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7 Attorneys for Plaintiff Alan Cummings, on behalf of himself and all "aggrieved employees"
8 pursuant to Labor Code § 2698 *et seq.*

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF SHASTA**

11 ALAN CUMMINGS, on behalf of himself and
12 all "aggrieved employees" pursuant to Labor
13 Code § 2698 *et seq.*,

14 Plaintiff,

15 v.

16 MOMEX DINING CONCEPTS, INC., a
17 California corporation, and DOES 1 through
18 10, inclusive,

19 Defendants.

CASE NO: **202977**

**REPRESENTATIVE ACTION
COMPLAINT FOR PENALTIES
PURSUANT TO LABOR CODE § 2699(f)
FOR VIOLATIONS OF LABOR CODE
§§ 201, 202, 203.1, 221, 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 §§ 225.5, 226.3, 351, AND 558**

FILED

AUG 15 2023

SHASTA COUNTY SUPERIOR COURT
BY: M. SAECHAO, DEPUTY CLERK

By Fax

1 Plaintiff ALAN CUMMINGS (“Plaintiff”), on behalf of himself and others as an “aggrieved
2 employee” under the Labor Code Private Attorneys General Act of 2004, complains of MOMEX
3 DINING CONCEPTS, INC., a California corporation, and/or any subsidiaries or affiliated companies
4 (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 other California employees who currently work or formerly worked for Defendants
9 (“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 Plaintiff and other non-exempt Aggrieved Employees all
15 minimum and overtime wages earned during the course of employment, in violation of Labor
16 Code §§ 510, 558, and 1194. Plaintiff and other non-exempt Aggrieved Employees were paid
17 \$14.00 per hour – less than the applicable minimum wage. This violates of Labor Code §§
18 510, 558, 1194 and IWC Wage Order No. 5-2001;

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

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

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

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

24 e. Failing to provide Plaintiff and Aggrieved Employees with gratuities earned
25 during employment, in violation of Labor Code § 351 (which requires that no employer shall
26 collect, take, or receive any gratuity, or part thereof, that is paid, given to, or left for an
27 employee by a patron . . . or require the employee to credit the amount, or any part thereof, of
28 a gratuity against and as a part of the wages due). Defendants violated Labor Code § 351 by

collecting for themselves all gratuities left for by Plaintiff and other Aggrieved Employees, in violation of Labor Code § 351;

f. Failing to pay all wages due to Plaintiff and other Aggrieved Employees by making unlawful deductions from their wages, in violation of Labor Code §§ 221, 225.5, 510, and 1194 and IWC Wage Order No. 5-2001. Defendants improperly deducted and withheld wages for child support obligations (among other things), but did not send these withheld wages to the proper recipients. Labor Code § 221 states that it is “unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee.” Defendants’ practice of unlawfully deducting and withholding wages from Plaintiff and other Aggrieved Employees violates Labor Code §§ 221, 225.5, 510, and 1194 and IWC Wage Order No. 5-2001, section 7;

g. Issuing wages to Plaintiff and other Aggrieved Employees on checks with insufficient funds. Defendants paid Plaintiff and Aggrieved Employees with paychecks that were subsequently refused payment as Defendants had insufficient funds in their account upon which the paychecks were drawn at the time of their payment, in violation of Labor Code § 203.1;

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

1 Employees failed to set forth the address of the legal entity that is the employer, in violation
2 of Labor Code §§ 226(a)(8) and 226.3; and

3 i. Failing to pay Plaintiff and certain Aggrieved Employees all wages due at the
4 separation of their employment based on the time frames required by Labor Code §§ 201, 202,
5 and 227.3. As stated above, Plaintiff and other Aggrieved Employees were not paid all wages
6 due during the course of their employment and, as a result of this failure, they were not timely
7 paid all wages due at the separation of their employment. Furthermore, when Plaintiff left his
8 employment with Defendants, he was not issued all of his vacation wages within 72 hours of
9 the separation of his employment. Plaintiff alleges that Defendants maintain a policy to
10 untimely pay final wages to their former employees. This violates Labor Code §§ 201-202
11 and 227.3 and is alleged on behalf of Plaintiff and certain Aggrieved Employees no longer
12 employed by Defendants.

13 3. Plaintiff, on behalf of himself and all Aggrieved Employees pursuant to Labor Code §
14 2698 *et seq.*, seeks civil penalties for Defendants' violations of the California Labor Code.

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

17 II.

18 PARTIES

19 A. Plaintiff

20 5. Plaintiff ALAN CUMMINGS was employed by Defendants from approximately 2015
21 through May 2023 as a non-exempt employee in Shasta County, California.

22 B. Defendants

23 6. Defendant MOMEX DINING CONCEPTS, INC. is a California corporation that
24 employed Plaintiff and Aggrieved Employees in Shasta County, California.

25 7. The true names and capacities, whether individual, corporate, associate, or otherwise,
26 of Defendants sued herein as DOES 1 to 10, inclusive, are currently unknown to Plaintiff, who
27 therefore sues Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiff is
28 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.

8. Plaintiff is informed and believes, and based thereon alleges, that each Defendants 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 Defendants is legally attributable to the other Defendants.

9. 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.

III.

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, 203.1, 221, 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 §§ 225.5, 226.3, 351, 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 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, 203.1, 221, 226(a), 226.7, 227.3, 246, 510, 512, 1174, 1174.5, 1194, and 1198; and

b. Pursuant to Labor Code § 2699(a), the civil penalties as authorized by Labor Code §§ 225.5, 226.3, 351, 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 6, 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 6, 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 14, 2023

Respectfully submitted,

GAINES & GAINES
A Professional Law Corporation

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