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County of Santa Clara  
22CV398571  
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BREISY RUIZ, and all others similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**FOR THE COUNTY OF SANTA CLARA  
(UNLIMITED JURISDICTION)**

**22CV398571**

BREISY RUIZ,

Case No.:

*Plaintiff,*

**COMPLAINT FOR DAMAGES FOR:**

*vs.*

**1) PRIVATE ATTORNEYS  
GENERAL ACT ("PAGA");**

AMY'S KITCHEN, INC.; XAVIER UNKOVIC;  
ANDREW BERLINER; PETER WONG; and  
DOES 1 to 25, inclusive,

*Defendants.*

1           **COMES NOW**, Plaintiff, BREISY RUIZ (hereafter “Plaintiff”), and alleges as follows:

2                                   **PARTIES, JURISDICTION, VENUE**

3           1.       Jurisdiction and Venue are proper in this Court and this action is properly filed in  
4 the County of Santa Clara in this judicial district because Defendants AMY’S KITCHEN, INC.,  
5 XAVIER UNKOVIC, ANDREW BERLINER, PETER WONG, and DOES 1 to 25, inclusive, do  
6 business in the County of Santa Clara and because Defendants’ obligations and liabilities arise  
7 therein, and because the work that was performed by Plaintiff in the County of Santa Clara is the  
8 subject of this action. Moreover, Plaintiff’s damages sought herein exceed \$25,000.

9           2.       Plaintiff is a female resident of the County of Santa Clara, State of California.

10          3.       Plaintiff is informed and believes that at all times herein mentioned, Defendant  
11 AMY’S KITCHEN, INC. is and was a California corporation, doing business in Santa Clara  
12 County, California, and which employed Plaintiff.

13          4.       Defendant XAVIER UNKOVIC is a citizen of California based on Plaintiff’s  
14 information and belief.

15          5.       Defendant ANDREW BERLINER is a citizen of California based on Plaintiff’s  
16 information and belief.

17          6.       Defendant PETER WONG is a citizen of California based on Plaintiff’s  
18 information and belief.

19          7.       In relevant part, Labor Code section 558.1 states:

20               (a) Any employer or other person acting on behalf of an employer, who  
21 violates, or causes to be violated, any provision regulating minimum  
22 wages or hours and days of work in any order of the Industrial Welfare  
23 Commission, or violates, or causes to be violated, Sections 203, 226,  
226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such  
violation.

24               (b) For purposes of this section, the term “other person acting on behalf of  
25 an employer” is limited to a natural person who is an owner, director,  
26 officer, or managing agent of the employer, and the term “managing  
agent” has the same meaning as in subdivision (b) of Section 3294 of the  
Civil Code.

27          8.       Plaintiff is informed and believes and thereon alleges that XAVIER UNKOVIC  
28 is a natural person and an owner, director, officer, and/or managing agent of Defendant AMY’S

1 KITCHEN INC., who directly or indirectly, or through an agent or any other person, employed  
2 or exercised control over the wages, hours, or working conditions of Plaintiff and the Aggrieved  
3 Employees (as defined below). Therefore, he is liable to Plaintiff and the Aggrieved Employees  
4 for his violations of, or causing Defendants to violate, Labor Code sections 203, 226, 226.7, and  
5 the Wage Order (nos. 1/5) pursuant to Labor Code section 558.1.

6 9. Plaintiff is informed and believes and thereon alleges that ANDREW BERLINER  
7 is a natural person and an owner, director, officer, and/or managing agent of Defendant AMY’S  
8 KITCHEN INC., who directly or indirectly, or through an agent or any other person, employed  
9 or exercised control over the wages, hours, or working conditions of Plaintiff and the Aggrieved  
10 Employees (as defined below). Therefore, he is liable to Plaintiff and the Aggrieved Employees  
11 for his violations of, or causing Defendants to violate, Labor Code sections 203, 226, 226.7, and  
12 the Wage Order (nos. 1/5) pursuant to Labor Code section 558.1.

13 10. Plaintiff is informed and believes and thereon alleges that PETER WONG is a  
14 natural person and an owner, director, officer, and/or managing agent of Defendant AMY’S  
15 KITCHEN INC., who directly or indirectly, or through an agent or any other person, employed  
16 or exercised control over the wages, hours, or working conditions of Plaintiff and the Aggrieved  
17 Employees (as defined below). Therefore, he is liable to Plaintiff and the Aggrieved Employees  
18 for his violations of, or causing Defendants to violate, Labor Code sections 203, 226, 226.7, and  
19 the Wage Order (nos. 1/5) pursuant to Labor Code section 558.1. AMY’S KITCHEN, INC.,  
20 XAVIER UNKOVIC, ANDREW BERLINER, and PETER WONG are hereinafter collectively  
21 referred to as Defendants or “AMY’S KITCHEN.”

22 11. The “Aggrieved Employees” are all current and former non-exempt or hourly paid  
23 California employees who worked for AMY’S KITCHEN during the relevant time period  
24 pursuant to California Labor Code section 2698, et. seq., the Labor Code Private Attorneys  
25 General Act of 2004 (“PAGA”).

26 12. Plaintiff is ignorant of the true names and capacities, whether individual,  
27 corporate, or associate of those defendants fictitiously sued as DOES 1 to 25, inclusive, and so  
28 Plaintiff sues them by these fictitious names. Plaintiff is informed and believes that each of the

DOE defendants, numbers 1 to 25, reside in the State of California and are in some manner responsible for the conduct alleged herein. Upon discovering the true names and capacities of these fictitiously named defendants, Plaintiff will amend this complaint to show the true names and capacities of these fictitiously named defendants.

13. Unless otherwise alleged in this complaint, Plaintiff is informed, and on the basis of that information and belief, alleges that at all times herein mentioned, each of the remaining codefendants, in doing the things hereinafter alleged, were acting within the course, scope, and under the authority of their agency, employment, or representative capacity, with the consent of his/her codefendants.

### **GENERAL ALLEGATIONS**

14. Plaintiff started working for AMY'S KITCHEN on or around May 2021 as a packager. Plaintiff was classified as an hourly, non-exempt employee and earned \$17.00/hour. Plaintiff's employment ended on or around August 31, 2021.

15. It is Plaintiff's position that AMY'S KITCHEN has committed the following labor code violations against Plaintiff and other similarly situated aggrieved employees.

16. AMY'S KITCHEN did not provide Plaintiff and other similarly situated aggrieved employees with the minimum wages to which they were entitled for all work performed and did not compensate her and others for all hours worked pursuant to California Labor Code sections 1194, 1197 and 1197.1. Plaintiff and others were not paid for all hours worked and consistently worked "off the clock". This is so because Plaintiff and others would consistently be required to perform work duties during lunch in that the company would literally hold meetings during the lunch hour. Moreover, there would be issues with rounding down the number of hours worked and time shaving, which led to Plaintiff and others not being paid for all hours worked. Moreover, and as alluded to above, to the extent employees such as Plaintiff and others worked through their meal periods, they were not compensated for that time, which would be akin to a minimum wage violation.

17. Due to the above "off the clock" violations and as a matter of company policy, AMY'S KITCHEN violated Labor Code §510 because it failed to pay our client and other

1 similarly situated aggrieved employees overtime, even though they worked more than 8 hours per  
2 day, 12 hours per day, and/or 40 hours per week throughout their employment. Plaintiff's and  
3 others' actual work hours, which included the "off the clock" work as described above, entitled  
4 them to overtime, however, it was not company policy to keep accurate track of all hours worked  
5 and to pay employees overtime. In addition, the company did not include any bonus payments  
6 made to employees in calculating the employees' regular rate of pay for purposes of calculating  
7 their overtime rate of pay.

8         18.     AMY'S KITCHEN violated Labor Code § 226.7 along with Industrial Welfare  
9 Commission Wage Order no. 1/5 because it failed to provide our client and other similarly situated  
10 aggrieved employees 10-minute rest periods for every four hours of work, or majority portion  
11 thereof, throughout their employment. AMY'S KITCHEN did not completely relieve our client  
12 of all duty during said rest periods. AMY'S KITCHEN did not pay to our client one additional  
13 hour of pay at our client's regular rate of compensation for each workday that one or more  
14 statutory rest periods was not provided. Rest breaks were not authorized or enforced. In fact, it  
15 was not part of AMY'S KITCHEN's culture for employees such as Plaintiff and others to take at  
16 least one 10-minute rest break every day wherein they are relieved of all work duties. The latter  
17 was due to understaffing and Plaintiff being too busy to be able to take rest breaks.

18         19.     AMY'S KITCHEN also violated Labor Code §§ 512 and 226.7 along with  
19 Industrial Welfare Commission Wage Order No. 1/5 because it failed to provide our client and  
20 other similarly situated aggrieved employees the requisite 30-minute, uninterrupted meal periods  
21 for every five (5) hours of work throughout their employment, and our client did not validly waive  
22 said meal periods. AMY'S KITCHEN did not completely relieve our client of all duties during  
23 said meal periods. AMY'S KITCHEN did not pay to our client one additional hour of pay at our  
24 client's regular rate of compensation for each workday that one or more statutory meal periods  
25 was not provided. If AMY'S KITCHEN had Plaintiff sign a meal period waiver, it would not be  
26 valid and enforceable since Plaintiff and others generally worked more than a 6-hour shift. If  
27 AMY'S KITCHEN had Plaintiff sign an on-duty meal period agreement wherein Plaintiff agreed  
28 to work through his meal period, it would also be invalid and unenforceable because the nature

1 of Plaintiff's job as a packager does not prevent her from taking a meal period. As such, Plaintiff  
2 and others did not always receive statutory, timely meal periods during their employment. As  
3 mentioned above, the company would often hold meetings during lunch, which meant that  
4 Plaintiff and others were working "off the clock" and that their meal periods were interrupted  
5 with work obligations. In addition, meal breaks were taken late and after the 5th hour worked in  
6 contravention of California law. As was the case with rest periods, meal breaks were definitively  
7 not part of the AMY'S KITCHEN's culture. The meal periods were not authorized and were not  
8 enforced.

9         20. Furthermore, during the relevant time period, AMY'S KITCHEN failed to pay  
10 Plaintiff and other similarly situated aggrieved employees all wages due to them within any time  
11 period specified by California Labor Code section 204, including the minimum wages and  
12 overtime as described above as well as meal/rest break premiums. In addition, employees,  
13 including Plaintiff were paid very late as Plaintiff went a full month after starting his employment  
14 before getting paid. AMY'S KITCHEN was also in violation of California Labor Code section  
15 226(a) by not providing access to paystubs and failing to include pertinent information on the  
16 wage statements, including but not limited to, all hours worked, tips earned, gross wages earned,  
17 net wages earned, all deductions, premium payments for meal and rest breaks, the correct legal  
18 name and address of the employer, the correct beginning and end of the pay period, all applicable  
19 hourly rates, and all identifying employee information, among other items. As such, AMY'S  
20 KITCHEN did not provide our client and other similarly situated aggrieved employees with  
21 complete, accurate itemized wage statements.

22         21. AMY'S KITCHEN violated Labor Code § 203 because it willfully failed to pay  
23 our client and other similarly situated aggrieved employees earned and due wages upon separation  
24 of employment, either immediately upon involuntary termination, or within 72 hours of  
25 resignation. After our client stopped working at AMY'S KITCHEN and after our client's  
26 employment with AMY'S KITCHEN ended, AMY'S KITCHEN failed and refused to pay all  
27 wages earned and due immediately upon separation. These earned but unpaid wages include  
28 compensation for all hours worked including minimum wages and overtime compensation, tips,

1 and premiums for the missed meal and rest breaks.

2 22. During the relevant time period, AMY’S KITCHEN also failed to keep accurate  
3 and complete payroll records showing the actual hours worked per day (including the time for  
4 meal periods) and the wages paid to our client and other aggrieved employees pursuant to  
5 California Labor Code sections 1174(d).

6 **FIRST (AND ONLY) CAUSE OF ACTION**

7 **PRIVATE ATTORNEYS GENERAL ACT**

8 **Individual and Representative Claim for PAGA penalties under California Labor Code**  
9 **sections 201, 202, 203, 204 and/or 204b, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5,**  
10 **1194, 1197, 1198 and the applicable Industrial Welfare Commission Wage Order Nos. 1/5-**  
11 **2001**

12 **(Against All Named Defendants and all DOE Defendants)**

13 23. Plaintiff re-alleges and incorporates by reference each and every allegation in  
14 paragraphs 1 through 22, inclusive, of this Complaint as though fully set forth herein.

15 24. Pursuant to law, Plaintiff provided the required written notice to the LWDA and  
16 Defendants of the specific violations of the California Labor Code that Defendants and DOE  
17 defendants have violated and continue to violate.

18 25. Pursuant to California Labor code section 2699.3, no response was received from  
19 the LWDA within 65 days of the postmark date of the above-alleged letter.

20 26. Plaintiff therefore has exhausted all administrative remedies required of her under  
21 California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute this cause  
22 of action and pursue penalties in a representative action for Defendants’ violations of the Labor  
23 Code.

24 27. Pursuant to California Labor Code section 2699, any provisions of the Labor Code  
25 that provides for a civil penalty to be assessed and collected by the LWDA or any of its  
26 departments, divisions, commissions, boards, agencies, or employees for violation of the code  
27 may, as an alternative, be recovered through a civil action brought by an aggrieved employee  
28 on behalf of himself or herself and other current or former employees pursuant to the procedures  
specified in California Labor Code section 2699.3.

28 28. Plaintiff is an “aggrieved employee” because Plaintiff was employed by the

1 Alleged violator and had one or more of the alleged violations committed against her, and  
2 therefore is properly suited to represent the interests of other current and former hourly, non-  
3 exempt employees who worked for AMY'S KITCHEN in the State of California during the  
4 PAGA period.

5 29. Based on the acts alleged above, Plaintiff, on behalf of herself and others, seeks  
6 penalties under California Labor Code sections 2698 and 2699 because of Defendants' violations  
7 of numerous provisions of the California Labor Code as alleged in this Complaint.

8 30. Plaintiff therefore has exhausted all administrative remedies required of her under  
9 California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute this cause  
10 of action and pursue penalties in a representative action for Defendants' violations of the Labor  
11 Code.

12 31. California Labor Code section 2699 et seq. imposes penalties upon culpable  
13 Defendants for violating the Labor Code.

14 32. California Labor Code section 558 establishes a civil penalty as follows: Any  
15 employer or other person action on behalf of an employer who violates, or causes to be violated,  
16 a section of this chapter or any provision regulating hours and days of work in any order of the  
17 Industrial Welfare Commission (including the "Hours and Days of Work" section of the Wage  
18 Order) shall be subject to a civil penalty of (1) for any initial violation, fifty dollars (\$50) for each  
19 underpaid employee for each pay period for which the employee was underpaid ...; (2) for each  
20 subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay  
21 period for which the employee was underpaid ...;

22 33. Plaintiff seeks penalties for Defendants' misconduct as alleged herein as permitted  
23 by law, but only those penalties that are required to be shared with the LWDA as Plaintiff is not  
24 seeking individual/victim specific relief or underpaid wages under this particular cause of action.

25 34. Specifically, Plaintiff seeks penalties under California Labor Code section 2699,  
26 for the following:

27 Violations of California Labor Code sections 201, 202, 203, 204 and/or 204b, 210,  
28 226, 226.3, 226.7, 226.8, 510, 512, 558, 1174, 1174.5, 1194, 1197, and 1198,

1 via 2698 and 2699 any other Labor Codes and Wage Orders (including nos. 1/5)  
2 violated on the facts alleged in this Complaint.

3 35. Pursuant to Labor Code section 2698 et seq., Plaintiff seeks to recover attorney's  
4 fees, costs, and civil penalties on behalf of Plaintiff and other current and former aggrieved  
5 employees as alleged herein in an amount to be shown according to proof at trial and within the  
6 jurisdictional limits of this Court.

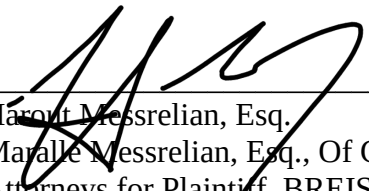
7 WHEREFORE, Plaintiff prays for Judgment against Defendants and each of them, as  
8 follows:

- 9 1. For the imposition of civil penalties;
- 10 2. For maximum civil penalties available under Labor Code Section 2699 against  
11 Defendants in a manner and amount authorized by that statute, as described more  
12 particularly in the Complaint and representative PAGA claims.
- 13 3. For all costs and disbursements incurred in this suit;
- 14 4. Reasonable attorney's fees where available by law, including but not limited to,  
15 pursuant to Labor Code section 2698 et seq., Code of Civil Procedure section  
16 1021.5, and/or other applicable laws; and
- 17 5. For such other and further relief as this Court may deem proper.

18  
19 Respectfully submitted,

20 **MESSRELIAN LAW INC.**

21 Dated: May 24, 2022

22  
23 By   
24 Harout Messrelia, Esq.  
25 Maralle Messrelia, Esq., Of Counsel  
26 Attorneys for Plaintiff, BREISY RUIZ  
27  
28