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Superior Court of California
County of Fresno
By: A. Rodriguez, Deputy

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF FRESNO**

DILLON GELTZ, an aggrieved employee, on
behalf of himself and other current and former
employees,

Plaintiff,

v.

DONAGHY SALES, LLC, an entity unknown,
and DOES 1 through 50, inclusive,

Defendants.

Case No.: 20CECG01633

**REPRESENTATIVE ACTION
COMPLAINT FOR PENALTIES FOR
VIOLATION OF LABOR CODE
SECTION 2698 *et seq.***

DEMAND FOR JURY TRIAL

Plaintiff Dillon Geltz (“Plaintiff”) hereby submits his Representative Action Complaint for Penalties against Defendants Donaghy Sales, LLC, and DOES 1 through 50, inclusive (collectively, “Defendants”), on behalf of himself and other current and former employees of Defendants for wages and penalties, as follows:

INTRODUCTION

1. This representative action is brought pursuant to Labor Code § 2698 *et seq.* (the Private Attorneys General Act of 2004 (“PAGA”)) for Defendant’s violations of California Labor Code §§ 201, 202, 203, 204, 218.5, 221, 226(a), 226.3, 226.7, 510, 512(a), 558, 1174(d), 1194, 1197, 1197.1, 1198 2802, and Industrial Welfare Commission (“IWC”) Wage Order No. 9-2001 (codified as California Code of Regulations, title 8, § 11090).

2. This Complaint challenges Defendants’ systemic illegal employment practices resulting in violations of the stated provisions of the Labor Code and corresponding IWC Wage Order against the group of aggrieved employees.

3. Plaintiff is informed and believes and thereon alleges Defendants joint and severally acted intentionally and with deliberate indifference and conscious disregard to the rights of all employees in (1) failing to provide all meal periods and rest breaks, (2) failing to pay all minimum and overtime wages, (3) failing to reimburse for all necessary business-related costs and expenses, (4) failing to provide accurate wage statements, and (5) failing to pay all wages due and owing upon termination of employment.

4. This Complaint is timely filed, in accordance with the limitations period provided by Code of Civ. Pro. section 340(a). On February 7, 2020, Plaintiff provided written notice to the LWDA and Defendants of the specific provisions of the Labor Code he contends were violated, and the theories supporting his contentions. To date, he has not received a response. While awaiting a potential response from the LWDA to the February 7, 2020 notice pursuant to Labor Code § 2699.3(a)(2)(A), the Judicial Council of California issued emergency rules related to the COVID-19 pandemic. Specifically, Emergency Rule 9 states “[n]otwithstanding any other law, the statutes of limitation for civil causes of action are tolled from April 6, 2020, until 90 days after the Governor declares that the state of emergency

1 related to the COVID-19 pandemic is lifted.” Accordingly, per the emergency tolling rule
2 adopted by the Judicial Council, the limitations period for Plaintiff’s cause of action was tolled,
3 and the instant complaint is thus timely filed.

4 **JURISDICTION AND VENUE**

5 5. This representative action is brought pursuant to PAGA. The monetary damages
6 sought by Plaintiff exceed the minimal jurisdictional limits of the Superior Court and will be
7 established according to proof at trial.

8 6. This Court has jurisdiction over this action pursuant to California Constitution,
9 Article VI, Section 10, which grants the Superior Court original jurisdiction in all causes
10 except those given by statute to other courts. The statutes under which this action is brought
11 do not specify any other basis for jurisdiction.

12 7. This Court has jurisdiction over the violations of PAGA and Labor Code §§
13 201, 202, 203, 204, 218.5, 221, 226(a), 226.3, 226.7, 510, 512(a), 558, 1174(d), 1194, 1197,
14 1197.1, 1198, 2802, and IWC Wage Order No. 9-2001.

15 8. This Court has jurisdiction over all Defendants because, upon information and
16 belief, each party has sufficient minimum contacts in California, or otherwise intentionally
17 avails itself of California law so as to render the exercise of jurisdiction over it by the
18 California courts consistent with traditional notions of fair play and substantial justice.

19 9. Venue is proper in this Court because, upon information and belief, the named
20 Defendants transact business and/or have offices in this county, and the acts and omissions
21 alleged herein took place in this county.

22 **PARTIES**

23 10. Plaintiff Dillon Geltz is an individual residing in the State of California.
24 Plaintiff was formerly employed by Defendants in a non-exempt, hourly-paid position during
25 the relevant time period.

26 11. Defendant Donaghy Sales, LCC is an unknown business entity organized and
27 existing under the laws of California, licensed to do business and actually doing business in the
28 State of California, including the County of Fresno.

12. Plaintiff does not know the true names or capacities, whether individual, partner or corporate, of Defendants sued herein as DOES 1 through 50, inclusive, and for that reason, said Defendants are sued under such fictitious names, and Plaintiff prays for leave to amend this complaint when the true names and capacities are known. Plaintiff is informed and believes and thereon alleges that each of Defendants designated as a DOE was responsible in some way for the matters alleged herein and proximately caused Plaintiff and members of the general public and the group of aggrieved employees to be subject to the illegal employment practices, wrongs and injuries complained of herein.

13. At all times herein mentioned, Defendants, and each of them, were agents, partners, joint venturers, representatives, servants, employees, successors-in-interest, co-conspirators and assigns, each of the other, and at all times relevant hereto were acting within the course and scope of their authority as such agents, partners, joint venturers, representatives, servants, employees, successors, co-conspirators and assigns, and that all acts or omissions alleged herein were duly committed with ratification, knowledge, permission, encouragement, authorization and consent of each Defendant designated herein.

14. As such, and based upon all the facts and circumstances incident to Defendants' business in California, Defendants are subject to Labor Code §§ 201, 202, 203, 204, 218.5, 221, 226(a), 226.3, 226.7, 510, 512(a), 558, 1174(d), 1194, 1197, 1197.1, 1198, 2802, and IWC Wage Order No. 9-2001.

CAUSE OF ACTION

FOR VIOLATION OF PAGA

**(AGAINST ALL DEFENDANTS BY PLAINTIFF ON BEHALF OF ALL AGGRIEVED
EMPLOYEES)**

15. Plaintiff re-alleges and incorporates by reference paragraphs 1 through 14 as though fully set forth herein.

16. PAGA expressly establishes that any provision of the California Labor Code which provides for a civil penalty to be assessed and collected by the LWDA, or any of its departments, divisions, commissions, boards, agencies or employees for a violation of the

California Labor Code, may be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself, and other current or former employees.

17. On February 7, 2020, Plaintiff provided written notice to the LWDA and Defendants of the specific provisions of the Labor Code he contends were violated, and the theories supporting his contentions. To date, he has not received a response.

18. Plaintiff and the other non-exempt employees are “aggrieved employees” as defined by California Labor Code § 2699(c) in that they are all current or former employees of Defendants, and one or more of the alleged violations was committed against them.

Failure to Pay Minimum and Overtime Wages

19. At all times relevant herein, Defendants were required to compensate their non-exempt employees minimum wages for all hours worked and overtime wages for all hours worked in excess of eight (8) hours in a workday and forty (40) hours in a workweek, pursuant to the mandate of Labor Code §§ 510, 1194, 1197, 1197.1, and 1198.

20. During the relevant time period, Plaintiff and other aggrieved employees routinely worked in excess of 8 hours in a day and 40 hours in a week. Defendants failed to compensate Plaintiff and other aggrieved employees for work performed off-the-clock, including pre- and post-shift work. Further, Plaintiff and other aggrieved employees were paid a fixed daily rate that failed to compensate them for all hours worked in excess of 8 in a day. Plaintiff also alleges Defendants failed to include non-discretionary bonuses and incentives in the regular rate of pay for Plaintiff and other aggrieved employees, and also automatically deducted 30 minutes of working time regardless of whether Defendants provided a meal break or not.

Failure to Provide Meal Periods and Rest Breaks

21. In accordance with the mandates of the California Labor Code and the applicable IWC Wage Order, Plaintiff and other aggrieved employees had the right to take a 10-minute rest break for every four (4) hours worked or major fraction thereof, and a 30-minute meal period for every five (5) hours worked.

22. As a pattern and practice, Defendants failed to authorize and permit Plaintiff

1 and other aggrieved employees all required off-duty, net-10-minute rest breaks during which
2 the employees were free to leave Defendants' premises.

3 **23.** Additionally, during the relevant time period, Defendants routinely required
4 Plaintiff and other aggrieved employees to work through, interrupt, cut short, and/or delay their
5 meal and rest breaks to comply with Defendants' policies and expectations, meet production
6 goals, and complete their routes in a timely manner.

7 **24.** Further, Defendants failed to authorize and permit Plaintiff and other aggrieved
8 employees the requisite number of meal and rest breaks when working shifts exceeding 10
9 hours, including second meal breaks and third rest breaks. Despite these facts, Defendants
10 never compensated premium wages to Plaintiff and other aggrieved employees.

11 **Failure to Reimburse Necessary Work-Related Expenses**

12 **25.** At all times relevant herein, Defendants were required to reimburse their
13 employees for necessary work-related expenses pursuant to the mandate of Labor Code §§
14 2800 and 2802.

15 **26.** As a pattern and practice, Defendants failed in their obligation to reimburse its
16 employees for business expenses incurred. For examples, Defendants failed to reimburse their
17 employees for expenses associated with the regular use of personal mobile phones (and phone
18 plans) for work. Plaintiff and other class members were contacted and communicated with on
19 their personal cell phones for work-related purposes, and were personally responsible for all of
20 the costs incurred related to their cell phones and cell phone plans from their mobile service
21 providers despite their required use for work-related purposes.

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

23 **27.** At all times relevant herein, Defendants were required to pay their employees
24 all wages owed in a timely fashion at the end of employment pursuant to California Labor
25 Code §§ 201 to 204.

26 **28.** As a result of Defendants' Labor Code violations alleged above, Defendants
27 failed to pay Plaintiff and the other similarly-situated former employees their final wages
28 pursuant to Labor Code §§ 201 to 204 and accordingly owe waiting time penalties pursuant to

Labor Code § 203.

Failure to Provide Complete and Accurate Wage Statements

29. At all times relevant herein, Defendants were required to keep *accurate* records regarding their California employees pursuant to the mandate of Labor Code §§ 226 and 1174(d).

30. As a result of Defendants' various Labor Code violations, Defendants failed to keep accurate records regarding Plaintiff and other similarly-situated current and former employees. For example, Defendants failed in their affirmative obligation to keep accurate records regarding Plaintiff and other similarly-situated current and former employees' gross wages earned, total hours worked, net wages earned, and all applicable hourly rates and the number of hours worked at each hourly rate.

Damages

31. Pursuant to California Labor Code § 2699, Plaintiff, individually and on behalf of other current and former aggrieved employees, requests and is entitled to recover from Defendants, and each of them, unpaid wages, civil penalties, interest, attorneys' fees and costs pursuant, as well as all statutory penalties against Defendants, and each of them, including but not limited to:

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

33. Penalties under California Labor Code § 210 in the amount of a hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation, and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation, plus 25% of the amount unlawfully withheld;

34. Penalties under Labor Code § 226.3 in the amount of two hundred fifty dollars (\$250) per employee per initial violation and one thousand dollars (\$1,000) per employee for each subsequent violation;

35. Penalties under Labor Code § 558 in the amount of fifty dollars (\$50) for each aggrieved employee per pay period for the initial violation, and one hundred dollars (\$100) for each aggrieved employee per pay period for each subsequent violation;

36. Penalties under Labor Code § 1197.1 in the amount of a hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation, and two hundred fifty dollars (\$250) for each aggrieved employee per pay period for each subsequent violation;

37. An amount sufficient to recover unpaid wages as penalties under Labor Code § 558;

38. An amount sufficient to recover unpaid wages as penalties under Labor Code § 1197.1;

39. Any and all additional penalties and sums as provided by the Labor Code and/or other statutes; and

40. Attorneys' fees and costs as permitted by law.

PRAYER FOR RELIEF

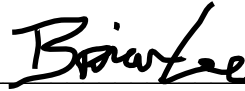
WHEREFORE, Plaintiff prays for judgment for himself and all others on whose behalf this suit is brought against Defendants, jointly and severally, as follows:

1. Upon the Cause of Action, for civil penalties and wages pursuant to statute as set forth in Labor Code § 2698 *et seq.*, for Defendants' violations of Labor Code §§ 201, 202, 203, 204, 218.5, 221, 226(a), 226.3, 226.7, 510, 512(a), 558, 1174(d), 1194, 1197, 1197.1, 1198, and 2802;

2. On all causes of action for attorneys' fees, interest, and costs as provided by California Labor Code §§ 210, 218.6, 226, 1194, 2699, 2802, and Code of Civil Procedure § 1021.5, and for such other and further relief the Court may deem just and proper.

1 DATED: June 5, 2020

YOON LAW, APC

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3 _____
4 Kenneth H. Yoon
5 Stephanie E. Yasuda
6 Brian G, Lee
7 Attorneys for Plaintiff Dillon Geltz

8 **DEMAND FOR JURY TRIAL**

9 Plaintiff, for himself and the aggrieved employees, hereby demands a jury trial as
10 provided by California law.

11 DATED: June 5, 2020

YOON LAW, APC

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13 _____
14 Kenneth H. Yoon
15 Stephanie E. Yasuda
16 Brian G, Lee
17 Attorneys for Plaintiff Dillon Geltz
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