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Attorneys for Plaintiff NORMA GAMEZ

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

NORMA GAMEZ,

Plaintiff,

vs.

YUM YUM DONUT SHOPS, INC. and
DOES 1 to 25, inclusive,

Defendants.

CASE NO.: **24STCV05324**

COMPLAINT FOR DAMAGES FOR:

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

COMES NOW Plaintiff, NORMA GAMEZ (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 YUM YUM DONUT SHOPS, INC; and DOES 1 to 25, inclusive (hereinafter collectively “YUM YUM” or “Defendant(s)”) do business in the County of Los Angeles, and because Defendants’ obligations and liabilities arise therein, and because Defendant’s headquarters are in Los Angeles County, California. Moreover, Plaintiff’s damages sought herein exceed \$35,000.

2. Plaintiff is a female resident of the State of California.

3. Plaintiff is informed and believes that at all times herein mentioned, Defendant YUM YUM DONUT SHOPS, INC. is a California corporation, doing business in the County of Los Angeles, State of California, and which employed Plaintiff.

4. Defendant YUM YUM DONUT SHOPS, INC. and DOES 1 to 25, inclusive, are collectively referred to herein as “Defendant(s)” (unless otherwise noted) or “YUM YUM”.

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

6. Unless otherwise alleged in this complaint, Plaintiff is informed, and on the basis of

1 that information and belief, alleges that at all times herein mentioned, each of the remaining
2 codefendants, in doing the things hereinafter alleged, were acting within the course, scope, and
3 under the authority of their agency, employment, or representative capacity, with the consent of
4 his/her codefendants.

5 **GENERAL ALLEGATIONS**

6 7. Plaintiff started working at YUM YUM on or around 2016. Plaintiff was classified as
7 an hourly, non-exempt employee and was employed as a cashier. Plaintiff's employment
8 ended on or around December 14, 2023 wherein Plaintiff was wrongfully terminated.

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

26 9. In sum, since PAGA allows Plaintiffs to bring suit on behalf of both themselves and
27 other employees, it allows for suits broader than the specific violations the named
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1 employee experienced. Therefore, even if the employee did not personally experience the
2 Labor Code violations, the employer may still be liable to under PAGA. Consequently, it is
3 Plaintiff's position that Plaintiff can equivocally bring the following labor code violations on
4 behalf of all other employees, including ALL hourly, non-exempt employees, irrespective of
5 job title or job duties, and irrespective of the location at which they worked.

6 10. It is Plaintiff's position that YUM YUM has violated the following Labor Code
7 Sections against Plaintiff and other similarly situated aggrieved employees, who include all
8 non-exempt, hourly employees who worked for YUM YUM at their various store locations in
9 the State of California during the relevant PAGA period.

10 11. YUM YUM violated Labor Code § 1194, 1194.2, 1197, and 1197.1 because it failed to
11 pay Plaintiff and other similarly situated aggrieved employees for all hours worked, including
12 the statutory minimum wage for all hours worked and for "off the clock" work. This is so
13 because YUM YUM had a company policy wherein they would disproportionately round
14 down the number of hours worked, resulting in "time shaving" and further resulting in
15 aggrieved employees not being paid for all hours worked. Furthermore, and since Plaintiff and
16 others worked through their meal periods while "off the clock", they were not compensated
17 for all hours worked, which would be akin to a minimum wage violation. It was commonplace
18 for Plaintiff to be clocked out for lunch only to show compliance on paper while helping
19 customers who entered the store. In fact, Plaintiff was forced to work through her meal breaks
20 because the store was understaffed. There was a baker who was there with Plaintiff during the
21 night shift, however, the baker did not know how to speak English and would not be able to aid
22 customers. As such, Plaintiff would be forced to help customers even if she was supposed to
23 be on a break.

24 12. Due to the above "off the clock" violations, YUM YUM also violated Labor Code §510
25 because it failed to pay Plaintiff and other aggrieved employees overtime compensation, even
26 though they worked more than 8 hours per day, 12 hours per day, and/or 40 hours per week
27 throughout their employment. Plaintiff's and other aggrieved employees' actual work hours
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entitled them to overtime compensation, especially if you consider the “off the clock” work in working through meal periods while clocked out, however, YUM YUM did not compensate its hourly, non-exempt employees with the correct amount of overtime due to the “off the clock” work and time shaving as described above. Furthermore, YUM YUM failed to include bonuses/incentive payments in calculating employees’ regular rate of pay for use in deciphering the correct overtime rate of pay. Additionally, the incentive and bonus payments were also not factored into employees’ regular rate for purposes of receiving meal and rest break premiums per the Ferra v. Loews case.

13. YUM YUM also violated Labor Code § 226.7 and the appropriate Industrial Welfare Commission Wage Order no. 5 because it failed to provide Plaintiff and other similarly situated aggrieved employees with 10-minute rest periods for every four hours of work, or majority portion thereof, throughout their employment. YUM YUM did not completely relieve Plaintiff and others of all duty during said rest periods. YUM YUM did not pay to Plaintiff and others one additional hour of pay at Plaintiff’s regular rate of compensation for each workday that one or more statutory rest periods was not provided. It was not part of the company policy for employees such as Plaintiff to take at least two rest breaks per shift. The concept of rest breaks was not consistently implemented as it was not company policy. Moreover, it would not have been possible for employees such as Plaintiff to take such rest breaks due to being understaffed and due to a heavy workload as was discussed above. There was simply not enough personnel for Plaintiff and others to be able to take statutory breaks and Plaintiff did not take any rest breaks throughout her employment tenure at YUM YUM. As such, the culture as well as the policies and procedures of YUM YUM did not lend itself to the employees receiving consistent statutory rest breaks wherein they were relieved of all work duties. The environment at YUM YUM was not conducive to receiving multiple statutory rest breaks under California law and timely, statutory rest breaks were not authorized or enforced.

14. YUM YUM violated Labor Code §§ 512 and 226.7 and the appropriate Industrial Welfare Commission Wage Order no. 5 because it failed to provide hourly, non-exempt employees, including Plaintiff and others, the requisite 30-minute, uninterrupted meal periods

1 for every five (5) hours of work throughout their employment. YUM YUM did not completely
2 relieve Plaintiff and other employees of all duty during said meal periods. YUM YUM did not
3 pay to Plaintiff and its hourly, non-exempt employees one additional hour of pay at their
4 regular rate of compensation for each workday that one or more statutory meal periods was
5 not provided. The hourly, non-exempt employees would often not be able to receive timely
6 meal periods before the 5th hour worked that were actually uninterrupted or would not be able
7 to receive them at all. The latter was due to the workload and due to being in a fast-paced
8 service-based environment. As alluded to above, there were numerous instances wherein
9 Plaintiff and others were clocking out for their meal periods but are not really taking them and
10 are working while “off the clock”. Like the rest breaks, receiving a thirty-minute uninterrupted
11 and timely meal break was not part of the company culture and was not enforced by YUM
12 YUM. Consequently, it was the normal practice and custom of YUM YUM not to authorize,
13 permit, and enforce timely statutory meal periods. If YUM YUM had Plaintiff sign a meal
14 period waiver, it would not be valid and enforceable since Plaintiff and others generally
15 worked more than a 6-hour shift. Even if Plaintiff’s and others’ shifts were less than 6 hours,
16 Plaintiff did not sign a meal period waiver wherein she was able to revoke the agreement. If
17 YUM YUM had Plaintiff sign an on-duty meal period agreement wherein Plaintiff agreed to
18 work through the meal periods, it would be invalid and unenforceable because the nature of
19 Plaintiff’s job as a cashier does not and did not prevent her from taking a meal period and the
20 company could have hired “breakers” to relieve Plaintiff of her job duties so that she can
21 actually take a timely, uninterrupted meal period. Moreover, any such “on duty” meal period
22 agreement did not allow Plaintiff and others to revoke such an agreement even if it was
23 signed. As such, Plaintiff and others did not receive statutory, timely meal periods during their
24 employment. To the extent that YUM YUM argues that employees receive meal break
25 premium pay for missed meal periods, that argument is inconsequential for PAGA penalty
26 purposes since the PAGA penalties are for the violations themselves, irrespective of whether
27 an employee received the premium payment for a missed, short, or interrupted meal period. In
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1 Kirby v. Immoos Fire Protection, Inc., the Court stated, “section 226.7 does not
2 give employers a lawful choice between providing *either* meal and rest breaks *or* an additional
3 hour of pay.” See Kirby v. Immoos Fire Protection, Inc., (2012) 53 Cal.4th 1244, 1256
4 (emphasis in original). Thus, the extra hour of pay does not excuse the violation; the employer
5 has still committed a violation even if the remedy for the violation has been paid. See Wert v.
6 U.S. Bancorp, (S.D. Cal. Mar. 22, 2016, 2016 WL 1110302 at *4). As such, the work
7 environment and culture at YUM YUM was not conducive to receiving consistent, timely,
8 statutory meal breaks under California law. Moreover, any meal or rest break premiums paid
9 were not compensated at the weighted average regular rate, inclusive of bonuses and/or
10 incentive payments as well as overtime compensation.

11 15. Furthermore, during the relevant time period, and due to the above labor code
12 violations, YUM YUM failed to pay Plaintiff and other similarly situated aggrieved
13 employees all wages due to them within any time period specified by California Labor Code
14 section 204. Since Plaintiff was personally not compensated for all hours worked, including
15 correct and accurate overtime compensation, YUM YUM would have certainly violated
16 section 204 as to Plaintiff. YUM YUM was also in violation of California Labor Code section
17 226(a) by failing to include pertinent information on the wage statements, including but not
18 limited to, the correct hourly rate, all hours worked, overtime hours worked, correct overtime
19 pay, gross wages earned, net wages earned, premium pay for missed meal and rest breaks, all
20 deductions, the correct start and end of the pay period, all employee identifying information,
21 the correct and complete name and address of the legal employer, tips, and reimbursement for
22 business expenses, among others. As such, YUM YUM did not provide Plaintiff and other
23 similarly situated aggrieved employees with complete, accurate itemized wage statements.

24 16. During the relevant time period, YUM YUM also failed to keep accurate and complete
25 payroll records showing the actual hours worked per day, including accurate meal breaks, and
26 the wages paid to Plaintiff and others pursuant to California Labor Code sections 1174(d).

27 17. YUM YUM also violated Labor Code § 203 because it willfully failed to pay Plaintiff
28 and other similarly situated aggrieved employees earned and due wages upon separation of

1 employment, either immediately upon involuntary termination, or within 72 hours of
2 resignation. These earned but unpaid wages include compensation for all hours worked,
3 including minimum wages, overtime compensation, and premium pay for missed meal and rest
4 breaks. Since Plaintiff was shorted on her hours and was not paid her full wages, YUM YUM
5 would have unequivocally violated Labor Code section 203 as to Plaintiff.

6 18. During the relevant time period, Plaintiff and other aggrieved employees incurred
7 necessary, business-related expenses and costs that were not reimbursed by YUM YUM.
8 These costs include, but are not limited to, uniforms and use of personal cell phones for work
9 purposes. Accordingly, YUM YUM was in violation of California Labor Code sections 2800
10 and 2802.

11 19. Additionally, YUM YUM violated Labor Code Section 351 and 353 by taking some of
12 the tips meant for employees. YUM YUM did not allow Plaintiff and others to recover cash
13 tips that were given to Plaintiff and others by customers for her service. As such, Plaintiff and
14 other similarly situated employees were not given accurate tips to which they were entitled.

15 **FIRST CAUSE OF ACTION**

16 **PRIVATE ATTORNEYS GENERAL ACT**

17 **Representative Claim for PAGA penalties under California Labor Code sections 201,**
18 **202, 203, 204 and/or 204b, 210, 226, 226.3, 226.7, 351, 353, 510, 512, 558, 1174, 1174.5,**
1194, 1197.1, 1198, 2802)

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

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

22 21. Plaintiff has complied with the procedures for bringing suit specified in California
23 Labor Code § 2699.3. By letter dated December 20, 2023, Plaintiff gave written notice by
24 certified mail to the Labor and Workforce Development Agency (“LWDA”) and Defendants of
25 the specific provisions of the California Labor Code alleged to have been violated, including the
26 facts and theories to support the alleged violations.

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

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

5 24. Pursuant to California Labor Code section 2699, any provisions of the Labor
6 Code that provides for a civil penalty to be assessed and collected by the LWDA or any of its
7 departments, divisions, commissions, boards, agencies, or employees for violation of the code
8 may, as an alternative, be recovered through a civil action brought by an aggrieved employee
9 on behalf of himself or herself and other current or former employees pursuant to the procedures
10 specified in California Labor Code section 2699.3.

11 25. Plaintiff is an "aggrieved employee" because Plaintiff was employed by the alleged
12 violator and had one or more of the alleged violations committed against her, and therefore is
13 properly suited to represent the interests of other current and former employees, including all
14 current and former hourly, non-exempt employees who worked for YUM YUM at any and all
15 locations in the State of California during the applicable PAGA Period.

16 26. Based on the acts alleged above, Plaintiff, on behalf of others, seeks penalties
17 under California Labor Code sections 2698 and 2699 because of Defendants' violations of
18 numerous provisions of the California Labor Code as alleged in this Complaint.

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

23 28. California Labor Code section 2699 et seq. imposes penalties upon culpable
24 Defendants for violating the Labor Code.

25 29. Plaintiff seeks penalties for Defendants' misconduct as alleged herein as permitted by
26 law, but only those penalties that are required to be shared with the LWDA as Plaintiff is not
27 seeking individual penalties/victim specific relief or underpaid wages for herself or other
28 employees under this specific PAGA cause of action.

30. Specifically, Plaintiff seeks penalties under California Labor Code

1 section 2699, for the following:

2 Violations of California Labor Code sections 201, 202, 203, 204, and/or 204b, 210, 226,
3 226.3, 226.7, 351, 353, 510, 512, 558, 1174, 1174.5, 1194, 1197.1, 1198, 2802, and any
4 other Labor Codes/Industrial Welfare Commission Order (No. 5) violated based on the facts
5 alleged in this Complaint.

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

10 **PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiffs pray for Judgment against Defendants and each of them, as
12 follows:

- 13 1. For the imposition of civil penalties;
- 14 2. For maximum civil penalties available under Labor Code Section 2699 against
15 Defendants in a manner and amount authorized by that statute, as described more
16 particularly in the Complaint and representative PAGA claims;
- 17 3. For all costs and disbursements incurred in this suit;
- 18 4. Reasonable attorney's fees where available by law, including but not limited to,
19 pursuant to Labor Code section 2698 et seq., Code of Civil Procedure section
20 1021.5, and/or other applicable laws; and
- 21 5. For such other and further relief as this Court may deem proper.

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23 DATED: March 4, 2024

MESSRELIAN LAW INC.

24
25 By



Harout Messrelian, Esq.

Attorneys for Plaintiff Norma Gamez