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SERENA CARNES

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN DIEGO

SERENA CARNES, as an “aggrieved
employee” and on behalf of “aggrieved
employees” under the California Labor Code
Private Attorneys General Act,

Plaintiff,

v.

THE SALVATION ARMY, THE
SALVATION ARMY ARC SAN DIEGO; and
DOES 1 through 10, inclusive,
Defendants.

Case No: 37-2021-00020557-CU-OE-CTL

REPRESENTATIVE ACTION

**REPRESENTATIVE ACTION
COMPLAINT FOR:**

- 1. PENALTIES, and**
- 2. ATTORNEYS’ FEES**

1 Plaintiff SERENA CARNES (“Plaintiff”), on behalf of herself and all other aggrieved
2 employees, complains against Defendants THE SALVATION ARMY, THE SALVATION
3 ARMY ARC SAN DIEGO, and Does 1 through 10 (all referred to collectively as “SALVATION
4 ARMY” or “Defendants”) as follows:

5 **I. JURISDICTION AND VENUE**

6 1. This Court has subject matter jurisdiction over Plaintiff’s claims, based on, among
7 other statutes, Labor Code §§ 1198 and 1199. Plaintiff has complied with all requirements set
8 forth in Labor Code § 2699.3 necessary to commence a civil action seeking Labor Code § 2699
9 penalties.

10 2. This Court has personal jurisdiction over the parties because Plaintiff is a
11 California resident who worked in California for Defendants and Defendants have systematically
12 and continuously conducted business in the State of California., including in this County.

13 3. Venue is proper in this Court because California Code of Civil Procedure § 395.5
14 because: (a) Plaintiff performed part of her duties in San Diego County, (b) part of the of the
15 obligations of the parties arises in San Diego County, (c) part of Defendants’ liability arises in
16 San Diego County, and (d) breaches by Defendants occurred in connection with work performed
17 partly in San Diego County.

18 **II. PARTIES AND BACKGROUND**

19 4. Plaintiff SERENE CARNES is a California resident. Plaintiff CARNES worked
20 for SALVATION ARMY as a non-exempt, hourly sales associate/cashier from approximately
21 January 2019 through December 1, 2020 at Defendants’ retail store located at 6875 El Cajon
22 Boulevard, San Diego, California 92115.

23 5. Defendant THE SALVATION ARMY is a California corporation doing business
24 throughout California, and is a “person” as defined by Labor Code § 18 and California Business
25 and Professions Code § 17201. In addition, it is an “employer” as that term is used in the Labor
26 Code and in the Industrial Welfare Commission’s (hereinafter referred to as “IWC”) Wage Orders
27 regulating wages, hours, and working conditions.

28

6. Defendant THE SALVATION ARMY ARC SAN DIEGO is an unknown entity doing business throughout California. In addition, it is an “employer” as that term is used in the Labor Code and in the Industrial Welfare Commission’s (hereinafter referred to as “IWC”) Wage Orders regulating wages, hours, and working conditions.

7. Plaintiff is ignorant of the true names and capacities of Defendants sued as Does 1 through 10, inclusive, and therefore sues those Defendants by those fictitious names. Plaintiff will amend this Complaint to allege their true names and capacities when ascertained. Plaintiff is informed and believes and on that ground alleges that each of the fictitiously named Defendants are responsible in some manner for the occurrences alleged and that Plaintiff’s damages and other losses as alleged are proximately caused by those occurrences.

8. Plaintiff bring this action on behalf of all aggrieved employees within the meaning of Labor Code §§ 2698, *et seq.* who worked as hourly employees in California. Plaintiff seeks all penalties within the applicable limitations period for each violation of Labor Code §§ 1198 and 1199 and IWC Wage Order No. 7-2001, § 14 (failure to provide suitable seating).

III. FACTUAL ALLEGATIONS

9. SALVATION ARMY operates numerous retail stores throughout California.

10. At all relevant times, Plaintiff was employed by SALVATION ARMY as an hourly, non-exempt employee in the “Mercantile Industry” as defined by IWC Wage Order 5-2001, § 2(H).

11. SALVATION ARMY employed a policy and practice of failing to provide Plaintiff and other aggrieved employees suitable seating in violation of Labor Code §§ 1198 and 1199 and IWC Wage Order No. 7-2001, § 14. SALVATION ARMY employs cashiers at its retail stores throughout California. The nature of the job duties of a cashier reasonably permits the use of seats as cashiers could ring up customers from a seated position and/or sit between assisting customers. Yet, SALVATION ARMY did not provide seats to Plaintiff and other aggrieved employees. Plaintiff and other aggrieved employees had to stand for numerous hours at a time due to the lack of suitable seating.

IV. REPRESENTATIVE ACTION

12. Plaintiff seeks to represent all aggrieved employees within the meaning of Labor Code §§ 2698, *et seq.* who are or were employed in the State of California by Defendants as hourly retail store employees and were provided suitable seating in violation of Labor Code §§ 1198 and 1199 and IWC Wage Order No. 7-2001, § 14.

13. There is a well-defined community of interest in the quests of law and fact affecting the aggrieved employees whom Plaintiff seeks to represent. The aggrieved employees' claims against Defendants involve questions of common or general interest, including, but not limited to, whether SALVATION ARMY failed to provide suitable seating in violation of Labor Code §§ 1198 and 1199 and IWC Wage Order No. 7-2001, § 14.

14. Plaintiff's claims are typical of the claims of the members of the aggrieved employees whom Plaintiff seeks to represent and her interests are consistent with, and not antagonistic to, those of the other aggrieved employees. Plaintiff will fairly and adequately represent the interests of the aggrieved employees because Plaintiff is also an aggrieved employee and her claims are typical of those of the aggrieved employees. Plaintiff has retained attorneys who are experienced in the prosecution of class and representative actions, and Plaintiff intends to prosecute this action vigorously.

15. Common questions of law and fact exist as to all aggrieved employees that predominate over any other questions affecting only individual aggrieved employees.

16. Plaintiff requests permission to amend the Complaint to include additional representatives if Plaintiff is deemed not to be an adequate representative of the aggrieved employees.

V. FIRST CAUSE OF ACTION

(FAILURE TO PROVIDE SUITABLE SEATING - PAGA)

17. Plaintiff repeats and realleges each and every paragraph above as though fully set forth herein.

18. Labor Code § 2699(f) permits "aggrieved employees" to recover certain penalties on their own behalf and on behalf of other current and former employees.

19. Plaintiff is an “aggrieved employee” as that term is defined in the Labor Code Private Attorneys General Act of 2004 because she is a person who was employed by the alleged violator and against whom one or more of the alleged violations were committed.

20. Plaintiff has met all of the Labor Code § 2699.3 requirements to commence a civil action against Defendants for violations of Labor Code §§ 1198 and 1199 and IWC Wage Order No. 7-2001, § 14.

21. By the actions alleged herein, Defendant failed to provide Plaintiff and other aggrieved employees suitable seating in violation of Labor Code §§ 1198 and 1199 and IWC Wage Order No. 7-2001, § 14.

22. Therefore, Plaintiff, for herself and all current and former aggrieved employees and on behalf of the State of California, demand the penalties provided by Labor Code §§ 1198 and 1199 and IWC Wage Order No. 7-2001, § 14.

23. Plaintiff further seeks reasonable attorneys’ fees and costs under Labor Code § 2699(g)(1).

Wherefore, Plaintiff prays for relief as set forth below.

PRAYER FOR RELIEF

Plaintiff prays for relief as follows:

24. For civil penalties as specified by Labor Code § 2699(f) for Plaintiff and each current and former aggrieved employee for each violation of Labor Code §§ 1198 and 1199 and IWC Wage Order No. 7-2001, § 14(failure to provide suitable seating) during the applicable limitations period preceding the original filing of the Complaint and up through and including the present and until the date of compliance with the law;

1. For reasonable attorneys’ fees and costs as allowed by Labor Code § 2699(g)(1) and Code of Civil Procedure § 1021.5;

2. For all interest as required by Labor Code § 218.6 and other applicable law; and

3. For such other and further relief as the Court may deem proper.

Dated: May 7, 2021

KELLER GROVER LLP

By: 
ERIC A. GROVER
ROBERT SPENCER

Counsel for Plaintiff
SERENA CARNES