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County of San Francisco

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Attorneys for Plaintiff ELIZABETH ANN JOLIVET,
on behalf of himself and current and former aggrieved employees,

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN FRANCISCO

CGC-23-611245

ELIZABETH ANN JOLIVET, on behalf of
herself and current and former aggrieved
employees

Plaintiff,

vs.

LARKIN STREET YOUTH SERVICES; and
DOES 1 to 100, inclusive,

Defendants.

Case No.:

PAGA ACTION

**PLAINTIFF ELIZABETH ANN
JOLIVET'S COMPLAINT FOR:**

- CIVIL PENALTIES PURSUANT
TO THE PRIVATE ATTORNEYS
GENERAL ACT OF 2004
("PAGA"), LABOR CODE
SECTIONS 2698, ET SEQ.**

COMES NOW Plaintiff ELIZABETH ANN JOLIVET ("Plaintiff"), who alleges and
complains against Defendants LARKIN STREET YOUTH SERVICES; and DOES 1 to 100,
inclusive (collectively "Defendants") as follows:

I. INTRODUCTION

1. This is a Private Attorneys General Act of 2004, Labor Code §§ 2698, *et seq.*
("PAGA") representative action brought by Plaintiff on behalf of the State of California, herself
and other current and former aggrieved employees of Defendants who worked as hourly non-
exempt employees in California during the relevant time period seeking civil penalties associated
with Defendants' violation of the Labor Code based on Defendants' failure to provide all legally

1 required and legally compliant meal and rest periods, failure to pay wages for accrued paid sick
2 time at the regular rate of pay, failure to timely pay earned wages during employment, failure to
3 provide complete and accurate wage statements, failure to timely pay all unpaid wages following
4 separation of employment. Plaintiff seeks on a representative basis, following notice to the Labor
5 and Workforce Development Agency, civil penalties, reasonable attorneys' fees pursuant to Labor
6 Code section 2699(g)(1) and costs brought on behalf of Plaintiff, the State of California, and
7 others aggrieved.

8 **II. JURISDICTION AND VENUE**

9 2. This Court has jurisdiction over the claims of Plaintiff and all other current and
10 former aggrieved California-based hourly non-exempt employees because Plaintiff's lawsuit seeks
11 civil penalties on behalf of herself, all other current and former aggrieved California-based hourly
12 non-exempt employees, and the State of California in excess of twenty-five thousand dollars
13 (\$25,000); Defendants employed Plaintiff and all other current and former aggrieved California-
14 based hourly non-exempt employees; and the injuries to Plaintiff and all other current and former
15 aggrieved California-based hourly non-exempt employees occurred in locations throughout
16 California, including but not limited to San Francisco County at 134 Golden Gate Ave, San
17 Francisco, CA 94102.

18 3. In response to the COVID-19 pandemic, the Judicial Council of California enacted
19 Emergency Rule 9 to the California Rules of Court, which provided that, notwithstanding any
20 other law, the statutes of limitations and repose for civil causes of action that exceed 180 days are
21 tolled from April 6, 2020, until October 1, 2020.

22 **III. PARTIES**

23 4. Plaintiff brings this action as a representative of the Labor and Workforce
24 Development Agency on behalf of herself and other current and former employees subject to
25 violations of the Labor Code. The named Plaintiff and the persons on whose behalf this action is
26 filed include current, former and/or future employees of Defendants who work, worked, or will
27 work for Defendants as direct employees as well as temporary employees employed through temp
28 agencies as hourly non-exempt employees in California. At all times mentioned herein, the

1 currently named Plaintiff is and was domiciled and a resident and citizen of California and was
2 employed by Defendants in an hourly position at Defendants' location in San Francisco from
3 approximately September 2022 until on or about present.

4 5. Plaintiff is informed and believes and thereon alleges that Defendant LARKIN
5 STREET YOUTH SERVICES is authorized to do business within the State of California and is
6 doing business in the State of California and/or that Defendants DOES 1-50 are, and at all times
7 relevant hereto were persons acting on behalf of Defendant LARKIN STREET YOUTH
8 SERVICES in the establishment of, or ratification of, the aforementioned illegal wage and hour
9 practices or policies. Defendant LARKIN STREET YOUTH SERVICES operates in San
10 Francisco County and employed Plaintiff and aggrieved employees in San Francisco County,
11 including but not limited to, at 134 Golden Gate Ave, San Francisco, CA 94102.

12 6. Plaintiff is informed and believes and thereon alleges that Defendants DOES 1
13 through 50 are corporations, or are other business entities or organizations of a nature unknown to
14 Plaintiff that employed Plaintiff and aggrieved California non-exempt employees, permitted
15 Plaintiff and aggrieved employees to work, and exercised control over the wages, hours and
16 working conditions of employment of Plaintiff and aggrieved employees.

17 7. Plaintiff is informed and believes and thereon alleges that Defendants DOES 51
18 through 100 are individuals unknown to Plaintiff. Each of the individual defendants is sued
19 individually and in his or her capacity as an agent, shareholder, owner, representative, manager,
20 supervisor, independent contractor and/or employee of each defendant who violated or caused to
21 be violated the minimum wage and overtime provisions of the Labor Code and/or any provision of
22 the Industrial Welfare Commission's wage orders regulating hours and days of work.

23 8. Plaintiff is unaware of the true names of Defendants DOES 1 through 100. Plaintiff
24 sues said defendants by said fictitious names, and will amend this complaint when the true names
25 and capacities are ascertained or when such facts pertaining to liability are ascertained, or as
26 permitted by law or by the Court. Plaintiff is informed and believes that each of the fictitiously
27 named defendants is in some manner responsible for the events and allegations set forth in this
28 complaint.

9. Plaintiff makes the allegations in this complaint without any admission that, as to any particular allegation, Plaintiff bears the burden of pleading, proving, or persuading and Plaintiff reserves all of Plaintiff's right to plead in the alternative.

FIRST CAUSE OF ACTION

**CIVIL PENALTIES PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT OF
2004, LABOR CODE SECTIONS 2698, ET SEQ.**

(Against all Defendants by Plaintiff)

10. Plaintiff incorporates all paragraphs above as though fully set forth herein.

11. During Plaintiff's employment and continuing through the present, Plaintiff alleges Defendants violated Labor Code sections 201, 202, 203, 204, 226, 226.7, 246, 512 and the applicable Wage Orders.

12. Specifically, Defendants have committed the following violations of California Labor Code:

13. **Failure to pay wages to hourly non-exempt employees for workdays that Defendants failed to provide legally required and compliant meal periods:** Plaintiff and other current and former aggrieved California-based hourly non-exempt employees regularly worked shifts of more than five (5) hours in length and shifts of more than ten (10) hours in length.

14. California law requires an employer to authorize or permit an employee an uninterrupted meal period of no less than thirty (30) minutes in which the employee is relieved of all duties and the employer relinquishes control over the employee's activities prior to the employee's sixth hour of work. Labor Code sections 226.7, 512; Wage Order 4 at §11; *Brinker Rest. Corp. v. Super Ct. (Hohnbaum)* (2012) 53 Cal.4th 1004. An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second such meal period of not less than thirty (30) minutes prior to the start of the eleventh hour of work. *Id.* If the employee is not relieved of all duty during a meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. A paid "on duty" meal period is only permitted when: (1) the nature of the work prevents an employee from being relieved of all duty; and (2) the parties have a written agreement agreeing to on-duty meal periods.

1 15. If an employer fails to provide an employee a meal period in accordance with the
2 law, the employer must pay the employee one (1) hour of pay at the employee's regular rate of pay
3 for each workday that a legally required and compliant meal period was not provided. Labor Code
4 section 226.7; Wage Order 4 at §11.

5 16. In this case, Defendants failed to authorize or permit legally required and compliant
6 meal periods to Plaintiff and other current and former aggrieved California-based hourly non-
7 exempt employees due to Defendants' policies, practices, and/or procedures, including but not
8 limited to,

9 (a) Failing to provide Plaintiff and other current and former aggrieved California-based
10 hourly non-exempt employees timely, uninterrupted, duty-free meal breaks of at least 30 minutes
11 for every five hours worked.

12 17. Additionally, Plaintiff alleges that Defendants maintained a policy, practice, and/or
13 procedure of failing to compensate Plaintiff and other current and former aggrieved California-
14 based hourly non-exempt employees one (1) hour of pay at their regular rate of pay for each
15 workday that Plaintiff and other current and former aggrieved California-based hourly non-exempt
16 employees did not receive legally required and compliant meal periods, in violation of Labor Code
17 section 226.7.

18 18. Finally, on occasions when Defendants paid Plaintiff and other current and former
19 aggrieved California-based hourly non-exempt employees a "premium" wage for late, missed,
20 short, on-premise, on-duty, and/or interrupted meal periods, Defendants failed to pay the one (1)
21 additional hour of pay at Plaintiff's and other current and former aggrieved California-based
22 hourly non-exempt employees' regular rate of compensation. Specifically, Defendants maintained
23 a policy, practice, and/or procedure of failing to include all remuneration such as onsite hazard pay
24 and overnight shift pay, for example, when calculating Plaintiff's and other current and former
25 aggrieved California-based hourly non-exempt employees' regular rate of pay for the purpose of
26 paying meal period premium wages.

27 19. Defendants' foregoing policies, practices, and/or procedures resulted in Plaintiff
28 and other current and former aggrieved California-based hourly non-exempt employees not
receiving wages to compensate them for workdays during which Defendants did not provide them

1 with meal periods in compliance with California law.

2 20. **Failure to pay wages to hourly non-exempt employees for workdays that**
3 **Defendants failed to provide legally required and compliant rest periods:** Plaintiff and other
4 current and former aggrieved California-based hourly non-exempt employees regularly worked
5 shifts of more than three-and-a-half (3.5) hours.

6 21. California law requires every employer to authorize and permit an employee a rest
7 period of ten (10) net minutes for every four (4) hours worked or major fraction thereof. Labor
8 Code section 226.7; Wage Order 4 at §12. Under California law, “[e]mployees are entitled to 10
9 minutes’ rest for shifts from three and one-half to six hours in length, 20 minutes for shifts of more
10 than six hours up to 10 hours, 30 minutes for shifts of more than 10 hours up to 14 hours, and so
11 on.” *Brinker Restaurant Corp. v. Sup. Ct. (Hohnbaum)* (2012) 53 Cal.4th 1004, 1029; Labor Code
12 section 226.7; Wage Order 4 at §12. Rest periods, insofar as practicable, shall be in the middle of
13 each work period. Wage Order 4 at §12. Additionally, the rest period requirement “obligates
14 employers to permit – and authorizes employees to take – off-duty rest periods.” *Augustus v. ABM*
15 *Security Services, Inc.*, (2016) 5 Cal.5th 257, 269. That is, during rest periods employers must
16 relieve employees of all duties and relinquish control over how employees spend their time. *Id.*

17 22. If the employer fails to authorize or permit a required rest period, the employer
18 must pay the employee one (1) hour of pay at the employee’s regular rate of pay for each workday
19 the employer did not authorize or permit a legally required rest period. Labor Code section 226.7;
20 Wage Order 4 at § 12.

21 23. In this case, Defendants failed to authorize or permit all legally required and
22 compliant rest periods to Plaintiff and other current and former aggrieved California-based hourly
23 non-exempt employees due to Defendants’ policies, practices, and/or procedures including, but not
24 limited to,

25 (a) Failing to provide Plaintiffs and other current and former aggrieved California-
26 based hourly non-exempt employees with net ten (10) minute rest breaks for every four (4) hours
27 worked or major fraction thereof.

28 24. Additionally, Plaintiff alleges that Defendants maintained a policy, practice, and/or

1 procedure of failing to compensate Plaintiff and other current and former aggrieved California-
2 based hourly non-exempt employees with one (1) hour of pay at their regular rate of pay for each
3 workday they did not receive legally required and compliant rest periods, in violation of Labor
4 Code section 226.7.

5 25. Finally, on occasions when Defendants did pay Plaintiff and other current and
6 former aggrieved California-based hourly non-exempt employees a “premium” wage for late,
7 missed, short, on-premise, on-duty, and/or interrupted rest periods, Defendants failed to pay the
8 one (1) additional hour of pay at Plaintiff’s and other current and former aggrieved California-
9 based hourly non-exempt employees’ regular rate of compensation. Specifically, Defendants
10 maintained a policy, practice, and/or procedure of failing to include all remuneration such as
11 onsite hazard pay and overnight shift pay, for example, when calculating Plaintiff’s and other
12 current and former aggrieved California-based hourly non-exempt employees’ regular rate of pay
13 for the purpose of paying rest period premiums.

14 26. Defendants’ foregoing policies, practices, and/or procedures resulted in Plaintiff
15 and other current and former aggrieved California-based hourly non-exempt employees not
16 receiving wages to compensate them for workdays in which Defendants did not provide them with
17 rest periods in compliance with California law.

18 27. **Failure to pay wages for accrued paid sick days at the regular rate of pay:**
19 Defendants had a policy and/or procedure where Plaintiff and other current and former aggrieved
20 California-based hourly non-exempt employees accrued paid sick time.

21 28. Labor Code section 246, subdivision (a), states in relevant part “[a]n employee
22 who...works in California for the same employer for 30 or more days within a year from the
23 commencement of employment is entitled to paid sick days.” Additionally, an employee accrues
24 paid sick days at the rate of no-less-than one (1) hour per every thirty (30) hours worked,
25 beginning at the commencement of employment. Labor Code section 246(b).

26 29. Here, Plaintiff and other current and former aggrieved California-based hourly non-
27 exempt employees were employed by Defendants for 30 or more days and were entitled to paid
28 sick days. Also, Plaintiff and other current and former aggrieved California-based hourly non-

1 exempt employees began accruing paid sick days since the beginning of each of their respective
2 employment with Defendants.

3 30. Labor Code section 246, subdivision (l), provides that an employer shall calculate
4 the paid sick time for non-exempt employees in the same manner as the regular rate of pay for the
5 workweek in which the employee elected to use paid sick time. “The regular rate at which an
6 employee is employed shall be deemed to include all remuneration for employment paid to, or on
7 behalf, of the employee.” See Division of Labor Standards Enforcement – Enforcement Policies
8 and Interpretations Manual, Section 49.1.2.

9 31. In this case, Plaintiff alleges that when she and other current and former aggrieved
10 California-based hourly non-exempt employees elected to use paid sick time, Defendants failed to
11 pay them sick time wages at the proper sick time rate of pay due to Defendants’ failure to include
12 all remuneration when calculating the sick time rate of pay. Specifically, Defendants maintained a
13 policy, practice, and/or procedure of failing to include all remuneration such as onsite hazard pay
14 and overnight shift pay, for example, when calculating Plaintiff’s and other current and former
15 aggrieved California-based hourly non-exempt employees’ regular rate of pay for the purpose of
16 paying sick time.

17 32. Defendants’ foregoing policy, practice, and/or procedure resulted in Defendants
18 failing to pay Plaintiff and other current and former aggrieved California-based hourly non-exempt
19 employees at their sick time regular rate of pay for all sick time accrued, in violation of Labor
20 Code section 246.

21 33. **Failure to timely pay earned wages during employment:** In California, wages
22 must be paid at least twice during each calendar month on days designated in advance by the
23 employer as regular paydays, subject to some exceptions. Labor Code section 204(a). Wages
24 earned between the 1st and 15th days, inclusive, of any calendar month must be paid between the
25 16th and the 26th day of that month and wages earned between the 16th and the last day,
26 inclusive, of any calendar month must be paid between the 1st and 10th day of the following
27 month. *Id.* Other payroll periods such as those that are weekly, biweekly, or semimonthly, must be
28 paid within seven (7) calendar days following the close of the payroll period in which wages were

1 earned. Labor Code section 204(d).

2 34. As a derivative of Plaintiff's claims above, Plaintiff alleges that Defendants failed
3 to timely pay Plaintiff's and other current and former aggrieved California-based hourly non-
4 exempt employees' earned wages (including meal period premium wages, rest period premium
5 wages, and sick pay wages at the regular rate of pay), in violation of Labor Code section 204.
6 Defendants' aforementioned policies, practices, and/or procedures resulted in their failure to pay
7 Plaintiff's and other current and former aggrieved California-based hourly non-exempt employees'
8 their earned wages within the applicable time frames outlined in Labor Code section 204.

9 35. **Failure to provide complete and accurate wage statements:** Labor Code section
10 226, subdivision (a). Labor Code section 226(a) provides, *inter alia*, that, upon paying an
11 employee his or her wages, the employer must "furnish each of his or her employees ... an
12 itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the
13 employee, except for any employee whose compensation is solely based on a salary and who is
14 exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of
15 the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable
16 piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided, that all
17 deductions made on written orders of the employee may be aggregated and shown as one item, (5)
18 net wages earned, (6) the inclusive dates of the pay period for which the employee is paid, (7) the
19 name of the employee and his or her social security number, (8) the name and address of the legal
20 entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and
21 the corresponding number of hours worked at each hourly rate by the employee."

22 36. As a derivative of Plaintiff's allegations above, Defendants' failure to pay Plaintiff
23 and other current and former aggrieved California-based hourly non-exempt employees all wages
24 earned (including meal period premium wages, rest period premium wages, and sick pay wages at
25 the regular rate of pay), rendered Plaintiff's and other current and former aggrieved California-
26 based hourly non-exempt employees' wage statements inaccurate, in violation of Labor Code
27 section 226.

28 37. **Failure to pay employees all wages due at time of termination/resignation:** An

1 employer is required to pay all unpaid wages timely after an employee's employment ends. The
2 wages are due immediately upon termination (Labor Code section 201) or within seventy-two (72)
3 hours of resignation (Labor Code section 202).

4 38. As a derivative of Plaintiff's allegations above, because Defendants failed to pay
5 Plaintiff and other current and former aggrieved California-based hourly non-exempt employees
6 all their earned wages (including meal period premium wages, rest period premium wages, and
7 sick pay wages at the regular rate of pay), Defendants failed to pay those employees timely after
8 each employee's termination and/or resignation, in violation of Labor Code sections 201, 202, and
9 203.

10 39. Labor Code sections 2699, subdivisions (a) and (g) authorize an aggrieved
11 employee, on behalf of himself or herself and other current or former employees, to bring a civil
12 action to recover civil penalties against all Defendants pursuant to the procedures specified in
13 Labor Code section 2699.3.

14 40. Plaintiff has complied with the procedures for bringing suit specified in Labor
15 Code section 2699.3. On October 17, 2023, Plaintiff filed a PAGA Claim Notice with the LWDA
16 and provided notice to Defendants by certified mail which provided notice of the specific
17 provisions of the Labor Code alleged to have been violated, including the facts and theories to
18 support the violations alleged.

19 41. Pursuant to Labor Code section 2699.3, the LWDA must give written notice by
20 certified mail to the parties that it intends to investigate the alleged violations of the Labor Code
21 within 60 days of the date of the complainant's written notice. The LWDA failed to provide the
22 parties notice within 60 days of the date of Plaintiff's PAGA Claim Notice that the LWDA intends
23 to investigate Plaintiff's claims.

24 42. Pursuant to Labor Code sections 2699(a) and (f), Plaintiff is entitled to recover civil
25 penalties for Defendants' violations of Labor Code sections 201, 202, 203, 204, 226, 226.7, 246,
26 and 512, During Plaintiff's employment and continuing through the present, preceding Plaintiff
27 sending the initial PAGA Claim Notice to the LWDA to the present, in the following amounts:

28 a. For violations of Labor Code sections 201, 202, 203, 204, 226.7, and 512;

one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation [penalty amounts established by Labor Code section 2699(f)(2)].

b. For violations of Labor Code section 226, two hundred fifty dollars (\$250) for each employee for each pay period for the initial violation, and for each subsequent violation, one thousand dollars (\$1000) for each underpaid employee for each pay period [penalty amounts established by Labor Code section 226.3].

43. Pursuant to Labor Code section 2699(g), Plaintiff is entitled to an award of reasonable attorneys' fees and costs in connection with her claims for civil penalties.

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF, ON BEHALF OF HERSELF AND ON OTHER AGGRIEVED EMPLOYEES, PRAYS AS FOLLOWS:

ON THE FIRST CAUSE OF ACTION:

1. That Defendants be found to have violated the provisions of the Labor Code and the IWC Wages Orders as to the Plaintiff and aggrieved employees;

2. For any and all legally applicable penalties during the relevant statute of limitations subject to any permissible tolling, including but not limited to those recoverable under the California Labor Code, including but not limited to section 2699(f);

3. For attorneys' fees and costs of suit, including but not limited to those recoverable under California Labor Code section 2699(g); and

4. For such and other further relief, in law and/or equity, as the Court deems just or appropriate

Dated: December 22, 2023

Respectfully submitted,
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