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ELECTRONICALLY
FILED

Superior Court of California,
County of San Francisco

06/13/2023
Clerk of the Court

BY: MARK UDAN
Deputy Clerk

7 *Attorneys for Plaintiff and the aggrieved employees*

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **COUNTY OF SAN FRANCISCO**

12 DIEGO ANGEL GONZALEZ, individually,
13 and on behalf of all other aggrieved
14 employees,

15 Plaintiff,

16 v.

17 UNDERDOGS RESTAURANT GROUP
18 LLC, a California limited liability company;
19 UNDERDOGS CANTINA, a California
20 corporation; and DOES 1 through 50,
21 inclusive,

22 Defendants.

Case No.:

CGC-23-607060

**COMPLAINT FOR VIOLATION OF THE
PRIVATE ATTORNEYS GENERAL ACT
OF 2004**

[California Labor Code § 2698 et seq.]

1 Plaintiff Diego Angel Gonzalez (“Plaintiff”) brings this representative action, individually and
2 on behalf of all other aggrieved employees, to recover civil penalties relating to systematic violations
3 of California wage and hour laws by Underdogs Restaurant Group LLC and Underdogs Cantina
4 (“Employers” or “Defendants”). Plaintiff makes the following allegations on information and belief,
5 except as to allegations pertaining to Plaintiff individually, which are based on his personal knowledge.

6 **INTRODUCTION**

7 1. Defendants own and operate a chain of restaurants in San Francisco, California.
8 Plaintiff, along with other non-exempt employees of Defendants, worked and performed duties and
9 tasks at these restaurants and additionally, received wages from Defendants.

10 2. Defendants implemented common policies and practices within their restaurants that
11 have resulted in systematic violations of California’s wage and hour laws.

12 3. Underdogs Restaurant Group LLC (“Underdogs Restaurant Group” or jointly referred
13 to as “Employers” or “Defendants” collectively), owns and operates two or more casual dining, fast
14 food Mexican American restaurants.

15 4. Underdogs Cantina (“Underdogs Cantina” or jointly referred to as “Employers” or
16 “Defendants” collectively), owns and operates a casual diner restaurant.

17 5. In an effort to conserve labor costs, and thereby maximize profits, Defendants have
18 implemented policies and practices that have resulted in systematic violations of California’s wage and
19 hour laws.

20 6. For example, Defendants have implemented unlawful policies with respect to meal and
21 rest breaks. Defendants require the non-exempt employees, who are informed that the needs of the
22 restaurant and its patrons take top priority, to work through meal and rest breaks, to take untimely meal
23 periods and to remain on call during such breaks. As a result, Plaintiff and other aggrieved employees
24 have been denied the ability to take meal and rest breaks that they were and are legally entitled to take.

25 7. Moreover, Defendants have uniformly failed to pay Plaintiff and other aggrieved
26 employees proper overtime wages and minimum wages due to the fact that it has willfully turned a
27 blind eye to off-the-clock work that Plaintiff and other non-exempt employees perform as a direct
28 consequence of Defendants’ understaffing and imposition of an unreasonable workload.

1 8. Defendants also failed to pay timely wages to current and former employees and has
2 failed to maintain required employee records and provide accurate, itemized wage statements.

3 **JURISDICTION AND VENUE**

4 9. The Superior Court of the State of California has jurisdiction in this matter because
5 Defendants are licensed to do business under the laws of the State of California and does business in
6 the State of California. No federal question is at issue because Plaintiff's claims are based solely on
7 California law.

8 10. Venue is proper in this judicial district and the County of San Francisco because
9 Defendants maintain one or more of their restaurants in the County of San Francisco and Plaintiff
10 worked for Defendants in County of San Francisco at their location in the City of San Francisco. Many
11 if not all of the other aggrieved employees also worked for Defendants at their restaurants located in
12 the County of San Francisco.

13 **THE PARTIES**

14 11. During the statute of limitations period, Plaintiff was employed by Defendants as a Cook
15 and Food Preparer.

16 12. Defendants are, and at all times relevant herein were, organized and existing under the
17 laws of the State of California. On information and belief, Defendants are authorized to conduct
18 business in the State of California and does conduct business in the State of California.

19 13. At all relevant times herein, Defendants were the joint employers of Plaintiff and
20 aggrieved employees. Defendants were the alter egos, divisions, affiliates, integrated enterprises, joint
21 employers, subsidiaries, parents, principals, related entities, co-conspirators, authorized agents,
22 partners, joint venturers, and/or guarantors, actual or ostensible, of each other. Each Defendant was
23 completely dominated by his, her or its co-Defendants, and each was the alter ego of the other.
24 Moreover, at all material times there has been extensive interrelation of operations, common
25 management, centralized control of labor relations with respect to Plaintiff and Class members, and
26 common ownership or financial control between all Defendants.

27 14. The true names and capacities of DOES 1 through 50, inclusive, are unknown to Plaintiff
28 at this time, and Plaintiff therefore sues such defendants under fictitious names. Plaintiff is informed

1 and believes, and thereon alleges, that each defendant designated as a DOE is in some manner highly
2 responsible for the occurrences alleged herein, and that Plaintiff and other aggrieved employees'
3 injuries and damages, as alleged herein, were proximately caused by the conduct of such DOE
4 defendants. Plaintiff will seek leave of the Court to amend this Complaint to allege the true names and
5 capacities of such DOE defendants when ascertained.

6 **PAGA REPRESENTATIVE ACTION ALLEGATIONS**

7 15. On March 23, 2023, Plaintiff gave written notice by certified mail pursuant to California
8 Labor Code § 2699.3, to the California Labor and Workforce Development Agency ("LWDA") and
9 Defendants, of the specific provisions of the California Labor Code and IWC Wage Order alleged to
10 have been violated, including the facts and theories to support the alleged violations. Plaintiff has not
11 received any response from the LWDA. As Plaintiff has waited more than sixty-five (65) days from
12 the March 23, 2023, postmark date of his written notice before filing this action, Plaintiff has complied
13 with all of the requirements set forth in California Labor Code § 2699.3 to commence a representative
14 action under the California Private Attorneys General Act of 2004 ("PAGA").

15 16. Pursuant to the PAGA, California Labor Code §§ 2698-2699.5, Plaintiff brings this
16 action on behalf of the State of California, and all other aggrieved employees (e.g., current and former
17 non-exempt employees of Defendants who are California citizens and performed work for Defendants
18 in the State of California at any time within the period beginning one (1) year prior to the March 23,
19 2023, notice Plaintiff provided to the LWDA and Defendants, and ending at the time this action
20 proceeds to final judgment ("statute of limitations period").

21 **FACTUAL ALLEGATIONS**

22 **Failure to Provide Required Meal Periods**

23 17. During the statute of limitations period, as part of Defendants' illegal policies and
24 practices to minimize labor costs and maximize corporate profits, Defendants have required, permitted
25 or otherwise suffered Plaintiff and aggrieved employees to perform work during their meal periods, to
26 completely skip their meal periods, to take late and short meal periods, and Defendants have otherwise
27 failed to provide the required meal periods to Plaintiff and aggrieved employees as required under
28 California Labor Code §§ 226.7, 512 and § 11 of the applicable IWC Order.

1 18. Defendants have implemented several practices that have caused Plaintiff and aggrieved
2 employees to systematically miss and otherwise take non-compliant meal periods. Defendants
3 systematically understaff job sites such that non-exempt employees are given so much work to
4 complete that they regularly miss or otherwise take non-compliant meal periods. As a direct
5 consequence of this understaffing, Plaintiff and aggrieved employees have so much work to complete
6 within their scheduled shifts that they are forced to skip their meal periods altogether, to take them after
7 working longer than five (5) hours, to perform work during their meal periods, or return to work after
8 taking less than a thirty (30) minute meal period. Moreover, Plaintiff and other aggrieved employees
9 need to secure permission before taking a meal period, which is often denied by supervisors.

10 19. There are also frequent occasions when Plaintiff and aggrieved employees need to
11 perform other duties immediately before the time during which they are legally entitled to take a meal
12 period. Pursuant to Defendants' policies, Plaintiff and aggrieved employees cannot simply drop their
13 job duties and leave a customer, refuse an order or stop cleaning in order to take a meal period.
14 Consequently, Plaintiff and aggrieved employees regularly miss meal periods, take late meal periods,
15 return early from meal periods, and even clock out for meal periods but continue working.

16 20. Plaintiff and aggrieved employees need to secure permission before taking a meal
17 period. Plaintiff and aggrieved employees often cannot simply stop taking an order from a customer or
18 stop cleaning to take their meal period, and their inability to secure coverage frequently causes them to
19 miss and otherwise take non-compliant meal periods.

20 21. Despite the foregoing, Defendants have implemented a policy and practice of actively
21 discouraging the issuance of meal period premium payments, and in the process, Defendants have
22 violated California Labor Code §§ 226.7 and § 11 of the applicable IWC Wage Order, by failing to
23 compensate Plaintiff and aggrieved employees who were not authorized and permitted to take a
24 complete, timely, uninterrupted meal period, one additional hour of compensation at the proper regular
25 rate of pay for each workday that such a meal period was not authorized or permitted.

26 22. Defendants also implemented an unlawful meal period policies by compensating
27 Plaintiff and aggrieved employees for interrupted meal periods only for their actual work time, as
28 opposed to paying them the legally required premium payments for non-compliant meal periods.

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24. The same or similar policies and practices that deprive Plaintiff and other aggrieved employees from taking their meal periods, as alleged herein, similarly deprive them of their ability to take their first and second and third rest breaks. As alleged herein, Defendants understaff their restaurants, which create so much work for Plaintiff and other aggrieved employees that they are frequently unable to take rest breaks. Moreover, Plaintiff and aggrieved employees need to first secure permission before taking a rest break. Plaintiff and aggrieved employees often cannot simply stop assisting a customer or stop cleaning to take a rest break, and their inability to secure coverage causes them to regularly miss and otherwise take non-compliant rest breaks.

26. Defendants also violated California Labor Code § 226.7, and § 12 of the applicable IWC Order, by failing to pay Plaintiff and other aggrieved employees who were not provided with a rest break, in accordance with the applicable wage order, one additional hour of compensation at the proper regular rate of pay for each workday that a rest break was not provided.

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1 workday and for all hours worked in excess of eight (8) hours on the seventh consecutive day of work
2 in any workweek.

3 28. During the statute of limitations period, Defendants failed to compensate Plaintiff and
4 other aggrieved employees for all overtime hours worked as required under the foregoing provisions
5 of the California Labor Code and IWC Wage Order by, among other methods: failing to pay overtime
6 at one and one-half (1 ½) or double the regular rate of pay as provided by California Labor Code §§
7 510, 1194 and § 3 of the applicable IWC Order, requiring, permitting or suffering Plaintiff and other
8 aggrieved employees to work off-the-clock, and to work through meal and rest breaks, but not
9 compensating them for this time, unlawful rounding of time worked by Plaintiff and the other aggrieved
10 employees in favor of Defendants, improperly calculating the regular rate of pay based on bonuses,
11 commissions, and other remuneration, and other methods to be discovered.

12 29. In a short-sighted attempt to maximize profits, Defendants have understaffed their
13 restaurants. Not only has this practice resulted in widespread missed meal and rest breaks, but it has
14 also caused Plaintiff and other aggrieved employees to perform work while off-the-clock. Defendants
15 have actual or constructive knowledge of this off-the-clock work and subtly condone it. Plaintiff and
16 other aggrieved employees routinely arrive to work early to check so that they are prepared and ready
17 to begin performing their duties promptly at the start of their shifts, as they must be pursuant to the
18 requirements of Defendants. Defendants know that Plaintiff and other aggrieved employees perform
19 this work off-the-clock.

20 30. Defendants have knowingly and willfully refused to perform their obligations to
21 compensate Plaintiff and other aggrieved employees for all wages earned and all hours worked in
22 violation of California Labor Code §§ 510, 1194 and 1198, and § 3 of the applicable IWC Order.

23 **Failure to Pay Minimum Wages**

24 31. Pursuant to Cal. Lab. Code §§ 1194, 1197, and § 4 of the applicable IWC Wage Order,
25 payment to an employee of less than the applicable minimum wage for all hours worked in a payroll
26 period is unlawful.

27 32. During the statute of limitations period, the hourly rates for Plaintiff and other aggrieved
28 employees were precisely at California minimum wage. Based on this common practice, Defendants

1 failed to pay Plaintiff and other aggrieved employees minimum wages for all hours worked by
2 requiring, permitting or suffering Plaintiff and other aggrieved employees to work off the clock, such
3 as requiring them to work through meal and rest breaks but not compensating them for this time,
4 unlawful rounding of time worked by Plaintiff and the other aggrieved employees in favor of
5 Defendants, and failing to include this time in all hours worked, and other methods to be discovered.

6 33. Defendants conduct described herein violates Cal. Lab. Code §§ 1194, 1197, and § 4 of
7 the applicable IWC Wage Orders. As a proximate result of the aforementioned violations, Plaintiff and
8 other aggrieved employees have been damaged in an amount according to proof at trial. Therefore,
9 pursuant to California Labor Code §§ 200, 203, 226, 1194, 1197.1, and any other applicable law,
10 Plaintiff and other aggrieved employees are entitled to recover the unpaid balance of wages owed to
11 them by Defendants, plus interest, penalties, attorneys' fees, expenses, and costs of suit.

12 **Failure to Timely Pay Wages During Employment**

13 34. Pursuant to California Labor Code § 204, for all labor performed between the 1st and
14 15th days of any calendar month, Defendants are required to pay their nonexempt employees between
15 the 16th and 26th day of the month during which the labor was performed. California Labor Code §
16 204 also provides that for all labor performed between the 16th and 26th days of any calendar month,
17 Defendants are required to pay their non-exempt employees between the 1st and 10th day of the
18 following calendar month. In addition, California Labor Code § 204 provides that all wages earned for
19 labor in excess of the normal work period shall be paid no later than the payday of the next regular
20 payroll period.

21 35. During the statute of limitations period, Defendants have knowingly and willfully failed
22 to timely pay Plaintiff and other aggrieved employees all the wages for labor performed by the next
23 regular payroll period as required by California Labor Code § 204, including but not limited to,
24 compensation for missed meal and rest breaks, proper overtime wages due to an unlawful calculation
25 of the regular rate of pay, and for work performed off-the-clock.

26 **Failure to Pay All Wages Due to Discharged and Quitting Employees**

27 36. Pursuant to California Labor Code §§ 201, 202 and 203, Defendants are required to pay
28 all earned and unpaid wages to an employee who is discharged. California Labor Code § 201 mandates

1 that if an employer discharges an employee, the employee's wages accrued and unpaid at the time of
2 discharge are due and payable immediately.

3 37. Furthermore, pursuant to California Labor Code § 202, Defendants are required to pay
4 all accrued wages due to an employee no later than 72 hours after the employee quits his or her
5 employment, unless the employee provided 72 hours previous notice of his or her intention to quit, in
6 which case the employee is entitled to his or her wages at the time of quitting.

7 38. California Labor Code § 203 provides that if an employer willfully fails to pay, in
8 accordance with Labor Code §§ 201 and 202, any wages of an employee who is discharged or who
9 quits, the employer is liable for waiting time penalties in the form of continued compensation to the
10 employee at the same rate for up to 30 workdays. Here, Defendants failed to provide Plaintiff with his
11 last paycheck immediately at the time of his termination. Plaintiff was terminated on or about January
12 of 2023 and did not receive his final paycheck until on or about February 23, 2023.

13 39. During the statute of limitations period, Defendants have willfully failed to pay accrued
14 wages and other compensation to Plaintiff and other aggrieved employees in accordance with California
15 Labor Code §§ 201 and 202. On information and belief, Defendants do not have a sufficient policy to
16 provide aggrieved employees with their final paychecks within the timeframes required under
17 California law. Defendants continue to fail to properly compensate other aggrieved employees for all
18 hours worked when due, overtime wages, and compensation for non-compliant meal and rest breaks,
19 Defendants also willfully failed and continue to fail to pay accrued wages and other compensation to
20 the aggrieved employees in accordance with California Labor Code §§ 201 and 202.

21 **Failure to Furnish Accurate Itemized Wage Statements**

22 40. During the statute of limitations period, Defendants routinely failed to provide Plaintiff
23 and other aggrieved employees with timely and accurate itemized wage statements. Defendants' pay
24 stubs have violated California Labor Code § 226. Next, Defendants are not providing Plaintiff and
25 other aggrieved employees with proper meal periods and rest breaks but intentionally fail to include in
26 their wage statements one (1) additional hour of compensation at their regular rates of pay for each
27 non-compliant meal period or rest break. Moreover, Defendants have failed to pay proper overtime
28 wages to Plaintiff and other aggrieved employees and their wage statements therefore fail to reflect the

1 correct hourly rates worked by Plaintiff and other aggrieved employees. Defendants also failed to
2 provide for supplemental COVID-19 on the wage statements of Plaintiff and the other aggrieved
3 employees pursuant to California Labor Code §§ 248.1(b)(2)(D), 248.2 and 248.6, et seq.

4 42. In order to conceal its wage theft, Defendants knowingly and intentionally failed to
5 provide Plaintiff and other aggrieved employees with timely and accurate itemized wage statements in
6 accordance with Labor Code § 226(a) and § 7 of the applicable IWC Order.

7 43. Plaintiff and other aggrieved employees suffered injury as a result of the failure of
8 Defendants to provide timely and accurate itemized wage statements because it prevented them from
9 discovering the scope and extent of Defendants' violations of California wage and hour laws, prevented
10 them from being able to accurately determine the gross wages earned, the total hours worked, all
11 deductions made, the net wages earned, all applicable hourly rates in effect during each pay period and
12 the corresponding number of hours worked at each hourly rate and the balance and available amount
13 of sick leave.

14 **Failure to Maintain Required Records**

15 44. During the statute of limitations period, as part of Defendants' illegal payroll policies
16 and practices to deprive Plaintiff and other aggrieved employees of all wages earned and due,
17 Defendant knowingly and intentionally failed to maintain records as required under California Labor
18 Code §§ 226(a) and 1174(d) and § 7 of the applicable IWC Wage Order, including but not limited to
19 the following records: total daily hours worked by each employee; applicable rates of pay relating to
20 non-discretionary bonuses, including but not limited to, overtime and double-time; all deductions; meal
21 and/or rest periods; time records showing when each employee begins and ends each work period; and
22 accurate itemized statements that reflect all compensation, rates of pay for all compensation paid and
23 remuneration owed and due to them. Defendants have knowledge that it was not providing its non-
24 exempt employees with proper meal and rest periods, but knowingly failed to include in the wage
25 statements one (1) extra hour of compensation for each missed meal and rest period. Defendants also
26 illegally and inaccurately recorded the time in which Plaintiff and other aggrieved employees worked.
27 Defendants have also failed to maintain accurate, itemized wage statements, as alleged above.

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46. Defendants failed to comply with Labor Code Section §246 by not providing Plaintiff and the other aggrieved employees with sick pay. Defendants also failed to comply with Labor Code §246(i) by not providing Plaintiff and the other aggrieved employees with their available sick leave and balance of sick leave. As such, Defendants have violated California Labor Code § 246.

[Cal. Lab. Code §§ 248.2 and 248.6, et seq.]

Failure to Indemnify Employees for Necessary Expenditures

[Cal. Lab. Code §2802]

48. California Labor Code § 2802(a) requires an employer to indemnify an employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer.

1 50. During the Statute of Limitations Period, Defendants have failed to reimburse aggrieved
2 employees for the usage of their personal cellular phones in addition to personal protective equipment
3 during the COVID-19 pandemic, including face masks and disposable gloves and other supplies.
4 Defendants did not reimburse Plaintiff and other aggrieved employees for the costs of the expenditures
5 relating to their cellular phones, face masks and other supplies.

6 **FIRST CAUSE OF ACTION**

7 **VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT**

8 **[Cal. Lab. Code § 2698 *et seq.*]**

9 **(On Behalf of Plaintiff and the Aggrieved Employees Against Defendants)**

10 51. Plaintiff incorporates herein by specific reference, as though fully set forth, the
11 allegations in paragraphs 1 through 50 above.

12 52. Plaintiff is an “aggrieved employee” within the meaning of California Labor Code §
13 2699(c), and a proper representative to bring a civil action on behalf of himself and other aggrieved
14 employees pursuant to the procedures specified in California Labor Code § 2699.3, because Plaintiff
15 was employed by Defendants and one or more of the alleged California Labor Code violations was
16 committed against Plaintiff during the statute of limitations period.

17 53. Plaintiff seeks to recover civil penalties through a representative action permitted by
18 PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal.4th 969. Thus, class
19 certification is not required.

20 54. Pursuant to California Labor Code §§ 2698-2699.5, Plaintiff seeks to recover civil
21 penalties from Defendants in a representative action for the violations set forth above, including but
22 not limited to, violations of California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 246, 510, 512,
23 558, 1174, 1194, 2802 and for the violations of the applicable IWC Wage Order alleged above.

24 55. Pursuant to California Labor Code § 2699(a), Plaintiff seeks to recover civil penalties
25 against Defendants for violations of California Labor Code provisions for which a civil penalty is
26 specifically provided, including but not limited to, the following:

- 27 a. Pursuant to California Labor Code § 210, for violations of California Labor
28 Code § 204, Defendants are subject to a civil penalty in the amount of one

1 hundred dollars (\$100) for the initial violation for each failure to pay each
2 employee, and two hundred dollars (\$200) per employee for violations in
3 subsequent pay periods.

4 b. Pursuant to California Labor Code § 226.3, for violations of California Labor
5 Code § 226(a), Defendants are subject to a civil penalty in the amount of two
6 hundred and fifty dollars (\$250) per aggrieved employee for the initial pay
7 period where a violation occurs and one thousand dollars (\$1,000) per
8 aggrieved employee for violations in subsequent pay periods.

9 c. Pursuant to California Labor Code § 1174.5, for violations of California Labor
10 Code § 1174(d), Defendants are subject to a civil penalty of five hundred
11 dollars (\$500).

12 56. California Labor Code § 2699(f) provides that for all California Labor Code violations
13 for which a civil penalty is not specifically provided, the following civil penalties are established: one
14 hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two
15 hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.

16 57. Plaintiff seeks to recover such civil penalties under California Labor Code § 2699(f) for
17 Defendants' violations of California Labor Code provisions for which a civil penalty is not specifically
18 provided, including but not limited to, California Labor Code §§ 201, 202, 203, 204, 226.7, 246, 248.1,
19 et seq., 248.2, et seq., and 1197, and for the violations of the applicable IWC Wage Order alleged above.

20 58. All civil penalties sought and recovered under this action will be allocated as follows:
21 seventy-five (75) percent to the State of California and twenty-five (25) percent to Plaintiff and
22 aggrieved employees.

23 59. Plaintiff additionally seeks reasonable attorneys' fees and costs pursuant to California
24 Labor Code § 2699(g)(1) and California Code of Civil Procedure § 1021.5.

25 **PRAYER FOR RELIEF**

26 WHEREFORE, Plaintiff, individually and on behalf of all other aggrieved employees and the
27 State of California, prays for relief against Defendants, as follows:

28 1. For civil penalties according to proof;

1 2. For reasonable attorneys' fees and costs pursuant to California Labor Code § 2699(g),
2 California Code of Civil Procedure § 1021.5, and/or any other applicable provisions providing for
3 attorneys' fees and costs; and

4 3. For such further relief that the Court may deem just and proper.

5 DATED: June 13, 2023

THE LAW OFFICE OF SCOTT ERNEST WHEELER

6
7 By: _____



8 SCOTT ERNEST WHEELER
9 JUSTIN A. WHEELER

Attorneys for Plaintiff and the Aggrieved Employees