

SUMMONS (CITACION JUDICIAL)

**NOTICE TO DEFENDANT: ALL WAYS TRANSPORT, INC., a
(AVISO AL DEMANDADO):** California corporation, and DOES 1
through 10, inclusive

**YOU ARE BEING SUED BY PLAINTIFF: MARCUS WELDON, on behalf
(LO ESTÁ DEMANDANDO EL DEMANDANTE):** of himself and all
"aggrieved employees" pursuant to Labor Code § 2698 et
seq.

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

FILED

**Superior Court Of California,
Sacramento**

05/27/2020

amocanu

By _____, Deputy

Case Number:

34-2020-00279623

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 o más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:

(El nombre y dirección de la corte es):

Superior Court of California, County of Sacramento
720 9th Street

Sacramento, California 95814

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is: Alex P. Katofsky, Esq. #202754
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Gaines & Gaines, APLC

27200 Agoura Road, Suite 101, Calabasas, CA 91301

818-703-8985

DATE:

(Fecha)

MAY 27 2020

Clerk, by

(Secretario)

A. MOCANU

, Deputy

(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):

3. ☐ on behalf of (specify):

under: ☐ CCP 416.10 (corporation)

☐ CCP 416.20 (defunct corporation)

☐ CCP 416.40 (association or partnership)

☐ other (specify):

4. ☐ by personal delivery on (date):

☐ CCP 416.60 (minor)

☐ CCP 416.70 (conservatee)

☐ CCP 416.90 (authorized person)

[SEAL]



BY FAX

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Alex P. Katofsky, Esq. SBN: 202754 Gaines & Gaines, APLC 27200 Agoura Road, Suite 101, Calabasas, CA 91301 TELEPHONE NO.: 818-703-8985 FAX NO.: 818-703-8984 ATTORNEY FOR (Name): Plaintiff, Marcus Weldon		FOR COURT USE ONLY FILED Superior Court Of California, Sacramento 05/27/2020 amocanu By _____, Deputy Case Number: 34-2020-00279623						
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO STREET ADDRESS: 720 9th Street MAILING ADDRESS: 720 9th Street CITY AND ZIP CODE: Sacramento, 95814 BRANCH NAME: Gordon D. Schaber Sacramento County Courthouse								
CASE NAME: Weldon v. All Ways Transport, Inc., et al.								
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td colspan="2" style="text-align: center; font-weight: bold;">CIVIL CASE COVER SHEET</td> <td style="text-align: center; font-weight: bold;">Complex Case Designation</td> </tr> <tr> <td style="width: 33%; vertical-align: top;"> ☒ Unlimited (Amount demanded exceeds \$25,000) </td> <td style="width: 33%; vertical-align: top;"> ☐ Limited (Amount demanded is \$25,000 or less) </td> <td style="width: 34%; vertical-align: top;"> ☐ Counter ☐ Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402) </td> </tr> </table>			CIVIL CASE COVER SHEET		Complex Case Designation	☒ Unlimited (Amount demanded exceeds \$25,000)	☐ Limited (Amount demanded is \$25,000 or less)	☐ Counter ☐ Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)
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Items 1-6 below must be completed (see instructions on page 2).

1. Check **one** box below for the case type that best describes this case:
- | | | |
|---|--|---|
| Auto Tort
☐ Auto (22)
☐ Uninsured motorist (46)
Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort
☐ Asbestos (04)
☐ Product liability (24)
☐ Medical malpractice (45)
☐ Other PI/PD/WD (23)
Non-PI/PD/WD (Other) Tort
☐ Business tort/unfair business practice (07)
☐ Civil rights (08)
☐ Defamation (13)
☐ Fraud (16)
☐ Intellectual property (19)
☐ Professional negligence (25)
☐ Other non-PI/PD/WD tort (35)
Employment
☐ Wrongful termination (36)
☒ Other employment (15) | Contract
☐ Breach of contract/warranty (06)
☐ Rule 3.740 collections (09)
☐ Other collections (09)
☐ Insurance coverage (18)
☐ Other contract (37)
Real Property
☐ Eminent domain/Inverse condemnation (14)
☐ Wrongful eviction (33)
☐ Other real property (26)
Unlawful Detainer
☐ Commercial (31)
☐ Residential (32)
☐ Drugs (38)
Judicial Review
☐ Asset forfeiture (05)
☐ Petition re: arbitration award (11)
☐ Writ of mandate (02)
☐ Other judicial review (39) | Provisionally Complex Civil Litigation
(Cal. Rules of Court, rules 3.400-3.403)
☐ Antitrust/Trade regulation (03)
☐ Construction defect (10)
☐ Mass tort (40)
☐ Securities litigation (28)
☐ Environmental/Toxic tort (30)
☐ Insurance coverage claims arising from the above listed provisionally complex case types (41)
Enforcement of Judgment
☐ Enforcement of judgment (20)
Miscellaneous Civil Complaint
☐ RICO (27)
☐ Other complaint (not specified above) (42)
Miscellaneous Civil Petition
☐ Partnership and corporate governance (21)
☐ Other petition (not specified above) (43) |
|---|--|---|
2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--|--|
| a. ☐ Large number of separately represented parties
b. ☐ Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
c. ☐ Substantial amount of documentary evidence | d. ☐ Large number of witnesses
e. ☐ Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
f. ☐ Substantial postjudgment judicial supervision |
|--|--|
3. Remedies sought (check all that apply): a. ☒ monetary b. ☐ nonmonetary; declaratory or injunctive relief c. ☐ punitive
4. Number of causes of action (specify): One (1)
5. This case ☐ is ☒ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: 5/26/2020

Alex P. Katofsky, Esq.
(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you **must** complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort

Auto (22)—Personal Injury/Property Damage/Wrongful Death
Uninsured Motorist (46) (*if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto*)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)
Asbestos Property Damage
Asbestos Personal Injury/Wrongful Death
Product Liability (*not asbestos or toxic/environmental*) (24)
Medical Malpractice (45)
Medical Malpractice—
Physicians & Surgeons
Other Professional Health Care Malpractice
Other PI/PD/WD (23)
Premises Liability (e.g., slip and fall)
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
Intentional Infliction of Emotional Distress
Negligent Infliction of Emotional Distress
Other PI/PD/WD

Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)
Civil Rights (e.g., discrimination, false arrest) (*not civil harassment*) (08)
Defamation (e.g., slander, libel) (13)
Fraud (16)
Intellectual Property (19)
Professional Negligence (25)
Legal Malpractice
Other Professional Malpractice (*not medical or legal*)
Other Non-PI/PD/WD Tort (35)

Employment

Wrongful Termination (36)
Other Employment (15)

Contract

Breach of Contract/Warranty (06)
Breach of Rental/Lease
Contract (*not unlawful detainer or wrongful eviction*)
Contract/Warranty Breach—Seller
Plaintiff (*not fraud or negligence*)
Negligent Breach of Contract/Warranty
Other Breach of Contract/Warranty
Collections (e.g., money owed, open book accounts) (09)
Collection Case—Seller Plaintiff
Other Promissory Note/Collections Case
Insurance Coverage (*not provisionally complex*) (18)
Auto Subrogation
Other Coverage
Other Contract (37)
Contractual Fraud
Other Contract Dispute

Real Property

Eminent Domain/Inverse Condemnation (14)
Wrongful Eviction (33)
Other Real Property (e.g., quiet title) (26)
Writ of Possession of Real Property
Mortgage Foreclosure
Quiet Title
Other Real Property (*not eminent domain, landlord/tenant, or foreclosure*)

Unlawful Detainer

Commercial (31)
Residential (32)
Drugs (38) (*if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential*)

Judicial Review

Asset Forfeiture (05)
Petition Re: Arbitration Award (11)
Writ of Mandate (02)
Writ—Administrative Mandamus
Writ—Mandamus on Limited Court Case Matter
Writ—Other Limited Court Case Review
Other Judicial Review (39)
Review of Health Officer Order
Notice of Appeal—Labor
Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)
Construction Defect (10)
Claims Involving Mass Tort (40)
Securities Litigation (28)
Environmental/Toxic Tort (30)
Insurance Coverage Claims (*arising from provisionally complex case type listed above*) (41)

Enforcement of Judgment

Enforcement of Judgment (20)
Abstract of Judgment (Out of County)
Confession of Judgment (*non-domestic relations*)
Sister State Judgment
Administrative Agency Award (*not unpaid taxes*)
Petition/Certification of Entry of Judgment on Unpaid Taxes
Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

RICO (27)
Other Complaint (*not specified above*) (42)
Declaratory Relief Only
Injunctive Relief Only (*non-harassment*)
Mechanics Lien
Other Commercial Complaint Case (*non-tort/non-complex*)
Other Civil Complaint (*non-tort/non-complex*)

Miscellaneous Civil Petition

Partnership and Corporate Governance (21)
Other Petition (*not specified above*) (43)
Civil Harassment
Workplace Violence
Elder/Dependent Adult Abuse
Election Contest
Petition for Name Change
Petition for Relief From Late Claim
Other Civil Petition

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FILED
Superior Court Of California,
Sacramento
05/27/2020
amocanu
By _____, Deputy
Case Number:
34-2020-00279623

7 Attorneys for Plaintiff Marcus Weldon, on behalf of himself and all "aggrieved employees"
8 pursuant to Labor Code § 2698 *et seq.*

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF SACRAMENTO**

11 MARCUS WELDON, on behalf of himself
12 and all "aggrieved employees" pursuant to
13 Labor Code § 2698 *et seq.*,

14 Plaintiffs,

15 v.

16 ALL WAYS TRANSPORT, INC., a
17 California corporation, and DOES 1 through
18 10, inclusive,

19 Defendants.

CASE NO:

REPRESENTATIVE ACTION
COMPLAINT FOR PENALTIES
PURSUANT TO LABOR CODE § 2699(f)
FOR VIOLATIONS OF LABOR CODE
§§ 201, 202, 226(a), 226.7, AND 512 AND
PURSUANT TO LABOR CODE § 2699(a)
FOR VIOLATIONS OF LABOR CODE §§
226.3 AND 226.8

1 Plaintiff MARCUS WELDON (“Plaintiff”), on behalf of himself and others as an “aggrieved
2 employee” under the Labor Code Private Attorneys General Act of 2004, complains of ALL WAYS
3 TRANSPORT, INC., a California corporation, and/or any subsidiaries or affiliated companies
4 (hereinafter referred to as “Defendants”), as follows:

5 I.

6 **INTRODUCTION AND FACTUAL BACKGROUND**

7 1. This is a Representative Action, pursuant to Labor Code § 2698 *et seq.*, on behalf of
8 Plaintiff and other California truck drivers classified as independent contractors who currently work
9 or formerly worked for Defendants (“Aggrieved Employees”).

10 2. For at least one (1) year prior to the filing of this action and at least one (1) year prior
11 to the date Plaintiff began the process of exhausting the administrative requirements, pursuant to
12 Labor Code § 2698 *et seq.*, and continuing to the present (the “liability period”), Defendants have had
13 consistent policies of:

14 a. Voluntarily and knowingly misclassifying their employees as independent
15 contractors, in violation of Labor Code § 226.8. California uses the ABC Test to determine if an
16 employee is properly classified as an independent contractor: unless the hiring entity establishes (A)
17 that the worker is free from the control and direction of the hiring entity in connection with the
18 performance of the work, both under the contract for the performance of the work and in fact, (B) that
19 the worker performs work that is outside the usual course of the hiring entity's business, and (C) that
20 the worker is customarily engaged in an independently established trade, occupation, or business,
21 then the worker should be considered an employee and the hiring business an employer under the
22 suffer or permit to work standard in the applicable wage orders. Defendants cannot establish all three
23 elements of the ABC Test, let alone any single element individually: first, Defendants dictated the
24 hours Plaintiff must work and how he was to specifically perform his job duties; next, Plaintiff
25 performed the exact type of work Defendants are in the business of—transportation of goods—and,
26 therefore, did not perform work that is outside the usual course of Defendants’ business; and third,
27 Plaintiff did not work in an independently established trade; truck drivers are customarily employees
28

1 of a transportation business. Plaintiff and Aggrieved Employees fail to meet the qualifications of
2 independent contractors under each element of the test, in violation of Labor Code § 226.8;

3 b. Failing to pay Plaintiff and other Aggrieved Employees compensation in lieu
4 of missed, denied and unauthorized rest periods. Plaintiff and other Aggrieved Employees were
5 unable and not authorized to take paid ten-minute rest periods for every four hours of work or major
6 fraction thereof due to the busy nature of their work schedule. However, Defendant failed to pay
7 them premium wages for these missed rest periods. The California Court of Appeal has held that rest
8 periods must be separately compensated. *See Bluford v. Safeway Stores, Inc.* (2013) 216 Cal.App.4th
9 864, 871. Under the California minimum wage law, employees must be compensated for each hour
10 worked at either the legal minimum wage or the contractual hourly wage, and compliance cannot be
11 determined by averaging daily compensation. Defendant failed to pay Plaintiff and other Aggrieved
12 Employees for their rest periods even when they could take them, thus also depriving them of all
13 wages due, in violation of Labor Code § 226.7;

14 c. Failing to pay Plaintiff and all other Aggrieved Employees premium wages
15 for missed meal periods, in violation of Labor Code §§ 226.7 and 512. Plaintiff and other Aggrieved
16 Employees were routinely denied, and not authorized to take, an uninterrupted, 30-minute meal period
17 for every shift worked over five hours in duration, and a second 30-minute meal period for every shift
18 worked over ten hours in duration, but were not paid premium wages of one hour's pay for each
19 missed meal period. They were simply too busy to take their meal periods. This violates Labor Code
20 §§ 226.7 and 512;

21 d. Failing to issue Plaintiff and Aggrieved Employees any itemized wage
22 statements. As such, they did not receive wage statements that accurately set forth all gross wages
23 earned, in violation of Labor Code §§ 226(a)(1) and 226.3, the total hours worked, in violation of
24 Labor Code §§ 226(a)(2) and 226.3, net wages earned, in violation of Labor Code §§ 226(a)(5) and
25 226.3, all deductions, in violation of Labor Code §§ 226(a)(4) and 226.3, the inclusive dates of the
26 pay period, in violation of Labor Code §§ 226(a)(6) and 226.3, an employee identification number or
27 the last four digits of employees' social security numbers, in violation of Labor Code §§ 226(a)(7)
28 and 226.3, the name and an address of the legal entity that is the employer, in violation of Labor Code

1 §§ 226(a)(8) and 226.3, and all hourly rates in effect during the pay period and the corresponding
2 number of hours worked, in violation of Labor Code §§ 226(a)(9) and 226.3; and

3 e. Failing to timely pay Plaintiff and Aggrieved Employees all wages due at the
4 separation of their employment based on the time frames required by Labor Code §§ 201 and 202. As
5 stated above, Plaintiff and Aggrieved Employees were not paid all wages due and, as a result of this
6 failure, they were not timely paid all wages due at the separation of their employment. This violates
7 Labor Code §§ 201-202 and is alleged on behalf of Plaintiff and other Aggrieved Employees who have
8 ended their employment with Defendant.

9 3. Plaintiff, on behalf of himself and all Aggrieved Employees pursuant to Labor Code §
10 2698 *et seq.*, seeks civil penalties for Defendants' violations of the California Labor Code.

11 4. Venue is proper in this judicial district, pursuant to Code of Civil Procedure § 395.
12 The Labor Code violations alleged against Defendants herein arose in Sacramento County, California.

13 II.

14 PARTIES

15 A. Plaintiff

16 5. Plaintiff MARCUS WELDON was employed by Defendants from February 2018
17 through February 20120 as a truck driver classified as an independent contractor in Sacramento
18 County, California.

19 B. Defendant

20 6. Defendant ALL WAYS TRANSPORT, INC., is a California corporation. Defendant
21 ALL WAYS TRANSPORT, INC., employed Plaintiff and Aggrieved Employees throughout the State
22 of California, including Sacramento County, California.

23 7. The true names and capacities, whether individual, corporate, associate, or otherwise,
24 of Defendants sued herein as DOES 1 to 10, inclusive, are currently unknown to Plaintiff, who
25 therefore sues Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiff is
26 informed and believes, and based thereon alleges, that each of the Defendants designated herein as a
27 DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will
28

1 seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendants
2 designated hereinafter as DOES when such identities become known.

3 8. Plaintiff is informed and believes, and based thereon alleges, that each Defendant acted
4 in all respects pertinent to this action as the agent of the other Defendant, carried out a joint scheme,
5 business plan or policy in all respects pertinent hereto, and the acts of each Defendant is legally
6 attributable to the other Defendants.

7 9. The Defendants named herein as DOE 1 through DOE 10 are and were persons acting
8 on behalf of, or acting jointly with, Defendants, who violated, or caused to be violated, one or more
9 provisions of the California Labor Code as alleged herein.

10 III.

11 CAUSES OF ACTION

12 FIRST CAUSE OF ACTION

13 PLAINTIFF AND ALL AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS 14 PENALTIES PURSUANT TO LABOR CODE § 2699(f) FOR VIOLATIONS OF LABOR 15 CODE §§ 201, 202, 226(a), 226.7, AND 512 AND PURSUANT TO LABOR CODE § 2699(a) 16 FOR VIOLATIONS OF LABOR CODE §§ 226.3 AND 226.8

17 10. Plaintiff incorporates paragraphs 1 through 9 of this Complaint as though fully set
18 forth herein.

19 11. As a result of the acts alleged above, including the Labor Code violations set forth in
20 paragraph 2 above, Plaintiff seeks civil penalties pursuant to Labor Code §§ 2698 *et seq.*

21 12. For each such violation, Plaintiff and all other Aggrieved Employees are entitled to
22 penalties and other relief in an amount to be shown at the time of trial subject to the following formula:

- 23 a. Pursuant to Labor Code § 2699(f), \$100 for each initial violation and \$200 for
24 each subsequent violation of Labor Code §§ 201, 202, 226(a), 226.7, and 512;
25 and
26 b. Pursuant to Labor Code § 2699(a), the penalties as authorized by Labor Code
27 §§ 226.3 and 226.8.
28

13. Civil penalties recovered will be allocated 75% to the Labor and Workforce Development Agency, and 25% to the affected employees.

14. On March 18, 2020, Plaintiff sent a letter, by online submission to the LWDA and by certified mail, return receipt requested, to Defendants setting forth the facts and theories of the violations alleged against Defendants, as prescribed by Labor Code § 2698 *et seq.* Pursuant to Labor Code § 2699.3(a)(2)(A), no notice was received by Plaintiff from the LWDA within sixty-five (65) calendar days of March 18, 2020. Plaintiff may therefore commence this action to seek civil penalties pursuant to Labor Code § 2698 *et seq.*

Wherefore, Plaintiff and the Aggrieved Employees he seeks to represent request relief as described below.

IV.

RELIEF REQUESTED

WHEREFORE, Plaintiff prays for the following relief:

1. For civil penalties pursuant to Labor Code § 2698 *et seq.* for Plaintiff and all other Aggrieved Employees;

2. An award providing for payment of costs of suit pursuant to Labor Code § 2699(g)(1) and other applicable law;

3. An award of attorneys' fees pursuant to Labor Code § 2699(g)(1) and other applicable law; and

4. Such other and further relief as this Court may deem just and proper.

Dated: May 26, 2020

Respectfully submitted,

GAINES & GAINES
A Professional Law Corporation

By:

DANIEL F. GAINES

EVAN S. GAINES

Attorneys for Plaintiff

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO STREET ADDRESS: 720 Ninth STREET MAILING ADDRESS: 720 Ninth STREET CITY AND ZIPCODE: Sacramento, CA 95814-1311 BRANCH NAME: Gordon D Schaber Courthouse PHONE NUMBER: (916) 874-5522	FOR COURT USE ONLY
SHORT TITLE: Marcus Weldon on behalf of himself and all aggrieved emp	
NOTICE OF CASE MANAGEMENT CONFERENCE AND ORDER TO APPEAR	CASE NUMBER: 34-2020-00279623-CU-OE-GDS

Hearing Date

The above entitled action has been set for a case management conference at 08:30 AM on 12/17/2020 in Department 43 in accordance with California Rules of Court 212. You must be familiar with the case and fully prepared to participate effectively in the case management conference.

Case Management Statement

All parties must file and serve a case management statement at least 15 calendar days before the case management conference. Parties are encouraged to file a single joint case management statement.

Minimum Requirements

Prior to the filing of the case management statement, the parties should have done the following:

- Served all parties named in the complaint within 60 days after the summons has been issued
- Ensured that all defendants and cross-defendants have answered, been dismissed, or had their defaults entered
- Met and conferred with all parties as required by CRC 212 (f) to discuss and resolve issues set forth therein.

Tentative Ruling

Following its review of the case management statement(s), the court may determine that a case management conference is not necessary.

To determine whether an appearance is required, the parties must check the court's tentative rulings after 2:00 p.m. on the Court day before the Thursday calendar by accessing the court's internet website at www.saccourt.ca.gov

Case Management Orders

At the case management conference, the court will consider whether the case should be ordered to judicial arbitration or referred to other forms of Alternative Dispute Resolution. Whether or not a case management conference is held, the court will issue a case management order shortly after the scheduled conference date.

Service of Case Management Notice

Unless otherwise ordered by the court, plaintiff shall serve a copy of this notice on any party to the complaint appearing after the court issued this notice. The cross-complainant shall have the same obligation with respect to the cross-complaint.

Certification Filed in Lieu of Case Management Statement

If parties in the action file a certification on a form provided by the court at least 15 calendar days prior to the date of the case management conference that the case is short cause (five hours or less of trial time), that the pleading stage is complete and that the case will be ready for trial within 60 days, the case will be exempted from any further case management requirements and will be set for trial within 60-120 days. The certification shall be filed in lieu of a case management statement.

Compliance

Failure to comply with this notice or to appear at the case management conference may result in the imposition of sanctions (including dismissal of the case, striking of the answer, or payment of money).

Continuances

Case management conference will not be continued except on a showing of good cause. If your case management conference is continued on motion or by the court on its own motion all parties shall file and serve a new case management statement at least 15 calendar days before the continued case management conference.

Dated: 05/29/2020



Thadd A. Blizzard, Judge of the Superior Court