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By: A. Turner
Deputy Clerk

Kane Moon (SBN 249834)
kane.moon@moonyanglaw.com
Lilit Ter-Astvatsatryan (SBN 320389)
lilit@moonyanglaw.com
MOON & YANG, APC
1055 W. Seventh St., Suite 1880
Los Angeles, California 90017
Telephone: (213) 232-3128
Facsimile: (213) 232-3125

Attorneys for Plaintiff Benjamin Rose

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SACRAMENTO

BENJAMIN ROSE, individually, and on behalf
of all others similarly situated,

Plaintiff,

vs.

PANCAKES 642, INC., a California corporation;
PANCAKES 654, INC., a California corporation;
PANCAKES 655, INC., a California corporation;
PANCAKES 659, INC., a California corporation;
PANCAKES 660, INC., a California corporation;
PANCAKES 688, INC., a California corporation;
PANCAKES 694, INC., a California corporation;
PANCAKES 698, INC., a California corporation;
PANCAKES 789, INC., a California corporation;
PANCAKES 1702, INC., a California
corporation; **PANCAKES 1705, INC.**, a
California corporation; **PANCAKES 1707, INC.**,
a California corporation; **PANCAKES 1716,**
INC., a California corporation; **PANCAKES**
1717, INC., a California corporation;
PANCAKES 1720, INC., a California
corporation; **PANCAKES 1726, INC.**, a
California corporation; **PANCAKES 1727, INC.**,
a California corporation; **PANCAKES 1749,**
INC., a California corporation; **PANCAKES**
1760, INC., a California corporation;
PANCAKES 3148, INC., a California
corporation; **PANCAKES 3306, INC.**, a
California corporation; **PANCAKES 3378, INC.**,
a California corporation; **PANCAKES 3546,**
INC., a California corporation; **PANCAKES**
3547, INC., a California corporation; and **DOES**
1 through 10, inclusive,
Defendants.

Case No.: 34-2022-00316924

**FIRST AMENDED REPRESENTATIVE
ACTION COMPLAINT:**

1. Civil Penalties Under PAGA [Cal. Lab.
Code § 2699, et seq.].

BY FAX

DEMAND FOR JURY TRIAL

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1 Plaintiff Benjamin Rose (“Plaintiff”), based upon facts that either have evidentiary support
2 or are likely to have evidentiary support after a reasonable opportunity for further investigation
3 and discovery, alleges as follows:

4 **INTRODUCTION & PRELIMINARY STATEMENT**

5 1. Plaintiff brings this action against Defendants Pancakes 642, Inc., Pancakes 654,
6 Inc., Pancakes 655, Inc., Pancakes 659, Inc., Pancakes 660, Inc., Pancakes 688, Inc., Pancakes 694,
7 Inc., Pancakes 698, Inc., Pancakes 789, Inc., Pancakes 1702, Inc., Pancakes 1705, Inc., Pancakes
8 1707, Inc., Pancakes 1716, Inc., Pancakes 1717, Inc., Pancakes 1720, Inc., Pancakes 1726, Inc.,
9 Pancakes 1727, Inc., Pancakes 1749, Inc., Pancakes 1760, Inc., Pancakes 3148, Inc., Pancakes
10 3306, Inc., Pancakes 3378, Inc., Pancakes 3546, Inc., Pancakes 3547, Inc., and Does 1 through 10
11 (Defendants are collectively referred to as “Defendants”) for California Labor Code violations
12 stemming from Defendants’ failure to pay minimum wages, failure to pay overtime wages, failure
13 to provide meal periods, failure to authorize and permit rest periods, failure to maintain accurate
14 records of hours worked and meal periods, failure to timely pay all wages to terminated employees,
15 failure to indemnify necessary business expenses, and failure to furnish accurate wage statements.

16 2. For over 50 years, California’s courts and legislature have recognized that this
17 State’s wage-and-hour laws serve a compelling public interest of fostering a stable job market.
18 Wages are not ordinary debts. Because of the economic position of the average worker and his or
19 her family, it is essential to the public welfare that employers obey the wage-and-hour laws so that
20 employees are promptly paid the minimum/overtime wages that the Legislature has required for
21 employees. So fundamental are California’s wage-and-hour laws that the Legislature has
22 criminalized certain types of violations. In extending extra protection to deter violations of these
23 underlying statutes—since Plaintiff is not seeking general and/or special damages, restitution or
24 other damages other than civil penalties—California has enacted the PAGA to permit an individual
25 to bring an action for PAGA penalties only, which is the precise and sole nature of this action.

26 3. All non-exempt California employees of Defendants beginning March 16, 2021 to
27 the present, are “Aggrieved Employees.”

28 4. Plaintiff brings this action against Defendants seeking only to recover penalties on

1 behalf of all Aggrieved Employees that worked for Defendants, and on behalf of the State of
2 California. Plaintiff does not seek to recover anything other than penalties as permitted by
3 California Labor Code Section 2699 at this time. To the extent that statutory violations are
4 mentioned for wage violations, Plaintiff does not seek underlying general and/or special damages
5 for those violations, but simply penalties as permitted by California Labor Code Section 2699,
6 declaratory relief, and injunctive relief for themselves and all aggrieved employees as permitted
7 by the PAGA.

8 5. Defendants own/owned and operate/operated an industry, business, and
9 establishment within the State of California, including San Diego County. As such, and based upon
10 all the facts and circumstances incident to Defendants' business in California, Defendants are
11 subject to the California Labor Code, and Wage Orders issued by the Industrial Welfare
12 Commission ("IWC").

13 6. Despite these requirements, throughout the statutory period Defendants maintained
14 a systematic, company-wide policy and practice of:

- 15 (a) Failing to pay employees for all hours worked, including all minimum
16 wages, and overtime wages in compliance with the California Labor Code
17 and IWC Wage Orders;
 - 18 (b) Failing to provide employees with timely and duty-free meal periods in
19 compliance with the California Labor Code and IWC Wage Orders, failing
20 to maintain accurate records of all meal periods taken or missed, and
21 failing to pay an additional hour's pay for each workday a meal period
22 violation occurred;
 - 23 (c) Failing to authorize and permit employees to take timely and duty-free rest
24 periods in compliance with the California Labor Code and IWC Wage
25 Orders, and failing to pay an additional hour's pay for each workday a rest
26 period violation occurred;
 - 27 (d) Failing to indemnify employees for necessary business expenses incurred;
- 28

- (e) Willfully failing to pay employees all minimum wages, overtime wages, meal period premium wages, and rest period premium wages due within the time period specified by California law when employment terminates; and
- (f) Failing to maintain accurate records of the hours that employees worked.
- (g) Failing to provide employees with accurate, itemized wage statements containing all the information required by the California Labor Code and IWC Wage Orders.

7. On information and belief, Defendants, and each of them were on actual and constructive notice of the improprieties alleged herein and intentionally refused to rectify their unlawful policies. Defendants' violations, as alleged above, during all relevant times herein were willful and deliberate.

8. At all relevant times, Defendants were and are legally responsible for all of the unlawful conduct, policies, practices, acts and omissions as described in each and all of the foregoing paragraphs as the employer of Plaintiff and Aggrieved Employees. Further, Defendants are responsible for each of the unlawful acts or omissions complained of herein under the doctrine of "respondeat superior".

THE PARTIES

A. Plaintiff

9. Plaintiff is a California resident that worked for Defendants in the County of Sacramento, State of California, as a line cook from approximately August 2021 to November 2021.

10. Plaintiff reserves the right to seek leave to amend this complaint to add new plaintiffs, if necessary, in order to establish suitable representative(s) pursuant to *La Sala v. American Savings and Loan Association* (1971) 5 Cal.3d 864, 872, and other applicable law.

B. Defendants

11. Plaintiff is informed and believes, and based upon that information and belief alleges, that Defendants Pancakes 642, Inc., Pancakes 654, Inc., Pancakes 655, Inc., Pancakes 659,

1 Inc., Pancakes 660, Inc., Pancakes 688, Inc., Pancakes 694, Inc., Pancakes 698, Inc., Pancakes 789,
2 Inc., Pancakes 1702, Inc., Pancakes 1705, Inc., Pancakes 1707, Inc., Pancakes 1716, Inc., Pancakes
3 1717, Inc., Pancakes 1720, Inc., Pancakes 1726, Inc., Pancakes 1727, Inc., Pancakes 1749, Inc.,
4 Pancakes 1760, Inc., Pancakes 3148, Inc., Pancakes 3306, Inc., Pancakes 3378, Inc., Pancakes
5 3546, Inc., Pancakes 3547, Inc. are:

- 6 (a) California corporations with their principal places of business in
7 Sacramento, California.
- 8 (b) Business entities conducting business in numerous counties throughout the
9 State of California, including in Sacramento County;
- 10 (c) The former employers of Plaintiff, and the current and/or former employers
11 of the putative Class. Defendants suffered and permitted Plaintiff and the
12 Class to work, and/or controlled their wages, hours, or working conditions;
- 13 (d) At all times mentioned herein, Defendants, and each of them, are and were
14 the joint employers of Plaintiff and the Class, in an integrated enterprise;
- 15 (e) At all times mentioned herein, Defendants, and each of them, are and were
16 doing business as the International House of Pancakes, or IHOP.

17 12. Plaintiff does not currently know the true names or capacities of the persons or
18 entities sued herein as Does 1-10, inclusive, and therefore sues said Defendants by such fictitious
19 names. Each of the Doe Defendants was in some manner legally responsible for the damages
20 suffered by Plaintiff and Aggrieved Employees as alleged herein. Plaintiff will amend this
21 complaint to set forth the true names and capacities of these Defendants when they have been
22 ascertained, together with appropriate charging allegations, as may be necessary.

23 13. At all times mentioned herein, the Defendants named as Does 1-10, inclusive, and
24 each of them, were residents of, doing business in, availed themselves of the jurisdiction of, and/or
25 injured a significant number of the Plaintiff and Aggrieved Employees in the State of California.

26 14. Plaintiff is informed and believes and thereon alleges that at all relevant times each
27 Defendant, directly or indirectly, or through agents or other persons, employed Plaintiff and
28 Aggrieved Employees, and exercised control over their wages, hours, and working conditions.

1 Plaintiff is informed and believes and thereon alleges that, at all relevant times, each Defendant
2 was the principal, agent, partner, joint venturer, officer, director, controlling shareholder,
3 subsidiary, affiliate, parent corporation, successor in interest and/or predecessor in interest of some
4 or all of the other Defendants, and was engaged with some or all of the other Defendants in a joint
5 enterprise for profit, and bore such other relationships to some or all of the other Defendants so as
6 to be liable for their conduct with respect to the matters alleged below. Plaintiff is informed and
7 believes and thereon alleges that each Defendant acted pursuant to and within the scope of the
8 relationships alleged above, that each Defendant knew or should have known about, and
9 authorized, ratified, adopted, approved, controlled, aided and abetted the conduct of all other
10 Defendants.

11 **ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

12 15. Plaintiff is a California resident who worked for Defendants in the County of
13 Sacramento, State of California, as a line cook from approximately August 2021 to November
14 2021. During the statutory period, Defendants classified Plaintiff as non-exempt from California's
15 overtime requirements, and paid Plaintiff an hourly wage.

16 16. Throughout the statutory period, Defendants failed to pay Plaintiff for all hours
17 worked (including minimum wages and overtime wages), failed to provide Plaintiff with
18 uninterrupted meal periods, failed to authorize and permit Plaintiff to take uninterrupted rest
19 periods, failed to indemnify Plaintiff for necessary business expenses, failed to timely pay all final
20 wages to Plaintiff when Defendants terminated Plaintiff's employment, and failed to furnish
21 accurate wage statements to Plaintiff. As discussed below, Plaintiff's experience working for
22 Defendants was typical and illustrative.

23 17. Throughout the statutory period, Defendants maintained a policy and practice of not
24 paying Plaintiff and the Aggrieved Employees for all hours worked, including all overtime wages.
25 Plaintiff and the Aggrieved Employees were required to work off the clock, and uncompensated.
26 For example, Plaintiff and the Aggrieved Employees were required to wait for a cash register to
27 become free in order to clock into work each workday, and when returning from meal breaks, off
28 the clock and uncompensated. Plaintiff and the Aggrieved Employees were also required to

1 conduct pre-check-in activities, and post-check-in activities. For example, Plaintiff and the
2 Aggrieved Employees would prepare for the day prior to clock into work, and would also complete
3 work after clocking out of work, off the clock and uncompensated. Plaintiff and the Aggrieved
4 Employees were also required to use their own personal cellular telephones outside of their shift
5 times, off the clock and uncompensated. Also throughout the statutory period, Plaintiff and the
6 Aggrieved Employees received non-discretionary bonuses and other remuneration. However,
7 Defendants failed to incorporate all remuneration when calculating the correct overtime rate of
8 pay, leading to underpayment of wages to Plaintiff and the Aggrieved Employees. Also throughout
9 the statutory period, on occasion, Plaintiff and the Aggrieved Employees were required to call into
10 work in order to find out whether they need to go to work the following day, off the clock and
11 uncompensated. In maintaining a practice of not paying all wages owed, Defendants failed to
12 maintain accurate records of the hours Plaintiff and the Aggrieved Employees worked.

13 18. Throughout the statutory period, Defendants failed to provide adequate and suitable
14 seating to its employees, despite the fact that seating was possible for its employees throughout the
15 workday.

16 19. Throughout the statutory period, Defendants have wrongfully failed to provide
17 Plaintiff and the Aggrieved Employees with legally compliant meal periods. Defendants
18 sometimes, but not always, required Plaintiff and the Aggrieved Employees to work in excess of
19 five consecutive hours a day without providing 30-minute, continuous and uninterrupted, duty-free
20 meal period for every five hours of work, or without compensating Plaintiff and the Aggrieved
21 Employees for meal periods that were not provided by the end of the fifth hour of work or tenth
22 hour of work. Defendants also did not adequately inform Plaintiff and the Aggrieved Employees
23 of their right to take a meal period by the end of the fifth hour of work, or, for shifts greater than
24 10 hours, by the end of the tenth hour of work. Accordingly, Defendants' policy and practice was
25 to not provide meal periods to Plaintiff and the Aggrieved Employees in compliance with
26 California law.

27 20. Throughout the statutory period, Defendants have wrongfully failed to authorize
28 and permit Plaintiff and the Aggrieved Employees to take timely and duty-free rest periods.

Defendants sometimes, but not always, required Plaintiff and the Aggrieved Employees to work in excess of four consecutive hours a day without Defendants authorizing and permitting them to take a 10-minute, continuous and uninterrupted, rest period for every four hours of work (or major fraction of four hours), or without compensating Plaintiff and the Aggrieved Employees for rest periods that were not authorized or permitted. Defendants also did not adequately inform Plaintiff and the Aggrieved Employees of their right to take a rest period. Moreover, Defendants did not have adequate policies or practices permitting or authorizing rest periods for Plaintiff and the Aggrieved Employees, nor did Defendants have adequate policies or practices regarding the timing of rest periods. Defendants also did not have adequate policies or practices to verify whether Plaintiff and the Aggrieved Employees were taking their required rest periods. Plaintiff and the Aggrieved Employees were also required to stay on the premises during rest breaks. Accordingly, Defendants' policy and practice was to not authorize and permit Plaintiff and the Aggrieved Employees to take rest periods in compliance with California law.

21. Throughout the statutory period, Defendants wrongfully required Plaintiff and the Aggrieved Employees to pay expenses that they incurred in direct discharge of their duties for Defendants without reimbursement, including the purchase of masks and specific types of boots. Further, Plaintiff and the Aggrieved Employees were required to use their own cellular telephones for work purposes, without reimbursement.

22. Throughout the statutory period, Defendants willfully failed and refused to timely pay Plaintiff and the Aggrieved Employees at the conclusion of their employment all wages for all minimum wages, overtime wages, meal period premium wages, and rest period premium wages. Defendants also did not pay the final wages timely after termination. Defendants also failed to pay Plaintiff and the Aggrieved Employees their final paychecks in a timely manner promptly upon termination.

23. Throughout the statutory period, Defendants failed to furnish Plaintiff and the Aggrieved Employees with accurate, itemized wage statements showing all applicable hourly rates, and all gross and net wages earned (including correct hours worked, correct wages earned for hours worked, correct overtime hours worked, correct wages for meal periods that were not provided in

1 accordance with California law, correct wages for rest periods that were not authorized and
2 permitted to take in accordance with California law, and Defendant's address). Further, the wage
3 statements do not show Defendant's address as required by California law. As a result of these
4 violations of California Labor Code § 226(a), the Plaintiff and the Aggrieved Employees suffered
5 injury because, among other things:

- 6 (a) the violations led them to believe that they were not entitled to be paid
7 minimum wages, overtime wages, meal period premium wages, and rest
8 period premium wages to which they were entitled, even though they were
9 entitled;
- 10 (b) the violations led them to believe that they had been paid the minimum,
11 overtime, meal period premium, and rest period premium wages, even
12 though they had not been;
- 13 (c) the violations led them to believe they were not entitled to be paid
14 minimum, overtime, meal period premium, and rest period premium wages
15 at the correct California rate even though they were;
- 16 (d) the violations led them to believe they had been paid minimum, overtime,
17 meal period premium, and rest period premium wages at the correct
18 California rate even though they had not been;
- 19 (e) the violations hindered them from determining the amounts of minimum,
20 overtime, meal period premium, and rest period premium owed to them;
- 21 (f) in connection with their employment before and during this action, and in
22 connection with prosecuting this action, the violations caused them to have
23 to perform mathematical computations to determine the amounts of wages
24 owed to them, computations they would not have to make if the wage
25 statements contained the required accurate information;
- 26 (g) by understating the wages truly due them, the violations caused them to
27 lose entitlement and/or accrual of the full amount of Social Security,
28 disability, unemployment, and other governmental benefits;

1 (h) the wage statements inaccurately understated the wages, hours, and wages
2 rates to which Plaintiff and the Class were entitled, and Plaintiff and the
3 Class were paid less than the wages and wage rates to which they were
4 entitled.

5 Thus, Plaintiff and the Class are owed the amounts provided for in California Labor Code § 226.7.

6 **FIRST CAUSE OF ACTION**

7 **(Against all Defendants for Civil Penalties Under the Private Attorneys General Act**
8 **of 2004, Cal. Lab. Code § 2698 et seq.)**

9 24. Plaintiff incorporates by reference and re-alleges as if fully stated herein paragraphs
10 1 through 23 in this First Amended Complaint.

11 25. At all times herein mentioned, Defendants were subject to the Labor Code of the
12 State of California and the applicable Industrial Welfare Commission Orders.

13 26. California Labor Code § 2699(a) specifically provides for a private right of action to
14 recover penalties for violations of the Labor Code: “Notwithstanding any other provision of law,
15 any provision of this code that provides for a civil penalty to be assessed and collected by the Labor
16 and Workforce Development Agency or any of its departments, divisions, commissions, boards,
17 agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a
18 civil action brought by an aggrieved employee on behalf of himself or herself and other current or
19 former employees pursuant to the procedures specified in Section 2699.3.”

20 27. Plaintiff has exhausted his administrative remedies pursuant to California Labor
21 Code § 2699.3. On March 15, 2022, Plaintiff gave written notice by online filing to the Labor and
22 Workforce Development Agency and by certified mail to Defendants of the specific provisions of
23 the Labor Code that Defendants have violated against Plaintiff and current and former aggrieved
24 employees, including the facts and theories to support the violations. At the time of this filing, 65
25 days has elapsed since Plaintiff provided notice, but the Labor and Workforce Development
26 Agency has not indicated that it intends to investigate Defendants’ Labor Code violations discussed
27 in the notice. Accordingly, Plaintiff may commence a civil action to recover penalties under Labor
28 Code § 2699 pursuant to § 2699.3 for the violations of the Labor Code described in this Complaint.

1 These penalties include, but are not limited to, penalties under California Labor Code §§ 210,
2 226.3, 558, 1197.1, and 2699(f)(2).

3 28. In addition, Plaintiff seeks penalties for Defendants' violation of California Labor
4 Code § 1174(d). Pursuant to California Labor Code § 1174.5, any person, including any entity,
5 employing labor who willfully fails to maintain accurate and complete records required by
6 California Labor Code § 1174 is subject to a penalty under § 1174.5. Pursuant to the applicable
7 IWC Order § 7(A)(3), every employer shall keep time records showing when the employee begins
8 and ends each work period. Meal periods, and total hours worked daily shall also be recorded.
9 Additionally, pursuant to the applicable IWC Order § 7(A)(5), every employer shall keep total
10 hours worked in the payroll period and applicable rates of pay.

11 29. During the time period of employment for Plaintiff and the Aggrieved Employees,
12 Defendants failed to maintain records pursuant to the Labor Code and IWC Orders by failing to
13 maintain accurate records showing meal periods, and accurate records showing when employees
14 begin and end each work period. Defendants' failure to provide and maintain records required by
15 the Labor Code IWC Wage Orders deprived Plaintiff and the Aggrieved Employees the ability to
16 know, understand and question the accuracy and frequency of meal periods, and the accuracy of
17 their hours worked stated in Defendants' records. Therefore, Plaintiff and the Aggrieved
18 Employees had no way to dispute the resulting failure to pay wages, all of which resulted in an
19 unjustified economic enrichment to Defendants. As a direct result, Plaintiff and the Aggrieved
20 Employees have suffered and continue to suffer, substantial losses related to the use and enjoyment
21 of such wages, lost interest on such wages and expenses and attorney's fees in seeking to compel
22 Defendants to fully perform its obligation under state law, all to their respective damage in amounts
23 according to proof at trial. Because of Defendants' knowing failure to comply with the Labor Code
24 and applicable IWC Wage Orders, Plaintiff and the Aggrieved Employees have also suffered an
25 injury in that they were prevented from knowing, understanding, and disputing the wage payments
26 paid to them.

27 30. Based on the conduct described in this First Amended Complaint, Plaintiff is entitled
28 to an award of civil penalties on behalf of himself, the State of California, and similarly Aggrieved

1 Employees of Defendants. The exact amount of the applicable penalties, in all, is in an amount to
2 be shown according to proof at trial. These penalties are in addition to all other remedies permitted
3 by law.

4 31. In addition, Plaintiff seeks an award of reasonable attorney's fees and costs pursuant
5 to California Labor Code § 2699(g)(1), which states, "Any employee who prevails in any action
6 shall be entitled to an award of reasonable attorney's fees and costs."

7 **PRAYER FOR RELIEF**

8 Plaintiff, on behalf of himself, the State of California, and similarly Aggrieved Employees
9 of Defendants, prays for relief and judgment against Defendants, jointly and severally, as follows:

10 **As to the First Cause of Action**

11 32. That the Court declare, adjudge and decree that Defendants violated the California
12 Labor Code by failing to pay wages for all hours worked (including minimum and overtime wages),
13 failing to provide meal periods, failing to maintain accurate records of meal periods, failing to
14 authorize and permit rest periods, failing to maintain accurate records of all hours worked and meal
15 periods, failing to pay final wages at termination, and failing to furnish accurate wage statements;

16 33. For all civil penalties pursuant to California Labor Code § 2699, et seq., and all
17 other applicable Labor Code provisions;

18 34. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
19 California Labor Code § 2699;

20 35. For such other and further relief as the Court may deem equitable and appropriate.
21
22

23 Dated: May 31, 2022

MOON & YANG, APC

24
25 By:  _____

Kane Moon

Lilit Ter-Astvatsatryan

26
27 Attorneys for Plaintiff
28

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury as to all causes of action triable by jury.

Dated: May 31, 2022

MOON & YANG, APC

By: 

Kane Moon

Lilit Ter-Astvatsatryan

Attorneys for Plaintiff