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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN BERNARDINO

YAILEEN FUENTES and BRIANA

GALLARDO, on behalf of themselves and
as representatives for the State of California
on behalf of all other aggrieved employees,

Plaintiffs,

v.

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

Defendants.

Case No. CIVSB2133593

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

- 1. PAGA CIVIL PENALTIES FOR FAILURE
TO PROVIDE SUITABLE SEATING**
- 2. PAGA CIVIL PENALTIES FOR FAILURE
TO MAINTAIN A REASONABLY
COMFORTABLE TEMPERATURE**
- 3. PAGA CIVIL PENALTIES FOR FAILURE
TO REIMBURSE BUSINESS EXPENSES**

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Attorneys for Plaintiff BRIANA GALLARDO

1 Plaintiffs YAILEEN FUENTES and BRIANA GALLARDO (“Plaintiffs”), on behalf of
2 themselves and other aggrieved employees and as Representatives of the State of California’s
3 Labor and Workforce Development Agency (“LWDA”), allege as follows:

4 **I.**

5 **INTRODUCTION**

6 1. Plaintiffs bring this proposed PAGA Representative Action against their
7 employers Amazon.com Services LLC and Does 1 through 10 (collectively “AMAZON” or
8 “Defendants”) under the California Labor Code to recover civil penalties for Defendants’ failure
9 to provide suitable seating, maintain a reasonably comfortable temperature, and reimburse
10 business expenses.

11 2. Plaintiffs bring this lawsuit as a PAGA Representative Action on behalf of the
12 state of California and aggrieved current and former employees of Defendants including, but not
13 limited to, Associates, Pickers, and Area Managers. Pursuant to Labor Code sections 2698, *et*
14 *seq.*, Plaintiffs seek to recover civil penalties and reasonable attorney’s fees and costs. Plaintiffs,
15 by operation of law, have standing and capacity to sue as representatives of the State of
16 California. Plaintiff Fuentes mailed written notice of Defendants’ violations of the Labor Code to
17 the LWDA and Defendant Amazon.com Services LLC pursuant to Labor Code section 2699.3
18 on August 23, 2021, including facts and theories to support the allegations. Plaintiff Gallardo
19 mailed written notice of Defendants’ violations of the Labor Code to the LWDA and Defendant
20 Amazon.com Services LLC pursuant to Labor Code section 2699.3 on or about January 13, 2022
21 including facts and theories to support the allegations. Amazon.com Services LLC did not
22 provide notices of cure and the LWDA did not provide notices of investigation in the 65 days
23 after the PAGA notices were mailed.

24 **II.**

25 **JURISDICTION AND VENUE**

26 3. Venue as to each Defendant is proper in this judicial district, pursuant to Code of
27 Civil Procedure section 395. Defendants conduct business in the city and county of San
28 Bernardino in the state of California and each Defendant is within the jurisdiction of this Court

1 for service of process purposes. The unlawful acts alleged have a direct effect on Plaintiffs and
2 other employees within the State of California and San Bernardino County. Defendants employ
3 numerous employees in San Bernardino County and in California generally. There is no federal
4 question at issue for removal under 28 U.S.C. section 1331, as the issues herein are based solely
5 on California statutes and law, including the Labor Code, IWC Wage Orders, Code of Civil
6 Procedure. Further, PAGA civil penalty actions are not subject to federal jurisdiction.

7 **III.**

8 **THE PARTIES**

9 4. Plaintiff YAILEEN FUENTES is a former employee of Defendants. She was
10 employed by Defendants as an “Associate” or “Picker” at Defendants’ Moreno Valley facility
11 located at 24208 San Michele Rd., Moreno Valley, CA 92551 from approximately May of 2020
12 until May 14, 2021.

13 5. Plaintiff BRIANA GALLARDO was employed by Defendants in the position of
14 “Area Manager.” Plaintiff GALLARDO was employed by Defendants from January 2021 until
15 January 2022.

16 6. Each Plaintiff is an “aggrieved employee” because they were employed by the
17 alleged violators and had one or more of the alleged violations committed against them and,
18 therefore, are properly suited to represent the interests of all other current and former employees
19 of Defendants.

20 7. Pursuant to Cal Labor Code sections 2698, *et seq.*, Plaintiffs seek to represent all
21 current and former employees, including, but not limited to, Associates, Pickers, and Area
22 Managers, who suffered one or more of the alleged violations (“aggrieved employees”) during
23 the applicable limitations period, or “PAGA Period” (any time from one year and 65 days before
24 the complaint filing date until trial).

25 8. Plaintiffs are informed and believe Defendant Amazon.com Services LLC is a
26 Delaware Limited Liability Company operating in the warehousing and storage industry.
27 Amazon.com Services LLC employs employees, including Associates, Pickers, and Area
28 Managers, throughout California, including throughout San Bernardino County.

10. Plaintiffs are unaware of the true names, capacities, relationships, and extent of participation in the conduct alleged of Defendants sued as DOES 1 through 10, but are informed and believe, and based on that allege, DOE Defendants are legally responsible for the wrongful conduct alleged and sue these Defendants by such fictitious names. Plaintiffs will amend this complaint when their true names and capabilities are ascertained.

11. Plaintiffs are informed and believe and, based thereon allege, that each Defendant, directly or indirectly, or through agents or other persons, employed Plaintiffs and other aggrieved employees, and exercised control over their wages, hours, and working conditions. Plaintiffs are informed and believe, and based thereon allege, that each Defendant acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan, or policy in all respects pertinent hereto, and the acts of each Defendant is legally attributable to the other Defendants.

GENERAL ALLEGATIONS

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

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

14. During the PAGA Period, Defendants did not provide Plaintiffs and other aggrieved employees with suitable seating in reasonable proximity to the work area when the employees were not engaged in the active duties of their employment. No seats were provided by

1 Defendants in the fulfillment center work area. The only seats available were those in the break
2 rooms which could be used during meal and rest breaks. Additionally, managers and supervisors
3 who worked in front of desks were denied seating and seating was not made available, requiring
4 them to stand while working. Plaintiff Gallardo alleges that throughout her employment
5 Defendants failed and/or refused to provide Plaintiff Gallardo and all other aggrieve employees
6 with adequate seating even though the nature of the work reasonably permits the use of seats.

7 15. Plaintiff Fuentes alleges that during the PAGA Period, Defendants did not provide
8 a reasonably comfortable, temperate work environment for Plaintiff Fuentes and other aggrieved
9 employees. Rather, Defendants' facilities where Plaintiff Fuentes and other aggrieved employees
10 worked were kept excessively hot, and Defendants did not take reasonable measures to allay the
11 heat.

12 16. Plaintiff Fuentes alleges that Defendants required Plaintiff Fuentes and other
13 aggrieved employees to use their personal cell phones for work-related purposes but did not
14 reimburse these employees for the work-related use of their cell phones. Plaintiff Fuentes and
15 other aggrieved employees were required by Defendants to download and use two cell phone
16 applications, "Amazon Chime" and "A to Z," to perform their work duties. Amazon Chime is an
17 internal instant messaging and video call system which allowed managers and supervisors to
18 coordinate operations and to organize group chats among employees regarding assignments.
19 Aggrieved employees received Amazon Chime notifications both at work and off-the-clock and
20 were required to respond to these messages immediately. A to Z is a scheduling application that
21 employees are required to use to examine, and make changes to, their work schedules.

22 17. Plaintiffs further alleges, based on personal experience and observations, that the
23 violations of the Labor Code described herein were suffered by other aggrieved employees of
24 Defendants.

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28 ///

V.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

**PAGA Civil Penalties for Failure to Provide Suitable Seating
(Labor Code § 1198; Industrial Welfare Commission (“IWC”) Wage Order 7-2001, § 14)**

18. Plaintiffs incorporate the preceding paragraphs of this Complaint.

19. 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.”

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

21. 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.”

22. 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

1 employee per pay period for each subsequent violation.”

2 23. When Plaintiffs and other aggrieved employees were not engaged in the active
3 duties of their employment and the nature of the work requires standing, Defendants failed to
4 provide and/or place an adequate number of seats in reasonable proximity to the work area and
5 failed to permit the use seats when it did not interfere with the performance of the duties of
6 Plaintiffs and other aggrieved employees.

7 24. Although the nature of Plaintiff Gallardo’s and other aggrieved employees’ work
8 reasonably permits the use of seats, Defendants failed to place seats in reasonable proximity to
9 the work areas of Plaintiff Gallardo and other aggrieved employees, including by failing to
10 provide seats for aggrieved employees who worked at desks.

11 25. Defendants violated Labor Code section 1198 and Section 14 of IWC Wage Order
12 7-2001. As a result, Plaintiffs are entitled to recover civil penalties pursuant to Labor Code
13 section 2699(a) or 2699(f)(2).

14 26. Plaintiffs, as representatives of the general public, will and do seek to recover any
15 and all penalties for each and every violation, in an amount according to proof, as to those
16 penalties available pursuant to the PAGA. Funds recovered will be distributed in accordance with
17 the PAGA, with 75% of penalties recovered provided to the LWDA on behalf of the State of
18 California.

19 **SECOND CAUSE OF ACTION**

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

21 27. Plaintiff Fuentes incorporates the preceding paragraphs of this Complaint.

22 28. Labor Code section 1198 provides: “The maximum hours of work and the
23 standard conditions of labor fixed by the commission shall be the maximum hours of work and
24 the standard conditions of labor for employees. The employment of any employee for longer
25 hours than those fixed by the order or under conditions of labor prohibited by the order is
26 unlawful.”

27 29. Section 15 of IWC Wage Order 7-2001, which governs the mercantile industry,
28 provides in pertinent part: “(A) The temperature maintained in each work area shall provide

1 reasonable comfort consistent with industry-wide standards for the nature of the process and the
2 work performed. (B) If excessive heat or humidity is created by the work process, the employer
3 shall take all feasible means to reduce such excessive heat or humidity to a degree providing
4 reasonable comfort.”

5 30. Labor Code section 2699(a) provides: “Notwithstanding any other provision of
6 law, any provision of this code that provides for a civil penalty to be assessed and collected by
7 the Labor and Workforce Development Agency or any of its departments, divisions,
8 commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative,
9 be recovered through a civil action brought by an aggrieved employee on behalf of himself or
10 herself and other current or former employees pursuant to the procedures specified in Section
11 2699.3.”

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

18 32. Defendants failed to take measures to provide a reasonably comfortable, temperate
19 work environment for Plaintiff Fuentes and other aggrieved employees. As a result, Plaintiff
20 Fuentes and other aggrieved employees were subjected to excessive heat in Defendants’ facility.

21 33. Defendants violated Labor Code section 1198 and Section 15 of IWC Wage Order
22 7-2001. As a result, Plaintiff Fuentes is entitled to recover civil penalties pursuant to Labor Code
23 section 2699(a) or 2699(f)(2).

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

THIRD CAUSE OF ACTION

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

35. Plaintiff Fuentes incorporates the preceding paragraphs of this Complaint.

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

37. 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.”

38. 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.”

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

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

41. Plaintiff Fuentes, as a representative of the general public, will and does seek to recover any and all penalties for each and every violation, in an amount according to proof, as to those penalties available pursuant to the PAGA. Funds recovered will be distributed in

1 accordance with the PAGA, with 75% of penalties recovered provided to the LWDA on behalf of
2 the State of California.

3 **VI.**

4 **PRAYER FOR RELIEF**

5 Plaintiffs, on behalf of themselves and all other aggrieved employees and as
6 Representatives of the Labor and Workforce Development Agency, pray for judgment as follows:

7 a. For maintenance of this claim as a Representative Action under the PAGA, and
8 providing Plaintiffs and their counsel with all enforcement capability as if this action has been
9 instituted by the Department of Labor Standards enforcement ("DLSE");

10 b. For recovery of civil penalties as permitted by Labor Code sections 2699(a),
11 2699.3, and 1198, in an amount according to proof;

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

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

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

19 COHELAN KHOURY & SINGER
20 LAW OFFICES OF SAHAG MAJARIAN II

21
22 Dated: September 1, 2023

By: 

23 Michael D. Singer, Esq.

Rosemary C. Khoury, Esq.

24 Marta Manus, Esq.

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

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CENTURION TRIAL ATTORNEYS
LAW OFFICE OF ROBERT A. WALLER, JR.

Dated: September 1, 2023

By:  with permission and on behalf of Robert A. Waller
Ryan Stygar, Esq.
Robert A. Waller, Esq.
Attorneys for Plaintiff BRIANA GALLARDO, on
behalf of herself and as representative
for the State of California on behalf of all other
aggrieved employees

PROOF OF SERVICE

Fuentes v. Amazon.com Services LLC

San Bernardino Superior Court Case No. CIVSB2133593

I, Karla Sousa, declare as follows:

I am employed in the County of San Diego, State of California. I am over the age of 18 and not a party to this action. My business address is 605 "C" Street, Suite 200, San Diego, California 92101.

On September 1, 2023, I instituted service of the forgoing document(s) described as:

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

on the following parties:

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[XX] BY EMAIL: Pursuant to an agreement between the Parties, I transmitted the foregoing document(s) electronically via the email addresses listed above.

[XX] STATE: I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed September 1, 2023, at San Diego, California.


Karla Sousa