

# Case Management Conference

07/09/2025 08:30 AM - Department 02

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individually and on behalf of all others similarly situated

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**Bret D Hillman**

**For All Purposes**

**ELECTRONICALLY FILED**  
Superior Court of California,  
County of Tulare  
**03/04/2025**  
By: Juliza Gutierrez,  
Deputy Clerk

## **IN THE SUPERIOR COURT OF CALIFORNIA**

### **COUNTY OF TULARE**

NATALIE MARIE GAMEZ ORTIZ,  
individually and on behalf of all others similarly  
situated,

Plaintiff(s),

v.

SUPER BURGER INC; and DOES 1 through  
100,

Defendant(s).

Case No. VCU318854

#### **COMPLAINT**

- 1. Failure to Provide Compliant Meal Breaks**
- 2. Failure to Provide Complaint Rest Breaks**
- 3. Wage Statement Violation**
- 4. Waiting Time Penalties**
- 5. Violation of Unfair Competition**
- 6. Private Attorneys General Act**
- 7. Sexual Harassment**
- 8. Wrongful Termination**

#### **RELEVANT PARTIES**

1. Plaintiff NATALIE MARIE GAMEZ ORTIZ ("Plaintiff") is an adult resident of Tulare County, California, and was at all times relevant residing in Tulare County, California.
2. Defendant SUPER BURGER INC ("Defendant") is a California corporation with its principal place of business located in Kings County, California. Defendant is registered to and does conduct business in the State of California and is subject to the laws of the State of California. All acts and omissions of Defendant employees as alleged herein occurred while they were acting within the course and scope of their employment.

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

9 **JURISDICTION AND VENUE**

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

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

16 **FACTUAL ALLEGATIONS**

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

18 7. Plaintiff was employed by Defendants from May 21, 2022 to August 28, 2024.

19 8. During her employment, Plaintiff was subjected to persistent sexual harassment beginning  
20 around February 2, 2023. The harassment included daily inappropriate questioning about her  
21 personal and sexual life by coworkers, who would corner her when she was alone to ask these  
22 questions.

23 9. Plaintiff was a minor (age 17) when the sexual harassment began.

24 10. Plaintiff reported the sexual harassment multiple times to her manager, Mohammed  
25 Abdullah, who failed to take appropriate corrective action and instead instructed her to keep the  
26 complaints between them to avoid his father (the owner) from finding out.

27 11. As a result of the intolerable working conditions, harassment, Plaintiff was constructively  
28 forced to resign from her position on August 28, 2024.

12. Defendants failed to provide Plaintiff with compliant meal breaks because meal breaks were regularly short, Plaintiff was only given 10-minute meal break. Further, Plaintiff was not given a second meal break for 10-hour shifts. Despite not being provided with compliant meal breaks, Defendant did not pay premium pay for these missed breaks at Plaintiff's regular rate of pay.

13. Defendant failed to provide Plaintiff with compliant rest breaks because rest breaks were regularly missed or short. Despite not being provided with compliant rest breaks, Defendant did not pay premium pay for these missed breaks at Plaintiff's regular rate of pay.

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

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

#### **PAGA ALLEGATIONS**

16. Pursuant to Labor Code section 2699(a), any provision of the Labor Code which provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency ("LWDA") for violations of the Labor 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 outlined in Labor Code section 2699.3.

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

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

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1 19. The LWDA has provided notice (hereinafter “LWDA’s Notice”) to the employer and the  
2 aggrieved employee by certified mail that it does not intend to investigate the aggrieved employee’s  
3 claims. Upon receipt of the LWDA’s Notice, or if the LWDA does not provide such Notice within  
4 65 calendar days of the postmark date of the Employee’s Notice, the aggrieved employee may  
5 commence a civil action pursuant to Labor Code section 2699 to recover civil penalties in addition  
6 to any other penalties to which the employee may be entitled.

7 20. On November 15, 2024, Plaintiff provided written notice by online filing to the LWDA and  
8 by certified mail to Defendants of specific provisions of the Labor Code alleged to have been  
9 violated by Defendants, including the facts and theories to support the alleged violations.

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

13 22. The Aggrieved Employees are defined as “All other nonexempt, hourly employees, current  
14 and former, who were employed by Defendants within one year prior to November 15, 2024,  
15 through final disposition of this action.”

#### 16 **EXHAUSTION OF ADMINISTRATIVE PROCEEDINGS**

17 23. On March 3, 2025, prior to initiating this complaint, Plaintiff filed with the California Civil  
18 Rights Department (hereinafter "CCRD"), a Complaint of Discrimination, Harassment, and  
19 Retaliation against Defendant. On March 3, 2025, the CCRD issued a Notice of Case Closure and  
20 Right-to-Sue letter to Plaintiff, authorizing Plaintiff to file a private lawsuit against Defendant in  
21 order to enforce their rights under FEHA.

22 24. Plaintiff has therefore exhausted all administrative remedies required by FEHA as a  
23 prerequisite to filing this action.

#### 24 **FIRST CAUSE OF ACTION**

##### 25 **Failure to Provide Compliant Meal Periods**

##### 26 **By Plaintiff Against All Defendants**

27 25. Plaintiff incorporates by reference the paragraphs above.

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

5 27. An employer provides compliant meal breaks to its employees “if it relieves its employees  
6 of all duty, relinquishes control over their activities and permits them a reasonable opportunity to  
7 take an uninterrupted 30-minute break.” (*Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th  
8 1004, 1040 (2012)).

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

12 29. Defendants failed to provide Plaintiff with compliant meal breaks as alleged herein.

13 30. For each day that Defendants failed to provide Plaintiff with a compliant meal break,  
14 Defendants were required to remit premium pay pursuant to Labor Code section 226.7(c), which is  
15 one additional hour of pay at Plaintiff’s regular rate of pay. (*Ferra v. Loews Hollywood Hotel, LLC*,  
16 11 Cal. 5th 858 (2021)).

17 31. Defendants failed to pay premium pay at Plaintiff’s regular rate of pay for each day a meal  
18 break was missed.

19 32. Plaintiff is therefore entitled to recover premium pay for missed meal breaks, interest,  
20 penalties, attorney fees, and costs.

21 **SECOND CAUSE OF ACTION**

22 **Failure to Provide Compliant Rest Periods**

23 **By Plaintiff Against All Defendants**

24 33. Plaintiff incorporates by reference the paragraphs above.

25 34. Labor Code section 226.7 and the Wage Orders requires employers to authorize and permit  
26 its employees to take rest periods based on the total hours worked daily at the rate of 10 minutes net  
27 per four hours or major fraction thereof.

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1 35. Furthermore, “[d]uring rest periods employers must relieve employees of all duties and  
2 relinquish control over how employees spend their time.” (*Augustus v. ABM Sec. Servs., Inc.*, 2 Cal.  
3 5th 257, 269 (2016)).

4 36. Defendants failed to provide Plaintiff with compliant rest breaks as alleged herein.

5 37. For each day that Defendants failed to provide Plaintiff with a compliant rest break,  
6 Defendants were required to remit premium pay pursuant to Labor Code section 226.7(c), which is  
7 one additional hour of pay at Plaintiff’s regular rate of pay. (*Ferra v. Loews Hollywood Hotel, LLC*,  
8 11 Cal. 5th 858 (2021)).

9 38. Defendants failed to pay premium pay at Plaintiff’s regular rate of pay for each day a rest  
10 break was missed.

11 39. Plaintiff is therefore entitled to recover premium pay for missed rest breaks, interest,  
12 penalties, attorney fees, and costs.

### 13 **THIRD CAUSE OF ACTION**

#### 14 **Wage Statement Penalties**

#### 15 **By Plaintiff Against All Defendants**

16 40. Plaintiff incorporates by reference the paragraphs above.

17 41. Labor Code section 226(a) requires employers to provide itemized wage statements to its  
18 employees that identify accurate information regarding their compensation. Defendants, as a matter  
19 of policy and practice, failed in its affirmative obligation to provide accurate itemized wage  
20 statements to Plaintiff in violation of Labor Code section 226(a).

21 42. As alleged herein, the wage statements that Defendants issued to Plaintiff were inaccurate  
22 and incomplete.

23 43. Defendants knowingly and intentionally issued wage statements that were inaccurate and  
24 incomplete, and the issuance of inaccurate and incomplete wage statements caused injury to  
25 Plaintiff in that Plaintiff was unable to accurately verify and/or calculate their wages.

26 44. Plaintiff is therefore entitled to the recovery of wage statement penalties, attorney fees, and  
27 costs.

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1 **FOURTH CAUSE OF ACTION**

2 **Waiting Time Penalties**

3 **By Plaintiff Against All Defendants**

4 45. Plaintiff incorporates by reference the paragraphs above.

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

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

12 48. As alleged herein, Defendants willfully did not pay Plaintiff all wages owed at the  
13 conclusion of employment.

14 49. Plaintiff is therefore entitled to the recovery of waiting time penalties, interest, attorney fees,  
15 and costs.

16 **FIFTH CAUSE OF ACTION**

17 **Violation of Unfair Competition Law**

18 **By Plaintiff Against All Defendants**

19 50. Plaintiff incorporates by reference the paragraphs above.

20 51. Defendants' conduct described herein constitutes unfair competition.

21 52. Specifically, Defendants have gained an unfair advantage over other similarly situated  
22 businesses by unlawfully reducing their overhead costs by not paying their employees what they are  
23 owed.

24 53. Pursuant to Business and Professions Code 17203, Plaintiff is entitled to restitution of all  
25 wrongfully withheld wages.

26 54. Plaintiff may recover attorney fees pursuant to Code of Civil Procedure section 1021.5.

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1 **SIXTH CAUSE OF ACTION**

2 **Private Attorneys General Act**

3 **By Plaintiff and the Aggrieved Employees Against All Defendants**

4 55. Plaintiff incorporates by reference the paragraphs above.

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

7 57. As alleged herein, Defendants' conduct violates numerous sections of the Labor Code.

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

11 59. With respect to violations of Labor Code section 226.7 for Defendants' failure to provide  
12 Plaintiff and the Aggrieved Employees with compliant rest periods or compensation in lieu thereof,  
13 the penalties in Labor Code section 2699 apply.

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

17 61. With respect to violations of Labor Code section 203 for failure to pay all wages due to  
18 Plaintiff and the Aggrieved Employees and the conclusion of their employment, the penalties in  
19 Labor Code section 2699 apply.

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

23 63. Additionally, Plaintiff and the Aggrieved Employees are entitled to attorney's fees pursuant  
24 to Labor Code section 2699(g).

25 **SEVENTH CAUSE OF ACTION**

26 **Violation of California Government Code §12940(j) – Sexual Harassment**

27 **By Plaintiff Against All Defendants**

28 64. Plaintiff incorporates by reference the paragraphs above.

1 65. 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 66. 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 67. During their employment with Defendants, Plaintiff was subjected to numerous instances of  
7 sexual harassment (described supra).

8 68. The harassment of Plaintiff was reported and known to Defendants.

9 69. Defendants failed to take immediate and appropriate corrective action.

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

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

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

21 **EIGHTH CAUSE OF ACTION**

22 **Wrongful Termination in Violation of Public Policy**

23 **By Plaintiff Against All Defendants**

24 73. Plaintiff incorporates by reference the paragraphs above.

25 74. At all times mentioned in this complaint, it was a fundamental policy of the State of  
26 California that Defendants cannot discriminate and/or retaliate against any employee on the basis of  
27 race, national origin, ancestry, physical disability, mental disability, medical condition, sex, and/or  
28 engagement in protected activity.

1 75. Based on the actions described above, Defendants constructively discharged Plaintiff for  
2 engaging in protected activity.

3 76. Defendants actions were in violation of California Public Policy.

4 77. As a proximate result of the acts of Defendants, and each of them, Plaintiff has suffered and  
5 will continues to suffer damages, as stated below.

6 **PRAYER FOR RELIEF**

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

8 First Cause of Action

- 9 1. Damages and/or penalties pursuant to Labor Code section 226.7  
10 2. Interest  
11 3. Attorneys' fees  
12 4. Costs  
13 5. Other relief the court deems proper

14 Second Cause of Action

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

20 Third Cause of Action

- 21 1. Penalties pursuant to Labor Code section 226  
22 2. Attorneys' fees  
23 3. Costs  
24 4. Other relief the court deems proper

25 Fourth Cause of Action

- 26 1. Penalties pursuant to Labor Code section 203  
27 2. Attorneys' fees  
28 3. Costs

1 4. Other relief the court deems proper

2 Fifth Cause of Action

3 1. Restitution of all wrongfully withheld wages

4 2. Attorneys' fees

5 3. Costs

6 4. Other relief the court deems proper

7 Sixth Cause of Action

8 1. All applicable civil penalties available pursuant to Labor Code section 2698, et seq.

9 2. Public injunctive relief in the form of an Order enjoining Defendants from continuing to  
10 violate the California Labor Code in the manner alleged herein

11 3. Attorneys' fees

12 4. Costs

13 5. Other relief the court deems proper

14 Seventh Cause of Action

15 1. Back pay and front pay

16 2. Interest on the above amounts

17 3. Compensatory damages

18 4. Punitive damages

19 5. Attorneys' fees

20 6. Costs

21 7. Other relief the court deems proper

22  
23 DATED: March 3, 2025

FRONTIER LAW CENTER

24 /s/ Daniel Ginzburg

Daniel Ginzburg

25 Attorney for Plaintiff

26 NATALIE MARIE GAMEZ ORTIZ,  
27 individually and on behalf of all others  
28 similarly situated