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Attorneys for Plaintiff(s),
NATALIAH DEVOL GREEN, and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES
(UNLIMITED JURISDICTION)

NATALIAH DEVOL GREEN, on behalf of
herself and all others similarly situated, and the
general public, and as an “aggrieved employee”
on behalf of other “aggrieved employees” under
the Labor Code Private Attorneys General Act of
2004,

Plaintiff(s),

vs.

MORGAN COOKIE GROUP CULVER LLC, a
California limited liability company; MORGAN
COOKIE GROUP LLC, a California limited
liability company; MORGAN COOKIE GROUP
DOWNEY LLC, a California limited liability
company; CRUMBL LLC, a Utah limited
liability company; POCKETS SMITTY LLC, a

Case No. 23STCV11939

CLASS ACTION

FIRST AMENDED COMPLAINT FOR:

1. Failure to Pay All Wages Earned for All Hours Worked and Other Compensable Hours at the Correct Rates of Pay (Lab. Code §§ 510, 1194, 1197, and 1198);
2. Failure to Provide Meal Periods (Lab. Code §§ 226.7, 512 and 1198);
3. Failure to Provide Rest Breaks (Lab. Code §§ 226.7 and 1198);
4. Failure to Indemnify (Lab. Code §§ 1198 and 2802);
5. Wage Statement Penalties (Lab. Code § 226);
6. Waiting Time Penalties (Lab. Code §



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FILED
Superior Court of California
County of Los Angeles
06/09/2023

David W. Slayton, Executive Officer / Clerk of Court
By: K. Martinez Deputy

Utah limited liability company; and DOES 1–50, inclusive,

Defendant(s).

- 203);
7. Unfair Competition (Bus. & Prof. Code §§ 17200, et seq; and
8. Civil Penalties (Lab. Code §§ 2698, et seq.).

JURY TRIAL DEMANDED

Plaintiff, Nataliah Devol Green (hereafter “Plaintiff” or “Green”), on behalf of herself and all others similarly situated, and the State of California, complains and alleges as follows:

I. INTRODUCTION

1. Plaintiff brings this class and representative action for alleged violations of the California Labor Code, Industrial Welfare Commission Order No. 7-2001 (hereafter “the Wage Order”), and the California Business and Professions Code against Defendants Morgan Cookie Group Culver LLC, a California limited liability company, Morgan Cookie Group LLC, a California limited liability company, Morgan Cookie Group Downey LLC, a California limited liability company, Crumbl LLC, a Utah limited liability company, Pockets Smitty LLC, a Utah limited liability company, and Does 1 through 50, inclusive (collectively “Defendants”).

2. As set forth in more detail below, Plaintiff alleges that Defendants are liable to her and other similarly situated workers for unpaid wages, statutory penalties, interest, and related relief. These claims are based on Defendants’ failures to:

(A) Pay all wages, including minimum, regular, overtime and doubletime wages, earned for all hours worked at the correct rates of pay;

(B) Provide all meal periods;

(C) Authorize and permit all rest breaks;

(D) Pay premium wages for unprovided meal periods;

(E) Pay premium wages for unprovided rest breaks;

(F) Indemnify for necessary work-related expenditures;

(G) Issue only accurate and complete itemized wage statements; and

(H) Timely pay wages upon termination of employment.

Accordingly, Plaintiff now seeks to recover unpaid wages, interest, liquidated damages, restitution, statutory penalties, attorneys’ fees, costs, and related relief through this class action.



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II. THE PARTIES

3. Plaintiff Nataliah Devol Green is a resident of California.

4. At all relevant times, Plaintiff was an “employee” within the meaning of Title 8 California Code of Regulations Section 11070 and an “aggrieved employee” within the meaning of Labor Code Section 2699(c).

5. Defendant Morgan Cookie Group Culver LLC is a limited liability company organized and existing under the laws of California and also a citizen of California based on Plaintiff’s information and belief.

6. Defendant Morgan Cookie Group LLC is a limited liability company organized and existing under the laws of California and also a citizen of California based on Plaintiff’s information and belief.

7. Defendant Morgan Cookie Group Downey LLC is a limited liability company organized and existing under the laws of California and also a citizen of California based on Plaintiff’s information and belief.

8. Defendant Crumbl LLC is organized and existing under the laws of Utah and also a citizen of California based on Plaintiff’s information and belief.

9. Defendant Pockets Smitty LLC is a limited liability company organized and existing under the laws of Utah and also a citizen of California based on Plaintiff’s information and belief.

10. Plaintiff is ignorant of the true names, capacities, relationships, and extents of participation in the conduct alleged herein of Defendants sued as DOES 1-50, inclusive, but is informed and believes and thereon alleges that said Defendants are legally responsible for the wrongful conduct alleged herein and therefore sues these Defendants by such fictitious names. Plaintiff will amend the Complaint to allege the true names and capacities of the DOE Defendants when ascertained.

11. Plaintiff is informed and believes and thereon alleges that, at all relevant times herein, all Defendants were the agents, employees and/or servants, masters or employers of the remaining defendants, and in doing the things hereinafter alleged, were acting or failing to act within the course and scope of such agency, employment, direction and control, and with the approval and ratification of each of the other Defendants.

12. At all relevant times, in perpetrating the acts and omissions alleged herein,



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1 Defendants, and each of them, acted pursuant to and in furtherance of a policy, practice, or a lack
2 of a practice which resulted in Defendants not compensating Plaintiff and the other Class
3 Members or otherwise complying with their rights in accordance with applicable California labor
4 laws as alleged herein.

5 13. At all relevant times, in perpetrating the acts and omissions alleged herein,
6 Defendants and each of them acted pursuant to and in furtherance of a policy and/or practice, or
7 lack thereof, which resulted in Defendants not paying Plaintiff and other members of the below-
8 described class in accordance with applicable laws as alleged herein.

9 **III. CLASS ALLEGATIONS**

10 14. This action has been brought and may be maintained as a class action pursuant to
11 California Code of Civil Procedure section 382 because there is a well-defined community of
12 interest among the persons who comprise the readily ascertainable class defined below and
13 because Plaintiff is unaware of any difficulties likely to be encountered in managing this case as
14 a class action.

15 15. **Class Definition:** The Class is defined as follows: All persons Defendants
16 employed or otherwise contracted with in California as non-exempt, hourly employees, including,
17 but not limited to bakers and cashiers, individuals performing work comparable to the
18 aforementioned, compensated comparably to the aforementioned, and individuals in similar
19 positions, at any time during the period beginning four years prior to the filing of this action and
20 ending on the date that final judgment is entered in this action (“Class” or “Class Members”).

21 16. **Reservation of Rights:** Pursuant to Rule of Court 3.765(b), Plaintiff reserves the
22 right to amend or modify the class definition with greater specificity, by further division into
23 subclasses and/or by limitation to particular issues.

24 17. **Numerosity:** The Class Members are so numerous that the individual joinder of
25 each individual Class Member is impractical. While Plaintiff does not currently know the exact
26 number of Class Members, Plaintiff is informed and believes that the actual number exceeds the
27 minimum required for numerosity under California laws.

28 18. **Commonality and Predominance:** Common questions of law and fact exist as to
all Class Members and predominate over any questions which affect only individual Class
Members. These questions include, but are not limited to:

A. Whether Defendants failed to pay all wages earned to Class Members for



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all hours worked at the correct rates of pay;

B. Whether Defendants failed to provide the Class Members with all meal periods in compliance with California law;

C. Whether Defendants failed to authorize and permit the Class Members to take all rest periods in compliance with California law;

D. Whether Defendants failed to indemnify the Class Members for the reasonable expenses they incurred during the course of performing their duties;

E. Whether Defendants knowingly and intentionally failed to provide the class with accurate and complete itemized wage statements;

F. Whether Defendants willfully failed to provide the class with timely final wages;

G. Whether Defendants engaged in unfair competition within the meaning of Business and Professions Code sections 17200, et seq., with respect to the Class; and

H. Whether Class Members are entitled to restitution of money or property that Defendants may have acquired from them through alleged Labor Code violations.

19. **Typicality:** Plaintiff's claims are typical of the other Class Members' claims. Plaintiff is informed and believes and thereon alleges that Defendants have a policy and/or practice, or lack thereof, which resulted in Defendants failing to comply with the California Labor Code, the Wage Order, and the Business and Professions Code.

20. **Adequacy of Class Representative:** Plaintiff is an adequate class representative in that she has no interests that are adverse to, or otherwise in conflict with, the interests of absent Class Members. Plaintiff is dedicated to vigorously prosecuting this action on behalf of Class Members. Plaintiff will fairly and adequately represent and protect the interests of Class Members.

21. **Adequacy of Class Counsel:** Plaintiff's counsel are adequate class counsel in that they have no known conflicts of interest with Plaintiff or absent Class Members, are experienced in class action litigation, and are dedicated to vigorously prosecuting this action on behalf of Plaintiff and absent Class Members.

22. **Superiority:** A class action is vastly superior to other available means for fair and efficient adjudication of Class Members' claims and would be beneficial to the parties and the Court. Class action treatment will allow a number of similarly situated persons to simultaneously



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1 and efficiently prosecute their common claims in a single forum without the unnecessary
2 duplication of effort and expense that numerous individual actions would entail. In addition, the
3 monetary amounts due to many individual Class Members are likely to be relatively small and
4 would thus make it difficult, if not impossible, for individual Class Members to both seek and
5 obtain relief. Moreover, a class action will serve an important public interest by permitting Class
6 Members to effectively pursue the recovery of monies owed to them. Further, a class action will
7 prevent the potential for inconsistent or contradictory judgments inherent in individual litigation.

8 **IV. STATEMENT OF FACTS**

9 23. The Wage Order applies to “all persons employed in the mercantile industry
10 whether paid on a time, piece rate, commission, or other basis...” Wage Order, § 1. The Wage
11 Order defines “Mercantile Industry” to mean “any industry, business, or establishment operated
12 for the purpose of purchasing, selling, or distributing goods are commodities at wholesale or
13 retail; or for the purpose of renting goods or commodities.” Wage Order, § 2(H). At all relevant
14 times during the applicable limitations period, Defendants, Green, and all of the Class Members
15 were covered by the Wage Order because Defendants operated, and Green, and all of the Class
16 Members worked for, one or more establishments operated as a bakery that sells cookies.
17 Accordingly, Green and all of the other Class Members are entitled to the protections the Wage
18 Order provides.

19 24. On approximately May 24, 2022, Defendants began to employ Green in
20 Hawthorne and Culver City in the position of hourly, non-exempt baker and cashier. Defendants
21 continuously employed her in that capacity until on or about September 15, 2022 when her
22 employment ended.

23 25. At all relevant times, Defendants issued wages to Green and all of the other Class
24 Members on a weekly (52 paychecks/year) basis and paid them by the hour. At all relevant times,
25 Defendants classified Green and all of the other Class Members as non-exempt employees entitled
26 to the protections of the Labor Code and the Wage Order.

27 26. At all relevant times, Defendants failed to compensate Green and all of the other
28 Class Members for all hours worked at the correct and applicable minimum, regular, or overtime
rates of pay. Defendants required Green and the Class Members to report to their stores to sign
onboarding and new hire documents before their first day of work. Defendants failed to
compensate Green and the Class Members for this onboarding process. Defendants further



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1 required Green and the Class Members to work off the clock before they clocked in at the
2 beginning of their shifts. Defendants required Green and all of the other Class Members to put on
3 their aprons, hats or hairnets and wash their hands before they could clock in at the beginning of
4 their shifts. Defendants also required Green and the Class Members to only use the one tablet at
5 the back of the stores to clock in, and therefore, there were often other employees in the line that
6 delayed the clock in process. Green and all of the other Class Members worked approximately
7 five (5) minutes off the clock at the beginning of their shifts without compensation. Defendants
8 also understaffed their stores and required Green and the Class Members to clock out for their
meal periods and continue working off the clock.

9 27. At all relevant times, Defendants failed to compensate Green and all of the other
10 Class Members at the correct rates of pay for all hours worked over eight in a day, over 40 in a
11 week, and for the first eight hours of the seventh day of the workweek.

12 28. At all relevant times, Defendants failed to compensate Green and all of the other
13 Class Members at the correct rates of pay for all hours worked over 12 in a day, and all over the
14 first eight of the seventh day of the workweek.

15 29. At all relevant times, Defendants failed to provide Green and all of the other Class
16 Members with all timely 30-minute, off-duty meal periods. Defendants required Green and the
17 Class Members to obtain their store managers' or shift leads' permission before taking a meal or
18 rest break. As described above, Defendants understaffed their stores and therefore, the shift leads
19 or the store managers often only authorized the meal periods *after* Green and the Class Members
20 had already worked more than five (5) hours in a workday. Defendants also required Green and
21 the Class Members to clock out for their meal periods and continue working off the clock.
Defendants failed to pay premium wages for days on which they failed to provide Green and all
22 of the other Class Members with meal periods as required by law.

23 30. Defendants also failed to pay premium wages for days on which they failed to
24 provide Green and all of the other Class Members with meal periods as required by law.

25 31. At all relevant times, Defendants failed to authorize and permit Green and all of
26 the other Class Members to take ten-minute, off-duty, paid rest breaks every four hours worked
27 or major portion thereof. As described above, Defendants understaffed their stores and failed to
28 provide Green and the Class Members with all timely rest breaks required under California law.
Defendants also failed to pay premium wages for days on which they failed to authorize and



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1 permit Green and all of the other Class Members to take rest breaks as required by law.

2 32. At all relevant times, Defendants required Green and all of the other Class
3 Members to incur certain business expenses in the course of performing their duties. Defendants
4 required Green and all of the other Class Members to supply mobile phones to communicate with
5 their managers and to perform their job duties. However, Defendants did not provide these items
6 and did not reimburse Green and the other Class Members for these items.

7 33. At all relevant times, Defendants failed to issue to Green and all of the other Class
8 Members complete and accurate wage statements that state all hours worked at the correct rates
9 of pay, and all wages earned. Defendants knowingly and intentionally failed to state on the wage
10 statements they issued to Green and all of the other Class Members the unpaid wages discussed
11 above. The wage statements fail to state all wages earned, all meal and rest break premium wages
12 earned, and related information.

13 34. At all relevant times, Defendants also failed to timely pay Green and all of the
14 other Class Members all earned wages as described above during and at the conclusion of
15 employment.

16 35. At all relevant times, Defendants failed to maintain accurate employee records of
17 Green and all of the other Class Members.

18 36. For the reasons stated herein, Plaintiff alleges that as a result of Defendants'
19 unlawful practices and policies, Plaintiff and the Class Members were:

- 20 A. Not provided with all off duty meal periods;
- 21 B. Not authorized and permitted to take all rest break periods;
- 22 C. Not paid one hour's pay for each workday in which Defendants failed to
23 authorize and permit them to take one or more timely rest periods;
- 24 D. Not paid one hour's pay for each workday in which Defendants failed to
25 provide them with one or more timely meal periods;
- 26 E. Not paid all wages earned, including, but not limited to, minimum, regular,
27 overtime, and doubletime wages for work performed while clocked out;
- 28 F. Not indemnified for all necessary business expenditures incurred during
the discharge of their duties;
- G. Not provided with accurate and complete wage statements; and
- H. Not timely paid all earned and unpaid wages at the time their employment



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ended.

FIRST CAUSE OF ACTION

**FAILURE TO PAY ALL WAGES EARNED FOR ALL HOURS WORKED AT THE
CORRECT RATES OF PAY**

Lab. Code §§ 510, 1194, 1197, and 1198

(By Plaintiff, on behalf of herself and the Class, against all Defendants)

37. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

38. At all relevant times, Plaintiff and the Class Members have been non-exempt employees entitled to the protections of both the Labor Code and the Wage Order.

39. Section 2 of the Wage Order defines “hours worked” as “the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.”

40. Section 3 of the Wage Order states:

The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to attend school and are not otherwise prohibited by law from engaging in the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40 in a workweek unless the employee receives one and one half (1½) times such employee’s regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day’s work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

(a) One and one-half (1½) times the employee’s regular rate of pay for all hours worked in excess of eight (8) hours up to and including twelve (12) hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek;

(b) Double the employee’s regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek. The overtime rate of compensation required to be paid to a nonexempt full-time salaried employee shall be computed by using the employee’s regular hourly salary as one fortieth (1/40) of the employee’s weekly salary.

41. Section 4 of the Wage Order requires an employer to pay non-exempt employees at least the minimum wage set forth therein for all hours worked, which consists of all hours that



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an employer has actual or constructive knowledge that employees are working.

42. Labor Code section 510 states:

Eight hours of labor constitutes a day's work. 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. Nothing in this section requires an employer to combine more than one rate of overtime compensation in order to calculate the amount to be paid to an employee for any hour of overtime work.

43. Labor Code section 1194 invalidates any agreement between an employer and an employee to work for less than the minimum wage required under the applicable Wage Order.

44. Labor Code section 1197 makes it unlawful for an employer to pay an employee less than the minimum wage required under the applicable Wage Order for all hours worked during a payroll period.

45. Labor Code section 1198 makes it unlawful for an employer to employ an employee under conditions that violate the Wage Order.

46. In conjunction, these provisions of the Labor Code require employers to pay non-exempt employees no less than their agreed-upon or statutorily mandated wage rates for all hours worked, including unrecorded hours when the employer knew or reasonably should have known that employees were working during those hours. (*See Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 585.)

47. As described above, at all relevant times during the applicable limitations period, Defendants failed to compensate Plaintiff and the Class Members for all hours worked, including, but not limited to minimum, regular, overtime and doubletime wages for all minimum, regular, overtime and doubletime hours, respectively, that they worked at the correct rates of pay.

48. Plaintiff is informed and believes and thereon alleges that, at all relevant times, Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants' failure to compensate Plaintiff and the other Class Members for all hours worked at the correct rates of pay as required by California law.



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a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

56. In relevant part, Section 11 of the Wage Order states:

Meal Periods:

- (A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee.
- (B) An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.
- (C) Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. An "on duty" meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.
- (D) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.
- (E) In all places of employment where employees are required to eat on the premises, a suitable place for that purpose shall be designated.

57. In relevant part, California Labor Code § 226.7 states:

- (b) An employer shall not require an employee to work during a meal or rest period mandated pursuant to an applicable



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statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.

(c) If an employer fails to provide an employee a meal period or rest period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one 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.

58. Pursuant to California Labor Code § 512 and the Wage Order, Plaintiff and the Class Members were entitled to uninterrupted meal periods of at least 30 minutes for each day they worked five or more hours. Pursuant to California Labor Code § 512, they were also entitled to a second 30-minute meal period when they worked more than 10 hours in a workday.

59. Defendants intentionally failed to provide Plaintiff and the Class Members with all required 30-minute duty free meal periods in accordance with the Wage Order.

60. As described above, at all relevant times, Defendants failed to provide Plaintiff and the Class Members with all timely, duty-free meal periods. Defendants denied Plaintiff and the other Class Members their 30-minute off-duty meal period within the first five hours of work. Furthermore, Defendants failed to pay premium wages for days on which they failed to provide Plaintiff and the other Class Members with timely meal periods.

61. Plaintiff is informed and believes and thereon alleges that, at all relevant times within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy which resulted in Defendants not providing Plaintiff and the Class Members with all off-duty meal periods required by California law.

62. As a result of Defendants' unlawful conduct, Plaintiff and the Class Members have suffered damages in amounts subject to proof to the extent they were not paid additional wages owed for all meal periods not provided to them.

63. By reason of the above, Plaintiff and the Class Members are entitled to premium wages for workdays in which one or more meal periods were not provided to them pursuant to



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1 California Labor Code § 226.7.

2 **THIRD CAUSE OF ACTION**

3 **FAILURE TO AUTHORIZE AND PERMIT REST BREAKS**

4 **Lab. Code §§ 226.7 and 1198**

5 **(By Plaintiff, on behalf of herself and the Class, against all Defendants)**

6 64. Plaintiff incorporates all paragraphs of this complaint as if fully alleged herein.

7 65. At all relevant times during the applicable limitations period, Plaintiff and the
8 Class Members have been employees of Defendants and entitled to the benefits and protections
9 of California Labor Code §§ 226.7 and 1198, and the Wage Order.

10 66. In relevant part, California Labor Code § 1198 states:

11 The maximum hours of work and the standard conditions of labor
12 fixed by the commission shall be the maximum hours of work and
13 the standard conditions of labor for employees. The employment
14 of any employee for longer hours than those fixed by the order or
under conditions of labor prohibited by the order is unlawful.

15 67. In relevant part, Section 12 of the Wage Order states:

16 Rest Periods:

17 (A) Every employer shall authorize and permit all employees to take
18 rest periods, which insofar as practicable shall be in the middle of
19 each work period. The authorized rest period time shall be based
20 on the total hours worked daily at the rate of ten (10) minutes net
rest time per four (4) hours or major fraction thereof. However, a
21 rest period need not be authorized for employees whose total daily
work time is less than three and one-half (3 ½) hours. Authorized
22 rest period time shall be counted as hours worked for which there
shall be no deduction from wages.

23 (B) If an employer fails to provide an employee a rest period in
24 accordance with the applicable provisions of this order, the
25 employer shall pay the employee one (1) hour of pay at the
employee's regular rate of compensation for each workday
that the rest period is not provided.

26 68. In relevant part, California Labor Code § 226.7 states:



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1 (b) An employer shall not require an employee to work during
2 a meal or rest period mandated pursuant to an applicable
3 statute, or applicable regulation, standard, or order of the
4 Industrial Welfare Commission, the Occupational Safety
and Health Standards Board, or the Division of
Occupational Safety and Health.

5 (c) If an employer fails to provide an employee a meal period
6 or rest period in accordance with a state law, including, but
7 not limited to, an applicable statute or applicable
8 regulation, standard, or order of the Industrial Welfare
9 Commission, the Occupational Safety and Health
10 Standards Board, or the Division of Occupational Safety
and Health, the employer shall pay the employee one
11 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.

12 69. Pursuant to the Wage Order, Plaintiff and the Class Members were entitled to be
13 authorized and permitted to take net rest breaks of at least ten minutes for each four-hour period
14 of work, or major fraction thereof.

15 70. Defendants intentionally failed to authorize and permit Plaintiff and the Class
16 Members to take all 10-minute rest periods free from any work duties in accordance with the
Wage Order.

17 71. As described above, at all relevant times, Defendants failed to authorize and permit
18 Plaintiff and the Class Members to take all timely rest periods. Furthermore, Defendants failed to
19 pay premium wages to Plaintiff and the Class Members for days on which they failed to authorize
20 and permit Plaintiff and the other Class Members to take timely rest periods.

21 72. At all relevant times, Defendants failed to authorize and permit Plaintiff and the
22 Class Members to take ten-minute, paid, duty-free rest breaks every four hours worked or major
23 fraction thereof. Defendants did not seek an exemption from the rest period protections of the
24 Wage Order from the California Division of Labor Standards Enforcement. Moreover,
25 Defendants failed to pay Plaintiff and the Class Members premium wages on workdays they failed
26 to authorize and permit them to take 10-minute rest periods every four hours worked or major
fraction thereof.

27 73. Plaintiff is informed and believes and thereon alleges that, at all relevant times
28 within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy



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1 which resulted in Defendants not authorizing and permitting Plaintiff and the Class Members to
2 take all rest breaks required by California law.

3 74. Defendants failed to provide Plaintiff with all required rest breaks in accordance
4 with the Wage Order. Plaintiff is informed and believes and thereon alleges that, at relevant times
5 within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy
6 which resulted in Defendants not providing the Class Members with all rest breaks required by
7 California law.

8 75. Defendants failed to pay Plaintiff the additional wages required by California
9 Labor Code § 226.7 for all rest breaks not provided to her. Plaintiff is informed and believes and
10 thereon alleges that, at relevant times within the applicable limitations period, Defendants have
11 maintained a policy, practice, or a lack of a policy which resulted in Defendants not providing the
12 Class Members with additional wages for all rest breaks not provided to them as required by
13 California Labor Code § 226.7.

14 76. By reason of the above, Plaintiff and the Class Members are entitled to premium
15 wages for workdays in which one or more rest breaks were not provided to them pursuant to
16 California Labor Code § 226.7.

17 **FOURTH CAUSE OF ACTION**

18 **FAILURE TO INDEMNIFY**

19 **Lab. Code §§1198 and 2802**

20 **(By Plaintiff, on behalf of herself and the Class, against all Defendants)**

21 77. Plaintiff incorporates all paragraphs of this complaint as if fully alleged herein.

22 78. In pertinent part, California Labor Code § 2802(a) states: “An employer shall
23 indemnify his or her employee[s] for all necessary expenditures incurred by the employee in direct
24 consequence of the discharge of his or her duties.”

25 79. California Labor Code § 1198 prohibits employers from employing their
26 employees under conditions prohibited by the Wage Order.

27 80. At all relevant times, Defendants required Plaintiff and the Class Members to incur
28 certain business expenses in the course of performing their duties.

81. As described above, Defendants required Green and all of the other Class
Members to incur certain business expenses in the course of performing their duties. Defendants
required Green and all of the other Class members to supply mobile phones to perform their job



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1 duties. However, Defendants did not provide these items and did not reimburse Green and the
2 other Class members for these items.

3 82. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
4 Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants'
5 failure to indemnify Plaintiff and the Class Members for the reasonable expenses they incurred
6 during the course of performing their duties.

7 83. By reason of the above, Plaintiff and the members of the class are entitled to
8 reimbursement for all necessary expenditures and losses and interest due and owing to them
9 within four years (4) of the date of the filing of the Complaint until the date of entry of judgment
10 pursuant to California Labor Code section 2802(b). Further, Plaintiff, on behalf of himself and
11 the class, prays for reasonable attorney's fees pursuant to Labor Code section 2802(c).

12 84. Additionally, with respect to this cause of action, on behalf of himself and the
13 class, Plaintiff prays for an award of reasonable attorney fees and costs, including interest thereon,
14 as permitted by law, all in amounts subject to proof.

15 **FIFTH CAUSE OF ACTION**

16 **FAILURE TO ISSUE ACCURATE AND COMPLETE WAGE STATEMENTS**

17 **Lab. Code §§ 226**

18 **(By Plaintiff, on behalf of herself and the Class, against all Defendants)**

19 85. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

20 86. Pursuant to California Labor Code § 226(a), Plaintiff and the Class Members were
21 entitled to receive, semi-monthly or at the time of each payment of wages, an accurate itemized
22 statement showing:

23 A. Gross wages earned;

24 B. Total hours worked by the employee, except for any employee whose
25 compensation is solely based on a salary and who is exempt from payment of overtime under
26 subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission;

27 C. The number of piece rate units earned and any applicable piece rate if the
28 employee is paid on a piece-rate basis;

D. All deductions, provided that all deductions made on written orders of the
Employee may be aggregated and shown as one item;

E. Net wages earned;



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1 F. The inclusive dates of the period for which the employee is paid;

2 G. The name of the employee and his or her social security number, except
3 that by January 1, 2008, only the last four digits of his or her social security number or an
4 employee identification number other than a social security number may be shown on the itemized
5 statement;

6 H. The name and address of the legal entity that is the employer; and

7 I. All applicable hourly rates in effect during the pay period and the
8 corresponding number of hours worked at each hourly rate by the employee.

9 87. Pursuant to California Labor Code § 226, an employee is deemed to suffer injury
10 if the employer fails to provide a wage statement. Also, an employee is deemed to suffer injury if
11 the employer fails to provide accurate and complete information as required by California Labor
12 Code § 226(a) and the employee cannot “promptly and easily determine” from the wage statement
13 alone one or more of the following:

14 A. The amount of the gross wages or net wages paid to the employee during
15 the pay period or any of the other information required to be provided on the itemized wage
16 statement pursuant to California Labor Code § 226(a);

17 B. Which deductions the employer made from gross wages to determine the
18 net wages paid to the employee during the pay period;

19 C. The name and address of the employer and, if the employer is a farm labor
20 contractor, as defined in subdivision (b) of Section 1682 of the California Labor Code, the name
21 and address of the legal entity that secured the services of the employer during the pay period;

22 D. The name of the employee and only the last four digits of his or her
23 social security number or an employee identification number other than a social security number;
24 and

25 E. The number of piece-rate units earned and the piece rate.

26 88. “Promptly and easily determine,” as stated in California Labor Code § 226(e),
27 means a reasonable person would be able to readily ascertain the information without reference
28 to other documents or information.

89. As alleged herein, at all relevant times during the applicable limitations period,
Defendants violated California Labor Code section 226 because they did not properly and
accurately itemize each employee’s gross wages earned, net wages earned, the total hours worked,



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1 the corresponding number of hours worked at each rate by the employee and other requirements
2 of California Labor Code section 226. Defendants failed to state in the wage statements they
3 issued to Plaintiff and the other Class Members all their hours worked and wages earned,
4 including, but not limited to, regular and overtime wages for work they performed off-the-clock
after clocking-out (as described above).

5 90. Defendants' failure to provide Plaintiff and the other Class Members with accurate
6 wage statements was knowing and intentional. Defendants had the ability to provide Plaintiff and
7 the other Class Members with accurate wage statements but intentionally provided wage
8 statements that Defendants knew were not accurate.

9 91. As a result of being provided with inaccurate wage statements by Defendants,
10 Plaintiff and the other Class Members have suffered injury. Their legal rights to receive accurate
11 wage statements were violated and they were misled about the amount of wages they had actually
12 earned and were owed. In addition, the absence of accurate information on their wage statements
13 prevented immediate challenges to Defendants' unlawful pay practices, has required discovery
14 and mathematical computations to determine the amounts of wages owed, has caused difficulty
15 and expense in attempting to reconstruct time and pay records and/or has led to the submission of
16 inaccurate information about wages to state and federal government agencies. Further, Plaintiff
17 and the other Class Members were not able to ascertain from the wage statements whether
Defendants complied with their obligations under California Labor Code section 226(a).

18 92. Pursuant to California Labor Code § 226(e), Plaintiff and the class are entitled to
19 recover the greater of actual damages, or penalties of fifty dollars (\$50) for the initial pay period
20 in which a violation of California Labor Code § 226(a) occurred and one hundred dollars for each
21 violation of California Labor Code § 226(a) in a subsequent pay period, not to exceed an aggregate
22 penalty of four thousand dollars (\$4,000) per class member, and are also entitled to an award of
23 costs and reasonable attorneys' fees.

SIXTH CAUSE OF ACTION

WILLFUL FAILURE TO TIMELY PAY FINAL WAGES

(Lab. Code §§ 201, 202, and 203)

(By Plaintiff, on behalf of herself and the Class, against all Defendants)

24 93. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

25 94. At all relevant times during the applicable limitations period, Plaintiffs and the



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1 Class have been non-exempt employees of Defendants and entitled to the benefits and protections
2 of California Labor Code §§ 201, 202, and 203, and the Wage Order.

3 95. Labor Code § 201 provides that all earned and unpaid wages of an employee who
4 is discharged are due and payable immediately at the time of discharge.

5 96. Labor Code § 202 provides that all earned and unpaid wages of an employee who
6 quits after providing at least 72-hours notice before quitting are due and payable at the time of
7 quitting and that all earned and unpaid wages of an employee who quits without providing at least
8 72-hours notice before quitting are due and payable within 72 hours.

9 97. Defendants failed to pay Green and all of the other Class Members whose
10 employment ended all of the earned but unpaid wages described above by the conclusion of their
11 employment, including minimum wages, regular wages, overtime wages, unprovided meal period
12 premium wages, unprovided rest break premium wages, and other compensation.

13 98. By failing to pay such earned wages to Plaintiff and the Class Members,
14 Defendants failed to timely pay them all earned and unpaid wages in violation of Labor Code
15 § 201 or § 202.

16 99. Plaintiff is informed and believes that Defendants' failures to timely pay Plaintiff
17 and the Class Members all of their earned and unpaid wages (described above) have been willful
18 in that, at all relevant times, Defendants have deliberately maintained policies and practices that
19 violate the requirements of the Labor Code and the Wage Order, even though at all relevant times,
20 they have had the ability to comply with those legal requirements.

21 100. Pursuant to Labor Code § 203, Plaintiffs seeks waiting time penalties on behalf of
22 themselves and the Class, in amounts subject to proof not to exceed 30 days of waiting time
23 penalties for each Class Member.

24 **SEVENTH CAUSE OF ACTION**

25 **UNFAIR COMPETITION**

26 **(Bus. & Prof. Code §§ 17200, *et seq.*)**

27 **(By Plaintiff, on behalf of herself and the Class, against all Defendants)**

28 101. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

102. At all relevant times during the applicable limitations period, Plaintiff and the
Class Members have been employees of Defendants and entitled to the benefits and protections



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of the Business and Professions Code §§ 17200, *et seq.*

103. The unlawful conduct of Defendants alleged herein amount to and constitutes unfair competition within the meaning of California Business & Professions Code §§ 17200, *et seq.* Due to their unfair and unlawful business practices alleged herein, Defendants have unfairly gained a competitive advantage over other comparable companies doing business in California that comply with their legal obligations to compensate employees for all earned wages.

104. As a result of Defendants' unfair competition as alleged herein, Plaintiff and the Class Members have suffered injuries in fact and lost money or property. Plaintiff and the Class Members were deprived of minimum wages, regular wages, overtime wages, missed meal period premium wages, missed rest period premium wages, phone expenses, and comparable money and property.

105. Pursuant to California Business & Professions Code § 17203, Plaintiff and the Class Members are entitled to restitution of all monies rightfully belonging to them that Defendants did not pay them or otherwise retained by means of their unlawful and unfair business practices.

106. Plaintiff and the Class Members are entitled to reasonable attorneys' fees in connection with their unfair competition claims pursuant to California Code of Civil Procedure § 1021.5, the substantial benefit doctrine and/or the common fund doctrine.

EIGHTH CAUSE OF ACTION

CIVIL PENALTIES

(By Plaintiff and the Class against all Defendants)

107. Plaintiff and the Class Members are entitled to reasonable attorneys' fees in connection with their unfair competition claims pursuant to California Code of Civil Procedure § 1021.5, the substantial benefit doctrine and/or the common fund doctrine.

108. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

109. The "Aggrieved Employees" are all members of the Class defined above who Defendants employed during the period beginning April 4, 2022 and ending on the date that final judgment is entered in this action.

110. Labor Code § 204 states

- (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



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1 employer as the regular paydays. Labor performed between the 1st and 15th
2 days, inclusive, of any calendar month shall be paid for between the 16th
3 and the 26th day of the month during which the labor was performed, and
4 labor performed between the 16th and the last day, inclusive, of any
5 calendar month, shall be paid for between the 1st and 10th day of the
6 following month. ...

7
8 (b) (1) Notwithstanding any other provision of this section, all wages
9 earned for labor in excess of the normal work period shall be paid no later
10 than the payday for the next regular payroll period.

11 (2) An employer is in compliance with the requirements of
12 subdivision (a) of Section 226 relating to total hours worked by the
13 employee, if hours worked in excess of the normal work period during the
14 current pay period are itemized as corrections on the paystub for the next
15 regular pay period. Any corrections set out in a subsequently issued
16 paystub shall state the inclusive dates of the pay period for which the
17 employer is correcting its initial report of hours worked.

18 (c) However, when employees are covered by a collective bargaining
19 agreement that provides different pay arrangements, those arrangements
20 shall apply to the covered employees.

21 (d) The requirements of this section shall be deemed satisfied by the payment
22 of wages for weekly, biweekly, or semimonthly payroll if the wages are
23 paid not more than seven calendar days following the close of the payroll
24 period.

25 111. Defendants paid wages to employees on regular intervals. Defendants, however,
26 failed to pay Plaintiff on such intervals for all wages earned and all hours worked. On information
27 and belief, Plaintiff alleges that Defendants also failed to pay the Aggrieved Employees on such
28 intervals for all wages earned and all hours worked.

112. During the applicable time period, Defendants violated California Labor Code §§
201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, and 2802.

113. California Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on
behalf of themselves and other current or former employees, to bring a civil action to recover civil
penalties pursuant to the procedures specified in California Labor Code § 2699.3.

114. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff and the Class are
entitled to recover civil penalties for each of the Defendants' violations of California Labor Code
§§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, and 2802 during the



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1 applicable limitations period in the following amounts:

2 A. For violations of California Labor Code § 204, one hundred dollars
3 (\$100.00) for each Aggrieved Employee for each initial violation and two hundred dollars
4 (\$200.00) for each Aggrieved Employee for each subsequent, willful or intentional violation
(penalty amounts established by California Labor Code § 210).

5 B. For violations of California Labor Code § 226(a), two hundred fifty dollars
6 (\$250.00) for each Aggrieved Employee for initial violation and one thousand dollars (\$1,000.00)
7 for each Aggrieved Employee for each subsequent violation (penalty amounts established by
8 California Labor Code § 226.3).

9 C. For violations of California Labor Code §§ 510 and 512, fifty dollars
10 (\$50.00) for each Aggrieved Employee for initial violation and one hundred dollars (\$100.00) for
11 each Aggrieved Employee for each subsequent violation, per pay period (penalty amounts
12 established by California Labor Code § 558).

13 D. For violations of California Labor Code § 1197, one hundred dollars
14 (\$100.00) for each Aggrieved Employee for each initial and intentional violation and two hundred
15 fifty dollars (\$250.00) for each Aggrieved Employee for each subsequent violation, per pay period
16 (regardless of whether the initial violations were intentionally committed) (penalty amounts
established by California Labor Code § 1197.1).

17 E. For violations of California Labor Code § 1174, five hundred dollars
18 (\$500.00) for each Aggrieved Employee for each violation (penalty amounts established by
19 California Labor Code § 1174.5).

20 F. For violations of California Labor Code §§ 201, 202, 203, 226.7, 1194,
21 1198, and 2802, one hundred dollars (\$100.00) for each Aggrieved Employee per pay period for
22 each initial violation and two hundred dollars (\$200.00) for each Aggrieved Employee per pay
23 period for each subsequent violation (penalty amounts established by California Labor Code §
2699(f)(2)).

24 115. Plaintiff has complied with the procedures for bringing suit specified in California
25 Labor Code § 2699.3. By letter dated April 4, 2023, Plaintiff filed written notice online with the
26 Labor and Workforce Development Agency (“LWDA”) and gave written notice by certified mail
27 to Defendants of the specific provisions of the California Labor Code alleged to have been
28 violated, including the facts and theories to support the alleged violations. A true and correct copy



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1 of the notice to the LWDA dated April 4, 2023 is attached as Exhibit A. Plaintiff accompanied
2 her LWDA notice with a fee in the amount of \$75.00. The LWDA has failed to take action in
3 response within 65 calendar days of the date of Plaintiff's notice, but Plaintiff anticipates that the
4 LWDA will provide written notice to Plaintiff informing her that it does not intend to investigate
5 these allegations.

6 116. Pursuant to California Labor Code § 2699(g), Plaintiff and the Aggrieved
7 Employees are entitled to an award of civil penalties, reasonable attorney's fees and costs in
8 connection with their claims for civil penalties.

9 **V. PRAYER FOR RELIEF**

10 117. WHEREFORE, Plaintiff, on behalf of herself and the Class Members, prays for
11 relief and judgment against Defendants as follows:

12 A. An order that the action be certified as a class action with respect to
13 Plaintiff's claims for violations of California law;

14 B. An order that Plaintiff be appointed class representative;

15 C. An order that counsel for Plaintiff be appointed class counsel;

16 D. Unpaid wages, including minimum, regular, overtime, double-time,
17 missed meal period, and missed rest period wages;

18 E. Liquidated damages;

19 F. Statutory penalties, including waiting time penalties;

20 G. Civil penalties;

21 H. Restitution;

22 I. Declaratory relief;

23 J. Actual damages;

24 K. Pre-judgment interest;

25 L. Costs of suit;

26 M. Reasonable attorneys' fees; and

27 N. Such other relief as the Court deems just and proper.

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Respectfully submitted,

Dated: June 9, 2023

David Spivak

Green v. Morgan Cookie Group Culver LLC, et al.

First Amended Class Action Complaint

Doc ID: d231c24e7c916da489e8b19fdc418d3122661f8d

EXHIBIT A



THE SPIVAK LAW FIRM
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SENT BY ELECTRONIC SUBMISSION, CERTIFIED MAIL, AND EMAIL

April 4, 2023

Attn: PAGA Administrator
Labor and Workforce Development Agency
Attn: PAGA Administrator
<http://dir.tflaforms.net>
Via Electronic Submission

Re: Nataliah Devol Green / Crumbl

To Whom It May Concern:

Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code sections 2698, *et seq.*, Nataliah Devol Green (hereafter “Green” or “Complainant”) provides notice that Morgan Cookie Group Culver LLC, a California limited liability company, Morgan Cookie Group LLC, a California limited liability company, Morgan Cookie Group Downey LLC, a California limited liability company, Crumbl LLC, a Utah limited liability company, Pockets Smitty LLC, a Utah limited liability company, and related entities (collectively “the Crumbl Employers” or “the Employers”) violated her rights and those of all other individuals the Crumbl Employers have employed or otherwise contracted with in California as non-exempt, hourly employees, individuals performing work comparable to the aforementioned, and individuals in similar positions (hereafter the “Aggrieved Employees”) under Labor Code sections 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, and 2802, and related employee protections. On behalf of herself and all other Aggrieved Employees, Green hereby provides this notice to the Labor & Workforce Development Agency and the Crumbl Employers and their agents and representatives.

At all relevant times, the Crumbl Employers have employed persons, conducted business, and engaged in illegal payroll practices and policies, throughout California. Green and all of the other Aggrieved Employees are “employees” within the meaning of Industrial Welfare Commission Order No. 7-2001 (hereafter “the Wage Order”)

section 2, subdivision (E) and “Aggrieved Employees” within the meaning of Labor Code section 2699(c).

Statement of Facts

In approximately May 24, 2022, the Crumbl Employers began to employ Green in Hawthorne and Culver City in the position of hourly, non-exempt baker and cashier. The Crumbl Employers continuously employed her in that capacity until on or about September 15, 2022 when her employment ended.

At all relevant times, the Crumbl Employers issued wages to Green and all of the other Aggrieved Employees on a weekly (52 paychecks/year) basis and paid them by the hour. At all relevant times, the Crumbl Employers classified Green and all of the other Aggrieved Employees as non-exempt employees entitled to the protections of the Labor Code and the Wage Order.

The Crumbl Employers failed to compensate Green and all of the other Aggrieved Employees for all hours worked at the applicable minimum, regular, or overtime rates of pay. The Crumbl Employers required Green and the Aggrieved Employees to report to their stores to sign onboarding and new hire documents before their first day of work. The Crumbl Employers failed to compensate Green and the Aggrieved Employees for this onboarding process. The Crumbl Employers further required Green and the Aggrieved Employees to work off the clock before they clocked in at the beginning of their shifts. The Crumbl Employers required Green and all of the other Aggrieved Employees to put on their aprons, hats or hairnets and wash their hands before they could clock in at the beginning of their shifts. The Crumbl Employers also required Green and the Aggrieved Employees to only use the one tablet at the back of the stores to clock in, and therefore, there were often other employees in the line that delayed the clock in process. Green and all of the other Aggrieved Employees worked approximately five (5) minutes off the clock at the beginning of their shifts without compensation. The Crumbl Employers also understaffed their stores and required Green and the Aggrieved Employees to clock out for their meal periods and continue working off the clock.

At all relevant times, the Crumbl Employers failed to provide Green and all of the other Aggrieved Employees with all timely 30-minute, off-duty meal periods. The Crumbl Employers required Green and the Aggrieved Employees to obtain their store

managers' or shift leads' permission before taking a meal or rest break. As described above, the Crumbl Employers understaffed their stores and therefore, the shift leads or the store managers often only authorized the meal periods *after* Green and the Aggrieved Employees had already worked more than five (5) hours in a workday. The Crumbl Employers also required Green and the Aggrieved Employees to clock out for their meal periods and continue working off the clock. The Crumbl Employers failed to pay premium wages for days on which they failed to provide Green and all of the other Aggrieved Employees with meal periods as required by law.

At all relevant times, the Crumbl Employers failed to authorize and permit Green and all of the other Aggrieved Employees to take ten-minute, off-duty, paid rest breaks every four hours worked or major portion thereof. As described above, the Crumbl Employers understaffed their stores and failed to provide Green and the Aggrieved Employees with all timely rest breaks required under California law. The Crumbl Employers also failed to pay premium wages for days on which they failed to authorize and permit Green and all of the other Aggrieved Employees to take rest breaks as required by law.

At all relevant times, the Crumbl Employers required Green and all of the other Aggrieved Employees to incur certain business expenses in the course of performing their duties. The Crumbl Employers required Green and all of the other Aggrieved Employees to supply mobile phones to communicate with their managers and to perform their job duties. However, the Crumbl Employers did not provide these items and did not reimburse Green and the other Aggrieved Employees for these items.

At all relevant times, the Crumbl Employers failed to issue to Green and all of the other Aggrieved Employees complete and accurate wage statements that state all hours worked at the correct rates of pay, and all wages earned. The Crumbl Employers knowingly and intentionally failed to state on the wage statements they issued to Green and all of the other Aggrieved Employees the unpaid wages discussed above.

The Crumbl Employers also failed to timely pay Green and all of the other Aggrieved Employees all earned wages as described above during and at the conclusion of employment.

The Crumbl Employers failed to maintain accurate employee records of Green and all of the other Aggrieved Employees.

For the reasons stated herein, Green alleges the following violations of the Labor Code and the Wage Order on behalf of herself and all of the other Aggrieved Employees:

- (a) The Crumbl Employers failed to pay Green and all of the other Aggrieved Employees all wages earned for all hours worked at the correct rates of pay, including minimum, regular, and overtime wages;
- (b) The Crumbl Employers failed to provide Green and all of the other Aggrieved Employees all meal periods in compliance with California law;
- (c) The Crumbl Employers failed to authorize and permit Green and all of the other Aggrieved Employees to take rest breaks in compliance with California law;
- (d) The Crumbl Employers failed to compensate Green and all of the other Aggrieved Employees at one hour's pay for each day in which the Crumbl Employers failed to provide them with one or more meal periods as required by law;
- (e) The Crumbl Employers failed to compensate Green and all of the other Aggrieved Employees at one hour's pay for each day in which the Crumbl Employers failed to authorize and permit them to take one or more rest breaks as required by law;
- (f) The Crumbl Employers failed to indemnify Green and all of the other Aggrieved Employees for all necessary business expenditures incurred during the discharge of their duties;
- (g) The Crumbl Employers knowingly and intentionally failed to issue to Green and all of the other Aggrieved Employees accurate and complete wage statements;
- (h) The Crumbl Employers willfully failed to timely pay Green and all of the other Aggrieved Employees all earned and unpaid wages during their employment with the Crumbl Employers and when their employment ended; and

- (i) The Crumbl Employers failed to maintain accurate employment records pertaining to Green and all of the other Aggrieved Employees.

Accordingly, Green now seeks civil penalties on behalf of herself and all of the other Aggrieved Employees based on the Crumbl Employers' alleged violations of the Labor Code and the Wage Order.

The Wage Order

The Wage Order applies to "all persons employed in the mercantile industry whether paid on a time, piece rate, commission, or other basis." Wage Order, § 1. The Wage Order defines "Mercantile Industry" to mean, "any industry, business, or establishment operated for the purpose of purchasing, selling, or distributing goods or commodities at wholesale or retail; or for the purpose of renting goods or commodities." Wage Order, § 2(H). At all relevant times during the applicable limitations period, the Crumbl "Employers, Green, and all of the Aggrieved Employees were covered by the Wage Order because the Crumbl Employers operated, and Green, and all of the Aggrieved Employees worked for, one or more establishments operated as a bakery that sells cookies. Accordingly, Green and all of the other Aggrieved Employees are entitled to the protections the Wage Order provides.

Failure To Pay Wages For All Hours Worked At The Correct Rates of Pay **(Lab. Code §§ 510, 1194, 1197, and 1198)**

Under Labor Code section 1197, "The minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful."

In relevant part, section 2(G) of the Wage Order states,

"Hours worked" means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so[.]

In relevant part, Labor Code section 1194 states:

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

In relevant part, Labor Code section 510 states:

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.

In relevant part, Section 3 of the Wage Order states:

The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to attend school and are not otherwise prohibited by law from engaging in the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40 in a workweek unless the employee receives one and one half (1½) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day's work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

- (a) One and one-half (1½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including twelve (12) hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek;

- (b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek. The overtime rate of compensation required to be paid to a nonexempt full-time salaried employee shall be computed by using the employee's regular hourly salary as one fortieth (1/40) of the employee's weekly salary.

Labor Code § 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

In conjunction, these provisions of the Labor Code require employers to pay employees no less than their agreed-upon or statutorily mandated wage rates for all hours worked, including hours spent working "off-the-clock" (before punching in or after punching out on a time clock) when the employer knew or reasonably should have known that employees were working during those hours. *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 585.

As described above, at all relevant times during the applicable limitations period, the Crumbl Employers failed to compensate Green and all of the other Aggrieved Employees for all hours worked, including, but not limited to minimum, regular, and overtime wages for all hours they worked at the correct rates of pay. Accordingly, Green now seeks civil penalties on behalf of herself and all of the other Aggrieved Employees as follows:

1. \$50 for each aggrieved employee for each initial violation of Labor Code § 510, and \$100 for each aggrieved employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by Labor Code § 558);
2. \$100 for each aggrieved employee for each initial violation of Labor Code § 1194, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code § 2699(f)(2));
3. \$100 for each underpaid aggrieved employee for each initial violation of Labor Code § 1197, and \$250 for each underpaid aggrieved employee for each subsequent violation per pay period (regardless of whether the initial violations were intentionally committed), in addition to an amount

sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203 (penalties set by Labor Code § 1197.1) and

4. \$100 for each aggrieved employee for each initial violation of Labor Code § 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code § 2699(f)(2)).

Failure to Provide Meal Periods
(Lab. Code §§ 226.7, 512, and 1198)

In relevant part, section 2(G) of the Wage Order states,

“Hours worked” means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

In relevant part, Labor Code section 1198 states, “The employment of any employee ... under conditions of labor prohibited by the [Wage Order] is unlawful.”

In relevant part, Labor Code section 512 states:

An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee 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 an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

In relevant part, section 11 of the Wage Order states:

Meal Periods:

- (A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee.
- (B) An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.
- (C) Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. An "on duty" meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.
- (D) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.
- (E) In all places of employment where employees are required to eat on the premises, a suitable place for that purpose shall be designated.

In addition, Labor Code section 226.7 states:

- (b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial

Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.

- (c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

As described above, at all relevant times, the Crumbl Employers failed to provide Green and all of the other Aggrieved Employees with all timely meal periods. The Crumbl Employers denied Green and all of the other Aggrieved Employees their 30-minute off-duty meal period within the first five hours of work. Furthermore, the Crumbl Employers failed to pay premium wages for days on which they failed to provide Green and all of the other Aggrieved Employees with timely off-duty meal periods. Accordingly, Green now seeks civil penalties for these Labor Code violations that the Crumbl Employers have committed against her and all of the other Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of Labor Code section 226.7, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2));
2. \$50 for each aggrieved employee for each initial violation of Labor Code section 512, and \$100 for each aggrieved employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by Labor Code section 558); and
3. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Failure to Authorize and Permit Rest Periods
(Lab. Code §§ 226.7 & 1198)

Section 2(G) of the Wage Order states,

“Hours worked” means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

In relevant part, Labor Code section 1198 states,

The employment of any employee . . . under conditions of labor prohibited by the [Wage Order] is unlawful.

Section 12 of the Wage Order provides, in relevant part:

Rest Periods:

- (A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 ½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.
- (B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that the rest period is not provided.

In addition, Labor Code section 226.7 states:

- (b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.
- (c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

As described above, the Crumbl Employers failed to authorize and permit Green and all of the other Aggrieved Employees to take ten-minute, paid, duty-free rest breaks every four hours worked or major fraction thereof. The Crumbl Employers did not seek an exemption from the rest period protections of the Wage Order from the California Division of Labor Standards Enforcement. Moreover, the Crumbl Employers failed to pay Green and all of the other Aggrieved Employees premium wages on workdays the Crumbl Employers failed to provide Green and all of the other Aggrieved Employees with 10-minute rest periods every four hours worked or major fraction thereof. Accordingly, Green now seeks civil penalties for these Labor Code violations that the Crumbl Employers have committed against her and all of the other Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of Labor Code section 226.7, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)); and
2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Failure to Reimburse for Expenses
(Lab. Code §§ 1198 and 2802)

In pertinent part, Labor Code § 2802(a) states, “An employer shall indemnify his or her employee[s] for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her duties.”

Labor Code Section 1198 prohibits an employer from employing any person under conditions that violate the Wage Order.

As described above, the Crumbl Employers required Green and all of the other Aggrieved Employees to incur certain business expenses in the course of performing their duties. The Crumbl Employers required Green and all of the other Aggrieved Employees to supply mobile phones to perform their job duties. However, the Crumbl Employers did not provide these items and did not reimburse Green and the other Aggrieved Employees for these items. Accordingly, Green seeks civil penalties for these Labor Code violations that the Crumbl Employers have committed against her and all of the other Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of Labor Code section 2802, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)); and
2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Failure to Provide Accurate Wage Statements
(Lab. Code § 226)

Labor Code section 226(a) requires an employer to provide an employee, either semi-monthly or at the time of each wage payment, with an accurate and itemized written wage statement that shows:

1. Gross wages earned;

2. Total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission;
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 his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement;
8. The name and address of the legal entity that is the employer; and
9. All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

At all relevant times during the applicable limitations period, the Crumbl Employers violated Labor Code section 226 because they did not properly and accurately itemize each Aggrieved Employee's gross wages earned, net wages earned, the total hours worked, the corresponding number of hours worked at each rate by the Aggrieved Employee and other requirements of Labor Code section 226. The Crumbl Employers failed to state in the wage statements they issued to Green and all of the other Aggrieved Employees all their hours worked and wages earned, including, but not limited to, regular and overtime wages for work they performed off-the-clock (as described above). The Crumbl Employers knowingly and intentionally failed to state on the wage statements they issued to Green and all of the other Aggrieved Employees the earned

but unpaid wages described above. Accordingly, Green seeks civil penalties for the Labor Code violations that the Crumbl Employers have committed against her and all of the other Aggrieved Employees as follows: \$250 for each aggrieved employee for each initial violation of Labor Code section 226(a), and \$1,000 for each aggrieved employee for each subsequent violation (penalties set by Labor Code section 226.3).

Failure to Timely Pay Wages During Employment
(Lab. Code § 204)

Labor Code section 204 states all wages (other than those mentioned in Labor Code sections 201 and 202) 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. In addition, all wages for work performed in excess of the normal work period must be paid by no later than the following regular payday.

The Crumbl Employers failed to compensate Green and all of the other Aggrieved Employees for wages earned, including minimum wages, regular wages, overtime wages, unprovided meal period premium wages, unprovided rest break premium wages, and related compensation, at the intervals stated above. As a result, the Crumbl Employers failed to timely pay all earned wages due during employment within the time periods set by Labor Code section 204. Accordingly, Green now seeks civil penalties for the Labor Code violations that the Crumbl Employers have committed against her and all of the other Aggrieved Employees as follows: \$100 for each aggrieved employee for each initial violation of Labor Code section 204, and \$200 for each aggrieved employee for each subsequent violation, plus 25% of the amount unlawfully withheld from each aggrieved employee (penalties set by Labor Code section 210).

Failure to Timely Pay Wages Upon Termination of Employment
(Lab. Code §§ 201, 202, and 203)

Under Labor Code § 201, if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. Under § 202, if an employee not having a written contract for a definite period quits his or her

employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. Notwithstanding any other provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. *Id.* The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting. *Id.*

Under Labor Code § 203, if an employer willfully fails to pay without abatement or reduction, in accordance with §§ 201 and 202, the wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.

The Crumbl Employers failed to pay Green and all of the other Aggrieved Employees whose employment ended all of the earned but unpaid wages described above by the conclusion of their employment with Green and the Aggrieved Employees, including minimum wages, regular wages, overtime wages, unprovided meal period premium wages, unprovided rest break premium wages, and related compensation. By failing to pay Green and all of the other Aggrieved Employees as set forth above at the end of employment, the Crumbl Employers are liable for violations of Labor Code §§ 201, 202, and 203. Accordingly, on behalf of herself and all of the other Aggrieved Employees, Green seeks civil penalties from the Crumbl Employers as follows:

1. For violations of Labor Code § 201, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 201 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of § 201 occurred (penalties set by Labor Code § 2699(f)(2));
2. For violations of Labor Code § 202, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 202 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of § 202 occurred (penalties set by Labor Code § 2699(f)(2)); and
3. For violations of Labor Code § 203, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 203 occurred, and \$200

for per aggrieved employee per pay period in which subsequent violations of § 203 occurred (penalties set by Labor Code § 2699(f)(2)).

Failure to Maintain Accurate Employment Records
(Lab. Code §§ 1174 & 1198)

Labor Code section 1174, which also pertains to recordkeeping, states:

Every person employing labor in this state shall:

...

- (c) Keep a record showing the names and addresses of all employees employed and the ages of all minors.
- (d) Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.

Labor Code section 1174.5 states:

Any person employing labor who willfully fails to maintain the records required by subdivision (c) of Section 1174 or accurate and complete records required by subdivision (d) of Section 1174, or to allow any member of the commission or employees of the division to inspect records pursuant to subdivision (b) of Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).

Section 7 of Wage Order states,

(A) Every employer shall keep accurate information with respect to each employee including the following:

- (1) Full name, home address, occupation and social security number.
- (2) Birth date, if under 18 years, and designation as a minor.
- (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded.
- (4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the Employee.
- (5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.
- (6) When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.

Labor Code section 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

The Crumbl Employers failed to compensate Green and all of the other Aggrieved Employees for all hours worked at the correct rates of pay and related compensation. As a result, the Crumbl Employers have failed to accurately maintain all records required by section 1174 and the Wage Order, including but not limited to Green and all of the other Aggrieved Employees' total hours worked, total wages paid, and

applicable hourly rates during each payroll period. Accordingly, Green seeks civil penalties on behalf of herself and all of the other Aggrieved Employees as follows:

1. \$500 for each aggrieved employee for each violation of Labor Code section 1174 (penalties set by Labor Code section 1174.5); and
2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Conclusion

As noted above, this letter constitutes the required notice under the Labor Code Private Attorneys General Act of 2004. Please be advised that Nataliah Devol Green will seek both reasonable attorneys' fees and costs under Labor Code section 2699(g)(1) in a civil action should the LWDA decline to pursue this matter. This letter also serves as a formal notice under the catalyst theory and Code of Civil Procedure section 1021.5 to resolve this matter before litigation.

Sincerely,



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LWDA / The Crumbl Employers

Re: Nataliah Devol Green

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LWDA / The Crumbl Employers

Re: Nataliah Devol Green

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