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County of Sonoma
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Attorneys for Plaintiff Miguel Aguilar, 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 SONOMA

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

Plaintiff,

v.

EUGENE BURGER MANAGEMENT
CORPORATION, a California corporation,
and DOES 1 through 10, inclusive,

Defendants.

CASE NO: ²³CV00199

**REPRESENTATIVE ACTION
COMPLAINT FOR PENALTIES
PURSUANT TO LABOR CODE § 2699(f)
FOR VIOLATIONS OF LABOR CODE
§§ 201, 202, 226(a), 226.7, 227.3, 246, 510,
512, 1174, 1174.5, 1194, AND 1198 AND
PURSUANT TO LABOR CODE § 2699(a)
FOR VIOLATIONS OF LABOR CODE §§
226.3 AND 558**

1 Plaintiff MIGUEL AGUILAR (“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 EUGENE BURGER MANAGEMENT CORPORATION, a California
4 corporation, and/or any subsidiaries or affiliated companies (hereinafter referred to as “Defendants”),
5 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 non-exempt California employees who currently work or formerly worked for
10 Defendants (“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 Plaintiff and other Aggrieved Employees all minimum and
16 overtime wages earned during the course of employment, in violation of Labor Code §§ 510, 558,
17 and 1194. Defendants failed to maintain accurate records indicating the start and end time of each
18 shift. Defendants unilaterally tracked Plaintiff’s hours, but did not pay Plaintiff for all hours worked.
19 This resulted in a significant underpayment of minimum and overtime hours worked and violates
20 Labor Code §§ 510, 558, 1174, 1174.5, 1194, and 1198 and IWC Wage Order 5-2001;

21 b. Failing to properly compute non-base hourly wages, including, but not limited
22 to, “Lodging,” earned by Plaintiff and other Aggrieved Employees into their regular rate of pay for
23 purposes of paying them meal and rest period premiums, overtime wages, vacation wages, and sick
24 pay wages at the correct rates, in violation of Labor Code §§ 226.7, 246, 510, 512, 558, and 1194.
25 Defendants paid Plaintiff and other Aggrieved Employees non-base hourly wages, including, but not
26 limited to, “Lodging”; however, Defendants failed to properly blend these forms of pay, and instead
27 paid Plaintiff and other Aggrieved Employees meal and rest period premiums, overtime wages,
28 vacation wages, and sick pay wages based only on the base hourly rate of pay, thus depriving Plaintiff

1 and other Aggrieved Employees of all meal and rest period premiums, overtime wages, vacation
2 wages, and sick pay wages earned. This violates Labor Code §§ 226.7, 246, 510, 512, 558, and 1194;

3 c. Requiring Plaintiff and other Aggrieved Employees to be on-call, without pay.
4 Regardless of whether they were or were not called in to work while on-call, Defendants would not
5 compensate them for time spent on-call, notwithstanding the fact they were subject to Defendants'
6 control during this on-call time. An employer is obligated to pay the wages of an hourly employee
7 for all time that the employee is under the control of her employer, and this includes all the time the
8 employee is suffered or permitted to work, whether or not required to do so. When Plaintiff and other
9 Aggrieved Employees were on-call, they were under the control of Defendants and required to be
10 compensated for all hours worked. Defendants, however, failed to do so. These instances deprived
11 Plaintiff and other Aggrieved Employees of significant hours worked and minimum and overtime
12 wages due, and constitute violations of Labor Code §§ 510, 558, and 1194 and IWC Wage Order 5-
13 2001;

14 d. Failing to pay correct premium wages to Plaintiff and other Aggrieved
15 Employees who were denied proper meal periods, in violation of Labor Code §§ 226.7, 512, and 558
16 and IWC Wage Order 5-2001. Plaintiff and other Aggrieved Employees were routinely denied, and
17 not authorized to take, a proper, timely, uninterrupted, 30-minute meal period for every shift worked
18 that exceeded five hours, or a second proper, timely, uninterrupted, 30-minute meal period for every
19 shift worked that exceeded ten hours, but were not paid premium wages of one hour's pay for each
20 missed first or second meal period. When they were able to take a meal period, they were oftentimes
21 late, cut short, or on-duty. Defendants also failed to maintain accurate records indicating the start and
22 end time of each meal period, if one ever occurred. This violates Labor Code §§ 226.7, 510, 512, 558,
23 1174, 1174.5, 1194, and 1198 and IWC Wage Order 5-2001;

24 e. Failing to pay correct premium wages to Plaintiff and other Aggrieved
25 Employees who were denied rest periods, in violation of Labor Code § 226.7 and IWC Wage Order
26 No. 5-2001. Plaintiff and other non-exempt Aggrieved Employees were routinely unable to take a 10-
27 minute rest period for every four (4) hours of work or major fraction thereof, but were not paid
28 premium wages of one hour's pay for each missed rest period. Plaintiff and other Aggrieved

1 Employees were frequently too busy to take a rest period. When they were able to take a rest period,
2 they were oftentimes late, cut short, or on-duty. This violates Labor Code § 226.7 and IWC Wage
3 Order No. 5-2001;

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

12 g. Failing to pay Plaintiff and other Aggrieved Employees all wages due at the
13 separation of their employment based on the time frames required by Labor Code §§ 201-202 and
14 227.3. As stated above, Plaintiff and other Aggrieved Employees were not paid all wages due during
15 the course of their employment and, as a result of this failure, they were not timely paid all wages due
16 at the separation of their employment. Furthermore, when Plaintiff was terminated, he was not issued
17 his final check and all of his vacation wages the date he was terminated. Instead, he was paid several
18 days later. Plaintiff alleges that Defendants maintain a policy to untimely pay final wages (including
19 vacation wages) to their former Aggrieved Employees. This violates Labor Code §§ 201-202 and 227.3
20 and is alleged on behalf of Plaintiff and certain Aggrieved Employees no longer employed by
21 Defendants.

22 3. Plaintiff, on behalf of himself and all Aggrieved Employees pursuant to Labor Code §
23 2698 *et seq.*, seeks civil penalties for Defendants' violations of the California Labor Code.

24 4. Venue is proper in this judicial district, pursuant to Code of Civil Procedure § 395.
25 The Labor Code violations alleged against Defendants herein arose in Sonoma County, California.

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1 **II.**

2 **PARTIES**

3 **A. Plaintiff**

4 5. Plaintiff MIGUEL AGUILAR was employed by Defendants as a non-exempt
5 employee from February 2022 through May 2023 in Sonoma County, California.

6 **B. Defendant**

7 6. Defendant EUGENE BURGER MANAGEMENT CORPORATION is a California
8 corporation that employed Plaintiff and Aggrieved Employees in Sonoma 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 Defendant, 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, 227.3, 246, 510, 512, 1174, 1174.5, 1194, 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, 227.3, 246, 510, 512, 1174, 1174.5, 1194, 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 June 15, 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 June 15, 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.

IV.

RELIEF REQUESTED

WHEREFORE, Plaintiff prays for the following relief:

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

Dated: August 30, 2023

Respectfully submitted,

GAINES & GAINES
A Professional Law Corporation

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