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County of San Diego
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Attorneys for Plaintiff Darryl Burrows, on behalf of himself and all “aggrieved employees” pursuant to Labor Code § 2698 *et seq.*

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO

DARRYL BURROWS, on behalf of himself
and all “aggrieved employees” pursuant to
Labor Code § 2698 *et seq.*,

Plaintiff,

v.

HOSPITALITY SERVICES GROUP LLC, an
Indiana corporation, and DOES 1 through 10,
inclusive,

Defendants.

CASE NO: 37-2023-00013910-CU-OE-CTL

**REPRESENTATIVE ACTION
COMPLAINT FOR PENALTIES
PURSUANT TO LABOR CODE § 2699(f)
FOR VIOLATIONS OF LABOR CODE
§§ 201, 202, 226(a), 226.7, 512, 1174,
1174.5, AND 1198 AND PURSUANT TO
LABOR CODE § 2699(a) FOR
VIOLATIONS OF LABOR CODE §§ 226.3
AND 558**

1 Plaintiff DARRYL BURROWS (“Plaintiff”), on behalf of himself and others as an “aggrieved
2 employee” under the Labor Code Private Attorneys General Act of 2004, codified as Labor Code §§
3 2698 *et seq.*, complains of HOSPITALITY SERVICES GROUP LLC, an Indiana corporation, and/or
4 any subsidiaries or affiliated companies (hereinafter referred to as “Defendants”), as follows:

5 **I.**

6 **INTRODUCTION AND FACTUAL BACKGROUND**

7 1. This is a Representative Action, pursuant to Labor Code § 2698 *et seq.*, on behalf of
8 Plaintiff and non-exempt California employees who currently work or formerly worked for
9 Defendants in California (“Aggrieved Employees”).

10 2. For at least one (1) year prior to the filing of this action and at least one (1) year prior
11 to the date Plaintiff began the process of exhausting the administrative requirements, pursuant to
12 Labor Code § 2698 *et seq.*, and continuing to the present (the “liability period”), Defendants have had
13 consistent policies of:

14 a. Failing to pay premium wages to Plaintiff and other Aggrieved Employees who
15 were denied proper meal periods, in violation of Labor Code §§ 226.7, 512, and 558 and IWC Wage
16 Order 4-2001. Plaintiff and other Aggrieved Employees were routinely denied, and not authorized to
17 take, a proper, timely, uninterrupted, 30-minute meal period for every shift worked that exceeded five
18 hours, or a second proper, timely, uninterrupted, 30-minute meal period for every shift worked that
19 exceeded ten hours, but were not paid premium wages of one hour’s pay for each missed first or
20 second meal period. When they were able to take a meal period, they were cut short, late or on-duty.
21 Defendant also fails to maintain records indicating the start and end time of each meal period. This
22 violates Labor Code §§ 226.7, 512, 558, 1174, 1174.5, and 1198 and IWC Wage Order 4-2001;

23 b. Failing to pay premium wages to Plaintiff and Aggrieved Employees who were
24 denied rest periods, in violation of Labor Code § 226.7 and IWC Wage Order No. 4-2001. Plaintiff
25 and Aggrieved Employees were routinely unable to take a 10-minute rest period for every four (4)
26 hours of work or major fraction thereof, but were not paid premium wages of one hour’s pay for each
27 missed rest period. When they were able to take a rest period, they were oftentimes late, cut short or
28 on-duty, in violation of Labor Code § 226.7 and IWC Wage Order No. 4-2001.

1 c. Failing to provide Plaintiff and Aggrieved Employees with wage statements
2 that fully and accurately itemized the requirements set forth in Labor Code §§ 226(a) and 226.3.
3 Plaintiff and Aggrieved Employees were not paid all premium meal and rest period wages due, as
4 stated above. As such, the wage statements provided by Defendants failed to accurately state all gross
5 wages earned, in violation of Labor Code §§ 226(a)(1) and 226.3, total hours worked, in violation of
6 Labor Code §§ 226(a)(2) and 226.3, net wages earned, in violation of Labor Code §§ 226(a)(5) and
7 226.3, and all applicable hourly rates in effect during the pay period and the corresponding number
8 of hours worked, in violation of Labor Code §§ 226(a)(9) and 226.3; and

9 d. Failing to pay Plaintiff and certain Aggrieved Employees all wages due at the
10 separation of their employment based on the time frames required by Labor Code §§ 201 and 202. As
11 stated above, Plaintiff and other Aggrieved Employees were not paid all wages due during the course
12 of their employment and, as a result of this failure, they were not timely paid all wages due at the
13 separation of their employment. Further, when Plaintiff was terminated from his employment, he was
14 paid his final wages many days later. Plaintiff contends that Defendants maintain a practice of paying
15 its separated employees their final wages beyond the time frames required by Labor Code §§ 201 and
16 202. This violates Labor Code §§ 201-202 and is alleged on behalf of Plaintiff and Aggrieved
17 Employees no longer employed by Defendants.

18 3. Plaintiff, on behalf of himself and all Aggrieved Employees pursuant to Labor Code §
19 2698 *et seq.*, seeks civil penalties for Defendants' violations of the California Labor Code.

20 4. Venue is proper in this judicial district, pursuant to Code of Civil Procedure § 395.
21 The Labor Code violations alleged against Defendants herein arose throughout California, including
22 in San Diego County.

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1 II.

2 PARTIES

3 A. Plaintiff

4 5. Plaintiff DARRYL BURROWS was employed by Defendants as a non-exempt
5 employee in 2023 in San Diego County, California.

6 B. Defendants

7 6. Defendant HOSPITALITY SERVICES GROUP LLC is an Indiana corporation that
8 employed Plaintiff and Aggrieved Employees in San Diego County, California.

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

16 8. Plaintiff is informed and believes, and based thereon alleges, that each Defendant acted
17 in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme,
18 business plan or policy in all respects pertinent hereto, and the acts of each Defendant is legally
19 attributable to the other Defendants.

20 9. The Defendants named herein as DOE 1 through DOE 10 are and were persons acting
21 on behalf of, or acting jointly with, Defendants, who violated, or caused to be violated, one or more
22 provisions of the California Labor Code as alleged herein.

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III.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

**PLAINTIFF AND ALL AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS
PENALTIES PURSUANT TO LABOR CODE § 2699(f) FOR VIOLATIONS OF LABOR
CODE §§ 201, 202, 226(a), 226.7, 512, 1174, 1174.5, AND 1198 AND PURSUANT TO
LABOR CODE § 2699(a) FOR VIOLATIONS OF LABOR CODE §§ 226.3 AND 558**

10. Plaintiff incorporates paragraphs 1 through 9 of this Complaint as though fully set forth herein.

11. As a result of the acts alleged above, including the Labor Code violations set forth in paragraph 2 above, Plaintiff seeks civil penalties pursuant to Labor Code §§ 2698 *et seq.*

12. For each such violation, Plaintiff and all other Aggrieved Employees are entitled to penalties and other relief in an amount to be shown at the time of trial subject to the following formula:

a. Pursuant to Labor Code § 2699(f), \$100 for each initial violation and \$200 for each subsequent violation of Labor Code 201, 202, 226(a), 226.7, 512, 1174, 1174.5, and 1198; and

b. Pursuant to Labor Code § 2699(f), the penalties as authorized by Labor Code §§ 226.3 and 558.

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

14. On January 23, 2023, Plaintiff sent a letter, by online submission to the LWDA and by certified mail, return receipt requested, to Defendants setting forth the facts and theories of the violations alleged against Defendants, as prescribed by Labor Code § 2698 *et seq.* Pursuant to Labor Code § 2699.3(a)(2)(A), no notice was received by Plaintiff from the LWDA within sixty-five (65) calendar days of January 23, 2023. Plaintiff may therefore commence this action to seek civil penalties pursuant to Labor Code § 2698 *et seq.*

Wherefore, Plaintiff and the Aggrieved Employees he seeks to represent request relief as described below.

1 IV.

2 **RELIEF REQUESTED**

3 WHEREFORE, Plaintiff prays for the following relief:

- 4 1. For civil penalties pursuant to Labor Code § 2698 *et seq.* for Plaintiff and all other
5 Aggrieved Employees;
- 6 2. An award providing for payment of costs of suit pursuant to Labor Code § 2699(g)(1)
7 and other applicable law;
- 8 3. An award of attorneys' fees pursuant to Labor Code § 2699(g)(1) and other applicable
9 law; and
- 10 4. Such other and further relief as this Court may deem just and proper.

11 Dated: April 4, 2023

Respectfully submitted,

12 GAINES & GAINES
13 A Professional Law Corporation

14 By: Daniel F. Gaines
15 DANIEL F. GAINES
16 EVAN S. GAINES
17 Attorneys for Plaintiff
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