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On Behalf of Himself, Other Aggrieved Employees,
and the General Public

SUPERIOR COURT FOR THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

DESMOND MARBLEY, an individual, on behalf of himself, all other aggrieved employees, and the general public,

Plaintiff,

vs.

SAS RETAIL SERVICES, LLC, a Delaware Limited Liability Company; and DOES 1 through 25, inclusive,

Defendants.

CASE NO. 24STCV06509
(Assigned to Honorable Judge Bruce G. Iwasaki in Dept. 50)

FIRST AMENDED COMPLAINT FOR:

1. **CIVIL PENALTIES UNDER LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF 2004, LABOR CODE 2698, ET. SEQ**

Plaintiff DESMOND MARBLEY, an individual, hereby files this Complaint ("Complaint") against Defendant SAS RETAIL SERVICES, LLC, a Delaware Limited Liability Company, and, DOES 1 through 25, inclusive, (hereinafter collectively, "SAS" or "Defendants"). Plaintiff, in his representative capacity, is informed and believes and on the basis of that information and belief alleges as follows:

INTRODUCTION

1. This representative lawsuit challenges Defendants' employment practices with respect to their non-exempt, hourly workers employed in the State of California who were situated, assigned, or placed at various food locations or establishments by SAS and travel to SAS's customers' retail locations (hereinafter "Aggrieved Employees"), based on Defendants' policy and practice of failing, among other things, to provide legally compliant meal and rest breaks, denying earned wages, including overtime pay, and failing to provide accurate wage statements from January 9, 2023 to the present ("Relevant Time Period"). In particular, Defendants fail to provide timely and adequate meal and rest breaks, fail to timely compensate employees for all wages earned, and fail to properly and accurately calculate overtime and report wages earned, hours worked, and wage rates, and failed to reimburse for necessary business expenses.

2. At all times relevant hereto, and with certain defined exceptions, Defendants' compensation scheme did not fully compensate Plaintiff with at least minimum wages and/or designated rates for all hours worked.

3. At all times relevant hereto, and with certain defined exceptions, Defendants' compensation scheme did not fully compensate Plaintiff with overtime compensation for all overtime hours worked.

4. At all times relevant hereto, and as a matter of policy and/or practice, Defendants failed to provide Plaintiff with adequate off-duty meal periods and meal period compensation in violation of Labor Code sections 226.7, 512, and 516 and IWC Wage Order No. 4 section 11.

5. At all times relevant hereto, and as a matter of policy and/or practice, Defendants failed to provide Plaintiff with paid rest periods and rest period compensation in violation of Labor Code sections 226.7 and 516 and IWC Wage Order No. 4 section 12.

6. At all times relevant hereto, and as a matter of policy and/or practice, Defendants' knowingly and intentionally utilized a timekeeping system, which failed to compensate Plaintiff for all hours worked.

7. At all times relevant hereto, and as a matter of policy and/or practice, Defendants knowingly and intentionally provided Plaintiff with wage statements that, among others, do not show all wages earned, all hours worked, or all applicable rates.

8. At all times relevant hereto, and as a matter of policy and/or practice, Defendants failed to maintain documentation of the actual hours worked each day by Plaintiff, all wages earned, and meal breaks taken in violation of Labor Code sections 1174 and IWC Wage Order No. 4 section 11.

9. At all times relevant hereto, and as a matter of policy and/or practice, Defendants failed to pay Plaintiff all wages due and owing upon termination of employment including, but not limited to, payment of wages for missed meal and rest periods compensation.

10. In this case, Plaintiff seeks civil penalties established by Labor Code section 2699, the Private Attorneys General Act ("PAGA"), against Defendants for their unlawful employment practices.

PARTIES

Plaintiff Desmond Marbley

11. Plaintiff DESMOND MARBLEY is an individual over the age of eighteen (18) and is now and/or at all relevant times mentioned in this Complaint was a resident and domiciliary of the State of California. Plaintiff commenced his employment with Defendants in or around July 2023 and was terminated on or around January 3, 2024. Throughout his employment with SAS, Plaintiff was categorized and classified as a non-exempt, hourly employee and maintained the position of Merchandiser throughout his employment with SAS.

Defendant SAS Retail Services, LLC

12. Plaintiff is informed and believes and based thereon alleges that Defendant SAS Retail Services, LLC, is a Delaware Limited Liability Company and now and/or at all times mentioned in this complaint, was licensed to do business, and actually doing business in the state of California as SAS Retail Services, LLC. SAS is in the business of providing merchandising solutions for client

retailers throughout the United States including but not limited to, big chain grocery stores like Food 4 Less and Ralphs. SAS assigns employees, including Plaintiff, to travel to SAS's customers' retail locations including but not limited to retail stores throughout Los Angeles, Orange County, and the Inland Empire and assist the retail client with its merchandising display needs and with replenishing grocery aisles with new item inventory or restocking items that are, for example, outdated or discontinued.

Does 1 through 25

13. DOES 1 through 25 inclusive are now and/or at all times mentioned in this Complaint were, licensed to do business and/or actually doing business in the State of California. Plaintiff does not know the true names or capacities, whether individual, partner, or corporate, of DOES 1 through 100, inclusive and for that reason, DOES 1 through 25 are sued under such fictitious names pursuant to California Code of Civil Procedure, section 474. Plaintiff will seek leave of court to amend this Complaint to allege such names and capacities as soon as they are ascertained. DOES 1 through 25 are believed to be business entities who were also co-employers of the Plaintiff and the other aggrieved employees.

All Defendants

14. Plaintiff is informed and believes and based thereon alleges that at all times herein mentioned, all Defendants, and each of them, were and are the agents, servants, employees, joint venturers, and/or partners of each of the other Defendants, and were, at all such times, acting within the course and scope of said employment and/or agency; furthermore, that each and every Defendant herein, while acting as a high corporate officer, director and/or managing agent, principal and/or employer, expressly directed, consented to, approved, affirmed and ratified each and every action taken by the other co-Defendants, as herein alleged and was responsible in whole or in part for the matters referred to herein.

15. Plaintiff is informed and believes and based thereon alleges that at all times herein mentioned, Defendants, and each of them, proximately caused Plaintiff, all others similarly situated and the general public to be subjected to the unlawful practices, wrongs, complaints, injuries and/or damages alleged in this Complaint.

16. Plaintiff is informed and believes and based thereon alleges that Defendants, and each of them, are now and/or at all times mentioned in this Complaint were members of and/or engaged in a joint venture, partnership, and common enterprise, and were acting within the course and scope of, and in pursuit of said joint venture, partnership, and common enterprise and, as such were co-employers of the Plaintiff and the other aggrieved employees.

17. Plaintiff is informed and believes and based thereon alleges that Defendants, and each of them, at all times mentioned in this Complaint, concurred with, contributed to, approved of, aided and abetted, condoned and/or otherwise ratified, the various acts and omissions of each and every one of the other Defendants in proximately causing the injuries and/or damages alleged in this Complaint.

JURISDICTION AND VENUE

18. This Court has jurisdiction over all causes of action herein pursuant to the California Constitution, Article VI, § 10, Code of Civil Procedure § 410.10 and Business and Professions Code § 17203. Venue is proper in this Court under Code of Civil Procedure §§ 395 and 395.5 because Defendants operate in this County, Plaintiff resides in and/or worked in this county and the injuries that are the subject of this lawsuit arose in this county.

FACTUAL ALLEGATIONS

Background

19. Plaintiff DESMOND MARBLEY commenced his employment with Defendants in or around July 2023 and was terminated from SAS in or around January of 2024. Throughout his employment with SAS, Plaintiff was categorized and classified as a non-exempt, hourly employee and maintained the position of Merchandiser throughout his employment with SAS. Plaintiff typically worked five days a week and his shifts were scheduled to be 8 hours in length. SAS would assign Plaintiff - and Plaintiff would travel to - various supermarket locations throughout Los Angeles County, Orange County, and the Inland Empire on behalf of SAS. Plaintiff would usually commence work at these supermarket locations in the evening hours, approximately one hour before the stores close for business and he – like other Aggrieved Employees - would work throughout the evening and into the early hours of the day organizing display entrances and restocking aisles. Plaintiff would work Monday through Friday, usually maintained the scheduled hours of 10:00 p.m. to about 6:30

a.m.

20. Our investigation has revealed that SAS utilizes a "rounding" mechanism with respect to its timekeeping system for purposes of processing payroll which results in the underpayment of wages and that use of a rounding system is not in accordance with the prevailing wage and hour laws in California.

21. Specifically, during the majority of the Relevant Time Period, Aggrieved Employees including Plaintiff were directed to record their hours of work on a timesheet at the conclusion of the day or week and would submit whole round numbers for pay purposes. The handwritten timesheets would also reveal instances of missed, shortened, and/or late meal periods but the Company would automatically deduct time from Aggrieved Employees' and Plaintiff's overall pay to artificially account for a supposed compliant meal break. More recently, and starting approximately in December of 2023, SAS now requires Aggrieved Employees including Plaintiff to utilize their personal cellphones to record their clock in and clock out times on a specific application.

22. Throughout his tenure with Defendants, Plaintiff was paid by the hour, eligible for overtime payment, and entitled to other forms of protections and benefits to California hourly employees.

Defendants' Failure to Reimburse For Necessary Business Expenditures

23. Merchandiser Employees, including Plaintiff, would use their personal vehicles to travel to different grocery stores located in Los Angeles, Orange County, and the Inland Empire – grocery stores that hired SAS and as such were SAS's business clients – to organize display entrances and replenish grocery aisles with new item inventory or restocking items that are, for example, outdated or discontinued. Plaintiff and Aggrieved Employees would normally conduct their work after the grocery or retail establishment was closed for business. At the business establishment, SAS directs Aggrieved Employees, including Plaintiff, to use their personal phones to receive their assignments and hotel information, if they were traveling far away via text message. During the majority of the Relevant Time Period, Aggrieved Employees including Plaintiff were directed to record their hours of work on a handwritten timesheet at the conclusion of the day or week and would submit whole round numbers for pay purposes. More recently, starting approximately in December of 2023, SAS required

Plaintiff and Aggrieved Employees to use their personal cellphones to record their clock in and clock out times from work on a specific mobile application.

24. Aggrieved Employees, including Plaintiff, are not reimbursed for usage of their personal vehicles and the associated gas to travel to, between, and from SAS's grocery store clients in connection with their work. Defendants have actual and constructive knowledge that Aggrieved Employees, like Plaintiff, travel to multiple locations throughout Los Angeles County and Orange County with their own personal vehicles as SAS provides a schedule outlining the various establishments and stores that Plaintiff and Aggrieved Employees need to travel to and service. SAS does not provide Aggrieved Employees, including Plaintiff, with a company-vehicle nor do they maintain a fleet of cars to service their clients. Lastly, in or around September 2023, SAS stopped reimbursing Plaintiff and other Aggrieved employees, for travel lodging expenses which required Plaintiff and other Aggrieved employees to pay out of pocket for hotel expenses while traveling to different SAS client locations.

25. Plaintiff is therefore informed and believes and based thereon alleges that as a matter of policy and/or practice, SAS fails to reimburse Aggrieved Employees on a number of items that are necessary for Aggrieved Employees, including Plaintiff, to perform their work duties for Defendants.

Defendants' Failure to Provide Adequate and Timely Meal and Rest Breaks

26. Aggrieved Employees, including Plaintiff, are also not provided with legally compliant meal periods and rest breaks, as they were often not made available due to the press of work and as a result of Defendants' scheduling practices. Aggrieved Employees, including Plaintiff, operate by themselves and work in isolation; they do not work in teams or crews. Further, Aggrieved Employees, including Plaintiff, take their mandated breaks on premises. SAS does not maintain any schedule or system to ensure that Aggrieved Employees, including Plaintiff, are provided with statutorily-compliant meal and rest periods. Similarly, SAS directs Plaintiff and other Aggrieved Employees to be ready to return to work to assist. Finally, given that the majority of shifts take place at SAS's customer locations and well after normal business hours, Aggrieved Employees including Plaintiff are practically confined to the space where they work. As a result, rest breaks are truly never "duty free" and likewise are cut short due to the press of work.

27. Plaintiff is further informed and believes and based thereon alleges that Defendants rarely, if ever, issue any compensation to Aggrieved Employees for missed, late or shortened meal and/or rest breaks.

28. Plaintiff is informed and believes and based thereon alleges that as a matter of policy and/or practice, Defendants routinely failed to provide their non-exempt employees, including Plaintiff and other Aggrieved Employees, with meal periods during which they were relived of all duties. Defendants did this by requiring Plaintiff and the other non-exempt employees to essentially work through their meal periods.

29. Specifically, throughout the Relevant Time Period, Defendants regularly:

a. Failed to provide Plaintiff and the other aggrieved employees with a first meal period of not less than thirty (30) minutes during which they were relieved of all duty before working more than five (5) hours;

b. Failed to provide Plaintiff and other aggrieved employees with a second meal break of not less than (30) minutes during which they were relieved of all duty before working more than ten (10) hours; and

c. Failed to pay Plaintiff and the other aggrieved employees one hour of pay at their regular rate of compensation for each workday that a meal period was not provided.

30. Plaintiff is further informed and believes and based thereon alleges that as a matter of policy and/or practice, Defendants routinely failed to provide their non-exempt employees, including Plaintiff and other aggrieved Employees, with rest breaks during which they were relived of all duties. Defendants did this by requiring Plaintiff and the other non-exempt employees to essentially work through their rest breaks.

31. Specifically, throughout the Relevant Time Period, Defendants regularly:

a. Failed to provide paid rest periods of ten (10) minutes during which Plaintiff and the other aggrieved employees were relieved of all duty for each four (4) hours of work;

b. Failed to compensate Plaintiff and the other aggrieved employees for break time when breaks were taken; and

c. Failed to pay Plaintiff and the other aggrieved employees one (1) hour of pay at their regular rate of compensation for each workday that a rest period was not permitted.

32. At all times relevant hereto, Labor Code section 226.7 and IWC Wage Order, number 4, section 12 required employers to authorize, permit, and provide a ten (10) minute paid rest for each four (4) hours of work, during which employees are relieved of all duty.

33. At all times relevant hereto, Labor Code Section 226.7(b) and IWC Wage Order, number 4, section 12 required employers to pay one hour of additional pay at the regular rate of compensation for each employee and each workday that a proper rest period is not provided.

34. Throughout the Relevant Time Period, Plaintiff and the other aggrieved employees were routinely denied the meal and rest breaks they were entitled to under California law.

Defendants' Failure to Pay Minimum Wages, including Overtime Payment

35. IWC Wage Order, number 4 defines "hours worked" to mean "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."

36. Labor Code section 1182.12 and IWC Wage Order, number 4, section 4 formerly provided that on and after January 1, 2008, the minimum wage shall be not less than eight dollars ($8.00) per hour.

37. Labor Code section 1182.12 and IWC Wage Order, number 4, section 4 provide that on and after July 1, 2014, the minimum wage for all industries shall be not less than nine dollars ($9) per hour, that on and after January 1, 2016, the minimum wage for all industries shall be not less than ten dollars ($10) per hour, that on and after January 1, 2017, the minimum wage for all industries shall be not less than ten dollars and fifty cents ($10.50) per hour, and that on and after January 1, 2018, the minimum wage for all industries shall be not less than eleven dollars ($11) per hour,

38. Labor Code section 1194(a) provides in relevant part: "Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage, including interest thereon, reasonable attorney's fees, and costs of suit."

39. Labor Code section 1194.2(a) provides in relevant part: "In any action under Section 1193.6 or Section 1194 to recover wages because of the payment of a wage less than the minimum

wage fixed by an order of the commission, an employee shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon."

40. Labor Code section 1197 provides: "The minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful."

41. Defendants' Aggrieved Employees, including Plaintiff, are paid on an hourly basis for their time spent working. Hours worked include, but are not limited to, all hours that an employee is permitted or suffered to work including, but not limited to, off-the-clock work that an employer either knew or should have known that an employee was performing.

42. As a matter of policy and/or practice, Defendants routinely suffered or permitted their Aggrieved Employees, including Plaintiff, to work portions of the day or night during which they were subject to Defendants' control, but Defendants failed to compensate them. As a matter of policy and/or practice, SAS compensates Plaintiff and Aggrieved Employees by only considering the time the Aggrieved Employee is at the customer location as hours worked for payroll purposes. Aggrieved Employees, including Plaintiff, typically cover a large geographical territory, to service SAS's customers. As such, Defendants carve out or fail to account for compensable time relating to travel time from home to the first customer location and all other travel time from one customer site to the next. Finally, Aggrieved Employees, including Plaintiff, are frequently required to perform work during their meal and rest breaks.

43. Labor Code Section 1194 further provides that an employee receiving less than the legal overtime compensation is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit.

44. Labor Code Section 510(a) states: "Any 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." Labor Code Section 510(a) further states: "Any 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." Labor Code Section 510(a) further states: "[A]ny work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee."

45. Throughout the Relevant Time Period, Wage Order No. 4-2001 provided for payment of overtime wages equal to one and one-half (1 1/2) times an employee's regular rate of pay for all hours worked over eight (8) hours per day and/or forty (40) hours in a workweek, and/or for payment of overtime wages equal to double the employee's regular rate of pay for all hours worked in excess of twelve (12) hours in any workday and/or for all hours worked in excess of eight (8) hours on the seventh (7th) day of work in any one workweek.

46. Plaintiff was classified as non-exempt by Defendants and was therefore entitled to payment for all hours worked, including overtime compensation for all hours worked in excess of the hours and time specified in the Wage Order, statutes and regulations identified herein.

47. As a matter of policy and/or practice, Plaintiff and Aggrieved Employees were frequently required to perform work during their meal and rest breaks.

48. As a matter of policy and/or practice Defendants utilized a timekeeping system, which failed to compensate Plaintiff and Aggrieved Employees for all hours worked, whether by rounding, time-shaving, or otherwise.

49. Plaintiff is informed and believes, and based thereon alleges, Defendants' policy, practice, and/or procedure of requiring to dial-in for time and pay purposes from the locations of SAS's customer's establishments, work transpiring before arrival is simply not accounted for by SAS as compensable time.

50. Throughout the Relevant Time Period, Defendants did not maintain adequate records of all wages earned, hours worked, and meal and rest breaks taken.

51. Accordingly, Defendants failed to properly record the actual hours worked by Plaintiff and Aggrieved Employees and thus failed to pay minimum wages and overtime wages for the actual amount of minimum and overtime hours worked.

Defendants' Failure to Provide Accurate, Itemized Wage Statements

52. At all times relevant hereto, Labor Code section 226 and IWC Wage Order, number 4,

section 7 required employers to maintain adequate employment records and provide employees with accurate itemized wage statements showing gross wages, total hours worked, all applicable hourly rates worked during each pay period, the corresponding number of hours worked at each hourly rate, and meal breaks taken.

53. Defendants' wage statements are facially non-compliant by virtue of the defective meal and rest period policies and practices, the uncompensated work, the unlawful timekeeping systems which does not accurately record the total hours worked by aggrieved Employees, including Plaintiff.

54. Wage statements provided to Plaintiff and the other Aggrieved Employees by Defendants do not show all wages earned, all hours worked, or all applicable rates, in violation of the Labor Code section 226, and IWC Wage Order number 4, section 7.

55. Moreover, Defendants did not maintain adequate records of all wages earned, hours worked, and breaks taken.

Defendants' Failure to Pay All Wages Due at Termination of Employment

56. At all times relevant hereto, Labor Code § 201 required an employer that discharges an employee to pay compensation due and owing to said employee immediately upon discharge. Labor Code Sections 202 requires an employer to pay an employee who quits any compensation due and owing to said employee within seventy-two (72) hours of an employee's resignation. Labor Code Section 203 provides that if an employer willfully fails to pay compensation promptly upon discharge or resignation, as required under Sections 201 and 202, then the employer is liable for waiting time penalties in the form of continued compensation for up to thirty (30) work days.

57. Defendants willfully and knowingly failed to pay Plaintiff and the other aggrieved Employees, upon termination of employment, all accrued compensation including payment of minimum wage compensation, missed meal and rest periods compensation and for time spent performing work off the clock at Defendants' direction.

Exhaustion of Administrative Remedies

58. Plaintiff has complied with the procedures for bringing suit specified in California Labor Code Section 2699.3. By letter dated January 10, 2024, Plaintiff, on behalf of himself and the other aggrieved employees, gave written notice by electronic mail and certified mail to the Labor and

Workforce Development Agency ("LWDA") and Defendants of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations. Attached as **Exhibit "1"** is a true and correct copy of the referenced letter.

59. More than sixty-five (65) calendar days have passed since Plaintiff provided the LWDA with written notice. To date, Plaintiff has not received any written notice nor been notified from the LWDA that it does intend to investigate the violations of the California Labor Code alleged herein.

FIRST CAUSE OF ACTION

CIVIL PENALTIES UNDER THE PRIVATE ATTORNEYS GENERAL ACT

(On Behalf of Plaintiff and the Other Aggrieved Employees Against All Defendants)

60. Plaintiff incorporates by reference the allegations set forth above.

61. As set forth above, Plaintiff has complied with the procedures for bringing suit specified in California Labor Code Section 2699.3. By letter dated January 10, 2024, Plaintiff, on behalf of himself and the other aggrieved employees, gave written notice by certified mail to the LWDA and to Defendants of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations. More than sixty-five (65) calendar days have passed since Plaintiff provided the LWDA with written notice. To date, Plaintiff has not received any written notice nor been notified from the LWDA that it does intend to investigate the violations of the California Labor Code alleged herein.

62. This action arises out of the allegedly unlawful labor practices of Defendants in California. Through this private attorneys' general action, Plaintiff represents himself, and other aggrieved employees of Defendants that were in California, against whom Defendants have allegedly committed labor law violations alleged herein. As a result of the allegedly unlawful conduct described herein, Plaintiff now seeks to recover civil penalties, attorneys' fees, and costs, pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code Section 2698, *et seq*.

63. Labor Code Section 1198 makes it unlawful for an employer to employ an employee under conditions that violate the applicable Wage Order.

64. Plaintiff is informed and believes that throughout the Relevant Time Period,

Defendants have applied centrally devised policies and practices to Plaintiff and the other aggrieved employees with respect to wages, hours, and working conditions.

<u>Failure to Pay Minimum Wages and Designated Rates</u>

65. At all relevant times, California Labor Code sections 1194, 1197 and 1197.1 provide that the minimum wage for employees fixed by the IWC is the minimum wage to be paid to employees and the payment of a wage less than the minimum so fixed is unlawful. Additionally, Code Section 1198 makes it unlawful for an employer to employ an employee under conditions that violate the applicable Wage Order.

66. Where any statute or contract requires an employer to maintain the designated wage scale, Labor Code Section 223 makes it unlawful for an employer to secretly pay a lower wage while purporting to pay the wage designated by statute or by contract.

67. At all relevant times, Defendants maintained a policy and practice of requiring Plaintiff and the other aggrieved employees to remain under Defendants' control without paying therefore, which resulted in them earning less than the legal minimum wage in the State of California for all hours worked. At all relevant times, Defendants maintained a policy and practice of requiring Plaintiff and the other aggrieved employees to remain under Defendants' control, while purportedly on a meal and rest break, and without paying therefor, which resulted in them earning less than the legal minimum wage in the State of California for all hours worked.

68. As a matter of policy and/or practice, Defendants utilized a timekeeping system, which failed to compensate Plaintiff and other aggrieved employees for all hours worked, whether by rounding, time-shaving, or otherwise. Specifically, during the majority of the Relevant Time Period, Aggrieved Employees including Plaintiff were directed to record their hours of work on a timesheet at the conclusion of the day or week and would submit whole round numbers for pay purposes. The handwritten timesheets would also reveal instances of missed, shortened, and/or late meal periods but the Company would automatically deduct time from Aggrieved Employees' and Plaintiff's overall pay to artificially account for a supposed compliant meal break. More recently, and starting approximately in December of 2023, SAS now requires Aggrieved Employees including Plaintiff to utilize their personal cellphones to record their clock in and clock out times on a specific application.

In addition, our investigation leads us to believe that Defendants' knowledge of work transpiring before arriving at Defendants' customer locations, such as travel time, and work occurring away from the customer site, has resulted in Plaintiff and other Aggrieved Employees not being compensated for all hours worked.

69. Defendants' failure to pay Plaintiff and other aggrieved Employees minimum wages and designated violates California Labor Code sections 223, 1182.12, 1194, and 1197. Plaintiff and other aggrieved employees are entitled to recover civil penalties pursuant to sections 1197.1 and 2699(a), (f), and (g).

Failure to Pay Overtime Compensation

70. Labor Code Section 1194 provides that an employee receiving less than the legal overtime compensation is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit.

71. Labor Code Section 510(a) states: "Any 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." Labor Code Section 510(a) further states: "Any 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." Labor Code Section 510(a) further states: "[A]ny work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee."

72. Throughout the Relevant Time Period, Wage Order No. 4-2001 provided for payment of overtime wages equal to one and one-half (1 1/2) times an employee's regular rate of pay for all hours worked over eight (8) hours per day and/or forty (40) hours in a workweek, and/or for payment of overtime wages equal to double the employee's regular rate of pay for all hours worked in excess of twelve (12) hours in any workday and/or for all hours worked in excess of eight (8) hours on the seventh (7th) day of work in any one workweek.

73. Plaintiff and the other aggrieved employees were classified as non-exempt by

Defendants and were therefore entitled to overtime compensation for all hours worked in excess of the hours and time specified in the Wage Order, statutes and regulations identified herein.

74. As a matter of policy and/or practice, Plaintiff and the other aggrieved employees were frequently required to performed work during meal and rest breaks.

75. As a matter of policy and/or practice, Defendants utilized a timekeeping system, which failed to compensate Plaintiff and other aggrieved employees for all hours worked, whether by rounding, time-shaving, or otherwise. Specifically, our investigation leads us to believe that Defendants' knowledge of work transpiring before arriving at Defendants' customer locations, such as travel time, has resulted in Plaintiff and other Aggrieved Employees not being compensated for all hours worked.

76. Accordingly, Defendants failed to properly record the actual hours worked by Plaintiff and other aggrieved employees, and thus failed to pay overtime wages for the actual amount of overtime hours worked.

Failure to Provide Timely and Adequate Meal and Rest Breaks

77. Labor Code Section 512 and Section 11 of the Wage Order impose an affirmative obligation on employers to provide non-exempt employees with uninterrupted, duty-free, meal periods of at least thirty (30) minutes for each work period of five (5) or more hours, and to provide them with two uninterrupted, duty-free, meal periods of at least thirty (30) minutes for each work period of more than ten (10) hours.

78. Labor Code Section 226.7 and Section 11 of the Wage Order prohibit employers from requiring employees to work during required meal periods and require employers to pay non-exempt employees an additional hour of premium wages on each workday that the employee is not provided with a required meal period.

79. At relevant times during the applicable limitations period, Defendants failed to provide Plaintiff and Aggrieved Employees with uninterrupted meal periods of at least thirty (30) minutes on each day that they worked five (5) or more hours, as required by Labor Code Section 512 and the Wage Order, as a result of duties and schedules that do not permit them to take all legally required meal periods. Plaintiff is informed, believes, and thereon alleges that, at relevant times during the

applicable limitations period, Defendants maintained a policy or practice of not providing the other aggrieved employees with uninterrupted meal periods of at least thirty (30) minutes for each five (5) hour work period, as required by Labor Code Section 512 and the Wage Order, as a result of duties and schedules that do not permit them to take all legally required meal periods.

80. Section 12 of the Wage Order imposes an affirmative obligation on employers to permit and authorize employees to take required rest periods at a rate of no less than ten (10) minutes of net rest time for each four (4) hour work period, or major portion thereof, that must be in the middle of each work period insofar as is practicable.

81. Labor Code Section 226.7 and Section 12 the Wage Order prohibit employers from requiring employees to work during required rest periods and require employers to pay non-exempt employees an additional hour of premium wages on each workday that the employee is not provided with the required rest period.

82. At relevant times during the applicable limitations period, Defendants failed to provide Plaintiff and Aggrieved Employees with a net rest period of at least ten (10) minutes for each four (4) hour work period, or major portion thereof, as required by the Wage Order, as a result of duties and schedules that do not permit Plaintiff and Aggrieved Employees to take all legally required rest breaks.

83. Plaintiff is informed, believes, and thereon alleges that, at relevant times during the applicable limitations period, Defendants maintained a policy or practice of not providing the other aggrieved employees with net rest periods of a least ten (10) minutes for each four (4) hour work period, or major portion thereof, as required by the Wage Order, as a result of duties and schedules that do not permit them to take all legally required rest breaks.

84. Plaintiff is further informed, believes, and thereon alleges that Defendants rarely, if ever, issues any compensation to Aggrieved Employees for missed, late or shortened meal and/or rest breaks.

<u>Failure to Reimburse For Necessary Business Expenditures</u>

85. Labor Code Section 2802 provides: “An employer shall indemnify his or her employee for all necessary business expenditures or losses incurred by the employee in direct consequence of

the discharge of his or her duties, or of his or her obedience to the direction of the employer… [which includes] all reasonable costs, including, but not limited to, attorneys' fees incurred by the employee enforcing the rights granted by this section."

86. As a direct consequence of discharging their duties for Defendant and/or obeying Defendant's directions, Plaintiff and Aggrieved Employees have necessarily incurred expenses for which they have been indemnified by Defendants, including travel expenses related to hotel and lodging fees, the use and mileage incurred by Plaintiff's and Aggrieved Employees' personal vehicles and personal cell phones, as required by Defendants; and the attorneys' fees incurred to enforce Plaintiff's and Aggrieved Employees ' rights under Cal. Labor Code § 2802.

87. Defendant has failed to indemnify or in any manner reimburse Plaintiff and Class Members for these expenditures and losses by requiring Plaintiff and Aggrieved Employees to pay expenses and cover losses that they incurred in direct consequence of the discharge of their duties for Defendant and/or in obedience of Defendant's direction, in violation of Cal. Labor Code § 2802.

88. As a direct and proximate result of Defendant's conduct, Plaintiff and Aggrieved Employees have suffered substantial losses according to proof, as well as pre-judgment interest, costs, and attorneys' fees for the prosecution of this action, which losses are compensable under Cal. Labor Code § 2802.

Failure to Provide and Maintain Compliant Wage Statements

89. Labor Code Section 1174 requires that every person employing labor in this state shall keep (1) a record showing the names and addresses of all employees employed and the ages of all minors; (2) at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments; (3) such records in accordance with rules established for this purpose by the commission, but in any case, on file for not less than three years. This statute also prevents an employer from prohibiting an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned. Defendants have willfully failed to keep the records required by Section 1174.

90. Pursuant to California Labor Code Section 226(a), Plaintiff and the other aggrieved employees were entitled to receive, semimonthly or at the time of each payment of wages, an accurate itemized statement showing: (a) gross wages earned; (b) net wages earned; (c) all applicable hourly rates in effect during the pay period; and (d) the corresponding number of hours worked at each hourly rate by the employee.

91. Defendants failed to provide Plaintiff with accurate itemized statements in accordance with California Labor Code Section 226(a) by providing Plaintiff with wage statements with inaccurate entries for hours worked, corresponding rates of pay, and total wages earned as a result of the unlawful labor and payroll practices described herein.

92. Plaintiff is informed and believes and thereon alleges that, at all relevant times during the applicable limitations period, Defendants maintained a policy or practice of not providing aggrieved employees with accurate itemized wage statements by providing them with wage statements with inaccurate entries for hours worked, corresponding rates of pay, total wages and deductions from wages earned as a result of the unlawful labor and payroll practices described herein.

93. Plaintiff is informed and believes and thereon alleges that Defendants' failure to provide her and the other aggrieved employees with accurate written wage statements is knowing and intentional.

94. Plaintiff is informed and believes and thereon alleges that Defendants had the ability to provide her and the aggrieved employees with accurate wage statements, but intentionally provided wage statements that they knew are not accurate.

95. As a result of being provided with inaccurate wage statements by Defendants, Plaintiff and the aggrieved employees have suffered an injury. Their legal rights to receive accurate wage statements were violated and they were misled about the amount of wages they had actually earned and were owed. In addition, the absence of accurate information on their wage statements prevented immediate challenges to Defendants' unlawful pay practices, has required discovery and mathematical computations to determine the amounts of wages owed, has caused difficulty and expense in attempting to reconstruct time and pay records, and/or has led to the submission of inaccurate information about wages and amounts deducted from wages to state and federal government agencies.

96. California Labor Code sections 2699(a) and (g) authorize an aggrieved employee, on behalf of themselves and other current or former employees, to bring a civil action to recover civil penalties pursuant to the procedures specified in California Labor Code Section 2699.3.

<u>Failure to Pay Wages Upon Termination</u>

97. Labor Code Section 201 provides that all earned and unpaid wages of an employee who is discharged are due and payable immediately at the time of discharge.

98. Labor Code Section 202 provides that all earned and unpaid wages of an employee who quits after providing at least 72-hours' notice before quitting are due and payable at the time of quitting and that all earned and unpaid wages of an employee who quits without providing at least 72-hours' notice before quitting are due and payable within 72 hours.

99. Labor Code Section 203 provides that the wages of an employee continue on a daily basis as a penalty for up to 30 days where an employer willfully fails to timely pay earned and unpaid wages to the employee in accordance with Labor Code Section 201 or Section 202.

100. Plaintiff is informed and believes that Defendants' failure to timely pay them all of their earned and unpaid wages, including unpaid minimum wages and overtime wages, and unprovided rest and meal period premium wages, have been willful in that, at all relevant times, Defendants have deliberately maintained policies and practices that violate the requirements of the Labor Code and the Wage Order even though, at all relevant times, they have had the ability to comply with those legal requirements.

<u>Section 558 Penalties</u>

101. The PAGA claims are also brought against Defendants pursuant to provisions of the labor code including § 558 which permits liability of persons or employers who violate or cause to be violated Labor Code and IWC regulations. California Labor Code Section 2699.

102. The PAGA states:

> Notwithstanding any other provision of law, any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or himself and other current or former employees…

103. One provision of law enforceable through PAGA as to civil penalties, though not unpaid wages, is Labor Code § 558, which states the following:

> (a) Any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows:
> (1) For any initial violation, fifty dollars ($50) for each underpaid employee for each pay period for which the employee was underpaid in addition to any amount sufficient to recover underpaid wages.
> (2) For each subsequent violation, one hundred dollars ($100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages…

Penalties Authorized by PAGA

104. Pursuant to California Labor Code sections 2699(a) and (f), Plaintiff and the other aggrieved employees of Defendants are entitled to, and seek to, recover civil penalties for Defendants' violations of California Labor Code sections 201, 202, 203, 204, 210, 216, 221, 223, 225.5, 226, 226.3, 226.7, 510, 511, 512, 551, 552, 558, 1174, 1174.5, 1194-1197.1, 1198, 2800, 2802, and 2698 *et seq.*, during the applicable limitations period in the following amounts:

a. For violations of California Labor Code sections 201, 202, 203, 226.7, 1198, and 2802, one hundred dollars ($100.00) for each aggrieved employee per pay period for each initial violation and two hundred dollars ($200.00) for each aggrieved employee per pay period for each subsequent violation (penalty amounts established by California Labor Code Section 2699(f)(2));

b. For violations of California Labor Code Section 1194-1197.1, one hundred dollars ($100.00) for each aggrieved employee per pay period for each initial violation and two hundred dollars and fifty ($250.00) for each aggrieved employee per pay period for each subsequent violation regardless of whether the initial violation is intentionally committed (penalty amounts established by California Labor Code § 1197.1);

c. For violations of California Labor Code Sections 216, 221, 223 one hundred dollars ($100.00) for each aggrieved employee for each initial violation and two hundred dollars ($200.00) for each aggrieved employee for each subsequent or willful violation (penalty amounts established by California Labor Code § 225.5);

d. For violations of California Labor Code Section 1174, five hundred dollars ($500.00) for each of Defendants' violations in addition to any other penalties or fines permitted by law (penalty amounts established by California Labor Code § 1174.5);

e. For violations of California Labor Code Section 226, two hundred fifty dollars ($250.00) per employee for initial violation and one thousand dollars ($1,000.00) per employee for each subsequent violation (penalty amounts established by California Labor Code Section 226.3);

f. For violations of California Labor Code Section 204, one hundred dollars ($100.00) per employee for initial violation and two hundred dollars ($200.00) per employee for each subsequent violation, plus 25 percent of the amount unlawfully withheld (penalty amounts established by California Labor Code Section 210);

g. For violations of California Labor Code section 510, 511, 512, 551, 552 and, Wage Order 4-2001 Sections 9, 11, and 12, fifty dollars ($50.00) for each aggrieved employee for each initial violation for pay period for which the employee was underpaid in addition to an amount sufficient to recover unpaid wages and one hundred dollars ($100.00) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover unpaid wages (penalty amounts established by California Labor Code Section 558).

h. For violations of California Labor Code Section 558, fifty dollars ($50.00) for initial violation, fifty dollars ($50.00) for each underpaid employee for each pay period for which the employee was underpaid; for each subsequent violation, one hundred dollars ($100.00) for each underpaid employee for each pay period for which the employee was underpaid (penalty amounts established by California Labor Code Section 558).

105. Pursuant to California Labor Code Section 2699(g), Plaintiff, on behalf of himself and

the other aggrieved employees, is entitled to an award of reasonable attorneys' fees and costs.

PRAYER FOR RELIEF

Wherefore, Plaintiff on behalf of himself and on behalf of all other Aggrieved Employees, prays for judgment against Defendants as follows:

a. Civil penalties;

b. Other penalties and fines permitted by law;

c. Costs of suit;

d. Reasonable attorneys' fees;

e. Pre-judgment and post-judgment interest as provided by law; and

f. Such other and further relief as the Court deems just and proper.

DATED: March 22, 2024

BOYAMIAN LAW, INC.

By: ______________________

Michael H. Boyamian
Tamar Chobanian
Attorney for Plaintiff DESMOND MARBLEY, Other Aggrieved Employees, and the General Public

Exhibit “1”

BOYAMIAN LAW

January 10, 2024

SUBMITTED ELECTRONICALLY VIA ONLINE SUBMISSION

Labor and Workforce Development Agency
Attention: PAGA Administrator
455 Golden Gate Avenue, 9th Floor
San Francisco, California 94102

Re: *Marbley adv. SAS Retail Services, Inc.*
Notice of PAGA Claims Pursuant to Labor Code § 2699.3

To Whom It May Concern:

My office represents Desmond Marbley (hereinafter "Claimant"), with respect to claims on behalf of himself and other similarly situated current and former non-exempt, hourly employees (collectively hereinafter referred to as "Aggrieved Employees") of SAS Retail Services, LLC (hereinafter "SAS" or "Company") who worked in California and were situated, assigned, or placed at various food locations or establishments by SAS from January 10, 2023 and continuing to the present ("Relevant Time Period"). The purpose of this letter is to satisfy the notice requirements of Labor Code § 2699.3(a). This notice is provided to enable Claimant to proceed in a court of law against SAS as authorized by California Labor Code section 2695, *et seq.*

Below we set forth the facts and theories which we believe support our contention that SAS has violated and continues to violate various provisions of the California Labor Code including, but not limited to, failures by SAS to pay for all hours worked, including minimum wages and overtime wages, to provide statutorily-mandated meal and rest periods, for unreimbursed business expenditures, and for related derivative claims of inaccurate wage statements and waiting time penalties.

Facts & Theories About the Case

1. Relevant Factual Background

SAS serves its retail customers with display and replenishment services. The Company provides merchandising solutions for client retailers throughout the United States, including but not limited to, big chain grocery stores like Food 4 Less and Ralphs. SAS assigns employees to travel to SAS's customers' retail location and SAS employees assist the retail client with its merchandising display needs and with replenishing grocery aisles with new item inventory or restocking items that are, for example, outdated or discontinued. Desmond Marbley is a former, non-exempt employee of SAS. Mr. Marbley commenced his employment with SAS on July 18, 2023 and maintained the position of Merchandiser throughout his employment with the Company. SAS would assign Claimant - and Claimant would travel to - various

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supermarket locations on behalf of SAS. Mr. Marbley would usually commence work at these supermarket locations in the evening hours, approximately one hour before the stores close for business and he – like other Aggrieved Employees - would work throughout the evening and into the early hours of the day organizing display entrances and restocking aisles. Mr. Marbley would work Monday through Friday, and usually maintained the scheduled hours of 10:00 p.m. to about 6:30 a.m. Mr. Marbley would utilize his own personal vehicle and drive to SAS' customers' retail locations in the counties of Los Angeles, Orange, and Inland Empire.

2. Failure to Pay For All Hours Worked

Our investigation has revealed that SAS utilizes a "rounding" mechanism with respect to its timekeeping system for purposes of processing payroll which results in the underpayment of wages and that use of a rounding system is not in accordance with the prevailing wage and hour laws in California. Specifically, during the majority of the Relevant Time Period, Aggrieved Employees including Claimant were directed to record their hours of work on a timesheet at the conclusion of the day or week and would submit whole round numbers for pay purposes. The handwritten timesheets would also reveal instances of missed, shortened, and/or late meal periods but the Company would automatically deduct time from Aggrieved Employees' and Claimant's overall pay to artificially account for a supposed compliant meal break. More recently, and starting approximately in December of 2023, SAS now requires Aggrieved Employees including Mr. Marbley to utilize their personal cellphones to record their clock in and clock out times on a specific application.

Rounding has been consistently called into question by recent law, given technological advances. It does not serve any administrative efficiency where an employer, like SAS, accurately records employee time – or has the ability to record time - to the minute. *Camp, et al v. Home Depot U.S.A., Inc.*, 84 Cal.App.5th 638 (Cal. Ct. App. October 24, 2022). The California Supreme Court stated that "[a]s technology continues to evolve, the practical advantages of rounding policies may diminish further." *Donahue v. AMN Services, LLC* (2021) 11 Cal.5th 58, 74; *see also Troester v. Starbucks Corp.* (2018) 5 Cal.5th 829, 848 ["technological advances may help with tracking small amounts of time"].) Likewise, it is not clear that any efficiencies were gained by SAS in capturing time worked in whole round numbers through handwritten timesheets when applications are available to accurately record time to the minute.

Claimant seeks to recover civil penalties pursuant to the unpaid compensation for all hours worked as defined by the Labor Code and the applicable Industrial Welfare Commission wage order as to the time during which an employee is subject to the control of an employer, and includes all the time the employee is engaged, suffered or permitted to work, whether or not required to do so, or as otherwise set forth in *Dynamex Operations West, Inc. v. Superior Court of Los Angeles*, (2018) 4 Cal.5th 903. *See also Morillion v. Royal Packing Co.* (2000) 22 Cal-4th 575; *Troester v. Starbucks Corp.* (2018) 421 P.3d 1114 (California Supreme Court decision affirming that relevant statutes and wage order do not allow employers to require employees to routinely work for minutes off-the-clock without compensation.) In California, the employer is required to keep records of all hours worked. Labor Code § 1174(d). California law also requires that all hours worked over 8 in a day or 40 in a week or worked on the 7th consecutive day of a work week be paid 1.5 times an employee's regular rate of pay. *See, e.g.*, Lab. Code §§ 510, 1194; Cal. Code Regs., tit. 8, § 11090, et seq. In addition, hours worked over 12 in a day or hours over 8 worked on the 7th consecutive day in a week are paid at 2 times an employee's regular rate of pay.

3. Failure to Provide Meal & Rest Breaks

California law likewise requires that an employer provide an employee who works more than five hours a meal break that is no less than 30 minutes in duration. 8 CCR 11090(11)(A). Unless an employee is relieved of all duty during the 30-minute meal period, the meal period is considered an on-duty meal period and counted as time worked. However, an on-duty meal period is permitted only when the nature of the work prevents an employee from being relieved of all duty and the parties agree in writing to an on-the-job paid meal period. *Id.* If an employer fails to provide an employee a lawful meal period, the employer must pay the employee one hour of pay for each violation. 8 CCR 11090(11)(D). Additionally, California law mandates that an employer must "authorize and permit" an employee to take a duty-free rest period not less than 10 minutes in duration for every four hours of work. 8 CCR 11090(12)(A). Violation of the rest break provisions requires the employer pay the employee one hour of pay for each workday a rest period was not provided. 8 CCR 11090(12)(B). In addition, if an employee works over ten hours, he or she is entitled to a second meal period unless there is a valid meal period waiver for shifts lasting less than twelve hours. *See* IWC Wage Order No. 4, § 11. Said differently, a second meal period of not less than thirty minutes is required if an employee works more than ten hours per day, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and employee only if the first meal period was not waived. Labor Code Section 512.

Our investigation has revealed that Aggrieved Employees, including Mr. Marbley, are also prevented from taking their statutorily mandated meal and rest breaks due to SAS's scheduling practices and that the nature and placement of the work does not truly relieve them from all duty. Upon information and belief, Aggrieved Employees, including Mr. Marbley, do not execute a written "on duty" meal period agreement with SAS.

The substantive requirements of the meal and rest break laws set forth clearly in the Supreme Court's controlling *Brinker* decision are dispositive. *Brinker Restaurant Corp. v. Superior Court*, 53 Cal. 4th 1004, 1037 (2012). An employer violates the law by maintaining a policy that "fails to give full effect" to the timing, duration, and relief from duty requirements of the Wage Order. Such a defective policy or practice, by itself, establishes a substantive violation of the law. Compliant rest breaks must likewise be "duty-free." *Faulkinbury v. Boyd*, 216 Cal.App.4th 220, 237 (2013).

Aggrieved Employees, including Mr. Marbley, are instructed to take their mandated breaks on premises. SAS does not maintain any schedule or system to ensure that Aggrieved Employees, including Mr. Marbley, are provided with statutorily-compliant meal and rest periods. Similarly, SAS directs Mr. Marbley and other Aggrieved Employees to be ready to return to work to assist. Finally, given that the majority of shifts take place at SAS's customer locations and well after normal business hours, Aggrieved Employees including Claimant are practically confined to the space where they work. As a result, meal and rest breaks are truly never "duty free" and likewise are cut short due to the press of work. If the employer, like SAS, requires the employee to remain at the work site or facility during the meal period, the meal period must be paid. This is true even where the employee is relieved of all work duties during the meal period. *Bono Enterprises, In. v. Bradshaw*, 32 Cal.App.4th 968 (1995).

As with rest breaks, in an explication of employer "control," the California Supreme Court held, in *Augustus v. ABM Security Services, Inc.*, 2 Cal. 5th 257 (2018), that employees are under employer control when the employer directs them to be ready to respond during breaks. *Augustus*, 2 Cal. 5th. The Court further clarified that employees who must keep phones with them during allegedly off-duty breaks are under employer control even if the phone never rings during those periods and the employee is never called back to full duty. *Augustus*, 2 Cal. 5th at 271-272 (expressly refusing to adopt an unclear rule that control only exists in on-call situations when the employer actually calls the employee back to work.)

4. Failure to Reimburse For Necessary Business Expenditures

Our investigation has uncovered that Aggrieved Employees, including Mr. Marbley, are not reimbursed for usage of their personal vehicles and the associated gas to travel to, between, and from Sunrise's grocery store clients in connection with their work. The Company knows very well that Aggrieved Employees, like Mr. Marbley , travel to multiple locations with their own personal vehicles as SAS provides a schedule outlining the various establishments that Mr. Marbley and similarly situated Aggrieved Employees need to tend to and service. SAS does not provide Aggrieved Employees, including Mr. Marbley, with a company-vehicle nor do they maintain a fleet of cars to service their clients. As a result, SAS fails to reimburse Aggrieved Employees on a number of items that are necessary for Aggrieved Employees, including Mr. Marbley, to perform their work duties for the Company.

Labor Code section 2802(a) provides that an employer must reimburse employees for all necessary expenditures that the employee incurs in discharging his or her duties. There is a "strong public policy" in favor of indemnifying employees for expenses incurred in the course and scope of their employment. *Edwards v. Arthur Andersen LLP*, 44 Cal. 4th 937, 952 (2008); *See also Gattuso v. Harte-Hanks Shoppers,* *Inc.*, 42 Cal. 4th 554, 572 (2007); *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137 (2014). Under Labor Code § 2802, therefore, employers like SAS cannot shift the cost of doing business and make Mr. Marbley and other Aggrieved Employees pay for the costs of doing business.

Mr. Marbley and Aggrieved Employees also incurred significant job-related expenses. This includes expenses related to mileage, gas, and personal cell phone use. "Necessary" in the context of expense reimbursement means reasonable under the circumstances; it does not mean, as it sometimes does in lay speech, inevitable. *See Gattuso, supra*, 42 Cal. 4th at 568. While California employers are required to reimburse a reasonable amount for expenses, our investigation has uncovered that no reimbursement whatsoever is tendered to Mr. Marbley and other Aggrieved Employees. Therefore, because Aggrieved Employees, including Mr. Marbley, incurred necessary business expenses in the scope of their employment but were not reimbursed, SAS owes civil penalties under Labor Code section 2802(a).

5. Other Claims

Because Claimant and other similarly situated Aggrieved Employees were not compensated for all hours worked, were deprived of overtime compensation, and were not provided the statutorily mandated meal and rest breaks, SAS also failed to provide accurate wage statements in a violation of Labor Code Section 226, and failed to fully compensate former employees in a timely manner when their employment ended, in violation of Labor Code Section 201 *et seq*.

Scope of Anticipated Action

California Labor Code Section 2699.3(a) requires an aggrieved employee to inform the Agency before filing a civil action under the Private Attorneys General Act of 2004 ("PAGA"). Based on the foregoing facts, Claimant is asserting PAGA claims on behalf of himself and on behalf of all other non-exempt, hourly employees employed by SAS at SAS's customer retail locations from January 10, 2023, to the present. Claimant seeks *civil penalties* under PAGA for the following Labor Code violations:

1. Violations of Labor Code sections 216, 1194, 225.5, 558 for failing to pay minimum and overtime wages due. Specifically, does not pay minimum and overtime wages to Claimant and other non-exempt, hourly employees for all hours worked, as required by Labor Code sections 216, 510, 511, 558, 1182.1-1182.3, 1194-1197.1 and 1198.

2. Violations of Labor Code section 558 for failing to pay wages due, including those for missed meal and rest periods as required by Labor Code sections 226.7, 512, 551-553. Specifically, with respect to meal breaks, SAS does not permit Claimant and other non-exempt, hourly Aggrieved Employees to take an uninterrupted, off-duty, and/or full meal periods, and does not pay one additional hour of pay at their regular rate of compensation for each missed meal period. The Company also does not

provide Claimant and other non-exempt, hourly employees with rest periods. Nor does it pay one additional hour of pay at their regular rate of compensation for each missed rest period.

3. Violations of Labor Code sections 226 and 226.3, requiring employers to provide specific information on employees' itemized wage statements, as the Company does not include all hours worked and wages earned on the wage statements of Claimant and other non-exempt, hourly Aggrieved Employees.

4. Violation of Labor Code section 2802, requiring employers to indemnify employees for necessarily-incurred business expenditures, as the Company fails to reimburse all or a reasonable amount of expenses incurred by Claimant and other non-exempt, hourly Aggrieved Employees.

5. Violations of Labor Code sections 204 and 210, based on the Company's failure to pay Claimant and similarly situated non-exempt, hourly employees on the regular pay day all owed wages, and the Company's failure to fully compensate former employees in a timely manner when their employment ended, in violation of Labor Code Section 201 *et seq.*

Accordingly, we believe SAS has violated, and continues to violate, numerous provisions of California law, including, without limitation Labor Code Sections §§ 201, 202, 203, 204, 210, 216, 221, 223, 225.5, 226, 226.3, 226.7, 510, 511, 512, 551, 552, 558, 1174, 1174.5, 1194-1197.1, 1198, 2802 and 2698, *et seq.*, as well as the relevant IWC orders and regulations, and that Claimant and other similarly situated current and former non-exempt, hourly employees are entitled to all damages, restitution and statutory penalties allowed by law. Our investigation is continuing, and there may be more violations uncovered.

We respectfully request that the Labor Workforce Development Agency notify this office within sixty (60) days if it wishes to investigate this matter further or, in the alternative, notify us that you will not pursue an investigation so that we may pursue these penalties under the Private Attorney General Act of 2004. Should you have any questions or concerns or require additional information, please do not hesitate to contact the undersigned. If the Company wishes to resolve these claims without resorting to protracted litigation, please contact the undersigned forthwith to discuss this matter further.

Thank you for your immediate attention to this matter.

Very truly yours,

Michael H. Boyamian

Cc: SAS Retail Services, LLC (*Sent via Certified Mail*)
Attention: 1505 Corporation (*Agent of Service of Process*)
Becky DeGeorge
2710 Gateway Oaks Drive
Sacramento, California 95833