

1 JAMES F. CLAPP (145814)
jclapp@sdlaw.com
2 MARITA MURPHY LAUNGER (199242)
mlauinger@sdlaw.com
3 ZACHARIAH P. DOSTART (255071)
zdostart@sdlaw.com
4 DOSTART CLAPP GORDON & COVENEY, LLP
4370 La Jolla Village Drive, Suite 970
5 San Diego, California 92122-1253
Tel: 858-623-4200
6 Fax: 858-623-4299

CONFORMED COPY
OF ORIGINAL FILED
Los Angeles Superior Court

JUN 11 2009

John A. Clarke, Executive Officer/Clerk
By A.E. LaFleur-Clayton, Deputy
A.E. LaFLEUR-CLAYTON

7 KEVIN J. McINERNEY (46941)
kevin@mcinerneylaw.net
8 McINERNEY & JONES
18124 Wedge Parkway #503
9 Reno, Nevada 89511
Tel: 775-849-3811
10 Fax: 775-849-3866

11 MATTHEW RIGHETTI (121012)
matt@righettilaw.com
12 RIGHETTI LAW FIRM, P.C.
456 Montgomery Street, Suite 1400
13 San Francisco, California 94104
Tel: 415-983-0900
14 Fax: 415-397-9005

15 Attorneys for Plaintiff

17 SUPERIOR COURT OF THE STATE OF CALIFORNIA
18 IN AND FOR THE COUNTY OF LOS ANGELES, CENTRAL DISTRICT

20 EUGINA BRIGHT, individually and on behalf
of all others similarly situated,
21 Plaintiff,
22
23 vs.
24 99¢ ONLY STORES, and DOES 1 through
50, inclusive,
25 Defendants.

CASE NO. **BC415527**
CLASS ACTION COMPLAINT FOR
VIOLATION OF THE LABOR CODE
PRIVATE ATTORNEYS GENERAL ACT
OF 2004 (CAL. LAB. CODE SECTION
2698 ET SEQ.)

1 Plaintiff Eugina Bright, individually and on behalf of all others similarly situated, alleges
2 as follows:

3 INTRODUCTION

4 1. This is a class action and a representative action for recovery of penalties under the
5 California Labor Code Private Attorneys General Act of 2004 ("PAGA"), Cal. Lab. Code section
6 2698 et seq. PAGA permits an "aggrieved employee" to bring a lawsuit on behalf of herself and
7 other current and former employees to address an employer's violations of the California Labor
8 Code. In this case, defendants violated California Labor Code section 1198 and Wage Order 7-
9 2001, section 14 by failing to provide suitable seats to plaintiff and other current and former
10 employees. Plaintiff seeks penalties on behalf of herself and other current and former employees
11 of defendants as provided herein.

12 2. Plaintiff Eugina Bright is an individual residing in the State of California.

13 3. Defendant 99¢ Only Stores is a California corporation doing business in Los
14 Angeles, California.

15 4. Plaintiff does not know the names of those defendants sued as DOES 1 through 50
16 but will amend this complaint when she learns those names. Plaintiff alleges on information and
17 belief that each of the defendants is the agent, representative, successor, affiliate, officer, director,
18 employee, co-conspirator, or alter ego of each of the other defendants and is in some manner
19 responsible for the wrongdoing alleged herein. For the purposes of this complaint, the defendants
20 are collectively referred to as "99¢ Only Stores."

21 5. Venue is proper in this judicial district because at least some of the alleged
22 wrongdoing occurred in this judicial district, and 99¢ Only Stores operates its principal place of
23 business office in Los Angeles County.

24 6. At all relevant times, plaintiff was employed as a Cashier at 99¢ Only Stores. In
25 connection with her job as a Cashier, plaintiff regularly operated a cash register.

26 7. Wage Order 7-2001, which covers businesses in the "mercantile industry" such as
27 99¢ Only Stores, states: "All working employees shall be provided with suitable seats when the
28 nature of the work reasonably permits the use of seats." Id., section. 14(a). 99¢ Only Stores failed

1 to provide its Cashiers, including plaintiff, with seats, despite the fact that the nature of cashier
2 work reasonably permits the use of seats.

3 CLASS ALLEGATIONS

4 8. Class Definition: Plaintiff brings this lawsuit on her own behalf and as a class
5 action under Cal. Code Civ. Proc. section 382 and Fed. R. Civ. P. 23. The class ("Class") that
6 plaintiff seeks to represent is defined as follows: "All persons who, during the applicable statute of
7 limitations, were employed by 99¢ Only Stores in the State of California in the position of
8 Cashier, or similar position that regularly involves the operation of a cash register, and were not
9 provided with a seat."

10 9. Ascertainable Class: The Class is ascertainable in that its members may be
11 identified and located using information contained in 99¢ Only Stores' personnel records.

12 10. Numerosity: The Class is so numerous that the individual joinder of all members is
13 impractical under the circumstances of this case. Plaintiff is informed and believes that the Class
14 consists of well over 1,000 individuals.

15 11. Common Questions of Fact or Law: This lawsuit is suitable for class treatment
16 because common questions of fact and law predominate over individual issues. Common
17 questions include, but are not limited to, the following: (1) whether 99¢ Only Stores is subject to
18 the requirements of Wage Order 7-2001, section 14; (2) whether the job of a Cashier at 99¢ Only
19 Stores reasonably permits the use of a seat; (3) what type(s) of seat would be suitable; and (4) the
20 amount of penalties that should be awarded under PAGA.

21 12. Typicality: Plaintiff's claims are typical of the claims of Class members. Plaintiff
22 and the Class members were injured by 99¢ Only Stores' common practice of failing to provide
23 seats.

24 13. Adequacy. Plaintiff will fairly and adequately protect the interests of the Class.
25 Plaintiff has no interests that are adverse to the interests of the Class.

26 14. Superiority. A class action is superior to other available means for the fair and
27 efficient adjudication of this controversy, since individual joinder of all members of the Class is
28 impractical. Class action treatment will permit a large number of similarly situated persons to

1 prosecute their common claims in a single forum simultaneously, efficiently, and without
2 unnecessary duplication of effort and expense. Furthermore, the expenses and burden of
3 individualized litigation would make it difficult or impossible for individual members of the Class
4 to redress the wrongs done to them, while an important public interest will be served by
5 addressing the matter as a class action. Individualized litigation would also present the potential
6 for inconsistent or contradictory judgments.

7 FIRST CAUSE OF ACTION

8 (Violation of PAGA)

9 15. Plaintiff incorporates by reference the allegations set forth above.

10 16. California Labor Code section 1198 makes it illegal to employ an employee under
11 conditions of labor that are prohibited by the applicable wage order. By failing to provide plaintiff
12 and the other Class members with seats, in violation of Wage Order 7-2001, section 14, 99¢ Only
13 Stores violated Lab. Code section 1198.

14 17. PAGA permits an "aggrieved employee" to recover penalties on behalf of himself
15 or herself and other current or former employees as a result of the employer's violations of certain
16 sections of the California Labor Code. Plaintiff is an aggrieved employee, in that plaintiff was
17 employed by 99¢ Only Stores and was not provided with a seat, in violation of Lab. Code section
18 1198 and Wage Order 7-2001, section 14. A violation of Lab. Code section 1198 gives rise to
19 private right of action under PAGA.

20 18. Plaintiff has complied with the PAGA notice provision set forth in Cal. Lab. Code
21 section 2699.3(a)(1). The Labor and Workforce Development Agency has not provided plaintiff
22 with notice that it intends to investigate this violation, although 33 calendar days have elapsed
23 since the postmark date of plaintiff's notice. Accordingly, plaintiff is entitled to commence this
24 action.

25 19. Plaintiff requests penalties against 99¢ Only Stores as provided under Lab. Code
26 section 2699(f), plus reasonable attorneys' fees and costs, in amounts to be proved at trial.

