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Assigned for all purposes:
Judge Peter Wilson
Dept. CX-101

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ORANGE

EPIPHANY SEAMAN and COURTNEY ROSE, on behalf of the State of California, as private attorney generals,

Plaintiffs,

vs.

SAS RETAIL SERVICES, LLC, a Limited Liability Company; and DOES 1 through 50, inclusive,

Defendants.

Case No. 30-2022-01292199-CU-OE-CXC

REPRESENTATIVE ACTION COMPLAINT FOR:

1.Civil Penalties Pursuant to Labor Code § 2699, *et seq*. for violations of Labor Code §§ 201, 202, 203, 204 *et seq*., 210, 218, 221, 226(a), 226.7, 227.3, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), and the applicable Wage Order(s).

Plaintiffs Epiphany Seaman and Courtney Rose ("PLAINTIFFS"), on behalf of the people of the State of California and as "aggrieved employees" acting as private attorney generals under the Labor Code Private Attorney General Act of 2004, § 2699, *et seq.* ("PAGA") only, allege on information and belief, except for their own acts and knowledge which are based on personal knowledge, the following:

INTRODUCTION

1. PLAINTIFFS bring this action against Defendant SAS Retail Services, LLC (referred to as "DEFENDANT") seeking only to recover PAGA civil penalties for themselves, and on behalf of all current and former aggrieved employees that worked for DEFENDANT. PLAINTIFFS do **not seek to recover anything other than penalties as permitted by California Labor Code § 2699**. To the extent that statutory violations are mentioned for wage violations, PLAINTIFFS do not seek underlying general and/or special damages for those violations, but simply the civil penalties permitted by California Labor Code § 2699.

2. California has enacted the PAGA to permit individuals to bring an action on behalf of themselves and on behalf of others for PAGA penalties *only*, which is the precise and sole nature of this action.

3. Accordingly, PLAINTIFFS seek to obtain all applicable relief for DEFENDANT's violations under PAGA and solely for the relief as permitted by PAGA – that is, penalties and any other relief the Court deems proper pursuant to the PAGA. Nothing in this complaint should be construed as attempting to obtain any relief that would not be available in a PAGA-only action.

THE PARTIES

4. Defendant SAS Retail Services, LLC ("DEFENDANT") is a limited liability company that at all relevant times mentioned herein conducted and continues to conduct substantial business in the state of California.

5. DEFENDANT develops merchandising service programs for the nation's largest retailers and consumer brands.

6. Plaintiff Seaman was employed by DEFENDANT in California from November of 2019 to February of 2022 and was at all times classified by DEFENDANT as a non-exempt employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and payment of minimum and overtime wages due for all time worked.

7. Plaintiff Rose has been employed by DEFENDANT in California since June of 2018 and has been at all times classified by DEFENDANT as a non-exempt employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and payment of minimum and overtime wages due for all time worked.

8. PLAINTIFFS, and such persons that may be added from time to time who satisfy the requirements and exhaust the administrative procedures under the Private Attorney General Act, bring this Representative Action on behalf of the State of California with respect to themselves and all individuals who are or previously were employed by DEFENDANT in California, including any employees staffed with DEFENDANT by a third party, and classified as non-exempt employees ("AGGRIEVED EMPLOYEES") during the time period of July 11, 2021 until a date as determined by the Court (the "PAGA PERIOD").

9. PLAINTIFFS, on behalf of themselves and all AGGRIEVED EMPLOYEES presently or formerly employed by DEFENDANT during the PAGA PERIOD, bring this representative action pursuant to Labor Code § 2699, *et seq*. seeking fixed civil penalties for DEFENDANT's violation of California Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 218, 221, 226(a), 226.7, 227.3, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), and the applicable Wage Order(s). Based upon the foregoing, PLAINTIFFS and all AGGRIEVED EMPLOYEES are aggrieved employees within the meaning of Labor Code § 2699, *et seq*.

10. The true names and capacities, whether individual, corporate, subsidiary, partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently unknown to PLAINTIFFS who therefore sue these Defendants by such fictitious names pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFFS will seek leave to amend this

Complaint to allege the true names and capacities of Does 1 through 50, inclusive, when they are ascertained. PLAINTIFFS are informed and believe, and based upon that information and belief allege, that the Defendants named in this Complaint, including DOES 1 through 50, inclusive, are responsible in some manner for one or more of the events and happenings that proximately caused the injuries and damages hereinafter alleged.

11. The agents, servants and/or employees of the Defendants and each of them acting on behalf of the Defendants acted within the course and scope of his, her or its authority as the agent, servant and/or employee of the Defendants, and personally participated in the conduct alleged herein on behalf of the Defendants with respect to the conduct alleged herein. Consequently, the acts of each Defendant are legally attributable to the other Defendants and all Defendants are jointly and severally liable to PLAINTIFFS and the other AGGRIEVED EMPLOYEES, for the loss sustained as a proximate result of the conduct of the Defendants' agents, servants and/or employees.

THE CONDUCT

12. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was required to pay PLAINTIFFS and the AGGRIEVED EMPLOYEES for all their time worked, meaning the time during which an employee is subject to the control of an employer, including all the time the employee is suffered or permitted to work. DEFENDANT requires PLAINTIFFS and the AGGRIEVED EMPLOYEES to work without paying them for all the time they are under DEFENDANT's control. Among other things, DEFENDANT requires PLAINTIFFS to work while clocked out during what is supposed to be PLAINTIFFS' off-duty meal break. PLAINTIFFS were from time to time interrupted by work assignments while clocked out for what should have been PLAINTIFFS' off-duty meal break. DEFENDANT, as a matter of established company policy and procedure, administers a uniform practice of rounding the actual time worked and recorded by PLAINTIFFS and the AGGRIEVED EMPLOYEES, always to the benefit of DEFENDANT, so that during the course of their employment, PLAINTIFFS and the AGGRIEVED EMPLOYEES are paid less than they would have been paid had they been

paid for actual recorded time rather than "rounded" time. Additionally, DEFENDANT engages in the practice of requiring PLAINTIFFS and the AGGRIEVED EMPLOYEES to perform work off the clock in that DEFENDANT, as a condition of employment, required these employees to submit to mandatory temperature checks and symptom questionnaires for COVID-19 screening prior to clocking into DEFENDANT's timekeeping system for the workday. As a result, PLAINTIFFS and the AGGRIEVED EMPLOYEES forfeit minimum wage, overtime wage compensation, and off-duty meal breaks by working without their time being correctly recorded and without compensation at the applicable rates. DEFENDANT's policy and practice not to pay PLAINTIFFS and the AGGRIEVED EMPLOYEES for all time worked, is evidenced by DEFENDANT's business records.

13. State law provides that employees must be paid overtime and meal and rest break premiums at one-and-one-half times their "regular rate of pay." PLAINTIFFS and the AGGRIEVED EMPLOYEES are compensated at an hourly rate plus incentive pay that is tied to specific elements of an employee's performance.

14. The second component of PLAINTIFFS' and the AGGRIEVED EMPLOYEES' compensation is DEFENDANT's non-discretionary incentive program that paid PLAINTIFFS and the AGGRIEVED EMPLOYEES incentive wages based on their performance for DEFENDANT. The non-discretionary incentive program provided all employees paid on an hourly basis with incentive compensation when the employees met the various performance goals set by DEFENDANT. However, when calculating the regular rate of pay in order to pay overtime and meal and rest break premiums to PLAINTIFFS and the AGGRIEVED EMPLOYEES, DEFENDANT failed to include the incentive compensation as part of the employees' "regular rate of pay" for purposes of calculating overtime pay and meal and rest break premium pay. Management and supervisors described the incentive program to potential and new employees as part of the compensation package. As a matter of law, the incentive compensation received by PLAINTIFFS and the AGGRIEVED EMPLOYEES must be included in the "regular rate of pay." The failure to

do so has resulted in a underpayment of overtime compensation and meal and rest break premiums to PLAINTIFFS and the AGGRIEVED EMPLOYEES by DEFENDANT.

15. As a result of their rigorous work schedules, PLAINTIFFS and the AGGRIEVED EMPLOYEES were from time to time unable to take thirty (30) minute off duty meal breaks and were not fully relieved of duty for their meal periods. PLAINTIFFS and the AGGRIEVED EMPLOYEES were required from time to time to perform work as ordered by DEFENDANT for more than five (5) hours during some shifts without receiving a meal break. Further, DEFENDANT from time to time failed to provide PLAINTIFFS and the AGGRIEVED EMPLOYEES with a second off-duty meal period for some workdays in which these employees were required by DEFENDANT to work ten (10) hours of work. DEFENDANT also engaged in the practice of rounding the meal period times to avoid paying penalties to PLAINTIFFS and the AGGRIEVED EMPLOYEES. PLAINTIFFS and the AGGRIEVED EMPLOYEES therefore forfeit meal breaks without additional compensation and in accordance with DEFENDANT's corporate policy and practice.

16. During the PAGA PERIOD, PLAINTIFFS and the AGGRIEVED EMPLOYEES were also required from time to time to work in excess of four (4) hours without being provided ten (10) minute rest periods. Further, these employees were denied their first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours from time to time, a first and second rest period of at least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours from time to time, and a first, second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more from time to time. PLAINTIFFS and the AGGRIEVED EMPLOYEES were also not provided with one hour wages in lieu thereof. Additionally, the applicable California Wage Order requires employers to provide employees with off-duty rest periods, which the California Supreme Court defined as time during which an employee is relieved from all work related duties and free from employer control. In so doing, the Court held that the requirement under California law that employers authorize and permit all employees to take rest period means that employers must relieve employees of all duties and relinquish

control over how employees spend their time which includes control over the locations where employees may take their rest period. Employers cannot impose controls that prohibit an employee from taking a brief walk - five minutes out, five minutes back. Here, DEFENDANT's policy restricted PLAINTIFFS and the AGGRIEVED EMPLOYEES from unconstrained walks and is unlawful based on DEFENDANT's rule which states PLAINTIFFS and the AGGRIEVED EMPLOYEES cannot leave the work premises during their rest period.

17. During the PAGA PERIOD, DEFENDANT failed to accurately record and pay PLAINTIFFS and the AGGRIEVED EMPLOYEES for the actual amount of time these employees worked. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was required to pay PLAINTIFFS and the AGGRIEVED EMPLOYEES for all time worked, meaning the time during which an employee was subject to the control of an employer, including all the time the employee was permitted or suffered to permit this work. DEFENDANT required these employees to work off the clock without paying them for all the time they were under DEFENDANT's control. As such, DEFENDANT knew or should have known that PLAINTIFFS and the AGGRIEVED EMPLOYEES were under compensated for all time worked. As a result, PLAINTIFFS and the AGGRIEVED EMPLOYEES forfeited time worked by working without their time being accurately recorded and without compensation at the applicable minimum wage and overtime wage rates. To the extent that the time worked off the clock does not qualify for overtime premium payment, DEFENDANT fails to pay minimum wages for the time worked off-the-clock in violation of Cal. Lab. Code §§ 1194, 1197, and 1197.1.

18. From time to time, DEFENDANT also failed to provide PLAINTIFFS and the AGGRIEVED EMPLOYEES with complete and accurate wage statements which failed to show, among other things, the correct gross and net wages earned. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her employees with an accurate itemized wage statement in writing showing, among other things, gross wages earned and all applicable hourly rates in effect during the pay period and the corresponding amount of time

worked at each hourly rate. PLAINTIFFS and the AGGRIEVED EMPLOYEES were paid on an hourly basis. As such, the wage statements should reflect all applicable hourly rates during the pay period and the total hours worked, and the applicable pay period in which the wages were earned pursuant to California Labor Code Section 226(a). The wage statements DEFENDANT provided to PLAINTIFFS and the AGGRIEVED EMPLOYEES failed to identify such information. More specifically, the wage statements failed to identify the accurate total hours worked each pay period. When the hours shown on the wage statements were added up, they did not equal the actual total hours worked during the pay period in violation of Cal. Lab. Code 226(a)(2). Aside, from the violations listed above in this paragraph, DEFENDANT failed to issue to PLAINTIFFS an itemized wage statement that lists all the requirements under California Labor Code 226 *et seq*. As a result, DEFENDANT from time to time provided PLAINTIFFS and the AGGRIEVED EMPLOYEES with wage statements which violated Cal. Lab. Code § 226.

19. Cal. Lab. Code § 204(d) provides, the requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period. Cal. Lab. Code § 210 provides:

> [I]n addition to, and entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections. . . .204. . .shall be subject to a civil penalty as follows: (1) For any initial violation, one hundred dollars ($100) for each failure to pay each employee; (2) For each subsequent violation, or any willful or intentional violation, two hundred dollars ($200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.

20. DEFENDANT from time to time failed to pay PLAINTIFFS and the AGGRIEVED EMPLOYEES within seven (7) days of the close of the payroll period in accordance with Cal. Lab. Code § 204(d), including but not limited to for the "Hourly" regular wage payments.

21. DEFENDANT underpaid sick pay wages to PLAINTIFFS and the AGGRIEVED EMPLOYEES by failing to pay such wages at the regular rate of pay in violation of Cal. Lab. Code Section 246. Specifically, PLAINTIFFS and other non-exempt

employees earn non-discretionary remuneration. Rather than pay sick pay at the regular rate of pay, DEFENDANT underpaid sick pay to PLAINTIFFS and the AGGRIEVED EMPLOYEES at their base rates of pay.

22. Cal. Lab. Code Section 246(l)(2) requires that paid sick time for nonexempt employees be calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment.

23. DEFENDANT violated Cal. Lab. Code Section 246 by failing to pay sick pay at the regular rate of pay. PLAINTIFFS and the AGGRIEVED EMPLOYEES routinely earned non-discretionary incentive wages which increased their regular rate of pay. However, when sick pay was paid, it was paid at the base rate of pay for PLAINTIFFS and the AGGRIEVED EMPLOYEES, as opposed to the correct, higher regular rate of pay, as required under Cal. Lab. Code Section 246.

24. As a pattern and practice, DEFENDANT regularly failed to pay PLAINTIFFS and the AGGRIEVED EMPLOYEES their correct wages and accordingly owe waiting time penalties pursuant to Cal. Lab. Code Section 203. Further, PLAINTIFFS are informed and believe and based thereon allege that such failure to pay sick pay at regular rate was willful, such that PLAINTIFFS and the AGGRIEVED EMPLOYEES whose employment has separated are entitled to waiting time penalties pursuant to Cal. Lab. Code Sections 201-203.

25. Pursuant to Cal. Lab. Code Section 221, "It shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee." DEFENDANT failed to pay all compensation due to PLAINTIFFS and the AGGRIEVED EMPLOYEES, made unlawful deductions from compensation payable to PLAINTIFFS and the AGGRIEVED EMPLOYEES, failed to disclose all aspects of the deductions from compensation payable to PLAINTIFFS and the AGGRIEVED EMPLOYEES, and thereby failed to pay these employees all wages due at each applicable pay period and upon termination.

26. DEFENDANT intentionally and knowingly failed to reimburse and indemnify PLAINTIFFS and the AGGRIEVED EMPLOYEES for required business expenses incurred by the PLAINTIFFS and the AGGRIEVED EMPLOYEES in direct consequence of discharging their duties on behalf of DEFENDANT. Under California Labor Code Section 2802, employers are required to indemnify employees for all expenses incurred in the course and scope of their employment. Cal. Lab. Code § 2802 expressly states that "an employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful."

27. In the course of their employment PLAINTIFFS and the AGGRIEVED EMPLOYEES as a business expense, were required by DEFENDANT to use their own personal cellular phones as a result of and in furtherance of their job duties as employees for DEFENDANT but are not reimbursed or indemnified by DEFENDANT for the cost associated with the use of their personal cellular phones and home offices for DEFENDANT's benefit. Specifically, PLAINTIFFS and the AGGRIEVED EMPLOYEES were required by DEFENDANT to use their personal cellular phones and home offices. As a result, in the course of their employment with DEFENDANT, PLAINTIFFS and the AGGRIEVED EMPLOYEES incurred unreimbursed business expenses which included, but were not limited to, costs related to the use of their personal cellular phones and home offices all on behalf of and for the benefit of DEFENDANT.

28. All of the conduct and violations alleged herein occurred during the PAGA PERIOD. To the extent that any of the conduct and violations alleged herein did not affect PLAINTIFFS during the PAGA PERIOD, PLAINTIFFS seek penalties for those violations that affected the AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp*. 2018 AJDAR 12157 (Certified for Publication 12/19/18).

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JURISDICTION AND VENUE

29. This Court has jurisdiction over this Action pursuant to California Code of Civil Procedure, Section 410.10.

30. Venue is proper in this Court pursuant to California Code of Civil Procedure, Sections 395 and 395.5, because PLAINTIFFS worked in this County for DEFENDANT and DEFENDANT (i) currently maintains and at all relevant times maintained offices and facilities in this County and/or conducts substantial business in this County, and (ii) committed the wrongful conduct herein alleged in this County against PLAINTIFFS and the AGGRIEVED EMPLOYEES.

FIRST CAUSE OF ACTION

For Violation of the Private Attorneys General Act

[Cal. Lab. Code §§ 2698, *et seq*.]

(By PLAINTIFFS and Against All Defendants)

31. PLAINTIFFS reallege and incorporate by this reference, as though fully set forth herein, the prior paragraphs of this Complaint.

32. PAGA is a mechanism by which the State of California itself can enforce state labor laws through the employee suing under the PAGA who do so as the proxy or agent of the state's labor law enforcement agencies. An action to recover civil penalties under PAGA is fundamentally a law enforcement action designed to protect the public and not to benefit private parties. The purpose of the PAGA is not to recover damages or restitution, but to create a means of "deputizing" citizens as private attorneys general to enforce the Labor Code. In enacting PAGA, the California Legislature specified that "it was ... in the public interest to allow aggrieved employees, acting as private attorneys general to recover civil penalties for Labor Code violations ..." Stats. 2003, ch. 906, § 1. Accordingly, PAGA claims cannot be subject to arbitration.

33. PLAINTIFFS, and such persons that may be added from time to time who satisfy the requirements and exhaust the administrative procedures under the Private

Attorney General Act, bring this Representative Action on behalf of the State of California with respect to themselves and all individuals who are or previously were employed by DEFENDANT in California, including any employees staffed with DEFENDANT by a third party, and classified as non-exempt employees ("AGGRIEVED EMPLOYEES") during the time period of July 11, 2021 until a date as determined by the Court (the "PAGA PERIOD").

34. On July 11, 2022, PLAINTIFFS gave written notice by electronic mail to the Labor and Workforce Development Agency (the "Agency") and by certified mail to the employer of the specific provisions of this code alleged to have been violated as required by Labor Code § 2699.3. The statutory waiting period for PLAINTIFFS to add these allegations to the Complaint has expired. As a result, pursuant to Section 2699.3, PLAINTIFFS may now commence a representative civil action under PAGA pursuant to Section 2699 as the proxies of the State of California with respect to all AGGRIEVED EMPLOYEES as herein defined.

35. The policies, acts and practices heretofore described were and are an unlawful business act or practice because DEFENDANT (a) failed to provide PLAINTIFFS and the AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to properly record and provide legally required meal and rest periods, (c) failed to pay minimum wages, (d) failed to pay overtime wages and sick pay wages, (e) failed to reimburse employees for required expenses and (f) failed to provide wages when due, all in violation of the applicable Labor Code sections listed in Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 218, 221, 226(a), 226.7, 227.3, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), and the applicable Wage Order(s), and thereby gives rise to civil penalties as a result of such conduct.[1] PLAINTIFFS hereby seek recovery of only civil penalties as prescribed by the Labor Code Private Attorney General Act of 2004 as the representatives of the State of California for the illegal conduct perpetrated on PLAINTIFFS and the AGGRIEVED EMPLOYEES.

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[1]Plaintiffs specifically exclude and/or do not allege any claims under California Labor Code §558(a)(3).

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFFS pray for judgment against each Defendant, jointly and severally, as follows:

1. On behalf of the State of California and with respect to all AGGRIEVED EMPLOYEES:

A) Recovery of civil penalties as prescribed by the Labor Code Private Attorneys General Act of 2004; and,

B) An award of attorneys' fees and cost of suit, as allowable under the law, including, but not limited to, pursuant to Labor Code §2699.

Dated: November 17, 2022

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: *__/s/__* Nicholas De Blouw
Norman B. Blumenthal
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