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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO**

KIM MARIE SCHLOSSER, on behalf of herself
and all others similarly situated,

Plaintiff,

v.

RETAIL SERVICES WIS CORP, a Delaware
Corporation; and DOES 1-50, inclusive.

Defendants.

CASE NO.:

**REPRESENTATIVE ACTION
COMPLAINT:**

(1) **CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS GENERAL
ACT (LABOR CODE § 2698 *et seq.*)**

1 Plaintiff Kim Marie Schlosser (“Plaintiff”) on behalf of the State of California hereby brings
2 this PAGA Representative Action Complaint (“Complaint”) against Defendant Retail Services Wis
3 Corp (“Defendant”) and DOES 1 to 50 (collectively “Defendants”) and each of them, as follows:

4 **INTRODUCTION**

5 1. Defendants are a leading global inventory and data collection services company.
6 2. Plaintiff brings this PAGA representative action solely on behalf of the State of
7 California against Defendants for alleged violations of the California Labor Code and applicable
8 Wage Orders of the IWC.

9 3. As set forth below, Plaintiff alleges that Defendants failed to pay all overtime
10 compensation, Plaintiff further alleges that Defendants failed to pay all sick pay wages and all
11 reporting time pay at the proper legal rates. Moreover, Plaintiff alleges that Defendants’ meal and
12 rest period policies and practices failed to allow and permit aggrieved employees to take all compliant
13 and timely meal and rest periods or pay premium wages at the “regular rate of pay” in lieu thereof.
14 As a result, Plaintiff alleges that Defendants failed to provide aggrieved employees with accurate
15 written itemized wage statements and failed to timely pay all final wages upon separation of
16 employment.

17 **JURISDICTION**

18 4. This is a representative action brought pursuant to Labor Code § 2698 *et seq.* on
19 behalf of the State of California and the group of aggrieved employees defined as follows: “All
20 individuals who are or were employed as hourly, aggrieved, employees by Defendants, or their
21 predecessors or merged entities, in the State of California from November 8, 2021, and continuing to
22 the present (“aggrieved employees”).

23 5. Plaintiff, of behalf of the State of California brings this representative action pursuant
24 to Labor Code § 2698, *et seq.* seeking penalties for Defendants’ violation of California Labor Code
25 §§ 201-203, 204, 210, 226, 226(a), 226(e), 226.3, 226.7, 227.3, 246, 510, 512, 516, 1194, 1197.1,
26 1199, and all applicable IWC Wage Orders.

27 6. Based upon the foregoing, Plaintiff and all aggrieved employees are aggrieved
28 employees within the meaning of Labor Code § 2699, *et seq.*

7. This Court has jurisdiction over Defendants because, upon information and belief, Defendants have sufficient minimum contacts in California, or otherwise intentionally avail themselves to the State of California so as to render the exercise of jurisdiction over them by California courts consistent with the traditional notions of fair play and substantial justice.

VENUE

8. Venue is proper in this judicial district pursuant to California Code of Civil Procedure §§ 395(a) and 395.5, as most of the acts and omissions complained of herein occurred in the County of Sacramento. Defendants own, maintain offices, transact business, have an agent or agents within the County of Sacramento, and/or otherwise are found within the County of Sacramento, and Defendants are within the jurisdiction of this Court for purposes of service of process.

9. In determining proper venue for a PAGA Action, a Plaintiff is not limited to the county/counties in which he or she suffered Labor Code violations, but instead may file suit in any county in which an allegedly aggrieved employee suffered a Labor Code violation. (*See Crestwood Behavioral Health v. Superior Court* (2021) 60 Cal.App.5th 1069.)

PARTIES

10. At all relevant times herein, Plaintiff, who is over the age of 18, was and currently is a California resident residing in the State of California.

11. Plaintiff is informed and believes and thereon alleges that Defendant Retail Services Wis Corp is a Delaware corporation authorized to and doing business in California and is and/or was the legal employer of Plaintiff and the aggrieved employees during the applicable statutory periods. Plaintiff was, and is, a victim of Defendants' policies and/or practices complained of herein and has been deprived of the rights guaranteed to her by California Labor Code §§ 201-204, 210, 221, 226(a), 226(e), 226.3, 226.7, 227.3, 246, 510, 512, 516, 1194, 1194.2, 1197.1, 1199, and applicable Wage Orders.

12. Plaintiff is informed and believes, and based thereon alleges, that at all relevant times preceding the filing of the Complaint and continuing to the present, Defendants did (and continue to do) business in the State of California, County of Sacramento.

1 13. Plaintiff does not know the true names or capacities, whether individual, partner, or
2 corporate, of the defendants sued herein as DOES 1 to 50, inclusive, and for that reason, said
3 Defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to
4 amend this Complaint when such true names and capacities are discovered. Plaintiff is informed, and
5 believes, and thereon alleges, that each of said fictitious defendants, whether individual, partners, or
6 corporate, were responsible in some manner for the acts and omissions alleged herein, and
7 proximately caused Plaintiff and the aggrieved employees to be subject to the unlawful employment
8 practices alleged herein.

9 14. Plaintiff is informed, and believes, and thereon alleges, that at all times mentioned
10 herein, Defendants were and are the employers of Plaintiff and the aggrieved employees. At all times
11 herein mentioned, each of said Defendants participated in the doing of the acts hereinafter alleged to
12 have been done by the named Defendants; and furthermore, the Defendants, and each of them, were
13 the agents, servants, and employees of each and every one of the other Defendants, as well as the
14 agents of all Defendants, and at all times herein mentioned were acting within the course and scope
15 of said agency and employment. Defendants, and each of them, approved of, condoned, and/or
16 otherwise ratified each and every one of the acts or omissions complained of herein.

17 15. At all times mentioned herein, Defendants, and each of them, were members of and
18 engaged in a joint venture, partnership, and common enterprise, and acting within the course and
19 scope of and in pursuance of said joint venture, partnership, and common enterprise. Further, Plaintiff
20 alleges that all Defendants were joint employers for all purposes of Plaintiff and the aggrieved
21 employees.

22 **PAGA REPRESENTATIVE ACTION ALLEGATIONS**

23 16. Defendants are a leading global inventory and data collection services company.
24 Plaintiff worked for Defendant as a “Inventory Associate” from May 2022 until the present.
25 Defendant employed Plaintiff and other aggrieved employees (which include Inventory Associates,
26 Drivers, Inventory Supervisors, and all other non-exempt positions) throughout the State of
27 California. Plaintiff and other aggrieved employees were responsible for all aspects of Defendants’
28 business operations in California.

1 17. At all relevant times, Plaintiff and other aggrieved employees were not properly paid
2 at the correct overtime rate for all hours worked in excess of eight (8) hours per workday and/or forty
3 (40) hours per workweek. Although Plaintiff and other aggrieved employees regularly worked
4 overtime hours, they were not compensated at one and one-half times their “regular rate of pay”
5 because Defendant failed to properly calculate aggrieved employees’ overtime rate. For instance,
6 during the pay period 09/09/2022 to 09/15/2022, Plaintiff’s wage statement provides her overtime
7 premium as \$7.5750. However, Plaintiff’s overtime premium should have been \$7.625 based on her
8 base rate of \$15.25.

9 18. Further, Defendant also failed to include all forms of compensation, including, but not
10 limited to, non-discretionary bonuses, shift differentials, incentive pay, and other forms of
11 remuneration when calculating the “regular rate of pay” used for payment of overtime wages. As a
12 result, Plaintiff and other aggrieved employees were not paid for all overtime hours at the “regular
13 rate of pay.”

14 19. Under the California Labor Code (as well as the FLSA), courts have consistently held
15 that regularly paid non-discretionary bonuses (and other forms of pay) must be included in
16 determining an employee’s “regular rate of pay” for purposes of calculating overtime. (See *Haber v.*
17 *The Americana Corp.* 378 F. 2d 854, 855-856 (9th Cir. 1967) [holding that regularly paid efficiency
18 bonuses must be included in calculating the “regular rate”]; *Wang v. Chinese Daily News, Inc.* 435 F.
19 Supp. 2d 1042, 1055-1057 (C.D. Cal. 2006) [granting summary judgement to Plaintiff under
20 California and federal law on the grounds, that Defendant improperly calculated overtime by
21 excluding annual bonuses paid to employees from the “regular rate of compensation”].)

22 20. By their policy of requiring Plaintiff and the other aggrieved employees to work in
23 excess of eight (8) hours in a workday and/or forty (40) hours in a workweek without compensating
24 them at the lawful rate of one-half (1 1/2) their “regular rate of pay,” Defendant willfully violated the
25 provisions of Labor Code § 510 and the applicable Wage Orders.

26 21. Accordingly, to the extent permitted by law, Plaintiff and other aggrieved employees
27 are entitled to recover unpaid wages and penalties for violations of Labor Code §§ 204, 210, 510,
28 1197.1.

1 22. Moreover, at all relevant times, Defendant failed in its obligation to provide Plaintiff
2 and other aggrieved employees the legally required paid sick days at the legal “regular rate of pay”
3 pursuant to Labor Code §§ 246(a),(b).

4 23. Pursuant to Labor Code § § 246(a),(b), “[a]n employee who, on or after July 1, 2015,
5 works in California for the same employer for 30 or more days within a year from the commencement
6 of employment is entitled to paid sick days. . . at the rate of not less than one hour per every 30 hours
7 worked, beginning at the commencement of employment.” Additionally, Labor Code § 246(l)(1)
8 provides that paid sick time for non-exempt employees must be “calculated in the same manner as
9 the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not
10 the employee actually works overtime in that workweek.” Furthermore, Labor Code § 246(l)(2) states
11 that the paid sick time must be “calculated by dividing the employee’s total wages, not including
12 overtime premium pay, by the employee’s total hours worked in the full pay periods of the prior 90
13 days of employment.” Finally, Labor Code §246(i) requires employers to “provide an employee with
14 written notice that sets forth the amount of paid sick leave available, or paid time off leave an
15 employer provides in lieu of sick leave, for use on either the employee’s itemized wage statement
16 described in Section 226 or in a separate writing provided on the designated pay date with the
17 employee’s payment of wages.”

18 24. Here, at all relevant times, Defendants failed in its obligation to provide Plaintiff and
19 other aggrieved employees the legally required paid sick days at the “regular rate of pay” pursuant to
20 Labor Code §§ 246(a),(b). Instead, Defendants paid sick time at the aggrieved employees’ base rate
21 of pay, rather than the “regular rate of pay” as required by Labor Code §§ 246(l)(1-2).

22 25. Accordingly, to the extent permitted by law, Plaintiff and other aggrieved employees
23 are entitled to recover unpaid sick pay and penalties for violations of Labor Code § 246.

24 26. Next, at all relevant times, Defendants failed to pay Plaintiff and the aggrieved
25 employees all reporting time pay at the “regular rate of pay” due to its uniform payroll
26 policies/practices. Indeed, Defendants uniformly failed and continues to fail to pay Plaintiff and other
27 aggrieved employees for reporting time pay as required by California law. Despite presenting
28 themselves for work in the manner directed by Defendant but failed and continue to fail to pay for

1 half the usual or scheduled day's work at the regular rate of pay as required by Section 5A of the
2 applicable Wage Orders. See 8 Cal. Code Reg. § 11040, ¶ 5(A).

3 27. At all relevant times, Plaintiff and the aggrieved employees were denied compliant
4 and timely 30-minute off-duty meal periods as mandated by California law. Due to Defendant'
5 uniform meal period policies/practices and work demands; the aggrieved employees were often
6 unable to take timely and uninterrupted 30-minute first meal periods before the end of the fifth hour
7 of work.

8 28. Further, when the aggrieved employees worked in excess of 10.0 hours in a shift, they
9 were not always allowed and permitted to take a mandated second meal period before the end of the
10 tenth hour of work in violation of the Labor Code and applicable Wage Orders.

11 29. Additionally, the aggrieved employees were not properly paid meal period premiums
12 for missed or non-compliant meal periods at the "regular rate of pay" pursuant to *Ferra v. Loews*
13 *Hollywood Hotel, LLC* (2021) 11 5th 858 and Labor Code 226.7.

14 30. Accordingly, due to Defendant' uniform meal period practices, Plaintiff and aggrieved
15 employees were also regularly denied legally compliant meal periods in violation of Labor Code §§
16 226.7, 1512, 516, and applicable Wage Orders.

17 31. Moreover, at all relevant times, Plaintiff and the aggrieved employees were not
18 provided with all 10-minute rest periods for every four hours worked, or major fraction thereof due
19 to Defendant' uniform rest period policies/practices and work demands. As a result, the aggrieved
20 employees were and are routinely unable to take a net 10-minute duty-free rest periods for every
21 major fraction of four hours worked. This includes a second rest period for shifts in excess of six
22 hours, and a third rest period for shifts in excess of 10 hours in a workday.

23 32. Here, Defendants' rest period policy fails to conform with the Labor Code, which
24 requires the provision of a net 10-minute rest period for every four hours of work "or major fraction
25 thereof," including a second meal period for shifts of 8.0 hours and third meal periods for shifts in
26 excess of 10.0 hours.

27 33. Finally, the policy fails to provide for payment of rest period premium payments at
28 the "regular rate of pay" as required by Labor Code § 226.7. In practice, by not relieving all aggrieved

1 employees of all duties during rest periods, Defendant failed to provide legally compliant rest periods.
2 See *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal. 5th 257, 269 [concluding that “during rest
3 periods employers must relieve employees of all duties and relinquish control over how employees
4 spend their time.”]. In *Augustus*, the California Supreme Court expressly rejected the employers’
5 assertion that it could provide an on-duty rest period to employees who worked as security guards
6 and further explained “that employers [must] relinquish any control over how employees spend their
7 break time and relieve their employees of all duties.” *Id.* at 273.

8 34. Each time the aggrieved employees were unable to take a compliant rest period,
9 Defendants failed and continues to fail to adequately pay rest period premium payments at the
10 “regular rate of pay” as required by Labor Code § 226.7.

11 35. Accordingly, due to Defendants’ uniform rest period policies/practices and work
12 demands, the aggrieved employees were also regularly denied legally compliant rest breaks in
13 violation of Labor Code §§ 226.7, 512, and applicable Wage Orders.

14 36. As a result of Defendants failure to pay Plaintiff and the aggrieved employees all
15 overtime wages and sick pay, reporting time and meal and rest period premiums at the “regular rate
16 of pay,” Defendants issued wage statements which failed to accurately identify the gross wages
17 earned, the total hours worked, the net wages earned, and the correct corresponding number of hours
18 worked at each hourly rate, in violation of Labor Code § 226(a)(1, 2, 5, and 9).

19 37. In addition, Defendants’ wage statements independently fail to state the accurate
20 “applicable rates of pay and units” in violation of Labor Code § 226(a)(9).

21 38. Labor Code § 226.3 provides that “[a]ny employer who violates subdivision (a) of
22 Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per
23 employee per violation in an initial violation and one thousand dollars (\$1,000) per employee for
24 each violation in a subsequent citation, for which the employer fails to provide the employee a wage
25 deduction statement or fails to keep the required in subdivision (a) of Section 226.”

26 39. As a further result of Defendant’ failure to pay all overtime wages, sick pay and
27 reporting time wages, and meal and rest period premiums at the “regular rate of pay,” Defendants
28 also failed and continues to fail to pay the aggrieved employees all wages owed at their time of

1 separation from employment in violation of Labor Code §§ 201-203 and applicable Wage Orders.
2 Thus, aggrieved employees would be entitled to recover penalties under Labor Code § 2698 *et seq.*

3 **FIRST CAUSE OF ACTION**

4 **PRIVATE ATTORNEYS GENERAL ACT**

5 *(Plaintiff and Similarly Aggrieved Employees Against All Defendants)*

6 40. Plaintiff re-alleges and incorporates by reference each and every allegation set forth
7 in the preceding paragraphs.

8 41. Defendants have committed several Labor Code violations against Plaintiff and other
9 similarly situated aggrieved employees. Plaintiff, an “aggrieved employee” within the meaning of
10 Labor Code § 2698 *et seq.*, acting on behalf of the State of California, brings this representative action
11 against Defendants to recover the civil penalties due to Plaintiff, other similarly situated aggrieved
12 employees, and the State of California according to proof pursuant to Labor Code § 2699 (a) and (f)
13 including, but not limited to (1) \$100 for each initial violation and \$200 for each subsequent violation
14 per employee per pay period for those violations of the Labor Code for which no civil penalty is
15 specifically provided based on the following Labor Code violations:

16 (a) Defendants’ failure to pay all overtime wages at the “regular rate of pay” because
17 Defendants failed to include all forms of compensation, including, but not limited to, shift
18 differentials, non-discretionary bonuses, incentive pay, and other forms of remuneration.

19 (b) Defendants’ failure to pay all wages in a timely fashion in violation of Labor Code §
20 204;

21 (c) Defendants’ failure to pay all sick pay at the “regular rate of pay”;

22 (d) Defendants’ failure to pay all vacation and PTO wages at the correct final rate;

23 (e) Defendants’ failure to allow and permit legally compliant meal periods or compensation
24 at the “regular rate of pay” in lieu thereof;

25 (f) Defendants’ failure to allow and permit legally compliant rest periods or compensation
26 at the “regular rate of pay” in lieu thereof;

27 (g) Defendants’ failure to furnish legally compliant wage statements pursuant to Labor
28 Code § 226(a); and

1 (h) Defendants' failure to timely pay final wages to aggrieved employees at the time of
2 separation from employment were unlawful.

3 42. On or about November 8, 2022, Plaintiff notified Defendant Retail Services Wis Corp
4 ("Defendant") via certified mail, and the California Labor and Workforce Development Agency
5 ("LWDA") via its website of Defendant's violations of the California Labor Code § 2698 *et. seq.*
6 with respect to violations of the California Labor Code identified in Paragraph 41(a)-(h).

7 43. Now that sixty-five days (65) have passed from Plaintiff notifying Defendant of these
8 violations, Plaintiff has exhausted her administrative requirements for bringing a claim under the
9 Private Attorneys General Act with respect to these violations.

10 44. Plaintiff was compelled to retain the services of counsel to file this court action to protect
11 her interests and the interests of other similarly aggrieved employees, and to assess and collect the
12 civil penalties owed by Defendants. Plaintiff has therefore incurred attorneys' fees and costs, which
13 he is entitled to receive under California Labor Code § 2698 *et seq.*

14 **PRAYER FOR RELIEF**

15 **WHEREFORE**, Plaintiff prays for judgment on behalf of the State of California against
16 Defendants, as follows:

17 1. Upon the First Cause of Action, for civil penalties due to Plaintiff, other similarly
18 aggrieved employees, and the State of California according to proof pursuant to Labor Code § 2699
19 (a) and (f) including, but not limited to: (1) \$100 for each initial violation and \$200 for each
20 subsequent violation per employee per pay period for those violations of the Labor Code for which
21 no civil penalty is specifically provided under the Labor Code;

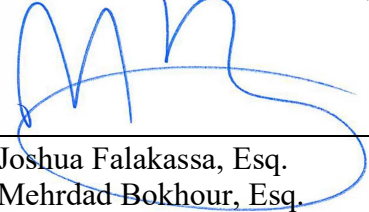
22 2. For attorneys' fees and costs as provided by Labor Code § 2698 *et seq.*, and Code
23 of Civil Procedure §1021.5; and

24 3. For such other and further relief, the Court may deem just and proper.

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Dated: June 5, 2023

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