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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF CONTRA COSTA

KENDRA L. MCGHEE, individually, and on
behalf of all others similarly situated,

Plaintiff,

vs.

VISION OF SUCCESS, INC., a California
corporation, and DOES 1 through 10, inclusive,

Defendants.

Case No.: MSC21-01903

**FIRST 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 Kendra L. McGhee (“Plaintiff”), based upon facts that either have evidentiary
2 support or are likely to have evidentiary support after a reasonable opportunity for further
3 investigation and discovery, alleges as follows:

4 **INTRODUCTION & PRELIMINARY STATEMENT**

5 1. Plaintiff brings this action against Defendants Vision of Success, Inc., and Does 1
6 through 10 (collectively referred to as “Defendants”) for California Labor Code violations
7 stemming from Defendants’ failure to pay minimum and regular rate wages, failure to pay
8 overtime wages, failure to provide meal periods, failure to authorize and permit rest periods,
9 failure to maintain accurate records of hours worked and meal periods, failure to timely pay all
10 wages to terminated employees, and failure to furnish accurate wage statements.

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

22 3. All non-exempt California employees of Defendants beginning September 13, 2020
23 to the present, are “Aggrieved Employees.”

24 4. Plaintiff brings this action against Defendants seeking only to recover penalties on
25 behalf of all Aggrieved Employees that worked for Defendants, and on behalf of the State of
26 California. Plaintiff does not seek to recover anything other than penalties as permitted by
27 California Labor Code Section 2699 at this time. To the extent that statutory violations are
28 mentioned for wage violations, Plaintiff does not seek underlying general and/or special damages

1 for those violations, but simply penalties as permitted by California Labor Code Section 2699,
2 declaratory relief, and injunctive relief for herself, and all aggrieved employees as permitted by
3 the PAGA.

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

- 6 (a) Failing to pay employees for all hours worked, including all minimum
7 wages, overtime wages, in compliance with the California Labor Code and
8 IWC Wage Orders;
- 9 (b) Failing to maintain accurate records of the hours employees worked;
- 10 (c) Failing to provide employees with timely and duty-free meal periods in
11 compliance with the California Labor Code and IWC Wage Orders, failing
12 to maintain accurate records of all meal periods taken or missed, and
13 failing to pay an additional hour's pay for each workday a meal period
14 violation occurred;
- 15 (d) Failing to authorize and permit employees to take timely and duty-free rest
16 periods in compliance with the California Labor Code and IWC Wage
17 Orders, and failing to pay an additional hour's pay for each workday a rest
18 period violation occurred;
- 19 (e) Willfully failing to pay employees all minimum wages, overtime wages,
20 meal period premium wages, and rest period premium wages due within
21 the time period specified by California law when employment terminates;
22 and
- 23 (f) Failing to provide employees with accurate, itemized wage statements
24 containing all the information required by the California Labor Code and
25 IWC Wage Orders.

26 6. On information and belief, Defendants, and each of them were on actual and
27 constructive notice of the improprieties alleged herein and intentionally refused to rectify their
28

1 unlawful policies. Defendants' violations, as alleged above, during all relevant times herein were
2 willful and deliberate.

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

8 **THE PARTIES**

9 **A. Plaintiff**

10 8. Plaintiff is a California resident who worked for Defendants in Contra Costa County,
11 California as a cashier from approximately April 2021 to May 2021.

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

15 **B. Defendants**

16 10. Plaintiff is informed and believes, and based upon that information and belief
17 alleges, that Defendant Vision of Success, Inc.:

- 18 (a) A California corporation with its principal place of business in Contra
19 Costa, California;
- 20 (b) A business entity conducting businesses in numerous counties throughout
21 the State of California, including in Contra Costa County;
- 22 (c) The former employer of Plaintiff, and the current and/or former employers
23 of the putative Class. Vision of Success, Inc. suffered and permitted
24 Plaintiff and the Aggrieved Employees to work, and/or controlled their
25 wages, hours, or working conditions; and
- 26 (d) At all times mentioned herein was and is doing business as AMPM and
27 ARCO.
28

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

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

11 13. Plaintiff is informed and believes and thereon alleges that at all relevant times
12 each Defendant, directly or indirectly, or through agents or other persons, employed Plaintiff and
13 the other employees and exercised control over their wages, hours, and working conditions.
14 Plaintiff is informed and believes and thereon alleges that, at all relevant times, each Defendant
15 was the principal, agent, partner, joint venturer, officer, director, controlling shareholder,
16 subsidiary, affiliate, parent corporation, successor in interest and/or predecessor in interest of
17 some or all of the other Defendants, and was engaged with some or all of the other Defendants in
18 a joint enterprise for profit, and bore such other relationships to some or all of the other
19 Defendants so as to be liable for their conduct with respect to the matters alleged below. Plaintiff
20 is informed and believes and thereon alleges that each Defendant acted pursuant to and within the
21 scope of the relationships alleged above, that each Defendant knew or should have known about,
22 and authorized, ratified, adopted, approved, controlled, aided and abetted the conduct of all other
23 Defendants.

24 **ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

25 14. Plaintiff worked for Defendants in Contra Costa County, California as a cashier
26 from approximately April 2021 to May 2021. At all times Defendants classified Plaintiff as non-
27 exempt from California's overtime requirements. During the statutory time period, Plaintiff was
28

1 typically scheduled to work 5 days in a workweek, and typically in excess of 8 hours in a single
2 workday.

3 15. Throughout the statutory period, Defendants failed to pay Plaintiff for all hours
4 worked (including minimum wages and overtime compensation), failed to provide Plaintiff with
5 uninterrupted meal periods, failed to authorize and permit Plaintiff to take uninterrupted rest
6 periods, failed to maintain accurate records of the hours Plaintiff worked, failed to timely pay all
7 final wages to Plaintiff when Defendants terminated Plaintiff's employment, and failed to furnish
8 accurate wage statements to Plaintiff. As discussed below, Plaintiff's experience working for
9 Defendants was typical and illustrative.

10 16. Throughout the statutory period, Defendants maintained a policy and practice of
11 not paying Plaintiff and the Aggrieved Employees for all hours worked, including all overtime
12 wages. Defendants regularly use a system of time rounding in a manner that resulted, over a
13 period of time, in failing to compensate Plaintiff and the Aggrieved Employees properly for all
14 the time they have actually worked, even though the realities of Defendants' operations are such
15 that it is possible, practical, and feasible to count and pay for work time to the minute. In
16 maintaining a practice of not paying all wages owed, Defendants failed to maintain accurate
17 records of the hours Plaintiff and the Aggrieved Employees worked.

18 17. Throughout the statutory period, Defendants have wrongfully failed to provide
19 Plaintiff and the Aggrieved Employees with legally compliant meal periods. Defendants
20 regularly, but not always, required Plaintiff and the Aggrieved Employees to work in excess of
21 five consecutive hours a day without providing a 30-minute, continuous and uninterrupted, duty-
22 free meal period for every five hours of work, or without compensating Plaintiff and the
23 Aggrieved Employees for meal periods that were not provided by the end of the fifth hour of
24 work or tenth hour of work. Defendants did not adequately inform Plaintiff and the Aggrieved
25 Employees of their right to take a meal period by the end of the fifth hour of work, or, for shifts
26 greater than 10 hours, by the end of the tenth hour of work. Defendants also did not have
27 adequate policies or practices to document and verify whether Plaintiff and the Aggrieved
28 Employees were taking their required meal periods. Accordingly, Defendants' policy and

1 practice was to not provide meal periods to Plaintiff and the Aggrieved Employees in compliance
2 with California law.

3 18. Throughout the statutory period, Defendants have wrongfully failed to authorize
4 and permit Plaintiff and the Aggrieved Employees to take timely and duty-free rest periods.
5 Defendants regularly, but not always, required Plaintiff and the Aggrieved Employees to work in
6 excess of four consecutive hours a day without Defendants authorizing and permitting them to
7 take a 10-minute, continuous and uninterrupted, rest period for every four hours of work (or
8 major fraction of four hours), or without compensating Plaintiff and the Aggrieved Employees
9 for rest periods that were not authorized or permitted. Further, Plaintiff and the Aggrieved
10 Employees were not authorized to leave the premises during their rest periods. Accordingly,
11 Defendants' policy and practice was to not authorize and permit Plaintiff and the Aggrieved
12 Employees to take rest periods in compliance with California law.

13 19. Throughout the statutory period, Defendants willfully failed and refused to timely
14 pay Plaintiff and the Aggrieved Employees at the conclusion of their employment all wages,
15 including overtime wages, meal period premium wages, and rest period premium wages.
16 Defendants maintained a practice of not paying the final wages on the same day of termination.

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

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

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

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

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 22. Plaintiff incorporates by reference and re-allege as if fully stated herein paragraphs
7 through 21 in this First Amended Complaint.

8 23. 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 24. 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 25. Plaintiff has exhausted her administrative remedies pursuant to California Labor
19 Code § 2699.3. On September 13, 2021, Plaintiff gave written notice by online filing to the
20 Labor and Workforce Development Agency and by certified mail to Defendants of the specific
21 provisions of the Labor Code that Defendants have violated against Plaintiff and current and
22 former aggrieved employees, including the facts and theories to support the violations. At the
23 time of this filing, 65 days has elapsed since Plaintiff provided notice, but the Labor and
24 Workforce Development Agency has not indicated that it intends to investigate Defendants’
25 Labor Code violations discussed in the notice. Accordingly, Plaintiff may commence a civil
26 action to recover penalties under Labor Code § 2699 pursuant to § 2699.3 for the violations of
27 the Labor Code described in this Complaint. These penalties include, but are not limited to,
28 penalties under California Labor Code §§ 210, 226.3, 558, 1197.1, and 2699(f)(2).

1 26. 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 27. 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 28. Based on the conduct described in this First 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.

29. 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

30. 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, 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 indemnify necessary business expenses, failing to pay final wages at termination, and failing to furnish accurate wage statements;

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

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

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

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

As to all Causes of Action

35. For any additional relief that the Court deems just and proper.

Respectfully submitted,

Dated: November 18, 2021

MOON & YANG, APC

By:

Kane 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 18, 2021

MOON & YANG, APC

By: _____

Kane Moon
Lilit Ter-Astvatsatryan

Attorneys for Plaintiff

1 **PROOF OF SERVICE**

2 **STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

3 I am employed in the State of California, County of Los Angeles. I am over the age of 18 and not
4 a party to the within suit; my business address is 1055 W. 7th Street, Suite 1880, Los Angeles, CA 90017.

5 On the date indicated below, I served the document described as: **FIRST AMENDED**
6 **REPRESENTATIVE ACTION COMPLAINT** on the interested parties in this action by sending []
7 the original [or] [✓] a true copy thereof [✓] to interested parties as follows [or] [] as stated on the
8 attached service list:

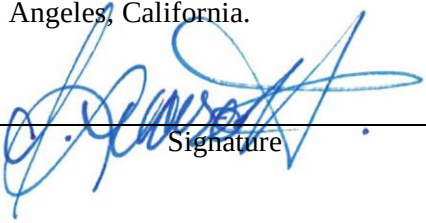
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20 *Attorneys for Defendant Vision of Success, Inc.*

21 [✓] **BY U.S. MAIL:** I deposited such envelope in the mail at Los Angeles, California. The
22 envelope was mailed with postage thereon fully prepaid. I am “readily familiar” with the
23 firm’s practice of collection and processing correspondence for mailing. Under that
24 practice it would be deposited with U.S. postal service on that same day with postage
25 thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am
26 aware that on motion of the party served, service is presumed invalid if postal cancellation
27 date or postage meter date is more than one day after date of deposit for mailing in affidavit.
28

29 I declare under penalty of perjury under the laws of the State of California that the foregoing is
30 true and correct. Executed this **November 19, 2021** at Los Angeles, California.

31 Ivette Hernandez
32 Type or Print Name

33 
34 Signature