

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO CIVIL DIVISION

OCT 04 2022

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7 as an aggrieved employee, and on behalf of all other
aggrieved employees

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**9 **FOR THE COUNTY OF SAN BERNARDINO**

11 CHRISTEN D. HARDY, as an aggrieved
12 employee, and on behalf of all other aggrieved
13 employees under the Labor Code Private
Attorneys' General Act of 2004,

14 Plaintiff,

15 v.

16 TEXAS ROADHOUSE MANAGEMENT
CORP., Kentucky corporation; TEXAS
17 ROADHOUSE, INC., a Delaware corporation;
and DOES 1 through 100, inclusive,

18 Defendants.

CASE NO.: CIV SB 2222250

19 REPRESENTATIVE ACTION

**COMPLAINT UNDER THE LABOR
CODE PRIVATE ATTORNEYS'
GENERAL ACT OF 2004 FOR CIVIL
PENALTIES UNDER LABOR CODE
SECTIONS 210, 226.3, 558, 1174.5, 1197.1
and 2699**

20 DEMAND FOR JURY TRIAL

[Amount in Controversy Greater Than
\$25,000.00]

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27 Plaintiff Christen D. Hardy, as an aggrieved employee, and on behalf of all other aggrieved
28 employees under the Labor Code Private Attorneys' General Act of 2004, alleges as follows.

By Fax

1 **COMPLAINT FOR CIVIL PENALTIES**

2 1. This is a representative action by Ms. Hardy arising from Defendants Texas
3 Roadhouse Management Corp.'s and Texas Roadhouse, Inc.'s ("Texas Roadhouse") disregard for
4 public health and workplace safety requirements during the coronavirus pandemic. As cases of
5 COVID-19 surged across California in mid-2021, Texas Roadhouse gambled with the health of its
6 customers and employees by failing to comply with California Labor Code provisions that required
7 it to notify its employees and health officials when it knew of potential COVID-19 exposure in the
8 workplace. Texas Roadhouse also failed to follow basic public health safety measure because,
9 among other reasons, it did not disinfect time clocks and other surfaces, it did not provide adequate
10 protection equipment such as face coverings to its employees, and it failed to provide adequate
11 distance in working conditions between employees. All of this unlawful conduct, as alleged herein,
12 created needless health risks among employees and within the community and undoubtedly
13 contributed to community spread.

14 2. This heedless conduct by Texas Roadhouse occurred in a workplace setting where
15 employees—including those with vulnerable family members—were given no real choice but to be
16 potentially exposed to COVID-19 as part of their job duties. As such, Ms. Hardy brings this action
17 on her own behalf and on behalf of the other aggrieved employees, duly deputized by the State of
18 California under the Labor Code Private Attorneys' General Act of 2004 ("PAGA").

19 3. This representative action is brought pursuant PAGA, codified at Labor Code section
20 2698, *et seq.*, against Texas Roadhouse Management Corp., Kentucky corporation, and any of its
21 respective subsidiaries or affiliated companies within the State of California ("Roadhouse
22 Management"), and Texas Roadhouse, Inc., a Delaware corporation, and any of its respective
23 subsidiaries or affiliated companies within the State of California ("Roadhouse") (collectively with
24 "Roadhouse Management" and DOES 1 through 100, as further defined below, "Defendants"), as a
25 proxy of the Labor and Workforce Development Agency of the State of California ("LWDA"), on
26 behalf of Plaintiff and all other current and former non-exempt employees of Defendants working
27 within the Civil Penalty Period, as further defined herein, and, as it pertains to the alleged claims
28 for failure to comply with Labor Code section 6401, *et seq.*, Labor Code section 6409.6, and Labor

1 Code section 6432, on behalf of all employees of Defendants working within the Civil Penalty
2 Period (collectively, "Aggrieved Employees").

3 **PARTIES**

4 **A. Plaintiff**

5 4. Plaintiff is a resident of the State of California. At all relevant times herein, Plaintiff
6 is informed and believes, and based thereon alleges that Defendants employed Plaintiff as a non-
7 exempt employee, with duties that included, but were not limited to, servicing patrons, cooking,
8 maintaining quality control, and monitoring food safety. Plaintiff is informed and believes that
9 Plaintiff worked for Defendants from approximately August of 2018 and through approximately
10 February of 2022.

11 **B. Defendants**

12 5. Plaintiff is informed and believes and based thereon alleges that defendant
13 Roadhouse Management is, and at all times relevant hereto was, a corporation organized and
14 existing under and by virtue of the laws of the State of Kentucky and doing business in the County
15 of San Bernardino, State of California.

16 6. Plaintiff is informed and believes and based thereon alleges that defendant
17 Roadhouse is, and at all times relevant hereto was, corporation organized and existing under and by
18 virtue of the laws of the State of Delaware and doing business in the County of San Bernardino,
19 State of California.

20 7. The true names and capacities, whether individual, corporate, associate, or otherwise,
21 of defendants sued herein as DOES 1 through 100, inclusive, are currently unknown to Plaintiff,
22 who therefore sues defendants by such fictitious names under Code of Civil Procedure section 474.
23 Plaintiff is informed and believes and based thereon alleges that each of the defendants designated
24 herein as DOE is legally responsible in some manner for the unlawful acts referred to herein.
25 Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of
26 the defendants designated hereinafter as DOES when such identities become known. Plaintiff is
27 informed and believes, and based thereon alleges, that each defendant acted in all respects pertinent
28 to this action, as the agent of the other defendant(s), carried out a joint scheme, business plan or

1 policy in all respects pertinent hereto, and the acts of each defendant are legally attributable to the
2 other defendants. Whenever, heretofore or hereinafter, reference is made to “Defendants,” it shall
3 include Roadhouse Management, Roadhouse, and any of their parent, subsidiary, or affiliated
4 companies within the State of California, as well as DOES 1 through 100 identified herein.

5 **JURISDICTION AND VENUE**

6 8. Jurisdiction exists in the Superior Court of the State of California pursuant to Code
7 Civil Procedure section 410.10.

8 9. Venue is proper in San Bernardino County, California pursuant to Code of Civil
9 Procedure sections 395, *et seq.* because, among other things, Defendants operate a store in Hesperia,
10 California, which is in San Bernardino County; Defendants regularly and systematically provide
11 restaurant services in California, including in this County; through Defendants’ operation of a
12 restaurant in San Bernardino County, the causes of action complained of herein arose in this County;
13 and San Bernardino County is a county in which Defendants, or some of them, reside. Moreover, the
14 unlawful acts alleged herein have a direct effect on Aggrieved Employees in San Bernardino
15 County, and Defendants employ numerous Aggrieved Employees in San Bernardino County.

16 **PAGA REPRESENTATIVE ALLEGATIONS**

17 10. Plaintiff is an “aggrieved employee” under PAGA, as Plaintiff was employed by
18 Defendants during the applicable statutory period and suffered one or more of the Labor Code
19 violations set forth herein. Accordingly, Plaintiff seeks to recover civil penalties, as the term “civil
20 penalty” is defined under *ZB N.A. v. Superior Court* (2019) 8 Cal.5th 175, under the Labor Code
21 Private Attorneys General Act of 2004, codified at Labor Code section 2698, *et seq.* (“PAGA”) plus
22 reasonable attorneys’ fees and costs, for Plaintiff and all other aggrieved current and former
23 employees of Defendants during the Civil Penalty Period.

24 11. Specifically, Plaintiff seeks to recover PAGA civil penalties through a representative
25 action permitted by PAGA and the California Supreme Court in, among other authorities, *Arias v.*
26 *Superior Court* (2009) 46 Cal.4th 969. According to the same authorities, class certification of the
27 PAGA allegations described herein is not required.

28 12. During the period beginning one (1) year preceding the provision of notice to the

1 LWDA regarding the herein-described Labor Code violations (the “Civil Penalty Period”),
2 Defendants violated, *inter alia*, Labor Code sections 6401, *et seq.*, 6409.6, and 6432, among others.

3 13. Labor Code section 2699, subdivisions (a) and (g), authorizes aggrieved employees
4 such as Plaintiff, on behalf of Plaintiff and all other aggrieved current and former employees within
5 the statutory period, to bring a civil action to recover civil penalties pursuant to the procedures
6 specified in Labor Code section 2699.3.

7 14. On or around February 21, 2022, Plaintiff provided written notice pursuant to Labor
8 Code section 2699.3 online and by certified mail, with return receipt requested, of Defendants’
9 violation of various, including the herein-described, provisions of the Labor Code, to the LWDA, as
10 well as by certified mail, with return receipt requested to Defendants, and each of them.

11 15. Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), the LWDA did not
12 provide notice of its intention to investigate Defendants’ alleged violations within sixty-five (65)
13 calendar days of the February 21, 2022 postmarked date of the herein-described notice sent by
14 Plaintiff to the LWDA and Defendants.

15 16. At all relevant times mentioned herein, Defendants had and have a policy or practice
16 failing to furnish and use safety devices and safeguards. And adopt and use practices, means,
17 methods, operations and processes which are reasonably adequate to render such employment and
18 place of employment safe and healthful, pursuant to, including but not limited to, Labor Code
19 section 6401. At all relevant times mentioned herein, Defendants had and have a policy or practice
20 of requiring or permitting employees to go or be in any employment or place of employment which
21 is not safe and healthful, pursuant to Labor Code section 6402. At all relevant times mentioned
22 herein, Defendants had and have a policy or practice of failing or neglecting to: provide and use
23 safety devices and safeguards reasonably adequate to render the employment and place of
24 employment safe; adopt and use methods and processes reasonably adequate to render the
25 employment and place of employment safe; and do every other thing reasonably necessary to protect
26 the life, safety, and health of employees, pursuant to Labor Code section 6403. Plaintiff is informed
27 and believes, and based thereon alleges that these failures include, without limitation, failing to
28 disinfect time clocks and other surfaces after use by Plaintiff and/or other Aggrieved Employees;

1 failing to provide adequate protection equipment to Plaintiff and/or other Aggrieved Employees;
2 and failing to provide adequate distance in working conditions between Plaintiff and/or other
3 Aggrieved Employees.

4 17. At all relevant times mentioned herein, Defendants had and have a policy or practice
5 failing to give sufficient, adequate and proper notice to Plaintiff and other Aggrieved Employees of
6 the COVID-19 exposure within one business day of receiving notice of potential COVID-19
7 workplace exposure from a qualifying individual as required by Labor Code section 6409.6.
8 Plaintiff is informed and believes that numerous employees contracted COVID-19 during the
9 relevant time periods, but that Defendants failed to provide notice to employees. Plaintiff is
10 additionally informed and believes that Defendants do not or did not keep adequate records of
11 written notifications required in subdivision (a) for a period of at least three years.

12 18. At all relevant times mentioned herein, Defendants had and have a policy or practice
13 failing within one business day after Defendants or a representative of Defendants received notice
14 of potential exposure to COVID-19 to provide written notice to Plaintiff and other Aggrieved
15 Employees, or their exclusive representatives, who were on the premises at the same worksite as a
16 qualifying individual who was within the infectious period that they may have been exposed to
17 COVID-19. Furthermore, Plaintiff is informed and believes, and based thereon alleges, that
18 Defendants had and has a practice or policy of failing within one business day after Defendants or a
19 representative of Defendants received a notice of potential exposure to COVID-19 to provide
20 Plaintiff and other Aggrieved Employees who were on the premises at the same worksite as the
21 qualifying individual within the infectious period and the exclusive representative, if any, with
22 information regarding COVID-19-related benefits to which the employee may be entitled under
23 applicable federal, state, or local laws, including, but not limited to, workers' compensation, and
24 options for exposed employees, including COVID-19-related leave, company sick leave, state-
25 mandated leave, supplemental sick leave, or negotiated leave provisions, as well as antiretaliation
26 and antidiscrimination protections of the employee. Plaintiff is informed and believes, and based
27 thereon alleges, that Defendants violated, without limitation, Labor Code sections 6409.6 and 6432.
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1 19. At all relevant times mentioned herein, Defendants had and have a policy or practice
2 of failing within one business day after Defendants or a representative of Defendants received a
3 notice of potential exposure to COVID-19 to notify Plaintiff and other Aggrieved Employees who
4 were on the premises at the same worksite as the qualifying individual within the infectious period,
5 and the employers of subcontracted employees who were on the premises at the same worksite as
6 the qualifying individual within the infectious period and the exclusive representative, if any, of the
7 cleaning and disinfection plan that the employer is implementing per the guidelines of the federal
8 Centers for Disease Control and Prevention and the COVID-19 prevention program per the Cal-
9 OSHA COVID-19 Emergency Temporary Standards. Plaintiff is informed and believes, and based
10 thereon alleges, that Defendants violated, without limitation, Labor Code sections 6409.6 and 6432.

11 20. At all relevant times mentioned herein, Defendants had and have a policy or practice
12 of failing to notify the local public health agency in the jurisdiction of the worksite of the names,
13 number, occupation, and worksite of employees who had a laboratory-confirmed case of COVID-
14 19, as defined by the State Department of Public Health; a positive COVID-19 diagnosis from a
15 licensed health care provider; a COVID-19-related order to isolate provided by a public health
16 official; or died due to COVID-19, in the determination of a county public health department or per
17 inclusion in the COVID-19 statistics of a county. Plaintiff is informed and believes, and based
18 thereon alleges, that Defendants violated, without limitation, Labor Code sections 6409.6 and 6432

19 21. Plaintiff is informed and believes, and based thereon alleges that Defendants violated
20 California Code of Regulations, title 8, sections 1527, 3366, 3457 and 8397.4 by failing to provide
21 adequate and readily accessible sanitation facilities; a regular schedule for servicing, cleaning, and
22 supplying each facility to ensure it is maintained in a clean, sanitary and serviceable condition; an
23 adequate supply of suitable cleansing agents, water, single-use towels or blowers; and a sufficient
24 number of toilets to be used by each sex of employee.

25 22. Plaintiff, in her representative capacity, seeks civil penalties under Labor Code
26 section 2699, among others, for the herein-described acts, which violate the California Labor Code
27 as described above, including on behalf of Plaintiff and other Aggrieved Employees pursuant to
28 PAGA.

1 **JOINT LIABILITY ALLEGATIONS**

2 23. Plaintiff is informed and believes, and based thereon alleges, that at all times
3 mentioned herein, each of the defendants was the agent, principal, employee, employer,
4 representative, joint venture or co-conspirator of each of the other defendants, either actually or
5 ostensibly, and in doing the things alleged herein acted within the course and scope of such agency,
6 employment, joint venture, and conspiracy.

7 24. All of the acts and conduct described herein of each and every corporate defendant
8 was duly authorized, ordered, and directed by the respective and collective defendant corporate
9 employers, and the officers and management-level employees of said corporate employers. In
10 addition thereto, said corporate employers participated in the aforementioned acts and conduct of
11 their said employees, agents, and representatives, and each of them; and upon completion of the
12 aforesaid acts and conduct of said corporate employees, agents, and representatives, the defendant
13 corporation respectively and collectively ratified, accepted the benefits of, condoned, lauded,
14 acquiesced, authorized, and otherwise approved of each and all of the said acts and conduct of the
15 aforementioned corporate employees, agents and representatives.

16 25. As a result of the aforementioned facts, Plaintiff is informed and believes, and based
17 thereon alleges that Defendants, and each of them, are joint employers.

18 **FIRST CAUSE OF ACTION**

19 **(Civil Penalties Under the Private Attorneys' General Act (2004) – Against All Defendants)**

20 26. Plaintiff re-alleges and incorporates by reference all of the allegations set forth in the
21 preceding paragraphs as though fully set forth hereat.

22 **Civil Penalties Under Labor Code § 2699**

23 27. Pursuant to Labor Code section 2699, subdivision (a), notwithstanding any other
24 provision of law, any provision of the Labor Code that provides for a civil penalty to be assessed
25 and collected by the LWDA or any of its departments, divisions, commissions, boards, agencies or
26 employees for a violation of the Labor Code may, as an alternative, be recovered through a civil
27 action brought by an aggrieved employee on behalf of himself or herself and other current or former
28 employees pursuant to the procedures specified in Labor Code section 2699.3.

28. Pursuant to Labor Code section 2699, subdivision (f), for all provisions of the Labor Code except those for which a civil penalty is specifically provided, the established civil penalty for a violation of those provisions is as follows: if, at the time of the alleged violation, the person employs one or more employees, the civil penalty is 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.

29. Plaintiff is informed and believes and based thereon alleges that Defendants, and each of them, violated the Labor Code sections described herein, including, without limitation, for the failure to: furnish and use safety devices and safeguards; give sufficient, adequate and proper notice to employees of COVID-19 exposures, to provide written notice to Plaintiff and Aggrieved Employees, who were on the premises at the same worksite as a qualifying individual who was within the infectious period that they may have been exposed to COVID-19 pursuant to California and local laws.

30. Moreover, Plaintiff and other Aggrieved Employees within the State of California whom he seeks to represent are entitled to an award of reasonable attorneys' fees and costs in connection with their herein-described claims for civil penalties.

PRAYER

WHEREFORE, on behalf of Plaintiff and Aggrieved Employees, Plaintiff prays for judgment against Defendants as follows:

- A. An award of civil penalties pursuant to Labor Code section 2699;
- B. An award of reasonable attorneys' fees and costs pursuant to Labor Code section 2699;
- C. Pre-judgment and post-judgment interest;
- D. For costs of suit incurred herein; and

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E. Such other and further relief as the Court deems just and proper.

Dated: October 3, 2022

BIBIYAN LAW GROUP, P.C.

BY: 

DAVID D. BIBIYAN

JEFFREY C. BILS

JOSHUA SHIRIAN

Attorneys for Plaintiff CHRISTEN D.
HARDY, as an aggrieved employee, and on
behalf of all other aggrieved employees under
the Labor Code Private Attorneys' General
Act of 2004