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14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

15 **COUNTY OF LOS ANGELES, CENTRAL DISTRICT**

16
17 ASHLEY HOUSE, Aggrieved Employee of
Defendants, on Behalf of the State of
18 California's Labor and Workforce
Development Agency for All Aggrieved
19 Employees of Defendants,
20 Plaintiff,
21 v.
22 99 CENTS ONLY STORES LLC, a California
Limited Liability Corporation; and DOES 1-
23 50, Inclusive,
24 Defendants.

Case No. 21STCV14452

REPRESENTATIVE ACTION

COMPLAINT FOR:

**VIOLATION OF CALIFORNIA'S LABOR
CODE PRIVATE ATTORNEYS
GENERAL ACT OF 2004 (CAL. LAB.
CODE §§ 2698, ET SEQ.)**

DEMAND FOR JURY TRIAL

1 Plaintiff ASHLEY HOUSE (“Plaintiff”), who is an aggrieved employee of Defendant 99
2 CENTS ONLY STORES LLC (“99 CENTS”), a California Limited Liability Corporation and
3 DOES 1 through 50 (“Defendants”) brings this representative action as proxy for the State of
4 California’s Labor and Workforce Development Agency (“LWDA”) on behalf of all current and
5 former aggrieved employees of Defendants in California, hereby alleges the following facts and
6 claims against Defendants, and respectfully request civil penalties, all other available relief, and a
7 trial by jury of all issues and causes of action so triable.

8 INTRODUCTION

9 1. Plaintiff brings this representative action as the proxy for the State of California’s
10 LWDA against Defendants for civil penalties pursuant to California’s Private Attorneys General
11 Act of 2004 (hereinafter, the “PAGA”), Labor Code section 2698, *et seq.*, resulting from
12 Defendants’ violations of “wage and hour” laws protective of Defendants’ aggrieved employees
13 under the California Labor Code and the Industrial Welfare Commission (“IWC”) Wage Orders.
14 The PAGA permits an aggrieved employee to bring a representative action as the State’s
15 designated proxy on behalf of herself and all other current and former non-exempt aggrieved
16 employees of an employer to recover civil penalties for violation of California’s Labor Code.

17 2. Defendants’ systemic pattern of Labor Code and IWC Wage Order violations
18 toward Plaintiff and other current and former aggrieved employees of Defendants in California
19 include, but are not limited to its:

20 a. Failure to provide thirty minute meal periods and meal period premiums in
21 violation of Labor Code sections 226.7, 512, 558, 1198, and 1199 and section 11 of the applicable
22 Wage Order(s);

23 b. Failure to provide a net ten minutes of off-duty rest periods for every four
24 hours worked, or a major fraction thereof, and rest period premiums, in violation of Labor Code
25 section 226.7 and section 12 of the applicable Wage Order(s);

26 c. Failure to furnish accurate itemized wage statements in violation of Labor
27 Code section 226(a) and 226.3; and

28 d. Failure to timely pay all final wages owed upon separation of employment

1 in violation of Labor Code sections 201, 202, and 203.

2 3. Pursuant to the PAGA, Plaintiff brings this representative action as proxy of the
3 LWDA against Defendants, on behalf of herself and all other aggrieved employees of Defendants
4 in California, seeking to recover civil penalties, costs and attorney's fees, and all other available
5 relief for Defendants' violations of the Labor Code, as alleged herein.

6 **PARTIES**

7 4. Plaintiff ASHLEY HOUSE is an individual over the age of eighteen (18). At all
8 relevant times mentioned in this Complaint was and is Plaintiff was a California citizen residing
9 within Los Angeles County, California. Plaintiff currently resides in the County of Los Angeles.
10 Plaintiff was employed by Defendants in California as a non-exempt cashier and head cashier at
11 Defendants' 8451 Crenshaw Blvd, Inglewood location, within Los Angeles County, California,
12 from approximately September 24, 2019 until her termination on or around January 3, 2020. At all
13 relevant times herein, Plaintiff was an "employee" as that term is used in the Labor Code. During
14 the applicable statutory period, Plaintiff was subject to various policies, procedures, and practices
15 implemented by Defendants that, as alleged herein, were and are in violation of the Labor Code
16 and IWC Wage Orders. At all relevant times, Plaintiff was and is an aggrieved employee of
17 Defendants within the meaning of Labor Code section 2699(c).

18 5. Defendant 99 CENTS is a California limited liability corporation headquartered at
19 4000 Union Pacific Avenue, Commerce, California 90023. Defendant 99 CENTS is a premier
20 deep-discount retailer that primarily carries name-brand consumable and general merchandise.¹ It
21 employs over 17,000 people across 391 store locations located in California, Texas, Arizona, and
22 Nevada.² 99 Cents offers a broad assortment of merchandise and seasonal product offerings.
23 Defendant 99 CENTS is an "employer" regularly employing California residents and is subject to
24 the Labor Code and IWC Wage Orders.

25 6. The Defendants sued by the fictitious names DOES 1 through 50, inclusive, are
26 _____

27 ¹ See <https://99only.com/about>

28 ² See <https://99only.com/investor-relations>

7. Defendants 99 CENTS, and DOES 1 through 50, inclusive, were Plaintiff's and other current and former aggrieved employees' employers or persons acting on behalf of their employer, within the meaning of California Labor Code section 558, who violated or caused to be violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision regulating hours and days of work in any Wage Order of the IWC, and are subject to civil penalties as set forth in Labor Code section 2698, *et seq.*

8. Plaintiff is informed and believes and thereon alleges that each Defendant, directly or indirectly, or through agents or other persons, is in some manner intentionally, negligently, or otherwise responsible for the acts, omissions, occurrences and transactions alleged herein. Plaintiff is informed and believe and thereon alleges that each Defendant acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant is legally attributable to the other Defendants.

9. The California Superior Court has jurisdiction in this matter pursuant to California Constitution Article VI, Section 10, which grants the Superior Court “original jurisdiction in all causes except those given by statute to other trial courts.” The statutes under which this action is brought do not specify any other specific basis for jurisdiction.

10. The California Superior Court also has jurisdiction in this matter because both the individual and aggregate monetary damages and restitution sought herein exceed the minimal jurisdictional limits of the Superior Court and will be established at trial, according to proof.

11. The California Superior Court also has jurisdiction over Defendants because they are corporations and/or entities and/or persons with sufficient minimum contacts in California, are citizens of California, and/or otherwise intentionally availed themselves of the California market so as to render the exercise of jurisdiction over them by the California courts consistent with traditional notions of fair play and substantial justice.

12. Venue is proper in the Superior Court of California, County of Los Angeles pursuant to Code of Civil Procedure section 395(a) and Code of Civil Procedure section 395.5 in that liability arose there because at least some of the acts and omissions that are the subject matter of this Complaint occurred therein and/or each Defendant either is found, maintains offices, transacts business, exists, and/or has an agent therein.

FACTUAL ALLEGATIONS

13. During the applicable statutory period, Defendants employed Plaintiff as a non-exempt cashier and head cashier at their 8451 Crenshaw Blvd, Inglewood, California from approximately September 24, 2019 through the date of her termination on or around January 3, 2020.

14. During the applicable statutory period, Defendants have consistently denied Plaintiff an opportunity to take timely off-duty and uninterrupted thirty-minute-long meal periods before the end of the fifth hour of work. Defendants also did not pay Plaintiff a premium wage equivalent to an additional hour of pay at her regular rate of pay for each workday that a compliant meal period was not provided. For example, Plaintiff had to request permission to take her meal breaks each day and was only allowed to do so when another employee was able to cover her position at the check-out register.

15. During the applicable statutory period, Defendants consistently failed to authorize and permit Plaintiff to take timely off-duty and uninterrupted ten-minute-long rest periods every four hours worked, or major fraction thereof. For example, Plaintiff was very seldom able to take a rest period and after Plaintiff complained to management about not receiving compliant rest periods, these same managers began regularly writing up Plaintiff for frivolous or fabricated transgressions.

1 16. During the applicable statutory period, Defendants failed to provide Plaintiff with
2 accurate itemized wage statements. For example, as a result of alleged violations discussed above,
3 Defendants furnished wage statements that failed to correctly show, among other items: (1) gross
4 wages earned, (2) all deductions, and (3) net wages earned. Further, Plaintiff was provided
5 noncompliant wage statements by Defendants because the hours and/or rate of pay are incorrect.
6 Specifically, Plaintiff's December 26, 2019 wage statement shows 28.38 hours at pay rate of
7 \$12.00 with earnings in the dollar amount of \$340.60. The actual number should be \$340.56.
8 Because of this facial deficiency on the wage statement, Plaintiff is unable to reasonably determine
9 whether she has been properly paid for all hours worked.

10 17. During the applicable statutory period, Defendants willfully failed to pay all wages
11 owed to Plaintiff upon separation of employment. Defendants still have yet to pay Plaintiff all
12 final wages owed to her due to their failure to pay all meal and rest period premium wages owed.

13 GENERAL ALLEGATIONS

14 18. Plaintiff and all other aggrieved employees are current and former non-exempt
15 employees of Defendants that work or worked at Defendants' retail stores in California as non-
16 exempt employees during the statutory period.

17 19. During the applicable statutory period, Plaintiff and all other current and former
18 aggrieved employees were subject to the same various policies, procedures, and practices
19 implemented by Defendants that, as alleged herein, were and are in violation of the Labor Code

20 20. Plaintiff is informed and believes, and thereon alleges, that as a matter of policy
21 and/or practice Defendants denied and continue to deny Plaintiff and all other aggrieved
22 employees an opportunity to take timely off-duty and uninterrupted thirty minute long meal
23 periods before the end of the fifth hour of work. Defendants also did not pay Plaintiff and
24 aggrieved employees a premium wage equivalent to an additional hour of pay at their regular rate
25 of pay for each workday that a compliant meal period was not provided.

26 21. Plaintiff is informed and believes, and thereon alleges, Defendants maintain a
27 policy and/or practice that denied and continues to deny Plaintiff and all other aggrieved
28 employees the opportunity to take timely off-duty and uninterrupted ten minute long rest periods

1 every four hours worked, or major fraction thereof. Defendants also did not pay Plaintiff and
2 aggrieved employees a premium wage equivalent to an additional hour of pay at their regular rate
3 of pay for each workday that a compliant rest period was not provided.

4 22. Plaintiff is informed and believes, and thereon alleges, Defendants maintain a
5 policy and/or practice of failing to provide Plaintiff and all other aggrieved employees with
6 accurate itemized wage statements. For example, as a result of alleged violations discussed above,
7 Defendants furnished wage statements that failed to correctly show, among other items: (1) gross
8 wages earned, (2) all deductions, and (3) net wages earned. Further, Plaintiff and all other
9 aggrieved employees were provided incompliant wage statements by Defendants because the
10 hours and/or rate of pay are incorrect. Because of this facial deficiency on the wage statement,
11 Plaintiff and all other aggrieved employees are unable to reasonably determine whether they have
12 been properly paid for all hours worked.

13 23. During the applicable statutory period, Defendants willfully failed to pay all wages
14 owed to Plaintiff upon separation of employment. Defendants still have yet to pay Plaintiff all
15 final wages owed to her due to their failure to pay all meal and rest period premium wages owed.

16 **FIRST CAUSE OF ACTION**

17 **VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT**

18 **(California Labor Code §§ 2698, *et seq.*)**

19 24. Plaintiff incorporates by reference and realleges each and every one of the
20 allegations contained in the preceding and foregoing paragraphs of this complaint, as though fully
21 set forth herein.

22 25. Pursuant to Labor Code section 2698, *et seq.*, Plaintiff seeks to recover all
23 applicable civil penalties, reasonable attorneys' fees and costs, and all other available relief
24 permitted under the PAGA through a representative action on behalf of the State of California's
25 LWDA for all aggrieved employees, including himself, that work or worked for Defendants
26 during the relevant time period.

27 26. In accordance with *Arias v. Superior Court* (2009) 46 Cal.4th 969, a representative
28 action is not subject to the formalities required of a class action and class certification of PAGA

1 claims is not required.

2 27. Plaintiff is an “aggrieved employee” of Defendants within the meaning of Labor
3 Code section 2699(c) because he was employed by Defendants during the applicable statutory
4 period and suffered one or more of the Labor Code violations, as alleged herein.

5 28. Pursuant to Labor Code section 2699(i), seventy-five percent (75%) of civil
6 penalties recovered by aggrieved employees shall be distributed to the LWDA for enforcement of
7 labor laws and education of employers and employees about their rights and responsibilities under
8 the Labor Code, and twenty-five percent (25%) shall be distributed to the aggrieved employees.

9 29. Plaintiff’s representative action alleges violations of certain Labor Code sections
10 that are listed within Labor Code section 2699.5. Accordingly, Labor Code section 2699.3(a)
11 applies to this action, and Labor Code section 2699.3(b)-(c) do not apply.

12 30. On November 18, 2020 Plaintiff complied with Labor Code section 2699.3(a) by
13 electronically filing written notice with the LWDA and serving written notice, via certified mail,
14 upon Defendants regarding the specific provisions of the Labor Code alleged to have been violated
15 by Defendants and Plaintiff intent to pursue civil penalties against Defendants on behalf of herself
16 and all other aggrieved employees pursuant to PAGA. Attached hereto as **Exhibit A** is a true and
17 correct copy of Plaintiff’s notice letter. Plaintiff also paid the filing fee to the LWDA.

18 31. Labor Code section 2699.3(a) provides in pertinent part that: “The agency shall
19 notify the employer and the aggrieved employee or representative by certified mail that it does not
20 intend to investigate the alleged violation within 60 calendar days of the postmark date of the
21 notice received... [u]pon receipt of that notice or if no notice is provided within 65 calendar days
22 of the postmark date of the notice given... the aggrieved employee may commence a civil action
23 pursuant to Section 2699.” Sixty-five calendar days have passed since Plaintiff served notice upon
24 the LWDA and Defendants, and the LWDA did not provide notice of its intent to investigate
25 Plaintiff’s claims. Accordingly, Plaintiff exhausted her obligation to provide administrative notice
26 and is authorized to commence this representative action seeking civil penalties on behalf of all
27 aggrieved employees of Defendants.

28 32. Pursuant to Labor Code section 2699(a), any provision of the Labor Code that

1 provides for a civil penalty to be assessed and collected by the LWDA or any of its departments,
2 divisions, commissions, boards, agencies or employees for violation of the code may, as an
3 alternative, be recovered through a civil action brought by an aggrieved employee on behalf of
4 herself and other current or former employees pursuant to the procedures specified in Labor Code
5 section 2699.3.

6 33. Pursuant to Labor Code section 2699(f)(2), for all provisions of the Labor Code for
7 which a civil penalty is not specifically provided, there is established a civil penalty that imposes a
8 penalty of one hundred dollars (\$100) for each aggrieved employee per pay period for the initial
9 violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each
10 subsequent violation.

11 34. Pursuant to Labor Code sections 2699(a) and (f), Plaintiff, on behalf of the State of
12 California's LWDA for all aggrieved employees of Defendants, including himself, seeks
13 applicable civil penalties for violations of Labor Codes 201, 202, 203, 226, 226.7, 512, 558, 1197,
14 1198, and 1199 during the statutory period, as set forth below:

15 35. For violations of Labor Code sections 201, 202, 203, 226.7, 512, 1194, 1197 1198,
16 and 1199, Labor Code section 2699(f)(2) imposes a civil penalty of one hundred dollars (\$100) for
17 each aggrieved employee per pay period for each initial violation and two hundred dollars (\$200)
18 for each aggrieved employee per pay period for each subsequent violation;

19 36. For violations of Labor Code section 226(a), Labor Code section 226.3 imposes a
20 civil penalty, in addition to any other penalty provided by law, of two hundred fifty dollars (\$250)
21 per aggrieved employee for the first violation, and one thousand dollars (\$1,000) per aggrieved
22 employee for each subsequent violation.

23 37. Defendants violated Labor Code sections 226.7 and 512 by denying Plaintiff and
24 all other aggrieved employees of Defendants an opportunity to take timely off-duty and
25 uninterrupted thirty minute meal periods for every five hours worked, including timely off-duty
26 and uninterrupted thirty minute long meal periods before the end of the fifth hour of work, and by
27 failing to pay a premium wage equivalent to an additional hour of pay at the regular rate of pay for
28 each day a compliant meal period was not provided. Thus, pursuant to Labor Code section

1 2699(f)(2), Defendants are subject to a civil penalty of one hundred dollars (\$100) for each
2 aggrieved employee per pay period for the initial violation, and two hundred dollars (\$200) for
3 each aggrieved employee per pay period for each subsequent violation.

4 38. Defendants violated Labor Code section 226.7 by denying Plaintiff and all other
5 aggrieved employees of Defendants a ten minute off-duty rest period for every four hours worked,
6 or major fraction thereof, and by failing to provide a premium wage equivalent to an additional
7 hour of pay at the regular rate of pay for each workday that a compliant rest period was not
8 provided. Thus, pursuant to Labor Code section 2699(f)(2), Defendants are subject to a civil
9 penalty of one hundred dollars (\$100) for each aggrieved employee per pay period for the initial
10 violation, and two hundred dollars (\$200) for each aggrieved employee per pay period for each
11 subsequent violation.

12 39. Defendants violated Labor Code section 226(a) by failing to provide Plaintiff and
13 aggrieved employees of Defendants with accurate itemized wage statements correctly identifying,
14 among other things the correct amount of gross wages earned, the correct amount of net wages
15 earned, and the correct amount of deductions that were paid or should have been paid. Thus,
16 pursuant to Labor Code sections 226.3 and 2699(a), Defendants, in addition to, and entirely
17 independent and apart from any other penalty, are subject to a civil penalty for violation Labor
18 Code section 226(a) in the amount of two hundred and fifty dollars (\$250) per aggrieved employee
19 per violation in an initial citation and one thousand dollars (\$1,000) per aggrieved employee for
20 each violation in a subsequent citation.

21 40. At all material times, Defendants were Plaintiff and all other aggrieved employees'
22 employers, or persons acting on their behalf, within the meaning of Labor Code section 558, who
23 violated or caused to be violated, a section of Part 2, Chapter 1 of the Labor Code or any provision
24 regulating hours and days of work in the applicable IWC Wage Order and, as such, are subject to
25 civil penalties for each underpaid employee as set forth in Labor Code section 558. The civil
26 penalties provided for under Labor Code section 558 are in addition to any other civil penalty
27 provided by law.

28 41. Pursuant to Labor Code sections 558 and 2699(a), Defendants are subject to a civil

1 penalty of fifty dollars (\$50) for each initial violation and one hundred dollars (\$100) for each
2 subsequent violation of Labor Code section 226.7 for each pay period for which Plaintiff and all
3 other aggrieved employees of Defendants were not provided with a compliant timely off-duty and
4 uninterrupted thirty minute meal period and/or ten minute long rest periods for every four hours
5 worked, or major fraction thereof, as alleged herein.

6 42. Defendants violated Labor Code section 1198 by failing to comply with the
7 maximum hours of work and the standards conditions of labor fixed by the IWC under the “Meal
8 Period”, the “Rest Period” and “Record” sections of the applicable IWC Wage Order, by failing to
9 provide compliant meal periods, failing to pay meal periods premium wages, failing to provide
10 compliant rest periods, failing to pay rest period premium wages, failing to keep and provide
11 accurate records, and failing to timely pay owed wages upon separation of employment, as alleged
12 herein. Thus pursuant to Labor Code section 2699(f)(2), Defendants are subject to a civil penalty
13 in the amount of one hundred dollars (\$100) for each aggrieved employee per pay period for the
14 initial violation, and two hundred dollars (\$200) for each aggrieved employee per pay period for
15 each subsequent violation.

16 **PRAYER FOR RELIEF**

17 WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

- 18 a. For all civil penalties authorized by Labor Code section 2698, *et seq.*;
- 19 b. For civil penalties under Labor Code section 226.3 in the amount two hundred fifty
20 dollars (\$250) per aggrieved employee for the first violation, and one thousand dollars (\$1,000)
21 per aggrieved employee for each subsequent violation;
- 22 c. For civil penalties under Labor Code section 2699(f), for Labor Code violations
23 without a specific civil penalty, in the amount of one hundred dollars (\$100) for each aggrieved
24 employee per pay period for each initial violation and two hundred dollars (\$200) for each
25 aggrieved employee per pay period for each subsequent violation;
- 26 d. For civil penalties under Labor Code section 558, as follows: (1) for an initial
27 violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the
28 employee was underpaid; (2) for each subsequent violation, one hundred dollars (\$100) for each

1 underpaid employee for each pay period for which the employee was underpaid;

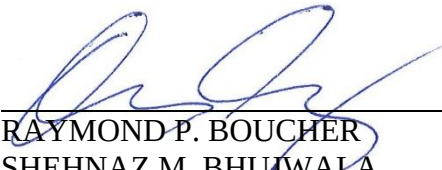
2 e. For an award of reasonable attorneys' fees and costs pursuant to Labor Code
3 section 2699(g)(1), or other applicable laws;

4 f. For pre-judgment and post-judgment interest as provided by law; and

5 g. For such additional relief as this Court may deem just and proper.

6 DATED: April 15, 2021

BOUCHER LLP

7
8 By: 

9 RAYMOND P. BOUCHER
10 SHEHNAZ M. BHUJWALA
11 ALEXANDER GAMEZ

12 LAW OFFICES OF SAHAG MAJARIAN II

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13 *Attorneys for Ashley House, an Aggrieved*
14 *Employee of Defendants, for the State of*
15 *California's Labor and Workforce Development*
16 *Agency on Behalf of All Aggrieved Employees of*
17 *Defendants*

DATED: April 15, 2021

BOUCHER LLP

By:

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EXHIBIT A

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November 18, 2020

ELECTRONICALLY FILED

Attn: PAGA Administrator
Labor and Workforce Development Agency
1515 Clay Street, Suite 801
Oakland, California 94612
PAGAfilings@dir.ca.gov

VIA CERTIFIED MAIL

99 Cents Only Stores LLC
c/o Agent for Service of Process
CT Corporation System
818 West Seventh Street, Suite 200
Los Angeles, California 90017

Re: *Ashley House v. 99 Cents Only Stores LLC, et al.*
Notice Regarding Private Attorneys General Act of 2004 Claim

To Whom It May Concern:

Pursuant to section 2699.3 of the California Labor Code Private Attorneys General Act of 2004 (“PAGA” or “the Act”) (Lab. Code § 2698 *et seq.*), this letter shall serve as written notice of claims for civil penalties that will be pursued by Ms. Ashley House as proxy for the Labor and Workforce Development Agency on behalf of all non-exempt aggrieved employees employed by 99 Cents Only Stores LLC (“99 Cents”) in California during the statutory period, against 99 Cents.

Headquartered in Commerce, California, 99 Cents Stores employ over 17,000 people across 391 store locations located in California, Texas, Arizona, and Nevada.¹ 99 Cents offers a broad assortment of merchandise and seasonal product offerings. 99 Cents employed Ms. House as a cashier in California at its store located at 8451 Crenshaw Blvd, Inglewood, California from approximately September 24, 2019 through the date of her termination on January 3, 2020. Pursuant to California law, 99 Cents was at all relevant times Ms. House’s employer during the statutory period.

¹ See, <https://99only.com/investor-relations>

In her representative action, Ms. House will seek civil penalties pursuant to PAGA as a result of 99 Cents' failure to: (1) provide proper meal periods and/or premium pay for non-compliant meal periods (Lab. Code §§ 226.7, 512, 558, 1198, 1199); (2) provide proper rest periods and/or premium pay for non-compliant rest periods (Lab. Code §§ 226.7, 558, 1197, 1198, 1199); (3) furnish complete and accurate itemized wage statements (Lab. Code § 226(a); and (4) timely pay all wages due within the time permitted upon separation of employment (Lab. Code §§ 201-203).

FAILURE TO PROVIDE MEAL PERIODS

(Labor Code §§ 226.7, 512(a), 558, 1198, 2699, and the "Meal Periods" Section of the
Applicable Wage Order)

Labor Code section 226.7(b) states, in pertinent part, "An employer shall not require an employee to work during meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission"

Labor Code section 226.7(c), provides that if an employer fails to provide an employee a meal period in accordance with statute or an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal period is not provided.

Labor Code section 512(a) states, in pertinent part, "An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes... [a]n employer may not employ an employee for a work period of more than ten hours per day without providing the employee with a second meal period of not less than thirty minutes, except that if the total hours worked is no more than twelve hours, the second meal period may be waived by mutual consent of the employer and employee only if the first meal period was not waived."

Labor Code section 1198 states, in pertinent part, "The employment of any employee... under conditions of labor prohibited by the [Wage Order] is unlawful."

In relevant part, Section 2 of the applicable Wage Order states that, "Hours worked means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work."

Section 11 of the applicable Wage Order provides that:

- (A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee. Unless the employee is

relieved of all duty during a 30 minute meal period, the meal period shall be considered an “on-duty” meal period and counted as time worked. An “on-duty” meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.

- (B) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employer’s regular rate of compensation for each workday that the meal period is not provided.

Upon information and belief, 99 Cents Stores failed and fail to provide Ms. House and aggrieved employees with compliant thirty minute off-duty meal periods for work periods of more than five hours and failed to pay them premium wages at their regular rates of pay on workdays they failed to provide them with required meal periods. For example, Ms. House had to request permission to take her meal breaks each day and was only allowed to do so when another employee was able to cover her position at the check-out register.

Accordingly, Ms. House, on behalf of herself and aggrieved employees, will pursue civil penalties and all available remedies to the extent allowed by law for the alleged violations.

FAILURE TO PROVIDE REST PERIODS

(Labor Code §§ 226.7, 1198, 2699, and the “Rest Periods” Section of the Applicable Wage Order)

Labor Code section 1198 states, in pertinent part, “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 section 226.7(b) states, in pertinent part, “An employer shall not require an employee to work during meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission.”

Pursuant to *Augustus v. ABM Security Services, Inc.*, (2017) 2 Cal.5th 257, 260, “[d]uring required rest periods, employers must relieve their employees of all duties and relinquish any control over how employees spend their break time.”

Labor Code section 226.7(c), provides that if an employer fails to provide an employee a rest period in accordance with statute or an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each work day that the rest period is not provided.

Section 12 of the applicable Wage Order provides that:

- (A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle each work period. The authorized rest period shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.
- (B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensations for each workday that the rest period is not provided.

Upon information and belief, 99 Cents' policies and practices failed and fail to provide Ms. House and aggrieved employees with off-duty net rest periods of at least ten minutes for each four hours worked, or major fraction thereof, and failed and fail to pay them a premium wage at their regular rates of pay on workdays 99 Cents failed to provide them with an opportunity to take rest periods. For example, Ms. House was very seldom able to take a rest period and after Ms. House complained to management about not receiving compliant rest periods, these same managers began regularly writing up Ms. House for frivolous or fabricated transgressions.

Accordingly, Ms. House, on behalf of herself and aggrieved employees, will pursue civil penalties and all available remedies to the extent allowed by law for the alleged violations.

FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

(Labor Code §§ 226, 226.3, and 2699)

Labor Code section 226(a) requires an employer to provide an employee with an accurate itemized wage statement that shows: (1) gross wages earned; (2) total hours worked by the employee; (3) the number of piece-rate units earned and any applicable piece-rate if the employee is paid on a piece-rate basis; (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item; (5) net wages earned; (6) the inclusive dates of the period for which the employee is pay; (7) the name of the employee and the last four digits of his or her social security number or an employee identification number other than a social security number; (8) the name and address of the legal entity that is the employer; and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each rate by the employee.

For violations of Labor Code section 226(a), Labor Code section 226.3 imposes a civil penalty on any employer that violates section 226(a) in the amount of \$250.00 per employee per violation in an initial citation and \$1,000.00 per employee for each subsequent violation. The civil penalties provided for in Labor Code section 226.3 are in addition to any other penalty provided by law.

As a result of alleged violations discussed above, 99 Cents furnished wage statements that failed to correctly show, among other items: (1) gross wages earned, (2) all deductions, and (3) net wages earned. Further, Ms. House and aggrieved employees' were provided incompliant wage statements by 99 Cents because the hours and/or rate of pay are incorrect. For example, Ms. House's December 26, 2019 wage statement shows 28.38 hours at pay rate of \$12.00 with earnings in the dollar amount of \$340.60. The actual number should be \$340.56. Because of this facial deficiency on the wage statement, Ms. House and aggrieved employees are unable to reasonably determine whether they have been properly paid for all hours worked.

Accordingly, Ms. House on behalf of herself and other aggrieved employees, will seek to recover available civil penalties for violations of Labor Code 226(a).

FAILURE TO TIMELY PAY WAGES UPON SEPARATION OF EMPLOYMENT

(Labor Code §§ 201, 202, 203, 256, and 2699)

Labor Code section 201 states, in pertinent part, "If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately."

Labor Code section 202 states, in pertinent part, "If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting."

Labor Code section 203 provides that an employee's wages shall continue as a penalty from when they first become due at the same rate until paid for up to 30 days when an employer willfully fails to timely pay all earned and unpaid wages in accordance with Labor Code section 201 or 202.

Labor Code section 256, in pertinent part, provides that a civil penalty shall be imposed in an amount not exceeding 30 days pay as waiting time under the terms of Section 203.

99 Cents willfully failed and fails to provide Ms. House, and, upon information and belief, aggrieved employees all wages due and owed upon separation of employment. By furnishing Ms. House and aggrieved employees with a final check that failed to include all earned and owed wages including all meal period premiums and rest period premiums – as described above, 99 Cents violated Labor Code sections 201 or 202.

Accordingly, Ms. House, on behalf of herself and aggrieved employees, will pursue civil penalties and all available remedies to the extent allowed by law for the alleged violations.

CIVIL PENALTIES FOR VIOLATION OF THE LABOR CODE AND IWC**WAGE ORDERS**

(Labor Code § 558)

Labor Code section 558 subjects any employer or other person acting on behalf of an employer who violates Part 2, Chapter 1, of the Labor Code (Labor Code §§ 500-558), or any provision regulating the hours and days in any IWC Wage Order, to a civil penalty in the amount of \$50 for any initial violation for each pay period in which an employee is underpaid, and \$100 for each subsequent violation.

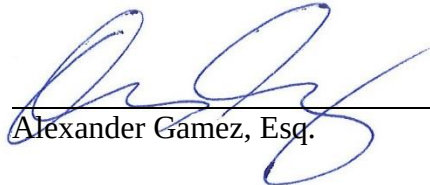
As set forth above, 99 Cents failed to provide Ms. House and aggrieved employees compliant meal periods and rest periods, and failed to pay premium wages owed as a result of its policies and practices that prevented Ms. House and aggrieved employees from taking compliant meal and rest periods. Accordingly, Ms. House, on behalf of aggrieved employees, will seek to recover civil penalties under Labor Code section 558.

CONCLUSION

The allegations set forth herein are supported by, among other things, records and documents from Ms. House's employment with 99 Cents, including wage statements, and Ms. House's confirmation of 99 Cents' unlawful practices and policies. As a result of the foregoing violations, Ms. House is entitled to file a Complaint and invoke the protections of PAGA. Ms. House has placed 99 Cents on notice by mailing a certified copy of this notice to its corporate headquarters and/or authorized agents.

Very truly yours,

BOUCHER LLP

By: 

Alexander Gamez, Esq.