

HAIG B. KAZANDJIAN LAWYERS, APC

Haig B. Kazandjian, Esq. Bar No.: 278622

haig@hbklawyers.com

Cathy Gonzalez, Esq., Bar No.: 310625

cathy@hbklawyers.com

Kevin Crough, Esq., Bar No.: 323904

kevin@hbklawyers.com

801 North Brand Boulevard, Suite 970

Glendale, California 91203

Telephone: 1-818-696-2306

Facsimile: 1-818-696-2307

Attorneys for Plaintiff EMMA GLASSEL

on behalf of herself and all other aggrieved employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA**FOR THE COUNTY OF LOS ANGELES**EMMA GLASSEL, an individual, on behalf of) Case No.
herself and all other aggrieved employees)

Plaintiff,

vs.

**COMPLAINT FOR ENFORCEMENT
UNDER THE PRIVATE ATTORNEYS
GENERAL ACT, CALIFORNIA LABOR
CODE § 2698, ET SEQ.**TOSCANOVA, L.P., a California Corporation;
TOSCANOVA 2 LP, a California Corporation;
KIMBERLYNN HOLM, an individual, and
DOES 1 through 100, inclusive,Violation of California Labor Code § 2698, et
seq. (California Labor Code Private Attorneys
General Act of 2004)

Defendants.

Plaintiff EMMA GLASSEL ("Representative Plaintiff" "Plaintiff" or "GLASSEL") alleges as
follows:**PARTIES**

1. Representative Plaintiff is an individual who resides in California and was employed by defendants TOSCANOVA, L.P., a California Corporation, and TOSCANOVA 2 LP, a California Corporation; (hereinafter referred to as "Defendants," or "the Companies") from on or about February 6, 2019 until on or about September 10, 2019.

2. Representative Plaintiff is informed and believes, and based on such information

1 and belief, alleges that at all times mentioned herein, Defendants TOSCANOVA, L.P., and
2 TOSCANOVA 2 LP, are California Corporations, licensed to do business and actually doing
3 business in the State of California. Defendant are an Italian style eating establishment within the
4 State of California, including, but not limited to, the County of Los Angeles. Thus, Defendant is
5 subject to the applicable California laws as alleged in this action.

6 3. Upon information and belief, Defendant KIMBERLYNN HOLM (hereinafter,
7 "HOLM") is an individual who resides in the State of California and the County of Los Angeles.
8 Defendant KOBY was and is an agent of Defendants, and in that capacity was and is responsible
9 for overseeing and implementing Defendants timekeeping policies and procedures that
10 Representative Plaintiff and the other aggrieved employees were made to follow.

11 4. Representative Plaintiff is unaware of the true names and capacities, whether
12 corporate or individual, or otherwise, of defendants named as DOES 1 through 10, inclusive.
13 Pursuant to California Code of Civil Procedure section 474, Representative Plaintiff will seek leave
14 of court to amend this complaint to state said defendants' true names and capacities when the same
15 have been ascertained. Representative Plaintiff is informed and believes and based on such
16 information and belief alleges that said fictitiously-named defendants are responsible in some
17 manner for the injuries and damages to Representative Plaintiff, and other aggrieved employees as
18 further alleged herein.

19 5. This is only a Private Attorney General Action Complaint, pursuant to California
20 Labor Code section 2699 et seq., on behalf of Representative Plaintiff and all other persons
21 similarly situated who worked for Defendants in its California locations as non-exempt, hourly
22 employees (herein collectively identified as "other aggrieved employees") for:

- 23 (i) failure to provide rest and meal periods in violation of Labor Code sections 226.7,
24 512(a), 1198 and the applicable Wage Orders;
- 25 (ii) failure to pay minimum wage in violation of Labor Code 1182.12, 1194, 1197,
26 1197.1, 1198, and the applicable Wage Orders;
- 27 (iii) failure to keep accurate payroll records and provide itemized wage statements in
28 violation of Labor Code 226(a), 1174(d), 1198, and the applicable Wage Orders;

- 1 (iv) failure to pay all wages earned on time in violation of Labor Code sections 204;
2 (v) failure to reimburse necessary, business-related expenses in violation of labor code
3 2800 and 2802;

4 **VENUE AND JURISDICTION**

5 6. Venue is proper under California Code of Civil Procedure section 395 and under
6 California Government Code section 12965(b), in that Representative Plaintiff's injuries were
7 incurred within the County of Los Angeles, the actions giving rise to Representative Plaintiff's
8 complaint arose within the County of Los Angeles, and Defendant is located in the County of Los
9 Angeles.

10 **STATEMENT OF FACTS**

11 7. Representative Plaintiff was hired by Defendants as a "Front of House" Server on or
12 about February 6, 2019. Representative Plaintiff worked for Defendants up until on or about
13 September 10, 2019 when her employment terminated. Defendants are an Italian style eating
14 establishment.

15 8. While employed with Defendants, Representative Plaintiff and other aggrieved
16 employees that worked with her at the Company's California locations, which include other
17 aggrieved employees that he seeks to represent in this action, working as non-exempt, hourly
18 employees (herein collectively identified as "other aggrieved employees") were regularly required
19 to work off-the-clock, and during their rest and meal periods.

20 9. Defendants failed to provide Representative Plaintiff and other aggrieved employees
21 with meal periods in accordance with Labor Code Sections 512(a) and 226.7, as aggrieved
22 employees were often not afforded an opportunity to take an off-duty meal period of at least 30
23 minutes within the first five (5) hours of their shift, because of work understaffing, inadequate
24 coverage, unreasonably high workload and expectations, and/or other actions, inactions, or
25 decisions made by and within the sole control and discretion of Defendants.

26 10. Defendants also failed to pay its aggrieved employees a premium pursuant to Labor
27 Code section 226.7 when it failed to provide its employees with legally adequate meal periods as
28 described above.

1 11. Defendants also failed to provide Representative Plaintiff and other aggrieved
2 employees with a 10-minute rest break for every four hours of work, or every major fraction
3 thereof, as employees were forced to work extended periods without rest breaks due to
4 understaffing, inadequate coverage, unreasonably high workload and expectations, and/or other
5 actions, inactions, or decisions made by and within the sole control and discretion of Defendants.

6 12. Additionally, Representative Plaintiff and the other aggrieved employees were not
7 provided a premium wage pursuant to Labor Code section 226.7 for their legally inadequate meal
8 and rest periods, as they were not relieved of all duties and responsibilities for the respective time
9 periods as required by the law. Defendants' failure to properly pay Plaintiff and other aggrieved
10 employees for all hours worked in these instances violates Labor Code sections 226.7, 512(a), 1198
11 and the applicable Wage Orders.

12 13. Representative Plaintiff and other aggrieved employees were often required to work
13 off-the-clock before their shifts started, after their shifts were completed, and during their meal and
14 rest periods. During this off-the-clock time and these so-called "working lunches", employees were
15 required by Defendants to finish work tasks that they did not have time to finish during their shift
16 because of understaffing, inadequate coverage, unreasonably high workload and expectations,
17 and/or other actions, inactions, or decisions made by and within the sole control and discretion of
18 Defendants'.

19 14. Defendants, being aware of these occurrences, still deducted 30 minutes from their
20 pay on these days that they were required to continue working without a legal meal period. The
21 Companies altered and adjusted time-sheets and time-cards in order to obfuscate this fact.

22 15. Defendants required Plaintiff and other aggrieved employees to work without
23 appropriate compensation, including the payment of at least minimum wage, for such work time as
24 described above in violation of Labor Code sections 1182.12, 1194, 1197, 1197.1 and 1198, and
25 the applicable Wage Orders.

26 16. California Labor Code section 226(a) provides that every employer shall furnish to
27 each of its employees an accurate, itemized wage statement in writing, showing, among other
28 things, all applicable hourly rates in effect during the pay period and the corresponding correct

1 number of hours worked at each hourly rate by the employee. Defendants' wage statements fail to
2 comply with this section of the Labor Code as they list the incorrect rates of pay and the incorrect
3 number of hours worked at each rate of pay. The number of hours that the employees actually spent
4 working for the Companies, which are listed on the pay stubs, is incorrect because of, among other
5 things, the Companies' failure to properly compensate its employees for all of the time that they
6 spent working under their employer's control.

7 17. Defendants wage statements listed the incorrect rates of pay and earnings. Thus, the
8 total earnings and the overtime hours listed on the employee's pay stubs are incorrect. The number
9 of hours that the employees actually spent working for the Companies that is listed on the wage
10 statement is also incorrect because of the Companies' failure to record and compensate its
11 employees for all of the time that they are under its control, including, but not limited to, time that
12 they spend complying with the Companies' required "working lunches" and off-the-clock work,
13 and when Defendants deducted 30-minutes for meal periods that Representative Plaintiff and the
14 other aggrieved employees did not actually enjoy.

15 18. Representative Plaintiff and all aggrieved employees who worked for Defendants
16 did not receive all wages earned on time as defined by California Labor Code section 204. As a
17 consequence of Defendants failures as described above, Representative Plaintiff and other
18 aggrieved employees did not receive, among other things, minimum wages for off-the-clock work,
19 rest period premium wages, meal period premium wages.

20 19. Defendants directed Representative Plaintiff and other aggrieved employees to incur
21 personal expenses on behalf of Defendants while performing their respective job duties. Such
22 personal expenses include, but are not limited to: use of personal cell phone, travel expenses, and
23 parking expenses. Without incurring these expenses, Representative Plaintiff and other aggrieved
24 employees would not be able to accomplish their job duties. Defendants failed to indemnify
25 Representative Plaintiff and other aggrieved for all of these necessary expenditures.

26 ///

27 ///

28 ///

FIRST CAUSE OF ACTION

(VIOLATION OF LABOR CODE § 2698, ET SEQ.)

(By Plaintiff Against Defendants and Does 1 through 10, inclusive)

20. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 21, and each and every part thereof with the same force and effect as though fully set forth herein.

21. PAGA expressly establishes that any provisions of the California Labor Code which provides for a civil penalty to be assessed and collected by the LWDA, or any of its departments, divisions, commissions, boards, agencies or employees for a violation of the California Labor Code, may be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself, and other current or former employees.

22. Whenever the LWDA, or any of its departments, divisions, commissions, boards, agencies, or employees has discretion to assess a civil penalty, a court in a civil action is authorized to exercise the same discretion, subject to the same limitations and conditions, to assess a civil penalty.

23. Plaintiff and the other hourly-paid or non-exempt employees, are "aggrieved employees" within the meaning of California Labor Code section 2699(c) as they are all current or former employees of Defendants, and one or more of the alleged violations was committed against them.

///

///

///

///

///

///

///

///

///

///

1 **Failure to Provide Meal Periods**

2 24. Defendants' failure to provide legally required meal periods to Plaintiff and the
3 other aggrieved employees is in violation of the Wage Orders and constitutes unlawful or unfair
4 activity prohibited by California Labor Code sections 226.7, 512(a), 1198, and the applicable Wage
5 Orders.

6 **Failure to Provide Rest Periods**

7 25. Defendants' failure to provide legally required rest periods to Plaintiff and the other
8 aggrieved employees is in violation of the Wage Orders and constitutes unlawful or unfair activity
9 prohibited by California Labor Code section 226.7.

10 ///

11 **Failure to Pay Minimum Wages**

12 26. Defendants' failure to pay legally required minimum wages to Plaintiff and the
13 other aggrieved employees is in violation of the Wage Orders and constitutes unlawful or unfair
14 activity prohibited by California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

15 **Failure to Keep Accurate and Provide Itemized Wage Statements**

16 27. Defendants' failure to keep accurate, and provide itemized wage statements to
17 Plaintiff and the other aggrieved employees in accordance with Labor Code section 226(a),
18 1174(d), and 1198 constitutes unlawful and/or unfair activity prohibited by California Labor Code
19 section 226(a), 1174(d), and 1198.

20 **Failure to Timely Pay Wages During Employment**

21 28. Defendants' failure to timely pay wages to Plaintiff and the other aggrieved
22 employees during employment in accordance with Labor Code section 204 constitutes unlawful
23 and/or unfair activity prohibited by California Labor Code section 204.

24 **Failure to Reimburse Necessary Business-Related Expenses and Costs**

25 29. Defendants' failure to reimburse Plaintiff and the other aggrieved employees for
26 necessary business-related expenses and costs in accordance with California Labor Code sections
27 2800 and 2802 constitutes unlawful and/or unfair activity prohibited by California Labor Code
28 sections 2800 and 2802.

1 30. Pursuant to California Labor Code section 2699, Plaintiff, individually, and on
2 behalf of all aggrieved employees, requests and is entitled to recover from Defendants and each of
3 them, business expenses, unpaid wages, and/or untimely wages according to proof, interest,
4 attorneys' fees and costs pursuant to California Labor Code section 218.5, as well as all statutory
5 penalties against Defendants, and each of them, including but not limited to:

6 a. Penalties under California Labor Code section 2699 in the amount of a hundred
7 dollars (\$100) for each aggrieved employee per pay period for the initial violation, and two
8 hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation;

9 b. Penalties under California Code of Regulations Title 8 section 11010, et seq. in the
10 amount of fifty dollars (\$50) for each aggrieved employee per pay period for the initial violation,
11 and one hundred dollars (\$100) for each aggrieved employee per pay period for each subsequent
12 violation;

13 c. Penalties under California Labor Code section 210 in addition to, and entirely
14 independent and apart from, any other penalties provided in the California Labor Code in the
15 amount of a hundred dollars (\$100) for each aggrieved employee per pay period for the initial
16 violation, and two hundred dollars (\$200) for each aggrieved employee per pay period for each
17 subsequent violation; and

18 d. Any and all additional penalties and sums as provided by the California Labor Code
19 and/or other statutes.

20 31. Pursuant to California Labor Code section 2699(i), civil penalties recovered by
21 aggrieved employees shall be distributed as follows: seventy-five percent (75%) to the Labor and
22 Workforce Development Agency for the enforcement of labor laws and education of employers
23 and employees about their rights and responsibilities and twenty-five percent (25%) to the
24 aggrieved employees.

25 32. Further, Plaintiff is entitled to seek and recover reasonable attorneys' fees and costs
26 pursuant to California Labor Code sections 210, 218.5 and 2699 and any other applicable statute.

27 THEREFORE, Representative Plaintiff and the individuals he seeks to represent request
28 relief as described below:

PRAYER

THEREFORE, Representative Plaintiff prays for judgment against Defendants, and Does 1 through 10, and each of them, as follows:

1. Statutory attorneys' fees and costs under PAGA and California Code of Civil Procedure Section 1021.5;
2. Statutory penalties under PAGA;
3. Costs of suit; and
4. Such further relief as the Court deems just and proper.

Dated: July 13, 2020

HAIG B. KAZANDJIAN LAWYERS, APC.

By: 

Haig B. Kazandjian, Esq.,
Cathy Gonzalez, Esq.,
Kevin Crough, Esq.,
Attorneys for Plaintiff EMMA GLASSEL
on behalf of herself and all others similarly
situated