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individually and on behalf of all others similarly situated

8
9 **IN THE SUPERIOR COURT OF CALIFORNIA**
10 **COUNTY OF SANTA CLARA**

11 KIMBERLY ANN GUZMAN, individually and
12 on behalf of all others similarly situated,

13 Plaintiff(s),

14 v.

15 TCA WEST, INC.; and DOES 1 through 100,

16 Defendant(s).

Case No. 24CV439120

COMPLAINT

1. **Failure to Provide Compliant Meal Periods**
2. **Failure to Provide Compliant Rest Periods**
3. **Failure To Reimburse Work-Related Expenses**
4. **Wage Statement Penalties**
5. **Waiting Time Penalties**
6. **Violation of Unfair Competition Law**
7. **Private Attorneys General Act**

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21 **RELEVANT PARTIES**

- 22 1. Plaintiff KIMBERLY ANN GUZMAN (“Plaintiff”) is an adult resident of Monterey
23 County, California, and was at all times relevant residing in Monterey County, California .
- 24 2. Defendant TCA WEST, INC. (“Defendant”) is a California corporation with its principal
25 place of business located in Santa Clara County, California. Defendant is registered to and does
26 conduct business in the State of California and is subject to the laws of the State of California. All
27 acts and omissions of Defendant employees as alleged herein occurred while they were acting
28 within the course and scope of their employment.

1 3. Plaintiff is unaware of the true names or capacities of the Defendants sued herein as DOES 1
2 through 100, inclusive (“Doe Defendants”), and therefore sues said Doe Defendants by such
3 fictitious names. Plaintiff will seek leave of this Court to amend this Complaint to insert the true
4 names and capacities of such Doe Defendants when such information has been obtained. Plaintiff is
5 informed and believes, and based on such information and belief alleges, that each of the fictitiously
6 named Doe Defendants has participated in some way in the wrongful acts and omissions alleged
7 below, and is liable to Plaintiff for damages and other relief to which Plaintiff is entitled. Defendant
8 and Doe Defendants are collectively referred to as “Defendants”.

9 **JURISDICTION AND VENUE**

10 4. This action is properly filed in Santa Clara County because the acts and omissions that give
11 rise to Plaintiff’s claims took place in Santa Clara County, and Defendants transact substantial
12 business in this County.

13 5. This Court has jurisdiction over Defendants because Defendants’ unlawful conduct as
14 alleged herein occurred in Santa Clara County, California and Plaintiff suffered damages from such
15 conduct within Santa Clara County, California.

16 **FACTUAL ALLEGATIONS**

17 6. At all times relevant, Plaintiff was Defendants’ employee.

18 7. Plaintiff was employed by Defendants from 1/2/2019 to 9/10/2023.

19 8. Defendants failed to provide Plaintiff with compliant meal breaks because meal breaks were
20 regularly short because they were interrupted by calls from management.

21 9. Also, Plaintiff had to remain on call and on duty because there was a heavy line of
22 communications and Plaintiff was not allowed to turn their mobile devices off.

23 10. . Despite not being provided with compliant meal breaks, Defendant did not pay premium
24 pay for these missed breaks at Plaintiff’s regular rate of pay.

25 11. Defendant failed to provide Plaintiff with compliant rest breaks because rest breaks were
26 regularly missed because rest breaks were never provided.

27 12. Despite not being provided with compliant rest breaks, Defendant did not pay premium pay
28 for these missed breaks at Plaintiff’s regular rate of pay.

13. Defendants failed to reimburse Plaintiff for all work-related expenses because Plaintiff was required to purchase gas to travel to cleaning sites in order to perform their work duties, but Defendants did not reimburse Plaintiff for these expenses.

14. Defendants failed to provide Plaintiff with accurate wage statements because the wage statements issued to Plaintiff did not accurately list total wages owed and hours worked, among other things.

15. Due to Defendants' failure to pay all wages due to Plaintiff during their employment, it follows that Defendant failed to pay all wages due at the conclusion of Plaintiff's employment as well. Therefore, Defendants are liable to Plaintiff for waiting time penalties.

PAGA ALLEGATIONS

16. Pursuant to Labor Code section 2699(a), any provision of the Labor Code which provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency ("LWDA") for violations of the Labor 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 outlined in Labor Code section 2699.3.

17. Pursuant to Labor Code section 2699.3, an aggrieved employee may pursue a civil action under PAGA after the following requirement have been met:

18. The aggrieved employee has provided written notice by online filing to the LWDA and by certified mail to the employer (hereinafter "Employee's Notice") of the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support the alleged violations; and

19. The LWDA has provided notice (hereinafter "LWDA's Notice") to the employer and the aggrieved employee by certified mail that it does not intend to investigate the aggrieved employee's claims. Upon receipt of the LWDA's Notice, or if the LWDA does not provide such Notice within 65 calendar days of the postmark date of the Employee's Notice, the aggrieved employee may commence a civil action pursuant to Labor Code section 2699 to recover civil penalties in addition to any other penalties to which the employee may be entitled.

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1 20. On 3/8/24, Plaintiff provided written notice by online filing to the LWDA and by certified
2 mail to Defendants of specific provisions of the Labor Code alleged to have been violated by
3 Defendants, including the facts and theories to support the alleged violations.

4 21. The 65-day notice period has elapsed, and the LWDA did not provide Plaintiff with written
5 notice that it intends to investigate the alleged violations of the Labor Code. Thus, Plaintiff seeks
6 PAGA Penalties on behalf of all Aggrieved Employees.

7 22. The Aggrieved Employees are defined as “All other nonexempt, hourly employees, current
8 and former, who were employed by Defendants within one year prior to 3/8/24, through final
9 disposition of this action.”

10 **FIRST CAUSE OF ACTION**

11 **Failure to Provide Compliant Meal Periods**

12 **By Plaintiff Against All Defendants**

13 23. Plaintiff incorporates by reference the paragraphs above.

14 24. Labor Code section 512 and the Wage Orders provide that “an employer shall not employ an
15 employee for a work period of more than five hours per day without providing the employee with a
16 meal period of not less than 30 minutes” or “for a work period of more than 10 hours per day
17 without providing the employee with a second meal period of not less than 30 minutes”.

18 25. An employer provides compliant meal breaks to its employees “if it relieves its employees
19 of all duty, relinquishes control over their activities and permits them a reasonable opportunity to
20 take an uninterrupted 30-minute break.” (*Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th
21 1004, 1040 (2012)).

22 26. Not only must an employer affirmatively relieve its employees of all duty during their meal
23 breaks, it also must not “impede or discourage” its employees from taking compliant meal breaks.
24 (*Brinker*, supra).

25 27. Defendants failed to provide Plaintiff with compliant meal breaks as alleged herein.

26 28. For each day that Defendants failed to provide Plaintiff with a compliant meal break,
27 Defendants were required to remit premium pay pursuant to Labor Code section 226.7(c), which is
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1 one additional hour of pay at Plaintiff's regular rate of pay. (*Ferra v. Loews Hollywood Hotel, LLC*,
2 11 Cal. 5th 858 (2021)).

3 29. Defendants failed to pay premium pay at Plaintiff's regular rate of pay for each day a meal
4 break was missed.

5 30. Plaintiff is therefore entitled to recover premium pay for missed meal breaks, interest,
6 penalties, attorney fees, and costs.

7 **SECOND CAUSE OF ACTION**

8 **Failure to Provide Compliant Rest Periods**

9 **By Plaintiff Against All Defendants**

10 31. Plaintiff incorporates by reference the paragraphs above.

11 32. Labor Code section 226.7 and the Wage Orders requires employers to authorize and permit
12 its employees to take rest periods based on the total hours worked daily at the rate of 10 minutes net
13 per four hours or major fraction thereof.

14 33. Furthermore, "[d]uring rest periods employers must relieve employees of all duties and
15 relinquish control over how employees spend their time." (*Augustus v. ABM Sec. Servs., Inc.*, 2 Cal.
16 5th 257, 269 (2016)).

17 34. Defendants failed to provide Plaintiff with compliant rest breaks as alleged herein.

18 35. For each day that Defendants failed to provide Plaintiff with a compliant rest break,
19 Defendants were required to remit premium pay pursuant to Labor Code section 226.7(c), which is
20 one additional hour of pay at Plaintiff's regular rate of pay. (*Ferra v. Loews Hollywood Hotel, LLC*,
21 11 Cal. 5th 858 (2021)).

22 36. Defendants failed to pay premium pay at Plaintiff's regular rate of pay for each day a rest
23 break was missed.

24 37. Plaintiff is therefore entitled to recover premium pay for missed rest breaks, interest,
25 penalties, attorney fees, and costs.

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1 **THIRD CAUSE OF ACTION**

2 **Failure To Reimburse Work-Related Expenses**

3 **By Plaintiff Against All Defendants**

4 38. Plaintiff incorporates by reference the paragraphs above.

5 39. Pursuant to Labor Code section 2802, an employer shall indemnify his or her employee for
6 all necessary expenditures or losses incurred by the employee in direct consequence of the
7 employee's discharge of his or her duties.

8 40. Defendants failed to reimburse Plaintiff for all work-related expenses as alleged herein.

9 41. Plaintiff is therefore entitled to reimbursement for all work-related expenses, penalties,
10 attorney fees, and costs.

11 **FOURTH CAUSE OF ACTION**

12 **Wage Statement Penalties**

13 **By Plaintiff Against All Defendants**

14 42. Plaintiff incorporates by reference the paragraphs above.

15 43. Labor Code section 226(a) requires employers to provide itemized wage statements to its
16 employees that identify accurate information regarding their compensation. Defendants, as a matter
17 of policy and practice, failed in its affirmative obligation to provide accurate itemized wage
18 statements to Plaintiff in violation of Labor Code section 226(a).

19 44. As alleged herein, the wage statements that Defendants issued to Plaintiff were inaccurate
20 and incomplete.

21 45. Defendants knowingly and intentionally issued wage statements that were inaccurate and
22 incomplete, and the issuance of inaccurate and incomplete wage statements caused injury to
23 Plaintiff in that Plaintiff was unable to accurately verify and/or calculate their wages.

24 46. Plaintiff is therefore entitled to the recovery of wage statement penalties, attorney fees, and
25 costs.

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1 **FIFTH CAUSE OF ACTION**

2 **Waiting Time Penalties**

3 **By Plaintiff Against All Defendants**

4 47. Plaintiff incorporates by reference the paragraphs above.

5 48. Labor Code sections 201 and 202 require that an employer provide an employee with all
6 wages due and payable either: (a) immediately upon termination, or (b) within 3 days of the
7 employee's resignation.

8 49. Labor Code section 203 provides that if an employer willfully fails to pay wages owed in
9 accordance with Labor Code sections 201 or 202, then the wages of the employee continue as a
10 penalty from the due date at the same rate until paid or until an action is commenced, not to exceed
11 thirty days.

12 50. As alleged herein, Defendants willfully did not pay Plaintiff all wages owed at the
13 conclusion of employment.

14 51. Plaintiff is therefore entitled to the recovery of waiting time penalties, interest, attorney fees,
15 and costs.

16 **SIXTH CAUSE OF ACTION**

17 **Violation of Unfair Competition Law**

18 **By Plaintiff Against All Defendants**

19 52. Plaintiff incorporates by reference the paragraphs above.

20 53. Defendants' conduct described herein constitutes unfair competition.

21 54. Specifically, Defendants have gained an unfair advantage over other similarly situated
22 businesses by unlawfully reducing their overhead costs by not paying their employees what they are
23 owed.

24 55. Pursuant to Business and Professions Code 17203, Plaintiff is entitled to restitution of all
25 wrongfully withheld wages.

26 56. Plaintiff may recover attorney fees pursuant to Code of Civil Procedure section 1021.5.

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1 **SEVENTH CAUSE OF ACTION**

2 **Private Attorneys General Act**

3 **By Plaintiff and the Aggrieved Employees Against All Defendants**

4 57. Plaintiff incorporates by reference the paragraphs above.

5 58. PAGA permits Plaintiff and the Aggrieved Employees to recover civil penalties for the
6 violation(s) of the Labor Code.

7 59. As alleged herein, Defendants' conduct violates numerous sections of the Labor Code.

8 60. With respect to violations of Labor Code sections 226.7 and 558 for Defendants' failure to
9 provide Plaintiff and the Aggrieved Employees with compliant meal periods or compensation in
10 lieu thereof, the penalties in Labor Code sections 558 and 2699 apply.

11 61. With respect to violations of Labor Code section 226.7 for Defendants' failure to provide
12 Plaintiff and the Aggrieved Employees with compliant rest periods or compensation in lieu thereof,
13 the penalties in Labor Code section 2699 apply.

14 62. With respect to violations of Labor Code section 226(a) for failure to provide accurate wage
15 statements to Plaintiff and the Aggrieved Employees, the penalties in Labor Code sections 226.3
16 and 2699 apply.

17 63. With respect to violations of Labor Code section 203 for failure to pay all wages due to
18 Plaintiff and the Aggrieved Employees and the conclusion of their employment, the penalties in
19 Labor Code section 2699 apply.

20 64. With respect to violations of Labor Code section 2802 for failure to reimburse Plaintiff and
21 the Aggrieved Employees for all work-related expenses, the penalties in Labor Code section 2699
22 apply.

23 65. Additionally, Plaintiff and the Aggrieved Employees are entitled to attorney's fees pursuant
24 to Labor Code section 2699(g).

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1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

3 1ST Cause of Action

- 4 1. Damages and/or penalties pursuant to Labor Code section 226.7
5 2. Interest
6 3. Attorneys' fees
7 4. Costs
8 5. Other relief the court deems proper

9 2ND Cause of Action

- 10 1. Damages and/or penalties pursuant to Labor Code section 226.7
11 2. Interest
12 3. Attorneys' fees
13 4. Costs
14 5. Other relief the court deems proper

15 3RD Cause of Action

- 16 1. Reimbursement of all work-related expenses
17 2. Attorneys' fees
18 3. Costs
19 4. Other relief the court deems proper

20 4TH Cause of Action

- 21 1. Penalties pursuant to Labor Code section 226
22 2. Attorneys' fees
23 3. Costs
24 4. Other relief the court deems proper

25 5TH Cause of Action

- 26 1. Penalties pursuant to Labor Code section 203
27 2. Attorneys' fees
28 3. Costs

1 4. Other relief the court deems proper

2 6TH Cause of Action

3 1. Restitution of all wrongfully withheld wages

4 2. Attorneys' fees

5 3. Costs

6 4. Other relief the court deems proper

7 7TH Cause of Action

8 1. All applicable civil penalties available pursuant to Labor Code section 2698, et seq.

9 2. Attorneys' fees

10 3. Costs

11 4. Other relief the court deems proper

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13 DATED: May 15, 2024

FRONTIER LAW CENTER

14 /s/ Daniel Ginzburg

Daniel Ginzburg

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16 Attorneys for Plaintiff
17 KIMBERLY ANN GUZMAN,
18 individually and on behalf of all others
19 similarly situated
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