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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

KAI LIU and JASON L. CARBONNEAU,
individually, and on behalf of all others similarly
situated,

Plaintiffs,

vs.

SEALY, INC.; and DOES 1 through 10,
inclusive,

Defendants

Case No.: **24STCV18300**

**PAGA REPRESENTATIVE ACTION
COMPLAINT:**

1. Civil Penalties Under PAGA [Cal. Lab.
Code §§ 2698, *et seq.*]

DEMAND FOR JURY TRIAL

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1 Plaintiffs Kai Liu and Jason L. Carbonneau (“Plaintiffs”), based upon facts that either have
2 evidentiary support or are likely to have evidentiary support after a reasonable opportunity for
3 further investigation and discovery, alleges as follows:

4 **INTRODUCTION & PRELIMINARY STATEMENT**

5 1. Plaintiffs bring this action against Defendants Sealy, Inc., and Does 1 through 10
6 (collectively referred to as “Defendants”) for civil penalties under the Private Attorneys General
7 Act of 2004, California Labor Code §§ 2698, *et seq.* (“PAGA”), stemming from Defendants’
8 failure to pay minimum wages, failure to pay overtime wages, failure to provide meal periods,
9 failure to authorize and permit rest periods, failure to maintain accurate records of hours worked
10 and meal periods, failure to timely pay all wages to terminated employees, failure to indemnify
11 necessary business expenses, and failure to furnish accurate wage statements.

12 2. For over 50 years, California’s courts and legislature have recognized that this
13 State’s wage-and-hour laws serve a compelling public interest of fostering a stable job market.
14 Wages are not ordinary debts. Because of the economic position of the average worker and his or
15 her family, it is essential to the public welfare that employers obey the wage-and-hour laws so that
16 employees are promptly paid the minimum/overtime wages that the Legislature has required for
17 employees. So fundamental are California’s wage-and-hour laws that the Legislature has
18 criminalized certain types of violations. In extending extra protection to deter violations of these
19 underlying statutes—since Plaintiff is not seeking general and/or special damages, restitution or
20 other damages other than civil penalties—California has enacted the PAGA to permit an individual
21 to bring an action on behalf of herself and on behalf of others for PAGA penalties only, which is
22 the precise and sole nature of this action.

23 3. Plaintiffs bring this Action on behalf of themselves as individuals, the State of
24 California, and certain current and former employees of Defendants who are or were harmed by
25 Defendants’ illegal practices (hereinafter collectively referred to as the “Aggrieved Employees”).
26 The Aggrieved Employees consists of Plaintiffs and all other persons who have been employed by
27 any Defendants in California as an hourly-paid, non-exempt employee during the statute of
28 limitations period.

1 4. Plaintiffs bring this Action against Defendants seeking only to recover penalties for
2 themselves, on behalf of all the Aggrieved Employees, and on behalf of the State of California.
3 Plaintiffs do not seek to recover anything other than penalties as permitted by California Labor
4 Code § 2699 at this time. To the extent that statutory violations are mentioned for wage violations,
5 Plaintiffs do not seek underlying general and/or special damages for those violations, but simply
6 penalties as permitted by California Labor Code § 2699, declaratory relief, and injunctive relief
7 for themselves and all the Aggrieved Employees as permitted by the PAGA.

8 5. Defendants own/owned and operate/operated an industry, business, and
9 establishment within the State of California, including Los Angeles County. As such, and based
10 upon all the facts and circumstances incident to Defendants' business in California, Defendants are
11 subject to the California Labor Code and Wage Orders issued by the Industrial Welfare
12 Commission ("IWC").

13 6. Despite these requirements, throughout the statutory period Defendants maintained
14 a systematic, company-wide policy and practice of:

- 15 (a) Failing to pay employees for all hours worked, including all minimum
16 wages, and overtime wages in compliance with the California Labor Code
17 and IWC Wage Orders;
- 18 (b) Failing to provide employees with timely and duty-free meal periods in
19 compliance with the California Labor Code and IWC Wage Orders, failing
20 to maintain accurate records of all meal periods taken or missed, and failing
21 to pay an additional hour's pay for each workday a meal period violation
22 occurred;
- 23 (c) Failing to authorize and permit employees to take timely and duty-free rest
24 periods in compliance with the California Labor Code and IWC Wage
25 Orders, and failing to pay an additional hour's pay for each workday a rest
26 period violation occurred;
- 27 (d) Failing to indemnify employees for all necessary business expenses
28 incurred;

- 1 (e) Willfully failing to pay employees all minimum wages, overtime wages,
2 meal period premium wages, and rest period premium wages due within the
3 time period specified by California law when employment terminates;
4 (f) Failing to maintain accurate records of the hours that employees worked;
5 and
6 (g) Failing to provide employees with accurate, itemized wage statements
7 containing all the information required by the California Labor Code and
8 IWC Wage Orders.

9 7. On information and belief, Defendants, and each of them were on actual and
10 constructive notice of the improprieties alleged herein and intentionally refused to rectify their
11 unlawful policies. Defendants' violations, as alleged above, during all relevant times herein were
12 willful and deliberate.

13 8. At all relevant times, Defendants were and are legally responsible for all of the
14 unlawful conduct, policies, practices, acts, and omissions as described in each and all of the
15 foregoing paragraphs as the employer of Plaintiffs and the Aggrieved Employees. Further,
16 Defendants are responsible for each of the unlawful acts or omissions complained of herein under
17 the doctrine of "respondeat superior".

18 **THE PARTIES**

19 **A. Plaintiffs**

20 9. Plaintiff Kai Liu is a California resident that worked for Defendants in the County
21 of Los Angeles, State of California as a driver from approximately September 2019 to January
22 2024.

23 10. Plaintiff Jason L. Carbonneau is a California resident that worked for Defendants in
24 the County of Los Angeles, State of California as a receiver from approximately July 2021 to
25 February 2024.

26 11. Plaintiffs reserve the right to seek leave to amend this complaint to add new
27 plaintiffs, if necessary, in order to establish suitable representative(s) pursuant to *La Sala v.*
28 *American Savings and Loan Association* (1971) 5 Cal.3d 864, 872, and other applicable law.

1 **B. Defendants**

2 12. Plaintiffs are informed and believe, and based upon that information and belief
3 allege, that Defendants are:

- 4 (a) Business entities with their principal places of business in Los Angeles,
5 California.
- 6 (b) Business entities conducting business in numerous counties throughout the
7 State of California, including in Los Angeles County; and
- 8 (c) The former employers of Plaintiffs, and the current and/or former employers
9 of the Aggrieved Employees. Defendants suffered and permitted Plaintiffs
10 and the Aggrieved Employees to work, and/or controlled their wages, hours,
11 or working conditions; and
- 12 (d) At all times mentioned herein, Defendants are and were the joint employers
13 of Plaintiffs and the Aggrieved Employees.

14 13. Plaintiffs do not currently know the true names or capacities of the persons or
15 entities sued herein as Does 1-10, inclusive, and therefore sues said Defendants by such fictitious
16 names. Each of the Doe Defendants was in some manner legally responsible for the damages
17 suffered by Plaintiffs and the Aggrieved Employees as alleged herein. Plaintiffs will amend this
18 complaint to set forth the true names and capacities of these Defendants when they have been
19 ascertained, together with appropriate charging allegations, as may be necessary.

20 14. At all times mentioned herein, the Defendants named as Does 1-10, inclusive, and
21 each of them, were residents of, doing business in, availed themselves of the jurisdiction of, and/or
22 injured a significant number of Plaintiffs and the Aggrieved Employees in the State of California.

23 15. Plaintiffs are informed and believe, and thereon allege, that at all relevant times each
24 Defendant, directly or indirectly, or through agents or other persons, employed Plaintiffs and the
25 Aggrieved Employees, and exercised control over their wages, hours, and working conditions.
26 Plaintiffs are informed and believe, and thereon allege, that, at all relevant times, each Defendants
27 were the principal, agent, partner, joint venturer, officer, director, controlling shareholder,
28 subsidiary, affiliate, parent corporation, successor in interest, and/or predecessor in interest of

1 some or all of the other Defendants, and was engaged with some or all of the other Defendants in
2 a joint enterprise for profit, and bore such other relationships to some or all of the other Defendants
3 so as to be liable for their conduct with respect to the matters alleged below. Plaintiffs are informed
4 and believe, and thereon allege, that each Defendant acted pursuant to and within the scope of the
5 relationships alleged above, that each Defendant knew or should have known about, and
6 authorized, ratified, adopted, approved, controlled, aided, and abetted the conduct of all other
7 Defendants.

8 **FACTUAL ALLEGATIONS**

9 16. Plaintiffs are California residents who worked for Defendants in the County of Los
10 Angeles, State of California during the statutory period. During the statutory time period,
11 Defendants classified Plaintiffs as a non-exempt employees. Plaintiffs were typically scheduled to
12 work at least 5 days in a workweek, and typically in excess of 8 hours in a single workday.

13 17. Throughout the statutory period, Defendants failed to pay Plaintiffs for all hours
14 worked (including, but not limited to, minimum wages and overtime wages), failed to provide
15 Plaintiffs with uninterrupted meal periods, failed to authorize and permit Plaintiffs to take
16 uninterrupted rest periods, failed to indemnify Plaintiffs for all necessary business expenses, failed
17 to timely pay all final wages to Plaintiffs when Defendants terminated Plaintiffs' employment, and
18 failed to furnish accurate wage statements to Plaintiffs. As discussed below, Plaintiffs' experience
19 working for Defendants was typical and illustrative.

20 18. Throughout the statutory period, Defendants maintained a policy and practice of not
21 paying Plaintiffs and the Aggrieved Employees for all hours worked, including, but not limited to,
22 all overtime wages. Throughout the statutory period, Plaintiffs and the Aggrieved Employees
23 received non-discretionary bonuses and other remuneration. However, Defendants failed to
24 incorporate all remuneration when calculating the correct overtime rate of pay, meal break
25 premium rate of pay, and sick day rate of pay, leading to underpayment. Also during the statutory
26 period, Plaintiffs and the Aggrieved Employees were required to work off the clock, and
27 uncompensated. For example, Plaintiffs and the Aggrieved Employees were required to work
28 during meal breaks, without compensation. Also, for drivers, Plaintiff and the Aggrieved

1 Employees were required to clock out when parked, but Plaintiff and the Aggrieved Employees
2 were required to continue to perform specific work duties after clocking out. Also, Plaintiff and
3 the Aggrieved Employees were required to undergo COVID screening prior to clocking into work,
4 off the clock and uncompensated. Also, Plaintiff and the Aggrieved Employees were required to
5 drive long distances to arrive at certain locations without being compensated. Also, Plaintiff and
6 the Aggrieved Employees were required to wait in line in order to clock in, off the clock and
7 uncompensated.

8 19. Throughout the statutory period, Defendants have wrongfully failed to provide
9 Plaintiffs and the Aggrieved Employees with legally compliant meal periods. Defendants
10 sometimes, but not always, required Plaintiffs and the Aggrieved Employees to work in excess of
11 five consecutive hours a day without providing 30-minute, continuous and uninterrupted, duty-free
12 meal period for every five hours of work, or without compensating Plaintiffs and the Aggrieved
13 Employees for meal periods that were not provided by the end of the fifth hour of work or tenth
14 hour of work. Defendants also did not adequately inform Plaintiffs and the Aggrieved Employees
15 of their right to take a meal period by the end of the fifth hour of work, or, for shifts greater than
16 10 hours, by the end of the tenth hour of work. Accordingly, Defendants' policy and practice was
17 to not provide meal periods to Plaintiffs and the Aggrieved Employees in compliance with
18 California law.

19 20. Throughout the statutory period, Defendants have wrongfully failed to authorize
20 and permit Plaintiffs and the Aggrieved Employees to take timely and duty-free rest periods.
21 Defendants sometimes, but not always, required Plaintiffs and the Aggrieved Employees to work
22 in excess of four consecutive hours a day without Defendants authorizing and permitting them to
23 take a 10-minute, continuous and uninterrupted, rest period for every four hours of work (or major
24 fraction of four hours), or without compensating Plaintiffs and the Aggrieved Employees for rest
25 periods that were not authorized or permitted. Defendants also did not adequately inform Plaintiffs
26 and the Aggrieved Employees of their right to take a rest period. Moreover, Defendants did not
27 have adequate policies or practices permitting or authorizing rest periods for Plaintiffs and the
28 Aggrieved Employees, nor did Defendants have adequate policies or practices regarding the timing

1 of rest periods. Defendants also did not have adequate policies or practices to verify whether
2 Plaintiffs and the Aggrieved Employees were taking their required rest periods. Further,
3 Defendants did not maintain accurate records of employee work periods, and therefore Defendants
4 cannot demonstrate that Plaintiffs and the Aggrieved Employees took rest periods during the
5 middle of each work period. Accordingly, Defendants' policy and practice was to not authorize
6 and permit Plaintiffs and the Aggrieved Employees to take rest periods in compliance with
7 California law.

8 21. Throughout the statutory period, Defendants wrongfully required Plaintiffs and the
9 Aggrieved Employees to pay expenses that they incurred in direct discharge of their duties for
10 Defendants without reimbursement, such as requiring Plaintiffs and the Aggrieved Employees to
11 purchase protective gear such as protective footwear. Also, Plaintiff and the Aggrieved Employees
12 were required to use their own personal cellular telephones for work purposes, without
13 reimbursement. Also, Plaintiff and the Aggrieved Employees were required to maintain their own
14 uniforms, without reimbursement. Also, Plaintiff and the Aggrieved Employees were sometimes
15 required to use their own vehicles to pick up other employees, without reimbursement.

16 22. Throughout the statutory period, Defendants willfully failed and refused to timely
17 pay Plaintiffs and the Aggrieved Employees at the conclusion of their employment all wages for
18 all minimum wages, overtime wages, meal period premium wages, and rest period premium wages.
19 Further, Defendants did not pay Plaintiffs and the Aggrieved Employees their final paychecks
20 immediately upon termination.

21 23. Throughout the statutory period, Defendants failed to furnish Plaintiffs and the
22 Aggrieved Employees with accurate, itemized wage statements showing all applicable hourly rates,
23 and all gross and net wages earned (including correct hours worked, correct wages earned for hours
24 worked, correct overtime hours worked, correct wages for meal periods that were not provided in
25 accordance with California law, correct wages for rest periods that were not authorized and
26 permitted to take in accordance with California law, and Defendant's address). Further, the wage
27 statements do not show Defendant's address as required by California law. As a result of these
28

1 violations of California Labor Code § 226(a), the Plaintiffs and the Aggrieved Employees suffered
2 injury because, among other things:

- 3 (a) the violations led them to believe that they were not entitled to be paid
4 minimum wages, overtime wages, meal period premium wages, rest period
5 premium wages and business reimbursements to which they were entitled,
6 even though they were entitled;
- 7 (b) the violations led them to believe that they had been paid the minimum,
8 overtime, meal period premium, and rest period premium wages and
9 business reimbursements, even though they had not been;
- 10 (c) the violations led them to believe they were not entitled to be paid minimum,
11 overtime, meal period premium, and rest period premium wages at the
12 correct California rate even though they were;
- 13 (d) the violations led them to believe they had been paid minimum, overtime,
14 meal period premium, and rest period premium wages at the correct
15 California rate even though they had not been;
- 16 (e) the violations hindered them from determining the amounts of minimum,
17 overtime, meal period premium, and rest period premium wages and
18 business reimbursements owed to them;
- 19 (f) in connection with their employment before and during this action, and in
20 connection with prosecuting this action, the violations caused them to have
21 to perform mathematical computations to determine the amounts of wages
22 owed to them, computations they would not have to make if the wage
23 statements contained the required accurate information;
- 24 (g) by understating the wages truly due them, the violations caused them to lose
25 entitlement and/or accrual of the full amount of Social Security, disability,
26 unemployment, and other governmental benefits;
- 27 (h) the wage statements inaccurately understated the wages, hours, and wages
28 rates to which Plaintiffs and the Aggrieved Employees were entitled, and

1 Plaintiffs and the Aggrieved Employees were paid less than the wages and
2 wage rates to which they were entitled.

3 Thus, Plaintiffs and the Aggrieved Employees are owed the amounts provided for in California
4 Labor Code § 226(e), including actual damages.

5 **FIRST CAUSE OF ACTION**

6 **(Against all Defendants for Civil Penalties Under the Private Attorneys General Act of**
7 **2004, Cal. Lab. Code §§ 2698, *et seq.*)**

8 24. Plaintiffs incorporate by reference and re-allege all preceding paragraphs of this
9 Complaint as though fully set forth herein.

10 25. At all times herein mentioned, Defendants were subject to the Labor Code of the
11 State of California and the applicable Industrial Welfare Commission Orders.

12 26. California Labor Code § 2699(a) specifically provides for a private right of action
13 to recover penalties for violations of the Labor Code: “Notwithstanding any other provision of law,
14 any provision of this code that provides for a civil penalty to be assessed and collected by the
15 California Labor and Workforce Development Agency (“LWDA”) or any of its departments,
16 divisions, commissions, boards, agencies, or employees, for a violation of this code, may, as an
17 alternative, be recovered through a civil action brought by an aggrieved employee on behalf of
18 herself or herself and other current or former employees pursuant to the procedures specified in
19 Section 2699.3.”

20 27. Plaintiffs have exhausted their administrative remedies pursuant to California Labor
21 Code § 2699.3. On May 19, 2024, they gave written notice by online filing to the LWDA and by
22 certified mail to Defendant Sealy, Inc. of the specific provisions of the Labor Code that Defendants
23 have violated against Plaintiffs and the Aggrieved Employees, including the facts and theories to
24 support the violations. Plaintiffs also paid the filing fee. Plaintiffs’ PAGA case number is LWDA-
25 CM-1029254-24.

26 28. The statute of limitations is tolled while a plaintiff exhausts his/her administrative
27 remedies with the LWDA prior to suit, which is required by the statute. (*See* Cal. Lab. Code §
28 2699.3(d).)

1 29. More than 65 days has elapsed since Plaintiffs provided notice, but the LWDA has
2 not indicated that it intends to investigate Defendants' Labor Code violations discussed in the
3 notice. Accordingly, Plaintiffs may commence a civil action to recover penalties under California
4 Labor Code § 2699, pursuant to California Labor Code § 2699.3, for the violations of the California
5 Labor Code described in Plaintiffs' notice and in this Complaint. These penalties include, but are
6 not limited to, penalties under California Labor Code §§ 210, 226.3, 1197.1, and 2699(f)(2).

7 30. In addition, Plaintiffs seek penalties for Defendants' violation of California Labor
8 Code § 1174(d). Pursuant to California Labor Code § 1174.5, any person, including any entity,
9 employing labor who willfully fails to maintain accurate and complete records required by
10 California Labor Code § 1174 is subject to a penalty under California Labor Code § 1174.5.
11 Pursuant to the applicable IWC Order § 7(A)(3), every employer shall keep time records showing
12 when the employee begins and ends each work period. Meal periods and total hours worked daily
13 shall also be recorded. Additionally, pursuant to the applicable IWC Order § 7(A)(5), every
14 employer shall keep total hours worked in the payroll period and applicable rates of pay.

15 31. During the time period of employment for Plaintiffs and the Aggrieved Employees,
16 Defendants failed to maintain records pursuant to the California Labor Code and IWC Orders by
17 failing to maintain accurate records showing meal periods, and accurate records showing when
18 employees begin and end each work period. Defendants' failure to provide and maintain records
19 as required by the California Labor Code and IWC Wage Orders deprived Plaintiffs and the
20 Aggrieved Employees the ability to know, understand, and question the accuracy and frequency of
21 meal periods and the accuracy of their hours worked stated in Defendants' records. Therefore,
22 Plaintiffs and the Aggrieved Employees had no way to dispute the resulting failure to pay wages,
23 all of which resulted in an unjustified economic enrichment to Defendants. As a direct result,
24 Plaintiffs and the Aggrieved Employees have suffered, and continue to suffer, substantial losses
25 related to the use and enjoyment of such wages, lost interest on such wages, expenses, and
26 attorneys' fees in seeking to compel Defendants to fully perform their obligation under state law,
27 all to their respective damage in amounts according to proof at trial. Because of Defendants'
28 knowing failure to comply with the California Labor Code and applicable IWC Wage Orders,

1 Plaintiffs and the Aggrieved Employees have also suffered an injury in that they were prevented
2 from knowing, understanding, and disputing the wage payments paid to them.

3 32. Based on the conduct described in this Complaint, Plaintiffs are entitled to an award
4 of civil penalties on behalf of themselves, the State of California, and similarly Aggrieved
5 Employees of Defendants. The exact amount of the applicable penalties, in all, is in an amount to
6 be shown according to proof at trial. These penalties are in addition to all other remedies permitted
7 by law.

8 33. In addition, Plaintiffs seek an award of reasonable attorneys' fees and costs pursuant
9 to California Labor Code § 2699(g)(1), which states, "Any employee who prevails in any action
10 shall be entitled to an award of reasonable attorney's fees and costs."

11 **PRAYER FOR RELIEF**

12 Plaintiffs, individually, and on behalf of all others similarly situated and the State of
13 California, pray for relief and judgment against Defendants, jointly and severally, as follows:

14 1. That the Court declare, adjudge, and decree that Defendants violated the California
15 Labor Code by failing to pay wages for all hours worked (including, but not limited to, minimum
16 wages and overtime wages), failing to provide meal periods, failing to authorize and permit rest
17 periods, failing to furnish accurate wage statements, failing to reimburse all business expenses, and
18 failing to maintain accurate records of all hours worked and meal periods;

19 2. An award of civil penalties on behalf of themselves, all similarly Aggrieved
20 Employees, and the State of California pursuant to PAGA;

21 3. Pre-judgment and post-judgment interest at the maximum rate allowed;

22 4. Attorneys' fees and costs reasonably incurred;

23 5. Injunctive and declaratory relief to the extent allowed by PAGA;

24 6. That counsel for Plaintiffs be appointed as PAGA Counsel; and

25 7. Such other and further relief that the Court deems proper.

26 ///

27 ///

28 ///

1 Dated: July 24, 2024

Respectfully submitted,

2 MOON LAW GROUP, PC

3
4 By:


Kane Moon
Allen Feghali
Charlotte Mikat-Stevens
Attorneys for Plaintiffs

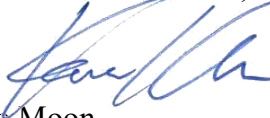
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8 **DEMAND FOR JURY TRIAL**

9 Plaintiffs demand a trial by jury as to all causes of action triable by jury.

10 Dated: July 24, 2024

MOON LAW GROUP, PC

11
12 By:


Kane Moon
Allen Feghali
Charlotte Mikat-Stevens
Attorneys for Plaintiffs