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12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF ORANGE

15 JENNIFER SOMMER and DAVID
16 BALSIE, individually and on behalf of all
17 others similarly situated, and on behalf of
18 the general public,

18 Plaintiffs,

19 vs.

20 DARDEN RESTAURANTS, INC., a
21 Florida corporation; GMRI, INC., a Florida
22 corporation; and DOES 1 through 20,
23 inclusive,

23 Defendants.

Case No. 30-2014-00720139-CU-OE-CXC
Assigned to Hon. William Claster
Dept.: CX 102

**THIRD AMENDED COMPLAINT FOR
VIOLATION OF THE PRIVATE ATTORNEYS
GENERAL ACT OF 2004 (CAL. LAB. CODE
§§ 2698, ET SEQ.)**

DEMAND FOR JURY TRIAL

1 Plaintiffs Jennifer Sommer and David Balsie, individually and on behalf of other
2 aggrieved employees in California, allege as follows:

3 **NATURE OF ACTION AND INTRODUCTORY STATEMENT**

4 1. Plaintiffs Jennifer Sommer and David Balsie (“Plaintiffs”) bring this
5 representative action against Defendants Darden Restaurants, Inc. and GMRI, Inc. (“DARDEN
6 and GMRI”) and DOES 1 through 20, inclusive (collectively, “Defendants”), on behalf of
7 themselves individually and other aggrieved employees employed by Defendants throughout
8 California (“aggrieved employees”).

9 2. Defendants Darden and GMRI own and operate casual dining restaurants
10 throughout the state of California, including The Capital Grille, Red Lobster, Olive Garden,
11 Seasons 52, Eddie V’s and Yard House restaurant locations. Defendants hire hourly employees
12 who work in non-exempt positions in their restaurant locations throughout California.

13 3. Through this action, Plaintiffs are alleging that Defendants have engaged in a
14 systematic pattern of wage and hour violations under the California Labor Code and Industrial
15 Welfare Commission (“IWC”) Wage Orders, all of which contribute to Defendants’ deliberate
16 unfair competition.

17 4. Plaintiffs are informed and believe, and thereon allege, that Defendants have
18 increased their profits by violating state wage and hour laws by, among other things:

- 19 (a) Failing to pay overtime wages;
20 (b) Failing to provide accurate itemized wage statements; and
21 (c) Failing to pay all wages due upon separation of employment.

22 5. Plaintiffs bring this lawsuit seeking monetary relief against Defendants on behalf
23 of themselves and all other aggrieved employees similarly situated in California to recover,
24 among other things, attorney’s fees, costs and expenses and penalties pursuant to the Private
25 Attorneys General Act of 2004, Labor Code §§ 2698, *et seq.* (“PAGA”).
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1 14. Plaintiffs are informed and believe, and thereon allege, that DOES 1 through 20
2 are the partners, agents, owners, shareholders, managers or employees of Darden and GMRI, at
3 all relevant times.

4 15. Plaintiffs are informed and believe, and thereon allege, that each and all of the
5 acts and omissions alleged herein were performed by, or are attributable to, Darden and GMRI
6 and/or DOES 1 through 20, acting as the agent or alter ego for the other, with legal authority to
7 act on the other's behalf. The acts of any and all Defendants were in accordance with, and
8 represent, the official policy of Defendants.

9 16. At all relevant times, Defendants, and each of them, acted within the scope of
10 such agency or employment, or ratified each and every act or omission complained of herein. At
11 all relevant times, Defendants, and each of them, aided and abetted the acts and omissions of
12 each and all the other Defendants in proximately causing the damages herein alleged.

13 17. Plaintiffs are informed and believe, and thereon allege, that each of said
14 Defendants is in some manner intentionally, negligently or otherwise responsible for the acts,
15 omissions, occurrences and transactions alleged herein.

16 **GENERAL ALLEGATIONS**

17 18. At all relevant times mentioned herein, Defendants employed Plaintiffs and other
18 persons as non-exempt, hourly employees.

19 19. During the relevant time period, Defendants employed Plaintiffs as servers at
20 Defendants' restaurants in California. Plaintiffs' compensation was based on an hourly rate plus
21 tips or gratuities.

22 20. Defendants continue to employ non-exempt hourly paid employees within
23 California.

24 21. Plaintiffs are informed and believe, and thereon allege, that at all times herein
25 mentioned, Defendants were advised by skilled lawyers, employees and other professionals who
26 were knowledgeable about California wage and hour laws, employment and personnel practices
27 and the requirements of California law.
28

1 22. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
2 should have known that, for the overtime hours that they worked, Plaintiffs and aggrieved
3 employees were entitled to receive an overtime rate of at least one and one-half times their
4 regular rate of pay. In violation of the Labor Code and IWC Wage Orders, Plaintiffs and
5 aggrieved employees were not properly paid for all of their overtime work because, in calculating
6 their overtime rates of pay, Defendants did not include mandatory gratuities in the computation
7 of their regular rate of pay.

8 23. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
9 should have known that Plaintiffs and aggrieved employees were entitled to receive itemized
10 wage statements that accurately showed their gross and net wages earned, total hours worked and
11 all applicable hourly rates in effect, including the regular and overtime rates, and the number of
12 hours worked at each hourly rate in accordance with California law. In violation of the Labor
13 Code, Plaintiffs and aggrieved employees were not provided with accurate itemized wage
14 statements.

15 24. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
16 should have known that Plaintiffs and aggrieved employees were entitled to timely payment of
17 wages due upon separation of employment. In violation of the Labor Code, Plaintiffs and the
18 aggrieved employees did not receive payment of all wages including, but not limited to, unpaid
19 overtime compensation, within permissible time periods.

20 25. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
21 should have known they had a duty to compensate Plaintiffs and aggrieved employees, and
22 Defendants had the financial ability to pay such compensation but willfully, knowingly and
23 intentionally failed to do so in order to increase Defendants' profits.

24 **ENFORCEMENT OF PRIVATE ATTORNEYS GENERAL ACT OF 2004, CAL. LAB.**

25 **CODE § 2698, ET SEQ.**

26 26. Plaintiffs hereby re-allege and incorporate by reference all of the allegations in the
27 preceding paragraphs of this complaint as though fully set forth herein.
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1 27. Pursuant to Labor Code § 2699(a), any provision of the Labor Code that provides
2 for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency
3 ("LWDA") or any of its departments, divisions, commissions, boards, agencies or employees for
4 violation of the code may, as an alternative, be recovered through a civil action brought by an
5 aggrieved employee on behalf of himself and other current or former employees pursuant to the
6 procedures specified in Labor Code § 2699.3.

7 28. For all provisions of the Labor Code except those for which a civil penalty is
8 specifically provided, Labor Code § 2699(f) imposes upon Defendants a penalty of one hundred
9 dollars (\$100.00) for each aggrieved employee per pay period for the initial violation and two
10 hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent pay
11 period in which Defendants violated these provisions of the Labor Code.

12 29. Defendants' conduct violates multiple Labor Code sections including, but not
13 limited to, the following:

- 14 a. Labor Code §§ 510, 1194 and 1198 for failing to pay wages at proper overtime
15 rates;
- 16 b. Labor Code §§ 201-203 for failing to timely pay all earned wages upon discharge;
17 and
- 18 c. Labor Code §§ 226 and 226.3 for failing to provide complete and accurate
19 itemized wage statements to Plaintiff and other aggrieved employees.

20 30. Plaintiffs are "aggrieved employees" because they were employed by the alleged
21 violator and had one or more of the alleged violations committed against them, and therefore are
22 properly suited to represent the interests of all other aggrieved employees.

23 31. Plaintiffs have exhausted the procedural requirements under Labor Code § 2699.3
24 as to Defendants and is therefore able to pursue a claim for penalties on behalf of themselves and
25 all other aggrieved employees under PAGA.

26 32. Pursuant to Labor Code §§ 2699(a), 2699.3 and 2699.5, Plaintiff and all aggrieved
27 employees are entitled to recover civil penalties, in addition to other remedies, for violations of
28 Labor Code §§ 201-203, 226, 226.3, 510, 1194 and 1198.

33. For bringing this action, Plaintiffs are entitled to attorney's fees and costs incurred herein.

PRAYER FOR RELIEF

Plaintiffs, for themselves and all other aggrieved employees, pray for relief and judgment against Defendants, jointly and severally, as follows:

1. For civil penalties against Defendants on behalf of all aggrieved employees pursuant to Labor Code §§ 2698 *et seq.*;

2. For reasonable attorney's fees and costs of suit to the extent permitted by law, including pursuant to Labor Code § 2699(g) and Code of Civil Procedure § 1021.5; and

3. For such other relief as the Court deems just and proper; and

Dated: December 2, 2016

THE COOPER LAW FIRM, P.C.

By: /s/ Scott B. Cooper

Scott B. Cooper
Attorneys for Plaintiffs

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a jury trial with respect to all issues triable of right by jury.

Dated: December 2, 2016

THE COOPER LAW FIRM, P.C.

By: /s/ Scott B. Cooper

Scott B. Cooper
Attorneys for Plaintiffs