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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

AUG 29 2011

ALAN CARLSON, Clerk of the Court

BY: E. HONG, DEPUTY

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

CHARLES DRENGBERG, an individual,

Case No.: 30-2009-00314774 *SA*

Plaintiff,

) LIMITED CIVIL CASE

30-2011

vs.

) COMPLAINT FOR:

00503768

J&A RESTAURANT MANAGEMENT INC., a
California corporation;
GEISHA HOUSE, a business organization, form
unknown;
DOES 1 through 10, inclusive,

1. WRONGFUL TERMINATION IN
VIOLATION OF PUBLIC POLICY
2. UNFAIR COMPETITION UNDER
BUSINESS & PROFESSIONS CODE
SECTION 17200

Defendants.

) Amount demanded exceeds \$10,000

Plaintiff alleges:

1. Defendants J&A RESTAURANT MANAGEMENT INC. and GEISHA HOUSE, (collectively "Geisha" or Defendants) have owned and operated a sushi bar restaurant and nightclub located at 2773 North Main Street, Santa Ana, California, 92705 under the business name "Geisha House," since on or about May or April 2011, at which time Defendants purchased Geisha House as a continuing business from the Dolce Group, a business entity form unknown that does business in California.

2. Defendants Doe 1 through Doe 10, inclusive, are sued herein under fictitious names. Their true names and capacities are unknown to Plaintiff. When their true names and capacities are ascertained,

1 Plaintiff will amend this complaint by inserting their true names and capacities herein. Plaintiff is
2 informed and believes, and thereon alleges, that each of the fictitiously named Defendants is responsible
3 in some manner for the occurrences herein alleged, and that Plaintiff's damages as herein alleged were
4 proximately caused by those Defendants. Each reference in this complaint to "Defendant" or
"Defendants" refers also to all Defendants sued under fictitious names.

5 3. Each of the defendants was the agent, joint venturer and employee of each of the remaining
6 defendants and in doing the things hereinafter alleged, each was acting within the course and scope of said
7 agency, employment and joint venture with the advance knowledge, acquiescence or subsequent
ratification of each and every remaining defendant.

8 4. All acts of Defendants alleged herein occurred within four years prior to filing of this
9 complaint.

10 **FIRST CAUSE OF ACTION FOR WRONGFUL TERMINATION
11 IN VIOLATION OF PUBLIC POLICY
12 (BY PLAINTIFF AGAINST ALL DEFENDANTS)**

13 5. At all times alleged herein, Defendants employed Plaintiff CHARLES DRENGBERG
("Drengberg") as a server and bartender.

14 6. Sometime in May 2011, Defendants implemented a tipping policy that required servers to
tip out up to 60% of the server's assumed tips.

15 7. Plaintiff is informed and believes, and on that basis alleges that in order to calculate the
tip-out amount, the Defendants assumed the servers made at least 12% of their sales in tips without regard
to the actual amount of tips made by the servers.

16 8. As a result of this policy, servers sometimes had to tip out an amount higher than the
amount of tips made during that shift.

17 9. Drengberg complained to Defendants that this policy is illegal because it could cause the
servers to earn less than the minimum wage and the tip-out amount is excessive.

20 10. The conduct of Defendants that Drengberg complained about violated Labor Code §§ 206,
1182-1182.13, 351-354; 29 U.S.C. §§ 203, 206(a)(1); and 29 C.F.R. §§ 531.50-531.60.

23 11. As a proximate result of Plaintiff's conduct as described above, and in violation of public
policy as set forth above, Defendants terminated Plaintiff's employment on May 22, 2011.

26 12. As a proximate result of Defendants conduct, plaintiff has suffered harm, including lost
earnings and other employment benefits, humiliation, embarrassment, and mental anguish, all to his
27 damage in an amount to be established at trial.

1 13. In doing the acts set forth above, Defendants knew that the conduct that they would have
2 required of Drengberg was unlawful, and required plaintiff to choose between tolerating a violation of the
3 law and losing his job. Notwithstanding this knowledge, Defendants despicably subjected Drengberg to
4 cruel and unjust hardship in conscious disregard of Drengberg 's rights by insisting that Drengberg
5 tolerates violation of the law as applicable to him, and terminating Drengberg 's employment when
6 Drengberg complained, and castigating Drengberg in front of Drengberg's coworkers. This oppressive
7 conduct was committed by Alex Chung, defendants Defendants's manager. Defendants' conduct warrants
the assessment of punitive damages.

8 14. Defendants authorized and ratified the conduct of Alex Chung.

9 WHEREFORE, on this cause of actions for wrongful termination in violation of public policy,
10 Plaintiff prays judgment against defendants GEISHA HOUSE and J&A RESTAURANT
11 MANAGEMENT INC., and each of them, as follow:

- 12 1. For compensatory damages according to proof, including lost earnings and other employee
13 benefits, costs of seeking other employment, and damages for emotional distress,
14 humiliation, and mental anguish;
- 15 2. For interest on lost earnings and benefits at the prevailing legal rate from May 22, 2011;
- 16 3. For punitive damages in an amount appropriate to punish defendants GEISHA HOUSE
17 and J&A RESTAURANT MANAGEMENT INC. and deter others from engaging in
18 similar misconduct;
- 19 4. For costs of suit incurred by plaintiff;
- 20 5. For such other and further relief as the court deems proper.

21 **SECOND CAUSE OF ACTION FOR UNFAIR COMPETITION UNDER
22 BUSINESS & PROFESSIONS CODE SECTION 17200
23 (BY PLAINTIFF AGAINST ALL DEFENDANTS)**

24 15. Plaintiff repeats and realleges each and every allegation contained in the foregoing
25 paragraphs as if fully set forth herein.

26 16. Drengberg has often worked in excess of 5 hours a day without being afforded full and
27 uninterrupted off-duty meal period of at least a one-half hour in which he was relieved of all duties. He
28 has also often worked at least 10 hours a day without receiving a second full and uninterrupted off-duty
meal period of at least one-half hour in which they were relieved of all duties. Defendants have known

1 these facts and permitted, encouraged, or required Drengberg to forego these meal periods without
2 compensating them for the missed meal periods. Labor Code §§ 226.7, 512, 1198, and Industrial Welfare
3 Commission wage order No. 5-2001 (Cal. Code Regs., tit. 8, § 11050) ("Wage Order No. 5-2001").

4 17. Drengberg has regularly worked over four-hour periods (or major fraction thereof) without
5 Defendants authorizing and permitting him to take a paid 10-minute rest period. Defendants have known
6 these facts and suffered, permitted, encouraged, or required Drengberg to forego these rest periods. Labor
7 Code §§ 226.7, 1198, and Wage Order No. 5-2001.

8 18. Defendants have failed to furnish Drengberg with timely itemized wage statements
9 accurately showing total hours, meal-and-rest break premiums, split-shift premiums, reporting time pay,
10 on call pay, and other information required to be disclosed by California law. Defendants have also failed
11 to keep payroll records showing the actual hours worked daily, meal periods, and split shift intervals
12 worked by Drengberg. These acts of the Defendants violate of Labor Code §§ 226, 1174, 1174.5, 1198,
13 and Wage Order No. 5-2001.

14 19. Defendants have required, encouraged, permitted or suffered Drengberg to work but failed
15 to pay Drengberg minimum wage for those hours worked. These acts of the Defendants violate of Labor
16 Code §§ 1197, 1198, and Wage Order No. 5-2001.

17 20. Defendants have regularly required, encouraged, permitted or suffered Drengberg to work
18 overtime but failed to pay Drengberg overtime wage for those hours worked. These acts of the Defendants
19 violate of Labor Code §§ 510, 1198, and Wage Order No. 5-2001.

20 21. Defendants have failed to timely pay Drengberg's wages upon his termination. These acts
21 of the Defendants violate Labor Code §§ 201-203, 1198, and Wage Order No. 5-2001.

22 22. Defendant have failed to pay Drengberg's wages when due. These acts of the Defendants
23 violate of Labor Code §§ 204, 1198, and Wage Order No. 5-2001.

24 23. Defendants have regularly required, encouraged, permitted or suffered Drengberg to work
25 split-shifts days without compensating him one hour pay at minimum wage in addition to the minimum
26 wage for that day. These acts of the Defendants violate of Labor Code § 1197, 1198, and Wage Order No.
27 5-2001.

28 24. Defendants have regularly required, encouraged, permitted or suffered Drengberg to
29 remain on call for work so that Drengberg was unable to use that time effectively for his own purposes,
30 but Defendants did not pay Drengberg minimum wages for the time spent waiting to be engaged to work
31 by Defendants. These acts of the Defendants violate of Labor Code § 1197, 1198, and Wage Order No. 5-
32 2001.

1 25. Defendants have required Drengberg to wear uniforms as a condition of employment, but
2 have failed to provide and maintain the uniform. Drengberg has had to pay for his uniforms. These acts
3 of Defendants violate Labor Code § 1198 and Wage Order No. 5-2001.

4 26. Defendants' aforementioned acts constitute unlawful business acts and practices by
5 violating California law including, but not limited to laws cited above.

6 27. As a result of their unlawful, unfair, and/or fraudulent acts, Defendants have reaped and
7 continue to reap unfair benefits and illegal profits at the expense of Drengberg. Therefore, Defendants
8 should be enjoined from these activities and should provide restitution to Plaintiff the wrongfully
9 withheld wages and other benefits pursuant to business & Professions Code § 17203, in a sum according
10 to proof.

11 WHEREFORE, on this cause of actions for violation of Business and Professions Code section
12 17200, Plaintiff prays judgment against Defendants, and each of them, as follow:

- 1 1. That the Court find that Defendants have violated California Labor Code §§ 226.7 and
2 512, and Wage Order No. 5-2001 by failing to afford Drengberg full and uninterrupted off-
3 duty meal and rest periods or compensation in lieu thereof;
- 4 2. That the Court find that Defendants have violated the record-keeping provisions of Labor
5 Code §§ 226, 1174(d), and Wage Order No. 5-2001 ¶ (7)(A) as to Plaintiff;
- 6 3. That the Court find that Defendants have violated California Labor Code §§ 204, 1197,
7 1198, and Wage Order No. 5-2001 ¶ 4(C) by failing to compensate Drengberg for all the
8 work he performed for Defendants;
- 9 4. That the Court find that Defendants have violated California Labor Code §510, Wage
10 Order No. 5-2001 ¶ 3(A)) by failing to compensate Drengberg for all overtime hours
11 worked for Defendants;
- 12 5. That the Court find that Defendants have violated California Labor Code §§ 201, 202, and
13 203 for willful failure to pay all compensation owed at the time of termination of
14 employment to Drengberg;
- 15 6. That the Court find that Defendants have violated California Labor Code §§ 204, 1197,
16 1198, and Wage Order No. 5-2001 ¶ 4(C) by failing to pay Drengberg split shift premiums.
- 17 7. That the Court find that Defendants have violated California Labor Code §§ 204, 1197,
18 1197, and Wage Order No. 5-2001 ¶ 4(C) by failing to pay Drengberg for time spent on
19 call so that Drengberg was unable to use that time effectively for his own purposes.

1 8. That the Court find that Defendants have violated Labor Code 1198 and Wage Order No.
2 5-2001 by requiring Drengberg to wear uniforms as a condition of employment, but
3 Defendants failed to provide and maintain the uniform.

4 9. That the Court find that Defendants have violated Business & Professions code § 17200 by
5 failing to keep proper time records, by failing to afford Drengberg full and uninterrupted
6 off-duty meal and rest periods, by failing to timely furnish Drengberg with statements
7 accurately showing total hours worked;

8 10. That the Court find that Defendants' violations as described have been willful;

9 11. That the Court award Drengberg restitution for all wages earned by Drengberg including
10 for missed meal and rest period; split shifts, on call shifts; and work performed without
11 compensation.

12 12. That Defendants be ordered and enjoined to pay restitution to Drengberg due to
13 Defendants' unlawful and/or unfair activities, pursuant to Business & Professions Code §§
14 17200-17205;

15 13. That Plaintiff be awarded reasonable attorneys' fees and costs pursuant to Civil Procedure
16 Code § 1021.5, and/or other applicable law; and

17 14. That the Court award such other and further relief as this Court may deem appropriate.

16 **DEMAND FOR JURY TRIAL**

17 Plaintiff hereby demands a trial by jury.

18 Dated: August 29, 2011

19 JAFARI LAW GROUP, INC.

20 
21 David V. Jafari, Esq.
22 Attorney for Plaintiff

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):

David V. Jafari, SBN 207881
JAFARI LAW GROUP, INC.
 120 Vantis Drive, Suite 430
 Aliso Viejo, CA 92656

TELEPHONE NO.: 714-542-2265

FAX NO.: 714-542-2286

ATTORNEY FOR (Name): Plaintiff Charles Drengberg

SUPERIOR COURT OF CALIFORNIA, COUNTY OF Orange

STREET ADDRESS: 700 Civic Center Drive West

MAILING ADDRESS: 700 Civic Center Drive West

CITY AND ZIP CODE: Santa Ana, CA 92701

BRANCH NAME: Central Justice Center

FOR COURT USE ONLY

FILEDSUPERIOR COURT OF CALIFORNIA
 COUNTY OF ORANGE
 CENTRAL JUSTICE CENTER

AUG 29 2011

ALAN CARLSON, Clerk of the Court

BY: E. HONG, DEPUTYCASE NUMBER: **30-2011**JUDGE: **00503768**

DEPT:

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort

Auto (22)
 Uninsured motorist (46)

Other PI/PD/WD (Personal Injury/Property**Damage/Wrongful Death) Tort**

Asbestos (04)
 Product liability (24)
 Medical malpractice (45)
 Other PI/PD/WD (23)

Non-PI/PD/WD (Other) Tort

Business tort/unfair business practice (07)
 Civil rights (08)
 Defamation (13)
 Fraud (16)
 Intellectual property (19)
 Professional negligence (25)
 Other non-PI/PD/WD tort (35)

Employment

Wrongful termination (36)
 Other employment (15)

Contract

Breach of contract/warranty (06)
 Rule 3.740 collections (09)
 Other collections (09)
 Insurance coverage (18)
 Other contract (37)

Real Property

Eminent domain/Inverse condemnation (14)
 Wrongful eviction (33)
 Other real property (26)

Unlawful Detainer

Commercial (31)
 Residential (32)
 Drugs (38)

Judicial Review

Asset forfeiture (05)
 Petition re: arbitration award (11)
 Writ of mandate (02)
 Other judicial review (39)

Provisionally Complex Civil Litigation
(Cal. Rules of Court, rules 3.400-3.403)

Antitrust/Trade regulation (03)
 Construction defect (10)
 Mass tort (40)
 Securities litigation (28)
 Environmental/Toxic tort (30)
 Insurance coverage claims arising from the above listed provisionally complex case types (41)

Enforcement of Judgment

Enforcement of judgment (20)

Miscellaneous Civil Complaint

RICO (27)
 Other complaint (not specified above) (42)

Miscellaneous Civil Petition

Partnership and corporate governance (21)
 Other petition (not specified above) (43)

2. This case is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

a. Large number of separately represented parties
 b. Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
 c. Substantial amount of documentary evidence
 d. Large number of witnesses
 e. Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
 f. Substantial postjudgment judicial supervision

3. Remedies sought (check all that apply): a. monetary b. nonmonetary; declaratory or injunctive relief c. punitive

4. Number of causes of action (specify): two

5. This case is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: August 29, 2011
DAVID JAFARI

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2



SUPERIOR COURT OF CALIFORNIA

COUNTY OF ORANGE

Superior Court of California, County of Orange

700 W. Civic Center Drive
Santa Ana, CA 92702

PAYMENT RECEIPT

Receipt #: 10806010

Clerk ID: ehong

Transaction No: 10982118

Transaction Date: 08/29/2011

Transaction Time: 04:00:31 PM

30-2011-00503768-CL-WT-CJC 168 - Complaint or other 1st paper 1 \$370.00 \$370.00 \$370.00 \$0.00
">\$10K<=\$25K

Sales Tax: \$0.00
Total: \$370.00 Total Rem. Bal: \$0.00

Credit Card: \$370.00

Total Amount Tendered: \$370.00

Change Due: \$0.00

Balance: \$0.00

\$25 will be charged for each returned check. www.occourts.org

ORIGINAL