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

16 **MASSIEL LINNETH HERNANDEZ,**
17 individually, and on behalf of all others similarly
18 situated,

19 Plaintiff,

20 vs.

21 **SOHNEN ENTERPRISES, INC.,** a California
22 corporation; and DOES 1 through 10, inclusive,

23 Defendants

Case No.: 20STCV31629

**FIRST AMENDED REPRESENTATIVE
ACTION COMPLAINT:**

1. Civil Penalties Under PAGA [Cal. Lab.
Code § 2699, et seq.]

DEMAND FOR JURY TRIAL

**CONFIRMED COPY
ORIGINAL FILED**
Superior Court of California
County of Los Angeles

NOV 04 2020

Sherri R. Carter, Executive Officer/Clerk of Court
By Steven Drew, Deputy

1 Plaintiff Massiel Linneth Hernandez (“Plaintiff”), based upon facts that either have
2 evidentiary support or are likely to have evidentiary support after a reasonable opportunity for
3 further investigation and discovery, alleges as follows:

4 **INTRODUCTION & PRELIMINARY STATEMENT**

5 1. Plaintiff brings this action against Defendants Sohnen Enterprises, Inc., and Does 1
6 through 10 (Sohnen Enterprises, Inc., and Does 1 through 10 are collectively referred to as
7 “Defendants”) for civil penalties under the Private Attorneys General Act of 2004, California
8 Labor Code §§ 2698 *et seq.* (“PAGA”) stemming from Defendants’ failure to pay for all hours
9 worked (including minimum wages, straight time wages, and overtime wages), failure to
10 provide meal periods, failure to authorize and permit rest periods, failure to maintain accurate
11 records of hours worked and meal periods, failure to timely pay all wages to terminated
12 employees, and failure to furnish accurate wage statements.

13 2. For over 50 years, California’s courts and legislature have recognized that this
14 State’s wage-and-hour laws serve a compelling public interest of fostering a stable job market.
15 Wages are not ordinary debts. Because of the economic position of the average worker and
16 his or her family, it is essential to the public welfare that employers obey the wage-and-hour
17 laws so that employees are promptly paid the minimum/overtime wages that the Legislature
18 has required for employees. So fundamental are California’s wage-and-hour laws that the
19 Legislature has criminalized certain types of violations. In extending extra protection to deter
20 violations of these underlying statutes—since Plaintiff is not seeking general and/or special
21 damages, restitution or other damages other than civil penalties—California has enacted the
22 PAGA to permit an individual to bring an action on behalf of herself and on behalf of others
23 for PAGA penalties only, which is the precise and sole nature of this action.

24 3. All California employees during the relevant statutes of limitations who are or were
25 harmed by Defendant’s illegal practices are “Aggrieved Employees.”

26 4. Plaintiff brings this action against Defendants seeking only to recover penalties for
27 herself, on behalf of all Aggrieved Employees that worked for Defendants, and on behalf of
28 the State of California. Plaintiff does not seek to recover anything other than penalties as

1 permitted by California Labor Code Section 2699 at this time. To the extent that statutory
2 violations are mentioned for wage violations, Plaintiff does not seek underlying general and/or
3 special damages for those violations, but simply penalties as permitted by California Labor
4 Code Section 2699, declaratory relief, and injunctive relief for herself and all aggrieved
5 employees as permitted by the PAGA.

6 5. Defendants own/owned and operate/operated an industry, business, and
7 establishment within the State of California, including San Francisco County. As such, and
8 based upon all the facts and circumstances incident to Defendants' business in California,
9 Defendants are subject to the California Labor Code, Wage Orders issued by the Industrial
10 Welfare Commission ("IWC"), and the California Business & Professions Code.

11 6. Despite these requirements, throughout the statutory period Defendants maintained
12 a systematic, company-wide policy and practice of:

- 13 (a) Failing to pay employees for all hours worked, including all minimum
14 wages, straight time wages, and overtime wages in compliance with the
15 California Labor Code and IWC Wage Orders;
- 16 (b) Failing to provide employees with timely and duty-free meal periods in
17 compliance with the California Labor Code and IWC Wage Orders, failing
18 to maintain accurate records of all meal periods taken or missed, and
19 failing to pay an additional hour's pay for each workday a meal period
20 violation occurred;
- 21 (c) Failing to authorize and permit employees to take timely and duty-free rest
22 periods in compliance with the California Labor Code and IWC Wage
23 Orders, and failing to pay an additional hour's pay for each workday a rest
24 period violation occurred;
- 25 (d) Failing to maintain accurate records of the hours employees worked;
- 26 (e) Willfully failing to pay employees all meal period, rest period, minimum
27 wages, straight time wages, and overtime wages due within the time period
28 specified by California law when employment terminates; and

(f) Failing to provide employees with accurate, itemized wage statements containing all the information required by the California Labor Code and IWC Wage Orders.

7. On information and belief, Defendants, and each of them were on actual and constructive notice of the improprieties alleged herein and intentionally refused to rectify their unlawful policies. Defendants' violations, as alleged above, during all relevant times herein were willful and deliberate.

8. At all relevant times, Defendants were and are legally responsible for all of the unlawful conduct, policies, practices, acts and omissions as described in each and all of the foregoing paragraphs as the employer of Plaintiff and the Aggrieved Employees. Further, Defendants are responsible for each of the unlawful acts or omissions complained of herein under the doctrine of "respondeat superior".

THE PARTIES

A. Plaintiff

9. Plaintiff is a California resident who worked for Defendants in Los Angeles County, California as a product handler from 2015 to August 2020.

10. Plaintiff reserves the right to seek leave to amend this complaint to add new plaintiffs, if necessary, in order to establish suitable representative(s) pursuant to *La Sala v. American Savings and Loan Association* (1971) 5 Cal.3d 864, 872, and other applicable law.

B. Defendants

11. Plaintiff is informed and believes, and based upon that information and belief alleges, that Defendants Sohnen Enterprises, Inc. is:

- (a) A California corporation with its principal places of business in Los Angeles, California.
- (b) A business entity conducting business in numerous counties throughout the State of California, including in Los Angeles County; and
- (c) The former employer of Plaintiff, and the current and/or former employer of the putative Class. Sohnen Enterprises, Inc. suffered and permitted

1 Plaintiff and the Class to work, and/or controlled their wages, hours, or
2 working conditions.

3 12. Plaintiff does not currently know the true names or capacities of the persons or
4 entities sued herein as Does 1-10, inclusive, and therefore sues said Defendants by such
5 fictitious names. Each of the Doe Defendants was in some manner legally responsible for the
6 damages suffered by Plaintiff and the Class as alleged herein. Plaintiff will amend this
7 complaint to set forth the true names and capacities of these Defendants when they have been
8 ascertained, together with appropriate charging allegations, as may be necessary.

9 13. At all times mentioned herein, the Defendants named as Does 1-10, inclusive, and
10 each of them, were residents of, doing business in, availed themselves of the jurisdiction of,
11 and/or injured a significant number of the Plaintiff and the Class in the State of California.

12 14. Plaintiff is informed and believes and thereon alleges that at all relevant times each
13 Defendant, directly or indirectly, or through agents or other persons, employed Plaintiff and
14 the other employees described in the class definitions below, and exercised control over their
15 wages, hours, and working conditions. Plaintiff is informed and believes and thereon alleges
16 that, at all relevant times, each Defendant was the principal, agent, partner, joint venturer,
17 officer, director, controlling shareholder, subsidiary, affiliate, parent corporation, successor in
18 interest and/or predecessor in interest of some or all of the other Defendants, and was engaged
19 with some or all of the other Defendants in a joint enterprise for profit, and bore such other
20 relationships to some or all of the other Defendants so as to be liable for their conduct with
21 respect to the matters alleged below. Plaintiff is informed and believes and thereon alleges
22 that each Defendant acted pursuant to and within the scope of the relationships alleged above,
23 that each Defendant knew or should have known about, and authorized, ratified, adopted,
24 approved, controlled, aided and abetted the conduct of all other Defendants.

25 **ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

26 15. Plaintiff Vicente Villa is a California resident who worked for Defendants in the
27 County of Los Angeles, State of California, as a yard worker from approximately January
28 2019 to August 2019. At all times Defendants classified Plaintiff as non-exempt from

1 California's overtime requirements. During the statutory period, Plaintiff typically worked 5
2 days each workweek, and typically in excess of 8 hours each workday.

3 16. Throughout Plaintiff's employment, Defendants committed numerous labor code
4 violations under state law. As discussed below, Plaintiff's experience working for Defendants
5 was typical and illustrative.

6 17. Throughout the statutory period, Defendants failed to pay Plaintiff for all hours
7 worked (including minimum wages, straight time wages, and overtime wages), failed to
8 provide Plaintiff with uninterrupted meal periods, failed to authorize and permit Plaintiff to
9 take uninterrupted rest periods, failed to timely pay all final wages to Plaintiff when
10 Defendants terminated Plaintiff's employment, and failed to furnish accurate wage statements
11 to Plaintiff. As discussed below, Plaintiff's experience working for Defendants was typical
12 and illustrative.

13 18. Throughout the statutory period, Defendants maintained a policy and practice of
14 not paying Plaintiff and the Aggrieved Employees for all hours worked, including all overtime
15 wages. Defendants regularly use a system of time rounding in a manner that resulted, over a
16 period of time, in failing to compensate Plaintiff and the Aggrieved Employees properly for all
17 the time they have actually worked, even though the realities of Defendants' operations are
18 such that it is possible, practical, and feasible to count and pay for work time to the minute.
19 Additionally throughout the statutory period, Defendants required Plaintiff and the Aggrieved
20 Employees to work "off the clock". For example, Plaintiff and the Aggrieved Employees
21 were required to wait in line each workday in order to clock into work, and when returning
22 from meal periods. This included being required to go through security checks and metal
23 detectors. While waiting in line and while going through security and metal detectors,
24 Plaintiff and the Aggrieved Employees were not paid any wages. As a result, Plaintiff and the
25 Aggrieved Employees were regularly underpaid wages. Also throughout the statutory period,
26 Defendants maintained a policy and practice of failing to pay Plaintiff and the Aggrieved
27 Employees the correct amount of overtime pay in compliance with California law. For
28 example, Plaintiff and the Aggrieved Employees earned non-discretionary bonuses, but

1 Defendants failed to incorporate these non-discretionary bonuses when calculating the regular
2 rate of pay for overtime purposes. Finally, Plaintiff and the Aggrieved Employees were
3 subjected to temperature checks prior to clocking into work each day, uncompensated. In
4 maintaining a practice of not paying all wages owed, Defendants failed to maintain accurate
5 records of the hours Plaintiff and the Aggrieved Employees worked. As a result, Defendants
6 frequently paid Plaintiff and the Aggrieved Employees less than all their work time, some of
7 which should have been paid at the overtime rate.

8 19. Throughout the statutory period, Defendants have wrongfully failed to provide
9 Plaintiff and the Aggrieved Employees with legally compliant meal periods. Defendants
10 regularly, but not always, required Plaintiff and the Aggrieved Employees to work in excess of
11 five consecutive hours a day without providing 30-minute, continuous and uninterrupted,
12 duty-free meal period for every five hours of work, or without compensating Plaintiff and the
13 Aggrieved Employees for meal periods that were not provided by the end of the fifth hour of
14 work or tenth hour of work. Defendants also did not adequately inform Plaintiff and the
15 Aggrieved Employees of their right to take a meal period by the end of the fifth hour of work,
16 or, for shifts greater than 10 hours, by the end of the tenth hour of work. Further, Defendants
17 maintained a practice and policy of automatically deducting 30 minutes for meal periods at a
18 specific time each workday, regardless of when the meal period was taken and regardless of
19 how long the meal period was. Moreover, Defendants did not have adequate written policies
20 or practices providing meal periods for Plaintiff and the Aggrieved Employees, nor did
21 Defendants have adequate policies or practices regarding the timing of meal periods.
22 Accordingly, Defendants' policy and practice was to not provide meal periods to Plaintiff and
23 the Aggrieved Employees in compliance with California law.

24 20. Throughout the statutory period, Defendants have wrongfully failed to authorize
25 and permit Plaintiff and the Aggrieved Employees to take timely and duty-free rest periods.
26 Defendants regularly, but not always, required Plaintiff and the Aggrieved Employees to work
27 in excess of four consecutive hours a day without Defendants authorizing and permitting them
28 to take a 10-minute, continuous and uninterrupted, rest period for every four hours of work (or

1 major fraction of four hours), or without compensating Plaintiff and the Aggrieved Employees
2 for rest periods that were not authorized or permitted. Indeed, Defendants required Plaintiff
3 and the Aggrieved Employees to work in lieu of taking 10-minute, paid, duty-free rest periods
4 because there was too much work to do. Defendants also did not adequately inform Plaintiff
5 and the Aggrieved Employees of their right to take a rest period. Moreover, Defendants did
6 not have adequate policies or practices permitting or authorizing rest periods for Plaintiff and
7 the Aggrieved Employees, nor did Defendants have adequate policies or practices regarding
8 the timing of rest periods. Defendants also did not have adequate policies or practices to
9 verify whether Plaintiff and the Aggrieved Employees were taking their required rest periods.
10 Further, Defendants did not maintain accurate records of employee work periods, and
11 therefore Defendants cannot demonstrate that Plaintiff and the Aggrieved Employees took rest
12 periods during the middle of each work period. Accordingly, Defendants' policy and practice
13 was to not authorize and permit Plaintiff and the Aggrieved Employees to take rest periods in
14 compliance with California law.

15 21. Throughout the statutory period, Defendants willfully failed and refused to timely
16 pay Plaintiff and the Aggrieved Employees at the conclusion of their employment all wages
17 for all minimum wages, straight time wages, overtime wages, meal period premium wages,
18 and rest period premium wages.

19 22. Throughout the statutory period, Defendants failed to furnish Plaintiff and the
20 Aggrieved Employees with accurate, itemized wage statements showing all applicable hourly
21 rates, and all gross and net wages earned (including correct hours worked, correct wages
22 earned for hours worked, correct overtime hours worked, correct wages for meal periods that
23 were not provided in accordance with California law, correct wages for rest periods that were
24 not authorized and permitted to take in accordance with California law, and Defendant's
25 address). As a result of these violations of California Labor Code § 226(a), the Plaintiff and
26 the Aggrieved Employees suffered injury because, among other things:

- 27 (a) the violations led them to believe that they were not entitled to be paid
28 minimum wages, overtime wages, meal period premium wages, and rest

1 period premium wages to which they were entitled, even though they were
2 entitled;

3 (b) the violations led them to believe that they had been paid the minimum,
4 overtime, meal period premium, and rest period premium wages, even
5 though they had not been;

6 (c) the violations led them to believe they were not entitled to be paid
7 minimum, overtime, meal period premium, and rest period premium wages
8 at the correct California rate even though they were;

9 (d) the violations led them to believe they had been paid minimum, overtime,
10 meal period premium, and rest period premium wages at the correct
11 California rate even though they had not been;

12 (e) the violations hindered them from determining the amounts of minimum,
13 overtime, meal period premium, and rest period premium owed to them;

14 (f) in connection with their employment before and during this action, and in
15 connection with prosecuting this action, the violations caused them to have
16 to perform mathematical computations to determine the amounts of wages
17 owed to them, computations they would not have to make if the wage
18 statements contained the required accurate information;

19 (g) by understating the wages truly due them, the violations caused them to
20 lose entitlement and/or accrual of the full amount of Social Security,
21 disability, unemployment, and other governmental benefits;

22 (h) the wage statements inaccurately understated the wages, hours, and wages
23 rates to which Plaintiff and the Aggrieved Employees were entitled, and
24 Plaintiff and the Aggrieved Employees were paid less than the wages and
25 wage rates to which they were entitled.

26 Thus, Plaintiff and the Aggrieved Employees are owed the amounts provided for in California
27 Labor Code § 226(e).
28

1 **FIRST CAUSE OF ACTION**

2 **(Against all Defendants for Civil Penalties Under the Private Attorneys General Act of**
3 **2004, Cal. Lab. Code § 2698 et seq.)**

4 23. Plaintiff incorporates by reference and re-alleges all preceding paragraphs as
5 though fully set forth herein.

6 24. At all times herein mentioned, Defendants were subject to the Labor Code of the
7 State of California and the applicable Industrial Welfare Commission Orders.

8 25. California Labor Code § 2699(a) specifically provides for a private right of action
9 to recover penalties for violations of the Labor Code: “Notwithstanding any other provision of
10 law, any provision of this code that provides for a civil penalty to be assessed and collected by
11 the Labor and Workforce Development Agency or any of its departments, divisions,
12 commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative,
13 be recovered through a civil action brought by an aggrieved employee on behalf of himself or
14 herself and other current or former employees pursuant to the procedures specified in Section
15 2699.3.”

16 26. Plaintiff has exhausted her administrative remedies pursuant to California Labor
17 Code § 2699.3. On August 14, 2020, she gave written notice by online filing to the Labor and
18 Workforce Development Agency and by certified mail to Defendants of the specific provisions
19 of the Labor Code that Defendants have violated against Plaintiff and current and former
20 aggrieved employees, including the facts and theories to support the violations. Plaintiff also
21 paid the filing fee shortly after August 14, 2020. Plaintiff’s PAGA case number is LWDA-CM-
22 802640-20.

23 27. The statute of limitations is tolled while a plaintiff exhausts her administrative
24 remedies with California’s Labor and Workforce Development Agency (LWDA) prior to suit,
25 which is required by the statute. (*See* Cal. Lab. Code § 2699.3(d).)

26 28. More than 65 days has elapsed since Plaintiff provided notice, but the Labor and
27 Workforce Development Agency has not indicated that it intends to investigate Defendants’
28 Labor Code violations discussed in the notice. Accordingly, Plaintiff may commence a civil

1 action to recover penalties under Labor Code § 2699 pursuant to § 2699.3 for the violations of
2 the Labor Code described in this Complaint. These penalties include, but are not limited to,
3 penalties under California Labor Code §§ 210, 226.3, 1197.1, and 2699(f)(2).

4 29. In addition, Plaintiff seeks penalties for Defendants' violation of California Labor
5 Code § 1174(d). Pursuant to California Labor Code § 1174.5, any person, including any entity,
6 employing labor who willfully fails to maintain accurate and complete records required by
7 California Labor Code § 1174 is subject to a penalty under § 1174.5. Pursuant to the applicable
8 IWC Order § 7(A)(3), every employer shall keep time records showing when the employee
9 begins and ends each work period. Meal periods, and total hours worked daily shall also be
10 recorded. Additionally, pursuant to the applicable IWC Order § 7(A)(5), every employer shall
11 keep total hours worked in the payroll period and applicable rates of pay.

12 30. During the time period of employment for Plaintiff and the Aggrieved Employees,
13 Defendants failed to maintain records pursuant to the Labor Code and IWC Orders by failing to
14 maintain accurate records showing meal periods, and accurate records showing when employees
15 begin and end each work period. Defendants' failure to provide and maintain records required by
16 the Labor Code IWC Wage Orders deprived Plaintiff and the Aggrieved Employees the ability to
17 know, understand and question the accuracy and frequency of meal periods, and the accuracy of
18 their hours worked stated in Defendants' records. Therefore, Plaintiff and the Aggrieved
19 Employees had no way to dispute the resulting failure to pay wages, all of which resulted in an
20 unjustified economic enrichment to Defendants. As a direct result, Plaintiff and the Aggrieved
21 Employees have suffered and continue to suffer, substantial losses related to the use and
22 enjoyment of such wages, lost interest on such wages and expenses and attorney's fees in seeking
23 to compel Defendants to fully perform its obligation under state law, all to their respective
24 damage in amounts according to proof at trial. Because of Defendants' knowing failure to
25 comply with the Labor Code and applicable IWC Wage Orders, Plaintiff and the Aggrieved
26 Employees have also suffered an injury in that they were prevented from knowing,
27 understanding, and disputing the wage payments paid to them.

28 31. Based on the conduct described in this Complaint, Plaintiff is entitled to an award

1 of civil penalties on behalf of herself, the State of California, and similarly Aggrieved Employees
2 of Defendants. The exact amount of the applicable penalties, in all, is in an amount to be shown
3 according to proof at trial. These penalties are in addition to all other remedies permitted by law.

4 32. In addition, Plaintiff seeks an award of reasonable attorney's fees and costs
5 pursuant to Labor Code § 2699(g)(1), which states, "Any employee who prevails in any action
6 shall be entitled to an award of reasonable attorney's fees and costs."

7 **PRAYER FOR RELIEF**

8 Plaintiff, on behalf of all similarly aggrieved employees, prays for relief and judgment
9 against Defendants, jointly and severally, as follows:

10 1. That the Court declare, adjudge and decree that Defendants violated the California
11 Labor Code by failing to pay wages for all hours worked (including minimum, straight time, and
12 overtime wages), failing to provide meal periods, failing to authorize and permit rest periods,
13 failing to furnish accurate wage statements, and failing to maintain accurate records of all hours
14 worked and meal periods;

15 2. An award of civil penalties on behalf of herself and all similarly aggrieved
16 employees pursuant to PAGA;

17 3. Pre-judgment and post-judgment interest at the maximum rate allowed;

18 4. Attorneys' fees and costs reasonably incurred;

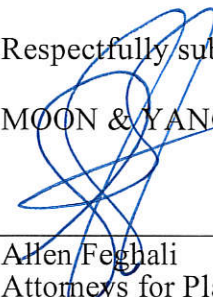
19 5. Injunctive and declaratory relief to the extent allowed by PAGA; and

20 6. Such other and further relief that the Court deems proper.

21
22 Dated: November 3, 2020

Respectfully submitted,

MOON & YANG, APC

23
24
25 By: 

Allen Feghali
Attorneys for Plaintiff

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury as to all causes of action triable by jury.

Dated: November 3, 2020

MOON & YANG, APC

By: 

Allen Feghali
Attorneys for Plaintiff

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA)
3) ss
4 COUNTY OF LOS ANGELES)

5 I am employed in the county of Los Angeles, State of California. I am over the age of
6 18 and not a party to the within action; my business address is 1055 West Seventh Street,
Suite 1880, Los Angeles, California 90017. On November 3, 2020, I served the foregoing
document described as:

7 **FIRST AMENDED REPRESENTATIVE ACTION COMPLAINT**

8 X by placing ___ the original X a true copy thereof enclosed in sealed envelope(s)
9 addressed as follows:

10 Gregory D. Wolflick, Esq.
Theodore S. Khachaturian, Esq.
11 WOLFLICK, KHACHATURIAN & BOUAYAD, APC
130 N. Brand Boulevard, Suite 410
12 Glendale, California 91203

13 *Attorney for Defendant Sohnen Enterprises, Inc.*

14 [X] **BY ELECTRONIC SERVICE:** Based on a court order or an agreement of the parties to
15 accept electronic service, I caused the documents to be sent to the persons at the
16 electronic service addresses listed above via third-party cloud service
CASEANYWHERE. I did not receive an error message.

17 X (State) I declare under penalty of perjury under the laws of the State of
18 California that the above is true and correct.

19 Executed on November 3, 2020, at Los Angeles, California.

20
21 Ivette Hernandez
22 Name

21 /s/ Ivette Hernandez
22 Signature