

FILED

FEB 29 2016

**Superior Court of California
County of Tuolumne**
By: *M. Shelton* Clerk

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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF TUOLUMNE - UNLIMITED JURISDICTION

10 MARK K. HIGGINS,

11 Plaintiff,

12 vs.

13 SIERRA PARK WATER COMPANY, INC.,
14 a California Corporation; ODD FELLOWS
15 SIERRA RECREATION ASSOCIATION, a
16 California Corporation; and DOES 1 through
17 20, inclusive,

18 Defendants.

CASE NO.: CV59961

COMPLAINT FOR DAMAGES FOR:

- (1) Disability Discrimination;
- (2) Failure to Accommodate Disability;
- (3) Failure to Pay Minimum Wages;
- (4) Failure to Pay Overtime Wages;
- (5) Failure to Pay Regular Wages;
- (6) Failure to Reimburse;
- (7) Failure to Pay Wages Due at Separation;
- (8) Failure to Provide Rest Periods;
- (9) Failure to Provide Meal Periods;
- (10) Unfair Competition.

JURY TRIAL DEMANDED

1 Plaintiff MARK K. HIGGINS complains against Defendants, and each of them, demands a
2 trial by jury of all issues and for all causes of action for which he is entitled, and hereby alleges as
3 follows:

4 **INTRODUCTION**

5 1. This is an action for damages due to (1) Disability Discrimination; (2) Failure to
6 Accommodate Disability; (3) Failure to Pay Minimum Wages; (4) Failure to Pay Overtime Wages;
7 (5) Failure to Pay Regular Wages; (6) Failure to Reimburse; (7) Failure to Pay Wages Due at
8 Separation; (8) Failure to Provide Rest Periods; (9) Failure to Provide Meal Periods; and (10) Unfair
9 Competition.

10 2. This action arises out of events involving Plaintiff MARK K. HIGGINS, JR. and
11 Defendants SIERRA PARK WATER COMPANY, INC., a California Corporation; ODD
12 FELLOWS SIERRA RECREATION ASSOCIATION, a California Corporation; and DOES 1
13 through 20, inclusive.

14 **PARTIES**

15 3. Plaintiff MARK K. HIGGINS ("Plaintiff" or "Mr. HIGGINS") is a resident of the
16 State of California and the County of Los Angeles. Mr. HIGGINS was employed as the caretaker for
17 Defendants in Long Barn, Tuolumne County, California from approximately May 1, 2010 to August
18 4, 2014.

19 4. Defendant SIERRA PARK WATER COMPANY, INC., a California Corporation
20 ("SIERRA PARK") is an entity incorporated in the State of California. Defendant SIERRA PARK is
21 located and has its principal place of business in Long Barn, California, which lies within Tuolumne
22 County.

23 5. Defendant ODD FELLOWS SIERRA RECREATION ASSOCIATION, a California
24 Corporation ("ODD FELLOWS") is an entity incorporated in the State of California. Defendant
25 ODD FELLOWS is located and has its principal place of business in Long Barn, California, which
26 lies within Tuolumne County.

27 6. Plaintiff is unaware of the identity of those Defendants sued as Does 1 through 20,
28 inclusive, and they are thus sued under those fictitious names. Plaintiff is informed and believes, and

1 thereon alleges, that he is entitled to the relief requested in this Complaint from these Doe
2 Defendants and will seek leave of this Court to amend this Complaint to reflect these Defendants'
3 true names and identities when ascertained.

4 7. Plaintiff is informed and believes and thereupon alleges that SIERRA PARK and
5 ODD FELLOWS, and each of them, are subject to such a degree of common ownership, control and
6 management that, in doing the things hereinafter alleged, each corporation was the agent of each
7 other corporation and each is liable to Plaintiff under the law for the damages sustained by Plaintiff.

8 8. Plaintiff is informed and believes and thereupon alleges that subsequent to March 25,
9 2013, SIERRA PARK and ODD FELLOWS, and each of them, were thereafter his employers under
10 California law, that each of the defendants herein acted as joint employer of Plaintiff and carried out
11 acts consistent with the existence of an employer-employee relationship with plaintiff.

12 9. Plaintiff is informed and believes and thereon alleges that each of the Defendants
13 named herein was the agent, employee or representative of each of the remaining Defendants and in
14 doing the things mentioned herein, was acting in the course and scope of such agency and
15 employment. Plaintiff further alleges that in doing the acts or omissions complained of herein,
16 Defendants, and each of them, acted or omitted to act in concert as agents of and/or on behalf of the
17 other Defendants named herein.

18 **JURISDICTION**

19 10. This Court has personal jurisdiction over Defendants, and each of them, pursuant to
20 Article 6, § 10 of the California Constitution. The amount in controversy in this action exceeds the
21 minimal jurisdictional dollar amount for this Court of unlimited jurisdiction.

22 11. Venue is proper in this Court pursuant to Code Civ. Proc. § 395 because Defendants'
23 location and principal place of business is located in Long Barn, California, which lies within
24 Tuolumne County. Further, Defendants employed and carried out the acts alleged herein in Long
25 Barn, California, which lies within Tuolumne County.

26 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

27 12. Mr. HIGGINS exhausted his administrative remedies by timely filing a Charge of
28 Discrimination with and receiving a Right to Sue Notice from the California Department of Fair
Employment & Housing ("DFEH").

1 **INCORPORATION OF ALLEGATIONS**

2 13. All of the allegations in this Complaint are hereby incorporated into each cause of
3 action to the extent necessary or useful to clarify and complete each stated cause of action, to avoid
4 repetition and redundancy

5 **FACTS COMMON TO MORE THAN ONE CAUSE OF ACTION**

6 14. Odd Fellows Sierra Park is a 400 acre gated private community located in Long Barn,
7 in Tuolumne County, California.

8 15. In 2010, the upkeep and maintenance of Odd Fellows Sierra Park was managed by
9 Defendant ODD FELLOWS.

10 16. Mr. HIGGINS was hired by Defendant ODD FELLOWS as a caretaker on a part-time
11 basis in May 1, 2010.

12 17. On May 15, 2010, Defendant ODD FELLOWS promoted Mr. Higgins to the fulltime
13 and caretaker. Mr. Higgins was required by Defendant ODD FELLOWS to reside in the caretakers
14 cabin located within the Odd Fellows Sierra Park as a condition of his employment. Defendant ODD
15 FELLOWS required Mr. HIGGINS to pay rent for the caretaker's cabin throughout his employment
16 with Defendants.

17 18. On March 25, 2013, Defendant SIERRA PARK was formed as a California
18 corporation.

19 19. At some point between the summer of June 2013 and the summer of 2014, Defendant
20 SIERRA PARK adopted some of the management duties of Odd Fellows Sierra Park.

21 20. Between May 1, 2010 and May 26, 2013, Mr. HIGGINS received his paychecks from
22 Defendant ODD FELLOWS. Beginning on May 27, 2013, Mr. HIGGINS received his paychecks
23 from Defendant SIERRA PARK.

24 21. On June 1, 2013, Defendant SIERRA PARK formally offered to Mr. HIGGINS that
25 he continue in his position as caretaker.

26 22. Mr. Higgins was required by Defendant SIERRA PARK to reside in the caretaker's
27 cabin located within the Odd Fellows Sierra Park as a condition of his employment. Defendant
28 SIERRA PARK required Mr. HIGGINS to pay rent for the caretaker's cabin throughout his
employment with Defendants.

1 23. Mr. Higgins remained in this position until August 4, 2014 when he was terminated
2 from his position.

3 24. Throughout his employment with Defendants, Mr. HIGGINS was required to work
4 numerous hours off-the-clock, including on weekends and evenings. Mr. HIGGINS was not
5 permitted to record these hours on his handwritten timecards and was not paid for the hours worked.

6 25. Throughout his employment with Defendants, Mr. HIGGINS was required to remain
7 on call at all times. Mr. HIGGINS was not compensated for the time he spent on-call on evenings
8 and weekends.

9 26. In December 2013, Mr. HIGGINS received surgery for an injury to his thumb. Mr.
10 HIGGINS was released by his doctor to return to work with limited restrictions on December 30,
11 2013.

12 27. Defendants refused to allow Mr. HIGGINS to return to work on December 30, 2013.
13 Defendants refused to consider any reasonable accommodations that would have allowed Mr.
14 HIGGINS to return to work.

15 28. Defendants continued refusing to allow Mr. HIGGINS to return to work until March
16 10, 2014. Mr. HIGGINS returned to work on March 10, 2014 only after all restrictions had been
17 lifted by his doctor.

18 29. Mr. Higgins was placed on medical leave on May 23, 2014 due to conditions suffered
19 as a result of his employment.

20 30. On August 4, 2014, while on medical leave due to conditions suffered from his
21 employment, he was terminated by his employer.

22 **FIRST CAUSE OF ACTION**
23 **DISABILITY DISCRIMINATION**
 (Gov. Code § 12940(a))
 (All Defendants)

24 31. Pursuant to the California Fair Employment and Housing Act ("FEHA") (Cal. Gov.
25 Code § 12900 *et seq.*) and its implementing regulations, it is unlawful for an employer to
26 discriminate against an employee in compensation or in the terms, conditions, or privileges of
27 employment on the basis of the employee's physical disability (whether actual, regarded or treated
28 as, and/or record, history, or permanence of impairment).

1 32. As alleged herein and in violation of California Government Code § 12940(a),
2 Defendants, and each of them, discriminated against Mr. HIGGINS on the basis of his physical
3 disability.

4 33. As a direct, foreseeable and proximate result of Defendants' discrimination, Mr.
5 HIGGINS has suffered and continues to suffer actual damages including, but not limited to, loss of
6 earnings and future earning capacity, attorneys' fees, costs of suit and other pecuniary loss not
7 presently ascertained.

8 34. As a further direct and legal result of the acts and conduct of Defendants, and each of
9 them, as alleged herein, Mr. HIGGINS has been caused to and did suffer and continues to suffer
10 severe emotional and mental distress, anguish, humiliation, embarrassment, fright, shock, pain,
11 discomfort and anxiety. Though the exact nature, extent, and duration of said injuries are presently
12 unknown to him, Mr. HIGGINS is informed and believes and thereon alleges that some if not all of
13 the injuries are reasonably certain to be permanent in character.

14 35. Mr. HIGGINS is informed and believes, and thereon alleges, that the Defendants, and
15 each of them, by engaging in the acts alleged herein and/or in authorizing and/or ratifying such acts,
16 engaged in willful, malicious, intentional, oppressive and despicable conduct, and acted with willful
17 and conscious disregard of the rights, welfare and safety of Mr. HIGGINS, thereby justifying the
18 award of punitive and exemplary damages in an amount to be determined at trial.

19 36. As a result of Defendants' acts and conduct, as alleged herein, Mr. HIGGINS is
20 entitled to reasonable attorneys' fees and costs of suit as provided in Section 12965(b) of the
21 California Government Code.

22 WHEREFORE, Plaintiff prays for relief as set forth herein.

23 **SECOND CAUSE OF ACTION**
24 **FAILURE TO ACCOMMODATE DISABILITY**
(Gov. Code § 12940(m))
(All Defendants)

25 37. Pursuant to the California Fair Employment and Housing Act ("FEHA") (Cal. Gov.
26 Code § 12900 *et seq.*) and its implementing regulations, it is unlawful for an employer to fail to
27 provide reasonable accommodations for an employee with a physical disability (whether actual,
28 regarded or treated as, and/or record, history, or permanence of impairment).

1 38. As alleged herein and in violation of California Government Code § 12940(a),
2 Defendants, and each of them, failed to accommodate Mr. HIGGINS' temporary physical disability.

3 39. As a direct, foreseeable and proximate result of Defendants' failure to accommodate
4 Mr. HIGGINS' physical disability, Mr. HIGGINS has suffered and continues to suffer actual
5 damages including, but not limited to, loss of earnings and future earning capacity, attorneys' fees,
6 costs of suit and other pecuniary loss not presently ascertained.

7 40. As a further direct and legal result of the acts and conduct of Defendants, and each of
8 them, as alleged herein, Mr. HIGGINS has been caused to and did suffer and continues to suffer
9 severe emotional and mental distress, anguish, humiliation, embarrassment, fright, shock, pain,
10 discomfort and anxiety. Though the exact nature, extent, and duration of said injuries are presently
11 unknown to him, Mr. HIGGINS is informed and believes and thereon alleges that some if not all of
12 the injuries are reasonably certain to be permanent in character.

13 41. Mr. HIGGINS is informed and believes, and thereon alleges, that the Defendants, and
14 each of them, by engaging in the acts alleged herein and/or in authorizing and/or ratifying such acts,
15 engaged in willful, malicious, intentional, oppressive and despicable conduct, and acted with willful
16 and conscious disregard of the rights, welfare and safety of Mr. HIGGINS, thereby justifying the
17 award of punitive and exemplary damages in an amount to be determined at trial.

18 42. As a result of Defendants' acts and conduct, as alleged herein, Mr. HIGGINS is
19 entitled to reasonable attorneys' fees and costs of suit as provided in Section 12965(b) of the
20 California Government Code.

21 WHEREFORE, Plaintiff prays for relief as set forth herein.

22 **THIRD CAUSE OF ACTION**
23 **FAILURE TO PAY MINIMUM WAGE**

24 (Lab. Code §§ 1194, 1194.2, 1197, 1197.1, Wage Order No. 5-2001)
25 (All Defendants)

26 43. Pursuant to California Labor Code § 1197, payment of less than the minimum wage
27 fixed by the Industrial Welfare Commission is unlawful. Employers of persons working as
28 caretakers in the Public Housekeeping Industry must comply with Wage Order 5-2001.

1 44. Pursuant to California Labor Code § 1194, Plaintiff is entitled to recover the unpaid
2 balance of the full amount of the unpaid wages, including interest thereon, reasonable attorney's
3 fees, and costs of suit.

4 45. Pursuant to California Labor Code § 1194.2, Plaintiff is entitled to recover liquidated
5 damages in an amount equal to the wages unlawfully unpaid and interest thereon.

6 46. Pursuant to California Labor Code § 1197.1, Plaintiff is entitled to restitution of
7 wages owed to him by Defendants.

8 47. Pursuant to Wage Order 5-2001, employees who are required to provide and maintain
9 hand tools and equipment customarily required by the trade or craft must be compensated at no less
10 than two (2) times the prevailing minimum wage for each and every hour worked.

11 48. Plaintiff was a non-exempt employee entitled to the protections of California Labor
12 Code §§ 1194, 1197 and Wage Order 5-2001.

13 49. During the course of Plaintiff's employment, Defendants failed to pay Plaintiff the
14 minimum wage by failing to pay Plaintiff for each and every hour worked; by requiring, permitting
15 or suffering Plaintiff to work off-the-clock; and by other methods to be discovered.

16 50. In violation of state law, Defendants have knowingly and willfully refused to perform
17 their obligations to pay the minimum wage for each and every hour worked by Plaintiff.

18 51. As a direct, foreseeable and proximate result of Defendants' failure to pay wages,
19 Plaintiff has suffered substantial losses related to the use and enjoyment of such wages, lost interest
20 on such wages, and expenses and attorneys' fees incurred in seeking to compel Defendants to
21 perform their obligations under state law, all to his damage in amounts according to proof at time of
22 trial.

23 52. Plaintiff is thus entitled to recover the balance of unpaid minimum wages owed at the
24 rate of two (2) times the prevailing minimum wage rate, interest, liquidated damages, and penalties
25 as pled and prayed for herein, as well as attorneys' fees and costs of suit in amounts to be
26 determined by the Court.

27 WHEREFORE, Plaintiff prays for relief as set forth herein.

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FOURTH CAUSE OF ACTION
FAILURE TO PAY OVERTIME WAGES
(Lab. Code §§ 510, 1194, 1198, Wage Order 5-2001)
(All Defendants)

53. Pursuant to California Labor Code §§ 510 and 1194, Defendants were required to compensate Plaintiff for all overtime hours worked, which is calculated at one and one-half (1 ½) times the regular rate of pay for hours worked in excess of eight (8) hours per day and/or forty (40) hours per week and for the first eight (8) hours of the seventh consecutive workday, and double time after eight (8) hours of the seventh day of any workweek or after twelve (12) hours in any workday.

54. Pursuant to California Labor Code § 1198, employment of any employee for longer hours than those fixed by the Industrial Wage Commission is unlawful. Employers of persons working as Service Technicians at automobile dealerships must comply with Wage Order 5-2001.

55. Plaintiff was a non-exempt employee entitled to the protections of California Labor Code §§ 510, 1194, 1198, and Wage Order 5-2001.

56. During the course of Plaintiff's employment, Defendants failed to compensate Plaintiff for overtime hours worked by failing to pay for all hours worked before and after Plaintiff's scheduled shifts, by failing to pay Plaintiff for all the time he was suffered or permitted to work, and through other methods to be discovered.

57. Plaintiff is informed and believes and thereon alleges that Defendants, and each of them, knowingly and willfully refused to perform their obligations to compensate Plaintiff for all overtime wages earned and all overtime hours worked as required by law.

58. As a direct, foreseeable and proximate result of Defendants' failure to pay overtime wages, Plaintiff has suffered substantial losses related to the use and enjoyment of such wages, lost interest on such wages, and expenses and attorneys' fees incurred in seeking to compel Defendants to perform their obligations under state law, all to his respective damage in amounts according to proof at time of trial.

59. Plaintiff is thus entitled to recover the balance of unpaid overtime wages due, interest, and penalties as pled and prayed for herein, as well as attorneys' fees and costs of suit in amounts to be determined by the Court.

1 WHEREFORE, Plaintiff prays for relief as set forth herein.

2 **FIFTH CAUSE OF ACTION**
3 **FAILURE TO PAY REGULAR WAGES**
4 (Lab. Code §§ 204, 218, 223)
5 (All Defendants)

6 60. Pursuant to California Labor Code § 204, all wages earned by an employee are due
7 and payable twice during each calendar month, on days designated in advance by the employer as
8 the regular paydays.

9 61. Pursuant to California Labor Code § 223, it is unlawful for an employer to secretly
10 pay a wage lower than that mandated by statute or contract while purporting to pay the wage
11 designated by statute or contract.

12 62. Pursuant to California Labor Code § 218, an employee may directly seek the wages
13 and penalties due to him.

14 63. By failing to compensate Plaintiff at the contractual rate of \$23.25 per hour for all
15 hours worked by Plaintiff, Defendant secretly paid a wage lower than that required under the
16 contract while purporting to pay the agreed-upon wage and failed to pay Plaintiff all wages due
17 twice each calendar month.

18 64. As a direct, foreseeable and proximate result of Defendants' failure to pay all wages
19 earned by Plaintiff, Plaintiff has suffered substantial losses related to the use and enjoyment of such
20 wages, lost interest on such wages, and expenses and attorneys' fees in seeking to compel
21 Defendants to perform their obligations under state law, all to his respective damage in amounts
22 according to proof at time of trial, and within the jurisdiction of this Court.

23 65. Plaintiff is thus entitled to recover the balance of unpaid compensation due, wages
24 owed, interest, compensatory damages, statutory penalties, attorneys' fees, and costs of suit in
25 amounts according to proof at time of trial.

26 WHEREFORE, Plaintiff prays for relief as set forth herein.

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1 73. Pursuant to California Labor Code § 203, an employer who willfully fails to provide
2 earned and due wages to an employee who is discharged or quits, the wages of the employee shall
3 continue as a penalty from the due date thereof at the same rate until paid for a period not to exceed
4 30 days.

5 74. Pursuant to California Labor Code § 218, an employee may directly seek the wages
6 and penalties due to him.

7 75. Plaintiff was discharged by Defendants on August 4, 2014. At the time of his
8 discharge and continuing through to the present date, Plaintiff had not and has not been compensated
9 for all wages earned and due to him.

10 76. Plaintiff is informed and believes and based thereon alleges that Defendants willfully
11 failed to pay Plaintiff wages pursuant to the requirements of Labor Code § 201 and § 202, and
12 thereby seeks compensation for unpaid wages and statutory penalties pursuant to Labor Code § 203.

13 77. As a direct, foreseeable and proximate result of Defendants' failure to pay wages in a
14 timely manner Plaintiff has suffered substantial losses related to the use and enjoyment of such
15 wages and penalties, lost interest on such wages and penalties, and expenses and attorneys' fees
16 incurred in seeking to compel Defendants to perform their obligations under state law, all to his
17 damage in amounts according to proof at time of trial.

18 78. Plaintiff is thus entitled to recover statutory penalties equivalent to 30 days of
19 Plaintiff's regular wages as pled and prayed for herein, as well as attorneys' fees, and costs of suit in
20 amounts to be determined by the Court.

21 79. Plaintiff is thus entitled to recover statutory penalties equivalent to 30 days of
22 Plaintiff's regular wages as pled and prayed for herein, as well as attorneys' fees, and costs of suit in
23 amounts to be determined by the Court.

24 WHEREFORE, Plaintiff prays for relief as set forth herein.

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EIGHTH CAUSE OF ACTION
FAILURE TO PROVIDE REQUIRED REST PERIODS
(Lab. Code § 226.7; Wage Order 5-2001)
(All Defendants)

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4 80. Pursuant to California Labor Code § 226.7 and Industrial Welfare Commission Wage
5 Order 5-2001, Defendants were required to provide legally mandated rest periods to Plaintiff.

6 81. Defendants were required to provide one paid 10-minute rest period every time
7 Plaintiff worked four (4) consecutive hours. For each day in which a rest period was not provided to
8 Plaintiff by Defendants, Defendants were required to pay Plaintiff one extra hour of compensation at
9 Plaintiff's regular hourly rate.

10 82. Plaintiff was a non-exempt employee entitled to the protections of California Labor
11 Code § 226.7 and Wage Order 5-2001.

12 83. During the course of Plaintiff's employment, Defendants required, permitted or
13 otherwise suffered Plaintiff to work through his 10-minute rest periods or otherwise fail to
14 compensate him for them, and failed to otherwise provide the required rest periods to Plaintiff as
15 required under California Labor Code § 226.7 and Wage Order 5-2001(12).

16 84. During the course of Plaintiff's employment, Defendants failed to compensate
17 Plaintiff, who was entitled to but did not receive on-the-clock rest periods, with an extra hour of
18 compensation at Plaintiff's regular rate of pay for each day in which he was prevented from taking a
19 rest period.

20 85. Plaintiff is informed and believes and based thereon alleges that Defendants have
21 knowingly and willfully refused to perform their obligations to provide required rest periods to
22 Plaintiff and to compensate Plaintiff for the rest periods that were not provided to him.

23 86. As a direct, foreseeable and proximate result of Defendants' failure to provide rest
24 periods or compensation for missed rest periods, Plaintiff has suffered substantial losses related to
25 the use and enjoyment of such wages, lost interest on such wages, and expenses and attorneys' fees
26 incurred in seeking to compel Defendants to perform their obligations under state law, all to his
27 damage in amounts as pled herein.
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1 87. Plaintiff is thus entitled to recover the balance of unpaid compensation and wages
2 owed, interest, and penalties as pled and prayed for herein, as well as attorneys' fees and costs of
3 suit in amounts to be determined by the Court.

4 WHEREFORE, Plaintiff prays for relief as set forth herein.

5 **NINTH CAUSE OF ACTION**
6 **FAILURE TO PROVIDE REQUIRED MEAL PERIODS**
7 (Lab. Code §§ 226.7, 512; Wage Order 5-2001)
8 (All Defendants)

9 88. Pursuant to California Labor Code §§ 226.7 and 512 and Industrial Welfare
10 Commission Wage Order 5-2001, Defendants were required to provide legally mandated meal
11 periods to Plaintiff.

12 89. Defendants were required to provide an uninterrupted meal period of at least 30
13 minutes every time Plaintiff worked a shift of more than five (5) hours. For each day in which a
14 meal period was not made available to Plaintiff by Defendants, Defendants were required to pay
15 Plaintiff one extra hour of compensation at Plaintiff's regular hourly rate.

16 90. Plaintiff was a non-exempt employee entitled to the protections of California Labor
17 Code §§ 226.7 and 512 and Wage Order 5-2001.

18 91. During the course of Plaintiff's employment, Defendants required, permitted or
19 otherwise suffered Plaintiff to take less than the required 30-minute meal periods or to work through
20 them, and failed to otherwise provide the required meal periods to Plaintiff as required under
21 California Labor Code § 226.7 and § 512 and Wage Order 5-2001(11).

22 92. During the course of Plaintiff's employment, Defendants failed to compensate
23 Plaintiff, who was entitled to but did not receive uninterrupted 30-minute meal periods, with an extra
24 hour of compensation at Plaintiff's regular rate of pay for each day in which he was not provided
25 with the opportunity to take a meal period.

26 93. In violation of state law, Defendants have knowingly and willfully refused to perform
27 their obligations to provide required meal periods to Plaintiff and to compensate Plaintiff for the
28 meal periods that were not provided to him.

1 99. As described herein, Plaintiff has suffered injury in fact and has lost money or
2 property as a result of Defendants' unfair competition in violation of Business and Professions Code
3 section § 17200, *et seq.* Defendants have withheld and continue to withhold wages earned by and
4 belonging to Plaintiff and have refused and continue to refuse to provide Plaintiff with statutory
5 penalties due to him.

6 100. Upon information and belief, Plaintiff alleges that Defendants will continue to
7 withhold regular, overtime, and contractual wages from employees, to unlawfully collect and receive
8 wages paid to their employees, to fail to properly account for wages earned by employees, to fail to
9 provide mandated rest periods to employees, and to fail to pay all wages due upon an employee's
10 separation unless and until Defendants are enjoined from engaging in this illegal conduct.

11 101. Plaintiff is entitled to equitable relief, including full restitution and/or disgorgement
12 of all moneys unlawfully withheld from Plaintiff or profits obtained as a result of the business acts
13 and practices described herein.

14 102. Plaintiff is entitled to attorneys' fees and costs of suit in amounts according to proof
15 at time of trial pursuant to Code of Civil Procedure § 1021.5 for bringing this action to enforce an
16 important right that affects the public interest.

17 WHEREFORE, Plaintiff prays for relief as set forth herein.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that judgment be entered against Defendants as follows:

1. For general damages according to proof, however, no less than the jurisdictional limit of this Court;
2. For special damages in amounts according to proof;
3. For punitive damages in amounts according to proof;
4. For statutory fines, penalties, and interest as provided by law;
5. For attorneys' fees as provided by law;
6. For costs of suit incurred herein; and
7. For such other and further relief as the Court deems fair and just.

Dated: February 29, 2012

SEIBERT & BAUTISTA



Joe Bautista

Attorneys for Plaintiff MARK K. HIGGINS