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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE**

MELISSA MOSS, as an individual and on
behalf of all others similarly situated,

Plaintiffs,

vs.

SARES REGIS OPERATING COMPANY,
L.P.; and DOES 1 through 50, inclusive,

Defendants.

Case No.: 30-2021-01207001-CU-OE-CXC

**FIRST AMENDED REPRESENTATIVE
ACTION COMPLAINT FOR VIOLATION OF
LABOR CODE § 2698, ET SEQ**

DEMAND OVER \$25,000.00

1 Plaintiff Melissa Moss (“Plaintiff”), hereby submits this First Amended Representative
2 Action Complaint against Defendant Sares Regis Operating Company, L.P. (“Defendant”) and
3 Does 1-50 (hereinafter collectively referred to as “Defendants”), on behalf of herself and other
4 aggrieved employees of Defendant, for penalties pursuant to the Private Attorneys General Act
5 (“PAGA”) for Defendant’s violations of the California Labor Code, as follows:

6 **INTRODUCTION**

7 1. This representative action is within the Court’s jurisdiction under California
8 Labor Code sections 201, 202, 203, 204, 212, 213, 226(a), 226.7, 246 and 2698, *et seq.* and the
9 California Industrial Welfare Commission’s (“IWC”) Wage Orders.

10 2. This Complaint challenges systemic illegal employment practices resulting in
11 violations of the California Labor Code against employees of Defendant.

12 3. Plaintiff is informed and believes and based thereon alleges that Defendants
13 jointly and severally have acted intentionally and with deliberate indifference and conscious
14 disregard to the rights of all employees by: a) failing to properly calculate the regular rate of pay
15 for purposes of paying sick pay; b) failing to pay meal/rest period premium wages at the regular
16 rate of pay; c) failing to provide accurate itemized wage statements; d) failing to pay all final
17 wages upon separation of employment; and e) issuing payment of wages to employees in the
18 form of a paycard without written authorization or consent.

19 4. Plaintiff is informed and believes and based thereon alleges that Defendants have
20 engaged in, among other things a system of willful violations of the California Labor Code and
21 applicable IWC Wage Orders by creating and maintaining policies, practices and customs that
22 knowingly deny employees the above stated rights and benefits.

23 **JURISDICTION AND VENUE**

24 5. The Court has jurisdiction over the violations of the California Labor Code
25 sections 201, 202, 203, 204, 212, 213, 226(a), 226.7, 246 and 2698, *et seq.*

26 6. Venue is proper in Orange County because Defendant maintains operations in
27 Newport Beach, California.
28

PARTIES

7. Plaintiff is a former non-exempt employee of Defendant. Plaintiff's employment with Defendant ended on or about April 21, 2021.

8. Plaintiff was and is the victim of the policies, practices, and customs of Defendant complained of in this action in ways that have deprived her of the rights guaranteed by California Labor Code sections 201, 202, 203, 204, 212, 213, 226(a), 226.7, 246 and 2698, *et seq.* and the applicable IWC Wage Orders.

9. Plaintiff is informed and believes and based thereon alleges that Defendant Sares Regis Operating Company, L.P. was and is a Delaware limited partnership that does business in California, including in Orange County.

10. Plaintiff is informed and believes and based thereon alleges that at all times herein mentioned Defendant and Does 1 through 50 are and were business entities, individuals, and partnerships, licensed to do business and actually doing business in the State of California.

11. As such, and based upon all the facts and circumstances incident to Defendants' business in California, Defendants are subject to California Labor Code sections 201, 202, 203, 204, 212, 213, 226(a), 226.7, 246 and 2698, *et seq.* and the applicable IWC Wage Orders.

12. Plaintiff does not know the true names or capacities, whether individual, partner or corporate, of the defendants sued herein as Does 1 through 50, inclusive, and for that reason, said defendants are sued under such fictitious names, and Plaintiff prays for leave to amend this complaint when the true names and capacities are known. Plaintiff is informed and believes and based thereon alleges that each of said fictitious defendants were responsible in some way for the matters alleged herein and proximately caused Plaintiff and other aggrieved employees to be subject to the illegal employment practices, wrongs and injuries complained of herein.

13. At all times herein mentioned, each of said Defendants participated in the doing of the acts hereinafter alleged to have been done by the named Defendant; and furthermore, the Defendants, and each of them, were the agents, servants and employees of each of the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned, were acting within the course and scope of said agency and employment.

14. Plaintiff is informed and believes and based thereon alleges that at all times material hereto, each of the Defendants named herein was the agent, employee, alter ego and/or joint venturer of, or working in concert with each of the other co-defendants and was acting within the course and scope of such agency, employment, joint venture, or concerted activity. To the extent said acts, conduct, and omissions were perpetrated by certain Defendants, each of the remaining Defendants confirmed and ratified said acts, conduct, and omissions of the acting Defendants.

15. At all times herein mentioned, Defendants, and each of them, were members of, and engaged in, a joint venture, partnership and common enterprise, and acting within the course and scope of, and in pursuance of, said joint venture, partnership and common enterprise.

16. At all times herein mentioned, the acts and omissions of various Defendants, and each of them, concurred and contributed to the various acts and omissions of each and all of the other Defendants in proximately causing the injuries and damages as herein alleged. At all times herein mentioned, Defendants, and each of them, ratified each and every act or omission complained of herein. At all times herein mentioned, the Defendants, and each of them, aided and abetted the acts and omissions of each and all of the other Defendants in proximately causing the damages as herein alleged.

FIRST CAUSE OF ACTION

VIOLATION OF LABOR CODE § 2698 ET SEQ.

(BY PLAINTIFF AND AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS)

17. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as though fully set forth herein.

18. Plaintiff brings this cause of action for violation of the Private Attorneys General Act, as a proxy for the State of California and in this capacity, seeks penalties on behalf of all Aggrieved Employees from May 3, 2020, through the present for Defendant's violations of Labor Code sections 201, 202, 203, 204, 212, 213, 226(a), 226.7 and 246, arising from Defendant's policy and practice of: (a) failing to pay employees sick pay at the correct regular rate of pay that included all non-discretionary remuneration, in violation of Labor Code sections

201, 202, 203, 204 and 246; (b) failing to pay employees meal and rest period premium wages at the regular rate of pay, in violation of Labor Code section 226.7; (c) failing to provide accurate, itemized wage statements, in violation of Labor Code section 226(a); (d) issuing payment of wages to employees in the form of a paycard without written authorization, which required employees to incur fees to use, was not fully cashable, and was not usable at all financial institutions, in violation of Labor Code sections 212 and 213; and (e) failing to pay final wages in a timely manner to separated employees as a result of the issuance of paycards and underpayment of sick pay wages and meal/rest period premiums, in violation of Labor Code sections 201, 202 and 203.

19. Labor Code section 201 provides 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 provides that an employee is entitled to receive all unpaid wages no later than 72 hours after an employee quits his or her employment, unless the employee has given seventy-two (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.

20. Labor Code section 246 provides that an employee is entitled to receive sick time pay. The employer shall calculate paid sick leave by using one of two calculations: (1) "Paid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek;" or (2) "Paid sick time for nonexempt employees shall be calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment."

21. Plaintiff and other non-exempt Aggrieved Employees earned non-discretionary incentives and/or bonuses and sick pay during the same work week. Whenever Defendant paid Plaintiff and non-exempt Aggrieved Employees sick time pursuant to California Labor Code section 246, Defendant did so at the incorrect rate of pay. Defendant paid Plaintiff and non-exempt Aggrieved Employees at the base hourly rate of pay, as opposed to the regular rate of

1 pay, which would take into account all non-discretionary wages such as incentives and/or
2 bonuses, as required by Labor Code section 246. This resulted in the underpayment of sick time,
3 and resulted in violations of California Labor Code sections 201, 202 and 203, and other
4 derivative Labor Code violations, because Defendant did not pay, or timely pay, Plaintiff and
5 non-exempt Aggrieved Employees all owing and unpaid wages for work performed by them
6 during their employment and at the end of their employment.

7 22. Relatedly, Defendant failed to pay meal and rest period premium wages at the
8 regular rate of pay, as mandated by Labor Code section 226.7. For each workday that a meal or
9 rest period is not provided, employees are entitled to one additional hour of pay at the
10 employee's regular rate of pay. Defendant, however, paid meal and rest period premium wages
11 at an employee's base hourly rate of pay, which did not include non-discretionary incentive
12 wages that an employee earned during the same workweek. As such, Plaintiff and the Aggrieved
13 Employees are owed additional meal/rest period premiums based on the correct, higher regular
14 rate of pay.

15 23. Moreover, Plaintiff and other Aggrieved Employees, whose employment was
16 separated for any reason (voluntary or involuntary), received their final wages in the form of a
17 paycard without their written authorization or consent. As alleged herein, the paycard required
18 Plaintiff and Aggrieved Employees to incur fees to use, was not fully cashable, and not usable at
19 all financial institutions. Thus, the paycard did not actually compensate separated employees for
20 all wages owed. As such, Plaintiff and Aggrieved Employees have not been paid all final wages
21 due upon termination.

22 24. Defendant also failed in its affirmative obligation to provide accurate itemized
23 wage statements, in violation of Labor Code section 226(a). The wage statements provided to
24 Plaintiff and other non-exempt Aggrieved Employees, should have reflected all applicable hourly
25 rates in effect during the pay period and the corresponding number of hours worked at each
26 hourly rate. However, the wage statements provided to Plaintiff and non-exempt Aggrieved
27 Employees failed to identify such information. More specifically, whenever FLSA Incentive
28 Adjustment wages were paid, the wage statements issued to Plaintiff and non-exempt Aggrieved

1 Employees did not identify the applicable rate of pay and number of hours worked used to
2 calculate such wages. Furthermore, as a result of the underpayment of meal/rest period premium
3 wages, whenever a meal or rest period premium and non-discretionary incentive pay was earned
4 during the same workweek, the corresponding wage statement failed to identify the accurate
5 rates of pay for such meal and rest premium wages, and the accurate gross and net wages earned.

6 25. On or about May 3, 2021, Plaintiff sent written notice to the California Labor &
7 Workforce Development Agency ("LWDA") of Defendant's violations of Labor Code sections
8 201, 202, 203, 204, 212, 213, 226(a) and 246, pursuant to Labor Code section 2698, *et seq.* To
9 date, the LWDA has not responded to Plaintiff's written notice.

10 26. On or about July 23, 2021, Plaintiff sent a supplemental written notice to the
11 LWDA of Defendant's violations of Labor Code sections 201, 202, 203, 226(a) and 226.7,
12 pursuant to Labor Code section 2698, *et seq.* To date, the LWDA has not responded to Plaintiff's
13 written notice.

14 27. As such, pursuant to Labor Code section 2699(a), Plaintiff seeks recovery of any
15 and all applicable civil penalties for Defendant's violation of Labor Code section 201, 202, 203,
16 204, 212, 213, 226(a), 226.7 and 246, for the time period described above, on behalf of herself
17 and other Aggrieved Employees.

18 **PRAYER FOR RELIEF**

19 WHEREFORE, Plaintiff prays for judgment as an individual and on behalf of all others
20 that this suit is brought against Defendants, jointly and severally, as follows:

- 21 1. Upon the First Cause of Action, for civil penalties according to proof pursuant to Labor
22 Code section 2698 *et seq.*, and for costs and attorneys' fees;
 - 23 2. On all causes of action for attorneys' fees and costs as provided by California Labor
24 Code section 2699, and Code of Civil Procedure section 1021.5; and
 - 25 3. For such other and further relief the Court may deem just and proper.
- 26
27
28

1 DATED: August 9, 2021

DIVERSITY LAW GROUP, P.C.

2
3 By: 

4 Larry W. Lee

Kristen M. Agnew

Nicholas Rosenthal

5 Attorneys for Plaintiff and the Aggrieved
6 Employees

1 **PROOF OF SERVICE**

2 **(Code of Civil Procedure Sections 1013a, 2015.5)**

3
4 STATE OF CALIFORNIA]
5 COUNTY OF LOS ANGELES]ss.
6]

7 I am employed in the County of Los Angeles, State of California. I am over the age of
8 18 and not a party to the within action; my business address is 515 S. Figueroa Street, Suite
9 1250, Los Angeles, California 90071.

10 On August 9, 2021, I served the following document(s) described as: **FIRST**
11 **AMENDED REPRESENTATIVE ACTION COMPLAINT FOR VIOLATION OF**
12 **LABOR CODE § 2698, ET SEQ** on the interested parties in this action as follows:

13 Matthew C. Lewis
14 Amy R. Patton
15 PAYNE & FEARS
16 235 Pine Street, Suite 1175
17 San Francisco, CA 94104
18 *Attorneys for Defendants*

19 X BY MAIL: by placing _____ the original or X a true and correct
20 copy thereof enclosed, in (a) sealed envelope(s) addressed to the party(ies) listed above or on the
21 attached mailing list. I am readily familiar with the firm's practice for collection and processing
22 of correspondence and other materials for mailing with the United States Postal Service. On this
23 date, I sealed the envelope(s) containing the above materials and placed the envelope(s) for
24 collection and mailing on this date at the address above following our office's ordinary business
25 practices. The envelope(s) will be deposited with the United States Postal Service on this date,
26 in the ordinary course of business.

27 I declare under penalty of perjury under the laws of the State of California that the
28 above is true and correct. Executed on August 9, 2021, at Los Angeles, California.

29 
30 Erika Mejia