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FILED
Superior Court of California
County of Los Angeles
10/02/2023

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

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Attorneys for Plaintiff, and on behalf of all similarly situated employees,

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
THE COUNTY OF LOS ANGELES – COMPLEX DIVISION**

KENYA ARGUETA, as an individual,
and on behalf of all similarly situated
employees,

Plaintiffs,

v.

FLASHINGBLINKYLIGHTS.COM,
INC., a California corporation; and DOES
1 through 50, inclusive,

Defendants.

Case No.: 23STCV17218

**FIRST AMENDED CLASS ACTION AND
PAGA ACTION COMPLAINT**

COMPLAINT FOR DAMAGES

1. Violation of Labor Code §§ 226.7, 512 (Meal Period Violations);
2. Violation of Labor Code § 226.7 (Rest Period Violations);
3. Violation of Labor Code §§ 201 – 203 (Waiting Time Penalties);
4. Violations of Labor Code §§ 204, 210 (Untimely Payment of Wages);
5. Violation of Labor Code § 226 (Waiting Time Penalties For Failure to Maintain Records and Provide Accurate Itemized Wage Statements);
6. Violation of Bus. & Prof. Code §§ 17200 et seq. (Unfair Business Practices); and
7. Violation of the Private Attorney General Act at Labor Code Sections 2698 et seq.

DEMAND FOR JURY TRIAL

1 Plaintiff KENYA ARGUETA (“Plaintiff” or “Argueta”), as an individual, on behalf of
2 herself, the State of California, all other similarly situated employees (hereinafter “Plaintiff Class”
3 or “Class Members”) and Aggrieved Employees, complain and allege on information and belief
4 as follows:

5 **INTRODUCTION**

6 1. Plaintiff brings this action on behalf of herself, the Class Members and fellow
7 current and former Aggrieved Employees (defined pursuant to, and on behalf of, the California
8 general public). Plaintiff Class consists of all current and former non-exempt employees of
9 Defendant FLASHINGBLINKYLIGHTS.COM, INC and DOES 1-50, inclusive (collectively,
10 “Defendant”), in the State of California during the Class Period.

11 2. Plaintiff, individually and on behalf of Plaintiff Class and Aggrieved Employees,
12 seeks relief against Defendant, for Defendant’s practices of violating the applicable Industrial
13 Welfare Commission (“IWC”) Wage Orders, Code of Regulations, and Labor Codes, including:
14 (1) failure to make available meal periods or provide compensation in lieu thereof; (2) failure to
15 make available rest periods or provide compensation in lieu thereof; (3) waiting time penalties;
16 (4) untimely payment of wages; (5) failure to maintain records and issue accurate itemized wage
17 statements; (6) violation of Bus. & Prof. Code §§ 17200 et seq. (Unfair Business Practices); and
18 (7) violations of California’s Private Attorney General Act (“PAGA”). As a result of the
19 foregoing, Defendant has violated California statutory laws as described below.

20 3. The “Class Period” is designated as the period from four years prior to the filing of
21 this action through the trial date. Defendant’s violations of California’s wage and hour laws
22 and unfair competition laws, as described more fully below, have been ongoing throughout
23 the Class Period.

24 4. The “PAGA Period” is designated as the period from one year prior to the filing of
25 Plaintiff Argueta’s notice to the Labor and Workforce Development Agency (“LWDA”)
26 through the trial date. Defendant’s violations of California’s wage and hour laws and unfair
27 competition laws, as described more fully below, have been ongoing throughout the PAGA
28 Period.

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- 1 9. By way of this action, Plaintiff also seeks to represent the following Classes:
- 2 a. All non-exempt individuals who are or were employed by
- 3 FLASHINGBLINKYLIGHTS.COM, INC. in the State of California
- 4 during the Class Period. (hereinafter, referred to as “Class Members” or
- 5 the “Class”);
- 6 b. All Class Members who did not receive their timely ten-minute, duty-free
- 7 rest breaks while working for Defendant during the Class Period
- 8 (hereinafter referred to as “Rest Break Class Members”);
- 9 c. All Class Members who did not receive their timely thirty-minute meal
- 10 break on or before the fifth hour of work while working for Defendant on
- 11 shifts greater than five hours and/or did not receive their second meal period
- 12 for shifts worked in excess of ten hours during the Class Period and/or were
- 13 not paid meal period premiums for late meal breaks (hereinafter referred to
- 14 as “Meal Break Class Members”);
- 15 d. All Class Members who were not provided accurate itemized wage
- 16 statements within one year prior to the filing of the Complaint; and
- 17 e. All Class Members and whose employment with Defendant terminated
- 18 during the period from three years prior to the filing of this Complaint and
- 19 continuing into through judgment (hereinafter referred to “Waiting Time
- 20 Penalty Class Members”).

21 **B. The Defendant**

22 10. Plaintiff is informed and believes, and based thereon alleges, that Defendant

23 FLASHINGBLINKYLIGHTS, INC. is a California corporation that owns and operates a business

24 that sells LED products throughout California, including in Los Angeles County, and was

25 Plaintiff’s employer. On information and belief, and based thereon, Plaintiff alleges that

26 Defendant is conducting business in good standing in California, and at all times herein mentioned

27 has regularly conducted business throughout the State of California.

28 11. To operate its business, Defendant employs non-exempt employees, such as the

1 Plaintiff, the Class Members and the Aggrieved Employees.

2 12. Plaintiff is ignorant of the true names, capacities, relationships, and extent of
3 participation in the conduct herein alleged of Defendants sued herein as DOES 1 through 50,
4 inclusive, but on information and belief, allege that said Defendants are legally responsible for
5 the violations alleged herein. Plaintiff will amend this complaint to allege the true names and
6 capacities of the DOE Defendants when that information is ascertained.

7 13. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
8 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint
9 scheme, business plan, or policy in all respects pertinent hereto, and the acts of each Defendant
10 are legally attributable to the other Defendants. Furthermore, Defendants operate as a joint
11 venture and/or single business enterprise, integrated enterprise, and/or are agents of one another,
12 are alter egos, joint employers, and conspire with one another to increase profits by engaging in
13 the conduct described in this complaint.

14 14. Plaintiffs are informed and believe, and based thereon allege, that each Defendant
15 acted in all respects as the agent, servant, partner, joint venture, alter-ego, employee, proxy,
16 managing agent, and/or principal of the co-Defendants, and in performing the actions mentioned
17 below was acting, at least in part, within the course and scope of that authority as such agent,
18 proxy, servant, partner, joint venture, employee, alter-ego, managing agent, and/or principal with
19 the permission and consent of the co-Defendants. Plaintiff also alleges the acts of each Defendant
20 are legally attributable to the other Defendants.

21 15. Defendant was and is the employer of Plaintiff, the Aggrieved Employees and
22 Class Members for all relevant time periods.

23 **FACTUAL ALLEGATIONS**

24 16. Plaintiff, the Class Members and the Aggrieved Employees have, at all times
25 relevant herein, been non-exempt employees within the meaning of the Labor Code, and the
26 implementing rules of the IWC Wage Order no. 4.

27 17. Plaintiff is informed and believes, and based thereon alleges, that Defendant
28 continues to employ non-exempt employees within California.

1 18. Plaintiff is informed and believes, and based thereon alleges, that Defendant's
2 policies and practices described herein are common across each of Defendant's locations within
3 the State of California.

4 19. Plaintiff is informed and believes, and based thereon alleges, that Defendant knew
5 or should have known that Plaintiff, Class Members and Aggrieved Employees were entitled to
6 receive all required meal periods or payment of one (1) additional hour of pay at Plaintiff's and
7 Class Members' regular rate of pay when they did not receive timely, uninterrupted off-duty meal
8 periods. In violation of the Labor Code and IWC Wage Orders, Defendant had a pattern, practice,
9 and policy of not providing compliant meal periods. Plaintiff, Class Members and Aggrieved
10 Employees were regularly unable to take a duty-free meal period or had their meal periods
11 interrupted by Defendant. Plaintiff, Class Members and Aggrieved Employees did not receive
12 all meal periods or payment of one (1) additional hour of pay at Plaintiff's, Class Members', or
13 Aggrieved Employees' regular rate of pay when they did not receive a timely, uninterrupted thirty
14 (30) minute off-duty meal period.

15 20. Plaintiff is informed and believes, and based thereon alleges, that Defendant knew
16 or should have known that Plaintiff, Class Members and Aggrieved Employees were entitled to
17 receive all paid rest periods or payment of one (1) additional hour of pay at Plaintiff's, Class
18 Members', and Aggrieved Employees' regular rate of pay when a rest period was missed,
19 interrupted, or shortened. In violation of the Labor Code and IWC Wage Orders, Defendant had
20 a pattern, practice, and policy of not providing paid rest periods. Defendant instructed Plaintiff,
21 Class Members and Aggrieved Employees to forego their rest breaks. As a result, Plaintiff, Class
22 Members and Aggrieved Employees did not receive all paid rest periods or payment of one (1)
23 additional hour of pay at Plaintiff's, Class Members', and Aggrieved Employees' regular rate of
24 pay when a paid rest period was missed, truncated, or interrupted.

25 **CLASS ACTION ALLEGATIONS**

26 21. Plaintiff brings this action on behalf of herself and all other similarly situated
27 employees, as a class action pursuant to Code of Civil Procedure section 382.

28 22. Plaintiff's proposed class consists of and is defined as follows: all individuals who

1 worked for Defendant in a California location as non-exempt employees during the Class Period.

2 23. Plaintiff reserves the right under California Rules of Court, rule 3.765, to amend
3 or modify the class description(s) with greater specificity or further division into subclasses or
4 limitation to particular issues.

5 24. This action has been brought and may be maintained as a class action pursuant to
6 Code of Civil Procedure section 382 because there is a well-defined community of interest in the
7 litigation and because the proposed classes are easily ascertained by Defendant's personnel and
8 payroll records.

9 **Numerosity**

10 25. The potential members of the class as defined are so numerous that joinder of all
11 class members is impracticable. While the precise number of the Plaintiff Class is unknown,
12 Plaintiff is informed and believes that Defendant has employed more than 150 non-exempt
13 employees during the Class Period.

14 **Commonality**

15 26. There are common questions of law and fact arising out of Defendant's conduct
16 as described herein, including, but not limited to:

- 17 a. Whether Defendant failed and continues to fail to provide meal periods or
18 compensation in lieu thereof to Class Members;
- 19 b. Whether Defendant failed and continues to fail to authorize and permit
20 Class Members to take rest periods or compensation in lieu thereof;
- 21 c. Whether Defendant failed to pay wages in a timely manner;
- 22 d. Whether Defendant failed to maintain records and issue accurate wage
23 statements; and
- 24 e. Whether Defendant engaged in unfair/unlawful business practices.

25 **Typicality**

26 27. The claims of the Plaintiff are typical of the claims for the Plaintiff Class, all of
27 whom have incurred and/or will incur damages, as a result of Defendant's common course of
28 conduct and common policies and practices. The claims of Plaintiff are typical because Defendant

1 subjected all of its non-exempt employees to the identical violations of the IWC Wage Orders,
2 Code of Regulations, Labor Code, and Business and Professions Code, among other statutes.

3 **Adequacy of Representation**

4 28. Plaintiff will fairly and adequately represent and protect the interests of the
5 Plaintiff Class. Plaintiff's interests are not in conflict with those of the Plaintiff Class. Plaintiff's
6 attorneys are competent, well-versed, and experienced in litigating employment class actions and
7 other complex litigation matters.

8 **Superiority of Class Action**

9 29. Under the facts and circumstances set forth above, a class action is superior to any
10 other method available for the fair and efficient adjudication of the rights of each Class Member
11 in as much as joinder of individual, relatively small claims of Class Members is not practical and
12 if each employee were required to file an individual lawsuit, the corporate defendant would
13 necessarily gain an unconscionable advantage as they would be able to exploit and overwhelm
14 the limited resources of each individual plaintiff. Requiring each Class Member to pursue an
15 individual remedy would also discourage the assertion of lawful claims by employees still
16 employed by Defendant who are fearful of retaliation and permanent damage to their careers as
17 well as employees who are fearful of retaliation and permanent damage to their careers at their
18 new place of employment. Further, the substantial risk of inconsistent or varying verdicts or
19 adjudications with respect to the individual Class Members against Defendant herein further
20 supports class certification.

21 **PAGA ADMINISTRATIVE PREREQUISITE**

22 30. Under the facts and circumstances set forth above, a class action is superior. The
23 Private Attorney General Act ("PAGA") permits an "Aggrieved Employee" to recover penalties
24 on behalf of herself or himself as well as on behalf of all Aggrieved Employees as a result of the
25 employer's violation of certain sections of California Labor Code. In this case, Aggrieved
26 Employees are all non-exempt individuals who were employed by Defendant in the State of
27 California during the PAGA period.

28 31. Plaintiff Argueta qualifies as an Aggrieved Employee as defined in Labor §

2699(a), in that she was employed by Defendant in the State of California and worked one or more shifts or longer during the PAGA period.

32. By this Complaint, Plaintiff Argueta brings this case as a representative action seeking civil penalties for the State of California in a representative capacity, as provided for in PAGA, to the extent permitted by law, as an aggrieved employee and on behalf of all other aggrieved employees who were employed by Defendant and subject to the violations set forth in Plaintiff's notice to the Labor and Workforce Development Agency ("LWDA") and the employer, including but not limited to: Labor Code §§201, 202, 203, 204, 226, 226.7, 512.

33. Under Labor Code section 2699.3(a), a plaintiff may bring a cause of action under PAGA only after giving the LWDA and the employer notice of the Labor Code sections alleged to have been violated, and after receiving notice from the LWDA of its intention not to investigate, or after 65 days have passed without notice from the LWDA.

34. On July 18, 2023, prior to the filing of the complaint in this action, Plaintiff Argueta gave written notice of the specified provisions of the Labor Code alleged to have been violated, including the facts and theories to support the alleged violations, as required by Labor Code section 2699.3. This written notice was given via certified mail to Defendant and electronically to the LWDA, LWDA Case No. LWDA-CM-969260-23. A true and correct copy of Plaintiff's notice to the LWDA and to Defendant dated July 18, 2023, is attached hereto as Exhibit A.

35. Under Labor Code section 2699.3(a)(2)(C), "Notwithstanding any other provision of law, a plaintiff may as a matter of right amend an existing complaint to add a cause of action arising under this part at any time within 60 days of the time periods specified in this part."

FIRST CAUSE OF ACTION

**Failure to Provide Meal Periods or Compensation in Lieu Thereof
(Lab. Code, §§ 226.7, 512)
(By Plaintiff against All Defendants)**

36. Plaintiff realleges and incorporates by reference all preceding paragraphs herein, as if fully alleged.

37. Labor Code sections 226.7, 512, and the applicable IWC Wage Order provide that

no employer shall employ any person for a work period of more than five (5) hours without providing a meal period uninterrupted by work duties of not less than thirty (30) minutes or employ any person for a work period of more than ten (10) hours without a second meal period of not less than thirty (30) minutes.

38. Labor Code section 226.7 provides that if an employer fails to provide an employee a meal period in accordance with this section, 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 in accordance with this section. Plaintiffs allege that Defendant failed to provide legally compliant meal periods and/or impeded, discouraged, dissuaded, and/or failed to relieve employees from all work duties during meal periods thereby preventing employees from taking legally compliant meal periods. Specifically, Plaintiff and Class Members frequently did not receive their meal period until after the fifth (5th) hour of work. Plaintiff and Class Members also had their lunches exactly at 30 minutes or much less than 30 minutes.

39. At all times relevant hereto, Plaintiff and Plaintiff Class have worked shifts of more than five (5) hours in a workday.

40. Pursuant to Labor Code section 226.7, Plaintiff and Plaintiff Class are entitled to damages in the amount equal to one (1) hour of wages at their regular rate of pay for each missed meal break, in an amount to be proven at trial.

41. Pursuant to Labor Code section 226.7, Plaintiff individually and on behalf of the Plaintiff Class, requests recovery of meal period compensation which she is owed beginning four (4) years prior to filing this complaint, as well as the assessment of any statutory penalties against the Defendant, in a sum as provided by the Labor Code and/or other statutes. Pursuant to Code of Civil Procedure section 1021.5, and any other provision of law, Plaintiff requests the court award reasonable attorneys' fees and costs incurred by her in this action.

SECOND CAUSE OF ACTION
Failure to Provide Rest Periods or Compensation in Lieu Thereof
(Lab. Code, § 226.7)
(By Plaintiff against All Defendants)

42. Plaintiff realleges and incorporates by reference all preceding paragraphs herein,

as if fully alleged.

43. Labor Code section 226.7 and the applicable Wage Order provide that employers authorize and permit all employees to take rest periods at the rate of ten (10) minutes rest time per four (4) work hours, or major fraction thereof.

44. Labor Code section 226.7, subdivision (b), provides that if an employer fails to provide employee rest periods in accordance with this section, 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. Plaintiff and Plaintiff Class consistently worked over four (4) hours per shift with no rest breaks, or otherwise had their rest breaks interrupted or shortened due to Defendant's uniform policies and practices.

45. Defendant failed to reasonably make available rest breaks to Plaintiff and Plaintiff Class throughout the Class Period due to their understaffing, workload, and demands.

46. Plaintiff and Plaintiff Class are entitled to damages in an amount equal to one (1) hour of wages per missed rest break, in a sum to be proven at trial. Pursuant to Code of Civil Procedure section 1021.5, and any other provision of law, Plaintiff requests the court award reasonable attorneys' fees and costs incurred by her in this action.

THIRD CAUSE OF ACTION
Waiting Time Penalties For
Failure To Pay Wages Due On Termination
[Cal. Labor Code §§ 201-203]
(On Behalf of Plaintiff and the Waiting Time Class Against Defendant)

47. Plaintiff realleges and incorporates by reference each and every allegation set forth in the preceding paragraphs.

48. Labor Code § 203 provides "if an employer willfully fails to pay . . . any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty. . ." for up to 30 days. Lab. Code § 203; *Mamika v. Barca*, (1998) 68 Cal.App.4th 487, 492.

49. Due to Defendant's faulty policies described above, including its failure to pay meal and rest break premiums, Defendant violated Labor Code § 203, for those employees whose

1 employment ended within the last three years and ongoing (i.e., the Waiting Time Class
2 Members) by willfully failing to pay them all wages due upon the termination of their
3 employment.

4 **FOURTH CAUSE OF ACTION**
5 **Failure to Pay Wages**
6 **(Labor Code §§ 204, 210)**
7 **(By Plaintiff against All Defendants)**

8 50. Plaintiff realleges and incorporates by reference all preceding paragraphs herein,
9 as if fully alleged herein.

10 51. Pursuant to Cal. Lab. Code § 204, “all wages...earned by any person in
11 employment are due and payable twice during each calendar month, on days designated in
12 advance by the employer as the regular paydays.”

13 52. Plaintiff and the Plaintiff Class who worked for Defendant during the Class Period
14 were not paid in a timely manner.

15 53. Pursuant to Cal. Lab. Code 210, Plaintiff is entitled to recover a penalty of \$100.00
16 for the initial failure to timely pay each employee all of the wages earned; in addition, pursuant
17 to Section 210, for each subsequent failure to pay in compliance with Labor Code Section 204,
18 Plaintiff is entitled to recover an additional amount equal to 25% of the unlawfully withheld
19 wages.

20 54. As a direct and proximate result of Defendant’s conduct in violation of the Labor
21 Code as alleged above, Plaintiff and the Class have suffered, and continue to suffer, losses related
22 to the use and enjoyment of wages and lost interest on such wages all to their damage in amounts
23 according to proof at trial.

24 **FIFTH CAUSE OF ACTION**
25 **Waiting Time Penalties For**
26 **Failure to Maintain Records and Provide Accurate Itemized Wage Statements**
27 **(Labor Code § 226)**
28 **(On Behalf of Plaintiff and the Class Against Defendant)**

55. Plaintiff realleges and incorporates by reference each and every allegation set forth
in the preceding paragraphs.

1 56. At all times relevant hereto, Defendant failed to issue payrolls statements to
2 Plaintiff and the Plaintiff Class which complied with *Labor Code* § 226 in that the statements
3 issued to Plaintiff and the Plaintiff Class did not properly and accurately include their premium
4 pay for meal/rest breaks not afforded.

5 57. Defendant knowingly and intentionally failed to comply with *Labor Code*
6 §226(a), causing damage to Plaintiff and the Plaintiff Class. These damages, including but not
7 limited to, costs expended calculating the actual hours worked and the amount of employment
8 taxes which were not properly paid to state and federal tax authorities, are difficult to estimate.
9 Therefore, Plaintiff and the Plaintiff Class elects to recover liquidated damages of \$50.00 for the
10 initial pay period in which the violations occurred, and \$100.00 for each violation in subsequent
11 pay periods, pursuant to *Labor Code* § 226(e), in the amount of \$4,000.00 plus reasonable
12 attorneys' fees and costs.

13 58. Plaintiff requests a permanent injunction to stop this unlawful conduct, plus
14 attorneys' fees and costs in obtaining the injunction, pursuant to *Labor Code* § 226(g).

15 **SIXTH CAUSE OF ACTION**
16 **Unfair/Unlawful Business Practices**
17 **(Bus. & Prof. Code, §§ 17200 et seq.)**
18 **(By Plaintiff against All Defendants)**

19 59. Plaintiff realleges and incorporates by reference all preceding paragraphs herein,
20 as if fully alleged herein.

21 60. Plaintiff brings this claim individually and on behalf of Class Members.

22 61. Business and Professions Code section 17200 ("UCL") prohibits unfair
23 competition in the form of any unlawful, unfair, or fraudulent business act or practice.

24 62. Business and Professions Code section 17204 allows "any person who has suffered
25 injury in fact and has lost money or property as a result of such unfair competition" to prosecute
26 a civil action for violation of the UCL.

27 63. Labor Code section 90.5, subdivision (a), states it is the public policy of California
28 to vigorously enforce minimum labor standards in order to ensure employees are not required to
work under substandard and unlawful conditions, and to protect employers who comply with the

1 law from those who attempt to gain competitive advantage at the expense of their workers by
2 failing to comply with minimum labor standards.

3 64. Beginning at an exact date unknown to Plaintiff, but at least since the date four
4 years prior to the filing of this complaint, Defendant has committed acts of unfair competition as
5 defined by the Unfair Business Practices Act, by engaging in the unlawful, unfair, and fraudulent
6 business practices and acts described in this complaint, including, but not limited to, violations of
7 Labor Code sections 201 202, 203, 204, 206, 210, 226, 226.3, 226.7 and 512, as well as other
8 statutes.

9 65. The violations of these laws and regulations, as well as of fundamental California
10 public policies protecting workers, serve as unlawful predicate acts and practices for purposes of
11 Business and Professions Code sections 17200 et seq.

12 66. As a result of these actions, Plaintiff, on information and belief, alleges that
13 Defendant, through its unlawful, unfair and/or fraudulent business practices, has gained an
14 unlawful competitive advantage over other comparable companies in the State of California in
15 violation of Business and Professions Code sections 17000 et seq. and sections 17200 et seq.

16 67. The victims of these unlawful, unfair, and/or fraudulent business practices include,
17 but are not limited to, Plaintiff, putative Class Members, competing LED lighting companies in
18 the State of California, and the general public. Plaintiff is informed and believes, and thereon
19 alleges, that Defendant performed the above-mentioned acts with the intent of gaining an unfair
20 competitive advantage and thereby injuring Plaintiff, putative class members, other competitors,
21 and the general public.

22 68. Plaintiff's success in this action will enforce important rights affecting the public
23 interest and public policy. In this regard, Plaintiff sues on behalf of the public as well as on behalf
24 of herself.

25 69. Business and Professions Code section 17203 provides that a court may make such
26 orders or judgments as may be necessary to prevent the use or employment by any person of any
27 practice which constitutes unfair competition. Injunctive relief is necessary and appropriate to
28 prevent Defendant from repeating their unlawful, unfair, and fraudulent business acts and

1 business practices alleged above.

2 70. Business and Professions Code section 17203 provides that the Court may restore
3 to any person in interest any money or property that may have been acquired by means of such
4 unfair competition. Plaintiff and the Plaintiff Class are entitled to restitution pursuant to Business
5 and Professions Code section 17203 for wages and payments unlawfully withheld from
6 employees, including the fair value of the meal and rest periods and other losses alleged herein,
7 during the four-year period prior to the filing of this complaint. All remedies are cumulative
8 pursuant to Business and Professions Code section 17205.

9 71. Business and Professions Code section 17202 provides: “Notwithstanding section
10 3369 of the Civil Code, specific or preventative relief may be granted to enforce a penalty,
11 forfeiture, or penal law in a case of unfair competition.” Plaintiff and Plaintiff Class are entitled
12 to enforce all applicable penalty provisions of the Labor Code pursuant to Business and
13 Professions Code section 17202.

14 72. Plaintiff requests injunctive relief pursuant to Business and Professions Code
15 section 17203 to enjoin Defendant from continuing the unfair/unlawful business practices alleged
16 herein.

17 73. Plaintiff herein takes upon herself enforcement of these laws and lawful claims.
18 There is a financial burden involved in pursuing this action. The action is seeking to vindicate a
19 public right, and it would be against the interests of justice to penalize Plaintiff by forcing Plaintiff
20 to pay attorneys’ fees from the recovery in this action. Attorneys’ fees are appropriate pursuant
21 to Code of Civil Procedure section 1021.5 and other statutes.

22 **SEVENTH CAUSE OF ACTION**

23 **For Civil Penalties Pursuant to Private Attorneys General Act (“PAGA”)**

24 **[Cal. Lab. Code §§ 2698, et seq.]**

25 **(On Behalf of Plaintiff Argueta, Aggrieved Employees, and the Plaintiff Class Against All
26 Defendants)**

27 74. Plaintiff Argueta and the Aggrieved Employees reallege and incorporate by this
28 reference, as though fully set forth herein, the prior paragraphs of this Complaint.

75. PAGA is a mechanism by which the State of California itself can enforce state

1 labor laws through the employee suing under the PAGA who do so as the proxy or agent of the
2 state's labor law enforcement agencies. An action to recover civil penalties under PAGA is
3 fundamentally a law enforcement action designed to protect the public and not to benefit private
4 parties. The purpose of the PAGA is not to recover damages or restitution, but to create a means
5 of "deputizing" citizens as private attorneys general to enforce the Labor Code. In enacting
6 PAGA, the California Legislature specified that "it was ... in the public interest to allow aggrieved
7 employees, acting as private attorneys general to recover civil penalties for Labor Code violations
8 ..." Stats. 2003, ch. 906, § 1. Accordingly, PAGA claims cannot be subject to arbitration.

9 76. Plaintiff brings this Representative Action on behalf of the State of California with
10 respect to herself, the Plaintiff Class, and all other current and former Aggrieved Employees
11 employed by Defendant during the PAGA Period.

12 77. At all relevant times, for the reasons described herein, and others, Plaintiff, the
13 Class Members, and the Aggrieved Employees were aggrieved employees of Defendant within
14 the meaning of Labor Code Section 2699(c).

15 78. Labor Code Sections 2699(a) and (g) authorize an Aggrieved Employee, like
16 Plaintiff Argueta, on behalf of herself, the Class Members and other current or former employees,
17 to bring a civil action to recover civil penalties pursuant to the procedures specified in Labor Code
18 Section 2699.3.

19 79. Plaintiff Argueta complied with the procedures for bringing suit specified in Labor
20 Code Section 2699.3. By certified letter, return receipt requested and electronic mail, dated July
21 18, 2023, Plaintiff gave written notice to the LWDA and to Defendant of the specific provisions
22 of the Labor Code alleged to have been violated, including the facts and theories to support the
23 alleged violations. *See* Exhibit A, attached hereto and incorporated by this reference herein.

24 80. As of October 1, 2023, sixty-five (65) days after serving the LWDA with notice
25 of Defendant's violations, the LWDA has not provided any notice by certified mail of its intent
26 to investigate the Defendant's alleged violations as mandated by Labor Code Section
27 2699.3(a)(2)(A). Accordingly, pursuant to Labor Code Section 2699.3(a)(2)A, Plaintiff may
28 commence and is authorized to pursue this cause of action.

1 81. Pursuant to Labor Code Sections 2699(a) and (f), Plaintiff and the Aggrieved
2 Employees are entitled to civil penalties for Defendant's violations of Labor Code Section 201,
3 202, 203, 204, 210, 226, 226.3, 226.7, 512 and 558, in the following amounts:

- 4 a. For violations of Labor Code Section 226(a), a civil penalty in the amount
5 of two hundred fifty dollars (\$250) for each Aggrieved Employee for any
6 initial violation and one thousand dollars for each subsequent violation
7 [penalty per Labor Code Section 226.3];
- 8 b. For violations of Labor Code Section 204, a civil penalty in the amount of
9 one hundred dollars (\$100) for each Aggrieved Employee for any initial
10 violation and two hundred dollars (\$200) for Aggrieved Employee for each
11 subsequent violation [penalty per Labor Code Section 210];
- 12 c. For violations of Labor Code Sections 226.7 and 512, a civil penalty in the
13 amount of fifty dollars (\$50) for each underpaid Aggrieved Employee for
14 the initial violation and one hundred dollars (\$100) for each underpaid
15 Aggrieved Employee for each subsequent violation [penalty per Labor
16 Code Section 558];
- 17 d. For violations of Labor Code Section 2269(a), a civil penalty in the
18 subsequent violation [penalty per Labor Code Section 226.3];
- 19 e. For violations of Labor Code Section 226(a), a civil penalty in the amount
20 of two hundred fifty dollars (\$250) for each Aggrieved Employee for any
21 initial violation and one thousand dollars for each subsequent violation
22 [penalty per Labor Code Section 226.3];
- 23 f. For violations of Labor Code Sections 204, a civil penalty in the amount of
24 one hundred dollars (\$100) for each Aggrieved Employee for any initial
25 violation and two hundred dollars (\$200) for each Aggrieved Employee for
26 each subsequent violation [penalty per Labor Code Section 210];
- 27 g. For violations of Labor Code Sections 226.7 and 512, a civil penalty in the
28 amount of fifty dollars (\$50) for each underpaid Aggrieved Employee for

the initial violation and hundred dollars (\$100) for each underpaid Aggrieved Employee for each subsequent violation [penalty per Labor Code Section 558];

h. For violations of Labor Code Section 2269(a), a civil penalty in the subsequent violation [penalty per Labor Code Section 226.3];

i. For violation of Labor Code Sections 201, 202, 203, and 204, one hundred dollars (\$100) for each Aggrieved Employee per pay period for the initial violation and two hundred dollars (\$200) for each Aggrieved Employee per pay period for each subsequent violation [penalty per Labor Code Section 2699(f)(2)]; and

j. For all provisions of the Labor Code for which a civil penalty is not specifically provided, Labor Code § 2699(f) imposes upon Defendant a penalty of one hundred dollars (\$100) for each Aggrieved Employee per pay period for the initial violation and two hundred dollars (\$200) for each Aggrieved Employee per pay period for each subsequent violation.

82. Plaintiff and the Aggrieved Employees are entitled to an award of reasonable attorneys' fees and costs in connection with their claims for civil penalties pursuant to Labor Code Section 2699(g)(1).

83. To the extent that any of the conduct and violations alleged herein did not affect Plaintiff or Class Members during the PAGA period, Plaintiff and Class Members seek penalties for those violations that affected other Aggrieved Employees. (*Carrington v. Starbucks Corp.* (2018) 30 Cal. App. 5th 504, 519; *see also Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal. App. 5th 745, 751 ["PAGA allows an "aggrieved employee"—a person affected by at least one Labor Code violation committed by an employer—to pursue penalties for all the Labor Code violations committed by that employer."], emphasis added, *reh'g denied* (June 13, 2018).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment as follows:

1. That the Court determine that this action may be maintained as a class action under

Code of Civil Procedure section 382;

2. The Court appoint Plaintiff as Class Representative;
3. The Court appoint Employment Rights Law Group, APC as class counsel;
4. For compensatory and statutory damages;
5. For restitution of all monies due to Plaintiff and Plaintiff Class from the unlawful/unfair business practices of Defendant;
6. For injunctive relief;
7. For statutory and civil penalties according to proof;
8. For reasonable attorneys' fees and costs pursuant to Labor Code section 226, subdivision (e), Code of Civil Procedure section 1021.5, and/or other applicable laws statues;
9. For civil penalties to the extent permitted by law pursuant to the Labor Code under the Private Attorneys General Act; and
10. That the Court award such other and further relief as this Court may deem appropriate.

Dated: October 2, 2023

EMPLOYMENT RIGHTS LAW GROUP, APC
LAW OFFICES OF TATIANA HERNANDEZ

By:

Amir H. Seyedfarshi, Esq.
Tatiana Hernandez, Esq.
Attorneys for Plaintiff and on behalf of all similarly
situated employees

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Dated: October 2, 2023

Amir H. Seyedfarshi, Esq.
Tatiana Hernandez, Esq.
Attorneys for Plaintiff and on behalf of all similarly
situated employees



Employment Rights Law Group, APC
6380 Wilshire Blvd., Suite 1602
Los Angeles, CA 90048
424-777-0964
amir@employmentrightslawgroup.com

July 18, 2023

Via Online Filing with the LWDA & Certified Mail to Defendant

FLASHINGBLINKYLIGHTS.COM, INC
C/O Agent for service of process
Christopher Camarella
10810 Cantara Street
Sun Valley, CA 91352

Re: NOTICE OF INTENT TO FILE SUIT (Labor Code § 2699.3)

Kenya Argueta v. FLASHINGBLINKYLIGHTS.COM, INC

Dear Gentleperson:

This letter is the written notice (“Notice”) required by the California Labor Code Private Attorneys General Act of 2004 (“PAGA”), Labor Code section 2698 *et seq.*, including without limitation Labor Code sections 2699.3 (a)(1) and/or any other applicable provision of statute, rule, or law. This letter is being sent simultaneously via online filing with the California Labor and Workforce Development Agency (“LWDA”). This letter is an important formal legal notice which may lead to action against you and/or FLASHINGBLINKYLIGHTS.COM, INC (“FBL”) in a court of law and/or in administrative proceedings; and to the imposition of substantial penalties, damages, and/or other orders against you and/or FBL.

My office, alongside with my co-counsel, Tatiana Hernandez, Esq. of Law Office of Tatiana Hernandez, P.C., represents Plaintiff Kenya Argueta (“Plaintiff”) and a proposed group of current and former Aggrieved Employees of FBL or any affiliated entities of FBL, including but not limited to any of its co-employers, successors in interest, and/or merged entities (“Defendant”) in connection with Plaintiff’s individual and/or PAGA representative action claims for, *inter alia*, civil penalties based on, without limitation, the following (“PAGA Claims”):

- (1) Defendant’s failure to provide timely duty-free rest periods within the first four (4) hours or major fraction thereof, and/or pay rest period premiums for late, on-duty, or missed rest breaks in violation of Labor Code sections 226.7 and 512 and Section 12 of the applicable IWC Wage Order;

- (2) Defendant's failure to provide timely duty-free meal periods and/or pay meal period premiums for late, on-duty, or missed meal breaks in violation of Labor Code sections 226.7 and 512 and Section 11 of the applicable IWC Wage Order;
- (3) Defendant's failure to provide accurate itemized wage statements in violation of Labor Code section 226 for failure to include: (a) all hours worked; and (b) rest and meal period premiums owed on FBL's wage statements issued to Plaintiff and the Wage Statement Aggrieved Employees;
- (4) statutory penalties based upon the foregoing, pursuant to Labor Code section 226;
- (5) Defendant's failure to pay all wages upon termination in violation of Labor Code sections 201-202;
- (6) Defendant's failure to timely pay employees all wages and failure to pay wages and meal and rest period premiums due on a bi-monthly basis when other wages were paid as required by Labor Code sections 204 and 210; and
- (7) statutory penalties under PAGA based upon the foregoing, pursuant to Labor Code sections 2698 *et seq.*

In connection with these PAGA Claims, Plaintiff and the Aggrieved Employees seek PAGA penalties from at least one year prior to the date of this Notice and ongoing (the "PAGA Period"). Plaintiff seeks to represent the following groups of Aggrieved Employees:

- (1) "Aggrieved Employees": All current or former hourly, non-exempt employees who worked for FBL in California during the PAGA period;
- (2) "Meal Break Aggrieved Employees": All Aggrieved Employees who worked at least 6 hours in a shift for Defendant during the PAGA Period;
- (3) "Rest Break Aggrieved Employees": All Aggrieved Employees who worked more than 3.51 hours in a shift for Defendant during the PAGA Period; and
- (4) "Wage Statement Aggrieved Employees": All Aggrieved Employees who were issued at least one wage statement from Defendant during the PAGA Period;

This notice is hereby given to and is made against FBL, and all related and/or alter ego companies, corporations, partnerships, and /or business entities, as well as against any and all officers, owners, directors managers, managing agents, or entities who are or may be liable under law for any of the alleged violations as to the Aggrieved Employees who worked at any location of FBL at any time during the PAGA Period in the State of California.

I. FACTUAL BACKGROUND

Plaintiff is a former employee of FBL, who was hired in or around July 12, 2021, and was employed by FBL until April 6, 2023. Plaintiff worked as a Regular Associate five days per week, eight to twelve hours per day and was compensated at \$18.00 per hour.

Plaintiff and the Aggrieved Employees are or were required to use a punch in and out system to record time worked at FBL. From the commencement of Plaintiff's employment, FBL did not have or enforce a policy for Plaintiff or the Meal Break Aggrieved Employees to take timely, uninterrupted, duty free, thirty-minute meal periods. As a result, most employees typically took their meal periods after the end of the fifth hour of work. Furthermore, approximately one or two times per week, Plaintiff and the Meal Break Aggrieved Employees were required to clock out for lunch but work through their lunches and then clock back in after thirty minutes. Plaintiff and the Meal Break Aggrieved Employees were then sometimes allowed to take their meal breaks after the 6th or 7th hour of work, depending on when the work slowed down. Furthermore, approximately three times per week for a period of six to eight months during the PAGA Period, Plaintiff and other Meal Break Aggrieved Employees who worked on machines worked twelve-hour shifts and were not permitted to take a second meal period before the end of the tenth hour of work.

Furthermore, from the commencement of Plaintiff's employment, FBL did not have or enforce a policy for Plaintiff or the Rest Break Aggrieved Employees to take timely, uninterrupted, duty free, ten-minute rest periods. Approximately three times per week during the PAGA Period, Plaintiff and the Rest Break Aggrieved Employees were not permitted to take a second ten-minute rest break during work shifts of over six hours, even despite work slowing down. This is a regular practice and is essentially FBL's unwritten policy. FBL never paid Plaintiff or the Aggrieved Employees the one hour of additional pay at their regular rate for being required to skip, work through, or untimely take their meal and/or rest periods, as required by California law.

II. PAGA Claims

A. Non-Compliant Meal Periods

Pursuant to Labor Code section 512, no employer shall employ any person for a work period of more than five (5) hours without providing a meal period of not less than thirty (30) minutes. *Id.* at subd. (a). However, if the total work period for that day is less than six hours, then the meal period may be waived by mutual consent. *Id.* The first meal period must start prior to the end of the employee's fifth hour of work if the employee is working less than ten (10) hours. *Brinker Restaurant Corp., supra*, 53 Cal. 4th at 1041. During the meal period, the employee is to be completely free of the employer's control and must not be required to perform any work for the employer. *Id.* at 1040-1041. If an employer fails to provide a legally compliant, duty-free meal period, the employee is entitled to one hour of "premium pay," or an additional hour of pay at the employee's regular rate of compensation for each workday that the meal period was not provided. Lab. Code § 226.7(c); IWC Wage Order 5-2001 § 11.

Here, As a result FBL's failure to have or enforce a compliant meal period policy, most employees typically took their meal periods after the end of the fifth hour of work. Approximately one or two times per week, Plaintiff and the Meal Break Aggrieved Employees were required to clock out for lunch but work through their lunches and then clock back in after thirty minutes. Plaintiff and the Meal Break Aggrieved Employees were then sometimes allowed

to take their meal breaks after the 6th or 7th hour of work. Approximately three times per week Plaintiff and other Meal Break Aggrieved Employees worked twelve-hour shifts and were not permitted to take a second meal period before the end of the tenth hour of work. *See Brinker Restaurant Corp., supra*, 53 Cal. 4th at 1041. Despite the foregoing, Plaintiff and the Meal Break Aggrieved Employees were never paid a meal period premium for every day that they did not receive a compliant meal period, in violation of the Labor Code.

B. Non-Compliant Rest Periods

California law requires an employer to provide its employees with an uninterrupted, duty-free rest period of not less than ten (10) minutes for each four hours worked or a “major fraction thereof.” Lab. Code § 226.7; IWC Wage Order 4-2001 § 12. The Division of Labor Standards Enforcement (“DLSE”) has interpreted the phrase “major fraction thereof”, as applied to a four-hour period, to mean any amount of time in excess of two hours—i.e., any fraction greater than half. *Brinker* at 1029, citing Dept. Industrial Relations, DLSE Opn. Letter No. 1999.02.16 (Feb. 16, 1999) p. 1. “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 . . .” Lab. Code § 226.7(b). If an employer fails to provide a legally compliant, duty-free rest period, the employee is entitled to one hour of “premium pay,” or an additional hour of pay at the employee’s regular rate of compensation for each workday that the rest period was not provided. Lab. Code § 226.7(c). The *Brinker* Court explained in the context of rest breaks that employer liability attaches from adopting an unlawful policy:

An employer is required to authorize and permit the amount of rest break time called for under the wage order for its industry. If it does not—if, for example, it adopts a uniform policy authorizing and permitting only one rest break for employees working a seven-hour shift when two are required—***it has violated the wage order and is liable.***

Brinker Rest. Corp. v. Sup. Ct. (2012) 53 Cal.4th 1004, 1033 (emphasis added).

Here, Plaintiff and the Rest Break Aggrieved Employees were not provided their timely ten-minute duty-free rest periods every four hours or major fraction thereof. On the contrary, approximately three times per week, Plaintiff and the Rest Break Aggrieved Employees were or are not permitted to take a second ten-minute rest break during work shifts of over six hours, despite work slowing down. This is a regular practice and is essentially FBL’s unwritten policy. Because Plaintiff and the Rest Break Aggrieved Employees did not receive compliant rest breaks, they were entitled to receive rest period premium pay for each day that they did not receive a compliant rest break, yet FBL failed to pay rest period premiums, in violation of Labor Code section 226.7.

C. Violation of Labor Code Sections 200, 204 & 210

Pursuant to Labor Code section 200, “wages” include “all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis, or other method of calculation.” The term “wages” includes meal and rest break premiums. *See Naranjo v. Spectrum Security Services, Inc.* (2022) 13 Cal. 5th 93, 110-118 (California Supreme Court held that unpaid meal and rest break premiums are “wages” that can be the basis of derivative claims for waiting time penalties and wage statement penalties). Labor Code section 204 expressly requires that “[a]ll wages . . . 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.” *Id.* at subd. (a). Additionally, Labor Code section 210(a), provides that, in addition to, and entirely independent and apart from, any other penalty provided under the Labor Code, every person who fails to pay wages pursuant to section 204 shall be subject to a civil penalty as follows:

- (1) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee;
- (2) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25% of the amount unlawfully withheld.”

Here, due to FBL’s failure to pay Plaintiff and the applicable Aggrieved Employees the meal period and rest period premiums that they were owed, it follows that FBL also failed to pay them all applicable wages on a timely and bi-monthly basis, giving rise to a viable claim for unpaid wages and civil penalties pursuant to Labor Code sections 200, 204, and 210.

D. Inaccurate Wage Statement Claim

Pursuant to Labor Code section 226, employers are obligated to furnish an itemized wage statement showing: (1) gross wages earned; (2) total hours worked; (3) the number of piece-rate units earned and any applicable piece rate (if applicable); (4) all deductions; (5) net wages earned; (6) the inclusive dates of the pay period; (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number; (8) the legal name and address of employer; and (9) all applicable hourly rates in effect and the corresponding number of hours worked at each rate during the pay period. *Id.* at subd. (a). An employer has an affirmative duty to track employee’s hours worked and meal periods. *See IWC Wage Order* section 7(A) (“Every employer shall keep accurate information with respect to each employee including . . . time records showing when the employee begins each work period[,] [m]eal periods[,] and total daily worked shall also be recorded.”); *See also Naranjo, supra*, 13 Cal. 5th at 110-111, 117-118 (meal and rest break premiums are wages that can be the basis of derivative claims for wage statement penalties). Additionally, if an employer does not keep such records, as is the case here, the burden shifts to the employer to show that proper timekeeping procedures were maintained. *See Hernandez v. Mendoza* (1988) 199 Cal. App. 3d 721, 727 (burden shifted to employer to produce evidence either of the precise amount of work or

evidence to negate the reasonableness of the inference to be drawn from the employee's evidence).

Labor Code section 226(e) provides that an employee is entitled to recover \$50 for initial pay period in which a violation of Section 226 occurs and \$100 for each subsequent pay period, not to exceed \$4,000, as well as an award of costs and reasonable attorney's fees, for all pay periods in which the employer fails to provide accurate itemized statements to the employee causing the employee to suffer injury.

Here, Plaintiff and the Wage Statement Aggrieved Employees did not receive wage statements which included all of the required information under Labor Code section 226(a), including all meal and rest period premiums owed, and thus the wage statements issued to these individuals failed to include the correct amount of gross wages earned, the net wages earned, all applicable hourly rates in effect during the pay period, and the corresponding number of hours worked at each hourly rate in violation of Labor Code § 226(a)(1), (2), (5) and (9).

Furthermore, FBL's failure to furnish accurate itemized wage statements has caused Plaintiff and the Wage Statement Aggrieved Employees to incur economic damages in that they were not aware that they were owed, due to not being paid compensation for their time spent on non-compliant meal and rest periods. *See Cicairos v. Summit Logistics, Inc.* (2005) 133 Cal.App.4th 949, 960-961 (reversing summary judgment for defendants where wage statements did not "give an accurate report of the hours plaintiff worked, at least not on its face"). "If it is left to the employee to add up the daily hours shown on the timecards or other records so that the employee must perform arithmetic computations to determine the total hours worked during the pay period, the requirements of section 226 would not be met." *Id.* at 955; *see also* Lab. Code § 226(e)(2)(B) (clarifying that injury is established where the wage statement violated Section 226(a)(1), (2), or (5), among other provisions, and where employees cannot easily determine the gross or net wages earned by the employee during the pay period).

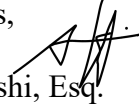
III. CONCLUSION

Based on the foregoing, we write to inform FBL and the LWDA, with whom this PAGA Notice has been filed, of our intent to pursue a PAGA representative action (and a class action) against Defendant seeking, *inter alia*, PAGA penalties under Labor Code section 2699, to be brought by Plaintiff individually, on a class basis, and on behalf of the Aggrieved Employees as defined above.

Nevertheless, it is the policy of this firm to attempt to negotiate an early resolution of all matters where possible and beneficial to the putative class and the Aggrieved Employees. If Defendant is interested in attempting to resolve this matter, please have counsel contact us by **July 31, 2023**, so that we may discuss an informal discovery plan and the possibility of early resolution through mediation.

You may contact Amir Seyedfarshi at Amir@employmentrightslawgroup.com or by calling (424) 777-0964, or Tatiana Hernandez at Tatiana@thlawpc.com or by calling (213) 909-4248. We look forward to your response.

Regards,

A handwritten signature in black ink, appearing to be 'AS', written over the printed name of Amir Seyedfarshi.

Amir Seyedfarshi, Esq.

Tatiana Hernandez, Esq.
*Attorneys for Plaintiff and the
Aggrieved Employees*