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2015 JUN 22 P 2: 32

Deputy Clerk of the Superior Court
Sharon Ulleselt
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SANTA CLARA

BRISEIDA HERNANDEZ, on behalf of
herself and all others similarly situated,

Plaintiff,

v.

CHIPOTLE MEXICAN GRILL, INC., a
Colorado Corporation authorized to do
business in California, and DOES 1 to 50
inclusive,

Defendants.

CASE NO.: **115CV282191**

REPRESENTATIVE ACTION

COMPLAINT FOR CIVIL PENALTIES
PURSUANT TO CAL. LAB. CODE § 2698 et
seq. FOR VIOLATIONS OF CAL. LAB.
CODE §§ 551 AND 552.

DEMAND FOR JURY TRIAL

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1 Plaintiff Briseida Hernandez (hereinafter “Plaintiff” or “Ms. Hernandez”), by and through
2 her attorneys of record, brings this action on behalf of herself and all others similarly situated,
3 against Defendant Chipotle Mexican Grill, Inc. (hereinafter “Defendant” or “Chipotle”), on the
4 following grounds:

5 **INTRODUCTION**

6 1. Pursuant to the Private Attorneys General Act of 2004 (“PAGA”), Cal. Lab. Code §
7 2698 et seq., Plaintiff brings this action in a representative capacity on behalf of all current and
8 former employees of Chipotle, who held an hourly, non-exempt position in the state of California,
9 and who worked seven or more consecutive days.

10 2. Plaintiff seeks civil penalties for the above described acts, which violate Cal. Lab.
11 Code §§ 551 and 552. In addition, Plaintiff seeks all reasonable attorneys’ fees and costs as
12 provided by Cal. Lab. Code § 2699(g).

13 3. All allegations in this Complaint are based upon information and belief except for
14 those allegations that pertain to Plaintiff, which are based upon her own personal knowledge. Each
15 allegation in this Complaint has evidentiary support or is likely to have evidentiary support after a
16 reasonable opportunity for further investigation and discovery.

17 **JURISDICTION AND VENUE**

18 4. The Court has jurisdiction over this action pursuant to Cal. Civ. Proc. Code §
19 410.10. Chipotle is a Delaware Corporation with its principal place of business in Denver,
20 Colorado. The company operates a number of restaurants in the state of California and advertises
21 and sells its products to California residents. The amount in controversy, exclusive of interest,
22 costs, and attorneys’ fees, exceeds the minimum jurisdictional amount for this Court.

23 5. Venue is proper in this judicial district pursuant to Cal. Civ. Proc. Code § 395(a).
24 Chipotle transacts business in Santa Clara County, and is otherwise within this Court’s jurisdiction
25 for purposes of service of process. The unlawful acts alleged herein have a direct effect on Plaintiff
26 and those similarly situated within Santa Clara County and the state of California.

27 **THE PARTIES**

28 6. At all material times mentioned herein, Plaintiff Briseida Hernandez resided in, and

1 continues to reside in, San Jose, California. During the relevant time period, Plaintiff was
2 employed by Chipotle in the state of California and held an hourly, non-exempt cashier position.
3 Over the course of her employment, Plaintiff worked seven or more consecutive days on multiple
4 occasions; most recently in July 2014.

5 7. Defendant Chipotle Mexican Grill, Inc. operates a chain of fast-food, Mexican-style
6 restaurants. Plaintiff is informed and believes and thereon alleges, that Chipotle is licensed to do
7 business, and is actually doing business in California. The company has more than 1,700
8 restaurants throughout the United States, including more than 100 locations in California.
9 According to its website (www.chipotle.com/company), Chipotle focuses on using fresh, high-
10 quality ingredients and practicing good environmental stewardship.

11 8. Plaintiff is informed and believes and thereon alleges, that at all times relevant,
12 Chipotle maintained control, oversight, and direction over Plaintiff and all other similarly situated
13 employees, including timekeeping, payroll, and other employment policies and practices that were
14 uniformly applied to all hourly, non-exempt employees.

15 9. The true names and capacities, whether individual, corporate, subsidiary,
16 partnership, or otherwise of Defendant Does 1 through 50, are unknown to Plaintiff, who therefore
17 sues these Defendants by such fictitious names pursuant to Cal. Civ. Proc. Code § 474. Plaintiff
18 further alleges that each fictitiously named Defendant is in some manner responsible for the acts
19 and occurrences set forth herein. Plaintiff will amend her Complaint to show their true names and
20 capacities when the same is ascertained, as well as the manner in which each fictitiously named
21 Defendant is responsible for the harm alleged.

22 10. Plaintiff is informed and believes and thereon alleges, that at all times relevant, each
23 of the acts alleged to have been done by Chipotle are also alleged to have been done by the
24 unascertained Defendants mentioned above and by each of their agents and employees who acted
25 within the scope of their agency and/or employment.

26 11. Plaintiff is informed and believes and thereon alleges, that at all times relevant, the
27 acts and omissions of each of the Defendants concurrently contributed to the various acts and
28 omissions of each and every one of the other Defendants in proximately causing the wrongful

1 conduct, harm, and damages alleged herein.

2 12. Plaintiff has complied with the procedural requirements specified in Cal. Lab. Code
3 § 2699.3, thus demonstrating that she is an aggrieved employee with standing to bring a
4 representative action as a private attorney general. Plaintiff now seeks civil penalties on behalf of
5 herself and all current and former employees of Chipotle, who held an hourly, non-exempt position
6 in the state of California, and who worked seven or more consecutive days.

7 **FACTUAL ALLEGATIONS**

8 13. Plaintiff was employed by Chipotle from April 2013 until early 2015. Plaintiff was
9 initially hired to work as a full-time cashier in the company's San Jose Airport location, and was
10 later transferred to a restaurant in Cupertino, California.

11 14. As a cashier, Plaintiff was classified as an hourly, non-exempt employee. Her
12 responsibilities included greeting customers, expediting food orders, cleaning and stocking drink
13 stations, cleaning and organizing the dining room, and ringing up customer purchases.

14 15. Like other hourly, non-exempt employees, Plaintiff was required to work a flexible
15 schedule during the course of her employment. As a result, Plaintiff typically worked 4 to 6 days a
16 week, and anywhere from 2 to 14 hours a day.

17 16. On several occasions, Plaintiff was required to work seven or more consecutive
18 days. This most recently occurred in July 2014, when Plaintiff worked a total of 57 hours over an
19 eight consecutive day period.

20 17. Plaintiff is informed and believes and thereon alleges, that working seven or more
21 consecutive days is a requirement for all of Chipotle's hourly, non-exempt employees. During her
22 employment with Chipotle, Plaintiff was required to work seven or more consecutive days at both
23 the San Jose Airport and the Cupertino restaurants. Moreover, Plaintiff alleges that the nature of
24 Chipotle's business does not reasonably require employees to work seven or more consecutive
25 days.

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FIRST CAUSE OF ACTION

**CIVIL PENALTIES PURSUANT TO CAL. LAB. CODE § 2698 et seq. FOR VIOLATIONS
OF CAL. LAB. CODE §§ 551 AND 552
(By Plaintiff and All Other Aggrieved Employees Against Defendant)**

18. Plaintiff realleges and incorporates by this reference, as though fully set forth herein, the proceeding paragraphs of this Complaint.

19. Cal. Lab. Code § 551 provides, “Every person employed in any occupation of labor is entitled to one day’s rest therefrom in seven.” To that end, Cal. Lab. Code § 552 states, “No employer of labor shall cause his employees to work more than six days in seven.”

20. Chipotle violated Cal. Lab. Code §§ 551 and 552 when it caused Plaintiff and other hourly, non-exempt employees to work seven or more consecutive days.

21. Under Cal. Lab. Code § 558(a), an employer who violates any provision of the Labor Code that regulates the hours and days of work is subject to a civil penalty as follows:

- (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.
- (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.
- (3) Wages recovered pursuant to this section shall be paid to the affected employee.

22. Cal. Lab. Code § 2698 et seq., also known as the Private Attorneys General Act of 2004 (“PAGA”), expressly provides that any provision of the California Labor Code allowing for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency (“LWDA”), or any of its departments, divisions, commissions, boards agencies or employees, for a violation of the Labor Code, may be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself, and other current or former employees. These penalties are in addition to any other relief available under the Labor Code, and pursuant to § 2699(i), must be allocated 75 percent (75%) to the LWDA and 25 percent (25%) to the aggrieved employees.

23. Plaintiff is an aggrieved employee within the meaning of Cal. Lab. Code § 2699(c). More specifically, Plaintiff is a former employee of Chipotle, and Chipotle committed one or more

1 violations against her.

2 24. As set forth above, Chipotle has committed, and continues to commit, violations for
3 which the California Labor Code entitles Plaintiff, as an private attorney general, to recover, on
4 behalf of herself, all aggrieved employees, and the general public, interest, attorneys' fees and
5 costs, as well as all statutory penalties against Chipotle, for violations of Cal. Lab. Code §§ 551
6 and 552.

7 25. Cal. Labor Code § 2699(f) provides in pertinent part:

8 For all provisions of this code except those for which a civil penalty
9 is specifically provided, there is established a civil penalty for a
10 violation of these provisions as follows:

11 . . .

12 (2) If, at the time of the alleged violation, the person employs one or more
13 employees, the civil penalty is one hundred dollars (\$100) for each aggrieved
14 employee per pay period for the initial violation and two hundred dollars (\$200) for
15 each aggrieved employee per pay period for each subsequent violation.

16 26. Plaintiff has complied with the procedures specified in Cal. Lab. Code § 2699.3. A
17 letter was sent to the LWDA by certified mail on May 18, 2015, giving notice of Plaintiff's PAGA
18 claims. A copy was simultaneously sent by certified mail to Chipotle through its agent for service
19 of process.

20 27. The LWDA had until June 20, 2015 to provide notice of whether it intended to
21 investigate the alleged violations. As of the date of this Complaint, the LWDA has not provided
22 notice of whether it intends to investigate the alleged violations. Therefore, under Cal. Lab. Code §
23 2699.3, Plaintiff has the right to pursue her claims in a representative capacity on behalf of herself
24 and all other aggrieved current and former employees.

25 **PRAYER FOR RELIEF**

26 WHEREFORE, Plaintiff, on behalf of herself and all other persons similarly situated, prays
27 for judgment against Defendant as follows:

28 1. For the maximum civil penalty specified in Cal Lab. Code § 558, in the amount of
fifty dollars (\$50) for Plaintiff and each aggrieved member per pay period for the
initial violation and one hundred dollars (\$100) for Plaintiff and each aggrieved

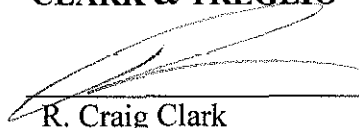
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member per pay period for each subsequent violation for the applicable statute of limitations prior to the filing of this Complaint until the date of compliance with the law, or for statutory penalties pursuant to Cal. Lab. Code § 2699, whichever is applicable;

- 2. For all reasonable attorneys' fees and costs; and
- 3. For such other and further relief the Court deems just and proper.

Dated: June 22, 2015

CLARK & TREGLIO



R. Craig Clark
James M. Treglio

Attorneys for Plaintiff

DEMAND FOR JURY TRIAL

Plaintiff demands a jury trial on all issues triable to a jury.

Dated: June 22, 2015

CLARK & TREGLIO



R. Craig Clark
James M. Treglio

Attorneys for Plaintiff