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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

ALICIA HERNANDEZ, an individual, on
behalf of herself and other similarly aggrieved
employees and the State of California,

Plaintiff,

vs.

AWESOME DOUGHNUT LLC and DOES
1-50,

Defendants.

Unlimited Jurisdiction

Case No.: **22STCV02415**

COMPLAINT FOR CIVIL PENALTIES
UNDER THE PRIVATE ATTORNEYS
GENERAL ACT OF 2004

COMPLAINT

1 Plaintiff Alicia Hernandez (“Plaintiff”), on behalf of herself and all other similarly
2 aggrieved employees and the State of California, complains and alleges as follows:

3 **INTRODUCTION**

4 1. Plaintiff, as a proxy for the State of California, brings a representative law
5 enforcement action under the Private Attorneys General Act of 2004 (“PAGA”), Labor Code
6 Section 2698 et seq., to recover civil penalties against Defendant Awesome Doughnut LLC
7 (“Awesome Doughnut” or “Defendant”). On behalf of herself and other aggrieved employees,
8 Plaintiff seeks to recover civil penalties (75% payable to the Labor Workforce Development
9 Agency and 25% payable to aggrieved employees) owed by Defendant under Labor Code Section
10 2699 for failure to pay Plaintiff and other similarly aggrieved employees rest and meal break
11 premiums at the correct regular rate of compensation and failure to timely pay all wages upon
12 cessation of employment.

13 **JURISDICTION AND VENUE**

14 2. Venue is proper in the County of Los Angeles because work was performed by
15 Plaintiff and other similarly aggrieved employees for Defendants in the County of Los Angeles,
16 California, and the legal obligations of Defendants to Plaintiff and other similarly aggrieved
17 employees were breached throughout California, including in Los Angeles County.

18 3. The California Superior Court has jurisdiction in this matter because Plaintiff is a
19 resident of California, Defendants are qualified to do business in California and Defendants
20 regularly conduct business in California. Further, there is no federal question at issue as the claims
21 herein are based solely on California law.

22 **THE PARTIES**

23 **A. Plaintiff**

24 4. Plaintiff is over the age of eighteen, and at times mentioned in this complaint, was
25 a resident of California. During the one-year period preceding the notification of her claims under
26 the PAGA to Defendants and Labor Workforce and Development Agency (the “LWDA”), Plaintiff
27 was employed by Defendants in California as an hourly paid non-exempt employee at one of
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1 Defendants' doughnut shops from approximately October 2005 through June 2021. During the
2 one-year period before Plaintiff notified Defendants and the LWDA of her claims under PAGA,
3 Defendants paid Plaintiff several meal break premiums for its failure to provide her compliant
4 meal periods under California law. In addition, Defendants paid Plaintiff several performance
5 bonuses.

6 5. Plaintiff seeks to represent similarly situated persons who are Aggrieved
7 Employees. Aggrieved Employees are persons who, at any time since the date one year before the
8 date of Plaintiff's letter notifying Defendants and the LWDA of the alleged violations, were
9 employed at Defendants' Krispy Kreme Doughnut shops in California and subjected to the
10 following violations of California law: Labor Code Sections 201-202 and 226.7 and the applicable
11 Industrial Welfare Commission ("IWC") Wage Orders, including Wage Order 5.

12 6. As such, Plaintiff appears in this action on behalf of herself and on behalf of all
13 other similarly aggrieved employees and the State of California.

14 **B. Defendants**

15 7. Plaintiff is informed and believes, and thereon alleges, that Defendant Awesome
16 Doughnut, LLC is a Delaware limited liability company that does business in California and its
17 principal place of business is located in Long Beach, California. In addition, Awesome Doughnut
18 is the exclusive franchisee of Krispy Kreme Doughnuts in Southern California.

19 8. Plaintiff is ignorant of the true names, capacities, relationships, and extent of
20 participation in the conduct herein alleged, of the Defendants sued herein as DOES, but is informed
21 and believes and thereon alleges that said Defendants are legally responsible for the wrongful
22 conduct alleged herein and therefore sues these Defendants by such fictitious names. Plaintiff will
23 amend this complaint to allege the true names and capacities of the DOE Defendants when
24 ascertained. Defendant Awesome Doughnut LLC and the DOE Defendants are collectively
25 referred to herein as "Defendants."

26 9. Plaintiff is informed and believes and thereon alleges that each Defendant acted in
27 all respects pertinent to this action as the agent of one or more of the other Defendants, carried out
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1 a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each
2 Defendant are legally attributable to one or more of the other Defendants.

3 **FACTS RELEVANT TO PLAINTIFF’S CLAIMS**

4 **Meal and Rest Period Premiums Rate Calculation**

5 1. At all relevant times, Defendants employed Plaintiff and other similarly aggrieved
6 employees subject to Labor Code Section 226.7. Labor Code Section 226.7 states, in relevant part:
7 If an employer fails to provide an employee a meal or rest or recovery period in accordance with
8 a state law, ..., the employer shall pay the employee one additional hour of pay at the employee’s
9 **regular rate of compensation** for each work day that the meal or rest period is not provided.”
10 (Emphasis added).

11 2. Similarly, Wage Order 5-2001(11) (emphasis added) provides: “If an employer
12 fails to provide an employee a meal period in accordance with the applicable provisions of this
13 order, the employer shall pay the employee one (1) hour of pay at the employee’s **regular rate of**
14 **compensation** for each workday that the meal period is not provided.” Wage Order 5-
15 2001(11)(B), (12)(B) (same re rest periods).

16 3. During the relevant period, Defendants paid aggrieved employees, including
17 Plaintiff, one hour of pay at the employee’s base hourly rate when compensating those employees
18 for violations of the meal and rest period requirements, including during periods when the
19 employee earned a performance bonus (or other form of non-discretionary pay) required to be
20 factored into an employee’s regular rate of compensation. *Ferra v. Loews Hollywood Hotel, LLC*,
21 11 Cal. 5th 858, 489 P.3d 1166, 1178 (2021) (“we hold that the term ‘regular rate of compensation’
22 in section 226.7(c) has the same meaning as ‘regular rate of pay’ in section 510(a) and
23 encompasses not only hourly wages but all nondiscretionary payments for work performed by the
24 employee.”).

25 4. For example, during quarters where Plaintiff met her performance metrics and was
26 paid a bonus, Defendants continued to pay her break premiums at her base hourly rate without
27 factoring the quarterly bonus into the regular rate of compensation calculation for the payment of
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1 the premium wage.

2 Unpaid Final Wages

3 5. At all relevant times, Defendants employed Plaintiff and other similarly aggrieved
4 employees subject to Labor Code Sections 201 and 202. Pursuant to Labor Code Sections 201 and
5 202, Defendants are required to immediately pay all wages owed in the case of a discharge or
6 resignation when the resigning employee provided at least three days' notice of resignation or
7 within 72 hours for those employees who resign and provide less than 3 days' notice.

8 6. Plaintiff and other aggrieved employees who were paid meal and rest period
9 premiums at their base hourly rates without incorporating performance bonuses and other forms
10 of non-discretionary pay into their regular rate of compensation have ceased their employment by
11 Awesome Doughnut. Upon the cessation of that employment relationship (and as prescribed by
12 statute), these aggrieved employees did not receive all wages owed. Namely, said former
13 employees did not receive all wages due to Defendants' failure to pay the correct regular rate of
14 compensation for premium wages for non-compliant rest and meal periods. Those former
15 employees, upon termination, did not receive all owed wages on the date of termination, or within
16 72 hours if they resigned. Therefore, Awesome Doughnut has violated and continues to violate
17 Labor Code Sections 201 and 202, because it has not paid the aforementioned premium wages and
18 owes PAGA penalties for each pay period in which it failed to pay all final pay upon termination.

19 7. As a result of these violations, Plaintiff seeks on behalf of herself and all other
20 similarly aggrieved employees, penalties under PAGA.

21 **FIRST CAUSE OF ACTION**

22 **CIVIL PENALTIES UNDER PAGA**

23 **(By Plaintiff, Aggrieved Employees and the State of California against Defendants)**

24 8. Plaintiff re-alleges and incorporates by reference the foregoing allegations as
25 though set forth herein.

26 9. At all times relevant to this action, Plaintiff and other aggrieved employees were
27 "aggrieved employees" within the meaning of Labor Code Section 2699.

10. Defendants' conduct as described herein, arising from Defendants' failure to pay rest and meal break premiums at the correct regular rate of compensation and failure to timely pay all wages upon cessation of employment, constitute violations of Labor Code Sections 201-202 and 226.7 and the applicable IWC Wage Order, including Wage Order 5-2001.

11. Labor Code Sections 2699(a) and (g) authorize an aggrieved employee, on behalf of herself and other current or former employees, to bring a civil action to recover civil penalties pursuant to the procedures specified in Labor Code Section 2699.3.

12. Plaintiff has complied with the procedures for bringing suit specified in Labor Code Section 2699.3. By letter dated November 15, 2021, Plaintiff gave written notice to the LWDA via its online filing system and by certified mail to Defendants of the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support the alleged violations. To date, more than 65 days after the postmark date of November 15, 2021, the LWDA has not advised Plaintiff that it intends to investigate Plaintiff's allegations.

13. Pursuant to Labor Code Sections 2699(a) and (f), Plaintiff and other aggrieved employees are entitled to civil penalties for Defendants' violations of the Labor Code in the amount of one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation, and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation. Pursuant to Labor Code Section 2699(i), 75% of the civil penalties recovered shall be distributed to the LWDA, and 25% shall be distributed to the aggrieved employees.

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

PRAYER FOR RELIEF

WHEREFORE, Plaintiff on behalf of herself and all others similarly aggrieved employees, prays for relief and judgment against Defendants as follows:

1. Civil penalties under Labor Code Section 2699 (75% payable to the LWDA and 25% payable to aggrieved employees);

2. Costs;

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3. Reasonable attorney's fees; and
4. Such other and further relief as this Court may deem just and proper.

Dated: January 20, 2022

MOSS BOLLINGER, LLP



By: _____

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