

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Mel Red Recana

LOYR, APC

YOUNG W. RYU, ESQ. (SBN 266372)

young.ryu@loywr.com

ALEXANDER D. WALLIN, ESQ. (SBN 320420)

alexander.wallin@loywr.com

SARAH H. COHEN, ESQ. (SBN 330700)

sarah.cohen@loywr.com

3130 Wilshire Blvd., Suite 209

Los Angeles, California 90010

Telephone: (888) 365 – 8686

Facsimile: (800) 576 – 1170

Attorneys for Plaintiff FILIBERTO HERNANDEZ

SMITH & BENOWITZ

BENJAMIN SMITH, ESQ. (SBN 266712)

benjamin@smithbenowitz.com

LOUIS BENOWITZ, ESQ. (SBN 262300)

louis@smithbenowitz.com

4515 Van Nuys Blvd, Ste 302

Sherman Oaks, CA 91403

Telephone: (818) 839-7800

Facsimile: (818) 839-9700

Attorneys for Plaintiff FILIBERTO HERNANDEZ

SUPERIOR COURT OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

FILIBERTO HERNANDEZ, individually
and on behalf of all similarly aggrieved
employees,

Plaintiff,

v.

CERRITOS BCD, INC., a California
corporation; HEE SOOK LEE, an
individual; and DOES 1 through 100,
inclusive,

Defendants.

CASE NO. 21ST CV 21674

**COMPLAINT FOR ENFORCEMENT
ACTION UNDER THE PRIVATE
ATTORNEYS GENERAL ACT,
CALIFORNIA LABOR CODE §§ 2698 ET
SEQ.**

**1. VIOLATION OF LABOR CODE §§
2698, ET SEQ. (“PAGA”)**

DEMAND FOR JURY TRIAL

COMES NOW, Plaintiff FILIBERTO HERNANDEZ (“Plaintiff”), on behalf of himself and all other aggrieved employees, and hereby brings this Representative Action Complaint against Defendants CERRITOS BCD, INC., a California corporation; HEE SOOK LEE, an individual; and DOES 1 through 100 (collectively, “Defendants”), and on information and belief alleges as follows:

JURISDICTION AND VENUE

1. Plaintiff, on behalf of himself and all other aggrieved employees, which is defined as individuals who are currently employed, or formerly have been employed, as non-exempt employees of Defendants between March 1, 2020 and the present, hereby brings this representative action for recovery of civil penalties under California Labor Code §§ 2698 *et seq.*

2. This Court has jurisdiction over Defendants because, upon information and belief, Defendants have sufficient minimum contacts in California, or otherwise intentionally avail themselves to the California market so as to render the exercise of jurisdiction over them by the California courts consistent with the traditional notions of fair play and substantial justice.

3. Venue is proper in this Court pursuant to California Code of Civil Procedure §§ 395(a) and 395.5, because Defendants regularly conduct business in Los Angeles County, maintain offices and facilities in Los Angeles County, because Plaintiff lives in Los Angeles County, and because the conduct alleged herein which gives rise to the claims asserted occurred within Los Angeles County.

THE PARTIES

4. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein, Plaintiff was and currently is, a California resident. During the one year immediately preceding the filing of this Complaint and within the statute of limitations period applicable to each cause of action pled herein, Plaintiff was employed by Defendants in Los Angeles County, California.

5. Plaintiff is informed and believes, and based thereon alleges, that Defendants were at all times doing business throughout the State of California, have their offices in Los Angeles County, and serve numerous clients throughout the State. Further, Defendants employed Plaintiff and other

1 aggrieved employees within the State of California and, therefore, were (and are) doing business in
2 Los Angeles County and the State of California.

3 6. Plaintiff does not know the true names or capacities, whether individual, partner, or
4 corporate, of the defendants sued herein as DOES 1 through 100, inclusive, and for that reason, said
5 Defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to amend
6 this Complaint when such true names and capacities are discovered. Plaintiff is informed, and
7 believes, and thereon alleges, that each of said fictitious defendants, whether individual, partners, or
8 corporate, were responsible in some manner for the acts and omissions alleged herein, and proximately
9 caused Plaintiff and other aggrieved employees to be subject to the unlawful employment practices,
10 wrongs, injuries and damages complained of herein.

11 7. Plaintiff is informed and believes, and based thereon alleges, that at all times mentioned
12 herein, Defendants were and are the employers of Plaintiff and the other aggrieved employees.

13 8. At all times herein mentioned, each of said Defendants participated in the doing of the
14 acts hereinafter alleged to have been done by the named Defendants; and furthermore, the Defendants,
15 and each of them, were the agents, servants, and employees of each and every one of the other
16 Defendants, as well as the agents of all Defendants, and at all times herein mentioned were acting
17 within the course and scope of said agency and employment. Defendants, and each of them, approved
18 of, condoned, and/or otherwise ratified each and every one of the acts or omissions complained of
19 herein.

20 9. At all times mentioned herein, Defendants, and each of them, were members of and
21 engaged in a joint venture, partnership, and common enterprise, and acting within the course and scope
22 of and in pursuance of said joint venture, partnership, and common enterprise. Further, Plaintiff
23 alleges that all Defendants were joint employers for all purposes of Plaintiff and the aggrieved
24 employees.

25 **ALTER EGO, AGENCY AND JOINT EMPLOYER**

26 10. HEE SOOK LEE owned and/or controlled the businesses operated by CERRITOS
27 BCD, INC., and furthermore, HEE SOOK LEE exercised control over the labor practices of each and
28

1 every one of the employees (inclusive of Plaintiff and the aggrieved employees) of each and every one
2 of his said interests, and caused the violations at issue in this Complaint.

3 11. Based on the foregoing allegations, even if HEE SOOK LEE is not found to be the
4 “employer(s)” of Plaintiff (by way of direct employment, alter ego, or otherwise) HEE SOOK LEE,
5 in fact, caused the violations at-issue in this Complaint, thereby creating individual liability
6 under *Labor Code* § 558.1.

7 12. As further referenced hereinbelow, the viability of obtaining liability of individuals by
8 this method was discussed by the California Supreme Court in *Reynolds v. Bement* (2005) 36 Cal.4th
9 1075, 1089 where the court noted that individual liability against non-employers could be obtained
10 through the use of § 558.

11 13. Plaintiff is informed and believes, and based thereon alleges, that there exists such a
12 unity of interest and ownership between HEE SOOK LEE, CERRITOS BCD, INC., and DOES 1-100
13 that the individuality and separateness of Defendants have ceased to exist.

14 14. Plaintiff is informed and believes, and based thereon alleges, that despite the formation
15 of purported corporate existence, HEE SOOK LEE, CERRITOS BCD, INC., and DOES 1-100, are in
16 reality, one and the same, including, but not limited to, because:

17 a. CERRITOS BCD, INC., and DOES 1-100 are completely dominated and controlled by
18 HEE SOOK LEE, who personally committed the frauds and violated the laws as set forth in this
19 complaint, and who has hidden and currently hide behind CERRITOS BCD, INC., and DOES 1-100
20 to perpetrate frauds, circumvent statutes, or accomplish some other wrongful or inequitable purpose.

21 b. HEE SOOK LEE derives actual and significant monetary benefits by and through
22 CERRITOS BCD, INC., and DOES 1-100’s unlawful conduct, and by using CERRITOS BCD, INC.,
23 and DOES 1-100 as the funding source for their own personal expenditures.

24 c. Plaintiff is informed and believes that HEE SOOK LEE, CERRITOS BCD, INC., and
25 DOES 1-100, while really one and the same, were segregated to appear as though separate and distinct
26 for purposes of perpetrating a fraud, circumventing a statute, or accomplishing some other wrongful
27 or inequitable purpose.
28

1 d. Plaintiff is informed and believes that HEE SOOK LEE, CERRITOS BCD, INC., and
2 DOES 1-100, do not comply with all requisite corporate formalities to maintain a legal and separate
3 corporate existence.

4 e. Plaintiff is informed and believes, and based thereon alleges, that the business affairs
5 of HEE SOOK LEE, CERRITOS BCD, INC., and DOES 1-100, are, and at all times relevant were,
6 so mixed and intermingled that the same cannot reasonably be segregated, and the same are in
7 inextricable confusion. CERRITOS BCD, INC., and DOES 1-100 are and at all times relevant times
8 hereto were used by HEE SOOK LEE as a mere shell and conduit for the conduct of certain of
9 Defendants' affairs, and are, and were, the alter egos of HEE SOOK LEE. The recognition of the
10 separate existence of HEE SOOK LEE, CERRITOS BCD, INC., and DOES 1-100 from one another
11 would not promote justice, in that it would permit Defendants to insulate themselves from liability to
12 Plaintiff for violations of the Government Code, Labor Code, and other statutory violations. The
13 corporate existence of CERRITOS BCD, INC., and DOES 1-100 should be disregarded in equity and
14 for the ends of justice because such disregard is necessary to avoid fraud and injustice to Plaintiff
15 herein.

16
17 15. Accordingly, HEE SOOK LEE, CERRITOS BCD, INC., and DOES 1-100 constitute
18 the alter egos of one another, and the fiction of their separate corporate existence must be disregarded.

19 16. As a result of the aforementioned facts, Plaintiff is informed and believes, and based
20 thereon alleges that HEE SOOK LEE, CERRITOS BCD, INC., and DOES 1-100 are Plaintiff's joint
21 employers by virtue of a joint enterprise, and that Plaintiff was an employee of HEE SOOK LEE,
22 CERRITOS BCD, INC. , and DOES 1-100. Plaintiff performed services for each and every one of
23 Defendants, and to the mutual benefit of all Defendants, and all Defendants shared control of Plaintiff
24 as an employee, either directly or indirectly, and the manner in which Defendants' business was and
25 is conducted.

26 **REPRESENTATIVE ACTION FACTUAL ALLEGATIONS**

27 17. Plaintiff worked for Defendants' tofu restaurant from in or around October 2017 until
28 January 2021 as a cook. At any given time, Defendants employed approximately eight (8) other

1 similarly aggrieved employees that were tasked with jobs all related to the running of the restaurant
2 such as clearing tables, taking orders, washing dishes, preparing food, cleaning, and unloading
3 inventory.

4 18. Plaintiff and other similarly aggrieved employees were never given meal or rest breaks.
5 Defendants assigned Plaintiff other similarly aggrieved employees two shifts per day. The first shift
6 was from 10:00 a.m. to 3:30 p.m.; the second shift was from 5:00 p.m. to 9:30 p.m. Plaintiff and other
7 similarly aggrieved employees were prohibited from taking timely meal or rest breaks because
8 Defendants considered their breaks to be between shifts i.e., between 3:30 p.m. and 5:00 p.m., and
9 thus instructed Plaintiff and similarly aggrieved employees not to take any breaks until 3:30 p.m.
10 Plaintiff and other similarly aggrieved employees, by law, should have been given their first rest break
11 by 2:00 p.m., and their meal break by 3:00 p.m. Plaintiff and other similarly aggrieved employees
12 were never paid meal or rest break premiums for the missed meal and rest breaks.

13 19. Plaintiff and other similarly aggrieved employees were not paid for all of their overtime
14 hours. Defendants had a policy that overtime would only be paid if an employee worked more than 80
15 hours in a pay period. Plaintiff and other similarly aggrieved employees were paid every two weeks.
16 This means that on the occasion that Plaintiff and other similarly aggrieved employees worked more
17 than eight (8) hours per day or more than 40 hours per week but did not work more than 80 hours in a
18 pay period, they would not be paid overtime wages. This happened frequently, resulting in unpaid
19 overtime wages.
20

21 20. Plaintiff and other similarly aggrieved employees were not paid for all hours worked.
22 Plaintiff and other similarly aggrieved employees regularly performed off-the-clock work because,
23 following Defendants' direct orders, they were required to unload inventory both before and after
24 clocking in for their shifts at least once per week.

25 21. As a result of Defendants' failure to pay Plaintiff and other similarly aggrieved
26 employees for their owed hourly and overtime wages, Defendants maintained inaccurate payroll
27 records, issued inaccurate wage statements to Plaintiff and other similarly aggrieved employees, and
28 failed to pay all final wages owed to Plaintiff and other similarly aggrieved employees upon their

1 separation of employment from Defendants.

2 22. As a result of Defendants' failure to pay all meal and rest period premium wages,
3 Defendants maintained inaccurate payroll records and issued inaccurate wage statements to Plaintiff
4 and aggrieved employees, and failed to timely pay Plaintiff and other similarly aggrieved employees
5 all wages owed them at the time of separation from their respective employments.

6 23. Defendants have engaged in, and continue to engage in, unfair business practices in
7 California by practicing, employing and utilizing the employment practices and policies outlined
8 above.

9 24. Defendants' utilization of such unfair business practices constitutes unfair competition
10 and provides an unfair advantage over Defendants' competitors. Defendants' utilization of such unfair
11 business practices deprived Plaintiffs of the general minimum working standards and entitlements due
12 to them under California law and the Industrial Welfare Commission Wage Order as described herein.

13 25. At all times relevant hereto, Plaintiffs were not exempt pursuant to Labor Code §515,
14 including because:

15 1. Plaintiffs' duties and responsibilities did not involve the management of the
16 enterprise in which they were employed or of a customarily recognized department or subdivision
17 thereof;

18 2. Plaintiffs were not licensed or certified by the State of California nor were they
19 primarily engaged in the practice of one of the following recognized professions: law, medicine,
20 dentistry, optometry, architecture, engineering, teaching, or accounting, nor were they primarily
21 engaged in an occupation commonly recognized as a learned or artistic profession as such terms are
22 defined by Wage Order 5;

23 3. Plaintiffs' duties and responsibilities did not involve either the performance of
24 office or non-manual work directly related to management policies or general business operations of
25 their employer or their employer's customers, or the performance of functions in the administration
26 of a school system, or educational establishment or institution, or of a department or subdivision
27 thereof, in work directly related to the academic instruction or training carried on therein;
28

1 4. Plaintiffs did not have the authority to hire or fire other employees, nor were
2 Plaintiffs' suggestions and recommendations as to the advancement and promotion or any other
3 change of status of other employees given any weight;

4 5. Plaintiffs did not customarily and regularly exercise discretion and independent
5 judgment in performing their work duties;

6 6. Plaintiffs did not perform under only general supervision work along
7 specialized or technical lines requiring special training, experience, or knowledge;

8 7. Plaintiffs did not perform under only general supervision special assignments
9 and tasks; and

10 8. Plaintiffs did not spend more than one-half of their work time engaged in
11 exempt work.

12 26. Defendants have engaged in, and continue to engage in, unfair business practices in
13 California by practicing, employing and utilizing the employment practices and policies outlined
14 above.

15 27. Defendants' utilization of such unfair business practices constitutes unfair competition
16 and provides an unfair advantage over Defendants' competitors. Defendants' utilization of such unfair
17 business practices deprives Plaintiffs of the general minimum working standards and entitlements due
18 them under California law and the Industrial Welfare Commission Wage Order as described herein.

19 28. As a direct result of the violations herein alleged, Plaintiffs have suffered, and continue
20 to suffer, substantial losses related to the use and enjoyment of wages, lost interest on such wages, and
21 expenses and attorney's fees in seeking to compel Defendants to fully perform their obligations under
22 state law, all to their respective damage in amounts according to proof at the time of trial.

23 29. Based on the foregoing, Plaintiff seeks to represent himself and all aggrieved
24 employees, as defined by Labor Code § 2699(c), including all individuals who are currently employed,
25 or formerly have been employed, as non-exempt employees of Defendants between March 1, 2020
26 and the present.

1 30. On March 1, 2021, Plaintiff sent a notice of filing the Private Attorney General Act
2 (“PAGA”) claim to Labor Workforce and Development Agency (“LWDA”) pursuant to California
3 Labor Code §§ 2698, *et seq.*, and paid \$75 to LWDA as a fee for filing the PAGA notice.

4 **FIRST CAUSE OF ACTION**

5 **PRIVATE ATTORNEYS GENERAL ACT**

6 **(AGAINST ALL DEFENDANTS)**

7 31. Plaintiff incorporates by reference and re-alleges as if fully stated herein all previous
8 paragraphs.

9 32. Defendants have committed several Labor Code violations against Plaintiff and
10 aggrieved employees.

11 33. PAGA permits Plaintiff to recover civil penalties for the violation(s) of the Labor Code
12 sections enumerated in Labor Code section 2699.5.

13 34. Plaintiff is an “aggrieved employee” within the meaning of Labor Code § 2698 *et seq.*,
14 and acting on behalf of himself and other aggrieved employees, brings this representative action
15 against Defendants to recover the civil penalties due to Plaintiff, other aggrieved employees, and the
16 State of California according to proof pursuant to Labor Code § 2699(a) including, but not limited to:
17 \$100.00 for each initial violation for each failure to pay each employee and \$200.00 for each
18 subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each failure
19 to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$250.00 for each initial
20 violation and \$1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per employee
21 per pay period; and/or (3) \$100.00 for each initial violation and \$200.00 for each subsequent violation
22 per employee per pay period for those violations of the Labor Code for which no civil penalty is
23 specifically provided, based on the following Labor Code violations:

- 24
- 25 a. Defendants’ failure to pay for all hours worked in violation of Industrial Welfare
26 Commission Order No.5 and Labor Code §§ 200, 226, 226.7, 500, 510, 1197, 1194, and
1198;
- 27 b. Defendants’ failure to pay the minimum wage in violation of Industrial Welfare
28 Commission Order No. 5 and Cal. Labor code §§200, 226, 500, 510, 1194, 1197, and
1198;

- c. Defendant violated Labor code §§ 200, 226, 500, 510, 1194, and 1198 by not paying Plaintiff and similarly aggrieved employees overtime and work performed for the benefit of Defendants.
- d. Defendants violated Labor Code §§ 226 and 1174(d) by failing to provide Plaintiff and other similarly aggrieved employees with accurate and compliant itemized wage statements;
- e. Defendants violated Labor Code §§ 201-203 by failing to timely pay all final wages due, including, but not limited to, overtime wages due to Plaintiff and other similarly aggrieved employees upon their separation of employment;
- f. Defendants violated Industrial Welfare Commission Order No. 5 and Labor Code §226.7 and 512, 516, 558 and 1198 by failing to provide all legally required meal and rest periods, or the required premiums for missed meal and rest periods, to Plaintiff and similarly aggrieved employees.

35. On March 1, 2021, Plaintiff sent a notice of his intent to file a PAGA claim for civil penalties to the LWDA pursuant to the California Labor Code § 2698, *et seq.*, with respect to the violations of the California Labor Code identified in Paragraph 21 (a)-(f). Now that sixty-five days have passed from the date Plaintiff notified Defendants and the LWDA of these violations, Plaintiff has exhausted his administrative requirements for bringing a claim under the Private Attorneys General Act with respect to these violations.

36. Plaintiff was compelled to retain the services of counsel to file this court action to protect his interests and the interests of other aggrieved employees, and to assess and collect the civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys' fees and costs, which he is entitled to receive under California Labor Code § 2699.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment for himself and for all others on whose behalf this suit is brought against Defendants, jointly and severally, as follows:

1. Upon the First Cause of Action, for civil penalties due to Plaintiff, other aggrieved employees, and the State of California according to proof pursuant to Labor Code § 2699(a) including, but not limited to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200.00 for each subsequent violation or willful or intentional violation pursuant to Labor Code § 210

1 for each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$250.00 for
2 each initial violation and \$1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per
3 employee per pay period; and/or (3) \$100.00 for each initial violation and \$200.00 for each subsequent
4 violation per employee per pay period for those violations of the Labor Code for which no civil penalty
5 is specifically provided;

6 2. On all causes of action, for attorneys' fees and costs as provided by Labor Code § 2699,
7 and Code of Civil Procedure § 1021.5; and

8 3. For such other and further relief that the Court may deem just and proper.
9

10 DATED: June 9, 2021

LOYR, APC

11
12
13 By: 

14 Young W. Ryu, Esq.

Alexander D. Wallin, Esq.

15 Sarah H. Cohen, Esq.

16 Attorneys for Plaintiff FILIBERTO HERNANDEZ
17

JURY DEMAND

18 Plaintiff, on behalf of himself and others aggrieved employees, demands a trial by jury for
19 himself and other aggrieved employees on all claims so triable.
20

21 DATED: June 9, 2021

LOYR, APC

22
23 By: 

24 Young W. Ryu, Esq.

Alexander D. Wallin, Esq.

26 Sarah H. Cohen, Esq.

27 Attorneys for Plaintiff FILIBERTO HERNANDEZ
28