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individually and on behalf of all others similarly situated

8
9 **IN THE SUPERIOR COURT OF CALIFORNIA**

10 **COUNTY OF FRESNO**

11 NATHAN ANTHONY VILLATORO,
12 individually and on behalf of all others similarly
situated,

13
14 Plaintiff(s),

15 v.

16 F&M RESTAURANTS, INC; and DOES 1
through 100,

17 Defendant(s).
18
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Case No. [24CECG03111](#)

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. **Violation of Unfair Competition Law**
6. **Private Attorneys General Act**

20
21 **RELEVANT PARTIES**

22 1. Plaintiff NATHAN ANTHONY VILLATORO ("Plaintiff") is an adult resident of Fresno
23 County, California, and was at all times relevant residing in Fresno County, California.

24 2. Defendant F&M RESTAURANTS, INC ("Defendant") is a California corporation with its
25 principal place of business located in Fresno 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 Fresno County because the acts and omissions that give rise
11 to Plaintiff’s claims took place in Fresno County, and Defendants transact substantial business in
12 this County.

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

16 **FACTUAL ALLEGATIONS**

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

18 7. Plaintiff was employed by Defendants from May 2, 2023, to the present.

19 8. Defendants failed to provide Plaintiff with compliant meal breaks because the work
20 environment fostered by the management includes direct discouragement from taking breaks.
21 Management's behavior and direct comments to Plaintiff have created a pressured environment that
22 discouraged taking any breaks and making Plaintiff feel compelled to work through his entitled
23 break periods to meet management's expectations and avoid conflict. Despite not being provided
24 with compliant meal breaks, Defendant did not pay premium pay for these missed breaks at
25 Plaintiff’s regular rate of pay.

26 9. Defendant failed to provide Plaintiff with compliant rest breaks because Plaintiff was not
27 allowed to leave the work premises during rest breaks. Despite not being provided with compliant
28

1 rest breaks, Defendant did not pay premium pay for these missed breaks at Plaintiff's regular rate of
2 pay.

3 10. Defendants failed to reimburse Plaintiff for all work-related expenses because Plaintiff was
4 required to purchase his uniform, pants, and shoes in order to perform his work duties, but
5 Defendants did not reimburse Plaintiff for these expenses.

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

9 12. Here, although Plaintiff and the Aggrieved Employees could have performed their job duties
10 while seated, Defendants failed to provide suitable seating. Furthermore, Plaintiff and the
11 Aggrieved Employees should have been provided with seats for use while not actively performing
12 their work duties, but such seating was not provided.

13 **PAGA ALLEGATIONS**

14 13. Pursuant to Labor Code section 2699(a), any provision of the Labor Code which provides
15 for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency
16 ("LWDA") for violations of the Labor Code may, as an alternative, be recovered through a civil
17 action brought by an aggrieved employee on behalf of himself or herself and other current or former
18 employees pursuant to the procedures outlined in Labor Code section 2699.3.

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

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

25 16. The LWDA has provided notice (hereinafter "LWDA's Notice") to the employer and the
26 aggrieved employee by certified mail that it does not intend to investigate the aggrieved employee's
27 claims. Upon receipt of the LWDA's Notice, or if the LWDA does not provide such Notice within
28 65 calendar days of the postmark date of the Employee's Notice, the aggrieved employee may

1 commence a civil action pursuant to Labor Code section 2699 to recover civil penalties in addition
2 to any other penalties to which the employee may be entitled.

3 17. On May 13, 2024, Plaintiff provided written notice by online filing to the LWDA and by
4 certified mail to Defendants of specific provisions of the Labor Code alleged to have been violated
5 by Defendants, including the facts and theories to support the alleged violations.

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

9 19. The Aggrieved Employees are defined as “All other nonexempt, hourly employees, current
10 and former, who were employed by Defendants within one year prior to May 13, 2024, through
11 final disposition of this action.”

12 **FIRST CAUSE OF ACTION**

13 **Failure to Provide Compliant Meal Periods**

14 **By Plaintiff Against All Defendants**

15 20. Plaintiff incorporates by reference the paragraphs above.

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

20 22. An employer provides compliant meal breaks to its employees “if it relieves its employees
21 of all duty, relinquishes control over their activities and permits them a reasonable opportunity to
22 take an uninterrupted 30-minute break.” (*Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th
23 1004, 1040 (2012)).

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

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

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1 25. For each day that Defendants failed to provide Plaintiff with a compliant meal break,
2 Defendants were required to remit premium pay pursuant to Labor Code section 226.7(c), which is
3 one additional hour of pay at Plaintiff's regular rate of pay. (*Ferra v. Loews Hollywood Hotel, LLC*,
4 11 Cal. 5th 858 (2021)).

5 26. Defendants failed to pay premium pay at Plaintiff's regular rate of pay for each day a meal
6 break was missed.

7 27. Plaintiff is therefore entitled to recover premium pay for missed meal breaks, interest,
8 penalties, attorney fees, and costs.

9 **SECOND CAUSE OF ACTION**

10 **Failure to Provide Compliant Rest Periods**

11 **By Plaintiff Against All Defendants**

12 28. Plaintiff incorporates by reference the paragraphs above.

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

16 30. Furthermore, "[d]uring rest periods employers must relieve employees of all duties and
17 relinquish control over how employees spend their time." (*Augustus v. ABM Sec. Servs., Inc.*, 2 Cal.
18 5th 257, 269 (2016)).

19 31. Defendants failed to provide Plaintiff with compliant rest breaks as alleged herein.

20 32. For each day that Defendants failed to provide Plaintiff with a compliant rest break,
21 Defendants were required to remit premium pay pursuant to Labor Code section 226.7(c), which is
22 one additional hour of pay at Plaintiff's regular rate of pay. (*Ferra v. Loews Hollywood Hotel, LLC*,
23 11 Cal. 5th 858 (2021)).

24 33. Defendants failed to pay premium pay at Plaintiff's regular rate of pay for each day a rest
25 break was missed.

26 34. Plaintiff is therefore entitled to recover premium pay for missed rest breaks, interest,
27 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 35. Plaintiff incorporates by reference the paragraphs above.

5 36. 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 37. Defendants failed to reimburse Plaintiff for all work-related expenses as alleged herein.

9 38. 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 39. Plaintiff incorporates by reference the paragraphs above.

15 40. 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 41. As alleged herein, the wage statements that Defendants issued to Plaintiff were inaccurate
20 and incomplete.

21 42. 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 his wages.

24 43. 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 **Violation of Unfair Competition Law**

3 **By Plaintiff Against All Defendants**

4 44. Plaintiff incorporates by reference the paragraphs above.

5 45. Defendants' conduct described herein constitutes unfair competition.

6 46. Specifically, Defendants have gained an unfair advantage over other similarly situated
7 businesses by unlawfully reducing their overhead costs by not paying their employees what they are
8 owed.

9 47. Pursuant to Business and Professions Code 17203, Plaintiff is entitled to restitution of all
10 wrongfully withheld wages.

11 48. Plaintiff may recover attorney fees pursuant to Code of Civil Procedure section 1021.5.

12 **SIXTH CAUSE OF ACTION**

13 **Private Attorneys General Act**

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

15 49. Plaintiff incorporates by reference the paragraphs above.

16 50. PAGA permits Plaintiff and the Aggrieved Employees to recover civil penalties for the
17 violation(s) of the Labor Code.

18 51. As alleged herein, Defendants' conduct violates numerous sections of the Labor Code.

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

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

25 54. With respect to violations of Labor Code section 226(a) for failure to provide accurate wage
26 statements to Plaintiff and the Aggrieved Employees, the penalties in Labor Code sections 226.3
27 and 2699 apply.

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1 55. With respect to violations of Labor Code section 203 for failure to pay all wages due to
2 Plaintiff and the Aggrieved Employees and the conclusion of their employment, the penalties in
3 Labor Code section 2699 apply.

4 56. With respect to violations of Labor Code section 2802 for failure to reimburse Plaintiff and
5 the Aggrieved Employees for all work-related expenses, the penalties in Labor Code section 2699
6 apply.

7 57. With respect to violations of Labor Code section 1198 and the relevant wage order for
8 failure to provide Plaintiff and the Aggrieved Employees with suitable seating, the penalties in
9 Labor Code section 2699 apply.

10 58. Additionally, Plaintiff and the Aggrieved Employees are entitled to attorney's fees pursuant
11 to Labor Code section 2699(g).

12 **PRAYER FOR RELIEF**

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

14 **First Cause of Action**

- 15 1. Damages and/or penalties pursuant to Labor Code section 226.7
- 16 2. Interest
- 17 3. Attorneys' fees
- 18 4. Costs
- 19 5. Other relief the court deems proper

20 **Second Cause of Action**

- 21 1. Damages and/or penalties pursuant to Labor Code section 226.7
- 22 2. Interest
- 23 3. Attorneys' fees
- 24 4. Costs
- 25 5. Other relief the court deems proper

26 **Third Cause of Action**

- 27 1. Reimbursement of all work-related expenses
- 28 2. Attorneys' fees

3. Costs
4. Other relief the court deems proper

Fourth Cause of Action

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

Fifth Cause of Action

1. Restitution of all wrongfully withheld wages
2. Attorneys' fees
3. Costs
4. Other relief the court deems proper

Sixth Cause of Action

1. All applicable civil penalties available pursuant to Labor Code section 2698, et seq.
2. Attorneys' fees
3. Costs
4. Other relief the court deems proper

DATED: July 22, 2024

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individually and on behalf of all others
similarly situated