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Individually and on behalf of all aggrieved employees

FILED
Superior Court of California
County of Alameda

03/29/2022

Clad Fike, Executive Officer / Clerk of the Court

By: Sue Pesko Deputy
S. Pesko

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA**

Blanca Lopez, individually and on behalf of
all aggrieved employees,

Plaintiff,

vs.

Smile Brands Group, Inc.; Smile Brands
Inc.; Consumer Health Inc.; and Does 1
through 20, inclusive,

Defendants.

Case No. 22CV005299

**FIRST AMENDED REPRESENTATIVE
ACTION COMPLAINT FOR:**

**VIOLATION OF THE CALIFORNIA
LABOR CODE PRIVATE ATTORNEYS
GENERAL ACT OF 2004 (CAL. LABOR
CODE §§ 2698, ET SEQ.)**

1 Plaintiff Blanca Lopez, individually and on behalf of other aggrieved employees, hereby
2 alleges as follows:

3 **NATURE OF ACTION AND INTRODUCTORY STATEMENT**

4 1. Plaintiff Blanca Lopez (“Plaintiff”) brings this representative action against
5 Defendants Smile Brands Group, Inc., Smile Brands Inc., Consumer Health Inc. and Does 1
6 through 20, inclusive (collectively, “Defendants”), on behalf of herself individually and all other
7 aggrieved employees employed by Defendants throughout California defined as all non-exempt
8 employees employed by Defendants in the State of California from one year before the date of
9 Plaintiff’s Private Attorneys General Act of 2004, Labor Code §§ 2698, *et seq.* (“PAGA”) notice,
10 plus any applicable tolling, to the date of trial.

11 2. Defendants operate a chain of dental offices in California.

12 3. Through this action, Plaintiff alleges that Defendants have engaged in a
13 systematic pattern of wage and hour violations under the California Labor Code (“Labor Code”).

14 4. Plaintiff is informed and believe, and thereon alleges, during the relevant time
15 period, Defendants had a consistent policy of violating state wage and hour laws by, among other
16 things:

- 17 (a) failing to pay minimum wages for all hours worked;
- 18 (b) failing to pay overtime wages for all hours worked;
- 19 (c) failing to provide lawful meal periods or compensation in lieu thereof;
- 20 (d) failing to authorize or permit lawful rest breaks or provide compensation
21 in lieu thereof;
- 22 (e) failing to provide accurate itemized wage statements;
- 23 (f) failing to indemnify all business expenses; and
- 24 (g) failing to produce all employment records.

25 5. Plaintiff brings this representative action seeking monetary relief against
26 Defendants on behalf of herself and other aggrieved employees to recover, among other things,
27 penalties, attorney’s fees, costs and expenses pursuant to the PAGA.

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1 13. Plaintiff is informed and believe, and thereon alleges, that Does 1 through 20 are
2 or were the partners, agents, owners, shareholders, managers, or employees of Defendants at all
3 relevant times.

4 14. Plaintiff is informed and believe, and thereon alleges, that each defendant acted
5 in all respects pertinent to this action as the agent of the other defendant, carried out a joint
6 scheme, business plan, or policy in all respects pertinent hereto, and the acts of each defendant
7 are legally attributable to the other defendant. Furthermore, defendants in all respects acted as
8 the employers and/or joint employers of Plaintiffs and other aggrieved employees.

9 15. Plaintiff is informed and believe, and thereon alleges, that each and all of the acts
10 and omissions alleged herein were performed by, or are attributable to, Defendants and/or Does
11 1 through 20, acting as the agent or alter ego for the other, with legal authority to act on the
12 other's behalf. The acts of any and all Defendants were in accordance with, and represent, the
13 official policy of Defendants.

14 16. At all relevant times, Defendants, and each of them, acted within the scope of such
15 agency or employment, or ratified each and every act or omission complained of herein. At all
16 relevant times, Defendants, and each of them, aided and abetted the acts and omissions of each
17 and all the other Defendants in proximately causing the damages herein alleged.

18 17. Plaintiff is informed and believe, and thereon allege, that each of said Defendants
19 is in some manner intentionally, negligently, or otherwise responsible for the acts, omissions,
20 occurrences, and transactions alleged herein.

21 **GENERAL ALLEGATIONS**

22 18. At all relevant times mentioned herein, Defendants employed Plaintiff and other
23 persons as non-exempt employees.

24 19. Defendants employed Plaintiff during the relevant time period.

25 20. Plaintiff is informed and believe, and thereon alleges, that at all times mentioned
26 herein, Defendants were advised by skilled lawyers, employees, and other professionals who
27 were knowledgeable about California's wage and hour laws, employment and personnel
28 practices, and the requirements of California law.

1 21. Through this action, Plaintiff alleges that Defendants have engaged in a
2 systematic pattern of wage and hour violations under the California Labor Code and IWC Wage
3 Orders.

4 22. Plaintiff is informed and believe, and thereon alleges, that Defendants knew or
5 should have known that Plaintiff and other aggrieved employees were entitled to receive wages
6 for all time worked (including minimum wages and overtime wages) and that they were not
7 receiving all wages earned for work that was required to be performed. For example, Defendants
8 required Plaintiff and aggrieved employees to work off-the-clock for required trainings and failed
9 to pay for the additional time worked. Plaintiff and aggrieved employees were also subject to
10 illegal time rounding which resulted in underpayment of wages. Moreover, Defendants failed to
11 pay overtime wages correctly based on its failure to include bonuses and all other remuneration
12 in the regular rate of pay. Further, Defendants failed to pay overtime during the correct pay
13 period and instead paid any missing overtime hours worked at the end of the quarter. In violation
14 of the Labor Code and IWC Wage Orders, Plaintiff and other aggrieved employees were not paid
15 all wages (including minimum wages and overtime wages) for all hours worked.

16 23. Plaintiff is informed and believe, and thereon alleges, that Defendants knew or
17 should have known that aggrieved employees were entitled to receive all required meal periods
18 or payment of one (1) additional hour of pay at the aggrieved employees' regular rate of pay
19 when they did not receive a timely, uninterrupted meal period. On information and belief,
20 Plaintiff and aggrieved employees were not able to take required off-duty meal periods during
21 their shifts due to Defendant's policy and practice of requiring off-the-clock work trainings
22 during their meal periods. In violation of the Labor Code and IWC Wage Orders, aggrieved
23 employees did not receive all meal periods or payment of one (1) additional hour of pay at the
24 aggrieved employees' regular rate of pay when they did not receive a timely, uninterrupted meal
25 period.

26 24. Plaintiff is informed and believe, and thereon alleges, that Defendants knew or
27 should have known that aggrieved employees were entitled to receive all rest breaks or payment
28 of one (1) additional hour of pay at the aggrieved employees' regular rate of pay when a rest

1 break was missed. In violation of the Labor Code and IWC Wage Orders, aggrieved employees
2 did not receive all rest breaks or payment of one (1) additional hour of pay at the aggrieved
3 employees' regular rate of pay when a rest break was missed, interrupted, or on-duty.

4 25. Plaintiff is informed and believe, and thereon alleges, that Defendants knew or
5 should have known that Plaintiff and aggrieved employees were entitled to receive itemized wage
6 statements that accurately showed the following information pursuant to the Labor Code: (1)
7 gross wages earned; (2) total hours worked by the employee; (3) the number of piece-rate units
8 earned and any applicable piece rate if the employee is paid on a piece-rate basis; (4) all
9 deductions, provided that all deductions made on written orders of the employee may be
10 aggregated and shown as one item; (5) net wages earned; (6) the inclusive dates of the period for
11 which the employee is paid; (7) the name of the employee and only the last four digits of his or
12 her social security number or an employee identification number other than a social security
13 number; (8) the name and address of the legal entity that is the employer; and (9) all applicable
14 hourly rates in effect during the pay period and the corresponding number of hours worked at
15 each hourly rate by the employee. The deficiencies include, among other things, the failure to
16 correctly state the gross wages earned, net wages earned, and all total hours worked by Plaintiffs
17 and aggrieved employees. In violation of the Labor Code, Plaintiff and aggrieved employees
18 were not provided with accurate itemized wage statements.

19 26. Plaintiff is informed and believe, and thereon allege, that Defendants knew or
20 should have known that Plaintiff and aggrieved employees were entitled to timely payment of
21 wages during their employment. In violation of the Labor Code, Plaintiff and aggrieved
22 employees did not receive payment of all wages within permissible time periods.

23 27. Plaintiff is informed and believe, and thereon alleges, that Defendants were
24 required to indemnify and reimburse Plaintiff other aggrieved employees for all expenditures or
25 losses caused by the employer's want of ordinary care and/or incurred in direct consequent of the
26 discharge of their duties but failed to indemnify and reimburse Plaintiffs and other aggrieved
27 employees. For example, Defendants failed to reimburse Plaintiff and other aggrieved
28 employees for personal cellular device for work related purposes and the purchase of uniforms,

1 masks, hand sanitizer, surface disinfectant, and other personal protective equipment (“PPE”).
2 Thus, in violation of the Labor Code, Plaintiff and aggrieved employees did not receive
3 reimbursements for all business expenses.

4 28. Plaintiff is informed and believe, and thereon alleges, that Defendants knew or
5 should have known that Plaintiff and aggrieved employees who requested the contents of their
6 personnel records must be provided. However, Defendant failed to provide Plaintiff her
7 personnel file, including time records upon request. Thus, in violation of the Labor Code,
8 Plaintiff and other aggrieved employees are entitled to civil penalties.

9 **FIRST CAUSE OF ACTION**

10 **ENFORCEMENT OF LABOR CODE § 2698 ET SEQ. (“PAGA”)**

11 29. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
12 though fully set forth herein.

13 30. Pursuant to Labor Code § 2699(a), any provision of the Labor Code that provides
14 for a civil penalty to be assessed and collected by the LWDA or any of its departments, divisions,
15 commissions, boards, agencies or employees for violation of the code may, as an alternative, be
16 recovered through a civil action brought by an aggrieved employee on behalf of themselves or
17 herself and other current or former employees pursuant to the procedures specified in Labor Code
18 § 2699.3.

19 31. For all provisions of the Labor Code except those for which a civil penalty is
20 specifically provided, Labor Code § 2699(f) imposes upon Defendants a penalty of one hundred
21 dollars (\$100.00) for each aggrieved employee per pay period for the initial violations and two
22 hundred dollars (\$200.000) for each aggrieved employee per pay period for each subsequent pay
23 period in which Defendants violated these provisions of the Labor Code.

24 32. Defendants’ conduct with respect to Plaintiffs and other aggrieved employees
25 violates numerous Labor Code sections including, but not limited to, the following:

- 26 a. Violation of Labor Code §§ 210, 510, 1194, 1194.2, 1197, 1198, and the IWC
27 Wage Orders for failure to timely pay all earned wages (including minimum
28 and overtime wages) and failure to pay overtime wages at the regular rate of

1 pay owed to Plaintiff and other aggrieved employees during employment as
2 herein alleged;

3 b. Violation of Labor Code §§ 226.7 and 512 for failure to provide meal periods
4 to Plaintiff and other aggrieved employees and failure to pay premium wages
5 for missed meal periods as herein alleged;

6 c. Violation of Labor Code § 226.7 for failure to permit paid rest breaks to
7 Plaintiff and other aggrieved employees and failure to pay premium wages for
8 missed rest periods as herein alleged;

9 d. Violation of Labor Code §§ 1174 and 1174.5 for failure to maintain accurate
10 and complete records showing the hours worked daily by Plaintiff and other
11 aggrieved employees as herein alleged;

12 e. Violation of Labor Code §§ 2800 and 2802 for failure to reimburse Plaintiff
13 and other aggrieved employees for all reasonable and necessary business
14 expenses as herein alleged; and

15 f. Violation of Labor Code § 226 for failure to provide accurate itemized wage
16 statements to Plaintiff and other aggrieved employees as herein alleged.

17 33. Plaintiff is an “aggrieved employee” because she was employed by the alleged
18 violator and had one or more of the alleged violations committed against him, and therefore are
19 properly suited to represent the interests of all other aggrieved employees.

20 34. Plaintiff has exhausted the procedural requirements under Labor Code § 2699.3
21 as to Defendants and is therefore able to pursue a claim for penalties on behalf of herself and all
22 other aggrieved employees under PAGA.

23 35. Pursuant to Labor Code §§ 2699(a), 2699.3 and 2699.5, Plaintiff is entitled to
24 recover civil penalties for violations of the Labor Code sections cited above.

25 36. For bringing this action, Plaintiff is entitled to attorney’s fees and costs incurred
26 herein.

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1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff, on behalf of all other aggrieved employees, pray for judgment
3 against Defendants as follows:

- 4 1. For civil penalties against Defendants on behalf of all aggrieved employees.
5 2. For reasonable attorney's fees and costs of suit to the extent permitted by law,
6 including pursuant to California Labor Code §§ 2699(g) and California Code of Civil Procedure
7 § 1021.5; and
8 3. For such other relief as the Court deems just and proper.

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10 Dated: March 29, 2022

LEBE LAW, APLC

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12 By: _____


Jonathan M. Lebe
Annaliz Loera
Attorneys for Plaintiff Blanca Lopez

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