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ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

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Clerk of the Superior Court
By Yvette Mapula, Deputy Clerk

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

JAZMIN MASON, on behalf of the State of
California and all aggrieved employees,

Plaintiff,

vs.

FAIRN & SWANSON, INC., a California
Corporation, and DOES 1 through 10,
inclusive,

Defendants.

Case No. 37-2020-00017093-CU-DE-CTL

**REPRESENTATIVE ACTION
COMPLAINT**

- 1. CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS GENERAL
ACT OF 2004 (LABOR CODE § 2698
ET SEQ.)**

1 Plaintiff JAZMIN MASON (“Plaintiff”) on behalf of the State of California and as an
2 “aggrieved employee” acting as a private attorney general under the Labor Code Private
3 Attorneys General Act of 2004 (“PAGA,” Labor Code § 2698 *et seq.*) brings this representative
4 action against Defendant FAIRN & SWANSON, INC. and DOES 1 through 10
5 (collectively, “Defendant”) and alleges on information and belief as follows:

6 **NATURE OF ACTION**

7 1. This is a civil enforcement action brought under Labor Code § 2698 *et seq.*
8 Plaintiff seeks to recover civil penalties for each violation of the Labor Code committed by
9 Defendant.

10 2. “Notwithstanding any other provision of law, any provision of this code that
11 provides for a civil penalty to be assessed and collected by the Labor and Workforce
12 Development Agency or any of its departments, divisions, commissions, boards, agencies, or
13 employees, for a violation of this code, may, as an alternative, be recovered through a civil
14 action brought by an aggrieved employee on behalf of himself or herself and other current or
15 former employees pursuant to the procedures specified in Section 2699.3.” (Labor Code
16 § 2699(a)).

17 3. Plaintiff seeks to recover civil penalties as an individual aggrieved employee and
18 on behalf of the State of California and all other current and former employees of Defendant
19 within the State of California within the one-year period prior to the date on which Plaintiff
20 provided written notice to the Labor and Workforce Development Agency (“LWDA”) and
21 Defendant under Labor Code § 2699.3 and continuing through the present.

22 4. Plaintiff worked during this period and is an “aggrieved employee” because
23 Plaintiff was employed by Defendant and suffered one or more of the Labor Code violations
24 committed by Defendant and alleged in this Representative Action Complaint.

25 5. On February 12, 2020, Plaintiff gave written notice by online filing with the
26 Labor and Workforce Development Agency and by certified mail to Defendant of the specific
27 provisions of the Labor Code alleged to have been violated, including the facts and theories to
28 support the alleged violations. Plaintiff paid the requisite filing fee.

1 6. Within 33 calendar days of the postmark date of the notice sent by Plaintiff,
2 Defendant did not give written notice by certified mail to Plaintiff providing a description of
3 any actions taken to cure the alleged violations.

4 7. Now that at least 65 days have passed from Plaintiff notifying Defendant of
5 these violations, without any notice of cure from Defendant or notice from the LWDA of its
6 intent to investigate the alleged allegations and issue the appropriate citations to Defendant,
7 Plaintiff exhausted all prerequisites and commences this civil action under Labor Code § 2699.

8 **JURISDICTION**

9 8. Jurisdiction of this action is proper in this Court under Article VI, § 10 of the
10 California Constitution. The civil penalties sought in this action exceed the minimum
11 jurisdictional limits of this Court. All of Plaintiff's claims arise under California law.

12 **VENUE**

13 9. Venue as to each defendant is proper in this judicial district under Code of Civil
14 Procedure §§ 395 and 395.5 because Defendant conducts substantial business in this county,
15 employed Plaintiff in this county, and committed at least some of the alleged violations in this
16 county.

17 **THE PARTIES**

18 10. Plaintiff worked for Defendant in San Diego County until December 2019.
19 Defendant classified Plaintiff as an hourly, non-exempt employee.

20 11. The State of California, via the Labor and Workforce Development Agency, is
21 the real party in interest in this action.

22 12. The "aggrieved employees" in this action are all current and former employees
23 of Defendant within the State of California who experienced one or more of the Labor Code
24 violations committed by Defendant during the period from February 12, 2019 continuing
25 through the present.

26 13. Defendant FAIRN & SWANSON, INC., is a CALIFORNIA CORPORATION
27 that does business throughout California.

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14. The true names and capacities, whether individual, corporate, associate, or otherwise, of the parties sued as Defendants DOES 1 through 10, inclusive, are unknown to Plaintiff, who sues them by such fictitious names under Code of Civil Procedure § 474. On information and belief, Plaintiff alleges Defendants DOES are legally responsible in some manner for the acts and omissions alleged herein. Plaintiff will seek leave to amend this Complaint to reflect the true names and capacities of DOE Defendants when they become known. All references to Defendant in this Representative Action Complaint mean and refer to Defendant DOES 1 through 10, inclusive.

15. All defendants in this action are employers or joint employers and part of a common integrated enterprise in their capacity and operation of FAIRN & SWANSON, INC., as each defendant exercises control over the wages, hours, and working conditions of Plaintiff and the aggrieved employees, suffers and permits them to work, and engages the workforce creating a common law employment relationship. Additionally, all defendants have common ownership, common management, interrelationship of operations, and centralized control over labor relations and are therefore part of a common integrated enterprise.

16. Plaintiff further alleges that each defendant acted in all respects pertinent to this action as an alter-ego, agent, servant, joint employer, joint venturer, co-conspirator, partner, in a common integrated enterprise, or in some other capacity on behalf of the employers of Plaintiff and the aggrieved employees, such that the acts and omissions of each defendant are legally attributable to all others rendering each of them liable for the violations and civil penalties plead in this action.

GENERAL ALLEGATIONS

17. Unless otherwise stated, all allegations in this Representative Action Complaint occurred during the period from February 12, 2019 through the present (the “PAGA Period”).

18. Defendant represents that it is one of the largest wholesale and retail companies in the duty-free and travel retail industry. Defendant employs aggrieved employees throughout California, including but not limited to San Diego County, Los Angeles County, Calexico, Tecate, and Oakland, among other locations. Plaintiff alleges that Defendant employs or

1 previously employed the aggrieved employees in different positions, including in warehouses
2 retail stores, at the Baja Duty Free stores, as drivers, and in administrative positions, among
3 others. Plaintiff alleges that these current and former employees experienced Labor Code
4 violations and that Defendant is liable accordingly.

5 19. Defendant maintained a centralized human resource department at its corporate
6 headquarters with personnel who oversaw the day to day operations of the organization,
7 including the payroll policies and practices that applied to Plaintiff and other aggrieved
8 employees who worked throughout California. Defendant issued the same uniform and
9 formatted wage statements and payment mechanisms for all non-exempt, hourly employees in
10 California, irrespective of their location or position. Defendant maintained common payroll and
11 time records using common software and data entry systems. Defendant utilized the same
12 methods and formulas when calculating wages due to Plaintiff and other aggrieved employees
13 in California. Defendant maintained common policies with respect to the payment of wages
14 and premiums for its workforce.

15 20. ***Overtime and Minimum Wage Violations.*** Defendant violated Labor Code
16 §§ 510, 1182.12, 1194, 1197, and 1198 and the IWC Wage Orders by failing to timely pay
17 wages owed at the lawful rate for all hours worked to Plaintiff and the aggrieved employees.
18 Aggrieved employees earned bonuses and other forms of remuneration that were required to be
19 included in the regular rate of pay for purposes of their hourly rate for overtime pay. However,
20 in those pay periods, Defendant did not pay aggrieved employees overtime based on the lawful
21 multiple of their regular rate of pay. Defendant instead paid overtime based on a multiple of
22 their straight time hourly rate. Additionally, Defendant deducted from the wages of Plaintiff
23 and the aggrieved employees for rest periods, which reduced the total hours worked on the time
24 sheets and deprived Plaintiff and other aggrieved employees of payment for those hours at the
25 lawful minimum and/or overtime rates for hours in excess of eight in a workday or 40 in a
26 workweek. As a result, Defendant failed to pay Plaintiff and the other aggrieved employees all
27 wages owed on the regularly scheduled paydays and upon termination of employment for
28 former aggrieved employees, as well as applicable waiting time penalties.

21. ***Meal Period Violations.*** Defendant violated Labor Code §§ 226.7 and 512 and the IWC Wage Orders by failing to provide compliant meal periods or pay meal period premiums in lieu thereof. Defendant did not maintain a lawful meal period waiver that allowed for Defendant and the aggrieved employees to waive meal periods for shifts of less than six hours in length. Defendant required Plaintiff and other aggrieved employees to work shifts of five hours or more, but did not provide a timely, uninterrupted 30-minute meal period or a payment of a meal period premium in lieu thereof for those shifts. Additionally, on days in which Plaintiff and other aggrieved employees did not receive an uninterrupted full 30-minute meal period within the first five hours of their shift, Defendant failed to pay a corresponding meal period premium at one hour their regular rate of compensation. Plaintiff alleges that this practice extends to second meal periods for shifts in excess of 10 hours in a workday, as Defendant had a policy and practice of not paying meal period premiums when due to the aggrieved employees.

22. ***Rest Period Violations.*** Defendant violated Labor Code § 226.7 and the IWC Wage Orders by failing to authorize and permit compliant rest periods for every 4 hours worked or major fraction thereof or pay rest period premiums in lieu thereof. Defendant required Plaintiff and other aggrieved employees record their rest periods but would automatically deduct hours worked and wages for rest periods in excess of 15 minutes with no corresponding credit for rest periods that were recorded for less than 15 minutes. Labor Code § 226.7 specifically states “there shall be no deduction from wages” for rest periods. Additionally, on days in which Plaintiff and other aggrieved employees did not receive at least one full uninterrupted rest period for each four hour period worked (or major fraction thereof), Defendant failed to pay a corresponding rest period premium at one hour their regular rate of compensation.

23. ***Failure to Timely Pay Wages.*** Defendant violated Labor Code § 204 and the IWC Wage Orders by failing to pay all wages earned at least twice each calendar month on days designated in advance as the regular paydays. Defendant committed a series of Labor Code violations which resulted in underpayment of minimum wage, overtime and premiums to

1 Plaintiff and the aggrieved employees. As a result, Defendant has failed to timely pay those
2 wages.

3 24. ***Failure to Pay All Wages Upon Separation.*** Defendant violated Labor Code
4 § 201, 202 and 203 by failing to timely pay all wages and premiums owed to the aggrieved
5 employees who terminated their employment during the PAGA Period on their final day of
6 employment (for those who were terminated or quit by giving at least 72 hours' prior notice) or
7 within 72 hours thereof (for who quit without giving notice), as applicable. Defendant failed to
8 pay waiting time penalties when owed based on its failure to pay all wages upon termination.
9 Wages were owed and unpaid for the aggrieved employees upon termination of employment
10 due to Defendant's policies and practices of failing to pay all wages owed at the lawful rate and
11 all meal and rest period premiums when due.

12 25. ***Paid Sick Leave Violations.*** Defendant violated Labor Code § 246 by failing to
13 provide paid sick leave to the aggrieved employees, failing to comply with the accrual and
14 carryover requirements for paid sick leave, failing to provide an employee with written notice
15 each pay period stating the amount of paid sick leave available each pay period, and otherwise
16 wholly failing to participate in the Healthy Workplaces, Healthy Families Act of 2014. (Labor
17 Code § 245, *et seq.*). Defendant also failed to comply with all local paid sick leave ordinances.
18 On January 1, 2020, about six years after the paid sick leave law went into effect, Defendant
19 implemented a paid sick leave policy entitled "EARNED SICK LEAVE POLICIES FOR NON-
20 EXEMPT/PART TIME EMPLOYEES" and thereafter began issuing wage statements that
21 stated the paid sick leave accrued.

22 26. ***Wage Statement Violations.*** Defendant violated Labor Code § 226 and the IWC
23 Wage Orders by failing to accurately state the gross wages earned, total hours worked, net
24 wages earned, and all hourly rates in effect and the total number of hours worked at each rate of
25 pay each pay period for Plaintiff and the other aggrieved employees. This is because Defendant
26 did not pay overtime at the regular rate of pay, rendering the overtime rate stated on the wage
27 statement incorrect along with the gross and net wages. Additionally, Defendant deducted from
28 hours worked for certain rest periods rendering the total hours worked, gross and net wages, and

number of hours at each hourly rate in effect in those pay periods incorrect as a result of the unlawful practice. Furthermore, Defendant did not provide notice of the paid sick leave accrual balance available to Plaintiff and other aggrieved employees.

27. ***Attorneys Fees and Costs.*** Plaintiff was compelled to retain the services of counsel to file this court action to protect Plaintiff's interests and those of the other aggrieved employees and to assess and collect civil penalties owed by Defendant. Plaintiff has thereby incurred attorneys' fees and costs, which Plaintiff is entitled to receive on all cause of action under Labor Code § 2699(g) and Code of Civil Procedure § 1021.5.

FIRST CAUSE OF ACTION
PRIVATE ATTORNEYS GENERAL ACT
(AGAINST ALL DEFENDANTS)

28. Plaintiff incorporates in this cause of action all paragraphs outside this section with the same force and effect as if fully set forth herein.

29. Defendant committed Labor Code violations against Plaintiff and the other aggrieved employees. Plaintiff brings this representative action as an individual and on behalf of the State of California and all other aggrieved employees of Defendant to recover civil penalties under Labor Code § 2699(a) and (f) for the following Labor Code violations committed against Plaintiff and other aggrieved employees during the PAGA Period:

- a. Failing to pay all earned overtime compensation for all overtime hours worked at the lawful regular rate of pay in violation of Labor Code §§ 510, 1194 and 1198;
- b. Failing to pay all minimum wages for all hours worked in violation of Labor Code §§ 1182.12, 1194, 1197 and 1198;
- c. Failing to provide all statutorily-compliant meal periods or payment of meal period premiums in violation of Labor Code §§ 226.7 and 512;
- d. Failing to authorize and permit all statutorily-compliant rest periods or payment of rest period premiums in violation of Labor Code §§ 226.7 and 516;
- e. Failing to timely pay all earned wages at least twice during each calendar month in violation of Labor Code § 204;

- f. Failing to timely pay all final wages due to upon separation of employment or waiting time penalties in violation of Labor Code §§ 201, 202 and 203;
- g. Failing to provide paid sick leave in violation of Labor Code § 246 and local ordinances; and
- h. Failing to furnish complete, accurate itemized wage statements each pay period in violation of Labor Code § 226.

30. For these violations, Plaintiff seeks to recover the following civil penalties:

- a. Civil penalties recoverable under Labor Code § 2699(a);
- b. Civil penalties under Labor Code § 2699(f)(2), for all provisions of the Labor Code for which a civil penalty is not specifically provided (including those sections identified in Labor Code § 2699.5), in the amount of \$100 for each aggrieved employee per pay period for all initial violations plus \$200 for each aggrieved employee per pay period for all subsequent violations;
- c. Civil penalties under Labor Code § 226.3 in the amount of \$250 per employee per violation for an initial citation and \$1,000 per employee for each subsequent violation;
- d. Civil penalties under Labor Code § 558(a)(1), (2) for all violations in the amount of \$50 for each underpaid employee per pay period for all initial violations plus \$100 for each underpaid employee per pay period for all subsequent violations;
- e. Civil penalties under Labor Code § 1197.1 for each minimum wage violation in the amount of \$100 for each underpaid employee per pay period for all initial violations and \$250 for each underpaid employee per pay period for all subsequent violations;

31. Plaintiff exclusively seeks to recover civil penalties as a private attorney general under the PAGA and does not seek to recover underpaid wages or other damages in this action.

32. Plaintiff further seeks to recover attorneys' fees and costs under Labor Code § 2699(g) and Code of Civil Procedure § 1021.5.

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PRAYER FOR RELIEF

Plaintiff, on behalf of the State of California and all aggrieved employees as a private attorney general, seeks the following relief against Defendants:

- a. An award of all recoverable civil penalties;
- b. Attorneys' fees and costs of suit; and
- c. Such other relief as the Court may deem just and proper.

Dated: May 11, 2020

FERRARO EMPLOYMENT LAW, INC.



NICHOLAS J. FERRARO, ESQ.
Attorney for Plaintiff JAZMIN MASON