

1 JAMES F. CLAPP (145814)
jclapp@clapplegal.com
2 MARITA MURPHY LAUINGER (199242)
mlauinger@clapplegal.com
3 CLAPP & LAUINGER LLP
701 Palomar Airport Road, Suite 300
4 Carlsbad, California 92011
Tel: 760-209-6565 ext. 101
5 Fax: 760-209-6565

6 KEVIN J. MCINERNEY (46941)
kevin@mcinerneylaw.net
7 1050 N Hills Blvd. #61388
Reno, Nevada 89506-9997
8 Tel: 775-849-3811
Fax: 775-849-3866

9 BEVIN ALLEN PIKE (221936)
10 Bevin.Pike@capstonelawyers.com
11 ORLANDO VILLALBA (232165)
Orlando.Villalba@capstonelawyers.com
12 CAPSTONE LAW APC
1875 Century Park East, Suite 1000
13 Los Angeles, California 90067
Tel: 310-556-4811
14 Fax: 310-943-0396

15 Attorneys for Plaintiffs

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17 SUPERIOR COURT OF THE STATE OF CALIFORNIA
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
23 Plaintiffs,

24 v.

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

26 Defendants.
27
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CASE NO. RG21093196

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

1 Plaintiffs Darlene Cabral, Natayna Jones, and Theresa Kincaid, as proxies for the
2 State 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 Recovery Period in
12 the position(s) of Customer Service Associate or Beauty Advisor.” “Recovery Period” is the
13 time period commencing no earlier than the date of entry of judgment in *Smiles v. Walgreen*
14 *Co.*, Alameda County Superior Court Case No. RG17862495, through the date of entry of
15 judgment in the present action.

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

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

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1 **THE PARTIES**

2 5. Plaintiff Darlene Cabral worked for Walgreens in California as a non-exempt
3 employee from July 2008 until March 30, 2020. During her employment, Cabral worked as a
4 Beauty Advisor and a Customer Service Associate.

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

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

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

11 9. Plaintiffs are unaware of the true names or capacities of the Defendants sued
12 herein under the fictitious names DOES 1 through 10, but will seek leave of Court to amend
13 the complaint and serve such fictitiously named Defendants once their names and capacities
14 become known. Plaintiffs are informed and believe and thereon allege that DOES 1 through
15 10 are the partners, agents, owners, shareholders, managers, or employees of Walgreens and
16 are in some manner responsible for the conduct alleged herein, either as joint employers,
17 joint venturers, principals, successors, assignees, guarantors, sureties, insurers, alter egos, or
18 co-conspirators.

19 **GENERAL ALLEGATIONS**

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

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

1 (1) “physically place at least one suitable seat at the Front-End Checkstands of each of its
2 California retail stores for use by employees when checking out customers and when not
3 actively performing job tasks that require standing or moving about”; and (2) “ensure that
4 each California store that has more than one register behind a Front-End Checkstand has a
5 sufficient number of suitable seats physically available for its employees to use when
6 checking out customers at those registers and when not actively performing job tasks that
7 require standing or moving about.” *Smiles* Settlement Agreement ¶ II.C.1.

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

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

27 14. On January 11, 2021, plaintiffs provided written notice by online filing to the
28 LWDA and by certified mail to Walgreens of the specific provisions of the California Labor

1 Code alleged to have been violated, including facts and theories to support the alleged
2 violations, in accordance with California Labor Code section 2699.3. Plaintiffs' written
3 notice was accompanied with the applicable filing fee of seventy-five dollars (\$75).

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

6 **FIRST CAUSE OF ACTION**

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

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

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

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

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

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

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

1 administrative remedies as required under Labor Code § 2699.3.

2 22. Pursuant to Labor Code § 2699(f), each violation of Wage Order 7-2001 § 14
3 during the applicable limitations period triggers a civil penalty, which may be recovered by
4 plaintiffs in this action. By virtue of the *Smiles* PAGA notice, complaint, litigation,
5 settlement, and breaches of the settlement, as well as the Walgreens conduct that led to those
6 events, each of the violations pleaded in this complaint is a “subsequent” violation under
7 Labor Code § 2699(f)(2), entitling plaintiffs to an award of \$200 in civil penalties per
8 employee for each pay period during the limitations period.

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

11 **PRAYER**

12 Plaintiffs pray for relief as follows:

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

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18 Dated: May 6, 2021

CLAPP & LAUINGER LLP

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20
21 JAMES F. CLAPP
22 MARITA MURPHY LAUINGER
23 Attorneys for Plaintiffs
24 DARLENE CABRAL, NATAYNA JONES AND
25 THERESA KINCAID
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1 **PROOF OF SERVICE**

2 **STATE OF CALIFORNIA, COUNTY OF SAN DIEGO**

3 At the time of service, I was over 18 years of age and **not a party to this action**. I am
4 employed in the County of San Diego, State of California. My business address is 701 Palomar
Airport Road, Suite 300, Carlsbad, CA 92011.

5 On May 6, 2021, I served true copies of the following document(s) described as:
6 **FIRST AMENDED COMPLAINT FOR CIVIL PENALTIES UNDER THE LABOR CODE
PRIVATE ATTORNEYS GENERAL ACT** on the interested parties in this action as follows:

7 Evan R. Moses
8 OGLETREE, DEAKINS, NASH, SMOAK &
9 STEWART, P.C.
400 South Hope Street, Suite 1200
Los Angeles, CA 90071
Evan.moses@ogletree.com

Kevin J. McInerney
1050 N. Hills Blvd., #61388
Reno, Nevada 89506-9997
kevin@mcinerneylaw.net

10 Raul Perez
11 Raul.perez@capstonelawyers.com
12 CAPSTONE LAW APC
1875 Century Park East, Suite 1000
Los Angeles, California 90067

Michael Rubin
ALTSHULER BERZON LLP
177 Post Street, Suite 300
San Francisco, CA 94108
mrubin@altshulerberzon.com
akushner@altshulerberzon.com

14 Graham M. Hoerauf
15 OGLETREE, DEAKINS, NASH, SMOAK &
16 STEWART, P.C.
Park Tower, 695 Town Center Dr., 15th
Floor
Costa Mesa, CA 92626
17 graham.hoerauf@ogletree.com

Catie Hazany
OGLETREE, DEAKINS, NASH, SMOAK &
STEWART, P.C.
19191 S. Vermont Avenue
Torrance, CA 90502
catherine.hazany@ogletree.com

18 **(BY ELECTRONIC SERVICE)** Based on a court order or an agreement of the parties to
19 accept service by electronic transmission, I caused the documents to be sent to the persons at the
electronic notification address listed above.

20 **(BY MAIL)** I placed said envelope(s) for collection and mailing, following ordinary
21 business practices, at the business offices of CLAPP & LAUINGER LLP, and addressed as shown
22 on the attached service list, for deposit in the United States Postal Service. I am readily familiar
with the practice of CLAPP & LAUINGER LLP for collection and processing correspondence for
23 mailing with the United States Postal Service, and said envelope(s) will be deposited with the United
States Postal Service on said date in the ordinary course of business.

24 I declare under penalty of perjury under the laws of the State of California that the
foregoing is true and correct.

25 Executed on May 6, 2021, at Carlsbad, California.

26
27 
28 Teri L. Zaayer