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Attorney for Plaintiffs
Miriam Marroquin, et al.

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA

MIRIAN MARROQUIN, HUMBERTO
MORALES, on behalf of themselves and all
similarly situated individuals and aggrieved
employees,

Plaintiffs,

v.

TELEFERIC BARCELONA PA, LLC, and
DOES 1 to 100,

Defendants.

) NO. 21CV388821
)
) CLASS ACTION
)
) FIRST AMENDED COMPLAINT
)
) 1. Wage and Hour Violations
) 2. Meal Period Violations
) 3. Rest Period Violations
) 4. Wage Statement Penalty
) 5. Waiting Time Penalties
) 6. Unfair Competition, Including Tip Pooling
) Violations
) 7. PAGA Penalties

PRELIMINARY ALLEGATIONS

1. Plaintiff Miriam Marroquin is a resident of San Mateo County.
2. Plaintiff Humberto Morales is a resident of Santa Clara County.
3. Defendant Teleferic Barcelona PA, LLC (“Teleferic”) is a limited liability company based in Santa Clara County.
4. Plaintiffs do not know the names and capacities of Does 1 to 100 and therefore use fictitious names. Plaintiffs will amend pursuant to Code of Civil Procedure section 474 when the names and capacities are known.
5. Plaintiff and the class members worked at Teleferic’s restaurant in Palo Alto as servers and

1 food staff.

2 6. Plaintiffs and the class members worked shifts up to twelve hours but were not provided
3 with compliant breaks.

4 7. Next, Teleferic has a mandatory tip pooling policy that required Plaintiffs and the class
5 members to pay out all tips at the end of shifts, however the distribution among Plaintiffs
6 and the class members is not based on a rational formula.

7 8. In fact, Teleferic does not disclose what formula it uses (if any) to distribute the tips.

8 9. Further, it is a regular occurrence for Teleferic's management to serve a table but keep the
9 tips and contribute nothing to the tip pool.

10 10. Labor Code section 351 prohibits employers and their agents from sharing in or keeping
11 any portion of a tip.

12 11. According to a 2005 DLSE opinion letter, participants in a tip pool are limited to employees
13 who contribute to the chain of service and may not include any managerial workers.

14 12. As stated above, Teleferic's managers regularly kept tips for tables they worked on,
15 resulting in a tip pool violation since the tip pool was decreased.

16 13. Also, there must be a fair system for deciding how much in tips to pay out of the tip pool,
17 which should be in proportion to the how much service each employee provided that day.
18 Yet, Barcelona will not disclose its tip pool calculation which is a further tip pool violation.

19 14. Finally, Plaintiffs and the class members often worked off the clock without getting paid for
20 that time off the clock.

21
22 CLASS ACTION ALLEGATIONS

23 15. The class is defined as the following: "All non-exempt employees who worked for
24 Defendants from four years prior to the filing of the complaint to certification."

25 16. The "Waiting Time Subclass" consists of all non-exempt employees within the past three
26 years from the date of filing who no longer work for Defendants.

27 17. There is a well-defined community of interest in the litigation and the proposed class is
28 ascertainable from Defendants' employment records.

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- 2 a. Numerosity: The members of the class as defined are so numerous that joinder of all
- 3 class members is impracticable.
- 4 b. Commonality: This action involves common questions of law and fact to the class
- 5 because the action focuses on Defendants' systematic course of conduct with respect to
- 6 violating the Labor Code and IWC Wage Order.
- 7 c. Typicality: Plaintiffs' claims are typical of the claims of the class. Plaintiffs were
- 8 subjected to the same violations and seeks the same types of damages, restitution, and
- 9 other relief on the same as those of the members of the class.
- 10 d. Adequacy of Representation: Plaintiffs will fairly and adequately represent and protect
- 11 the interests of the class. Plaintiffs understands the obligations as a class representative
- 12 and is willing and able to fulfill them. Plaintiffs' counsel is competent and experienced
- 13 in litigating large employment class actions and complex litigation matters, including
- 14 wage and hour cases like this.
- 15 e. Superiority of Class Action: A class action is superior to other available means for the
- 16 efficient adjudication of this controversy. Class action treatment will allow similarly
- 17 situated persons to pursue the claims in a manner that is most efficient and economical.
- 18 f. Public Policy Considerations: Employees are often afraid to assert their rights out of fear
- 19 of retaliation; thus, class actions provide the class members with anonymity that allows
- 20 for vindication of rights while protecting privacy.

21 18. There are common questions of law and fact including but not limited to:

- 22 a. Whether Defendants did not pay overtime and off the clock time in violation of
- 23 Labor code sections 510 and 1194;
- 24 b. Whether Defendant violated Labor Code section 512 and Wage Order 5 by not
- 25 providing meal and rest breaks;
- 26 c. Whether Defendants violated Labor Code section 226 by providing inaccurate
- 27 wage statements;
- 28 d. Whether Defendant violated Labor Code section 226.7 by not paying premium

- 1 pay for missed meal and rest breaks;
- 2 e. Whether Defendants violated Labor Code section 351 regarding tips;
- 3 f. Whether Defendants engaged in unfair competition; and
- 4 g. The amount of damages, wages, and penalties owed to Plaintiffs and the class.
- 5

6 FIRST CAUSE OF ACTION

7 WAGE AND HOUR VIOLATIONS

8 Against All Defendants

9 19. Plaintiffs incorporate by reference paragraphs 1 to 18 of the amended complaint.

10 20. Plaintiffs and the class members worked off the clock at the end of shifts but were not paid

11 for that time.

12 21. Pursuant to Labor Code section 1194, Plaintiffs and the class members are entitled to all

13 unpaid overtime plus interest, costs, and attorney fees.

14

15 SECOND CAUSE OF ACTION

16 MEAL PERIOD VIOLATIONS

17 Against All Defendants

18 22. Plaintiffs incorporate by reference paragraphs 1 to 18 of the amended complaint.

19 23. Pursuant to Labor Code section 512 and Wage Order 5, Plaintiffs and the class members

20 should have received thirty-minute meal periods for every five hours of work.

21 24. Plaintiffs did not receive these meal periods, thus pursuant to Labor Code section 226.7,

22 Plaintiffs are entitled to an additional hour of compensation for each missed meal period.

23

24 THIRD CAUSE OF ACTION

25 REST PERIOD VIOLATIONS

26 Against All Defendants

27 25. Plaintiffs incorporate by reference paragraphs 1 to 18 of the amended complaint.

28 26. Pursuant to Wage Order 5, Plaintiffs and the class members should have received ten-

1 minute meal periods for every four hours of work.

2 27. Plaintiffs and the class members did not receive these rest periods, thus pursuant to Labor
3 Code section 226.7, they are entitled to additional hours of compensation for each time they missed
4 a rest period.

5
6 FOURTH CAUSE OF ACTION
7 WAGE STATEMENT PENALTIES
8 Against All Defendants

9 28. Plaintiffs incorporate by reference paragraphs 1 to 18 of the amended complaint.

10 29. Plaintiffs' and the class members' wage statements did not comply with Labor Code section
11 226 since they did not list all hours worked

12 30. As a result, Plaintiffs and the class members are entitled to the wage statement penalties,
13 injunctive relief, and attorney fees.

14
15 FIFTH CAUSE OF ACTION
16 WAITING TIME PENALTIES
17 Against All Defendants

18 31. Plaintiffs incorporate by reference paragraphs 1 to 18 of the amended complaint.

19 32. Plaintiffs and members of the waiting time penalty subclass are still owed wages for work
20 performed off the clock.

21 33. Thus, waiting time penalties under Labor Code section 203 apply.

22
23 SIXTH CAUSE OF ACTION
24 UNFAIR COMPETITION, INCLUDING TIP POOLING VIOLATIONS
25 Against All Defendants

26 34. Plaintiffs incorporate by reference paragraphs 1 to 18 of the amended complaint.

27 35. Defendants engaged in the unlawful prong of the Unfair Competition Law, which included
28 taking Plaintiffs and the class members tips, and not paying wages for all hours worked.

36. Pursuant to Business and Professions Code section 17203, restitution applies.

37. Attorney fees apply under Code of Civil Procedure section 1021.5

SEVENTH CAUSE OF ACTION

PAGA PENALTIES

Against Teleferic Barcelona PA, LLC

38. Plaintiffs incorporate by reference paragraphs 1 to 18 of the first amended complaint.

39. On October 21, 2021 Plaintiffs sent a letter by certified mail to Teleferic Barcelona PA, LLC and uploaded the letter to the LWDA website.

40. Since it has been more the 65 days, Plaintiffs may now request PAGA penalties.

41. Plaintiffs request PAGA penalties under Labor Code section 1197.1 for the unpaid hours of work allegations.

42. Plaintiffs request PAGA penalties under Labor Code section 2699 for the missed meal and rest breaks allegations.

43. Plaintiffs request PAGA penalties under Labor Code section 2699 for the allegations of tip pooling violations.

44. Plaintiffs are entitled to attorney fees and costs under Labor Code section 2699(g).

PRAYER

Class Action

1. Certification

2. Plaintiffs are appointed as the class representative

3. Plaintiffs' attorneys are appointed as class counsel

First Cause of Action

1. Payment of all unpaid wages plus interest

2. Attorney fees and costs

3. Other relief the court deems proper

1 Second Cause of Action

2 1. Premium pay for each missed break

3 2. Other relief the court deems proper

4

5 Third Cause of Action

6 1. Premium pay for each missed break

7 2. Other relief the court deems proper

8

9 Fourth Cause of Action

10 1. Wage statement penalties

11 2. Injunctive relief

12 3. Attorney fees and costs

13

14 Fifth Cause of Action

15 1. Waiting time penalties

16

17 Sixth Cause of Action

18 1. Restitution of tips and wages

19 2. Attorney fees under CCP 1021.5

20 3. Other relief the court deems proper

21

22 Seventh Cause of Action

23 1. All applicable PAGA penalties

24 2. Attorney fees and costs

25 3. Other relief the court deems proper

26 Date: September 1, 2022

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FRONTIER LAW CENTER

/s/ Adam Rose

Attorney for Plaintiff

Mirian Marroquin, et al.