

Matthew A. Haulk (SBN 272457)

Email: mhaulk@hemploymentlaw.com

Jose M. Herrera (SBN 289590)

Email: jherrera@hemploymentlaw.com

HAULK & HERRERA LLP

100 Pine Street, Suite 1250

San Francisco, CA 94111

Telephone: (415) 745-3219

Facsimile: (415) 745-3301

Attorneys for Plaintiffs

JOSE WILBUR HERNANDEZ and EUFEMIO MUKUL

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF MARIN

JOSE WILBUR HERNANDEZ, an
individual; and EUFEMIO MUKUL, an
individual,

Plaintiffs,

vs.

BUCKEYE ROADHOUSE, INC., a
California Corporation; PETER
SCHUMACHER, an individual; and DOES 1
TO 50,

Defendants.

CASE NO.: CV0004633

[Assigned to Honorable Stephen P.
Freccero, Courtroom A]

**FIRST AMENDED COMPLAINT FOR
CIVIL PENALTIES AND INJUNCTIVE
RELIEF:**

**1. CIVIL PENALTIES – THE LABOR
CODE PRIVATE ATTORNEYS
GENERAL ACT (“PAGA”)**

[UNLIMITED CIVIL JURISDICTION]

Complaint Filed: November 27, 2024

Trial Date: None

Plaintiffs Jose Wilbur Hernandez, an individual, and Eufemio Mukul, an individual, (“Plaintiffs”) bring this action on behalf of the State of California, and all other Aggrieved Employees (as defined below), against Defendants Buckeye Roadhouse, Inc., a California corporation, Peter Schumacher, an individual, and Does 1-50, inclusive, (collectively referred to herein as “Defendants”).

INTRODUCTION

1. This is a representative action filed by Plaintiffs on behalf of the State of California against Defendants pursuant to California's Private Attorney General Act, Labor

Code section 2698 et. seq. ("PAGA"), to recover civil penalties (65% payable to the Labor and Workforce Development Agency and 35% payable to Aggrieved Employees) for Defendants' violations of the California Labor Code as alleged below.

2. By and through this action, Plaintiffs do not allege individual claims; Rather, their claims are representative made on behalf of the State of California for PAGA violations against themselves and other aggrieved employees. See *Balderas v. Fresh Start Harvesting, Inc.* 2024 WL 167112 "[A]n employee who does not bring an individual claim against her employer may nevertheless bring a PAGA action for herself and other employees of the company". Plaintiffs allege claims against Peter Schumacher pursuant to Labor Code section 558. See *Atempa v. Pedrazzani* (2018) 27 Cal.App.5th 809.

PARTIES

3. Plaintiff Jose Wilbur Hernandez is a natural person and domiciled in California.

4. Plaintiff Eufemio Mukul is a natural person and domiciled in California.

5. Defendant Buckeye Roadhouse, Inc., a California Corporation, (the "Company") was at all relevant times doing business in Marin County, California.

6. Defendant Peter Schumacher is a natural person and was at all relevant times doing business in Marin County, California

7. Plaintiffs are ignorant of the true names and capacities of the defendants sued under the fictitious names of Does 1 through 50. Plaintiffs will amend this Complaint to show their true names and capacities when the same have been ascertained. Plaintiffs are informed and believe that each of the fictitiously named Doe Defendants is legally responsible in some manner for the occurrences alleged and that Plaintiffs' injuries and damages, as alleged, were proximately caused by these Doe Defendants' actions.

8. Defendant Buckeye Roadhouse, Inc, Peter Schumacher, and Doe Defendants 1 through 50, inclusive, are referred to herein collectively as "Defendants". Plaintiffs are informed and believe and thereon allege that at all times pertinent hereto, each Defendant was the agent and employee of each of its co-Defendants, and in doing

1 the things described herein, was acting within the course and scope of his/her authority
2 as such agent and employee, and each Defendant ratified and approved the acts of his/her
3 agents and employees. Defendants acted as Plaintiffs' "employer" and are responsible for
4 any and all damages claimed by Plaintiffs in this action under Labor Code section 558.

5 **PAGA ALLEGATIONS**

6 9. Plaintiff brings this action under the PAGA on behalf of the State of California
7 and other Aggrieved Employees, regarding violations of the California Labor Code as set
8 forth herein as to all Aggrieved Employees. Said "Aggrieved Employees" include:

9 "All individuals who worked for any one or more of the
10 Defendants at any location in California within one year plus 65
11 days from the filing of the initial Complaint through the present
12 ("PAGA Period" or "Class Period")."

13 10. Plaintiffs are "aggrieved employee," as that term is defined under Labor
14 Code section 2699(c), as Plaintiffs were employed by Defendants during the applicable
15 statutory limitations period and suffered one or more of the Labor Code violations set forth
16 herein. Accordingly, Plaintiffs seek to recover on behalf of the State of California, and all
17 Aggrieved Employees, the civil penalties provided by PAGA, plus reasonable attorney's
18 fees and costs.

19 **COMPLIANCE WITH PAGA'S NOTIFICATION REQUIREMENTS**

20 11. Plaintiffs, through counsel, gave written notice by online filing with the
21 California Labor and Workforce Development Agency ("LWDA") informing it that
22 Defendants failed to comply with California's labor laws with regard to the allegations
23 alleged in this Complaint ("PAGA Notice").

24 12. The PAGA Notice outlined Plaintiffs' claims for violations of the California
25 Labor Code and the applicable wage orders on behalf of the State of California and all
26 Aggrieved Employees.

27 13. The LWDA did not provide notice of its intention to investigate Defendants'
28 violations after expiration of the 65-day waiting time period, or at any time. To the extent

any of the alleged violations were curable, Defendants failed to cure within the time allotted by PAGA. Accordingly, Plaintiffs have exhausted the administrative remedies as required by Labor Code section 2699.3. Consequently, Plaintiffs' right to file the instant lawsuit against Defendants has duly accrued.

GENERAL FACTUAL ALLEGATIONS

14. Plaintiff Hernandez has worked for Buckeye as a line cook since approximately July 2023.

15. Plaintiff Mukul worked for Buckeye as a food runner from 2004 through July 2024.

16. At all times, Plaintiffs were paid on an hourly basis. Plaintiff Hernandez generally begins his workday at 3:30pm on weekdays and 8:00am on weekends. Plaintiff Hernandez and similarly situated employees are not provided with timely meal periods, as reflected in employee time records. Defendant maintains an unlawful policy wherein managers are instructed to "punch" employees into their shift 30 minutes before actually commencing to reflect an "unpaid" break. However, this "break" is fictitious. Employees do not actually receive a meal break upon their arrival for their shift. Indeed, Plaintiff Hernandez has worked in excess of 13 hours without a meal period.

17. In addition, Defendants regularly deduct 30 minutes from employee time for a "meal period", despite the inability to take such break. This policy has resulted in the regular underpayment of wages to Plaintiffs and Aggrieved Employees.

18. In addition, Plaintiffs and similarly situated employees are not provided rest periods, irrespective of hours worked, at times working in excess of 12 hours without a rest period.

19. Employees are not compensated with a break premium for missed or untimely meal and/or rest breaks.

20. During the PAGA Period, Plaintiffs, like other Aggrieved Employees, were paid on an hourly basis. Defendants regularly deducted 30-minute meal periods from Plaintiffs' time records despite the inability to take a meal break.

21. During the PAGA period, Plaintiffs, like other Aggrieved Employees, were discouraged from taking code compliant meal breaks and Defendants did not authorize or permit code compliant meal breaks. For example, Aggrieved Employees were generally provided a sham break 30 minutes before their scheduled start time to reflect an unpaid meal period at the “beginning” of their shift. Moreover, Defendants regularly deduct 30-minutes from employee time records despite the inability to take a break. During the PAGA Period, Plaintiffs, like other Aggrieved Employees, were not paid one hour of premium pay for missed or delayed meal breaks.

22. During the PAGA Period, Plaintiffs, like other Aggrieved Employees, were discouraged from taking code compliant rest breaks and Defendants did not authorize or permit code compliant rest breaks. For example, Aggrieved Employees were only provided with a sham 30-minute meal period prior to their shift, with no other breaks being provided. Plaintiffs, like other Aggrieved Employees, were not paid one hour of premium pay for missed or delayed rest breaks.

23. During the PAGA Period, Plaintiffs, like other Aggrieved Employees, were never issued accurate or itemized wage statements reflecting all wages earned.

24. During the PAGA Period, Plaintiff Mukul separated from employment with Defendant. However, and like other Aggrieved Employees, he was not paid all wages owed to him at the time of separation, including regular wages, overtime wages, and premium pay for missed and delayed meal and rest periods. On information and belief, the Defendants’ refusal to pay all wages owed to former employees continues.

FIRST CAUSE OF ACTION
CIVIL PENALTIES – THE LABOR CODE PRIVATE ATTORNEYS GENERAL ACT
(“PAGA”)
(Plaintiff Against All Defendants)

25. Plaintiffs incorporate by reference all other paragraphs of this Complaint as if they were re-alleged and set forth herein.

26. Plaintiffs bring this cause of action on behalf all other aggrieved current and former employees of Defendant Buckeye Roadhouse, Inc. and seek civil penalties for

each and every violation alleged herein. Plaintiffs are aggrieved employees. Plaintiffs were employed by Defendants and the violations alleged herein were committed against Plaintiffs. At the time of each violation, Defendants employed one or more employees.

27. On August 27, 2024, Plaintiffs filed a PAGA Notice with the California Labor and Workforce Development Agency (hereafter, "LWDA") and provided a copy by certified mail to Defendants. A true and correct copy of the PAGA Notice and Certified Mail Receipts are attached hereto as **Exhibit 1**.

28. Plaintiffs complied with all procedural requirements of Labor Code § 2699.3 before filing this Complaint. The LWDA did not respond to Plaintiffs' notice of the alleged violations within the statutory timeframe, and Plaintiffs have therefore exhausted administrative remedies.

29. As a result of the aforesaid wrongful and illegal conduct of the Defendants, and each of them, Plaintiffs are entitled to civil penalties in an amount to be determined at trial, costs, and attorney's fees.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs prays for relief and judgment solely on behalf of other Aggrieved Employees and the State of California as follows:

1. For civil penalties under Labor Code Section 2699 (65% payable to the LWDA and 35% payable to Aggrieved Employees);
2. For an order temporarily, preliminarily and permanently enjoining and restraining Defendants from engaging in similar unlawful conduct as set forth herein;
3. For injunctive and equitable relief;
3. For reasonable attorney's fees and costs of suit; and

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4. For such other and further relief that the Court deems just and proper.

Dated: January 23, 2025

HAULK & HERRERA LLP

By: 
Matthew A. Haulk, Esq.
Jose M. Herrera, Esq.
Attorneys for JOSE WILBUR
HERNANDEZ and EUFEMIO MUKUL

EXHIBIT 1



HAULK & HERRERA LLP

Attorneys at Law

Matthew A. Haulk, Esq.
mhaulk@hhemploymentlaw.com
Jose M. Herrera, Esq.
jherrera@hhemploymentlaw.com

100 Pine Street, Suite 1250
San Francisco, CA 94111-5235
Telephone: 415.745.3219
www.hhemploymentlaw.com

August 27, 2024

VIA ONLINE SUBMISSION

Labor & Workforce Development Agency
Attn: PAGA Administrator
455 Golden Gate Avenue, 9th Floor
San Francisco, California 94102

Re: **Private Attorney General Act Notice**

Dear PAGA Administrator:

This firm represents Jose Wilbur Hernandez and Eufemio Mukul (collectively hereinafter “Plaintiffs”) with respect to Plaintiffs’ claims against Buckeye Roadhouse, Inc. (“Buckeye”) and Peter Schumacher (collectively hereinafter “Defendants”) arising out of violations of numerous provisions of the applicable California Labor Code and IWC Wage Order committed against all of Defendants’ non-exempt employees.

This letter shall serve as written notice, pursuant to California Labor Code section 699.3(a) (1), of Defendants’ violations of the provisions of the Labor Code and Wage Order set forth below.

Plaintiff Jose Wilbur Hernandez has worked for Buckeye as a line cook since approximately July 2023. Plaintiff Eufemio worked for Buckeye as a food runner from 2004 through July 2024. At all times, Plaintiffs were paid on an hourly basis. Plaintiff Jose Wilbur Hernandez generally begins his workday at 3:30pm on weekdays and 8:00am on weekends. Plaintiff Jose Wilbur Hernandez and similarly situated employees are not provided with timely meal periods, as reflected in employee time records. Defendants maintain an unlawful policy wherein managers are instructed to “punch” employees into their shift 30 minutes before actually commencing to reflect an “unpaid” break. However, this “break” is fictitious. Employees do not actually receive a meal break upon their arrival for their shift. Indeed, Plaintiff Jose Wilbur Hernandez has worked in excess of 13 hours without a meal period.

In addition, Defendants also regularly deducts 30 minutes from employee time for a “meal period”, despite the inability to take such break. This policy has resulted in the regular underpayment of wages to Plaintiffs and Class members.



In addition, Plaintiffs and similarly situated employees are not provided rest periods, irrespective of hours worked, at times working in excess of 12 hours without a rest period. Employees are not compensated with a break premium for missed or untimely meal and/or rest breaks.

During the Class Period, Plaintiffs, like other members of the Class, were paid on an hourly basis. Defendants regularly deducted 30-minute meal periods from Plaintiffs' time records despite the inability to take a meal break.

During the Class Period, Plaintiffs, like other members of the Class, was discouraged from taking code compliant meal breaks and Company did not authorize or permit code compliant meal breaks. For example, Class Members were generally provided a sham break 30 minutes before their scheduled start time to reflect an unpaid meal period at the "beginning" of their shift. Moreover, Defendants regularly deducts 30-minutes from employee time records despite the inability to take a break. During the Class Period, Plaintiffs, like other members of the Class, were not paid one hour of premium pay for missed or delayed meal breaks.

During the Class Period, Plaintiffs, like other members of the Class, were discouraged from taking code compliant rest breaks and Company did not authorize or permit code compliant rest breaks. For example, Class Members were only provided with a sham 30-minute meal period prior to their shift, with no other breaks being provided. Plaintiffs, like other members of the Class, were not paid one hour of premium pay for missed or delayed rest breaks.

During the Class Period, Plaintiffs, like other Class Members, were never issued accurate or itemized wage statements reflecting all wages earned.

During the Class Period, Plaintiff Eufemio Mukul separated from employment with the Company. However, and like other Subclass Members, he was not paid all wages owed to him at the time of separation, including regular wages, overtime wages, and premium pay for missed and delayed meal and rest periods. On information and belief, the Company's refusal to pay all wages owed to former employees continues, and none of the Subclass Members have been paid all wages owed, despite weeks, months, and years since their respective employment separations.

Plaintiffs alleges that Defendants engaged in a pattern of knowingly violating numerous Labor Code sections, as set forth below. In particular, Defendants have violated California's wage and hour laws by:

a) Failing to pay Plaintiffs (and other non-exempt employees) for all hours worked (including overtime), in violation of the applicable Wage Order and Labor Code sections 204,



510, 1194 et seq. As set forth above, Defendants failed to properly compensate Plaintiffs for all hours worked.

b) Failing to permit non-exempt employees to take timely rest/meal breaks in violation of Labor Code section 226.7, 512, and the applicable Wage Order. Pursuant to Defendants' policies and the demands of Plaintiffs' duties, Plaintiffs routinely were required to skip, and consequently missed, the rest/meal periods required to be made available to Plaintiffs.

c) Failing to pay premium pay for missed or untimely rest/meal breaks, in violation of Labor Code sections 226.7 and 512. Plaintiffs have not been compensated for Plaintiffs' missed rest/meal breaks.

d) Failing to pay all earned wages (including overtime compensation, and premium pay for missed meal and rest breaks) at least twice a month in violation of Labor Code section 204. By failing to properly compensate Plaintiffs, as described above, Defendants violated this provision.

e) Failing to maintain and furnish accurate, itemized statements of hours worked, gross and net wages earned all applicable hourly rates in effect during the pay period and the number of hours worked at each hourly rate, and deductions in violation of the applicable Wage Order and Labor Code sections 226 and 226.3. Defendant did not keep accurate records of non-exempt employees' hours worked (e.g., overtime hours worked).

f) Failing to pay all earned wages (including overtime compensation, and premium pay for missed meal breaks) at the time of termination or within 72 hours of resignation in violation of Labor Code sections 201, 202, 203, 206, and 227.3. As described above, Defendants systematically failed to pay all overtime compensation and premium pay owed to Plaintiffs (and other non-exempt employees); as such, Plaintiffs' earned wages were not timely paid in full following Plaintiffs' separation from Defendants.

As an aggrieved employee, Plaintiffs are able to bring a PAGA claim on behalf of all non-exempt Defendants employees, and is entitled to recover penalties for all violations, as well as Plaintiffs' attorneys' fees.

This notice is based on the facts currently known to Plaintiff and is made without prejudice to Plaintiffs' right to seek all available remedies for any and all additional violations that may subsequently be discovered or identified.



H A U L K & H E R R E R A L L P

Page 4 of 4

Please advise this office within 60 days of the post-mark date of this notice whether the Labor & Workforce Development Agency intends to investigate the above-noted Labor Code and Wage Order violations. Thank you for your attention to this matter.

Very truly yours,

Jose M. Herrera

cc: Buckeye Roadhouse, Inc. and Peter Schumacher, *via Certified Mail/Return Receipt Requested*

9589 0710 5270 0616 7871 70

U.S. Postal Service™ *Jose Hernandez*
CERTIFIED MAIL® RECEIPT
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For delivery information, visit our website at www.usps.com®.

OFFICIAL USE

Certified Mail Fee

\$ *4.85*

Extra Services & Fees (check box, add fees as appropriate)

☒ Return Receipt (hardcopy) \$ *4.10*
☐ Return Receipt (electronic) \$ _____
☐ Certified Mail Restricted Delivery \$ _____
☐ Adult Signature Required \$ _____
☐ Adult Signature Restricted Delivery \$ _____

Postage

\$ *1.73*

Total Postage and Fees

\$ *9.68*

Sent To

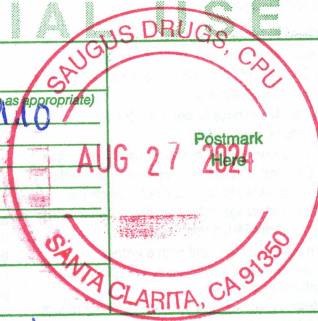
Peter Schumacher

Street and Apt. No., or P.O. Box No.

15 Shoreline Highway

City, State, ZIP+4®

Mill Valley, CA 94941



9589 0710 5270 0172 0765 89

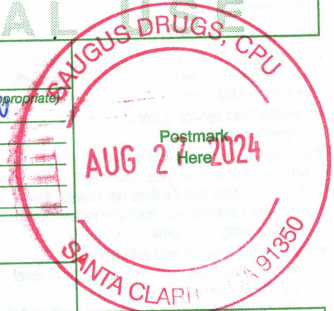
U.S. Postal ServiceTM
CERTIFIED MAIL[®] RECEIPT
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Jose Hernandez

For delivery information, visit our website at www.usps.com.

OFFICIAL USE

Certified Mail Fee
\$ 4.85
Extra Services & Fees (check box, add fee as appropriate)
☒ Return Receipt (hardcopy) \$ 4.10
☐ Return Receipt (electronic) \$
☐ Certified Mail Restricted Delivery \$
☐ Adult Signature Required \$
☐ Adult Signature Restricted Delivery \$



Postage
\$.73
Total Postage and Fees
\$ 9.68

Sent To
Buckeye Roadhouse, Inc.
Street and Apt. No., or PO Box No.
107 Caledonia St. Suite P
City, State, ZIP+4[®]
Sausalito, CA 94965

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Peter Schumacher
15 Shoreline Highway
Mill Valley, CA 94041



9590 9402 7326 2028 8435 93

2. Article Number

9589 0710 5270 0616 7871 70

PS Form 3811, July 2020 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent

☒ Addressee

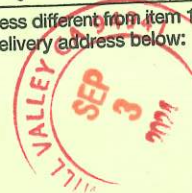
B. Received by (Printed Name)

Schumacher

C. Date of Delivery

9/3

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No



3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
- ☒ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Insured Mail
- ☐ Insured Mail Restricted Delivery (over \$500)

- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

Hernandez, Jose

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Buckeye Roadhouse, Inc.
107 Caledonia St., Ste P
Sausalito, CA 94960



9590 9402 7326 2028 8438 83

2. Article Number (Transfer from service label)

9589 0710 5270 0172 0765 89

PS Form 3811, July 2020 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

[Signature]

☒ Agent

☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

8/3

D. Is delivery address different from item 1?
If YES, enter delivery address below:

☐ Yes

☐ No

3. Service Type

☐ Adult Signature

☐ Adult Signature Restricted Delivery

☒ Certified Mail®

☐ Certified Mail Restricted Delivery

☐ Collect on Delivery

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Domestic Return Receipt

Hernandez Jose