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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA**

SILVIA ROMERO DE SANCHEZ, individually
and on behalf of all others similarly situated,

Plaintiff,

vs.

THE POSH BAKERY INC. and DOES 1
through 50, inclusive,

Defendants.

Case No. **23CV409732**

CLASS ACTION

CLASS ACTION COMPLAINT

1. Meal Period Violations
2. Rest Period Violations
3. Untimely Payment of Wages
4. Wage Statement Violations
5. Waiting Time Penalties
6. Unfair Competition

1 Plaintiff SILVIA ROMERO DE SANCHEZ (“Plaintiff”), individually and on behalf of all
2 others similarly situated brings this CLASS ACTION COMPLAINT against Defendants THE POSH
3 BAKERY INC. and DOES 1 through 50, inclusive (collectively “Defendants”), alleging as follows:

4 **INTRODUCTION**

5 1. This is a class and representative action filed for wage and hour violations of the
6 California Labor Code. Defendants employed Plaintiff and class members in bakery and production
7 positions, but failed to provide duty free rest periods and second meal periods (for shifts of ten hours
8 or more) in the manner required by the California Labor Code. On those occasions, Defendants did
9 not pay Plaintiff and class members a meal or rest period premium.

10 **JURISDICTION & VENUE**

11 2. Jurisdiction of this action is proper in this Court under Article VI, Section 10 of the
12 California Constitution as the causes of action are premised upon violations of California law.

13 3. The monetary damages and restitution sought by Plaintiff exceed the minimal
14 jurisdiction limits of the Superior Court.

15 4. This Court has jurisdiction over Defendants because, upon information and belief,
16 Defendants are citizens of California, have sufficient minimum contacts in California, or otherwise
17 intentionally avail themselves to the California economy so as to render the exercise of jurisdiction
18 over them by the California courts consistent with traditional notions of fair play and substantial
19 justice.

20 5. Venue is proper in this Court under Code of Civil Procedure sections 393, 395, and
21 395.5 because Defendants conduct business and committed some of the alleged violations in this
22 county.

23 **PARTIES**

24 **A. Plaintiff Silvia Romero De Sanchez**

25 6. Plaintiff Silvia Romero De Sanchez is an individual over 18 years of age who worked
26 for Defendants in California as a non-exempt employee from about October 2018 to August 2022.
27 Plaintiff worked as a Machine Operator.

1 **B. Defendants**

2 7. Defendant The Posh Bakery Inc. is a California corporation that maintains operations
3 and conducts business throughout the State of California, including in this county. Defendant
4 maintains its office at 20488 Stevens Creek Blvd, Cupertino, CA 95014.

5 8. The true names and capacities, whether individual, corporate, or otherwise, of the
6 parties sued as DOES 1 through 50, are presently unknown, unascertainable, or uncertain to Plaintiff,
7 who sues them by such fictitious names under Code of Civil Procedure section 474. Plaintiff is
8 informed, believes, and alleges that each of DOES 1 through 50 employed Plaintiff and is responsible
9 in some manner for the acts and omissions alleged herein. Plaintiff may seek leave to amend this
10 Complaint to reflect their true names and capacities once ascertained.

11 9. Plaintiff is informed, believes, and alleges that all Defendants in this action are
12 employers, co-employers, joint employers, and/or part of an integrated employer enterprise, as each
13 of the Defendants exercised control over the wages, hours, and working conditions of Plaintiff and
14 other aggrieved employees, suffered and permitted them to work, and otherwise engaged them as
15 employees under California law.

16 10. Plaintiff is informed, believes, and alleges that at least some of the Defendants have
17 common ownership, common management, interrelationship of operations, and centralized control
18 over labor relations and are therefore part of an integrated enterprise and thus jointly and severally
19 responsible for the acts and omissions alleged herein, including pursuant to Labor Code sections 558,
20 558.1, and 1197.1

21 11. Plaintiff is informed, believes, and alleges that each defendant acted in all respects
22 pertinent to this action as an alter-ego, agent, servant, joint employer, joint venturer, co-conspirator,
23 partner, in an integrated enterprise, or in some other capacity on behalf of all other co-defendants, such
24 that the acts and omissions of each defendant may be legally attributable to all others.

1 **CLASS ALLEGATIONS**

2 12. Plaintiff brings this action individually and on behalf of the following class pursuant to
3 Code of Civil Procedure section 382:

4 a. All current and former non-exempt employees who worked for Defendants in
5 California at any time from four years (plus the additional 178-day statutory
6 tolling period under Emergency Rule 9) prior to the filing of this action through
7 date of class certification.

8 13. Plaintiff reserves the right to establish various subclass definitions as appropriate at the
9 class certification stage, according to proof.

10 14. The class is ascertainable and shares a well-defined community of interest in this
11 litigation:

12 a. Numerosity: Although the precise membership of the entire class is unknown
13 to Plaintiff at this time, Plaintiff estimates the class to exceed 50 individuals.
14 The class members are so numerous that joinder of all class members is
15 impracticable. The identity of class members is readily ascertainable by
16 inspection of Defendants' employment records.

17 b. Typicality: Plaintiff's claims are typical of the claims of the other class
18 members. Plaintiff and class members were subject to the same policies and
19 practices of Defendants, which resulted in losses to Plaintiff and Class
20 Members. Proof of common unlawful business practices, which Plaintiff
21 experienced and is representative of, will establish the right of the class to
22 recover on the causes of action alleged herein.

23 c. Adequacy: Plaintiff is an adequate class representative. Plaintiff will take all
24 necessary steps to adequately and fairly represent and protect the interests of
25 the class. Plaintiff has no interest antagonistic to other class members. Plaintiff
26 is represented by attorneys who have substantial experience prosecuting,
27 defending, resolving, and litigating wage and hour class, collective, and
28 representative actions in California state and federal courts.

1 d. Superiority: A class action is superior to other means for adjudicating this
2 dispute. Individual joinder is impractical. Class treatment will allow for
3 common issues to be resolved in a single forum, simultaneously, and without
4 duplication of effort and expense.

5 e. Public Policy Considerations: Certification of this lawsuit as a class action
6 advances the State of California's strong public interest in ensuring its
7 approximately millions of employed residents are properly paid the wages they
8 earned for the hours they worked. Class actions provide a mechanism for
9 enforcement of labor laws and allow for vindication of employee rights by
10 unnamed class members.

11 15. Common questions of law and fact as to the class members predominate over questions
12 affecting only individual members. The common questions of law and fact exist as to whether the
13 employment policies and practices formulated by Defendants and applied to the class members
14 constitute violate California law.

15 **GENERAL ALLEGATIONS**

16 16. Defendants failed to provide second uninterrupted, duty-free meal periods to Plaintiff
17 of at least 30 minutes in length when their shifts exceeded 10 hours in length. On those occasions,
18 Defendants did not pay a meal period premium due, in violation of Labor Code section 226.7.

19 17. No second meal period waiver was in effect.

20 18. Defendants' time records reflect the noncompliance with the second meal period
21 requirement. Defendants' wage statements reflect a lack of meal period premiums at the lawful rate
22 of pay for when those second meal periods were not provided.

23 19. Additionally, Defendants had a policy and practice of not paying rest period premiums
24 to employees when they were due.

25 20. Defendants required Plaintiff and other aggrieved employees to effectively waive or
26 otherwise forego their rest periods contrary to law. Defendants had an unlawful policy and practice
27 of not allowing Plaintiff and other aggrieved employees to use the restroom or take water breaks when
28 they were working.

1 21. Plaintiff's records show that Plaintiff consistently did not take rest periods nor was she
2 compensated any rest period premiums. Defendants' time records reflect Plaintiff's experience and
3 show 0.0 in the column for paid breaks. Although Defendants are not required to record paid 10-
4 minute rest breaks, they are required to provide them, which they did not as a matter of common
5 practice. Plaintiff and the class members worked in systemic production positions where breaks
6 should have and could have been scheduled to ensure they were authorized. Instead, Defendants
7 expected employees to forgo 10-minute breaks, and forgo using the restroom until their first lunch.

8 22. Defendants failed to timely pay the meal and rest period premiums owed to Plaintiff
9 and class members each pay period or upon separation of employment in violation of Labor Code
10 sections 201 to 203 (waiting time) and 204 and 204b (paydays), as a result of the foregoing practices.

11 23. Defendants' failure to pay such premium payments each pay period or upon separation
12 of employment, rendered the payments untimely and subject to civil penalties for the violations
13 committed against the aggrieved employees under Labor Code §§ 201 through 203.

14 24. Defendants failed to provide accurate itemized wage statements to the aggrieved
15 employees each pay period as a result of the policies and practices.

16 25. Specifically, Defendants violated Labor Code section 226(a)(1) and (5) by not listing
17 the correct "gross wages earned" or "net wages earned" on those statements because the amounts listed
18 failed to include and account for the unpaid meal and rest period premiums Plaintiff and the class
19 members earned but were not paid.

20 26. Likewise, in violation of Labor Code section 226(a)(9), Defendants failed to state on
21 employee statements each pay period the applicable hourly rates and the number of hours worked at
22 that rate, as Defendants failed to pay all wages and premiums owed to employees each pay period (i.e.,
23 meal and rest period premiums). The amounts stated are instead depreciated and underpaid, resulting
24 in an inaccurate reflection to the pay stub.

25 27. The wage statement violations created significant confusion among Plaintiff and other
26 aggrieved employees with respect to what amounts were owed and paid, at what rates, the number of
27 hours worked, and how those amounts were or should be calculated. The wage statements reflect a
28

1 false statement of earnings and concealed the underlying problems and underpayments of employee
2 wages.

3 28. Plaintiff is informed, believes, and alleges that Defendants' acts and omissions have
4 knowingly and intentionally caused harm to Plaintiff and the Class. Plaintiff is informed, believes,
5 and alleges that Defendants have engaged in systemic violations of the Labor Code and IWC Wage
6 Order by maintaining practices, policies, and customs that are inconsistent with their obligations under
7 California Law.

8 **FIRST CAUSE OF ACTION**

9 **MEAL PERIOD VIOLATIONS**

10 **Violation of Labor Code §§ 226.7 and 512**

11 29. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

12 30. This cause of action is brought pursuant to the IWC Wage Orders and Labor Code
13 §§ 226.7, 558 and 512, which require non-exempt employees be provided complaint meal periods (or
14 meal period premiums in lieu thereof), and which further provide a private right of action for an
15 employer's failure to lawfully provide all meal periods and/or pay meal period premiums at the lawful
16 regular rate of compensation.

17 31. Defendants willfully failed in their affirmative obligation to consistently provide
18 Plaintiff and Class Members compliant, duty-free meal periods of not less than 30 minutes beginning
19 before the fifth hour of hour for each work period of more than five hours per day and a second duty-
20 free meal period of not less than 30 minutes beginning before the tenth hour of hour of work in
21 violation of Labor Code sections 226.7, 512, 558, 1198 and the IWC Wage Orders (the "Meal Periods"
22 sections of the applicable orders).

23 32. Further, Defendants willfully failed in their affirmative obligation to consistently pay
24 Plaintiff and Class Members one additional hour of pay at the respective regular rate of compensation
25 for each workday that a fully compliant meal period was not provided, in violation of Labor Code
26 sections 226.7, 512, 558, and 1198 and the IWC Wage Orders (the "Meal Periods" sections of the
27 applicable orders).

1 this obligation. Labor Code § 218 authorizes individuals to sue directly for wages and penalties due
2 under these sections, including Labor Code § 210(c)'s statutory late payment penalties.

3 40. Defendants willfully failed in their affirmative obligation to timely pay all wages,
4 including paid sick leave and meal and rest premiums, earned by Plaintiff and class members twice
5 during each calendar month on days designated in advance by the employer as regular paydays (for
6 employees paid on a non-weekly basis) and on the regularly-scheduled weekly payday weekly
7 employees, if any, in violation of Labor Code sections 204 and 204b and the IWC Wage Orders (the
8 "Minimum Wages" sections of the applicable orders).

9 41. Plaintiff and class members are entitled to recover the full amount of the unpaid wages,
10 in addition to a statutory penalty in the amount of \$100 for the initial violation for each failure to pay
11 each employee and \$200 for all subsequent violations and for all willful or intentional violations for
12 each failure to pay each employee, plus 25 percent of the amount unlawfully withheld under provided
13 in Labor Code § 210, in addition to interest, attorneys' fees, and costs to the extent permitted by law.

14 **FOURTH CAUSE OF ACTION**

15 **WAGE STATEMENT VIOLATIONS**

16 **Violation of Labor Code § 226**

17 42. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

18 43. This cause of action is brought by the Wage Statement Subclass pursuant to Labor Code
19 § 226(a) which requires non-exempt employees be provided accurate itemized wage statements each
20 pay period, and which further provide a private right of action for an employer's failure to comply
21 with this obligation.

22 44. Defendants knowingly and intentionally failed in their affirmative obligation provide
23 accurate itemized wage statements to Plaintiff and Class Members resulting in injury to Plaintiff and
24 Class Members. Specifically, the wage statements issued to Plaintiff and Class Members did not
25 accurately state each pay period all of the information required by Labor Code § 226(a)(1)-(9).

26 45. Defendants' unlawful acts and omissions deprived Plaintiff and Class Members of
27 accurate itemized wage statements, causing confusion and concealing wage and premium
28 underpayments.

- 1 c. For appointment of above-captioned counsel for Plaintiff as Class Counsel;
- 2 d. For division of Class Members into appropriate classes and/or subclasses according to
- 3 proof;
- 4 e. For recovery of damages in amount according to proof;
- 5 f. For all recoverable pre- and post-judgment interest;
- 6 g. For recovery of all civil and statutory penalties and liquidated damages;
- 7 h. For disgorgement of all amounts wrongfully obtained;
- 8 i. For restitution and injunctive relief;
- 9 j. For reasonable attorneys' fees and costs of suit, including expert fees, to the extent
- 10 permitted by law, including (without limitation) under Labor Code §§ 218.5, 226,
- 11 1194, 2699 and Code of Civil Procedure section 1021.5; and
- 12 k. For such other relief the Court deems just and proper.

13
14 Dated: January 10, 2023

Ferraro Vega Employment Lawyers, Inc.

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16 Nicholas J. Ferraro

17 *Attorneys for Plaintiff Silvia Romero De Sanchez*