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Kern County Superior Court
By Alexandra Valles, Deputy

6 Attorneys for Plaintiff ROBERT WAYNE MOSS,
7 individually and on behalf of all others similarly situated

8 **IN THE SUPERIOR COURT OF CALIFORNIA**

9 **COUNTY OF KERN**

10 ROBERT WAYNE MOSS, individually and on
11 behalf of all others similarly situated,

Case No. BCV-24-104168

12 **COMPLAINT**

13 Plaintiff(s),

14 v.

15 BIG N DEEP INC; and DOES 1 through 100,

16 Defendant(s).

1. Meal Break Violation
2. Failure to Pay All Hours Worked
3. Failure to Pay Overtime
4. Wage Statement Penalties
5. Waiting Time Penalties
6. Unlawful Competition
7. Sexual Discrimination in Violation of FEHA
8. Disability Harassment in Violation of FEHA
9. Retaliation in violation of Labor Code § 1102.5
10. PAGA Allegations

17 **RELEVANT PARTIES**

18 1. Plaintiff ROBERT WAYNE MOSS ("Plaintiff") is an adult resident of Kern County,
19 California, and was at all times relevant residing in Kern County, California.

20 2. Defendant BIG N DEEP INC ("Defendant") is a California corporation with its principal
21 place of business located in Kern County, California. Defendant is registered to and does conduct
22 business in the State of California and is subject to the laws of the State of California. All acts and
23

1 omissions of Defendant employees as alleged herein occurred while they were acting within the
2 course and scope of their employment.

3 3. Plaintiff is unaware of the true names or capacities of the Defendants sued herein as DOES 1
4 through 100, inclusive (“Doe Defendants”), and therefore sues said Doe Defendants by such
5 fictitious names. Plaintiff will seek leave of this Court to amend this Complaint to insert the true
6 names and capacities of such Doe Defendants when such information has been obtained. Plaintiff is
7 informed and believes, and based on such information and belief alleges, that each of the fictitiously
8 named Doe Defendants has participated in some way in the wrongful acts and omissions alleged
9 below, and is liable to Plaintiff for damages and other relief to which Plaintiff is entitled. Defendant
10 and Doe Defendants are collectively referred to as “Defendants”.

11 **JURISDICTION AND VENUE**

12 4. This action is properly filed in Kern County because the acts and omissions that give rise to
13 Plaintiff’s claims took place in Kern County, and Defendants transact substantial business in this
14 County.

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

18 **FACTUAL ALLEGATIONS**

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

20 7. Plaintiff was employed by Defendants around February 2024 as an Operator/Low Board
21 Driver.

22 8. Plaintiff was subjected to gender discrimination when he placed a rainbow flag on his
23 workbench. Defendants made fun of his gender identity.

24 9. Further, Plaintiff suffered from a speech impediment. Defendants often made fun of his
25 disability.

26 10. On May 10, 2024, Plaintiff recognized payroll discrepancies after being informed by a
27 coworker named Luis. Plaintiff noted that Defendants implanted an unlawful time rounding policy
28 which failed to reflect all hours worked in his payroll. Specifically, Plaintiff worked around 8 hours

1 in a day, but his hours would be amended to 4 hours if Defendants believed that the work could
2 have been done in 4 hours.

3 11. On May 15, 2024, Plaintiff informed an HR representative of the payroll discrepancies.

4 12. Between May 17-18, 2024, Plaintiff discussed the payroll discrepancies with Jeff, the owner
5 of the company.

6 13. Around the last week of May, Plaintiff was not scheduled for work for 2 weeks in retaliation
7 to complaints made about missing wages. Thereafter, Plaintiff's hours were reinstated but were
8 reduced.

9 14. On August 18, 2024, Plaintiff was terminated from employment.

10 15. Defendants failed to provide Plaintiff with compliant meal breaks because Plaintiff was not
11 provided with a second meal break when working for more than 10 hours. Despite not being
12 provided with compliant meal breaks, Defendant did not pay premium pay for these missed breaks
13 at Plaintiff's regular rate of pay.

14 16. Defendants failed to pay Plaintiff for all hours worked because of unlawful time rounding
15 policies.

16 17. Defendants failed to pay Plaintiff all overtime owed because Plaintiff usually worked over 8
17 hours in a day and 40 hours in a week and thus any unpaid time was necessarily overtime.

18 18. Defendants failed to provide Plaintiff with accurate wage statements because the wage
19 statements issued to Plaintiff did not accurately list total wages owed and hours worked, among
20 other things.

21 19. Due to Defendants' failure to pay all wages due to Plaintiff during their employment, it
22 follows that Defendant failed to pay all wages due at the conclusion of Plaintiff's employment as
23 well. Therefore, Defendants are liable to Plaintiff for waiting time penalties.

24 **PAGA ALLEGATIONS**

25 20. Pursuant to Labor Code section 2699(a), any provision of the Labor Code which provides
26 for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency
27 ("LWDA") for violations of the Labor Code may, as an alternative, be recovered through a civil
28

1 action brought by an aggrieved employee on behalf of himself or herself and other current or former
2 employees pursuant to the procedures outlined in Labor Code section 2699.3.

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

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

9 23. The LWDA has provided notice (hereinafter "LWDA's Notice") to the employer and the
10 aggrieved employee by certified mail that it does not intend to investigate the aggrieved employee's
11 claims. Upon receipt of the LWDA's Notice, or if the LWDA does not provide such Notice within
12 65 calendar days of the postmark date of the Employee's Notice, the aggrieved employee may
13 commence a civil action pursuant to Labor Code section 2699 to recover civil penalties in addition
14 to any other penalties to which the employee may be entitled.

15 24. On September 19, 2024, Plaintiff provided written notice by online filing to the LWDA and
16 by certified mail to Defendants of specific provisions of the Labor Code alleged to have been
17 violated by Defendants, including the facts and theories to support the alleged violations.

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

21 26. The Aggrieved Employees are defined as "All other nonexempt, hourly employees, current
22 and former, who were employed by Defendants within one year prior to September 19, 2024,
23 through final disposition of this action."

24 **EXHAUSTION OF ADMINISTRATIVE PROCEEDINGS**

25 27. On December 3, 2024, prior to initiating this complaint, Plaintiff filed with the California
26 Civil Rights Department (hereinafter "CCRD"), a Complaint of Discrimination, Harassment, and
27 Retaliation against Defendant. On December 3, 2024, the CCRD issued a Notice of Case Closure
28

1 and Right-to-Sue letter to Plaintiff, authorizing Plaintiff to file a private lawsuit against Defendant
2 in order to enforce their rights under FEHA.

3 28. Plaintiff has therefore exhausted all administrative remedies required by FEHA as a
4 prerequisite to filing this action.

5 **FIRST CAUSE OF ACTION**

6 **Failure to Provide Compliant Meal Periods**

7 **By Plaintiff Against All Defendants**

8 29. Plaintiff incorporates by reference the paragraphs above.

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

13 31. An employer provides compliant meal breaks to its employees “if it relieves its employees
14 of all duty, relinquishes control over their activities and permits them a reasonable opportunity to
15 take an uninterrupted 30-minute break.” (*Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th
16 1004, 1040 (2012)).

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

20 33. Defendants failed to provide Plaintiff with compliant meal breaks as alleged herein.

21 34. Specifically, Plaintiff did not receive second meal breaks for shifts exceeding 10 hours.

22 35. For each day that Defendants failed to provide Plaintiff with a compliant meal break,
23 Defendants were required to remit premium pay pursuant to Labor Code section 226.7(c), which is
24 one additional hour of pay at Plaintiff’s regular rate of pay. (*Ferra v. Loews Hollywood Hotel, LLC*,
25 11 Cal. 5th 858 (2021)). Defendants failed to pay premium pay at Plaintiff’s regular rate of pay for
26 each day a meal break was missed.

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

1 **SECOND CAUSE OF ACTION**

2 **Failure to Pay for All Hours Worked**

3 **By Plaintiff Against All Defendants**

4 37. Plaintiff incorporates by reference the paragraphs above.

5 38. Labor Code sections 558 and 1194 and the Wage Orders require an employer to pay
6 employees minimum wages for all hours worked fewer than eight hours in a day and/or fewer than
7 40 hours in a workweek.

8 39. Defendants failed to pay Plaintiff for all hours worked as alleged herein.

9 40. Specifically, Plaintiff reported discrepancies in his payroll. Plaintiff noted that Defendants
10 implemented an unlawful time rounding policy which resulted in failure of his wage statements to
11 reflect all hours worked.

12 41. Plaintiff is therefore entitled to recover all unpaid wages, liquidated damages, interest,
13 penalties, attorney fees, and costs.

14 **THIRD CAUSE OF ACTION**

15 **Failure to Pay All Overtime Owed**

16 **By Plaintiff Against All Defendants**

17 42. Plaintiff incorporates by reference the paragraphs above.

18 43. Labor Code section 510 provides that “[a]ny work in excess of eight hours in one workday
19 and any work in excess of 40 hours in any one workweek and the first eight hours worked on the
20 seventh day of work in any one workweek shall be compensated at the rate of no less than one and
21 one-half times the regular rate of pay for an employee.”

22 44. Defendants failed to pay Plaintiff all overtime wages owed as alleged herein.

23 45. Plaintiff is therefore entitled to recover all unpaid overtime wages, liquidated damages,
24 interest, penalties, attorney fees, and costs.

25 **FOURTH CAUSE OF ACTION**

26 **Wage Statement Penalties**

27 **By Plaintiff Against All Defendants**

28 46. Plaintiff incorporates by reference the paragraphs above.

1 47. Labor Code section 226(a) requires employers to provide itemized wage statements to its
2 employees that identify accurate information regarding their compensation. Defendants, as a matter
3 of policy and practice, failed in its affirmative obligation to provide accurate itemized wage
4 statements to Plaintiff in violation of Labor Code section 226(a).

5 48. As alleged herein, the wage statements that Defendants issued to Plaintiff were inaccurate
6 and incomplete.

7 49. Defendants knowingly and intentionally issued wage statements that were inaccurate and
8 incomplete, and the issuance of inaccurate and incomplete wage statements caused injury to
9 Plaintiff in that Plaintiff was unable to accurately verify and/or calculate their wages.

10 50. Plaintiff is therefore entitled to the recovery of wage statement penalties, attorney fees, and
11 costs.

12 **FIFTH CAUSE OF ACTION**

13 **Waiting Time Penalties**

14 **By Plaintiff Against All Defendants**

15 51. Plaintiff incorporates by reference the paragraphs above.

16 52. Labor Code sections 201 and 202 require that an employer provide an employee with all
17 wages due and payable either: (a) immediately upon termination, or (b) within 3 days of the
18 employee's resignation.

19 53. Labor Code section 203 provides that if an employer willfully fails to pay wages owed in
20 accordance with Labor Code sections 201 or 202, then the wages of the employee continue as a
21 penalty from the due date at the same rate until paid or until an action is commenced, not to exceed
22 thirty days.

23 54. As alleged herein, Defendants willfully did not pay Plaintiff all wages owed at the
24 conclusion of employment.

25 **SIXTH CAUSE OF ACTION**

26 **Violation of Unfair Competition Law**

27 **By Plaintiff Against All Defendants**

28 55. Plaintiff incorporates by reference the paragraphs above.

1 56. Defendants' conduct described herein constitutes unfair competition.

2 57. Specifically, Defendants have gained an unfair advantage over other similarly situated
3 businesses by unlawfully reducing their overhead costs by not paying their employees what they are
4 owed.

5 58. Pursuant to Business and Professions Code 17203, Plaintiff is entitled to restitution of all
6 wrongfully withheld wages.

7 59. Plaintiff may recover attorney fees pursuant to Code of Civil Procedure section 1021.5.

8 **SEVENTH CAUSE OF ACTION**

9 **Violation of California Government Code § 12940 et seq. – Discrimination based on Sex**
10 **By Plaintiff Against All Defendants**

11 60. Plaintiff incorporates by reference the paragraphs above.

12 61. Government Code § 12940(a) prohibits an employer from discriminating against an
13 employee in compensation or in terms, conditions, or privileges of employment because of the
14 employee's "race," "national origin, ancestry, physical disability, mental disability, medical
15 condition" or "sex."

16 62. During their employment with Defendants, Plaintiff was subjected to discrimination based
17 on their sex.

18 63. Plaintiff was subjected to discrimination based on their sex. (described supra).

19 64. Specifically, Plaintiff is a member of the LGBTQ+ Community. Plaintiff placed a rainbow
20 flag on his workbench. Thereafter, Defendants consistently made fun of Plaintiff for being gay.

21 65. The discriminatory actions of Defendants against Plaintiff constitute unlawful discrimination
22 in violation of FEHA. Such violations were a proximate cause in Plaintiff's damages as stated
23 below.

24 **EIGHTH CAUSE OF ACTION**

25 **Violation of California Government Code §12940(j) – Disability Harassment**
26 **By Plaintiff Against All Defendants**

27 66. Plaintiff incorporates by reference the paragraphs above.
28

1 67. At all times hereto, the California Fair Employment and Housing Act ("FEHA") was in full
2 force and effect and was binding upon Defendants and each of them.

3 68. Government Code § 12940(j) makes it an unlawful employment practice for an employee or
4 independent contractor to be subjected to harassment based on "race," "national origin, ancestry,
5 physical disability, mental disability, medical condition" or "sex."

6 69. During their employment with Defendants, Plaintiff was subjected to numerous instances of
7 harassment based on their disability (described supra).

8 70. Specifically, Plaintiff has speech impairment. Defendants consistently made fun on
9 Plaintiff's disability.

10 71. The harassment of Plaintiff was reported and known to Defendants.

11 72. Defendants failed to take immediate and appropriate corrective action.

12 73. As a further direct and legal result of the acts and conduct of Defendants, as aforesaid,
13 Plaintiff has been caused to and did suffer, and continues to suffer, severe emotional and mental
14 distress, anguish, humiliation, embarrassment, fright, shock, discomfort, anxiety, and related
15 symptoms.

16 74. Defendants, by engaging in the aforementioned acts and/or in authorizing and/or ratifying
17 such acts, engaged in willful, malicious, intentional, oppressive, and despicable conduct, and acted
18 with willful and conscious disregard of the rights, welfare, and safety of Plaintiff, thereby justifying
19 the award of punitive and exemplary damages in an amount to be determined at trial.

20 75. As a direct and proximate result of Defendants' unlawful conduct, as set forth herein,
21 Plaintiff is entitled to recover damages in amounts to be established at trial, as set forth below,
22 including recovery of attorney's fees and costs of suit, pursuant to Government Code § 12965(b).

23 **NINTH CAUSE OF ACTION**

24 **Retaliation in violation of Labor Code § 1102.5**

25 **By Plaintiff Against All Defendants**

26 76. Plaintiff incorporates by reference the paragraphs above.

27 77. California Labor Code § 1102.5 prohibits employers from retaliating against an employee
28 "for disclosing information" reasonably believed to be a violation of state or federal law to a

government agency or “to a person with authority over the employee, or to another employee who has authority to investigate, discover, or correct the violation or noncompliance.”

78. Plaintiff reported a violation of state or federal law.

79. Specifically, Plaintiff made several reports regarding the unlawful time rounding policies and inaccurate wage statements.

80. Defendant's conduct constitutes retaliation in violation of Lab.C. § 1102.5.

81. Plaintiff may recover civil penalties and other penalties pursuant to Lab.C. § 1102.5.

TENTH CAUSE OF ACTION

Private Attorneys General Act

By Plaintiff and the Aggrieved Employees Against All Defendants

82. Plaintiff incorporates by reference the paragraphs above.

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

84. As alleged herein, Defendants’ conduct violates numerous sections of the Labor Code.

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

86. With respect to violations of Labor Code section 1197 for Defendants’ failure to compensate Plaintiff and the Aggrieved Employees for all minimum wages earned, the penalties in Labor Code sections 1197.1 and 2699 apply.

87. With respect to violations of Labor Code section 510 for Defendants’ failure to compensate Plaintiff and the Aggrieved Employees for all overtime wages earned, the penalties in Labor Code sections 558, 1197.1, and 2699 apply.

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

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

4 90. Pursuant to Labor Code section 2699(k)(1), Plaintiff further seeks public injunctive relief in
5 the form of an Order enjoining Defendants from continuing to violate the California Labor Code in
6 the manner alleged herein.

7 91. Additionally, Plaintiff and the Aggrieved Employees are entitled to attorney's fees pursuant
8 to Labor Code section 2699(g).

9 92.

10 **PRAYER FOR RELIEF**

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

12 **First Cause of Action**

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

18 **Second Cause of Action**

- 19 1. Damages and/or penalties pursuant to Labor Code sections 558, 1194, 1197, and 1197.1
- 20 2. Liquidated damages
- 21 3. Interest
- 22 4. Attorneys' fees
- 23 5. Costs
- 24 6. Other relief the court deems proper

25 **Third Cause of Action**

- 26 1. Damages and/or penalties pursuant to Labor Code sections 510, 558, and 1194
- 27 2. Interest
- 28 3. Attorneys' fees

- 1 4. Costs
2 5. Other relief the court deems proper

3 Fourth Cause of Action

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

8 Fifth Cause of Action

- 9 1. Penalties pursuant to Labor Code section 203
10 2. Attorneys' fees
11 3. Costs
12 4. Other relief the court deems proper

13 Sixth Cause of Action

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

18 Seventh Cause of Action

- 19 1. Compensatory damages
20 2. Punitive damages
21 3. Attorneys' fees
22 4. Costs
23 5. Other relief the court deems proper

24 Eighth Cause of Action

- 25 1. Compensatory damages
26 2. Punitive damages
27 3. Attorneys' fees
28 4. Costs

1 5. Other relief the court deems proper

2 Ninth Cause of Action

- 3 1. \$10,000 civil penalty
4 2. Back pay and front pay
5 3. Interest on the above amounts
6 4. Compensatory damages
7 5. Punitive damages
8 6. Attorney's fees
9 7. Costs
10 8. Other relief the court deems proper

11 Tenth Cause of Action

- 12 1. All applicable civil penalties available pursuant to Labor Code section 2698, et seq.
13 2. Public injunctive relief in the form of an Order enjoining Defendants from continuing to
14 violate the California Labor Code in the manner alleged herein
15 3. Attorneys' fees
16 4. Costs
17 5. Other relief the court deems proper

18
19 DATED: December 3, 2024

FRONTIER LAW CENTER

20 /s/ Daniel Ginzburg

Daniel Ginzburg

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22 Attorneys for Plaintiff
23 ROBERT WAYNE MOSS,
24 individually and on behalf of all others
25 similarly situated
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