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County of San Diego
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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

RENEE DAVIN and DIEGO REYES,
individually and on behalf of all others similarly
situated,

Plaintiffs,

vs.

ROCK BASIN, LLC and DOES 1 through 50,
inclusive,

Defendants.

Case No. 37-2023-00038275-CU-OE-CTL

CLASS ACTION

CLASS ACTION COMPLAINT

1. Minimum Wage Violations
2. Failure to Pay All Overtime Wages
3. Meal Period Violations
4. Rest Period Violations
5. Untimely Payment of Wages
6. Wage Statement Violations
7. Waiting Time Penalties
8. Failure to Reimburse Business Expenses
9. Unfair Competition

1 Plaintiffs RENEE DAVIN and DIEGO REYES, individually and on behalf of all others
2 similarly situated (“Plaintiffs”) bring this CLASS ACTION COMPLAINT against Defendants ROCK
3 BASIN, LLC and DOES 1 through 50, inclusive (collectively “Defendants”), alleging as follows:

4 **INTRODUCTION**

5 1. This is a class action brought under California Code of Civil Procedure section 382 for
6 Defendants’ violations of the California Labor Code and Business and Professions Code.

7 2. Defendants underpaid the class members’ wages by requiring uncompensated, off-
8 clock work and failing to pay due premiums for deficient meal and rest periods.

9 3. Defendants also failed to reimburse Plaintiffs and class members for work-related
10 expenses the class members incurred in furtherance of their job duties.

11 4. Defendants’ employment policies, practices, and payroll administration systems
12 enabled and facilitated these violations on a company-wide basis with respect to the class members.

13 **JURISDICTION & VENUE**

14 5. Jurisdiction of this action is proper in this Court under Article VI, Section 10 of the
15 California Constitution as the causes of action are premised upon violations of California law.

16 6. The monetary damages and restitution sought exceed the minimal jurisdiction limits of
17 the Superior Court.

18 7. This Court has jurisdiction over Defendants because, upon information and belief,
19 Defendants have sufficient minimum contacts in California, or otherwise intentionally avail
20 themselves to the California economy so as to render the exercise of jurisdiction over them by the
21 California courts consistent with traditional notions of fair play and substantial justice.

22 8. Venue is proper in this Court under Code of Civil Procedure sections 393(a), 395,
23 and/or 395.5 because, upon information and belief, Defendants conduct business and committed some
24 of the alleged violations in this county.

PARTIES

A. Plaintiff Renee Davin

9. Plaintiff Davin is an individual over 18 years of age who worked for Defendants in California as a non-exempt employee from about August 2020 to Present. Plaintiff works as a Shift Manager.

B. Plaintiff Diego Reyes

10. Plaintiff Reyes is an individual over 18 years of age who worked for Defendants in California as a non-exempt employee from about November 2021 to Present. Plaintiff works as a Crew Member.

C. Defendants

11. Defendant Rock Basin, LLC is an Arizona limited liability company that maintains operations and conducts business throughout the State of California, doing business as McDonald's restaurants.

12. The true names and capacities, whether individual, corporate, or otherwise, of the parties sued as DOES 1 through 50, are presently unknown, unascertainable, or uncertain, and are sued by such fictitious names under Code of Civil Procedure section 474. Upon information and belief, each of DOES 1 through 50 constitutes a legal employer or is otherwise legally responsible in some manner for the acts and omissions alleged herein. This Complaint may be amended to reflect their true names and capacities once ascertained.

13. Upon information and belief, Defendants in this action are employers, co-employers, joint employers, and/or part of an integrated employer enterprise, as each of the Defendants exercised control over the wages, hours, and working conditions of the employees, suffered and permitted them to work, and otherwise engaged them as employees under California law.

14. Upon information and belief, at least some of the Defendants have common ownership, common management, interrelationship of operations, and centralized control over labor relations and are therefore part of an integrated enterprise and thus jointly and severally responsible for the acts and omissions alleged herein, including pursuant to Labor Code sections 558, 558.1, and 1197.1.

15. Upon information and belief, Defendants acted in all respects pertinent to this action as an alter-ego, agent, servant, joint employer, joint venturer, co-conspirator, partner, in an integrated enterprise, or in some other capacity on behalf of all other co-defendants, such that the acts and omissions of each defendant may be legally attributable to all others.

CLASS ALLEGATIONS

16. This action is brought individually and on behalf of the following class pursuant to Code of Civil Procedure section 382:

a. All current and former non-exempt employees who worked for Defendants in California at any time from four years (plus the additional 178-day statutory tolling period under Emergency Rule 9) prior to the filing of this action through date of class certification.

17. Plaintiffs reserve the right to establish various subclass definitions as appropriate at the class certification stage, according to proof.

18. The class is ascertainable and shares a well-defined community of interest in this litigation:

a. Numerosity: The class is estimated to exceed 50 individuals, although the precise membership of the entire class is unknown at this time. The class is so numerous that joinder of all class members is impracticable. The identities of class members are ascertainable by inspection of Defendants' employment and payroll records.

b. Typicality: Plaintiffs' claims are typical of the claims of the other class members. They were subject to the same policies and practices of Defendants, which resulted in losses to the class. Proof of common unlawful business practices, which Plaintiffs experienced, will establish the right of the class to recover on the causes of action alleged herein.

c. Adequacy: Plaintiffs are an adequate class representative; will take all necessary steps to protect the class members' interests adequately and fairly; have no interest antagonistic to other class members; and are represented by

attorneys who have substantial experience prosecuting, defending, resolving, and litigating wage and hour class, collective, and representative actions in California state and federal courts.

d. Superiority: A class action is superior to other means for adjudicating this dispute. Individual joinder is impractical. Class treatment will allow for common issues to be resolved in a single forum, simultaneously, and without duplication of effort and expense.

e. Public Policy Considerations: Certification of this lawsuit as a class action advances the State of California's strong public interest in ensuring its approximately millions of employed residents are properly paid the wages they earned for the hours they worked. Class actions provide a mechanism for enforcement of labor laws and allow for vindication of employee rights by unnamed class members.

19. Common questions of law and fact as to the class members predominate over questions affecting only individual members. The common questions of law and fact exist as to whether the employment policies and practices formulated by Defendants and applied to the class members constitute violations of California law.

GENERAL ALLEGATIONS

20. Plaintiffs and class members worked for Defendants and were compensated on an hourly basis as nonexempt employees.

21. Defendants expected uncompensated off-clock work from Plaintiff Davin and class members, resulting in Defendants' failure to pay class members for *all* hours worked. To qualify for managerial positions, Defendants required Plaintiff Davin and other class members to complete remote, virtual training using the class members' personal time and resources. Defendants did not provide opportunities for the class members to complete this training on-the-clock, using company time or resources.

22. To the extent this off-the-clock work resulted in overtime hours worked, Plaintiffs believe and allege that Defendants underpaid those due overtime wages.

23. Further, due to short staffing, employee responsibilities, and customer volume, Plaintiffs and class members suffered many deficient meal and rest periods.

24. For example, Plaintiff Davin was often the only manager on duty, which resulted in multiple interrupted meal periods because employees would often need assistance or authorization from a manager to complete customer transactions. As a closing manager, Plaintiff Davin also needed to wait until after closing to receive a guaranteed, duty-free, uninterrupted meal or rest break. However, closing was often after her fifth or sixth hour of work. In the month of January 2023 alone, Plaintiff Davin experienced eight deficient meal periods. Similar conditions and practices also prevented Plaintiff Davin from being able to timely take her uninterrupted, duty-free, 10-minute rest breaks. Defendants did not pay Plaintiff Davin any premiums for these deficient meal and rest periods.

25. Likewise, Plaintiff Reyes experienced meal and rest period deficiencies at another one of Defendants' locations. Plaintiff Reyes rarely received his uninterrupted, duty-free 10-minute rest period, despite regularly working shifts four hours or longer. Often, Defendants' scheduling did not provide for enough employees to cover each other while taking due meal and rest breaks because of the constant flow of customers. However, even when customer volume slowed, Defendants, through their supervisors, would encourage Plaintiff Reyes and class members to use this "dead time" to complete other job duties, like inventory processing, in lieu of taking a break. Defendants did not pay Plaintiff Reyes any premiums for these deficient meal and rest periods.

26. Plaintiffs believe and allege that Defendants similarly did not pay premiums for any of class members' deficient meal or rest periods.

27. Finally, Defendants also required Plaintiffs and class members to incur personal expenses in furtherance of the class members' job duties. Defendants expected Plaintiffs to utilize their personal cell phones to conduct all work-related communications with their team and supervisors, and to complete customer survey tasks. Further, as mentioned above, Plaintiff Davin and other class members needed to utilize their personal computers and internet to complete required training for managerial positions. Lastly, Defendants expected Plaintiff Reyes and other class members to use their personal cars and gas mileage to travel to various other franchise locations while on shift to retrieve

1 inventory items. Defendants did not reimburse Plaintiffs or class members for any of the foregoing
2 expenses.

3 28. Because of the aforementioned violations, Defendants failed to provide accurate
4 itemized wage statements that included all accurate gross or net wages. Defendants failed to pay all
5 due regular, overtime, and premium wages.

6 29. These violations create derivative liability for failure to timely pay all wages owed each
7 payday or upon separation of employment.

8 **FIRST CAUSE OF ACTION**

9 **MINIMUM WAGE VIOLATIONS**

10 **Violation of Labor Code §§ 1194, 1194.2 and 1197**

11 **(All Claims Alleged by Plaintiffs and Class Members Against All Defendants)**

12 30. All outside paragraphs of this Complaint are incorporated into this section.

13 31. This cause of action is brought pursuant to the IWC Wage Orders and Labor Code
14 §§ 1182.12, 1194, 1194.2, 1197, 1197.1 and 1198 and the IWC Wage Orders (the “Hours and Days
15 of Work” and “Minimum Wages” sections of the applicable orders), which require non-exempt
16 employees be timely paid at least the state or local minimum wage (if higher) for each hour of work,
17 and further provide a private right of action for an employer’s failure to pay all minimum wages (plus
18 liquidated damages).

19 32. Defendants willfully failed in their affirmative obligation to pay Plaintiffs and class
20 members at least the lawful minimum wage for each hour worked in violation of Labor Code sections
21 1182.12, 1194, 1194.2, 1197, 1197.1 and 1198 and the IWC Wage Orders (the “Hours and Days of
22 Work” and “Minimum Wages” sections of the applicable orders), including payment at the lawful
23 local and county minimum wage ordinances in effect. As a result, Defendants are liable for all
24 associated damages, including liquidated damages for the minimum wage violations pursuant to Labor
25 Code § 1194.2.

26 33. Defendants’ unlawful acts and omissions deprived Plaintiffs and class members of
27 minimum, regular and overtime wages in amounts to be determined at trial. Plaintiffs and class
28 members are entitled to recover the full amount of the unpaid wages, plus liquidated damages in an

1 amount equal to the wages unlawfully unpaid (and interest thereon), in addition to interest, attorneys'
2 fees, and costs to the extent permitted by law, including under Labor Code sections 1194 and 1194.2.

3 **SECOND CAUSE OF ACTION**

4 **FAILURE TO PAY ALL OVERTIME WAGES**

5 **Violation of Labor Code §§ 510 and 1194**

6 34. All outside paragraphs of this Complaint are incorporated into this section.

7 35. This cause of action is brought pursuant to the IWC Wage Orders and Labor Code
8 §§ 204, 510, 558, 1194, and 1198, which require non-exempt employees be timely paid overtime
9 wages all overtime hours worked, and which further provide a private right of action for an employer's
10 failure to pay all overtime compensation for overtime hours worked.

11 36. Defendants failed in their affirmative obligation to pay Plaintiffs and class members no
12 less than one and one-half times their respective "regular rate of pay" for all hours worked in excess
13 of eight hours in one day, 40 hours in one week, or the first eight hours worked on the seventh day of
14 work in any one workweek, and no less than twice their respective "regular rate of pay" for all hours
15 over 12 hours in one day and any work in excess of eight hours on any seventh day of a workweek for
16 such hours worked, in violation of Labor Code sections 204, 510, 558, 1194, and 1198 and the IWC
17 Wage Orders (the "Hours and Days of Work" sections of the applicable orders).

18 37. Plaintiffs and class members are entitled to recover the full amount of the unpaid
19 overtime, in addition to interest, statutory and civil penalties, and attorneys' fees, and costs to the
20 extent permitted by law.

21 **THIRD CAUSE OF ACTION**

22 **MEAL PERIOD VIOLATIONS**

23 **Violation of Labor Code §§ 226.7 and 512**

24 38. All outside paragraphs of this Complaint are incorporated into this section.

25 39. This cause of action is brought pursuant to the IWC Wage Orders and Labor Code
26 §§ 226.7, 558 and 512, which require non-exempt employees be provided complaint meal periods (or
27 meal period premiums in lieu thereof), and which further provide a private right of action for an
28

1 employer's failure to lawfully provide all meal periods and/or pay meal period premiums at the lawful
2 regular rate of compensation.

3 40. Defendants willfully failed in their affirmative obligation to consistently provide
4 Plaintiffs and class members compliant, duty-free meal periods of not less than 30 minutes beginning
5 before the fifth hour of hour for each work period of more than five hours per day and a second duty-
6 free meal period of not less than 30 minutes beginning before the tenth hour of hour of work in
7 violation of Labor Code sections 226.7, 512, 558, 1198 and the IWC Wage Orders (the "Meal Periods"
8 sections of the applicable orders).

9 41. Further, Defendants willfully failed in their affirmative obligation to consistently pay
10 Plaintiffs and class members one additional hour of pay at the respective regular rate of compensation
11 for each workday that a fully compliant meal period was not provided, in violation of Labor Code
12 sections 226.7, 512, 558, and 1198 and the IWC Wage Orders (the "Meal Periods" sections of the
13 applicable orders).

14 42. Plaintiffs and class members are entitled to recover the full amount of the meal period
15 premiums owed, in addition to interest, statutory and civil penalties, and attorneys' fees, and costs to
16 the extent permitted by law.

17 **FOURTH CAUSE OF ACTION**

18 **REST PERIOD VIOLATIONS**

19 **Violation of Labor Code §§ 226.7 and 516**

20 43. All outside paragraphs of this Complaint are incorporated into this section.

21 44. This cause of action is brought pursuant to the IWC Wage Orders and Labor Code
22 §§ 226.7 and 516, which require non-exempt employees be authorized to take complaint rest periods
23 (or rest period premiums in lieu thereof), and which further provide a private right of action for an
24 employer's failure to lawfully provide all rest periods and/or pay rest period premiums at the lawful
25 regular rate of compensation.

26 45. Defendants willfully failed in their affirmative obligation to consistently authorize and
27 permit Plaintiffs and class members to receive compliant, duty-free rest periods of not less than ten
28 (10) minutes for every four hours worked (or major fraction thereof) in violation of Labor Code

1 sections 226.7, 516, 558, and 1198 and the IWC Wage Orders (the “Rest Periods” sections of the
2 applicable orders).

3 46. Further, Defendants willfully failed in their affirmative obligation to consistently pay
4 Plaintiffs and class members one additional hour of pay at the respective regular rate of compensation
5 for each workday that a fully compliant rest period was not provided, in violation of Labor Code
6 sections 226.7, 516, 558, and 1198 and the IWC Wage Orders.

7 **FIFTH CAUSE OF ACTION**

8 **UNTIMELY PAYMENT OF WAGES**

9 **Violation of Labor Code §§ 204, 210, 218**

10 47. All outside paragraphs of this Complaint are incorporated into this section.

11 48. This cause of action is brought pursuant to the IWC Wage Orders and Labor Code
12 §§ 204, 204b, and 210 which require non-exempt employees be timely paid all wages owed each pay
13 period, and which further provide a private right of action for an employer’s failure to comply with
14 this obligation. Labor Code § 218 authorizes individuals to sue directly for wages and penalties due
15 under these sections, including Labor Code § 210(c)’s statutory late payment penalties.

16 49. Defendants willfully failed in their affirmative obligation to timely pay all wages,
17 including paid sick leave and meal and rest premiums, earned by Plaintiffs and class members twice
18 during each calendar month on days designated in advance by the employer as regular paydays (for
19 employees paid on a non-weekly basis) and on the regularly-scheduled weekly payday for weekly
20 employees, if any, in violation of Labor Code sections 204 and 204b and the IWC Wage Orders (the
21 “Minimum Wages” sections of the applicable orders).

22 50. Plaintiffs and class members are entitled to recover the full amount of the unpaid wages,
23 in addition to a statutory penalty in the amount of \$100 for the initial violation for each failure to pay
24 each employee and \$200 for all subsequent violations and for all willful or intentional violations for
25 each failure to pay each employee, plus 25 percent of the amount unlawfully withheld under provided
26 in Labor Code § 210, in addition to interest, attorneys’ fees, and costs to the extent permitted by law.

penalties each day an employer fails to comply with this obligation, up to a maximum of 30 days wages.

58. Defendants willfully failed and continue to fail in their affirmative obligation to pay all wages earned and unpaid to Plaintiffs and class members immediately upon termination of employment or within 72 hours thereafter for employees who did not provide at least 72 hours prior notice of his or her intention to quit, and further failed to pay those sums for 30 days thereafter in violation of Labor Code sections 201 through 203 and the IWC Wage Orders.

59. Plaintiffs and class members are entitled to recover a waiting time penalty for a period of up to 30 days, in addition to interest, attorneys' fees, and costs to the extent permitted by law.

EIGHTH CAUSE OF ACTION

FAILURE TO REIMBURSE BUSINESS EXPENSES

Violation of Labor Code § 2802

60. All outside paragraphs of this Complaint are incorporated into this section.

61. Defendants willfully failed in their affirmative obligation to reimburse Plaintiffs and a reimbursement subclass for all necessary expenditures, losses, expenses, and costs incurred by them in direct discharge of the duties of their employment, in violation of Labor Code section 2802.

62. Defendants' unlawful acts and omissions deprived Plaintiffs and class members of lawful reimbursements for business expenses in amounts to be determined at trial. Plaintiffs and class members are entitled to recover the amount unreimbursed expenses of Plaintiffs and class members in addition to interest, attorneys' fees, and costs to the extent permitted by law, including under Labor Code section 2802.

NINTH CAUSE OF ACTION

UNFAIR COMPETITION

Violation of Business and Professions Code §§ 17200 *et seq.*

63. All outside paragraphs of this Complaint are incorporated into this section.

64. Defendants have engaged and continue to engage in unfair and/or unlawful business practices in the State of California in violation of California Business and Professions Code § 17200 by committing the foregoing wage and hour violations alleged throughout this Complaint.

65. Defendants' dependence on these unfair and/or unlawful business practices deprived Plaintiffs and continue to deprive other class members of compensation to which they are legally entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage to Defendants over competitors who have been and/or are currently employing workers in compliance with California's wage and hour laws. These failures constitute unlawful, deceptive, and unfair business acts and practices in violation of Business and Professions Code section 17200 *et seq.*

66. Plaintiffs are victims of Defendants' unfair and/or unlawful conduct alleged in this Complaint, and Plaintiffs, as individuals and on behalf of others similarly situated, seek full restitution of the moneys as necessary and according to proof to restore all monies withheld, acquired, and/or converted by Defendants pursuant to Business and Professions Code §§ 17203 and 17208.

67. Plaintiffs do not have an adequate remedy at law for past or future violations, to the extent the statute of limitations on each of the alleged causes of action do not extend to the four year limitation provided under the UCL or to the extent the underlying Labor Code and IWC Wage Order violations do not provide a private right of action.

68. Plaintiffs and class members are entitled to injunctive relief against Defendants, restitution, and other equitable relief to return all funds over which Plaintiffs and class members have an ownership interest and to prevent future damage and the public interest under Business and Professions Code § 17200 *et seq.* Plaintiffs and class members are further entitled to recover interest, attorneys' fees, and costs to the extent permitted by law, including under Code of Civil Procedure § 1021.5.

PRAYER

Plaintiffs pray for judgment as follows:

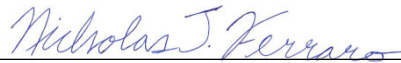
- a. For certification of this action as a class action;
- b. For appointment of Plaintiffs as the class representatives;
- c. For appointment of above-captioned counsel for Plaintiffs as Class Counsel;
- d. For division of class members into appropriate classes and/or subclasses according to proof;
- e. For recovery of damages in amount according to proof;

- 1 f. For all recoverable pre- and post-judgment interest;
- 2 g. For recovery of all civil and statutory penalties and liquidated damages;
- 3 h. For disgorgement of all amounts wrongfully obtained;
- 4 i. For restitution and injunctive relief;
- 5 j. For reasonable attorneys' fees and costs of suit, including expert fees, to the extent
- 6 permitted by law, including (without limitation) under Labor Code §§ 218.5, 226,
- 7 1194, 2802, and Code of Civil Procedure section 1021.5; and
- 8 k. For such other relief the Court deems just and proper.

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10 Dated: September 5, 2023

Ferraro Vega Employment Lawyers, Inc.

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12 Nicholas J. Ferraro

13 *Attorneys for Plaintiffs Renee Davin and Diego Reyes*

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