

JUSTICE FOR WORKERS, P.C.
Young K. Park, SB# 287589
E-Mail: young@justiceforworkers.com
William C. Sung, SB# 280792
E-Mail: william@justiceforworkers.com
3600 Wilshire Boulevard, Suite 1815
Los Angeles, CA 90010
Tel: 323-922-2000
Fax: 323-922-2000

Assigned for All Purposes
Judge William Claster
Dept. CX101

Attorneys for Plaintiff DO QUYNH NHI NGUYEN

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE

DO QUYNH NHI NGUYEN, an aggrieved
employee;

Plaintiff,

vs.

THANH LE CONG DO, an individual, doing
business as OC 7\$; and DOES 1 through 50,

Defendants.

Case No.: 30-2024-01371447-CU-OE-CXC

REPRESENTATIVE ACTION
COMPLAINT FOR VIOLATION OF THE
CALIFORNIA PRIVATE ATTORNEYS
GENERAL ACT (LABOR CODE §§ 2698,
***et seq.*)**

Plaintiff DO QUYNH NHI NGUYEN (“Plaintiff”), on behalf of herself as an aggrieved employee, the State of California, and other aggrieved employees, hereby brings this Representative Action Complaint (“Complaint”) against Defendants THANH LE CONG DO, an individual, doing business as OC 7\$, and DOES 1 to 50 inclusive (collectively “Defendants”), and on information and belief alleges as follows:

JURISDICTION AND VENUE

1. Plaintiff brings this Complaint for recovery of civil penalties under the California Private Attorneys General Act, California Labor Code §§ 2698, *et seq.* (“PAGA”), for Defendants’ violations of the Labor Code and Industrial Welfare Commission (“IWC”) Wage Order 5-2001 (“Wage Order 5”), including Labor Code §§ 201-204, 226, 226.7, 246, 432, 510, 512, 516, 558, 558.1, 1182.12, 1174, 1194, 1194.2, 1197, 1198, 1198.5, 2802. This Court has jurisdiction over

Defendants' violations of the Labor Code because the amount in controversy exceeds \$25,000.

2. Venue is proper in this judicial district because Defendants maintain offices, have agents, and/or transact business in the State of California, including Orange County, and some of the acts and omissions complained of herein occurred in Orange County. Furthermore, Plaintiff was employed by Defendants within Orange County.

PARTIES

3. Plaintiff is, and at all times relevant herein was, an individual over the age of eighteen (18) and is a California resident. Within the statute of limitations periods applicable to each cause of action pled herein, Plaintiff was employed by Defendants as a non-exempt employee. Plaintiff was, and is, a victim of Defendants' policies, practices, and/or customs complained of herein and has been deprived of the rights guaranteed by Labor Code §§ 201-204, 226, 226.7, 246, 432, 510, 512, 516, 558, 558.1, 1182.12, 1174, 1194, 1194.2, 1197, 1198, 1198.5, 2802, and Wage Order 5.

4. Plaintiff is informed and believes, and based thereon alleges, that during the applicable statute of limitations for each cause of action pled herein and continuing to the present, Defendants engaged in and continue to engage in business, and employed Plaintiff and other, similarly-situated non-exempt employees within Orange County, and the State of California and, therefore, were (and are) doing business in Orange County and the State of California.

5. Plaintiff does not know the true names or capacities, whether individual, partner, or corporate, of the defendants sued herein as DOES 1 to 50, inclusive, and for that reason, said defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to amend this Complaint when such true names and capacities are discovered. Plaintiff is informed, and believes, and based thereon alleges, that each of said fictitious defendants, whether individual, partners, or corporate, was responsible in some manner for the acts and omissions alleged herein, and proximately caused Plaintiff and aggrieved employees to be subject to the unlawful employment practices, wrongs, injuries, and damages complained of herein.

6. At all times herein mentioned, each of said Defendants participated in the doing of the acts hereinafter alleged to have been done by the named Defendant; and furthermore,

1 Defendants, and each of them, were the agents, servants, and employees of each of the other
2 defendants, as well as the agents of all Defendants, and at all times herein mentioned, were acting
3 within the course and scope of said agency and employment.

4 7. Plaintiff is informed and believes, and based thereon alleges, that at all times
5 material hereto, each of the Defendants named herein was the agent, employee, alter ego and/or
6 joint venturer of, or working in concert with each of the other co-Defendants and was acting within
7 the course and scope of such agency, employment, joint venture, or concerted activity. To the extent
8 said acts, conduct, and omissions were perpetrated by certain Defendants, each of the remaining
9 Defendants confirmed and ratified said acts, conduct, and omissions of the acting Defendants.

10 8. At all times herein mentioned, Defendants, and each of them, were members of, and
11 engaged in, a joint venture, partnership, and common enterprise, and acting within the course and
12 scope of, and in pursuance of, said joint venture, partnership, and common enterprise.

13 9. At all times herein mentioned, the acts and omissions of various Defendants, and
14 each of them, concurred and contributed to the various acts and omissions of each and all of the
15 other Defendants in proximately causing the injuries and damages as herein alleged.

16 **FACTUAL ALLEGATIONS**

17 10. On information and belief, Defendant DO is an individual and does business as OC
18 7\$ under the laws of the State of California. Defendant DO is an owner of a restaurant called OC 7\$
19 located at 12342 Brookhurst St, Garden Grove, CA 92840. Defendant DO oversees OC 7\$'s day-
20 to-day business, enforces OC 7\$'s policies, and makes decisions regarding hiring, paying wages,
21 and all other terms and conditions of employment.

22 11. Plaintiff started working for Defendants on or around April 12, 2022, and continued
23 working there until she was unlawfully discharged on June 3, 2022.

24 12. Plaintiff worked as a waitress for the restaurant. Her duties included taking orders,
25 serving and preparing drinks, and serving food.

26 13. Plaintiff worked four to five days per week. Plaintiff's shift typically lasted between
27 seven hours to seven and a half hours.

28 ///

1 14. Effective January 1, 2022, the California minimum wage for employers employing
2 twenty-six (26) employees or more is \$15.00 per hour. Despite this, Plaintiff received an hourly rate
3 of \$13.00 per hour when paid via check or \$11.00 per hour when paid via cash. Thus, her wages
4 were below the state minimum wage during her entire employment. Upon information and belief,
5 other aggrieved employees were also paid below the minimum wage.

6 15. Defendant DO and Tien Nguyen Cat Hoang (“HOANG”), restaurant manager,
7 handled tips distribution. Plaintiff estimated her daily tips to be approximately \$50.00 per day on
8 weekdays and \$70.00 per day on weekends. However, Defendants only paid Plaintiff approximately
9 \$30.00 per day for tips. As a result, Defendants unlawfully retained a portion of Plaintiff's tips.
10 Upon information and belief, Defendants unlawfully retained a portion of other aggrieved
11 employees' tips.

12 16. According to the written policy of restaurant, all employees were expected to eat and
13 drink prior to showing up at work. The rule stated that eating food and chewing gum were forbidden
14 during their shifts. Meal and rest breaks were expressly forbidden.

15 17. As a result, Plaintiff was not allowed to take an uninterrupted 30-minute meal breaks
16 before the fifth hour of work for each day she worked. Upon information and belief, other aggrieved
17 employees were not provided with compliant meal periods.

18 18. Defendants also did not provide rest breaks to its employees. Defendants expected its
19 employees to work non-stop during their shift. As a result, Plaintiff could not have a break that
20 lasted longer than 2 minutes. During her entire employment, Plaintiff never received an
21 uninterrupted 10-minute rest break for every four hours of work for each day that she worked. Upon
22 information and belief, other aggrieved employees were also not permitted to take compliant rest
23 periods.

24 19. Defendants did not have any bench or chairs for the employees to sit while they were
25 working. All employees had to stand on their feet for the entirety of their shifts, which typically
26 lasted seven hours.

27 20. Also, Defendants unlawfully penalized its employees for showing up late or making
28 mistakes at work. According to the written policy of the restaurant, if an employee was 10 minutes

1 late to a shift, his or her wages would be deducted by 15 minutes as a penalty. If an employee was
2 30 minutes late to a shift, his or her wages would be deducted by one hour. If an employee was one
3 hour late to a shift, his or her wages would be deducted by two hours. If an employee was 2 hours
4 late to a shift, the entire shift would be unpaid. As a result of this unlawful penalty scheme,
5 Plaintiff's wages were wrongfully forfeited, in violation of the state minimum wage policy. Upon
6 information and belief, other aggrieved employees' wages were wrongfully forfeited, in violation of
7 the state minimum wage policy.

8 21. In addition, Defendants would round down the worked hours to the closest fifteen-
9 minute interval as a regular business practice. Plaintiff often had her earned wages forfeited because
10 of this unlawful rounding policy. Upon information and belief, other aggrieved employees had their
11 earned wages forfeited.

12 22. When Plaintiff questioned Defendants about her uncounted work hours, HOANG
13 responded that Defendants would only count to the "0.25, 0.5, and 0.75" intervals for convenience
14 in calculating wages.

15 23. Every two weeks, Defendants would require its employees to stay for an additional
16 hour after work to have its team meeting and salary distribution. Plaintiff and other aggrieved
17 employees were not paid for their time.

18 24. Despite Plaintiff requesting her paystubs on many occasions, HOANG and
19 Defendants failed to provide Plaintiff with proper itemized wage statements. Upon information and
20 belief, HOANG and Defendants failed to provide other aggrieved employees with proper itemized
21 wage statements.

22 25. On or about August 15, 2023, Plaintiff notified Defendants via certified mail, and
23 notified the California Labor and Workforce Development Agency ("LWDA") via its website, of
24 Defendants' violations of the Labor Code and Plaintiff's intent to bring a claim for civil penalties
25 under Labor Code $\text{--}\beta$ 2698, et seq. with respect to the violations of the Labor Code identified in the
26 preceding paragraph. Now that 33 days and 65 days have passed from Plaintiff notifying
27 Defendants and the LWDA of these violations, Defendants have not cured any curable violations,
28 and the LWDA has not provided notice that it intends to investigate the violations, Plaintiff has

1 exhausted administrative requirements for bringing a claim under the Private Attorneys General Act
2 with respect to these violations.

3 **FIRST CAUSE OF ACTION**

4 **PRIVATE ATTORNEYS GENERAL ACT**

5 **(Against All Defendants)**

6 26. Plaintiff re-alleges and incorporates by reference all preceding paragraphs as though
7 fully set forth herein.

8 27. Plaintiff, an “aggrieved employee” within the meaning of Labor Code §§ 2698, *et*
9 *seq.*, acting on behalf of herself and other aggrieved employees (collectively, “Aggrieved
10 Employees”), brings this representative action against Defendants to recover the civil penalties due
11 to Plaintiff and other Aggrieved Employees, and the State of California according to proof pursuant
12 to Labor Code §§ 558 and 2699(a) and (f) including, but not limited to: (1) \$100.00 for each initial
13 violation for each failure to pay each employee and \$200 for each subsequent violation or willful or
14 intentional violation pursuant to Labor Code §§ 210 and/or 225.5 for each failure to pay each
15 employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for each initial violation and
16 \$100 for each subsequent violation pursuant to Labor Code § 558 per employee per pay period; (3)
17 \$100 for each initial violation and \$250 for each subsequent violation pursuant to Labor Code §
18 1197.1 per employee per pay period; (4) \$250 for each initial violation and \$1,000 for each
19 subsequent violation pursuant to Labor Code § 226.3 per employee per pay period; (5) pursuant to
20 Labor Code § 256, a civil penalty in an amount not exceeding 30 days per former employee as
21 waiting time under the terms of Labor Code § 203; and/or (6) \$100 for each initial violation and
22 \$200 for each subsequent violation per employee per pay period for those violations of the Labor
23 Code for which no civil penalty is specifically provided, based on the following Labor Code
24 violations:

25 a. Failing to pay minimum wages for all hours worked to Aggrieved Employees in
26 violation of Labor Code § 558, 1182.12, 1194, 1194.2, 1197, and 1198;

27 b. Failing to pay Aggrieved Employees all earned overtime compensation in violation
28 of Labor Code §§ 204, 510, 558, 1194, and 1198;

1 c. Failing to provide all legally required meal periods, and failure to pay meal period
2 premium wages, to Aggrieved Employees at the regular rate of compensation in violation of Labor
3 Code §§ 226.7, 512, 558, and 1198;

4 d. Failing to authorize and permit all legally required rest periods, and failure to pay
5 rest period premium wages, to Aggrieved Employees at the regular rate of compensation in
6 violation of Labor Code §§ 226.7, 516, 558, and 1198;

7 e. Failing to furnish Aggrieved Employees with complete, accurate, itemized wage
8 statements in violation of Labor Code § 226;

9 f. Failing to timely pay all final wages and compensation earned by Aggrieved
10 Employees at the time of separation in violation of Labor Code §§ 201-202;

11 g. Failure to reimburse Aggrieved Employees for all necessary business expenses in
12 violation of Labor Code § 2802;

13 h. Failing to pay Aggrieved Employees all paid sick leave wages in violation of Labor
14 Code § 246;

15 i. Failing to pay Aggrieved Employees all earned wages at least twice during each
16 calendar month in violation of Labor Code § 204; and

17 j. Failing to maintain accurate records on behalf of Aggrieved Employees in violation
18 of Labor Code §§ 1174 and 1198.

19 28. A plaintiff has standing to pursue a PAGA claim if she satisfies the statutory
20 definition of an “aggrieved employee.” *Adolph v. Uber Techs., Inc.* (2023) 14 Cal.5th 1104, 1121
21 (citing *Johnson v. Maxim Healthcare Services, Inc.* (2021) 66 Cal.App.5th 924, 930). “The fact that
22 the plaintiff’s ‘individual claim may be time-barred does not nullify the alleged Labor Code
23 violations nor strip [the plaintiff] of her standing to pursue PAGA remedies.’” *Id.* (quoting *Johnson*,
24 66 Cal.App.5th at p. 930.) Thus, Plaintiff has standing as an aggrieved employee to recover civil
25 penalties on behalf of other Aggrieved Employees.

26 29. Plaintiff has incurred attorneys’ fees and costs, which Plaintiff is entitled to receive
27 under California Labor Code § 2699(g).

28 ///

1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff prays for judgment for herself and for all others on whose behalf
3 this suit is brought against Defendants, as follows:

4 1. Upon the First Cause of Action, for civil penalties due to Plaintiff, other Aggrieved
5 Employees, and the State of California according to proof pursuant to Labor Code §§ 558 and
6 2699(a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for each failure to
7 pay each employee and \$200 for each subsequent violation or willful or intentional violation
8 pursuant to Labor Code §§ 210 and/or 225.5 for each failure to pay each employee, plus 25% of the
9 amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent
10 violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial
11 violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per employee
12 per pay period; (4) \$250.00 for each initial violation and \$1,000.00 for each subsequent violation
13 pursuant to Labor Code § 226.3 per employee per pay period; (5) pursuant to Labor Code § 256, a
14 civil penalty in an amount not exceeding 30 days per former employee as waiting time under the
15 terms of Labor Code § 203; and/or (6) \$100.00 for each initial violation and \$200 for each
16 subsequent violation per employee per pay period for those violations of the Labor Code for which
17 no civil penalty is specifically provided;

18 2. On all causes of action, for attorneys' fees and costs as provided by Labor Code §
19 2699(g) and Code of Civil Procedure § 1021.5; and

20 3. For such other and further relief, the Court may deem just and proper.
21

22 DATED: January 3, 2024

JUSTICE FOR WORKERS, P.C.

23
24 By: 

25 Young K. Park
26 William C. Sung
27 Attorneys for Plaintiff
28 DO QUYNH NHI NGUYEN