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Attorneys for Plaintiff Rosalind Miles

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO

ROSALIND MILES, as an aggrieved
employee pursuant to the Private Attorneys
General Act ("PAGA"), on behalf of the
State of California and other aggrieved
employees,

Plaintiff,

vs.

PAQ, INC., a California corporation; and
DOES 1 through 10, inclusive,

Defendants.

Case No.: **25CV014017**

**COMPLAINT – PAGA ENFORCEMENT
ACTION**

- (1) Claim for Civil Penalties Pursuant to
PAGA § 2699 for Violations of California
Labor Code and IWC Wage Order No.
7-2001, subdivision 14(A); and
- (2) Claim for Civil Penalties Pursuant to
PAGA § 2699 for Violations of California
Labor Code and IWC Wage Order No.
7-2001, subdivision 14(B).

1 Plaintiff Rosalind Miles, as an aggrieved employee and on behalf of the State of
2 California and all other aggrieved employees, alleges as follows:

3 JURISDICTION AND VENUE

4 1. This is an enforcement action under the Labor Code Private Attorneys General
5 Act of 2004, California Labor Code sections 2698, *et seq.* (“PAGA”) to recover civil penalties
6 on behalf of the Plaintiff, the State of California, and other current and former employees who
7 worked for Defendants in California as a non-exempt employee at a California retail store
8 location and who suffered violations of Industrial Welfare Commission (“IWC”) Wage Order
9 No. 7-2001 subdivision 14(A) and/or (B) as set forth in this complaint at any time between
10 one year prior to the filing of the pre-filing written notice to the Labor and Workforce
11 Development Agency (“LWDA”) in this case on April 7, 2025, until judgment (“non-party
12 Aggrieved Employees”). Plaintiff’s share of civil penalties sought in this action does not
13 exceed \$75,000.

14 2. This Court has jurisdiction over this action pursuant to the California
15 Constitution, Article VI, section 10. The overall amount in controversy exceeds \$35,000. The
16 statute under which this action is brought does not specify any other basis for jurisdiction.

17 3. This Court has jurisdiction over all Defendants because, on information and
18 belief, Defendants are either citizens of California, have sufficient minimum contacts in
19 California, and otherwise intentionally avail themselves of the California market so as to
20 render the exercise of jurisdiction over them by the California courts consistent with
21 traditional notions of fair play and substantial justice. Also, Plaintiff and all other non-party
22 Aggrieved Employees were employed by Defendants in California.

23 4. There is no basis for federal diversity jurisdiction in this action given that the
24 State of California, as the real party in interest in this action, is not a “citizen” for purposes of
25 satisfying diversity jurisdiction. *Urbino v. Orkin Servs. of Cal.*, 726 F.3d 1118, 1123 (9th Cir.
26 Cal. 2013). *Urbino* also holds that civil penalties cannot be aggregated to satisfy the amount
27 in controversy requirement for federal diversity jurisdiction in this action, and that diversity
28 jurisdiction cannot be established when Plaintiff’s share of the civil penalties attributable to

violations personally suffered are less than \$75,000. *Id.* at 1122.

5. Venue is proper in this Court because Defendants employ or employed persons within the County of Sacramento, and have violated the requirements of the California Labor Code and applicable IWC Wage Order in this county which give rise to the penalties sought in this action. Cal. Code Civ. P. § 393. Specifically, Defendants have violated the requirements of the California Labor Code and applicable IWC Wage Order in at least three (3) locations within the County of Sacramento, including Defendants' stores located in Rio Linda (430 Elkhorn Boulevard, Rio Linda, California 95673) and Sacramento (3547 Bradshaw Road, Sacramento, California 95827; and 4551 Mack Road, Sacramento, California 95823). Pursuant to California Civil Code of Procedure section 393, venue is proper for the recovery of a penalty imposed by statute in the county in which the cause, or some part of the cause, arose. Because Defendants have employees in Sacramento County, and Plaintiff could bring an action filed under PAGA in any county in which an aggrieved employee worked and Labor Code violations occurred, venue is proper. *Crestwood Behavioral Health, Inc. v. Superior Court of Alameda County*, 60 Cal. App. 5th 1069 (2021).

6. California Labor Code sections 2698, *et seq.*, the "Labor Code Private Attorneys General Act of 2004," authorize aggrieved employees to sue as private attorneys general their current or former employers for various civil penalties for violations of various provisions in the California Labor Code. Labor Code section 1198 makes a violation of a Wage Order such as subdivision 14(A) or 14(B) a violation of the Labor Code.

THE PARTIES

7. Plaintiff Rosalind Miles worked for Defendants as a non-exempt employee from approximately December 2023 to January 2025. Plaintiff worked for Defendants at their Food 4 Less store located at 4551 Mack Road, Sacramento, California 95823. During her employment, Plaintiff worked as a Combo Clerk. Plaintiff typically worked eight (8) hours per day and five (5) days per week on a varied schedule. Plaintiff's job duties included, without limitation, operating the cash register, handling customer transactions, and providing customer service.

1 8. Defendant PAQ, INC. was and is, upon information and belief, a California
2 corporation doing business in California, and at all times hereinafter mentioned, an employer
3 whose employees are engaged throughout this county, the State of California, or the various
4 states of the United States of America.

5 9. Plaintiff is unaware of the true names or capacities of the Defendants sued
6 herein under the fictitious names DOES 1 through 10, but will seek leave of this Court to
7 amend the complaint and serve such fictitiously named Defendants once their names and
8 capacities become known.

9 10. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10
10 are the partners, agents, owners, shareholders, managers, or employees of PAQ, INC., at all
11 relevant times.

12 11. Plaintiff is informed and believes, and thereon alleges, that each and all of the
13 acts and omissions alleged herein was performed by, or is attributable to, PAQ, INC. and/or
14 DOES 1 through 10 (collectively, “Defendants” or “PAQ”), each acting as the agent,
15 employee, alter ego, and/or joint venturer of, or working in concert with, each of the other co-
16 Defendants and was acting within the course and scope of such agency, employment, joint
17 venture, or concerted activity with legal authority to act on the others’ behalf. The acts of any
18 and all Defendants were in accordance with, and represent, the official policy of Defendants.

19 12. At all relevant times, Defendants, and each of them, ratified each and every act
20 or omission complained of herein. At all relevant times, Defendants, and each of them, aided
21 and abetted the acts and omissions of each and all the other Defendants in proximately causing
22 the damages herein alleged.

23 13. Plaintiff is informed and believes, and thereon alleges, that each of said
24 Defendants are in some manner intentionally, negligently, or otherwise responsible for the
25 acts, omissions, occurrences, and transactions alleged herein.

26 **PAGA REPRESENTATIVE ALLEGATIONS**

27 14. Defendants operate Food 4 Less supermarkets and Rancho San Miguel Markets
28 in California. Defendants operate approximately 24 retail grocery store locations in

1 California.

2 15. Upon information and belief, Defendants maintain a single, centralized Human
3 Resources (HR) department at their corporate headquarters in Lodi, California, for all non-
4 exempt employees working for Defendants in California, which is responsible for the
5 recruiting and hiring of new employees, and communicating and implementing Defendants'
6 company-wide policies to employees throughout California.

7 16. In particular, on information and belief, Plaintiff and other non-party Aggrieved
8 Employees received the same standardized documents and/or written policies. Upon
9 information and belief, Defendants maintained uniform practices with respect to their
10 provision of seats (or lack thereof) in their retail stores for all non-exempt employees in
11 California, including Plaintiff and other non-party Aggrieved Employees, regardless of their
12 location or position.

13 17. During the relevant time period, Plaintiff and other non-party Aggrieved
14 Employees have spent or spend a substantial portion of their day behind Defendants'
15 cashwraps. The nature of the work of an employee performing cashier duties can reasonably
16 be accomplished from a seated position. However, as set forth herein, Defendants
17 systematically, and on a company-wide basis, designed cashwraps that require standing and
18 do not provide suitable seats at cashwraps, forcing Plaintiff and other non-party Aggrieved
19 Employees to stand throughout their work shifts.

20 18. Plaintiff alleges that Defendants' California retail stores are generally similar in
21 their layout and design and that the cashwraps could allow for the presence and use of a seat
22 or stool by Defendants' employees during the performance of their work duties at these
23 cashwraps. However, on information and belief, Defendants have designed their cashwraps to
24 require Plaintiff and other non-party Aggrieved Employees to stand while performing their
25 cashwrap work duties. Defendants could have designed their cashwraps in a manner that
26 would allow Plaintiff and other non-party Aggrieved Employees to perform cashwrap duties
27 while seated and could have provided Plaintiff and other non-party Aggrieved Employees with
28 suitable seats at the cashwraps. Instead, on information and belief, Defendants have denied

1 and continue to deny them seats altogether or deny them suitable seats. As a result, Plaintiff
2 and other non-party Aggrieved Employees are and have been forced to stand throughout the
3 day. In addition, Defendants have failed to expressly advise Plaintiff and other non-party
4 Aggrieved Employees that they could utilize seats while performing their duties.

5 19. Additionally, Defendants have not placed an adequate number of suitable seats
6 within reasonable proximity to the work areas of employees who perform duties whose nature
7 requires standing and therefore has not permitted employees to use those seats when not
8 actively engaged in performing their standing duties (i.e., during “lulls in operation”), even
9 though sitting would not interfere with the performance of their job duties.

10 20. Defendants continue to employ non-exempt employees at retail store locations
11 throughout California.

12 21. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
13 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
14 suitable seating when the nature of their work reasonably permits the use of seats and/or were
15 entitled to sit when it did not interfere with the performance of their cashier duties. In
16 violation of the California Labor Code and applicable IWC Wage Order, Defendants failed to
17 provide Plaintiff and other non-party Aggrieved Employees suitable seating.

18 22. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
19 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
20 have seats in reasonable proximity to their work area(s) and be permitted to use such seats
21 when it did not interfere with the performance of their duties whose nature require standing
22 during lulls in performing those tasks. In violation of the California Labor Code and
23 applicable IWC Wage Order, Defendants failed to provide Plaintiff and other non-party
24 Aggrieved Employees suitable seating within reasonable proximity of their work areas and
25 failed to permit them to use such seats when not actively engaged in their standing duties.

26 23. At all times herein set forth, PAGA provides that any provision of law under
27 the California Labor Code and applicable IWC Wage Order that provides for a civil penalty to
28 be assessed and collected by the LWDA for violations of the California Labor Code and

1 applicable IWC Wage Order may, as an alternative, be recovered by aggrieved employees in a
2 civil action brought on behalf of themselves and other current or former employees pursuant
3 to procedures outlined in California Labor Code section 2699.3.

4 24. PAGA defines an “aggrieved employee” in Labor Code section 2699(c)(1) as
5 “any person who was employed by the alleged violator and personally suffered each of the
6 violations alleged.”

7 25. Plaintiff and other current and former California employees of Defendants are
8 “aggrieved employees” as defined by Labor Code section 2699(c)(1) in that they are all
9 Defendants’ current or former California employees and each of the alleged violations of IWC
10 Wage Order No. 7-2001, subdivisions 14(A) and 14(B), were committed against them.

11 26. Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved
12 employee, including Plaintiff, may pursue a civil action arising under PAGA after the
13 following requirements have been met:

14 (a) The aggrieved employee or representative shall give written notice by
15 online filing with the LWDA and by certified mail to the employer of
16 the specific provisions of the California Labor Code alleged to have
17 been violated, including the facts and theories to support the alleged
18 violation.

19 (b) An aggrieved employee’s notice filed with the LWDA pursuant to
20 2699.3(a) and any employer response to that notice shall be
21 accompanied by a filing fee of seventy-five dollars (\$75).

22 (c) The LWDA shall notify the employer and the aggrieved employee or
23 representative by certified mail that it does not intend to investigate the
24 alleged violation (“LWDA Notice”) within sixty (60) calendar days of
25 the postmark date of the aggrieved employee’s notice. Upon receipt of
26 the LWDA Notice, or if no LWDA Notice is provided within sixty-five
27 (65) calendar days of the postmark date of the aggrieved employee’s
28 notice, the aggrieved employee may commence a civil action pursuant

1 to California Labor Code section 2699 to recover civil penalties.

2 27. On April 7, 2025, Plaintiff provided written notice by online filing to the
3 LWDA and by Certified Mail to Defendants of the specific provisions of the California Labor
4 Code alleged to have been violated, including facts and theories to support the alleged
5 violations, in accordance with California Labor Code section 2699.3. Plaintiff's written
6 notice was accompanied with the applicable filing fees of seventy-five dollars (\$75). That
7 same day, the LWDA PAGA Administrator confirmed receipt of Plaintiff's written notice and
8 assigned Plaintiff PAGA Case Number LWDA-CM-1090870-25. A true and correct copy of
9 Plaintiff's written notice to the LWDA and Defendants is attached hereto as "Exhibit 1."

10 28. As of the filing date of this complaint, over 65 days have passed since Plaintiff
11 sent the notice described above to the LWDA, and the LWDA has not responded that it
12 intends to investigate Plaintiff's claims and Defendants have not cured the violations.

13 29. Thus, Plaintiff has satisfied the administrative prerequisites under California
14 Labor Code section 2699.3(a) to recover civil penalties against Defendants for violations of
15 California Labor Code section 1198.

16 30. Defendants, at all times relevant to this complaint, were employers or persons
17 acting on behalf of an employer(s) who violated Plaintiff's and other non-party Aggrieved
18 Employees' rights by violating sections of the California Labor Code as set forth above.

19 31. As set forth below, Defendants have violated provisions of both the Labor Code
20 sections regulating conditions of labor as well as the applicable IWC Wage Order,
21 specifically, Labor Code section 1198 and California Code of Regulations, Title 8, section
22 11070(14)(A)-(B).

23 32. Pursuant to PAGA, and in particular, California Labor Code sections 1194.5,
24 2699(a), 2699(k), 2699.3(a), and 2699.5, Plaintiff, acting in the public interest as a private
25 attorney general, seeks assessment and collection of civil penalties and injunctive relief for
26 herself, all other non-party Aggrieved Employees, and the State of California against
27 Defendants for violations of California Labor Code section 1198.

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FIRST CAUSE OF ACTION
FAILURE TO PROVIDE SUITABLE SEATING
VIOLATION OF LABOR CODE SECTION 1198 AND CALIFORNIA CODE OF
REGULATIONS, TITLE 8, SECTION 11070(14)(A)
(By Plaintiff on Behalf of the State of California and Aggrieved Employees Against all
Defendants)

33. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

34. California Labor Code sections 2698, *et seq.* permit Plaintiff to recover civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code section 2699.5. Section 2699.5 enumerates Labor Code section 1198, among others. Defendants’ conduct, as alleged herein, violates section 1198 of the California Labor Code, by failing to provide suitable seating to Plaintiff and other non-party Aggrieved Employees as set forth below.

35. At all relevant times herein, California Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable wage order. California Labor Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.”

36. California Code of Regulations, Title 8, section 11070(14)(A) provides that “[a]ll working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats.”

37. During the relevant time period, Defendants violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11070(14)(A), because Plaintiff and other non-party Aggrieved Employees were not allowed to sit, even when the nature of their work would reasonably permit the use of seats, nor were they provided with suitable seats. As employees assigned cashier duties, Plaintiff’s and other non-party

1 Aggrieved Employees' tasks, including operating the cash register, scanning items, and
2 bagging items, could be performed from a seated position. Plaintiff and other non-party
3 Aggrieved Employees could have handled customer transactions and performed other similar
4 tasks at cashwraps at any of Defendants' stores while seated, without affecting the quality and
5 effectiveness of the performance of their job duties.

6 38. Defendants could have designed their cashwraps in a manner that allowed
7 Plaintiff and other non-party Aggrieved Employees to sit while performing cashwrap duties
8 and could have placed suitable seats or stools at or near each cashwrap for use by Plaintiff and
9 other non-party Aggrieved Employees. Instead, on information and belief, Defendants
10 designed the cashwraps to require Plaintiff and other non-party Aggrieved Employees to stand
11 at the work area(s) and did not provide suitable seats or stools they could use while working at
12 the cashwrap. In addition, upon information and belief, Defendants prohibited employees
13 from sitting while working. Defendants' management did not inform Plaintiff and other non-
14 party Aggrieved Employees that they were allowed to sit down, provide any means for them
15 to sit down, or mention any policy regarding sitting.

16 39. For example, during her employment, when Plaintiff performed cashiering
17 duties at the cashwrap, she was required to stand the entire time because Defendants, on
18 information and belief, designed their cashwraps for standing and did not provide suitable
19 seating for employees' use while working at cashwraps. Other non-party Aggrieved
20 Employees similarly were not permitted to sit while performing cash register duties because
21 Defendants designed their cashwraps for standing and did not provide seats or stools at the
22 cashwraps.

23 40. As a result of Defendants' company-wide policy and/or practice prohibiting
24 employees from sitting during their shifts and failure to provide suitable seating to these
25 employees, as well as designing their cashwraps to require standing, Plaintiff and other non-
26 party Aggrieved Employees were forced to stand during shifts and denied seats. Defendants'
27 failure to provide suitable seating to Plaintiff and other non-party Aggrieved Employees
28 violated and continues to violate California Labor Code section 1198 and IWC Wage Order

1 No. 7-2001, subdivision 14(A).

2 41. Plaintiff and other non-party Aggrieved Employees and the State of California
3 are therefore entitled to recover civil penalties pursuant to Labor Code sections 2699(a), (f),
4 and (k).

5 **SECOND CAUSE OF ACTION**

6 **FAILURE TO PROVIDE SUITABLE SEATING**

7 **VIOLATION OF LABOR CODE SECTION 1198 AND CALIFORNIA CODE OF**
8 **REGULATIONS, TITLE 8, SECTION 11070(14)(B)**

9 **(By Plaintiff on Behalf of the State of California and Aggrieved Employees Against all**
10 **Defendants)**

11 42. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
12 and every allegation set forth above.

13 43. California Labor Code sections 2698, *et seq.* permit Plaintiff to recover civil
14 penalties for the violation(s) of the Labor Code sections enumerated in Labor Code section
15 2699.5. Section 2699.5 enumerates Labor Code section 1198, among others. Defendants'
16 conduct, as alleged herein, violates section 1198 of the California Labor Code, by failing to
17 provide suitable seating to Plaintiff and other non-party Aggrieved Employees as set forth
18 below.

19 44. At all relevant times herein, California Labor Code section 1198 makes it
20 illegal to employ an employee under conditions of labor that are prohibited by the applicable
21 wage order. California Labor Code section 1198 requires that ". . . the standard conditions of
22 labor fixed by the commission shall be the . . . standard conditions of labor for employees.
23 The employment of any employee . . . under conditions of labor prohibited by the order is
24 unlawful."

25 45. California Code of Regulations, Title 8, section 11070(14)(B) provides that
26 "[w]hen employees are not engaged in the active duties of their employment and the nature of
27 the work requires standing, an adequate number of suitable seats shall be placed in reasonable
28 proximity to the work area and employees shall be permitted to use such seats when it does

1 not interfere with the performance of their duties.”

2 46. During the relevant time period, Defendants violated California Labor Code
3 section 1198 and California Code of Regulations, Title 8, section 11070(14)(B), because
4 Plaintiff and other non-party Aggrieved Employees were not allowed to sit, even during lulls
5 in their work duties, nor were they provided with suitable seats in reasonable proximity to
6 their work areas.

7 47. Defendants did not place an adequate number of suitable seats or stools within
8 reasonable proximity to the work areas of employees who perform duties whose nature
9 requires standing, and therefore have not permitted employees to use those seats when not
10 actively engaged in performing their standing duties (i.e., during “lulls in operation”), even
11 though sitting would not interfere with the performance of their job duties. Defendants could
12 have provided Plaintiff and other non-party Aggrieved Employees with a suitable seat or stool
13 within reasonable proximity of their work areas but instead deny employees seats and force
14 them to stand throughout the day. Moreover, Defendants did not inform Plaintiff and other
15 non-party Aggrieved Employees of their right to a seat or stool under California law.

16 48. For example, during her employment, Plaintiff experienced lulls in her work at
17 various times during a typical shift, especially when the store was not busy, such as very early
18 in the morning. During these lulls, when Plaintiff was not actively performing tasks (which,
19 on information and belief, Defendants would claim that the nature of the work requires
20 standing), Plaintiff could have taken a moment to sit and rest her legs, back, and feet if seating
21 was provided. Other non-party Aggrieved Employees similarly were not permitted to sit
22 during these lulls in operation and were forced to stand throughout the day.

23 49. As a result of Defendants’ company-wide failure to provide seats in reasonable
24 proximity to employees’ work areas and failure to permit them to use those seats when not
25 actively engaged in what Defendants claim are standing duties, Plaintiff and other non-party
26 Aggrieved Employees were forced to stand during shifts and denied seats. Defendants’ failure
27 to provide suitable seating to Plaintiff and other non-party Aggrieved Employees violated and
28 continues to violate California Labor Code section 1198 and IWC Wage Order No. 7-2001,

subdivision 14(B).

50. Plaintiff and other non-party Aggrieved Employees and the State of California are therefore entitled to recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (k).

PRAYER FOR RELIEF

Plaintiff, on behalf of the State of California and all other non-party Aggrieved Employees, prays for relief and judgment against Defendants, jointly and severally, as follows:

1. For civil penalties, injunctive relief, and attorneys' fees in excess of thirty-five thousand dollars (\$35,000) to the State of California and aggrieved employees.

As to the First Cause of Action

2. That the Court declare, adjudge and decree that Defendants violated California Labor Code section 1198 and IWC Wage Order No. 7-2001, subdivision 14(A) as to Plaintiff and other non-party Aggrieved Employees (by failing to provide suitable seating);

3. For civil penalties pursuant to California Labor Code sections 2699(a), (f), and (k) for violations of California Labor Code section 1198;

4. For injunctive relief pursuant to California Labor Code sections 1194.5 and/or 2699(k) to bring Defendants into compliance with California's seating requirements;

5. For attorneys' fees and costs pursuant to California Labor Code section 2699(k)(1), and any and all other relevant statutes, for Defendants' violations of California Labor Code section 1198;

6. For pre-judgment and post-judgment interest as provided by law; and

7. For such other and further relief as the Court may deem equitable and appropriate.

As to the Second Cause of Action

8. That the Court declare, adjudge and decree that Defendants violated California Labor Code section 1198 and IWC Wage Order No. 7-2001, subdivision 14(B) as to Plaintiff and other non-party Aggrieved Employees (by failing to provide suitable seating);

1 9. For civil penalties pursuant to California Labor Code sections 2699(a), (f), and
2 (k) for violations of California Labor Code section 1198;

3 10. For injunctive relief pursuant to California Labor Code sections 1194.5 and/or
4 2699(k) to bring Defendants into compliance with California's seating requirements;

5 11. For attorneys' fees and costs pursuant to California Labor Code section
6 2699(k)(1), and any and all other relevant statutes, for Defendants' violations of California
7 Labor Code section 1198;

8 12. For pre-judgment and post-judgment interest as provided by law; and

9 13. For such other and further relief as the Court may deem equitable and
10 appropriate.
11

12 Dated: June 12, 2025

Respectfully submitted,

Capstone Law APC

14
15 By: 

16 Melissa Grant
17 Orlando Villalba
18 Helga Hakimi
19 Jaime Castaneda

20 Attorneys for Plaintiff Rosalind Miles
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EXHIBIT “1”



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Los Angeles, California 90067
310.556.4811 Main | 310.943.0396 Fax

NINEL KOCHARYAN
310.712.8146 Direct
Ninel.Kocharyan@capstonelawyers.com

April 7, 2025

VIA ONLINE SUBMISSION

California Labor & Workforce Development Agency
ATTN: PAGA Administrator
(<https://dir.govfa.net/418>)

Subject: *Rosalind Miles v. PAQ, Inc.*

Dear PAGA Administrator:

This office represents Rosalind Miles in connection with her claims under the California Labor Code, and this letter is sent in compliance with the notice requirements of the California Labor Code Private Attorneys General Act, California Labor Code section 2699.3. Ms. Miles was an employee of PAQ, INC. ("PAQ").

The employer may be contacted directly at the address below:

PAQ, INC.
3021 REYNOLDS RANCH PARKWAY 230
LODI, CA 95240

Ms. Miles intends to seek civil penalties, attorneys' fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 ("PAGA"). Ms. Miles seeks relief on behalf of herself, the State of California, and other persons who are or were employed by PAQ as a non-exempt employee in a California retail store location ("aggrieved employees"). This letter is sent in compliance with the notice and reporting requirements of California Labor Code section 2699.3.

PAQ employed Ms. Miles as a non-exempt employee from approximately December 2023 to January 2025. Ms. Miles worked for PAQ as a Combo Clerk at its Food 4 Less store in Sacramento (4551 Mack Road, Sacramento, California 95823). Ms. Miles typically worked eight (8) hours per day and three (3) to five (5) days per week on a varied schedule. Ms. Miles's job duties included, without limitation, operating the cash register, handling customer transactions, and providing customer service.

PAQ committed each of the following Labor Code violations against Ms. Miles, the facts and theories of which follow, making her an “aggrieved employee” pursuant to California Labor Code section 2699(c)(1).¹ Ms. Miles’s relevant claims are as follows:

PAQ’s Company-Wide and Uniform HR Practices

PAQ, INC. is a California corporation that operates Food 4 Less supermarkets and Rancho San Miguel Markets in California. PAQ operates approximately 24 retail grocery store locations in California. Upon information and belief, PAQ maintains a centralized Human Resources (HR) department at its corporate headquarters in Lodi, California, for all non-exempt employees working for PAQ at retail stores in California, including Ms. Miles and other aggrieved employees. PAQ maintained uniform practices with respect to its provision of seats (or lack thereof) in its retail stores for all non-exempt employees in California, including Ms. Miles and other aggrieved employees, regardless of their location or position.

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11070 Subdivision 14(A) – Failure to Provide Suitable Seating

California Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable Industrial Welfare Commission (“IWC”) Wage Order. California Labor Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.” California Code of Regulations, Title 8, section 11070(14)(A) provides that “[a]ll working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats.”

“The ‘nature of the work’ refers to an employee’s tasks performed at a given location for which a right to a suitable seat is claimed, rather than a ‘holistic’ consideration of the entire range of an employee’s duties anywhere on the jobsite during a complete shift. If the tasks being performed at a given location reasonably permit sitting, and provision of a seat would not interfere with performance of any other tasks that may require standing, a seat is called for.” *Kilby v. CVS Pharmacy, Inc.*, 368 P.3d 554, 558 (Cal. 2016). “Whether the nature of the work reasonably permits sitting is a question to be determined objectively based on the totality of the circumstances. An employer’s business judgment and the physical layout of the workplace are relevant but not dispositive factors. The inquiry focuses on the nature of the work, not an individual employee’s characteristics.” *Id.* The burden of proof to show suitable seating is not available is on the employer. *Id.* at 568. In other words, the employer must show that compliance is “infeasible because no suitable seating exists.” *See id.*

PAQ’s California retail stores are generally similar in their layout and design and there was, and continues to be, space at cash wraps and/or service counters that would allow for the presence and

¹ These facts, theories, and claims are based on Ms. Miles’s experience and counsel’s review of those records currently available relating to Ms. Miles’s employment. Discovery conducted in litigation of wage and hour claims such as these often reveals additional claims that the aggrieved employee was not initially aware of (because the aggrieved employee was not aware of the law’s requirements, the employer misinformed its employee of the law’s requirements, or because the employer effectively hid the violations). Thus, Ms. Miles reserves the right to supplement this letter with additional facts, theories, and claims if she becomes aware of them subsequent to the submission of this letter.

use of a seat or stool by Ms. Miles and other aggrieved employees during the performance of their work duties at the cash wraps and/or service counters. However, PAQ has designed its cash wraps and/or service counters to require Ms. Miles and other aggrieved employees to stand while performing their work duties at those locations. PAQ could have provided Ms. Miles and other aggrieved employees with suitable seats at cash wraps and/or service counters, with reasonable or no modification to the work area(s), but instead has denied and continues to deny them seats altogether or denies them suitable seats. As a result, Ms. Miles and other aggrieved employees are and have been forced to stand throughout the day. In addition, PAQ failed to expressly advise Ms. Miles and other aggrieved employees that they could utilize seats while performing their duties.

During her employment, Ms. Miles performed cashiering duties at the cash wrap and spent a significant portion of her day behind the cash wrap. Other aggrieved employees similarly spent a portion of their day at cash wraps and/or service counters performing cash register and/or other customer service duties. The nature of the work of an employee performing cashier and/or customer service duties can reasonably be accomplished from a seated position. Ms. Miles and other aggrieved employees could have handled customer transactions and performed other similar tasks at cash wraps and/or service counters at any of PAQ's stores while seated without affecting the quality and effectiveness of the performance of their job duties. However, as set forth herein, PAQ systematically, and on a company-wide basis, does not provide seats or does not provide suitable seats at cash wraps and/or service counters and expressly prohibits employees from sitting while working, forcing Ms. Miles and other aggrieved employees to stand throughout their work shifts.

PAQ violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11070(14)(A) because Ms. Miles and other aggrieved employees were not allowed to sit, even when the nature of their work would reasonably permit the use of seats, nor were they provided with suitable seats. PAQ's management did not inform Ms. Miles and other aggrieved employees that they were allowed to sit down, provide any means for them to sit down, or mention any policy regarding sitting. PAQ's failure to provide suitable seating to Ms. Miles and other aggrieved employees violates California Labor Code section 1198 and IWC Wage Order No. 7-2001, subdivision 14(A).

Ms. Miles and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring PAQ into compliance with the applicable IWC Wage Order and Labor Code section 1198, pursuant to Labor Code sections 1194.5 and/or 2699(a), (f), and (k).

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11070 Subdivision 14(B) – Failure to Provide Suitable Seating

California Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable IWC Wage Order. California Labor Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.” California Code of Regulations, Title 8, section 11070(14)(B) provides that “[w]hen employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties.”

The IWC states that subdivision 14(B) applies during “lulls in operation” when an employee, while still on the job, is not then actively engaged in any duties. *Kilby v. CVS Pharmacy, Inc.*, 368 P.3d 554, 565 (Cal. 2016), citing IWC, 1976 Wage Orders, Summary of Basic Provisions, Seats. When taken together, an employee is entitled to a seat under subdivision 14(A) if his or her actual tasks at a discrete location make seated work feasible, while working there. *Id.* However, if other job duties take the employee to a different location where he or she must perform tasks requiring standing, the employee would be entitled to a seat under subdivision 14(B) during “lulls in operation.” *Id.*

PAQ has not placed an adequate number of suitable seats within reasonable proximity to the work areas of employees who perform duties, whose nature require standing, and therefore has not permitted employees to use those seats when not actively engaged in performing their standing duties (i.e., during “lulls in operation”), even though sitting would not interfere with the performance of their job duties.

During her employment, Ms. Miles experienced lulls in her work at various times during a typical shift, especially when the store was not busy, such as very early in the morning. During these lulls, when Ms. Miles was not actively performing tasks (the nature of which require standing), Ms. Miles could have taken a moment to sit and rest her legs, back, and feet if seating was provided. PAQ could have provided Ms. Miles and other aggrieved employees with a suitable seat or stool within reasonable proximity of their work areas but instead denies employees seats and forces Ms. Miles and other aggrieved employees to stand throughout the day. Moreover, PAQ did not inform Ms. Miles and other aggrieved employees of their rights to a seat or stool under California law. PAQ’s failure to provide suitable seating to Ms. Miles and other aggrieved employees within reasonable proximity of their work areas and permit them to use those seats when not actively engaged in their standing duties violates California Labor Code section 1198 and IWC Wage Order No. 7-2001, subdivision 14(B).

Ms. Miles and other aggrieved employees are entitled to recover civil penalties, attorneys’ fees, costs, and interest thereon, and seek injunctive relief to bring PAQ into compliance with the applicable IWC Wage Order and Labor Code section 1198, pursuant to Labor Code sections 1194.5 and/or 2699(a), (f), and (k).

Ms. Miles, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties and injunctive relief for herself, all other aggrieved employees, and the State of California against PAQ for violations of California Labor Code section 1198 and the applicable IWC Wage Order.

Therefore, on behalf of all aggrieved employees, Ms. Miles seeks all applicable penalties related to these violations of the California Labor Code pursuant to PAGA.

Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

Ninel Kocharyan
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, CA 90067
(310) 556-4811

Best Regards,

A handwritten signature in cursive script, appearing to read "Ninel".

Ninel Kocharyan

Copy: PAQ, INC. (via U.S. Certified Mail)

SENDER: COMPLETE THIS SECTION

■ Complete items 1, 2, and 3.
■ Print your name and address on the reverse so that we can return the card to you.

PAQ, INC.
3021 Reynolds Ranch Parkway
Suite #230
Lodi, CA 95240

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Domestic Return Receipt

CAPSTONE LAW, APC
1875 Century Park East
Suite #1000
Los Angeles, CA 90067

PAQ, INC.
3021 Reynolds Ranch Parkway
Suite #230
Lodi, CA 95240

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT OF THE RETURN ADDRESS. FOLD AT DOTTED LINE.

CERTIFIED MAIL®

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PAQ, INC.
3021 Reynolds Ranch Parkway
Suite #230
Lodi, CA 95240

PAQ, U.
Niles

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