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VENTURA
SUPERIOR COURT
FILED

DEC 10 2020

MICHAEL D. PLANET
Executive Officer and Clerk

BY: _____ Deputy

NINA LEMOS

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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF VENTURA**

12 JOSE A. ORDONEZ, individually, and on
13 behalf of all other aggrieved employees,

14 Plaintiff,

15 v.

16 DANWEN, INC., doing business as
17 DANNY'S DELI & GRILL, DANNY'S DELI
18 & GRILL, an unknown business entity; and
19 DOES 1 through 50, inclusive,

20 Defendants.

CASE NO. 56-2020-00547709-CU-OE-VTA

**COMPLAINT FOR VIOLATION OF THE
PRIVATE ATTORNEYS GENERAL ACT
OF 2004 ("PAGA")**

[California Labor Code § 2698 *et seq.*]

By FAX

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19 DOES 1 through 50, inclusive,

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CASE NO.

**COMPLAINT FOR VIOLATION OF THE
PRIVATE ATTORNEYS GENERAL ACT
OF 2004 ("PAGA")**

[California Labor Code § 2698 *et seq.*]

1 This is a representative action brought by Jose A. Ordonez ("Plaintiff"), on behalf of all other
2 aggrieved employees and the State of California, relating to systemic violations of California wage
3 and hour laws by his former employer Danwen, Inc. doing business as Danny's Deli & Grill and
4 Danny's Deli & Grill, an unknown business entity (hereinafter referred to as "Danny's Deli & Grill"
5 or "Defendants"). Plaintiff makes the following allegations on information and belief, except as to
6 allegations pertaining to Plaintiff individually, which are based on his personal knowledge.

7 **INTRODUCTION**

8 1. Defendants operates a fast food restaurant doing business as Danny's Deli &
9 Grill in Ventura, California.

10 2. In an effort to conserve labor costs, and thereby maximize profits, Defendants have
11 implemented policies and practices that have resulted in systematic violations of California's wage
12 and hour laws.

13 3. For example, Defendants have implemented unlawful policies with respect to meal
14 and rest breaks. Defendant requires its non-exempt employees, who are informed that the needs of the
15 businesses take top priority, to work through meal and rest breaks, to take untimely meal periods and
16 to remain on call during such breaks. As a result, Plaintiff and other aggrieved employees have been
17 denied the ability to take the meal and rest breaks that they were and are legally entitled to take.

18 4. Moreover, Defendants uniformly failed to pay Plaintiff and other aggrieved employees
19 proper overtime wages due the fact that it has willfully turn a blind eye to off-the-clock work that
20 Plaintiff and other non-exempt employees perform as a direct consequence of Defendants
21 understaffing and imposition of an unreasonable workload.

22 5. Finally, Defendant failed to provide suitable seating by not providing seats or stools at
23 the cash registers operated by Plaintiff and the other aggrieved employees. The nature of the work
24 performed by Plaintiff and the other aggrieved employees reasonably permits the use of seats when
25 cashiers are assisting customers at Defendant's restaurants.

26 **JURISDICTION AND VENUE**

27 6. The Superior Court of the State of California has jurisdiction in this matter because
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1 Plaintiff is a resident of the State of California, and Defendants are licensed to do business under the
2 laws of the State of California. No federal question is at issue because Plaintiff's claims are based
3 solely on California law.

4 7. Venue is proper in this judicial district and the County of Ventura because Defendants
5 restaurant is maintained in the County of Ventura and Plaintiff worked for Defendants at a location
6 located in the County of Ventura. Many other aggrieved employees also work or worked at
7 Defendants restaurant located in the County of Ventura.

8 **THE PARTIES**

9 8. During the statute of limitations period, Plaintiff was employed by Defendants as a
10 Food Preparer at the restaurant owned and operated by Defendants in Ventura, California.

11 9. Plaintiff is informed and believes, and thereon alleges, that Defendant, Danwen, Inc.,
12 doing business as Danny's Deli & Grill, is and at all times relevant hereto was, a corporation
13 organized and existing under the laws of the State of California.

14 10. Plaintiff is informed and believes, and thereon alleges, that Defendant, Danny's Deli
15 & Grill, is and at all times relevant hereto was, an unknown business entity organized and existing
16 under the laws of the State of California.

17 11. The true names and capacities of DOES 1 through 50, inclusive, are unknown to
18 Plaintiff at this time, and Plaintiff therefore sues such defendants under fictitious names. Plaintiff is
19 informed and believes, and thereon alleges, that each defendant designated as a DOE is in some
20 manner highly responsible for the occurrences alleged herein, and that Plaintiff and other aggrieved
21 employees' injuries and damages, as alleged herein, were proximately caused by the conduct of such
22 DOE defendants. Plaintiff will seek leave of the Court to amend this Complaint to allege the true
23 names and capacities of such DOE defendants when ascertained.

24 **PAGA REPRESENTATIVE ACTION ALLEGATIONS**

25 12. On October 1, 2020, Plaintiff gave written notice by certified mail pursuant to
26 California Labor Code § 2699.3, to the California Labor and Workforce Development Agency
27 ("LWDA") and Defendants, of the specific provisions of the California Labor Code and IWC Wage
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1 Order alleged to have been violated, including the facts and theories to support the alleged violations.
2 Plaintiff has not received any response from the LWDA. As Plaintiff has waited more than sixty-five
3 (65) days from the October 1, 2020 postmark date of his written notice before filing this action,
4 Plaintiff has complied with all of the requirements set forth in California Labor Code § 2699.3 to
5 commence a representative action under the California Private Attorneys General Act of 2004
6 (“PAGA”).

7 13. Pursuant to the PAGA, California Labor Code §§ 2698-2699.5, Plaintiff brings this
8 action on behalf of the State of California, and all other aggrieved employees (e.g., current and
9 former non-exempt employees of Defendants and performed work for Defendants in the State of
10 California at any time within the period beginning one (1) year prior to the October 1, 2020 notice
11 Plaintiff provided to the LWDA and Defendant, and ending at the time this action proceeds to final
12 judgment (“statute of limitations period”).

13 **FACTUAL ALLEGATIONS**

14 **Failure to Provide Required Meal Periods**

15 14. During the statute of limitations period, as part of Defendants illegal policies and
16 practices to minimize labor costs and maximize corporate profits, Defendants required, permitted or
17 otherwise suffered Plaintiff and aggrieved employees to perform work during their meal periods, to
18 completely skip their meal periods, to take late and short meal periods, and Defendants have
19 otherwise failed to provide the required meal periods to Plaintiff and aggrieved employees as
20 required under California Labor Code §§ 226.7, 512 and § 11 of the applicable IWC Order.

21 15. Defendants implemented several practices that have caused Plaintiff and aggrieved
22 employees to systematically miss and otherwise take non-compliant meal periods. Defendants
23 systematically understaff its job sites such that non-exempt employees are given so much work to
24 complete that they regularly miss or otherwise take non-compliant meal periods. As a direct
25 consequence of this understaffing, Plaintiff and aggrieved employees have so much work to complete
26 within their scheduled shifts that they are forced to skip their meal periods altogether, to take them
27 after working longer than five (5) hours, to perform work during their meal periods, or return to work
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1 after taking less than a thirty (30) minute meal period.

2 16. There are also frequent occasions when Plaintiff and aggrieved employees need to
3 perform other duties immediately before the time during which they are legally entitled to take a meal
4 period. Pursuant to Defendants policies, Plaintiff and aggrieved employees cannot simply drop their
5 job duties and leave a customer to take a meal period. At other times Plaintiff and the other aggrieved
6 employees were too busy preparing food and/or waiting on customers of Defendants to stop their
7 work in middle of a customer order. Consequently, Plaintiff and aggrieved employees regularly miss
8 meal periods, take late meal periods, return early from meal periods, and even clock out for meal
9 periods but continue working.

10 17. Moreover, Plaintiff and other aggrieved employees need to secure permission before
11 taking a meal period, which is often denied by supervisors. Plaintiff and aggrieved employees often
12 cannot simply stop taking the order from a customer to take their meal period, and their inability to
13 secure coverage regularly causes them to regularly miss and otherwise take non-compliant meal
14 periods, in addition to other violations yet to be discovered.

15 18. Despite the foregoing, Defendants have implemented a policy and practice of actively
16 discouraging the issuance of meal period premium payments, and in the process, Defendants have
17 violated California Labor Code §§ 226.7 and § 11 of the applicable IWC Wage Order, by failing to
18 compensate Plaintiff and aggrieved employees who were not authorized and permitted to take a
19 complete, timely, uninterrupted meal period, one additional hour of compensation at the proper
20 regular rate of pay for each workday that such a meal period was not authorized or permitted.

21 **Failure to Provide Required Rest Breaks**

22 19. During the statute of limitations period, as part of Defendants illegal policies and
23 practices to minimize labor costs and maximize corporate profits, Defendants have failed to authorize
24 and permit Plaintiff and other aggrieved employees to take rest breaks as required under California
25 Labor Code §§ 226.7 and 512, and § 12 of the applicable IWC Wage Order.

26 20. The same or similar policies and practices that deprive Plaintiff and other aggrieved
27 employees from taking their meal periods, as alleged herein, similarly deprive them of their ability to
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1 take their first and second and third rest breaks. As alleged herein, Defendants understaff the
2 restaurant, which creates so much work for Plaintiff and other aggrieved employees that they are
3 frequently unable to take rest breaks. Moreover, Plaintiff and aggrieved employees need to first
4 secure permission before taking a rest break. Plaintiff and aggrieved employees often cannot simply
5 stop assisting a customer to take a rest break, and their inability to secure coverage regularly causes
6 them to regularly miss and otherwise take non-compliant rest breaks.

7 21. Defendants also do not provide adequate training regarding its legal obligations with
8 respect to the provision of rest breaks, does not implement a schedule regarding rest breaks for non-
9 exempt employees, and often interrupts staff who try to take rest periods. In short, Defendants
10 essentially have a non-existent rest break policy, as there is no guidance or specification as to when
11 Plaintiff and other aggrieved employees are authorized and permitted to take rest breaks during their
12 shifts.

13 22. Defendants also violated California Labor Code § 226.7, and § 12 of the applicable
14 IWC Order, by failing to pay Plaintiff and other aggrieved employees who were not provided with a
15 rest break, in accordance with the applicable wage order, one additional hour of compensation at the
16 proper regular rate of pay for each workday that a rest break was not provided.

17 **Failure to Pay Overtime Wages**

18 23. Pursuant to California Labor Code §§ 510, 1194, and § 3 of the applicable IWC Order,
19 Defendants are required to compensate Plaintiff and other aggrieved employees for all overtime,
20 which is calculated at one and one-half (1 ½) times the regular rate of pay for all hours worked in
21 excess of eight (8) hours per day and/or forty (40) hours per week, and for the first eight (8) hours on
22 the seventh consecutive workday, with double time for all hours worked in excess of twelve (12)
23 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh
24 consecutive day of work in any workweek.

25 24. During the statute of limitations period, Defendants failed to compensate Plaintiff and
26 other aggrieved employees for all overtime hours worked as required under the foregoing provisions
27 of the California Labor Code and IWC Wage Order by, among other methods: failing to pay overtime
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1 at one and one-half (1 ½) or double the regular rate of pay as provided by California Labor Code §§
2 510, 1194 and § 3 of the applicable IWC Order, requiring, permitting or suffering Plaintiff and other
3 aggrieved employees to work off-the-clock, and to work through meal and rest breaks, but not
4 compensating them for this time, improperly calculating the regular rate of pay based on bonuses,
5 commissions, and other remuneration, and other methods to be discovered.

6 25. In a short-sighted attempt to maximize profits, Defendants have understaffed its job
7 site. Not only has this practice resulted in widespread missed meal and rest breaks, but it has also
8 caused Plaintiff and other aggrieved employees to perform work while off-the-clock. Defendants
9 have actual or constructive knowledge of this off-the-clock work and subtly condone it. Plaintiff and
10 other aggrieved employees routinely arrive to work early to check so that they are prepared and ready
11 to begin performing their duties promptly at the start of their shifts, as they must be pursuant to the
12 requirements of Defendants. Defendants know that Plaintiff and other aggrieved employees perform
13 this work off-the-clock.

14 26. Defendants have knowingly and willfully refused to perform its obligations to
15 compensate Plaintiff and other aggrieved employees for all wages earned and all hours worked in
16 violation of California Labor Code §§ 510, 1194 and 1198, and § 3 of the applicable IWC Order.

17 **Failure to Pay Minimum Wages**

18 **[Cal. Lab. Code §§ 1194, 1197; § 4 of the IWC Wage Orders]**

19 27. Pursuant to Cal. Lab. Code §§ 1194, 1197, and § 4 of the applicable IWC Wage Order,
20 payment to an employee of less than the applicable minimum wage for all hours worked in a payroll
21 period is unlawful.

22 28. During the statute of limitations period, the hourly rates for Plaintiff and other
23 aggrieved employees were precisely at California minimum wage. Based on this common practice,
24 Defendant failed to pay Plaintiff and other aggrieved employees minimum wages for all hours
25 worked by requiring, permitting or suffering Plaintiff and other aggrieved employees to work off the
26 clock, such as requiring them to work through meal and rest breaks but not compensating them for
27 this time, and failing to include this time in all hours worked, and other methods to be discovered.

1 29. Defendants conduct described herein violates Cal. Lab. Code §§ 1194, 1197, and § 4
2 of the applicable IWC Wage Order. As a proximate result of the aforementioned violations, Plaintiff
3 and other aggrieved employees have been damaged in an amount according to proof at trial.
4 Therefore, pursuant to California Labor Code §§ 200, 203, 226, 1194, 1197.1, and any other
5 applicable law, Plaintiff and other aggrieved employees are entitled to recover the unpaid balance of
6 wages owed to them by Defendants, plus interest, penalties, attorneys' fees, expenses, and costs of
7 suit.

8 **Failure to Timely Pay Wages During Employment**

9 30. Pursuant to California Labor Code § 204, for all labor performed between the 1st and
10 15th days of any calendar month, Defendants are required to pay its nonexempt employees between
11 the 16th and 26th day of the month during which the labor was performed. California Labor Code §
12 204 also provides that for all labor performed between the 16th and 26th days of any calendar month,
13 Defendants are required to pay its non-exempt employees between the 1st and 10th day of the
14 following calendar month. In addition, California Labor Code § 204 provides that all wages earned
15 for labor in excess of the normal work period shall be paid no later than the payday of the next
16 regular payroll period.

17 31. During the statute of limitations period, Defendants has knowingly and willfully failed
18 to timely pay Plaintiff and other aggrieved employees all the wages for labor performed by the next
19 regular payroll period as required by California Labor Code § 204, including but not limited to,
20 compensation for missed meal and rest breaks, proper overtime wages due to an unlawful calculation
21 of the regular rate of pay, and for work performed off-the-clock.

22 **Failure to Pay All Wages Due to Discharged and Quitting Employees**

23 32. Pursuant to California Labor Code §§ 201, 202 and 203, Defendants are required to
24 pay all earned and unpaid wages to an employee who is discharged. California Labor Code § 201
25 mandates that if an employer discharges an employee, the employee's wages accrued and unpaid at
26 the time of discharge are due and payable immediately.

27 33. Furthermore, pursuant to California Labor Code § 202, Defendants are required to pay
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1 all accrued wages due to an employee no later than 72 hours after the employee quits his or her
2 employment, unless the employee provided 72 hours previous notice of his or her intention to quit, in
3 which case the employee is entitled to his or her wages at the time of quitting.

4 34. California Labor Code § 203 provides that if an employer willfully fails to pay, in
5 accordance with Labor Code §§ 201 and 202, any wages of an employee who is discharged or who
6 quits, the employer is liable for waiting time penalties in the form of continued compensation to the
7 employee at the same rate for up to 30 workdays.

8 35. During the statute of limitations period, Defendants have willfully failed to pay
9 accrued wages and other compensation to Plaintiff and other aggrieved employees in accordance with
10 California Labor Code §§ 201 and 202. On information and belief, Defendants do not have a
11 sufficient policy to provide Plaintiff and other aggrieved employees with their final paychecks within
12 the timeframes required under California law. Further, Plaintiff's employment ended on or about
13 March of 2020, Defendants failed and continues to fail to properly compensate Plaintiff and other
14 aggrieved employees for all hours worked when due, overtime wages, and compensation for non-
15 compliant meal and rest breaks, Defendants also willfully failed and continue to fail to pay accrued
16 wages and other compensation to Plaintiff and other aggrieved employees in accordance with
17 California Labor Code §§ 201 and 202.

18 **Failure to Furnish Accurate Itemized Wage Statements**

19 36. During the statute of limitations period, Defendants have routinely failed to provide
20 Plaintiff and other aggrieved employees with timely and accurate itemized wage statements.
21 Defendant's pay stubs have violated California Labor Code § 226. Defendants were and are not
22 providing Plaintiff and other aggrieved employees with proper meal periods and rest breaks but
23 intentionally fails to include in their wage statements one (1) additional hour of compensation at their
24 regular rates of pay for each non-compliant meal period or rest break. Moreover, Defendants have
25 failed to pay proper overtime wages to Plaintiff and other aggrieved employees and its wage
26 statements therefore fail to reflect the correct hourly rates worked by Plaintiff and other aggrieved
27 employees resulting in inaccurate wage statements.

1 2699(c), and a proper representative to bring a civil action on behalf of himself and other aggrieved
2 employees pursuant to the procedures specified in California Labor Code § 2699.3, because Plaintiff
3 was employed by Defendant and one or more of the alleged California Labor Code violations was
4 committed against Plaintiff during the statute of limitations period.

5 42. Plaintiff seeks to recover civil penalties through a representative action permitted by
6 PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal.4th 969. Thus,
7 class certification is not required.

8 43. Pursuant to California Labor Code §§ 2698-2699.5, Plaintiff seeks to recover civil
9 penalties from Defendant in a representative action for the violations set forth above, including but
10 not limited to, violations of California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1174,
11 1194 and for the violations of the applicable IWC Wage Order alleged above.

12 44. Pursuant to California Labor Code § 2699(a), Plaintiff seeks to recover civil penalties
13 against Defendant for violations of California Labor Code provisions for which a civil penalty is
14 specifically provided, including but not limited to, the following:

- 15 a. Pursuant to California Labor Code § 210, for violations of California Labor
16 Code § 204, Defendant is subject to a civil penalty in the amount of one
17 hundred dollars (\$100) for the initial violation for each failure to pay each
18 employee, and two hundred dollars (\$200) per employee for violations in
19 subsequent pay periods.
- 20 b. Pursuant to California Labor Code § 226.3, for violations of California Labor
21 Code § 226(a), Defendant is subject to a civil penalty in the amount of two
22 hundred and fifty dollars (\$250) per aggrieved employee for the initial pay
23 period where a violation occurs and one thousand dollars (\$1,000) per
24 aggrieved employee for violations in subsequent pay periods.
- 25 c. Pursuant to California Labor Code § 1174.5, for violations of California Labor
26 Code § 1174(d), Defendant is subject to a civil penalty of five hundred dollars
27 (\$500).

45. California Labor Code § 2699(f) provides that for all California Labor Code violations for which a civil penalty is not specifically provided, the following civil penalties are established: 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.

46. Plaintiff seeks to recover such civil penalties under California Labor Code § 2699(f) for Defendants violations of California Labor Code provisions for which a civil penalty is not specifically provided, including but not limited to, California Labor Code §§ 201, 202, 203, 204, 226.7, 1197, 1024.5, and for the violations of the applicable IWC Wage Order alleged above.

47. All civil penalties sought and recovered under this action will be allocated as follows: seventy-five (75) percent to the State of California and twenty-five (25) percent to Plaintiff and aggrieved employees.

48. Plaintiff additionally seeks reasonable attorneys' fees and costs pursuant to California Labor Code § 2699(g)(1) and California Code of Civil Procedure § 1021.5.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of all other aggrieved employees, prays for relief against Defendants, as follows:

1. For civil penalties according to proof;

2. For reasonable attorneys' fees and costs pursuant to California Labor Code § 2699(g), California Code of Civil Procedure §1021.5, and/or any other applicable provisions providing for attorneys' fees and costs; and

3. For such further relief that the Court may deem just and proper.

DATED: December 3, 2020

THE LAW OFFICE OF SCOTT E. WHEELER

By: [Signature]

SCOTT E. WHEELER

Attorney for Plaintiff and the aggrieved employees