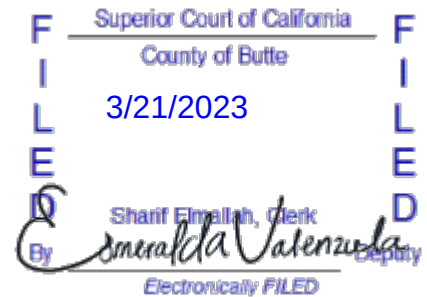


DANIEL F. GAINES, ESQ. SBN 251488
daniel@gaineslawfirm.com
ALEX P. KATOFISKY, ESQ. SBN 202754
alex@gaineslawfirm.com
EVAN S. GAINES, ESQ. SBN 287668
evan@gaineslawfirm.com
GAINES & GAINES, APLC
4550 East Thousand Oaks Boulevard, Suite 100
Westlake Village, CA 91362
Telephone: (818) 703-8985
Facsimile: (818) 703-8984



Attorneys for Plaintiff Marlon Davis, 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 BUTTE**

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

Plaintiff,

v.

ELITE DINERS, LLC, a California limited
liability company d/b/a BLACK BEAR
DINER; ELITE DEVCO, LLC, a California
limited liability company; and DOES 1 through
10, inclusive,

Defendants.

CASE NO: **23CV00681**

**REPRESENTATIVE ACTION
COMPLAINT FOR PENALTIES
PURSUANT TO LABOR CODE § 2699(f)
FOR VIOLATIONS OF LABOR CODE
§§ 201, 202, 212, 226(a), 226.7, AND 512
AND PURSUANT TO LABOR CODE §
2699(a) FOR VIOLATIONS OF LABOR
CODE §§ 225.5, 226.3, AND 558**

1 Plaintiff MARLON DAVIS ("Plaintiff"), on behalf of himself and others as an "aggrieved
2 employee" under the Labor Code Private Attorneys General Act of 2004, complains of Elite Diners,
3 LLC, a California limited liability company d/b/a Black Bear Diner, Elite Devco, LLC, a California
4 limited liability company, and/or any subsidiaries or affiliated companies (hereinafter referred to as
5 "Defendants"), as follows:

6 **I.**

7 **INTRODUCTION AND FACTUAL BACKGROUND**

8 1. This is a Representative Action, pursuant to Labor Code § 2698 et seq., on behalf of
9 Plaintiff and other California employees who currently work or formerly worked for Defendants
10 ("Aggrieved Employees").

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

15 a. Failing to pay premium wages to Plaintiff and other non-exempt Aggrieved
16 Employees who were denied rest periods, in violation of Labor Code § 226.7 and IWC Wage
17 Order No. 5-2001. Plaintiff and non-exempt Aggrieved Employees were routinely unable to
18 take a 10-minute rest period for every four (4) hours of work or major fraction thereof, but
19 were not paid premium wages of one hour's pay for each missed rest period. When they were
20 able to take a rest period, they were oftentimes late, cut short, or on duty. This violates Labor
21 Code § 226.7 and IWC Wage Order No. 5-2001;

22 b. Failing to pay premium wages to Plaintiff and other non-exempt Aggrieved
23 Employees who were denied proper meal periods, in violation of Labor Code §§ 226.7, 512,
24 and 558 and IWC Wage Order 5-2001. Plaintiff and other non-exempt Aggrieved Employees
25 were routinely denied, and not authorized to take, a proper, timely, uninterrupted, 30-minute
26 meal period for every shift worked that exceeded five hours, or a second proper, timely,
27 uninterrupted, 30-minute meal period for every shift worked that exceeded ten hours, but were
28 not paid premium wages of one hour's pay for each missed first or second meal period. When

1 they were able to take a meal period, they were oftentimes late or on-duty. This violates Labor
2 Code §§ 226.7, 512, and 558 and IWC Wage Order 5-2001;

3 c. Issuing Plaintiff and Aggrieved Employees' wages by paychecks drawn on an
4 account at Community Bank of the Bay. Community Bank of the Bay charges all non-account
5 holders check cashing fees. Plaintiff and other Aggrieved Employees do not have a bank
6 account with Community Bank of the Bay, such that they were forced to incur check cashing
7 fees at Community Bank of the Bay to obtain their wages. Further, there was no California
8 business address listed on their paychecks where they could be cashed without any fees,
9 violating the express requirements of Labor Code § 212. By not making arrangements with
10 Community Bank of the Bay or another business to permit employees to cash their paychecks
11 without paying a fee, Defendants have violated Labor Code §§ 212 and 225.5;

12 d. Failing to provide Plaintiff and other non-exempt Aggrieved Employees with
13 wage statements that fully and accurately itemized the requirements set forth in Labor Code
14 § 226(a). Plaintiff and other non-exempt Aggrieved Employees were not paid all wages due,
15 as stated above. As such, the wage statements provided by Defendants failed to accurately
16 state all gross wages earned, in violation of Labor Code §§ 226(a)(1) and 226.3, total hours
17 worked, in violation of Labor Code §§ 226(a)(2) and 226.3, net wages earned, in violation of
18 Labor Code §§ 226(a)(5) and 226.3, and all applicable hourly rates in effect during the pay
19 period and the corresponding number of hours worked at each hourly rate, in violation of
20 Labor Code §§ 226(a)(9) and 226.3; and

21 e. Failing to pay Plaintiff and other non-exempt Aggrieved Employees all wages
22 due at the separation of their employment based on the time frames required by Labor Code
23 §§ 201 and 202. As stated above, Plaintiff and other non-exempt Aggrieved Employees were
24 not paid all wages due during the course of their employment and, as a result of this failure,
25 they were not timely paid all wages due at the separation of their employment. This violates
26 Labor Code §§ 201-202 and is alleged on behalf of Plaintiff and certain non-exempt
27 Aggrieved Employees no longer employed by Defendants.
28

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

4. Venue is proper in this judicial district, pursuant to Code of Civil Procedure § 395 because Defendants employed Plaintiff and Aggrieved Employees in Butte County, California.

II.

PARTIES

A. Plaintiff

5. Plaintiff MARLON DAVIS was employed by Defendants from October 2022 through November 2022 as a non-exempt employee in Butte County, California.

B. Defendant

6. Defendant Elite Diners, LLC is a California limited liability company doing business as Black Bear Diner. Defendant Elite Diners, LLC employed Plaintiff and Aggrieved Employees throughout the State of California, including Butte County, California.

7. Defendant Elite Devco, LLC is a California limited liability company that employed Plaintiff and Aggrieved Employees throughout the State of California, including Butte County, California.

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

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

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

IV.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

**PLAINTIFF AND ALL AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS
CIVIL PENALTIES PURSUANT TO LABOR CODE § 2699(f) FOR VIOLATIONS OF
LABOR CODE §§ 201, 202, 212, 226(a), 226.7, AND 512 AND PURSUANT TO LABOR
CODE § 2699(a) FOR VIOLATIONS OF LABOR CODE §§ 225.5, 226.3, AND 558**

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

12. 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.*

13. For each such violation, Plaintiff and all other Aggrieved Employees are entitled to civil penalties 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, 212, 226(a), 226.7, and 512; and
- b. Pursuant to Labor Code § 2699(a), the civil penalties as authorized by Labor Code §§ 225.5, 226.3, and 558.

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

15. On January 10, 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)

1 calendar days of January 10, 2023. Plaintiff may therefore commence this action to seek civil penalties
2 pursuant to Labor Code § 2698 *et seq.*

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

5 **RELIEF REQUESTED**

6 WHEREFORE, Plaintiff prays for the following relief:

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

14 Dated: March 21, 2023

Respectfully submitted,

16 GAINES & GAINES
A Professional Law Corporation

18 By: Daniel F. Gaines
19 DANIEL F. GAINES
20 EVAN S. GAINES
Attorneys for Plaintiff