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David H. Yamasaki

Chief Executive Officer/Clerk

Superior Court of CA, County of Santa Clara

Case #1-13-CV-254098 Filing #G-61580

By R. Walker, Deputy

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15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
16 **FOR THE COUNTY OF SANTA CLARA**

17 FRANK ORTEGON-RAMIREZ, as individual
18 and on behalf of all others similarly situated,

19 Plaintiff,

20 vs.

21 CEDAR FAIR, L.P. and CEDAR FAIR
22 MANAGEMENT, INC., a Delaware
23 corporation; and DOES 1 through 25, inclusive,

24 Defendants.

Case No.: **1-13-CV-254098**

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR DAMAGES FOR:**

- 25 (1) FAILURE TO PAY MINIMUM WAGES
- 26 (2) FAILURE TO PAY OVERTIME WAGES;
- 27 (3) FAILURE TO PAY REPORTING TIME WAGES;
- 28 (4) VIOLATION OF LABOR CODE § 203;
- (5) VIOLATION OF LABOR CODE § 226;
- (6) UNFAIR BUSINESS PRACTICES (Violation of California Business & Professions Code §17200 et seq.); and
- (7) VIOLATION OF LABOR CODE § 2698 *ET. SEQ.*

DEMAND FOR JURY TRIAL

1
2 Plaintiff FRANK ORTEGON-RAMIREZ (hereinafter referred to as "Plaintiff"), hereby
3 submits his First Amended Class Action Complaint against Defendants CEDAR FAIR
4 ENTERTAINMENT, CEDAR FAIR, L.P. and DOES 1-25 (hereinafter collectively referred to
5 as "DEFENDANTS") on behalf of themselves and the class of all other similarly situated current
6 and former non-exempt employees of DEFENDANTS for minimum wages, overtime wages,
7 reporting time wages, as well as waiting time penalties, and penalties or damages for failure to
8 provide accurate records, penalties under California Labor Code statutes, and for restitution as
9 follows:

10 **INTRODUCTION**

11 1. This class action is within the Court's jurisdiction under California Labor Code §§
12 201-203, 226, 510, 1194, 1197, 2698 the applicable Industrial Welfare Commission ("IWC")
13 Wage Order, and California Business and Professions Code § 17200, et seq., (Unfair Practices
14 Act).

15 2. This complaint challenges systemic illegal employment practices resulting in
16 violations of the California Labor Code and Business and Professions Code against employees of
17 DEFENDANTS.

18 3. Plaintiff is informed and believe and based thereon allege DEFENDANTS, joint and
19 severally have acted intentionally and with deliberate indifference and conscious disregard to the
20 rights of all employees in receiving all minimum and overtime wages for unpaid wait/check-out
21 time, reporting time wages, waiting time penalties, and in connection with DEFENDANTS'
22 failure to provide all proper payroll records of Plaintiff and Class Members.

23 4. Plaintiff is informed and believe and based thereon allege DEFENDANTS have
24 engaged in, among other things a system of willful violations of the California Labor Code,
25 Business and Professions Code and applicable IWC wage orders by creating and maintaining
26 policies, practices and customs that knowingly deny employees the above stated rights and
27 benefits.
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5. The policies, practices and customs of defendants described above and below have

1 resulted in unjust enrichment of DEFENDANTS and an unfair business advantage over
2 businesses that routinely adhere to the strictures of the California Labor Code, Business and
3 Professions Code.

4 **JURISDICTION AND VENUE**

5 6. The Court has jurisdiction over the violations of the California Labor Code §§ 201-
6 203, 226, 510, 1194, 1197, 2698, the applicable IWC Wage Order, and California Business and
7 Professions Code § 17200, et seq., (Unfair Practices Act).

8 7. Venue is proper because the DEFENDANTS conduct business here in California, and
9 the acts complained of herein arose in the County of Santa Clara and other counties throughout
10 California.

11 **PARTIES**

12 8. Plaintiff FRANK ORTEGON-RAMIREZ was employed by DEFENDANTS at its
13 Great America amusement park as a non-exempt employee. Upon the completion of each work
14 shift, Plaintiff and other Class Members were required to clock out and record the end time of
15 their daily work hours. However, after clocking out and recording their end time, Plaintiff and
16 other Class Members were required to further wait in line and be checked out by a “lead” before
17 being fully released from work. In addition, Plaintiff was not allowed to work at least half of his
18 scheduled shift without being paid reporting time wages. Further, whenever Plaintiff and the
19 Class Members were provided with itemized wage statements along with their pay, such wage
20 statements failed to identify the name and address of the legal entity that is the employer and/or
21 the pay period dates and/or the pay date and further, such wage statements failed to identify the
22 accurate number of hours worked and the accurate total/gross/net pay as a result of the minimum
23 and overtime violations alleged herein. Finally, Plaintiff and other Class Members were not paid
24 their final wages in a timely manner upon the termination of their employment. Plaintiff and the
25 Class Members were and are victims of the policies, practices, and customs of DEFENDANTS
26 complained of in this action in ways that have deprived them of the rights guaranteed to them by
27 California Labor Code §§ 201-203, 226, 510, 1194, 1197, 2698, the applicable IWC Wage
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1 Order, and California Business and Professions Code § 17200, et seq.

2 9. Plaintiff is informed and believe, and based thereon allege, that DEFENDANTS are
3 corporations doing business in the State of California.

4 10. Plaintiff is informed and believe and based thereon allege that at all times herein
5 mentioned DEFENDANT and DOES 1 through 25, are and were corporations, business entities,
6 individuals, and partnerships, licensed to do business and actually doing business in the State of
7 California.

8 11. As such, and based upon all the facts and circumstances incident to
9 DEFENDANTS' business in California, DEFENDANTS are subject to California Labor Code
10 §§ 201-204, 226, 510, 1194, 1197, 2698, the applicable IWC Wage Order, and California
11 Business and Professions Code § 17200, et seq.

12 12. Plaintiff does not know the true names or capacities, whether individual, partner
13 or corporate, of the DEFENDANTS sued herein as DOES 1 through 25, inclusive, and for that
14 reason, said DEFENDANTS are sued under such fictitious names, and Plaintiff prays for leave to
15 amend this complaint when the true names and capacities are known. Plaintiff is informed and
16 believe and based thereon allege that each of said fictitious DEFENDANTS was responsible in
17 some way for the matters alleged herein and proximately caused Plaintiff and members of the
18 general public and class to be subject to the illegal employment practices, wrongs and injuries
19 complained of herein.
20

21 13. At all times herein mentioned, each of said DEFENDANTS participated in the
22 doing of the acts hereinafter alleged to have been done by the named DEFENDANTS; and
23 furthermore, the DEFENDANTS, and each of them, were the agents, servants and employees of
24 each of the other DEFENDANTS, as well as the agents of all DEFENDANTS, and at all times
25 herein mentioned, were acting within the course and scope of said agency and employment.

26 14. Plaintiff is informed and believe and based thereon allege that at all times material
27 hereto, each of the DEFENDANTS named herein was the agent, employee, alter ego and/or joint
28 venturer of, or working in concert with each of the other co-DEFENDANTS and was acting

1 within the course and scope of such agency, employment, joint venture, or concerted activity.

2 To the extent said acts, conduct, and omissions were perpetrated by certain DEFENDANTS,
3 each of the remaining DEFENDANTS confirmed and ratified said acts, conduct, and omissions
4 of the acting DEFENDANTS.

5 15. At all times herein mentioned, DEFENDANTS, and each of them, were members
6 of, and engaged in, a joint venture, partnership and common enterprise, and acting within the
7 course and scope of, and in pursuance of, said joint venture, partnership and common enterprise.

8 16. At all times herein mentioned, the acts and omissions of various DEFENDANTS,
9 and each of them, concurred and contributed to the various acts and omissions of each and all of
10 the other DEFENDANTS in proximately causing the injuries and damages as herein alleged. At
11 all times herein mentioned, DEFENDANTS, and each of them, ratified each and every act or
12 omission complained of herein. At all times herein mentioned, the DEFENDANTS, and each of
13 them, aided and abetted the acts and omissions of each and all of the other DEFENDANTS in
14 proximately causing the damages as herein alleged.

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16 **CLASS ACTION ALLEGATIONS**

17 17. **Definition:** The named individual Plaintiff seeks class certification, pursuant to
18 California Code of Civil Procedure § 382, of a class of all current and former non-exempt
19 employees of DEFENDANTS who worked in California during the during the period from
20 October 3, 2009 to the present, including the following sub-classes:

- 21 (a) All past and current California non-exempt employees of DEFENDANTS
22 who an itemized wage statement at any time between October 3, 2012 through
23 the present.
- 24 (b) All past and current California non-exempt employees of DEFENDANTS
25 who worked less than half of any scheduled work-shift.
- 26 (c) All current and former seasonal employees of DEFENDANTS who worked in
27 California during the during the period from October 3, 2009 to the present.

28 Plaintiff further reserves the right to amend the above definitions based upon further discovery.

1 **18. Numerosity:** The members of the Class are so numerous that joinder of all
2 members would be impractical, if not impossible. The identity of the members of the Class is
3 readily ascertainable by review of DEFENDANTS' records, including payroll records. Plaintiff
4 is informed and believe and based thereon allege that DEFENDANTS: (a) failed to pay to
5 Plaintiff and the Class all minimum and overtime wages owed; (b) failed to pay reporting time
6 wages; (c) failed to provide proper payroll records in violation of Labor Code § 226; (d) failed to
7 pay final wages in a timely manner; and (e) engaged in Unfair Business Practices, all in violation
8 of the applicable IWC Wage Orders.

9 **19. Adequacy of Representation:** The named Plaintiff is fully prepared to take all
10 necessary steps to represent fairly and adequately the interests of the class defined above.
11 Plaintiff's attorneys are ready, willing and able to fully and adequately represent the class and
12 individual Plaintiff. Plaintiff's attorneys have prosecuted and settled wage-and-hour class
13 actions in the past and currently have a number of wage-and-hour class actions pending in
14 California courts.

15 **20.** DEFENDANTS uniformly administered a corporate policy, practice of failing to
16 (a) pay all minimum and overtime wages, (b) pay reporting time wages, (c) provide proper
17 payroll records in violation of Labor Code § 226 for Plaintiff and Class Members, (d) pay final
18 wages in a timely manner; and (e) engaging in Unfair Business Practices, all in violation of IWC
19 Wage Orders.
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21 **21.** Plaintiff is informed and believe and based thereon allege that DEFENDANTS, in
22 violation of California Labor Code §§ 201 to 203, respectfully, had a consistent and uniform
23 policy, practice of willfully failing to comply with Labor Code § 203. Plaintiff and other
24 members of the class did not secret or absent himself from DEFENDANTS, nor refuse to accept
25 the earned and unpaid wages from DEFENDANTS. Accordingly, DEFENDANTS are liable for
26 waiting time compensation for the unpaid wages to separated employees pursuant to California
27 Labor Code § 203.

28 **22. Common Question of Law and Fact:** There are predominant common questions

1 of law and fact and a community of interest amongst Plaintiff and the claims of the Class
2 concerning DEFENDANTS' failure to (a) pay all minimum and overtime wages due for waiting
3 in line to be checked out by a "lead" after having clocked out, (b) pay reporting time wages, (c)
4 provide proper payroll records in violation of Labor Code § 226 for Plaintiff and Class Members,
5 (d) pay final wages in a timely manner, and (d) engaging in Unfair Business Practices, all in
6 violation of IWC Wage Orders.

7 **23. Typicality:** The claims of Plaintiff is typical of the claims of all members of the
8 Class in that Plaintiff have suffered the harm alleged in this Complaint in a similar and typical
9 manner as the Class members. Plaintiff was not paid for all minimum and overtime wages for
10 waiting in line to be checked out. Plaintiff was not allowed to work at least half of his scheduled
11 work shift without the payment of reporting time wages. Plaintiff was not paid his final wages in
12 a timely manner. DEFENDANTS did not provide proper and accurate itemized wage statements
13 in violation of California law. Plaintiff is a member of the Class and has suffered the alleged
14 violations of California Labor Code §§ 201-203, 226, 510, 1194, 1197, 2698, and IWC Wage
15 Orders.

16 **24.** The California Labor Code and upon which Plaintiff bases his claims are broadly
17 remedial in nature. These laws and labor standards serve an important public interest in
18 establishing minimum working conditions and standards in California. These laws and labor
19 standards protect the average working employee from exploitation by employers who may seek
20 to take advantage of superior economic and bargaining power in setting onerous terms and
21 conditions of employment.

22 **25.** The nature of this action and the format of laws available to Plaintiff and
23 members of the Class identified herein make the class action format a particularly efficient and
24 appropriate procedure to redress the wrongs alleged herein. If each employee were required to
25 file an individual lawsuit, the corporate DEFENDANTS would necessarily gain an
26 unconscionable advantage since it would be able to exploit and overwhelm the limited resources
27 of each individual plaintiff with their vastly superior financial and legal resources. Requiring
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1 each Class member to pursue and individual remedy would also discourage the assertion of
2 lawful claims by employees who would be disinclined to file an action against their former
3 and/or current employer for real and justifiable fear of retaliation and permanent damage to their
4 careers at subsequent employment.

5 26. The prosecution of separate actions by the individual class members, even if
6 possible, would create a substantial risk of (a) inconsistent or varying adjudications with respect
7 to individual Class members against the DEFENDANTS and which would establish potentially
8 incompatible standards of conduct for the DEFENDANTS, and/or (b) adjudications with respect
9 to individual Class members which would, as a practical matter, be dispositive of the interest of
10 the other Class members not parties to the adjudications or which would substantially impair or
11 impede the ability of the Class members to protect their interests. Further, the claims of the
12 individual members of the Class are not sufficiently large to warrant vigorous individual
13 prosecution considering all of the concomitant costs and expenses.

14 27. Such a pattern, practice and uniform administration of corporate policy regarding
15 illegal employee compensation described herein is unlawful and creates an entitlement to
16 recovery by the Plaintiff and the class identified herein, in a civil action, for the unpaid balance
17 of unpaid minimum and overtime wages, including interest thereon, applicable penalties,
18 reasonable attorney's fees, and costs of suit according to the mandate of California Labor Code
19 §§ 201-204, 226, 510, 1194, 1197, 2698, IWC Wage Orders and Code of Civil Procedure §
20 1021.5.

21 28. Proof of a common business practice or factual pattern, which the named Plaintiff
22 experienced and is a representative of, will establish the right of each of the members of the
23 Plaintiff Class to recovery on the causes of action alleged herein.

24 29. The Plaintiff class is commonly entitled to a specific fund with respect to the
25 compensation illegally and unfairly retained by DEFENDANTS. The Plaintiff Class is
26 commonly entitled to restitution of those funds being improperly withheld by DEFENDANTS.
27 This action is brought for the benefit of the entire class and will result in the creation of a
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1 common fund.

2 **FIRST CAUSE OF ACTION**

3 **FOR UNPAID MINIMUM WAGES**

4 **(AGAINST ALL DEFENDANTS BY PLAINTIFF AND ON BEHALF OF THE CLASS)**

5 30. Plaintiff re-alleges and incorporate by reference paragraphs 1 through 29 as
6 though fully set for herein.

7 31. At all times relevant herein, DEFENDANTS were required to compensate their
8 non-exempt employees minimum wages for all hours worked.

9 32. As a pattern and practice, DEFENDANTS regularly required Plaintiff and other
10 members of Class to clock out upon the end of his/her work shift. However, upon clocking out,
11 said employees are not allowed to be released from work. Rather, such employees were required
12 to further wait in line and to be checked out, one-by-one, by a "lead." It was only after being
13 checked out by a lead, were such employees released and allowed to be off work. Such "check
14 out" time was not recorded and was not counted as hours worked for purposes of payment of
15 wages.

16 33. As a pattern and practice, DEFENDANTS regularly failed to pay Plaintiff and
17 other members of Class proper minimum wages as a result of such violations.

18 34. Plaintiff is informed and believe and based thereon allege DEFENDANTS
19 willfully failed to pay employees all minimum wages. Plaintiff is informed and believe and
20 based thereon allege DEFENDANTS' willful failure to provide all minimum wages due and
21 owing them upon separation from employment results in a continued payment of wages up to
22 thirty (30) days from the time the wages were due. Therefore, all members of the Class who
23 have separated from employment are entitled to compensation pursuant to Labor Code § 203.

24 35. Such a pattern, practice and uniform administration of corporate policy regarding
25 illegal employee compensation as described herein is unlawful and creates an entitlement to
26 recovery by Plaintiff in a civil action, for the unpaid balance of the full amount of minimum
27 wages owing, including interest thereon, applicable penalties, attorneys fees, and costs of suit.
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SECOND CAUSE OF ACTION

FOR UNPAID OVERTIME WAGES

(AGAINST ALL DEFENDANTS BY PLAINTIFF AND ON BEHALF OF THE CLASS)

36. Plaintiff re-alleges and incorporate by reference paragraphs 1 through 35 as though fully set for herein.

37. At all times relevant herein, DEFENDANTS were required to compensate their non-exempt employees overtime wages for all overtime hours worked.

38. As a pattern and practice, DEFENDANTS regularly required Plaintiff and other members of Class to clock out upon the end of his/her work shift. However, upon clocking out, said employees are not allowed to be released from work. Rather, such employees were required to further wait in line and to be checked out, one-by-one, by a "lead." It was only after being checked out by a lead, were such employees released and allowed to be off work. Such "check out" time was not recorded and was not counted as hours worked for purposes of payment of wages.

39. As a pattern and practice, DEFENDANTS regularly failed to pay Plaintiff and other members of Class proper overtime wages as a result of such violations.

40. Plaintiff is informed and believe and based thereon allege DEFENDANTS willfully failed to pay employees all overtime wages. Plaintiff is informed and believe and based thereon allege DEFENDANTS' willful failure to provide all overtime wages due and owing them upon separation from employment results in a continued payment of wages up to thirty (30) days from the time the wages were due. Therefore, all members of the Class who have separated from employment are entitled to compensation pursuant to Labor Code § 203.

41. Such a pattern, practice and uniform administration of corporate policy regarding illegal employee compensation as described herein is unlawful and creates an entitlement to recovery by Plaintiff in a civil action, for the unpaid balance of the full amount of overtime wages owing, including interest thereon, applicable penalties, attorneys fees, and costs of suit.

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THIRD CAUSE OF ACTION

**FOR FAILURE TO PAY REPORTING TIME WAGES IN VIOLATION OF IWC WAGE
ORDER 10-2001 § 5
(AGAINST ALL DEFENDANTS BY PLAINTIFF AND ON BEHALF OF THE CLASS)**

42. Plaintiff re-alleges and incorporate by reference paragraphs 1 through 41 as though fully set for herein.

43. At all times relevant herein, DEFENDANTS were required to compensate their non-exempt employees reporting time wages for any work shift that the employee was not allowed to work at least half of.

44. As a pattern and practice, DEFENDANTS regularly required Plaintiff and other members of Class to end their scheduled work shift without having worked at least half of said scheduled work shift.

45. As a pattern and practice, DEFENDANTS regularly failed to pay Plaintiff and other members of Class proper reporting time wages as a result of such violations.

46. Plaintiff is informed and believe and based thereon allege DEFENDANTS willfully failed to pay employees all reporting time wages. Plaintiff is informed and believe and based thereon allege DEFENDANTS' willful failure to provide all reporting time wages due and owing them upon separation from employment results in a continued payment of wages up to thirty (30) days from the time the wages were due. Therefore, all members of the Class who have separated from employment are entitled to compensation pursuant to Labor Code § 203.

47. Such a pattern, practice and uniform administration of corporate policy regarding illegal employee compensation as described herein is unlawful and creates an entitlement to recovery by Plaintiff in a civil action, for the unpaid balance of the full amount of reporting time wages owing, including interest thereon, applicable penalties, attorneys fees, and costs of suit.

FOURTH CAUSE OF ACTION

FOR VIOLATION OF LABOR CODE § 203

(AGAINST ALL DEFENDANTS BY PLAINTIFF AND ON BEHALF OF THE CLASS)

1 **(AGAINST ALL DEFENDANTS BY PLAINTIFF AND ON BEHALF OF THE CLASS)**

2 54. Plaintiff re-alleges and incorporate by reference paragraphs 1 through 53 as
3 though fully set for herein.

4 55. DEFENDANTS, and each of them, have engaged and continue to engage in unfair
5 and unlawful business practices in California by practicing, employing and utilizing the
6 employment practices outlined above, include, to wit, by failing to (a) pay all minimum and
7 overtime wages, and (b) provide proper and accurate itemized wage statements.

8 56. DEFENDANTS' utilization of such unfair and unlawful business practices
9 constitutes unfair, unlawful competition and provides an unfair advantage over DEFENDANTS'
10 competitors.

11 57. Plaintiff seeks, on his own behalf, on behalf of other members of the class
12 similarly situated, full restitution of monies, as necessary and according to proof, to restore any
13 and all monies withheld, acquired and/or converted by the DEFENDANTS by means of the
14 unfair practices complained of herein.

15 58. Plaintiff is informed and believe and based thereon allege that at all times herein
16 mentioned DEFENDANTS have engaged in unlawful, deceptive and unfair business practices,
17 as proscribed by California Business and Professions Code § 17200 et seq., including those set
18 forth herein above thereby depriving Plaintiff and other members of the class the minimum
19 working condition standards and conditions due to them under the California laws and Industrial
20 Welfare Commission wage orders as specifically described therein.

21 **SEVENTH CAUSE OF ACTION**

22 **FOR VIOLATIONS OF CALIFORNIA LABOR CODE § 2698 ET SEQ.**

23 **(AGAINST ALL DEFENDANTS BY PLAINTIFF ORTEGON-RAMIREZ)**

24 59. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 58 as
25 though fully set for herein.

26 60. On or about August 26, 2013, Plaintiff Ortegon-Ramirez provided written notice to
27 to the California Labor & Workforce Development Agency ("LWDA") of DEFENDANTS'
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of any acts or practices declared by this Court to be in violation of Business and Professions Code § 17200 et seq.;

10. Upon the Seventh Cause of Action, for penalties according to proof pursuant to California Labor Code §§ 2699 et seq.; and

11. On all causes of action for attorneys fees and costs and for such other and further relief the Court may deem just and proper.

Dated: March 12, 2014

DIVERSITY LAW GROUP

By: 

Larry W. Lee, Esq.
Attorney for Plaintiff and the Class

DEMAND FOR JURY TRIAL

Plaintiff, for himself and the class, hereby demands a jury trial as provided by California law.

Dated: March 12, 2014

DIVERSITY LAW GROUP

By: 

Larry W. Lee, Esq.
Attorney for Plaintiff and the Class