

FILED  
CIVIL BUSINESS OFFICE 12  
CENTRAL DIVISION

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CLERK-SUPERIOR COURT  
SAN DIEGO COUNTY, CA

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16 similarly situated

17 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
18 **FOR THE COUNTY OF SAN DIEGO**

19 EUGENE FOX, an individual California resident, ) CASE NO.:  
20 SPENCER FENNEL, an individual California )  
21 resident, on behalf of themselves and all others )  
22 similarly situated, )

37-2009-00098964-CU-OE-CTL

23 Plaintiff,

24 ) **CLASS ACTION COMPLAINT FOR:**

25 v.

26 ) **1. FAILURE TO PROVIDE REST**  
27 ) **PERIODS AND MEAL PERIODS**  
28 ) **OR COMPENSATION IN LIEU**  
 ) **THEREOF;**

29 BUSCH ENTERTAINMENT CORPORATION, )  
30 a Delaware Corporation dba SEA WORLD SAN )  
31 DIEGO and DOES 1 through 10, inclusive, )

32 ) **2. FAILURE TO PAY OVERTIME**  
33 ) **WAGES IN VIOLATION OF**  
34 ) **CALIFORNIA OVERTIME**  
35 ) **LAW;**

36 Defendants.

37 ) **3. KNOWING AND INTENTIONAL**  
38 ) **FAILURE TO COMPLY WITH**  
39 ) **ITEMIZED EMPLOYEE WAGE**  
40 ) **STATEMENT PROVISIONS;**

41 ) **4. VIOLATIONS OF THE UNFAIR**  
42 ) **COMPETITION LAW;**

43 ) **DEMAND FOR TRIAL BY JURY**

1 Plaintiffs Eugene Fox and Spencer Fennell, on behalf of themselves and all other  
2 similarly situated, are informed and believe and hereby allege the following causes of action  
3 against Defendants Busch Entertainment Corporation, a Delaware Corporation dba Sea World  
4 San Diego and Does 1 through 10, inclusive as follows:

5  
6 **PARTIES**

7 1. Plaintiff Eugene Fox ("Fox") is, and at all relevant times mentioned herein was, a  
8 competent individual over the age of 18 years old, and a resident of the State of California.  
9 Plaintiff sues herein on behalf of himself and all others similarly situated. Plaintiff currently  
10 works as an hourly employee for Defendants Busch Entertainment Corporation at Sea World San  
11 Diego.

12 2. Plaintiff Spencer Fennell ("Fennell") is, and at all relevant times mentioned herein  
13 was, a competent individual over the age of 18 years old, and a resident of the State of California.  
14 Plaintiff sues herein on behalf of himself and all other similarly situated. Plaintiff currently  
15 works as an hourly employee for Defendants Busch Entertainment Corporation at Sea World San  
16 Diego. Plaintiffs Eugene Fox and Spencer Fennell are collectively referred to as "Plaintiffs."

17 3. Plaintiffs allege on information and belief that Defendant Busch Entertainment  
18 Corporation owns, operates, controls and/or does business as Sea World San Diego in California.

19 4. Plaintiffs allege on information and belief that Defendant Busch Entertainment  
20 Corporation owns, operates, controls and/or does business as the Shipwreck Reef Café, Calypso  
21 Bay Smokehouse, Mama Stella's Pizza Kitchen, The Deli, Plaza Bakery, Pineapple Pete's Island  
22 Eats, Coconut Bay Café, Mango Joe's Beach Café and Rocky Point Café Healthy Alternatives,  
23 all restaurants located inside Sea World San Diego.

24 5. Plaintiffs and the class they seek to represent, are unaware of the true names and  
25 capacities of Defendants sued herein as Does 1-10, inclusive ("Doe Defendants"), and therefore  
26 sue these Doe Defendants by such fictitious names. Plaintiffs will seek leave to amend this  
27 Complaint to allege the true names and capacities of said Doe Defendants when ascertained.  
28 Plaintiffs are informed and believe, and thereon allege, that at all relevant times mentioned  
herein, each of the fictitiously-named Doe Defendants conducted business in San Diego County,

1 California, and are culpable or responsible in some manner and/or conspired with one or more of  
2 the other Defendants for the conduct, acts, omissions, occurrences, injuries, and damages herein  
3 alleged, and that the injuries and damages sustained by Plaintiffs were directly and proximately  
4 caused thereby. Busch Entertainment Corporation dba Sea World San Diego and Doe  
5 Defendants are hereinafter referred to collectively as "Defendants."  
6

### 7 GENERAL ALLEGATIONS

8 6. Upon information and belief, during the liability period, thousands of Defendants'  
9 Non-Exempt Employees worked in non-exempt, non-managerial positions and includes but are  
10 not limited to hosts, ticket sales personnel, greeters, ride operators, cashiers, servers, cooks,  
11 expeditors, busboys, waiters, bartenders, hostesses, food servers, dishwashers, janitors, clean up  
12 staff and or similar and incidental positions related to the operation of a theme park.

13 7. Plaintiffs and the class they seek to represent are / were Non-Exempt employees  
14 of Defendants and were not provided rest periods for work periods of and were not compensated  
15 one hours' wages in lieu thereof all in violation of, among other things, Labor Code sections 201,  
16 202, 208, 218.5, 218.6, 221, 226.7, 227.3, 512, 1194, 1199, 2802, and all applicable Industrial  
17 Welfare Commission Wage Orders.

18 8. Plaintiffs and the class they seek to represent are informed and believe, and based  
19 thereon allege, Defendants currently employ, and during the relevant period have employed, over  
20 2,000 employees in the State of California in non-exempt positions, such as food service  
21 employees and/or other similar positions.

22 9. Plaintiffs and the class they seeks to represent spend / spent the majority of their  
23 time doing the following routine, non-discretionary tasks for Defendants, including but not  
24 limited to: greeting guests, selling tickets, working as cashiers in gift shops and kiosks  
25 throughout Sea World, cooking, preparing food, bussing tables, waiting on tables, seating  
26 patrons, serving food, "expediting" food, washing dishes, taking orders, cleaning the grounds,  
27 bathrooms, floors and restaurants, and other duties incidental and necessary to the operation of a  
28 theme park for Defendants. These duties occupy more than 50% of the work time of Plaintiffs  
and the class they seek to represent.

1           10.     Plaintiffs and the class they seek to represent are / were at all times pertinent  
2 hereto, non-exempt employees within the meaning of the California Labor Code, and the  
3 implementing rules and regulations fo the ICW California Wage Orders.

4           11.     During the liability period, Plaintiffs and the class they seek to represent have  
5 been / were employed by Defendants as Non-Exempt Employees and were paid on an hourly  
6 basis.

7           12.     During the liability period Plaintiffs and the class they seek to represent were not  
8 provided lawful rest and meal periods, and were not provided with one hours wage in lieu  
9 thereof. Instead, Defendants have had a policy of not providing rest and meal breaks to Plaintiffs  
10 and the class they seek to represent. During the Liability Period, Defendants consistently  
11 impeded, discouraged, and/or dissuaded the taking of such breaks.

12           13.     Defendants did not / do not fully compensate Plaintiffs and the class they seek to  
13 represent for hourly wages during the liability period and did not compensate Plaintiffs and the  
14 class they seek to represent for Defendants' failure to provide rest periods and meal periods  
15 during the rest and meal period liability period.

16           14.     On information and belief, Defendants have been notified of the improprieties  
17 alleged herein by their employees, and have intentionally and maliciously refused to rectify their  
18 policy.

19           15.     Defendants and/or their managing agents, employees, owners, shareholders,  
20 superintendents, managers, or persons acting on their behalf, willfully, intentionally, recklessly,  
21 and unlawfully forced the unlawful practices alleges herein.

22           16.     Defendants' denial of legal compensation due to Plaintiffs and the class they seek  
23 to represent was a breach of Defendants' fiduciary duty to Plaintiffs and the class they seek to  
24 represent, as the denial was deliberate, showed a callous disregard for the rights of Plaintiffs who  
25 relied on Defendants to compensate them fairly.

26           17.     On information and belief, during the liability period Defendants willfully failed  
27 to pay the legal wages, failed to provide rest and meal periods during which Defendants' Non-  
28 Exempt employees were required to work, and willfully failed to pay one hour's wages in lieu of  
rest and meal periods.

1 18. Plaintiffs and the class they seek to represent allege Defendants have made it  
2 difficult to account with precision for the unlawfully withheld wages and deductions due to  
3 Plaintiffs and the class they seek to represent, during the liability period, because Defendants did  
4 not implement and preserve a record keeping method to record all the unlawful deductions by its  
5 employees as required for non-exempt employees by California Labor Code sections 226,  
6 1174(d), and section 7 of the California Wage Orders.

7 19. On information and belief, Defendants have failed to comply with Labor Code  
8 section 226(a) by failing / refusing to itemize in wage statements all deductions from payment of  
9 wages by failing / refusing to accurately report total hours worked by Plaintiffs and the class they  
10 seek to represent. Plaintiffs and the class they seek to represent are entitled to penalties not to  
11 exceed \$4,000 each pursuant to Labor Code section 226(b).

12 20. On information and belief, Defendants have failed to comply with Industrial  
13 Welfare Commission ICW Wage Order 5-2001(7) by, among other violations, failing to maintain  
14 time records showing: (a) when the employee begins and ends each work period, (b) meal  
15 periods, and (c) by itemizing in wage statements all deductions from payment of wages with  
16 accurate reporting of total hours worked by Plaintiffs and the class they seek to represent.

17 21. Plaintiffs and the class they seek to represent are covered by the California  
18 Industrial Welfare Commission Occupational Wage Order Nos. 5-2001, 5-1998, California  
19 Industrial Welfare Commission in No. 4 (Title 8 Cal. Code of Reg. sections 11040, 11070), and  
20 the Labor Code.

21 **CLASS ACTION ALLEGATIONS**

22 22. Plaintiffs and the class they seek to represent bring this action on behalf of  
23 themselves and all others similarly situated as a Class Action pursuant to §382 of the Code of  
24 Civil Procedure.

25 23. Plaintiffs reserve the right under Rule 1855(b), California Rules of Court, to  
26 amend or modify the class description with greater specificity or further division into subclasses  
27 or limitation to particular issues.

28 24. This action has been brought and may properly be maintained as a class action  
under the provisions of §382 of the Code of Civil Procedure because there is a well-defined

1 community of interest in the litigation and the proposed class is easily ascertainable.

2 **A. Numerosity**

3 25. The potential members of the proposed class as defined are so numerous that  
4 joinder of all the members of the proposed class is impracticable. While the precise number of  
5 proposed class members has not been determined at this time, Plaintiffs are informed and believe  
6 that Defendants currently employ, and during the relevant time periods employed over 2,000  
7 hourly employees.

8 26. Accounting for employee turnover during the relevant time periods necessarily  
9 increases this number substantially. Plaintiffs allege Defendants' employment records would  
10 provide information as to the number and location of all proposed class members. Joinder of all  
11 members of the proposed class is not practicable.

12 **B. Commonality**

13 27. There are questions of law and fact common to the proposed class that  
14 predominate over any questions affecting only individual class members. These common  
15 questions of law and fact include, without limitation:

- 16 (1) Whether Defendants failed to pay for all hours worked;
- 17 (2) Whether Defendants failed to pay overtime compensation as required by  
18 the Labor Code and Wage Orders;
- 19 (3) Whether Defendants violated Labor Code §§226.7 and 512, IWC Wage  
20 Order 5-2001 or other applicable IWC Wage Orders, by failing to provide  
21 daily rest periods for every four (4) hours or major fraction thereof worked  
22 and failing to compensate said employees one (1) hour's wages in lieu of  
23 rest periods;
- 24 (4) Whether Defendants violated Labor Code §§226.7 and 512, IWC Wage  
25 Order 5-2001 or other applicable IWC Wage Orders, by failing to provide  
26 meal period on days they worked in excess of five (5) hours and failing to  
27 compensate said employees one (1) hour's wages in lieu of meal periods;
- 28 (5) Whether Defendants violated California Law, including other applicable  
IWC Wage Orders, by failing to provide meal period on days they worked

1 in excess of eight (8) hours and failing to compensate said employees one  
2 (1) hour's wages in lieu of meal periods;

3 (6) Whether Defendants violated §226(a) of the Labor Code;

4 (7) Whether Defendants violated §17200 et seq. of the Business & Professions  
5 Code by failing to provide wages and compensation to hourly employees;

6 (8) Whether Plaintiff and the members of the proposed class are entitled to  
7 equitable relief pursuant to Business and Professions Code §17200 et.seq.

8 **C. Typicality**

9 28. The claims of the named Plaintiffs are typical of the claims of the proposed class.  
10 Plaintiffs and all class members of the proposed class sustained injuries and damages arising out  
11 of and caused by Defendants' common course of conduct and policy in violation of laws,  
12 regulations that have the force and effect of law and statutes as alleged herein.

13 **D. Adequacy of Representation**

14 29. Plaintiffs will fairly and adequately represent and protect the interests of the  
15 members of the proposed class. Counsel who represent Plaintiffs are experienced and competent  
16 with regard to litigating employment cases and wage and hour class actions.

17 **E. Superiority of Class Action**

18 30. A class action is superior to other available means for the fair and efficient  
19 adjudication of this controversy. Individual joinder of all proposed class members is not  
20 practicable, and questions of law and fact common to the proposed class members is not  
21 practicable, and questions of law and fact common to the proposed class predominate over any  
22 questions affecting only individual members of the proposed class. Each member of the  
23 proposed class has been damaged and is entitled to recovery by reason of Defendants' illegal  
24 policy and/or practice of failing to compensate class members at the legal overtime rates and  
25 denying class members rest and meal periods without legal compensation.

26 31. Class action treatment will allow those similarly situated persons to litigate their  
27 claims in the manner that is most efficient and economical for the parties and the judicial system.  
28 Plaintiffs are unaware of any difficulties that are likely to be encountered in the management of  
this action that would preclude its maintenance as a class action.

1 **FIRST CAUSE OF ACTION**

2 **(FAILURE TO PROVIDE REST PERIODS AND MEAL PERIODS OR**  
3 **COMPENSATION IN LIEU THEREOF AGAINST DEFENDANTS AND DOES 1 TO 10)**

4 32. Plaintiffs incorporate by reference paragraphs 1 through 31 above as though set  
5 forth in full herein.

6 33. By their failure to provide rest and meal periods to Defendants Non-Exempt  
7 employees as mandated by California Law, and by failing to provide compensation for such  
8 unprovided rest periods and meal periods, as alleged above, Defendants willfully violated, among  
9 other laws, the provisions of California Labor Code sections 226.7 and 512, and ICW Wage  
10 Order Nos. 5-20000, 5-2001.

11 34. By failing to keep adequate time records required by sections 226 and 1174(d) of  
12 California Labor Code, Defendants have made it difficult to calculate the unpaid rest and meal  
13 period compensation due Plaintiffs and the class they seek to represent.

14 35. As a result of the unlawful acts of Defendants, Plaintiffs and the class they seek to  
15 represent have been deprived of premium wages in amounts to be determined at trial, and are  
16 entitled to recovery of such amounts, plus interest and penalties thereon, attorney's fees, and  
17 costs, under Labor Code sections 203, 218.5, 226, 226.7, 1194, ICW Wage Orders 5-2000 and 5-  
18 2001.

19 **SECOND CAUSE OF ACTION**

20 **(VIOLATION OF CALIFORNIA OVERTIME LAW AGAINST DEFENDANTS AND**  
21 **DOES 1 TO 10)**

22 36. Plaintiffs incorporate by reference paragraphs 1 through 31 above as though set  
23 forth in full herein.

24 37. Plaintiffs allege that pursuant to Defendants policy, Plaintiffs and the class they  
25 seek to represent were not paid overtime wages during the liability period, in violation of, among  
26 other laws, California Labor Code §510.

27 38. As a result of the unlawful acts of Defendants, Plaintiffs and the class they seek  
28 to represent have been deprived of premium wages in amounts to be determined at trial, and are  
entitled to recovery of such amounts, plus interest and penalties thereon, attorney's fees, and

1 costs, under California Labor Code sections 203, 218.5, 226, 226.7, 510, 1194, ICW Wage  
2 Orders 5-2000 and 5-2001.

3 **THIRD CAUSE OF ACTION**

4 **(KNOWING AND INTENTIONAL FAILURE TO COMPLY WITH ITEMIZED**  
5 **EMPLOYEE WAGE STATEMENT PROVISIONS AGAINST DEFENDANTS AND**  
6 **DOES 1 TO 10)**

7 39. Plaintiffs incorporate by reference paragraphs 1 through 31 above as though set  
8 forth in full herein.

9 40. Section 226(a) of the California Labor Code requires Defendants to itemize wage  
10 statements all deductions from payment of wages and to accurately report total hours worked by  
11 Plaintiffs. On information and belief Defendants have knowingly and intentionally failed to  
12 comply with Labor Code section 226(a) on each wage statement that should have provided to  
13 Plaintiffs.

14 41. Section 114 of the California Labor Code requires Defendants to maintain and  
15 preserve in a centralized locations, among other items, records showing the named and addresses  
16 of all employees employed, payroll records showing the hours worked daily and the wages paid  
17 to its employees. On information and belief Defendants have knowingly and intentionally failed  
18 to comply with California Labor Code section 1174. Defendants' failure to comply with  
19 California Labor Code section 1174 is unlawful pursuant to California Labor Code section 1175.

20 42. ICW Wage Orders 5-2001(7), 5-2000(7), 5-1998(7) require Defendants to  
21 maintain time records showing, among others, when the employee begin and ends each work  
22 period, meal periods, split shift intervals and total daily hours worked in an itemized wage  
23 statements, and must show all deductions and reimbursements from payment of wages, and  
24 accurately report total hours worked by Plaintiffs and the members of the proposed class. On  
25 information and belief, Defendants have failed to record all or some of the items delineated in  
26 Wage Order 5 section 7 and 226.

27 43. Pursuant to California Labor Code section 226, Plaintiffs and the class they seek  
28 to represent are entitled up to a maximum of \$4,000 each for record-keeping violations.

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**FOURTH CAUSE OF ACTION**  
**(VIOLATION OF UNFAIR COMPETITION LAW AGAINST DEFENDANTS AND DOES 1 TO 10)**

44. Plaintiffs incorporate by reference paragraphs 1 through 31 above as though set forth in full herein.

45. The actions of Defendants as alleged within this Complaint, constitute false, fraudulent, unlawful, unfair and deceptive business practices within the meaning of Business and Professions Code sections 17200, et.seq.

46. Plaintiffs and the class they seek to represent are entitled to an injunction and other equitable relief against such unlawful practices in order to prevent future damage, for which there is no adequate remedy at law, and to avoid a multiplicity of lawsuits.

47. As a result of their unlawful acts, Defendants have reaped and continue to reap unfair benefits and unlawful profits at the expense of Plaintiffs. Defendants should be enjoined from this activity and made to disgorge these ill-gotten gains and restore to Plaintiff the wrongfully withheld wages pursuant to Business and Professions Code section 17203. Plaintiffs are informed and believe, and based thereon allege, that Defendants are unjustly enriched through their requiring employees to assume Defendants' expenditures and losses and failure to indemnify, pay legal wages, and pay compensation for working through meal periods, and compensation for unprovided rest periods to Plaintiffs. Plaintiffs are informed and believe and thereon alleges that Plaintiffs and the class they seek to represent are prejudiced by Defendants' unfair trade practices.

48. As a direct and proximate result of the unfair business practices of Defendants, and each of them, Plaintiffs and the class they seek to represent are entitled to equitable and injunctive relief, including full restitution ad/or disgorgement of all wages which have been unlawfully withheld from Plaintiffs and the class they seek to represent as a result of the business acts and practices described herein and enjoining Defendants to cease and desist from engaging in the practices described, herein.

49. The unlawful conduct alleged herein is continuing and there is no indication that Defendants will not continue such activity into the future. Plaintiffs allege that if Defendants are

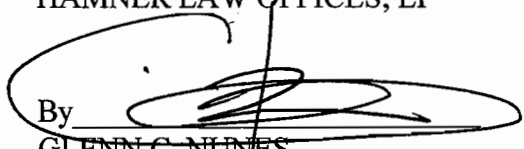


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9. Declaratory relief as requested herein.

DATED: September 22, 2009

NUNES LAW GROUP, LP  
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By 

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