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SUPERIOR COURT OF THE STATE OF CALIFORNIA

18

IN AND FOR THE COUNTY OF ALAMEDA

19

20 MELISSA S. CURRIE-WHITE, individually
 and on behalf of all others similarly situated,

21

Plaintiff,

22

vs.

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24 BLOCKBUSTER, INC.; and DOES 1 through
 50, inclusive,

25

Defendants.

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**ENDORSED
 FILED
 ALAMEDA COUNTY**

APR 24 2009

CLERK OF THE SUPERIOR COURT
 By Esther Coleman, Deputy

CASE NO.

0908410029

**CLASS ACTION COMPLAINT FOR
 VIOLATION OF THE LABOR CODE
 PRIVATE ATTORNEYS GENERAL ACT
 OF 2004 (CAL. LAB. CODE SECTION
 2698 ET SEQ.)**

1 Plaintiff Melissa S. Currie-White, individually and on behalf of all others similarly
2 situated, alleges 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 Melissa S. Currie-White is an individual residing in the State of California.

13 3. Defendant Blockbuster, Inc. is a Delaware corporation doing business in Alameda,
14 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 "Blockbuster."

21 5. Venue is proper in this judicial district because at least some of the alleged
22 wrongdoing occurred in this judicial district, and Blockbuster has failed to designate a principal
23 business office in California.

24 6. At all relevant times, plaintiff was employed as a Customer Service Representative
25 ("CSR") at Blockbuster. In connection with her job as a CSR, plaintiff regularly operated a cash
26 register.

27 7. Wage Order 7-2001, which covers businesses in the "mercantile industry" such as
28 Blockbuster, states: "All working employees shall be provided with suitable seats when the nature

1 of the work reasonably permits the use of seats." Id., section. 14(a). Blockbuster failed to provide
2 its CSRs, including plaintiff, with seats, despite the fact that the nature of cashier work reasonably
3 permits the use of seats.

4 CLASS ALLEGATIONS

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

11 9. Ascertainable Class: The Class is ascertainable in that its members may be
12 identified and located using information contained in Blockbuster's personnel records.

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

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

22 12. Typicality: Plaintiff's claims are typical of the claims of Class members. Plaintiff
23 and the Class members were injured by Blockbuster's common practice of failing to provide 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,
13 Blockbuster 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 is
17 employed by Blockbuster and was not provided with a seat, in violation of Lab. Code section 1198
18 and Wage Order 7-2001, section 14. A violation of Lab. Code section 1198 gives rise to private
19 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 Blockbuster as provided under Lab. Code
26 section 2699(f), plus reasonable attorneys' fees and costs, in amounts to be proved at trial.

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PRAYER

WHEREFORE, plaintiff requests entry of judgment, on behalf of herself and the other
Class members, against each defendant, jointly and severally, as follows:

1. For penalties according to proof;
2. For reasonable attorneys' fees and costs of suit; and
3. For such other relief that the Court deems proper.

Dated: April 24, 2009

DOSTART CLAPP GORDON & COVENEY, LLP



JAMES F. CLAPP
Attorneys for Plaintiff

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