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ALAMEDA COUNTY

April 02, 2021

CLERK OF
THE SUPERIOR COURT
By Joanne Downie, Deputy

CASE NUMBER:

RG21094369

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SUPERIOR COURT OF CALIFORNIA**COUNTY OF ALAMEDA**

ERIC PEREZ, on behalf of the State of California, Case No.: _____

Plaintiff,

v.

99 CENTS ONLY STORES LLC; and DOES 1-
100, inclusive,*Defendants.***COMPLAINT FOR PENALTIES
PURSUANT TO SECTIONS 2699(a) and (f)
OF THE CALIFORNIA LABOR CODE
PRIVATE ATTORNEYS GENERAL ACT
AND DEMAND FOR JURY TRIAL**

COMPLAINT FOR PENALTIES PURSUANT TO SECTIONS 2699(a) AND (f) OF THE CALIFORNIA
LABOR CODE PRIVATE ATTORNEYS GENERAL ACT AND DEMAND FOR JURY TRIAL

Eric Perez vs. 99 Cents Only Stores LLC

1 Plaintiff Eric Perez, on behalf of the State of California and Aggrieved Employees (“Plaintiff”),
2 complains and alleges as follows:

3 **INTRODUCTION**

4 1. Plaintiff brings this enforcement action against Defendant 99 Cents Only Stores, LLC
5 (“Defendant” or “99 Cents Only Stores”) on behalf of the State of California to collect statutory
6 penalties as a result of Defendant’s systematic violations of California labor law with respect to
7 Defendant’s non-exempt, hourly Store Managers in California (“Aggrieved Employees”).

8 2. Plaintiff and Aggrieved Employees are current and former non-exempt, hourly Store
9 Managers who have worked for Defendant in California.¹

10 3. Upon information and belief, Defendant is a deep-discount retailer that primarily carries
11 consumable and general merchandise and the leading extreme value chain in the Western United
12 States, with extensive operations and store locations in California.

13 4. Plaintiff and Aggrieved Employees bring this action to challenge Defendant’s policies
14 and practices of (1) failing to pay Plaintiff and Aggrieved Employees all minimum wages owed; (2)
15 failing to pay Plaintiff and Aggrieved Employees overtime wages; (3) failing to compensate Plaintiff
16 and Aggrieved Employees for all hours worked; (4) failing to authorize and permit Plaintiff and
17 Aggrieved Employees to take meal and rest breaks to which they are entitled by law and failing to
18 make premium payments for those non-compliant meal and rest breaks; (5) failing to reimburse
19 Plaintiff and Aggrieved Employees for necessary business expenditures; (6) failing to provide
20 Plaintiff and Aggrieved Employees accurate, itemized wage statements; and (7) failing to timely pay
21 Plaintiff and Aggrieved Employees full wages earned during employment and upon termination or
22 resignation.

23 5. Defendant maintains a longstanding policy and/or practice of failing to properly
24 compensate Store Managers for work related tasks performed while “off-the-clock,” including but not
25 limited to providing customer service to customers; sales activities; answering calls and text messages
26 from Defendant’s employees, other managers, and others; working through meal periods, and

27 ¹ Although Plaintiff is a former employee, the Aggrieved Employees include current and former
28 employees. For ease of discussion, the allegations herein are made in the present tense.

1 attending conference calls.

2 6. Plaintiff and Aggrieved Employees perform off-the-clock work in-store before and after
3 paid shifts. Plaintiff and Aggrieved Employees perform off-the-clock work out of store outside of
4 normal work times, such as at night, on weekends, and during other unpaid hours.

5 7. Throughout the relevant time period, Plaintiff and Aggrieved Employees have been
6 denied proper payment for all hours worked, including overtime and minimum wages, for the time
7 spent off-the-clock, in-store and out of store. As Plaintiff and Aggrieved Employees regularly work
8 in excess of eight hours per day and forty hours per week, at least some of this off-the-clock work
9 should be compensated at overtime rates. However, Defendant fails to pay for any of this work time,
10 including the required overtime premiums, in violation of the California Labor Code.

11 8. Defendant regularly fails to provide Plaintiff and Aggrieved Employees with timely,
12 legally compliant meal and rest breaks because Aggrieved Employees' meal periods are regularly
13 skipped, interrupted, or subject to interruption at all times. Plaintiff and Aggrieved Employees
14 routinely work through or are interrupted during their breaks to perform duties such as providing
15 customer service and sales. Defendant fails to pay Plaintiff and Aggrieved Employees the required
16 premium pay when their meal and rest breaks were missed, untimely, interrupted, or on-duty.

17 9. Plaintiff and Aggrieved Employees utilize their personal internet and cell phones, as
18 well as their personal vehicles, and are not reimbursed by Defendant.

19 10. As a result of the above violations, Defendant fails to provide Plaintiff and Aggrieved
20 Employees with accurate, itemized wage statements. Defendant has also failed to pay all wages due
21 when these hourly employees, like Plaintiff, voluntarily or involuntarily terminated their employment
22 with Defendant.

23 11. Plaintiff, on behalf of the State of California, seeks to recover penalties and reasonable
24 attorneys' fees for these violations pursuant to Sections 2699(a) and (f) of the California Labor Code
25 Private Attorneys General Act ("PAGA").

26 **PARTIES**

27 12. Plaintiff and Aggrieved Employees are current and former non-exempt, hourly Store
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1 Managers for Defendant in California. Defendant employs and/or employed Plaintiff and the
2 Aggrieved Employees.

3 13. Plaintiff is an individual over the age of eighteen, and at all times mentioned in this
4 Complaint was a resident of the State of California.

5 14. Plaintiff was employed as a non-exempt Store Manager by Defendant from
6 approximately December 2009 until August 2019. Plaintiff worked for Defendant as a Store Manager
7 at several locations in California.

8 15. Defendant is a California limited liability company with offices in the City of
9 Commerce, California. Defendant does business in the State of California and employs workers,
10 including Plaintiff and Aggrieved Employees, in California. On information and belief, Defendant
11 operates a chain of deep-discount stores.

12 16. Plaintiff is informed, believes, and thereon alleges that Defendant operates retail
13 locations throughout California, including in Alameda County. Plaintiff is informed, believes, and
14 thereon alleges that Defendant employs non-exempt employees, including non-exempt Store
15 Managers, throughout California, including in Alameda County.

16 17. The true names and capacities, whether individual, corporate, associate, or otherwise,
17 of Does 1-100, inclusive, are unknown to Plaintiff, who therefore sues the Doe Defendants by
18 fictitious names. Plaintiff is informed, believes, and thereon alleges that each of these fictitiously-
19 named Defendants is responsible in some manner for the occurrences and violations as herein alleged.
20 Plaintiff will amend this Complaint to show their true names and capacities when they have been
21 ascertained. Defendants are jointly and severally liable for the civil penalties asserted.

22 18. At all relevant times, Defendants have done business under the laws of California, have
23 had places of business in California, including in this judicial district, and have employed Aggrieved
24 Employees in this judicial district. Defendants are “persons” as defined in Labor Code § 18 and
25 Business and Professions Code § 17201. Defendants are also “employers” as that term is used in the
26 Labor Code and IWC Wage Orders.

1 27. At the end of each pay period, Aggrieved Employees receive wages from Defendant that
2 are determined by common systems and methods that Defendant selects and controls.

3 28. As a matter of policy and/or practice, Defendant routinely fails to compensate Plaintiff
4 and Aggrieved Employees for all hours that they actually work. Plaintiff and Aggrieved Employees
5 are not permitted to log the actual number of hours worked during each week. Plaintiff and Aggrieved
6 Employees are not compensated for time spent on all work-related activities in-store and out of store.

7 29. Specifically, Plaintiff and Aggrieved Employees perform duties off-the-clock including,
8 but not limited to, providing customer service, sales, handling calls and text messages from employees
9 and managers, attending conference calls, and working through unpaid meal periods. This time is not
10 compensated at all, let alone at proper California overtime and minimum wage rates.

11 30. As the Store Managers work long hours, routinely in excess of eight hours per day and
12 over 40 hours per week, the off-the-clock time regularly should be compensated at overtime rates.

13 31. Defendant also requires Plaintiff and Aggrieved Employees to remain on duty during
14 rest breaks and unpaid meal periods. Plaintiff and Aggrieved Employees are not provided with meal
15 and rest periods in which they are relieved of work-related duties. Plaintiff and Aggrieved Employees
16 routinely work through or are interrupted during their rest breaks and unpaid meal periods to perform
17 duties such as providing customer service and sales. They regularly have to answer questions from
18 customers and employees during their meal and rest periods.

19 32. Defendant does not compensate Plaintiff and Aggrieved Employees for work performed
20 during rest breaks and unpaid meal periods. Despite these recurring violations, Defendant does not
21 provide Plaintiff and Aggrieved Employees premium pay for missed or non-compliant rest breaks and
22 meal periods.

23 33. Defendant also does not provide Plaintiff and Aggrieved Employees with
24 reimbursement for business expenses that they incur in the performance of their work duties.
25 Defendant requires Plaintiff and Aggrieved Employees to use their personal cellular phones and
26 personal cellular voice, text, and data plans for extensive, regular work-related communications.
27 Defendant, however, does not reimburse these expenditures. Plaintiff and Aggrieved Employees
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1 regularly use their personal vehicles for work purposes without reimbursement.

2 34. Defendant's common course of wage-and-hour abuse includes routinely failing to
3 maintain true and accurate records of the hours worked by Aggrieved Employees. Defendant has
4 failed to record hours that Plaintiff and Aggrieved Employees worked off-the-clock, failed to record
5 non-compliant meal periods and rest breaks, and failed to record out-of-pocket expenditures made by
6 Plaintiff and Aggrieved Employees.

7 35. Defendant does not provide Plaintiff and Aggrieved Employees with accurate wage
8 statements as required by California law. These workers receive wage statements that do not reflect
9 all hours worked, premium pay for missed meal and rest breaks, and applicable overtime premiums.

10 36. Defendant does not provide Plaintiff and Aggrieved Employees with full payment of all
11 wages owed at the end of employment. These workers are owed wages and premium pay for all time
12 worked, overtime, and missed meal and rest breaks when their employment ends. These amounts
13 remain unpaid after voluntary and involuntary termination. As a consequence, Defendant is subject
14 to waiting time penalties under the California Labor Code.

15 37. Defendant is aware that it maintains policies and practices that deprive its Store
16 Managers of compensation for time worked, including overtime compensation and minimum wages,
17 and of the fact that its Store Managers are not made available meal and rest periods to which they are
18 entitled. Defendant is further aware that Store managers expend personal funds on work duties without
19 reimbursement. Therefore, the denial of wages, compliant meal and rest periods, and reimbursement
20 for work expenditures to Plaintiff and Aggrieved Employees is knowing and willful.

21 38. Plaintiff is informed, believes, and thereon alleges that Defendant's unlawful conduct
22 has been widespread, repeated, and consistent as to the Aggrieved Employees and throughout
23 Defendant's operations in California.

24 39. Defendant's conduct was willful, carried out in bad faith, and triggers significant civil
25 penalties in an amount to be determined at trial.

FIRST CAUSE OF ACTION
Penalties Pursuant to Labor Code § 2699(a)
(On Behalf of the State of California and Aggrieved Employees)

40. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth herein.

41. Labor Code § 2699(a) provides:

Notwithstanding any other provision of law, any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies or employees, for a violation of this code, 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.

42. Labor Code §§ 201 and 202 require employers to immediately pay wages earned and unpaid to an employee that is discharged, and to pay an employee who quits within 72 hours after he or she quits, at the latest.

43. Labor Code § 203 provides, in relevant part:

If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.5, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced; but the wages shall not continue for more than 30 days.

44. Labor Code § 256 provides: "The Labor Commissioner shall impose a civil penalty in an amount not exceeding 30 days pay as waiting time under the terms of Section 203."

45. Labor Code § 225.5 provides that every person who unlawfully withholds wages due any employee in violation of Section 212, 216, 221, 222, or 223 shall be subject to a civil penalty of \$100 for any initial violation for each failure to pay each employee and \$200 for each subsequent violation, or any willful or intentional violation, for each failure to pay each employee.

46. Labor Code § 226(a) provides:

Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under

subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (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 paid, (7) the name of the employee and his or her 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 hourly rate by the employee. The deductions made from payments of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement or a record of the deductions shall be kept on file by the employer for at least four years at the place of employment or at a central location within the State of California.

47. Labor Code § 226.3 provides:

Any employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the records required in subdivision (a) of Section 226. The civil penalties provided for in this section are in addition to any other penalty provided by law.

48. Plaintiff seeks civil penalties pursuant to Labor Code § 2699(a) for each failure by Defendant, as alleged above, to timely pay all wages owed to Plaintiff and Aggrieved Employees in compliance with Labor Code §§ 201-202.

49. Plaintiff also seeks civil penalties pursuant to Labor Code § 2699(a) for each failure by Defendant, alleged above, to provide Plaintiff and Aggrieved Employees an accurate, itemized wage statement in compliance with Labor Code § 226(a).

50. Plaintiff also seeks civil penalties pursuant to Labor Code § 2699(a) for each violation by Defendant of Labor Code § 225.5, 226.3, 256, and any other violation alleged herein that carries penalties under Labor Code § 2699(a).

51. Pursuant to Labor Code § 2699.3(a)(1) and (2), Plaintiff provided the Labor and Workforce Development Agency (“LWDA”) with notice of his intention to file this claim. Sixty-five calendar days have passed without notice from the LWDA. Plaintiff satisfied the administrative prerequisites to commence this civil action in compliance with § 2699.3(a).

52. Plaintiff seeks the aforementioned penalties on behalf of the State, other Aggrieved

1 Employees, and herself as set forth in Labor Code § 2699.

2 53. Defendant is liable to Plaintiff, Aggrieved Employees, and the State of California for
3 the civil penalties set forth in this Complaint, with interest thereon. Plaintiff is also entitled to an
4 award of attorneys' fees and costs as set forth below.

5 54. Wherefore, Plaintiff requests relief as hereinafter provided.

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7 **SECOND CAUSE OF ACTION**
8 **Penalties Pursuant to Labor Code § 2699(f)**
9 **(On Behalf of the State of California and Aggrieved Employees)**

10 55. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth
11 herein.

12 56. Labor Code § 2699(f) provides:

13 For all provisions of this code except those for which a civil penalty is specifically
14 provided, there is established a civil penalty for a violation of these provisions, as
15 follows: . . . (2) If, at the time of the alleged violation, the person employs one or more
16 employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee
17 per pay period for the initial violation and two hundred dollars (\$200) for each
18 aggrieved employee per pay period for each subsequent violation.

19 57. Labor Code § 200 defines wages as "all amounts for labor performed by employees
20 of every description, whether the amount is fixed or ascertained by the standard of time, task,
21 piece, commission basis or method of calculation."

22 58. Labor Code § 204(a) provides that "[a]ll wages ... earned by any person in any
23 employment are due and payable twice during each calendar month...."

24 59. IWC Wage Orders 7-2001(2)(G) and 4-2001(2)(K) define hours worked as "the time
25 during which an employee is subject to the control of an employer, and includes all the time the
26 employee is suffered or permitted to work, whether or not required to do so."

27 60. Labor Code § 1198 makes it unlawful for employers to employ employees under
28 conditions that violate the Wage Order.

61. Labor Code § 510 provides, in relevant part:

Eight hours of labor constitutes a day's work. Any work in excess of eight hours in
one workday and any work in excess of 40 hours in any one workweek and the first

1 eight hours worked on the seventh day of work in any one workweek shall be
2 compensated at the rate of no less than one and one-half times the regular rate of pay
3 for an employee. Any work in excess of 12 hours in one day shall be compensated at
4 the rate of no less than twice the regular rate of pay for an employee. In addition, any
5 work in excess of eight hours on any seventh day of a workweek shall be
6 compensated at the rate of no less than twice the regular rate of pay of an employee.
7 Nothing in this section requires an employer to combine more than one rate of
8 overtime compensation in order to calculate the amount to be paid to an employee for
9 any hour of overtime work.

62. Labor Code § 1197 provides:

7 The minimum wage for employees fixed by the commission or by any applicable
8 state or local law, is the minimum wage to be paid to employees, and the payment of
9 a lower wage than the minimum so fixed is unlawful. This section does not change
10 the applicability of local minimum wage laws to any entity.

63. Labor Code § 1194 provides, in relevant part:

11 Notwithstanding any agreement to work for a lesser wage, any employee receiving
12 less than the legal minimum wage or the legal overtime compensation applicable to
13 the employee is entitled to recover in a civil action the unpaid balance of the full
14 amount of this minimum wage or overtime compensation, including interest thereon,
15 reasonable attorney's fees, and costs of suit.

64. Labor Code §§ 226.7 and 512 and IWC Wage Orders 4-2001 and 7-2001 require
16 Defendants to authorize, permit, and/or make available timely and compliant meal and rest periods
17 to its employees. Labor Code §§ 226.7 and 512 and IWC Wage Orders 4-2001 and 7-2001
18 prohibit employers from employing an employee for more than five hours without a meal period of
19 not less than thirty minutes, and from employing an employee more than ten hours per day without
20 providing the employee with a second meal period of not less than thirty minutes. Section 226.7
21 and IWC Wage Orders 4-2001 and 7-2001 also require employers to authorize and permit
22 employees to take ten minutes of net rest time per four hours, or major fraction thereof of work,
23 and to pay employees their full wages during those rest periods. Unless the employee is relieved of
24 all duty during the thirty-minute meal period and ten-minute rest period, the employee is
25 considered "on duty" and the meal or rest period is counted as time worked under the applicable
26 wage orders.

65. Labor Code § 2802 requires employers to indemnify employees for all necessary
27 expenditures or losses incurred by the employee in direct consequence of the discharge of his or
28

1 her duties.

2 66. To the extent than any violation alleged herein does not carry penalties under Labor
3 Code § 2699(a), Plaintiff seeks civil penalties pursuant to Labor Code § 2699(f) for Plaintiff and
4 Aggrieved Employees each pay period in which he or she was aggrieved, in the amounts
5 established by Labor Code § 2699(f). Plaintiff seeks penalties pursuant to Labor Code § 2699(f)
6 for Plaintiff and Aggrieved Employees for violations of Labor Code provisions including, but not
7 limited, to, Labor Code § 510, 1194, 1197, 201-203, 204, 226, 226.7, 512, 1198, 2802, IWC Wage
8 Orders 4-2001 and 7-2001, and any other violation alleged herein does not carry penalties under
9 Labor Code § 2699(a).

10 67. Pursuant to Labor Code § 2699.3(a)(1) and (2), Plaintiff has provided the LWDA
11 with notice of his intention to file this claim. Sixty-five calendar days have passed without notice
12 from the LWDA. Plaintiff satisfied the administrative prerequisites to commence this civil action
13 in compliance with § 2699.3(a).

14 68. Plaintiff seeks the aforementioned penalties on behalf of the State, other Aggrieved
15 Employees, and herself as set forth in Labor Code § 2699(g)(1).

16 69. Defendant is liable to Plaintiff, Aggrieved Employees, and the State of California for
17 the civil penalties set forth in this Complaint, with interest thereon. Plaintiff is also entitled to an
18 award of attorneys' fees and costs as set forth below.

19 70. Wherefore, Plaintiff requests relief as hereinafter provided.

20 **PRAYER FOR RELIEF**

21 WHEREFORE, Plaintiff prays for relief as follows:

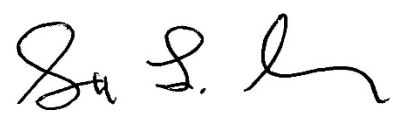
- 22 1. For the Court to declare, adjudge, and decree that Defendant has violated the
23 California Labor Code as alleged herein;
- 24 2. For an order awarding the State of California, Plaintiff, and Aggrieved Employees
25 civil penalties provided under the PAGA;
- 26 3. For interest on penalties awarded as provided by applicable law;
- 27 4. For an award of reasonable attorneys' fees;

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- 5. For all costs of suit; and
- 6. For such other and further relief as this Court deems just and proper.

Respectfully submitted,

Date: April 2, 2021



Carolyn H. Cottrell
David C. Leimbach
Scott L. Gordon
SCHNEIDER WALLACE
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*Attorneys for Plaintiff, on behalf of the State of
California and Aggrieved Employees*

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Date: April 2, 2021

Respectfully submitted,

Sa S. h

Carolyn H. Cottrell
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*Attorneys for Plaintiff, on behalf of the State of
California and Aggrieved Employees*