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by Superior Court of California, County of San Mateo

ON 10/10/2023

By /s/ Anthony Berini
Deputy Clerk

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN MATEO

MARCO UYU CHAMALE, an individual, on
behalf of the State of California,

Plaintiff,

v.

TIMBER & SALT LLC, a California limited
liability company; and DOES 1 through 10,
inclusive,

Defendants.

CASE NO.: 23-CIV-04722

**REPRESENTATIVE ACTION
COMPLAINT FOR VIOLATION OF THE
CALIFORNIA PRIVATE ATTORNEYS
GENERAL ACT OF 2004**

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

1. Plaintiff Marco Uyu Chamale (“Plaintiff”) brings this representative action on behalf of the State of California, pursuant to the California Private Attorneys General Act of 2004 (“PAGA”), against Defendant Timber & Salt LLC, and Does 1 through 10, inclusive (collectively, “Defendant” or “T&S”). Plaintiff makes the following allegations on information and belief, except as to allegations pertaining to Plaintiff individually, which are based on his personal knowledge.

INTRODUCTION

2. Defendant has implemented common policies and practices that have resulted in systematic violations of California's Labor Code and the applicable Industrial Welfare Commission ("IWC") Wage Order(s). Accordingly, Plaintiff, on behalf of the State of California, brings this representative action to recover civil penalties for the California Labor and Workforce Development Agency ("LWDA"), himself, and all other aggrieved employees—i.e., non-exempt employees who worked for Defendant in California during the statute of limitations period—predicated on, *inter alia*, Defendant's failure to provide legally compliant meal periods and rest breaks and failure to provide compensation for missed and otherwise unlawful meal periods and rest breaks, unpaid regular, overtime and minimum wages, failure to timely pay wages, failure to pay all wages owed and due to discharged or quitting non-exempt employees, failure to maintain required records, and failure to provide accurate itemized wage statements.

JURISDICTION AND VENUE

3. The Superior Court of the State of California has jurisdiction in this matter because Plaintiff is a resident of the State of California and Defendant regularly conducts business in the State of California. No federal question is at issue because Plaintiff's claims are based solely on California law.

4. Venue is proper in this judicial district and the County of San Mateo because Plaintiff and other aggrieved employees performed work for Defendant in the County of San Mateo, and a substantial portion of the unlawful actions and omissions, as alleged herein, occurred in the County of San Mateo.

THE PARTIES

5. Plaintiff is a resident of the State of California. Plaintiff worked as a cook, a non-

1 exempt position, for Defendant at its restaurant in Redwood City, California, from approximately
2 2018 to April 2023.

3 6. Defendant Timber & Salt LLC is a California limited liability company, which has
4 done business in the State of California as a restaurant, at all times relevant herein.

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

12 **REPRESENTATIVE ACTION ALLEGATIONS**

13 8. On August 3, 2023, Plaintiff gave written notice by certified mail, pursuant to
14 California Labor Code § 2699.3, to the LWDA and Defendant, of the specific provisions of the
15 California Labor Code and applicable IWC Wage Orders alleged to have been violated, including the
16 facts and theories to support the alleged violations. Within sixty-five (65) calendar days of the
17 postmark date of Plaintiff's notice letter, the LWDA did not provide notice to Plaintiff that it intends
18 to investigate the alleged violations. Nor did Defendant respond to any of the allegations contained in
19 Plaintiff's notice letter. Therefore, Plaintiff has complied with all the requirements set forth in
20 California Labor Code § 2699.3 to commence a representative action under the PAGA.

21 9. Plaintiff was a non-exempt employee of Defendant during the time period beginning
22 one year and 65 days prior to the filing of this Complaint to the present—i.e., the statute of
23 limitations period. Plaintiff also personally experienced violations of the California Labor Code
24 during his employment with Defendant, as alleged herein.

25 **FACTUAL ALLEGATIONS**

26 **Failure to Provide Required Meal Periods**

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

28 10. During the statute of limitations period, Defendant has required, permitted or

1 otherwise suffered Plaintiff and other aggrieved employees to perform work during their meal
2 periods, to completely skip their meal periods, to take late and short meal periods, and Defendant has
3 otherwise failed to provide the required meal periods to Plaintiff and other aggrieved employees as
4 required under California Labor Code §§ 226.7, 512, and IWC Wage Order No. 5-2001, § 11.

5 11. Defendant has implemented several common policies and practices that have caused
6 Plaintiff and other aggrieved employees to systematically miss or otherwise take non-compliant meal
7 periods.

8 12. Among other things, Defendant overworks aggrieved employees but understaffs its
9 restaurant. As a direct consequence of this understaffing, Plaintiff and other aggrieved employees had
10 so much work to complete within their scheduled shifts that they are forced to skip their meal periods
11 altogether, to take them after working longer than five (5) hours, to perform work during their meal
12 periods, or return to work after taking less than a thirty (30) minute meal period. And when Plaintiff
13 and other aggrieved employees were able to take meal periods, they were regularly interrupted.
14 Defendant has also failed to adequately notify aggrieved employees of their rights to take meal
15 periods or to implement a sufficient schedule for meal periods.

16 13. Despite work conditions that systematically result in missed and non-compliant meal
17 periods, and in order to keep labor costs down, Defendant has implemented a policy and practice of
18 failing to pay meal period premium payments when owed and due. In short, Defendant has also
19 violated California Labor Code §§ 226.7 and § 11 of the applicable IWC Wage Order by failing to
20 compensate Plaintiff and other aggrieved employees who were not authorized and permitted to take a
21 complete, timely, uninterrupted meal period, one additional hour of compensation at the proper
22 regular rate of pay for each workday that such a meal period was not authorized or permitted.

23 **Failure to Provide Required Rest Breaks**

24 **[Cal. Lab. Code §§ 226.7, 512; IWC Wage Order No. 5-2001, § 12]**

25 14. During the statute of limitations period, Defendant has failed to authorize and permit
26 Plaintiff and other aggrieved employees to take rest breaks as required under California Labor Code
27 §§ 226.7 and 512, and IWC Wage Order No. 5-2001, § 12.

28 15. The same common policies and practices that deprive Plaintiff and other aggrieved

1 employees from taking their meal periods, as alleged herein, similarly deprive them of their ability to
2 take their rest breaks. Namely, Defendant's deficient staffing policy forces Plaintiff and other
3 aggrieved employees to skip their rest breaks otherwise take non-compliant rest breaks. Additionally,
4 Defendant has failed to adequately inform aggrieved employees of their rights to take rest breaks, by
5 among other methods, failing to provide proper training and failing to implement adequate schedules
6 regarding rest breaks.

7 16. Defendant has further violated California Labor Code § 226.7 and IWC Wage Order
8 No. 5-2001, § 12, by failing to pay Plaintiff and other aggrieved employees who were not provided
9 with a rest break, in accordance with the applicable wage order, one additional hour of compensation
10 at the proper regular rate of pay for each workday that a rest break was not provided.

11 **Failure to Pay Overtime Wages**

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

13 17. Pursuant to California Labor Code §§ 510, 1194, and IWC Wage Order No. 5-2001, §
14 3, Defendant is required to compensate Plaintiff and other aggrieved employees for all overtime,
15 which is calculated at one and one-half (1 ½) times the regular rate of pay for all hours worked in
16 excess of eight (8) hours per day and/or forty (40) hours per week, and for the first eight (8) hours on
17 the seventh consecutive workday, with double time for all hours worked in excess of twelve (12)
18 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh
19 consecutive day of work in any workweek.

20 18. During the statute of limitations period, Defendant has failed to compensate Plaintiff
21 and other aggrieved employees for all overtime hours worked as required under the foregoing
22 provisions of the California Labor Code and IWC Wage Order by, among other methods, requiring,
23 permitting or suffering Plaintiff and other aggrieved employees to work off-the-clock, including *inter*
24 *alia*, during meal periods and rest breaks, but not compensating them for this time, inaccurately
25 recording time in which Plaintiff and other aggrieved employees worked, and other methods to be
26 discovered.

27 19. Defendant has knowingly and willfully refused to perform its obligations to
28 compensate Plaintiff and other aggrieved employees for all wages earned and all hours worked in

1 violation of California Labor Code §§ 510, 1194 and 1198 and IWC Wage Order No. 5-2001, § 3.

2 **Failure to Minimum Wages**

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

4 20. Pursuant to California Labor Code §§ 1194, 1197, and § 4 of the applicable IWC
5 Wage Order, payment to an employee of less than the applicable minimum wage for all hours worked
6 in a payroll period is unlawful.

7 21. During the statute of limitations period, Defendant has paid Plaintiff and other
8 aggrieved employees at or slightly above minimum wage. This practice, in conjunction with the fact
9 that Defendant has required, suffered, or permitted Plaintiff and other aggrieved employees to work
10 off-the-clock, including during meal periods and rest breaks, but not compensated them for this time,
11 unlawfully and inaccurately recorded time that Plaintiff and other aggrieved employees worked, and
12 other methods to be discovered, has resulted in the systematic underpayment of minimum wages.

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

14 **[Cal. Lab. Code § 204]**

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

23 23. During the statute of limitations period, Defendant has knowingly and willfully failed
24 to timely pay Plaintiff and other aggrieved employees all the wages for labor performed by the next
25 regular payroll period as required by California Labor Code § 204.

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

27 **[Cal. Lab. Code §§ 201-203]**

28 24. Pursuant to California Labor Code §§ 201, 202 and 203, Defendant is required to pay

1 all earned and unpaid wages to an employee who is discharged. California Labor Code § 201
2 mandates that if an employer discharges an employee, the employee's wages accrued and unpaid at
3 the time of discharge are due and payable immediately.

4 25. Furthermore, pursuant to California Labor Code § 202, Defendant is required to pay
5 all accrued wages due to an employee no later than 72 hours after the employee quits his or her
6 employment, unless the employee provided 72 hours previous notice of his or her intention to quit, in
7 which case the employee is entitled to his or wages at the time of quitting.

8 26. California Labor Code § 203 provides that if an employer willfully fails to pay, in
9 accordance with California Labor Code §§ 201 and 202, any wages of an employee who is
10 discharged or who quits, the employer is liable for waiting time penalties in the form of continued
11 compensation to the employee at the same rate for up to 30 workdays.

12 27. During the statute of limitations period, Defendant has willfully failed to pay accrued
13 wages and other compensation to Plaintiff and other aggrieved employees in accordance with
14 California Labor Code §§ 201 and 202. Because Defendant has failed and continues to fail to
15 properly compensate Plaintiff and other aggrieved employees for all hours worked when due,
16 overtime wages, and compensation for non-compliant meal periods and rest breaks, Defendant has
17 also willfully failed and continue to fail to pay accrued wages and other compensation to Plaintiff and
18 other aggrieved employees in accordance with California Labor Code §§ 201 and 202. *Almanzar v.*
19 *Home Depot U.S.A., Inc.*, No. 2:20-cv-0699-KJN, 2022 WL 2817435, at *12 (E.D. Cal. Jul. 19, 2022)
20 ("The California Supreme Court's decision in *Naranjo* eliminates the anticipated defense that, as a
21 matter of law, non-payment of meal and rest break premiums cannot form the basis of derivative
22 claims under § 203 or § 226.").

23 **Failure to Maintain Required Records**

24 **[Cal. Lab. Code §§ 226(a), 1174(d); IWC Wage Order No. 5-2001, § 7]**

25 28. During the statute of limitations period, Defendant has knowingly and intentionally
26 failed to maintain records as required under California Labor Code §§ 226(a) and 1174(d) and IWC
27 Wage Order No. 5-2001, § 7, including but not limited to, the following records: total daily hours
28 worked by each employee; applicable rates of pay; all deductions; meal periods; time records

1 showing when each employee begins and ends each work period; and accurate itemized statements.
2 Moreover, Defendant has not provided its non-exempt employees with proper meal periods and rest
3 breaks, but omits from the wage statements such compensation and/or remuneration owed and due.
4 Additionally, Defendant has required non-exempt employees to work off-the-clock but fails to record
5 this time or compensate them for this time, which invariably results in inaccurate time and payroll
6 records.

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

8 **[Cal. Lab. Code § 226(a); IWC Wage Order No. 5-2001, § 7]**

9 29. During the statute of limitations period, Defendant has routinely failed to provide
10 Plaintiff and other aggrieved employees with timely and accurate itemized wage statements.
11 Defendant's pay stubs violate California Labor Code § 226 in that Defendant has not provided
12 Plaintiff and other aggrieved employees with proper meal periods and rest breaks but failed to include
13 in their wage statements one (1) additional hour of compensation at their regular rates of pay for each
14 missed or non-compliant meal or rest period. *See Naranjo v. Spectrum Sec. Servs., Inc.* (2022) 13
15 Cal.5th 93, 972 ("failure to report premium pay for missed breaks can support monetary liability
16 under section 226 for failure to supply an accurate itemized statement reflecting an employee's gross
17 wages earned, net wages earned, and credited hours worked."). In addition, Defendant does not
18 properly pay Plaintiff and other aggrieved employees proper overtime wages owed and due to them,
19 resulting in accurate wage statements. Defendant has also suffered and permitted Plaintiff and other
20 aggrieved employees to work off-the-clock without compensation, yet such hours worked and
21 compensation and/or remuneration is not listed on the wage statements.

22 30. During the statute of limitations, and in order to conceal its wage theft, Defendant has
23 knowingly and intentionally failed to provide Plaintiff and other aggrieved employees with timely
24 and accurate itemized wage statements in accordance with California Labor Code § 226(a) IWC
25 Wage Order No. 5-2001 § 7.

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1 **FIRST CAUSE OF ACTION**

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

3 **[Cal. Lab. 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 California Labor Code §
8 2699(c), and a proper representative to bring a civil action on behalf of the State of California and
9 other current and former non-exempt employees of Defendant pursuant to the procedures specified in
10 California Labor Code § 2699.3, because Plaintiff was employed by Defendant, and one or more of
11 the alleged California Labor Code violations was committed against Plaintiff during the statute of
12 limitations period.

13 33. Pursuant to California Labor Code § 2699, Plaintiff seeks to recover civil penalties
14 under the PAGA, for Defendant’s violations of the provisions of the California Labor Code and IWC
15 Wage Order alleged herein.

16 34. All civil penalties sought and recovered under this action will be allocated as follows:
17 seventy-five (75) percent to the State of California and twenty-five (25) percent to Plaintiff and
18 aggrieved employees.

19 35. Plaintiff additionally seeks reasonable attorneys’ fees and costs pursuant to California
20 Labor Code § 2699(g)(1).

21 **PRAYER FOR RELIEF**

22 **WHEREFORE**, Plaintiff, on behalf of himself and the State of California, prays for relief
23 against Defendant as follows:

- 24 1. For civil penalties pursuant to California Labor Code § 2699 according to proof;
25 2. For reasonable attorneys’ fees and costs pursuant to California Labor Code §
26 2699(g)(1), California Code of Civil Procedure § 1021.5, and/or any other applicable provisions
27 providing for attorneys’ fees and costs; and
28 3. For such further relief that the Court may deem just and proper.

1 DATED: October 10, 2023

THE WAND LAW FIRM, P.C.

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By: 

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Aubry Wand

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Attorney for Plaintiff

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