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Attorneys for Plaintiffs JOSE BAYLON and
CHRISTIAN GUTIERREZ, individually, on
behalf of themselves, all others similarly situated,
and the general public

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES, SPRING STREET COURTHOUSE

JOSE BAYLON and CHRISTIAN
GUTIERREZ, individuals, on behalf of
themselves, all others similarly situated, and
the general public,

Plaintiffs,

vs.

ARAMARK SERVICES, INC., a Delaware
corporation and DOES 1 to 100, inclusive,

Defendants.

CASE NO.: 23STCV04307

Assigned for all purposes to Hon. Kenneth R.
Freeman, Dept SS-14

**SECOND AMENDED CLASS ACTION
COMPLAINT FOR DAMAGE AND
PENALTIES FOR:**

1. **Failure to Pay Wages;**
2. **Failure to Provide Meal Periods;**
3. **Failure to Pay Reporting Time Pay**
4. **Failure to Furnish Accurate,
Itemized Wage Statements;**
5. **Failure to Indemnify Expenses;**
6. **Violation of Lab. Code, § 203; and,**
7. **Private Attorney General Act**

Initial Complaint Filed: February 27, 2023
Removal: June 8, 2023
Remanded: December 7, 2023

DEMAND FOR JURY TRIAL

1 Plaintiffs JOSE BAYLON and CHRISTIAN GUTIERREZ, individuals, on behalf of
2 themselves, all others similarly situated, and the general public (hereinafter “Plaintiffs”) hereby
3 file this Second Amended Class Action Complaint against Defendant ARAMARK SERVICES,
4 INC, a Delaware corporation and DOES 1 to 100, inclusive (hereinafter collectively referred to
5 as “Defendants”). Plaintiffs are informed and believe, and on the basis of that information and
6 belief, allege as follows:

7
8 **I.**

9 **INTRODUCTION**

10 1. This is a proposed class, collective and representative action brought pursuant to
11 California law brought by former, hourly-paid employees on behalf of themselves and all other
12 similarly situated employees of Defendants in the State of California to recover the damages and
13 penalties for Defendants’ failure to:

- 14 a. provide payment for all hours worked, including minimum wages and statutory
15 overtime based upon the proper rate of pay;
16 b. provide code-compliant meal periods or proper premium pay for violations;
17 c. comply with the prohibition the unlawful payment of a secret lower wage;
18 d. provide code-compliant wage statements;
19 e. provide indemnification for business-related expenses; and
20 f. provide payment of all wages due at the time of termination.

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22 **II.**

23 **JURISDICTION AND VENUE**

24 2. The Los Angeles Superior Court, Central District has jurisdiction over this case
25 by virtue of the fact that many of the events that give rise to the claims set forth in this Complaint
26 occurred within this judicial district, which also means that this Court is the proper venue for the
27 Complaint.
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3. Defendant ARAMARK SERVICES, INC. (hereinafter referred to as “Aramark” or “Defendant”) engaged in business operations at 2121 Santa Monica Boulevard, Santa Monica, CA 90404, which included the employment of Plaintiffs herein.

III.

PARTIES

NAMED PLAINTIFFS

4. Plaintiffs JOSE BAYLON and CHRISTIAN GUTIERREZ are individuals over the age of eighteen (18) and are now and at all relevant times mentioned in this Complaint were residents and domiciliaries of the State of California; and were employed by Defendant ARAMARK as a Dietary Nutritionist and a Dietary Aid, respectively, during the Relevant Time Period, which means within four years of the filing of the instant complaint, plus such additional time as may be allowed pursuant to mandatory tolling statutes (e.g., 178 days from Emergency Rule 9).

NAMED DEFENDANT

5. Defendant Aramark is registered to do business in the State of California as a Delaware corporation and is the former employer of the named Plaintiffs and is also either the current or former employer of all similarly situated employees.

DEFENDANTS DOES 1 TO 100, INCLUSIVE

6. DOES 1 to 100, inclusive, are now and/or at all times mentioned in this Complaint were licensed to do business and/or actually doing business as co-employers of the named Plaintiffs and all similarly situated employees.

7. Plaintiffs do not know the true names or capacities, whether individual, partner or corporate, of DOES 1 to 100, inclusive and for that reason DOES 1 to 100 are sued under such fictitious names. If required, Plaintiffs will seek leave of court to amend this Complaint to allege such names and capacities as soon as they are ascertained.

ALL DEFENDANTS

8. Defendants, and each of them, are now and/or at all times mentioned in this Complaint were in some manner legally responsible for the events, happenings and circumstances alleged in this Complaint.

9. All Defendants, and each of them, were and are the agents, servants, employees, joint venturers, and/or partners of each of the other Defendants, and were, at all such times, acting within the course and scope of said employment and/or agency; furthermore, that each and every Defendant herein, while acting as a high corporate officer, director and/or managing agent, principal and/or employer, expressly directed, consented to, approved, affirmed and ratified each and every action taken by the other co-Defendants, as herein alleged and was responsible in whole or in part for the matters referred to herein.

10. Defendants, and each of them, proximately caused Plaintiffs, all other similarly situated employees and the general public to be subjected to the unlawful practices, wrongs, complaints, injuries and/or damages alleged in this Complaint.

11. Defendants, and each of them, are now and/or at all times mentioned in this Complaint were members of and/or engaged in a joint venture, partnership and common enterprise, and were acting within the course and scope of, and in pursuit of said joint venture, partnership and common enterprise and, as such, were co-employers of the Plaintiffs and similarly situated employees.

12. Defendants, and each of them, at all times mentioned in this Complaint concurred with, contributed to, approved of, aided and abetted, condoned and/or otherwise ratified the various acts and omissions of each and every one of the other Defendants in proximately causing the injuries and/or damages alleged in this Complaint.

13. Defendant Aramark and DOES 1 through 20, at all relevant times, were employers, whose business operations were subject to the California Labor Code and the California Industrial Welfare Commission Wage Orders. These Defendants are jointly and severally liable for all the violations alleged herein, in that they dictated material terms and

conditions of the Plaintiffs’ and similarly situated employees’ employment and controlled material aspects of the employment relationship.

IV.

CLASS ACTION ALLEGATIONS

14. Pursuant to Cal. Code of Civ. Proc. (“CCP”), § 382 and common law related thereto, a case should be treated as a class action when a court finds: (a) that the predominant issues raised in the case are of a common interest; (b) that the parties are so numerous that it is impracticable to bring them all before this Court; (c) that the proposed Class is clearly and easily ascertainable; (d) that the named representatives’ claims are common and typical of the claims of the proposed classes; (e) that the Class representatives will adequately represent the interests of the classes; and (e) that a class action is superior to other methods of adjudicating the claims alleged herein. Each of the foregoing can and will be demonstrated at the hearing on Plaintiffs’ motion for class certification.

15. Plaintiffs bring this suit as a class action pursuant to CCP, § 382 on behalf of a Class of individuals defined as follows:

All of Defendants’ hourly paid employees who have worked for Defendants in the State of California in Defendant’s Food and Nutrition Services and Healthcare and/or Healthcare+ Services Division, including but not limited to Defendant’s operations at St. John’s Health Center in Santa Monica, California, during the Relevant Time Period (i.e., three (3) years prior to the filing of the case plus such additional time as may be permitted due to mandatory tolling of the statutes of limitations pursuant to the California Rules of Court) herein up to the date the court determines this case is properly certified as a class action.

16. Plaintiffs also seek to certify a Subclass defined as follows:

All Class members whose employment with Defendants terminated within three (3) years and 178 days preceding the filing of this action.

1 17. **Numerosity:** The potential membership in the Class and Subclass is so numerous
2 that joinder of all members is impractical. While the exact number of Class members is presently
3 unknown to Plaintiffs, Plaintiffs estimate that membership in the Class exceeds 100 and that the
4 Subclass is at least 50. The exact number and specific identities of the members of the Class,
5 may be readily ascertained through inspection of Defendants' business records.

6 18. **Commonality:** numerous questions of law and/or fact are common to all
7 members of the Class, including, without limitation:

8 a. Whether Class members received pay for all hours they were suffered to
9 work

10 b. Whether Class members received overtime pay based upon the proper
11 multiplier of their regular rate of pay;

12 c. Whether the members of the Class received code-compliant wage
13 statements in conformity with Lab. Code, § 226(a) and, if not, whether liability
14 for the same;

15 d. Whether Defendants failed to indemnify and/or reimburse putative Class
16 members for business-related expenses, such as specialized shoes required by the
17 Defendants;

18 e. Whether Defendants willfully failed to pay all wages due to the Class at
19 the time of the termination of their employment;

20 f. Whether the members of the Class are entitled to damages and/or penalties
21 and, if so, the proper means of measuring the same;

22 g. Whether Defendants are liable for pre-judgment interest; and,

23 h. Whether Defendants are liable for attorneys' fees and costs.

24 19. **Typicality:** Plaintiffs' claims are typical of the claims of all members of the Class
25 they seek to represent. Defendants treated Plaintiffs and all members of the Class in a virtually
26 identical manner with respect to the violations of law asserted herein. These violations of law
27 arise out of Defendants' common course of conduct in failing to pay minimum and/or overtime
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wages, issuing inaccurate wage statements, and requiring members of the Class to work without indemnification of necessary business expenses.

20. **Adequacy:** Plaintiffs will fairly and adequately protect the interests of the members of the Classes they seek to represent.

21. **Superiority:** This action is properly brought as a class action, not only because the prerequisites of Rule 23 and common law related thereto are satisfied (as outlined above), but also because of the following:

a. The prosecution of separate actions by or against individual members of the Class would create risk of inconsistent or varying adjudications with respect to individual members of the Class, which would establish incompatible standards of conduct for the party opposing the Class;

b. Adjudications with respect to individual members of the Class would, as a practical matter, be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests;

c. Defendants have acted or refused to act on grounds generally applicable to all members of the Class, making declaratory relief appropriate with respect to all of the Class;

d. Questions of law or fact common to the members of the Class predominate over any questions affecting only individual members; and,

e. Class action treatment is superior to other available methods for the fair and efficient adjudication of the controversy.

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V.

INDIVIDUAL CAUSES OF ACTION

FIRST CAUSE OF ACTION

FAILURE TO PAY WAGES

(Pursuant to Lab. Code, § 1194)

(On Behalf of the Class Against Defendant Aramark and DOES 1 to 20, inclusive)

22. Plaintiffs incorporate by reference and re-allege each and every one of the allegations contained in the preceding paragraphs of this Complaint as though fully set forth herein.

23. At all relevant times, Defendants were legally required to pay Plaintiffs and similarly situated employees for all time they were under the Defendants' control, including time they were suffered or permitted to work, pursuant to California law including Lab. Code, § 204, Wage Order 5 and *Morillion v. Royal Packing*, (2000) 22 Cal. 4th 575.

24. Additionally, Defendants were obligated to pay Plaintiffs and similarly situated employees one and one-half (1½) times their *regular rate* of pay for all time worked in excess of eight (8) hours per workday and in excess of forty (40) hours per workweek. Further, an employer must compensate employees at no less than twice the *regular rate* of pay when an employee works more than twelve (12) hours in a day or more than eight (8) hours on the seventh consecutive day of work.

25. Defendants failed to meet the above-mentioned legal obligations owed to Plaintiffs and other similarly situated employees, because of the following:

a. Defendants failed to pay for time employees spent complying with mandatory Covid screening, and

b. Defendants failed to compute overtime pay based on Class members' regular rate of pay, which should have included, among other items, the value of meal allowances provided to employees;

26. Plaintiffs, by and through their counsel of record, have specifically requested all documents related to the individual Plaintiffs' employment with the Defendants herein, including

time keeping and payroll records, which documents would provide Plaintiffs with information essential to providing more specific factual allegations regarding the dates and hours for which they were not paid, Defendants have failed and/or refused to provide to Plaintiffs with said documents as of this date.

27. Nevertheless, Plaintiffs allege that starting in or about July or August of 2020 up until the date of the termination of Plaintiffs' work, which, for Plaintiff Gutierrez was on or about January 20, 2021 and for Plaintiff Baylon was on or about February 25, 2021, Defendants suffered and permitted Plaintiffs to work off the clock and without proper compensation between July or August 2020 through the date of their respective terminations, with the exception of vacation weeks.

28. Plaintiffs, on behalf of Class members, seek to recover pursuant to Lab. Code, § 1194(a) the unpaid balance of minimum and overtime wages owed.

29. Plaintiffs also seek all legal remedies available for Defendants' willful non-payment of premium wages, including but not limited to:

- a. Liquidated damages pursuant to Lab. Code, § 1194.2;
- b. Interest pursuant to Lab. Code, §§ 218.6 and 1194(a), Civil Code, §§ 3287 and § 3289;
- c. Reasonable attorneys' fees and costs of suit pursuant to Lab. Code, § 1194; and/or
- d. Damages and/or penalties pursuant to the applicable Wage Order.

SECOND CAUSE OF ACTION

FAILURE TO PROVIDE MEAL PERIODS

(Pursuant to Lab. Code, §§ 226(a), 226.2 & 226.7)

(On Behalf of the Class Against Defendant Aramark and DOES 1 to 20, inclusive)

30. Plaintiffs incorporate by reference and re-allege each and every one of the allegations contained in the preceding paragraphs of this Complaint as though fully set forth herein.

1 31. Cal. Lab. Code, §§ 226.7, 512, and the applicable IWC Wage Order require
2 employers to provide employees with a thirty (30) minute uninterrupted and duty-free meal
3 period within the first five (5) hours of work. *Brinker Rest. Corp. v. Superior Court* (2012) 53
4 Cal. 4th 1004, 1042 (“Accordingly, first meal periods must start after no more than five hours.”).
5 Moreover, an employee who works more than ten (10) hours per day is entitled to receive a
6 second thirty (30) minute uninterrupted and duty-free meal period.

7 32. In addition to failing to authorize and permit compliant meal and rest periods,
8 Plaintiffs and similarly situated employees were not compensated with one (1) hour’s worth of
9 pay at their regular rate of compensation when they were not provided with compliant meal and
10 rest periods in accordance with Cal. Lab. Code, § 226.7(b).

11 33. Defendants routinely failed to timely provide members of the Class with code-
12 compliant meal periods, notwithstanding the fact that said Class members had not waived their
13 right to the same. This is to say that Defendants failed to provide meal periods in conformity
14 with the requirements established by Cal. Lab. Code, §§ 226.7, 512, and 516 and Section 11 of
15 the IWC Wage Order(s).

16 34. These meal period violations commenced starting in or about July or August 2020
17 and continued for every single workweek worked by Plaintiffs, with the exception of vacation
18 weeks, through the dates of the termination of Plaintiffs’ work with Defendants herein, which
19 are noted herein above.

20 35. Plaintiffs seek damages (in terms of premium pay) pursuant to Section 11(D) of
21 the IWC Wage Order(s) and Cal. Lab. Code, § 226.7(b), in the amount of one (1) additional hour
22 of pay at the employee’s regular rate of compensation for each time that a meal period is/was not
23 provided to any member of the Class in full conformity with the applicable wage order, the
24 cumulative sum of which is to be proved at time of trial.

25 36. Plaintiffs seek pre-judgment interest on all amounts recovered herein pursuant to
26 Cal. Lab. Code, §§ 218.6 and 1194(a), and Civil Code §§ 3287(b) and 3289.

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THIRD CAUSE OF ACTION
FAILURE TO PAY REPORTING TIME PAY
(Pursuant to IWC Wage Order, § 5)

(On Behalf of the Subclass Against Defendant Aramark and DOES 1 to 20, inclusive)

37. Plaintiffs incorporate by reference and re-allege each and every one of the allegations contained in the preceding paragraphs of this Complaint as though fully set forth herein.

38. The applicable IWC Wage Order, § 5 requires that any employee who is required to report for work must be paid at for least half the usual or scheduled day’s work.

39. Defendants have engaged in a standard practice of requiring employees, whose employment was being terminated, to show up for work, only to be terminated without any pay for the day on which they were terminated. This occurred on or about January 20, 2021 for Plaintiff Gutierrez and on or about February 25, 2021for Plaintiff Baylon.

40. Plaintiffs seek damages for the amounts Defendants failed to pay, including pre-judgment interest pursuant to Cal. Lab. Code, §§ 218.6 and 1194(a), and Civil Code §§ 3287(b) and 3289.

41. Plaintiffs further seek reasonable attorney’s fees and costs pursuant to, inter alia, Lab. Code, § 218.5.

FOURTH CAUSE OF ACTION
FAILURE TO FURNISH ACCURATE ITEMIZED WAGE STATEMENTS
(Pursuant to Lab. Code, §§ 226(a), 226.2 & 226.7)

(On Behalf of the Class Against Defendant Aramark and DOES 1 to 20, inclusive)

42. Plaintiffs incorporate by reference and re-allege each and every one of the allegations contained in the preceding paragraphs of this Complaint as though fully set forth herein.

43. Lab. Code, § 226(a) sets forth reporting requirements for employers when they pay wages, as follows: “Every employer shall, semimonthly or at the time of each payment of

wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. The deductions made from payments of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement or a record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California.”

44. Throughout the COVID pandemic, starting in or about July or August 2020 (and lasting at least until February 25, 2021, but likely much longer), Defendants, in violation of Lab. Code, § 226(a), engaged in a consistent practice with respect to the Class of regularly failing to furnish Class members with accurate itemized statements in writing showing:

- a. gross wages actually earned;
- b. total hours actually worked by the employee;
- c. net wages actually earned; and/or,
- d. all applicable hourly rates in effect during each respective pay period and the corresponding number of hours worked at each hourly rate by each respective individual.

1 45. Defendants did not maintain accurate business records pertaining to the total hours
2 worked for Defendants by the members of the Class.

3 46. Plaintiffs and Class members have suffered cognizable legal injuries as a result of
4 said violations, such as (a) the risk that these Class members will not be paid for all hours actually
5 worked, (b) confusion over whether all Class members received all wages owed them, (c)
6 difficulty and expense involved in reconstructing pay records to compute all pay actually due and
7 owing, and/or (d) the need to make mathematical computations to analyze whether the wages
8 paid in fact compensated all Class members for all hours worked.

9 47. Plaintiffs herein seek on behalf of themselves and the Class, damages and/or
10 penalties pursuant to Lab. Code, § 226(e) for each violation by Defendants of Lab. Code, §
11 226(a).

12 48. Plaintiffs further seek preliminary and permanent injunctive relief pursuant to
13 Lab. Code, §226(h).

14 49. Plaintiffs seek an award of reasonable attorneys' fees and costs pursuant to Lab.
15 Code, § 226(e) and/or (h).

16
17 **FIFTH CAUSE OF ACTION**
18 **FAILURE TO INDEMNIFY EXPENSES**
19 **(Pursuant to Lab. Code, § 2802)**

20 **(On Behalf of the Class Against Defendant Aramark and DOES 1 to 20, inclusive)**

21 50. Plaintiffs incorporate by reference and re-alleges each and every one of the
22 allegations contained in the preceding paragraphs of this Complaint as though fully set forth
23 herein.

24 51. Defendants, in violation of Lab. Code, § 2802 failed to indemnify and/or
25 reimburse Plaintiffs and putative Class members for "necessary expenditures or losses incurred
26 by the employee[s] in direct consequence of [the] discharge of ... [their] duties, or ... obedience
27 to the directions of the employer[.]" such as specialized shoes the Defendants required Plaintiffs
28 to purchase as a part of their work uniform.

1 52. Moreover, in violation of Lab. Code, § 221 and/or 224, Defendants apparently
2 failed to obtained Plaintiffs' express authorization for payroll deductions relating to specialized
3 shoes they obligated Plaintiffs to purchase.

4 53. Plaintiffs seek an award that fully reimburses him for all business-related
5 expenses incurred, reasonable attorney fees, and costs of suit pursuant to Lab. Code, § 2802.

6
7 **SIXTH CAUSE OF ACTION**

8 **VIOLATION OF LABOR CODE, § 203**

9 **(On Behalf of the Subclass - Against Defendant Aramark and DOES 1 to 20, inclusive)**

10 54. Plaintiffs incorporate by reference and re-allege each and every one of the
11 allegations contained in the preceding paragraphs of this Complaint as though fully set forth
12 herein.

13 55. Defendants, in violation of Lab. Code § 203, willfully failed to timely pay all
14 wages due and owing not just to Plaintiff but also to similarly situated class members at the time
15 of termination of their employment, including minimum wages for time worked off the clock as
16 well as premium overtime pay and meal period premium pay computed at the correct regular
17 rate.

18 56. Plaintiffs seek penalties pursuant to Lab. Code, § 203, in the amount of each Class
19 members' daily wage multiplied by thirty (30) days, the exact amount of which is to be
20 determined at trial.

21
22 **SEVENTH CAUSE OF ACTION**

23 **VIOLATION OF PAGA (CAL. LAB. CODE § 2699 *ET SEQ.*)**

24 **(On Behalf of Aggrieved Employees)**

25 **(Against All Defendants)**

26 57. Plaintiffs, on behalf of themselves and aggrieved employees, re-allege and
27 incorporate by reference all of the allegations contained in the preceding paragraphs of this
28 Complaint as though fully alleged herein.

1 58. Cal. Lab. Code, §§ 2699 et. seq. provides employees with a private right of action
2 to remedy an employer's failure to comply with Labor Code sections designated in Cal. Lab.
3 Code, § 2699.5 including, but not limited to, Cal. Lab. Code, §§ 201, 202, 203, 204, 221, 224, 226,
4 226.7, 510, 512, 516, 1194, 1197, 1198 and 2802—all of which Plaintiffs allege that Defendants
5 violated as set forth above in this pleading and within the Plaintiffs' notice to the
6 LWDA/Defendants, attached hereto as **Exhibit 1** and incorporated herein by reference.

7 59. Plaintiffs, on behalf of themselves and aggrieved employees, bring this
8 representative action against Defendants to recover wages and penalties pursuant to the Private
9 Attorneys General Act of 2004 ("PAGA"), Cal. Lab. Code, § 2698 *et seq.*

10 60. Based on the above allegations incorporated by reference, Defendants have
11 violated Cal. Lab. Code, §§ 201, 202, 203, 204, 221, 224, 226, 226.7, 510, 512, 516, 1194, 1197,
12 1198 and 2802.

13 61. As a result of the acts alleged above, Plaintiffs seek penalties under Cal. Lab.
14 Code, § 2699 et seq.

15 62. Under Cal. Lab. Code, §§ 2699(a), (f), and 2699.5, for each such violation,
16 Plaintiffs and Aggrieved Employees are entitled to penalties in an amount to be shown at the time
17 of trial subject to the following formula:

18 \$100.00 for the initial violation per employee per pay period; and

19 \$200.00 for each subsequent violation per employee per pay period.

20 These penalties shall be allocated seventy-five percent (75%) to the Labor and Workforce
21 Development Agency ("LWDA") and twenty-five percent (25%) to the affected employees.

22 63. On or about March 19, 2024, and in compliance with Cal. Lab. Code, §§
23 2699.3(1)(A) and (B), Plaintiffs, on behalf of themselves and all aggrieved employees, gave
24 written notice by online filing with the LWDA (including a filing fee of seventy-five dollars
25 (\$75.00)) and by certified mail to Defendant Aramark Services, Inc. of the specific Labor Code
26 provisions to have been violated, including the facts and theories to support the alleged violations.
27 The matter was assigned LWDA Case Number LWDA-CM-1017497-24.
28

64. Whereas the LWDA did not give notice to Plaintiffs or their attorneys of its intent to investigate the alleged violation set forth in her Notice, and more than 65 calendar days have passed since the Notice was filed, Plaintiffs thus now commence a civil action pursuant to Labor Code § 2699.

65. Plaintiffs, as personal representatives of the general public, will and do seek to recover any and all penalties for each and every violation shown to exist or to have occurred during the period prescribed by law prior to when Plaintiffs filed their notice with the LWDA of their intent to bring an action, in an amount according to proof, as to those penalties that are otherwise only available to public agency enforcement actions. Funds recovered will be distributed in accordance with the PAGA, with 75% of the penalties recovered being reimbursed to the State of California and the LWDA.

120. Plaintiffs were compelled to retain the services of counsel to file this action to protect their interests and those of Aggrieved Employees, and to assess and collect the wages and penalties owed by Defendants. Plaintiffs have thereby incurred attorneys' fees and costs, which they are entitled to recover under Labor Code section 2699(g)(1).

VI.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray:

1. That the Court issue an Order certifying the Class and Subclass herein, appointing the named Plaintiffs as the Class Representatives, and appointing the law firm(s) representing Plaintiff as Class Counsel.
2. **As to the First Cause of Action for Failure to Pay Wages:**
 - a. For recovery of the unpaid balance of the full amount of the minimum and overtime wages due and owing, according to proof;
 - b. For liquidated damages pursuant to Lab. Code, § 1194.2;
 - c. For pre- and post-judgment interest pursuant to, inter alia, Lab. Code, §§ 218.6 and 1194(a), and Civil Code, §§ 3287(b) and 3289;

d. For an accounting, under administration of Plaintiffs and/or the receiver and subject to Court review, to determine the amount to be returned by Defendants, and the amounts to be refunded to members of the classes who are owed monies by Defendants;

e. For all other appropriate injunctive, declaratory and equitable relief; and,

f. For an award of reasonable attorneys' fees and costs incurred in the investigation, filing and prosecution of this action pursuant to Lab. Code, § 1194(a).

3. As to the Second Cause of Action for Failure to Provide Meal Periods:

a. For one (1) hour of premium pay at each employee's regular rate of compensation for each noncompliant meal period;

b. For pre-judgment interest pursuant to Labor Code §§ 218.6 and 1194(a) and Civil Code §§ 3287(b) and 3289.

4. As to the Third Cause of Action for Failure to Pay Reporting Time Pay

a. Damages for the amounts Defendants failed to pay, including pre-judgment interest pursuant to Cal. Lab. Code, §§ 218.6 and 1194(a), and Civil Code §§ 3287(b) and 3289.

b. Reasonable attorney's fees and costs pursuant to, inter alia, Lab. Code, § 218.5.

5. As to the Fourth Cause of Action for Failure to Timely Furnish Accurate Itemized Wage Statements:

a. For damages and/or penalties as authorized by Lab. Code, § 226(e);

b. For injunctive relief pursuant to Lab. Code, § 226(h); and,

c. For an award of costs and reasonable attorneys' fees pursuant to Lab. Code, § 226(e) and/or (h).

6. As to the Fifth Cause of Action for Failure to Indemnify Expenses:

a. For a compensatory damages award to indemnify the Class for necessary business-related expenses pursuant Lab. Code, § 2802; and,

b. For an award of costs and reasonable attorneys' fees pursuant to Lab., Code, § 2802(c).

1 7. **As to the Sixth Cause of Action for Violations of Lab. Code, § 203** – the penalties as
2 authorized by Lab. Code, § 203.

3 8. **As to the Seventh Cause of Action for Violation of the Private Attorneys General**
4 **Act** (Labor Code § 2699 *et seq.*):

- 5 a. For costs of suit and expenses pursuant to Labor Code § 2699(g)(1);
6 b. For reasonable attorney’s fees pursuant to Labor Code § 2699(g)(1); and,
7 c. For statutory penalties pursuant to 2699 *et seq.*

8 For all civil penalties available under the Labor Code and the Private Attorneys General
9 Act of 2004, including those for violations of Lab. Code, §201, 202, 203, 204, 221,
10 224, 226, 226.7, 510, 512, 516, 1194, 1197, 1198 and 2802; and,

11 9. For all other relief as the Court may deem proper.

12 Respectfully submitted,

13 Dated: June 4, 2024

14 **THE CULLEN LAW FIRM, APC**

15 

16 **PAUL T. CULLEN**
17 Attorneys for Plaintiffs

PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action. My business address is The Cullen Law Firm, APC; 9800 Topanga Canyon Boulevard; Suite D, PMB 235; Chatsworth, CA 91311-4057.

On June 11, 2024, I served the following documents:

FIRST AMENDED INDIVIDUAL AND CLASS ACTION COMPLAINT FOR DAMAGE AND PENALTIES

on the following interested parties in this action:

MORGAN, LEWIS & BOCKIUS LLP

Eric Meckley, Bar No. 168181

Sarah Zenewicz, Bar No. 258068

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BY ELECTRONIC MAIL OR ELECTRONIC TRANSMISSION

Based on a court order or an agreement of the parties to accept service by e-mail or electronic transmission, I caused the document(s) to be sent to the respective e-mail address(es) of the party(ies) as stated above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on June 11, 2024 at Los Angeles, California.



Paul T. Cullen, Declarant