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HERMAN WELCH
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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF SANTA CLARA
10 UNLIMITED JURISDICTION
11

12 HERMAN WELCH, on behalf of himself, all
13 others similarly situated, and the general
public,

14 *Plaintiff,*

15 vs.

16 STAFFMARK HOLDINGS, INC., an Ohio
corporation; STAFFMARK INVESTMENT,
17 LLC, an Ohio Limited Liability Company;
AIR MENZIES INTERNATIONAL (U.S.A.),
18 INC., a Texas corporation; and DOES 1
through 50, inclusive,

19 *Defendants.*
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Case No. 20CV366070

REPRESENTATIVE ACTION

COMPLAINT

Civil Penalties (Lab. Code § 2698, *et seq.*)

JURY TRIAL DEMANDED

1 Plaintiff HERMAN WELCH (referred to as "Plaintiff"), on behalf of himself, all others
2 similarly situated, and the general public, complains and alleges as follows:

3 **INTRODUCTION**

4 1. Plaintiff brings this class action against Defendants STAFFMARK HOLDINGS,
5 INC., an Ohio corporation; STAFFMARK INVESTMENT, LLC, an Ohio Limited Liability
6 Company; AIR MENZIES INTERNATIONAL (U.S.A.), INC., a Texas corporation; and DOES 1
7 through 50, inclusive (collectively referred to as "Defendants") for alleged violations of the Labor
8 Code and Business and Professions Code. As set forth below, Plaintiff alleges that Defendants
9 have:

- 10 (1) failed to provide he and all other aggrieved employees with meal periods;
- 11 (2) failed to provide them with rest periods;
- 12 (3) failed to pay them premium wages for missed meal and/or rest periods;
- 13 (4) failed to pay them premium wages for missed meal and/or rest periods at the
14 regular rate of pay;
- 15 (5) failed to pay them at least minimum wage for all hours worked;
- 16 (6) failed to pay them overtime wages at the correct rate;
- 17 (7) failed to pay them double time wages at the correct rate;
- 18 (8) failed to pay them overtime and/or double time wages by failing to include all
19 applicable remuneration in calculating the regular rate of pay;
- 20 (9) failed to pay them for all vested vacation pay;
- 21 (10) failed to reimburse them for all necessary business expenses;
- 22 (11) failed to provide them with accurate written wage statements; and
- 23 (12) failed to pay them all of their final wages following separation of
24 employment.

25 Based on these alleged Labor Code violations, Plaintiff now brings this representative
26 action to recover unpaid wages, restitution and related relief on behalf of himself, all others
27 similarly situated, and the general public.

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3. Venue is proper in the County of Santa Clara pursuant to Code of Civil Procedure sections 395(a) and 395.5 in that liability arose this county because at least some of the transactions that are the subject matter of this Complaint occurred therein and/or each defendant is found, maintains offices, transacts business and/or has an agent therein.

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5. Plaintiff is informed and believes, and thereupon alleges that Defendant STAFFMARK HOLDINGS, INC., is, and at all relevant times mentioned herein, an Ohio corporation doing business in the State of California.

7. Plaintiff is informed and believes, and thereupon alleges that Defendant AIR MENZIES INTERNATIONAL (U.S.A.), INC., is, and at all relevant times mentioned herein, a Texas corporation doing business in the State of California.

8. Plaintiff is ignorant of the true names and capacities of the defendants sued herein as DOES 1 through 50, inclusive, and therefore sues these defendants by such fictitious names. Plaintiff will amend this Complaint to allege the true names and capacities of the DOE defendants when ascertained. Plaintiff is informed and believes, and thereupon alleges that each of the fictitiously named defendants are responsible in some manner for the occurrences, acts and omissions alleged herein and that Plaintiff's alleged damages were proximately caused by these defendants, and each of them. Plaintiff will amend this complaint to allege both the true names and capacities of the DOE defendants when ascertained.

1 9. Plaintiff is informed and believes, and thereupon alleges that, at all relevant times
2 mentioned herein, some or all of the defendants were the representatives, agents, employees,
3 partners, directors, associates, joint venturers, principals or co-participants of some or all of the
4 other defendants, and in doing the things alleged herein, were acting within the course and scope of
5 such relationship and with the full knowledge, consent and ratification by such other defendants.

6 10. Plaintiff is informed and believes, and thereupon alleges that, at all relevant times
7 mentioned herein, some of the defendants pursued a common course of conduct, acted in concert
8 and conspired with one another, and aided and abetted one another to accomplish the occurrences,
9 acts and omissions alleged herein.

10 **GENERAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

11 11. Plaintiff worked for Defendants as a non-exempt, hourly employee from
12 approximately 2015 through March 2019.

13 **Missed Meal Periods**

14 12. Plaintiff and the aggrieved employees were not provided with meal periods of at
15 least thirty (30) minutes for each five (5) hour work period due to (1) Defendants' policy of not
16 scheduling meal periods for Saturday shifts; (2) understaffing each work shift with not enough
17 workers; (3) imposing so much work on each employee such that it made it unlikely that an
18 employee would be able to take their breaks if they wanted to finish their work on time; and (4)
19 Defendants practice of making employees work through their entire shift without a meal period on
20 Saturdays.

21 13. Plaintiff and the aggrieved employees would generally receive compliant meal
22 periods, however Defendants maintained a policy/practice of having employees work through their
23 meal periods on Saturdays. During the week, Plaintiff and the aggrieved employees would receive
24 an hour-long unpaid meal period. On Saturdays, however, Plaintiff and the aggrieved employees
25 would be directed to work through their entire shifts and not to take a meal period. Plaintiff and
26 the aggrieved employees would regularly work shifts that lasted nine or more hours during these
27 Saturday shifts, however they would only be paid for eight of them.

28 14. As a result of Defendants' policy, Plaintiff and the aggrieved employees were

1 regularly not provided with uninterrupted meal periods of at least thirty (30) minutes for each five
2 (5) hours worked due to complying with Defendants' productivity requirements that required
3 Plaintiff and the aggrieved employees to work through their meal periods in order to complete their
4 assignments.

5 **Missed Rest Periods**

6 15. Plaintiff and the aggrieved employees were not provided with rest periods of at least
7 ten (10) minutes for each four (4) hour work period, or major fraction thereof, due to (1)
8 Defendants' policy of not scheduling each rest period as part of each work shift; (2) understaffing
9 each work shift with not enough workers; (3) imposing so much work on each employee such that
10 it made it unlikely that an employee would be able to take their breaks if they wanted to finish their
11 work on time; and (4) no formal written rest period policy that encouraged employees to take their
12 rest periods.

13 16. Plaintiff and the aggrieved employees at no point during their employment with
14 Defendants ever received a rest break. Defendants would combine meal and rest periods into one
15 unpaid hour long break and Plaintiff and the aggrieved employees would be made to work through
16 the entirety of the rest of their shifts. Plaintiff inquired about this policy in the past and each time
17 was met with the assertion that their rest breaks were part of the hour long unpaid meal period.

18 17. As a result of Defendants' policy, Plaintiff and the aggrieved employees were
19 regularly not provided with uninterrupted rest periods of at least ten (10) minutes for each four (4)
20 hours worked due to complying with Defendants' productivity requirements that required Plaintiff
21 and the aggrieved employees to work through their rest periods.

22 **Off-the-Clock Work**

23 18. Plaintiff and the aggrieved employees were not paid all wages earned as Defendants
24 directed, permitted or otherwise encouraged Plaintiff and the aggrieved employees to perform off-
25 the-clock work.

26 19. Specifically, Plaintiff and the aggrieved employees regularly performed work before
27 and after their scheduled work hours and were not paid for this time. First, Plaintiff and the
28 aggrieved employees would not be paid for the hour they spent working through their meal periods

on Saturdays. Defendants would log that Plaintiff and the aggrieved employees took their meal period when in reality they were being directed to work through them. Plaintiff and the aggrieved employees were off-the-clock for the hour that they worked through their meal periods on Saturdays. Second, Plaintiff and the aggrieved employees would frequently have hour shaved off of their time sheets by Defendants. Plaintiff and the aggrieved employees would receive checks that were in no way reflective of the actual amount of hours that were being worked. Additionally, Plaintiff and the aggrieved employees were denied overtime pay on the occasions that they would work overtime and instead would be paid for only eight hours of work at their regular wages. Plaintiff brought this issue of not being paid for all of the hours that he was working to the attention of his employers and was subsequently let go from the company and told not to return.

20. Defendants knew or should have known that Plaintiff and the aggrieved employees were performing work before and after their scheduled work shifts and failed to pay Plaintiff and the aggrieved employees for these hours.

21. As a result of performing off-the-clock work that was directed, permitted or otherwise encouraged by Defendants, Plaintiff and the aggrieved employees should have been paid for this time. Instead, Defendants only paid Plaintiff and the aggrieved employees based on the time they were clocked in for their shifts and did not pay Plaintiff and the aggrieved employees for any of the time spent working off-the-clock.

Wage Statements

22. Plaintiff and the aggrieved employees were not provided with accurate wage statements as mandated by law pursuant to Labor Code section 226.

23. Defendants failed to comply with Labor Code section 226(a)(1) as “gross wages earned” were not accurately reflected in that:

a. all hours worked, including overtime, were not included;

b. any and all meal and/or rest period premium wages were not included.

24. Defendants failed to comply with Labor Code section 226(a)(2) as “total hours worked by the employee” were not accurately reflected in that:

c. all hours worked, including overtime, were not included.

1 25. Defendants failed to comply with Labor Code section 226(a)(5) as “net wages
2 earned” were not accurately reflected in that:

3 d. all hours worked, including overtime, were not included.

4 e. any and all meal and/or rest period premium wages were not included.

5 26. Defendants failed to comply with Labor Code section 226(a)(9) as “all applicable
6 hourly rates in effect during the pay period and the corresponding number of hours worked at each
7 hourly rate by the employee” were not accurately reflected in that:

8 f. all hours worked, including overtime, were not included.

9 **Expense Reimbursement**

10 27. Plaintiff and the aggrieved employees were required to utilize purchase items to be
11 used in the workplace as a necessary precondition of employment. Specifically, Plaintiff and the
12 aggrieved employees were made to purchase steel toed boots, safety glasses, safety vests, and
13 gloves prior to their commencing work with Defendants.

14 28. Plaintiff and the aggrieved employees were not reimbursed for business expenses
15 incurred as a necessary precondition of employment.

16 29. Defendants failed to reimburse Plaintiff and the aggrieved employees for such
17 necessary business expenses incurred by them.

18 **Vacation Pay**

19 30. Plaintiff and the aggrieved employees accrued vacation wages during their
20 employment with Defendants.

21 31. Under California law, vacation wages are considered a form of wages under Labor
22 Code section 200. Vested vacation pay and other similar forms of paid time off earned based on
23 labor performed are considered wages that cannot be subject to forfeiture without compensation for
24 forfeited days at the applicable rates required by law.

25 32. At all relevant times, Defendants maintained policies that provide for the unlawful
26 forfeiture of vested vacation pay in violation of Labor Code section 227.3 and *Suastez v. Plastic*
27 *Dress-Up Co.*, (1982) 31 Cal. 3d 774.

28 33. Plaintiff and the aggrieved employees are entitled to vacation accrued during their

1 employment with Defendants. Upon termination, Plaintiff and the aggrieved employees were not
2 paid out all accrued vacation pay.

3 **Regular Rate of Pay**

4 34. The regular rate of pay under California law includes all remuneration for
5 employment paid to, on behalf of, the employee. This requirement includes, but is not limited, to,
6 overtime and meal/rest break premiums.

7 35. During the applicable limitations period, Defendants violated the rights of Plaintiff
8 and the aggrieved employees under the above-referenced Labor Code sections by failing to pay
9 them overtime wages for all overtime hours worked in violation of Labor Code §§ 510, 1194, and
10 1198 as a result of not correctly calculating their regular rate of pay to include all applicable
11 remuneration, including, but not limited to, meal and rest break premiums.

12 **FIRST CAUSE OF ACTION**

13 **CIVIL PENALTIES**

14 **(Lab. Code §§ 2698, *et seq.*)**

15 36. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged
16 herein.

17 37. During the applicable limitations period, Defendants have violated Labor Code §§
18 201, 202, 203, 204, 223, 226(a), 226.7, 510, 512, 1194, 1197, and 1198.

19 38. Labor Code sections 2699(a) and (g) authorize an aggrieved employee, of behalf of
20 himself and other current and former employees, to bring a representative civil action to recover
21 civil penalties pursuant to the procedures specified in Labor Code section 2699.3 that may, but need
22 not, be brought or maintained as a class action pursuant to Code of Civil Procedure section 382.

23 39. Plaintiff, as a former employee against whom Defendants committed one or more of
24 the alleged Labor Code violations during the applicable limitations period, is an aggrieved
25 employee within the meaning of Labor Code section 2699(c).

26 40. Plaintiff has complied with the procedures for bringing suit specified in Labor Code
27 section 2699.3.

28 41. Pursuant to Labor Code sections 2699(a) and (f), Plaintiff seeks the following civil

1 penalties for Defendants' violations of Labor Code sections 201, 202, 203, 204, 223, 226(a), 226.7,
2 510, 512, 1194, 1197, and 1198:

- 3 A. For violations of Labor Code sections 201, 202, 203, 212, 226.7, 1194, and
4 1198, \$100 for each employee per pay period for each initial violation and
5 \$200 for each employee per pay period for each subsequent violation
6 (penalties set by Labor Code section 2699(f)(2));
- 7 B. For violations of Labor Code section 203, a penalty in an amount not
8 exceeding 30 days pay as waiting time (penalties set by Labor Code section
9 256).
- 10 C. For violations of Labor Code section 204, \$100 for each employee for each
11 initial violation that was neither willful nor intentional, \$200 for each
12 employee, plus 25% of the amount unlawfully withheld from each employee,
13 for each initial violation that was either willful or intentional, and \$200 for
14 each employee, plus 25% of the amount unlawfully withheld from each
15 employee, for each subsequent violation, regardless of whether the
16 subsequent violation was either willful or intentional (penalties set by Labor
17 Code section 210);
- 18 D. For violations of Labor Code section 223, \$100 for each employee for each
19 initial violation that was neither willful nor intentional, \$200 for each
20 employee, plus 25% of the amount unlawfully withheld from each employee,
21 for each initial violation that was either willful or intentional, and \$200 for
22 each employee, plus 25% of the amount unlawfully withheld from each
23 employee, for each subsequent violation, regardless of whether the
24 subsequent violation was either willful or intentional (penalties set by Labor
25 Code section 225.5);
- 26 E. For violations of Labor Code section 226(a), if this action is deemed to be an
27 initial citation, \$250 for each employee for each violation. Alternatively, if an
28 initial citation or its equivalent occurred before the filing of this action,

1 \$1,000 for each employee for each violation (penalties set by Labor Code
2 section 226.3);

3 F. For violations of Labor Code sections 510 and 512, \$50 for each employee
4 for each initial pay period for which the employee was underpaid, and \$100
5 for each employee for each subsequent pay period for which the employee
6 was underpaid (penalties set by Labor Code section 558); and

7 G. For violations of Labor Code section 1197, \$100 for each aggrieved
8 employee for each initial violation of Labor Code section 1197 that was
9 intentional, and \$250 for each aggrieved employee per pay period for each
10 subsequent violation of Labor Code section 1197, regardless of whether the
11 initial violation was intentional (penalties set by Labor Code section 1197.1).

12 42. Pursuant to Labor Code section 2699(g), Plaintiff seeks awards of reasonable costs
13 and attorneys' fees in connection with his claims for civil penalties.

14 **PRAYER FOR RELIEF**

15 WHEREFORE, Plaintiff, on behalf of himself, all others similarly situated, and the general
16 public, prays for relief and judgment against Defendants as follows:

- 17 A. Pre-judgment interest;
18 B. Statutory penalties;
19 C. Civil penalties;
20 D. Costs of suit;
21 E. Reasonable attorneys' fees; and
22 F. Such other relief as the Court deems just and proper.

23 **DEMAND FOR JURY TRIAL**

24 Plaintiff, on behalf of himself, all others similarly situated, and the general public, hereby
25 demands a jury trial on all issues so triable.

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1 DATED: April 15, 2020

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6 WILLIAM PAO
7 Attorneys for Plaintiff
8 HERMAN WELCH
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