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13 *of herself and all others similarly situated*

ELECTRONICALLY FILED
Superior Court of California,
County of Orange

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Clerk of the Superior Court
By Irma Cook, Deputy Clerk

14 SUPERIOR COURT OF CALIFORNIA

15 COUNTY OF ORANGE

16 KIMBERLY BENNETT, on behalf of herself and all
17 others similarly situated,

18 Plaintiff,

19 vs.

20 PRIDE BAKERIES, LLC, DENNIS W.
21 HITZEMAN, DENNIS SHANE HITZEMAN,
22 THOMAS MCDONALD, DAVID BABBUSH, and
23 Does 1 through 50, inclusive,

24 Defendants.

No. 30-2012-00595050-CU-OE-CXC

SECOND AMENDED COMPLAINT

Unlimited Civil Case

The Amount Demanded Exceeds \$10,000

25 Plaintiff Kimberly Bennett ("Plaintiff"), by her attorneys, brings this action on behalf of
26 herself and all other similarly situated and the general public, and on information and belief,
27 except those allegations that pertain to the named Plaintiff and her attorneys (which are alleged on
28 personal knowledge), hereby alleges as follows:

1. This action alleges Defendants Pride Bakeries, LLC ("Pride"), Dennis W.
Hitzeman, Dennis Shane Hitzeman, Thomas McDonald, and David Babbush (collectively
"Defendants"): (1) failed to pay employees overtime pay in violation of California Labor Code
section 1194 and applicable Industrial Welfare Commission Orders; (2) failed to timely pay

1 employees for all hours worked and to timely pay all wages due on termination in violation of
2 California Labor Code sections 201, 203, and 204; (3) failed to pay employees compensation for
3 work without meal periods in violation of California Labor Code sections 510 and 226.7, and
4 applicable Industrial Welfare Commission Orders; (4) made unlawful deductions from the wages
5 of employees; and, (5) failed to provide accurate wage statements to employees as required by
6 law. Plaintiff further alleges that Defendants Dennis W. Hitzeman, Dennis Shane Hitzeman,
7 Thomas McDonald, and David Babbush, as owners and/or officers of Pride, created, implemented,
8 administered and/or authorized the practices alleged to have occurred herein, such that Plaintiff,
9 class members, and aggrieved employees failed to receive meal periods and failed to receive
10 compensation for work without meal periods, and failed to receive all overtime wages earned, in
11 violation of Labor Code sections 510, 512, and 558, and provisions regulating the hours and days
12 of work in the applicable Industrial Welfare Commission Wage Orders.

13 2. This action seeks relief for unremedied violations of California law, including, inter
14 alia; damages, and/or restitution, as appropriate, to members of the Class, and to victims of the
15 practices at issue, who have not been paid for regular and overtime hours worked, who have not
16 timely received all wages due on termination, who have not received compensation for labor
17 provided without meal periods, who have had their wages deducted unlawfully, and who have
18 failed to receive accurate wage statements. Plaintiff is informed and believes that the damages, back
19 wages, expense reimbursements, restitution, penalties, interest and attorneys' fees do not exceed an
20 aggregate of \$4,999,999.99 and that the pro-rata value of Plaintiff's individual claims, including
21 damages, back wages, expense reimbursements, restitution, interest, attorneys' fees, and penalties,
22 does not exceed \$74,999.99.

23 3. Plaintiff is an adequate and proper class representative. Plaintiff brings this action
24 in her individual capacity, on behalf of all others similarly situated, as an aggrieved employee, and
25 pursuant to California Business & Professions Code section 17204, on behalf of the general
26 public. Defendants employed Plaintiff as an hourly-paid manager in California, within the four
27 years of the filing of this complaint. While employed as an hourly manager by Defendants,
28 Plaintiff was required to work regular and overtime hours on a routine basis. Defendants failed to

1 pay Plaintiff all earned overtime wages for overtime hours worked. As a result of these practices,
2 Defendants paid Plaintiff regular and overtime wages significantly less than that required by law.
3 Further, when Defendants terminated Plaintiff, Defendants failed to pay Plaintiff all wages due at
4 termination in accordance with the law. In addition to the foregoing, Defendants failed to provide
5 Plaintiff and all others similarly situated with meal periods, failed to pay compensation for the
6 lack of said meal periods, unlawfully deducted the wages of Plaintiff and all others similarly
7 situated, and failed to provide Plaintiff and all others similarly situated with accurate statements of
8 wages.

9 4. Pride is, and at all relevant times was, doing business in the State of California and
10 is an employer under applicable Industrial Welfare Commission Orders. Dennis W. Hitzeman,
11 Dennis Shane Hitzeman, Thomas McDonald, and David Babbush are owners and/or officers of
12 Pride.

13 5. The names and capacities of defendants sued herein under California Code of Civil
14 Procedure section 474 as Does 1 through 50, inclusive, are presently not known to Plaintiff, who
15 therefore sues these defendants by such fictitious names. Plaintiff will seek to amend this
16 Complaint and include these Doe defendants' names and capacities when they are ascertained.
17 Each of the fictitiously named defendants is responsible in some manner for the conduct alleged
18 herein and for the injuries suffered by Plaintiff, the members of the Class and the general public.

19 6. At all times mentioned in the causes of action alleged herein, each and every
20 Defendant was an agent and/or employee of each and every other Defendant. In doing the things
21 alleged in the causes of action stated herein, each and every Defendant was acting within the
22 course and scope of this agency or employment and was acting with the consent, permission and
23 authorization of each of the remaining Defendants. All actions of each Defendant as alleged in the
24 causes of action stated herein were ratified and approved by every other Defendant or their
25 officers or managing agents.

26 7. This action seeks relief on behalf of a class comprised of persons in the employ of
27 Defendants in California as hourly paid shift supervisors and hourly paid managers within four
28 years preceding the filing of the action to the present ("the Class").

1 8. The Class is sufficiently numerous, consisting of more than 50 individuals but
2 fewer than 100, geographically dispersed throughout California, such that the joinder of all Class
3 Members in one action is impracticable, and the disposition of whose claims in a class action will
4 provide substantial benefits to both the parties and the Court.

5 9. There is a well-defined community of interest in the questions of law and fact
6 involved affecting the parties to be represented. The questions of law and fact common to the
7 Class predominate over questions that may affect individual Class Members, including but not
8 limited to the following:

- 9 a. Whether Defendants implemented and engaged in a systematic practice
10 whereby it unlawfully failed to pay all earned regular and overtime pay to
11 employees;
- 12 b. Whether Defendants implemented and engaged in a systematic practice
13 whereby it unlawfully failed to pay all wages due to employees upon
14 termination;
- 15 c. Whether Defendants implemented and engaged in a systematic practice
16 whereby it unlawfully failed to provide meal periods to employees as
17 required by law and failed to pay employees compensation for the lack of
18 meal periods;
- 19 d. Whether Defendants implemented and engaged in a systematic practice
20 whereby it made unlawful deductions from the wages of its employees;
- 21 e. Whether Defendants implemented and engaged in a systematic practice
22 whereby it failed to provide accurate wage statements to employees;
- 23 f. Whether the systematic acts and practices of Defendants as alleged herein
24 violated, inter alia, applicable provisions of the California Labor Code,
25 including but not limited to sections 201, 203, 204, 221, 226, 226.7, 510,
26 512, 1174, 1194, and 2698, applicable Industrial Welfare Commission
27 Orders, and California Business & Professions Code section 17200, et seq.

28 10. Because Plaintiff worked regular and overtime hours on a regular basis for which

1 she was not compensated, and was routinely required to work without meal periods, for which
2 Plaintiff was not properly compensated, had her wages unlawfully deducted by Defendants, did
3 not receive all wages due on termination, and failed to receive timely and accurate wage
4 statements, Plaintiff is asserting claims that are typical of the claims of the Class.

5 11. Plaintiff will fairly and adequately represent and protect the interests of the Class in
6 that she has no disabling conflict of interest that would be antagonistic to those of the other
7 members of the Class. Plaintiff retained counsel who are competent and experienced in the
8 prosecution of class action wage and hour violations.

9 12. Plaintiff and the members of the Class have all similarly suffered irreparable harm
10 and damages as a result of Defendants' unlawful and wrongful conduct, including but not limited
11 to Defendants' systematic failure to pay regular and overtime wages, systematic failure to pay all
12 wages due on termination of employment, systematic failure to provide meal periods and
13 compensation for work without meal periods, and systematic practice of making unlawful
14 deductions from wages, makes class treatment especially appropriate. Because the hours worked
15 by Defendants' employees and Class Members follow common patterns, all of which are reflected
16 in the records possessed by Defendants, this action will provide substantial benefits to both.
17 Absent this action, Defendants' unlawful conduct will continue unremedied and uncorrected.

18 **FIRST CAUSE OF ACTION**

19 **(Against Defendant Pride Bakeries, LLC Only)**

20 **(Failure To Pay Overtime Wages Pursuant to Labor Code Section 1194)**

21 13. Plaintiff incorporates by reference the allegations contained in the foregoing
22 paragraphs of this Complaint as if fully set forth herein.

23 14. During all relevant periods, Pride periodically required Plaintiff and Class
24 Members to work in excess of 8 hours per day and 40 hours per week.

25 15. During all relevant periods, both the Labor Code and the pertinent Wage Orders
26 required that all work performed by an employee in excess of 8 hours per day and 40 hours per
27 week be compensated at one and one half times the employee's regular rate of pay. Pride failed to
28 pay Plaintiff and Class Members earned overtime wages for overtime hours worked, and failed to

1 provide Plaintiff and Class Members accurate wage statements as required by California Labor
2 Code section 226. Plaintiff and Class Members are entitled to recover their unpaid overtime
3 compensation and penalties arising therefrom.

4 16. Plaintiff and Class Members are therefore entitled to the relief requested below.

5
6 **SECOND CAUSE OF ACTION**

7 **(Against Defendant Pride Bakeries, LLC Only)**

8 **(Unlawful, Unfair And Fraudulent Business Practices Pursuant**
9 **To Business & Professions Code Section 17200, et seq.)**

10 17. Plaintiff incorporates by reference the allegations contained in the foregoing
11 paragraphs of this Complaint as if fully set forth herein.

12 18. Business & Professions Code section 17200, et seq., prohibits acts of unfair
13 competition, defined as an “unlawful, unfair, or fraudulent business act or practice.”

14 19. The policies, acts and practices heretofore described were and are unlawful
15 business acts or practices because Pride’s failure to provide meal periods, failure to pay
16 compensation for work without meal periods, failure to timely pay earned regular and overtime
17 wages, failure to timely pay all wages upon termination, failure to provide accurate and timely
18 wage statements, and practice of unlawfully deducting the wages of employees violate applicable
19 Labor Code sections, including but not limited to Labor Code sections 201, 203, 204, 221, 226,
20 226.7, 510, 512, 1174, and 1194, applicable Industrial Welfare Commission Wage Orders, the
21 Labor Code Private Attorneys General Act of 2004, Labor Code section 2698 et seq., and other
22 provisions of California common and/or statutory law. Plaintiff reserves the right to allege
23 additional statutory and common law violations by Pride. Such conduct is ongoing to this date.

24 20. Further, the policies, acts or practices described herein were and are an unfair
25 business act or practice because any justifications for Pride’s illegal and wrongful conduct were
26 and are vastly outweighed by the harm such conduct caused to Plaintiff, class members, aggrieved
27 employees, and the members of the general public. Such conduct is ongoing to this date.

28 21. As a result of its unlawful and/or unfair and/or fraudulent acts, Pride reaps and
continues to reap unfair benefits and illegal profits at the expense of Plaintiff and class members.

1 Pride should be made to disgorge ill-gotten gains and provide restitution to class members and
2 Plaintiff for the wrongfully withheld wages pursuant to Business and Professions Code section
3 17203.

4 22. Accordingly, Plaintiff and the Class respectfully request that the Court award
5 judgment and relief in their favor, to provide restitution, and other types of equitable relief.

6 **THIRD CAUSE OF ACTION**

7 **(On Behalf of Plaintiff Kimberly Bennett Only, Against Defendant Pride Bakeries, LLC**
8 **Only)**
9 **(Pregnancy Discrimination Cal. Gov. Code §§ 12940, 12945)**

10 23. Plaintiff incorporates by reference the allegations contained in the foregoing
11 paragraphs of this Complaint as if fully set forth herein.

12 24. At all times material hereto, Plaintiff was an employee covered by California
13 Government Code sections 12940 and 12945, prohibiting discrimination in employment based on
14 pregnancy and on disability.

15 25. Pride was, at all times material hereto, an employer within the meaning of
16 California Government Code section 12926(d), and as such, is barred from discriminating on the
17 basis of pregnancy or disability.

18 26. During her employment, Plaintiff alerted Pride that she was pregnant and that she
19 would need time off to have and care for her expected child. Plaintiff alerted Pride that she would
20 need to take time off beginning October 18, 2011, which was her last day of work before giving
21 birth. When Plaintiff alerted Pride of her the impending the birth of her child, Pride provided
22 Plaintiff with paperwork regarding the Family Medical and Leave Act ("FMLA"). Plaintiff and
23 her medical provider completed the paperwork. On or about December 28, 2011, while Plaintiff
24 was off work due to the birth of her child, Plaintiff informed Pride that she would require an
25 additional four weeks of leave, as required by Plaintiff's medical provider, through February 7,
26 2012. Pride instructed Plaintiff to inform Pride of Plaintiff's return approximately two weeks prior
27 to her planned return. On or about January 23, 2012, Plaintiff contacted Pride per Pride's
28 instructions to alert Pride of her plan to return to work within two weeks. Pride informed her that

1 it did not have a position available for her. On or about January 25, 2012, Pride then informed
2 Plaintiff that it was terminating Plaintiff's employment.

3 27. Pride discriminated against Plaintiff on the basis of her pregnancy and related
4 conditions in multiple violations of California Government Code sections 12940 and 12945 by
5 engaging in a course of conduct intentionally designed to discriminate against Plaintiff on the
6 basis of her pregnancy. This conduct culminated in Pride's unlawful, discriminatory termination
7 on or about January 25, 2012.

8 28. As a proximate result of Pride's discrimination, Plaintiff suffered and continues to
9 suffer substantial losses and in earnings, bonuses, deferred compensation and other employment
10 benefits, and has suffered and continues to suffer embarrassment, anger, humiliation, frustration
11 and other highly unpleasant mental anguish all in an amount according to proof.

12 29. Plaintiff filed a timely charge of discrimination and wrongful termination with the
13 Department of Fair Employment and Housing ("DFEH") and received a timely notice of the right
14 to sue in California Superior Court pursuant to California Government Code section 12965(b),
15 permitting Plaintiff to bring this action. Therefore, Plaintiff exhausted all of her administrative
16 remedies.

17 30. Pride, in doing the acts and failing to do the acts as herein alleged, acted
18 maliciously, fraudulently, and oppressively, with the wrongful intention of injuring Plaintiff, and
19 in conscious disregard of said Plaintiff's rights. In addition, Pride abused its position of authority
20 and ratified the discriminatory conduct of its employees. Plaintiff is thus entitled to recover
21 punitive damages from Defendants, in an amount according to proof. As a result of Pride's
22 discriminatory acts as alleged herein, Plaintiff is entitled to an award of reasonable attorneys' fees
23 and costs of suit as provided by California Government Code section 12965(b).

24 **FOURTH CAUSE OF ACTION**

25 **(On Behalf Of Plaintiff Kimberly Bennett Only, Against Defendant Pride Bakeries, LLC**
26 **Only)**
27 **(Disability Discrimination, Failure to Provide Reasonable Accommodation, Failure to**
28 **Engage in the Interactive Process: Cal. Gov. Code § 12940)**

31. Plaintiff incorporates by reference the allegations contained in the foregoing

1 paragraphs as if fully set forth herein.

2 32. At all times material hereto, Plaintiff suffered from pregnancy and physical and/or
3 mental disability within the meaning of California Government Code section 12926(j). Plaintiff's
4 disability limited one or more of her major life activities within the meaning of California
5 Government Code sections 12926(k) and 12926.1.

6 33. At all times material hereto, Plaintiff could perform her essential job functions with
7 or without reasonable accommodations for her disability.

8 34. During her employment, Plaintiff alerted Pride that she was pregnant and that she
9 would need time off to have and care for her expected child. Plaintiff alerted Pride that she would
10 need to take time off beginning October 18, 2011, which was her last day of work before giving
11 birth. When Plaintiff alerted Pride of her the impending the birth of her child, Pride provided
12 Plaintiff with paperwork regarding the FMLA. Plaintiff and her medical provider completed the
13 paperwork. On or about December 28, 2011, while Plaintiff was off work due to the birth of her
14 child, Plaintiff informed Pride that she would require an additional four weeks of leave, as
15 required by Plaintiff's medical provider, through February 7, 2012. Pride instructed Plaintiff to
16 inform Defendants of Plaintiff's return approximately two weeks prior to her planned return. On
17 or about January 23, 2012, Plaintiff contacted Pride per Pride's instructions to alert Pride of her
18 plan to return to work within two weeks. Pride informed her that it did not have a position
19 available for her. On or about January 25, 2012, Pride then informed Plaintiff that it was
20 terminating Plaintiff's employment.

21 35. At all relevant times herein, Pride failed to determine what reasonable
22 accommodations existed for Plaintiff, in violation of California Government Code section
23 12940(m). Pride failed to engage in an interactive process with Plaintiff in violation of California
24 Government Code section 12940(n).

25 36. Pride discriminated against Plaintiff on the basis of a disability in multiple violation
26 of California Government Code section 12940 by engaging in a course of conduct intentionally
27 designed to discriminate against Plaintiff on the basis of a disability, a perceived disability, and/or
28

1 medical condition, including but not limited to the conduct culminating in Pride's unlawful,
2 discriminatory termination of Plaintiff on or about January 25, 2012.

3 37. Plaintiff filed a timely charge of discrimination and wrongful termination with the
4 Department of Fair Employment and Housing ("DFEH") and received a timely a notice of the
5 right to sue in California Superior Court pursuant to California Government Code section
6 12965(b) permitting Plaintiff to bring this action. Therefore, Plaintiff exhausted all of her
7 administrative remedies.

8 38. The foregoing conduct caused Plaintiff to suffer severe emotional distress. Plaintiff
9 has suffered and continues to suffer pain, loss of sleep, discomfort, anxiety, anger, frustration and
10 other emotional distress, and will continue to suffer said emotional distress in the future in an
11 amount according to proof.

12 39. As a proximate result of Pride's discrimination against Plaintiff, Plaintiff has
13 suffered and continues to suffer losses in earnings and other employment benefits and has suffered
14 and continues to suffer embarrassment, anger, humiliation, frustration and other highly unpleasant
15 mental anguish all to her damage in an amount according to proof.

16 40. Pride, in doing the acts and failing to do the acts as herein alleged, acted
17 maliciously, fraudulently, and oppressively, with the wrongful intention of injuring Plaintiff, and
18 in conscious disregard of said Plaintiff's rights. In addition, Pride abused its position of authority
19 and ratified the discriminatory conduct of its employees. Plaintiff is thus entitled to recover
20 punitive damages from Defendants, according to proof. As a result of Pride's retaliatory acts as
21 alleged herein, Plaintiff is entitled to an award of reasonable attorney's fees and costs of suit as
22 provided by California Government Code section 12965(b).

23 **FIFTH CAUSE OF ACTION**

24 **(On Behalf of Plaintiff Kimberly Bennett Only, Against Defendant Pride Bakeries, LLC**
25 **Only)**
26 **(Wrongful Termination In Violation Of Public Policy -**
Article I, section 8, of the California Constitution)

27 41. Plaintiff incorporates by reference the allegations contained in the foregoing
28 paragraphs of this Complaint as if fully set forth herein.

1 Code sections 510 and 512, and provisions regulating the hours and days of work in the applicable
2 Industrial Welfare Commission Wage Orders. Plaintiff further alleges that Defendants Dennis W.
3 Hitzeman, Dennis Shane Hitzeman, Thomas McDonald, and David Babbush created,
4 implemented, administered and/or authorized the practices alleged to have occurred herein, such
5 that Plaintiff, class members, and aggrieved employees failed to receive meal periods and failed to
6 receive compensation for work without meal periods, and failed to receive all overtime wages
7 earned, in violation of Labor Code sections 510, 512, and 558, and provisions regulating the hours
8 and days of work in the applicable Industrial Welfare Commission Wage Orders. As such, all
9 Defendants are liable for civil penalties as provided by Labor Code section 558.

10 49. The policies, acts and practices heretofore described were and are unlawful acts in
11 violation of applicable Labor Code sections and the applicable Industrial Welfare Commission
12 Wage Orders and give rise to statutory penalties as a result of such conduct, including, but not
13 limited to, penalties as provided by the Labor Code Private Attorneys General Act of 2004
14 (“PAGA”). The unlawful policies, acts and practices include, but are not limited to, Defendants’
15 failure to timely pay wages to employees upon termination in violation of California Labor Code
16 section 203; failure to maintain and provide accurate wage statements to employees as required by
17 California Labor Code sections 226 and 1174; failure to provide meal periods and to pay
18 compensation for work without meal periods to California employees in violation of California
19 Labor Code sections 226.7 and 512 and applicable Industrial Welfare Commission Orders;
20 unlawful withholding of wages from the paychecks of California employees in violation of
21 California Labor Code section 221; and, failure to pay all earned regular and overtime wages in
22 violation of California Labor Code sections 201, 203, 204, 510, and 1194, and gives rise to
23 statutory penalties as a result of such conduct, including but not limited to penalties as provided by
24 Labor Code sections 201, 203, 204, 221, 226, 226.7, 510, 512, 558, 1174, 1194, and 2699.5, and
25 applicable Industrial Welfare Commission Wage Orders. Plaintiff, as an aggrieved employee,
26 hereby seeks recovery of civil penalties as prescribed by the Labor Code Private Attorney General
27 Act of 2004 on behalf of herself and other current and former employees of Defendants against
28 whom one or more of the violations of the Labor Code was committed.

