

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Monica Bachner

HAINES LAW GROUP, APC
Paul K. Haines (SBN 248226)
phaines@haineslawgroup.com
Tuvia Korobkin (SBN 268066)
tkorobkin@haineslawgroup.com
Alexandra R. McIntosh (SBN 320904)
amcintosh@haineslawgroup.com
2155 Campus Drive, Suite 180
El Segundo, California 90245
Tel: (424) 292-2350
Fax: (424) 292-2355

Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

ELIA PAREDES ACOSTA, as an individual
and on behalf of all others similarly situated,

Plaintiff,

vs.

SMG/LONG BEACH CONVENTION AND
ENTERTAINMENT CENTER, a business
entity form unknown; ASM GLOBAL
FRESNO, LLC, a Delaware limited liability
company; and DOES 1 through 100, inclusive,
Defendants.

Case No.: 21STCV36919

**REPRESENTATIVE ACTION
COMPLAINT:**

**(1) CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS GENERAL
ACT (LABOR CODE § 2698, et seq.)**

UNLIMITED CIVIL CASE

1 Plaintiff Elia Paredes Acosta (“Plaintiff”), on behalf of herself and all others similarly
2 situated, hereby brings this Representative Action Complaint (“Complaint”) against SMG, a
3 general partnership; ASM Global Fresno, LLC, a Delaware limited liability company; and DOES
4 1 to 100, inclusive (collectively “Defendants”), and on information and belief alleges as follows:

5 **JURISDICTION**

6 1. Plaintiff, on behalf of herself, all other aggrieved employees, and the State of
7 California, hereby brings this Complaint for recovery of civil penalties under the Private
8 Attorneys General Act, Labor Code § 2698, *et seq.* (“PAGA”), and Industrial Welfare
9 Commission Wage Order 10 (“Wage Order 10”). The monetary damages that Plaintiff seeks
10 exceed this Court’s jurisdictional minimum.

11 **VENUE**

12 2. Venue is proper in this judicial district pursuant to Cal. Code of Civ. Proc. §§
13 395(a) and 395.5, as at least some of the acts and omissions complained of herein occurred in the
14 County of Los Angeles. Defendants own, maintain offices, transact business, have agent(s) within
15 the County of Los Angeles, and/or otherwise are found within the County of Los Angeles, and
16 Defendants are within the jurisdiction of this Court for purposes of service of process.

17 **PARTIES**

18 3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
19 Plaintiff was and currently is, a California resident. Within the statute of limitations periods
20 applicable to each cause of action pled herein, Plaintiff was employed by Defendants as a non-
21 exempt employee.

22 4. Plaintiff is informed and believes, and based thereon alleges, that during the statute
23 of limitations periods applicable to this action through the present, Defendants did (and continue
24 to do) business and employed Plaintiff and other aggrieved employees within, among other
25 counties, Los Angeles County and the state of California and, therefore, were (and are) doing
26 business in Los Angeles County and the State of California.

27 5. Plaintiff does not know the true names or capacities, whether individual, partner,
28 or corporate, of the defendants sued herein as DOES 1 to 100, inclusive, and for that reason, said

1 defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to
2 amend this Complaint when such true names and capacities are discovered. Plaintiff is informed,
3 and believes, and based thereon alleges, that each of said fictitious defendants, whether individual,
4 partners, or corporate, were responsible in some manner for the acts and omissions alleged herein,
5 and proximately caused Plaintiff and the other aggrieved employees to be subject to the unlawful
6 employment practices, wrongs, injuries and damages complained of herein.

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

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

16 8. At all times mentioned herein, Defendants, and each of them, were members of
17 and engaged in a joint venture, partnership, and common enterprise, and acting within the course
18 and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further,
19 Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and the other
20 aggrieved employees.

21 **REPRESENTATIVE ACTION ALLEGATIONS**

22 9. Defendants own and operate the Long Beach Convention and Entertainment
23 Center in Long Beach, California. Plaintiff has been employed by Defendants as a non-exempt
24 employee since approximately March 2018, although she has been on a leave of absence since
25 approximately July 2019.

26 10. During her employment with Defendants, Plaintiff clocked in to work through a
27 finger scanner, and on information and belief, Defendants' electronic timekeeping system
28 recorded her clock-in and clock-out times to the minute. However, during the relevant time

1 period, Defendants' timekeeping system rounded and/or time-shaved Plaintiff's hours, such that
2 Plaintiff was only paid in quarter of an hour increments, and which resulted in Plaintiff not being
3 compensated for all hours actually worked. Defendants regularly, systematically, and
4 impermissibly rounded and/or shaved the time worked by Plaintiff and other aggrieved employees
5 in Defendants' favor. This time shaving/rounding practice utilized by Defendants was not-even
6 handed over time and would round and shave in Defendants' favor such that Plaintiff was
7 routinely underpaid for her time worked. Due to Defendants' timekeeping policies and practices
8 that fail to compensate for all hours worked, Plaintiff and other aggrieved employees were
9 deprived of all required minimum wages. Further, on occasions when Plaintiff worked over eight
10 hours in a day and/or forty hours in a workweek, this process of time-shaving or rounding also
11 deprived her of all overtime wages owed. As such, Plaintiff and other aggrieved employees were
12 not compensated for all required minimum and overtime wages.

13 11. In addition to failing to pay Plaintiff and other aggrieved employees for all time
14 they were on the clock as a result of its unlawful rounding/time-shaving practice, Defendants also
15 failed to pay Plaintiff and other aggrieved employees for time spent undergoing security checks
16 prior to clocking in. Specifically, Defendants' written policy provides that Defendants have the
17 right to search employees' backpacks, purses, briefcases, and similar items, and Defendants did
18 in fact search Plaintiff's and other employees' bags on a daily basis. Defendants would conduct
19 these searches prior to employees clocking in, such that the searches were done off-the-clock and
20 the time employees spent under Defendants' control during these searches was not compensated.
21 In addition, Plaintiff would sometimes need to wait in line before having her bag searched, since
22 there were other employee(s) having their bags searched when she arrived. This time spent
23 waiting in line was also not compensated by Defendants, even though Plaintiff was subject to
24 Defendants' control during this time. Defendants' practices violate California law, as held by the
25 Supreme Court of California in *Frlekin v. Apple, Inc.*, 8 Cal.5th 1038 (2020) (holding employer
26 must compensate employees for time spent undergoing, and waiting for, bag searches).

27 12. As a result of Defendants' failure to pay all overtime wages and minimum wages,
28 Defendants failed to pay Plaintiff and other aggrieved employees all wages owed at the time of

1 separation from employment with Defendants, and also failed to issue accurate, compliant and
2 itemized wage statements. Pursuant to California Judicial Council Emergency Rule 9, statutes of
3 limitations of more than 180 days were suspended for 178 days, from April 6, 2020 through
4 October 1, 2020. Accordingly, the relevant time period for each cause of action pled herein has
5 been calculated to include 178 days preceding the filing of this action.

6 **FIRST CAUSE OF ACTION**

7 **PRIVATE ATTORNEY GENERAL ACT**

8 **(AGAINST ALL DEFENDANTS)**

9 13. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

10 14. Defendants have committed several Labor Code violations against Plaintiff and
11 other aggrieved employees. Plaintiff, an “aggrieved employee” within the meaning of Labor Code
12 § 2698 *et seq.*, acting on behalf of herself and other aggrieved employees, brings this
13 representative action against Defendants to recover the civil penalties due to Plaintiff, other
14 aggrieved employees, and the State of California according to proof pursuant to Labor Code §§
15 558 and 2699 (a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for
16 each failure to pay each employee and \$200.00 for each subsequent violation or willful or
17 intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus
18 25% of the amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100.00 for each
19 subsequent violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for
20 each initial violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1
21 per employee per pay period; (4) \$250.00 for each initial violation and \$1,000.00 for each
22 subsequent violation pursuant to Labor Code § 226.3 per employee per pay period; and/or (5)
23 \$100.00 for each initial violation and \$200.00 for each subsequent violation per employee per pay
24 period for those violations of the Labor Code for which no civil penalty is specifically provided,
25 based on the following Labor Code violations:

- 26 a. Failing to pay Plaintiff and other aggrieved employees all overtime and/or
27 double time compensation earned in violation of Labor Code §§ 204, 510, 558,
28 1194, and 1198;

- b. Failing to pay Plaintiff and other aggrieved employees at least the statutory minimum wage for all hours worked in violation of Labor Code §§ 1182.12, 1194, 1194.2, 1197 and 1198;
- c. Failing to provide aggrieved employees with complete, accurate, itemized wage statements in violation of Labor Code § 226;
- d. Failing to pay aggrieved former employees all wages due at the end of their employment in violation of Labor Code § 201-203; and
- e. Failing to pay Plaintiff and other aggrieved employees all earned wages at least twice each calendar month in violation of Labor Code § 204.

15. On or about July 23, 2021 Plaintiff notified Defendants via certified mail and notified the California Labor and Workforce Development Agency (“LWDA”) via its website, of Defendants’ violations of the California Labor Code and Plaintiff’s intent to bring a claim for civil penalties under California Labor Code § 2698 et seq. with respect to the violations of the California Labor Code identified in Paragraph 14 (a)-(e). Now that sixty-five days have passed from Plaintiff notifying Defendants and the LWDA of these violations, and the LWDA has not provided notice that it intends to investigate the violations, Plaintiff has exhausted his administrative requirements for bringing a claim under the Private Attorneys General Act with respect to these violations.

16. Based on the foregoing, Plaintiff seeks to represent herself, the State of California, and all aggrieved employees, as defined by Labor Code § 2699(c), which includes all current and former aggrieved employees who worked for Defendants in California between the one year and 178 days prior to the submission of Plaintiff’s PAGA notice to the present.

17. Plaintiff was compelled to retain the services of counsel to file this court action to protect her interest 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 recover under California Labor Code § 2699.

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1 **PRAYER**

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

4 18. Upon the First Cause of Action, for civil penalties due to Plaintiff, other aggrieved
5 employees, and the State of California according to proof pursuant to Labor Code § 2699,
6 including, but not limited to: (1) \$100.00 for each initial violation for each failure to pay each
7 employee and \$200.00 for each subsequent violation or willful or intentional violation pursuant
8 to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully
9 withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent violation pursuant to
10 Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial violation and \$250.00
11 for each subsequent violation pursuant to Labor Code § 1197.1 per employee per pay period; (4)
12 \$250.00 for each initial violation of Labor Code § 226 and \$1,000.00 for each subsequent
13 violation, pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for
14 each initial violation and \$200.00 for each subsequent violation per employee per pay period for
15 those violations of the Labor Code for which no civil penalty is specifically provided, pursuant to
16 Labor Code § 2699(f);

17 19. On all causes of action, for attorney's fees and costs as provided by Labor Code §
18 2699(g) and Code of Civil Procedure § 1021.5; and

19 20. For such other and further relief the Court may deem just and proper.

20 Dated: October 6, 2021

21 Respectfully submitted,
22 HAINES LAW GROUP, APC

23 By:

24 
25 Paul K. Haines
26 Attorneys for Plaintiff