

Clerk of the Superior Court
By Angelika Cazares, Deputy Clerk

5. Each Defendant acted as an agent, servant, employee, co-conspirator, alter-ego and/or joint venturer of the other Defendant, and in doing the things alleged herein acted within the course and scope of such agency, employment, alter-ego and/or in furtherance of the joint venture. Each of the Defendant's acts alleged herein was done with the consent of each of the other Defendants. All actions or failures to act by individual agents of Defendants were ratified by Defendants.

6. Venue is proper in the County of San Diego because Defendant does business here.

7. On June 2, 2023, Plaintiff sent a California Private Attorney General Act of 2004 (“PAGA”) letter via certified mail to Defendant and uploaded the required information to the Labor and Workforce Development Agency (“LWDA”) website. The notice was assigned LWDA case number LWDA-CM-959462-23. No action has been taken by LWDA. Thus, the 65-day PAGA notice period has elapsed.

8. Plaintiff is an “aggrieved employee” within the meaning of California Labor Code § 2699(c), and a proper representative to bring a civil action on behalf of himself and other current and former employees of Defendant (“Aggrieved Employees”) pursuant to the procedures specified in California Labor Code § 2699.3, because Plaintiff was employed by Defendant and one or more of the violations of the California Labor Code were committed against Plaintiff.

9. Pursuant Labor Code §§ 2698-2699.5, Plaintiff and Aggrieved Employees seek to recover civil penalties, including but not limited to those authorized under California Labor Code § 2699, as well as attorneys fees and costs pursuant to California Labor Code § 2699(g)(1).

FIRST CAUSE OF ACTION

**(Private Attorney General Act Claim For Violation of Multiple Labor Code Sections
Against All Defendants)**

10. Plaintiff incorporates by reference the paragraphs set forth above.

11. Plaintiff and/or Aggrieved Employees, and each of them, were subject to one or more violations of the Labor Code by Defendant, each of which provides for the penalties pursuant to the Labor Code section specified:

12. **Failure to Pay Minimum Wage:** California Labor Code §§ 1194, 1197, 1197.1 and Industrial Welfare Commission Wage Orders 5-2001 and 15-2001 entitle non-exempt employees to

1 an amount equal to or greater than the minimum wage for all hours worked. All hours must be paid
2 at the statutory or agreed rate and no part of this rate may be used as a credit against a minimum
3 wage obligation.

4 13. Plaintiff and/or Aggrieved Employees, and each of them, were paid less than
5 minimum wage by Defendant.

6 14. With respect to violations of Labor Code § 1194, for failure to provide minimum
7 wage for all hours worked, the penalties in Labor Code §§ 558 and 1197.1 apply.

8 15. **Failure to Provide Mandated Meal Periods:** Defendant failed to maintain a policy
9 of providing meal periods as required by Labor Code §§ 226.7, 512 and Wage Orders 5-2001 and 15-
10 2001.

11 16. Plaintiff and/or Aggrieved Employees, and each of them, regularly worked in excess
12 of five hours a day without being provided half-hour meal periods in which they were relieved of
13 their duties, as required by Labor Code §§ 226.7 and 512 and Wage Orders 5-2001 and 15-2001.

14 17. With respect to violations of Labor Code sections 226.7 and 512(a) for Defendants'
15 failure to provide Plaintiff and the Aggrieved Employees with meal periods or compensation in lieu
16 thereof, the penalties in Labor Code § 2699 apply.

17 18. **Failure to Provide Mandated Rest Periods:** Defendant failed to maintain a policy of
18 providing meal periods as required by Labor Code §§ 226.7 and 512 and Wage Orders 5-2001 and
19 15-2001.

20 19. Plaintiff and/or Aggrieved Employees, and each of them, regularly worked without
21 any rest periods that are required by Wage Orders 5-2001 and 15-2001.

22 20. With respect to violations of Labor Code sections 226.7 and 512(a) for Defendants'
23 failure to provide Plaintiff and/or Aggrieved Employees, and each of them, with rest periods or
24 compensation in lieu thereof, the penalties in Labor Code section 2699 apply.

25 21. **Failure to Provide Accurate Itemized Wage Statements:** Labor Code § 226
26 requires an employer to furnish its employees with an accurate itemized statement in writing
27 showing, among other things: (1) all applicable hourly rates in effect during each respective pay
28 period and the corresponding number of hours worked by each respective individual; (2) total hours

1 worked by each respective individual; (3) gross wages earned; (4) net wages earned; (5) all
2 deductions; (6) inclusive dates of the period for which the employee is paid; (7) the name of the
3 employee and an employee identification or social security number; and (8) the name and address of
4 the legal entity that is the employer.

5 22. In violation of Labor Code § 226(a), Defendants did not provide Plaintiff and/or
6 Aggrieved Employees, and each of them, with accurate itemized wage statements.

7 23. With respect to violations of Labor Code section 226(a) for failure to provide accurate
8 wage statements to Plaintiff and/or Aggrieved Employees, and each of them, the penalties in Labor
9 Code sections 226.3 or 2699 apply.

10 24. **Failure to Pay Compensation Due Upon Termination:** Labor Code §§ 201 and
11 202 required Defendant to pay all compensation due and owing to Plaintiff and/or Aggrieved
12 Employees, and each of them, upon discharge or within seventy-two hours of termination of
13 employment.

14 25. Defendant willfully failed to pay Plaintiff and/or Aggrieved Employees, and each of
15 them, compensation due upon termination as required by Labor Code §§ 201 and 202.

16 26. With respect to violations of Labor Code sections 201, and 202, for failure to timely
17 pay all wages to Plaintiff and/or Aggrieved Employees, and each of them, upon the conclusion of
18 employment, the penalties in Labor Code section 2699 apply.

19 27. **Failure to Pay Overtime Wages:** Labor Code §510 provides: “Eight hours of labor
20 constitutes a day’s work. Any work in excess of eight hours in one workday and any work in excess
21 of 40 hours in any one workweek and the first eight hours on the seventh day of work in any one
22 workweek shall be compensated at the rate of no less than one and one-half times the regular rate of
23 pay for an employee.”

24 28. Plaintiff and/or Aggrieved Employees, and each of them, routinely work more than
25 eight hours per day and/or forty hours per week but are not paid one and one-half their regular rate of
26 pay for overtime work.

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1 29. As a result of violations of California Labor Code §§ 510, 1194, and Industrial
2 Welfare Commission Wage Orders 5-2001 and 15-2001 for failure to pay overtime, the penalties in
3 Labor Code §§ 558 and 2698 *et seq.* apply.

4 30. **Failure to Pay “Regular Rate of Compensation”:** Labor Code § 226.7 requires
5 employers to pay an additional one hour of pay at the employee’s “regular rate of compensation” for
6 each workday that the meal or rest period is not provided. This payment must be made by the
7 employer concurrently with the other wages due within the pay period when the break violation
8 occurred.

9 31. Labor Code § 246 requires employers to calculate paid sick leave in the same manner
10 as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or
11 not the employee actually works overtime in that workweek.

12 32. Defendant failed to pay Plaintiff and/or Aggrieved Employees, and each of them, at
13 their regular rate of compensation when such compensation was due.

14 33. With respect to violations of Labor Code §§ 226.7 and/or 246, for Defendant’s failure
15 to properly compute the regular rate of pay for Plaintiff and/or Aggrieved Employees, and each of
16 them, the penalties in Labor Code § 2699 apply.

17 34. **Unlawful Taking and Reporting of Tips:** Labor Code § 351 provides that no
18 employer or agent shall collect, take, or receive any gratuity or a part thereof that is paid, given to, or
19 left for an employee by a patron, or deduct any amount from wages due an employee on account of a
20 gratuity, or require an employee to credit the amount, or any part thereof, of a gratuity against and as
21 a part of the wages due the employee from the employer.

22 35. By reporting Plaintiff and/or Aggrieved Employees’ tips as a percentage of gross sales
23 rather than the actual amount of the tips, Defendant violated Labor Code § 351.

24 36. In addition, Defendant required Plaintiff and/or Aggrieved Employees, and each of
25 them, to distribute a portion of their tips to employees who were not in the chain of service.

26 37. With respect to violations of Labor Code § 351, the penalties in Labor Code § 2699(f)
27 apply.

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1 **9. Unlawful Failure to Indemnify:** Labor Code § 2802 provides in pertinent part
2 that an employer “shall indemnify his or her employee for all necessary expenditures or losses
3 incurred by the employee in direct consequence of the discharge of his or her duties . . .”

4 38. By failing to indemnify Plaintiff and/or Aggrieved Employees, and each of them, for
5 all necessary expenditures or losses incurred by them in direct consequence of the discharge of their
6 duties, Defendant violated Labor Code § 2802.

7 39. With respect to violations of Labor Code § 2802, the penalties in Labor Code §§ 2802
8 and 2699(f) apply.

9 40. Additionally, Plaintiff and/or Aggrieved Employees, and each of them are entitled to
10 attorneys fees and costs pursuant to Labor Code § 2699(g).

11 Based on the foregoing, Plaintiff and/or Aggrieved Employees, and each of them, pray:

12 A. For penalties pursuant to the applicable Labor Code sections;

13 C. For attorneys fees;

14 D. For costs of suit; and

15 E. For such other and further relief as the Court considers proper.

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17 Dated: October 10, 2023

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20 Daniel S. Levinson
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