

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Scott Edward Cole, Esq. (S.B. #160744)
Andrew Weaver, Esq. (S.B. #318935)
SCOTT COLE & ASSOCIATES, APC
555 12th Street, Suite 1725
Oakland, California 94612
Telephone: (510) 891-9800
Facsimile: (510) 891-7030
Email: scole@scalaw.com
Email: aweaver@scalaw.com
Web: www.scalaw.com

**ENDORSED
FILED
ALAMEDA COUNTY**

OCT 24 2019

**CLERK OF THE SUPERIOR COURT
By Molly Kautz**

Attorneys for Representative Plaintiff
and Aggrieved Employees

**IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF ALAMEDA**

SCOTT COLE & ASSOCIATES, APC
ATTORNEYS AT LAW
555 12th STREET, SUITE 1725
OAKLAND, CA 94607
TEL: (510) 891-9800

HARRY RODRIGUEZ, individually,
and on behalf of all others similarly
situated,

Plaintiff,

vs.

SPECIALTY'S CAFÉ AND BAKERY,
INC. and DOES 1 through 100,
inclusive,

Defendant.

Case No. **RG19040547**

**PRIVATE ATTORNEYS GENERAL ACT
COMPLAINT FOR CIVIL PENALTIES**

[CAL. LAB. CODE § 2699]

[DEMAND FOR JURY TRIAL]

Representative Plaintiff alleges as follows:

PRELIMINARY STATEMENT

1. This is a representative action seeking civil penalties under the Labor Code Private Attorneys General Act of 2004, codified as California Labor Code section 2698, *et seq.* ("PAGA"). Plaintiff Harry Rodriguez ("Plaintiff") brings this action on behalf of himself as an aggrieved employee and on behalf of all other persons similarly situated ("Aggrieved Employees") who are or have been employed by Specialty's Café and Bakery, Inc. and/or Does 1 through 100, inclusive (collectively "Defendant" or "Specialty's") as non-exempt food service workers within the State of California at any time after August 14, 2018.



SCOTT COLE & ASSOCIATES, APC
ATTORNEYS AT LAW
555 12th STREET, SUITE 1725
OAKLAND, CA 94607
TEL: (510) 891-9800

1 7. Despite Defendant’s knowledge of Plaintiff’s and Aggrieved Employees’
2 entitlement to these benefits of employment, Defendant failed to provide same, for all applicable
3 work periods, in violation of California state statutes, California Industrial Welfare Commission
4 Wage Order No. 7, and Title 8 of the California Code of Regulations. This action is brought to
5 redress and end this long-time pattern of unlawful conduct.

6 **JURISDICTION AND VENUE**

7 8. This Court has jurisdiction over Plaintiff’s and Aggrieved Employees’ claims for
8 civil penalties sought herein under the California Labor Code.

9 9. Venue as to Defendant is proper in this judicial district pursuant to California Code
10 of Civil Procedure § 395(a). Defendant provides food services within the County of Alameda
11 (where Plaintiff and numerous Aggrieved Employees worked), transacts business, has agents, and
12 is otherwise within this Court’s jurisdiction for purposes of service of process. The unlawful acts
13 alleged herein have and have had a direct effect on Representative Plaintiff and those similarly
14 situated within the State of California and within the County of Alameda.

15
16 **PLAINTIFF**

17 10. Representative Plaintiff Harry Rodriguez is a natural person who was employed by
18 Defendant as a non-exempt food service worker during the claims period. At all times herein
19 relevant, Plaintiff Rodriguez was and is now an individual within the category of Aggrieved
20 Employees further described and defined herein.

21 11. In these capacities, Representative Plaintiff is and was entitled to full, uninterrupted
22 and statutorily-mandated rest periods, as well as other benefits of employment as set forth herein.

23 12. As used throughout this Complaint, the term “Aggrieved Employees” refers to the
24 named Plaintiff herein as well as each and every person employed by Defendant in California as a
25 non-exempt retail store worker and/or salaried assistant manager during the relevant time period.

26 13. Plaintiff brings this action on behalf of himself and as a representative action,
27 pursuant to California Labor Code section 2699, on behalf of all Aggrieved Employees similarly
28 situated and proximately damaged by the unlawful conduct described herein.

DEFENDANT

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

14. Representative Plaintiff is informed and believes and, based thereon, alleges that, at all times herein relevant, defendants Specialty's Café and Bakery, Inc., and Does 1 through 100, did business within the State of California as food service/eating establishments and/or providers of restaurant services.

15. Those defendants identified as Does 1 through 100, inclusive, are and were, at all relevant times herein-mentioned, officers, directors, partners, and/or managing agents of some or each of the remaining defendants. Representative Plaintiff is informed and believes and, on that basis, alleges that at all relevant times herein mentioned, defendants Specialty's Café and Bakery, Inc., and those identified as Does 1 through 100, inclusive, employed, and/or exercised control over the wages, hours, and/or working conditions of the Representative Plaintiff and Aggrieved Employees within the State of California.

16. The Representative Plaintiff is unaware of the true names and capacities of those defendants sued herein as Does 1 through 100, inclusive and, therefore, sues these defendants by such fictitious names. The Representative Plaintiff will seek leave of court to amend this Complaint when such names are ascertained. The Representative Plaintiff is informed and believes and, on that basis, alleges that each of the fictitiously-named defendants was responsible in some manner for, gave consent to, ratified, and/or authorized the conduct herein alleged and that the Representative Plaintiff's and Aggrieved Employees' damages, as herein alleged, were proximately caused thereby.

17. Representative Plaintiff is informed and believes and, on that basis, alleges that, at all relevant times herein mentioned, each of the defendants was the agent and/or employee of each of the remaining defendants and, in doing the acts herein alleged, was acting within the course and scope of such agency and/or employment.

SCOTT COLE & ASSOCIATES, APC
ATTORNEYS AT LAW
555 12th STREET, SUITE 1725
OAKLAND, CA 94607
TEL: (510) 891-9800

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

REPRESENTATIVE ACTION ALLEGATIONS

18. Plaintiff brings this action on behalf of himself and as a representative action on behalf of the following categories of Aggrieved Employees:

Non-Exempt Food Service Workers

All persons who are and/or were employed as non-exempt food service workers by Specialty's Café and Bakery, Inc., in one or more of its California locations at any time after August 14, 2018.

19. Defendants and their officers and directors are excluded from the category of Aggrieved Employees defined in the preceding paragraph.

COMMON FACTUAL ALLEGATIONS

20. Defendant Specialty's has, for years, knowingly failed to properly compensate Plaintiff and the Aggrieved Employees for all wages earned and due (including, but not necessarily limited to, compensation for missed rest periods). Moreover, Defendant has failed to provide Plaintiff and the Aggrieved Employees with net ten-minute rest periods for work shifts exceeding four hours or a major fraction thereof. Defendant has declined to pay these wages, even upon an Aggrieved Employee's termination or resignation from employment, in blatant violation of California Labor Code §§ 201-204, inclusive. More than 30 days have passed since Plaintiff and certain Aggrieved Employees have left Defendant's employ.

21. Defendant also failed to provide Plaintiff and Aggrieved Employees with accurate semimonthly itemized statements of the total number of hours worked by each, and all applicable hourly rates in effect during each pay period, in violation of California Labor Code § 226. In doing so, Defendant has not only failed to pay its workers the full amount of compensation due, it has, until now, effectively shielded itself from its employees' scrutiny for its unlawful conduct by concealing the magnitude (e.g., the full number of hours worked) and financial impact of its wrongdoing.

22. As a direct and proximate result of Defendant's unlawful conduct, as set forth herein, Plaintiff and Aggrieved Employees are entitled to penalties pursuant to Labor Code § 2699 *et seq.* for the violations described above including missed rest periods, in an amount to be established at trial. As a further direct and proximate result of Defendant's unlawful conduct, as

1 set forth herein, Plaintiff and Aggrieved Employees are entitled to recover penalties for failure to
2 provide semimonthly itemized wage statements of hours worked and all applicable hourly rates
3 (in violation of California Labor Code § 226) in an amount to be established at trial. As a further
4 direct and proximate result of Defendant’s unlawful conduct, as set forth herein, Plaintiff and
5 Aggrieved Employees are also entitled to recover attorneys’ fees, litigation costs, and restitution
6 of ill-gotten gains, pursuant to statute.

7 23. Plaintiff complied with the procedures for bringing suit specified in California
8 Labor Code § 2699.3. By letter dated August 14, 2018, Plaintiff gave written notice to the Labor
9 and Workforce Development Agency (“LWDA”) and Defendant of the specific provisions of the
10 California Labor Code alleged to have been violated, including the facts and theories to support
11 these violations.

12 **FIRST CAUSE OF ACTION**
13 **PRIVATE ATTORNEYS GENERAL ACT CLAIM**
14 **(California Labor Code §§ 2699)**

15 24. Plaintiff incorporates in this cause of action each and every allegation of the
16 preceding paragraphs, with the same force and effect as though fully set forth herein.

17 25. California Labor Code § 2699(a) states:

18 Notwithstanding any other provision of the law, any provision of this code that
19 provides for a civil penalty to be assessed and collected by the Labor and Workforce
20 Development Agency or any of its departments, divisions, commissions, boards,
21 agencies, or employees, for a violation of this code, may, as an alternative, be
22 recovered through a civil action brought by an aggrieved employee on behalf of
23 himself or herself and other current or former employees...

24 26. Plaintiff (and each and every other Aggrieved Employee defined herein) are
25 “aggrieved employees,” as defined by California Labor Code § 2699(c), because they were
26 employed by Defendant and were among the many employees against whom violations of law
27 were committed.

28 27. Plaintiff has met all of the requirements set forth in California Labor Code § 2699.3
necessary to maintain a civil action against Defendant for penalties based on violations of
California Labor Code §§ 200-204, inclusive, 226, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1197,
and/or 1198.

SCOTT COLE & ASSOCIATES, APC
ATTORNEYS AT LAW
555 12th STREET, SUITE 1725
OAKLAND, CA 94607
TEL: (510) 891-9800

1 28. Plaintiff brings this cause of action on behalf of himself and all Aggrieved
2 Employees alleging violations of the California Labor Code sections cited in the preceding
3 paragraph.

4 29. As a direct and proximate result of Defendant's unlawful conduct, as set forth
5 herein, Plaintiff and Aggrieved Employees have sustained damages, including loss of earnings, in
6 an amount to be established at trial.

7 30. As a further direct and proximate result of Defendant's unlawful conduct, as set
8 forth herein, Plaintiff and Aggrieved Employees are entitled to recover various penalties as
9 provided by California Labor Code § 2699 in an amount to be established at trial, as well as costs
10 and attorneys' fees, pursuant to statute.

11
12 **RELIEF SOUGHT**

13 **WHEREFORE**, the Representative Plaintiff, on behalf of himself and the Aggrieved
14 Employees, prays for judgment and the following specific relief against Defendants, and each of
15 them, jointly and separately, as follows:

16 1. That the Court declare, adjudge, and decree that this action is a proper
17 representative action pursuant to California Labor Code § 2699;

18 2. That the Court make an award of civil penalties for violations of the California
19 Labor Code, pursuant to California Labor Code § 2699;

20 3. For reasonable attorneys' fees, pursuant to California Labor Code § 2699(g) and/or
21 California Code of Civil Procedure § 1021.5; and

22 4. For costs of suit and any and all other such relief as the Court deems just and proper.
23
24
25
26
27
28


1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

JURY DEMAND

Plaintiff and the Aggrieved Employees hereby demand trial by jury of all issues trial as of right by jury.

Dated: October 24, 2019

SCOTT COLE & ASSOCIATES, APC

By: 
Andrew Weaver, Esq.
Attorneys for Representative Plaintiff
and Aggrieved Employees

SCOTT COLE & ASSOCIATES, APC
ATTORNEYS AT LAW
555 12th STREET, SUITE 1725
OAKLAND, CA 94607
TEL: (510) 891-9800