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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

MAY 29 2020

BY


EDUARDO HERNANDEZ, DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN BERNARDINO

PATTY RUVALCABA, individually, and on
behalf of all other aggrieved employees,

Plaintiff,

v.

EM KMR LLC, a California limited liability
corporation; and DOES 1 through 50,
inclusive,

Defendants.

CASE NO. **CIV DS 2008937**

**COMPLAINT FOR VIOLATION OF THE
PRIVATE ATTORNEYS GENERAL ACT
OF 2004 ("PAGA")**

[California Labor Code § 2698 *et seq.*]

DEMAND FOR JURY TRIAL

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BY FAX

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10 **COUNTY OF SAN BERNARDINO**

11 **PATTY RUVALCABA**, individually, and on
12 behalf of all other aggrieved employees,

13 **Plaintiff,**

14 **v.**

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16 corporation; and **DOES 1 through 50**,
17 inclusive,

18 **Defendants.**

CASE NO.

**COMPLAINT FOR VIOLATION OF THE
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OF 2004 ("PAGA")**

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DEMAND FOR JURY TRIAL

1 This is a representative action brought by Patty Ruvalcaba ("Plaintiff"), on behalf of all other
2 aggrieved employees and the State of California, relating to systemic violations of California wage
3 and hour laws by her employer EM KMR LLC doing business as Chick-fil-A/Colony Crossroads
4 FSU (01544) (hereinafter referred to as "EM KMR" or "Defendant"). Plaintiff makes the following
5 allegations on information and belief, except as to allegations pertaining to Plaintiff individually,
6 which are based on her personal knowledge.

7 **INTRODUCTION**

8 1. Defendant is an Operator and franchisee of Chick-fil-A.

9 2. In an effort to conserve labor costs, and thereby maximize profits, Defendant has
10 implemented policies and practices that have resulted in systematic violations of California's wage
11 and hour laws.

12 3. For example, Defendant has implemented unlawful policies with respect to meal and
13 rest breaks. Defendant requires its non-exempt employees, who are informed that the needs of the
14 businesses take top priority, to work through meal and rest breaks, to take untimely meal periods and
15 to remain on call during such breaks. As a result, Plaintiff and other aggrieved employees have been
16 denied the ability to take the meal and rest breaks that they were and are legally entitled to take.

17 4. Moreover, Defendant has uniformly failed to pay Plaintiff and other aggrieved
18 employees proper overtime wages due the fact that it has willfully turn a blind eye to off-the-clock
19 work that Plaintiff and other non-exempt employees perform as a direct consequence of Defendant's
20 understaffing and imposition of an unreasonable workload.

21 5. Defendant has also failed to list the correct corporate entity on its wage statements and
22 it failed to register its fictitious business name with the County of San Bernardino in violation of
23 Labor Code §226 (a).

24 6. Defendant also failed to provide sick leave to Plaintiff and other aggrieved employees
25 and failed to comply with Labor Code §§226 and/or 246.

26 **JURISDICTION AND VENUE**

27 7. The Superior Court of the State of California has jurisdiction in this matter because
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1 Plaintiff is a citizen of the State of California, and Defendant is licensed to do business under the laws
2 of the State of California. No federal question is at issue because Plaintiff's claims are based solely
3 on California law.

4 8. Venue is proper in this judicial district and the County of San Bernardino because
5 Defendant maintains its restaurant in the County of San Bernardino and Plaintiff worked for
6 Defendant at a location located in the County of San Bernardino. Many other aggrieved employees
7 also worked for Defendant at its restaurant located in the County of San Bernardino.

8 **THE PARTIES**

9 9. During the statute of limitations period, Plaintiff was employed by Defendant as a
10 Kitchen Team Member at its location in Upland, California.

11 10. Plaintiff is informed and believes, and thereon alleges, that Defendant is, and at all
12 times relevant hereto was, a corporation organized and existing under the laws of the State of
13 California.

14 11. The true names and capacities of DOES 1 through 50, inclusive, are unknown to
15 Plaintiff at this time, and Plaintiff therefore sues such defendants under fictitious names. Plaintiff is
16 informed and believes, and thereon alleges, that each defendant designated as a DOE is in some
17 manner highly responsible for the occurrences alleged herein, and that Plaintiff and other aggrieved
18 employees' injuries and damages, as alleged herein, were proximately caused by the conduct of such
19 DOE defendants. Plaintiff will seek leave of the Court to amend this Complaint to allege the true
20 names and capacities of such DOE defendants when ascertained.

21 **PAGA REPRESENTATIVE ACTION ALLEGATIONS**

22 12. On March 17, 2020, Plaintiff gave written notice by certified mail pursuant to
23 California Labor Code § 2699.3, to the California Labor and Workforce Development Agency
24 ("LWDA") and Chick-fil-A, of the specific provisions of the California Labor Code and IWC Wage
25 Order alleged to have been violated, including the facts and theories to support the alleged violations.
26 Plaintiff has not received any response from the LWDA. As Plaintiff has waited more than sixty-five
27 (65) days from the March 17, 2020 postmark date of her written notice before filing this action,
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1 Plaintiff has complied with all of the requirements set forth in California Labor Code § 2699.3 to
2 commence a representative action under the California Private Attorneys General Act of 2004
3 (“PAGA”).

4 13. Pursuant to the PAGA, California Labor Code §§ 2698-2699.5, Plaintiff brings this
5 action on behalf of the State of California, and all other aggrieved employees (e.g., current and
6 former non-exempt employees of Defendant who are California citizens and performed work for
7 Defendant in the State of California at any time within the period beginning one (1) year prior to the
8 March 17, 2020 notice Plaintiff provided to the LWDA and Chick-fil-A, and ending at the time this
9 action proceeds to final judgment (“statute of limitations period”).

10 **FACTUAL ALLEGATIONS**

11 **Failure to Provide Required Meal Periods**

12 14. During the statute of limitations period, as part of Defendant’s illegal policies and
13 practices to minimize labor costs and maximize corporate profits, Defendant has required, permitted
14 or otherwise suffered Plaintiff and aggrieved employees to perform work during their meal periods,
15 to completely skip their meal periods, to take late and short meal periods, and Defendant has
16 otherwise failed to provide the required meal periods to Plaintiff and aggrieved employees as
17 required under California Labor Code §§ 226.7, 512 and § 11 of the applicable IWC Order.

18 15. Defendant has implemented several practices that have caused Plaintiff and aggrieved
19 employees to systematically miss and otherwise take non-compliant meal periods. Defendant
20 systematically understaff its job sites such that non-exempt employees are given so much work to
21 complete that they regularly miss or otherwise take non-compliant meal periods. As a direct
22 consequence of this understaffing, Plaintiff and aggrieved employees have so much work to complete
23 within their scheduled shifts that they are forced to skip their meal periods altogether, to take them
24 after working longer than five (5) hours, to perform work during their meal periods, or return to work
25 after taking less than a thirty (30) minute meal period. Moreover, Plaintiff and other aggrieved
26 employees need to secure permission before taking a meal period, which is often denied by
27 supervisors.

1 16. There are also frequent occasions when Plaintiff and aggrieved employees need to
2 perform other duties immediately before the time during which they are legally entitled to take a meal
3 period. Pursuant to Defendant's policies, Plaintiff and aggrieved employees cannot simply drop their
4 job duties and leave a customer to take a meal period. Consequently, Plaintiff and aggrieved
5 employees regularly miss meal periods, take late meal periods, return early from meal periods, and
6 even clock out for meal periods but continue working.

7 17. Plaintiff and aggrieved employees need to first secure permission before taking a meal
8 period. Plaintiff and aggrieved employees often cannot simply stop taking the order from a customer
9 to take their meal period, and their inability to secure coverage regularly causes them to regularly
10 miss and otherwise take non-compliant meal periods.

11 18. Despite the foregoing, Defendant has implemented a policy and practice of actively
12 discouraging the issuance of meal period premium payments, and in the process, Defendant has
13 violated California Labor Code §§ 226.7 and § 11 of the applicable IWC Wage Order, by failing to
14 compensate Plaintiff and aggrieved employees who were not authorized and permitted to take a
15 complete, timely, uninterrupted meal period, one additional hour of compensation at the proper
16 regular rate of pay for each workday that such a meal period was not authorized or permitted.

17 19. Defendant also implemented an unlawful meal period policy by compensating
18 Plaintiff and aggrieved employees for interrupted meal periods only for their actual work time, as
19 opposed to paying them the legally required premium payments for non-compliant meal periods.

20 20. Defendant's also implemented a non-compliant meal period waiver pursuant to Wage
21 Order 5, §11(A) as the meal period waiver implemented by Defendant was not mutual and the waiver
22 failed to contain the language that the waiver could be revoked by the Plaintiff and the aggrieved
23 employees "at any time".

24 **Failure to Provide Required Rest Breaks**

25 21. During the statute of limitations period, as part of Defendant's illegal policies and
26 practices to minimize labor costs and maximize corporate profits, Defendant has failed to authorize
27 and permit Plaintiff and other aggrieved employees to take rest breaks as required under California
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1 Labor Code §§ 226.7 and 512, and § 12 of the applicable IWC Wage Order.

2 22. The same or similar policies and practices that deprive Plaintiff and other aggrieved
3 employees from taking their meal periods, as alleged herein, similarly deprive them of their ability to
4 take their first and second and third rest breaks. As alleged herein, Defendant understaffs its
5 restaurant, which creates so much work for Plaintiff and other aggrieved employees that they are
6 frequently unable to take rest breaks. Moreover, Plaintiff and aggrieved employees need to first
7 secure permission before taking a rest break. Plaintiff and aggrieved employees often cannot simply
8 stop assisting a customer to take a rest break, and their inability to secure coverage regularly causes
9 them to regularly miss and otherwise take non-compliant rest breaks.

10 23. Defendant also does not provide adequate training regarding its legal obligations with
11 respect to the provision of rest breaks, does not implement a schedule regarding rest breaks for non-
12 exempt employees, and often interrupts staff who try to take rest periods. In short, Defendant
13 essentially has a non-existent rest break policy, as there is no guidance or specification as to when
14 Plaintiff and other aggrieved employees are authorized and permitted to take rest breaks during their
15 shifts.

16 24. Defendant also violated California Labor Code § 226.7, and § 12 of the applicable
17 IWC Order, by failing to pay Plaintiff and other aggrieved employees who were not provided with a
18 rest break, in accordance with the applicable wage order, one additional hour of compensation at the
19 proper regular rate of pay for each workday that a rest break was not provided.

20 **Failure to Pay Overtime Wages**

21 25. Pursuant to California Labor Code §§ 510, 1194, and § 3 of the applicable IWC Order,
22 Defendant is required to compensate Plaintiff and other aggrieved employees for all overtime, which
23 is calculated at one and one-half (1 ½) times the regular rate of pay for all hours worked in excess of
24 eight (8) hours per day and/or forty (40) hours per week, and for the first eight (8) hours on the
25 seventh consecutive workday, with double time for all hours worked in excess of twelve (12) hours in
26 any workday and for all hours worked in excess of eight (8) hours on the seventh consecutive day of
27 work in any workweek.

1 26. During the statute of limitations period, Defendant failed to compensate Plaintiff and
2 other aggrieved employees for all overtime hours worked as required under the foregoing provisions
3 of the California Labor Code and IWC Wage Order by, among other methods: failing to pay overtime
4 at one and one-half (1 ½) or double the regular rate of pay as provided by California Labor Code §§
5 510, 1194 and § 3 of the applicable IWC Order, requiring, permitting or suffering Plaintiff and other
6 aggrieved employees to work off-the-clock, and to work through meal and rest breaks, but not
7 compensating them for this time, improperly calculating the regular rate of pay based on bonuses,
8 commissions, and other remuneration, and other methods to be discovered.

9 27. In a short-sighted attempt to maximize profits, Defendant has understaffed its job site.
10 Not only has this practice resulted in widespread missed meal and rest breaks, but it has also caused
11 Plaintiff and other aggrieved employees to perform work while off-the-clock. Defendant has actual or
12 constructive knowledge of this off-the-clock work and subtly condone it. Plaintiff and other
13 aggrieved employees routinely arrive to work early to check so that they are prepared and ready to
14 begin performing their duties promptly at the start of their shifts, as they must be pursuant to the
15 requirements of Defendant. Defendant knows that Plaintiff and other aggrieved employees perform
16 this work off-the-clock.

17 28. Defendant has knowingly and willfully refused to perform its obligations to
18 compensate Plaintiff and other aggrieved employees for all wages earned and all hours worked in
19 violation of California Labor Code §§ 510, 1194 and 1198, and § 3 of the applicable IWC Order.

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

21 29. Pursuant to California Labor Code § 204, for all labor performed between the 1st and
22 15th days of any calendar month, Defendant is required to pay its nonexempt employees between the
23 16th and 26th day of the month during which the labor was performed. California Labor Code § 204
24 also provides that for all labor performed between the 16th and 26th days of any calendar month,
25 Defendant is required to pay its non-exempt employees between the 1st and 10th day of the following
26 calendar month. In addition, California Labor Code § 204 provides that all wages earned for labor in
27 excess of the normal work period shall be paid no later than the payday of the next regular payroll
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1 period.

2 30. During the statute of limitations period, Defendant has knowingly and willfully failed
3 to timely pay Plaintiff and other aggrieved employees all the wages for labor performed by the next
4 regular payroll period as required by California Labor Code § 204, including but not limited to,
5 compensation for missed meal and rest breaks, proper overtime wages due to an unlawful calculation
6 of the regular rate of pay, and for work performed off-the-clock.

7 **Failure to Pay All Wages Due to Discharged and Quitting Employees**

8 31. Pursuant to California Labor Code §§ 201, 202 and 203, Defendant is required to pay
9 all earned and unpaid wages to an employee who is discharged. California Labor Code § 201
10 mandates that if an employer discharges an employee, the employee's wages accrued and unpaid at
11 the time of discharge are due and payable immediately.

12 32. Furthermore, pursuant to California Labor Code § 202, Defendant is required to pay
13 all accrued wages due to an employee no later than 72 hours after the employee quits his or her
14 employment, unless the employee provided 72 hours previous notice of his or her intention to quit, in
15 which case the employee is entitled to his or her wages at the time of quitting.

16 33. California Labor Code § 203 provides that if an employer willfully fails to pay, in
17 accordance with Labor Code §§ 201 and 202, any wages of an employee who is discharged or who
18 quits, the employer is liable for waiting time penalties in the form of continued compensation to the
19 employee at the same rate for up to 30 workdays.

20 34. During the statute of limitations period, Defendant has willfully failed to pay accrued
21 wages and other compensation to Plaintiff and other aggrieved employees in accordance with
22 California Labor Code §§ 201 and 202. On information and belief, Defendant does not have a
23 sufficient policy to provide Plaintiff and other aggrieved employees with their final paychecks within
24 the timeframes required under California law. Further, Plaintiff's employment ended on or about
25 November 12, 2019, Defendant failed and continues to fail to properly compensate Plaintiff and other
26 aggrieved employees for all hours worked when due, overtime wages, and compensation for non-
27 compliant meal and rest breaks, Defendant also willfully failed and continue to fail to pay accrued
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1 wages and other compensation to Plaintiff and other aggrieved employees in accordance with
2 California Labor Code §§ 201 and 202.

3 **Failure to Furnish Accurate Itemized Wage Statements**

4 35. During the statute of limitations period, Defendant has routinely failed to provide
5 Plaintiff and other aggrieved employees with timely and accurate itemized wage statements.
6 Defendant's pay stubs have violated California Labor Code § 226. Defendant's wage statements are
7 non-compliant with Labor Code §226 as the wage statements list "EM KMR LCC DBA: Chick-fil-
8 A/Colonies Crossroads FSU (01544)" as the employer which is incorrect. Defendant failed to
9 register it's dba with the County of San Bernardino. Next, Defendant was and is not providing
10 Plaintiff and other aggrieved employees with proper meal periods and rest breaks but intentionally
11 fails to include in their wage statements one (1) additional hour of compensation at their regular rates
12 of pay for each non-compliant meal period or rest break. Moreover, Defendant has failed to pay
13 proper overtime wages to Plaintiff and other aggrieved employees and its wage statements therefore
14 fail to reflect the correct hourly rates worked by Plaintiff and other aggrieved employees. Finally, the
15 wage statements do not reflect or incorrectly reflect the sick pay balance and/or the amount of sick
16 pay available to Plaintiff and the other aggrieved employees.

17 36. In order to conceal its wage theft, Defendant knowingly and intentionally failed to
18 provide Plaintiff and other aggrieved employees with timely and accurate itemized wage statements
19 in accordance with Labor Code § 226(a) and § 7 of the applicable IWC Order.

20 37. Plaintiff and other aggrieved employees suffered injury as a result of the failure of
21 Defendant to provide timely and accurate itemized wage statements because it prevented them from
22 discovering the scope and extent of Defendant's violations of California wage and hour laws,
23 prevented them from being able to accurately determine the gross wages earned, the total hours
24 worked, all deductions made, the net wages earned, all applicable hourly rates in effect during each
25 pay period and the corresponding number of hours worked at each hourly rate and the balance and
26 available amount of sick leave.

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1 **FIRST CAUSE OF ACTION**

2 **VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT**

3 **[Cal. Lab. Code § 2698 *et seq.*]**

4 **(On Behalf of Plaintiff and the Aggrieved Employees Against Defendant)**

5 41. Plaintiff incorporates herein by specific reference, as though fully set forth, the
6 allegations in paragraphs 1 through 40 above.

7 42. Plaintiff is an “aggrieved employee” within the meaning of California Labor Code §
8 2699(c), and a proper representative to bring a civil action on behalf of herself and other aggrieved
9 employees pursuant to the procedures specified in California Labor Code § 2699.3, because Plaintiff
10 was employed by Defendant and one or more of the alleged California Labor Code violations was
11 committed against Plaintiff during the statute of limitations period.

12 43. Plaintiff seeks to recover civil penalties through a representative action permitted by
13 PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal.4th 969. Thus,
14 class certification is not required.

15 44. Pursuant to California Labor Code §§ 2698-2699.5, Plaintiff seeks to recover civil
16 penalties from Defendant in a representative action for the violations set forth above, including but
17 not limited to, violations of California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 246, 510, 512,
18 1174, 1194 and for the violations of the applicable IWC Wage Order alleged above.

19 45. Pursuant to California Labor Code § 2699(a), Plaintiff seeks to recover civil penalties
20 against Defendant for violations of California Labor Code provisions for which a civil penalty is
21 specifically provided, including but not limited to, the following:

22 a. Pursuant to California Labor Code § 210, for violations of California Labor
23 Code § 204, Defendant is subject to a civil penalty in the amount of one
24 hundred dollars (\$100) for the initial violation for each failure to pay each
25 employee, and two hundred dollars (\$200) per employee for violations in
26 subsequent pay periods.

27 b. Pursuant to California Labor Code § 226.3, for violations of California Labor
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Code § 226(a), Defendant is subject to a civil penalty in the amount of two hundred and fifty dollars (\$250) per aggrieved employee for the initial pay period where a violation occurs and one thousand dollars (\$1,000) per aggrieved employee for violations in subsequent pay periods.

c. Pursuant to California Labor Code § 1174.5, for violations of California Labor Code § 1174(d), Defendant is subject to a civil penalty of five hundred dollars (\$500).

46. California Labor Code § 2699(f) provides that for all California Labor Code violations for which a civil penalty is not specifically provided, the following civil penalties are established: one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.

47. Plaintiff seeks to recover such civil penalties under California Labor Code § 2699(f) for Defendant's violations of California Labor Code provisions for which a civil penalty is not specifically provided, including but not limited to, California Labor Code §§ 201, 202, 203, 204, 226.7, 1197, 1024.5, and 2810.5, and for the violations of the applicable IWC Wage Order alleged above.

48. All civil penalties sought and recovered under this action will be allocated as follows: seventy-five (75) percent to the State of California and twenty-five (25) percent to Plaintiff and aggrieved employees.

49. Plaintiff additionally seeks reasonable attorneys' fees and costs pursuant to California Labor Code § 2699(g)(1) and California Code of Civil Procedure § 1021.5.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of all other aggrieved employees, prays for relief against Defendant, as follows:

1. For civil penalties according to proof;
2. For reasonable attorneys' fees and costs pursuant to California Labor Code § 2699(g), California Code of Civil Procedure § 1021.5, and/or any other applicable provisions providing for

1 attorneys' fees and costs; and

2 3. For such further relief that the Court may deem just and proper.

3 **DEMAND FOR JURY TRIAL**

4 Plaintiff hereby demands a jury trial with respect to all issues triable of right by jury.

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6 DATED: May 27, 2020

THE LAW OFFICE OF SCOTT E. WHEELER

7
8 By: 

9 SCOTT E. WHEELER

10 *Attorneys for Plaintiff*