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By _____, Deputy
Case Number:
34-2021-00301944

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO**

LUIS PALENCIA CABA,

Plaintiff,

v.

CALERES, INC., a New York corporation, BG
RETAIL, LLC, a Delaware corporation, KATHY
MARTIN, an individual, and DOES 1-10,

Defendants,

Case No. 34-2021-00301944

**FIRST AMENDED CLASS ACTION
COMPLAINT**

DEMAND FOR JURY TRIAL

(1) Failure to Pay Minimum Wage (Cal.
Lab. Code, §§ 204, 224, 1194, 1194.2)

(2) Failure to Provide Rest Breaks And
Pay Rest Break Penalties (Cal. Lab. Code,
§ 226.7)

(3) Failure to Provide Accurate Paystubs
(Cal. Lab. Code, § 226)

(4) Waiting Time Penalties (Cal. Lab.
Code, §§ 201, 202, 203)

(5) Unfair Competition (Cal. B & P Code,
§ 17200)

FIRST AMENDED CLASS ACTION COMPLAINT

BY FAX

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(6) Violation of Private Attorneys General Act of 2004, Labor Code § 2698, *et seq.*

(7) Violation of the California Fair Employment and Housing Act (Cal. Lab. Code, § 12940, subd. (j)(1))

(8) Violation of California Family Rights Act (Cal. Gov't. Code, § 12945.2, subds. (k) & (q))

(9) Retaliation For Complaining Of Violations of California Law (Cal. Lab. Code, § 1102.5, subd. (b).)

1 Plaintiff Luis Palencia Caba, on behalf of himself and all others similarly situated in part,
2 and only on his own behalf in part, complains and alleges as follows:

3 **INTRODUCTION**

4 1. Plaintiff brings this class action pursuant to California Code of Civil Procedure
5 section 382¹ against Defendants Caleres, Inc., a New York corporation doing business as Famous
6 Footwear, Defendant BG Retail, LLC, a Delaware corporation also doing business as Famous
7 Footwear, and DOES 1 through 10, inclusive (collectively "Defendants"), as a result of
8 Defendants' maintenance of certain policies and/or uniform practices as identified herein that give
9 rise to violations of the California Labor Code and Industrial Welfare Commission Order No. 7-
10 2001 (hereafter "the Wage Order"), among others. Plaintiff alleges that the Defendants are liable
11 both to him and to other similarly situated current and former employees for unpaid minimum
12 wages, liquidated damages, failure to provide accurate paystubs, failure to provide timely rest
13 breaks as legally required, failure to pay penalties for missed or untimely rest breaks as legally
14 required, and waiting time penalties for failure to pay all wages due upon termination. Pursuant to
15 California Rules of Court, Appendix I- Emergency Rules Related to COVID-19, Rule 9, the
16 statute of limitations for all such civil claims was suspended between April 6 and October 1, 2020.

17 2. Plaintiff and the other similarly situated employees have suffered injuries and have
18 lost money or property as a result of Defendants' failures to comply with well-established
19 California wage-and-hour laws. Plaintiff on his own behalf and on behalf of other similarly
20 situated employees also brings this action under California's Unfair Competition Law, Bus & Prof.
21 Code §§ 17200, *et seq.* (the "UCL"), as Caleres's actions were both unfair and unlawful.
22 Accordingly, Plaintiff alleges that Defendants' wrongful and unlawful statewide conduct gave
23 Defendants an unfair advantage over other employers that abide by California law in violation of
24 the UCL, and that Defendants' unfair and unlawful practices resulted in harm to Plaintiff and the
25 other similarly situated employees.

26 3. Plaintiff further alleges that Caleres, BG Retail, and his former supervisor, Famous
27 Footwear Sacramento District Manager and Defendant Kathy Martin, are each jointly and
28

¹ Unless otherwise indicated, all code sections refer to California statutes.

severally liable to Plaintiff as a result of Defendant Martin's harassment of Plaintiff and interference with his legal rights under the California Fair Employment and Housing and Family Rights Acts in response to his seeking medically necessary leave on an intermittent basis as a result of a chronically disabling medical condition he has long had, had timely notified Caleres and Martin alike of - and that also constitutes a "serious health condition" under the California Family Rights Act. In response to his opposing such interference and harassment, Plaintiff further alleges he was retaliated against in violation of the California Family Rights Act, Gov't Code § 12945.2 subds. (k) & (q), the California Fair Employment and Housing Act, Gov't Code § 12940(j)(1) and California Labor Code § 1102.5(b). Plaintiff has exhausted his administrative remedies. A copy of his right-to-sue letters issued by the California Department of Fair Employment and Housing are attached hereto as Exhibit 1.

4. Plaintiff also seeks to represent a proposed class of all hourly employees who worked for Defendant at a Famous Footwear location (the "proposed Class"). Plaintiff also seeks to represent a subclass consisting of all non-exempt employees designated as "keyholders" (the "proposed Keyholder Subclass"). Plaintiff seeks to recover unpaid wages, liquidated damages, restitution, and statutory penalties, to which Plaintiff and other proposed Class and Keyholder Subclass members are entitled under the Labor Code and/or Business & Professions Code § 17203.

5. Plaintiff also brings suit under California's Private Attorneys General Act (PAGA) as the representative of current and former Caleres employees who are or were affected by Defendants' violations of California's Labor Code described below.

JURISDICTION AND VENUE

6. This Court has subject matter jurisdiction because the aggregate claims of Plaintiff and the Class Members, inclusive of all relief, place more than \$25,000 in controversy. The California Superior Court has jurisdiction in this matter because Plaintiff is a resident of California, Defendants Caleres and BG Retail are qualified to do and regularly conduct business in California, and Defendant Martin has at all relevant times including the present resided in and worked in California with District Manager responsibility for eleven Sacramento District Famous

1 Footwear locations including, among others, the Famous Footwear retail locations in Folsom,
2 California, Yuba City, California and Arden Way in Sacramento where Plaintiff and Class
3 Members worked. Further, there is no federal question at issue as the claims herein are based
4 solely on California law.

5 7. Venue is proper in the County of Sacramento because the work that is the subject
6 matter of this Complaint occurred therein and/or because Defendants' legal obligations to at least
7 some class members under California law arose and were breached in the County of Sacramento,
8 wherein each of the Defendants can be found, is domiciled or transacts business regularly.

9 **PARTIES**

10 8. Plaintiff Luis Palencia Caba has at all relevant times been and remains now a
11 resident of Carmichael, California. He was employed by Caleres and supervised by Defendant
12 Martin, Caleres's District Manager with supervisory authority over the location where Plaintiff
13 primarily worked full-time between April 2, 2018 and April 3, 2020 as "Associate Manager."
14 Plaintiff worked at the Famous Footwear location at 2775 E. Bidwell St., Folsom, California, as
15 well as at least two other Sacramento-area Famous Footwear locations: 1140 Harter Pkwy., Yuba
16 City, California, and 1872 Arden Way, Sacramento, California.

17 9. Defendant Caleres is a corporation listed on the New York Stock Exchange and
18 headquartered in Clayton, Missouri. Caleres was originally organized under the laws of the State
19 of New York, and performs significant business in California. Plaintiff alleges based on personal
20 experience, interviews with former employees working at several Famous Footwear California
21 locations, and on information and belief that Caleres's operational, staffing, and/or payment
22 policies and practices have been and/or are employed and applied uniformly across California's
23 approximately 94 Famous Footwear retail locations at all relevant times.

24 10. Defendant BG Retail, LLC, is a Delaware corporation headquartered in Clayton,
25 Missouri. Plaintiff's paychecks issued from this corporation. Plaintiff alleges based on personal
26 experience, interviews with former employees working at several Famous Footwear California
27 locations, and on information and belief that BG Retail's operational, staffing, and/or payment
28 policies and practices have been and/or are employed and applied uniformly across California's

1 approximately 94 Famous Footwear retail locations at all relevant times.

2 11. Defendant Martin has at all relevant times been and remains now a resident of El
3 Dorado Hills, California, Caleres's District Manager for its eleven Famous Footwear locations
4 included in its Sacramento District, and a managing agent of Caleres with chief immediate
5 authority over approximately 100 California employees within the Sacramento District including
6 Plaintiff, who worked at three of the eleven Sacramento-area Famous Footwear retail locations.
7 Plaintiff does not know the true names and capacities of defendants sued in this Complaint as
8 Does 1-10, inclusive, and therefore sues these Defendants by fictitious names. Plaintiff will
9 amend, or seek leave to amend, this Complaint to allege the true names and capacities of Does 1-
10 10, when and if ascertained.

11 12. Plaintiff is informed and believes, and based thereon alleges - but only with respect
12 to the class claims Plaintiff brings here - that both the corporate and individual Defendants acted in
13 all respects pertinent to those class claims brought in this action as the agents of the other Doe
14 Defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and
15 the acts of each Defendant are legally attributable to the other Defendants. Plaintiff is informed
16 and believes, and on that basis alleges, that each of the defendants named herein as Does 1-10,
17 inclusive, is responsible in some manner for the occurrence, injury, and other damages alleged in
18 this Complaint.

19 **FACTS UNDERLYING CLASS TIMEKEEPING CLAIM**

20 13. At least prior to April 3, 2020, Defendants have staffed California Famous
21 Footwear locations with a full-time, non-exempt Store Manager and Associate Store Manager, and
22 with three to six part-time employees who typically worked between one and three shifts per
23 week, totaling between five and 25 hours a week on average. Thus, at any given time - with the
24 exception of the period that Defendants closed their California Famous Footwear stores entirely at
25 the outset of the pandemic - there have been approximately 600 non-exempt employees working at
26 Famous Footwear stores in California.

27 14. Under Defendants' policy and practice implemented at Famous Footwear stores,
28 each Famous Footwear non-exempt employee in California working at a retail location was and

1 has been or is required to punch in when they start working, punch out for their meal break, punch
2 back in upon the conclusion of their meal break, and then punch out at the end of their scheduled
3 work period after they finish working. These time punches track each employee's claimed time
4 worked to the hours, minutes, *and* seconds for each work period.

5 15. While still employed by Defendants, Plaintiff discovered that Defendants had been
6 calculating his compensable time in a manner designed to obscure a step in that process that
7 Defendants have been employing and that has the effect and apparent purpose of systematically
8 and gratuitously deducting 30 seconds, on average, from the actual work time already recorded by
9 and payable to each non-exempt employee for each shift.

10 16. In particular, Plaintiff's inspection of his and other timecards revealed that
11 Defendants employ a multi-step methodology that "bakes into" its compensation practices a one-
12 way "rounding" practice that systematically denies employees money for time they have recorded
13 as worked.

14 17. First, Defendants accurately calculate the total amount of time worked by the
15 employee to the second, based on an employee's daily punches. Defendants do not then use this
16 same accurate and available "to-the-second" information already in its possession for its Famous
17 Footwear (or other) employees to then accurately calculate the wages the employee is due.
18 Instead, having determined the total amount of time worked to the second, Defendants deduct any
19 seconds (whether 1 or 59) and rounds the employee's worked time *down*—that is, one way only—
20 to the next-lowest whole number of minutes. They then deem this whole number the employee's
21 actual worked time for the day. Defendants then express this improperly rounded down whole
22 number through a gratuitous intermediate step that makes its calculation appear precise and
23 accurate when it is not, and thereby disguises its illegal time-shaving practice. Thus, for example,
24 if an employee works 301 minutes and 1 second, the employee's time is recorded as 301 minutes
25 and zero seconds. But if, for example, that same employee works 301 minutes and 59 seconds,
26 that employee's time is rounded down and also recorded as 301 minutes, rather than 302 minutes,
27 as would be required by a "neutral" rounding policy—that is, a policy that rounds seconds to the
28 nearest minute.

1 18. The 301 minutes is then expressed as a number of hours rounded to the second
2 decimal point. In this way, whether an employee's actual time has been five hours, one minute
3 and one second (*i.e.*, 301 minutes and 1 second) or five hours one minute and 59 seconds (*i.e.*, 301
4 minutes and 59 seconds) - the employee is always paid for five hours and one minute (expressed
5 as 5.02 hours). This one-way *rounding down* of time on average thus systematically shorts
6 employees thirty (30) seconds on average for every shift they work. That is because, on average,
7 one half of the time, an accurate accounting of seconds would lead to rounding down to the nearest
8 minute, and one half of the time, it would lead to rounding up to the nearest minute. Defendants,
9 however, only round down. This practice further results in chronic inaccuracies in time records
10 and paystubs provided to employees as well as chronic failures to pay all wages due to terminated
11 employees.

12 **FACTS UNDERLYING REST BREAK CLASS CLAIM**

13 19. At all relevant times, Defendants scheduled Plaintiff to work between 33 and 40
14 hours each week, paid Plaintiff a base hourly wage of \$20.80 per hour and classified Plaintiff as
15 eligible for overtime. During Plaintiff's employment, the Bidwell Street Famous Footwear retail
16 location (as well as its other stores in the greater Sacramento area where Plaintiff worked) opened
17 daily for business at 10:00 a.m. and closed at 9:00 p.m., except on Sunday when it closed at 7:00
18 p.m. Plaintiff is informed and believes that since June 2020, only the closing hours of this
19 standard schedule have been or were temporarily changed at the approximately 94 Famous
20 Footwear retail locations in California re-opened for retail business in or by June 2020. On
21 information and belief, Plaintiff alleges that such stores were regularly closing earlier at 6:00 p.m.
22 rather than at 9:00 to customers and 9:15 p.m. to managerial employees for some or all of the
23 period of time since their re-opening in June 2020.

24 20. During Plaintiff's employment, the Bidwell store was staffed by a Store Manager,
25 Kyle Bergman, an Associate Store Manager, Plaintiff, and an Assistant Store Manager, Jamie
26 Tarpley. All three positions were classified as non-exempt. In addition, Defendants employed
27 four part-time associates at the Famous Footwear Bidwell store who were scheduled to work
28 variable numbers of shifts per week, depending on demand. Generally, Mr. Bergman began work

1 at 9:00 a.m. five days a week and was the only managerial employee on duty at the store until the
2 next managerial employee scheduled that same day—typically Plaintiff—had arrived to work and
3 clocked in on duty either at 1:00 or 1:30 p.m. Between the hours of 1:30 p.m. and 5:30 p.m., there
4 were typically two designated “keyholders”—that is, persons who have keys to the store—
5 scheduled in the Bidwell store. By the time the “opening” manager had left the store at 5:30 p.m.,
6 a part-time sales associate typically had arrived who would work with the Assistant Store Manager
7 until the actual store closing - which due to specific managerial duties on average at the time in
8 fact took place at or about 9:15 p.m. Because Defendants required a designated “keyholder” to be
9 physically in the store at all times when it was open and the “manager on duty” (often Plaintiff),
10 when working from 1:30 to closing, was the only person with such status - and thus required to
11 stay inside the store at all times between 5:30 p.m. and 9:15 - Plaintiff and other similarly situated
12 managers contending with such inadequate staffing as a matter of policy were thus unable to leave
13 the store and take a second 10-minute rest break in compliance with California law.

14 21. Under California Famous Footwear stores’ uniform policy and practice, non-
15 exempt California retail store managers or assistant managers such as Mr. Bergman, Mr. Palencia
16 Caba, and Ms. Tarpley were all designated so-called “keyholders.” As alleged above, under this
17 policy, a keyholder must be on duty inside each retail store during all hours the store is scheduled
18 to be or must remain open. Specifically, Caleres’s 2019 Field Associate Handbook states: “[a]t
19 least one (1) management Associate, who has successfully completed The Interview for Store
20 Keys, must be present in the store at all times.” As a result of this practice and policy, the
21 manager opening the Bidwell store was as a matter of scheduling for that day unable to leave the
22 store and/or take a compliant 10-minute rest break under California law during the first or last four
23 hours worked. (*Augustus v. ABM Security*, 2 Cal. 5th 257 (2016).) Moreover, Plaintiff further
24 alleges that Defendants failed, fails and/or refuses to pay a one-hour penalty to any managerial
25 employee affected by this non-compliance, as required by law.

26 **CLASS ACTION ALLEGATIONS**

27 22. Plaintiff brings this action pursuant to the provisions of section 382 of the
28 California Code of Civil Procedure, on behalf of themselves and the following proposed class and

1 subclass:

2 **Employee Class**

3 All persons employed by Caleres and/or BG Retail, LLC at a California Famous
4 Footwear location on a non-exempt basis within the statutory period.

5 **Keyholder Subclass**

6 All persons employed by Caleres and/or BG Retail, LLC as Store managers or
7 Assistant Store Managers on a non-exempt basis within the statutory period.

8 23. Excluded from the Class and Subclass are Defendants, their officers, directors,
9 legal representatives, heirs, successors, wholly- or partly-owned, and its subsidiaries and affiliates;
10 proposed Class counsel and their employees; the judicial officers and associated court staff
11 assigned to this case and their immediate family members; all persons who make a timely election
12 to be excluded from the Classes; governmental entities; and the judge to whom this case is
13 assigned and his/her immediate family.

14 24. Certification of Plaintiff's claims for class-wide treatment is appropriate because
15 there is a well-defined community of interest in the litigation and the proposed Class is easily
16 ascertainable.

17 25. This action satisfies the predominance, typicality, numerosity, superiority, and
18 adequacy of representation requirements under § 382.

19 26. Numerosity. The size of the proposed plaintiff Class makes individual joinder of all
20 members impractical. While Plaintiff does not presently know the exact number of Class
21 Members, Plaintiff is informed and believes, and thereon alleges, that Defendants have employed
22 hundreds of Store Managers and/or Assistant Store Managers on a non-exempt basis within
23 California during the last four years.

24 27. Commonality and Predominance. Common questions of law and fact exist as to all
25 members of the proposed Plaintiff Class and predominate over any questions that affect only
26 individual members of the Class. These common questions of law and fact include, but are not
27 limited to, the following:

28 i. Whether Caleres and/or BG Retail failed to meet its minimum wage

obligations in violation of California Labor Code §§ 1194 *et seq.*;

ii. Whether Caleres and/or BG Retail employed timekeeping practices involving impermissible one-way downward rounding;

iii. Whether Caleres's and/or BG Retail's scheduling practices and policy requiring a "keyholder" be present within the store at all times during business hours necessarily resulted in non-compliance with California rest period law;

iv. Whether Caleres and/or BG Retail failed at all relevant times to provide Class Members with adequate rest periods as well as compensation for missed rest periods in violation of California Labor Code §§ 226.7 and IWC Wage Order No. 7;

v. Whether Caleres and/or BG Retail knowingly or intentionally failed to maintain accurate records of hours worked by Class Members in compliance with Labor Code § 1174(d) and Wage Order No. 7, § 7(A)(1);

vi. Whether Caleres and/or BG Retail knowingly or intentionally failed to maintain accurate itemized wage statements as required by California Labor Code § 226 and IWC Wage Order No. 7;

vii. Whether Caleres and/or BG Retail violated California Labor Code §§201-203 by failing, upon termination, to timely pay Class Members wages that were due at minimum wage for "off the clock" work or missed rest breaks; and

viii. Whether Caleres's and/or BG Retail's failure to pay at least minimum wage to Class Members for all hours worked, failure to schedule sufficient personnel so that Class Members can timely take legally required rest break periods and failure to provide rest break compensation, failure to maintain accurate time records, failure to provide Class Members with accurate itemized wage statements, and failure to timely pay Class Members all wages that were due upon termination constitute an unlawful, and/or unfair business practices under Cal. Business & Professions Code §17200, *et seq.*

28. **Typicality.** Plaintiff's claims are typical of the claims of the Class. Plaintiff and Class Members sustained damages arising out of defendants' common course of conduct underlying the Class and Subclass claims in violation of the law as alleged herein.

29. Adequacy. Plaintiff is a member of the Class, does not have any conflicts of interest with other Class Members, and will represent and protect the interests of the Class Members. Plaintiff's counsel are competent and experienced in litigating employment class actions.

30. **Superiority.** A class action is superior to other available means of adjudicating part of this controversy. Class treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without unnecessary duplication of effort and expense that numerous individual claims would entail. Class treatment will also avoid the risk of inconsistent or contradictory judgments.

PAGA ALLEGATIONS

31. Plaintiff brings suit under California's Private Attorneys General Act (PAGA) as the representative of current and former Caleres and/or BG Retail non-exempt employees who are or were affected by Caleres's and/or BG Retail's violations of California's Labor Code alleged below.

32. Plaintiff seeks to represent current and former non-exempt Caleres and/or BG Retail employees in California to bring any claim related to their employment on a so-called “representative” basis.

FACTS PERTINENT TO PLAINTIFF'S INDIVIDUAL CLAIMS

33. After experiencing such symptoms for an extended period (including months before March 2019) Plaintiff had, in March 2019, been diagnosed by a neurological specialist as having been suffering from a migraine headache condition that flared up intermittently but chronically, causing him debilitating pain. When Plaintiff experienced migraine headaches, they interfered with and at times entirely prevented him from carrying on his normal daily activities. Plaintiff had come to understand through personal experience and observation that dehydration, bright lights, loud sounds, and unusually stressful personal circumstances were the most reliable

1 triggers for his condition. Among other things, in late 2018 and 2019, Plaintiff had been
2 experiencing unusual stress and more frequent migraine flare-ups as a result of his partner's own
3 recent recurring medical problems. In November 2018, Plaintiff's partner had had a seizure that
4 resulted in his being taken from their home to the hospital in an ambulance.

5 34. At all times relevant to this action, Caleres and/or BG Retail maintained a policy
6 forbidding its retail employees from carrying or having a water bottle or drinking water while they
7 worked on the sales floor or at the cash register. On May 9, 2019, Mr. Palencia Caba sent a
8 request to Defendants' Human Resources Department that his migraine headache condition—
9 which constituted and constitutes both a disability and a serious health condition under California
10 law—be reasonably accommodated. In particular, Plaintiff requested that Defendants make an
11 exception to its water bottle and drinking policy so that Plaintiff could better avoid his condition
12 being triggered by dehydration. In May 2019, Caleres agreed to this accommodation.

13 35. When Defendant Martin subsequently learned that Plaintiff had a water bottle at the
14 cash register, and had requested and been granted this accommodation through Defendants'
15 Human Resources Department, she made remarks to Mr. Palencia Caba suggesting she was
16 displeased that this had occurred.

17 36. Subsequently, in or around early Summer 2019, Plaintiff asked the Human
18 Resources Department if he could also be allowed to use family leave intermittently in order to
19 mitigate any flare-ups of his migraine-related health condition occurring during a work day.
20 Plaintiff's request was approved effective August 2, 2019.

21 37. On the morning of August 31, 2019, Plaintiff was performing a periodic mandatory
22 fire alarm test at the Bidwell store that involved triggering an extremely loud alarm. Later that
23 same day, Defendant Martin arrived at the Bidwell store in order to perform certain administrative
24 tasks in the store's "back room" office. Plaintiff had already begun feeling unwell during the
25 course of the fire alarm testing earlier that day, and his condition had deteriorated as the day went
26 on during the course of his shift. Eventually, Plaintiff approached Defendant Martin and informed
27 her that he was not feeling well and needed to go home. Defendant Martin objected - at least at
28 first.

1 38. When Plaintiff informed Defendant Martin that he had already been approved by
2 Defendants for intermittent leave based on his medical condition, Defendant Martin responded:
3 “What, do you think you can just come and go as you please now? I am not going to have that.”
4 Defendant Martin then aggressively began demanding additional information about Plaintiff’s
5 medical condition and flare ups and the effects such flare ups had on him. Only after he complied
6 with Martin’s unwarranted and invasive requests did Defendant Martin then relent, and agree to let
7 Plaintiff take intermittent leave and go home.

8 39. Following this threatening and coercive interaction with and interrogation by
9 Defendant Martin, on or around September 3, 2019, Plaintiff complained to Defendants’ Human
10 Resources Department in writing, informing Caleres that Defendant Martin seemed disinclined to
11 have him working within the Sacramento District she controlled as an employee who needed a
12 reasonable accommodation and/or intermittent leave. Plaintiff also drew Defendants’ attention to
13 Defendant Martin’s having told Plaintiff at one point that she did not like “the way he talked”—a
14 remark he believed reflected either her negative view of his slightly Spanish-accented English or a
15 negative view of his occasionally “camp” and vivacious communication style, most stereotypically
16 associated with same-sex orientation. Plaintiff had been “out” as gay at work since the November
17 2018 hospitalization incident involving his partner.

18 40. Between September 2019 and April 3, 2020, Plaintiff took additional intermittent
19 leave. Shortly after the COVID-19 pandemic began, on April 3, 2020, Caleres and/or BG Retail
20 purportedly “terminated” many if not all of its retail employees in California below District
21 Manager. On information and belief, Plaintiff alleges that Caleres and/or BG Retail subsequently
22 (in June 2020 and thereafter) contacted the great majority if not all of its former retail employees
23 below “Store Manager” and invited them to re-apply to their former jobs. Plaintiff knew from
24 discussions he had had with other Assistant Store Manager colleagues who Defendant Martin had
25 supervised and purportedly “terminated” on April 3, 2020, that by June 2020, she had contacted
26 many if not all Assistant Store Managers and encouraged them to return to work - and without the
27 need to re-apply. Plaintiff never received any such call from Defendant Martin - even though
28 Defendant Martin was having difficulty filling all the available newly open Assistant Store

1 Manager positions - including at locations where Plaintiff had worked.

2 Plaintiff is further informed and believes that Defendant Martin made repeated calls to
3 certain of his colleagues despite already having been informed by the solicited Assistant Store
4 manager of a lack of interest in returning or re-applying for re-employment by Caleres in their
5 former Famous Footwear retail store Assistant Store Manager position. When Plaintiff spoke to
6 the Store Manager at one of the several retail locations he had previously worked in, he learned
7 that though Defendant Martin was having little success filling the job and had started making
8 repeated calls to some Assistant Managers who had earlier said no to her already, Defendant
9 Martin made no effort at all to make even a single call to Plaintiff. Unlike many if not all of his
10 former Assistant Manager colleagues, Plaintiff alone was apparently never contacted by Defendant
11 Martin or recalled to his former job in June 2020—or since. Given the temporal proximity of
12 Plaintiff's protected September complaint about Defendant Martin, and his further protected
13 activity of requesting and taking intermittent leave through early 2020, his April 3, 2020
14 termination and Caleres's and/or BG Retail's deliberate and targeted failure to contact him in or
15 around June 2020 (or thereafter) to encourage him to return to his former job with Defendants,
16 Plaintiff alleges that the inference is justified that his ongoing protected activities substantially
17 contributed to the adverse action of failing to offer him re-employment at any time.

18 41. Plaintiff has exhausted his administrative remedies with the California's
19 Department of Fair Employment and Housing by filing an administrative complaint naming both
20 Defendants Caleres and Martin individually and receiving the right to sue letter on April 25, 2021.
21 Plaintiff amended that complaint to add Defendant BG Retail on September 8, 2021. Both are
22 attached hereto as Exhibit 1.

23 **FIRST CAUSE OF ACTION**

24 **(Failure to Pay Minimum Wage)**

25 **(Cal. Lab. Code, 204, 224, 1194, 1194.2, 1197.1)**

26 **(on behalf of Plaintiff and the Proposed Class against Caleres and BG Retail)**

27 42. Plaintiff realleges and incorporates herein by reference all previous paragraphs as if
28 set forth in full.

1 43. Defendants' practice of systematic time-shaving violates the provisions of
2 California Labor Code § 1194, which provides that "Notwithstanding any agreement to work for a
3 lesser wage, any employee receiving less than the legal minimum wage . . . applicable to the
4 employee is entitled to recover in a civil action the unpaid balance of the full amount of this
5 minimum wage . . . including interest thereon, reasonable attorney's fees, and costs of suit."

6 44. Under California law, Defendants are entitled to use a rounding policy *only if* it is
7 "fair and neutral on its face and 'it is used in such a manner that it will not result, over a period of
8 time, in failure to compensate the employees properly for all the time they have actually worked.'" *See*
9 *'s Candy Shops, Inc. v. Superior Court*, 210 Cal. App. 4th 889, 907 (2012); Division of Labor
10 Standards Enforcement (DLSE) Enforcement Policies and Interpretations Manual (2002 rev.) §§
11 47.1, 47.2 (DLSE Manual). Under California law, an employer's rounding policy is "fair and
12 neutral" if "'on average, [it] favors neither overpayment nor underpayment'"; but such a policy is
13 illegal if it "'systematically undercompensate[s] employees' " because it "'encompasses only
14 rounding down.'" *See 's Candy*, 210 Cal. App. 4th at 901-02, 907. California law, moreover, does
15 not allow private or public employers covered by the Labor Code to allow their employees to
16 work so-called "*de minimis*" time without compensation or "off the clock" since existing
17 technologically available timekeeping methods—such as those used by Defendants in
18 California—actually allow for seamless and accurate tracking of time to the second. *Troester v.*
19 *Starbucks Corp.*, 5 Cal. 5th 829, 848 (2018).

20 45. As a result of Defendants' illegal one-way rounding, Plaintiff and proposed Class
21 Members were not paid for all their time worked and did not receive their minimum wages due as
22 required by law. To the contrary, despite knowing the actual hours that had been worked by
23 Plaintiff and Class Members, Defendants deliberately and in knowing violation of the California
24 Labor Code failed and refused to pay Plaintiff and Class Members at least minimum wage for all
25 their actual time worked by deliberately rounding their time down daily, thereby shaving an
26 average of 30 seconds from each employee's time worked each shift.

27 46. Plaintiff and Class Members are entitled to recover from Defendants the unpaid
28 balance of the full amount of the minimum wages due them in an amount to be determined at trial,

1 plus interest on that amount, reasonable attorney's fees and costs of this suit pursuant to Labor
2 Code § 1194(a). Plaintiff and Class Members are also entitled to recover from Defendant
3 liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon
4 pursuant to Labor Code § 1194.2.

5 **SECOND CAUSE OF ACTION**

6 **(Violation of Labor Code Section 226.7)**

7 **(Failure to Provide Rest Periods)**

8 **(on behalf of Plaintiff and the Proposed Keyholder Subclass against Caleres and BG**
9 **Retail)**

10 47. Plaintiff realleges and incorporates herein by reference all previous paragraphs as if
11 set forth in full.

12 48. Defendants' requirement that at least one keyholder be in the store at all times,
13 combined with its regular practice of staffing retail locations with a single Store Manager or
14 Assistant Store manager for periods of four (4) consecutive hours or more without another
15 keyholder present, causes regular violations of California Labor Code § 226.7, which provides that
16 no employer shall require any employee to work during any rest period mandated by an applicable
17 order of the IWC. Wage Order 7, subdivision 12(A) and Labor Code § 226.7, both of which apply
18 to Defendants' Famous Footwear locations, prohibit "on-duty" rest periods during which an
19 employee is unable to leave the workplace. *Augustus v. ABM Security Services*, 2 Cal. 5th 257
20 (2016). Because they were required to stay on the store premises when no other keyholder was
21 present, Plaintiff and other keyholders were therefore regularly unable to take rest periods that
22 comply with California law.

23 49. IWC Wage Order No. 7-2001 provides that every employer shall authorize and
24 permit all employees to take rest periods, which insofar as practicable shall be in the middle of
25 each work period. The authorized rest period time shall be based on the total hours worked daily
26 at the rate of ten minutes net rest time per four hours or major fraction thereof. Authorized rest
27 period time shall be counted as hours worked for which there shall be no deduction from wages.

28 50. IWC Wage Order No. 7-2001 further provides that when an employer fails to

1 provide an employee with a rest period as required by California law, the employer must pay the
2 employee one hour of pay at the employee's regular rate of compensation for each work day that
3 the rest period is not provided.

4 51. Defendants denied Plaintiff and other Store Managers and Assistant Store
5 Managers—as designated “keyholders” who must remain in the retail location at all times if
6 another keyholder is not present—uninterrupted rest periods as required by law. As a result,
7 Plaintiff and proposed Subclass Members were required to work through rest periods that should
8 have been provided by Caleres and are now due one (1) additional hour of pay for each rest period
9 Plaintiff and proposed Class Members were unable to timely take or were denied entirely for any
10 period of four (4) or more consecutive hours.

11 52. Defendants willfully and knowingly violated California Labor Code § 226.7 and
12 IWC Wage Order No. 7-2001 by denying Plaintiff and proposed Subclass Members uninterrupted
13 rest periods.

14 53. Therefore, Plaintiff and Keyholder Subclass Members are entitled to recover from
15 Defendants one hour of pay at the employee's regular rate of compensation for each workday that
16 any mandatory rest period was not provided, all to be determined at trial, plus interest on that
17 amount.

18 **THIRD CAUSE OF ACTION**

19 **(Violation of Labor Code §§ 226, 226.3)**

20 **(Failure to Provide Accurate Written Itemized Statements of Wages)**

21 **(on behalf of Plaintiff and the Proposed Class against Caleres and BG Retail)**

22 54. Plaintiff realleges and incorporates herein by reference all previous paragraphs as if
23 set forth in full.

24 55. Defendants violated California Labor Code § 226, which provides that “every
25 employer shall, semimonthly or at the time of each payment of wages, furnish the employee with
26 an accurate itemized statement in writing showing, among other things, the gross wages earned,
27 the total hours worked by the employee, all deductions from the employee's wages, the net wages
28 earned, the pay period, the name of the employee, the name and address of the legal entity that is

1 the employer, and the applicable hourly rates and number of hours worked by the employee at
2 each hourly rate.”

3 56. Because Defendants did not pay Plaintiff and Class Members for all time worked as
4 herein alleged, Defendants owe Plaintiff and Class Members unpaid wages and applicable
5 statutory penalties in the form of premium wages. These unpaid and premium wages were due at
6 the time Plaintiff and Class Members were paid their regular wages. Defendants knowingly and
7 intentionally failed to include the amounts of these unpaid and premium wages on Plaintiff and
8 Class Members’ written itemized statements of wages. Therefore, Caleres knowingly and
9 intentionally failed to provide plaintiff and proposed Class Members with accurate written
10 itemized statements of wages as required by California Labor Code § 226.

11 57. Moreover, in failing and refusing to pay Plaintiff and Class Members the overtime
12 due them, and in failing and refusing to pay Plaintiff and Class Members the minimum wage,
13 Defendants did not provide them with accurate written itemized statements of wages as required
14 by California Labor Code § 226.

15 58. Moreover, in failing and refusing to compensate Plaintiff and Keyholder Subclass
16 Members for their missed rest periods as alleged above, Defendants did not provide them with
17 accurate written itemized statements of wages as required by California Labor Code § 226.

18 59. Therefore, Plaintiff and Class Members and Keyholder Subclass Members are
19 entitled to recover from Defendants the penalties provided for in Labor Code § 226(e) along with
20 costs and reasonable attorneys’ fees.

21 **FOURTH CAUSE OF ACTION**

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

23 **(Waiting Time Penalties)**

24 **(on behalf of Plaintiff and the Proposed Class against Caleres and BG Retail)**

25 60. Plaintiff realleges and incorporates herein by reference all previous paragraphs as if
26 set forth in full.

27 61. At all times set forth herein, California Labor Code § 218 has authorized
28 employees including but not limited to Plaintiff to “sue directly . . . for any wages or penalty due

1 him [or her] under [the Labor Code].”

2 62. Labor Code § 201(a) provides in relevant part: “If an employer discharges an
3 employee, the wages earned and unpaid at the time of discharge are due and payable
4 immediately.” Likewise, Labor Code § 202(a) provides in relevant part that “If an employee . . .
5 quits his or her employment, his or her wages shall become due and payable not later than 72
6 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to
7 quit, in which case the employee is entitled to his or her wages at the time of quitting.” Finally,
8 Labor Code § 203 provides in relevant part that “If an employer willfully fails to pay, without
9 abatement or reduction, in accordance with Sections 201 [or] . . . 202 . . . any wages of an
10 employee who is discharged or who quits, the wages of the employee shall continue as a penalty
11 from the due date thereof at the same rate until paid or until an action therefor is commenced; but
12 the wages shall not continue for more than 30 days Suit may be filed for these penalties at
13 any time before the expiration of the statute of limitations on an action for the wages from which
14 the penalties arise.”

15 63. Plaintiff is informed and believes and thereon alleges that at all times herein
16 mentioned Defendants knew they had a duty to pay Plaintiff and terminated Class Members their
17 wages without reduction at the time any were discharged from or quit their employment. Plaintiff
18 is further informed and believes that Defendants had the financial ability to pay such wages, but
19 willfully, knowingly and intentionally failed to do so. Caleres’s failure to pay Plaintiff and
20 terminated Class Members their wages earned within the time required by law was willful and in
21 violation of California Labor Code § 203.

22 64. Therefore, Plaintiff and terminated members of the Class are entitled to recover
23 from Defendants the prescribed statutory penalty for each day that they were not paid their wages
24 upon separation from employment up to a thirty-day maximum pursuant to California Labor Code
25 § 203.
26
27
28

1 **FIFTH CAUSE OF ACTION**

2 **(Violation of Cal. Bus. & Prof. Code, §§ 17200 *et seq.*)**

3 **(Restitution for Past Unfair Competition)**

4 **(on behalf of Plaintiff and Proposed Class and Subclass Members against Caleres and BG Retail)**

5 65. Plaintiff realleges and incorporates herein by reference all previous paragraphs as if
6 set forth in full.

7 66. In failing and refusing to pay Plaintiff and Class and Subclass Members unpaid
8 wages for unaccounted time, unaccounted overtime, and missed rest periods, and in failing to
9 provide uninterrupted rest periods, accurate written itemized wage statements, and unpaid wages
10 upon termination, Defendants have engaged and are engaging in unlawful and unfair business
11 practices in violation of Labor Code §§ 201, 203, 226, 226.7, 1174, 1194, 1194.2, and IWC Wage
12 Order No. 7-2001.

13 67. Defendants' violations of Labor Code §§ 201, 203, 226, 226.7, 1174, 1194, 1194.2,
14 and IWC Wage Order No. 7-2001 constitute unlawful and/or unfair business practices in violation
15 of California Business and Professions Code §§ 17200, *et seq.*

16 68. As a proximate result of Defendants' unlawful and/or unfair business practices,
17 Defendants have made improper and illegal profits. Plaintiff and proposed Class and Subclass
18 Members are entitled to restitution of the losses they have sustained and disgorgement of
19 defendants' improper profits. For purposes of this claim, Plaintiff alleges both independently and
20 in the alternative that Plaintiff lacks an adequate remedy at law.

21 69. Plaintiff and Class and Subclass Members are also entitled to recover reasonable
22 attorneys' fees in connection with their unfair competition claims pursuant to Code of Civil
23 Procedure § 1021.5, the substantial benefit doctrine and/or the common fund doctrine.
24
25
26
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28

1 **SIXTH CAUSE OF ACTION**

2 **Violations of Labor Code Private Attorneys General Act**

3 **California Labor Code §2698, *et seq.***

4 **(on behalf of Plaintiff and other aggrieved employees against Caleres and BG Retail)**

5 70. Plaintiff realleges and incorporates herein by reference all previous paragraphs as if
6 set forth in full.

7 71. Plaintiff, as an aggrieved employee, brings a claim under California Labor Code
8 §§ 2698-2699 in a representative capacity on behalf of current and former hourly employees of
9 Defendants who worked for Defendants in California and who were subjected to the unlawful
10 wage-and-hour practices alleged herein.

11 72. The California Labor Code Private Attorneys General Act of 2004 ("PAGA"),
12 Labor Code § 2698, *et seq.*, grants California employees the right to bring a civil action for the
13 violation of any provision of the Labor Code on behalf of themselves and other current or former
14 employees in order to recover civil penalties. PAGA is intended to assist in the achievement of
15 maximum compliance with state labor laws by empowering aggrieved employees to act as private
16 attorneys general in order to recover civil penalties for Labor Code violations that would otherwise
17 be prosecuted by the state. *See Arias v. Super. Ct.* (2009) 46 Cal. 4th 969, 980.

18 73. PAGA permits an aggrieved employee to collect the civil penalty authorized by law
19 and normally collectible by the California Labor and Workforce Development Agency. To
20 address violations for which no penalty has been established, § 2699(f) creates a private right of
21 action for aggrieved employees and a default penalty in the amount of \$100 for each aggrieved
22 employee per pay period for the initial violation, and \$200 for each aggrieved employee per pay
23 period for each subsequent violation. *See* Cal. Lab. Code § 2699(f).

24 74. Plaintiff hereby seeks to collect these civil penalties for the Labor Code violations
25 described below in the year prior to this filing and up to the present:

- 26 a. Under California Labor Code § 2699(f)(2), a civil penalty of one hundred dollars
27 (\$100) for Plaintiff and each aggrieved employee per pay period for the initial
28 violation of Labor Code §§ 204, 224, 1194, 1194.2, 1197.1 for failing to pay

1 hourly employees at Famous Footwear stores minimum wage for all hours
2 worked as alleged herein due to an improper rounding policy, and two hundred
3 dollars (\$200) for Plaintiff and each aggrieved employee per pay period for each
4 subsequent violation of Labor Code §§ 204, 224, 1194, 1194.2, 1197.1, for
5 failing to pay hourly employees at Famous Footwear stores minimum wage for
6 all hours worked as alleged herein due to an improper rounding policy.

7 b. Under California Labor Code § 2699(f)(2), a civil penalty of one hundred dollars
8 (\$100) for Plaintiff and each aggrieved employee per pay period for the initial
9 violation of Labor Code § 226.7, 512, and IWC Wage Order No. 5, §§ 11 and 12,
10 for failing to provide rest periods to keyholders employed in California, and two
11 hundred dollars (\$200) for Plaintiff and each aggrieved employee per pay period
12 for each subsequent violation of Labor Code § 226.7, for failing to provide rest
13 periods to keyholders employed in California, as alleged herein.

14 c. Under California Labor Code § 226.3, which provides for civil penalties for
15 violations of California Labor Code § 226(a), a civil penalty of two hundred fifty
16 dollars (\$250) for Plaintiff and each aggrieved hourly employee for the first
17 violation, and one thousand dollars (\$1,000) for Plaintiff and each aggrieved
18 employee for each subsequent violation of Labor Code § 226(a), for Defendants'
19 failure to provide timely, accurate, itemized wage statements to keyholders and
20 all other hourly employees employed in California, as alleged herein.

21 d. Under California Labor Code § 2699(f)(2), a civil penalty of one hundred dollars
22 (\$100) for Plaintiff and each formerly employed aggrieved employee per pay
23 period for the initial violation of Labor Code §§ 201, 202, and 203 for
24 Defendants' failure to pay earned wages upon discharge to hourly workers and
25 keyholders previously employed by Defendants in California, as alleged herein,
26 and two hundred dollars (\$200) for Plaintiff and each such aggrieved employee
27 per pay period for each subsequent violation of Labor Code §§ 201, 202, and 203.
28

75. California Labor Code § 2699(g) further provides that any employee who prevails in an action for civil penalties is entitled to an award of reasonable attorneys' fees and costs. Plaintiff hereby seeks to recover his attorneys' fees and costs under this fee and cost provision.

76. On March 12, 2021, pursuant to California Labor Code § 2699.3 and Cal. Senate Bill No. 838, Plaintiff submitted online notice to the Labor and Workforce Development Agency (LWDA) of the specific provisions of the Labor Code that have been violated, including the facts and theories to support the violations. Plaintiff sent this notice to Caleres by electronic and certified mail which was received. The sixty-five-day time limit for the agency to respond has expired, such that Plaintiff has exhausted his administrative remedies. In addition, Plaintiff has not received any written notice from Caleres that the violations alleged above have been cured pursuant to Cal. Labor Code § 2699.3. Plaintiff submitted an amended letter online and via electronic and certified mail to add BG Retail on September 8, 2021.

SEVENTH CAUSE OF ACTION

(Violation of Cal. Gov't. Code, § 12940, subds. (j)(1) & (k))

**(Harassment and Failure To Prevent Harassment In Violation of the California Fair
Employment and Housing Act)**

(on behalf of Plaintiff individually against Defendants Caleres, BG Retail, and Martin)

77. Plaintiff realleges and incorporates herein by reference all previous paragraphs as if set forth in full.

78. California Government Code § 12940(j)(1) provides in relevant part: “It is an unlawful employment practice . . . [f]or an employer . . . or any other person because of . . . race . . . national origin, ancestry, physical disability, mental disability, medical condition . . . sexual orientation . . . to harass an employee [] . . . Loss of tangible job benefits shall not be necessary in order to establish harassment.” (Cal. Gov’t Code, § 12940, subd. (j)(1).) California Government Code § 12940(k) further provides that it is an “unlawful employment practice” for “an employer . . . to fail to take all reasonable steps necessary to prevent discrimination and harassment from occurring.” (Cal. Gov’t Code, § 12940, subd. (k).) The FEHA further provides in relevant part

1 that an “employee of an entity subject to this subdivision is personally liable for any harassment
2 prohibited by this section that is perpetrated by the employee, regardless of whether the employer
3 or covered entity knows or should have known of the conduct and fails to take immediate and
4 appropriate corrective action.”

5 79. Defendant Martin’s hostility toward Plaintiff after being informed that he had
6 applied for and been granted legally protected intermittent leave was unwelcome and intimidating
7 and constituted harassment based on Plaintiff’s migraine-related disability and/or national origin
8 and/or sexual orientation and/or harassment based on his association with another disabled
9 individual—his then partner.

10 80. Based on Defendant Martin’s words and acts including but not limited to the
11 content and tone of demeaning comments she made to Plaintiff about his need for leave
12 intermittently to mitigate flare ups of his chronic migraine condition and/or Plaintiff’s requested
13 exemption from Caleres’s and/or BG Retail’s policy preventing him from drinking water while on
14 duty on the retail floor or at the register to prevent dehydration and/or Plaintiff’s non-gender
15 conforming manner of speaking with a slight accent, Plaintiff believes that his disability, his
16 requests for reasonable accommodation of his disability and/or his national origin, and/or his
17 sexual orientation were substantial motivating factors in Defendant Martin’s hostile acts
18 culminating in her singling him out and excluding him as ineligible to be contacted for or
19 otherwise offered recall or re-employment by Caleres and/or BG Retail in its Sacramento District.

20 81. Caleres and/or BG Retail had reprimanded Defendant Martin in response to
21 Plaintiff’s September 2020 complaint that Martin had ridiculed Plaintiff and responded to his
22 protected request for leave in a verbally hostile and demeaning manner. Caleres and/or BG Retail
23 knew or should have known that Defendant Martin would remain more likely to be motivated to
24 retaliate against Plaintiff illegally as a result of the reprimand she received based on Plaintiff’s
25 recent complaint. On information and belief, Caleres and/or BG Retail nonetheless knowingly
26 failed to take steps reasonably necessary to prevent Plaintiff from being retaliated and/or
27 discriminated against as a “troublemaker” ineligible even to be solicited to return to work - even
28 when Caleres and/or BG Retail and Defendant Martin were having trouble filling an Assistant

1 Store Manager position at one of the retail locations in the Sacramento District where Plaintiff had
2 previously worked. Rather, Caleres and/or BG Retail allowed Defendant Martin to make re-
3 employment calls at her discretion and to treat Caleres's April 3 closure and simultaneous
4 termination of its Assistant Store Managers differently in Plaintiff's case different than she did or
5 could in the case of other Assistant Store Managers who had not ever challenged her authority
6 with the HR department of Caleres and/or BG Retail. By knowingly or recklessly allowing
7 Defendant Martin to select and determine unilaterally and without any HR review which of her
8 former Sacramento District Assistant Managers would or would not even be called and/or offered
9 re-employment, Caleres and/or BG Retail failed to prevent discrimination and harassment from
10 occurring. By terminating Plaintiff in April 2020 while allowing Defendant Martin then to single
11 Plaintiff out as ineligible for re-employment in June 2020 - and then failing and refusing to contact
12 or offer re-employment in June 2020 and since - Caleres, BG Retail, and Martin acted in violation
13 of California's Fair Employment & Housing Act, Gov't Code §§ 12940 (j)(1) and (k).

14 82. These illegal acts and omissions by Martin, Caleres, and BG Retail have resulted in
15 and/or been a substantial factor proximately causing Plaintiff to suffer damages including but not
16 limited to loss of income and wages and additional emotional distress and anxiety, in a manner
17 and amount to be proven at any trial of this matter.

18 **EIGHTH CAUSE OF ACTION**

19 **(Violation of Cal. Gov't. Code, § 12945.2, subds. (k) & (q))**

20 **(Interference With Rights Under California Family Rights Act)**

21 **(on behalf of Plaintiff individually against Defendants Caleres, BG Retail, and**

22 **Martin)**

23 83. Plaintiff realleges and incorporates herein by reference all previous paragraphs as if
24 set forth in full.

25 84. California Government Code § 12945.2(k) provides in relevant part: "It shall be an
26 unlawful employment practice for an employer to refuse to hire, or to discharge . . . expel, or
27 discriminate against, any individual because of . . . (1) An individual's exercise of the right to
28 family care and medical leave . . . [or] (2) An individual's giving information . . . as to the

1 individual's own family care and medical leave . . in any inquiry . . . related to rights guaranteed
2 under this section."

3 85. The acts and remarks by Martin alleged above, and Caleres's and/or BG Retail's
4 subsequent ratification of the decision Defendant Martin knew or should have known it made to
5 blacklist Plaintiff and treat him as ineligible for re-employment in June 2020 constituted unlawful
6 interference with his intermittent leave rights protected under California law.

7 86. As a proximate result of the acts of Caleres, BG Retail, and Martin, Plaintiff has
8 suffered damages deriving from, among other things, emotional distress as well as loss of income
9 in amounts to be proven at any trial of this matter.

10 **NINTH CAUSE OF ACTION**

11 **(Violation of Cal. Lab. Code, § 1102.5)**

12 **(Retaliation for Internal Complaint of Perceived Illegal Harassment)**

13 **(on behalf of Plaintiff individually against Defendants Caleres, BG Retail, and**
14 **Martin)**

15 87. Plaintiff realleges and incorporates herein by reference all previous paragraphs as if
16 set forth in full.

17 88. California Labor Code § 1102.5(b) provides in relevant part: "An employer, or any
18 person acting on behalf of the employer, shall not retaliate against an employee for disclosing
19 information or because the employer believes that the employee disclosed or may disclose
20 information, to a government or law enforcement agency, to a person with authority over the
21 employee or another employee who has the authority to investigate, discover, or correct the
22 violation or noncompliance . . . if the employee has reasonable cause to believe that the
23 information discloses a violation of state or federal statute, or a violation of or noncompliance
24 with a local, state, or federal rule or regulation, regardless of whether disclosing the information is
25 part of the employee's job duties."

26 89. Plaintiff engaged in activity protected under Labor Code § 1102.5(b) when, on
27 September 3, 2020, he honestly and not unreasonably complained to Defendants' Human
28 Resources Department about Defendant Martin's recent hostile remarks and reactions reflecting

1 hostility and anger in response to and as the direct result of his having requested and attempted to
2 take legally protected intermittent leave following a flare up of his migraine-related disability and
3 serious health condition.

4 90. Plaintiff is informed and believes that with the exception of those persons
5 designated the "Manager" of each of its retail store locations nationally, in early April 2020,
6 Caleres and/or BG Retail had laid off its entire Famous Footwear retail staff (including all in
7 California) and then briefly closed all its Famous Footwear retail locations in or around the
8 beginning of April, 2020, including the Famous Footwear Sacramento District Bidwell St. store
9 managed by Martin where Plaintiff had worked. Plaintiff is further informed and believes on that
10 basis that in or around early June 2020, Caleres and/or BG Retail gave its managing agent
11 Defendant Martin authority to unilaterally decide which - if any - of the Assistant Managers
12 previously working within the District she supervised she would or would not contact or
13 encourage or solicit to return to work at Sacramento District Famous Footwear locations she
14 supervised. Plaintiff was never contacted at any time after his April 2020 layoff by Defendant
15 Martin or any other representative of Caleres and/or BG Retail or asked, encouraged or otherwise
16 invited to return to work from layoff status or offered re-employment at Famous Footwear.
17 Plaintiff subsequently learned however that many if not all of other his former Sacramento District
18 Assistant Store Manager colleagues had been contacted and offered re-employment by Defendant
19 Martin. Plaintiff alleges that Caleres and/or BG Retail knowingly and deliberately allowed
20 Defendant Martin to subject Plaintiff to materially adverse actions and disparate treatment action
21 by deeming Plaintiff uniquely ineligible for recall or re-employment by Caleres and/or BG Retail
22 in June 2020 following his April 3, 2020 "termination" while in contrast deeming his former
23 colleagues who had not complained as he had of illegal activity by Defendant Martin 2020 as
24 eligible for recall and/or re-employment.

25 By allowing Martin to so proceed with Plaintiff's termination on April 3, 2020
26 notwithstanding any prior purported discipline meted out against Defendant Martin following and
27 in response to the Plaintiff's good faith complaint of illegal interference and/or harassment,
28 Caleres and/or BG Retail undermined its own anti-retaliation policy and ratified Martin's

1 recommendation course of action motivated by her personal desire to eliminate Plaintiff from the
2 ranks of the managers she supervised for Caleres and/or BG Retail.

3 91. As a proximate result of the illegal acts or omissions of Caleres, BG Retail, and
4 Martin alleged above, Plaintiff has suffered damages deriving from, among other things,
5 emotional distress as well as loss of income in amounts to be proven at any trial of this matter.

6 **PRAYER FOR RELIEF**

7 **WHEREFORE** Plaintiff, on behalf of himself, Class Members and Subclass Members,
8 respectfully requests relief as follows:

- 9 1. For compensatory damages, including lost wages and employment benefits
10 according to proof;
 - 11 2. For general and special damages, as may be appropriate;
 - 12 3. For an award of interest, including prejudgment and post judgment interest, at the
13 legal rate;
 - 14 4. For all actual, consequential, and incidental losses and damages, according to
15 proof, including but not limited to unpaid wages (including unpaid minimum or
16 premium wages);
 - 17 5. For pre-judgment interest on any sums due from the day such amounts were due;
 - 18 6. For punitive and exemplary damages;
 - 19 7. For an award of penalties pursuant to Labor Code § 226 and/or Labor Code § 226.7
20 and/or Labor Code § 1194 and/or IWC Wage Order No. 5-2001;
 - 21 8. For liquidated damages and interest thereon pursuant to Labor Code § 1194.2;
 - 22 9. For an award of statutory penalties pursuant to Labor Code § 203;
 - 23 10. For an award of restitution pursuant to Civil Code § 17200, *et seq.*;
 - 24 11. For an award of costs and reasonable attorneys' fees pursuant to Labor Code §
25 1194(a);
 - 26 12. For costs of suit incurred herein; and,
 - 27 13. For such other and further relief as the Court deems appropriate.
- 28

1 DATED: September 9, 2021

Respectfully submitted,

2
3 By: /s/ Steven M. Tindall
Steven M. Tindall

4
5 Steven M. Tindall (SBN 187862)
Amanda M. Karl (SBN 301088)
6 **GIBBS LAW GROUP LLP**
505 14th Street, Suite 1110
7 Oakland, California 94612
Telephone: (510) 350-9700
8 Fax: (510) 350-9701
9 smt@classlawgroup.com
10 amk@classlawgroup.com

11 John H. Douglas (SBN 178966)
12 **DOUGLAS LAW OFFICES**
100 Pine St., Suite 1250
13 San Francisco, California 94111
Telephone: (415) 794-4751
14 Fax: (415) 795-3432
15 JDouglas@douglaslegal.com

EXHIBIT 1



DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

KEVIN KISH, DIRECTOR

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
(800) 884-1684 (Voice) | (800) 700-2320 (TTY) | California's Relay Service at 711
<http://www.dfeh.ca.gov> | Email: contact.center@dfeh.ca.gov

April 25, 2021

John Douglas
100 Pine St. Suite 1250
San Francisco, California 94111

RE: **Notice to Complainant's Attorney**
DFEH Matter Number: 202104-13353525
Right to Sue: Palenciacaba / Caleres, Inc. et al.

Dear John Douglas:

Attached is a copy of your complaint of discrimination filed with the Department of Fair Employment and Housing (DFEH) pursuant to the California Fair Employment and Housing Act, Government Code section 12900 et seq. Also attached is a copy of your Notice of Case Closure and Right to Sue.

Pursuant to Government Code section 12962, DFEH will not serve these documents on the employer. You must serve the complaint separately, to all named respondents. Please refer to the attached Notice of Case Closure and Right to Sue for information regarding filing a private lawsuit in the State of California. A courtesy "Notice of Filing of Discrimination Complaint" is attached for your convenience.

Be advised that the DFEH does not review or edit the complaint form to ensure that it meets procedural or statutory requirements.

Sincerely,

Department of Fair Employment and Housing



DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

KEVIN KISH, DIRECTOR

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
(800) 884-1684 (Voice) | (800) 700-2320 (TTY) | California's Relay Service at 711
<http://www.dfeh.ca.gov> | Email: contact.center@dfeh.ca.gov

April 25, 2021

RE: **Notice of Filing of Discrimination Complaint**
DFEH Matter Number: 202104-13353525
Right to Sue: Palenciacaba / Caleres, Inc. et al.

To All Respondent(s):

Enclosed is a copy of a complaint of discrimination that has been filed with the Department of Fair Employment and Housing (DFEH) in accordance with Government Code section 12960. This constitutes service of the complaint pursuant to Government Code section 12962. The complainant has requested an authorization to file a lawsuit. A copy of the Notice of Case Closure and Right to Sue is enclosed for your records.

This matter may qualify for DFEH's Small Employer Family Leave Mediation pilot program. Under this program, established under Government Code section 12945.21, a small employer with 5 -19 employees, charged with violation of the California Family Rights Act, Government Code section 12945.2, has the right to participate in DFEH's free voluntary mediation service. Under this program both the employee requesting an immediate right to sue and the employer charged with the violation may request that all parties participate in DFEH's free voluntary mediation service. A request for mediation must be made within 30 days of receipt of the Notice of Case Closure and Right to Sue. If mediation is requested, the employee is prohibited from filing a civil action until mediation is complete. The employee's statute of limitations to file a civil action, including for all related claims not arising under section 12945.2, is tolled from DFEH's receipt of a mediation request under section 12945.21 until mediation is complete. To request DFEH Small Employer Family Leave Mediation, email DRDOnlineRequests@dfeh.ca.gov and include the DFEH matter number indicated on the Right to Sue notice.

Please refer to the attached complaint for a list of all respondent(s) and their contact information.

No response to DFEH is requested or required.

Sincerely,

Department of Fair Employment and Housing



DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
(800) 884-1684 (Voice) | (800) 700-2320 (TTY) | California's Relay Service at 711
<http://www.dfeh.ca.gov> | Email: contact.center@dfeh.ca.gov

April 25, 2021

Luis Palenciabaca
4760 Liesel Court
Carmichael, California 95608

RE: **Notice of Case Closure and Right to Sue**
DFEH Matter Number: 202104-13353525
Right to Sue: Palenciabaca / Caleres, Inc. et al.

Dear Luis Palenciabaca:

This letter informs you that the above-referenced complaint filed with the Department of Fair Employment and Housing (DFEH) has been closed effective April 25, 2021 because an immediate Right to Sue notice was requested.

This letter is also your Right to Sue notice. According to Government Code section 12965, subdivision (b), a civil action may be brought under the provisions of the Fair Employment and Housing Act against the person, employer, labor organization or employment agency named in the above-referenced complaint. The civil action must be filed within one year from the date of this letter.

This matter may qualify for DFEH's Small Employer Family Leave Mediation pilot program. Under this program, established under Government Code section 12945.21, a small employer with 5 -19 employees, charged with violation of the California Family Rights Act, Government Code section 12945.2, has the right to participate in DFEH's free voluntary mediation service. Under this program both the employee requesting an immediate right to sue and the employer charged with the violation may request that all parties participate in DFEH's free voluntary mediation service. A request for mediation must be submitted to the DFEH within 30 days of receipt of the Notice of Case Closure and Right to Sue. If mediation is requested, the employee is prohibited from filing a civil action until mediation is complete. The employee's statute of limitations to file a civil action, including for all related claims not arising under section 12945.2, is tolled from DFEH's receipt of a mediation request under section 12945.21 until mediation is complete. To request DFEH Small Employer Family Leave Mediation, email DRDOnlineRequests@dfeh.ca.gov and include the DFEH matter number indicated on the Right to Sue notice.

To obtain a federal Right to Sue notice, you must contact the U.S. Equal Employment Opportunity Commission (EEOC) to file a complaint within 30 days of receipt of this DFEH Notice of Case Closure or within 300 days of the alleged discriminatory act, whichever is earlier.

Sincerely,



STATE OF CALIFORNIA | Business, Consumer Services and Housing Agency

GAVIN NEWSOM, GOVERNOR

DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

KEVIN KISH, DIRECTOR

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
(800) 884-1684 (Voice) | (800) 700-2320 (TTY) | California's Relay Service at 711
<http://www.dfeh.ca.gov> | Email: contact.center@dfeh.ca.gov

Department of Fair Employment and Housing

1 **COMPLAINT OF EMPLOYMENT DISCRIMINATION**
2 **BEFORE THE STATE OF CALIFORNIA**
3 **DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING**
4 **Under the California Fair Employment and Housing Act**
5 **(Gov. Code, § 12900 et seq.)**

6 **In the Matter of the Complaint of**

7 Luis Palenciabaca

DFEH No. 202104-13353525

8 Complainant,

9 vs.

10 Caleres, Inc.
11 8300 Maryland Ave.
12 St. Louis, Missouri 63105

13 Kathleen M. Martin
14 2291 Loch Way
15 El Dorado Hills, California 95762

16 Respondents

17 1. Respondent **Caleres, Inc.** is an employer **Caleres, Inc.** subject to suit under the California
18 Fair Employment and Housing Act (FEHA) (Gov. Code, § 12900 et seq.).

19 2. Complainant is naming **Kathleen M. Martin** individual as Co-Respondent(s).

20 3. Complainant **Luis Palenciabaca**, resides in the City of **Carmichael**, State of **California**.

21 4. Complainant alleges that on or about **June 1, 2020**, respondent took the following
22 adverse actions:

23 **Complainant was harassed** because of complainant's national origin (includes language
24 restrictions), disability (physical or mental), association with a member of a protected class,
25 family care or medical leave (cfra).

26 **Complainant was discriminated against** because of complainant's national origin
27 (includes language restrictions), disability (physical or mental), association with a member of
28 a protected class, family care or medical leave (cfra) and as a result of the discrimination
was terminated, denied hire or promotion, asked impermissible non-job-related questions,
denied any employment benefit or privilege, denied work opportunities or assignments,
denied family care or medical leave (cfra).

1 **Complainant experienced retaliation** because complainant reported or resisted any form
2 of discrimination or harassment, requested or used a disability-related accommodation,
3 requested or used family care or medical leave (cfra) and as a result was terminated, denied
4 hire or promotion, denied any employment benefit or privilege, denied reasonable
accommodation for a disability, denied work opportunities or assignments, denied family
care or medical leave (cfra).

5 **Additional Complaint Details:** Between February 18, 2018 and April 3, 2020, Charging
6 Party Luis Palenciabaca ("Mr. Palenciabaca") was employed as an Assistant Store Manager
by Respondent Caleres, Inc. dba "Famous Footwear."

7 Caleres, Inc., is the current name of the former "Brown Shoe" company - a New York Stock
8 Exchange listed New York corporation founded in 1878 in Rochester, New York now
headquartered in Clayton, Missouri, a suburb of St. Louis.

9 Mr. Palenciabaca worked for Caleres principally at its 2775 E. Bidwell St. retail store location
10 in Folsom, California. In addition, Mr. Palenciabaca was also assigned at times by his
supervisor, Caleres Sacramento District Manager Kathleen Martin, to two other retail
11 locations of the total of eleven (11) that she supervised in that District - a Famous Footwear
retail location at the Yuba City Marketplace in Yuba City and another similar location at Point
12 West Plaza on Arden Way in Sacramento.

13 Following the statewide declaration of emergency and shelter-in-place order as a result of
14 the COVID pandemic, on April 3, 2020, Caleres closed its domestic Famous Footwear retail
locations temporarily and Mr. Palenciabaca was terminated. By June, 2020, however,
15 Caleres had re-opened virtually all of the locations it had previously operated.

16 Mr. Palenciabaca is informed and believes on that basis that upon re-opening, Ms. Martin
17 contacted other Assistant Store Managers working in Caleres Sacramento District and
offered them renewed employment in their former jobs with Famous Footwear within its
Sacramento District. In contrast with other Assistant Store managers who reported to her,
18 Ms. Martin made no effort to contact Mr. Palenciabaca and did not offer him his job back.

19 Mr. Palenciabaca believes based on all the facts and circumstances, that Ms. Martin's
20 decision not to recall him to work in June 2020 was motivated in whole or in substantial part
by her anger at his having engaged in protected activity under both the California Fair
Employment and Housing Act and California Family Rights Act.

21 In March 2019, Mr. Palenciabaca had been diagnosed by a neurologist as suffering from
22 chronic and often debilitating migraine headaches. On May 9, 2019, Mr. Palenciabaca had
requested an accommodation of his disability from Caleres' Human Resources Department
23 in the form of asking that an exception be made to Famous Footwear's policy forbidding
employees from having or drinking water while working the sales floor or cash register.
24

1 In Mr. Palenciabaca's experience, dehydration, among other things, as well as bright lights,
2 loud sounds and unusually stressful personal circumstances were the most reliable triggers
3 for his migraine condition.

4 Ms. Martin made remarks to Mr. Palenciabaca suggesting she was displeased that Mr.
5 Palenciabaca would be allowed to have and drink water while working within the store when
6 she subsequently learned that Mr. Palenciabaca had requested this accommodation - and
7 that it had been agreed to by Caleres HR.

8 Mr. Palenciabaca subsequently requested that he be allowed to use CFRA leave
9 intermittently as a result of his migraine serious health condition and was approved for such
10 leave effective August 2, 2019.

11 Among other things, he had been experiencing significant stress - and migraine flare-ups -
12 as a result of his then (male) partner's recent recurring medical problems. For example, in
13 November 2018, Mr. Palenciabaca's partner had had a seizure that resulted in his being
14 taken from the home they shared to the hospital in an ambulance. The stress caused by the
15 medical problems his partner was having appeared to increase the frequency of Mr.
16 Palenciabaca's migraines.

17 On August 31 2019, Mr. Palenciabaca was required to perform a fire alarm test in the
18 morning at the Bidwell St. store. Ms. Martin subsequently came to the same location as she
19 needed to perform certain "back room" administrative tasks. While Ms. Martin was in the
20 store, Mr. Palenciabaca informed her that he needed to use his intermittent family leave -
21 although he did not give Ms. Martin specifics of his diagnosis.

22 Ms. Martin responded by objecting and then aggressively inquiring into the specifics of his
23 medical condition. When Mr. Palenciabaca then informed Ms. Martin that he had already
24 been approved by Caleres HR for intermittent family leave under the CFRA - and had a
25 legal right to go home as a result - Ms. Martin responded - "what - do you think you can just
26 come and go as you please now?" - or words to that effect.

27 Following this threatening and coercive interaction with Ms. Martin, on or around September
28 3, 2019, Mr. Palenciabaca complained to Caleres HR in writing and informed Caleres of his
suspicion that Ms. Martin was disinclined to have an employee who needed a reasonable
accommodation and/or intermittent leave working within the Sacramento District. Mr.
Palenciabaca also drew Caleres HR's attention to Ms. Martin's having told Mr. Palenciabaca
that she did not like "the way he talked" - a remark he believed reflected either a negative
view of his slightly Spanish-accented English or her being displeased by his occasionally
"camp" or vivacious communication style - one stereotypically associated with same-sex
orientation. Mr. Palenciabaca had been "out" with Ms. Martin at work since the November
2018 incident involving his then significant other.

Mr. Palenciabaca was subsequently informed by Caleres HR that Ms. Martin had been
reprimanded, and such remarks did not recur between September 2019 and his termination
on April 3, 2020. Unlike his other Assistant Store Manager colleagues who Ms. Martin did
recall to their former jobs in June 2020, however, neither Caleres nor Ms. Martin ever

1 extended any offer to let Mr. Palenciacaba return to his former job at the re-opened Bidwell
2 St. location.

3 Given the temporal proximity of Mr. Palenciacaba's protected activity and the June 2020
4 adverse action, an inference is justified that the protected activity substantially contributed to
5 the adverse action that soon followed.
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1 VERIFICATION

2 I, **John H. Douglas**, am the **Attorney** in the above-entitled complaint. I have read the
3 foregoing complaint and know the contents thereof. The matters alleged are based
4 on information and belief, which I believe to be true.

5 On April 25, 2021, I declare under penalty of perjury under the laws of the State of
6 California that the foregoing is true and correct.

7 **San Francisco, CA**
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DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

KEVIN KISH, DIRECTOR

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
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September 8, 2021

John Douglas
100 Pine St. Suite 1250
San Francisco, California 94111

RE: **Notice to Complainant's Attorney**
DFEH Matter Number: 202109-14690608
Right to Sue: Palencia-Caba / BG Retail, LLC

Dear John Douglas:

Attached is a copy of your complaint of discrimination filed with the Department of Fair Employment and Housing (DFEH) pursuant to the California Fair Employment and Housing Act, Government Code section 12900 et seq. Also attached is a copy of your Notice of Case Closure and Right to Sue.

Pursuant to Government Code section 12962, DFEH will not serve these documents on the employer. You must serve the complaint separately, to all named respondents. Please refer to the attached Notice of Case Closure and Right to Sue for information regarding filing a private lawsuit in the State of California. A courtesy "Notice of Filing of Discrimination Complaint" is attached for your convenience.

Be advised that the DFEH does not review or edit the complaint form to ensure that it meets procedural or statutory requirements.

Sincerely,

Department of Fair Employment and Housing



DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

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September 8, 2021

RE: Notice of Filing of Discrimination Complaint
DFEH Matter Number: 202109-14690608
Right to Sue: Palencia-Caba / BG Retail, LLC

To All Respondent(s):

Enclosed is a copy of a complaint of discrimination that has been filed with the Department of Fair Employment and Housing (DFEH) in accordance with Government Code section 12960. This constitutes service of the complaint pursuant to Government Code section 12962. The complainant has requested an authorization to file a lawsuit. A copy of the Notice of Case Closure and Right to Sue is enclosed for your records.

This matter may qualify for DFEH's Small Employer Family Leave Mediation pilot program. Under this program, established under Government Code section 12945.21, a small employer with 5 -19 employees, charged with violation of the California Family Rights Act, Government Code section 12945.2, has the right to participate in DFEH's free voluntary mediation service. Under this program both the employee requesting an immediate right to sue and the employer charged with the violation may request that all parties participate in DFEH's free voluntary mediation service. A request for mediation must be made within 30 days of receipt of the Notice of Case Closure and Right to Sue. If mediation is requested, the employee is prohibited from filing a civil action until mediation is complete. The employee's statute of limitations to file a civil action, including for all related claims not arising under section 12945.2, is tolled from DFEH's receipt of a mediation request under section 12945.21 until mediation is complete. To request DFEH Small Employer Family Leave Mediation, email DRDOnlineRequests@dfeh.ca.gov and include the DFEH matter number indicated on the Right to Sue notice.

Please refer to the attached complaint for a list of all respondent(s) and their contact information.

No response to DFEH is requested or required.

Sincerely,

Department of Fair Employment and Housing



DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

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KEVIN KISH, DIRECTOR

September 8, 2021

Luis Palencia-Caba
4760 Liesel Ct.
Carmichael, California 95608

RE: Notice of Case Closure and Right to Sue
DFEH Matter Number: 202109-14690608
Right to Sue: Palencia-Caba / BG Retail, LLC

Dear Luis Palencia-Caba:

This letter informs you that the above-referenced complaint filed with the Department of Fair Employment and Housing (DFEH) has been closed effective September 8, 2021 because an immediate Right to Sue notice was requested.

This letter is also your Right to Sue notice. According to Government Code section 12965, subdivision (b), a civil action may be brought under the provisions of the Fair Employment and Housing Act against the person, employer, labor organization or employment agency named in the above-referenced complaint. The civil action must be filed within one year from the date of this letter.

This matter may qualify for DFEH's Small Employer Family Leave Mediation pilot program. Under this program, established under Government Code section 12945.21, a small employer with 5 -19 employees, charged with violation of the California Family Rights Act, Government Code section 12945.2, has the right to participate in DFEH's free voluntary mediation service. Under this program both the employee requesting an immediate right to sue and the employer charged with the violation may request that all parties participate in DFEH's free voluntary mediation service. A request for mediation must be submitted to the DFEH within 30 days of receipt of the Notice of Case Closure and Right to Sue. If mediation is requested, the employee is prohibited from filing a civil action until mediation is complete. The employee's statute of limitations to file a civil action, including for all related claims not arising under section 12945.2, is tolled from DFEH's receipt of a mediation request under section 12945.21 until mediation is complete. To request DFEH Small Employer Family Leave Mediation, email DRDOnlineRequests@dfeh.ca.gov and include the DFEH matter number indicated on the Right to Sue notice.

To obtain a federal Right to Sue notice, you must contact the U.S. Equal Employment Opportunity Commission (EEOC) to file a complaint within 30 days of receipt of this DFEH Notice of Case Closure or within 300 days of the alleged discriminatory act, whichever is earlier.

Sincerely,



STATE OF CALIFORNIA | Business, Consumer Services and Housing Agency

GAVIN NEWSOM, GOVERNOR

DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

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Department of Fair Employment and Housing

1 **COMPLAINT OF EMPLOYMENT DISCRIMINATION**
2 **BEFORE THE STATE OF CALIFORNIA**
3 **DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING**
4 **Under the California Fair Employment and Housing Act**
5 **(Gov. Code, § 12900 et seq.)**

6 **In the Matter of the Complaint of**

7 Luis Palencia-Caba

DFEH No. 202109-14690608

8 Complainant,

9 vs.

10 BG Retail, LLC
11 8300 Maryland Ave.
12 St. Louis, Missouri 63105

13 Respondents

14
15 1. Respondent **BG Retail, LLC** is an employer **BG Retail, LLC** subject to suit under the
16 California Fair Employment and Housing Act (FEHA) (Gov. Code, § 12900 et seq.).

17
18 2. Complainant **Luis Palencia-Caba**, resides in the City of **Carmichael**, State of **California**.

19 3. Complainant alleges that on or about **June 1, 2020**, respondent took the following
20 adverse actions:

21 **Complainant was harassed** because of complainant's national origin (includes language
22 restrictions), disability (physical or mental), association with a member of a protected class,
23 family care or medical leave (cfra).

24 **Complainant was discriminated against** because of complainant's national origin
25 (includes language restrictions), disability (physical or mental), association with a member of
26 a protected class, family care or medical leave (cfra) and as a result of the discrimination
27 was terminated, denied hire or promotion, asked impermissible non-job-related questions,
28 denied any employment benefit or privilege, denied work opportunities or assignments,
29 denied family care or medical leave (cfra).

30 **Complainant experienced retaliation** because complainant reported or resisted any form
31 of discrimination or harassment, requested or used a disability-related accommodation,
32 requested or used family care or medical leave (cfra) and as a result was terminated, denied
33 hire or promotion, denied any employment benefit or privilege, denied reasonable

1 accommodation for a disability, denied work opportunities or assignments, denied family
2 care or medical leave (cfra).

3 **Additional Complaint Details:** Between February 18, 2018 and April 3, 2020, Charging
4 Party Luis Palencia-Caba ("Mr. Palencia-Caba") was employed as an Assistant Store
5 Manager by Respondents Caleres, Inc. and BG Retail, LLC dba "Famous Footwear"
6 ("Respondents"). Respondent BG Retail, LLC is a wholly owned subsidiary formed in 2015
7 of the the former "Brown Shoe" company - a New York Stock Exchange listed New York
8 corporation founded in 1878 in Rochester, New York and now known as Caleres, Inc. dba
9 Famous Footwear and/or BG Retail, LLC dba Famous Footwear, both of which are
10 headquartered in Clayton, Missouri, a suburb of St. Louis. Mr. Palencia-Caba worked for
11 Respondents principally at their 2775 E. Bidwell St. retail store location in Folsom,
12 California. In addition, Mr. Palencia-Caba was also assigned at times by his supervisor,
13 Caleres / BG Retail District Manager Kathleen Martin, to two other retail locations of the total
14 of eleven
15 (11) that she supervised - a Famous Footwear retail location at the Yuba City Marketplace in
16 Yuba City and another similar location at Point West Plaza on Arden Way in Sacramento.
17 Following the statewide declaration of emergency and shelter in place order as a result of
18 the COVID pandemic, on April 3, 2020,
19 Respondents closed their domestic Famous Footwear retail locations. By June, 2020,
20 however, Respondents had re-opened virtually all of the locations they had previously
21 operated. Mr. Palencia-Caba is informed and
22 believes on that basis that upon re-opening, Ms. Martin contacted other Assistant store
23 managers working in Respondents' Sacramento area District and offered them renewed
24 employment in their former jobs with Famous Footwear within its Sacramento District. In
25 contrast with other Assistant Store managers who reported to her, Ms. Martin made no effort
26 to contact Mr. Palencia- aba to offer him his job back. Mr.
27 Palencia-Caba believes based on all the facts and circumstances, that Ms. Martin's decision
28 not to recall him to work in June 2020 was motivated in whole or in substantial part by her
anger at his having engaged in protected activity under both the California Fair Employment
and Housing Act and California Family Rights Act. In or around March 2020, Mr. Palencia-
Caba had been diagnosed by a neurologist as suffering from chronic and debilitating
migraine headaches and had requested an accommodation of his condition from
Respondent Caleres' Human Resources Department in the form of an exception to Famous
Footwear's policy forbidding employees from having or drinking water while working the
sales floor or cash register. In Mr. Palencia-Caba's experience, dehydration, among other
things, as well as bright lights, loud sounds and unusually stressful personal circumstances
were the most reliable triggers for his condition. Ms. Martin made remarks to Mr. Palencia-
Caba suggesting she was displeased that Mr. Palencia-Caba would be allowed to have and
drink water while working when she subsequently learned that Mr. Palencia-Caba had
requested this accommodation - and that it had been granted by Respondent Caleres' HR
agents. In May, 2019, Mr. Palencia-Caba also requested that he be allowed to use CFRA
leave intermittently as a result of his migraine serious health

condition. Among other things, he had been experiencing significant stress - and migraine
flare-ups - as a result of his then (male) partner's recent recurring medical problems. For

1 example, in November 2018, Mr. Palencia-Caba's partner had had a seizure that resulted in
2 his being taken from the home they shared to the hospital in an ambulance. The stress
3 caused by the medical problems his partner was having appeared to increase the frequency
4 of his migraines. In August 2019, Ms. Martin was present to conduct fire alarm testing and
5 working for the day in the "back of the house" at Respondents' Bidwell St. location in Folsom
6 where Mr. Palencia-Caba was working. After being exposed to an extremely loud fire alarm
7 for an extended period of time, Mr. Palencia-Caba approached Ms. Martin and informed her
8 that he did not feel well and was beginning to experience migraine symptoms and needed to
9 go home where he could be in a quiet dark place. Ms. Martin's initial reaction was to object
10 to Mr. Palencia-Caba's request. When Mr. Palencia-Caba then informed Ms. Martin that he
11 had been approved by Caleres HR for intermittent family leave under the CFRA - and had a
12 legal right to go home as a result - Ms. Martin responded - "what - do you think you can just
13 come and go as you please now?" - or words to that effect. Ms. Martin then proceeded to
14 pepper Mr.
15 Palencia-Caba with a series of invasive questions about his private serious health condition
16 and disability. Following this threatening remark by Ms. Martin, Mr. Palencia-Caba
17 complained to Respondents' HR representatives on or around September 3, 2019, informing
18 Respondents of his suspicion that Ms. Martin was disinclined to have an employee who
19 needed a reasonable accommodation and/or intermittent leave working within her District.
20 Mr. Palencia-Caba also drew Respondents' HR's attention to Ms. Martin's having told Mr.
21 Palencia-Caba that she did not like "the way he talked" - a remark he believed reflected
22 either a negative view of his slightly Spanish accented English or her being displeased by
23 his occasionally "camp" or vivacious communication style - one stereotypically associated
24 with same sex orientation. Mr. Palencia-Caba had been "out" with Ms. Martin at work since
25 the November 2018 incident involving his then significant other. Mr. Palencia-Caba was
26 subsequently informed by Respondent Caleres' HR personnel that Ms. Martin had been
27 reprimanded and such remarks did not recur between September 2019 and his termination
28 on April 3, 2020. Unlike his other Assistant Store Manager colleagues who Ms. Martin did
recall to their former jobs in June 2020, Respondents Caleres, BG Retail, LLC and Ms.
Martin never extended any offer to let Mr. Palencia-Caba return to his former job at the re-
opened Bidwell St. location. Given the temporal proximity of Mr. Palencia-Caba's protected
activity and the June 2020 adverse action, an inference is justified that the protected activity
substantially contributed to the adverse action that soon followed. Notably, Ms. Martin was
NOT the manager who had hired Mr. Palencia-Caba on behalf of Respondents dba Famous
Footwear initially.

1 VERIFICATION

2 I, **John H. Douglas**, am the **Attorney** in the above-entitled complaint. I have read the
3 foregoing complaint and know the contents thereof. The matters alleged are based
4 on information and belief, which I believe to be true.

5 On September 8, 2021, I declare under penalty of perjury under the laws of the State
6 of California that the foregoing is true and correct.

7 **San Francisco, CA**
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