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individually and on behalf of all others similarly situated

IN THE SUPERIOR OF CALIFORNIA

COUNTY OF SAN DIEGO

LAWRENCE CHARLES BEEMON, individually and on behalf of all others similarly situated,

Plaintiff(s),

v.

ELITE SHOW SERVICES INC; and DOES 1 through 100,

Defendant(s).

Case No. 37-2023-00043060-CU-OE-CTL

COMPLAINT

1. **Failure to Provide Compliant Meal Periods**
2. **Failure to Provide Compliant Rest Periods**
3. **Failure to Pay for All Hours Worked**
4. **Failure to Pay All Overtime Owed**
5. **Wage Statement Penalties**
6. **Waiting Time Penalties**
7. **Violation of Unfair Competition Law**
8. **Private Attorneys General Act**

RELEVANT PARTIES

1. Plaintiff Lawrence Charles Beemon ("Plaintiff") is an adult resident of San Diego, California and was at all times relevant residing in San Diego, California.

2. Defendant Elite Show Services Inc ("Defendant") is a California corporation with its principal place of business located in San Diego, California. Defendant is registered to and does conduct business in the State of California and is subject to the laws of the State of California. All

acts and omissions of Defendant employees as alleged herein occurred while they were acting within the course and scope of their employment.

3. Plaintiff is unaware of the true names or capacities of the Defendants sued herein as DOES 1 through 100, inclusive ("Doe Defendants"), and therefore sues said Doe Defendants by such fictitious names. Plaintiff will seek leave of this Court to amend this Complaint to insert the true names and capacities of such Doe Defendants when such information has been obtained. Plaintiff is informed and believes, and based on such information and belief alleges, that each of the fictitiously named Doe Defendants has participated in some way in the wrongful acts and omissions alleged below, and is liable to Plaintiff for damages and other relief to which Plaintiff is entitled. Defendant and Doe Defendants are collectively referred to as "Defendants".

JURISDICTION AND VENUE

4. This action is properly filed in San Diego, California because the acts and omissions that give rise to Plaintiff's claims took place in San Diego, California, and Defendants transact substantial business in this County.

5. This Court has jurisdiction over Defendants because Defendants' unlawful conduct as alleged herein occurred in San Diego, California, California and Plaintiff suffered damages from such conduct within San Diego, California, California.

FACTUAL ALLEGATIONS

6. At all times relevant, Plaintiff was Defendants' employee.

7. Plaintiff was employed by Defendants from 8/18/2021 to 4/4/2023.

8. Defendants failed to provide Plaintiff with compliant meal breaks because meal breaks were regularly missed, late or short.

9. In addition, Plaintiff was required to remain on premises, on call and on duty for his meal breaks.

10. Despite not being provided with compliant meal breaks, Defendant did not pay premium pay for these missed breaks at Plaintiff's regular rate of pay.

11. In addition, Plaintiff was required to remain on premises, on call and on duty for his rest breaks.

12. Despite not being provided with compliant rest breaks, Defendant did not pay premium pay for these missed breaks at Plaintiff's regular rate of pay.

13. Defendants failed to pay Plaintiff for all hours worked because Plaintiff had to go through a security check and wait in line prior to clocking in. This amounted to unpaid time worked.

14. Defendants failed to pay Plaintiff all overtime owed because Plaintiff regularly worked in excess of eight hours in a day and 40 hours in a workweek. Since the Plaintiff was required to perform work off the clock, it follows that this time was often overtime. Thus, Plaintiff was not paid all overtime wages owed.

15. Defendants failed to provide Plaintiff with accurate wage statements because the wage statements issued to Plaintiff did not accurately list total wages owed and hours worked, among other things.

16. Due to Defendants' failure to pay all wages due to Plaintiff during their employment, it follows that Defendant failed to pay all wages due at the conclusion of Plaintiff's employment as well. Therefore, Defendants are liable to Plaintiff for waiting time penalties.

PAGA ALLEGATIONS

17. Pursuant to Labor Code section 2699(a), any provision of the Labor Code which provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency ("LWDA") for violations of the Labor Code may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures outlined in Labor Code section 2699.3.

18. Pursuant to Labor Code section 2699.3, an aggrieved employee may pursue a civil action under PAGA after the following requirement have been met:

19. The aggrieved employee has provided written notice by online filing to the LWDA and by certified mail to the employer (hereinafter "Employee's Notice") of the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support the alleged violations; and

20. The LWDA has provided notice (hereinafter "LWDA's Notice") to the employer and the aggrieved employee by certified mail that it does not intend to investigate the aggrieved employee's

claims. Upon receipt of the LWDA's Notice, or if the LWDA does not provide such Notice within 65 calendar days of the postmark date of the Employee's Notice, the aggrieved employee may commence a civil action pursuant to Labor Code section 2699 to recover civil penalties in addition to any other penalties to which the employee may be entitled.

21. On 7/25/23, Plaintiff provided written notice by online filing to the LWDA and by certified mail to Defendants of specific provisions of the Labor Code alleged to have been violated by Defendants, including the facts and theories to support the alleged violations.

22. The 65-day notice period has elapsed, and the LWDA did not provide Plaintiff with written notice that it intends to investigate the alleged violations of the Labor Code. Thus, Plaintiff seeks PAGA Penalties on behalf of all Aggrieved Employees.

23. The Aggrieved Employees are defined as "All other nonexempt, hourly employees, current and former, who were employed by Defendants within one year prior to 7/25/23, through final disposition of this action."

FIRST CAUSE OF ACTION

Failure to Provide Compliant Meal Periods

By Plaintiff Against All Defendants

24. Plaintiff incorporates by reference the paragraphs above.

25. Labor Code section 512 and the Wage Orders provide that "an employer shall not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes" or "for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes".

26. An employer provides compliant meal breaks to its employees "if it relieves its employees of all duty, relinquishes control over their activities and permits them a reasonable opportunity to take an uninterrupted 30-minute break." (*Brinker Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004, 1040 (2012)).

27. Not only must an employer affirmatively relieve its employees of all duty during their meal breaks, it also must not "impede or discourage" its employees from taking compliant meal breaks. (*Brinker*, supra).

28. Defendants failed to provide Plaintiff with compliant meal breaks as alleged herein.

29. For each day that Defendants failed to provide Plaintiff with a compliant meal break, Defendants were required to remit premium pay pursuant to Labor Code section 226.7(c), which is one additional hour of pay at Plaintiff's regular rate of pay. (*Ferra v. Loews Hollywood Hotel, LLC*, 11 Cal. 5th 858 (2021)).

30. Defendants failed to pay premium pay at Plaintiff's regular rate of pay for each day a meal break was missed.

31. Plaintiff is therefore entitled to recover premium pay for missed meal breaks, interest, penalties, attorney fees, and costs.

SECOND CAUSE OF ACTION

Failure to Provide Compliant Rest Periods

By Plaintiff Against All Defendants

32. Plaintiff incorporates by reference the paragraphs above.

33. Labor Code section 226.7 and the Wage Orders requires employers to authorize and permit its employees to take rest periods based on the total hours worked daily at the rate of 10 minutes net per four hours or major fraction thereof.

34. Furthermore, "[d]uring rest periods employers must relieve employees of all duties and relinquish control over how employees spend their time." (*Augustus v. ABM Sec. Servs., Inc*., 2 Cal. 5th 257, 269 (2016)).

35. Defendants failed to provide Plaintiff with compliant rest breaks as alleged herein.

36. For each day that Defendants failed to provide Plaintiff with a compliant rest break, Defendants were required to remit premium pay pursuant to Labor Code section 226.7(c), which is one additional hour of pay at Plaintiff's regular rate of pay. (*Ferra v. Loews Hollywood Hotel, LLC*, 11 Cal. 5th 858 (2021)).

37. Defendants failed to pay premium pay at Plaintiff's regular rate of pay for each day a rest break was missed.

38. Plaintiff is therefore entitled to recover premium pay for missed rest breaks, interest, penalties, attorney fees, and costs.

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THIRD CAUSE OF ACTION

Failure to Pay for All Hours Worked

By Plaintiff Against All Defendants

39. Plaintiff incorporates by reference the paragraphs above.

40. Labor Code sections 558 and 1194 and the Wage Orders require an employer to pay employees minimum wages for all hours worked fewer than eight hours in a day and/or fewer than 40 hours in a workweek.

41. Defendants failed to pay Plaintiff for all hours worked as alleged herein.

42. Plaintiff is therefore entitled to recover all unpaid wages, liquidated damages, interest, penalties, attorney fees, and costs.

FOURTH CAUSE OF ACTION

Failure to Pay All Overtime Owed

By Plaintiff Against All Defendants

43. Plaintiff incorporates by reference the paragraphs above.

44. Labor Code section 510 provides that "[a]ny work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee."

45. Defendants failed to pay Plaintiff all overtime wages owed as alleged herein.

46. Plaintiff is therefore entitled to recover all unpaid overtime wages, liquidated damages, interest, penalties, attorney fees, and costs.

FIFTH CAUSE OF ACTION

Wage Statement Penalties

By Plaintiff Against All Defendants

47. Plaintiff incorporates by reference the paragraphs above.

48. Labor Code section 226(a) requires employers to provide itemized wage statements to its employees that identify accurate information regarding their compensation. Defendants, as a matter

of policy and practice, failed in its affirmative obligation to provide accurate itemized wage statements to Plaintiff in violation of Labor Code section 226(a).

49. As alleged herein, the wage statements that Defendants issued to Plaintiff were inaccurate and incomplete.

50. Defendants knowingly and intentionally issued wage statements that were inaccurate and incomplete, and the issuance of inaccurate and incomplete wage statements caused injury to Plaintiff in that Plaintiff was unable to accurately verify and/or calculate their wages.

51. Plaintiff is therefore entitled to the recovery of wage statement penalties, attorney fees, and costs.

SIXTH CAUSE OF ACTION

Waiting Time Penalties

By Plaintiff Against All Defendants

52. Plaintiff incorporates by reference the paragraphs above.

53. Labor Code sections 201 and 202 require that an employer provide an employee with all wages due and payable either: (a) immediately upon termination, or (b) within 3 days of the employee's resignation.

54. Labor Code section 203 provides that if an employer willfully fails to pay wages owed in accordance with Labor Code sections 201 or 202, then the wages of the employee continue as a penalty from the due date at the same rate until paid or until an action is commenced, not to exceed thirty days.

55. As alleged herein, Defendants willfully did not pay Plaintiff all wages owed at the conclusion of employment.

56. Plaintiff is therefore entitled to the recovery of waiting time penalties, interest, attorney fees, and costs.

SEVENTH CAUSE OF ACTION

Violation of Unfair Competition Law

By Plaintiff Against All Defendants

57. Plaintiff incorporates by reference the paragraphs above.

58. Defendants' conduct described herein constitutes unfair competition.

59. Specifically, Defendants have gained an unfair advantage over other similarly situated businesses by unlawfully reducing their overhead costs by not paying their employees what they are owed.

60. Pursuant to Business and Professions Code 17203, Plaintiff is entitled to restitution of all wrongfully withheld wages.

61. Plaintiff may recover attorney fees pursuant to Code of Civil Procedure section 1021.5.

EIGHTH CAUSE OF ACTION

Private Attorneys General Act

By Plaintiff and the Aggrieved Employees Against All Defendants

62. Plaintiff incorporates by reference the paragraphs above.

63. PAGA permits Plaintiff and the Aggrieved Employees to recover civil penalties for the violation(s) of the Labor Code.

64. As alleged herein, Defendants' conduct violates numerous sections of the Labor Code.

65. With respect to violations of Labor Code sections 226.7 and 558 for Defendants' failure to provide Plaintiff and the Aggrieved Employees with compliant meal periods or compensation in lieu thereof, the penalties in Labor Code sections 558 and 2699 apply.

66. With respect to violations of Labor Code section 226.7 for Defendants' failure to provide Plaintiff and the Aggrieved Employees with compliant rest periods or compensation in lieu thereof, the penalties in Labor Code section 2699 apply.

67. With respect to violations of Labor Code section 1197 for Defendants' failure to compensate Plaintiff and the Aggrieved Employees for all minimum wages earned, the penalties in Labor Code sections 1197.1 and 2699 apply.

68. With respect to violations of Labor Code section 510 for Defendants' failure to compensate Plaintiff and the Aggrieved Employees for all overtime wages earned, the penalties in Labor Code sections 558, 1197.1, and 2699 apply.

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69. With respect to violations of Labor Code section 226(a) for failure to provide accurate wage statements to Plaintiff and the Aggrieved Employees, the penalties in Labor Code sections 226.3 and 2699 apply.

70. With respect to violations of Labor Code section 203 for failure to pay all wages due to Plaintiff and the Aggrieved Employees and the conclusion of their employment, the penalties in Labor Code section 2699 apply.

71. Additionally, Plaintiff and the Aggrieved Employees are entitled to attorney's fees pursuant to Labor Code section 2699(g).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

1st Cause of Action

1. Damages and/or penalties pursuant to Labor Code section 226.7
2. Interest
3. Attorneys' fees
4. Costs
5. Other relief the court deems proper

2nd Cause of Action

1. Damages and/or penalties pursuant to Labor Code section 226.7
2. Interest
3. Attorneys' fees
4. Costs
5. Other relief the court deems proper

3rd Cause of Action

1. Damages and/or penalties pursuant to Labor Code sections 558, 1194, 1197, and 1197.1
2. Liquidated damages
3. Interest
4. Attorneys' fees
5. Costs

6. Other relief the court deems proper

4th Cause of Action

1. Damages and/or penalties pursuant to Labor Code sections 510, 558, and 1194
2. Interest
3. Attorneys' fees
4. Costs
5. Other relief the court deems proper

5th Cause of Action

1. Penalties pursuant to Labor Code section 226
2. Attorneys' fees
3. Costs
4. Other relief the court deems proper

6th Cause of Action

1. Penalties pursuant to Labor Code section 203
2. Attorneys' fees
3. Costs
4. Other relief the court deems proper

7th Cause of Action

1. Restitution of all wrongfully withheld wages
2. Attorneys' fees
3. Costs
4. Other relief the court deems proper

8th Cause of Action

1. All applicable civil penalties available pursuant to Labor Code section 2698, et seq.
2. Attorneys' fees
3. Costs
4. Other relief the court deems proper

DATED: October 4, 2023

/s/ D. Ginzburg

DANIEL GINZBURG
Attorney for Plaintiff