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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ORANGE

EPIPHANY SEAMAN, JAMIE GANGWER,
COURTNEY ROSE, CASSANDRA
STEINER, AUDREY TORRES, and
SERENA NEGRETE, and 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

**THIRD AMENDED REPRESENTATIVE
ACTION COMPLAINT FOR:**

1. Declaratory Relief pursuant to Cal. Code of
Civil Procedure § 1060; and

2. Civil Penalties Pursuant to Labor Code §
2699, *et seq.* for violations of Labor Code §§
201, 202, 203, 204 *et seq.*, 210, 211, 216,
218, 221, 223, 225.5, 226, 226.3, 226.7,
227.3, 233, 246, 246.5, 510, 512, 551, 552,
558, 1174, 1174.5, 1182.12, 1194, 1194.2,
1197, 1197.1, 1198, 1199, 2800, 2802,
California Code of Regulations, Title 8,
Section 11040, and the applicable Wage
Order(s).

1 Plaintiffs Epiphany Seaman, Jamie Gangwer, Courtney Rose, Cassandra Steiner, Audrey
2 Torres, and Serena Negrete (“PLAINTIFFS”), on behalf of the people of the State of California
3 and as “aggrieved employees” acting as private attorney generals under the Labor Code Private
4 Attorney General Act of 2004, § 2699, *et seq.* (“PAGA”) only, allege on information and belief,
5 except for their own acts and knowledge which are based on personal knowledge, the following:

6
7 **INTRODUCTION**

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

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

18
19 3. Accordingly, PLAINTIFFS seek to obtain all applicable relief for
20 DEFENDANT’s violations under PAGA and solely for the relief as permitted by PAGA –
21 that is, penalties and any other relief the Court deems proper pursuant to the PAGA.
22 Nothing in this complaint should be construed as attempting to obtain any relief that would
23 not be available in a PAGA-only action.
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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 Gangwer was employed by DEFENDANT in California from 2014 to 2025 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.

8. 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.

9. Plaintiff Steiner was employed by DEFENDANT in California from June of 2019 to 2025 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.

10. Plaintiff Torres was employed by DEFENDANT in California from March of 2017 to Present and was at all times classified by DEFENDANT as a non-exempt employee,

1 paid on an hourly basis, and entitled to the legally required meal and rest periods and payment
2 of minimum and overtime wages due for all time worked.

3 11. Plaintiff Negrete was employed by DEFENDANT in California from February
4 of 2023 to August of 2023 and was at all times classified by DEFENDANT as a non-exempt
5 employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and
6 payment of minimum and overtime wages due for all time worked.

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8 12. PLAINTIFFS, and such persons that may be added from time to time who satisfy
9 the requirements and exhaust the administrative procedures under the Private Attorney General
10 Act, bring this Representative Action on behalf of the State of California with respect to
11 themselves and all individuals employed by Defendant in hourly, nonexempt positions in
12 California ("AGGRIEVED EMPLOYEES") during the time period of May 2, 2019 to June 15,
13 2025 (the "PAGA PERIOD").

14 13. PLAINTIFFS, on behalf of themselves and all AGGRIEVED EMPLOYEES
15 presently or formerly employed by DEFENDANT during the PAGA PERIOD, bring this
16 representative action pursuant to Labor Code § 2699, *et seq.* seeking fixed civil penalties for
17 DEFENDANT's violation of California Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 211,
18 216, 218, 221, 223, 225.5, 226, 226.3, 226.7, 227.3, 233, 246, 246.5, 510, 512, 551, 552, 558,
19 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2800, 2802, California Code
20 of Regulations, Title 8, Section 11040, and the applicable Wage Order(s). Based upon the
21 foregoing, PLAINTIFFS and all AGGRIEVED EMPLOYEES are aggrieved employees within
22 the meaning of Labor Code § 2699, *et seq.*

23 14. The true names and capacities, whether individual, corporate, subsidiary,
24 partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently
25 unknown to PLAINTIFFS who therefore sue these Defendants by such fictitious names
26 pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFFS will seek leave to amend this Complaint
27 to allege the true names and capacities of Does 1 through 50, inclusive, when they are
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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.

15. 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

A. Factual Allegations

16. DEFENDANT performs merchandising services for over 100 retail companies, including Wal-mart.

17. DEFENDANT's merchandisers such as Plaintiff help retailers set up and rotate their in-store product displays to help maximize sales. Many retailers will rotate their displays every 30 days to highlight new or seasonal products.

18. DEFENDANT's merchandisers also help retail companies set up all the shelves and displays when they open a new store or re-open an existing store after a remodel.

19. To perform these merchandising services, SAS employs 20,000 full- and part-time employees.

20. DEFENDANT's merchandisers often must drive to relatively remote locations to help set up or rearrange the in-store displays. Many of DEFENDANT's teams, such as those

1 responsible for setting up all the product in new or remodeled stores, must travel so far that they
2 are required to stay overnight in hotels.

3 21. DEFENDANT uses a mobile application for employees to clock in when they
4 arrive at a retail store locations and clock out when they leave. This mobile application uses
5 Google Maps to estimate drive time to and from each store. DEFENDANT uses Google Maps'
6 estimates on drive time, which regularly underestimates the amount of time merchandisers
7 actually spend driving. Nor does the application account for rush-hour traffic, road construction,
8 weather, or other factors that may alter trip length.

9
10 22. DEFENDANT also underpays its merchandisers for mileage. Although the IRS
11 mileage reimbursement rate for 2019 was 58 cents per mile, DEFENDANT reimbursed
12 Aggrieved Employees in 2019 at rates significantly below this rate—as little as 15 cents per mile.

13 **B. Declaratory Relief Allegations**

14 23. DEFENDANT required PLAINTIFF GANGWER to sign a document entitled
15 “Agreement to Arbitrate Claims & Class/Collective Action Waiver,” which he signed. That
16 document states (capitalized text contained in the original):

17 THE PARTIES AGREE THAT FINAL AND BINDING ARBITRATION IS THE
18 EXCLUSIVE MEANS FOR RESOLVING COVERED DISPUTES AND THAT NO
19 OTHER ACTION MAY BE BROUGHT IN ANY COURT. THE PARTIES
20 UNDERSTAND THAT THIS AGREEMENT IS A WAIVER OF ALL RIGHTS TO A
21 CIVIL COURT ACTION FOR A DISPUTE RELATING TO ANY MATTER ARISING
22 DURING OR FROM THE EMPLOYMENT RELATIONSHIP. ONLY AN
23 ARBITRATOR, NOT A JUDGE OR JURY, WILL DECIDE THE DISPUTE.

24 THE PARTIES FURTHER AGREE THAT THEY WILL RESOLVE THEIR
25 DISPUTES ON AN INDIVIDUAL BASIS. ANY CLAIMS BROUGHT UNDER THIS
26 AGREEMENT MUST BE BROUGHT IN THE PARTIES' INDIVIDUAL CAPACITY,
27 AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS,
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1 COLLECTIVE, OR REPRESENTATIVE PROCEEDING...INSTEAD, THE PARTIES
2 AGREE TO RESOLVE THEIR DISPUTES UNDER THIS AGREEMENT ON AN
3 INDIVIDUAL BASIS.

4 24. The Agreement also states: “This Agreement will not apply to...any claim not
5 arbitrable pursuant to federal or state law...The scope of arbitration is no broader than allowed
6 by law. Nothing contained in this Agreement is intended to require the arbitration of any matter
7 or claim which the courts having jurisdiction over such matter or claim have expressly held or
8 ruled are not subject to mandatory arbitration.”

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10 25. Finally, the Agreement states: “Employee and the Company further agree that if
11 any court or other tribunal of competent jurisdiction declares that any clause or provision
12 contained in this Agreement is illegal, invalid, or unenforceable, the illegal, invalid, or
13 unenforceable part will no longer be part of this Agreement...”

14 26. Plaintiff now seeks declarations from the Court that: (i) the above-referenced
15 blanket prohibition on bringing “representative” actions was and is void as contrary to the
16 public policy of the State of California as definitively interpreted and set forth in Labor Code
17 § 2699 subd. (a), and illegal within the meaning of California Civil Code § 1667 and California
18 Labor Code § 432.5 as a result; (ii) there was no meeting of the minds or other mutual consent
19 in the parties’ Agreement that would require Plaintiffs representative claims, if any, to be
20 decided in arbitration; and (iii) this civil action or any civil claim against Defendant predicated
21 in whole or in part on this illegal contractual provision — including a representative PAGA
22 claim based in any way on this illegal provision — must now be maintained in a court of law
23 rather than in arbitration.

24 **C. PAGA Allegations**

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26 27. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
27 required to pay PLAINTIFFS and the AGGRIEVED EMPLOYEES for all their time worked,
28 meaning the time during which an employee is subject to the control of an employer, including

1 all the time the employee is suffered or permitted to work. DEFENDANT requires
2 PLAINTIFFS and the AGGRIEVED EMPLOYEES to work without paying them for all the
3 time they are under DEFENDANT's control. Among other things, DEFENDANT requires
4 PLAINTIFFS to work while clocked out during what is supposed to be PLAINTIFFS' off-duty
5 meal break. PLAINTIFFS were from time to time interrupted by work assignments while
6 clocked out for what should have been PLAINTIFFS' off-duty meal break. DEFENDANT, as
7 a matter of established company policy and procedure, administers a uniform practice of
8 rounding the actual time worked and recorded by PLAINTIFFS and the AGGRIEVED
9 EMPLOYEES, always to the benefit of DEFENDANT, so that during the course of their
10 employment, PLAINTIFFS and the AGGRIEVED EMPLOYEES are paid less than they would
11 have been paid had they been paid for actual recorded time rather than "rounded" time.
12 Additionally, DEFENDANT engages in the practice of requiring PLAINTIFFS and the
13 AGGRIEVED EMPLOYEES to perform work off the clock in that DEFENDANT, as a
14 condition of employment, required these employees to submit to mandatory temperature checks
15 and symptom questionnaires for COVID-19 screening prior to clocking into DEFENDANT's
16 timekeeping system for the workday. As a result, PLAINTIFFS and the AGGRIEVED
17 EMPLOYEES forfeit minimum wage, overtime wage compensation, and off-duty meal breaks
18 by working without their time being correctly recorded and without compensation at the
19 applicable rates. DEFENDANT's policy and practice not to pay PLAINTIFFS and the
20 AGGRIEVED EMPLOYEES for all time worked, is evidenced by DEFENDANT's business
21 records.

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

26 29. The second component of PLAINTIFFS' and the AGGRIEVED EMPLOYEES'
27 compensation is DEFENDANT's non-discretionary incentive program that paid PLAINTIFFS
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1 and the AGGRIEVED EMPLOYEES incentive wages based on their performance for
2 DEFENDANT. The non-discretionary incentive program provided all employees paid on an
3 hourly basis with incentive compensation when the employees met the various performance
4 goals set by DEFENDANT. However, when calculating the regular rate of pay in order to pay
5 overtime and meal and rest break premiums to PLAINTIFFS and the AGGRIEVED
6 EMPLOYEES, DEFENDANT failed to include the incentive compensation as part of the
7 employees' "regular rate of pay" for purposes of calculating overtime pay and meal and rest
8 break premium pay. Management and supervisors described the incentive program to potential
9 and new employees as part of the compensation package. As a matter of law, the incentive
10 compensation received by PLAINTIFFS and the AGGRIEVED EMPLOYEES must be included
11 in the "regular rate of pay." The failure to do so has resulted in a underpayment of overtime
12 compensation and meal and rest break premiums to PLAINTIFFS and the AGGRIEVED
13 EMPLOYEES by DEFENDANT.

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

26 31. During the PAGA PERIOD, PLAINTIFFS and the AGGRIEVED EMPLOYEES
27 were also required from time to time to work in excess of four (4) hours without being provided
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1 ten (10) minute rest periods. Further, these employees were denied their first rest periods of at
2 least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours from time to
3 time, a first and second rest period of at least ten (10) minutes for some shifts worked of
4 between six (6) and eight (8) hours from time to time, and a first, second and third rest period
5 of at least ten (10) minutes for some shifts worked of ten (10) hours or more from time to time.
6 PLAINTIFFS and the AGGRIEVED EMPLOYEES were also not provided with one hour
7 wages in lieu thereof. Additionally, the applicable California Wage Order requires employers
8 to provide employees with off-duty rest periods, which the California Supreme Court defined
9 as time during which an employee is relieved from all work related duties and free from
10 employer control. In so doing, the Court held that the requirement under California law that
11 employers authorize and permit all employees to take rest period means that employers must
12 relieve employees of all duties and relinquish control over how employees spend their time
13 which includes control over the locations where employees may take their rest period.
14 Employers cannot impose controls that prohibit an employee from taking a brief walk - five
15 minutes out, five minutes back. Here, DEFENDANT's policy restricted PLAINTIFFS and the
16 AGGRIEVED EMPLOYEES from unconstrained walks and is unlawful based on
17 DEFENDANT's rule which states PLAINTIFFS and the AGGRIEVED EMPLOYEES cannot
18 leave the work premises during their rest period.

19 32. During the PAGA PERIOD, DEFENDANT failed to accurately record and pay
20 PLAINTIFFS and the AGGRIEVED EMPLOYEES for the actual amount of time these
21 employees worked. Pursuant to the Industrial Welfare Commission Wage Orders,
22 DEFENDANT was required to pay PLAINTIFFS and the AGGRIEVED EMPLOYEES for all
23 time worked, meaning the time during which an employee was subject to the control of an
24 employer, including all the time the employee was permitted or suffered to permit this work.
25 DEFENDANT required these employees to work off the clock without paying them for all the
26 time they were under DEFENDANT's control. As such, DEFENDANT knew or should have
27 known that PLAINTIFFS and the AGGRIEVED EMPLOYEES were under compensated for
28 all time worked. As a result, PLAINTIFFS and the AGGRIEVED EMPLOYEES forfeited time

1 worked by working without their time being accurately recorded and without compensation at
2 the applicable minimum wage and overtime wage rates. To the extent that the time worked off
3 the clock does not qualify for overtime premium payment, DEFENDANT fails to pay minimum
4 wages for the time worked off-the-clock in violation of Cal. Lab. Code §§ 1194, 1197, and
5 1197.1.

6 33. From time to time, DEFENDANT also failed to provide PLAINTIFFS and the
7 AGGRIEVED EMPLOYEES with complete and accurate wage statements which failed to
8 show, among other things, the correct gross and net wages earned. Cal. Lab. Code § 226
9 provides that every employer shall furnish each of his or her employees with an accurate
10 itemized wage statement in writing showing, among other things, gross wages earned and all
11 applicable hourly rates in effect during the pay period and the corresponding amount of time
12 worked at each hourly rate. PLAINTIFFS and the AGGRIEVED EMPLOYEES were paid on
13 an hourly basis. As such, the wage statements should reflect all applicable hourly rates during
14 the pay period and the total hours worked, and the applicable pay period in which the wages
15 were earned pursuant to California Labor Code Section 226(a). The wage statements
16 DEFENDANT provided to PLAINTIFFS and the AGGRIEVED EMPLOYEES failed to
17 identify such information. More specifically, the wage statements failed to identify the accurate
18 total hours worked each pay period. When the hours shown on the wage statements were added
19 up, they did not equal the actual total hours worked during the pay period in violation of Cal.
20 Lab. Code 226(a)(2). Aside, from the violations listed above in this paragraph, DEFENDANT
21 failed to issue to PLAINTIFFS an itemized wage statement that lists all the requirements under
22 California Labor Code 226 *et seq.* As a result, DEFENDANT from time to time provided
23 PLAINTIFFS and the AGGRIEVED EMPLOYEES with wage statements which violated Cal.
24 Lab. Code § 226.

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

2 Cal. Lab. Code § 210 provides:

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

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

14 36. DEFENDANT underpaid sick pay wages to PLAINTIFFS and the AGGRIEVED
15 EMPLOYEES by failing to pay such wages at the regular rate of pay in violation of Cal. Lab.
16 Code Section 246. Specifically, PLAINTIFFS and other non-exempt employees earn non-
17 discretionary remuneration. Rather than pay sick pay at the regular rate of pay, DEFENDANT
18 underpaid sick pay to PLAINTIFFS and the AGGRIEVED EMPLOYEES at their base rates of
19 pay.

20 37. Cal. Lab. Code Section 246(1)(2) requires that paid sick time for nonexempt
21 employees be calculated by dividing the employee’s total wages, not including overtime
22 premium pay, by the employee’s total hours worked in the full pay periods of the prior 90 days
23 of employment.

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

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

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

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

25
26 42. In the course of their employment PLAINTIFFS and the AGGRIEVED
27 EMPLOYEES as a business expense, were required by DEFENDANT to use their own personal
28 cellular phones as a result of and in furtherance of their job duties as employees for

1 DEFENDANT but are not reimbursed or indemnified by DEFENDANT for the cost associated
2 with the use of their personal cellular phones and home offices for DEFENDANT's benefit.
3 Specifically, PLAINTIFFS and the AGGRIEVED EMPLOYEES were required by
4 DEFENDANT to use their personal cellular phones and home offices. As a result, in the course
5 of their employment with DEFENDANT, PLAINTIFFS and the AGGRIEVED EMPLOYEES
6 incurred unreimbursed business expenses which included, but were not limited to, costs related
7 to the use of their personal cellular phones and home offices all on behalf of and for the benefit
8 of DEFENDANT.

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

14 JURISDICTION AND VENUE

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16
17 44. This Court has jurisdiction over this Action pursuant to California Code of Civil
18 Procedure, Section 410.10.

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

25 FIRST CAUSE OF ACTION

26 **For Declaratory Relief**

[Cal. Code Civ. Proc. § 1060]

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

47. PLAINTIFF GANGWER was required to sign the Agreement to continue working for DEFENDANT.

48. There currently exists an actual and real controversy between PLAINTIFF GANGWER and DEFENDANT regarding the legality and enforceability of specific language contained in the Agreement. Clarification of the parties' rights and obligations under the Agreement is both necessary and proper at this time so that PLAINTIFF GANGWER can determine where he can and should maintain the representative claim he is preparing to commence at this time.

49. The Agreement between PLAINTIFF GANGWER and DEFENDANT purports to require PLAINTIFF GANGWER to waive all rights to pursue any dispute on a representative basis.

50. California Civil Code § 1667 defines "unlawfulness" as either "(1) Contrary to an express provision of law; (2) Contrary to the policy of express law, though not expressly prohibited; or (3) Otherwise contrary to good morals."

51. In *Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348, the California Supreme Court found that even if class-action waivers in arbitration agreements are enforceable, where "an employment agreement compels the waiver of representative claims under the PAGA, it is contrary to public policy and unenforceable as a matter of state law."

52. PLAINTIFF GANGWER now thus seeks from the Court declarations that:

a) As a result, *inter alia*, of *Iskanian v. CLS Transportation Los Angeles, LLC* (2014) 59 Cal.4th 348, Defendant's inclusion of language purporting to deny to civil

1 courts and arbitrators alike any power to hear or decide any representative claim under the
2 California PAGA statute was and is void as against public policy and illegal;

3 b) Given, inter alia, the plain language of the Agreement making clear
4 that no Arbitrator can decide a representative PAGA claim brought by PLAINTIFF
5 GANGWER and the lack of consent of the State of California to mandatory arbitration of
6 such claims, there was and is no meeting of the minds or other evidence of mutual consent
7 that could require Plaintiff to maintain any representative PAGA claim he may bring in
8 arbitration.

9 c) PLAINTIFF GANGWER may maintain a representative PAGA action
10 in Court.

11
12 **SECOND CAUSE OF ACTION**

13 **For Violation of the Private Attorneys General Act**

14 **[Cal. Lab. Code §§ 2698, *et seq.*]**

15 **(By PLAINTIFFS and Against All Defendants)**

16
17 53. PLAINTIFFS reallege and incorporate by this reference, as though fully set
18 forth herein, the prior paragraphs of this Complaint.

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

3 55. PLAINTIFFS, and such persons that may be added from time to time who satisfy
4 the requirements and exhaust the administrative procedures under the Private Attorney General
5 Act, bring this Representative Action on behalf of the State of California with respect to
6 themselves and all individuals employed by Defendant in hourly, nonexempt positions in
7 California ("AGGRIEVED EMPLOYEES") during the time period of May 2, 2019 to June 15,
8 2025 (the "PAGA PERIOD").

9 56. On February 14, 2019 and on July 11, 2022, PLAINTIFFS gave written notice by
10 electronic mail to the Labor and Workforce Development Agency (the "Agency") and by
11 certified mail to the employer of the specific provisions of this code alleged to have been
12 violated as required by Labor Code § 2699.3. The statutory waiting period for PLAINTIFFS
13 to add these allegations to the Complaint has expired. As a result, pursuant to Section 2699.3,
14 PLAINTIFFS may now commence a representative civil action under PAGA pursuant to
15 Section 2699 as the proxies of the State of California with respect to all AGGRIEVED
16 EMPLOYEES as herein defined.

17 57. The policies, acts and practices heretofore described were and are an unlawful
18 business act or practice because DEFENDANT (a) failed to provide PLAINTIFFS and the
19 AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to properly record
20 and provide legally required meal and rest periods, (c) failed to pay minimum wages, (d) failed
21 to pay overtime wages and sick pay wages, (e) failed to reimburse employees for required
22 expenses and (f) failed to provide wages when due, all in violation of the applicable Labor Code
23 sections listed in Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 211, 216, 218, 221, 223, 225.5,
24 226, 226.3, 226.7, 227.3, 233, 246, 246.5, 510, 512, 551, 552, 558, 1174, 1174.5, 1182.12,
25 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2800, 2802, California Code of Regulations, Title 8,
26 Section 11040, and the applicable Wage Order(s), and thereby gives rise to civil penalties as a
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1 result of such conduct.¹ PLAINTIFFS hereby seek recovery of only civil penalties as prescribed
2 by the Labor Code Private Attorney General Act of 2004 as the representatives of the State of
3 California for the illegal conduct perpetrated on PLAINTIFFS and the AGGRIEVED
4 EMPLOYEES.

5 **PRAYER FOR RELIEF**

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

- 8
- 9 1. For a declaration that the provisions in the Agreement between PLAINTIFF
10 GANGWER and DEFENDANT purporting to ban maintenance of representative
11 PAGA actions in any forum—civil or arbitral—was and is void as against public
12 policy and illegal;
- 13 2. For a declaration that there is no evidence of an intention or meeting of the minds
14 the Agreement that would require that Plaintiff’s representative claims, if any, be
15 heard and decided in arbitration rather than in civil court;
- 16 3. For a declaration that Plaintiff may maintain a representative PAGA action in
17 Court;
- 18 4. On behalf of the State of California and with respect to all AGGRIEVED
19 EMPLOYEES:

20

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

23

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

26

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

1 5. For such other and further relief as the Court may deem just and proper.

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3 Dated: March 9, 2026

BLUMENTHAL NORDREHAUG BHOWMIK DE
BLOUW LLP

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6 By: _____


Christine T. LeVu

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9 *Attorneys for Plaintiffs*