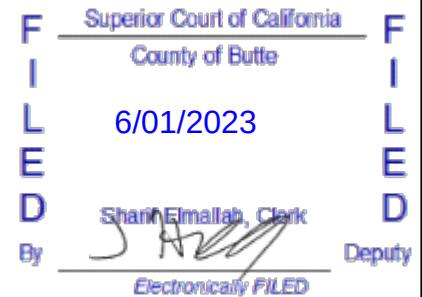


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Attorneys for Plaintiff, Marlon Davis



**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

*Assigned to the Hon. Tamara L. Mosbarger,
Dept. 1*

FIRST AMENDED COMPLAINT FOR:

**1. FAILURE TO PROVIDE REST
PERIODS OR COMPENSATION IN LIEU
THEREOF (LABOR CODE § 226.7; IWC
WAGE ORDER 5-2001)**

**2. FAILURE TO PROVIDE MEAL
PERIODS OR COMPENSATION IN LIEU
THEREOF (LABOR CODE §§ 226.7 AND
512; IWC WAGE ORDER 5-2001)**

**3. KNOWING AND INTENTIONAL
FAILURE TO COMPLY WITH
ITEMIZED EMPLOYEE WAGE
STATEMENT PROVISIONS (LABOR
CODE § 226(a), (e))**

**4. FAILURE TO PAY WAGES DUE AT
SEPARATION OF EMPLOYMENT
(LABOR CODE §§ 201-203)**

**5. VIOLATION OF BUSINESS AND
PROFESSIONS CODE § 17200**

**6. PENALTIES PURSUANT TO LABOR
CODE § 2699(f) FOR VIOLATIONS OF
LABOR CODE §§ 201-202, 226(a), 226.7,
AND 512 AND PURSUANT TO LABOR**

**CODE § 2699(a) FOR VIOLATIONS OF
LABOR CODE §§ 226.3 AND 558**

**7. PENALTIES PURSUANT TO LABOR
CODE § 2699(f) FOR VIOLATIONS OF
LABOR CODE § 212 AND PURSUANT
TO LABOR CODE § 2699(a) FOR
VIOLATIONS OF LABOR CODE § 225.5**

DEMAND FOR JURY TRIAL

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

I.

INTRODUCTION AND FACTUAL BACKGROUND

1. For at least four (4) years prior to the filing of this action and continuing through the present (the “liability period”) Defendants have had a consistent policy of voluntarily and knowingly failing to provide legally compliant meal and rest periods or compensation in lieu thereof to Plaintiff; failing to provide accurately itemized wage statements to Plaintiff; failing to timely pay wages upon separation of employment to Plaintiff; and failing to issue wages to Plaintiff and other California employees who currently work or formerly worked for Defendants (“Aggrieved Employees”) by an instrument payable on demand, without discount.

2. Plaintiff brings this action pursuant to Labor Code §§ 201-203, 212, 225.5, 226(a), 226.7, and 512 seeking compensation for all unpaid wages, civil and statutory penalties, injunctive and other equitable relief, and reasonable attorneys’ fees and costs.

3. Plaintiff, on behalf of himself pursuant to Business & Professions Code §§ 17200-17208, also seek injunctive relief, restitution, and disgorgement of all benefits Defendants enjoyed from their failure to pay him all wages due.

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

6. During his work with Defendants, Plaintiff was:

- a. Willfully denied rest periods or compensation in lieu thereof;
- b. Willfully denied meal periods or compensation in lieu thereof;
- c. Willfully denied accurately itemized wage statements;
- d. Willfully denied the timely payment of wages upon separation of his employment; and
- e. Willfully denied the payment of wages by an instrument on demand, without discount.

B. Defendants

7. 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.

8. 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.

9. 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, including as a

1 successor to Defendants. Plaintiff will seek leave of court to amend this Complaint to reflect the true
2 names and capacities of the Defendants designated hereinafter as DOES when such identities become
3 known.

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

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

11 III.

12 CAUSES OF ACTION

13 FIRST CAUSE OF ACTION

14 FAILURE TO PROVIDE REST PERIODS OR COMPENSATION IN LIEU THEREOF

15 (LABOR CODE § 226.7; IWC WAGE ORDER 5-2001)

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

18 13. Plaintiff is entitled to one hour of pay for each day that Defendants failed to properly
19 provide one or more rest periods as set forth in Labor Code § 226.7.

20 14. Plaintiff was routinely unable to take a 10-minute rest period for every four (4) hours
21 of work or major fraction thereof, but was not paid premium wages of one hour's pay for each missed
22 rest period. When he was able to take a rest period, they were oftentimes late, cut short, or on duty.
23 This practice violates Labor Code § 226.7 and IWC Wage Order No. 5-2001.

24 15. Pursuant to Labor Code § 226.7, Plaintiff seeks the payment of all rest period
25 compensation which he is owed for four years preceding the filing of this Action, according to proof.

26 Wherefore, Plaintiff requests relief as described below.

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1 IV.

2 SECOND CAUSE OF ACTION

3 PLAINTIFF AGAINST ALL DEFENDANTS

4 FAILURE TO PROVIDE MEAL PERIODS OR COMPENSATION IN LIEU THEREOF

5 (LABOR CODE §§ 226.7 AND 512; IWC WAGE ORDER 5-2001)

6 16. Plaintiff incorporates paragraphs 1 through 15 of this Complaint as though fully set
7 forth herein.

8 17. Plaintiff is entitled to one hour of pay for each day that Defendants failed to properly
9 provide one or more meal periods as set forth in Labor Code §§ 226.7 and 512.

10 18. Plaintiff was routinely denied, and not authorized to take, a timely, uninterrupted, 30-
11 minute meal period for every shift worked that exceeded five hours, or a second timely, uninterrupted,
12 30-minute meal period for every shift worked that exceeded ten hours, but was not paid premium
13 wages of one hour's pay for each missed first or second meal period. When he was able to take a
14 meal period, they were oftentimes late or on-duty. This violates Labor Code §§ 226.7 and 512 and
15 IWC Wage Order 5-2001.

16 19. Pursuant to Labor Code §§ 226.7 and 512, Plaintiff seeks the payment of all meal
17 period compensation which he is owed for four years preceding the filing of this Action, according
18 to proof.

19 Wherefore, Plaintiff requests relief as described below.

20 V.

21 THIRD CAUSE OF ACTION

22 PLAINTIFF AGAINST ALL DEFENDANTS

23 KNOWING AND INTENTIONAL FAILURE TO COMPLY WITH ITEMIZED

24 EMPLOYEE WAGE STATEMENT PROVISIONS

25 (LABOR CODE § 226(a), (e))

26 20. Plaintiff incorporates paragraphs 1 through 19 of this Complaint as though fully set
27 forth herein.

28 ///

1 21. Section 226(a) of the California Labor Code requires Defendants to provide wage
2 statements to employees. In those wage statements, Defendants must provide an accurate itemized
3 statement in writing showing (1) gross wages earned, (2) total hours worked by the employee..., (3)
4 the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-
5 rate basis, (4) all deductions, provided that all deductions made on written orders of the employee
6 may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period
7 for which the employee is paid, (7) the name of the employee and only the last four digits of his or
8 her social security number or an employee identification number other than a social security number,
9 (8) the name and address of the legal entity that is the employer..., and (9) all applicable hourly rates
10 in effect during the pay period and the corresponding number of hours worked at each hourly rate by
11 the employee. Defendants have knowingly and intentionally failed to comply with Labor Code §
12 226(a).

13 22. Defendants failed to provide Plaintiff with wage statements that fully and accurately
14 itemized the requirements set forth in Labor Code §§ 226(a). Plaintiff was not paid all wages due, as
15 stated above. As such, the wage statements provided by Defendants failed to accurately state all gross
16 wages earned, in violation of Labor Code § 226(a)(1), total hours worked, in violation of Labor Code
17 § 226(a)(2), net wages earned, in violation of Labor Code § 226(a)(5), and all applicable hourly rates
18 in effect during the pay period and the corresponding number of hours worked, in violation of Labor
19 Code § 226(a)(9).

20 23. As a consequence of Defendants' willful conduct in failing to provide Plaintiff with
21 accurate itemized wage statements, Plaintiff has been injured because he has not been paid all wages
22 due and was issued wage statements which do not reflect, and fail to state, all information required
23 by Labor Code § 226(a). The missing information cannot be discerned at all from the face of the wage
24 statements themselves. As a result, Plaintiff is entitled to penalties pursuant to Labor Code § 226(e)
25 to recover the greater of all actual damages or \$50 for the initial pay period in which a violation occurs
26 and \$100 per employee for each violation in a subsequent pay period, not exceeding an aggregate
27 penalty of \$4,000 per employee, and are entitled to an award of costs and reasonable attorneys' fees
28 pursuant to Labor Code § 226(h).

Wherefore, Plaintiff requests relief as described below.

VI.

FOURTH CAUSE OF ACTION

PLAINTIFF AGAINST ALL DEFENDANTS

FAILURE TO PAY WAGES DUE AT SEPARATION OF EMPLOYMENT

(LABOR CODE §§ 201-203)

24. Plaintiff incorporates paragraphs 1 through 23 of this Complaint as though fully set forth herein.

25. California Labor Code § 201 and § 202 require Defendants to pay employees all wages due within 72 hours after resignation of employment or the day of termination of employment. Labor Code § 203 provides that if an employer willfully fails to timely pay such wages, the employer must, as a penalty, continue to pay the subject employee's daily wages until the back wages are paid in full or an action is commenced. The penalty cannot exceed 30 days of wages.

26. Defendants paid Plaintiff his final wages beyond the time frames set forth in Labor Code §§ 201 and 202, in violation of Labor Code § 203. As stated above, Plaintiff was not paid all wages due during the course of his employment, and as a result of this failure, he was not timely paid all wages due at the separation of his employment. This violates Labor Code §§ 201-203.

27. More than 30 days have passed since Plaintiff left Defendants' employ.

28. As a consequence of Defendants' willful conduct in not paying wages owed timely upon separation of employment, Plaintiff is entitled to up to 30 days' wages as a penalty under Labor Code § 203 for Defendants' failure to timely pay legal wages at separation of employment.

Wherefore, Plaintiff requests relief as described below.

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VII.
FIFTH CAUSE OF ACTION
PLAINTIFF AGAINST ALL DEFENDANTS
UNFAIR COMPETITION PURSUANT TO
BUSINESS & PROFESSIONS CODE § 17200 ET SEQ.

29. Plaintiff incorporates paragraphs 1 through 28 of this Complaint as though fully set forth herein.

30. This is an Action for Unfair Business Practices. Plaintiff brings this claim pursuant to Business & Professions Code § 17200 *et seq.* The conduct of all Defendants as alleged in this Complaint has been and continues to be unfair, unlawful, and harmful to Plaintiff. Plaintiff seeks to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure § 1021.5.

31. Plaintiff is a “person” within the meaning of Business & Professions Code § 17204, and therefore has standing to bring this cause of action for injunctive relief, restitution, and other appropriate equitable relief.

32. Business & Professions Code § 17200 *et seq.* prohibits unlawful and unfair business practices.

33. Wage and hour laws express fundamental public policies. Properly providing employees with all wages due is a fundamental public policy of this State and of the United States. Labor Code § 90.5(a) articulates the public policies of this State to enforce vigorously minimum labor standards, to ensure that employees are not required or permitted to work under substandard and unlawful conditions, and to protect law-abiding employers and its employees from competitors who lower their costs by failing to comply with minimum labor standards.

34. Defendants have violated statutes and public policies. Through the conduct alleged in this Complaint, Defendants, and each of them, have acted contrary to these public policies, have violated specific provisions of the Labor Code, and have engaged in other unlawful and unfair business practices in violation of Business & Professions Code § 17200 *et seq.* depriving Plaintiff and all interested persons of rights, benefits, and privileges guaranteed to all employees under law.

35. Defendants' conduct, as alleged herein, constitutes unfair competition in violation of §17200 *et seq.* of the Business & Professions Code.

36. Defendants, by engaging in the conduct herein alleged, either knew or in the exercise of reasonable care should have known that the conduct was unlawful. As such, it is a violation of § 17200 *et seq.* of the Business & Professions Code.

37. As a proximate result of the above-mentioned acts of Defendants, Plaintiff has been damaged in a sum as may be proven.

38. Unless restrained by this Court, Defendants will continue to engage in the unlawful conduct, as alleged above. Pursuant to Business & Professions Code § 17200 *et seq.*, this Court should make such orders or judgments, including the appointment of a receiver, as may be necessary to prevent the use or employment, by Defendants, its agents, or employees, of any unlawful or deceptive practice prohibited by the Business & Professions Code, and/or, including but not limited to, disgorgement of profits which may be necessary to restore Plaintiff the money Defendants have unlawfully failed to pay.

VIII.

SIXTH CAUSE OF ACTION

PLAINTIFF AGAINST ALL DEFENDANTS

**PENALTIES FOR VIOLATIONS OF LABOR CODE §§ 201-202, 226(a), 226.7, AND 512
AND PURSUANT TO LABOR CODE § 2699(a) FOR VIOLATIONS OF LABOR CODE §§
226.3 AND 558**

39. Plaintiff incorporates paragraphs 1 through 38 of this Complaint as though fully set forth herein.

40. As a result of the acts alleged above, including the Labor Code violations set forth herein, Plaintiff seeks penalties pursuant to Labor Code § 2698 *et seq.*

41. For each such violation, Plaintiff is entitled to penalties 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, and 512; and

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

42. Penalties recovered will be allocated 75% to the Labor and Workforce Development Agency, and 25% to the affected employees.

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

Wherefore, Plaintiff requests relief as described below.

IX.

SEVENTH CAUSE OF ACTION

**PLAINTIFF AND ALL AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS
CIVIL PENALTIES PURSUANT TO LABOR CODE § 2699(f) FOR VIOLATIONS OF
LABOR CODE § 212 AND PURSUANT TO LABOR CODE § 2699(a) FOR VIOLATIONS
OF LABOR CODE § 225.5**

44. Plaintiff incorporates paragraphs 1 through 43 of this Complaint as though fully set forth herein.

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

1 have violated Labor Code §§ 212 and 225.5 As a result of this act alleged, Plaintiff seeks civil
2 penalties pursuant to Labor Code §§ 2698 *et seq.*

3 46. For each such violation, Plaintiff and all other Aggrieved Employees are entitled to
4 civil penalties subject to the following formula:

- 5 a. Pursuant to Labor Code § 2699(f), \$100 for each initial violation and \$200 for
6 each subsequent violation of Labor Code § 212; and
7 b. Pursuant to Labor Code § 2699(a), the civil penalties as authorized by Labor
8 Code § 225.5.

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

11 48. On January 10, 2023, Plaintiff sent a letter, by online submission to the LWDA and
12 by certified mail, return receipt requested, to Defendants setting forth the facts and theories of the
13 violations alleged against Defendants, as prescribed by Labor Code § 2698 *et seq.* Pursuant to Labor
14 Code § 2699.3(a)(2)(A), no notice was received by Plaintiff from the LWDA within sixty-five (65)
15 calendar days of January 10, 2023. Plaintiff may therefore commence this action to seek civil penalties
16 pursuant to Labor Code § 2698 *et seq.*

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

19 **RELIEF REQUESTED**

20 WHEREFORE, Plaintiff prays for the following relief:

- 21 1. For civil penalties pursuant to Labor Code § 2698 *et seq.* for Plaintiff, Aggrieved
22 Employees, and the State of California;
23 2. For compensatory damages in the amount of one hour of wages for each day on which
24 a meal and/or rest period was not properly provided, pursuant to Labor Code § 226.7;
25 3. For penalties pursuant to Labor Code § 226(e);
26 4. For penalties pursuant to Labor Code § 203;
27 5. An award of prejudgment and post-judgment interest;
28

1 6. For restitution for unfair competition pursuant to Business & Professions Code §
2 17200 *et seq.*;

3 7. An award providing for payment of costs of suit pursuant to Labor Code §§ 226(h),
4 2699(g)(1), and other applicable law;

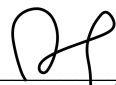
5 8. An award of attorneys' fees pursuant to Labor Code §§ 226(h), 2699(g)(1), and other
6 applicable law; and

7 9. Such other and further relief as this Court may deem just and proper.

8 Dated: June 1, 2023

Respectfully submitted,

9 GAINES & GAINES
10 A Professional Law Corporation

11 By: 
12 DANIEL F. GAINES
13 EVAN S. GAINES
 Attorneys for Plaintiff

14 **DEMAND FOR JURY TRIAL**

15 Plaintiff hereby demands a trial of his claims by jury to the extent authorized by law.

16 Dated: June 1, 2023

Respectfully submitted,

17 GAINES & GAINES
18 A Professional Law Corporation

19 By: 
20 DANIEL F. GAINES
21 EVAN S. GAINES
22 Attorneys for Plaintiff
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_____ (For messenger) my business address is:

Jagdeep Hansra, Esq.
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19925 Stevens Creek Blvd. Suite 100
Cupertino, CA 95014

X (BY ~~X~~ U.S. MAIL/ BY ☐ CERTIFIED MAIL, RETURN RECEIPT REQUESTED) The sealed envelope was mailed with postage thereon fully prepaid. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with United States postal service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

____ (BY FACSIMILE TRANSMISSION) On June 1, 2023, at ____ a.m./p.m., at Westlake Village, California, I served the above-referenced document on the above-stated addressee by facsimile transmission pursuant to Rule 2008 of the California Rules of Court. The telephone number of the sending facsimile machine was (818)703-8984 and the telephone number(s) of the receiving facsimile machine was (____) ____-____. A transmission report was properly issued by the sending facsimile machine, and the transmission was reported as complete and without error. Copies of the facsimile transmission cover sheet and the transmission report are attached to this proof of service.

I certify that the above document was printed on recycled paper.

Executed on June 1, 2023, at Westlake Village, California.

Amelia Booth
AMELIA BOOTH