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SAM KIMM

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES: CENTRAL DISTRICT

SAM KIMM, individually, and on behalf of
other members of the general public similarly
situated;

Plaintiff,

vs.

CALOP BUSINESS SYSTEMS, INC. dba
CALOP AEROGROUND SERVICES, a
California corporation; and DOES 1 through
100, Inclusive,

Defendants.

CASE NO. **20STCV22191**
**REPRESENTATIVE CLAIM FOR
CIVIL PENALTIES FOR VIOLATION
OF CALIFORNIA LABOR CODE
PURSUANT TO PAGA, LABOR CODE
§§2698, ET SEQ.**

DEMAND FOR JURY TRIAL

Plaintiff SAM KIMM (hereinafter “KIMM” or “Plaintiff,”) on behalf of himself and all
other aggrieved employees of Defendant CALOP BUSINESS SYSTEMS, INC. dba CALOP
AEROGROUND SERVICES (hereinafter referred to as “CALOP” or “Defendant”) and Does 1

through 100 alleges as follows:

PARTIES

1. At all times herein relevant, Plaintiff SAM KIMM was a resident in the County of Los Angeles, State of California and worked for Defendants at their offices in Los Angeles County, California.

2. Plaintiff is informed and believes and thereon alleges that CALOP was and at all times mentioned in this complaint is a California corporation doing business in the State of California, operating and doing business in the City of Los Angeles, County of Los Angeles, State of California.

3. At all relevant times Defendants were the “employer” of the Plaintiff within the meaning of all applicable California laws and statutes.

4. At all times herein relevant, Defendant CALOP and DOES 1 through 100, and each of them, were the agents, partners, joint venturers, joint employers, representatives, servants, employees, successors in interest, co-conspirators and/or assigns, 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, joint employers, representatives, servants, employees, successors in interest, co-conspirators and/or assigns, and all acts or omissions alleged herein were duly committed with the ratification, knowledge, permission, encouragement, authorization and/or consent of each defendant designated as a DOE herein.

5. The true names and capacities, whether corporate, associate, individual or otherwise, of defendants DOES 1 through 100, inclusive, are unknown to Plaintiff who sues said defendants by such fictitious names. Plaintiff is informed and believes, and based on that information and belief alleges, that each of the defendants designated as DOE is legally responsible for the events and happenings referred to in this complaint, and unlawfully caused the injuries and damages to Plaintiff and the other aggrieved employees as alleged in this complaint. Plaintiff will seek leave of court to amend this Complaint to show the true names and capacities when the same have been ascertained.

6. Defendant CALOP and DOES 1 through 100 will hereinafter collectively referred be referred to as “Defendants.”

7. Plaintiff further alleges that Defendants directly or indirectly controlled or affected the working conditions, wages, working hours, and conditions of employment of the Plaintiff and the other aggrieved employees so as to make each of said Defendants employers and employers liable under the statutory provisions set forth herein.

8. Venue is proper in this action on the grounds that the Defendants do business in the County of Los Angeles, and the events at issue occurred in the County of Los Angeles

GENERAL ALLEGATIONS

9. KIMM incorporates by this reference each and every allegation contained in Paragraph 1 through 8 above as though set forth fully below.

10. KIMM is informed and believes, and herein alleges, that CALOP employs more than five (5) people in the State of California.

11. Plaintiff brings this PAGA representative action against Defendants on behalf of himself and other aggrieved employees of Defendants in California seeking PAGA penalties pursuant to California Labor Code Sections 98.6, 201, 202, 204, 210, 221, 223, 225.5, 226, 226.3, 226.7, 227.3, 246, 510, 512, 558, 1102.5, 1174, 1175.5, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2751, 2802, and 2698 et seq.

GENERAL ALLEGATIONS

12. At all relevant time set forth herein, Defendants employed the Plaintiff and other aggrieved employees as hourly-paid or non-exempt employees within the State of California.

13. Plaintiff commenced his employment as an hourly paid, non-exempt employee for Defendants on or about July 17, 2017 until his employment was terminated on or about February 25 or 26, 2020.

14. Defendants hired Plaintiff and the other aggrieved employees and classified them as hourly-paid or non-exempt employees, and failed to compensate them for all hours worked, missed meal periods and/or rest breaks.

15. Defendants had the authority to hire and terminate Plaintiff and the other aggrieved employees; to set work rules and conditions governing Plaintiff's and the other aggrieved employees' employment; and to supervise their daily employment activities.

1 16. Defendants exercised sufficient authority over the terms and conditions of
2 Plaintiff's and other aggrieved employees' employment for them to be joint employers of the
3 Plaintiff and the other class members.

4 17. Defendants directly hired and paid wages and benefits to Plaintiff and the other
5 aggrieved employees.

6 18. Defendants continue to employ hourly-paid or non-exempt employees within the
7 State of California.

8 19. Plaintiff and the other aggrieved employees worked over eight (8) hours in a day,
9 and/or forty (40) hours in a week during their employment with Defendants.

10 20. Plaintiff is informed and believes, and based thereon alleges, that Defendants
11 engaged in a pattern and practice of wage abuse against their hourly-paid or non-exempt
12 employees within the State of California, involving, *inter alia*, failing to pay them for all regular
13 and/or overtime wages earned, missed meal periods and rest breaks in violation of California
14 law.

15 21. Plaintiff is informed and believes, and based thereon alleges, that Defendants
16 knew or should have known that Plaintiff and the other aggrieved employees were entitled to
17 receive certain wages for overtime compensation and that they were not receiving wages for
18 overtime compensation.

19 22. Plaintiff is informed and believes, and based thereon alleges, that Defendants
20 failed to provide Plaintiff and the other aggrieved employees the required rest and meal period
21 during the relevant time period as required under the Industrial Welfare Commission Wage
22 Orders and thus they are entitled to any and all applicable penalties.

23 23. Plaintiff is informed and believes, and based thereon alleges, that Defendants
24 knew or should have known that the Plaintiff and the other aggrieved employees were entitled to
25 receive all meal periods or payment of one additional hour of pay at Plaintiff's and the other
26 aggrieved employees regular rate of pay when a meal period was missed, and they did not
27 receive all meal periods or payment of one additional hour of pay at Plaintiff's and the other
28 aggrieved employees' regular rate of pay when a meal period was missed.

1 24. Plaintiff is informed and believes, and based thereon alleges, that Defendants
2 knew or should have known that the Plaintiff and the other aggrieved employees were entitled to
3 receive all rest periods or payment of one additional hour of pay at Plaintiff's and the other
4 aggrieved employees' regular rate of pay when a rest period was missed, and that Plaintiff and
5 the other aggrieved employees did not receive all rest periods or payment of one additional hour
6 of pay at Plaintiff's and the other aggrieved employees' regular rate of pay when a rest period
7 was missed.

8 25. Plaintiff is informed and believes, and based thereon alleges, that Defendants
9 knew or should have known that the Plaintiff and the other aggrieved employees were entitled to
10 receive at least minimum wage for compensation, and they were not receiving at least minimum
11 wage for all hours worked.

12 26. Plaintiff is informed and believes, and based thereon alleges, that Defendants
13 knew or should have known that the Plaintiff and the other aggrieved employees were entitled to
14 receive all wages owed to them upon discharge or resignation, including overtime and minimum
15 wages and meal and rest period premiums, and they did not, in fact, receive all such wages owed
16 to them at the time of their discharge or resignation.

17 27. Plaintiff is informed and believes, and based thereon alleges, that Defendants
18 knew or should have known that the Plaintiff and the other aggrieved employees were entitled to
19 receive complete and accurate wage statements in accordance with California law, but, in fact,
20 they did not receive complete and accurate wage statements from Defendants. The deficiencies
21 included, inter alia, the failure to include the total number of hours worked by Plaintiff and the
22 other aggrieved employees.

23 28. Plaintiff is informed and believes, and based thereon alleges, that Defendants
24 knew or should have known that the Plaintiff and the other aggrieved employees were entitled to
25 reimbursement for necessary business expenses, including certain footwear Plaintiff and other
26 aggrieved employees were required by Defendants to wear upon the job. Defendants also failed
27 to pay for or reimburse for expenses incurred to obtain and/or renew the security clearance
28 required to work at Defendants' facilities.

1 29. Plaintiff is informed and believes, and based thereon alleges, that Defendants
2 knew or should have known that they had a duty to compensate Plaintiff and the other aggrieved
3 employees pursuant to California law, and that Defendants had the financial ability to pay such
4 compensation, but willfully, knowingly, and intentionally failed to do so, and falsely represented
5 to Plaintiff and the other aggrieved employees that they were properly denied wages, all in order
6 to increase Defendants' profit.

7 30. During the relevant times set forth herein, Defendants failed to pay overtime
8 wages to Plaintiff and the other aggrieved employees for all hours worked. Plaintiff and the other
9 aggrieved employees were required to work more than eight (8) hours per day and/or forty (40)
10 hours per week without overtime compensation.

11 31. During the relevant times set forth herein, Defendants failed to provide the
12 requisite uninterrupted meal and rest periods to Plaintiff and the other aggrieved employees.

13 32. During the relevant times set forth herein, Defendants failed to pay Plaintiff and
14 the other aggrieved employees at least minimum wage for all hours worked.

15 33. During the relevant times set forth herein, Defendants failed to pay other
16 aggrieved employees all wages owed to them upon discharge or resignation.

17 34. During the relevant times set forth herein, Defendants failed to provide complete
18 or accurate wage statements to Plaintiff and the other aggrieved employees.

19 35. During the relevant times set forth herein, Defendants failed to properly
20 compensate Plaintiff and the other aggrieved employees pursuant to California law in order to
21 increase Defendants' profits.

22 36. Defendants willfully failed to pay Plaintiff and other aggrieved employees in
23 California by the time set forth by Labor Code sections 201, 202, and 204, all minimum, regular,
24 and overtime wages and all meal and rest period premium wages earned and owed during their
25 employment and upon separation from employment.

26 37. Defendants also did not pay Plaintiff and other aggrieved employees all wages
27 due and payable during and upon separation from employment, including minimum , regular and
28 overtime wages for all hours worked, and meal and rest period premium wages, as required by

1 Labor Code sections 201, 202, and 204.

2 38. The cause of action alleged herein is appropriately suited of a labor code Private
3 Attorney General's Act ("PAGA") action because:

4 a) Pursuant to California Labor Code section 2699(a), any provision of the Labor
5 Code that provides for a civil penalty to be assessed and collected by the Labor and Workforce
6 Development Agency ("LDWA") or any of its departments, divisions, commissions, boards,
7 agencies, or employees for a violation of the California Labor Code, may, as an alternative, be
8 recovered through a civil action brought by an aggrieved employee on behalf of himself or
9 himself and all other current or former employees pursuant to the procedures specified in
10 section 2699.

11 b) This action involves allegations of violations of provisions of the California Labor
12 Code that provide or do not provide for a civil penalty to be assessed and collected by the
13 LWDA or any departments, divisions, commissions, boards, agencies, or employees.

14 c) Plaintiff is an aggrieved employee because he was employed by the alleged
15 violators and had one or more of the alleged violations committed against her.

16 d) On March 6, 2020, Plaintiff satisfied the procedural requirements of section
17 2699.3 by serving the LWDA and Defendant CALOP via certified Mail with his notice for
18 wage and hour violations and penalties, including the facts and theories to support each
19 violation. A true and correct copy of Plaintiff's notice and proof of mailing is attached as
20 Exhibit A. Plaintiff also satisfied the procedural requirements of section 2699.3 by serving the
21 LWDA electronically on March 6, 2020 and thereafter obtained LWDA Case No. LWDA-CM-
22 779360-20.

23 e) More than 33 days have passed since Plaintiff served notice via Certified Mail to
24 the LWDA and her employer. Therefore, Plaintiff satisfied all the administrative requirements
25 to pursue civil penalties against Defendants pursuant to Labor Code section 2698, et seq.

26 f) The doctrine of equitable tolling applies herein because Plaintiff notified the
27 LWDA and the Defendant of the factual and legal bases of Plaintiff's claim within the
28 applicable one year statute of limitations; Defendant has not been prejudiced because Defendant

1 had notice of the factual and legal bases of Plaintiff's claim within the statutory period; and (3)
2 Plaintiff in good faith filed this initial complaint in the earliest possible time after providing the
3 LWDA and Defendants with its statutorily-mandated 33-day safe harbor.

4 g) Plaintiff herein asserts this action pursuant to Labor Code section 2699(a) and (f)
5 on behalf of himself and all other aggrieved employees of Defendants to recover civil penalties,
6 including unpaid wages, which are to be paid to the affected employees pursuant to Labor Code
7 sections 558 and 1197.1.

8 h) Defendants were Plaintiff's employers or persons acting on behalf of Plaintiff's
9 employer, within the meaning of California Labor Code section 558, who violated or caused to
10 be violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision
11 regulating hours and days of work in any order of the Industrial Welfare Commission and, as
12 such, are subject to civil penalties for each underpaid employee, as set forth in Labor Code
13 section 558, at all relevant times.

14 i) Defendants were Plaintiff's employer or persons acting on behalf of Plaintiff's
15 employer either individually or as an officer, agent, or employee of another person, within the
16 meaning of California Labor Code section 1197.11, who paid or caused to be paid to any
17 employee a wage less than the minimum wage fixed by California state law, and as such, are
18 subject to civil penalties for each underpaid employee, as well as liquidated damages pursuant
19 to labor code section 1194.2, and any applicable penalties imposed pursuant to labor code
20 section 203.

21 j) Plaintiff seeks to recover all applicable civil penalties under PAGA on behalf of
22 himself and all other aggrieved employees of Defendants in California including but not limited
23 to, all unpaid and/or underpaid wages pursuant to Labor Code sections 558 and 1197.1, in
24 accordance with *Reynolds v Bement*, 36 Cal.4th 1075, 1089 (2005), and *Thurman v Bayshore*
25 *Transit Management, Inc.*, 203 Cal.App4th 1112 (2012).

26 **FIRST CAUSE OF ACTION**

27 **Representative Claims Under PAGA**

28 (By Plaintiff on Behalf of All Aggrieved Employees of Defendants Against All Defendants)

1 39. Plaintiff incorporates by reference all previous paragraphs above as if set forth
2 hereat in full.

3 40. Pursuant to California Labor Code section 2699(a), any provision of the Labor
4 Code that provides for a civil penalty to be assessed and collected by the Labor and Workforce
5 Development Agency (“LDWA”) or any of its departments, divisions, commissions, boards,
6 agencies, or employees for a violation of the California Labor Code, may, as an alternative, be
7 recovered through a civil action brought by an aggrieved employee on behalf of himself or
8 himself and all other current or former employees pursuant to the procedures specified in section
9 2699.

10 41. This cause of action involves allegations of violations of provisions of Labor
11 Code sections, including sections 98.6, 201, 202, 204, 210, 221, 223, 225.5, 226, 226.3, 226.7,
12 227.3, 246, 510, 512, 558, 1102.5, 1174(d), 1197, 1198, 1199, 2751, and 2802, which pursuant
13 to Labor Code section 2699.5 provide for a civil penalty to be assessed and collected by the
14 LDWA or recovered through a civil action brought by an aggrieved employee on behalf of
15 himself or himself and other current or former employees pursuant to the procedures specified in
16 Labor Code section 2699.3.

17 42. Plaintiff has exhausted his administrative remedies and obligations and now seeks
18 penalties on behalf of himself and other aggrieved employees.

19 43. Pursuant to California Labor Code section 2699(a), Plaintiff seeks civil penalties
20 on behalf of himself and other aggrieved employees that worked as non-exempt employees at
21 Defendants’ facilities in Los Angeles County (collectively the “aggrieved employees.”)

22 44. Defendants employed Plaintiff and Plaintiff had one or more of the alleged
23 violations committed against him. Therefore, Plaintiff is an aggrieved employee under PAGA.
24 As such Plaintiff is properly suited to represent the interests of the other aggrieved employees in
25 this PAGA representative action.

26 45. Plaintiff seeks to recover civil penalties for, including underpaid wages pursuant
27 to labor code sections 558 and 1197.1, on behalf of himself and other aggrieved employees for
28 Defendants’ violations of the Labor Code, including violations of Labor code sections 98.6, 201,

202, 204, 210, 221, 223, 225.5, 226, 226.3, 226.7, 227.3, 246, 510, 512, 558, 1102.5, 1174(d),
1197, 1198, 1199, 2751, and 2802.

46. For all provisions of the Labor Code for which a civil penalty is not specifically
provided, Labor Code Section 2699(f) imposes upon Defendants a penalty of one hundred
dollars (\$100.00) for each aggrieved employee per pay period for the initial violation and two
hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent
violation.

47. Defendants violated Labor Code sections 226(a) and 1198 by failing to include
unpaid minimum, regular and overtime wages on Plaintiff's and aggrieved employees' wage
statements as required by law. Pursuant to Labor Code section 2699(f) Defendants are subject to
a civil penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay period for
the initial violation and two hundred dollars (\$200.00) for each aggrieved employee per pay
period for each subsequent violation.

48. Alternatively, Labor Code section 226.3 provides for a civil penalty in the amount
of \$250 per violation in an initial citation and \$1,000 for each violation in a subsequent citation
for which the employer fails to provide the employee an accurate wage statement or fails to keep
the records required in subdivision (a) of section 226.

49. Labor Code section 1174.6 provided for a civil penalty of \$500.00 for any person
employing labor who willfully fails to maintain accurate and complete records required by
subdivision (d) of section 1174.

50. Defendants are and were Plaintiff's and aggrieved employees' employers or other
persons acting either individually or as an officer, agent, or employee of another person, who
pays or causes to be paid to any employee a wage less than the minimum wage fixed by an order
of the commission, and as such, are subject to civil penalties for each underpaid employee,
pursuant to Labor Code section 1197.1.

51. Labor Code section 1197.1 imposes upon Defendants for each initial violation of
Labor Code 1197 by paying or causing an employee to be paid less than the minimum wage, a
civil penalty of \$100 for each underpaid employee for each pay period for which the employee is

1 underpaid and a civil penalty of \$250 per underpaid employee for each pay period for each
2 subsequent violation. The civil penalty is in addition to an amount sufficient to recover the
3 underpaid wages, as well as liquidated damages pursuant to Labor Code section 1194.2, and any
4 applicable penalties imposed pursuant to Labor Code section 203, which shall be paid directly to
5 each affected employee.

6 52. Defendants are and were Plaintiff's and other aggrieved employees' employers, or
7 persons acting on their behalf, within the meaning of Labor Code section 558, who violated or
8 caused to be violated, a section of Part 2, Ch. 1 of the Labor code or any provision regulating
9 hours and days of work in any IWC Wage Order and as such are subject to civil penalties for
10 each underpaid employee as set forth in Labor Code section 558.

11 53. Pursuant to Labor Code section 558, Defendants are subject to a civil penalty of
12 \$50 for each initial violation of Labor Code sections 510 and 512, for each aggrieved employee,
13 for each pay period for which the aggrieved employee was not provided with a timely
14 uninterrupted 30 minute meal period and all overtime wages for all hours worked, as alleged
15 herein. Furthermore, labor code section 558 imposes upon Defendants a civil penalty of \$100 for
16 each subsequent violation of Labor Code sections 510 and 512 for each aggrieved employee for
17 each pay period the aggrieved employee was not provided with a timely uninterrupted 30 minute
18 meal period and all overtime wages for all hours worked, as alleged herein. The civil penalty
19 recoverable under section 558 is in addition to an amount sufficient to recover the unpaid meal
20 premiums and overtime wages, which shall be paid directly to each affected employee.

21 54. Labor Code section 558 also imposes upon Defendants for each initial violation of
22 the hours and days of work section of the applicable IWC Wage Order a civil penalty of \$50 for
23 each pay period for which the aggrieved employee was not provided with a paid, uninterrupted
24 10 minute rest period, as alleged herein. Furthermore, Labor Code section 558 also imposes upon
25 Defendants for each subsequent violation of the hours and days of work section of the applicable
26 IWC Wage Order a civil penalty of \$100 for each pay period for which the aggrieved employee
27 was not provided with a paid, uninterrupted 10 minute rest period, as alleged herein. As set forth
28 in and *Thurman v Bayshore Transit Management, Inc.*, 203 Cal.App4th 1112 (2012) the hours

1 and days of work section of the applicable IWC Wage Order also cover failure to provide rest
2 periods and Plaintiff may therefore recover civil penalties, including the unpaid wages, under
3 Labor Code section 558 for each such violation.

4 55. Defendants violated Labor Code sections 98.6 and 1102.5 by retaliating against
5 Plaintiff and wrongfully terminating her for exercising her rights under the Labor Code by
6 complaining about the aforesaid violations. Thus, under labor Code section 2699(f)(2)
7 Defendants are subject to a civil penalty of \$100 for each aggrieved employee for the initial
8 violation of Labor Code section 98.6 and a civil penalty of \$100 for each aggrieved employee for
9 the initial violation of Labor Code section 1102.5. Defendants are subject to a civil penalty of
10 \$200 for each subsequent violation of Labor Code sections 98.6 and 1102.5.

11 56. In addition to the other remedies available, pursuant to labor Code section
12 98.6(a)(3), Defendants are subject to a civil penalty not to exceed \$10,000 per aggrieved
13 employee for each violation of Labor code section 98.6, to be awarded to the employee or
14 employees who suffered the violation

15 57. Furthermore, in addition to the other penalties, under labor Code section 1102.5(f)
16 Defendants are subject to a civil penalty not to exceed \$10,000 for each violation of Labor Code
17 section 1102.5.

18 58. Plaintiff is also entitled to attorney's fees and costs herein for bringing this action.

19 59. Plaintiff seeks to recover civil penalties on behalf of himself and other aggrieved
20 employees for Defendants' violations of the Labor Code, including violations of Labor code
21 sections 98.6, 201, 202, 204, 221, 223, 226(a), 226.7, 227.3, 246, 510, 512, 558, 1102.5, 1174(d),
22 1197, 1198, 1199, 2751, and 2802 pursuant to Labor Code section 2698 et seq.. The exact
23 amount of the applicable penalties in an amount according to proof at trial but in an amount
24 exceeding the minimum jurisdictional limitations of this court

25 **PRAYER FOR RELIEF**

26 Wherefore, Plaintiff prays for judgment against Defendants as follows:

27 a) For reasonable attorney's fees and costs of suit to the extent permitted by law,
28 including pursuant to Labor Code sections 2699, et seq.

b) For civil penalties to the extent permitted by law pursuant to the Labor Code under PAGA;

c) For civil penalties for each initial and subsequent violation for each underpaid employee for each pay period for which the employee was underpaid, in addition to an amount sufficient to recover the underpaid wages pursuant to Labor code section 558, and pursuant to Labor Code section 1197.1, in addition to an amount sufficient to recover the underpaid wages, as well as liquidated damages pursuant to Labor Code section 1194.2, and any applicable penalties imposed pursuant to Labor Code section 203.

d) For such other relief as the court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury of all issues so triable.

Dated: June 10, 2020

JOEL GLASER, APC

By:

Joel Glaser, Esq.
Attorneys for Plaintiff
SAM KIMM

Dated: June 10, 2020

DBL LAW GROUP

By:

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