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**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN MATEO**

AUSTIN SCOTT, on Behalf of the State of
California and Aggrieved Employees,

Plaintiff,

vs.

PACIFICA HOTEL COMPANY, and DOES 1
through 50, inclusive,

Defendant.

Case No. 20-CIV-03647

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

DEMAND FOR JURY TRIAL

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

3 **INTRODUCTION**

4 1. Plaintiff brings this enforcement action on behalf of the State of California against
5 Defendant Pacifica Hotel Company ("Defendant" or "Pacifica Hotels") for its systematic violations
6 of California labor law with respect to Defendant's current and former non-exempt employees who
7 worked in California (the "Aggrieved Employees"). Throughout the relevant time period, Plaintiff
8 and Aggrieved Employees have been denied proper payment for all hours worked, minimum wages,
9 overtime wages, as well as unpaid gratuity payments, and have been denied meal and rest periods
10 that comply with California law.

11 2. Defendant imposes mandatory "service fee" surcharges on the total cost of banquet
12 services, but fails to distribute the total proceeds of those service fees to non-managerial service
13 employees as gratuity payments as required by California law. This conduct violates California Labor
14 Code § 351.

15 3. Defendant also maintains a longstanding policy and practice of failing to properly
16 compensate non-exempt employees for work performed during meal periods, and for missed rest and
17 meal periods. These policies deny Plaintiff and Aggrieved Employees payment for all hours worked,
18 including overtime, and deny Plaintiff and Aggrieved Employees meal and rest periods that comply
19 with California law.

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

3 5. Plaintiff and Aggrieved Employees seek penalties under the Labor Code Private
4 Attorneys General Act of 2004 (“PAGA”).

5 **JURISDICTION AND VENUE**

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

10 7. Venue is proper in this judicial district pursuant to Code of Civil Procedure §§ 393 and
11 395.5. Defendant conducts business and employs Aggrieved Employees in this County, namely at
12 its Half Moon Bay Lodge location in San Mateo County, and therefore liability arises in this County.

13 **PARTIES**

14 8. Plaintiff Austin Scott is an individual over the age of eighteen, and at all times relevant
15 to this Complaint was a resident of the State of California, County of Los Angeles. Plaintiff was
16 employed as a service worker by Defendant at Jamaica Bay Inn in Marina Del Rey, California from
17 June 2019 to April 2020.

18 9. The Aggrieved Employees are current former similarly situated, hourly, non-exempt
19 employees of Defendant in California.

20 10. Plaintiff is informed, believes, and thereon alleges that Defendant Pacifica Hotel
21 Company is a California corporation with its principal place of business located in Aliso Viejo,
22 California. Defendant may be served with process by serving its registered agent, Matthew D.
23 Marquis, 39 Argonaut, Aliso Viejo, California 92656.

24 11. At all relevant times, Defendant has been a California corporation, has had places of
25 business in California, including in this district, and has employed Aggrieved Employees in
26 California. Defendant is a “person” as defined in Labor Code § 18 and an “employer” as that term is
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used in the Labor Code and the IWC Wage Orders regulating wages, hours, and working conditions.

FACTUAL ALLEGATIONS

12. Defendant operates the Jamaica Bay Inn in Marina Del Rey, California. Defendant employs dozens of hourly non-exempt workers similarly situated to Plaintiff at the Jamaica Bay Inn.

13. Plaintiff worked as an employee of Pacifica Hotels at the Jamaica Bay Inn as a non-exempt bartender from approximately June 2019 to April 2020. Plaintiff was paid at an hourly rate of \$14.25. On average, Plaintiff Scott worked 28 hours in a workweek every week. On average, Plaintiff worked in excess of eight hours in a day twice per month.

14. Aggrieved Employees are current and former hourly, non-exempt employees of Defendant in California.

15. Aggrieved Employees perform their jobs under Defendant's supervision and using materials and technology approved and supplied by Defendant.

16. Aggrieved Employees are required to follow and abide by common work, time, and pay policies and procedures in the performance of their jobs.

17. At the end of each pay period, Aggrieved Employees members receive wages from Defendant that are determined by common systems and methods that Defendant selects and controls.

18. Defendant pays Aggrieved Employees on an hourly rate basis.

19. As a matter of course, Defendant routinely adds a service charge of 20% to 23% to the total cost of food and beverages served at banquets. These service charges have been in the form of automatic surcharges that appear only as a line item on the customer's bill as "service," which customers are required to pay, and which reasonably appear to be gratuities for the service staff by their description as a charge for "service." Moreover, Plaintiff and Aggrieved Employees are instructed not to ask for tips during the course of their work, which underscores that the "service" fee charged to the customer is reasonably interpreted by the customer as a built-in gratuity payment meant to compensate the Aggrieved Employees.

20. There is a custom in the hospitality industry to treat sums designated as "service

1 charges” as gratuities for the service worker employees. However, Defendant does not remit the
2 proceeds of these service charges to Plaintiff and certain Aggrieved Employees, the non-managerial
3 employees who serve the food and beverages. Instead, Defendant has a policy and practice of
4 retaining those service charges for itself. As a result, Plaintiff and Aggrieved Employees do not
5 receive the proceeds of the service charges as gratuities, to which they are entitled under California
6 law.

7 21. As a matter of policy, Defendant also requires Plaintiff and Aggrieved Employees to
8 remain on duty during their scheduled shifts, including during rest breaks and unpaid meal periods.
9 Defendant does not compensate Aggrieved Employees for work performed while clocked out for
10 meal periods. Plaintiff and Aggrieved Employees are often kept too busy with work responsibilities
11 to take meal and rest breaks. Breaks are often interrupted, cut short, or not taken at all. Defendant
12 does not require Aggrieved Employees to manually clock out for these unpaid meal periods. Instead,
13 Defendant automatically deducts 30 minutes from the Aggrieved Employees’ time records, and then
14 requires Aggrieved Employees to falsely report that they received a meal break, when in fact
15 Aggrieved Employees did not receive a bona fide meal break that relieved them of all duties.

16 22. As a result of these policies, Defendant denies Plaintiff and Aggrieved Employees
17 gratuities to which they are lawfully owed, minimum wages, time worked while off-the-clock for
18 Defendant’s benefit, and reimbursement for business expenses incurred for the benefit of Defendant.

19 23. Defendant’s common course of wage-and-hour abuse includes routinely failing to
20 maintain true and accurate records of the hours worked by Aggrieved Employees. In particular,
21 Defendant has failed to record hours that Plaintiff and Aggrieved Employees work while off-the-
22 clock.

23 24. Defendant’s failure to record all gratuity payments and all hours worked also results in
24 a failure to provide Aggrieved Employees, including Plaintiff, accurate itemized wage statements as
25 required by California law. The wage statements Defendant provides are not accurate because they
26 do not reflect the actual wages earned as gratuity payments, nor the actual hours worked by Plaintiff
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1 and Aggrieved Employees. The wage statements do not contain all of the service charges that should
2 be paid as gratuity payments, and do not contain all of the off-the-clock work or time that should be
3 compensable.

4 25. Plaintiff and Aggrieved Employees are often denied overtime for all work performed
5 in excess of eight hours per day or 40 hours per week in violation of California law. Plaintiff and
6 Aggrieved Employees are typically scheduled to work shifts of eight hours. However, Plaintiff and
7 Aggrieved Employees regularly work additional hours beyond their normally scheduled shifts.
8 Plaintiff and Aggrieved Employees regularly work five days consecutively.

9 26. Further, Defendant often does not provide Aggrieved Employees, including Plaintiff,
10 with full payment of all wages owed at the end of employment. As these workers are owed for work
11 performed during meal and rest breaks, unpaid overtime, and premium pay when their employment
12 ends, and these amounts remain unpaid under Defendant's policies and practices, Defendant fails to
13 pay all wages due upon termination. As a consequence, Defendant is subject to waiting time
14 penalties.

15 27. Defendant has employed hundreds of people similarly situated to Plaintiff throughout
16 its hotels and resorts in California.

17 28. Defendant's method of paying Plaintiff and Aggrieved Employees is willful, and is not
18 based on a good faith and reasonable belief that its conduct complies with California law.
19 Defendant's conduct causes significant damages to non-exempt hourly employees in an amount to
20 be determined at trial.

21 **FIRST CAUSE OF ACTION**
22 **Penalties Pursuant to Labor Code § 2699(a)**

23 29. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth
24 herein.

25 30. Labor Code § 2699(a) provides:

26 Notwithstanding any other provision of law, any provision of this code that
27 provides for a civil penalty to be assessed and collected by the Labor and
28 Workforce Development Agency or any of its departments, divisions,

commissions, boards, agencies or employees, for a violation of this code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees.

31. Labor Code § 203 provides, in relevant part:

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

32. Labor Code § 226(a) provides:

Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely 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.

33. Labor Code § 226.3 provides: 2

Any employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the records required in subdivision (a) of Section 226. The civil penalties provided for in this section are in addition to any other penalty provided by law.

34. Plaintiff seeks civil penalties pursuant to Labor Code § 2699(a) for each failure by

1 Defendant, as alleged above, to timely pay all wages owed to Plaintiff and Aggrieved Employees
2 in compliance with Labor Code §§ 201-202 in the amounts established by Labor Code § 203.
3 Plaintiff seeks such penalties as an alternative to the penalties available under Labor Code § 203, as
4 prayed for herein.

5 35. Plaintiff also seeks civil penalties pursuant to Labor Code § 2699(a) for each failure
6 by Defendant, alleged above, to provide Plaintiff and Aggrieved Employees an accurate, itemized
7 wage statement in compliance with Labor Code § 226(a) in the amounts established by Labor Code
8 § 226(e). Plaintiff seeks such penalties as an alternative to the penalties available under Labor Code
9 § 226(e), as prayed for herein.

10 36. Plaintiff also seeks civil penalties pursuant to Sections 225.5, 226.3, 512, and 558 of
11 the California Labor Code.

12 37. Pursuant to Labor Code § 2699.3(a)(1) and (2), Plaintiff provided the Labor and
13 Workforce Development Agency (“LWDA”) with notice of her intention to file this claim. Sixty-
14 five calendar days have passed without notice from the LWDA. Plaintiff satisfied the administrative
15 prerequisites to commence this civil action in compliance with § 2699.3(a).

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

18 39. Defendant is liable to Plaintiff, Aggrieved Employees, and the State of California for
19 the civil penalties set forth in this Complaint, with interest thereon. Plaintiff is also entitled to an
20 award of attorneys’ fees and costs as set forth below.

21 40. Wherefore, Plaintiff requests relief as hereinafter provided.

22 **SECOND CAUSE OF ACTION**
23 **Penalties Pursuant to Labor Code § 2699(f)**

24 41. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth
25 herein.

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1 42. Labor Code § 2699(f) provides:

2 For all provisions of this code except those for which a civil penalty is
3 specifically provided, there is established a civil penalty for a violation of
4 these provisions, as follows: . . . (2) If, at the time of the alleged violation,
5 the person employs one or more employees, the civil penalty is one hundred
6 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.

7 43. To the extent than any violation alleged herein does not carry penalties under Labor
8 Code § 2699(a), Plaintiff seeks civil penalties pursuant to Labor Code § 2699(f) for Plaintiff and
9 Aggrieved Employees each pay period in which he or she was aggrieved, in the amounts established
10 by Labor Code § 2699(f). Plaintiff seeks civil penalties under Labor Code § 2699(f) for Defendant's
11 violations of Labor Code § 351, 204, 510, 225.5, 226, 256, 226.7, 512, and 1194.

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

16 45. Plaintiff seeks the aforementioned penalties on behalf of the State, other Aggrieved
17 Employees, and himself as set forth in Labor Code § 2699(g)(i).

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

21 47. Wherefore, Plaintiff requests relief as hereinafter provided.

22 **PRAYER FOR RELIEF**

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

- 25 1. For an order awarding civil penalties to the full extent provided for by the PAGA;
26 2. For an award of reasonable attorneys' fees as provided by the California Labor Code,
27 including Labor Code § 2699(g)(1); California Code of Civil Procedure §1021.5;

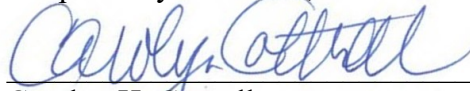
and/or any other applicable law;

3. For all costs of suit;

4. For interest on any penalties awarded, as provided by applicable law; and

5. For such other and further relief as this Court deems just and proper.

Respectfully submitted,



Carolyn H. Cottrell

David C. Leimbach

Ryan M. Hecht

SCHNEIDER WALLACE

COTTRELL KONECKY LLP

Date: August 20, 2020

Attorneys for Plaintiff, on behalf of the State of
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: August 20, 2020

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7 Carolyn H. Cottrell

8 David C. Leimbach

9 Ryan M. Hecht

10 Kristabel Sandoval

11 SCHNEIDER WALLACE

12 COTTRELL KONECKY LLP

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