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Assigned for All Purposes
Judge Melissa R. McCormick
CX-104

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Attorneys for Plaintiff and the Aggrieved Employees

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

ADELINA HERNANDEZ, as an individual
and on behalf of all others similarly situated,

Plaintiff,

vs.

BROTHERS INTERNATIONAL
DESSERTS, a California corporation; and
DOES 1 through 50, inclusive,

Defendants.

Case No.: **30-2025-01454220-CU-OE-CXC**

**REPRESENTATIVE ACTION COMPLAINT
FOR:**

**(1) VIOLATION OF LABOR CODE § 2698,
ET SEQ.**

DEMAND OVER \$25,000.00

1 Plaintiff Adelina Hernandez (“Plaintiff”) hereby submits this representative action
2 complaint (“Complaint”) against Defendant Brothers International Desserts and Does 1 through
3 50 (collectively, “Defendants”), on behalf of herself and all other aggrieved employees of
4 Defendants for penalties pursuant to the Private Attorneys General Act, Labor Code § 2698, *et*
5 *seq.* (“PAGA”), for Defendants’ violations of the California Labor Code, as follows:

6 **INTRODUCTION**

7 1. This action is within the Court’s jurisdiction under California Labor Code §§ 201-
8 204, 226, 226.7, 246, 510, 512, 558, 1194, 1197, 1197.1, and 2698, *et seq.*, and the applicable
9 Wage Orders of the California Industrial Welfare Commission (“IWC”).

10 2. This Complaint challenges systemic illegal employment practices resulting in
11 violations of the California Labor Code against individuals who worked for Defendants.

12 3. Plaintiff is informed and believes, and based thereon alleges, that Defendants,
13 jointly and severally, have acted intentionally and with deliberate indifference and conscious
14 disregard to the rights of all employees by failing to provide legally compliant meal and rest
15 periods and/or pay meal and rest premiums at the regular rate of pay, failing to pay sick pay at
16 the regular rate of pay, failing to pay overtime wages at the regular rate of pay, and failing to
17 provide accurate itemized wage statements.

18 4. Plaintiff is informed and believes, and based thereon alleges, that Defendants
19 have engaged in, among other things a system of willful violations of the California Labor Code,
20 by creating and maintaining policies, practices, and customs that knowingly deny employees the
21 above stated rights and benefits.

22 **JURISDICTION AND VENUE**

23 5. The Court has jurisdiction over the violations of the California Labor Code §§
24 201-204, 226, 226.7, 246, 510, 512, 558, 1194, 1197, 1197.1, and 2698, *et seq.*, and the
25 applicable Wage Orders of the IWC.

26 6. Venue is proper because Defendants do business in Orange County and Plaintiff
27 worked for Defendants in Santa Ana, California.

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PARTIES

7. Plaintiff was employed by Defendants from on or about November 15, 2023, to about July 29, 2024. Throughout her employment with Defendants, Plaintiff worked as a non-exempt, hourly employee.

8. Plaintiff was and is the victim of the policies, practices, and customs of Defendants complained of in this action in ways that have deprived her of the rights guaranteed by California Labor Code §§ 201-204, 226, 226.7, 246, 510, 512, 558, 1194, 1197, 1197.1, and 2698, *et seq.*, and the applicable Wage Orders of the IWC.

9. Plaintiff is informed and believes, and based thereon alleges, that Defendant Brothers International Desserts is a California corporation that manufactures ice cream and other frozen desserts in the State of California, and County of Orange.

11. Plaintiff is informed and believes, and based thereon alleges, that at all times herein mentioned Defendant and Does 1 through 50, are and were corporations, business entities, individuals, and partnerships, licensed to do business and actually doing business in the State of California. As such, and based upon all the facts and circumstances incident to Defendants' business, Defendants are subject to California Labor Code §§ 201-204, 226, 226.7, 246, 510, 512, 558, 1194, 1197, 1197.1, and 2698, *et seq.*, and the applicable Wage Orders of the IWC.

12. Plaintiff does not know the true names or capacities, whether individual, partner, or corporate, of the defendants sued herein as Does 1 through 50, inclusive, and for that reason, said defendants are sued under such fictitious names, and Plaintiff prays for leave to amend this Complaint when the true names and capacities are known. Plaintiff is informed and believes and based thereon alleges that each of said fictitious defendants was responsible in some way for the matters alleged herein and proximately caused Plaintiff and the aggrieved employees to be subject to the illegal employment practices, wrongs, and injuries complained of herein.

13. At all times herein mentioned, each of said Defendants participated in the doing of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the Defendants, and each of them, were the agents, servants, and employees of each of the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned, were

1 acting within the course and scope of said agency and employment.

2 14. Plaintiff is informed and believes, and based thereon alleges, that at all times
3 material hereto, each of the Defendants named herein was the agent, employee, alter ego, and/or
4 joint venturer of, or working in concert with each of the other co-Defendants and was acting
5 within the course and scope of such agency, employment, joint venture, or concerted activity.
6 To the extent said acts, conduct, and omissions were perpetrated by certain Defendants, each of
7 the remaining Defendants confirmed and ratified said acts, conduct, and omissions of the acting
8 Defendants.

9 15. At all times herein mentioned, Defendants, and each of them, were members of,
10 and engaged in, a joint venture, partnership, and common enterprise, and acting within the course
11 and scope of, and in pursuance of, said joint venture, partnership, and common enterprise.

12 16. At all times herein mentioned, the acts and omissions of various Defendants, and
13 each of them, concurred and contributed to the various acts and omissions of each and all of the
14 other Defendants in proximately causing the injuries and damages as herein alleged. At all times
15 herein mentioned, Defendants, and each of them, ratified each and every act or omission
16 complained of herein. At all times herein mentioned, Defendants, and each of them, aided and
17 abetted the acts and omissions of each and all of the other Defendants in proximately causing the
18 damages as herein alleged.

19 **FIRST CAUSE OF ACTION**

20 **VIOLATION OF LABOR CODE § 2698, *ET SEQ.***

21 **(BY PLAINTIFF AND AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS)**

22 17. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as
23 though fully set forth herein.

24 18. Plaintiff brings this cause of action as a proxy for the State of California and in
25 this capacity, seek penalties on behalf of all aggrieved employees in the State of California from
26 April 6, 2024, through the present, for Defendants' violations of Labor Code §§ 201-204, 226,
27 226.7, 246, 510, 512, 558, 1194, 1197, and 1197.1, arising from Defendants' policy and practice
28 of: (a) failing to provide off-duty meal and rest breaks, or pay meal and rest period premium

1 compensation at the regular rate of pay, in violation of Labor Code §§ 201-203, 226.7, and 512;
2 (b) failing to pay sick pay at the regular rate of pay, in violation of Labor Code §§ 201-203 and
3 246; (c) failing to pay overtime wages at the regular rate of pay, in violation of Labor Code §§
4 201-204, 510, 558, 1194, 1197, and 1197.1; (d) failing to pay all wages due upon separation of
5 employment, in violation of Labor Code §§ 201, 202, 203, and 204; and (e) failing to provide
6 accurate itemized wage statements, in violation of Labor Code § 226.

7 19. In this regard, Defendants regularly failed to provide or timely provide meal and
8 rest breaks to their employees, as breaks were either not provided, or were provided late into the
9 shifts. When breaks were provided, they were often interrupted. Defendants failed to provide
10 meal and rest period premium compensation for all missed, late, or interrupted breaks.

11 20. Furthermore, on occasions when meal and rest premiums were paid, they were
12 paid at an incorrect rate of pay. More specifically, Plaintiff and aggrieved employees earned
13 non-discretionary remuneration, such as incentives and bonuses. However, said non-
14 discretionary wages were not factored into the regular rate of pay for the purposes of paying
15 meal and rest period premiums. As such, whenever Defendants paid Plaintiff and aggrieved
16 employees meal and rest premiums during periods in which they earned non-discretionary
17 remuneration, the meal and rest premiums were paid at less than their regular rate of pay.

18 21. Similarly, Defendants failed to pay sick pay and overtime wages at the regular
19 rate of pay. Rather, sick pay and overtime wages were paid at the employee's base rate of pay.
20 Defendants did not include non-discretionary remuneration, including without limitation,
21 incentives and bonuses, into the regular rate of pay for sick pay wages and overtime wages.

22 22. As such, Plaintiff and aggrieved employees are owed additional premiums, sick
23 pay, and overtime based on the correct, higher regular rate of pay. To date, Plaintiff has yet to
24 receive the underpaid wages owed to her. Thus, Defendants have violated Labor Code sections
25 201-203 by not paying employees all wages owed upon separation of employment.

26 23. Lastly, as a result of the nonpayment/underpayment of wages, Defendants issued
27 inaccurate wage statements to Plaintiff and aggrieved employees, as the wage statements
28 displayed inaccurate rates of pay and net and gross wages earned.

24. On or about November 12, 2024, Plaintiff sent written notice to the California Labor and Workforce Development Agency (“LWDA”) of Defendants’ violations of Labor Code §§ 201-204, 226, 226.7, 246, 510, 512, 558, 1194, 1197, and 1197.1, pursuant to the PAGA. Plaintiff also sent her notice to Defendants via certified mail pursuant to Labor Code § 2699.3.

25. As of the date of the filing of this Complaint, the LWDA has not responded to Plaintiff’s written notice nor indicated that it intends to investigate the Labor Code violations provided for in the written notice. As such, pursuant to Labor Code § 2699(a), Plaintiff seeks recovery of any and all applicable civil penalties for Defendants’ violations of Labor Code §§ 201-204, 226, 226.7, 246, 510, 512, 558, 1194, 1197, and 1197.1, for the time period described above, on behalf of herself and other aggrieved employees.

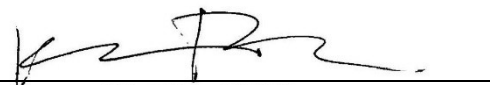
PRAYER FOR RELIEF

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

1. Upon the First Cause of Action, for the full amount of civil penalties pursuant to California Labor Code §§ 226.3 and 2698, *et seq.*, and for costs and attorneys’ fees;
2. On all causes of action, for attorneys’ fees and costs as provided by California Labor Code § 2699, and Code of Civil Procedure § 1021.5; and
3. For such other and further relief as the Court may deem just and proper.

DATED: January 21, 2025

DIVERSITY LAW GROUP, P.C.

By: 

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Attorneys for Plaintiff and the Aggrieved Employees