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16 SUPERIOR COURT OF THE STATE OF CALIFORNIA
17
18 FOR THE COUNTY OF ALAMEDA - OAKLAND - RCD COURTHOUSE

19 DARLENE CABRAL, NATAYNA
20 JONES, THERESA KINCAID, as
aggrieved employees pursuant to the Labor
Code Private Attorneys Act of 2004
21 ("PAGA"), on behalf of the State of
California and other aggrieved employees,

22 Plaintiffs,

23 v.

24 WALGREEN CO., an Illinois corporation,
25 and DOES 1 through 10, inclusive,

26 Defendants.
27
28

ENDORSED
FILED
ALAMEDA COUNTY

MAR 25 2021

CLERK OF THE SUPERIOR COURT
By NICOLE HALL Deputy

CASE NO. **RG21093196**

**COMPLAINT FOR CIVIL PENALTIES
UNDER THE LABOR CODE PRIVATE
ATTORNEYS GENERAL ACT**

1 Plaintiffs Darlene Cabral, Natayna Jones, and Theresa Kincaid, as proxy for the State
2 of California, allege as follows:

3 JURISDICTION AND VENUE

4 1. This is an enforcement action under the Labor Code Private Attorneys
5 General Act of 2004, California Labor Code §§ 2698 *et seq.* (“PAGA”) to recover civil
6 penalties on behalf of the State of California and all current and former aggrieved employees
7 of defendant Walgreen Co. (“Walgreens”). Plaintiffs allege Walgreens has violated
8 California’s suitable seating law, Wage Order 7-2001 §14, which is in turn a violation of
9 Labor Code § 1198 and is therefore actionable under PAGA.

10 2. For purposes of this action, “aggrieved employees” means: “All persons
11 employed by Walgreens in California at any time during the applicable limitations period in
12 the position(s) of Customer Service Associate, Beauty Advisor, or any other non-exempt
13 position whose duties include operating the cash register at the front-end checkstand(s) of a
14 Walgreens retail store.”

15 3. There is no basis for federal diversity jurisdiction in this action given that the
16 State of California, as the real party in interest in this action, is not a “citizen” for purposes of
17 satisfying diversity jurisdiction. *Urbino v. Orkin Servs. of Cal.*, 726 F.3d 1118, 1123 (9th
18 Cir. Cal. 2013). *Urbino* also holds that civil penalties cannot be aggregated to satisfy the
19 amount in controversy requirement for federal diversity jurisdiction. *Id.* at 1122. Each
20 named plaintiff’s share of civil penalties sought in this action is less than \$75,000.

21 4. Venue is proper in this Court because Walgreens employs individuals at
22 multiple Walgreens stores located within the County of Alameda and has violated the seating
23 requirements of the applicable Wage Order in this County. Additionally, Walgreens has not
24 designated a principal business office in California.

25 THE PARTIES

26 5. Plaintiff Darlene Cabral (“Cabral”) worked for Walgreens in California as a
27 non-exempt employee from July 2008 until March 30, 2020. During her employment, Cabral
28 worked as a Beauty Advisor and a Customer Service Associate.

6. Plaintiff Natayna Jones has been employed by Walgreens in California since June 2016 as a non-exempt Customer Service Associate.

7. Plaintiff Theresa Kincaid has been employed by Walgreens since 1993. Currently she works as a non-exempt Customer Service Associate.

8. Defendant Walgreens is an Illinois corporation with its principal place of business in Deerfield, Illinois.

9. Plaintiffs are unaware of the true names or capacities of the Defendants sued herein under the fictitious names DOES 1 through 10, but will seek leave of Court to amend the complaint and serve such fictitiously named Defendants once their names and capacities become known. Plaintiffs are informed and believe and thereon allege that DOES 1 through 10 are the partners, agents, owners, shareholders, managers, or employees of Walgreens and are in some manner responsible for the conduct alleged herein, either as joint employers, joint venturers, principals, successors, assignees, guarantors, sureties, insurers, alter egos, or co-conspirators.

GENERAL ALLEGATIONS

10. Walgreens operates approximately 586 retail stores in California. Each store generally consists of a front-end retail section and a pharmacy in the back of the store. In the front-end retail section, usually near the main entrance to the store, there are one or more fixtures where the point-of-sale systems are located and where customers pay for their purchases. These fixtures are referred to as “front-end checkstands.”

11. On August 7, 2019, Alameda County Superior Court Judge Brad Seligman approved a PAGA settlement and entered judgment in a suitable seating case called *Smiles v. Walgreen Co.*, Alameda County Superior Court Case No. RG17862495. Pursuant to the *Smiles* settlement, beginning promptly upon settlement approval, Walgreens was required to:

(1) “physically place at least one suitable seat at the Front-End Checkstands of each of its California retail stores for use by employees when checking out customers and when not actively performing job tasks that require standing or moving about”; and (2) “ensure that each California store that has more than one register behind a Front-End Checkstand has a

1 sufficient number of suitable seats physically available for its employees to use when
2 checking out customers at those registers and when not actively performing job tasks that
3 require standing or moving about.” *Smiles* Settlement Agreement ¶ II.C.1.

4 12. Walgreens has breached the *Smiles* Settlement Agreement. A significant
5 percentage of Walgreens’ California stores do not have seats anywhere in the vicinity of the
6 front-end checkstands, and at those stores that do, the seats are not suitable “for use by
7 employees when checking out customers.” Settlement Agreement ¶ II.C.1.

8 13. Walgreens’ breaches of the *Smiles* Settlement Agreement are also violations
9 of Wage Order 7-2001 § 14(A) and (B). First, as Walgreens has effectively conceded by
10 entering into the Settlement Agreement, the nature of the work at the front-end checkstands
11 does reasonably permit the use of seats for at least part of the time the aggrieved employees
12 are stationed there. Tasks such as scanning merchandise, bagging, operating the point-of-
13 sale system, handing the receipt and change to the customer, greeting the customer, providing
14 good customer service, and waiting for the next customer all can be performed while seated.
15 Second, the physical configuration of the work space at the front-end checkstand can
16 accommodate one or more seats. Third, Walgreens’ business judgment is, in fact, to allow
17 aggrieved employees to use seats while checking out customers at the front-end checkstands.
18 Fourth, suitable seats exist; for example, a lean stool would fit behind the front-end
19 checkstand and could be safely used while an aggrieved employee is checking out customers.
20 Fifth, there are periods of time when the aggrieved employees are stationed at the front-end
21 checkstands but not engaged in active duties of their employment, yet there are no suitable
22 seats in reasonable proximity to the work area, and use of seats would not interfere with the
23 performance of their duties.

24 14. On January 11, 2021, plaintiffs provided written notice by online filing to the
25 LWDA and by certified mail to Walgreens of the specific provisions of the California Labor
26 Code alleged to have been violated, including facts and theories to support the alleged
27 violations, in accordance with California Labor Code section 2699.3. Plaintiffs’ written
28 notice was accompanied with the applicable filing fee of seventy-five dollars (\$75).

1 15. Over 65 days have passed since plaintiffs sent their notice described above to
2 the LWDA, and the LWDA has not responded that it intends to investigate plaintiffs' claims.

3 **FIRST CAUSE OF ACTION**

4 **(For Civil Penalties Under PAGA)**

5 16. Plaintiffs incorporate by reference and re-allege as if fully stated herein each
6 and every allegation set forth above.

7 17. Labor Code § 2699(f) permits aggrieved employees such as plaintiffs to
8 recover civil penalties against Walgreens for violations of the Labor Code.

9 18. California Labor Code § 1198 makes it illegal to employ an employee under
10 conditions of labor that are prohibited by the applicable wage order, which in this case is
11 Wage Order 7-2001.

12 19. Wage Order 7-2001 § 14(A) states: "All working employees shall be provided
13 with suitable seats when the nature of the work reasonably permits the use of seats." Section
14 14(B) states: "When employees are not engaged in the active duties of their employment and
15 the nature of the work requires standing, an adequate number of suitable seats shall be placed
16 in reasonable proximity to the work area and employees shall be permitted to use such seats
17 when it does not interfere with the performance of their duties."

18 20. As alleged herein, Walgreens violated Wage Order 7-2001 § 14(A) by failing
19 to provide suitable seats to aggrieved employees to use while stationed at the front-end
20 checkstands of its California stores. Walgreens also violated Section 14(B) by failing to
21 place an adequate number of suitable seats in reasonable proximity to the work area to use
22 when the aggrieved employees are not engaged in the active duties of their employment.

23 21. Each plaintiff is an aggrieved employee in that she was employed by
24 Walgreens during the applicable limitations period and was not provided with a suitable seat
25 as required by Wage Order 7-2001 § 14. As alleged herein, each plaintiff has also exhausted
26 administrative remedies as required under Labor Code § 2699.3.

27 22. Pursuant to Labor Code § 2699(f), each violation of Wage Order 7-2001 § 14
28 during the applicable limitations period triggers a civil penalty, which may be recovered by

1 plaintiffs in this action. By virtue of the *Smiles* PAGA notice, complaint, litigation, and
2 settlement, as well as the Walgreens conduct that led to those events, each of the violations
3 pleaded in this complaint is a “subsequent” violation under Labor Code § 2699(f)(2),
4 entitling plaintiffs to an award of \$200 in civil penalties per employee for each pay period
5 during the limitations period.

6 23. Pursuant to Labor Code § 2699(g)(1), plaintiffs are entitled to an award of
7 reasonable attorneys’ fees and costs.

8 **PRAYER**

9 Plaintiffs pray for relief as follows:

- 10 1. For civil penalties as alleged herein;
11 2. For costs of suit, including reasonable attorneys’ fees;
12 3. For interest as provided by law; and
13 4. For such other relief that the Court deems proper.

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15 Dated: March 25, 2021

CLAPP & LAUINGER LLP

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