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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

PATCHA MARION, Plaintiff, vs. 58 EAST COLORADO CORPORATION; VIROJ WATANA; and DOES 1 to 25, inclusive, Defendants.	CASE NO.: 24STCV30959 **COMPLAINT FOR DAMAGES FOR:** **1) PRIVATE ATTORNEYS GENERAL ACT (“PAGA”)**

COMES NOW Plaintiff, PATCHA MARION (hereinafter "Plaintiff"), and alleges as follows:

PARTIES, JURISDICTION, and VENUE

1. Jurisdiction and Venue are proper in this Court and this action is properly filed in the County of Los Angeles in this judicial district because Defendants 58 EAST COLORADO CORPORATION; VIROJ WATANA; and DOES 1 to 25, inclusive (hereinafter collectively "58 EAST" or "Defendant(s)") do business in the County of Los Angeles, and because Defendants' obligations and liabilities arise therein, and because the work that was performed by Plaintiff in the County of Los Angeles is the subject of this action. Moreover, Plaintiff's damages sought herein exceed $35,000.

2. Plaintiff is a female resident of the County of Los Angeles, State of California.

3. Plaintiff is informed and believes that at all times herein mentioned, Defendant 58 EAST COLORADO CORPORATION, is a California corporation, doing business in the County of Los Angeles, State of California, and which employed Plaintiff.

4. Plaintiff is informed and believes that at all times herein mentioned, Defendant VIROJ WATANA is a male resident of the State of California, and the owner, managing agent, and/or director 58 EAST COLORADO CORPORATION. Individual VIROJ WATANA is being included in this lawsuit pursuant to Labor Code Section 558.1 in that he was involved in the day-to-day operations of the business, including the wage and hour policies and procedures, and as such, he controlled the hours, wages, and/or working conditions of Plaintiff and other hourly, non-exempt employees. Defendants 58 EAST COLORADO CORPORATION and VIROJ WATANA are collectively referred to herein as "Defendant(s)" (unless otherwise noted) or "58 EAST".

5. Plaintiff is ignorant of the true names and capacities, whether individual, corporate, or

associate of those defendants fictitiously sued as DOES 1 to 25, inclusive, and so Plaintiff sues them by these fictitious names. Plaintiff is informed and believes that each of the DOE defendants, numbers 1 to 25, reside in the State of California and are in some manner responsible for the conduct alleged herein. Upon discovering the true names and capacities of these fictitiously named defendants, Plaintiff will amend this complaint to show the true names and capacities of these fictitiously named defendants.

6. Unless otherwise alleged in this complaint, Plaintiff is informed, and on the basis of that information and belief, alleges that at all times herein mentioned, each of the remaining codefendants, in doing the things hereinafter alleged, were acting within the course, scope, and under the authority of their agency, employment, or representative capacity, with the consent of his/her codefendants.

GENERAL ALLEGATIONS

7. Plaintiff started working at 58 EAST on or around 2021 or 2022 as a server/waitress. Plaintiff is and was classified as an hourly, non-exempt employee. Plaintiff's last rate of pay was around $17.00 per hour. Plaintiff is still currently employed at 58 EAST.

8. It is Plaintiff's position that due to personally suffering the below violations, Plaintiff can equivocally bring the following labor code violations on behalf of all other employees, including ALL hourly, non-exempt employees who worked for 58 EAST anywhere in the state of California (at all different restaurant locations) during the relevant PAGA period.

9. It is Plaintiff's position that 58 EAST has violated the following Labor Code Sections against Plaintiff and other similarly situated aggrieved employees, who include all non-exempt, hourly employees who worked for 58 EAST at their various locations/restaurants in the State of California during the relevant PAGA period.

10. 58 EAST violated Labor Code § 1194, 1194.2, 1197, and 1197.1 because it failed to

pay Plaintiff and other similarly situated aggrieved employees for all hours worked, including the statutory minimum wage for all hours worked and for “off the clock” work. This is so because 58 EAST had a company policy wherein they would disproportionately round down the number of hours worked, resulting in “time shaving” and further resulting in aggrieved employees not being paid for all hours worked. In addition, Plaintiff and others worked “off the clock” in that they would perform work activities including setting up before clocking in and would engage in clean up duties after clocking out. It was the normal practice for employees to work “off the clock” and management/ownership was unequivocally aware of this practice. Moreover, to the extent that Plaintiff and others would work through their meal breaks, the latter would also amount to a minimum wage violation because they were not paid for all hours worked. Moreover, 58 EAST failed to provide its employees with proper and accurate reporting time pay.

11. Due to the above “off the clock” violations, 58 EAST also violated Labor Code §510 because it failed to pay Plaintiff and other aggrieved employees overtime compensation, even though they worked more than 8 hours per day, 12 hours per day, and/or 40 hours per week throughout their employment. Plaintiff’s and other aggrieved employees’ actual work hours entitled them to overtime compensation, however, 58 EAST did not compensate its hourly, non-exempt employees with the correct amount of overtime due to the “off the clock” work and time shaving as described above. Moreover, 58 EAST did not keep accurate track of all hours worked and often shorted its employees on overtime compensation, whether it was at the rate of 1.5 times their regular rate or double time. Furthermore, 58 EAST failed to include bonuses/incentive payments/shift differentials in calculating employees’ regular rate of pay for use in deciphering the correct overtime rate of pay. Additionally, the incentive, shift

differential, and bonus payments were also not factored into employees' regular rate for purposes of receiving meal and rest break premiums per the Ferra v. Loews case.

12. 58 EAST also violated Labor Code § 226.7 and the appropriate Industrial Welfare Commission Wage Order no. 5 because it failed to provide Plaintiff and other similarly situated aggrieved employees with 10-minute rest periods for every four hours of work, or majority portion thereof, throughout their employment. 58 EAST did not completely relieve Plaintiff and others of all duty during said rest periods. 58 EAST did not pay to Plaintiff and others one additional hour of pay at Plaintiff's regular rate of compensation for each workday that one or more statutory rest periods was not provided. Plaintiff and others did not take any statutory, timely, and uninterrupted rest breaks during her employment tenure as that concept did not exist in a fast-paced restaurant environment where tables and guests needed constant and consistent attention. As such, it would not have been possible for employees such as Plaintiff to take such rest breaks due to being understaffed and due to a heavy workload, especially in the fast-paced restaurant environment. As such, the culture as well as the policies and procedures of 58 EAST did not lend itself to the employees receiving consistent statutory rest breaks wherein they were relieved of all work duties. The environment at 58 EAST was not conducive to receiving statutory rest breaks under California law and timely, statutory rest breaks were not authorized or enforced.

13. 58 EAST violated Labor Code §§ 512 and 226.7 and the appropriate Industrial Welfare Commission Wage Order no. 5 because it failed to provide hourly, non-exempt employees, including Plaintiff and others, the requisite 30-minute, uninterrupted meal periods for every five (5) hours of work throughout their employment. 58 EAST did not completely relieve Plaintiff and other employees of all duty during said meal periods. 58 EAST did not pay to Plaintiff and its hourly, non-exempt employees one additional hour of pay at their regular rate

of compensation for each workday that one or more statutory meal periods was not provided. Like the rest breaks, receiving a consistent thirty-minute uninterrupted and timely meal break before the 5th hour was not part of the company culture and was not enforced by 58 EAST. While 58 EAST tried to have Plaintiff's scheduled shifts be 6 hours or less to avoid meal break issues, the reality was that Plaintiff would consistently work PAST 10pm (the usual end of her scheduled shift) and so her shifts would actually be longer than 6 hours at times, however, Plaintiff would not get any statutory breaks. There have been occasions wherein Plaintiff has worked 8 hours consecutively without a single break. To the extent that Plaintiff and other aggrieved employees even received meal periods, they were either late or consistently interrupted by work obligations as well. Consequently, it was the normal practice and custom of 58 EAST not to authorize, permit, and enforce timely statutory meal periods. If 58 EAST had Plaintiff sign a meal period waiver, it would not be valid and enforceable since Plaintiff and others generally worked more than a 5-hour shift. Furthermore, under California law, however, employees must make an affirmative decision every day regarding whether to waive their meal periods. August 13, 2003 DLSE Opinion Letter ("The decision to forego a meal period may not, therefore, be based on a specific requirement of the employer or on a policy or practice which could reasonably be perceived to be a condition of employment. Therefore, blanket "waivers" of meal periods …whether written or oral, will not be considered valid."). If 58 EAST had Plaintiff sign an on-duty meal period agreement wherein Plaintiff agreed to work through the meal periods, it would be invalid and unenforceable because the nature of Plaintiff's job does not and did not prevent her from taking a meal period and the company could have hired "breakers" to relieve Plaintiff of her job duties so that she can actually take a timely, uninterrupted meal period. Moreover, any such "on duty" meal period agreement did not allow for Plaintiff to revoke such an agreement even if it was signed. As such, Plaintiff and others did not always receive statutory, timely meal periods during their employment. To the extent that 58 EAST argues that employees receive meal break premium pay for missed meal periods, that argument is inconsequential for PAGA penalty purposes since the PAGA penalties are for the violations themselves, irrespective of whether an employee received the premium payment for a missed, short, or interrupted meal period. In Kirby v. Immoos Fire Protection, Inc., the Court stated, "section 226.7 does not give employers a lawful choice between providing either meal and rest breaks or an additional hour of pay." See Kirby v. Immoos Fire Protection, Inc., (2012) 53 Cal.4th 1244, 1256 (emphasis in original). Thus, the extra hour of pay does not excuse the violation; the employer has still committed a violation even if the remedy for the violation has been paid. See Wert v. U.S. Bancorp, (S.D. Cal. Mar. 22, 2016, 2016 WL 1110302 at *4).

14. As such, the work environment and culture at 58 EAST was not conducive to receiving consistent, timely, statutory meal breaks under California law. Moreover, any meal or rest break premiums paid were not compensated at the weighted average regular rate, inclusive of bonuses and/or incentive payments as well as overtime compensation.

15. Furthermore, during the relevant time period, and due to the above labor code violations, 58 EAST failed to pay Plaintiff and other similarly situated aggrieved employees all wages due to them within any time period specified by California Labor Code section 204. Since Plaintiff was not compensated for her "off the clock" work and since Plaintiff did not receive meal and rest break premiums, Plaintiff would still be owed wages pursuant to Labor Code Section 204. 58 EAST was also in violation of California Labor Code section 226(a) by failing to include pertinent information on the wage statements, including but not limited to, the correct hourly rate, all hours worked, overtime hours worked, tips, correct overtime pay, gross wages earned, net wages earned, premium pay for missed meal and rest breaks, all

deductions, the correct start and end of the pay period, all employee identifying information, the correct and complete name and address of the legal employer, and reimbursement for business expenses, among others. As such, 58 EAST did not provide Plaintiff and other similarly situated aggrieved employees with complete, accurate itemized wage statements.

16. During the relevant time period, 58 EAST also failed to keep accurate and complete payroll records showing the actual hours worked per day and the wages paid to Plaintiff and others pursuant to California Labor Code sections 1174(d).

17. 58 EAST also violated Labor Code § 203 because it willfully failed to pay other similarly situated aggrieved employees earned and due wages upon separation of employment, either immediately upon involuntary termination, or within 72 hours of resignation. These earned but unpaid wages include compensation for all hours worked, including minimum wages, overtime compensation, and premium pay for missed meal and rest breaks.

18. During the relevant time period, Plaintiff and other aggrieved employees incurred necessary, business-related expenses and costs that were not reimbursed by 58 EAST. These costs include, but are not limited to uniforms, and use of personal cell phones for work purposes as well as equipment to effectuate their job duties. Accordingly, 58 EAST was in violation of California Labor Code sections 2800 and 2802.

19. Additionally, 58 EAST violated Labor Code Section 351 and 353 by taking some of the tips meant for employees and also deducting the tips from employees' earned wages. 58 EAST also deducted the credit card fee from employees' tips and did not timely provide the credit card and even cash tips to aggrieved employees. As such, aggrieved employees were not given accurate tips to which they were entitled.

20. Furthermore, 58 EAST did not provide proper and correct/accurate sick pay (inclusive

of all bonuses/shift differentials/incentive payments) that was also delineated on employee pay stubs and also failed to provide proper sick leave in violation of Labor Code sections 233 and 246. Moreover, there were no suitable seating/rest break facilities for the employees pursuant to Wage Order no. 5-2001 as employees did not have a designated break area.

FIRST CAUSE OF ACTION

PRIVATE ATTORNEYS GENERAL ACT
Representative Claim for PAGA penalties under California Labor Code sections 201, 202, 203, 204 and/or 204b, 210, 226, 226.3, 226.7, 233, 246, 351, 353, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 2800, 2802, and IWC Wage Order 5-2001)

(Plaintiff against All Named Defendants and all DOE defendants)

21. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 20, inclusive, of this Complaint as though fully set forth herein.

22. Plaintiff has complied with the procedures for bringing suit specified in California Labor Code § 2699.3. By letter dated September 4, 2024, Plaintiff gave written notice by certified mail to the Labor and Workforce Development Agency ("LWDA") and Defendants of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations.

23. Pursuant to California Labor code section 2699.3, no response was received from the LWDA within 65 days of the postmark date of the above-alleged letter.

24. Plaintiff therefore has exhausted all administrative remedies required of her under California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute this cause of action and pursue penalties in a representative action for Defendants' violations of the Labor Code.

25. Pursuant to California Labor Code section 2699, any provisions of the Labor Code that provides for a civil penalty to be assessed and collected by the LWDA or any of its departments, divisions, commissions, boards, agencies, or employees for violation of the code may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of other current or former employees pursuant to the procedures specified in California Labor Code section 2699.3.

26. Plaintiff is an "aggrieved employee" because Plaintiff was employed by the alleged violator and had one or more of the alleged violations committed against her, and therefore is properly suited to represent the interests of other current and former employees, including all current and former hourly, non-exempt employees who worked for 58 EAST at any and all locations in the State of California during the applicable PAGA Period.

27. Based on the acts alleged above, Plaintiff, on behalf of others, seeks penalties under California Labor Code sections 2698 and 2699 because of Defendants' violations of numerous provisions of the California Labor Code as alleged in this Complaint.

28. Plaintiff therefore has exhausted all administrative remedies required of her under California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute this cause of action and pursue penalties in a representative action for Defendants' violations of the Labor Code.

29. California Labor Code section 2699 et seq. imposes penalties upon culpable Defendants for violating the Labor Code.

30. Plaintiff seeks penalties for Defendants' misconduct as alleged herein as permitted by law, but only those penalties that are required to be shared with the LWDA as Plaintiff is not seeking individual penalties/victim specific relief or underpaid wages for herself or other employees under this specific PAGA cause of action.

31. Specifically, Plaintiff seeks penalties under California Labor Code section 2699, for the following:

Violations of California Labor Code sections 201, 202, 203, 204 and/or 204b, 210, 226, 226.3, 226.7, 233, 246, 351, 353, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 2800, 2802, and any other Labor Codes/Industrial Welfare Commission Order (No. 5) violated based on the facts alleged in this Complaint.

32. Pursuant to Labor Code section 2698 et seq., Plaintiff seeks to recover attorney's fees, costs, and civil penalties on behalf of other current and former aggrieved employees as alleged herein in an amount to be shown according to proof at trial and within the jurisdictional limits of this Court.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for Judgment against Defendants, and each of them, as follows:

1. For the imposition of civil penalties;
2. For maximum civil penalties available under Labor Code Section 2699 against Defendants in a manner and amount authorized by that statute, as described more particularly in the Complaint and representative PAGA claims;
3. For all costs and disbursements incurred in this suit;
4. Reasonable attorney's fees where available by law, including but not limited to, pursuant to Labor Code section 2698 et seq., Code of Civil Procedure section 1021.5, and/or other applicable laws; and
5. For such other and further relief as this Court may deem proper.

DATED: November 22, 2024

MESSRELIAN LAW INC.

By________________________________
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