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**SUPERIOR COURT OF CALIFORNIA
COUNTY OF SANTA CLARA**

20CV370665

MICHELLE SMITH, on Behalf of the State of
California and Aggrieved Employees,

Plaintiff,

vs.

CURIO MANAGEMENT, LLC and CURIO
EMPLOYER, LLC, and DOES 1 through 50,
inclusive,

Defendants.

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**

DEMAND FOR JURY TRIAL

1 Plaintiff Michelle Smith (“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 Defendants Curio Management, LLC and Curio Employer, LLC, (“Defendants”) for their systematic
6 violations of California labor law with respect to Defendants’ current and former non-exempt
7 employees who worked at any Curio property in California (the “Aggrieved Employees”).
8 Throughout the relevant time period, Plaintiff and Aggrieved Employees have been denied: (1) proper
9 payment for unpaid gratuity payments, (2) timely and accurate wage statements, (3) payment for all
10 wages owed during employment, and (4) payment for all wages owed following separation from
11 employment under California law.

12 2. Defendants impose mandatory surcharges of 18% for in-room dining services, which
13 customers reasonably believe to represent gratuity/tips for the Aggrieved Employees. However,
14 Defendants fail to distribute the total proceeds of those gratuities to non-managerial service
15 employees as required by California law. This conduct violates California Labor Code § 351.

16 3. As a result in this systematic underpayment of gratuity payments, Defendants also fail
17 to provide timely and accurate wage statements to the Aggrieved Employees in violation of Labor
18 Code § 226, and fail to provide all wages owed during employment and following separation from
19 employment under Labor Code §§ 201-203, 225.5, and 256.

20 4. Plaintiff and Aggrieved Employees bring this action to challenge Defendants’ policies
21 and practices of: (1) failing to pay Plaintiff and Aggrieved Employees all tips owed from gratuity
22 payments; (2) failing to provide Plaintiff and Aggrieved Employees timely and accurate, itemized
23 wage statements; and (3) failing to timely pay Plaintiff and Aggrieved Employees full wages during
24 their employment and upon termination or resignation.

25 5. Plaintiff and Aggrieved Employees seek penalties under the Labor Code Private
26 Attorneys General Act of 2004 (“PAGA”).
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1 managed, and/or owned places of business in California, including in this district, and have employed
2 Aggrieved Employees in California. Defendants are each considered a “person” as defined in Labor
3 Code § 18 and an “employer” as that term is used in the Labor Code and the IWC Wage Orders
4 regulating wages, hours, and working conditions.

5 **FACTUAL ALLEGATIONS**

6 13. Defendants operate numerous hotels and resorts within the State of California,
7 including but not limited to the Juniper Hotel in Cupertino, California. Defendants employ hundreds
8 of Aggrieved Employees throughout these properties.

9 14. Plaintiff worked as an employee of Defendants at the Juniper Hotel as a non-exempt
10 service worker from approximately August 2019 to February 2020. Plaintiff was paid at an hourly
11 rate of \$20.50, plus tips. On average, Plaintiff worked approximately 8 hours per shift and 5 shifts
12 per week. On average, Plaintiff worked approximately 40 hours in a workweek every week.

13 15. Aggrieved Employees are current and former hourly, non-exempt service employees
14 of Defendants at any Curio hotel throughout California.

15 16. Aggrieved Employees perform their jobs under Defendants’ supervision and using
16 materials and technology approved and supplied by Defendants.

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

19 18. At the end of each pay period, Aggrieved Employees members receive wages from
20 Defendants that are determined by common systems and methods that Defendants select and control.

21 19. Defendants pay Aggrieved Employees on an hourly rate basis.

22 20. As a matter of course, Defendants routinely add a mandatory surcharge of 18% to the
23 total cost of food and beverages served as in-room dining services. These charges have been in the
24 form of automatic surcharges that appear only as a line item on the customer’s bill as “service fee”
25 or “service charge” and which reasonably appear to be gratuities for the service staff by their
26 description as a charge for “service.” There is a custom in the hospitality industry to treat sums
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designated as “service charges” as gratuities for the service worker employees.

21. Defendants do not remit the total proceeds of these gratuities to Plaintiff and Aggrieved Employees, the non-managerial employees who serve the food and beverages. Instead, Defendants have a policy and practice of retaining portions of those gratuities for themselves or for their exempt, managerial employees. As a result, Plaintiff and Aggrieved Employees do not receive the total proceeds of these service charge gratuities, to which they are entitled under California law. As a result of these policies, Defendants deny Plaintiff and Aggrieved Employees gratuities to which they are lawfully owed.

22. Defendants’ failure to record all gratuity payments owed also results in a failure to provide Aggrieved Employees, including Plaintiff, accurate itemized wage statements as required by California law. The wage statements Defendant provides are not accurate because they do not reflect the actual wages earned, including all service charges that should be paid as gratuity payments.

23. Further, Defendants often do not provide Aggrieved Employees, including Plaintiff, with full payment of all wages owed during their employment and at the end of employment. As these workers are owed for gratuity payments resulting from the service charge, and these amounts remain unpaid under Defendants’ policies and practices, Defendants fail to pay all wages due upon termination. As a consequence, Defendants are subject to waiting time penalties.

24. Defendants employ hundreds of people similarly situated to Plaintiff throughout their hotels and resorts in California.

25. Defendants’ method of paying Plaintiff and Aggrieved Employees is willful, and is not based on a good faith and reasonable belief that its conduct complies with California law. Defendants’ conduct causes significant damages to non-exempt hourly employees in an amount to be determined at trial.

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

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

1 fails to keep the records required in subdivision (a) of Section 226. The civil
2 penalties provided for in this section are in addition to any other penalty
provided by law.

3 31. Plaintiff seeks civil penalties pursuant to Labor Code § 2699(a) for each failure by
4 Defendants, as alleged above, to timely pay all wages owed to Plaintiff and Aggrieved Employees
5 in compliance with Labor Code §§ 201-202 in the amounts established by Labor Code § 203.
6 Plaintiff seeks such penalties as an alternative to the penalties available under Labor Code § 203, as
7 prayed for herein.

8 32. Plaintiff also seeks civil penalties pursuant to Labor Code § 2699(a) for each failure
9 by Defendants, alleged above, to provide Plaintiff and Aggrieved Employees an accurate, itemized
10 wage statement in compliance with Labor Code § 226(a) in the amounts established by Labor Code
11 § 226(e). Plaintiff seeks such penalties as an alternative to the penalties available under Labor Code
12 § 226(e), as prayed for herein.

13 33. Plaintiff also seeks civil penalties pursuant to Sections 225.5 and 226.3 of the
14 California Labor Code.

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

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

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

24 37. Wherefore, Plaintiff requests relief as hereinafter provided.

25 **SECOND CAUSE OF ACTION**
26 **Penalties Pursuant to Labor Code § 2699(f)**

27 38. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth

1 herein.

2 39. Labor Code § 2699(f) provides:

3 For all provisions of this code except those for which a civil penalty is
4 specifically provided, there is established a civil penalty for a violation of
5 these provisions, as follows: . . . (2) If, at the time of the alleged violation,
6 the person employs one or more employees, the civil penalty is one hundred
7 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.

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

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

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

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

22 44. Wherefore, Plaintiff requests relief as hereinafter provided.

23 **PRAYER FOR RELIEF**

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

- 26 1. For an order awarding civil penalties to the full extent provided for by the PAGA;
27 2. For an award of reasonable attorneys' fees as provided by the California Labor Code,

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 any interest as provided by applicable law; and
5. For such other and further relief as this Court deems just and proper.

Respectfully submitted,

Date: September 22, 2020



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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: September 22, 2020

6 

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