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and other aggrieved employees

FILED
Superior Court of California
County of Alameda
09/21/2022

Clad File, Executive Officer / Clerk of the Court
By: Cheryl Clark Deputy
C. C. Clark

SUPERIOR COURT OF CALIFORNIA

COUNTY OF ALAMEDA

DIANA MENDEZ, individually and on behalf
of other persons similarly situated and other
aggrieved employees,

Plaintiff,

vs.

**ROTISYSTEMS, INC. dba ROLI ROTI; and
DOES 1-50,**

Defendants.

Case No.: 22CV012376
Assigned to Hon. Evelio Grillo, Dept. 21

CLASS ACTION

FIRST AMENDED COMPLAINT FOR:

1. Failure to Pay Minimum Wages For All Hours Worked;
2. Failure to Pay All Wages Earned Each Pay Period;
3. Failure to Pay All Overtime Premiums Earned;
4. Failure to Provide Compliant Meal Periods;
5. Failure to Provide Compliant Rest Breaks;
6. Failure to Pay All Wages Upon Termination;
7. Failure to Provide Compliant Wage Statements;
8. Unfair Business Practices;
9. Penalties Pursuant to the California Private Attorneys General Act ("PAGA")

DEMAND FOR JURY TRIAL

Plaintiff DIANA MENDEZ on behalf of herself, other aggrieved employees, and all others
similarly situated, complains and alleges as follows:

INTRODUCTION

1
2 1. This is a class action lawsuit, under Code of Civil Procedure § 382, seeking earned,
3 but unpaid wages, meal and rest break penalties, waiting time penalties in the form of continuation
4 wages for failure to timely pay employees, injunctive relief and other equitable relief, reasonable
5 attorneys' fees and costs, brought on behalf of Plaintiff and others similarly situated.

JURISDICTION AND VENUE

6
7
8 2. This Court has jurisdiction over this action under Article 6 of the California
9 Constitution and California Code of Civil Procedure § 410.10.

10 3. This Court has jurisdiction over Plaintiff's and Class Members' claims for unpaid
11 minimum wages and overtime under California Labor Code § 1194, as well as waiting time
12 penalties under Labor Code §§ 203 and 218.

13 4. This Court has jurisdiction over Plaintiff's and the Class Members' claims for meal
14 and rest period wage penalties under California Labor Code §§ 204, 218, 226, 226.7, 512 and IWC
15 Wage Order 5-2001, or alternatively, Wage Order 1-2001.

16 5. This Court has jurisdiction over Plaintiff's and the Class Members' claims for
17 injunctive relief, and restitution of unpaid wages and other ill-gotten benefits arising from
18 Defendants' unlawful and/or unfair business practices under California Business & Professions
19 Code §§ 17200 *et seq.*

20 6. Pursuant to Labor Code § 2699.3(a)(2)(A), following sixty-five (65) days without
21 response from the California Labor & Workforce Development Agency ("LWDA") this Court has
22 jurisdiction over Plaintiff's claims for civil and statutory penalties following Plaintiff's exhaustion
23 of administrative remedies.

24 7. Venue is proper in this judicial district, pursuant to California Code of Civil
25 Procedure § 395.5 because the acts, conduct, omissions, and events alleged herein, occurred in part
26 as to a large portion of the class members in Alameda County.

27 ///

28 ///

PARTIES

8. Plaintiff DIANA MENDEZ (“Plaintiff” or “Mendez”) is a California resident. At all times relevant hereto, Plaintiff was employed by Defendants on an hourly basis as a non-exempt employee (designated herein as “hourly employee”) of Defendant within Alameda County, California. She is no longer an employee of Defendant and was last employed by Defendant within all applicable statutes of limitations to this Complaint. Plaintiff appears in this action on behalf of herself and on behalf of all others similarly situated.

9. Defendant Rotisystems, Inc. dba Roli Roti (“ROTI” or “Defendant”) is a California corporation, with its principal place of business in Alameda County, California. ROTI operates catering and food preparation business in Oakland, California.

10. Plaintiff is unaware of the true names of Defendants DOES 1 through 50. Plaintiff sues said defendants by said fictitious name, and will amend this complaint when the true names and capacities are ascertained or when such facts pertaining to liability are ascertained, or as permitted by law or by the Court. Plaintiff is informed and believe that each of the fictitiously named Defendants is in some manner responsible for the events and allegations set forth in this complaint.

11. Plaintiff is informed and believes, and based thereon allege that at all relevant times, each Defendant was an employer, was the principal, agent, partner, joint venture, officer, director, controlling shareholder, subsidiary affiliate, parent corporation, successor in interest and/or predecessor in interest of some or all of the other Defendants, and was engaged with some or all of the other Defendants in a joint enterprise for profit and bore such other relationships to some or all of the other Defendants so as to be liable for their conduct with respect to the matters alleged in this complaint. Plaintiff is further informed and believe and thereon allege that each Defendant acted pursuant to and within the scope of the relationships alleged above, and that at all relevant times, each Defendant knew or should have known about, authorized, ratified, adopted, approved, controlled, aided and abetted the conduct of all other Defendants. As used in this complaint “Defendant” or “Defendants” means “Defendants and each of them”, including DOES 1 through 50.

1 12. At all times mentioned herein, each Defendant was the agent of the other
2 Defendants and was acting within the course and scope of said agency and with the permission
3 and consent and knowledge of each of the other Defendants.

4 13. Plaintiff makes the allegations in this amended complaint without any admission
5 that, as to any particular allegation, Plaintiff bears the burden of pleading, proving, or persuading,
6 and Plaintiff reserves all of Plaintiff's rights to plead in the alternative.

7
8 **FACTS COMMON TO CAUSES OF ACTION**

9 14. Defendant owns and/or operates catering and food preparation business in Oakland,
10 California under the fictitious business name Roli Roti.

11 15. At times during the liability period, Defendant employed Plaintiff as a laborer in its
12 food processing facility. Plaintiff and other similarly situated employees were compensated on an
13 hourly basis. Plaintiff and other similarly situated employees worked more than 40 hours in a
14 workweek or eight hours in a day during the liability period and are or were entitled to overtime
15 premium wages.

16 16. Plaintiff and other similarly situated employees were required to wear personal
17 protective equipment ("PPE") to perform their job duties and were required to don and doff said
18 PPE on ROTI's premises.

19 17. ROTI directed its employees to, or knew or should have known that its employees
20 believed they were required to, don and doff PPE while off the clock and therefore depriving
21 Plaintiff and other similarly situated employees of wages while under the control of ROTI and
22 during times suffered or permitted to work.

23 18. Plaintiff is informed and believes that ROTI provided Plaintiff and others similarly
24 situated with 30 minutes for meal periods, which included time to clear the floor, clock out, doff
25 PPE, eat, don PPE, clock back in, and return to their respective workstations. ROTI's policy or
26 practice caused Plaintiff and others similarly situated to be permitted less than thirty minutes of
27 uninterrupted time free from all control of the employer for meal periods.

28 19. Plaintiff is informed and believes that its donning and doffing policies and/or

1 practices caused Plaintiffs and others similarly situated to receive authorized meal periods after
2 the start of the sixth hour of work.

3 20. Plaintiff is informed and believes that ROTI's rest break policy or practice likewise
4 resulted in less than ten minutes of uninterrupted time, given that the employees were required to
5 doff and don PPE on their break time.

6 21. ROTI required Plaintiff and, upon information and belief, other similarly situated
7 employees to report to ROTI's facility for training without compensation for said time.

8 22. At all times during the liability period, Plaintiff and those other similarly situated
9 hourly paid employees who no longer work for Defendant did not receive all money owed them at
10 the time their employment with Defendant ceased and they still have not received such pay.

11 23. At all times relevant hereto, Defendant failed to provide wage statements in
12 compliance with the strict requirements of Labor Code Section 226(a). Said wage statements
13 failed to accurately state, *inter alia*, gross wages earned, net wages earned, the proper name and
14 address of the employing entity, and all hours worked.

15
16 **CLASS DEFINITIONS AND CLASS ALLEGATIONS**

17 24. Plaintiff bring the first through eighth causes of action on behalf of herself, on
18 behalf of all others similarly situated, and on behalf of the General Public, and as a member of
19 classes defined as follows:

20 **Unpaid Wages Class:** All former non-exempt employees of
21 ROTI who worked for Defendant at any time beginning four
22 years prior to the date of filing of the initial Complaint through
the date notice is mailed to the Class.

23 **Former Employee Class:** All former non-exempt employees of
24 Defendants any time beginning three years prior to the date of
filing of the initial Complaint through the date notice is mailed
to the Class.

25 **Wage Statement Class:** All current and former hourly
26 employees of Defendant ROTI in California for which wage
27 statements were issued at any time during the period beginning
one year prior to the date of filing of the initial Complaint
28 through the date notice is mailed to the Class.

1 25. This action has been brought and may be properly maintained as a class action
2 pursuant to the provisions of California Code of Civil Procedure § 382 and other applicable law.

3 26. **Numerosity of the Classes:** Members of the Classes are so numerous that their
4 individual joinder is impracticable. Plaintiff estimates that there are no less than 100 persons in
5 the Unpaid Wages Class and no less than 50 members of the Former Employee Class and Wage
6 Statement Class. The precise number of Class members and their addresses are unknown to
7 Plaintiff. However, Plaintiff is informed and believe that the number can be obtained from
8 Defendants' records. Class members may be notified of the pendency of this action by
9 conventional mail, electronic mail, the Internet, or published notice.

10 27. **Existence of Predominance of Common Questions of Fact and Law:** Common
11 questions of law and fact exist as to all members of the Class. These questions predominate over
12 any questions effecting only individual members of the class. These common factual and legal
13 questions include:

- 14 (a) Whether time spent receiving training provided to ROTI employees is labor as
15 defined by the Labor Code;
- 16 (b) Whether completing post-application paperwork is labor as defined by the Labor
17 Code;
- 18 (c) Whether time spent donning and doffing PPE is labor as defined by the Labor Code;
- 19 (d) Whether nonexempt employees of ROTI were under Defendant's control while
20 donning and doffing PPE;
- 21 (e) Whether the ROTI's wage statements issued to its employees complied with the
22 requirements of Labor Code § 226(a);
- 23 (f) Whether members of the Unpaid Wages Class were provided with a paid 10-minute
24 rest break for each four hours of work or major fraction thereof;
- 25 (g) Whether Defendant provided members of the Unpaid Wages Class with one hour's
26 pay for each day of work during which a compliant rest period was not provided;
- 27 (h) Whether Defendant provided members of the Unpaid Wages Class with one hour's
28 pay for each day of work during which an Unpaid Wages Class member was not

afforded a 30-minute, unpaid, uninterrupted meal break on shifts of 6 hours or more;

(i) Whether Defendant failed to provide members of the Former Employee Class all wages owed at the time of the cessation of the employee-employer relationship;

(j) Whether Defendants' failure to pay meal and rest break penalties earned by the Unpaid Wages Class pursuant to Labor Code § 226.7(b) at the conclusion of each pay period constitutes a violation of Labor Code § 204 and/or Business & Professions Code §§ 17200 *et seq.*;

(k) Whether Defendants' failure to pay meal and rest break penalties earned by the Waiting Time Penalty Class pursuant to Labor Code § 226.7(b) at the termination of the employment relationship constitutes a violation of Labor Code §§ 201 and 202 and gives rise to wage penalties under Labor Code § 203;

(l) Whether Industrial Welfare Commission Wage Order 5-2001 or 1-2001 applies to ROTI employees;

(m) Whether Defendants committed unlawful business practices or acts within the meaning of Business & Professions Code §§ 17200 *et seq.*;

(n) Whether Defendant's conduct entitles members of the Unpaid Wages Class to restitution, and/or other equitable relief;

(o) Whether Defendants' affirmative defenses, if any, raise any common issues of law or fact as to Plaintiff and the Class members as a whole.

28. **Typicality:** Plaintiff's claims are typical of the claims of the members of the respective Classes because Plaintiff, as an hourly paid employee, was exposed to the same unlawful business practices as the members of the respective classes. Plaintiff sustained the same types of injuries and losses that the class members sustained. Plaintiff is subject to the same affirmative defenses as the members of the classes.

29. **Adequacy:** Plaintiff will adequately and fairly protect the interests of the members each of the Classes. Plaintiff has no interest adverse to the interests of absent Class members. Plaintiff is represented by legal counsel who has substantial class action experience in civil

1 litigation and employment law.

2 30. **Superiority:** A class action is superior to other available means for fair and
3 efficient adjudication of the claims of the Classes and would be beneficial for the parties and the
4 court. Class action treatment will allow a large number of similarly situated persons to prosecute
5 their common claims in a single forum, simultaneously, efficiently, and without the unnecessary
6 duplication of effort and expense that numerous individual actions would require. The monetary
7 amounts due to many individual class members are likely to be relatively small, and the burden
8 and expense of individual litigation would make it difficult or impossible for individual members
9 of each Class to seek and obtain relief. A class action will serve an important public interest by
10 permitting such individuals to effectively pursue recovery of the sums owed to them. Further,
11 class litigation prevents the potential for inconsistent or contradictory judgments raised by
12 individual litigation.

13
14 **FIRST CAUSE OF ACTION**
15 **FAILURE TO PAY MINIMUM WAGES FOR ALL HOURS WORKED**
16 **(By Plaintiff and the Unpaid Wages Class against Defendants)**

17 31. Plaintiff incorporates paragraphs 1 through 30 of this Complaint as though fully
18 alleged herein.

19 32. At all relevant times, Plaintiff and the other members of the Unpaid Wages Class
20 were employees of Defendant covered by Labor Code Section 1197 and the relevant Wage Order.

21 33. Pursuant to Labor Code Section 1197 and the relevant Wage Order, Plaintiff and
22 the other members of the Unpaid Wages Class were entitled to receive minimum wages for all
23 hours worked.

24 34. Defendant failed to pay Plaintiff and other members of the Unpaid Wages Class
25 minimum wages for all hours worked in violation of Labor Code Section 1197 and the relevant
26 Wage Order. Plaintiff is informed and believes and thereon alleges that at all relevant times within
27 the applicable limitations period, Defendant maintained and continues to maintain a policies and
28 practices which result in the members of the Unpaid Wages Class performing work for which they
are not paid.

1 35. Plaintiff is informed and believes and based thereon alleges that the unlawful
2 practices of Defendant included, but are not limited to not paying for all work time of Plaintiff and
3 members of the Unpaid Wages Class resulting in the non-payment of minimum wages owed to
4 Plaintiff and members of the Unpaid Wages Class. When Defendant paid Plaintiff and the
5 members of the Unpaid Wages Class, the payment calculated did not incorporate all off-the-clock
6 time spent donning and doffing required PPE, nor did Defendant pay for training and mandatory
7 attendance upon the beginning of employment.

8 36. As a result of Defendant's unlawful conduct, Plaintiff and other members of the
9 Unpaid Wages Class have suffered damages in the form of unpaid minimum wages, in an amount,
10 subject to proof, for all unpaid and underpaid hours actually worked.

11 37. Pursuant to Labor Code Sections 1194 and 1194.2, Plaintiff and other members of
12 the Unpaid Wages Class are entitled to recover the full amount of unpaid minimum wages,
13 prejudgment interest, liquidated damages, reasonable attorneys' fees and costs of suit.

14
15 **SECOND CAUSE OF ACTION**
16 **FAILURE TO PAY ALL WAGES EARNED EACH PAY PERIOD**
17 **(By Plaintiff and the Unpaid Wages Class against Defendants)**

18 38. Plaintiff incorporates paragraphs 1 through 30 of this complaint as though fully
19 alleged herein.

20 39. At all relevant times, Labor Code § 204 applied to Plaintiff and other similarly
21 situated employees of Defendants.

22 40. Pursuant to Labor Code § 204, Plaintiff and other similarly situated employees were
23 entitled to receive on regular paydays all wages earned for the pay period corresponding to the
24 payday.

25 41. Pursuant to Labor Code § 204, Plaintiff and other similarly situated employees were
26 entitled to receive on all regular pay days all wages and penalties to which they were entitled to
27 recover pursuant to Labor Code § 226.7 on regular paydays for all non-compliant meal and rest
28 periods during the pay period corresponding to the payday.

42. Defendants failed to pay Plaintiff and other aggrieved employees for all wages and penalties earned and to which they were entitled each pay period on the regular payday for the pay period.

43. Pursuant to Labor Code Sections 210, 218, 218.5 and 218.6, Plaintiff and members of the Unpaid Wages Class are entitled to recover the full amount of their unpaid wages plus twenty-five percent of wages unlawfully withheld, prejudgment interest, reasonable attorneys' fees and costs of suit.

THIRD CAUSE OF ACTION
FAILURE TO PAY ALL OVERTIME PREMIUMS EARNED
(By Plaintiff and The Unpaid Wages Class Against Defendants)

44. Plaintiff incorporates paragraphs 1 through 43 of this complaint as though fully alleged herein.

45. At all relevant times, Plaintiff and the other members of the Unpaid Wages Class were employees of Defendant covered by Labor Code Section 510 and the relevant Wage Order.

46. Pursuant to Labor Code Section 510 and Wage Orders 1-2001 and/or 5-2001, Plaintiff and the other members of the Unpaid Wage Class were entitled to overtime wages payable at the rate of at least one and one-half times their regular rate of pay for all work in excess of eight hours in one workday or in excess of forty hours in one workweek and payable at the rate of at least twice the regular rate of pay for all work in excess of twelve hours in one workday and in excess of eight hours on the seventh day worked in a workweek.

47. Defendant failed to pay Plaintiff and other members of the Unpaid Wages Class for all overtime owed in accordance with Labor Code Section 510, insofar as the unpaid work performed by Plaintiff and the Unpaid Wages Class members, at times occurred on workdays in which they worked over eight hours in a day and/or work weeks in which they worked over forty hours in a week.

48. As a result of Defendant's unlawful conduct, Plaintiff and other members of the Unpaid Wages Class have suffered damages in an amount, subject to proof, to the extent they were not paid all overtime wages earned.

1 49. Pursuant to Labor Code Section 1194, Plaintiff and other members of the Unpaid Wages
2 Class are entitled to recover the full amount of their unpaid overtime wages, prejudgment interest,
3 reasonable attorney's fees and costs of suit.

4
5 **FOURTH CAUSE OF ACTION**
6 **FAILURE TO PAY MEAL PENALTIES**
7 **(By Plaintiff and the Unpaid Wages Class Against Defendants)**

8 50. Plaintiff incorporates paragraphs 1 through 49 of this complaint as though fully
9 alleged herein.

10 51. During the relevant period, Plaintiff and other members of the Unpaid Wages Class
11 were required to work shifts of six or more hours and did not receive the legally required full 30-
12 minute meal periods within the time required by Labor Code § 512 and relevant order of the
13 Industrial Welfare Commission.

14 52. During the relevant period, Plaintiff and other members of the Unpaid Wages Class
15 were required to return to work from a purported meal break without being provided an opportunity
16 to take a full, uninterrupted thirty-minute meal period.

17 53. At all relevant times, Plaintiff and other members of the Unpaid Wages Class did
18 not receive wages contemplated by Labor Code § 226.7 for missed meal periods.

19 54. Pursuant to Labor Code Sections 218, 218.5 and 218.6, Plaintiff and members of
20 each Class are entitled to recover the full amount of their unpaid monies owed, prejudgment
21 interest, reasonable attorneys' fees, and costs of suit.

22 **FIFTH CAUSE OF ACTION**
23 **FAILURE TO PROVIDE PROPER REST BREAKS**
24 **(By Plaintiff and The Unpaid Wages Class against Defendants)**

25 55. Plaintiff incorporates paragraphs 1 through 54 of this complaint as though fully
26 alleged herein.

27 56. During the relevant period, Plaintiff and other members of the Unpaid Wages Class
28 were required to work shifts of four or more hours and did not receive the legally required rest
breaks within the time required by the relevant order of the Industrial Welfare Commission.

1 57. At all relevant times, Plaintiff and other members of each Class did not receive
2 wages contemplated by Labor Code § 226.7 for missed rest breaks.

3 58. Pursuant to Labor Code Sections 218, 218.5 and 218.6, Plaintiff and members of
4 each Class are entitled to recover the full amount of their unpaid monies owed, prejudgment
5 interest, reasonable attorneys' fees and costs of suit.

6
7 **SIXTH CAUSE OF ACTION**
8 **FAILURE TO PAY WAGES TIMELY UPON CESSATION OF EMPLOYMENT**
 (By Plaintiff and the Former Employee Class against Defendants)

9 59. Plaintiff incorporates paragraphs 1 through 58 of this complaint as though fully
10 alleged herein.

11 60. At all relevant times, Plaintiff and the other members of the Unpaid Wages Class
12 were employees of Defendants covered by Labor Code Section 201 or 202.

13 61. Pursuant to Labor Code Sections 201 or 202, all former employees of Defendants
14 were entitled upon cessation of employment with Defendants to timely payment of all wages
15 earned and unpaid prior to termination. Discharged employees were entitled to payment of all
16 wages earned and unpaid prior to discharge immediately upon termination. Employees who
17 resigned were entitled to payment of all wages earned and unpaid prior to resignation within 72
18 hours after giving notice of resignation or, if they gave 72 hours previous notice, they were entitled
19 to payment of all wages earned and unpaid prior to resignation at the time of resignation.

20 62. Defendants failed to pay Plaintiff and other members of the Unpaid Wages Class
21 all wages earned and unpaid prior to termination timely in accordance with Labor Code Section
22 201 or 202. Plaintiff is informed and believes and thereon alleges that by failing to pay for all
23 work time, at all relevant times within the applicable limitations period, Defendants maintained
24 and continue to maintain a policy or practice of not paying terminated employees all their final
25 wages earned before termination, due under Labor Code Section 201 or 202.

26 63. Defendants' failure to pay Plaintiff and members of the Unpaid Wages Class all
27 wages earned prior to termination in accordance with Labor Code Sections 201 or 202 was willful.
28 Defendants had the ability to pay all wages earned by employees prior to termination in accordance

with Labor Code Sections 201 or 202, but intentionally adopted policies or practices incompatible with the requirements of Labor Code Sections 201 or 202.

64. Pursuant to Labor Code Section 201 or 202, all former employees, including Plaintiff and other members of the Former Employee Class, are entitled to all wages earned prior to termination that Defendants failed to pay them.

65. Pursuant to Labor Code Section 203, all former employee Plaintiff and other members of the Unpaid Wages Class are entitled to continuation of their wages, from the day their earned and unpaid wages were due upon termination until paid, up to a maximum of 30 days.

66. As a result of Defendants' conduct, all former employees, including Plaintiff and other members of the ROTI Class, have suffered damages in an amount, subject to proof, to the extent they were not paid for all wages earned prior to termination.

67. As a result of Defendants' conduct, all former employee Plaintiff and members of the Unpaid Wages Class have suffered damages in an amount, subject to proof, to the extent they were not paid all continuation wages owed under Labor Code Section 203.

68. Pursuant to Labor Code Sections 218 and 218.5, Plaintiff and other members of the Unpaid Wages Class are entitled to recover the full amount of their unpaid wages, continuation wages under Labor Code Section 203, reasonable attorneys' fees and costs of suit. Pursuant to Labor Code Section 218.6 or Civil Code Section 3287(a), all former employee Plaintiff and other members of the Unpaid Wages Class are entitled to recover prejudgment interest on the amount of their unpaid wages and unpaid continuation wages.

SEVENTH CAUSE OF ACTION
FAILURE TO PROVIDE COMPLIANT WAGE STATEMENTS
(By Plaintiff and the Wage Statement Class Against All Defendants)

69. Plaintiff incorporates paragraphs 1 through 68 as though fully set forth herein.

70. Labor Code § 226(a) sets forth reporting requirements for employers when they pay wages: "Every employer shall ... at the time of each payment of wages, furnish each of his or her employees ... an itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee ... (4) a deductions, (5) net wages earned ... (8) the name and address of

1 the legal entity that is the employer ... and (9) all applicable hourly rates in effect during the pay
2 period and the corresponding number of hours worked at each hourly rate by the employee.” Labor
3 Code § 226(e) provides: “An employee suffering injury as a result of a knowing and intentional
4 failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual
5 damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred
6 dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding an
7 aggregate penalty of four thousand dollars (\$4,000) per employee, and is entitled to an award of
8 costs and reasonable attorneys’ fees.”

9 71. Throughout the period applicable to this cause of action, Defendant knowingly
10 and intentionally failed to furnish, and continue to knowingly and intentionally fail to furnish,
11 to Plaintiff and other members of the Wage Statement Class, upon each payment of wages,
12 itemized statements accurately showing the required information, including but not limited to
13 the net and gross wages earned each pay period.

14 72. Plaintiff and the other members of the Wage Statement Class suffered injury by
15 these failures because, among other things, the failures led them to believe that they were being
16 paid for all time actually worked at the correct rates, and because these wage statement failures
17 prevented and will prevent them from determining the true amounts of wages owed to them, and
18 caused them, and will cause them, extra work and effort to determine their true wages.

19 73. Plaintiff and the other Wage Statement Class members are entitled to the amounts
20 provided for in Labor Code § 226(e), plus costs of suit.

21 74. Pursuant to Labor Code § § 218 and 218.5, the members of the Wage Statement
22 Class are entitled to recover the penalty wages available pursuant to Labor Code § 226(e),
23 reasonable attorneys’ fees, and costs of suit. Pursuant to Labor Code § 218.6 or Civil Code §
24 3287(a), Plaintiff and the other members of the Unpaid Wage Class are entitled to recover
25 prejudgment interest on the amount of their unpaid penalty wages.

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EIGHTH CAUSE OF ACTION
UNFAIR COMPETITION
(By Plaintiff and the Classes against Defendant)

75. Plaintiff incorporates paragraphs 1 through 74 of this complaint as though fully alleged herein.

76. The unlawful conduct of Defendants alleged herein constitutes unfair competition within the meaning of Business & Professions Code §§ 17200 *et seq.* Due to its unlawful and unfair business practices in violation of the Labor Code, Defendants have gained a competitive advantage over other comparable companies doing business in the State of California that comply with their obligations to compensate employees for all earned wages as required by law.

77. As a result of Defendants' unfair competition as alleged herein, Plaintiff and other members of the Classes have suffered injury in fact and lost money or property. Plaintiff and members of the Classes have been deprived of their rights to minimum wages for all hours worked; overtime wages for all overtime hours worked; timely and accurate wage statements; and timely payment of all monies earned each pay period.

78. Pursuant to Business and Professions Code § 17203, Plaintiff and other members of the Classes are entitled to restitution of all wages and other monies owed and belonging to them, including interest thereon, that Defendants wrongfully withheld from them and retained for itself by means of its unlawful and unfair business practices.

79. Pursuant to Business and Professions Code § 17203, Plaintiff and other members of the Classes are entitled to an injunction to prevent the continuation of Defendants' unlawful and unfair business practices that constitute unfair competition. Injunctive relief is warranted because, on information and belief, Defendants continue to engage in unlawful and unfair business practices with respect to currently employed members of the Classes, and such members of the Classes have no adequate legal remedy for the continuing injuries that will be suffered as a result of Defendants' ongoing unlawful conduct. Injunctive relief is the only remedy available to prevent Defendants from continuing to engage in the unlawful and unfair business practices described herein.

80. Plaintiff and members of the Classes are entitled to recover reasonable attorneys' fees in connection with their unfair competition claims pursuant to Code of Civil Procedure §

1 1021.5, the substantial benefit doctrine and/or the common fund doctrine.

2
3 **NINTH CAUSE OF ACTION**
4 **For Penalties Pursuant to the Private Attorneys General Act of 2004 (PAGA)**
(By Plaintiff as an Aggrieved Employee Pursuant to Labor Code § 2698 *et seq.*)

5 81. Plaintiff incorporates paragraphs 1 through 80 of this complaint as though fully
6 alleged herein.

7 82. At all times relevant herein, the Private Attorneys General Act of 2004 (“PAGA”)
8 was applicable to Plaintiff’s employment by Defendants.

9 83. At all times relevant herein, the PAGA provides that any provision of law under
10 the Labor Code that provides for a civil penalty to be assessed and collected by the California
11 Labor & Workforce Development Agency (“LWDA”) for violations of the Labor Code may, as
12 an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of
13 herself or herself and other current or former employees pursuant to the procedures delineated in
14 Labor Code § 2699.3.

15 84. Pursuant to the PAGA, a civil action under the PAGA may be brought by an
16 aggrieved employee, which Labor Code §2699(c) defines as any person who was employed by the
17 alleged violator and against whom one or more of the alleged violations was committed.

18 85. Plaintiff was employed by Defendants and the alleged violations were committed
19 against her during the period of his employment with Defendants. Plaintiff is therefore an
20 aggrieved employee within the meaning of the PAGA.

21 86. Pursuant to the *Huff v. Securitas Sec. Svcs. USA, Inc.*, 23 Cal.App.5th 745 (2018)
22 Plaintiff employee may bring an action under the PAGA affecting other employees although
23 Plaintiff may not have been affected by violations affecting other employees.

24 87. Pursuant to the requirements of Labor Code § 2699.3, Plaintiff gave written notice
25 to the LWDA and the employer of the specific provisions of the Labor Code that Plaintiff alleges
26 to have been violated by Defendants against the aggrieved employees. A copy of Plaintiff’s notice
27 to the LWDA is attached hereto as Exhibit 1.

28 88. Pursuant to Labor Code § 2699.3, the LWDA is required to provide notice to the

1 aggrieved employee whether it intends to investigate the alleged violation(s) within sixty (60) days
2 of written notice from the aggrieved employee, and, if notice is not provided within sixty-five (65)
3 calendar days of the postmark date of written notice, the aggrieved employee may commence a
4 civil action pursuant to Labor Code § 2699 to recover civil penalties in addition to any other
5 penalties to which the employee may be entitled.

6 89. More than sixty-five days have passed since Plaintiff gave notice to the LWDA of
7 her alleged violations without response. Accordingly, Plaintiff has satisfied the administrative
8 prerequisites under Labor Code §2699.3 to recover civil penalties against Defendants, in addition
9 to other remedies, for violations of Labor Code §§ 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510,
10 512, 558, 558.1, 1194, 1197, 1197.1, 1199.

11
12 **PRAYER FOR RELIEF**

13 WHEREFORE, Plaintiff on behalf of herself and all others similarly situated, pray for relief
14 and judgment against Defendants as follows:
15

- 16 1. Damages for unpaid wages and overtime premiums;
- 17 2. Damages for unpaid wages and penalties pursuant to Labor Code § 226.7;
- 18 3. Penalties of 25% of all wages unpaid each pay period;
- 19 4. Damages for unpaid continuation wages owed for failing to pay all earned wages
20 timely upon termination of employment up to 30 days' wages;
- 21 5. Remedies available pursuant to Labor Code § 226(e);
- 22 6. An order enjoining Defendants from engaging in the unfair and unlawful business
23 practices described herein;
- 24 7. Restitution of all Unpaid Wages and other monies owed and belonging to Class
25 members that Defendants unlawfully withheld from them and retained for itself;
- 26 8. For civil penalties pursuant to Labor Code section 2698 *et seq.*
- 27 9. Prejudgment interest at the legal rate;
- 28 10. Judgment in favor of Plaintiff and the Classes and against Defendant;

11. Reasonable attorneys' fees;
12. Costs of suit; and
13. Such other relief as the Court deems just and proper.
14. An order that the action be certified as a class action;
15. An order that Plaintiff be appointed as the representative of the Classes;
16. An order that counsel for Plaintiff be confirmed as Class counsel;

DATED: September 21, 2022

LAW OFFICE OF KENNETH A. GOLDMAN, PC
LAW OFFICES OF SAHAG MAJARIAN II

By:



KENNETH A. GOLDMAN, Esq.
Attorney for Plaintiff, DIANA MENDEZ

EXHIBIT 1

LAW OFFICE OF KENNETH A. GOLDMAN

16133 VENTURA BOULEVARD, SUITE 1200 | ENCINO, CALIFORNIA 91436
TELEPHONE: (818) 287-7689 | FACSIMILE: (818) 287-7816 | EMAIL: KEN@KENGOLDMANLAW.COM

April 25, 2022

VIA U.S. CERTIFIED MAIL RETURN RECEIPT REQUESTED

Secretary Natalie Palugyai
Labor & Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Suite 801
Oakland, California 94612

Thomas R. Odermatt
Rotisystems, Inc.
7800 Edgewater Drive
Oakland, CA 94621

Cert. Mail # 7019 1120 0000 704 9783

RE: Notice Pursuant to Labor Code § 2699.3(a)(1)
Labor Code Private Attorney General Act ("PAGA")

Employer(s): Rotisystems, Inc. dba Roli Roti

Employee: Diana Mendez

Dear Secretary Palugyai:

Pursuant to the Private Attorney General Act of 2004, California Labor Code § 2698 *et seq.* ("PAGA"), representative Diana Mendez ("Mendez"), on behalf of herself and all others similarly situated California employees, gives notice of her allegations that her former employer, Creative Brain Learning, violated the California Labor Code during her period of employment.

This letter shall serve the dual purpose of providing the LWDA with the theory and statutes under which Ms. Mendez seeks to pursue penalties under the PAGA, as well as a demand that all unpaid wages owed upon each pay period be immediately paid to Ms. Mendez and the aggrieved employees pursuant to Labor Code §211.

RELEVANT FACTS

Rotisystems, Inc. dba Roli Roti (hereinafter "Roti") operates a food packaging and catering operation in Oakland, California. Ms. Mendez worked for Roti on the company's morning shift in the "meat room" or "cold room" until October 2021.

Approximately a week after applying for employment, Ms. Mendez was offered a position and required to report to the facility to complete paperwork and receive basic job training. Roti did not compensate Ms. Mendez for this work.

Em, Ms. Mendez and the other employees of Roti were required to wear protective equipment, including a hardhat, gloves, apron, boots, hairnet and mask. She was required to keep her hardhat and boots in a locker provided by Roti.

Roti did not instruct its employees, including Ms. Mendez, to clock in prior to donning the protective equipment (“PPE”). Roti’s supervisors and managers knew or should have known that the employees were donning PPE for the benefit of the company without compensation for the work performed. Ms. Mendez is informed and believes that Roti encourages employees to perform off the clock work by donning and doffing PPE while off the clock.

Roti provided its employees with exactly 30 minutes for meal periods, which included time to clear the floor, clock out, doff PPE, eat, don PPE, clock back in, and return to her workstation. In fact, employees often had less than twenty minutes of uninterrupted time free from all control of the employer.

Roti’s rest break policy likewise resulted in less than ten minutes of uninterrupted time, given that the employees were required to doff and don PPE on their break time.

At the conclusion of each shift, employees were instructed to clock out before doffing their PPE, placing soiled linens in proper storage, and placing hardhats and boots back in their lockers.

Wage statements issued to employees did not contain the proper address for the legal entity. Instead, the wage statements listed only a PO Box. Wage statements additionally failed to include all hours worked and gross and net wages earned.

THEORY OF LABOR CODE VIOLATIONS

Failure to Pay Minimum Wages

California law requires that an employee must receive the minimum wage for each hour worked. Labor Code §§ 1182.12, 1194, 1197; *Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 323. As described above, Roti fails to pay a minimum wage for each hour worked by, *inter alia*, requiring and/or encouraging donning and doffing of PPE while off-the-clock, and by requiring employees to complete paperwork and training for employment without compensation. Failure to pay the minimum wage for all hours worked subjects Roti to liability pursuant to Labor Code §§ 558.1, 1194, 1197, 1197.1, 1199, and 2698 *et seq.*

Failure to Pay Overtime Premiums

Labor Code § 510 sets forth the requirements for rates of pay for hours worked in excess of 40 hours per week or 8 hours per day. Roti’s practice of encouraging or requiring donning and doffing while off-the-clock results in unpaid overtime premiums

for Ms. Mendez and the aggrieved employees. Failure to pay overtime premiums subjects Roti to liability pursuant to Labor Code §§510, 558, and 2698 *et seq.*

Failure to Pay All Wages Owed Each Pay Period

Roti's failure to pay for training, paperwork, and donning/doffing time resulted in payment of less than all wages earned or owed by employees during each pay period in violation of Labor Code §§ 204 and subjects Roti to liability pursuant to Labor Code §§ 204, 210, 1199, and 2698 *et seq.*

Failure to Provide Compliant Meal Periods

Ms. Mendez and the aggrieved employees are not afforded a full 30-minute, uninterrupted meal period free from all control of the employer prior to the sixth hour of work, as described above. Accordingly, Roti is subject to civil penalties pursuant to Labor Code §§ 226.7, 512, 558, and 2698 *et seq.*

Failure to Provide Paid Rest Breaks

The relevant Wage Order requires ten minutes of paid rest in which the employee is relieved of all duties for each four hours of work or major fraction thereof. As a result of the practices described above, pursuant to Labor Code § 226.7, 558, 558.1, 1199, and 2698 *et seq.*, Roti is subject to penalties.

Failure to Furnish Wage Statements in Accord With California Law

Roti violated California Labor Code §226 by willfully failing to furnish Ms. Mendez and the other aggrieved employees with accurate wage statements showing all wages owed for hours worked, overtime earned, missed and late meal breaks, and rest breaks. Under Labor Code §§ 226, 226.3, 1199 and 2698 *et seq.*, Roti is subject to civil penalties.

Continuation Wages

By reason of Roti's willful acts regarding the compensation schemes addressed above, Roti failed to pay Ms. Mendez and all former employees all wages owed at termination. Accordingly, Roti is subject to liability pursuant to Labor Code §§ 203 and 2698 *et seq.*

CONCLUSION

Ms. Mendez requests a response from the LWDA pursuant to Labor Code §2699.3(a)(2) at its earliest opportunity.

In the event that the LWDA investigates and pursues this matter rather than permitting Ms. Mendez to pursue this action on behalf of the aggrieved employees, she hereby requests reimbursement of the fee charged to merely lodge a complaint that is investigated and pursued by the State, and which results in collection of penalties as a result of said complaint.

Thank you for your immediate attention to this matter. If you have any questions, please do not hesitate to contact me at (818) 287-7689.

Sincerely,

A handwritten signature in blue ink, appearing to read "Kenneth A. Goldman", with a long horizontal flourish extending to the right.

Kenneth A. Goldman

PROOF OF SERVICE

STATE OF CALIFORNIA, }
 }
COUNTY OF LOS ANGELES }

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is: 16133 Ventura Boulevard, Suite 1200, Encino, California 91436.

On September 21, 2022, I served the attached documents described as **FIRST AMENDED COMPLAINT** on all interested parties in this action

☐ by placing ☐ the original ☐ a true copy thereof enclosed in sealed envelopes addressed as follows:

Allison Ross
Mollie Burks
Gordon Rees Scully Mansukhani
3 Parkcenter Drive, Suite 200
Sacramento, CA 95825
Phone: (415) 819-9387
Email: arross@grsm.com
mburks@grsm.com

☐ BY MAIL

☐ I deposited such envelope in the mail at Encino, California. The envelope was mailed with postage thereon fully prepaid.

☐ As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. postal service on that same day with postage thereon fully prepaid at Encino, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

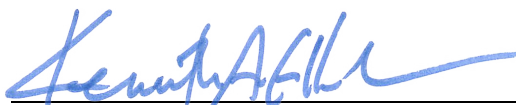
☐ BY ELECTRONIC TRANSMISSION: I caused to be transmitted the document(s) described above on the parties listed via CaseAnywhere.

☒ BY E-MAIL: I caused to be transmitted the document(s) described above on the parties listed herein pursuant to agreement between the Parties.

EXECUTED on September 21, 2022, at Encino, California.

☒ STATE - I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Kenneth A. Goldman
Name


Signature