

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Yolanda Orozco

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Attorneys for Plaintiff, JENNIFER LINARES,
individually and as a proxy for the State of California

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES
[UNLIMITED CIVIL]

JENNIFER LINARES, an individual, and as a
proxy for the State of California,

Plaintiff,

vs.

TOLUCA LAKE COLLECTIVE, INC., a
corporation; and DOES 1 through 5, inclusive,

Defendants.

Case No.: 22STCV09767

COMPLAINT FOR:

1. Private Attorneys General Act
2. Failure to Pay Overtime Wages in Violation of Labor Code § 510
3. Labor Code § 203 Waiting Time Penalty

DEMAND FOR JURY TRIAL

Plaintiff, JENNIFER LINARES, alleges as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction to hear the subject matter of this complaint. This Court also has jurisdiction over each defendant, as the unlawful business acts alleged herein occurred in California. Plaintiff's claims arise out of and are related to all Defendant's contacts with California.

2. Venue is proper in any county in which an aggrieved employee worked and Labor Code violations allegedly occurred. Venue is proper in this Court because all or some of the violations of law and unlawful practices alleged herein occurred and are occurring in the County of Los Angeles.

PARTIES

3. Plaintiff is an individual who, at all relevant times, has resided in the State of California.

1 4. Defendant TOLUCA LAKE COLLECTIVE, INC. ("TOLUCA LAKE") is a corporation
2 that conducted, and is conducting, business in the State of California. TOLUCA LAKE registered the
3 address 3650 E Olympic Blvd., Los Angeles, California 90023 with the California Secretary of State as
4 its principal place of business in California.

5 5. Plaintiff is ignorant of the true names and capacities of the defendants sued herein as
6 DOES 1-5, inclusive, and therefore sues these defendants by such fictitious names and capacities.
7 Plaintiff will seek leave to amend this Complaint to allege their true names and capacities when
8 ascertained. Plaintiff is informed and believes and on that basis alleges that each fictitiously named
9 Defendants are responsible in some manner for the occurrences herein alleged, and that Plaintiff's
10 injuries were proximately caused by the conduct of such defendant.

11 6. All of the Defendants, including DOES 1-5, are alleged to be co-conspirators with each
12 other, in that each agreed to participate, and participated in, the furtherance of the objective of civil
13 wrongs as alleged in this Complaint.

14 7. Plaintiff is informed and believes and thereupon alleges that at all times material herein,
15 each defendant was completely dominated and controlled by its, his or her co-Defendants, each was the
16 agent, representative, and alter ego of the others, and all aided and abetted the wrongful acts of the
17 others.

18 8. Plaintiff is informed and believes and thereupon alleges that at all times material herein,
19 each of the Defendants was the agent, employee and/or joint venturer of, or working in concert with, co-
20 Defendants and was acting within the course and scope of such agency, employment, and/or joint
21 venture or concerted activity. To the extent that said conduct and omissions were perpetrated by certain
22 Defendants, Plaintiff is informed and believes and thereupon alleges that the remaining Defendant
23 and/or Defendants confirmed and ratified said conduct and omissions.

24 9. Plaintiff is informed and believes and on that basis alleges that at all times relevant
25 herein, the corporate Defendants, and each of them, had the right to control, and controlled, Plaintiff's
26 wages, hours and working conditions, and has the right to control the manner in which Plaintiff
27 performed work duties, including but not limited to supervision of work, engaged Plaintiff, suffered and
28

permitted Plaintiff to work, and they were employers, joint employers, or co-employers of Plaintiff at all relevant times alleged herein.

10. Plaintiff is informed and believes and on that basis alleges that at all times relevant herein, the Defendant, and each of them, were an integrated enterprise in that they had an interrelation of operations, centralized control of labor relations, common management, and common ownership or financial control.

GENERAL ALLEGATIONS

11. Defendant employed Plaintiff, as an hourly non-exempt worker, from at least around May 2018 to March 22, 2021. Defendant did not pay all overtime wages for hours worked over 8/day or 40/week. Because Defendant did not pay all hourly wages owed, it willfully failed to pay Plaintiff all of her final wages owed upon discharge.

12. As a company-wide practice, Defendant's employees such as Plaintiff and her non-management co-workers were left tips from patrons as gratuity. As a company-wide practice, Defendant took and received portions of the gratuity that was paid, given to, or left for Plaintiff and her non-management coworkers by patrons. As a company-wide practice, Defendant has a company-wide practice of not paying its employees their final vacation wages on the dates of their discharge.

FIRST CAUSE OF ACTION

PRIVATE ATTORNEYS GENERAL ACT (AGAINST TOLUCA LAKE AND DOES 1-5)

13. Plaintiff incorporates each allegation set forth in all of the preceding paragraphs as though set forth herein in full again.

14. Pursuant to the California Labor Code Private Attorneys General Act ("PAGA"), "Notwithstanding any other provision of law, any provision of [the California Labor Code] that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Section 2699.3." Lab. Code § 2699(a). "For all provisions of [the California Labor Code] except those for which

a civil penalty is specifically provided, there is established a civil penalty for a violation of these provisions.” Lab. Code § 2699(f).

15. This PAGA suit “is fundamentally a law enforcement action.” *Arias v. Super. Ct.*, 46 Cal. 4th 969, 986 (2009); *Iskanian v. CLS Transportation Los Angeles, LLC*, 59 Cal.4th 348, 386-387 (2014) (“[E]very PAGA action, whether seeking penalties for Labor Code violations as to only one aggrieved employee—the plaintiff bringing the action—or as to other employees as well, is a representative action on behalf of the state.”); *Williams v. Super. Ct.*, 3 Cal. 5th 531, 538 (2017) (“a PAGA suit, essentially a qui tam action filed on behalf of the state to assist it with labor law enforcement”). An employee who brings such an action is acting as an agent of state enforcement agencies. *Kim v. Reins Intl. Cal., Inc.*, 9 Cal.5th 73, 81 (2020).

20. A PAGA “violation” includes, and is used in these allegations to mean, a failure to comply with any requirement of the Labor Code. Lab. Code § 22. Under the PAGA, an “aggrieved employee” means any person who was employed by the alleged violator and against whom only one of the alleged violations was committed. Lab. Code § 2699(c). Plaintiff is an “aggrieved employee.”

16. This PAGA action is intended to “remediate present violations and deter future ones.” *Williams*, 3 Cal. 5th at 546. The relevant period for the following PAGA allegations in this cause of action is from January 15, 2021, to present and ongoing.

Labor Code Violations §§ 351, 353, 227.3, 226(a)

§ 351

17. “No employer or agent shall collect, take, or receive any gratuity or a part thereof that is paid, given to, or left for an employee by a patron, or deduct any amount from wages due an employee on account of a gratuity, or require an employee to credit the amount, or any part thereof, of a gratuity against and as a part of the wages due the employee from the employer. Every gratuity is hereby declared to be the sole property of the employee or employees to whom it was paid, given, or left for.” Lab. Code § 351.

18. Here, Defendant violated section 351 by, among other things, taking and receiving portions of the gratuity that was paid, given to, or left for Plaintiff and her non-management coworkers by patrons. Labor Code § 351 does not provide for its own self-contained “civil penalty” within the

statute. Thus, California Labor Code § 2699(f)(2) applies to provide a civil penalty of \$100 for each aggrieved employee per pay period for the initial violation and \$200 for each aggrieved employee per pay period for each subsequent violation.

19. Other aggrieved employees are any current or former non-management California employees.

§ 353

20. “Every employer shall keep accurate records of all gratuities received by him, whether received directly from the employee or indirectly by means of deductions from the wages of the employee or otherwise. Such records shall be open to inspection at all reasonable hours by the department.” Lab. Code § 353.

21. Here, Defendant violated section 353 by, among other things, failing to keep accurate records of all gratuities received. Labor Code § 353 does not provide for its own self-contained “civil penalty” within the statute. Thus, California Labor Code § 2699(f)(2) applies to provide a civil penalty of \$100 for each aggrieved employee per pay period for the initial violation and \$200 for each aggrieved employee per pay period for each subsequent violation.

22. Other aggrieved employees are any current or former non-management California employees.

§ 227.3

23. “Unless otherwise provided by a collective–bargaining agreement, whenever a contract of employment or employer policy provides for paid vacations, and an employee is terminated without having taken off his vested vacation time, all vested vacation shall be paid to him as wages at his final rate in accordance with such contract of employment or employer policy respecting eligibility or time served; provided, however, that an employment contract or employer policy shall not provide for forfeiture of vested vacation time upon termination.” Lab. Code § 227.3

24. Defendant did not immediately pay all of Plaintiff’s final vacation wages on the date of her discharge. This is a violation of Labor Code section 227.3. On information and belief, Defendant has a company-wide practice of not paying its employees their final vacation wages on the dates of their discharge. Labor Code § 227.3 does not provide for its own self-contained “civil penalty” within the

statute. Thus, California Labor Code § 2699(f)(2) applies to provide a civil penalty of \$100 for each aggrieved employee per pay period for the initial violation and \$200 for each aggrieved employee per pay period for each subsequent violation.

25. Other aggrieved employees are any current or former California employees excluding current management employees.

§ 226(a)

26. “An employer, semimonthly or at the time of each payment of wages, shall furnish to his or her employee, either as a detachable part of the check, draft, or voucher paying the employee’s wages, or separately if wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except as provided in subdivision (j), (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer . . . , and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.” Lab. Code § 226(a).

27. Plaintiff (except for the pay date of 3/22/2021) and other aggrieved employees’ itemized wage records did not show the address of the legal entity that is the employer. As such, Defendants violated Labor Code Section 226(a)(8). Defendant also failed to keep itemized wage statement records of the foregoing.

28. Labor Code Section 226 does not provide for its own self-contained “civil” penalty within the statute. Thus, Labor Code Section 2699(f)(2) applies to provide a civil penalty of \$100 for each aggrieved employee per pay period for the initial violation and \$200 for each aggrieved employee per pay period for each subsequent violation.

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1 **§ 226.3**

2 29. “Any employer who violates subdivision (a) of section 226 shall be subject to a civil
3 penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation
4 and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which
5 the employer fails to provide the employee a wage deduction statement or fails to keep the records
6 required in subdivision (a) of Section 226.” Lab. Code § 226.3. This section “sets out a civil penalty for
7 all violations of section 226.” *Raines v. Coastal Pacific Food Distribs., Inc.*, 23 Cal. App. 5th 667, 675
8 (2018). Because Defendant violated California Labor Code section 226(a), Defendant is subject to civil
9 penalties under section 226.3 applicable to Plaintiff and other current and former aggrieved employees.

10 ***Exhaustion of Administrative Remedies***

11 30. On January 3, 2022, Plaintiff provided notice to the California Labor and Workforce
12 Development Agency (“LWDA”), pursuant to Labor Code § 2699.3, detailing the specific provisions of
13 the foregoing Labor Code sections that have been violated, including the facts and theories to support
14 the violations. The LWDA file number is LWDA-CM-860720-22. The notice was sent by certified
15 mail on or about December 30, 2021, to Martin R Vivero, CEO, Toluca Lake Collective Inc., (Certified
16 Mail. No. 7021 1970 0000 0044 0751). Plaintiff submitted a fee waiver to the LWDA.

17 31. The LWDA has not, within 65 days of Plaintiff’s Notice of violations of the Labor Code,
18 sent Plaintiff notice that it intends to investigate the violations. Thus, Plaintiff has exhausted Plaintiff’s
19 administrative remedies, pursuant to Labor Code section 2699.3(a), as a prerequisite to assert a civil
20 action, for civil penalties pursuant to Labor Code section 2699. Defendant has not sent any notice to
21 the LWDA attempting to cure the alleged violations of Labor Code statutes not enumerated in Labor
22 Code section 2699.5. Thus, Plaintiff has exhausted Plaintiff’s administrative remedies, pursuant to
23 Labor Code section 2699.3(c), as a prerequisite to assert a civil action, for civil penalties pursuant to
24 Labor Code section 2699.

25 32. The LWDA has not, within 65 days of Plaintiff’s Supplemental PAGA Notice of
26 violations of the Labor Code, sent Plaintiff notice that it intends to investigate the violations. Thus,
27 Plaintiff has exhausted Plaintiff’s administrative remedies, pursuant to Labor Code section 2699.3(a), as
28 a prerequisite to assert a civil action, for civil penalties pursuant to Labor Code section 2699.

Defendant has not sent any notice to the LWDA attempting to cure the alleged violations of Labor Code statutes not enumerated in Labor Code section 2699.5. Thus, Plaintiff has exhausted Plaintiff's administrative remedies, pursuant to Labor Code section 2699.3(c), as a prerequisite to assert a civil action, for civil penalties pursuant to Labor Code section 2699.

SECOND CAUSE OF ACTION

FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF LABOR CODE § 510

(AGAINST TOLUCA LAKE AND DOES 1-5)

33. Plaintiff incorporates each allegation set forth in all of the preceding paragraphs as though set forth herein in full again.

34. Any employee receiving less than the California legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of overtime compensation including interest and reasonable attorney's fees. Lab. Code § 1194(a).

35. "Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee." Lab. Code § 510(a).

36. Plaintiff sometimes worked more than eight hours per workday and more than 40 hours per workweek and was not compensated at an overtime rate for those overtime hours worked more than eight per day and 40 per week. As such, Defendant violated Labor Code Sections 510 and 1198 because it violated the above-referenced as Industrial Welfare Commission Orders, as applicable.

37. Any "person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections . . . 1194 . . . may be held liable as the employer for such violation." Lab. Code § 558.1(a).

38. If the defendant does not keep accurate records of the hours worked by the plaintiff, then the plaintiff may prove the number of overtime hours worked by making a reasonable estimate of those hours. CACI 2703. As a direct and proximate result of the violations of law by Defendant, Plaintiff has worked a substantial number of hours without receiving overtime compensation, at the applicable rate, from Defendants, in accordance with California law.

39. Plaintiff has been damaged in an amount equal to the compensation to which she was entitled but was unlawfully deprived by Defendants, subject to proof at trial.

40. Pursuant to California Labor Code section 1194(a) Plaintiff is entitled to interest at the legal rate on the overtime wages owed to Plaintiff by Defendants.

41. Pursuant to California Labor Code section 1194(a), Plaintiff is entitled to an award of attorneys' fees, and costs.

FOURTH CAUSE OF ACTION

LABOR CODE § 203 WAITING TIME PENALTY

(AGAINST TOLUCA LAKE AND DOES 1-5)

42. Plaintiff incorporates each allegation set forth in all of the preceding paragraphs as though set forth herein in full again.

43. "If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced." Lab. Code § 203(a).

44. Defendant failed to timely pay Plaintiff her final wages (including all owed wages for unpaid overtime) on her last date of work, in violation of Labor Code § 201, and failed to pay her the additional continuing wages as a penalty from the original due date, in violation of Labor Code § 203.

45. Plaintiff has been harmed by Defendant's conduct and is entitled to a statutory waiting time penalty, in an amount according to proof at trial, interest thereon, and an award of attorneys' fees, and costs.

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PRAYER

WHEREFORE, Plaintiff prays:

1. For civil penalties pursuant to the California Labor Code §§ 2698 *et seq.*
2. For compensatory special damages, in an amount according to proof at the time of trial.
3. For statutory penalties pursuant to the California Labor Code.
4. For reasonable attorneys' fees pursuant to the California Labor Code and Code of Civil Procedure.
5. For costs of suit including expert witness fees.
6. For prejudgment interest.
7. For such other and further relief as the Court may deem proper.

DEMAND FOR JURY TRIAL

Plaintiff JENNIFER LINARES hereby demands a trial by jury.

Dated: March 21, 2022

GUTIERREZ DERHAM LAW FIRM LLP

By: 

Matthew Gutierrez
Attorneys for Plaintiff, JENNIFER LINARES,
individually and as a proxy for the State of
California