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Attorneys for Plaintiff
LYLE SINCLAIR

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF RIVERSIDE, RIVERSIDE HISTORIC COURTHOUSE

LYLE SINCLAIR, on behalf of himself and all others similarly situated,

Plaintiff,

vs.

SUNDOWN ENTERTAINMENT GROUP INC., a California corporation; and DOES 1-50, inclusive,

Defendant.

Case No. CVRI2406741
[Assigned for All Purposes to the Honorable Harold W. Hopp of Department 1]

CLASS ACTION

FIRST AMENDED COMPLAINT FOR:

1. Unfair Competition (Bus. & Prof. Code § 17200 *et seq.*);
2. Non-Provision of Meal and Rest Periods (Lab. Code § 226.7);
3. Unpaid Minimum & Overtime Wages (Lab. Code §§ 1194, 1194.2, 1197);
4. Failure to Indemnify (Lab. Code § 2802);
5. Waiting Time Penalties (Lab. Code § 203);
6. Wage Statement Penalties (Lab. Code § 226); and
7. Civil Penalties (Lab. Code § 2698 *et seq.*

JURY TRIAL DEMANDED

Plaintiff Lyle Sinclair ("Plaintiff"), on behalf of himself and all others similarly situated, and as an aggrieved employee under the Labor Code Private Attorneys General Act of 2004, complains and alleges as follows:

INTRODUCTION

1. This is a class and representative private attorney general action against Defendants Sundown Entertainment Group, Inc., and Does 1–50, inclusive (collectively, "Defendants") for violations of the Labor Code, Industrial Welfare Commission Order 5-2001 (the "Wage Order"), and the Business and Professions Code. As set forth herein, Defendants have maintained illegal policies and/or practices with respect to the provision of meal and rest periods, payments of minimum and overtime wages, and employee expense reimbursements. As a result, Defendants are liable to Plaintiff and similarly situated employees for earned and unpaid minimum, overtime, and premium wages, unreimbursed expenses, statutory penalties, civil penalties, and other related remedies.

JURISDICTION AND VENUE

2. This Court has subject matter jurisdiction to hear this case in that the amount in controversy in this case, exclusive of costs and attorneys' fees, exceeds $35,000.

3. Venue is proper in Riverside County under Code of Civil Procedure §§ 395(a) and 395.5 because the events giving rise to liability in this action arose in Riverside County in that at least some of the transactions that are the subject matter of this Complaint occurred therein and/or because each defendant either is found, maintains offices, transacts business, and/or has an agent therein.

THE PARTIES

4. Plaintiff incorporates each of the preceding paragraphs of this Complaint by reference as if fully set forth herein.

5. Plaintiff Lyle Sinclair is an individual who, at relevant times, was employed by Defendants in Riverside County, California on an hourly basis as a full-time server during the period from around October 2022 until he was discharged on or around December 18, 2023.

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6. Plaintiff is informed and believes and thereon alleges that, at all relevant times, each of the Defendants has been a “person” within the meaning of Labor Code § 18.

7. Defendant Sundown Entertainment Group, Inc. is a California corporation with its principal address in Palm Springs, Riverside County, California.

8. Plaintiff is informed and believes and thereon alleges that Defendants Sundown Entertainment Group, Inc., and/or one or more of Does 1–50, inclusive, has been her “employer” and/or “joint employer” who has violated the Labor Code within the meaning of all pertinent statutory and regulatory provisions, including Labor Code § 558.1.

9. Plaintiff is ignorant of the true names, capacities, relationships, and extent of participation in the conduct alleged herein, of the defendants sued as Does 1–50, inclusive, but is informed and believes and thereon alleges that said defendants are legally responsible for the wrongful conduct alleged herein and therefore sues these defendants by such fictitious names.

10. Plaintiff will amend this Complaint to allege the true names and capacities of the Doe defendants when ascertained.

11. Plaintiff is informed and believes and thereon alleges that each of the Defendants has acted in all respects pertinent to this action as the agent or employee of the other Defendants, carried out a joint scheme, business plan, or policy in all respects hereto, and therefore the acts of each of the Defendants are legally attributable to the other Defendants.

12. Plaintiff is informed and believes and thereon alleges that, at all relevant times herein, except as otherwise indicated, Defendants have been the agents, employees and/or servants, masters or employers of the remaining Defendants, and in doing the things hereinafter alleged, have been acting within the course and scope of such agency or employment, and with the approval and ratification of each of the other Defendants.

13. Plaintiff is informed and believes and thereon alleges that, at all relevant times, and except as otherwise indicated, each and every one of the acts and omissions alleged herein were performed by, and/or attributable to, all Defendants, each acting as agents and/or employees, and/or under the direction and control of each of the other Defendants, and that said acts and failures to act have been within the course and scope of said agency, employment, and/or direction

and control.

14. Plaintiff is informed and believes and thereon alleges that, at all relevant times, in perpetrating the acts and omissions alleged herein, Defendants, and each of them, acted pursuant to and in furtherance of policies and practices that violate the Unfair Competition Law in the Business and Professions Code and provisions of the Labor Code and the Wage Order.

CLASS ACTION ALLEGATIONS

15. Plaintiff incorporates each of the preceding paragraphs of this Complaint by reference as if fully set forth herein.

16. Plaintiff brings this action on behalf of himself and the following class and subclasses pursuant to Code of Civil Procedure § 382:

A. **Plaintiff Class:** All hourly or non-exempt employees of Defendants in California during the period beginning four years before the filing of this action and ending when final judgment is entered.

B. **Former Employee Subclass**: All **Plaintiff Class** members who voluntarily or involuntarily separated from their employment with Defendants during the period beginning three years before the filing of this action and ending when final judgment is entered.

C. **Penalties Subclass:** All **Plaintiff Class** members who have been employed by Defendants during the period beginning one year before the filing of this action and ending when final judgment is entered.

17. **Reservation of Rights:** Pursuant to Rule of Court 3.765(b), Plaintiff reserves the right to amend or modify the class definitions with greater specificity, by further division into subclasses, and/or by limitation to particular issues. In addition, Plaintiff reserves the right to pursue his cause of action for civil penalties under the Labor Code Private Attorneys General Act of 2004 in a representative capacity without complying with Code of Civil Procedure § 382.

18. **Numerosity:** Class members are so numerous that the individual joinder of each class member is impractical. While Plaintiff does not currently know the exact number of class members, he is informed and believes and thereon alleges that the actual number exceeds the

minimum number required for numerosity purposes under Code of Civil Procedure § 382.

19. **Predominant Common Questions:** Common questions of law and fact exist as to all class members and predominate over any questions that only affect individual class members. These questions include, but are not limited to:

A. Whether Defendants have failed to adopt, implement, or otherwise enforce policies authorizing **Plaintiff Class** members to take all required meal and rest periods?

B. Whether Defendants, as a matter of policy or practice, have failed to implement mechanisms for paying premium wages to **Plaintiff Class** members when a meal or rest period violation occurs?

C. Whether Defendants lack a mechanism for paying premium wages when **Plaintiff Class** members on occasions when a timely and otherwise compliant meal or rest period is not provided?

D. Whether Defendants have a policy or practice of requiring **Plaintiff Class** members to participate in pre-shift meetings during unpaid time?

E. Whether Defendants have a policy or practice of paying **Plaintiff Class** members at straight time wage rates for some or all of the overtime hours they work?

F. Whether Defendants have willfully failed to pay earned and unpaid wages to **Former Employee Subclass** members within the times set forth in Labor Code §§ 201-202 as a result of failing to pay them minimum, overtime, and/or premium wages?

G. Whether Defendants failures to pay minimum, overtime, and/or premium wages to **Former Employee Subclass** members have been willful so as to render them liable for waiting time penalties under Labor Code § 203?

H. Whether Defendants are liable to **Penalties Subclass** members for statutory penalties under Labor Code § 226(e)?

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20. **<u>Typicality</u>:** Plaintiff's claims are typical of class members' claims in that Defendants have policies and practices that violate the Labor Code, Wage Order, and Business and Professions Code as alleged herein that enable her to seek the same relief as they could seek under the same theories of recovery and to which Defendants may attempt to assert the same affirmative defenses.

21. **<u>Adequacy of Representation</u>:** Plaintiff will fairly and adequately represent and protect the interests of class members in that he has no interests that are adverse to theirs and is represented by counsel experienced in employment and wage and hour class action litigation.

22. **<u>Superiority</u>:** A class action is superior to other available means for fair and efficient adjudication of class members' claims and offers significant benefits to the parties and the court. A class action will allow a number of similarly situated persons to simultaneously and efficiently prosecute their common claims in a single forum without the unnecessary duplication of effort and expense that numerous individual actions would entail. The monetary amounts due to many class members are likely to be relatively small, thus making it difficult, if not impossible, for individual class members to seek and obtain relief. Moreover, a class action will serve important public interests by enabling the non-waivable statutory rights of class members to be effectively asserted, and fundamental public policies to be vindicated, in one proceeding. A class action will also provide a means for vindicating the rights of current employees who are less likely to come forward to assert those rights based on fears of employer reprisal. Finally, a class action will prevent the potential for inconsistent or contradictory judgments inherent in individual litigation and address the problems inherent in random and fragmentary enforcement.

<u>FIRST CAUSE OF ACTION</u>

UNFAIR COMPETITION

(Bus. & Prof. Code § 17200 *et seq.*)

(By Plaintiff and the Plaintiff Class)

23. Plaintiff incorporates each of the preceding paragraphs of this Complaint by reference as if fully set forth herein.

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24. Business and Professions Code § 17200 defines "unfair competition" to include any unlawful, unfair, and/or fraudulent business act or practice.

25. Business and Professions Code §§ 17203-17204 allow a person who has lost money or property as a result of unfair competition to bring a class action in accordance with Code of Civil Procedure § 382 to recover money or property that may have been acquired from similarly situated persons by means of unfair competition.

26. At all relevant times, Defendants have employed Plaintiff and **Plaintiff Class** members as non-exempt employees in the public housekeeping industry, thus entitling them to the full benefits and protections of the Labor Code and the Wage Order.

27. Collectively, Labor Code §§ 226.7, 512, and 1198, and Sections 7 and 11 of the Wage Order require employers to provide a first meal period of at least thirty minutes to non-exempt employees who work shifts of at least five hours after no more than five hours of work, and to pay premium wages when required meal periods are not provided. As relevant here, absent valid on-duty meal period agreements, employers must maintain records of meal period start and stop times, completely relieve their non-exempt employees of duty, relinquish control over them, and permit them to come and go as they please during the meal period to discharge the duty to provide meal periods.

28. Collectively, Labor Code §§ 226.7 and 1198, and Section 12 of the Wage Order require employers to authorize and permit net rest periods of at least ten minutes for each four-hour work period, or major fraction thereof, to make good faith efforts to provide said rest periods during the middle of each work period, and to pay premium wages when required rest periods are not provided.

29. Collectively, Labor Code §§ 226(a), 510, 1174, 1194, 1197, and 1198, and Sections 3, 4, and 7 of the Wage Order require an employer to pay a non-exempt employee no less than minimum wage for each hour worked (see *Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314), no less than one and one-half times the employee's regular rate of pay for all hours worked in excess of 8 hours in one workday, in excess of 40 hours in one workweek, and for the first 8 hours worked on a seventh consecutive workday, and at no less than twice the

employee's regular rate of pay for all hours worked in excess of 12 hours in a workday and/or in excess of 8 hours on a seventh consecutive workday, and to maintain accurate records of all hours worked by the employee.

30. Labor Code § 2802(a) requires an employer to "indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer."

31. Section 5.8 of the Wage Order:

> No employer shall make any deduction from the wage or require any reimbursement from an employee for any cash shortage, breakage, or loss of equipment, unless it can be shown that the shortage, breakage, or loss is caused by a dishonest or willful act, or by the gross negligence of the employee.

32. Plaintiff is informed and believes and thereon alleges that, all relevant times, Defendants have violated the above-referenced laws as matters of policy and/or practice by, among other things:

A. Failing to provide Plaintiff and **Plaintiff Class** members with timely meal periods of at least thirty minutes when they worked shifts of five or more hours by not consistently scheduling timely meal periods, not providing complete relief from duty during purported meal periods, not keeping accurate records of meal period start and stop times, and/or by employing them under conditions that did not reasonably permit them to take timely and duty-free meal periods;

B. Not paying Plaintiff and **Plaintiff Class** members premium wages on workdays of five or more hours when they have not been provided with one or more required meal periods;

C. Failing to provide Plaintiff and **Plaintiff Class** members with paid rest periods when they worked shifts of 3.5 or more hours by not maintaining compliant rest period policies, not scheduling rest periods, not providing relief from duty for rest periods, not making good faith efforts to provide rest periods in the middle of each four-hour work period, and/or by employing them under conditions that did not reasonably permit them to take timely and duty-free rest periods;

D. Not paying Plaintiff and **Plaintiff Class** members premium wages on workdays of three and one-half or more hours when they have not been provided with one or more rest periods; and

E. Failing to pay Plaintiff and **Plaintiff Class** members at legal minimum wage and overtime rates for all recorded time worked as a result of paying them at straight time and overtime wage rates based on regular rates of pay below the applicable statewide minimum wage;

F. Failing to pay Plaintiff and **Plaintiff Class** members at least the applicable minimum wage for all time worked as a result of failing to indemnify them for ordinary business losses not attributable to any employee gross negligence or wrongdoing, such as customers sending back orders, and instead required them to reimburse Defendants for the lost revenue from their gratuities, which failure caused their wages to drop below the applicable legal minimum wage;

G. Failing to pay Plaintiff and **Plaintiff Class** members at the applicable overtime wage rates for all overtime worked as a result of paying them at straight time wage rates for overtime work;

H. Failing to pay Plaintiff and **Plaintiff Class** members at the legal minimum or applicable overtime wage rates for all time worked as a result of requiring them to perform restaurant closing duties such as cleaning after clocking out from their shifts;

I. Failing to pay Plaintiff and **Plaintiff Class** members at the legal minimum or applicable overtime wage rates for all time worked as a result of requiring them to attend shift meetings on their days off;

J. Failing to reimburse Plaintiff and **Plaintiff Class** members for expenses incurred in using personal telephones for work purposes; and

K. Failing to indemnify Plaintiff and **Plaintiff Class** members for ordinary business losses not attributable to any employee gross negligence or wrongdoing, such as customers sending back orders, and instead required them to reimburse Defendants for the lost revenue from their gratuities.

33. As a result of the violations of the Labor Code and the Wage Order set forth above, Plaintiff has lost money or property by means of unfair competition and Defendants have, or may have, acquired money or property from **Plaintiff Class** members by means of unfair competition.

34. Pursuant to Business and Professions Code §§ 17203-17204, Plaintiff, on behalf of himself and the **Plaintiff Class**, seeks an order awarding restitution of all earned and unpaid wages that Defendants acquired, or may have acquired, by means of unfair competition in amounts subject to proof.

35. Pursuant to Code of Civil Procedure § 1021.5, the substantial benefit doctrine, and/or the common fund doctrine, Plaintiff, on behalf of himself and the **Plaintiff Class**, seeks reasonable costs and attorneys' fees in amounts subject to proof.

<u>SECOND CAUSE OF ACTION</u>

NON-PROVISION OF MEAL AND REST PERIODS

(Lab. Code § 226.7)

(By Plaintiff and the Plaintiff Class)

36. Plaintiff incorporates each of the preceding paragraphs of this Complaint by reference as if fully set forth herein.

37. Pursuant to Labor Code § 226.7, Plaintiff seeks to recover premium wages on behalf of himself and **Plaintiff Class** members in amounts subject to proof.

38. Pursuant to Code of Civil Procedure § 1021.5 and Labor Code §§ 218.5 and 218.6, the substantial benefit doctrine, and/or the common fund doctrine, Plaintiff, on behalf of himself and the **Plaintiff Class**, seeks awards of reasonable attorneys' fees and costs in amounts subject to proof.

<u>THIRD CAUSE OF ACTION</u>

UNPAID MINIMUM & OVERTIME WAGES

(Lab. Code §§ 1194, 1194.2, 1197)

(By Plaintiff and the Plaintiff Class)

39. Plaintiff incorporates each of the preceding paragraphs of this Complaint by reference as if fully set forth herein.

40. Pursuant to Labor Code § 1194 and 1194.2, Plaintiff, on behalf of himself and **Plaintiff Class** members, seeks unpaid minimum and overtime wages, liquidated damages in an amount equal to the amounts of unpaid minimum wages, interest thereon, and awards of reasonable costs and attorneys' fees, all in amounts subject to proof.

<u>FOURTH CAUSE OF ACTION</u>

FAILURE TO INDEMNIFY

(Lab. Code § 2802)

(By Plaintiff and the Plaintiff Class)

41. Plaintiff incorporates each of the preceding paragraphs of this Complaint by reference as if fully set forth herein.

42. Pursuant to Labor Code § 2802, Plaintiff, on behalf of himself and the **Plaintiff Class**, seeks to recover unreimbursed expenses, interest thereon, costs of suit, and attorneys' fees in amounts subject to proof.

<u>FIFTH CAUSE OF ACTION</u>

WAITING TIME PENALTIES

(Lab. Code § 203)

(By Plaintiff and the Former Employee Subclass)

43. Plaintiff incorporates each of the preceding paragraphs of this Complaint by reference as if fully set forth herein.

44. Labor Code § 201 makes all of the earned and unpaid wages of a discharged employee immediately due and payable at the time of discharge.

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45. Labor Code § 202 makes all of the earned and unpaid wages of an employee who quits after giving less than 72 hours previous notice within 72 hours of quitting.

46. Labor Code § 202 also makes all of the earned and unpaid wages of an employee who quits after giving at least 72 hours previous notice at the time of quitting.

47. Labor Code § 203 entitles an employee to an additional day of wages as a penalty for each day that wages remain unpaid, for up to a maximum of thirty days, where the employer willfully fails to pay timely earned wages in compliance with § 201 or § 202.

48. Defendants failed to pay Plaintiff all of his earned and unpaid wages within the times set forth in Labor Code § 201 as a result of failing to timely pay him all of his earned and unpaid minimum, overtime, and premium wages.

49. Plaintiff is informed and believes and thereon alleges that, at all relevant times, Defendants have failed to timely pay **Former Employee Subclass** all of their earned and unpaid wages in violation of Labor Code § 201 or § 202 as a result of failing to timely pay them all of their earned and unpaid minimum, overtime, and/or premium wages.

50. Plaintiff is informed and believes and thereon alleges that, at all relevant times, Defendants' failures to timely pay him and **Former Employee Subclass** members have been willful in that, at all relevant times, Defendants have had the ability to comply with the above-referenced laws concerning payments of minimum, overtime, and premium wages, and the timing of wage payments, but have deliberately maintained policies and practices in violation of the requirements of the Labor Code and the Wage Order.

51. Pursuant to Labor Code § 203, Plaintiff, on behalf of himself and the **Former Employee Subclass**, seeks up to a maximum of thirty days of waiting time penalties for each subclass member in amounts subject to proof.

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SIXTH CAUSE OF ACTION

WAGE STATEMENT PENALTIES

(Lab. Code § 226)

(By Plaintiff and the Penalties Subclass)

52. Plaintiff incorporates each of the preceding paragraphs of this Complaint by reference as if fully set forth herein.

53. Pursuant to Labor Code § 226(a), Defendants have been obliged to provide Plaintiff and **Penalties Subclass** members, either semimonthly or at the time of each payment of wages, accurate itemized written wage statements showing, among other things, each applicable wage rate, the number of hours worked at each applicable wage rate, and amounts of gross and net wages earned.

54. Defendants have failed to provide Plaintiff and **Penalties Subclass** members with accurate written wage statements by providing them with wage statements that fail to accurately reflect, among other things, all of their applicable wage rates (by paying them at a wage rate below the state minimum wage and/or by not paying them overtime and/or premium wages), their number of hours worked at each applicable wage rate (by not paying them meal and rest period premiums, by paying them at straight time wage rates for overtime work, and by requiring them to perform closing duties while off the clock), and/or amounts of gross and net wages earned (by not paying them minimum, overtime, and/or meal and rest period premium wages as set forth herein).

55. Plaintiff is informed and believes and thereon alleges that, at all relevant times, Defendants' failures to provide him and **Penalties Subclass** members with accurate wage statements have been knowing and intentional, in that Defendants have, at all relevant times, had the ability to provide them with accurate wage statements but, instead, have deliberately maintained unlawful wage and hour policies with respect to timekeeping, minimum wages, overtime, and meal and rest periods so as to result in inaccurate wage statements.

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56. Plaintiff is informed and believes and thereon alleges that, at all relevant times, he and **Penalties Subclass** members have suffered injuries due to Defendants' failures to provide them with accurate written wage statements in that, among other things, their legal rights to receive accurate wage statements have been violated, they have been misled about the amounts of wages they have earned, they have been prevented from immediately challenging allegedly unlawful pay practices, have needed to reconstruct time and pay records and perform mathematical computations to determine the amounts of wages they have earned, have been unable to verify if they have been properly paid based on the information provided on their written wage statements, and/or have had inaccurate information about their wages and deductions submitted to government agencies.

57. Pursuant to Labor Code § 226(e), Plaintiff, on behalf of himself and the **Penalties Subclass**, seeks to recover the greater of actual damages or $50 for the initial pay period in which a § 226(a) violation occurred, the greater of actual damages or $100 for each violation of § 226(a) in a subsequent pay period, up to the greater of actual damages or an aggregate $4,000 penalty per subclass member, as well as awards of reasonable attorneys' fees and costs, all in amounts subject to proof.

<u>SEVENTH CAUSE OF ACTION</u>

CIVIL PENALTIES

(Lab. Code § 2698 *et seq.*)

(By Plaintiff)

58. Plaintiff incorporates each of the preceding paragraphs of this Complaint by reference as if fully set forth herein.

59. Plaintiff has complied with the procedures for bringing suit specified in Labor Code § 2699.3. By letter dated December 9, 2024, Plaintiff filed written notice online with the Labor and Workforce Development Agency ("LWDA") and gave written notice by certified mail to Defendants of the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support the alleged violations. Plaintiff accompanied his LWDA notice with a fee in the amount of $75.00. The LWDA has failed to take action in response

within 65 calendar days of the date of Plaintiff's notice, but Plaintiff anticipates that the LWDA will provide written notice to them that it does not intend to investigate these allegations. A true and correct copy of Plaintiff's letter to the LWDA and certified mail delivery confirmation are collectively attached hereto as Exhibit A.

60. The "Aggrieved Employees" are all current and former employees of Defendants against whom one or more of the Labor Code violations set forth herein has been committed within the applicable statute of limitations, including the period between the filing of this lawsuit and the entry of final judgment.

61. Labor Code § 204 states,

> (a) All wages, other than those mentioned in Section 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. …
>
> (b)(1) Notwithstanding any other provision of this section, all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period.
>
> (2) An employer is in compliance with the requirements of subdivision (a) of Section 226 relating to total hours worked by the employee, if hours worked in excess of the normal work period during the current pay period are itemized as corrections on the paystub for the next regular pay period. Any corrections set out in a subsequently issued paystub shall state the inclusive dates of the pay period for which the employer is correcting its initial report of hours worked.
>
> (c) However, when employees are covered by a collective bargaining agreement that provides different pay arrangements, those arrangements shall apply to the covered employees.
>
> (d) The requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.

62. Defendants paid wages to Plaintiff and Aggrieved Employees on regular intervals.

63. Defendants failed to pay Plaintiff on such intervals for all wages earned and all hours worked as a result of not timely paying them minimum, overtime, and premium wages within the times set forth in Labor Code § 204.

64. Plaintiff is informed and believe and thereon alleges that Defendants failed to pay Aggrieved Employees on such intervals for all wages earned as a result of not timely paying them minimum, overtime, and/or premium wages within the times set forth in Labor Code § 204.

65. During the applicable time period, Defendants violated Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1194, 1197, 1198, and 2802.

66. Labor Code §§ 2699(a) and (g) authorize an Aggrieved Employee, on behalf of himself and other current or former employees, to bring a civil action to recover civil penalties pursuant to the procedures specified in Labor Code § 2699.3.

67. Pursuant to Labor Code §§ 2699(a) and (f), Plaintiff and Aggrieved Employees are entitled to recover civil penalties for each of the Defendants' violations of Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1194, 1197, 1198, and 2802 during the applicable limitations period in the following amounts:

A. For violations of Labor Code §§ 201, 202, 203, 226.7, 1194, 1198, and 2802, one hundred dollars ($100.00) for each Aggrieved Employee per pay period. The civil penalty is two hundred dollars ($200) for each aggrieved employee per pay period if either of the following are met: (i) Within the five years preceding the alleged violation, the agency or any court issued a finding or determination to the employer that its policy or practice giving rise to the violation was unlawful or (ii) The court determines that the employer's conduct giving rise to the violation was malicious, fraudulent, or oppressive (penalty amounts established by Labor Code § 2699(f)(2));

B. For violations of Labor Code § 204, one hundred dollars ($100.00) for each Aggrieved Employee for each initial violation and two hundred dollars ($200.00) for each Aggrieved Employee for each subsequent, willful or intentional violation (penalty amounts established by Labor Code § 210);

C. For violations of Labor Code § 226(a), twenty-five dollars ($25) for each aggrieved employee per pay period for violation of paragraphs (1) to (7), inclusive, or paragraph (9) of subdivision (a) of Section 226 if the employee could promptly and easily determine from the wage statement alone the accurate information specified by subdivision (a) of Section 226. If the alleged violation is a violation of paragraph (8) of subdivision (a) of Section 226, the civil penalty applicable under this part for the violation is twenty-five dollars ($25) for each aggrieved employee per pay period if the employee would not be confused or misled about the correct identity of their employer or, if their employer is a farm labor contractor, the legal entity that secured the services of that employer (penalty amounts established by Labor Code § § 2699(f)(2));

D. For violations of Labor Code §§ 510 and 512, fifty dollars ($50.00) for each Aggrieved Employee for initial violation and one hundred dollars ($100.00) for each Aggrieved Employee for each subsequent violation, per pay period (penalty amounts established by Labor Code § 558);

E. For violations of Labor Code § 1197, one hundred dollars ($100.00) for each Aggrieved Employee for each initial and intentional violation and two hundred fifty dollars ($250.00) for each Aggrieved Employee for each subsequent violation, per pay period (regardless of whether the initial violations were intentionally committed) (penalty amounts established by Labor Code § 1197.1);

68. Pursuant to Labor Code § 2699(g), Plaintiff and Aggrieved Employees are entitled to an award of civil penalties, reasonable attorney's fees and costs in connection with their claims for civil penalties.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of himself and all others similarly situated, and as an aggrieved employee under the Labor Code Private Attorneys General Act of 2004, prays for relief and judgment against Defendants as follows:

A. An order that the action be certified as a class action;

B. An order that Plaintiff be appointed class representative;

C. An order that counsel for Plaintiff be appointed class counsel;

D. Damages;

E. Restitution;

F. Declaratory relief;

G. Statutory penalties;

H. Civil penalties;

I. Pre-judgment interest;

J. Post-judgment interest;

K. Costs of suit;

L. Reasonable attorney's fees; and

M. Such other relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

WHEREFORE, Plaintiff, on behalf of himself and all others similarly situated, hereby demands a trial by jury on all issues so triable.

Respectfully submitted,

BENOWITZ LAW CORPORATION
BHATIA LAW FIRM, PC

Dated: February 13, 2025 BY______________________________

LOUIS BENOWITZ
Attorneys for Plaintiff
LYLE SINCLAIR

EXHIBIT A

Benowitz
LAW CORPORATION

Sender's direct line and email:
(818) 839-9610
Louis@BenowitzLaw.com

Sent Via Certified U.S. Mail/ Online Submission

December 9, 2024

Sundown Entertainment Group Inc.
c/o Dan Bunde
330 East Amado Road
Palm Springs, CA 92262

RE: ***Lyle Sinclair / Sundown Entertainment Group Inc.***

To Whom It May Concern:

Pursuant to the Labor Code Private Attorneys General Act of 2004 (Labor Code § 2698 *et seq.*), Mr. Lyle Sinclair ("Sinclair") provides notice on behalf of himself and all other persons currently or formerly employed by Sundown Entertainment Group Inc. (a California corporation) ("Sundown") in California who were employed on an hourly or otherwise non-exempt basis and who experienced one or more of the Labor Code violations alleged herein during the applicable statutory limitations period (the "Aggrieved Employees"). As set forth herein, Sundown violated the rights of Sinclair and the Aggrieved Employees under Labor Code §§ 201, 202, 203, 204, 226(a), 226.7, 510, 512, 1194, 1197, 1198, and 2802.

Sinclair is a former non-exempt employee of Sundown. He worked as a server at the Tropicale location in Palm Springs, California (Riverside County) from approximately October 2022 until he was discharged on or around December 18, 2023.

At all relevant times the entity that comprise Sundown have each been "persons" within the meaning of Labor Code § 18. Sinclair is informed and believes and thereon alleges that, at all relevant times, the entity that comprises Sundown has each been an employer of Sinclair and the Aggrieved Employees within the meaning of Section 2(H) of Industrial Welfare Commission Order No. 5-2001 (the "Wage Order") in that each entity has, either directly or indirectly, or through an agent or any other person, employed or exercised control over the wages, hours, or working conditions of Sinclair and the Aggrieved Employees. At all relevant times, Sinclair and the Aggrieved Employees have been "employees" of Sundown within the meaning of Section 2(F) of the Wage Order and "aggrieved employees" within the meaning of Labor Code § 2699(c).

Failures to Provide Meal and Rest Periods

Under Labor Code § 1198, "The employment of any employee for longer hours than those fixed by the [Wage Order] or under conditions of labor prohibited by the [Wage Order] is unlawful."

Under Section 12 of the Wage Order, an employer must authorize and permit net rest periods of at least ten minutes for each four-hour work period, or major fraction thereof, except for employees whose shifts do not exceed 3.5 hours. Said rest periods must be paid and must be counted as hours worked. Said rest periods also have to be completely duty-free. To comply with these requirements, employers must authorize and permit paid rest periods as follows based on shift length: (1) 3.50 to 6.00 hours – one rest period; (2) 6.01 to 10.00 hours – two rest periods; (3) 10.01 to 14.00 hours – three rest periods; and (4) 14.01 hours to 18.00 hours – four rest periods. In addition, an employee may not waive a rest period unless the employer has already authorized the rest period. Further, the employer must make good faith efforts to provide each rest period in the middle of each four-hour work period insofar as is practicable.

Under Labor Code § 512 and Section 11 of the Wage Order, an employer has a duty to provide its non-exempt employees with first meal periods of no less than thirty minutes after no more than five hours of work when they work shifts of at least five hours, and to provide its non-exempt employees with second meal periods of no less than thirty minutes after no more than ten hours of work when they work shifts of more than ten hours. In the absence of a valid on-duty meal period agreement, or a valid waiver, this duty requires an employer to affirmatively authorize said meal periods, completely relieve its employees of duty, allow them to come and go as they please, and to relinquish control over their activities. In addition, an employee may not waive a meal period unless the employer has already authorized the meal period. Further, Section 7 of the Wage Order requires the employer to keep accurate records of meal period start and stop times.

Under Labor Code § 226.7, and Section 12 of the Wage Order, an employer cannot require an employee to work during a meal or rest period mandated under the Wage Order and must pay premium wages on each workday when the meal or rest period is not provided.

At all relevant times, Sundown violated the rights of Sinclair and the Aggrieved Employees under requirements by, among other things: (1) not scheduling timely and duty-free meal and rest periods; (2) not clearly communicating policies informing employees of their rights to duty-free meal and rest periods; (3) not structuring the work performed in a manner that consistently allows for duty-free meal and rest periods; (4) not providing reasonable opportunities to take timely and duty-free meal and rest periods; (5) not maintaining legally required records of meal period start and stop times; and (6) not paying premium wages when a required meal or rest period is not provided. Sinclair has personally been denied meal and rest periods and been denied premium pay within the one-year period before the date of this letter. As a result of these policies and practices, Sinclair and the Aggrieved Employees routinely worked without required meal and rest periods and were denied premium wages in lieu thereof.

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Failures to Pay Minimum & Overtime Wages

Under Labor Code § 1194, any purported agreement to pay an employee less than the overtime wages required by law is unlawful and invalid.

Labor Code § 1197 states,

> The minimum wage for employees fixed by the commission or by any applicable state or local law, is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful. This section does not change the applicability of local minimum wage laws to any entity.

In relevant part, Labor Code § 510(a) states,

> Eight hours of labor constitutes a day's work. Any 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. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

These same requirements are set forth in Section 3 of the Wage Order.

In conjunction, these provisions of the Labor Code and the Wage Order require employers to pay their non-exempt employees no less than minimum, overtime, or agreed wage rates for each hour worked, and, unlike federal law, prohibit the use of an averaging method to determine whether these obligations have been met. (See *Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 321-324.) This standard applies to all time that the employee is either subject to the control of the employer and/or suffered or permitted to work.

At relevant times, Sundown failed to pay Sinclair at legal overtime rates for recorded overtime. Sinclair is informed and believes and thereon alleges that Sundown consequently denied other Aggrieved Employees overtime wages based on an insufficient regular rate of pay during the applicable limitations period.

At relevant times, Sundown management clocked Sinclair out of its timekeeping system while he was performing restaurant closing duties such as cleaning and other end-of-shift tasks, which resulted in him performing work without being paid for that working time. Sinclair is informed and believes and thereon alleges that Sundown management also clocked other Aggrieved Employees out while performing duties and other end-of-shift tasks as a result of a common policy and/or practice, which resulted in them not being paid at least the minimum wage for that working time. To the extent this working time was straight time, this policy and/or practice denied him and Aggrieved Employees overtime wages in violation of Labor Code §§ 510 and 1198.

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Failures to Provide Accurate Wage Statements and Maintain Required Records

Labor Code § 226(a) states in pertinent part,

> An employer, semimonthly or at the time of each payment of wages, shall furnish to his or her employee, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately if wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except as provided in subdivision (j), (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee and, beginning July 1, 2013, if the employer is a temporary services employer as defined in Section 201.3, the rate of pay and the total hours worked for each temporary services assignment.

At all relevant times, Sundown violated the rights of Sinclair and the Aggrieved Employees under these requirements by providing them with wage statements with at least the following defects: (1) statements that fail to accurately state the amounts of gross and net wages earned as a result of not paying them all earned minimum, overtime, and/or premium wages; (2) statements that fail to accurately state the total hours worked by the employee in the pay period, as a result of requiring them to perform closing duties while off the clock and as a result of not paying them premium wages for meal or rest period violations; (3) statements that fail to accurately list all applicable hourly rates in effect and the corresponding number of hours worked at each rate as a result of not paying minimum, overtime, and/or premium wages as set forth herein.

Failures to Timely Pay Wages

In relevant part, Labor Code § 201(a) states,

> If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.

In relevant part, Labor Code § 202(a) states,

> If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

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In relevant part, Labor Code § 203(a) states,

> If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.

In relevant part, Labor Code § 204 states,

> (a) All wages, other than those mentioned in Section 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. However, salaries of executive, administrative, and professional employees of employers covered by the Fair Labor Standards Act, as set forth pursuant to Section 13(a)(1) of the Fair Labor Standards Act, as amended through March 1, 1969, in Part 541 of Title 29 of the Code of Federal Regulations, as that part now reads or may be amended to read at any time hereafter, may be paid once a month on or before the 26th day of the month during which the labor was performed if the entire month's salaries, including the unearned portion between the date of payment and the last day of the month, are paid at that time.
>
> (b)(1) Notwithstanding any other provision of this section, all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period

Sundown violated the rights of Sinclair and the Aggrieved Employees in at least the following ways under these statutes: (1) by failing to timely pay earned minimum, overtime, and/or premium wages as set forth herein during employment in violation of Labor Code § 204; (2) by failing to timely pay all earned minimum, overtime, and/or premium wages to separated employees as set forth herein in accordance with the requirements of Labor Code §§ 201-203 to Sinclair and other separated Aggrieved Employees; and (3) by failing to tender final paychecks to Sinclair and separated Aggrieved Employees within the time constraints set forth in Labor Code §§ 201-202 without regard to whether or not said final paychecks were complete.

Unreimbursed Expenses

California law, specifically Labor Code § 2802(a) requires an employer to indemnify an employee for all necessary expenditures or losses incurred as a direct consequence of discharging his or her duties or obeying the directions of his or her employer.

Labor Code § 1198 makes it unlawful to employ a person under conditions that violate the Wage Order.

Section 9 of the Wage Order requires employers to provide and maintain tools and equipment necessary to the performance of the job for employees who are not paid at least two (2) times the minimum wage under the Wage Order.

Here, Sundown violated the rights of Sinclair and the Aggrieved Employees as follows under these requirements: (1) by requiring employees to pay ordinary business losses not attributable to any employee gross negligence or wrongdoing without reimbursement; and (2) not reimbursing them for use of their personal telephones in connection with their work duties. To the extent that that Sinclair and Aggrieved Employees were paid at the legal minimum wage, this practice caused their wages to fall below the legal minimum wage for each pay period in which any such failure to indemnify occurred.

Conclusion

As indicated above, this letter constitutes the notice required under Labor Code § 2699.3. Insofar as it is directed toward Sundown, please be advised that Sinclair intends to seek attorneys' fees and costs, in addition to the maximum civil penalties allowed by the Labor Code, in a civil action if the LWDA declines to investigate this matter.

Please do not hesitate to contact me if you have any questions.

Sincerely,

Louis Benowitz
cc: Labor and Workforce Development Agency (via online submission)

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FAQs

PROOF OF SERVICE

LYLE SINCLAIR VS. SUNDOWN ENTERTAINMENT GROUP, INC., ET AL.

Case No. CVRI2406741

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES:

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and am not a party to this action. My business address is 3620 Pacific Coast Highway, Suite 200, Torrance, CA 90505.

On June 23, 2025, I caused the documents described as:

FIRST AMENDED COMPLAINT FOR DAMAGES

to be served on the interested parties in this action by placing a true copy thereof enclosed in a sealed envelope(s) addressed as stated on the attached mailing list as follows:

Alexis Law Firm
Drew L. Alexis (SBN 177692)
Wendy K. Shiff (SBN 174616)
100 W. Broadway, Suite 250
Long Beach, CA 90802
Telephone: (562) 544-9809
E-mail: dalexis@alexislawfirm.com
wshiff@alexislawfirm.com

Attorneys for Defendant SUNDOWN ENTERTAINMENT GROUP, INC.

___BY MAIL: I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business.

_X__BY ELECTRONIC SERVICE: The email service of the documents was transmitted to the recipient and no error was responded. I caused the computer to print a record of the transmission.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on June 23, 2025 at Torrance, California.

Sunjay Bhatia

Suny Bhatia