

LAW OFFICE OF SCOTT ERNEST WHEELER

Scott Ernest Wheeler (SBN 187998)
Justin A. Wheeler (SBN 342226)
250 West First Street, Suite 216
Claremont, California 91711
Telephone: (909) 621-4988
Facsimile: (909) 621-4622
Email: sew@scottwheelerlawoffice.com

*Attorneys for Plaintiff and the other Aggrieved
Employees*

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CLARA**

22CV398713

MONICA FLORES, individually, and on
behalf of all other aggrieved employees,

Plaintiff,

v.

LOAVES & FISHES FAMILY KITCHEN;
and DOES 1 through 50, inclusive,

Defendants.

CASE NO.

**COMPLAINT FOR VIOLATION OF THE
PRIVATE ATTORNEYS GENERAL ACT
OF 2004 ("PAGA")**

[California Labor Code § 2698 *et seq.*]

1 This is a representative action brought by Monica Flores ("Plaintiff"), on behalf of all other
2 aggrieved employees and the State of California, relating to systemic violations of California wage and
3 hour laws by her employer Loaves & Fishes Family Kitchen (hereinafter referred to as "Loaves &
4 Fishes" or "Defendant"). Plaintiff makes the following allegations on information and belief, except as
5 to allegations pertaining to Plaintiff individually, which are based on her personal knowledge.

6 **INTRODUCTION**

7 1. Plaintiff brings this action on behalf of herself and all other aggrieved employees of
8 Defendant and DOES 1 through 50, inclusive, Defendant to recover penalties arising from unpaid
9 wages earned and due, including but not limited to, unpaid and illegally calculated overtime
10 compensation, unpaid off-the-clock work, illegal meal and rest period policies, failure to pay all wages
11 due to discharged or quitting employees, failure to maintain required records, failure to provide
12 accurate itemized wage statements, failure to timely pay wages during employment, and failure to
13 provide California COVID-19 supplemental sick leave, failure to provide suitable seating and failure
14 to provide employment records.

15 **JURISDICTION AND VENUE**

16 2. The Superior Court of the State of California has jurisdiction in this matter because
17 Plaintiff is a resident and citizen of the State of California. Defendant is a California corporation and
18 a citizen of and/or regularly conducts business in the State of California. Further, no federal question
19 is at issue because Plaintiff's claims are based solely on California law.

20 3. Venue is proper in this judicial district and the County of Santa Clara because Plaintiff
21 resides in the County of Santa Clara, other persons similarly situated, performed work for Defendant
22 the County of Santa Clara, and Defendant maintains offices in the County of Santa Clara, where,
23 Defendant's illegal payroll policies and practices, which are the subject of this action were applied, at
24 least in part, to Plaintiff and other aggrieved employees.

25 4. Defendant employed Plaintiff and other aggrieved employees within the State of
26 California and the unlawful acts alleged herein have a direct effect on Plaintiff and other aggrieved
27 employees.

1 **THE PARTIES**

2 5. During the statute of limitations period, Plaintiff was employed by Defendant as a
3 Driver from June 1, 2019 through January 11, 2022. Plaintiff assisted with driving to different locations
4 as assigned by Defendant delivering donations for drop-offs and pickups in the County of Santa Clara,
5 California.

6 6. Plaintiff is informed and believes, and thereon alleges, that Defendant is, and at all times
7 relevant hereto was, a corporation organized and existing under the laws of the State of California.

8 7. The true names and capacities of DOES 1 through 50, inclusive, are unknown to
9 Plaintiff at this time, and Plaintiff therefore sues such defendants under fictitious names. Plaintiff is
10 informed and believes, and thereon alleges, that each defendant designated as a DOE is in some manner
11 highly responsible for the occurrences alleged herein, and that Plaintiff and other aggrieved employees'
12 injuries and damages, as alleged herein, were proximately caused by the conduct of such DOE
13 defendants. Plaintiff will seek leave of the Court to amend this Complaint to allege the true names and
14 capacities of such DOE defendants when ascertained.

15 8. At all relevant times herein, Plaintiff and other aggrieved employees were employed by
16 Defendant under employment agreements that were partly written, partly oral, and partly implied. In
17 perpetrating the acts and omissions alleged herein, Defendant acted pursuant to, and in furtherance of,
18 its common policies and practices of failing to pay Plaintiff and other aggrieved employees all wages
19 earned and due, through methods and schemes which include, but are not limited to: failing to pay and
20 properly calculate overtime; requiring, suffering, and/or permitting off-the-clock work; failing to
21 provide meal and rest breaks; failing to properly maintain required records; failing to provide accurate
22 itemized statements for each pay period; failing to timely pay wages during employment; and failing
23 to provide to Plaintiff and the other aggrieved employees supplemental COVID-19 sick leave, failure
24 to provide suitable seating; and failure to provide employment records.

25 **PAGA REPRESENTATIVE ACTION ALLEGATIONS**

26 9. On March 11, 2022, Plaintiff gave written notice by certified mail pursuant to California
27 Labor Code § 2699.3, to the California Labor and Workforce Development Agency ("LWDA") and
28 Defendant, of the specific provisions of the California Labor Code and IWC Wage Order alleged to

1 have been violated, including the facts and theories to support the alleged violations. Plaintiff has not
2 received any response from the LWDA. As Plaintiff has waited more than sixty-five (65) days from
3 the March 11, 2022 postmark date of her written notice before filing this action, Plaintiff has complied
4 with all of the requirements set forth in California Labor Code § 2699.3 to commence a representative
5 action under the California Private Attorneys General Act of 2004 ("PAGA").

6 10. Pursuant to the PAGA, California Labor Code §§ 2698-2699.5, Plaintiff brings this
7 action on behalf of the State of California, and all other aggrieved employees (e.g., current and former
8 non-exempt employees of Defendant and performed work for Defendant in the State of California at
9 any time within the period beginning one (1) year prior to the March 11, 2022 notice Plaintiff provided
10 to the LWDA and Defendant, and ending at the time this action proceeds to final judgment ("statute of
11 limitations period").

12 **FACTUAL ALLEGATIONS**

13 **Failure to Provide Required Meal Periods**

14 11. During the statute of limitations period, as part of Defendant's illegal policies and
15 practices to minimize labor costs and maximize corporate profits, Defendant has required, permitted or
16 otherwise suffered Plaintiff and aggrieved employees to perform work during their meal periods, to
17 completely skip their meal periods, to take late and short meal periods, and Defendant has otherwise
18 failed to provide the required meal periods to Plaintiff and aggrieved employees as required under
19 California Labor Code §§ 226.7, 512 and § 11 of the applicable IWC Order.

20 12. Defendant has implemented several practices that have caused Plaintiff and aggrieved
21 employees to systematically miss and otherwise take non-compliant meal periods. Defendant
22 systematically understaff the services provided by Defendant such that non-exempt employees are
23 given so much work to complete that they regularly miss or otherwise take non-compliant meal periods.
24 As a direct consequence of this understaffing, Plaintiff and aggrieved employees have so much work
25 to complete within their scheduled shifts that they are forced to skip their meal periods altogether, to
26 take them after working longer than five (5) hours, to perform work during their meal periods, or return
27 to work after taking less than a thirty (30) minute meal period.

28 13. There are also frequent occasions when Plaintiff and aggrieved employees need to

1 perform other duties immediately before the time during which they are legally entitled to take a meal
2 period. Pursuant to Defendant's policies, Plaintiff and aggrieved employees cannot simply drop their
3 job duties and take a meal period. At other times Plaintiff and the other aggrieved employees were too
4 busy performing their job duties at Defendant's to stop their work in middle of an assignment or while
5 driving to a location to drop off and/or pick up supplies. Consequently, Plaintiff and aggrieved
6 employees regularly miss meal periods, take late meal periods, return early from meal periods, and
7 even clock out for meal periods but continue working.

8 14. Plaintiff and aggrieved employees often cannot simply stop their cleaning assignments
9 to take their meal period, and their inability to secure coverage regularly causes them to regularly miss
10 and otherwise take non-compliant meal periods, in addition to other violations yet to be discovered.

11 15. Despite the foregoing, Defendant has implemented a policy and practice of actively
12 discouraging the issuance of meal period premium payments, and in the process, Defendant has
13 violated California Labor Code §§ 226.7 and § 11 of the applicable IWC Wage Order, by failing to
14 compensate Plaintiff and aggrieved employees who were not authorized and permitted to take a
15 complete, timely, uninterrupted meal period, one additional hour of compensation at the proper regular
16 rate of pay for each workday that such a meal period was not authorized or permitted.

17 **Failure to Provide Required Rest Breaks**

18 16. During the statute of limitations period, as part of Defendant's illegal policies and
19 practices to minimize labor costs and maximize corporate profits, Defendant has failed to authorize
20 and permit Plaintiff and other aggrieved employees to take rest breaks as required under California
21 Labor Code §§ 226.7 and 512, and § 12 of the applicable IWC Wage Order.

22 17. The same or similar policies and practices that deprive Plaintiff and other aggrieved
23 employees from taking their meal periods, as alleged herein, similarly deprive them of their ability to
24 take their first and second and third rest breaks. As alleged herein, Defendant understaffs its drivers
25 and other workers which creates so much work for Plaintiff and other aggrieved employees that they
26 are frequently unable to take rest breaks. Plaintiff and aggrieved employees often cannot simply stop
27 assisting a customer to take a rest break, and their inability to secure coverage regularly causes them to
28 regularly miss and otherwise take non-compliant rest breaks.

18. Defendant also does not provide adequate training regarding its legal obligations with respect to the provision of rest breaks, does not implement a schedule regarding rest breaks for non-exempt employees, and often interrupts staff who try to take rest periods. In short, Defendant essentially has a non-existent rest break policy, as there is no guidance or specification as to when Plaintiff and other aggrieved employees are authorized and permitted to take rest breaks during their shifts.

19. Defendant also violated California Labor Code § 226.7, and § 12 of the applicable IWC Order, by failing to pay Plaintiff and other aggrieved employees who were not provided with a rest break, in accordance with the applicable wage order, one additional hour of compensation at the proper regular rate of pay for each workday that a rest break was not provided.

Failure to Pay Overtime Wages

20. Pursuant to California Labor Code §§ 510, 1194, and § 3 of the applicable IWC Order, Defendant is required to compensate Plaintiff and other aggrieved employees for all overtime, which is calculated at one and one-half (1 ½) times the regular rate of pay for all hours worked in excess of eight (8) hours per day and/or forty (40) hours per week, and for the first eight (8) hours on the seventh consecutive workday, with double time for all hours worked in excess of twelve (12) hours in any workday and for all hours worked in excess of eight (8) hours on the seventh consecutive day of work in any workweek.

21. During the statute of limitations period, Defendant failed to compensate Plaintiff and other aggrieved employees for all overtime hours worked as required under the foregoing provisions of the California Labor Code and IWC Wage Order by, among other methods: failing to pay overtime at one and one-half (1 ½) or double the regular rate of pay as provided by California Labor Code §§ 510, 1194 and § 3 of the applicable IWC Order, requiring, permitting or suffering Plaintiff and other aggrieved employees to work off-the-clock, and to work through meal and rest breaks, but not compensating them for this time, illegal rounding, improperly calculating the regular rate of pay based on bonuses, commissions, and other remuneration, and other methods to be discovered.

22. Defendant has knowingly and willfully refused to perform its obligations to compensate Plaintiff and other aggrieved employees for all wages earned and all hours worked in violation of California Labor Code §§ 510, 1194 and 1198, and § 3 of the applicable IWC Order.

Failure to Pay Minimum Wages

23. Pursuant to Cal. Lab. Code §§ 1194, 1197, and § 4 of the applicable IWC Wage Order, payment to an employee of less than the applicable minimum wage for all hours worked in a payroll period is unlawful.

24. During the statute of limitations period, the hourly rates for Plaintiff and other aggrieved employees were precisely at California minimum wage. Based on this common practice, Defendant failed to pay Plaintiff and other aggrieved employees minimum wages for all hours worked by requiring, permitting or suffering Plaintiff and other aggrieved employees to work off the clock, such as requiring them to work through meal and rest breaks but not compensating them for this time, illegal rounding, and failing to include this time in all hours worked, and other methods to be discovered.

25. Defendant's conduct described herein violates Cal. Lab. Code §§ 1194, 1197, and § 4 of the applicable IWC Wage Order. As a proximate result of the aforementioned violations, Plaintiff and other aggrieved employees have been damaged in an amount according to proof at trial. Therefore, pursuant to California Labor Code §§ 200, 203, 226, 1194, 1197.1, and any other applicable law, Plaintiff and other aggrieved employees are entitled to recover the unpaid balance of wages owed to them by Defendant, plus interest, penalties, attorneys' fees, expenses, and costs of suit.

Failure to Pay All Wages Due to Discharged and Quitting Employees

26. Pursuant to California Labor Code §§ 201, 202 and 203, Defendant is required to pay all earned and unpaid wages to an employee who is discharged. California Labor Code § 201 mandates that if an employer discharges an employee, the employee's wages accrued and unpaid at the time of discharge are due and payable immediately.

27. Furthermore, pursuant to California Labor Code § 202, Defendant is required to pay all accrued wages due to an employee no later than 72 hours after the employee quits his or her employment, unless the employee provided 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

28. California Labor Code § 203 provides that if an employer willfully fails to pay, in accordance with Labor Code §§ 201 and 202, any wages of an employee who is discharged or who quits, the employer is liable for waiting time penalties in the form of continued compensation to the

1 employee at the same rate for up to 30 workdays.

2 29. During the statute of limitations period, Defendant has willfully failed to pay accrued
3 wages and other compensation to Plaintiff and other aggrieved employees in accordance with
4 California Labor Code §§ 201 and 202. On information and belief, Defendant does not have a sufficient
5 policy to provide Plaintiff and other aggrieved employees with their final paychecks within the
6 timeframes required under California law. Further, Plaintiff's employment ended on or about January
7 25, 2021. Defendant failed to timely compensate Plaintiff for all hours worked when due, overtime
8 wages, and compensation for non-compliant meal and rest breaks. Defendant also willfully failed and
9 continues to fail to pay accrued wages and other compensation to other aggrieved employees similarly
10 situated as Plaintiff in accordance with California Labor Code §§ 201, 202 and 203.

11 **Failure to Furnish Accurate Itemized Wage Statements**

12 30. During the statute of limitations period, Defendant has routinely failed to provide
13 Plaintiff and other aggrieved employees with timely and accurate itemized wage statements.
14 Defendant's pay stubs have violated California Labor Code § 226. Defendant routinely failed to
15 provide Plaintiff and aggrieved employees with timely, accurate, and itemized wage statements in
16 writing showing each employee's gross wages earned, total hours worked, all deductions made, net
17 wages earned, and all applicable hourly rates in effect during each pay period and the corresponding
18 number of hours worked at each hourly rate, in violation of California Labor Code § 226 and IWC
19 Wage Order No. 4-2001, § 7, and all other applicable IWC Wage Orders. Defendant was and is not
20 providing Plaintiff and other aggrieved employees with proper meal periods and rest breaks but
21 intentionally fails to include in their wage statements one (1) additional hour of compensation at their
22 regular rates of pay for each non-compliant meal period or rest break. Moreover, Defendant has failed
23 to pay proper overtime wages and its wage statements therefore fail to reflect the correct hourly rates
24 worked by the aggrieved employees.

25 31. In order to conceal its wage theft, Defendant knowingly and intentionally failed to
26 provide Plaintiff and other aggrieved employees with timely and accurate itemized wage statements in
27 accordance with Labor Code § 226(a) and § 7 of the applicable IWC Order.

28 32. Plaintiff and other aggrieved employees suffered injury as a result of the failure of

1 Defendant to provide timely and accurate itemized wage statements because it prevented them from
2 discovering the scope and extent of Defendant's violations of California wage and hour laws, prevented
3 them from being able to accurately determine the gross wages earned, the total hours worked, all
4 deductions made, the net wages earned, and all applicable hourly rates in effect during each pay period
5 and the corresponding number of hours worked at each hourly rate.

6 **Failure to Maintain Required Records**

7 33. During the statute of limitations period, as part of Defendant's illegal payroll policies
8 and practices to deprive Plaintiff and other aggrieved employees of all wages earned and due,
9 Defendant knowingly and intentionally failed to maintain records as required under California Labor
10 Code §§ 226(a) and 1174(d) and § 7 of the applicable IWC Order, including but not limited to the
11 following records: total daily hours worked by Plaintiff and the other aggrieved employees; applicable
12 rates of pay; all deductions; meal periods; time records showing when each employee begins and ends
13 each work period; and accurate itemized statements. Defendant had knowledge that it was not
14 providing its non-exempt employees with proper meal and rest periods, but knowingly failed to include
15 in the wage statements one (1) extra hour of compensation for each missed meal and rest period.
16 Defendant also illegally and inaccurately recorded the time in which Plaintiff and other aggrieved
17 employees worked. Defendant also failed to maintain records regarding employee reimbursements.

18 **Failure to Pay COVID-19 Supplemental Sick Leave**

19 34. During the Statute of Limitations Period, Defendant failed to provide 80 hours of
20 COVID-19 Supplemental Paid Sick leave and compensate Aggrieved Employees at their regular rate
21 of pay for supplemental sick leave, i.e., their highest regular rate of pay, taking into consideration non-
22 discretionary bonuses, etc., in violation of California Labor Code § 248.1(b)(3)(A). Defendant also
23 failed to provide COVID-19 Supplemental Sick Leave to Aggrieved Employees in violation of
24 California Labor Code § 248.1(b)(2)(D). Defendant also failed to accurately reflect any offset and/or
25 the current amount of COVID-19 Supplemental Sick Leave available to Aggrieved Employees on their
26 wage statements, in violation of California Labor Code §§ 248.1(b)(2)(D), 248.2 and 248.6, et seq. for
27 the reasons provided herein.

1 **FIRST CAUSE OF ACTION**

2 **VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT**

3 **[Cal. Lab. Code § 2698 *et seq.*]**

4 **(On Behalf of Plaintiff and the Aggrieved Employees Against Defendant)**

5 35. Plaintiff incorporates herein by specific reference, as though fully set forth, the
6 allegations in paragraphs 1 through 34 above.

7 36. Plaintiff is an "aggrieved employee" within the meaning of California Labor Code §
8 2699(c), and a proper representative to bring a civil action on behalf of herself and other aggrieved
9 employees pursuant to the procedures specified in California Labor Code § 2699.3, because Plaintiff
10 was employed by Defendant and one or more of the alleged California Labor Code violations was
11 committed against Plaintiff during the statute of limitations period.

12 37. Plaintiff seeks to recover civil penalties through a representative action permitted by
13 PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal.4th 969. Thus, class
14 certification is not required.

15 39. Plaintiff further has standing to represent all aggrieved employees for all of her asserted
16 violations of the California Labor Code under PAGA. See *Huff v. Securitas Security Services USA, Inc.*
17 (2018) 23 Cal.App.5th 745, 757 ("For PAGA standing a plaintiff need only have been employed by the
18 violator and affected by 'one or more' of the alleged violations. (Sec. 2699, subs. (a), (c)).).

19 40. Pursuant to California Labor Code §§ 2698-2699.5, Plaintiff seeks to recover civil
20 penalties from Defendant in a representative action for the violations set forth above, including but not
21 limited to, violations of California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1174,
22 1194, 2802 and for the violations of the applicable IWC Wage Order alleged above.

23 41. Pursuant to California Labor Code § 2699(a), Plaintiff seeks to recover civil penalties
24 against Defendant for violations of California Labor Code provisions for which a civil penalty is
25 specifically provided, including but not limited to, the following:

- 26 a. Pursuant to California Labor Code § 226.3, for violations of California Labor
27 Code § 226(a), Defendant is subject to a civil penalty in the amount of two
28 hundred and fifty dollars (\$250) per aggrieved employee for the initial pay

1 period where a violation occurs and one thousand dollars (\$1,000) per
2 aggrieved employee for violations in subsequent pay periods.

3 b. Pursuant to California Labor Code § 1174.5, for violations of California Labor
4 Code § 1174(d), Defendant is subject to a civil penalty of five hundred dollars
5 (\$500).

6 42. California Labor Code § 2699(f) provides that for all California Labor Code violations
7 for which a civil penalty is not specifically provided, including but not limited to, Labor Code §248.2,
8 et seq., the following civil penalties are established: one hundred dollars (\$100) for each aggrieved
9 employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved
10 employee per pay period for each subsequent violation.

11 43. Plaintiff seeks to recover such civil penalties under California Labor Code § 2699(f) for
12 Defendant's violations of California Labor Code provisions for which a civil penalty is not specifically
13 provided, including but not limited to, California Labor Code §§ 201, 202, 203, 204, 226.7, 1197, and
14 for the violations of the applicable IWC Wage Order alleged above.

15 44. All civil penalties sought and recovered under this action will be allocated as follows:
16 seventy-five (75) percent to the State of California and twenty-five (25) percent to Plaintiff and
17 aggrieved employees.

18 45. Plaintiff additionally seeks reasonable attorneys' fees and costs pursuant to California
19 Labor Code § 2699(g)(1) and California Code of Civil Procedure § 1021.5.

20 **PRAYER FOR RELIEF**

21 WHEREFORE, Plaintiff, individually and on behalf of all other aggrieved employees, prays
22 for relief against Defendant, as follows:

23 1. For civil penalties according to proof;

24 2. For reasonable attorneys' fees and costs pursuant to California Labor Code § 2699(g),
25 California Code of Civil Procedure § 1021.5, and/or any other applicable provisions providing for
26 attorneys' fees and costs; and
27
28

3. For such further relief that the Court may deem just and proper.

DATED: May 22, 2022

LAW OFFICE OF SCOTT ERNEST WHEELER

By  _____
SCOTT E. WHEELER
JUSTIN A. WHEELER

Attorney for Plaintiff and the other Aggrieved Employees