

SCOTT COLE & ASSOCIATES, APC
ATTORNEYS AT LAW
THE WACHOVIA TOWER
1970 BROADWAY, NINTH FLOOR
OAKLAND, CA 94612
TEL: (510) 891-9800

1 Scott Edward Cole, Esq. (S.B. #160744)
Andrew Weaver, Esq. (S.B. #318935)
2 **SCOTT COLE & ASSOCIATES, APC**
1970 Broadway, Ninth Floor
3 Oakland, California 94612
Telephone: (510) 891-9800
4 Facsimile: (510) 891-7030
Email: scole@scalaw.com
5 Email: aweaver@scalaw.com
Web: www.scalaw.com

6 Attorneys for Representative Plaintiff
7 and the Plaintiff Class

8 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **IN AND FOR THE COUNTY OF SAN FRANCISCO**

11 JENNIFER FREEMAN, individually,
and on behalf of all others similarly
12 situated

13 Plaintiffs,

14 vs.

15 THE MINA GROUP, LLC, MG-101
16 CAL, LLC and DOES 1 through 100,
inclusive,

17 Defendant.

Case No.

CLASS ACTION

**COMPLAINT FOR DAMAGES,
INJUNCTIVE RELIEF AND RESTITUTION**

[Jury Trial Demanded]

18
19 Representative Plaintiff alleges as follows:

20
21 **INTRODUCTION**

22 1. This is a class action seeking unpaid regular and overtime wages, including unpaid
23 compensation for meal and/or rest period violations, interest thereon, liquidated damages and other
24 penalties, injunctive and other equitable relief, and reasonable attorneys' fees and costs under,
25 *inter alia*, California Labor Code §§ 200-204, inclusive, 226, 226.7, 226.8, 510, 512, 558, 1174,
26 1174.5, 1194, 1194.2, 1197, 1198, California Business and Professions Code §§ 17200, *et seq.* and
27 California Code of Civil Procedure § 1021.5. Plaintiff Jennifer Freeman ("Representative
28 Plaintiff" or "Plaintiff") brings this action on behalf of herself and all other persons similarly

1 situated (“Class Members” and/or the “Plaintiff Class”) who are or have been employed by
2 defendants The Mina Group, LLC, MG-101 Cal, LLC, and/or Does 1 through 100, inclusive
3 (collectively “Defendant”) as non-exempt food service workers within the State of California
4 within the applicable class period.

5 2. The class period is designated as the time from June 13, 2014 through trial, based
6 upon the allegation that the violations of California’s wage and hour laws, as described more fully
7 below, have been ongoing throughout that time.

8 3. During the class period, Defendant has had a consistent policy of (1) unlawfully
9 denying Plaintiff and Class Members statutorily-mandated meal and rest periods, (2) willfully
10 failing to provide Plaintiff and Class Members with accurate semimonthly itemized wage
11 statements reflecting the total number of hours each worked, the applicable deductions, and the
12 applicable hourly rates in effect during the pay period, and (3) willfully failing to pay compensation
13 in a prompt and timely manner to Plaintiff and those Class Members whose employment with
14 Defendant has terminated.

15 4. Defendant operates a restaurant service within California for which Representative
16 Plaintiff worked as a non-exempt food service worker. The Representative Plaintiff is informed
17 and believes and, on that basis, alleges that, within the Class Period, Defendant employed hundreds
18 of individuals in California in recent years to perform food service work, employment positions
19 which did not, and currently do not, meet any known test for exemption from the payment of
20 overtime wages and/or the entitlement to meal or rest periods.

21 5. Despite actual knowledge of these facts and legal mandates, Defendant has and
22 continues to enjoy an advantage over its competition and a resultant disadvantage to its workers
23 by electing not to pay all wages due (missed meal and rest period compensation) and/or all
24 penalties dues (including “waiting time” penalties) to its California based non-exempt food service
25 workers.

26 6. Representative Plaintiff is informed and believes and, based thereon, alleges that
27 Defendant’s officers knew of these facts and legal mandates yet, nonetheless, repeatedly
28 authorized and/or ratified the violation of the laws cited herein.

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1 13. Representative Plaintiff is informed and believes and, based thereon, alleges that,
2 at all times herein relevant, defendants The Mina Group, LLC, MG-101 Cal, LLC, and Does 1
3 through 100, did business within the State of California as food service/eating establishments
4 and/or providers of restaurant services.

5 14. Those defendants identified as Does 1 through 100, inclusive, are and were, at all
6 relevant times herein-mentioned, officers, directors, partners, and/or managing agents of some or
7 each of the remaining defendants. Representative Plaintiff is informed and believes and, on that
8 basis, alleges that at all relevant times herein mentioned, defendants The Mina Group, LLC, MG-
9 101 Cal, LLC, and those identified as Does 1 through 100, inclusive, employed, and/or exercised
10 control over the wages, hours, and/or working conditions of the Representative Plaintiff and Class
11 Members within the State of California.

12 15. Plaintiff is informed and believes and, on that basis, alleges that defendant MG-101
13 Cal, LLC is the alter ego of defendant The Mina Group, LLC. Defendant The Mina Group, LLC
14 is the sole manager of defendant MG-101 Cal, LLC, and both entities share the same physical
15 address as well as have the same agent for service of process. Furthermore, Plaintiff is informed
16 and believes and, on that basis, alleges that defendant The Mina Group, LLC controls the wages,
17 hours, and/or working conditions of employees of defendant MG-101 Cal, LLC.

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

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

3
4 **CLASS ACTION ALLEGATIONS**

5 18. The Representative Plaintiff brings this action on behalf of herself and as a class
6 action on behalf of all persons similarly situated and proximately damaged by Defendant's conduct
7 including, but not necessarily limited to, the following Plaintiff Class:

8 "All persons employed by Defendant as a non-exempt food service
9 worker in California at any time on or after June 13, 2014."

10 19. Defendant's officers and directors are excluded from the Plaintiff Class.

11 20. This action has been brought and may properly be maintained as a class action
12 under California Code of Civil Procedure § 382 because there is a well-defined community of
13 interest in the litigation and the proposed Class is easily ascertainable.

14 a. Numerosity: A class action is the only available method for the fair
15 and efficient adjudication of this controversy. The members of the
16 Plaintiff Class are so numerous that joinder of all members is
17 impractical, if not impossible, insofar as Representative Plaintiff is
18 informed and believes and, on that basis, alleges that there are
19 sufficient Class Members to meet the numerosity requirement.
20 Membership in the Class will be determined upon analysis of
21 employee and payroll, among other, records maintained by
22 Defendant.

23 b. Commonality: The Representative Plaintiff and the Class Members
24 share a community of interests in that there are numerous common
25 questions and issues of fact and law which predominate over any
26 questions and issues solely affecting individual members, including,
27 but not necessarily limited to:

- 28
- 1) Whether Defendant violated California Business and Professions Code § 17200, *et seq.* by failing to provide meal and/or rest breaks to Class Members working eligible shifts;
 - 2) Whether Defendant violated California Labor Code § 1174 by failing to keep accurate records of employees' hours of work;
 - 3) Whether Defendant violated California Labor Code §§ 201-204 by failing to pay wages due and owing at the time that certain Class Members' employment with Defendant terminated;

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4) Whether Defendant violated California Labor Code § 226 by failing to provide semimonthly itemized statements to Class Members of total hours worked by each and all applicable hourly rates in effect during the pay period; and

5) Whether Class Members are entitled to “waiting time” penalties, pursuant to California Labor Code § 203.

c. Typicality: The Representative Plaintiff’s claims are typical of the claims of Class Members. The Representative Plaintiff and Class Members sustained damages arising out of and caused by Defendant’s common course of conduct in violation of law, as alleged herein.

d. Adequacy of Representation: The Representative Plaintiff in this class action is an adequate representative of the Plaintiff Class in that the Representative Plaintiff’s claims are typical of those of the Plaintiff Class and the Representative Plaintiff has the same interest in the litigation of this case as the Class Members. The Representative Plaintiff is committed to vigorous prosecution of this case and has retained competent counsel who are experienced in conducting litigation of this nature. The Representative Plaintiff is not subject to any individual defenses unique from those conceivably applicable to Class Members as a whole. The Representative Plaintiff anticipates no management difficulties in this litigation.

e. Superiority of Class Action: Since the damages suffered by individual Class Members, while not inconsequential, may be relatively small, the expense and burden of individual litigation by each member makes or may make it impractical for Class Members to seek redress individually for the wrongful conduct alleged herein. Should separate actions be brought, or be required to be brought, by each individual Class Member, the resulting multiplicity of lawsuits would cause undue hardship and expense for the Court and the litigants. The prosecution of separate actions would also create a risk of inconsistent rulings which might be dispositive of the interests of other Class Members who are not parties to the adjudications and/or may substantially impede their ability to adequately protect their interests.

COMMON FACTUAL ALLEGATIONS

21. As described herein, for years, Defendant has knowingly failed to adequately compensate those employees within the class definition identified above for all wages earned (including premium wages such as compensation for missed meal and/or rest periods) under the California Labor Code and the applicable IWC Wage Order, thereby enjoying a significant competitive edge over other service providers.

1 22. Defendant has declined to pay these wages, even upon a Class Member's
2 termination or resignation from employment, in blatant violation of California Labor Code § 201
3 and/or § 202.

4 23. California Labor Code §§ 201 and 202 require Defendant to pay severed employees
5 all wages due and owed to the employee immediately upon discharge or within 72 hours of
6 resignation of their positions, in most circumstances. California Labor Code § 203 provides that
7 an employer who willfully fails to timely pay such wages must, as a penalty, continue to pay the
8 subject employees' wages until the back wages are paid in full or an action is commenced, and the
9 payment of such penalty shall continue for a period of time up to 30 days.

10 24. Furthermore, despite its knowledge of the Representative Plaintiff's and the Class
11 Members' entitlement to compensation for all hours worked, Defendant violated California Labor
12 Code § 1174(d) by failing to provide or require the use, maintenance, or submission of time records
13 by members of the Plaintiff Class. Defendant also failed to provide the Representative Plaintiff
14 and Class Members with accurate semimonthly itemized statements of the total number of hours
15 worked by each, and all applicable hourly rates in effect, during the pay period, in violation of
16 California Labor Code § 226. In failing to provide the required documents, Defendant has not only
17 failed to pay its workers the full amount of compensation due but the company has also, until now,
18 effectively shielded itself from its employees' scrutiny by concealing the magnitude and financial
19 impact of its wrongdoing that such documents might otherwise have led workers to discover.

20 25. Representative Plaintiff and all persons similarly situated are entitled to unpaid
21 compensation, yet, to date, have not received such compensation despite many of the same having
22 been terminated by and/or resigned from Defendant's employ. More than 30 days have passed
23 since certain Class Members have left Defendant's employ.

24 26. As a consequence of Defendant's willful conduct in not paying former employees
25 compensation for all hours worked in a prompt and timely manner, certain Class Members are
26 entitled to up to 30 days wages as a penalty under California Labor Code § 203, together with
27 attorneys' fees and costs.

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1 31. During the limitations period, Defendant refused to compensate Plaintiff for all of
2 the wages earned, in violation of the applicable IWC Wage Order(s) and provisions of the
3 California Labor Code.

4 32. Defendant's conduct, as heretofore detailed, represents underpayment of wages
5 pursuant to California Labor Code § 558 for which Plaintiffs seek damages and/or penalties
6 according to proof.

7 33. As a direct and proximate result of Defendant's unlawful conduct, as set forth
8 herein, Plaintiff has sustained damages, including loss of earnings for hours worked on behalf of
9 Defendant, in an amount to be established at trial. As a further direct and proximate
10 result of Defendant's unlawful conduct, as set forth herein, Plaintiff is entitled to recover penalties
11 in amounts to be established at trial, as well as attorneys' fees and costs, and restitution, pursuant
12 to statute.

13
14 **SECOND CAUSE OF ACTION**
15 **FAILURE TO PROVIDE MEAL AND REST PERIODS**
16 **(California Labor Code §§ 226.7 and 512)**

17 34. Representative Plaintiff incorporates in this cause of action each and every
18 allegation of the preceding paragraphs, with the same force and effect as though fully set forth
19 herein.

20 35. At all relevant times, Defendant was aware of and was under a duty to comply with
21 California Labor Code § 226.7 and §512.

22 36. California Labor Code § 226.7 provides:

23 (a) No employer shall require any employee to work during any
24 meal or rest period mandated by an applicable order of the Industrial
25 Welfare Commission.

26 (b) If an employer fails to provide an employee a meal period or
27 rest period in accordance with an applicable order of the Industrial
28 Welfare Commission, the employer shall pay the employee one
additional hour of pay at the employee's regular rate of
compensation for each work day that the meal or rest period is not
provided.

37. Moreover, California Labor Code § 512(a) provides:

1 An employer may not employ an employee for a work period of
2 more than five hours per day without providing the employee with
3 a meal period of not less than 30 minutes, except that if the total
4 work period per day of the employee is no more than six hours, the
5 meal period may be waived by mutual consent of both the employer
6 and employee. An employer may not employ an employee for a
7 work period of more than 10 hours per day without providing the
8 employee with a second meal period of not less than 30 minutes,
9 except that if the total hours worked is no more than 12 hours, the
10 second meal period may be waived by mutual consent of the
11 employer and the employee only if the first meal period was not
12 waived.

13 38. Sections 11 and 12, respectively, of the applicable IWC Wage Order mandate that
14 employers provide all applicable meal and/or rest periods to non-exempt (including exempt-
15 misclassified) employees.

16 39. Section 11 of the applicable IWC Wage Order provides:

17 (A) No employer shall employ any person for a work period of more
18 than five (5) hours without a meal period of not less than 30
19 minutes...

20 (B) An employer may not employ an employee for a work period of
21 more than ten (10) hours per day without providing the
22 employee with a second meal period of not less than 30
23 minutes...

24 (C) If an employer fails to provide an employee a meal period in
25 accordance with the applicable provisions of this order, the
26 employer shall pay the employee one (1) hour of pay at the
27 employee's regular rate of compensation for each workday that
28 the meal period is not provided.

38. Moreover, Section 12 of the applicable IWC Wage Order 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. The authorized rest period time shall be based
on the total hours worked daily at the rate of ten (10) minutes net
rest time per four (4) hours or major fraction thereof ...

(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.

41. By failing to consistently provide uninterrupted thirty-minute meal periods within
the first five hours of work each day and/or uninterrupted net ten-minute rest periods to

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1 Representative Plaintiff and Class Members, Defendant violated the California Labor Code and
2 applicable IWC Wage Order provisions.

3 42. Representative Plaintiff is informed and believes and, on that basis, alleges that
4 Defendant has never paid the one hour of compensation to any Class Member due to its violations
5 of the California Labor Code and applicable IWC Wage Order provisions.

6 43. As a direct and proximate result of Defendant's unlawful conduct, as set forth
7 herein, Representative Plaintiff and Class Members have sustained damages, including lost
8 compensation resulting from missed meal and/or rest periods, in an amount to be established at
9 trial.

10 44. As a further direct and proximate result of Defendant's unlawful conduct, as set
11 forth herein, certain Class Members are entitled to recover other penalties, in amounts to be
12 established at trial, as well as recovery of attorneys' fees and costs, pursuant to statute.

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15 **THIRD CAUSE OF ACTION**
16 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**
17 **(California Labor Code §§ 226 and 1174)**

18 45. Representative Plaintiff incorporates in this cause of action each and every
19 allegation of the preceding paragraphs, with the same force and effect as though fully set forth
20 herein.

21 46. California Labor Code § 226(a) provides:

22 Each employer shall semimonthly, or at the time of each payment of
23 wages, furnish each of his or her employees either as a detachable
24 part of the check, draft or voucher paying the employee's wages, or
25 separately when wages are paid by personal check or cash, an
26 itemized wage statement in writing showing: (1) gross wages
27 earned; (2) total number of hours worked by each employee whose
28 compensation is based on an hourly wage; (3) all deductions,
provided that all deductions made on written orders of the employee
may be aggregated and shown as one item; (4) net wages earned; (5)
the inclusive date of the period for which the employee is paid; (6)
the name of the employee and his or her social security number; and
(7) the name and address of the legal entity which is the employer.

47. Moreover, California Labor Code § 226(e) provides:

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

6 48. Finally, California Labor Code § 1174(d) provides:

7 Every person employing labor in this state shall. . . [k]eep, at a
8 central location in the state...payroll records showing the hours
9 worked daily by and the wages paid to...employees.... These records
10 shall be kept in accordance with rules established for this purpose
11 by the commission, but in any case shall be kept on file for not less
12 than two years.

11 49. Representative Plaintiff seeks to recover actual damages, costs, and attorneys' fees
12 under these provisions on behalf of herself and on behalf of all Class Members.

13 50. Defendant has failed to provide timely, accurate itemized wage statements to the
14 Representative Plaintiff and Class Members in accordance with California Labor Code § 226.
15 Representative Plaintiff is informed and believes and, on that basis, alleges that none of the
16 statements provided by Defendant accurately reflected actual gross wages earned, net wages
17 earned, or the appropriate deductions of such Class Members.

18 51. As a direct and proximate result of Defendant's unlawful conduct, as set forth
19 herein, the Representative Plaintiff and Class Members have sustained damages in an amount to
20 be established at trial, and are entitled to recover attorneys' fees and costs of suit.

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22 **FOURTH CAUSE OF ACTION**
23 **FAILURE TO PAY WAGES ON TERMINATION**
24 **(California Labor Code § 203)**

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

27 53. California Labor Code § 203 provides that:
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If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.5, 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 therefor is commenced; but the wages shall not continue for more than 30 days.

54. Numerous Class Members were employed by Defendant during the class period and were thereafter terminated or resigned from their positions, yet they were not paid all premium (overtime) wages due upon said termination or within 72 hours of said resignation of employment therefrom. Said non-payment was the direct and proximate result of a willful refusal to do so by Defendant.

55. More than 30 days have elapsed since certain Class Members were involuntarily terminated or voluntarily resigned from Defendant's employ.

56. As a direct and proximate result of Defendant's willful conduct in failing to pay said Class Members for all hours worked, affected Class Members are entitled to recover "waiting time" penalties of up to thirty days' wages pursuant to California Labor Code § 203 in an amount to be established at trial, together with interest thereon, and attorneys' fees and costs.

FIFTH CAUSE OF ACTION
UNFAIR BUSINESS PRACTICES UNDER THE UNFAIR COMPETITION ACT
(California Business & Professions Code §§ 17200-17208)

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

58. Representative Plaintiff further brings this cause of action seeking equitable and statutory relief to stop Defendant's misconduct, as complained of herein, and to seek restitution of the amounts Defendant acquired through the unfair, unlawful, and fraudulent business practices described herein.

59. Defendant's knowing conduct, as alleged herein, constitutes an unlawful and/or fraudulent business practice, as set forth in California Business & Professions Code §§ 17200-

1 17208. Specifically, Defendant conducted business activities while failing to comply with the legal
2 mandates cited herein.

3 60. Defendant has clearly established a policy of accepting a certain amount of
4 collateral damage, as represented by the damages to the Representative Plaintiff and to Class
5 Members herein alleged, as incidental to its business operations, rather than accept the alternative
6 costs of full compliance with fair, lawful, and honest business practices, ordinarily borne by its
7 responsible competitors and as set forth in legislation and the judicial record.

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10 **RELIEF SOUGHT**

11 **WHEREFORE, the Representative Plaintiff**, on behalf of herself and the proposed
12 Plaintiff Class, prays for judgment and the following specific relief against defendants, and each
13 of them, jointly and separately, as follows:

14 1. That the Court declare, adjudge, and decree that this action is a proper class action
15 and certify the proposed Class and/or any other appropriate subclasses under California Code of
16 Civil Procedure § 382;

17 2. That the Court declare, adjudge, and decree that Defendant willfully violated its
18 legal duties to pay all wages due under the California Labor Code and the applicable California
19 Industrial Welfare Commission Wage Orders;

20 3. That the Court make an award to the Representative Plaintiff and the Class
21 Members of one hour of pay at each employee's regular rate of compensation for each workday
22 that a meal period was not provided;

23 4. That the Court make an award to the Representative Plaintiff and the Class
24 Members of one hour of pay at each employee's regular rate of compensation for each workday
25 that a rest period was not provided;

26 5. That the Court Order Defendant to pay restitution to the Representative Plaintiff
27 and the Class Members due to Defendant's unlawful activities, pursuant to California Business
28 and Professions Code §§ 17200-17208;

