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FILED

JAN 07 2022

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF HUMBOLDT**

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8 **SUPERIOR COURT OF CALIFORNIA**
9 **IN AND FOR THE COUNTY OF HUMBOLDT**

10
11 MARTHA GONZALEZ, on behalf of all
12 others similarly aggrieved,

13 Plaintiff,

14 vs. SHAMUS T BONES, INC., a California
15 corporation, CHRISTOPHER BARRY, an
individual, and DOES 1 through 10,
inclusive,

16 Defendants.

CASE NO. **CV 2200044**

COMPLAINT FOR VIOLATION OF
PRIVATE ATTORNEYS GENERAL ACT

JURY TRIAL DEMANDED

GENERAL ALLEGATIONS

1. Plaintiff MARTHA GONZALEZ is an individual residing in the State of California.

2. On information and belief, defendant SHAMUS T BONES, INC. is a California corporation duly licensed to conduct business in the State of California.

3. On information and belief, defendant CHRISTOPHER BARRY is an individual residing in the State of California and is, and at all relevant times has been, the Chief Executive Officer of defendant SHAMUS T BONES, INC, owns, operates, and/or manages SHAMUS T BONES, INC, and had direct control and power over the working conditions and the violations at issue in this Complaint. On information and belief, CHRISTOPHER BARRY devised and implemented the policies at issue in this complaint and “caused” these violations as that term is used in Labor Code §§ 558, 1197.1 and 2699(f). Pursuant to Labor code §§ 558, 1197.1, 2699(f), CHRISTOPHER BARRY is individually liable as a person who “caused” the violations to occur

4. Plaintiff is unaware of the names and capacities of those defendants sued as DOES 1 through 10 but will amend this complaint when that information becomes known. Plaintiff is informed and believes and thereon alleges that, at all relevant times, each of the defendants, including the DOE defendants, was the officer, director, employee, agent, representative, alter ego, or co-conspirator of each of the other defendants, and in engaging in the conduct alleged herein, was acting in the course and scope of, and in furtherance of, such relationship. Unless otherwise specified, Plaintiff will refer to all defendants as “Defendant,” and each allegation pertains to each defendant.

5. This court possesses original subject matter jurisdiction over this matter. Venue is proper in this judicial district because Defendant transacts business in this district, and some of the complained of conduct occurred in this judicial district.

6. Defendant has employed Plaintiff in California as a non-exempt employee during the relevant time period. Plaintiff brings her complaint under the Private Attorneys General Act of 2004, Labor Code sections 2698, *et seq.*, (“PAGA”), as a representative action on behalf of the State of California regarding violations of the Labor Code as to all similarly aggrieved individuals

1 employed by Defendant as non-exempt employees, however titled, in the State of California,
2 from the date one year prior to submission of Plaintiff's PAGA notice letter. This action is
3 brought solely under PAGA and seeks no relief beyond that available under PAGA.

4 7. During the period beginning one-year period preceding the filing of the required
5 PAGA notice with the Labor Workforce & Development Agency, and continuing through the
6 present, as alleged herein, Defendant violated Labor Code sections 201-203, 204, 210, 221-
7 223, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, 1199, and all applicable Wage Orders, as
8 to Plaintiff and all other similarly aggrieved employees employed by Defendant in California.
9 These violations subject Defendant to civil penalties as set forth in the foregoing statutes as
10 well as other provisions of the Labor Code, including without limitation Labor Code sections
11 203, 210, 225.5, 226.3, 226.7, 256, 1174.5, 1194.2, 1197.1, and 2699, and section 20 of all
12 applicable IWC Wage Orders.

13 FIRST CAUSE OF ACTION

14 (Violation of Private Attorneys General Act – Labor Code §§ 2698, et seq.)

15 8. Plaintiff incorporates by reference the allegations contained in paragraphs 1
16 through 7.

17 9. Under the Labor Code and IWC Wage Orders, Defendant was required to provide
18 Plaintiff and similarly aggrieved employees with one 30-minute meal period free from all duties
19 for all shifts longer than 5 hours, and a second 30-minute meal period free from all duties for all
20 shifts longer than 10 hours. Meal periods can be waived, but only under the following
21 circumstances: (1) if an employee's total work period in a day is over five (5) hours but no more
22 than six (6) hours, the required meal period may be waived by mutual consent of the employer
23 and employee, and (2) if an employee's total work period in a day is over ten (10) hours but no
24 more than twelve (12) hours, the required second meal period may be waived by mutual consent
25 of the employer and employee, but only if the first meal period was not waived. Employers
26 covered by the Wage Orders have an obligation to both (1) relieve their employees for at least one
27 meal period for shifts over five hours (see above), and (2) to record having done so. If the
28 employer fails to properly record a valid meal period, it is presumed no meal period was

1 provided.

2 10. Plaintiff and similarly aggrieved employees regularly worked periods of more than
3 five hours in a workday without being provided mandatory thirty-minute, duty-free meal periods.
4 Upon information and belief, Defendant failed to maintain a company meal period policy
5 compliant with California law. Moreover, as noted above, Plaintiff and other aggrieved
6 employees frequently worked in excess 5 hours per shift and, thus, they were entitled to
7 uninterrupted thirty minute meal periods before the end of the fifth hour of work. Defendant also
8 failed to pay Plaintiff and similarly aggrieved employees an additional hour of wages at the
9 regular rate of compensation for each workday a meal period was not provided, or was late, short
10 or interrupted.

11 11. Defendant failed to provide Plaintiff and similarly aggrieved employees all
12 required and/or fully compliant rest periods, or compensation in lieu thereof. Defendant employed
13 policies and procedures that ensured Plaintiff and other aggrieved employees would not receive
14 all legally required rest periods, as Defendant did not authorize and permit all required rest
15 periods in strict accordance to, and in compliance with, the timing requirements of all applicable
16 Wage Orders. Plaintiff and other aggrieved employees were not provided with rest periods
17 regardless of the number of hours worked. Defendant further employed policies and procedures
18 ensuring Plaintiff and similarly aggrieved employees did not receive premium wages at the
19 regular rate of compensation for workdays they did not receive all legally required and fully
20 compliant rest periods.

21 12. California law provides that, at the time of each payment of wages, the employer
22 must provide each employee with an itemized statement showing, inter alia, gross wages earned,
23 total hours worked, all deductions taken, net wages earned, the inclusive dates for which the
24 employee is being paid, the employee's name and last four digits of their social security number,
25 the name and address of the legal entity that it is the employer, and all applicable hourly rates in
26 effect during the pay period and all hours worked at each rate.

27 13. Defendant knowingly and intentionally failed to provide Plaintiff and other
28 aggrieved employees with proper, itemized wage statements as the wage statements provided by

1 Defendant do not accurately reflect, inter alia, gross wages earned, total hours worked, net wages
2 earned, and all applicable hourly rates in effect during each pay period and all hours worked at
3 each applicable hourly rate, for all the reasons herein mentioned. Accordingly, Defendant has
4 violated Labor Code section 226 as to Plaintiff and all similarly aggrieved employees. These
5 violations subject Defendant to civil penalties under the Labor Code, including without limitation
6 Labor Code sections 226.3 and 2699. Each violation of each Labor Code section and Wage Order
7 provision, for each aggrieved employee, results in a separate civil penalty.

8 14. California law requires employers to keep “accurate and complete” payroll records
9 showing, among other things, the hours worked daily by all non-exempt employees. The
10 applicable IWC Wage Order similarly requires employers to keep time records showing, inter
11 alia, when the employees begins and end each work period and reflecting the times during which
12 all owed meal periods are provided each day. At all relevant times, Defendant has failed, and
13 continues to fail, to keep the required time records by, including but not limited to, by failing to
14 accurately record hours worked when Plaintiff and other aggrieved employees had to remain on
15 duty while waiting for their replacement to arrive at the work location, and failing to record hours
16 worked when lunch periods were interrupted and/or less than 30 minutes.

17 15. Defendant’s failure to keep “accurate and complete” payroll records for Plaintiff
18 and other similarly aggrieved employees violates Labor Code sections 1174, 1198-99, and Wage
19 Order 5-2001 (and all applicable Wage Orders), section 7. These violations subject Defendant to
20 civil penalties under the Labor Code, including without limitation sections 1174.5 and 2699.
21 Each violation of each Labor Code section and Wage Order provision, for each aggrieved
22 employee, results in a separate civil penalty.

23 16. Labor Code sections 1198 and 1199 make it unlawful to employ any individual
24 under conditions of labor prohibited by the Wage Orders, and any violation, refusal, or neglect to
25 comply with any provision within Part 4, Chapter 1 of the Labor Code, including sections 1174,
26 1197, and 1198, or other order or ruling of the IWC. Defendant’s violations with respect to
27 minimum wages and/or overtime wages, as alleged herein, result in separate violations of Labor
28 Code sections 1198 and 1199, and subject Defendant to civil penalties under the Labor Code,

1 including without limitation Labor Code sections 1197.1 and 2699. Each violation of each Labor
2 Code section and Wage Order provision, for each aggrieved employee, results in a separate civil
3 penalty.

4 17. California Labor Code section 204 requires an employer to pay employees all
5 wages due and payable at least twice each calendar month. For reasons discussed herein,
6 Defendant failed to comply with Labor Code section 204 by failing to timely pay twice during
7 each calendar month all wages due and payable to Plaintiff and other similarly aggrieved
8 employees. Defendant's violations of Labor Code section 204 subject Defendant to civil
9 penalties, including but not limited to the penalties set forth in California Labor Code sections
10 210 and 2699. Each violation results in a separate civil penalty, for each aggrieved employee for
11 each pay period during which the statutory provisions were violated.

12 18. Labor Code section 201 requires employers to pay all wages earned and unpaid at
13 the time of discharge, immediately upon discharge. Labor Code section 202 states similar
14 provisions with respect to employees who resign. For all aggrieved employees no longer
15 employed by Defendant, Defendant still has not paid such aggrieved employees all wages earned
16 and unpaid at the time of discharge, in that Defendant has not paid for, all minimum and overtime
17 wages. These violations subject Defendant to civil penalties under the Labor Code, including
18 without limitation Labor Code sections 203, 256 and 2699. Each violation results in a separate
19 civil penalty, for each aggrieved employee for each pay period during which the statutory
20 provisions were violated.

21 21. Plaintiff complied with the procedures for bringing suit specified in Labor Code
22 Sections 2699.3 and 2699.5. By letter dated and postmarked October 15, 2021, Plaintiff
23 gave written notice to the California Labor & Workforce Development Agency ("LWDA") via
24 electronic submission at PAGAfilings@dir.ca.gov, and via certified mail to Defendant, of the
25 specific provisions of the Labor Code and Wage Orders allegedly violated, including the facts
26 and theories to support the alleged violations.

27 23. Under Labor Code Section 2699.3, the LWDA must give written notice by
28 certified mail to the parties it intends to investigate the alleged violations within 65 days of the

1 date of the complainant's written notice. As of the filing of this Complaint, the LWDA has not
2 provided the parties any notice of its intention to investigate Plaintiff's claims on behalf of
3 himself and other aggrieved employees, nor has Defendant responded to Plaintiff's PAGA
4 notices in an attempt to cure. According, Plaintiff has exhausted all administrative remedies
5 required by law.

6 24. Under Labor Code Section 2699(g), Plaintiff is entitled to an award of
7 reasonable attorney's fees and costs in connection with her claims for civil penalties.

8 PRAYER

9 WHEREFORE, Plaintiff prays for judgment against each Defendant, jointly and severally,
10 as follows:

- 11 1. For civil penalties according to proof;
- 12 2. For reasonable attorney's fees and costs of suit; and
- 13 3. For such other and further relief as the Court deems just and proper.

14
15 Dated: January 3, 2022

LAW OFFICES OF J. KIRK DONNELLY, APC

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18 J. Kirk Donnelly
Attorneys for Plaintiff Martha Gonzalez

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20 DEMAND FOR JURY TRIAL

21 Plaintiff hereby demands a trial by jury on all claims so triable.

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23 Dated: January 3, 2022

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25 
26 J. Kirk Donnelly
Attorneys for Plaintiff Martha Gonzalez