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CLERK OF THE SUPERIOR COURT
COUNTY OF CONTRA COSTA, CA
BY: C. JACALA, DEPUTY CLERK

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF CONTRA COSTA

C22-00476-

PER LOCAL RULE, THIS
CASE IS ASSIGNED TO
DEPT. 29, FOR ALL
PURPOSES

GABRIEL SOSA, as an aggrieved
employee pursuant to the Private Attorneys
General Act ("PAGA"), on behalf of the
State of California and other aggrieved
employees,

Plaintiff,

vs.

DICK'S SPORTING GOODS, INC., a
Delaware corporation; and DOES 1 through
10, inclusive,

Defendants.

Case No.:

**COMPLAINT – PAGA ENFORCEMENT
ACTION**

- (1) Claim for Civil Penalties Pursuant to
PAGA § 2699 for Violations of California
Labor Code and IWC Wage Order No. 7-
2001, subdivision 14(A); and
- (2) Claim for Civil Penalties Pursuant to
PAGA § 2699 for Violations of California
Labor Code and IWC Wage Order No. 7-
2001, subdivision 14(B).

Jury Trial Demanded

1 Plaintiff Gabriel Sosa, as an aggrieved employee and on behalf of the State of
2 California and all other aggrieved employees, alleges as follows:

3 JURISDICTION AND VENUE

4 1. This is an enforcement action under the Labor Code Private Attorneys General
5 Act of 2004, California Labor Code sections 2698, *et seq.* (“PAGA”) to recover civil penalties
6 on behalf of the Plaintiff, the State of California, and other current and former employees who
7 worked for Defendants in California as a non-exempt employee at a California Dick’s
8 Sporting Goods retail store location and who suffered violations of Industrial Welfare
9 Commission (“IWC”) Wage Order No. 7-2001 subdivision 14(A) and/or (B) as set forth in
10 this complaint at any time between one year prior to the filing of the pre-filing written notice
11 to the Labor and Workforce Development Agency (“LWDA”) in this case on January 10,
12 2022, until judgment (“non-party Aggrieved Employees”). Plaintiff’s share of civil penalties
13 sought in this action does not exceed \$75,000.

14 2. This Court has jurisdiction over this action pursuant to the California
15 Constitution, Article VI, section 10. The overall amount in controversy exceeds \$25,000. The
16 statute under which this action is brought does not specify any other basis for jurisdiction.

17 3. This Court has jurisdiction over all Defendants because, on information and
18 belief, Defendants are either citizens of California, have sufficient minimum contacts in
19 California, and otherwise intentionally avail themselves of the California market so as to
20 render the exercise of jurisdiction over them by the California courts consistent with
21 traditional notions of fair play and substantial justice. Also, Plaintiff and all other non-party
22 Aggrieved Employees were employed by Defendants in California.

23 4. There is no basis for federal diversity jurisdiction in this action given that the
24 State of California, as the real party in interest in this action, is not a “citizen” for purposes of
25 satisfying diversity jurisdiction. *Urbino v. Orkin Servs. of Cal.*, 726 F.3d 1118, 1123 (9th Cir.
26 Cal. 2013). *Urbino* also holds that civil penalties cannot be aggregated to satisfy the amount
27 in controversy requirement for federal diversity jurisdiction in this action, and that diversity
28 jurisdiction cannot be established when Plaintiff’s share of the civil penalties attributable to

violations personally suffered are less than \$75,000. *Id.* at 1122.

5. Venue is proper in this Court because Defendants employ persons at Defendants' retail stores located within the County of Contra Costa and have violated the seating requirements of the California Labor Code and applicable IWC Wage Order in this county which give rise to the civil penalties sought in this action. Cal. Code Civ. P. § 393. Specifically, Defendants have violated the seating requirements of the California Labor Code and applicable Wage Order in at least one store within the County of Contra Costa, including Defendants' location in Pleasant Hill (2314 Monument Blvd., Pleasant Hill, California 94523). Pursuant to California Civil Code of Procedure section 393, venue is proper for the recovery of a penalty imposed by statute in the county in which the cause, or some part of the cause, arose. Because Defendants have employees in Contra Costa County and Plaintiff could bring an action filed under PAGA in any county in which an aggrieved employee worked and Labor Code violations occurred, venue is proper. *Crestwood Behavioral Health, Inc. v. Superior Court of Alameda County*, 60 Cal. App. 5th 1069 (2021).

6. California Labor Code sections 2698, *et seq.*, the "Labor Code Private Attorneys General Act of 2004" ("PAGA"), authorize aggrieved employees to sue as private attorneys general their current or former employers for various civil penalties for violations of various provisions in the California Labor Code. Labor Code section 1198 makes a violation of a Wage Order such as subdivision 14(A) or 14(B) a violation of the Labor Code.

THE PARTIES

7. Plaintiff Gabriel Sosa worked for Defendants as an hourly non-exempt Customer Service Specialist from approximately 2018 to August 2021. Plaintiff worked for Defendants at their stores located at 19939 N. Campus Avenue, Upland, California 91784, and at 390 E. H Street, Chula Vista, California 91910. During his employment, Plaintiff typically worked eight (8) hours per day and four (4) days per week. Plaintiff's job duties as a Customer Service Specialist included operating the cash register, providing customer service, and updating merchandise prices in the point-of-sale system.

8. Defendant DICK'S SPORTING GOODS, INC. was and is, upon information

1 and belief, a Delaware corporation doing business in California, and at all times hereinafter
2 mentioned, an employer whose employees are engaged throughout this county, the State of
3 California, or the various states of the United States of America.

4 9. Plaintiff is unaware of the true names or capacities of the Defendants sued
5 herein under the fictitious names DOES 1 through 10, but will seek leave of this Court to
6 amend the complaint and serve such fictitiously named Defendants once their names and
7 capacities become known.

8 10. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10
9 are the partners, agents, owners, shareholders, managers, or employees of DICK'S
10 SPORTING GOODS, INC., at all relevant times.

11 11. Plaintiff is informed and believes, and thereon alleges, that each and all of the
12 acts and omissions alleged herein was performed by, or is attributable to, DICK'S SPORTING
13 GOODS, INC. and/or DOES 1 through 10 (collectively "Defendants"), each acting as the
14 agent, employee, alter ego, and/or joint venturer of, or working in concert with, each of the
15 other co-Defendants and was acting within the course and scope of such agency, employment,
16 joint venture, or concerted activity with legal authority to act on the others' behalf. The acts
17 of any and all Defendants were in accordance with, and represent, the official policy of
18 Defendants.

19 12. At all relevant times, Defendants, and each of them, ratified each and every act
20 or omission complained of herein. At all relevant times, Defendants, and each of them, aided
21 and abetted the acts and omissions of each and all the other Defendants in proximately causing
22 the damages herein alleged.

23 13. Plaintiff is informed and believes, and thereon alleges, that each of said
24 Defendants are in some manner intentionally, negligently, or otherwise responsible for the
25 acts, omissions, occurrences, and transactions alleged herein.

26 **PAGA REPRESENTATIVE ALLEGATIONS**

27 14. Defendants own and operate a chain of retail sporting goods stores throughout
28 the United States. Defendants operate approximately 734 retail locations in the United States,

1 including approximately 59 store locations in California.

2 15. On information and belief, Defendants maintain their corporate headquarters in
3 Coraopolis, Pennsylvania, with operations in the United States based out of Coraopolis,
4 Pennsylvania. Upon information and belief, Defendants maintain a single, centralized Human
5 Resources department in Coraopolis, Pennsylvania, which is responsible for conducting
6 Defendants' recruiting and hiring of new employees, as well as communicating and
7 implementing Defendants' company-wide policies to employees throughout California.

8 16. In particular, on information and belief, Plaintiff and other non-party Aggrieved
9 Employees received the same standardized documents and/or written policies. Upon
10 information and belief, the usage of standardized documents and/or written policies, indicate
11 that Defendants dictated policies at the corporate level and implemented them company-wide,
12 regardless of their employees' assigned locations or positions. Upon information and belief,
13 Defendants set forth uniform policies and procedures in several documents provided at an
14 employee's time of hire.

15 17. Plaintiff alleges that Defendants' California retail stores are generally similar in
16 their layout and design and that there is space behind each front-end cash wrap and near each
17 service counter (with reasonable or no modification to these work areas) to allow for the
18 presence and use of a seat or stool by Defendants' employees during the performance of their
19 work duties.

20 18. Plaintiff and other non-party Aggrieved Employees have spent a substantial
21 portion of their day behind Defendants' front-end cash wraps and/or service counters. The
22 nature of the work of an employee performing cashier and/or customer service duties can
23 reasonably be accomplished from a seated position. However, as set forth herein, Defendants
24 have not and do not provide Plaintiff and other non-party Aggrieved Employees with seats or
25 stools at or near each cash wrap and/or service counter.

26 19. Defendants continue to employ non-exempt employees at retail store locations
27 throughout California.

28 20. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or

1 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
2 suitable seating and/or were entitled to sit when it did not interfere with the performance of
3 their cashier and/or customer service duties. In violation of the California Labor Code and
4 applicable IWC Wage Order, Defendants failed to provide Plaintiff and other non-party
5 Aggrieved Employees suitable seating.

6 21. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
7 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
8 have seats in reasonable proximity to their work area and be permitted to use such seats when
9 it did not interfere with the performance of their duties during a lull in tasks that do require
10 moving about or standing. In violation of the California Labor Code and applicable IWC
11 Wage Order, Defendants failed to provide Plaintiff and other non-party Aggrieved Employees
12 suitable seating.

13 22. At all times herein set forth, PAGA provides that any provision of law under
14 the California Labor Code and applicable IWC Wage Order that provides for a civil penalty to
15 be assessed and collected by the LWDA for violations of the California Labor Code and
16 applicable IWC Wage Order may, as an alternative, be recovered by aggrieved employees in a
17 civil action brought on behalf of themselves and other current or former employees pursuant
18 to procedures outlined in California Labor Code section 2699.3.

19 23. PAGA defines an “aggrieved employee” in Labor Code section 2699(c) as “any
20 person who was employed by the alleged violator and against whom one or more of the
21 alleged violations was committed.”

22 24. Plaintiff and other current and former California employees of Defendants are
23 “aggrieved employees” as defined by Labor Code section 2699(c) in that they are all
24 Defendants’ current or former California employees who experienced violations of IWC Wage
25 Order No. 7-2001, subdivisions 14(A) and 14(B).

26 //

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28 //

1 25. Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved
2 employee, including Plaintiff, may pursue a civil action arising under PAGA after the
3 following requirements have been met:

- 4 (a) The aggrieved employee or representative shall give written notice by
5 online filing with the LWDA and by certified mail to the employer of
6 the specific provisions of the California Labor Code alleged to have
7 been violated, including the facts and theories to support the alleged
8 violation.
- 9 (b) An aggrieved employee's notice filed with the LWDA pursuant to
10 2699.3(a) and any employer response to that notice shall be
11 accompanied by a filing fee of seventy-five dollars (\$75).
- 12 (c) The LWDA shall notify the employer and the aggrieved employee or
13 representative by certified mail that it does not intend to investigate the
14 alleged violation ("LWDA Notice") within sixty (60) calendar days of
15 the postmark date of the aggrieved employee's notice. Upon receipt of
16 the LWDA Notice, or if no LWDA Notice is provided within sixty-five
17 (65) calendar days of the postmark date of the aggrieved employee's
18 notice, the aggrieved employee may commence a civil action pursuant
19 to California Labor Code section 2699 to recover civil penalties.

20 26. Pursuant to California Labor Code section 2699.3(c), aggrieved employees,
21 through Plaintiff, may pursue a civil action arising under the PAGA for violations of any
22 provision other than those listed in Section 2699.5 after the following requirements have been
23 met:

- 24 (a) The aggrieved employee or representative shall give written notice by
25 online filing with the LWDA and by certified mail to the employer of
26 the specific provisions of the California Labor Code alleged to have
27 been violated (other than those listed in Section 2699.5), including the
28 facts and theories to support the alleged violation.

- 1 (b) An aggrieved employee's notice filed with the LWDA pursuant to
2 2699.3(c) and any employer response to that notice shall be
3 accompanied by a filing fee of seventy-five dollars (\$75).
- 4 (c) The employer may cure the alleged violation within thirty-three (33)
5 calendar days of the postmark date of the notice sent by the aggrieved
6 employee or representative. The employer shall give written notice
7 within that period of time by certified mail to the aggrieved employee or
8 representative and by online filing with the LWDA if the alleged
9 violation is cured, including a description of actions taken, and no civil
10 action pursuant to Section 2699 may commence. If the alleged violation
11 is not cured within the 33-day period, the aggrieved employee may
12 commence a civil action pursuant to Section 2699.

13 27. On January 10, 2022, Plaintiff provided written notice by online filing to the
14 LWDA and by Certified Mail to Defendants of the specific provisions of the California Labor
15 Code alleged to have been violated, including facts and theories to support the alleged
16 violations, in accordance with California Labor Code section 2699.3. Plaintiff's written
17 notice was accompanied with the applicable filing fees of seventy-five dollars (\$75). That
18 same day, the LWDA PAGA Administrator confirmed receipt of Plaintiff's written notice and
19 assigned Plaintiff PAGA Case Number LWDA-CM-862037-22. A true and correct copy of
20 Plaintiff's written notice to the LWDA and Defendants dated January 10, 2022, is attached
21 hereto as "Exhibit 1."

22 28. As of the filing date of this complaint, over 65 days have passed since Plaintiff
23 sent the notice described above to the LWDA, and the LWDA has not responded that it
24 intends to investigate Plaintiff's claims and Defendants have not cured the violations.

25 29. Thus, Plaintiff has satisfied the administrative prerequisites under California
26 Labor Code sections 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
27 violations of California Labor Code section 1198.

28 30. Defendants, at all times relevant to this complaint, were employers or persons

1 acting on behalf of an employer(s) who violated Plaintiff's and other non-party Aggrieved
2 Employees' rights by violating sections of the California Labor Code as set forth above.

3 31. As set forth below, Defendants have violated provisions of both the Labor Code
4 sections regulating hours and days of work as well as the applicable IWC Wage Order,
5 specifically, Labor Code section 1198 and California Code of Regulations, Title 8, section
6 11070(14)(A)-(B).

7 32. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a),
8 2699.3(a), 2699.3(c), and 2699.5, Plaintiff, acting in the public interest as a private attorney
9 general, seeks assessment and collection of civil penalties for himself, all other non-party
10 Aggrieved Employees, and the State of California against Defendants for violations of
11 California Labor Code section 1198.

12 **FIRST CAUSE OF ACTION**

13 **FAILURE TO PROVIDE SUITABLE SEATING**

14 **VIOLATION OF LABOR CODE SECTION 1198 AND CALIFORNIA CODE OF**
15 **REGULATIONS, TITLE 8, SECTION 11070(14)(A)**

16 **(By Plaintiff on Behalf of the State of California and Aggrieved Employees Against all**
17 **Defendants)**

18 33. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
19 and every allegation set forth above.

20 34. California Labor Code §§ 2698, *et seq.* ("PAGA") permits Plaintiff to recover
21 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code
22 section 2699.5. Section 2699.5 enumerates Labor Code section 1198, among others.
23 Defendants' conduct, as alleged herein, violates section 1198 of the California Labor Code, by
24 failing to provide suitable seating to Plaintiff and other non-party Aggrieved Employees as set
25 forth below.

26 35. At all relevant times herein, California Labor Code section 1198 makes it
27 illegal to employ an employee under conditions of labor that are prohibited by the applicable
28 wage order. California Labor Code section 1198 requires that "... the standard conditions of

1 labor fixed by the commission shall be the . . . standard conditions of labor for employees.
2 The employment of any employee . . . under conditions of labor prohibited by the order is
3 unlawful.”

4 36. California Code of Regulations, Title 8, section 11070(14)(A) provides that
5 “[a]ll working employees shall be provided with suitable seats when the nature of the work
6 reasonably permits the use of seats.”

7 37. During the relevant time period, Defendants violated California Labor Code
8 section 1198 and California Code of Regulations, Title 8, section 11070(14)(A), because
9 Plaintiff and other non-party Aggrieved Employees were not allowed to sit, even when the
10 nature of their work would reasonably permit the use of seats, nor were they provided with
11 suitable seats. As employees assigned cashier and/or customer service duties, a substantial
12 amount of Plaintiff’s and other non-party Aggrieved Employees’ tasks, including operating
13 the cash register, scanning items, bagging items, and updating merchandise prices in the point-
14 of-sale system could have been performed from a seated position. Plaintiff and other non-
15 party Aggrieved Employees could have handled transactions and provided customer service
16 while seated.

17 38. Defendants could have placed seats or stools at or near each cash wrap and/or
18 service counter for use by Plaintiff and other non-party Aggrieved Employees with reasonable
19 or no modification to these work areas. However, on a company-wide basis, Defendants did
20 not provide seats or stools at or near each cash wrap and/or service counter. Defendants’
21 management did not inform Plaintiff and other non-party Aggrieved Employees that they were
22 allowed to sit down, provide any means for them to sit down, or mention any policy regarding
23 sitting.

24 39. For example, when Plaintiff was assigned to work behind the cash register, he
25 was required to stand the entire time because Defendants did not provide seating at the front-
26 end cash wraps and service counters. Other non-party Aggrieved Employees similarly were
27 not permitted to sit while performing cashier and/or customer service duties, because
28 Defendants did not provide seats or stools at or near each cash wrap and/or service counter.

1 40. As a result of Defendants’ company-wide policy and/or practice prohibiting
2 employees from sitting during their shifts and failure to provide suitable seating to these
3 employees, they were forced to stand during shifts and denied seats. Defendants’ failure to
4 provide suitable seating to Plaintiff and other non-party Aggrieved Employees violated and
5 continues to violate California Labor Code section 1198 and IWC Wage Order No. 7-2001,
6 subdivision 14(A).

7 41. Plaintiff and other non-party Aggrieved Employees and the State of California
8 are therefore entitled to recover civil penalties pursuant to Labor Code sections 2699(a), (f),
9 and (g).

10 **SECOND CAUSE OF ACTION**

11 **FAILURE TO PROVIDE SUITABLE SEATING**

12 **VIOLATION OF LABOR CODE SECTION 1198 AND CALIFORNIA CODE OF**
13 **REGULATIONS, TITLE 8, SECTION 11070(14)(B)**

14 **(By Plaintiff on Behalf of the State of California and Aggrieved Employees Against all**
15 **Defendants)**

16 42. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
17 and every allegation set forth above.

18 43. California Labor Code §§ 2698, *et seq.* (“PAGA”) permits Plaintiff to recover
19 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code
20 section 2699.5. Section 2699.5 enumerates Labor Code section 1198, among others.
21 Defendants’ conduct, as alleged herein, violates section 1198 of the California Labor Code, by
22 failing to provide suitable seating to Plaintiff and other non-party Aggrieved Employees as set
23 forth below.

24 44. At all relevant times herein, California Labor Code section 1198 makes it
25 illegal to employ an employee under conditions of labor that are prohibited by the applicable
26 wage order. California Labor Code section 1198 requires that “. . . the standard conditions of
27 labor fixed by the commission shall be the . . . standard conditions of labor for employees.
28 The employment of any employee . . . under conditions of labor prohibited by the order is

1 unlawful.”

2 45. California Code of Regulations, Title 8, section 11070(14)(B) provides that
3 “[w]hen employees are not engaged in the active duties of their employment and the nature of
4 the work requires standing, an adequate number of suitable seats shall be placed in reasonable
5 proximity to the work area and employees shall be permitted to use such seats when it does
6 not interfere with the performance of their duties.”

7 46. During the relevant time period, Defendants violated California Labor Code
8 section 1198 and California Code of Regulations, Title 8, section 11070(14)(B), because
9 Plaintiff and other non-party Aggrieved Employees were not allowed to sit, even during lulls
10 in their work duties, nor were they provided with suitable seats in reasonable proximity to
11 their work areas.

12 47. Defendants did not provide Plaintiff and other non-party Aggrieved Employees
13 with seats or stools in reasonable proximity to their work to allow them to use seats when it
14 would not interfere with the performance of their duties for times when they were not engaged
15 in active duties that require standing. In other words, to the extent Plaintiff and other non-
16 party Aggrieved Employees engaged in duties in which the nature of the work required
17 standing, Defendants denied them the use of seats nearby when they were not engaged in
18 those duties. Even though the layout of Defendants’ workplaces could accommodate seats or
19 stools with reasonable or no modification to Defendants’ workplaces, Defendants have, on a
20 company-wide basis, denied Plaintiff and other non-party Aggrieved Employees suitable
21 seating altogether.

22 48. As a result of Defendants’ company-wide policy and/or practice prohibiting
23 employees from sitting at any time, even when they were not engaged in active duties
24 requiring standing, and company-wide failure to provide seats in reasonable proximity to their
25 work areas, Plaintiff and other non-party Aggrieved Employees were forced to stand during
26 shifts and denied seats. Defendants’ failure to provide suitable seating to Plaintiff and other
27 non-party Aggrieved Employees violated and continues to violate California Labor Code
28 section 1198 and IWC Wage Order No. 7-2001, subdivision 14((B).

1 49. Plaintiff and other non-party Aggrieved Employees and the State of California
2 are therefore entitled to recover civil penalties pursuant to Labor Code sections 2699(a), (f),
3 and (g).

4 **REQUEST FOR JURY TRIAL**

5 Plaintiff hereby requests a trial by jury.

6 **PRAYER FOR RELIEF**

7 Plaintiff, on behalf of the State of California and all other non-party Aggrieved
8 Employees, prays for relief and judgment against Defendants, jointly and severally, as
9 follows:

10 1. For civil penalties and attorneys' fees in excess of twenty-five thousand dollars
11 (\$25,000) to the State of California and aggrieved employees.

12 **As to the First Cause of Action**

13 2. That the Court declare, adjudge and decree that Defendants violated California
14 Labor Code section 1198 and IWC Wage Order No. 7-2001, subdivision 14(A) as to Plaintiff
15 and other non-party Aggrieved Employees (by failing to provide suitable seating);

16 3. For civil penalties pursuant to California Labor Code sections 2699(a), (f)-(g)
17 for violations of California Labor Code section 1198;

18 4. For injunctive relief pursuant to California Labor Code sections 1194.5 and/or
19 2699(a), (f)-(g) to bring Defendants into compliance with California's seating requirements;

20 5. For attorneys' fees and costs pursuant to California Labor Code section
21 2699(g)(1), and any and all other relevant statutes, for Defendants' violations of California
22 Labor Code section 1198;

23 6. For pre-judgment and post-judgment interest as provided by law; and

24 7. For such other and further relief as the Court may deem equitable and
25 appropriate.

26 **As to the Second Cause of Action**

27 8. That the Court declare, adjudge and decree that Defendants violated California
28 Labor Code section 1198 and IWC Wage Order No. 7-2001, subdivision 14(B) as to Plaintiff

1 and other non-party Aggrieved Employees (by failing to provide suitable seating);

2 9. For civil penalties pursuant to California Labor Code sections 2699(a), (f)-(g)
3 for violations of California Labor Code section 1198;

4 10. For injunctive relief pursuant to California Labor Code sections 1194.5 and/or
5 2699(a), (f)-(g) to bring Defendants into compliance with California's seating requirements;

6 11. For attorneys' fees and costs pursuant to California Labor Code section
7 2699(g)(1), and any and all other relevant statutes, for Defendants' violations of California
8 Labor Code section 1198;

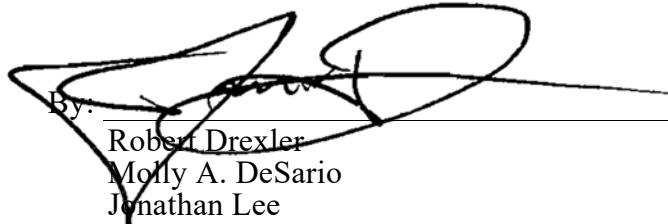
9 12. For pre-judgment and post-judgment interest as provided by law; and

10 13. For such other and further relief as the Court may deem equitable and
11 appropriate.

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13 Dated: March 17, 2022

Respectfully submitted,

Capstone Law APC

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15
16 By: 
17 Robert Drexler
Molly A. DeSario
Jonathan Lee

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19 Attorneys for Plaintiff Gabriel Sosa
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Exhibit 1



1875 Century Park East, Suite 1000
Los Angeles, California 90067
310.556.4811 Main | 310.943.0396 Fax

ANTHONY CASTILLO
310.712.8169 Direct
Anthony.Castillo@capstonelawyers.com

January 10, 2022

VIA ONLINE SUBMISSION

California Labor & Workforce Development Agency
ATTN: PAGA Administrator
(<https://dir.tfaforms.net/308>)

Subject: *Gabriel Sosa v. Dick's Sporting Goods, Inc.*

Dear PAGA Administrator:

This office represents Gabriel Sosa in connection with his claims under the California Labor Code, and this letter is sent in compliance with the notice requirements of the California Labor Code Private Attorneys General Act, California Labor Code section 2699.3. Mr. Sosa was an employee of DICK'S SPORTING GOODS, INC. ("DSG").

The employer may be contacted directly at the address below:

DICK'S SPORTING GOODS, INC.
345 COURT STREET
CORAOPOLIS PA 15108

Mr. Sosa intends to seek civil penalties, attorney's fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 ("PAGA"). Mr. Sosa seeks relief on behalf of himself, the State of California, and other persons who are or were employed by DSG as a non-exempt employee in a California retail store location ("aggrieved employees"). This letter is sent in compliance with the notice and reporting requirements of California Labor Code section 2699.3.

DSG employed Mr. Sosa as a non-exempt employee from approximately 2018 to August 2021. Mr. Sosa worked as a Customer Service Specialist at the DICK'S Sporting Goods stores in Upland and Chula Vista, California. Mr. Sosa typically worked eight (8) hours per day and four (4) days per week. Mr. Sosa's job duties included, without limitation, operating the cash register, providing customer service, and updating merchandise prices in the point-of-sale system.

DSG committed one or more of the following Labor Code violations against Mr. Sosa, the facts and theories of which follow, making him an “aggrieved employee” pursuant to California Labor Code section 2699(c).¹ Mr. Sosa's relevant claims are as follows:

DSG’s Company-Wide and Uniform HR Practices

DICK’S SPORTING GOODS, INC. is a Delaware corporation that owns and operates a chain of retail sporting goods stores throughout the United States. DSG operates approximately 734 retail locations in the United States, including approximately 59 locations in California. Upon information and belief, DSG maintains a centralized Human Resources (HR) department at its corporate headquarters in Coraopolis, Pennsylvania, for all non-exempt employees working for DSG at retail stores in California, including Mr. Sosa and other aggrieved employees. DSG maintained uniform practices with respect to its provision of seats (or lack thereof) in its retail stores for all non-exempt employees in California, including Mr. Sosa and other aggrieved employees, regardless of their location or position.

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11070 Subdivision 14(A) – Failure to Provide Suitable Seating

California Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable wage order. California Labor Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.” California Code of Regulations, Title 8, section 11070(14)(A) provides that “[a]ll working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats.”

“The ‘nature of the work’ refers to an employee’s tasks performed at a given location for which a right to a suitable seat is claimed, rather than a ‘holistic’ consideration of the entire range of an employee’s duties anywhere on the jobsite during a complete shift. If the tasks being performed at a given location reasonably permit sitting, and provision of a seat would not interfere with performance of any other tasks that may require standing, a seat is called for.” *Kilby v. CVS Pharmacy, Inc.*, 368 P.3d 554, 558 (Cal. 2016). “Whether the nature of the work reasonably permits sitting is a question to be determined objectively based on the totality of the circumstances. An employer’s business judgment and the physical layout of the workplace are relevant but not dispositive factors. The inquiry focuses on the nature of the work, not an individual employee’s characteristics.” *Id.* The burden of proof to show suitable seating is not available is on the employer. *Id.* at 568. In other words, the employer must show that compliance is “infeasible because no suitable seating exists.” *See id.*

¹ These facts, theories, and claims are based on Mr. Sosa's experience and counsel’s review of those records currently available relating to Mr. Sosa's employment. Discovery conducted in litigation of wage and hour claims such as these often reveals additional claims that the aggrieved employee was not initially aware of (because the aggrieved employee was not aware of the law’s requirements, the employer misinformed its employee of the law’s requirements, or because the employer effectively hid the violations). Thus, Mr. Sosa reserves the right to supplement this letter with additional facts, theories, and claims if he becomes aware of them subsequent to the submission of this letter.

DSG's California retail stores are generally similar in their layout and design and there was, and continues to be, space behind each front-end cash wrap and near each service counter to allow for the presence and use of a seat or stool by Mr. Sosa and other aggrieved employees during the performance of their work duties. DSG could have provided Mr. Sosa and other aggrieved employees with a seat at these workstations, with reasonable or no modification to these work areas, but instead denies them seating and forces Mr. Sosa and other aggrieved employees to stand throughout the day.

During his employment, Mr. Sosa worked for the most part at a front-end cash wrap. His cashiering tasks include, without limitation, operating the cash register, scanning items, bagging items, and updating merchandise prices in the point-of-sale system—all of which could have been performed from a seated position without negatively affecting the quality or efficiency of his performance. Although his cashier tasks could be performed from a seated position, Mr. Sosa was required to stand when working at the front-end cash wraps.

Other aggrieved employees similarly spent a substantial portion of their day at front-end cash wraps and/or service counters. The nature of the work of an employee performing cashier and/or customer service duties can reasonably be accomplished from a seated position. Mr. Sosa and other aggrieved employees could have handled transactions, provided customer service, and performed other similar tasks at these workstations at any of DSG's stores while seated without interfering with their ability to perform their job duties. However, as set forth herein, DSG systematically, and on a company-wide basis, does not provide seats or stools at or near each cash wrap and/or service counter, forcing employees, including Mr. Sosa and other aggrieved employees, to stand throughout their work shifts.

DSG violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11070(14)(A) because Mr. Sosa and other aggrieved employees were not allowed to sit, even when the nature of their work would reasonably permit the use of seats, nor were they provided with suitable seats. DSG's management did not inform Mr. Sosa and other aggrieved employees that they were allowed to sit down, provide any means for them to sit down, or mention any policy regarding sitting.

As a result of DSG's company-wide policy and/or practice of prohibiting employees from sitting during their shifts and company-wide failure to provide suitable seating, Mr. Sosa and other aggrieved employees were forced to stand during shifts and denied seats. DSG's failure to provide suitable seating to Mr. Sosa and other aggrieved employees violates California Labor Code section 1198 and Industrial Welfare Commission ("IWC") Wage Order No. 7-2001, subdivision 14(A).

Mr. Sosa and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, and seek injunctive relief to bring DSG into compliance with California's seating requirements, pursuant to Labor Code sections 1194.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11070 Subdivision 14(B) – Failure to Provide Suitable Seating

California Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable wage order. California Labor Code section 1198 requires that "... the standard conditions of labor fixed by the commission shall be the ... standard conditions of labor for employees. The employment of any employee ... under conditions of labor prohibited by the order is unlawful." California Code of Regulations, Title 8, section 11070(14)(B) provides that

“[w]hen 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.”

The IWC states that subdivision 14(B) applies during “lulls in operation” when an employee, while still on the job, is not then actively engaged in any duties. *Kilby v. CVS Pharmacy, Inc.*, 368 P.3d 554, 565 (Cal. 2016), citing IWC, 1976 Wage Orders, Summary of Basic Provisions, Seats. When taken together, an employee is entitled to a seat under subdivision 14(A) if his or her actual tasks at a discrete location make seated work feasible, while working there. *Id.* However, if other job duties take the employee to a different location where he or she must perform tasks requiring standing, the employee would be entitled to a seat under subdivision 14(B) during “lulls in operation.” *Id.*

As stated, DSG’s California retail stores are generally similar in their layout and design and there was, and continues to be, space near their work areas to allow for the presence and use of a seat or stool by Mr. Sosa and other aggrieved employees during lulls in operation. DSG could provide Mr. Sosa and other aggrieved employees with a seat or stool in its work areas, with reasonable or no modification to these work areas, but instead denies employees seating and forces Mr. Sosa and other aggrieved employees to stand throughout the day.

DSG did not provide Mr. Sosa and other aggrieved employees with seats or stools in reasonable proximity to their work areas to allow them to use seats when it would not interfere with the performance of their duties for times when they were not engaged in active duties that require standing. In other words, to the extent Mr. Sosa and other aggrieved employees engaged in duties in which the nature of the work required standing, DSG denied them the use of seats nearby during lulls in their work duties. Moreover, DSG did not inform Mr. Sosa and other aggrieved employees of their rights to a seat or stool under California law.

As a result of DSG’s company-wide policy and/or practice of prohibiting employees from sitting at any time, even when they were not engaged in active duties requiring standing, and company-wide failure to provide seats in reasonable proximity to their work areas, Mr. Sosa and other aggrieved employees were forced to stand during shifts and denied seats. DSG’s failure to provide suitable seating to Mr. Sosa and other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order No. 7-2001, subdivision 14(B).

Mr. Sosa and other aggrieved employees are therefore entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, and seek injunctive relief to bring DSG into compliance with California’s seating requirements, pursuant to Labor Code sections 1194.5 and/or 2699(a), (f)-(g).

Mr. Sosa, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for himself, all other aggrieved employees, and the State of California against DSG for violations of California Labor Code section 1198.

Therefore, on behalf of all aggrieved employees, Mr. Sosa seeks all applicable penalties related to these violations of the California Labor Code pursuant to PAGA.

Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

Anthony Castillo
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, CA 90067
(310) 556-4811

Best Regards,


Anthony Castillo

Copy: DICK'S SPORTING GOODS, INC. (via U.S. Certified Mail)

Capstone
LAW APC
1875 Century Park East, Ste 1000
Los Angeles, CA 90067

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345 COURT STREET
CORAPOLIS, PA 15108

PS Form 3800, April 2015 PSN 7530-02-000-9047

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Sosa V.
DICK'S Sporting
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☐ Agent

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