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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

VERONICA CUSIMANO, on behalf of herself
and all “aggrieved employees” pursuant to
Labor Code § 2698 *et seq.*,

Plaintiff,

v.

BRILLIANT EARTH, LLC, a Delaware
limited liability company, and DOES 1 through
10, inclusive,

Defendants.

CASE NO: **22SMCV02621**

**REPRESENTATIVE ACTION
COMPLAINT FOR PENALTIES
PURSUANT TO LABOR CODE § 2699(f)
FOR VIOLATIONS OF LABOR CODE
§§ 201, 202, 226(a), 226.7, 246, 510, 512,
1194, AND 2802 AND PURSUANT TO
LABOR CODE § 2699(a) FOR
VIOLATIONS OF LABOR CODE §§ 226.3
AND 558**

1 Plaintiff VERONICA CUSIMANO (“Plaintiff”), on behalf of herself and others as an
2 “aggrieved employee” under the Labor Code Private Attorneys General Act of 2004, complains of
3 BRILLIANT EARTH, LLC, a Delaware limited liability company, and/or any subsidiaries or
4 affiliated companies (hereinafter referred to as “Defendants”), as follows:

5 **I.**

6 **INTRODUCTION AND FACTUAL BACKGROUND**

7 1. This is a Representative Action, pursuant to Labor Code § 2698 et seq., on behalf of
8 Plaintiff and other non-exempt California employees who currently work or formerly worked for
9 Defendants (“Aggrieved Employees”).

10 2. For at least one (1) year prior to the filing of this action and at least one (1) year prior
11 to the date Plaintiff began the process of exhausting the administrative requirements, pursuant to
12 Labor Code § 2698 et seq., and continuing to the present (the “liability period”), Defendants have had
13 consistent policies of:

14 a. Failing to properly compute bonuses earned by Plaintiff and other Aggrieved
15 Employees into their regular rate of pay for purposes of paying them meal and rest period
16 premiums, overtime wages, and sick pay wages at the correct rates, in violation of Labor Code
17 §§ 226.7, 246, 510, 512, 558 and 1194. Defendants paid Plaintiff and other Aggrieved
18 Employees bonuses; however, Defendants failed to properly blend these bonuses, and instead
19 paid Plaintiff and other Aggrieved Employees meal and rest period premiums, overtime
20 wages, and sick pay wages based *only* on the base hourly rate of pay, thus depriving Plaintiff
21 and other Aggrieved Employees of all meal and rest period premiums, overtime wages, and
22 sick pay wages earned. This violates Labor Code §§ 226.7, 246, 510, 512, 558 and 1194;

23 b. Failing to pay correct premium wages to Plaintiff and other Aggrieved
24 Employees who were denied rest periods, in violation of Labor Code § 226.7 and IWC Wage
25 Order No. 7-2001. Plaintiff and other Aggrieved Employees were routinely unable to take a
26 10-minute rest period for every four (4) hours of work or major fraction thereof, but were not
27 paid premium wages of one hour’s pay for each missed rest period. Plaintiff and other
28 Aggrieved Employees were frequently too busy to take a rest period. When they were able to

1 take a rest period, they were oftentimes late or cut short. This violates Labor Code § 226.7
2 and IWC Wage Order No. 7-2001;

3 c. Failing to pay correct premium wages to Plaintiff and other Aggrieved
4 Employees who were denied proper meal periods, in violation of Labor Code §§ 226.7, 512,
5 and 558 and IWC Wage Order 7-2001. Plaintiff and other Aggrieved Employees were
6 routinely denied, and not authorized to take, a proper, timely, uninterrupted, 30-minute meal
7 period for every shift worked that exceeded five hours, or a second proper, timely,
8 uninterrupted, 30-minute meal period for every shift worked that exceeded ten hours, but were
9 not paid premium wages of one hour's pay for each missed first or second meal period. When
10 they were able to take a meal period, they were oftentimes late, short, or on-duty. This violates
11 Labor Code §§ 226.7, 512, and 558 and IWC Wage Order 7-2001;

12 d. Failing to reimburse Plaintiff and other Aggrieved Employees for necessary
13 business expenses incurred in direct consequence of the discharge of their duties, in violation
14 of Labor Code § 2802, including, but not limited to, the cost of purchasing masks that
15 employees were required to wear at work. Labor Code § 2802 states that an employer must
16 indemnify its employees for all necessary expenditures or losses incurred by the employee in
17 direct consequence of the discharge of their duties, and Defendants' failure to do so has
18 violated this section;

19 e. Failing to provide Plaintiff and other Aggrieved Employees with wage
20 statements that fully and accurately itemized the requirements set forth in Labor Code §
21 226(a). Plaintiff and Aggrieved Employees were not paid all wages due, as stated above. As
22 such, the wage statements provided by Defendants failed to accurately state all gross wages
23 earned, in violation of Labor Code §§ 226(a)(1) and 226.3, total hours worked, in violation of
24 Labor Code §§ 226(a)(2) and 226.3, net wages earned, in violation of Labor Code §§ 226(a)(5)
25 and 226.3, and all applicable hourly rates in effect during the pay period and the corresponding
26 numbers of hours worked at each rate, in violation of Labor Code §§ 226(a)(9) and 226.3. In
27 addition to, and independent of the above allegations, the wage statements issued to Plaintiff
28

1 and all other Aggrieved Employees failed to list the applicable hourly rates in effect during
2 the pay period, in violation of Labor Code §§ 226(a)(9) and 226.3; and

3 f. Failing to pay Plaintiff and certain Aggrieved Employees all wages due at the
4 separation of their employment based on the time frames required by Labor Code §§ 201 and
5 202. As stated above, Plaintiff and Aggrieved Employees were not paid all wages due during
6 the course of their employment and, as a result of this failure, they were not timely paid all
7 wages due at the separation of their employment. Furthermore, when Plaintiff resigned from
8 her employment, she was not issued her final wages within 72 hours of her resignation—
9 rather, she was issued her final wages ten days later. Plaintiff alleges that Defendants maintain
10 a policy to untimely pay final wages to their former Aggrieved Employees. This violates Labor
11 Code §§ 201-202 and is alleged on behalf of Plaintiff and certain Aggrieved Employees no
12 longer employed by Defendants.
13

14 3. Plaintiff, on behalf of herself and all Aggrieved Employees pursuant to Labor Code §
15 2698 *et seq.*, seeks civil penalties for Defendants' violations of the California Labor Code.

16 4. Venue is proper in this judicial district, pursuant to Code of Civil Procedure § 395
17 because Defendants employed Plaintiff and Class Members in Los Angeles County, California.

18 II.

19 PARTIES

20 A. Plaintiff

21 5. Plaintiff VERONICA CUSIMANO was employed by Defendants from January 2022
22 through May 2022 as a non-exempt employee in Los Angeles County, California.

23 B. Defendant

24 6. Defendant BRILLIANT EARTH, LLC, is a Delaware limited liability company that
25 employed Plaintiff and Aggrieved Employees throughout the State of California, including Los
26 Angeles County, California.

27 7. The true names and capacities, whether individual, corporate, associate, or otherwise,
28 of Defendants sued herein as DOES 1 to 10, inclusive, are currently unknown to Plaintiff, who

1 therefore sues Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiff is
2 informed and believes, and based thereon alleges, that each of the Defendants designated herein as a
3 DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will
4 seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendants
5 designated hereinafter as DOES when such identities become known.

6 8. Plaintiff is informed and believes, and based thereon alleges, that each Defendant acted
7 in all respects pertinent to this action as the agent of the other Defendant, carried out a joint scheme,
8 business plan or policy in all respects pertinent hereto, and the acts of each Defendant is legally
9 attributable to the other Defendants.

10 9. The Defendants named herein as DOE 1 through DOE 10 are and were persons acting
11 on behalf of, or acting jointly with, Defendants, who violated, or caused to be violated, one or more
12 provisions of the California Labor Code as alleged herein.

13 IV.

14 CAUSES OF ACTION

15 FIRST CAUSE OF ACTION

16 **PLAINTIFF AND ALL AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS**
17 **CIVIL PENALTIES PURSUANT TO LABOR CODE § 2699(f) FOR VIOLATIONS OF**
18 **LABOR CODE §§ 201, 202, 226(a), 226.7, 246, 510, 512, 1194, AND 2802 AND PURSUANT**
19 **TO LABOR CODE § 2699(a) FOR VIOLATIONS OF LABOR CODE §§ 226.3 AND 558**

20 10. Plaintiff incorporates paragraphs 1 through 9 of this Complaint as though fully set
21 forth herein.

22 11. As a result of the acts alleged above, including the Labor Code violations set forth in
23 paragraph 2 above, Plaintiff seeks civil penalties pursuant to Labor Code §§ 2698 *et seq.*

24 12. For each such violation, Plaintiff and all other Aggrieved Employees are entitled to
25 civil penalties subject to the following formula:

- 26 a. Pursuant to Labor Code § 2699(f), \$100 for each initial violation and \$200 for
27 each subsequent violation of Labor Code §§ 201, 202, 226(a), 226.7, 246, 510,
28 512, 1194, and 2802; and

b. Pursuant to Labor Code § 2699(a), the civil penalties as authorized by Labor Code §§ 226.3 and 558.

13. Civil penalties recovered will be allocated 75% to the Labor and Workforce Development Agency, and 25% to the affected employees.

14. On August 29, 2022, Plaintiff sent a letter, by online submission to the LWDA and by certified mail, return receipt requested, to Defendants setting forth the facts and theories of the violations alleged against Defendants, as prescribed by Labor Code § 2698 *et seq.* Pursuant to Labor Code § 2699.3(a)(2)(A), no notice was received by Plaintiff from the LWDA within sixty-five (65) calendar days of August 29, 2022. Plaintiff may therefore commence this action to seek civil penalties pursuant to Labor Code § 2698 *et seq.*

Wherefore, Plaintiff and the Aggrieved Employees she seeks to represent request relief as described below.

V.

RELIEF REQUESTED

WHEREFORE, Plaintiff prays for the following relief:

1. For civil penalties pursuant to Labor Code § 2698 *et seq.* for Plaintiff and all other Aggrieved Employees;

2. An award providing for payment of costs of suit pursuant to Labor Code § 2699(g)(1) and other applicable law;

3. An award of attorneys' fees pursuant to Labor Code § 2699(g)(1) and other applicable law; and

4. Such other and further relief as this Court may deem just and proper.

Dated: December 5, 2022

Respectfully submitted,

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