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Attorneys for Plaintiff
FERNANDO SALGUERO

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

FERNANDO SALGUERO, as an aggrieved
employee and private attorney general,

Plaintiff,

vs.

COLLABERA INC., a New Jersey
Corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No.: **20STCV19946**

**REPRESENTATIVE ACTION
COMPLAINT FOR:**

**(1) VIOLATION OF CALIFORNIA
LABOR CODE § 2699, ET SEQ.
(PRIVATE ATTORNEYS
GENERAL ACT)**

DEMAND FOR TRIAL BY JURY

1 Plaintiff FERNANDO SALGUERO (“Plaintiff”), as an aggrieved employee and private
2 attorney general, based upon facts that either have evidentiary support or are likely to have
3 evidentiary support after a reasonable opportunity for further investigation and discovery, alleges
4 as follows:

5 **JURISDICTION AND VENUE**

6 1. Plaintiff brings this action against Defendants COLLABERA INC. and DOES 1
7 THROUGH 50 (hereinafter also collectively referred to as “Defendants”) as a representative
8 action on behalf of himself and certain other current and former employees of Defendants against
9 whom one or more of the alleged violations was committed (hereinafter collectively referred to
10 as the “Aggrieved Employees”) pursuant to California Labor Code sections 2698, et seq. Plaintiff
11 is an aggrieved employee against whom one or more of the alleged violations was committed.
12 The civil penalties sought by Plaintiff exceed the minimal jurisdiction limits of the Superior Court
13 and will be established according to proof at trial.

14 2. The Court has jurisdiction over this action pursuant to the California Constitution,
15 Article VI, Section 10, which grants the superior court “original jurisdiction in all other causes”
16 except those given by statute to other courts. The statutes under which this action is brought do
17 not specify any other basis for jurisdiction.

18 3. This Court has jurisdiction over Defendants because, upon information and belief,
19 Defendants are citizens of California, have sufficient minimum contacts in California, or
20 otherwise intentionally avail themselves of the California market so as to render the exercise of
21 jurisdiction over them by the California courts consistent with traditional notions of fair play and
22 substantial justice.

23 4. Venue is proper in this Court because, upon information and belief, Defendants
24 maintain offices, have agents, and/or transact business in the State of California, County of Los
25 Angeles.

26 **PARTIES**

27 5. Plaintiff FERNANDO SALGUERO is an individual residing in the County of Los
28 Angeles, State of California.

6. Defendant COLLABERA INC., is and at all times herein mentioned was, a Corporation organized and existing under the laws of the State of New Jersey, and registered to do business in the state of California.

7. Plaintiff is ignorant of the identities of defendants Does 1 through 50, inclusive, and therefore sues these defendants by such fictitious names. The Doe defendants may be individuals, partnerships, or corporations. Plaintiff is informed and believe, and thereon alleges, that, at all times mentioned herein, each of the Doe defendants was the parent, subsidiary, agent, servant, employee, co-venturer, and/or co-conspirator of each of the other defendants, and was at all times mentioned acting within the scope, purpose, consent, knowledge, ratification and authorization of such agency, employment, joint venture and conspiracy. Plaintiff will amend this Complaint to allege their true names and capacities when ascertained. Plaintiff is informed and believes and thereon alleges that each of the fictitiously named Doe defendants is responsible in some manner for the occurrences herein alleged, and that Plaintiff's damages as herein alleged were proximately caused by its conduct. COLLABERA INC. and Doe Defendants 1 through 50 are collectively referred to herein as "Defendants."

8. Defendants are and at all times herein mentioned were, (a) conducting business in the County of Los Angeles, State of California, and (b) the employer of Plaintiff consistent with the California Labor Code and Industrial Welfare Commission Wage Orders (“Wage Orders”).

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

GENERAL ALLEGATIONS

10. Defendants are a staffing solutions company with offices and worksites throughout the state of California.

11. Defendants employed Plaintiff to work as a field technician from approximately October 1, 2018 to April 29, 2019.

12. At all relevant times set forth herein, Defendants employed Plaintiff and

Aggrieved Employees as hourly-paid or non-exempt employees.

13. Throughout the time period involved in this case, Defendants had the authority to hire and terminate Plaintiff and Aggrieved Employees; to directly or indirectly control work rules, working conditions, wages, working hours, and conditions of employment of Plaintiff and Aggrieved Employees; and to hire and terminate the employment of Plaintiff and Aggrieved Employees.

14. At all times herein mentioned, Defendants were subject to the Labor Code of the State of California and the applicable Industrial Welfare Commission Orders.

15. Plaintiff is informed and believes, and thereon alleges that Defendants engaged in a ongoing and systematic scheme of wage abuse against their hourly-paid or non-exempt employees. As set forth in more detail below, this scheme involved, *inter alia*, regularly requiring Plaintiff and Aggrieved Employees to work off the clock without compensation, thereby failing to pay them for all hours worked, including minimum and overtime wages. Defendants also failed to accurately record the actual time worked by Plaintiff and Aggrieved Employees, resulting in the systematic underpayment of wages. In addition, Defendants routinely failed to permit Plaintiff and Aggrieved Employees to take timely and duty-free meal periods and rest periods in violation of California law.

16. Throughout the time period involved in this case, Defendants have implemented policies and practices which failed to provide Plaintiff and Aggrieved Employees with timely and duty-free meal periods. Defendants routinely failed to relieve Plaintiff and Aggrieved Employees of all duties during their meal periods, regularly failed to relinquish control over Plaintiff and Aggrieved Employees during their meal periods, regularly failed to permit Plaintiff and Aggrieved Employees a reasonable opportunity to take their meal periods, and regularly impeded or discouraged Plaintiff and Aggrieved Employees from taking thirty (30) minute uninterrupted meal breaks no later than the end of their fifth hour of work and/or from taking a second thirty (30) minute uninterrupted meal break no later than their tenth hour of work for shifts lasting more than ten (10) hours.

17. Throughout the time period involved in this case, Defendants did not adequately

1 inform Plaintiff and Aggrieved Employees of their right to take meal periods under California
2 law. Moreover, Defendants systematically disregarded their own written policies regarding the
3 provision and timing of meal periods for Plaintiff and Aggrieved Employees. Instead,
4 Defendants' actual policy and practice was to schedule Plaintiff and Aggrieved Employees in a
5 way the prohibited them from taking timely and duty-free meal periods, and to require Plaintiff
6 and Aggrieved Employees to work through their meal periods, for which they were not
7 compensated. Defendants also failed to maintain accurate records of meal periods taken by
8 Plaintiff and Aggrieved Employees. Defendants also required employees to carry and monitor
9 radios, cell phones, or communication devices at all times including during meal periods.

10 18. Throughout the time period involved in this case, Defendants failed to pay Plaintiff
11 and Aggrieved Employees premium wages for meal periods that were missed, late, interrupted,
12 or shortened in violation of California law. Defendants knew or should have known that Plaintiff
13 and Aggrieved Employees were entitled to receive all meal periods or payment of one additional
14 hour of pay at their regular rate of pay when a meal period was missed, short, late, and/or
15 interrupted. Notwithstanding this knowledge, Defendants routinely failed to provide legally
16 compliant meal periods to Plaintiff and Aggrieved Employees, and routinely failed pay one
17 additional hour of pay to Plaintiff and Aggrieved Employees at their regular rate of pay when a
18 meal period was missed, short, late, and/or interrupted.

19 19. Throughout the time period involved in this case, Defendants have implemented
20 policies and practices which prohibited Plaintiff and Aggrieved Employees from taking timely
21 and duty-free rest periods. Defendants regularly failed to provide, authorize, and permit Plaintiff
22 and Aggrieved Employees to take full, uninterrupted, off-duty rest periods for every shift lasting
23 three and one-half (3.5) to six (6) hours and/or two full, uninterrupted, off-duty rest periods for
24 every shift lasting six (6) to ten (10) hours, and failed to make a good faith effort to authorize,
25 permit, and provide such rest breaks in the middle of each work period.

26 20. Throughout the time period involved in this case, Defendants did not adequately
27 inform Plaintiff and Aggrieved Employees of their right to take rest periods under California law.
28 Moreover, Defendants systematically disregarded their own written policies regarding the

1 provision and timing of rest periods for Plaintiff and Aggrieved Employees. Instead, Defendants'
2 actual policy and practice was to schedule Plaintiff and Aggrieved Employees in a way that
3 regularly prohibited them from taking timely and duty free rest periods, and to regularly require
4 Plaintiff and Aggrieved Employees to work through their rest periods. Defendants also required
5 employees to carry and monitor radios, cell phones, or communication devices at all times
6 including during rest periods.

7 21. Throughout the time period involved in this case, Defendants failed to pay Plaintiff
8 and Aggrieved Employees premium wages for rest periods that were missed, late, interrupted, or
9 shortened in violation of California law. Defendants knew or should have known that Plaintiff
10 and Aggrieved Employees were entitled to receive all rest periods or payment of one additional
11 hour of pay at their regular rate of pay when a rest period was missed, short, late, and/or
12 interrupted. Notwithstanding this knowledge, Defendants routinely failed to authorize and permit
13 Plaintiff and Aggrieved Employees to take duty-free rest periods, and failed to pay one additional
14 hour of pay to Plaintiff and Aggrieved Employees at their regular rate of pay when a rest period
was missed, short, late and/or interrupted.

15 22. Throughout the time period involved in this case, Defendant regularly required
16 Plaintiff and Aggrieved Employees to perform work off-the-clock. Although Defendants
17 prohibited overtime, Defendants still regularly required Plaintiff and Aggrieved Employees
18 complete all of their assigned duties. To do so, Plaintiff and Aggrieved Employees were regularly
19 required to perform work off-the-clock for which they were not compensated.

20 23. Throughout the time period involved in this case, Defendants failed to accurately
21 record all time worked by Plaintiff and Aggrieved Employees, resulting in a failure to pay
22 Plaintiffs and Aggrieved Employees for all hours actually worked.

23 24. Throughout the time period involved in this case, Plaintiff and Aggrieved
24 Employees worked more than eight (8) hours in a day, and/or forty (40) hours in a week. Plaintiff
25 and Aggrieved Employees also worked more than twelve (12) hours in a day, and/or eighty (80)
26 hours in a week.

27 25. Throughout the time period involved in this case, Defendants regularly failed to
28

1 pay overtime compensation to Plaintiff and Aggrieved Employees when they worked in excess
2 of eight (8) hours in a single work day and/or forty (40) hours in a single work week, or in excess
3 of twelve (12) hours in a single work day and/or eighty (80) hours in a single work week.
4 Defendants knew or should have known that Plaintiff and Aggrieved Employees were entitled to
5 receive certain wages for overtime or double overtime compensation and that they were not
6 receiving wages for overtime or double overtime compensation.

7 26. Throughout the time period involved in this case, Defendants regularly failed to
8 pay Plaintiff and Aggrieved Employees at least minimum wages for all hours worked. Defendants
9 knew or should have known that Plaintiff and Aggrieved Employees were entitled to receive at
10 least minimum wages for all hours worked and that they were not receiving at least minimum
11 wages for all hours worked. Defendants' failure to pay minimum wages included, *inter alia*,
12 failing to pay Plaintiff and Aggrieved Employees at the required minimum wage pursuant to
13 California law, requiring Plaintiff and Aggrieved Employees to perform work off the clock, and
14 implementing time rounding policies that resulted in the systematic underpayment of wages to
15 Plaintiff and Aggrieved Employees.

16 27. Throughout the time period involved in this case, Defendants regularly failed to
17 pay Plaintiff and Aggrieved Employees all wages owed to them upon discharge or resignation.
18 Defendant knew or should have known that Plaintiff and Aggrieved Employees were entitled to
19 receive all wages owed to them upon termination within the time permissible under California
20 Labor Code section 202. Plaintiff and Aggrieved Employees did not receive payment of all final
21 wages owed to them upon discharge or resignation, including overtime compensation and
22 minimum wages within any time permissible under California Labor Code section 202.

23 28. Throughout the time period involved in this case, Defendants regularly failed to
24 pay Plaintiff and Aggrieved Employees all wages within any time permissible under California
25 law, including, *inter alia*, California Labor Code section 204. Defendants knew or should have
26 known that Plaintiff and Aggrieved Employees were entitled to receive all wages owed to them
27 during their employment. Plaintiff and Aggrieved Employees did not receive payment of all
28 wages, including overtime compensation, minimum wages, and meal and rest period premiums,

1 within any time permissible under California Labor Code section 204.

2 29. Throughout the time period involved in this case, Defendants regularly failed to
3 provide complete or accurate wage statements to Plaintiff and Aggrieved Employees. Defendants
4 knew or should have known that Plaintiff and Aggrieved Employees were entitled to receive
5 complete and accurate wage statements in accordance with California law, but, in fact, they did
6 not receive complete and accurate wage statements from Defendants. The deficiencies included,
7 *inter alia*, the failure to include the total number of hours worked, the actual gross wages earned,
8 the correct rates of pay, the inclusive pay period dates, all applicable hourly rates, and the name
9 and address of the legal entity of the employer.

10 30. Throughout the time period involved in this case, Defendants regularly failed to
11 keep complete or accurate payroll records for Plaintiff and Aggrieved Employees. Defendants
12 knew or should have known that Defendants were required keep complete and accurate payroll
13 records for Plaintiff and Aggrieved Employees in accordance with California law, but, in fact, did
14 not keep complete and accurate payroll records.

15 31. Throughout the time period involved in this case, Defendants knew or should have
16 known that they had a duty to compensate Plaintiff and Aggrieved Employees pursuant to
17 California law. Defendants had the financial ability to pay such compensation, but willfully,
18 knowingly, and intentionally failed to do so, and falsely represented to Plaintiff and Aggrieved
19 Employees that they paid all wages owed to them, all in order to increase Defendants' profits.

20 32. California Labor Code section 218 states that nothing in Article 1 of the Labor
21 Code shall limit the right of any wage claimant to "sue directly ... for any wages or penalty due
22 to him [or her] under this article."

23 **FIRST CAUSE OF ACTION**

24 **(Violation of California Labor Code § 2699, Et Seq.)**

25 **(Against All Defendants)**

26 33. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and
27 every allegation set forth above.

28 34. Plaintiff brings his first cause of action as a representative action on behalf of

1 himself and similarly Aggrieved Employees in the capacity as a private attorney general pursuant
2 to the Private Attorneys General Act of 2004, California Labor Code section 2698, et seq.
3 (“PAGA”).

4 35. PAGA specifically provides for a private right of action to recover civil penalties
5 for violations of the Labor Code as follows: “Notwithstanding any other provision of law, any
6 provision of this code that provides for a civil penalty to be assessed and collected by the Labor
7 and Workforce Development Agency or any of its departments, divisions, commissions, boards,
8 agencies, or employees, for a violation of this code, may, as an alternative, be recovered through
9 a civil action brought by an aggrieved employee on behalf of himself or herself and other current
10 or former employees pursuant to the procedures specified in Section 2699.3.” Cal. Lab. Code §
2699(a).

11 36. Plaintiff was employed by Defendants and the Labor Code violations alleged above
12 were committed against him during his time of employment. Plaintiff is therefore, an “aggrieved
13 employee” under PAGA.

14 37. As set forth in detail above, during all times relevant to this Action, Defendant
15 has routinely subjected Plaintiff and the Aggrieved Employees to violations of California Labor
16 Codes by:

- 17 a. Failing to pay Plaintiff and the Aggrieved Employees all earned minimum wage
18 compensation in violation of Labor Code §§ 1194 and 1198 *et seq.*;
- 19 b. Failing to pay Plaintiff and the Aggrieved Employees all earned overtime
20 compensation in violation of Labor Code §§ 204, 510, 1194, and 1198 *et seq.*;
- 21 c. Failing to provide legally required meal periods to Plaintiff and the Aggrieved
22 Employees, and failing to pay Plaintiff and the Aggrieved Employees an additional
23 hour of premium pay for meal period violations in violation of Labor Code §§
24 226.7 and 512.
- 25 d. Failing to provide authorize and permit Plaintiff and the Aggrieved Employees to
26 take duty-free rest periods, and failing to pay Plaintiff and the Aggrieved
27
28

Employees an additional hour of premium pay for rest period violations in violation of Labor Code §§ 226.7 and 512.

- e. Failing to timely pay Plaintiff and the Aggrieved Employees all wages at end of their employment in violation of Labor Code § 203.
- f. Failing to timely pay Plaintiff and the Aggrieved Employees all wages owed during employment in violation of Labor Code § 204.
- g. Failing to furnish Plaintiff and the Aggrieved Employees with complete, accurate, itemized wage statements in violation of Labor Code § 226;
- h. Failing to maintain accurate records relating to Plaintiff and the Aggrieved Employees' work periods, meal periods, total daily hours, hours per pay period, and applicable pay rates.

38. Pursuant to California Labor Code sections 2699 and 2699.5, Plaintiff, individually and on behalf of the Aggrieved Employees and the State of California, requests and is entitled to recover penalties against Defendants for the Labor Code violations described above, including but not limited to penalties under California Code of Regulations Title section 11010, penalties under California Labor Code sections 2699, 558, 210, 1197.1, 226, 226.3 and 1174.5, and any and all additional penalties and sums as provided by the California Labor Code and/or other statutes. The exact amount of the applicable penalties, in all, is in an amount to be shown according to proof at trial.

39. Plaintiff has exhausted his administrative remedies pursuant to Labor Code § 2699.3. On March 18, 2020, Plaintiff, through his counsel of record, by online filing with the Labor and Workforce Development Agency ("LWDA") and by certified mail to the Defendants, notified Defendants and the LWDA of the specific provisions of the Labor Code and IWC Wage Orders that Defendants have violated, including the facts and theories to support the violations, and of Plaintiff's intent to bring a claim for civil penalties under PAGA. Plaintiff also paid the filing fee required under Labor Code § 2699.3. As of the filing of this Complaint, more than 65 days have elapsed since the mailing of Plaintiff's March 18, 2020 notice, and the Labor and Workforce Development Agency has not indicated that it intends to investigate the violations discussed in the

notice. Accordingly, Plaintiff may commence a civil action to recover penalties for himself and other Aggrieved Employees pursuant to Labor Code § 2699.3.

40. Plaintiff was compelled to retain the services of counsel to file this court action to protect his interests and the Aggrieved Employees, and to assess and collect the civil penalties owed by Defendants. Plaintiff therefore seeks an award of reasonable attorney's fees and costs pursuant to Labor Code § 2699(g)(1), and any other applicable statute.

41. Plaintiff may amend this complaint as a matter of right pursuant to California Labor Code § 2699.3 as this complaint has been filed within sixty days of the time periods specified in Labor Code §2699.3.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of all other members of the general public similarly situated, and as a private attorney general, prays for relief and judgment against Defendants, jointly and severally, as follows:

As to the First Cause of Action

1. For statutory attorneys' fees and costs pursuant to 2699(g)(1) of California Labor Code;
2. Prejudgment interest at the legal rate pursuant to California Labor Code Section 218.6;
3. For the imposition of civil penalties pursuant to California Labor Code §§ 2699, 210, 558, 226, 226.3, 1174.5, 1197.1, and all other penalties allowed by the California Labor Code and/or other applicable statutes; and
4. For such other relief as the Court deems just and proper

Dated: May 26, 2020

PROTECTION LAW GROUP

By: 

Heather Davis
Amir Nayebdadash

Attorneys for Plaintiff
FERNANDO SALGUERO

DEMAND FOR TRIAL BY JURY

Plaintiff demands a trial by jury as to all causes of action triable by a jury.

Dated: May 26, 2020

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By: 

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