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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **FOR THE COUNTY OF SACRAMENTO**

12 ALYSSA COULTER, on behalf of herself and
13 all others similarly situated,

14 Plaintiff,

15 v.

16 GAMESTOP INC, a Minnesota Corporation;
and DOES 1-50, inclusive.

17 Defendants.
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FILED/ENDORSED

SEP 29 2023

By: G. Galaviz
Deputy Clerk

CASE NO.: 23CV002568

**FIRST AMENDED PAGA
REPRESENTATIVE ACTION
COMPLAINT:**

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

1 Plaintiff Alyssa Coulter ("Plaintiff") on behalf of the State of California hereby brings this
2 PAGA Representative Action Complaint ("Complaint") against Defendant GameStop Inc.
3 ("Defendant") and DOES 1 to 50 (collectively "Defendants") and each of them, as follows:

4 **INTRODUCTION**

5 1. Defendant is a global, multichannel video game, consumer electronics and collectibles
6 retailer. Defendants operate more than 5,700 stores across 14 countries, with dozens of locations
7 across the State of California.

8 2. Plaintiff brings this PAGA representative action solely on behalf of the State of
9 California against Defendants for alleged violations of the California Labor Code and applicable
10 Wage Orders of the IWC.

11 3. As set forth below, Plaintiff alleges that Defendants failed to pay all overtime, sick,
12 vacation, PTO, and meal/rest premium pay at the appropriate "regular rate of pay." As a result of the
13 foregoing violations, Plaintiff alleges that Defendants failed to provide aggrieved employees with
14 accurate written itemized wage statements, failed to pay timely wages during employment, and failed
15 to timely pay all final wages upon separation of employment.

16 **JURISDICTION**

17 4. This is a representative action brought pursuant to Labor Code § 2698 *et seq.* on
18 behalf of the State of California and the group of aggrieved employees defined as follows: "All
19 individuals who are or were employed as hourly, aggrieved, employees by Defendants, or their
20 predecessors or merged entities, in the State of California from March 22, 2022, and continuing to
21 the present ("aggrieved employees)."

22 5. Plaintiff, of behalf of the State of California brings this representative action pursuant
23 to Labor Code § 2698, *et seq.* seeking penalties for Defendants' violation of California Labor Code
24 §§ 201-204, 210, 221, 226(a), 226(e), 226.3, 226.7, 227.3, 246, 510, 512, 516, 1197.1, 1194, 1199,
25 and all applicable IWC Wage Orders.

26 6. Based upon the foregoing, Plaintiff and all aggrieved employees are aggrieved
27 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 GameStop, Inc., is a Minnesota 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.

13. Plaintiff does not know the true names or capacities, whether individual, partner, or

1 corporate, of the defendants sued herein as DOES 1 to 50, inclusive, and for that reason, said
2 Defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to
3 amend this Complaint when such true names and capacities are discovered. Plaintiff is informed, and
4 believes, and thereon alleges, that each of said fictitious defendants, whether individual, partners, or
5 corporate, were responsible in some manner for the acts and omissions alleged herein, and
6 proximately caused Plaintiff and the aggrieved employees to be subject to the unlawful employment
7 practices alleged herein.

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

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

21 **PAGA REPRESENTATIVE ACTION ALLEGATIONS**

22 16. Defendants are a global, multichannel video game, consumer electronics and
23 collectibles retailer. GameStop operates more than 5,700 stores across 14 countries, with dozens of
24 locations across the State of California.

25 17. Plaintiff started working for Defendants on or about August 12, 2015, as a aggrieved
26 employee until her separation from employment on or about October 31, 2022. Plaintiff and other
27 aggrieved employees (including, but not limited to, guest advisors, keyholders, retail store managers,
28 assistant managers, assistant store leader, and all other aggrieved positions) were responsible for all

1 aspects of Defendants' business in the state of California. However, in these roles Plaintiff and other
2 aggrieved employees were often not afforded all protections and rights conferred under the California
3 Labor Code and applicable Wage Orders.

4 18. First, at all relevant times, Plaintiff and other aggrieved employees worked regular
5 shifts that lasted longer than 8.0 hours in a workday and resulted in Plaintiff and other aggrieved
6 employees regularly working more than 40 hours in a workweek. However, upon information and
7 belief, aggrieved employees were not properly paid at the correct overtime rate for all overtime hours
8 worked due to Defendants' uniform failure to include all forms of compensation/renumeration,
9 including, but not limited to, non-discretionary bonus payments, commission, and incentive pay and
10 other renumeration in calculating the "regular rate of pay" for purposes of overtime compensation.

11 19. Under the California Labor Code (as well as the FLSA), courts have held that regularly
12 paid non-discretionary bonuses must be included in determining an employee's "regular rate of pay"
13 for purposes of calculating overtime. (See *Haber v. The Americana Corp.* 378 F. 2d 854, 855-856
14 (9th Cir. 1967) [holding that regularly paid efficiency bonuses must be included in calculating the
15 "regular rate"]; *Wang v. Chinese Daily News, Inc.* 435 F. Supp. 2d 1042, 1055-1057 (C.D. Cal. 2006)
16 [granting summary judgement to Plaintiff under California and federal law on the grounds, that
17 Defendant improperly calculated overtime by excluding annual bonuses paid to employees from the
18 "regular rate of compensation"]. see *Walling v. Youngerman-Reynolds Hardwood Co.* (1945) 65 S.Ct.
19 1242, 1245. ("The regular rate by its very nature must reflect all payments which the parties have
20 agreed shall be received regularly during the workweek, exclusive of overtime payments. It is not an
21 arbitrary label chosen by the parties; it is an actual fact. Once the parties have decided upon the
22 amount of wages and the mode of payment the determination of the regular rate becomes a matter of
23 mathematical computation, the result of which is unaffected by any designation of a contrary 'regular
24 rate' in the contracts."); see also 29 CFR §§ 778.110 ("production bonus") and 778.111 ("piece-
25 rate").)

26 20. At all relevant times, Defendants consistently paid Plaintiff and other aggrieved
27 employees' non-discretionary compensation as well as overtime pay, however these forms of
28 compensation were uniformly omitted when calculating aggrieved employees' regular rate of pay for

1 overtime purposes.

2 21. Labor Code § 510 requires an employer to compensate an employee who works more
3 than eight (8.0) hours in one workday, forty (40.0) hours in a workweek, and for the first eight (8.0)
4 hours worked on the seventh consecutive day, no less than one and one-half times (1 1/2) the regular
5 rate of pay. In addition, Labor Code § 510 obligates employers to compensate employees at no less
6 than twice the regular rate of pay when an employee works more than twelve (12.0) hours in a
7 workday or more than eight (8.0) hours on the seventh consecutive day of work. Pursuant to Section
8 3 of the applicable Wage Orders, aggrieved employees shall not be employed more than eight (8.0)
9 hours in any workday or more than 40.0 hours in any workweek unless the employee receives one
10 and one-half (1 1/2) times such employee's regular rate of pay for all hours worked over 40 hours in
11 the workweek.

12 22. By their policy of requiring aggrieved employees to work in excess of eight (8) hours
13 in a workday and/or forty (40.0) hours in a workweek without compensating them at the rate of one-
14 half (1 1/2) their regular rate of pay, GameStop willfully violated the provisions of Labor Code § 510
15 and the applicable Wage Orders.

16 23. Similarly, Defendants also failed in its obligation to provide Plaintiff and other
17 aggrieved employees the legally required paid sick days at the "regular rate of pay" pursuant to Labor
18 Code §§ 246(a),(b), which requires that "[a]n employee who, on or after July 1, 2015, works in
19 California for the same employer for 30 or more days within a year from the commencement of
20 employment is entitled to paid sick days. . . at the rate of not less than one hour per every 30 hours
21 worked, beginning at the commencement of employment." Labor Code § 246(l)(1) provides that paid
22 sick time for aggrieved employees must be "calculated in the same manner as the regular rate of pay
23 for the workweek in which the employee uses paid sick time, whether or not the employee actually
24 works overtime in that workweek."

25 24. Additionally, Labor Code § 246(l)(2) states that the paid sick time must be "calculated
26 by dividing the employee's total wages, not including overtime premium pay, by the employee's total
27 hours worked in the full pay periods of the prior 90 days of employment." Finally, Labor Code § 246(i)
28 requires employers to "provide an employee with written notice that sets forth the amount of paid

1 sick leave available, or paid time off leave an employer provides in lieu of sick leave, for use on either
2 the employee's itemized wage statement described in Section 226 or in a separate writing provided
3 on the designated pay date with the employee's payment of wages."

4 25. Here, at all relevant times, Defendants failed in its obligation to provide Plaintiff and
5 other aggrieved employees the legally required paid sick days at the "regular rate of pay," including
6 all forms of compensation, pursuant to Labor Code §§ 246(a),(b). As such, Defendants paid sick time
7 below her base rate of pay, rather than the "regular rate of pay" as required by Labor Code §§
8 246(l)(1-2).

9 26. Moreover, at all relevant times, the Defendants utilized a policy and practice through
10 which Plaintiff and other aggrieved employees accrued vacation time and/or Paid Time Off ("PTO")
11 hours. However, on the occasions when Plaintiff and other aggrieved employees had accrued but
12 unused vacation hours or other PTO upon separation of employment, Defendants failed to pay for
13 these earned wages and, further, failed to pay for vested and unused vacation time and PTO at the
14 "final rate of pay" as required by Labor Code § 227.3.

15 27. Furthermore, at all relevant times, Plaintiff and other aggrieved employees were
16 denied complaint and timely 30-minute off-duty meal periods as mandated by California law. As a
17 result of Defendants' uniform meal period policies/practices and operational requirements, Plaintiff
18 and other aggrieved employees were often unable to take timely and uninterrupted 30-minute first
19 meal periods before the end of the fifth hour of work. Moreover, at all relevant times, when Plaintiff
20 and other aggrieved employees worked in excess of 10.0 hours in a shift, they were not allowed and
21 permitted to take a mandated and timely second meal period before the end of the tenth hour of work
22 in violation of the Labor Code and applicable Wage Orders.

23 28. Importantly, Plaintiff and other aggrieved employees were not provided meal period
24 premiums at the "regular rate of pay" for their missed or non-complaint meal periods pursuant to
25 Labor Code § 226.7 and *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 5th 858.

26 29. Moreover, at all relevant times, Plaintiff and other aggrieved employees were also not
27 provided with 10 minutes of net rest period time for every 4 hours worked, or major fraction thereof
28 as mandated by California law. Specifically, in light of the stringent work demands imposed by

1 Defendants, Plaintiff and other aggrieved employees were often unable to take complaint and
2 uninterrupted rest periods of 10 minutes time for every 4 hours worked, or major fraction thereof. On
3 occasions when Plaintiff and other aggrieved employees worked in excess of 10.0 hours in a shift,
4 Defendants failed to authorize and/or permit a third mandated rest break. By not relieving all
5 aggrieved employees of all duties during rest periods, Defendants failed to provide legally compliant
6 rest periods. See *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal. 5th 257, 269 [concluding that
7 “during rest periods employers must relieve employees of all duties and relinquish control over how
8 employees spend their time.”] (Emphasis added). In *Augustus*, the California Supreme Court
9 expressly rejected the employers’ assertion that it could provide an on-duty rest period to employees
10 who worked as security guards and further explained “that employers [must] relinquish any control
11 over how employees spend their break time and relieve their employees of all duties.” *Id.* at 273.

12 30. Importantly, each time aggrieved employees were unable to take a compliant rest
13 period, Defendants failed and continues to fail to adequately pay rest period premium payments at
14 the “regular rate of pay” as required by Labor Code § 226.7.

15 31. As a result of the above Labor Code violations, at all relevant times, Defendants also
16 failed to comply with the mandates of Labor Code §§ 204 and 210 regarding the timing of the
17 payment of wages to Plaintiff and other aggrieved employees. Therefore, Plaintiff would be entitled
18 to penalties pursuant to Labor Code § 2698 *et seq.*

19 32. As a result of Defendants’ failure to pay Plaintiff and other aggrieved employees for
20 all overtime, meal and rest period premiums, sick pay, vested vacation hours and PTO at the “regular
21 rate of pay,” Defendants issued wage statements which failed to accurately identify the gross wages
22 earned, the total hours worked, the net wages earned, and the correct corresponding number of hours
23 worked at each hourly rate, in violation of Labor Code § 226(a)(1, 2, 5, and 9).

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

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2 34. Finally, as a result of Defendants' failure to pay all overtime, sick pay, vacation hours,
3 PTO and meal/rest period premiums at the "regular rate of pay," Defendants also failed and continues
4 to fail to pay the aggrieved employees all wages owed at their time of separation from employment
5 in violation of Labor Code §§ 201-203. and applicable Wage Orders. Thus, aggrieved employees
6 would be entitled to recover penalties under Labor Code § 2698 *et seq.*

7 **FIRST CAUSE OF ACTION**

8 **PRIVATE ATTORNEYS GENERAL ACT**

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

10 35. Plaintiff re-alleges and incorporates by reference each and every allegation set forth
11 in the preceding paragraphs.

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

20 (a) Defendants' failure to pay all overtime wages at the "regular rate of pay" because
21 Defendants failed to include all forms of compensation, including, but not limited to, shift
22 differentials, non-discretionary bonuses, incentive pay, and other forms of remuneration.

23 (b) Defendants' failure to pay all wages in a timely fashion in violation of Labor Code §
24 204;

25 (c) Defendants' failure to pay all sick pay at the "regular rate of pay";

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

27 (e) Defendants' failure to allow and permit legally compliant meal periods or compensation
28 at the "regular rate of pay" in lieu thereof;

1 (f) Defendants' failure to allow and permit legally compliant rest periods or compensation
2 at the "regular rate of pay" in lieu thereof;

3 (g) Defendants' failure to furnish legally compliant wage statements pursuant to Labor
4 Code § 226(a); and

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

7 37. On or about March 22, 2023, Plaintiff notified Defendant GameStop, Inc. ("Defendant")
8 via certified mail, and the California Labor and Workforce Development Agency ("LWDA") via its
9 website of Defendant's violations of the California Labor Code § 2698 *et. seq.* with respect to
10 violations of the California Labor Code identified in Paragraph 34(a)-(h).

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

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

18 **PRAYER FOR RELIEF**

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

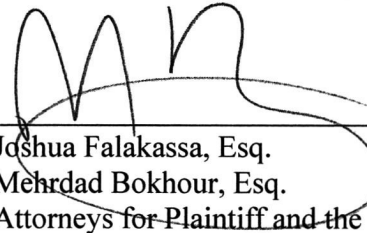
21 1. Upon the First Cause of Action, for civil penalties due to Plaintiff, other similarly
22 aggrieved employees, and the State of California according to proof pursuant to Labor Code § 2699
23 (a) and (f) including, but not limited to: (1) \$100 for each initial violation and \$200 for each
24 subsequent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

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

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

1 Dated: September 29, 2023

FALAKSSA LAW, P.C.
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3
4 By: 

Joshua Falakassa, Esq.

Mehrdad Bokhour, Esq.

Attorneys for Plaintiff and the Aggrieved Employees

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