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Clerk of Court
Superior Court of CA,
County of Santa Clara
22CV392988
Reviewed By: M. Dominguez

SUPERIOR COURT OF CALIFORNIA
IN AND FOR THE COUNTY OF SANTA CLARA

VIDALIA GOMEZ, on behalf of all others
similarly aggrieved,

Plaintiff,

vs. GIULIETTA ITALIAN FOODS, INC., a
California corporation, and DOES 1 through
10, inclusive,

Defendants.

CASE NO. 22CV392988

COMPLAINT FOR VIOLATION OF
PRIVATE ATTORNEYS GENERAL ACT

JURY TRIAL DEMANDED

GENERAL ALLEGATIONS

1. Plaintiff VIDALIA GOMEZ is an individual residing in the State of California.

2. On information and belief, defendant GIULETTA ITALIAN FOODS, INC. is a California corporation duly licensed to conduct business in the State of California.

3. 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.

4. 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.

5. Defendant has employed Plaintiff in California as a non-exempt employee during the relevant time period until her employment ended in and around October 2021. 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 employed by Defendant as non-exempt employees, however titled, in the State of California, from the date one year prior to submission of Plaintiff's PAGA notice letter. This action is brought solely under PAGA and seeks no relief beyond that available under PAGA.

6. During the period beginning one-year period preceding the filing of the required PAGA notice with the Labor Workforce & Development Agency, and continuing through the present, as alleged herein, Defendant violated Labor Code sections 201-203, 204, 210, 221-223, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, 1199, and all applicable Wage Orders, as to Plaintiff and all other similarly aggrieved employees employed by Defendant in California.

1 These violations subject Defendant to civil penalties as set forth in the foregoing statutes as
2 well as other provisions of the Labor Code, including without limitation Labor Code sections
3 203, 210, 225.5, 226.3, 226.7, 256, 1174.5, 1194.2, 1197.1, and 2699, and section 20 of all
4 applicable IWC Wage Orders.

5 FIRST CAUSE OF ACTION

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

7 7. Plaintiff incorporates by reference the allegations contained in paragraphs 1
8 through 6.

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

22 9. Plaintiff and similarly aggrieved employees regularly worked periods of more than
23 five hours in a workday without being provided mandatory thirty-minute, duty-free meal periods.
24 Upon information and belief, Defendant failed to maintain a company meal period policy
25 compliant with California law. Moreover, as noted above, Plaintiff and other aggrieved
26 employees frequently worked in excess 5 hours per shift and, thus, they were entitled to
27 uninterrupted thirty minute meal periods before the end of the fifth hour of work. Defendant also
28 failed to pay Plaintiff and similarly aggrieved employees an additional hour of wages at their

1 regular rates of compensation for each workday a meal period was not provided, or was late, short
2 or interrupted.

3 10. Defendant failed to provide Plaintiff and similarly aggrieved employees all
4 required and/or fully compliant rest periods, or compensation in lieu thereof. Defendant employed
5 policies and procedures that ensured Plaintiff and other aggrieved employees would not receive
6 all legally required rest periods, as Defendant did not authorize and permit all required rest
7 periods in strict accordance to, and in compliance with, the timing requirements of all applicable
8 Wage Orders. Plaintiff and other aggrieved employees were provided with only one rest period
9 per shift regardless of the number of hours worked, and were not provided proper rest breaks
10 because purported rest breaks were short, interrupted, untimely, and/or on duty. Defendant further
11 employed policies and procedures ensuring Plaintiff and similarly aggrieved employees did not
12 receive premium wages at the regular rate of compensation to compensate them for workdays
13 they did not receive all legally required and fully compliant rest periods.

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

20 12. Defendant knowingly and intentionally failed to provide Plaintiff and other
21 aggrieved employees with proper, itemized wage statements as the wage statements provided by
22 Defendant do not accurately reflect, inter alia, gross wages earned, total hours worked, net wages
23 earned, and all applicable hourly rates in effect during each pay period and all hours worked at
24 each applicable hourly rate, for all the reasons herein mentioned. Accordingly, Defendant has
25 violated Labor Code section 226 as to Plaintiff and all similarly aggrieved employees. These
26 violations subject Defendant to civil penalties under the Labor Code, including without limitation
27 Labor Code sections 226.3 and 2699. Each violation of each Labor Code section and Wage Order
28 provision, for each aggrieved employee, results in a separate civil penalty.

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

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

16 15. Labor Code sections 1198 and 1199 make it unlawful to employ any individual
17 under conditions of labor prohibited by the Wage Orders, and any violation, refusal, or neglect to
18 comply with any provision within Part 4, Chapter 1 of the Labor Code, including sections 1174,
19 1197, and 1198, or other order or ruling of the IWC. Defendant’s violations with respect to
20 minimum wages and/or overtime wages, as alleged herein, result in separate violations of Labor
21 Code sections 1198 and 1199, and subject Defendant to civil penalties under the Labor Code,
22 including without limitation Labor Code sections 1197.1 and 2699. Each violation of each Labor
23 Code section and Wage Order provision, for each aggrieved employee, results in a separate civil
24 penalty.

25 16. California Labor Code section 204 requires an employer to pay employees all
26 wages due and payable at least twice each calendar month. For reasons discussed herein,
27 Defendant failed to comply with Labor Code section 204 by failing to timely pay twice during
28 each calendar month all wages due and payable to Plaintiff and other similarly aggrieved

1 employees. Defendant's violations of Labor Code section 204 subject Defendant to civil
2 penalties, including but not limited to the penalties set forth in California Labor Code sections
3 210 and 2699. Each violation results in a separate civil penalty, for each aggrieved employee for
4 each pay period during which the statutory provisions were violated.

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

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

20 19. Under Labor Code Section 2699.3, the LWDA must give written notice by
21 certified mail to the parties it intends to investigate the alleged violations within 65 days of the
22 date of the complainant's written notice. As of the filing of this Complaint, the LWDA has not
23 provided the parties any notice of its intention to investigate Plaintiff's claims on behalf of
24 himself and other aggrieved employees, nor has Defendant responded to Plaintiff's PAGA
25 notices in an attempt to cure. According, Plaintiff has exhausted all administrative remedies
26 required by law.

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

1 PRAYER

2 WHEREFORE, Plaintiff prays for judgment against each Defendant, jointly and severally,
3 as follows:

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

7
8 Dated: January 4, 2022

LAW OFFICES OF J. KIRK DONNELLY, APC

9
10 
11 J. Kirk Donnelly
Attorneys for Plaintiff Vidalia Gomez

12 DEMAND FOR JURY TRIAL

13
14 Plaintiff hereby demands a trial by jury on all claims so triable.

15
16 Dated: January 4, 2022

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18 
19 J. Kirk Donnelly
Attorneys for Plaintiff Vidalia Gomez