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16 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
17 **FOR THE COUNTY OF SAN BERNARDINO**

18 MILAGROS MORENO GARCIA, individually,
19 and on behalf of all other aggrieved employees,

20 Plaintiff,

21 v.

22 GEN RESTAURANT GROUP, LLC, a limited
23 liability company; GEN DEVELOPMENT,
24 LLC, a limited liability company; GEN CHINO
25 HILLS, LP, a limited partnership; JC
26 HOLDINGS GROUP, LLC, a limited liability
27 company; GEN CALIFORNIA, LLC, a limited
28 liability company; and DOES 1 through 50,
inclusive,

Defendants.

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO CIVIL DIVISION

SEP 20 2021

BY *Sylvia Guajardo*
SYLVIA GUAJARDO, DEPUTY

CASE NO.:

CIV SB 2127192

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

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

1 Plaintiff Milagros Moreno Garcia ("Plaintiff") brings this representative action,
2 individually and on behalf of all other aggrieved employees, to recover civil penalties relating to
3 systematic violations of California wage and hour laws by Gen Restaurant Group, LLC, Gen
4 Development, LLC, Gen Chino Hills, LP, JC Holdings Group, LLC, and Gen California, LLC
5 (collectively, "Gen" or "Defendants"). Plaintiff makes the following allegations on information
6 and belief, except as to allegations pertaining to Plaintiff individually, which are based on her
7 personal knowledge.

8 INTRODUCTION

9 1. Gen does business as Gen Korean BBQ House, an All-You-Can-Eat Korean
10 barbecue restaurant chain. Collectively, Gen owns and operates approximately 22 Korean BBQ
11 restaurants throughout the state of California.

12 2. These restaurants are packed with customers and they are grossly understaffed. To
13 compound matters, and due in large part to the All-You-Can-Eat format, the work performed by
14 employees is fast-paced and requires incessant, often physically demanding, work. For example,
15 front-of-the-house employees, such as servers and hostesses, are constantly shuttling back and
16 forth between tables, taking orders, bringing food to customers, cleaning and changing out grills,
17 seating customers, and otherwise assisting with restaurant operations. Similarly, back-of-the-house
18 employees, such as line cooks and dishwashers, are continuously prepping meat and other food
19 and washing dishes in order to meet non-stop customer demand.

20 3. As a result of systematic policies and practices, Gen has violated California's wage
21 and hour laws, as promulgated in the California Labor Code and Industrial Welfare Commission
22 ("IWC") Wage Order No. 5-2001. For example, Gen attempts to maximize profits by cutting labor
23 costs and implementing unlawful policies and practices, including but not limited to, grossly
24 understaffing their restaurants, denying meal and rest breaks, and cheating their employees out of
25 wages and premiums.

26 4. This case involves all non-exempt employees of Gen who have worked for Gen in
27 the State of California from July 17, 2020 to present ("Statute of Limitations Period"). Hereinafter,
28 these employees are referred to as "Aggrieved Employees."

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1 Diego, Alhambra, Cerritos, Rancho Cucamonga, Torrance, Northridge, San Jose, Chino Hills,
2 Rowland Heights, Milpitas, Concord, Fremont, Sacramento, Westgate, and Mountain View.

3 10. On information and belief, Gen Restaurant Group, LLC is, and at all times relevant
4 herein was, a California limited liability company that is authorized to conduct business in the
5 State of California.

6 11. On information and belief, Gen Development, LLC is, and at all times relevant
7 herein was, a Delaware limited liability company, with its headquarters and/or principal place of
8 business located in the State of California. Gen Development, LLC has been authorized to conduct
9 business in the State of California at all times relevant herein.

10 12. On information and belief, Gen Chino Hills, LP is, and at all times relevant herein
11 was, a Delaware limited partnership, with its headquarters and/or principal place of business
12 located in the State of California. Gen Chino Hills, LP has been authorized to conduct business in
13 the State of California at all times relevant herein. Gen Chino Hills, LP is partners with Gen
14 Development, LLC.

15 13. On information and belief, JC Holdings Group, LLC is, and at all times relevant
16 herein was, a California limited liability company that is authorized to conduct business in the
17 State of California.

18 14. On information and belief, Gen California, LLC is, and at all times relevant herein
19 was, a California limited liability company that is authorized to conduct business in the State of
20 California.

21 15. On information and belief, and at all times material herein, Defendants have been
22 the joint employers, alter egos, divisions, affiliates, integrated enterprises, subsidiaries, parents,
23 principals, related entities, co-conspirators, authorized agents, partners, joint venturers, and/or
24 guarantors, actual or ostensible, of each other. Each Defendant was completely dominated by his,
25 her or its co-Defendant, and each was the alter ego of the other. Each Defendant has the authority
26 to direct and oversee the business operations of all of the restaurants where Aggrieved Employees
27 work, and to directly or indirectly, employ, exercise control over the wages, hours, and working
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1 conditions of Plaintiff and other Aggrieved Employees, and knowingly implement policies and
2 practices that have resulted in violations of the California wage and hour laws as alleged herein.

3 16. The true names and capacities of DOES 1 through 50, inclusive, are unknown to
4 Plaintiff at this time, and Plaintiff therefore sues such defendants under fictitious names. Plaintiff
5 is informed and believes, and thereon alleges, that each defendant designated as a DOE is in some
6 manner highly responsible for the occurrences alleged herein, and that Plaintiff and other
7 Aggrieved Employees' injuries and damages, as alleged herein, were proximately caused by the
8 conduct of such DOE defendants. Plaintiff will seek leave of the Court to amend this Complaint to
9 allege the true names and capacities of such DOE defendants when ascertained.

10 **PAGA REPRESENTATIVE ALLEGATIONS**

11 17. Pursuant to the California Private Attorneys General Act of 2004 ("PAGA"),
12 California Labor Code §§ 2698-2699.5, Plaintiff brings this action, on behalf of herself and all
13 other Aggrieved Employees.

14 18. On July 16, 2021, Plaintiff gave written notice by certified mail pursuant to
15 California Labor Code § 2699.3, to the California Labor and Workforce Development Agency
16 ("LWDA") and Gen, of the specific provisions of the California Labor Code and IWC Wage
17 Order alleged to have been violated, including the facts and theories to support the alleged
18 violations. Plaintiff has not received any response from the LWDA. As Plaintiff has waited more
19 than sixty-five (65) days from the postmark date of her written notice before filing this action,
20 with no response from the LWDA, Plaintiff has complied with all of the requirements set forth in
21 California Labor Code § 2699.3 to commence a representative action under PAGA.

22 **FACTUAL ALLEGATIONS**

23 **Failure to Provide Required Meal Periods and Failure to Properly Pay**

24 **Required Meal Period Premium Payments**

25 **[Cal. Lab. Code §§ 226.7, 512; IWC Wage Order No. 5-2001, § 11]**

26 19. During the Statute of Limitations Period, as part of Gen's unlawful policies and
27 practices to minimize labor costs and maximize profits, Gen has required, permitted or otherwise
28 suffered Plaintiff and other Aggrieved Employees to perform work during their meal periods, to

1 completely skip their meal periods, to take late and short meal periods, and Gen has otherwise
2 failed to provide the required meal periods to Plaintiff and other Aggrieved Employees as required
3 under California Labor Code §§ 226.7, 512, and § 11 of IWC Wage Order 5-2001, or any other
4 applicable Wage Order.

5 20. In order to minimize labor costs, which Plaintiff alleges are tied to a fixed
6 percentage of sales, Gen uniformly understaffs their restaurants. As a direct consequence of this
7 understaffing, Plaintiff and other Aggrieved Employees have so much work to complete within
8 their scheduled shifts that they are forced to skip their meal periods altogether, to take them after
9 working longer than five (5) hours, to perform work during their meal periods, or return to work
10 after taking less than a thirty (30) minute meal period.

11 21. In addition, Plaintiff and other Aggrieved Employees need to first secure
12 permission before taking a meal period, however, they often cannot timely find secure such
13 permission, causing them to regularly miss and otherwise take non-compliant meal periods.

14 22. Despite work conditions that systematically result in missed and non-compliant
15 meal periods, and in order to keep labor costs down, Gen has implemented a policy and practice of
16 failing to pay meal period premium payments that are owed and due. Moreover, to the extent Gen
17 pays any such meal period premium payments, it has failed to pay them at the proper regular rate
18 of pay. In short, Gen has violated California Labor Code §§ 226.7, and § 11 of IWC Wage Order
19 5-2001 or any other applicable Wage Order, by failing to compensate Plaintiff and other
20 Aggrieved Employees who were not authorized and permitted to take a complete, timely,
21 uninterrupted meal period, one additional hour of compensation at the proper regular rate of pay
22 for each workday that such a meal period was not authorized or permitted.

23 **Failure to Provide Required Rest Breaks and Failure to Properly Pay**

24 **Required Rest Break Premium Payments**

25 **[Cal. Lab. Code §§ 226.7, 512; IWC Wage Order No. 5-2001, § 12]**

26 23. During the Statute of Limitations Period, as part of Gen's unlawful policies and
27 practices to minimize labor costs and maximize profits, Gen has failed to authorize and permit
28 Plaintiff and other Aggrieved Employees to take rest breaks as required under California Labor

1 Code §§ 226.7 and 512, and § 12 of IWC Wage Order 5-2001 or any other applicable Wage
2 Order.

3 24. The same common policies and practices that deprive Plaintiff and other Aggrieved
4 Employees from taking their meal periods similarly deprive them of their ability to take rest
5 breaks. As alleged herein, Gen uniformly understaffs their restaurants, based on a fixed percentage
6 of sales, which creates so much work for Plaintiff and other Aggrieved Employees that they are
7 frequently denied requests to take rest breaks.

8 25. Gen further violated Labor Code § 226.7 and § 12 of IWC Wage Order 5-2001 any
9 other applicable Wage Order, by systematically failing to pay Plaintiff and other Aggrieved
10 Employees who were not provided with a lawfully required and compliant rest break, one
11 additional hour of compensation at each employee's regular rate of pay for each workday that a
12 rest period was not provided. In fact, Gen has had a policy and practice of not paying rest break
13 premium payments whatsoever.

14 **Failure to Pay Overtime Wages**

15 **[Cal. Lab. Code §§ 510, 1194, 1198; IWC Wage Order No. 5-2001, § 3]**

16 26. Pursuant to California Labor Code §§ 510, 1194, and IWC Wage Order No. 5-
17 2001, § 3, Gen is required to compensate Plaintiff and other Aggrieved Employees for all
18 overtime, which is calculated at one and one-half (1 ½) times the regular rate of pay for all hours
19 worked in excess of eight (8) hours per day and/or forty (40) hours per week, and for the first eight
20 (8) hours on the seventh consecutive workday, with double time for all hours worked in excess of
21 twelve (12) hours in any workday and for all hours worked in excess of eight (8) hours on the
22 seventh consecutive day of work in any workweek.

23 27. To maximize profits, Gen has uniformly understaffed their restaurants. Not only
24 has this practice systematically caused missed and otherwise non-compliant meal periods and rest
25 breaks, but it has also caused Aggrieved Employees to perform work while off-the-clock. Gen has
26 actual or constructive knowledge of this off-the-clock work and subtly condones it. Plaintiff and
27 other Aggrieved Employees routinely arrive to work early and stay late to clean up their
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1 workstations and finish seating and waiting on customers until they finish with their drinks and
2 meals.

3 28. Gen has also failed to properly calculate Aggrieved Employees' regular rates of pay
4 for the purposes of determining their overtime rates by, among other things, failing to include shift
5 differentials, non-discretionary bonuses, and other forms of remuneration in the regular rate
6 calculation, as required under California law.

7 29. Gen has knowingly and willfully refused to perform their obligations to
8 compensate Plaintiff and other Aggrieved Employees for all wages earned and all hours worked in
9 violation of California Labor Code §§ 510, 1194 and 1198 and § 3 of IWC Wage Order 5-2001 or
10 any other applicable Wage Order.

11 **Failure to Pay Minimum Wages**

12 **[Cal. Lab. Code §§ 1194, 1197; IWC Wage Order No. 5-2001, § 4]**

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

16 31. During the Statute of Limitations Period, Gen paid Plaintiff and other Aggrieved
17 Employees at a base hourly rate that was precisely at minimum wage. Based on this common
18 practice, Gen has failed to actually pay Plaintiff and other Aggrieved Employees minimum wages
19 for all hours worked by requiring, permitting or suffering them to work off-the-clock, requiring
20 them to work through meal periods and rest breaks but not compensating them for this time and
21 failing to include this time in all hours worked, and other methods to be discovered.

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

23 **[Cal. Lab. Code § 204]**

24 32. Pursuant to California Labor Code § 204, for all labor performed between the 1st
25 and 15th days of any calendar month, Gen is required to pay their nonexempt employees between
26 the 16th and 26th day of the month during which the labor was performed. California Labor Code §
27 204 also provides that for all labor performed between the 16th and 26th days of any calendar
28 month, Gen is required to pay their non-exempt employees between the 1st and 10th day of the

1 following calendar month. In addition, California Labor Code § 204 provides that all wages
2 earned for labor in excess of the normal work period shall be paid no later than the payday of the
3 next regular payroll period.

4 33. During the Statute of Limitations Period, Gen has knowingly and willfully failed to
5 timely pay Plaintiff and other Aggrieved Employees all the wages for labor performed by the next
6 regular payroll period as required under California Labor Code § 204.

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

8 **[Cal. Lab. Code §§ 201, 202, 203]**

9 34. Pursuant to California Labor Code § 201, 202 and 203, Gen is required to pay all
10 earned and unpaid wages to an employee who is discharged. California Labor Code § 201
11 mandates that if an employer discharges an employee, the employee's wages accrued and unpaid
12 at the time of discharge are due and payable immediately.

13 35. Pursuant to California Labor Code § 202, Gen is required to pay all accrued wages
14 due to an employee no later than 72 hours after the employee quits his or her employment, unless
15 the employee provided 72 hours previous notice of his or her intention to quit, in which case the
16 employee is entitled to his or her wages at the time of quitting.

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

21 37. During the Statute of Limitations Period, Gen has willfully failed to pay accrued
22 wages and other compensation to Plaintiff and other Aggrieved Employees in accordance with
23 California Labor Code §§ 201 and 202. Gen does not have a sufficient policy to provide Plaintiff
24 and other Aggrieved Employees with their final paychecks within the timeframes required under
25 California law. In addition, because Gen has failed and continues to fail to properly compensate
26 Plaintiff and other Aggrieved Employees for all hours worked when due, overtime wages, and
27 compensation for non-compliant meal periods and rest breaks, Gen has also willfully failed and
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1 continues to fail to pay accrued wages and other compensation to Plaintiff and other Aggrieved
2 Employees in accordance with California Labor Code §§ 201 and 202.

3 **Failure to Maintain Required Records**

4 **[Cal. Lab. Code §§ 226(a), 1174(d); IWC Wage Order No. 5-2001, § 7]**

5 38. During the Statute of Limitations Period, as part of Gen's illegal payroll policies
6 and practices to deprive Plaintiff and other Aggrieved Employees of all wages earned and due,
7 Gen has knowingly and intentionally failed to maintain records as required under California Labor
8 Code §§ 226(a) and 1174(d) and § 7 of IWC Wage Order 5-2001 or any other applicable Wage
9 Order, including but not limited to the following records: total daily hours worked by each
10 employee; applicable rates of pay; all deductions; meal periods; time records showing when each
11 employee begins and ends each work period; and accurate itemized statements. Gen also has
12 knowledge that it is not providing Aggrieved Employees with proper meal periods and rest breaks,
13 but knowingly fails to include in the wage statements one (1) extra hour of compensation for each
14 missed meal period and rest break. Finally, Gen failed to provide supplemental COVID-19 paid
15 sick leave to Aggrieved Employees and failed to maintain records relating to the amount of
16 supplemental COVID-19 sick leave hours available and the number of hours taken.

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

18 **[Cal. Lab. Code § 226(a); IWC Wage Order No. 5-2001, § 7]**

19 39. During the Statute of Limitations Period, Gen has routinely failed to provide
20 Plaintiff and other Aggrieved Employees with timely and accurate itemized wage statements.
21 Gen's pay stubs violate California Labor Code § 226 by, *inter alia*, failing to state the name and
22 address of the legal entity that was Plaintiff's and Aggrieved Employees' employer, not providing
23 Plaintiff and other Aggrieved Employees with proper meal periods and rest breaks but failing to
24 include in their wage statements one (1) additional hour of compensation at their regular rates of
25 pay for each non-compliant meal period or rest break, and failing to provide the available hours of
26 supplemental COVID-19 paid sick leave. As a result, Gen has violated California Labor Code §
27 226(a) and § 7 of IWC Wage Order 5-2001 or any other applicable Wage Order.

1 **Failure to Indemnify Employees for Necessary Expenditures**

2 **[Cal. Lab. Code § 2802; IWC Wage Order No. 5-2001, § 9]**

3 40. California Labor Code § 2802(a) requires an employer to indemnify an employee
4 for all necessary expenditures or losses incurred by the employee in direct consequence of the
5 discharge of her his or her duties, or of his or her obedience to the directions of the employer.
6 Moreover, § 7 of IWC Wage Order 5-2001 or any other applicable Wage Order require employers
7 to provide and maintain uniforms for employees when such uniforms are required.

8 41. During the Statute of Limitations Period, Gen has failed to reimburse Aggrieved
9 Employees for the costs and maintenance of their uniforms. Due to the work environment, which
10 requires non-stop exposure to smoke from the grills, the uniforms of Plaintiff and other Aggrieved
11 Employees get covered in grease and smell like meat. This grease is so pervasive that even the
12 floors of the restaurants are coated with it. This grease also permeates the uniforms of Plaintiff and
13 other Aggrieved Employees. As a result, Aggrieved Employees have been required to purchase
14 special cleaning products, and wash their uniform frequently and separately from their regular
15 clothes.

16 42. In addition, during the COVID-19 pandemic, Plaintiff and other Aggrieved
17 Employees were required to purchase and wear PPE, including gloves and masks, as a condition
18 of employment. Gen did not reimburse Plaintiff and other Aggrieved Employees for the costs of
19 this PPE.

20 **Failure to Provide Notice of Employer-Related Information**

21 **[Cal. Lab. Code § 2810.5]**

22 43. California Labor Code § 2810.5 requires employers in California to provide written
23 notice at the time of hiring of certain employment-related information, as follows:

24 “(A) The rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week,
25 salary, piece, commission, or otherwise, including any rates for overtime, as applicable.

26 (B) Allowances, if any, claimed as part of the minimum wage, including meal or lodging
allowances.

27 (C) The regular payday designated by the employer in accordance with the requirements of
this code.

28 (D) The name of the employer, including any “doing business as” names used by the
employer.

- 1 (E) The physical address of the employer's main office or principal place of business, and
2 a mailing address, if different.
3 (F) The telephone number of the employer.
4 (G) The name, address, and telephone number of the employer's workers' compensation
5 insurance carrier.
6 (H) That an employee: may accrue and use sick leave; has a right to request and use
7 accrued paid sick leave; may not be terminated or retaliated against for using or requesting
8 the use of accrued paid sick leave; and has the right to file a complaint against an employer
9 who retaliates.
10 (I) Any other information the Labor Commissioner deems material and necessary."

11 44. During the Statute of Limitations Period, Gen has failed to comply with California
12 Labor Code § 2810.5 because they did not provide Plaintiff and other Aggrieved Employees with
13 notice of the requirements set forth above.

14 **Failure to Pay COVID-19 Supplemental Sick Leave**

15 **[Cal. Lab. Code §§ 248.1, 248.2]**

16 45. During the Statute of Limitations Period, Gen failed to provide 80 hours of
17 COVID-19 Supplemental Paid Sick leave and compensate Aggrieved Employees at their regular
18 rate of pay for supplemental sick leave, i.e., their highest regular rate of pay, taking into
19 consideration non-discretionary bonuses, etc., in violation of California Labor Code §
20 248.1(b)(3)(A). Gen also failed to provide COVID-19 Supplemental Sick Leave to Aggrieved
21 Employees in addition to regular sick leave, in violation of California Labor Code §
22 248.1(b)(2)(D). Gen also failed to accurately reflect any offset and/or the current amount of
23 COVID-19 Supplemental Sick Leave available to Aggrieved Employees on their wage statements,
24 in violation of California Labor Code §§ 248.1(b)(2)(D), 248.2 and for the reasons provided
25 herein.

26 **FIRST CAUSE OF ACTION**

27 **VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT**

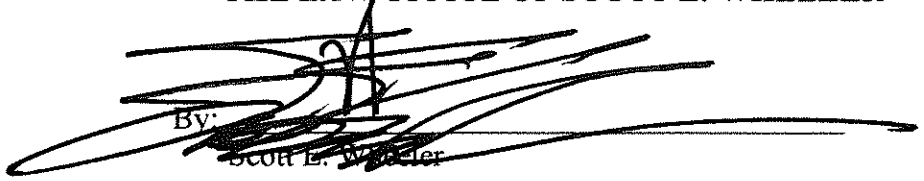
28 **[Cal. Lab. Code § 2698 *et seq.*]**

(On Behalf of Plaintiff and All Other Aggrieved Employees Against All Defendants)

46. Plaintiff incorporates herein by specific reference, as though fully set forth, the
allegations in paragraphs 1 through 45.

1 DATED: September 20, 2021

2 THE LAW OFFICE OF SCOTT E. WHEELER

3
4 By: 

5 Scott E. Wheeler

6 THE WAND LAW FIRM, P.C.

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8 *Attorneys for Plaintiff*