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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF KINGS

ELIZABETH MCSORLEY,

Case No.: 20C-0354

Plaintiff,

COMPLAINT FOR PENALTIES FOR

vs.

1. VIOLATIONS OF LABOR CODE § 2698
ET SEQ. (PAGA)

MCCORMICK BARSTOW LLP and
DOES 1-10, inclusive,

Defendants.

Plaintiff Elizabeth McSorley ("McSorley") brings this action against Defendant McCormick Barstow LLP ("McCormick") and Does 1-10, inclusive as referred to herein, as a proxy of the California Labor and Workforce Development Agency ("LWDA") under the California Labor Code Private Attorneys General Act of 2004 ("PAGA") for civil penalties on behalf of herself and current and other former employees of McCormick, as well as statutory attorneys' fees and costs. As grounds McSorley therefore alleges:

PARTIES

1. McSorley is and was at all times relevant herein an individual and a resident of Kings County, California.

2. McCormick is and was at all times relevant herein a California limited liability partnership.

3. McCormick and Does 1-10 are collectively referred to as Defendants.

4. McSorley is not aware of the true names and capacities of the defendants sued herein as Does 1-10, whether individual, corporate, associate, or otherwise, and, therefore, sues such defendants by these fictitious names. McSorley will amend this complaint to allege their true names and capacities when ascertained. McSorley is informed and believes, and on that basis alleges, that each of the fictitiously named defendants is responsible in some manner for the occurrences herein alleged and that the violations alleged herein were caused by such defendants. Unless otherwise indicated, each defendant was acting within the course and scope of said agency and/or employment, with the knowledge and/or consent of said co-defendant.

VENUE

5. Venue is proper in this Court because unlawful acts as to McSorley alleged herein occurred in Kings County.

PAGA ALLEGATIONS

6. McSorley was employed by McCormick in California within the last year, in an hourly, non-exempt position.

7. Within the relevant time period, including within the past year, and in accordance with a uniform, statewide policy throughout California as to all of its current and former California employees, McCormick failed to indemnify its California employees, both exempt and non-exempt, including McSorley, from her home in Kings County, for all necessary expenditures or losses incurred in direct consequence of the discharge of their duties, including, for instance, cell phones, cell phone service, internet service, in violation of Labor Code § 2802. For instance, while the majority of its California workforce has been working remotely, from home, necessarily incurring expenses in direct consequence of the discharge of their job duties primarily in the form of personal phone, computer, and internet usage, McCormick has failed to indemnify these employees, current and former, including McSorley, for these necessary expenditures, in violation of Labor Code § 2802.

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1 8. Also within the relevant time period, including within the past year, and in
2 accordance with a uniform, statewide policy throughout California as to current and former non-
3 exempt California employees, including McSorley, McCormick intentionally and regularly failed
4 to pay these individuals for all hours worked, in violation of Labor Code § 218.5. McCormick,
5 aware through its management and partners that its non-exempt California employees are working
6 hours “off the clock,” i.e., beyond the hours recorded in its timekeeping system, but had not
7 compensated these individuals for the additional time, in violation of Labor Code § 218.5. These
8 failures also constitute minimum wage violations, in violation of Labor Code §§ 558, 1182.12,
9 1194, 1194.2, and 1197, because McCormick has effectively compensated these individuals at an
10 hourly rate of \$0, far less than the minimum wage, for the additional time. Some of these failures
11 also constitute overtime violations, in violation of Labor Code §§ 510, 558, 1194, and 1198,
12 because some of the uncompensated additional time should have been paid at overtime hourly
13 rates, because some of the time was performed in excess of 40 hours in a workweek and/or 8 hours
14 in a workday, and/or was performed on the seventh consecutive day of work in a workweek.

15 9. Also within the relevant time period, including within the past year, and in
16 accordance with a uniform, statewide policy throughout California as to current and former non-
17 exempt California employees, including McSorley, as a result of the violations of Labor Code §§
18 218.5, 510, 558, 1182.12, 1194, 1194.2, 1197, and 1198 set forth above, McCormick has failed to
19 pay non-exempt California employees, current and former, including McSorley, in a timely
20 manner, in violation of Labor Code § 204. To be clear: McCormick has failed to compensate these
21 individuals for the additional “off the clock” time relating to pay periods that have long since
22 passed (i.e., later than the timely payday for regular wages and later than payday for the next
23 regular payroll period following the payroll period in which any of the additional time constituted
24 overtime hours).

25 10. Also within the relevant time period, including within the past year, and in
26 accordance with a uniform, statewide policy throughout California as to former non-exempt
27 California employees, including McSorley, and again as a result of the violations of Labor Code §§
28 218.5, 510, 558, 1182.12, 1194, 1194.2, 1197, and 1198 set forth above, McCormick failed to pay

1 former California non-exempt employees all wages due immediately at the time of discharge,
2 including McSorley, in violation of Labor Code §§ 201, 203, and 256, and within 72 hours to those
3 who resigned employment, in violation of Labor Code §§ 202, 203, and 256, because McCormick
4 has not compensated these individuals for the additional “off the clock” time either immediately
5 upon termination or more than 72 hours for those who resigned employment. In fact, McCormick
6 has, to date, failed to compensate these former employees for the additional time.

7 11. Also within the relevant time period, including within the past year, and in
8 accordance with a uniform, statewide policy throughout California as to current and former non-
9 exempt California employees, including McSorley, as a result of the violations of Labor Code §§
10 218.5, 510, 558, 1182.12, 1194, 1194.2, 1197, and 1198 set forth above, McCormick has failed to
11 furnish complete and accurate wage statements to non-exempt California employees, current and
12 former, including McSorley, whom it failed to properly compensate for additional “off the clock”
13 time, in violation of Labor Code § 226(a), because the wage statements in relation to pay periods in
14 which the individuals performed and should have been paid for the additional time fail to show the
15 **actual** gross wages earned, in violation of Labor Code § 226(a)(1); the **actual** total hours worked,
16 in violation of Labor Code § 226(a)(2); the **actual** net wages earned, in violation of Labor Code §
17 226(a)(5); and the **actual** applicable hourly rates in effect during the pay period and the
18 corresponding number of hours worked at each hourly rate, in violation of Labor Code § 226(a)(9).

19 12. Also within the relevant time period, including within the past year, and in
20 accordance with a uniform, statewide policy throughout California as to current and former non-
21 exempt California employees, including McSorley, McCormick, having actual knowledge and
22 constructive knowledge, knowing that their work schedules and duties would do not allow for such
23 breaks, intentionally and regularly failed to provide all 10-minute rest breaks to its current and
24 former non-exempt California employees, including McSorley, for every 4 hours they worked, in
25 violation of Labor Code §§ 226.7 and 512.

26 13. Also within the relevant time period, including within the past year, and in
27 accordance with a uniform, statewide policy throughout California as to current and former non-
28 exempt California employees, including McSorley, McCormick, again, having actual knowledge

1 and constructive knowledge, knowing that their work schedules and duties would do not allow for
2 such breaks, intentionally and regularly employed its current and former non-exempt California
3 employees, including McSorley, for work periods of more than 5 hours per day without providing
4 them with a meal period of not less than 30 minutes and for work periods of more than 10 hours
5 without a second 30-minute meal break, in violation of Labor Code §§ 226.7 and 512.

6 14. Pursuant to the provisions of Labor Code § 2699.3, an aggrieved employee may
7 pursue a civil action arising under PAGA after the following requirements have been met:

- 8 a. The aggrieved employee shall give written notice by certified mail to the
9 LWDA and the employer (hereinafter “Employee’s Notice”) of the specific
10 provisions of the Labor Code alleged to have been violated, including the
11 facts and theories to support the alleged violations;
- 12 b. The LWDA shall provide notice (hereinafter “LWDA’s Notice”) to the
13 employer and the aggrieved employee by certified mail that it does not
14 intend to investigate the alleged violation within 60 calendar days of the
15 postmark date of the Employee’s Notice. Upon receipt of the LWDA’s
16 Notice, or if the LWDA does not provide notice within 65 calendar days of
17 the postmark date of the Employee’s Notice, the aggrieved employee may
18 commence a civil action pursuant to Labor § 2699 to recover civil penalties
19 in addition to any other penalties to which the employee may be entitled.

20 15. On September 9, 2020, McSorley provided written notice by online submission to
21 the LWDA and by certified mail to McCormick of its violations of the Labor Code set forth herein,
22 including the facts and theories to support the alleged violations. As of the filing of this complaint,
23 more than 65 days have passed without the LWDA providing written notice that it intends to
24 investigate the allegations in September 9, 2020 notice. Accordingly, McSorley has satisfied the
25 administrative prerequisites under Labor Code § 2699.3 to bring a civil action to recover penalties
26 against McCormick under PAGA.

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FIRST CAUSE OF ACTION
VIOLATIONS OF LABOR CODE § 2698 *ET SEQ.*
(PAGA)
Against Defendants

16. McSorley hereby realleges and incorporates by reference each and every allegation set forth above as though fully set forth herein, except as said paragraphs are inconsistent with the allegations of this cause of action.

17. As set forth above, Defendants violated Labor Code § 201, 203, 204, 218.5, 226, 226.7, 256, 510, 512, 558, 1182.12, 1194, 1194.2, 1197, 1198, 2802.

18. Wherefore, McSorley seeks civil penalties under PAGA.

PRAYER FOR RELIEF

WHEREFORE, McSorley prays judgment against Defendants as follows:

1. For civil penalties recoverable under PAGA, including but not limited to those available under Labor Code §§ 226.3 and 2699(f); and
2. For statutory attorneys' fees and costs, including but not limited to those available under Code of Civil Procedure § 1021.5 and Labor Code § 2699(g);
3. For prejudgment and post-judgment interest according to any applicable provision of law or as otherwise permitted by law, including those available under Civil Code §§ 3287(a) and 3289(b); and
4. For such other and further relief as the court deems just and proper.

DATED: December 11, 2020

MAYALL HURLEY P.C.

By _____



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ELIZABETH MCSORLEY