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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

TIFFANY ALLEN,

Plaintiff,

vs.

GOLDEN ROAD FOOD SERVICES, LLC; RON COOLBAUGH; and DOES 1 to 25, inclusive,

Defendants.

CASE NO.: 24STCV12059

COMPLAINT FOR DAMAGES FOR:

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

COMES NOW Plaintiff, TIFFANY ALLEN (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 GOLDEN ROAD FOOD SERVICES, LLC; RON COOLBAUGH; and DOES 1 to 25, inclusive (hereinafter collectively "GOLDEN ROAD" or "Defendant(s)") 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 $25,000.

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

3. Plaintiff is informed and believes that at all times herein mentioned, Defendant GOLDEN ROAD FOOD SERVICES, LLC, is a California limited liability company, doing business 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 RON COOLBAUGH is a male resident of the State of California, and the owner, managing agent, and/or director GOLDEN ROAD FOOD SERVICES. RON COOLBAUGH is being included in this lawsuit pursuant to Labor Code Section 558.1 as he 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 GOLDEN ROAD FOOD SERVICES, and RON COOLBAUGH are collectively referred to herein as "Defendant(s)" (unless otherwise noted) or "GOLDEN ROAD".

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

GENERAL ALLEGATIONS

7. Plaintiff started working at GOLDEN ROAD on or around May 2022. Plaintiff was classified as an hourly, non-exempt employee and her latest rate of pay was $19.75 per hour. Plaintiff's latest job title was Shift Manager. Plaintiff's employment ended in or around late December 2023.

8. In the case of Huff v. Securitas Sec. Servs. USA, Inc., 23 Cal. App. 5th 745 (2018), Plaintiff, Huff, was employed as a security guard for the Defendant Employer, Securitas Security Services USA, Inc., an onsite security provider. After about a year of employment, Huff resigned. Huff then filed suit against Securitas under PAGA. In his claim, Huff specifically alleged violations to the Labor Code requiring immediate payment of wages upon termination of employment and weekly payment of wages to temporary employees. The trial court determined Huff was not a temporary employee, and therefore, lacked standing to bring the claim. Thus, Securitas was granted a motion for summary judgement. Later, the trial court granted Huff a new trial. Securitas then appealed the grant of a new trial. On appeal, the issue was whether Huff could bring a PAGA claim and sue for Labor Code violations that did not directly affect him. Securitas unsuccessfully argued that the PAGA statute only allows the PAGA representative to sue for violations that the representative has personally suffered. The

PAGA statute states that an "aggrieved employee" is able to file suit on behalf of themselves and others. The statute also states that an "aggrieved employee" is "any person who was employed by the alleged violator and against whom one or more of the alleged violations was committed." Because at least one of the violations that Huff had alleged had affected him personally, the Court of Appeal denied Securitas' motion.

9. In sum, since PAGA allows Plaintiffs to bring suit on behalf of both themselves and other employees, it allows for suits broader than the specific violations the named employee experienced. Therefore, even if the employee did not personally experience the Labor Code violations, the employer may still be liable to under PAGA. Consequently, it is Plaintiff's position that Plaintiff can equivocally bring the following labor code violations on behalf of all other employees, including ALL hourly, non-exempt employees who worked for GOLDEN ROAD anywhere in the state of California during the relevant PAGA period.

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

11. GOLDEN ROAD violated Labor Code § 1194, 1194.2, 1197, and 1197.1 because it failed to pay Plaintiff and other similarly situated aggrieved employees for all hours worked, including the statutory minimum wage for all hours worked and for "off the clock" work. This is so because Plaintiff would engage in work-related tasks during her meal breaks despite being clocked out because the restaurant location was understaffed and there was not another manager on duty. GOLDEN ROAD was unequivocally aware of Plaintiff working these "off the clock" hours, however, Plaintiff was not paid for all hours worked, which is a minimum wage violation. Moreover, GOLDEN ROAD had a company policy wherein they would disproportionately round down the number of hours worked, resulting in "time shaving" and further resulting in aggrieved employees not being paid for all hours worked. Moreover, GOLDEN ROAD failed to provide its employees with proper and accurate reporting time pay.

12. Due to the above "off the clock" violations, GOLDEN ROAD also violated Labor Code §510 because it failed to pay Plaintiff and other aggrieved employees overtime compensation, even though they worked more than 8 hours per day, 12 hours per day, and/or 40 hours per week throughout their employment. Plaintiff's and other aggrieved employees' actual work hours , especially those "off the clock" hours, entitled them to overtime compensation, however, GOLDEN ROAD 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, GOLDEN ROAD 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. GOLDEN ROAD 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. GOLDEN ROAD did not completely relieve Plaintiff and others of all duty during said rest periods. GOLDEN ROAD 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. In fact, Plaintiff and others did not take any rest breaks at all. The concept of rest breaks was not 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 a shift manager, especially in the fast-paced restaurant industry. As such, the culture as well as the policies and procedures of GOLDEN ROAD did not lend itself to the employees receiving consistent statutory rest breaks wherein they were relieved of all work duties. The environment at GOLDEN ROAD was not conducive to receiving multiple statutory rest breaks under California law and timely, statutory rest breaks were not authorized or enforced.

14. GOLDEN ROAD 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 for every five (5) hours of work throughout their employment. GOLDEN ROAD did not completely relieve Plaintiff and other employees of all duty during said meal periods. GOLDEN ROAD did not pay to Plaintiff and its hourly, non-exempt employees one additional hour of pay at their regular rate of compensation for each workday that one or more statutory meal periods was not provided. The hourly, non-exempt employees would often not be able to receive any meal breaks, much less meal periods before the 5th hour worked that were actually uninterrupted. The latter was due to the workload, being understaffed, and due to being in a fast-paced restaurant environment. Like the rest breaks, receiving a thirty-minute <u>uninterrupted</u> and <u>timely</u> meal break was not part of the company culture and was not enforced by GOLDEN ROAD. Consequently, it was the normal practice and custom of GOLDEN ROAD not to authorize, permit, and enforce timely statutory meal periods. Since Plaintiff was penalized if she didn't actually clock out for a meal break to make it seem like the company was following California law, Plaintiff would often times clock out for a meal period but continue working. If GOLDEN ROAD had Plaintiff sign a meal period waiver, it would not be valid and enforceable since Plaintiff and others generally worked more than a 6-hour shift. If GOLDEN ROAD had Plaintiff sign an on-duty meal period agreement wherein Plaintiff agreed to work through the meal periods, it would be invalid and unenforceable because the nature of Plaintiff's job does not and did not prevent her from taking a meal period and the company could have hired "breakers" to relieve Plaintiff of her job duties so that she can actually take a timely, uninterrupted meal period. Moreover, any such "on duty" meal period agreement did not allow for Plaintiff to revoke such an agreement even if it was signed. As such, Plaintiff and others did not always receive statutory, timely meal periods during their employment. To the extent that GOLDEN ROAD argues that employees receive meal break premium pay for missed meal periods, that argument is inconsequential for PAGA penalty purposes since the PAGA penalties are for the violations themselves, irrespective of whether an employee received the premium payment for a missed, short, or interrupted meal period. In *Kirby v. Immoos Fire Protection, Inc.*, the Court stated, "section 226.7 does not give employers a lawful choice between providing *either* meal and rest breaks *or* an additional hour of pay." *See Kirby v. Immoos Fire Protection, Inc.*, (2012) 53 Cal.4th 1244, 1256 (emphasis in original). Thus, the extra hour of pay does not excuse the violation; the employer has still committed a violation even if the remedy for the violation has been paid. *See Wert v. U.S. Bancorp*, (S.D. Cal. Mar. 22, 2016, 2016 WL 1110302 at *4). As such, the work environment and culture at GOLDEN ROAD was not conducive to receiving consistent, timely, statutory meal breaks under California law. Moreover, any meal or rest break premiums paid were not compensated at the weighted average regular rate, inclusive of bonuses and/or incentive payments as well as overtime compensation.

15. Furthermore, during the relevant time period, and due to the above labor code violations, GOLDEN ROAD failed to pay Plaintiff and other similarly situated aggrieved employees all wages due to them within any time period specified by California Labor Code section 204. Since Plaintiff was not compensated for her "off the clock" work and since Plaintiff did not receive meal and rest break premiums, Plaintiff would still be owed wages pursuant to Labor Code Section 204. GOLDEN ROAD was also in violation of California Labor Code section 226(a) by failing to include pertinent information on the wage statements, including but not limited to, the correct hourly rate, all hours worked, overtime hours worked, correct overtime pay, gross wages earned, net wages earned, premium pay for missed meal and rest breaks, all deductions, the correct start and end of the pay period, all employee identifying information, the correct and complete name and address of the legal employer, and reimbursement for business expenses, among others. As such, GOLDEN ROAD did not provide Plaintiff and other similarly situated aggrieved employees with complete, accurate itemized wage statements.

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

17. GOLDEN ROAD also violated Labor Code § 203 because it willfully failed to pay Plaintiff and other similarly situated aggrieved employees earned and due wages upon separation of employment, either immediately upon involuntary termination, or within 72 hours of resignation. These earned but unpaid wages include compensation for all hours

worked, including minimum wages, overtime compensation, and premium pay for missed meal and rest breaks.

18. During the relevant time period, Plaintiff and other aggrieved employees incurred necessary, business-related expenses and costs that were not reimbursed by GOLDEN ROAD. These costs include, but are not limited to, personal cell phones for work purposes and uniforms. Moreover, Plaintiff was told that the company would reimburse her for parking tickets which she received due to the job, however, that was never done. In addition, Plaintiff's personal vehicle got damaged while she was picking up a C02 tank for the restaurant. Plaintiff did use her personal cell phone to contact her boss and the District Manager during her shift about work-related issues. Accordingly, GOLDEN ROAD was in violation of California Labor Code sections 2800 and 2802.

19. Additionally, GOLDEN ROAD violated Labor Code Section 351 and 353 by taking some of the tips meant for employees and also deducting the tips from Plaintiff's and others' earned wages. GOLDEN ROAD also deducted the credit card fee from Plaintiff's and others' tips and did not timely provide the credit card and even cash tips to Plaintiff and other similarly situated aggrieved employees. As such, Plaintiff and the other similarly situated employees were not given accurate tips to which they were entitled.

20. Furthermore, GOLDEN ROAD did not provide proper and correct/accurate sick pay that was also delineated on employee pay stubs and also failed to provide proper sick leave in violation of Labor Code sections 233 and 246. In addition, GOLDEN ROAD failed to provide proper rest facilities and suitable seating under IWC Wage Order no. 5-2001.

21. Each of the aforementioned violations, except the violations for inaccurate pay statements under Labor Code section 226(a), is among the enumerated serious violations set forth in Labor Code § 2699.5, for which there is no statutory right to cure.

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FIRST CAUSE OF ACTION

PRIVATE ATTORNEYS GENERAL ACT
Representative Claim for PAGA penalties under California Labor Code sections 201, 202, 203, 204 and/or 204b, 210, 226, 226.3, 226.7, 233, 246, 351, 353, 510, 512, 558, 1174, 1174.5, 1194, 1197.1, 1198, 2802 and IWC Wage Order 5-2001)

(Plaintiff against All Named Defendants and all DOE defendants)

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

23. Plaintiff has complied with the procedures for bringing suit specified in California Labor Code § 2699.3. By letter dated January 24, 2024, Plaintiff gave written notice by certified mail to the Labor and Workforce Development Agency ("LWDA") and Defendants of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations.

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

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

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

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

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

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

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

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

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

Violations of California Labor Code sections 201, 202, 203, 204, and/or 204b, 210, 226, 226.3, 226.7, 233, 246, 351, 353, 510, 512, 558, 1174, 1174.5, 1194, 1197.1, 1198, 2802, and any other Labor Codes/Industrial Welfare Commission Order (No. 5) violated based on the facts alleged in this Complaint.

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

PRAYER FOR RELIEF

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

1. For the imposition of civil penalties;
2. For maximum civil penalties available under Labor Code Section 2699 against

Defendants in a manner and amount authorized by that statute, as described more particularly in the Complaint and representative PAGA claims;

3. For all costs and disbursements incurred in this suit;

4. Reasonable attorney's fees where available by law, including but not limited to, pursuant to Labor Code section 2698 et seq., Code of Civil Procedure section 1021.5, and/or other applicable laws; and

5. For such other and further relief as this Court may deem proper.

DATED: May 13, 2024

MESSRELIAN LAW INC.

By______________________________
Harout Messrelian, Esq.
Attorneys for Plaintiff Tiffany Allen