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OCT 21 2020

Superior Court of California
County of Placer

10 **SUPERIOR COURT OF CALIFORNIA**
11 **FOR THE COUNTY OF PLACER**

12 KENNETH TRONE, as an aggrieved
13 employee pursuant to the Private
14 Attorneys General Act (PAGA),

15 Plaintiff,

16 vs.

17 SUGAR BOWL CORPORATION; and
18 DOES 1 to 20, inclusive,

19 Defendants
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Case No.

COMPLAINT FOR DAMAGES:

1. Failure to Pay Minimum Wage for All Hours Worked;
2. Failure to Provide Accurate Wage Statements;
3. Failure to Provide Meal and Rest Periods;
4. Waiting Time Penalties;
5. Failure to Pay Overtime Wages;
6. Civil Penalties Pursuant to Private Attorney General Act, Labor Code § 2698 *et seq.*

1 Plaintiff KENNETH TRONE ("Plaintiff") hereby files this Complaint against Defendants
2 SUGAR BOWL CORPORATION; and DOES 1 to 20, inclusive, (hereinafter collectively
3 referred to as "Defendants"). Plaintiff alleges the following:

4 **PARTIES AND JURISDICTION**

5 1. This is an enforcement action under the Labor Code Private Attorneys General Act of
6 2004 ("PAGA"), California Labor Code section 2698, *et seq.* to recover civil penalties and any
7 other available relief on behalf of Plaintiff, the State of California, and other current and former
8 employees who worked for Defendants in California and who suffered at least one violation of the
9 Labor Code as set forth in this complaint, at any time between July 13, 2019 and judgement.

10 2. Plaintiff KENNETH TRONE is an individual over the age of eighteen (18) and is now
11 and/or at all times mentioned in this Complaint was a resident of the State of California.

12 3. Plaintiff was a non-exempt employee of Defendants from approximately December
13 2019 through approximately February 2020.

14 4. Plaintiff is informed and believes, and thereon alleges, that Defendant SUGAR BOWL
15 CORPORATION is a California Corporation doing business in California.

16 5. Plaintiff is further informed and believes, and thereon alleges, that each of the
17 Defendants herein was, at all times relevant to this action, the agent, employee, or joint employer
18 or joint venturer of the remaining defendants and was acting within the course and scope of that
19 relationship. Plaintiff is further informed and believes, and thereon alleges, that each of the
20 Defendants herein gave consent to, ratified and authorized the acts alleged herein to each of the
21 remaining defendants. The true names and capacities of the defendants named herein Does 1
22 through 20, inclusive, whether individual, corporate, associate, or otherwise are unknown to
23 Plaintiff, who therefore sues such defendants by fictitious names pursuant to California Code of
24 Civil Procedure section 474. Plaintiff will amend this complaint to show such true names and
25 capacities of Does 1 through 20, inclusive, when they have been determined.

26 6. The Placer County Superior Court has jurisdiction in this matter under the California
27 Constitution, Article VI, section 10. The statute under which this action is brought does not
28 specify any other basis for jurisdiction.

1 7. Venue is proper pursuant to Civil Procedure Code §§ 395(a) and 395.5, in that some of
2 the wrongful acts and violations of law asserted herein occurred within Placer County.

3 8. On July 13, 2020, Plaintiff filed his Labor Code § 2699.3 Private Attorney General Act
4 ("PAGA") notice with the California Labor & Workforce Development Agency ("LWDA"). The
5 LWDA did not respond to Plaintiff's PAGA notice within 65 days, thus deputizing Plaintiff to
6 represent himself, other aggrieved employees, and the California Labor Commissioner for the
7 purpose of collecting civil penalties for violations of the California Labor Code committed by
8 Defendants.

9 **FACTS COMMON TO ALL CAUSES OF ACTION**

10 9. Plaintiff worked for Defendants from approximately December 2019 through
11 approximately February 2020. During his employment, Plaintiff, and other aggrieved employees,
12 have been made to suffer numerous violations of the California Labor Code.

13 10. During the relevant period, Defendants regularly and systematically failed to provide
14 Plaintiff and other similarly situated employees a 30-minute, duty-free meal period before the end of
15 the fifth hour of work as required under the law. In fact, during the two and 1/2 months of his
16 employment at Sugar Bowl, Plaintiff was paid a total of 41 meal break premiums.

17 11. On information and belief, Plaintiff missed even more meal breaks than he was paid
18 premiums for, but even when Plaintiff and similarly situated employees were paid premiums,
19 Defendants was still in willful violation of the requirements of the California Labor Code.

20 12. Defendants also failed to provide rest periods to Plaintiff and similarly situated
21 employees for every 4 hours worked or major fraction thereof.

22 13. Additionally, Plaintiff and similarly situated employees were instructed by Defendants to
23 record false times on their timecards. This resulted in unpaid minimum wages, unpaid overtime,
24 inaccurate time records, and inaccurate wage statements. Plaintiff refused to falsify the timecards as
25 he was told to do and Defendant retaliated against him as a result of his refusal.

26 14. Plaintiff and similarly situated employees were also effectively on call for Defendant
27 24/7. Plaintiff and similarly situated employees were not paid all of the wages owed, including base
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1 pay and overtime when applicable, for the time spent working outside of their regularly scheduled
2 shifts. Plaintiff and similarly situated employees were required to report to work at these times, but
3 they were not permitted to report this time as hours worked, and this were not paid.

4 15. Plaintiff is informed and believes that Defendants committed numerous other violations
5 of the California Labor Code, including but not limited to those identified in this letter. Pursuant
6 to *Huff v. Securitas Sec. Servs. USA, Inc.*, 23 Cal. App. 5th 745, 761, 233 Cal. Rptr. 3d 502, 513
7 (2018), Plaintiff intends to seek civil penalties for all violations of the California Labor Code,
8 whether he experienced them personally or not.

9 16. Upon information and belief, all transactions regarding hiring, terminations,
10 promotions, pay increases, pay rates, wages paid, etc. relating to Defendants' California employees
11 were submitted to and processed by Defendants' HR department in their corporate headquarters.
12 Additionally, on information and belief, Defendants' corporate records, in particular HR and pay
13 records pertaining to Defendants' California employees, are also maintained at Defendants'
14 corporate headquarters.

15 17. Upon information and belief, Defendants maintain a central Payroll department at their
16 corporate headquarters which processes payroll for all Defendants' employees, including Plaintiff
17 and similarly situated, aggrieved employees.

18 18. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should
19 have known that its aggrieved employees were entitled to timely payment of all wages earned upon
20 termination of employment. In violation of the California Labor Code, Defendants' aggrieved
21 employees did not receive payment of all wages due upon termination.

22 19. Plaintiff is further informed and believes, and based thereon alleges, that Defendants
23 knew or should have known that its California employees were entitled to wage statements that
24 were compliant with the requirements of Labor Code section 226, but purposefully failed to
25 provide compliant wage statements, causing injury to Plaintiff and Defendants' similarly aggrieved
26 employees.
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1 20. At all times herein set forth, PAGA provides that any provision of law under the Labor
2 Code and applicable IWC Wage Order that provides for a civil penalty to be assessed and collected
3 by the LWDA for violations of the California Labor Code and applicable IWC Wage Order may,
4 as an alternative, be recovered by aggrieved employees in a civil action brought on behalf of
5 themselves and other current or former employees pursuant to procedures outlined in California
6 Labor Code section 2699.3.

7 21. PAGA defines an aggrieved employee in labor Code section 2699(c) as “any person
8 who was employed by the alleged violator and against whom one or more of the alleged violations
9 was committed.”

10 22. Plaintiff and other current and former employees of Defendants are aggrieved
11 employees as defined by the Labor Code in that they are all Defendants’ current or former
12 employees and one or more of the alleged violations was committed against them.

13
14 **FIRST CAUSE OF ACTION**
15 **(Failure to Pay Minimum Wage for All Hours Worked)**

16 23. Plaintiff hereby incorporates by reference Paragraphs 1 through 22 of this Complaint as
17 if fully set forth herein and for a cause of action alleges as follows:

18 24. Defendants were required to compensate Plaintiff and similarly situated employees
19 with at least the State’s minimum wage for all hours worked. *See* Cal. Labor Code § 1194; MW
20 Order-2014; MW Order-2017.

21 25. Defendants were aware of their obligation to pay the minimum wages but failed to do
22 so.

23 26. Defendants’ conduct described herein violates California Labor Code section 1194, and
24 Wage Orders. As a proximate result of Defendants’ conduct, Plaintiff and similarly situated
25 employees have been damaged and deprived of minimum wages, in an amount to be established at
26 trial. Plaintiff now seek these wages, liquidated damages pursuant to California Labor Code
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1 section 1194.2, attorney's fees and costs, and interest pursuant to California Labor Code sections
2 1194.

3 **SECOND CAUSE OF ACTION**
4 **(Failure to Provide Accurate Wage Statements)**

5 27. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 26 as though
6 fully set forth herein.

7 28. According to Labor Code section 226(a), an employer must provide an itemized
8 statement to an employee, semi-monthly or at the time of each payment of wages, showing:

9 *(1) gross wages earned, (2) total hours worked by the employee,*
10 *except for any employee whose compensation is solely based on a*
11 *salary and who is exempt from payment of overtime under*
12 *subdivision (a) of Section 515 or any applicable order of the*
13 *Industrial Welfare Commission, (3) the number of piece-rate units*
14 *earned and any applicable piece rate if the employee is paid on a*
15 *piece-rate basis, (4) all deductions, provided that all deductions*
16 *made on written orders of the employee may be aggregated and*
17 *shown as one item, (5) net wages earned, (6) the inclusive dates of*
18 *the period for which the employee is paid, (7) the name of the*
19 *employee and the last four digits of his or her social security number*
20 *or an employee identification number other than a social security*
21 *number, (8) the name and address of the legal entity that is the*
22 *employer and, if the employer is a farm labor contractor, as defined*
23 *in subdivision (b) of Section 1682, the name and address of the legal*
24 *entity that secured the services of the employer, and (9) all*
25 *applicable hourly rates in effect during the pay period and the*
26 *corresponding number of hours worked at each hourly rate by the*
27 *employee. The deductions made from payment of wages shall be*
28 *recorded in ink or other indelible form, properly dated, showing the*
month, day, and year, and a copy of the statement and the record of
the deductions shall be kept on file by the employer for at least three
years at the place of employment or at a central location within the
State of California.

29 Defendants failed to provide an itemized statement or failed to provide an accurate and
30 complete itemized statement showing the requirements set forth in Labor Code section 226(a).
31 Defendants failed to list on the wage statements provided to Plaintiff and similarly situated
32 employees wage statements listing all hour worked and the applicable rates of pay and overtime

1 rate. Plaintiff alleges that Defendants failed to provide accurate itemized wage statements in
2 accordance with Labor Code section 226(a) to all members of the Labor Code Class.

3 30. Additionally, Plaintiff alleges he suffered injury as a result of Defendants' knowing and
4 intentional failure to provide accurate and complete information as required by any one or more of
5 items (1) to (9), inclusive, of Labor Code section 226, subdivision (a), and Plaintiff cannot
6 promptly and easily determine (*i.e.* a reasonable person in each Plaintiff's position would not be
7 able to readily ascertain the information without reference to other documents or information) from
8 the wage statement alone. Cal. Lab Code § 226(e)(2)(B)(iv).

9 31. As a proximate cause of Defendants' failure to provide accurate statements, Plaintiff
10 was damaged and is entitled to statutory and civil penalties under the Labor Code, and attorney's
11 fees and costs, in an amount to be proven at trial.

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13 **THIRD CAUSE OF ACTION**
14 **(Failure to Provide Meal and Rest Periods)**

15 32. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 31 as though
16 fully set forth herein.

17 33. An employer must provide an employee a meal period and/or rest period in accordance
18 with the applicable Wage Order and Labor Code sections 226.7 and 512.

19 34. Labor Code section 510 and Wage Order 2-2001, section 11(A) require an employer to
20 provide a meal period of not less than thirty (30) minutes for each work period of more than five
21 (5) hours. If an employee works longer than ten (10) hours in a workday, the employer must
22 provide a second meal period.

23 35. Labor Code section 510 and Wage Order 2-2001 section 12(A) require an employer to
24 provide a rest period of not less than ten (10) minutes for each work period of more than four (4)
25 hours or a major fraction thereof.

26 36. Plaintiff alleges that Defendants failed to provide Plaintiff and similarly situated
27 employees with meal breaks of at least thirty (30) minutes for several work periods that Plaintiff
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1 and similarly situated employees worked more than five (5) hours in a day, or to take a second
2 meal break of at least thirty (30) minutes for several work periods that Plaintiff and similarly
3 situated employees worked more than ten (10) hours in a day.

4 37. Plaintiff further alleges that Defendants failed to provide rest breaks of at least ten (10)
5 minutes for each work period that he and similarly situated employees worked for four (4) hours or
6 major fraction thereof.

7 38. As a proximate cause of Defendants' failure to provide meal and rest periods, Plaintiffs
8 is entitled to one (1) hour of pay at the regular rate of compensation for each meal period or rest
9 period not provided, as a wage, from three (3) years of the filing of this action, in an amount to be
10 established at trial. See Labor Code § 226.7 and Wage Order 2-2001 §§ 11(B), 12(B).
11

12 **FOURTH CAUSE OF ACTION**
13 **(Waiting Time Penalties)**

14 39. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 38 as though
15 fully set forth herein.

16 40. An employer must pay an employee who is terminated all unpaid wages immediately
17 upon termination. California Labor Code § 201.

18 41. An employer who willfully fails to pay an employee wages in accordance with
19 California Labor Code sections 201 and/or 202 must pay the employee a waiting time penalty of
20 up to thirty (30) days. California Labor Code § 203.

21 42. Plaintiff and similarly situated employees did not receive all wages at their termination
22 or separation from employment, including, but not limited to, unpaid overtime and minimum
23 wages, and unpaid meal and rest period penalties.

24 43. Defendants knew of their obligation to pay Plaintiff and similarly situated employees
25 and Defendants' failure to pay all wages was in complete disregard of their obligations. Such
26 conduct shows Defendants' knowledge of their obligation to pay all wages owed upon termination
27 and willful refusal.
28

1 44. As a proximate result of the Defendants' conduct, Plaintiff has been damaged and
2 deprived of his wages and thereby seeks his daily rate of pay multiplied by thirty (30) days for
3 Defendants' failure to pay all wages due.

4 **FIFTH CAUSE OF ACTION**
5 **(Failure to Pay Overtime Wages)**

6 45. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 44 as though
7 fully set forth herein.

8 46. During the period Plaintiff and similarly situated employees were employed by
9 Defendants, Defendants were required to compensate them one and one-half (1½) times the regular
10 rate of pay for hours worked in excess of eight (8) hours per day and/or forty (40) hours per week,
11 and two (2) times the regular rate of pay for hours worked in excess of twelve (12) hours per day.
12 See California Labor Code §§ 510, 1194. Although Plaintiff and similarly situated employees
13 regularly worked in excess of eight (8) hours a day and/or forty (40) hours per week, Defendants
14 failed to pay all overtime wages owed to them.

15 47. Plaintiff and similarly situated employees were non-exempt employees under the
16 administrative, executive, or professional exemptions of the applicable Wage Order and California
17 Labor Code section 510.

18 48. Defendants' conduct described herein violates California Labor Code sections 510 and
19 1194, and Wage Orders. As a proximate result of Defendants' conduct, Plaintiff has been
20 damaged and deprived of overtime wages, in an amount to be established at trial. Plaintiff now
21 seeks these wages, attorney's fees and costs, and interest pursuant to California Labor Code
22 sections 1194.

23 **SIXTH CAUSE OF ACTION**
24 **(Civil Penalties Pursuant to PAGA § 2698 ET SEQ.)**

25 49. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 48 as though
26 fully set forth herein.
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1 50. Plaintiff brings this cause of action as a proxy for the State of California and in this
2 capacity, seeks penalties on behalf of all Aggrieved Employees for Defendants' violations of the
3 California Labor Code, including but not necessarily limited to, those Labor Code and Wage Order
4 violations identified above.

5 51. On or about July 13, 2020, Plaintiff, through counsel, sent written notice to the LWDA
6 regarding Defendant's violations of the California Labor Code, pursuant to Labor Code section
7 2698, *et seq.*, PAGA. As of the date of the filing of this Complaint, the LWDA has not informed
8 Plaintiff whether the LWDA intends to investigate Plaintiff's PAGA claims. As such, Plaintiff has
9 exhausted his administrative remedies under PAGA and may proceed in this Court.

10 52. Plaintiff is thus entitled to recover civil penalties on behalf of the State of California
11 and all aggrieved employees for all violations of the Labor Code from July 13, 2019, through trial
12 on this matter.

13 53. Defendants' conduct, as alleged herein, violated various sections of the California labor
14 Code, including but not limited to, the following:

15 54. Labor Code sections 201–203 require that all wages, including minimum wages and
16 meal and rest period premiums, be paid to employees upon separation and/or termination of
17 employment. Here, for the reasons stated above, Defendants' employees did not receive all final
18 wages due and owing to them at the time of termination or seventy-two (72) hours thereafter as
19 required by Labor Code sections 201–203. This is in violation of the Labor Code.

20 55. Labor Code section 1174(d) requires employers to keep "payroll records showing the
21 hours worked daily by and the wages paid to . . . employees . . . These records shall be kept in
22 accordance with rules established for this purpose by the commission, but in any case shall be kept
23 on file for not less than three years." Defendants did not keep accurate information regarding all
24 hours worked by Plaintiff and similarly situated employees, largely by failing to accurately record
25 all time worked on their time records. This is in violation of the Labor Code.

26 56. Labor Code section 226 requires employers to furnish to employees with "an accurate
27 itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the
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1 employee, . . . (3) the number of piece-rate units earned and any applicable piece rate if the
2 employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on
3 written orders of the employee may be aggregated and shown as one item, (5) net wages earned,
4 (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee
5 and only the last four digits of his or her social security number or an employee identification
6 number other than a social security number, (8) the name and address of the legal entity that is the
7 employer . . . and (9) all applicable hourly rates in effect during the pay period and the
8 corresponding number of hours worked at each hourly rate by the employee” For the reasons
9 stated above, Defendants failed to comply with these requirements with respect to Plaintiff and
10 similarly situated employees in violation of the Labor Code.
11

12 57. Labor Code sections 510 and 1194 require employers to pay employees overtime for
13 any work in excess of eight (8) hours in one workday and any work in excess of forty (40) hours in
14 any one workweek. Employers must also pay overtime for the first eight (8) hours worked on the
15 seventh day of work in any one workweek. Finally, employers must pay double time for all hours
16 worked in excess of twelve (12) hours in any workday and for all hours worked in excess of eight
17 (8) hours on the seventh day of work in any one workweek. As stated above, Plaintiff and
18 similarly situated employees worked over eight (8) hours per day and forty (40) hours per week
19 and were not paid overtime wages. This is in violation of the Labor Code.
20

21 58. During the period Plaintiff and similarly situated employees were employed by
22 Defendants they were entitled to be paid at least the State’s minimum wage rate for each hour that
23 they worked. *See, e.g.*, IWC Wage Order MW-2014, MW-2017; IWC Wage Order No. 5-2001,
24 section (4); Cal. Lab. Code §§ 1194, 1197.1. For the reasons stated above, Defendants did not pay
25 Plaintiff and similarly situated employees at least minimum wage for all hours worked. Thus,
26 Plaintiff and similarly situated employees were not paid at least the applicable state minimum
27 wage for all hours worked in violation of the Labor Code. This is in violation of the Labor Code.
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59. Labor Code section 226.7 and IWC Wage Order No. 4-2001, section 11(A) require
employers to provide employees meal periods of thirty (30) minutes per five (5) hours worked. For

1 the reasons stated above, Plaintiff and similarly situated employees were not authorized and
2 permitted to take legally compliant meal periods pursuant to California law. Defendants also
3 failed to pay meal period premiums for their failure to provide meal periods. This is in violation of
4 the Labor Code.

5 60. Labor Code section 226.7 and IWC Wage Order No. 5-2001, section 12(A) require
6 employers to provide employees paid off-duty rest periods of ten (10) minutes per four (4) hours or
7 major fraction thereof worked. For the reasons stated above, Plaintiff and similarly situated
8 employees were not authorized and permitted to take legally compliant rest periods pursuant to
9 California law in violation of the Labor Code. Defendants also failed to pay rest period premiums
10 for their failure to provide rest periods. This is in violation of the Labor Code.

11 61. Pursuant to *Huff v. Securitas Sec. Servs. USA, Inc.*, 23 Cal. App. 5th 745, 761, 233 Cal.
12 Rptr. 3d 502, 513 (2018), Plaintiff seeks civil penalties on behalf of the State of California and all
13 aggrieved employees for all violations of the California Labor Code, whether he experienced them
14 personally or not.
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16 **DAMAGES**

17 WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

- 18 1. For civil penalties under the California Labor Code according to proof allowed by law;
19 2. For an award to Plaintiff of costs of suit incurred herein and reasonable attorney's
20 fees;
21 3. For injunctive relief;
22 4. For an award of prejudgment and post-judgment interest; and
23 5. For an award to Plaintiff of such other and further relief as the Court deems just and
24 proper.
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26 Dated: October __, 2020

27 **Castle Law: California Employment Counsel**

28 By: 

Timothy B. Del Castillo

Kent L. Bradbury
Attorneys for Plaintiff KENNETH TRONE

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