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12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

13 **IN AND FOR THE COUNTY OF SAN DIEGO**

14 SANDY MURILLO, on behalf of the
15 State of California, as a private attorney
16 general,

17 Plaintiff,

18 vs.

19 7 ELEVEN, INC., a Corporation; and
20 DOES 1 through 10, inclusive,

21 Defendants.

Case No. 37-2021-00002324-CU-OE-CTL

REPRESENTATIVE ACTION
COMPLAINT FOR:

1. Civil Penalties Pursuant to Labor Code § 2699, *et seq.* for violations of Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 226(a), 226.7, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 11070(14) (Failure to Provide Seating).

1 Plaintiff Sandy Murillo (“PLAINTIFF”) on behalf of the people of the State of California
2 and as an “aggrieved employee” acting as a private attorney general under the Labor Code
3 Private Attorney General Act of 2004, § 2699, *et seq.* (“PAGA”) only, alleges on information
4 and belief, except for her own acts and knowledge which are based on personal knowledge, the
5 following:

6 **INTRODUCTION**

7 1. PLAINTIFF brings this action against Defendant 7 ELEVEN, INC.
8 (“DEFENDANT”) seeking only to recover PAGA civil penalties for herself, and on behalf of
9 all current and former aggrieved employees that worked for DEFENDANT. PLAINTIFF does
10 **not seek to recover anything other than penalties as permitted by California Labor Code**
11 **§ 2699**. To the extent that statutory violations are mentioned for wage violations, PLAINTIFF
12 does not seek underlying general and/or special damages for those violations, but simply the
13 civil penalties permitted by California Labor Code § 2699.

14 2. California has enacted the PAGA to permit an individual to bring an action on
15 behalf of herself and on behalf of others for PAGA penalties *only*, which is the precise and sole
16 nature of this action.

17 3. Accordingly, PLAINTIFF seeks to obtain all applicable relief for
18 DEFENDANT’s violations under PAGA and solely for the relief as permitted by PAGA – that
19 is, penalties and any other relief the Court deems proper pursuant to the PAGA. Nothing in this
20 complaint should be construed as attempting to obtain any relief that would not be available in
21 a PAGA-only action.

22 **THE PARTIES**

23 4. 7 Eleven, Inc. (“DEFENDANT”) is a corporation that at all relevant times
24 mentioned herein conducted and continue to conduct substantial business in the state of
25 California.

26 5. DEFENDANT is an American chain of convenience stores.

27 6. PLAINTIFF was employed by DEFENDANT from March 4, 2020 to July 21,
28

1 2020 and was at all times classified by DEFENDANT as a non-exempt employee, paid on an
2 hourly basis, and entitled to the legally required meal and rest periods and payment of minimum
3 and overtime wages due for all time worked.

4 7. PLAINTIFF, and such persons that may be added from time to time who satisfy
5 the requirements and exhaust the administrative procedures under the Private Attorney General
6 Act, brings this Representative Action on behalf of the State of California with respect to herself
7 and all individuals who are or previously were employed by DEFENDANT in California and
8 classified as non-exempt employees ("AGGRIEVED EMPLOYEES") during the time period
9 of October 21, 2019 until a date as determined by the Court (the "PAGA PERIOD").

10 8. PLAINTIFF, on behalf of herself and all AGGRIEVED EMPLOYEES presently
11 or formerly employed by DEFENDANT during the PAGA PERIOD, brings this representative
12 action pursuant to Labor Code § 2699, *et seq.* seeking fixed civil penalties for DEFENDANT's
13 violation of California Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 226(a), 226.7, 351, 510,
14 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8,
15 Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1
16 1070(14) (Failure to Provide Seating), and the applicable Wage Order(s). Based upon the
17 foregoing, PLAINTIFF and all AGGRIEVED EMPLOYEES are aggrieved employees within
18 the meaning of Labor Code § 2699, *et seq.*

19 9. The true names and capacities, whether individual, corporate, subsidiary,
20 partnership, associate or otherwise of DEFENDANT DOES 1 through 10, inclusive, are
21 presently unknown to PLAINTIFF who therefore sues DEFENDANT by such fictitious names
22 pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this
23 Complaint to allege the true names and capacities of Does 1 through 10, inclusive,
24 when they are ascertained. PLAINTIFF is informed and believes, and based upon that
25 information and belief alleges, that the DEFENDANT named in this Complaint, including
26 DOES 1 through 10, inclusive, are responsible in some manner for one or more of the
27 events and happenings that proximately caused the injuries and damages hereinafter alleged.

28 10. The agents, servants and/or employees of the DEFENDANT and each of them

1 acting on behalf of the DEFENDANT acted within the course and scope of his, her or its
2 authority as the agent, servant and/or employee of the DEFENDANT, and personally
3 participated in the conduct alleged herein on behalf of the DEFENDANT with respect to the
4 conduct alleged herein. Consequently, the acts of each DEFENDANT are legally attributable
5 to the other DEFENDANT and all DEFENDANTS are jointly and severally liable to
6 PLAINTIFF and the other AGGRIEVED EMPLOYEES, for the loss sustained as a proximate
7 result of the conduct of the DEFENDANT's agents, servants and/or employees.

8 **THE CONDUCT**

9 11. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
10 required to pay PLAINTIFF and AGGRIEVED EMPLOYEES for all their time worked,
11 meaning the time during which an employee is subject to the control of an employer, including
12 all the time the employee is suffered or permitted to work. DEFENDANT required PLAINTIFF
13 and AGGRIEVED EMPLOYEES to work without paying them for all the time they were under
14 DEFENDANT's control. Specifically, DEFENDANT required PLAINTIFF to work while
15 clocked out during what was supposed to be PLAINTIFF's off-duty meal break. PLAINTIFF
16 was from time to time interrupted by work assignments. Further, PLAINTIFF and other
17 AGGRIEVED EMPLOYEES from time to time were not paid wages for all time worked,
18 including overtime wages, such that in the aggregate employees were underpaid wages as a
19 result of DEFENDANT's pattern and practice of unevenly rounding time worked by its
20 employees. As a result, PLAINTIFF and other AGGRIEVED EMPLOYEES forfeited minimum
21 wage, overtime wage compensation, and meal break wages, by working without their time being
22 correctly recorded and without compensation at the applicable rates. DEFENDANT's policy
23 and practice not to pay PLAINTIFF and other AGGRIEVED EMPLOYEES for all time
24 worked, is evidenced by DEFENDANT's business records. DEFENDANT knew or should
25 have known that PLAINTIFF and other AGGRIEVED EMPLOYEES were working off the
26 clock and were not being paid their correct minimum wage and overtime compensation.

27 12. As a result of their rigorous work schedules, PLAINTIFF and other AGGRIEVED
28 EMPLOYEES were from time to time unable to take thirty (30) minute off duty meal breaks

1 and were not fully relieved of duty for their meal periods. PLAINTIFF and other AGGRIEVED
2 EMPLOYEES were required from time to time to perform work as ordered by DEFENDANT
3 for more than five (5) hours during some shifts without receiving a meal break. Further,
4 DEFENDANT failed to provide PLAINTIFF and AGGRIEVED EMPLOYEES with a second
5 off-duty meal period for some workdays in which these employees were required by
6 DEFENDANT to work ten (10) hours of work from time to time. As a result, DEFENDANT's
7 failure to provide PLAINTIFF and the AGGRIEVED EMPLOYEES with legally required meal
8 breaks is evidenced by DEFENDANT's business records. PLAINTIFF and other
9 AGGRIEVED EMPLOYEES therefore forfeited meal breaks without additional compensation
10 and in accordance with DEFENDANT's strict corporate policy and practice.

11 13. During the PAGA PERIOD, PLAINTIFF and other AGGRIEVED EMPLOYEES
12 were also required from time to time to work in excess of four (4) hours without being provided
13 ten (10) minute rest periods. Further, these employees were denied their first rest periods of at
14 least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours from time to
15 time, a first and second rest period of at least ten (10) minutes for some shifts worked of
16 between six (6) and eight (8) hours from time to time, and a first, second and third rest period
17 of at least ten (10) minutes for some shifts worked of ten (10) hours or more from time to time.
18 PLAINTIFF and other AGGRIEVED EMPLOYEES were also not provided with one hour
19 wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFF and other
20 AGGRIEVED EMPLOYEES were from time to time denied their proper rest periods by
21 DEFENDANT and DEFENDANT's managers. Additionally, the applicable California Wage
22 Order requires employers to provide employees with off-duty rest periods, which the California
23 Supreme Court defined as time during which an employee is relieved from all work related
24 duties and free from employer control. In so doing, the Court held that the requirement under
25 California law that employers authorize and permit all employees to take rest period means that
26 employers must relieve employees of all duties and relinquish control over how employees
27 spend their time which includes control over the locations where employees may take their rest
28 period. Employers cannot impose controls that prohibit an employee from taking a brief walk -

1 five minutes out, five minutes back. Here, DEFENDANT's policy restricted PLAINTIFF and
2 other AGGRIEVED EMPLOYEES from unconstrained walks and was unlawful based on
3 DEFENDANT's rule which stated PLAINTIFF and other AGGRIEVED EMPLOYEES could
4 not leave the work premises during their rest period, and as a result of remaining on the
5 premises, PLAINTIFF and other AGGRIEVED EMPLOYEES would then work during their
6 rest periods as they would from time to time have to ring up customers and deal with other in-
7 store workplace issues.

8 14. Further, PLAINTIFF alleges that the sales counters in DEFENDANT's California
9 stores are generally similar in their layout and design and that there is ample space behind each
10 counter area to allow for the presence and use of a stool or seat by DEFENDANT's non-exempt
11 employees during the performance of their work duties. DEFENDANT's non-exempt
12 employees working at DEFENDANT's locations spend a very substantial portion, and, in many
13 workdays, the vast majority of their working time behind these counters. The nature of the
14 cashier position can reasonably be accomplished while using a seat/stool.

15 15. In violation of the applicable sections of the California Labor Code and the
16 requirements of the applicable Industrial Welfare Commission ("IWC") Wage Order,
17 DEFENDANT as a matter of company policy, practice and procedure, intentionally and
18 knowingly failed to provide PLAINTIFF and the other AGGRIEVED EMPLOYEES suitable
19 seating when the nature of these employees' work reasonably permitted sitting.

20 16. DEFENDANT knew or should have known that PLAINTIFF and other
21 AGGRIEVED EMPLOYEES were entitled to suitable seating and/or were entitled to sit when
22 it did not interfere with the performance of their duties, and that DEFENDANT did not provide
23 suitable seating and/or did not allow them to sit when it did not interfere with the performance
24 of their duties.

25 17. By reason of this conduct applicable to PLAINTIFF and all Aggrieved
26 Employees, DEFENDANT violated California Labor Code Section 1198 and Wage Order 4-
27 2001, Section 14 by failing to provide suitable seats.

28 18. From time to time, DEFENDANT also failed to provide PLAINTIFF and the

1 other AGGRIEVED EMPLOYEES with complete and accurate wage statements which failed
2 to show, among other things, the correct gross and net wages earned. Cal. Lab. Code § 226
3 provides that every employer shall furnish each of his or her employees with an accurate
4 itemized wage statement in writing showing, among other things, gross wages earned and all
5 applicable hourly rates in effect during the pay period and the corresponding amount of time
6 worked at each hourly rate. Specifically, DEFENDANT failed to list the rate and hours for the
7 “Mealtime Prem Pay” payments and only listed an amount paid. Aside, from the violations
8 listed above in this paragraph, DEFENDANT failed to issue to PLAINTIFF an itemized wage
9 statement that lists all the requirements under California Labor Code 226 *et seq.* As a result,
10 DEFENDANT from time to time provided PLAINTIFF and the other AGGRIEVED
11 EMPLOYEES with wage statements which violated Cal. Lab. Code § 226.

12 19. DEFENDANT failed to reimburse and indemnify PLAINTIFF and the other
13 AGGRIEVED EMPLOYEES for required business expenses incurred by PLAINTIFF and other
14 AGGRIEVED EMPLOYEES in direct consequence of discharging their duties on behalf of
15 DEFENDANT. Under California Labor Code Section 2802, employers are required to
16 indemnify employees for all expenses incurred in the course and scope of their employment.
17 Cal. Lab. Code § 2802 expressly states that "an employer shall indemnify his or her employee
18 for all necessary expenditures or losses incurred by the employee in direct consequence of the
19 discharge of his or her duties, or of his or her obedience to the directions of the employer, even
20 though unlawful, unless the employee, at the time of obeying the directions, believed them to
21 be unlawful."

22 20. In the course of their employment PLAINTIFF and other AGGRIEVED
23 EMPLOYEES as a business expense, were required by DEFENDANT to use personal cellular
24 phones as a result of and in furtherance of their job duties as employees for DEFENDANT but
25 were not reimbursed or indemnified by DEFENDANT for the cost associated with the use of
26 the personal cellular phones for DEFENDANT's benefit. As a result, in the course of their
27 employment with DEFENDANT, PLAINTIFF and other AGGRIEVED EMPLOYEES incurred
28 unreimbursed business expenses which included, but were not limited to, costs related to the use

1 of their personal cellular phones, all on behalf of and for the benefit of DEFENDANT.

2 21. In violation of the applicable sections of the California Labor Code and the
3 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as
4 a matter of company policy, practice and procedure, intentionally and knowingly failed to
5 compensate PLAINTIFF and the other AGGRIEVED EMPLOYEES for missed meal and rest
6 periods and all time worked. This policy and practice of DEFENDANT was intended to
7 purposefully avoid the payment for all time worked as required by California law which allows
8 DEFENDANT to illegally profit and gain an unfair advantage over competitors who complied
9 with the law. To the extent equitable tolling operates to toll claims by the AGGRIEVED
10 EMPLOYEES against DEFENDANT, the PAGA PERIOD should be adjusted accordingly.

11 22. All of the conduct and violations alleged herein occurred during the PAGA
12 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect
13 PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations that
14 affected other AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.* 2018
15 AJDAR 12157 (Certified for Publication 12/19/18).

16
17 **JURISDICTION AND VENUE**

18 23. This Court has jurisdiction over this Action pursuant to California Code of Civil
19 Procedure, Section 410.10.

20 24. Venue is proper in this Court pursuant to California Code of Civil Procedure,
21 Sections 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANT, resides
22 in this County, and DEFENDANT(i) currently maintains and at all relevant times maintained
23 offices and facilities in this County and/or conducts substantial business in this County, and (ii)
24 committed the wrongful conduct herein alleged in this County against PLAINTIFF and the
25 AGGRIEVED EMPLOYEES.

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1 **FIRST CAUSE OF ACTION**

2 **For Violation of the Private Attorneys General Act**

3 **[Cal. Lab. Code §§ 2698, *et seq.*]**

4 **(By PLAINTIFF and Against All Defendants)**

5 25. PLAINTIFF incorporates by reference, as though fully set forth herein, the prior
6 paragraphs of this Complaint.

7 26. PAGA is a mechanism by which the State of California itself can enforce state
8 labor laws through the employee suing under the PAGA who do so as the proxy or agent of the
9 state's labor law enforcement agencies. An action to recover civil penalties under PAGA is
10 fundamentally a law enforcement action designed to protect the public and not to benefit private
11 parties. The purpose of the PAGA is not to recover damages or restitution, but to create a
12 means of "deputizing" citizens as private attorneys general to enforce the Labor Code. In
13 enacting PAGA, the California Legislature specified that "it was ... in the public interest to
14 allow aggrieved employees, acting as private attorneys general to recover civil penalties for
15 Labor Code violations ..." Stats. 2003, ch. 906, § 1. Accordingly, PAGA claims cannot be
16 subject to arbitration.

17 27. PLAINTIFF, and such persons that may be added from time to time who satisfy
18 the requirements and exhaust the administrative procedures under the Private Attorney General
19 Act, brings this Representative Action on behalf of the State of California with respect to herself
20 and all individuals who are or previously were employed by DEFENDANT in California and
21 classified as non-exempt employees ("AGGRIEVED EMPLOYEES") during the time period
22 of October 21, 2019 until a date as determined by the Court (the "PAGA PERIOD").

23 28. On October 21, 2020, PLAINTIFF gave written notice by electronic mail to the
24 Labor and Workforce Development Agency (the "Agency") and by certified mail to the
25 employer of the specific provisions of this code alleged to have been violated as required by
26 Labor Code § 2699.3. The statutory waiting period for PLAINTIFF to add these allegations to
27 the Complaint has expired. As a result, pursuant to Section 2699.3, PLAINTIFF may now
28 commence a representative civil action under PAGA pursuant to Section 2699 as the proxy of

1 the State of California with respect to all AGGRIEVED EMPLOYEES as herein defined.

2 29. The policies, acts and practices heretofore described were and are an unlawful
3 business act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the other
4 AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to properly record
5 and provide legally required meal and rest periods, (c) failed to pay overtime wages, (d) failed
6 to pay minimum wages, (e) failed to reimburse for required expenses, (f) failed to provide
7 wages when due, and (g) failed to provide seating, all in violation of the applicable Labor Code
8 sections listed in Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 226(a), 226.7, 351, 510, 512,
9 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section
10 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1 1070(14)
11 (Failure to Provide Seating), and the applicable Industrial Wage Order(s), and thereby gives rise
12 to civil penalties as a result of such conduct.¹ PLAINTIFF hereby seeks recovery of only civil
13 penalties as prescribed by the Labor Code Private Attorney General Act of 2004 as the
14 representative of the State of California for the illegal conduct perpetrated on PLAINTIFF and
15 the other AGGRIEVED EMPLOYEES.

16
17 **PRAYER FOR RELIEF**

18 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and
19 severally, as follows:

20 1. On behalf of the State of California and with respect to all AGGRIEVED
21 EMPLOYEES:

22 A) Recovery of civil penalties as prescribed by the Labor Code Private
23 Attorneys General Act of 2004; and,

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25 ///

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27 _____
28 ¹Plaintiff specifically excludes and/or does not allege any claims under California Labor
Code §558(a)(3).

B) An award of attorneys' fees and cost of suit, as allowable under the law, including, but not limited to, pursuant to Labor Code §2699.

Dated: January 19, 2021 **BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP**

By: /s/ Norman Blumenthal
Norman B. Blumenthal

Attorneys for Plaintiff