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County of Alameda

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

**FOR THE COUNTY OF ALAMEDA
(UNLIMITED JURISDICTION)**

ABRAN GUZMAN,

Plaintiff,

vs.

SCOTT'S JACK LONDON SEAFOOD, INC.;
RAYMOND GALLAGHER; and DOES 1 to 25,
inclusive,

Defendants.

Case No.: **24CV098957**

**COMPLAINT FOR VIOLATIONS
OF THE LABOR CODE AND CIVIL
PENALTIES UNDER THE LABOR
CODE PRIVATE ATTORNEYS
GENERAL ACT OF 2004, LABOR
CODE §§ 2698, ET SEQ.**

COMES NOW, Plaintiff, ABRAN GUZMAN (hereafter "Plaintiff"), and alleges as follows:

PARTIES, JURISDICTION, VENUE

1. Jurisdiction and Venue are proper in this Court and this action is properly filed in the County of Alameda in this judicial district because Defendants SCOTT'S JACK LONDON SEAFOOD, INC.; RAYMOND GALLAGHER; and DOES 1 to 25, inclusive (hereafter "SCOTT'S JACK" or "Defendants") do business in the County of Alameda and because Defendants' obligations and liabilities arise therein, and because the work that was performed by Plaintiff in the County of Alameda is the subject of this action. Moreover, Plaintiff's damages sought herein exceed \$35,000.

2. Plaintiff is a male resident of the state of California.

3. Plaintiff is informed and believes that at all times herein mentioned, Defendant SCOTT'S JACK LONDON SEAFOOD, INC. is and was a California corporation, doing business in Alameda County, California, and which employed Plaintiff.

4. Defendant RAYMOND GALLAGHER is a citizen of California based on Plaintiff's information and belief.

5. In relevant part, Labor Code section 558.1 states:

(a) Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.

(b) For purposes of this section, the term "other person acting on behalf of an employer" is limited to a natural person who is an owner, director, officer, or managing agent of the employer, and the term "managing agent" has the same meaning as in subdivision (b) of Section 3294 of the Civil Code.

6. Plaintiff is informed and believes and thereon alleges that RAYMOND GALLAGHER is a natural person and an owner, director, officer, and/or managing agent of Defendant SCOTT'S JACK LONDON SEAFOOD, INC., who directly or indirectly, or through an agent or any other person, employed or exercised control over the wages, hours, or working conditions of Plaintiff and the aggrieved employees (as defined below). Therefore, he is liable to

1 Plaintiff and the aggrieved employees for his violations of, or causing Defendants to violate,
2 Labor Code sections 203, 226, 226.7, 1193.6, 1194, 2802, and the Wage Order (no. 5) pursuant
3 to Labor Code section 558.1.

4 7. The “aggrieved employees” are all current and former non-exempt or hourly paid
5 employees who worked for Defendants at any of their California restaurant locations during the
6 relevant time period pursuant to California Labor Code section 2698, et. seq., the Labor Code
7 Private Attorneys General Act of 2004 (“PAGA”).

8 8. Plaintiff is ignorant of the true names and capacities, whether individual,
9 corporate, or associate of those defendants fictitiously sued as DOES 1 to 25, inclusive, and so
10 Plaintiff sues them by these fictitious names. Plaintiff is informed and believes that each of the
11 DOE defendants, numbers 1 to 25, reside in the State of California and are in some manner
12 responsible for the conduct alleged herein. Upon discovering the true names and capacities of
13 these fictitiously named defendants, Plaintiff will amend this complaint to show the true names
14 and capacities of these fictitiously named defendants.

15 9. Unless otherwise alleged in this complaint, Plaintiff is informed, and on the basis
16 of that information and belief, alleges that at all times herein mentioned, each of the remaining
17 codefendants, in doing the things hereinafter alleged, were acting within the course, scope, and
18 under the authority of their agency, employment, or representative capacity, with the consent of
19 his/her codefendants.

20 **GENERAL ALLEGATIONS**

21 10. Plaintiff started working at SCOTT’S JACK on or around September 25, 2023 as
22 a server. Plaintiff is and was classified as an hourly, non-exempt employee. Plaintiff’s last rate of
23 pay was \$16.50 per hour.

24 11. It is Plaintiff’s position that due to personally suffering the below violations,
25 Plaintiff can equivocally bring the following labor code violations on behalf of all other
26 employees, including ALL hourly, non-exempt employees who worked for SCOTT’S JACK
27 anywhere in the state of California (at all different restaurant locations) during the relevant PAGA
28 period.

1 12. It is our position that SCOTT’S JACK has violated the following Labor Code
2 Sections against Plaintiff and other similarly situated aggrieved employees, who include all non-
3 exempt, hourly employees who worked for SCOTT’S JACK at their various locations/restaurants
4 in the State of California during the relevant PAGA period.

5 13. SCOTT’S JACK violated Labor Code § 1194, 1194.2, 1197, and 1197.1 because
6 it failed to pay Plaintiff and other similarly situated aggrieved employees for all hours worked,
7 including the statutory minimum wage for all hours worked and for “off the clock” work. This is
8 so because SCOTT’S JACK had a company policy wherein they would disproportionately round
9 down the number of hours worked, resulting in “time shaving” and further resulting in aggrieved
10 employees not being paid for all hours worked. Moreover, SCOTT’S JACK failed to provide its
11 employees with proper and accurate reporting time pay.

12 14. SCOTT’S JACK also violated Labor Code § 226.7 and the appropriate Industrial
13 Welfare Commission Wage Order no. 5 because it failed to provide Plaintiff and other similarly
14 situated aggrieved employees with 10-minute rest periods for every four hours of work, or
15 majority portion thereof, throughout their employment. SCOTT’S JACK did not completely
16 relieve Plaintiff and others of all duty during said rest periods. SCOTT’S JACK did not pay to
17 Plaintiff and others one additional hour of pay at Plaintiff’s regular rate of compensation for each
18 workday that one or more statutory rest periods was not provided. Plaintiff did not receive any
19 rest breaks whatsoever during his employment tenure. Rest breaks were simply not a priority for
20 the restaurant and not enforced at all. Moreover, it would not have been possible for employees
21 such as Plaintiff to take such rest breaks due to being understaffed and due to a heavy workload
22 in waiting on tables, especially in the fast-paced restaurant environment. As such, the culture as
23 well as the policies and procedures of SCOTT’S JACK did not lend itself to the employees
24 receiving any statutory rest breaks wherein they were relieved of all work duties. The environment
25 at SCOTT’S JACK was not conducive to receiving statutory rest breaks under California law and
26 timely, statutory rest breaks were not authorized or enforced.

27 15. SCOTT’S JACK violated Labor Code §§ 512 and 226.7 and the appropriate
28 Industrial Welfare Commission Wage Order no. 5 because it failed to provide hourly, non-exempt

1 employees, including Plaintiff and others, the requisite 30-minute, uninterrupted meal periods for
2 every five (5) hours of work throughout their employment. SCOTT’S JACK did not completely
3 relieve Plaintiff and other employees of all duty during said meal periods. SCOTT’S JACK did
4 not pay to Plaintiff and its hourly, non-exempt employees one additional hour of pay at their
5 regular rate of compensation for each workday that one or more statutory meal periods was not
6 provided. On information and belief, Plaintiff has not signed a meal period waiver and it is
7 Plaintiff’s position that such meal period waivers would not be valid and enforceable. Under
8 California law, however, employees must make an affirmative decision every day regarding
9 whether to waive their meal periods. August 13, 2003 DLSE Opinion Letter (“The decision to
10 forego a meal period may not, therefore, be based on a specific requirement of the employer or
11 on a policy or practice which could reasonably be perceived to be a condition of employment.
12 Therefore, blanket “waivers” of meal periods ...whether written or oral, will not be considered
13 valid.”). As such, Plaintiff and others did not receive statutory, timely meal periods during their
14 employment. To the extent that SCOTT’S JACK argues that employees receive meal break
15 premium pay for missed meal periods, that argument is inconsequential for PAGA penalty
16 purposes since the PAGA penalties are for the violations themselves, irrespective of whether an
17 employee received the premium payment for a missed, short, or interrupted meal period. In *Kirby*
18 *v. Immoos Fire Protection, Inc.*, the Court stated, “section 226.7 does not give employers a lawful
19 choice between providing either meal and rest breaks or an additional hour of pay.” See *Kirby v.*
20 *Immoos Fire Protection, Inc.*, (2012) 53 Cal.4th 1244, 1256 (emphasis in original). Thus, the
21 extra hour of pay does not excuse the violation; the employer has still committed a violation even
22 if the remedy for the violation has been paid. See *Wert v. U.S. Bancorp.*, (S.D. Cal. Mar. 22, 2016,
23 2016 WL 1110302 at *4). As such, the work environment and culture at SCOTT’S JACK was
24 not conducive to receiving consistent, timely, statutory meal breaks under California law.
25 Moreover, any meal or rest break premiums paid were not compensated at the weighted average
26 regular rate, inclusive of bonuses and/or incentive payments as well as overtime compensation.

27 16. Furthermore, during the relevant time period, and due to the above labor code
28 violations, SCOTT’S JACK failed to pay Plaintiff and other similarly situated aggrieved

1 employees all wages due to them within any time period specified by California Labor Code
2 section 204. Since Plaintiff was not compensated for his “off the clock” work and since Plaintiff
3 did not receive proper meal and rest break premiums, Plaintiff would still be owed wages pursuant
4 to Labor Code Section 204. In addition, there were numerous occasions wherein Plaintiff was not
5 paid on the designated pay date and was paid late. SCOTT’S JACK was also in violation of
6 California Labor Code section 226(a) by failing to include pertinent information on the wage
7 statements, including but not limited to, the correct hourly rate, all hours worked, overtime hours
8 worked, correct overtime pay, gross wages earned, net wages earned, premium pay for missed
9 meal and rest breaks, all deductions, the correct start and end of the pay period, all employee
10 identifying information, the correct and complete name and address of the legal employer, tips,
11 and reimbursement for business expenses, among others. As such, SCOTT’S JACK did not
12 provide Plaintiff and other similarly situated aggrieved employees with complete, accurate
13 itemized wage statements.

14 17. During the relevant time period, SCOTT’S JACK also failed to keep accurate and
15 complete payroll records showing the actual hours worked per day and the wages paid to Plaintiff
16 and others pursuant to California Labor Code sections 1174(d).

17 18. SCOTT’S JACK also violated Labor Code § 203 because it willfully failed to pay
18 Plaintiff and other similarly situated aggrieved employees earned and due wages upon separation
19 of employment, either immediately upon involuntary termination, or within 72 hours of
20 resignation. These earned but unpaid wages include compensation for all hours worked, including
21 minimum wages, overtime compensation, and premium pay for missed meal and rest breaks.

22 19. During the relevant time period, Plaintiff and other aggrieved employees incurred
23 necessary, business-related expenses and costs that were not reimbursed by SCOTT’S JACK.
24 These costs include but are not limited to uniforms and use of personal cell phone for work
25 purposes as the host/manager would call Plaintiff on his cell phone relating to work matters. In
26 addition, Plaintiff had to bring his own pen and notebook to work to effectuate his job duties as a
27 waiter, but was not reimbursed for such expenses. Accordingly, SCOTT’S JACK was in violation
28 of California Labor Code sections 2800 and 2802.

1 20. Additionally, SCOTT’S JACK violated Labor Code Section 351 and 353 by taking
2 some of the tips meant for employees and also deducting the tips from employees’ earned wages.
3 SCOTT’S JACK also deducted the credit card fee from employees’ tips and did not timely provide
4 the credit card and even cash tips to aggrieved employees. As such, aggrieved employees were
5 not given accurate tips to which they were entitled.

6 21. Furthermore, SCOTT’S JACK did not provide proper and correct/accurate sick
7 pay (inclusive of all bonuses/shift differentials/incentive payments) that was also delineated on
8 employee pay stubs and also failed to provide proper sick leave in violation of Labor Code
9 sections 233 and 246. Moreover, there were no suitable seating/rest break facilities for the
10 employees pursuant to Wage Order no. 5-2001 as employees did not have a designated break
11 area.

12 22. Accordingly, Plaintiff now seeks civil penalties on behalf of himself and the
13 aggrieved employees based on Defendants’ alleged violations of the California Labor Code and
14 the Wage Order.

15 **FIRST (AND ONLY) CAUSE OF ACTION**

16 **PRIVATE ATTORNEYS GENERAL ACT**

17 **Representative Claim for PAGA penalties under California Labor Code sections 201, 202,**
18 **203, 204 and/or 204b, 226, 226.3, 226.7, 233,246, 351, 353, 510, 512, 558, 558.1, 1174,**
19 **1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 2698, 2699, 2800, 2802, and the applicable**
20 **Industrial Welfare Commission Wage Order No. 5-2001**

21 **(Against All Named Defendants and all DOE Defendants)**

22 23. Plaintiff re-alleges and incorporates by reference each and every allegation in
23 paragraphs 1 through 22, inclusive, of this Complaint as though fully set forth herein.

24 24. Pursuant to law, on August 9, 2024, Plaintiff provided the required written notice
25 to the California Labor & Workforce Development Agency (LWDA) and Defendants of the
26 specific violations of the California Labor Code that Defendants and DOE defendants have
27 violated and continue to violate.

28 25. Pursuant to California Labor code section 2699.3, no response was received from
the LWDA within 65 days of the postmark date of the above-alleged letter.

 26. Plaintiff therefore has exhausted all administrative remedies required of him under

1 California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute this cause
2 of action and pursue penalties in a representative action for Defendants' violations of the Labor
3 Code.

4 27. Pursuant to California Labor Code section 2699, any provisions of the Labor Code
5 that provides for a civil penalty to be assessed and collected by the LWDA or any of its
6 departments, divisions, commissions, boards, agencies, or employees for violation of the code
7 may, as an alternative, be recovered through a civil action brought by an aggrieved employee
8 on behalf of himself or herself and other current or former employees pursuant to the procedures
9 specified in California Labor Code section 2699.3.

10 28. Plaintiff is an "aggrieved employee" because Plaintiff was employed by the
11 alleged violator and had one or more of the alleged violations committed against him, and
12 therefore is properly suited to represent the interests of all current and former non-exempt or
13 hourly paid employees who worked for Defendants at any of their California locations during the
14 relevant time period.

15 29. Based on the acts alleged above, Plaintiff, on behalf of himself and others, seeks
16 penalties under California Labor Code sections 2698 and 2699 because of Defendants' violations
17 of numerous provisions of the California Labor Code as alleged in this Complaint.

18 30. Plaintiff therefore has exhausted all administrative remedies required of him under
19 California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute this cause
20 of action and pursue penalties in a representative action for Defendants' violations of the Labor
21 Code.

22 31. California Labor Code section 2699 et seq. imposes penalties upon culpable
23 Defendants for violating the Labor Code.

24 32. California Labor Code section 558 establishes a civil penalty as follows: Any
25 employer or other person action on behalf of an employer who violates, or causes to be violated,
26 a section of this chapter or any provision regulating hours and days of work in any order of the
27 Industrial Welfare Commission (including the "Hours and Days of Work" section of the Wage
28 Order) shall be subject to a civil penalty of (1) for any initial violation, fifty dollars (\$50) for each

1 underpaid employee for each pay period for which the employee was underpaid ...; (2) for each
2 subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay
3 period for which the employee was underpaid ...;

4 33. Plaintiff seeks penalties for Defendants' misconduct as alleged herein as permitted
5 by law, but only those penalties that are required to be shared with the LWDA as Plaintiff is not
6 seeking individual/victim specific relief or underpaid wages under this particular cause of action.

7 34. Specifically, Plaintiff seeks penalties under California Labor Code section 2699,
8 for the following:

9 Violations of California Labor Code sections 201, 202, 203, 204 and/or 204b, 226, 226.3,
10 226.7, 233, 246, 351, 353, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1,
11 1198, 2800, and 2802 via 2698 and 2699, and any other Labor Codes and Wage Order no.
12 5 violated on the facts alleged in this Complaint.

13 35. Pursuant to Labor Code section 2698 et seq., Plaintiff seeks to recover attorney's
14 fees, costs, and civil penalties on behalf of Plaintiff and other current and former Aggrieved
15 Employees as alleged herein in an amount to be shown according to proof at trial and within the
16 jurisdictional limits of this Court.

17 WHEREFORE, Plaintiff prays for Judgment against Defendants and each of them, as
18 follows:

- 19 1. For the imposition of civil penalties;
- 20 2. For maximum civil penalties available under Labor Code Section 2699 against
21 Defendants in a manner and amount authorized by that statute, as described more
22 particularly in the Complaint and representative PAGA claims;
- 23 3. For all costs and disbursements incurred in this suit;
- 24 4. Reasonable attorney's fees where available by law, including but not limited to,
25 pursuant to Labor Code section 2698 et seq., Code of Civil Procedure section
26 1021.5, and/or other applicable laws; and

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5. For such other and further relief as this Court may deem proper.

Respectfully submitted,

MESSRELIAN LAW INC.

Dated: November 7, 2024

By Maralle Messrelian
Harout Messrelian, Esq.
Maralle Messrelian, Esq., Of Counsel
Attorneys for Plaintiff, ABRAN GUZMAN