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SUPERIOR COURT OF CALIFORNIA

COUNTY OF ALAMEDA

KIMBER SEYBERT, on behalf of the State of California and Aggrieved Employees, Plaintiff, vs. CHLN, INC., LANDRY'S, INC., and LANDRY'S PAYROLL, INC. Defendants.	Case No. RG21087543 **FIRST AMENDED COMPLAINT FOR PENALTIES PURSUANT TO SECTIONS 2699(a) and (f) OF THE CALIFORNIA LABOR CODE PRIVATE ATTORNEYS GENERAL ACT AND DEMAND FOR JURY TRIAL**

Plaintiff Kimber Seybert ("Plaintiff"), on behalf of the State of California and Aggrieved Employees, complains and alleges as follows:

INTRODUCTION

1. Plaintiff brings this enforcement action on behalf of the State of California against Defendants CHLN, Inc. ("Chart House"), Landry's, Inc. ("Landry's"), and Landry's Payroll, Inc. ("Landry's Payroll") (collectively "Defendants") for their systematic violations of California labor law with respect to Defendants' non-exempt hourly employees in California (the "Aggrieved Employees") from November 25, 2019 through the present (the "Relevant Time Period").

2. Defendants impose gratuities on the sale of food and beverages, but fail to distribute the total proceeds of those gratuities to non-managerial service employees as required by California law. This conduct violates California Labor Code § 351.

3. Defendants have maintained longstanding policies and practices of failing to properly compensate non-exempt employees for work performed while "off-the-clock" and for missed rest periods. These policies deny Plaintiff and Aggrieved Employees payment for all hours worked and rest periods that comply with California law.

4. Further, upon information and belief, Defendants have violated California law in relation to their vacation policy by forcing Plaintiff and Aggrieved Employees to forfeit accrued vacation days, and have failed to pay all vested vacation wages upon separation from employment.

5. Plaintiff and Aggrieved Employees bring this complaint to challenge Defendants' wage and hour policies and practices, including: (1) failing to pay Plaintiff and Aggrieved Employees all tip wages owed from gratuity payments; (2) failing to pay Plaintiff and Aggrieved Employees all minimum wages owed; (3) failing to pay Plaintiff and Aggrieved Employees for all hours worked; (4) failing to pay Plaintiff and Aggrieved Employees for all overtime/doubletime wages owed; (5) failure to provide Plaintiff and Aggrieved Employees with compliant rest breaks; (6) failing to pay Plaintiff and Aggrieved Employees, with vested vacation wages upon separation from employment; (7) failing to provide Plaintiff and Aggrieved Employees accurate, itemized wage statements; and

(8) failing to timely pay Plaintiff and Aggrieved Employees all wages upon separation from employment.

PARTIES

6. Plaintiff Kimber Seybert is an individual over the age of eighteen, and at all times relevant to this Complaint was a resident of the State of California, County of San Diego. Plaintiff was employed as a service worker by Defendants at Chart House in Cardiff, California from August 2007 through May 2020.

7. Plaintiff is informed, believes, and thereon alleges that Defendant CHLN, Inc. is a Delaware corporation, registered to do business in California. Defendant CHLN, Inc. may be served with process by serving its registered agent, C T Corporation System, 818 West Seventh Street, Suite 930, Los Angeles, California 90017.

8. Plaintiff is informed, believes, and thereon alleges that Defendant Landry’s, Inc. is a Texas corporation with its principal place of business in Houston, Texas. Defendant Landry’s, Inc. may be served with process by serving its registered agent, Steven L. Scheinthal, 1510 West Loop South, Houston, Texas 77027.

9. Plaintiff is informed, believes, and thereon alleges that Defendant Landry’s Payroll, Inc. is a Texas corporation, registered to do business in California. Defendant Landry’s Payroll, Inc. may be served with process by serving its registered agent, C T Corporation System, 818 West Seventh Street, Suite 930, Los Angeles, California 90017.

10. Plaintiff is informed, believes, and thereon alleges that Defendants maintain a chain of restaurants in California. Plaintiff is informed, believes, and thereon alleges that Defendants employ Aggrieved Employees, among other hourly employees, throughout California.

11. Plaintiff is informed and believes that each and every one of the acts and omissions alleged herein were performed by, and/or attributable to, Defendants, each acting as agents and/or employees, and/or under the direction and control of each of the other, and that said acts and failures to act were within the course and scope of said agency, employment and/or direction and control.

12. As the employers of Plaintiff and Aggrieved Employees throughout the Relevant Time Period, Defendants are liable for penalties for violating the Labor Code with respect to the employment of Plaintiff and Aggrieved Employees.

13. As employers of Plaintiff and Aggrieved Employees throughout the Relevant Time Period, Defendants, each of them, are solely, jointly, and severally liable for penalties for violating the Labor Code with respect to the employment of Plaintiff and Aggrieved Employees.

14. Throughout this Complaint, any reference to "Defendant" or "Defendants" is intended to refer to Defendants CHLN, Inc., Landry's, Inc., and Landry's Payroll, Inc.

15. At all material times, Defendants have done business under the laws of California, have had places of business in California, including in this County, and have employed Aggrieved Employees in this County and elsewhere in California. Defendants are "person[s]" as defined in Labor Code § 18 and California Business and Professions Code § 17201. Defendants are also "employer[s]" as that term is used in the Labor Code and the IWC Wage Orders.

<u>SUBJECT MATTER JURISDICTION AND VENUE</u>

16. This Court has jurisdiction over Plaintiff's claims for penalties pursuant to the Private Attorneys' General Act ("PAGA"). The Court also has jurisdiction over Defendants because Defendants do business in the State of California, are authorized to do business in California, and are registered with the California Secretary of State.

17. Defendants operate multiple restaurants and employ Aggrieved Employees in California.

18. Venue is proper in this county because Defendant Landry, Inc. and its agents and affiliates conduct business, employ Aggrieved Employees, and have a jobsite in this county. Plaintiff is informed, believes, and thereon alleges that events giving rise to these causes of action occurred in this county. Further, on information and belief, Defendant Landry's, Inc. is not a California resident and has not filed statements designating a principal office in California, and venue is therefore proper in any county in the State including this county. *Easton v. Sup. Ct.*, 12 Cal. App. 3d

243, 246-47, 90 Cal. Rptr. 642 (1970).

FACTUAL ALLEGATIONS

19. Defendants operate a chain of restaurants in California, including a Chart House in Cardiff, California. Defendants employ hundreds of hourly non-exempt workers similarly situated to Plaintiff across these facilities.

20. Plaintiff worked at Chart House as a server from August 2007 to May 2020. Plaintiff was paid at an hourly rate of $12.00. On average, Plaintiff worked approximately seven hours each shift and five shifts per week. On average, Plaintiff worked 35 hours per week. By virtue of Plaintiff's off the clock work, Plaintiff occasionally worked more than 8 hours in a day during her employment with Defendants.

21. As a matter of course, Defendants routinely add a service charge of 20% to their food and beverage bills for private parties, banquets, and other pre-planned events. These service charges have been in the form of automatic charges which customers are required to pay, and which reasonably appear to be gratuities for the service staff.

22. It is typically customary in the hospitality industry that establishments impose gratuity charges in the range of 18% to 22% of the food and beverage bills. Thus, when customers have paid these mandatory service charges, it is reasonable for the customers to believe those service charges are gratuities to be paid to the service staff. Indeed, because of the way these service charges are depicted to customers, and the custom in the food and beverage industry that gratuities range of 18% to 22% are paid for food and beverage service, customers pay these charges reasonably believing they were to be remitted to the service staff as gratuities.

23. However, Defendants do not remit the total proceeds of these service charges to the non-managerial employees who serve the food and beverages. Instead, Defendants have a policy and practice of retaining for themselves a portion of those service charges and/or using a portion of the service charges to pay managers or other non-service employees. As a result, Plaintiff and Aggrieved Employees do not receive the total proceeds of the service charges as gratuities, to which they are

entitled under California law.

24. Furthermore, and as a matter of course, Defendants routinely make Plaintiff and Aggrieved Employees work off-the-clock, without providing them compensation, before they clock in before their shifts and after they clock out when their scheduled shift has ended. This time spent working off the clock is compensable, but nevertheless goes unpaid.

25. Defendants encourage Plaintiff and Aggrieved Employees to arrive early before their shift is scheduled to start, but instruct them not to clock in within a few minutes before their scheduled start time. For example, Plaintiff would normally arrive 15 minutes before her scheduled start time, but would not clock in until her scheduled shift time actually started. During this time, Plaintiff would put on her uniform, get her utensils ready, and generally prepare for her shift. Similarly, Plaintiff and Aggrieved Employees are regularly directed by Defendants to clock out for their shifts within a few minutes of their scheduled end-of-shift time, but nonetheless are required to continue working after clocking out. On average, Plaintiff performed post-shift work while off-the-clock two to three times per week, spending on average twenty minutes of time performing services such as doing a walk-through with the manager, performing a "check out" for her sections, and cleaning up.

26. As a result of these policies and practices, Defendants deny Plaintiff and Aggrieved Employees compensation to which they are lawfully owed, as well as the overtime premiums resulting from the additional off-the-clock work performed beyond eight hours in a day.

27. Plaintiff is informed, believes, and thereon alleges that Defendants utilize the same or substantially similar timekeeping mechanism throughout all of their stores in California.

28. Defendants' common course of wage-and-hour abuse includes routinely failing to maintain true and accurate records of the hours worked by Aggrieved Employees. In particular, Defendants have failed to record hours that Plaintiff and Aggrieved Employees worked off-the-clock, which therefore results in wage statements inaccurately reporting total hours worked and wages owed.

29. Defendants' fail to authorize or permit rest breaks because Aggrieved Employees'

schedules are too busy, and Defendants' pressure to complete job assignments is too constant for Aggrieved Employees to take compliant rest breaks. Defendants monitor Plaintiff and other Aggrieved Employees throughout the day, directing them to work without breaks.

30. Plaintiff is informed, believe, and thereon alleges that this policy and practice applies to all Aggrieved Employees throughout California.

31. Despite Defendants' failure to authorize and permit rest periods, Defendants fail to pay Plaintiff and Aggrieved Employees premium wages for their missed breaks.

32. Additionally, on information and belief, Defendants' vacation policy provides that employees, including Plaintiff and Aggrieved Employees, accrue a certain number of vacation days each year depending upon the length of service with Defendants.

33. Upon information and belief, Defendants implemented a "use it or lose it" policy with regard to accrued vacation, where employees who do not use their accrued vacation within the calendar year are forced to forfeit those vacation days at the beginning of the next calendar year.

34. Plaintiff is informed, believes, and thereon alleges, that Defendants do not and did not pay Aggrieved Employees for all earned vacation time that was unused and thus improperly forfeited. Plaintiff is also informed, believes, and thereon alleges, that Defendants do not and did not pay Plaintiff and Aggrieved Employees for all earned vacation time upon separation of employment. As a result, Plaintiff and Aggrieved Employees are harmed by being forced to improperly forfeit these earned vacation days.

35. Defendants' failure to record all gratuity payments, all hours worked, and failure to provide accrued vacation payout also results in a failure to provide Aggrieved Employees, including Plaintiff, accurate itemized wage statements as required by California law. The wage statements Defendants provide are not accurate because they do not reflect the service charges that should be paid to Plaintiff and Aggrieved Employees as gratuity payments, do not reflect all wages for time worked off-the-clock, and do not accurately reflect accrued vacation pay.

36. Further, Defendants often do not provide Aggrieved Employees, including Plaintiff, with full payment of all wages. These workers are owed compensation, including but not limited to that based on Defendants' alleged failure to pay gratuity payments, failure to pay split shift premiums, failure to pay reporting time pay, rounding, alteration and/or manipulation of time records, on-call or standby shifts, payments due to regular rate issues (including sick pay at the regular rate), failure to indemnify employees for necessary expenditures, unlawful deductions from wages, failure to pay tips from service charges/banquet fees, tip pooling, unlawful requirement for release of claims as a condition to receive wages, failure to provide written notice of material terms to employment, unlawful as well as accrued but unpaid vacation compensation, and failure to pay all wages due upon separation from employment. In addition, Defendants are subject to waiting time penalties.

37. On information and belief, Aggrieved Employees are employed by Defendants and performed work materially similar to Plaintiff.

38. On information and belief, Aggrieved Employees report to facilities owned, operated, or managed by Defendants to perform their jobs.

39. On information and belief, Aggrieved Employees perform their jobs under Defendants' supervision and using materials and technology approved and supplied by Defendants.

40. On information and belief, Aggrieved Employees are required to follow and abide by common work, time, pay, meal and rest break, and overtime policies and procedures in the performance of their jobs.

41. On information and belief, at the end of each pay period, Aggrieved Employees receive wages from Defendants that are determined by common systems and methods that Defendants select and control.

42. Defendants pay Plaintiff and Aggrieved Employees on an hourly rate basis.

43. Upon information and belief, Aggrieved Employees worked more than 8 hours a day, and more than 40 hours in at least one workweek during the Relevant Time Period.

44. On November 3, 2020, pursuant to Labor Code § 2699.3, Plaintiff served the California Labor and Workforce Development Agency with notice of her intention to file a PAGA action for violations of Labor Code §§ 351 (gratuity violation); 1194 (failure to pay minimum wage); 204 (failure to compensate for all hours worked); 226.7 and 512 (failure to provide rest periods); 226 and 226.3 (failure to provide timely and compliant itemized wage statements); 201-203, 225.5, and 256 (failure to timely pay all wages owed during employment and following separation from employment); 227.3 (failure to pay vested vacation wages upon separation of employment); 558 (penalties for underpaid wages); and Business and Professions Code §§ 17200, *et seq*. (engaging in unfair business practices).

45. On March 4, 2021, Plaintiff supplemented her November 2, 2020 letter to articulate additional Labor Code provisions implicated by her factual allegations - Labor Code § 510 (failure to pay all overtime wages owed).

46. On June 5, 2026, Plaintiff supplemented her March 4, 2021 letter to articulate additional Labor Code provisions implicated by her factual allegations - Labor Code § 210 (penalties available for violations of Sections 201.3, 204, 204b, 204.1, 204.2, 204.11, 205, 205.5, and 1197.5); and 1194.2 (liquidated damages for "Section 98, 1193.6, 1194, or 1197.1").

FIRST CAUSE OF ACTION
Penalties Pursuant to Labor Code § 2699(a)
(Against All Defendants – On Behalf of All Aggrieved Employees)

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

48. Labor Code § 2699(a) provides:

> Notwithstanding any other provision of law, any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and 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.

49. 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.

50. 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.

51. Labor Code § 226.3 provides:

> 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.

52. Labor Code § 226.7(c) provides:

> If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided

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

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

55. Plaintiff also seeks civil penalties pursuant to Labor Code § 2699(a) for each failure by Defendant, alleged above, to provide Plaintiff and Aggrieved Employees rest periods in compliance with Labor Code § 226.7.

56. Plaintiff also seeks civil penalties pursuant to Sections 225.5, 226.3, 227.3, 256, 210, 558, and 1194.2 of the California Labor Code.

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

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

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

60. Wherefore, Plaintiff requests relief as hereinafter provided.

SECOND CAUSE OF ACTION

Penalties Pursuant to Labor Code § 2699(f)
(Against All Defendants – On Behalf of All Aggrieved Employees)

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

62. Labor Code § 2699(f) provides:

> For all provisions of this code except those for which a civil penalty is specifically provided, there is established a civil penalty for a violation of these provisions, as follows: . . . (2) If, at the time of the alleged violation, 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.

63. To the extent than any violation alleged herein does not carry penalties under Labor Code § 2699(a), Plaintiff seeks civil penalties pursuant to Labor Code § 2699(f) for Plaintiff and Aggrieved Employees each pay period in which he or she was aggrieved, in the amounts established by Labor Code § 2699(f). Plaintiff seeks civil penalties under Labor Code § 2699(f) for Defendant's violations of Labor Code §§ 351, 204, 510, 1194, and 227.3.

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

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

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

67. Wherefore, Plaintiff requests relief as hereinafter provided.

PRAYER FOR RELIEF

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

1. For an order awarding civil penalties to the full extent provided for by the PAGA;
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 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,

Date: July 9, 2026

Esther Lee Bylsma

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Attorneys for Plaintiff and Aggrieved Employees

<u>DEMAND FOR JURY TRIAL</u>

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

Respectfully submitted,

Date: July 9, 2026

Esther Lee Bylsma

Carolyn H. Cottrell
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SCHNEIDER WALLACE
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Attorneys for Plaintiff and Aggrieved Employees

PROOF OF SERVICE

I, Karina Garcia-Guillen, declare the following:

I am over the age of eighteen years and not a party to the within entitled action. I am employed at Schneider Wallace Cottrell Kim LLP located at 515 S. Figueroa St., Suite 1060, Los Angeles CA 90071.

On July 9, 2026, I served the following document(s) described as:

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

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[✓] **BY ELECTRONIC SERVICE** by electronically mailing a true and correct copy in PDF format through SWCK's electronic mail system to the email address(es) set forth above from my email at: kgarciaguillen@schneiderwallace.com.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on July 9, 2026, at Los Angeles, California.

_*/s/ Karina Garcia-Guillen*_________
Karina Garcia-Guillen