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Attorney for Plaintiff
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Electronically
FILED
by Superior Court of California, County of San Mateo
ON 9/6/2023
By /s/ Ashlee Nelson
Deputy Clerk

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN MATEO

EDGAR RANGEL ROSALES, individually and on behalf of all similarly situated individuals and aggrieved employees,	) NO. 23-CIV-02945
	) CLASS ACTION
Plaintiff,	) FIRST AMENDED COMPLAINT
v.	) 1. Minimum Wage Violations
	) 2. Overtime Violations
ALL DAY USA OPERATIONS, LLC, and DOES	) 3. Meal Period Violations
1 to 100,	) 4. Rest Period Violations
	) 5. Wage Statement Penalties
Defendants.	) 6. Violation of Unfair Competition Law
	) 7. PAGA Penalties

PRELIMINARY ALLEGATIONS

1. Plaintiff Edgar Rangel Rosales is a resident of Alameda County.
2. Defendant All Day USA Operations, LLC is a Delaware corporation that is authorized to do business in California, with its principal place of business in San Mateo County.
3. Plaintiff does not know the true names and capacities of Does 1 to 100 and therefore uses fictitious names. Plaintiff will amend the complaint pursuant to Code of Civil Procedure section 474 to allege the true names and capacities when ascertained.
4. The named and Doe defendants are collectively referred to as "Defendants."
5. Plaintiff is informed and believes that each of the Defendants was the agent or employee of the other defendants and acted in the scope of agency or employment.

6. Defendants employed Plaintiff and the class members and aggrieved employees as food workers in their ghost kitchens. Therefore, Wage Order 4 would apply.

7. Plaintiff has worked for Defendants since February 2021 out of their Belmont, San Francisco, and Berkeley locations; yet Defendants are based in San Mateo County for venue.

8. Plaintiff and the class members were not exempt since they did not customarily and regularly exercise discretion and independent judgment.

9. Throughout Plaintiff's and the class members' and aggrieved employees' employment, they did not receive compliant meal and rest periods, did not receive overtime at the correct regular rate, did not receive at least the minimum wage for work off the clock, and did not receive accurate wage statements.

10. Plaintiff and the class members and aggrieved employees worked as crew members at Defendants' at the above locations, and additional locations for All Day Kitchens in Santa Monica and South Pasadena, Palo Alto, and San Jose.

11. Job duties included kitchen operations, food monitoring, and food stocking.

12. On June 26, 2023 Plaintiff sent a PAGA letter to All Day USA Operations, LLC and uploaded the letter to the LWDA website. Since it has been more than 65 days, Plaintiff may now request PAGA penalties.

CLASS ACTION ALLEGATIONS

13. The class is defined as the following: "All non-exempt employees who worked for Defendants in California as from four years prior to filing the case to the date of certification or judgment, whichever is earlier."

14. There is a well-defined community of interest, and the proposed class is ascertainable from Defendants' employment records. Further, the following apply to show the viability of a class action pursuant to Code of Civil Procedure section 382:

- a. Numerosity: The members of the class as defined are so numerous that joinder of all class members is impracticable.
- b. Commonality: This action involves common questions of law and fact to the

class because the action focuses on Defendants' systematic course of conduct with respect to violating the Labor Code and IWC Wage Order.

- c. Typicality: The claims are typical of the claims of the class. Plaintiff was subjected to the same violations and seeks the same types of damages, restitution, and other relief on the same as those of the members of the class.
- d. Adequacy of Representation: Plaintiff will fairly and adequately represent and protect the interests of the class. Plaintiff understands the obligations as a class representative and is willing and able to fulfill them. Plaintiff's counsel is competent and experienced in litigating large employment class actions and complex litigation matters, including wage and hour cases like this.
- e. Superiority of Class Action: A class action is superior to other available means for efficient adjudication. Class action treatment will allow similarly situated persons to pursue the claims in a manner that is most efficient and economical.

15. There are common questions of law and fact including but not limited to:

- a. Whether Defendants did not pay overtime at the correct regular rate of pay in violation of Labor code sections 510 and 1194;
- b. Whether Defendants violated Labor Code sections 510 and 1194 for not paying at least the minimum wage for work off the clock;
- c. Whether Defendants violated Labor Code section 512 and Wage Order 4 by not providing meal breaks;
- d. Whether Defendants violated Wage Order 4 for not providing rest breaks;
- e. Whether Defendants violated Labor Code section 226 by providing inaccurate wage statements;
- f. Whether Defendants violated Labor Code section 226.7 by not paying premium pay for missed meal and rest breaks;
- g. Whether Defendants engaged in unfair competition; and
- h. The amount of damages, wages, and penalties owed.

1 FIRST CAUSE OF ACTION

2 Minimum Wage Violations

3 Against All Defendants

4 16. Plaintiff incorporates by reference paragraphs 1 to 15 of the first amended complaint.

5 17. Plaintiff and the class members were required to work off the clock, and this time should
6 have been paid at least the minimum wage.

7 18. Off-the-clock time included attending mandatory trainings.

8 19. Therefore, Plaintiff and the class members are owed payment for unpaid wages and interest.

9 20. Also, statutory attorney fees apply.

10
11 SECOND CAUSE OF ACTION

12 Overtime Violations

13 Against All Defendants

14 21. Plaintiff incorporates by reference paragraphs 1 to 15 of the first amended complaint.

15 22. Plaintiff and the class members were required to work over eight hours in a day and/or 40
16 hours in a week without being compensated for all overtime in violation of Labor Code 510.

17 23. Plaintiff and the class members should have received overtime at the correct regular rate of
18 pay for the overtime work off the clock.

19 23. Plaintiff and the class members received bonuses, and these bonuses should have been
20 computed into the regular rate for overtime.

21 24. The remedy for the overtime violations is payment of the unpaid overtime at the correct
22 regular rate of pay, plus interest and attorney fees, pursuant to Labor Code section 1194.

23
24 THIRD CAUSE OF ACTION

25 Meal Period Violations

26 Against All Defendants

27 25. Plaintiff incorporates by reference paragraphs 1 to 15 of the first amended complaint.

28 26. Pursuant to the applicable Wage Order, every employer shall authorize and permit

1 employees to take meal periods of thirty minutes for every five hours worked.

2 27. Pursuant to Labor Code section 226.7(c) and IWC Wage Order 4, when the employer does
3 not provide an employee with the required meal period, the employer shall pay the employee one
4 hour of pay at the employee's regular rate of compensation for each workday that a rest period is
5 not provided.

6 28. Plaintiff and the class members were denied meal periods as meal periods were not
7 provided or were on-duty; Defendants used automatic thirty-minute deductions regardless of
8 uninterrupted meal periods were taken.

9 29. As a result of Defendants' meal period violations, Plaintiff and the class members are
10 entitled to premium pay which is one additional hour of compensation for each missed break at the
11 regular rate of pay, and interest.

12
13 FOURTH CAUSE OF ACTION

14 Rest Period Violations

15 Against All Defendants

16 30. Plaintiff incorporates by reference paragraphs 1 to 15 of the first amended complaint.

17 31. Pursuant to the applicable Wage Order every employer shall authorize and permit
18 employees to take rest periods of ten minutes for every four hours worked.

19 30. Pursuant to Labor Code section 226.7(c) and the applicable Wage Order, when the
20 employer does not provide an employee with the required rest period, the employer shall pay the
21 employee one hour of pay at the employee's regular rate of compensation for each workday that a
22 rest period is not provided.

23 32. Plaintiff and the class members were denied rest periods as rest periods were not provided
24 or were on-duty.

25 33. As a result of Defendants' rest period violations, Plaintiff and the class members are
26 entitled to premium pay which is one additional hour of compensation for each missed break.

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1 FIFTH CAUSE OF ACTION

2 Wage Statement Penalties

3 Against All Defendants

4 34. Plaintiff incorporates by reference paragraphs 1 to 15 of the first amended complaint.

5 35. Defendants' wage statements issued to Plaintiff and the class members violated Labor Code
6 section 226 since they did not list the work off the clock, did not list the correct regular rates of pay
7 for overtime, and did not list premium pay for missed breaks at the regular rates of pay.

8 36. As a result, Plaintiff and the class members are entitled to wage statement penalties up to
9 \$4,000 each and attorney fees.

10
11 SIXTH CAUSE OF ACTION

12 Violation of Unfair Competition Law

13 Against All Defendants

14 37. Plaintiff incorporates by reference paragraphs 1 to 15 of the first amended complaint.

15 38. The Unfair Competition Law prohibits unfair, unlawful, and fraudulent business practices.

16 39. This claim is being brought under the unlawful prong of the UCL.

17 40. Defendants violated the Labor Code and IWC Wage Order by not paying all wages due,
18 including minimum wage, and overtime and premium pay at the correct regular rate.

19 41. Plaintiff and the class members are entitled to restitution for the above.

20 42. Under Code of Civil Procedure section 1021.5, Plaintiff is entitled to attorney fees.

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22 SEVENTH CAUSE OF ACTION

23 PAGA Penalties

24 Against All Defendants

25 43. Plaintiff incorporates by reference paragraphs 1 to 15 of the first amended complaint.

26 44. The PAGA penalties for the minimum wage violations are contained in Labor Code
27 sections 1197.1 and 2699.

28 45. The PAGA penalties for the overtime violations are in Labor Code 558, 1197.1, and 2699.

- 1 46. The PAGA penalties for the meal break violations are in Labor Code 558 and 2699.
2 47. The PAGA penalties for the wage statement violations are in Labor Code section 2699.
3 48. Also, Plaintiff is entitled to attorney fees and costs under Labor Code section 2699.
4

5 PRAYER

6 For All Causes of Action

- 7 1. That the court determine that this action may be maintained as a class action
8 2. That Plaintiff serves as representatives of the class
9 3. That Counsel for Plaintiff is appointed as class counsel
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11 First Cause of Action

- 12 1. Payment of all unpaid wages
13 2. Interest
14 3. Attorney fees
15 4. Other relief the court deems proper
16

17 Second Cause of Action

- 18 1. Payment of overtime
19 2. Interest
20 3. Attorney fees
21 4. Other relief the court deems proper
22

23 Third Cause of Action

- 24 1. Premium pay at the correct regular rate of pay
25 2. Interest
26 3. Other relief the court deems proper
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1 Fourth Cause of Action

2 1. Premium pay at the correct regular rate of pay

3 2. Interest

4 3. Other relief the court deems proper

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6 Fifth Cause of Action

7 1. Wage statement penalties

8 2. Attorney fees and costs

9 3. Other relief the court deems proper

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11 Sixth Cause of Action

12 1. Restitution of unpaid wages and premium pay

13 2. Attorney fees

14 3. Other relief the court deems proper

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16 Seventh Cause of Action

17 1. All applicable PAGA penalties

18 2. Attorney fees and costs

19 3. Other relief the court deems proper

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21 Date: September 6, 2023

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Attorney for Plaintiff
Edgar Rangel Rosales

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