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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 FOR THE COUNTY OF LOS ANGELES

10 UNLIMITED JURISDICTION

11  
12 MICHAEL GARNER, on behalf of himself  
13 and all others similarly situated, and the  
general public,

14 *Plaintiff,*

15 v.

16 BEVERAGES & MORE, INC., a Delaware  
17 corporation; BEVMO GC SERVICES LLC, a  
California limited liability company; and  
18 DOES 1 through 50, inclusive,

19 *Defendants.*

Case No. 21STCV39667

**REPRESENTATIVE ACTION**

**COMPLAINT**

1. Civil Penalties (Lab. Code § 2698, *et seq.*)

1 Plaintiff MICHAEL GARNER ("Plaintiff"), on behalf of himself, all other similarly  
2 situated aggrieved employees, the general public, and the State of California complains and alleges  
3 as follows:

#### 4 INTRODUCTION

5 1. Plaintiff brings this representative action against defendant BEVERAGES &  
6 MORE, INC., a Delaware corporation; BEVMO GC SERVICES LLC, a California limited  
7 liability company; and DOES 1 through 50, inclusive, (collectively referred to as "Defendants") for  
8 alleged violations of the Labor Code. As set forth below, Plaintiff alleges that Defendants have

- 9 (1) failed to provide Plaintiff and all other similarly situated individuals with meal  
10 periods;
- 11 (2) failed to provide them with rest periods;
- 12 (3) failed to pay them premium wages for missed meal and/or rest periods;
- 13 (4) failed to pay them premium wages for missed meal and/or rest periods at the regular  
14 rate of pay;
- 15 (5) failed to pay them at least minimum wage for all hours worked;
- 16 (6) failed to pay them overtime wages at the correct rate;
- 17 (7) failed to pay them double time wages at the correct rate;
- 18 (8) failed to pay them overtime and/or double time wages by failing to include all  
19 applicable remuneration in calculating the regular rate of pay;
- 20 (9) failed to pay them for all vested vacation pay;
- 21 (10) failed to reimburse them for all necessary business expenses;
- 22 (11) failed to provide them with accurate written wage statements; and
- 23 (12) failed to pay them all of their final wages following separation of employment.

24 Based on these alleged violations, Plaintiff now brings this representative action to recover civil  
25 and statutory penalties, and related relief on behalf of himself and all others similarly situated, all  
26 other aggrieved employees, and the State of California.

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1 or all of the other defendants, and, in doing the things alleged herein, were acting within the course  
2 and scope of such relationship and with the full knowledge, consent, and ratification by such other  
3 defendants.

4 **GENERAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

5 9. Plaintiff worked for Defendants as an hourly, non-exempt employee during the  
6 applicable statutory period.

7 **Off-the-Clock Work**

8 10. Plaintiff and aggrieved employees were not paid all wages earned as Defendants  
9 directed, permitted, or otherwise encouraged Plaintiff and aggrieved employees to perform off-the-  
10 clock work.

11 11. During the applicable limitations period, Garner and the aggrieved employees had to  
12 work off-the-clock because they were not paid for all hours worked including, but not limited to,  
13 Defendants failing to pay them for transporting inventory between stores, Defendants requiring  
14 Garner and the aggrieved employees to open the store, move shopping carts, and/or deactivate the  
15 store alarm before clocking in. Frequently, after performing their store opening procedures “off-the-  
16 clock,” Garner and the aggrieved employees would attempt to boot their computers to clock in only  
17 to find that the system was down. Garner and the aggrieved employees would then have to report in  
18 to an area manager, resulting in time unpaid.

19 12. Garner and the aggrieved employees were given hundreds of dollars’ worth of  
20 inventory, including heavy and burdensome beer kegs, and instructed by their managers including  
21 but not limited to Effrain Garcia to transport the inventory between locations while they were off-  
22 the-clock, before or after their working hours. For instance, Effrain Garcia would regularly give  
23 Garner inventory to transfer from the Turlock, CA location to the Clovis, CA location, a trip which  
24 took approximately 45 minutes. Garner and the aggrieved employees would then be forced to  
25 unload all the heavy inventory and put it safely into the store while it was closed.

26 13. Additionally, managers, including but not limited to District Manager Jill Doe would  
27 frequently call Plaintiff and aggrieved employees at night after he had clocked out and was at home  
28 to discuss store management strategy and store requirements.

14. Garner and the aggrieved employees were required to don their work uniforms before clocking in for each shift. It generally took Garner a few minutes to walk to an area for changing and don the uniform. The time spent donning their work uniforms and performing store opening procedures as described above was considered to be on the employee's personal time for which Garner and the aggrieved employees were not paid. As a result, Defendants failed to pay Garner and the aggrieved employees for the time spent donning and doffing their work uniforms.

15. All of the foregoing work was required and/or permitted by Defendants, resulting in substantial amounts of time worked for which Garner and the aggrieved employees were systematically unpaid. Plaintiff and aggrieved employees regularly performed work before and after their scheduled work hours and were not paid for this time.

16. As a result of performing off-the-clock work that was directed, permitted, or otherwise encouraged by Defendants, Plaintiff and aggrieved employees should have been paid for this time. Instead, Defendants only paid Plaintiff and aggrieved employees based on the time they were clocked in for their shifts and did not pay Plaintiff and aggrieved employees for any of the time spent working off-the-clock.

17. Defendants knew or should have known that Plaintiff and aggrieved employees were performing work before and after their scheduled work shifts and failed to pay Plaintiff and aggrieved employees for these hours.

18. Defendants were aware of this practice and directed, permitted, or otherwise encouraged Plaintiff and aggrieved employees to perform off-the-clock work.

19. As a result of Defendants' policies and practices, Plaintiff and aggrieved employees were not paid for all hours worked.

### Missed Meal Periods

20. Plaintiff and aggrieved employees were not provided with meal periods of at least thirty (30) minutes for each five (5) hour work period due to (1) Defendants' policy of not scheduling each meal period as part of each work shift; (2) chronically understaffing each work shift with not enough workers; (3) imposing so much work on each employee such that it made it unlikely that an employee would be able to take their breaks if they wanted to finish their work on

1 time; and (4) no formal written meal and rest period policy that encouraged employees to take their  
2 meal and rest periods.

3         21. Defendants have a policy and/or practice of requiring Plaintiff and the aggrieved  
4 employees to take their meal periods after the fifth hour of work due to the volume of tasks that  
5 they were responsible for. Also, Plaintiff and the aggrieved employees were required to clock out  
6 for meal periods even though they continued to perform work with the full knowledge of their  
7 supervisors, including but not limited to Effrain Garcia. Frequently, their meal periods were  
8 interrupted by management as well as customers. Since there were typically only two people at a  
9 time working, Plaintiff and aggrieved employees were usually tasked with moving kegs, moving  
10 inventory, stocking, answering questions, assisting a customer to find inventory and/or breaking a  
11 bill for a customer along with myriad other tasks during their meal period, while they were clocked  
12 out. Plaintiff and aggrieved employees were instructed to alert an area manager, including but not  
13 limited to Effrain Garcia and/or Jessica Root when they were required to take their meal period  
14 after the 5th hour so that they could use manager override to fix their time sheets to show they had  
15 a compliant meal period. Management, including but not limited to Effrain Garcia, made it clear to  
16 Plaintiff and aggrieved employees that Defendants would be very upset when they were supposed  
17 to pay premiums for violations, viewing it as a penalty, so Plaintiff and aggrieved employees were  
18 pressured and instructed by their supervisors to clock out for a meal period before the 5th hour, set  
19 a timer for thirty minutes, and then either eat quickly, or not eat at all and continue working until  
20 the time they were supposed to clock back in. Accordingly, Plaintiff and the aggrieved employees  
21 were not provided with legally mandated uninterrupted meal periods of at least thirty minutes  
22 pursuant to California law.

23         22. As a result of Defendants' policy, Plaintiff and aggrieved employees were regularly  
24 not provided with uninterrupted meal periods of at least thirty (30) minutes for each five (5) hours  
25 worked due to complying with Defendants' productivity requirements that required Plaintiff and  
26 aggrieved employees to work through their meal periods in order to complete their assignments on  
27 time.

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28. At all relevant times, Defendants failed to pay Garner and the aggrieved employees for all hours worked, including, but not limited to, overtime hours and/or premiums for meal and rest break violations. While employed by Defendants, Garner and the aggrieved employees received hourly wages and other remuneration, including, but not limited to, commissions and merit based and/or non-discretionary bonuses and/or other applicable remuneration that must be included when calculating their regular rates of pay. However, Defendants consistently failed to include all applicable forms of remuneration when calculating their regular rates of pay. As a result, any overtime wages and/or premiums paid for meal and/or rest break violations were not paid at the regular rate of pay.

## Expense Reimbursement

29. Plaintiff and aggrieved employees members were required to utilize their own personal tools to perform their job duties.

30. At all relevant times during the applicable limitations period, Defendants required Garner and the aggrieved employees to incur expenses which Defendants failed and/or refused to reimburse them for including, but not limited to, use of personal tools on the job including, but not limited to, hammer, screwdriver, nails, screws, and all manner of generic tools used in store maintenance including a grinder (to grind down steel shelves when there was a defect that could cut and/or injure a customer). Defendants failed to reimburse Garner and the aggrieved employees for the use of such personal tools in the execution of their duties.

31. Plaintiff and aggrieved employees members were not reimbursed for business expenses incurred in maintaining their tools..

32. Defendants failed to reimburse Plaintiff and aggrieved employees for such necessary business expenses incurred by them.

## Wage Statements

33. Plaintiff and aggrieved employees were not provided with accurate wage statements as mandated by law pursuant to Labor Code § 226.

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34. Defendants failed to comply with Labor Code section 226(a)(1) as “gross wages earned” were not accurately reflected in that all hours worked, including overtime and “off-the-clock” work, were not included.

35. Defendants failed to comply with Labor Code section 226(a)(2) as “total hours worked by the employee” were not accurately reflected in that all hours worked, including overtime and “off-the-clock” work, were not included.

36. Defendants failed to comply with Labor Code section 226(a)(5) as “net wages earned” were not accurately reflected in that all hours worked, including overtime and “off-the-clock” work, were not included.

37. Defendants failed to comply with Labor Code section 226(a)(9) as “all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee” were not accurately reflected in that all hours worked, including overtime and “off-the-clock” work, were not included.

### FIRST CAUSE OF ACTION

## CIVIL PENALTIES

**(Lab. Code §§ 2698 *et seq.*)**

38. Plaintiff incorporates the preceding paragraphs as if fully alleged herein.

39. During the applicable limitations period, Defendants have violated Labor Code §§ 201, 202, 203, 204, 223, 226(a), 226.7, 510, 512, 1174, 1194, 1197, 1198, and 2802.

40. Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on behalf of himself and other current and former employees, to bring a representative civil action to recover civil penalties pursuant to the procedures set forth in Labor Code § 2699.3 that may, but need not, be brought or maintained as a class action pursuant to Code of Civil Procedure section 382.

41. Plaintiff, a former employee against whom Defendants committed one or more of the alleged Labor Code violations during the applicable limitations period, is an aggrieved employee within the meaning of Labor Code § 2699(c).

42. Plaintiff has complied with the procedures for bringing suit specified in Labor Code § 2699.3.

1           43. Pursuant to Labor Code sections 2699(a) and (f), Plaintiff seeks the following civil  
2 penalties for Defendants' violations of Labor Code §§ 201, 202, 203, 204, 223, 226(a), 226.7, 510,  
3 512, 1174, 1194, 1197, 1198 and 2802:

4           i. For violations of Labor Code §§ 201, 202, 203, 212, 226.7, 1174, 1194, 1198  
5 and 2802, one hundred dollars (\$100) for each employee per pay period for  
6 each initial violation and two hundred dollars (\$200) for each employee per  
7 pay period for each subsequent violation (penalties set by Labor Code §  
8 2699(f)(2));

9           ii. For violations of Labor Code § 203, a penalty in an amount not exceeding  
10 thirty (30) days' pay as waiting time (penalties set by Labor Code § 256);

11          iii. For violations of Labor Code § 204, one hundred dollars (\$100) for each  
12 employee for each initial violation that was neither willful nor intentional,  
13 two hundred dollars (\$200) for each employee, plus 25% of the amount  
14 unlawfully withheld from each employee, for each initial violation that was  
15 either willful or intentional, and two hundred dollars (\$200) for each  
16 employee, plus twenty-five percent (25%) of the amount unlawfully withheld  
17 from each employee, for each subsequent violation, regardless of whether the  
18 subsequent violation was either willful or intentional (penalties set by Labor  
19 Code § 210);

20          iv. For violations of Labor Code § 223, one hundred dollars (\$100) for each  
21 employee for each initial violation that was neither willful nor intentional,  
22 two hundred dollars (\$200) for each employee, plus twenty-five percent  
23 (25%) of the amount unlawfully withheld from each employee, for each  
24 initial violation that was either willful or intentional, and two hundred dollars  
25 (\$200) for each employee, plus twenty-five percent (25%) of the amount  
26 unlawfully withheld from each employee, for each subsequent violation,  
27 regardless of whether the subsequent violation was either willful or  
28 intentional (penalties set by Labor Code § 225.5);

- 1           v.       For violations of Labor Code § 226(a), if this action is deemed to be an initial  
2                   citation, two hundred and fifty dollars (\$250) for each employee for each  
3                   violation. Alternatively, if an initial citation or its equivalent occurred before  
4                   the filing of this action, one thousand dollars (\$1,000) for each employee for  
5                   each violation (penalties set by Labor Code § 226.3);
- 6           vi.       For violation of Labor Code §§ 510 and 512, fifty dollars (\$50) for each  
7                   employee for each initial pay period for which the employee was underpaid,  
8                   and one hundred dollars (\$100) for each employee for each subsequent pay  
9                   period for which the employee was underpaid (penalties set by Labor Code §  
10                  558);
- 11          vii.       For violations of Labor Code § 1197, one hundred dollars (\$100) for each  
12                   aggrieved employee for each initial violation of Labor Code § 1197 that was  
13                   intentional and two hundred and fifty dollars (\$250) for each aggrieved  
14                   employee per pay period for each subsequent violation of Labor Code §  
15                   1197, regardless of whether the initial violation was intentional (penalties set  
16                   by Labor Code § 1197.1);
- 17          viii.       Pursuant to Labor Code § 2699(g), Plaintiff seeks an award of reasonable  
18                   attorneys' fees and costs in connection with Plaintiff's claims for civil  
19                   penalties.

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1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff, on behalf of himself, all other similarly situated aggrieved  
3 employees, the general public, and the State of California prays for relief and judgment against  
4 Defendants as follows:

- 5 (1) Pre-judgment interest;  
6 (2) Statutory penalties;  
7 (3) Civil penalties;  
8 (4) Costs of suit;  
9 (5) Reasonable attorneys' fees; and  
10 (6) Such other relief as the Court deems just and proper.

11  
12 Dated: October 27, 2021

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