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Complaint and Party information entered



NEW FILE

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

JUL 10 2020

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN BERNARDINO

JOSE A. GOMEZ, individually, and on behalf
of all other aggrieved employees,

Plaintiff,

v.

RABS, INC., doing business as ALFREDO'S
PIZZA & PASTA, a California corporation;
and DOES 1 through 50, inclusive,

Defendants.

CASE NO.: CIV DS 2013897

**COMPLAINT FOR VIOLATION OF THE
PRIVATE ATTORNEYS GENERAL ACT
OF 2004**

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

1 This is a representative action brought by Jose A. Gomez, individually and on behalf of all other
2 aggrieved employees ("Plaintiff"), alleging systematic violations of California wage and hour laws
3 committed by his former employer, RABS, INC., doing business as ALFREDO'S PIZZA & PASTA
4 ("Defendant"). Plaintiff makes the following allegations on information and belief, except as to
5 allegations pertaining to Plaintiff individually, which are based on his personal knowledge.

6 INTRODUCTION

7 1. At all relevant times herein, Defendant has implemented policies and practices that have
8 resulted in systematic violations of California's wage and hour laws. Defendant engages in these
9 unlawful practices to maximize profits.

10 2. Defendant maximizes profits at the expense of its employees by cutting labor costs
11 through understaffing, denying meal and rest breaks, cheating non-exempt employees out of wages and
12 premiums, and related violations of California wage and hour laws.

13 3. For example, Defendant has implemented unlawful policies with respect to meal and
14 rest breaks. Defendant requires its non-exempt employees to routinely work through meal and rest
15 breaks while failing to pay them the legally-required premium pay for these missed and non-complaint
16 meal and rest breaks.

17 4. Plaintiff seeks civil penalties and other statutorily available relief for himself and other
18 current and former non-exempt employees of Defendant during the applicable limitations period to
19 compensate these workers for the wages Defendant has stolen from them and to protect workers from
20 being subjected to similar unlawful working conditions perpetrated by Defendant.

21 JURISDICTION AND VENUE

22 5. The Superior Court of the State of California has jurisdiction in this matter because
23 Plaintiff is a resident and citizen of the State of California, and Defendant regularly conducts business
24 in the State of California. No federal question is at issue because Plaintiff's claims are based solely on
25 California law.

26 6. Venue is proper in this judicial district and the County of San Bernardino because
27 Plaintiff and other aggrieved employees performed work for Defendant in the County of San
28 Bernardino and many of Defendant's unlawful actions and omissions, as set alleged herein, occurred

1 in the County of San Bernardino. In addition, Defendant's corporate office is in San Juan Capistrano,
2 which is located in the County of San Bernardino.

3 THE PARTIES

4 7. Plaintiff is a resident and citizen of the State of California and a former employee of
5 Defendant. Plaintiff was employed by Defendant as a cook, a non-exempt position, during the time
6 period of August 2018 through March of 2020.

7 8. Plaintiff, on behalf of himself and all other aggrieved employees, brings this
8 representative action to recover wages and penalties for among other things, Defendant's failure to
9 provide legally compliant meal periods and rest breaks and failure to provide proper compensation for
10 missed and otherwise unlawful meal periods and rest breaks, unpaid and illegally calculated regular
11 and overtime compensation, Defendant's failure to pay all wages due to discharged or quitting non-
12 exempt employees, Defendant's failure to reimburse employees for necessary business expenses, and
13 Defendant's failure to maintain required records and failure to provide accurate itemized wage
14 statements, among other violations of California wage and hour laws as alleged herein.

15 9. Defendant is a restaurant located in the City of San Bernardino. Defendant is, and at all
16 times relevant herein was, a California corporation authorized to conduct business in the state of
17 California.

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

25 PAGA REPRESENTATIVE ACTION ALLEGATIONS

26 11. Pursuant to the Private Attorneys General Act of 2004 ("PAGA"), California Labor
27 Code §§ 2698-2699.5, Plaintiff brings this action on behalf of himself and all other aggrieved
28 employees – i.e., all current and former non-exempt employees who worked for Defendant in the State

1 of California at any time during the statute of limitations period.

2 12. On April 23, 2020, Plaintiff gave written notice by certified mail, pursuant to California
3 Labor Code § 2699.3, to the California Labor and Workforce Development Agency ("LWDA") and
4 Defendant, of the specific provisions of the California Labor Code and IWC Wage Order alleged to
5 have been violated, including the facts and theories to support the alleged violations. As of the date of
6 this filing, Plaintiff has not received any response from the LWDA. As Plaintiff has waited more than
7 sixty-five (65) days from the postmark date of his written notice before filing this action, Plaintiff has
8 complied with all of the requirements set forth in California Labor Code § 2699.3 to commence a
9 representative action under PAGA.

10 **FACTUAL ALLEGATIONS**

11 **Failure to Provide Required Meal Periods**

12 **[Cal. Lab. Code §§ 226.7, 512; IWC Wage Order No. 5-2001,**

13 **§ 11 and all other applicable IWC Wage Orders]**

14 13. During the statute of limitations period, Defendant has required, permitted or otherwise
15 suffered Plaintiff and aggrieved employees to perform work during their meal periods, to completely
16 skip their meal periods, to take late and short meal periods, and Defendant has otherwise failed to
17 provide the required meal periods to Plaintiff and aggrieved employees as required under California
18 Labor Code §§ 226.7, 512, and § 11 of the applicable IWC Order.

19 14. Defendant systematically understaffs its restaurant such that Plaintiff and the other
20 aggrieved employees are unable to take timely meal periods. Plaintiff and the other aggrieved
21 employees could not leave their workstations and/or no one was available to cover for them.

22 15. Defendant has implemented several policies and practices that have caused Plaintiff and
23 aggrieved employees to systematically miss and otherwise take non-compliant meal periods. Plaintiff
24 and aggrieved employees have so much work to complete within their scheduled shifts, including but
25 not limited to, cooking, waiting on tables, bussing table and washing dishes, that they are forced to skip
26 their meal periods altogether, to take meal periods after working longer than five (5) hours, perform
27 work during their meal periods, or return to work after taking less than a thirty (30) minute meal period.

28 16. Defendant's policy is to not inform Plaintiff and aggrieved employees that they are able

1 to take meal periods before the fifth hour of work. This policy, combined with an unreasonable
2 workload, results in systematic late meal periods taken by Plaintiff and aggrieved employees.

3 17. Defendant also has no policy to provide second meal periods when Plaintiff and
4 aggrieved employees work shifts longer than ten hours. This is in direct contravention of California
5 law. *See Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1041 ("We conclude that,
6 absent waiver, section 512 requires a first meal period no later than the end of an employee's fifth hour
7 of work, and a second meal period no later than the end of an employee's 10th hour of work.")

8 18. Moreover, Defendant has engaged in a systematic practice of automatically deducting
9 meal periods for Plaintiff and aggrieved employees, regardless of whether they actually took them or
10 not.

11 19. Despite work conditions that systematically result in missed and non-compliant meal
12 periods, and in order to keep labor costs down, Defendant has implemented a policy and practice of
13 not paying meal period premium payments that are owed and due. This policy is in direct contravention
14 of California law, which requires Defendant to pay one hour at the employee's regular rate of pay for
15 a missed or interrupted meal period.

16 20. In sum, Defendant has violated California Labor Code §§ 226.7, § 11 of the applicable
17 IWC Wage Order, by failing to compensate Plaintiff and aggrieved employees who were not authorized
18 and permitted to take a complete, timely, uninterrupted meal period, one additional hour of
19 compensation at the proper regular rate of pay for each workday that such a meal period was not
20 authorized or permitted. Defendant further violated California Labor Code sections 226.7, 510, 1194,
21 1197, and § 11 of the applicable IWC Wage Order by failing to compensate Plaintiff and Class
22 members for all hours worked during their meal periods.

23 **Failure to Provide Required Rest Breaks**

24 [Cal. Lab. Code §§ 226.7, 512; IWC Wage Order No. 5-2001, § 12

25 **and all other applicable IWC Wage Orders]**

26 21. During the statute of limitations period, Defendant has failed to authorize and permit
27 Plaintiff and other aggrieved employees to take rest breaks as required under California Labor Code §§
28 226.7 and 512, and IWC Wage Order No. 5-2001, § 12.

22. As with meal periods, Defendant's policies and practices caused Plaintiff and other aggrieved employees to miss or otherwise take non-compliant rest periods by, among other things, giving them unreasonable amounts of work that had to be completed within their shift, and relatedly, engaging in gross understaffing and setting unrealistic project goals, such that rest periods as a practical matter could not be taken. For example, Plaintiff would be so busy working that he could not keep up with cooking and cleaning the kitchen within the deadlines set by Defendant without skipping his rest breaks.

23. Defendant further violated California Labor Code § 226.7, IWC Wage Order No. 5-2001, § 11 and all other applicable IWC wage orders, by failing to pay Plaintiff and other aggrieved employees who were not provided with a rest break, in accordance with the applicable wage order, one additional hour of compensation at the proper regular rate of pay for each workday that a rest break was not provided.

Failure to Pay Overtime Wages

**[Cal. Lab. Code §§ 510, 1194, 1198; IWC Wage Order No. 5-2001, § 3,
and all applicable IWC Wage Orders]**

24. Pursuant to California Labor Code §§ 510, 1194, and IWC Wage Order No. 5-2001, § 3, Defendant is required to compensate Plaintiff and other aggrieved employees for all overtime, which is calculated at one and one-half (1 ½) times the regular rate of pay for all hours worked in excess of eight (8) hours per day and/or forty (40) hours per week, and for the first eight (8) hours on the seventh consecutive workday, with double time for all hours worked in excess of twelve (12) hours in any workday and for all hours worked in excess of eight (8) hours on the seventh consecutive day of work in any workweek.

25. Plaintiff and other aggrieved employees are current and former non-exempt employees entitled to the protections of California Labor Code §§ 510, 1194, and IWC Wage Order No. 5-2001. During the statute of limitations period, Defendant failed to compensate Plaintiff and other aggrieved employees for all overtime hours worked as required under the foregoing provisions of the California Labor Code and IWC Wage Order by, among other methods, failing to pay overtime at one and one-half (1 ½) or double the regular rate of pay as provided by California Labor Code §§ 510, 1194 and

1 IWC Wage Order No. 5-2001, § 3, and all other applicable IWC wage orders, requiring, permitting or
2 suffering Plaintiff and other aggrieved employees to work off-the-clock, and to work through meal
3 periods and rest breaks, but not compensating them for this time, and other methods to be discovered.

4 26. Defendant failed to pay Plaintiff and the aggrieved employees the applicable overtime
5 rate of pay. For example, when Plaintiff and the aggrieved employees would work more than eight (8)
6 hours a day, the overtime was not listed on the paystubs provided to Plaintiff and the aggrieved
7 employees. Instead, Defendant maintained a separate list of overtime hours and paid to Plaintiff and
8 the other aggrieved employees their regularly hourly rate and not at time and a half as required by § 3
9 of IWC Wage Order No. 5-2001 as well as all other applicable IWC wage orders.

10 27. Defendant has knowingly and willfully refused to perform its obligations to compensate
11 Plaintiff and other aggrieved employees for all wages earned and all hours worked in violation of
12 California Labor Code §§ 510, 1194 and 1198 and IWC Wage Order No. 5-2001, § 3 and all other
13 applicable IWC wage orders.

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

15 **[Cal. Lab. Code § 204]**

16 28. Pursuant to California Labor Code § 204, for all labor performed between the 1st and
17 15th days of any calendar month, Defendant is required to pay its nonexempt employees between the
18 16th and 26th day of the month during which the labor was performed. California Labor Code § 204
19 also provides that for all labor performed between the 16th and 26th days of any calendar month,
20 Defendant is required to pay its non-exempt employees between the 1st and 10th day of the following
21 calendar month. In addition, California Labor Code § 204 provides that all wages earned for labor in
22 excess of the normal work period shall be paid no later than the payday of the next regular payroll
23 period.

24 29. During the statute of limitations period, Defendant has knowingly and willfully failed
25 to timely pay Plaintiff and other aggrieved employees all the wages for labor performed by the next
26 regular payroll period as required by California Labor Code § 204.

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

28 **[Cal. Lab. Code §§ 201, 202, 203]**

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

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

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

13 33. During the statute of limitations period, Defendant has willfully failed to pay accrued
14 wages and other compensation to Plaintiff and other aggrieved employees in accordance with
15 California Labor Code §§ 201 and 202. Because Defendant has failed and continues to fail to properly
16 compensate Plaintiff and other aggrieved employees for all hours worked when due, overtime and
17 minimum wages, and compensation for non-compliant meal periods and rest breaks, Defendant has
18 also willfully failed and continues to fail to pay accrued wages and other compensation to Plaintiff and
19 other aggrieved employees in accordance with California Labor Code §§ 201 and 202.

20 **Failure to Maintain Required Records**

21 **[Cal. Lab. Code §§ 226(a), 1174(d); IWC Wage Order No. 5-2001, § 7**

22 **and all other applicable IWC Wage Orders]**

23 34. During the statute of limitations period, as part of Defendant's illegal payroll policies
24 and practices to deprive Plaintiff and other aggrieved employees of all wages earned and due,
25 Defendant knowingly and intentionally failed to maintain records as required under California Labor
26 Code §§ 226(a) and 1174(d) and IWC Wage Order No. 5-2001, § 7, and all other applicable IWC wage
27 orders, including but not limited to the following records: total daily hours worked by each employee;
28 applicable rates of pay; all deductions; meal periods; time records showing when each employee begins

1 and ends each work period; overtime wages, and accurate itemized wage statements. Among other
2 things, Defendant has systematically failed to maintain records of when Plaintiff and aggrieved
3 employees take meal periods (when they are able to take them). In addition, Defendant had knowledge
4 that it was not providing its non-exempt employees with proper meal and rest periods, but knowingly
5 failed to include in the wage statements one (1) extra hour of compensation for each missed meal and
6 rest period. Defendant also illegally and inaccurately recorded the time in which Plaintiff and other
7 aggrieved employees worked.

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

9 **[Cal. Lab. Code § 226(a); IWC Wage Order No. 5-2001, § 7,**

10 **and all other applicable IWC Wage Orders]**

11 35. During the statute of limitations period, Defendant has routinely failed to provide
12 Plaintiff and other aggrieved employees with timely and accurate itemized wage statements.
13 Defendant's pay stubs violate California Labor Code § 226 on their face by, among other things, not
14 providing Plaintiff and other aggrieved employees with proper meal periods and rest breaks but
15 intentionally fails to include in their wage statements one (1) additional hour of compensation at their
16 regular rates of pay for each non-compliant meal period or rest break and by not including all of the
17 hours worked by Plaintiff and the other aggrieved employees, including but not limited to, overtime
18 hours.

19 36. In order to conceal its wage theft, Defendant knowingly and intentionally failed to
20 provide Plaintiff and other aggrieved employees with timely and accurate itemized wage statements in
21 accordance with Labor Code § 226(a) IWC Wage Order No. 5-2001 § 7, and all other applicable wage
22 orders.

23 37. Plaintiff and other aggrieved employees suffered injury as a result of Defendant's failure
24 to provide timely and accurate itemized wage statements because it prevented them from discovering
25 the scope and extent of Defendant's violations of California wage and hour laws, prevented them from
26 being able to determine the gross wages earned, the total hours worked, all deductions made, the net
27 wages earned, all applicable hourly rates in effect during each pay period and the corresponding number
28 of hours worked at each hourly rate, or even the name of the legal entity that employed them.

1 **Failure To Provide Mandatory Sick Leave**

2 38. Pursuant to California Labor Code §246, any employee who works in the State of
3 California and who works more than “30 or more days within a year ... is entitled to be paid sick days
4 ...” Labor Code §246(i) requires an employer to provide an employee with “written notice” that sets
5 for the “amount of sick leave available” on the employee’s wage statement pursuant to Labor Code
6 §226 or “..., in a separate writing provided on the designated pay date with the employee’s payment
7 of wages.”

8 39. Defendant failed to comply with Labor Code Section §246 by not providing Plaintiff
9 and the other aggrieved employees with sick pay. Defendant also failed to comply with Labor Code
10 §246(i) by not providing Plaintiff and the other aggrieved employees with their available sick leave
11 and balance of sick leave. As such, Defendant has violated California Labor Code § 246.

12 **FIRST CAUSE OF ACTION**

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

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

15 ***(On Behalf of Plaintiff and Aggrieved Employees against all Defendants)***

16 40. Plaintiff incorporates herein by specific reference, as though fully set forth, the
17 allegations in paragraphs 1 through 39.

18 41. Plaintiff is an “aggrieved employee” within the meaning of California Labor Code §
19 2699(c), and a proper representative to bring a civil action on behalf of himself and other aggrieved
20 employees pursuant to the procedures specified in California Labor Code § 2699.3, because Plaintiff
21 was employed by Defendant and one or more of the alleged California Labor Code violations was
22 committed against Plaintiff during the statute of limitations period.

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

26 43. Pursuant to California Labor Code §§ 2698-2699.5, Plaintiff seeks to recover civil
27 penalties from Defendant in a representative action for the violations set forth above, including but not
28 limited to violations of California Labor Code §§ 201, 202, 203, 204, 226(a), 226.7, 510, 512, 1174(d),

1 1194, 1197, and 1198.

2 44. Pursuant to California Labor Code § 2699(a), Plaintiff seeks to recover civil penalties
3 for Defendant's violations of California Labor Code provisions for which a civil penalty is specifically
4 provided, including but not limited to, the following:

5 a. Pursuant to California Labor Code § 210, for violations of California Labor Code §
6 204, Defendant is subject to a civil penalty in the amount of one hundred dollars
7 (\$100) for the initial violation for each failure to pay each employee, and two
8 hundred dollars (\$200) per employee for violations in subsequent pay periods.

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

14 c. Pursuant to California Labor Code § 558(a), "[a]ny employer or other person
15 acting on behalf of an employer who violates, or causes to be violated, a section of
16 this chapter or any provision regulating hours and days of work in any order of the
17 Industrial Welfare Commission," including California Labor Code §§ 510 and
18 512, shall be subject to a civil penalty, in addition to any other penalty provided by
19 law, of fifty dollars (\$50) for initial violations for each underpaid employee for
20 each pay period for which the employee was underpaid and one hundred dollars
21 (\$100) for each subsequent violation for each underpaid employee for each pay
22 period for which the employee was underpaid. In addition, Plaintiff seeks civil
23 penalties in the amount sufficient to recover unpaid wages owed to aggrieved
24 employees pursuant to California Labor Code § 558(a).

25 d. Pursuant to California Labor Code § 1174.5, for violations of California Labor
26 Code § 1174(d), Defendant is subject to a civil penalty of five hundred dollars
27 (\$500).
28

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

5 46. Plaintiff seeks to recover penalties pursuant to California Labor Code § 2699 for
6 Defendant's violations of the California Labor Code provisions for which a civil penalty is not
7 specifically provided, including but not limited to, California Labor Code §§201, 202, 203, 226.7,
8 and 1198. All penalties sought and recovered under this action will be allocated as follows: 75
9 percent to the state of California and 25 percent to aggrieved employees.

10 47. Plaintiff additionally seeks reasonable attorneys' fees and costs pursuant to California
11 Labor Code § 2699(g)(1), California Code of Civil Procedure § 1021.5, and any other applicable
12 laws, rules, or doctrines.

13 **PRAYER FOR RELIEF**

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

16 1. For civil penalties according to proof, including but not limited to, the amount of any
17 unpaid wages of Plaintiff and the other aggrieved employees and all penalties authorized by California
18 Labor Code §§210, 226.3, 558, 1174.5, and 2699(a) and (f);

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

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

23 DATED: July 9, 2020

LAW OFFICE OF SCOTT E. WHEELER

24 
25 By: 
26 Scott E. Wheeler

27 THE WAND LAW FIRM, P.C.
28 Aubry Wand
Attorneys for Plaintiffs

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