

1 Santosh Narayan, Esq. (SBN 243273)
2 Narayan Law, APC
3 Pacific Southwest Building
4 1060 Fulton Mall Suite 301
5 Fresno, CA 93721
6 (559)-679-3320 phone
7 (626)-657-2921 facsimile
8 snarayan@narayanlegal.com

9 Attorneys for Plaintiff Bao Cha

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Superior Court of California
County of Fresno
By: I. Herrera, Deputy

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**SUPERIOR COURT FOR THE STATE OF CALIFORNIA
FOR THE COUNTY FRESNO**

BAO CHA, in an individual capacity, as well as
a representative capacity on behalf of the State of
California,

Plaintiff,

vs.

ALLEN SPEES FAMILY HOME and DOES 1
through 100, inclusive,

Defendants.

CASE NO.: 23CECG02451

COMPLAINT FOR DAMAGES:

1. **FAILURE TO PROVIDE OFF-DUTY MEAL PERIODS (LABOR CODE §§ 226.7, 512, 516; IWC WAGE ORDER NO. 5, § 11);**
2. **FAILURE TO PROVIDE REST PERIODS LABOR CODE §§ 226.7, 512, 516; IWC WAGE ORDER NO. 5, § 12);**
3. **FAILURE TO TIMELY FURNISH ACCURATE, ITEMIZED WAGE STATEMENTS (LABOR CODE § 226);**
4. **FAILURE TO PAY WAGES DUE ON TERMINATION (LABOR CODE § 203);**
5. **FAILURE TO KEEP ACCURATE PAYROLL AND EMPLOYMENT RECORDS (LABOR CODE §§ 1174, 1174.5; IWC WAGE ORDER NO. 5 § 7;**
6. **VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT OF 2004 (Labor Code Section 2698, et seq.)**

DEMAND FOR JURY TRIAL

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1 meal break and were not provided any on-duty meals by Defendants. Such missed meal periods
2 were not considered "on-duty" or paid by Defendants.

3 8. Plaintiff and the other aggrieved employees were also unable to exercise the right to have
4 an off-duty lunch upon 30 days' notice to Defendants.

5 9. Plaintiff and the other aggrieved employees were never provided an additional hour of pay
6 for their missed meal or rest breaks and accordingly were provided inaccurate paystubs during their
7 respective tenures. Furthermore, following the end of their employment, Plaintiff and the other
8 aggrieved employees were not provided with all wages owed to them within 30 days of the end of
9 their employment, including all accrued, but unused vacation hours.

10 10. Plaintiff timely exhausted all administrative requirements and complied with all notice
11 requirements by giving written notice to the Labor and Workforce Development Agency
12 ("LWDA") and sending the same letter to Defendants via certified mail on April 4, 2023 setting
13 forth the Labor Code sections alleged to have been violated and the facts and theories supporting
14 each alleged violation.

15 11. The LWDA failed to notify Plaintiff of its intent to investigate within 65 days of the
16 postmark of the aforementioned letter sent to the Defendants.

17 **FIRST CAUSE OF ACTION**

18 **FAILURE TO PROVIDE OFF-DUTY MEAL PERIODS (LABOR CODE §§ 226.7, 512, 516,**
19 **1198; IWC WAGE ORDER NO. 5, § 11); (BY PLAINTIFF AGAINST ALL DEFENDANTS)**

20 12. Plaintiff incorporates each and every allegation previously set forth in this complaint.

21 13. Pursuant to Labor Code Sections 226.7, 512, 516, and 1198, and IWC Wage Order No. 5,
22 Defendants were required to provide Plaintiffs with an uninterrupted meal period of 30 minutes for
23 any work period of more than 5 hours and a second meal period of 30 minutes for work period of at
24 least 10 hours.

1 14. During the employment, Plaintiff and all aggrieved employees were not allowed to leave
2 the Premises and were not relieved from work during their meal periods. Further, they were not
3 provided any on-duty meals by Defendants, nor able to exercise the right to have an off-duty lunch
4 upon 30 days' notice to Defendants.

5 15. Defendants did not enter into any valid and enforceable written on-duty meal period
6 agreements with Plaintiff and the other aggrieved employees. Any such agreements were legally
7 invalid and unenforceable.
8

9 16. As a result of Defendants' conduct, Plaintiff and all aggrieved employees are entitled to an
10 additional hour of pay at their regular rate of compensation for each workday that the meal period
11 was not provided along with interest thereon.
12

13 **SECOND CAUSE OF ACTION**

14 **FAILURE TO PROVIDE REST PERIODS LABOR CODE §§ 226.7, 512, 516, 1198;** 15 **IWC WAGE ORDER NO. 5, § 12); BY PLAINTIFF AGAINST ALL DEFENDANTS**

16 17. Plaintiff incorporates each and every allegation previously set forth in this complaint.

17 18. Pursuant to Labor Code Section 226.7, 512, 516, and 1198, and Wage Order No. 5,
18 Defendants were required to provide Plaintiffs with 10 minutes of net rest time per every four
19 hours work or major fraction thereof.
20

21 19. During the employment, Plaintiff and all aggrieved employees worked more than four
22 hours of work without being provided the required 10-minute rest period. Further, Plaintiffs were
23 not authorized and/or permitted by Defendants to take an additional rest period when they were not
24 able to take their rest period in order to tend to the needs of the disabled children.

25 20. As a result of Defendants' conduct, Plaintiff and all aggrieved employees are entitled to an
26 additional hour of pay at their regular rate of compensation for each workday that the rest period
27 was not provided along with interest thereon.
28

1 **THIRD CAUSE OF ACTION**

2 **FAILURE TO TIMELY FURNISH ACCURATE, ITEMIZED WAGE STATEMENTS**

3 **(LABOR CODE § 226) BY PLAINTIFF AGAINST ALL DEFENDANTS**

4 21. Plaintiff incorporates each and every allegation previously set forth in this complaint.

5 22. Labor Code Section 226(a) sets forth the reporting requirements for employers when
6 paying wages, stating "Every employer shall, semimonthly or at the time of each payment of
7 wages, furnish each of his or her employees... an accurate itemized statement in writing showing
8 (1) gross wages earned, (2) total hours worked by the employee, except for any employee whose
9 compensation is solely based on a salary and who is exempt from payment of overtime under
10 subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission...,
11 and (9) all applicable hourly rates in effect during the pay period and the corresponding number of
12 hours worked at each hourly rate by the employee..."
13

14 23. Plaintiff is informed and believes and based thereon alleges that Defendants knowingly
15 and intentionally failed to provide Plaintiff and all aggrieved employees with such timely and
16 accurate wage and hour statements.
17

18 24. Plaintiff and all aggrieved employees have been damaged by Defendants' failure to comply
19 with Labor Code Section 226 by not realizing the total amount of wages to which they were
20 entitled.
21

22 25. As a direct and proximate result of Defendants' conduct as alleged above, Defendants are
23 liable for damages and/or statutory penalties, together with interest thereon and attorney's fees and
24 costs.
25

26 **FOURTH CAUSE OF ACTION**

27 **FAILURE TO PAY WAGES DUE ON TERMINATION (LABOR CODE §203); BY**
28 **PLAINTIFF AGAINST ALL DEFENDANTS**

1 26. Plaintiff incorporates each and every allegation previously set forth in this complaint.

2 27. Labor Code Section 203 provides that if an employer fails to pay any wages of an
3 employee who is discharged or quits, the wages of such employee shall continue as from the due
4 date thereof at the same rate until paid or until an action therefor is commenced, for not more than
5 30 days.
6

7 28. Defendants willfully failed to pay all wages due to Plaintiff and all aggrieved employees
8 within the time limits set forth in Labor Code Section 203 after the end of their respective
9 employments with Defendants.

10 29. As a direct and proximate result of Defendants' actions, pursuant to Labor Code Section
11 203, Plaintiffs are entitled to their wages as a penalty from the date of discharge up to 30 days
12 thereafter.
13

14 **FIFTH CAUSE OF ACTION**

15 **FAILURE TO KEEP ACCURATE PAYROLL AND EMPLOYMENT RECORDS**

16 **(LABOR CODE §§ 1174, 1174.5, 1198; IWC WAGE ORDER NO. 5 § 7);**

17 **BY PLAINTIFF AGAINST ALL DEFENDANTS**

18 30. Plaintiff incorporates each and every allegation previously set forth in this complaint.

19 31. Defendants, as California employers, are required to maintain accurate payroll records
20 evidencing the hours worked daily by and the wages paid to, and the number of piece-rate units
21 earned by and any applicable piece rate paid to employees at a particular establishment but kept for
22 a period of not less than three years.
23

24 32. Upon information and belief, Defendants willfully failed to maintain any of the above
25 records accurately with respect to Plaintiff and all aggrieved employees' employment.

26 33. As a direct and proximate result of Defendants' actions, pursuant to Labor Code Section
27 1174.5, Plaintiff and all aggrieved employees are entitled to a civil penalty of \$500.
28

SIXTH CAUSE OF ACTION
VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT OF 2004 (BY
PLAINTIFF IN HER REPRESENTATIVE CAPACITY AGAINST ALL
DEFENDANTS)

34. Plaintiff incorporates each and every allegation previously set forth in this complaint.

35. Plaintiff is an aggrieved employee under PAGA because she was employed by Defendants during the applicable statutory period and suffered one or more of the Labor Code violations set forth in this complaint. Plaintiff seeks to recover on behalf of the State of California, for all current and former aggrieved employees of Defendants, including herself, the civil penalties provided by PAGA, plus reasonable attorney's fees and costs.

36. Plaintiff seeks penalties pursuant to PAGA for violation of the following Labor Code Sections:

- a. Failure to provide meal breaks in violation of Labor Code §§ 226.7 and 1198, and IWC Wage Order No. 5, the penalty for which is set forth in Labor Code §§ 558 and 2699(f)(2).
- b. Failure to provide rest breaks in violation of Labor Code §§ 226.7 and 1198, and IWC Wage Order No. 5, the penalty for which is set forth in Labor Code §§ 558 and 2699(f)(2).
- c. Failure to provide prompt payment of wages to employees upon termination and/or resignation in violation of Labor Code §203, the penalty for which is set forth in Labor Code § 256; and
- d. Failure to provide accurate itemized wage statement to employees in violation of Labor Code § 226, the penalty of which is set forth in Labor Code § 226.3.
- e. Failure to keep accurate payroll records in violation of Labor Code § 1174, the penalty for which is set forth in Labor Code § 1174.5.

37. Plaintiff has complied with the prefiling and notice requirements of PAGA by timely filing notice of the claims with the LWDA and sending a letter to Defendants of such claims via certified mail on April 4, 2023. The State of California did not provide notice within 65 days of the postmark of the aforementioned letter that it was launching an investigation.

1 **PRAYER FOR RELIEF**

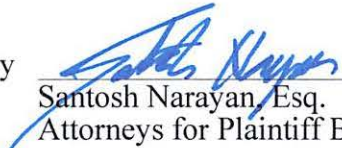
2 **WHEREFORE**, Plaintiff, on behalf of herself and the State of California, prays for
3 judgment against Defendants, and each of them, as follows:

- 4 1. For all compensation and wages owed, but not paid, to Plaintiff, as well as interest thereon,
5 according to proof;
6
7 2. For a premium hour of pay pursuant to Labor Code 226.7 for all missed meal and rest
8 breaks;
9
10 3. For damages and statutory and civil penalties pursuant to Labor Code §§ 203, 226.3, 1174.5
11 and 2699, et seq.;
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13 4. For reasonable attorney's fees and costs according to proof;
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15 5. For costs of suit incurred herein;
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17 6. Pre-judgment and post-judgment interest as provided by law; and,
18
19 7. For any other and further relief as the Court deems just and proper.

20 Dated: June 20, 2023

NARAYAN LAW, APC

21 By


Santosh Narayan, Esq.
Attorneys for Plaintiff BAO CHA

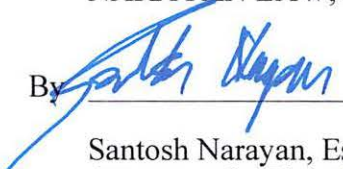
22 **DEMAND FOR JURY TRIAL**

23 Plaintiff hereby requests a trial by jury.

24 Dated: June 20, 2023

NARAYAN LAW, APC

25 By


Santosh Narayan, Esq.
Attorneys for Plaintiff BAO CHA