

Assigned for all purposes to Judge Jeffrey B. Jones including trial

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County of Imperial
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Attorney for Plaintiff, Daniel Shibata, on behalf
of himself and all “aggrieved employees” pursuant
to Labor Code §2698 et seq.

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF IMPERIAL**

DANIEL SHIBATA, on behalf of himself
and all “aggrieved employees” pursuant to
Labor Code § 2698 et seq.;

Plaintiff,

vs.

AMY’S KITCHEN RESTAURANT
OPERATING COMPANY LLC, a
California limited liability company; and
DOES 1 through 10, inclusive,

Defendants.

CASE NO.: ECU003964

**REPRESENTATIVE ACTION COMPLAINT
FOR PENALTIES UNDER CALIFORNIA
LABOR CODE 2698 ET SEQ. (Private
Attorneys General Act)**

DEMAND FOR JURY TRIAL

Plaintiff DANIEL SHIBATA, on behalf of himself and all “aggrieved employees” under
the Labor Code Private Attorneys General Act of 2004, alleges as follows against all Defendants:

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I.**INTRODUCTION AND FACTUAL BACKGROUND**

1. This is a Representative Action pursuant to Labor Code §2698 et seq. on behalf of Plaintiff and other non-exempt California employees who currently and/or formerly worked for Defendants (“Aggrieved Employees”). This PAGA action is brought on behalf of Plaintiff, the State of California as private attorney general and on behalf of the Aggrieved Employees who are or were employed by Defendants as non-exempt employees in California during the PAGA Period, which is June 7, 2023 and continuing to the present. .

2. During the year prior to the date Plaintiff began the process of exhausting the administrative requirements pursuant to Labor Code § 2698 et seq. (by submission with the Labor and Workforce Development Agency (“LWDA”) and properly serving Defendant with written notice of the claims herein) and continuing throughout and to the present, at all times, Defendants have:

a. Failed to pay premium wages to Plaintiff and Aggrieved Employees who were denied rest periods, in violation of Labor Code § 226.7 and IWC Wage Order No. 5-2001. Plaintiff and Aggrieved Employees were denied and unable to take an off-duty 10-minute rest period for every four (4) hours of work or major fraction thereof, and were not paid premium wages of one hour’s pay for each missed rest period. Defendants violated Labor Code § 226.7 and IWC Wage Order No. 5-2001;

b. Failed to pay premium wages to Plaintiff and other Aggrieved Employees who were denied compliant meal periods, in violation of Labor Code §§ 226.7, 512, 558 and IWC Wage Order 5-2001. Plaintiff and Aggrieved Employees were denied, and not authorized to take, timely, uninterrupted, 30-minute meal periods for every shift worked that exceeded five hours in duration, and/or a second timely, uninterrupted, 30-minute meal period for every shift worked that exceeded ten hours and they were not paid premium wages of one hour’s pay for each missed compliant first and second meal periods. Defendants violated California Labor Code §§ 226.7, 512, 558 and IWC Wage Order 5-2001.

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c. Failed to pay Plaintiff and other Aggrieved Employees who were terminated by Defendants all wages due at the separation of their employment based on the time frames required by Labor Code §§ 201 and 202. Plaintiff and other Aggrieved Employees were not paid all wages due during the course of their employment, and as a result of this failure, Plaintiff and other Aggrieved Employees who were terminated were not timely paid all wages due at the separation of their employment. This violates the Labor Code §§ 201-202 and is alleged on behalf of Plaintiff and certain Aggrieved Employees no longer employed by Defendants.

d. Failed to compute bonus wages and other non-base hourly wages earned by Plaintiff and Aggrieved Employees into their regular rate of pay for purposes of paying meal and rest period premiums, sick pay wages and overtime wages. This violates Labor Code §§ 226.7, 246, 510, 512, 558 and 1194 and IWC Wage Order No. 5-2001. Defendants failed to properly blend bonus wages and/or other non-base hourly wages and instead paid Plaintiff and other Aggrieved Employees meal and rest period premiums, sick pay wages, and overtime wages based on the base hourly rate of pay, thus depriving Plaintiff and the other Aggrieved Employees of all meal and rest period premiums, sick pay wages, and overtime wages earned, all in violation of the aforementioned Labor Code sections and IWC Wage Order.

e. Failed to provide Plaintiff and other Aggrieved Employees with wage statements that fully and accurately itemized the requirements set forth in Labor Code § 226(a). Wage statements provided by Defendant to Plaintiff and Aggrieved Employees failed, among other things, to accurately state all gross wages earned, in violation of Labor Code §§ 226(a)(1) and 226.3, total hours worked, in violation of Labor Code §§ 226(a)(2) and 226.3, net wages earned, in violation of Labor Code §§ 226(a)(5) and 226.3, the correct name of the purported employer, “Amy’s Kitchen Restaurant Opera” instead of Amy’s Kitchen Restaurant Operating Company LLC in violation of §226(a)(8), and all applicable hourly rates in effect during the pay period and the corresponding numbers of hours worked at each rate, in violation of Labor Code §§ 226(a)(9) and 226.3 Defendants knew of their legal obligations to give and accurately state gross wages and net wages on pay statements but knowingly and intentionally failed to do so.

1 f. Owned Covered Establishments, as such term is defined in the California Labor
2 Code, ordered a mass layoff and termination during a 30 day period of 50 or more of its
3 employees at Covered Establishments, inclusive of Plaintiff and Aggrieved Employees, and
4 failed to provide Plaintiff and Aggrieved Employees that worked and were laid off and terminated
5 at the Covered Establishments that closed down with at least 60 days prior written notice as
6 required by California law. Defendants violated California Labor Code §§1400 et seq.
7 Defendants failed to pay Plaintiff and Aggrieved Employees the amounts they were liable to pay
8 under California Labor Code §1402 as well as Labor Code Sections 558, 201 and 202. Plaintiff
9 seeks all civil penalties arising from Defendant's violation, including those provided for under
10 California Labor Code §1403.

11 g. Defendants knew of their legal obligations with respect to the Labor Code as
12 alleged herein but knowingly and intentionally acted and in violation thereof.

13 3. Plaintiff, on behalf of himself and all Aggrieved Employees pursuant to Labor Code §
14 2698 et seq., seeks all civil penalties arising from Defendants' violations of the California Labor
15 Codes and IWC orders referenced above.

16 4. Plaintiff personally experienced each of the Labor Code violations alleged above in this
17 Complaint.

18 5. Plaintiff is informed and believes and thereon alleges that the California Industrial
19 Welfare Commission ("IWC") Wage Order applicable to the facts of this case is IWC Wage
20 Order 5-2001 and possibly others that may be applicable. (Cal. Code of Regs., tit. 8, §§ 11010,
21 11040.) Plaintiff reserves the right to amend or modify the definition of the applicable wage
22 orders with greater specificity or add additional IWC Wage Orders if additional applicable wage
23 orders are applicable.

24 II.

25 PARTIES

26 6. Plaintiff, Daniel Shibata, was employed by Defendants as a non-exempt employee in
27 California.

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7. Defendant, Amy's Kitchen Restaurant Operating Company LLC, is a California corporation that employed Plaintiff and Aggrieved Employees in their restaurants located in California.

8. At all relevant times alleged, the Aggrieved Employees were aggrieved employees of Defendants within the meaning of California Labor Code 2699(c).

9. The true names and capacities, whether individual, corporate, associate, or otherwise, of Defendants sued herein as DOES 1 through 10, inclusive, are currently unknown to Plaintiff, who therefore sues Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants designated herein as a DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendants designated hereinafter as DOES when such identities become known.

10. This Court has subject matter jurisdiction over all causes of action asserted herein pursuant to Article VI, section 10, of the California Constitution and Code of Civil Procedure section 410.10 because this is a civil action in which the matter in controversy, exclusive of interest, exceeds \$25,000, and because each cause of action asserted arises under the laws of the State of California or is subject to adjudication in the courts of the State of California.

11. This Court has personal jurisdiction over Defendants because Defendants have caused injuries in the State of California through their acts, and by their violation of the California Labor Code and California state common law. Defendants transact business within the State of California. Defendants are within the jurisdiction of this Court for purposes of services of process.

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III.

FIRST CAUSE OF ACTION**PLAINTIFF AND ALL AGGRIEVED EMPLOYEES****AGAINST ALL DEFENDANTS FOR****CIVIL PENALTIES PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT**

12. Plaintiff realleges and incorporates paragraphs 1 through 10 of this Complaint as though fully set forth herein.

13. On June 7, 2024, Plaintiff gave written notice by online submission to the LWDA and by certified mail to Defendant setting forth the facts and theories of the violations alleged herein against Defendants (the "LWDA Notice") as required by PAGA.

14. No notice was received by Plaintiff from the LWDA in response to the LWDA Notice within sixty-five (65) calendar days of the June 7, 2024 delivery date.

15. Plaintiff may on behalf of himself and the Aggrieved Employees commence and pursue this action to seek all civil penalties that could be assessed and collected (PAGA being intended to assist in the achievement of maximum compliance with state labor laws by empowering aggrieved employees to act as private attorneys general in order to recover civil penalties for Labor Code violations that would otherwise be prosecuted by the state).

16. Plaintiff seeks all civil penalties arising from the Labor Code violations alleged in paragraph 2 herein, including but not limited to those under Labor Code §§2699 et seq., 226.3, 256, 558 and 1403 as applicable.

17. Civil penalties recovered will be allocated 75% to the Labor and Workforce Development Agency, and 25% to the affected employees.

18. Plaintiff is entitled to and seeks recovery of the attorney fees and costs pursuant to Labor Code 2699 and all other applicable law.

19. By written agreement entered into by Plaintiff, on behalf of himself and Aggrieved Employees, and Defendant, any applicable limitations periods on bringing this action and the claims asserted herein were tolled through the date of filing this Complaint.

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