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Assigned for All Purposes
Judge William Claster

CX-104

Attorneys for Plaintiff PAUL HAILEY, as representative of the State of California and the Labor and Workforce Development Agency, and on behalf of himself and other current and former employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY ORANGE

PAUL HAILEY, as an individual and on behalf of all employees similarly situated,

Plaintiff,

v.

SPECIALTY RESTAURANTS CORPORATION, and DOES 1 through 50, inclusive,

Defendants.

Case No.: 30-2022-01255939-CU-OE-CXC

**REPRESENTATIVE ACTION
COMPLAINT FOR CIVIL PENALTIES
AND FINES**

1. Violation of the Private Attorneys General Act, Labor Code §2698 et seq. for Recovery of Unpaid Wages and Overtime;
2. Violation of the Private Attorneys General Act, Labor Code §2698 et seq. for Failure to Provide Meal Periods;
3. Violation of the Private Attorneys General Act, Labor Code §2698 et seq for Failure to Provide Rest Periods;
4. Violation of the Private Attorneys General Act, Labor Code §2698 et seq for Failure to Keep Accurate Payroll Records and Provide Accurate Itemized Wage Statement; and
5. Violation of the Private Attorneys General Act, Labor Code §2698 et seq for Failure to Provide All Wages Due Upon Termination of Employment.

1 Plaintiff PAUL HAILEY (“Plaintiff” or “Mr. Hailey”), as a representative of the state of
2 California and the Labor and Workforce Development Agency (“LWDA”), and on behalf of
3 himself and other current and former employees, complains and alleges as follows:

4 **INTRODUCTION**

5 1. This is an action brought on behalf of Plaintiff and all similarly-situated employees
6 who were subjected to one or more of the violations alleged herein (“Aggrieved Employees”) by
7 Defendant SPECIALTY RESTAURANTS CORPORATION (“SRC” or “Defendant”). The term
8 “Relevant Time Period” or “Time Period” is defined as one (1) year plus sixty-five (65) days prior
9 to the filing of the complaint. Plaintiff reserves the right to amend this complaint to reflect a
10 different “Time Period” as further discovery is conducted.

11 2. Plaintiff, individually and on behalf of the Aggrieved Employees, seeks relief
12 against Defendant for its: (1) failure to pay all wages due, including regular and overtime wages;
13 (2) failure to provide meal periods or premium compensation in lieu thereof; (3) failure to provide
14 rest periods or premium compensation in lieu thereof; and (4) failure to keep accurate payroll
15 records and provide accurate itemized wage statements.

16 3. At all relevant times herein, Defendant has consistently maintained and enforced
17 the following unlawful policies and practices against Plaintiff and Aggrieved Employees:

- 18 a. Willfully refusing to pay all hours worked, including both regular and overtime
19 wages;
20 b. Willfully refusing to permit off-duty meal periods or providing compensation
21 in lieu thereof;
22 c. Willfully refusing to permit rest periods or providing compensation in lieu
23 thereof; and
24 d. Willfully refusing to furnish accurate itemized wage statements upon payment
25 of wages.
26 e. Willfully refusing to pay all wages due upon termination of employment.

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5. Venue is proper in the County of Orange, because the Defendant maintains its location and transact business in this county, the obligations and liability arise in this county, and work performed by Plaintiff and Aggrieved Employees that form the subject of this action occurred in this county.

7. Further, there is no federal question at issue as the issues herein are based solely on California statutes and law, including the Labor Code, Code of Civil Procedure, Business and Professions Code, and California Rules of Court.

Plaintiff

-3-

Defendants

9. Plaintiff is informed and believes, and based thereon alleges that, SRC is a California corporation, operating restaurants throughout California and is and/or was the employer of the Plaintiff and Aggrieved Employees during the Relevant Time Period. During the Relevant Time Period, Defendant employed Plaintiff and similarly situated persons and failed to pay Plaintiff and Aggrieved Employees for all hours worked as a result of working off the clock before or after the start of their shifts, failing to pay minimum and overtime wages, failing to provide meal periods or pay a meal period penalty in lieu of, failed to provide rest periods or pay a rest period penalty in lieu of, and failed to provide accurate and itemized wage statements. On information and belief, and based thereon alleges that Defendant is conducting business in good standing in California.

10. Plaintiff is ignorant of the true names, capacities, relationships, and extent of participation in the conduct herein alleged of Defendants sued herein as DOES 1 through 50, inclusive, but on information and belief alleges that said Defendants are legally responsible for the violations alleged herein. Plaintiff will amend this complaint to allege the true names and capacities of the DOE Defendant when ascertained.

11. Plaintiff is informed believes, and thereon alleges, that each Defendants acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan, or policy in all respects pertinent hereto, and the acts of each Defendant are legally attributable to the other Defendants. Furthermore, Defendants operate as a joint venture and/or single business enterprise, integrated enterprise and/or are agents of one another, are alter egos, joint employers and conspire with one another to increase profits by engaging in the conduct described in this complaint.

12. Plaintiff is informed and believes, and based thereon alleges, that each Defendant acted in all respects as the agent, servant, partner, joint venture, alter-ego, employee, proxy, managing agent, and/or principal of the co-Defendants, and in performing the actions mentioned below was acting, at least in part, within the course and scope of that authority as such agent, proxy, servant, partner, joint venture, employee, alter-ego, managing agent, and/or principal with

1 the permission and consent of the co-Defendants. Plaintiff also alleges the acts of each Defendant
2 are legally attributable to the other Defendants.

3 **PAGA ADMINISTRATIVE PREREQUISITE**

4 13. By this complaint, Plaintiff brings this case as a representative action seeking
5 penalties for the State of California in a representative capacity, as provided by PAGA, Labor
6 Code section 2698 et seq., to the extent permitted by law, as an aggrieved employee who was
7 employed by Defendant and subject to alleged violations set forth in Labor Code section
8 2699.5. Plaintiff and other aggrieved employees are current and former employees of Defendant
9 starting from three hundred sixty-five (365) days from the submission of the written notice to
10 the LWDA and Defendant to the resolution of this matter. Plaintiffs specifically alleged the
11 following in their notice to the Labor and Workforce Development Agency (“LWDA”) and the
12 employer: violations of Labor Code sections 226, 226.7, 510, 512, 558, 1171, and 1194.

13 14. Under Labor Code section 2699.3 subdivision(a), a Plaintiff may bring a cause of
14 action under PAGA only after giving notice to the LWDA and the employer of the Labor Code
15 section alleged to have been violated, and after sixty-five (65) days have passed without notice.
16 Prior to filing this complaint, on January 31, 2022, Plaintiff gave written notice by certified
17 electronic mail to the LWDA and to Defendant of the specified provisions alleged to have been
18 violated, including the facts and theories to support the alleged violation as required by Labor
19 Code section 2699.3. A true and correct copy of Plaintiff’s original letter sent to the LWDA on
20 January 31, 2022, is attached hereto as Exhibit A.

21 15. More than sixty-five (65) days have passed since Plaintiff submitted his January
22 31, 2022, notice to the LWDA and Defendant of the specific alleged Labor Code violations and
23 the LWDA have not provided notice to Plaintiff of its intent to investigate such alleged violations.
24 Plaintiff further has received no notice of Defendant’s intent to cure any of the alleged violations.
25 Therefore, Plaintiff has satisfied the administrative prerequisites for filing this action with regard
26 to his January 31, 2022, PAGA notice.

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FACTUAL ALLEGATIONS

16. This lawsuit arises out of an ongoing wrongful scheme by Defendant to deny its employees the benefits due under California's wage and hour laws for work performed in California. Defendant wrongfully refused to provide Plaintiff and the Aggrieved Employees minimum wages, overtime compensation, meal and rest periods, and other statutory benefits mandated by California.

17. Throughout the Relevant Time Period, Defendant employed Plaintiff and Aggrieved Employees in non-exempt positions throughout its California locations. Accordingly, these positions remain non-exempt from California's wage and hour laws, yet Defendant failed to pay overtime, provide meal and rest breaks and otherwise pay all wages due to these non-exempt employees as required by law.

18. During the Relevant Time Period, Defendant failed to compensate Plaintiff and Aggrieved Employees legally mandated minimum wages and overtime rate for all work performed during their shifts in violation of the Labor Code and the Labor Code and Industrial Welfare Commission ("IWC") Wage Orders. During the course of Plaintiff's employment with Defendant, Plaintiff and Aggrieved Employees regularly worked in excess of eight (8) hours per day, but were routinely not paid for all hours worked. Plaintiff and Aggrieved Employees primarily performed non-exempt work in excess of the maximum regular rate hours set by the IWC in the applicable Wage Orders, regulations or statutes, and therefore entitled the Plaintiff and Aggrieved Employees to overtime compensation at time and a half rate, and when applicable, double time rates as set forth by the applicable Wage Orders, regulations and/or statutes. Further, Plaintiff and Aggrieved Employees regularly worked through meal and rest breaks, and were not paid the legally mandated regular or overtime wages for the hours they worked.

19. Defendant also failed to make reasonably available legally compliant rest periods. Mr. Hailey is informed and believes that Defendant did not have either written or verbal policies regarding meal and rest breaks. This resulted in employees taking meal and rest breaks only sporadically. Defendant failed to provide adequate coverage to Plaintiff and Class Members from their duties by requiring them to carry and respond to radios and cell phones at all times during

1 their shifts, and interrupted their rest periods with various duties.

2 20. Mr. Hailey alleges he and the Aggrieved Employees were not compensated with
3 premium pay for every meal period and rest period that was not provided, as required by Labor
4 Code sections 226.7 and 512 and the applicable IWC Wage Order.

5 21. Mr. Hailey further alleges that Defendant failed to compensate him and the
6 Aggrieved Employees at the legally mandated wage rates for all hours worked. Mr. Hailey and
7 the Aggrieved Employees performed work off-the-clock during meal periods resulting in unpaid
8 overtime wages.

9 22. Further, to the extent the total hours worked exceeded eight (8) in one day, or forty
10 (40) in one week, all excess hours were required to be compensated at a rate of one-and-a-half
11 times the employee's base rate of pay. Defendant's failure to provide Plaintiff and the Aggrieved
12 Employees any pay whatsoever for off-the-clock hours worked therefore necessarily resulted in
13 overtime violations as well.

14 23. Furthermore, Defendant failed to keep accurate time records reflecting the time
15 Mr. Hailey and the Aggrieved Employees began and ended their meal periods. Insofar as
16 Defendant required the employees to work before and/or after signing in/out, the timekeeping by
17 Defendant was non-compliant as required under the Labor Code and Code of Regulations.

18 24. By failing to include on Plaintiff and the Aggrieved Employees' paystubs all owed
19 meal and rest premium pay, and all minimum wage and overtime owed, Defendant failed to keep
20 accurate payroll records and failed to provide Plaintiff and the Aggrieved Employees with
21 complete and accurate wage statements.

22 **FIRST CAUSE OF ACTION**

23 **Violation of the Private Attorney General Act for Failure to Pay All Wages Owed,**

24 **Including Minimum Wage and Overtime**

25 **(Plaintiff on behalf of himself and Aggrieved Employees Against Defendants)**

26 25. Plaintiff realleges and incorporates by reference all preceding paragraphs as if
27 fully alleged herein.

28 26. Plaintiff and Aggrieved Employees regularly worked over eight (8) hours per day

1 and/or forty (40) hours per week. Defendants failed to pay Plaintiff and Aggrieved Employees
2 minimum wage for all hours worked and overtime premium for hours worked in excess of over
3 eight (8) hours per day and/or forty (40) hours per week for work performed for the Defendants.
4 Defendants failed to pay Plaintiff and Aggrieved Employees overtime premium for hours worked
5 in excess of eight (8) hours per day and forty (40) hours per week for work performed for
6 Defendants. Defendants frequently denied Mr. Hailey and aggrieved employees a meal rest
7 periods when the restaurant and/or bar were busy. Additionally, Defendants often required Mr.
8 Hailey and aggrieved employees to clock out at the end of their shifts but continue performing
9 work duties such as taking out the trash or cleaning the restaurant and bar. Finally, Defendants
10 required Mr. Hailey and aggrieved employees to park several miles away from the restaurant and
11 take an employer sponsored shuttle to and from the restaurant for work purposes; however,
12 Defendant failed and/or refused to compensated Mr. Hailey and aggrieved employees for the time
13 they spent waiting on the employer sponsored shuttle and riding in the shuttle.

14 27. Defendant willfully violated the Labor Code by failing to pay Plaintiff and
15 Aggrieved Employees all wages, including both minimum wage and overtime. Plaintiff and
16 Aggrieved Employees were denied proper wages as a result of Defendant's policy of having
17 Plaintiff and Aggrieved Employees work before clocking in and/or clocking out, refusing to
18 compensate Plaintiff and Aggrieved Employees for their time waiting on and riding in the shuttle,
19 and failing to compensate Mr. Hailey and Aggrieved Employees for all hours worked at the proper
20 rate of pay pursuant to Labor Code section 510.

21 28. Labor Code section 510, subdivision (a) states in pertinent part: "Any work in
22 excess of eight hours in one workday and any work in excess of 40 hours in any one workweek...
23 shall be compensated at the rate of no less than one and one-half times the regular rate of pay for
24 any employee."

25 29. Labor Code section 1194, subdivision (a) states: "Notwithstanding any agreement
26 to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal
27 overtime compensation applicable to the employee is entitled to recover in a civil action the
28 unpaid balance of the full amount of this minimum wage or overtime compensation, including

1 interest thereon, reasonable attorney's fees, and costs of suit.”

2 30. Further, pursuant to Labor Code section 1197, payment of less than the minimum
3 wage fixed by the Labor Commission is unlawful.

4 31. Pursuant to Labor Code section 1198, it is unlawful to employ persons for longer
5 than the hours set by the Industrial Welfare Commission or under conditions prohibited by the
6 IWC Wage Order(s).

7 32. Pursuant to the IWC Wage Order(s), Defendant is required to pay Plaintiff and
8 Class Members for all hours worked, meaning the time during which an employee is subject to
9 the control of an employer, including all the time the employee is suffered or permitted to work,
10 whether or not required to do so.

11 33. During the all relevant times herein, Defendant, as a matter of established
12 company policy and procedure, (1) administered a uniform company policy and practice as to the
13 rounding policies regarding the Aggrieved Employees time worked, and (2) rounded the actual
14 time worked and recorded by the members of the Aggrieved Employees, usually down, so that
15 during the course of the their employment, the Aggrieved Employees were paid far less than they
16 would have been paid had they been paid for actual recorded time rather than “rounded” time.

17 34. Because Defendant required the Aggrieved Employees to remain under
18 Defendant’s control without paying therefore, this resulted in the Aggrieved Employees earning
19 less than the legal minimum wage in the State of California.

20 35. Plaintiff and the Aggrieved Employees regularly worked over eight (8) hours per
21 day. Defendant failed to pay Plaintiff and the Aggrieved Employees all minimum wage and
22 overtime premiums for all hours worked in excess of eight (8) hours per day for work performed
23 for Defendant. Pursuant to the Labor Code and IWC Wage Order, Plaintiff and the Aggrieved
24 Employees seek civil penalties pursuant to Labor Code sections 2698-2699, attorney’s fees and
25 costs.

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**Violation of the Private Attorney General Act for Failure to Provide Meal Periods or
Premium Compensation in Lieu thereof
(Plaintiff and Aggrieved Employees against all Defendants)**

37. Labor Code sections 226.7 and 512 and IWC Wage Order 5-2001, Sect. 11 provide that no employer shall employ any person for a work period of more than five (5) hours without providing a meal period uninterrupted by work duties of not less than thirty (30) minutes or employ any person for a work period of more than ten (10) hours without a second meal period of not less than thirty (30) minutes.

39. At all relevant times, Plaintiff and the Aggrieved Employees have worked shifts of more than five (5) hours in a workday.

41. At varying times relevant hereto, Plaintiff and the Aggrieved Employees have worked shifts of more than ten (10) hours in a workday

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**Violation of the Private Attorney General Act for Failure to Provide Rest Periods or
Premium Compensation in Lieu Thereof
(Plaintiff and Aggrieved Employees against all Defendants)**

43. Plaintiff realleges and incorporates by reference all preceding paragraphs as if fully set forth herein.

44. Labor Code section 226.7 provides that employers authorize and permit all employees to take rest periods at the rate of ten (10) minutes rest time per four (4) work hours, or major fraction thereof.

45. Labor Code section 226.7, subdivision (b) provides that if an employer fails to provide and employee rest periods in accordance with this section, the employer shall pay the employee one (1) hour of pay at the employees' regular rate of compensation for each workday that the rest period is not provided. Plaintiff and the Aggrieved Employees consistently worked over four (4) hours per shift with no rest breaks, due to Defendant's uniform policies and practices.

46. Defendant failed to reasonably make available rest breaks to Plaintiff and the Aggrieved Employees during all relevant times herein. In addition, regardless of whether Plaintiff and the Aggrieved Employees were provided with a rest period, Defendant's policy was to not compensate them for this time.

47. Plaintiff, and aggrieved employees seek civil penalties pursuant to Labor Code sections 2698-2699, attorney's fees and costs.

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**Violation of Private Attorney General Act for Failure to Provide Accurate Itemized
Wage Statements and Maintain Records
(Plaintiff and Aggrieved Employees against all Defendants)**

48. Plaintiff realleges and incorporates by reference all preceding paragraphs as if fully set forth herein.

49. Labor Code sections 226, 226.3, 1174, and 1174.5, and all applicable IWC Wage

1 Orders, provide that employers must keep records and provide employees with itemized wage
2 statements showing all hours worked and each applicable rate of pay in effect during the pay
3 period with the corresponding number of hours worked at each hourly rate.

4 50. Labor Code section 1174, subdivision (d), requires employers to keep at a central
5 location in California or at the plant or establishment at which the employees are employed,
6 payroll records showing the hours worked daily, and the wages paid to, each employee.

7 51. Labor Code section 226, subdivision (a), requires employers to provide employees
8 – either as a detachable part of the check, draft, or voucher paying the employee’s wages, or
9 separately when wages are paid by personal check or cash – an accurate itemized wage statement
10 in writing including specified information, including but not limited to: (1) gross wages earned;
11 (2) total hours worked by the employee . . . ; (3) the number of piece-rate units earned . . . ; (4)
12 all deductions . . . ; (5) net wages; (6) the inclusive dates of the period for which the employee is
13 paid; (7) the name of the employee and only the last four digits of his or his social security number
14 or an employee identification number other than a social security number; (8) the name and
15 address of the legal entity that is the employer . . . ; and (9) all applicable hourly rates in effect
16 during the pay period and corresponding number of hours worked at each hourly rate by the
17 employee...

18 52. Labor Code section 226, subdivision (e), provides that if an employer knowingly
19 and intentionally fails to provide a statement itemizing, *inter alia*, the gross and net wages earned,
20 the total hours worked by the employee and the applicable hourly overtime rates, causing the
21 employee injury, then the employee is entitled to recover the greater of all actual damages or fifty
22 dollars (\$50.00) for the initial violation and one hundred dollars (\$100.00) for each subsequent
23 violation, up to four thousand dollars (\$4,000.00). Plaintiff is informed and believes that
24 Defendant willfully failed to make or keep accurate records for Plaintiff and Aggrieved
25 Employees.

26 53. IWC Wage Orders require that every employer shall keep accurate information
27 with respect to each employee, including time records showing when each employee begins and
28 ends each work periods, the total daily hours worked by each employee and the total hours worked

1 in each payroll period, and applicable rates of pay. Plaintiff is informed and believes that
2 Defendant willfully and intentionally failed to make and/or keep records which accurately reflect
3 the hours worked by Plaintiff and the Aggrieved Employees. Specifically, Plaintiff believes that
4 Defendant did not maintain accurate records for Plaintiff and the Aggrieved Employees reflecting
5 when they were working during their meal periods.

6 54. An employee is deemed to suffer injury if the employer fails to provide a wage
7 statement containing all of the required information set forth in Labor Code section 226,
8 subdivision (a). (Lab. Code § 226(e)(2).) In addition, the omission of time worked, proper rates
9 of pay, records of missed meal and rest breaks and/or premium pay make it difficult for employees
10 to determine whether they were paid all wages due without complicated calculations and/or
11 reconstruction of records required to be maintained by the employer.

12 55. For each employee suffering an injury as a result of Defendant's knowing and
13 intentional failure to provide an accurate, itemized wage statement the employee is entitled to
14 recover the greater of actual damages or fifty dollars (\$50.00) for the initial pay period in which
15 a violation occurs and one hundred dollars (\$100.00) per employee for each violation in a
16 subsequent pay period.

17 56. Plaintiff is informed and believes that Defendant's failure to keep accurate payroll
18 records, as described above, violated Labor Code sections 1174, subdivision (d) and 226,
19 subdivision (a), and the applicable Wage Order. Plaintiff intends to seek penalties under Labor
20 Code section 2699, subdivision (f)(2). Plaintiff and the Aggrieved Employees are entitled to
21 penalties of one hundred (\$100.00) for the initial violation, and two hundred (\$200.00) for each
22 subsequent violation for every pay period during which these records and information were not
23 kept by Defendant.

24 57. Plaintiff is informed and believes that Defendant's failure to keep and maintain
25 accurate records and information and provide to Plaintiff and the Aggrieved Employees itemized
26 wage statements containing all of the information mandated by the Labor Code, as described
27 above, was knowing and intentional. Accordingly, Plaintiff and aggrieved employees seek civil
28 penalties pursuant to Labor Code sections 2698-2699, attorneys fees and costs.

FIFTH CAUSE OF ACTION

**Violation of the Private Attorney General Act for Failure to Pay Wages Due upon
Termination of Employment
(Plaintiff and Aggrieved Employees against all Defendants)**

58. Plaintiff realleges and incorporates by reference all preceding paragraphs as if fully set forth herein.

59. Plaintiff is informed and believes, and based thereon alleges, that as part of Defendant's ongoing unfair business practices, Defendant failed to pay all employees all wages earned during their employment at the time of their separation in violation of Labor Code sections 201, 202, and 203.

60. Labor Code section 201 provides that employers are required to pay an employee whose employment is terminated by the employer all wages earned throughout their employment and unpaid immediately upon termination.

61. Labor Code section 202 requires employers to pay an employee who quits his or her employment all wages earned and unpaid no later than seventy-two (72) hours thereafter.

62. Labor Code section 203 provides that when an employer who fails to pay all wages earned and due to an employee, who is discharged or quits within the appropriate timeframes set forth in sections 201 and 202, the wages of the employee shall continue as a penalty at the employee's regular rate of daily pay for each day the full amount of unpaid wages is not paid, up to thirty (30) days.

63. Accordingly, Plaintiff and aggrieved employees seek civil penalties pursuant to Labor Code sections 2698-2699, attorney's fees and costs.

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1. For penalties pursuant to Labor Code sections 2698-2699;
2. For attorney's fees pursuant to Labor Code sections 2698-2699;
3. For costs pursuant to Labor Code sections 2698-2699; and
4. For all such other and further relief as the Court may deem just and proper.

MAHONEY LAW GROUP, APC

Kevin Mahoney, Esq.
Attorneys for Plaintiff PAUL HAILEY, as an
individual and on behalf of all employees similarly
situated

EXHIBIT A



Raleigh Dixon, Esq.
562.590.5550 phone
562.590.8400 facsimile
rdixon@mahoney-law.net

January 31, 2022

Via Certified Electronic Mail

LABOR AND WORKFORCE DEVELOPMENT AGENCY
PAGAfilings@dir.ca.gov

VIA CERTIFIED MAIL #7019 0700 0001 7488 9968

Return Receipt Requested

John D. Tallichet – Managing Member
Specialty Restaurants Corporation
150 Paularino, Building C
Costa Mesa, CA 92626

VIA CERTIFIED MAIL #7019 0700 0001 7488 9975

Return Receipt Requested

Brian Ofcacek – Agent for Service of Process for Specialty Restaurants Corporation
150 Paularino, Building C
Costa Mesa, CA 92626

Re: Paul Hailey v. Specialty Restaurant Corporation DBA Orange Hill Restaurant Corporation

**NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO
LABOR CODE SECTION 2698 ET SEQ.**

To: Labor and Workforce Development Agency; Specialty Restaurant Corporation (“Employer”)

From: Paul Hailey, on behalf of himself and all aggrieved employees who were subject to the employer’s wage and hour policies set forth below.

Factual Statement

Please note that this firm, Mahoney Law Group, APC, represents Oscar Hailey (“Mr. Hailey”), who intends to file a complaint alleging various Labor Code violations and seeking civil penalties under the Private Attorneys General Act of 2004, Labor Code sections 2698 et seq. (“PAGA”), on behalf of himself and all other aggrieved employees.

Theories of Labor Code Violations and Remedies

Specialty Restaurant Corporation is a California Company conducting business throughout Southern California, and was the employer of Mr. Hailey. Specialty Restaurant Corporation owns and operates eighteen (18) restaurants across the country, including Orange Hill Restaurant in Orange, California, where Mr. Hailey works as a bartender.

John D. Tallichet is the current owner and/or managing member of Specialty Restaurant Corporation. John D. Tallichet may be held liable for the violations set forth herein under and pursuant to Labor Code section 558 as “person[s] acting on behalf of an employer who violates, or causes to be violated ... any provision regulating hours and days of work in any order of the Industrial Welfare Commission.” For purposes of this notice, Specialty Restaurant Corporation, Orange Hill Restaurant Corporation and John D. Tallichet are collectively referred to as “Employers”.

Mr. Hailey is a current employee of Employers and started his employment in or around December 2019.

Mr. Hailey alleges that Employers violated various sections of the Labor Code, including sections 226, 226.7, 510, 512, 558, 1171, and 1194, by:

- a) Failing to pay Mr. Hailey and aggrieved employees for all hours worked;
- b) failing to provide Mr. Hailey and aggrieved employees with compliant meal periods or premium compensation in lieu thereof;
- c) failing to provide Mr. Hailey and aggrieved employees with compliant rest periods or premium compensation in lieu thereof;
- d) failing to provide Mr. Hailey and aggrieved employees with accurate itemized wage statements;

Mr. Hailey and the similarly aggrieved employees are identifiable current, and/or former hourly non-exempt employees who worked for Employer in California during the liability period of one year prior to the filing of a complaint alleging a PAGA cause of action.

A. Employers failed to pay Mr. Hailey and aggrieved employees for all hours worked

Pursuant to Labor Code section 1194, subdivision (a), “any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.”

Labor Code section 510, subdivision (a), provides that “[a]ny work in excess of eight hours in one workday and any work in excess of 40 hours 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.”

Employers failed to compensate Mr. Hailey and aggrieved employees at the legally mandated wage rates for all hours worked in violation of California law. Specifically, Mr. Hailey

and aggrieved employees were frequently denied a meal period and denied rest periods. Additionally, Mr. Hailey and aggrieved employees often were required to clock out at the end of their shifts but continue performing work duties such as taking out the trash or cleaning the restaurant and bar. Finally, Mr. Hailey and aggrieved employees were required to park multiple miles away from the restaurant and take a shuttle to and from the restaurant; however, Mr. Hailey and aggrieved employees were never compensated for the time they spent waiting on the shuttle and riding in the shuttle.

Employers' failure to pay Mr. Hailey and aggrieved employees for all hours worked, including applicable overtime rates, as detailed above is actionable under PAGA as a violation of Labor Code sections 510 and 1194.

B. Employers failed to provide Mr. Hailey and aggrieved employees with meal periods or premium compensation in lieu thereof

Labor Code sections 226.7 and 512 provide that no employer shall employ a person for a work period of more than five hours without providing an uninterrupted meal period of at least thirty minutes. Further, when an employer fails to provide an employee a required meal period, the employer must pay the employee one hour of pay at the employee's regular rate of pay for each workday that a required meal period is not provided.

Frequently, Mr. Hailey and aggrieved employees did not receive their meal period until after the fifth (5th) hour of work. Often, Mr. Hailey and aggrieved employees were not permitted to take their meal if the restaurant was busy.

Employer failed or refused to provide premium compensation to Mr. Hailey and aggrieved employees for late meal periods.

Employers' conduct in failing to provide compliant meal periods or premium compensation in lieu thereof is actionable under PAGA as violations of Labor Code sections 226.7 and 512.

C. Employers failed to provide Mr. Hailey and aggrieved employees with rest periods or premium compensation in lieu thereof

Labor Code section 226.7 requires that employers permit all employees to take a ten-minute rest period for every four hours, or major fraction thereof worked. Further, when an employer fails to provide an employee with required rest periods, the employer must pay the employee one hour of pay at the employee's regular rate of pay for each workday that a required rest period is not provided.

Mr. Hailey and aggrieved employees were not permitted to take a rest period if the restaurant was busy. At times, Mr. Hailey and aggrieved employees were required to work for six (6) hours before being permitted to take a rest period. When they worked six (6) to eight (8) hours in a workday, Mr. Hailey and aggrieved employees sometimes only received one rest period instead of the two required by law.

Employers failed or refused to provide premium compensation to Mr. Hailey and aggrieved employees for late rest periods.

Employers' conduct in failing to provide compliant rest periods or premium compensation in lieu thereof is actionable under PAGA as violations of Labor Code sections 226.7.

D. Employers failed to provide Mr. Hailey and aggrieved employees with accurate itemized wage statements

Labor Code section 226, subdivision (a), requires employers to furnish employees with accurate itemized wage statements reflecting the total hours worked, gross and net wages, applicable hourly rates, the corresponding number of hours worked at each hourly rate, and the name and address of the legal entity that is the employer. Labor Code section 1174 further requires employers to keep accurate payroll records that include "the hours worked daily" by employees.

By failing to pay Mr. Hailey and aggrieved employees for all hours worked during meal break and premium compensation for missed and/or late meal and rest periods, Employers provided wage statements that were incomplete and inaccurate. Specifically, Employers provided wage statements with an inaccurate total number of hours worked which resulted in inaccurate gross and net wages, and an inaccurate corresponding number of hours worked at each hourly rate.

Employer's conduct is not compliant with Labor Code sections 226 and 1174 and is therefore actionable under PAGA.

E. John D. Tallichet is personally liable for Labor Code Violations

Plaintiff is informed and believes that John D. Tallichet is the current owner and/or managing member of Specialty Restaurant Corporation. John D. Tallichet may be held liable for the violations set forth herein under and pursuant to Labor Code section 558 as "person[s] acting on behalf of an employer who violates, or causes to be violated ... any provision regulating hours and days of work in any order of the Industrial Welfare Commission." Specifically, Plaintiff is informed and believes that John D. Tallichet is the person who implemented and enforced the policies described herein and as such, is liable under Labor Code section 558.

F. Reservation of Rights

The facts and claims contained herein are based on the information available at the time of this writing. Therefore, if through discovery and/or expert review, Mr. Hailey becomes aware of additional compensation owed or losses incurred by Mr. Hailey or by any other aggrieved employee of the Employers, Mr. Hailey expressly reserves the right to revise these facts and/or add any new claims by amending the claim letter or by adding applicable causes of action to the complaint which will relate back to the date of this letter.

If the Labor and Workforce Development Agency intends to investigate the allegations set forth herein, please provide notice via certified mail to:

Mahoney Law Group, APC
Raleigh Dixon, Esq.
249 E. Ocean Blvd., Ste. 814
Long Beach, CA 90802
Tel: (562) 590-5550
Email: rdixon@mahoney-law.net

Sincerely,

A handwritten signature in black ink, appearing to read "Raleigh Dixon", written over a horizontal line.

Raleigh Dixon, Esq.

MAHONEY LAW GROUP, APC