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14 **SUPERIOR COURT OF CALIFORNIA**
15 **COUNTY OF SAN BERNARDINO**

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

JUL 29 2020

BY 
ELYZABETH GOMEZ, DEPUTY

CIV DS 2015780

16 JEANNE FORMOSA, on behalf of the State of
17 California and Aggrieved Employees,

18 Plaintiffs,

19 vs.

20 KING'S SEAFOOD CO. LLC, and DOES 1-50,
21 inclusive,

22 Defendant.

Case No. _____

**COMPLAINT FOR PENALTIES
PURSUANT TO SECTIONS 2699(a) and (f)
OF THE CALIFORNIA LABOR CODE
PRIVATE ATTORNEYS GENERAL ACT
AND DEMAND FOR JURY TRIAL**

200812-0313 7435.02-5.

1 Plaintiff Jeanne Formosa ("Plaintiff"), on behalf of the State of California and Aggrieved
2 Employees, complains and alleges as follows:

3 **INTRODUCTION**

4 1. Plaintiff brings this enforcement action on behalf of the State of California against
5 Defendant King's Seafood Co. ("Defendant") for its systematic violations of California labor law
6 with respect to Defendant's non-exempt hourly employees in California (the "Aggrieved
7 Employees").

8 2. Defendant imposes gratuities on the sale of food and beverages, but fails to distribute
9 the total proceeds of those gratuities to non-managerial service employees as required by California
10 law. This conduct violates California Labor Code § 351.

11 3. Defendant maintains a longstanding policy and practice of failing to properly
12 compensate non-exempt employees for work performed during meal periods, for work performed
13 while "off-the-clock," and for missed meal and rest periods. These policies deny Plaintiff and
14 Aggrieved Employees payment for all hours worked, including overtime, and deny Plaintiff and
15 Aggrieved Employees meal and rest periods that comply with California law.

16 4. Defendant violates California law by knowingly and willfully requiring Plaintiff and
17 Aggrieved Employees to perform work and/or remain on duty during meal and rest periods,
18 subjecting them to interruption during those times. Defendant requires Aggrieved Employees to
19 manually clock out for their unpaid meal periods, even though Aggrieved Employees remain on duty
20 and are continuously subject to interruption during that time.

21 5. Plaintiff and Aggrieved Employees bring this claim to challenge Defendant's policies
22 and practices of: (1) failing to pay Plaintiff and Aggrieved Employees overtime wages; (2) failing to
23 pay Plaintiff and Aggrieved Employees all tip wages owed from gratuity payments; (3) failing to
24 authorize and permit Plaintiff and Aggrieved Employees to take meal and rest breaks to which they
25 are entitled by law; (4) failing to compensate Plaintiff and Aggrieved Employees for all hours worked;
26 (5) failing to provide Plaintiff and Aggrieved Employees accurate, itemized wage statements; (6)
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1 failing to timely pay Plaintiff and Aggrieved Employees full wages upon termination or resignation;
2 and (7) failing to remit the total proceeds from mandatory service fee surcharges to non-managerial
3 service workers like the Aggrieved Employees.

4 **PARTIES**

5 6. Plaintiff Jeanne Formosa is an individual over the age of eighteen, and at all times
6 relevant to this Complaint has been a resident of the State of California, County of Orange. Plaintiff
7 was employed as a server for Defendant at Water Grill in Costa Mesa, California beginning
8 approximately July 2016 and ending approximately December 2019.

9 7. Plaintiff is informed, believes, and thereon alleges that Defendant King's Seafood Co.
10 LLC is a Delaware limited liability corporation with its principal place of business in Costa Mesa,
11 and is registered to do business in California. Defendant may be served with process by serving its
12 designated registered agent, Kelly Ellerman at 3185 Airway Avenue, Suite J, Costa Mesa, California
13 92626

14 8. Plaintiff is informed, believes, and thereon alleges that Defendant maintains a chain of
15 restaurants under various brand names, including Water Grill, Meat on Ocean, King's Fish House,
16 555 East, Fish Camp, Pier Burger, and others throughout the United States, including in California.

17 9. Plaintiff is informed, believes, and thereon alleges that Defendant King's Seafood Co.
18 LLC directly controls the operations of its agents, namely the various restaurants that Defendant
19 owns, operates, and/or manages. Plaintiff is informed, believes, and thereon alleges that Defendant
20 exercises control over Plaintiff and Aggrieved Employees with respect to their employment.

21 10. As employer of Plaintiff and Aggrieved Employees throughout the relevant time
22 period, Defendant is liable for penalties for violating the Labor Code with respect to the employment
23 of Plaintiff and Aggrieved Employees.

24 11. Throughout this Complaint, any reference to "Defendant" is intended to refer to
25 Defendant King's Seafood Co. LLC's various restaurant groups collectively and jointly.

26 12. At all material times, Defendant has done business under the laws of California, has
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1 had places of business in California, including in this County, and has employed Aggrieved
2 Employees in this County and elsewhere in California. Defendant is a “person” as defined in Labor
3 Code § 18 and “employer” as that term is used in the Labor Code and the IWC Wage Orders
4 regulating wages, hours, and working conditions.

5 **SUBJECT MATTER JURISDICTION AND VENUE**

6 13. This Court has jurisdiction over Plaintiff’s claims for penalties pursuant to the PAGA.
7 The Court also has jurisdiction over Defendant because Defendant does business in the State of
8 California, is authorized to do business in California, and is registered with the California Secretary
9 of State.

10 14. Defendant operates multiple restaurants and employs aggrieved employees in
11 California.

12 15. Venue is proper in this judicial district pursuant to Code of Civil Procedure §§ 393
13 and/or 395.5. Defendant conducts business, employs Aggrieved Employees, and has jobsites in this
14 County, namely at the King’s Fish House restaurant location in Rancho Cucamonga.

15 **FACTUAL ALLEGATIONS**

16 16. Defendant owns, operates, and manages various restaurant groups throughout the
17 United States and California, including Water Grill, Meat on Ocean, King’s Fish House, 555 East,
18 Fish Camp, Pier Burger, and Lou & Mickey’s. Defendant employs hundreds of hourly non-exempt
19 workers similarly situated to Plaintiff across these restaurants.

20 17. Plaintiff worked at Water Grill South Coast Plaza restaurant in Costa Mesa, California
21 as a server from July 2016 to December 2019. Plaintiff was paid at an hourly rate of \$12, plus tips,
22 and was generally scheduled to work between 6 and 9 hours per day and 5 shifts per week; however,
23 in actuality, Plaintiff typically worked hours beyond the scheduled shift. On average, Plaintiff
24 worked 40 to 45 hours per week.

25 18. As a matter of course, Defendant adds a mandatory service charge of 20% to its food
26 and beverage bills. These service charges are in the form of automatic surcharges which customers
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1 are required to pay, and which reasonably appear to be gratuities for the service staff.

2 19. It is typically customary in the hospitality industry that establishments impose gratuity
3 charges in the range of 18% to 22% of the food and beverage bills. Thus, when customers pay these
4 mandatory service charges, it is reasonable for the customers to believe those service charges are
5 gratuities to be paid to the service staff. Indeed, because of the way these service charges are depicted
6 to customers, and the custom in the food and beverage industry that gratuities range of 18% to 22%
7 are paid for food and beverage service, customers pay these charges reasonably believing they were
8 to be remitted in their entirety to the non-exempt service staff as gratuities.

9 20. However, Defendant does not remit the total proceeds of these service charges to the
10 non-managerial employees who serve the food and beverages. Instead, Defendant has a policy and
11 practice of retaining a portion of those service charges for themselves and/or for managerial non-
12 service worker employees. As a result, Plaintiff and Aggrieved Employees do not receive the
13 proceeds of the service charges as gratuities, to which they are entitled under California law.

14 21. As a matter of policy, Defendant also requires Plaintiff and Aggrieved Employees to
15 remain on duty throughout their scheduled shifts, including during rest breaks and unpaid meal
16 periods. Defendant does not compensate Plaintiff and Aggrieved Employees for work performed
17 while clocked out for meal periods. Defendant requires Plaintiff and Aggrieved Employees to
18 manually clock out for these unpaid meal periods when in fact Plaintiff and Aggrieved Employees
19 do not receive a bona fide meal break relieved of all duties. In essence, Defendant shifts the burden
20 from itself to individual workers to ensure that the workers receive a full, completely off-duty meal
21 period. Plaintiff is informed, believes, and thereon alleges that this policy and practice applies to all
22 Aggrieved Employees throughout California. Likewise, Defendant routinely refuses to authorize or
23 permit Aggrieved Employees to take ten-minute rest periods as required by law.

24 22. Beyond Defendant's failure to authorize or permit meal and rest breaks, Aggrieved
25 Employees' schedules are too busy, and Defendant's pressure to complete job assignments too
26 constant, for Aggrieved Employees to take compliant meal or rest breaks. Defendant monitors
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1 Plaintiff and Aggrieved Employees throughout the day, directing them to go from customer to
2 customer without breaks. Further, Defendant fails to pay Plaintiff and Aggrieved Employees
3 premium wages for their missed breaks. This uniformly violates California law.

4 23. In addition to working through unpaid meal periods, Aggrieved Employees also
5 perform work while "off-the-clock" with Defendant's knowledge and are denied compensation for
6 the time spent engaged in this off-the-clock work. Aggrieved Employees' off-the-clock work
7 includes cleaning, stocking supplies, attending work-related meetings, and performing various other
8 tasks before clocking in for their shifts. Defendant discourages Aggrieved Employees from recording
9 work hours performed outside of their scheduled shifts. Even though Aggrieved Employees routinely
10 work prior to the start of their shifts, Defendant sets strict clock-in procedures requiring Aggrieved
11 Employees to clock in within a few minutes of their scheduled start time, regardless of when they
12 actually start their work. Aggrieved Employees are not compensated for this work performed outside
13 of their recorded hours. For example, Aggrieved Employees are not permitted to clock in until the
14 start of their scheduled shift but are required to arrive early for pre-shift meetings while off-the-clock
15 at the direction of their supervisors. Aggrieved Employees are also required to restock supplies and
16 set up the tables in the restaurant, even before clocking in.

17 24. As a result of these policies, Defendant denies Plaintiff and Aggrieved Employees
18 gratuities to which they are lawfully owed, meal and rest periods to which they are statutorily entitled,
19 as well as overtime premiums resulting from the additional off-the-clock work performed during
20 meal breaks, as well as pre-shift work performed for Defendant's benefit.

21 25. Despite these recurring violations, Defendant does not provide Plaintiff and Aggrieved
22 Employees premium pay for missed meal and rest periods.

23 26. Plaintiff is informed, believes, and thereon alleges that the same timekeeping system is
24 used across all Defendant's facilities.

25 27. Defendant's common course of wage-and-hour abuse includes routinely failing to
26 maintain true and accurate records of the hours worked by Aggrieved Employees. In particular,
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1 Defendant has failed to record hours that Plaintiff and Aggrieved Employees worked during missed
2 meal breaks, as well as hours worked off-the-clock.

3 28. Defendant's failure to record all gratuity payments and all hours worked also results in
4 a failure to provide Aggrieved Employees, including Plaintiff, accurate itemized wage statements as
5 required by California law. The wage statements Defendant provides are not accurate because they
6 do not reflect the actual wages earned as gratuity payments, nor the actual hours worked by Plaintiff
7 and Aggrieved Employees. The wage statements do not contain all of the service charges that should
8 be paid as gratuity payments, and do not contain all of the off-the-clock work or time that should be
9 compensable during interruptible meal breaks. Further, the wage statements are inaccurate because
10 they do not include premium pay for missed breaks, overtime, and work that was performed while
11 the timeclock was out of service.

12 29. Defendant also does not provide Aggrieved Employees, including Plaintiff, with full
13 payment of all wages owed at the end of employment. As these workers are owed for earned but
14 unpaid gratuities, as well as off-the-clock work, unpaid overtime, and premium pay when their
15 employment ends, and these amounts remain unpaid under Defendant's policies and practices,
16 Defendant fails to pay all wages due upon termination. As a consequence, Defendant is subject to
17 waiting time penalties.

18 30. On March 18, 2020, pursuant to Labor Code § 2699.3, Plaintiff served the California
19 Labor and Workforce Development Agency with notice of her intention to file a PAGA action for
20 violations of Labor Code §§ 351 (gratuity violation); 1194 (failure to pay minimum wage); 50
21 (failure to pay overtime wages); 204 (failure to compensate for all hours worked); 226.7 and 512
22 (failure to provide meal and rest periods); 226 and 226.3 (failure to provide timely and compliant
23 itemized wage statements); 201-203, 225.5, and 256 (failure to timely pay all wages owed during
24 employment and following separation from employment); 2802 (failure to reimburse for necessary
25 business expenditures); and Business and Professions Code §§ 17200, *et seq.* (engaging in unfair
26 business practices). Plaintiff served Defendant's registered agent with a courtesy copy of the notice
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1 via certified mail.

2 **FIRST CAUSE OF ACTION**
3 **Penalties Pursuant to Labor Code § 2699(a)**

4 31. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth
5 herein.

6 32. Labor Code § 2699(a) provides:

7 Notwithstanding any other provision of law, any provision of this code
8 that provides for a civil penalty to be assessed and collected by the Labor
9 and Workforce Development Agency or any of its departments, divisions,
10 commissions, boards, agencies or employees, for a violation of this code,
11 may, as an alternative, be recovered through a civil action brought by an
12 aggrieved employee on behalf of himself or herself and other current or
13 former employees.

14 33. Labor Code § 203 provides, in relevant part:

15 If an employer willfully fails to pay, without abatement or reduction, in
16 accordance with Sections 201, 201.5, 202, and 205.5, any wages of an
17 employee who is discharged or who quits, the wages of the employee shall
18 continue as a penalty from the due date thereof at the same rate until paid
19 or until an action therefore is commenced; but the wages shall not continue
20 for more than 30 days.

21 34. Labor Code § 226(a) provides:

22 Every employer shall, semimonthly or at the time of each payment of
23 wages, furnish each of his or her employees, either as a detachable part of
24 the check, draft, or voucher paying the employee's wages, or separately
25 when wages are paid by personal check or cash, an accurate itemized
26 statement in writing showing (1) gross wages earned, (2) total hours worked
27 by the employee, except for any employee whose compensation is solely
28 based on a salary and who is exempt from payment of overtime under
subdivision (a) of Section 515 or any applicable order of the Industrial
Welfare Commission, (3) the number of piece-rate units earned and any
applicable piece rate if the employee is paid on a piece-rate basis, (4) all
deductions, provided that all deductions made on written orders of the
employee may be aggregated and shown as one item, (5) net wages earned,
(6) the inclusive dates of the period for which the employee is paid, (7) the
name of the employee and his or her social security number, (8) the name
and address of the legal entity that is the employer, and (9) all applicable
hourly rates in effect during the pay period and the corresponding number
of hours worked at each hourly rate by the employee.

1 Workforce Development Agency ("LWDA") with notice of her intention to file this claim. Sixty-
2 five calendar days have passed without notice from the LWDA. Plaintiff satisfied the administrative
3 prerequisites to commence this civil action in compliance with § 2699.3(a).

4 41. Plaintiff seeks the aforementioned penalties on behalf of the State, other Aggrieved
5 Employees, and herself as set forth in Labor Code § 2699(g)(i).

6 42. Defendant is liable to Plaintiff, Aggrieved Employees, and the State of California for
7 the civil penalties set forth in this Complaint, with interest thereon. Plaintiff is also entitled to an
8 award of attorneys' fees and costs as set forth below.

9 43. Wherefore, Plaintiff requests relief as hereinafter provided.

10 **SECOND CAUSE OF ACTION**
11 **Penalties Pursuant to Labor Code § 2699(f)**

12 44. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth
13 herein.

14 45. Labor Code § 2699(f) provides:

15 For all provisions of this code except those for which a civil penalty is
16 specifically provided, there is established a civil penalty for a violation of
17 these provisions, as follows: . . . (2) If, at the time of the alleged violation,
18 the person employs one or more employees, the civil penalty is one hundred
dollars (\$100) for each aggrieved employee per pay period for the initial
violation and two hundred dollars (\$200) for each aggrieved employee per
pay period for each subsequent violation.

19 46. To the extent than any violation alleged herein does not carry penalties under Labor
20 Code § 2699(a), Plaintiff seeks civil penalties pursuant to Labor Code § 2699(f) for Plaintiff and
21 Aggrieved Employees each pay period in which he or she was aggrieved, in the amounts established
22 by Labor Code § 2699(f). Plaintiff seeks civil penalties under Labor Code § 2699(f) for Defendant's
23 violations of Labor Code §§ 351, 1194, 204, and 2802.

24 47. Pursuant to Labor Code § 2699.3(a)(1) and (2), Plaintiff has provided the LWDA with
25 notice of her intention to file this claim. Sixty-five calendar days have passed without notice from
26 the LWDA. Plaintiff satisfied the administrative prerequisites to commence this civil action in
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1 compliance with § 2699.3(a).

2 48. Plaintiff seeks the aforementioned penalties on behalf of the State, other Aggrieved
3 Employees, and themselves as set forth in Labor Code § 2699(g)(i).

4 49. Defendant is liable to Plaintiff, Aggrieved Employees, and the State of California for
5 the civil penalties set forth in this Complaint, with interest thereon. Plaintiff is also entitled to an
6 award of attorneys' fees and costs as set forth below.

7 50. Wherefore, Plaintiff requests relief as hereinafter provided.

8 **PRAYER FOR RELIEF**

9 WHEREFORE, Plaintiff, on behalf of the State of California and Aggrieved Employees,
10 requests the following relief:

- 11 1. For an order awarding civil penalties to the full extent provided for by the PAGA;
12 2. For an award of reasonable attorneys' fees as provided by the California Labor Code,
13 including Labor Code § 2699(g)(1); California Code of Civil Procedure §1021.5;
14 and/or any other applicable law;
15 3. For all costs of suit;
16 4. For interest on any penalties awarded, as provided by applicable law; and
17 5. For such other and further relief as this Court deems just and proper.

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19 Respectfully submitted,

20 Date: July 28, 2020

21 
22 Carolyn H. Cottrell
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26 COTTRELL KONECKY LLP

27 *Attorneys for Plaintiff, on behalf of the State of*
28 *California and Aggrieved Employees*

1 **DEMAND FOR JURY TRIAL**

2 Plaintiff hereby demands a jury trial on all claims and issues for which Plaintiff is entitled to
3 a jury.

4 Respectfully submitted,

5 Date: July 28, 2020

6 

7 Carolyn H. Cottrell

8 Ori Edelstein

9 Kristabel Sandoval

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