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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 FOR THE COUNTY OF CONTRA COSTA
12

13 ANTHONY BRADSHAW and OLIVIA
SAWYER, as aggrieved employees
14 pursuant to the Private Attorneys General
Act ("PAGA"), on behalf of the State of
15 California and other aggrieved employees,

16 Plaintiffs,

17 vs.

18 DICK'S SPORTING GOODS, INC., a
Delaware corporation; and DOES 1 through
19 10, inclusive,

20 Defendants.
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Case No.: C22-00783

**FIRST AMENDED 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 Plaintiffs Anthony Bradshaw and Olivia Sawyer, as aggrieved employees and on
2 behalf of the State of California and all other aggrieved employees, allege 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 Plaintiffs, the State of California, and other current and former employees
7 who 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 31,
12 2022, until judgment (“non-party Aggrieved Employees”). Plaintiffs’ 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, Plaintiffs 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 Plaintiffs’ 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 in this county, and employed Plaintiff Bradshaw in this county, and thus a substantial portion of the transactions and occurrences related to this action occurred in this county.

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 Anthony Bradshaw worked for Defendants as an hourly paid, non-exempt Sales Associate from approximately August 2021 to July 2022. Plaintiff Bradshaw worked for Defendants at their store located at 2314 Monument Boulevard, in Pleasant Hill, California. Plaintiff typically worked four (4) hours per day. Plaintiff Bradshaw’s job duties as a Sales Associate included assisting customers on the sales floor, re-stocking inventory, assisting customers with fitting rooms, and updating merchandise pricing.

8. Plaintiff Olivia Sawyer worked for Defendants as an hourly paid, non-exempt Sales Associate/Greeter from approximately June 2020 to November 2020 and from August 2021 to September 2021. Plaintiff Sawyer worked for Defendants at their store located at 7542 Edinger Avenue, in Huntington Beach, California. Plaintiff Sawyer typically worked eight (8) hours per day and three (3) to five (5) days per week. Plaintiff Sawyer’s job duties included, without limitation, putting away freight, pricing inventory, providing customer service, moving and rearranging store fixtures, and greeting customers at the front of the store.

9. On information and belief, Defendants required some employees, including Plaintiffs, to execute an arbitration agreement at the time of their hire or during their employment. On further information and belief, Defendants’ arbitration agreement was and is both procedurally and substantively unconscionable. Specifically, Defendants presented new hires with a “Mutual Agreement to Arbitrate Claims” (“Arbitration Agreement”) during the

1 onboarding process, which had to be reviewed and acknowledged immediately. In fact, upon
2 information and belief, the Arbitration Agreement was one of several documents presented to
3 new employees for signature during the orientation process, including a Mobile Device and
4 Detacher Acknowledgement Form, among other documents. Also, employees did not have a
5 meaningful opportunity to negotiate the terms of the Arbitration Agreement. Rather, it was
6 provided to Defendants' employees for them to sign on a take-it or leave-it basis, along with
7 all of the other on-boarding documents: "**Regardless of whether you sign/accept**, by
8 continuing to apply to and/or work for the Company you will be bound by this Agreement."
9 (Emphasis added.)

10 10. Defendant DICK'S SPORTING GOODS, INC. was and is, upon information
11 and belief, a Delaware corporation doing business in California, and at all times hereinafter
12 mentioned, an employer whose employees are engaged throughout this county, the State of
13 California, or the various states of the United States of America.

14 11. Plaintiffs are unaware of the true names or capacities of the Defendants sued
15 herein under the fictitious names DOES 1 through 10, but will seek leave of this Court to
16 amend the complaint and serve such fictitiously named Defendants once their names and
17 capacities become known.

18 12. Plaintiffs are informed and believe, and thereon allege, that DOES 1 through 10
19 are the partners, agents, owners, shareholders, managers, or employees of DICK'S
20 SPORTING GOODS, INC., at all relevant times.

21 13. Plaintiffs are informed and believe, and thereon allege, that each and all of the
22 acts and omissions alleged herein was performed by, or is attributable to, DICK'S SPORTING
23 GOODS, INC. and/or DOES 1 through 10 (collectively "Defendants"), each acting as the
24 agent, employee, alter ego, and/or joint venturer of, or working in concert with, each of the
25 other co-Defendants and was acting within the course and scope of such agency, employment,
26 joint venture, or concerted activity with legal authority to act on the others' behalf. The acts
27 of any and all Defendants were in accordance with, and represent, the official policy of
28 Defendants.

1 14. At all relevant times, Defendants, and each of them, ratified each and every act
2 or omission complained of herein. At all relevant times, Defendants, and each of them, aided
3 and abetted the acts and omissions of each and all the other Defendants in proximately causing
4 the damages herein alleged.

5 15. Plaintiffs are informed and believe, and thereon allege, that each of said
6 Defendants are in some manner intentionally, negligently, or otherwise responsible for the
7 acts, omissions, occurrences, and transactions alleged herein.

8 **PAGA REPRESENTATIVE ALLEGATIONS**

9 16. Defendants own and operate a chain of retail sporting goods stores throughout
10 the United States. Defendants operate approximately 729 retail locations in the United States,
11 including approximately 59 store locations in California.

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

18 18. In particular, on information and belief, Plaintiffs and other non-party
19 Aggrieved Employees received the same standardized documents and/or written policies.
20 Upon information and belief, the usage of standardized documents and/or written policies,
21 indicate that Defendants dictated policies at the corporate level and implemented them
22 company-wide, regardless of their employees' assigned locations or positions. Upon
23 information and belief, Defendants set forth uniform policies and procedures in several
24 documents provided at an employee's time of hire.

25 19. Plaintiffs allege that Defendants' California retail stores are generally similar in
26 their layout and design and that there is space behind each front-end cash wrap, near each
27 service counter, and/or near each entrance/exit (with reasonable or no modification to these
28 work areas) to allow for the presence and use of a seat or stool by Defendants' employees

1 during the performance of their work duties.

2 20. Plaintiff Sawyer and other non-party Aggrieved Employees have spent a
3 substantial portion of their day behind Defendants' service counters and/or store
4 entrances/exits. Other non-party Aggrieved Employees spent a substantial portion of their day
5 at Defendants' front-end cash wraps. The nature of the work of an employee performing
6 cashier, customer service, and/or greeter duties can reasonably be accomplished from a seated
7 position. However, as set forth herein, Defendants have not and do not provide Plaintiffs and
8 other non-party Aggrieved Employees with seats or stools at or near each cash wrap, service
9 counter, and/or entrance/exit.

10 21. Defendants continue to employ non-exempt employees at retail store locations
11 throughout California.

12 22. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
13 should have known that Plaintiffs and other non-party Aggrieved Employees were entitled to
14 suitable seating and/or were entitled to sit when it did not interfere with the performance of
15 their cashier, customer service, and/or greeter duties. In violation of the California Labor
16 Code and applicable IWC Wage Order, Defendants failed to provide Plaintiffs and other non-
17 party Aggrieved Employees suitable seating.

18 23. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
19 should have known that Plaintiffs and other non-party Aggrieved Employees were entitled to
20 have seats in reasonable proximity to their work area and be permitted to use such seats when
21 it did not interfere with the performance of their duties during a lull in tasks that do require
22 moving about or standing. In violation of the California Labor Code and applicable IWC
23 Wage Order, Defendants failed to provide Plaintiffs and other non-party Aggrieved
24 Employees suitable seating.

25 24. At all times herein set forth, PAGA provides that any provision of law under
26 the California Labor Code and applicable IWC Wage Order that provides for a civil penalty to
27 be assessed and collected by the LWDA for violations of the California Labor Code and
28 applicable IWC Wage Order may, as an alternative, be recovered by aggrieved employees in a

1 civil action brought on behalf of themselves and other current or former employees pursuant
2 to procedures outlined in California Labor Code section 2699.3.

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

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

10 27. Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved
11 employee, including Plaintiffs, may pursue a civil action arising under PAGA after the
12 following requirements have been met:

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

1 28. Pursuant to California Labor Code section 2699.3(c), aggrieved employees,
2 through Plaintiffs, may pursue a civil action arising under the PAGA for violations of any
3 provision other than those listed in Section 2699.5 after the following requirements have been
4 met:

- 5 (a) The aggrieved employee or representative shall give written notice by
6 online filing with the LWDA and by certified mail to the employer of
7 the specific provisions of the California Labor Code alleged to have
8 been violated (other than those listed in Section 2699.5), including the
9 facts and theories to support the alleged violation.
- 10 (b) An aggrieved employee's notice filed with the LWDA pursuant to
11 2699.3(c) and any employer response to that notice shall be
12 accompanied by a filing fee of seventy-five dollars (\$75).
- 13 (c) The employer may cure the alleged violation within thirty-three (33)
14 calendar days of the postmark date of the notice sent by the aggrieved
15 employee or representative. The employer shall give written notice
16 within that period of time by certified mail to the aggrieved employee or
17 representative and by online filing with the LWDA if the alleged
18 violation is cured, including a description of actions taken, and no civil
19 action pursuant to Section 2699 may commence. If the alleged violation
20 is not cured within the 33-day period, the aggrieved employee may
21 commence a civil action pursuant to Section 2699.

22 29. On January 31, 2022, Plaintiff Bradshaw provided written notice by online
23 filing to the LWDA and by Certified Mail to Defendants of the specific provisions of the
24 California Labor Code alleged to have been violated, including facts and theories to support
25 the alleged violations, in accordance with California Labor Code section 2699.3. Plaintiff
26 Bradshaw's written notice was accompanied with the applicable filing fees of seventy-five
27 dollars (\$75). That same day, the LWDA PAGA Administrator confirmed receipt of Plaintiff
28 Bradshaw's written notice and assigned Plaintiff Bradshaw PAGA Case Number LWDA-CM-

1 865710-22. A true and correct copy of Plaintiff Bradshaw's written notice to the LWDA and
2 Defendants dated January 31, 2022, is attached hereto as "Exhibit 1."

3 30. On June 22, 2022, Plaintiff Sawyer provided written notice by online filing to
4 the LWDA and by Certified Mail to Defendants of the specific provisions of the California
5 Labor Code alleged to have been violated, including facts and theories to support the alleged
6 violations, in accordance with California Labor Code section 2699.3. Plaintiff Sawyer's
7 written notice was accompanied with the applicable filing fees of seventy-five dollars (\$75).
8 That same day, the LWDA PAGA Administrator confirmed receipt of Plaintiff Sawyer's
9 written notice and assigned Plaintiff Sawyer PAGA Case Number LWDA-CM-890847-22. A
10 true and correct copy of Plaintiff Sawyer's written notice to the LWDA and Defendants dated
11 June 22, 2022, is attached hereto as "Exhibit 2."

12 31. As of the filing date of this complaint, over 65 days have passed since Plaintiffs
13 sent the notices described above to the LWDA, and the LWDA has not responded that it
14 intends to investigate Plaintiffs' claims and Defendants have not cured the violations.

15 32. Thus, Plaintiffs have satisfied the administrative prerequisites under California
16 Labor Code sections 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
17 violations of California Labor Code section 1198.

18 33. Defendants, at all times relevant to this complaint, were employers or persons
19 acting on behalf of an employer(s) who violated Plaintiffs' and other non-party Aggrieved
20 Employees' rights by violating sections of the California Labor Code as set forth above.

21 34. As set forth below, Defendants have violated provisions of both the Labor Code
22 sections regulating hours and days of work as well as the applicable IWC Wage Order,
23 specifically, Labor Code section 1198 and California Code of Regulations, Title 8, section
24 11070(14)(A)-(B).

25 35. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a),
26 2699.3(a), 2699.3(c), and 2699.5, Plaintiffs, acting in the public interest as private attorneys
27 general, seek assessment and collection of civil penalties for themselves, all other non-party
28 Aggrieved Employees, and the State of California against Defendants for violations of

1 California Labor Code section 1198.

2 **FIRST CAUSE OF ACTION**

3 **FAILURE TO PROVIDE SUITABLE SEATING**

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

6 **(By Plaintiffs on Behalf of the State of California and Aggrieved Employees Against all**
7 **Defendants)**

8 36. Plaintiffs incorporate by reference and re-allege as if fully stated herein each
9 and every allegation set forth above.

10 37. California Labor Code §§ 2698, *et seq.* (“PAGA”) permits Plaintiffs to recover
11 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code
12 section 2699.5. Section 2699.5 enumerates Labor Code section 1198, among others.
13 Defendants’ conduct, as alleged herein, violates section 1198 of the California Labor Code, by
14 failing to provide suitable seating to Plaintiffs and other non-party Aggrieved Employees as
15 set forth below.

16 38. At all relevant times herein, California Labor Code section 1198 makes it
17 illegal to employ an employee under conditions of labor that are prohibited by the applicable
18 wage order. California Labor Code section 1198 requires that “. . . the standard conditions of
19 labor fixed by the commission shall be the . . . standard conditions of labor for employees.
20 The employment of any employee . . . under conditions of labor prohibited by the order is
21 unlawful.”

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

25 40. During the relevant time period, Defendants violated California Labor Code
26 section 1198 and California Code of Regulations, Title 8, section 11070(14)(A), because
27 Plaintiffs and other non-party Aggrieved Employees were not allowed to sit, even when the
28 nature of their work would reasonably permit the use of seats, nor were they provided with

1 suitable seats. During their employment, Plaintiff Sawyer and other non-party Aggrieved
2 Employees were assigned to work front-end cash registers and service counters throughout the
3 store, and/or assigned to work store entrances/exits. Other non-party Aggrieved Employees'
4 cashiering duties include, without limitation, operating the cash register, scanning items,
5 bagging items, and updating merchandise prices in the point-of-sale system—all of which
6 could have been performed from a seated position without negatively affecting the quality or
7 efficiency of their performance. Similarly, Plaintiff Sawyer and other non-party Aggrieved
8 Employees' assigned duties at service counters and/or at store entrances/exits, including, but
9 not limited to, pricing inventory, answering customer questions, directing customers to
10 merchandise, scheduling customer deliveries, placing orders for items otherwise unavailable
11 in-store for customers, completing employee trainings, and greeting customers, could have
12 been performed from a seated position without negatively affecting the quality and efficiency
13 of their performance. Although some of Plaintiff Sawyer's and other non-party Aggrieved
14 Employees' assigned tasks at these workstations could be performed from a seated position,
15 Defendants did not provide them with seating and instead required to stand at all times.

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

23 42. As a result of Defendants' company-wide policy and/or practice prohibiting
24 employees from sitting during their shifts and failure to provide suitable seating to these
25 employees, they were forced to stand during shifts and denied seats. Defendants' failure to
26 provide suitable seating to Plaintiffs and other non-party Aggrieved Employees violated and
27 continues to violate California Labor Code section 1198 and IWC Wage Order No. 7-2001,
28 subdivision 14(A).

1 43. Plaintiffs 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 **SECOND CAUSE OF ACTION**
5 **FAILURE TO PROVIDE SUITABLE SEATING**
6 **VIOLATION OF LABOR CODE SECTION 1198 AND CALIFORNIA CODE OF**
7 **REGULATIONS, TITLE 8, SECTION 11070(14)(B)**
8 **(By Plaintiffs on Behalf of the State of California and Aggrieved Employees Against all**
9 **Defendants)**

10 44. Plaintiffs incorporate by reference and re-allege as if fully stated herein each
11 and every allegation set forth above.

12 45. California Labor Code §§ 2698, *et seq.* (“PAGA”) permits Plaintiffs to recover
13 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code
14 section 2699.5. Section 2699.5 enumerates Labor Code section 1198, among others.
15 Defendants’ conduct, as alleged herein, violates section 1198 of the California Labor Code, by
16 failing to provide suitable seating to Plaintiffs and other non-party Aggrieved Employees as
17 set forth below.

18 46. At all relevant times herein, California Labor Code section 1198 makes it
19 illegal to employ an employee under conditions of labor that are prohibited by the applicable
20 wage order. California Labor Code section 1198 requires that “. . . the standard conditions of
21 labor fixed by the commission shall be the . . . standard conditions of labor for employees.
22 The employment of any employee . . . under conditions of labor prohibited by the order is
23 unlawful.”

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

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

6 49. As stated, Defendants' California retail stores are generally similar in their
7 layout and design and there was, and continues to be, space near their work areas to allow for
8 the presence and use of a seat or stool by Plaintiffs and other non-party Aggrieved Employees
9 during lulls in operation. For example, Plaintiffs experienced lulls in their work at various
10 times during a typical shift, especially when the store was not busy. During these lulls, when
11 Plaintiffs were not actively performing tasks that require standing, Plaintiffs could have taken
12 a moment to sit and rest their legs, back, and feet if seating was provided. Defendants could
13 have provided Plaintiffs and other non-party Aggrieved Employees with a seat or stool in their
14 work areas, with reasonable or no modification to Plaintiffs' and other non-party Aggrieved
15 Employees' work areas, but instead denied, and continues to deny, employees seating and
16 forced Plaintiffs and other non-party Aggrieved Employees to stand throughout the day.

17 50. Defendants did not provide Plaintiffs and other non-party Aggrieved
18 Employees with seats or stools in reasonable proximity to their work areas to allow them to
19 use seats when it would not interfere with the performance of their duties for times when they
20 were not engaged in active duties that require standing. In other words, to the extent Plaintiffs
21 and other non-party Aggrieved Employees engaged in duties in which the nature of the work
22 required standing, Defendants denied them the use of seats nearby during lulls in their work
23 duties. Moreover, Defendants did not inform Plaintiffs and other non-party Aggrieved
24 Employees of their rights to a seat or stool under California law.

25 51. As a result of Defendants' company-wide policy and/or practice prohibiting
26 employees from sitting at any time, even when they were not engaged in active duties
27 requiring standing, and company-wide failure to provide seats in reasonable proximity to their
28 work areas, Plaintiffs and other non-party Aggrieved Employees were forced to stand during

1 shifts and denied seats. Defendants' failure to provide suitable seating to Plaintiffs and other
2 non-party Aggrieved Employees violated and continues to violate California Labor Code
3 section 1198 and IWC Wage Order No. 7-2001, subdivision 14(B).

4 52. Plaintiffs and other non-party Aggrieved Employees and the State of California
5 are therefore entitled to recover civil penalties pursuant to Labor Code sections 2699(a), (f),
6 and (g).

7 **REQUEST FOR JURY TRIAL**

8 Plaintiffs hereby request a trial by jury.

9 **PRAYER FOR RELIEF**

10 Plaintiffs, on behalf of the State of California and all other non-party Aggrieved
11 Employees, pray for relief and judgment against Defendants, jointly and severally, as follows:

12 1. For civil penalties and attorneys' fees in excess of twenty-five thousand dollars
13 (\$25,000) to the State of California and aggrieved employees.

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

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

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

20 4. For injunctive relief pursuant to California Labor Code sections 1194.5 and/or
21 2699(a), (f)-(g) to bring Defendants into compliance with California's seating requirements;

22 5. For attorneys' fees and costs pursuant to California Labor Code section
23 2699(g)(1), and any and all other relevant statutes, for Defendants' violations of California
24 Labor Code section 1198;

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

26 7. For such other and further relief as the Court may deem equitable and
27 appropriate.

28 //

As to the Second Cause of Action

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

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

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

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

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

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

Dated: September 21, 2022

Respectfully submitted,

Capstone Law APC



By: _____

Robert Drexler
Molly A. DeSario
Jonathan Lee

Attorneys for Plaintiffs Anthony Bradshaw
and Olivia Sawyer

EXHIBIT “1”



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Los Angeles, California 90067
310.556.4811 Main | 310.943.0396 Fax

NINEL KOCHARYAN
310.712.8146 Direct
Ninel.Kocharyan@capstonelawyers.com

January 31, 2022

VIA ONLINE SUBMISSION

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

Subject: *Anthony Bradshaw v. Dick's Sporting Goods, Inc.*

Dear PAGA Administrator:

This office represents Anthony Bradshaw 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. Bradshaw is 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. Bradshaw 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. Bradshaw 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 has employed Mr. Bradshaw as a non-exempt employee since August 2021. Mr. Bradshaw works as a Sales Associate at the DICK'S Sporting Goods store located at 2314 Monument Boulevard in Pleasant Hill, California. Mr. Bradshaw typically works four (4) hours per day. Mr. Bradshaw's job duties vary, and include, without limitation, assisting customers on the sales floor, re-stocking inventory, assisting customers with fitting rooms, and updating merchandise pricing.

DSG committed one or more of the following Labor Code violations against Mr. Bradshaw, the facts and theories of which follow, making him an “aggrieved employee” pursuant to California Labor Code section 2699(c).¹ Mr. Bradshaw’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. Bradshaw 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. Bradshaw 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. Bradshaw’s experience and counsel’s review of those records currently available relating to Mr. Bradshaw’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. Bradshaw 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 near each front-end cash wrap and service counters to allow for the presence and use of a seat or stool by Mr. Bradshaw and/or other aggrieved employees during the performance of their work duties. DSG could have provided Mr. Bradshaw and/or 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. Bradshaw and/or other aggrieved employees to stand throughout the day.

During their employment, other aggrieved employees were assigned to work front-end cash registers and service counters throughout the store. Other aggrieved employees' cashiering duties 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 their performance. Similarly, other aggrieved employees' assigned duties at service counters, including, but not limited to, answering customer questions, directing customers to merchandise, scheduling customer deliveries, placing orders for items otherwise unavailable in-store for customers, and completing employee trainings, could have been performed from a seated position without negatively affecting the quality and efficiency of their performance. Although some of other aggrieved employees' assigned tasks at these workstations could be performed from a seated position, DSG did not provide them with seating and instead required to stand at all times.

DSG violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11070(14)(A) because Mr. Bradshaw and/or 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. Bradshaw and/or 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. Bradshaw and/or other aggrieved employees were forced to stand during shifts and denied seats. DSG's failure to provide suitable seating to Mr. Bradshaw and/or other aggrieved employees violates California Labor Code section 1198 and Industrial Welfare Commission ("IWC") Wage Order No. 7-2001, subdivision 14(A).

Mr. Bradshaw and/or other aggrieved employees are 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. Bradshaw and other aggrieved employees during lulls in operation. For example, as a Sales Associate, Mr. Bradshaw has experienced lulls in his work at various times during a typical shift, especially when the store is not busy. During these lulls, when Mr. Bradshaw is not actively performing tasks that require standing, Mr. Bradshaw could take a moment to sit and rest his legs, back, and feet if seating was provided. DSG could provide Mr. Bradshaw and other aggrieved employees with a seat or stool in its work areas, with reasonable or no modification to Mr. Bradshaw’s and other aggrieved employees’ work areas, but instead denies employees seating and forces Mr. Bradshaw and other aggrieved employees to stand throughout the day.

DSG did not provide Mr. Bradshaw 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. Bradshaw 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. Bradshaw 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. Bradshaw and other aggrieved employees were forced to stand during shifts and denied seats. DSG’s failure to provide suitable seating to Mr. Bradshaw and other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order No. 7-2001, subdivision 14(B).

Mr. Bradshaw and other aggrieved employees are 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. Bradshaw, 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. Bradshaw 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:

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

Best Regards,

A handwritten signature in black ink, appearing to read "Ninel", is placed over a light gray rectangular background.

Ninel Kocharyan

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

EXHIBIT “2”



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

NINEL KOCHARYAN
310.712.8146 Direct
Ninel.Kocharyan@capstonelawyers.com

June 22, 2022

VIA ONLINE SUBMISSION

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

Subject: *Olivia Sawyer v. Dick's Sporting Goods, Inc.*

Dear PAGA Administrator:

This office represents Olivia Sawyer in connection with her 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. Ms. Sawyer 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

Ms. Sawyer 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"). Ms. Sawyer seeks relief on behalf of herself, 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 Ms. Sawyer as a non-exempt employee from approximately June 2020 to September 2021. Ms. Sawyer worked as a Sales Associate/Greeter at the DICK'S Sporting Goods store in Huntington Beach, California. Ms. Sawyer typically worked eight (8) hours per day and three (3) to five (5) days per week. Ms. Sawyer's job duties included, without limitation, putting away freight, pricing inventory, providing customer service, moving and rearranging store fixtures, and greeting customers at the front of the store.

DSG committed one or more of the following Labor Code violations against Ms. Sawyer, the facts and theories of which follow, making her an “aggrieved employee” pursuant to California Labor Code section 2699(c).¹ Ms. Sawyer’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 729 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 Ms. Sawyer 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 Ms. Sawyer 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 Ms. Sawyer’s experience and counsel’s review of those records currently available relating to Ms. Sawyer’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, Ms. Sawyer reserves the right to supplement this letter with additional facts, theories, and claims if she 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 and/or entrance/exit to allow for the presence and use of a seat or stool by Ms. Sawyer and other aggrieved employees during the performance of their work duties. DSG could have provided Ms. Sawyer 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 Ms. Sawyer and other aggrieved employees to stand throughout the day.

During her employment, Ms. Sawyer worked for the most part at a service counter in the Lodge Department and the store entrance/exit. Other aggrieved employees similarly spent a substantial portion of their day at front-end cash wraps. The nature of the work of an employee performing cashier, customer service, and/or greeter duties can reasonably be accomplished from a seated position. Ms. Sawyer and other aggrieved employees could have provided customer service, greeted customers, priced inventory, handled transactions, 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, service counter, and/or entrance/exit, forcing employees, including Ms. Sawyer 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 Ms. Sawyer 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 Ms. Sawyer 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, Ms. Sawyer and other aggrieved employees were forced to stand during shifts and denied seats. DSG's failure to provide suitable seating to Ms. Sawyer and other aggrieved employees violates California Labor Code section 1198 and Industrial Welfare Commission ("IWC") Wage Order No. 7-2001, subdivision 14(A).

Ms. Sawyer 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).

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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, Ms. Sawyer and other aggrieved employees were forced to stand during shifts and denied seats. DSG’s failure to provide suitable seating to Ms. Sawyer and other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order No. 7-2001, subdivision 14(B).

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

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

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

Best Regards,

A handwritten signature in cursive script, appearing to read "Ninel", is shown within a light gray rectangular box.

Ninel Kocharyan

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

1 **PROOF OF SERVICE**

2 I am employed in the State of California, County of Los Angeles. I am over the age of 18
3 and not a party to the within suit; my business address is 1875 Century Park East, Suite 1000 Los
4 Angeles, California 90067.

5 On **September 21, 2022**, I served the document described as: **FIRST AMENDED**
6 **COMPLAINT – PAGA ENFORCEMENT ACTION** on the interested parties in this action by
7 sending ☐ the original [or] ☒ a true copy thereof ☒ to interested parties as follows [or] ☐
8 as stated on the attached service list:

9 Paul S. Cowie
10 Amanda E. Beckwith
11 Melissa Hughes
12 SHEPPARD, MULLIN, RICHTER
13 & HAMPTON LLP
14 Four Embarcadero Center, 17th Floor
15 San Francisco, California 94111-4109
16 pcowie@sheppardmullin.com
17 abeckwith@sheppardmullin.com
18 mhughes@sheppardmullin.com

Attorneys for Defendants
DICK’S SPORTING GOODS, INC.

19 ☐ **BY MAIL (ENCLOSED IN A SEALED ENVELOPE):** I deposited the envelope(s)
20 for mailing in the ordinary course of business at Los Angeles, California. I am “readily
21 familiar” with this firm’s practice of collection and processing correspondence for
22 mailing. Under that practice, sealed envelopes are deposited with the U.S. Postal
23 Service that same day in the ordinary course of business with postage thereon fully
24 prepaid at Los Angeles, California.

25 ☐ **BY E-MAIL:** I hereby certify that this document was served from Los Angeles,
26 California, by e-mail delivery on the parties listed herein at their most recent known e-
27 mail address or e-mail of record in this action.

28 ☒ **BY ELECTRONIC SERVICE:** I caused the document(s) to be transmitted
electronically via One Legal eService to the individuals listed above, as they exist on
that database. This will constitute service of the document(s).

☐ **BY OVERNIGHT DELIVERY:** I am “readily familiar” with this firm’s practice of
collection and processing correspondence for overnight delivery. Under that practice,
overnight packages are enclosed in a sealed envelope with a packing slip attached
thereto fully prepaid. The packages are picked up by the carrier at our offices or
delivered by our office to a designated collection site.

I declare under penalty of perjury under the laws of the State of California that the
foregoing is true and correct. Executed on **September 21, 2022**, at Los Angeles, California.

Sophia Flores
Type/Print Name


Signature