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11 **SUPERIOR COURT OF CALIFORNIA**
12 **IN AND FOR THE COUNTY OF MERCED**
13

14 JUAN QUINTERO, on behalf of all others
15 similarly aggrieved,
16
17 Plaintiff,
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19 vs. GREG MARKARIAN AG
20 ENTERPRISES, INC., a California
21 corporation, and DOES 1 through 20,
22 inclusive,
23
24 Defendants.
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CASE NO. 23CV-00106

COMPLAINT FOR VIOLATION OF
PRIVATE ATTORNEYS GENERAL ACT

JURY TRIAL DEMANDED

GENERAL ALLEGATIONS

1. Plaintiff JUAN QUINTERO is an individual residing in the State of California.

2. On information and belief, defendant GREG MARKARIAN AG ENTERPRISES, INC. is a California corporation duly licensed to conduct business in the State of California.

3. Plaintiff is unaware of the names and capacities of those defendants sued as DOES 1 through 10 but will amend this complaint when that information becomes known. Plaintiff is informed and believes and thereon alleges that, at all relevant times, each of the defendants, including the DOE defendants, was the officer, director, employee, agent, representative, alter ego, or co-conspirator of each of the other defendants, and in engaging in the conduct alleged herein, was acting in the course and scope of, and in furtherance of, such relationship. Unless otherwise specified, Plaintiff will refer to all defendants as "Defendant," and each allegation pertains to each defendant.

4. This court possesses original subject matter jurisdiction over this matter. Venue is proper in this judicial district because Defendant transacts business in this district, and some of the complained of conduct occurred in this judicial district.

5. Defendant employed Plaintiff in California as a non-exempt employee during the relevant time period until his employment ended in and around June 2022. Plaintiff brings his complaint under the Private Attorneys General Act of 2004, Labor Code sections 2698, *et seq.*, ("PAGA"), as a representative action on behalf of the State of California regarding violations of the Labor Code as to all similarly aggrieved individuals employed by Defendant as non-exempt employees, however titled, in the State of California, from the date one year prior to submission of Plaintiff's PAGA notice letter. This action is brought solely under PAGA and seeks no relief beyond that available under PAGA.

6. During the period beginning one-year period preceding the filing of the required PAGA notice with the Labor Workforce & Development Agency, and continuing through the present, as alleged herein, Defendant violated Labor Code sections 201-203, 204, 216, 221-224, 226, 226.7, 450, 512, 514, 1174, 1194, 1197, 1198, 1199, 2441, 2802, 2810.5, and all applicable Wage Orders, as to Plaintiff and all other similarly aggrieved employees employed by Defendant

1 in California. These violations subject Defendant to civil penalties as set forth in the foregoing
2 statutes as well as other provisions of the Labor Code, including without limitation Labor
3 Code sections 203, 210, 225.5, 226.3, 226.7, 256, 1174.5, 1194.2, 1197.1, and 2699, and
4 section 20 of all applicable IWC Wage Orders.

5 FIRST CAUSE OF ACTION

6 (Violation of Private Attorneys General Act – Labor Code §§ 2698, et seq.)

7 7. Plaintiff incorporates by reference the allegations contained in paragraphs 1
8 through 6.

9 8. California law mandates that employees in California be paid for all hours worked,
10 up to 40 per week or 8 per day, at a regular time rate no less than the mandated minimum wage.
11 Defendant violated California minimum wage laws in part by using a rounding system that, as
12 applied, worked to detrimentally shave and round time off from Plaintiff and similarly aggrieved
13 employees' work days. Specifically, Plaintiff alleges on information and belief that through the
14 operation of Defendant's rounding system, Plaintiff and similarly aggrieved employees would
15 systematically be deprived of compensable time because the time recording system implemented
16 by Defendant resulted in understating actual compensable work time due to the rounding.
17 Accordingly, Plaintiff and similarly aggrieved employees were not being paid for all hours
18 worked causing minimum wage violations pursuant to Labor Code sections 1194-1199, and all
19 applicable Wage Orders.

20 9. Under the Labor Code and IWC Wage Orders, Defendant was required to provide
21 Plaintiff and similarly aggrieved employees with one 30-minute meal period free from all duties
22 for all shifts longer than 5 hours, and a second 30-minute meal period free from all duties for all
23 shifts longer than 10 hours. Meal periods can be waived, but only under the following
24 circumstances: (1) if an employee's total work period in a day is over five (5) hours but no more
25 than six (6) hours, the required meal period may be waived by mutual consent of the employer
26 and employee, and (2) if an employee's total work period in a day is over ten (10) hours but no
27 more than twelve (12) hours, the required second meal period may be waived by mutual consent
28 of the employer and employee, but only if the first meal period was not waived. Employers

covered by the Wage Orders have an obligation to both (1) relieve their employees for at least one meal period for shifts over five hours (see above), and (2) to record having done so. If the employer fails to properly record a valid meal period, it is presumed no meal period was provided.

10. Plaintiff and similarly aggrieved employees regularly worked periods of more than five hours in a workday without being provided mandatory thirty-minute, duty-free meal periods. Upon information and belief, Defendant failed to maintain a company meal period policy compliant with California law. Moreover, as noted above, Plaintiff and other aggrieved employees frequently worked in excess 5 hours per shift and, thus, they were entitled to uninterrupted thirty minute meal periods before the end of the fifth hour of work, and frequently worked in excess of 10 hours per shift and thus were entitled to a second thirty-minute, duty-free meal period, but did not receive the required second meal period, and they also did not waive their second meal period. To the extent meal periods were provided, they were provided on an “on duty” basis even though the nature of work permitted Plaintiff and other aggrieved employees to receive meal periods on an off duty basis. Defendant also failed to pay Plaintiff and similarly aggrieved employees an additional hour of wages at their regular rates of compensation for each workday a meal period was not provided, or was late, short, interrupted and/or “on duty.”

11. Defendant failed to provide Plaintiff and similarly aggrieved employees all required and/or fully compliant rest periods, or compensation in lieu thereof. Defendant employed policies and procedures that ensured Plaintiff and other aggrieved employees would not receive all legally required rest periods, as Defendant did not authorize and permit all required rest periods in strict accordance to, and in compliance with, the timing requirements of all applicable Wage Orders. Plaintiff and other aggrieved employees frequently worked in excess of 10 hours per shift and thus were entitled to a third 10 minute duty-free rest period that was no provided. To the extent rest periods were provided, they were provided on an “on duty” basis even though there is no basis for on duty rest periods. Defendant further employed policies and procedures ensuring Plaintiff and similarly aggrieved employees did not receive premium wages at the regular rate of compensation to compensate them for workdays they did not receive all legally required and fully

1 compliant rest periods.

2 12. California law provides that, at the time of each payment of wages, the employer
3 must provide each employee with an itemized statement showing, inter alia, gross wages earned,
4 total hours worked, all deductions taken, net wages earned, the inclusive dates for which the
5 employee is being paid, the employee's name and last four digits of their social security number,
6 the name and address of the legal entity that it is the employer, and all applicable hourly rates in
7 effect during the pay period and all hours worked at each rate.

8 13. Defendant knowingly and intentionally failed to provide Plaintiff and other
9 aggrieved employees with proper, itemized wage statements as the wage statements provided by
10 Defendant do not accurately reflect, inter alia, gross wages earned, total hours worked, net wages
11 earned, and all applicable hourly rates in effect during each pay period and all hours worked at
12 each applicable hourly rate, for all the reasons herein mentioned. Accordingly, Defendant has
13 violated Labor Code section 226 as to Plaintiff and all similarly aggrieved employees.

14 14. California law requires employers to keep "accurate and complete" payroll records
15 showing, among other things, the hours worked daily by all non-exempt employees. The
16 applicable IWC Wage Order similarly requires employers to keep time records showing, inter
17 alia, when the employees begins and end each work period and reflecting the times during which
18 all owed meal periods are provided each day. At all relevant times, Defendant has failed, and
19 continues to fail, to keep the required time records by, including but not limited to, by failing to
20 accurately record hours worked when Plaintiff and other aggrieved employees took their meal
21 periods. Defendant's failure to keep "accurate and complete" payroll records for Plaintiff and
22 other similarly aggrieved employees violates Labor Code sections 1174, 1198-99, and Wage
23 Order 9-2001 (and all applicable Wage Orders), section 7.

24 15. Labor Code section 201 requires employers to pay all wages earned and unpaid at
25 the time of discharge, immediately upon discharge. Labor Code section 202 states similar
26 provisions with respect to employees who resign. For all aggrieved employees no longer
27 employed by Defendant, Defendant still has not paid such aggrieved employees all wages earned
28 and unpaid at the time of discharge, in that Defendant has not paid for, all minimum and overtime

1 wages. These violations subject Defendant to civil penalties under the Labor Code, including
2 without limitation Labor Code sections 203, 256 and 2699. Each violation results in a separate
3 civil penalty, for each aggrieved employee for each pay period during which the statutory
4 provisions were violated.

5 16. California Labor Code section 2802 provides an employer shall fully reimburse an
6 employee for all reasonable and necessary expenses incurred in the performance of the
7 employee's job duties. Plaintiff and other aggrieved employees incurred expenses as they had to
8 use their personal mobile phones for work purposes, such as communicating with management during
9 shifts, dispatch, navigation, etc. This conduct results in violations of Labor Code section 2802.

10 17. Plaintiff complied with the procedures for bringing suit specified in Labor Code
11 Sections 2699.3 and 2699.5. By letter dated and postmarked September 14, 2022, Plaintiff
12 gave written notice to the California Labor & Workforce Development Agency ("LWDA") via
13 electronic submission at PAGAfilings@dir.ca.gov, and via certified mail to Defendant, of the
14 specific provisions of the Labor Code and Wage Orders allegedly violated, including the facts
15 and theories to support the alleged violations.

16 18. Under Labor Code Section 2699.3, the LWDA must give written notice by
17 certified mail to the parties it intends to investigate the alleged violations within 65 days of the
18 date of the complainant's written notice. As of the filing of this Complaint, the LWDA has not
19 provided the parties any notice of its intention to investigate Plaintiff's claims on behalf of
20 himself and other aggrieved employees, nor has Defendant responded to Plaintiff's PAGA
21 notices in an attempt to cure. According, Plaintiff has exhausted all administrative remedies
22 required by law.

23 19. Under Labor Code Section 2699(g), Plaintiff is entitled to an award of
24 reasonable attorney's fees and costs in connection with her claims for civil penalties.

25 PRAYER

26 WHEREFORE, Plaintiff prays for judgment against each Defendant, jointly and severally,
27 as follows:

- 28 1. For civil penalties according to proof;

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LAW OFFICES OF J. KIRK DONNELLY, APC

COMPLAINT UNDER PRIVATE ATTORNEYS GENERAL ACT