aggrieved Sales Employees when a customer

1 returns merchandise and replaces it with essentially the same item (e.g. customer  
2 returns a shirt in Medium and replaces it with the same item in Large).

3 15. Plaintiff TESSITORE and the other Aggrieved Sales Employees were  
4 subjected to unlawful deductions of commission wages already paid to the Sales  
5 Employees as a result of Defendants' unlawful Price Adjustment Chargeback  
6 policy. Defendants' decision to discount merchandise after the sale is a business  
7 decision totally beyond the control of the Sales Employees. Defendants' Price  
8 Adjustment Chargeback policy operates to illegally shift Defendants' cost of doing  
9 business to the Sales Employees by forcing these employees to subsidize the  
10 reduction in price of Defendants' merchandise by giving back the commissions  
11 they earned on the original sale through illegal deductions from their commission  
12 wages. Likewise, Defendants' Even Exchange Chargeback policy illegally deducts  
13 earned commission wages from the Sales Employees in the amount of the  
14 commission paid on the item of merchandise when it is exchanged after the sale for  
15 a different size or color, etc., despite the fact that Defendants do not lose any  
16 money on the exchange. Thus, Defendant's Price Adjustment Chargeback policy  
17 and Even Exchange Chargeback policy violate Labor Code § 221 by deducting  
18 commission wages previously paid to the Sales Employees.

19 16. As a result of Defendants' violations of Labor Code § 221 through  
20 their illegal Price Adjustment Chargeback policy and illegal Even Exchange  
21 Chargeback policy, Plaintiff TESSITORE seeks, on behalf of the State of  
22 California and the Aggrieved Sales Employees, all applicable civil penalties  
23 mandated by Labor Code § 2699(f)(2).

## 24 **SECOND CAUSE OF ACTION**

### 25 **PAGA Civil Penalties for Illegal Commission Chargeback Policies** 26 **(Violation of Labor Code § 223)**

27 17. Plaintiff CRAIG TESSITORE hereby incorporates by reference  
28 Paragraphs 1 through 16 above as though fully set forth herein.



18. Labor Code § 223 states that “where any statute or contract requires an employer to maintain the designated wage scale, it shall be unlawful to secretly pay a lower wage while purporting to pay the wage designated by statute or by contract.” Section 223 applies where the employer nominally pays employees the wage required by contract or statute, but then requires the employees to pay back a portion of the wages so that in reality the employees are earning less than was required. *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4<sup>th</sup> 1157, 1204-1205. Under § 223, the secret is being kept from the applicable enforcement agency--not from the employees. *Id.* at p. 1205. “[T]he secret is not the making of an ‘underpayment’ but rather the existence of the employer’s obligation to pay more.” *Id.*

19. Defendants’ Price Adjustment Chargeback policy and Even Exchange Chargeback policy violate Labor Code § 223 because the underpayment of commission wages resulting from these policies are kept secret from California law enforcement agencies as well as Defendants’ obligation to pay the full amount of commission wages owed to the Sales Employees. *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4<sup>th</sup> 1157, 1204-1205.

20. As a result of Defendants’ violations of Labor Code § 223 through their illegal Price Adjustment Chargeback policy and illegal Even Exchange Chargeback policy, Plaintiff TESSITORE seeks, on behalf of the State of California and the Aggrieved Sales Employees, all applicable civil penalties mandated by Labor Code § 2699(f)(2).

### **THIRD CAUSE OF ACTION**

#### **PAGA Civil Penalties for failure to Pay Wages at Termination**

#### **(Violation of Labor Code §§ 201, 202, 203)**

21. Plaintiff CRAIG TESSITORE hereby incorporates by reference Paragraphs 1 through 20 above as though fully set forth herein.

1           22. Labor Code §201(a) states that if an employer discharges an  
2 employee, all wages earned and unpaid at the time of discharge are due and  
3 payable immediately. Likewise, pursuant to Labor Code § 202(a), if an employee  
4 resigns, the employer must pay all wages earned and unpaid not later than 72 hours  
5 after resignation.

6           23. When Defendants terminate Sales Employees or when the employees  
7 resign, Defendants issue wage statements indicating that final wages are being  
8 paid, when in fact the entire paycheck or large portions of the wages listed on the  
9 paycheck are withheld by Defendants, which requires the employees to discover  
10 the illegal withholding and then request the unpaid wages from Defendants. This  
11 illegal withholding of final wages by Defendants is an intentional scheme  
12 undertaken by Defendants to reduce labor costs, and violates Labor Code §§ 201  
13 and 202.  
14

15           24. Additionally, as set forth above, Defendants do not pay their Sales  
16 Employees all commission wages owed as a result of the illegal Price Adjustment  
17 Chargeback policy and the illegal Even Exchange Chargeback policy. Thus, in  
18 violation of Labor Code §§ 201 and 202, Defendants' Sales Employees are not  
19 paid these wages at the time of termination or resignation.

20           25. As a result of these violations of §§ 201 and 202, Plaintiff Tessitore  
21 seeks, on behalf of the State of California and all other Aggrieved Sales  
22 Employees, all applicable civil penalties mandated by Labor Code § 2699(f)(2).  
23 Additionally, pursuant to Labor Code § 558 and Wage Order No. 7, Plaintiff  
24 Tessitore seeks PAGA civil penalties in the amount of the unpaid wages withheld  
25 from the Sales Employees, including minimum wages, contractual wages, and/or  
26 commission wages, which civil penalties are to be paid solely to the Aggrieved  
27 Sales Employees. *See Reynolds v. Bement* (2005) 36 Cal.4<sup>th</sup> 1075, 1075-1089;  
28



1 *Thurman v. Bayshore Transit Management* (2012) 203 Cal.App.4<sup>th</sup> 1112, 1147-  
2 1148.

3 **VI. CLASS ACTION ALLEGATIONS**

4 26. Plaintiffs incorporate by this reference Paragraphs 1 through 25 above  
5 as though fully set forth herein.

6 27. Plaintiffs TESSITORE and MALLON bring this action on behalf of  
7 themselves and all others similarly situated as a class action pursuant to Code of  
8 Civil Procedure § 382. The Class, also referred to as the “Represented  
9 Employees,” that Plaintiffs seek to represent is defined as follows:

10 All current and former employees of Macy’s West  
11 Stores, Inc. who were employed by Macy’s in California  
12 as commissioned sales employees at any time during the  
13 period commencing four (4) years preceding the filing of  
14 this complaint up through the time of the final judgment  
15 in this matter.

16 28. Plaintiffs TESSITORE and MALLON, as Class Representatives, are  
17 members of the class they seek to represent.

18 29. At all relevant times alleged herein, the Represented Employees were  
19 employees of Defendants and were subjected to Defendants’ (1) unlawful  
20 deduction of wages due to the Price Adjustment Chargeback policy and Even  
21 Exchange Chargeback policy, (2) failure to timely pay all wages due and owing  
22 upon separation from employment within the time required by Cal. Labor Code §§  
23 201 – 203, and (3) unfair and unlawful competition.

24 30. This action has been brought and may be properly maintained as a  
25 class action under Code of Civil Procedure § 382 because Defendants’ practices  
26 were applied uniformly to all members of the Class, so that the questions of law  
27 and fact are common to all members of the Class.  
28



31. All members of the Class were and/or are similarly affected by the actions of Defendants as alleged herein, and the relief sought herein is for the benefit of Plaintiffs and members of the Class.

32. **Numerosity**: The potential members of the Class as defined are so numerous that a joinder of all Class Members is impracticable. Although the exact number is currently unknown, that information is easily ascertainable from Defendants' payroll and personnel records.

33. **Commonality**: Questions of law and fact common to Plaintiffs and the Class exist that predominate over questions affecting only individual members, including:

- i. Whether Defendants deducted earned commissions from the Represented Employees under Defendants' Price Adjustment Chargeback policy and Even Exchange Chargeback policy, in violation of California law;
- ii. Whether Defendants failed to timely pay all wages due and owing to the Represented Employees upon separation from employment, as required by Cal. Labor Code §§ 201 – 203;
- iii. Whether Defendants violated California Business & Professions Code §§ 17200 *et seq.* by unlawfully deducting earned wages under the Price Adjustment Chargeback policy and the Even Exchange Chargeback policy, and by failing to timely pay all wages due and owing to the Represented Employees upon separation from employment;
- iv. Whether Defendants violated § 17200 *et seq.* of the California Business and Professions Code and, without limitation, California Labor Code §§ 201, 202, 203, 221, and 223 and Wage Order No. 7; and

1 v. Whether Plaintiff and Represented Employees are entitled to equitable  
2 relief pursuant to California Business & Professions Code §§ 17200 *et*  
3 *seq.*, including restitution of wages.

4 34. **Typicality**: Plaintiffs' claims, as the Class Representatives, are  
5 typical of the claims of the Class. The Class Representatives, like other members  
6 of the Class, were subjected to the same Labor Code violations committed by  
7 Defendants as alleged herein.

8 35. **Adequacy of Representation**. Plaintiffs, as the Class  
9 Representatives, will fairly and adequately represent and protect the interests of the  
10 Class Members. Plaintiffs' interests are not in conflict with those of the Class  
11 Members. Class Representatives' counsel is competent and experienced in  
12 litigating large employment class actions and other complex litigation matters,  
13 including cases like this case.

14 36. **Superiority of Class Action**. Class certification is appropriate  
15 because a class action is superior to other available means for the fair and efficient  
16 adjudication of this controversy. Each Class Member has been damaged and is  
17 entitled to recovery by reason of Defendants' illegal policies and practices set forth  
18 above. Class action treatment will allow those similarly situated persons to litigate  
19 their claims in the manner that is most efficient and economical for the parties and  
20 the judicial system. Absent a class action, it would be highly unlikely that the  
21 representative Plaintiffs or any other members of the Class would be able to protect  
22 their own interests because the cost of litigation through individual lawsuits might  
23 exceed expected recovery.

24 37. Certification is also appropriate because Defendants acted, or refused  
25 to act, on grounds generally applicable to both the Class Representatives and the  
26 Class, thereby making appropriate the relief sought on behalf of the Class. Further,  
27 given the large number of Represented Employees, allowing individual actions to  
28



1 proceed in lieu of a class action would run the risk of yielding inconsistent and  
2 conflicting adjudications.

3 38. A class action is a fair and appropriate method for the adjudication of  
4 the controversy, in that it will permit a large number of claims to be resolved in a  
5 single forum simultaneously, efficiently, and without the unnecessary hardship that  
6 would result from the prosecution of numerous individual actions and the  
7 duplication of discovery, effort, expense and burden on the courts that individual  
8 actions would engender.

9 39. The benefits of proceeding as a class action, including providing a  
10 method for obtaining redress for claims that would not be practical to pursue  
11 individually, outweigh any difficulties that might be argued with regard to the  
12 management of this class action.

#### 13 **FOURTH CAUSE OF ACTION**

##### 14 **Unlawful Deduction of Wages**

##### 15 **(Violation of Cal. Labor Code § 221)**

16 40. Plaintiffs reallege and incorporate by reference paragraphs 1 through  
17 39 above as though fully set forth herein.

18 41. California Labor Code § 221 states that “[i]t shall be unlawful for any  
19 employer to collect or receive from an employee any part of wages theretofore paid  
20 by said employer to said employee.” California Labor Code § 200 defines “wages”  
21 as “all amounts for labor performed by employees of every description, whether  
22 the amount is fixed or ascertained by the standard of time, task, piece, *commission*  
23 *basis*, or other method of calculation.” For this reason, sales commissions are  
24 “wages.” See *Reid v. Overland Machined Products* (1961) 55 Cal.2d 203, 207–  
25 208; *Koehl v. Vero, Inc.* (2006) 142 Cal.App.4th 1313, 1329 (“*Koehl*”); *Hudgins v.*  
26 *Neiman Marcus Group, Inc.* (1995) 34 Cal.App.4th 1109, 1118 (“*Hudgins*”).

27 42. California Labor Code § 221 reflects “‘California's strong public  
28 policy favoring the protection of employees' wages,’ including amounts earned

1 through commissions on sales.” *Sciborski v. Pacific Bell Directory* (2012) 205  
2 Cal.App.4th 1152, 1166 (“*Sciborski*”), quoting *Harris v. Investor's Business Daily,*  
3 *Inc.* (2006) 138 Cal.App.4th 28, 40–41. Furthermore, Labor Code §219 states that  
4 the protections of Labor Code § 221 cannot “be contravened or set aside by a  
5 private agreement.” Therefore, the rights under Labor Code § 221 are  
6 nonnegotiable and cannot be waived by the parties. See *Sciborski, supra* at 1166.  
7 Also, under California Labor Code §§ 219 and 221, an employer may not “require  
8 its employees to consent to unlawful deductions from their wages.” *Hudgins, supra*  
9 at 1124.

10 43. As previously alleged herein, at all relevant times, Plaintiffs and the  
11 Represented Employees were subjected to unlawful deductions from earned  
12 commission wages due to Defendants’ Price Adjustment Chargeback policy and  
13 Even Exchange Chargeback policy. Defendants’ Price Adjustment Chargeback  
14 policy and Defendants’ decision to discount merchandise after the sale is entirely  
15 unrelated to the sale of goods between the Sales Employee and customers. This  
16 policy unlawfully shifts the costs of doing business (i.e. Macy’s losses on  
17 discounted items to generate other business and sales) to the Sales Employees, in  
18 violation of Labor Code § 221, by deducting this cost directly from the Sales  
19 Employees’ earned commission wages. This deduction is done after the sale is  
20 complete and after the Sales Employees have been paid commissions on the  
21 original sale. Likewise, Defendants’ Even Exchange Chargeback policy illegally  
22 deducts earned commission wages from the Sales Employees in the amount of the  
23 commission paid on the item of merchandise when it is exchanged after the sale for  
24 a different size or color, etc., despite the fact that Defendants do not lose any  
25 money on the exchange.

26 44. As a result of Defendants’ unlawful deduction of wages pursuant to  
27 the Price Adjustment Chargeback policy and the Even Exchange Chargeback  
28 policy, Plaintiffs, on behalf of themselves and the Represented Employees, seek



1 recovery under Labor Code § 221 of all unlawfully deducted wages, interest  
2 thereon, attorneys' fees, and costs of suit against Defendants in an amount to be  
3 proven at trial.

#### 4 **FIFTH CAUSE OF ACTION**

##### 5 **Unlawful Deduction of Wages**

##### 6 **(Violation of Labor Code § 223)**

7 45. Plaintiffs hereby incorporate by reference Paragraphs 1 through 44  
8 above as though fully set forth herein.

9 46. Labor Code § 223 states that "where any statute or contract requires  
10 an employer to maintain the designated wage scale, it shall be unlawful to secretly  
11 pay a lower wage while purporting to pay the wage designated by statute or by  
12 contract." Section 223 applies where the employer nominally pays employees the  
13 wage required by the contract but then requires the employees to pay back a  
14 portion of the wages so that in reality the employees are earning less than was  
15 required. *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4<sup>th</sup> 1157, 1204-1205.  
16 Under § 223, the secret is being kept from the applicable state enforcement  
17 agency--not from the employees. *Id.* at p. 1205. "[T]he secret is not the making of  
18 an 'underpayment' but rather the existence of the employer's obligation to pay  
19 more." *Id.*

20 47. Defendants' Price Adjustment Chargeback policy and Even Exchange  
21 Chargeback policy violate Labor Code § 223 because the underpayment of  
22 commission wages resulting from these policies, as alleged above, is kept secret  
23 from California law enforcement agencies as well as Defendants' obligation to pay  
24 the full amount of commission wages owed to the Sales Employees. *Amaral v.*  
25 *Cintas Corp. No. 2* (2008) 163 Cal.App.4<sup>th</sup> 1157, 1204-1205.

26 48. As a result of Defendants' unlawful deduction of wages pursuant to  
27 the Price Adjustment Chargeback policy and the Even Exchange Chargeback  
28 policy, Plaintiffs, on behalf of themselves and the Represented Employees, seek

1 recovery under Labor Code § 223 of all unlawfully deducted wages, interest  
 2 thereon, attorneys' fees, and costs of suit against Defendants in an amount to be  
 3 proven at trial.

#### 4 **SIXTH CAUSE OF ACTION**

##### 5 **Failure to Pay Wages Owed at Separation of Employment** 6 **(Violation of Labor Code §§ 201, 202, 203)**

7 49. Plaintiffs hereby incorporate by reference Paragraphs 1 through 48  
 8 above as though fully set forth herein.

9 50. Labor Code §201(a) states that if an employer discharges an  
 10 employee, all wages earned and unpaid at the time of discharge are due and  
 11 payable immediately. Likewise, pursuant to Labor Code § 202(a), if an employee  
 12 resigns, the employer must pay all wages earned and unpaid not later than 72 hours  
 13 after resignation.

14 51. When Defendants terminate Sales Employees or when the employees  
 15 resign, Defendants issue wage statements indicating that final wages are being  
 16 paid, when in fact the entire paycheck or large portions of the wages listed on the  
 17 paycheck are withheld by Defendants, which requires the employees to discover  
 18 the illegal withholding of wages and then request the unpaid wages from  
 19 Defendants. This illegal withholding of final wages by Defendants is an intentional  
 20 scheme undertaken by Defendants to reduce labor costs. This policy violates Labor  
 21 Code §§ 201 and 202.

22 52. Defendants do not pay the Sales Employees all commission wages  
 23 owed as a result of the illegal Price Adjustment Chargeback policy and illegal  
 24 Even Exchange Chargeback policy. Thus, in violation of Labor Code §§ 201 and  
 25 202, Defendants' Sales Employees are not paid these wages at the time of  
 26 termination or resignation.  
 27  
 28



53. Defendants' violations of §§ 201 and 202 as set forth above, are willful. Accordingly, Plaintiffs seek, on behalf of themselves and the Class, the penalties provided by Labor Code § 203 in the amount of 30 days of wages for each former Sales Employee.

## **SEVENTH CAUSE OF ACTION**

### **Unfair Competition**

#### **(Violation of California Business and Professions Code §17200, *et seq.*)**

54. Plaintiffs reallege and incorporate by reference paragraphs 1 through 53 above as though fully set forth herein.

55. California Business & Professions Code § 17200, *et seq.*, prohibits acts of unfair competition, which includes any "unlawful, unfair or fraudulent business act or practice..." The Represented Employees, including Plaintiffs, have suffered and continue to suffer injuries in fact, due to the unfair and unlawful business practices of Defendants as alleged herein above. As alleged in detail above, Defendants engaged in conduct that violated California's wage and hour laws. From the time that each Represented Employee was hired, Defendants failed to comply with the California Labor Code and IWC Wage Order No. 7 through their actions as herein alleged.

56. At all relevant times herein, Defendants did not pay the Represented Employees wages and monies and other financial obligations attached thereto to which they were entitled.

57. As a result of Defendants' failure to comply with the Labor Code and IWC Wage Order No. 7, the Represented Employees, including Plaintiffs, suffered a loss of wages and monies, all in an amount to be shown according to proof at trial. Defendants' ongoing violations of the foregoing statutes and laws constitute a violation of Bus. & Prof. Code § 17200, *et seq.*

58. Defendants' violations of the California Labor Code and IWC Wage Order No. 7 and their scheme to lower payroll costs and costs of doing business



1 through their illegal Price Adjustment Chargeback policy, illegal Even Exchange  
 2 Chargeback policy, and unlawful failure to pay all wages due at the time of  
 3 separation from employment, including the withholding of minimum wages,  
 4 contractual wages, and/or commission wages required to be paid by the Labor  
 5 Code and Wage Order No. 7, subdivisions 3 and 4, and the other violations as  
 6 alleged herein, constitute unlawful and unfair business practices because it was  
 7 done in a systematic manner over a period of time to the detriment of the Plaintiffs  
 8 and all others similarly-situated.

9 59. As a result of the unfair business practices of Defendants alleged  
 10 herein, Plaintiffs and all Represented Employees are entitled to restitution of their  
 11 unlawfully deducted wages and unlawfully withheld wages at the time of the  
 12 termination of employment in an amount according to proof at trial. As private  
 13 attorneys general under California Code of Civil Procedure § 1021.5, Represented  
 14 Employees seek to recover any and all attorneys' fees and costs incurred herein.

## 15 **VII. PRAYER FOR RELIEF**

16 WHEREFORE, Plaintiffs pray for judgment for themselves and all others on  
 17 whose behalf this suit is brought, against Defendants, jointly and severally, as  
 18 follows:

- 19 1. For certification of the Fourth through the Seventh Causes of Action  
 20 as a Class Action pursuant to Code of Civil Procedure § 382.
- 21 2. For appointment of Plaintiffs as the representatives of the Class.
- 22 3. For appointment of Counsel for Plaintiffs as Class Counsel for the  
 23 Class.
- 24 4. For such general, special and liquidated damages as may be  
 25 appropriate, including all damages alleged above.
- 26 5. For payment of all unpaid wages and illegally deducted wages that  
 27 were denied due to Defendants' illegal Price Adjustment Chargeback policy,  
 28

1 illegal Even Exchange Chargeback policy, and illegal withholding of wages at  
2 termination of employment policy.

3 6. For waiting time penalties of up to thirty (30) days of wages as  
4 provided for in Labor Code § 203 for all Class members who are no longer  
5 employed by Defendants.

6 7. For restitution of all unpaid wages and illegally deducted and illegally  
7 withheld wages, as described in the claim for relief under Business. & Prof. Code §  
8 17200 et seq. above.

9 8. For all applicable civil penalties available under The Labor Code  
10 Private Attorneys General Act (Lab. C. § 2698 et seq.), Wage Order No. 7, and  
11 California law, plus reasonable attorney's fees and costs.

12 9. For reasonable attorneys' fees and costs of suit to the extent permitted  
13 by law.

14 10. For pre- and post-judgement interest.

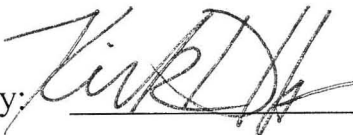
15 11. For such other relief as the Court deems just and proper.

16 **DEMAND FOR JURY TRIAL**

17 WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly  
18 situated, hereby demand a jury trial as to the Fourth through Seventh Causes of  
19 Action pled in the Complaint herein.

20  
21 Date: September 4, 2018

LAW OFFICES OF KIRK D. HANSON

22  
23 By:   
24 Kirk D. Hanson  
25 Attorneys for Plaintiffs  
26  
27  
28



ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):  
 Kirk D. Hanson, Esq., (SBN 167920) Law Offices of Kirk D. Hanson  
 2790 Truxtun Rd., Ste. 140  
 San Diego, CA 92106

**ELECTRONICALLY FILED**  
 Superior Court of California,  
 County of San Diego

09/04/2018 at 05:03:09 PM

Clerk of the Superior Court  
 By Gen Dieu, Deputy Clerk

TELEPHONE NO.: 619/523-1992

FAX NO.: 619/523-9002

ATTORNEY FOR (Name): Craig Tessitore and Sarah Mallon

SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Diego

STREET ADDRESS: 330 W. Broadway

MAILING ADDRESS:

CITY AND ZIP CODE: San Diego, CA 92101

BRANCH NAME: Hall of Justice

CASE NAME:

Craig Tessitore and Sarah Mallon v. Macy's West Stores, Inc.

**CIVIL CASE COVER SHEET**

☒ **Unlimited**  
 (Amount  
 demanded  
 exceeds \$25,000)

☐ **Limited**  
 (Amount  
 demanded is  
 \$25,000 or less)

**Complex Case Designation**

☐ **Counter** ☐ **Joinder**

Filed with first appearance by defendant  
 (Cal. Rules of Court, rule 3.402)

CASE NUMBER:

37-2018-00044691-CU-OE-CTL

JUDGE:

Judge Timothy Taylor

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**

☐ Auto (22)  
☐ Uninsured motorist (46)

**Other PI/PD/WD (Personal Injury/Property  
 Damage/Wrongful Death) Tort**

☐ Asbestos (04)  
☐ Product liability (24)  
☐ Medical malpractice (45)  
☐ Other PI/PD/WD (23)

**Non-PI/PD/WD (Other) Tort**

☐ Business tort/unfair business practice (07)  
☐ Civil rights (08)  
☐ Defamation (13)  
☐ Fraud (16)  
☐ Intellectual property (19)  
☐ Professional negligence (25)  
☐ Other non-PI/PD/WD tort (35)

**Employment**

☐ Wrongful termination (36)  
☒ Other employment (15)

**Contract**

☐ Breach of contract/warranty (06)  
☐ Rule 3.740 collections (09)  
☐ Other collections (09)  
☐ Insurance coverage (18)  
☐ Other contract (37)

**Real Property**

☐ Eminent domain/Inverse  
 condemnation (14)  
☐ Wrongful eviction (33)  
☐ Other real property (26)

**Unlawful Detainer**

☐ Commercial (31)  
☐ Residential (32)  
☐ Drugs (38)

**Judicial Review**

☐ Asset forfeiture (05)  
☐ Petition re: arbitration award (11)  
☐ Writ of mandate (02)  
☐ Other judicial review (39)

**Provisionally Complex Civil Litigation  
 (Cal. Rules of Court, rules 3.400-3.403)**

☐ Antitrust/Trade regulation (03)  
☐ Construction defect (10)  
☐ Mass tort (40)  
☐ Securities litigation (28)  
☐ Environmental/Toxic tort (30)  
☐ Insurance coverage claims arising from the  
 above listed provisionally complex case  
 types (41)

**Enforcement of Judgment**

☐ Enforcement of judgment (20)

**Miscellaneous Civil Complaint**

☐ RICO (27)  
☐ Other complaint (not specified above) (42)

**Miscellaneous Civil Petition**

☐ Partnership and corporate governance (21)  
☐ Other petition (not specified above) (43)

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. ☒ Large number of separately represented parties d. ☐ Large number of witnesses  
 b. ☒ Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve e. ☐ Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court  
 c. ☒ Substantial amount of documentary evidence f. ☐ 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): 7 claims relating to unpaid commission wages

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: September 4, 2018

Kirk D. Hanson, 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.

Page 1 of 2

<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO</b>	
STREET ADDRESS: 330 W Broadway	
MAILING ADDRESS: 330 W Broadway	
CITY AND ZIP CODE: San Diego, CA 92101-3827	
BRANCH NAME: Central	
TELEPHONE NUMBER: (619) 450-7072	
PLAINTIFF(S) / PETITIONER(S): Craig Tessitore et.al.	
DEFENDANT(S) / RESPONDENT(S): Macys West Stores Inc	
TESSITORE VS MACYS WEST STORES, INC [IMAGED]	
<b>NOTICE OF CASE ASSIGNMENT AND CASE MANAGEMENT CONFERENCE on MANDATORY eFILE CASE</b>	CASE NUMBER: 37-2018-00044691-CU-OE-CTL

**CASE ASSIGNMENT**

Judge: Timothy Taylor

Department: C-72

**COMPLAINT/PETITION FILED:** 09/04/2018

TYPE OF HEARING SCHEDULED	DATE	TIME	DEPT	JUDGE
Civil Case Management Conference	02/08/2019	09:15 am	C-72	Timothy Taylor

A case management statement must be completed by counsel for all parties or self-represented litigants and timely filed with the court at least 15 days prior to the initial case management conference. (San Diego Local Rules, Division II, CRC Rule 3.725).

All counsel of record or parties in pro per shall appear at the Case Management Conference, be familiar with the case, and be fully prepared to participate effectively in the hearing, including discussions of ADR\* options.

IT IS THE DUTY OF EACH PLAINTIFF (AND CROSS-COMPLAINANT) TO SERVE A COPY OF THIS NOTICE WITH THE COMPLAINT (AND CROSS-COMPLAINT), THE ALTERNATIVE DISPUTE RESOLUTION (ADR) INFORMATION FORM (SDSC FORM #CIV-730), A STIPULATION TO USE ALTERNATIVE DISPUTE RESOLUTION (ADR) (SDSC FORM #CIV-359), AND OTHER DOCUMENTS AS SET OUT IN SDSC LOCAL RULE 2.1.5.

ALL COUNSEL WILL BE EXPECTED TO BE FAMILIAR WITH SUPERIOR COURT RULES WHICH HAVE BEEN PUBLISHED AS DIVISION II, AND WILL BE STRICTLY ENFORCED.

**TIME STANDARDS:** The following timeframes apply to general civil cases and must be adhered to unless you have requested and been granted an extension of time. General civil cases consist of all civil cases except: small claims proceedings, civil petitions, unlawful detainer proceedings, probate, guardianship, conservatorship, juvenile, parking citation appeals, and family law proceedings.

**COMPLAINTS:** Complaints and all other documents listed in SDSC Local Rule 2.1.5 must be served on all named defendants.

**DEFENDANT'S APPEARANCE:** Defendant must generally appear within 30 days of service of the complaint. (Plaintiff may stipulate to no more than 15 day extension which must be in writing and filed with the Court.) (SDSC Local Rule 2.1.6)

**JURY FEES:** In order to preserve the right to a jury trial, one party for each side demanding a jury trial shall pay an advance jury fee in the amount of one hundred fifty dollars (\$150) on or before the date scheduled for the initial case management conference in the action.

**MANDATORY eFILE:** Case assigned to mandatory eFile program per CRC 3.400-3.403 and SDSC Rule 2.4.11. All documents must be eFiled at [www.onelegal.com](http://www.onelegal.com). Refer to General Order in re procedures regarding electronically imaged court records, electronic filing, and access to electronic court records in civil and probate cases or guidelines and procedures.

**COURT REPORTERS:** Court reporters are not provided by the Court in Civil cases. See policy regarding normal availability and unavailability of official court reporters at [www.sdcourt.ca.gov](http://www.sdcourt.ca.gov).

\*ALTERNATIVE DISPUTE RESOLUTION (ADR): THE COURT ENCOURAGES YOU TO CONSIDER UTILIZING VARIOUS ALTERNATIVES TO TRIAL, INCLUDING MEDIATION AND ARBITRATION, PRIOR TO THE CASE MANAGEMENT CONFERENCE. PARTIES MAY FILE THE ATTACHED STIPULATION TO USE ALTERNATIVE DISPUTE RESOLUTION (SDSC FORM #CIV-359).



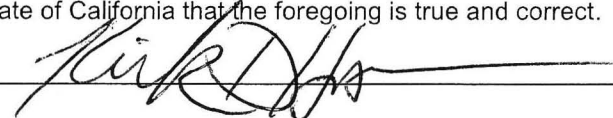
ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Kirk D. Hanson (SBN 167920) Law Offices of Kirk D. Hanson 2790 Truxtun Rd., Ste. 140 San Diego, CA 92106  TELEPHONE NO.: 619/523-1992 FAX NO. (Optional): 619/523-9002 E-MAIL ADDRESS (Optional): hansonlaw@cox.net ATTORNEY FOR (Name): Plaintiffs Craig Tessitore and Sarah Mallon		<b>FOR COURT USE ONLY</b>	
<b>SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO</b> <input type="checkbox"/> CENTRAL DIVISION, CENTRAL COURTHOUSE, 1100 UNION ST., SAN DIEGO, CA 92101 <input type="checkbox"/> CENTRAL DIVISION, COUNTY COURTHOUSE, 220 W. BROADWAY, SAN DIEGO, CA 92101 <input checked="" type="checkbox"/> CENTRAL DIVISION, HALL OF JUSTICE, 330 W. BROADWAY, SAN DIEGO, CA 92101 <input type="checkbox"/> CENTRAL DIVISION, FAMILY COURT, 1501 6TH AVE., SAN DIEGO, CA 92101 <input type="checkbox"/> CENTRAL DIVISION, MADGE BRADLEY, 1409 4TH AVE., SAN DIEGO, CA 92101 <input type="checkbox"/> CENTRAL DIVISION, KEARNY MESA, 8950 CLAIREMONT MESA BLVD., SAN DIEGO, CA 92123 <input type="checkbox"/> CENTRAL DIVISION, JUVENILE COURT, 2851 MEADOW LARK DR., SAN DIEGO, CA 92123 <input type="checkbox"/> NORTH COUNTY DIVISION, 325 S. MELROSE DR., VISTA, CA 92081 <input type="checkbox"/> EAST COUNTY DIVISION, 250 E. MAIN ST., EL CAJON, CA 92020 <input type="checkbox"/> SOUTH COUNTY DIVISION, 500 3RD AVE., CHULA VISTA, CA 91910			
PLAINTIFF(S) Craig Tessitore and Sarah Mallon			
DEFENDANT(S) Macy's West Stores, Inc.		JUDGE Timothy Taylor	
IN THE MATTER OF   <div style="text-align: right;">A MINOR</div>		DEPT C-72	
<b>PEREMPTORY CHALLENGE</b>		CASE NUMBER 37-2018-00044691-CU-OE-CTL	

Kirk D. Hanson \_\_\_\_\_, is ☐ a party ☒ an attorney for a party in the above-entitled case and declares that Timothy Taylor \_\_\_\_\_, the judge to whom this case is assigned, is prejudiced against the party or the party's attorney or the interests of the party or the party's attorney such that the said party or parties believe(s) that a fair and impartial trial or hearing cannot be had before such judge.

WHEREFORE, pursuant to the provisions of Code Civ. Proc. §170.6, I respectfully request that this court issue its order reassigning said case to another, and different, judge for further proceedings.

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

Date: September 6, 2018

  
 Signature

### ORDER OF THE COURT

☐ GRANTED - This case is referred to Presiding/Supervising Department for reassignment and a notice will be mailed to counsel.

☐ DENIED

Date: \_\_\_\_\_

\_\_\_\_\_  
Judge/Commissioner/Referee of the Superior Court

### FOR OFFICE USE ONLY

This case has been reassigned to Judge \_\_\_\_\_ per Presiding/Supervising Judge \_\_\_\_\_ on \_\_\_\_\_.



EFFECTIVE IMMEDIATELY, THE ABOVE-ENTITLED CASE HAS BEEN REASSIGNED

All subsequent documents filed in this case must include the name of the new judge and the department number on the first page immediately below the number of the case. All counsel and self-represented litigants are advised that Division II of the Superior Court Rules is strictly enforced. It is the duty of each plaintiff (and cross-complainant) to serve a copy of this notice with the complaint (and cross-complaint).

(Rev 8-06)

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO**

STREET ADDRESS: 330 West Broadway  
 MAILING ADDRESS: 330 West Broadway  
 CITY AND ZIP CODE: San Diego, CA 92101  
 BRANCH NAME: Central  
 TELEPHONE NUMBER: (619) 450-7066

PLAINTIFF(S)/PETITIONER(S)/APPELLANT(S): Craig Tessitore et.al.

DEFENDANT(S)/RESPONDENT(S): Macys West Stores Inc

Short Title: Tessitore vs Macys West Stores Inc [IMAGED]

**NOTICE OF HEARING**

CASE NUMBER:

37-2018-00044691-CU-OE-CTL

Notice is given that the above-entitled case has been set for the reason listed below and at the location shown above. All inquiries regarding this notice should be referred to the court listed above.

**TYPE OF HEARING**

Civil Case Management Conference

**DATE**

05/03/2019

**TIME**

08:30 am

**DEPT**

C-66

**JUDGE**

Kenneth J Medel

Counsel: Check service list. If you have brought a party into this case who is not included in the service list, San Diego Superior Court Local Rules, Division II, requires you to serve the party with a copy of this notice.

A case management statement must be completed by counsel for all parties or parties in pro per and timely filed with the court at least 15 days prior to the initial case management conference. (San Diego Local Rules, Division II, CRC Rule 3.725).

All counsel of record or parties in pro per shall appear at the Case Management Conference, be familiar with the case, and be fully prepared to participate effectively in the hearing, including discussions of ADR options.



**Exhibit B**



JS 44 (Rev. 07/16)

**CIVIL COVER SHEET**

The JS 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 by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

**I. (a) PLAINTIFFS**

CRAIG TESSITORE and SARAH MALLON

(b) County of Residence of First Listed Plaintiff SAN DIEGO

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

KIRK D. HANSON, SBN 167920, LAW OFFICES OF KIRK D. HANSON  
2790 TRUXTUN ROAD, SUITE 140, SAN DIEGO, CA 92106  
TEL: (619) 523-1992 FAX: (619) 5239002

**DEFENDANTS**

MACY'S WEST STORES, INC.

**'18CV2343 DMS KSC**County of Residence of First Listed Defendant OHIO

(IN U.S. PLAINTIFF CASES ONLY)

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

Attorneys (If Known)

MARIA C. ROBERTS, SBN 137907, GREENE & ROBERTS  
402 WEST BROADWAY, SUITE 1025, SAN DIEGO, CA 92101  
TEL: (619) 398-3400 FAX: (619) 330-4907

**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)

- |   | PTF                                   | DEF                        |   | PTF                        | DEF                                   |
|---|---------------------------------------|----------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State                   | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4            |
| Citizen of Another State                | <input type="checkbox"/> 2            | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3            | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6            |

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

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<b>PERSONAL INJURY</b> <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input checked="" type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	<b>PRISONER PETITIONS</b> <b>Habeas Corpus:</b> <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <b>Other:</b> <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

**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):  
28 U.S.C. § 1453(b)Brief description of cause:  
Diversity under CAFA**VII. REQUESTED IN COMPLAINT:**☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.**DEMAND \$**

CHECK YES only if demanded in complaint:

**JURY DEMAND:** ☐ Yes ☒ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE \_\_\_\_\_

DOCKET NUMBER \_\_\_\_\_

DATE

10/12/2018

SIGNATURE OF ATTORNEY OF RECORD

/s/ MARIA C. ROBERTS

FOR OFFICE USE ONLY

RECEIPT # \_\_\_\_\_ AMOUNT \_\_\_\_\_ APPLYING IFP \_\_\_\_\_ JUDGE \_\_\_\_\_ MAG. JUDGE \_\_\_\_\_



Kirk D. Hanson (SBN 167920)  
LAW OFFICES OF KIRK D. HANSON  
2790 Truxtun Rd., Ste. 140  
San Diego, CA 92106  
Tel: (619) 523-1992  
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*hansonlaw@cox.net*

**ELECTRONICALLY FILED**  
Superior Court of California,  
County of San Diego  
**09/04/2018** at 05:03:09 PM  
Clerk of the Superior Court  
By Gen Dieu, Deputy Clerk

Attorneys for Plaintiffs Craig Tessitore  
and Sarah Mallon

**IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA,  
COUNTY OF SAN DIEGO**

CRAIG TESSITORE and SARAH  
MALLON, on behalf of themselves and  
all others similarly situated,

Plaintiffs,

vs.

MACY'S WEST STORES, INC., and  
DOES 1 through 25, inclusive,

Defendants.

**Case No. 37-2018-00044691-CU-OE-CTL**

**PAGA REPRESENTATIVE  
CLAIMS AND CLASS ACTION  
CLAIMS**

Plaintiffs Craig Tessitore and Sarah Mallon, on behalf of themselves and all  
others similarly situated, complain and allege as follows:

**I. INTRODUCTION AND GENERAL ALLEGATIONS**

1. Plaintiffs bring this action on behalf of themselves and all other  
similarly situated current and former sales employees, who were employed by  
Defendants MACY'S WEST STORES, INC. and/or DOES 1 through 25,  
inclusive, (collectively the "Defendants") in the State of California, for violations

COMPLAINT

1

1 of the California Labor Code and Wage Order No. 7-2001 stemming from  
 2 Defendants' (1) unlawful deduction of commission wages due to an unlawful  
 3 "Price Adjustment" chargeback policy and unlawful "Even Exchange" chargeback  
 4 policy, (2) failure to timely pay final wages upon termination of employment, and  
 5 (3) unfair competition. Plaintiffs each suffered from these violations.

6 2. Plaintiffs bring this lawsuit seeking monetary and injunctive relief  
 7 against Defendants and each of them, on behalf of themselves, the State of  
 8 California, the Aggrieved Employees, and the Class Members, to recover, among  
 9 other things, civil penalties, unpaid wages, interest, attorneys' fees, statutory  
 10 penalties, and costs and expenses pursuant to California Law.

## 11 **II. JURISDICTION**

12 3. This Court has jurisdiction over this matter pursuant to Labor Code §§  
 13 200, 201, 202, 203, 221, 223, and 2698 et seq., and Wage Order No. 7.

## 14 **III. VENUE**

15 4. Venue as to each Defendant is proper in this court, pursuant to Code  
 16 of Civil Procedure § 395(a), as each Defendant maintains offices, transacts  
 17 business, and/or has an agent in San Diego County, and each Defendant is  
 18 otherwise within this Court's jurisdiction for purposes of service of process. The  
 19 unlawful acts alleged herein have a direct effect on Plaintiffs and those similarly  
 20 situated within the State of California and within San Diego County. Defendants  
 21 employ the Aggrieved Employees and Class Members in San Diego County and  
 22 other counties in California.

## 23 **IV. PARTIES**

### 24 **Plaintiffs**

25 5. Plaintiff CRAIG TESSITORE resides in the State of California,  
 26 County of San Diego, and is a citizen of California. Mr. TESSITORE is currently  
 27 employed by Defendants in San Diego County, California, as a commissioned  
 28 sales employee. Plaintiff SARAH MALLON resides in the State of California,



County of Orange, and is a citizen of California. Ms. MALLON is a former employee of Defendants, and was employed by Defendants during the relevant statutory period in Orange County, California, as a commissioned sales employee. Plaintiffs, the Aggrieved Employees, and the Class Members are all current or former commissioned sales employees of Defendants classified by Defendants as "Draw vs. Commission Associates," "Base Plus Commission Associates" or otherwise classified by Defendants as commissioned sales employees and are collectively referred to herein as "Sales Employees."

**Defendants**

6. Upon information and belief, Defendant MACY'S WEST STORES, INC., is now, and at all relevant times has been, an Ohio Corporation, and does business throughout the State of California, including San Diego County.

7. Plaintiffs are ignorant of the true names, capacities, relationships, and extent of participation in the conduct herein alleged of Defendants sued herein as DOES 1 through 25, inclusive, but on information and belief allege that those Defendants are legally responsible for the payment of penalties and damages to Plaintiffs, the Aggrieved Employees, and the Class Members by virtue of Defendants' unlawful actions and practices and therefore sue these Defendants by such fictitious names. Plaintiffs will amend this complaint to allege the true names and capacities of the DOE Defendants when ascertained.

8. Plaintiffs are informed and believe and based thereon allege that Defendants, and each of them, acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are legally attributable to the other Defendants. On information and belief, a unity of interest and ownership between each Defendant exists such that all Defendants acted as a single employer of Plaintiffs, the Aggrieved Employees, and the Class Members.



1  
2 **V. PAGA REPRESENTATIVE ACTION ALLEGATIONS**

3 9. Plaintiff CRAIG TESSITORE hereby incorporates by reference  
4 Paragraphs 1 through 8 above as though fully set forth herein.

5 10. The following causes of action brought under the Labor Code Private  
6 Attorneys General Act ("PAGA", Lab. C. §§2698-2699.5) are pursued by Plaintiff  
7 CRAIG TESSITORE. Plaintiff TESSITORE is an Aggrieved Employee under  
8 PAGA as he was employed by Defendants during the applicable statutory period  
9 and suffered one or more of the Labor Code violations alleged herein. As such, he  
10 seeks to recover, on behalf of the State of California and the Aggrieved Employees  
11 of Defendants, all applicable civil penalties provided by PAGA. Moreover,  
12 Plaintiff TESSITORE seeks to recover the PAGA civil penalties through a  
13 representative action as permitted by California law. Therefore, Plaintiff  
14 TESSITORE is not required to seek class certification of the PAGA claims under  
15 Code of Civil Procedure § 382, nor does he seek class certification of such claims.

16 11. Pursuant to Labor Code § 2698 et seq., on June 15, 2018, Plaintiff  
17 TESSITORE submitted, via online service to the California Labor & Workforce  
18 Development Agency ("LWDA") and via certified mail to Defendants, a PAGA  
19 claim notice letter setting forth the violations by Defendants of various wage and  
20 hour rules as alleged herein, which notice letter included the facts and theories  
21 supporting the alleged violations. Over sixty-five (65) calendar days have passed  
22 since Plaintiff TESSITORE provided the LWDA with his PAGA claim notice  
23 letter on June 15, 2018, and there has been no response from the LWDA.  
24 Therefore, Plaintiff TESSITORE has exhausted the prefiling requirements of  
25 PAGA, and may now prosecute this PAGA representative action.

26 12. At all material times, Defendants and DOES 1 through 25 were and/or  
27 are the employers of the Aggrieved Employees or are persons acting on behalf of  
28

the employers of the Aggrieved Employees, within the meaning of California Labor Code § 558.1, with respect to Defendants' violation of Labor Code § 203.

### **FIRST CAUSE OF ACTION**

#### **PAGA Civil Penalties for Illegal Commission Chargeback Policies (Violation of Labor Code § 221)**

13. Plaintiff CRAIG TESSITORE hereby incorporates by reference Paragraphs 1 through 12 above as though fully set forth herein.

14. During Plaintiff TESSITORE's employment with Defendants, he was subjected to unlawful deductions from his earned commission wages under Defendants' illegal commission chargeback schemes. Under Defendants' "Price Adjustment" policy, Defendants deduct wages from the earned commissions of Plaintiff TESSITORE and the Aggrieved Sales Employees when a customer requests a monetary credit for already-purchased merchandise that Defendants subsequently reduce in price after the customer's purchase and after the Sales Employee has been paid commission on the sale (hereinafter referred to as the "Price Adjustment Chargeback policy"). Defendants' Price Adjustment Chargeback policy states:

A "Price Adjustment" occurs when, in accordance with our return policies, a customer requests and receives a credit due to merchandise going on sale after the original date of purchase. Price Adjustments are processed using the Price Adjustment function on the register. Because the Price Adjustment happens within the Eligible Return Period, the amount of the Price Adjustment is considered a Return and is applied against the Original Associate's Gross Sales and the Original Associate retains the remaining value of the original sale.

Likewise, Defendants' "Even Exchange" policy (hereinafter referred to as "Even Exchange Chargeback policy") deducts wages from the earned commissions of Plaintiff TESSITORE and the Aggrieved Sales Employees when a customer



1 returns merchandise and replaces it with essentially the same item (e.g. customer  
2 returns a shirt in Medium and replaces it with the same item in Large).

3 15. Plaintiff TESSITORE and the other Aggrieved Sales Employees were  
4 subjected to unlawful deductions of commission wages already paid to the Sales  
5 Employees as a result of Defendants' unlawful Price Adjustment Chargeback  
6 policy. Defendants' decision to discount merchandise after the sale is a business  
7 decision totally beyond the control of the Sales Employees. Defendants' Price  
8 Adjustment Chargeback policy operates to illegally shift Defendants' cost of doing  
9 business to the Sales Employees by forcing these employees to subsidize the  
10 reduction in price of Defendants' merchandise by giving back the commissions  
11 they earned on the original sale through illegal deductions from their commission  
12 wages. Likewise, Defendants' Even Exchange Chargeback policy illegally deducts  
13 earned commission wages from the Sales Employees in the amount of the  
14 commission paid on the item of merchandise when it is exchanged after the sale for  
15 a different size or color, etc., despite the fact that Defendants do not lose any  
16 money on the exchange. Thus, Defendant's Price Adjustment Chargeback policy  
17 and Even Exchange Chargeback policy violate Labor Code § 221 by deducting  
18 commission wages previously paid to the Sales Employees.

19 16. As a result of Defendants' violations of Labor Code § 221 through  
20 their illegal Price Adjustment Chargeback policy and illegal Even Exchange  
21 Chargeback policy, Plaintiff TESSITORE seeks, on behalf of the State of  
22 California and the Aggrieved Sales Employees, all applicable civil penalties  
23 mandated by Labor Code § 2699(f)(2).

## 24 **SECOND CAUSE OF ACTION**

### 25 **PAGA Civil Penalties for Illegal Commission Chargeback Policies** 26 **(Violation of Labor Code § 223)**

27 17. Plaintiff CRAIG TESSITORE hereby incorporates by reference  
28 Paragraphs 1 through 16 above as though fully set forth herein.



18. Labor Code § 223 states that “where any statute or contract requires an employer to maintain the designated wage scale, it shall be unlawful to secretly pay a lower wage while purporting to pay the wage designated by statute or by contract.” Section 223 applies where the employer nominally pays employees the wage required by contract or statute, but then requires the employees to pay back a portion of the wages so that in reality the employees are earning less than was required. *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4<sup>th</sup> 1157, 1204-1205. Under § 223, the secret is being kept from the applicable enforcement agency--not from the employees. *Id.* at p. 1205. “[T]he secret is not the making of an ‘underpayment’ but rather the existence of the employer’s obligation to pay more.” *Id.*

19. Defendants’ Price Adjustment Chargeback policy and Even Exchange Chargeback policy violate Labor Code § 223 because the underpayment of commission wages resulting from these policies are kept secret from California law enforcement agencies as well as Defendants’ obligation to pay the full amount of commission wages owed to the Sales Employees. *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4<sup>th</sup> 1157, 1204-1205.

20. As a result of Defendants’ violations of Labor Code § 223 through their illegal Price Adjustment Chargeback policy and illegal Even Exchange Chargeback policy, Plaintiff TESSITORE seeks, on behalf of the State of California and the Aggrieved Sales Employees, all applicable civil penalties mandated by Labor Code § 2699(f)(2).

### **THIRD CAUSE OF ACTION**

#### **PAGA Civil Penalties for failure to Pay Wages at Termination**

#### **(Violation of Labor Code §§ 201, 202, 203)**

21. Plaintiff CRAIG TESSITORE hereby incorporates by reference Paragraphs 1 through 20 above as though fully set forth herein.

1           22. Labor Code §201(a) states that if an employer discharges an  
2 employee, all wages earned and unpaid at the time of discharge are due and  
3 payable immediately. Likewise, pursuant to Labor Code § 202(a), if an employee  
4 resigns, the employer must pay all wages earned and unpaid not later than 72 hours  
5 after resignation.

6           23. When Defendants terminate Sales Employees or when the employees  
7 resign, Defendants issue wage statements indicating that final wages are being  
8 paid, when in fact the entire paycheck or large portions of the wages listed on the  
9 paycheck are withheld by Defendants, which requires the employees to discover  
10 the illegal withholding and then request the unpaid wages from Defendants. This  
11 illegal withholding of final wages by Defendants is an intentional scheme  
12 undertaken by Defendants to reduce labor costs, and violates Labor Code §§ 201  
13 and 202.  
14

15           24. Additionally, as set forth above, Defendants do not pay their Sales  
16 Employees all commission wages owed as a result of the illegal Price Adjustment  
17 Chargeback policy and the illegal Even Exchange Chargeback policy. Thus, in  
18 violation of Labor Code §§ 201 and 202, Defendants' Sales Employees are not  
19 paid these wages at the time of termination or resignation.

20           25. As a result of these violations of §§ 201 and 202, Plaintiff Tessitore  
21 seeks, on behalf of the State of California and all other Aggrieved Sales  
22 Employees, all applicable civil penalties mandated by Labor Code § 2699(f)(2).  
23 Additionally, pursuant to Labor Code § 558 and Wage Order No. 7, Plaintiff  
24 Tessitore seeks PAGA civil penalties in the amount of the unpaid wages withheld  
25 from the Sales Employees, including minimum wages, contractual wages, and/or  
26 commission wages, which civil penalties are to be paid solely to the Aggrieved  
27 Sales Employees. *See Reynolds v. Bement* (2005) 36 Cal.4<sup>th</sup> 1075, 1075-1089;  
28



1 *Thurman v. Bayshore Transit Management* (2012) 203 Cal.App.4<sup>th</sup> 1112, 1147-  
2 1148.

3 **VI. CLASS ACTION ALLEGATIONS**

4 26. Plaintiffs incorporate by this reference Paragraphs 1 through 25 above  
5 as though fully set forth herein.

6 27. Plaintiffs TESSITORE and MALLON bring this action on behalf of  
7 themselves and all others similarly situated as a class action pursuant to Code of  
8 Civil Procedure § 382. The Class, also referred to as the “Represented  
9 Employees,” that Plaintiffs seek to represent is defined as follows:

10 All current and former employees of Macy’s West  
11 Stores, Inc. who were employed by Macy’s in California  
12 as commissioned sales employees at any time during the  
13 period commencing four (4) years preceding the filing of  
14 this complaint up through the time of the final judgment  
15 in this matter.

16 28. Plaintiffs TESSITORE and MALLON, as Class Representatives, are  
17 members of the class they seek to represent.

18 29. At all relevant times alleged herein, the Represented Employees were  
19 employees of Defendants and were subjected to Defendants’ (1) unlawful  
20 deduction of wages due to the Price Adjustment Chargeback policy and Even  
21 Exchange Chargeback policy, (2) failure to timely pay all wages due and owing  
22 upon separation from employment within the time required by Cal. Labor Code §§  
23 201 – 203, and (3) unfair and unlawful competition.

24 30. This action has been brought and may be properly maintained as a  
25 class action under Code of Civil Procedure § 382 because Defendants’ practices  
26 were applied uniformly to all members of the Class, so that the questions of law  
27 and fact are common to all members of the Class.  
28



31. All members of the Class were and/or are similarly affected by the actions of Defendants as alleged herein, and the relief sought herein is for the benefit of Plaintiffs and members of the Class.

32. **Numerosity**: The potential members of the Class as defined are so numerous that a joinder of all Class Members is impracticable. Although the exact number is currently unknown, that information is easily ascertainable from Defendants' payroll and personnel records.

33. **Commonality**: Questions of law and fact common to Plaintiffs and the Class exist that predominate over questions affecting only individual members, including:

- i. Whether Defendants deducted earned commissions from the Represented Employees under Defendants' Price Adjustment Chargeback policy and Even Exchange Chargeback policy, in violation of California law;
- ii. Whether Defendants failed to timely pay all wages due and owing to the Represented Employees upon separation from employment, as required by Cal. Labor Code §§ 201 – 203;
- iii. Whether Defendants violated California Business & Professions Code §§ 17200 *et seq.* by unlawfully deducting earned wages under the Price Adjustment Chargeback policy and the Even Exchange Chargeback policy, and by failing to timely pay all wages due and owing to the Represented Employees upon separation from employment;
- iv. Whether Defendants violated § 17200 *et seq.* of the California Business and Professions Code and, without limitation, California Labor Code §§ 201, 202, 203, 221, and 223 and Wage Order No. 7; and

1 v. Whether Plaintiff and Represented Employees are entitled to equitable  
2 relief pursuant to California Business & Professions Code §§ 17200 *et*  
3 *seq.*, including restitution of wages.

4 34. **Typicality**: Plaintiffs' claims, as the Class Representatives, are  
5 typical of the claims of the Class. The Class Representatives, like other members  
6 of the Class, were subjected to the same Labor Code violations committed by  
7 Defendants as alleged herein.

8 35. **Adequacy of Representation**. Plaintiffs, as the Class  
9 Representatives, will fairly and adequately represent and protect the interests of the  
10 Class Members. Plaintiffs' interests are not in conflict with those of the Class  
11 Members. Class Representatives' counsel is competent and experienced in  
12 litigating large employment class actions and other complex litigation matters,  
13 including cases like this case.

14 36. **Superiority of Class Action**. Class certification is appropriate  
15 because a class action is superior to other available means for the fair and efficient  
16 adjudication of this controversy. Each Class Member has been damaged and is  
17 entitled to recovery by reason of Defendants' illegal policies and practices set forth  
18 above. Class action treatment will allow those similarly situated persons to litigate  
19 their claims in the manner that is most efficient and economical for the parties and  
20 the judicial system. Absent a class action, it would be highly unlikely that the  
21 representative Plaintiffs or any other members of the Class would be able to protect  
22 their own interests because the cost of litigation through individual lawsuits might  
23 exceed expected recovery.

24 37. Certification is also appropriate because Defendants acted, or refused  
25 to act, on grounds generally applicable to both the Class Representatives and the  
26 Class, thereby making appropriate the relief sought on behalf of the Class. Further,  
27 given the large number of Represented Employees, allowing individual actions to  
28



1 proceed in lieu of a class action would run the risk of yielding inconsistent and  
2 conflicting adjudications.

3 38. A class action is a fair and appropriate method for the adjudication of  
4 the controversy, in that it will permit a large number of claims to be resolved in a  
5 single forum simultaneously, efficiently, and without the unnecessary hardship that  
6 would result from the prosecution of numerous individual actions and the  
7 duplication of discovery, effort, expense and burden on the courts that individual  
8 actions would engender.

9 39. The benefits of proceeding as a class action, including providing a  
10 method for obtaining redress for claims that would not be practical to pursue  
11 individually, outweigh any difficulties that might be argued with regard to the  
12 management of this class action.

#### 13 **FOURTH CAUSE OF ACTION**

##### 14 **Unlawful Deduction of Wages**

##### 15 **(Violation of Cal. Labor Code § 221)**

16 40. Plaintiffs reallege and incorporate by reference paragraphs 1 through  
17 39 above as though fully set forth herein.

18 41. California Labor Code § 221 states that “[i]t shall be unlawful for any  
19 employer to collect or receive from an employee any part of wages theretofore paid  
20 by said employer to said employee.” California Labor Code § 200 defines “wages”  
21 as “all amounts for labor performed by employees of every description, whether  
22 the amount is fixed or ascertained by the standard of time, task, piece, *commission*  
23 *basis*, or other method of calculation.” For this reason, sales commissions are  
24 “wages.” See *Reid v. Overland Machined Products* (1961) 55 Cal.2d 203, 207–  
25 208; *Koehl v. Vero, Inc.* (2006) 142 Cal.App.4th 1313, 1329 (“*Koehl*”); *Hudgins v.*  
26 *Neiman Marcus Group, Inc.* (1995) 34 Cal.App.4th 1109, 1118 (“*Hudgins*”).

27 42. California Labor Code § 221 reflects “‘California's strong public  
28 policy favoring the protection of employees' wages,’ including amounts earned



1 through commissions on sales.” *Sciborski v. Pacific Bell Directory* (2012) 205  
2 Cal.App.4th 1152, 1166 (“*Sciborski*”), quoting *Harris v. Investor's Business Daily,*  
3 *Inc.* (2006) 138 Cal.App.4th 28, 40–41. Furthermore, Labor Code §219 states that  
4 the protections of Labor Code § 221 cannot “be contravened or set aside by a  
5 private agreement.” Therefore, the rights under Labor Code § 221 are  
6 nonnegotiable and cannot be waived by the parties. See *Sciborski, supra* at 1166.  
7 Also, under California Labor Code §§ 219 and 221, an employer may not “require  
8 its employees to consent to unlawful deductions from their wages.” *Hudgins, supra*  
9 at 1124.

10 43. As previously alleged herein, at all relevant times, Plaintiffs and the  
11 Represented Employees were subjected to unlawful deductions from earned  
12 commission wages due to Defendants’ Price Adjustment Chargeback policy and  
13 Even Exchange Chargeback policy. Defendants’ Price Adjustment Chargeback  
14 policy and Defendants’ decision to discount merchandise after the sale is entirely  
15 unrelated to the sale of goods between the Sales Employee and customers. This  
16 policy unlawfully shifts the costs of doing business (i.e. Macy’s losses on  
17 discounted items to generate other business and sales) to the Sales Employees, in  
18 violation of Labor Code § 221, by deducting this cost directly from the Sales  
19 Employees’ earned commission wages. This deduction is done after the sale is  
20 complete and after the Sales Employees have been paid commissions on the  
21 original sale. Likewise, Defendants’ Even Exchange Chargeback policy illegally  
22 deducts earned commission wages from the Sales Employees in the amount of the  
23 commission paid on the item of merchandise when it is exchanged after the sale for  
24 a different size or color, etc., despite the fact that Defendants do not lose any  
25 money on the exchange.

26 44. As a result of Defendants’ unlawful deduction of wages pursuant to  
27 the Price Adjustment Chargeback policy and the Even Exchange Chargeback  
28 policy, Plaintiffs, on behalf of themselves and the Represented Employees, seek

1 recovery under Labor Code § 221 of all unlawfully deducted wages, interest  
2 thereon, attorneys' fees, and costs of suit against Defendants in an amount to be  
3 proven at trial.

#### 4 **FIFTH CAUSE OF ACTION**

##### 5 **Unlawful Deduction of Wages**

##### 6 **(Violation of Labor Code § 223)**

7 45. Plaintiffs hereby incorporate by reference Paragraphs 1 through 44  
8 above as though fully set forth herein.

9 46. Labor Code § 223 states that "where any statute or contract requires  
10 an employer to maintain the designated wage scale, it shall be unlawful to secretly  
11 pay a lower wage while purporting to pay the wage designated by statute or by  
12 contract." Section 223 applies where the employer nominally pays employees the  
13 wage required by the contract but then requires the employees to pay back a  
14 portion of the wages so that in reality the employees are earning less than was  
15 required. *Amaral v. Cintas Corp. No. 2* (2008) 163 Cal.App.4<sup>th</sup> 1157, 1204-1205.  
16 Under § 223, the secret is being kept from the applicable state enforcement  
17 agency--not from the employees. *Id.* at p. 1205. "[T]he secret is not the making of  
18 an 'underpayment' but rather the existence of the employer's obligation to pay  
19 more." *Id.*

20 47. Defendants' Price Adjustment Chargeback policy and Even Exchange  
21 Chargeback policy violate Labor Code § 223 because the underpayment of  
22 commission wages resulting from these policies, as alleged above, is kept secret  
23 from California law enforcement agencies as well as Defendants' obligation to pay  
24 the full amount of commission wages owed to the Sales Employees. *Amaral v.*  
25 *Cintas Corp. No. 2* (2008) 163 Cal.App.4<sup>th</sup> 1157, 1204-1205.

26 48. As a result of Defendants' unlawful deduction of wages pursuant to  
27 the Price Adjustment Chargeback policy and the Even Exchange Chargeback  
28 policy, Plaintiffs, on behalf of themselves and the Represented Employees, seek



1 recovery under Labor Code § 223 of all unlawfully deducted wages, interest  
 2 thereon, attorneys' fees, and costs of suit against Defendants in an amount to be  
 3 proven at trial.

#### 4 **SIXTH CAUSE OF ACTION**

##### 5 **Failure to Pay Wages Owed at Separation of Employment** 6 **(Violation of Labor Code §§ 201, 202, 203)**

7 49. Plaintiffs hereby incorporate by reference Paragraphs 1 through 48  
 8 above as though fully set forth herein.

9 50. Labor Code §201(a) states that if an employer discharges an  
 10 employee, all wages earned and unpaid at the time of discharge are due and  
 11 payable immediately. Likewise, pursuant to Labor Code § 202(a), if an employee  
 12 resigns, the employer must pay all wages earned and unpaid not later than 72 hours  
 13 after resignation.

14 51. When Defendants terminate Sales Employees or when the employees  
 15 resign, Defendants issue wage statements indicating that final wages are being  
 16 paid, when in fact the entire paycheck or large portions of the wages listed on the  
 17 paycheck are withheld by Defendants, which requires the employees to discover  
 18 the illegal withholding of wages and then request the unpaid wages from  
 19 Defendants. This illegal withholding of final wages by Defendants is an intentional  
 20 scheme undertaken by Defendants to reduce labor costs. This policy violates Labor  
 21 Code §§ 201 and 202.

22 52. Defendants do not pay the Sales Employees all commission wages  
 23 owed as a result of the illegal Price Adjustment Chargeback policy and illegal  
 24 Even Exchange Chargeback policy. Thus, in violation of Labor Code §§ 201 and  
 25 202, Defendants' Sales Employees are not paid these wages at the time of  
 26 termination or resignation.  
 27  
 28



53. Defendants' violations of §§ 201 and 202 as set forth above, are willful. Accordingly, Plaintiffs seek, on behalf of themselves and the Class, the penalties provided by Labor Code § 203 in the amount of 30 days of wages for each former Sales Employee.

## **SEVENTH CAUSE OF ACTION**

### **Unfair Competition**

#### **(Violation of California Business and Professions Code §17200, *et seq.*)**

54. Plaintiffs reallege and incorporate by reference paragraphs 1 through 53 above as though fully set forth herein.

55. California Business & Professions Code § 17200, *et seq.*, prohibits acts of unfair competition, which includes any "unlawful, unfair or fraudulent business act or practice..." The Represented Employees, including Plaintiffs, have suffered and continue to suffer injuries in fact, due to the unfair and unlawful business practices of Defendants as alleged herein above. As alleged in detail above, Defendants engaged in conduct that violated California's wage and hour laws. From the time that each Represented Employee was hired, Defendants failed to comply with the California Labor Code and IWC Wage Order No. 7 through their actions as herein alleged.

56. At all relevant times herein, Defendants did not pay the Represented Employees wages and monies and other financial obligations attached thereto to which they were entitled.

57. As a result of Defendants' failure to comply with the Labor Code and IWC Wage Order No. 7, the Represented Employees, including Plaintiffs, suffered a loss of wages and monies, all in an amount to be shown according to proof at trial. Defendants' ongoing violations of the foregoing statutes and laws constitute a violation of Bus. & Prof. Code § 17200, *et seq.*

58. Defendants' violations of the California Labor Code and IWC Wage Order No. 7 and their scheme to lower payroll costs and costs of doing business

1 through their illegal Price Adjustment Chargeback policy, illegal Even Exchange  
 2 Chargeback policy, and unlawful failure to pay all wages due at the time of  
 3 separation from employment, including the withholding of minimum wages,  
 4 contractual wages, and/or commission wages required to be paid by the Labor  
 5 Code and Wage Order No. 7, subdivisions 3 and 4, and the other violations as  
 6 alleged herein, constitute unlawful and unfair business practices because it was  
 7 done in a systematic manner over a period of time to the detriment of the Plaintiffs  
 8 and all others similarly-situated.

9 59. As a result of the unfair business practices of Defendants alleged  
 10 herein, Plaintiffs and all Represented Employees are entitled to restitution of their  
 11 unlawfully deducted wages and unlawfully withheld wages at the time of the  
 12 termination of employment in an amount according to proof at trial. As private  
 13 attorneys general under California Code of Civil Procedure § 1021.5, Represented  
 14 Employees seek to recover any and all attorneys' fees and costs incurred herein.

## 15 **VII. PRAYER FOR RELIEF**

16 WHEREFORE, Plaintiffs pray for judgment for themselves and all others on  
 17 whose behalf this suit is brought, against Defendants, jointly and severally, as  
 18 follows:

- 19 1. For certification of the Fourth through the Seventh Causes of Action  
 20 as a Class Action pursuant to Code of Civil Procedure § 382.
- 21 2. For appointment of Plaintiffs as the representatives of the Class.
- 22 3. For appointment of Counsel for Plaintiffs as Class Counsel for the  
 23 Class.
- 24 4. For such general, special and liquidated damages as may be  
 25 appropriate, including all damages alleged above.
- 26 5. For payment of all unpaid wages and illegally deducted wages that  
 27 were denied due to Defendants' illegal Price Adjustment Chargeback policy,  
 28

1 illegal Even Exchange Chargeback policy, and illegal withholding of wages at  
2 termination of employment policy.

3 6. For waiting time penalties of up to thirty (30) days of wages as  
4 provided for in Labor Code § 203 for all Class members who are no longer  
5 employed by Defendants.

6 7. For restitution of all unpaid wages and illegally deducted and illegally  
7 withheld wages, as described in the claim for relief under Business. & Prof. Code §  
8 17200 et seq. above.

9 8. For all applicable civil penalties available under The Labor Code  
10 Private Attorneys General Act (Lab. C. § 2698 et seq.), Wage Order No. 7, and  
11 California law, plus reasonable attorney's fees and costs.

12 9. For reasonable attorneys' fees and costs of suit to the extent permitted  
13 by law.

14 10. For pre- and post-judgement interest.

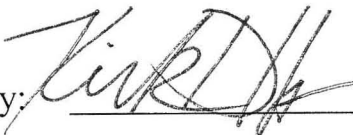
15 11. For such other relief as the Court deems just and proper.

16 **DEMAND FOR JURY TRIAL**

17 WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly  
18 situated, hereby demand a jury trial as to the Fourth through Seventh Causes of  
19 Action pled in the Complaint herein.

20  
21 Date: September 4, 2018

LAW OFFICES OF KIRK D. HANSON

22  
23 By:   
24 Kirk D. Hanson  
25 Attorneys for Plaintiffs  
26  
27  
28



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8 Attorneys for Defendant  
9 MACY'S WEST STORES, INC.

10 UNITED STATES DISTRICT COURT  
11 SOUTHERN DISTRICT OF CALIFORNIA

12 CRAIG TESSITORE and SARAH  
13 MALLON, on behalf of themselves  
14 and all others similarly situated,

15 Plaintiffs,

16 v.

17 MACY'S WEST STORES, INC., and  
18 DOES 1 through 25, inclusive,

19 Defendants.

Case No. '18CV2343 DMS KSC

**PROOF OF SERVICE**

Craig Tessitore, et al. v. Macy's West Stores, Inc.  
United States District Court, Southern District of California  
Case No. \_\_\_\_\_

At the time of service, I was over 18 years of age and not a party to the action. My business address is 402 West Broadway, Suite 1025, San Diego, California 92101.

On October 12, 2018, I served the following documents described as:

- **NOTICE OF REMOVAL;**
- **CIVIL COVER SHEET; AND**
- **NOTICE OF PARTY WITH FINANCIAL INTEREST**

on the interested parties in this action as follows:

Kirk D. Hanson, Esq.  
Law Offices of Kirk D. Hanson  
2790 Truxtun Road, Suite 140  
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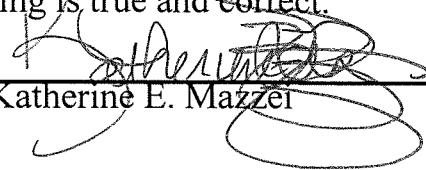
☐ **BY ELECTRONIC SUBMISSION:** Pursuant to Court order, I submitted said document(s) electronically through the United States District Court, Southern Division CM/ECF's website and posted to the website and notice given to all parties that document was served.

☒ **BY MAIL:** I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. postal service on that same day with postage thereon fully prepaid at San Diego, California in the ordinary course of business pursuant to Federal Rule of Civil Procedure section 5(b). I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

☐ **BY PERSONAL SERVICE:** I caused to be hand-delivered said document(s) to the addressee(s) pursuant to Federal Rule of Civil Procedure section 5(b).

Executed on October 12, 2018, at San Diego, California.

I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

  
Katherine E. Mazzei

# ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Sales Employees Sue Macy's Over Allegedly Unlawful Wage Deductions](#)

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