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David W. Slayton,
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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

ANGELA DIAZ, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

YUMMI SUSHI, a California corporation;
GBC FOOD SERVICES, LLC, a Texas
limited liability company; THEIN AUNG, an
individual; KATIE AUNG, an individual; and
DOES 1 through 100, inclusive,

Defendants.

Case No. 24STCV31607

**REPRESENTATIVE ACTION
COMPLAINT:**

**(1) CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS GENERAL
ACT (LABOR CODE § 2698 *et seq.*)**

UNLIMITED CIVIL CASE

1 Plaintiff Angela Diaz (“Plaintiff”), on behalf of herself and all other aggrieved employees,
2 hereby brings this Representative Action Complaint against Defendants Yummi Sushi, a
3 California corporation; GBC Food Services, LLC, a Texas limited liability company; Thein Aung,
4 an individual; Katie Aung, an individual and DOES 1 to 100, inclusive (collectively
5 “Defendants”), and on information and belief alleges as follows:

6 **JURISDICTION**

7 1. Plaintiff, on behalf of herself and all other aggrieved employees, hereby brings this
8 representative action for recovery of civil penalties under California Labor Code §§ 2698 *et seq.*

9 2. This Court has jurisdiction over Defendants because, upon information and belief,
10 Defendants are citizens of California, Defendants have sufficient minimum contacts in California,
11 or otherwise intentionally avail themselves to the California market so as to render the exercise
12 of jurisdiction over them by the California courts consistent with the traditional notions of fair
13 play and substantial justice.

14 **VENUE**

15 3. Venue as to each Defendant is proper in this judicial district pursuant to California
16 Code of Civil Procedure §§ 395(a) and 395.5, as at least some of the acts and omissions
17 complained of herein occurred in the County of Los Angeles. Further, at all times relevant herein
18 Plaintiff was employed by Defendants within the County of Los Angeles.

19 **PARTIES**

20 4. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
21 Plaintiff was, and currently is, a California resident, residing in the County of Los Angeles.
22 During the one year immediately preceding Plaintiff’s giving of the required notice under the
23 PAGA, and within the statute of limitations periods applicable to the cause of action pled herein,
24 Plaintiff was employed by Defendants as an hourly non-exempt employee.

25 5. Plaintiff is informed and believes, and based thereon alleges, that during the one
26 year preceding Plaintiff’s giving of the required notice under the PAGA and continuing to the
27 present, Defendants did (and do) business franchising kiosks that sell sushi and related food
28 products (“Sushi Products”) inside of other businesses throughout the United States, including

1 the State of California, and employed Plaintiff and other similarly-situated hourly non-exempt
2 employees within the County of Los Angeles and, therefore, were (and are) doing business in the
3 County of Los Angeles and the State of California.

4 6. Plaintiff is informed and believes, and thereon alleges, that at all times mentioned
5 herein, Defendants were licensed to do business in California and the County of Los Angeles, and
6 were the employers of Plaintiff and the Aggrieved Employees (as defined in Paragraph 24).
7 Plaintiff is informed and believes, and based thereon alleges, that Defendant Thein Aung is and
8 has been an employer of Plaintiff and the Aggrieved Employees (as defined in Paragraph 24),
9 and/or is a person defined by Labor Code § 558 responsible for the violations of the Labor Code
10 and the Wage Order as alleged herein. Plaintiff is informed and believes, and based thereon
11 alleges, that Defendant Katie Aung is and has been an employer of Plaintiff and the Aggrieved
12 Employees (as defined in Paragraph 24), and/or is a person defined by Labor Code § 558
13 responsible for the violations of the Labor Code and the Wage Order as alleged herein.

14 7. Plaintiff does not know the true names or capacities, whether individual, partner,
15 or corporate, of the defendants sued herein as DOES 1 to 100, inclusive, and for that reason, said
16 defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to
17 amend this Representative Action Complaint when such true names and capacities are discovered.
18 Plaintiff is informed, and believes, and thereon alleges, that each of said fictitious defendants,
19 whether individual, partners, or corporate, were responsible in some manner for the acts and
20 omissions alleged herein, and proximately caused Plaintiff and the Aggrieved Employees (as
21 defined in Paragraph 17) to be subject to the unlawful employment practices, wrongs, injuries,
22 and damages complained of herein.

23 8. Plaintiff is informed, and believes, and thereon alleges, that at all times mentioned
24 herein, Defendants were and are the employers of Plaintiff and the Aggrieved Employees (as
25 defined in Paragraph 17).

26 9. At all times herein mentioned, each of said Defendants participated in the doing
27 of the acts hereinafter alleged to have been done by the named Defendant; and furthermore, the
28 Defendants, and each of them, were the agents, servants, and employees of each and every one of

1 the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned
2 were acting within the course and scope of said agency and employment. Defendants, and each
3 of them, approved of, condoned, and/or otherwise ratified each and every one of the acts or
4 omissions complained of herein.

5 10. At all times mentioned herein, Defendants, and each of them, were members of
6 and engaged in a joint venture, partnership, and common enterprise, and acting within the course
7 and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further,
8 Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and the
9 Aggrieved Employees (as defined in Paragraph 17).

10 **REPRESENTATIVE ACTION ALLEGATIONS**

11 11. Plaintiff worked for Defendants as a “Contractor” from approximately April 1,
12 2024, until approximately August 20, 2024, operating a kiosk that sold Sushi Products within an
13 Albertsons grocery store. At the beginning of Plaintiff’s employment with Defendants,
14 Defendants required Plaintiff to sign a form titled as “Contract with Independent Contractor” (the
15 “Contract Agreement”), which contained terms governing Plaintiff’s work for Defendants,
16 including the compensation plan discussed below and the requirement that the Contractor work
17 full-time at the kiosk for the equivalent of 5 days per week and 8 hours per day. Plaintiff is
18 informed, believes, and based thereon alleges that Defendants required all of their Contractors to
19 sign the same or similar Contract Agreements during the time period relevant to this lawsuit.

20 12. Under the applicable statutes and Wage Order regulations, Defendants are the
21 “employer” of Plaintiff and other aggrieved employees because Defendants have engaged
22 Plaintiff and other aggrieved employees to do something of benefit for them or a third party (Labor
23 Code § 2750), and because Defendants exercised pervasive control over Plaintiff and other
24 aggrieved employees and retained all necessary control over their business enterprise. Further,
25 Defendants exercised control over the wages, hours, and/or working conditions of Plaintiff and
26 other aggrieved employees, such that Plaintiff and other aggrieved employees are employees of
27 Defendants.

28 13. Defendants are in the business operating kiosks that sell Sushi Products in various

1 business locations, such as grocery stores. In running their business, Defendants classified
2 Plaintiff and other aggrieved employees that perform Defendants' core business functions as
3 independent contractors, as opposed to employees. Notwithstanding that Plaintiff and other
4 aggrieved employees should be classified as non-exempt employees of Defendants, because they
5 provide services that are within the usual course of the hiring entity's business, Defendants
6 willfully misclassified their Contractors as independent contractors. *See Dynamex Operations*
7 *West, Inc. v. The Superior Court of Los Angeles County* (2018) 4 Cal.5th 903 ("Under this [ABC]
8 test, a worker is properly considered an independent contractor to whom a wage order does not
9 apply only if the hiring entity establishes: . . . (B) that the worker performs work that is outside
10 the usual course of the hiring entity's business . . .").

11 14. Throughout Plaintiff's and other aggrieved employees' employment, Defendants
12 failed to maintain accurate records of Plaintiff's and other aggrieved employees' actual hours
13 worked. Rather, Defendants compensated their Contractors pursuant to an unlawful piece-
14 rate/commission basis, whereby Contractors were paid a percentage of the gross proceeds of all
15 sales at the Contractor's location, minus the costs of the Sushi Products that needed to be
16 purchased from Defendants, a \$24,000 "sign-up fee," and weekly \$100 fees for product labels
17 and for the oversight of a local corporate manager. Plaintiff and other aggrieved employees were
18 not paid wages apart from the above percentage of weekly gross sales, minus the enumerated
19 costs and fees. As a result, Plaintiff and other aggrieved employees were not paid for all hours
20 that they worked for Defendants, including but not limited to, non-productive time including
21 training sessions during the first two weeks of her employment, researching and purchasing
22 equipment needed to run the kiosk, shopping for products when orders from Defendants did not
23 arrive or were misplaced, researching and hiring new employees, accounting, and generating
24 marketing materials. Plaintiff estimates that she performed approximately 25-30 hours of non-
25 productive work each week for which she was not compensated.

26 15. As a result of Defendants' failure to pay Plaintiff and other aggrieved employees
27 for non-productive time, Defendants failed to pay Plaintiff and other aggrieved employees at least
28 the minimum wage for all hours worked. In addition, on those occasions when Plaintiff and other

aggrieved employees worked over 8 hours in a workday or over 40 hours in a workweek, Defendants failed to pay overtime wages due as a result of their failure to pay for non-productive time.

16. Defendants' meal period policies/practices have also failed to provide Plaintiff and other aggrieved employees with all legally compliant meal periods because they have failed to provide Plaintiff and other aggrieved employees with a timely, duty-free, and uninterrupted 30-minute meal period commencing before the end of the fifth hour of work, and/or a second 30-minute meal period for shifts of over 10.0 hours. Specifically, Defendants did not provide Plaintiff and other aggrieved employees with legally compliant meal periods as they required Plaintiff and other aggrieved employees to remain on the floor during the entirety of their shift. Defendants further failed to compensate Plaintiff and other aggrieved employees with the required meal period premium for each workday in which they experienced a meal period violation as mandated by Labor Code § 226.7. Upon information and belief, Defendants maintained no mechanism for the payment of meal period premium payments as required by Labor Code section 226.7.

17. Furthermore, Defendants did not properly compensate Plaintiff or other non-exempt employees paid on a piece rate/commission basis for rest periods as required by Labor Code § 226.2. *See Vaquero v. Stoneledge Furniture LLC*, (2017) 9 Cal.App.5th 98. Plaintiff and other aggrieved employees regularly worked 3.5 hours or more in a workday, and were not provided with a paid rest period for every 4-hour period worked, or major fraction thereof, because Defendants' compensation plan failed to separately compensate Plaintiff and other aggrieved employees for required rest periods. *See id.*; *Bluford v. Safeway Inc.*, 216 Cal.App.4th 864 (2013) ("There is no dispute that Safeway's activity-based compensation system did not separately compensate drivers for their rest periods"). Accordingly, Defendants failed to pay Plaintiff and other aggrieved employees all wages owed, including minimum and/or overtime wages, as a result of Defendants' failure to separately compensate for rest periods. In addition, as a result of failing to authorize and permit *paid* rest periods, Defendants failed to authorize and permit rest periods as required under Wage Order 5, § 12. As a result, Defendants owed Plaintiff and other aggrieved employees rest periods premiums pursuant to Labor Code § 226.7 and Wage

Order 5, § 12(B), but failed to pay them those premiums. On information and belief, for at least a portion of the relevant time period, Defendants did not maintain a pay code or other mechanism for paying rest period premiums.

18. Defendants also failed to reimburse Plaintiff and other aggrieved employees for all reasonable and necessary work expenditures, including, but not limited to, use of personal cellular phones, mileage for work-related travel, purchase of Sushi Products from Defendants, label fees, and fees for oversight of a local corporate manager. Therefore, Plaintiff and other aggrieved employees are entitled reimbursement pursuant to Labor Code § 2802.

19. Defendants also took unlawful deductions from Plaintiff's and other aggrieved employees' wages. For example, the Agreement between Plaintiff and Defendants specified that Contractors were permitted to purchase only Sushi Products from the Defendants, which were costlier than the same items available from other vendors, and that any violation of this provision was punishable by fines. Furthermore, Defendants also took deductions for use of Defendants' labels and for a local corporate manager who was supposed to perform weekly checks of Plaintiff's and other aggrieved employees' kiosks. As a result of these and other deductions, Defendants took unlawful deductions from Plaintiff's and other aggrieved employees' wages. *See, e.g., Hudgins v. Neiman Marcus Grp., Inc.*, 34 Cal.App.4th 1109 (1995) (prohibiting deductions from wages that shift the cost of doing business from employer to employee).

20. As a result of Defendants' failure to pay all minimum and overtime wages and meal and rest period premiums, Defendants maintained inaccurate payroll records and issued inaccurate wage statements. Additionally, upon information and belief, Defendants failed to issue accurate itemized wage statements to Plaintiff and other aggrieved employees by issuing facially deficient wage statements that failed to include, among other things, the total hours of compensable rest and recovery periods and the corresponding rate of compensation and gross wages for those periods in violation of Labor Code § 226.2(a)(2)(A), and the total hours of non-productive time along with the corresponding rate of compensation and gross wages for non-productive time worked in violation of Labor Code § 226.2(a)(2)(B).

21. As a result of Defendants' failure to compensate its non-exempt employees for all

1 minimum and overtime wages, all meal and rest period premiums, and non-productive time,
2 Defendants failed to pay all final wages owed to employees upon their respective separations of
3 employment.

4 22. As a result of Defendants' intentional misclassification, Defendants failed to
5 properly pay California taxes they owed and deprived Plaintiff and other aggrieved employees of
6 the protections of workers' compensation benefits in the event of any injury, among other benefits
7 to which they were entitled.

8 23. Additionally, by willfully and intentionally misclassifying Plaintiff and other
9 aggrieved employees as independent contractors, pursuant to Labor Code § 226.8, Defendants are
10 liable for civil penalties as a result of its willful misclassification of Plaintiff and other aggrieved
11 employees as independent contractors.

12 24. Based on the foregoing, Plaintiff seeks to represent herself and other aggrieved
13 employees, as defined by Labor Code § 2699(c), who have been aggrieved by the Labor Code
14 violations discussed herein.

15 **FIRST CAUSE OF ACTION**

16 **PRIVATE ATTORNEYS GENERAL ACT**

17 **(AGAINST ALL DEFENDANTS)**

18 25. Plaintiff re-alleges and incorporates by reference all prior paragraphs as though
19 fully set forth herein.

20 26. Defendants have committed several Labor Code violations against Plaintiff and
21 other aggrieved employees. Plaintiff, an "aggrieved employee" within the meaning of Labor
22 Code § 2698 *et seq.*, acting on behalf of herself and other aggrieved employees, brings this
23 representative action against Defendants to recover the civil penalties due to Plaintiff, other
24 aggrieved employees, and the State of California according to proof, including, but not limited
25 to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200.00 for
26 each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for
27 each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for
28 each initial violation and \$100 for each subsequent violation pursuant to Labor Code § 558 per

1 employee per pay period; (3) \$100.00 for each initial violation and \$250.00 for each subsequent
2 violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each
3 initial violation; and \$1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per
4 employee per pay period; and/or (5) \$100.00 for each initial violation and \$200.00 for each
5 subsequent violation per employee per pay period for those violations of the Labor Code for
6 which no civil penalty is specifically provided, based on the following Labor Code violations:

- 7 a. Willfully misclassifying Plaintiff and other aggrieved employees as independent
8 contractors in violation of Labor Code §§ 226.8 and 558;
- 9 b. Failing to pay the statutory minimum wage for all hours worked to Plaintiff and
10 other aggrieved employees in violation of Labor Code §§ 558, 1182.12, 1194,
11 1194.2, 1197, and 1198;
- 12 c. Failing to pay Plaintiff and other aggrieved employees all overtime compensation
13 earned in violation of Labor Code §§ 204, 510, 558, 1194, and 1198;
- 14 d. Failing to provide meal periods as required by law and failing to pay meal period
15 premiums to Plaintiff and other aggrieved employees at these employees'
16 respective regular rates of compensation for meal period violations in violation
17 of Labor Code §§ 226.7, 512, 558, and 1198;
- 18 e. Failing to authorize and permit Plaintiff and other aggrieved employees all
19 required rest periods and failing to pay rest period premiums to Plaintiff and other
20 aggrieved employees at these employees' respective regular rates of compensation
21 for rest period violations in violation of Labor Code §§ 226.7, 516, 558, and 1198;
- 22 f. Failing to reimburse Plaintiff and other aggrieved employees for all necessary
23 expenditures incurred in violation of Labor Code §§ 558, 2802, and 2804;
- 24 g. Unlawfully deducting earned wages from the wages paid to Plaintiff and other
25 aggrieved employees in violation of Labor Code §§ 221, 222.5, 558, and 1198;
- 26 h. Failing to furnish Plaintiff and other aggrieved employees with accurate and
27 compliant itemized wage statements in violation of Labor Code §§ 226 and 558;
- 28 i. Failing to timely pay all final wages due to Plaintiff and other aggrieved employees

in violation of Labor Code §§ 201, 202, 203, and 558;

j. Failing to pay Plaintiff and other aggrieved employees all wages earned at least twice during each calendar month in violation of Labor Code §§ 204 and 558; and

k. Failing to maintain accurate records on behalf of Plaintiff and other aggrieved employees in violation of Labor Code §§ 558, 1174, and 1198.

27. On or about September 24, 2024, Plaintiff notified Defendants via certified mail, and the California Labor and Workforce Development Agency (“LWDA”) via its website, of Defendants’ violations of the California Labor Code and Plaintiff’s intent to bring a claim for civil penalties under California Labor Code § 2698 *et seq.* with respect to violations of the California Labor Code identified in Paragraph 26 (a)-(k). Now that sixty-five days have passed from Plaintiff notifying Defendants of these violations, Plaintiff has exhausted her administrative requirements for bringing a claim under the Private Attorneys General Act with respect to these violations.

28. Plaintiff was compelled to retain the services of counsel to file this court action to protect her interests and the interests of other aggrieved employees, and to assess and collect the civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys’ fees and costs, which she is entitled to receive under California Labor Code § 2699.

PRAYER

WHEREFORE, Plaintiff prays for judgment for herself and for all others on whose behalf this suit is brought against Defendants, jointly and severally, as follows:

1. Upon the First Cause of Action, for civil penalties due to Plaintiff, other aggrieved employees, and the State of California according to proof pursuant to Labor Code §§ 558 and 2699(a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200 for each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per employee per

1 pay period; (4) \$250.00 for each initial violation and \$1,000.00 for each subsequent violation
2 pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for each initial
3 violation and \$200 for each subsequent violation per employee per pay period for those violations
4 of the Labor Code for which no civil penalty is specifically provided, based on the Labor Code
5 violations identified in Paragraph 26 (a)-(k);

6 2. On all causes of action, for attorneys' fees and costs as provided by Labor Code §
7 2699(g) and Code of Civil Procedure § 1021.5; and

8 3. For such other and further relief the Court may deem just and proper.

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10 Dated: December 2, 2024

Respectfully submitted,
HAINES LAW GROUP, APC

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12 By:



13 Paul K. Haines
14 Sean M. Blakely
15 Attorneys for Plaintiff
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