

SCOTT COLE & ASSOCIATES, APC
ATTORNEYS AT LAW
THE WACHOVIA TOWER
1970 BROADWAY, NINTH FLOOR
OAKLAND, CA 94612
TEL: (510) 891-9600

1 Matthew R. Bainer, Esq. (S.B. #220972)
2 Hannah R. Salassi, Esq. (S.B. #230117)
3 SCOTT COLE & ASSOCIATES, APC
4 1970 Broadway, Ninth Floor
5 Oakland, California 94612
6 Telephone: (510) 891-9800
7 Facsimile: (510) 891-7030
8 E-mail: mbainer@scalaw.com
9 E-mail: hsalassi@scalaw.com
10 Web: www.scalaw.com

11 Attorneys for Plaintiff Zachary Morvant

12 **IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **IN AND FOR THE COUNTY OF SACRAMENTO**

14 ZACHARY MORVANT, individually,

15 Plaintiffs,

16 vs.

17 P.F. CHANG'S CHINA BISTRO,
18 INC., P.F. CHANG'S III, LLC, and
19 DOES 1 through 100, inclusive,

20 Defendants.

Case No.:

CLASS ACTION

**COMPLAINT FOR DAMAGES,
INJUNCTIVE RELIEF AND RESTITUTION**

[Jury Trial Demanded]

21 The individual Plaintiff alleges as follows:

Department
Assignments
Case Management 35
Law and Motion 54
Minors Compromise 14

22 **PRELIMINARY STATEMENT**

23 1. This Complaint is brought by Zachary Morvant, individually, ("Plaintiff"), seeking
24 unpaid wages, including meal and rest period compensation, interest thereon, liquidated damages
25 and other penalties, injunctive and other equitable relief, and reasonable attorneys' fees and costs
26 under, *inter alia*, California Labor Code §§ 200-204, inclusive, 226, 226.7, 510, 512, 1174, 1194,
27 1197 and/or 1198, California Business and Professions Code §§ 17200, *et seq.* and California Code
28 of Civil Procedure § 1021.5 against P.F. Chang's China Bistro, Inc., P.F. Chang's III, LLC and Does
1 - 100 (collectively "Defendants" and/or "PFC").

FILED
Superior Court Of California,
Sacramento
12/14/2010
mmeraz
By _____, Deputy
Case Number:
34-2010-00093491

BY FAX

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JURISDICTION AND VENUE

1. This Court has jurisdiction over Plaintiff's claims for unpaid wages, penalties and other forms of relief sought herein under, *inter alia*, Industrial Welfare Commission Wage Order No. 5, Title 8 of the California Code of Regulations, Labor Code §§ 201-204, inclusive, 226, 226.7, 510, 512, 1174, 1194 and/or 1198, and California Code of Civil Procedure § 1021.5.

2. This Court also has jurisdiction over Plaintiff's claims for injunctive relief and restitution of ill-gotten benefits arising from Defendant's unfair, unlawful and/or fraudulent business practices under California Business & Professions Code §§ 17200, *et seq.*

3. Venue as to Defendant is proper in this judicial district pursuant to California Code of Civil Procedure § 395(a). Defendant P.F. CHANG'S maintains locations within Sacramento County, transacts business, has agents, and is otherwise within this Court's jurisdiction for purposes of service of process. The unlawful acts alleged herein have a direct effect on Plaintiff within this judicial district, in which Defendant operates facilities and has employed Plaintiff in the County of Sacramento, as well as within other counties across the State of California.

PLAINTIFF

4. Plaintiff Zachary Morvant began working for Defendant as a food runner in early 2005, and began working as a server and bartender in April, 2005, all non-exempt positions, at the P.F. Chang's restaurant located in Emeryville, California. During this time, Plaintiff was entitled to the benefits of employment alleged herein.

5. During the statutory period, Plaintiff Zachary Morvant clocked in at the beginning of each shift, clocked out upon beginning a meal break, clocked back in upon returning from a meal break, and clocked out again at the end of his shift. Upon clocking out at the end of his shift, Plaintiff obtained an employee clock out receipt, which verified the number of hours he worked during that shift.

6. Plaintiff Zachary Morvant's work shifts did not have a definitive end time, but rather depended on customer flow and whether other work duties had been assigned to him. During

1 these shifts, Plaintiff Zachary Morvant was entitled to take a 30 minute uninterrupted meal break.
2 However, Plaintiff was only allowed to take a meal break if Defendant had sufficient staff available
3 to relive Plaintiff of his duties while sufficiently maintaining Defendant's operations. On several
4 occasions, Plaintiff Zachary Morvant was often prevented from taking a 30 minute uninterrupted
5 meal break because either Defendant failed to schedule sufficient staff to work during his shift,
6 members of the staff of Plaintiff's restaurant failed to report to work or Defendant sent staff
7 members home before they relieved Plaintiff of his work duties for 30 minutes.

8 7. For these same reasons, during the Class Period, Plaintiff Zachary Morvant was
9 also required to work and did work four hours or a "major fraction" thereof without being afforded
10 net ten minute rest periods. Upon information and belief, Defendant did not utilize any staff
11 members to relieve Plaintiff of his duties for his statutorily mandated rest periods.

12 8. Additionally, upon information and belief, Defendant had a practice of editing the
13 records of Plaintiff in order to have it appear that Plaintiff's shifts lasted less than six hours and/or
14 that Plaintiff took a 30 minute meal break. In so doing, Defendant not only denied Plaintiff his
15 statutorily mandated meal break, but also failed to compensate Plaintiff for all time he worked
16 during those shifts.

17 9. Plaintiff is informed and believes and, on that basis, alleges that this conduct of
18 Defendant is/was commonplace at every one of Defendant's California facilities.

19
20 **DEFENDANTS**

21 10. At all times herein relevant, P.F. CHANG'S was/is a corporation and/or other form
22 of business entity, duly licensed, located and doing business in, but not limited to, the County of
23 Sacramento, in the State of California.

24 11. Those defendants identified as Does 1 through 100, inclusive, are and were, at all
25 relevant times herein-mentioned, business affiliates, successors and/or predecessors-in-interest,
26 officers, directors, partners, and/or managing agents of some or each of the remaining defendants.
27 Plaintiff is informed and believes and, on that basis, alleges that each of the fictitiously-named
28 defendants is/was responsible in some manner for, gave consent to, ratified, and/or authorized the

1 conduct herein-alleged and that Plaintiff's damages, as herein-alleged, were proximately caused
2 thereby.

3 12. Plaintiff is unaware of the true names and capacities of those defendants sued herein
4 as Does 1 through 100, inclusive and, therefore, sues these defendants by such fictitious names.
5 Plaintiff will seek leave of court to amend this Complaint when such names are ascertained.

6 13. Plaintiff is informed and believes and, on that basis, alleges that, at all relevant
7 times herein-mentioned, each of the defendants was the agent and/or employee of each of the
8 remaining defendants and, in doing the acts herein alleged, was acting within the course and scope of
9 such agency and/or employment.

10
11 **FACTUAL ALLEGATIONS**

12 14. Defendant P.F. CHANG'S has failed to properly compensate Plaintiff for all wages
13 earned and due (including, but not necessarily limited to, overtime wages and/or compensation for
14 missed meal and/or rest periods). Moreover, Defendant has failed to provide Plaintiff with net ten
15 minute rest periods for work shifts exceeding four hours or a major fraction thereof, and has failed to
16 provide uninterrupted, unrestricted meal periods of at least 30 minute for work shifts exceeding five
17 hours. Defendant has further failed to pay wages owed upon Plaintiff's resignation of employment in
18 blatant violation of California Labor Code §§ 201-204, inclusive. More than 30 days has passed
19 since certain Plaintiff left Defendant's employ.

20 15. Defendant also failed to provide Plaintiff with accurate semimonthly itemized
21 statements of the total number of hours worked by each, and all applicable hourly rates in effect
22 during each pay period, in violation of California Labor Code § 226. In doing so, Defendant has not
23 only failed to pay Plaintiff the full amount of compensation due, it has, until now, effectively
24 shielded itself from its employees' scrutiny for its unlawful conduct by concealing the magnitude
25 (e.g., the full number of hours worked) and financial impact of its wrongdoing.

26 16. As a direct and proximate result of Defendant's unlawful conduct, as set forth
27 herein, Plaintiff has sustained damages, as described above, including loss of earnings for
28 uncompensated meal and rest periods, in an amount to be established at trial. As a further direct and

1 proximate result of Defendant's unlawful conduct, as set forth herein, Plaintiff is entitled to recover
2 penalties/wages (pursuant to California Labor Code §§ 201-204), and penalties for failure to provide
3 semimonthly itemized wage statements of hours worked and all applicable hourly rates (pursuant to
4 California Labor Code § 226) in an amount to be established at trial. As a further direct and
5 proximate result of Defendant's unlawful conduct, as set forth herein, Plaintiff is also entitled to
6 recover costs and attorneys' fees and restitution of ill-gotten gains, pursuant to statute.

7
8 **FIRST CAUSE OF ACTION**
9 **FAILURE TO PROVIDE MEAL AND REST PERIODS**
10 **(California Labor Code §§ 226.7 and 512)**

11 17. Plaintiff incorporates in this cause of action each and every allegation of the
12 preceding paragraphs, with the same force and effect as though fully set forth herein.

13 18. At all relevant times, Defendant was aware of and was under a duty to comply with
14 California Labor Code §§ 226.7 and 512.

15 19. California Labor Code §226.7 provides:

16 (a) No employer shall require any employee to work during any meal or
17 rest period mandated by an applicable order of the Industrial Welfare
18 Commission.

19 (b) If an employer fails to provide an employee a meal period or rest
20 period in accordance with an applicable order of the Industrial Welfare
21 Commission, the employer shall pay the employee one additional hour of pay
22 at the employee's regular rate of compensation for each work day that the
23 meal or rest period is not provided.

24 20. Moreover, California Labor Code § 512 provides:

25 An employer may not employ an employee for a work period of more than
26 five hours per day without providing the employee with a meal period of not
27 less than 30 minutes, except that if the total work period per day of the
28 employee is no more than six hours, the meal period may be waived by
mutual consent of both the employer and employee. An employer may not
employ an employee for a work period of more than 10 hours per day without
providing the employee with a second meal period of not less than 30
minutes, except that if the total hours worked is no more than 12 hours, the
second meal period may be waived by mutual consent of the employer and
the employee only if the first meal period was not waived.

21 21. By failing to consistently provide uninterrupted and unrestricted meal and rest

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1 periods to Plaintiff, as a result of Defendant's "breaker" and "shaving" policies, Defendant violated
2 California Labor Code §§ 226.7 and/or 512, and §§ 11 and 12 of the IWC Wage Order No. 5.

3 22. Section 11 of this Wage Order provides:

4 (A) No employer shall employ any person for a work period of more than
5 five (5) hours without a meal period of not less than 30 minutes

6 (B) An employer may not employ an employee for a work period of more
7 than ten (10) hours per day without providing the employee with a second
8 meal period of not less than 30 minutes

9 (C) If an employer fails to provide an employee a meal period in
10 accordance with the applicable provisions of this order, the employer shall
11 pay the employee one (1) hour of pay at the employee's regular rate of
12 compensation for each workday that the meal period is not provided.

13 23. Moreover, Section 12 of this Wage Order provides:

14 (A) Every employer shall authorize and permit all employees to take rest
15 periods, which insofar as practicable shall be in the middle of each work
16 period. The authorized rest period time shall be based on the total hours
17 worked daily at the rate of ten (10) minutes net rest time per four (4) hours or
18 major fraction thereof

19 (B) If an employer fails to provide an employee a rest period in
20 accordance with the applicable provisions of this order, the employer shall
21 pay the employee one (1) hour of pay at the employee's regular rate of
22 compensation for each workday that the rest period is not provided.

23 24. Plaintiff is informed and believes and, on that basis, alleges that Defendant has
24 never paid the one hour of compensation to Plaintiff due to its violations of the California Labor
25 Code and applicable IWC Wage Order provisions.

26 25. As a direct and proximate result of Defendant's unlawful conduct, as set forth
27 herein, Plaintiff has sustained damages, including lost compensation resulting from missed meal
28 and/or rest periods, in an amount to be established at trial. As a further direct and proximate result of
Defendant's unlawful conduct, as set forth herein, Plaintiff is entitled to recover "waiting time" and
other penalties, in an amount to be established at trial, as well as recovery of attorneys' fees and
costs, and restitution, pursuant to statute.

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33. Finally, California Labor Code § 1198, in pertinent part, provides:

The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

34. By refusing to compensate Plaintiff for overtime wages earned, Defendant violated those California Labor Code provisions cited herein as well as the applicable IWC Wage Order.

35. As a direct and proximate result of Defendant's unlawful conduct, as set forth herein, Plaintiff has sustained damages, including loss of earnings for hours of overtime worked on behalf of P.F. CHANG'S, in an amount to be established at trial. As a further direct and proximate result of Defendant's unlawful conduct, as set forth herein, Plaintiff is entitled to recover penalties (including "waiting time" penalties of up to thirty days' wages, pursuant to California Labor Code § 203) in an amount to be established at trial, as well as recovery of attorneys' fees and costs, and restitution, pursuant to statute.

THIRD CAUSE OF ACTION
FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS
(California Labor Code §§ 226 and 1174)

36. Plaintiff incorporates in this cause of action each and every allegation of the preceding paragraphs, with the same force and effect as though fully set forth herein.

37. California Labor Code § 226(a) provides:

Each employer shall semi-monthly, or at the time of each payment of wages, furnish each of his or her employees either as a detachable part of the check, draft or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an itemized wage statement in writing showing: (1) gross wages earned; (2) total number of hours worked by each employee whose compensation is based on an hourly wage; (3) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item; (4) net wages earned; (5) the inclusive date of the period for which the employee is paid; (6) the name of the employee and his or her social security number; and (7) the name and address of the legal entity which is the employer.

38. Moreover, California Labor Code § 226(e) provides:

An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the

greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's fees.

39. Finally, California Labor Code § 1174 provides:

Every person employing labor in this state shall: (d) Keep, at a central location in the state...payroll records showing the hours worked daily by and the wages paid to ... employees These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than two years.

40. Defendant has failed to provide timely, accurate itemized wage statements to Plaintiff in accordance with California Labor Code § 226. Plaintiff is informed and believes and, on that basis, alleges that none of the statements provided by Defendant accurately reflected actual gross wages earned, net wages earned, or the appropriate deductions for any Class Member.

41. As a direct and proximate result of Defendant's unlawful conduct, as set forth herein, Plaintiff is entitled to recover penalties, in an amount to be established at trial, as well as recovery of attorneys' fees and costs, pursuant to statute.

FOURTH CAUSE OF ACTION
UNFAIR BUSINESS PRACTICES UNDER THE UNFAIR COMPETITION ACT
(California Business & Professions Code §§ 17200-17208)

42. Plaintiff incorporates in this cause of action each and every allegation of the preceding paragraphs, with the same force and effect as though fully set forth herein.

43. Plaintiff further brings this cause of action seeking equitable and injunctive relief to stop Defendant's misconduct, as complained of herein, and to seek restitution of the amounts Defendant acquired through the unfair, unlawful, and fraudulent business practices described herein.

44. Defendant's knowing conduct, as alleged herein, constitutes an unlawful and/or fraudulent business practice, as set forth in California Business & Professions Code §§ 17200-17208. Specifically, Defendant conducted business activities while failing to comply with the legal mandates cited herein.

45. Defendant's knowing failure to adopt policies in accordance with and/or adhere to

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1 these laws, all of which are binding upon and burdensome to its competitors, engenders an unfair
2 competitive advantage for P.F. CHANG'S, thereby constituting an unfair business practice under
3 California Business & Professions Code §§ 17200-17208.

4 46. Defendant has clearly established a policy of accepting a certain amount of
5 collateral damage, as represented by the damages to Plaintiff herein alleged, as incidental to its
6 business operations, rather than accept the alternative costs of full compliance with fair, lawful, and
7 honest business practices, ordinarily borne by its responsible competitors and as set forth in
8 legislation and the judicial record.

9
10 **RELIEF SOUGHT**

11 **WHEREFORE, Plaintiff** prays for judgment and the following specific relief against
12 **Defendants, and each of them,** jointly and separately, as follows:

13 1. That the Court make an award to Plaintiff of one hour of pay at each employee's
14 regular rate of compensation for each workday that a meal period was not provided;

15 2. That the Court make an award to Plaintiff and the Class Members of one hour of pay
16 at each employee's regular rate of compensation for each workday that a rest period was not
17 provided;

18 3. That the Court declare, adjudge, and decree that Defendants violated the wage
19 (including overtime wage) provisions of the California Labor Code and the applicable California
20 Industrial Welfare Commission Wage Order as to Plaintiff;

21 4. That the Court declare, adjudge, and decree that Plaintiff was, at all times relevant
22 herein, and is still, entitled to be paid overtime for work beyond eight hours in a day and 40 hours in
23 a week;

24 5. That the Court make an award to Plaintiff of damages and/or restitution for the
25 amount of unpaid overtime compensation, including interest thereon, and penalties in an amount to
26 be proven at trial;

27 6. That the Court order Defendant to pay restitution to Plaintiff due to Defendant's
28 unlawful activities, pursuant to California Business and Professions Code §§ 17200-17208;

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- 7. That the Court further enjoin Defendant, ordering it to cease and desist from unlawful activities in violation of California Business and Professions Code §§ 17200, *et seq.*;
- 8. For all other Orders, findings and determinations identified and sought in this Complaint;
- 9. For interest on the amount of any and all economic losses, at the prevailing legal rate;
- 10. For reasonable attorneys' fees, pursuant to California Labor Code §§1194 and/or California Code of Civil Procedure § 1021.5; and
- 11. For costs of suit and any and all other such relief as the Court deems just and proper.

JURY DEMAND

Plaintiff hereby demands trial by jury on all issues triable of right by jury.

Dated: December 14, 2010

SCOTT COLE & ASSOCIATES, APC

By: Hannah Salassi
Hannah R. Salassi, Esq.
Attorneys for Plaintiff
and Plaintiff