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Attorneys for Plaintiff
**QUEENIE TING, individually and in
a representative capacity, on behalf of
other members of the general public
similarly situated**

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
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Clerk of the Superior Court
By M. Acevedo ,Deputy Clerk

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO**

QUEENIE TING, individually and in a
representative capacity on behalf of other
members of the general public similarly situated,

Plaintiff,

v.

SD BACKYARD, LLC, a California Limited
Liability Company; FRANKIN CHOU, an
individual; and DOES 1 through 10, inclusive

Defendants.

) Case No: 24CU012979C
)
) **COMPLAINT FOR:**
) 1. MINIMUM WAGE VIOLATIONS
) [Lab. Code §§ 1197, 2698 *et seq.*]
) 2. OVERTIME VIOLATIONS [Lab.
) Code §§510, 2698 *et seq.*]
) 3. WAGE STATEMENT
) VIOLATIONS [Lab. Code §§ 226,
) 2698 *et seq.*]
) 4. MEAL AND REST PERIOD
) VIOLATIONS [Lab. Code §§ 226.7,
) 512, 2698 *et seq.*]
) 5. FAILURE TO REIMBURSE [Lab.
) Code § 2698 *et seq.*]
) 6. FAILURE TO TIMELY PAY
) WAGES [Lab. Code §§ 204, 2698 *et*
) *seq.*]
) 7. FAILURE TO PAY WAGES UPON
) SEPARATION [Lab. Code §§ 201-
) 203, 2698 *et seq.*]
) 8. FAILURE TO PROVIDE SICK
) PAY [Lab. Code §§ 246, 2698 *et*
) *seq.*]
) 9. FAILURE TO PROVIDE
) PERSONNEL RECORDS [Lab.
) Code §§ 226, 1198.5, 2698 *et seq.*]

[JURY TRIAL DEMANDED]

COMES NOW Plaintiff QUEENIE TING (“Plaintiff”), in an Individual and Representative capacity on behalf of all aggrieved employees alleges for her complaint as follows:

PARTIES, JURISDICTION, AND VENUE

1. This Court has jurisdiction over this matter in that all parties are residents of, or do business within, the State of California and the amount in controversy exceeds the statutory minimum limit of this Court. The monetary damages and restitution sought by Plaintiff exceed the minimal jurisdiction limits of the Superior Court and will be established according to proof at trial. Furthermore, there is no federal question at issue as Wage and Hour protections and remedies related thereto are based solely on California Law and Statutes, including the Labor Code, Civil Code, and IWC Wage Order(s). Also, the Ninth Circuit has recently held that, for purposes of establishing federal diversity jurisdiction, penalties pursuant to the Private Attorneys General Act of 2004 (“PAGA”) may not be aggregated. *Urbino v. Orkin Servs. of California, Inc.*, 726 F.3d 1118, 1122 (9th Cir. 2013).
2. Venue before this Court is proper in that certain wrongful acts which gave rise to Plaintiff’s injuries occurred in the County of San Diego, State of California.
3. Plaintiff is informed and believes and thereon alleges that at all relevant times mentioned herein, Defendant SD BACKYARD, LLC (“SD BACKYARD” or “Defendants” collectively) was and is a California Limited Liability Company doing business throughout the state, including the County of San Diego, State of California.
4. Plaintiff is informed and believes and thereon alleges that at all relevant times mentioned herein, Defendant FRANKIN CHOU (“CHOU” or “Defendants” collectively) was and is an individual residing and doing business in the state, including the County of San Diego, State of California.
5. Plaintiff is presently unaware of the true names, capacities and liability of Defendants named herein as DOES 1 through 10, inclusive. Accordingly, Plaintiff will seek leave of court to amend this complaint to allege their true names and capacities after the same have been ascertained.

- 1 6. Plaintiff is informed and believes and thereon alleges that each of the fictitiously named
2 Defendant is responsible in some manner for the wrongs and damages as herein alleged,
3 and in so acting was functioning as the agent, servant, partner, and employee of the co-
4 Defendant, and in doing the actions mentioned below, was acting within the course and
5 scope of his or her authority as such agent, servant, partner, and employee with the
6 permission and consent of the co-Defendant. Plaintiff's injuries as herein alleged were
7 proximately caused by said Defendant. Wherever it is alleged herein that any act or
8 omission was done or committed by any specially named Defendant or Defendants,
9 Plaintiff intends thereby to allege and does allege that the same act or omission was also
10 done and committed by each and every defendant named as a DOE, both separately and
11 in concert with the named Defendant or Defendants.
- 12 7. Plaintiff is informed and believes and thereon alleges that Defendants, and each of them,
13 including DOES 1 through 10, are and at all times herein mentioned were either
14 individuals, sole proprietorships, partnerships, registered professionals, corporations, alter
15 egos or other legal entities which were licensed to do and/or were doing business in the
16 County of San Diego, State of California at all times relevant to the subject matter of this
17 action.

18 **FACTUAL BACKGROUND**

- 19 8. On or around January 2024, Plaintiff QUEENIE TING commenced working for
20 Defendants as a barista. Plaintiff's employment with Defendants lasted until
21 May 19, 2024. Throughout her employment with Defendants, Plaintiff performed her job
22 in a capable and competent manner and was commended for doing so.
- 23 9. Throughout the term of her employment, Plaintiff and all other aggrieved employees
24 were, and currently are, denied the benefits and protections of the Labor Code due to
25 Defendants' institutionalized pay practices, standard as to all of Defendants' California-
26 based employees.

27 ///

REPRESENTATIVE ALLEGATIONS

10. As more specifically set forth below, Plaintiff brings this action in a representative capacity on behalf of all current and former nonexempt employees of Defendants. Code Civ. Proc. § 2699; *Arias v. Superior Court* (2009) 46 Cal. 4th 969, 980-981. Throughout the operative limitations period, Plaintiff and all other aggrieved employees were denied the protections and benefits of the Labor Code and Industrial Welfare Commission ("IWC") Wage Order(s) due to Defendants' standard practices. Throughout their employment, Plaintiff and all other aggrieved employees were and are denied full and accurate compensation, including overtime compensation, in violation of, *inter alia*, Labor Code §§ 510 and 1194. Plaintiff and the other aggrieved employees were and are denied meal and rest periods and meal and rest period payments, in violation of, *inter alia*, IWC Wage Order 5 (or any other applicable Wage Order) and Labor Code §§ 226.7 and 512. Defendants failed to furnish accurate itemized wage statements in violation of, *inter alia*, Labor Code § 226. Defendants failed to reimburse Plaintiff and other aggrieved employees for necessary business expenditures in violation of, *inter alia*, Labor Code § 2802. Defendants failed to provide all compensation due at termination of employment in violation of, *inter alia*, Labor Code §§ 201 through 203. Defendants failed to provide sick time in violation of, *inter alia*, Labor Code § 246. Defendants failed to provide personnel records upon request in violation of, *inter alia*, Labor Code §§ 226 and 1198.5.
11. Plaintiff brings this action on the grounds that she and other similarly situated current and former employees of Defendants were and are improperly denied the mandated wages and reimbursements resulting from the above-referenced violations. Code Civ. Proc. § 2699; *Arias*, 46 Cal. 4th at 980-981. The number of current and former aggrieved employees is believed to exceed ninety (90) aggrieved employees.
12. The approximately ninety (90) aggrieved employees are comprised of all of Defendants' current and former California-based employees, designated as "nonexempt" by

1 Defendants. Defendants' standard policies and practices which lead to Labor Code
2 violations, as alleged herein, applied to all California nonexempt employees.

3 13. There are questions of fact and law common to all aggrieved employees arising from
4 Defendants' actions include, among others, the following:

- 5 a. Whether Defendants failed to pay its employees the proper straight-time,
6 overtime, and double time wages due and owing to them;
- 7 b. Whether Defendants failed to provide its employees with statutorily-compliant
8 Meal and/or Rest Periods, in violation of, *inter alia*, California Labor Code §§
9 512 and 226.7, in that Defendants written policies are not compliant with
10 California law, Defendants do not allow its employees duty-free Meal and/or Rest
11 Periods, and Defendants improperly "round" employees recorded Meal Periods;
- 12 c. Whether Defendants failed to properly provide Meal and Rest Period premiums in
13 accordance with law;
- 14 d. Whether Defendants failed to properly calculate and pay its employees Overtime
15 compensation or Meal and Rest Period premiums in accordance with law by
16 failing to properly calculate, into the Regular Rate of Pay, the value of employee
17 benefits;
- 18 e. Whether Defendants failed to properly reimburse its employees for necessary
19 business expenditures for, *inter alia*, cell phone costs and mileage, in violation of
20 Labor Code § 2802;
- 21 f. Whether Defendants failed to provide all compensation, timely, during
22 employment in violation of Labor Code § 204, due, in part, to the fact that
23 Defendants failed to provide proper compensation for all hours worked, as
24 discussed above;
- 25 g. Whether Defendants failed to provide all compensation upon termination of
26 employment in violation of Labor Code §§ 201-203, due, in part, to the fact that
27 Defendants failed to provide proper compensation for all hours worked, as
28 discussed above;

- 1 h. Whether Defendants failed to provide Plaintiff and all other aggrieved employees
2 with accurate itemized wage statements in violation of, among other statutes,
3 Labor Code § 266;
- 4 i. Whether Defendants failed to provide Plaintiff and all other aggrieved employees
5 with sick time in violation of, among other statutes, Labor Code § 246; and
- 6 j. Whether Defendants failed to provide Plaintiff and all other aggrieved employees
7 with personnel records upon request in violation of, among other statutes, Labor
8 Code §§ 226 and 1198.5.
- 9 14. At all times mentioned herein, Defendants were subject to the Labor Code and Industrial
10 Welfare Commission Wage Orders of the State of California, including, but not limited
11 to, California Labor Code § 2698 et seq.
- 12 15. At all times mentioned herein, Defendants are and were “employers” as that term is used
13 within the relevant sections of the California Labor Code and the applicable wage order.
14 An employer-employee relationship existed between Plaintiff and Defendants.
- 15 16. Plaintiff has exhausted her administrative remedies and pre-filing requirements California
16 Labor Code § 2699.3 and has also fulfilled all notice requirements under the statute. On
17 July 17, 2024, counsel for Plaintiff prepared and electronically submitted a letter to the
18 LWDA via the California Department of Industrial Relations’ “PAGA Filing” website.
19 This letter concerned SD BACKYARD, CHOU, and their Labor Code violations. A copy
20 of this letter was also mailed to Defendants, via USPS Certified Mail. The letter
21 contained the specific provisions of the California Labor Code violated by Defendants, as
22 well as the facts and theories in support of Plaintiff’s claims. (Please see **Exhibit 1**, a true
23 and correct copy of this letter.)
- 24 17. The statutory time period for the LWDA to investigate and/or respond, and for the
25 employers to respond, has concluded.
- 26 18. Throughout the operative limitations period, Plaintiff and all other aggrieved employees
27 were denied the protections and benefits of the Labor Code and IWC Wage Order(s) due
28 to Defendants’ standard practices. Said violations are set forth below.

FIRST CAUSE OF ACTION
Minimum Wage Violations
[Cal. Lab. Code §§ 1197, 2698 *et seq.*]
Individual and Representative Action
(By Plaintiff against Defendants and DOES 1 through 10)

19. Plaintiff hereby incorporates by reference each and every allegation contained in the preceding paragraphs as though fully set forth herein.
20. Defendants failed to pay its employees all compensation due in violation of, among other statutes, Labor Code § 1197. California law holds that the failure to pay for any work time constitutes a violation of minimum wage laws. *Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 323. These violations were caused by and through Defendants' failure to maintain accurate Time Records (as required by California law), to the detriment of the employees. Specifically, Defendants recorded only scheduled work time as opposed to actual work time, and would frequently falsify, or edit, employees' recorded time. Additionally, the right to receive the proper minimum wage compensation was impacted by Defendants knowingly failing to consider other work performed by the employees, including all time employees were under Defendants' control. These actions, and instructions, caused the employees to lose compensation, including proper minimum wage compensation and overtime compensation.
21. As a direct result of Defendants' failure to comply with the foregoing provisions of the Labor Code, Plaintiff and all other aggrieved employees have been damaged in an amount to be proven at trial.
22. As California Labor Code § 2699 provides for civil penalties recoverable by Plaintiff on behalf of herself and all other aggrieved employees by and through Labor Code § 2699.3, and as Plaintiff has complied with all pre-filing requirements, Plaintiff may recover these penalties pursuant to Labor Code § 2699, as more specifically set forth in the below Prayer For Relief.
23. Plaintiff seeks an award of statutory civil penalties for each underpaid employee of Defendants pursuant to Labor Code § 2699(a) for each of these employees.

24. Plaintiff also seek an award of reasonable attorney's fees and costs pursuant to Labor Code § 2699(g)(1), and interest, pursuant to Labor Code § 218.6.

SECOND CAUSE OF ACTION

Overtime Violations

[Cal. Lab. Code §§ 510, 2698 *et seq.*]

Individual and Representative Action

(By Plaintiff against Defendants and DOES 1 through 10)

25. Plaintiff hereby incorporates by reference each and every allegation contained in the preceding paragraphs as though fully set forth herein.

26. Defendants willfully failed to pay Plaintiff and all other aggrieved employees all compensation, including Overtime Compensation, due in violation of, among other statutes, Labor Code § 510. These violations occurred due to Defendants' illegal policies, referenced above, whereby employees experienced monetary under-compensation. Given the length of Plaintiff's (and other employees') shifts, the unpaid work time often would have been owed at the overtime rate of pay. Additionally, Plaintiff and other employees frequently worked in excess of eight hours per shift without receiving overtime pay. These systematic failures to provide proper overtime compensation are in violation of California law.

27. As a direct result of Defendants' failure to comply with the foregoing provisions of the Labor Code, Plaintiff and all other aggrieved employees have been damaged in an amount to be proven at trial.

28. As California Labor Code § 2699 provides for civil penalties recoverable by Plaintiff on behalf of herself and all other aggrieved employees by and through Labor Code § 2699.3, and as Plaintiff has complied with all pre-filing requirements, Plaintiff may recover these penalties pursuant to Labor Code § 2699, as more specifically set forth in the below Prayer For Relief.

29. Plaintiff seeks an award of statutory civil penalties for each underpaid employee of Defendants pursuant to Labor Code § 2699(a) for each of these employees.

30. Plaintiff also seek an award of reasonable attorney's fees and costs pursuant to Labor Code § 2699(g)(1), and interest, pursuant to Labor Code § 218.6.

THIRD CAUSE OF ACTION
Wage Statement Violations
[Cal. Lab. Code §§ 226, 2698 *et seq.*]
Individual and Representative Action
(By Plaintiff against Defendants and DOES 1 through 10)

31. Plaintiff hereby incorporates by reference each and every allegation contained in the preceding paragraphs as though fully set forth herein.

32. Defendants willfully failed to provide Plaintiff and all other aggrieved employees with accurate itemized wage statements in violation of, among other statutes, Labor Code § 226. These violations include, but are not limited to, Defendants' failure to accurately identify all applicable regular and overtime rates of pay in violation of section 226(a)(9) and providing inaccurate representations of both "gross" and "net wages." Defendants also failed to provide an accurate showing of the "total hours worked," in violation of Labor Code § 226(a)(2).

33. As a direct result of Defendants' failure to comply with the foregoing provisions of the Labor Code, Plaintiff and all other aggrieved employees have been damaged in an amount to be proven at trial.

34. As California Labor Code § 2699 provides for civil penalties recoverable by Plaintiff on behalf of herself and all other aggrieved employees by and through Labor Code § 2699.3, and as Plaintiff has complied with all pre-filing requirements, Plaintiff may recover these penalties pursuant to Labor Code § 2699, as more specifically set forth in the below Prayer For Relief.

35. Plaintiff seeks an award of statutory civil penalties for each underpaid employee of Defendants pursuant to Labor Code § 2699(a) for each of these employees.

36. Plaintiff also seek an award of reasonable attorney's fees and costs pursuant to Labor Code § 2699(g)(1), and interest, pursuant to Labor Code § 218.6.

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FOURTH CAUSE OF ACTION
Meal and Rest Period Violations
[Cal. Lab. Code §§ 512, 2698 *et seq.*]
Individual and Representative Action
(By Plaintiff against Defendants and DOES 1 through 10)

37. Plaintiff hereby incorporates by reference each and every allegation contained in the preceding paragraphs as though fully set forth herein.

38. Labor Code § 1198 states:

The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

Defendants violated this section by establishing working conditions below the standard of the applicable Wage Order.

39. Under applicable California law, “An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a Meal Period of not less than 30 minutes [...] An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second Meal Period of not less than 30 minutes” Lab. Code § 512(a); see also 8 Cal. Code Regs. § 11050 (11)(A).

40. Unless the employee is relieved of all duty during a thirty (30) minute Meal Period, the Meal Period shall be considered an “on duty” Meal Period and counted as time worked. 8 Cal. Code Regs. § 11050 (11)(A).

41. California law requires employers to provide nonexempt employees with a 10-minute Rest Period for every four hours worked, or “major fraction thereof.” 8 Cal. Code Regs. § 11050 (12)(A).

42. An employer who fails to provide Meal or Rest Periods as required by an applicable Wage Order must pay the employee one additional hour of pay at the employee’s regular rate of pay for each workday that the Meal or Rest Period was not provided. Lab. Code § 226.7(b); 8 Cal. Code Regs. § 11050 (11), (12).

- 1 43. Within the operative time period, Defendants failed to possess compliant Meal and Rest
2 Period policies or practices.
- 3 44. For example, Defendants' Rest Period policy and practice does not provide the right for
4 employees to "leave the premises," by requiring employees to remain on the job site
5 during Rest Periods. Additionally, employees often do not have time to take a break due
6 to the volume of orders that must be completed before the end of the employee's shift.
- 7 45. Moreover, Defendants' policies and practices preclude "duty-free" Meal and Rest
8 Periods. These institutional and established practices of Defendants are illegal, in that
9 Plaintiff and all other employees were denied proper and/or timely Meal and Rest
10 Periods.
- 11 46. These violations are due, in part, to the fact that Defendants do not possess a legal Rest
12 Period policy or practice, as its Rest Period policy lacks required language, resulting in
13 employees failing to receive all Rest Periods legally due. Defendants do not provide Rest
14 Periods, as defined by California law. Further, Defendants have never provided a Rest
15 Period penalty payment to any employee.
- 16 47. Defendants also do not possess a legal Meal Period policy and make no attempt to ensure
17 that its employees are either timely or wholly provided Meal Periods. The employees
18 would often either miss a Meal Period entirely, be provided a short or late Meal Period,
19 or be provided only one Meal Period, even when they were working in excess of 10 hours
20 a day. Additionally, Defendants failed to accurately record its employees' actual start and
21 stop times of Meal Periods (and would frequently edit or falsify time records with respect
22 to Meal Periods), in violation of the IWC Wage Orders. 8 Cal. Code Regs. § 11050
23 (7)(A)(3).
- 24 48. Moreover, Defendants' policies and practices preclude "duty-free" Meal and Rest
25 Periods, in that the employees are required to remain "On Call" at all times, including
26 during the Meal and Rest Periods, in order to (among other reasons) attend to the large
27 volume of customers/orders in a timely manner before the end of the shift. These
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1 institutional and established practices of Defendants are illegal, in that Plaintiff and all
2 other aggrieved employees were denied proper and/or timely Meal and Rest Periods.

3 49. Defendants willfully failed and refused to pay Plaintiff and all other aggrieved employees
4 one additional hour of pay at their regular rate of pay for all workdays that a Meal or Rest
5 Period was not provided, as required by Labor Code § 226.7 and IWC Wage Order 5
6 (11), (12).

7 50. Any payments made by Defendants for missed or late Meal Periods were not paid at an
8 employee's regular rate in violation of Labor Code § 226.7 and the operative IWC Wage
9 Orders. Instead, these payments were made at an employee's base rate and did not
10 include the value of, *inter alia*, additional compensation and/or employee benefits.

11 51. As a direct result of Defendants' failure to comply with the foregoing provisions of the
12 Labor Code, Plaintiff and all other aggrieved employees have been damaged in an
13 amount to be proven at trial.

14 52. As California Labor Code § 2699 provides for civil penalties recoverable by Plaintiff on
15 behalf of herself and all other aggrieved employees by and through Labor Code § 2699.3,
16 and as Plaintiff has complied with all pre-filing requirements, Plaintiff may recover these
17 penalties pursuant to Labor Code § 2699, as more specifically set forth in the below
18 Prayer For Relief.

19 53. Plaintiff seeks an award of statutory civil penalties for each underpaid employee of
20 Defendants pursuant to Labor Code § 2699(a) for each of these employees.

21 54. Plaintiff also seek an award of reasonable attorney's fees and costs pursuant to Labor
22 Code § 2699(g)(1), and interest, pursuant to Labor Code § 218.6.

23 **FIFTH CAUSE OF ACTION**

24 **Failure to Reimburse**

25 **[Cal. Lab. Code §§ 2802, 2698 *et seq.*]**

26 **Individual and Representative Action**

27 **(By Plaintiff against Defendants and DOES 1 through 10)**

28 55. Plaintiff hereby incorporates by reference each and every allegation contained in the
preceding paragraphs as though fully set forth herein.

56. Defendants failed to reimburse their nonexempt employees for all necessary business expenditures incurred in direct consequence of the discharge of their duties in violation of, among other statutes, Labor Code § 2802. These expenditures are the result of, *inter alia*, Defendants' standard policies which require its employees to incur equipment costs without reimbursement.

57. As a direct result of Defendants' failure to comply with the foregoing provisions of the Labor Code, Plaintiff and all other aggrieved employees have been damaged in an amount to be proven at trial.

58. As California Labor Code § 2699 provides for civil penalties recoverable by Plaintiff on behalf of herself and all other aggrieved employees by and through Labor Code § 2699.3, and as Plaintiff has complied with all pre-filing requirements, Plaintiff may recover these penalties pursuant to Labor Code § 2699, as more specifically set forth in the below Prayer For Relief.

59. Plaintiff seeks an award of statutory civil penalties for each underpaid employee of Defendants pursuant to Labor Code § 2699(a) for each of these employees.

60. Plaintiff also seek an award of reasonable attorney's fees and costs pursuant to Labor Code § 2699(g)(1), and interest, pursuant to Labor Code § 218.6.

SIXTH CAUSE OF ACTION

Failure to Timely Pay Wages

[Cal. Lab. Code §§ 204, 2698 *et seq.*]

Individual and Representative Action

(By Plaintiff against Defendants and DOES 1 through 10)

61. Plaintiff hereby incorporates by reference each and every allegation contained in the preceding paragraphs as though fully set forth herein.

62. Plaintiff and all other aggrieved employees performed work for Defendants, as an employee of Defendants, as stated herein. Throughout Plaintiff's and all other aggrieved employees' employment, they earned wages that were not paid to them, as stated herein, in an amount according to proof at trial.

63. California Labor Code § 204, applicable at all times relevant herein to Plaintiff's and all other aggrieved employees' employment by Defendants, provides that all wages earned

1 by any person in any employment are due and payable twice during each calendar month.
2 Defendants failed to pay Plaintiff and all other aggrieved employees the wages they were
3 entitled to under the Code.

4 64. During their employment, Plaintiff and all other aggrieved employees were denied proper
5 wages due, in part, to Defendants' uniform policies and procedures of editing time records
6 resulting in an underpayment to employees.

7 65. As a direct result of Defendants' failure to comply with the foregoing provisions of the
8 Labor Code, Plaintiff and all other aggrieved employees have been damaged in an
9 amount to be proven at trial.

10 66. As a result of Defendants' willful failure to pay wages, in addition to such other damages
11 and penalties as may properly be recovered herein, Plaintiff and all other aggrieved
12 employees are entitled to back pay, waiting time penalties, interest, costs, and attorneys'
13 fees pursuant to Labor Code §§ 206, 218.5, 218.6, 558, 1194.2, and 1197.1.

14 67. As California Labor Code § 2699 provides for civil penalties recoverable by Plaintiff on
15 behalf of herself and all other aggrieved employees by and through Labor Code § 2699.3,
16 and as Plaintiff has complied with all pre-filing requirements, Plaintiff may recover these
17 penalties pursuant to Labor Code § 2699, as more specifically set forth in the below
18 Prayer For Relief.

19 68. Plaintiff seeks an award of statutory civil penalties for each underpaid employee of
20 Defendants pursuant to Labor Code § 2699(a) for each of these employees.

21 69. Plaintiff also seek an award of reasonable attorney's fees and costs pursuant to Labor
22 Code § 2699(g)(1), and interest, pursuant to Labor Code § 218.6.

23 **SEVENTH CAUSE OF ACTION**

24 **Failure to Pay Wages Upon Separation**
[Cal. Lab. Code § 201-203, 2698 *et seq.*]

25 **Individual and Representative Action**
(By Plaintiff against Defendants and DOES 1 through 10)

26 70. Plaintiff hereby incorporates by reference each and every allegation contained in the
27 preceding paragraphs as though fully set forth herein.
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71. Defendants willfully failed to provide Plaintiff and other aggrieved employees with all wages earned and unpaid at termination in violation of, among other statutes, Labor Code §§ 201 through 203. These violations resulted from, among other unlawful actions, Defendants willful failure to provide accurate and complete compensation to aggrieved employees under Labor Code §§ 226.7, 510, 512, and 1197.

72. Defendants failed to provide all compensation upon termination of employment in violation of Labor Code §§ 201-203 due, in part, to the fact that Defendants failed to provide proper compensation for all hours worked and failed to pay meal and/or rest period penalties.

73. As a direct result of Defendants' failure to comply with the foregoing provisions of the Labor Code, Plaintiff and all other aggrieved employees have been damaged in an amount to be proven at trial.

74. As California Labor Code § 2699 provides for civil penalties recoverable by Plaintiff on behalf of herself and all other aggrieved employees by and through Labor Code § 2699.3, and as Plaintiff has complied with all pre-filing requirements, Plaintiff may recover these penalties pursuant to Labor Code § 2699, as more specifically set forth in the below Prayer For Relief.

75. Plaintiff seeks an award of statutory civil penalties for each underpaid employee of Defendants pursuant to Labor Code § 2699(a) for each of these employees.

76. Plaintiff also seek an award of reasonable attorney's fees and costs pursuant to Labor Code § 2699(g)(1), and interest, pursuant to Labor Code § 218.6.

EIGHTH CAUSE OF ACTION

Failure to Provide Sick Pay

[Cal. Lab. Code §§ 246, 2698 *et seq.*]

Individual and Representative Action

(By Plaintiff against Defendants and DOES 1 through 10)

77. Plaintiff hereby incorporates by reference each and every allegation contained in the preceding paragraphs as though fully set forth herein.

- 1 78. Labor Code § 246 (a)-(b) states that an employee who has worked for the same employer
2 for 30 days or more within a calendar year is entitled to “paid sick days at the rate of one
3 hour per every 30 hours worked [...] provided that the accrual is on a regular basis so that
4 an employee has no less than 24 hours of accrued sick leave or paid time off by the 120th
5 calendar day of employment or each calendar year, or in each 12-month period.”
- 6 79. Labor Code § 246 (c) further states that “An employee shall be entitled to use accrued
7 paid sick days beginning on the 90th day of employment, after which day the employee
8 may use paid sick days as they are accrued.”
- 9 80. Labor Code § 246 (n) states, “An employer shall provide payment for sick leave taken by
10 an employee no later than the payday for the next regular payroll period after sick leave
11 was taken.”
- 12 81. As set forth herein, Plaintiff and other aggrieved employees worked the requisite amount
13 of days for sick time to accrue. However, Defendants did not permit their employees to
14 take sick time, and did not pay its employees sick time when it was taken.
- 15 82. As a direct result of Defendant’s violations alleged herein, Plaintiff and other aggrieved
16 employees have suffered and continue to suffer, substantial losses related to the use and
17 enjoyment of such sick wages, including lost interest on such monies and expenses, and
18 attorney’s fees in seeking to compel Defendants to fully perform their obligation under
19 state law, all to their respective damage in amounts according to proof at trial.
- 20 83. As California Labor Code § 2699 provides for civil penalties recoverable by Plaintiff on
21 behalf of herself and all other aggrieved employees by and through Labor Code § 2699.3,
22 and as Plaintiff has complied with all pre-filing requirements, Plaintiff may recover these
23 penalties pursuant to Labor Code § 2699, as more specifically set forth in the below
24 Prayer For Relief.
- 25 84. Plaintiff seeks an award of statutory civil penalties for each underpaid employee of
26 Defendants pursuant to Labor Code § 2699(a) for each of these employees.
- 27 85. Plaintiff also seeks an award of reasonable attorney’s fees and costs pursuant to Labor
28 Code § 2699(g)(1), and interest, pursuant to Labor Code § 218.6.

NINTH CAUSE OF ACTION

**Failure to Provide Personnel Records
[Cal. Lab. Code § 2698 *et seq.*]**

Representative Action

(By Plaintiff Representative against Defendants and DOES 1 through 10)

86. Plaintiff hereby incorporates by reference each and every allegation contained in the preceding paragraphs as though fully set forth herein.

87. California law provides that current and former employees, as a matter of right are entitled to inspect and receive a copy of their personnel records, including time records and employee handbooks. Pursuant to Labor Code § 226(f) upon a written request from a current or former employee, or a representative, the employer shall provide a copy of the personnel records not less than 21 calendar days from the date the employer receives the request.

88. Pursuant to California Labor Code section 226 (f), “A failure by an employer to permit a current or former employee to inspect or copy records within the time set forth in subdivision (c) entitles the current or former employee or the Labor Commissioner to recover a seven hundred-fifty-dollar (\$750) penalty from the employer”

89. Plaintiff submitted a written records request via mail to Defendants on July 2, 2024, via U.S. Mail. Plaintiff then submitted a second written request via mail and email for records to Defendants on July 15, 2024, but did not receive any records. To date, Plaintiff has not received her time records from Defendants.

90. By failing to provide employees with all personnel records within the thirty (30) days of receiving an employee’s records request, Defendants willfully violated the provisions of Labor Code section 226(f).

91. Plaintiff seeks an award of statutory civil penalties for each aggrieved employee of Defendants to Labor Code § 2699(a).

92. Plaintiff also seeks an award of reasonable attorney’s fees and costs pursuant to Labor Code § 226(h), and interest, pursuant to Labor Code § 218.5.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiff on her own behalf and on behalf of all other aggrieved employees, prays for judgment as follows:

1. For compensatory damages according to proof, as set forth under Labor Code §§ 510, 1194, and 2802, among other statutes;
2. For penalties and restitution of wages according to proof, as set forth under Labor Code §§ 221, 226, 226.7, 450 and 1197.1, among other statutes;
3. For penalties pursuant to Title 8, California Code of Regulations, Wage Order 5 (or any applicable Wage Order);
4. For lost back pay in an amount to be proven;
5. Where available, for liquidated damages pursuant to Labor Code § 1194.2;
6. Where available, for an award of interest, including prejudgment interest, pursuant to Labor Code § 218.6;
7. For an award of attorneys' fees and costs of suit herein pursuant to Labor Code §§ 218.5, 226, 1194, 2802 and Code of Civil Procedure § 1021.5; and
8. For such other relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby requests that this matter be heard and decided by trial by jury.

DATED: September 20, 2024

GRUENBERG LAW



JOSHUA GRUENBERG, ESQ.

KATHERINE KREBS, ESQ.

Attorneys for Plaintiff

**QUEENIE TING, individually and in a
representative capacity, on behalf of other
members of the general public similarly situated**

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EXHIBIT 1

(1) PLAINTIFF’S LETTER FILED WITH THE LABOR AND WORKFORCE
DEVELOPMENT AGENCY



July 17, 2024

Labor and Workforce Development Agency
Attn. PAGA Administrator

Re: Queenie Ting v. SD Backyard LLC and Franklin Chou

Dear Administrator:

Please allow this correspondence to serve as “written notice,” as required by California Labor Code section 2699.3(a)(1), of the specific provisions of the California Labor Code believed to have been violated by SD Backyard LLC and Franklin Chou (collectively “SD Backyard”), in the above-referenced matter. This “written notice” is filed on behalf of Queenie Ting, and all current and former non-exempt employees employed by SD Backyard. Thank you for your assistance and instruction on this issue.

The specific provisions alleged to have been violated by SD Backyard are as follows:

CALIFORNIA LABOR CODE SECTIONS 201-204, 226, 226.7, 512, 510, 2802 as well as IWC Wage Order 5, and any other applicable wage orders, codified as Title 8, California Code of Regulations, section 11050 et seq.

Facts and theories supporting the allegations: Our client, Queenie Ting, worked as a non-exempt employee employed by SD Backyard from approximately January 11, 2024, until approximately May 19, 2024. SD Backyard, LLC and Franklin Chou own and control Steamy Piggy and several other restaurants (Formoosa, Flama Llama, Yún, Bok Bok Dok, and Viet Nom) and create uniform and standard policies which are addressed below.

Throughout the term of Ms. Ting’s employment, SD Backyard required Ms. Ting and all other non-exempt employees to experience actions illegal under the California Labor Code, including the following:

Minimum Wage and Overtime Violations

SD Backyard failed to provide all compensation, including minimum wage and overtime compensation, as well as compensation for work performed inside of Meal and Rest Periods, to its employees in violation of, *inter alia*, Labor Code sections 1194, 510, as well as IWC Wage Order 5, and any other applicable wage orders. This illegal action is due, in part, to SD Backyard’s policies of **(1)** failing to properly retain accurate time records, in violation of California law, and **(2)** failing to provide compensation (including both minimum and overtime compensation) for all time worked by the employees, or in control of the employer. For instance,

SD Backyard would instruct Ms. Ting to report scheduled (as opposed to *actual*) work hours, resulting in a loss of compensation. Additionally, SD Backyard would often require Ms. Ting to work extended hours (beyond his scheduled hours) without compensation. Further, SD Backyard paid Ms. Ting and other non-exempt employees, an hourly wage which was below the state and/or local minimum wage laws and/or ordinances.

Additionally, among other issues, SD Backyard has notice of Ms. Ting, and others, working outside of their scheduled and/or reported hours, as well as *within* meal and rest periods, but fails to provide any compensation for this work-time.

Finally, SD Backyard failed to properly calculate and pay overtime at the actual overtime rate of pay, as SD Backyard ignores certain compensation when calculating the regular rate of pay. Additionally, SD Backyard would improperly classify overtime as regular time, resulting in an underpayment to employees.

Failure to Provide Compliant Meal Periods

SD Backyard failed to provide complaint meal period in violation of, inter alia, Labor Code 226.7, 512, as well as IWC Wage Order 5, or any other applicable wage orders. For example, SD Backyard does not possess a legal meal period policy and makes no attempt to ensure that its employees are either timely or wholly provided meal periods. The employees would often either miss a meal period entirely, or be provided a short or untimely meal period. Whether or not an employee was provided a meal period was often contingent upon how busy SD Backyard was on a given day.

SD Backyard would pressure its employees to either skip, or cut short, a meal period as employees were expected to respond to supervisors at all times. Finally, on the rare occasions when employees *were* paid meal period penalties (i.e. California Meal Period Premiums), such payments do not “cure” the stated Labor Code violation under section 226.7. The California Supreme Court held that “An employer’s failure to provide an additional hour of pay does not form part of a section 226.7 violation, and an employer’s provision of an additional hour of pay does not excuse a section 226.7 violation. The failure to provide required meal and rest breaks is what triggers a violation of 226.7.” (*Kirby v. Immoos Fire Protection, Inc.* (2012) 53 Cal.4th 1244, 1256.) Even more recently, a 2020 California Supreme Court ruling stated that, “The remedy for a Labor Code violation, through settlement or other means, is distinct from the fact of the violation itself. For example, employers can pay an additional hour of wages as a remedy for failing to provide meal and rest breaks (§ 226.7, subd. (c).) But we have held that payment of this statutory remedy ‘does not excuse a 226.7 violation.’” *Kim v. Reins International California, Inc.* (2020) 9 Cal.5th 73. To be clear, payment of a meal period penalty to employees does not rectify the violation, it is in fact an admission of a Labor Code violation. Finally, SD Backyard failed to pay Meal Period Premiums at the proper rate, as SD Backyard fails to either **(1)** pay a full hours

worth of pay, or **(2)** properly calculate the regular rate of pay for purposes of determining the premium rate owed. *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858, 864.

Finally, SD Backyard illegally retained control over its employees during meal period. For example, SD Backyard required its employees to “remain on the premises” (i.e. at the restaurant) and to remain “on call” (i.e. monitor their telephones) at all times, including during meal periods.

Failure to Provide Compliant Rest Periods

SD Backyard failed to provide compliant rest periods or requisite rest period penalty payments, in violation of, inter alia, Labor Code sections 226.7, 512, and IWC Wage Order 5, and any other applicable wage orders. For example, SD Backyard does not possess a legal rest period policy, as its rest period policy lacks required language under California law. SD Backyard makes no attempt to ensure that its employees are either timely or wholly provided rest periods. The employees would often either miss a rest period entirely, be provided a short or untimely rest period, or be provided only one rest period, even when they were working in excess of 6.5 hours a day. SD Backyard would pressure its employees to either skip, or cut short, a rest period as employees were expected to respond to supervisors at all times. SD Backyard has never provided a compliant rest period penalty payment to any employee as to the above-referenced issues. Finally, on the rare occasions in which SD Backyard would provide a rest period penalty, it would pay said penalty at an improper (and *lesser*) rate, due to the failure to properly calculate the regular rate of pay.

SD Backyard required its employees to constantly monitor their cell phones and be “on-call” at all times, specifically during rest periods. On occasion, SD Backyard would interrupt, or cut short, its employees’ rest periods and require them to return to work.

Finally, SD Backyard illegally retained control over its employees’ rest periods. For example, SD Backyard required its employees to “remain on the premises,” (i.e. stay at the restaurant) and to remain “On Call” (i.e. monitor their telephones) at all times, including during rest periods.

Wage Statement Violations

SD Backyard violated Labor Code section 226 (a)(1) by failing to provide wage statements to its employees. Employees were and are not permitted to view their wage statements unless they request to do so from management. Additionally, SD Backyard violated Labor Code section 226 (a)(1) by failing to furnish an accurate showing of the gross wages earned by its employees. For example, SD Backyard **(a)** would not provide compensation for all

hours and minutes worked, **(b)** would use improper (and lesser) minimum wage and overtime rates of pay, and **(c)** would fail to pay meal and/or rest period penalties when due.

SD Backyard violated Labor Code section 226(a)(2) by failing to furnish an accurate showing of all hours worked at each hourly rate by the employee. Ms. Ting and the other employees were not compensated for all hours worked (due in part to SD Backyard's requirement that employees list only *scheduled* work-times, not actual work-times). Furthermore, SD Backyard failed to state the overtime rate of pay on its earning records.

SD Backyard violated Labor Code section 226(a)(5) by failing to furnish an accurate showing of the net wages earned by its employees. For example, SD Backyard **(a)** would not provide compensation for all hours and minutes worked, **(b)** would use an improper (and lesser) overtime rate of pay, and **(c)** would fail to pay meal and/or rest period penalties when due. Further, on the rare occasions in which SD Backyard would provide a meal or rest period penalty, it would pay said penalty at an improper (and lesser) rate, due to the failure to properly calculate the regular rate of pay.

SD Backyard violated Labor Code section 226 (a)(9) by failing to furnish an accurate showing of all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Additionally, Ms. Ting, and the other employees, were not compensated for all hours worked (due in part to SD Backyard requiring employees to list only *Scheduled* work-time, not actual work-times to include "on-call" hours). In fact, the wage statements only list the type of work performed and not the total amount. The wage statements do not state the hourly rates for any work. Therefore, SD Backyard failed to provide a showing of the "total hours worked" by its employees pursuant to section 226(a)(2).

Failure to Provide Compliant Expense Reimbursement Payments

SD Backyard failed to provide compliant expense reimbursement payments in violation of, *inter alia*, Labor Code section 2802 by failing to provide payments for expenses incurred by Ms. Ting, and other non-exempt employees, including expenses for cell-phone costs, other necessary work supplies, and mileage.

Failure to Provide Sick Time

SD Backyard failed to provide accrued sick hours in violation of, *inter alia*, Labor Code § 246. Moreover, SD Backyard failed to accurately list the amount of sick time earned on its employees' wage statements. For example, on the rare occasion Ms. Ting to use her sick time, SD Backyard informed her she would not be paid for her sick time. Additionally, Ms. Ting was told she was not permitted to take sick time unless a coworker covered her shift, despite working with customer's food and having a cough (a safety threat to customers).

Willful Failure to Provide All Compensation to Current Employees

SD Backyard failed to timely provide all compensation due during employment in violation of Labor Code sections 204, due in part, to the fact that SD Backyard failed to provide proper compensation for all hours worked, and failed to pay full meal and rest period penalties, as discussed above.

Willful Failure to Provide All Compensation to Ex-Employees

SD Backyard failed to provide all compensation upon termination of employment in violation of Labor Code sections 201-203, due in part, to the fact that SD Backyard failed to provide proper compensation for all hours worked, and failed to pay full meal and rest period penalties, as discussed above.

To confirm, SD Backyard, LLC is a “person” as defined within California Labor Code section 18.

To confirm, Frankin Chou is a “person” as defined within California Labor Code section 18.

Again, thank you for your assistance and instruction with this matter. Should you have any questions or comments, please do not hesitate to contact the undersigned.

Very Truly Yours,



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619-452-3635

***cc: Via Certified U.S. Mail
and email***

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