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14 *and Aggrieved Employees*

15 **SUPERIOR COURT OF CALIFORNIA**

16 **COUNTY OF SACRAMENTO**

17 DELILAH SANDOVAL, on behalf of the State
18 of California and Aggrieved Employees,

19 *Plaintiff,*

20 v.

21 PILOT TRAVEL CENTERS LLC d/b/a PILOT
22 FLYING J,

23 *Defendant.*

FILED/ENDORSE

DEC 11 2020

By: K. Johnson
Deputy Clerk

Case No.:

84E2020-0029057 1

**COMPLAINT FOR PENALTIES
PURSUANT TO SECTIONS 2699(a) and (f)
OF THE CALIFORNIA LABOR CODE
PRIVATE ATTORNEYS GENERAL ACT
AND DEMAND FOR JURY TRIAL**

1 Plaintiff Delilah Sandoval (“Plaintiff”), on behalf of the State of California and Aggrieved
2 Employees, complain and allege as follows:

3 **INTRODUCTION**

4 1. Plaintiff, individually and on behalf the State of California and the Aggrieved
5 Employees, brings this enforcement action against Defendant Pilot Travel Centers LLC d/b/a Pilot
6 Flying J (“PFJ” or “Defendant”) on behalf of individuals who have worked for Defendant as non-
7 exempt hourly employees and have been subject to Defendant’s systematic violations of California
8 labor law with respect to Defendant’s current and former non-exempt employees who worked in
9 California (the “Aggrieved Employees”). Throughout the relevant time period, Plaintiff and Aggrieved
10 Employees have been denied proper payment for all hours worked, minimum wages, overtime wages,
11 and compliant meal and rest periods pursuant to California law. Furthermore, throughout the relevant
12 time period, Defendant has failed to provide Plaintiff and Aggrieved Employees timely and compliant
13 wage statements, and has failed to pay all wages owed after separation of employment to Plaintiff and
14 Aggrieved Employees, pursuant to California law.

15 2. Defendant maintains a longstanding policy and/or practice of failing to properly
16 compensate non-exempt employees for work performed while “off-the-clock,” including but not
17 limited to post-shift work, where employees are directed to continue performing work and work-
18 related tasks such as preparation work and cleaning. For example Plaintiff was instructed to clock out
19 at the end of her shift and to continue working to wash dishes and complete other kitchen preparation.
20 Defendant also maintains a longstanding policy and/or practice of discounting all hours work,
21 specifically to keep hours worked under 50 per week. Defendant also denies Plaintiff and Aggrieved
22 Employees proper meal and rest periods that comply with California law.

23 3. Plaintiff and Aggrieved Employees bring this action to challenge Defendant’s policies
24 and practices of (1) failing to pay Plaintiff and Aggrieved Employees all minimum wages owed; (2)
25 failing to pay Plaintiff and Aggrieved Employees overtime wages; (3) failing to compensate Plaintiff
26 and Aggrieved Employees for all hours worked; (4) failing to authorize and permit Plaintiff and
27 Aggrieved Employees to take meal and rest breaks to which they are entitled by law and failing to
28 make premium payments for those missed meal and rest breaks; (5) failing to provide Plaintiff and

1 Aggrieved Employees accurate, itemized wage statements; and (6) failing to timely pay Plaintiff and
2 Aggrieved Employees full wages upon termination or resignation.

3 4. Plaintiff and Aggrieved Employees seek penalties under the Labor Code Private
4 Attorneys General Act of 2004 ("PAGA").

5 **JURISDICTION AND VENUE**

6 5. This Court has jurisdiction over Plaintiff's claims for penalties pursuant to the PAGA.
7 The Court also has jurisdiction over Defendant because Defendant does business in the State of
8 California and is registered with the California Secretary of State.

9 6. Venue is proper in this judicial district pursuant to Code of Civil Procedure §§ 393
10 and/or 395.5. Defendant conducts business in this County, employs Aggrieved Employees in this
11 County, has jobsites in this County, and therefore liability, as well as the cause, or some part of the
12 cause, arose in this County.

13 **PARTIES**

14 7. Plaintiff Delilah Sandoval is an individual over the age of eighteen, and at all times
15 relevant to this Complaint was a resident of the State of California, County of San Bernardino.
16 Plaintiff Delilah Sandoval was employed as a deli worker for Defendant at PFJ locations in Fontana,
17 California, and Mira Loma, California, from Approximately January 23, 2020 to August 9, 2020.

18 8. Plaintiff is informed, believes, and thereon alleges that Defendant is a Delaware limited
19 liability company doing business in the State of California, with its principal office located in
20 Knoxville, Tennessee. Defendant may be served with process by serving its registered agent, C T
21 Corporation System, 818 West Seventh Street, Suite 930, Los Angeles, California 90017.

22 9. Plaintiff is informed and believes that each and every one of the acts and omissions
23 alleged herein were performed by, and/or attributable to, Defendant, acting through its agents and/or
24 employees, and/or under the direction and control of each of the other, and that said acts and failures
25 to act were within the course and scope of said agency, employment and/or direction and control.

26 10. Plaintiff is informed, believes, and thereon alleges that Defendant directly controls the
27 operations of its agents, managers, and employees throughout all of its stores in California.

28 11. At all material times, Defendant has done business under the laws of California, has

1 had places of business in California, including in this County, and has employed Aggrieved Employees
2 in this County and elsewhere in California. Defendant is a “person” as defined in Labor Code § 18,
3 and an “employer” as that term is used in the Labor Code and the IWC Wage Orders regulating wages,
4 hours, and working conditions.

5 12. Defendant employs Aggrieved Employees, because Defendant, directly or indirectly,
6 controls the employment terms, pay practices, timekeeping practices, and daily work of Plaintiff and
7 similarly situated employees.

8 **FACTUAL ALLEGATIONS**

9 13. Defendant operates a chain of truck stops, providing fuel and quick service restaurants
10 throughout the United States and California. Defendant employs thousands of hourly non-exempt
11 workers similarly situated to Plaintiff across its facilities throughout the State of California.

12 14. Plaintiff Delilah Sandoval worked as a deli worker for Defendant from approximately
13 January 23, 2020 to August 9, 2020. On average, Plaintiff Delilah Sandoval was paid at an hourly rate
14 of approximately \$13.50, and regularly worked in excess of eight hours a day and, on average, 40
15 hours per week. On average, Plaintiff Delilah Sandoval worked more than 8 hours per shift one to
16 three times per week, every week worked.

17 15. Aggrieved Employees were and are employed by Defendant and performed work
18 materially similar to Plaintiff throughout California, including in this County.

19 16. Aggrieved Employees perform their jobs under Defendant’s supervision and using
20 materials and technology approved and supplied by Defendant.

21 17. Aggrieved Employees are required to follow and abide by common work, time, and
22 pay policies and procedures in the performance of their jobs.

23 18. At the end of each pay period, Aggrieved Employees receive wages from Defendant
24 that are determined by common systems and methods that Defendant selects and controls.

25 19. Defendant pays Aggrieved Employees on an hourly rate basis.

26 20. As a matter of policy and or/practice, Defendant fails to authorize and/or permit
27 Plaintiff and Aggrieved Employees to take compliant meal and rest breaks by requiring them to remain
28 on duty at all times during their scheduled shifts, including while taking a meal or rest break. Plaintiff

1 is informed, believes, and thereon alleges that this policy and practice applies to all Aggrieved
2 Employees throughout California. Moreover, Defendant fails to pay Plaintiff and Aggrieved
3 Employees premium wages for their missed breaks.

4 21. In addition to working through their meal and rest breaks, Plaintiff and Aggrieved
5 Employees perform work while “off-the-clock” with Defendant’s knowledge, and are denied
6 compensation for the time spent engaged in this off-the-clock work. Nearly every day, Plaintiff Delilah
7 Sandoval was required to continue working after each shift, and after clocking out. Furthermore,
8 Defendant regularly altered Plaintiff’s time records to reduce the number of hours Plaintiff worked in
9 order to keep the total hours paid under 50 per week. Plaintiff is informed, believe, and thereon alleges
10 that these policies and practices apply to all Aggrieved Employees throughout California.

11 22. As a result of this off-the-clock work, Plaintiff and Aggrieved Employees are not
12 adequately compensated for all hours worked at their regular rate or at the applicable overtime rates.

13 23. Defendant’s common course of wage-and-hour abuse includes routinely failing to
14 maintain true and accurate records of the hours worked by Aggrieved Employees. In particular,
15 Defendant has failed to record hours that Plaintiff and Aggrieved Employees worked off the clock.

16 24. Defendant’s failure to record all hours worked results in a failure to provide Aggrieved
17 Employees, including Plaintiff, accurate itemized wage statements as required by California law. The
18 wage statements Defendant provides are not accurate because they do not reflect the actual hours
19 worked by Plaintiff and Aggrieved Employees. The wage statements do not contain off-the-clock work
20 or premium pay for missed meal and rest breaks.

21 25. Further, Defendant does not provide Aggrieved Employees, including Plaintiff, whose
22 employment with Defendant has ended, with full payment of all wages owed at the end of their
23 employment. As these workers are owed for off-the-clock work, unpaid overtimes, premium pay when
24 their employment ends, and these amounts remain unpaid under Defendant’s policies and practices,
25 Defendant fails to pay all wages due upon termination. As a consequence, Defendant is subject to
26 waiting time penalties.

27 26. Defendant has employed thousands of people similarly situated to Plaintiff.

28 27. Defendant’s method of paying Plaintiff and Aggrieved Employees is willful, and is not

1 based on a good faith and reasonable belief that their conduct complies with California law.
2 Defendant's conduct causes significant damages to non-exempt hourly employees in an amount to be
3 determined at trial.

4 **FIRST CAUSE OF ACTION**
5 **Penalties Pursuant to Labor Code § 2699(a)**

6 28. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth
7 herein.

8 29. Labor Code § 2699(a) provides:

9 Notwithstanding any other provision of law, any provision of this code that
10 provides for a civil penalty to be assessed and collected by the Labor and
11 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, be recovered through a civil action brought by an
aggrieved employee on behalf of himself or herself and other current or
former employees.

13 30. Labor Code § 226(a) provides:

14 Every employer shall, semimonthly or at the time of each payment of
15 wages, furnish each of his or her employees, either as a detachable part of
16 the check, draft, or voucher paying the employee's wages, or separately
17 when wages are paid by personal check or cash, an accurate itemized
statement in writing showing (1) gross wages earned, (2) total hours worked
18 by the employee, except for any employee whose compensation is solely
based on a salary and who is exempt from payment of overtime under
19 subdivision (a) of Section 515 or any applicable order of the Industrial
Welfare Commission, (3) the number of piece-rate units earned and any
20 applicable piece rate if the employee is paid on a piece-rate basis, (4) all
deductions, provided that all deductions made on written orders of the
21 employee may be aggregated and shown as one item, (5) net wages earned,
(6) the inclusive dates of the period for which the employee is paid, (7) the
22 name of the employee and his or her social security number, (8) the name
and address of the legal entity that is the employer, and (9) all applicable
23 hourly rates in effect during the pay period and the corresponding number
24 of hours worked at each hourly rate by the employee.

25 31. Labor Code § 512(a) provides:

26 An employer shall not employ an employee for a work period of more than
27 five hours per day without providing the employee with a meal period of
not less than 30 minutes, except that if the total work period per day of the
28 employee is no more than six hours, the meal period may be waived by
mutual consent of both the employer and employee. An employer shall not

1 employ an employee for a work period of more than 10 hours per day
2 without providing the employee with a second meal period of not less than
3 30 minutes, except that if the total hours worked is no more than 12 hours,
4 the second meal period may be waived by mutual consent of the employer
5 and the employee only if the first meal period was not waived.

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10 32. Labor Code § 203 provides, in relevant part:

11 If an employer willfully fails to pay, without abatement or reduction, in
12 accordance with Sections 201, 201.3, 201.5, 201.6, 201.8, 201.9, 202, and
13 205.5, any wages of an employee who is discharged or who quits, the wages
14 of the employee shall continue as a penalty from the due date thereof at the
15 same rate until paid or until an action therefor is commenced; but the wages
16 shall not continue for more than 30 days.

17 33. Labor Code § 226(e)(1) provides:

18 An employee suffering injury as a result of a knowing and intentional failure by
19 an employer to comply with subdivision (a) is entitled to recover the greater of
20 all actual damages or fifty dollars (\$50) for the initial pay period in which a
21 violation occurs and one hundred dollars (\$100) per employee for each violation
22 in a subsequent pay period, not to exceed an aggregate penalty of four thousand
23 dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's
24 fees.

25 34. Labor Code § 226.3 provides:

26 Any employer who violates subdivision (a) of Section 226 shall be subject to
27 a civil penalty in the amount of two hundred fifty dollars (\$250) per employee
28 per violation in an initial citation and one thousand dollars (\$1,000) per
employee for each violation in a subsequent citation, for which the employer
fails to provide the employee a wage deduction statement or fails to keep the
records required in subdivision (a) of Section 226. The civil penalties provided
for in this section are in addition to any other penalty provided by law. In
enforcing this section, the Labor Commissioner shall take into consideration
whether the violation was inadvertent, and in his or her discretion, may decide
not to penalize an employer for a first violation when that violation was due to
a clerical error or inadvertent mistake.

35. Plaintiff seeks civil penalties pursuant to Labor Code § 2699(a) for each failure by
Defendant, as alleged above, to timely pay all wages owed to Plaintiff and Aggrieved Employees in
compliance with Labor Code §§ 201-202 in the amounts established by Labor Code § 203. Plaintiff
seeks such penalties as an alternative to the penalties available under Labor Code § 203, as prayed for
herein.

36. Plaintiff also seeks civil penalties pursuant to Labor Code § 2699(a) for each failure by Defendant, alleged above, to provide Plaintiff and Aggrieved Employees an accurate, itemized wage statement in compliance with Labor Code § 226(a) in the amounts established by Labor Code § 226(e). Plaintiff seeks such penalties as an alternative to the penalties available under Labor Code § 226(e), as prayed for herein.

37. Plaintiff also seeks civil penalties pursuant to Sections 225.5, 226.3, and 256 of the California Labor Code.

38. Pursuant to Labor Code § 2699.3(a)(1) and (2), Plaintiff provided the Labor and Workforce Development Agency (“LWDA”) with notice of her intention to file this claim on September 24, 2020. Sixty-five calendar days have passed without notice from the LWDA. Plaintiff therefore satisfied the administrative prerequisite to commence this civil action in compliance with § 2699.3(a).

39. Plaintiff seeks the aforementioned penalties on behalf of the State, other Aggrieved Employees, and herself as set forth in Labor Code § 2699(g)(i).

40. Defendant is liable to Plaintiff, Aggrieved Employees, and the State of California for the civil penalties set forth in this Complaint. Plaintiff is also entitled to an award of attorneys' fees and costs as set forth below.

41. Wherefore, Plaintiff request relief as hereinafter provided.

SECOND CAUSE OF ACTION
Penalties Pursuant to Labor Code § 2699(f) for Violations of California Labor Code § 204
(Failure to Pay for all Hours Worked)
Penalties Pursuant to Labor Code § 2699(f)

42. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth herein.

43. Labor Code § 2699(f) provides:

For all provisions of this code except those for which a civil penalty is specifically provided, there is established a civil penalty for a violation of these provisions, as follows: . . . (2) If, at the time of the alleged violation, the person employs one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.

44. To the extent than any violation alleged herein does not carry penalties under Labor Code § 2699(a), Plaintiff seeks civil penalties pursuant to Labor Code § 2699(f) for Plaintiff and Aggrieved Employees each pay period in which they were aggrieved, in the amounts established by Labor Code § 2699(f). Plaintiff seeks civil penalties under Labor Code § 2699(f) for Defendant's violations of Labor Code § 204, 226.7, 510, 512, and 1194.

45. Pursuant to Labor Code § 2699.3(a)(1) and (2), Plaintiff has provided the LWDA with notice of their intention to file this claim. Sixty-five calendar days have passed without notice from the LWDA on September 24, 2020. Plaintiff satisfied the administrative prerequisites to commence this civil action in compliance with § 2699.3(a).

46. Plaintiff seeks the aforementioned penalties on behalf of the State, other Aggrieved Employees, and herself as set forth in Labor Code § 2699(g)(i).

47. Defendant is liable to Plaintiff, Aggrieved Employees, and the State of California for the civil penalties set forth in this Complaint. Plaintiff is also entitled to an award of attorneys' fees and costs as set forth below.

48. Wherefore, Plaintiff requests relief as hereinafter provided.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of the State of California and Aggrieved Employees,
requests the following relief:

1. For an order awarding civil penalties to the full extent provided for by the PAGA;
2. For an award of reasonable attorneys' fees as provided by the California Labor Code, including Labor Code § 2699(g)(1); California Code of Civil Procedure §1021.5; and/or any other applicable law;
3. For all costs of suit; and
4. For such other and further relief as this Court deems just and proper.

Respectfully submitted,

Date: December 11, 2020

Carolyn H. Cottrell
Ori Edelstein

Ryan M. Hecht
SCHNEIDER WALLACE
COTTRELL KONECKY LLP

*Attorneys for Plaintiff, on behalf of the State of
California and Aggrieved Employees*

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