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Attorneys for Plaintiff Kadie Freeman as a proxy for the LWDA

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN MATEO

10 KADIE FREEMAN, individually and on
11 behalf of all others similarly situated,

12 Plaintiffs,

13 vs.

14 BON APPETIT MANAGEMENT
15 COMPANY, a California corporation;
16 COMPASS GROUP USA, INC., a Delaware
17 corporation; and DOES 1-100, inclusive,

18 Defendants.

Case No.: 23-CIV-01497

FIRST AMENDED COMPLAINT TO ASSESS
AND COLLECT CIVIL PENALTIES FOR:

1. VIOLATION OF THE PRIVATE
ATTORNEYS GENERAL ACT OF 2004 [Lab.
Code § 2698 et seq.]

19 1. Plaintiff Kadie Freeman (“Freeman” or “Plaintiff”), as a proxy for the California
20 Labor & Workforce Development Agency (“LWDA”) brings this first amended complaint seeking
21 to assess and collect civil penalties pursuant to the California Labor Code Private Attorneys
22 General Act of 2004 (Cal. Labor Code §§ 2698, et seq.) against Bon Appetit Management
23 Company, a California corporation (“BAM”), Compass Group USA, Inc., a Delaware corporation
24 (“Compass”), and Does 1 through 100 (collectively, “Defendants”). As set forth with greater
25 particularity below, Freeman, having exhausted administrative remedies as required by Labor Code
26 § 2699.3 seeks to recover civil penalties for violations of the California Labor Code committed
27 against her and other current and former California employees of Defendants.

28 ///

Electronically
FILED
by Superior Court of California, County of San Mateo
ON 6/12/2023
By /s/ Ashlee Nelson
Deputy Clerk

1
2 **PARTIES**

3 2. Freeman is, and at all times relevant herein was, employed in Santa Clara County,
4 California, and was an “employee” as defined by the Fair Labor Standards Act (“FLSA”), the
5 California Labor Code (“Labor Code”), and the applicable California Industrial Wage Commission
6 (“IWC”) Order(s).

7 3. BAM is a corporation organized and existing under the laws of the state of California,
8 with its principal place of business located at 201 Redwood Shores Parkway, Suite 100, Redwood
9 Shores, San Mateo County, California. At all times relevant herein, BAM has been an “employer” as
10 defined by the Fair Labor Standards Act (“FLSA”), the California Labor Code (“Labor Code”), and
11 the applicable California Industrial Wage Commission (“IWC”) Order(s) and employed Plaintiff.

12 4. Compass is a corporation organized and existing under the laws of the state of
13 Delaware, with its principal place of business located at 2400 Yorkmont Road, Charlotte, North
14 Carolina. At all times relevant herein, Compass has been an “employer” as defined by the Fair Labor
15 Standards Act (“FLSA”), the California Labor Code (“Labor Code”), and the applicable California
16 Industrial Wage Commission (“IWC”) Order(s) and employed Plaintiff.

17 5. BAM, Compass, and Does 1-100 are collectively referred to as Defendants.

18 6. Plaintiff is not aware of the true names and capacities of the Defendants sued herein as
19 Does 1 through 100, whether individual, corporate, associate, or otherwise and therefore sues such
20 Defendants by these fictitious names. Plaintiff will amend this Complaint to allege their true names
21 and capacities when ascertained. Plaintiff is informed and believes, and on that basis alleges, that
22 each of the fictitiously named Defendants is responsible in some manner for the occurrences herein
23 alleged and that Plaintiff’s injuries and damages herein alleged were legally caused by such
24 Defendants. Unless otherwise indicated, each Defendant was acting within the course and scope of
25 said agency and/or employment, with the knowledge and/or consent of said co-Defendant.

26 7. Plaintiff is informed and believes and thereupon alleges that at all times mentioned
27 herein, each of the Defendants, including each Doe Defendant, was acting as the agent, servant,
28 employee, partner and/or joint venturer of and was acting in concert with each of the remaining

1 Defendants, including each Doe Defendant, in doing the things herein alleged, while at all times acting
2 within the course and scope of such agency, service, employment partnership, joint venture and/or
3 concert of action. Each Defendant, in doing the acts alleged herein, was acting both individually and
4 within the course and scope of such agency and/or employment, with the knowledge and/or consent of
5 the remaining Defendants.

6 **JURISDICTION AND VENUE**

7 8. This Court is the proper Court, and this action is properly filed in the Superior Court of
8 California for the County of San Mateo pursuant to Code of Civil Procedure section 395(a) because
9 BAM resides in San Mateo County and does business in San Mateo County.

10 **GENERAL ALLEGATIONS**

11 9. Plaintiff was hired by Defendants to work in the front of the house at a restaurant
12 facility on the Google campus in and around August 2017. Plaintiff was promoted to a prep cook at
13 the same facility in 2019.

14 10. Throughout her employment, Plaintiff was properly classified as a non-exempt
15 employee and paid an hourly wage. As such, she was entitled to be paid at least minimum wage for
16 every hour she worked and overtime for hours worked beyond eight (8) in a workday, forty (40) in a
17 workweek, the first eight (8) hours of worked on the seventh consecutive day in the workweek, and
18 doubletime for hours worked beyond 12 in a workday and hours worked beyond eight (8) on the
19 seventh consecutive workday in the workweek. Cal. Labor Code § 510.

20 11. Throughout her employment, Defendants failed to properly calculate and pay the
21 overtime wages owed to Plaintiff and its other non-exempt employees.

22 12. Specifically, Defendants failed to include commissions, non-discretionary bonuses and
23 other items of compensation (including housing and vehicle allowances) when determining Plaintiff's
24 and its other non-exempt employees' regular rate of pay for purposes of overtime.

25 13. For example, Plaintiff was paid items identified as "Transpo AllowanceGoogle" and
26 "Housing Allowance Googl" during each and every pay period that she was employed. These
27 amounts were components of Plaintiff's compensation that she was offered/provided *because* of the
28 specific job/worksites assignment she was given, accepted, and performed. See Exh. 1.

1 14. Pursuant to its uniform policy, practice and procedure, Defendants failed to include
2 Plaintiff's allowances when calculating her regular rate of pay and thus underpaid her for the overtime
3 she worked during periods when she was also provided allowances. *Id.*

4 15. Plaintiff worked overtime hours during the pay period July 15-28, 2022. Her records
5 indicate she worked 0.32 overtime hours during that period. *Id.*

6 16. Although Plaintiff worked 0.32 hours of overtime, she was compensated for overtime at
7 1 ½ her then existing "base hourly rate". For the July 15-28, 2022 pay period, Plaintiff was only
8 compensated for the 0.32 overtime hours she worked at the rate of \$35.55; 1 ½ times her base hourly
9 rate of \$23.70. *Id.*

10 17. Pursuant to its uniform policy, practice and procedure, Defendants underpaid Plaintiff
11 and other class members for the overtime she worked.

12 18. Plaintiff and Defendants' other non-exempt California employees were also entitled to
13 sick pay.

14 19. Any sick pay used appeared on their wage statements as "sick hours".

15 20. Defendants failed to include commissions, non-discretionary bonuses and other items
16 of compensation (including housing and vehicle allowances) when determining Plaintiff's and its other
17 non-exempt California employees' regular rate of pay for purposes of sick pay.

18 21. Instead, redeemed sick pay was only paid at the base hourly rate of Plaintiff and
19 Defendants' other California non-exempt employees.

20 22. Pursuant to its uniform policy, practice and procedure, Defendants failed to include all
21 of Plaintiff's remuneration when calculating her regular rate of pay and underpaid her for redeemed
22 sick leave. Exh. 2.

23 23. Because of the violations set forth above, the wage statements furnished by Defendants
24 to their non-exempt California employees violated California Labor Code section 226(a) insofar as
25 they failed to accurately show:

- 26 a. The gross wages earned, in violation of section 226(a)(1);
- 27 b. The net wages earned, in violation of section 226(a)(5); and
- 28 c. All applicable hourly rates in effect during the pay period and the corresponding
number of hours worked at each hourly rate in violation of section 226(a)(9).

1 24. Defendants were, at all times relevant herein, aware of the requirements of California
2 Labor Code section 226.

3 25. Defendants have, at all times relevant herein, furnished wage statements to each of their
4 non-exempt California employees pursuant to an established set of policies, procedures and practices.

5 26. Plaintiff and Defendants' other non-exempt California employees, both current and
6 former, were unable to promptly and easily determine their gross wages earned from the wage
7 statements furnished by Defendants.

8 27. Plaintiff and Defendants' other non-exempt California employees, both current and
9 former, were unable to promptly and easily determine their net wages earned from the wage
10 statements furnished by Defendants.

11 28. Plaintiff and Defendants' other non-exempt California employees, both current and
12 former, were unable to promptly and easily determine all applicable hourly rates in effect during the
13 pay period and the corresponding number of hours worked at each hourly rate from the wage
14 statements furnished by Defendants.

15 29. Plaintiff separated from employment with Defendants in March 2023 when she was
16 constructively terminated from her position due to unlawful disability discrimination and was not
17 offered any comparable assignment.

18 30. At the time of Plaintiff's separation, Defendants owed her outstanding wages, including
19 underpaid overtime wages for time that was not properly compensated at the regular rate of pay, and
20 redeemed sick leave wages that were not compensated at the regular rate of pay.

21 31. Defendants' other former California non-exempt employees similarly separated without
22 being timely provided all wages due and owing.

23 32. Defendants' failure to pay the outstanding wages to Plaintiff and its other non-exempt
24 California employees was willful.

25 **PRIVATE ATTORNEYS GENERAL ACT ALLEGATIONS**

26 33. The Labor Code Private Attorneys General Act of 2004 ("PAGA"), as set forth at
27 Labor Code § 2698 *et seq.*, is and at all times relevant herein was applicable to Freeman's
28 employment with Defendants.

1 34. Pursuant to Labor Code § 2699(a), any provision of the Labor Code which provides
2 for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency
3 (“LWDA”) for violations of the Labor Code may, as an alternative, be recovered through a civil
4 action brought by an aggrieved employee on behalf of himself or herself and other current or
5 former employees pursuant to the procedures outlined in Labor Code § 2699.3.

6 35. Freeman was employed by Defendants and the alleged violations were committed
7 against her in relation to her employment with Defendants. Freeman is therefore an aggrieved
8 employee as defined by Labor Code § 2699(c). Other employees, current and former, are also
9 aggrieved employees in that one or more of the alleged violations were also committed against
10 them in relation to their employment with Defendants.

11 36. Pursuant to Labor Code § 2699(g), an aggrieved employee may recover the civil
12 penalty on behalf of himself or herself and other current or former employees against whom one or
13 more of the alleged violations was committed. Furthermore, any employee who prevails in
14 any such action shall be entitled to an award of reasonable attorney's fees and costs.

15 37. Pursuant to Labor Code § 2699.3, an aggrieved employee may pursue a civil action
16 arising under the PAGA after the following requirements have been met:

- 17 a. The aggrieved employee shall give written notice by online filing to the LWDA and
18 by certified mail to the employer (hereinafter “Employee’s Notice”) of the specific
19 provisions of California Labor Code alleged to have been violated, including the
20 facts and theories to support the alleged violations;
- 21 b. The LWDA shall provide notice (hereinafter “LWDA’s Notice”) to the employer
22 and the aggrieved employee by certified mail that it does not intend to investigate
23 the alleged violation within 60 days of the postmark date of the Employee’s Notice.
24 Upon receipt of the LWDA’s Notice, or if the LWDA does not provide notice with
25 65 calendar days of the postmark date of the Employee’s Notice, the aggrieved
26 employee may commence a civil action pursuant to California Labor Code § 2699
27 to recover civil penalties in addition to any other penalties to which the employee
28 may be entitled.

1 c. For all alleged violations not enumerated in Labor Code § 2699.5, the employer is
2 given thirty-three (33) days to cure and notify the aggrieved employee by certified
3 mail that the violation has been cured. If the violation is not cured, the aggrieved
4 employee may commence a civil action pursuant to California Labor Code § 2699
5 to recover civil penalties in addition to any other penalties to which the employee
6 may be entitled.

7 38. On March 29, 2023, Plaintiff provided written notice by certified mail to
8 Defendants, and by online filing to the LWDA, of the specific provisions of the Labor Code
9 alleged to have been violated, including the facts and theories to support the alleged violations. A
10 true and correct copy of the Notice is attached hereto as **Exhibit 3**.

11 39. As of the date of this amended complaint, which is more than sixty-five (65) days after
12 the March 29, 2023 letter, the LWDA has not responded to Plaintiff's notification or otherwise
13 indicated an intention to investigate her claims. Defendants have also not provided any notification or
14 other indication that it has cured any of the violations alleged in the March 29, 2023 letter. Plaintiff has
15 therefore satisfied the administrative prerequisites under Labor Code § 2699.3 to bring a civil action to
16 recover civil penalties against Defendants for violations of California Labor Code

17 **FIRST CAUSE OF ACTION**
18 **VIOLATION OF LABOR CODE SECTION 2698 ET SEQ.**
19 **(Private Attorneys General Act)**
20 **Against Defendant**

21 40. Plaintiff hereby realleges and incorporates by reference each and every allegation set
22 forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
23 allegations of this cause of action.

24 41. Pursuant to Labor Code section 2699(a), any provision of the Labor Code which
25 provides for a civil penalty to be assessed and collected by the LWDA for violations of the Labor
26 Code may, as an alternative, be recovered through a civil action brought by an aggrieved employee on
27 behalf of himself or herself and other current or former employees pursuant to the procedures outlined
28 in Labor Code section 2699.3.

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42. Plaintiff was employed by Defendants and the alleged violations were committed against her during her time of employment. Plaintiff is therefore an aggrieved employee as defined by Labor Code section 2699(c). Other current and former employees are also aggrieved employees in that one or more of the alleged violations were also committed against them during their time of employment with Defendant.

43. Pursuant to Labor Code section 2699(f), the civil penalty recoverable in a PAGA action is that which is provided for by the Labor Code or, where no civil penalty is specifically provided, one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.

44. Pursuant to California Labor Code section 2699(g), an aggrieved employee may recover the civil penalty on behalf of himself or herself and other current or former employees against whom one or more of the alleged violations was committed. Furthermore, any employee who prevails in any such action shall be entitled to an award of reasonable attorney's fees and costs.

45. As set forth above, Defendants violated the California Labor Code by, inter alia, failing to properly overtime, failing to pay minimum wage for all hours worked, failing to timely pay wages, failing to properly compensate for sick pay, failing to timely pay wages on separation, and failing to furnish accurate itemized wage statements.

46. Wherefore, Plaintiff and the other aggrieved employees have been damaged as set forth above and request relief as hereafter provided.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays judgment against Defendants as follows:

1. For civil penalties, including those available under Labor Code sections 226.3, 256, 558 exclusive of the underpaid wage portion and consistent with the California Supreme Court’s holding in *Z.B., N.A. v. Superior Court* (2019) 8 Cal.5th 175; and 2699(f);
2. For statutory attorneys’ fees and costs, including those available under Labor Code section 2699(g);

/ / /

- 1 3. For prejudgment and post-judgment interest according to any applicable provision
2 of law or as otherwise permitted by law; and
3 4. For such other and further relief as the court deems just and proper.

4 **DATED:** June 12, 2023

MAYALL HURLEY P.C.

5
6 By _____



JENNY D. BAYSINGER

Attorneys for Plaintiff as a proxy for the LWDA

EXHIBIT 1

Name..... KADIE FREEMAN Personnel # :01144707 Pay area.... XF XF Bi-weekly Legal Entity:T070			Exemptions: FED 01 Single Exemptions: CA 01 Single Exemptions: Exemptions: Exemptions:			Cost Center: 15660 Pay type.... Regular payroll Pay period.. 07/15/2022 - 07/28/2022 Payroll for. 16/2022 Payroll in.. 16/2022			
Check date	Check number	Chk amount =	Gross -	Taxes -	DEDS +	EXP REIM	Total Hours Worked		
08/04/2022	17371346	1,244.22	1,589.31 -	330.28	26.81 +	12.00	47.38		
GROSS		RATE	HOURS	AMOUNT	YTD	PRE-TAX ITEMS		AMOUNT YTD	
Retro Adjustment				48.00		5020 Supplemental Life Ins		0.25- 2.00-	
Hourly Wage		23.70	47.06	1,115.33	4,785.89	Tax Exempt Total		0.25- 2.00-	
Hourly Holiday Pay					1,049.63	POST-TAX ITEMS		AMOUNT YTD	
Vacation Pay - Hourly		23.70	3.02	71.57	484.39	2711 Union Dues		25.90- 181.30-	
Overtime Adjustment				0.66	0.66	4025 Voluntary Programs			513.55-
Transpo AllowanceGoogle			1.00	66.92	466.14	5023 LTD Hourly Ins		0.66- 5.28-	
Housing Allowance Googl			1.00	133.85	932.33	Total After Tax Deduction		26.56- 700.13-	
Non Work Paid Time Hour		23.70	8.00	189.60	3,767.44	Vacation/Sick/Personal-Balances			
Daily Overtime *		35.55	0.32	11.38	11.38	Wage Type Description		Balance	
Sick Hours					1,066.50	1600 Vacation Hrs. Bal. - Hrly		1.62	
Claim from prev. period				48.00		1626 COVID Sick Bal. Days-Hrly		10.00	
Total Earnings				1,589.31	12,564.36	EXP REIM		AMOUNT YTD	
TAXES				AMOUNT	YTD	1132 Cell Phone Stipend		12.00 96.00	
Federal		FED	Federal			Total Reim Expense		12.00 96.00	
/401 TX Withholding Tax				156.22	1,309.74				
/403 TX EE Social Security Tax				98.51	778.87				
/405 TX EE Medicare Tax				23.03	182.15				
State		CA	California						
/401 TX Withholding Tax				35.04	359.05				
/441 TX EE Disability Tax				17.48	138.19				
Total Taxes				330.28	2,768.00				
Pay stubs and prior year W2s are available electronically for all active and LOA associates via the following applications:									
OMS - compassmanager.com CAP - compassassociate.com ESS - ess.compassassociate.com									
Total hours worked means time spent working and does not include OT premium, holiday, sick, vacation or any other paid time off.									
Los recibos de nómina y los W2 del año anterior están disponibles para todos los asociados activos y de Licencia de Ausencia en: OMS - compassmanager.com CAP - compassassociate.com ESS - ess.compassassociate.com									
El total de horas trabajadas significa el tiempo dedicado a trabajar y no incluye paga extra por tiempo extraordinario, días de fiesta enfermedad, vacaciones o cualquier otro tiempo libre pagado.									
Bon Appetit Management Co. 201 Redwood Shores Pkwy,Stel00 Redwood Shores,CA 94065 877-311-4747									

EXHIBIT 2

Name..... KADIE FREEMAN Personnel # :01144707 Pay area.... XF XF Bi-weekly Legal Entity:T070			Exemptions: FED 01 Single Exemptions: CA 01 Single Exemptions: Exemptions: Exemptions:			Cost Center: 15660 Pay type.... Regular payroll Pay period.. 12/18/2020 - 12/31/2020 Payroll for. 01/2021 Payroll in.. 01/2021		
Check date	Check number	Chk amount =	Gross -	Taxes -	DEDS +	EXP REIM	Total Hours Worked	
01/07/2021	<Not assigned>	1,418.67	1,861.73 -	411.74 -	31.32 +	0.00	6.53	
GROSS	RATE	HOURS	AMOUNT	YTD	PRE-TAX ITEMS		AMOUNT	YTD
Hourly Wage	21.20	6.53	138.44	138.44	5020 Supplemental Life Ins		0.27-	0.27-
Hourly Holiday Pay	21.20	22.50	477.00	477.00	Tax Exempt Total		0.27-	0.27-
Transpo AllowanceGoogle			62.31	62.31	POST-TAX ITEMS		AMOUNT	YTD
Housing Allowance Geogl			124.62	124.62	2711 Union Dues		25.90-	25.90-
Non Work Paid Time Hour	21.20	45.97	974.56	974.56	4025 Voluntary Programs		4.47-	4.47-
Sick Hours	21.20	4.00	84.80	84.80	5023 LTD Hourly Ins		0.68-	0.68-
Sick Hours					Total After Tax Deduction		31.05-	31.05-
Total Earnings			1,861.73	1,861.73	BANK INFORMATION		Account Number	Amount
TAXES			AMOUNT	YTD	Bank Number		XXXXXXX5551	1,418.67
Federal	FED	Federal			Vacation/Sick/Personal-Balances			
/401 TX Withholding Tax			190.11	190.11	Wage Type Description			Balance
/403 TX EE Social Security Tax			115.41	115.41	1600 Vacation Hrs. Bal. - Hrly			12.74
/405 TX EE Medicare Tax			26.99	26.99	1626 COVID Sick Bal. Days-Hrly			10.00
State	CA	California						
/401 TX Withholding Tax			56.89	56.89				
/441 TX EE Disability Tax			22.34	22.34				
Total Taxes			411.74	411.74				
Pay stubs and prior year M2s are available electronically for all active and LOA associates via the following applications:			OMS - compassmanager.com CAP - compassassociate.com ESS - ess.compassassociate.com			Los recibos de nómina y los M2 del año anterior están disponibles para todos los asociados activos y de Licencia de Ausencia en: OMS - compassmanager.com CAP - compassassociate.com ESS - ess.compassassociate.com		
Total hours worked means time spent working and does not include OT premium, holiday, sick, vacation or any other paid time off.						El total de horas trabajadas significa el tiempo dedicado a trabajar y no incluye paga extra por tiempo extraordinario, días de fiesta enfermedad, vacaciones o cualquier otro tiempo libre pagado.		
						Bon Appetit Management Co. 201 Redwood Shores Pkwy, Ste100 Redwood Shores, CA 94065 877-311-4747		

EXHIBIT 3

LAW OFFICES OF

MAYALL HURLEY

A PROFESSIONAL CORPORATION

SOUTHERN CALIFORNIA OFFICE
.....
450 N. BRAND BLVD., SUITE 600
GLENDALE, CALIFORNIA 91206
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LODI OFFICE
.....

118 W. OAK STREET
LODI, CA 95240

STOCKTON OFFICE
.....

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JENNY D. BAYSINGER
JOHN P. BRISCOE
VLADIMIR J. KOZINA

March 29, 2023

SUBMITTED VIA ONLINE CLAIM NOTICE

<https://dir.tfaforms.net/295>

VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED

Bon Appetit Management Co.
201 Redwood Shores Pkwy, Suite 100
Redwood Shores, CA 94065

Compass Group USA, Inc.
2400 Yorkmount Road
Charlotte, NC 28217

Re: Kadie Freeman

DOB: 08/08/1994; SSN: xxx-xx-2055; Personnel # 01144707

To whom it may concern:

This office has been retained by Kadie Freeman ("Freeman") in connection with claims under the California Labor Code and California's Fair Employment & Housing Act ("FEHA") arising out of her employment for Bon Appetit Management Co. and/or Compass Group USA, Inc. ("Employers"). Freeman began working for Employers in approximately August 2017 as a front of the house employee specifically assigned to a restaurant location on a Google campus within Santa Clara County. Freeman was promoted to a prep cook in approximately August 2019 and remained in that position until she was unlawfully replaced in and around January 2023. At all times, Freeman was properly classified by Employers as a non-exempt employee and was therefore entitled to minimum wage for all hours worked, overtime wages, meal and rest periods (and associated premiums), and redeemed paid sick leave in accordance with California law. In accordance with California Labor Code section 2699.3, this letter shall serve as Freeman's written notice to the Labor and Workforce Development Agency ("LWDA") and Employers regarding numerous violations of the California Labor Code committed against Freeman and Employers' other current and/or former California workers, and the facts and circumstances relating thereto.

Employers have, within the last year and beyond, as to Freeman and other current and former non-exempt employees within California, failed to do the following:

1. Pay Wages for All Hours Worked/Pay Minimum Wage for All Hours Worked – California Labor Code section 1197 and paragraph 4 of the applicable Industrial Welfare Commission Wage Order mandate that employees be paid at least minimum wage for all

hours worked. Despite such mandate, Employers routinely failed to pay Freeman for all of the time it knew or should have known that she performed worked. Instead, Employers often credited Freeman only for “scheduled” hours as opposed to actual work hours. In addition, although Freeman was physically at work for at least 1 hour on December 30, 2022 before she had to leave because of an unexpected medical condition. Despite clocking in that day (via a photographic system), Freeman was not compensated for any time worked on December 30, 2022. Freeman is informed and believes that Employers similarly fail to properly pay their other California non-exempt employees for all hours clocked in.

2. Pay Overtime Wages – California Labor Code section 510 requires employers to compensate employees at a rate at least 1 ½ times the regular rate of pay for all hours worked beyond eight (8) in a workday and forty (40) in a workweek, and at least twice the regular rate of pay for all hours worked beyond twelve (12) in a workday and beyond eight (8) on the seventh day of the workweek. Regular rate of pay includes “all remuneration” paid to or on behalf of any employee, unless subject to a specific exemption. 29 U.S.C. § 207(e).

Throughout her employment, Freeman and Employers’ other California non-exempt employees earned non-discretionary bonuses and other items of compensation not subject to the exemptions outlined in 29 U.S.C. section 207(e)(1)-(8). By way of specific example, Freeman was provided with compensation items identified as “Transpo AllowanceGoogle” and “Housing Allowance Google” during each and every pay period that she was assigned to a Google campus. This additional compensation was a component of her compensation package for that assignment and something she became contractually entitled to by virtue of her continued employment with Employers in the specified assignment. *Huntington Memorial Hospital v. Sup. Ct.* (2005) 131 Cal.App.4th 893, 904; *Carlino v. CHG Medical Staffing, Inc.* (E.D. Cal. 2022) 2022 WL 5249439 * 2. Although this amount was plainly an element of remuneration which Freeman was entitled to and paid “for employment”, it was not included in the regular rate of pay for purposes of calculating the rate to be paid to Freeman for overtime hours worked. Instead, Freeman was always compensated solely at the rate of 1 ½ times her base hourly rate for all overtime worked throughout her employment.

Because Employers failed to include all remuneration paid to Freeman in calculating the regular rate of pay, it underpaid her for overtime wages earned and unlawfully deprived her of those earnings. Freeman is informed and believes Employers provided non-discretionary bonuses and other remuneration, including but not limited to housing allowances and vehicle allowances to other California non-exempt employees as well. Freeman is further informed and believes Employers similarly failed to include such remuneration in the regular rate of pay for overtime purposes and thus underpaid other California non-exempt employees for overtime work performed.

3. Properly Calculate and Pay Redeemed Sick Leave Wages – California Labor Code sections 245, et seq. outline a California employer’s obligations with respect to providing, calculating, and paying employees for redeemed paid sick leave. Specifically, California Labor Code section 246, subdivision (l) requires that paid sick time “shall be calculated in the same manner as the **regular rate of pay** for the workweek in which the employee uses paid sick time”. See also *Flores v. Dart Container Corp.* (E.D. Cal. 2020) 2020 WL 2770073 * 3. Just as they do with the “regular rate” for overtime purposes, Employers failed to include all necessary remuneration when calculating the “regular rate” for purposes of redeemed paid sick leave. Instead, Freeman and other California non-exempt employees were compensated for redeemed sick leave only at his/her base hourly rate of pay. Such a violation may properly be redressed through a PAGA action for civil penalties. *Wood v. Kaiser Foundation Hospitals* (2023) 88 Cal.App.5th 742.

4. Furnish Accurate Itemized Wage Statements – Because of the violations set forth above, the wage statements furnished by Employers violated Labor Code section 226(a) insofar as they failed to accurately show:

- a. The gross wages earned as required by section 226(a)(1);
Since Employers did not compensate Freeman and their other California non-exempt employees for all hours worked, or properly calculate and pay for overtime wages and redeemed sick leave, the wage statements issued by Employers necessarily failed to accurately identify gross wages earned;
- b. The total hours worked as required by section 226(a)(2);
Since Employers did not compensate Freeman and their other California non-exempt employees for all hours worked, the wage statements necessarily identified inaccurate total hours worked
- c. The net wages earned in violation of section 226(a)(5); and
Because of the myriad failures to properly pay wages, including failing to pay for all hours worked and failing to properly calculate and pay overtime/redeemed sick leave, the wage statements furnished to Freeman and other employees necessarily failed to accurately identify net wages earned.
- d. All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate in violation of section 226(a)(9).
Since Employers did not properly calculate the rate of overtime compensation, the wage statements did not accurately reflect the number of hours worked at each rate.

5. Timely Pay Wages – Because Employers failed to properly pay wages for all hours worked when they became due, as outlined in the preceding sections, they necessarily violated the provisions of Labor Code section 204.

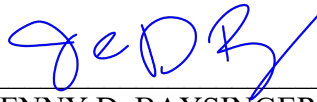
6. Pay All Wages on Separation – Because Employers failed, and continue to fail, to properly pay their employees for all hours they know or should know have been worked, or to properly calculate and pay overtime wages and redeemed sick leave, there are necessarily wages that remained outstanding at the time Freeman (and other California employees) separated from employment with Employers that are not timely paid at the end of their employment.

Freeman contends Employers violated numerous Labor Code provisions, including sections 203, 204, 226, 510, and 1197. If the LWDA believes that it needs additional information to determine whether to investigate these claims, please contact me immediately to request such and I will provide to the extent it is available to me or my client.

If the LWDA does not intend to investigate these violations, Freeman intends to file a civil complaint against Employers pursuant to the Labor Code Private Attorney General Act of 2004 (Labor Code §§ 2698 – 2699.5), on behalf of herself and, as a proxy for the LWDA, to impose civil penalties arising out of violations of the Labor Code as to Freeman and Employers' other current and former California employees. Thank you for your attention to this matter.

Regards,

MAYALL HURLEY P.C.

By 
JENNY D. BAYSINGER