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Attorney for Plaintiffs
Jeremy Burkett, et al.

FILED
Superior Court of California
County of Los Angeles
05/15/2023

David W. Slayton, Executive Officer / Clerk of Court
By: K. Martinez Deputy

SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

JEREMY BURKETT, SHANNON ELLIOTT, individually and on behalf of all similarly situated individuals,	) NO. 23STCV01072
	) CLASS ACTION
	)
Plaintiffs,	) FIRST AMENDED COMPLAINT
	)
v.	) 1. Meal Period Violations
	) 2. Rest Period Violations
	) 3. Overtime Violations
WEHO HOSPITALITY SUNSET, LLC, and	) 4. Minimum Wage Violations
DOES 1 to 100,	) 5. Wage Statement Penalties
	) 6. Waiting Time Penalties
Defendants.	) 7. Violation of West Hollywood Tip Law
	) 8. Violation of Unfair Competition Law
	) 9. PAGA Penalties

PRELIMINARY ALLEGATIONS

1. Plaintiff Jeremy Burkett is a resident of Los Angeles County.
2. Plaintiff Shannon Elliott is a resident of Los Angeles County.
3. Defendant Weho Hospitality Sunset, LLC is a limited liability company based in Los Angeles County, and it does business as Lavo Ristorante in West Hollywood.
4. Plaintiff does not know the true names and capacities of Does 1 to 100 and therefore uses fictitious names. Plaintiff will amend the complaint pursuant to Code of Civil Procedure section 474 to allege the true names and capacities when ascertained.

1 5. Plaintiff is informed and believes that each of the Defendant was the agent or employee of
2 the other defendants and acted in the scope of agency or employment.

3 6. Defendants employed Plaintiffs and the class members as nonexempt food service workers.

4 7. Since Defendants operate a restaurant Industrial Welfare Commission Occupational Wage
5 Order 5 applies.

6 8. Throughout Plaintiffs' and the class members' employment, they did not receive compliant
7 meal and rest periods, did not receive accurate wage statements, did not receive overtime, were not
8 paid for all hours worked, and did not receive all tips.

9 9. On December 28, 2022 Plaintiffs sent a certified PAGA letter to Weho Hospitality, LLC
10 and uploaded the letter to the LWDA website. Plaintiffs will amend the complaint to include
11 PAGA allegations at least 65 days after December 28, 2022.

12
13 CLASS ACTION ALLEGATIONS

14 10. The class is defined as the following: "All non-exempt employees who worked for
15 Defendants at Lavo Ristorante from four years prior to the filing of the complaint to the date of
16 preliminary approval or judgment, whichever is earlier."

17 11. The subclass includes: "All non-exempt employees who stopped working for Defendants at
18 Lavo Ristorante from three years prior to the filing of the complaint to the date of preliminary
19 approval or judgment, whichever is earlier."

20 12. There is a well-defined community of interest in the litigation and the proposed class is
21 ascertainable from Defendants' employment records.

22 a. Numerosity: The members of the class as defined are so numerous that joinder
23 of all class members is impracticable.

24 b. Commonality: This action involves common questions of law and fact to the
25 class because the action focuses on Defendants' systematic course of conduct
26 with respect to violating the Labor Code and IWC Wage Order.

27 c. Typicality: The claims are typical of the claims of the class. Plaintiff was
28 subjected to the same violations and seeks the same types of damages,

- 1 restitution, and other relief on the same as those of the members of the class.
- 2 d. Adequacy of Representation: Plaintiffs will fairly and adequately represent and
- 3 protect the interests of the class. Plaintiffs understand the obligations as a class
- 4 representative and is willing and able to fulfill them. Plaintiffs' counsel is
- 5 competent and experienced in litigating large employment class actions and
- 6 complex litigation matters, including wage and hour cases like this.
- 7 e. Superiority of Class Action: A class action is superior to other available means
- 8 for the efficient adjudication. Class action treatment will allow similarly situated
- 9 persons to pursue the claims in a manner that is most efficient and economical.
- 10 13. There are common questions of law and fact including but not limited to:
- 11 a. Whether Defendants did not pay overtime and off the clock time in violation of
- 12 Labor code sections 510 and 1194;
- 13 b. Whether Defendant violated Labor Code section 512 and Wage Order 5 by not
- 14 providing meal and rest breaks;
- 15 c. Whether Defendants violated Labor Code section 226 by providing inaccurate
- 16 wage statements;
- 17 d. Whether Defendant violated Labor Code section 226.7 by not paying premium
- 18 pay for missed meal and rest breaks;
- 19 e. Whether Defendants did not distribute tips in compliance with the West
- 20 Hollywood Municipal Code;
- 21 f. Whether Defendants engaged in unfair competition; and
- 22 g. The amount of damages, wages, and penalties owed to Plaintiff and the class.
- 23

24 FIRST CAUSE OF ACTION

25 Meal Period Violations

26 Against All Defendants

- 27 14. Plaintiffs incorporate by reference paragraphs 1 to 13 of the complaint.
- 28 15. Labor Code section 226.7 requires employers to provide its employees meal periods as

1 mandated by IWC Wage Order 5 and Labor Code section 512(a).

2 16. These provisions also provide that an employer may not employ any person for a work
3 period of more than five hours per day without a meal period of not less than 30 minutes.

4 17. The meal periods taken by Plaintiffs and the class members were on-duty meal periods.

5 18. As a result, Defendants are required to remit premium pay pursuant to Labor Code section
6 226.7 for each missed break, which is one additional hour of pay at the regular rate of pay.

7
8 SECOND CAUSE OF ACTION

9 Rest Period Violations

10 Against All Defendants

11 19. Plaintiffs incorporate by reference paragraphs 1 to 13 of the complaint.

12 20. Pursuant to Wage Order 5 every employer shall authorize and permit employees to take rest
13 periods of ten minutes for every four hours worked.

14 21. Pursuant to Labor Code section 226.7(c) and subpart (B) of paragraph 12 of IWC Wage
15 Order 5, if an employer fails to provide an employee with the required rest period, the employer
16 shall pay the employee one hour of pay at the employee's regular rate of compensation for each
17 workday that a rest period is not provided.

18 22. Plaintiffs and the class members were denied rest periods because they were required to
19 remain at the worksite during all alleged rest periods.

20 23. As a result of Defendants' rest period violations, Plaintiffs and the class members are
21 entitled to premium pay which is one additional hour of compensation for each missed break.

22
23 THIRD CAUSE OF ACTION

24 Overtime Violations

25 Against All Defendants

26 24. Plaintiffs incorporate by reference paragraphs 1 to 13 of the complaint.

27 25. Plaintiffs and the class members were required to work over eight hours in a day and/or 40
28 hours in a week without being compensated for all overtime.

1 26. Plaintiffs and the class members regularly had to work overtime off the clock, including
2 attending mandatory trainings.

3 27. The remedy for the unpaid off the clock work is payment of the unpaid overtime at the
4 correct regular rate of pay, plus interest and attorney fees, pursuant to Labor Code section 1194.

5
6 FOURTH CAUSE OF ACTION

7 Minimum Wage Violation

8 Against All Defendants

9 28. Plaintiffs incorporate by reference paragraphs 1 to 13 of the complaint.

10 29. Defendants paid Plaintiffs and the class members less than minimum wage when they
11 worked off the clock.

12 30. Labor Code section 1194 provides that any employee receiving less than the minimum
13 wage is entitled to recover the unpaid balance, including interest, reasonable attorneys' fees, and
14 costs of suit.

15
16 FIFTH CAUSE OF ACTION

17 Wage Statement Penalties

18 Against All Defendants

19 31. Plaintiffs incorporate by reference paragraphs 1 to 13 of the complaint.

20 32. Labor Code section 226(a) provides a list of information to include on wage statements.

21 33. Defendants this statute since overtime was not paid at the correct regular rate of pay.

22 34. As a result of this knowing and intentional violation, Labor Code section 226(e) requires
23 Defendants to pay wage statement penalties, plus attorneys' fees and costs per class member.

24
25 SIXTH CAUSE OF ACTION

26 Waiting Time Penalties

27 Against All Defendants

28 34. Plaintiffs incorporate by reference paragraphs 1 to 13 of the complaint.

35. For Plaintiffs and the waiting time subclass, waiting time penalties are owed since they were still owed wages after they stopped working, including unpaid overtime and premium pay.

SEVENTH CAUSE OF ACTION

Violation of West Hollywood Tip Law

Against All Defendants

35. Plaintiffs incorporate by reference paragraphs 1 to 13 of the complaint.

36. West Hollywood Municipal Code section 5.130.050 provides that amounts collected as service charges shall be paid to employees equitably and according to the services related to the amounts paid by customers.

37. Defendants did not equitably distribute service charges pursuant to this principle.

38. Therefore pursuant to West Hollywood Municipal Code section 5.130.150 penalties of \$100 per person for each day service charges were not equitably divided apply, plus attorney fees.

EIGHTH CAUSE OF ACTION

Violation of Unfair Competition Law

Against All Defendants

39. Plaintiffs incorporate by reference paragraphs 1 to 13 of the complaint.

40. This claim is being brought under the unlawful prong of the UCL.

41. Defendants violated the Labor Code and IWC Wage Order by not paying all wages and premium pay at the correct regular rate, and not equitably distributing service charges and tips.

42. Restitution pursuant to Business and Professions Code section 17203 applies.

43. Under Code of Civil Procedure section 1021.5, Plaintiff is entitled to attorney fees.

NINTH CAUSE OF ACTION

PAGA Penalties

Against All Defendants

45. Plaintiffs incorporate by reference paragraphs 1 to 13 of the complaint.

1 46. The PAGA penalties for the minimum wage violations are found in Labor Code sections
2 1197.1 and 2699.

3 47. The PAGA penalties for the overtime violations are found in Labor Code sections 558,
4 1197.1, and 2699.

5 48. The PAGA penalties for the meal break violations are found in Labor Code sections 558
6 and 2699.

7 49. The PAGA penalties for the rest break violations are found in Labor Code section 2699.

8 50. The PAGA penalties for the wage statement violations are found in Labor Code 2699.

9 51. The PAGA penalties for the tips violations are found in Labor Code section 2699.

10 52. Further, Plaintiffs are entitled to attorney fees and costs under Labor Code section 2699(g).

11
12 PRAYER

13 For All Causes of Action

14 1. That the court determine that this action may be maintained as a class action

15 2. That Plaintiffs serves as representative of the class

16 3. That Counsel for Plaintiffs be appointed as class counsel

17
18 First Cause of Action

19 1. Premium pay

20 2. Other relief the court deems proper

21
22 Second Cause of Action

23 1. Premium pay

24 2. Other relief the court deems proper

25
26 Third Cause of Action

27 1. Unpaid wages

28 2. Attorney fees and costs

- 1 3. Interest
2 4. Other relief the court deems proper
3

4 Fourth Cause of Action

- 5 1. Unpaid wages
6 2. Liquidated damages
7 3. Attorney fees and costs
8 4. Interest
9 5. Other relief the court deems proper
10

11 Fifth Cause of Action

- 12 1. Wage statement penalties
13 2. Attorney fees and costs
14 3. Other relief the court deems proper

15 Sixth Cause of Action

- 16 1. Waiting time penalties
17 2. Other relief the court deems proper
18

19 Seventh Cause of Action

- 20 1. Penalties of \$100 per person for each day service charges were not equitably distributed
21 2. Attorney fees and costs
22 3. Other relief the court deems proper
23

24 Eighth Cause of Action

- 25 1. Restitution of unpaid wages, premium pay, and work expenditures
26 2. Attorney fees and costs
27 3. Other relief the court deems proper
28 ///

- 1 Ninth Cause of Action
2 1. All applicable PAGA penalties
3 2. Attorney fees and costs
4 3. Other relief the court deems proper
5

6 Date: May 14, 2023

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