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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

VERONICA SEGURA and DANIELLE OJEDA,
as private attorneys general,

Plaintiffs,

vs.

99 CENTS ONLY STORES LLC, a California
limited liability company; and DOES 1 through
50, inclusive,

Defendants.

Case No. 37-2023-00022802-CU-OE-CTL

**REPRESENTATIVE ACTION COMPLAINT
UNDER THE LABOR CODE PRIVATE
ATTORNEYS GENERAL ACT OF 2004**

DEMAND OVER \$25,000.00

1 As proxies for the State of California, Plaintiffs Veronica Segura and Danielle Ojeda submit this
2 representative action Complaint against Defendant, 99 Cents Only Stores LLC, and Does 1 through 50
3 (collectively, “Defendants”).

4 INTRODUCTION

5 1. Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code §§ 2698
6 et seq. (“PAGA”), this representative action Complaint seeks penalties and other relief for Defendants’
7 violations of the California Labor Code. Defendants’ systemic employment practices have deprived
8 aggrieved employees of the benefits and protections of Labor Code sections 201-204, 210, 218, 226,
9 226.3, 233, 246, 510, 512, 558, 1182.12, 1194, 1197, 1197.1, 1198, and 2802, among other provisions.¹

10 2. Plaintiffs are informed and believe that Defendants have jointly and severally acted
11 intentionally and with deliberate indifference and conscious disregard to the rights of employees by
12 failing to pay all minimum and overtime wages, failing to pay all sick pay wages, failing to provide
13 accurate itemized wage statements, and failing to reimburse necessary and reasonable business
14 expenses.

15 3. Defendants routinely fail to pay all wages, including minimum wages and overtime
16 wages, for all hours worked, including the time that Plaintiffs and other non-exempt employees spend to
17 maintain their work uniforms. Specifically, Plaintiffs and other non-exempt employees are required to
18 maintain and clean their work uniforms on their own time, without the payment of any wages for the
19 time spent maintaining and cleaning their uniforms.

20 4. Defendants also routinely fail to reimburse Plaintiffs and other employees for work-
21 related expenses, including for example for the costs associated with the maintenance and cleaning of
22 their work uniforms. Specifically, Plaintiffs and other employees also must maintain and clean their
23 work uniforms on their own time at their own expense, but they also are not reimbursed for the costs of
24 maintaining and cleaning the work uniforms.

25 5. Defendants also routinely underpay Plaintiffs and other non-exempt employees by
26 failing to correctly calculate their regular rates. Specifically, Defendants fail to consider all non-base
27

28

¹ Except as otherwise noted, all “Section” references are to the Labor Code.

hourly wages or other non-hourly, non-discretionary remuneration, including but not limited to shrink bonuses, when calculating the regular rate. Defendants thus underpay sick pay wages.

6. Because Plaintiffs and other non-exempt employees are not paid all of their wages, they also are neither timely paid their wages during employment nor timely paid their wages upon separation of employment. Similarly, as a result of Defendants' failure to pay for all hours worked and underpay sick pay wages, Plaintiffs and other non-exempt employees also receive itemized wage statements that inaccurately state the total hours worked, all applicable hourly rates in effect during the pay period, number of hours worked at each applicable hourly rate, gross wages earned, and net wages earned.

7. The Labor Code is broadly remedial in nature. Its laws serve an important public interest in establishing minimum working conditions and requirements in California. These labor standards protect employees from onerous terms and conditions of employment or exploitation by employers who have superior economic and bargaining power. Plaintiffs are informed and believe that Defendants have engaged in, among other things, a system of willful violations of the Labor Code by creating and maintaining policies, practices, and customs that knowingly deny its employees the above stated rights and benefits.

8. Defendants' pattern, practice, and uniform administration of corporate policy in violation of the Labor Code is unlawful. Proof of a common business practice or factual pattern will establish entitlement under Sections 201-204, 210, 218, 226, 226.3, 233, 246, 510, 512, 558, 1182.12, 1194, 1197, 1197.1, 1198, and 2802, applicable IWC Wage Orders, and Code of Civil Procedure section 1021.5 to recover applicable penalties, reasonable attorneys' fees, and costs of suit.

JURISDICTION AND VENUE

9. The Complaint seeks relief exceeding \$25,000.00. The Court has jurisdiction of Defendants' violations of Sections 201-204, 210, 218, 226, 226.3, 233, 246, 510, 512, 558, 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

10. Venue is proper in the County of San Diego. Defendants employ aggrieved employees in San Diego, California.

PARTIES

11. Plaintiff Segura began working for Defendants in or about April of 2019. Until her employment as an assistant manager ended on or about May 30, 2022, Plaintiff Segura was paid on an hourly basis as a non-exempt employee and also received non-base hourly wages or other non-hourly, non-discretionary remuneration, including but not limited to shrink bonuses. Plaintiff Segura worked in California for Defendants for 30 or more days within a year but was not paid sick pay wages at the regular rate of pay. Plaintiff Segura also was required to maintain and clean her work uniform on her own time and at her own expense. Plaintiff Segura was not reimbursed for the costs of maintaining or cleaning her work uniform. Plaintiff Segura also regularly worked more than eight hours in a workday. Plaintiff Segura was neither timely paid nor ever paid all sick pay wages due or all minimum wages or overtime wages for her work time spent maintaining and cleaning her work uniform. Plaintiff Segura also received itemized wage statements that inaccurately stated her total hours worked, all applicable hourly rates in effect during the pay period, number of hours worked at each applicable hourly rate, gross wages earned, and net wages earned.

12. Plaintiff Ojeda began working for Defendants in 2016. Until her employment as a cashier ended in November of 2022, Plaintiff Ojeda was paid on an hourly basis as a non-exempt employee. Plaintiff Ojeda also was required to maintain and clean her work uniform on her own time and at her own expense. Plaintiff Ojeda was not reimbursed for the costs of maintaining or cleaning her work uniform. Plaintiff Ojeda also regularly worked more than eight hours in a workday. Plaintiff Ojeda was neither timely paid nor ever paid all sick pay wages due or all minimum wages or overtime wages for her work time spent maintaining and cleaning her work uniform. Plaintiff Ojeda also received itemized wage statements that inaccurately stated her total hours worked, number of hours worked at each applicable hourly rate, gross wages earned, and net wages earned.

13. Plaintiffs are informed and believe that 99 Cents Only Stores LLC was and is a California limited liability company. Plaintiffs are informed and believe that at all times herein mentioned named defendants and Does 1 through 50, were and are corporations, business entities, individuals, or partnerships that are, were, or should have been licensed to do business in the State of California and actually doing business in the State of California. Based upon all the facts and

circumstances incident to Defendants' business, Defendants are subject to Sections 201-204, 210, 226, 226.3, 226.7, 233, 246, 510, 512, 558, 1182.12, 1194, 1198, and 2802.

14. Plaintiffs do not know the true names or capacities of the defendants sued herein as Does 1 through 50, whether individual, partner, or corporate, and for that reason, said defendants are sued under such fictitious names. Plaintiffs pray for leave to amend this Complaint when the true names and capacities are known. Plaintiffs are informed and believe that each of said fictitious defendants was responsible in some way for the matters alleged herein and proximately caused the illegal employment practices, wrongs, and injuries complained of herein.

15. At all times herein mentioned, each of said Defendants participated in the doing of the acts alleged herein. Defendants, and each of them, were the agents, servants, or employees of each of the other Defendants, as well as the agents of all Defendants, and were acting within the course and scope of said agency and employment.

16. Plaintiffs are informed and believe that at all times material hereto, each of said Defendants was the agent, employee, alter ego, or joint venture of, or was working in concert with, each of the other Defendants and was acting within the course and scope of such agency, employment, joint venture, or concerted activity. To the extent said acts, conduct, or omissions were perpetrated by certain Defendants, each of the remaining Defendants confirmed and ratified said acts, conduct, or omissions of the acting Defendants.

17. Plaintiffs are informed and believe that at all times material hereto each of the Defendants (i) aided and abetted the acts and omissions of each of the other Defendants in proximately causing the alleged harms, or (ii) were members of, engaged in, and acting within the course and scope of, and in pursuance of, a joint venture, partnership, or common enterprise.

PAGA ALLEGATIONS

18. Pursuant to PAGA, Plaintiffs sue as a proxy for the State of California. Plaintiffs seek penalties for Defendants' violations of Sections 201-204, 210, 218, 226, 226.3, 233, 246, 510, 512, 558, 1182.12, 1194, 1197, 1197.1, 1198, and 2802 committed against all aggrieved employees since March 24, 2022.

19. On or about March 21 and 24, 2023, Plaintiffs sent written notices to the Labor & Workforce Development Agency (“LWDA”) of Defendants’ violations of Sections 201-204, 210, 218, 226, 226.3, 233, 246, 510, 512, 558, 1182.12, 1194, 1197, 1197.1, 1198, and 2802. Plaintiffs simultaneously sent written notices to Defendants via certified mail. The LWDA has not elected to investigate the allegations. As such, pursuant to Section 2699(a) and (g), Plaintiffs seek recovery of all applicable penalties for Defendants’ violations against all aggrieved employees for the period described above.

FIRST CAUSE OF ACTION

Penalties for Labor Code Violation (Lab. Code §§ 2698 et seq.)

(By Plaintiffs as Proxies for the State Against All Defendants)

20. The preceding paragraphs are re-alleged and incorporated by this reference.

21. **Underpaid Minimum Wages:** For Plaintiffs and non-exempt employees, Sections 1182.12 and 1197 provide a minimum wage to be paid to employees and make unlawful the payment of a lesser wage. The applicable IWC Wage Order defines compensable time as “the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.” Cal. Code. Regs. tit. 8, § 11040(2)(K) (defining “Hours Worked”). California law thus generally requires that employers pay employees at least the minimum wage for all hours worked.

22. As a matter of policy and practice, Defendants fail to pay at least minimum wage or any wage for all hours worked by Plaintiffs and aggrieved employees, including the time that Plaintiffs and aggrieved employees spend to maintain their work uniforms. Specifically, Plaintiffs and aggrieved employees are required to maintain and clean work uniforms on their own time. As a matter of policy and practice, Plaintiffs and aggrieved employees are not paid any wages for these hours worked. Defendants thus owe unpaid minimum wages and violate Section 1197.

23. **Underpaid Overtime:** For Plaintiffs and non-exempt employees, Defendants were required to comply with Section 510 and the applicable IWC Wage Order. Section 510 and the applicable IWC Wage Order provide that “[a]ny work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of

work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee” and that “[a]ny work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee.” Section 1198 makes unlawful conditions of labor that are prohibited by the applicable IWC Wage Order.

24. As a matter of policy and practice, Defendants fail to pay all overtime wages for all overtime hours worked by Plaintiffs and aggrieved employees, including the time that Plaintiffs and aggrieved employees spend to maintain their work uniforms. Specifically, Plaintiffs and aggrieved employees are required to maintain and clean work uniforms on their own time. As a matter of policy and practice, Plaintiffs and aggrieved employees are not paid any wages for these hours worked. Defendants thus owe unpaid overtime wages and violate Section 510.

25. **Underpaid Sick Pay Wages:** For Plaintiffs and non-exempt employees, Section 246 provides that an employee is entitled to sick pay wages for use of accrued sick leave. Once accrued sick leave is used as paid sick time, an employee has a vested right to sick pay wages, which an employer must calculate and compensate based on one of two calculations: (i) “Paid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek,” or (ii) “Paid sick time for nonexempt employees shall 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.”

26. As a matter of policy and practice, Defendants fail to pay all sick pay wages to aggrieved employees. As discussed above, Plaintiffs and aggrieved employees earn non-base hourly wages or other non-hourly, non-discretionary remuneration, including but not limited to shrink bonuses, that Defendants fail to consider when calculating the regular rate for purposes of paying sick pay wages. Defendants thus underpay sick pay wages and violate Section 246.

27. **Failure to Timely Pay Wages Due:** Section 204 provides that wages are generally due and payable no later than seven days after the end of a pay period or at least twice during each calendar month, on days designated in advance as the regular paydays. Section 201 provides if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable

1 immediately. Section 202 provides that an employee is entitled to receive all unpaid wages no later than
2 72 hours after an employee quits his or her employment, unless the employee has given seventy-two
3 (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or
4 her wages at the time of quitting. Section 203 provides that if an employer willfully fails to pay wages
5 owed in accordance with Sections 201 and 202, then the wages of the employee shall continue as a
6 penalty from the due date, and at the same rate until paid, but the wages shall not continue for more than
7 thirty (30) days. that wages are due and payable twice during each calendar month, on days designated
8 in advance by the employer as the regular paydays. Consistent with Section 204, Section 246 also
9 provides that an employer shall provide payment for sick leave taken by an employee no later than the
10 payday for the next regular payroll period after the sick leave was taken.

11 28. As alleged herein and as a matter of policy and practice, Defendants fail to timely pay all
12 wages due during employment and upon the termination of employment. Based on Defendants' failure
13 to pay all minimum wages, overtime wages, and sick pay wages, Defendants fail to timely pay
14 aggrieved employees all due wages. On information and belief, Defendants are advised by skilled
15 lawyers and knew, or should have known, of the mandates of the Labor Code as it relates to Plaintiff's
16 allegations. Defendants thus violate Sections 201-204 by not timely paying all due wages.

17 29. **Failure to Provide Accurate Itemized Wage Statements:** Section 226(a) requires an
18 employer to furnish to its employees itemized wage statements that show accurate information,
19 including without limitation, all applicable hourly rates in effect during the pay period, the
20 corresponding number of hours worked at each hourly rate, gross wages earned, net wages earned, and
21 total hours worked.

22 30. As a matter of policy and practice, Defendants fail to provide accurate itemized wage
23 statements to aggrieved employees. Specifically, because of Defendants' minimum wage, overtime, and
24 sick pay violations, Defendants fail to furnish aggrieved employees with wage statements that
25 accurately show all applicable hourly rates in effect during the pay period, the corresponding number of
26 hours worked at each hourly rate, gross wages earned, net wages earned, and total hours worked.
27 Defendants thus violate Sections 226.

31. **Failure to Reimburse Business Expenses:** Section 2802 requires that an employer must reimburse employees for all necessary expenditures and losses incurred in the performance of their jobs. Section 2802 is intended to prevent employers from placing their operating expenses and cost of doing business on employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014).

32. As a matter of policy and practice, Defendants fail to reimburse aggrieved employees for necessary business expenses incurred in performing their work for Defendants. Specifically, Defendants require employees to maintain and clean their work uniforms at their own expense. Although Plaintiffs and other employees were expected to maintain and clean their work uniforms at their own expense, they were not reimbursed for their related expenses. Defendants thus violate Sections 2802.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment for themselves as proxies for the State against Defendants, jointly and severally, as follows:

1. Upon the First Cause of Action for penalties according to proof pursuant to Section 2699(a), (f), and (g), and for costs and attorneys' fees;

2. Upon each cause of action for attorneys' fees and costs as provided by Section 2699, Code of Civil Procedure section 1021.5, and any other applicable laws; and

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

DATED: May 26, 2023

DIVERSITY LAW GROUP, P.C.

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