

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Jon Takasugi

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

GARY BINION, as an individual and on
behalf of all other aggrieved employees,

Plaintiff,

vs.

MAINTENX INTERNATIONAL SERVICE
MANAGEMENT GROUP, INC., a Florida
corporation; and DOES 1 through 100,

Defendants.

Case No. 20STCV13548

**REPRESENTATIVE ACTION
COMPLAINT:**

**(1) CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS GENERAL
ACT (LABOR CODE § 2698 *et seq.*)**

UNLIMITED CIVIL CASE

1 Plaintiff Gary Binion ("Plaintiff"), on behalf of himself and all other aggrieved
2 employees, hereby brings this Representative Action Complaint against Defendant Maintenx
3 International Service Management Group, Inc.; and DOES 1 to 100, inclusive (collectively
4 "Defendants"), and on information and belief alleges as follows:

5 **JURISDICTION**

6 1. Plaintiff, on behalf of himself and all other aggrieved employees, hereby brings
7 this representative action for recovery of civil penalties under California Labor Code §§ 2698 *et*
8 *seq.*

9 2. This Court has jurisdiction over Defendants because, upon information and belief,
10 Defendants are citizens of California, Defendants have sufficient minimum contacts in California,
11 or otherwise intentionally avail themselves to the California market so as to render the exercise
12 of jurisdiction over them by the California courts consistent with the traditional notions of fair
13 play and substantial justice.

14 **VENUE**

15 3. Venue as to each Defendant is proper in this judicial district pursuant to California
16 Code of Civil Procedure §§ 395(a) and 395.5, as at least some of the acts and omissions
17 complained of herein occurred in the County of Los Angeles. Further, at all times relevant herein
18 Plaintiff was employed by Defendants within the County of Los Angeles.

19 **PARTIES**

20 4. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
21 Plaintiff was, and currently is, a California resident, residing in the County of Los Angeles.
22 During the one year immediately preceding Plaintiff's giving of the required notice under the
23 PAGA, and within the statute of limitations periods applicable to the cause of action pled herein,
24 Plaintiff was employed by Defendants as an hourly non-exempt employee.

25 5. Plaintiff is informed and believes, and based thereon alleges, that during the one
26 year preceding Plaintiff's giving of the required notice under the PAGA and continuing to the
27 present, Defendants did (and do) business by providing facility maintenance services, and
28 employed Plaintiff and other similarly-situated hourly non-exempt employees within the County

1 of Los Angeles and, therefore, were (and are) doing business in the County of Los Angeles and
2 the State of California.

3 6. Plaintiff is informed and believes, and thereon alleges, that at all times mentioned
4 herein, Defendants were licensed to do business in California and the County of Los Angeles, and
5 were the employers of Plaintiff and the Aggrieved Employees (as defined in Paragraph 19).

6 7. Plaintiff does not know the true names or capacities, whether individual, partner,
7 or corporate, of the defendants sued herein as DOES 1 to 100, inclusive, and for that reason, said
8 defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to
9 amend this Representative Action Complaint when such true names and capacities are discovered.
10 Plaintiff is informed, and believes, and thereon alleges, that each of said fictitious defendants,
11 whether individual, partners, or corporate, were responsible in some manner for the acts and
12 omissions alleged herein, and proximately caused Plaintiff and the Aggrieved Employees (as
13 defined in Paragraph 19) to be subject to the unlawful employment practices, wrongs, injuries and
14 damages complained of herein.

15 8. Plaintiff is informed, and believes, and thereon alleges, that at all times mentioned
16 herein, Defendants were and are the employers of Plaintiff and the Aggrieved Employees (as
17 defined in Paragraph 19).

18 9. At all times herein mentioned, each of said Defendants participated in the doing
19 of the acts hereinafter alleged to have been done by the named Defendant; and furthermore, the
20 Defendants, and each of them, were the agents, servants, and employees of each and every one of
21 the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned
22 were acting within the course and scope of said agency and employment. Defendants, and each
23 of them, approved of, condoned, and/or otherwise ratified each and every one of the acts or
24 omissions complained of herein.

25 10. At all times mentioned herein, Defendants, and each of them, were members of
26 and engaged in a joint venture, partnership, and common enterprise, and acting within the course
27 and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further,
28 Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and the

Aggrieved Employees (as defined in Paragraph 19).

REPRESENTATIVE ACTION ALLEGATIONS

11. Defendants employed Plaintiff as a non-exempt Electrician and/or Maintenance worker beginning in approximately August 2017 through approximately March 2019. Plaintiff's job duties included, but were not limited to, providing electrician and maintenance services to Defendants' clients, such as restaurants and retailers.

12. During Plaintiff's and other aggrieved employees' employment with Defendants, Plaintiff and other aggrieved employees obtained their daily work orders by receiving notifications from a mobile application through their company-provided cellphone. Once Plaintiff and other aggrieved employees received a notification through their company-provided cellphones, they unlocked their phones, logged into the mobile application to review the work order, and tapped "Dispatch" to clock in and obtain the details of the work order, such as the client's contact information and worksite location. Once Plaintiff and other aggrieved employees completed a work order, they called Defendants' dispatch center to inform Defendants that the job had been completed. Defendants' dispatch center then either promptly provided Plaintiff and other aggrieved employees with a subsequent work order, placed Plaintiff or the other aggrieved employees on stand-by in order to wait for additional work orders, or told Plaintiff or the other aggrieved employee that there were no additional work orders and to go home for the day. If Defendants' dispatch center informed Plaintiff and other aggrieved employees that there were no additional work orders for the day, Plaintiff and other aggrieved employees clocked out by logging into the mobile application on the company-provided cellphone and tapping "Check Out" before beginning their drive back to their personal residences.

13. At all times relevant herein, Defendants' timekeeping policies and/or practices resulted in Plaintiff and other aggrieved employees not being compensated for all hours actually worked. Specifically, for a portion of Plaintiff's and other aggrieved employees' employment with Defendants, Defendants failed to compensate Plaintiff and other aggrieved employees for the time they were on "stand-by." On those occasions when Plaintiff and other aggrieved employees were on "stand-by," they could not leave the geographic area or otherwise carry out

1 personal errands, and they were therefore subject to Defendants' control. Furthermore, for a
2 portion of Plaintiff's and other aggrieved employees' employment with Defendants, Defendants
3 failed to compensate Plaintiff and other aggrieved employees for all required travel time.
4 Specifically, Defendants required Plaintiff and other aggrieved employees to travel to various
5 work sites using a company-provided vehicle and to store the vehicle at their individual
6 residences. However, Defendants required Plaintiff and other aggrieved employees to clock out
7 once they had completed their last work order for the day and before traveling from the last
8 worksite to their individual residences at the conclusion of their work shifts, and therefore,
9 Defendants failed to compensate Plaintiff and other aggrieved employees for all required travel
10 time. As a result, Defendants' policies and/or practices resulted in a systematic underpayment of
11 minimum and overtime wages to Plaintiff and other aggrieved employees.

12 14. During Plaintiff's and other aggrieved employees' employment, Defendants'
13 policies and/or practices failed to provide Plaintiff and other aggrieved employees with legally-
14 compliant meal periods. Due to the work demands imposed by Defendants, Plaintiff and other
15 aggrieved employees often were unable to take a meal period prior to the completion of the fifth
16 hour of work, and on some occasions, were not provided with any meal period at all. Instead,
17 Plaintiff and other aggrieved employees would often eat their lunches while driving between
18 worksites. Furthermore, although Defendants required Plaintiff and other aggrieved employees
19 to clock in and out at the beginning and end of their shift, Defendants did not require employees
20 to record their meal periods in violation of Wage Order 16, § 6(A). Instead, upon information
21 and belief, Defendants automatically deducted 30 minutes from the total hours for each shift
22 worked regardless of whether the employee took a 30-minute compliant meal period. Defendants
23 also failed to provide a second meal period for shifts worked in excess of 10.0 hours. On those
24 occasions when Plaintiff and other aggrieved employees were not provided with all the legally-
25 compliant meal periods to which they were entitled, Defendants failed to compensate Plaintiff
26 and other aggrieved employees with the required meal period premium(s) for each workday there
27 was a meal period violation, as mandated by Labor Code § 226.7. Upon information and belief,
28 for at least during a portion of the relevant time period, Defendants maintained no mechanism for

1 the payment of meal period premium payments as required by Labor Code § 226.7, in the event
2 that a legally compliant meal period was not provided to their non-exempt employees.

3 15. Plaintiff and other aggrieved employees were not authorized and permitted to take
4 all required rest period due to Defendants' unlawful rest period policies/practices. Specifically,
5 Plaintiff and other aggrieved employees were often not authorized or permitted to take any rest
6 periods due to work demands. Furthermore, despite working shifts in excess of 10.0 hours,
7 Defendants failed to authorize and permit Plaintiff and other aggrieved employees from taking a
8 third rest period during shifts worked in excess of 10.0 hours. On those occasions when Plaintiff
9 and other aggrieved employees were not authorized and permitted to take all the legally-compliant
10 rest periods to which they were entitled, Defendants failed to compensate Plaintiff and other
11 aggrieved employees with the required rest period premium(s) for each workday there was a rest
12 period violation as mandated by Labor Code § 226.7. Upon information and belief, for at least
13 during a portion of the relevant time period, Defendants maintained no mechanism for the
14 payment of rest period premium payments as required by Labor Code § 226.7, in the event that a
15 legally compliant rest period was not authorized and permitted to their non-exempt employees.

16 16. During Plaintiff's and other aggrieved employees' employment with Defendants,
17 Plaintiff and other aggrieved employees regularly worked in excess of 8.0 hours per day and/or
18 forty hours per week, but did not receive overtime compensation equal to one and one-half times
19 their regular rate of pay for working overtime hours. Specifically, Defendants paid Plaintiff and
20 other aggrieved employees non-discretionary bonuses and other forms of non-discretionary pay
21 that are not excludable from the regular rate of pay (hereinafter the aforementioned forms of pay
22 are collectively referred to as "Incentive Pay"). Defendants failed to accurately calculate
23 Plaintiff's and other aggrieved employees' regular rate of pay as a result of receiving Incentive
24 Pay, as Plaintiff and other aggrieved employees were only paid one and one-half times their base
25 rates of pay, thereby causing Plaintiff and other aggrieved employees to be underpaid all their
26 required overtime wages.

27 17. Defendants also failed to reimburse Plaintiff and other aggrieved employees for
28 all reasonable and necessary work expenditures, including, but not limited to tools such as

1 screwdrivers, electrical tools, drills, and snippers. Specifically, Plaintiff and other aggrieved
2 employees used their own tools to complete the work orders Defendants assigned. As a result,
3 Plaintiff and other aggrieved employees were not reimbursed for these work-related expenditures
4 as required pursuant to Labor Code § 2802.

5 18. As a result of Defendants' failure to pay all minimum and overtime wages, as well
6 as all meal and rest period premium wages, Defendants maintained inaccurate payroll records,
7 failed to issue accurate and itemized wage statements, and failed to pay Plaintiff and other
8 aggrieved employees all wages owed at the time of their separation of employment with
9 Defendants.

10 19. Based on the foregoing, Plaintiff seeks to represent himself and other aggrieved
11 employees, as defined by Labor Code § 2699(c), who have been aggrieved by the Labor Code
12 violations discussed herein.

13 **FIRST CAUSE OF ACTION**

14 **PRIVATE ATTORNEYS GENERAL ACT**

15 **(AGAINST ALL DEFENDANTS)**

16 20. Plaintiff re-alleges and incorporates by reference all prior paragraphs as though
17 fully set forth herein.

18 21. Defendants have committed several Labor Code violations against Plaintiff and
19 other aggrieved employees. Plaintiff, an "aggrieved employee" within the meaning of Labor
20 Code § 2698 *et seq.*, acting on behalf of himself and other aggrieved employees, brings this
21 representative action against Defendants to recover the civil penalties due to Plaintiff, other
22 aggrieved employees, and the State of California according to proof, including, but not limited
23 to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200.00 for
24 each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for
25 each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for
26 each initial violation and \$100 for each subsequent violation pursuant to Labor Code § 558 per
27 employee per pay period; (3) \$100.00 for each initial violation, and \$250.00 for each subsequent
28 violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each

1 initial violation, and \$1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per
2 employee per pay period; and/or (5) \$100.00 for each initial violation and \$200.00 for each
3 subsequent violation per employee per pay period for those violations of the Labor Code for
4 which no civil penalty is specifically provided, based on the following Labor Code violations:

- 5 a. Failing to pay Plaintiff and other aggrieved employees all earned overtime
6 compensation in violation of Labor Code §§ 204, 510, 558, 1194, and 1198;
- 7 b. Failing to pay minimum wages for all hours worked to Plaintiff and other
8 aggrieved employees in violation of Labor Code §§ 558, 1182.12, 1194, 1194.2,
9 and 1197;
- 10 c. Failing to provide all legally required meal periods, or to pay premium pay in lieu
11 thereof, to Plaintiff and other aggrieved employees at the regular rate of pay in
12 violation of Labor Code §§ 226.7, 512, and 558;
- 13 d. Failing to authorize and permit all legally required rest periods, or to pay premium
14 pay in lieu thereof, to Plaintiff and other aggrieved employees at the regular rate
15 of pay in violation of Labor Code §§ 226.7, 516, and 558;
- 16 e. Failing to reimburse Plaintiff and other aggrieved employees for all necessary
17 expenditures incurred in violation of Labor Code §§ 2802 and 2804;
- 18 f. Failing to furnish Plaintiff and other aggrieved employees with complete,
19 accurate, itemized wage statements in violation of Labor Code § 226;
- 20 g. Failing to timely pay all final wages due to Plaintiff and other aggrieved employees
21 in violation of Labor Code §§ 201, 202, and 203;
- 22 h. Failing to pay Plaintiff and other aggrieved employees all earned wages at least
23 twice during each calendar month in violation of Labor Code § 204; and
- 24 i. Failing to maintain accurate records on behalf of Plaintiff and other aggrieved
25 employees in violation of Labor Code §§ 558 and 1174.

26 22. On or about January 30, 2020, Plaintiff notified Defendant Maintenx International
27 Service Management Group, Inc., via certified mail, and the California Labor and Workforce
28 Development Agency (“LWDA”) via its website, of Defendants’ violations of the California

1 Labor Code and Plaintiff's intent to bring a claim for civil penalties under California Labor Code
2 § 2698 *et seq.* with respect to violations of the California Labor Code identified in Paragraph 21
3 (a)-(i). Now that sixty-five days have passed from Plaintiff notifying Defendants of these
4 violations, Plaintiff has exhausted his administrative requirements for bringing a claim under the
5 Private Attorneys General Act with respect to these violations.

6 23. Plaintiff was compelled to retain the services of counsel to file this court action to
7 protect his interests and the interests of other aggrieved employees, and to assess and collect the
8 civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys' fees and costs, which
9 he is entitled to receive under California Labor Code § 2699.

10 **PRAYER**

11 WHEREFORE, Plaintiff prays for judgment for himself and for all others on whose behalf
12 this suit is brought against Defendants, jointly and severally, as follows:

13 1. Upon the First Cause of Action, for civil penalties due to Plaintiff, other aggrieved
14 employees, and the State of California according to proof pursuant to Labor Code §§ 558 and
15 2699(a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for each failure
16 to pay each employee and \$200 for each subsequent violation or willful or intentional violation
17 pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount
18 unlawfully withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent violation
19 pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial violation
20 and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per employee per
21 pay period; (4) \$250.00 for each initial violation and \$1,000.00 for each subsequent violation
22 pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for each initial
23 violation, and \$200 for each subsequent violation per employee per pay period for those violations
24 of the Labor Code for which no civil penalty is specifically provided, based on the Labor Code
25 violations identified in Paragraph 21 (a)-(i);

26 2. On all causes of action, for attorneys' fees and costs as provided by Labor Code §
27 2699(g) and Code of Civil Procedure § 1021.5; and

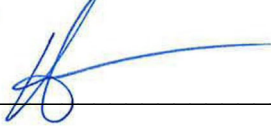
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1 3. For such other and further relief the Court may deem just and proper.

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3 Dated: April 6, 2020

Respectfully submitted,
HAINES LAW GROUP, APC

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5 By:

Paul K. Haines
Sean M. Blakely
Attorney for Plaintiff