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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO

BRITNEY SANGER, individually, and on behalf
of all others similarly situated,

Plaintiff,

vs.

ELC ENTERPRISE, LLC, a limited liability
company dba THE COOKIE PLUG; and DOES
1 through 10, inclusive,

Defendants.

Case No.: CIVSB2119358

**SECOND AMENDED
REPRESENTATIVE ACTION
COMPLAINT:**

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

DEMAND FOR JURY TRIAL

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

4 **INTRODUCTION & PRELIMINARY STATEMENT**

5 1. Plaintiff brings this action against Defendants ELC Enteprise, LLC dba The Cookie
6 Plug, and Does 1 through 10 (collectively referred to as “Defendants”) for California Labor Code
7 violations and unfair business practices stemming from Defendants’ failure to pay minimum
8 wages, failure to pay overtime wages, failure to provide meal periods, failure to authorize and
9 permit rest periods, failure to reimburse necessary business expenses, failure to maintain accurate
10 records of hours worked and meal periods, failure to timely pay all wages to terminated
11 employees, failure to indemnify necessary business expenses, and failure to furnish accurate
12 wage statements.

13 2. For over 50 years, California’s courts and legislature have recognized that this
14 State’s wage-and-hour laws serve a compelling public interest of fostering a stable job market.
15 Wages are not ordinary debts. Because of the economic position of the average worker and his
16 or her family, it is essential to the public welfare that employers obey the wage-and-hour laws so
17 that employees are promptly paid the minimum/overtime wages that the Legislature has required
18 for employees. So fundamental are California’s wage-and-hour laws that the Legislature has
19 criminalized certain types of violations. In extending extra protection to deter violations of these
20 underlying statutes—since Plaintiff is not seeking general and/or special damages, restitution or
21 other damages other than civil penalties—California has enacted the PAGA to permit an
22 individual to bring an action for PAGA penalties only, which is the precise and sole nature of this
23 action.

24 3. All non-exempt California employees of Defendants, beginning July 6, 2020 to the
25 present, are “Aggrieved Employees.”

26 4. Plaintiff brings this action against Defendants seeking only to recover penalties on
27 behalf of all Aggrieved Employees that worked for Defendants, and on behalf of the State of
28 California. Plaintiff does not seek to recover anything other than penalties as permitted by

1 California Labor Code Section 2699 at this time. To the extent that statutory violations are
2 mentioned for wage violations, Plaintiff does not seek underlying general and/or special damages
3 for those violations, but simply penalties as permitted by California Labor Code Section 2699,
4 declaratory relief, and injunctive relief for themselves and all aggrieved employees as permitted
5 by the PAGA.

6 5. Defendants own/owned and operate/operated an industry, business, and
7 establishment within the State of California, including San Bernardino County. As such, and
8 based upon all the facts and circumstances incident to Defendants' business in California,
9 Defendants are subject to the California Labor Code, Wage Orders issued by the Industrial
10 Welfare Commission ("IWC"), and the California Business & Professions Code.

11 6. Despite these requirements, throughout the statutory period Defendants maintained
12 a systematic, company-wide policy and practice of:

- 13 (a) Failing to pay employees for all hours worked, including all minimum
14 wages, and overtime wages in compliance with the California Labor Code
15 and IWC Wage Orders;
- 16 (b) Failing to provide employees with timely and duty-free meal periods in
17 compliance with the California Labor Code and IWC Wage Orders, failing
18 to maintain accurate records of all meal periods taken or missed, and
19 failing to pay an additional hour's pay for each workday a meal period
20 violation occurred;
- 21 (c) Failing to authorize and permit employees to take timely and duty-free rest
22 periods in compliance with the California Labor Code and IWC Wage
23 Orders, and failing to pay an additional hour's pay for each workday a rest
24 period violation occurred;
- 25 (d) Failing to indemnify employees for necessary business expenses incurred;
- 26 (e) Willfully failing to pay employees all minimum wages, overtime wages,
27 meal period premium wages, and rest period premium wages due within
28 the time period specified by California law when employment terminates;

and

(f) Failing to maintain accurate records of the hours that employees worked.

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

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

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

THE PARTIES

A. Plaintiff

9. Plaintiff Britney Sanger is a California resident that worked for Defendants in the County of San Bernardino, State of California, as a general employee from approximately May 2020 to August 2020.

10. Plaintiff reserves the right to seek leave to amend this complaint to add new plaintiffs, if necessary, in order to establish suitable representative(s) pursuant to *La Sala v. American Savings and Loan Association* (1971) 5 Cal.3d 864, 872, and other applicable law.

B. Defendants

11. Plaintiff is informed and believes, and based upon that information and belief alleges, that Defendant ELC Enterprises, LLC is:

(a) A limited liability company with its principal places of business in San Bernardino, California.

(b) A business entity conducting business in numerous counties throughout the

State of California, including in San Bernardino County;

- (c) The former employer of Plaintiff, and the current and/or former employer of the Aggrieved Employees. ELC Enterprises, LLC suffered and permitted Plaintiff and the Aggrieved Employees to work, and/or controlled their wages, hours, or working conditions; and
- (d) At all times mentioned herein, was and is doing business as The Cookie Plug.

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

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

14. Plaintiff is informed and believes and thereon alleges that at all relevant times each Defendant, directly or indirectly, or through agents or other persons, employed Plaintiff and the other employees described in the Aggrieved Employees definitions below, and exercised control over their wages, hours, and working conditions. Plaintiff is informed and believes and thereon alleges that, at all relevant times, each Defendant was the principal, agent, partner, joint venturer, officer, director, controlling shareholder, subsidiary, affiliate, parent corporation, successor in interest and/or predecessor in interest of some or all of the other Defendants, and was engaged with some or all of the other Defendants in a joint enterprise for profit, and bore such other relationships to some or all of the other Defendants so as to be liable for their conduct with respect to the matters alleged below. Plaintiff is informed and believes and thereon alleges that each Defendant acted pursuant to and within the scope of the relationships alleged above, that

each Defendant knew or should have known about, and authorized, ratified, adopted, approved, controlled, aided and abetted the conduct of all other Defendants.

ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

15. Plaintiff Britney Sanger is a California resident who worked for Defendants in the County of San Bernardino, State of California, as a general employee from approximately May 2020 to August 2020. During the statutory period, Defendants classified Plaintiff as non-exempt from California's overtime requirements, and paid Plaintiff an hourly wage. During the statutory period, Plaintiff typically worked 5 days each workweek, and typically in excess of 8 hours each workday.

16. Throughout the statutory period, Defendants failed to pay Plaintiff for all hours worked (including minimum wages and overtime wages), failed to provide Plaintiff with uninterrupted meal periods, failed to authorize and permit Plaintiff to take uninterrupted rest periods, failed to indemnify Plaintiff for necessary business expenses, failed to timely pay all final wages to Plaintiff when Defendants terminated Plaintiff's employment, and failed to furnish accurate wage statements to Plaintiff. As discussed below, Plaintiff's experience working for Defendants was typical and illustrative.

17. Throughout the statutory period, Defendants maintained a policy and practice of not paying Plaintiff and the Aggrieved Employees for all hours worked, including all overtime wages. Defendants regularly use a system of time rounding in a manner that resulted, over a period, in failing to compensate Plaintiff and the Aggrieved Employees properly for all the time they have actually worked, even though the realities of Defendants' operations are such that it is possible, practical, and feasible to count and pay for work time to the minute. As a result, Defendants frequently paid Plaintiff and the Aggrieved Employees less than all their work time, some of which should have been paid at the overtime rate. Also, throughout the statutory period, Plaintiff and the Aggrieved Employees worked "off the clock". For example, Plaintiff and the Aggrieved Employees were required to clock into work using the cash register, and Plaintiff and the Aggrieved Employees were required to wait in line and/or wait for the cash register to be free in order to clock into work, uncompensated. Further, Plaintiff and the Aggrieved Employees

1 were required to text message through group chats using their cellular telephones while not
2 clocked in. Also, Plaintiff and the Aggrieved Employees were required to take photographs of
3 the room that was locked up, as well as setting up the security system after clocking out of work,
4 uncompensated. Further, Plaintiff and the Aggrieved Employees did not receive all tips that they
5 were owed. In maintaining a practice of not paying all wages owed, Defendants failed to
6 maintain accurate records of the hours Plaintiff and the Aggrieved Employees worked.

7 18. Throughout the statutory period, Defendants have wrongfully failed to provide
8 Plaintiff and the Aggrieved Employees with legally compliant meal periods. Defendants
9 sometimes, but not always, required Plaintiff and the Aggrieved Employees to work in excess of
10 five consecutive hours a day without providing 30-minute, continuous and uninterrupted, duty-
11 free meal period for every five hours of work, or without compensating Plaintiff and the
12 Aggrieved Employees for meal periods that were not provided by the end of the fifth hour of
13 work or tenth hour of work. Defendants also did not adequately inform Plaintiff and the
14 Aggrieved Employees of their right to take a meal period by the end of the fifth hour of work, or,
15 for shifts greater than 10 hours, by the end of the tenth hour of work. Further, Defendants auto-
16 deducted meal periods, regardless of how long meal breaks took and when they were taken.
17 Accordingly, Defendants' policy and practice was to not provide meal periods to Plaintiff and the
18 Aggrieved Employees in compliance with California law.

19 19. Throughout the statutory period, Defendants have wrongfully failed to authorize
20 and permit Plaintiff and the Aggrieved Employees to take timely and duty-free rest periods.
21 Defendants sometimes, but not always, required Plaintiff and the Aggrieved Employees to work
22 in excess of four consecutive hours a day without Defendants authorizing and permitting them to
23 take a 10-minute, continuous and uninterrupted, rest period for every four hours of work (or
24 major fraction of four hours), or without compensating Plaintiff and the Aggrieved Employees
25 for rest periods that were not authorized or permitted. Defendants also did not adequately inform
26 Plaintiff and the Aggrieved Employees of their right to take a rest period. Moreover, Defendants
27 did not have adequate policies or practices permitting or authorizing rest periods for Plaintiff and
28 the Aggrieved Employees, nor did Defendants have adequate policies or practices regarding the

1 timing of rest periods. Defendants also did not have adequate policies or practices to verify
2 whether Plaintiff and the Aggrieved Employees were taking their required rest periods. Further,
3 Defendants did not maintain accurate records of employee work periods, and therefore
4 Defendants cannot demonstrate that Plaintiff and the Aggrieved Employees took rest periods
5 during the middle of each work period. Accordingly, Defendants' policy and practice was to not
6 authorize and permit Plaintiff and the Aggrieved Employees to take rest periods in compliance
7 with California law.

8 20. Throughout the statutory period, Defendants wrongfully required Plaintiff and the
9 Aggrieved Employees to pay expenses that they incurred in direct discharge of their duties for
10 Defendants without reimbursement. For example, Plaintiff and the Aggrieved Employees were
11 required to use their own personal cellular telephones during their employment to text message
12 through group chats with other employees, and to take photographs of the locked store after
13 closing the store. During the entire statutory time period, Plaintiff and the Aggrieved Employees
14 were required to use those apps to check their work assignments.

15 21. Throughout the statutory period, Defendants failed to provide adequate and suitable
16 seating to its employees despite the fact that seating was possible for its employees throughout
17 the workday.

18 22. Throughout the statutory period, Defendants willfully failed and refused to timely
19 pay Plaintiff and the Aggrieved Employees at the conclusion of their employment all wages for
20 all minimum wages, overtime wages, meal period premium wages, and rest period premium
21 wages.

22 23. Throughout the statutory period, Defendants failed to furnish Plaintiff and the
23 Aggrieved Employees with accurate, itemized wage statements showing all applicable hourly
24 rates, and all gross and net wages earned (including correct hours worked, correct wages earned
25 for hours worked, correct overtime hours worked, correct wages for meal periods that were not
26 provided in accordance with California law, correct wages for rest periods that were not
27 authorized and permitted to take in accordance with California law, and Defendant's address).
28 As a result of these violations of California Labor Code § 226(a), the Plaintiff and the Aggrieved

1 Employees suffered injury because, among other things:

- 2 (a) the violations led them to believe that they were not entitled to be paid
3 minimum wages, overtime wages, meal period premium wages, and rest
4 period premium wages to which they were entitled, even though they were
5 entitled;
- 6 (b) the violations led them to believe that they had been paid the minimum,
7 overtime, meal period premium, and rest period premium wages, even
8 though they had not been;
- 9 (c) the violations led them to believe they were not entitled to be paid
10 minimum, overtime, meal period premium, and rest period premium wages
11 at the correct California rate even though they were;
- 12 (d) the violations led them to believe they had been paid minimum, overtime,
13 meal period premium, and rest period premium wages at the correct
14 California rate even though they had not been;
- 15 (e) the violations hindered them from determining the amounts of minimum,
16 overtime, meal period premium, and rest period premium owed to them;
- 17 (f) in connection with their employment before and during this action, and in
18 connection with prosecuting this action, the violations caused them to have
19 to perform mathematical computations to determine the amounts of wages
20 owed to them, computations they would not have to make if the wage
21 statements contained the required accurate information;
- 22 (g) by understating the wages truly due them, the violations caused them to
23 lose entitlement and/or accrual of the full amount of Social Security,
24 disability, unemployment, and other governmental benefits;
- 25 (h) the wage statements inaccurately understated the wages, hours, and wages
26 rates to which Plaintiff and the Aggrieved Employees were entitled, and
27 Plaintiff and the Aggrieved Employees were paid less than the wages and
28 wage rates to which they were entitled.

1 Thus, Plaintiff and the Aggrieved Employees are owed the amounts provided for
2 in California Labor Code § 226(e), including actual damages.

3 **FIRST CAUSE OF ACTION**

4 **(Against all Defendants for Civil Penalties Under the Private Attorneys General Act of**
5 **2004, Cal. Lab. Code § 2698 et seq.)**

6 24. Plaintiff incorporates by reference and re-alleges as if fully stated herein
7 paragraphs 1 through 23 in this Second Amended Complaint.

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

10 26. California Labor Code § 2699(a) specifically provides for a private right of action
11 to recover penalties for violations of the Labor Code: “Notwithstanding any other provision of
12 law, any provision of this code that provides for a civil penalty to be assessed and collected by
13 the Labor and Workforce Development Agency or any of its departments, divisions,
14 commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative,
15 be recovered through a civil action brought by an aggrieved employee on behalf of himself or
16 herself and other current or former employees pursuant to the procedures specified in Section
17 2699.3.”

18 27. Plaintiff has exhausted her administrative remedies pursuant to California Labor
19 Code § 2699.3. On July 1, 2021, Plaintiff gave written notice by online filing to the Labor and
20 Workforce Development Agency and by certified mail to Defendants of the specific provisions
21 of the Labor Code that Defendants have violated against Plaintiff and current and former
22 aggrieved employees, including the facts and theories to support the violations. At the time of
23 this filing, 65 days has elapsed since Plaintiff provided notice, but the Labor and Workforce
24 Development Agency has not indicated that it intends to investigate Defendants’ Labor Code
25 violations discussed in the notice. Accordingly, Plaintiff may commence a civil action to recover
26 penalties under Labor Code § 2699 pursuant to § 2699.3 for the violations of the Labor Code
27 described in this Complaint. These penalties include, but are not limited to, penalties under
28 California Labor Code §§ 210, 226.3, 558, 1197.1, and 2699(f)(2).

1 28. In addition, Plaintiff seeks penalties for Defendants' violation of California Labor
2 Code § 1174(d). Pursuant to California Labor Code § 1174.5, any person, including any entity,
3 employing labor who willfully fails to maintain accurate and complete records required by
4 California Labor Code § 1174 is subject to a penalty under § 1174.5. Pursuant to the applicable
5 IWC Order § 7(A)(3), every employer shall keep time records showing when the employee
6 begins and ends each work period. Meal periods, and total hours worked daily shall also be
7 recorded. Additionally, pursuant to the applicable IWC Order § 7(A)(5), every employer shall
8 keep total hours worked in the payroll period and applicable rates of pay.

9 29. During the time period of employment for Plaintiff and the Aggrieved Employees,
10 Defendants failed to maintain records pursuant to the Labor Code and IWC Orders by failing to
11 maintain accurate records showing meal periods, and accurate records showing when employees
12 begin and end each work period. Defendants' failure to provide and maintain records required by
13 the Labor Code IWC Wage Orders deprived Plaintiff and the Aggrieved Employees the ability to
14 know, understand and question the accuracy and frequency of meal periods, and the accuracy of
15 their hours worked stated in Defendants' records. Therefore, Plaintiff and the Aggrieved
16 Employees had no way to dispute the resulting failure to pay wages, all of which resulted in an
17 unjustified economic enrichment to Defendants. As a direct result, Plaintiff and the Aggrieved
18 Employees have suffered and continue to suffer, substantial losses related to the use and
19 enjoyment of such wages, lost interest on such wages and expenses and attorney's fees in seeking
20 to compel Defendants to fully perform its obligation under state law, all to their respective
21 damage in amounts according to proof at trial. Because of Defendants' knowing failure to
22 comply with the Labor Code and applicable IWC Wage Orders, Plaintiff and the Aggrieved
23 Employees have also suffered an injury in that they were prevented from knowing,
24 understanding, and disputing the wage payments paid to them.

25 30. Based on the conduct described in this Second Amended Complaint, Plaintiff is
26 entitled to an award of civil penalties on behalf of herself, the State of California, and similarly
27 Aggrieved Employees of Defendants. The exact amount of the applicable penalties, in all, is in
28 an amount to be shown according to proof at trial. These penalties are in addition to all other

remedies permitted by law.

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

PRAYER FOR RELIEF

Plaintiff, on behalf of herself, the State of California, and similarly Aggrieved Employees of Defendants, prays for relief and judgment against Defendants, jointly and severally, as follows:

As to the First Cause of Action

32. That the Court declare, adjudge and decree that Defendants violated the California Labor Code by failing to pay wages for all hours worked (including minimum, straight time, and overtime wages), failing to provide meal periods, failing to maintain accurate records of meal periods, failing to authorize and permit rest periods, failing to maintain accurate records of all hours worked and meal periods, failing to pay final wages at termination, and failing to furnish accurate wage statements;

33. For all actual, consequential and incidental losses and damages, according to proof.

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

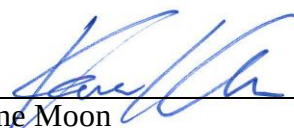
35. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Labor Code § 2699;

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

Respectfully submitted,

Dated: November 5, 2021

MOON & YANG, APC

By: 

Kang Moon
Lilit Ter-Astvatsatryan

Attorneys for Plaintiff

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury as to all causes of action triable by jury.

Dated: November 5, 2021

MOON & YANG, APC

By: 

Kane Moon
Lilit Ter-Astvatsatryan

Attorneys for Plaintiff

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss
COUNTY OF LOS ANGELES)

I am employed in the county of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 1055 W. 7th Street, Suite 1880, Los Angeles, California 90017. On **November 8, 2021**, I served the foregoing document described as:

SECOND AMENDED REPRESENTATIVE ACTION COMPLAINT

X by placing ___ the original X a true copy thereof enclosed in sealed envelope(s) addressed as follows:

Janice P. Brown
David Middleton
MEYERS NAVE
600 B Street, Suite 1650
San Diego, California 92101
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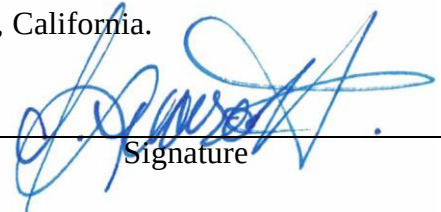
[✓] **BY E-MAIL:** I hereby certify that this document was served from Los Angeles, California, by e-mail delivery on the parties listed herein at their most recent known e-mail address or e-mail of record in this action.

[✓] **BY U.S. MAIL:** I deposited such envelope in the mail at Los Angeles, California. The envelope was mailed with postage thereon fully prepaid. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this **November 8, 2021**, at Los Angeles, California.

Ivette Hernandez
Type or Print Name


Signature