

03/21/2024

By: A. Turner Deputy

1 DAVID G. SPIVAK (SBN 179684)

david@spivaklaw.com

2 LAUREN R. DAVIS (SBN 294115)

lauren@spivaklaw.com

3 THE SPIVAK LAW FIRM

4 8605 Santa Monica Bl

PMB 42554

5 West Hollywood, CA 90069

Telephone: (213) 725-9094

6 Facsimile: (213) 634-2485

7 Attorneys for Plaintiff(s),

8 NAOMI MOJADDIDI, KIA SPURNEY, and all others similarly situated

9 (Additional attorneys for Plaintiff(s) on following page)

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **FOR THE COUNTY OF SACRAMENTO**
12 **(UNLIMITED JURISDICTION)**

13 NAOMI MOJADDIDI, KIA SPURNEY,
14 and ANTOLIN NAJERA, on behalf of
15 themselves and all others similarly situated,
16 the general public, and as “aggrieved
17 employees” on behalf of other “aggrieved
18 employees” under the Labor Code Private
19 Attorneys General Act of 2004,

20 *Plaintiffs,*

21 vs.

22 ELITE DINERS, LLC, a California limited
23 liability company; ELITE DEVCO, LLC, a
24 California limited liability company; ELITE
25 SPORTS BAR GROUP, LLC, a California
26 limited liability company; SOCAL DINERS,
27 LLC, a California limited liability company;
28 ELITE BUSINESS ENTERPRISES, INC., a
California corporation; and DOES 1-50,
inclusive,

Defendants.

Case No.: 34-2020-00273090-CU-OE-GDS

CLASS ACTION

**~~PROPOSED~~ THIRD AMENDED
COMPLAINT FOR:**

1. Failure to Provide Rest Breaks (Lab. Code §§ 226.7 and 1198);
2. Failure to Provide Meal Periods (Lab. Code §§ 226.7, 512 and 1198);
3. Failure to Pay All Wages Earned for All Hours Worked at the Correct Rates of Pay (Lab. Code §§ 510, 1194, 1197, and 1198);
4. Failure to Indemnify (Lab. Code §§ 1198 and 2802);
5. Wage Statement Penalties (Lab. Code § 226);
6. Waiting Time Penalties (Lab. Code §§ 201-203);
7. Unfair Competition (Bus. & Prof. Code §§ 17200, et seq.; and
8. Civil Penalties (Lab. Code §§ 2698, et seq.).

JURY TRIAL DEMANDED

ADDITIONAL ATTORNEYS FOR PLAINTIFF(S)

WALTER L. HAINES (SBN 71075)

walter@uelglaw.com

UNITED EMPLOYEES LAW GROUP

8605 Santa Monica Bl.

PMB 63354

West Hollywood, CA 90069

Telephone: (562) 256-1047

Facsimile: (562) 256-1006

Attorneys for Plaintiff(s),

NAOMI MOJADDIDI, KIA SPURNEY, and all others similarly situated

DAVID D. BIBIYAN (SBN 287811)

david@tomorrowlaw.com

JEFFREY D. KLEIN (SBN 297296)

jeff@tomorrowlaw.com

VEDANG J. PATEL (SBN 328647)

vedang@tomorrowlaw.com

BIBIYAN LAW GROUP, P.C.

8484 Wilshire Bl.

Suite 500

Beverly Hills, CA 90211

Telephone: (310) 438-5555

Facsimile: (310) 300-1705

Attorneys for Plaintiff(s),

ANTOLIN NAJERA, and all others similarly situated

1 Plaintiffs, NAOMI MOJADDIDI, KIA SPURNEY, and ANTOLIN NAJERA (hereafter
2 “Plaintiffs”), on behalf of themselves and all others similarly situated, complain and allege as
3 follows:

4 **INTRODUCTION**

5 1. Plaintiffs bring this class and representative action against Defendant ELITE
6 DINERS, LLC, a California limited liability company, ELITE DEVCO, LLC, a California limited
7 liability company, ELITE SPORTS BAR GROUP, LLC, a California corporation, SOCAL
8 DINERS, LLC, a California limited liability company; ELITE BUSINESS ENTERPRISES,
9 INC., a California corporation; and DOES 1-50, inclusive (collectively “Defendants”) for alleged
10 violations of the California Labor Code, Industrial Welfare Commission Order No. 5-2001
11 (hereafter “the Wage Order”), and the Business and Professions Code.

12 2. As set forth in more detail below, Plaintiffs allege that Defendants are liable to
13 them and other similarly situated current and former California-based hourly workers, including
14 but not limited to servers, bussers, wait staff, cashiers, and cooks, for unpaid wages and other
15 related relief. These claims are based on Defendants’ alleged failures to (1) provide all meal and
16 rest periods in compliance with California law, (2) pay all wages earned for all hours worked, (3)
17 indemnify Plaintiffs and the below-described class for reasonable expenses incurred performing
18 their duties, (4) provide accurate written wage statements, (5) timely pay all final wages upon
19 termination of employment, and (6) fairly compete. Accordingly, Plaintiffs now seek to recover
20 unpaid wages and related relief through this class and representative action.

21 **PARTIES**

22 3. Plaintiff NAOMI MOJADDIDI is a resident of California. At all relevant times,
23 Plaintiff was an “employee” within the meaning of Title 8 California Code of Regulations Section
24 11050 and an “aggrieved employee” within the meaning of Labor Code Section 2699(c).

25 4. Plaintiff KIA SPURNEY is a resident of California. At all relevant times, Plaintiff
26 was an “employee” within the meaning of Title 8 California Code of Regulations Section 11050
27 and an “aggrieved employee” within the meaning of Labor Code Section 2699(c).

28 5. Plaintiff ANTOLIN NAJERA is a resident of California. At all relevant times,

1 Plaintiff was an “employee” within the meaning of Title 8 California Code of Regulations Section
2 11050 and an “aggrieved employee” within the meaning of Labor Code Section 2699(c).

3 6. Defendant ELITE DINERS, LLC is a limited liability company organized and
4 existing under the laws of California and is citizen thereof.

5 7. Defendant ELITE DEVCO, LLC is a limited liability company organized and
6 existing under the laws of California and is citizen thereof.

7 8. Defendant ELITE SPORTS BAR GROUP, LLC is a limited liability company
8 organized and existing under the laws of California and is citizen thereof.

9 9. Defendant SOCAL DINERS, LLC is a limited liability company organized and
10 existing under the laws of California and is citizen thereof.

11 10. Defendant ELITE BUSINESS ENTERPRISES, INC. is a corporation organized
12 and existing under the laws of California and is citizen thereof.

13 11. Plaintiffs are ignorant of the true names, capacities, relationships, and extents of
14 participation in the conduct alleged herein of the Defendants sued as DOES 1-50, inclusive, but
15 are informed and believe and thereon allege that said Defendants are legally responsible for the
16 wrongful conduct alleged herein and therefore sue these Defendants by such fictitious names.
17 Plaintiffs will amend the Complaint to allege the true names and capacities of the DOE
18 Defendants when ascertained.

19 12. Plaintiffs are informed and believe and thereon allege that, at all relevant times
20 herein, all Defendants were the agents, employees, servants, masters, and/or employers of the
21 remaining Defendants, and, in doing the things hereinafter alleged, were acting within the course
22 and scope of such agency or employment and with the approval and ratification of each of the
23 other Defendants.

24 13. At all relevant times, in perpetrating the acts and omissions alleged herein,
25 Defendants and each of them acted pursuant to and in furtherance of a policy and/or practice, or
26 lack thereof, which resulted in Defendants not paying Plaintiffs and other members of the below-
27 described class in accordance with applicable laws as alleged herein.

28 14. Plaintiffs are informed and believe and thereon allege that each and every one of

1 the acts and omissions alleged herein was performed by, and/or attributable to, all Defendants,
2 each acting as agents and/or employees, and/or under the direction and control of each of the other
3 Defendants, and that said acts and failures to act were within the course and scope of said agency,
4 employment, and/or direction and control.

5 **CLASS ALLEGATIONS**

6 15. This action has been brought and may be maintained as a class action pursuant to
7 California Code of Civil Procedure section 382 because there is a well-defined community of
8 interest among the persons who comprise the readily ascertainable class defined below and
9 because Plaintiffs are unaware of any difficulties likely to be encountered in managing this case
10 as a class action.

11 16. **Class Definition:** The Class is defined as follows: All California based persons
12 Defendants employed hourly as servers, bussers, cashiers, cooks, and in comparable positions at
13 any time during the period beginning four years prior to the filing of this action and ending on the
14 date that final judgment is entered in this action (“Class” or “Class Members”).

15 17. **Reservation of Rights:** Pursuant to Rule of Court 3.765(b), Plaintiffs reserve the
16 right to amend or modify the class definition with greater specificity, by further division into
17 subclasses and/or by limitation to particular issues.

18 18. **Numerosity:** The Class Members are so numerous that the individual joinder of
19 each individual Class Member is impractical. While Plaintiffs do not currently know the exact
20 number of Class Members, Plaintiffs are informed and believe that the actual number exceeds the
21 minimum required for numerosity under California laws.

22 19. **Commonality and Predominance:** Common questions of law and fact exist as to
23 all Class Members and predominate over any questions which affect only individual Class
24 Members. These questions include, but are not limited to:

25 A. Whether Defendants failed to provide the class with all meal and rest
26 periods in compliance with California law;

27 B. Whether Defendants failed to pay all wages earned to Class Members for
28 all hours worked at the correct rates of pay;

1 C. Whether Defendants failed to indemnify the Class Members for the
2 reasonable expenses they incurred during the course of performing their duties;

3 D. Whether Defendants knowingly and intentionally failed to provide the
4 class with accurate written wage statements;

5 E. Whether Defendants willfully failed to provide the Class with timely final
6 wages;

7 F. Whether Defendants engaged in unfair competition within the meaning of
8 Business and Professions Code sections 17200, *et seq.*, with respect to the class; and

9 G. Whether Class Members are entitled to restitution of money or property
10 that Defendants may have acquired from them through alleged Labor Code violations.

11 20. **Typicality:** Plaintiffs' claims are typical of the other Class Members' claims.
12 Plaintiffs are informed and believe and thereon allege that Defendants have a policy and/or
13 practice, or lack thereof, which resulted in Defendants failing to comply with the California Labor
14 Code, the Wage Order, and the Business and Professions Code.

15 21. **Adequacy of Class Representative:** Plaintiffs are adequate class representatives
16 in that they have no interests that are adverse to, or otherwise in conflict with, the interests of
17 absent Class Members. Plaintiffs are dedicated to vigorously prosecuting this action on behalf of
18 Class Members. Plaintiffs will fairly and adequately represent and protect the interests of Class
19 Members.

20 22. **Adequacy of Class Counsel:** Plaintiffs' counsel are adequate class counsel in that
21 they have no known conflicts of interest with Plaintiffs or absent Class Members, are experienced
22 in class action litigation, and are dedicated to vigorously prosecuting this action on behalf of
23 Plaintiffs and absent Class Members.

24 23. **Superiority:** A class action is vastly superior to other available means for fair and
25 efficient adjudication of Class Members' claims and would be beneficial to the parties and the
26 Court. Class action treatment will allow a number of similarly situated persons to simultaneously
27 and efficiently prosecute their common claims in a single forum without the unnecessary
28 duplication of effort and expense that numerous individual actions would entail. In addition, the

1 monetary amounts due to many individual Class Members are likely to be relatively small and
2 would thus make it difficult, if not impossible, for individual Class Members to both seek and
3 obtain relief. Moreover, a class action will serve an important public interest by permitting Class
4 Members to effectively pursue the recovery of monies owed to them. Further, a class action will
5 prevent the potential for inconsistent or contradictory judgments inherent in individual litigation.

6 **STATEMENT OF FACTS**

7 24. On or about March 27, 2017, Defendants first employed Plaintiff Naomi
8 Mojaddidi (hereafter “Plaintiff Mojaddidi”) to work at their Black Bear Diner restaurant, located
9 at 1830 Arden Way in Sacramento, California, as a non-exempt hourly server, where they
10 employed Plaintiff Mojaddidi continuously in this capacity until approximately March 20, 2020
11 when they terminated her employment.

12 25. Defendants first employed Kia Spurney (hereafter “Plaintiff Spurney”) in
13 approximately June of 2016 to work as a non-exempt hourly server at their restaurant located in
14 Bakersfield, California. Plaintiff Spurney continuously worked for Defendants from the time of
15 her hire until on or about October 1, 2018, when her first term of employment ended. Defendants
16 again employed Plaintiff Spurney in April of 2019 as a non-exempt hourly server at their
17 Bakersfield, California restaurant. Plaintiff Spurney continuously worked for Defendants in this
18 capacity from the time of her rehire until approximately August 1, 2019, when her second term
19 of employment ended.

20 26. On or about June of 2018, Defendants first employed Plaintiff Antolin Najera
21 (hereafter “Plaintiff Najera”) to work at their restaurant located in the County of Los Angeles in
22 the state of California as a non-exempt employee, with duties that included, but were not limited
23 to, file management, posting payments, answering phones, and taking payments, where
24 Defendants employed Plaintiff Najera continuously in this capacity until approximately June of
25 2020, when his employment ended.

26 27. Plaintiffs and the Class Members earned their wages at an hourly rate and
27 Defendants issued their paychecks on a semi-monthly and/or bi-weekly basis. At relevant times,
28 Plaintiff and the Class Members worked shifts in excess of eight (8) hours in one workday and/or

1 over forty (40) hours in one work week.

2 28. At all relevant times, Defendants failed to provide Plaintiffs and the Class
3 Members with all timely rest and meal periods pursuant to California law. Defendants failed to
4 hire sufficient staff members, including “breaker” employees, to cover Plaintiffs and the Class
5 Members so they could take duty-free, ten-minute rest periods and duty-free, 30-minute meal
6 periods. Even when Plaintiffs and the Class Members tried to take duty-free rest and/or meal
7 periods, other of Defendants’ employees and managers interrupted them with requests for help
8 serving Defendants’ customers, cashing out their tables, and for other business. Moreover,
9 Defendants often failed to provide Plaintiffs and the Class Members with 30-minute meal periods
10 before the end of their fifth work hour. Defendants’ management required that Plaintiffs and the
11 Class Members request permission prior to taking a meal period, which they often prohibited,
12 due to the press of business. Furthermore, Defendants failed to pay premium wages for days on
13 which they failed to provide Plaintiffs and the Class Members with timely rest and/or meal
14 periods.

15 29. At all relevant times, Defendants required Plaintiffs and the Class Members to
16 perform “side work” during meal periods and after clocking out at the end of their shifts. This
17 side work included, but is not limited to, cashing out tables, bussing tables, refilling condiments,
18 milk, and beer, cleaning and rolling silverware, restocking ice, cups, straws, dressings, as well as
19 taking apart and cleaning the orange juice and coffee machines. Plaintiffs and the Class Members
20 spent on average approximately 4-5 hours per week performing such “side work.” Defendants,
21 however, failed to pay Plaintiffs and the other Class Members for this off-the-clock work.
22 Defendants’ management would threaten Plaintiffs and the other Class Members with reducing
23 their work hours and/or issuing a write-up for failing to perform the required side work. As such,
24 Defendants failed to pay Plaintiffs and the other Class Members minimum wages for all hours
25 worked and compensate them at one and one-half times their respective regular rates of pay for
26 all overtime hours worked.

27 30. At all relevant times, as a condition for employment, Defendants required
28 Plaintiffs and the Class Members to purchase and wear while working uniforms and purchase

1 server books. Defendants, however, failed to reimburse them for these required business
2 expenses.

3 31. Defendants failed to record the “off the clock” wages Plaintiffs and the other Class
4 Members earned and all the “off the clock” hours they worked, as described above, on their
5 itemized wage statements. As a result of the practices described above, Defendants failed to
6 provide Plaintiffs and the other Class Members with accurate wage statements that properly and
7 accurately itemize Plaintiffs’ and the other Class Members’ gross and net wages earned and the
8 total hours worked. As a further result, Defendants failed to timely pay Plaintiffs and the other
9 Class Members all earned and unpaid wages during their employment.

10 **FIRST CAUSE OF ACTION**

11 **FAILURE TO PROVIDE REST BREAKS**

12 **(Lab. Code §§ 226.7 and 1198)**

13 **(By Plaintiffs and the Class against all Defendants)**

14 32. Plaintiffs incorporate all paragraphs of this Complaint as if fully alleged herein.

15 33. At all relevant times during the applicable limitations period, Plaintiffs and the
16 Class have been employees of Defendants and entitled to the benefits and protections of
17 California Labor Code §§ 226.7, 1198, and the Wage Order.

18 34. Labor Code § 1198 states,

19 “The maximum hours of work and the standard conditions of labor fixed
20 by the commission shall be the maximum hours of work and the standard
21 conditions of labor for employees. The employment of any employee for
22 longer hours than those fixed by the order or under conditions of labor
23 prohibited by the order is unlawful.”

24
25 35. In relevant part, Section 12 of the Wage Order states:

26 Rest Periods:

27 (A) Every employer shall authorize and permit all employees
28 to take rest periods, which insofar as practicable shall be in the

1 middle of each work period. The authorized rest period time shall
2 be based on the total hours worked daily at the rate often (10)
3 minutes net rest time per four (4) hours or major fraction thereof.
4 However, a rest period need not be authorized for employees
5 whose total daily work time is less than three and one-half (3 1/2)
6 hours. Authorized rest period time shall be counted as hours
7 worked for which there shall be no deduction from wages.

8
9 (B) If an employer fails to provide an employee a rest period
10 in accordance with the applicable provisions of this Order, the
11 employer shall pay the employee one (1) hour of pay at the
12 employee's regular rate of compensation for each work day that
13 the rest period is not provided.

14
15 36. In addition, Labor Code Section 226.7 states

16 (b) An employer shall not require an employee to work during a meal
17 or rest or recovery period mandated pursuant to an applicable statute, or
18 applicable regulation, standard, or order of the Industrial Welfare
19 Commission, the Occupational Safety and Health Standards Board, or the
20 Division of Occupational Safety and Health.

21
22 (c) If an employer fails to provide an employee a meal or rest or
23 recovery period in accordance with a state law, including, but not limited
24 to, an applicable statute or applicable regulation, standard, or order of the
25 Industrial Welfare Commission, the Occupational Safety and Health
26 Standards Board, or the Division of Occupational Safety and Health, the
27 employer shall pay the employee one additional hour of pay at the
28 employee's regular rate of compensation for each workday that the meal

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

or rest or recovery period is not provided.

37. Pursuant to the Wage Order, Plaintiffs and the Class were entitled to be provided with net rest breaks of at least ten minutes for each four-hour period of work, or major fraction thereof.

38. Defendants failed to provide Plaintiffs with all required rest breaks in accordance with the Wage Order. Defendants failed to hire sufficient staff members, including “breaker” employees, to cover Plaintiffs and the Class Members so they could take duty-free 10-minute rest periods. Even when Plaintiffs and the Class Members tried to take rest periods, other employees and managers interrupted them with requests for help serving Defendants’ customers. Plaintiffs are informed and believe and thereon allege that, at relevant times within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy which resulted in Defendants not providing the class with all rest breaks required by California law.

39. Defendants failed to pay Plaintiffs the additional wages required by California Labor Code § 226.7 for all rest breaks not provided to them. Plaintiffs are informed and believe and thereon allege that, at relevant times within the applicable limitations period, Defendants have maintained a policy, practice, or a lack of a policy which resulted in Defendants not providing the class with additional wages for all rest breaks not provided to them as required by California Labor Code § 226.7.

40. As a result of Defendants’ unlawful conduct, Plaintiffs and the class have suffered damages in amounts subject to proof to the extent they were not paid additional wages owed for all rest breaks not provided to them.

41. By reason of the above, Plaintiffs and the members of the class are entitled to premium wages for workdays in which one or more rest breaks were not provided to them pursuant to California Labor Code § 226.7.

///
///
///

1 **SECOND CAUSE OF ACTION**

2 **FAILURE TO PROVIDE MEAL PERIODS**

3 **(Lab. Code §§ 226.7, 512, and 1198)**

4 **(By Plaintiffs and the Class against all Defendants)**

5 42. Plaintiffs incorporate all paragraphs of this Complaint as if fully alleged herein.

6 43. At all relevant times during the applicable limitations period, Plaintiffs and the
7 class have been employees of Defendants and entitled to the benefits and protections of
8 California Labor Code §§ 226.7, 512 and 1198, and the Wage Order.

9 44. Labor Code § 1198 states:

10 “The maximum hours of work and the standard conditions of labor fixed
11 by the commission shall be the maximum hours of work and the standard
12 conditions of labor for employees. The employment of any employee for
13 longer hours than those fixed by the order or under conditions of labor
14 prohibited by the order is unlawful.”

15
16 45. In relevant part, Labor Code Section 512 states:

17 “An employer may not employ an employee for a work period of more
18 than five hours per day without providing the employee with a meal
19 period of not less than 30 minutes, except that if the total work period per
20 day of the employee is no more than six hours, the meal period may be
21 waived by mutual consent of both the employer and employee. An
22 employer may not employ an employee for a work period of more than
23 10 hours per day without providing the employee with a second meal
24 period of not less than 30 minutes, except that if the total hours worked
25 is no more than 12 hours, the second meal period may be waived by
26 mutual consent of the employer and the employee only if the first meal
27 period was not waived.”
28

1 46. In relevant part, Section 11 of the Wage Order states:

2 Meal Periods:

3 (A) No employer shall employ any person for a work period of more
4 than five (5) hours without a meal period of not less than 30
5 minutes, except that when a work period of not more than six (6)
6 hours will complete the day's work the meal period may be
7 waived by mutual consent of the employer and the employee...

8
9 (B) If an employer fails to provide an employee a meal period in
10 accordance with the applicable provisions of this order, the
11 employer shall pay the employee one (1) hour of pay at the
12 employee's regular rate of compensation for each workday that
13 the meal period is not provided.

14
15 47. Pursuant to California Labor Code § 512 and the Wage Order, Plaintiffs and the
16 class were entitled to be provided with uninterrupted meal periods of at least 30 minutes for
17 each day they worked five or more hours. Pursuant to California Labor Code § 512, they were
18 also entitled to a second 30-minute meal period when they worked more than ten (10) hours in
19 a workday.

20 48. During the relevant time period, Defendants failed to provide Plaintiffs and the
21 Class Members with timely, off-duty meal periods in accordance with California Labor Code §
22 512 and the Wage Order. Defendants failed to hire sufficient staff members, including "breaker"
23 employees, to cover Plaintiffs and the Class Members so they could take duty-free 30-minute
24 meal periods. Even when Plaintiffs and the Class Members tried to take duty-free meal periods,
25 other of Defendants' employees and managers interrupted them with requests for help serving
26 Defendants' customers, cashing out their tables, and for other business. Moreover, Defendants'
27 management required that Plaintiffs and the Class Members request permission prior to taking
28 a meal period, which they often prohibited, due to the press of business.

1 49. Plaintiffs are informed and believe and thereon allege that, at relevant times
2 within the applicable limitations period, Defendants maintained a policy, practice, or a lack of
3 a policy which resulted in Defendants not providing Plaintiffs and the class with all timely meal
4 periods required by California Labor Code § 512 and the Wage Order.

5 50. Defendants failed to pay Plaintiffs the additional wages required by California
6 Labor Code § 226.7 for all meal periods not provided to them. Plaintiffs are informed and
7 believe and thereon allege that, at relevant times within the applicable limitations period,
8 Defendants have maintained a policy, practice, or a lack of a policy which resulted in Defendants
9 not providing the class with additional wages for all meal periods not provided to them as
10 required by California Labor Code § 226.7.

11 51. As a result of Defendants' unlawful conduct, Plaintiffs and the class have
12 suffered damages in amounts subject to proof to the extent they were not paid additional wages
13 owed for all meal periods not provided to them.

14 52. By reason of the above, Plaintiffs and the members of the class are entitled to
15 premium wages for workdays in which one or more meal periods were not provided to them
16 pursuant to California Labor Code § 226.7.

17 **THIRD CAUSE OF ACTION**

18 **FAILURE TO PAY ALL WAGES EARNED FOR ALL HOURS WORKED**

19 **(Lab. Code §§ 510, 1194, 1197, and 1198)**

20 **(Plaintiffs and the Class against Defendants)**

21 53. Plaintiffs incorporate all paragraphs of the Complaint as if fully alleged herein.

22 54. At all relevant times, Plaintiffs and the other Class Members have been non-
23 exempt employees of Defendants and entitled to the benefits and protections of California Labor
24 Code sections 510, 1194, 1197, and 1198 and the Wage Order.

25 55. Section 2 of the Wage Order defines "hours worked" as "the time during which an
26 employee is subject to the control of an employer, and includes all the time the employee is
27 suffered or permitted to work, whether or not required to do so."

28 56. Section 3 of the Wage Order states:

1 (A) Daily Overtime - General Provisions

2
3 (1) The following overtime provisions are applicable to employees 18 years of
4 age or over and to employees 16 or 17 years of age who are not required by law
5 to attend school and are not otherwise prohibited by law from engaging in the
6 subject work. Such employees shall not be employed more than eight (8) hours in
7 any workday or more than 40 hours in any workweek unless the employee
8 receives one and one-half (1 ½) times such employee's regular rate of pay for all
9 hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes
10 a day's work. Employment beyond eight (8) hours in any workday or more than
11 six (6) days in any workweek is permissible provided the employee is
12 compensated for such overtime at not less than:

13
14 (a) One and one-half (1 ½) times the employee's regular rate of pay for all hours
15 worked in excess of eight (8) hours up to and including 12 hours in any workday,
16 and for the first eight (8) hours worked on the seventh (7th) consecutive day of
17 work in a workweek.

18
19 (b) Double the employee's regular rate of pay for all hours worked in excess of
20 12 hours in any workday and for all hours worked in excess of eight (8) hours on
21 the seventh (7th) consecutive day of work in a workweek.

22
23 (c) The overtime rate of compensation required to be paid to a nonexempt full-
24 time salaried employee shall be computed by using the employee's regular hourly
25 salary as one-fortieth (1/40) of the employee's weekly salary.

26
27 57. Section 4 of the Wage Order requires an employer to pay non-exempt employees
28 at least the minimum wage set forth therein for all hours worked, which consists of all hours that

1 an employer has actual or constructive knowledge that employees are working.

2 58. Labor Code section 510 states:

3 Eight hours of labor constitutes a day's work. Any work in excess of eight hours
4 in one workday and any work in excess of 40 hours in any one workweek and the
5 first eight hours worked on the seventh day of work in any one workweek shall
6 be compensated at the rate of no less than one and one-half times the regular rate
7 of pay for an employee. Any work in excess of 12 hours in one day shall be
8 compensated at the rate of no less than twice the regular rate of pay for an
9 employee. In addition, any work in excess of eight hours on any seventh day of a
10 workweek shall be compensated at the rate of no less than twice the regular rate
11 of pay of an employee. Nothing in this section requires an employer to combine
12 more than one rate of overtime compensation in order to calculate the amount to
13 be paid to an employee for any hour of overtime work.

14
15 59. Labor Code section 1194 invalidates any agreement between an employer and an
16 employee to work for less than the minimum wage required under the applicable Wage Order.

17 60. Labor Code section 1197 makes it unlawful for an employer to pay an employee
18 less than the minimum wage required under the applicable Wage Order for all hours worked
19 during a payroll period.

20 61. Labor Code section 1198 makes it unlawful for an employer to employ an
21 employee under conditions that violate the Wage Order.

22 62. In conjunction, these provisions of the Labor Code require employers to pay non-
23 exempt employees no less than their agreed-upon or statutorily mandated wage rates for all hours
24 worked, including unrecorded hours when the employer knew or reasonably should have known
25 that employees were working during those hours. (See *Morillion v. Royal Packing Co.* (2000) 22
26 Cal.4th 575, 585.)

27 63. At all relevant times, Defendants required Plaintiffs and the other Class Members
28 to perform "side work" during meal periods and after clocking out at the end of their shifts,

1 including but not limited to, cashing out tables, bussing tables, refilling condiments, milk, and
2 beer, cleaning and rolling silverware, restocking ice, cups, straws, dressings, as well as taking
3 apart and cleaning the orange juice and coffee machines. Plaintiffs and the other Class Members
4 spent on average approximately 4-5 hours a week performing such “side work.” Defendants,
5 however, failed to pay Plaintiffs and the other Class Members for this off-the-clock work.

6 64. Plaintiffs are informed and believe and thereon allege that, at all relevant times,
7 Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants’
8 failure to compensate Plaintiffs and the other Class Members for all hours worked as required by
9 California law.

10 65. As a result of Defendants’ unlawful conduct, Plaintiffs and the other Class
11 Members have suffered damages, in an amount subject to proof, to the extent they were not paid
12 the full amount of wages earned during each pay period during the applicable limitations period,
13 including minimum and overtime wages.

14 66. Pursuant to Labor Code section 1194, Plaintiffs, on behalf of themselves and Class
15 Members, seek to recover unpaid wages, liquidated damages in amounts equal to the amounts of
16 unpaid wages, interest thereon, and awards of reasonable costs and attorneys’ fees, all in amounts
17 subject to proof.

18 **FOURTH CAUSE OF ACTION**

19 **FAILURE TO INDEMNIFY**

20 **(Lab. Code §§ 1198 & 2802)**

21 **(Plaintiffs and the Class against all Defendants)**

22 67. Plaintiffs incorporate all paragraphs of this Complaint as if fully alleged herein.

23 68. At all relevant times, Plaintiffs and the Class Members have been non-exempt
24 employees of Defendants and entitled to the benefits and protections of the California Labor Code
25 §§ 1198 and 2802 and the Wage Order.

26 69. In pertinent part, California Labor Code § 2802(a) states:

27
28 “An employer shall indemnify his or her employee[s] for all

1 necessary expenditures incurred by the employee in direct
2 consequence of the discharge of his or her duties.”

3
4 70. Section 9(B) of the Wage Order states:

5 When tools or equipment are required by the employer or are
6 necessary to the performance of a job, such tools and equipment
7 shall be provided and maintained by the employer, except that an
8 employee whose wages are at least two (2) times the minimum
9 wage provided herein may be required to provide and maintain
10 hand tools and equipment customarily required by the trade or
11 craft.

12
13 71. California Labor Code § 1198 prohibits employers from employing their
14 employees under conditions prohibited by the Wage Order.

15 72. At all relevant times, as a condition for employment, Defendants required
16 Plaintiffs and the Class Members to purchase and wear while working uniforms and purchase
17 server books. Defendants, however, failed to reimburse them for these required business
18 expenses.

19 73. Plaintiffs are informed and believe and thereon allege that, at all relevant times,
20 Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants’
21 failure to indemnify Plaintiffs and the Class Members for the reasonable expenses they incurred
22 during the course of performing their duties.

23 74. Therefore, pursuant to California Labor Code § 2802(b), Plaintiffs and the Class
24 Members are entitled to reimbursement for all necessary expenditures and losses and interest
25 thereon, due and owing to them within four years of the date of the filing of the Complaint until
26 the entry of judgment.

27 75. Accordingly, with respect to this cause of action, on behalf of themselves and the
28 Class Members, Plaintiffs pray for the above stated relief, costs, and all reasonable attorneys’

1 fees pursuant to Labor Code § 2802(c) and as otherwise permitted by law.

2 **FIFTH CAUSE OF ACTION**

3 **FAILURE TO PROVIDE ACCURATE WRITTEN WAGE STATEMENTS**

4 **(Lab. Code § 226)**

5 **(Plaintiffs and the Class against all Defendants)**

6 76. Plaintiffs incorporate all paragraphs of the Complaint as if fully alleged herein.

7 77. At all relevant times during the applicable limitations period, Plaintiffs and the
8 other Class Members have been employees of Defendants and entitled to the benefits and
9 protections of California Labor Code section 226.

10 78. Pursuant to California Labor Code section 226(a), Plaintiffs and the other Class
11 Members were entitled to receive, semimonthly and/or bi-weekly or at the time of each payment
12 of wages, an accurate itemized statement showing:

- 13 (1) Gross wages earned,
- 14 (2) Total hours worked by the employee, except for any employee whose
15 compensation is solely based on a salary and who is exempt from payment of overtime under
16 subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission,
- 17 (3) The number of piece rate units earned and any applicable piece rate if the
18 employee is paid on a piece-rate basis,
- 19 (4) All deductions, provided that all deductions made on written orders of the
20 employee may be aggregated and shown as one item,
- 21 (5) Net wages earned,
- 22 (6) The inclusive dates of the period for which the employee is paid,
- 23 (7) The name of the employee and his or her social security number, except
24 that by January 1, 2008, only the last four digits of his or her social security number or an
25 employee identification number other than a social security number may be shown on the itemized
26 statement,
- 27 (8) The name and address of the legal entity that is the employer, and
- 28 (9) All applicable hourly rates in effect during the pay period and the

1 corresponding number of hours worked at each hourly rate by the employee.

2 79. Pursuant to California Labor Code section 226(e), an employee suffering injury as
3 a result of a knowing and intentional failure by an employer to comply with subdivision (a) is
4 entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period
5 in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a
6 subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and
7 is entitled to an award of costs and reasonable attorneys' fees.

8 80. Pursuant to California Labor Code section 226(e), an employee is deemed to suffer
9 injury if the employer fails to provide a wage statement. Also, an employee is deemed to suffer
10 injury if the employer fails to provide accurate and complete information as required by California
11 Labor Code section 226(a) and the employee cannot "promptly and easily determine" from the
12 wage statement alone one or more of the following:

13 A. The amount of the gross wages or net wages paid to the employee during
14 the pay period or any of the other information required to be provided on the itemized wage
15 statement pursuant to California Labor Code section 226(a);

16 B. Which deductions the employer made from gross wages to determine the
17 net wages paid to the employee during the pay period;

18 C. The name and address of the employer and, if the employer is a farm labor
19 contractor, as defined in subdivision (b) of Section 1682 of the California Labor Code, the name
20 and address of the legal entity that secured the services of the employer during the pay period;
21 and

22 D. The name of the employee and only the last four digits of his or her social
23 security number or an employee identification number other than a social security number.

24 81. "Promptly and easily determine," as stated in California Labor Code section
25 226(e), means a reasonable person would be able to readily ascertain the information without
26 reference to other documents or information.

27 82. As alleged herein, Defendants failed to provide Plaintiffs and the other Class
28 Members with all meal and rest periods in compliance with California law. They also failed to

1 provide them with premium wages on workdays they failed to provide them with one or more
2 meal and/or rest periods in compliance with California law. Further, Defendants failed to
3 compensate Plaintiffs and the other Class Members for all hours worked. As a result, Defendants
4 have failed to properly itemize Plaintiffs' and the other Class Members' gross and net wages
5 earned, total hours worked, hourly rate of pay, the corresponding number of hours worked at each
6 hourly rate, and other requirements of California Labor Code § 226. As a result, Defendants have
7 violated California Labor Code § 226.

8 83. Defendants' failure to provide Plaintiffs and the other Class Members with
9 accurate wage statements was knowing and intentional. Defendants had the ability to provide
10 Plaintiffs and the other Class Members with accurate wage statements but intentionally provided
11 wage statements that Defendants knew were not accurate.

12 84. As a result of being provided with inaccurate wage statements by Defendants,
13 Plaintiffs and the other Class Members have suffered injury. Their legal rights to receive accurate
14 wage statements were violated, and they were misled about the amount of wages they had actually
15 earned and were owed. In addition, the absence of accurate information on their wage statements
16 prevented immediate challenges to Defendants' unlawful pay practices, has required discovery
17 and mathematical computations to determine the amounts of wages owed, has caused difficulty
18 and expense in attempting to reconstruct time and pay records, and/or has led to the submission
19 of inaccurate information about wages to state and federal government agencies. Further,
20 Plaintiffs and the other Class Members were not able to ascertain from the wage statements
21 whether Defendants complied with their obligations under California Labor Code section 226(a).

22 85. Pursuant to California Labor Code section 226(e), Plaintiffs and the other class
23 members are entitled to recover the greater of actual damages, or penalties of fifty dollars (\$50)
24 for the initial pay period in which a violation of California Labor Code section 226(a) occurred
25 and one hundred dollars for each violation of California Labor Code section 226(a) in a
26 subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000) per
27 Class Member, and are also entitled to an award of costs and reasonable attorneys' fees.

28 86. Accordingly, with respect to this cause of action, on behalf of themselves and the

1 other Class Members, Plaintiffs pray for the herein stated relief and for an award of all reasonable
2 costs and attorneys' fees, including interest thereon, as permitted by law, all in amounts subject
3 to proof.

4 **SIXTH CAUSE OF ACTION**

5 **WAITING TIME PENALTIES**

6 **(Lab. Code §§ 201-203)**

7 **(By Plaintiffs and the Class against all Defendants)**

8 87. Plaintiffs incorporate all paragraphs of the Complaint as if fully alleged herein.

9 88. At all relevant times during the applicable limitations period, Plaintiffs and the
10 class have been non-exempt employees of Defendants and entitled to the benefits and protections
11 of California Labor Code sections 201 to 203 and the Wage Order.

12 89. Labor Code section 201 provides that all earned and unpaid wages of an employee
13 who is discharged are due and payable immediately at the time of discharge.

14 90. Labor Code section 202 provides that all earned and unpaid wages of an employee
15 Who quits after providing at least 72-hours' notice before quitting are due and payable at the time
16 of quitting and that all earned and unpaid wages of an employee who quits without providing at
17 least 72-hours' notice before quitting are due and payable within 72 hours.

18 91. By failing to pay all earned minimum, regular, overtime, and premium wages to
19 Plaintiffs and the class as described above, Defendants failed to timely pay Plaintiffs and the
20 class all earned and unpaid wages in violation of Labor Code section 201 or 202.

21 92. Plaintiffs are informed and believe that Defendants' failures to timely pay all final
22 wages to them and the Class Members have been willful in that Defendants have the ability to
23 pay final wages in accordance with Labor Code sections 201 and 202 but have intentionally
24 adopted policies or practice that are incompatible with those requirements.

25 93. Labor Code section 203 provides that the wages of an employee continue on a
26 daily basis as a penalty for up to 30 days where an employer willfully fails to timely pay earned
27 and unpaid wages to the employee in accordance with Labor Code section 201 or 202.

28 94. Plaintiffs are informed and believe that Defendants' failures to timely pay

1 Plaintiffs and the class all of their earned and unpaid wages have been willful in that, at all
2 relevant times, Defendants have deliberately maintained policies and practices that violate the
3 requirements of the Labor Code and the Wage Order even though, at all relevant times, they have
4 had the ability to comply with those legal requirements.

5 95. Pursuant to Labor Code section 203, Plaintiffs seek waiting time penalties on
6 behalf of themselves and the Class Members, in amounts subject to proof not to exceed 30 days
7 of waiting time penalties for each Class Member.

8 **SEVENTH CAUSE OF ACTION**

9 **UNFAIR COMPETITION**

10 **(Bus. & Prof. Code §§ 17200, et seq.)**

11 **(Plaintiffs and the Class against all Defendants)**

12 96. Plaintiffs incorporate all paragraphs of the Complaint as if fully alleged herein.

13 97. At all relevant times during the applicable limitations period, Plaintiffs and the
14 other Class Members have been employees of Defendants and entitled to the benefits and
15 protections of the Business and Professions Code sections 17200, *et seq.*

16 98. The unlawful conduct of Defendants alleged herein amounts to and constitutes
17 unfair competition within the meaning of California Business & Professions Code sections 17200,
18 *et seq.* Due to their unfair and unlawful business practices as alleged herein, Defendants have
19 unfairly gained a competitive advantage over other comparable companies doing business in
20 California that comply with their legal obligations to, among other things, pay their employees
21 premium wages for workdays in which they did not provide employees with one or more meal
22 and rest periods, reimburse their employees for reasonable expenses incurred during the course
23 of performing their duties, and pay them all earned wages for all regular and overtime hours
24 worked.

25 99. As a result of Defendants' unfair competition as herein alleged, Plaintiffs and the
26 other Class Members have suffered injuries in fact and lost money or property. Defendants
27 deprived Plaintiffs and the other Class Members of minimum, overtime, and premium wages and
28 reimbursement for expenses that Plaintiffs and the other Class Members incurred during the

1 course of performing their duties.

2 100. Pursuant to California Business & Professions Code section 17203, Plaintiffs and
3 the other Class Members are entitled to restitution of all monies rightfully belonging to them that
4 Defendants did not pay them, or that Defendants otherwise retained by means of their unlawful
5 and unfair business practices.

6 101. Plaintiffs and the other Class Members are entitled to reasonable attorneys' fees
7 in connection with their unfair competition claims pursuant to California Code of Civil
8 Procedure section 1021.5, the substantial benefit doctrine and/or the common fund doctrine.

9 **EIGHTH CAUSE OF ACTION**

10 **CIVIL PENALTIES**

11 **(By Plaintiffs and the Class against all Defendants)**

12 102. Plaintiffs incorporate all paragraphs of this Complaint as if fully alleged herein.

13 103. The "Aggrieved Employees" are all members of the class defined above who
14 Defendants employed during the period beginning January 6, 2019 and ending on the date that
15 final judgment is entered in this action.

16 104. Labor Code § 204 states:

17 (a) All wages, other than those mentioned in Section 201, 201.3, 202, 204.1,
18 or 204.2, earned by any person in any employment are due and payable twice
19 during each calendar month, on days designated in advance by the employer as the
20 regular paydays. Labor performed between the 1st and 15th days, inclusive, of any
21 calendar month shall be paid for between the 16th and the 26th day of the month
22 during which the labor was performed, and labor performed between the 16th and
23 the last day, inclusive, of any calendar month, shall be paid for between the 1st
24 and 10th day of the following month. ...

25
26 (b) (1) Notwithstanding any other provision of this section, all wages
27 earned for labor in excess of the normal work period shall be paid no later than the
28 payday for the next regular payroll period.

1
2 (2) An employer is in compliance with the requirements of subdivision (a) of
3 Section 226 relating to total hours worked by the employee, if hours worked in
4 excess of the normal work period during the current pay period are itemized as
5 corrections on the paystub for the next regular pay period. Any corrections set out
6 in a subsequently issued paystub shall state the inclusive dates of the pay period
7 for which the employer is correcting its initial report of hours worked.
8

9 (c) However, when employees are covered by a collective bargaining
10 agreement that provides different pay arrangements, those arrangements shall
11 apply to the covered employees.
12

13 (d) The requirements of this section shall be deemed satisfied by the payment
14 of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not
15 more than seven calendar days following the close of the payroll period.
16

17 105. Defendants paid wages to employees on regular intervals. Defendants failed to pay
18 Plaintiffs on such intervals for all wages earned and all hours worked. On information and belief,
19 Plaintiffs allege that Defendants also failed to pay the Aggrieved Employees on such intervals for
20 all wages earned and all hours worked.

21 106. During the applicable time period, Defendants violated California Labor Code §§
22 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, and 2802.

23 107. California Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on
24 behalf of himself or herself and other current or former employees, to bring a civil action to
25 recover civil penalties pursuant to the procedures specified in California Labor Code § 2699.3.

26 108. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiffs and the Class are
27 entitled to recover civil penalties for each of the Defendants' violations of California Labor Code
28 §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, and 2802 during the

1 applicable limitations period in the following amounts:

2 A. For violations of California Labor Code § 204, one hundred dollars
3 (\$100.00) for each Aggrieved Employee for each initial violation and two hundred dollars
4 (\$200.00) for each Aggrieved Employee plus twenty-five percent (25%) of the amount unlawfully
5 withheld from each Aggrieved Employee for each subsequent, willful or intentional violation
6 (penalty amounts established by California Labor Code § 210).

7 B. For violations of California Labor Code § 226(a), two hundred fifty dollars
8 (\$250.00) for each Aggrieved Employee for initial violation and one thousand dollars (\$1,000.00)
9 for each Aggrieved Employee for each subsequent violation (penalty amounts established by
10 California Labor Code § 226.3).

11 C. For violations of California Labor Code §§ 510 and 512, fifty dollars
12 (\$50.00) for each Aggrieved Employee for each initial violation and one hundred dollars
13 (\$100.00) for each Aggrieved Employee for each subsequent violation per pay period (penalty
14 amounts established by California Labor Code § 558).

15 D. For violations of California Labor Code § 1174, five hundred dollars
16 (\$500.00) for each Aggrieved Employee for each violation (penalty amounts established by
17 California Labor Code § 1174.5).

18 E. For violations of California Labor Code § 1197, one hundred dollars
19 (\$100.00) for each Aggrieved Employee for each initial and intentional violation and two hundred
20 fifty dollars (\$250.00) for each Aggrieved Employee for each subsequent violation per pay period
21 (regardless of whether the initial violations were intentionally committed) (penalty amounts
22 established by California Labor Code § 1197.1).

23 F. For violations of California Labor Code §§ 201, 202, 203, 226.7,
24 1194, 1198, and 2802 one hundred dollars (\$100.00) for each Aggrieved Employee per pay period
25 for each initial violation and two hundred dollars (\$200.00) for each Aggrieved Employee per
26 pay period for each subsequent violation (penalty amounts established by California Labor Code
27 § 2699(f)(2)).

28 109. Plaintiffs have complied with the procedures for bringing suit specified in

1 California Labor Code § 2699.3. By letters dated January 6, 2020, January 31, 2020, and April
2 13, 2020, Plaintiff Mojaddidi filed written notice online with the Labor and Workforce
3 Development Agency (“LWDA”) and gave written notice by certified mail to Defendants Elite
4 Diners, LLC, and Elite Devco, LLC of the specific provisions of the California Labor Code
5 alleged to have been violated, including the facts and theories to support the alleged violations.
6 True and correct copies of Plaintiff Mojaddidi’s written notices to the LWDA dated January 6,
7 2020, January 31, 2020, and April 13, 2020 are collectively attached as **Exhibit A**. By letter dated
8 March 27, 2020, Plaintiff Spurney filed written notice online with the LWDA and gave written
9 notice by certified mail to Defendant Elite Sports Bar Group LLC of the specific provisions of
10 the California Labor Code alleged to have been violated, including the facts and theories to
11 support the alleged violations. A true and correct copy of Plaintiff Spurney’s written notice to the
12 LWDA dated March 27, 2020 is attached as **Exhibit B**. By letter dated September 17, 2021,
13 Plaintiff Najera filed written notice online with the LWDA and gave written notice by certified
14 mail to Defendant SoCal Diners, LLC of the specific provisions of the California Labor Code
15 alleged to have been violated, including the facts and theories to support the alleged violations. A
16 true and correct copy of Plaintiff Najera’s written notice to the LWDA dated September 17, 2021
17 is attached as **Exhibit C**. Plaintiffs accompanied each of their LWDA notices with a fee in the
18 amount of \$75.00. The LWDA has failed to take action in response within 65 calendar days of
19 the dates of Plaintiffs’ notices, but Plaintiffs anticipate that the LWDA will provide written notice
20 to Plaintiffs informing them that it does not intend to investigate these allegations.

21 110. Pursuant to California Labor Code § 2699(g), Plaintiffs and the Aggrieved
22 Employees are entitled to an award of civil penalties, reasonable attorneys’ fees, and costs in
23 connection with their claims for civil penalties.

24 **PRAYER FOR RELIEF**

25 WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly situated, pray
26 for relief and judgment against Defendants as follows:

- 27 A. An order that the action be certified as a class action;
28 B. An order that Plaintiffs be appointed class representatives;

- 1 C. An order that counsel for Plaintiffs be appointed class counsel;
- 2 D. Unpaid Wages;
- 3 E. Actual Damages;
- 4 F. Statutory Damages;
- 5 G. Liquidated Damages;
- 6 H. Restitution;
- 7 I. Declaratory and injunctive relief;
- 8 J. Equitable relief;
- 9 K. Pre-judgment interest;
- 10 L. Statutory penalties;
- 11 M. Civil penalties;
- 12 N. Costs of suit;
- 13 O. Interest;
- 14 P. Reasonable attorneys' fees; and
- 15 Q. Such other relief as the Court deems just and proper.

16 ///

17 ///

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DEMAND FOR JURY TRIAL

Plaintiffs, on behalf of themselves and all others similarly situated, hereby demand a jury trial on all issues so triable.

Respectfully submitted,

THE SPIVAK LAW FIRM

Dated: February 2, 2024

By 

DAVID SPIVAK and LAUREN R. DAVIS,
Attorneys for Plaintiff(s), NAOMI
MOJADDIDI and KIA SPURNEY, and all
others similarly situated

BIBIYAN LAW GROUP, P.C.

Dated:

By _____
DAVID D. BIBIYAN, JEFFREY D. KLEIN,
and VEDANG J. PATEL,
Attorneys for Plaintiff(s), ANTOLIN NAJERA,
and all others similarly situated

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DEMAND FOR JURY TRIAL

Plaintiffs, on behalf of themselves and all others similarly situated, hereby demand a jury trial on all issues so triable.

Respectfully submitted,

THE SPIVAK LAW FIRM

Dated: February 2, 2024

By _____
DAVID SPIVAK and LAUREN R. DAVIS,
Attorneys for Plaintiff(s), NAOMI
MOJADDIDI and KIA SPURNEY, and all
others similarly situated

BIBIYAN LAW GROUP, P.C.

Dated: February 2, 2024

By Vedang J. Patel
DAVID D. BIBIYAN, JEFFREY D. KLEIN,
and VEDANG J. PATEL,
Attorneys for Plaintiff(s), ANTOLIN NAJERA,
and all others similarly situated

EXHIBIT A



SPIVAK LAW

SENT BY ELECTRONIC SUBMISSION, CERTIFIED MAIL AND EMAIL

April 13, 2020

Attn: PAGA Administrator
PAGAfilings@dir.ca.gov

RE: *Naomi Mojaddidi / Elite Diners, LLC*

To whom it may concern:

This is the second supplemental notice of Labor Code violations regarding the matter of *Naomi Mojaddidi / Elite Diners, LLC*. The original notice dated January 6, 2020, and the first supplemental notice dated January 31, 2020, are enclosed herewith and incorporated by reference.

Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code sections 2698, *et seq.*, Naomi Mojaddidi (hereafter "Mojaddidi") provides notice on behalf of herself and on behalf of all individuals currently and formerly employed in California as hourly employees, including but not limited to servers, bussers, wait staff, cashiers, cooks, and similarly situated employees (hereafter "Aggrieved Employees"), by Elite Diners, LLC, a California limited liability company and Elite Devco, LLC, a California limited liability (hereafter "Elite"), of alleged violations of Labor Code sections 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, and 2802.

At all relevant times, Elite has employed persons, conducted business in and engaged in illegal payroll practices and policies throughout California. Mojaddidi and the Aggrieved Employees are "employees" within the meaning of Industrial Welfare Commission Order No. 5-2001 (hereafter "the Wage Order"),

16530 VENTURA BLVD., STE 203
ENCINO, CA 91436

TEL (818) 582-3086
FAX (818) 582-2561

SPIVAKLAW.COM

paragraph 2.F, and “Aggrieved Employees” within the meaning of California Labor Code § 2699(c).

Statement of Facts

On or about March 27, 2017, Elite first employed Mojaddidi to work as a server at its Black Bear Diner restaurant located at 1830 Arden Way in Sacramento, California. Mojaddidi continuously worked for Elite from the time of her hire until approximately March 20, 2020, when Elite terminated her employment.

Elite failed to timely pay Mojaddidi and the Aggrieved Employees all earned and unpaid wages upon the termination of their employment with Elite, including but not limited to, wages earned for work performed off the clock during periods clocked out for “meal periods” and after clocking out at the end of their shifts, and rest and meal premium wages.

Failures to Timely Pay Wages Upon Termination **(Lab. Code §§ 201-203)**

Under Labor Code § 201, if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. Under § 202, if an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. Notwithstanding any other provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. *Id.* The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting. *Id.*

Under Labor Code § 203, if an employer willfully fails to pay, without abatement or reduction, in accordance §§ 201 and 202, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty

Elite terminated Mojaddidi's employment on or about March 20, 2020. By failing to pay wages to Mojaddidi and the Aggrieved Employees as set forth in the original notice dated January 6, 2020 (enclosed) Elite is liable for violations of Labor Code §§ 201, 202, and 203. Accordingly, on behalf of herself and other Aggrieved Employees, Mojaddidi seeks civil penalties from Elite as follows:

1. For violations of Labor Code § 201, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 201 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of § 201 occurred (penalties set by Labor Code § 2699(f)(2));
2. For violations of Labor Code § 202, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 202 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of § 202 occurred (penalties set by Labor Code § 2699(f)(2)); and
3. For violations of Labor Code § 203, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 203 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of § 203 occurred (penalties set by Labor Code § 2699(f)(2)).

///

Conclusion

As noted above, this letter constitutes the required notice under the California Labor Code Private Attorneys General Act of 2004. Please be advised that I will seek both reasonable attorneys' fees and costs under Labor Code section 2699, subdivision (g)(1) in a civil action should the LWDA decline to pursue this matter. This letter also serves as a formal notice under the catalyst theory and Code of Civil Procedure section 1021.5 to resolve this matter before litigation.

Sincerely,



Maralle Messrelan, Esq.

maralle@spivaklaw.com

Encls. as stated

cc: Naomi Mojaddidi
Walter Haines, Esq.

Elite Diners, LLC
c/o Jagdeep Hansra, Esq.
Enedina Cardenas, Esq.
Hansra Cardenas LLP
19925 Stevens Creek Blvd. Suite 100
Cupertino, CA 95014-2358
jh@ej-law.com
ec@ej-law.com

Elite Devco, LLC
c/o Charanjiv Dhaliwal
Agent for Service of Process
2190 Meridian Park Blvd. Suite G
Concord, CA 94520



SPIVAK LAW

SENT BY ELECTRONIC SUBMISSION, CERTIFIED MAIL AND EMAIL

January 31, 2020

Attn: PAGA Administrator
PAGAFilings@dir.ca.gov

RE: *Naomi Mojaddidi / Elite Diners, LLC*

To whom it may concern:

This is a supplemental notice. The original notice dated January 6, 2020 is enclosed.

In the previous notice, we inadvertently omitted an employer, Elite Devco, LLC, from our definition of "Elite." The claims stated in the previous notice against "Elite" shall also apply to Elite Devco, LLC, a California limited liability company.

Sincerely,

Maralle Messrelian, Esq.
maralle@spivaklaw.com
Encls. as stated

cc: Naomi Mojaddidi
Walter Haines, Esq.

///
///

16530 VENTURA BLVD., STE 203
ENCINO, CA 91436

TEL (818) 582-3086
FAX (818) 582-2561

SPIVAKLAW.COM

Elite Devco, LLC
c/o Agent for service of process
Charanjiv Dhaliwal
2190 Meridian Park Blvd. Suite G
Concord, CA 94520

Elite Diners, LLC
c/o Agent for service of process
Charanjiv Dhaliwal
2190 Meridian Park Blvd. Suite G
Concord, CA 94520



SPIVAK LAW

SENT BY ELECTRONIC SUBMISSION AND CERTIFIED MAIL

January 6, 2020

Attn: PAGA Administrator
Labor and Workforce Development Agency
Attn: PAGA Administrator
<http://dir.tflaforms.net>
Via Electronic Submission

Re: *Naomi Mojaddidi / Elite Diners, LLC*

To Whom It May Concern:

Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code sections 2698, *et seq.*, Naomi Mojaddidi (hereafter "Mojaddidi") provides notice on behalf of herself and on behalf of all individuals currently and formerly employed in California as hourly employees, including but not limited to servers, bussers, wait staff, cashiers, cooks, and similarly situated employees (hereafter "Aggrieved Employees"), by Elite Diners, LLC, a California limited liability company (hereafter "Elite"), of alleged violations of Labor Code sections 204, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, and 2802.

At all relevant times, Elite has employed persons, conducted business, and engaged in illegal payroll practices and policies, throughout California. Mojaddidi and the Aggrieved Employees are "employees" within the meaning of Industrial Welfare Commission Order No. 5-2001 (hereafter "the Wage Order") section 2, subdivision (F) and "Aggrieved Employees" within the meaning of Labor Code section 2699(c).

///

///

16530 VENTURA BLVD., STE 203
ENCINO, CA 91436

TEL (818) 582-3086
FAX (818) 582-2561

SPIVAKLAW.COM

Statement of Facts

Mojaddidi began working for Elite at its Black Bear Diner restaurant located at 1830 Arden Way in Sacramento, California, as a server on or about March 27, 2017, where Mojaddidi is still employed as a server.

At all relevant times, Elite paid Mojaddidi and the other Aggrieved Employees on a semi-monthly basis at an hourly rate of pay. At all relevant times, Elite classified Mojaddidi and the other Aggrieved Employees as non-exempt employees entitled to the protections of both the Labor Code and the Wage Order.

At all relevant times, Mojaddidi and the Aggrieved Employees have worked over eight (8) hours in one workday and/or over forty (40) hours in one work week. Despite this, Elite failed to provide Mojaddidi and the Aggrieved Employees with all timely rest and meal periods pursuant to California law. Elite failed to hire sufficient staff members, including “breaker” employees, to cover Mojaddidi and the Aggrieved Employees so they could take duty-free, ten-minute rest periods and duty-free, 30-minute meal periods. Even when Mojaddidi and the Aggrieved Employees tried to take duty-free rest and/or meal periods, other Elite employees and managers interrupted them with requests for help serving Elite’s customers, cashing out their tables, and for other Elite business. Moreover, Elite often failed to provide Mojaddidi and the Aggrieved Employees with 30-minute meal periods before their fifth work hour. Elite’s management, including Greg Anderson, Nathan Munding, Rick Brentley, Steven McConnel, Paul Banducci, Joseph Watkins, and Damien (last name unknown) required that Mojaddidi and the Aggrieved employees request permission prior to taking a meal period, which they often prohibited, due to the press of business. Furthermore, Elite failed to pay premium wages for days on which it failed to provide Mojaddidi and the other Aggrieved Employees with timely rest and/or meal periods.

At all relevant times, Elite required Mojaddidi and the Aggrieved Employees to perform “side work” during meal periods and after clocking out at the end of their shifts, including but not limited to, cashing out tables, bussing tables,

refilling condiments, milk, and beer, cleaning and rolling silverware, restocking ice, cups, straws, dressings, as well as, taking apart and cleaning the orange juice and coffee machines. Mojaddidi and the Aggrieved Employees spent on average approximately 4-5 hours a week performing such “side work”. Elite, however, failed to pay Mojaddidi and the other Aggrieved Employees for this off-the-clock work. Elite’s management, including Greg Anderson, Nathan Munding, Rick Brentley, Steven McConnel, Paul Banducci, Joseph Watkins, and Damien (last name unknown) would threaten Mojaddidi and the other Aggrieved Employees with reducing their work hours and/or issuing a write up for failing to perform the required side work. As such, Elite failed to pay Mojaddidi and the other Aggrieved Employees minimum wages for all hours worked and compensate them at one and one-half times their respective regular rates of pay for all overtime hours worked.

Furthermore, as a condition for employment, Elite required Mojaddidi and the Aggrieved Employees to purchase and wear while working uniform shirts, aprons, pants, and shoes, and to purchase server books. Elite, however, failed to reimburse them for these required business expenses.

Elite failed to record the “off the clock” wages Mojaddidi and the Aggrieved Employees earned and all the “off the clock” hours they worked, as described above, on their itemized wage statements. As a result of the practices described above, Elite failed to provide Mojaddidi and the other Aggrieved Employees with accurate wage statements that properly and accurately itemize Mojaddidi and the other Aggrieved Employees’ gross and net wages earned and the total hours worked. As a further result, Elite failed to timely pay Mojaddidi and the other Aggrieved Employees all earned and unpaid wages during their employment.

For the reasons stated herein, Mojaddidi alleges the following violations of the California Labor Code and the Wage Order on behalf of herself and the other Aggrieved Employees:

- (a) Elite failed to pay Mojaddidi and the other Aggrieved Employees all wages earned for all hours worked at the correct rates of pay;

- (b) Elite failed to provide Mojaddidi and the Aggrieved Employees all meal periods and rest periods in compliance with California laws;
- (c) Elite failed to compensate Mojaddidi and the Aggrieved at one hour's pay for each day in which they were not provided their rest breaks as required by law;
- (d) Elite failed to compensate Mojaddidi and the Aggrieved at one hour's pay for each day in which they were not provided their meal periods as required by law;
- (e) Elite failed to indemnify Mojaddidi and the Aggrieved Employees for business expenses it required them to incur in the discharge of their duties;
- (f) Elite failed to provide Mojaddidi and the other Aggrieved Employees with accurate wage statements; and
- (g) Elite failed to timely pay Mojaddidi and the other Aggrieved Employees all earned and unpaid wages during their employment with Elite.

Accordingly, Mojaddidi now seeks civil penalties on behalf of herself and the other Aggrieved Employees based on Elite's alleged violations of the California Labor Code and the Wage Order.

The Wage Order

The Wage Order applies to "all persons employed in the public housekeeping industry," where "Public Housekeeping Industry" includes "Restaurants." (*Id.*, §§ 1 & 2(P)(1).) At all relevant times during the applicable limitations period, Elite operated restaurants. Accordingly, Mojaddidi and the Aggrieved Employees are entitled to the protections provided under the Wage Order.

///

**Failure To Pay Wages For All Hours Worked At The Correct
Rates of Pay**
(Lab. Code §§ 510, 1194, 1197, and 1198)

Under Labor Code section 1197, “The minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.”

In relevant part, section 2(K) of the Wage Order states,

“Hours worked” means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so[.]

In relevant part, Labor Code section 1194 states:

(a) Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit.

In relevant part, Labor Code section 510 states:

Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

In relevant part, Section 3 of the Wage Order states:

The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to attend school and are not otherwise prohibited by law from engaging in the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40 in a workweek unless the employee receives one and one half (1½) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day's work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

- (a) One and one-half (1½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including twelve (12) hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek;
- (b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek; and
- (c) The overtime rate of compensation required to be paid to a nonexempt full-time salaried employee shall be computed by using the employee's regular hourly salary as one fortieth (1/40) of the employee's weekly salary.

At all relevant times, at Elite's direction, Mojaddidi and the Aggrieved Employees have worked off the clock without pay, including during periods clocked out for "meal periods," and after clocking out at the end of their shifts. Such "side work" included: bussing tables, refilling condiments, milk, and beer, cleaning and rolling silverware, restocking ice, cups, straws, dressings, and taking apart and cleaning the orange juice and coffee machines, among others. At all relevant times,

Mojaddidi and the Aggrieved Employees have worked over eight hours in one workday and/or over 40 hours in one workweek. Despite this, Elite failed to compensate Mojaddidi and the Aggrieved Employees for all minimum wages and for all overtime hours worked as required under the aforementioned California law. As a result, Elite is in violation of California Labor Code § 510 and 1194.

Accordingly, Mojaddidi now seeks civil penalties on behalf of herself and the Aggrieved Employees as follows:

1. \$50 for each Aggrieved Employee for each initial violation of California Labor Code § 510, and \$100 for each Aggrieved Employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by California Labor Code § 558);
2. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2));
3. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1194, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)); and
4. \$100 for each underpaid hourly employee for each initial violation of California Labor Code § 1197, and \$250 for each underpaid employee for each subsequent violation per pay period (regardless of whether the initial violations were intentionally committed), in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed pursuant to Section 203 (penalties set by Labor Code § 1197.1).

///

Failure to Provide Meal Periods
(Lab. Code §§ 226.7, 512, and 1198)

In relevant part, section 2(K) of the Wage Order states,

“Hours worked” means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

In relevant part, Labor Code section 1198 states, “The employment of any employee ... under conditions of labor prohibited by the [Wage Order] is unlawful.”

In relevant part, Labor Code section 512 states:

An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

In relevant part, section 11 of the Wage Order states:

Meal Periods:

- (A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less

than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee. Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. . . .

- (B) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

In addition, Labor Code section 226.7 states:

- (b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant 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.
- (c) 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.

At all relevant times, Elite failed to provide Mojaddidi and the Aggrieved Employees with duty free 30-minute meal periods before their fifth workhour.

Elite failed to hire sufficient staff members, including “breaker” employees, to cover Mojaddidi and the Aggrieved Employees so they could take duty-free 30-minute meal periods. Even when Mojaddidi and the Aggrieved Employees tried to take duty-free meal periods, other Elite employees and managers interrupted them with requests for help serving Elite’s customers, cashing out their tables, and for other Elite business. Moreover, Elite’s management, including Joseph Watkins and Nathan Munding, required that Mojaddidi and the Aggrieved employees request permission prior to taking a meal period, which they often prohibited, due to the press of business. Furthermore, Elite failed to pay premium wages for days on which it failed to provide Mojaddidi and the other Aggrieved Employees with timely rest and/or meal periods.

Accordingly, Mojaddidi now seeks civil penalties for these Labor Code violations that Elite has committed against her and the Aggrieved Employees as follows:

1. \$100 for each Aggrieved Employee for each initial violation of California Labor Code section 226.7, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code section 2699(f)(2));
2. \$50 for each Aggrieved Employee for each initial violation of California Labor Code section 512, and \$100 for each Aggrieved Employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by California Labor Code section 558); and
3. \$100 for each Aggrieved Employee for each initial violation of California Labor Code section 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code section 2699(f)(2)).

Failure to Authorize and Permit Rest Periods
(Lab. Code §§ 226.7 & 1198)

Section 2(K) of the Wage Order states,

“Hours worked” means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

In relevant part, Labor Code section 1198 states,

The employment of any employee . . . under conditions of labor prohibited by the [Wage Order] is unlawful.

Section 12 of the Wage Order provides, in relevant part:

Rest Periods:

- (A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 ½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.
- (B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided.

In addition, Labor Code section 226.7 states:

- (b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant 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.
- (c) 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.

Elite failed to provide Mojaddidi and the Aggrieved Employees with 10-minute rest periods every four hours worked (or major fraction thereof). Elite failed to pay Mojaddidi and the Aggrieved Employees premium wages on workdays it failed to provide them with 10-minute rest periods every four hours worked (or major fraction thereof).

Accordingly, Mojaddidi now seeks civil penalties for these Labor Code violations that Elite has committed against her and the Aggrieved Employees as follows:

1. \$100 for each Aggrieved Employee for each initial violation of California Labor Code section 226.7, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code section 2699(f)(2)); and
2. \$100 for each Aggrieved Employee for each initial violation of California Labor Code section 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code section 2699(f)(2)).

Failure to Indemnify for Expenses
(Lab. Code § 2802)

In pertinent part, California Labor Code § 2802(a) states, “An employer shall indemnify his or her employee[s] for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her duties.”

At all relevant times during the applicable limitations period, as a condition for employment, Elite required Mojaddidi and the Aggrieved Employees to purchase and wear while working uniform shirts, aprons, pants, and shoes, and to purchase server books. Elite, however, failed to reimburse them for these required business expenses. Therefore, Elite failed to indemnify them for expenditures incurred as a direct consequence of discharging their duties. Accordingly, on behalf of herself and Aggrieved Employees, Mojaddidi seeks civil penalties against Elite as follows: \$100 for each aggrieved employee for each initial violation of California Labor Code section 2802, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by California Labor Code section 2699(f)(2)).

Failure to Provide Accurate Wage Statements
(Lab. Code § 226)

Labor Code section 226(a) requires an employer to provide an employee, either semi-monthly or at the time of each wage payment, with an accurate and itemized written wage statement that shows:

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, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement;
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.

Elite require Mojaddidi and the Aggrieved Employees to work off the clock without pay. Elite failed to provide Mojaddidi and the Aggrieved Employees with all meal and rest periods in compliance with California laws. Elite also failed to provide Mojaddidi and the Aggrieved Employees with premium wages on workdays it failed to provide them with one or more meal or rest periods in compliance with California laws. Elite knowingly and intentionally did not state this worktime and wages earned on the itemized wage statements it issued to Mojaddidi and the Aggrieved Employees. As a result, Elite has failed to properly itemize Mojaddidi and the Aggrieved Employees' gross and net wages earned, total hours worked, hourly rate of pay, and other requirements of California Labor Code § 226. As a result, Lulu's has violated California Labor Code § 226.

Accordingly, Mojaddidi seeks civil penalties for the Labor Code violations that Elite has committed against her and the other Aggrieved Employees as follows: \$250 for each Aggrieved Employee for each initial violation of California Labor Code section 226(a), and \$1,000 for each Aggrieved Employee for each subsequent violation (penalties set by California Labor Code section 226.3).

Failure to Timely Pay Wages
(Lab. Code § 204)

California Labor Code section 204 states all wages (other than those mentioned in Labor Code sections 201 and 202) earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. In addition, all wages for work performed in excess of the normal work period must be paid by no later than the following regular payday.

Elite failed to pay Mojaddidi and the other Aggrieved Employees for work performed before and after they clocked out. Elite failed to provide Mojaddidi and the Aggrieved Employees with all meal and rest periods in compliance with California laws. Elite also failed to provide Mojaddidi and the Aggrieved Employees with premium wages on workdays it failed to provide them with one or more meal or rest periods in compliance with California laws. As a result, Elite failed to timely pay all earned minimum, overtime, and premium wages due during employment within the time periods set by California Labor Code section 204.

Accordingly, Mojaddidi now seeks civil penalties for the Labor Code violations that Elite has committed against her and the other Aggrieved Employees as follows: \$100 for each Aggrieved Employee for each initial violation of California Labor Code section 204, and \$200 for each Aggrieved Employee for each

subsequent violation, plus 25% of the amount unlawfully withheld from each Aggrieved Employee (penalties set by Labor Code section 210).

Failure to Maintain Accurate Employment Records
(Lab. Code §§ 1174 & 1198)

Labor Code section 1174, which also pertains to recordkeeping, states:

Every person employing labor in this state shall:

...

(c) Keep a record showing the names and addresses of all employees employed and the ages of all minors.

(d) Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.

Labor Code section 1174.5 states:

Any person employing labor who willfully fails to maintain the records required by subdivision (c) of Section 1174 or accurate and complete records required by subdivision (d) of Section 1174, or to allow any member of the commission or employees of the division to inspect records pursuant to subdivision (b) of Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).

Section 7 of Wage Order states,

(A) Every employer shall keep accurate information with respect to each employee including the following:

- (1) Full name, home address, occupation and social security number.
- (2) Birth date, if under 18 years, and designation as a minor.
- (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded.
- (4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the Employee.
- (5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.
- (6) When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.

Labor Code section 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

Elite failed to pay Mojaddidi and the other Aggrieved Employees for work performed after they clocked out. Elite failed to provide Mojaddidi and the Aggrieved Employees with all meal and rest periods in compliance with California laws. Elite also failed to provide Mojaddidi and the Aggrieved Employees with premium wages on workdays it failed to provide them with one or more meal or rest periods in compliance with California laws. Elite did not record the hours worked off the clock. As a result, Elite has failed to accurately

maintain all records required by section 1174 and the Wage Order, including but not limited to Mojaddidi and the Aggrieved Employees' total hours worked, total wages paid, and applicable hourly rates during each payroll period.

Accordingly, Mojaddidi seeks civil penalties on behalf of herself and the other Aggrieved Employees as follows:

1. \$500 for each Aggrieved Employee for each violation of California Labor Code section 1174 (penalties set by Labor Code section 1174.5); and
2. \$100 for each Aggrieved Employee for each initial violation of California Labor Code section 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code section 2699(f)(2)).

Conclusion

As noted above, this letter constitutes the required notice under the Labor Code Private Attorneys General Act of 2004. Please be advised that I will seek both reasonable attorneys' fees and costs under Labor Code section 2699(g)(1) in a civil action should the LWDA decline to pursue this matter. This letter also serves as a formal notice under the catalyst theory and Code of Civil Procedure section 1021.5 to resolve this matter before litigation.

Sincerely,



Maralle Messrelian, Esq.
maralle@spivaklaw.com

cc: Naomi Mojaddidi

Walter Haines, Esq.

LWDA / Elite Diners, LLC

1/6/20

Page 19 of 19

Elite Diners, LLC

c/o Agent for service of process

Charanjiv Dhaliwal

2190 Meridian Park Blvd. Suite G

Concord, CA 94520

EXHIBIT B



SPIVAK LAW

***SENT BY ELECTRONIC SUBMISSION, AND CERTIFIED U.S. MAIL ***

March 27, 2020

Attn: PAGA Administrator
Labor and Workforce Development Agency
<http://dir.tflaforms.net>
Via Electronic Submission

RE: *Kia Spurney / Twin Peaks*

To whom it may concern:

This notice concerns the following employers:

1. Elite Sports Bar Group LLC, a California limited liability company; and
2. Twin Restaurant Holdings, LP, a Delaware limited partnership

Collectively, the aforementioned employers are herein referred to as "Twin Peaks."

Pursuant to the California Labor Code Private Attorneys General Act of 2004 (Lab. Code §§ 2698, *et seq.*), Kia Spurney (hereafter "Spurney") provides notice on behalf of herself and of all individuals currently and formerly employed in California as hourly employees, including but not limited to servers, performers, and other hourly employees in comparable positions (hereafter referred to collectively as "Aggrieved Employees") by Twin Peaks, of violations of California Labor Code §§ 201, 202, 203, 204, 221226, 226.7, 510, 512, 1174, 1174.5, 1194, 1197, 1198, and 2802.

At all relevant times, Twin Peaks has employed persons, conducted business in and engaged in illegal payroll practices and policies throughout California. Spurney and the Aggrieved Employees are "employees" within the meaning of Industrial Welfare Commission Order No. 5-2001 (hereafter "the Wage Order")

16530 VENTURA BLVD., STE 203
ENCINO, CA 91436

TEL (818) 582-3086
FAX (818) 582-2561

SPIVAKLAW.COM

or “Wage Order 5”), paragraph 2.F, and “Aggrieved Employees” within the meaning of California Labor Code § 2699(c).

Statement of Facts

Twin Peaks began to employ Spurney in approximately June of 2016 as a non-exempt hourly server at its restaurant located in Bakersfield, California. Spurney continuously worked for Twin Peaks from the time of her hire until on or about October 1, 2018, when she left to care for her newborn child. Twin Peaks again employed Spurney beginning April of 2019 as a non-exempt hourly server at its Bakersfield, California restaurant. Spurney continuously worked for Twin Peaks in this capacity from the time of her rehire until approximately August 1, 2019, when her employment ended.

At all relevant times, Twin Peaks employed Spurney and the other Aggrieved Employees and issued their paychecks on a bi-weekly basis. At all relevant times, Twin Peaks classified Spurney and the Aggrieved Employees as non-exempt employees entitled to the protections of both the Labor Code and Wage Order.

At all relevant times, Twin Peaks failed to provide Spurney and the Aggrieved Employees adequate rest periods and premium wages for missed rest periods in violation of California law. Twin Peaks failed to permit Spurney and the Aggrieved Employees to take a ten-minute, paid, duty-free rest break every four hours or major portion thereof during most of their workdays. On the occasions Twin Peaks permitted Spurney and the Aggrieved Employees to take ten-minute rest breaks, Twin Peaks frequently interrupted these breaks and required Spurney and the Aggrieved Employees to return to work before they had ten minutes of break time. Twin Peaks did not seek an exemption from the rest period protections of the Wage Order from the California Division of Labor Standards Enforcement.

At relevant times, Twin Peaks failed to provide Spurney and the Aggrieved Employees with an off-duty, 30-minute meal period before the end of the fifth hour worked. Instead, Twin Peaks regularly required Spurney and the Aggrieved Employees to work through their meal periods.

Twin Peaks also required Spurney and the Aggrieved Employees to perform work while clocked out. Twin Peaks required Spurney and the Aggrieved Employees to study and memorize its menus while off-the-clock. On the occasions when Twin Peaks updated its menus, Twin Peaks required Spurney and the Aggrieved Employees to demonstrate their menu knowledge by passing tests on Twin Peaks's online testing platform, "Peaks Point," while clocked out for work. Twin Peaks did not pay Spurney and the Aggrieved Employees for this work time.

Twin Peaks required Spurney and the Aggrieved Employees to incur certain business expenses in the course of performing their duties. These business expenses included the purchase of several uniforms, including, but not limited to, lingerie sets for Twin Peaks' "Lingerie Days." Such lingerie sets included garter belts, brassieres, stockings, and underwear of specific colors pertaining to the events in question – for instance, Twin peaks required Spurney and the Aggrieved Employees to purchase green lingerie sets for Twin Peaks's St. Patrick's Day Lingerie Days. Twin Peaks further required Spurney and the Aggrieved Employees to purchase Ugg boots or snow boots as part of their work uniforms. Twin Peaks also required Spurney and the Aggrieved Employees to maintain specific hair styles and manicures as part of their work uniforms. When Spurney requested reimbursement for these expenses, Twin Peaks managers instructed her to "keep your receipts" and "write it off in your taxes."

Twin Peaks further required Spurney and the Aggrieved Employees to use their personal mobile telephones to communicate with Twin Peaks and failed to reimburse them for this expense.

Twin Peaks also consistently failed to pay all wages for all hours worked by Spurney and the Aggrieved Employees. Twin Peaks regularly edited Spurney's and the Aggrieved Employees' time records to reflect work days of shorter duration than those actually worked.

For the reasons herein, Spurney alleges the following violations of the California Labor Code and the Wage Order on behalf of herself and the Aggrieved Employees:

- a) Twin Peaks failed to provide Spurney and the other Aggrieved Employees with all timely, off-duty rest breaks and meal periods;
- b) Twin Peaks failed to compensate Spurney and the other Aggrieved Employees at one hour's pay for each day in which they were not provided one or more meal periods required by law;
- c) Twin Peaks failed to compensate Spurney and the other Aggrieved Employees at one hour's pay for each day in which they were not provided one or more rest breaks required by law;
- d) Twin Peaks failed to pay Spurney and the other Aggrieved Employees for all hours worked at the correct rates of pay including, but not limited to, minimum and overtime pay due to off-the-clock work;
- e) Twin Peaks failed to indemnify Spurney and the other Aggrieved Employees for all necessary business expenditures incurred during the discharge of their duties;
- f) Twin Peaks failed to provide Spurney and the Aggrieved Employees with accurate wage statements;
- g) Twin Peaks failed to timely pay Spurney and the Aggrieved Employees all earned and unpaid wages during employment;
- h) Twin Peaks unlawfully deducted the wages Spurney and the Aggrieved Employees earned, including, but not limited to, regular and overtime wages;

- i) Twin Peaks failed to timely pay Spurney and the Aggrieved Employees who are former employees all earned and unpaid wages at the time of separation from employment; and
- j) Twin Peaks willfully failed to maintain accurate employment records regarding Spurney and the Aggrieved Employees.

Accordingly, Spurney now seeks civil penalties on behalf of herself and the other Aggrieved Employees based on Twin Peaks's alleged violations of the California Labor Code and the Wage Order.

The Wage Order

The Wage Order applies to “all persons employed in the public housekeeping industry[.]” Wage Order § 1. The phrase “public housekeeping industry” includes restaurants. *Id.* § 2 (P)(1).

At all relevant times during the applicable limitations period, Twin Peaks employed Spurney and the other Aggrieved Employees as servers and employees in comparable positions. Accordingly, Spurney and the other Aggrieved Employees are entitled to the protections provided under the Wage Order.

Failure To Provide Rest Breaks And Meal Periods **(Lab. Code §§ 226.7, 512, and 1198)**

In relevant part, California Labor Code § 1198 states:

The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

In relevant part, California Labor Code § 512 states:

An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee.

An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

In relevant part, Section 11 of Wage Order 5 states:

Meal Periods:

- (A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee. Unless the employee is relieved of all duty during a 30-minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. An "on duty" meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.

- (B) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

...

- (D) Notwithstanding any other provision of this order, employees in the health care industry who work shifts in excess of eight (8) total hours in a workday may voluntarily waive their right to one of their two meal periods. In order to be valid, any such waiver must be documented in a written agreement that is voluntarily signed by both the employee and the employer. The employee may revoke the waiver at any time by providing the employer at least one day's written notice. The employee shall be fully compensated for all working time, including any on-the-job meal period, while such a waiver is in effect.

In relevant part, Section 12 of Wage Order 5 states:

Rest Periods:

- (A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate often (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 1/2) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.

- (B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each work day that the rest period is not provided.

California Labor Code § 226.7 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.
- (b) If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, 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 period is not provided.

In relevant part, California Labor Code § 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, §§ 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 § 3294 of the Civil Code.

Section 17 of the Wage Order states:

If, in the opinion of the Division after due investigation, it is found that the enforcement of any provision contained in Section 7, Records; Section 12, Rest Periods; Section 13, Change Rooms and Resting Facilities; Section 14, Seats; Section 15, Temperature; or Section 16, Elevators, would not materially affect the welfare or comfort of employees and would work an undue hardship on the employer, exemption may be made at the discretion of the Division. Such exemptions shall be in writing to be effective and may be revoked after reasonable notice is given in writing. Application for exemption shall be made by the employer or by the employee and/or the employee's representative to the Division in writing. A copy of the application shall be posted at the place of employment at the time the application is filed with the division.

Twin Peaks has intentionally and improperly failed to provide all duty-free rest breaks and/or meal periods free from any work or duties to Spurney and the other Aggrieved Employees as required by law. Twin Peaks did not pay premium wages to Spurney and Aggrieved Employees on days it failed to provide them with one or more timely meal and rest periods as required by law. In failing to do so, Twin Peaks violated the provisions of California Labor Code §§ 226.7, 512, and 1198.

Accordingly, Spurney seeks civil penalties on behalf of herself and the other Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of California Labor Code § 226.7, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2));
2. \$50 for each Aggrieved Employee for each initial violation of California Labor Code § 512, and \$100 for each Aggrieved

Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 558); and

3. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f) (2)).

Failure to Indemnify for Expenses
(Lab Code § 2802)

In pertinent part, California Labor Code § 2802(a) states, “An employer shall indemnify his or her employee[s] for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her duties.”

At relevant times during the applicable limitations period, Twin Peaks required Spurney and the Aggrieved Employees to use personal mobile telephones to communicate Twin Peaks as a necessary condition of employment. Twin Peaks failed to indemnify Spurney and the Aggrieved Employees for these expenses both during and after their employment ended. Twin Peaks further required Spurney and the Aggrieved Employees incur expenses relating to their uniforms, such as the purchase various articles of clothing and the preparation of their hair and nails in particular fashions. Twin Peaks failed to indemnify Spurney and the Aggrieved Employees for their uniform-related expenses, instead instructing them to “write it off in [their] taxes.”

Accordingly, Spurney seeks civil penalties on behalf of herself and the Aggrieved Employees as follows: \$100 for each Aggrieved Employee per pay period in which initial violations of California Labor Code § 2802 occurred, and \$200 for each Aggrieved Employee per pay period in which subsequent violations of § 2802 occurred (penalties set by California Labor Code § 2699(f)(2)).

///

**Failure to Pay All Wages for All Hours Worked at the Correct Rates of
Pay**
(Lab Code §§ 510, 1194, 1197, and 1198)

Under California Labor Code § 1197, “The minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.”

In relevant part, section 2(K) of the Wage Order states,

“Hours worked” means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so[.]

In relevant part, California Labor Code § 1194 states,

- (a) Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the [...] legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of [...] overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.

In relevant part, Section 3 of the Wage Order states,

(A) Daily Overtime - General Provisions

- (1) The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to attend school and are not otherwise prohibited by law from engaging in the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40 hours in any workweek unless the employee receives one and one-half (1 ½) times such employee’s regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8)

hours of labor constitutes a day's work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

- (a) One and one-half ($1\frac{1}{2}$) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including 12 hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek.
- (b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek.

In relevant part, California Labor Code § 510 states,

Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

With respect to overtime wages, the regular rate of pay under California law must include "all remuneration for employment paid to, on behalf of, the employee." O.L. 2002.06.14 (quoting 29 U.S.C. § 207(e)). This requirement includes, but is not limited, to, non-discretionary bonuses. See, e.g., *Huntington Memorial Hosp. v. Superior Court* (2005) 131 Cal. App. 4th 893, 904–05.

Commissions and bonuses must be included in the regular rate whether they are the sole source of the employee's compensation or are in addition to a guaranteed salary or hourly rate. 29 C.F.R. §§778.117, 778.208. See *Oliver v. Mercy Med. Ctr., Inc.* (9th Cir 1982) 695 F.2d 379.

Labor Code § 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

Employers must compensate non-exempt employees for "off-the-clock" work (before punching in or after punching out on a time clock) if the employers knew or should have known that the employees were working those hours. *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 585.

At all relevant times during the applicable limitations period, Twin Peaks knowingly failed to pay Spurney and the Aggrieved Employees for all hours worked at the correct rates of pay, including, but not limited to, all regular and overtime wages for hours they worked that Twin Peaks subsequently removed from their time records, and all regular and overtime wages for the work they performed by memorizing Twin Peaks' menu options and performing assessments on Twin Peaks's "Peaks Point" application while off-the-clock.

Accordingly, Spurney seeks civil penalties on behalf of herself and the other Aggrieved Employees as follows:

1. \$50 for each Aggrieved Employee for each initial violation of California Labor Code § 510, and \$100 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by Labor Code § 558);
2. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2));
3. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1194, and \$200 for each Aggrieved Employee for each

subsequent violation, per pay period (penalties set by California labor Code § 2699(f)(2)); and

4. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 1197, and \$250 for each Aggrieved Employee for each subsequent violation, per pay period (regardless of whether the initial violations were intentionally committed) (penalties set by California Labor Code § 1197.1).

Unlawful Collection of Wages
(Lab. Code § 221)

In relevant part, California Labor Code § 221 states, “It shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee.”

Twin Peaks illegally and arbitrarily deducted several minutes from Spurney’s and the Aggrieved Employees’ time records and reported on their wage statements less hours than their actual hours worked. As a result, Twin Peaks collected and received part of Spurney’s and the Aggrieved Employees’ wages in violation of California Labor Code § 221.

Accordingly, Spurney seeks civil penalties on behalf of herself and the other Aggrieved Employees as follows: \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 221 (if found to be neither willful nor intentional), and \$200 for each employee for each initial violation of California Labor Code 221 (if found to be either willful or intentional) and for each subsequent violation of California Labor Code § 221 (regardless of whether they are found to be either willful or intentional) (penalties set by California Labor Code § 225.5).

///

///

Failure to Provide Accurate Written Wage Statements
(Lab. Code § 226)

California Labor Code § 226 requires employers to furnish employees with accurate itemized written wage statements 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 only the last four digits of his or her social security number or an employee identification 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.

At relevant times during the applicable limitations period, Twin Peaks violated California Labor Code § 226 because it did not properly and accurately itemize each employee's gross wages earned, net wages earned, the total hours worked,

the corresponding number of hours worked at each rate by the employee and other requirements of California Labor Code § 226. Twin Peaks failed to state in the wage statements it issued to Spurney and the other Aggrieved Employees all their hours worked and wages earned, including, but not limited to, regular and overtime wages for work they performed that Twin Peaks subsequently edited out of their time records, and regular and overtime wages for work they performed while clocked out.

Accordingly, Spurney now seeks civil penalties for the Labor Code violations that Twin Peaks has committed against herself and the other Aggrieved Employees as follows: \$250 for each Aggrieved Employee for each initial violation of California Labor Code § 226(a), and \$1,000 for each Aggrieved Employee for each subsequent violation (penalties set by California Labor Code § 226.3).

Failure to Timely Pay Wages During Employment
(Lab. Code § 204)

California Labor Code § 204 states that all wages (other than those mentioned in Labor Code sections 201-202) earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. In addition, all wages for work performed in excess of the normal work period must be paid by no later than the following regular payday.

As alleged herein, Twin Peaks consistently failed to timely pay all wages to Spurney and the Aggrieved Employees. Twin Peaks failed to provide Spurney and the other Aggrieved Employees all wages owed, including, but not limited to, (1) all premium wages for missed, interrupted, or late meal and rest periods; (2) all regular and overtime wages for time they worked that Twin Peaks subsequently edited out of their time records; and (3) all regular and overtime

wages for work they performed off-the-clock. As a result, Twin Peaks failed to pay Spurney and the other Aggrieved Employees all wages within the time periods set by California Labor Code § 204. As a result, Twin Peaks has violated California Labor Code § 204. Because of Twin Peaks's failure to fully pay Spurney and the other Aggrieved Employees within the time periods set by California Labor Code § 204, Twin Peaks failed to timely pay all wages due during employment.

Accordingly, Spurney seeks civil penalties on behalf of herself and Aggrieved Employees as follows:

- (1) \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 204; and
- (2) \$200 for each Aggrieved Employee for each subsequent violation of California Labor Code § 204 (penalties set by Labor Code § 210).

Failure to Timely Pay Wages After Separation of Employment
(Lab. Code §§ 201, 202 and 203)

Under California Labor Code § 201, if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. Under California Labor Code § 202, if an employee, not having a written contract for a definite period, quits his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. Notwithstanding any other provision of law, an employee who quits without providing a seventy-two (72) hour notice shall be entitled to receive payment by mail if he or she so requests at a designated mailing address. *Id.* The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within seventy-two (72) hours of the notice of quitting. *Id.*

Under California Labor Code § 203, if an employer willfully fails to timely pay in accordance with California Labor Code §§ 201 and 202, 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 at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.

As alleged herein, Twin Peaks failed to provide Spurney and the other Aggrieved Employees all wages owed at the time of resignation or termination including, but not limited to, regular and overtime wages for all hours they worked that Twin Peaks subsequently edited out of their time records, and regular and overtime wages they earned for work they performed off-the-clock. As a result, Twin Peaks failed to pay Spurney and other Aggrieved Employees all wages within the time periods set by California Labor Code §§ 201, 202 and 203. As a result, Twin Peaks has violated California Labor Code §§ 201, 202 and 203.

Accordingly, Spurney seeks civil penalties on behalf of herself and the other Aggrieved Employees as follows: \$100 for each Aggrieved Employee per pay period in which initial violations of California Labor Code §§ 201, 202 and 203 occurred, and \$200 for each Aggrieved Employee per pay period in which subsequent violations occurred (penalties set by California Labor Code § 2699(f)(2)).

Failure to Maintain Accurate Employment Records
(Lab. Code §§ 1174, 1174.5, 1198)

Labor Code § 1174, which also pertains to recordkeeping, states:

Every person employing labor in this state shall:

...

(c) Keep a record showing the names and addresses of all employees employed and the ages of all minors.

(d) Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.

Section 7 of Wage Order states,

(A) Every employer shall keep accurate information with respect to each employee including the following:

- (1) Full name, home address, occupation and social security number.
- (2) Birth date, if under 18 years, and designation as a minor.
- (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded.
- (4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the employee.
- (5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.

- (6) When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.

Labor Code § 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

Twin Peaks has willfully failed to maintain the records required by § 1174 and the Wage Order, including but not limited to, 1) all premium wages for missed, interrupted, or late meal and rest periods; (2) all regular and overtime wages for time they worked that Twin Peaks subsequently edited out of their time records; and (3) all regular and overtime wages for work they performed off-the-clock. Accordingly, Spurney seeks civil penalties from Twin Peaks on behalf of herself and the other Aggrieved Employee as follows:

1. \$500 for each aggrieved employee for each violation of California Labor Code § 1174 (penalties set by Labor Code § 1174.5); and
2. \$100 for each aggrieved employee for each initial violation of California Labor Code § 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f) (2)).

///

///

///

///

///

///

///

///

///

///

///

Conclusion

As noted above, this letter constitutes the required notice under the California Labor Code Private Attorneys General Act of 2004. Please be advised that I will seek both reasonable attorneys' fees and costs under Labor Code § 2699, subdivision (g) (1) in a civil action should the LWDA decline to pursue this matter. This letter also serves as a formal notice under the catalyst theory and Code of Civil Procedure section 1021.5 to resolve this matter before litigation.

Sincerely,



David Spivak, Esq.
david@spivaklaw.com

cc: Kia Spurney
Walter Haines, Esq.

Elite Sports Bar Group LLC, a California Limited Liability Company
c/o Charanjiv Dhaliwal
Agent for Service of Process
2608 Silvermere Ct
Brentwood, CA 94513

Twin Restaurant Holding, LP, a Delaware Limited Partnership
c/o CT Corporation System
Agent for Service of Process
818 West Seventh Street, Suite 930
Los Angeles, CA 90017

USPS Tracking®

[FAQs >](#)

Track Another Package +

Tracking Number: 70180680000044833693

Remove X

Your item was delivered to an individual at the address at 11:08 am on March 30, 2020 in BRENTWOOD, CA 94513.

 **Delivered**

March 30, 2020 at 11:08 am
Delivered, Left with Individual
BRENTWOOD, CA 94513

Feedback

Tracking History



March 30, 2020, 11:08 am

Delivered, Left with Individual
BRENTWOOD, CA 94513

Your item was delivered to an individual at the address at 11:08 am on March 30, 2020 in BRENTWOOD, CA 94513.

March 30, 2020, 6:27 am

Arrived at Unit
BRENTWOOD, CA 94513

March 29, 2020, 11:45 am

Departed USPS Regional Facility
OAKLAND CA DISTRIBUTION CENTER

March 28, 2020, 1:39 pm
Arrived at USPS Regional Facility
OAKLAND CA DISTRIBUTION CENTER

Product Information



See Less 

Can't find what you're looking for?

Go to our FAQs section to find answers to your tracking questions.

FAQs

Feedback

USPS Tracking[®]

[FAQs >](#)

Track Another Package +

Tracking Number: 70180680000044833709

[Remove X](#)

Your package is moving within the USPS network and is on track to be delivered to its final destination. It is currently in transit to the next facility.

In-Transit

April 1, 2020
In Transit to Next Facility

Feedback

Tracking History



April 1, 2020

In Transit to Next Facility

Your package is moving within the USPS network and is on track to be delivered to its final destination. It is currently in transit to the next facility.

March 28, 2020, 6:32 pm

Departed USPS Regional Facility

LOS ANGELES CA DISTRIBUTION CENTER

March 28, 2020, 1:53 pm

Arrived at USPS Regional Facility

LOS ANGELES CA DISTRIBUTION CENTER

March 27, 2020, 10:06 pm
Departed USPS Regional Facility
SANTA CLARITA CA DISTRIBUTION CENTER

March 27, 2020, 7:25 pm
Arrived at USPS Regional Facility
SANTA CLARITA CA DISTRIBUTION CENTER

Product Information



See Less 

Can't find what you're looking for?

Go to our FAQs section to find answers to your tracking questions.

FAQs

Feedback

EXHIBIT C



BIBIYAN LAW GROUP PC

5424 Wilshire Blvd. Suite 500
Beverly Hills, California 9021
310.413.5555
310.322.7222
employment@bibiyanc.com

September 17, 2021

PAGA NOTICE FILED ELECTRONICALLY

Re: Notice Letter of Antolin Najera on Behalf of Himself and
Aggrieved Employees Under California Labor section 2699.3

Employer: SoCal Diners, LLC
2190 Meridian Park Blvd. Suite G
Concord, California 94520

To Whom It May Concern:

This letter shall constitute notice under Labor Code section 2699.3 (hereinafter "PAGA Notice"). The \$75 filing fee for the PAGA Notice was paid online by credit card at the time this PAGA Notice was submitted online to the Department of Industrial Relations.

This PAGA Notice concerns Antolin Najera's ("Employee") employment with Employee's former employers: SoCal Diners, LLC. Employee was employed as a non-exempt employee of SoCal Diners, LLC, with duties that included, but were not limited to, washing dishes and helping other staff from approximately June of 2018 through approximately June of 2020. In connection with the alleged claims for failure to comply with Labor Code section 2810.5, Labor Code section 203, Labor Code section 226, Labor Code section 246, *et seq.*, Labor Code section 2802, restraints on competition, whistleblowing and freedom of speech, Employee seeks to represent all employees of SoCal Diners, LLC. as well as their parents, subsidiaries and affiliates (hereinafter, collectively, "Employer"). On all other claims mentioned herein, Employee seeks to represent only non-exempt employees of Employer.

Employee and other aggrieved employees are covered by Labor Code section 510 and applicable Wage Orders. Employee is informed and believes, and based thereon alleges, that Employer had and has a policy or practice of requiring its employees to work more than eight (8) hours per day, forty (40) hours per week, and/or seven (7) straight workdays in a workweek without paying them proper overtime wages, as a result of, without limitation, failing to accurately track and/or pay for all minutes actually worked; engaging, suffering, or permitting employees to work off the clock, including, without limitation, by requiring employees: to come early to work and leave late work without being able to clock in for all that time, to suffer under Employer's control due to long lines for clocking in, to complete pre-shift tasks before clocking in and post-shift tasks after clocking out, to clock out for meal periods and continue working, to clock out for rest periods, to don and doff uniforms and/or safety equipment off the clock, to attend company meetings off the clock, to make phone calls or drive off the clock, and/or go through security screenings and/or

temperature checks off the clock; failing to include all forms of remuneration, including non-discretionary bonuses, incentive pay, meal allowances, and other forms of remuneration into the regular rate of pay for the pay periods where overtime was worked and the additional compensation was earned for the purpose of calculating the overtime rate of pay; detrimental rounding of employee time entries, editing and/or manipulation of time entries to show less hours than actually worked, and for paying straight pay instead of overtime pay to the detriment of Employee and other aggrieved employees. Consequently, Employee is informed and believes, and based thereon alleges, that Employer violated Labor Code sections 510, 1194, and applicable Wage Orders based on its practice of providing total compensation that is less than the required legal overtime compensation for the overtime worked, entitling Employee and other aggrieved employees to damages. Employer would also be liable for civil penalties pursuant to Labor Code sections 558 and 2699.

Employee is informed and believes, and based thereon alleges, that Employer had and has a practice or policy of failing to compensate Employee and other aggrieved employees with minimum wages for all hours worked or otherwise under Employer's control as a result of, without limitation, failing to accurately track and/or pay for all minutes actually worked; engaging, suffering, or permitting employees to work off the clock, including, without limitation, by requiring employees: to come early to work and leave late work without being able to clock in for all that time, to suffer under Employer's control due to long lines for clocking in, to complete pre-shift tasks before clocking in and post-shift tasks after clocking out, to clock out for meal periods and continue working, to clock out for rest periods, to don and doff uniforms and/or safety equipment off the clock, to attend company meetings off the clock, to make phone calls or drive off the clock; detrimental rounding of employee time entries; editing and/or manipulation of time entries to show less hours than actually worked; and failing to pay split shift premiums. In addition, Employee and other aggrieved employees were required to report to work, and did report, but were not put to work and/or were furnished less than half their usual or scheduled day's work without being paid for half the usual or scheduled work at their regular rate of pay. As such, Employee is informed and believes, and based thereon alleges, that Employer violated, without limitation, Labor Code sections 221, 223, 1197, 1182.12, Cal. Code Regs, title 8, section 110404(5)(A), and applicable Wage Orders based on its continued failure to pay minimum wages for all hours worked, entitling Employee and other aggrieved employees to actual and liquidated damages under, without limitation, Labor Code sections 1194 and 1194.2. Employer would also be liable for civil penalties pursuant to Labor Code sections 558, 1197.1, and 2699.

Employee is informed and believes, and based thereon alleges, that Employer had and has a policy or practice of compelling its employees to work in excess of five (5) and ten (10) hours per day without being afforded uninterrupted, timely, and complete 30-minute meal periods or compensation in lieu thereof including, without limitation: by interrupting meal periods; not providing timely meal periods; failing to provide first and second meal periods; providing short meal periods; requiring that employees carry cellular telephones during meal periods; not permitting employees to leave the premises; otherwise requiring on-duty/on-call meal periods; and auto-deducting meal periods that could not be auto-deducted by law or during which employees worked. Consequently, Employee is informed and believes, and based thereon alleges, that

Employer violated Labor Code section 512, entitling Employee and other aggrieved employees to premium payments under Labor Code section 226.7. However, Employee is informed and believes that those premium payments under Labor Code section 226.7 were not made, either, for these non-compliant meal periods. Employer would thus be liable for civil penalties pursuant to Labor Code sections 558 and 2699 for both failing to authorize the taking of compliant meal periods, as well as for failing to provide premium pay under Labor Code section 226.7.

Employee is informed and believes, and based thereon alleges, that Employer maintains policies or practices of compelling its non-exempt employees, including, without limitation, Employee, to work over four-hour periods (or major fractions thereof) without authorizing and permitting Employee and other aggrieved employees to take uninterrupted, timely, and complete ten-minute rest periods in which the employees are completely relieved of all of their duties, including, without limitation: by failing to provide rest periods all together; requiring that they be bundled together and/or with meal periods; interrupting them; requiring that employees carry cellular telephones during rest periods not providing them in a timely fashion; and not permitting employees to leave the premises; and otherwise requiring on-duty/on-call rest periods. As such, Employee is informed and believes, and based thereon alleges, that Employee and other aggrieved employees are entitled to relief under, without limitation, Labor Code section 226.7. However, Employee is informed and believes that those premium payments under Labor Code section 226.7 were not made, either, for these non-compliant rest periods. Employer would thus be liable for civil penalties pursuant to Labor Code sections 558 and 2699 for both failing to authorize the taking of compliant rest periods, as well as for failing to provide premium pay under Labor Code section 226.7.

In addition to the above, Employee is informed and believes, and based thereon alleges that Employer failed and continue to fail to keep adequate or accurate time records including wage statements and similar payroll documents under Labor Code section 226, documents signed to obtain or hold employment under Labor Code section 432, personnel records under Labor Code section 1198.5, and time records under Labor Code section 1174, making it difficult for Employee and other aggrieved employees to calculate their unpaid wages and/or premium payments. Employer also failed to provide these documents to Employee and other aggrieved employees upon request. This would entitle Employee and other aggrieved employees to penalties prescribed by Labor Code sections 226 and 1198.5. Employer would also be liable for civil penalties pursuant to Labor Code sections 558, 1174.5 and 2699.

As a result of, among other things, Employer's herein-described policy or practice of failing to: accurately record time; failing to pay overtime and minimum wages; provide meal periods; provide rest periods; and provide compensation in lieu of meal or rest periods; as described above, Employee is informed and believes, and based thereon alleges, that Employer also intentionally failed and continues to fail to furnish aggrieved employees, including, without limitation, Employee, with itemized wage statements that accurately reflect: gross wages earned; total hours worked by the employee; net wages earned; all deductions; all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee; the legal name and address of the other; and other such information as required

by Labor Code section 226, subdivision (a). Specifically, Employer intentionally failed to furnish employees with itemized wage statements that accurately reflect the hours worked by Mr. Najera and other aggrieved employees and the rates of pay at which they were or should have been paid, thus resulting in a failure to reflect gross and net wages earned and paid at each rate, as well. Consequently, since Employer would have failed to comply with Labor Code section 226, subdivision (a), Employee and other aggrieved employees would be entitled to recover penalties under, without limitation, Labor Code section 226, subdivision (e). Employer would also be liable for civil penalties pursuant to Labor Code sections 226.3, 558, and 2699.

Employee is informed and believes, and based thereon alleges, that Employer also failed and refused, and continue to fail and refuse, to timely pay compensation to Employee and other terminated or resigned employees, including but not limited to, all overtime wages owed; all minimum wages owed; and all premium pay owed as set out above. Consequently, Employer would be liable for waiting time penalties for having violated California Labor Code sections 201, 202, and 203. Employer would also be liable for civil penalties pursuant to Labor Code sections 558 and 2699.

Employee is further informed and believes, and based thereon alleges that Employer failed and refused, and continues to fail and refuse, to comply with the notice requirements of Labor Code section 2810.5 (*i.e.*, the Wage Theft Protection Act of 2011) by, among other things, failing to provide Employee and other aggrieved employees with the rates of pay and overtime rates of pay applicable to their employment, allowances claimed as part of the minimum wage, the regular payday designated by Employer, the name of the employer, including any “doing business as” names used, the name, address and telephone number of the workers’ compensation insurance carrier, information regarding paid sick leave, and other pertinent information required to be disclosed by Employer under Labor Code section 2810.5. Employee is informed and believes that failure to provide such information, including rates of pay that are in effect, has permitted Employer to pay employees at rates of pay that were not agreed upon and violate minimum wage and overtime wage laws in California. Among other relief, employees may collect from Employer in connection with these violations’ civil penalties pursuant to Labor Code sections 558 and 2699.

Employee is informed and believes, and based thereon alleges that Employer also failed and refused, and continues to fail and refuse, to reimburse employees, including, without limitation, Employee and other aggrieved employees, with their costs incurred for driving personal vehicles (*i.e.*, mileage and gas), purchasing uniforms, uniform or other deposits, separately laundering mandatory uniforms, for the purchase of tools and safety equipment, including, without limitation, shoes, and for the purchase and maintenance of cellular phones and cellular phone plans, in direct consequence of the discharge of their duties, or of their obedience to the directions of Employer, as required by Labor Code section 2802, and other statutory and common law offenses. As a result, Employer are liable to reimburse Employee and other aggrieved employees for these costs incurred in furtherance of work duties. In addition, Employer would be liable for civil penalties pursuant to Labor Code sections 558 and 2699.

Employee is further informed and believes, and based thereon alleges, that Employer has or had a policy or practice of failing to provide Employee and other aggrieved employees with the amount of paid sick leave required to be provided pursuant to California and local laws (including, without limitation, Labor Code section 246, *et seq.*). Employee is further informed and believes that Employer also did not permit its use upon request by Employee and other aggrieved employees as contemplated under California and local laws. As such, Employer would be liable for civil penalties for violation of the paid sick leave regulations under Labor Code sections 558 and 2699.

Employee is informed and believes, and based thereon alleges that Employer had and has a policy or practice of failing to pay aggrieved employees their paid time off and vacation time owed upon separation of employment as wages at their final rate of pay in violation of Labor Code section 227.3 and applicable Wage Orders. As such, Employer would be liable for civil penalties for violation of Labor Code section 227.3 under Labor Code section 558 and 2699.

Employee is informed and believes, and based thereon alleges that Employer had and has a policy or practice of failing to pay aggrieved employees their wages in accordance with Labor Code Section 204, which requires that: “[l]abor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive of any calendar month, shall be paid for between the 1st and 10th day of the following month.” Employee is informed and believes and based thereon alleges that Employer did not and do not pay Employee and other aggrieved employees in accordance with Labor Code Section 204. As such, Employee is informed and believes, and based thereon alleges that Employer violated Labor Code section 204. Employer would be liable for civil penalties pursuant to Labor Code sections 210, 558 and 2699.

Employee is informed and believes, and based thereon alleges that Employer had and has a policy of failing to provide all temporary workers with owed wages weekly by not later than the regular payday of the following week. As a result, pursuant to Labor Code section 201.3, Employer would be liable for civil penalties pursuant to Labor Code sections 201.3.

Employee is informed and believes, and based thereon alleges that Employer had and has a policy or practice of failing to provide all working employees with suitable seats when the nature of the work reasonably permits the use of seats. Employee is further informed and believes, and based thereon alleges that Employer has failed to place an adequate number of seats in reasonable proximity to the work area and/or permitted employees to use such seats when it does not interfere with the performance of their duties when employees are not engaged in the active duties of their employment and the nature of their work requires standing.

Employee is informed and believes, and based thereon alleges that Employer had and has a policy or practice of preventing Employee and/or other aggrieved employees from using or disclosing the skills, knowledge and experience they obtained at Employer for purposes of competing with Employer, including, without limitation, preventing Employees from disclosing their wages in negotiating a new job with a prospective employer, and from disclosing who else

works at Employer and under what circumstances that they might be receptive to an offer from a rival employer. As such, Employee is informed and believes that this violates Business and Professions Code sections 17200, 16600 and 16700, and, by virtue thereof, various provisions of the Labor Code, including Labor Code sections 232, 232.5, and 1197.5, subdivision (k). Employer would be liable for civil penalties pursuant to Labor Code section 2699.

Employee is informed and believes, and based thereon alleges that Employer had and has a policy or practice of preventing Employee and/or other aggrieved employees from disclosing violations of state and federal law, either within Employer to their managers or outside Employer to private attorneys or government officials, among others, in violation of Business and Professions Code section 17200, and, thus, in violation of Labor Code section 1102.5. In addition, Employee is informed and believes that these policies and/or practices prevent Employee and/or other aggrieved employees from disclosing information about unsafe or discriminatory working conditions, or about wage and hour violations in violation of Labor Code section 232 and 232.5. These violations of the Labor Code would expose Employer to liability for civil penalties pursuant to Labor Code section 2699.

Employee is informed and believes, and based thereon alleges that Employer had and has a policy or practice of preventing Employee and/or other aggrieved employees from engaging in lawful conduct during non-work hours, thus violating state statutes entitling employees to disclose wages, working conditions, and illegal conduct, including, without limitation, Labor Code sections 96, subdivision (k), 98.6, 232, 232.5, and 1197.5, subdivision (k). Employee is informed and believes that this lawful conduct includes the exercise of Employee and/or other aggrieved employee's constitutional rights of freedom of speech and economic liberty and would thus expose Employer to liability for civil penalties pursuant to Labor Code section 2699.

Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), please advise within sixty-five (65) calendar days of the postmarked date of this notice whether the LWDA intends to investigate the violations alleged above. Our office understands that if we do not receive a response within sixty-five (65) calendar days of the postmark date of this PAGA Notice that the LWDA intends to investigate these allegations, Employee may immediately thereafter file a civil complaint against Employer to allege causes of action for civil penalties under the Private Attorney General Act for the herein-described alleged violations of the Labor Code.

Very truly yours,

BIBIYAN LAW GROUP, P.C.



Jeffrey D. Klein

cc: SoCal Diners, LLC (via U.S. Certified Mail, Return Receipt Requested)

1 **PROOF OF SERVICE**

2 State of California,
3 County of Los Angeles

4 1. I am a citizen of the United States and am employed in the County
5 of Los Angeles, State of California. I am over the age of 18 years, and not a
6 party to the within action. My business address is 1801 Century Park East,
7 25th Floor, Los Angeles, CA 90067.

8 2. I am familiar with the practice of The Spivak Law Firm, for
9 collection and processing of correspondence for mailing with the United
10 States Postal Service. It is the practice that correspondence is deposited
11 with the United States Postal Service the same day it is submitted for
12 mailing.

13 On Monday, March 11, 2024, I served the foregoing document described as
14 [PROPOSED] THIRD AMENDED COMPLAINT interested parties by placing a true and
15 correct copy thereof enclosed in a sealed envelope, with postage fully
16 prepaid, addressed as follows:

17 **ATTORNEYS FOR DEFENDANTS**

18 Jagdeep Singh Hansra
19 Enedina S. Cardenas
20 Hansra Cardenas LLP
21 19925 Stevens Creek Blvd., Suite 100
22 Cupertino, CA 95014-2384
23 jh@ej-law.com
24 ec@ej-law.com

25 **ATTORNEYS FOR PLAINTIFF NAJERA**

26 David D. Bibiyan
27 david@tomorrowlaw.com
28 Jeffrey D. Klein
jeff@tomorrowlaw.com
Vedang J. Patel
vedang@tomorrowlaw.com
BIBIYAN LAW GROUP, P.C.
8484 Wilshire Bl.
Suite 500
Beverly Hills, CA 90211

XXXX (BY EMAIL) I caused the documents to be sent to the persons at the
electronic service addresses listed above from my electronic service address
nora@spivaklaw.com.

EXECUTED on Monday, March 11, 2024, at Burbank, California.

XXXX (State) I declare under penalty of perjury under the laws of the State
of California that the above is true and correct.

27 
28 _____
NORA GREER

1 **PROOF OF SERVICE**

2 State of California,
3 County of Los Angeles

4 1. I am a citizen of the United States and am employed in the County
5 of Los Angeles, State of California. I am over the age of 18 years, and not a
6 party to the within action. My business address is 1801 Century Park East,
7 25th Floor, Los Angeles, CA 90067.

8 2. I am familiar with the practice of The Spivak Law Firm, for
9 collection and processing of correspondence for mailing with the United
10 States Postal Service. It is the practice that correspondence is deposited
11 with the United States Postal Service the same day it is submitted for
12 mailing.

13 On Thursday, March 21, 2024, I served the foregoing document described
14 as **PLAINTIFFS' THIRD AMENDED COMPLAINT** interested parties by placing a true
15 and correct copy thereof enclosed in a sealed envelope, with postage fully
16 prepaid, addressed as follows:

17 **ATTORNEYS FOR DEFENDANTS**

18 Jagdeep Singh Hansra
19 Enedina S. Cardenas
20 Hansra Cardenas LLP
21 19925 Stevens Creek Blvd., Suite 100
22 Cupertino, CA 95014-2384
23 jh@ej-law.com
24 ec@ej-law.com

25 **ATTORNEYS FOR PLAINTIFF NAJERA**

26 David D. Bibiyan
27 david@tomorrowlaw.com
28 Jeffrey D. Klein
jeff@tomorrowlaw.com
Vedang J. Patel
vedang@tomorrowlaw.com
BIBIYAN LAW GROUP, P.C.
8484 Wilshire Bl.
Suite 500
Beverly Hills, CA 90211

29 XXXX (BY EMAIL) I caused the documents to be sent to the persons at the
30 electronic service addresses listed above from my electronic service address
31 nora@spivaklaw.com.

32 EXECUTED on Thursday, March 21, 2024, at Burbank, California.

33 XXXX (State) I declare under penalty of perjury under the laws of the State
34 of California that the above is true and correct.

35 
36 _____
37 NORA GREER
38