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Attorney for Plaintiff
Gisselle Selvy-Medina

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN DIEGO

11	GISSELLE SELVY-MEDINA, on behalf of	)	NO. 37-2023-00041657-CU-OE-CTL
12	herself and all aggrieved employees,	)	
13	Plaintiff,	)	COMPLAINT FOR PAGA PENALTIES
14	v.	)	
15	NOTHING BUNDT CAKES,	)	
16	ROARK CAPITAL GROUP,	)	
17	NOTHING BUNDT CAKES FRANCHISING,	)	
	LLC, and DOES 1 to 100,	)	
	Defendants.	)	

PRELIMINARY ALLEGATIONS

1. Plaintiff Gisselle Selvy-Medina is a resident of San Diego County.
2. Defendant Nothing Bundt Cakes is a business entity form unknown that is based in Texas and operates stores in California.
3. Defendant Roard Capital Group is a business entity form unknown that is based in Georgia and operates stores in California.
4. Defendant Nothing Bundt Cakes Franchising, LLC is a Texas limited liability company that operates stores in California.
5. Plaintiff does not know the names and capacities of Does 1 to 100 and therefore use

1 fictitious names. Plaintiff will amend pursuant to Code of Civil Procedure section 474 when the
2 names and capacities are known.

3 6. The named and Doe defendants are referred to as “Defendants” and are the alter ego of each
4 other and are collectively liable for the acts below.

5 7. Plaintiff worked for Defendants in a nonexempt capacity; therefore Wage Order 4 applies.

6 8. Plaintiff worked at Defendants’ store on Mission Center Road from November 2022 to May
7 2023; therefore venue is proper in San Diego County.

8 9. However, Defendants operate 75 stores throughout California.

9 10. Paragraph 14 of Wage Order 4 provides:

10 A. All working employees shall be provided with suitable seats when the nature of the
11 work reasonably permits the use of seats.

12 B. When employees are not engaged in the active duties of their employment and the
13 nature of the work requires standing, an adequate number of suitable seats shall be
14 placed in reasonable proximity to the work area and employees shall be permitted to use
15 such seats when it does not interfere with the performance of their duties.

16 11. The standard for providing suitable seating is objective, and it protects employees because it
17 does not allow employers unlimited ability to arbitrarily define certain tasks as “standing” ones,
18 undermining the protective purpose of the wage order. (Kilby v. CVS Pharmacy, Inc. (2016) 63
19 Cal.4th 1, 22.)

20 12. An aggrieved employee may enforce the suitable seating requirements (Lab. Code, § 1198.)

21 13. On July 10, 2023 Plaintiff sent a PAGA letter to Defendants and uploaded the letter to the
22 LWDA website. Since it has been more than 65 days since the letter was sent, Plaintiff may now
23 request PAGA penalties on behalf of herself and all aggrieved employees. (Lab. Code, § 2699(a).)

24
25 FIRST CAUSE OF ACTION

26 PAGA Penalties

27 Against All Defendants

28 14. Plaintiff incorporates by reference paragraphs 1 to 13 of the complaint.

1 15. The nature of the aggrieved employees reasonably permits the use of seats, however
2 Defendants did not provide suitable seats for the aggrieved employees.

3 16. No suitable seats were placed in reasonable proximity to the work area for the aggrieved
4 employees so even if a portion of the work required standing, the aggrieved employees had
5 nowhere to sit if it did not interfere with performance of their duties.

6 17. The remedy for the suitable seating violation is contained in Labor Code section 2699(f),
7 which is \$100 per pay period for each aggrieved employee for the initial violation and \$200 per pay
8 period for each aggrieved employee for each subsequent violation.

9 18. Plaintiff is also entitled to attorney fees and costs under Labor Code section 2699(g).

10
11 PRAYER

12 First Cause of Action

- 13 1. All applicable penalties
14 2. Attorney fees and costs
15 3. Other relief the court deems proper
16

17 Date: September 16, 2023

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18 *Adam Rose*
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20 _____
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Attorney for Plaintiff
Gisselle Selvy-Medina
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