

1 **MATERN LAW GROUP, PC**
2 MATTHEW J. MATERN (SBN 159798)
3 DEANNA S. LEIFER (SBN 265840)
4 KRISTEN B. DOYAN (SBN 348257)
5 1230 Rosecrans Avenue, Suite 200
6 Manhattan Beach, CA 90266
7 Telephone: (310) 531-1900
8 Facsimile: (310) 531-1901

9 Attorneys for Plaintiff ALFONSO ROMERO,
10 individually and on behalf of all other
11 aggrieved employees

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **FOR THE COUNTY OF SANTA CLARA**

14 ALFONSO ROMERO, individually and on
15 behalf of all other aggrieved employees

16 Plaintiff,

17 vs.

18 WENDY'S OF SANTA CLARA, INC., a
19 California corporation; and DOES 1 through 50,
20 inclusive,

21 Defendants.

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11/17/2023 8:41 AM
Clerk of Court
Superior Court of CA,
County of Santa Clara
23CV425944
Reviewed By: R. Walker

CASE NO.: **23CV425944**

**COMPLAINT FOR VIOLATION OF
THE CALIFORNIA LABOR CODE
PRIVATE ATTORNEYS GENERAL
ACT OF 2004**

[California Labor Code § 2698, *et seq.*]

DEMAND FOR JURY TRIAL

1 Plaintiff ALFONSO ROMERO (“PLAINTIFF”), individually and on behalf of all
2 aggrieved employees, hereby alleges as follows:

3 **INTRODUCTION**

4 1. PLAINTIFF brings this action on behalf of himself and all other aggrieved
5 employees of defendants WENDY’S OF SANTA CLARA, INC. (“WENDY’S”), a California
6 corporation, and DOES 1 through 50 inclusive (collectively, “DEFENDANTS”) in the State of
7 California during the relevant statutory period to recover penalties arising from DEFENDANTS’
8 failure to provide employees meal and rest periods (or compensation therefor) as required under
9 California law, unpaid minimum and overtime wages, and wage statement violations.

10 **JURISDICTION AND VENUE**

11 2. The Superior Court of the State of California has jurisdiction in this matter because
12 PLAINTIFF is a resident of the State of California, and DEFENDANTS are qualified to do
13 business in California and regularly conduct business in California. Further, no federal question is at
14 issue because the claims are based solely on California law.

15 3. Venue is proper in this judicial district and the County of Santa Clara, California
16 because PLAINTIFF and other aggrieved employees performed work for DEFENDANTS in the
17 County of Santa Clara, DEFENDANTS maintain offices and facilities and transact business in the
18 County of Santa Clara, and DEFENDANTS’ illegal payroll policies and practices which are the
19 subject of this action were applied, at least in part, to PLAINTIFF and other aggrieved employees
20 in the County of Santa Clara.

21 **PARTIES**

22 4. PLAINTIFF is a resident of the State of California. At times material to this
23 complaint, PLAINTIFF was employed by DEFENDANTS in the State of California as a non-
24 exempt employee. PLAINTIFF worked for DEFENDANTS as a Cashier in San Jose, California
25 from approximately April 1, 2023, to July 2023.

26 5. PLAINTIFF is informed and believes, and thereon alleges, that WENDY’S is, and
27 at all times relevant hereto was, a corporation organized and existing under the laws of the State
28 of California. PLAINTIFF is further informed and believes, and thereon alleges, that WENDY’S

1 is authorized to conduct business in the State of California, and does conduct business in, the
2 State of California. Specifically, WENDY'S maintains offices and facilities, conducts business,
3 and engages in illegal payroll practices or policies in the County of Alameda.

4 6. The true names and capacities of DOES 1 through 50, inclusive, are unknown to
5 PLAINTIFF at this time, and PLAINTIFF therefore sues such DOE defendants under fictitious
6 names. PLAINTIFF is informed and believes, and thereon alleges, that each defendant
7 designated as a DOE is in some manner highly responsible for the occurrences alleged herein, and
8 that PLAINTIFF and other aggrieved employees' injuries and damages, as alleged herein, were
9 proximately caused by the conduct of such DOE defendants. PLAINTIFF will seek leave of the
10 court to amend this Complaint to allege their true names and capacities of such DOE defendants
11 when ascertained.

12 7. At all relevant times herein, DEFENDANTS were the joint employers of
13 PLAINTIFF and other aggrieved employees. PLAINTIFF is informed and believes, and thereon
14 alleges, that at all relevant times DEFENDANTS were the alter egos, divisions, affiliates,
15 integrated enterprises, joint employers, subsidiaries, parents, principals, related entities, co-
16 conspirators, authorized agents, partners, joint venturers, and/or guarantors, actual or ostensible,
17 of each other. Each defendant was completely dominated by his, her or its co-defendant, and each
18 was the alter ego of the other.

19 8. At all relevant times herein, PLAINTIFF and other aggrieved employees were
20 employed by DEFENDANTS under employment agreements that were partly written, partly oral,
21 and partly implied. In perpetrating the acts and omissions alleged herein, DEFENDANTS, and
22 each of them, acted pursuant to, and in furtherance of, their policies and practices of not paying
23 PLAINTIFF and other aggrieved employees all wages earned and due, through methods and
24 schemes which include, but are not limited to, failing to provide meal periods; failing to authorize
25 and permit rest breaks; failing to pay minimum and overtime wages; failing to provide accurate
26 itemized statements; failing to properly maintain records; and failing to properly compensate
27 PLAINTIFF and other aggrieved employees for necessary expenditures, in violation of the
28 California Labor Code ("Labor Code") and the applicable Industrial Welfare Commission

1 (“IWC”) Wage Order.

2 9. PLAINTIFF is informed and believes, and thereon alleges, that each and every one
3 of the acts and omissions alleged herein were performed by, and/or attributable to, all
4 DEFENDANTS, each acting as agents and/or employees, and/or under the direction and control
5 of, each of the other DEFENDANTS, and that said acts and failures to act were within the course
6 and scope of said agency, employment and/or direction and control.

7 10. As a direct and proximate result of DEFENDANTS’ unlawful actions,
8 PLAINTIFFS and other aggrieved employees have suffered, and continue to suffer, from loss of
9 earnings in amounts as yet unascertained, but subject to proof at trial, and within the jurisdiction
10 of this Court.

11 **PAGA REPRESENTATIVE ACTION ALLEGATIONS**

12 11. Pursuant to the California Private Attorneys General Act of 2004 (“PAGA”), Labor
13 Code §§ 2698-2699.5, PLAINTIFF brings this action on behalf of himself and all current and
14 former non-exempt aggrieved employees of DEFENDANTS in the State of California at any time
15 within the period beginning one (1) year and sixty-five (65) days prior to the filing of this action,
16 and ending at the time this action settles or proceeds to final judgment (“PENALTY PERIOD”).

17 12. Pursuant to California Labor Code §§ 2699.3, PLAINTIFF gave written notice by
18 online filing on September 13, 2023 to the California Labor and Workforce Development Agency
19 (“LWDA”) and by certified mail to WENDY’S of the specific provisions of the California Labor
20 Code and IWC Wage Orders alleged to have been violated, including the facts and theories to
21 support the alleged violations. More than sixty-five (65) days have passed and the LWDA has
22 not provided notice to PLAINTIFF that it intends to investigate the alleged violations.

23 13. Therefore, PLAINTIFF has complied with all of the requirements set forth in
24 California Labor Code § 2699.3 to commence a representative action under PAGA.

25 **FACTUAL ALLEGATIONS**

26 **Failure to Provide Required Meal Periods**

27 **[Labor Code §§ 226.7, 512; IWC Wage Order No. 5-2001, § 11]**

28 14. During the PENALTY PERIOD, DEFENDANTS have had, and continue to have,

1 a policy and practice of failing to provide PLAINTIFFS and other aggrieved employees full and
2 timely meal periods as required by California Labor Code §§ 226.7 and 512 and IWC Wage
3 Order No. 5-2001 § 11.

4 15. As a result of DEFENDANTS' policies and practices as alleged herein,
5 PLAINTIFF and other aggrieved employees have regularly been denied, and continue to be
6 denied, the opportunity to take full, uninterrupted, and timely meal periods as required under
7 California Labor Code §§ 226.7 and 512 and IWC Wage Order No. 5-2001 § 11.

8 16. DEFENDANTS have further violated, and continue to violate, Labor Code §§
9 226.7 and 512 and IWC Wage Order No. 5-2001, § 11 by failing to compensate PLAINTIFF and
10 other aggrieved employees who were not provided with a meal period, in accordance with the
11 applicable Wage Order, one (1) additional hour of compensation at each employee's regular rate
12 of pay for each workday that a meal period was not provided.

13 **Failure to Authorize and Permit Rest Periods**

14 **[Labor Code §§ 226.7; IWC Wage Order No. 5-2001, § 12]**

15 17. During the PENALTY PERIOD, DEFENDANTS have had, and continue to have,
16 a policy and practice of failing to authorize and permit PLAINTIFF and other aggrieved
17 employees to take rest breaks as required by California Labor Code § 226.7 and IWC Wage Order
18 No. 5-2001 § 12. As a result of DEFENDANTS' policies and practices as alleged herein,
19 PLAINTIFFS and other aggrieved employees have regularly been denied, and continue to be
20 denied, the opportunity to take full, uninterrupted, and timely rest periods as required under
21 California Labor Code § 226.7 and IWC Wage Order No. 5-2001 § 12.

22 18. DEFENDANTS have further violated, and continue to violate, California Labor
23 Code § 226.7 and IWC Wage Order No. 5-2001, § 12 by failing to pay PLAINTIFF and other
24 aggrieved employees who were not provided with a rest period, in accordance with the applicable
25 Wage Order, one (1) additional hour of compensation at each employee's regular rate of pay for
26 each workday that a rest period was not authorized and permitted.

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1 **Failure to Pay Minimum Wages**

2 **[Cal. Labor Code §§ 1194, 1197; IWC Wage Order No. 5-2001 § 4]**

3 19. Pursuant to California Labor Code §§ 1194 and 1197 and IWC Wage Order No. 5-
4 2001 § 4, payment to an employee of less than the applicable minimum wage for all hours
5 worked in a payroll period is unlawful.

6 20. During the PENALTY PERIOD, DEFENDANTS failed to pay PLAINTIFF and
7 other aggrieved employees minimum wages for all hours worked by, among other things:
8 requiring, suffering or permitting PLAINTIFF and other aggrieved employees to work off the
9 clock; requiring, suffering or permitting PLAINTIFF and other aggrieved employees to work
10 through meal breaks without compensation; rounding PLAINTIFF's and other aggrieved
11 employees' clock-in and clock-out times in a manner that resulted, over time, in failure to
12 compensate employees for all time worked; illegally and inaccurately recording time in which
13 PLAINTIFF and other aggrieved employees worked; and other methods to be discovered.

14 **Failure to Pay Overtime Wages**

15 **[Cal. Labor Code §§ 510, 1194, 1198; IWC Wage Order No. 5-2001 § 3]**

16 21. Pursuant to California Labor Code §§ 510 and 1194 and IWC Wage Order No. 5-
17 2001 § 3, DEFENDANTS are required to compensate PLAINTIFF and other aggrieved
18 employees for all overtime at a rate of one and one-half (1 ½) times the regular rate of pay for all
19 hours worked in excess of eight (8) hours per day and/or forty (40) hours per week, and for the
20 first eight (8) hours on the seventh consecutive workday and at a rate of twice the regular rate of
21 pay for all hours worked in excess of twelve (12) hours in any workday and for all hours worked
22 in excess of eight (8) hours on the seventh consecutive day of work in any workweek.

23 22. PLAINTIFF and other aggrieved employees are current and former non-exempt
24 employees entitled to the protections of California Labor Code §§ 510 and 1194 and IWC Wage
25 Order No. 5-2001. During the PENALTY PERIOD, DEFENDANTS failed to compensate, and
26 continue to fail to compensate, PLAINTIFF and other aggrieved employees for all overtime hours
27 worked as required under the foregoing provisions of the California Labor Code and IWC Wage
28 Order by, among other things: failing to pay overtime at one and one-half (1 ½) times or double

1 the regular rate of pay as provided by California Labor Code §§ 510 and 1194 and IWC Wage
2 Order No. 5-2001 § 3; requiring, suffering or permitting PLAINTIFF and other aggrieved
3 employees to work off the clock; requiring, suffering or permitting PLAINTIFF and other
4 aggrieved employees to work through meal breaks without compensation; rounding
5 PLAINTIFF's and other aggrieved employees' clock-in and clock-out times in a manner that
6 resulted, over time, in failure to compensate employees for all time worked; failing to properly
7 calculate the regular rate of pay for purposes of calculating overtime compensation; illegally and
8 inaccurately recording time in which PLAINTIFF and other aggrieved employees worked; and
9 other methods to be discovered.

10 **Failure to Timely Pay Wages During Employment**

11 **[Cal. Labor Code § 204]**

12 23. Pursuant to California Labor Code § 204, for all labor performed between the 1st
13 and 15th days of any calendar month, DEFENDANTS are required to pay their nonexempt
14 employees between the 16th and 26th day of the month during which the labor was performed.
15 California Labor Code § 204 also provides that for all labor performed between the 16th and 26th
16 days of any calendar month, DEFENDANTS are required to pay their nonexempt employees
17 between the 1st and 10th day of the following calendar month. In addition, California Labor
18 Code § 204 provides that all wages earned for labor in excess of the normal work period shall be
19 paid no later than the payday of the next regular payroll period.

20 24. During the PENALTY PERIOD, DEFENDANTS failed to timely pay
21 PLAINTIFF and other aggrieved employees all the wages for labor performed by the next regular
22 payroll period as required by California Labor Code § 204.

23 **Failure to Pay All Wages Due to Discharged and Quitting Employees**

24 **[Cal. Labor Code §§ 201, 202]**

25 25. Pursuant to California Labor Code §§ 201 and 202, DEFENDANTS are required
26 to timely pay all earned and unpaid wages to an employee upon separation.

27 26. California Labor Code § 201 mandates that if an employer discharges an
28 employee, the employee's wages accrued and unpaid at the time of discharge are due and payable

1 immediately.

2 27. Pursuant to California Labor Code § 202, DEFENDANTS are required to pay all
3 accrued wages due to an employee no later than 72 hours after the employee quits his or her
4 employment, unless the employee provided 72 hours previous notice of his or her intention to
5 quit, in which case the employee is entitled to his or her wages at the time of quitting.

6 28. During the PENALTY PERIOD, DEFENDANTS failed, and continue to fail, to
7 pay accrued wages and other compensation to PLAINTIFF and other aggrieved employees in
8 accordance with California Labor Code §§ 201 and 202.

9 **Failure to Maintain Required Records**

10 **[Cal. Labor Code §§ 226, 1174; IWC Wage Order No. 5-2001 § 7]**

11 29. During the PENALTY PERIOD, as part of DEFENDANTS' illegal payroll
12 policies and practices to deprive PLAINTIFF and other aggrieved employees of all wages earned
13 and due, DEFENDANTS failed to maintain records as required under California Labor Code §§
14 226 and 1174 and IWC Wage Order No. 5-2001 § 7, including but not limited to the following
15 records: total daily hours worked by each employee; applicable rates of pay; all deductions; meal
16 periods; time records showing when each employee begins and ends each work period; and
17 accurate itemized statements.

18 **Failure to Furnish Accurate Itemized Wage Statements**

19 **[Cal. Labor Code § 226; IWC Wage Order No. 5-2001 § 7]**

20 30. During the PENALTY PERIOD, DEFENDANTS failed to provide PLAINTIFF
21 and other aggrieved employees with timely and accurate itemized wage statements in writing
22 showing each employee's gross wages earned, total hours worked, all deductions made, net
23 wages earned, the name and address of the legal entity or entities employing PLAINTIFF and
24 other aggrieved employees, and all applicable hourly rates in effect during each pay period and
25 the corresponding number of hours worked at each hourly rate, in violation of California Labor
26 Code § 226 and IWC Wage Order No. 5-2001 § 7.

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1 **FIRST CAUSE OF ACTION**

2 **VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT**

3 **[Labor Code § 2698, *et seq.*]**

4 **(Against All DEFENDANTS)**

5 31. PLAINTIFF incorporates herein by specific reference, as though fully set forth, the
6 allegations in paragraphs 1 through 30.

7 32. PLAINTIFF is an “aggrieved employee” within the meaning of Labor Code §
8 2699(c), and a proper representative to bring a civil action on behalf of himself and other current
9 and former non-exempt employees of DEFENDANTS pursuant to the procedures specified in
10 Labor Code § 2699.3, because PLAINTIFF was employed by DEFENDANTS and one or more
11 of the alleged Labor Code violations was committed against PLAINTIFF during the PENALTY
12 PERIOD.

13 33. Pursuant to Labor Code §§ 2698-2699.5, PLAINTIFF seeks to recover civil
14 penalties from DEFENDANTS in a representative action for the violations set forth above,
15 including but not limited to violations of Labor Code §§ 201, 202, 203, 204, 226(a), 226.7, 510,
16 512, 1174(d), 1194, 1197, and 1198. PLAINTIFF and other aggrieved employees are also entitled
17 to an award of reasonable attorneys’ fees and costs pursuant to California Labor Code
18 § 2699(g)(1).

19 34. Pursuant to Labor Code § 2699(a), PLAINTIFF seeks civil penalties for
20 DEFENDANTS’ violations of Labor Code provisions for which a civil penalty is specifically
21 provided, including but not limited to the following:

22 a. Pursuant to Labor Code § 210, for violations of Labor Code § 204,
23 DEFENDANTS are subject to a civil penalty in the amount of one hundred
24 dollars (\$100) for the initial violation for each failure to pay each employee
25 and two hundred dollars (\$200) per employee for violations in subsequent
26 pay periods.

27 b. Pursuant to Labor Code § 226.3, for violations of Labor Code § 226(a),
28 DEFENDANTS are subject to a civil penalty in the amount of two hundred

1 and fifty dollars (\$250) per aggrieved employee for the initial pay period
2 where a violation occurs and one thousand dollars (\$1,000) per aggrieved
3 employee for violations in subsequent pay periods.

4 c. Pursuant to Labor Code § 558(a), “[a]ny employer or other person acting
5 on behalf of an employer who violates, or causes to be violated, a section
6 of this chapter or any provision regulating hours and days of work in any
7 order of the Industrial Welfare Commission,” including Labor Code §§ 510
8 and 512, shall be subject to a civil penalty, in addition to any other penalty
9 provided by law, of fifty dollars (\$50) for initial violations for each
10 underpaid employee for each pay period for which the employee was
11 underpaid and one hundred dollars (\$100) for each subsequent violation for
12 each underpaid employee for each pay period for which the employee was
13 underpaid.

14 d. Pursuant to Labor Code § 1174.5, for violations of Labor Code § 1174(d),
15 DEFENDANTS are subject to a civil penalty of five hundred dollars
16 (\$500).

17 e. Pursuant to Labor Code § 1197.1, an employer who pays or causes to be
18 paid to any employee a wage less than the minimum fixed by an order of
19 the commission, shall be subject to a civil penalty as follows: for any initial
20 violation that is intentionally committed, one hundred dollars (\$100) for
21 each underpaid employee for each pay period for which the employee is
22 underpaid; and for each subsequent violation of the same offense, two
23 hundred fifty dollars (\$250) for each underpaid employee for each pay
24 period for which the employee is underpaid regardless of whether the
25 initial violation was intentionally committed.

26 35. Labor Code § 2699(f) provides that for all Labor Code violations for which a civil
27 penalty is not specifically provided, the following civil penalties are established: one hundred
28 dollars (\$100) for each aggrieved employee per pay period for the initial violation and two

1 hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.
2 PLAINTIFF seeks such civil penalties under Labor Code § 2699(f) for DEFENDANTS'
3 violations of Labor Code provisions for which a civil penalty is not specifically provided,
4 including but not limited to Labor Code §§ 201, 202, 203, 226.7, 1194, 1197, 1198, and 2802.

5 **PRAYER FOR RELIEF**

6 **WHEREFORE**, PLAINTIFF, individually and on behalf of all other persons similarly
7 situated, respectfully prays for relief against DEFENDANTS and DOES 1 through 50, inclusive,
8 and each of them, as follows:

- 9 1. For statutory and civil penalties according to proof, including but not limited to all
10 penalties authorized by Labor Code §§ 210, 226.3, 558, 1174.5, 1197.1, and 2699(a) and (f);
11 2. For interest at the legal rate pursuant to Labor Code §§ 218.6 and 1194, California
12 Civil Code §§ 3287, 3288, and/or any other applicable provision providing for pre-judgment
13 interest;
14 3. For reasonable attorneys' fees and costs pursuant to Labor Code § 2699(g) and/or
15 any other applicable provisions providing for attorneys' fees and costs; and
16 4. For such further relief that the Court may deem just and proper.

17 DATED: November 17, 2023

18 Respectfully submitted,

19 MATERN LAW GROUP, PC

20
21 By:



22 MATTHEW J. MATERN

23 DEANNA S. LEIFER

24 KRISTEN B. DOYAN

25 Attorneys for Plaintiff ALFONSO

26 ROMERO, individually, and on behalf of all
27 other aggrieved employees
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DATED: November 17, 2023

MATERN LAW GROUP, PC



MATTHEW J. MATERN
DEANNA S. LEIFER
KRISTEN B. DOYAN
Attorneys for Plaintiff ALFONSO
ROMERO, individually and on behalf of all
other aggrieved employees