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on behalf of himself and all other aggrieved employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

JUAN FERNANDEZ, an individual, on behalf
of himself and all other aggrieved employees

Plaintiff,

vs.

ABSTRAX TECH, INC., a California
Corporation; KEVIN KOBAYASHI, an individual, and
DOES 1 through 100, inclusive,

Defendants.

Case No. 30-2020-01150230-CU-OE-CJC

Assigned for all purposes to: Judge Walter Schwarm

**COMPLAINT FOR ENFORCEMENT
UNDER THE PRIVATE ATTORNEYS
GENERAL ACT, CALIFORNIA LABOR
CODE § 2698, ET SEQ.**

Violation of California Labor Code § 2698, et
seq. (California Labor Code Private Attorneys
General Act of 2004)

Plaintiff JUAN FERNANDEZ ("Representative Plaintiff" "Plaintiff" or "FERNANDEZ") alleges
as follows:

PARTIES

1. Representative Plaintiff is an individual who resides in California and was
employed by defendant ABSTRAX TECH, INC., a California Corporation (hereinafter referred to
as "Defendant," or the "Company") from on or about February 2, 2018 until on or about December
30, 2019.

2. Representative Plaintiff is informed and believes, and based on such information

1 and belief, alleges that at all times mentioned herein, Defendant ABSTRAX is a California
2 Corporation, licensed to do business and actually doing business in the State of California.
3 Defendant is a purveyor of terpenes within the State of California, including, but not limited to, the
4 County of Orange. Thus, Defendant is subject to the applicable California laws as alleged in this
5 action.

6 3. Upon information and belief, Defendant KEVIN KOBY (hereinafter, "KOBY") is
7 an individual who resides in the State of California and the County of Orange. Defendant KOBY
8 was and is an agent of Defendant ABSTRAX, and in that capacity was and is responsible for
9 overseeing and implementing Defendant ABSTRAX's timekeeping policies and procedures that
10 Representative Plaintiff and the other aggrieved employees were made to follow.

11 4. Representative Plaintiff is unaware of the true names and capacities, whether
12 corporate or individual, or otherwise, of defendants named as DOES 1 through 10, inclusive.
13 Pursuant to California Code of Civil Procedure section 474, Representative Plaintiff will seek leave
14 of court to amend this complaint to state said defendants' true names and capacities when the same
15 have been ascertained. Representative Plaintiff is informed and believes and based on such
16 information and belief alleges that said fictitiously-named defendants are responsible in some
17 manner for the injuries and damages to Representative Plaintiff, and other aggrieved employees as
18 further alleged herein.

19 5. This is only a Private Attorney General Action Complaint, pursuant to California
20 Labor Code section 2699 et seq., on behalf of JUAN FERNANDEZ and all other persons similarly
21 situated who worked for Defendants in its California locations as non-exempt hourly employees -
22 (herein collectively identified as "other aggrieved employees") for:

- 23 (i) failure to pay overtime and double time in violation of Labor Code sections 510,
24 1198, and the applicable Wage Orders;
- 25 (ii) failure to provide rest and meal periods in violation of Labor Code sections 226.7,
26 512(a), 1198 and the applicable Wage Orders;
- 27 (iii) failure to pay minimum wage in violation of Labor Code 1182.12, 1194, 1197,
28 1197.1, 1198, and the applicable Wage Orders;

- (iv) failure to keep accurate payroll records and provide itemized wage statements in violation of Labor Code 226(a), 1174(d), 1198, and the applicable Wage Orders;
- (v) failure to pay all wages earned on time in violation of Labor Code sections 204;
- (vi) failure to pay all wages earned upon discharge or resignation in violation of Labor Code 201, 202, and 203;
- (vii) failure to reimburse necessary, business-related expenses in violation of labor code 2800 and 2802;

VENUE AND JURISDICTION

6. Venue is proper under California Code of Civil Procedure section 395 and under California Government Code section 12965(b), in that Representative Plaintiff's injuries were incurred within the County of Orange, the actions giving rise to Representative Plaintiff's complaint arose within the County of Orange, and Defendant is located in the County of Orange.

STATEMENT OF FACTS

7. Representative Plaintiff was hired by Defendants as a Post Processing Manager on or about February 2, 2018. Representative Plaintiff worked for Defendants up until December 30, 2019 when his employment terminated. Defendants are purveyors of terpenes.

8. While employed with Defendants, Representative Plaintiff and other aggrieved employees that worked with him at the Company's California locations, which include other aggrieved employees that he seeks to represent in this action, working as non-exempt, hourly employees (herein collectively identified as "other aggrieved employees") were regularly required to work off-the-clock, and during their rest and meal periods.

9. Defendants failed to pay its aggrieved employees' overtime in accordance with California law when they worked in excess of eight (8) hours in a day and/or 40 hours within a workweek. Defendants also failed to pay its aggrieved employees' double time in accordance with California law when they worked in excess of 12 hours in a workday.

10. Defendants failed to provide Representative Plaintiff and other aggrieved employees with meal periods in accordance with Labor Code Sections 512(a) and 226.7, as aggrieved employees were often not afforded an opportunity to take an off-duty meal period of at least 30

1 minutes within the first five (5) hours of their shift, because of work understaffing, inadequate
2 coverage, unreasonably high workload and expectations, and/or other actions, inactions, or
3 decisions made by and within the sole control and discretion of Defendants.

4 11. Additionally, when Representative Plaintiff and aggrieved employees worked in
5 excess of 10 hours in a day, they were not offered an opportunity to take a second meal period in
6 accordance with Labor Code section 512(a).

7 12. Defendants also failed to pay its aggrieved employees a premium pursuant to Labor
8 Code section 226.7 when it failed to provide its employees with legally adequate meal periods as
9 described above.

10 13. Defendants also failed to provide Representative Plaintiff and other aggrieved
11 employees with a 10-minute rest break for every four hours of work, or every major fraction
12 thereof, as employees were forced to work extended periods without rest breaks due to
13 understaffing, inadequate coverage, unreasonably high workload and expectations, and/or other
14 actions, inactions, or decisions made by and within the sole control and discretion of Defendants.
15 Defendants also failed to provide its employees with a premium payment pursuant to Labor Code
16 section 226.7 when it failed to provide its employees with legally adequate rest breaks.

17 14. Additionally, Plaintiff and other aggrieved employees were not provided a premium
18 wage pursuant to Labor Code section 226.7 for their legally inadequate meal and rest periods, as
19 they were not relieved of all duties and responsibilities for the respective time periods as required
20 by the law. Defendants' failure to properly pay Plaintiff and other aggrieved employees for all
21 hours worked in these instances violates Labor Code sections 226.7, 512(a), 1198 and the
22 applicable Wage Orders.

23 15. Representative Plaintiff and other aggrieved employees were often required to work
24 off-the-clock before their shifts started, after their shifts were completed, and during their meal and
25 rest periods. During this off-the-clock time and these so-called "working lunches", employees were
26 required by Defendants to finish work tasks that they did not have time to finish during their shift
27 because of understaffing, inadequate coverage, unreasonably high workload and expectations,
28

1 and/or other actions, inactions, or decisions made by and within the sole control and discretion of
2 Defendants'.

3 16. Defendants, being aware of these occurrences, still deducted 30 minutes from their
4 pay on these days that they were required to continue working without a legal meal period. The
5 Companies altered and adjusted time-sheets and time-cards in order to obfuscate this fact.

6 17. Defendants required Plaintiff and other aggrieved employees to work without
7 appropriate compensation, including the payment of at least minimum wage, for such work time as
8 described above in violation of Labor Code sections 1182.12, 1194, 1197, 1197.1 and 1198, and
9 the applicable Wage Orders.

10 18. California Labor Code section 226(a) provides that every employer shall furnish to
11 each of its employees an accurate, itemized wage statement in writing, showing, among other
12 things, all applicable hourly rates in effect during the pay period and the corresponding correct
13 number of hours worked at each hourly rate by the employee. Defendants' wage statements fail to
14 comply with this section of the Labor Code as they list the incorrect rates of pay and the incorrect
15 number of hours worked at each rate of pay. The number of hours that the employees actually spent
16 working for the Companies, which are listed on the pay stubs, is incorrect because of, among other
17 things, the Companies' failure to properly compensate its employees for all of the time that they
18 spent working under their employer's control.

19 19. Defendants wage statements listed the incorrect rates of pay and earnings. Thus, the
20 total earnings and the overtime hours listed on the employee's pay stubs are incorrect. The number
21 of hours that the employees actually spent working for the Companies that is listed on the wage
22 statement is also incorrect because of the Companies' failure to record and compensate its
23 employees for all of the time that they are under its control, including, but not limited to, time that
24 they spend complying with the Companies' required "working lunches" and off-the-clock work,
25 and when Defendants deducted 30-minutes for meal periods that were not legally adequate.

26 20. Representative Plaintiff and all aggrieved employees who worked for Defendants
27 did not receive all wages earned on time as defined by California Labor Code section 204. As a
28 consequence of Defendants failures as described above, Representative Plaintiff and other

1 aggrieved employees did not receive, among other things, their straight time, overtime, or double
2 time pay, minimum wages for off-the-clock work, rest period premium wages, meal period
3 premium wages.

4 21. Representative Plaintiff and all aggrieved employees who were separated from their
5 employment with Defendants, to whom Defendants willfully failed to pay for all hours worked as
6 described herein, are also entitled to up to thirty days of wages pursuant to California Labor Code
7 sections 201, 202, and 203.

8 22. Defendants directed Representative Plaintiff and other aggrieved employees to incur
9 personal expenses on behalf of Defendants while performing their respective job duties. Such
10 personal expenses include, but are not limited to: use of personal cell phone, travel expenses, and
11 parking expenses. Without incurring these expenses, Representative Plaintiff and other aggrieved
12 employees would not be able to accomplish their job duties. Defendants failed to indemnify
13 Representative Plaintiff and other aggrieved for all of these necessary expenditures.

14 **FIRST CAUSE OF ACTION**

15 **(VIOLATION OF LABOR CODE § 2698, ET SEQ.)**

16 **(By Plaintiff Against Defendants and Does 1 through 10, inclusive)**

17 23. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through
18 21, and each and every part thereof with the same force and effect as though fully set forth herein.

19 24. PAGA expressly establishes that any provisions of the California Labor Code which
20 provides for a civil penalty to be assessed and collected by the LWDA, or any of its departments,
21 divisions, commissions, boards, agencies or employees for a violation of the California Labor
22 Code, may be recovered through a civil action brought by an aggrieved employee on behalf of
23 himself or herself, and other current or former employees.

24 25. Whenever the LWDA, or any of its departments, divisions, commissions, boards,
25 agencies, or employees has discretion to assess a civil penalty, a court in a civil action is authorized
26 to exercise the same discretion, subject to the same limitations and conditions, to assess a civil
27 penalty.

28 26. Plaintiff and the other hourly-paid or non-exempt employees, are "aggrieved

employees" within the meaning of California Labor Code section 2699(c) as they are all current or former employees of Defendants, and one or more of the alleged violations was committed against them.

Failure to Pay Overtime

27. Defendants' failure to pay legally required overtime wages to Plaintiff and the other aggrieved employees is in violation of the Wage Orders and constitutes unlawful or unfair activity prohibited by California Labor Code sections 510 and 1198.

Failure to Provide Meal Periods

28. Defendants' failure to provide legally required meal periods to Plaintiff and the other aggrieved employees is in violation of the Wage Orders and constitutes unlawful or unfair activity prohibited by California Labor Code sections 226.7, 512(a), 1198, and the applicable Wage Orders.

Failure to Provide Rest Periods

29. Defendants' failure to provide legally required rest periods to Plaintiff and the other aggrieved employees is in violation of the Wage Orders and constitutes unlawful or unfair activity prohibited by California Labor Code section 226.7.

Failure to Pay Minimum Wages

30. Defendants' failure to pay legally required minimum wages to Plaintiff and the other aggrieved employees is in violation of the Wage Orders and constitutes unlawful or unfair activity prohibited by California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

Failure to Keep Accurate and Provide Itemized Wage Statements

31. Defendants' failure to keep accurate, and provide itemized wage statements to Plaintiff and the other aggrieved employees in accordance with Labor Code section 226(a), 1174(d), and 1198 constitutes unlawful and/or unfair activity prohibited by California Labor Code section 226(a), 1174(d), and 1198.

Failure to Timely Pay Wages During Employment

32. Defendants' failure to timely pay wages to Plaintiff and the other aggrieved employees during employment in accordance with Labor Code section 204 constitutes unlawful

1 and/or unfair activity prohibited by California Labor Code section 204.

2 **Failure to Timely Pay Wages Upon Termination**

3 33. Defendants' failure to timely pay wages to Plaintiff and the other aggrieved
4 employees upon termination in accordance with Labor Code sections 201, 202, and 203 constitutes
5 unlawful and/or unfair activity prohibited by California Labor Code sections 201, 202, and 203.

6 **Failure to Reimburse Necessary Business-Related Expenses and Costs**

7 34. Defendants' failure to reimburse Plaintiff and the other aggrieved employees for
8 necessary business-related expenses and costs in accordance with California Labor Code sections
9 2800 and 2802 constitutes unlawful and/or unfair activity prohibited by California Labor Code
10 sections 2800 and 2802.

11 35. Pursuant to California Labor Code section 2699, Plaintiff, individually, and on
12 behalf of all aggrieved employees, requests and is entitled to recover from Defendants and each of
13 them, business expenses, unpaid wages, and/or untimely wages according to proof, interest,
14 attorneys' fees and costs pursuant to California Labor Code section 218.5, as well as all statutory
15 penalties against Defendants, and each of them, including but not limited to:

16 a. Penalties under California Labor Code section 2699 in the amount of a hundred
17 dollars (\$100) for each aggrieved employee per pay period for the initial violation, and two
18 hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation;

19 b. Penalties under California Code of Regulations Title 8 section 11010, et seq. in the
20 amount of fifty dollars (\$50) for each aggrieved employee per pay period for the initial violation,
21 and one hundred dollars (\$100) for each aggrieved employee per pay period for each subsequent
22 violation;

23 c. Penalties under California Labor Code section 210 in addition to, and entirely
24 independent and apart from, any other penalties provided in the California Labor Code in the
25 amount of a hundred dollars (\$100) for each aggrieved employee per pay period for the initial
26 violation, and two hundred dollars (\$200) for each aggrieved employee per pay period for each
27 subsequent violation; and

28 d. Any and all additional penalties and sums as provided by the California Labor Code

1 and/or other statutes.

2 36. Pursuant to California Labor Code section 2699(i), civil penalties recovered by
3 aggrieved employees shall be distributed as follows: seventy-five percent (75%) to the Labor and
4 Workforce Development Agency for the enforcement of labor laws and education of employers
5 and employees about their rights and responsibilities and twenty-five percent (25%) to the
6 aggrieved employees.

7 37. Further, Plaintiff is entitled to seek and recover reasonable attorneys' fees and costs
8 pursuant to California Labor Code sections 210, 218.5 and 2699 and any other applicable statute.

9 THEREFORE, Representative Plaintiff and the individuals he seeks to represent request
10 relief as described below:

11 **PRAYER**

12 THEREFORE, Representative Plaintiff prays for judgment against Defendants, and Does 1
13 through 10, and each of them, as follows:

- 14 1. Statutory attorneys' fees and costs under PAGA and California Code of Civil
15 Procedure Section 1021.5;
16 2. Statutory penalties under PAGA;
17 3. Costs of suit; and
18 4. Such further relief as the Court deems just and proper.

19 Dated: July 7, 2020

HAIG B. KAZANDJIAN LAWYERS, APC.

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21 By: 

22 Haig B. Kazandjian, Esq.,
23 Cathy Gonzalez, Esq.,
24 Kevin Crough, Esq.,
25 Attorneys for Plaintiff JUAN FERNANDEZ
26 on behalf of herself and all others similarly
27 situated
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