

ENDORSED  
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ALAMEDA COUNTY

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CLERK OF THE SUPERIOR COURT  
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7  
8 **SUPERIOR COURT OF CALIFORNIA  
COUNTY OF ALAMEDA**

9 Jamie Gangwer,

10 Plaintiff,

11 v.

12 SAS Retail Services, LLC,

13 Defendant.

Case No. RG19008876

**COMPLAINT FOR DECLARATORY  
RELIEF**

**COMPLEX**

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28 SAS Retail Services Employee Lawsuit

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

**BY FAX**

1 **INTRODUCTION**

2 1. SAS Retail Services, LLC (“SAS”), is a leading merchandising company that is one of a  
3 small group of merchandisers that handle inventory and displays for Walmart.

4 2. Plaintiff Jamie Gangwer, a merchandiser for SAS, seeks declaratory relief concerning  
5 the enforceability of certain provisions contained in a mandatory Arbitration Agreement that he was  
6 required to sign.

7 **PARTIES**

8 3. Plaintiff Jamie Gangwer is a resident and citizen of California who worked in the Bay  
9 Area for SAS for approximately a year. He spent a substantial amount of that time working for SAS in  
10 Fremont, California, which is located in Alameda County.

11 4. Defendant SAS Retail Services, LLC, is a Delaware corporation with its principal place  
12 of business in Orange, California.

13 **JURISDICTION AND VENUE**

14 5. This Court has jurisdiction over the cause of action asserted herein because it arises out  
15 of an employment relationship between Plaintiff and a California employer for whom he worked in  
16 California. Defendant is a citizen of the State of California, has sufficient minimum contacts within the  
17 State of California, and has otherwise intentionally availed itself of the benefit of doing business within  
18 the State of California so as to render the exercise of jurisdiction over it by the State of California  
19 courts consistent with traditional notions of fair play and substantial justice.

20 6. Venue is proper in this Court under Code of Civil Procedure §§ 395 and 395.5 because  
21 the agreement to arbitrate was signed by Plaintiff, who performed substantial work under that  
22 agreement in Alameda County.

23 **FACTUAL ALLEGATIONS**

24 **A. Background on SAS**

25 7. SAS performs merchandising services for over 100 retail companies, including Wal-  
26 mart.<sup>1</sup>

27  
28 <sup>1</sup> <https://www.sasretail.com/about-us/>.

1 8. SAS merchandisers such as Plaintiff help retailers set up and rotate their in-store product  
2 displays to help maximize sales. Many retailers will rotate their displays every 30 days to highlight  
3 new or seasonal products.

4 9. SAS merchandisers also help retail companies set up all the shelves and displays when  
5 they open a new store or re-open an existing store after a remodel.<sup>2</sup>

6 10. To perform these merchandising services, SAS employs 20,000 full- and part-time  
7 employees.<sup>3</sup>

8 11. SAS merchandisers often must drive to relatively remote locations to help set up or  
9 rearrange the in-store displays. Many SAS teams, such as those responsible for setting up all the  
10 product in new or remodeled stores, must travel so far that they are required to stay overnight in hotels.  
11 Plaintiff intends to bring a representative action under the Private Attorneys General Act of 2004  
12 (“PAGA”), Labor Code § 2699 *et seq.*, on behalf of himself and other merchandisers concerning  
13 Defendants’ practices related to driving time and expenses.

14 12. SAS required Plaintiff to sign a document entitled “Agreement to Arbitrate Claims &  
15 Class/Collective Action Waiver,” which he signed. That document states (capitalized text contained in  
16 the original):

17 THE PARTIES AGREE THAT FINAL AND BINDING ARBITRATION IS THE  
18 EXCLUSIVE MEANS FOR RESOLVING COVERED DISPUTES AND THAT NO OTHER  
19 ACTION MAY BE BROUGHT IN ANY COURT. THE PARTIES UNDERSTAND THAT  
20 THIS AGREEMENT IS A WAIVER OF ALL RIGHTS TO A CIVIL COURT ACTION FOR  
21 A DISPUTE RELATING TO ANY MATTER ARISING DURING OR FROM THE  
22 EMPLOYMENT RELATIONSHIP OR THE TERMINATION OF THE EMPLOYMENT  
23 RELATIONSHIP. ONLY AN ARBITRATOR, NOT A JUDGE OR JURY, WILL DECIDE  
24 THE DISPUTE.

25 THE PARTIES FURTHER AGREE THAT THEY WILL RESOLVE THEIR DISPUTES ON  
26

27 \_\_\_\_\_  
28 <sup>2</sup> <https://www.sasretail.com/new-store-and-remodel-support/>.

<sup>3</sup> SAS, *supra* note 1.

1 AN INDIVIDUAL BASIS. ANY CLAIMS BROUGHT UNDER THIS AGREEMENT MUST  
2 BE BROUGHT IN THE PARTIES' INDIVIDUAL CAPACITY, AND NOT AS A  
3 PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS, COLLECTIVE, OR  
4 REPRESENTATIVE PROCEEDING . . . INSTEAD, THE PARTIES AGREE TO RESOLVE  
5 THEIR DISPUTES UNDER THIS AGREEMENT ON AN INDIVIDUAL BASIS.

6 13. The Agreement also states: "This Agreement will not apply to . . . any claim not  
7 arbitrable pursuant to federal or state law . . . The scope of arbitration is no broader than allowed by  
8 law. Nothing contained in this Agreement is intended to require the arbitration of any matter or claim  
9 which the courts having jurisdiction over such matter or claim have expressly held or ruled are not  
10 subject to mandatory arbitration."

11 14. Finally, the Agreement states: "Employee and the Company further agree that if any  
12 court or other tribunal of competent jurisdiction declares that any clause or provision contained in this  
13 Agreement is illegal, invalid, or unenforceable, the illegal, invalid, or unenforceable part will no longer  
14 be part of this Agreement . . . ."

15 15. Plaintiff now seeks declarations that: (i) the above-referenced blanket prohibition on  
16 bringing "representative" actions was and is void as contrary to the public policy of the State of  
17 California as definitively interpreted and set forth in Labor Code § 2699 subd. (a), and illegal within the  
18 meaning of California Civil Code § 1667 and California Labor Code § 432.5 as a result; (ii) there was  
19 no meeting of the minds or other mutual consent in the parties' Agreement that would require  
20 Plaintiff's representative claims, if any, to be decided in arbitration; and (iii) this civil action or any  
21 civil claim against Defendant predicated in whole or in part on this illegal contractual provision –  
22 including a representative PAGA claim based in any way on this illegal provision – must now be  
23 maintained in a court of law rather than in arbitration.

24 **FIRST CAUSE OF ACTION**

25 **(DECLARATORY RELIEF – CCP § 1060)**

26 16. Plaintiff realleges and incorporates by this reference the foregoing paragraphs as though  
27 fully set forth herein.

1 17. Plaintiff was required to sign the Agreement to continue working for Defendant.

2 18. There currently exists an actual and real controversy between Plaintiff and Defendant  
3 regarding the legality and enforceability of specific language contained in the Agreement. Clarification  
4 of the parties' rights and obligations under the Agreement is both necessary and proper at this time so  
5 that Plaintiff can determine where he can and should maintain the representative claim he is preparing  
6 to commence at this time.

7 19. The Agreement between the parties purports to require Plaintiff to waive all rights to  
8 pursue any dispute on a representative basis.

9 20. California Civil Code § 1667 defines "unlawfulness" as either "(1) Contrary to an  
10 express provision of law; (2) Contrary to the policy of express law, though not expressly prohibited; or  
11 (3) Otherwise contrary to good morals."

12 21. In *Iskanian v. CLS Transp. Los Angeles, LLC*, (2014) 59 Cal.4th 348, the California  
13 Supreme Court found that even if class-action waivers in arbitration agreements are enforceable, where  
14 "an employment agreement compels the waiver of representative claims under the PAGA, it is contrary  
15 to public policy and unenforceable as a matter of state law."

16 22. Plaintiff now thus seeks from the Court declarations that:

17 a) As a result, *inter alia*, of *Iskanian v. CLS Transp. Los Angeles, LLC* (2014) 59  
18 Cal.4th 348, Defendant's inclusion of language purporting to deny to civil courts and arbitrators alike  
19 any power to hear or decide any representative claim under the California PAGA statute was and is  
20 void as against public policy and illegal;

21 b) Given, *inter alia*, the plain language of the Agreement making clear that no  
22 Arbitrator can decide a representative PAGA claim brought by Plaintiff and the lack of consent of the  
23 State of California to mandatory arbitration of such claims, there was and is no meeting of the minds or  
24 other evidence of mutual consent that could require Plaintiff to maintain any representative PAGA  
25 claim he may bring in arbitration.

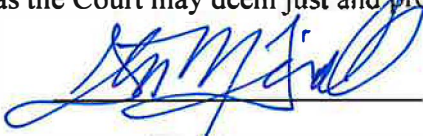
26 c) Plaintiff may maintain a representative PAGA action in Court.

27 **PRAYER FOR RELIEF**

28 23. WHEREFORE, PLAINTIFF prays for judgment as follows:

- i. For a declaration that the provisions in the Agreement between Plaintiff and Defendant purporting to ban maintenance of representative PAGA actions in any forum – civil or arbitral – was and is void as against public policy and illegal;
- ii. For a declaration that there is no evidence of an intention or meeting of the minds in the Agreement that would require that Plaintiff’s representative claims, if any, be heard and decided in arbitration rather than in civil court;
- iii. For a declaration that Plaintiff may maintain a representative PAGA action in Court;
- iv. For reasonable costs of suit herein; and attorneys’ fees incurred pursuant to CCP § 1021.5 or to the maximum extent available by law; and
- v. For such other and further relief as the Court may deem just and proper.

Dated: February 28, 2019



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