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30-2021-01178139-CU-OE-CXC - ROA # 103 - DAVID H. YAMASAKI, Clerk of the Court By G. Ramirez, Deputy Clerk.

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individually and as a proxy for the State of California

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ORANGE

[UNLIMITED CIVIL—COMPLEX]

SIDNEY JUDGE, an individual, and as a proxy for the State of California,

Plaintiff,

vs.

ALISO VIEJO BREWING COMPANY, INC. DBA STADIUM BREWING COMPANY, a corporation; and DOES 1 through 5, inclusive,

Defendants.

Case No.: 30-2021-01178139-CU-OE-CXC

Assigned for All Purposes to the Hon. Judge William Claster in Dept. CX104

SECOND AMENDED COMPLAINT FOR:

1. **Private Attorneys General Act**
2. **Failure to Provide Meal and Rest Breaks or Compensation in Lieu thereof in Violation of Labor Code § 226.7**
3. **Failure to Pay All Wages at the Time of Termination**
4. **Failure to Produce Personnel Records**
5. **Failure to Produce Payroll Records**
6. **Failure to Reimburse and Indemnify for Expenditures**

DEMAND FOR JURY TRIAL

Plaintiff, SIDNEY JUDGE, alleges as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction to hear the subject matter of this complaint. This Court also has jurisdiction over each defendant, as the unlawful business acts alleged herein occurred in California. Plaintiff's claims arise out of and are related to all Defendant's contacts with California.

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2. Venue is proper in this Court because all or some of the violations of law and unlawful practices alleged herein occurred and are occurring in the County of Orange.

PARTIES

3. Plaintiff is an individual who, at all relevant times, has resided in the State of California.

4. Defendant ALISO VIEJO BREWING COMPANY, INC. DBA STADIUM BREWING COMPANY ("AVBC") is a corporation that conducted, and is conducting, business in the State of California. AVBC registered the address 26731 Aliso Creek Rd #C, Aliso Viejo, CA 92656 with the California Secretary of State as its principal place of business in California.

5. Plaintiff is ignorant of the true names and capacities of the defendants sued herein as DOES 1-5, inclusive, and therefore sues these defendants by such fictitious names and capacities. Plaintiff will seek leave to amend this Complaint to allege their true names and capacities when ascertained. Plaintiff is informed and believes and on that basis alleges that each fictitiously named Defendants are responsible in some manner for the occurrences herein alleged, and that Plaintiff's injuries were proximately caused by the conduct of such defendant.

6. All of the Defendants, including DOES 1-5, are alleged to be co-conspirators with each other, in that each agreed to participate, and participated in, the furtherance of the objective of civil wrongs as alleged in this Complaint.

7. Plaintiff is informed and believes and thereupon alleges that each Defendant entered into a conspiracy and agreement with the other Defendants and/or subsequently joined said conspiracy and ratified the prior acts and conduct of the Defendants who had previously entered into said conspiracy. Plaintiff is currently unaware of when each Defendant joined said conspiracy and, upon information and belief, alleges that all Defendants have knowingly, maliciously, and willfully entered into said conspiracy, which continues until this day. The purposes of this ongoing conspiracy include, but are not limited to, the wrongs alleged herein. All Defendant's acts and failures to act as alleged herein were perpetrated in furtherance of the ongoing conspiracy.

8. Plaintiff is informed and believes and thereupon alleges that at all times material herein, each defendant was completely dominated and controlled by its, his or her co-Defendants, each was the agent, representative, and alter ego of the others, and all aided and abetted the wrongful acts of the

others.

9. Plaintiff is informed and believes and thereupon alleges that at all times material herein, each of the Defendants was the agent, employee and/or joint venturer of, or working in concert with, co-Defendants and was acting within the course and scope of such agency, employment, and/or joint venture or concerted activity. To the extent that said conduct and omissions were perpetrated by certain Defendants, Plaintiff is informed and believes and thereupon alleges that the remaining Defendant and/or Defendants confirmed and ratified said conduct and omissions.

10. Whenever and wherever reference is made to individuals who are not named as defendants in this Complaint but are or were employees and/or agents of Defendants, such references shall be deemed to mean that such individuals at all relevant times acted on behalf of the Defendant within the scope of their employment.

11. Plaintiff is informed and believes and on that basis alleges that at all times relevant herein, the corporate Defendants, and each of them, had the right to control, and controlled, Plaintiff's wages, hours and working conditions, and has the right to control the manner in which Plaintiff performed work duties, including but not limited to supervision of work, engaged Plaintiff, suffered and permitted Plaintiff to work, and they were employers, joint employers, or co-employers of Plaintiff at all relevant times alleged herein.

12. Plaintiff is informed and believes and on that basis alleges that at all times relevant herein, the Defendant, and each of them, were an integrated enterprise in that they had an interrelation of operations, centralized control of labor relations, common management, and common ownership or financial control.

GENERAL ALLEGATIONS

13. Plaintiff began working for Defendants on May 25, 2018 as a bartender on a non-exempt hourly basis. Throughout Plaintiff's employment her and other aggrieved employees were subject to numerous labor code violations. Defendant unlawfully refused to permit Plaintiff and other aggrieved employees to take rest or meal periods according to California law.

14. Further, Defendant terminated Plaintiff on January 15, 2020, but failed to immediately provide her with all wages earned at her termination. Instead, Defendant waited to issue her "final check" with the normal payroll on January 29, 2020.

15. On January 31, 2020, Plaintiff requested her personnel and payroll records pursuant to Labor Code sections 226(c), 432, and 1198.5. In response to specific statutory requests for records, Defendant did not provide complete records, and has continued to fail to provide Defendant with all of the requested personnel records, actual wage statements, and/or any documents signed during employment.

FIRST CAUSE OF ACTION

PRIVATE ATTORNEYS GENERAL ACT

(AGAINST AVBC AND DOES 1-5)

16. Plaintiff incorporates each allegation set forth in all of the preceding paragraphs as though set forth herein in full again.

17. Pursuant to the California Labor Code Private Attorneys General Act ("PAGA"), "Notwithstanding any other provision of law, any provision of [the California Labor Code] that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Section 2699.3." Lab. Code § 2699(a). "For all provisions of [the California Labor Code] except those for which a civil penalty is specifically provided, there is established a civil penalty for a violation of these provisions." Lab. Code § 2699(f).

18. This PAGA suit "is fundamentally a law enforcement action." *Arias v. Super. Ct.*, 46 Cal. 4th 969, 986 (2009); *Iskanian v. CLS Transportation Los Angeles, LLC*, 59 Cal.4th 348, 386-387 (2014) ("[E]very PAGA action, whether seeking penalties for Labor Code violations as to only one aggrieved employee—the plaintiff bringing the action—or as to other employees as well, is a representative action on behalf of the state."); *Williams v. Super. Ct.*, 3 Cal. 5th 531, 538 (2017) ("a PAGA suit, essentially a qui tam action filed on behalf of the state to assist it with labor law enforcement").

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19. A PAGA "violation" includes, and is used in these allegations to mean, a failure to comply with any requirement of the Labor Code. Lab. Code § 22. Under the PAGA, an "aggrieved employee" means any person who was employed by the alleged violator and against whom only one of the alleged violations was committed. Lab. Code § 2699(c). Plaintiff is an "aggrieved employee."

Labor Code Violation § 1198.5

20. On January 31, 2020, Plaintiff requested her personnel records via e-mail, and via U.S. Mail on February 6, 2020. To date, Employer has not provided Plaintiff with her complete personnel records within 30 days of her request as required.

21. Labor Code section 1198.5 provides that an employer shall make personnel records available for inspection to the former employee, or his or her representative, at reasonable intervals and at reasonable times, but "not later than 30 calendar days from the date the employer receives a written request." Lab. Code § 1198.5(b).

22. Employer failed to provide the complete personnel records that Plaintiff requested within 30 days from the date of the request. Employer did provide some records on February 26, 2020, however that production was still incomplete. Labor Code section 1198.5 does not provide for its own self-contained "civil" penalty within the statute. Thus, Labor Code Section 2699(f)(2) applies to provide a civil penalty of $100 for each aggrieved employee per pay period for the initial violation and $200 for each aggrieved employee per pay period for each subsequent violation. Aliso Viejo Brewing Company dba Stadium Brewing Company's civil penalty is $100 for the single violation for the single pay period.

23. Other aggrieved employees are any current or former California employees who were not provided with their personnel records within 30 days from their requests.

Labor Code Violation § 226

24. Labor Code section 226(a) provides that "An employer, semimonthly or at the time of each payment of wages, shall furnish to his or her employee, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately if wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except as provided in subdivision (j),… (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, …and (9) all applicable hourly rates in effect during the pay

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period and the corresponding number of hours worked at each hourly rate by the employee and, beginning July 1, 2013, if the employer is a temporary services employer as defined in Section 201.3, the rate of pay and the total hours worked for each temporary services assignment." Lab. Code § 226(a).

25. Employer violated Labor Code section 226(a) by failing to provide Plaintiff with her an accurate itemized wage statement showing the number of hours worked, gross wages earned, net wages earned and all applicable hourly rates in effect during the pay period, and are liable for civil penalties for this separate violation. Specifically, Employer's failed to provide accurate wage statements that accurately report all meal and rest break penalties paid in the applicable pay period.

26. Labor Code section 226(c) provides that "An employer who receives a written or oral request to inspect or copy records pursuant to subdivision (b) pertaining to a current or former employee shall comply with the request as soon as practicable, but no later than 21 calendar days from the date of the request." Lab. Code § 226(c).

27. Employer violated Labor Code section 226(c) by failing to provide Plaintiff with her payroll records, and are liable for civil penalties for this separate violation. Specifically, Employer's failed to provide copies of Plaintiff's ***complete*** wage statements in response to her January 31, 2020 and February 6, 2020 requests. Specifically, to date Employer has not complied with the production of payroll records including all wage statements.

28. California Labor Code § 226 does not provide for its own self-contained "civil penalty" within the statute. Thus, California Labor Code § 2699(f)(2) applies to provide a civil penalty of $100 for each aggrieved employee per pay period for the initial violation and $200 for each aggrieved employee per pay period for each subsequent violation of Labor Code section 226(a) or 226(c).

29. Other aggrieved employees are any current or former California employees who were not provided with accurate wage statements and/or with their personnel records within 21 days from their requests.

Labor Code Violation § 226.7

30. "An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the

Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health." Lab. Code § 226.7(b).

31. Relevant Wage Orders of the Industrial Welfare Commission ("IWC"), applicable to Employer, such as Wage Order No. 5-2001 section 12, provide that "Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof."

32. As set forth above, Employer did not permit Plaintiff and other co-workers to have rest breaks with the opportunity to be relieved of all duties.

33. Employer did not compensate Plaintiff and the other aggrieved employees in lieu of providing them with rest breaks. As such, Employer violated Labor Code section 226.7.

34. "Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the [IWC], or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation." Lab. Code § 558.1(a). Mr. John Waters is the corporate officer who caused Aliso Viejo Brewing Company dba Stadium Brewing Company to violate the Labor Code § 226.7.

35. California Labor Code section 226.7 does not provide for its own self-contained "civil penalty" within the statute. Thus, California Labor Code section 2699(f)(2) applies to provide a civil penalty of $100 for each aggrieved employee per pay period for the initial violation and $200 for each aggrieved employee per pay period for each subsequent violation.

Labor Code Violation § 201

36. "If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately." Lab. Code § 201(a).

37. Employer did not immediately pay all of Plaintiff's final wages on January 15, 2020. This is a violation of Labor Code section 201. Labor Code § 201 does not provide for its own self-contained "civil penalty" within the statute. Thus, California Labor Code § 2699(f)(2) applies to provide a civil

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penalty of $100 for each aggrieved employee per pay period for the initial violation and $200 for each aggrieved employee per pay period for each subsequent violation.

38. Other aggrieved employees are any current or former California employees who were not immediately paid all of their final wages upon discharge.

Labor Code Violation § 202

39. "If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. Notwithstanding any other law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting." Lab. Code § 202(a).

40. Labor Code § 202 does not provide for its own self-contained "civil penalty" within the statute. Thus, California Labor Code § 2699(f)(2) applies to provide a civil penalty of $100 for each aggrieved employee per pay period for the initial violation and $200 for each aggrieved employee per pay period for each subsequent violation.

41. Other aggrieved employees are any current or former California employees who were not paid all of their final wages pursuant to Labor Code Section 202 .

Labor Code Violation § 203

42. "If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.6, 201.8, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days. An employee who secretes or absents themselves to avoid payment to them, or who refuses to receive the payment when fully tendered to them, including any penalty then accrued under this section, is not entitled to any benefit under this section for the time during which the employee so avoids payment." Lab. Code § 203(a).

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43. Employer violated Labor Code section 203 by failing to provide Plaintiff with waiting time penalties for all earned wages at the time of his/her separation of employment and are liable for civil penalties for this separate violation. Specifically, Employer's failed to provide all earned wages at the time of termination or resignation, and/or including in the final wages payment for all owed meal and rest break premiums.

44. Labor Code §203 does not provide for its own self-contained "civil penalty" within the statue. Thus, California Labor Code §2699(f)(2) applies to provide a civil penalty of $100 for each aggrieved employee per pay period for the initial violation and $200 for each aggrieved employee per pay period for each subsequent violation.

45. Other aggrieved employees are any current or former California employees who were not paid all of their final wages pursuant to Labor Code Section 201, 201.3, 201.5, 201.6, 201.8, 201.9, 202, and 205.5, and did not receive waiting time penalties according to Labor Code Section 203.

Labor Code Violation § 1198

46. California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. California Labor Code section 1173 defines commission as the IWC. Further, the "employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful." Lab. Code § 1198.

47. Sections 12 of IWC Order Nos. 5-2001, , provide that ""Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof." As set forth above, on numerous occasions, Defendant did not permit Ms. Judge and other aggrieved employees to have rest breaks with the opportunity to be relieved of all duties, in violation of IWC Wage Orders.

48. Based on the foregoing, Defendant violated California Labor Code Section 1198 by violating the above-referenced sections of relevant Wage Orders of the IWC.

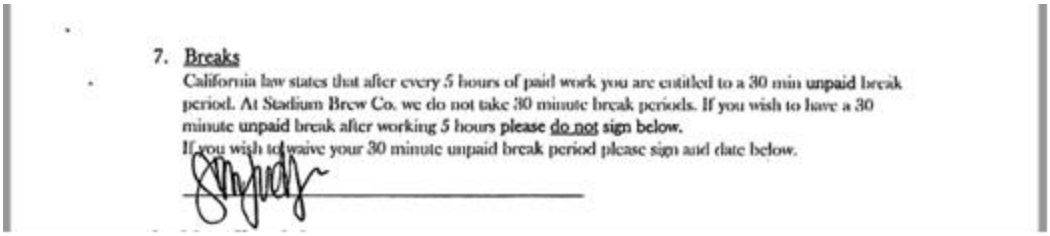
49. California Labor Code section 1198 does not provide for its own self-contained "civil penalty" within the statute. Thus, California Labor Code section 2699(f)(2) applies to provide a civil

penalty of $100 for each aggrieved employee per pay period for the initial violation and $200 for each aggrieved employee per pay period for each subsequent violation.

Labor Code Violation § 512

50. "An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes." Lab. Code § 512(a).

51. As set forth above, Employer did not permit Plaintiff and the other employees a duty-free meal periods with the opportunity to be relieved of all duties. In fact, Employer has a written policy stating that it does not provide "Breaks" consistent with California law.



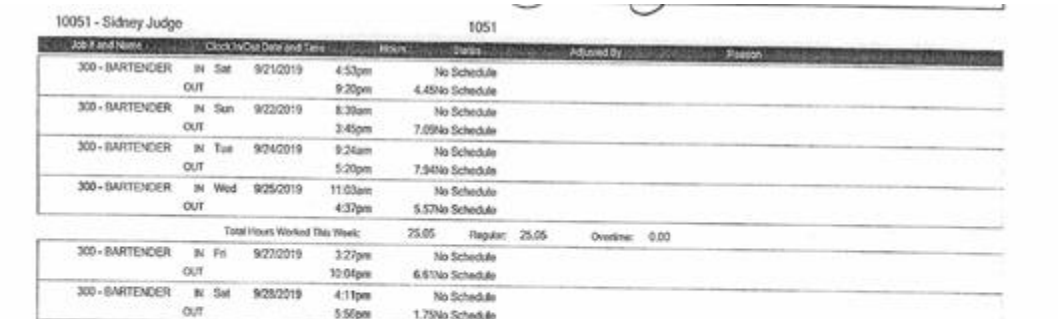
7. Breaks

California law states that after every 5 hours of paid work you are entitled to a 30 min unpaid break period. At Stadium Brew Co. we do not take 30 minute break periods. If you wish to have a 30 minute unpaid break after working 5 hours please do not sign below.

If you wish to waive your 30 minute unpaid break period please sign and date below.

52. While Employer attempts to create a "waiver" of the lawful "unpaid break period" it is not waivable in these circumstances under California law. Labor Code section 512 allows for a waiver of the meal period **IF** the total work period per day for an employee is no more than six hours. Likewise, if the if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and employee only if the first meal period was not waived.

53. Even if this proposed waiver is valid for shifts of 6 hours or less, Plaintiff's shifts and the shifts of other aggrieved employees almost always exceeded 6 hours, and they were not permitted to take unpaid meal periods as required by California law. This is demonstrated in Plaintiff's timecard records.



10051 - Sidney Judge 1051

Job # and Name		Clock In/Out Date and Time		Hours	Shifts	Adjusted By	Reason
300 - BARTENDER	IN Sat	9/21/2019	4:53pm	No Schedule			
	OUT		9:20pm	4.45No Schedule			
300 - BARTENDER	IN Sun	9/22/2019	8:39am	No Schedule			
	OUT		3:45pm	7.09No Schedule			
300 - BARTENDER	IN Tue	9/24/2019	9:24am	No Schedule			
	OUT		5:20pm	7.94No Schedule			
300 - BARTENDER	IN Wed	9/25/2019	11:03am	No Schedule			
	OUT		4:37pm	5.57No Schedule			
Total Hours Worked This Week:				25.05	Regular: 25.05	Overtime: 0.00	
300 - BARTENDER	IN Fri	9/27/2019	3:27pm	No Schedule			
	OUT		10:04pm	6.61No Schedule			
300 - BARTENDER	IN Sat	9/28/2019	4:11pm	No Schedule			
	OUT		5:56pm	1.75No Schedule			

54. California Labor Code section 512 does not provide for its own self-contained "civil penalty" within the statute. Thus, California Labor Code section 2699(f)(2) applies to provide a civil penalty of $100 for each aggrieved employee per pay period for the initial violation and $200 for each aggrieved employee per pay period for each subsequent violation.

Exhaustion of Administrative Remedies

55. On March 25, 2020, Plaintiff provided notice to the California Labor and Workforce Development Agency ("LWDA"), pursuant to Labor Code § 2699.3, detailing the specific provisions of the foregoing Labor Code sections that have been violated, including the facts and theories to support the violations. The LWDA file number is LWDA-CM-780205-20. The notice was sent on or about March 25, 2020, to John Waters, CEO. Plaintiff submitted a $75.00 fee to the LWDA.

56. The LWDA has not, within 65 days of Plaintiff's Notice of violations of the Labor Code, sent Plaintiff notice that it intends to investigate the violations. Thus, Plaintiff has exhausted Plaintiff's administrative remedies, pursuant to Labor Code section 2699.3(a), as a prerequisite to assert a civil action, for civil penalties pursuant to Labor Code section 2699. Defendants have not sent any notice to the LWDA attempting to cure the alleged violations of Labor Code statutes not enumerated in Labor Code section 2699.5. Thus, Plaintiff has exhausted Plaintiff's administrative remedies, pursuant to Labor Code section 2699.3(c), as a prerequisite to assert a civil action, for civil penalties pursuant to Labor Code section 2699.

SECOND CAUSE OF ACTION

FAILURE TO PROVIDE MEAL AND REST PERIODS OR COMPENSATION IN LIEU THEREOF IN VIOLATION OF LABOR CODE § 226.7

(AGAINST AVBC AND DOES 1-5)

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57. Plaintiff incorporates each allegation set forth in all of the preceding paragraphs as though set forth herein in full again.

58. California Labor Code section 226.7 provides that "An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health." Lab. Code § 226.7(b).

59. If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided." Lab. Code § 226.7(c).

60. Relevant Wage Orders of the Industrial Welfare Commission ("IWC"), applicable to Defendant, such as Wage Order No. 5-2001 section 12, provide that "Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof."

61. Relevant Wage Orders of the IWC, applicable to Defendant, such as Wage Order No. 5-2001 section 11, provide that "No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee."

62. California Labor Code section 512(a) provides that an employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee.

63. Defendant regularly required Plaintiff to work without being provided the opportunity to have an uninterrupted rest break. Defendant did not allow her the opportunity to be relieved of her duties to take a rest break. Defendant did not compensate Plaintiff in lieu of providing her with uninterrupted rest breaks.

64. Defendant regularly required Plaintiff to work more than 5 hours without being provided with a duty-free meal period with relief of all duties. Defendant did not compensate Plaintiff in lieu of providing her with duty-free meal breaks.

65. Pursuant to Labor Code section 512, Plaintiff is entitled to compensation of one additional hour of pay at her regular rate of compensation for each workday that the meal period was not provided. Pursuant to Labor Code section 226.7, Plaintiff is entitled to compensation of one additional hour of pay at her regular rate of compensation for each workday that the meal period was not provided *and* one additional hour of pay at her regular rate of compensation for each workday that the rest period was not provided, pursuant to *United Parcel Serv., Inc. v. Superior Court*, 196 Cal. App. 4th 57, 70 (2011).

THIRD CAUSE OF ACTION

FAILURE TO PAY ALL WAGES AT THE TIME OF TERMINATION

(AGAINST AVBC AND DOES 1-5)

58. Plaintiff incorporates each allegation set forth in all of the preceding paragraphs as though set forth herein in full again.

59. "If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced." Lab. Code § 203(a).

60. Defendant terminated Plaintiff on January 15, 2020, but failed to timely pay Plaintiff her final wages upon her discharge, in violation of Labor Code § 201 and wage order provisions, and failed to pay her the additional continuing wages as a penalty from the original due date, in violation of Labor Code § 203. Defendant did not pay Plaintiff her final wages until January 29, 2020 with the normal payroll.

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61. Plaintiff has been harmed by Defendant's conduct and is entitled to a statutory waiting time penalty, in an amount according to proof at trial, interest thereon, and an award of attorneys' fees, and costs.

62. "Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the IWC, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation." Lab. Code § 558.1(a). JOHN WATERS is an owner and corporate officer of Defendant that caused it to violate Labor Code § 203.

FOURTH CAUSE OF ACTION

FAILURE TO PROVIDE PERSONNEL RECORDS

(AGAINST AVBC AND DOES 1-5)

63. Plaintiff incorporates each allegation set forth in all of the preceding paragraphs as though set forth herein in full again.

64. The employer shall make personnel records available for inspection to the former employee, or his or her representative, at reasonable intervals and at reasonable times, but "not later than 30 calendar days from the date the employer receives a written request." Lab. Code § 1198.5(b).

65. Defendants did not provide Plaintiff's complete personnel records including all documents signed by Plaintiff during employment.

66. "If an employer fails to permit a current or former employee, or his or her representative, to inspect or copy personnel records within the times specified in this section, or times agreed to by mutual agreement as provided in this section, the current or former employee or the Labor Commissioner may recover a penalty of seven hundred fifty dollars ($750) from the employer." Lab. Code § 1198.5(k).

67. A former employee may also bring an action for injunctive relief to obtain compliance with section 1198.5 and may recover costs and reasonable attorney's fees in such an action. Lab. Code § 1198.5(l).

68. Because Defendant failed to provide the personnel records, Plaintiff is entitled to injunctive relief, for an order that Defendants turn over the records, and for an award of attorneys' fees.

FIFTH CAUSE OF ACTION

FAILURE TO PROVIDE PAYROLL RECORDS

(AGAINST AVBC AND DOES 1-5)

69. Plaintiff incorporates each allegation set forth in all of the preceding paragraphs as though set forth herein in full again.

70. Labor Code section 226(c) provides that "An employer who receives a written or oral request to inspect or copy records pursuant to subdivision (b) pertaining to a current or former employee shall comply with the request as soon as practicable, but no later than 21 calendar days from the date of the request." Cal. Lab. Code § 226(c).

71. Labor Code Section 1174(d) provides that every person employing labor in this state shall keep payroll records showing the hours worked daily by and the wages paid to employees, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments, for not less than three years.

72. Plaintiff requested her records, by and through her authorized representative, on February 6, 2020. The request was sent via electronic transmission on January 31, 2020. On February 6, 2020, the records request was sent via U.S. Mail to Defendants. Despite confirmation of receipt and partial production of payroll records, Defendants failed provide a complete copy of payroll records including Plaintiff's wage statements.

73. Defendant violated Labor Code section 226(c) by failing to timely provide Plaintiff with her complete payroll records within 21 days of her request.

74. Plaintiff is also entitled to be a prevailing party on her injunctive relief claim because to date, Defendant has failed to provide her with copies of all of her payroll records, including records maintained pursuant to Labor Code 1174 (d), IWC Wage Order 9-2001 and itemized wage statements requested in writing through her representative on February 6, 2020. Plaintiff is also entitled to a $750.00 statutory penalty, costs and attorneys' fees.

FOURTH CAUSE OF ACTION

FAILURE TO REIMBURSE AND INDEMNIFY FOR EXPENDITURES

(AGAINST ALL DEFENDANTS AND DOES 1-5)

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75. Plaintiff incorporates each allegation set forth in all of the preceding paragraphs as though set forth herein in full again.

76. California Labor Code § 2802(a) provides that "An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties . . . ."

77. Labor Code "Section 2802 is designed to prevent employers from passing their operating expenses on to their employees." *Gattuso v. Harte-Hanks Shoppers, Inc.*, 42 Cal. 4th 554, 562 (2007).

78. Defendants violated Labor Code Section 2802 by passing on their operating expenses to Plaintiff, in violation of Labor Code § 2802(a).

79. During Plaintiff's employment with Defendant, Plaintiff was required to use her personal cell phone during her shifts to communicate with her supervisors and other employees regarding business issues, including scheduling, inventory, and staffing among other business issues.

80. Plaintiff has been damaged by Defendants' failure to reimburse in an amount according to proof at trial.

81. Pursuant to California Labor Code § 2802, and other applicable statutes, Plaintiff is entitled to reimbursement of expenditures, in an amount according to proof at trial, interest thereon, and an award of attorneys' fees, and costs.

82. "Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation." Lab. Code § 558.1(a). JOHN WATERS is the is an owner and corporate officer of Defendant that caused it to violate section 2802.

PRAYER

WHEREFORE, Plaintiff prays:

1. For compensatory damages in an amount according to proof at the time of trial.

2. For civil penalties pursuant to the California Labor Code.

3. For statutory penalties pursuant to the California Labor Code.

4. For liquidated damages pursuant to the California Labor Code.

5. For injunctive relief in the form of an order enjoining the Defendants from continuing violations of the Labor Code and Government Code.

6. For a reimbursement of all work-related expenditures, as restitution, in an amount according to proof at the time of trial, and prejudgment interest thereon to the extent allowable by law.

7. For reimbursement and indemnification for all work-related expenditures, in an amount according to proof at the time of trial.

8. For reasonable attorneys' fees pursuant to the California Labor Code and Code of Civil Procedure.

9. For costs of suit including expert witness fees.

10. For prejudgment interest.

11. For such other and further relief as the Court may deem proper.

DEMAND FOR JURY TRIAL

Plaintiff SIDNEY JUDGE hereby demands a trial by jury.

Dated: September 9, 2022

GUTIERREZ DERHAM LAW FIRM LLP

By: Amber B Derham

Amber B. Derham
Attorneys for Plaintiff, SIDNEY JUDGE, individually and as a proxy for the State of California

PROOF OF SERVICE—30-2021-01178139-CU-OE-CXC

I, the undersigned, am over the age of eighteen years and not a party to this action.

On the date set forth below, I served the foregoing document(s) described as:

SECOND AMENDED COMPLAINT

I served the foregoing document(s) on the interested parties in this action, as follows:

Michael J. Lancaster lancasterlaw2020@yahoo.com Stocker & Lancaster LLP 19200 Von Karman Avenue The Atrium—Suite 600 Irvine, CA 92612	CO-COUNSEL Jeffrey S. Ranen Jeffrey.Ranen@lewisbrisbois.com William C. Sung William.Sung@lewisbrisbois.com Sona P. Patel Sona.patel@lewisbrisbois.com Lewis Brisbois Bisgaard & Smith LLP 633 West 5th Street, Suite 4000 Los Angeles, CA 90071

Attorneys for Defendants, ALISO VIEJO BREWING COMPANY, INC.

_____ BY MAIL: I served the documents from within California by enclosing them in an envelope and depositing the sealed envelope at a post office, mailbox, subpost office, substation, or mail chute, or other like facility regularly maintained by the United States Postal Service, with postage fully prepaid.

_____ BY OVERNIGHT DELIVERY: I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the addresses indicated above. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

_X__ BY ELECTRONIC SERVICE: Pursuant to Code of Civil Procedure section 1010.6, or a court order, or an agreement of the parties to accept electronic service, I caused the documents to be sent to the persons at the electronic service addressed indicated above. The documents to be sent to the persons at the electronic service addressed indicated above.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on September 9, 2022.

Emily Page

Emily Page