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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

LUIS CRUZ, individually, and on behalf of all
others similarly situated,

Plaintiff,

v.

GREYSTAR MANAGEMENT SERVICES, LP,
a Delaware limited partnership; and DOES 1
through 10, inclusive,

Defendants.

Case No. 37-2020-00009672-CU-OE-CTL

CLASS ACTION

*[Assigned for All Purposes to Hon. Timothy
Taylor, Dept. C-72]*

FIRST AMENDED COMPLAINT:

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

FILED
Clerk of the Superior Court

MAY 24 2021

By: **R. Wills**

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

4 **INTRODUCTION & PRELIMINARY STATEMENT**

5 1. Plaintiff brings this action against Defendant Greystar Management Services, L.P.;
6 and Does 1 through 10 (Greystar Management Services, LP; and Does 1 through 10 are
7 collectively referred to as "Defendants") for California Labor Code violations stemming from
8 Defendants' failure to pay for all hours worked (minimum, straight time, and overtime wages),
9 failure to provide meal periods, failure to authorize and permit rest periods failure to timely pay
10 final wages, and failure to furnish accurate wage statements.

11 2. Plaintiff brings this Cause of Action as a representative action under the California
12 Private Attorney General Act ("PAGA") to recover civil penalties that are owed to Plaintiff, the
13 State of California, and past and present non-exempt employees employed by Defendants in the
14 State of California during the statute of limitations period for his PAGA claim (hereinafter
15 collectively referred to as the "Aggrieved Employees").

16 3. Defendants own/owned and operate/operated an industry, business, and
17 establishment within the State of California, including San Diego County. As such and based
18 upon all the facts and circumstances incident to Defendants' business in California, Defendants
19 are subject to the California Labor Code, Wage Orders issued by the Industrial Welfare
20 Commission ("IWC"), and the California Business & Professions Code.

21 4. Despite these requirements, throughout the statutory period Defendants maintained
22 a systematic, company-wide policy and practice of:

- 23 (a) Failing to pay employees for all hours worked, including all minimum
24 wages, straight time wages, and overtime wages in compliance with the
25 California Labor Code and IWC Wage Orders;
26 (b) Failing to provide employees with timely and duty-free meal periods in
27 compliance with the California Labor Code and IWC Wage Orders, failing
28 to maintain accurate records of all meal periods taken or missed, and

1 failing to pay an additional hour's pay for each workday a meal period
2 violation occurred;

3 (c) Failing to authorize and permit employees to take timely and duty-free rest
4 periods in compliance with the California Labor Code and IWC Wage
5 Orders, and failing to pay an additional hour's pay for each workday a rest
6 period violation occurred;

7 (d) Willfully failing to pay employees all overtime wages, and meal period
8 premium wages due within the time period specified by California law
9 when employment terminates; and

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

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

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

22 THE PARTIES

23 A. Plaintiff

24 7. Plaintiff Luis Cruz is a California resident who worked for Defendants in San
25 Pedro, California as a maintenance worker from December 2014 to approximately November of
26 2020.

27 8. Plaintiff reserves the right to seek leave to amend this complaint to add new
28 plaintiffs, if necessary, in order to establish suitable representative(s) pursuant to *La Sala v.*

1 *American Savings and Loan Association* (1971) 5 Cal.3d 864, 872, and other applicable law.

2 **B. Defendants**

3 9. Plaintiff is informed and believes, and based upon that information and belief
4 alleges, that Defendant Greystar Management Services, LP, is, and at all times herein mentioned,
5 was:

- 6 (a) A Delaware limited partnership with its corporate headquarters and
7 principal place of business in Charleston, South Carolina.
8 (b) A business entity conducting business in numerous counties throughout the
9 State of California, including in San Diego County; and,
10 (c) The former employer of Plaintiff, and the current and/or former employer
11 of the Aggrieved Employees, Greystar Management Services, LP, suffered
12 and permitted Plaintiff and the Aggrieved Employees to work, and/or
13 controlled their wages, hours, or working conditions.

14 10. Plaintiff does not know the true names or capacities of the persons or entities sued
15 herein as Does 1-10, inclusive, and therefore sues said Defendants by such fictitious names.
16 Each of the Doe Defendants was in some manner legally responsible for the damages suffered by
17 Plaintiff and the Aggrieved Employees as alleged herein. Plaintiff will amend this complaint to
18 set forth the true names and capacities of these Defendants when they have been ascertained,
19 together with appropriate charging allegations, as may be necessary.

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

24 12. Plaintiff is informed and believes and thereon alleges that at all relevant times each
25 Defendant, directly or indirectly, or through agents or other persons, employed Plaintiff and the
26 other employees described in the Aggrieved Employees definitions below, and exercised control
27 over their wages, hours, and working conditions. Plaintiff is informed and believes and thereon
28 alleges that, at all relevant times, each Defendant was the principal, agent, partner, joint venturer,

1 officer, director, controlling shareholder, subsidiary, affiliate, parent corporation, successor in
2 interest and/or predecessor in interest of some or all of the other Defendants, and was engaged
3 with some or all of the other Defendants in a joint enterprise for profit, and bore such other
4 relationships to some or all of the other Defendants so as to be liable for their conduct with
5 respect to the matters alleged below. Plaintiff is informed and believes and thereon alleges that
6 each Defendant acted pursuant to and within the scope of the relationships alleged above, that
7 each Defendant knew or should have known about, and authorized, ratified, adopted, approved,
8 controlled, aided and abetted the conduct of all other Defendants.

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

10 13. Plaintiff worked for Defendants in San Pedro, California as a maintenance worker
11 from approximately December 2014 to approximately November of 2020. Throughout Plaintiff's
12 employment for Defendants, Defendants typically scheduled Plaintiff to work 5 days in a
13 workweek and 40 hours in a workweek, but Plaintiff often worked more than more than 40 hours
14 in a workweek.

15 14. Throughout Plaintiff's employment, Defendants failed to pay Plaintiff for all hours
16 worked (including minimum wage, straight time, and overtime wages), failed to provide Plaintiff
17 with meal periods, failed to authorize and permit rest periods, failed to pay timely pay all final
18 wages to Plaintiff when Defendants terminated his employment, and failed to furnish accurate
19 wage statements to Plaintiff. As discussed below, Plaintiff's experience working for Defendants
20 was typical and illustrative.

21 15. Throughout the statutory period, Defendants failed to pay Plaintiff and the
22 Aggrieved Employees for all hours worked. Defendants maintained a policy and practice of not
23 paying Plaintiff and the Aggrieved Employees for all hours worked, including minimum wages,
24 straight time wages, and overtime wages. Defendants regularly used a system of time rounding
25 in a manner that resulted, over a period of time, in failing to compensate Plaintiff and the
26 Aggrieved Employees properly for all the time they have actually worked, even though the
27 realities of Defendants' operations are such that it is possible, practical, and feasible to count and
28 pay for work time to the minute. Accordingly, Defendants frequently paid Plaintiff and the

1 Aggrieved Employees less than all their work time. Some of this unpaid work also should have
2 been paid at the overtime rate. In failing to pay for all hours worked, Defendants also failed to
3 maintain accurate records of the hours Plaintiff and the Aggrieved Employees worked.

4 16. Throughout the statutory period, Defendants maintained a policy and practice of
5 failing to pay Plaintiff and the Aggrieved Employees the correct amount of overtime pay in
6 compliance with California law. Throughout the statutory period, Plaintiff and the Aggrieved
7 Employees worked more than 8 hours in a workday. Plaintiff and the Aggrieved Employees
8 earned non-discretionary bonuses. However, Defendants did not include these bonuses when
9 paying Plaintiff and the Aggrieved Employees overtime. In failing to include all non-
10 discretionary forms of remuneration in the calculation of Plaintiff and the Aggrieved Employees'
11 overtime rate, Defendants failed to pay Plaintiff and the Aggrieved Employees the correct
12 amount of overtime pay in accordance with California law.

13 17. Throughout the statutory period, Defendants wrongfully failed to provide Plaintiff
14 and the Aggrieved Employees with legally compliant meal periods. Defendants regularly
15 required Plaintiff and the Aggrieved Employees to work in excess of five consecutive hours a
16 day without providing a 30-minute, uninterrupted, and duty-free meal period for every five hours
17 of work, or without compensating Plaintiff and the Aggrieved Employees for meal periods that
18 were not provided by the end of the fifth hour of work or tenth hour of work. Plaintiff and the
19 Aggrieved Employees were given tasks of a volume which frequently required Plaintiff and the
20 Aggrieved Employees to take their meal periods late, cut meal periods short, or perform some
21 work tasks while clocked out for a meal period. The job requirements imposed by Defendants
22 had the effect of requiring, pressuring, or encouraging Plaintiff and the Aggrieved Employees to
23 perform work tasks which could not be completed without working in lieu of taking mandatory
24 meal periods, or by taking impermissibly short meal periods. Defendants' policy and practice
25 was to not provide meal periods to Plaintiff and the Aggrieved Employees in compliance with
26 California law.

27 18. Throughout the statutory period, Defendant have wrongfully failed to authorize and
28 permit Plaintiff and the Aggrieved Employees to take legally compliant rest periods. Defendant

1 regularly required Plaintiff and the Aggrieved Employees to work in excess of four consecutive
2 hours a day without Defendant authorizing and permitting them to take a 10-minute,
3 uninterrupted, duty-free rest period for every four hours of work (or major fraction of four
4 hours), or without compensating Plaintiff and the Aggrieved Employees for rest periods that
5 were not authorized or permitted. Instead, Defendant continued to assert control over Plaintiff
6 and the Aggrieved Employees by requiring, pressuring, or encouraging them to perform work
7 tasks which could not be completed without working in lieu of taking mandatory rest periods, or
8 by denying Plaintiff and the Aggrieved Employees permission to take a rest period.

9 Accordingly, Defendant's policy and practice was to not authorize and permit Plaintiff and the
10 Aggrieved Employees to take rest periods in compliance with California law.

11 19. Throughout the statutory period, Defendants willfully failed and refused to timely
12 pay Plaintiff and the Aggrieved Employees at the conclusion of their employment all final wages
13 due at their termination of employment. Plaintiff's final paycheck did not include payment for
14 all wages (minimum, straight time, and overtime wages), meal period premium wages, and rest
15 period premium wages owed to him by Defendants at the conclusion of his employment. Based
16 on the personal knowledge of Plaintiff and the Aggrieved Employees, Defendants' failure to
17 timely pay Plaintiff's final wages when his employment ended was not a single, isolated incident,
18 but was instead consistent with Defendants' policy and practice that applied to Plaintiff and the
19 Aggrieved Employees.

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

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

1 entitled;

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

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

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

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

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

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

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

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

FIRST CAUSE OF ACTION

(Against all Defendants for Civil Penalties Under the Private Attorney General Act of 2004, Cal. Lab. Code §2699, *et seq.*)

21. Plaintiff incorporates by reference and re-alleges as if fully stated herein paragraphs 1 through 19 in this Complaint.

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

23. California Labor Code §2699 (a) specifically provides for a private right of action to recover penalties for violations of the Labor Code: "Notwithstanding any other provision of law, any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, 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 pursuant to the procedures specified in Section 2699.3."

24. Plaintiff has exhausted his administrative remedies pursuant to California Labor Code § 2699.3. She gave written notice by online filing to the Labor and Workforce Development Agency and by certified mail to Defendants of the specific provisions of the Labor Code that Defendants have violated against Plaintiff and current and former aggrieved employees, including the facts and theories to support the violations. Plaintiff also paid the filing fee.

25. The Labor and Workforce Development Agency has not indicated that it intends to investigate Defendants' Labor Code violations discussed in the notice. Accordingly, Plaintiff may commence a civil action to recover penalties under Labor Code § 2699 pursuant to § 2699.3 for the violations of the Labor Code described in this Complaint. These penalties include, but are not limited to, penalties under California Labor Code §§ 210, 226.3, 558, 1174.5, 1197.1, and 2699.

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

7 **PRAYER FOR RELIEF**

8 Plaintiff, individually, and on behalf of all others similarly situated only with respect to
9 the Aggrieved Employees claims, prays for relief and judgment against Defendants, jointly and
10 severally, as follows:

11 **As to the First Cause of Action**

12 28. That the Court declare, adjudge, and decree that Defendants violated the California
13 Labor Code by failing to pay straight time wages, failing to correctly pay overtime wages, failing
14 to provide meal periods and provide the correct amount of meal premium wages, failing to
15 authorize and permit rest periods, failing to timely pay all wages to terminated employees, and
16 failing to furnish accurate wage statements;

17 29. For all actual, consequential, and incidental losses and damages, according to proof;

18 30. For all civil penalties pursuant to California Labor Code § 2699, *et seq.*, and all
19 other applicable Labor Code provisions;

20 31. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to
21 California Labor Code § 2699; and,

22 32. For such other and further relief as the Court may deem equitable and appropriate.

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As to all Causes of Action

33. For any additional relief that the Court deems just and proper.

Respectfully submitted,

Dated: May 20, 2021

WILSHIRE LAW FIRM

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