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SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO

TIANA FLEMING, on behalf of the State of
California and Aggrieved Employees,

Plaintiffs,

v.

American Retail Services, ARS Fresno, LLC, and
ARS West, LLC, MYOBZ, LLC, Multi-Site
Management, inclusive,

Defendant.

Case No.: 37-2021-00007716-CU-OE-NC

**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 Tiana Fleming (“Plaintiff”), on behalf of the State of California and Aggrieved
2 Employees, complains and alleges as follows:

3 **INTRODUCTION**

4 1. Plaintiff brings this enforcement action on behalf of the State of California against
5 Defendants American Retail Services, ARS Fresno, LLC, and ARS West, LLC, MYOBZ, LLC, Multi-
6 Site Management (“Defendants”) for their systematic violations of California labor law with respect
7 to Defendant’s non-exempt hourly employees in California (the “Aggrieved Employees”).

8 2. Defendants maintains a longstanding policy and practice of failing to pay overtime
9 wages, failing to compensate non-exempt employees for all hours worked, failing to provide compliant
10 meal breaks and rest breaks, failing to provide premium pay for these missed breaks, failing to, failing
11 to provide accurate itemized wage statements, and failing to timely pay all wages owed during
12 employment and following separation form employment. These policies deny Plaintiff and Aggrieved
13 Employees payment for all hours worked, including overtime, and deny Plaintiff and Aggrieved
14 Employees meal and rest periods that comply with California law.

15 3. Defendants violate California law by knowingly and willfully requiring Plaintiff and
16 Aggrieved Employees to perform work and/or remain on duty during meal and rest periods, subjecting
17 them to interruption during those times. Defendants require Aggrieved Employees to manually clock
18 out for their unpaid meal periods, even though Aggrieved Employees remain on duty and are
19 continuously subject to interruption during that time. Defendants do not provide Plaintiff and
20 Aggrieved Employees with premium pay for failure to provide compliant meal and rest periods.

21 4. Plaintiff and Aggrieved Employees bring this claim to challenge Defendants’ policies
22 and practices of: (1) failing to pay Plaintiff and Aggrieved Employees overtime wages; (2) failing to
23 compensate Plaintiff and Aggrieved Employees for all hours worked; (3) failing to authorize and
24 permit Plaintiff and Aggrieved Employees to take compliant meal and rest periods to which they are
25 entitled by law; (4) failing to provide Plaintiff and Aggrieved Employees accurate, itemized wage
26 statements; and (5) failing to timely pay all wages owed to Plaintiff and Aggrieved Employees during
27 employment and following separation from employment.

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1 **PARTIES**

2 5. Plaintiff Tiana Fleming is an individual over the age of eighteen, and at all times relevant
3 to this Complaint has been a resident of the State of California, County of San Diego. Plaintiff was
4 employed as a lead cashier for Defendants at Speedway Express Gas Station, California beginning
5 approximately in January 2019.

6 6. Plaintiff is informed, believes, and thereon alleges that Defendants American Retail
7 Services, ARS Fresno, LLC, and ARS West, LLC, Multi-Site Management, LLC are California
8 limited liability corporations with its principal place of business in Oceanside, California, and is
9 registered to do business in California. MYOBZ, LLC, is a Delaware Corporation. Defendants may
10 be served with process by serving its designated registered agent, Jan Sucha.

11 7. Plaintiff is informed, believes, and thereon alleges that Defendants maintain 144 gas
12 stations under various brand names, including Porter's, and others throughout the United States,
13 including 29 stores in California.

14 8. Plaintiff is informed, believes, and thereon alleges that Defendants American Retail
15 Services, ARS Fresno, LLC, and ARS West, LLC, MYOBZ, LLC, Multi-Site Management directly
16 control the operations of its agents, namely the various gas stations that Defendants own, operate,
17 and/or manage. Plaintiff is informed, believes, and thereon alleges that Defendants exercise control
18 over Plaintiff and Aggrieved Employees with respect to their employment.

19 9. As employers of Plaintiff and Aggrieved Employees throughout the relevant time
20 period, Defendants are liable for penalties for violating the Labor Code with respect to the employment
21 of Plaintiff and Aggrieved Employees.

22 10. Throughout this Complaint, any reference to "Defendants" is intended to refer to
23 Defendants American Retail Services, ARS Fresno, LLC, and ARS West, LLC, MYOBZ, LLC, and
24 Multi-Site Management.

25 11. At all material times, Defendants have done business under the laws of California, has
26 had places of business in California, including in this County, and has employed Aggrieved Employees
27 in this County and elsewhere in California. Each named Defendant is a "person" as defined in Labor
28 Code § 18 and an "employer" as that term is used in the Labor Code and the IWC Wage Orders

1 regulating wages, hours, and working conditions.

2 **SUBJECT MATTER JURISDICTION AND VENUE**

3 12. This Court has jurisdiction over Plaintiff's claims for penalties pursuant to the PAGA.
4 The Court also has jurisdiction over Defendants because Defendants do business in the State of
5 California, is authorized to do business in California, and is registered with the California Secretary
6 of State.

7 13. Defendants operate multiple gas stations and employs aggrieved employees in
8 California.

9 14. Venue is proper in this judicial district pursuant to Code of Civil Procedure §§ 393
10 and/or 395.5. Defendants conduct business, employ Aggrieved Employees, and has jobsites in this
11 County, namely at Speedway Express Gas Station in San Diego, CA.

12 **FACTUAL ALLEGATIONS**

13 15. Defendants own, operate, and manage various gas stations throughout the United States
14 and California, including Porter's. Defendants employ hundreds of hourly non-exempt workers
15 similarly situated to Plaintiff across these gas stations.

16 16. Plaintiff worked at Speedway Express Gas Station in San Diego, CA as a lead cashier
17 from January 2019 to the present. Plaintiff is paid at an hourly rate of \$13.50, and was generally
18 scheduled to work an average of 8 hours per day and between 5 and 6 shifts per week; however,
19 Plaintiff actually typically worked hours beyond the scheduled shift. On average, Plaintiff worked 65
20 hours per pay period.

21 17. In practice, Defendants require Plaintiff and Aggrieved Employees to remain on duty
22 throughout their scheduled shifts, including during rest breaks and unpaid meal periods. Defendants
23 do not compensate Plaintiff and Aggrieved Employees for work performed while clocked out for meal
24 periods. Defendants require Plaintiff and Aggrieved Employees to manually clock out for these unpaid
25 meal periods when in fact Plaintiff and Aggrieved Employees do not receive a bona fide meal break
26 relieved of all duties. Plaintiff is informed, believes, and thereon alleges that this policy and practice
27 applies to all Aggrieved Employees throughout California. Likewise, Defendants routinely refuse to
28 authorize or permit Aggrieved Employees to take ten-minute rest periods as required by law.

1 18. Beyond Defendants' failure to authorize or permit meal and rest breaks, Aggrieved
2 Employees' schedules are too busy, and Defendants pressure to complete job assignments too
3 constant, for Aggrieved Employees to take compliant meal or rest breaks. Defendants monitor Plaintiff
4 and Aggrieved Employees throughout the day, directing them to address customers' needs during
5 breaks and without breaks. Plaintiff has had to work on-site alone and as a result eats while on-duty
6 because she must be ready to address customer needs whenever a customer requires assistance.
7 Further, Defendants fail to pay Plaintiff and Aggrieved Employees premium wages for their missed
8 breaks. This violates California law.

9 19. As a result of these policies, Defendants deny Plaintiff and Aggrieved Employees
10 gratuities to which they are lawfully owed, meal and rest periods to which they are statutorily entitled,
11 as well as overtime premiums resulting from the additional off-the-clock work performed during meal
12 breaks, as well as pre-shift work performed for Defendants' benefit.

13 20. Despite these recurring violations, Defendant does not provide Plaintiff and Aggrieved
14 Employees premium pay for missed meal and rest periods.

15 21. Plaintiff is informed, believes, and thereon alleges that the same timekeeping system is
16 used across all Defendant's facilities.

17 22. Defendants common course of wage-and-hour abuse include routinely failing to
18 maintain true and accurate records of the hours worked by Aggrieved Employees. Defendants have
19 failed to record hours that Plaintiff and Aggrieved Employees worked during missed meal breaks, as
20 well as hours worked off-the-clock.

21 23. Defendants failure to record all hours worked results in a failure to provide Aggrieved
22 Employees, including Plaintiff, accurate itemized wage statements as required by California law. The
23 wage statements Defendants provide are not accurate because they do not reflect the actual wages
24 earned, nor the actual hours worked by Plaintiff and Aggrieved Employees. The wage statements do
25 not contain all of the time that should be compensable during interruptible meal breaks. Further, the
26 wage statements are inaccurate because they do not include premium pay for missed breaks, overtime,
27 and work that was performed while the timeclock was out of service.

28 24. Defendants also do not provide Aggrieved Employees, including Plaintiff, with full

1 payment of all wages owed at the end of employment. As these workers are owed for earned but unpaid
2 off-the-clock work, unpaid overtime, and premium pay when their employment ends, and these
3 amounts remain unpaid under Defendants' policies and practices, Defendants fail to pay all wages due
4 upon termination. As a consequence, Defendants are subject to waiting time penalties.

5 25. On December 9, 2020, pursuant to Labor Code § 2699.3, Plaintiff served the California
6 Labor and Workforce Development Agency with notice of her intention to file a PAGA action for
7 violations of Labor Code §§ 510 (failure to pay overtime wages); 204 (failure to compensate for all
8 hours worked); 226.7 and 512 (failure to provide meal and rest periods); 226 (failure to provide timely
9 and compliant itemized wage statements); 201-203 (failure to timely pay all wages owed during
10 employment and following separation from employment). Pursuant to Section 2699(a), Plaintiff will
11 seek civil penalties pursuant to each provision of the Code that provides for a civil penalty to be
12 assessed and collected by the Labor and Workforce Development Agency or any of its departments,
13 divisions, commissions, boards, agencies, or employees, including but not limited to those Labor Code
14 provisions referenced above, as well as Sections 225.5, 226.3, 256, and 558 of the California Labor
15 Code. To the extent a provision of the Labor Code does not provide for a civil penalty, the Plaintiff
16 will seek civil penalties pursuant to California Labor Code Section 2699(f). Plaintiff served
17 Defendant's registered agent with a courtesy copy of the notice via certified mail.

18
19 **FIRST CAUSE OF ACTION**
 Penalties Pursuant to Labor Code § 2699(a)

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

22 27. Labor Code § 2699(a) provides:

23
24 Notwithstanding any other provision of law, any provision of this code
25 that provides for a civil penalty to be assessed and collected by the Labor
26 and Workforce Development Agency or any of its departments, divisions,
27 commissions, boards, agencies or employees, for a violation of this code,
28 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.

28 28. Labor Code § 203 provides, in relevant part:

1 If an employer willfully fails to pay, without abatement or reduction, in
2 accordance with Sections 201, 201.5, 202, and 205.5, any wages of an
3 employee who is discharged or who quits, the wages of the employee shall
4 continue as a penalty from the due date thereof at the same rate until paid
5 or until an action therefore is commenced; but the wages shall not continue
6 for more than 30 days.

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17 29. Labor Code § 226(a) provides:

18 Every employer shall, semimonthly or at the time of each payment of
19 wages, furnish each of his or her employees, either as a detachable part of
20 the check, draft, or voucher paying the employee's wages, or separately
21 when wages are paid by personal check or cash, an accurate itemized
22 statement in writing showing (1) gross wages earned, (2) total hours worked
23 by the employee, except for any employee whose compensation is solely
24 based on a salary and who is exempt from payment of overtime under
25 subdivision (a) of Section 515 or any applicable order of the Industrial
26 Welfare Commission, (3) the number of piece-rate units earned and any
27 applicable piece rate if the employee is paid on a piece-rate basis, (4) all
28 deductions, provided that all deductions made on written orders of the
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
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
hourly rates in effect during the pay period and the corresponding number
of hours worked at each hourly rate by the employee.

30. Labor Code § 510(a) provides:

31 Eight hours of labor constitutes a day's work. Any work in excess of eight
32 hours in one workday and any work in excess of 40 hours in any one
33 workweek and the first eight hours worked on the seventh day of work in
34 any one workweek shall be compensated at the rate of no less than one and
35 one-half times the regular rate of pay for an employee. Any work in excess
36 of 12 hours in one day shall be compensated at the rate of no less than twice
37 the regular rate of pay for an employee.

38 31. Labor Code § 512(a) provides:

39 An employer shall not employ an employee for a work period of more than
40 five hours per day without providing the employee with a meal period of
41 not less than 30 minutes, except that if the total work period per day of the
42 employee is no more than six hours, the meal period may be waived by
43 mutual consent of both the employer and employee. An employer shall not
44 employ an employee for a work period of more than 10 hours per day
45 without providing the employee with a second meal period of not less than

30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

32. Labor Code § 558 provides:

(a) Any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (3) Wages recovered pursuant to this section shall be paid to the affected employee.

33. 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.

34. 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.

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

36. 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. Sixty-five calendar days have passed without notice from the LWDA. Plaintiff satisfied the administrative prerequisites to commence this civil action in compliance with § 2699.3(a).

37. Plaintiff seeks the aforementioned penalties on behalf of the State, other Aggrieved

1 Employees, and herself as set forth in Labor Code § 2699(g)(i).

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

5 39. Wherefore, Plaintiff requests relief as hereinafter provided.

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7 **SECOND CAUSE OF ACTION**
Penalties Pursuant to Labor Code § 2699(f)

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

10 41. Labor Code § 2699(f) provides:

11 For all provisions of this code except those for which a civil penalty is
12 specifically provided, there is established a civil penalty for a violation of
13 these provisions, as follows: . . . (2) If, at the time of the alleged violation,
14 the person employs one or more employees, the civil penalty is one hundred
15 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.

16 42. To the extent than any violation alleged herein does not carry penalties under Labor
17 Code § 2699(a), Plaintiff seeks civil penalties pursuant to Labor Code § 2699(f) for Plaintiff and
18 Aggrieved Employees each pay period in which he or she was aggrieved, in the amounts established
19 by Labor Code § 2699(f). Plaintiff seeks civil penalties under Labor Code § 2699(f) for Defendant's
20 violations of Labor Code §§ 351, 1194, 204, and 2802.

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

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

27 45. Defendant is liable to Plaintiff, Aggrieved Employees, and the State of California for
28 the civil penalties set forth in this Complaint, with interest thereon. Plaintiff is also entitled to an

award of attorneys' fees and costs as set forth below.

46. 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;
4. For interest on any penalties awarded, as provided by applicable law; and
5. For such other and further relief as this Court deems just and proper.

Respectfully submitted,

Date: February 18, 2021



Carolyn H. Cottrell
SCHNEIDER WALLACE
COTTRELL KONECKY LLP
*Attorneys for Plaintiff, on behalf of the State of
California and Aggrieved Employees*

1 **DEMAND FOR JURY TRIAL**

2 Plaintiff hereby demands a jury trial on all claims and issues for which Plaintiff is entitled to
3 a jury.

4 Respectfully submitted,

5 Date: February 18, 2021

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7 Carolyn H. Cottrell
8 SCHNEIDER WALLACE
9 COTTRELL KONECKY LLP
10 *Attorneys for Plaintiff, on behalf of the State of*
11 *California and Aggrieved Employees*
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