

**JUSTICE FOR WORKERS, P.C.**

William C. Sung, SB# 280792

E-Mail: william@justiceforworkers.com

Tiffany L. Luu, SB# 335127

E-Mail: tluu@justiceforworkers.com

3600 Wilshire Boulevard, Suite 1815

Los Angeles, CA 90010

Tel: 323-922-2000

Fax: 323-922-2000

Attorneys for Plaintiffs

EIKO BERNARDO RODRIGUEZ and DANNY LE

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES, CENTRAL DISTRICT**

EIKO BERNARDO RODRIGUEZ and  
DANNY LE, an individual and on behalf of all  
others similarly situated;

Plaintiffs,

vs.

BENIHANA NATIONAL CORP., a Delaware  
corporation; and DOES 1 through 50,

Defendants.

Case No.: **24STCV02419**

**REPRESENTATIVE ACTION  
COMPLAINT FOR VIOLATION OF THE  
CALIFORNIA PRIVATE ATTORNEYS  
GENERAL ACT (LABOR CODE §§ 2698,  
*et seq.*)**

Plaintiffs EIKO BERNARDO RODRIGUEZ and DANNY LE (“Plaintiffs”), on behalf of themselves as aggrieved employees, the State of California, and other aggrieved employees, hereby bring this Representative Action Complaint (“Complaint”) against Defendants BENIHANA NATIONAL CORP., a Delaware corporation, and DOES 1 to 50 (collectively “Defendants”), and on information and belief alleges as follows:

**JURISDICTION AND VENUE**

1. Plaintiffs bring this Complaint for recovery of civil penalties under the California Private Attorneys General Act, California Labor Code §§ 2698, *et seq.* (“PAGA”), for Defendants’ violations of the Labor Code and Industrial Welfare Commission (“IWC”) Wage Order 5-2001 (“Wage Order 5”), including Labor Code §§ 201, 202, 203, 204, 210, 212, 226, 226.7, 246, 256,

1 351, 510, 512, 516, 558, 558.1, 1174, 1198, and 2802. This Court has jurisdiction over Defendants'  
2 violations of the Labor Code because the amount in controversy exceeds \$25,000.

3 2. Venue is proper in this judicial district because Defendants maintain offices, have  
4 agents, and/or transact business in the State of California, including Los Angeles County, and some  
5 of the acts and omissions complained of herein occurred in Los Angeles County. Furthermore,  
6 Plaintiffs was employed by Defendants within Los Angeles County.

7 **PARTIES**

8 3. Plaintiffs are, and at all times relevant herein were, individuals over the age of  
9 eighteen (18) and are California residents. Within the statute of limitations periods applicable to  
10 each cause of action pled herein, Plaintiffs were employed by Defendants as non-exempt  
11 employees. Plaintiffs were, and are, a victim of Defendants' policies, practices, and/or customs  
12 complained of herein and have been deprived of the rights guaranteed by Labor Code §§ 201-204,  
13 212, 226, 226.7, 246, 351, 432, 510, 512, 516, 558, 558.1, 1182.12, 1174, 1194, 1194.2, 1197,  
14 1198, 1198.5, 2802, and Wage Order 5.

15 4. Plaintiffs are informed and believe, and based thereon allege, that during the  
16 applicable statute of limitations for each cause of action pled herein and continuing to the present,  
17 Defendants engaged in and continue to engage in business, and employed Plaintiffs and other,  
18 similarly-situated non-exempt employees within Los Angeles County, and the State of California  
19 and, therefore, were (and are) doing business in Los Angeles County and the State of California.

20 5. Plaintiffs do not know the true names or capacities, whether individual, partner, or  
21 corporate, of the defendants sued herein as DOES 1 to 50, inclusive, and for that reason, said  
22 defendants are sued under such fictitious names, and Plaintiffs will seek leave from this Court to  
23 amend this Complaint when such true names and capacities are discovered. Plaintiffs are informed,  
24 and believes, and based thereon alleges, that each of said fictitious defendants, whether individual,  
25 partners, or corporate, was responsible in some manner for the acts and omissions alleged herein,  
26 and proximately caused Plaintiffs and aggrieved employees to be subject to the unlawful  
27 employment practices, wrongs, injuries, and damages complained of herein.

28 ///

1           6.       At all times herein mentioned, each of said Defendants participated in the doing of  
2 the acts hereinafter alleged to have been done by the named Defendant; and furthermore,  
3 Defendants, and each of them, were the agents, servants, and employees of each of the other  
4 defendants, as well as the agents of all Defendants, and at all times herein mentioned, were acting  
5 within the course and scope of said agency and employment.

6           7.       Plaintiffs are informed and believe, and based thereon allege, that at all times  
7 material hereto, each of the Defendants named herein was the agent, employee, alter ego and/or  
8 joint venturer of, or working in concert with each of the other co-Defendants and was acting within  
9 the course and scope of such agency, employment, joint venture, or concerted activity. To the extent  
10 said acts, conduct, and omissions were perpetrated by certain Defendants, each of the remaining  
11 Defendants confirmed and ratified said acts, conduct, and omissions of the acting Defendants.

12           8.       At all times herein mentioned, Defendants, and each of them, were members of, and  
13 engaged in, a joint venture, partnership, and common enterprise, and acting within the course and  
14 scope of, and in pursuance of, said joint venture, partnership, and common enterprise.

15           9.       At all times herein mentioned, the acts and omissions of various Defendants, and  
16 each of them, concurred and contributed to the various acts and omissions of each and all of the  
17 other Defendants in proximately causing the injuries and damages as herein alleged.

18                               **FACTUAL ALLEGATIONS**

19           10.      Defendants own and operate Benihana restaurants in the State of California.  
20 Defendants employed Plaintiff Rodriguez as an hourly-paid, non-exempt employee from  
21 approximately June 2022 to approximately November 2023 as a server at the Benihana restaurant in  
22 Torrance. Defendants employed Plaintiff Le as an hourly-paid, non-exempt employee since  
23 approximately September 3, 2023 as a chef at the Benihana restaurant in Anaheim.

24           11.      Labor Code §§ 510 and 1198 require employers to pay time-and-a-half or double  
25 time overtime wages, and make it unlawful to work employees for hours longer than eight hours in  
26 one day and/or over forty hours in one week without paying the premium overtime rates at one-and-  
27 one-half times or double the regular rate of pay, including additional remuneration. During the  
28 relevant time period, Plaintiffs and other aggrieved employees worked in excess of 8 hours in a day

1 and 40 hours in a week. Plaintiffs and other aggrieved employees were not paid overtime  
2 compensation at the regular rate of pay because Defendants failed to accurately incorporate multiple  
3 rates of pay and/or all non-discretionary remuneration, including mandatory service charges, into  
4 the regular rate of pay. Upon information and belief, Defendants' mandatory service charges are  
5 flat-sum incentive compensation. However, Defendants calculated the regular rate of pay based on  
6 the production method and underpaid overtime premiums to Plaintiffs and other aggrieved  
7 employees.

8       12. Labor Code §§ 226.7, 512, and Wage Order 5, § 11 require employers to provide  
9 non-exempt employees with compliant meal periods or pay premiums at the regular rate of  
10 compensation. During the relevant time period, Defendants failed to provide Plaintiffs and other  
11 aggrieved employees with all legally compliant meal periods due to Defendants' meal period  
12 policies/practices, which have frequently resulted in late (commencing after the fifth hour of work),  
13 short (less than 30 minutes), and/or missed meal periods. Although Defendants paid meal period  
14 premiums to Plaintiffs and aggrieved employees, Defendants failed to properly incorporate multiple  
15 rates of pay and/or all non-discretionary remuneration, including mandatory service charges, into  
16 the regular rate of compensation. Upon information and belief, Defendants' mandatory service  
17 charges are flat-sum incentive compensation. However, Defendants calculated the regular rate of  
18 compensation based on the production method and underpaid meal period premiums to Plaintiffs  
19 and other aggrieved employees.

20       13. Labor Code §§ 226.7 and Wage Order 5, § 12 require employers to authorize and  
21 permit non-exempt employees to take compliant rest periods or pay premiums at the regular rate of  
22 compensation. During the relevant time period, Plaintiffs and other aggrieved employees were not  
23 authorized and permitted to take all required rest periods due to Defendants' unlawful rest period  
24 policies/practices, which failed to authorize and permit a net 10-minute rest period for every four  
25 hours worked, or major fraction thereof. Plaintiffs and other aggrieved employees were not able to  
26 take their legally compliant rest breaks due to work demands imposed by Defendants. On those  
27 occasions when Plaintiffs and other aggrieved employees were not authorized and permitted to take  
28 all legally compliant rest periods to which they were entitled, Defendants failed to compensate them

1 with the required rest period premium(s) for each workday there was a rest period violation as  
2 mandated by Labor Code § 226.7. Upon information and belief, Defendants maintained no  
3 mechanism for the payment of rest period premium payments as required by Labor Code § 226.7, in  
4 the event that a legally compliant rest period was not authorized and permitted to their non-exempt  
5 employees.

6 14. Labor Code § 246 mandates employers to comply with various requirements with  
7 respect to the provision of paid sick leave to employees. Upon information and belief, during the  
8 relevant time period, Defendants improperly calculated the sick leave rate of pay owed to Plaintiffs  
9 and other aggrieved employees by failing to properly incorporate multiple rates of pay and/or all  
10 non-discretionary remuneration, including mandatory service charges, into the sick leave pay rate  
11 calculation.

12 15. As a result of Defendants' failure to pay all minimum and overtime wages, failure to  
13 pay all meal and rest period premium wages, and unlawful timekeeping and payroll practices as  
14 alleged above, Defendants maintained inaccurate payroll records and issued inaccurate wage  
15 statements to Plaintiffs and other aggrieved employees. As a further result of Defendants' failure to  
16 pay all minimum and overtime wages, sick leave wages, and meal and rest period premium wages,  
17 Defendants failed to timely pay all final wages to Plaintiffs and other aggrieved employees upon  
18 their separation of employment from Defendants.

19 16. Labor Code § 2802 requires an employer to reimburse its employee for all necessary  
20 expenditures incurred by the employee in direct consequence of the discharge of his or her job  
21 duties or in direct consequence of his or her obedience to the directions of the employer. During the  
22 relevant time period, Plaintiffs and other aggrieved employees incurred necessary business-related  
23 expenses and costs that were not fully reimbursed by Defendants, including, but not limited to,  
24 requiring Plaintiffs and other aggrieved employees to use their personal cellphones to scan discount  
25 coupons tendered by patrons.

26 17. Labor Code § 1198 provides: "The employment of any employee ... under conditions  
27 of labor prohibited by the [Industrial Wage Orders] is unlawful." The applicable Industrial Wage  
28 Orders, including Wage Order 5-2001, require that for each workday an employee is required to

1 report for work and does report, but is not put to work or is furnished less than half said employee's  
2 usual or scheduled day's work, the employee shall be paid for half the usual or scheduled day's  
3 work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee's  
4 regular rate of pay. Further, if an employee is required to report for work a second time in any one  
5 workday and is furnished less than two (2) hours of work on the second reporting, said employee  
6 shall be paid for two (2) hours at the employee's regular rate of pay. During the relevant time  
7 period, Defendants failed to pay Plaintiffs and other aggrieved employees half the usual or  
8 scheduled day's work in an amount no less than two (2) hours nor more than four (4) hours at the  
9 employee's regular rate of pay for workdays in which aggrieved employees reported to work and  
10 were furnished less than half the usual or scheduled day's work. For instance, Plaintiffs reported to  
11 work for a scheduled shift and was terminated without payment of reporting time pay.

12       18. Labor Code § 351 prohibits an employer and its agents from sharing in or keeping  
13 any portion of a gratuity left for or given to one or more employees by a patron. Furthermore, it is  
14 illegal for employers to make wage deductions from gratuities, or from using gratuities as direct or  
15 indirect credits against an employee's wages. The law further states that gratuities are the sole  
16 property of the employee or employees to whom they are given. During the relevant time period,  
17 Defendants operated an unlawful tip pool policy that required Plaintiffs and other aggrieved  
18 employees in the position of servers to contribute 9% of every check to the tip pool. However, if a  
19 patron tipped less than 9% of his or her check, Plaintiffs and other aggrieved employees were still  
20 required to contribute 9% of the check to the tip pool and paying their own earned wages and tips to  
21 make up the difference.

22       19. Labor Code § 212 provides: "(a) No person, or agent or officer thereof, shall issue in  
23 payment of wages due, or to become due, or as an advance on wages to be earned: (1) Any order,  
24 check, draft, note, memorandum, or other acknowledgment of indebtedness, unless it is negotiable  
25 and payable in cash, on demand, without discount, at some established place of business in the state,  
26 the name and address of which must appear on the instrument, and at the time of its issuance and for  
27 a reasonable time thereafter, which must be at least 30 days, the maker or drawer has sufficient  
28 funds in, or credit, arrangement, or understanding with the drawee for its payment. (2) Any scrip,

1 coupon, cards, or other thing redeemable, in merchandise or purporting to be payable or redeemable  
2 otherwise than in money. (b) Where an instrument mentioned in subdivision (a) is protested or  
3 dishonored, the notice or memorandum of protest or dishonor is admissible as proof of presentation,  
4 nonpayment and protest and is presumptive evidence of knowledge of insufficiency of funds or  
5 credit with the drawee. (c) Notwithstanding paragraph (1) of subdivision (a), if the drawee is a bank,  
6 the bank's address need not appear on the instrument and, in that case, the instrument shall be  
7 negotiable and payable in cash, on demand, without discount, at any place of business of the drawee  
8 chosen by the person entitled to enforce the instrument." Defendants violated Labor Code § 212 by  
9 issuing final paychecks to Plaintiffs and other aggrieved employees via a paycard.

10 20. On or about November 29, 2023, Plaintiffs notified Defendants via certified mail,  
11 and notified the California Labor and Workforce Development Agency ("LWDA") via its website,  
12 of Defendants' violations of the Labor Code and Plaintiffs' intent to bring a claim for civil penalties  
13 under Labor Code § 2698, *et seq.* with respect to the violations of the Labor Code identified in the  
14 preceding paragraph. Now that 33 days and 65 days have passed from Plaintiffs notifying  
15 Defendants and the LWDA of these violations, Defendants have not cured any curable violations,  
16 and the LWDA has not provided notice that it intends to investigate the violations, Plaintiffs has  
17 exhausted administrative requirements for bringing a claim under the Private Attorneys General Act  
18 with respect to these violations.

19 **FIRST CAUSE OF ACTION**

20 **PRIVATE ATTORNEYS GENERAL ACT**

21 **(Against All Defendants)**

22 21. Plaintiffs re-allege and incorporate by reference all preceding paragraphs as though  
23 fully set forth herein.

24 22. Plaintiffs, "aggrieved employees" within the meaning of Labor Code §§ 2698, *et*  
25 *seq.*, acting on behalf of themselves and other aggrieved employees (collectively, "Aggrieved  
26 Employees"), bring this representative action against Defendants to recover the civil penalties due  
27 to Plaintiffs and other Aggrieved Employees, and the State of California according to proof  
28 pursuant to Labor Code §§ 558 and 2699(a) and (f) including, but not limited to: (1) \$100.00 for

1 each initial violation for each failure to pay each employee and \$200 for each subsequent violation  
2 or willful or intentional violation pursuant to Labor Code §§ 210 and/or 225.5 for each failure to  
3 pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for each initial  
4 violation and \$100 for each subsequent violation pursuant to Labor Code § 558 per employee per  
5 pay period; (3) \$100 for each initial violation and \$250 for each subsequent violation pursuant to  
6 Labor Code § 1197.1 per employee per pay period; (4) \$250 for each initial violation and \$1,000 for  
7 each subsequent violation pursuant to Labor Code § 226.3 per employee per pay period; (5)  
8 pursuant to Labor Code § 256, a civil penalty in an amount not exceeding 30 days per former  
9 employee as waiting time under the terms of Labor Code § 203; and/or (6) \$100 for each initial  
10 violation and \$200 for each subsequent violation per employee per pay period for those violations  
11 of the Labor Code for which no civil penalty is specifically provided, based on the following Labor  
12 Code violations:

- 13       a.       Failing to pay minimum wages for all hours worked to Aggrieved Employees in  
14 violation of Labor Code § 558, 1182.12, 1194, 1194.2, 1197, and 1198;
- 15       b.       Failing to pay Aggrieved Employees all earned overtime compensation in violation  
16 of Labor Code §§ 204, 510, 558, 1194, and 1198;
- 17       c.       Failing to provide all legally required meal periods, and failure to pay meal period  
18 premium wages, to Aggrieved Employees at the regular rate of compensation in violation of Labor  
19 Code §§ 226.7, 512, 558, and 1198;
- 20       d.       Failing to authorize and permit all legally required rest periods, and failure to pay  
21 rest period premium wages, to Aggrieved Employees at the regular rate of compensation in  
22 violation of Labor Code §§ 226.7, 516, 558, and 1198;
- 23       e.       Failing to furnish Aggrieved Employees with complete, accurate, itemized wage  
24 statements in violation of Labor Code § 226;
- 25       f.       Failing to timely pay all final wages and compensation earned by Aggrieved  
26 Employees at the time of separation in violation of Labor Code §§ 201-202;
- 27       g.       Failure to reimburse Aggrieved Employees for all necessary business expenses in  
28 violation of Labor Code § 2802;

1 h. Failing to pay Aggrieved Employees all paid sick leave wages in violation of Labor  
2 Code § 246;

3 i. Failing to pay reporting time pay in violation of Labor Code § 1198;

4 j. Operating an illegal tip pool scheme in violation of Labor Code § 351;

5 k. Violating Labor Code § 212 by issuing final paychecks via a paycard;

6 l. Failing to pay Aggrieved Employees all earned wages at least twice during each  
7 calendar month in violation of Labor Code § 204; and

8 m. Failing to maintain accurate records on behalf of Aggrieved Employees in violation  
9 of Labor Code §§ 1174 and 1198.

10 23. Plaintiffs has incurred attorneys' fees and costs, which Plaintiffs are entitled to  
11 receive under California Labor Code § 2699(g).

12 **PRAYER FOR RELIEF**

13 WHEREFORE, Plaintiffs prays for judgment for themselves and for all others on whose  
14 behalf this suit is brought against Defendants, as follows:

15 1. Upon the First Cause of Action, for civil penalties due to Plaintiffs, other Aggrieved  
16 Employees, and the State of California according to proof pursuant to Labor Code §§ 558 and  
17 2699(a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for each failure to  
18 pay each employee and \$200 for each subsequent violation or willful or intentional violation  
19 pursuant to Labor Code §§ 210 and/or 225.5 for each failure to pay each employee, plus 25% of the  
20 amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent  
21 violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial  
22 violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per employee  
23 per pay period; (4) \$250.00 for each initial violation and \$1,000.00 for each subsequent violation  
24 pursuant to Labor Code § 226.3 per employee per pay period; (5) pursuant to Labor Code § 256, a  
25 civil penalty in an amount not exceeding 30 days per former employee as waiting time under the  
26 terms of Labor Code § 203; and/or (6) \$100.00 for each initial violation and \$200 for each  
27 subsequent violation per employee per pay period for those violations of the Labor Code for which  
28 no civil penalty is specifically provided;

1           2.       On all causes of action, for attorneys' fees and costs as provided by Labor Code §  
2 2699(g) and Code of Civil Procedure § 1021.5; and

3           3.       For such other and further relief, the Court may deem just and proper.  
4

5 DATED: January 30, 2024

**JUSTICE FOR WORKERS, P.C.**

6  
7 By: 

8 William C. Sung

9 Tiffany L. Luu

10 Attorneys for Plaintiffs EIKO BERNARDO  
11 RODRIGUEZ and DANNY LE  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28