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**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SONOMA**

TONI ARGO, on behalf of the State of
California and Aggrieved Employees,

Plaintiff,

vs.

BEVERAGES & MORE, INC.,

Defendant.

Case No. 24CV03802

**COMPLAINT FOR PENALTIES PURSUANT
TO SECTIONS 2699(a) AND (f) OF THE
CALIFORNIA LABOR CODE PRIVATE
ATTORNEYS GENERAL ACT**

DEMAND FOR JURY TRIAL

ELECTRONICALLY FILED
Superior Court of California
County of Sonoma
6/26/2024 4:15 PM
By: Kristin Breeden, Deputy Clerk

1 Plaintiff Toni Argo (“Plaintiff”), on behalf of the State of California and Aggrieved Employees,
2 complains and alleges as follows:

3 **INTRODUCTION**

4 1. Plaintiff brings this enforcement action against Defendant Beverages & More, Inc.
5 (“BevMo!” or “Defendant”) on behalf of the State of California to collect penalties as a result of
6 Defendant’s systematic violations of California labor law with respect to Defendant’s non-exempt
7 hourly workers in the State of California (the “Aggrieved Employees”).

8 2. Plaintiff and Aggrieved Employees are current and former non-exempt, hourly workers
9 employed by Defendant in California.¹

10 3. Plaintiff challenges Defendant’s policies and practices of: (1) failing to pay Plaintiff
11 and Aggrieved Employees overtime wages; (2) failing to authorize and permit Plaintiff and Aggrieved
12 Employees to take compliant meal and rest periods to which they are entitled by law, and failing to
13 pay premium compensation for noncompliant meal periods; (3) failing to provide Plaintiff and
14 Aggrieved Employees true and accurate itemized wage statements; and (4) failing to pay Plaintiff and
15 Aggrieved Employees all wages owed upon separation from employment.

16 4. Plaintiff, on behalf of the State of California, seeks to recover penalties and reasonable
17 attorneys’ fees for these violations pursuant to Sections 2699(a) and (f) of the California Labor Code
18 Private Attorneys General Act (“PAGA”).

19 **PARTIES**

20 5. Plaintiff and Aggrieved Employees are all current and former store managers
21 unlawfully misclassified as exempt employees of Defendant in the State of California. The Aggrieved
22 Employees work as, among other positions, hourly paid general store managers, omni store managers,
23 and other hourly non-exempt employees who were misclassified as exempt employees in California.

24 6. Plaintiff Toni Argo is an individual over the age of eighteen, and at all times relevant
25 to this Complaint was a resident of the State of California.

26 7. Plaintiff worked for Defendant as a General Store Manager in Petaluma, County of
27

28 ¹ Although Plaintiff is a former employee, the Aggrieved Employees include current and former
employees. For ease of discussion, the allegations herein are made in the present tense.

1 Sonoma, California, from approximately 2019 until July 2023.

2 8. Plaintiff is informed, believes, and thereon alleges that Beverages & More, Inc. who
3 operates as BevMo! is a Delaware corporation with its principal place of business located in Concord,
4 California. BevMo! is registered to do business in the State of California and does business in the State
5 of California, including in this county.

6 9. Upon information and belief, BevMo! is a wine and spirits retailer that does business
7 in California. BevMo! operates approximately 145 stores in California.

8 10. At all material times, Defendant does business under the laws of California, has places
9 of business in the State of California, including in this County, and employs Aggrieved Employees in
10 this County. Defendant is a “person” as defined in Cal. Lab. Code § 18 and Cal. Bus. & Prof. Code §
11 17201. Defendant is also an “employer” as that term is used in the California Labor Code and the IWC
12 Wage Orders.

13 11. Defendant employs Plaintiff and Aggrieved Employees because Defendant, directly or
14 indirectly, controls the employment terms, pay practices, timekeeping practices, and daily work of
15 Plaintiff and Aggrieved Employees.

16 **SUBJECT MATTER JURISDICTION AND VENUE**

17 12. Venue is proper in this County pursuant to Cal. Code Civ. Proc. §§ 393 and/or 395.5.
18 Defendant conducts business and employs Aggrieved Employees in this County, and therefore the
19 liability and the cause, or some part of the cause, arose in this County.

20 13. This Court has jurisdictions over Plaintiff’s claims for penalties pursuant to the PAGA.
21 The Court also has jurisdiction over Defendant because they are a corporation authorized to do
22 business in the State of California, and because Defendant does in fact do business and employs
23 workers in the State of California.

24 **FACTUAL ALLEGATIONS**

25 14. Upon information and belief, BevMo! is a wine and spirits retailer that operates retail
26 locations across the state of California. Defendant employs General Store Managers and Omni Store
27 Managers to assist with general retail store operations.

28 15. Plaintiff was employed by Defendant as a General Store Manager in Petaluma,

1 California, from approximately 2019 to July 2023. Plaintiff is informed, believes, and thereon alleges
2 that the Petaluma, California location is owned and operated by Defendant. Plaintiff was classified as
3 an hourly, non-exempt employee and was paid an hourly rate of \$29.48.

4 16. Plaintiff was subsequently transferred to a store in Santa Rosa, California and was
5 classified as an exempt, salaried Omni Store Manager from approximately July 2023 until December
6 2023. Plaintiff is informed, believes, and thereon alleges that the Santa Rosa, California location is
7 owned and operated by Defendant. Plaintiff was classified as a salaried, exempt employee and was
8 paid a salary of \$80,000.

9 17. Although Plaintiff's shifts varied in length, as an hourly store manager, Plaintiff usually
10 worked approximately eight (8) hours or more per shift. Plaintiff's weekly hours varied, but on
11 average, Plaintiff worked approximately 45 hours per week or more while she was classified as a non-
12 exempt employee. The Plaintiff was paid overtime for any daily hours worked over eight (8) and for
13 working over 40-hours in a week.

14 18. As a salaried store manager, Plaintiff usually worked approximately 65 to 70 hours per
15 week. While the Plaintiff maintained the same responsibilities as a store manager, she was not paid
16 overtime wages for any hours worked over eight (8) in a day or 40-hours in a week.

17 19. The Plaintiff and Aggrieved Employees are improperly classified as exempt employees,
18 receiving a fixed salary rather than hourly wages.

19 20. Plaintiff is informed, believes, and thereon alleges that Defendant employs and
20 employed hundreds of exempt workers similarly situated to Plaintiff in California.

21 21. Plaintiff is informed, believes, and based thereon, alleges that Aggrieved Employees are
22 employed by Defendant in a similar manner throughout the State of California, including in this
23 County, and perform work materially similar to Plaintiff.

24 22. Aggrieved Employees perform their jobs under Defendant's supervision using materials
25 and technology approved and supplied by Defendant.

26 23. Aggrieved Employees are required to follow and abide by Defendant's common work,
27 time, and pay policies and procedures in the performance of their jobs.

28 24. At the end of each pay period, Aggrieved Employees receive wages from Defendant that

1 are determined by common systems and methods that Defendant selects and controls.

2 25. Plaintiff is informed, believes, and thereon alleges that Defendant's policies and
3 practices have at all relevant times been similar for Plaintiff and Aggrieved Employees, regardless of
4 location in the State of California. Upon information and belief, Aggrieved Employees worked more
5 than eight (8) hours per day and more than forty (40) hours in at least one workweek during the one
6 year before this Complaint was filed.

7 26. Plaintiff is informed and believes and based thereon alleges that Plaintiff and Aggrieved
8 Employees fail to meet the exemption requirements of California law as they (1) regularly spend more
9 than 50% of their time performing non-exempt work, such as checking online orders, stocking the
10 store, merchandising, and cleaning; (2) do not customarily and regularly exercise independent
11 judgment and discretion on matters of significance, store managers have similar responsibilities as
12 other non-exempt, non-management positions in retail locations. Any decisions as to the operation of
13 location, discipline, administrative issues are outside the control of store managers; and/or (3) do not
14 have authority to hire and fire. Thus, Aggrieved Employees are not exempt from the overtime
15 requirements of California law.

16 27. Defendant uniformly requires the Plaintiff and Aggrieved Employees to spend more
17 than 50% of their time performing non-exempt tasks. Defendant places customer service and other
18 "non-management" duties and responsibilities onto the shoulders of Aggrieved Employees. Plaintiff
19 and Aggrieved Employees routinely spend over 50% of their working hours performing duties
20 delegated to non-exempt employees, including, but not limited to assisting customers, running cash
21 registers, opening and closing cash registers, stocking shelves, cleaning, taking out the trash, ordering
22 inventory, receiving shipments, and other general tasks.

23 28. As a result of misclassifying Plaintiff and Aggrieved Employees, Defendant pays
24 Aggrieved Employees a set salary regardless of the hours actually worked. Plaintiff and Aggrieved
25 Employees are denied payment for all hours worked and are denied overtime for all hours worked
26 over eight (8) in a day or forty (40) in a workweek.

27 29. Plaintiff and Aggrieved Employees are regularly scheduled to work, and in fact work,
28 in excess of eight (8) hours per workday and/or in excess of forty (40) hours per workweek.

1 Additionally, Plaintiff and Aggrieved Employees on occasion are required to work more than six (6)
2 days in seven (7). As a result of these policies and/or practices, Aggrieved Employees are not paid for
3 all hours worked and they do not receive straight time or overtime compensation for overtime hours
4 in violation of Cal. Lab. Code section 510 and Wage Order 7.

5 30. Plaintiff and Aggrieved Employees are also denied meal and rest breaks in violation of
6 Cal. Lab. Code sections 226.7 & 512, among other incidents and conditions of employment in
7 California required for non-exempt employees.

8 31. Plaintiff and Aggrieved Employees are not provided with an uninterrupted, off-duty, 30-
9 minute meal period before the fifth hour of work, or a second meal break before the tenth hour of work
10 on days when they work shifts of ten (10) hours or more. Defendant's policies, practices, and
11 procedures prevent Plaintiff and Aggrieved Employees from taking their required 30-minute meal
12 period prior to their fifth hour of work. As a result, Aggrieved Employees are not provided with duty-
13 free, uninterrupted, and timely thirty-minute meal periods by the end of the fifth hour of work, nor do
14 they receive the proper premium payments for non-compliant meal breaks.

15 32. Further, for each day Plaintiff and Aggrieved Employees work longer shifts of ten hours
16 or more, Defendant denies Plaintiff and Aggrieved Employees a duty-free, uninterrupted, and timely
17 second 30-minute meal break by the end of the tenth hour of work. Yet again, Plaintiff and Aggrieved
18 Employees do not receive premium payments for these missed second meal breaks.

19 33. Additionally, Plaintiff and Aggrieved Employees are not provided with uninterrupted,
20 ten-minute rest periods, during which they should be completely relieved of any duty, by the end of
21 the fourth hour of work, and again, by the end of the eighth hour of work. Thus, Aggrieved Employees
22 remain on duty during their 10-minute rest periods. As a result, Aggrieved Employees are not provided
23 duty-free, uninterrupted, and timely 10-minute rest breaks during which they should be completely
24 relieved of any duty.

25 34. Despite these recurring violations, Plaintiff and Aggrieved Employees are not provided
26 one (1) hour of premium pay for each day they do not receive a compliant meal and rest break.

27 35. Plaintiff is informed, believes, and thereon alleges that these meal and rest period
28 policies and practices have at all relevant times been similar for Plaintiff and Aggrieved Employees

1 regardless of location and assignment in California.

2 36. Plaintiff is informed, believes, and thereon alleges that all Aggrieved Employees of
3 Defendant are subject to the same or similar unlawful timekeeping and compensation policies and
4 practices.

5 37. Defendant's common course of wage-and-hour abuse results in routinely failing to
6 maintain true and accurate records of the hours worked by Plaintiff and Aggrieved Employees.

7 38. As a result of the aforementioned violations, Plaintiffs and Aggrieved Employees are
8 provided with inaccurate wage statements as such statement do not reflect the correct amount of gross
9 and net wages earned, including overtime compensations and premium pay for non-complaint meal
10 and rest periods, nor the correct total hours worked by Plaintiffs and Aggrieved
11 Employees. Defendant's failure to record all hours worked also results in a failure to provide
12 Aggrieved Employees, including Plaintiff, accurate itemized wage statements as required by
13 California law. The wage statements Defendant provides are not accurate because they do not reflect
14 payment for all hours worked, including minimum wage and overtime compensation. Further, the
15 wage statements are inaccurate because they do not include premium pay for non-compliant meal and
16 rest periods in violation of California law.

17 39. Further, Defendant does not provide Plaintiff and Aggrieved Employees who are
18 former workers of Defendant with full payment of all wages owed upon separation from employment.
19 At the time their employment ends, Aggrieved Employees are owed wages for all time worked,
20 including overtime and premium pay for non-compliant meal and rest periods, whether their
21 termination was voluntary or involuntary; yet Defendant has failed to provide Aggrieved Employees
22 with such payments within the required time period. As a result, and pursuant to the California Labor
23 Code, Defendant is subject to waiting time penalties.

24 40. Plaintiff is informed, believes, and thereon alleges that Defendant's unlawful conduct
25 has been widespread, repeated, and consistent as to Aggrieved Employees and throughout Defendant's
26 operations in the State of California.

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FIRST CAUSE OF ACTION

Penalties Pursuant to Cal. Lab. Code § 2699(a)

(On Behalf of the State of California and Aggrieved Employees)

41. Plaintiff realleges and incorporates the foregoing paragraphs as though fully set forth herein.

42. Cal. Lab. Code § 2699(a) provides:

Notwithstanding any other provision of law, any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and to other current or former employees.

43. Cal. Lab. Code §§ 201 and 202 require employers to immediately pay wages earned and unpaid to an employee that is discharged, and to pay an employee who quits within 72 hours after he or she quits, at the latest.

44. Cal. Lab. Code § 203 provides, in relevant part:

If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.5, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employees shall continue as a penalty from the due date thereof at the same rate paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.

45. Cal. Lab. Code § 256 provides: “The Labor Commissioner shall impose a civil penalty in an amount not exceeding 30 days’ pay as waiting time under the terms of Section 203.”

46. Plaintiff seeks civil penalties pursuant to Cal. Lab. Code § 2699(a) for each failure by Defendant, as alleged above, to timely pay all wages owed to Plaintiff and the Aggrieved Employees in compliance with Cal. Lab. Code §§ 201-202 and in the amounts established by Cal. Lab. Code §§ 203 and 256.

47. Cal. Lab. Code § 226(a) provides:

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

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

12 48. Cal. Lab. Code § 226(e)(1) provides, in relevant part:

13 An employee suffering injury as a result of a knowing and intentional failure
14 by an employer to comply with subdivision (a) is entitled to recover the
15 greater of all actual damages or fifty dollars (\$50) for the initial pay period
16 in which a violation occurs and one hundred dollars (\$100) per employee
17 for each violation in a subsequent pay period, not to exceed an aggregate
18 penalty of four thousand dollars (\$4,000), and is entitled to an award of
19 costs and reasonable attorney's fees.

20 49. Cal. Lab. Code § 226.3 provides:

21 Any employer who violates subdivision (a) of Section 226 shall be subject
22 to a civil penalty in the amount of two hundred fifty dollars (\$250) per
23 employee per violation in an initial citation and one thousand dollars
24 (\$1,000) per employee for each violation in a subsequent citation, for which
25 the employer fails to provide the employee a wage deduction statement or
26 fails to keep the records required in subdivision (a) of Section 226. The civil
27 penalties provided for in this section are in addition to any other penalty
28 provided by law.

50. Plaintiff also seeks civil penalties pursuant to Cal. Lab. Code § 2699(a) for each failure
by Defendant, alleged above, to provide Plaintiff and Aggrieved Employees an accurate, itemized
wage statement in compliance with Cal. Lab. Code § 226(a) in the amounts established by Cal. Lab.
Code § 226.3. In addition, Plaintiff seeks penalties in the amount established by Cal. Lab. Code §
226(e)(1).

51. Pursuant to Cal. Lab. Code §§ 2699.3(a)(1) and (2), on April 9, 2024, Plaintiff provided
the Labor and Workforce Development Agency ("LWDA") with notice of his intention to file this
claim. On April 9, 2024, Plaintiff mailed Defendant a copy of such notice via certified mail. At least
sixty-five calendar days have passed without response from the LWDA. Plaintiff satisfied the
administrative prerequisites to commence this civil action in compliance with Cal. Lab. Code §
2699.3(a).

1 52. Plaintiff seeks the aforementioned penalties on behalf of the State, other Aggrieved
2 Employees, and himself as set forth in Cal. Lab. Code § 2699.

3 53. Defendant is liable to Plaintiff, Aggrieved Employees, and the State of California for
4 the civil penalties set forth in this Complaint. Plaintiff is also entitled to an award of attorneys' fees
5 and costs as set forth below.

6 54. Wherefore, Plaintiff requests relief as hereinafter provided.

7 **SECOND CAUSE OF ACTION**

8 **Penalties Pursuant to Cal. Lab. Code § 2699(f)**

9 **(On Behalf of the State of California and Aggrieved Employees)**

10 55. Plaintiff realleges and incorporates the foregoing paragraphs as though fully set forth
11 herein.

12 56. Cal. Lab. Code § 2699(f) provides:

13 For all provisions of this code except those for which a civil penalty is
14 specifically provided, there is established a civil penalty for a violation of
15 these provisions, as follows: . . . (2) If, at the time of the alleged violation,
16 the person employs one or more employees, the civil penalty is one hundred
dollars (\$100) for each aggrieved employee per pay period for the initial
violation and two hundred dollars (\$200) for each aggrieved employee per
pay period for each subsequent violation.

17 57. Cal. Lab. Code § 200 defines wages as "all amounts for labor performed by employees
18 of every description, whether the amount is fixed or ascertained by the standard of time, task, piece,
19 commission basis or method of calculation."

20 58. Cal. Lab. Code § 510 provides, in relevant part:

21 Eight hours of labor constitutes a day's work. Any work in excess of eight
22 hours in one workday and any work in excess of 40 hours in any one
23 workweek and the first eight hours worked on the seventh day of work in
24 any one workweek shall be compensated at the rate of no less than one and
one-half times the regular rate of pay for an employee. Any work in excess
25 of 12 hours in one day shall be compensated at the rate of no less than twice
the regular rate of pay for an employee. In addition, any work in excess of
26 eight hours on any seventh day of a workweek shall be compensated at the
rate of no less than twice the regular rate of pay of an employee. Nothing in
27 this section requires an employer to combine more than one rate of overtime
compensation in order to calculate the amount to be paid to an employee for
any hour of overtime work.

28 59. Cal. Lab. Code §§ 226.7 and 512 and IWC Wage Order 7-2001 require Defendants to

1 authorize, permit, and/or make available timely and compliant meal and rest periods to its employees.
2 Cal. Lab. Code §§ 226.7 and 512 and IWC Wage Order 7-2001 prohibit employers from employing
3 an employee for more than five hours without a meal period of not less than thirty minutes, and from
4 employing an employee more than ten hours per day without providing the employee with a second
5 meal period of not less than thirty minutes. Unless the employee is relieved of all duty during the
6 thirty-minute meal period and ten-minute rest period, the employee is considered “on duty” and the
7 meal period is counted as time worked under the applicable wage orders.

8 60. Defendant’s policies and practices result in overtime violations, and meal and rest
9 period violations.

10 61. To the extent than any violation alleged herein does not carry penalties under Cal. Lab.
11 Code § 2699(a), Plaintiff seeks civil penalties pursuant to Cal. Lab. Code § 2699(f) for each pay period
12 in which Plaintiff and an Aggrieved Employee was aggrieved, in the amounts established by Cal. Lab.
13 Code § 2699(f).

14 62. Plaintiff seeks penalties pursuant to Cal. Lab. Code § 2699(f) for Plaintiff and
15 Aggrieved Employees for violations of Cal. Lab. Code provisions including, but not limited to, Cal.
16 Lab. Code §§ 226.7, 510, 512, IWC Wage Order 7-2001, and any other violation alleged herein which
17 does not carry penalties under Cal. Lab. Code § 2699(a).

18 63. Pursuant to Cal. Lab. Code §§ 2699.3(a)(1) and (2), on April 9, 2024, Plaintiff provided
19 the Labor and Workforce Development Agency (“LWDA”) with notice of his intention to file this
20 claim. On April 9, 2024, Plaintiff mailed Defendant a copy of such notice via certified mail. At least
21 sixty-five calendar days have passed without response from the LWDA. Plaintiff satisfied the
22 administrative prerequisites to commence this civil action in compliance with Cal. Lab. Code §
23 2699.3(a).

24 64. Plaintiff seeks the aforementioned penalties on behalf of the State, other Aggrieved
25 Employees, and himself as set forth in Cal. Lab. Code § 2699(g)(1).

26 65. Defendant is liable to Plaintiff, Aggrieved Employees, and the State of California for
27 the civil penalties set forth in this Complaint. Plaintiff is also entitled to an award of attorneys’ fees
28 and costs as set forth below.

66. Wherefore, Plaintiff requests relief as hereinafter provided.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief as follows:

1. For the Court to declare, adjudge, and decree that Defendant has violated the Cal. Lab. Code as alleged herein;
2. For an order awarding the State of California, Plaintiff, and Aggrieved Employees civil penalties provided under the PAGA;
3. For an award of reasonable attorneys' fees as provided by the Cal. Lab. Code § 2699(g)(1); Cal. Code Civ. Proc. § 1021.5; and/or any other applicable law;
4. For all costs of suit; and
5. For such other and further relief as this Court deems just and proper.

Respectfully Submitted,

Date: June 26, 2024



Carolyn H. Cottrell
Ori Edelstein
Ryan Quadrel
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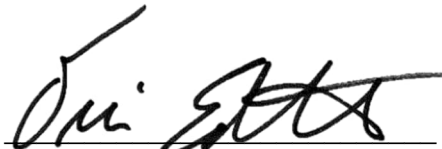
*Attorneys for Plaintiff, on behalf of the State of
California and Aggrieved Employees*

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial on all claims and issues for which Plaintiff is entitled to a jury.

Respectfully Submitted,

Date: June 26, 2024



Carolyn H. Cottrell

Ori Edelstein

Ryan Quadrel

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Attorneys for Plaintiff, on behalf of the State of California and Aggrieved Employees