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**SUMMONS ISSUED**

7 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

8 **IN AND FOR THE COUNTY OF CONTRA COSTA**

9 **C21-00564**

10 MYRNA ATIENZA, on behalf of the State  
of California, as a private attorney  
11 general,

Case No. \_\_\_\_\_

**REPRESENTATIVE ACTION COMPLAINT**  
**FOR:**

12  
13 Plaintiff,

1. Civil Penalties Pursuant to Labor Code § 2699, *et seq.* for violations of Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 226(a), 226.7, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating)

14 vs.

15 HOMEGOODS, INC., a Corporation; and  
DOES 1 through 10, inclusive,

16  
17 Defendants.

PER LOCAL RULE, THIS  
CASE IS ASSIGNED TO  
DEPT 33 FOR ALL  
PURPOSES.

1 Plaintiff Myrna Atienza (“PLAINTIFF”) on behalf of the people of the State of  
2 California and as an “aggrieved employee” acting as a private attorney general under the Labor  
3 Code Private Attorney General Act of 2004, § 2699, *et seq.* (“PAGA”) only, alleges on  
4 information and belief, except for her own acts and knowledge which are based on personal  
5 knowledge, the following:

### 6 INTRODUCTION

7 1. PLAINTIFF brings this action against Defendant HOMEGOODS, INC.  
8 (“DEFENDANT”) seeking only to recover PAGA civil penalties for herself, and on behalf of  
9 all current and former aggrieved employees that worked for DEFENDANT. PLAINTIFF does  
10 not seek to recover anything other than penalties as permitted by California Labor Code  
11 § 2699. To the extent that statutory violations are mentioned for wage violations, PLAINTIFF  
12 does not seek underlying general and/or special damages for those violations, but simply the  
13 civil penalties permitted by California Labor Code § 2699.

14 2. California has enacted the PAGA to permit an individual to bring an action on  
15 behalf of herself and on behalf of others for PAGA penalties *only*, which is the precise and sole  
16 nature of this action.

17 3. Accordingly, PLAINTIFF seeks to obtain all applicable relief for  
18 DEFENDANT’s violations under PAGA and solely for the relief as permitted by PAGA – that  
19 is, penalties and any other relief the Court deems proper pursuant to the PAGA. Nothing in this  
20 complaint should be construed as attempting to obtain any relief that would not be available in  
21 a PAGA-only action.

### 22 THE PARTIES

23 4. Homegoods, Inc. (“DEFENDANT”) is a corporation that at all relevant times  
24 mentioned herein conducted and continue to conduct substantial business in the state of  
25 California.  
26

27 5. DEFENDANT is a chain of home furnishing stores that was founded as a chain  
28 in 1992. HomeGoods sells furniture, linens, cooking products, art and other home accessories.

1 6. PLAINTIFF was employed by DEFENDANT from June of 2020 to November  
2 27, 2020 and was at all times classified by DEFENDANT as a non-exempt employee, paid on  
3 an hourly basis, and entitled to the legally required meal and rest periods and payment of  
4 minimum and overtime wages due for all time worked.

5 7. PLAINTIFF, and such persons that may be added from time to time who satisfy  
6 the requirements and exhaust the administrative procedures under the Private Attorney General  
7 Act, brings this Representative Action on behalf of the State of California with respect to herself  
8 and all individuals who are or previously were employed by DEFENDANT in California and  
9 classified as non-exempt employees ("AGGRIEVED EMPLOYEES") during the time period  
10 of January 5, 2020 until a date as determined by the Court (the "PAGA PERIOD").

11 8. PLAINTIFF, on behalf of herself and all AGGRIEVED EMPLOYEES presently  
12 or formerly employed by DEFENDANT during the PAGA PERIOD, brings this representative  
13 action pursuant to Labor Code § 2699, *et seq.* seeking fixed civil penalties for DEFENDANT's  
14 violation of California Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 226(a), 226.7, 351, 510,  
15 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8,  
16 Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1  
17 1070(14) (Failure to Provide Seating), and the applicable Wage Order(s) and thereby gives rise  
18 to civil penalties as a result of such conduct.<sup>1</sup> Based upon the foregoing, PLAINTIFF and all  
19 AGGRIEVED EMPLOYEES are aggrieved employees within the meaning of Labor Code §  
20 2699, *et seq.*

21 9. The true names and capacities, whether individual, corporate, subsidiary,  
22 partnership, associate or otherwise of DEFENDANT DOES 1 through 50, inclusive, are  
23 presently unknown to PLAINTIFF who therefore sues these DEFENDANT by such fictitious  
24 names pursuant to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this  
25 Complaint to allege the true names and capacities of Does 1 through 50, inclusive, when they  
26 are ascertained. PLAINTIFF is informed and believes, and based upon that information and

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27  
28 <sup>1</sup>Plaintiff specifically excludes and/or does not allege any claims under California Labor  
Code §558(a)(3).



1 belief alleges, that the DEFENDANT named in this Complaint, including DOES 1 through 50,  
2 inclusive, are responsible in some manner for one or more of the events and happenings that  
3 proximately caused the injuries and damages hereinafter alleged.

4 10. The agents, servants and/or employees of the DEFENDANT and each of them  
5 acting on behalf of the DEFENDANT acted within the course and scope of his, her or its  
6 authority as the agent, servant and/or employee of the DEFENDANT, and personally  
7 participated in the conduct alleged herein on behalf of the DEFENDANT with respect to the  
8 conduct alleged herein. Consequently, the acts of each DEFENDANT are legally attributable  
9 to the other DEFENDANT and all DEFENDANT are jointly and severally liable to PLAINTIFF  
10 and the other AGGRIEVED EMPLOYEES, for the loss sustained as a proximate result of the  
11 conduct of the DEFENDANT's agents, servants and/or employees.

### 12 THE CONDUCT

13  
14 11. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was  
15 required to pay PLAINTIFF and AGGRIEVED EMPLOYEES for all their time worked,  
16 meaning the time during which an employee is subject to the control of an employer, including  
17 all the time the employee is suffered or permitted to work. DEFENDANT required PLAINTIFF  
18 and AGGRIEVED EMPLOYEES to work without paying them for all the time they were under  
19 DEFENDANT's control. Specifically, DEFENDANT required PLAINTIFF to work while  
20 clocked out during what was supposed to be PLAINTIFF's off-duty meal break. PLAINTIFF  
21 was from time to time interrupted by work assignments. Additionally, PLAINTIFF and  
22 AGGRIEVED EMPLOYEES were required by DEFENDANT to clock out of DEFENDANT's  
23 timekeeping system, in order to perform additional work for DEFENDANT as required to meet  
24 DEFENDANT's job requirements. Additionally, during the PAGA PERIOD, DEFENDANT  
25 required PLAINTIFF and other AGGRIEVED EMPLOYEES to wait in line and submit to  
26 mandatory temperature checks for COVID-19 screening prior to clocking into DEFENDANT's  
27 timekeeping system for the workday. DEFENDANT failed to pay PLAINTIFF and other  
28 AGGRIEVED EMPLOYEES for this off the clock work. Further, PLAINTIFF and other

1 AGGRIEVED EMPLOYEES from time to time were not paid wages for all time worked,  
2 including overtime wages, such that in the aggregate employees were underpaid wages as a  
3 result of DEFENDANT's pattern and practice of unevenly rounding time worked by its  
4 employees.

5 12. As a result of their rigorous work schedules, PLAINTIFF and other AGGRIEVED  
6 EMPLOYEES were from time to time unable to take thirty (30) minute off duty meal breaks  
7 and were not fully relieved of duty for their meal periods. PLAINTIFF and other AGGRIEVED  
8 EMPLOYEES were required from time to time to perform work as ordered by DEFENDANT  
9 for more than five (5) hours during some shifts without receiving a meal break. Further,  
10 DEFENDANT failed to provide PLAINTIFF and AGGRIEVED EMPLOYEES with a second  
11 off-duty meal period for some workdays in which these employees were required by  
12 DEFENDANT to work ten (10) hours of work from time to time. As a result, DEFENDANT's  
13 failure to provide PLAINTIFF and the AGGRIEVED EMPLOYEES with legally required meal  
14 breaks is evidenced by DEFENDANT's business records. PLAINTIFF and other  
15 AGGRIEVED EMPLOYEES therefore forfeited meal breaks without additional compensation  
16 and in accordance with DEFENDANT's corporate policy and practice.

17 13. During the PAGA PERIOD, PLAINTIFF and other AGGRIEVED EMPLOYEES  
18 were also required from time to time to work in excess of four (4) hours without being provided  
19 ten (10) minute rest periods. Further, these employees were denied their first rest periods of at  
20 least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours from time to  
21 time, a first and second rest period of at least ten (10) minutes for some shifts worked of  
22 between six (6) and eight (8) hours from time to time, and a first, second and third rest period  
23 of at least ten (10) minutes for some shifts worked of ten (10) hours or more from time to time.  
24 PLAINTIFF and other AGGRIEVED EMPLOYEES were also not provided with one hour  
25 wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFF and other  
26 AGGRIEVED EMPLOYEES were from time to time denied their proper rest periods by  
27 DEFENDANT and DEFENDANT's managers. Additionally, the applicable California Wage  
28 Order requires employers to provide employees with off-duty rest periods, which the California

1 Supreme Court defined as time during which an employee is relieved from all work related  
2 duties and free from employer control. In so doing, the Court held that the requirement under  
3 California law that employers authorize and permit all employees to take rest period means that  
4 employers must relieve employees of all duties and relinquish control over how employees  
5 spend their time which includes control over the locations where employees may take their rest  
6 period. Employers cannot impose controls that prohibit an employee from taking a brief walk -  
7 five minutes out, five minutes back. Here, DEFENDANT's policy restricts PLAINTIFF and  
8 other AGGRIEVED EMPLOYEES from unconstrained walks and requires these employees to  
9 remain on DEFENDANT's premises under DEFENDANT's control during what should be their  
10 paid, off duty rest periods.

11 14. In addition, State and federal law provides that employees must be paid overtime  
12 at one-and-one-half times their "regular rate of pay." PLAINTIFF and other AGGRIEVED  
13 EMPLOYEES are compensated at an hourly rate plus incentive pay that is tied to specific  
14 elements of an employee's performance.

15 15. The second component of PLAINTIFF's and other AGGRIEVED EMPLOYEES'  
16 compensation was DEFENDANT's non-discretionary incentive program that paid PLAINTIFF  
17 and other AGGRIEVED EMPLOYEES incentive wages based on their performance for  
18 DEFENDANT. The non-discretionary incentive program provided all employees paid on an  
19 hourly basis with incentive compensation when the employees met the various performance  
20 goals set by DEFENDANT. However, when calculating the regular rate of pay in order to pay  
21 overtime to PLAINTIFF and other AGGRIEVED EMPLOYEES, DEFENDANT failed to  
22 include the incentive compensation as part of the employees' "regular rate of pay" for purposes  
23 of calculating overtime pay. Management and supervisors described the incentive program to  
24 potential and new employees as part of the compensation package. As a matter of law, the  
25 incentive compensation received by PLAINTIFF and other AGGRIEVED EMPLOYEES must  
26 be included in the "regular rate of pay." The failure to do so has resulted in an underpayment  
27 of overtime compensation to PLAINTIFF and other AGGRIEVED EMPLOYEES by  
28 DEFENDANT. Moreover, DEFENDANT underpaid sick pay wages to PLAINTIFF and other



1 AGGRIEVED EMPLOYEES by failing to pay such wages at the regular rate of  
2 pay. Specifically, PLAINTIFF and other non-exempt employees regularly earn non-  
3 discretionary remuneration, including but not limited to, incentives, shift differential pay, and  
4 bonuses. Rather than pay sick pay at the regular rate of pay, DEFENDANT underpaid sick pay  
5 to PLAINTIFF and other AGGRIEVED EMPLOYEES at their base rates of pay.

6 16. Further, PLAINTIFF alleges that the sales counters in DEFENDANT's California  
7 stores are generally similar in their layout and design and that there is ample space behind each  
8 counter area to allow for the presence and use of a stool or seat by DEFENDANT's non-exempt  
9 employees during the performance of their work duties. DEFENDANT's non-exempt  
10 employees working at DEFENDANT's locations spend a very substantial portion, and, in many  
11 workdays, the vast majority of their working time behind these counters. The nature of the sales  
12 position can reasonably be accomplished while using a seat/stool.

13 17. In violation of the applicable sections of the California Labor Code and the  
14 requirements of the applicable Industrial Welfare Commission ("IWC") Wage Order,  
15 DEFENDANT as a matter of company policy, practice and procedure, intentionally, knowingly  
16 and systematically failed to provide PLAINTIFF and the other AGGRIEVED EMPLOYEES  
17 suitable seating when the nature of these employees' work reasonably permitted sitting.

18 18. DEFENDANT knew or should have known that PLAINTIFF and other  
19 AGGRIEVED EMPLOYEES were entitled to suitable seating and/or were entitled to sit when  
20 it did not interfere with the performance of their duties, and that DEFENDANT did not provide  
21 suitable seating and/or did not allow them to sit when it did not interfere with the performance  
22 of their duties.

23 19. By reason of this conduct applicable to PLAINTIFF and all Aggrieved  
24 Employees, DEFENDANT violated California Labor Code Section 1198 and Wage Order 4-  
25 2001, Section 14 by failing to provide suitable seats.

26 20. From time to time, DEFENDANT also failed to provide PLAINTIFF and the  
27 other AGGRIEVED EMPLOYEES with complete and accurate wage statements which failed  
28 to show, among other things, the correct gross and net wages earned. Cal. Lab. Code § 226

1 provides that every employer shall furnish each of his or her employees with an accurate  
2 itemized wage statement in writing showing, among other things, gross wages earned and all  
3 applicable hourly rates in effect during the pay period and the corresponding amount of time  
4 worked at each hourly rate. Aside, from the violations listed above in this paragraph,  
5 DEFENDANT failed to issue to PLAINTIFF an itemized wage statement that lists all the  
6 requirements under California Labor Code 226 *et seq.* As a result, DEFENDANT from time to  
7 time provided PLAINTIFF and the other AGGRIEVED EMPLOYEES with wage statements  
8 which violated Cal. Lab. Code § 226.

9       21. DEFENDANT failed to reimburse and indemnify PLAINTIFF and the other  
10 AGGRIEVED EMPLOYEES for required business expenses incurred by PLAINTIFF and other  
11 AGGRIEVED EMPLOYEES in direct consequence of discharging their duties on behalf of  
12 DEFENDANT. Under California Labor Code Section 2802, employers are required to  
13 indemnify employees for all expenses incurred in the course and scope of their employment.  
14 Cal. Lab. Code § 2802 expressly states that "an employer shall indemnify his or her employee  
15 for all necessary expenditures or losses incurred by the employee in direct consequence of the  
16 discharge of his or her duties, or of his or her obedience to the directions of the employer, even  
17 though unlawful, unless the employee, at the time of obeying the directions, believed them to  
18 be unlawful."

19       22. In the course of their employment PLAINTIFF and other AGGRIEVED  
20 EMPLOYEES as a business expense, were required by DEFENDANT to use personal cellular  
21 phones as a result of and in furtherance of their job duties as employees for DEFENDANT but  
22 were not reimbursed or indemnified by DEFENDANT for the cost associated with the use of  
23 the personal cellular phones for DEFENDANT's benefit. Specifically, DEFENDANT required  
24 PLAINTIFF and other AGGRIEVED EMPLOYEES to complete mandatory surveys on their  
25 cell phones while at home regarding whether or not they were experiencing symptoms related  
26 to the COVID-19 virus. These questions were required to be answered prior to coming into  
27 work for the day. As a result, in the course of their employment with DEFENDANT,  
28 PLAINTIFF and other AGGRIEVED EMPLOYEES incurred unreimbursed business expenses



1 which included, but were not limited to, costs related to the use of their personal cellular  
2 phones, all on behalf of and for the benefit of DEFENDANT.

3 23. In violation of the applicable sections of the California Labor Code and the  
4 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT  
5 intentionally and knowingly failed to compensate PLAINTIFF and the other AGGRIEVED  
6 EMPLOYEES for missed meal and rest periods and all time worked. This policy and practice  
7 of DEFENDANT was intended to purposefully avoid the payment for all time worked as  
8 required by California law which allows DEFENDANT to illegally profit and gain an unfair  
9 advantage over competitors who complied with the law. To the extent equitable tolling operates  
10 to toll claims by the AGGRIEVED EMPLOYEES against DEFENDANT, the PAGA PERIOD  
11 should be adjusted accordingly..

12 24. All of the conduct and violations alleged herein occurred during the PAGA  
13 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect  
14 PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations that  
15 affected other AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.* 2018  
16 AJDAR 12157 (Certified for Publication 12/19/18).

### 17 18 JURISDICTION AND VENUE

19 25. This Court has jurisdiction over this Action pursuant to California Code of Civil  
20 Procedure, Section 410.10.

21 26. Venue is proper in this Court pursuant to California Code of Civil Procedure,  
22 Sections 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANT, resides  
23 in this County, and DEFENDANT(i) currently maintains and at all relevant times maintained  
24 offices and facilities in this County and/or conducts substantial business in this County, and (ii)  
25 committed the wrongful conduct herein alleged in this County against PLAINTIFF and the  
26 AGGRIEVED EMPLOYEES.

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1 FIRST CAUSE OF ACTION

2 **For Violation of the Private Attorneys General Act**

3 [Cal. Lab. Code §§ 2698, *et seq.*]

4 **(By PLAINTIFF and Against All Defendants)**

5 27. PLAINTIFF incorporates by reference, as though fully set forth herein, the prior  
6 paragraphs of this Complaint.

7 28. PAGA is a mechanism by which the State of California itself can enforce state  
8 labor laws through the employee suing under the PAGA who do so as the proxy or agent of the  
9 state's labor law enforcement agencies. An action to recover civil penalties under PAGA is  
10 fundamentally a law enforcement action designed to protect the public and not to benefit private  
11 parties. The purpose of the PAGA is not to recover damages or restitution, but to create a  
12 means of "deputizing" citizens as private attorneys general to enforce the Labor Code. In  
13 enacting PAGA, the California Legislature specified that "it was ... in the public interest to  
14 allow aggrieved employees, acting as private attorneys general to recover civil penalties for  
15 Labor Code violations ..." Stats. 2003, ch. 906, § 1. Accordingly, PAGA claims cannot be  
16 subject to arbitration.

17 29. PLAINTIFF, and such persons that may be added from time to time who satisfy  
18 the requirements and exhaust the administrative procedures under the Private Attorney General  
19 Act, brings this Representative Action on behalf of the State of California with respect to herself  
20 and all individuals who are or previously were employed by DEFENDANT in California and  
21 classified as non-exempt employees ("AGGRIEVED EMPLOYEES") during the time period  
22 of January 5, 2020 until a date as determined by the Court (the "PAGA PERIOD").

23 30. On January 5, 2021, PLAINTIFF gave written notice by electronic mail to the  
24 Labor and Workforce Development Agency (the "Agency") and by certified mail to the  
25 employer of the specific provisions of this code alleged to have been violated as required by  
26 Labor Code § 2699.3. The statutory waiting period for PLAINTIFF to add these allegations to  
27 the Complaint has expired. As a result, pursuant to Section 2699.3, PLAINTIFF may now  
28 commence a representative civil action under PAGA pursuant to Section 2699 as the proxy of

1 the State of California with respect to all AGGRIEVED EMPLOYEES as herein defined.

2 31. The policies, acts and practices heretofore described were and are an unlawful  
3 business act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the other  
4 AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to properly record  
5 and provide legally required meal and rest periods, (c) failed to pay overtime wages, (d) failed  
6 to pay minimum wages, (e) failed to reimburse for required expenses, (f) failed to provide  
7 wages when due, and (g) failed to provide seating, all in violation of the applicable Labor Code  
8 sections listed in Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 226(a), 226.7, 351, 510, 512,  
9 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section  
10 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1 1070(14)  
11 (Failure to Provide Seating), and the applicable Industrial Wage Order(s), and thereby gives rise  
12 to civil penalties as a result of such conduct.<sup>2</sup> PLAINTIFF hereby seeks recovery of only civil  
13 penalties as prescribed by the Labor Code Private Attorney General Act of 2004 as the  
14 representative of the State of California for the illegal conduct perpetrated on PLAINTIFF and  
15 the other AGGRIEVED EMPLOYEES.

16 **PRAYER FOR RELIEF**

17 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and  
18 severally, as follows:

19 1. On behalf of the State of California and with respect to all AGGRIEVED  
20 EMPLOYEES:

21 A) Recovery of civil penalties as prescribed by the Labor Code Private  
22 Attorneys General Act of 2004; and,

23 B) An award of attorneys' fees and cost of suit, as allowable under the

24 ///

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27 \_\_\_\_\_  
28 <sup>2</sup>Plaintiff specifically excludes and/or does not allege any claims under California Labor Code §558(a)(3).



1 law, including, but not limited to, pursuant to Labor Code §2699.

2  
3 Dated: March 19, 2021 **BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP**

4  
5  
6 By: 

Norman B. Blumenthal

7 Attorneys for Plaintiff