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County of San Diego
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By M. Acevedo ,Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

LINDSAY BUCKNER, individually and on behalf of the State of California, the general public and all aggrieved employees, Plaintiff, v. K.A. MCNAIR BREWING COMPANY, LLC, a limited liability company; and DOES 1 through 50, inclusive, Defendants.	Case No.: 25CU002376C **COMPLAINT PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT OF 2004 (Labor Code §§ 2698 et seq.)**

Plaintiff Lindsay Buckner ("Plaintiff"), by and through her attorneys of record, brings this enforcement action under the Private Attorneys General Act of 2004 ("PAGA") on behalf of the State of California and all aggrieved employees of Defendant K.A. McNair Brewing Company, LLC and Does 1 through 50, inclusive (collectively, "Defendants"), on the following grounds:

INTRODUCTION

1. This enforcement action is brought by Plaintiff on behalf of the State of California and all current and former non-exempt employees who performed work for Defendants in the state of California during the relevant statutory time period (referred to herein as "Aggrieved Employees").

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2. Through this action, Plaintiff alleges that Defendants have violated the California Labor Code ("Labor Code") and the applicable Industrial Welfare Commission ("IWC") Wage Orders by, among other things:

a. Failing to authorize and provide legally compliant rest periods and timely pay premium wages for non-compliant rest periods during employment;

b. Failing to pay all gratuities earned during employment;

c. Failing to reimburse for necessary business expenses;

d. Failing to timely pay all wages due and owing at the time of separation of employment and the required waiting time penalties;

e. Failing to furnish accurate itemized wage statements; and

f. Failing to maintain accurate employment records.

3. By and through this enforcement action, Plaintiff seeks to recover all available remedies including, but not limited to, civil penalties, reasonable attorneys' fees, and litigation costs, as provided under California law.

4. All allegations in this complaint are based upon information and belief except those allegations specifically pertaining to Plaintiff, which are based upon her personal knowledge and experience. Each allegation in this complaint has evidentiary support or is likely to have evidentiary support after a reasonable opportunity for further investigation and discovery.

JURISDICTION AND VENUE

5. This Court has jurisdiction over this action pursuant to California Code of Civil Procedure ("Code of Civil Procedure") section 410.10. Defendants are licensed to do business, and are actually doing business, in the state of California. The amount in controversy, exclusive of interest, costs, and attorneys' fees exceeds the minimum jurisdictional amount for this Court.

6. Venue is proper in this judicial district pursuant to Code of Civil Procedure sections 395(a) and 395.5 because many of the acts, conduct, and events alleged herein occurred within this county. Defendants transact business in this county and are otherwise within this Court's jurisdiction for purposes of service of process. The unlawful acts alleged herein have a direct effect on Aggrieved Employees within this county and throughout the state of California.

THE PARTIES

7. At all times relevant to this complaint, Plaintiff Lindsay Buckner was an adult residing in San Diego County, and in the state of California. Plaintiff was employed as a bartender by Defendants from 2019 to 2020, then again from March 2024 to September 24, 2024 and worked at Defendants' three different locations across San Diego, California. Claimant earned an hourly rate of $16.85 and usually worked an average of 28 to 30 hours per week.

8. Defendant K.A. McNair Brewing Company, LLC is a limited liability company with its principal place of business in San Diego, California. K.A. McNair Brewing Company, LLC is a craft brewery and taproom with three locations across San Diego County, operating under the name of North Park Beer Company. The company registered with the California Secretary of State in 2013 and is authorized to do business, and is actually doing business, in the state of California.

9. Plaintiff is informed and believes, and thereon alleges, that Defendants, at all times relevant to this complaint, are employers subject to the Labor Code and applicable IWC Wage Order, as defined therein, whose employees were and are engaged throughout this county within the state of California.

10. The true names and capacities, whether individual, corporate, subsidiary, partnership, associate or otherwise of defendant Does 1 through 50, inclusive, are unknown to Plaintiff, who therefore sues these defendants by such fictitious names pursuant to Code of Civil Procedure section 474. Plaintiff will amend this complaint to allege the true names and capacities of Does 1 through 50 when they are ascertained.

11. At all times relevant to this complaint, the acts alleged to have been done by the named defendants are also alleged to have been done by the fictitiously named defendants and by each of their agents and employees who acted within the scope of their agency and/or employment.

12. At all times relevant to this complaint, the acts and omissions of each of the defendants concurrently contributed to the various acts and omissions of each and every one of the other defendants in proximately causing the wrongful conduct, harm, and damages alleged herein. Each of the defendants approved of, condoned, and/or otherwise ratified each and every one of the acts or omissions complained of herein.

13. At all times relevant to this complaint, each defendant, including each fictitiously named

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defendant, had control over Plaintiff and the Aggrieved Employees.

14. At all times relevant to this complaint, each defendant, including each fictitiously named defendant, was the employer or other person acting on behalf of the employer, within the meaning of Labor Code sections 558, 558.1, and 1197.1, who violated or caused the violations alleged herein.

15. Each defendant, including each fictitiously named defendant, is alleged to have caused each of the violations alleged herein.

16. Each defendant, including each fictitiously named defendant, is jointly and severally liable for each of the violations alleged herein.

FACTUAL ALLEGATIONS

17. Plaintiff was employed by, or otherwise performed work for, Defendants from about 2019 to 2020, then again from March 2024 through and including September 24, 2024. Plaintiff performed work as a bartender at Defendants' three different locations across San Diego County. As a bartender, Plaintiff's job duties consisted of attending to and serving Defendants' customers, maintaining the bar and bartender work area, and completing customer service transactions, among other things. At all times during her employment, Plaintiff was classified by Defendants as a non-exempt employee, earned an hourly wage, and was paid on a bi-weekly basis. Plaintiff typically worked an average of 28 to 30 hours per week. Plaintiff's shifts typically lasted six hours or less and she would, on occasion, work an eight and a half hour shift on the weekends.

18. Defendant K.A. McNair Brewing Company, LLC is a craft brewery and taproom with three locations in San Diego, California: North Park, Bankers Hill and Crown Point. K.A. McNair Brewing Company, LLC operates under the name of North Park Beer Company and was registered with the California Secretary of State in 2013, and is authorized to do business, and is actually doing business in the state of California.

19. At all times relevant to this complaint, Defendants employed other Aggrieved Employees in various non-exempt positions. Aggrieved Employees earn an hourly wage and are paid on a bi-weekly basis.

20. At all times relevant to this complaint, the policies and practices applicable to Plaintiff were also applicable to other Aggrieved Employees.

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21. Plaintiff contends that Defendants have a common practice of failing to authorize and provide legally compliant rest periods and/or timely pay premium wages for non-compliant rest periods during employment.

22. Plaintiff alleges Defendants had, and continue to have, a policy and practice of failing to adequately staff their breweries. Although Plaintiff and other Aggrieved Employes were entitled to at least one 10-minute rest period per workday for shifts up to six hours in length, Defendants do not adequately staff their breweries such that Plaintiff and other Aggrieved Employees are able to take their 10-minute, uninterrupted rest periods. Plaintiff alleges she often was unable to take a rest period because there was no other bartender on-duty during her shift to cover for her, so she had to work through her rest period. Despite the fact that Defendants failed to provide Plaintiff and other Aggrieved Employees with legally compliant rest periods, Defendants failed to compensate Plaintiff and other Aggrieved Employees one hour of pay at the employee's regular rate of compensation for each rest period violation.

23. Plaintiff further asserts Defendants have a common policy and practice of failing to pay Plaintiff and other Aggrieved Employees all earned gratuities during employment.

24. Plaintiff alleges Defendants have a tipping policy where employees eligible for tips on a given workday share in the tip pools of the location where they work. All hourly employees share in the tip pools at their respective work locations. Plaintiff and other Aggrieved Employees were often scheduled to work at different locations and were entitled to the tip pools at the different locations where they were assigned to work. Plaintiff alleges the culinary staff's share of the tip pool is a percentage of the total tip pool, while the remaining amount in the tip pool, after the subtraction of the culinary staff's share, is shared by the taproom staff eligible to receive a tip, including Plaintiff and other Aggrieved Employees.

25. Plaintiff contends the taproom supervisors and managers were also included in the group of employees eligible to receive a tip from the tip pool for the taproom staff. However, Plaintiff alleges the taproom supervisors and managers were authorized to hire, discharge, supervise and direct employees on behalf of Defendants and were acting agents of Defendants. Therefore, Plaintiff contends the taproom supervisors and managers should not be permitted to share in the gratuities earned by Plaintiff and other Aggrieved Employees because they were acting agents of Defendants.

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26. Additionally, Plaintiff alleges Defendants have a common policy and practice of failing to reimburse Plaintiff and other Aggrieved Employees for necessary business expenses.

27. Plaintiff contends that Defendants required her and other Aggrieved Employees to download the Slack and HomeBase applications to their personal mobile devices in order to execute their work duties. Plaintiff and other Aggrieved Employees were required to use the Slack application on their personal mobile device in order to communicate with management, other employees, and review work communications, such as new items and food specials. Plaintiff further alleges the Slack and HomeBase applications were the only methods for her and other Aggrieved Employees to check their work schedules and contact management regarding their shifts. Despite requiring Plaintiff and other Aggrieved Employees to use their personal mobile devices in the discharge of their work duties, Defendants failed to reimburse Plaintiff and other Aggrieved Employees for the expenses they incurred in using of their personal devices.

28. Plaintiff also alleges Defendants have a common policy and practice of failing to timely pay her and other former Aggrieved Employees all wages due and owing at the time of separation and the required waiting time penalties. Plaintiff's employment with Defendants ended on September 24, 2024. However, to date, she has not received all the wages she is owed, including but not limited to, wages owed for non-compliant rest periods, earned gratuities and reimbursement of business expenses, in addition to the required waiting time penalties.

29. Additionally, Plaintiff claims that Defendants have a common policy and practice of failing to furnish her and other Aggrieved Employees with accurate itemized wage statements. Plaintiff contends the wage statements issued by Defendants did not include the correct amount of gross or net wages earned as required by the Labor Code. For example, Plaintiff's wage statements did not include the premium wages earned when a rest period was non-compliant, nor the correct amount of earned gratuities.

30. As a direct result of Defendants' illegal policies and procedures, Plaintiff contends Defendants have a common policy and practice of failing to maintain accurate employment records reflecting Plaintiff's and other Aggrieved Employees' actual wages earned and paid in violation of California law.

31. On November 7, 2024, Plaintiff submitted written notice to the California Labor and Workforce Development Agency ("LWDA") and K.A. McNair Brewing Company, LLC as required by

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the PAGA, informing them of K.A. McNair Brewing Company LLC's alleged violations of the Labor Code. A true and correct copy of the November 7, 2024 written notice is attached hereto as **Exhibit 1** and is incorporated herein by reference.

32. To date, more than 65 days after submission of Plaintiff's written notice, the LWDA has not provided notice of its intent to investigate Plaintiff's alleged violations of the Labor Code.

33. Plaintiff believes that additional violations may be discovered and therefore reserves her right to allege additional violations of law as investigation and discovery warrants. In the event Plaintiff discovers additional violations, Plaintiff will seek to amend the operative complaint.

PAGA DESIGNATION

34. Plaintiff represents herself and the following employees of Defendants:

Aggrieved Employees

> All current and former non-exempt employees of Defendants who performed work for Defendants in the state of California starting from one year and sixty-five days prior to the filing of this Complaint through and including the last date of trial. To the extent that equitable tolling operates to toll the claims by the Aggrieved Employees against Defendants, the time period should be adjusted accordingly.

35. Aggrieved Employees are all "employees" as the term is used in the Labor Code and the IWC Wage Orders regulating wages, hours, and working conditions in the state of California.

36. Plaintiff reserves her right to redefine the Aggrieved Employees as permitted by California law.

37. Pursuant to Labor Code section 2698 et seq., any provision 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 himself or herself and other current or former employees pursuant to the procedures specified in Labor Code section 2699.3.

38. Pursuant to PAGA, all civil penalties recovered must be allocated sixty-five percent (65%) to the LWDA and thirty-five percent (35%) to the aggrieved employees. (Lab. Code § 2699(m).)

39. During all, or a portion of, the one-year and sixty-five day period before Plaintiff filed notice of her claims with LWDA, Defendants were Plaintiff's and all other Aggrieved Employees'

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employer or person acting on behalf of the Aggrieved Employees' employer, either individually or as an officer, agent, or employee of another person, within the meaning of Labor Code sections 558(a), 558.1, and 1197.1.

40. Plaintiff is an "aggrieved employee" under PAGA because she was employed by the alleged violators, Defendants, and personally suffered each of the violations of law alleged herein.

41. Plaintiff has exhausted her administrative remedies. On November 7, 2024, Plaintiff submitted notice to the LWDA and K.A. McNair Brewing Company, LLC informing them of K.A. McNair Brewing Company, LLC's alleged violations of the Labor Code and applicable IWC Wage Order. See Ex. 1. The LWDA had 65 days to provide notice of whether it intended to investigate the alleged violations. (Lab. Code § 2699.3(a)(2)(A).) To date, the LWDA has not provided notice its intent to investigate the alleged violations.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

(By Plaintiff, on behalf of the state of California and all Aggrieved Employees, against Defendants)

PRIVATE ATTORNEYS GENERAL ACT OF 2004

[Labor Code §§ 2698 et seq.]

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

43. Plaintiff, on behalf of the state of California and all Aggrieved Employees, seeks to recover civil penalties, reasonable attorneys' fees, and litigation costs through this enforcement action based on violations of the following Labor Code and/or IWC Wage Order provisions:

a. Failing to provide legally compliant rest periods and/or timely pay premium wages for non-compliant rest periods during employment in violation of Labor Code sections 204, 226.7, 1198, and the "Rest Periods" section of the applicable IWC Wage Order;

b. Failing to pay all gratuities earned during employment in violation of Labor Code section 351;

c. Failing to reimburse for necessary business expenses in violation of Labor Code

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section 2802;

d. Failing to timely pay all wages due and owing at the time of separation and/or the required waiting time penalties in violation of Labor Code sections 201, 202, and 203;

e. Failing to furnish accurate itemized wage statements in violation of Labor Code section 226, and the "Records" section of the applicable IWC Wage Order;

f. Failing to maintain accurate employment records in violation of Labor Code sections 226, 1174, and the "Records" section of the applicable IWC Wage Order; and

g. Failing to maintain accurate records of gratuities received in violation of Labor Code section 353.

44. Labor Code section 210 provides that any person who fails to pay wages as provided in Labor Code sections 201.3, 203, 204, 204(b), 204.1, 204.2, 205, 205.5, and 1197.5 shall be subject to a civil penalty of $100 for any initial violation for each failure to pay each employee and for each subsequent violation, or any willful or intentional violation $200 for each failure to pay each employee, plus 25% of the amount unlawfully withheld, in addition to any other penalty. Plaintiff, on behalf of the state of California and all Aggrieved Employees, seeks the civil penalty imposed by Labor Code section 210.

45. Labor Code section 1174.5 imposes a civil penalty of $500 for an employer's failure to maintain accurate and complete records. This civil penalty is in addition to the civil penalty of $100 per pay period, per aggrieved employee that would be imposed pursuant to Labor Code section 2699(f)(2) for a violation of Labor Code section 1174(d). Plaintiff, on behalf of the state of California and all Aggrieved Employees, seeks the civil penalty imposed by section 1174.5.

46. Labor Code section 2699(f)(2)(A) provides that for violations of Labor Code section 226, if the violation is a violation of paragraphs (1) to (7) or (9) of subdivision (a) of Section 226 then the civil penalty is $25 per pay period per employs if the employee could promptly and easily determine the information specified in subdivision (a) of Section 226. If the alleged violation is a violation of paragraph (8) of subdivision (a) of Section 226, the civil penalty is $25 for each aggrieved employee per pay period if the employee would not be confused or misled about the correct identity of their employer. The civil

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penalty is $50 for each aggrieved employee per pay period if the alleged violation resulted from an isolated, nonrecurring event that did not extend beyond the lesser of 30 consecutive days or four consecutive pay periods. Plaintiff, on behalf of the state of California and all Aggrieved Employees, seeks the civil penalties described in Labor Code section 2699(f)(2)(A).

47. For all provisions of the Labor Code except those for which a civil penalty is specifically provided, Labor Code section 2699(f)(2) imposes a civil penalty of $100 per pay period, per employee, except for violations of Labor Code section 226(a), and $200 per pay period, per employee if either of the following are met: (a) an agency or court issued a finding or determination to the employer that its policy or practice giving rise to the violation was unlawful within the five years preceding the alleged violation, or (b) the court determines that the employer's conduct giving rise to the violation was malicious, fraudulent, or oppressive. Plaintiff, on behalf of the state of California and all Aggrieved Employees, seeks the civil penalties described in Labor Code section 2699(f)(2).

48. Labor Code section 2699(k)(1) provides that an employee who prevails in a civil action brought pursuant to the PAGA shall be entitled to an award of reasonable attorneys' fees and costs. Plaintiff, on behalf of the state of California and all Aggrieved Employees, seeks attorneys' fees and costs as provided by Labor Code section 2699(k)(1).

49. Labor Code sections 218.5, 226(e)(1), 2802, and Code of Civil Procedure section 1021.5, also permit the recovery of attorneys' fees and costs. Plaintiff, on behalf of the state of California and all Aggrieved Employees, seeks attorneys' fees and costs as permitted by Labor Code sections 218.5, 226(e)(1), 2802, and Code of Civil Procedure section 1021.5.

50. Plaintiff, on behalf of the state of California and all Aggrieved Employees, requests further relief as described in the below prayer.

PRAYER FOR RELIEF

Plaintiff, on behalf of the state of California and all Aggrieved Employees, prays for judgment against Defendants and in favor of the state of California and all Aggrieved Employees as follows:

a. For any and all civil penalties available for the violations of the Labor Code and applicable IWC Wage Order alleged herein including, but not limited to, civil penalties under Labor Code sections 210, 1174.5, 2699(f)(2), 2699(f)(2)(A), and/or

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other applicable law;

b. For reasonable attorneys' fees and costs of suit to the extent permitted by law, including, but not limited to, Labor Code sections 218.5, 226(e)(1), 2699(k)(1), 2802, Code of Civil Procedure section 1021.5, and the "common fund" theory, the "substantial benefit" theory, the "catalyst" theory and/or other applicable law; and

c. For any and all other relief as this Court deems proper and just.

Respectfully submitted,

Dated: January 14, 2025

GRAHAM**HOLLIS** APC

By: ______________________________
Nathan J. Reese
Dawn M. Berry

Attorneys for Plaintiff Lindsay Buckner

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EXHIBIT 1

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Dawn M. Berry
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November 7, 2024

VIA ONLINE ELECTRONIC SUBMISSION

California Labor and Workforce Development Agency
Attn: PAGA Administrator
800 Capitol Mall, Suite 5000 (MIC-55)
Sacramento, CA 95814

VIA CERTIFIED MAIL (RETURN RECEIPT)

K.A. McNair Brewing Company, LLC
3038 University Avenue
San Diego, CA 92104

K.A. McNair Brewing Company, LLC
c/o Steven Pickett, Agent for Service of Process
5716 Corsa Avenue, Suite 110
Westlake Village, CA 91362

Re: Lindsay Buckner's Wage and Hour Claims Against K.A. McNair Brewing Company, LLC

Dear California Labor and Workforce Development Agency and K.A. McNair Brewing Company, LLC:

Please be advised that Lindsay Buckner ("Claimant") has retained our firm, GrahamHollis APC, to represent her for various claims against K.A. McNair Brewing Company, LLC (the "Company").

This letter shall serve as Claimant's written notice to the California Labor and Workforce Development Agency ("LWDA") and the Company of the alleged California Labor Code ("Labor Code") violations Claimant claims that the Company committed against her and all other current and former non-exempt employees who performed work for the Company in California during the relevant statutory period. Claimant provides this notice, which includes the facts and theories to support her Labor Code violations in accordance with the Private Attorneys General Act of 2004 (codified in Labor Code section 2698 et seq., "PAGA"), Labor Code section 2699.3. Claimant intends to file a civil action to enforce her rights under the Labor Code and seek penalties accordingly.

Pursuant to Labor Code section 2699(a), and by way of this written notice, Claimant intends to represent herself and all other current and former non-exempt employees who performed work for the Company in California during the relevant time period and who

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Monique R. Rodriguez

suffered at least one of the violations alleged herein ("Aggrieved Employees"). All employees of the Company, including Claimant, are believed to have suffered at least one of the Labor Code violations described herein. Claimant therefore contends that she and all other Aggrieved Employees are "aggrieved employees" as defined by the PAGA.

FACTUAL BACKGROUND

K.A. McNair Brewing Company, LLC (the "Company") is a California limited liability company with its principal place of business in San Diego, California. The Company is a craft brewery and taproom with three locations across San Diego County, operating under the name of North Park Beer Company. The Company registered with the Secretary of State in 2013, and is authorized to do business, and is actually doing business, in the State of California.

Claimant performed work for the Company as a non-exempt bartender from 2019 to 2020, then again from March 2024 to September 24, 2024. Claimant earned an hourly rate of $16.85 and worked an average of 28 to 30 hours per week. Claimant's shifts were usually six hours or less and she would occasionally work an eight and a half hour shift on the weekends. Claimant contends that during the relevant time period, the Company employed, and continues to employ, other Aggrieved Employees in various non-exempt positions who earned an hourly wage and regularly worked at least six hours per day.

Claimant alleges that the Company denied, and continues to deny, Claimant and other Aggrieved Employees the specific rights afforded to them under the Labor Code and the applicable Industrial Welfare Commission ("IWC") Wage Order. Specifically, the Company failed, and continues to fail, to authorize and permit Claimant and other Aggrieved Employees to take a rest period or timely pay premium wages in lieu thereof; failed, and continues to fail, to pay Claimant and other Aggrieved Employees earned gratuity; failed, and continues to fail, to reimburse Claimant and other Aggrieved Employees for expenses necessarily incurred during their employment with the Company; failed, and continues to fail, to pay Claimant and other former Aggrieved Employees all wages due upon separation of employment, including waiting time penalties; failed, and continues to fail, to furnish accurate itemized wage statements to Claimant and other Aggrieved Employees; and failed, and continues to fail, to maintain accurate employment records for Claimant and other Aggrieved Employees.

During the relevant time period, Claimant alleges the Company did not authorize or permit Claimant or other Aggrieved Employees to take on off-duty, uninterrupted, 10-minute rest period for every four hours worked or major fraction thereof. Claimant contends the Company had, and continues to have, a policy and practice of failing to adequately staff their breweries for such rest breaks to be taken. Although Claimant and other Aggrieved Employees were entitled to at least one 10-minute rest break per workday for shifts up to 6 hours in length, the Company does not sufficiently staff its breweries in order for Claimant and other Aggrieved Employees to take an off-duty, uninterrupted rest period. For instance, Claimant alleges she often could not take a rest break at all because there was no other bartender on-duty during her shift to cover for her. Despite the fact that the Company failed to provide Claimant and other Aggrieved Employees with legally compliant rest periods, the Company failed to compensate Claimant and other Aggrieved Employees one hour of pay at the employee's regular rate of compensation for each rest period violation.

Claimant also asserts that the Company failed, and continues to fail, to pay Claimant and other Aggrieved Employees their earned gratuity. Per the Company's tipping policy, employees eligible for tips on a given workday share in the tip pools of the location where they worked. All hourly employees share in the tip pools at their respective locations. Claimant and other Aggrieved Employees were often scheduled to work at different locations and were entitled to the tip pools at the different locations where they were assigned to work. The culinary staff's share of the tip pool is a percentage of the total tip pool. The remaining amount in the tip pool after the subtraction of the culinary staff's share is shared by the taproom staff eligible to receive a tip, including Claimant and other Aggrieved Employees. During the relevant time period, Claimant alleges the Company had a policy or procedure of including taproom supervisors and managers in the tip pool where they would be eligible to collect gratuities. Claimant alleges the taproom supervisors and managers were authorized to hire and discharge employees on behalf of the Company and were acting agents of the Company, and therefore should not be permitted to share in the gratuities earned by Claimant and other Aggrieved Employees, in violation of California law.

Further, Claimant alleges the Company failed to reimburse Claimant and other Aggrieved Employees for all necessary work expenditures. For example, Claimant and other Aggrieved Employees were required to download the Slack and HomeBase applications onto their personal mobile devices in order to execute their work duties. Claimant and other Aggrieved Employees were required to use the Slack application on their personal mobile device in order to communicate with management, other employees, and review work communications, such as new items and food specials. The Slack and HomeBase applications were also the only methods for Claimant and other Aggrieved Employees to check their work schedules and contact management regarding their shifts. Despite requiring Claimant and other Aggrieved Employees to use their personal mobile devices in the discharge of their work duties, the Company failed to reimburse Claimant and other Aggrieved Employees for the use of their personal devices, in violation of California law.

Claimant also contends that the Company did not timely pay her or other former Aggrieved Employees all wages due and owing upon separation of employment or the required waiting time penalties for the late payment of wages. The missing wages include, but are not limited to, premium wages for non-compliant rest periods, earned gratuities, and reimbursement of business expenses.

Additionally, the wage statements furnished by the Company to Claimant and other Aggrieved Employees did not reflect the correct amount of gross or net wages earned as required by the Labor Code. For example, Claimant's wage statements did not include the premium wages earned when a rest period was missed, nor the correct amount of earned gratuities.

As a direct result of the Company's illegal policies and practices, the Company failed to maintain accurate records reflecting all of Claimant's and other Aggrieved Employees' actual wages earned and paid, in violation of California law.

Due to the foregoing Labor Code violations, the Company denied, and continues to deny its employees certain rights afforded to them under the Labor Code and IWC Wage Order No. 5-2001. Claimant makes these claims against the Company on behalf of herself and all other Aggrieved Employees.

FAILURE TO AUTHORIZE AND PERMIT REST PERIODS

(Labor Code §§ 204, 226.7, and the "Rest Periods" section of IWC Wage Order No. 5-2001)

The "Rest Periods" section of IWC Wage Order 5-2001 provides:

> (A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. <u>The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes of net rest time per four (4)</u>

> hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 ½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.
>
> (B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided. (Emphasis added.)

An employer has not authorized or permitted lawful off-duty rest periods unless the employer relieves its employees of any and all work-related duties and relinquishes all control over how its employees spend their time during rest periods. *Augustus v. ABM Security Services, Inc.*, 2 Cal. 5th 267, 269 (2016).

In pertinent part, Labor Code section 226.7 provides:

> (b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and health.
>
> (c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for workday that the meal or rest or recovery period is not provided.

Labor Code section 204 establishes an employee's fundamental right in the state of California to be paid wages in a timely manner for their work. Premium wages under Labor Code section 226.7 are wages that are due payable in accordance with the Labor Code section 204. *Murphy*, 40 Cal.4th at pp. 1103-1114.

As discussed herein, the Company failed to authorize and permit Aggrieved Employees, including Claimant, to take any off-duty, uninterrupted, 10-minute rest periods for every four hours worked or major fraction thereof. Therefore, Claimant and other Aggrieved Employees are entitled to receive one hour of premium wages for each day a legally compliant rest period was not provided. Claimant will pursue all available remedies against the Company for its violations of the Labor Code on behalf of herself and all Aggrieved Employees to the extent permitted by law.

FAILURE TO PAY EARNED GRATUITY

(Labor Code §§ 351 and 353)

Labor Code section 350(d) defines an "[a]gent" as "every person other than the employer having the authority to hire or discharge any employee or supervise, direct, or control the acts of employees."

Further, Labor Code section 350(e) defines "gratuity" as "any tip, gratuity, money, or part thereof that has been paid or given to or left for an employee by a patron of a business over and above the actual amount due the business for services rendered or for goods, food, drink, or articles sold or served to the patron."

Labor Code section 351 states:

> No employer or agent shall collect, take, or receive any gratuity or a part thereof that is paid, given to, or left for an employee by a patron, or deduct any amount from wages due an employee on account of gratuity, or require an employee to credit the amount, or any part thereof, of a gratuity against and as part of the wages due the employee from the employer.
>
> Every gratuity is hereby declared to be the sole property of the employee or employees to whom it was paid, given, or left for.
>
> An employer that permits patrons to pay gratuities by credit card shall pay the employees the full amount of the gratuity that the patron indicated on the credit card slip, without any deductions for any credit card payment processing fee or costs that may be charged to the employee by the credit card company. Payment of gratuities made by patrons using credit cards shall be made to the employees not later than the next regular payday following the date the patron authorized the credit card payment.

Labor Code section 353 requires every employer to "keep accurate records of all gratuities received by him, whether received directly from the employee or indirectly by means of deductions from the wages of the employee or otherwise."

As set forth above, the Company had a policy and practice of including taproom managers and supervisors in the group of employees eligible to collect tips from the tip pool. However, the taproom managers and supervisors were authorized by the Company to make decisions as to the hiring and discharge of employees, essentially serving as agents to the Company. The Company permitted taproom managers and supervisors to collect tips from the tip pool in violation of Labor Code section 351. As a result of this, Claimant and other Aggrieved Employees did not receive all gratuities earned during their employment with the Company. Claimant will pursue all available remedies for the Company's violations on behalf of herself and other Aggrieved Employees to the extent allowed by law.

FAILURE TO REIMBURSE FOR NECESSARY BUSINESS EXPENSES
(Labor Code § 2802)

Labor Code section 2802(a) provides in pertinent part, "[a]n employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer."

Furthermore, Labor Code section 2802(c) states, "[f]or purposes of this section, the term 'necessary expenditures or losses' shall include all reasonable costs, including, but not limited to, attorney's fees incurred by the employee enforcing the rights granted by this section." Consequently, Claimant will also request reimbursement of the attorney's fees incurred in pursuing this matter.

As set forth above, Claimant and other Aggrieved Employees incurred business expenses in direct consequence of their job duties. Specifically, Claimant and other Aggrieved Employees were not reimbursed for the necessary use of their personal mobile devices. Despite this, the Company failed to provide appropriate reimbursement for these expenses, in violation of Labor Code section 2802. Claimant will pursue all available remedies for the Company's violations on behalf of herself and other Aggrieved Employees to the extent allowed by law.

FAILURE TO PAY ALL WAGES DUE AND OWING UPON SEPARATION OF EMPLOYMENT AND/OR THE REQUIRED WAITING TIME PENALTIES
(Labor Code §§ 201, 202, and 203)

Labor Code section 201 states, in pertinent part, "[i]f an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately."

Labor Code section 202 provides, in pertinent part:

> If an employee not having a written contract for a definite period quits his or his employment, his or his wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or his intention to quit, in which case the employee is entitled to his or his wages at the time of quitting.

Labor Code section 203(a) further states:

> If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced; but the wages shall not continue for more than 30 days.

Rest period premiums constitute wages due and owing and thus must be factored into potential waiting time penalties. *Naranjo v. Spectrum Security Services, Inc.*, 13 Cal. 5th 93 (2022).

As discussed herein, the Company did not timely pay Claimant or former Aggrieved Employees all rest period premium wages within the required time upon separation of employment. As a result of the Company's failure to comply with the aforementioned Labor Code provisions, the Company owes waiting time penalties. Claimant will pursue all available remedies against the Company for its violations of the Labor Code on behalf of herself and all Aggrieved Employees to the extent permitted by law.

FAILURE TO FURNISH ACCURATE ITEMIZED WAGE STATEMENTS
(Labor Code §§ 226, 226.3, and the "Records" section of IWC Wage Order No. 5-2001)

Labor Code section 226(a) states in pertinent part:

> Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or his employees, either as detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an accurate itemized

> statement in writing showing (1) gross wages earned, (2) total hours worked by the employee… (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or his social security number or an employee identification number, (8) the name and address of the legal entity that is the employer, … and (9) all applicable hourly rates in effect during each period and the corresponding number of hours worked at each hourly rate by the employee…

Rest period premiums must also be included on an employee's itemized wage statement. *Naranjo v. Spectrum Security Services, Inc.*, 13 Cal. 5th at p. 93.

Labor Code section 226(e)(1) provides:

> An employee suffering injury as a result of knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars ($50) for the initial pay period in which a violation occurs and one hundred dollars ($100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand ($4,000), and is entitled to an award of costs and reasonable attorney's fees.

Labor Code section 226(h) further states, "an employee may also bring an action for injunctive relief to ensure compliance with this section and is entitled to an award of costs and reasonable attorneys' fees."

Labor Code section 226.3 imposes an additional civil penalty of $250 per employee per violation in an initial citation and $1,000 per employee per violation for any subsequent violation on the employer for violations of Labor Code section 226(a).

As set forth above, the Company failed to furnish Claimant and other Aggrieved Employees with accurate itemized wage statements that comply with the requirements of the Labor Code because the wage statements issued did not, among other things, list the gross wages earned and the net wages earned. Claimant will pursue all available remedies against the Company for its violations of the Labor Code on behalf of herself and all Aggrieved Employees to the extent permitted by law.

FAILURE TO MAINTAIN ACCURATE EMPLOYMENT RECORDS

(Labor Code §§ 226, 1174, 1174.5, and the "Records" section of IWC Wage Order No. 5-2001)

Labor Code section 1174(c) requires every employer to "keep a record showing the names and addresses of all employees employed …."

Labor Code section 1174(d) further requires every person employing labor in California to:

> [k]eep, at a central location in the state of at the plants or establishments at which employees are employed, payroll records showing the hours

> worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than three years.

An employer is further obliged under Labor Code section 226(b) to keep the information required by Labor Code section 226(a) and afford current or former employees the right to inspect or copy records pertaining to their employment.

The "Records" section of IWC Wage Order No. 5-2001 also provides that every employer shall keep accurate information with respect to each one of its employees, including time records showing when the employee begins and ends each work period, meal periods, total daily hours worked, total wages paid each payroll period, and total hours worked in the payroll period and applicable rates of pay.

Labor Code section 1174.5 imposes a civil penalty of $500 for an employer's failure to maintain accurate and complete records. This civil penalty is in addition to the civil penalty of $100 per pay period, per aggrieved employee that would be imposed pursuant to Labor Code section 2699 for a violation of Labor Code section 1174(d).

Labor Code section 226(e)(1) provides:

> An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) [of Labor Code § 226] is entitled to recover the greater of all actual damages or fifty dollars ($50) for the initial pay period in which a violation occurs and one hundred dollars ($100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars ($4,000), and is entitled to an award of costs and reasonable attorney's fees.

As set forth above, the Company failed to keep accurate employment records. Claimant will pursue all available remedies for the Company's violations on behalf of herself and other Aggrieved Employees to the extent allowed by law.

ATTORNEY'S FEES, COSTS, INTEREST, LIQUIDATED DAMAGES AND PENALTIES

(Labor Code §§ 210, 218.5, 218.6, 226, 558, and 2698 et seq.)

Labor Code sections 210, 218.5, 218.6, 226, 558, and 2698 et seq., among others, give employees the right to recover in a civil action the full amount of damages, liquidated damages and penalties, including interest thereon, as well as reasonable attorney's fees and costs.

Pursuant to Labor Code section 2699(i), an aggrieved employee, such as Claimant, is entitled to collect 35-percent of the penalty assessment. Under Labor Code section 2699(g)(1), an aggrieved employee, such as Claimant, is entitled to an award of reasonable attorney's fees and costs. Accordingly, the Company is liable for these items. Claimant has already incurred actual damages, costs and attorney's fees and she will continue to incur such costs as a result of the Company's unlawful actions. Claimant will pursue all available remedies against the Company, including those provided by the PAGA, on behalf of herself and all Aggrieved Employees to the extent permitted by California law for the violations of law described herein and those that may be later discovered.

CONCLUSION

Based on the foregoing, the Company has violated the Labor Code and IWC Wage Order No. 5-2001, thereby depriving Claimant and other Aggrieved Employees of the rights and protections afforded to them. Claimant has satisfied the prerequisites of the PAGA to serve as a representative of all Aggrieved Employees, the general public, and the state of California in order to enforce California labor laws and to seek civil penalties for the provisions set forth herein, as well as those which may be later discovered.

Accordingly, if the LWDA declines to intervene or act within time prescribed by the PAGA, Claimant may elect to initiate a civil action, on behalf of herself and all Aggrieved Employees, as permitted by the PAGA.

Sincerely,

Dawn M. Berry