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Attorneys for Plaintiff LUCY LIM, on behalf of herself and as representative
for the State of California on behalf of all other aggrieved employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

LUCY LIM, on behalf of herself and as
representative for the State of California on
behalf of all other aggrieved employees,

Plaintiffs,

v.

SFC MILPITAS, INC., a California
Corporation doing business as Seafood City
and Seafood City Supermarket, and DOES 1
through 10, inclusive,

Defendants.

Case No. R920066777
REPRESENTATIVE ACTION

**COMPLAINT FOR CIVIL PENALTIES
(PRIVATE ATTORNEYS' GENERAL ACT)**

[Cal. Labor Code Section 2698, *et seq.*]

**ENDORSED
FILED
ALAMEDA COUNTY
JUL 1 - 2020
CLERK OF THE SUPERIOR COURT
By TANIA PIERCE**

1 Plaintiff LUCY LIM, on behalf of herself and as a representative for the State of
2 California on behalf of all other aggrieved employees, alleges:

3 1. LUCY LIM (“Plaintiff”) brings this representative action against SFC
4 MILPITAS, INC., doing business as, “Seafood City” and “Seafood City Supermarket,” and DOES
5 1 through 10, inclusive (“Seafood City” or “Defendants”) to recover civil penalties arising out of
6 Defendants’ labor code violation for failure to provide suitable seating.

7 2. Plaintiff gave notice of these claims to the California Labor and Workforce
8 Development Agency (“LWDA”) on April 13, 2020. There was no LWDA intervention within
9 65 days of that notice, and no notice of cure by Defendants. Plaintiff is an aggrieved employee
10 with standing to bring a representative action on behalf of the State, and LWDA and as a private
11 attorney general. Labor Code § 2699.3. (See Exhibit 1).

12 3. Plaintiff asserts claims for civil penalties as a representative of the State of
13 California, as authorized by the Private Attorneys General Act (“PAGA”), on behalf of
14 aggrieved employees who held the positions identified and suffered one or more of the
15 violations alleged. Labor Code §§ 2698, *et seq.*, 2699.3(a)(2)(C).

16 4. Plaintiff seeks to represent all current and former non-exempt employees in
17 California who performed cashier duties and were not provided suitable seating (“aggrieved
18 employees”) during the period one year before Plaintiff’s notice to the LWDA was filed until
19 the start of trial in this matter (“PAGA Period”).

20 **JURISDICTION AND VENUE**

21 5. Venue as to each Defendant is proper in this judicial district. CCP § 395.
22 Defendants conduct business and commit Labor Code violations directly effecting employees in
23 Alameda County, and each is within California for service of process. Plaintiff’s claims raise no
24 federal question, and PAGA civil penalty actions are not subject to federal jurisdiction.

25 **PARTIES**

26 6. Plaintiff was at all relevant times a California resident and worked as a non-
27 exempt cashier for Defendants from approximately November 2018 to September 2019 in
28 Hayward, California.

8. The true names and capacities, whether individual, corporate, associate, or otherwise, of Defendants sued as DOES 1 through 10, inclusive, are unknown to Plaintiff, who sues Defendants by fictitious names under Code of Civil Procedure section 474. Plaintiff is informed and believes, and alleges, each DOE Defendant is legally responsible in some manner for the unlawful acts alleged. Plaintiff will seek leave to amend this Complaint to reflect the true names and capacities of DOE Defendants when they become known.

9. Plaintiff is informed and believes each Defendant acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, plan or policy, and the acts of each Defendant are legally attributable to the other Defendants.

10. During the PAGA Period, Defendants employed Plaintiff and other aggrieved employees in Alameda County as non-exempt employees to perform cashier duties.

11. Primary responsibilities for Plaintiff and other aggrieved employees were operating cash registers and completing customer transactions. Plaintiff and other aggrieved employees engaged in these duties at designated stations in Defendant's stores.

12. The nature of the work performed by Plaintiff and other aggrieved employees at Defendants' stores reasonably permits the use of seats to perform their job duties.

13. Plaintiff and other aggrieved employees were not provided with suitable seating, or any seating, in the performance of their job duties.

14. Defendants issued a “suitable seating policy,” but it was not intended to provide seating. The policy was designed to prevent seats from being provided because, among other reasons, it states seating will only be provided if all duties are completed, a condition which by the policy’s own terms, can never exist. The Policy states when all cashier duties are completed, an employee must find the Store Manager or Assistant Manager and additional tasks will be assigned until the end of the shift.

CAUSE OF ACTION

**PAGA PENALTIES FOR
FAILURE TO PROVIDE SUITABLE SEATING
(AGAINST ALL DEFENDANTS)**

15. Plaintiff incorporates the preceding paragraphs of this Complaint.

16. As provided by Labor Code section 1198, the Industrial Welfare Commission (“IWC”) establishes the standard conditions of labor for California employees. The employment of an employee under conditions prohibited by an IWC order is unlawful.

17. Plaintiff and other aggrieved employees at Defendants’ California stores are covered by IWC Wage Order 7-2001, which applies to employees in the mercantile industry, which includes any industry, business, or establishment operated for the purpose of purchasing, selling, or distributing goods or commodities at wholesale or retail; or for the purpose of renting goods or commodities.

18. Wage Order 7-2001 requires that all employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats, and when employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties. Sections 14(A) and (B).

19. “[S]ection 14(A), unambiguously states employees ‘shall be provided with suitable seats’” when “the nature of [their] work reasonably permits seated work.” An employer must provide seats unless it meets “the burden of showing compliance is infeasible because no suitable seating exists.” *Kilby v. CVS Pharmacy, Inc.* (2016) 63 Cal. 4th 1, 24.

20. “[T]he IWC has stated that section 14(B) applies during ‘lulls in operation’ when an employee, while still on the job, is not then actively engaged in any duties. Taking [14(A) and (B)] together, if an employee’s actual tasks at a discrete location make seated work feasible, he is entitled to a seat under section 14(A) while working there. [I]f other job duties take him to a different location where he must perform standing tasks, he would be entitled to a seat under section 14(B) during ‘lulls in operation.’” *Kilby v. CVS Pharmacy, Inc.* (2016) 63 Cal. 4th at 19.

22. “[A]ny provision of [the Labor] code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency ... may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees.” Labor Code § 2699.

23. “For all provisions of this code except those for which a civil penalty is specifically provided, there is established a civil penalty for a violation of these provisions []

(2) If, at the time of the alleged violation, the person employs one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.” Labor Code § 2699(f)(2).

Plaintiff Lucy Lim, on behalf of herself and all other aggrieved employees, prays for judgment as follows:

A. This action be maintained as a PAGA Representative Action, and Plaintiff and her counsel be provided with enforcement capability as if the action were brought by the DLSE;

B. For recovery of civil penalties under Labor Code section 2699 for failure to provide suitable seating pursuant to Labor Code section 1198;

C. For all applicable civil penalties to be distributed 75% to the LWDA and 25% to the aggrieved employees, subject to approval by the Court, Labor Code section 2699(i);

D. For reasonable attorneys' fees and costs pursuant to statute, including, Labor Code sections 2698, *et seq.*, and Code of Civil Procedure section 1021.5;

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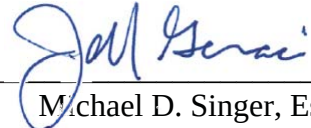
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1 E. For all interest accrued;

2 F. For such other relief the Court deems just and proper.

3 **COHELAN KHOURY & SINGER**
4 **DAVTYAN LAW FIRM, INC.**

5
6 Dated: July 1, 2020

By: 

Michael D. Singer, Esq.

Jeff Geraci, Esq.

Attorneys for Plaintiff LUCY LIM

EXHIBIT 1

COHELAN KHOURY & SINGER

A PARTNERSHIP OF PROFESSIONAL LAW CORPORATIONS

TIMOTHY D. COHELAN, APLC*
ISAM C. KHOURY, APC
DIANA M. KHOURY, APC
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(*Also admitted in the District of Columbia)
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JEFF GERACI
J. JASON HILL†
MARTA MANUS
KRISTINA DE LA ROSA

(† Also admitted in Illinois)

April 13, 2020

NOTICE VIA ONLINE SUBMISSION

California Labor and Workforce Development Agency (“LWDA”)

VIA CERTIFIED U.S. MAIL WITH RETURN RECEIPT

SFC Milpitas, Inc.
2883 Surveyor Street
Pomona, California 91768

Mr. Victor Lee
SFC Milpitas, Inc.
8450 Garvey Ave, Ste. 200
Rosemead, California 91770

Re: Ms. Lucy Lim, on behalf of herself and all similarly-situated SFC Milpitas, Inc. employees, as an individual and proposed Representative of the State of California

Dear PAGA Administrator:

Ms. Lucy Lim submits notice of Labor Code and Industrial Welfare Commission Wage Order violations by SFC Milpitas, Inc (“Defendant”). Ms. Lim seeks to represent herself and other aggrieved employees in a Private Attorneys General Act (“PAGA”) action against Defendant. Labor Code §§ 2698, *et seq.* For purposes of this notice, “aggrieved employees” includes all Defendant’s non-exempt employees in California who performed cashier duties.

FACTUAL STATEMENT

Ms. Lim worked as a cashier for Defendant from November 2018 until September 2019. A cashier’s primary duty is to operate a cash register and complete customer transactions. Although the nature of cashiering work at Defendant’s stores reasonably permits the use of seats, and has since at least one year before this Notice, none were provided.

FAILURE TO PROVIDE SUITABLE SEATING

California first required “suitable seating” for employees a century ago. This is codified in Section 14 of Wage Order 7 – 2001, and nearly every other Wage Order as well. See *Kilby v. CVS Pharmacy, Inc.* (2016) 63 Cal. 4th 1, 10-13. That Order requires:

(A) All working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats.

(B) When employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties.

“The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.” Labor Code § 1198.

“Violations of Wage Order No. 7 [14] are violations of section 1198.” *Bright v. 99cents Only Stores* (2010) 189 Cal. App. 4th 1472, 1476.

“[A]ny provision of [the Labor] code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency ... may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees.” Labor Code § 2699.

The nature of the work performed by Claimant and other aggrieved employees reasonably permitted the use of seats, but such seats were not provided. For example, as in other stores, including Aldi, cashiering tasks such as ringing up items and completing customer transactions can be performed while seated. Periods of time while customers are loading items on a conveyor belt also allow cashiers to remain seated.

Defendant issued a “suitable seating policy,” but it was not intended to provide seating. The policy was designed to prevent seats from being provided because, among other reasons, it states seating will only be provided if all duties are completed, a condition which by the policy’s own terms, can never exist. When all duties are completed, an employee must advise the Store Manager or Assistant Manager and have additional tasks assigned until the end of the shift.

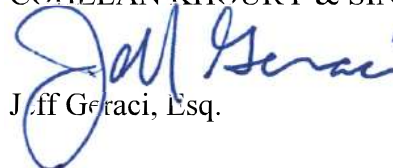
Although there were lulls in activities which would allow Claimant and other aggrieved employees to use seats during those times, an adequate number of suitable seats were not provided in reasonable proximity to cashier work areas. Section 14(B).

CONCLUSION

Defendant’s practices, as described in detail above, violate IWC Wage Orders, including 7-2001, and the California Labor Code, including sections 1198, 1199, and 2699.

Our client requests the Labor and Workforce Development Agency (“LWDA”) initiate enforcement for the violations described above. If the LWDA does not pursue enforcement, Ms. Lim will pursue claims for statutory penalties and seek all remedies available for violations of the Labor Code and Industrial Welfare Commission Wage Orders 7-2001, including all penalties, interest, attorney’s fees, and costs of suit. Labor Code section 2699(f).

Very truly yours,
COHELAN KHOURY & SINGER



Jeff Geraci, Esq.

California LWDA
SFC Milpitas, Inc.

Re: Lucy Lim

April 13, 2020

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cc:

Via Email Only

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