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ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
11/28/2022 at 08:39:00 AM
Clerk of the Superior Court
By Regina Chanez, Deputy Clerk

9 **SUPERIOR COURT OF CALIFORNIA**

10 **IN AND FOR THE COUNTY OF SAN DIEGO**

11 **KELLY NG, an individual, on her own**
12 **behalf and on behalf of the Labor and**
13 **Workforce Development Agency;**

14 **Plaintiff,**

15 **vs.**

16 **HK TEA BASE INC., a corporation; and**
17 **DOES 1-100, inclusive,**

18 **Defendants.**

Case No.: 37-2022-00025604-CU-OE-CTL

**FIRST AMENDED COMPLAINT FOR
DAMAGES AND CIVIL PENALTIES**

1. RETALIATION
2. FAILURE TO PREVENT RETALIATION
3. FAILURE TO PROVIDE MEAL PERIODS
OR PAY PREMIUMS
4. FAILURE TO FURNISH COMPLETE
AND ACCURATE ITEMIZED WAGE
STATEMENTS
5. FAILURE TO PAY ALL WAGES DUE
UPON CESSATION OF EMPLOYMENT
6. PRIVATE ATTORNEYS GENERAL ACT

JURY TRIAL DEMANDED

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21 Plaintiff Kelly Ng brings this action against HK Tea Base Inc., a corporation; and Does 1
22 through 100, for violations of the Labor Code.

23 **PARTIES**

24 1. Plaintiff Kelly Ng ("Ng" or "Plaintiff") is and at all times relevant herein was employed
25 in San Diego County, California, and was an "employee" as defined by the Government Code, the
26 Labor Code, and applicable California Industrial Wage Commission ("IWC") Wage Order(s).

2. Defendant HK Tea Base Inc. (aka “Defendant”) is a California corporation, formed under the laws of California, and at all times relevant was an “employer” as defined by the Government Code, the Labor Code, and applicable IWC Wage Order(s).

3. HK Tea Base Inc. and Does 1-100 are collectively referred to as Defendants.

4. Plaintiff is not aware of the true names and capacities of the Defendants sued herein as Does 1 through 100, whether individual, corporate, associate, or otherwise and therefore sues such Defendants by these fictitious names. Plaintiff will amend this Complaint to allege their true names and capacities when ascertained. Plaintiff is informed and believes, and on that basis alleges, that each of the fictitiously named Defendants is responsible in some manner for the occurrences herein alleged and that Plaintiff's injuries and damages herein alleged were legally caused by such Defendants. Unless otherwise indicated, each Defendant was acting within the course and scope of said agency and/or employment, with the knowledge and/or consent of said co-Defendant.

5. Plaintiff is informed and believes and thereupon alleges that at all times mentioned herein, each of the Defendants, including each Doe Defendant, was acting as the agent, servant, employee, partner and/or joint venturer of and was acting in concert with each of the remaining Defendants, including each Doe Defendant, in doing the things herein alleged, while at all times acting within the course and scope of such agency, service, employment partnership, joint venture and/or concert of action. Each Defendant, in doing the acts alleged herein, was acting both individually and within the course and scope of such agency and/or employment, with the knowledge and/or consent of the remaining Defendants.

VENUE AND JURY TRIAL DEMAND

6. Venue is proper in this court because the unlawful acts alleged herein took place in San Diego County, California and Plaintiff's place of employment with Defendants was within San Diego County. With respect to the First through Fifth Causes of Action, Plaintiff demands a jury trial.

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GENERAL ALLEGATIONS

7. Ng was hired by HK Tea Base Inc. (doing business as Tea N' More) in San Diego, California on or around February 21, 2022. At all times, Ng performed her job duties with competence. Ng was and is an hourly, nonexempt employee, eligible for meal periods.

8. On April 30, 2022, Ng was working with the manager, Tony Yip ("Yip"). As Ng was cleaning the sink, Yip walked by and asked Ng "You don't wear gloves?" Ng responded that she sometimes did. Yip said "It's gonna hurt your skin. No more beautiful Kelly!"

9. Ng was uncomfortable and attempted to laugh it off, but quickly realized that what Yip said was grossly inappropriate and potentially sexually harassing.

10. Ng later informed a coworker, Jackie, about what Yip said; Jackie responded that Yip had earlier referred to Jackie as "pretty girl."

11. Later that evening, Ng texted Yip and told him that what he said was "extremely inappropriate and unprofessional and it made me very uncomfortable. Please don't do it again." Yip attempted to deflect and claimed that he was merely looking out for Ng's skin health. He oddly also said that "I also encourage others [sic] workers to do things in a friendly manner" (implying perhaps that Ng was not being "friendly" in her complaint). He also wrote "Since ur the first one to tell me when I am trying to create a friendly working environment and express you have that feeling. I will pay attention to that."

12. Ng hoped that the matter had been resolved appropriately. However, Respondents promptly retaliated against Ng by cutting her hours. The following week, Ng was scheduled for only four hours (typically, she was scheduled for 12 to 24 hours or more). The next week, Ng was only scheduled for eight hours. Ng asked Yip why her hours had been reduced; Yip said "I make the schedule based on your performance and availability as well as others [sic] availability and performance."

13. In reality, Ng's work hours were cut in retaliation for her complaints of sex harassment, *supra*.

1 14. On May 12, 2022, Ng filed a complaint with the California Department of Fair
2 Employment and Housing related to the aforementioned conduct, and was issued a right-to-sue
3 notice that same day. (**Exhibit 1.**)

4 15. Separately from the foregoing, Ng's rights under the Labor Code were violated by
5 HK Tea Base Inc.

6 16. Ng was not provided with all meal periods to which she was entitled. Though her
7 workshifts are frequently in excess of five hours, Ng is not typically relieved of all duty and given
8 the chance to take an uninterrupted, thirty-minute meal period after working five hours. Due to the
9 demands of the job, Ng is frequently compelled to work through her meal periods; furthermore, she
10 has not been paid an hour of pay at her regular rate of compensation for every meal period that has
11 not been provided in accordance with the Labor Code and applicable Wage Orders of the Industrial
12 Welfare Commission.

13 17. Because of the aforementioned meal period violations and failure to pay premiums,
14 the wage statements furnished to Ng do not accurately show the gross wages and net wages earned.
15 Additionally, the wage statements do not show the name and address of the legal entity that is the
16 employer. (**Exhibit 2.**)

17 18. Ng submitted her resignation with HK Tea Base Inc. on or around June 9, 2022. At
18 no point since was Ng paid the full balance of meal period premiums, *supra*.

19 19. The foregoing list of misconduct is a partial list only and set forth by way of example.

20 20. On May 13, 2022, Ng provided written notice to the Labor and Workforce
21 Development Agency ("LWDA") and Defendant regarding the specific provisions of the Labor
22 Code alleged to have been violated, including the facts and theories to support those alleged
23 violations. (**Exhibit 3.**)

24 21. HK Tea Base Inc. did not, within 33 calendar days after Ng's initial written notice,
25 provide written notice to Ng, and by online filing with the LWDA, with a showing that it "cured"
26 the violations of Labor Code section 226(a)(8) by providing a fully compliant, itemized wage
27 statement for each aggrieved employee for each pay period for the three-year period prior to the
28

1 date of Ng's initial written notice. (See Lab. Code, §§ 2699, subd. (d), 2699.3, subd. (c)(2)(A).)
2 Accordingly, Ng satisfied the administrative prerequisites under Labor Code section 2699.3 to
3 bring a civil action to recover civil penalties against Defendants, in addition to other remedies, for
4 violations of Labor Code section 226(a)(8).

5 22. As of the filing of this First Amended Complaint, more than 65 days after Ng's
6 initial written notice, the LWDA has not provided written notice that it intends to investigate any of
7 Ng's allegations as set forth above. Accordingly, Ng satisfied the administrative prerequisites
8 under Labor Code section 2699.3 to bring a civil action to recover civil penalties against
9 Defendants, in addition to other remedies, for violations of the California Labor Code.

10 **FIRST CAUSE OF ACTION**
11 **RETALIATION**
12 **(Gov. Code, § 12940, subd. (h))**
13 **Against Defendants**

14 23. Plaintiff hereby realleges and incorporates by reference each paragraph above as
15 though fully set forth herein, except as said paragraphs are inconsistent with the allegations of this
16 cause of action.

17 24. The FEHA explicitly prohibits an employer from retaliating against an employee
18 because the employee has opposed any practices forbidden by the FEHA or because the employee
19 has filed a complaint, testified or assisted in any proceeding under the FEHA. (Gov. Code, §
20 12940, subd. (h).)

21 25. Nevertheless, as set forth above, Defendants retaliated against Plaintiff in violation
22 of Government Code section 12940, subdivision (h).

23 26. The acts taken toward Plaintiff were carried out by and/or ratified by Defendants
24 and/or managing agents/employees of Defendants acting in an oppressive, fraudulent and malicious
25 manner in order to injure or damage Plaintiff, thereby justifying an award of punitive damages.

26 27. Wherefore, Plaintiff has been injured as set forth above and requests relief as
27 hereafter provided.

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SECOND CAUSE OF ACTION
FAILURE TO PREVENT RETALIATION
(Gov. Code, § 12940, subd. (j)(1))
Against Defendants

28. Plaintiff hereby realleges and incorporates by reference each and every allegation set forth above as though fully set forth herein, except as said paragraphs are inconsistent with the allegations of this cause of action.

29. FEHA requires an employer to take all reasonable steps necessary to prevent harassment and discrimination from occurring. (Gov. Code, § 12940, subd. (k).)

30. Nevertheless, as set forth above, Defendants failed to prevent harassment and discrimination against Plaintiff.

31. As a result of Defendants' conduct, Plaintiff has suffered damages.

32. Defendants' actions towards Plaintiff were committed or ratified by Defendants, and/or their managing agents and/or employees in an oppressive, fraudulent, and malicious manner in order to injure or damage Plaintiff, thereby justifying an award of punitive damages.

33. Wherefore, Plaintiff has been injured as set forth above and requests relief as hereafter provided.

THIRD CAUSE OF ACTION
FAILURE TO PROVIDE MEAL PERIODS OR PAY PREMIUMS
(Lab. Code, §§ 226.7, 512)
Against Defendants

34. Plaintiff hereby realleges and incorporates by reference each and every allegation set forth above as though fully set forth herein, except as said paragraphs are inconsistent with the allegations of this cause of action.

35. Labor Code section 226.7 requires employers to provide employees meal periods as mandated by Order of the Industrial Welfare Commission. It states:

- a. No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.

1 b. If an employer fails to provide an employee a meal period or rest period in
2 accordance with an applicable order of the Industrial Welfare Commission,
3 the employer shall pay the employee one additional hour of pay at the
4 employee's regular rate of compensation for each work day that the meal or
5 rest period is not provided.

6 36. Labor Code section 512(a) and the applicable wage order provide that an employer
7 may not employ a person for a work period of more than five hours per day without providing that
8 employee a meal period of not less than thirty minutes, except that if the total work period per day
9 is no more than six hours, the meal period may be waived by mutual consent of both the employer
10 and employee. An employer may not employ a person for a work period of more than ten hours
11 per day without providing an employee with a second meal period of not less than thirty minutes,
12 except that if the total work period per day of the employee is no more than twelve hours, the meal
13 period may be waived by mutual consent of both the employer and the employee, and if the first
14 meal period was not waived.

15 37. During the relevant time period, Plaintiff was not provided with meal breaks as
16 required by law and did not receive an additional hour of premium pay for each missed meal
17 period.

18 38. Wherefore, Plaintiff has been injured and requests relief as hereinafter provided.

19 **FOURTH CAUSE OF ACTION**
20 **FAILURE TO FURNISH COMPLETE AND ACCURATE ITEMIZED WAGE STATEMENTS**
21 **(Lab. Code, § 226(a))**
22 **Against Defendants**

23 39. Plaintiff hereby realleges and incorporates by reference each and every allegation set
24 forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
25 allegations of this cause of action.

26 40. Pursuant to Labor Code section 226(a) "every employer shall, semimonthly or at the
27 time of each payment of wages, furnish each of his or her employees, either as a detachable part of the
28 check, draft, or voucher paying the employee's wages, or separately when the wages are paid by

1 personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2)
2 total hours worked by the employee [. . .], (3) the number of piece-rate units earned and any applicable
3 piece rate if the employee is paid on a piece-rate basis, (4) all deductions, (5) net wages earned, (6) the
4 inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the
5 last four digits of his or her social security number or an employee identification number, (8) the name
6 and address of the legal entity that is the employer [. . .], (9) all applicable hourly rates in effect during
7 the pay period and corresponding number of hours worked at each hourly rate by the employee and, if
8 the employer is a temporary services employer [. . .], the rate of pay and the total hours worked for each
9 temporary services assignment.”

10 41. An employee suffering injury as a result of the knowing and intentional failure by an
11 employer to comply with Labor Code section 226(a) is entitled to recover the greater of all actual
12 damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred
13 dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed the aggregate
14 penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney’s
15 fees. (Lab. Code, § 226, subd. (e)(1).)

16 42. An employee is deemed to suffer injury if the employer fails to provide a wage
17 statement or if the employer fails to provide accurate and complete information as required by any one
18 or more of the items (1) to (9), inclusive, of subdivision (a) and the employee cannot promptly and
19 easily determine from the wage statement alone, i) the amount of gross/net wages paid to the employee
20 during the pay period or any of the other information required to be provided pursuant to Labor Code
21 section 226(a) items (2) to (4), inclusive, (6) and (9), ii) deductions made by the employer, iii) the name
22 and address of the employer and iv) the name of the employee and the last four digits of his or her
23 social security number or employee identification number. (Lab. Code, § 226, subds. (e)(2)(A), (B)(i)-
24 (iv).) “Promptly and easily determine” means a reasonable person would be able to readily ascertain
25 the information without reference to other documents or information. (Lab. Code, § 226, subd.
26 (e)(2)(C).)

1 43. As set forth above, Defendants intentionally and willfully failed to furnish accurate
2 itemized wage statements which complied with Labor Code section 226.

3 44. Wherefore, Plaintiff has been injured as set forth above and requests relief as hereafter
4 provided.

5 **FIFTH CAUSE OF ACTION**
6 **FAILURE TO PAY ALL WAGES DUE UPON CESSATION OF OF EMPLOYMENT**
7 **(Lab. Code, § 201, *et seq.*)**
8 **Against Defendants**

9 45. Plaintiff hereby realleges and incorporates by reference each and every allegation set
10 forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
11 allegations of this cause of action.

12 46. Labor Code section 201 provides that if an employer discharges an employee, the wages
13 earned and unpaid at the time of discharge are due and payable immediately.

14 47. Labor Code section 202 requires an employer to pay an employee all earned wages
15 within 72 hours of the employee quitting his or her employment, or immediately at the time of quitting
16 if the employee has given 72 hours previous notice of his or her intention to quit.

17 48. As set forth above, Plaintiff was not timely paid all earned but unpaid wages when her
18 employment with Defendants ended.

19 49. Wherefore, Plaintiff has been injured as set forth above and requests relief as hereafter
20 provided.

21 **SIXTH CAUSE OF ACTION**
22 **PRIVATE ATTORNEYS GENERAL ACT**
23 **(Lab. Code, § 2698 *et seq.*)**
24 **Against Defendants**

25 50. Plaintiff hereby realleges and incorporates by reference each and every allegation
26 set forth above as though fully set forth herein, except as said paragraphs are inconsistent with the
27 allegations of this cause of action.

28 51. Pursuant to Labor Code section 2699, subdivision (a), any provision of the Labor
Code which provides for a civil penalty to be assessed and collected by the LWDA for violations

1 of the Labor Code may, as an alternative, be recovered through a civil action brought by an
2 aggrieved employee on behalf of himself or herself and other current or former employees pursuant
3 to the procedures outlined in Labor Code section 2699.3.

4 52. Plaintiff was employed by Defendants and the alleged violations were committed
5 against her during her time of employment. Plaintiff is therefore an aggrieved employee as defined
6 by Labor Code section 2699, subdivision (c). Other current and former employees are also
7 aggrieved employees in that one or more of the alleged violations were also committed against
8 them during their time of employment with Defendants.

9 53. Pursuant to Labor Code section 2699, subdivision (f), the civil penalty recoverable
10 in a PAGA action is that which is provided for by the Labor Code or, where no civil penalty is
11 specifically provided, one hundred dollars (\$100) for each aggrieved employee per pay period for
12 the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for
13 each subsequent violation.

14 54. Pursuant to California Labor Code section 2699, subdivision (g), an aggrieved
15 employee may recover the civil penalty on behalf of himself or herself and other current or former
16 employees against whom one or more of the alleged violations was committed. Furthermore, any
17 employee who prevails in any such action shall be entitled to an award of reasonable attorney's fees
18 and costs.

19 55. Pursuant to the PAGA, Plaintiff seeks to recover civil penalties against Defendants
20 for violations of the Labor Code.

21 56. Wherefore, Plaintiff and other employees (current and former) have been aggrieved
22 and Plaintiff, on behalf of the Labor and Workforce Development Agency, requests relief as
23 hereafter provided.

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1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiff prays judgment against Defendants as follows:

3 **As to the First and Second Causes of Action:**

- 4 1. For compensatory, special, and general damages;
- 5 2. For punitive and/or exemplary damages;
- 6 3. For injunctive relief;
- 7 4. For statutory attorneys' fees and costs, including but not limited to those available
- 8 under Government Code section 12965, subdivision (b);
- 9 5. For prejudgment and post-judgment interest according to any applicable provision of
- 10 law or as otherwise permitted by law, including but not limited to that available
- 11 under Civil Code sections 3287, subdivision (a) and 3289, subdivision (b); and
- 12 6. For all other and further relief as the court deems just and proper.

13 **As to the Third, Fourth, and Fifth Causes of Action:**

- 14 1. That this Court award injunctive relief, including that available under Labor Code
- 15 sections 226(h);
- 16 2. That this Court award unpaid wages, including meal break premiums;
- 17 3. That this Court award statutory penalties including, but not limited to, those available
- 18 under Labor Code sections 203 and 226;
- 19 4. That this Court award statutory attorneys' fees and costs under Labor Code sections
- 20 218.5 and 226(e)(1) and (h), as well as those available under Code of Civil Procedure
- 21 section 1021.5;
- 22 5. That this Court award prejudgment and post-judgment interest according to any
- 23 applicable provision of law or as otherwise permitted by law; and
- 24 6. That this Court award such other and further relief as the court deems just and proper.

25 **As to the Sixth Cause of Action:**

- 26 1. For civil penalties, including but not limited to those available under Labor Code
- 27 sections 226.3, 558, and 2699(f);

2. For injunctive relief;
3. For statutory attorneys' fees and costs, including but not limited to those available under Labor Code section 2699(g);
4. For prejudgment and post-judgment interest according to any applicable provision of law or as otherwise permitted by law, including those available under Civil Code sections 3287(a) and 3289(b); and
5. For such other and further relief as the court deems just and proper.

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DATED: November 28, 2022

MAYALL HURLEY P.C.

By



JOHN P. BRISCOE

Attorneys for Plaintiff Kelly Ng

EXHIBIT 1



DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

KEVIN KISH, DIRECTOR

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
(800) 884-1684 (Voice) | (800) 700-2320 (TTY) | California's Relay Service at 711
<http://www.dfeh.ca.gov> | Email: contact.center@dfefh.ca.gov

May 12, 2022

Kelly Ng

,

RE: **Notice to Complainant**
DFEH Matter Number: 202205-16982712
Right to Sue: Ng / HK Tea Base Inc. et al.

Dear Kelly Ng:

Attached is a copy of your complaint of discrimination filed with the Department of Fair Employment and Housing (DFEH) pursuant to the California Fair Employment and Housing Act, Government Code section 12900 et seq. Also attached is a copy of your Notice of Case Closure and Right to Sue.

Pursuant to Government Code section 12962, DFEH will not serve these documents on the employer. You must serve the complaint separately, to all named respondents. If you do not have an attorney, you must serve the complaint yourself. Please refer to the attached Notice of Case Closure and Right to Sue for information regarding filing a private lawsuit in the State of California. A courtesy "Notice of Filing of Discrimination Complaint" is attached for your convenience.

Be advised that the DFEH does not review or edit the complaint form to ensure that it meets procedural or statutory requirements.

Sincerely,

Department of Fair Employment and Housing



DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

2218 Kausen Drive, Suite 100 | Elk Grove | CA | 95758
(800) 884-1684 (Voice) | (800) 700-2320 (TTY) | California's Relay Service at 711
<http://www.dfeh.ca.gov> | Email: contact.center@dfeh.ca.gov

May 12, 2022

RE: **Notice of Filing of Discrimination Complaint**

DFEH Matter Number: 202205-16982712

Right to Sue: Ng / HK Tea Base Inc. et al.

To All Respondent(s):

Enclosed is a copy of a complaint of discrimination that has been filed with the Department of Fair Employment and Housing (DFEH) in accordance with Government Code section 12960. This constitutes service of the complaint pursuant to Government Code section 12962. The complainant has requested an authorization to file a lawsuit. A copy of the Notice of Case Closure and Right to Sue is enclosed for your records.

This matter may qualify for DFEH's Small Employer Family Leave Mediation Pilot Program. Under this program, established under Government Code section 12945.21, a small employer with 5 -19 employees, charged with violation of the California Family Rights Act, Government Code section 12945.2, has the right to participate in DFEH's free mediation program. Under this program both the employee requesting an immediate right to sue and the employer charged with the violation may request that all parties participate in DFEH's free mediation program. The employee is required to contact the Department's Dispute Resolution Division prior to filing a civil action and must also indicate whether they are requesting mediation. The employee is prohibited from filing a civil action unless the Department does not initiate mediation within the time period specified in section 12945.21, subdivision (b) (4), or until the mediation is complete or is unsuccessful. The employee's statute of limitations to file a civil action, including for all related claims not arising under section 12945.2, is tolled from the date the employee contacts the Department regarding the intent to pursue legal action until the mediation is complete or is unsuccessful. You may contact DFEH's Small Employer Family Leave Mediation Pilot Program by emailing DRDOnlineRequests@dfeh.ca.gov and include the DFEH matter number indicated on the Right to Sue notice.

Please refer to the attached complaint for a list of all respondent(s) and their contact information.

No response to DFEH is requested or required.

Sincerely,



DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

KEVIN KISH, DIRECTOR

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Department of Fair Employment and Housing



DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

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May 12, 2022

Kelly Ng

RE: **Notice of Case Closure and Right to Sue**
DFEH Matter Number: 202205-16982712
Right to Sue: Ng / HK Tea Base Inc. et al.

Dear Kelly Ng:

This letter informs you that the above-referenced complaint filed with the Department of Fair Employment and Housing (DFEH) has been closed effective May 12, 2022 because an immediate Right to Sue notice was requested.

This letter is also your Right to Sue notice. According to Government Code section 12965, subdivision (b), a civil action may be brought under the provisions of the Fair Employment and Housing Act against the person, employer, labor organization or employment agency named in the above-referenced complaint. The civil action must be filed within one year from the date of this letter.

This matter may qualify for DFEH's Small Employer Family Leave Mediation Pilot Program. Under this program, established under Government Code section 12945.21, a small employer with 5 -19 employees, charged with violation of the California Family Rights Act, Government Code section 12945.2, has the right to participate in DFEH's free mediation program. Under this program both the employee requesting an immediate right to sue and the employer charged with the violation may request that all parties participate in DFEH's free mediation program. The employee is required to contact the Department's Dispute Resolution Division prior to filing a civil action and must also indicate whether they are requesting mediation. The employee is prohibited from filing a civil action unless the Department does not initiate mediation within the time period specified in section 12945.21, subdivision (b) (4), or until the mediation is complete or is unsuccessful. The employee's statute of limitations to file a civil action, including for all related claims not arising under section 12945.2, is tolled from the date the employee contacts the Department regarding the intent to pursue legal action until the mediation is complete or is unsuccessful. Contact DFEH's Small Employer Family Leave Mediation Pilot Program by emailing DRDOnlineRequests@dfeh.ca.gov and include the DFEH matter number indicated on the Right to Sue notice.



DEPARTMENT OF FAIR EMPLOYMENT & HOUSING

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To obtain a federal Right to Sue notice, you must contact the U.S. Equal Employment Opportunity Commission (EEOC) to file a complaint within 30 days of receipt of this DFEH Notice of Case Closure or within 300 days of the alleged discriminatory act, whichever is earlier.

Sincerely,

Department of Fair Employment and Housing

**COMPLAINT OF EMPLOYMENT DISCRIMINATION
BEFORE THE STATE OF CALIFORNIA
DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING
Under the California Fair Employment and Housing Act
(Gov. Code, § 12900 et seq.)**

In the Matter of the Complaint of

Kelly Ng

DFEH No. 202205-16982712

Complainant,

vs.

HK Tea Base Inc.
8979 Jade Coast Lane
San Diego, CA 92126

Tony Yip

,

Respondents

1. Respondent **HK Tea Base Inc.** is an **employer** subject to suit under the California Fair Employment and Housing Act (FEHA) (Gov. Code, § 12900 et seq.).

2. Complainant is naming **Tony Yip** individual as Co-Respondent(s).

3. Complainant **Kelly Ng**, resides in the City of , State of .

4. Complainant alleges that on or about **May 12, 2022**, respondent took the following adverse actions:

Complainant was harassed because of complainant's sex/gender, sexual harassment-hostile environment, sexual harassment- quid pro quo.

Complainant was discriminated against because of complainant's sex/gender, sexual harassment- hostile environment, sexual harassment- quid pro quo and as a result of the discrimination was other, denied work opportunities or assignments.

Complainant experienced retaliation because complainant reported or resisted any form of discrimination or harassment and as a result was other, denied work opportunities or assignments.

Additional Complaint Details: Complainant was hired by HK Tea Base Inc. ("Employer") dba Tea N' More in San Diego, California on or around February 21, 2022. At all times, Complainant performed her job duties with competence and dedication. On April 30, 2022, Complainant was working with the manager, Tony Yip ("Yip"). As Complainant was cleaning the sink, Yip walked by and asked Complainant "You don't wear gloves?" Complainant responded that she sometimes did. Yip said "It's gonna hurt your skin. No more beautiful Kelly!" Complainant was uncomfortable and attempted to laugh it off, but quickly realized that what Yip said was grossly inappropriate and could constitute sexual harassment. Complainant later informed a coworker, Jackie, about what Yip said; Jackie responded that Yip had earlier referred to Jackie as "pretty girl." Later that evening, Complainant texted Yip and told him that what he said was "extremely inappropriate and unprofessional and it made me very uncomfortable. Please don't do it again." Yip attempted to deflect and claimed that he was merely looking out for Complainant's skin health. He oddly also said that "I also encourage others [sic] workers to do things in a friendly manner" (implying perhaps that Complainant was not being "friendly" in her complaint). He also wrote "Since ur the first one to tell me when I am trying to create a friendly working environment and express you have that feeling. I will pay attention to that." Complainant hoped that the matter had been resolved appropriately. However, Respondents promptly retaliated against Complainant by cutting her hours. The following week, Complainant was scheduled for only eight hours (typically, she was scheduled for 15 to 24 hours or more). The next week, Complainant was again only scheduled for eight hours. Complainant asked Yip why her hours had been reduced; Yip said "I make the schedule based on your performance and availability as well as others [sic] availability and performance." Yet Complainant's work performance was always exemplary and her general availability had not changed. The reality is that Respondents cut Complainant's hours in an act of retaliation for her reasonable and good faith opposition to sexual harassment. Employer failed to prevent the foregoing, which is a partial list only and set forth by way of mere example.

1 VERIFICATION

2 I, **John P. Briscoe**, am the **Attorney** in the above-entitled complaint. I have read the
3 foregoing complaint and know the contents thereof. The matters alleged are based
4 on information and belief, which I believe to be true.

5 On May 12, 2022, I declare under penalty of perjury under the laws of the State of
6 California that the foregoing is true and correct.

7 **Stockton CA**
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EXHIBIT 2

Employee Name **KELLY J. NG** Id No. **25** 7380 CLAIREMONT MESA BLVD #1
 For Period **04/18/22 to 05/01/22** Date **05/06/22** SAN DIEGO, CA 92111

Type	Rate	Hours	Current	Year to Date	Deductions	Current	Year to Date
Regular Pay	15.50	43.65	676.58	1346.65	Federal W/H	30.00	109.00
Tips - Charge			118.49	396.17	Social Security	49.29	181.55
Regular Pay				1162.80	Medicare	11.53	42.46
Overtime				22.50	State W/H	4.03	16.03
					State Other	8.75	32.22
Vac Avail	0.00						
Sick Avail	5.51						
Totals		43.65	795.07	2928.12	Totals	103.60	381.26
Social Security No.	XXX-XX-				Net	691.47	2546.86

EXHIBIT 3

SOUTHERN CALIFORNIA OFFICE
450 N. BRAND BLVD., SUITE 600
GLENDALE, CALIFORNIA 91206
(818) 646-6440

MAILING ADDRESS:
2453 GRAND CANAL BOULEVARD
STOCKTON, CALIFORNIA 95207

LAW OFFICES OF
MAYALL HURLEY
A PROFESSIONAL CORPORATION

2453 GRAND CANAL BOULEVARD
STOCKTON, CALIFORNIA 95207

TELEPHONE: (209) 477-3833
FACSIMILE: (209) 473-4818
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VLADIMIR F. KOZINA
STEVEN A. MALCOUN
MARK E. BERRY
WILLIAM J. GORHAM, III
NICHOLAS F. SCARDIGLI
ROBERT J. WASSERMAN
JENNY D. BAYSINGER
JOHN P. BRISCOE
VLADIMIR J. KOZINA
SHANE M. HOOVER

May 13, 2022

SUBMITTED ELECTRONICALLY

Labor and Workforce Development Agency
Attn: PAGA Administrator
1515 Clay Street, Suite 801
Oakland, California 94612

SENT VIA CERTIFIED MAIL

HK Tea Base Inc.
8979 Jade Coast Lane
San Diego, CA 92126

Re: Kelly Ng/HK Tea Base Inc.

To whom it may concern:

This firm represents Kelly Ng ("Ng") in relation to her current employment with HK Tea Base Inc. dba Tea N' More in San Diego, California. In accordance with Labor Code section 2699.3, this letter shall serve as Ng's written notice to the Labor and Workforce Development Agency ("LWDA") and HK Tea Base Inc. regarding the following violations, and facts and theories supporting those violations, on Ng's behalf and, as a proxy for the LWDA, on behalf of former and other current California employees of HK Tea Base Inc.

Ng was hired by HK Tea Base Inc. on or around February 21, 2022 at the Tea N' More boba tea and coffee shop in San Diego, California. Ng remains employed by HK Tea Base Inc. Ng has been correctly classified as an hourly employee, eligible for rest and meal periods.

Throughout her employment with HK Tea Base Inc., Ng has not been provided with all meal periods to which she is entitled under the California Labor Code. Though her workshifts are frequently in excess of five hours, Ng is typically not relieved of all duty and given the opportunity to take an uninterrupted, thirty-minute meal period after working five hours. Due to demands of the job, Ng is frequently compelled to work through her meal periods; furthermore, she has not been paid an hour of pay at her regular rate of compensation for every meal period that has not been provided in accordance with the Labor Code and applicable Wage Orders of the Industrial Welfare Commission. Accordingly, HK Tea Base Inc. violated Labor Code sections 226.7 and 512.

Labor and Workforce Development Agency
HK Tea Base Inc.
Re: Kelly Ng
May 13, 2022
Page 2

Because of the aforementioned meal period violations and failure to pay premiums, the wage statements furnished to Ng do not accurately show the gross wages and net wages earned. Additionally, the wage statements furnished to Ng do not show the name and address of the legal entity that is the employer. **(Exhibit A.)** Accordingly, HK Tea Base Inc. violated Labor Code section 226, subdivisions (a)(1), (5), and (8).

The foregoing violations, and each of them, were committed as against current and other former employees of HK Tea Base Inc. in California, and within the last year.

If the LWDA believes that it needs additional information to determine whether to investigate these claims, please contact me immediately to request the additional information, which I will provide to the extent it is available to me or my client.

If the LWDA does not intend to investigate these violations, Ng intends to file a civil complaint against HK Tea Base Inc. pursuant to the Labor Code Private Attorneys General Act of 2004 (Labor Code, § 2698 *et seq.*), on her behalf and, as a proxy for the LWDA, on behalf of all aggrieved current and former employees. Thank you for your attention in this matter.

Sincerely,

MAYALL HURLEY P.C.

By


JOHN P. BRISCOE

Enclosure

Exhibit A

Employee Name KELLY J. NG Id No. 25 7380 CLAIREMONT MESA BLVD #1
 For Period 04/18/22 to 05/01/22 Date 05/06/22 SAN DIEGO, CA 92111

Type	Rate	Hours	Current	Year to Date	Deductions	Current	Year to Date
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Overtime				22.50	State W/H	4.03	16.03
					State Other	8.75	32.22
Vac Avail	0.00						
Sick Avail	5.51						
Totals		43.65	795.07	2928.12	Totals	103.60	381.26
Social Security No.	XXX-XX-				Net	691.47	2546.86

PROOF OF SERVICE

I, the undersigned, certify and declare as follows:

I am over the age of eighteen years and not a party to this action. My business address is 2453 Grand Canal Boulevard, Stockton, California 95207 that is located in the county where the mailing and/or delivery below took place.

On November 28, 2022, I served the following document:

FIRST AMENDED COMPLAINT

addressed to:

Edward G. Wong
Law Offices of Edward G. Wong
Camino Professional Office Condominiums
2333 Camino Del Rio South, Suite 210
San Diego, CA 92108
law_wong@yahoo.com

☐ **BUSINESS PRACTICE TO ENTRUST DEPOSIT TO OTHERS:** I am readily familiar with the business practice at my place of business for collection and processing of correspondence for mailing with the United States Postal Service. Correspondence so collected and processed is deposited with the United States Postal Service that same day in the ordinary course of business. On the date specified below, at my place of business at Stockton, California a copy of the document described above was placed for deposit in the United States Postal Service in a sealed envelope, with postage fully prepaid addressed to the individuals and/or entities mentioned above; and that envelope was placed for collection and mailing on that date following ordinary business practice.

☐ **BY EXPRESS SERVICE CARRIER:** On the date specified below, I directed to be deposited in a box or other facility regularly maintained by Federal Express or delivered to a courier or driver authorized by said express service carrier to receive documents, a copy of the document mentioned above, in an envelope designed by the said express service carrier, with delivery fees paid or provided for, addressed to the individuals and/or entities mentioned above.

☒ **BY EMAIL:** In accordance with Code of Civil Procedure, Section 1010.6, on the date specified below, I caused a copy of the document(s) described above to be sent to the person(s) at the e-mail address(es) listed above. My business e-mail address is lriley@mayallaw.com. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I certify and declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on November 28, 2022, at Lodi, California.


LINDSAY RILEY SHIELDS