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Superior Court of California
County of Los Angeles

JUN 09 2020

Sherri R. Carter, Executive Officer/Clerk of Court
By: Isaac Lovo, Deputy

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

GRACE MONTANO, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

R.K. HUNTER, LP, a California limited
partnership; RONALD K. HUNTER, an
individual; and DOES 1 through 100,

Defendants.

CASE NO. 20STCV13883

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT:**

- (1) **FAILURE TO PAY ALL
OVERTIME WAGES (LABOR
CODE §§ 204, 510, 558, 558.1, 1194,
1198);**
- (2) **MINIMUM WAGE VIOLATIONS
(LABOR CODE §§ 558, 558.1,
1182.12, 1194, 1194.2, 1197, 1198);**
- (3) **MEAL PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 512, 558,
558.1);**
- (4) **REST PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 516, 558,
558.1);**
- (5) **WAGE STATEMENT VIOLATIONS
(LABOR CODE § 226 *et seq.*, 558.1);**
- (6) **WAITING TIME PENALTIES
(LABOR CODE §§ 201-203, 558.1);**
- (7) **UNFAIR COMPETITION (BUS &
PROF CODE § 17200 *et seq.*).**
- (8) **CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS GENERAL
ACT (LABOR CODE §§ 2698, *et seq.*)**

**DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

1 Plaintiff Grace Montano (“Plaintiff”), on behalf of herself and all others similarly situated,
2 hereby brings this First Amended Class and Representative Action Complaint (“Complaint”)
3 against Defendants R.K. Hunter, LP, a California limited partnership; Ronald K. Hunter, an
4 individual; and DOES 1 to 100, inclusive (collectively, “Defendants”), and on information and
5 belief alleges as follows:

6 **JURISDICTION**

7 1. Plaintiff, on behalf of herself and all others similarly situated, hereby brings this
8 Complaint for recovery of unpaid wages penalties, and civil penalties under California Business
9 and Professions Code § 17200 *et. seq.*, Labor Code §§ 201-203, 204, 226 *et seq.*, 226.7, 510,
10 512, 516, 558, 558.1, 1182.12, 1194, 1194.2, 1197, 1198, 2698 *et seq.*, and Industrial Welfare
11 Commission Wage Order 5 (“Wage Order 5”), in addition to seeking injunctive relief, declaratory
12 relief, and restitution. This Complaint is brought pursuant to California Code of Civil Procedure
13 § 382. The monetary damages and restitution sought by Plaintiff exceed the minimal
14 jurisdictional limits of the Superior Court and will be established according to proof at trial.

15 **VENUE**

16 2. Venue is proper in this judicial district pursuant to Cal. Code Civ Proc. §§ 395(a)
17 and 395.5, as at least some of the acts and omissions complained of herein occurred in Los
18 Angeles County. Upon information and belief, Defendants own, maintain offices, transact
19 business, have agent(s) within, and/or otherwise are found within Los Angeles County, and
20 Defendants are within this Court’s jurisdiction for purposes of service of process.

21 **PARTIES**

22 3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
23 Plaintiff was and currently is, a California resident. Within the statute of limitations periods
24 applicable to each cause of action pled herein, Plaintiff was employed by Defendants as a non-
25 exempt employee. Plaintiff was, and is, a victim of Defendants’ policies and practices complained
26 of herein, lost money and/or property, and has been deprived of the rights guaranteed by Labor
27 Code §§ 201-203, 204, 226 *et seq.*, 226.7, 510, 512, 516, 558, 558.1, 1182.12, 1194, 1194.2,
28 1197, 1198, California Business and Professions Code § 17200 *et seq.*, 2698 *et seq.*, and Wage

Order 5, which sets employment standards for the public housekeeping industry, including restaurants.

4. Plaintiff is informed and believes, and based thereon alleges, that during the four years preceding the filing of this action and continuing to the present, Defendants did (and continue to do) business as a restaurant and employed Plaintiff and/or other, similarly-situated non-exempt employees within Los Angeles County and the State of California and, therefore, were (and are) doing business in Los Angeles County and the State of California.

5. Plaintiff does not know the true names or capacities, whether individual, partner, or corporate, of the defendants sued herein as DOES 1 to 100, inclusive, and for that reason, said defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to amend this Complaint when such true names and capacities are discovered. Plaintiff is informed, and believes, and based thereon alleges, that each of said fictitious defendants, whether individual, partners, or corporate, were responsible in some manner for the acts and omissions alleged herein, and proximately caused Plaintiff and the Classes (as defined in Paragraph 16) to be subject to the unlawful employment practices, wrongs, injuries and damages complained of herein.

6. Plaintiff is informed, believes, and thereon alleges, that at all times mentioned herein, Defendants were and are the employers of Plaintiff and all members of the Classes. Further, Plaintiff is informed, believes, and based thereon alleges, that Defendant Ronald K. Hunter was, at all times mentioned herein, Plaintiff's "employer or other person acting on behalf of an employer" within the meaning of Labor Code § 558.1, and specifically that Ronald K. Hunter was, and is, the "owner, director, officer, or managing agent of the employer," and that Ronald K. Hunter caused the Labor Code violations mentioned herein.

7. At all relevant times, each Defendant participated in the doing of the acts alleged herein to have been done by the named Defendants; and furthermore, the Defendants, and each of them, were the agents, servants, and employees of each and every one of the other Defendants, as well as the agents of all Defendants, and at all relevant times were acting within the course and scope of said agency and employment. Defendants, and each of them, approved of, condoned, and/or otherwise ratified each and every one of the acts or omissions complained of herein.

1 8. At all times mentioned herein, Defendants, and each of them, were members of
2 and engaged in a joint venture, partnership, and common enterprise, and acting within the course
3 and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further,
4 Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and all
5 members of the Classes.

6 **GENERAL FACTUAL ALLEGATIONS**

7 9. Defendants are in the restaurant business and, upon information and belief, have
8 owned and operated multiple Smashburger restaurants during the time period relevant to this
9 action. Plaintiff was employed by Defendants as a non-exempt employee from approximately
10 July 30, 2017 until approximately December 13, 2019.

11 10. During Plaintiff's employment with Defendants, Defendants failed to pay Plaintiff
12 and non-exempt employees daily overtime for hours worked over 8 in a workday, or double-time
13 for hours worked over 12 in a workday, as required under California law. For example, Plaintiff's
14 timekeeping and payroll records reflect that on September 16, 2019, Plaintiff worked a total of
15 13.58 hours. However, those same records show that all of Plaintiff's hours worked on September
16 16, 2019 were recorded by Defendants as regular hours and none were recorded as overtime (time-
17 and-a-half) and/or double-time hours. Additionally, Plaintiff was not paid overtime wages and/or
18 double-time wages on the seventh consecutive day of work in a workweek as required under
19 California law. Upon information and belief, Defendants' handbook defined the workweek as
20 beginning on Saturday. However, Plaintiff worked seven consecutive days in the workweek of
21 Saturday, September 14, 2019 through Friday, September 20, 2019, for example, but her hours
22 worked on September 20, 2019 were all recorded by Defendants as regular hours, rather than
23 overtime hours as required under California law. As another example, Plaintiff's timekeeping and
24 payroll records reflect that she worked seven consecutive workdays from Saturday, October 19,
25 2019 through Friday, October 25, 2019, and worked 10.5 hours on October 25, 2019. However,
26 all 10.5 hours were recorded as regular hours, rather than the first 8.0 hours being paid as overtime
27 (time-and-a-half) and the final 2.5 hours paid as double-time, as required under California law.

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1 11. Additionally, Defendants did not record employee meal periods. Rather,
2 Defendants automatically deducted 30 minutes for a purported meal period from Plaintiff's time
3 records for each shift worked, irrespective of whether a full 30-minute meal period is provided
4 (as discussed below). Indeed, Plaintiff was informed by her manager that this was Defendants'
5 practice. Defendants' automatic deduction of 30 minutes of time for a purported meal period also
6 contributed to additional unpaid wages, as Plaintiff and other non-exempt employees did not
7 always receive a full 30 minutes for a meal period. Further, Defendants required Plaintiff to
8 perform bank drops and other duties off-the-clock. However, Defendants failed to compensate
9 Plaintiff for her time spent conducting bank drops or other work off-the-clock. As a result,
10 Plaintiff and other non-exempt employees were not compensated for all required minimum wages
11 and/or overtime wages for all hours worked.

12 12. Plaintiff was not provided with all legally compliant meal periods due to
13 Defendants' meal period policies/practices, which routinely failed to provide Plaintiff and other
14 non-exempt employees with a duty-free, uninterrupted 30-minute meal period commencing
15 before the end of the fifth hour of work. Specifically, Defendants routinely failed to provide
16 Plaintiff and other non-exempt employees with their meal period commencing before the end of
17 the fifth hour of work, if at all. In addition, Plaintiff and other non-exempt employees did not
18 record and/or did not clock out for meal periods, and were often provided with a meal period that
19 was less than 30 minutes in duration, but Defendants would nevertheless deduct a full 30 minutes
20 from their timekeeping records. In the event that a legally compliant meal period was not in fact
21 provided, Plaintiff was not paid the meal period premium required by Labor Code § 226.7. Upon
22 information and belief, during at least a portion of the relevant time period, Defendants did not
23 maintain a payroll code or other mechanism for the payment of meal period premiums under
24 Labor Code § 226.7 in the event that they failed to provide a legally compliant meal period to
25 their non-exempt employees.

26 13. Plaintiff and other non-exempt employees were not authorized and permitted to
27 take all legally compliant rest periods. Specifically, Plaintiff was not always authorized and
28 permitted to take all legally compliant rest periods of at least a net ten minutes for every four

1 hours worked or major fraction thereof, due to her workload and the volume of tasks she had to
2 perform. On those occasions when Plaintiff was not provided with all legally-required and
3 compliant rest periods to which she was entitled, Defendants failed to compensate Plaintiff with
4 the required rest period premium for each workday in which she experienced a rest period
5 violation as mandated by Labor Code § 226.7. Upon information and belief, during at least a
6 portion of the putative class period, Defendants did not maintain any payroll code or other
7 mechanism for payment of rest period premiums as required by Labor Code § 226.7.

8 14. As a result of Defendants' failure to pay all minimum, overtime, and double-time
9 wages, as well as meal and rest period premium wages, Defendants maintained inaccurate payroll
10 records and issued inaccurate wage statements to Plaintiff and other non-exempt employees. In
11 addition, the wage statements issued by Defendants were facially deficient because they failed to
12 include the name and/or address of the legal entity that is the employer, as required by Labor
13 Code § 226(a)(8).

14 15. As a further result of Defendants' failure to pay all minimum, overtime, double-
15 time wages and meal and rest period premiums, Defendants failed to timely pay Plaintiff and
16 other non-exempt employees all wages owed at the time of their respective separations from
17 employment.

18 **CLASS ACTION ALLEGATIONS**

19 16. **Class Definitions:** Plaintiff brings this action on behalf of herself and the
20 following Classes pursuant to § 382 of the Code of Civil Procedure:

- 21 a. The Overtime Class consists of all of Defendants' current and former non-exempt
22 employees in California who (i) worked more than 8.0 hours in a workday and
23 were not paid time-and-a-half for those hours; (ii) worked over 12.0 hours in a
24 workday but were not paid double-time for those hours; (iii) worked seven
25 workdays in one workweek and were not paid time-and-a-half for the first 8.0
26 hours worked on the seventh workday and/or were not paid double-time for hours
27 worked beyond the first 8.0 hours of the seventh workday; (iv) had time deducted
28 from their time records for purported meal periods; and/or (v) worked more than

8.0 hours in a workday and/or more than 40 hours in a workweek, and were not paid for hours spent working off-the-clock, during the four years immediately preceding the filing of this action through the present.

b. The Minimum Wage Class consists of all of Defendants' current and former non-exempt employees in California who: (i) had time deducted from their time records for purported meal periods; and/or (ii) were not paid for time spent working off-the-clock, at any time during the four years immediately preceding the filing of this action through the present.

c. The Meal Period Class consists of all of Defendants' current and former non-exempt employees in California who worked at least one shift in excess of 5.0 hours without a 30-minute meal period commencing before the end of the fifth hour of work reflected in their timekeeping records, during the four years immediately preceding the filing of this action through the present.

d. The Rest Period Class consists of all Defendants' current and former non-exempt employees in California who worked a shift of 3.5 hours or more, during the four years immediately preceding the filing of this action through the present.

e. The Wage Statement Class consists of: (i) all members of the Overtime Class, Minimum Wage Class, Meal Period Class and/or Rest Period Class who received a wage statement; and/or (ii) all of Defendants' current and former employees in California who received a wage statement that did not contain the name and/or address of the legal entity that is the employer, during the one year immediately preceding the filing of this action through the present.

f. The Waiting Time Class consists of Defendants' formerly employed members of the Overtime Class, Minimum Wage Class, Meal Period Class, and/or Rest Period Class, whose employment with Defendants ended during the three years immediately preceding the filing of this action through the present.

17. **Numerosity/Ascertainability:** The members of the Classes are so numerous that joinder of all members would be unfeasible and not practicable. The membership of the Classes

and Subclasses are unknown to Plaintiff at this time; however, it is estimated that the members of the Classes number greater than one hundred (100) individuals. The identity of such membership is readily ascertainable via inspection of Defendants' employment records.

18. Common Questions of Law and Fact Predominate/Well Defined Community of Interest: There are common questions of law and fact as to Plaintiff and all other similarly situated employees, which predominate over questions affecting only individual members including, without limitation to:

- i. Whether Defendants violated the applicable Labor Code provisions, including, but not limited to §§ 510 and 1194, by requiring overtime work and not paying for said work according to the overtime laws of the State of California;
- ii. Whether Plaintiff and members of the Minimum Wage Class were compensated at least the minimum wage for all hours worked;
- iii. Whether Defendants provided all legally compliant meal periods to members of the Meal Period Class pursuant to Labor Code §§ 226.7 and 512;
- iv. Whether Defendants authorized and permitted all legally compliant rest periods to members of the Rest Period Class;
- v. Whether Defendants provided meal or rest period premium payments for non-compliant meal and/or rest periods;
- vi. Whether Defendants furnished legally compliant wage statements to members of the Wage Statement Class pursuant to Labor Code § 226; and
- vii. Whether Defendants' policies and/or practices for the timing and amount of payment of final wages to members of the Waiting Time Class at the time of separation were lawful.

19. Predominance of Common Questions: Common questions of law and fact predominate over questions that affect only individual Class members. The common questions set forth above are numerous and substantial and stem from Defendants' policies and/or practices applicable to each individual class member, including but not limited to Defendants' uniform timekeeping and meal and rest period policies and/or practices. As such, the common questions

predominate over individual questions concerning each individual class member's showing as to their eligibility for recovery or as to the amount of damages.

20. **Typicality:** The claims of Plaintiff are typical of the claims of the Classes because Plaintiff was employed by Defendants as a non-exempt employee in California during the statute(s) of limitations period applicable to each cause of action pled in the Complaint. As alleged herein, Plaintiff, like the members of the Classes, was not paid overtime, doubletime, and/or minimum wages for all hours worked, was not provided all required meal periods, was not authorized and permitted to take all required rest periods, did not receive meal and rest period premium wages for missed or non-compliant meal and rest periods, was not provided with accurate, itemized wage statements, and/or was deprived of all final wages upon her separation of employment from Defendants.

21. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps to represent fairly and adequately the interests of the members of the Classes. Moreover, Plaintiff's attorneys are ready, willing and able to fully and adequately represent the members of the Classes and Plaintiff. Plaintiff's attorneys have prosecuted and defended numerous wage-and-hour class actions in state and federal courts in the past and are committed to vigorously prosecuting this action on behalf of the members of the Classes.

22. **Superiority:** The California Labor Code is broadly remedial in nature and serves an important public interest in establishing minimum working conditions and standards in California. These laws and labor standards protect the average working employee from exploitation by employers who have the responsibility to follow the laws and who may seek to take advantage of superior economic and bargaining power in setting onerous terms and conditions of employment. The nature of this action and the format of laws available to Plaintiff and Class members make the class action format a particularly efficient and appropriate procedure to redress the violations alleged herein. If each employee were required to file an individual lawsuit, Defendants would necessarily gain an unconscionable advantage since they would be able to exploit and overwhelm the limited resources of each individual plaintiff with their vastly superior financial and legal resources. Moreover, requiring each member of the Class(es) to

1 pursue an individual remedy would also discourage the assertion of lawful claims by employees
2 who would be disinclined to file an action against a former and/or current employer for real and
3 justifiable fear of retaliation and permanent damages to their careers at subsequent employment.
4 Further, the prosecution of separate actions by the individual class members, even if possible,
5 would create a substantial risk of inconsistent or varying verdicts or adjudications with respect to
6 the individual class members against Defendants herein; and which would establish potentially
7 incompatible standards of conduct for Defendants; and/or legal determinations with respect to
8 individual class members which would, as a practical matter, be dispositive of the interest of the
9 other class members not parties to adjudications or which would substantially impair or impede
10 the ability of the class members to protect their interests. Further, individual Class members'
11 claims are not sufficiently large to warrant vigorous individual prosecution considering the
12 concomitant costs and expenses. Thus, the Classes identified in Paragraph 16 are maintainable as
13 a class under Code of Civil Procedure § 382.

14 **FIRST CAUSE OF ACTION**

15 **FAILURE TO PAY ALL OVERTIME WAGES**

16 **(AGAINST ALL DEFENDANTS)**

17 23. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

18 24. This cause of action is brought pursuant to Labor Code §§ 204, 510, 1194, and
19 1198, which provide that non-exempt employees are entitled to all overtime wages and
20 compensation for all overtime hours worked and provide a private right of action for the failure
21 to pay all overtime compensation for overtime work performed.

22 25. At all times relevant herein, Defendants were required to properly compensate
23 non-exempt employees, including Plaintiff and members of the Overtime Class, for all overtime
24 hours worked pursuant to California Labor Code §§ 510 and 1194 and Wage Order 5. Wage
25 Order 5, § 3, as well as Labor Code § 510, require an employer to pay an employee one and one-
26 half (1½) times the employee's regular rate of pay for all hours worked in excess of eight (8)
27 hours up to and including twelve (12) hours in any workday, and for the first eight (8) hours
28 worked on the seventh (7th) consecutive day of work in a workweek; and double the employee's

regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek. Defendants caused Plaintiff to work overtime hours, but did not credit Plaintiff or members of the Overtime Pay Class with all overtime hours actually worked, and did not compensate Plaintiff or members of the Overtime Pay Class at one and one-half times (or two times, in the case of double-time hours) their regular rates of pay for such hours.

26. California Labor Code § 558.1(a) provides that 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 or days of work, or causes to be violated Labor Code § 1194, “may be held liable as the employer for such violation.” Section 558.1(b) provides that “other person acting on behalf of the employer” means “a natural person who is an owner, director, officer, or managing agent of the employer.” Accordingly, because the individual Defendant named in this Complaint is a natural person who is an owner, director, officer, or managing agent of the employer, Plaintiff alleges this cause of action against the individual Defendant as well.

27. The foregoing policies and practices are unlawful and create entitlement to recovery by Plaintiff and the Overtime Class Members in a civil action for the unpaid amount of overtime premiums owing, including interest thereon, statutory penalties, attorneys’ fees, and costs of suit according to California Labor Code §§ 204, 210, 216, 510, 558, 558.1, 1194, and 1198; and Code of Civil Procedure § 1021.5.

SECOND CAUSE OF ACTION

MINIMUM WAGE VIOLATIONS

(AGAINST ALL DEFENDANTS)

28. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

29. Wage Order 5, § 4 and Cal. Labor Code §§ 1197 and 1182.12 establish employees’ right to be paid minimum wages for all hours worked, in amounts set by state law. Labor Code §§ 1194(a) and 1194.2(a) provide that an employee who has not been paid the legal minimum wage as required by Labor Code § 1197 may recover the unpaid balance together with attorneys’ fees and costs of suit, as well as liquidated damages in an amount equal to the unpaid wages and

1 interest accrued thereon. At all relevant times, Defendants failed to conform their pay practices
2 to the requirements of the law by failing to pay Plaintiff and the Minimum Wage Class for all
3 hours actually worked including, but not limited to, all hours they were subject to Defendants'
4 control and/or suffered or permitted to work under the Labor Code and Wage Order 5.

5 30. California Labor Code § 1198 makes unlawful the employment of an employee
6 under conditions that the IWC prohibits. California Labor Code §§ 1194(a) and 1194.2(a) provide
7 that an employer who has failed to pay its employees the legal minimum wage is liable to pay
8 those employees the unpaid balance of the unpaid wages as well as liquidated damages in an
9 amount equal to the wages due and interest thereon.

10 31. California Labor Code § 558.1(a) provides that any employer "or other person
11 acting on behalf of an employer" who violates, or causes to be violated, any provision regulating
12 minimum wages or hours or days of work, or causes to be violated Labor Code § 1194, "may be
13 held liable as the employer for such violation." Section 558.1(b) provides that "other person acting
14 on behalf of the employer" means "a natural person who is an owner, director, officer, or
15 managing agent of the employer." Accordingly, because the individual Defendant named in this
16 Complaint is a natural person who is an owner, director, officer, or managing agent of the
17 employer, Plaintiff alleges this cause of action against the individual Defendant as well.

18 32. As a direct and proximate result of Defendants' unlawful conduct as alleged
19 herein, Plaintiff and the Minimum Wage Class have sustained economic damages, including but
20 not limited to unpaid wages and lost interest, in an amount to be established at trial, and they are
21 entitled to recover economic and statutory damages and penalties and other appropriate relief as
22 a result of Defendants' violations of the California Labor Code and Wage Order 5.

23 33. Defendants' practice and uniform administration of corporate policy regarding
24 illegal employee compensation is unlawful and creates an entitlement to recovery by Plaintiff and
25 the Minimum Wage Class in a civil action for the unpaid amount of minimum wages, liquidated
26 damages, including interest thereon, statutory penalties, attorneys' fees, and costs of suit per
27 Labor Code §§ 204, 558, 558.1, 1194 *et seq.*, 1197, 1198, and Code of Civil Procedure § 1021.5.

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1 **THIRD CAUSE OF ACTION**

2 **MEAL PERIOD VIOLATIONS**

3 **(AGAINST ALL DEFENDANTS)**

4 34. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

5 35. Plaintiff is informed, believes, and based thereon alleges, that Defendants failed in
6 their affirmative obligation to provide their non-exempt employees in California, including
7 Plaintiff and Meal Period Class members, with all legally compliant meal periods in accordance
8 with the mandates of the California Labor Code and Wage Order 5, § 11. Despite Defendants'
9 violations, Defendants did not pay an additional hour of pay to Plaintiff and Meal Period Class
10 members at their respective regular rates of compensation, per Labor Code §§ 226.7 and 512.

11 36. California Labor Code § 558.1(a) provides that any employer "or other person
12 acting on behalf of an employer" who violates, or causes to be violated, any provision regulating
13 minimum wages or hours or days of work, or causes to be violated Labor Code § 226.7, "may be
14 held liable as the employer for such violation." Section 558.1(b) provides that "other person acting
15 on behalf of the employer" means "a natural person who is an owner, director, officer, or
16 managing agent of the employer." Accordingly, because the individual Defendant named in this
17 Complaint is a natural person who is an owner, director, officer, or managing agent of the
18 employer, Plaintiff alleges this cause of action against the individual Defendant as well.

19 37. As a result, Defendants are responsible for paying premium compensation for meal
20 period violations, interest thereon, costs of suit, statutory penalties, and civil penalties, pursuant
21 to Labor Code §§ 226.7 512, 558, 558.1, Wage Order 5, and Civil Code §§ 3287(b) and 3289.

22 **FOURTH CAUSE OF ACTION**

23 **REST PERIOD VIOLATIONS**

24 **(AGAINST ALL DEFENDANTS)**

25 38. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

26 39. Wage Order 5, § 12 and Labor Code §§ 226.7 and 516 establish the right of
27 employees to be provided with a rest period of at least ten (10) minutes for each four (4) hour
28 period worked, or major fraction thereof.

40. As alleged herein, Defendants failed to authorize and permit Plaintiff and members of the Rest Period Class to take all required rest periods.

41. California Labor Code § 558.1(a) provides that 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 or days of work, or causes to be violated Labor Code § 226.7, “may be held liable as the employer for such violation.” Section 558.1(b) provides that “other person acting on behalf of the employer” means “a natural person who is an owner, director, officer, or managing agent of the employer.” Accordingly, because the individual Defendant named in this Complaint is a natural person who is an owner, director, officer, or managing agent of the employer, Plaintiff alleges this cause of action against the individual Defendant as well.

42. The foregoing violations create an entitlement to recovery by Plaintiff and members of the Rest Period Class in a civil action for the unpaid amount of rest period premiums owing, including interest thereon, statutory penalties, civil penalties, and costs of suit according to Labor Code §§ 226.7, 516, 558, 558.1 and Civil Code §§ 3287(b) and 3289.

FIFTH CAUSE OF ACTION

WAGE STATEMENT VIOLATIONS

(AGAINST ALL DEFENDANTS)

43. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

44. Plaintiff is informed and believes, and based thereon alleges, that Defendants knowingly and intentionally, as a matter of uniform policy and practice, failed to furnish Plaintiff and members of the Wage Statement Class with complete and accurate wage statements with respect to their actual regular hours worked, overtime and double-time hours worked, total gross wages earned, all rates of pay, and total net wages earned, as well as the name and address of the legal entity that is the employer, in violation of Labor Code § 226 *et seq.*

45. Defendants' failures in furnishing Plaintiff and members of the Wage Statement Class with complete and accurate itemized wage statements resulted in injury, as said failures led to, among other things, the non-payment of all their overtime, double-time and minimum wages, meal period premiums, rest period premium wages, and deprived them of the information

necessary to identify the discrepancies in Defendants' reported data, as well as the failure to identify the name and address of the legal entity that is the employer.

46. California Labor Code § 558.1(a) provides that 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 or days of work, or causes to be violated Labor Code § 226, "may be held liable as the employer for such violation." Section 558.1(b) provides that "other person acting on behalf of the employer" means "a natural person who is an owner, director, officer, or managing agent of the employer." Accordingly, because the individual Defendant named in this Complaint is a natural person who is an owner, director, officer, or managing agent of the employer, Plaintiff alleges this cause of action against the individual Defendant as well.

47. Defendants' failures create an entitlement to recovery by Plaintiff and members of the Wage Statement Class in a civil action for all damages and/or penalties pursuant to Labor Code § 226 *et seq.*, including statutory penalties, civil penalties, reasonable attorneys' fees, and costs of suit according to California Labor Code § 226 *et seq.*

SIXTH CAUSE OF ACTION

WAITING TIME PENALTIES

(AGAINST ALL DEFENDANTS)

48. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

49. This cause of action is brought pursuant to Labor Code §§ 201-203, which require an employer to pay all wages immediately at the time of termination of employment in the event the employer discharges the employee or the employee provides at least 72 hours of notice of his/her intent to quit. In the event the employee provides less than 72 hours of notice of his/her intent to quit, said employee's wages become due and payable not later than 72 hours upon said employee's last date of employment.

50. Plaintiff is informed and believes, and based thereon alleges, that Defendants failed to timely pay Plaintiff and members of the Waiting Time Class all final wages due to them at their termination, including, among other things, minimum, overtime, and double-time wages and meal and rest period premium wages.

1 51. Further, Plaintiff is informed and believes, and based thereon alleges, that as a
2 matter of uniform policy and practice, Defendants continue to fail to pay Plaintiff and members
3 of the Waiting Time Class all earned wages at the end of employment in a timely manner pursuant
4 to the requirements of Labor Code §§ 201-203. Defendants' failure to pay all final wages was
5 willful within the meaning of Labor Code § 203.

6 52. California Labor Code § 558.1(a) provides that any employer "or other person
7 acting on behalf of an employer" who violates, or causes to be violated, any provision regulating
8 minimum wages or hours or days of work, or causes to be violated Labor Code § 203, "may be
9 held liable as the employer for such violation." Section 558.1(b) provides that "other person
10 acting on behalf of the employer" means "a natural person who is an owner, director, officer, or
11 managing agent of the employer." Accordingly, because the individual Defendant named in this
12 Complaint is a natural person who is an owner, director, officer, or managing agent of the
13 employer, Plaintiff alleges this cause of action against the individual Defendant as well.

14 53. Defendants' willful failure to timely pay Plaintiff and the members of the Waiting
15 Time Class their earned wages upon separation from employment results in a continued payment
16 of wages up to thirty days from the time the wages were due. Therefore, Plaintiff and members
17 of the Waiting Time Class are entitled to compensation pursuant to Labor Code § 203, plus
18 reasonable attorneys' fees and costs of suit.

19 **SEVENTH CAUSE OF ACTION**

20 **UNFAIR COMPETITION**

21 **(AGAINST ALL DEFENDANTS)**

22 54. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

23 55. Defendants have engaged and continue to engage in unfair and/or unlawful
24 business practices in California in violation of Business & Professions Code § 17200 *et seq.*, by:
25 (a) failing to pay Plaintiff and Overtime Class members all overtime wages; (b) failing to pay
26 Plaintiff and Minimum Wage Class members at least the minimum wage for all hours worked;
27 (c) failing to provide Plaintiff and Meal Period Class members all meal periods to which they are
28 entitled, and failing to pay them meal period premiums; (d) failing to authorize and permit all

1 required duty-free rest periods to Plaintiff and Rest Period Class members, and failing to pay them
2 rest period premiums; (e) knowingly failing to furnish Plaintiff and Wage Statement Class
3 members with accurate and complete wage statements in violation of Labor Code § 226; and (f)
4 failing to pay all earned wages to Waiting Time Class members at the time of their separation of
5 employment.

6 56. Defendants' utilization of these unfair and/or unlawful business practices deprived
7 Plaintiff, and continues to deprive members of the Classes, of compensation to which they are
8 legally entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage
9 over Defendants' competitors who have been and/or are currently employing workers and
10 attempting to do so in honest compliance with applicable wage and hour laws.

11 57. Because Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged
12 herein, Plaintiff for herself and on behalf of the members of the Classes, seeks full restitution of
13 monies, as necessary and according to proof, to restore any and all monies withheld, acquired
14 and/or converted by Defendants pursuant to Business and Professions Code §§ 17203 and 17208.

15 58. The acts complained of herein occurred within the last four years immediately
16 preceding the filing of this action.

17 59. Plaintiff was compelled to retain the services of counsel to file this court action to
18 protect her interests and those of the Classes, to obtain restitution and injunctive relief on behalf
19 of Defendants' current non-exempt employees, and to enforce important rights affecting the
20 public interest. Plaintiff has thereby incurred the financial burden of attorneys' fees and costs,
21 which she is entitled to recover under Code of Civil Procedure § 1021.5.

22 **EIGHTH CAUSE OF ACTION**

23 **PRIVATE ATTORNEYS GENERAL ACT**

24 **(AGAINST ALL DEFENDANTS)**

25 60. Plaintiff re-alleges and incorporates by reference all prior paragraphs.

26 61. Defendants have committed several Labor Code violations against Plaintiff,
27 members of the Classes, and other aggrieved employees. Plaintiff, an "aggrieved employee"
28 within the meaning of Labor Code § 2698 *et seq.* ("PAGA"), acting on behalf of herself and other

aggrieved employees, brings this representative action against Defendants to recover the civil penalties due to Plaintiff, the members of the Classes, other aggrieved employees, and the State of California according to proof, pursuant to Labor Code § 558 and § 2699 (a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200 for each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each initial violation and \$1,000.00 for each subsequent violation of Lab. Code § 226 pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for each initial violation and \$200 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided pursuant to Labor Code § 2699(f), based on the following Labor Code violations:

- a. Failing to compensate Plaintiff and other aggrieved employees all overtime and/or double-time wages earned in violation of Labor Code §§ 204, 510, 558, 1194, and 1198;
- b. Failing to compensate Plaintiff and other aggrieved employees the statutory minimum wage for all hours worked in violation of Labor Code §§ 558, 1182.12, 1194, 1194.2, 1197, and 1198;
- c. Failing to provide Plaintiff and other aggrieved employees with their statutorily mandated meal periods and failing to pay meal period premiums in violation of Labor Code §§ 226.7, 512, 558, and 1198;
- d. Failing to authorize and permit Plaintiff and other aggrieved employees to take their statutorily mandated rest periods and failing to pay rest period premiums in violation of Labor Code §§ 226.7, 516, 558, and 1198;
- e. Failing to furnish Plaintiff and other aggrieved employees with complete and accurate itemized wage statements in violation of Labor Code § 226;

- f. Failing to pay Plaintiff and other aggrieved employees all final wages due at termination of employment in violation of Labor Code §§ 201-203;
- g. Failing to pay Plaintiff and other aggrieved employees all wages earned at least twice each calendar month in violation of Labor Code § 204;
- h. Failing to maintain accurate records on behalf of Plaintiff and other aggrieved employees in violation of Labor Code §§ 1174;

62. On April 1, 2020, Plaintiff notified Defendants R.K. Hunter, L.P. and Ronald K. Hunter via certified mail, and the California Labor and Workforce Development Agency (“LWDA”) via its website, of Defendants’ violations of the California Labor Code and Plaintiff’s intent to bring a claim for civil penalties under the PAGA with respect to violations of the California Labor Code identified herein. Now that sixty-five (65) days have passed from Plaintiff’s notifying Defendants and the LWDA of these violations, Plaintiff has exhausted her administrative requirements for bringing a claim under the PAGA with respect to these violations.

PRAYER

WHEREFORE, Plaintiff prays for judgment for herself and for all others on whose behalf this suit is brought against Defendants, as follows:

1. For an order certifying the proposed Classes;
2. For an order appointing Plaintiff as representative of the Classes;
3. For an order appointing Counsel for Plaintiff as Counsel for the Classes;
4. Upon the First Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 204, 510, 558, 558.1, 1194, and 1198;
5. Upon the Second Cause of Action, for payment of minimum wages, liquidated damages, and penalties according to proof pursuant to Labor Code §§ 558, 558.1, 1182.12, 1194, 1194.2 1197, and 1198;
6. Upon the Third Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 226.7 512, 558 and 558.1;

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1 7. Upon the Fourth Cause of Action, for compensatory, consequential, general and
2 special damages according to proof pursuant to Labor Code §§ 226.7 516, 558 and 558.1;

3 8. Upon the Fifth Cause of Action, for statutory penalties pursuant to Labor Code §§
4 226 and 558.1;

5 9. Upon the Sixth Cause of Action, for statutory waiting time penalties pursuant to
6 Labor Code §§ 201-203 and 558.1;

7 10. Upon the Seventh Cause of Action, for restitution to Plaintiff and members of the
8 Classes of all money and/or property unlawfully acquired by Defendants by means of any acts or
9 practices declared by this Court to be in violation of Business and Professions Code § 17200 *et*
10 *seq.*;

11 11. Upon the Eighth Cause of Action, for civil penalties due to Plaintiff, other
12 aggrieved employees, and the State of California according to proof pursuant to Labor Code §§
13 558 and 2699(a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for
14 each failure to pay each employee and \$200.00 for each subsequent violation or willful or
15 intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus
16 25% of the amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100.00 for each
17 subsequent violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for
18 each initial violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1
19 per employee per pay period; (4) \$250.00 for each initial violation and \$1,000.00 for each
20 subsequent violation of Lab. Code § 226 pursuant to Labor Code § 226.3 per employee per pay
21 period; and/or (5) \$100.00 for each initial violation and \$200.00 for each subsequent violation per
22 employee per pay period for those violations of the Labor Code for which no civil penalty is
23 specifically provided pursuant to Labor Code § 2699(f), based on the violations of Labor Code
24 sections cited in Paragraph 61 (a)-(h) above.;

25 12. Prejudgment interest on all due and unpaid wages pursuant to California Labor
26 Code § 218.6 and Civil Code §§ 3287 and 3289;

27 13. On all causes of action, for attorneys' fees and costs as provided by Labor Code
28 §§ 226, 1194, *et seq.*, 2699(g), and Code of Civil Procedure § 1021.5; and

1 14. For such other and further relief, the Court may deem just and proper.

2
3 Dated: June 9, 2020

Respectfully submitted,
HAINES LAW GROUP, APC

4
5 By:



Paul K. Haines
Attorneys for Plaintiff

6
7
8 **DEMAND FOR JURY TRIAL**

9 Plaintiff hereby demands a jury trial with respect to all issues triable by jury.

10
11 Dated: June 9, 2020

Respectfully submitted,
HAINES LAW GROUP, APC

12
13 By:



Paul K. Haines
Attorneys for Plaintiff