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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

JACOB PARCELL, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

CALIFORNIA DINNER
ENTERTAINMENT, LLC, d/b/a Pirates
Dinner Adventure, a Florida limited liability
company; and DOES 1 through 100,

Defendants.

Case No. 30-2023-01350262-CU-OE-CXC

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT:**

- (1) **MINIMUM WAGE VIOLATIONS
(LABOR CODE §§ 226.2, 1182.12,
1194, 1194.2, AND 1197);**
- (2) **FAILURE TO PAY ALL OVERTIME
WAGES (LABOR CODE §§ 204, 510,
1194, 1198);**
- (3) **MEAL PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 512, 558);**
- (4) **REST PERIOD VIOLATIONS
(LABOR CODE §§ 226.2, 226.7, 516,
558);**
- (5) **WAGE STATEMENT VIOLATIONS
(LABOR CODE § 226 *et seq.*);**
- (6) **UNFAIR COMPETITION (BUS &
PROF CODE § 17200, *et seq.*); and**
- (7) **CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS
GENERAL ACT (LABOR CODE §
2698 *et seq.*).**

**DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

1 Plaintiff Jacob Parcell (“Plaintiff”) hereby brings this First Amended Class and
2 Representative Action Complaint (“Complaint”) against California Dinner Entertainment, LLC,
3 d/b/a Pirates Dinner Adventure, a Florida limited liability company; and DOES 1 through 100,
4 inclusive (collectively, “Defendants”), and on information and belief alleges as follows:

5 **JURISDICTION**

6 1. Plaintiff hereby brings this Complaint for recovery of unpaid wages and penalties
7 under Labor Code §§ 204, 226 *et seq.*, 226.2, 226.7, 510, 512, 516, 558, 1182.12, 1194, 1194.2,
8 1197, 1198, and 2698 *et seq.*; California Business and Professions Code §§ 17200, *et. seq.*, and
9 Industrial Welfare Commission Wage Order 10 (“Wage Order 10”), in addition to seeking
10 declaratory relief and restitution. This class action is brought pursuant to California Code of Civil
11 Procedure § 382. This Court has jurisdiction over Defendants’ violations of the California Labor
12 Code because the amount in controversy exceeds this Court’s jurisdictional minimum.

13 **VENUE**

14 2. Venue is proper in this judicial district pursuant to California Code of Civil
15 Procedure §§ 395(a) and 395.5, as at least some of the acts and omissions complained of herein
16 occurred in Orange County. Defendants own, maintain offices, transact business, have an agent
17 or agents within Orange County, and/or otherwise are found within Orange County, and
18 Defendants are within the jurisdiction of this Court for purposes of service of process.

19 **PARTIES**

20 3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
21 Plaintiff was, and currently is, a California resident. Within the statute of limitations periods
22 applicable to each cause of action pled herein, Plaintiff was employed by Defendants as a non-
23 exempt employee. Plaintiff was, and is, a victim of Defendants’ policies and/or practices
24 complained of herein, lost money and/or property, and has been deprived of the rights guaranteed
25 to him by Labor Code §§ 204, 226 *et seq.*, 226.2, 226.7, 510, 512, 516, 558, 1182.12, 1194,
26 1194.2, 1197, 1198, and 2698 *et seq.*; California Business and Professions Code §§ 17200, *et.*
27 *seq.*, and Wage Order 10, which sets forth the employment standards for “Amusement and
28 Recreation Industry.”

1 4. Plaintiff is informed and believes, and based thereon alleges, that during the time
2 period relevant to this action, Defendants did (and continue to do) business by staging pirate-
3 themed dinner-theater shows.

4 5. Plaintiff is informed and believes, and based thereon alleges, that at all times
5 mentioned herein, Defendants were licensed to do business in California and were the employers
6 of Plaintiff and of the members of the Classes (as defined in Paragraph 15).

7 6. Plaintiff does not know the true names, capacities, relationships, and/or the extent
8 of participation of Defendants DOES 1 through 100, inclusive, in the conduct alleged in this
9 Complaint. For that reason, Defendants DOES 1 through 100, inclusive, are sued under such
10 fictitious names. Plaintiff prays for leave to amend this Complaint when their true names and
11 capacities are known. Plaintiff is informed and believes, and based thereon alleges, that each
12 fictitiously named Respondent is and was responsible in some way for the alleged wage-and-hour
13 violations and other wrongful conduct that subjected Plaintiff and the Classes, as defined below,
14 to the illegal employment practices, wrongs and injuries complained of herein. All references in
15 this Complaint to “Defendants” shall be deemed to include all DOE Defendants.

16 7. At all times herein mentioned, each of said Defendants participated in the doing
17 of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the
18 Defendants, and each of them, were the agents, servants, and employees of each and every one of
19 the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned
20 were acting within the course and scope of said agency and employment. Defendants, and each
21 of them, approved of, condoned, and/or otherwise ratified each and every one of the acts or
22 omissions complained of herein.

23 8. At all times mentioned herein, Defendants, and each of them, were members of
24 and engaged in a joint venture, partnership, and common enterprise, and acted within the course
25 and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further,
26 Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and the
27 Classes (as defined in Paragraph 15).

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GENERAL FACTUAL ALLEGATIONS

9. Defendants operate a pirate-themed dinner theater. Defendants employed Plaintiff in the non-exempt job position of “Performer” (or similarly titled position) in Buena Park, California, playing roles in the live show, assisting with set up and break down of the stage, moving props, and interacting with audience members. Plaintiff has been employed by Defendants from approximately September 14, 2021 to the present.

10. Throughout his employment, Defendants paid Plaintiff and other non-exempt employees on a piece-rate basis for each show in which they performed. Although Defendants paid a rate for non-show days for rehearsal and marketing, Defendants failed to pay Plaintiff and other non-exempt employees who were compensated on a piece-rate basis for so-called “non-productive” time (i.e. hours on shows days when Plaintiff was working on but not performing in a show). Plaintiff and other non-exempt employees always clocked in and out during show days for a number of hours that far exceeded the length of each show. Under Defendants’ piece-rate compensation system, Plaintiff and non-exempt employees were not separately compensated for any non-productive time (i.e. time working but not performing the show) spent on days when they were being compensated only on a piece-rate basis. As a result of these practices, Defendants did not pay Plaintiff and other non-exempt performers for all hours worked at the minimum wage when they were being compensated on a piece-rate basis, as Defendants failed to pay for non-productive hours.

11. Additionally, Plaintiff and other non-exempt employees often worked in excess of 8.0 hours per day and/or 40.0 hours per week. However, Defendants failed to properly calculate Plaintiff’s overtime rate because the overtime rate did not properly incorporate Plaintiff’s piece-rate earnings. Because Defendants failed to properly calculate their regular rate of pay, Plaintiff and other non-exempt employees were deprived of overtime compensation. Further, as a result of Defendants’ failure to record all of the hours they worked, Plaintiff and other non-exempt employees did not receive all overtime compensation to which they were entitled.

12. Defendants also failed to provide Plaintiff and other non-exempt employees with legally-compliant meal periods of at least 30 minutes commencing before the conclusion of the fifth hour of work, and/or a second meal period when they worked shifts in excess of 10.0 hours.

1 Plaintiff and other non-exempt performers often missed meal periods altogether, and/or took meal
2 periods that were short (less than 30 minutes) and/or late (commencing after 5.0 hours of work).
3 Moreover, Defendants failed to relieve Plaintiff and other non-exempt employees of all work
4 duties during meal periods and required Plaintiff and other non-exempt employees to enter into
5 on-duty meal period agreements because the nature of Plaintiff's work precluded lawful rest
6 periods. On those occasions when Plaintiff and other non-exempt employees were not provided
7 with all the legally-compliant meal periods to which they were entitled, Defendants failed to
8 compensate Plaintiff and other non-exempt employees with the required meal period premium(s)
9 for each workday there was a meal period violation as mandated by Labor Code § 226.7, paid at
10 the regular rates of pay.

11 13. While working on a commission and/or piece rate basis, Plaintiff and other non-
12 exempt employees worked shifts in excess of 3.5 hours. However, Defendants failed to authorize
13 and permit Plaintiff and other non-exempt employees from taking a rest period for every 4.0-hour
14 period worked, or major fraction thereof. As a result, Defendants failed to compensate Plaintiff
15 and other non-exempt employees for rest periods as required by Wage Order 10, §12(A) and
16 Labor Code section 226.2. Nor have Defendants compensated Plaintiff and other non-exempt
17 employees pursuant to Labor Code section 226.7 for Defendants' failure to provide "paid" rest
18 periods. On those occasions that Defendants did pay for a rest period pursuant to 226.7, Plaintiff
19 and other non-exempt performers were not paid for the rest period at the regular rate of pay,
20 reflecting the actual hours worked by Plaintiff and other non-exempt employees on show days.

21 14. As a result of Defendants' failure to pay all wages and meal and rest period
22 premium wages, Defendants maintained inaccurate payroll records and issued inaccurate wage
23 statements to Plaintiff and other non-exempt employees.

24 **CLASS ACTION ALLEGATIONS**

25 15. **Class Definitions:** Plaintiff brings this action on behalf of himself and the
26 following Classes pursuant to Section 382 of the Code of Civil Procedure:

27 a. The Minimum Wage Class consists of all of Defendants' current and
28 former non-exempt employees who performed work that was compensated on a piece-

rate basis during the four years immediately preceding the filing of this action through the present.

b. The Overtime Class consists of all of Defendants' current and former non-exempt employees who worked more than 8 hours in a workday day and/or 40 hours in a workweek and performed work that was compensated on a piece-rate basis during the four years immediately preceding the filing of this action through the present.

c. The Meal Period Class consists of all of Defendants' current and former non-exempt employees in California who (i) worked at least one shift in excess of 5.0 hours without a recorded 30-minute meal period commencing prior to the end of the fifth hour of work; and/or (ii) worked at least one shift in excess of 10.0 hours without a second recorded 30-minute meal period commencing prior to the end of the tenth hour of work, during the four years immediately preceding the filing of this action through the present.

d. The Rest Period Class consists of all of Defendants' current and former non-exempt employees who worked at least one shift of at least 3.5 hours while performing work that was compensated on a piece-rate basis, during the four years immediately preceding the filing of this action through the present.

e. The Wage Statement Class consists of (i) all members of the Minimum Wage Class, Overtime Class, Meal Period and/or Rest Period Class, who received a wage statement from Defendants; and (ii) any of Defendants' current and former employees who performed work that was compensated on a piece-rate basis, and whose wage statements did not contain the number of piece-rate units earned and/or the total hours of rest periods and non-productive time worked.

16. **Numerosity/Ascertainability:** The members of the Classes are so numerous that joinder of all members would be unfeasible and not practicable. The membership of the classes and subclasses are unknown to Plaintiff at this time; however, it is estimated that the Classes number greater than fifty (50) individuals as to each Class. The identity of such membership is readily ascertainable via inspection of Defendants' employment records.

17. **Common Questions of Law and Fact Predominate/Well Defined Community of Interest:** There are common questions of law and fact as to Plaintiff and all other similarly

1 situated employees, which predominate over questions affecting only individual members
2 including, without limitation to:

3 i. Whether Defendants paid all minimum wages owed for all hours worked
4 to members of the Minimum Wage Class pursuant to Labor Code sections 226.2, 1182.12,
5 1194, 1194.2, and 1197;

6 ii. Whether Defendants violated the applicable Labor Code provisions,
7 including, but not limited to, sections 226.2, 510, and 1194 by requiring members of the
8 Overtime Class to perform overtime work and not paying for said work in accordance
9 with the overtime laws of the State of California;

10 iii. Whether Defendants provided legally compliant meal periods to members
11 of the Meal Period Class pursuant to Labor Code sections 226.7 and 512;

12 iv. Whether Defendants authorized and permitted all lawful rest periods to
13 members of the Rest Period Class pursuant to Labor Code sections 226.2, 226.7, and 516;

14 v. Whether Defendants furnished legally compliant wage statements to
15 members of the Wage Statement Class pursuant to Labor Code §§ 226, 226.2, and 246;

16 18. **Predominance of Common Questions:** Common questions of law and fact
17 predominate over questions that affect only individual members of the Classes. The common
18 questions set forth above are numerous and substantial and stem from Defendants' policies and/or
19 practices applicable to each individual class member, such as Defendants' uniform minimum
20 wage, overtime, meal and rest period, and wage statement policies/practices. As such, the
21 common questions predominate over individual questions concerning each individual class
22 member's showing as to his or her eligibility for recovery or as to the amount of his or her
23 damages.

24 19. **Typicality:** Plaintiff's claims are typical of the claims of the Classes because
25 Plaintiff was employed by Defendants as a non-exempt employee in California during the statutes
26 of limitation periods applicable to each cause of action pled herein. As alleged herein, Plaintiff,
27 like the members of the Classes, was deprived of all minimum and overtime wages owed, meal
28 period premium wages, and rest period premium wages, and was furnished with inaccurate and
incomplete wage statements.

1 20. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary
2 steps to represent fairly and adequately the interests of the members of the Classes. Moreover,
3 Plaintiff's attorneys are ready, willing, and able to fully and adequately represent the members of
4 the Classes and Plaintiff. Plaintiff's attorneys have prosecuted and defended numerous wage and
5 hour class actions in state and federal courts in the past, and are committed to vigorously
6 prosecuting this action on behalf of the members of the Classes.

7 21. **Superiority:** The California Labor Code is broadly remedial in nature and serves
8 an important public interest in establishing minimum working conditions and standards in
9 California. These laws and labor standards protect the average working employee from
10 exploitation by employers who have the responsibility to follow the laws, and who may seek to
11 take advantage of superior economic and bargaining power in setting onerous terms and
12 conditions of employment. The nature of this action and the format of laws available to Plaintiff
13 and members of the Classes make the class action format a particularly efficient and appropriate
14 procedure to redress the violations alleged herein. If each employee was required to file an
15 individual lawsuit, Defendants would necessarily gain an unconscionable advantage since they
16 would be able to exploit and overwhelm the limited resources of each individual plaintiff with
17 their vastly superior financial and legal resources. Moreover, requiring each member of the
18 Class(es) to pursue an individual remedy would also discourage the assertion of lawful claims by
19 employees who would be disinclined to file an action against their former and/or current employer
20 for real and justifiable fear of retaliation and permanent damages to their careers at subsequent
21 employment. Further, the prosecution of separate actions by the individual class members, even
22 if possible, would create a substantial risk of inconsistent or varying verdicts or adjudications
23 with respect to the individual class members against Defendants herein; and which would
24 establish potentially incompatible standards of conduct for Defendants; and/or legal
25 determinations with respect to individual class members which would, as a practical matter, be
26 dispositive of the interest of the other class members not parties to adjudications or which would
27 substantially impair or impede the ability of the class members to protect their interests. Further,
28 the claims of the individual Class members are not sufficiently large to warrant vigorous
individual prosecution considering all of the concomitant costs and expenses attending thereto.

As such, the Classes identified above are maintainable under California Code of Civil Procedure section 382.

FIRST CAUSE OF ACTION
MINIMUM WAGE VIOLATIONS
(AGAINST ALL DEFENDANTS)

22. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

23. Wage Order 10, § 4 and California Labor Code §§ 226.2, 1197, and 1182.12 establish the right of employees to be paid minimum wages for all hours worked, in amounts set by state law. Labor Code §§ 1194(a) and 1194.2(a) provide that an employee who has not been paid the legal minimum wage as required by Labor Code § 1197 may recover the unpaid balance together with attorneys' fees and costs of suit, as well as liquidated damages in an amount equal to the unpaid wages and interest accrued thereon.

24. At all relevant times herein, Defendants failed to conform their pay practices to the requirements of the law by failing to pay Plaintiff and members of the Minimum Wage Class for all hours worked including, but not limited to, all hours they were subject to the control of Defendants and/or suffered or permitted to work under the California Labor Code and Wage Order 10.

25. California Labor Code § 1198 makes unlawful the employment of an employee under conditions that the IWC prohibits. California Labor Code §§ 1194(a) and 1194.2(a) provide that an employer who has failed to pay its employees the legal minimum wage is liable to pay those employees the unpaid balance of the unpaid wages as well as liquidated damages in an amount equal to the wages due and interest thereon.

26. As a direct and proximate result of Defendants' unlawful conduct as alleged herein, Plaintiff and the Minimum Wage Class have sustained economic damages including, but not limited to, unpaid wages and lost interest, in an amount to be established at trial, and are entitled to recover economic and statutory damages and penalties and other appropriate relief as a result of Defendants' violations of the California Labor Code and Wage Order 10.

27. The foregoing practices and policies are unlawful and create an entitlement to recovery by Plaintiff and the members of the Minimum Wage Class in a civil action for the unpaid

1 amount of minimum wages owing, including interest thereon, liquidated damages, statutory and
2 civil penalties, attorney's fees, and costs of suit according to California Labor Code §§ 204, 226.2,
3 558, 1194, 1194.2, 1197, and 1198, Wage Order 10, and Code of Civil Procedure § 1021.5.

4 **SECOND CAUSE OF ACTION**

5 **FAILURE TO PAY ALL OVERTIME WAGES**

6 **(AGAINST ALL DEFENDANTS)**

7 28. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

8 29. This cause of action is brought pursuant to Labor Code §§ 204, 510, 558, 1194,
9 and 1198, which provide that non-exempt employees are entitled to overtime wages for all
10 overtime hours worked and provide a private right of action for the failure to pay all overtime
11 compensation for overtime work performed.

12 30. At all times relevant herein, Defendants were required to properly pay Plaintiff
13 and members of the Overtime Class for all overtime hours worked pursuant to California Labor
14 Code § 1194 and Wage Order 10. Wage Order 10, § 3 requires an employer to pay an employee
15 "one and one-half (1½) times the employee's regular rate of pay for all hours worked in excess
16 of eight (8) hours" per work day and/or in excess of 40 hours of work in the workweek.

17 31. At all times relevant herein, Defendants caused Plaintiff and other non-exempt
18 employees to work overtime hours but did not compensate Plaintiff or members of the Overtime
19 Class at one and one-half times their regular rate of pay for such hours.

20 32. The foregoing policies and practices are unlawful and create entitlement to
21 recovery by Plaintiff and the Overtime Class in a civil action for the unpaid amount of overtime
22 premiums owing, including interest thereon, statutory and civil penalties, attorney's fees, and
23 costs of suit according to California Labor Code §§ 204, 510, 558, 1194, and 1198, Wage Order
24 10, and Code of Civil Procedure § 1021.5.

25 **THIRD CAUSE OF ACTION**

26 **MEAL PERIOD VIOLATIONS**

27 **(AGAINST ALL DEFENDANTS)**

28 33. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

34. Plaintiff is informed and believes, and based thereon alleges, that Defendants

1 failed in their affirmative obligation to provide Plaintiff and members of the Meal Period Class
2 with all required meal periods in accordance with the mandates of the California Labor Code and
3 Wage Order 10, for the reasons set forth in the factual allegations and Class definitions sections
4 of this Complaint.

5 35. As a result, Defendants are responsible for paying premium compensation for meal
6 period violations, including interest thereon, statutory penalties, and costs of suit pursuant to
7 Wage Order 10, Labor Code §§ 226.7 and 512, and Civil Code §§ 3287(b) and 3289.

8 **FOURTH CAUSE OF ACTION**

9 **REST PERIOD VIOLATIONS**

10 **(AGAINST ALL DEFENDANTS)**

11 36. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

12 37. Wage Order 10, § 11 and Labor Code §§ 226.7, 516, and 558 establish the right of
13 employees to be provided with a rest period of at least ten (10) minutes for each four (4) hour
14 period worked, or major fraction thereof. Further, Labor Code § 226.2 and *Bluford v. Safeway*
15 *Stores, Inc.*, 216 Cal. App. 4th 864 (2013) mandate that employees paid pursuant to a piece-rate
16 compensation system be compensated separately for their rest periods.

17 38. As alleged herein, Defendants did not properly compensate Plaintiff and members
18 of the Rest Period Class for all rest periods to which they were legally entitled, and/or did not
19 authorize and permit members of the Rest Period Class to take the paid rest periods to which they
20 are legally entitled. Despite Defendants' violations, Defendants failed to pay an additional hour
21 of premium pay to Plaintiff and members of the Rest Period Class at their respective regular rates
22 of pay for each violation, as required by California Labor Code § 226.7.

23 39. The foregoing policies and practices are unlawful and create an entitlement to
24 recovery by Plaintiff and the Rest Period Class in a civil action for the unpaid amount of rest
25 period premiums owing, including interest thereon, statutory penalties, civil penalties, and costs
26 of suit according to Labor Code §§ 226.7, 516, and 558, Wage Order 10, and Code of Civil
27 Procedure § 1021.5, and Civil Code §§ 3287(b) and 3289.

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FIFTH CAUSE OF ACTION
WAGE STATEMENT PENALTIES
(AGAINST ALL DEFENDANTS)

40. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

41. Plaintiff is informed and believes, and based thereon alleges, that Defendants knowingly and intentionally, as a matter of uniform policy and practice, failed to furnish Plaintiff and the Wage Statement Class with accurate and complete itemized wage statements that included, among other requirements, all wages owed, all meal and rest period premium wages earned, number of piece-rate units earned, amount of rest period and non-productive time worked, and amount of paid sick leave available in violation of Labor Code §§ 226, 226.2, and 246(h).

42. Defendants' failure to furnish Plaintiff and members of the Wage Statement Class with complete and accurate itemized wage statements resulted in injury, as said failures led to, among other things, the non-payment of all their minimum and overtime wages owed, rest period premium wages, and deprived them of the information necessary to identify the discrepancies in Defendants' reported data.

43. Defendants' failures create an entitlement to recovery by Plaintiff and members of the Wage Statement Class in a civil action for all damages and/or penalties pursuant to Labor Code § 226 *et. seq.*, including statutory penalties, civil penalties, reasonable attorneys' fees, and costs of suit according to California Labor Code §§ 226 *et. seq.*, and 246 (h).

SIXTH CAUSE OF ACTION
UNFAIR COMPETITION
(AGAINST ALL DEFENDANTS)

44. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

45. Defendants have engaged and continue to engage in unfair and/or unlawful business practices in California in violation of California Business and Professions Code § 17200, *et seq.*, by failing to pay Plaintiff and the Classes all minimum and overtime wages owed, rest period premium wages, and meal period premium wages, failing to reimburse for all necessary business expenses incurred, knowingly failing to furnish Plaintiff and members of the Wage Statement Class with accurate and complete wage statements, and failing to pay all final wages

at the time of separation in violation of Labor Code § 226 *et seq.*

46. Defendants' utilization of these unfair and/or unlawful business practices deprived Plaintiff, and continues to deprive members of the Classes, of compensation to which they are legally entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage over Defendants' competitors who have been and/or are currently employing workers and attempting to do so in honest compliance with applicable wage and hour laws.

47. Because Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged herein, Plaintiff, for himself and on behalf of the members of the Classes, seeks full restitution of monies as necessary and according to proof, to restore any and all monies withheld, acquired, and/or converted by Defendants pursuant to Business and Professions Code §§ 17203 and 17208.

48. The acts complained of herein occurred within the four years immediately preceding the filing of this action.

49. Plaintiff was compelled to retain the services of counsel to file this court action to protect his interests and those of the Classes, to obtain restitution and injunctive relief on behalf of Defendants' current non-exempt employees, and to enforce important rights affecting the public interest. Plaintiff has thereby incurred the financial burden of attorneys' fees and costs, which he is entitled to recover under Code of Civil Procedure § 1021.5.

SEVENTH CAUSE OF ACTION
PRIVATE ATTORNEYS GENERAL ACT
(AGAINST ALL DEFENDANTS)

50. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

51. Defendants have committed several Labor Code violations against Plaintiff, members of the Classes, and other aggrieved employees. Plaintiff, an "aggrieved employee" within the meaning of Labor Code § 2698 *et seq.*, acting on behalf of himself and other aggrieved employees, brings this representative action against Defendants to recover the civil penalties due to Plaintiff, the members of the Classes, other aggrieved employees, and the State of California according to proof pursuant to Labor Code § 558 and § 2699 (a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200 for each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each

1 failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for each
2 initial violation and \$100 for each subsequent violation pursuant to Labor Code § 558 per
3 employee per pay period; (3) \$100.00 for each initial violation and \$250.00 for each subsequent
4 violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each
5 initial violation and \$1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per
6 employee per pay period; and/or (5) \$100.00 for each initial violation and \$200 for each
7 subsequent violation per employee per pay period for those violations of the Labor Code for
8 which no civil penalty is specifically provided, based on the following Labor Code violations:

- 9 a. Failing to pay minimum wages for all hours worked to Plaintiff, the Minimum
10 Wage Class, and other aggrieved employees in violation of Labor Code §§ 226.2,
11 1182.12, 1194, 1194.2, and 1197;
- 12 b. Failing to pay Plaintiff, the Overtime Class, and other aggrieved employees all
13 earned overtime compensation in violation of Labor Code §§ 204, 510, 1194, and
14 1198;
- 15 c. Failing to provide all legally required meal periods, and failure to pay meal period
16 premium wages, to Plaintiff, the Meal Period Class, and other aggrieved employees
17 at the regular rate of compensation in violation of Labor Code §§ 226.7, 512, 558,
18 and 1198;
- 19 d. Failing to authorize and permit all legally required rest periods, and failure to pay
20 rest period premium wages, to Plaintiff, the Rest Period Class, and other aggrieved
21 employees at the regular rate of compensation in violation of Labor Code §§ 226.2,
22 226.7, 516, 558, and 1198;
- 23 e. Failing to furnish Plaintiff, the Wage Statement Class, and other aggrieved
24 employees with complete, accurate, itemized wage statements in violation of Labor
25 Code § 226;
- 26 f. Failing to pay Plaintiff and other aggrieved employees all earned wages at least
27 twice during each calendar month in violation of Labor Code § 204; and
- 28 g. Failing to maintain accurate records on behalf of Plaintiff and other aggrieved
employees in violation of Labor Code § 1174 and 1198.

52. On September 20, 2023, Plaintiff notified Defendants via certified mail, and notified the California Labor and Workforce Development Agency (“LWDA”) via its website, of Defendants’ violations of the California Labor Code and Plaintiff’s intent to bring a claim for civil penalties under California Labor Code § 2698 et seq. with respect to the violations of the California Labor Code identified in Paragraph 51 (a)-(g). Now that sixty-five days have passed from Plaintiff notifying Defendants and the LWDA of these violations, and the LWDA has not provided notice that it intends to investigate the violations, Plaintiff has exhausted his administrative requirements for bringing a claim under the Private Attorneys General Act with respect to these violations.

53. Based on the foregoing, Plaintiff seeks to represent himself and all Aggrieved Employees, as defined by Labor Code § 2699(c).

54. Plaintiff was compelled to retain the services of counsel to file this court action to protect his interests and the interests of other aggrieved employees, and to assess and collect the civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys’ fees and costs, which he is entitled to receive under California Labor Code § 2699(g).

PRAYER

WHEREFORE, Plaintiff prays for judgment for himself and for all others on whose behalf this suit is brought against Defendants, as follows:

1. For an order certifying the proposed Classes;
2. For an order appointing Plaintiff as representative of the Classes;
3. For an order appointing counsel for Plaintiff as counsel for the Classes;
4. Upon the First Cause of Action, for payment of minimum wages, liquidated damages, and penalties owed according to proof pursuant to Labor Code §§ 226.2, 1182.12, 1194, 1194.2 and 1197;
5. Upon the Second Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 204, 510, 558, 1194, and 1198;
6. Upon the Third Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 226.7, 512, and 558;
7. Upon the Fourth Cause of Action, for compensatory, consequential, general and

special damages according to proof pursuant to Labor Code §§ 226.2, 226.7, 516, and 558;

8. Upon the Fifth Cause of Action, for statutory penalties pursuant to Labor Code §§ 226 *et. seq.*, 226.2, and 246(h);

9. Upon the Sixth Cause of Action, for restitution to Plaintiff and members of the Classes of all money and/or property unlawfully acquired by Defendants by means of any acts or practices declared by this Court to be in violation of California Business and Professions Code § 17200 *et seq.*;

10. Upon the Seventh Cause of Action, for civil penalties due to Plaintiff, other aggrieved employees, and the State of California according to proof pursuant to Labor Code §§ 558 and 2699(a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200 for each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each initial violation and \$1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for each initial violation and \$200 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided, based on the Labor Code violations identified in Paragraph 51 (a)-(g);

11. Prejudgment interest on all due and unpaid wages pursuant to Labor Code § 218.6 and Civil Code §§ 3287 and 3289;

12. On all causes of action, for attorneys' fees and costs as provided by Labor Code §§ 226, 1194 *et seq.*, Code of Civil Procedure § 1021.5; and

13. For such other and further relief, the Court may deem just and proper.

Dated: November 27, 2023
Respectfully submitted,
HAINES LAW GROUP, APC

By:


Paul K. Haines
Attorney for Plaintiff

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Dated: November 27, 2023

By:


Paul K. Hines

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Orange County Superior Court Case No. 30-2023-01350262-CU-OE-CXC

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is [X] 2155 Campus Drive, Suite 180, El Segundo, California 90245.

On November 27, 2023, I served the foregoing document(s) described as:

FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT

on the interested party(ies) in this action as follows:

Tiffany H. Rouhi, Esq.
O'HAGAN MEYER LLP
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Attorneys for Defendant CALIFORNIA DINNER ENTERTAINMENT, LLC

[X] (VIA ELECTRONIC MAIL) Based on court order or an agreement of the parties to accept electronic service, I caused the document described above to be sent to the persons at the electronic service addresses listed above via third party cloud service One Legal.

[X] (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on November 27, 2023, at El Segundo, California.

Aaron Clark

Aaron Clark