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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF LOS ANGELES**

STERLING CARR, an individual, and on
behalf of the State of California, as a
private attorney general,

Plaintiff,

vs.

2ND STREET USA, INC., a Corporation;
2ND STREET RETAILERS, a
Corporation; and DOES 1 through 50,
inclusive,

Defendant.

Case No. **24STCV26369**

COMPLAINT FOR:

1. Civil Penalties Pursuant to Labor Code § 2699, *et seq.* for violations of Labor Code §§ 201, 202, 203, 204, 210, 218, 221, 226(a), 226.7, 227.3, 246, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), and Violation of Applicable Industrial Welfare Commission Wage Order(s);
2. Wrongful Termination in Violation of Public Policy;
3. Retaliation in Violation of Labor Code § 1102.5, *et seq.*; and,
4. Discrimination and Retaliation in Violation of FEHA

DEMAND FOR A JURY TRIAL

1 Sterling Carr (“PLAINTIFF”), on behalf of the people of the State of California and as an
2 “aggrieved employee” acting as a private attorney general under the Labor Code Private Attorney
3 General Act of 2004, § 2699, *et seq.* (“PAGA”) with regard to the First Cause of Action, and as an
4 individual with regard to the Second, Third and Fourth Causes of Action, alleges on information and
5 belief, except for his own acts and knowledge which are based on personal knowledge, the following:

6 **INTRODUCTION**

7 1. PLAINTIFF brings the First Cause of Action against Defendants 2nd Street USA, Inc.
8 and 2nd Street Retailers (referred to as “DEFENDANT”) seeking only to recover PAGA civil penalties
9 on behalf of all current and former aggrieved employees that worked for DEFENDANT. PLAINTIFF
10 does **not seek to recover anything other than penalties as permitted by California Labor Code §**
11 **2699.** To the extent that statutory violations are mentioned for wage violations, PLAINTIFF does not
12 seek underlying general and/or special damages for those violations, but simply the civil penalties
13 permitted by California Labor Code § 2699.

14 2. California has enacted the PAGA which permits PLAINTIFF to bring an action
15 on behalf of himself and on behalf of others for PAGA penalties *only*, which is the precise and sole
16 nature of this action.

17 3. Accordingly, as to the First Cause of Action, PLAINTIFF seeks to obtain all applicable
18 relief for DEFENDANT’s violations under PAGA and solely for the relief as permitted by PAGA – that
19 is, penalties and any other relief the Court deems proper pursuant to the PAGA.

20 4. As to the First Cause of Action, PLAINTIFF is not suing in his individual capacity, he
21 is proceeding solely under the PAGA, on behalf of the State of California for all aggrieved employees,
22 including himself and other aggrieved employees. With regard to the First Cause of Action, nothing in
23 this complaint should be construed as PLAINTIFF suing in his individual capacity.

24 5. PLAINTIFF brings the Second, Third and Fourth Causes of Action individually against
25 DEFENDANT for special damages, punitive damages, pre-judgment interest, costs and reasonable
26 attorneys’ fees as set forth below.

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28 ///

THE PARTIES

6. 2nd Street USA, Inc. is a corporation that at all relevant times mentioned herein conducted and continues to conduct substantial business in California.

7. 2nd Street Retailers is a corporation that at all relevant times mentioned herein conducted and continues to conduct substantial business in California.

8. 2nd Street USA, Inc. and 2nd Street Retailers were the joint employers of Plaintiff as evidenced by paycheck and by the company PLAINTIFF performs work for respectively, and are therefore jointly responsible as employers for the conduct alleged herein, and are therefore collectively referred to herein as ("DEFENDANT").

9. PLAINTIFF was employed by DEFENDANT in California from April 2, 2023 to October 24, 2023 and was at all times classified by DEFENDANT as a non-exempt employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and payment of minimum and overtime wages due for all time worked.

10. PLAINTIFF, and such persons that may be added from time to time who satisfy the requirements and exhaust the administrative procedures under the Private Attorney General Act, brings this Representative Action on behalf of the State of California with respect to himself and all individuals who are or previously were employed by 2nd Street USA, Inc. and/or 2nd Street Retailers in California, including any employees staffed with 2nd Street USA, Inc. and/or 2nd Street Retailers by a third party, and classified as non-exempt employees ("AGGRIEVED EMPLOYEES") during the time period of February 13, 2023 until a date as determined by the Court (the "PAGA PERIOD").

11. PLAINTIFF, on behalf of himself and all AGGRIEVED EMPLOYEES presently or formerly employed by DEFENDANT during the PAGA PERIOD, brings this representative action pursuant to Labor Code § 2699, *et seq.* seeking fixed civil penalties for DEFENDANT's violation of California Labor Code §§ 201, 202, 203, 204, 210, 218, 221, 226(a), 226.7, 227.3, 246, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), and the applicable Wage Order(s). Based upon the foregoing,

1 PLAINTIFF and all AGGRIEVED EMPLOYEES are aggrieved employees within the meaning of Labor
2 Code § 2699, *et seq.*

3 12. The true names and capacities, whether individual, corporate, subsidiary, partnership,
4 associate or otherwise of DEFENDANT DOES 1 through 50, inclusive, are presently unknown to
5 PLAINTIFF who therefore sues these DEFENDANT by such fictitious names pursuant to Cal. Civ.
6 Proc. Code § 474. PLAINTIFF will seek leave to amend this Complaint to allege the true names and
7 capacities of Does 1 through 50, inclusive, when they are ascertained. PLAINTIFF is informed and
8 believes, and based upon that information and belief alleges, that the DEFENDANT named in this
9 Complaint, including DOES 1 through 50, inclusive, are responsible in some manner for one or more
10 of the events and happenings that proximately caused the injuries and damages hereinafter alleged.

11 13. The agents, servants and/or employees of the DEFENDANT and each of them acting
12 on behalf of the DEFENDANT acted within the course and scope of his, her or its authority as the
13 agent, servant and/or employee of the DEFENDANT, and personally participated in the conduct
14 alleged herein on behalf of the DEFENDANT with respect to the conduct alleged herein.
15 Consequently, the acts of each Defendant are legally attributable to the other DEFENDANT and all
16 DEFENDANT are jointly and severally liable to PLAINTIFF and all the AGGRIEVED EMPLOYEES,
17 for the loss sustained as a proximate result of the conduct of the DEFENDANT's agents, servants
18 and/or employees.

19 **THE CONDUCT**

20 14. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
21 required to pay PLAINTIFF and the AGGRIEVED EMPLOYEES for all their time worked, meaning
22 the time during which an employee is subject to the control of an employer, including all the time the
23 employee is suffered or permitted to work. DEFENDANT requires PLAINTIFF and the AGGRIEVED
24 EMPLOYEES to work without paying them for all the time they are under DEFENDANT's control.
25 Among other things, DEFENDANT requires PLAINTIFF to work while clocked out during what is
26 supposed to be PLAINTIFF's off-duty meal break. PLAINTIFF was from time to time interrupted by
27 work assignments while clocked out for what should have been PLAINTIFF's off-duty meal break.
28 DEFENDANT, as a matter of established company policy and procedure, administers a uniform

1 practice of rounding the actual time worked and recorded by PLAINTIFF and the AGGRIEVED
2 EMPLOYEES, always to the benefit of DEFENDANT, so that during the course of their employment,
3 PLAINTIFF and the AGGRIEVED EMPLOYEES are paid less than they would have been paid had
4 they been paid for actual recorded time rather than “rounded” time. Additionally, DEFENDANT
5 engages in the practice of requiring PLAINTIFF and the AGGRIEVED EMPLOYEES to perform work
6 off the clock in that DEFENDANT, as a condition of employment, required these employees to submit
7 to mandatory temperature checks and symptom questionnaires for COVID-19 screening prior to
8 clocking into DEFENDANT’s timekeeping system for the workday. As a result, PLAINTIFF and the
9 AGGRIEVED EMPLOYEES forfeit minimum wage, overtime wage compensation, and off-duty meal
10 breaks by working without their time being correctly recorded and without compensation at the
11 applicable rates. DEFENDANT’s policy and practice not to pay PLAINTIFF and the AGGRIEVED
12 EMPLOYEES for all time worked, is evidenced by DEFENDANT’s business records.

13 15. State law provides that employees must be paid overtime and meal and rest break
14 premiums at one-and-one-half times their “regular rate of pay.” PLAINTIFF and the AGGRIEVED
15 EMPLOYEES are compensated at an hourly rate plus incentive pay that is tied to specific elements of
16 an employee’s performance.

17 16. The second component of PLAINTIFF’s and the AGGRIEVED EMPLOYEES’
18 compensation is DEFENDANT’s non-discretionary incentive program that paid PLAINTIFF and the
19 AGGRIEVED EMPLOYEES incentive wages based on their performance for DEFENDANT. The
20 non-discretionary incentive program provided all employees paid on an hourly basis with incentive
21 compensation when the employees met the various performance goals set by DEFENDANT. However,
22 when calculating the regular rate of pay in order to pay overtime and meal and rest break premiums to
23 PLAINTIFF and the AGGRIEVED EMPLOYEES, DEFENDANT failed to include the incentive
24 compensation as part of the employees’ “regular rate of pay” for purposes of calculating overtime pay
25 and meal and rest break premium pay. Management and supervisors described the incentive program
26 to potential and new employees as part of the compensation package. As a matter of law, the incentive
27 compensation received by PLAINTIFF and the AGGRIEVED EMPLOYEES must be included in the
28 “regular rate of pay.” The failure to do so has resulted in a underpayment of overtime compensation

1 and meal and rest break premiums to PLAINTIFF and the AGGRIEVED EMPLOYEES by
2 DEFENDANT.

3 17. As a result of their rigorous work schedules, PLAINTIFF and the AGGRIEVED
4 EMPLOYEES were from time to time unable to take thirty (30) minute off duty meal breaks and were
5 not fully relieved of duty for their meal periods. PLAINTIFF and the AGGRIEVED EMPLOYEES
6 were required from time to time to perform work as ordered by DEFENDANT for more than five (5)
7 hours during some shifts without receiving a meal break. Further, DEFENDANT from time to time
8 failed to provide PLAINTIFF and AGGRIEVED EMPLOYEES with a second off-duty meal period
9 for some workdays in which these employees were required by DEFENDANT to work ten (10) hours
10 of work. DEFENDANT also engaged in the practice of rounding the meal period times to avoid paying
11 penalties to PLAINTIFF and the AGGRIEVED EMPLOYEES. PLAINTIFF and the AGGRIEVED
12 EMPLOYEES therefore forfeit meal breaks without additional compensation and in accordance with
13 DEFENDANT's corporate policy and practice.

14 18. During the PAGA PERIOD, PLAINTIFF and the AGGRIEVED EMPLOYEES were
15 also required from time to time to work in excess of four (4) hours without being provided ten (10)
16 minute rest periods. Further, these employees were denied their first rest periods of at least ten (10)
17 minutes for some shifts worked of at least two (2) to four (4) hours from time to time, a first and
18 second rest period of at least ten (10) minutes for some shifts worked of between six (6) and eight (8)
19 hours from time to time, and a first, second and third rest period of at least ten (10) minutes for some
20 shifts worked of ten (10) hours or more from time to time. PLAINTIFF and the AGGRIEVED
21 EMPLOYEES were also not provided with one hour wages in lieu thereof. Additionally, the
22 applicable California Wage Order requires employers to provide employees with off-duty rest periods,
23 which the California Supreme Court defined as time during which an employee is relieved from all
24 work related duties and free from employer control. In so doing, the Court held that the requirement
25 under California law that employers authorize and permit all employees to take rest period means that
26 employers must relieve employees of all duties and relinquish control over how employees spend their
27 time which includes control over the locations where employees may take their rest period. Employers
28 cannot impose controls that prohibit an employee from taking a brief walk - five minutes out, five

1 minutes back. Here, DEFENDANT's policy restricted PLAINTIFF and the AGGRIEVED
2 EMPLOYEES from unconstrained walks and is unlawful based on DEFENDANT's rule which states
3 PLAINTIFF and the AGGRIEVED EMPLOYEES cannot leave the work premises during their rest
4 period.

5 19. During the PAGA PERIOD, DEFENDANT failed to accurately record and pay
6 PLAINTIFF and the AGGRIEVED EMPLOYEES for the actual amount of time these employees
7 worked. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was required
8 to pay PLAINTIFF and the AGGRIEVED EMPLOYEES for all time worked, meaning the time during
9 which an employee was subject to the control of an employer, including all the time the employee was
10 permitted or suffered to permit this work. DEFENDANT required these employees to work off the
11 clock without paying them for all the time they were under DEFENDANT's control. As such,
12 DEFENDANT knew or should have known that PLAINTIFF and the AGGRIEVED EMPLOYEES
13 were under compensated for all time worked. As a result, PLAINTIFF and the AGGRIEVED
14 EMPLOYEES forfeited time worked by working without their time being accurately recorded and
15 without compensation at the applicable minimum wage and overtime wage rates. To the extent that
16 the time worked off the clock does not qualify for overtime premium payment, DEFENDANT failed
17 to pay minimum wages for the time worked off-the-clock in violation of Cal. Lab. Code §§ 1194, 1197,
18 and 1197.1.

19 20. From time to time, DEFENDANT also failed to provide PLAINTIFF and the
20 AGGRIEVED EMPLOYEES with complete and accurate wage statements which failed to show,
21 among other things, the correct gross and net wages earned. Cal. Lab. Code § 226 provides that every
22 employer shall furnish each of his or her employees with an accurate itemized wage statement in
23 writing showing, among other things, gross wages earned and all applicable hourly rates in effect
24 during the pay period and the corresponding amount of time worked at each hourly rate. PLAINTIFF
25 and the AGGRIEVED EMPLOYEES were paid on an hourly basis. As such, the wage statements
26 should reflect all applicable hourly rates during the pay period and the total hours worked, and the
27 applicable pay period in which the wages were earned pursuant to California Labor Code Section
28 226(a). The wage statements DEFENDANT provided to PLAINTIFF and the AGGRIEVED

1 EMPLOYEES failed to identify such information. More specifically, the wage statements failed to
2 identify the accurate total hours worked each pay period. When the hours shown on the wage
3 statements were added up, they did not equal the actual total hours worked during the pay period in
4 violation of Cal. Lab. Code 226(a)(2). Aside, from the violations listed above in this paragraph,
5 DEFENDANT failed to issue to PLAINTIFF an itemized wage statement that lists all the requirements
6 under California Labor Code 226. As a result, DEFENDANT from time to time provided PLAINTIFF
7 and the AGGRIEVED EMPLOYEES with wage statements which violated Cal. Lab. Code § 226.

8 21. Cal. Lab. Code § 204(d) provides, the requirements of this section shall be deemed
9 satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid
10 not more than seven (7) calendar days following the close of the payroll period. Cal. Lab. Code § 210
11 provides:

12 [I]n addition to, and entirely independent and apart from, any other penalty provided in
13 this article, every person who fails to pay the wages of each employee as provided in
14 Sections. . . .204. . .shall be subject to a civil penalty as follows: (1) For any initial
15 violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For
each subsequent violation, or any willful or intentional violation, two hundred dollars
(\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully
withheld.

16 22. DEFENDANT from time to time failed to pay PLAINTIFF and the AGGRIEVED
17 EMPLOYEES within seven (7) days of the close of the payroll period in accordance with Cal. Lab.
18 Code § 204(d), including but not limited to for the “Hourly” regular wage payments.

19 23. DEFENDANT underpaid sick pay wages to PLAINTIFF and the AGGRIEVED
20 EMPLOYEES by failing to pay such wages at the regular rate of pay in violation of Cal. Lab. Code
21 Section 246. Specifically, PLAINTIFF and other non-exempt employees earn non-discretionary
22 remuneration, including, but not limited to, incentives, shift differential pay, and bonuses. Rather than
23 pay sick pay at the regular rate of pay, DEFENDANT underpays sick pay to PLAINTIFF and the
24 AGGRIEVED EMPLOYEES at their base rates of pay.

25 24. Cal. Lab. Code Section 246(1)(2) requires that paid sick time for nonexempt
26 employees be calculated by dividing the employee’s total wages, not including overtime premium pay,
27 by the employee’s total hours worked in the full pay periods of the prior 90 days of employment.
28

1 25. DEFENDANT violated Cal. Lab. Code Section 246 by failing to pay sick pay at the
2 regular rate of pay. PLAINTIFF and the AGGRIEVED EMPLOYEES routinely earned non-
3 discretionary incentive wages which increased their regular rate of pay. However, when sick pay was
4 paid, it was paid at the base rate of pay for PLAINTIFF and the AGGRIEVED EMPLOYEES, as
5 opposed to the correct, higher regular rate of pay, as required under Cal. Lab. Code Section 246.

6 26. As a pattern and practice, DEFENDANT regularly failed to pay PLAINTIFF and the
7 AGGRIEVED EMPLOYEES their correct wages and accordingly owe waiting time penalties pursuant
8 to Cal. Lab. Code Section 203. Further, PLAINTIFF is informed and believes and based thereon alleges
9 that such failure to pay sick pay at regular rate was willful, such that the AGGRIEVED EMPLOYEES
10 whose employment has separated are entitled to waiting time penalties pursuant to Cal. Lab. Code
11 Sections 201-203.

12 27. Pursuant to Cal. Lab. Code Section 221, "It shall be unlawful for any employer to
13 collect or receive from an employee any part of wages theretofore paid by said employer to said
14 employee." DEFENDANT failed to pay all compensation due to PLAINTIFF and the AGGRIEVED
15 EMPLOYEES, made unlawful deductions from compensation payable to PLAINTIFF and the
16 AGGRIEVED EMPLOYEES, failed to disclose all aspects of the deductions from compensation
17 payable to PLAINTIFF and the AGGRIEVED EMPLOYEES, and thereby failed to pay these
18 employees all wages due at each applicable pay period and upon termination.

19 28. DEFENDANT intentionally and knowingly failed to reimburse and indemnify
20 PLAINTIFF and the AGGRIEVED EMPLOYEES for required business expenses incurred by the
21 PLAINTIFF and the AGGRIEVED EMPLOYEES in direct consequence of discharging their duties
22 on behalf of DEFENDANT. Under California Labor Code Section 2802, employers are required to
23 indemnify employees for all expenses incurred in the course and scope of their employment. Cal. Lab.
24 Code § 2802 expressly states that "an employer shall indemnify his or her employee for all necessary
25 expenditures or losses incurred by the employee in direct consequence of the discharge of his or her
26 duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the
27 employee, at the time of obeying the directions, believed them to be unlawful."
28

1 29. In the course of their employment PLAINTIFF and the AGGRIEVED EMPLOYEES
2 as a business expense, were required by DEFENDANT to use their own personal cellular phones as
3 a result of and in furtherance of their job duties as employees for DEFENDANT but are not reimbursed
4 or indemnified by DEFENDANT for the cost associated with the use of their personal cellular phones
5 for DEFENDANT's benefit. Specifically, PLAINTIFF and the AGGRIEVED EMPLOYEES were
6 required by DEFENDANT to use their personal cellular phones. As a result, in the course of their
7 employment with DEFENDANT, PLAINTIFF and the AGGRIEVED EMPLOYEES incurred
8 unreimbursed business expenses which included, but were not limited to, costs related to the use of
9 their personal cellular phones all on behalf of and for the benefit of DEFENDANT.

10 30. In violation of the applicable sections of the California Labor Code and the requirements
11 of the applicable Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as a matter of
12 company policy, practice and procedure, intentionally, knowingly and systematically failed to provide
13 PLAINTIFF and the other AGGRIEVED EMPLOYEES suitable seating when the nature of these
14 employees' work reasonably permitted sitting.

15 31. DEFENDANT knew or should have known that PLAINTIFF and other AGGRIEVED
16 EMPLOYEES were entitled to suitable seating and/or were entitled to sit when it did not interfere with
17 the performance of their duties, and that DEFENDANT did not provide suitable seating and/or did not
18 allow them to sit when it did not interfere with the performance of their duties.

19 32. By reason of this conduct applicable to PLAINTIFF and all AGGRIEVED
20 EMPLOYEES, DEFENDANT violated California Labor Code Section 1198 and Wage Order 4-2001,
21 Section 14 by failing to provide suitable seats. PLAINTIFF seeks penalties on behalf of PLAINTIFF
22 and other AGGRIEVED EMPLOYEES as provided herein. Providing suitable seating is the
23 DEFENDANT's burden. As a result of DEFENDANT's intentional disregard of the obligation to meet
24 this burden, DEFENDANT violated the California Labor Code and regulations promulgated thereunder
25 as herein alleged.

26 33. The employment of PLAINTIFF and other AGGRIEVED EMPLOYEES has
27 terminated and DEFENDANT has not tendered payment of all wages owed as required by law.
28 Additionally, at all times during the term of PLAINTIFF's employment with DEFENDANT,

1 PLAINTIFF and other AGGRIEVED EMPLOYEES earned and accrued vested vacation and
2 holiday time on the date of their termination pursuant to DEFENDANT's uniform vacation
3 policies and applicable California law. The amount of vacation pay PLAINTIFF and the other
4 AGGRIEVED EMPLOYEES earned and accumulated is evidenced by DEFENDANT's
5 business records. Additionally, DEFENDANT also underpaid accrued vested vacation wages
6 to PLAINTIFF and other AGGRIEVED EMPLOYEES by failing to pay such wages at the
7 regular rate of pay and more specifically the final rate of pay that included all non-discretionary
8 incentive compensation. Rather than pay vacation wages at the regular rate of pay,
9 DEFENDANT underpaid vacation wages to PLAINTIFF and other AGGRIEVED
10 EMPLOYEES at their base rates of pay, instead of including all of the PLAINTIFF's and other
11 AGGRIEVED EMPLOYEES' non-discretionary incentive compensation into the vacation
12 wage payment calculations. DEFENDANT failed to specify in DEFENDANT's written
13 vacation policy the rate at which PLAINTIFF and other AGGRIEVED EMPLOYEES would
14 be paid vacation upon leaving employment with DEFENDANT. As a result of DEFENDANT's
15 unlawful practice, policy and procedure to deny paying the PLAINTIFF and other
16 AGGRIEVED EMPLOYEES all of their vested vacation and holiday time, DEFENDANT
17 failed to pay PLAINTIFF and other AGGRIEVED EMPLOYEES all vested vacation time as
18 wages due upon employment termination, in violation of the California Labor Code, Sections
19 201, 202, 203 and 227.3. Similarly, DEFENDANT underpaid waiting time penalties to
20 PLAINTIFF and other AGGRIEVED EMPLOYEES at their base rates of pay, instead of
21 including all of the AGGRIEVED EMPLOYEES' non-discretionary compensation into the
22 waiting time penalty calculations. This failure by DEFENDANT is believed to be the result
23 of DEFENDANT's unlawful, unfair and deceptive refusal to provide compensation for earned,
24 accrued and vested vacation and holiday time, as well as the corresponding waiting time
25 penalties that were paid. DEFENDANT perpetrated this unlawful, unfair and deceptive
26 practice to the detriment of PLAINTIFF and other AGGRIEVED EMPLOYEES.
27 DEFENDANT's uniform practice and policy of failing to pay PLAINTIFF and other
28 AGGRIEVED EMPLOYEES for all vested vacation and holiday time accumulated at

1 employment termination violated and continues to violate Section 227.3 of the California Labor
2 Code.

3 34. All of the conduct and violations alleged herein occurred during the PAGA
4 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect
5 PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations that
6 affected the AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.* 2018
7 AJDAR 12157 (Certified for Publication 12/19/18).

8 **JURISDICTION AND VENUE**

9 35. This Court has jurisdiction over this Action pursuant to California Code of Civil
10 Procedure, Section 410.10.

11 36. Venue is proper in this Court pursuant to California Code of Civil Procedure, Sections
12 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANT and DEFENDANT (i)
13 currently maintains and at all relevant times maintained offices and facilities in this County and/or
14 conducts substantial business in this County, and (ii) committed the wrongful conduct herein alleged
15 in this County against PLAINTIFF and other AGGRIEVED EMPLOYEES.

16 **FIRST CAUSE OF ACTION**

17 **For Violation of the Private Attorneys General Act**

18 **[Cal. Lab. Code §§ 2698]**

19 **(By PLAINTIFF and Against All Defendants)**

20 37. PLAINTIFF realleges and incorporates by this reference, as though fully set forth herein,
21 the prior paragraphs of this Complaint.

22 38. PAGA is a mechanism by which the State of California itself can enforce state labor
23 laws through the employee suing under the PAGA who do so as the proxy or agent of the state's labor
24 law enforcement agencies. An action to recover civil penalties under PAGA is fundamentally a law
25 enforcement action designed to protect the public and not to benefit private parties. The purpose of
26 the PAGA is not to recover damages or restitution, but to create a means of "deputizing" citizens as
27 private attorneys general to enforce the Labor Code. In enacting PAGA, the California Legislature
28

1 specified that "it was ... in the public interest to allow aggrieved employees, acting as private attorneys
2 general to recover civil penalties for Labor Code violations ..." Stats. 2003, ch. 906, § 1. Accordingly,
3 PAGA claims cannot be subject to arbitration.

4 39. PLAINTIFF, and such persons that may be added from time to time who satisfy the
5 requirements and exhaust the administrative procedures under the Private Attorney General Act, brings
6 this Representative Action on behalf of the State of California with respect to himself and all
7 individuals who are or previously were employed by 2nd Street USA, Inc. and/or 2nd Street Retailers
8 in California, including any employees staffed with 2nd Street USA, Inc. and/or 2nd Street
9 Retailers by a third party, and classified as non-exempt employees ("AGGRIEVED EMPLOYEES")
10 during the time period of February 13, 2023 until a date as determined by the Court (the "PAGA
11 PERIOD").

12 40. On February 13, 2024, PLAINTIFF gave written notice by electronic mail to the Labor
13 and Workforce Development Agency (the "Agency") and by certified mail to the employer of the
14 specific provisions of this code alleged to have been violated as required by Labor Code § 2699.3. *See*
15 **Exhibit #1**, attached hereto and incorporated by this reference herein (*PAGA Notice only without draft*
16 *complaint*). The statutory waiting period for PLAINTIFF to add these allegations to the Complaint has
17 expired. As a result, pursuant to Section 2699.3, PLAINTIFF may now commence a representative
18 civil action under PAGA pursuant to Section 2699 as the proxy of the State of California with respect
19 to all AGGRIEVED EMPLOYEES as herein defined.

20 41. The policies, acts and practices heretofore described were and are an unlawful business
21 act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the AGGRIEVED
22 EMPLOYEES accurate itemized wage statements, (b) failed to properly record and provide legally
23 required meal and rest periods, (c) failed to pay minimum wages, (d) failed to pay overtime wages and
24 sick pay wages, (e) failed to reimburse employees for required expenses, (f) failed to provide wages
25 when due, and (g) failed to provide suitable seating, all in violation of the applicable Labor Code
26 sections listed in Labor Code §§ 201, 202, 203, 204, 210, 218, 221, 226(a), 226.7, 227.3, 246,
27 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title
28 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1

1 1070(14) (Failure to Provide Seating), and the applicable Wage Order(s), and thereby gives rise to
2 civil penalties as a result of such conduct.¹ PLAINTIFF hereby seeks recovery of civil penalties as
3 prescribed by the Labor Code Private Attorney General Act of 2004 as the representative of the State
4 of California for the illegal conduct perpetrated on PLAINTIFF and the AGGRIEVED EMPLOYEES.

5
6 **SECOND CAUSE OF ACTION**

7 **Wrongful Termination In Violation of Public Policy**

8 **(By PLAINTIFF Against All Defendants)**

9 42. PLAINTIFF realleges and incorporates by reference, as though fully set forth
10 herein, the prior paragraphs of this Complaint.

11 43. Subsequent to PLAINTIFF's participation in protective activity by reporting
12 retaliation and discrimination based on race and his sexual orientation, DEFENDANT
13 subjected PLAINTIFF to adverse employment actions by retaliating against PLAINTIFF.
14 Starting in August of 2023 and continuing throughout the rest of PLAINTIFF's employment,
15 PLAINTIFF reported workplace discrimination he was experiencing from his Store Manager,
16 Rudolfo Martinez, based on his race as an African American and his sexual orientation as a
17 homosexual male. In or around September of 2023, PLAINTIFF was denied a promotion.
18 Throughout the rest of PLAINTIFF's employment, PLAINTIFF continued to voice concerns
19 about the harassing treatment in PLAINTIFF's store and voiced concerns it was retaliation
20 stemming from PLAINTIFF's reporting of the workplace discrimination and harassment.
21 Shortly thereafter, on October 24, 2023, DEFENDANT informed PLAINTIFF that he was
22 being terminated. Because of PLAINTIFF's engagement in the protected activity of reporting
23 harassment and discrimination based on his association in a protected class, DEFENDANT
24 terminated PLAINTIFF's employment. As a result, there is a causal link between the protected
25 activity and DEFENDANT's decision to terminate PLAINTIFF's employment, which is

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27 _____
28 ¹As to the First Cause of Action alleging violations of the PAGA, Plaintiff specifically excludes
and/or does not allege any claims under California Labor Code §558(a)(3).

1 against public policy.

2 44. PLAINTIFF raised complaints of illegality while PLAINTIFF worked for
3 DEFENDANT and was believed to be willing to raise complaints, and DEFENDANT
4 retaliated against PLAINTIFF by taking adverse employment actions, including employment
5 termination, against PLAINTIFF.

6 45. As a proximate result of DEFENDANT's willful, knowing, and intentional
7 misconduct, PLAINTIFF has suffered and continues to suffer humiliation, emotional distress,
8 and mental and physical pain and anguish, all to PLAINTIFF's damage in a sum according to
9 proof.

10 46. As a result of DEFENDANT's adverse employment actions against PLAINTIFF,
11 PLAINTIFF has suffered general and special damages in sums according to proof.

12 47. DEFENDANT's misconduct was committed intentionally, in a malicious,
13 oppressive manner, and fraudulent manner entitling PLAINTIFF to punitive damages against
14 DEFENDANT.

15 **THIRD CAUSE OF ACTION**

16 **Retaliation**

17 **[Violation of Cal. Lab. Code § 1102.5, *et seq.*]**

18 **(By PLAINTIFF Against All Defendants)**

19 48. PLAINTIFF realleges and incorporates by reference, as though fully set forth
20 herein, the prior paragraphs of this Complaint.

21 49. At all relevant times, Labor Code section 1102.5 was in effect and was
22 binding on DEFENDANT. This statute prohibits DEFENDANT from retaliating against
23 any employee, including PLAINTIFF, for raising complaints of illegality and/or belief that
24 the employee may disclose illegality.

25 50. Subsequent to PLAINTIFF's participation in protective activity by reporting
26 retaliation and discrimination based on race and his sexual orientation, DEFENDANT
27 subjected PLAINTIFF to adverse employment actions by retaliating against PLAINTIFF.
28

1 Starting in August of 2023 and continuing throughout the rest of PLAINTIFF's
2 employment, PLAINTIFF reported workplace discrimination he was experiencing from his
3 Store Manager, Rudolfo Martinez, based on his race as an African American and his sexual
4 orientation as a homosexual male. In or around September of 2023, PLAINTIFF was denied
5 a promotion. Throughout the rest of PLAINTIFF's employment, PLAINTIFF continued to
6 voice concerns about the harassing treatment in PLAINTIFF's store and voiced concerns it
7 was retaliation stemming from PLAINTIFF's reporting of the workplace discrimination and
8 harassment. Shortly thereafter, on October 24, 2023, DEFENDANT informed PLAINTIFF
9 that he was being terminated. Because of PLAINTIFF's engagement in the protected
10 activity of reporting harassment and discrimination based on his association in a protected
11 class, DEFENDANT terminated PLAINTIFF's employment. As a result, there is a causal
12 link between the protected activity and DEFENDANT's decision to terminate
13 PLAINTIFF's employment, which is against public policy.

14 51. As a proximate result of DEFENDANT's willful, knowing, and intentional
15 violation(s) of Labor Code section 1102.5, PLAINTIFF has suffered and continues to suffer
16 humiliation, emotional distress, and mental and physical pain and anguish, all to
17 PLAINTIFF's damage in a sum according to proof.

18 52. As a result of DEFENDANT's adverse employment actions against
19 PLAINTIFF, PLAINTIFF has suffered general and special damages in sums according to
20 proof.

21 53. DEFENDANT's misconduct was committed intentionally, in a malicious,
22 oppressive manner, and fraudulent manner entitling PLAINTIFF to punitive damages
23 against defendants.

24 ///

25 ///

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[Discrimination and Retaliation For the Exercise of Rights Guaranteed Under the FEHA, Participating in Protected Activities, and/or Opposing DEFENDANT's Failure to Provide Such Rights]

(By PLAINTIFF Against All Defendants)

55. DEFENDANT's conduct, as alleged, violated FEHA, Government Code Section 12900, *et seq.*, and DEFENDANT committed unlawful employment practices, including the following bases for liability:

d. Retaliating against PLAINTIFF for seeking to exercise rights guaranteed under FEHA, participating in protected activities, and/or opposing

1 DEFENDANT's failure to provide such rights, in violation of Government Code Section
2 12940(h).

3 56. Subsequent to PLAINTIFF's participation in protective activity by reporting
4 retaliation and discrimination based on race and his sexual orientation, DEFENDANT
5 subjected PLAINTIFF to adverse employment actions by retaliating against PLAINTIFF.
6 Starting in August of 2023 and continuing throughout the rest of PLAINTIFF's
7 employment, PLAINTIFF reported workplace discrimination he was experiencing from his
8 Store Manager, Rudolfo Martinez, based on his race as an African American and his sexual
9 orientation as a homosexual male. In or around September of 2023, PLAINTIFF was denied
10 a promotion. Throughout the rest of PLAINTIFF's employment, PLAINTIFF continued to
11 voice concerns about the harassing treatment in PLAINTIFF's store and voiced concerns it
12 was retaliation stemming from PLAINTIFF's reporting of the workplace discrimination and
13 harassment. Shortly thereafter, on October 24, 2023, DEFENDANT informed PLAINTIFF
14 that he was being terminated. Because of PLAINTIFF's engagement in the protected
15 activity of reporting harassment and discrimination based on his association in a protected
16 class, DEFENDANT terminated PLAINTIFF's employment. As a result, there is a causal
17 link between the protected activity and DEFENDANT's decision to terminate
18 PLAINTIFF's employment, which is against public policy.

19 57. As a result of the good faith complaints PLAINTIFF made to DEFENDANT
20 regarding the discriminatory practices stated above and also as a result of PLAINTIFF's
21 race and/or sexual orientation, DEFENDANT in direct retaliation for those complaints,
22 denied PLAINTIFF employment benefits, and ultimately terminated PLAINTIFF's
23 employment with DEFENDANT.

24 58. As a proximate result of DEFENDANT's willful, knowing, and intentional
25 discrimination against PLAINTIFF, PLAINTIFF has sustained and continues to sustain
26 substantial losses of earnings and other employment benefits.

27 59. As a proximate result of DEFENDANT's willful, knowing, and intentional
28

1 discrimination against PLAINTIFF, PLAINTIFF has suffered and continues to suffer
2 humiliation, emotional distress, and physical and mental pain and anguish, all to
3 PLAINTIFF's damage in a sum according to proof.

4 60. PLAINTIFF has incurred and continues to incur legal expenses and attorneys'
5 fees. Pursuant to Government Code Section 12965(b), PLAINTIFF is entitled to recover
6 reasonable attorneys' fees and costs (including expert costs) in an amount according to
7 proof.

8 61. DEFENDANT's misconduct was committed intentionally, in a malicious,
9 oppressive manner, and fraudulent manner entitling PLAINTIFF to punitive damages
10 against DEFENDANT.

11
12 **PRAYER FOR RELIEF**

13 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and
14 severally, as follows:

- 15 1. For the First Cause of Action on behalf of the State of California and with respect
16 to all AGGRIEVED EMPLOYEES:

17 A) Recovery of civil penalties as prescribed by the Labor Code Private
18 Attorneys General Act of 2004; and,

19 B) An award of attorneys' fees and cost of suit, as allowable under the law,
20 including, but not limited to, pursuant to Labor Code §2699;

- 21 2. For the Second, Third and Fourth Causes of Action on behalf of PLAINTIFF
22 Individually:

23 A) For all special damages which were sustained as a result of
24 DEFENDANT's conduct, including, but not limited to, back pay, front
25 pay, lost compensation and job benefits that PLAINTIFF would have
26 received but for the retaliatory practices of DEFENDANT;

27 B) For all exemplary damages, according to proof, which were sustained
28

1 as a result of DEFENDANT's conduct;

2 C) An award of interest, including prejudgment interest at the legal rate

3 D) Such other and further relief as the Court deems just and equitable;
4 and,

5 E) An award of penalties, attorneys' fees and cost of suit.
6

7
8 Dated: October 10, 2024 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

9 By: /s/ Nicholas De Blouw

10 Norman B. Blumenthal

11 Nicholas J. De Blouw

12 *Attorneys for Plaintiff*
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Dated: October 10, 2024 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

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EXHIBIT 1

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

2255 CALLE CLARA

LA JOLLA, CALIFORNIA 92037

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San Diego | San Francisco | Sacramento | Los Angeles | Riverside | Santa Clara | Orange | Chicago

Phone: (858) 551-1223

Fax: (858) 551-1232

WRITERS E-MAIL:

Nick@bamlawca.com

WRITERS EXT:

1004

February 13, 2024

CA3132

VIA ONLINE FILING TO LWDA AND CERTIFIED MAIL TO DEFENDANT

Labor and Workforce Development Agency
Online Filing

2nd Street Retailers
Certified Mail #9589071052701316528698
Corp2000
Jennifer McLaughlin
720 14th Street
Sacramento, CA95814

Re: Notice Of Violations Of California Labor Code Sections §§ 201, 202, 203, 204 et seq., 210, 218, 221, 226(a), 226.7, 227.3, 246 et seq., 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), and Violation of Applicable Industrial Welfare Commission Wage Order(s), Brought Pursuant To California Labor Code Section 2699.5.

Dear Sir/Madam:

“Aggrieved Employees” refers to all individuals who are or previously were employed by 2nd Street USA, Inc. and/or 2nd Street Retailers in California, including any employees staffed with 2nd Street USA, Inc. and/or 2nd Street Retailers by a third party, and classified as non-exempt employees during the time period of February 13, 2023 until a date as determined by the Court. Our offices represent Plaintiff Sterling Carr (“Plaintiff”) and other Aggrieved Employees in a lawsuit against 2nd Street USA, Inc. and/or 2nd Street Retailers (“Defendant”). Plaintiff was employed with Defendant from April of 2023 to October of 2023 and was at all times classified by Defendant as a non-exempt employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and payment of minimum and overtime wages due for all time worked. Defendant, however, unlawfully failed to record and pay Plaintiff and other Aggrieved Employees for, including but not limited to, all of their time worked, including minimum and overtime wages and sick pay wages at the correct rate, for all of their missed meal and rest breaks at the correct regular rates, and for all of their time spent working off the clock. Moreover, when Defendant required Plaintiff and Aggrieved Employees to report for work, but “furnished less than half said employee’s usual or scheduled day’s work,” Defendant violated Cal. Code Regs., tit. 8 § 11040, subd. 5(A) by failing to pay Plaintiff and Aggrieved Employees for at least two (2) hours’ worth of work at their regular rate of pay. In addition, when Defendant required Plaintiff and Aggrieved Employees to respond to and engage in additional work, this resulted in a second reporting for work in a single workday, and Defendant failed to pay these employees reporting time pay as required by Cal. Code Regs., tit. 8, § 11040, subd. 5(B).

Further, Defendant failed to advise Plaintiff and the other Aggrieved Employees of their right to take separately and hourly paid duty-free ten (10) minute rest periods. *See Vaquero v. Stoneledge Furniture, LLC*, 9 Cal. App. 5th 98, 110 (2017). Additionally, pursuant to Labor Code § 204 *et seq.*, Defendant failed to timely provide Plaintiff and other Aggrieved Employees with their wages. Plaintiff further contends that Defendant failed to provide accurate wage statements to Plaintiff, and other Aggrieved Employees, in violation of California Labor Code section 226(a). Specifically, Plaintiff and the Aggrieved Employees were paid on an hourly basis. As such, the wage statements should reflect all applicable hourly rates during the pay period and the total hours worked, and the applicable pay period in which the wages were earned pursuant to California Labor Code Section 226(a). The wage statements Defendant provided to Plaintiff and the Aggrieved Employees failed to identify such information. More specifically, the wage statements failed to identify the accurate total hours worked each pay period in violation of Cal. Lab. Code Section 226(a)(2). Additionally, Plaintiff contends that Defendant failed to comply with Industrial Wage Order 7(A)(3) in that Defendant failed to keep time records showing when Plaintiff began and ended each shift and meal period. Plaintiff and other Aggrieved Employees perform tasks that reasonably permit sitting, and a seat would not interfere with their performance of any of their tasks that may require them to stand. Defendant failed to provide Plaintiff and other Aggrieved Employees with suitable seats. Said conduct, in addition to the foregoing, as well as the conduct alleged in the incorporated Complaint, violates Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 218, 221, 226(a), 226.7, 227.3, 246, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 11070(14) (Failure to Provide Seating), Violation of the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

A true and correct copy of the Complaint by Plaintiff against Defendant, which (i) identifies the alleged violations, (ii) details the facts and theories which support the alleged violations, (iii) details the specific work performed by Plaintiff, (iii) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to Plaintiff, and (iv) sets forth the illegal practices used by Defendant, is attached hereto. This information provides notice to the Labor and Workforce Development Agency of the facts and theories supporting the alleged violations for the agency's reference. Plaintiff therefore incorporates the allegations of the attached Complaint into this letter as if fully set forth herein. If the agency needs any further information, please do not hesitate to ask.

This notice is provided to enable Plaintiff to proceed with the Complaint against Defendant as authorized by California Labor Code section 2699, *et seq.* The lawsuit consists of other Aggrieved Employees. As counsel, our intention is to vigorously prosecute the claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Statue of 2004 on behalf of Plaintiff and all Aggrieved Employees. Your earliest response to this notice is appreciated. If you have any questions or concerns, please do not hesitate to contact me at the above number and address.

Respectfully,

/s/ Nicholas J. De Blouw

Nicholas J. De Blouw, Esq.

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

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LA JOLLA, CALIFORNIA 92037

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WRITERS EXT:

1004

February 13, 2024

CA3132

VIA ONLINE FILING TO LWDA AND CERTIFIED MAIL TO DEFENDANT

Labor and Workforce Development Agency
Online Filing

2nd Street USA, Inc.
Certified Mail #9589071052701316528704
Registered Agent Solutions, Inc.
838 Walker Road Suite 21-2
Dover, DE 19904

Re: Notice Of Violations Of California Labor Code Sections §§ 201, 202, 203, 204 et seq., 210, 218, 221, 226(a), 226.7, 227.3, 246 et seq., 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), and Violation of Applicable Industrial Welfare Commission Wage Order(s), Brought Pursuant To California Labor Code Section 2699.5.

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Respectfully,

/s/ Nicholas J. De Blouw

Nicholas J. De Blouw, Esq.