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Assigned for all Purposes

Judge William Cluster

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CX-104

Attorneys for Plaintiff and the Aggrieved Employees

**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

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

DEMAND OVER \$25,000.00

1 Plaintiff Melissa Moss (“Plaintiff”), hereby submits this Representative Action
2 Complaint against Defendant Sares Regis Operating Company, L.P. (“Defendant”) and Does 1-
3 50 (hereinafter collectively referred to as “Defendants”), on behalf of herself and other aggrieved
4 employees of Defendant, for penalties pursuant to the Private Attorneys General Act (“PAGA”)
5 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), 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 provide accurate itemized wage statements; c)
16 failing to pay all final wages upon separation of employment; and d) issuing payment of wages
17 to employees in the form of a paycard without written authorization or consent.

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

22 **JURISDICTION AND VENUE**

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

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

27 **PARTIES**

28 7. Plaintiff is a former non-exempt employee of Defendant. Plaintiff’s employment

1 with Defendant ended on or about April 21, 2021.

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

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

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

12 11. As such, and based upon all the facts and circumstances incident to Defendants'
13 business in California, Defendants are subject to California Labor Code sections 201, 202, 203,
14 204, 212, 213, 226(a), 246 and 2698, *et seq.* and the applicable IWC Wage Orders.

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

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

27 14. Plaintiff is informed and believes and based thereon alleges that at all times
28 material hereto, each of the Defendants named herein was the agent, employee, alter ego and/or

1 joint venturer of, or working in concert with each of the other co-defendants and was acting
2 within the course and scope of such agency, employment, joint venture, or concerted activity.
3 To the extent said acts, conduct, and omissions were perpetrated by certain Defendants, each of
4 the remaining Defendants confirmed and ratified said acts, conduct, and omissions of the acting
5 Defendants.

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

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

16 **FIRST CAUSE OF ACTION**

17 **VIOLATION OF LABOR CODE § 2698 ET SEQ.**

18 **(BY PLAINTIFF AND AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS)**

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

21 18. Plaintiff brings this cause of action for violation of the Private Attorneys General
22 Act, as a proxy for the State of California and in this capacity, seeks penalties on behalf of all
23 Aggrieved Employees from May 3, 2020, through the present for Defendant's violations of
24 Labor Code sections 201, 202, 203, 204, 212, 213, 226(a) and 246, arising from Defendant's
25 policy and practice of: (a) failing to pay employees sick pay at the correct regular rate of pay that
26 included all non-discretionary remuneration, in violation of Labor Code sections 201, 202, 203,
27 204 and 246; (b) failing to provide accurate, itemized wage statements, in violation of Labor
28 Code section 226(a); (c) issuing payment of wages to employees in the form of a paycard

1 without written authorization, which required employees to incur fees to use, was not fully
2 cashable, and was not usable at all financial institutions, in violation of Labor Code sections 212
3 and 213; and (d) failing to pay final wages in a timely manner to separated employees as a result
4 of the issuance of paycards and underpayment of sick pay wages, in violation of Labor Code
5 sections 201, 202 and 203.

6 19. Labor Code section 201 provides if an employer discharges an employee, the
7 wages earned and unpaid at the time of discharge are due and payable immediately. Labor Code
8 section 202 provides that an employee is entitled to receive all unpaid wages no later than 72
9 hours after an employee quits his or her employment, unless the employee has given seventy-two
10 (72) hours previous notice of his or her intention to quit, in which case the employee is entitled
11 to his or her wages at the time of quitting.

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

20 21. Plaintiff and other non-exempt Aggrieved Employees earned non-discretionary
21 incentives and/or bonuses and sick pay during the same work week. Whenever Defendant paid
22 Plaintiff and non-exempt Aggrieved Employees sick time pursuant to California Labor Code
23 section 246, Defendant did so at the incorrect rate of pay. Defendant paid Plaintiff and non-
24 exempt Aggrieved Employees at the base hourly rate of pay, as opposed to the regular rate of
25 pay, which would take into account all non-discretionary wages such as incentives and/or
26 bonuses, as required by Labor Code section 246. This resulted in the underpayment of sick time,
27 and resulted in violations of California Labor Code sections 201, 202 and 203, and other
28 derivative Labor Code violations, because Defendant did not pay, or timely pay, Plaintiff and

1 non-exempt Aggrieved Employees all owing and unpaid wages for work performed by them
2 during their employment and at the end of their employment.

3 22. Moreover, Plaintiff and other Aggrieved Employees, whose employment was
4 separated for any reason (voluntary or involuntary), received their final wages in the form of a
5 paycard without their written authorization or consent. As alleged herein, the paycard required
6 Plaintiff and Aggrieved Employees to incur fees to use, was not fully cashable, and not usable at
7 all financial institutions. Thus, the paycard did not actually compensate separated employees for
8 all wages owed. As such, Plaintiff and Aggrieved Employees have not been paid all final wages
9 due upon termination.

10 23. Defendant also failed in its affirmative obligation to provide accurate itemized
11 wage statements, in violation of Labor Code section 226(a). The wage statements provided to
12 Plaintiff and other non-exempt Aggrieved Employees, should have reflected all applicable hourly
13 rates in effect during the pay period and the corresponding number of hours worked at each
14 hourly rate. However, the wage statements provided to Plaintiff and non-exempt Aggrieved
15 Employees failed to identify such information. More specifically, whenever FLSA Incentive
16 Adjustment wages were paid, the wage statements issued to Plaintiff and non-exempt Aggrieved
17 Employees did not identify the applicable rate of pay and number of hours worked used to
18 calculate such wages.

19 24. On or about May 3, 2021, Plaintiff sent written notice to the California Labor &
20 Workforce Development Agency ("LWDA") of Defendant's violations of Labor Code sections
21 201, 202, 203, 204, 212, 213, 226(a) and 246, pursuant to Labor Code section 2698, *et seq.* To
22 date, the LWDA has not responded to Plaintiff's written notice.

23 25. As such, pursuant to Labor Code section 2699(a), Plaintiff seeks recovery of any
24 and all applicable civil penalties for Defendant's violation of Labor Code section 201, 202, 203,
25 204, 212, 213, 226(a) and 246, for the time period described above, on behalf of herself and
26 other Aggrieved Employees.

27 **PRAYER FOR RELIEF**

28 WHEREFORE, Plaintiff prays for judgment as an individual and on behalf of all others

1 that this suit is brought against Defendants, jointly and severally, as follows:

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

7
8 DATED: June 21, 2021

DIVERSITY LAW GROUP, P.C.

9
10 By: 

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Attorneys for Plaintiff and the Aggrieved
Employees