

**ORIGINAL**

**FILED**  
SUPERIOR COURT OF CALIFORNIA  
COUNTY OF SAN BERNARDINO  
SAN BERNARDINO DISTRICT

**APR 02 2021**

BY *Daisy Balon*  
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**BY FAX**

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11 **SUPERIOR COURT OF CALIFORNIA**  
12 **COUNTY OF SAN BERNARDINO**

13 ARYAN ALBA,

14 Plaintiff,

15 v.

16 COCK-A-DOODLE RESTAURANT, INC., A  
17 CALIFORNIA CORPORATION; and DOES 1  
18 to 50, inclusive,

19 Defendants.

Case No.: **CIV SB 2108545**

**COMPLAINT AND DEMAND FOR  
JURY TRIAL**

- 20 1. Wrongful Termination in Violation of  
21 Labor Code Section 98.6
- 22 2. Wrongful Termination in Violation of  
23 Labor Code Section 1102.5(b)
- 24 3. Wrongful Termination in Violation of  
25 Labor Code Section 6310(a)(1)
- 26 4. Wrongful Termination in Violation of  
27 Public Policy
- 28 5. Failure to Provide Meal Periods
- 6. Failure to Provide Rest Periods
- 7. Failure to Pay Minimum Wage
- 8. Failure to Pay Overtime Wages
- 9. Failure to Provide Accurate Pay Stubs

*[Continued on Next Page.]*

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- ) 10. Failure to Pay Final Wages
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- ) 11. Failure to Produce Payroll Records
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- ) 12. Unfair Business Practices

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**THE PARTIES**

1. Plaintiff Aryan Alba is, and at all times relevant herein was, citizen of the State of California and an individual residing in the County of San Bernardino, State of California.

2. Defendant Cock-a-Doodle Restaurant, Inc., a California Corporation (hereinafter at times "Cock-a-Doodle") is, and all times relevant herein was, a corporation incorporated in the State of California and doing business in the County of San Bernardino, State of California.

3. Plaintiff is ignorant of the true names and capacities of defendants Does 1 to 50 and therefore sues them by such fictitious names. Plaintiff will amend this Complaint to allege their true names and capacities once Plaintiff ascertains them.

4. Plaintiff is informed and believes, and thereon alleges, that at all times relevant herein, Does 1 to 50 were the agents, employees, servants, partners, joint venturers, affiliates, parents, sisters, or subsidiaries of the other defendants.

5. Plaintiff is informed and believes, and thereon alleges, that at all times relevant herein, Does 1 to 50 acted within the course and scope of their agency, employment, service, partnership, joint venture, affiliation, or other relationship with the other defendants.

6. Plaintiff is informed and believes, and thereon alleges, that Does 1 to 50 are liable for the torts, wage and hour violations, unlawful employment practices, and other wrongs that Plaintiff alleges herein and that such defendants proximately caused Plaintiff's damages.

**VENUE**

7. Venue in the County of San Bernardino is proper because at least one defendant resides there.

**GENERAL ALLEGATIONS**

8. Cock-a-Doodle operated a restaurant and bar by the same name in the City of Chino at all times herein. Cock-a-Doodle's CEO, Patricia Costa, hired Plaintiff to work as a server in or around April 2018. Ms. Costa later employed her as a bartender. Ms. Costa employed her full-time and purported to pay her minimum wage.

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1 **Cock-a-Doodle Commits Wage and Hour Violations**

2 9. Cock-a-Doodle failed to provide Plaintiff meal periods for at least 30 minutes by  
3 the end of the fifth and tenth hours of work and rest periods for at least 10 minutes every four  
4 hours or major fraction thereof. Cock-a-Doodle required her to skip, delay, or work during meal  
5 and rest periods.

6 10. Cock-a-Doodle failed to pay Plaintiff at least the applicable California minimum  
7 wage for on-duty meal periods. Ms. Costa required her to clock out and continue working during  
8 what should have been meal periods of at least 30 minutes. Ms. Costa failed to count such time  
9 as work and failed to pay her the applicable California minimum wage for such time.

10 11. Cock-a-Doodle failed to pay Plaintiff at least the applicable California minimum  
11 wage for postliminary work. Ms. Costa required her to clock out for the day and continue working  
12 for approximately two hours per day, three to four times per week. Ms. Costa failed to count such  
13 time as work and failed to pay her the applicable California minimum wage for such time.

14 12. Cock-a-Doodle failed to pay Plaintiff one and one-half times her regular rate of  
15 pay for all work in excess of eight hours in one workday. Ms. Costa's failure to count Plaintiff's  
16 off-the-clock work as compensable time caused Cock-a-Doodle to begin paying her the applicable  
17 overtime rates later than it should have paid them or at all.

18 13. Cock-a-Doodle failed, either semimonthly or each time they paid Plaintiff's  
19 wages, to furnish her with wage statements that completely and accurately showed the total  
20 number of off-the-clock hours that she worked during each pay period. She could not promptly  
21 and readily determine such information from the wage statements alone.

22 14. Cock-a-Doodle's failure to provide Plaintiff with wage statements that completely  
23 and accurately showed the total number of off-the-clock hours that she worked during each pay  
24 period was knowing and intentional. In point of fact, Ms. Costa told her to clock-out for on-duty  
25 meal periods and postliminary work.

26 **Cock-a-Doodle Fires Plaintiff**

27 15. The Director of the California Department of Public Health ("CDPH") tried to stop  
28 the spread of COVID-19 by ordering all Californians to wear masks inside any indoor public

1 space on June 18, 2020 and by ordering indoor dining in San Bernardino County restaurants to  
2 cease for 20 days starting July 2, 2020. Cock-a-Doodle defied the CDPH Director's health orders.

3 16. Plaintiff exercised her rights under Labor Code sections 6310(a)(1) and 1102.5(b)  
4 by informing Ms. Costa on or around July 5, 2020 that Cock-a-Doodle guests did not wear masks,  
5 that COVID-19 was getting worse, and that she did not feel safe working at Cock-a-Doodle. She  
6 asked Ms. Costa to let her know when Cock-a-Doodle would follow the law.

7 17. Plaintiff had reasonable cause to believe that such information disclosed violations  
8 of Labor Code sections 6401, 6403(c), and 6406(d) and violations of, or noncompliance with, the  
9 CDPH Director's orders requiring individuals to wear masks inside public places and requiring  
10 restaurants to cease indoor dining operations in San Bernardino County.

11 18. Plaintiff exercised her rights under Labor Code sections 6310(a)(1) and 1102.5(b)  
12 by informing the San Bernardino County Department of Public Health ("SBCDPH") in or around  
13 July 2020 that Cock-a-Doodle continued indoor operations and continued to let guests occupy the  
14 restaurant without masks. SBCDPH inspected Cock-a-Doodle on or around July 8, 2020.

15 19. Ms. Costa got so mad that she told Plaintiff to hand in her keys to the restaurant  
16 and fired her on or around July 21, 2020. Plaintiff's exercise of her rights under Labor Code  
17 sections 1102.5(b) and 6310(a)(1) were substantial motivating reasons for Ms. Costa's  
18 termination of Plaintiff's employment.

19 20. In the process of firing Plaintiff, Ms. Costa was personally guilty of: (1) malice in  
20 that she intended to harm Plaintiff; and (2) oppression in that she acted despicably and subjected  
21 her to the cruel and unjust hardship of unemployment, in conscious disregard of her rights under  
22 Labor Code sections 98.6, 1102.5(b), and 6310(a)(1).

23 **Cock-a-Doodle Fails to Pay Final Wages and Produce Payroll Records**

24 21. Plaintiff's earned but unpaid wages for on-duty meal periods, postliminary work,  
25 and overtime came due and payable immediately upon termination on or around July 21, 2020.  
26 Cock-a-Doodle willfully failed to pay her all such final wages immediately upon termination,  
27 within 30 days thereof, or at any other time.

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1 28. Plaintiff informed Ms. Costa and the SBCDPH that Defendants continued to  
2 permit indoor operations and continued to let customers occupy the restaurant without masks.

3 29. Plaintiff had reasonable cause to believe that said information disclosed violations  
4 of Labor Code sections 6400(a), 6401, and 6406(d) and the CDPH Director's health orders.

5 30. Ms. Costa had authority over Plaintiff or authority to investigate, discover, and/or  
6 correct violations of state and federal statutes and local, state, and federal rules and regulations.

7 31. Plaintiff's disclosure of such information to Ms. Costa and the SBCDPH was a  
8 substantial motivating reason for Defendants' termination of her employment.

9 32. Defendants' termination of Plaintiff's employment was a substantial factor in  
10 causing actual harm.

11 **THIRD CAUSE OF ACTION**

12 **Wrongful Termination in Violation of Labor Code Section 6310(a)(1)**

13 **(Against All Defendants)**

14 33. Plaintiff re-states and incorporates by reference each of the foregoing allegations  
15 as though fully set forth herein.

16 34. Plaintiff reported to Ms. Costa and the SBCDPH that Defendants continued to  
17 permit indoor operations and continued to let customers occupy the restaurant without masks.

18 35. Plaintiff's reports to Ms. Costa and the SBCDPH thus revealed that Defendants  
19 created unsafe and unhealthful working conditions.

20 36. Plaintiff's reports to Ms. Costa and SBCDPH were substantial motivating reasons  
21 for Defendants' termination of her employment.

22 37. Defendants' termination of Plaintiff's employment was a substantial factor in  
23 causing actual harm.

24 **FOURTH CAUSE OF ACTION**

25 **Wrongful Termination in Violation of Public Policy**

26 **(Against All Defendants)**

27 38. Plaintiff re-states and incorporates by reference each of the foregoing allegations  
28 as though fully set forth herein.





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**SIXTH CAUSE OF ACTION**

**Failure to Provide Rest Periods – Lab. Code §226.7**

**(Against All Defendants )**

47. Plaintiff re-states and incorporates by reference each of the foregoing allegations as though fully set forth herein.

48. Defendants employed Plaintiff by engaging her to work, suffering and permitting her to work, and/or exercising control over her wages, hours, and/or working conditions.

49. Defendants failed to relieve Plaintiff of all duty for rest periods of not less than 10 minutes every four hours of work or major fraction thereof.

50. Wherefore, Plaintiff seeks an additional hour of pay at her regular rate of pay for each workday in which Defendants failed to provide a rest period.

**SEVENTH CAUSE OF ACTION**

**Failure to Pay Minimum Wage – Lab. Code §§1194 & 1194.2**

**(Against All Defendants )**

51. Plaintiff re-states and incorporates by reference each of the foregoing allegations as though fully set forth herein.

52. Defendants employed Plaintiff by engaging her to work, suffering and permitting her to work, and/or exercising control over her wages, hours, and/or working conditions.

53. Defendants failed to pay Plaintiff the applicable California minimum wage rates for all hours of work.

54. Wherefore, Plaintiff seeks all unpaid minimum wage compensation (plus interest) and liquidated damages equal thereto, plus reasonable attorney’s fees and costs.

**EIGHTH CAUSE OF ACTION**

**Failure to Pay Overtime Wages – Lab. Code §1194**

**(Against All Defendants)**

55. Plaintiff re-states and incorporates by reference each of the foregoing allegations as though fully set forth herein.

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1 67. Defendants willfully failed to pay Plaintiff all earned but unpaid straight time  
2 wages immediately upon termination.

3 68. Wherefore, Plaintiff seeks waiting-time penalties equal to her daily rate of pay for  
4 each day that Defendants willfully failed to pay all final wages, up to 30 calendar days.

5 **ELEVENTH CAUSE OF ACTION**

6 **Failure to Produce Payroll Records – Lab. Code §226**

7 **(Against All Defendants)**

8 69. Plaintiff re-states and incorporates by reference each of the foregoing allegations  
9 as though fully set forth herein.

10 70. Plaintiff, through counsel, mailed Defendants a request for her payroll records on  
11 or around December 16, 2020.

12 71. Defendants received the request on or around December 23, 2020 but failed and  
13 refused to produce all payroll records within 21 calendar days of their receipt of said request.

14 72. Wherefore, Plaintiff seeks a \$750 statutory penalty, plus reasonable attorney's fees  
15 and costs of suit.

16 **TWELFTH CAUSE OF ACTION**

17 **Unfair, Unlawful, and/or Fraudulent Business Practices – Bus. & Prof. Code §17200**

18 **(Against All Defendants)**

19 73. Plaintiff re-states and incorporates by reference each of the foregoing allegations  
20 as though fully set forth herein.

21 74. Defendants committed the following unfair, unlawful, and/or fraudulent business  
22 acts and practices against Plaintiff:

- 23 a. Defendants violated Labor Code sections 226.7(b) and Labor Code section  
24 512 by failing to provide meal periods.
- 25 b. Defendants violated Labor Code section 226.7(b) and Wage Order 5,  
26 section 12(A) by failing to provide rest periods.
- 27 c. Defendants violated Labor Code sections 226.7(c) and Wage Order 5,  
28 section 11(D) by failing to pay meal period premiums.

**COMPLAINT AND DEMAND FOR JURY TRIAL**

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- d. Defendants violated Labor Code sections 226.7(c) and Wage Order 5, section 12(B) by failing to pay rest period premiums.
- e. Defendants violated Labor Code sections 1182.12 and 1197 and Wage Order 5, section 4(A) by failing to pay the minimum wage.
- f. Defendants violated Labor Code sections 510(a) and Wage Order 5, section 3(A) by failing to pay overtime wages.

75. Defendants enriched themselves at Plaintiff's expense by committing the aforementioned unfair, unlawful, and/or fraudulent business practices.

76. Plaintiff seeks restitution, a declaratory judgment, and injunctive relief to stop Defendants' unfair, unlawful, and/or fraudulent business acts and practices.

**PRAYER**

WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

**As to the First Cause of Action**

- 1. For no less than \$50,000 in damages for loss of past earnings.
- 2. For no less than \$100,000 in damages for loss of future earnings.
- 3. For no less than \$100,000 in damages for loss of future earnings capacity.
- 4. For no less than \$100,000 in damages for damages for past emotional distress.
- 5. For no less than \$100,000 in damages for future emotional distress.
- 6. For no less than a \$10,000 civil penalty. (Lab. Code §98.6(b)(3).)
- 7. For punitive damages.

**As to the Second to Fourth Causes of Action**

- 8. For no less than \$50,000 in damages for loss of past earnings.
- 9. For no less than \$100,000 in damages for loss of future earnings.
- 10. For no less than \$100,000 in damages for loss of future earnings capacity.
- 11. For no less than \$100,000 in damages for damages for past emotional distress.
- 12. For no less than \$100,000 in damages for future emotional distress.
- 13. For punitive damages.

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1 **As to the Fifth Cause of Action**

2 14. For no less than \$7,000 in unpaid meal period premiums. (Lab. Code §226.7(c).)

3 **As to the Sixth Cause of Action**

4 15. For no less than \$7,000 in unpaid rest period premiums. (Lab. Code §226.7(c).)

5 **As to the Seventh Cause of Action**

6 16. For no less than \$7,000 in unpaid minimum wages. (Lab. Code §1194(a).)

7 17. For no less than \$7,000 in liquidated damages. (Lab. Code §1194.2(a).)

8 18. For reasonable attorney's fees and costs. (Lab. Code §1194(a).)

9 19. For interest at the maximum legal rate of 10% per annum. (Lab. Code §218.6.)

10 **As to the Eighth Cause of Action**

11 20. For no less than \$10,000 in unpaid overtime wages and interest thereon. (Lab.  
12 Code §1194(a).)

13 21. For reasonable attorney's fees and costs. (Lab. Code §1194(a).)

14 22. For interest at the maximum legal rate of 10% per annum. (Lab. Code §218.6.)

15 **As to the Ninth Cause of Action**

16 23. For no less than \$4,000 in actual damages. (Lab. Code §226(e)(1).)

17 24. For no less than \$4,000 in penalties. (Lab. Code §226(e)(1).)

18 25. For reasonable attorney's fees and costs. (Lab. Code §226(e)(1).)

19 **As to the Tenth Cause of Action**

20 26. For \$2,880 in waiting-time penalties, i.e., 30 days of waiting-time penalties at a  
21 rate of \$96 per day. (Lab. Code §203(a).)

22 **As to the Eleventh Cause of Action**

23 27. For a \$750 penalty. (Lab. Code §226(f).)

24 28. For preliminary and permanent injunctive relief. (Lab. Code §226(h).)

25 29. For reasonable attorney's fees and costs. (Lab. Code §226(e)(1).)

26 **As to the Twelfth Cause of Action**

27 30. For no less than \$30,000 in restitution. (Bus. & Prof. Code §17203.)

28 31. For a declaratory judgment. (Bus. & Prof. Code §17203.)

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32. For preliminary and permanent injunctive relief. (Bus. & Prof. Code §17203.)

**As to All Causes of Action**

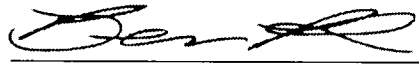
33. For costs of suit.

34. For pre-judgment interest to the maximum extent that the law allows.

35. For such other and further relief as the Court may deem proper.

Date: March 30, 2021

**LAW OFFICE OF BEN ROTHMAN**



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Ben Rothman, Esq.  
Attorney for Plaintiff,  
ARYAN ALBA

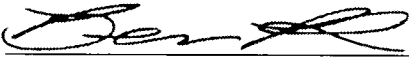
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**DEMAND FOR JURY TRIAL**

Plaintiff demands a jury trial.

Date: March 30, 2021

**LAW OFFICE OF BEN ROTHMAN**



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Ben Rothman, Esq.  
Attorney for Plaintiff,  
ARYAN ALBA