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Attorneys for Plaintiff TERI MACEY,

On behalf of the general public as private attorney general

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

TERI MACEY, on behalf of the general public
as private attorney general,

Plaintiff,

v.

RELISH LABS LLC, a Delaware Limited
Liability Company doing business as HOME
CHEF; and DOES 1-50, inclusive,

Defendants.

Case No.

ASSIGNED FOR ALL PURPOSES TO:

JUDGE:

DEPT:

**PAGA REPRESENTATIVE ACTION
COMPLAINT PURSUANT TO THE
PRIVATE ATTORNEYS GENERAL ACT
(Labor Code §§ 2698 *et seq*).**

COMES NOW Plaintiff TERI MACEY (“Plaintiff”), on behalf the general public and all non-exempt aggrieved employees, acting on behalf of the California Attorney General as private attorney general, asserts claims against Defendants RELISH LABS LLC, A DELAWARE LIMITED LIABILITY COMPANY DOING BUSINESS AS HOME CHEF; and DOES 1-50, inclusive (collectively “Defendants”) as follows:

I. INTRODUCTION

1. This is a representative action for recovery of penalties under the Private Attorneys General Act of 2004 (“PAGA”), Cal. Lab. Code sections 2698 *et seq.* PAGA permits “aggrieved employees” to bring a lawsuit as a representative action on behalf of the general public as private attorney general and all other current and former aggrieved employees, to recover civil penalties and address an employer’s violations of the California Labor Code.

2. In this case, Defendants violated various provisions of the California Labor Code. As set forth below, Defendants implemented policies and practices which led to Defendant’s: (a) failure to pay wages including overtime, (b) failure to provide meal periods for every work period exceeding more than ten (10) hours per day and failure to pay an additional hour’s of pay or accurately pay an additional hour’s of pay in lieu of providing a meal period; (c) failing to pay all wages earned and owed upon separation from Defendant’s employ, (d) failing to provide accurate itemized wage statements, and (e) failing to accurately calculate sick pay. As a result Plaintiff seeks penalties under Labor Code 2698, *et. seq.* on behalf of the general public as private attorney general and all other aggrieved employees.

II. JURISDICTION AND VENUE

3. The California Superior Court has jurisdiction over this action pursuant to California Constitution Article VI, Section 10, which grants the Superior Court “original jurisdiction in all cases except those given by statute to other trial courts.” The statutes under which this action is brought do not give jurisdiction to any other court.

4. This Court has jurisdiction over Defendants because, upon information and belief, each Defendant either has sufficient minimum contacts in California, or otherwise intentionally

1 avails itself of the California market so as to render the exercise of jurisdiction over it by the
2 California Courts consistent with traditional notions of fair play and substantial justice.

3 5. Venue as to each Defendant is proper in this judicial district pursuant to Code of
4 Civil Procedure section 395. Defendants are doing business throughout California, including but
5 not limited to San Bernardino County, and each Defendant is within the jurisdiction of this Court
6 for service of process purposes. The unlawful acts alleged herein have a direct effect on Plaintiff
7 and all other aggrieved employees within the State of California. Defendants employ numerous
8 aggrieved employees in in the State of California.

9 6. On information and belief, Defendants have conducted business within the State of
10 California during the purported liability period and continue to conduct business throughout the
11 State of California. The unlawful acts alleged herein have had a direct effect on Plaintiff, and the
12 similarly situated non-exempt aggrieved employees within California.

13 7. The California Superior Court also has jurisdiction in this matter because on
14 information and belief there are no federal questions at issue, as the issues herein are based solely
15 on California statutes and law, including the California Labor Code, the IWC Wage Orders, the
16 California Code of Civil Procedure, the California Civil Code, and the California Business and
17 Professions Code.

18 8. On information and belief, during the statutory liability period and continuing to
19 the present ("liability period"), Defendant consistently maintained and enforced against
20 Defendant's Non-Exempt Aggrieved Employees, among others, the following unlawful practices
21 and policies, in violation of California state wage and hour laws: (a) failure to pay wages including
22 overtime, (b) failure to provide meal periods for every work period exceeding more than ten (10)
23 hours per day and failure to pay an additional hour's of pay or accurately pay an additional hour's
24 of pay in lieu of providing a meal period; (c) failing to pay all wages earned and owed upon
25 separation from Defendant's employ, (d) failing to provide accurate itemized wage statements, and
26 (e) failing to accurately calculate sick pay.

27 9. Plaintiff on behalf of the general public as private attorney general and all other
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aggrieved employees bring this action pursuant to Labor Code 2698, et. seq. for violations enumerated under 2699.5 as follows: sections 201-203, 226, 226.3, 226.7, 246, 510, 512, 558, 1174, 1174.5, 1175, 1194, 1197, 1197.1, 1198, and seeking penalties, interest, attorneys' fees and costs.

III. PARTIES

A. Plaintiff

10. Plaintiff, TERI MACEY, was at all times relevant to this action a resident of California. Plaintiff was employed by Defendants in approximately February 2017 as a Non-Exempt Employee working as a production associate and worked during the liability period for Defendants until Plaintiff's separation from Defendants' employ in approximately March 2021. Plaintiff's duties included, but were not limited to, meal bagging and portioning.

11. As Defendants' employee, Plaintiff, and all other aggrieved employees were regularly required to and subsequently suffered:

- a) perform work subject to the control of the employer without being compensated all wages including overtime, all in violation of California labor laws, regulations, and the Industrial Welfare Commission Wage Order ("IWC");
- b) work in excess of six and ten hours per day without being provided meal periods and not compensated one (1) hour of pay at the regular rate of compensation for each workday that a meal period was not provided, all in violation of California labor laws, regulations, and the Industrial Welfare Commission Wage Orders ("IWC");
- c) not accurately paid sick pay; and
- d) not provided accurate itemized wage statements.

12. On information and belief, Defendants willfully failed to pay all earned wages in the form regular wages and overtime wages, and meal period premium wages, to its Non-Exempt Employees and members of the Representative Group; nor have Defendants returned to Plaintiff or members of the Representative Group, upon or after separation from employment with Defendants, all wages earned and owing. Plaintiff seeks penalties under Labor Code 2698, et.

1 seq. on behalf of the general public as private attorney general and all other aggrieved
2 employees..

3 **B. Defendants**

4 13. Defendant RELISH LABS LLC, a Delaware Limited Liability Company doing
5 business as HOME CHEF, operates as a meal kit and food delivery company. Plaintiff estimates
6 there are in excess of 100 Non-Exempt Employees who work or have worked for Defendants over
7 the last year.

8 14. Other than identified herein, Plaintiff is unaware of the true names, capacities,
9 relationships and extent of participation in the conduct alleged herein, of the defendants sued as
10 DOES 1 through 50, but is informed and believes and thereon alleges that said defendants are
11 legally responsible for the wrongful conduct alleged herein and therefore sues these defendants by
12 such fictitious names. Plaintiff will amend this complaint when their true names and capabilities
13 are ascertained.

14 15. Plaintiff is informed and believes and thereon alleges that each Defendant, directly
15 or indirectly, or through agents or other persons, employed Plaintiff and other members of the
16 Representative Group , and exercised control over their wages, hours, and working conditions.
17 Plaintiff is informed and believes and thereon alleges that each defendant acted in all respects
18 pertinent to this action as the agent of the other defendants, carried out a joint scheme, business
19 plan or policy in all respects pertinent hereto, and the acts of each defendant are legally attributable
20 to the other defendants.

21
22 **IV. GENERAL ALLEGATIONS**

23 16. At all times set forth herein, Defendants employed Plaintiff and other persons in
24 the capacity of non-exempt positions, however titled, throughout the state of California.

25 17. Plaintiff is informed and believes Aggrieved Employees have at all times pertinent
26 hereto been Non-Exempt within the meaning of the California Labor Code and the implementing
27 rules and regulations of the IWC California Wage Orders.

28 18. Defendants continue to employ Non-Exempt Employees, however titled, in

1 California and implement a uniform set of policies and practices to all non-exempt employees, as
2 they were all engaged in the generic job duties related to meal bagging and portioning.

3 19. Plaintiff is informed and believes, and thereon alleges, that Defendants are and were
4 advised by skilled lawyers and other professionals, employees, and advisors with knowledge of
5 the requirements of California's wage and employment laws.

6 20. On information and belief, during the relevant time frame, Plaintiff and Aggrieved
7 Employees frequently worked well over eight (8) hours in a day and forty (40) hours in a work
8 week.

9 21. During the relevant time frame, Defendants compensated Plaintiff and Aggrieved
10 Employees based upon an hourly rate.

11 22. On information and belief, during the relevant time frame, Plaintiff and Aggrieved
12 Employees typically worked five (5) days a week.

13 23. Plaintiff is informed and believes that the Aggrieved Employees were required to
14 keep similar schedules.

15 24. In addition, the Aggrieved Employees frequently worked in excess of eight (8)
16 hours a day and/or over forty (40) hours in a workweek.

17 25. Plaintiff is informed and believes, and thereon alleges that, during the relevant time
18 frame, Defendants also compensated Plaintiff and the Aggrieved Employees with shift
19 differentials, but failed to incorporate the shift differentials into the regular rate of pay for overtime
20 calculation purposes and therefore were provided inaccurate overtime pay.

21 26. Defendants also failed to properly calculate Plaintiff's and the Aggrieved
22 Employees ' regular rate of pay including but not limited to by failing to include all forms of
23 compensation/remuneration in the regular rate including but not limited to bonuses, incentives,
24 commissions, and other compensation.

25 27. In addition, upon information and belief, Plaintiff alleges that Defendants failed to
26 pay sick leave pay to Plaintiff and the Aggrieved Employees at the proper rate, as Defendants
27 failed to factor all forms of compensation into the regular rate.
28

1 28. Plaintiff and the Aggrieved Employees were regularly required to work shifts in
2 excess of five hours without being provided a lawful meal period and over ten hours in a day
3 without being provided a second lawful meal period as required by law.

4 29. Indeed, during the relevant time, as a consequence of Defendants' staffing and
5 scheduling practices, work demands, and Defendants' policies and practices, Defendants
6 frequently failed to provide Plaintiff and the Aggrieved Employees timely, legally complaint
7 uninterrupted 30-minute meal periods on shifts over five hours as required by law.

8 30. Similarly, as a consequence of Defendants' staffing and scheduling practices, lack
9 of coverage, work demands, and Defendants' policies and practices, Defendants frequently failed
10 to provide Plaintiff and the Aggrieved Employees legally compliant second meal periods on shifts
11 over ten hours as required by law.

12 31. On information and belief, Plaintiff and Aggrieved Employees did not waive their
13 rights to meal periods under the law.

14 32. Plaintiff and the Aggrieved Employees were not provided with valid lawful on-duty
15 meal periods.

16 33. Despite the above-mentioned meal period violations, Defendants failed to
17 compensate Plaintiff, and on information and belief, failed to compensate Aggrieved Employees,
18 one additional hour of pay at their regular rate as required by California law when meal periods
19 were not timely or lawfully provided in a compliant manner.

20 34. Plaintiff is informed and believes, and thereon alleges, that Defendants know,
21 should know, knew, and/or should have known that Plaintiff and the other Aggrieved Employees
22 were entitled to receive premium wages based on their regular rate of pay under Labor Code §226.7
23 but were not receiving such compensation.

24 35. Defendants also failed to provide accurate, lawful itemized wage statements to
25 Plaintiff and the Aggrieved Employees in part because of the above specified violations including
26 Defendants' failure to identify the hourly rate of pay and the hours worked to calculate Plaintiff's
27 and Aggrieved Employees' compensation. In addition, upon information and belief, Defendants
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1 omitted an accurate itemization of the premiums due and owing for meal period violations and
2 also the rate for the shift differential from Plaintiff and the Aggrieved Employees' wage
3 statements.

4 36. Plaintiff is informed and believes, and thereon alleges, that at all times herein
5 mentioned, Defendants knew that at the time of termination of employment (or within 72 hours
6 thereof for resignations without prior notice as the case may be) they had a duty to accurately
7 compensate Plaintiff and Aggrieved Employees for all wages owed including minimum wages,
8 meal period premiums, and that Defendants had the financial ability to pay such compensation,
9 but willfully, knowingly, recklessly, and/or intentionally failed to do so in part because of the
10 above-specified violations.

11 37. Upon information and belief, Defendants knew and or should have known that it is
12 improper to implement policies and commit unlawful acts such as:

13 (a) requiring employees to work in excess of five (5) hours or ten (10) hours per day
14 without being provided an uninterrupted thirty minute meal period and/or a second meal period,
15 and without compensating employees with one (1) hour of pay at the regular rate of compensation
16 for each workday that such a meal period was not provided;

17 (b) failing to pay Plaintiff and Aggrieved Employees for all wages including overtime
18 wages owed;

19 (c) failing to provide accurate itemized wage statements;

20 (d) failing to timely pay Plaintiff and Aggrieved Employees; and

21 (e) failure to accurately pay sick pay.
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23 38. In addition to the violations above, and on information and belief, Defendants knew
24 they had a duty to compensate Plaintiff and aggrieved employees for the allegations asserted
25 herein, and that Defendants had the financial ability to pay such compensation, but willfully,
26 knowingly, recklessly, and/or intentionally failed to do so.

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1 V. REPRESENTATIVE CLAIMS

2 THE PRIVATE ATTORNEYS GENERAL ACT- LABOR CODE §§ 2698 et seq.

3 39. Plaintiff incorporates by reference and re-alleges each and every allegation
4 contained above, as though fully set forth herein.

5 40. On or about August 13, 2021, Plaintiff complied with notice requirements pursuant
6 to Labor Code section 2699.3. A copy of the letter sent to the LWDA is attached hereto as **Exhibit**
7 **A**, indicating that the LWDA and Defendants were put on notice of the claims alleged here and
8 that the notice requirement has been satisfied. Sixty five days have passed and the LWDA has not
9 indicated intent to investigate the claims. Therefore, Plaintiff may proceed with this action in a
10 representative capacity. The substance and violations set forth in this Complaint of which the
11 LWDA was provided timely notice, Plaintiff has also sent a copy of this PAGA Representative
12 Action Complaint to the LWDA.

13 41. Plaintiff is an aggrieved employee as defined in Labor Code Section 2699(a).
14 Plaintiff brings this cause of action on behalf of all current and former California Non-Exempt
15 Employees of Defendants.

16 42. Pursuant to Labor Code section 2699(a) Plaintiff seek to recover civil penalties for
17 which Defendants are liable due to numerous Labor Code violations as set forth in this Complaint,
18 including without limitation Labor Code section 201-203, 226, 226.3, 226.7, 246, 510, 512, 558,
19 1174, 1174.5, 1175, 1194, 1197, 1197.1, 1198, and 2698 *et seq.*, applicable IWC Wage Orders and
20 California Code of Regulations, Title 8, section 11000 *et. seq.*

21 43. At all times relevant, Plaintiff and all other aggrieved employees regularly
22 performed non-exempt work in excess of 50% of the time, and thus, were subject to the meal and
23 rest break requirements of the applicable IWC wage order and the Labor Code.

24 44. Defendants violated Labor Code section 200, 558, 1194, 1197, by failing to
25 accurately pay at least minimum wages due as a result of compensating Plaintiff and the Aggrieved
26 Employees with shift differentials, but failing to incorporate the shift differentials into the regular
27 rate of pay for overtime calculation purposes and therefore providing inaccurate overtime pay.
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1 45. Defendants violated Labor Code section 510, and 1194 by failing to accurately pay
2 overtime wages owed as discussed above due to Defendants' failure to incorporate bonuses and
3 other forms of remuneration as described above into the regular rate of pay for overtime calculation
4 purposes. Therefore, Defendants violated section 510, and 1194 by not compensating its Non-
5 Exempt Employees for work performed in excess of eight hours (8) in a day or forty hours in a
6 work week (40). Section 510 of the Labor Code codifies the right to overtime compensation at the
7 rate of one and one-half times the regular rate of pay for all hours worked in excess of eight (8)
8 hours in a day or forty (40) hours in a work week and to overtime compensation twice the regular
9 rate of pay for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours
10 in a day on the seventh day of work in a particular work week.

11 46. Defendants also failed to accurately pay sick pay at Plaintiff and Aggrieved
12 Employees' regular rates. Labor Code § 246 provides that the employer shall calculate paid sick
13 leave by using one of two calculations: (1) "Paid sick time for nonexempt employees shall be
14 calculated in the same manner as the regular rate of pay for the workweek in which the employee
15 uses paid sick time, whether or not the employee actually works overtime in that workweek;" or
16 (2) "Paid sick time for nonexempt employees shall be calculated by dividing the employee's total
17 wages, not including overtime premium pay, by the employee's total hours worked in the full pay
18 periods of the prior 90 days of employment."

19 47. Whenever Defendant paid Plaintiff and Aggrieved Employees sick time pursuant
20 to California Labor Code § 246, Defendant did so at the incorrect rate of pay. Defendant paid
21 Plaintiff and the Aggrieved Employees at the base hourly rate of pay, as opposed to the regular
22 rate of pay, which would take into account and include non-discretionary wages, including, but
23 not limited to, shift differentials and/or other incentive pay in the computation of their overtime
24 rate of pay, or by dividing the employees' total wages, not including overtime premium pay, by
25 the employees' total hours worked in the full pay periods of the prior 90 days of employment, as
26 required by Labor Code § 246. This resulted in the employees being underpaid for sick time, and
27 resulted in violations of California Labor Code §§ 201, 202, and 203, and other derivative Labor
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Code violations, because Defendant did not pay, or timely pay, Plaintiff and the unpaid wages for work performed by them during their employment and at the end of their employment.

48. Defendants failed to provide Plaintiff and all other aggrieved employees uninterrupted duty free meal periods of not less than thirty (30) minutes. Defendants implemented and enforced policies of on duty meal period practices which required employees to work during their meal periods, to forego their meal periods, and/or to return to work from meal periods prior to thirty (30) uninterrupted minutes. As a proximate result of the aforementioned violations, Plaintiff and all other aggrieved employees have been damaged in an amount according to proof at time of trial.

49. Defendants also willfully violated Labor Code sections 201-203 by failing to provide all owed wages at separation from employment. Labor Code sections 201 and 202 require Defendants to pay their employees all wages due either at time of firing, or within seventy-two (72) hours of voluntary separation, if not sooner. Section 203 of the Labor Code provides that if an employer willfully fails to timely pay such wages the employer must, as a penalty, continue to pay the subject employee's wages until the back wages are paid in full or an action is commenced. The penalty cannot exceed 30 days of wages.

50. Plaintiff and all other aggrieved employees who were separated from employment are entitled to compensation for all forms of wages earned, including but not limited to compensation regular and overtime wages, and for non-provided meal periods, but to date have not received such compensation, therefore entitling them to penalties under PAGA for violations of Labor Code sections 201-203.

51. On information and belief, Defendants willfully failed to pay all wages due and owing upon separation from employment. These wages include regular and overtime wages, and meal period premiums.

52. On information and belief, Defendants failed to provide accurate itemized wage statements which failed to include the rate of pay and total hours worked per pay period, failed to account for all hours worked, including overtime, and lastly the accurate accounting of, the lawful

1 meal period premiums due and owing to Plaintiff and the aggrieved employees, pursuant to Labor
2 Code section 226(a).

3 53. Defendants have failed to provide Plaintiff and Aggrieved Employees rates of pay
4 and the hours for which they worked for any given pay period.

5 54. Defendants have failed to accurately record all time worked.

6 55. Defendants have also failed to accurately record the meal period premiums owed
7 and all wages owed per pay period.

8 56. Defendants also failed to identify the hourly rate of pay and the hours worked to
9 calculate Plaintiff's and Aggrieved Employees' compensation. In addition, Defendants omitted an
10 accurate itemization of the premiums due and owing for meal period violations and also the rate
11 for the shift differential from Plaintiff and the Aggrieved Employees' wage statements

12 57. Plaintiff and Aggrieved Employees have been injured as they were unable to
13 determine whether they had been paid correctly for all hours worked per pay period among other
14 things

15 58. Pursuant to Labor Code section 226.3, any employer who violates subdivision (a)
16 of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250)
17 per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee
18 for each violation in a subsequent citation, for which the employer fails to provide the employee a
19 wage deduction statement or fails to keep the records required in subdivision (a) of Section 226.
20

21 59. Additionally, Defendants have no accurate records relating to aggrieved
22 employees' work periods, meal periods, total daily hours worked, total hours worked per payroll
23 period and applicable pay rates, in violation of Wage Order. Similarly, Defendants failed to
24 maintain accurate records relating to hours worked daily in violation of Labor Code sections
25 1174(d), 1174.5.

26 60. As a result of Defendants' unlawful conduct, Plaintiff and Aggrieved employees
27 are entitled to penalties to the extent they were not paid at the prevailing wage rate for all hours
28 worked.

1 61. Plaintiff and the Representative Aggrieved Employees are entitled to recover
2 Penalties and attorneys' fees and costs under Labor Code section 2698, et. seq.

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Plaintiff prays for judgment against Defendants, as follows:

- 5 1. For penalties according to proof, pursuant to Labor Code §§ 2698 et seq.;
- 6 2. For reasonable attorneys' fees and costs; and
- 7 3. For such other and further relief as the Court deems proper.
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10 Dated: August 13, 2021

JAMES HAWKINS APLC

11 By: _____

12 JAMES R. HAWKINS, ESQ.
13 GREGORY MAURO, ESQ.
14 MICHAEL CALVO, ESQ.
15 JEANNE SARMIENTO, ESQ.
16 Attorneys for Plaintiff TERI MACEY and
17 on behalf of the general public as private
18 attorney general
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