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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

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By: Maria Rubio, DEPUTY

Attorneys for Plaintiff ERIKA ESCOBAR,
on behalf of herself and current and former aggrieved employees

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO**

ERIKA ESCOBAR, on behalf of herself and
current and former aggrieved employees

Plaintiff,

vs.

JOBSOURCE CHINO, INC.; FABFITFUN,
INC.; and DOES 1 to 100, inclusive,

Defendants.

Case No.: CIVSB2410858

PAGA ACTION

**PLAINTIFF ERIKA ESCOBAR'S
COMPLAINT FOR:**

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

COMES NOW Plaintiff ERIKA ESCOBAR ("Plaintiff"), on behalf of herself and
current and former aggrieved employees, who alleges and complains against Defendants
JOBSOURCE CHINO, INC.; FABFITFUN, INC.; 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

1 with Defendants' violation of the Labor Code based on Defendants' failure to pay wages for all
2 hours worked at the employees' minimum wage rate or overtime rate, failure to provide all legally
3 required and legally compliant meal periods or meal period premium wages, failure to timely pay
4 earned wages during employment, failure to provide complete and accurate wage statements,
5 failure to timely pay all unpaid wages following separation of employment. Plaintiff seeks on a
6 representative basis, following notice to the Labor and Workforce Development Agency, civil
7 penalties, reasonable attorneys' fees pursuant to Labor Code section 2699(g)(1) and costs brought
8 on behalf of Plaintiff, the State of California, and others aggrieved.

9 **II. JURISDICTION AND VENUE**

10 2. This Court has jurisdiction over the claims of Plaintiff and all other current and
11 former aggrieved California-based hourly non-exempt employees because Plaintiff's lawsuit seeks
12 civil penalties on behalf of herself, all other current and former aggrieved California-based hourly
13 non-exempt employees, and the State of California in excess of twenty-five thousand dollars
14 (\$25,000); Defendants employed Plaintiff and all other current and former aggrieved California-
15 based hourly non-exempt employees; and the injuries to Plaintiff and all other current and former
16 aggrieved California-based hourly non-exempt employees occurred in locations throughout
17 California, including but not limited to San Bernardino County at 14101 Pipeline Avenue, Chino,
18 CA 91710.

19 **III. PARTIES**

20 3. Plaintiff brings this action as a representative of the Labor and Workforce
21 Development Agency on behalf of herself and other current and former employees subject to
22 violations of the Labor Code. The named Plaintiff and the persons on whose behalf this action is
23 filed include current, former and/or future employees of Defendants who work, worked, or will
24 work for Defendants as direct employees as well as temporary employees employed through temp
25 agencies as hourly non-exempt employees in California. At all times mentioned herein, the
26 currently named Plaintiff is and was domiciled and a resident and citizen of California and was
27 employed by Defendants in an hourly position at Defendants' location in San Bernardino from
28 approximately February 2023 until on or about April 12, 2023.

1 4. Plaintiff is informed and believes and thereon alleges that Defendant JOBSOURCE
2 CHINO, INC. is authorized to do business within the State of California and is doing business in
3 the State of California and/or that Defendants DOES 1-33 are, and at all times relevant hereto
4 were persons acting on behalf of Defendant JOBSOURCE CHINO, INC. in the establishment of,
5 or ratification of, the aforementioned illegal wage and hour practices or policies. Defendant
6 JOBSOURCE CHINO, INC. operates in San Bernardino County and employed Plaintiff and
7 aggrieved employees in San Bernardino County, including but not limited to, at 14101 Pipeline
8 Avenue, Chino, CA 91710.

9 5. Plaintiff is informed and believes and thereon alleges that Defendant FABFITFUN,
10 INC. is authorized to do business within the State of California and is doing business in the State
11 of California and/or that Defendants DOES 34-66 are, and at all times relevant hereto were
12 persons acting on behalf of Defendant FABFITFUN, INC. in the establishment of, or ratification
13 of, the aforementioned illegal wage and hour practices or policies. Defendant FABFITFUN, INC.
14 operates in San Bernardino County and employed Plaintiff and aggrieved employees in San
15 Bernardino County, including but not limited to, at 14101 Pipeline Avenue, Chino, CA 91710.

16 6. Plaintiff is informed and believes and thereon alleges that Defendants DOES 1
17 through 66 are corporations, or are other business entities or organizations of a nature unknown to
18 Plaintiff that employed Plaintiff and aggrieved California non-exempt employees, permitted
19 Plaintiff and aggrieved employees to work, and exercised control over the wages, hours and
20 working conditions of employment of Plaintiff and aggrieved employees.

21 7. Plaintiff is informed and believes and thereon alleges that Defendants DOES 67
22 through 100 are individuals unknown to Plaintiff. Each of the individual defendants is sued
23 individually and in his or her capacity as an agent, shareholder, owner, representative, manager,
24 supervisor, independent contractor and/or employee of each defendant who violated or caused to
25 be violated the minimum wage and overtime provisions of the Labor Code and/or any provision of
26 the Industrial Welfare Commission's wage orders regulating hours and days of work.

27 8. Plaintiff is unaware of the true names of Defendants DOES 1 through 100. Plaintiff
28 sues said defendants by said fictitious names, and will amend this complaint when the true names

1 and capacities are ascertained or when such facts pertaining to liability are ascertained, or as
2 permitted by law or by the Court. Plaintiff is informed and believes that each of the fictitiously
3 named defendants is in some manner responsible for the events and allegations set forth in this
4 complaint.

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

8 **FIRST CAUSE OF ACTION**

9 **CIVIL PENALTIES PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT OF**
10 **2004, LABOR CODE SECTIONS 2698, ET SEQ.**

11 **(Against all Defendants by Plaintiff)**

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

13 11. During Plaintiff's employment and continuing through the present, Plaintiff alleges
14 Defendants violated Labor Code sections 201, 202, 203, 204, 226, 226.7, 510, 512, 1194, 1197,
15 and the applicable Wage Orders.

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

18 13. **Failure to pay wages for all hours worked at the legal minimum wage:**
19 Defendants employed many of their employees, including Plaintiff, as hourly non-exempt
20 employees. In California, an employer is required to pay hourly employees for all "hours worked,"
21 which includes all time that an employee is under control of the employer and all time the
22 employee is suffered and permitted to work. This includes the time an employee spends, either
23 directly or indirectly, performing services which inure to the benefit of the employer.

24 14. Labor Code sections 1194 and 1197 require an employer to compensate employees
25 for all "hours worked" at least at a minimum wage rate of pay as established by the IWC and the
26 Wage Orders.

27 15. In this case, Plaintiff and other current and former aggrieved California-based
28 hourly non-exempt employees worked more minutes per shift than Defendants credited them with

1 having worked. Specifically, Defendants failed to pay Plaintiff and other current and former
2 aggrieved California-based hourly non-exempt employees all wages at the applicable minimum
3 wage for all hours worked due to Defendants' policies, practices, and/or procedures including, but
4 not limited to:

5 (a) Requiring Plaintiff and other current and former aggrieved California-based hourly
6 non-exempt employees to line up to wait to undergo and undergo off-the-clock security checks,
7 including bag checks, prior to clocking in for the start of their shift, after clocking out for their
8 meal breaks if Plaintiff and other current and former aggrieved California-based hourly non-
9 exempt employees wished to leave the premise, prior to clocking back in from their meal breaks if
10 Plaintiff and other current and former aggrieved California-based hourly non-exempt employees
11 left the premises, and after clocking out for the end of their shift.

12 16. Therefore, Defendants suffered, permitted, and required Plaintiff and other current
13 and former aggrieved California-based hourly non-exempt employees to be subject to Defendants'
14 control without paying wages for that time. This resulted in Plaintiff and other current and former
15 aggrieved California-based hourly non-exempt employees working time for which they were not
16 compensated any wages, in violation of Labor Code sections 1194 and 1197 and the applicable
17 Wage Order.

18 17. **Failure to pay wages for overtime hours worked at the overtime rate of pay:**
19 Defendants employed many of their employees, including Plaintiff, as hourly non-exempt
20 employees. In California, an employer is required to pay hourly employees for all "hours worked,"
21 which includes all time that an employee is under control of the employer and all time the
22 employee is suffered and permitted to work. This includes the time an employee spends, either
23 directly or indirectly, performing services that inure to the benefit of the employer.'

24 18. Labor Code sections 510 and 1194 require an employer to compensate employees a
25 higher rate of pay for hours worked in excess of eight (8) hours in a workday, in excess of forty
26 (40) hours in a workweek, and on any seventh consecutive day of work in a workweek:

27 Any work in excess of eight (8) hours in one workday, any work in excess of forty (40)
28 hours in any one (1) workweek, and the first eight (8) hours worked on the seventh day of
work in any one (1) workweek, shall be compensated at the rate of no less than one-and-
one-half (1.5) times the regular rate of pay for an employee. Any work in excess of twelve

(12) hours in one (1) day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight (8) hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

Labor Code section 510.

19. In this case, Defendants failed to pay Plaintiff and other current and former aggrieved California-based hourly non-exempt employees overtime wages for all overtime hours worked due to Defendants' policies, practices, and/or procedures including, but not limited to,

(a) Requiring Plaintiff and other current and former aggrieved California-based hourly non-exempt employees to line up to wait to undergo and undergo off-the-clock security checks, including bag checks, prior to clocking in for the start of their shift, after clocking out for their meal breaks if Plaintiff and other current and former aggrieved California-based hourly non-exempt employees wished to leave the premise, prior to clocking back in from their meal breaks if Plaintiff and other current and former aggrieved California-based hourly non-exempt employees left the premises, and after clocking out for the end of their shift.

20. The foregoing policies, practices, and/or procedures resulted in time during each workday that Plaintiff and other current and former aggrieved California-based hourly non-exempt employees were under the control of Defendants but were not compensated. To the extent that the foregoing uncompensated time occurred when Plaintiff and other current and former aggrieved California-based hourly non-exempt employees worked more than eight (8) hours in a workday, more than forty (40) hours in a workweek, and/or seven (7) days in a workweek, Defendants failed to pay them at their overtime rate of pay for overtime hours worked, in violation of Labor Code sections 510 and 1194 and the applicable Wage Order.

21. **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.

22. 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

1 employee's sixth hour of work. Labor Code sections 226.7, 512; Wage Order 1 at §11; *Brinker*
2 *Rest. Corp. v. Super Ct. (Hohnbaum)* (2012) 53 Cal.4th 1004. An employer may not employ an
3 employee for a work period of more than ten (10) hours per day without providing the employee
4 with a second such meal period of not less than thirty (30) minutes prior to the start of the eleventh
5 hour of work. *Id.* If the employee is not relieved of all duty during a meal period, the meal period
6 shall be considered an "on duty" meal period and counted as time worked. A paid "on duty" meal
7 period is only permitted when: (1) the nature of the work prevents an employee from being
8 relieved of all duty; and (2) the parties have a written agreement agreeing to on-duty meal periods.

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

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

17 (a) Requiring Plaintiff and other current and former aggrieved California-based hourly
18 non-exempt employees, who left the premises for meal breaks to undergo off-the-clock security
19 checks, as a result Plaintiff and other current and former aggrieved California-based hourly non-
20 exempt employees were not provided with timely, uninterrupted, duty-free meal breaks of at least
21 30 minutes; and

22 (b) Discouraging off-premises meal breaks by requiring Plaintiff and other current and
23 former aggrieved California-based hourly non-exempt employees to be subjected to an off-the-
24 clock security check and bag check process during meal breaks if they left Defendants' premises
25 during their meal breaks.

26 25. Additionally, Plaintiff alleges that Defendants maintained a policy, practice, and/or
27 procedure of failing to compensate Plaintiff and other current and former aggrieved California-
28 based hourly non-exempt employees one (1) hour of pay at their regular rate of pay for each

1 workday that Plaintiff and other current and former aggrieved California-based hourly non-exempt
2 employees did not receive legally required and compliant meal periods, in violation of Labor Code
3 section 226.7.

4 26. Defendants' foregoing policies, practices, and/or procedures resulted in Plaintiff
5 and other current and former aggrieved California-based hourly non-exempt employees not
6 receiving wages to compensate them for workdays during which Defendants did not provide them
7 with meal periods in compliance with California law.

8 27. **Failure to timely pay earned wages during employment:** In California, wages
9 must be paid at least twice during each calendar month on days designated in advance by the
10 employer as regular paydays, subject to some exceptions. Labor Code section 204(a). Wages
11 earned between the 1st and 15th days, inclusive, of any calendar month must be paid between the
12 16th and the 26th day of that month and wages earned between the 16th and the last day,
13 inclusive, of any calendar month must be paid between the 1st and 10th day of the following
14 month. *Id.* Other payroll periods such as those that are weekly, biweekly, or semimonthly, must be
15 paid within seven (7) calendar days following the close of the payroll period in which wages were
16 earned. Labor Code section 204(d).

17 28. As a derivative of Plaintiff's claims above, Plaintiff alleges that Defendants failed
18 to timely pay Plaintiff's and other current and former aggrieved California-based hourly non-
19 exempt employees' earned wages (including minimum wages, overtime wages, and/or meal period
20 premium wages), in violation of Labor Code section 204. Defendants' aforementioned policies,
21 practices, and/or procedures resulted in their failure to pay Plaintiff's and other current and former
22 aggrieved California-based hourly non-exempt employees' their earned wages within the
23 applicable time frames outlined in Labor Code section 204.

24 29. **Failure to provide complete and accurate wage statements:** Labor Code section
25 226, subdivision (a). Labor Code section 226(a) provides, *inter alia*, that, upon paying an
26 employee his or her wages, the employer must "furnish each of his or her employees ... an
27 itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the
28 employee, except for any employee whose compensation is solely based on a salary and who is

1 exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of
2 the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable
3 piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided, that all
4 deductions made on written orders of the employee may be aggregated and shown as one item, (5)
5 net wages earned, (6) the inclusive dates of the pay period for which the employee is paid, (7) the
6 name of the employee and his or her social security number, (8) the name and address of the legal
7 entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and
8 the corresponding number of hours worked at each hourly rate by the employee.”

9 30. As a derivative of Plaintiff’s allegations above, Defendants’ failure to pay Plaintiff
10 and other current and former aggrieved California-based hourly non-exempt employees all wages
11 earned (including minimum wages, overtime wages, and/or meal period premium wages) rendered
12 Plaintiff’s and other current and former aggrieved California-based hourly non-exempt employees’
13 wage statements inaccurate, in violation of Labor Code section 226.

14 31. **Failure to pay employees all wages due at time of termination/resignation:** An
15 employer is required to pay all unpaid wages timely after an employee’s employment ends. The
16 wages are due immediately upon termination (Labor Code section 201) or within seventy-two (72)
17 hours of resignation (Labor Code section 202).

18 32. As a derivative of Plaintiff’s allegations above, because Defendants failed to pay
19 Plaintiff and other current and former aggrieved California-based hourly non-exempt employees
20 all their earned wages (including minimum wages, overtime wages, and/or meal period premium
21 wages), Defendants failed to pay those employees timely after each employee’s termination and/or
22 resignation, in violation of Labor Code sections 201, 202, and 203.

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

27 34. Plaintiff has complied with the procedures for bringing suit specified in Labor
28 Code section 2699.3. On January 24, 2024, Plaintiff filed a PAGA Claim Notice with the LWDA

1 and provided notice to Defendants by certified mail which provided notice of the specific
2 provisions of the Labor Code alleged to have been violated, including the facts and theories to
3 support the violations alleged.

4 35. Pursuant to Labor Code section 2699.3, the LWDA must give written notice by
5 certified mail to the parties that it intends to investigate the alleged violations of the Labor Code
6 within 60 days of the date of the complainant's written notice. The LWDA failed to provide the
7 parties notice within 60 days of the date of Plaintiff's PAGA Claim Notice that the LWDA intends
8 to investigate Plaintiff's claims.

9 36. Pursuant to Labor Code sections 2699(a) and (f), Plaintiff is entitled to recover civil
10 penalties for Defendants' violations of Labor Code sections 201, 202, 203, 204, 226, 226.7, 510,
11 512, 1194, and 1197, During Plaintiff's employment and continuing through the present,
12 preceding Plaintiff sending the initial PAGA Claim Notice to the LWDA to the present, in the
13 following amounts:

14 a. For violations of Labor Code sections 201, 202, 203, 204, 226.7, and 512;
15 one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation
16 and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent
17 violation [penalty amounts established by Labor Code section 2699(f)(2)].

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

22 c. For violations of Labor Code section 510, fifty dollars (\$50) for each
23 employee for each pay period for the initial violation, and for each subsequent violation, one
24 hundred dollars (\$100) for each underpaid employee for each pay period [penalty amounts
25 established by Labor Code section 558].

26 d. For violations of Labor Code section 1194 and 1197, one hundred dollars
27 (\$100) for each underpaid employee for each pay period for the initial violation, and for each
28 subsequent violation, two hundred fifty dollars (\$250) for each underpaid employee for each pay

period [penalty amounts established by Labor Code section 1197.1].

37. 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: April 2, 2024

Respectfully submitted,
LAVI & EBRAHIMIAN, LLP

By:



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