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FILED
Superior Court of California
County of Riverside
9/5/2018
D. Romo
By Fax

10 SUPERIOR COURT OF CALIFORNIA, COUNTY OF RIVERSIDE
11 SOUTHWEST JUSTICECENTER

12 SHAVINA LUCKETT , an individual ,
13 Plaintiff ,

Case No.: MCC1800997

14 vs.

COMPLAINT FOR:

15 KOHL' S DEPARTMENT STORES, INC., a
16 Delaware corporation; and DOES 1 through
17 100, inclusive,
18 Defendants .

- 1) Discrimination (Cal. Gov. Code § 12940(a);)
- 2) Failure to Prevent Discrimination (Cal. Gov. Code § 12940(k));
- 3) Failure to Provide Suitable Seating (IWC Wage Order 7-2001 and Lab. Code § 1198);
- 4) Failure to Maintain a Reasonably Comfortable Temperature (IWC Wage Order 7-2001 and Lab. Code § 1198);
- 5) Failure to Pay All Wages Owed at Termination (Labor Code § 201);
- 6) Unpaid Rest Period Wages (IWC Wage Order No. 7-2001 and Cal. Lab. Code § 226.7);
- 7) Failure to Provide Accurate Itemized Statements (Cal. Lab. Code § 226);

-- **Complaint Continues on Next Page** --

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- 8) Unlawful Business Practices (Cal. Business and Professions Code §§ 17200 *et seq.*); and
- 9) Civil Penalties Pursuant to the California Private Attorneys General Act (Cal. Lab. Code §§ 2698 *et seq.*).

Amount demanded exceeds \$25,000.

JURY TRIAL DEMANDED

1 1) Plaintiff Shavina Lockett (hereafter “Plaintiff”), an individual, hereby alleges against
2 Defendants, Kohl’s Department Stores, Inc., a Delaware corporation (hereafter “Kohl’s”), and
3 Does 1 through 100, inclusive (collectively, “Defendants”), as follows:
4

5 **JURISDICTION AND VENUE**

6 2) Jurisdiction is conferred on this Court over Defendants named herein as residents of the
7 state of California and/or conductors of business in the state of California. Jurisdiction is
8 conferred on this Court as to all causes of action as they arise under state statute or common law.

9 3) Venue is proper in this Court because Plaintiff resides in this County, Defendants reside
10 and/or conduct business in this County, and a substantial part of the events and omissions giving
11 rise to Plaintiff’s causes of action occurred in this County.
12

13 **THE PARTIES**

14 4) Plaintiff Shavina Lockett is an individual residing in Winchester, California.

15 5) Defendant Kohl’s is a Delaware corporation with department stores throughout California,
16 including at 24661 Madison Ave., Murrieta, CA 92562. Kohl’s is a department store chain
17 offering clothing, accessories, and homewares. Plaintiff is informed and believes, and thereon
18 alleges, that Kohl’s is, and at all pertinent times alleged herein was, doing business in the County
19 of Riverside.

20 6) The true names, identities, or capacities, whether individual, corporate, associate, or
21 otherwise, of DOES 1 through 100, inclusive, are unknown to Plaintiff. When the true names,
22 identities, or capacities of such fictitiously designated Defendants are ascertained, Plaintiff will
23 ask leave of this Court to amend this Complaint to insert their true names, identities, and
24 capacities, together with the proper charging allegations. Plaintiff is informed and believes and
25 thereon alleges that some or all of the fictitiously named Defendants are responsible in some
26 manner for the occurrences herein alleged, and that Plaintiff’s damages as herein alleged were
27 proximately caused by those defendants.

28 7) Plaintiff believes and therefore alleges that at all times herein mentioned, each of the

1 Defendants was the agent and employee of each of the other Defendants, and in doing the acts
2 alleged herein, was acting within the scope of such agency and employment. Plaintiff further
3 believes and therefore alleges that the conduct of each of the Defendants as alleged herein was
4 ratified by each of the other Defendants, and the benefits thereof were accepted by each of the
5 other said Defendants.

6
7 **FACTUAL ALLEGATIONS**

8 8) Beginning on or around July 10, 2016, Plaintiff was employed by Kohl's as a cashier in
9 Murrieta, California. Plaintiff's duties included achieving daily credit goals, completing
10 transactions, and maintaining and improving customer good will. Plaintiff performed her job well
11 and received praise from her coworkers and customers. However, Plaintiff's supervisors and
12 managers debased Plaintiff and made her feel less than human because Plaintiff was black and a
13 woman expecting the birth of her child.

14 9) In 2016, while employed by Defendants, Plaintiff became pregnant. Four months into her
15 pregnancy, Plaintiff began experiencing severe cramps while at work. Plaintiff reported the pain
16 to her manager who said Plaintiff could go home but that she would receive a demerit for leaving
17 early. Plaintiff left work and went to the emergency room to find out she was in labor and needed
18 to deliver immediately. Plaintiff lost her child because Plaintiff suffers from cervical
19 insufficiency, a condition where the cervix is weak and starts to dilate and efface before the
20 pregnancy is at term and without labor starting. Essentially, the downward pressure the fetus was
21 exerting on Plaintiff's cervix was too much for Plaintiff's cervix to bear. Plaintiff's medical
22 condition was exacerbated because Defendants necessitated that Plaintiff stand for her shifts.

23 10) In April of 2017, Plaintiff became pregnant again and told one of Defendants' Human
24 Resources associates (hereafter "HR") the news. In order to decrease the risk of a second
25 miscarriage due to cervical insufficiency, Plaintiff provided HR with a note from Plaintiff's doctor
26 stating Plaintiff's condition necessitated her to perform her work while seated for at least 50% of
27 Plaintiff's workday. Plaintiff also told Defendants that her pregnancy was a high-risk pregnancy
28 given her previous miscarriage and insufficient cervix. Plaintiff also informed Defendants that

1 Plaintiff had to take hormone shots to help reduce the risk of a second miscarriage. HR, upset
2 with Plaintiff's reasonable accommodation request, responded that Plaintiff would not be allowed
3 to sit during her shifts. Rather, HR said Plaintiff could be taken off the schedule entirely or have
4 her hours reduced if Plaintiff could not handle her normal job duties without a seat. Plaintiff,
5 visibly upset with HR's response, went to one of her managers, Ms. Cassandra Henson (hereafter
6 "Ms. Henson"). Ms. Henson, in front of customers, humiliated Plaintiff by telling Plaintiff she
7 could "get on disability" and that HR was correct about Defendant's refusal to provide Plaintiff
8 with a seat. Defendants' failure to provide Plaintiff with a seat was especially problematic because
9 some of Plaintiff's non-black coworkers who were employed as cashiers were provided stools to
10 sit on at their cash registers.

11 11) Plaintiff, realizing the real possibility that standing for hours on end could result in a
12 second miscarriage, took matters into her own hands. When Plaintiff's managers were not around,
13 and only if they were not around, Plaintiff found a stool from elsewhere in the store and sat at her
14 register during her shifts. Of course, out of a fear of being reprimanded for sitting, Plaintiff stood
15 while she worked when her managers were present.

16 12) Plaintiff reported Defendants' refusal to provide Plaintiff with a stool to her doctor who
17 provided a second medical note detailing that Plaintiff could sit for as long as she needed and
18 could stand more than 50% of her shift if Plaintiff felt well enough to do so. Despite receiving the
19 second medical note, HR significantly cut Plaintiff's hours and still refused to provide Plaintiff
20 with a chair. After the reduction in hours, Plaintiff wrote a letter to the store manager explaining
21 how she was being mistreated and discriminated against because of her pregnancy, as evidenced
22 by Plaintiff's loss of hours and lack of seat. The store manager had a discussion with HR, which
23 resulted in Plaintiff's hours being restored and a stool being provided. However, remedying
24 Plaintiff's hours and eventually providing a stool did not remedy the mental pain and suffering
25 Plaintiff endured due to HR and Ms. Henson's discrimination toward Plaintiff or the fear and
26 stress Plaintiff suffered as a result of thinking that standing for so long could result in a second
27 miscarriage.

28 13) Plaintiff was subjected to further discrimination based on the area in Defendants' Murrieta

1 store where Plaintiff was scheduled to work. At the time of Plaintiff's employment, the Murrieta
2 store had cash registers located in the front and back of the store. Defendants' policy was to rotate
3 cashiers between the front and back cash registers by last name. Thus, the rotation policy was, on
4 paper, a fair way of allowing all employees to "be the face of the store" as the first employees to
5 greet customers. In practice, however, Defendants' rotation policy was discriminatory against
6 Plaintiff as a woman of color.

7 14) Plaintiff, the only black cashier at the Murrieta store, was never scheduled to rotate
8 between the front and back of the store. Rather, Defendants scheduled Plaintiff so she was only
9 ever stationed at the cash registers in the back of the store. Plaintiff complained about this to the
10 store manager and asked if he could switch her to the front of the store. The store manager agreed
11 and said he would send an email so everyone would be refamiliarized with Defendants' rotation
12 policy. Despite the store manager's promise, Plaintiff was still only scheduled to work the cash
13 registers in the rear of the store where Plaintiff would be away from the incoming customers and
14 never the face of Defendants' Murrieta store. Such a deplorable act is reminiscent of the days of
15 Rosa Parks and the way segregation marred this country's history.

16 15) As if Plaintiff's forced and discriminatory dissociation from the store front was not
17 enough, the back of the Murrieta store was significantly hotter than the front of the store. Plaintiff,
18 who was only scheduled to work the back area, was subjected to unreasonably hot temperatures
19 during her shifts. Plaintiff was especially susceptible to the effects of prolonged heat exposure
20 because of her pregnancy, but everyone who worked in or perused Defendants' wares in the back
21 of the store complained to Defendants about the excessive heat, especially when the problem
22 worsened during the summer months. Despite the complaints from Plaintiff, Plaintiff's
23 coworkers, and customers, Defendants failed to repair the air conditioning system in the back of
24 the store or provide any other form of relief. Thus, Plaintiff, the only black cashier at the Murrieta
25 store who also happened to be pregnant, was required by Defendants to suffer under these
26 unreasonable, uncomfortable, and discrimination-fueled conditions.

27 16) Plaintiff was also denied the training that would have allowed her to advance her position
28 within Defendants' company because of her skin color. Specifically, Defendants required its

1 employees to go through training to be promoted to customer service. Wanting to move up in the
2 company, Plaintiff asked Ms. Henson if Plaintiff could receive the requisite training. Ms. Henson
3 said Plaintiff could but to let HR know so the schedule could be properly created. HR refused to
4 schedule Plaintiff for the training because “all the managers were at work during [Plaintiff’s]
5 shifts.” Plaintiff complained about this to the store manager who did schedule Plaintiff for the
6 training. However, Plaintiff never received the customer service training even though her
7 coworkers, including new hires, received the training and the associated promotion.

8 17) On a different occasion, Ms. Henson was talking with Plaintiff’s coworkers in the store’s
9 breakroom. At the time, Plaintiff was at her locker, out of sight but within earshot. Ms. Henson
10 told Plaintiff’s coworkers that Ms. Henson did not get a lot of sleep because she had to call the
11 police on her neighbors, saying that she, Ms. Henson, lives in the ghetto. This comment made
12 Plaintiff feel extremely uncomfortable and ostracized because the term “ghetto” is often used to
13 describe an underprivileged area of a city associated with crime and frequently inhabited by
14 minorities, especially black people.

15 18) Plaintiff not only overheard discriminatory comments at work but also had them said
16 directly to her face. On one instance, Ms. Shelley Hunter (hereafter “Ms. Hunter”) approached
17 Plaintiff while Plaintiff was working at her cash register in the unbearably hot back of the store.
18 Ms. Hunter said she was looking through Plaintiff’s Facebook profile and was surprised to learn
19 that Plaintiff’s significant other, Mr. Josh Rose (hereafter “Mr. Rose”), was white. Ms. Hunter
20 also told Plaintiff she (Ms. Hunter) overheard Plaintiff’s coworkers discussing how Plaintiff’s
21 daughter is light-skinned. Ms. Hunter found the notion that Plaintiff could have a light-skinned
22 baby preposterous. But these were not the only instances of profiling to which Plaintiff was
23 subjected.

24 19) Near the end of May of 2018, Mr. Rose made multiple trips to Defendants’ Murrieta store
25 on a single day to make several purchases. For each purchase, Mr. Rose used Plaintiff’s associate
26 coupon, a coupon provided to Defendants’ employees so employees and their spouses could
27 receive a store discount. No one explained to Plaintiff the rules and restrictions on the proper use
28 of the employee discount or whether her significant other could use the associate coupon. On the

1 first four trips, the associate coupon was accepted without a single employee questioning Mr.
2 Rose as to which employee was his spouse. Defendants knew Mr. Rose's association to the
3 Murrieta store was Plaintiff because Plaintiff's coworkers had seen them together on numerous
4 occasions.

5 20) However, on Mr. Rose's fifth use of the spouse coupon, Plaintiff's supervisors told Mr.
6 Rose that he could not use the coupon as he and Plaintiff were not married. No one ever asked
7 Mr. Rose if he was married to Plaintiff. Rather, Defendants' employees assumed, based on
8 racially-motivated profiling, that since Plaintiff was black and Mr. Rose was white, the two could
9 not be married to each other. That this situation was racially based is evidenced by the fact that
10 no other employee's spouse was questioned as to whether they were married to one of
11 Defendants' employees.

12 21) As a result of Mr. Rose's use of the associate coupon, Defendants interrogated Plaintiff at
13 the Murrieta store. During the questioning, Defendants' loss prevention team asked Plaintiff if
14 she had ever stolen money or merchandise from the store. This question was asked even though
15 no complaints were filed against Plaintiff and there were no thefts of which Plaintiff was accused.
16 It is clear these questions were based on racial stereotypes. After the interrogation, Ms. Hunter
17 asked Plaintiff to call her on the upcoming Saturday for a follow-up discussion.

18 22) As instructed, Plaintiff called Ms. Hunter, and on June 02, 2018, Defendants informed
19 Plaintiff that her employment was terminated without first providing a single warning of
20 misconduct or wrongdoing. Defendants did not provide Plaintiff with her final pay check until
21 June 04, 2018.

22 23) In addition to discriminating against Plaintiff, Defendants found yet another way to inflict
23 more wrongdoing against Plaintiff: the provision of improper rest periods.

24 24) Under California law, an employee is entitled to an at least ten-minute rest period for every
25 four hours worked, or major fraction thereof. Additionally, the employee must be free to spend
26 their rest period as they see fit; otherwise, if the employer dictates how the rest period is to be
27 used, it is not a rest period at all.

28 25) Defendants, however, decided not to follow California's rest period rules and required

1 “Associate [to] remain on site for the rest period,” as evidenced by the Kohl’s “California
2 Meal/Rest Break Periods and Timeclock Acknowledgement” document. This is clearly an
3 exercise of control over rest periods proscribed by the California Labor Code. As a result, Plaintiff
4 did not receive proper rest periods but was not properly compensated for the missed rest periods.

5 26) Plaintiff’s final pay check failed to include the wages earned for these improper rest
6 periods.

7 27) Plaintiff has exhausted her administrative remedies under the California Labor Code
8 Private Attorneys General Act of 2004 (Labor Code §§ 2698 *et seq.*) (hereafter “PAGA”) as
9 indicated herein. As such, Plaintiff pleads all rights and remedies available under the PAGA,
10 including the recovery of attorneys’ fees.

11
12 **FIRST CAUSE OF ACTION FOR DISCRIMINATION IN VIOLATION OF**
13 **CALIFORNIA GOVERNMENT CODE § 12940(a) AGAINST ALL DEFENDANTS**

14 28) Plaintiff restates and incorporates by reference each and every allegation of the foregoing
15 paragraphs as though fully set forth herein.

16 29) Defendants are employers in the State of California, as defined in the California Fair
17 Employment and Housing Act (hereafter “FEHA”). Defendants, were also employers in the State
18 of California, as defined in the FEHA.

19 30) Defendants discriminated against Plaintiff on the basis of her skin color and sex in
20 violation of the FEHA.

21 31) Plaintiff filed a charge of discrimination with the California Department of Fair
22 Employment and Housing (hereafter “Department”) within one year of the discrimination. The
23 Department issued Plaintiff a right-to-sue letter within one year of filing this Complaint. Plaintiff
24 has exhausted her administrative remedies.

25 32) As a direct and proximate result of Defendants’ unlawful conduct: Plaintiff has
26 experienced and will continue to experience pain and suffering, and extreme and severe mental
27 anguish and emotional distress; and Plaintiff has suffered and continues to suffer a loss of earnings
28 and other employment benefits. Plaintiff is thereby entitled to general and compensatory damages

1 in amounts to be proven at trial.

2 33) The conduct of Defendants and each of them and/or their agents/employees as described
3 herein was malicious, fraudulent, and/or oppressive, and done with a willful and conscious
4 disregard for Plaintiff's rights and for the deleterious consequences of Defendants' actions.
5 Defendants and each of them and their agents/employees or supervisors, authorized, condoned,
6 and ratified the unlawful conduct of each other. Consequently, Plaintiff is entitled to punitive
7 damages against each of said Defendants.

8
9 **SECOND CAUSE OF ACTION FOR FAILING TO PREVENT DISCRIMINATION IN**
10 **VIOLATION OF CALIFORNIA GOVERNMENT CODE § 12940(k) AGAINST ALL**
11 **DEFENDANTS**

12 34) Plaintiff restates and incorporates by reference each and every allegation of the foregoing
13 paragraphs as though fully set forth herein.

14 35) Defendants knew or should have known of the discrimination that Plaintiff was being
15 subjected to but failed to take any appropriate action to prevent the discrimination from occurring.

16 36) The acts and omissions by Defendants have caused Plaintiff to suffer actual damages
17 including, but not limited to, loss of earnings and future earning capacity, and other pecuniary
18 loss in amount to be established at trial.

19 37) As a proximate result of Defendants' wrongful actions and conduct, Plaintiff has suffered
20 substantial harm and damages, including lost earnings, humiliation, embarrassment, loss of
21 reputation, emotional distress, and mental anguish, in an amount to be proven at trial.

22 38) Defendants' conduct described herein was intended to cause injury to Plaintiff or was
23 despicable conduct carried on by Defendants with a willful and conscious disregard of Plaintiff's
24 rights and subjected Plaintiff to cruel and unjust hardship in conscious disregard of Plaintiff's
25 rights, such as to constitute malice, oppression, or fraud under Cal. Civ. Code § 3294, thereby
26 entitling Plaintiff to punitive damages in an amount appropriate to punish or set an example of
27 Defendants.

28 39) Plaintiff also seeks her reasonable attorneys' fees and costs pursuant to Gov. Code §

1 12965(b).

2
3 **THIRD CAUSE OF ACTION FOR FAILING TO PROVIDE SUITABLE SEATING IN**
4 **VIOLATION OF IWC WAGE ORDER NO. 7-2001 § 14 AND LABOR CODE § 1198**
5 **AGAINST ALL DEFENDANTS**

6 40) Plaintiff restates and incorporates by reference each and every allegation of the foregoing
7 paragraphs as though fully set forth herein.

8 41) California Labor Code § 1198 states that “the standard conditions of labor fixed by the
9 commission shall be . . . the standard conditions of labor for employees. The employment of any
10 employee . . . under conditions of labor prohibited by the order is unlawful.” As required by
11 Industrial Welfare Commission Wage Order 7-2001 (hereafter “Wage Order”) § 14, “[a]ll
12 working employees shall be provided with suitable seats when the nature of the work reasonably
13 permits the use of seats.”

14 42) As alleged herein, Plaintiff was required to stand during her shifts as Defendants refused
15 to provide Plaintiff with a suitable seat during her shifts. Such a seat would not have interfered
16 with Plaintiff’s work or been unreasonable to provide as evidenced by the other cashiers who
17 were granted seats during their work shift.

18 43) As a direct and proximate result of Defendants’ conduct, Plaintiff has been injured by
19 Defendants’ conduct. Plaintiff is entitled to be compensated for her damages and to penalties for
20 Defendants’ actions in an amount to be proven at trial.

21
22 **FOURTH CAUSE OF ACTION FOR FAILING TO MAINTAIN A REASONABLY**
23 **COMFORTABLE TEMPERATURE IN VIOLATION OF IWC WAGE ORDER NO. 7-**
24 **2001 § 15 AND LABOR CODE § 1198 AGAINST ALL DEFENDANTS**

25 44) Plaintiff restates and incorporates by reference each and every allegation of the foregoing
26 paragraphs as though fully set forth herein.

27 45) California Labor Code § 1198 states that “the standard conditions of labor fixed by the
28 commission shall be . . . the standard conditions of labor for employees. The employment of any

1 employee . . . under conditions of labor prohibited by the order is unlawful.” As required by
2 Industrial Welfare Commission Wage Order 7-2001 (hereafter “Wage Order”) § 15, “[t]he
3 temperature maintained in each work area shall provide reasonable comfort consistent with
4 industry-wide standards for the nature of the process and the work performed.”

5 46) As alleged herein, Plaintiff was required to work in extremely hot temperatures that were
6 not reasonable and did not provide comfort.

7 47) As a direct and proximate result of Defendants’ conduct, Plaintiff has been injured by
8 Defendants’ conduct. Plaintiff is entitled to be compensated for her damages and to penalties for
9 Defendants’ actions in an amount to be proven at trial.

10
11 **FIFTH CAUSE OF ACTION FOR FAILING TO PAY ALL WAGES OWED AT**
12 **TERMINATION IN VIOLATION OF LABOR CODE § 201 AGAINST ALL**
13 **DEFENDANTS**

14 48) Plaintiff restates and incorporates by reference each and every allegation of the
15 foregoing paragraphs as though fully set forth herein.

16 49) Labor Code § 201 states that “[i]f an employer discharges an employee, the wages
17 earned and unpaid at the time of discharge are due and payable immediately.

18 50) Defendants discharged Plaintiff’s employment on June 02, 2018, but Defendants did not
19 provide Plaintiff with her final pay check until June 04, 2018. Not only was this final pay check
20 not immediately due and payable at the time of Plaintiff’s termination but the final pay check
21 failed to include wages Plaintiff had earned, including her compensation for the improper rest
22 periods. Defendants’ failure to pay these wages has been and continues to be willful.

23 51) As a result of Defendants’ conduct, Plaintiff is entitled to waiting time penalties pursuant
24 to Labor Code § 203, together with interest thereon, reasonable attorneys’ fees, and costs pursuant
25 to Labor Code § 218.5.

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1 **SIXTH CAUSE OF ACTION FOR IMPROPER REST PERIODS IN VIOLATION OF**
2 **IWC WAGE ORDER NO. 7-2001 § 12 AGAINST ALL DEFENDANTS**

3 52) Plaintiff restates and incorporates by reference each and every allegation of the foregoing
4 paragraphs as though fully set forth herein.

5 53) At all times relevant to this Complaint, Wage Order and California Labor Code § 226.7
6 were applicable to Plaintiff.

7 54) Wage Order § 12 states that an employer shall authorize and permit all employees to take
8 rest periods, which insofar as practicable shall be in the middle of each work period. The
9 authorized rest period time shall be based on the total hours worked daily at the rate of ten minutes
10 net rest time per four hours or major fraction thereof.

11 55) Pursuant to Wage Order § 12, Plaintiff is entitled to recover from Defendants one
12 additional hour of pay at Plaintiff's regular hourly rate of compensation for each work day that
13 the rest period was not provided.

14 56) As alleged herein, Defendant Kohl's required its employees to "remain onsite for the rest
15 period," as stated in Kohl's "California Meal/Rest Break Periods and Timeclock
16 Acknowledgement" document. That employers cannot mandate how employees spend their rest
17 periods was explained by the California Supreme Court, which held that "[d]uring required rest
18 periods, employers must relieve their employees of all duties and *relinquish any control over how*
19 *employees spend their break time.*" *Augustus v. ABM Security Services, Inc.*, 2 Cal.5th 257, 260
20 (2016) (emphasis added).

21 57) During the relevant time period, Defendants willfully exercised control over Plaintiff's
22 rest periods by proscribing Plaintiff from leaving the premises during her rest period. As a result,
23 Plaintiff did not receive proper rest periods. Defendants failed to pay Plaintiff the full rest period
24 premium due in violation of Wage Order § 12, and Plaintiff is entitled to receive compensation
25 in an amount to be proven at trial, including reasonable attorney's fees and costs pursuant to Labor
26 Code § 218.5.

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1 **SEVENTH CAUSE OF ACTION FOR FAILURE TO PROVIDE ACCURATE**
2 **ITEMIZED STATEMENTS IN VIOLATION OF LABOR CODE § 226 AGAINST ALL**
3 **DEFENDANTS**

4 58) Plaintiff restates and incorporates by reference each and every allegation of the
5 foregoing paragraphs as though fully set forth herein.

6 59) Labor Code § 226(a) requires an employer to furnish its employees with an accurate
7 itemized statement in writing showing, among other things, total hours worked, all applicable
8 hourly rates during the pay period, and the corresponding number of hours worked at each rate
9 by the employee.

10 60) Defendants have at all relevant times been required to provide Plaintiff with regular
11 itemized written statements. As alleged herein, Plaintiff was never given a proper rest periods
12 during her employment with Defendants. Because of these improper rest periods, Defendants
13 were required to compensate Plaintiff with an additional hour of pay at Plaintiff's regular hourly
14 rate for each work day a non-compliant rest break was taken. However, Defendants
15 intentionally failed to provide Plaintiff with this compensation. Thus, Plaintiff's itemized
16 statements did not include or account for the rest period violations. As such, Defendants are in
17 violation of Labor Code § 226 for failing to provide accurate itemized statements.

18 61) As a direct and proximate result of Defendants' conduct, Plaintiff has been injured by,
19 among other things, not being paid all wages due, not knowing how many hours she worked,
20 and being required to file this action to recover her wages and determine the amount of hours
21 worked and wages due. Plaintiff is entitled to recover the damages or penalties provided by
22 Labor Code § 226(e), including interest thereon, reasonable attorneys' fees, and costs.

23
24 **EIGHTH CAUSE OF ACTION FOR UNLAWFUL BUSINESS PRACTICES IN**
25 **VIOLATION OF BUSINESS AND PROFESSIONS CODE § 17200 ET SEQ. AGAINST**
26 **ALL DEFENDANTS**

27 62) Plaintiff restates and incorporates by reference each and every allegation of the foregoing
28 paragraphs as though fully set forth herein.

1 63) Plaintiff, on her own behalf, on behalf of the general public, and on behalf of others
2 similarly situated, brings this claim pursuant to Business and Professions Code § 17200 *et seq.*
3 Defendants' conduct as alleged herein has been and continues to be unfair, unlawful, and harmful
4 to Plaintiff, the general public, and those similarly situated. Plaintiff seeks to enforce important
5 rights affecting the public interest within the meaning of Cal. Code Civ. P. § 1021.5.

6 64) Plaintiff is a "person" within the meaning of Bus. & Prof. Code § 17201 and therefore has
7 standing to bring this cause of action pursuant to Bus. & Prof. Code § 17204 for injunctive relief,
8 restitution, and other appropriate equitable relief.

9 65) Bus. & Prof. Code § 17200 *et seq.* provides that "unfair competition shall mean and include
10 any unlawful, unfair or fraudulent business act or practice."

11 66) Wage and hour laws express fundamental public policies. The prompt payment of rest
12 period violations and other legally required wages and benefits is a fundamental public policy of
13 this State. Labor Code § 90.5(a) articulates the public policies of this State to enforce vigorously
14 minimum labor standards, to ensure employees are not required or permitted to work under
15 substandard and unlawful conditions, and to protect law-abiding employers and their employees
16 from competitors who lower their costs by failing to comply with minimum labor standards.

17 67) Defendants have violated statutes, common law, and public policies. Through the conduct
18 alleged in this Complaint, Defendants have acted contrary to these public policies, have violated
19 specific provisions of the FEHA, including § 12940, the Labor Code, including §§ 201, 226.7, and
20 1198, and have engaged in other unlawful and unfair business practices in violation of Bus. &
21 Prof. Code § 17200 *et seq.*, depriving Plaintiff, all persons similarly situated, and all interested
22 persons of rights, benefits, and privileges guaranteed to all employees under the law.

23 68) Defendants' unlawful and unfair conduct, as alleged herein, constitutes unfair competition
24 in violation of Bus. & Prof. Code § 17200.

25 69) Business & Professions Code § 17204 provides for a private cause of action, stating that
26 "[a]ctions for any relief pursuant to this chapter shall be prosecuted exclusively in a court of
27 competent jurisdiction . . . upon the complaint of any board, officer, person, corporation or
28 association or by any person who has suffered injury in fact and has lost money or property as a

1 result of such unfair competition.”

2 70) Business & Professions Code § 17203 provides the Court with available remedies, stating
3 that “[a]ny person who engages, has engaged, or proposes to engage in unfair competition may be
4 enjoined in any court of competent jurisdiction. The [C]ourt may make such orders or judgments
5 . . . as may be necessary to restore to any person in interest any money or property . . . which may
6 have been acquired by means of such unfair competition.”

7 71) The unlawful and unfair business practices of Defendants described herein present a
8 continuing threat to members of the public in that Defendants continue to engage in the conduct
9 described herein.

10 72) Defendants have wrongfully retained monies belonging to Plaintiff it acquired by means
11 of unfair and unlawful business practices.

12 73) Unless restrained by this Court, Defendants will continue to engage in the unlawful conduct
13 as alleged herein. Pursuant to the Business and Professions Code, this Court should make such
14 orders or judgments as may be necessary to prevent the use or employment, by Defendants, its
15 agents or employees, of any unlawful or deceptive practice prohibited by the Business &
16 Professions Code, including but not limited to, disgorgement of profits which may be necessary to
17 restore to Plaintiff the money Defendants have unlawfully failed to pay.

18
19 **NINTH CAUSE OF ACTION FOR CIVIL PENALTIES PURSUANT TO THE PRIVATE**
20 **ATTORNEYS GENERAL ACT AGAINST ALL DEFENDANTS**

21 74) Plaintiff restates and incorporates by reference each and every allegation of the foregoing
22 paragraphs as though fully set forth herein.

23 75) Pursuant to California Labor Code § 2699.3, Plaintiff provided notice to the California
24 Labor and Workforce Development Agent (hereafter “LWDA”) and written notice by U.S.
25 certified mail to Defendant Kohl’s of the specific provisions of the Labor Code alleged to have
26 been violated and the facts and theories to support the alleged violations. These notices were sent
27 on June 29, 2018. The LWDA did not respond to the notice within sixty-five calendar days.
28 Thus, under Labor Code § 2699.3(a)(2)(A), Plaintiff is permitted to commence a civil action

1 pursuant to Labor Code § 2699.

2 76) Defendants' conduct as set forth herein has caused injured to Plaintiff and all those
3 employees similarly aggrieved and has violated various provisions of the California Labor Code.
4 As such, Plaintiff brings this claim as a representative action on behalf of herself and those
5 similarly aggrieved.

6 77) Under California Labor Code § 2699(f), "[f]or all provisions of this code except those for
7 which a civil penalty is specifically provided, there is established a civil penalty for a violation of
8 these provisions, as follows: . . . (2) If, at the time of the alleged violation, the person employs
9 one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved
10 employee per pay period for the initial violation and two hundred dollars (\$200) for each
11 aggrieved employee per pay period for each subsequent violation."

12 78) As alleged herein, Plaintiff and all those similarly situated seek, and Defendants are liable
13 for, penalties for the violations of Labor Code, including the following:

- 14 a. Violation of Labor Code § 1198 for Defendants' failure to provide Plaintiff and
15 other aggrieved employees with suitable seating;
- 16 b. Violation of Labor Code § 1198 for Defendants' failure to provide Plaintiff and
17 other aggrieved employees with a work environment maintained at a reasonably
18 comfortable temperature;
- 19 c. Violation of Labor Code § 226.7 for Defendants' failure to provide Plaintiff and
20 other aggrieved employees with proper rest periods or compensation in lieu
21 thereof; and
- 22 d. Violation of Labor Code § 226 for Defendants' failure to provide Plaintiff and
23 other aggrieved employees with accurate itemized statements.

24 79) Plaintiff is also entitled to seek on behalf of herself and all other similarly situated
25 employees all reasonable attorneys' fees and costs of suit pursuant to Labor Code § 2699(g).

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28 ///

1 **WHEREFORE**, Plaintiff prays for judgment against the Defendants, and each of them,
2 as follows:

- 3 1) For general damages in an amount not less than \$10,000,000.00;
4 2) For special damages in an amount not less than \$187,512.00;
5 3) For pre-judgment interest to the extent allowed by law;
6 4) For civil penalties pursuant to the PAGA;
7 5) For punitive damages;
8 6) For costs of suit incurred herein;
9 7) For attorneys' fees; and
10 8) For such other and further relief as the Court deems just and proper.

11
12 DATED: September 04, 2018

Jafari Law Group, Inc.

13
14 By: 
15 David Jafari, Esq.
16 Saul Acherman, Esq.
17 Griffin Schindler, Esq.

18 Attorneys for Plaintiff
19 Shavina Lockett


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DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial by jury on all issues so triable in the Complaint.

DATED: September 04, 2018

Jafari Law Group

By: 
David Jafari, Esq.
Saul Acherman, Esq.
Griffin Schindler, Esq.

Attorneys for Plaintiff
Shavina Lockett

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EXHIBIT A

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3 **JAFARI LAW GROUP**[®]
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David V. Jafari
Attorney at Law
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www.jafarilawgroup.com

5 June 29, 2018

6 VIA CERTIFIED MAIL

7 Mr. Ryan Sobel, Esq.
8 Kohl's Corporation
9 N56 W17000 Ridgewood Dr.
10 Menomonee Falls, WI 53051

11 Re: *Shavina Luckett v. Kohl's Corporation*

12 Dear Mr. Sobel:

13 This letter is Ms. Shavina Luckett's ("Employee") amended Private Attorneys General Act
14 notice letter in relation to her causes of action against Kohl's Corporation ("Employer").
15 Employee's Labor and Workforce Development Agency number is LWDA-CM-546463-18.

16 Employee intends to seek penalties on behalf of herself and other current and former aggrieved
17 employees for violations of the California Labor Code which are recoverable under California
18 Labor Code § 2698 *et seq.* Employee is seeking penalties on behalf of the State of California of
19 which 75% will be kept by the State while 25% will be available to aggrieved employees. This
20 letter is sent in compliance with the reporting requirements of California Labor Code § 2699.3.

21 Employee's claims are as follows:

22 **Violation of California Labor Code § 226.7**

23 California Labor Code § 226.7 requires employers to pay its employees one additional hour of
24 pay at the employee's regular rate for each work day that a meal or rest period is not provided.
25 Employee and other aggrieved employees were not allowed to take proper rest periods as
26 Employer's required Employee and other aggrieved employees to remain on Employer's
27 premises during rest periods, as stated in Employer's "California Meal/Rest Break Periods and
28 Timeclock Acknowledgement." This exercise of control is not in compliance with Industrial
Welfare Commission Wage Order 7-2001 § 12 and thus violates Labor Code § 226.7.

Violation of California Labor Code § 1198

California Labor Code § 1198 states that "the standard conditions of labor fixed by the
commission shall be . . . the standard conditions of labor for employees. The employment of any
employee . . . under conditions of labor prohibited by the order is unlawful." Pursuant to
Industrial Welfare Commission (hereafter "IWC") Wage Order 7-2001 § 14, "[a]ll working

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S. Lockett
June 29, 2018
Page 2 of 2

employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats.” IWC Wage Order 7-2001 § 15 provides that “[t]he temperature maintained in each work area shall provide reasonable comfort consistent with industry-wide standards for the nature of the process and the work performed.”

Employer did not provide suitable seats at at least some of the cashier stations where Employee and similarly aggrieved employees worked. The cashier stations could accommodate suitable seats, such as stools, because a limited number of stools were provided at a limited number of cashier stations. Despite complaints and letters from medical professionals, Employer unreasonably failed to provide all cashiers with suitable seats in violation of IWC Wage Order 7-2001 § 14.

Employer also failed to maintain all work areas at a temperature that provided reasonable comfort consistent with industry-wide standards. To wit, the work area in the front of Employer’s store was maintained at a comfortable temperature. However, the work area in the back of Employer’s store, where Employee and other similarly aggrieved employees were required to work, was uncomfortably and unreasonably hot. Employee, similarly aggrieved employees, and customers complained about the temperature that was so high, Employee, similarly aggrieved employees, and customers began sweating profusely upon entering the back area of Employer’s store. This is in violation of IWC Wage Order 7-2001 § 15.

Employee will also seek reimbursement of reasonable attorneys’ fees from Employer pursuant to California Labor Code § 2699(g). Therefore, on behalf of all affected current and former employees, Employee seeks all applicable penalties related to these violations of the California Labor Code pursuant to California’s Labor Code Private Attorneys General Act of 2004.

Thank you for your attention to this matter. If you have any questions, please contact me.

Dated: June 29, 2018

JAFARI LAW GROUP, INC.



David Jafari, Esq.
Griffin Schindler, Esq.
Attorneys for Shavina Lockett