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Superior Court of California,  
Sacramento  
06/01/2023  
zeyaadn  
By \_\_\_\_\_, Deputy  
34-2023-00336959-CU-OI

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SACRAMENTO

BEVERLY D. PULLEM,

Plaintiff,

vs.

WIMPY'S CALIFORNIA DELTA RESORT,  
LLC, and DOES 1-100, inclusive,

Defendants.

Case No.: 34-2023-00336959

FIRST AMENDED COMPLAINT FOR  
DAMAGES AND PENALTIES

1. RETALIATION IN VIOLATION OF  
LABOR CODE §§ 98.6 & 1102.5
2. WRONGFUL TERMINATION IN  
VIOLATION OF PUBLIC POLICY  
(TAMENY V. ARCO)
3. FAILURE TO PAY MINIMUM WAGE
4. FAILURE TO PAY OVERTIME
5. FAILURE TO PROVIDE MEAL BREAKS
6. FAILURE TO PROVIDE REST BREAKS
7. FAILURE TO PAY ALL WAGES DUE  
AT END OF EMPLOYMENT
8. FAILURE TO FURNISH WAGE  
STATEMENTS
9. TO COLLECT UNPAID WAGES
10. PAGA

JURY TRIAL DEMANDED

Plaintiff Beverly D. Pullem brings this First Amended Complaint for unpaid wages, penalties and damages, against Defendant Wimpy's California Delta Resort, LLC, and Does 1 through 100, for violations of the California Labor Code and common law. Plaintiff further alleges standing under the Private Attorney Generals Act ("PAGA") as an aggrieved employee, and seeks civil penalties, fees, and costs thereunder.

**PARTIES**

1  
2           1.       Beverly D. Pullem ("Plaintiff" or "Pullem") is and at all times relevant herein was  
3 employed in Sacramento County, California, and was an "employee" of Defendants herein, as defined  
4 by the California Labor Code ("Labor Code") and the applicable California Industrial Wage  
5 Commission ("IWC") Order(s).

6           2.       Wimpy's California Delta Resort, LLC, ("Wimpy's") is a Nevada corporation which  
7 does business in California, and with its principal place of business in Walnut Grove, California.

8           3.       At all times relevant herein, Wimpy's has been an "employer" as defined by the  
9 California Labor Code ("Labor Code") and the applicable California Industrial Wage Commission  
10 ("IWC") Order(s).

11          4.       Wimpy's and Does 1-100 are collectively referred to as Defendants.

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

20          6.       Plaintiff is informed and believe and thereupon allege that at all times mentioned herein,  
21 each of the Defendants, including each Doe Defendant, was acting as the agent, servant, employee,  
22 partner and/or joint venturer of and was acting in concert with each of the remaining Defendants,  
23 including each Doe Defendant, in doing the things herein alleged, while at all times acting within the  
24 course and scope of such agency, service, employment partnership, joint venture and/or concert of  
25 action. Each Defendant, in doing the acts alleged herein, was acting both individually and within the  
26 course and scope of such agency and/or employment, with the knowledge and/or consent of the  
27 remaining Defendants.

28       ///

**JURISDICTION, VENUE AND JURY TRIAL DEMAND**

7. This Court is the proper Court, and this action is properly filed in the Superior Court of California for the County of Sacramento because Wimpy's conducts business, and has its principal place of business, in this County and Plaintiff has performed work for Wimpy's in this County. Plaintiff hereby demands a jury trial.

**GENERAL ALLEGATIONS**

8. Plaintiff was hired by Wimpy's in October of 2022, to work in its bar and restaurant in Walnut Grove. Plaintiff was paid \$3,000 per month. She was misclassified as an exempt employee, both because of the duties she performed, but also because Defendants failed to pay her the minimum salary required to be classified as exempt. Wage Order 5-2001(1)(f). Specifically, in 2022, twice the minimum wage required a monthly salary of \$4,853.33 ( $2080 \times (\$14.00/\text{hr} \times 2) \div 12$ ), and in 2023, twice the minimum wage required a monthly salary of \$5,200 ( $2080 \times (\$15.00/\text{hr} \times 2) \div 12$ ).

9. Plaintiff was paid weekly.

10. As a non-exempt employee, Plaintiff was entitled to be paid for every hour worked and overtime as appropriate.

11. Plaintiff was paid straight salary regardless of how many hours she worked. She commonly worked 10 to 12 hours per day, seven days per week. Consequently, Plaintiff was not properly paid for all hours worked, including overtime.

12. Wimpy's misclassified Plaintiff as an exempt employee, and therefore did not furnish her compliant meal and rest breaks. Commonly, Plaintiff would not be able to take any break regardless, due to understaffing and work demands.

13. Further, Plaintiff was not paid any premium wages as required by California law, when she did not receive compliant meal or rest breaks.

14. As a result of Wimpy's failure to pay minimum wage, overtime, and premium pay, Plaintiff was not timely paid all wages due and owing to them at the end of their employment.

15. Plaintiff's duties included the preparation of food for Wimpy's customers. In so doing, she noticed that Wimpy's commonly used meat and seafood that was unsafe for consumption. Plaintiff complained of this and was told to use the product.

1           16. Plaintiff also complained that the kitchen was unsanitary, that co-workers were feeding a  
2 cat on tables where customers would eat, and that some coworkers were drinking on the job.

3           17. In retaliation for these complaints, Plaintiff was told that she did not fit in with the “fast  
4 and loose,” “Mom and Pop,” practices employed at Wimpy’s, and it terminated her employment on  
5 February 28, 2023.

6           18. This is illustrative of how Wimpy paid all of its non-exempt California employees, both  
7 current and former, and is part of its established policies, practices, and procedures.

8           19. Plaintiff and Wimpy’s other hourly, non-exempt California employees were not  
9 consistently authorized or permitted to take meal and rest breaks as required by California law.

10          20. Wimpy’s was at all times relevant herein, aware of the requirements of California Labor  
11 Code section 226.

12          21. Plaintiff has suffered injury as a matter of law pursuant to Labor Code section  
13 226(e)(2)(A), because Wimpy’s failure to comply with California Labor Code section 226(a).

14                                   **FIRST CAUSE OF ACTION**  
15                                   **Violation of Labor Code §§ 98.6 & 1102.5**  
16                                   **(Retaliation)**  
                                      **Against All Defendants**

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

20          23. Pursuant to Labor Code § 98.6, no person shall discharge an employee or in any manner  
21 discriminate against any employee because the employee engaged in any conduct delineated in Chapter  
22 4 of the Labor Code, including the conduct described in 96(k), and Chapter 5 of the Labor Code (Labor  
23 Code §§ 1101-1105), or because of the exercise by the employee on behalf of himself, herself, or others  
24 of any rights afforded him or her under the Labor Code.

25          24. Labor Code section 1102.5(b) makes expressly unlawful any form of retaliation against  
26 an employee for disclosing to any person with authority over the employee information that the  
27 employee has reasonable cause to believe is a violation of a state or federal statute, or local, state, or  
28 federal rule or regulation.

25. As set forth above, Plaintiff complained that she was being forced to use meat and seafood, and that Wimpy's maintained a food service environment, that was unsafe for the consuming public and her coworkers, which Plaintiff reasonably believed to be violations of applicable state and/or local rules and regulations.

26. In retaliation, and in lieu of providing a safe work environment, Defendants retaliated against Plaintiff by terminating the employment relationship on February 28, 2023.

27. As a result of Defendants' conduct, Plaintiff has suffered compensatory damages, including special and general damages.

28. Wherefore, Plaintiff prays for relief as set forth below.

**SECOND CAUSE OF ACTION**  
**TERMINATION IN VIOLATION OF PUBLIC POLICY**  
**(Tameny v. ARCO)**  
**Against All Defendants**

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

30. In *Tameny v. ARCO, Inc.* (1980) 27 Cal.3d 167, the California Supreme Court an action lies in tort for an employee who has been terminated in contravention to the fundamental principles of public policy.

31. When Defendants terminated Plaintiff, they violated the fundamental principles of public policy, including those set forth in Labor Code §§ 6310, 1102.5 and 98.6, which protect employees from retaliation for complaining about unsafe and illegal employment practices.

32. As a result of Defendants' conduct, Plaintiff has suffered compensatory damages, including special and general damages.

33. Wherefore, Plaintiff prays for relief as set forth below.

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**THIRD CAUSE OF ACTION**  
**FAILURE TO PAY MINIMUM WAGE**  
**(Violation of Labor Code §§ 1182.12, 1194, 1197, & 1198)**  
**Against All Defendants**

34. California Labor Code section 1182.12 establishes the minimum wage for California employees from July 1, 2014, to present.

35. Labor Code Section 1194 provides, in relevant part:

Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage ... applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage ... including interest thereon, reasonable attorney's fees, and costs of suit.

Labor Code section 1194.2 provides, in relevant part:

In any action under ... Section 1194 to recover wages because of the payment of a wage less than the minimum wage fixed by an order of the commission, an employee shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

36. Labor Code section 1197 provides that the minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a lesser wage is unlawful.

37. Pursuant to California Labor Code section 1198, the maximum hours of work and standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees and the employment of any employee for longer hours than those fixed by the commission or under conditions of labor prohibited by the order is unlawful.

38. During Plaintiff's employment, Defendants failed to pay her a minimum wage rate for all hours worked as required by State of California as set forth above.

39. During Plaintiff's employment, Defendants intentionally and willfully failed to pay Plaintiff for every hour worked.

40. Wherefore, Plaintiff has been injured as set forth above and requests relief as hereafter provided.

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**FOURTH CAUSE OF ACTION**  
**VIOLATION OF CALIFORNIA LABOR CODE §§ 510 & 1198**  
**(Failure to Pay Overtime)**  
**Against All Defendants**

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

42. Pursuant to California Labor Code section 510, any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

43. Pursuant to California Labor Code section 1198, the maximum hours of work and standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees and the employment of any employee for longer hours than those fixed by the commission or under conditions of labor prohibited by the order is unlawful.

44. During Plaintiff's employment, Plaintiff regularly worked, but was not paid, overtime.

45. During Plaintiff's employment, Defendants intentionally and willfully failed to pay the proper overtime wages due to Plaintiff.

46. Wherefore, Plaintiff has been injured as set forth above and requests relief as hereafter provided.

**FIFTH CAUSE OF ACTION**  
**VIOLATION OF LABOR CODE §§ 226.7, 512 and IWC WAGE ORDERS**  
**(Failure to Provide Meal Breaks)**  
**Against All Defendants**

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

48. Labor Code § 226.7 requires employers to provide employees meal breaks as mandated by Order of the Industrial Welfare Commission. It states:

a. No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.

b. If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee 1 additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided

49. Labor Code § 512(a) and the applicable Wage Order(s) provide that an employer may not employ a person for a work period of more than 5 hours per day without providing that employee a meal period of not less than 30 minutes, except that if the total work period per day is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ a person for a work period of more than 10 hours per day without providing an employee with a second meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than twelve 12 hours, the meal period may be waived by mutual consent of both the employer and the employee, and if the first meal period was not waived.

50. During Plaintiff's employment, Plaintiff was not provided with compliant meal breaks, nor did she receive an additional hour of premium pay for each missed meal break.

51. Wherefore, Plaintiff has been injured as set forth above and requests relief as hereafter provided.

**SIXTH CAUSE OF ACTION**  
**VIOLATION OF LABOR CODE §§ 226.7 and IWC WAGE ORDERS**  
**(Failure to Provide Rest Breaks)**  
**Against All Defendants**

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

53. Labor Code § 226.7 requires employers to provide employees rest periods as mandated by Order of the Industrial Welfare Commission. It states:

- 1 a. No employer shall require any employee to work during any meal or rest  
2 period mandated by an applicable order of the Industrial Welfare  
3 Commission.  
4 b. If an employer fails to provide an employee a meal period or rest period in  
5 accordance with an applicable order of the Industrial Welfare Commission,  
6 the employer shall pay the employee 1 additional hour of pay at the  
7 employee's regular rate of compensation for each work day that the meal or  
8 rest period is not provided

9 54. The applicable Wage Order(s) provides that every "employer shall authorize and  
10 permit all employees to take rest periods, which insofar as practicable shall be in the middle of  
11 each work period. The authorized rest period time shall be based on the total hours worked daily at  
12 the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof..." The  
13 applicable Wage Order further provides that "[i]f an employer fails to provide an employee rest  
14 period in accordance with the applicable provisions of this order, the employer shall pay the  
15 employee one (1) hour of pay at the employee's regular rate of compensation for each workday that  
16 the rest period is not provided."

17 55. During Plaintiff's employment, Plaintiff was not provided with compliant rest breaks,  
18 nor did they receive an additional hour of premium pay for each missed rest break.

19 56. Wherefore, Plaintiff has been injured as set forth above and requests relief as hereafter  
20 provided.

21 **SEVENTH CAUSE OF ACTION**  
22 **VIOLATION OF LABOR CODE §§ 201, ET SEQ.**  
23 **(Failure to Pay All Wages Due at End of Employment)**  
24 **Against All Defendants**

25 57. Plaintiff hereby realleges and incorporates by reference each and every allegation set  
26 forth above as though fully set forth herein, except as said paragraphs are inconsistent with the  
27 allegations of this cause of action.

28 58. California Labor Code section 201 provides that if an employer discharges an employee,  
the wages earned and unpaid at the time of discharge are due and payable immediately.

59. When Defendants terminated Plaintiff's employment, it failed to timely pay all wages due and owing to her.

60. Wherefore, Plaintiff has been injured as set forth above and requests relief as hereafter provided.

**EIGHTH CAUSE OF ACTION**  
**VIOLATION OF LABOR CODE § 226(a)**  
**(Failure to Furnish Accurate Itemized Wage Statements)**  
**Against All Defendants**

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

62. Pursuant to California Labor Code section 226(a) “every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee’s wages, or separately when the wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee [ . . . ], (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number, (8) the name and address of the legal entity that is the employer [ . . . ], (9) all applicable hourly rates in effect during the pay period and corresponding number of hours worked at each hourly rate by the employee and, if the employer is a temporary services employer [ . . . ], the rate of pay and the total hours worked for each temporary services assignment.”

63. An employee suffering injury as a result of the knowing and intentional failure by an employer to comply with Labor Code section 226(a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed the aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's fees. Labor Code § 226(e)(1).

64. An employee is deemed to suffer injury if the employer fails to provide a wage statement or if the employer fails to provide accurate and complete information as required by any one or more of the items (1) to (9), inclusive, of subdivision (a) and the employee cannot promptly and easily determine from the wage statement alone, i) the amount of gross/net wages paid to the employee during the pay period or any of the other information required to be provided pursuant to Labor Code section 226(a) items (2) to (4), inclusive, (6) and (9), ii) deductions made by the employer, iii) the name and address of the employer and iv) the name of the employee and the last four digits of his or her social security number or employee identification number. Labor Code § 226(e)(2)(A) and (B)(i)-(iv). “Promptly and easily determine” means a reasonable person would be able to readily ascertain the information without reference to other documents or information. Labor Code § 226(e)(2)(C).

65. As set forth above, Defendants intentionally and willfully failed to furnish any wage statements to Plaintiff.

66. Wherefore, Plaintiff has been injured as set forth above and requests relief as hereafter provided.

**NINTH CAUSE OF ACTION**  
**(FOR UNPAID WAGES PURSUANT TO LABOR CODE §218)**  
**(To Collect Unpaid Wages)**

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

68. For reasons set forth above, Defendants have failed to pay to Plaintiff all wages due to her, including premium wages, unpaid minimum wages, and overtime wages.

69. Labor Code § 218 provides, in pertinent part: “Nothing in this article shall limit the right of any wage claimant to sue directly or through an assignee for any wages or penalty due him under this article.”

70. In addition, Labor Code § 218.5, a wage claimant may recover reasonable fees and costs in an action to obtain unpaid wages.

71. Wherefore, Plaintiff seeks all unpaid wages during her employment, reasonable attorney's fees and costs.

**TENTH CAUSE OF ACTION**  
**VIOLATIONS OF LABOR CODE § 2698 *et seq.***  
**(Private Attorneys General Act)**  
**Against Defendant Wimpy's**

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

73. Plaintiff Pullem has standing as an aggrieved employee pursuant to the provisions of Labor Code § 2699.3, because she was the victim of Labor Code violations committed by Defendant, exhausted the legal prerequisite of providing the LWDA and Defendant with notice of the same on March 24, 2023, and then waited the required statutory time frame before amending his complaint to add claims pursuant to the PAGA. A true and correct copy of the March 24, 2023 notice sent to the LWDA and Defendant ("PAGA Notice"), is attached hereto as Exhibit 1, and is incorporated by this reference as though set forth in full herein.

74. As set forth in the PAGA Notice, Defendant failed to pay its employees for all hours actually worked, and all overtime hours actually worked. It therefore has violated minimum wage and overtime pay laws as set forth in the PAGA Notice. In so doing, Defendant violated Labor Code sections 510, 1182.12, 1194, 1197, 1198, and the applicable Wage Orders issued by the Industrial Wage Commission.

75. In addition, Defendant Wimpy's, failed to furnish timely meal or rest breaks, and in such instances, failed to pay the wage premium to its California employees or the civil penalty due under the PAGA. In so doing, Defendant Wimpy's violated Labor Code section 226.7 and the applicable Wage Orders issued by the Industrial Wage Commission as set forth in the PAGA Notice.

76. Defendant Wimpy's failed to issue accurate wage statements to Plaintiff and other former and current California employees as set forth above and in the PAGA Notice. In so doing, it violated Labor Code section 226(a).



1 **As to the Third Cause of Action:**

- 2 1. For compensatory damages, including wages for all hours worked, in an amount  
3 according to proof;
- 4 2. For liquidated damages pursuant to Labor Code § 1194.2;
- 5 3. For statutory attorney's fees and costs, including but not limited to those available under  
6 Labor Code §§ 218.5, and 1194;
- 7 4. For prejudgment and post-judgment interest according to any applicable provision of  
8 law or as otherwise permitted by law, including but not limited to that available under  
9 Civil Code §§ 3287(a) and 3289(b), Labor Code §§ 218.6 and 1194; and
- 10 5. For such other and further relief as the court deems just and proper.

11 **As to the Fourth Cause of Action:**

- 12 1. For compensatory damages, including overtime wages for all hours worked in excess of  
13 8 hours per day, or 40 hours per week, in an amount according to proof;
- 14 2. For statutory attorney's fees and costs, including but not limited to those available under  
15 Labor Code §§ 218.5, and 1194;
- 16 3. For prejudgment and post-judgment interest according to any applicable provision of  
17 law or as otherwise permitted by law, including but not limited to that available under  
18 Civil Code §§ 3287(a) and 3289(b), Labor Code §§ 218.6 and 1194; and
- 19 4. For such other and further relief as the court deems just and proper.

20 **As to the Fifth Cause of Action:**

- 21 1. For compensatory damages, including wage premium penalties, for each instance  
22 Defendants failed to provide a compliant meal period, pursuant to Labor Code § 226.7;
- 23 2. For statutory attorney's fees and costs, including but not limited to those available under  
24 Labor Code § 218.5;
- 25 3. For prejudgment and post-judgment interest according to any applicable provision of  
26 law or as otherwise permitted by law, including but not limited to that available under  
27 Civil Code §§ 3287(a) and 3289(b), Labor Code § 218.6; and
- 28 4. For such other and further relief as the court deems just and proper.

**As to the Sixth Cause of Action:**

1. For compensatory damages, including wage premium penalties, for each instance Defendants failed to provide a compliant meal period, pursuant to Labor Code § 226.7;
2. For statutory attorney's fees and costs, including but not limited to those available under Labor Code § 218.5;
3. For prejudgment and post-judgment interest according to any applicable provision of law or as otherwise permitted by law, including but not limited to that available under Civil Code §§ 3287(a) and 3289(b), Labor Code § 218.6; and
4. For such other and further relief as the court deems just and proper.

**As to the Seventh Cause of Action:**

1. For statutory penalties under Labor Code § 203 according to proof;
2. For prejudgment and post-judgment interest according to any applicable provision of law or as otherwise permitted by law, including but not limited to Civil Code §§ 3287(a) and 3289(b);
3. For costs of suit; and
4. For such other and further relief as the court deems just and proper.

**As to the Eighth Cause of Action:**

1. For statutory penalties of \$4,000 under Labor Code § 226(e);
2. For attorney's fees and costs under Labor Code § 226(e);
3. For prejudgment and post-judgment interest according to any applicable provision of law or as otherwise permitted by law, including but not limited to that available under Civil Code §§ 3287(a) and 3289(b); and
4. For such other and further relief as the court deems just and proper.

**As to the Ninth Cause of Action:**

1. For all unpaid wages pursuant to Labor Code § 218;
2. For statutory attorney's fees and costs, including but not limited to those available under Labor Code § 218.5;

3. For prejudgment and post-judgment interest according to any applicable provision of law or as otherwise permitted by law, including but not limited to that available under Labor Code § 218.6, Civil Code §§ 3287(a) and 3289(b); and
4. For such other and further relief as the court deems just and proper.

**As to the Tenth Cause of Action:**

1. For civil penalties under the PAGA, including,
  - a. Civil penalties of \$100 for the first violation per pay period per employee, and \$250 for each subsequent violation per pay period per employee, for each violation of the minimum wage laws, including, Labor Code §1197;
  - b. Civil penalties of \$50 per pay period per affected employee for overtime violations pursuant to Labor Code §558;
  - c. Civil penalties of \$250 per violation pursuant to Labor Code section 226.3 for each instance an inaccurate wage statement was furnished to an employee;
  - d. Civil penalties of \$50 pursuant to Labor Code § 558 per pay period for each pay period in which an employee was not furnished all complaint meal period;
  - e. Civil penalties of \$50 pursuant to Labor Code § 558 per pay period per employee for each pay period in which an employee was not furnished all complaint rest periods;
  - f. Penalties of \$100 per pay period per employee pursuant to Labor Code §2699(f), for each instance an employee was not properly paid all wages due at the cessation of employment;
  - g. Penalties of \$100 per pay period per employee pursuant Labor Code §2699(f), for each instance an employee, or former employee, was not timely provided records when a request for the same was made pursuant to Labor Code §§226(b) or 1198.5;
2. For a judicial declaration that Defendant violated Labor Code §§ 226. 226(a) (failure to furnish wage statements), 226(a)(1), (2), (5) and ((9) (failure to furnish accurate wage statements), 512 (failure to furnish compliant meal and rest breaks),

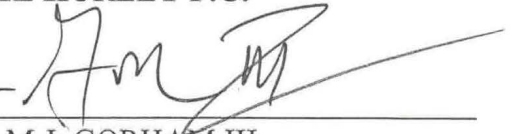
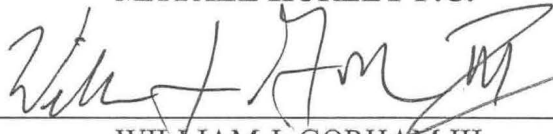
201 and 202 (failure to pay all wages due on cessation of employment), 1197 (failure to pay minimum wage for all hours worked), 558 (failure to pay all overtime wages earned), 226(b) and 1198.5 (failure to provide records).

3. For statutory attorneys' fees and costs, including but not limited to those available under Code of Civil Procedure § 1021.5 and Labor Code § 2699(g);
4. For prejudgment and post-judgment interest according to any applicable provision of law or as otherwise permitted by law, including those available under Civil Code §§ 3287(a) and 3289(b); and
5. For such other and further relief as the court deems just and proper.

**DATED:** May 31, 2023

**MAYALL HURLEY P.C.**

By



WILLIAM J. GORHAM III

VLADIMIR J. KOZINA

Attorneys for Plaintiff Beverly D. Pullem

# **Exhibit 1**

NORTHERN CALIFORNIA  
118 WEST OAK STREET  
LODI, CALIFORNIA 95240  
[BY APPT. ONLY - NO SERVICE ACCEPTED]  
2453 GRAND CANAL BLVD.  
STOCKTON, CALIFORNIA 95207  
SOUTHERN CALIFORNIA  
450 N. BRAND BLVD., SUITE 600  
GLENDALE, CALIFORNIA 91206  
[BY APPT. ONLY - NO SERVICE ACCEPTED]

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VLADIMIR I. KOZINA

March 24, 2023

**SUBMITTED VIA ONLINE CLAIM NOTICE**

**<https://dir.tfaforms.net/308>**

The State of California Labor and Workforce Development Agency

**SENT VIA CERTIFIED MAIL**

Wimpy's California Delta Resort, LLC  
14001 West Walnut Grove Road  
Walnut Grove, CA 95690

Re: Beverly D. Pullem

To Whom It May Concern:

This firm represents Beverly D. Pullem relating to her former employment as a non-exempt short order cook/chef for Wimpy's California Delta Resort, LLC ("Employer"). In accordance with California Labor Code § 2699.3, this letter shall serve as Ms. Pullem's written notice regarding the following violations, and facts and theories supporting the violations, on her behalf and, as a proxy for the Labor and Workforce Development Agency ("LWDA"), on behalf of current and other former California employees of Employer. Notice to the LWDA has been submitted online, in accordance with the process described on the California Department of Industrial Relations' website at <http://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html>.

**Liability Under the PAGA**

Attached as Exhibit 1, and incorporated by this reference, is complaint for damages that Ms. Pullem is filing in the Sacramento County Superior Court, seeking damages and penalties for Employer's violations of the California Labor Code. The violations set forth in Exhibit 1 as to Ms. Pullem, were within the last year, and she is an "aggrieved employee," as that term is defined under the California Labor Code section 2699(c). Ms. Pullem is informed and believes that the unlawful practices giving rise to her complaints in Exhibit 1, were illegal practices and policies by Employer, that were enforced against all its California employees within the last year and ongoing, which give rise to claims against Employer under the Private Attorneys General Act.

Labor and Workforce Development Agency  
Wimpy's California Delta Resort, LLC  
Re: Beverly D. Pullem  
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In addition to the claims set forth in Exhibit 1, Employer has failed to pay its employees in a timely manner, in violation of California Labor Code section 204, which provides, in pertinent part:

(a) All wages, other than those mentioned in Section 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. However, salaries of executive, administrative, and professional employees of employers covered by the Fair Labor Standards Act, as set forth pursuant to Section 13(a)(1) of the Fair Labor Standards Act, as amended through March 1, 1969, in Part 541 of Title 29 of the Code of Federal Regulations, as that part now reads or may be amended to read at any time hereafter, may be paid once a month on or before the 26th day of the month during which the labor was performed if the entire month's salaries, including the unearned portion between the date of payment and the last day of the month, are paid at that time.

Because Employer failed to pay Ms. Pullem, and its other non-exempt California employees for all wages earned by them during the pay periods, it could not, and did not, comply with the timing requirements of Labor Code section 204. In Ms. Pullem's case, she worked 10 to 12 hours per day, commonly seven days per week. She was not compensated for any overtime, because Employer misclassified her as an exempt employee. Ms. Pullem, as a matter of law, was not exempt because Employer failed to pay her two times the applicable minimum wage for her work in 2022, and 2023.

Finally, in addition to its failure to provide Ms. Pullem *any* wage statements in violation of Labor Code section 226(a), Employers failure to timely pay wages to its California employees, failure to pay all hours worked, failure to pay overtime, failure to provide compliant meal and rest breaks, all has led to its *failure to provide accurate* wage statements as required by Labor Code section 226(a). In this regard, Labor Code section 226(a) provides, in pertinent part:

Labor and Workforce Development Agency  
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- (a) An employer, semimonthly or at the time of each payment of wages, shall furnish to his or her employee, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately if wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except as provided in subdivision (j), (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer . . . .

### **Penalties Under the PAGA**

Due to the above violations, Employer faces the following penalties per violation:

Labor Code 226/Failure to Provide Wage Statement: \$250 per LC § 226.3  
Labor Code 226/Failure to Provide Accurate Wage Statement: \$250 per LC § 226.3  
Minimum wage violations: Labor Code § 1197.1, the first such violation carries a civil penalty of \$100, and subsequent violations \$250.  
Overtime violations: \$50 pursuant to Labor Code § 558  
Non-compliant rest breaks: \$50 pursuant to Labor Code § 558  
Non-compliant meal breaks: \$50 pursuant to Labor Code § 558  
Failure to pay wages due at cessation of employment: \$100 per Labor Code § 2699(f)

In addition to these penalties, attorneys' fees and costs are to be awarded to legal counsel to a party acting as proxy to the LWDA pursuant to Labor Code § 2699(g), and any other applicable statute providing for such reimbursement of fees and costs.

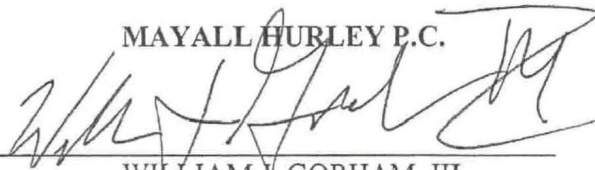
### **Conclusion**

If the LWDA believes that it needs additional information to determine whether to investigate these claims, please contact me immediately to request the additional information, which I will provide to the extent it is available to me or to my client, Ms. Pullem.

Labor and Workforce Development Agency  
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If the LWDA does not intend to investigate these violations, Ms. Pullem intends to file a civil complaint against Employer pursuant to the Labor Code Private Attorneys General Act of 2004 (Labor Code §§ 2698 – 2699.5), on her behalf and, as a proxy for the LWDA, on behalf of all aggrieved current and former employees. Thank you for your attention in this matter.

Sincerely,

MAYALL HURLEY P.C.  
By   
WILLIAM J. GORHAM, III

Enclosure: Exhibit 1

cc: client

# **Exhibit 1**

MAYALL HURLEY P.C.  
WILLIAM J. GORHAM III (SBN: 151773)  
[wgorham@mavallaw.com](mailto:wgorham@mavallaw.com)  
VLADIMIR J. KOZINA (SBN: 284645)  
[vjkozina@mavallaw.com](mailto:vjkozina@mavallaw.com)  
2453 Grand Canal Boulevard  
Stockton, California 95207-8253  
Telephone: (209) 477-3833  
Facsimile: (209) 473-4818

Attorneys for Plaintiff Beverly D. Pullem

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SACRAMENTO

BEVERLY D. PULLEM,

Plaintiff,

vs.

WIMPY'S CALIFORNIA DELTA RESORT,  
LLC, and DOES 1-100, inclusive,

Defendants.

Case No.:

COMPLAINT FOR DAMAGES AND  
PENALTIES

1. RETALIATION IN VIOLATION OF  
LABOR CODE §§ 98.6 & 1102.5
2. WRONGFUL TERMINATION IN  
VIOLATION OF PUBLIC POLICY  
(TAMENY V. ARCO)
3. FAILURE TO PAY MINIMUM WAGE
4. FAILURE TO PAY OVERTIME
5. FAILURE TO PROVIDE MEAL BREAKS
6. FAILURE TO PROVIDE REST BREAKS
7. FAILURE TO PAY ALL WAGES DUE  
AT END OF EMPLOYMENT
8. FAILURE TO FURNISH WAGE  
STATEMENTS
9. TO COLLECT UNPAID WAGES

JURY TRIAL DEMANDED

Plaintiff Beverly D. Pullem brings this action for unpaid wages, penalties and damages, against Defendant Wimpy's California Delta Resort, LLC, and Does 1 through 100, for violations of the California Labor Code and common law.

PARTIES

1. Beverly D. Pullem ("Plaintiff" or "Pullem") is and at all times relevant herein was employed in Sacramento County, California, and was an "employee" of Defendants herein, as defined

1 by the California Labor Code ("Labor Code") and the applicable California Industrial Wage  
2 Commission ("IWC") Order(s).

3 2. Wimpy's California Delta Resort, LLC, ("Wimpy's") is a Nevada corporation which  
4 does business in California, and with its principal place of business in Walnut Grove, California.

5 3. At all times relevant herein, Wimpy's has been an "employer" as defined by the  
6 California Labor Code ("Labor Code") and the applicable California Industrial Wage Commission  
7 ("IWC") Order(s).

8 4. Wimpy's and Does 1-100 are collectively referred to as Defendants.

9 5. Plaintiff is not aware of the true names and capacities of the Defendants sued herein as  
10 Does 1 through 100, whether individual, corporate, associate, or otherwise and therefore sue such  
11 Defendants by these fictitious names. Plaintiff will amend this Complaint to allege their true names  
12 and capacities when ascertained. Plaintiff is informed and believes, and on that basis alleges, that each  
13 of the fictitiously named Defendants is responsible in some manner for the occurrences herein alleged  
14 and that Plaintiff's injuries and damages herein alleged were legally caused by such Defendants.  
15 Unless otherwise indicated, each Defendant was acting within the course and scope of said agency  
16 and/or employment, with the knowledge and/or consent of said co-Defendant.

17 6. Plaintiff is informed and believe and thereupon allege that at all times mentioned herein,  
18 each of the Defendants, including each Doe Defendant, was acting as the agent, servant, employee,  
19 partner and/or joint venturer of and was acting in concert with each of the remaining Defendants,  
20 including each Doe Defendant, in doing the things herein alleged, while at all times acting within the  
21 course and scope of such agency, service, employment partnership, joint venture and/or concert of  
22 action. Each Defendant, in doing the acts alleged herein, was acting both individually and within the  
23 course and scope of such agency and/or employment, with the knowledge and/or consent of the  
24 remaining Defendants.

25 **JURISDICTION, VENUE AND JURY TRIAL DEMAND**

26 7. This Court is the proper Court, and this action is properly filed in the Superior Court of  
27 California for the County of Sacramento because Wimpy's conducts business, and has its principal  
28

1 place of business, in this County and Plaintiff has performed work for Wimpy's in this County.  
2 Plaintiff hereby demands a jury trial.

3 **GENERAL ALLEGATIONS**

4 8. Plaintiff was hired by Wimpy's in October of 2022, to work in its bar and restaurant in  
5 Walnut Grove. Plaintiff was paid \$3,000 per month. She was misclassified as an exempt employee,  
6 both because of the duties she performed, but also because Defendants failed to pay her the minimum  
7 salary required to be classified as exempt. Wage Order 5-2001(1)(f). Specifically, in 2022, twice the  
8 minimum wage required a monthly salary of \$4,853.33 ( $2080 \times (\$14.00/\text{hr} \times 2) \div 12$ ), and in 2023,  
9 twice the minimum wage required a monthly salary of \$5,200 ( $2080 \times (\$15.00/\text{hr} \times 2) \div 12$ ).

10 9. Plaintiff was paid weekly.

11 10. As a non-exempt employee, Plaintiff was entitled to be paid for every hour worked and  
12 overtime as appropriate.

13 11. Plaintiff was paid straight salary regardless of how many hours she worked. She  
14 commonly worked 10 to 12 hours per day, seven days per week. Consequently, Plaintiff was not  
15 properly paid for all hours worked, including overtime.

16 12. Wimpy's misclassified Plaintiff as an exempt employee, and therefore did not furnish  
17 her compliant meal and rest breaks. Commonly, Plaintiff would not be able to take any break  
18 regardless, due to understaffing and work demands.

19 13. Further, Plaintiff was not paid any premium wages as required by California law, when  
20 she did not receive compliant meal or rest breaks.

21 14. As a result of Wimpy's failure to pay minimum wage, overtime, and premium pay,  
22 Plaintiff was not timely paid all wages due and owing to them at the end of their employment.

23 15. Plaintiff's duties included the preparation of food for Wimpy's customers. In so doing,  
24 she noticed that Wimpy's commonly used meat and seafood that was unsafe for consumption. Plaintiff  
25 complained of this and was told to use the product.

26 16. Plaintiff also complained that the kitchen was unsanitary, that co-workers were feeding a  
27 cat on tables where customers would eat, and that some coworkers were drinking on the job.  
28

1           17.     In retaliation for these complaints, Plaintiff was told that she did not fit in with the “fast  
2 and loose,” “Mom and Pop,” practices employed at Wimpy’s, and it terminated her employment on  
3 February 28, 2023.

4           18.     This is illustrative of how Wimpy paid all of its non-exempt California employees, both  
5 current and former, and is part of its established policies, practices, and procedures.

6           19.     Plaintiff and Wimpy’s other hourly, non-exempt California employees were not  
7 consistently authorized or permitted to take meal and rest breaks as required by California law.

8           20.     Wimpy’s was at all times relevant herein, aware of the requirements of California Labor  
9 Code section 226.

10          21.     Plaintiff has suffered injury as a matter of law pursuant to Labor Code section  
11 226(e)(2)(A), because Wimpy’s failure to comply with California Labor Code section 226(a).

12                               **FIRST CAUSE OF ACTION**  
13                               **Violation of Labor Code §§ 98.6 & 1102.5**  
14                               **(Retaliation)**  
                                  **Against All Defendants**

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

18          23.     Pursuant to Labor Code § 98.6, no person shall discharge an employee or in any manner  
19 discriminate against any employee because the employee engaged in any conduct delineated in Chapter  
20 4 of the Labor Code, including the conduct described in 96(k), and Chapter 5 of the Labor Code (Labor  
21 Code §§ 1101-1105), or because of the exercise by the employee on behalf of himself, herself, or others  
22 of any rights afforded him or her under the Labor Code.

23          24.     Labor Code section 1102.5(b) makes expressly unlawful any form of retaliation against  
24 an employee for disclosing to any person with authority over the employee information that the  
25 employee has reasonable cause to believe is a violation of a state or federal statute, or local, state, or  
26 federal rule or regulation.

27          25.     As set forth above, Plaintiff complained that she was being forced to use meat and  
28 seafood, and that Wimpy’s maintained a food service environment, that was unsafe for the consuming

1 public and her coworkers, which Plaintiff reasonably believed to be violations of applicable state and/or  
2 local rules and regulations.

3 26. In retaliation, and in lieu of providing a safe work environment, Defendants retaliated  
4 against Plaintiff by terminating the employment relationship on February 28, 2023.

5 27. As a result of Defendants' conduct, Plaintiff has suffered compensatory damages,  
6 including special and general damages.

7 28. Wherefore, Plaintiff prays for relief as set forth below.

8 **SECOND CAUSE OF ACTION**  
9 **TERMINATION IN VIOLATION OF PUBLIC POLICY**  
10 **(Tameny v. ARCO)**  
11 **Against All Defendants**

12 29. Plaintiff hereby realleges and incorporates by reference each and every allegation set  
13 forth above as though fully set forth herein, except as said paragraphs are inconsistent with the  
14 allegations of this cause of action.

15 30. In *Tameny v. ARCO, Inc.* (1980) 27 Cal.3d 167, the California Supreme Court an action  
16 lies in tort for an employee who has been terminated in contravention to the fundamental principles of  
17 public policy.

18 31. When Defendants terminated Plaintiff, they violated the fundamental principles of  
19 public policy, including those set forth in Labor Code §§ 6310, 1102.5 and 98.6, which protect  
20 employees from retaliation for complaining about unsafe and illegal employment practices.

21 32. As a result of Defendants' conduct, Plaintiff has suffered compensatory damages,  
22 including special and general damages.

23 33. Wherefore, Plaintiff prays for relief as set forth below.

24 **THIRD CAUSE OF ACTION**  
25 **FAILURE TO PAY MINIMUM WAGE**  
26 **(Violation of Labor Code §§ 1182.12, 1194, 1197, & 1198)**  
27 **Against All Defendants**

28 34. California Labor Code section 1182.12 establishes the minimum wage for California  
employees from July 1, 2014, to present.

35. Labor Code Section 1194 provides, in relevant part:

1 Notwithstanding any agreement to work for a lesser wage, any employee receiving less  
2 than the legal minimum wage ... applicable to the employee is entitled to recover in a  
3 civil action the unpaid balance of the full amount of this minimum wage ... including  
interest thereon, reasonable attorney's fees, and costs of suit.

4 Labor Code section 1194.2 provides, in relevant part:

5 In any action under ... Section 1194 to recover wages because of the payment of a wage  
6 less than the minimum wage fixed by an order of the commission, an employee shall be  
entitled to recover liquidated damages in an amount equal to the wages unlawfully  
7 unpaid and interest thereon.

8 36. Labor Code section 1197 provides that the minimum wage for employees fixed by the  
9 commission is the minimum wage to be paid to employees, and the payment of a lesser wage is  
10 unlawful.

11 37. Pursuant to California Labor Code section 1198, the maximum hours of work and  
12 standard conditions of labor fixed by the commission shall be the maximum hours of work and the  
13 standard conditions of labor for employees and the employment of any employee for longer hours than  
14 those fixed by the commission or under conditions of labor prohibited by the order is unlawful.

15 38. During Plaintiff's employment, Defendants failed to pay her a minimum wage rate for  
16 all hours worked as required by State of California as set forth above.

17 39. During Plaintiff's employment, Defendants intentionally and willfully failed to pay  
18 Plaintiff for every hour worked.

19 40. Wherefore, Plaintiff has been injured as set forth above and requests relief as hereafter  
20 provided.

21 **FOURTH CAUSE OF ACTION**  
22 **VIOLATION OF CALIFORNIA LABOR CODE §§ 510 & 1198**  
23 **(Failure to Pay Overtime)**  
**Against All Defendants**

24 41. Plaintiff hereby realleges and incorporates by reference each and every allegation set  
25 forth above as though fully set forth herein, except as said paragraphs are inconsistent with the  
26 allegations of this cause of action.

27 42. Pursuant to California Labor Code section 510, any work in excess of eight hours in one  
28 workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on

1 the seventh day of work in any one workweek shall be compensated at the rate of no less than one and  
2 one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall  
3 be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition,  
4 any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate  
5 of no less than twice the regular rate of pay of an employee.

6 43. Pursuant to California Labor Code section 1198, the maximum hours of work and  
7 standard conditions of labor fixed by the commission shall be the maximum hours of work and the  
8 standard conditions of labor for employees and the employment of any employee for longer hours than  
9 those fixed by the commission or under conditions of labor prohibited by the order is unlawful.

10 44. During Plaintiff's employment, Plaintiff regularly worked, but was not paid, overtime.

11 45. During Plaintiff's employment, Defendants intentionally and willfully failed to pay the  
12 proper overtime wages due to Plaintiff.

13 46. Wherefore, Plaintiff has been injured as set forth above and requests relief as hereafter  
14 provided.

15 **FIFTH CAUSE OF ACTION**  
16 **VIOLATION OF LABOR CODE §§ 226.7, 512 and IWC WAGE ORDERS**  
17 **(Failure to Provide Meal Breaks)**  
**Against All Defendants**

18 47. Plaintiff hereby realleges and incorporates by reference each and every allegation set  
19 forth above as though fully set forth herein, except as said paragraphs are inconsistent with the  
20 allegations of this cause of action.

21 48. Labor Code § 226.7 requires employers to provide employees meal breaks as mandated  
22 by Order of the Industrial Welfare Commission. It states:

- 23 a. No employer shall require any employee to work during any meal or rest period  
24 mandated by an applicable order of the Industrial Welfare Commission.
- 25 b. If an employer fails to provide an employee a meal period or rest period in  
26 accordance with an applicable order of the Industrial Welfare Commission, the  
27 employer shall pay the employee 1 additional hour of pay at the employee's  
28 regular rate of compensation for each work day that the meal or rest period is not  
provided

49. Labor Code § 512(a) and the applicable Wage Order(s) provide that an employer may not employ a person for a work period of more than 5 hours per day without providing that employee a meal period of not less than 30 minutes, except that if the total work period per day is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ a person for a work period of more than 10 hours per day without providing an employee with a second meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than twelve 12 hours, the meal period may be waived by mutual consent of both the employer and the employee, and if the first meal period was not waived.

50. During Plaintiff's employment, Plaintiff was not provided with compliant meal breaks, nor did she receive an additional hour of premium pay for each missed meal break.

51. Wherefore, Plaintiff has been injured as set forth above and requests relief as hereafter provided.

**SIXTH CAUSE OF ACTION**  
**VIOLATION OF LABOR CODE §§ 226.7 and IWC WAGE ORDERS**  
**(Failure to Provide Rest Breaks)**  
**Against All Defendants**

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

53. Labor Code § 226.7 requires employers to provide employees rest periods as mandated by Order of the Industrial Welfare Commission. It states:

- a. No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.
- b. If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee 1 additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided

1           54.     The applicable Wage Order(s) provides that every “employer shall authorize and  
2 permit all employees to take rest periods, which insofar as practicable shall be in the middle of  
3 each work period. The authorized rest period time shall be based on the total hours worked daily at  
4 the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof...” The  
5 applicable Wage Order further provides that “[i]f an employer fails to provide an employee rest  
6 period in accordance with the applicable provisions of this order, the employer shall pay the  
7 employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that  
8 the rest period is not provided.”

9           55.     During Plaintiff’s employment, Plaintiff was not provided with compliant rest breaks,  
10 nor did they receive an additional hour of premium pay for each missed rest break.

11           56.     Wherefore, Plaintiff has been injured as set forth above and requests relief as hereafter  
12 provided.

13                                   **SEVENTH CAUSE OF ACTION**  
14                                   **VIOLATION OF LABOR CODE §§ 201, ET SEQ.**  
15                                   **(Failure to Pay All Wages Due at End of Employment)**  
                                      **Against All Defendants**

16           57.     Plaintiff hereby realleges and incorporates by reference each and every allegation set  
17 forth above as though fully set forth herein, except as said paragraphs are inconsistent with the  
18 allegations of this cause of action.

19           58.     California Labor Code section 201 provides that if an employer discharges an employee,  
20 the wages earned and unpaid at the time of discharge are due and payable immediately.

21           59.     When Defendants terminated Plaintiff’s employment, it failed to timely pay all wages  
22 due and owing to her.

23           60.     Wherefore, Plaintiff has been injured as set forth above and requests relief as hereafter  
24 provided.

25     ///

26     ///

27     ///

**EIGHTH CAUSE OF ACTION**  
**VIOLATION OF LABOR CODE § 226(a)**  
**(Failure to Furnish Accurate Itemized Wage Statements)**  
**Against All Defendants**

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

62. Pursuant to California Labor Code section 226(a) "every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when the wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee [ . . . ], (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number, (8) the name and address of the legal entity that is the employer [ . . . ], (9) all applicable hourly rates in effect during the pay period and corresponding number of hours worked at each hourly rate by the employee and, if the employer is a temporary services employer [ . . . ], the rate of pay and the total hours worked for each temporary services assignment."

63. An employee suffering injury as a result of the knowing and intentional failure by an employer to comply with Labor Code section 226(a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed the aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's fees. Labor Code § 226(e)(1).

64. An employee is deemed to suffer injury if the employer fails to provide a wage statement or if the employer fails to provide accurate and complete information as required by any one or more of the items (1) to (9), inclusive, of subdivision (a) and the employee cannot promptly and easily determine from the wage statement alone, i) the amount of gross/net wages paid to the employee

1 during the pay period or any of the other information required to be provided pursuant to Labor Code  
2 section 226(a) items (2) to (4), inclusive, (6) and (9), ii) deductions made by the employer, iii) the name  
3 and address of the employer and iv) the name of the employee and the last four digits of his or her  
4 social security number or employee identification number. Labor Code § 226(e)(2)(A) and (B)(i)-(iv).  
5 “Promptly and easily determine” means a reasonable person would be able to readily ascertain the  
6 information without reference to other documents or information. Labor Code § 226(e)(2)(C).

7 65. As set forth above, Defendants intentionally and willfully failed to furnish any wage  
8 statements to Plaintiff.

9 66. Wherefore, Plaintiff has been injured as set forth above and requests relief as hereafter  
10 provided.

11 **NINTH CAUSE OF ACTION**  
12 **(FOR UNPAID WAGES PURSUANT TO LABOR CODE §218)**  
13 **(To Collect Unpaid Wages)**

14 67. Plaintiff hereby realleges and incorporates by reference each and every allegation set  
15 forth above as though fully set forth herein, except as said paragraphs are inconsistent with the  
16 allegations of this cause of action.

17 68. For reasons set forth above, Defendants have failed to pay to Plaintiff all wages due to  
18 her, including premium wages, unpaid minimum wages, and overtime wages.

19 69. Labor Code § 218 provides, in pertinent part: “Nothing in this article shall limit the right  
20 of any wage claimant to sue directly or through an assignee for any wages or penalty due him under  
21 this article.”

22 70. In addition, Labor Code § 218.5, a wage claimant may recover reasonable fees and costs  
23 in an action to obtain unpaid wages.

24 71. Wherefore, Plaintiff seeks all unpaid wages during her employment, reasonable  
25 attorney’s fees and costs.

26 ///

27 ///

28 ///

///

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays judgment against Defendants as follows:

**As to the First Cause of Action:**

1. For compensatory damages in the form of economic and non-economic damages in an amount unknown, but in excess of the jurisdictional minimum of this Court;
2. For a civil penalty of \$10,000 pursuant Labor Code § 98.6(b)(3);
3. For attorney's fees and costs pursuant to Labor Code § 1102.5(j), and any other applicable statute;
4. For prejudgment and post-judgment interest according to any applicable provision of law or as otherwise permitted by law, including that available under Civil Code §§ 3287(a) and 3289(b);
5. For such other and further relief as the Court deems just and proper.

**As to the Second Cause of Action:**

1. For compensatory damages in the form of economic and non-economic damages in an amount unknown, but in excess of the jurisdictional minimum of this Court;
2. For prejudgment and post-judgment interest according to any applicable provision of law or as otherwise permitted by law, including that available under Civil Code §§ 3287(a) and 3289(b);
3. For such other and further relief as the Court deems just and proper.

**As to the Third Cause of Action:**

1. For compensatory damages, including wages for all hours worked, in an amount according to proof;
2. For liquidated damages pursuant to Labor Code § 1194.2;
3. For statutory attorney's fees and costs, including but not limited to those available under Labor Code §§ 218.5, and 1194;
4. For prejudgment and post-judgment interest according to any applicable provision of law or as otherwise permitted by law, including but not limited to that available under Civil Code §§ 3287(a) and 3289(b), Labor Code §§ 218.6 and 1194; and

1           5.     For such other and further relief as the court deems just and proper.

2     **As to the Fourth Cause of Action:**

- 3           1.     For compensatory damages, including overtime wages for all hours worked in excess of  
4                 8 hours per day, or 40 hours per week, in an amount according to proof;
- 5           2.     For statutory attorney's fees and costs, including but not limited to those available under  
6                 Labor Code §§ 218.5, and 1194;
- 7           3.     For prejudgment and post-judgment interest according to any applicable provision of  
8                 law or as otherwise permitted by law, including but not limited to that available under  
9                 Civil Code §§ 3287(a) and 3289(b), Labor Code §§ 218.6 and 1194; and
- 10          4.     For such other and further relief as the court deems just and proper.

11     **As to the Fifth Cause of Action:**

- 12          1.     For compensatory damages, including wage premium penalties, for each instance  
13                 Defendants failed to provide a compliant meal period, pursuant to Labor Code § 226.7;
- 14          2.     For statutory attorney's fees and costs, including but not limited to those available under  
15                 Labor Code § 218.5;
- 16          3.     For prejudgment and post-judgment interest according to any applicable provision of  
17                 law or as otherwise permitted by law, including but not limited to that available under  
18                 Civil Code §§ 3287(a) and 3289(b), Labor Code § 218.6; and
- 19          4.     For such other and further relief as the court deems just and proper.

20     **As to the Sixth Cause of Action:**

- 21          1.     For compensatory damages, including wage premium penalties, for each instance  
22                 Defendants failed to provide a compliant meal period, pursuant to Labor Code § 226.7;
- 23          2.     For statutory attorney's fees and costs, including but not limited to those available under  
24                 Labor Code § 218.5;
- 25          3.     For prejudgment and post-judgment interest according to any applicable provision of  
26                 law or as otherwise permitted by law, including but not limited to that available under  
27                 Civil Code §§ 3287(a) and 3289(b), Labor Code § 218.6; and
- 28          4.     For such other and further relief as the court deems just and proper.



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112 South Church Street  
Lodi, California 95240

Wimpy's California Delta Resort, LLC  
14001 West Walnut Grove Road  
Walnut Grove, CA 95690



March 27, 2023

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The following is in response to your request for proof of delivery on your item with the tracking number:  
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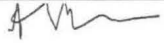
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|----------------------------|----------------------------------------------|
| <b>Status:</b>             | Delivered, Front Desk/Reception/Mail Room    |
| <b>Status Date / Time:</b> | March 25, 2023, 12:05 pm                     |
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| Signature of Recipient: | <br>Annelle |
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