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ORIGINAL FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

AUG 27 2013

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individually and on behalf of all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

DAVID GARDNER, individually and on
behalf of all others similarly situated,

Plaintiff,

vs.

POPCORNOPOLIS, LLC, a California
limited liability company; and DOES 1
through 25, inclusive,

Defendants.

CASE NO.: BC519587

[CLASS ACTION]

COMPLAINT FOR:

1. UNPAID WAGES (LABOR CODE §§ 216 and 1194);
2. FAILURE TO PAY MINIMUM WAGE (LABOR CODE §1194 *et seq.*);
3. FAILURE TO PROVIDE MEAL & REST PERIODS (LABOR CODE §§ 226.7 and 512);
4. FAILURE TO FURNISH ACCURATE WAGE AND HOUR STATEMENTS (LABOR CODE § 226);
5. WAITING TIME PENALTIES (LABOR CODE §§ 201-203);
6. FAILURE TO PROVIDE ACCURATE STATEMENTS AND MAINTAIN REQUIRED RECORDS;
7. COMMON LAW CONVERSION;
8. UNFAIR COMPETITION (BUSINESS AND PROFESSIONS CODE § 17200, *et seq.*); and
9. PRIVATE ATTORNEYS GENERAL ACT (LABOR CODE

§§ 2698 *et seq.*)

JURY TRIAL DEMANDED

Plaintiff DAVID GARDNER (“Plaintiff”), individually and on behalf of all similarly situated individuals, alleges as follows:

GENERAL ALLEGATIONS

1. This is a proposed class action brought against Defendant POPCORNOPOLIS, LLC, a California limited liability company, and DOES 1 through 25, inclusive (collectively, “Defendant” or “Popcornopolis”), on behalf of Plaintiff and all other individuals who were employed by Defendant as a product demonstration team member for Popcornopolis’ “Road Show,” at any time during the four years preceding the filing of this action, and continuing while this action is pending (“Class Period”), and who were denied the benefits and protections required under the Labor Code and other statutes and regulations applicable to employees in the State of California (collectively “Team Members”).

2. During the Class Period, Defendant:

- a. failed to pay wages for all hours worked, including for hours worked in excess of eight hours a day or forty hours a week, by the Team Members;
- b. failed to pay minimum wages due to Team Members;
- c. failed to make available meal and rest periods to Team Members;
- d. failed to provide the Team Members with timely and accurate wage and hour statements;
- e. failed to pay the Team Members compensation in a timely manner upon their termination or resignation;
- f. failed to maintain complete and accurate payroll records for the Team Members;
- g. wrongfully withheld wages and compensation due to the Team Members;
- h. committed unfair business practices in an effort to increase profits and to

1 gain an unfair business advantage at the expense of the Auto Service
2 Technicians and the public; and

3 i. violated the Labor Code and owe civil penalties pursuant to Labor Code §
4 2699(a).

5 3. The foregoing acts and other acts by Defendants - committed throughout
6 California and Los Angeles County - violated numerous provisions of California law, including
7 Labor Code §§ 201, 202, 203, 204, 210, 216, 225.5, 226, 226.3, 226.7, 510, 512, 558, 1174,
8 1174.5, 1194, 1194.2, 1197, 1197.1, 1199, 2802, and 2698 *et seq.* and the applicable Wage
9 Orders issued by the Industrial Welfare Commission (collectively, "Employment Laws and
10 Regulations"), Business & Professions Code §§ 17200 *et seq.*, owe civil penalties pursuant to the
11 Private Attorneys General Act, Labor Code §§ 2698 *et seq.* ("PAGA"), and violated Plaintiff's
12 rights and the rights of the Team Members.

13 JURISDICTION AND VENUE

14 4. This Court has jurisdiction over all causes of action herein pursuant to the
15 California Constitution, Article VI, § 10, Code of Civil Procedure § 410.10 and Business and
16 Professions Code § 17203.

17 5. Venue is proper in this Court under Code of Civil Procedure §§ 395 and 395.5
18 because Defendants operate in this County, Plaintiff David Gardner resides in and/or worked in
19 this county and the injuries that are the subject of this lawsuit arose in this county.

20 THE PARTIES

21 6. Plaintiff David Gardner was employed by Defendant as a product demonstration
22 team member for Popcornopolis' "Road Show". Plaintiff traveled to various retail and
23 wholesales locations in the County of Los Angeles during the past year, "demo-ing"
24 Popcornopolis' products. Plaintiff resided in and performed duties in the County of Los Angeles
25 during the last year preceding the filing of this action.

26 7. Defendant POPCORNOPOLIS, LLC is, and at all relevant times was, a California
27 limited liability company conducting business as a gourmet popcorn retailer throughout the State
28 of California, including in the County of Los Angeles. Defendant has engaged in unlawful

1 employment practices addressed in this complaint throughout California and in Los Angeles
2 County.

3 8. Plaintiff is currently unaware of the true names and capacities of the defendants
4 sued in this action by the fictitious names DOES 1 through 25, inclusive, and therefore sue those
5 defendants by such fictitious names. Plaintiff will amend this Complaint to allege the true names
6 and capacities of such fictitiously named defendants when they are ascertained. Plaintiff is
7 informed and believe and based thereon state that the persons sued herein as DOES are in some
8 manner responsible for the conduct, injuries and damages herein alleged.

9 9. Plaintiff is informed and believe and based thereon allege that each defendant
10 sued in this action, including each defendant sued by the fictitious names DOES 1 through 25,
11 inclusive, is responsible in some manner for the occurrences, controversies and damages alleged
12 below.

13 10. Plaintiff is informed and believe and based thereon allege that DOES 1 through
14 25, inclusive, were the agents, servants and/or employees of Defendants and, in doing the things
15 hereinafter alleged and at all times, were acting within the scope of their authority as such agents,
16 servants and employees, and with the permission and consent of Defendants.

17 11. Plaintiff is informed and believes and based thereon alleges that Defendant
18 ratified, authorized, and consented to each and all of the acts and conduct of each other as alleged
19 herein. Each of the defendants was the agent and/or employee of the others, and the conduct of
20 each defendant herein alleged was authorized and/or ratified by the others. The conduct of
21 Popcornopolis was carried on by and through its authorized agents, including owners, officers,
22 directors, managers and supervisors.

23 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

24 12. Plaintiff alleges that on or about July 15, 2013, Plaintiff provided written notice
25 by certified mail to the Labor and Workforce Development Agency ("LWDA") and Defendant of
26 the facts and theories regarding the violations of the Employment Laws and Regulations.
27 Attached as Exhibit 1 is a true and correct copy of the letter sent to the LWDA and
28 Popcornopolis.

1 However, these employees are instructed to, and do, continue to perform work, such as cleaning,
2 stocking merchandise and disassembling hardware used for product demonstrations. None of this
3 work is paid time. This is because Popcornopolis compensated Plaintiff - and as a matter of
4 uniform company policy all of its team members - based on pre-formatted time sheets showing
5 start and stop times in advance reflecting 40 hours a week. Those time sheets do not correspond
6 to the time actually worked.

7 19. During Plaintiff's employment with Defendants, Defendants failed and refused to
8 provide Plaintiff with timely and accurate wage and hour statements in violation of the
9 Employment Laws and Regulations.

10 20. During Plaintiff's employment with Defendants, Defendant wrongfully withheld
11 from Plaintiff and failed to pay wages and other compensation due for all hours worked, for
12 overtime work, and as otherwise required per Employment Laws and Regulations.

13 21. To the extent that any Team Member, including Plaintiff, entered into any
14 arbitration agreement with any Defendant, such agreement is void and unenforceable. Any such
15 agreement was one of adhesion, executed under duress, lacked consideration and mutuality, and
16 is otherwise void under both Labor Code § 229 and the California Supreme Court case of
17 *Armendariz v. Foundation Health Psychare Services, Inc.* (2000) 24 Cal.4th 83.

18 **CLASS ACTION ALLEGATIONS**

19 22. All current and former product demonstration team members who worked the
20 afternoon shifts for Defendant in California during the Class Period, including Plaintiff, are
21 proposed class members (henceforth, "Class Members").

22 23. The Class Members' duties and activities during their respective working hours
23 and each shift are known to and directed by Defendant, and are set and controlled by Defendant.

24 24. During the Class Period, Defendant has routinely failed and refused to
25 compensate Class Members for all wages earned ("off-the-clock" work).

26 25. During the Class Period, Popcornopolis failed and refused to pay Class Members
27 for all hours worked including time during which Class Members were subject to Popcornopolis'
28 control and were suffered or permitted to work for Defendant. Popcornopolis failed and refused

1 to pay Class Members for all hours worked, including but not limited to time worked after the
2 official end times of their shifts.

3 26. During the Class Period, Class Members were also deprived of legally compliant
4 off-duty meal periods and rest breaks based on Defendant scheduling team members to work at
5 booths with no coverage and having Class Members comply with Defendant's policy dealing
6 with "Staffing."

7 27. During the Class Period, Defendants have failed and refused to provide Team
8 Members with timely and accurate wage and hour statements.

9 28. During the Class Period, Defendants have failed and refused to pay accrued wages
10 and other compensation earned and due immediately to Team Members who were terminated,
11 and Defendants have failed and refused to pay accrued wages and other compensation earned and
12 due within seventy-two hours to Team Members who ended their employment.

13 29. During the Class Period, Defendants have failed and refused to maintain complete
14 and accurate payroll records for Team Members showing gross hours earned, total hours worked,
15 all deductions made, net wages earned, and all applicable hourly rates in effect during each pay
16 period and the corresponding number of hours worked at each hourly rate.

17 30. During the Class Period, Defendants have wrongfully withheld and failed to pay
18 Team Members wages and other compensation earned and due them for all hours worked, for
19 overtime premium pay, and as otherwise required pursuant to the Employment Laws and
20 Regulations.

21 31. Defendant's conduct violated the Employment Laws and Regulations. Defendants'
22 systematic acts and practices also violated, *inter alia*, Business & Professions Code §§ 17200, *et*
23 *seq.*

24 32. Plaintiff also seeks payment for all hours worked and other compensation, all
25 benefits required pursuant to the Employment Laws and Regulations, plus penalties and interest,
26 owed to Class Members.

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1 33. The duties and business activities of the Class Members were essentially the same
2 as the duties and activities of the Plaintiff described above. At all times during the Class Period,
3 all of the Class Members were employed in the same or similar job as Plaintiff (as a product
4 demonstration team member) and were paid in the same manner and under the same standard
5 employment procedures and practices as Plaintiff.

6 34. During the Class Period, Defendants were fully aware that Plaintiff and the Class
7 Members were performing "off-the-clock" unpaid work and not being paid for all hours worked,
8 including overtime premium pay, in violation of the provisions of the Labor Code.

9 35. Defendants' violations of the Employment Laws and Regulations were repeated,
10 willful and intentional.

11 36. Plaintiff and the Class Members have been damaged by Defendants' conduct.

12 37. While the exact number of Class Members is unknown to Plaintiff at the present
13 time, based on information and belief, there are more than 40 such persons. A class action is the
14 most efficient mechanism for resolution of the claims of the Class Members.

15 38. In addition, a class action is superior to other available methods for the fair and
16 efficient adjudication of this controversy because the damages suffered by individual Class
17 Members may be relatively small, and the expense and burden of individual litigation would make
18 it impossible for such Class Members individually to redress the wrongs done to them. Moreover,
19 because of the similarity of the Class Members' claims, individual actions would present the risk
20 of inconsistent adjudications subjecting the Defendants to incompatible standards of conduct.

21 39. Plaintiff is currently unaware of the identities of all the Class Members.
22 Accordingly, Defendants should be required to provide to Plaintiff a list of all persons employed
23 as Team Members (and similarly situated individuals who held titles involving the service and
24 repair of vehicles) in California beginning four years prior to the filing of this Complaint until the
25 present, stating their last known addresses and telephone numbers, so that Plaintiff may give such
26 Class Members notice of the pendency of this action and an opportunity to make an informed
27 decision about whether to participate in it.

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