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FILED
SUPERIOR COURT
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

DEC 09 2021

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Attorneys for Plaintiff YAILEEN FUENTES, on behalf of herself and as representative for the State of California on behalf of all other aggrieved employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN BERNARDINO

YAILEEN FUENTES, on behalf of herself
and as representative for the State of
California on behalf of all other aggrieved
employees,

Case No. **CIV SB 2133593**

**COMPLAINT FOR RECOVERY OF CIVIL
PENALTIES PURSUANT TO THE PRIVATE
ATTORNEYS GENERAL ACT ("PAGA")**

Plaintiffs,

**1. PAGA CIVIL PENALTIES FOR
FAILURE TO PROVIDE SUITABLE
SEATING**

v.

**2. PAGA CIVIL PENALTIES FOR
FAILURE TO MAINTAIN A
REASONABLY COMFORTABLE
TEMPERATURE**

AMAZON.COM SERVICES LLC, a
Delaware Limited Liability Company; and
DOES 1 through 10, inclusive,

**3. PAGA CIVIL PENALTIES FOR
FAILURE TO REIMBURSE BUSINESS
EXPENSES**

Defendants.

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DEC - 9 2021
SUPERIOR COURT
SAN BERNARDINO COUNTY

1 Plaintiff YAILEEN FUENTES ("Plaintiff"), on behalf of herself and other aggrieved
2 employees and as a Representative of the State of California's Labor and Workforce
3 Development Agency ("LWDA"), alleges as follows:

4 I.

5 **INTRODUCTION**

6 1. Plaintiff brings this proposed PAGA Representative Action against her former
7 employers Amazon.com Services LLC and Does 1 through 10 (collectively "Defendants") under
8 the California Labor Code to recover civil penalties for Defendants' failure to provide suitable
9 seating, maintain a reasonably comfortable temperature, and reimburse business expenses.

10 2. Plaintiff brings this lawsuit as a PAGA Representative Action on behalf of the
11 state of California and aggrieved current and former employees of Defendants including, but not
12 limited to, Associates and Pickers. Pursuant to Labor Code sections 2698, *et seq.*, Plaintiff seeks
13 to recover civil penalties and reasonable attorney's fees and costs. Plaintiff, by operation of law,
14 has standing and capacity to sue as a representative of the State of California. Plaintiff mailed
15 written notice of Defendants' violations of the Labor Code to the LWDA and Defendant
16 Amazon.com Services LLC pursuant to Labor Code section 2699.3 on August 23, 2021,
17 including facts and theories to support the allegations. Amazon.com Services LLC did not
18 provide notice of cure and the LWDA did not provide notice of investigation in the 65 days after
19 the PAGA notice was mailed.

20 II.

21 **JURISDICTION AND VENUE**

22 3. Venue as to each Defendant is proper in this judicial district, pursuant to Code of
23 Civil Procedure section 395. Defendants conduct business in the city and county of San
24 Bernardino in the state of California and each Defendant is within the jurisdiction of this Court
25 for service of process purposes. The unlawful acts alleged have a direct effect on Plaintiff and
26 other employees within the State of California and San Bernardino County. Defendants employ
27 numerous employees in San Bernardino County and in California generally. There is no federal
28 question at issue for removal under 28 U.S.C. section 1331, as the issues herein are based solely

1 on California statutes and law, including the Labor Code, IWC Wage Orders, Code of Civil
2 Procedure. Further, PAGA civil penalty actions are not subject to federal jurisdiction.

3 **III.**

4 **THE PARTIES**

5 4. Plaintiff YAILEEN FUENTES is a former employee of Defendants. She was
6 employed by Defendants as an "Associate" or "Picker" at Defendants' Moreno Valley facility
7 located at 24208 San Michele Rd., Moreno Valley, CA 92551 from approximately May of 2020
8 until May 14, 2021.

9 5. Plaintiff is an "aggrieved employee" because she was employed by the alleged
10 violators and had one or more of the alleged violations committed against her and, therefore, is
11 properly suited to represent the interests of all other current and former employees of
12 Defendants.

13 6. Pursuant to Cal Labor Code sections 2698, *et seq.*, Plaintiff seeks to represent all
14 current and former employees, including, but not limited to, Associates and Pickers, who
15 suffered one or more of the alleged violations ("aggrieved employees") during the applicable
16 limitations period, or "PAGA Period" (any time from one year and 65 days before the complaint
17 filing date until trial).

18 7. Plaintiff is informed and believes Defendant Amazon.com Services LLC is a
19 Delaware Limited Liability Company operating in the warehousing and storage industry.
20 Amazon.com Services LLC employs employees, including Associates and Pickers, throughout
21 California, including throughout San Bernardino County.

22 8. During the PAGA Period, Defendants did, and do, transact and conduct business
23 in the state of California, including, but not limited to, within the jurisdiction of the Court.
24 During the PAGA Period, each Defendant employed Plaintiff and other aggrieved employees for
25 purposes of the California wage and hour laws at issue in this action.

26 9. Plaintiff is unaware of the true names, capacities, relationships, and extent of
27 participation in the conduct alleged of Defendants sued as DOES 1 through 10, but is informed
28 and believes, and based on that alleges, DOE Defendants are legally responsible for the wrongful

1 conduct alleged, and sues these Defendants by such fictitious names. Plaintiff will amend this
2 complaint when their true names and capabilities are ascertained.

3 10. Plaintiff is informed and believes and, based thereon alleges, that each Defendant,
4 directly or indirectly, or through agents or other persons, employed Plaintiff and other aggrieved
5 employees, and exercised control over their wages, hours, and working conditions. Plaintiff is
6 informed and believes, and based thereon alleges, that each Defendant acted in all respects
7 pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business
8 plan, or policy in all respects pertinent hereto, and the acts of each Defendant is legally
9 attributable to the other Defendants.

10 **IV.**

11 **GENERAL ALLEGATIONS**

12 11. During the PAGA Period, Plaintiff and other aggrieved employees were
13 employed by Defendants and each of them, including Doe Defendants, within the state of
14 California.

15 12. During the PAGA Period, Plaintiff and other aggrieved employees of Defendants
16 worked under the same policies, practices, and procedures relating to their employment,
17 including those governing seating and temperature regulation within Defendants' facilities and
18 expense reimbursements.

19 13. During the PAGA Period, Defendants did not provide Plaintiff and other
20 aggrieved employees with suitable seating in reasonable proximity to the work area. No seats
21 were provided by Defendants in the fulfillment center work area. The only seats available were
22 those in the break rooms which could be used during meal and rest breaks. Additionally,
23 managers and supervisors who worked in front of desks had their seats removed, requiring them
24 to stand while working.

25 14. During the PAGA Period, Defendants did not provide a reasonably comfortable,
26 temperate work environment for Plaintiff and other aggrieved employees. Rather, Defendants'
27 facilities where Plaintiff and other aggrieved employees worked were kept excessively hot, and
28 Defendants did not take reasonable measures to allay the heat.

V.

FIRST CAUSE OF ACTION

17. Plaintiff incorporates the preceding paragraphs of this Complaint.

19. Section 14 of IWC Wage Order 7-2001, which governs the mercantile industry, provides: “(A) All working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats. (B) When employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be

1 permitted to use such seats when it does not interfere with the performance of their duties.”

2 20. Labor Code section 2699(a) provides: “Notwithstanding any other provision of
3 law, any provision of this code that provides for a civil penalty to be assessed and collected by
4 the Labor and Workforce Development Agency or any of its departments, divisions,
5 commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative,
6 be recovered through a civil action brought by an aggrieved employee on behalf of himself or
7 herself and other current or former employees pursuant to the procedures specified in Section
8 2699.3.”

9 21. Labor Code section 2699(f) states: “For all provisions of this code except those for
10 which a civil penalty is specifically provided, there is established a civil penalty for a violation of
11 these provisions, as follows... (2) If, at the time of the alleged violation, the person employs one
12 or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee
13 per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved
14 employee per pay period for each subsequent violation.”

15 22. Although the nature of Plaintiff’s and other aggrieved employees’ work
16 reasonably permits the use of seats, Defendants failed to place seats in reasonable proximity to
17 Plaintiff’s and other aggrieved employees’ work areas, including by failing to provide seats for
18 aggrieved employees who worked at desks.

19 23. Defendants violated Labor Code section 1198 and Section 14 of IWC Wage Order
20 7-2001. As a result, Plaintiff is entitled to recover civil penalties pursuant to Labor Code section
21 2699(a) or 2699(f)(2).

22 24. Plaintiff, as a representative of the general public, will and does seek to recover
23 any and all penalties for each and every violation, in an amount according to proof, as to those
24 penalties available pursuant to the PAGA. Funds recovered will be distributed in accordance with
25 the PAGA, with 75% of penalties recovered provided to the LWDA on behalf of the State of
26 California.

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SECOND CAUSE OF ACTION

**PAGA Civil Penalties for Failure to Maintain a Reasonably Comfortable Temperature
(Labor Code § 1198; Industrial Welfare Commission ("IWC") Wage Order 7-2001, § 15)**

25. Plaintiff incorporates the preceding paragraphs of this Complaint.

26. Labor Code section 1198 provides: "The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. 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."

27. Section 15 of IWC Wage Order 7-2001, which governs the mercantile industry, provides in pertinent part: "(A) The temperature maintained in each work area shall provide reasonable comfort consistent with industry-wide standards for the nature of the process and the work performed. (B) If excessive heat or humidity is created by the work process, the employer shall take all feasible means to reduce such excessive heat or humidity to a degree providing reasonable comfort."

28. Labor Code section 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 pursuant to the procedures specified in Section 2699.3."

29. Labor Code section 2699(f) states: "For all provisions of this code except those for which a civil penalty is specifically provided, there is established a civil penalty for a violation of these provisions, as follows... (2) If, at the time of the alleged violation, the person employs one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation."

30. Defendants failed to take measures to provide a reasonably comfortable, temperate

1 work environment for Plaintiff and other aggrieved employees. As a result, Plaintiff and other
2 aggrieved employees were subjected to excessive heat in Defendants' facility.

3 31. Defendants violated Labor Code section 1198 and Section 15 of IWC Wage Order
4 7-2001. As a result, Plaintiff is entitled to recover civil penalties pursuant to Labor Code section
5 2699(a) or 2699(f)(2).

6 32. Plaintiff, as a representative of the general public, will and does seek to recover
7 any and all penalties for each and every violation, in an amount according to proof, as to those
8 penalties available pursuant to the PAGA. Funds recovered will be distributed in accordance with
9 the PAGA, with 75% of penalties recovered provided to the LWDA on behalf of the State of
10 California.

11 **THIRD CAUSE OF ACTION**

12 **PAGA Civil Penalties for Failure to Reimburse Business Expenses**
13 **(Labor Code §§ 2802 and 2804)**

14 33. Plaintiff incorporates the preceding paragraphs of this Complaint.

15 34. An employer must reimburse its employees for their reasonable business-related
16 expenses. Labor Code § 2802. This right to reimbursement cannot be waived. Labor Code §
17 2804.

18 35. Labor Code section 2699(a) provides: "Notwithstanding any other provision of
19 law, any provision of this code that provides for a civil penalty to be assessed and collected by
20 the Labor and Workforce Development Agency or any of its departments, divisions,
21 commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative,
22 be recovered through a civil action brought by an aggrieved employee on behalf of himself or
23 herself and other current or former employees pursuant to the procedures specified in Section
24 2699.3."

25 36. Labor Code section 2699(f) states: "For all provisions of this code except those for
26 which a civil penalty is specifically provided, there is established a civil penalty for a violation of
27 these provisions, as follows... (2) If, at the time of the alleged violation, the person employs one
28 or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee
per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved

1 employee per pay period for each subsequent violation.”

2 37. Defendants failed to reimburse Plaintiff and other aggrieved employees for their
3 reasonable business use of their cell phones, including for their use of cell phone applications
4 which Defendants required them to download and use.

5 38. Defendants violated Labor Code sections 2802 and 2804. As a result, Plaintiff is
6 entitled to recover civil penalties pursuant to Labor Code section 2699(a) or 2699(f)(2).

7 39. Plaintiff, as a representative of the general public, will and does seek to recover
8 any and all penalties for each and every violation, in an amount according to proof, as to those
9 penalties available pursuant to the PAGA. Funds recovered will be distributed in accordance with
10 the PAGA, with 75% of penalties recovered provided to the LWDA on behalf of the State of
11 California.

12 VI.

13 **PRAYER FOR RELIEF**

14 Plaintiff, on behalf of herself and all other aggrieved employees and as a Representative
15 of the Labor and Workforce Development Agency, prays for judgment as follows:

16 a. For maintenance of this claim as a Representative Action under the PAGA, and
17 providing Plaintiff and her counsel with all enforcement capability as if this action has been
18 instituted by the Department of Labor Standards enforcement (“DLSE”);

19 b. For recovery of civil penalties as permitted by Labor Code sections 2699(a),
20 2699.3, and 1198, in an amount according to proof;

21 c. For recovery of civil penalties pursuant to Labor Code section 2699(f)(2), to the
22 extent that Section 2699(a) does not apply and/or where a statutory civil penalty is not provided,
23 for failing to comply with Labor Code sections 1198, 2802, and 2804;

24 d. For Attorneys’ fees and costs of suit, including expert fees and fees pursuant to the
25 California Labor Code, the PAGA, and all other applicable state laws; and

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1 e. Such other legal equitable relief as this Court deems necessary, just, equitable and
2 proper.

3 COHELAN KHOURY & SINGER
4 LAW OFFICES OF SAHAG MAJARIAN II

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6 Dated: December 8, 2021

7 By: Rosemary Khoury
8 Michael D. Singer, Esq.
9 Rosemary C. Khoury, Esq.
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11 behalf of herself and as representative
12 for the State of California on behalf of all other
13 aggrieved employees
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