

1 THE GRAVES FIRM
 2 ALLEN GRAVES (SB# 204580)
 allen@gravesfirm.com
 3 ELIZABETH SULLIVAN (SB# 212482)
 liz@gravesfirm.com
 4 790 E. Colorado Blvd., 9th Floor
 5 Pasadena, CA 91101
 Telephone: (626) 240-0575
 6 Facsimile: (626) 737-7013

7 Attorney for Plaintiff
 8 Elizabeth Duarte

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ORIGINAL FILED
 Superior Court Of California
 County Of Los Angeles

JAN 22 2014

Sherrill ... *Executive Officer/Clerk*
 By: D. Davis, Deputy

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 10 LOS ANGELES COUNTY

11 Elizabeth Duarte
 12 Plaintiff,

13 v.

14 Carl Karcher Enterprises, Inc.;
 15 Carl Karcher Enterprises LLC,
 16 and DOES 1 through 10,
 17 inclusive,

18 Defendants.

CASE NO.: BC521683

**FIRST AMENDED CLASS ACTION
 COMPLAINT FOR:**

1. Class and Representative Claim for Failure to Pay Wages as Required by California Labor Code §204;
2. Class and Representative Claim for Failure to Pay Overtime Wages in Violation of Labor Code §§510 and 1194;
3. Class and Representative Claim for Failure to accurately record hours worked in violation of the Wage Order and Labor Code §1198;
4. Class and Representative Claim for failure to provide an accurate itemized paystub in Violation of California Labor Code §226;
5. Class and Representative Claim for Violation of Labor Code §§201 and 202;
6. Class and Representative Claim for Failure to Reimburse Employee Business Expenses in Violation of Labor Code §§2802; and
7. Representative Claim for Violation of Business and Professions Code §17200 *et seq.* against all Defendants.

DEMAND FOR JURY TRIAL

Dept.: 307

Judge: Hon. William F. Highberger

1 Plaintiff Elizabeth Duarte (“Plaintiff”) alleges as follows:
2

3 INTRODUCTION

4 1. Plaintiff brings this Complaint to recover wages and civil penalties that are
5 owed to her and other past and present General Managers as a result of a series of Labor
6 Code violations by Carl Karcher Enterprises, Inc. (hereinafter “CKE” or “Defendant”).

7 2. Plaintiff brings the first through sixth causes of action in this Complaint as
8 a Private Attorney General on behalf of the State of California and other current and
9 former CKE employees pursuant to California Labor Code §2699 *et seq.*

10 3. Plaintiff brings the first through sixth causes of action in this Complaint on
11 behalf of herself and a class of current and former CKE employees pursuant to California
12 Code of Civil Procedure §382. The class is defined as follows: All individuals who have
13 worked for Defendant as a General Manager in California at any time since the date four
14 years prior to the filing the instant case.

15 4. With regard to the violations of Business and Professions Code §17200 *et*
16 *seq.* alleged in the seventh cause of action, Plaintiff brings a representative action on
17 behalf of all CKE employees subject to the unfair practices that are described or
18 incorporated by reference therein.

19 THE PARTIES

20
21 5. Duarte is a citizen United States and a resident of Los Angeles County,
22 California. From October 2003 until August 2012, CKE employed Duarte in Los Angeles
23 County, California. At the time of her termination and for more than eight years prior,
24 Duarte held the position of General Manager.

25 6. CKE is a corporation organized under the laws of the state of California
26 with its principal place of business in Santa Barbara County, California.

27 7. Plaintiff is currently unaware of the true names and capacities of the
28 Defendants sued herein as Does 1 through 10 (the “Doe Defendants”) and therefore sues

1 the Doe Defendants by such fictitious names. Duarte will amend this Complaint to allege
2 the true names and capacities of the Doe Defendants when they are ascertained.

3 8. Plaintiff is informed and believes, and thereon alleges, that the Doe
4 Defendants are the partners, agents, or principals and co-conspirators of the named
5 Defendant, and of each other; that the named Defendant and the Doe Defendants
6 performed the acts and conduct herein alleged directly, aided and abetted the performance
7 thereof, or knowingly acquiesced in, ratified, and accepted the benefits of such acts and
8 conduct, and therefore each of the Doe Defendants is liable to Duarte to the extent of the
9 liability of the named Defendants as alleged herein.

10 9. Plaintiff is informed and believes, and on that basis alleges, that at all times
11 herein mentioned, all of the Defendants are a single employer.

12 10. Plaintiff is informed and believes, and on that basis alleges, that at all times
13 herein mentioned, each of the Defendants was the agent, servant and/or employee of each
14 of the other Defendants and in connection with the matters hereinafter alleged, was acting
15 within the scope of such agency and employment, and each Defendant ratified each and
16 every act, omission and thing done by each and every other Defendant herein.

17
18 **JURISDICTION AND VENUE**

19 11. This Court has jurisdiction in this action because the Defendants committed
20 intentional, tortious acts in Los Angeles County, because one or more Defendants reside
21 in this jurisdiction, and because service was effected on one or more Defendants while
22 voluntarily present in California.

23 12. Venue is proper under California Code of Civil Procedure §395.5, as it is
24 the county where liability against CKE arises.

1 LABOR CODE §2699

2 13. Plaintiff realleges and incorporates herein by this reference the allegations
3 of paragraphs 1 through 12 hereof, inclusive.

4 14. California Labor Code §2699 *et seq.* authorizes Plaintiff to recover civil
5 penalties on behalf of herself, the State of California, and all other CKE General
6 Managers who have been employed in California for each Labor Code violation described
7 herein.

8 15. Plaintiff hereby seeks to recover civil penalties for each Labor Code
9 violation described herein on behalf of herself, the State of California, and all other CKE
10 General Managers who have been employed in California pursuant to California Labor
11 Code §2699 *et seq.*

12 16. Pursuant to California Labor Code §2699.3, on August 9, 2013, Plaintiff
13 gave written notice by certified mail to the Labor and Workforce Development Agency
14 and the employer of the specific provisions of the code alleged to be violated in this
15 Complaint, including the facts and theories to support the alleged violation.

16 17. More than 33 days have passed since Plaintiff gave written notice by
17 certified mail to the Labor and Workforce Development Agency and the employer and the
18 Labor and Workforce Development Agency has not provided any notice of intent to
19 investigate any of the alleged violations.

20
21 COMMON ALLEGATIONS

22 18. Plaintiff realleges and incorporates herein by this reference the allegations
23 of paragraphs 1 through 17 hereof, inclusive.

24 19. CKE owns and operates fast food restaurants in California.

25 20. CKE employs a General Manager at each of its California restaurants.

26 21. All General Managers at CKE are subject to a common policy regarding
27 the hours that they are required to work.

1 22. All General Managers at CKE are subject to a common policy regarding
2 overtime pay.

3 23. CKE uses a common system to track work hours for all of its General
4 Managers in California.

5 24. CKE uses a common system to track payroll for all of its General Managers
6 in California.

7 25. In June of 2009, CKE reclassified all of its General Managers in California
8 from salaried to hourly compensation.

9 26. At all times relevant hereto, CKE has required its General Managers in
10 California to work 47.5 hours per week in the restaurant to which the General Manager is
11 assigned.

12 27. When CKE reclassified its general managers, the company reduced the
13 hourly rate for each General Manager so as to avoid paying any overtime premium for the
14 first 7.5 hours of overtime each week. Specifically, CKE set each General Manager's
15 hourly rate such that his or her weekly compensation would be the same working 47.5
16 hours as an hourly employee as it was when the General Manager was salaried.

17 28. At all times relevant hereto, CKE has required all of its general managers to
18 be available by phone to both their subordinates and superiors 24 hours per day and seven
19 days per week. This on-call availability is in addition to 47.5 hours per week that each
20 General Manager is required to work in the restaurant.

21 29. As part of the 2009 conversion, CKE performed a study of the amount of
22 time that General Managers spend actively working outside of the restaurant as a result of
23 the on-call requirement ("on-call work"). CKE concluded that, on average, each General
24 Manager performed one hour per week of on-call work.

25 30. Since at least June of 2009, CKE has refused to pay General Managers in
26 California for the actual hours of on-call work that they perform. Instead, CKE pays each
27 General Manager one hour of pay for all on-call work in a week. CKE calls this one hour
28 of pay "build in time."

1 31. Build in time is the only compensation that General Managers in California
2 receive for on-call work. For example, if a General Manager spent three hours in a week
3 on the phone answering questions from subordinates in the restaurant, he or she would be
4 paid only the standard one hour of build in time for that week and would not receive any
5 other compensation for the three hours that he or she spent on the phone.

6 32. During some periods since June of 2009 and within four years of the filing
7 of the instant action, CKE has maintained a uniform policy of refusing to pay build in
8 time at overtime rates. For example, a General Manager who worked 47.5 hours in the
9 restaurant and also spent one hour on the phone answering questions from subordinates
10 would be paid 41 hours of straight time and just seven and a half hours of overtime even
11 though he or she had in fact worked eight and one half hours of overtime.

12 33. At all times relevant hereto, CKE has maintained a uniform policy of
13 refusing to pay build in time at double time rates. For example, if a General Manager
14 spent one hour on the phone with his or her superiors at the end of a twelve hour day,
15 CKE would still pay the one hour of build in time for that week at regular overtime rates
16 or straight time rates. The General Manager would not receive any compensation at
17 double time rates despite the fact that he or she worked more than twelve hours in single
18 day.

19 34. During all times relevant hereto, CKE has refused to record or track the
20 time or duration of on-call work performed by General Managers in California.

21 35. During all times relevant hereto, CKE has failed to report the hours of on-
22 call work performed each pay period by each General Manager in California on the
23 paystub provided to that General Manager.

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1 FIRST CAUSE OF ACTION

2 **(Class and Representative Claim for Failure to Pay Wages as Required by California**
3 **Labor Code §204)**

4 36. Plaintiff realleges and incorporates herein by this reference the allegations
5 of paragraphs 1 through 35 hereof, inclusive.

6 37. Labor Code §204 requires that all wages are due and payable twice in each
7 calendar month.

8 38. At all times relevant hereto, CKE has used a two-week pay period for
9 compensation of General Managers in California.

10 39. At all times relevant hereto, CKE General Managers in California have
11 regularly performed more than one hour of on-call work in a week.

12 40. At all times relevant hereto, CKE General Managers in California have
13 regularly performed more than two hours of on-call work in a pay period.

14 41. At all times relevant hereto, CKE has refused to pay General Managers in
15 California for on-call work in excess of one hour per week or two hours per pay period.

16 42. CKE is guilty of the tort of conversion with regard to each overtime
17 premium payment that the Company has withheld from a General Manager.

18 43. At all times relevant hereto, CKE has acted willfully and deliberately with
19 oppression, fraud and malice to deprive employees of overtime to which they are entitled.
20

21 SECOND CAUSE OF ACTION

22 **(Class and Representative Claim for Failure to Pay Overtime Wages in Violation of**
23 **Labor Code §§510 and 1194)**

24 44. Plaintiff realleges and incorporates herein by this reference the allegations
25 of paragraphs 1 through 43 hereof, inclusive.

26 45. At all times relevant hereto, California Labor Code §510 has required that
27 CKE pay each of its General Managers one and one half times his or her regular rate of
28 pay for any work in excess of 8 hours in one workday, in excess of 40 hours in one

1 workweek, and for the first 8 hours of work on the seventh day of a workweek.

2 46. At all times relevant hereto, California Labor Code §510 requires that CKE
3 pay each of its General Managers two times his or her regular rate of pay for any work in
4 excess of 12 hours in one workday on the first six days of the workweek, and in excess of
5 8 hours on the seventh day of a workweek.

6 47. Because CKE requires General Managers in California to work 47.5 hours
7 per week in a restaurant and on-call time is in addition to work in the restaurant, all unpaid
8 on-call hours are subject to an overtime premium of either time and a half or double time.

9 48. At all times relevant hereto, CKE has refused to pay the overtime premium
10 due on unpaid on-call hours.

11 49. Because CKE refused to pay any overtime premium due on unpaid on-call
12 hours, the Company owes each General Manager either the time and a half premium or
13 the double time premium for every hour of unpaid on-call work.

14 50. Because CKE requires General Managers in California to work 47.5 hours
15 per week in a restaurant and on-call time is in addition to work in the restaurant, all build
16 in time pay is subject to an overtime premium of either time and a half or double time.

17 51. For the period during which CKE refused to pay any overtime premium on
18 build in time pay, CKE owes each General Manager either the time and a half premium or
19 the double time premium for every hour of build in time paid.

20 52. At all times relevant hereto, General Managers in California have regularly
21 worked on-call time on days in which the General Manager worked more than twelve
22 hours.

23 53. At all times relevant hereto, General Managers in California have regularly
24 worked on-call time on days in which the General Manager worked more than eight hours
25 and that were the seventh consecutive day that the General Manager had worked.

26 54. Because CKE refused to pay the double time premium on build in time pay,
27 the Company owes each General Manager that premium for every minute of on-call work
28 in excess of 12 hours in one workday on the first six days of the workweek, and in excess

1 of 8 hours on the seventh day of a workweek.

2 55. Because CKE deliberately manipulated the wage rates of General
3 Managers to avoid paying any premium for the first 7.5 hours of overtime that each
4 General Manager works each week, the Company owes each General Manager that
5 premium.

6 56. CKE is guilty of the tort of conversion with regard to each overtime
7 premium payment that the Company has withheld from a General Manager.

8 57. At all times described herein, CKE has acted willfully and deliberately with
9 oppression, fraud and malice to deprive its employees of the overtime premiums to which
10 they are entitled.

11
12 **THIRD CAUSE OF ACTION**

13 **(Class and Representative Claim for Failure to Record Work Hours as Required by**
14 **the Operative Wage Order and California Labor Code §1198)**

15 58. Plaintiff realleges and incorporates herein by this reference the allegations
16 of paragraphs 1 through 57 hereof, inclusive.

17 59. Paragraph 7(a) of the operative Wage Order requires CKE to record when
18 an employee begins and end each work period.

19 60. Labor Code §1198 requires CKE to comply with all of the terms and
20 conditions of the operative Wage Order.

21 61. Because CKE does not record when California General Managers begin
22 and end periods of on-call work, CKE violated the operative Wage Order and Labor
23 Code §1198 on every pay period that a California General Manager performs on-call
24 work.

1 **FOURTH CAUSE OF ACTION**

2 **(Class and Representative Claim for Failure to Provide an Accurate Itemized**
3 **Paystub in Violation of California Labor Code §226)**

4 62. Plaintiff realleges and incorporates herein by this reference the allegations
5 of paragraphs 1 through 61 hereof, inclusive.

6 63. California Labor Code §226 requires that each pay period CKE must
7 provide each employee with an itemized statement of wages that includes, among other
8 things, the hours worked by the employee, the gross wages earned by the employee and
9 the net wages earned by the employee.

10 64. At all times relevant hereto, CKE has failed to provide any of its California
11 General Managers with an itemized statement of wages that accurately states the total
12 hours worked by the General Manager in that each statement omits on-call hours worked.

13 65. At all times relevant hereto, CKE has failed to provide any of its General
14 Managers with an itemized statement that accurately states the net wages earned by the
15 General Manager in that each statement omitted wages due for on-call hours worked.

16 66. At all times relevant hereto, CKE has failed to provide any of its General
17 Managers with an itemized statement that accurately states the gross wages earned by the
18 General Manager in that each statement omitted wages due for on-call hours worked.

19 67. At all times relevant hereto, CKE has failed to provide any of its General
20 Managers with an itemized statement that accurately states the net wages earned by the
21 General Manager in that each statement omitted overtime premium due.

22 68. At all times relevant hereto, CKE has failed to provide any of its General
23 Managers with an itemized statement that accurately states the gross wages earned by the
24 General Manager in that each statement omitted overtime premium due.

1 **FIFTH CAUSE OF ACTION**

2 **(Class and Representative Claim for Violation of Labor Code §§201 and 202)**

3 69. Plaintiff realleges and incorporates herein by this reference the allegations
4 of paragraphs 1 through 68 hereof, inclusive.

5 70. Labor Code §§201 and 202 require that Defendant pay each employee all
6 of the wages earned by that employee at the time of termination for an involuntary
7 termination and within 72 hours of termination for a voluntary termination.

8 71. At all times relevant hereto, CKE has willfully failed to pay the wages due
9 for on-call work due to each General Manager who was terminated or quit his or her job at
10 CKE.

11 72. At all times relevant hereto, CKE has willfully failed to pay the overtime
12 premium due for on-call work due to each General Manager who was terminated or quit
13 his or her job at CKE.

14 73. At all times relevant hereto, CKE has willfully failed to pay the overtime
15 premium due on build in time pay to each General Manager who was terminated or quit
16 his or her job at CKE.

17
18 **SIXTH CAUSE OF ACTION**

19 **(Failure to reimburse employee expenses)**

20 74. Plaintiff realleges and incorporates herein by this reference the allegations
21 of paragraphs 1 through 73 hereof, inclusive.

22 75. At all times relevant hereto, Labor Code §2802 has required Defendant to
23 reimburse all employees for necessary expenditures incurred by the employee in the direct
24 consequence of the discharge of his or her duties or of his or her obedience to the
25 directions of the employer.

26 76. At all times relevant hereto, CKE required every General Manager to own
27 and maintain a cell phone in order to be available to take work related calls 24 hours per
28 day and 7 days per week.

1 7. For punitive damages.

2 **ON THE SECOND CAUSE OF ACTION:**

3 1. For damages according to proof;

4 2. For restitution of unpaid wages;

5 3. For disgorgement of Defendants' ill-gotten gains;

6 4. For civil penalties pursuant to Labor Code §§558 and 2699;

7 5. For attorney fees and costs reasonably incurred, in accordance with California Labor
8 Code §§218.5, 2699, 1194, and California Code of Civil Procedure §1021.5;

9 6. For interest pursuant to Labor Code §218.6 and 1194, and Civil Code §3287; and

10 7. For punitive damages.

11
12 **ON THE THIRD CAUSE OF ACTION:**

13 1. For temporary, preliminary and permanent injunctive relief against Defendants'
14 ongoing violations of the Labor Code;

15 2. For civil penalties pursuant to Labor Code §2699; and

16 3. For attorney fees and costs reasonably incurred, in accordance with California Labor
17 Code §§218.5, 2699, 1194, and California Code of Civil Procedure §1021.5.

18
19 **ON THE FOURTH CAUSE OF ACTION:**

20 1. For temporary, preliminary and permanent injunctive relief against Defendants'
21 ongoing violations of the Labor Code;

22 2. For penalties pursuant to Labor Code §226.3; and

23 3. For attorney fees and costs reasonably incurred, in accordance with California Labor
24 Code §§218.5, 2699, 1194, and California Code of Civil Procedure §1021.5.

25
26 **ON THE FIFTH CAUSE OF ACTION:**

27 1. For temporary, preliminary and permanent injunctive relief against Defendants'
28 ongoing violations of the Labor Code;

- 1 2. For waiting time penalties pursuant to Labor Code §203;
- 2 3. For attorney fees and costs reasonably incurred, in accordance with California Labor
- 3 Code §§218.5, 2699, 1194, and California Code of Civil Procedure §1021.5; and
- 4 4. For interest pursuant to Labor Code §218.6 and 1194, and Civil Code §3287.

5

6 **ON THE SIXTH CAUSE OF ACTION:**

- 7 1. For damages according to proof;
- 8 2. For restitution of unpaid employee business expenses;
- 9 3. For temporary, preliminary and permanent injunctive relief against Defendants'
- 10 ongoing violations of the Labor Code;
- 11 4. For civil penalties pursuant to Labor Code §2699 and all other applicable penalties;
- 12 5. For attorney fees and costs reasonably incurred, in accordance with California Labor
- 13 Code §§218.5, 2802, 2699, 1194, and California Code of Civil Procedure §1021.5; and
- 14 6. For interest pursuant to Labor Code §2802 218.6 and 1194, and Civil Code §3287.

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16 **ON THE SEVENTH CAUSE OF ACTION:**

- 17 1. For temporary, preliminary and permanent injunctive relief against Defendants'
- 18 ongoing violations of the Labor Code;
- 19 2. For disgorgement of Defendants' ill-gotten gains and other relief that may be
- 20 necessary to remedy Defendants' misconduct;
- 21 3. For restitution of payments unlawfully withheld;
- 22 4. For attorney fees and costs reasonably incurred pursuant to California Code of Civil
- 23 Procedure §1021.5; and
- 24 5. For interest pursuant to Civil Code §3287.

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ON ALL CAUSES OF ACTION:

1. For costs of suit, to the extent not otherwise prayed for above;
2. For attorney fees to the extent not otherwise prayed for above;
3. For interest on damages recoverable; and
4. For such other and further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial.

DATED: January 21, 2014

THE GRAVES FIRM
ALLEN GRAVES
ELIZABETH SULLIVAN

By: 

ALLEN GRAVES

Attorney for Plaintiff
Elizabeth Duarte

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PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss:
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of 18, and not a party to the within action. My business address is 790 E. Colorado Blvd., Pasadena, CA 91101.

On January 21, 2014, I served the following document(s) described as: **FIRST AMENDED CLASS ACTION COMPLAINT** on the interested parties by placing a true copy thereof in a sealed envelope(s) addressed as follows:

Chad Anderton
Littler Mendelson
2050 Main Street, Suite 900
Irvine, CA 92614

VIA OVERNIGHT MAIL:
By delivering such document(s) to an overnight mail service or an authorized courier in a sealed envelope or package designated by the express service courier addressed to the person(s) on whom it is to be served.

VIA U.S. MAIL:
I am readily familiar with the firm's practice of collection and processing of correspondence for mailing. Under that practice such sealed envelope(s) would be deposited with the U.S. postal service on January 21, 2014 with postage thereon fully prepaid, at Pasadena, California.

VIA COURT-ORDERED ELECTRONIC TRANSMISSION:
Pursuant to the Court's Order, I served said document(s) via court-appointed *File and Serve Xpress* on all parties registered in this action.

VIA FACSIMILE:
I personally sent such document(s) via facsimile to the known facsimile number of the person(s) on whom it is to be served before 5:00 p.m.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct and was executed on January 21, 2014, at Pasadena, California.

Viviana Garza _____
Type or Print Name Signature 