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on behalf of himself and current and former aggrieved employees

ELECTRONICALLY
FILED
Superior Court of California,
County of San Francisco
03/01/2023
Clerk of the Court
BY: JEFFREY FLORES
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN FRANCISCO

LUIS O. RAMIREZ, on behalf of himself and
other aggrieved employees,

Plaintiff,

vs.

LM SAN FRANCISCO, a Delaware corporation;
and DOES 1 to 100, inclusive,

Defendants.

Case No.:

CGC-23-604880

PAGA ACTION

**PLAINTIFF LUIS O. RAMIREZ'S
COMPLAINT FOR DAMAGES AND
RESTITUTION FOR CIVIL
PENALTIES PURSUANT TO THE
PRIVATE ATTORNEYS GENERAL
ACT OF 2004 ("PAGA"), LABOR
CODE SECTION 2698, et seq.**

Violation of California Labor Code §2698,
et seq. (California Labor Code Private
Attorneys General Act of 2004)

DEMAND FOR JURY TRIAL

COME NOW Plaintiff LUIS O. RAMIREZ ("Plaintiff"), who alleges and complains
against Defendants LM SAN FRANCISCO, a Delaware corporation ("Defendant LM SAN
FRANCISCO"), and DOES 1 to 100, inclusive (collectively "Defendants") brings this
representative action as proxy for the State of California's Labor and Workforce Development
Agency ("LWDA") on behalf of all current and former aggrieved employees of Defendants in
California, hereby alleges the following facts and claims against Defendants, and respectfully
request civil penalties, all other available relief, and a trial by jury of all issues and causes of action
so triable.

1 **JURISDICTION AND VENUE**

2 1. This representative action is brought pursuant to the California Labor Code section
3 2698, et seq. The civil penalties sought by Plaintiff exceed the minimal jurisdiction limits of the
4 Superior Court and will be established according to proof at trial. The “amount in controversy” for
5 the named Plaintiff, including claims for compensatory damages, restitution, penalties, wages,
6 premium pay, and pro rata share of attorneys’ fees, is less than seventy-five thousand dollars
7 (\$75,000).

8 2. This Court has jurisdiction over this action pursuant to the California Constitution,
9 Article VI, Section 10, which grants the superior court “original jurisdiction in all other causes”
10 except those given by statute to other courts. The statutes under which this action is brought do not
11 specify any other basis for jurisdiction.

12 3. This Court has jurisdiction over Defendant because, upon information and belief,
13 Defendant is a citizen of California, has sufficient minimum contacts in California, or otherwise
14 intentionally avails itself of the California market so as to render the exercise of jurisdiction over it
15 by the California courts consistent with traditional notions of fair play and substantial justice.

16 4. Venue is proper in this Court because, upon information and belief, Defendant
17 maintains offices, has agents, and/or transacts business in the State of California, including the
18 County of San Francisco. At all relevant times, Defendant maintained its headquarters/”nerve
19 center” within the State of California, County of San Francisco.

20 **PARTIES**

21 5. Plaintiff brings this action as a representative of the Labor and Workforce
22 Development Agency on behalf of himself and other current and former employees subject to
23 violations of the Labor Code and IWC Wage Orders. The named Plaintiff and the persons on whose
24 behalf this action is filed include current, former and/or future employees of Defendants who
25 worked, work, or will work for Defendants as hourly non-exempt employees in California. At all
26 times mentioned herein, the currently named Plaintiff is and was domiciled and a resident and citizen
27 of California and was employed by Defendants in an hourly non-exempt position at Defendants’
28 location in San Francisco from approximately January 2017 through and including August 2022.

1 6. Plaintiff is informed and believes and thereon alleges that Defendant LM SAN
2 FRANCISCO is authorized to do business within the State of California and is doing business in the
3 State of California and/or that Defendants DOES 1-50 are, and at all times relevant hereto were
4 persons acting on behalf of Defendant LM SAN FRANCISCO in the establishment of, or ratification
5 of, the aforementioned illegal wage and hour practices or policies. Defendant LM SAN
6 FRANCISCO operates in San Francisco County and employed Plaintiff and putative class members
7 in San Francisco County, including but not limited to, at Pier 1 ½ The Embarcadero., Suite 100, San
8 Francisco, California 94111.

9 7. Plaintiff is informed and believes and thereon alleges that Defendants DOES 1
10 through 50 are corporations, or are other business entities or organizations of a nature unknown to
11 Plaintiff that employed Plaintiff and aggrieved California non-exempt employees, permitted
12 Plaintiff and aggrieved employees to work, and exercised control over the wages, hours and working
13 conditions of employment of Plaintiff and aggrieved employees.

14 8. Plaintiff is informed and believes and thereon alleges that Defendants DOES 51
15 through 100 are individuals unknown to Plaintiff. Each of the individual defendants is sued
16 individually and in his or her capacity as an agent, shareholder, owner, representative, manager,
17 supervisor, independent contractor and/or employee of each defendant who violated or caused to be
18 violated the minimum wage and overtime provisions of the Labor Code and/or any provision of the
19 Industrial Welfare Commission's wage orders regulating hours and days of work.

20 9. Plaintiff is unaware of the true names of Defendants DOES 1 through 100. Plaintiff
21 sues said defendants by said fictitious names, and will amend this complaint when the true names
22 and capacities are ascertained or when such facts pertaining to liability are ascertained, or as
23 permitted by law or by the Court. Plaintiff is informed and believes that each of the fictitiously
24 named defendants is in some manner responsible for the events and allegations set forth in this
25 complaint.

26 10. Plaintiff makes the allegations in this complaint without any admission that, as to
27 any particular allegation, Plaintiff bears the burden of pleading, proving, or persuading and Plaintiff
28 reserves all of Plaintiff's right to plead in the alternative.

PAGA ALLEGATIONS

11. At all times herein set forth, PAGA was applicable to Plaintiff's employment by Defendants.

12. At all times herein set forth, PAGA provides that any provision of law under the California Labor Code that provides for a civil penalty to be assessed and collected by the LWDA for violations of the California Labor Code may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself and other current or former employees pursuant to procedures outlined in California Labor Code section 2699.3.

13. Pursuant to PAGA, a civil action under PAGA may be brought by an "aggrieved employee," who is any person that was employed by the alleged violator and against whom one or more of the alleged violations was committed.

14. Plaintiff was employed by Defendants and the alleged violation was committed against him during his time of employment and he is, therefore, an aggrieved employee. Plaintiff and the other employees are "aggrieved employees" as defined by California Labor Code section 2699(c) in that they are all current or former employees of Defendants, and one or more of the alleged violations were committed against them.

15. Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved employee, including Plaintiff, may pursue a civil action arising under PAGA after the following requirements have been met:

- a. The aggrieved employee shall give written notice by online submission (hereinafter "Employee's Notice") to the Labor & Workforce Development Agency (hereinafter "LWDA") and by U.S. Certified Mail to the employer of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations.
- b. The LWDA shall provide notice (hereinafter "LWDA Notice") to the employer and the aggrieved employee by certified mail that it does not intend to investigate the alleged violation within sixty (60) calendar days of the postmark date of the Employee's Notice. Upon receipt of the LWDA Notice,

1 or if the LWDA Notice is not provided within sixty-five (65) calendar days of
2 the postmark date of the Employee's Notice, the aggrieved employee may
3 commence a civil action pursuant to California Labor Code section 2699 to
4 recover civil penalties in addition to any other penalties to which the employee
5 may be entitled.

6 16. On December 13, 2022, Plaintiff provided written notice by online submission to the
7 LWDA and by U.S. Certified Mail to Defendant LM SAN FRANCISCO of the specific provisions
8 of the California Labor Code alleged to have been violated, including the facts and theories to support
9 the alleged violations. Plaintiff has not received an LWDA Notice within sixty-five (65) calendar
10 days of the date of Plaintiff's notice.

11 17. Therefore, Plaintiff has satisfied the administrative prerequisites under California
12 Labor Code section 2699.3(a) to recover civil penalties against Defendants, in addition to other
13 remedies, for violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510,
14 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802.

15 **GENERAL LLEGATIONS**

16 18. At all relevant times set forth herein, Defendants employed Plaintiff and other
17 aggrieved hourly-paid or non-exempt employees who worked for any of the Defendants in the State
18 of California (hereinafter collectively referred to as the "other aggrieved employees").

19 19. Defendants, jointly and severally, employed Plaintiff as an hourly-paid, non- exempt
20 employee from approximately January 2017 through and including in or about August 2022 in the
21 State of California.

22 20. Defendants hired Plaintiff and the other aggrieved employees, and failed to
23 compensate them for all hours worked, missed meal periods or rest breaks.

24 21. Defendants had the authority to hire and terminate Plaintiff and the other aggrieved
25 employees, to set work rules and conditions governing Plaintiff's and the other aggrieved employees'
26 employment, and to supervise their daily employment activities.

1 22. Defendants exercised sufficient authority over the terms and conditions of
2 Plaintiff's and the other aggrieved employees' employment for them to be joint employers of
3 Plaintiff and the other aggrieved employees.

4 23. Defendants directly hired and paid wages and benefits to Plaintiff and the other
5 aggrieved employees.

6 24. Defendants continue to employ hourly-paid or non-exempt employees, within the
7 State of California.

8 25. Plaintiff and the other aggrieved employees worked over eight (8) hours in a day,
9 and/or forty (40) hours in a week during their employment with Defendants.

10 26. Plaintiff is informed and believes, and based thereon alleges, that Defendants
11 engaged in a uniform policy and systematic scheme of wage abuse against their hourly-paid or
12 non-exempt employees. This scheme involved, *inter alia*, failing to pay them for all hours worked
13 and for missed (short, late, interrupted, and altogether missed) meal periods and rest breaks in
14 violation of California law.

15 27. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew
16 or should have known that Plaintiff and the other aggrieved employees were entitled to receive
17 certain wages for overtime compensation and that they were not receiving wages for overtime
18 compensation.

19 a. At times, Plaintiff and other current and former aggrieved California-based
20 hourly non-exempt employees worked overtime hours under state law during
21 pay periods that they earned "banquet pay". Despite the fact that California
22 law requires employers to include all remuneration as part of the regular rate
23 of pay for determining overtime premium pay, Defendants entirely excluded
24 Plaintiff's and other current and former aggrieved California-based hourly
25 non-exempt employees' "banquet pay" in calculating those employees'
26 overtime rate of pay.

27 28. Plaintiff is informed and believes, and based thereon alleges, that Defendants failed
28 to provide Plaintiff and the other aggrieved employees the required meal and rest periods during

1 the relevant time period as required under the Industrial Welfare Commission Wage Orders and
2 thus they are entitled to any and all applicable penalties.

- 3 a. During pay periods Defendants paid Plaintiff and other current and former
4 aggrieved California-based hourly non-exempt employees additional
5 “banquet pay” and meal period premium wages for missed, late, short, or
6 interrupted meal periods, Defendants failed to pay the meal period premium
7 wages at one (1) hour of pay at Plaintiff’s and other current and former
8 aggrieved California-based hourly non-exempt employees’ regular rate of pay
9 due to Defendants’ failure to include the “banquet pay” when calculating
10 Plaintiff’s and other current and former aggrieved California-based hourly
11 non-exempt employees regular rate of pay for the purpose of paying premium
12 wages.

13 29. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew
14 or should have known that Plaintiff and the other aggrieved employees were entitled to receive all
15 wages owed to them during their employment. Plaintiff and the other aggrieved employees did
16 not receive payment of all wages, including overtime wages and meal and rest period premiums,
17 within any time permissible under California Labor Code section 204.

18 30. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew
19 or should have known that Plaintiff and the other aggrieved employees were entitled to receive all
20 meal periods or payment of one additional hour of pay at Plaintiff’s and the other aggrieved
21 employee’s regular rate of pay when a meal period was missed, and they did not receive all meal
22 periods or payment of one additional hour of pay at Plaintiff’s and the other aggrieved employee’s
23 regular rate of pay when a meal period was missed.

24 31. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew
25 or should have known that Plaintiff and the other aggrieved employees were entitled to receive all
26 rest periods or payment of one additional hour of pay at Plaintiff’s and the other aggrieved
27 employees’ regular rate of pay when a rest period was missed, and they did not receive all rest
28

1 periods or payment of one additional hour of pay at Plaintiff's and the other aggrieved employees'
2 regular rate of pay when a rest period was missed.

3 32. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew
4 or should have known that Plaintiff and the other aggrieved employees were entitled to receive
5 complete and accurate wage statements in accordance with California law, but, in fact, they did
6 not receive complete and accurate wage statements from Defendants. The deficiencies included,
7 *inter alia*, the failure to include the total number of hours worked by Plaintiff and the other
8 aggrieved employees.

9 33. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew
10 or should have known that Defendants had to keep complete and accurate payroll records for
11 Plaintiff and the other aggrieved employees in accordance with California law, but, in fact, did
12 not keep complete and accurate payroll records.

13 34. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew
14 or should have known that Plaintiff and the other aggrieved employees were entitled to receive all
15 wages owed to them upon discharge or resignation, including overtime wages and meal and rest
16 period premiums, and they did not, in fact, receive all such wages owed to them at the time of
17 their discharge.

18 35. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew
19 or should have known that Plaintiff and the other aggrieved employees were entitled to receive
20 sick pay compensable at the employee's regular rate of pay, for the workweek in which the paid
21 leave was taken, or at a rate determined by averaging total wages excluding overtime over 90-days.

22 a. In addition to hourly wages, Plaintiff and other current and former aggrieved,
23 California-based, hourly non-exempt employees, received compensation in
24 addition to hourly wages, including but not limited to, "banquet pay," but
25 those additional amounts were not included when calculating sick pay wages.
26 By failing to pay Plaintiff and other current and former aggrieved, California-
27 based, hourly non-exempt employees, for sick pay at the correct rate,
28 Defendants willfully violated Labor Code section 246.

1 36. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew
2 or should have known that they had a duty to compensate Plaintiff and the other aggrieved
3 employees pursuant to California law, and that Defendants had the financial ability to pay such
4 compensation, but willfully, knowingly, and intentionally failed to do so, and falsely represented
5 to Plaintiff and the other aggrieved employees that they were properly denied wages, all in order
6 to increase Defendants' profits.

7 37. At all material times set forth herein, Defendants failed to pay overtime wages to
8 Plaintiff and the other aggrieved employees. Plaintiff and the other aggrieved employees were
9 required to work more than eight (8) hours per day and/or forty (40) hours per week without
10 overtime compensation.

11 38. At all material times set forth herein, Defendants failed to provide uninterrupted
12 meal and rest periods to Plaintiff and the other aggrieved employees.

13 39. At all material times set forth herein, Defendants failed to pay Plaintiff and the
14 other aggrieved employees' wages within any time permissible under California law, including,
15 *inter alia*, California Labor Code section 204.

16 40. At all material times set forth herein, Defendants failed to provide complete and
17 accurate wage statements to Plaintiff and the other aggrieved employees.

18 41. At all material times set forth herein, Defendants failed to pay Plaintiff and the
19 other aggrieved employees all wages owed to them upon discharge or resignation.

20 42. At all material times set forth herein, Defendants failed to keep complete and accurate
21 payroll records for Plaintiff and the other aggrieved employees.

22 43. At all material times set forth herein, Defendants failed to properly compensate
23 Plaintiff and the other aggrieved employees pursuant to California law in order to increase
24 Defendants' profits.

25 44. At all material times set forth herein, Defendants failed to pay sick pay at the correct
26 rate.

27 45. California Labor Code section 218 states that noting in Article 1 of the Labor Code
28 shall limit the right of any wage claimant to "sue directly . . . for any wages or penalty due to him [or

her] under this article.”

FIRST CAUSE OF ACTION

CIVIL PENALTIES AND WAGES PURSUANT TO THE PRIVATE ATTORNEYS

GENERAL ACT OF 2004, LABOR CODE SECTION 2698, et seq.

(By Plaintiff As Against All Defendants and Doe Defendants)

46. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 48, and each and every part thereof with the same force and effect as though fully set forth herein.

47. PAGA expressly establishes that any provision of the California Labor Code which provides for a civil penalty to be assessed and collected by the LWDA, or any of its departments, divisions, commissions, boards, agencies or employees for a violation of the California Labor Code, may be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself, and other current or former employees.

48. Whenever the LWDA, or any of its departments, divisions, commissions, boards, agencies, or employees has discretion to assess a civil penalty, a court in a civil action is authorized to exercise the same discretion, subject to the same limitations and conditions, to assess a civil penalty.

49. Plaintiff and the other hourly-paid or non-exempt employees are “aggrieved employees” as defined by California Labor Code section 2699(c) in that they are all current or former employees of Defendants, and one or more of the alleged violations was committed against them.

Failure to Pay Overtime

50. Defendants’ failure to pay legally required overtime wages to Plaintiff and the other aggrieved employees is in violation of the Wage Orders and constitutes unlawful or unfair activity prohibited by California Labor Code sections 510 and 1198.

Failure to Provide Meal Periods

51. Defendants’ failure to provide legally required meal periods to Plaintiff and the other aggrieved employees is in violation of the Wage Orders and constitutes unlawful or unfair activity prohibited by California Labor Code sections 226.7 and 512(a).

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1 of them, attorneys' fees and costs pursuant to California Labor Code section 218.5, as well as all
2 penalties pursuant to PAGA against Defendants, and each of them, including but not limited to:

- 3 a. Penalties under California Labor Code section 2699 in the amount of a
4 hundred dollars (\$100) for each aggrieved employee per pay period for the
5 initial violation, and two hundred dollars (\$200) for each aggrieved employee
6 per pay period for each subsequent violation;
- 7 b. Penalties under California Code of Regulations Title 8 section 11010 et seq.
8 in the amount of fifty dollars (\$50) for each aggrieved employee per pay
9 period for the initial violation, and one hundred dollars (\$100) for each
10 aggrieved employee per pay period for each subsequent violation;
- 11 c. Penalties under California Labor Code section 210 in addition to, and entirely
12 independent and apart from, any other penalty provided in the California
13 Labor Code in the amount of a hundred dollars (\$100) for each aggrieved
14 employee per pay period for the initial violation, and two hundred dollars
15 (\$200) for each aggrieved employee per pay period for each subsequent
16 violation; and
- 17 d. Any and all additional penalties and sums as provided by the California Labor
18 Code and/or other statutes.

19 59. Pursuant to California Labor Code section 2699(i), civil penalties recovered by
20 aggrieved employees shall be distributed as follows: seventy-five percent (75%) to the Labor and
21 Workforce Development Agency for the enforcement of labor laws and education of employers
22 and employees about their rights and responsibilities and twenty-five percent (25%) to the
23 aggrieved employees.

24 60. Further, Plaintiff is entitled to seek and recover reasonable attorneys' fees and costs
25 pursuant to California Labor Code sections 210, 218.5 and 2699 and any other applicable statute.

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1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff, individually, and on behalf of other aggrieved employees pursuant
3 to the Private Attorneys General Act, prays for relief and judgment against Defendants, jointly and
4 severally, in excess of twenty-five thousand dollars (\$25,000):

5 **ON THE FIRST CAUSE OF ACTION:**

- 6 1. For all civil penalties authorized by Labor Code section 2698, *et seq.*;
- 7 2. For civil penalties under Labor Code section 226.3 in the amount two hundred fifty
8 dollars (\$250) per aggrieved employee for the first violation, and one thousand dollars (\$1,000) per
9 aggrieved employee for each subsequent violation;
- 10 3. For civil penalties under Labor Code section 2699(f), for Labor Code violations
11 without a specific civil penalty, in the amount of one hundred dollars (\$100) for each aggrieved
12 employee per pay period for each initial violation and two hundred dollars (\$200) for each aggrieved
13 employee per pay period for each subsequent violation;
- 14 4. For civil penalties under Labor Code section 558, as follows: (1) for an initial
15 violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the
16 employee was underpaid; (2) for each subsequent violation, one hundred dollars (\$100) for each
17 underpaid employee for each pay period for which the employee was underpaid;
- 18 5. For an award of reasonable attorneys' fees and costs pursuant to Labor Code section
19 2699(g), or other applicable laws;
- 20 6. For pre-judgment and post-judgment interest as provided by law; and
- 21 7. For such additional relief as this Court may deem just and proper.

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23 Dated: March 1, 2023

Respectfully submitted,
E&L, LLP

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26 By: _____

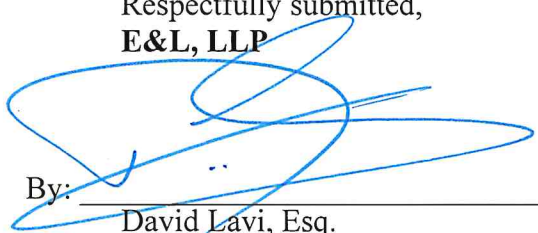
David Lavi, Esq.
Arie Ebrahimian, Esq.
Attorneys for Plaintiff,
LUIS O. RAMIREZ on behalf of himself and
current and former aggrieved employees

DEMAND FOR JURY TRIAL

Plaintiff, individually, and on behalf of other aggrieved employees pursuant to the California
Private Attorneys General Act, requests a trial by jury.

Dated: March 1, 2023

Respectfully submitted,
E&L, LLP

By: 

David Lavi, Esq.
Arie Ebrahimian, Esq.
Attorneys for Plaintiff,
LUIS O. RAMIREZ on behalf of himself and
current and former aggrieved employees