

Kane Moon (SBN 249834)
Allen Feghali (SBN 301080)
Jacquelyne VanEmmerik (SBN 339338)
MOON LAW GROUP, P.C.
725 South Figueroa Street, 31st Floor
Los Angeles, California 90017
Telephone: (213) 232-3128
Facsimile: (213) 232-3125
Email: kmoon@moonlawgroup.com
Email: afeghali@moonlawgroup.com
Email: jvanemmerik@moonlawgroup.com

ELECTRONICALLY FILED
Superior Court of California,
County of Solano
10/29/2024 at 05:25:41 PM
By: S. Brack, Deputy Clerk

\$435

Attorneys for Plaintiff, Nora Berenice Martinez

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SOLANO

NORA BERENICE MARTINEZ, on behalf of
all others similarly situated,

Plaintiff,

vs.

SCHULTE HOSPITALITY GROUP, INC.; and
DOES 1 through 10, inclusive,

Defendants.

Case No.: CU24-08485

**REPRESENTATIVE ACTION
COMPLAINT:**

1. Civil Penalties Under PAGA [Cal. Lab. Code
§§ 2698, *et seq.*]

DEMAND FOR JURY TRIAL

TABLE OF CONTENTS

INTRODUCTION AND PRELIMINARY STATEMENT	1
THE PARTIES	3
A. Plaintiff	3
B. Defendants	3
ALLEGATIONS COMMON TO ALL CAUSES OF ACTION	4
FIRST CAUSE OF ACTION	8
PRAYER FOR RELIEF	10
DEMAND FOR JURY TRIAL	11

1 Plaintiff Nora Berenice Martinez (“Plaintiff”), based upon facts that either have evidentiary
2 support or are likely to have evidentiary support after a reasonable opportunity for further
3 investigation and discovery, alleges as follows:

4 **INTRODUCTION AND PRELIMINARY STATEMENT**

5 1. Plaintiff brings this action against Defendants Schulte Hospitality Group, Inc. and
6 DOES 1 through 10 (collectively, “Defendants”).

7 2. Plaintiff brings this action against Defendants for civil penalties under the Private
8 Attorneys General Act of 2004 (“PAGA”), California Labor Code §§ 2698, *et seq.*, stemming from
9 their failure to: pay minimum wages; pay overtime compensation; provide meal periods or
10 compensation in lieu thereof; maintain accurate records of hours worked and meal periods; authorize
11 and permit rest breaks or compensation in lieu thereof; indemnify necessary business expenses;
12 timely pay all wages to terminated employees; and provide accurate itemized wage statements.
13 Plaintiff does not seek to recover anything other than civil penalties under PAGA. Therefore, to the
14 extent statutory violations are mentioned for wage violations, Plaintiff does not seek underlying
15 general and/or special damages for those violations, restitution, or other damages.

16 3. Plaintiff brings this action as a representative action on behalf of the State of
17 California and all past and present non-exempt, hourly-paid employees of Defendants who worked in
18 California during the applicable statute of limitations period (collectively, “Aggrieved Employees”).

19 4. For over fifty years, California courts have recognized that California wage-and-hour
20 laws serve the compelling public interest of fostering a stable job market. On this basis, California
21 courts have observed that violation of California wage-and-hour laws permeates all economic strata
22 and can destabilize the economic welfare of those employees who depend on the timely and accurate
23 payment of all entitled wages, premiums, and reimbursements. So fundamental are California wage-
24 and-hour laws that the Legislature has criminalized certain types of violations and extended
25 additional deterrent protection in the form of PAGA, which allows employees to step into the shoes
26 of the state to allege civil penalties against their respective employers. This is the precise and sole
27 nature of this Action.
28

1 5. Defendants own/owned and operate/operated an industry, business, and establishment
2 within the State of California, including Solano County. As such, and based upon all the facts and
3 circumstances incident to Defendants' business in California, Defendants are subject to the California
4 Labor Code, Industrial Welfare Commission ("IWC") Wage Orders, and the California Business and
5 Professions Code.

6 6. Despite these requirements, throughout the statutory period, Defendants maintained a
7 systematic, company-wide policy and practice of:

- 8 (a) Failing to pay employees for all hours worked, including all minimum and
9 overtime wages, in compliance with the California Labor Code and IWC
10 Wage Orders;
- 11 (b) Failing to provide employees with timely and duty-free meal periods, maintain
12 accurate records of all meal periods taken or missed, and pay an additional
13 hour's pay for each workday a meal period violation occurred, in compliance
14 with the California Labor Code and IWC Wage Orders;
- 15 (c) Failing to authorize and permit employees to take timely and duty-free rest
16 periods and pay an additional hour's pay for each workday a rest period
17 violation occurred, in compliance with the California Labor Code and IWC
18 Wage Orders;
- 19 (d) Failing to indemnify employees for necessary business expenses incurred, in
20 compliance with the California Labor Code and IWC Wage Orders;
- 21 (e) Willfully failing to pay employees all minimum wages, overtime wages, meal
22 period premium wages, and rest period premium wages due within the time
23 period specified by California law when employment terminates;
- 24 (f) Failing to maintain accurate records of the hours that employees worked, in
25 compliance with the California Labor Code and IWC Wage Orders; and
- 26 (g) Failing to provide employees with accurate, itemized wage statements
27 containing all the information required by the California Labor Code and IWC
28 Wage Orders.

7. On information and belief, Defendants, and each of them were on actual and constructive notice of the improprieties alleged herein and intentionally refused to rectify their unlawful policies. Defendants' violations, as alleged above, during all relevant times herein were willful and deliberate.

8. At all relevant times, Defendants were and are legally responsible for all of the unlawful conduct, policies, practices, acts, and omissions as described in each and all of the foregoing paragraphs as the employer of Plaintiff and the Aggrieved Employees. Further, Defendants are responsible for each of the unlawful acts or omissions complained of herein under the doctrine of “respondeat superior.”

THE PARTIES

A. Plaintiff

9. Plaintiff is a California resident who worked for Defendants in the Solano County, California, as a Houseman from approximately August 2023 to September 2023.

10. Plaintiff reserves the right to seek leave to amend this complaint to add new plaintiffs, if necessary, in order to establish suitable representative(s) pursuant to *La Sala v. American Savings and Loan Association* (1971) 5 Cal.3d 864, 872, and other applicable law.

B. Defendants

11. Plaintiff is informed and believes, and based upon that information and belief alleges, that Defendants are:

- (a) Business entities with their principal places of business in Solano County, California;
- (b) Business entities conducting business in numerous counties throughout California, including in Solano County;
- (c) The former employers of Plaintiff; and
- (d) The current and/or former employers of all Aggrieved Employees, who suffered and permitted Plaintiff and the Aggrieved Employees to work and/or controlled their wages, hours, or working conditions.

1 12. Plaintiff does not currently know the true names or capacities of the persons or
2 entities sued herein as DOES 1-10, inclusive, and therefore sues said Defendants by such fictitious
3 names. Each DOE Defendant was in some manner legally responsible for the damages suffered by
4 Plaintiff and the Aggrieved Employees as alleged herein. Plaintiff will amend this complaint to set
5 forth the true names and capacities of these Defendants when they have been ascertained, together
6 with appropriate charging allegations, as may be necessary.

7 13. At all times mentioned herein, the Defendants named as DOES 1-10, inclusive, and
8 each of them, were residents of, doing business in, availed themselves of the jurisdiction of, and/or
9 injured a significant number of the Plaintiff and the Aggrieved Employees in the State of California.

10 14. Plaintiff is informed and believes, and thereon alleges, that at all relevant times each
11 Defendant, directly or indirectly, or through agents or other persons, employed Plaintiff and the other
12 employees described herein and exercised control over their wages, hours, and working conditions.

13 15. Plaintiff is informed and believes, and thereon alleges, that at all relevant times each
14 Defendant was the principal, agent, partner, joint venturer, officer, director, controlling shareholder,
15 subsidiary, affiliate, parent corporation, successor in interest and/or predecessor in interest of some or
16 all of the other Defendants, and was engaged with some or all of the other Defendants in a joint
17 enterprise for profit, and bore such other relationships to some or all of the other Defendants so as to
18 be liable for their conduct with respect to the matters alleged below.

19 16. Plaintiff is informed and believes, and thereon alleges, that at all relevant times each
20 Defendant acted pursuant to and within the scope of the relationships alleged above, that each
21 Defendant knew or should have known about, and authorized, ratified, adopted, approved, controlled,
22 aided, and abetted the conduct of all other Defendants.

23 **ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

24 17. Plaintiff is a California resident who worked for Defendants in Solano County,
25 California, as a Houseman during the statutory period. During the statutory period, Plaintiff was
26 typically scheduled to work five (5) days in a workweek and occasionally in excess of eight (8) hours
27 in a single workday.
28

1 18. Throughout the statutory period, Defendants failed to pay Plaintiff for all hours
2 worked (including minimum wages and overtime wages), failed to provide Plaintiff with
3 uninterrupted meal periods, failed to authorize and permit Plaintiff to take uninterrupted rest periods,
4 failed to indemnify Plaintiff for necessary business expenses, failed to timely pay all final wages to
5 Plaintiff when Defendants terminated Plaintiff's employment, and failed to furnish accurate wage
6 statements to Plaintiff. As discussed below, Plaintiff's experience working for Defendants was
7 typical and illustrative.

8 19. Throughout the statutory period, Defendants maintained a policy and practice of not
9 paying Plaintiff and the Aggrieved Employees for all hours worked, including all overtime wages.
10 Defendants regularly use a system of time rounding in a manner that resulted, over a period of time,
11 in failing to compensate Plaintiffs and the Aggrieved Employees properly for all the time they have
12 actually worked, even though the realities of Defendants' operations are such that it is possible,
13 practical, and feasible to count and pay for work time to the minute. Also, throughout the statutory
14 period, Plaintiff and the Aggrieved Employees were required to work "off the clock" and
15 uncompensated. For example, Plaintiff and the Aggrieved Employees were required to wait in line in
16 order to clock into work, off the clock and uncompensated. Also, Plaintiff and the Aggrieved
17 Employees were required to perform work duties prior to clocking into work, such as stocking carts
18 before clocking in, off the clock and uncompensated. Also, Plaintiff and the Aggrieved Employees
19 were required to perform work duties after clocking out, such as to finish cleaning rooms and putting
20 away carts, off the clock and uncompensated. Also, Plaintiff and the Aggrieved Employees were
21 required to carry their walkie-talkies and cellular telephones during meal breaks, and were required to
22 answer, without compensation. Also, Plaintiff and the Aggrieved Employees' meal breaks were
23 sometimes otherwise interrupted without further compensation. Also, Plaintiff and the Aggrieved
24 Employees were required to use their own personal cellular telephones for work purposes while off
25 the clock, such as to communicate with supervisors, uncompensated. Also, throughout the statutory
26 period, Plaintiff and the Aggrieved Employees received non-discretionary bonuses and other
27 remunerations. However, Defendants failed to incorporate all remunerations when calculating the
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1 correct overtime rate of pay, sick day rate of pay, and meal break premium rate of pay, leading to
2 underpayment to Plaintiff and the Aggrieved Employees.

3 20. Throughout the statutory period, Defendants have wrongfully failed to provide
4 Plaintiff and the Aggrieved Employees with legally compliant meal periods. Defendants sometimes,
5 but not always, required Plaintiff and the Aggrieved Employees to work in excess of five (5)
6 consecutive hours a day without providing 30-minute, continuous and uninterrupted, duty-free meal
7 period for every five (5) hours of work, or without compensating Plaintiff and the Aggrieved
8 Employees for meal periods that were not provided by the end of the fifth hour of work or tenth hour
9 of work. Defendants also did not adequately inform Plaintiff and the Aggrieved Employees of their
10 right to take a meal period by the end of the fifth hour of work, or, for shifts greater than ten (10)
11 hours, by the end of the tenth hour of work. Defendants also failed to accurately record meal periods.
12 Accordingly, Defendants' policy and practice was to not provide meal periods to Plaintiff and the
13 Aggrieved Employees in compliance with California law.

14 21. Throughout the statutory period, Defendants have wrongfully failed to authorize and
15 permit Plaintiff and the Aggrieved Employees to take timely and duty-free rest periods. Defendants
16 sometimes, but not always, required Plaintiff and the Aggrieved Employees to work in excess of four
17 (4) consecutive hours a day without Defendants authorizing and permitting them to take a 10-minute,
18 continuous and uninterrupted, rest period for every four (4) hours of work (or major fraction of four
19 hours), or without compensating Plaintiff and the Aggrieved Employees for rest periods that were not
20 authorized or permitted. Defendants also did not adequately inform Plaintiff and the Aggrieved
21 Employees of their right to take a rest period. Moreover, Defendants did not have adequate policies
22 or practices permitting or authorizing rest periods for Plaintiff and the Aggrieved Employees, nor did
23 Defendants have adequate policies or practices regarding the timing of rest periods. Defendants also
24 did not have adequate policies or practices to verify whether Plaintiff and the Aggrieved Employees
25 were taking their required rest periods. Further, Defendants did not maintain accurate records of
26 employee work periods, and therefore Defendants cannot demonstrate that Plaintiff and the
27 Aggrieved Employees took rest periods during the middle of each work period. Accordingly,
28

1 Defendants' policy and practice was to not authorize and permit Plaintiff and the Aggrieved
2 Employees to take rest periods in compliance with California law.

3 22. Throughout the statutory period, Defendants wrongfully required Plaintiff and the
4 Aggrieved Employees to pay expenses that they incurred in the direct discharge of their duties for
5 Defendants without reimbursement. This included, without limitation, the purchase of dividers to
6 organize carts for work and the use of personal cellular telephones for work purposes.

7 23. Throughout the statutory period, Defendants willfully failed and refused to timely pay
8 Plaintiff and the Aggrieved Employees at the conclusion of their employment all wages for all
9 minimum wages, overtime wages, meal period premium wages, and rest period premium wages.

10 24. Throughout the statutory period, Defendants failed to furnish Plaintiff and the
11 Aggrieved Employees with accurate, itemized wage statements showing all applicable hourly rates,
12 and all gross and net wages earned (including correct hours worked, correct wages earned for hours
13 worked, correct overtime hours worked, correct wages for meal periods that were not provided in
14 accordance with California law, correct wages for rest periods that were not authorized and permitted
15 to take in accordance with California law, and Defendant's address). Further, the wage statements do
16 not show Defendant's address as required by California law. As a result of these violations of
17 California Labor Code § 226(a), the Plaintiff and the Aggrieved Employees suffered injury because,
18 among other things:

- 19 (a) the violations led them to believe that they were not entitled to be paid
20 minimum wages, overtime wages, meal period premium wages, and rest
21 period premium wages to which they were entitled, even though they were
22 entitled;
- 23 (b) the violations led them to believe that they had been paid the minimum,
24 overtime, meal period premium, and rest period premium wages, even though
25 they had not been;
- 26 (c) the violations led them to believe they were not entitled to be paid minimum,
27 overtime, meal period premium, and rest period premium wages at the correct
28 California rate, even though they were;

- 1 (d) the violations led them to believe they had been paid minimum, overtime,
2 meal period premium, and rest period premium wages at the correct California
3 rate, even though they had not been;
- 4 (e) the violations hindered them from determining the amounts of minimum,
5 overtime, meal period premium, and rest period premium owed to them;
- 6 (f) in connection with their employment before and during this action, and in
7 connection with prosecuting this action, the violations caused them to have to
8 perform mathematical computations to determine the amounts of wages owed
9 to them, computations they would not have to make if the wage statements
10 contained the required accurate information;
- 11 (g) by understating the wages truly due them, the violations caused them to lose
12 entitlement and/or accrual of the full amount of Social Security, disability,
13 unemployment, and other governmental benefits; and
- 14 (h) the wage statements inaccurately understated the wages, hours, and wages
15 rates to which Plaintiff and the Aggrieved Employees were entitled, and
16 Plaintiff and the Aggrieved Employees were paid less than the wages and
17 wage rates to which they were entitled.

18 Thus, Plaintiff and the Aggrieved Employees are owed the amounts provided for in California
19 Labor Code § 226(e), including actual damages.

20 **FIRST CAUSE OF ACTION**

21 **(Against All Defendants for Civil Penalties Under the**

22 **Private Attorneys General Act of 2004, Cal. Lab. Code §§ 2698, *et. seq.*)**

23 25. Plaintiff incorporates by reference and re-alleges all preceding Paragraphs as though
24 fully set forth herein.

25 26. At all times herein mentioned, Defendants were subject to the California Labor
26 Code and applicable IWC Orders. California Labor Code § 2699(a) specifically provides for a
27 private right of action to recover penalties for violations of the Labor Code:
28

1 “Notwithstanding any other provision of law, any provision of this code that provides for a
2 civil penalty to be assessed and collected by the Labor and Workforce Development
3 Agency or any of its departments, divisions, commissions, boards, agencies, or employees,
4 for a violation of this code, may, as an alternative, be recovered through a civil action
brought by an aggrieved employee on behalf of the employee and other current or former
employees against whom a violation of the same provision was committed pursuant to the
procedures specified in Section 2699.3.”

5 27. Plaintiff exhausted her administrative remedies pursuant to California Labor Code §
6 2699.3. On August 21, 2024, Plaintiff gave written notice by online filing to the Labor and
7 Workforce Development Agency and by certified mail to Defendants of the specific provisions of
8 the Labor Code that Defendants violated against Plaintiff and the Aggrieved Employees, including
9 the facts and theories to support the violations. Plaintiff also paid the filing fees. Plaintiff’s PAGA
10 case number is LWDA-CM-1046871-24.

11 28. More than sixty-five (65) days have elapsed since Plaintiff provided notice, but the
12 Labor and Workforce Development Agency has not indicated that it intends to investigate
13 Defendants’ Labor Code violations discussed in the notice. Accordingly, Plaintiff may commence a
14 civil action to recover penalties under Labor Code § 2699(a) pursuant to § 2699.3, for the violations
15 of the Labor Code described in this Complaint. These penalties include, but are not limited to,
16 penalties under California Labor Code §§ 1194, 2802, 226, and 2699(f)(2).

17 29. In addition, Plaintiff seeks penalties for Defendants’ violation of California Labor
18 Code § 1174(d). Pursuant to California Labor Code § 1174.5, any person, including any entity,
19 employing labor who willfully fails to maintain accurate and complete records required by California
20 Labor Code § 1174 is subject to a penalty under § 1174.5. Pursuant to the applicable IWC Order §
21 7(A)(3), every employer shall keep time records showing when the employee begins and ends each
22 work period. Meal periods and total hours worked daily shall also be recorded. Additionally,
23 pursuant to the applicable IWC Order § 7(A)(5), every employer shall keep the total hours worked in
24 the payroll period and applicable rates of pay.

25 30. During the time period of employment for Plaintiff and the Aggrieved Employees,
26 Defendants failed to maintain records pursuant to the Labor Code and IWC Orders by failing to
27 maintain accurate records showing meal periods. Defendants’ failure to provide and maintain records
28 required by the Labor Code IWC Wage Orders deprived Plaintiff and the Aggrieved Employees the

1 ability to know, understand and question the accuracy and frequency of meal periods. Therefore,
2 Plaintiff and the Aggrieved Employees had no way to dispute the resulting failure to pay wages, all
3 of which resulted in an unjustified economic enrichment to Defendants. As a direct result, Plaintiff
4 and the Aggrieved Employees have suffered and continue to suffer, substantial losses related to the
5 use and enjoyment of such wages, lost interest on such wages and expenses and attorney's fees in
6 seeking to compel Defendants to fully perform its obligation under state law, all to their respective
7 damage in amounts according to proof at trial. Because of Defendants' knowing failure to comply
8 with the Labor Code and applicable IWC Wage Orders, Plaintiff and the Aggrieved Employees have
9 also suffered an injury in that they were prevented from knowing, understanding, and disputing the
10 wage payments paid to them. By and through the conduct described above, Plaintiff and the
11 Aggrieved Employees have been deprived of their rights to be paid wages earned by virtue of their
12 employment with Defendants.

13 31. Based on the conduct described in this Complaint, Plaintiff is entitled to an award of
14 civil penalties on behalf of the State of California and the Aggrieved Employees. The exact amount
15 of the applicable penalties, in all, is in an amount to be shown according to proof at trial. These
16 penalties are in addition to all other remedies permitted by law. In addition, Plaintiff seeks an award
17 of reasonable attorney's fees and costs pursuant to California Labor Code § 2699(g)(1), which states,
18 "Any employee who prevails in any action shall be entitled to an award of reasonable attorney's fees
19 and costs."

20 **PRAYER FOR RELIEF**

21 Plaintiff, on behalf of the State of California and all Aggrieved Employees, prays for relief
22 and judgment against Defendants, jointly and severally, as follows:

23 1. That the Court declare, adjudge, and decree that Defendants violated the California
24 Labor Code by failing to pay wages for all hours worked (including minimum, straight time, and
25 overtime wages), failing to provide meal periods, failing to authorize and permit rest periods, failing
26 to furnish accurate itemized wage statements, and failing to maintain accurate records of all hours
27 worked and meal periods;

- 1 2. That the Court award civil penalties on behalf of all Aggrieved Employees, pursuant
2 to PAGA;
3 3. That the Court award pre-judgment and post-judgment interest at the maximum rate
4 allowed;
5 4. That the Court award attorney's fees and costs reasonably incurred;
6 5. That the Court award injunctive and declaratory relief to the extent allowed by
7 PAGA; and
8 6. That the Court award such other and further relief that the Court deems proper.
9

10 Dated: October 29, 2024

Respectfully submitted,

11 MOON LAW GROUP, P.C.

12 By: /s/ Kane Moon

13 Kane Moon, Esq.

14 Allen Feghali, Esq.

Jacquelyne VanEmmerik, Esq.

15 Attorneys for Plaintiff, Nora Berenice Martinez

16 **DEMAND FOR JURY TRIAL**

17 Plaintiff demands a trial by jury as to all causes of action triable by jury.
18

19 Dated: October 29, 2024

MOON LAW GROUP, P.C.

20 By: /s/ Kane Moon

21 Kane Moon, Esq.

22 Allen Feghali, Esq.

Jacquelyne VanEmmerik, Esq.

23 Attorneys for Plaintiff, Nora Berenice Martinez
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