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

Attorneys for Plaintiff Fulvia Manzanares, on behalf of herself and all “aggrieved employees”
pursuant to Labor Code § 2698 *et seq.*

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

FULVIA MANZANARES, on behalf of
herself and all “aggrieved employees” pursuant
to Labor Code § 2698 *et seq.*,

Plaintiff,

v.

MALIBU FARM RESTAURANT AT THE
PIER, a California corporation, and DOES 1
through 10, inclusive,

Defendants.

CASE NO: **23SMCV04135**

**REPRESENTATIVE ACTION
COMPLAINT FOR PENALTIES
PURSUANT TO LABOR CODE § 2699(f)
FOR VIOLATIONS OF LABOR CODE
§§ 201, 202, 226(a), 226.7, 227.3, 246, 510,
512, 1174, 1174.5, 1194, AND 2802 AND
PURSUANT TO LABOR CODE § 2699(a)
FOR VIOLATIONS OF LABOR CODE §§
226.3 AND 558**

1 Plaintiff FULVIA MANZANARES (“Plaintiff”), on behalf of herself and others as an
2 “aggrieved employee” under the Labor Code Private Attorneys General Act of 2004, complains of
3 MALIBU FARM RESTAURANT AT THE PIER, a California corporation, and any subsidiaries or
4 affiliated companies (hereinafter referred to as “Defendants”) as follows:

5 **I.**

6 **INTRODUCTION AND FACTUAL BACKGROUND**

7 1. This is a Representative Action, pursuant to Labor Code § 2698 *et seq.*, on behalf of
8 Plaintiff and other non-exempt California employees who currently work or formerly worked for
9 Defendants (“Aggrieved Employees”).

10 2. For at least one (1) year prior to the filing of this action and at least one (1) year prior
11 to the date Plaintiff began the process of exhausting the administrative requirements, pursuant to
12 Labor Code § 2698 *et seq.*, and continuing to the present (the “liability period”), Defendants have had
13 consistent policies of:

14 a. Failing to properly compute bonuses, commission wages, and non-base hourly
15 wages, including, but not limited to, shift differential wages earned by her and other Aggrieved
16 Employees into their regular rate of pay for purposes of paying them overtime wages, sick
17 pay wages, and meal and rest period premiums, in violation of Labor Code §§ 226.7, 246,
18 510, 512, 558, and 1194. Defendants pay Plaintiff and other Aggrieved Employees bonuses,
19 commission wages, and non-base hourly wages; however, Defendants fail to properly blend
20 these forms of pay, and instead pay Plaintiff and other Aggrieved Employees overtime wages,
21 sick pay wages, and meal and rest period premiums based only on the base hourly rate of pay,
22 thus depriving Plaintiff and other Aggrieved Employees of all meal and rest period premiums,
23 overtime wages, and sick pay wages earned. This violates Labor Code §§ 226.7, 246, 510,
24 512, 558 and 1194;

25 b. Failing to pay correct premium wages to Plaintiff and other Aggrieved
26 Employees who are denied rest periods, in violation of Labor Code § 226.7 and IWC Wage
27 Order No. 5-2001. Plaintiff and other Aggrieved Employees are routinely unable to take a 10-
28 minute rest period for every four (4) hours of work or major fraction thereof, but are not paid

1 premium wages of one hour's pay for each missed rest period. Plaintiff and other Aggrieved
2 Employees are frequently too busy to take a rest period. When they are able to take a rest
3 period, they are oftentimes late, cut short, or on duty. This violates Labor Code § 226.7 and
4 IWC Wage Order No. 5-2001;

5 c. Failing to pay correct premium wages to Plaintiff and other Aggrieved
6 Employees who are denied proper meal periods, in violation of Labor Code §§ 226.7, 512,
7 and 558 and IWC Wage Order 5-2001. Plaintiff and other Aggrieved Employees are routinely
8 denied, and not authorized to take, a proper, timely, uninterrupted, 30-minute meal period for
9 every shift worked that exceeds ten hours, but are not paid premium wages of one hour's pay
10 for each missed first or second meal period. When they are able to take a meal period, they
11 are oftentimes, short, late, or on-duty. This violates Labor Code §§ 226.7, 512, and 558 and
12 IWC Wage Order 5-2001;

13 d. Failing to retain accurate records in accordance with Labor Code §§ 1174 and
14 1174.5, including for employees' start and end times for every shift and meal period. This
15 violates Labor Code §§ 1174, 1174.5, 1198 and IWC Wage Order 5-2001;

16 e. Failing to reimburse Plaintiff and other Aggrieved Employees for necessary
17 business expenses incurred in direct consequence of the discharge of their duties, in violation
18 of Labor Code § 2802, including, but not limited to, the cost of purchasing aprons and shoes
19 that are required to perform their job. Labor Code § 2802 states that an employer must
20 indemnify its employees for all necessary expenditures or losses incurred by the employee in
21 direct consequence of the discharge of their duties, and Defendants' failure to do so has
22 violated this section;

23 f. Failing to provide Plaintiff and other Aggrieved Employees with wage
24 statements that fully and accurately itemized the requirements set forth in Labor Code §§
25 226(a) and 226.3. Plaintiff and other Aggrieved Employees are not paid all wages due, as
26 stated above. As such, the wage statements provided by Defendants fail to accurately state all
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gross wages earned, in violation of Labor Code §§ 226(a)(1) and 226.3, total hours worked, in violation of Labor Code §§ 226(a)(2) and 226.3, net wages earned, in violation of Labor Code §§ 226(a)(5) and 226.3, and all applicable hourly rates in effect during the pay period and the corresponding numbers of hours worked at each rate, in violation of Labor Code §§ 226(a)(9) and 226.3; and

g. Failing to pay certain Aggrieved Employees all wages due, including all accrued, but unused vacation wages, at the separation of their employment based on the time frames required by Labor Code §§ 201-202 and 227.3. As stated above, certain Aggrieved Employees are not paid all wages due during the course of their employment and, as a result of this failure, they are not timely paid all wages due at the separation of their employment. This violates Labor Code §§ 201-202 and 227.3 and is alleged on behalf of certain Aggrieved Employees no longer employed by Defendants.

3. Plaintiff, on behalf of herself and all Aggrieved Employees pursuant to Labor Code § 2698 *et seq.*, seeks civil penalties for Defendants' violations of the California Labor Code.

4. Venue is proper in this judicial district, pursuant to Code of Civil Procedure § 395. The Labor Code violations alleged against Defendants herein arose throughout California, including in Los Angeles County.

III.

PARTIES

A. Plaintiff

5. Plaintiff FULVIA MANZANARES has been employed by Defendants since January 2022 as a non-exempt employee in Los Angeles County, California.

B. Defendant

6. Defendant MALIBU FARM RESTAURANT AT THE PIER is a California corporation that employed Plaintiff and Aggrieved Employees in Los Angeles County, California.

7. The true names and capacities, whether individual, corporate, associate, or otherwise, of Defendants sued herein as DOES 1 to 10, inclusive, are currently unknown to Plaintiff, who

1 therefore sues Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiff is
2 informed and believes, and based thereon alleges, that each of the Defendants designated herein as a
3 DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will
4 seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendants
5 designated hereinafter as DOES when such identities become known.

6 8. Plaintiff is informed and believes, and based thereon alleges, that each Defendant acted
7 in all respects pertinent to this action as the agent of the other Defendant, carried out a joint scheme,
8 business plan or policy in all respects pertinent hereto, and the acts of each Defendants is legally
9 attributable to the other Defendants.

10 9. The Defendants named herein as DOE 1 through DOE 10 are and are persons acting
11 on behalf of, or acting jointly with, Defendants, who violated, or caused to be violated, one or more
12 provisions of the California Labor Code as alleged herein.

13 IV.

14 CAUSES OF ACTION

15 FIRST CAUSE OF ACTION

16 **PLAINTIFF AND ALL AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS**
17 **CIVIL PENALTIES PURSUANT TO LABOR CODE § 2699(f) FOR VIOLATIONS OF**
18 **LABOR CODE §§ 201, 202, 226(a), 226.7, 227.3, 246, 510, 512, 1174, 1174.5, 1175, 1194, AND**
19 **2802 AND PURSUANT TO LABOR CODE § 2699(a) FOR VIOLATIONS OF**
20 **LABOR CODE §§ 226.3 AND 558**

21 10. Plaintiff incorporates paragraphs 1 through 9 of this Complaint as though fully set
22 forth herein.

23 11. As a result of the acts alleged above, including the Labor Code violations set forth in
24 paragraph 2 above, Plaintiff seeks civil penalties pursuant to Labor Code §§ 2698 *et seq.*

25 12. For each such violation, Plaintiff and all other Aggrieved Employees are entitled to
26 civil penalties subject to the following formula:
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- a. Pursuant to Labor Code § 2699(f), \$100 for each initial violation and \$200 for each subsequent violation of Labor Code §§ 201, 202, 226(a), 226.7, 227.3, 246, 510, 512, 1174, 1174.5, 1194, and 2802; and
- b. Pursuant to Labor Code § 2699(a), the civil penalties as authorized by Labor Code §§ 226.3 and 558.

13. Civil penalties recovered will be allocated 75% to the Labor and Workforce Development Agency, and 25% to the affected employees.

14. On June 21, 2023, Plaintiff sent a letter, by online submission to the LWDA and by certified mail, return receipt requested, to Defendants setting forth the facts and theories of the violations alleged against Defendants, as prescribed by Labor Code § 2698 *et seq.* Pursuant to Labor Code § 2699.3(a)(2)(A), no notice was received by Plaintiff from the LWDA within sixty-five (65) calendar days of June 21, 2023. Plaintiff may therefore commence this action to seek civil penalties pursuant to Labor Code § 2698 *et seq.*

Wherefore, Plaintiff and the Aggrieved Employees she seeks to represent request relief as described below.

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V.

RELIEF REQUESTED

WHEREFORE, Plaintiff prays for the following relief:

1. For civil penalties pursuant to Labor Code § 2698 *et seq.* for Plaintiff and all other Aggrieved Employees;
2. An award providing for payment of costs of suit pursuant to Labor Code § 2699(g)(1) and other applicable law;
3. An award of attorneys' fees pursuant to Labor Code §§ 2699(g)(1) and other applicable law; and
4. Such other and further relief as this Court may deem just and proper.

Dated: August 30, 2023

Respectfully submitted,

GAINES & GAINES
A Professional Law Corporation

By: *Daniel F. Gaines*
DANIEL F. GAINES
EVAN S. GAINES
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