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9
10 **SUPERIOR COURT OF CALIFORNIA**
11 **COUNTY OF LOS ANGELES**

12 KATHY BYRON, an individual, on behalf of
13 herself and all others similarly situated,

14 Plaintiff,

15 vs.

16 WOLFGANG PUCK CATERING AND
17 EVENTS, LLC, a Delaware entity, and DOES
1-50,

18 Defendants.

Case No:

20STCV17954

COMPLAINT FOR DAMAGES

1. FAILURE TO TIMELY PAY ALL
WAGES UPON CESSATION OF
EMPLOYMENT
2. PENALTIES PURSUANT TO
PRIVATE ATTORNEY GENERAL
ACT OF 2004 (Labor Code §§ 2698
et seq. ("PAGA"))

DEMAND FOR JURY TRIAL

CONFORMED COPY
ORIGINAL FILED
Superior Court of California
County of Los Angeles

MAY 08 2020

Sherri K. Carter, ~~Law Clerk~~ Officer/Clerk of Court
By *[Signature]*, Deputy
Steven Drew

COMPLAINT

1 Plaintiff KATHY BYRON (“PLAINTIFF” OR “BYRON”), on behalf of herself and
2 other similarly situated persons employed by Defendant WOLFGANG PUCK CATERING AND
3 EVENTS, LLC, and the State of California, complains and alleges as follows:

4 **INTRODUCTION**

5 1. This is a class action lawsuit brought on behalf of PLAINTIFF and others similarly
6 situated against Defendant WOLFGANG PUCK CATERING AND EVENTS, LLC and Doe
7 Defendants 1-50 (“collectively DEFENDANTS”) under Code of Civil Procedure § 382, seeking
8 waiting time penalties for failure to timely pay all wages due to employees pursuant to Labor
9 Code sections 201 and 203, reasonable attorneys’ fees and costs, and penalties pursuant to the
10 California Private Attorney General Act, Labor Code sections 2698 *et seq.* (“PAGA”).

11 **JURISDICTION AND VENUE**

12 2. This Court has jurisdiction over PLAINTIFF’s claims under Article 6 of the California
13 Constitution and California Code of Civil Procedure § 410.10.2.

14 3. This Court has jurisdiction over PLAINTIFF’S and Class Members’ claims for waiting
15 time penalties under California Labor Code § 218.

16 4. This Court has jurisdiction over PLAINTIFF’S claims for penalties pursuant to PAGA.

17 5. Venue is proper in this Judicial district and the County of Los Angeles pursuant to
18 California Code of Civil Procedure § 395.5 because DEFENDANTS employed PLAINTIFF in
19 Los Angeles County, and the acts, omissions, and conduct alleged by PLAINTIFF herein
20 occurred in this county as well as elsewhere in the State of California.

21 **PARTIES**

22 6. Defendant WOLFGANG PUCK CATERING AND EVENTS, LLC, is a catering and
23 events company. It is a limited liability company organized and existing under the laws of
24 Delaware, licensed to do business and actually doing business in California, including in Los
25 Angeles County. Plaintiff is informed and believes and thereon alleges that its principal place of
26 business is in Los Angeles, County.

1 7. Plaintiff KATHY BYRON is a resident of California. During the three-year period
2 preceding the filing of this action, including subsequent to November 16, 2018, Plaintiff has
3 intermittently worked as an EVENT STAFF EMPLOYEE of DEFENDANTS in California. The
4 term "EVENT STAFF EMPLOYEE" as used herein means an employee hired as needed by
5 DEFENDANTS to work at events catered by DEFENDANTS and include, among others, wait
6 staff, captains, bartenders, and food preparation personnel.

7 8. PLAINTIFF is informed and believes that DOES 1 through 50 are corporations,
8 individuals, limited liability partnerships, limited liability companies, general partnerships, sole
9 proprietorships or are other business entities or organizations of a nature not currently known to
10 PLAINTIFF.

11 9. PLAINTIFF is unaware of the true names of Defendants DOES 1 through 50.
12 PLAINTIFF sues said Defendants by said fictitious name and will amend this complaint when
13 the true names and capacities are ascertained or when such facts pertaining to liability are
14 ascertained, or as permitted by law or by the Court. PLAINTIFF is informed and believes that
15 each of the fictitiously named Defendants is in some manner responsible for the events and
16 allegations set forth in this complaint.

17 10. PLAINTIFF is informed and believes, and thereon alleges, that at all times herein
18 mentioned each Defendant, including all Defendants sued under fictitious names, was the
19 employee, or representative of each of the remaining Defendants, and in doing the things
20 hereinafter alleged, was at times acting within the course and scope of this employment, and at
21 other times, acting in his or her own individual capacity. In the alternative, each of the
22 individually named Defendants, acted in concert and in furtherance of a fraudulent plan and
23 scheme and each actively participated in the wrongful acts alleged in this complaint.

24 **FACTS COMMON TO ALL CAUSES OF ACTION**

25 11. During the liability period, DEFENDANTS employed PLAINTIFF and other
26 similarly situated persons as EVENT STAFF EMPLOYEES to perform catering and event
27 services in California.

1 12. DEFENDANTS hire EVENT STAFF EMPLOYEES on an assignment basis, hiring
2 them as needed to staff events catered by DEFENDANTS.

3 13. As a matter of fact, and pursuant to Labor Code Section 201 and *Smith v. Superior*
4 *Court* (2006) 39 Cal. 4th 77, at the end of each event catered by DEFENDANTS, EVENT
5 STAFF EMPLOYEES who were assigned to the event and worked it were discharged by
6 DEFENDANTS. Upon such discharges, pursuant to Labor Code Section 201, DEFENDANTS
7 were required to pay the discharged EVENT STAFF EMPLOYEES immediately. However,
8 DEFENDANTS did not make the wage payments as required. Instead, PLAINTIFF and similarly
9 employed EVENT STAFF EMPLOYEES had to wait several days after each assignment to
10 receive their wages for the assignment. DEFENDANTS maintained, and continue to maintain, a
11 policy and practice of paying EVENT STAFF EMPLOYEES their final wages without regard to
12 the timing requirement of Labor Code Section 201.

13 **CLASS DEFINITIONS AND CLASS ALLEGATIONS**

14 14. PLAINTIFF brings this action on behalf of herself, on behalf of all others similarly
15 situated, and as members of a Class defined as follows:

16 All persons ever employed as an EVENT STAFF EMPLOYEE by Defendant
17 WOLFGANG PUCK CATERING AND EVENTS, LLC, in California at any time
18 from November 17, 2018 through the date Notice is mailed to the Class. This action
19 has been brought and may be properly maintained as a class action pursuant to the
20 provisions of California Code of Civil Procedure § 382 and other applicable law.

21 15. **Numerosity:** Code of Civil Procedure § 382: members of the Class are so numerous
22 that their individual joinder is impracticable. The precise number of Class members and their
23 addresses are unknown to PLAINTIFF. However, PLAINTIFF is informed and believes that the
24 number of class members exceeds 200 and can be obtained from DEFENDANT's records. Class
25 members may be notified of the pendency of this action by mail, electronic mail, the Internet, or
26 published notice.

1 **16. Predominance of Common Questions of Fact and Law:** Code of Civil Procedure §
2 382: Common questions of law and fact exist as to all members of the Class. These questions
3 predominate over any questions effecting only individual members of the class. These common
4 factual and legal questions include:

5 (a) Whether DEFENDANTS violated Labor Code Section 201 by not
6 immediately paying EVENT STAFF EMPLOYEES at the conclusion of
7 assignments.

8 (b) Whether DEFENDANTS' conduct in not paying EVENT STAFF
9 EMPLOYEES immediately upon the end of an assignment was willful.

10 (c) Whether DEFENDANTS' affirmative defenses, if any, raise any common
11 issues of law or fact as to Plaintiff and the Class members as a whole.

12 **17. Typicality:** PLAINTIFF's claims are typical of the claims of the members of each
13 Class because PLAINTIFF, as someone employed as an EVENT STAFF EMPLOYEE, was
14 repeatedly exposed to the same unlawful business practice as the members of the class.
15 PLAINTIFF sustained the same types of injuries and losses that the class members sustained.
16 PLAINTIFF is subject to the same affirmative defenses as the members of the class.

17 **18. Adequacy:** PLAINTIFF will adequately and fairly protect the interests of the
18 members of the Class. PLAINTIFF has no interest adverse to the interests of absent Class
19 Members. PLAINTIFF is represented by legal counsel who has substantial class action
20 experience in civil litigation and employment law.

21 **19. Superiority:** A class action is superior to other available means for fair and efficient
22 adjudication of the claims of the Class and would be beneficial for the parties and the court.
23 Class action treatment will allow a large number of similarly situated persons to prosecute their
24 common claims in a single forum, simultaneously, efficiently, and without the unnecessary
25 duplication of effort and expense that numerous individual actions would require. The monetary
26 amounts due to many individual Class members are likely to be relatively small, and the burden
27 and expense of individual litigation would make it difficult or impossible for individual members
28

1 of the Class to seek and obtain relief. A class action will serve an important public interest by
2 permitting such individuals to effectively pursue recovery of the sums owed to them. Further,
3 class litigation prevents the potential for inconsistent or contradictory judgments raised by
4 individual litigation.

5 **FIRSTCAUSE OF ACTION**

6 **FAILURE TO PAY WAGES TIMELY UPON CESSATION OF EMPLOYMENT**

7 **(Plaintiff and the Class Against All Defendants)**

8 20. PLAINTIFF incorporates all of the foregoing paragraphs of this complaint as if
9 fully alleged herein.

10 21. PLAINTIFF and the other members of the Class were employees of DEFENDANTS
11 covered by Labor Code Section 201.

12 22. Labor Code Section 201 provides: “(a) If an employer discharges an employee,
13 the wages earned and unpaid at the time of discharge are due and payable immediately. An
14 employer who lays off a group of employees by reason of the termination of seasonal
15 employment in the curing, canning, or drying of any variety of perishable fruit, fish or
16 vegetables, shall be deemed to have made immediate payment when the wages of said
17 employees are paid within a reasonable time as necessary for computation and payment thereof;
18 provided, however, that the reasonable time shall not exceed 72 hours, and further provided that
19 payment shall be made by mail to any employee who so requests and designates a mailing
20 address therefor.”

21 23. Plaintiff and other Class members were discharged at the end of each event to which
22 they were assigned to work in violation of Labor Code Section 201. *See Smith, supra*, (2006) 39
23 Cal. 4th 77.

24 24. Pursuant to Labor Code Section 201, PLAINTIFF and other members of the Class
25 were entitled upon each discharge they experienced, to immediate payment of all wages earned
26 and unpaid prior to each discharge.

1 25. DEFENDANTS failed to pay PLAINTIFF and other members of the Class all wages
2 earned and unpaid at the time of each discharge they experienced during the relevant period in
3 accordance with Labor Code Section 201, paying them instead typically at least one week later.

4 26. PLAINTIFF is informed and believes, and thereon alleges, that at all relevant times
5 within the applicable limitations period, DEFENDANTS maintained and continue to maintain a
6 policy and practice of not paying wages due under Labor Code Section 201 to EVENT STAFF
7 EMPLOYEES upon discharge from an assignment.

8 27. DEFENDANTS' failure to timely pay PLAINTIFF and members of the Class wages
9 in accordance with Labor Code Section 201 was willful. DEFENDANTS had the ability to pay
10 all wages earned by EVENT STAFF EMPLOYEES at the time of each discharge, as required by
11 Labor Code Section 201.

12 28. Pursuant to Labor Code Section 203, PLAINTIFF and other members of the Class
13 are entitled to continuation of their wages, from the day their earned and unpaid wages were due
14 upon discharge until they were paid, up to a maximum of 30 days.

15 29. As a result of DEFENDANTS' conduct, PLAINTIFF and members of the
16 Class have suffered damages in an amount, subject to proof, to the extent they were not paid all
17 continuation wages owed under Labor Code Section 203.

18 30. Pursuant to Labor Code Sections 218 and 218.5, PLAINTIFF and other members
19 of the Class are entitled to recover the full amount of their continuation wages under Labor Code
20 Section 203, reasonable attorney's fees and costs of suit. Pursuant to Labor Code Section 218.6
21 or Civil Code Section 3287(a), Plaintiff and other members of the Class are entitled to recover
22 prejudgment interest on the amount of their unpaid wages and unpaid continuation wages.

23 **SECOND CAUSE OF ACTION**

24 **CIVIL PENALTIES UNDER PAGA**

25 **(By Plaintiff and Aggrieved Employees against Defendants)**

26 31. PLAINTIFF incorporates all the foregoing paragraphs of this complaint as if fully
27 alleged herein.

1 32. Under the Private Attorney General Act, Labor Code §§ 2698-99 (“PAGA”),
2 private parties may recover civil penalties for violations of the California Labor Code and the
3 Industrial Welfare Commission’s (“IWC”) Wage Orders. PAGA penalties are in addition to any
4 other relief available under the Labor Code.

5 33. As set forth above, DEFENDANTS violated the California Labor Code by
6 consistently failing to timely pay employees upon discharge.

7 34. PLAINTIFF provided written notice by certified mail to the Labor & Workforce
8 Development Agency (“LWDA”) and to DEFENDANT of the legal claims and theories of this
9 case on February 26, 2020. (Attached hereto as **Exhibit A** is a true and correct copy of the
10 February 26, 2020 letter.) To date, and 65 days from the date of mailing of the written notice, the
11 LWDA has not notified PLAINTIFF that the LWDA intends to exercise jurisdiction over the
12 claim for civil penalties under the PAGA. Accordingly, PLAINTIFF exhausted administrative
13 remedies as required by Labor Code § 2699.3.

14 35. Under the PAGA, PLAINTIFF and all other aggrieved employees are entitled to
15 recover the maximum civil penalties permitted by law from DEFENDANT for the violations of
16 Labor Code alleged in this Complaint.

17 36. PLAINTIFF and all other aggrieved employees are also entitled to recover their
18 attorneys’ fees and costs under Labor Code § 2699.

19 **PRAYER FOR RELIEF**

20 WHEREFORE, PLAINTIFF on behalf of herself and all others similarly situated, prays
21 for relief and judgment against DEFENDANTS as follows:

22 **CLASS CERTIFICATION:**

- 23 1. An order that the action be certified as a class action;
24 2. An order that Plaintiff be certified as the representative of the Classes;
25 3. An order that counsel for Plaintiff be confirmed as Class counsel;

26 ///

1 **ON THE FIRST CAUSE OF ACTION:**

- 2 1. Waiting Time Penalties pursuant to Labor Code Section 203, according to proof;
3 2. Prejudgment interest;

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

- 5 1. Civil penalties under Labor Code Section 2699 (75% payable to the LWDA and
6 25% payable to aggrieved employees);

7
8 **ON ALL CAUSES OF ACTION:**

- 9 1. Judgment in favor of Plaintiff and the putative Classes and against Defendants;
10 2. Reasonable attorney's fees;
11 3. Costs of suit; and
12 4. Such other relief as the Court deems just and proper.

13
14 Dated: May 6, 2020

MOSS BOLLINGER LLP

15
16 By: 

17 Dennis F. Moss

18 Attorneys for Plaintiff KATHY BYRON

19 **DEMAND FOR JURY TRIAL**

20 Plaintiff demand a trial by jury for herself and the Class on all claims so triable.

21 Dated: May 6, 2020

22 MOSS BOLLINGER LLP

23
24 By: 

25 Dennis F. Moss

26 Attorneys for Plaintiff KATHY BYRON
27
28

EXHIBIT A



Moss Bollinger
LLP

Dennis F. Moss 310-773-0323
dennis@mossbollinger.com

February 26, 2020

VIA E-MAIL: PAGAFilings@dir.ca.gov

Secretary David Lanier
Labor & Workforce Development Agency
PAGA ADMINISTRATOR
1515 Clay Street, Ste. 801
Oakland, California 94612

**VIA U.S. CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

Wolfgang Puck Catering and Events, LLC
CSC-Lawyers Incorporating Service-Agent for
Service of Process
2710 Gateway Oaks Dr.
Sacramento, CA 95833

Re: Notice pursuant to Labor Code Section 2699.3(a)(1)
Labor Code Private Attorney General Act ("PAGA")

Employer: Wolfgang Puck Catering and Events, LLC

Employee: Kathy Byron, on behalf of herself and on behalf of all current and former
intermittently employed event employees of Wolfgang Puck Catering and
Events, LLC

Dear Secretary Lanier:

Pursuant to the Private Attorney General Act of 2004, California Labor Code § 2698 *et seq.* ("PAGA"), representative employee, Kathy Byron ("Ms.Byron"), on behalf of herself and all other similarly situated persons who have been intermittently employed by Wolfgang Puck Catering and Events, LLC ("Wolfgang Puck"), gives notice that Wolfgang Puck Catering and

Events, LLC violated California Labor Code 201 within the one year prior to the mailing of this letter.

General Facts

Wolfgang Puck is a catering company that provides catering services for special events in California. The principal place of business of Wolfgang Puck is in Los Angeles County. It employs over 100 people in California. During her employment with Wolfgang Puck Ms. Byron and similarly employed individuals were hired/assigned to work events catered by Wolfgang Puck intermittently. At the end of each event they were laid off until they were hired for another assignment or laid off never to be rehired.

Ms. Byron and other similarly situated persons are covered by Labor Code Section 201 and were “discharged” at the end of each assignment within the meaning of Labor Code Section 201 and *Smith v. Superior Court* (2006) 39 Cal. 4th 77. Pursuant to Labor Code Section 201, Wolfgang Puck owed Ms. Byron and other similarly employed persons immediate payment of their wages at the end of each of the discharges that occurred at the end of each assignment. However, Wolfgang Puck did not pay owed wages at the time of discharge. Instead, Wolfgang Puck paid the wages several days late, on regularly scheduled pay days after the assignments ended. In doing so, Wolfgang Puck violated Section 201, and also violated Section 203 by not paying Ms. Byron and other similarly employed persons their waiting time penalties.

As a result of the foregoing, Wolfgang Puck failed to pay Ms. Byron and others all earned wages at the time of their discharges by Wolfgang Puck.

The Claims

The foregoing facts support Ms. Byron’s claims, on behalf of herself and all other aggrieved individuals for violations of Labor Code § 201 and Labor Code § 203.

As a result, Wolfgang Puck is liable for civil penalties as provided for by California law. Consequently, Ms. Byron and all other aggrieved Wolfgang Puck employees are entitled to recover all penalties permitted by the Labor Code and penalties provided for under California law, including Labor Code § 2698 *et seq.*

Conclusion

Wolfgang Puck violated and continues to violate the Labor Code sections identified above. Ms. Byron requests the agency to investigate the above allegations and provide notice of the investigation and findings pursuant to PAGA's provisions. Alternatively, Ms. Byron requests

that the agency inform her if it does not intend to investigate these violations so that she may file a lawsuit with respect to the allegations discussed in this letter. Thank you for your immediate attention to this matter. If you have any questions, please do not hesitate to contact me at (310) 982-2984, Ext. 6.

Sincerely,

A handwritten signature in blue ink, appearing to read "D.F. Moss". The signature is fluid and cursive, with the first name "Dennis" and last name "Moss" clearly distinguishable.

Dennis F. Moss
MOSS BOLLINGER LLP

cc Kathy Byron