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11 behalf of other persons similarly situated and similarly aggrieved
12 employees

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **FOR THE COUNTY OF ORANGE – CIVIL COMPLEX CENTER**

15 CAROLINA SALINAS ESTRADA,
16 individually and on behalf of other persons
17 similarly situated and similarly aggrieved
18 employees,

19 Plaintiffs,

20 v.

21 FMS MANAGEMENT, an active California
22 Corporation; and DOES 1 through 10,

23 Defendants.

Case No.: 30-2024-01381258-CU-OE-CXC

Assigned to: Hon. Randall J. Sherman
Department: CX-105

**FIRST AMENDED COMPLAINT –
CLASS AND REPRESENTATIVE
ACTION
JURY TRIAL DEMANDED**

1. Failure to Provide Meal Periods;
2. Failure to Provide Paid Rest Periods;
3. Failure to Pay Wages;
4. Failure to Timely Pay Wages at Termination/Separation;
5. Failure to Timely Pay Vacation Wages at Termination;
6. Failure to Provide Accurate Wage Statements;
7. Failure to Reimburse Business

- Expenses;
8. Violation of Unfair Business Practices Act – Bus. & Prof. Code §§ 17200, *et seq.*; and
9. Penalties Pursuant to Private Attorneys General Act (“PAGA”)

Plaintiff CAROLINA SALINAS ESTRADA (“Plaintiff”), on behalf of herself and all others similarly situated, based on information and belief, complains and alleges:

I.

INTRODUCTION

1. This class and representative action lawsuit arises out of the failure of Defendant FMS MANAGEMENT (referred here as “FMS” or “Defendant”) to provide meal periods at the proper intervals, to provide rest periods at the proper intervals, to pay all wages owed including overtime, to provide accurate wage statements, to pay all wages owed to terminated or separated employees in a timely manner, to pay all vacation pay owed to terminated or separated employees, and to reimburse employee business expenses.
2. Defendant employed Plaintiff during the applicable time period, utilizing consistent policies and procedures in violation of Labor Code §200, *et seq.*, Labor Code §500, *et seq.*, Labor Code §1194, *et seq.*, Labor Code §2800, *et seq.*, and the applicable Wage Orders issued by the California Industrial Welfare Commission.
3. Defendant is engaged in the business of operating fast food restaurants. Plaintiff was hired around December 2017 and was terminated on or about June 3, 2023. At all times during said employment, Plaintiff had a non-exempt classification. Plaintiff was working at the McDonald’s restaurant located at 31822 Del Obispo Street in San Juan Capistrano, California 92675.
4. At the time of her separation, Plaintiff was not paid all her wages, including all accrued and vested vacation pay. This includes the utilization of debit pay

1 cards which did not result in the timely and complete payment of wages at
2 proper intervals.

- 3 5. Plaintiff was also deprived of lawful meal and rest periods, not paid all wages
4 she was entitled to, and failed to receive accurate and compliant itemized wage
5 statements.
- 6 6. Defendant had a consistent policy of not paying wages for all hours worked,
7 including overtime and double time wages to the extent applicable, including
8 failing to calculate overtime and double time with respect to an employee's
9 regular rate of compensation.
- 10 7. Defendant had a consistent policy of requiring its employees, including
11 Plaintiff, to work through meal periods or work without a meal period for at
12 least five (5) hours of a shift and failing to pay such employees one (1) hour of
13 pay at the employees' regular rate of compensation for each workday that the
14 meal period was not provided or as required by California state wage and hour
15 laws.
- 16 8. Defendant had a consistent policy of failing to allow its employees, including
17 Plaintiff, rest periods for at least ten (10) minutes per four (4) hours, or a major
18 fraction worked, and failing to pay such employees one (1) hour of pay at their
19 regular rate of compensation for each workday that the rest period was not
20 provided, or other compensation, as required by California state and wage and
21 hour laws.
- 22 9. Defendant knowingly provided inaccurate wage statements to its
23 employees, including Plaintiff, that did not correctly include the correct wages,
24 including compensation for meal periods not provided and rest period not
25 authorized or permitted as required by California state wage and hour laws.
- 26 10. Defendant had a consistent policy of failing to pay its employees, including
27 Plaintiff, all wages including unpaid premium wages and accrued and vested
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1 vacation pay, due at the termination or separation, in violation of California
2 state wage and hour laws.

3 11. Defendants had a consistent policy of failing to reimburse their employees,
4 including Plaintiff, for all business expenses incurred in the discharge of their
5 duties.

6 12. Plaintiff, on behalf of herself and all Class Members, brings this action
7 pursuant to Lab. Code §§ 201, 202, 203, 204, 210, 212, 213, 226, 226.7, 227.3, 510,
8 512, 1194, 1194.2, 2800, and 2802 seeking unpaid wages, penalties, equitable
9 relief, and reasonable attorneys' fees and costs.

10 13. Plaintiff, on behalf of herself and the putative class members, also brings
11 this action pursuant to Bus. & Prof. Code §§ 17200, *et seq.*, seeking injunctive
12 relief, restitution, and disgorgement of all benefits obtained by Defendant as a
13 result of Labor Code and applicable Wage Order violations.

14 14. Plaintiff, on behalf of the State of California, herself, and other similarly
15 aggrieved employees, also brings this action pursuant to California Private
16 Attorney General Act ("PAGA"), Cal. Lab. Code §2698, *et seq.* seeking unpaid
17 wages and other compensation, penalties, and reasonable attorneys' fees and
18 costs.

19 II.

20 JURISDICTION AND VENUE

21 15. Venue as to each defendant is proper in this judicial district, pursuant to
22 Code of Civil Procedure § 395. The County of Orange is the proper venue,
23 because work for Defendant was performed by Plaintiff and other class
24 members in the County of Orange and the legal obligations owed by Defendant
25 to Plaintiff and other class members were breached in the County of Orange.

26 16. The California Superior Court has jurisdiction in this matter, because Plaintiff is
27 a resident of California, Defendant is qualified to do business in California and
28 regularly conducts business in California.

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III.

THE PARTIES

17. Plaintiff CAROLINA SALINAS ESTRADA is a resident of the State of California, and was employed by Defendant in Orange County from on or about December 2017 through on or about June 3, 2023.
18. Defendant FMS MANAGEMENT was an active California Corporation Corporation at all times during the claims of Plaintiff and the putative class and was doing business in California.
19. Plaintiff is ignorant of the true names, capacities, relationships and extent of participation in the conduct herein alleged, of the defendants sued herein as Does 1 through 10, but she is informed and believes and thereon alleges that said defendants are legally responsible for the wrongful conduct alleged herein and therefore sues these defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiff will amend this First Amended Complaint to allege their true names and capacities when ascertained.
20. Plaintiff is informed and believes and thereon alleges that each Defendant acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are legally attributable to the other Defendants.

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IV.

GENERAL ALLEGATIONS

21. At all times relevant here and as set forth in the following paragraphs of this First Amended Complaint, Defendant employed more than 100 people; and Plaintiff and each member of the putative class was employed by Defendant, and each of them, in the State of California.
22. The employees of Defendant have not been provided: uninterrupted thirty-minute meal periods for work periods of more than five (5) hours per day;

1 second uninterrupted thirty-minute meal periods for work periods of more
2 than ten (10) hours per day; and have not been permitted to take ten-minute
3 (10) rest periods for work periods of four (4) hours or major fractions, pursuant
4 to the Labor Code, and applicable IWC Wage Orders.

5 23. Defendant failed to pay employees wages owed for all hours worked, including
6 overtime and double time hours as applicable, as well as failing to calculate any
7 overtime wages with respect to an employee's regular rate of compensation.

8 24. Defendant failed to pay Plaintiff and the members of her putative class upon
9 separation the wages earned and unpaid at the time of discharge, including
10 unpaid premium wages and accrued and vested vacation pay or "PTO."

11 25. Defendant failed to provide Plaintiff and the putative members of her class, at
12 the time of each payment of wages, an accurate itemized statement in writing,
13 showing the gross wages earned and/or paid, including premium wages owed
14 for failing to provide meal and/or rest periods at the proper intervals.

15 26. Defendants failed to fully reimburse Plaintiff and putative members of her class
16 for all their business-related expenditures. In violation of the Labor Code,
17 Plaintiff and putative members of her class did not receive indemnification for
18 all business-related expenditures.

19 27. Plaintiff asserts claims for relief on behalf of herself and other similarly situated
20 persons as a class action pursuant to Code of Civil Procedure § 382. Plaintiff
21 and all members of her putative class are described below with specificity and
22 fall in several categories of subclasses whose rights have been violated under
23 the law. Defendant has made no effort as of the filing of this First Amended
24 Complaint to correct or remedy the violations of law specified here.

25 **V.**

26 **CLASS ACTION ALLEGATIONS**

27 28. Plaintiff brings this action on behalf of herself and all other employees of FMS
28 who are similarly-situated persons as a class action pursuant to California Code

1 of Civil Procedure § 382. There is a well-defined common interest by and
2 among Plaintiff and the putative class members, and it is impractical to bring all
3 those individuals before the court under separate, different and repetitive
4 actions. Plaintiff also reserves the right to amend or modify the class
5 descriptions set forth below in greater specificity or clarity if required in the
6 future in accordance with Rule 3.765 (b), California Rules of Court. The class
7 which Plaintiff seeks to represent is composed of and defined as follows:

8 “Plaintiff Class” – All of Defendant’s current and former non-exempt
9 employees who worked for Defendant in California, during the four
10 years before the filing of the Complaint through the time of class
11 certification.

12 29. Plaintiff seeks to certify the following subclasses of employees:

- 13 a) “Meal Period Subclass” – All members of Plaintiff Class who worked
14 each period exceeding five (5) hours without an uninterrupted, off
15 duty, thirty (30) minute meal period and/or periods in excess of ten (10)
16 hours without a second uninterrupted, off duty, thirty (30) minute
17 meal periods; and were not provided compensation of one hour’s pay
18 at the employee’s regular rate for each day that a meal period was not
19 provided.
- 20 b) “Rest Period Subclass” – All members of Plaintiff Class who worked
21 periods of four (4) hours or major fraction thereof without a duty free
22 rest period of at least 10-minutes and who were not compensated one
23 hour’s pay at the employee’s regular rate for each day that a rest period
24 was not permitted.
- 25 c) “Unpaid Wage Subclass” – All members of Plaintiff Class who were
26 not paid their minimum/actual wages, including any time that was
27 unlawfully rounded by Defendant or otherwise considered as off-the-
28 clock, as well as overtime wages for hours worked in excess of eight

1 hours per day at the one and a half rate (of an employee's regular rate
2 of pay) or at a double time rate (of an employee's regular rate of pay)
3 as applicable.

- 4 d) "Waiting Time Subclass" – All members of Plaintiff Class to whom
5 Defendant failed to pay all wages due to them upon termination or
6 resignation under Labor Code §§ 201-203.
- 7 e) "Vacation Pay Subclass" – All members of Plaintiff Class to whom
8 Defendant failed to pay all vacation wages owed, vested or agreed to
9 upon termination or resignation as required by Labor Code §227.3.
- 10 f) "Wage Statement Subclass" – All members of Plaintiff Class to whom
11 Defendant improperly failed to provide accurate itemized wage
12 statements under Labor Code §§ 226.
- 13 g) "Expense Reimbursement Subclass" – All members of Plaintiff Class to
14 whom Defendants failed to fully reimburse employee business
15 expenses as required by Labor Code §2802.
- 16 h) "UCL Subclass" – All members of the Meal Period, Rest Period,
17 Unpaid Wage, Waiting Time, Vacation Pay, Wage Statement, and
18 Expense Reimbursement Subclasses who were subject to unlawful,
19 illegal, unfair and/or deceptive business acts and practices by
20 Defendant and are entitled to disgorgement and restitution of unpaid
21 wages.

22 30. There is a well-defined community of interest among many persons who
23 comprise a readily ascertainable class:

- 24 a) Numerosity - The potential members of the Class and Subclasses as
25 defined here are so numerous that the individual joinder of all of them as
26 named plaintiffs is impracticable. The number of members of the Class
27 and Subclasses is unknown to Plaintiff. It is however estimated that the
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1 members are more than 100 individuals, and their identities may readily
2 be ascertained from Defendant's records.

- 3 b) Typicality – The claims of Plaintiff are typical of the claims of all
4 members of the Class and Subclasses, who sustained similar damages
5 arising out of Defendant's common course of conduct in violation of law
6 as alleged.
- 7 c) Ascertainable Class – The proposed Class and Subclasses are
8 ascertainable as the members can readily be identified and located based
9 on the Defendant's payroll and personnel records.
- 10 d) Adequacy – Plaintiff is an adequate representative of the Class and
11 Subclasses: Plaintiff will fairly protect the interests of the members, she
12 has no interest adverse to the members, and she will vigorously pursue
13 this lawsuit on behalf of all the members of the Class and Subclasses.
14 Plaintiff's attorneys are competent, skilled and experienced in litigating
15 large employment law class actions.
- 16 e) Superiority - Class action treatment will allow a large number of
17 similarly situated persons to prosecute their common claims in a single
18 forum simultaneously, efficiently, and without the unnecessary
19 duplication of effort and expense that numerous individual actions
20 would require. Further, the monetary amounts due to many individual
21 members of the Class and Subclasses are likely to be relatively small, and
22 the burden and expense of individual litigation would make it difficult
23 or impossible for the members to seek and obtain relief. A class action
24 will serve an important public interest by permitting employees harmed
25 by Defendant's unlawful practices to effectively pursue recovery of the
26 sums owed to them.
- 27 f) Common Questions of Law and Fact – There are common questions of
28 law and fact as to the members of the Class and Subclasses which are

1 superior to questions affecting only individual members of the Class and
2 Subclasses. The common questions of law and fact may be summarized
3 as follows and if necessary will be refined with the progress of formal
4 discovery in the case:

- 5 g) Whether Defendant failed to provide members of Plaintiff Class who
6 ceased employment with Defendant all wages owed at the time of the
7 cessation of the employee-employer relationship?
- 8 h) Whether Defendant violated California law and applicable Wage Orders
9 by failing to provide Plaintiff Class members with paid ten-minute (10)
10 rest periods for each four hours worked?
- 11 i) Whether the remedy for an employer's failure to provide rest breaks as
12 required by law is a premium wage for hardship of missing a lawful rest
13 break?
- 14 j) Whether Defendant violated California law and applicable Wage Orders
15 by failing to provide Plaintiff Class members with thirty minute (30)
16 meal period for more than five hours of work?
- 17 k) Whether Defendant violated California law and applicable Wage Orders
18 by failing to provide members of Plaintiff Class with a second meal
19 period?
- 20 l) Whether the remedy for an employer's failure to provide meal period as
21 required by law is a premium wage for hardship of missing a lawful
22 meal period?
- 23 m) Whether Defendant violated California law, including the applicable
24 wage orders by failing to properly compensate Plaintiff Class members
25 for all hours worked, including overtime and double time hours as
26 applicable?
- 27 n) Whether Plaintiff Class is entitled to waiting time penalties under Labor
28 Code § 203?

- 1 o) Whether Defendant violated Labor Code §227.3 by its failure to provide
2 Plaintiff Class with all vacation wages or PTO owed, vested or agreed to
3 upon termination or separation?
- 4 p) Whether Defendant violated California law by its failure to provide
5 Plaintiff Class with accurate and itemized wage statements?
- 6 q) Whether Defendants have violated Labor Code §2802 by failing to
7 reimburse Plaintiff and the Plaintiff Class for all business expenses
8 incurred by them in direct consequence of the discharge of their duties?
- 9 r) Whether Defendant's use of debit pay cards resulted in the timely and
10 complete payment of wages to employees at proper intervals?
- 11 s) Whether Defendant violated Business and Professions Code §§ 17200 et.
12 seq., Labor Code §§ 201, 202, 203, 204, 210, 212, 213, 226, 226.7, 227.3, 510,
13 512, 1194, 1194.2, 2800, 2802, and applicable Wage Orders which
14 constitute violations of the public policy?
- 15 t) Whether Plaintiff Class is entitled to an equitable relief in accordance
16 with Business and Professions Code §§ 17200 et. seq.
- 17 u) Whether Defendant's affirmative defenses, if any, raise common issues
18 of law and fact as to Plaintiff Class as a whole and/or Subclasses in
19 particular?

20 **VI.**

21 **FIRST CAUSE OF ACTION**

22 **FAILURE TO PROVIDE MEAL PERIOD OR**
23 **COMPENSATION IN LIEU THEREOF**

24 **(Labor Code §§ 226.7, 512)**

25 **(By Plaintiff and Meal Period Subclass against Defendant)**

- 26 31. Plaintiff incorporates paragraphs 1 through 30 of this First Amended Complaint
27 as if fully alleged herein.
- 28 32. By its failure to provide thirty minute (30) uninterrupted meal period as well as
second meal period, if applicable, to Plaintiff and members of Meal Period

Subclass, Defendant willfully violated the provisions of Labor Code §§ 226.7, 512 and applicable IWC Wage Orders.

33. As a result of Defendant's unlawful conduct, Plaintiff and other members of the Subclass have suffered damages as articulated in the Prayer for Relief, set forth below, and fully incorporated here as applicable.

VII.

SECOND CAUSE OF ACTION
FAILURE TO PROVIDE REST PERIODS OR
COMPENSATION IN LIEU THEREOF
(Labor Code § 226.7)

(By Plaintiff and Rest Period Subclass against Defendant)

34. Plaintiff incorporates paragraphs 1 through 30 of this First Amended Complaint as if fully alleged herein.

35. By its failure to provide ten-minute (10) rest periods for every four (4) hours of work or major fraction thereof per day to Plaintiff and Rest Period Subclass, Defendant willfully violated Labor Code § 226.7 and applicable Wage Orders.

36. As a result of Defendant's unlawful conduct, Plaintiff and other members of the Subclass have suffered damages as articulated in the Prayer for Relief, set forth below, and fully incorporated here as applicable.

VIII.

THIRD CAUSE OF ACTION
FAILURE TO PAY WAGES
(Labor Code §§ 204, 210, 212, 213, 510, 1194, 1194.2)
(By Plaintiff and the Unpaid Wage Subclass against Defendant)

37. Plaintiff incorporates paragraphs 1 through 30 of this First Amended Complaint as if fully alleged herein.

38. At all relevant times, Plaintiff and the other members of the Unpaid Wage Class were employees of Defendant covered by Labor Code §§ 204, 210, 212, 213, 510, 1194, 1194.2 and applicable Wage Orders, and they were entitled to receive

1 minimum and overtime wages for all hours worked and liquidated damages
2 equal to unlawfully unpaid minimum wages with interest.

3 39. Defendant has violated California law and the specified provisions of the Labor
4 Code and applicable Wage Orders by its failure to pay all wages due in
5 accordance, including minimum wages, wrongfully classified off-the-clock
6 wages, overtime pay and double time pay as based on an employee's regular
7 rate of compensation. Notably, any wages that were paid were not effectively
8 paid within seven (7) days of the close of any applicable payroll period. As a
9 result of Defendant's unlawful conduct, Plaintiff and other members of the
10 Subclass have suffered damages as articulated in the Prayer for Relief, set forth
11 below, and fully incorporated here as applicable.

12 **IX.**

13 **FOURTH CAUSE OF ACTION**

14 **FAILURE TO PAY WAGES DUE AT TERMINATION**

15 **(Labor Code §§ 201, 202, 203)**

16 **(By Plaintiff and Waiting Time Subclass against Defendant)**

17 40. Plaintiff incorporates paragraphs 1 through 30 of this Complaint as if fully
18 alleged herein.

19 41. By its failure to timely pay Plaintiff and Waiting Time Subclass, Defendant
20 willfully violated the provisions of Labor Code §§ 201, 202, 203 and applicable
21 Wage Orders. Sec. 203 of Labor Code provides that if an employer willfully fails
22 to timely pay such wages, the employer must, as penalty, continue to pay the
23 employee's wages until the back wages are paid in full or an action is
24 commenced.

25 42. As a result of Defendant's unlawful conduct, Plaintiff and other members of the
26 Subclass have suffered damages as articulated in the Prayer for Relief, set forth
27 below, and fully incorporated here as applicable.

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1 X.

2 **FIFTH CAUSE OF ACTION**
3 **FAILURE TO PAY VACATION WAGES DUE AT TERMINATION**
4 **(Labor Code §227.3)**
5 **(By Plaintiff and Vacation Pay Subclass against Defendant)**

6 43. Plaintiff incorporates paragraphs 1 through 30 of this First Amended Complaint
7 as if fully alleged herein.

8 44. By its failure to timely pay Plaintiff and Vacation Pay Subclass, Defendant
9 willfully violated the provisions of Labor Code §227.3. Section 227.3 of Labor
10 Code provides that whenever a contract of employment or employer policy
11 provides for paid vacation, and an employee is terminated without having
12 taken off her or her vested vacation time, all vested vacation shall be paid to
13 him as wages at her or her final rate in accordance with such contract of
14 employment or employer policy respecting eligibility of time served; provided,
15 however, that an employment contract or employer policy shall not provide for
16 forfeiture of vested vacation time upon termination.

17 45. As a result of Defendant's unlawful conduct, Plaintiff and other members of the
18 Subclass have suffered damages as articulated in the Prayer for Relief, set forth
19 below, and fully incorporated here as applicable.

20 XI.

21 **SIXTH CAUSE OF ACTION**
22 **FAILURE TO PROVIDE ITEMIZED WAGE STATEMENTS**
23 **(Labor Code §226)**
24 **(By Plaintiff and Wage Statement Subclass against Defendant)**

25 46. Plaintiff incorporates paragraphs 1 through 30 of this First Amended Complaint
26 as if fully alleged herein.

27 47. By its failure to provide accurate itemized wage statements, semimonthly or at
28 the time of each payment of wages, Defendant willfully violated the provisions
of Labor Code §226 and applicable Wage Orders.

1 48. As a result of Defendant's unlawful conduct, Plaintiff and other members of the
2 Subclass have suffered damages as articulated in the Prayer for Relief, set forth
3 below, and fully incorporated here as applicable.

4 **XII.**

5 **SEVENTH CAUSE OF ACTION**
6 **FAILURE TO REIMBURSE ALL BUSINESS EXPENSES**
7 **(Labor Code §§2800, 2802)**

8 **(By Plaintiff and Expense Reimbursement Subclass against Defendants)**

9 49. Plaintiff incorporates paragraphs 1 through 30 of this First Amended Complaint
10 as if fully alleged herein.

11 50. Labor Code § 2800 provides, in pertinent part, "[a]n employer shall in all cases
12 indemnify her employee for losses caused by the employer's want of ordinary
13 care."

14 51. Labor Code § 2802 provides, in pertinent part, "[a]n employer shall indemnify
15 her or her employee for all necessary expenditures or losses incurred by the
16 employee in direct consequence of the discharge of her or her duties..."

17 52. Further, Labor Code § 2802 additionally provides, in pertinent part: "(c)...the
18 term 'necessary expenditures or losses' shall include all reasonable costs,
19 including but not limited to, attorney's fees incurred by the employee enforcing
20 the rights granted by this section."

21 53. During the relevant time period, Defendants were required to reimburse
22 Plaintiff and class members for all expenditures or losses caused by the
23 employer's want of ordinary care and/or incurred in direct consequence of the
24 discharge of their duties, but failed to indemnify and reimburse Plaintiff and
25 class members in violation of Labor Codes §§ 2800 and 2802.

26 54. As a direct and proximate result, Plaintiff and class members have suffered, and
27 continue to suffer, substantial losses, related to the use and enjoyment of such
28 monies to be reimbursed, lost interest on such monies, and expenses and
attorney's fees in seeking to compel Defendants to fully perform their

obligations under California law, all of their damage in amounts according to proof at the time of trial.

XIII.

EIGHTH CAUSE OF ACTION
VIOLATION OF UNFAIR BUSINESS PRACTICES ACT
(Bus. & Prof. Code §§ 17200, *et seq.*)
(By Plaintiff, Plaintiff Class and All Subclasses against Defendant)

55. Plaintiff incorporates paragraphs 1 through 54 of this First Amended Complaint as if fully alleged herein.

56. The alleged unlawful conduct of Defendant constitutes unfair competition pursuant to Business and Professions Code §§ 17200 *et seq.*, and this cause of action is brought as a cumulative remedy under Bus. & Prof. Code § 17205 for the time period starting four (4) years before the filing of the Complaint.

57. As a result, Plaintiff and other members of Plaintiff Class and Subclasses have suffered injury in fact and lost money or property. Plaintiff and said members have been deprived of their rights as set forth in this First Amended Complaint, including, but not limited to, payment of minimum and/or actual wages for all hours worked.

58. Pursuant to Business and Professions Code § 17203, Plaintiff and other members of Plaintiff Class and Subclasses are entitled to restitution of all wages owed to them under the Labor Code, and interest thereon, in which they had a property interest, which Defendant failed to pay to them but withheld and retained for itself. Restitution of the money owed to Plaintiff, Plaintiff Class and Subclasses is necessary to prevent Defendant from becoming unjustly enriched by its failure to comply with the Labor Code provisions.

59. Plaintiff and members of Plaintiff Class and Subclasses are entitled to recover reasonable attorney's fees in connection with their unfair competition claims pursuant to Code of Civil Procedure § 1021.5, the substantial benefit doctrine and/or the common fund doctrine.

1 60. Plaintiff requests the court to issue a preliminary and permanent injunction
2 prohibiting defendants from committing the Labor Code and applicable Wage
3 Order violations set forth in this First Amended Complaint, and Plaintiff and
4 the members of Plaintiff Class and Subclasses have suffered further damages as
5 articulated in the Prayer for Relief, set forth below, also incorporated here fully
6 as applicable.

7 **XIV.**

8 **NINTH CAUSE OF ACTION**
9 **VIOLATION OF CALIFORNIA'S PRIVATE ATTORNEY GENERAL ACT**
10 **(LABOR CODE § 2699 *et seq.*)**
11 **(By Plaintiff and Aggrieved Employees Against Defendant)**

12 61. Plaintiff incorporates paragraphs 1 through 60 of this First Amended Complaint
13 as if fully alleged herein.

14 62. Under the Private Attorney General Act, Labor Code §§ 2698-99 ("PAGA"),
15 private parties may recover civil penalties for violations of the California Labor
16 Code. PAGA penalties are in addition to any other relief available under the
17 Labor Code.

18 63. As set forth above, Defendant violated the California Labor Code by
19 consistently failing to employ Plaintiff and other similarly situated employees
20 in compliance with California law.

21 64. Plaintiff provided written notice by certified mail to Defendant on February 20
22 2024, and electronic notice to the State Labor & Workforce Development
23 Agency ("LWDA"), of the legal claims and theories of this case. To date, and
24 after 65 days from the date of mailing of notice, the LWDA has not notified
25 Plaintiff that the LWDA intends to exercise jurisdiction over the claim for civil
26 penalties under the PAGA. Accordingly, Plaintiff exhausted administrative
27 remedies as required by Labor Code § 2699.3. Plaintiff's PAGA claim was
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1 assigned case number LWDA-CM-1012070-24 by the LWDA. Appended hereto
2 is a copy of the notice communicated by Plaintiff.

3 65. Under the PAGA, Plaintiff and all other aggrieved employees are entitled to
4 recover the maximum civil penalties permitted by law from Defendant for the
5 violations of Labor Code alleged in this First Amended Complaint and the
6 notice communicated by Plaintiff.

7 66. Plaintiff and all other aggrieved employees are also entitled to recover their
8 attorneys' fees and costs under Labor Code § 2699.

9 **XV.**

10 **PRAYER FOR RELIEF**

11 **WHEREFORE**, on behalf of herself and all others similarly situated, Plaintiff
12 prays for relief and judgment against Defendant as follows:

13 A. An order certifying that Plaintiff may pursue her claims as a class action
14 under Section 382 of the Code of Civil Procedure; and it is further requested that
15 Plaintiff Class and each Plaintiff Subclass be certified;

16 B. An order appointing Plaintiff as Class representative;

17 C. An order appointing Plaintiff's counsel as Class counsel;

18 D. Disgorgement of Defendant's wrongfully obtained profits and restitution
19 of unpaid wages under Business and Professions Code §§ 17203, 17204;

20 E. Damages for unpaid additional compensation for failing to provide
21 timely or uninterrupted or lawful meal periods and rest periods;

22 F. Damages for unpaid minimum and overtime wages under Labor Code
23 §§ 1194 and 510;

24 G. Liquidated damages under Labor Code § 1194.2;

25 H. Statutory penalties under Labor Code § 226(e);

26 I. Damages for unpaid penalty wages under Labor Code § 203;

27 J. Reimbursement of business expenses under Labor Code § 2802;

1 K. Damages for unpaid vacation wages at the time of discharge under
2 Labor Code § 227.3;

3 L. Reasonable attorney's fees and costs pursuant to statute, including, but
4 not limited to Labor Code § 218.5 and Code of Civ. Proc. § 1021.5;

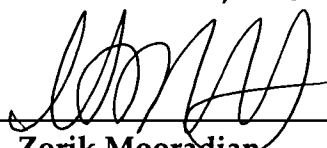
5 M. Enjoinment of Defendant from further acts of unfair competition and
6 continuous violations of the Labor Code and applicable Wage Orders;

7 N. Civil penalties under Labor Code Section 2699 (75% payable to the
8 LWDA and 25% payable to aggrieved employees); and

9 O. For such other relief that the Court may deem just and proper, including
10 prejudgment interest and costs.

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12 DATED: May 20, 2024

MOORADIAN LAW, APC

13
14 By: 

15 Zorik Mooradian,

16 Haik Hacopian,

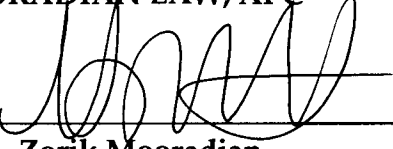
17 Attorneys for Plaintiff and the putative class

18 **DEMAND FOR A JURY TRIAL**

19 Plaintiff CAROLINA SALINAS ESTRADA hereby demands a jury trial in the
20 above case.
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22
23 DATED: May 20, 2024

MOORADIAN LAW, APC

24
25 By: 

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FEBRUARY 20, 2024

VIA USPS CERTIFIED MAIL

FMS Management
4140 Oceanside Blvd., Ste. 170
Oceanside, CA 92056
7022 3330 0002 3350 7710

Agent of Service of Process for FMS
Management
1505 Corp – Calif. Corp. Agents, Inc.
Chris Johnson
2108 N Street, Suite C
Sacramento, CA 95816
7022 3330 0002 3350 7727

VIA ONLINE SUBMISSION

State of California
Labor & Workforce Development Agency
800 Capitol Mall, MIC-55
Sacramento, CA 95814
www.dir.ca.gov

Re: *California Wage & Hour Violations*
FMS Management

To Whom It May Concern:

This office represents Carolina Salinas Estrada with respect to Private Attorney General claims that she intends to pursue against FMS Management (hereinafter “FMS”) based upon its illegal wage and hour practices in the State of California as to its non-exempt employees. This letter constitutes the notice required by Labor Code Section 2699.3.

Facts

FMS is engaged in the business of owning and operating fast-food restaurants. Ms. Estrada worked as a non-exempt employee of FMS at the McDonald’s restaurant located at 31822 Del Obispo Avenue in San Juan Capistrano, California. FMS employs numerous non-exempt, hourly paid employees such as Ms. Estrada in California (“Aggrieved Employees”). Unfortunately, FMS has engaged in the following practices:

Failure to Pay Wages

FMS failed to pay employees for all hours worked, including any overtime. This includes rounding practices and time that was considered off-the-clock by FMS. Additionally, employees also did not receive net 30-minute meal breaks on account of the clocking out and clocking process and other factors.

Additionally, Employers adopted a system of paying employees through debit pay cards that did not result in the full and timely payment of wages owed to employees, including due to the imposition of fees.

The above practices resulted in the underpayment of wages to employees, including underpayment of overtime and double-time to the extent applicable.

Meal Breaks

FMS engages in the practice of not allowing mandated meal breaks and not compensating employees for any missed, late, or short meal breaks. Also, FMS failed to regularly provide the required rest break within the first five hours of work including non-provision of off-duty meal breaks lasting at least thirty (30) minutes. Employees did not receive premium pay for any missed, late, or short meal period. Moreover, employees are owed wages for off-the-clock work resulting from any interrupted meal periods. Notably, meal breaks were not at least a net thirty (30) minutes in duration on account of the clock in and out process and other factors.

Rest Breaks

FMS engages in the practice of not allowing mandated rest breaks and not compensating employees for any missed, late, or short rest breaks. Employees were regularly not afforded an opportunity to take rest breaks every four hours, or major fraction thereof, they worked. To the extent any rest breaks were taken, they were frequently untimely and/or lasted less than ten (10) minutes in duration. Significantly, employees did not receive premium pay for any short, late, or missed rest breaks.

Waiting Time & Failure to Pay Accrued Vacation Wages

At the time of an employees' separation (whether it be by termination or resignation) FMS has failed to provide employees with all monies owed, including meal break premiums, rest break premiums, and unpaid wages for work performed, including overtime and double-time wages to the extent applicable.

FMS maintained a separate vacation/PTO benefit for employees but FMS did not accrue and pay the PTO benefit in compliance with its written policy. Moreover, vacation wages would be owed to the extent that any unpaid compensation or time worked would need to be factored into the accrual of the vacation benefit. Correspondingly, any vacation balance paid to an employee upon separation would not be full and complete.

Failure to Provide Wage Statements and Inaccurate Wage Statements

FMS failed to provide employees with wage statements, including due to the implementation of a pay card system. To the extent any wage statements were provided, FMS has adopted a custom and practice of failing to provide wage statements which reflect all hours worked during any pay period, whether or not employees received all wages entitled to, including applicable overtime and double-time wages and the respective wage rates, meal and rest break premiums, and vacation wages paid. Notably, the wage statements failed to include the address of the legal entity that is the employer.

Failure to Fully Reimburse Employee Expenses

FMS required the use of personal cell phones for work related communication with employees but never provided compensation or reimbursement for such use by employees.

Additional Penalties

Ms. Estrada and all other similarly aggrieved California employees intend to seek all penalties for the violations described above. Ms. Estrada also intends to recover the actual wages owed to employees under the Labor Code sections that authorize such recovery, including but not limited to Labor Code § 558.

Identity and Capacity of Employers/Joint Employers

Ms. Estrada intends to pursue a PAGA action against FMS and its parent companies, subsidiaries, successors, owners, officers, directors, and managing agents (collectively referred to as “FMS” as well). Ms. Estrada will seek to hold all owners, directors, officers and managing agents of FMS personally liable for said violations to the extent permitted under Labor Code § 558 and/or Labor Code § 558.1.

All business entities referenced herein were the alter-egos of each and every other entity and individual referenced herein and there exists, and at all times herein mentioned has existed, a unity of interest and ownership between said entities and individuals such that any separateness between them ceased to exist in that said individuals and other entities have completely controlled,

dominated, managed, and operated the business entities and have intermingled the assets of each to suit convenience. Further, each of the business entities are, and at all times mentioned herein were, mere shells, instrumentalities, and conduits through which the other above-referenced entities/individuals carried out their business while exercising complete control and dominance of the business such that individuality or separateness did not truly exist. Therefore, in the PAGA action, Ms. Estrada will seek to hold each said individual and/or entity jointly and severally liable for any and/or all violations committed by the other above-referenced individuals and/or entities.

It should further be noted that FMS and its parent companies, subsidiaries, successors, owners, officers, directors, and/or managing agents have been engaged in a joint enterprise. Moreover, said persons/individuals are joint employers of Aggrieved Employees for the following reasons: 1) Said entities/individuals directly and/or indirectly exercised control over the wages, hours or working conditions of Aggrieved Employees; 2) Said entities/individuals had knowledge (either personally or through officers, directors and/or managing agents) of the work Aggrieved Employees were doing for them while supposedly being employed by another entity/individual and failed to prevent the work from occurring; and 3) Said entities retained or assumed a general right of control over hiring, direction, supervision, discipline, discharge, and relevant day-to-day aspects of the workplace behavior of Aggrieved Employees.

Code Provisions Violated and Legal Theories

The specific provisions of the California Labor Code which FMS has violated, and applicable legal theories which establish the violations, are as follows:

Labor Code Section 201: FMS violated, and continues to violate, Labor Code Section 201 by failing to pay the employees it has discharged the complete and correct amount of all wages owing at the time of termination. The wages earned but not paid at termination include uncompensated work time, including overtime and double-time as applicable, and premium and vacation wages.

Labor Code Sections 202: FMS violated, and continues to violate, Labor Code Section 202 by failing to pay employees who quit the correct amount of all wages, within 72 hours of the termination. As already stated, the wages earned but not paid at termination include the above.

Labor Code Section 203: FMS violated, and continues to violate, Labor Code Section 203 by failing to pay 30 days of continuing wages to employees owed wages (explained above) whose employment ended.

Labor Code Section 204 and 210: FMS violated, and continues to violate, Labor Code Sections 204 and 210 by failing to pay wages to employees for all hours worked as explained above.

Labor Code Section 212 and 213: FMS violated, and continues to violate, Labor Code Sections 212 and 213 by paying wages to employees through debit pay cards that did not permit the withdrawal of cash, on demand, without discount.

Labor Code Section 226 and 226.3: FMS violated, and continues to violate, Labor Code Sections 226(a) and 226.3 by failing to provide employees with wage statements as well as providing itemized wage statements that are not complete, accurate, or compliant.

Labor Code Section 226.7: FMS violated, and continues to violate, Labor Code Section 226.7 by failing to provide meal periods and/or rest periods that are in accordance and in compliance with the IWC's applicable wage order.

Labor Code Section 227.3: FMS violated, and continues to violate, Labor Code Section 227.3 by failing to pay vested vacation wages to employees upon their separation.

Labor Code Section 510: FMS violated, and continues to violate, Labor Code Section 510 by failing to pay minimum wage or overtime compensation required by law.

Labor Code Section 512: FMS violated, and continues to violate, Labor Code Section 512 by not providing aggrieved employees with legally compliant meal periods.

Labor Code Section 1194: FMS violated, and continues to violate, Labor Code Sections 1194 by failing to pay employees minimum wage and overtime compensation required by law.

Labor Code Sections 1197 and 1197.1: FMS violated, and continues to violate, Labor Code Section 1197 by failing to pay employees a wage less than the minimum fixed by an applicable state or local law.

Labor Code Sections 2800 and 2802: FMS violated and continues to violate, Labor Code Sections 2800 and 2802 by failing to indemnify employees for all necessary expenditures or losses incurred by employees in direct consequence of the discharge of their duties.

Conclusion

Please inform us if you intend to investigate this matter. We look forward to prompt administrative action so that the identified unlawful practices can be rectified. In the absence of such action, we may file an appropriate action against FMS, pursuant to Labor Code Section 2698 *et seq.* Ms. Estrada and all other similarly aggrieved employees intend to seek all penalties for the violations described above. Should you require any additional information, do not hesitate to contact the undersigned.

Very truly yours,

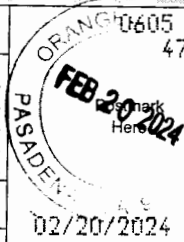
MOORADIAN LAW, APC

/s/ Haik Hacopian

HAIK HACOPIAN

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PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions	



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PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions	





Haik Hacopian <haik.hacopian@gmail.com>

Thank you for submission of your PAGA Case.

LWDA DO NOT REPLY <lwdadonotreply@dir.ca.gov>
To: "haik.hacopian@gmail.com" <haik.hacopian@gmail.com>

Tue, Feb 20, 2024 at 2:58 PM

2/20/2024

LWDA Case No. LWDA-CM-1012070-24
Law Firm : Mooradian Law, APC
Plaintiff Name : Carolina Salinas Estrada
Employer: FMS Management
Filing Fee : \$75.00
IFP Claimed : No

Item submitted: Initial PAGA Notice

Thank you for your submission to the Labor and Workforce Development Agency. Please make a note of the LWDA Case No. above as you may need this number for future reference when filing any subsequent documents for this Case.

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm