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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF CONTRA COSTA

MYRNA ATIENZA, on behalf of the State
of California, as a private attorney
general,

Plaintiff,

vs.

HOMEGOODS, INC., a Corporation; and
DOES 1 through 10, inclusive,

Defendants.

Case No. _____

C21-00564

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 1 1070(14) (Failure to Provide
Seating)

PER LOCAL RULE, THIS
CASE IS ASSIGNED TO
DEPT 33, FOR ALL
PURPOSES.



SUMMONS ISSUED

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

6 **INTRODUCTION**

7 1. PLAINTIFF brings this action against Defendant HOMEGOODS, 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. Homegoods, 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 a chain of home furnishing stores that was founded as a chain
27 in 1992. HomeGoods sells furniture, linens, cooking products, art and other home accessories.
28

1 6. PLAINTIFF was employed by DEFENDANT from June of 2020 to November
2 27, 2020 and was at all times classified by DEFENDANT as a non-exempt employee, paid on
3 an hourly basis, and entitled to the legally required meal and rest periods and payment of
4 minimum and overtime wages due for all time worked.

5 7. PLAINTIFF, and such persons that may be added from time to time who satisfy
6 the requirements and exhaust the administrative procedures under the Private Attorney General
7 Act, brings this Representative Action on behalf of the State of California with respect to herself
8 and all individuals who are or previously were employed by DEFENDANT in California and
9 classified as non-exempt employees ("AGGRIEVED EMPLOYEES") during the time period
10 of January 5, 2020 until a date as determined by the Court (the "PAGA PERIOD").

11 8. PLAINTIFF, on behalf of herself and all AGGRIEVED EMPLOYEES presently
12 or formerly employed by DEFENDANT during the PAGA PERIOD, brings this representative
13 action pursuant to Labor Code § 2699, *et seq.* seeking fixed civil penalties for DEFENDANT's
14 violation of California Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 226(a), 226.7, 351, 510,
15 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8,
16 Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1
17 1070(14) (Failure to Provide Seating), and the applicable Wage Order(s) and thereby gives rise
18 to civil penalties as a result of such conduct.¹ Based upon the foregoing, PLAINTIFF and all
19 AGGRIEVED EMPLOYEES are aggrieved employees within the meaning of Labor Code §
20 2699, *et seq.*

21 9. The true names and capacities, whether individual, corporate, subsidiary,
22 partnership, associate or otherwise of DEFENDANT DOES 1 through 50, inclusive, are
23 presently unknown to PLAINTIFF who therefore sues these DEFENDANT by such fictitious
24 names pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this
25 Complaint to allege the true names and capacities of Does 1 through 50, inclusive, when they
26 are ascertained. PLAINTIFF is informed and believes, and based upon that information and

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

1 belief alleges, that the DEFENDANT named in this Complaint, including DOES 1 through 50,
2 inclusive, are responsible in some manner for one or more of the events and happenings that
3 proximately caused the injuries and damages hereinafter alleged.

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

12 THE CONDUCT

13
14 11. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
15 required to pay PLAINTIFF and AGGRIEVED EMPLOYEES for all their time worked,
16 meaning the time during which an employee is subject to the control of an employer, including
17 all the time the employee is suffered or permitted to work. DEFENDANT required PLAINTIFF
18 and AGGRIEVED EMPLOYEES to work without paying them for all the time they were under
19 DEFENDANT's control. Specifically, DEFENDANT required PLAINTIFF to work while
20 clocked out during what was supposed to be PLAINTIFF's off-duty meal break. PLAINTIFF
21 was from time to time interrupted by work assignments. Additionally, PLAINTIFF and
22 AGGRIEVED EMPLOYEES were required by DEFENDANT to clock out of DEFENDANT's
23 timekeeping system, in order to perform additional work for DEFENDANT as required to meet
24 DEFENDANT's job requirements. Additionally, during the PAGA PERIOD, DEFENDANT
25 required PLAINTIFF and other AGGRIEVED EMPLOYEES to wait in line and submit to
26 mandatory temperature checks for COVID-19 screening prior to clocking into DEFENDANT's
27 timekeeping system for the workday. DEFENDANT failed to pay PLAINTIFF and other
28 AGGRIEVED EMPLOYEES for this off the clock work. Further, PLAINTIFF and other

1 AGGRIEVED EMPLOYEES from time to time were not paid wages for all time worked,
2 including overtime wages, such that in the aggregate employees were underpaid wages as a
3 result of DEFENDANT's pattern and practice of unevenly rounding time worked by its
4 employees.

5 12. As a result of their rigorous work schedules, PLAINTIFF and other AGGRIEVED
6 EMPLOYEES were from time to time unable to take thirty (30) minute off duty meal breaks
7 and were not fully relieved of duty for their meal periods. PLAINTIFF and other AGGRIEVED
8 EMPLOYEES were required from time to time to perform work as ordered by DEFENDANT
9 for more than five (5) hours during some shifts without receiving a meal break. Further,
10 DEFENDANT failed to provide PLAINTIFF and AGGRIEVED EMPLOYEES with a second
11 off-duty meal period for some workdays in which these employees were required by
12 DEFENDANT to work ten (10) hours of work from time to time. As a result, DEFENDANT's
13 failure to provide PLAINTIFF and the AGGRIEVED EMPLOYEES with legally required meal
14 breaks is evidenced by DEFENDANT's business records. PLAINTIFF and other
15 AGGRIEVED EMPLOYEES therefore forfeited meal breaks without additional compensation
16 and in accordance with DEFENDANT's corporate policy and practice.

17 13. During the PAGA PERIOD, PLAINTIFF and other AGGRIEVED EMPLOYEES
18 were also required from time to time to work in excess of four (4) hours without being provided
19 ten (10) minute rest periods. Further, these employees were denied their first rest periods of at
20 least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours from time to
21 time, a first and second rest period of at least ten (10) minutes for some shifts worked of
22 between six (6) and eight (8) hours from time to time, and a first, second and third rest period
23 of at least ten (10) minutes for some shifts worked of ten (10) hours or more from time to time.
24 PLAINTIFF and other AGGRIEVED EMPLOYEES were also not provided with one hour
25 wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFF and other
26 AGGRIEVED EMPLOYEES were from time to time denied their proper rest periods by
27 DEFENDANT and DEFENDANT's managers. Additionally, the applicable California Wage
28 Order requires employers to provide employees with off-duty rest periods, which the California

1 Supreme Court defined as time during which an employee is relieved from all work related
2 duties and free from employer control. In so doing, the Court held that the requirement under
3 California law that employers authorize and permit all employees to take rest period means that
4 employers must relieve employees of all duties and relinquish control over how employees
5 spend their time which includes control over the locations where employees may take their rest
6 period. Employers cannot impose controls that prohibit an employee from taking a brief walk -
7 five minutes out, five minutes back. Here, DEFENDANT's policy restricts PLAINTIFF and
8 other AGGRIEVED EMPLOYEES from unconstrained walks and requires these employees to
9 remain on DEFENDANT's premises under DEFENDANT's control during what should be their
10 paid, off duty rest periods.

11 14. In addition, State and federal law provides that employees must be paid overtime
12 at one-and-one-half times their "regular rate of pay." PLAINTIFF and other AGGRIEVED
13 EMPLOYEES are compensated at an hourly rate plus incentive pay that is tied to specific
14 elements of an employee's performance.

15 15. The second component of PLAINTIFF's and other AGGRIEVED EMPLOYEES'
16 compensation was DEFENDANT's non-discretionary incentive program that paid PLAINTIFF
17 and other AGGRIEVED EMPLOYEES incentive wages based on their performance for
18 DEFENDANT. The non-discretionary incentive program provided all employees paid on an
19 hourly basis with incentive compensation when the employees met the various performance
20 goals set by DEFENDANT. However, when calculating the regular rate of pay in order to pay
21 overtime to PLAINTIFF and other AGGRIEVED EMPLOYEES, DEFENDANT failed to
22 include the incentive compensation as part of the employees' "regular rate of pay" for purposes
23 of calculating overtime pay. Management and supervisors described the incentive program to
24 potential and new employees as part of the compensation package. As a matter of law, the
25 incentive compensation received by PLAINTIFF and other AGGRIEVED EMPLOYEES must
26 be included in the "regular rate of pay." The failure to do so has resulted in an underpayment
27 of overtime compensation to PLAINTIFF and other AGGRIEVED EMPLOYEES by
28 DEFENDANT. Moreover, DEFENDANT underpaid sick pay wages to PLAINTIFF and other

1 AGGRIEVED EMPLOYEES by failing to pay such wages at the regular rate of
2 pay. Specifically, PLAINTIFF and other non-exempt employees regularly earn non-
3 discretionary remuneration, including but not limited to, incentives, shift differential pay, and
4 bonuses. Rather than pay sick pay at the regular rate of pay, DEFENDANT underpaid sick pay
5 to PLAINTIFF and other AGGRIEVED EMPLOYEES at their base rates of pay.

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

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

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

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

26 20. From time to time, DEFENDANT also failed to provide PLAINTIFF and the
27 other AGGRIEVED EMPLOYEES with complete and accurate wage statements which failed
28 to show, among other things, the correct gross and net wages earned. Cal. Lab. Code § 226

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

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

19 22. In the course of their employment PLAINTIFF and other AGGRIEVED
20 EMPLOYEES as a business expense, were required by DEFENDANT to use personal cellular
21 phones as a result of and in furtherance of their job duties as employees for DEFENDANT but
22 were not reimbursed or indemnified by DEFENDANT for the cost associated with the use of
23 the personal cellular phones for DEFENDANT's benefit. Specifically, DEFENDANT required
24 PLAINTIFF and other AGGRIEVED EMPLOYEES to complete mandatory surveys on their
25 cell phones while at home regarding whether or not they were experiencing symptoms related
26 to the COVID-19 virus. These questions were required to be answered prior to coming into
27 work for the day. As a result, in the course of their employment with DEFENDANT,
28 PLAINTIFF and other AGGRIEVED EMPLOYEES incurred unreimbursed business expenses

1 which included, but were not limited to, costs related to the use of their personal cellular
2 phones, all on behalf of and for the benefit of DEFENDANT.

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

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

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18 **JURISDICTION AND VENUE**

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

21 26. Venue is proper in this Court pursuant to California Code of Civil Procedure,
22 Sections 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANT, resides
23 in this County, and DEFENDANT(i) currently maintains and at all relevant times maintained
24 offices and facilities in this County and/or conducts substantial business in this County, and (ii)
25 committed the wrongful conduct herein alleged in this County against PLAINTIFF and the
26 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 27. PLAINTIFF incorporates by reference, as though fully set forth herein, the prior
6 paragraphs of this Complaint.

7 28. 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 29. 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 January 5, 2020 until a date as determined by the Court (the "PAGA PERIOD").

23 30. On January 5, 2021, 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 31. 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.² 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 **PRAYER FOR RELIEF**

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

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

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

23 B) An award of attorneys' fees and cost of suit, as allowable under the

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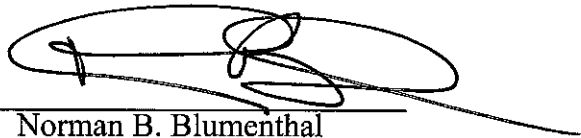
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27 _____
28 ²Plaintiff specifically excludes and/or does not allege any claims under California Labor
Code §558(a)(3).

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law, including, but not limited to, pursuant to Labor Code §2699.

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

By:



Norman B. Blumenthal

Attorneys for Plaintiff