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Attorneys for Plaintiff Konstantin Sotirhos

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

KONSTANTIN SOTIRHOS,

Plaintiff,

vs.

710 E 4th PLACE LLC; HEATHER
TIERNEY; and DOES 1 to 25, inclusive,

Defendants.

CASE NO.: **24STCV03700**

COMPLAINT FOR DAMAGES FOR:

**1) PRIVATE ATTORNEYS GENERAL
ACT ("PAGA")**

COMES NOW Plaintiff, KONSTANTIN SOTIRHOS (hereinafter "Plaintiff"), and
alleges as follows:

PARTIES, JURISDICTION, and VENUE

1. Jurisdiction and Venue are proper in this Court and this action is properly filed in the County of Los Angeles in this judicial district because Defendants 710 E 4th PLACE LLC; HEATHER TIERNEY and DOES 1 to 25, do business in the County of Los Angeles, and because Defendants' obligations and liabilities arise therein, and because the work that was performed by Plaintiff in the County of Los Angeles is the subject of this action. Moreover, Plaintiff's damages sought herein exceed \$35,000.

2. Plaintiff is a male resident of the County of Los Angeles, State of California.

3. Plaintiff is informed and believes that at all times herein mentioned, Defendant 710 E 4th PLACE LLC is and was a California corporation, doing business as "DE LA NONNA" in the County of Los Angeles, State of California, and which employed Plaintiff.

4. Plaintiff is informed and believes that at all times herein mentioned, Defendant HEATHER TIERNEY is a female resident of the State of California, and the owner, managing agent, and/or director 710 E 4th PLACE LLC. Defendant HEATHER TIERNEY is being included in this lawsuit pursuant to Labor Code Section 558.1 in that she was involved in the day-to-day operations of the business and controlled the hours, wages, and/or working conditions of Plaintiff and other hourly, non-exempt employees Defendants 710 E 4th PLACE LLC and HEATHER TIERNEY are collectively referred to herein as "Defendant(s)" (unless otherwise noted) or "DE LA NONNA".

5. Plaintiff is ignorant of the true names and capacities, whether individual, corporate, or

1 associate of those defendants fictitiously sued as DOES 1 to 25, inclusive, and so Plaintiff sues
2 them by these fictitious names. Plaintiff is informed and believes that each of the DOE
3 defendants, numbers 1 to 25, reside in the State of California and are in some manner responsible
4 for the conduct alleged herein. Upon discovering the true names and capacities of these
5 fictitiously named defendants, Plaintiff will amend this complaint to show the true names and
6 capacities of these fictitiously named defendants.

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8 6. Unless otherwise alleged in this complaint, Plaintiff is informed, and on the basis of
9 that information and belief, alleges that at all times herein mentioned, each of the remaining
10 codefendants, in doing the things hereinafter alleged, were acting within the course, scope, and
11 under the authority of their agency, employment, or representative capacity, with the consent of
12 his/her codefendants.

13 **GENERAL ALLEGATIONS**

14 7. Plaintiff started working at DE LA NONNA on or around 2023 as a chef. Plaintiff was
15 classified as an hourly, non-exempt employee and his latest rate of pay was \$17.00 per hour.
16 Plaintiff's employment with DE LA NONNA ended in October 2023.

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18 8. In the case of Huff v. Securitas Sec. Servs. USA, Inc., 23 Cal. App. 5th 745 (2018),
19 Plaintiff, Huff, was employed as a security guard for the Defendant Employer, Securitas
20 Security Services USA, Inc., an onsite security provider. After about a year of employment,
21 Huff resigned. Huff then filed suit against Securitas under PAGA. In his claim, Huff
22 specifically alleged violations to the Labor Code requiring immediate payment of wages upon
23 termination of employment and weekly payment of wages to temporary employees. The trial
24 court determined Huff was not a temporary employee, and therefore, lacked standing to bring
25 the claim. Thus, Securitas was granted a motion for summary judgement. Later, the trial court
26 granted Huff a new trial. Securitas then appealed the grant of a new trial. On appeal, the issue
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1 was whether Huff could bring a PAGA claim and sue for Labor Code violations that did not
2 directly affect him. Securitas unsuccessfully argued that the PAGA statute only allows the
3 PAGA representative to sue for violations that the representative has personally suffered. The
4 PAGA statute states that an “aggrieved employee” is able to file suit on behalf of themselves
5 and others. The statute also states that an “aggrieved employee” is “any person who was
6 employed by the alleged violator and against whom one or more of the alleged violations was
7 committed.” Because at least one of the violations that Huff had alleged had affected him
8 personally, the Court of Appeal denied Securitas’ motion.
9

10 9. In sum, since PAGA allows Plaintiffs to bring suit on behalf of both themselves and
11 other employees, it allows for suits broader than the specific violations the named
12 employee experienced. Therefore, even if the employee did not personally experience the
13 Labor Code violations, the employer may still be liable to under PAGA. Consequently, it is
14 Plaintiff’s position that Plaintiff can equivocally bring the following labor code violations on
15 behalf of all other employees, including ALL hourly, non-exempt employees who worked for
16 DE LA NONNA at any of their restaurants in the state of California during the relevant PAGA
17 period. It is Plaintiff’s position that DE LA NONNA has violated the following Labor Code
18 Sections against Plaintiff and other similarly situated aggrieved employees, who include all
19 non-exempt, hourly employees who worked for DE LA NONNA at their various locations in
20 the State of California during the relevant PAGA period.
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22 10. DE LA NONNA violated Labor Code § 1194, 1194.2, 1197, and 1197.1 because it
23 failed to pay Plaintiff and other similarly situated aggrieved employees for all hours worked,
24 including the statutory minimum wage for all hours worked and for “off the clock” work. This
25 is so because DE LA NONNA had a company policy wherein they would disproportionately
26 round down the number of hours worked, resulting in “time shaving” and further resulting in
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1 aggrieved employees not being paid for all hours worked. Furthermore, and to the extent that
2 Plaintiff and others worked through their meal periods while “off the clock”, they were not
3 compensated for all hours worked, which would be akin to a minimum wage violation.
4 Furthermore, aggrieved employees regularly performed work related tasks before clocking in
5 and after clocking out, including setting up and clean up. Moreover, DE LA NONNA failed to
6 compensate its employees the proper reporting time pay.

7 11. Due to the above “off the clock” violations, DE LA NONNA also violated Labor Code
8 §510 because it failed to pay Plaintiff and other aggrieved employees overtime compensation,
9 even though they worked more than 8 hours per day, 12 hours per day, and/or 40 hours per
10 week throughout their employment. Plaintiff’s and other aggrieved employees’ actual work
11 hours entitled them to overtime compensation, however, DE LA NONNA did not compensate
12 its hourly, non-exempt employees with the correct amount of overtime due to the “off the
13 clock” work and time shaving as described above. Furthermore, DE LA NONNA failed to
14 include bonuses/incentive payments in calculating employees’ regular rate of pay for use in
15 deciphering the correct overtime rate of pay. Additionally, the incentive and bonus payments
16 were also not factored into employees’ regular rate for purposes of receiving meal and rest
17 break premiums per the Ferra v. Loews case.

18 12. DE LA NONNA also violated Labor Code § 226.7 and the appropriate Industrial
19 Welfare Commission Wage Order no. 5 because it failed to provide Plaintiff and other
20 similarly situated aggrieved employees with 10-minute rest periods for every four hours of
21 work, or majority portion thereof, throughout their employment. DE LA NONNA did not
22 completely relieve Plaintiff and others of all duty during said rest periods. DE LA NONNA
23 did not pay to Plaintiff and others one additional hour of pay at Plaintiff’s regular rate of
24 compensation for each workday that one or more statutory rest periods was not provided. It
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1 was not part of the company policy for employees such as Plaintiff to consistently take at least
2 two rest breaks per shift. The concept of rest breaks was not consistently implemented.
3 Moreover, it would not have been possible for employees such as Plaintiff and others to take
4 such rest breaks due to being understaffed and due to a heavy workload, especially in the fast-
5 paced restaurant industry. As such, the culture as well as the policies and procedures of DE LA
6 NONNA did not lend itself to the employees receiving consistent statutory rest breaks,
7 including 2 rest breaks for an 8-hour shift, wherein they were relieved of all work duties. The
8 environment at DE LA NONNA was not conducive to receiving multiple statutory rest breaks
9 under California law and timely, statutory rest breaks were not authorized or enforced.
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11 13. DE LA NONNA violated Labor Code §§ 512 and 226.7 and the appropriate Industrial
12 Welfare Commission Wage Order no. 5 because it failed to provide hourly, non-exempt
13 employees, including Plaintiff and others, the requisite 30-minute, uninterrupted meal periods
14 for every five (5) hours of work throughout their employment. DE LA NONNA did not
15 completely relieve Plaintiff and other employees of all duty during said meal periods. DE LA
16 NONNA did not pay to Plaintiff and its hourly, non-exempt employees one additional hour of
17 pay at their regular rate of compensation for each workday that one or more statutory meal
18 periods was not provided. If Plaintiff and other aggrieved employees were able to take meal
19 breaks, the meal breaks would sometimes be late and after the 5th hour worked or they would
20 be interrupted due to work obligations. The latter was due to the workload and due to being in
21 a fast-paced restaurant environment. Like the rest breaks, consistently receiving a thirty-minute
22 uninterrupted and timely meal break was not part of the company culture and was not enforced
23 by DE LA NONNA. Consequently, it was the normal practice and custom of DE LA NONNA
24 not to authorize, permit, and enforce timely statutory meal periods. If DE LA NONNA had
25 Plaintiff sign a meal period waiver, it would not be valid and enforceable since Plaintiff and
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1 others generally worked more than a 6-hour shift. If DE LA NONNA had Plaintiff sign an on-
2 duty meal period agreement wherein Plaintiff agreed to work through the meal periods, it
3 would be invalid and unenforceable because the nature of Plaintiff's job as a chef does not and
4 did not prevent him from taking a meal period and the company could have hired "breakers" to
5 relieve Plaintiff of his job duties so that he can actually take a timely, uninterrupted meal
6 period. Moreover, any such "on duty" meal period agreement did not allow for Plaintiff to
7 revoke such an agreement even if it was signed. As such, Plaintiff and others did not always
8 receive statutory, timely meal periods during their employment. To the extent that DE LA
9 NONNA argues that employees receive meal break premium pay for missed, short, or late
10 meal periods, that argument is inconsequential for PAGA penalty purposes since the PAGA
11 penalties are for the violations themselves, irrespective of whether an employee received the
12 premium payment for a missed, short, or interrupted meal period. In *Kirby v. Immoos Fire*
13 *Protection, Inc.*, the Court stated, "section 226.7 does not give employers a lawful choice
14 between providing *either* meal and rest breaks *or* an additional hour of pay." *See Kirby v.*
15 *Immoos Fire Protection, Inc.*, (2012) 53 Cal.4th 1244, 1256 (emphasis in original). Thus, the
16 extra hour of pay does not excuse the violation; the employer has still committed a violation
17 even if the remedy for the violation has been paid. *See Wert v. U.S. Bancorp*, (S.D. Cal. Mar.
18 22, 2016, 2016 WL 1110302 at *4). As such, the work environment and culture at DE LA
19 NONNA was not conducive to receiving consistent, timely, statutory meal breaks under
20 California law. Moreover, any meal or rest break premiums paid were not compensated at the
21 weighted average regular rate, inclusive of bonuses and/or incentive payments as well as
22 overtime compensation.

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26 14. Furthermore, during the relevant time period, and due to the above labor code
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1 violations, DE LA NONNA failed to pay Plaintiff and other similarly situated aggrieved
2 employees all wages due to them within any time period specified by California Labor Code
3 section 204. DE LA NONNA was also in violation of California Labor Code section 226(a) by
4 failing to include pertinent information on the wage statements, including but not limited to,
5 the correct hourly rate, all hours worked, overtime hours worked, all earned tips, correct
6 overtime pay, gross wages earned, net wages earned, premium pay for missed meal and rest
7 breaks, all deductions, the correct start and end of the pay period, all employee identifying
8 information, the correct and complete name and address of the legal employer, and
9 reimbursement for business expenses, among others. As such, DE LA NONNA did not provide
10 Plaintiff and other similarly situated aggrieved employees with complete, accurate itemized
11 wage statements.
12

13 15. During the relevant time period, DE LA NONNA also failed to keep accurate and
14 complete payroll records showing the actual hours worked per day and the wages paid to
15 Plaintiff and others pursuant to California Labor Code sections 1174(d).
16

17 16. DE LA NONNA also violated Labor Code § 203 because it willfully failed to pay other
18 similarly situated aggrieved employees earned and due wages upon separation of employment,
19 either immediately upon involuntary termination, or within 72 hours of resignation. These
20 earned but unpaid wages include compensation for all hours worked, including minimum
21 wages, overtime compensation, and premium pay for missed meal and rest breaks.
22

23 17. During the relevant time period, Plaintiff and other aggrieved employees incurred
24 necessary, business-related expenses and costs that were not reimbursed by DE LA NONNA.
25 These costs include, but are not limited to, uniforms, including specific shoes that needed to be
26 purchased, and use of personal cell phones/equipment for work purposes. Accordingly, DE LA
27 NONNA was in violation of California Labor Code sections 2800 and 2802.
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1 18. Additionally, DE LA NONNA violated Labor Code Section 351 and 353 by taking
2 some of the tips meant for employees and also deducting the tips from aggrieved employees
3 earned wages. DE LA NONNA also deducted the credit card fee from aggrieved employees'
4 tips and did not timely provide the credit card and even cash tips to aggrieved employees. As
5 such, the aggrieved employees were not given accurate tips to which they were entitled.

6 **FIRST CAUSE OF ACTION**

7 **PRIVATE ATTORNEYS GENERAL ACT**

8 **Representative Claim for PAGA penalties under California Labor Code sections 201,**
9 **202, 203, 204 and/or 204b, 210, 226, 226.3, 226.7, 351, 353, 510, 512, 558, 1174, 1174.5,**
10 **1194, 1194.2, 1197, 1197.1, 1198, 2800, 2802)**

11 **(Plaintiff against All Named Defendants and all DOE defendants)**

12 19. Plaintiff re-alleges and incorporates by reference each and every allegation in
13 paragraphs 1 through 18, inclusive, of this Complaint as though fully set forth herein.

14 20. Plaintiff has complied with the procedures for bringing suit specified in California
15 Labor Code § 2699.3. By letter dated November 29, 2023, Plaintiff gave written notice by
16 certified mail to the Labor and Workforce Development Agency ("LWDA") and Defendants of
17 the specific provisions of the California Labor Code alleged to have been violated, including the
18 facts and theories to support the alleged violations.

19 21. Pursuant to California Labor code section 2699.3, no response was received from
20 the LWDA within 65 days of the postmark date of the above-alleged letter.

21 22. Plaintiff therefore has exhausted all administrative remedies required of him under
22 California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute this
23 cause of action and pursue penalties in a representative action for Defendants' violations of the
24 Labor Code.

25 23. Pursuant to California Labor Code section 2699, any provisions of the Labor
26 Code that provides for a civil penalty to be assessed and collected by the LWDA or any of its
27 departments, divisions, commissions, boards, agencies, or employees for violation of the code
28 may, as an alternative, be recovered through a civil action brought by an aggrieved employee

1 on behalf of himself or herself and other current or former employees pursuant to the procedures
2 specified in California Labor Code section 2699.3.

3 24. Plaintiff is an “aggrieved employee” because Plaintiff was employed by the alleged
4 violator and had one or more of the alleged violations committed against him, and therefore is
5 properly suited to represent the interests of other current and former employees, including all
6 current and former hourly, non-exempt employees who worked for DE LA NONNA at any of
7 their restaurant locations in the State of California during the applicable PAGA Period.

8 25. Based on the acts alleged above, Plaintiff, on behalf of others, seeks penalties
9 under California Labor Code sections 2698 and 2699 because of Defendants’ violations of
10 numerous provisions of the California Labor Code as alleged in this Complaint.

11 26. Plaintiff therefore has exhausted all administrative remedies required of him under
12 California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute
13 this cause of action and pursue penalties in a representative action for Defendants’ violations of
14 the Labor Code.

15 27. California Labor Code section 2699 et seq. imposes penalties upon culpable
16 Defendants for violating the Labor Code.

17 28. Plaintiff seeks penalties for Defendants’ misconduct as alleged herein as permitted by
18 law, but only those penalties that are required to be shared with the LWDA as Plaintiff is not
19 seeking victim specific relief or underpaid wages for himself or other employees under this
20 specific PAGA cause of action.

21 29. Specifically, Plaintiff seeks penalties under California Labor Code
22 section 2699, for the following:

23 Violations of California Labor Code sections 201, 202, 203, 204, and/or 204b, 210, 226,
24 226.3, 226.7, 351, 353, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198,
25 2800, 2802, and any other Labor Codes/Industrial Welfare Commission Order (No. 5)
26 violated based on the facts alleged in this Complaint.

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1 30. Pursuant to Labor Code section 2698 et seq., Plaintiff seeks to recover attorney's fees,
2 costs, and civil penalties on behalf of other current and former aggrieved employees as alleged
3 herein in an amount to be shown according to proof at trial and within the jurisdictional limits
4 of this Court.

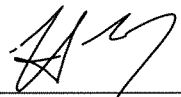
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6 **PRAYER FOR RELIEF**

7 WHEREFORE, Plaintiff prays for Judgment against Defendants and each of them, as
8 follows:

- 9 1. For the imposition of civil penalties;
10 2. For maximum civil penalties available under Labor Code Section 2699 against
11 Defendants in a manner and amount authorized by that statute, as described more
12 particularly in the Complaint and representative PAGA claims;
13 3. For all costs and disbursements incurred in this suit;
14 4. Reasonable attorney's fees where available by law, including but not limited to,
15 pursuant to Labor Code section 2698 et seq., Code of Civil Procedure section
16 1021.5, and/or other applicable laws; and
17 5. For such other and further relief as this Court may deem proper.

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19 DATED: February 13, 2024

MESSRELIAN LAW INC.

20 By 
21 Harout Messrelian, Esq.
22 Attorneys for Plaintiff Konstantin Sotirhos
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