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30-2024-01391376-CU-OE-CXC - ROA # 2 - DAVID H. YAMASAKI, Clerk of the Court By S. Juarez, Deputy Clerk.

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Assigned for All Purposes
Judge William Claster
Dept. CX101

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

ROBERT NOVELLO, an individual, Plaintiff, vs. HEG ENTERPRISES, INC., an unknown corporation; HAROLD GRIFFITH, an individual; GREAT WESTERN PACIFIC INC., an unknown corporation; and DOES 1 to 10, inclusive, Defendants.	Case No.: 30-2024-01391376-CU-OE-CXC **COMPLAINT FOR:** **1) FAILURE TO PAY WAGES;** **2) FAILURE TO PAY TIMELY WAGES AT TERMINATION/SEPARATION;** **3) FAILURE TO PAY VACATION WAGES DUE AT TERMINATION** **4) FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS** **5) FAILURE TO REIMBURSE ALL BUSINESS EXPENSES** **6) VIOLATION OF UNFAIR BUSINESS PRACTICES ACT – Bus. & Prof. Code §§ 17200, *et seq.*; and** **7) PENALTIES PURSUANT TO PRIVATE ATTORNEYS GENERAL ACT (“PAGA”)** **[DEMAND FOR JURY TRIAL]**

Plaintiff Robert Novello ("Mr. Novello") hereby alleges as follows:

INTRODUCTION

1. This lawsuit arises out of Defendants HEG ENTERPRISES, INC. ("HEG"), HAROLD GRIFFITH ("MR. GRIFFITH"), and GREAT WESTERN PACIFIC, INC.'s ("GWP") (collectively referred here as "Defendants") failure to provide meal and rest periods at the proper intervals, to pay all wages owed including overtime, to provide accurate wage statements, to pay all wages owed to terminated or separated employees in a timely manner, to pay all vacation pay owed to terminated or separated employees, and to reimburse employee business expenses.

2. Defendants employed Mr. Novello during the applicable time period, utilizing consistent policies and procedures in violation of Labor Code §200, *et seq.*, Labor Code §500, *et seq.*, Labor Code §1194, *et seq.*, Labor Code §2800, *et seq.*, and the applicable Wage Orders issued by the California Industrial Welfare Commission.

3. Defendants are engaged in the provision of food services. Mr. Novello was hired in 1985 and was terminated in February 2023, the exact day of which is disputed. At all times during Mr. Novello's employment, he was an exempt employee. Plaintiff was the General Manager of the Fisherman's Restaurant in San Clement, California ("Fisherman") before he became the Vice President of Operations running Defendants' entire California portfolio of businesses. However, all policy decisions and human resource matters alleged herein were handled by corporate. Thereafter, in 2022 Mr. Novello ran special projects only, including purchasing for Great Western Pacific (from his home base at the Fisherman).

4. At the time of his separation, Mr. Novello was not paid all of his wages.

5. Mr. Novello is also aware that Defendants deprive their non-exempt employees of lawful meal and rest periods, do not pay all wages they are entitled to, and fail to provide accurate and compliant itemized wage statements.

6. At all relevant times, Defendants had a consistent policy of not paying wages for all hours worked, including their manipulation of time records so that they could avoid paying overtime to non-exempt employees.

7. At all relevant times, Defendants had a consistent policy of requiring their non-

exempt employees to work through meal periods and/or work without a meal period for at least five (5) hours of a shift and failed to pay such employees one (1) hour of pay at the employees' regular rate of compensation for each workday that the meal period was not provided or as required by California state wage and hour laws.

8. At all relevant times, Defendants had a consistent policy of failing to allow their non-exempt employees to take rest periods for at least ten (10) minutes per four (4) hours, or a major fraction worked, and failed to pay such employees one (1) hour of pay at their regular rate of compensation for each workday that the rest period was not provided, or other compensation, as required by California state and wage and hour laws.

9. Defendants knowingly provided inaccurate wage statement to Mr. Novello. Additionally, Defendants knowingly provided inaccurate wage statements to their non-exempt employees, and often times manipulated wage statements to their employees that did not include the correct wages, including compensation for meal periods not provided and rest period not authorized or permitted as required by California state wage and hour laws.

10. At all relevant times, Defendants had a consistent policy of failing to pay their employees, including Mr. Novello, all wages, including unpaid premium wages and accrued and vested vacation pay, due at the termination or separation, in violation of California state wage and hour laws.

11. At all relevant times, Defendants had a consistent policy of failing to reimburse their employees, including Mr. Novello, for all business expenses incurred in the discharge of their duties.

12. Mr. Novello brings this action pursuant to California Labor Code sections 201, 202, 203, 204, 210, 226, 226.7, 227.3, 510, 512, 1194, 1194.2, 2800, and 2802 seeking unpaid wages, penalties, equitable relief, and reasonable attorneys' fees and costs.

13. Mr. Novello also brings this action pursuant to California Business & Professions Code sections 17200, *et seq.*, seeking injunctive relief, restitution, and disgorgement of all benefits obtained by Defendants as a result of Labor Code and applicable Wage Order violations.

14. Mr. Novello, on behalf of the State of California, himself, and other similarly

aggrieved employees, also bring this action pursuant to California Private Attorney General Act ("PAGA"), California Labor Code section 2698, *et seq.*, seeking unpaid wages and other compensation, penalties, and reasonable attorneys' fees and costs.

PARTIES

15. Mr. Novello is a natural person, over 18 years of age, and at all relevant times was an employee of HEG and GWP

16. Defendant HEG is a corporation, organized and existing under the laws of the State of California, with its principal place of business in San Clemente, California.

17. Defendant GWP is a corporation, organized and existing under the laws of the State of Washington, with its principal place of business in Seattle.

18. GWP employed Mr. Novello in San Clemente California to perform its purchasing.

19. Defendant Mr. Griffith is an individual and owner of HEG and GWP, and committed the alleged acts in San Clemente, California.

20. Mr. Novello is informed and believes, and based thereon alleges, that DOES 1 through 10, inclusive, are persons or entities whose exact identities and/or roles are currently unknown to him, but who are in some fashion liable to Mr. Novello under the Corporations Code as alleged herein. Mr. Novello is ignorant of the true names of defendants sued herein under the fictitious names DOES 1 through 10 and will seek leave to amend this complaint to state the true names and capacities of DOES 1 through 10 when they have been ascertained.

21. Mr. Novello is informed and believes, and based thereon alleges, that except as otherwise alleged herein, at all relevant times each of the defendants, including DOES 1 through 10, inclusive, was the member, agent, servant, employee, employer, partner, joint venture, alter ego, affiliate, authorized representative, director, and/or co-conspirator of each of the other defendants, and was acting within the scope and purpose of such relationship, and with the permission, knowledge, consent and/or ratification of each of the other defendants.

22. Mr. Novello is informed and believes that there exists, and at all times herein mentioned there existed, a unity of interest and ownership between defendants, such that any

individuality and separateness between them has ceased and that they are the alter ego of each other.

JURISDICTION AND VENUE

23. This Court has jurisdiction pursuant to California Government Code section 12920, *et seq*,. and California Code of Civil Procedure section 395(a). Defendants employed Mr. Novello within the State of California and/or managed him, made all employment decisions regarding and impacting him, and engaged in California Labor Code violations against him from the restaurants he managed in San Clemente, California.

24. Venue is proper in the County of Orange because the material acts upon which the Complaint is based occurred in the County of Orange.

GENERAL ALLEGATIONS

25. Defendants' aggrieved employees have not been provided: uninterrupted thirty-minute meal periods for work periods of more than five (5) hours per day; second uninterrupted thirty-minute meal periods for work periods of more than ten (10) hours per day; and have not been permitted to take ten-minute (10) rest periods for work periods of four (4) hours or major fractions, pursuant to the Labor Code and applicable IWC Wage Orders.

26. Defendants failed to pay Mr. Novello and aggrieved employees wages owed for all hours worked, including overtime and double time hours as applicable, and failed to calculate any overtime wages with respect to each aggrieved employees' regular rate of compensation. Defendants also intentionally manipulated time records of aggrieved employees to avoid payment of actual wages owed.

27. Upon separation, Defendants failed to pay Mr. Novello and other aggrieved employees wages earned and unpaid at the time of discharge, including unpaid premium wages and accrued and vested vacation pay.

28. At the time of each payment of wages, Defendants failed to provide Mr. Novello and other aggrieved employees an accurate itemized statement in writing, showing the gross wages earned and/or paid, including premium wages owed for failing to provide meal and/or rest periods at the proper intervals.

29. Defendants failed to fully reimburse Mr. Novello and aggrieved employees all their business-related expenditures. In violation of the Labor Code, Mr. Novello and aggrieved employees did not receive indemnification for all business-related expenditures.

30. Effective September 11, 2023, Mr. Novello and Defendants entered into a tolling agreement tolling all applicable statutes of limitations and filing of the Private Attorney General Act (Labor Code §§ 2698-99 ("PAGA")) claim notices to the Labor & Workforce Development Agency, which tolled all of the claims asserted herein. A copy of the tolling agreement is attached as **Exhibit A**.

FIRST CAUSE OF ACTION

FAILURE TO PAY WAGES

(Labor Code §§ 204, 210, 510, 1194, 1194.2)

(Against All Defendants)

31. Mr. Novello re-alleges each and every allegation set forth above and incorporates each by reference as though set forth in full herein.

32. At all relevant times, Mr. Novello and the other aggrieved employees were employees of Defendants covered by California Labor Code section 204, 210, 510, 1194, and 1194.2, and applicable Wage Orders, and they were entitled to receive minimum and overtime wages for all hours worked and liquidated damages equal to unlawfully unpaid minimum wages with interest.

33. Defendants have violated California law and the specified provisions of the Labor Code and applicable Wage Orders by their failure to pay all wages due in accordance, including minimum wages, wrongfully classified off-the-clock wages, overtime pay and double time pay as based on an employee's regular rate of compensation. Notably, any wages that were paid were not effectively paid within seven (7) days of the close of any applicable payroll period. As a result of Defendants' unlawful conduct, Mr. Novello and other aggrieved employees suffered damages as articulated in the Prayer for Relief, set forth below, and fully incorporated here as applicable.

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SECOND CAUSE OF ACTION

FAILURE TO PAY WAGES DUE AT TERMINATION

(Labor Code §§ 201, 202, 203)

(Against All Defendants)

34. Mr. Novello re-alleges each and every allegation set forth above and incorporates each by reference as though set forth in full herein.

35. By their failure to timely pay Mr. Novello and aggrieved employees Defendants willfully violated the provisions of California Labor Code section 201, 202, and 203, and applicable Wage Orders. Section 203 of the Labor Code provides that if an employer willfully fails to timely pay such wages, the employer must, as penalty, continue to pay the employee's wages until the back wages are paid in full or an action is commenced.

36. As a result of Defendants' unlawful conduct, Mr. Novello and aggrieved employees have suffered damages as articulated in the Prayer for Relief, set forth below, and fully incorporated here as applicable.

THIRD CAUSE OF ACTION

FAILURE TO PAY VACATION WAGES DUE AT TERMINATION

(Labor Code §227.3)

(Against All Defendants)

37. Mr. Novello re-alleges each and every allegation set forth above and incorporates each by reference as though set forth in full herein.

38. By their failure to timely pay Nr. Novello and aggrieved employees, Defendants willfully violated the provisions of California Labor Code section 227.3. Section 227.3 of Labor Code provides that whenever a contract of employment or employer policy provides for paid vacation, and an employee is terminated without having taken off his or her vested vacation time, all vested vacation shall be paid to him as wages at his or her final rate in accordance with such contract of employment or employer policy respecting eligibility of time served; provided, however, that an employment contract or employer policy shall not provide for forfeiture of vested vacation time upon termination.

39. As a result of Defendants' unlawful conduct, Mr. Novello and other aggrieved employees have suffered damages as articulated in the Prayer for Relief, set forth below, and fully incorporated here as applicable.

FOURTH CAUSE OF ACTION

FAILURE TO PROVIDE ITEMIZED WAGE STATEMENTS

(Labor Code §226)

(Against All Defendants)

40. Mr. Novello re-alleges each and every allegation set forth above and incorporates each by reference as though set forth in full herein.

41. Defendants failed to provide wage statements in compliance with California Labor Code section 226.

42. By their failure to provide accurate itemized wage statements, semimonthly or at the time of each payment of wages, Defendants willfully violated the provisions of California Labor Code section 226 and applicable Wage Orders.

43. As a result of Defendants' unlawful conduct, Mr. Novello and other aggrieved employee have suffered damages as articulated in the Prayer for Relief, set forth below, and fully incorporated here as applicable.

FIFTH CAUSE OF ACTION

FAILURE TO REIMBURSE ALL BUSINESS EXPENSES

(Labor Code §§2800, 2802)

(Against All Defendants)

44. Mr. Novello re-alleges each and every allegation set forth above and incorporates each by reference as though set forth in full herein.

45. California Labor Code section 2800 provides, in pertinent part, "[a]n employer shall in all cases indemnify his employee for losses caused by the employer's want of ordinary care." As a result of Defendants' unlawful conduct, Mr. Novello and aggrieved employees have suffered damages as articulated in the Prayer for Relief, set forth below, and fully incorporated here as applicable.

46. California Labor Code section 2802 provides, in pertinent part, "[a]n employer shall indemnify his or his employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or his duties…"

47. Further, California Labor Code section 2802 additionally provides, in pertinent part: "(c)…the term 'necessary expenditures or losses' shall include all reasonable costs, including but not limited to, attorney's fees incurred by the employee enforcing the rights granted by this section." During the relevant time period, Defendants was required to reimburse

48. Mr. Novello and aggrieved employees seek all expenditures or losses caused by the employer's want of ordinary care and/or incurred in direct consequence of the discharge of their duties, but failed to indemnify and reimburse Mr. Novello and aggrieved employees in violation of California Labor Codes sections 2800 and 2802.

49. As a direct and proximate result, Mr. Novello and aggrieved employees have suffered, and continue to suffer, substantial losses, related to the use and enjoyment of such monies to be reimbursed, lost interest on such monies, and expenses and attorneys' fees in seeking to compel Defendants to fully perform their obligations under California law, all of their damage in amounts according to proof at the time of trial.

SIXTH CAUSE OF ACTION

VIOLATION OF UNFAIR BUSINESS PRACTICES ACT

(Bus. & Prof. Code §§17200, *et seq.*)

(Against All Defendants)

50. Mr. Novello repeats and re-alleges the allegations set forth above, and incorporates them by reference as though fully set forth herein.

51. The alleged unlawful conduct of Defendants constitutes unfair competition pursuant to California Business and Professions Code section 17200 *et seq.*, and this cause of action is brought as a cumulative remedy under California Business and Professions Code section 17205 for the time period starting four (4) years before the filing of the Complaint.

52. As a result, Mr. Novello and other aggrieved employees have suffered injury in fact and lost money or property. Mr. Novello and said aggrieved employees have been deprived

of their rights as set forth in this Complaint, including, but not limited to, payment of minimum and/or actual wages for all hours worked.

53. Pursuant to California Business and Professions Code section 17203, Mr. Novello and other aggrieved employees are entitled to restitution of all wages owed to them under the Labor Code, and interest thereon, in which they had a property interest, which Defendants failed to pay to them and withheld and retained for themselves. Restitution of the money owed to Mr. Novello, and aggrieved employees is necessary to prevent Defendants from becoming unjustly enriched by their failure to comply with the Labor Code provisions.

54. Mr. Novello and aggrieved employees are entitled to recover reasonable attorney's fees in connection with their unfair competition claims pursuant to California Code of Civil Procedure section 1021.5, the substantial benefit doctrine and/or the common fund doctrine.

55. Mr. Novello requests the court to issue a preliminary and permanent injunction prohibiting defendants from committing the Labor Code and applicable Wage Order violations set forth in this Complaint, and Mr. Novello and the aggrieved employees have suffered further damages as articulated in the Prayer for Relief, set forth below, also incorporated here fully as applicable.

SEVENTH CAUSE OF ACTION

VIOLATION OF CALIFORNIA'S PRIVATE ATTORNEY GENERAL ACT

(LABOR CODE §2699 *et seq.*)

(Against All Defendants)

56. Mr. Novello incorporates by reference and re-alleges each and every allegation contained in paragraphs 1 through 55 as though fully set forth herein, except if doing so is inconsistent with this cause of action.

57. Under the PAGA, private parties may recover civil penalties for violations of the California Labor Code. PAGA penalties are in addition to any other relief available under the Labor Code.

58. As set forth above, Defendants violated the California Labor Code by consistently failing to employ Mr. Novello and other aggrieved employees in a manner that complies with

California law.

59. Mr. Novello provided written notice by certified mail to Defendants on January 24, 2024, and electronic notice thereafter to the State Labor & Workforce Development Agency ("LWDA"), of the legal claims and theories of this case. Attached hereto as **Exhibit B**, is a copy of the notice communicated by Mr. Novello, which allegations are incorporated herein.

60. To date, and after 65 days from the date of mailing of notice, the LWDA has not notified Mr. Novello that the LWDA intends to exercise jurisdiction over the claim for civil penalties under the PAGA. Accordingly, Mr. Novello exhausted the administrative remedies as required by California Labor Code section 2699.3. Mr. Novello's PAGA claim was assigned case number LWDA-CM-1006851-24 by the LWDA.

61. Under the PAGA, Mr. Novello and all other aggrieved employees are entitled to recover the maximum civil penalties permitted by law from Defendants for the violations of the Labor Code alleged in this Complaint and Mr. Novello's notice.

62. Mr. Novello and all other aggrieved employees are also entitled to recover their attorneys' fees and costs under California Labor Code section 2699.

PRAYER FOR RELIEF

Mr. Novello prays for relief and judgment against Defendants, and each of them, to the extent provided by law as follows:

1. Disgorgement of Defendants' wrongfully obtained profits and restitution of unpaid wages under California Business and Professions Code sections 17203, 17204;

2. Damages for unpaid minimum wages under California Labor Code section 1194;

3. Liquidated damages under California Labor Code section 1194.2;

4. Statutory penalties under California Labor Code section 210;

5. Statutory penalties under California Labor Code section 226(e);

6. Damages for unpaid penalty wages under California Labor Code section 203;

7. Reimbursement of business expenses under California Labor Code section 2802;

8. Damages for unpaid vacation wages at the time of discharge under California Labor Code section 227.3;

9. Reasonable attorney's fees and costs pursuant to statute, including, but not limited to California Labor Code section 218.5 and California Code of Civil Procedure section 1021.5;

10. Enjoinment of Defendants from further acts of unfair practices

11. Civil penalties under California Labor Code section 2699 (75% payable to LWDA and 25% payable to aggrieved employees); and

12. For such other relief that the Court may deem just and proper, including prejudgment interest and costs.

13. For costs of suit incurred herein; and

14. For such other and further relief as the Court deems just and proper.

DEMAND FOR A JURY TRIAL

Mr. Novello herein demands a trial by jury of all issues in this action.

Date: April 2, 2024

GODES & PREIS, LLP

By: ______________________

Joseph M. Preis
Joshua R. Mino
Benjamin G. Reynolds
Attorneys for Plaintiff
ROBERT NOVELLO

EXHIBIT A

TOLLING AGREEMENT

1. **Scope of Agreement/No Admission of Liability.** This Tolling Agreement ("Agreement") operates to toll the statute of limitations and time constraints imposed by law as to any and all disputes between Robert Novello ("Claimant") and HEG Enterprises, Inc., Harold Griffith and Great Western Pacific, Inc ("Employer"). This Agreement shall not be construed as an admission of liability or be offered in evidence in any proceeding other than to prove that the statute of limitations was tolled during the Tolling Period (defined below).

2. **Tolling Period.** This Agreement shall be in effect from September 11, 2023 (the "Effective Date") through and including the date of the completion of the parties' pre-litigation mediation (the "Expiration Date"). From the Effective Date and through the Expiration Date (the "Tolling Period") all applicable statutes of limitations shall be tolled and suspended.

3. **Waiver During Tolling Period.** Claimant and Employer hereby waive any statute of limitations defense that would otherwise arise during the Tolling Period. Neither Claimant nor Employer waives any statute of limitations defense, or any other claims or defenses, available as of the Effective Date or that arise after the Expiration Date.

4. **No Action Initiated During Tolling Period.** During the Tolling Period, Claimant will not file a complaint or initiate any other legal proceeding, including the submission of any PAGA claim notice to the Labor & Workforce Development Agency, or seek a Right to Sue letter from the California Civil Rights Department, against Employer relating to any of Claimant's claims.

5. **Termination Before Expiration Date.** Either Claimant or Employer may terminate this Agreement at any time by providing a notice of intent to terminate in writing, via Federal Express to Claimant's and Employer's respective counsel. The termination date shall be effective 30 days from the date of service of the notice of intent to terminate.

6. **Copies of Tolling Agreement Valid.** This Agreement may be executed in one or more original or counterparts.

DATED: 9/12/23

Hal Griffith

HEG Enterprises, Inc.,

DATED: 9/13/23

Robert Novello

Robert Novello

DATED: 9/12/23

Hal Griffith

Harold Griffith

DATED: 9/12/23

Hal Griffith

Great Western Pacific, Inc.