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Samuel Sachs

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

Samuel Sachs behalf of himself and All Others
Similarly Situated;

Plaintiffs,

vs.

American Gonzo Food Co. LLC., a California
Limited Liability Company, American Beauty
Venture, LLC, a California Limited Liability
Company; and DOES 1 through 25, Inclusive;

Defendant(s).

Case No.: 21SMCV01464

**FIRST AMENDED COMPLAINT FOR
DAMAGES**

1. Unlawful Conversion of Gratuities
2. Unfair Competition Cal. Bus. & Prof
Code 17200 et seq.
3. Violation of Labor Code § 226.7
4. Violation and Enforcement of the Private
Attorneys General Act.

DEMAND FOR JURY TRIAL

Comes Now Plaintiffs Who bring this action on behalf of himself and as a Private
Attorney General on behalf of the State of California and aggrieved employees under the Private
Attorney General Act of 2004, Labor Code § 2699 *et seq.* (“PAGA”) complains of Defendants
American Gonzo Food Co. LLC., American Beauty Venture, LLC, , Deluxe Foods, LLC, Pit
Fire Westwood, LLC, Pit Fire Marina, LLC, Pit Fire Manhattan Beach, LLC, Pit Fire Pasadena,
LLC, Pit Fire Pizza Co Inc. and PFP Woodland Hills, LLC and DOES 1 through 25, Inclusive,
and each of them (hereinafter collectively referred to as “Defendants”) as follows:

PARTIES:

A. Plaintiffs

1. Plaintiff Samuel Sachs (hereinafter “Samuel”) is, and at all relevant times was, an individual residing in the County of Los Angeles, State of California.
2. Defendants American Gonzo Food Co. LLC., American Beauty Venture, LLC, Deluxe Foods, LLC, Pit Fire Westwood, LLC, Pit Fire Marina, LLC, Pit Fire Manhattan Beach, LLC, Pit Fire Pasadena, LLC, Pit Fire Pizza Co Inc. and PFP Woodland Hills, LLC (collectively “Defendants”) were joint employers of Plaintiff , and at all relevant times were doing business in the County of Los Angeles, State of California.
3. Plaintiff is informed and believes, and thereon alleges, that at all times discussed herein, defendants, and each of them, were the employees, agents, representatives, parents, acting as legal representative via power of attorney, subsidiaries, joint venturers, and/or partners of each and every other defendant, and at all times alleged herein, defendants were acting within the purpose and scope of said agency, employment, representation, partnership, and/or joint venture, and for the mutual benefit and/or profit of each and every other defendant.
4. Plaintiffs are currently ignorant as to the true names and capacities of defendants sued herein as DOES 1 through 25, inclusive, and therefore sue said defendants by such fictitious names. Plaintiffs is informed and believe, and therefore allege that each defendant sued herein under such fictitious name is in someway legally responsible and/or liable for Plaintiff’s injuries and damages. Plaintiff will seek leave to amend this Complaint upon the discovery of the true names and capacities of such defendants.
5. This Court has subject matter jurisdiction over any and all causes of action asserted herein pursuant to Article VI, § 10 of the California Constitution and California Code of Civil Procedure § 410.10 by virtue of the fact that this is a civil action in which the matter in controversy, exclusive of interest, exceeds \$25,000, and because each cause of action asserted arises under the laws of the State of California or is subject to adjudication in the courts of the State of California.

6. This Court has personal jurisdiction over Defendants because Defendants have caused injuries to Plaintiff in the City of Los Angeles, County of Los Angeles, State of California through their acts, and by their violations of the California Labor Code, California state statutes, and/or common law.
7. Venue as to each Defendant is proper in this judicial district, pursuant to Code of Civil Procedure § 395. Defendant(s) operate within California and/or at all relevant times hereto were doing business within Los Angeles County and/or these unlawful acts arise from the Defendants' California business activities and wrongful conduct which occurred in Los Angeles County. The unlawful acts alleged herein have a direct effect on Plaintiff and all aggrieved employees within the State of California and Los Angeles County, where this dispute arose.

GENERAL FACTUAL ALLEGATIONS

8. Defendant owns and operates several restaurant concepts in the Los Angeles area, including Pit Fire Pizza, Superba Food and Bread and American Beauty.
9. Defendants employs hourly non-exempt workers similarly situated to Plaintiffs in these locations throughout the county.
10. From August 26, 2019 through April 7, 2021 Defendant Employed Plaintiff Samuel as a server at a bar and restaurant at American Beauty, owned and operate by Defendants.
11. Defendants have implemented a mandatory tip pooling system in order to distribute tips to the wait staff in the chain of service.
12. During the course of plaintiff's employment with defendant was actively engaged in the handling and taking of tips and gratuities which were left for the service staff, including but not limited to Sam.
13. Defendants have implemented such a scheme in all of the restaurants it owns and operates.
14. Upon information and belief, other management was also involved in the taking of tips left for wait staff.
15. Defendants instituted an illegal tip pooling system whereby those employees within the

1. chain of service had their tips and gratuities taken from them.

2. 16. Sam made complaints about this illegal taking of tips to management at on more than one

3. occasion.

4. 17. Defendants failed to maintain records of the tips collected and how they were distributed

5. in violation of Labor code §353.

6. 18. During Sam's entire length of employment with Defendants he worked shifts no less than

7. 4 hours, but usually up to 9 hours.

8. 19. During Sam's entire length of employment with defendant, defendant failed to allow or

9. provide meal breaks to any of its staff including Sam in violation of labor code § 226.7.

10. 20. Defendants have failed to provide or allow meal breaks across the concepts they own as

11. well.

12. 21. As a result, the time worked by Plaintiffs and other Staff goes unrecorded and

13. uncompensated. Further, Defendants fail to pay Plaintiffs premium wages for their

14. missed breaks. This uniformly violates California law.

15. 22. Defendants' conduct was willful, carried out in bad faith, and caused significant damages

16. to non-exempt hourly employees in an amount to be determined at trial.

17. 23. During all relevant times, Plaintiffs have been non-exempt under the overtime laws and

18. paid on an hourly basis.

19. **ALLEGATIONS REGARDING THE STATUTE OF LIMITATIONS**

20. 24. On April 6, 2020, in response to the COVID-19 pandemic, the Judicial Council of

21. California adopted 13 temporary emergency rules of court, including

22. Emergency Rule 9 tolling the statutes of limitations for civil cases from April 6, 2020

23. until 90 days after Governor Newsom lifted the state of emergency.

24. 25. On May 29, 2020, the Judicial Council amended Emergency Rule 9 so that it is no longer

25. tied to the state of emergency declaration. Amended Rule 9 tolled the statute of

26. limitations for civil actions from April 6, 2020 to October 1, 2020.

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2. **REPRESENTATIVE ACTION ALLEGATIONS**

3. 26. Plaintiff seeks to represent all aggrieved employees within the meaning of Labor Code §§

4. 2698, et seq., who are or were employed by Defendants in California from October 31,

5. 2019 through April 26, 2021.

6. 27. Plaintiff, on behalf of himself and other aggrieved employees, seek to recover damages

7. pursuant to Labor Code section 558 and civil penalties (“PAGA penalties”) because

8. Defendants (1) unlawfully collected gratuities; (2) failed to provide employee rest periods

9. (3) civil penalties; and (4) reasonable attorneys' fees and costs;

10. 28. While not required in order to be entitled to pursue a representative action under PAGA,

11. Plaintiff alleges that there is a well-defined community of interest in the questions of law

12. and fact affecting the aggrieved employees whom Plaintiffs seeks to represent. The

13. aggrieved employees' claims against Defendants involve questions of common or general

14. interest. These issues are such that proof of a statement of facts common to Plaintiff will

15. entitle each aggrieved employee to the relief requested in this Complaint.

16. 29. While not required in order to be entitled to pursue a representative action under PAGA,

17. Plaintiff alleges that their claims are typical of the claims of the aggrieved employees

18. whom Plaintiff seeks to represent and their interests are consistent with, and not

19. antagonistic to, those of the other aggrieved employees. Plaintiff will fairly and

20. adequately represent the interests of the aggrieved employees whom they seek to

21. represent because Plaintiff is also aggrieved employee and his claims are typical of those

22. of the aggrieved employees.

23. 30. Plaintiff has retained attorneys who are experienced and who intend to prosecute this

24. action vigorously.

25. **FIRST CAUSE OF ACTION**

26. **(Conversion of Gratuities Samuel Sachs as an individual Against All Defendants and Does**

27. **1 to 25)**

28. 31. Plaintiff incorporates by reference as though fully set forth herein the preceding

1. paragraphs of this Complaint.

2. 32. Labor Code section 351 provides that “[n]o employer or agent shall collect, take, or
3. receive any gratuity or a part thereof that is paid, given to or left for an employee by a
4. patron, or deduct any amount from wages due an employee on account of a gratuity, or
5. require an employee to credit the amount, or any part thereof, of a gratuity against and as
6. a part of the wages due the employee from the employer. Every gratuity is hereby
7. declared to be the sole property of the employee of employees to whom it was paid,
8. given, or left for.” Labor Code section 353 requires every employer to keep accurate
9. records of all gratuities received by employer, whether received directly from the
10. employee or indirectly by means of deductions from the wages of the employee or
11. otherwise.

12. 33. In violation of Labor Code section 351. Defendants consistently collected, took, or
13. received the gratuities or a portion thereof paid by customers to Plaintiff and other
14. aggrieved employees. In violation of Labor Code section 353, Defendants failed to keep
15. accurate records of all gratuities received by them. Defendants have committed
16. conversion of the property and moneys that belong to Plaintiff and other aggrieved
17. employees in violation of the California law and are liable for damages to Plaintiff for the
18. loss of gratuities paid by Defendants' customers. The conversion has been carried out by
19. Defendants with complete disregard of the law and the rights of Plaintiff and other
20. aggrieved employees.

21. 34. In converting the gratuities paid by customers. Defendants are guilty of “oppression,
22. fraud or malice” within the meaning of California Civil Code section 3294. and should be
23. liable for punitive damages in an amount to be determined at trial.

24. 35. Therefore. Plaintiff and other aggrieved employees request judgment as set forth in the
25. prayer at the conclusion of this complaint

26. **SECOND CAUSE OF ACTION**

27. **(Unfair Competition Cal. Bus. & Prof Code 17200 et seq. against Defendants)**

28. 36. Plaintiff incorporates by reference as though fully set forth herein the preceding

paragraphs of this Complaint.

37. The majority, if not all, of the unlawful conduct of the Defendants alleged in the prior causes of action constitute unlawful or unfair business practices within the meaning of Business and Professions Code § 17200.

38. Due to its unlawful and unfair business practices in violation of the Labor Code, Defendants have gained a competitive advantage over other comparable companies doing business in the state of California that comply with their obligations to fairly distribute tips earned by employees as required by law.

39. As a result of Defendants' unfair business practices as alleged herein, Plaintiff and other aggrieved employees have suffered injury in fact and/or lost money or property.

40. Pursuant to Business and Professions Code § 17203, Plaintiff is entitled to restitution of all tips or other monies owed and belonging to them, including interest thereon, that Defendants wrongfully withheld from them and retained for themselves by means of their unlawful and unfair business practices.

41. Plaintiff also seeks to recover their costs and reasonable attorney's fees pursuant to Code of Civil Procedure § 1021.5.

THIRD CAUSE OF ACTION

(Failure to Provide Meal and Rest Breaks all Aggrieved Employees Against all Defendants and does 1 to 25)

42. Plaintiff incorporates each and every paragraph of this complaint as though fully alleged herein.

43. At all times relevant to this Complaint, Plaintiffs and were hourly non-exempt employees of Defendants, covered by Labor Code section 226.7 and the Wage Order.

44. California law requires that “[e]very 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....” Wage Order 9 at § 12. Employees are entitled to 10 minutes' rest for shifts from three and

one-half to six hours in length, 20 minutes for shifts of more than six hours up to 10 hours, 30 minutes for shifts of more than 10 hours up to 14 hours, and so on.” (*Brinker Restaurant Corp. v. Sup. Ct. (Hohnbaum)* (2012) 53 Cal.4th 1004, 1029; Labor Code section 226.7). Additionally, the rest period requirement “obligates employers to permit - and authorizes employees to take - off-duty rest periods.” (*Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5th 257, 269). That is, during rest periods employers must relieve employees of all duties and relinquish control over how employees spend their time. *Id.*

45. If an employer fails to provide an employee a rest period in accordance with the law, the employer must pay the employee one (1) hour of pay at the employee's regular rate of pay for each workday that a legally required and compliant rest period was not provided. (Labor Code section 226.7; Wage Order 9 at § 12).

46. “[t]he regular rate at which an employee is employed shall be deemed to include all remuneration for employment paid to, or on behalf, of the employee.” See Division of Labor Standards Enforcement - Enforcement Policies and Interpretations Manual, Section 49.1.2.

47. In this case, Plaintiffs regularly worked shifts of more than three-and-a-half (3.5) hours. Nevertheless, Defendants failed to authorize or permit Plaintiffs to take all legally rest periods due to defendants' policies, practices, and/or procedures including, but not limited to: requiring Plaintiffs to carry on duties during their breaks and rest periods.

48. Additionally, Defendants failed to pay premium wages to Plaintiffs to compensate them for each workday the employees did not receive all legally required and compliant rest periods. Defendants employed policies and procedures which ensured that employees did not receive any rest period premium wages to compensate them for workdays in which they did not receive all legally required and compliant rest periods.

49. The aforementioned policies, practices, and/or procedures of Defendants resulted in Plaintiff s not being provided with all legally required and compliant rest periods and/or not receiving premium wages at the proper regular rate to compensate them for such

instances, all in violation of California law.

50. Defendants' unlawful conduct alleged herein occurred in the course of employment of Plaintiffs and such conduct has continued through the filing of this Complaint.

51. Because Defendants failed to provide employees with rest periods in compliance with the law, Defendants are liable to Plaintiffs for one (1) hour of additional pay at the regular rate of compensation for each workday that Defendants did not provide all legally required and compliant rest periods, pursuant to Labor Code section 226.7 and the Wage Order.

52. Plaintiffs seek damages and all other relief allowable, including a rest period premium wage for each workday Defendants failed to provide all legally required and compliant rest periods, plus pre-judgment interest.

FOURTH CAUSE OF ACTION

(Representative Private Attorney General Act Claim for Civil Penalties. All Aggrieved Employees Against All Defendants and does 1 to 25)

53. Plaintiff incorporates by reference as though fully set forth herein the preceding paragraphs of this Complaint.

54. On April 26, 2021, Plaintiff sent a letter, via certified mail to the LWDA and American Gonzo giving notice of these PAGA claims, pursuant to Labor Code § 2699.3. On or about August 24, 2024 Plaintiff submitted to the LWDA an Amended PAGA notice letter.

55. Within 60 calendar days of the postmark date of the notice received by the LWDA Plaintiff did not receive any response from the LWDA.

56. Since no notice was provided within 60 calendar days of the postmark date of the notice given pursuant to paragraph 69, above, Plaintiffs commenced this civil action pursuant to Labor Code § 2699.3.

57. For at least one year prior to the date of the letter sent to LWDA, and continuing to the present, Defendants have had policies of taking employees and other wait staff's gratuities, as described above, in violation of the law.

58. For at least one year prior to the date of the letter sent to LWDA, and continuing to the present, Defendants have had policies of not providing rest periods as required by law.

59. Defendants' practice violates Labor Code § 351. Plaintiffs, on behalf of the State of California and aggrieved employees, is entitled to recover civil penalties pursuant to Labor Code § 558 and/or § 2699(f)(2).

60. Plaintiffs on behalf of the State of California and aggrieved employees, seeks recovery of civil penalties under California Labor Code 2698, 2699(f) et seq. and/or Labor Code § 558 provided because of Defendants' violation of Labor Code §§ 98.6, 201, 202, 203, 204, 226(a), 226.7, 351, 510, 512(a), 551, 552, 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2801, by among other things: (1) unlawfully withholding tips and/or engaging in and implementing an unlawful tip pooling system (Lab. C. § 351); (2) failing to pay for all hours worked, including minimum wage, regular wages and overtime wages (Lab. C. §§ 204, 510, 1194, 1197, and 1198), (3) failing to provide compliant meal periods (Lab. C. § 226.7), (4) failing to authorize and permit rest periods (Lab. C. § 226.7), (5) failing to pay all earned wages (Lab. C. § 204), (6) failing to maintain accurate records of hours worked and meal periods taken or missed (Lab. C. § 1174.5), (7) willfully failing to pay all wages owed at termination (Lab. C. §§ 201 to 203); and (8) failing to provide accurate itemized wage statements (Lab. C. § 226)

61. 75% of any civil penalties approved by the court will be allocated to the Labor Workforce Development Agency and 25% to affected aggrieved employees. Any unpaid wages recovered as a penalty pursuant to Labor Code § 558 or other applicable statute shall be paid to Plaintiff. (Labor Code § (a)(3).)

62. Pursuant to Labor Code § 2699(g), Plaintiff also seeks prejudgment interest on any wages recovered as a penalty under § 558, and an award of her attorney's fees and costs

PRAYER FOR RELIEF

WHEREFORE PLAINTIFF PRAYS FOR JUDGMENT AS FOLLOWS:

1. For an order of the Court restoring to Plaintiff all money and property improperly converted by Defendants;

2. For compensatory and punitive damages;
3. For all applicable statutory damages pursuant to Labor Code sections 351, 226.7, and 2699.5.
4. For all applicable civil penalties pursuant to Labor Code sections, 558 and 2698, et seq., including without limitation, Labor Code sections 98.6, 201, 202, 203, 204, 226(a), 226.7, 351, 510, 512(a), 551, 552, 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2801.
5. For violation of § 351 and 226.7: One hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation. Labor Code § 2699(f)(2)
6. Enjoin Defendants from engaging in the practices challenged herein, to cease and desist from unlawful activities, and to remedy all violations of the California Labor Code in their practices and procedures in the future;
7. An award that 75% of any civil penalties approved by the court be allocated to the Labor Workforce Development Agency
8. An award that 25% of any civil penalties approved by the court be allocated to affected aggrieved employees.
9. For restitution as provided by Business and Professions Code § 17200 et seq. and for an order requiring Defendants jointly and severely to restore all funds to Plaintiff by means of any act or practice declared by this Court to be unlawful, unfair or fraudulent and, therefore, constituting unfair competition under Business and Professions Code §17200 et seq. as set forth above;
10. Pre-judgment interest at the maximum legal rate;
11. Reasonable attorney's fees under Labor Code sections, 558, 226.7 and 2699, Cal. Civ. Code § 1021.5.
12. For costs of this suit;
13. For such other and further relief as the Court deems just and proper.

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2. DATED: September 2, 2023

SKINNER LAW CORPORATION



Troy C. Skinner
Attorneys for Plaintiffs

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7. **DEMAND FOR JURY TRIAL**

8. Plaintiff hereby demands a trial by jury as to all issues and causes of action so triable.

9.
10. DATED: September 22, 2023

SKINNER LAW CORPORATION



Troy C. Skinner
Attorneys for Plaintiffs