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Attorneys for Plaintiff, SAUL DEL TORO,
individually and as a proxy for the State of California

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF KERN
[UNLIMITED CIVIL]

SAUL DEL TORO, an individual, and as a
proxy for the State of California,

Plaintiff,

vs.

GOLDEN STATE DRILLING, INC., a
corporation; and DOES 1 through 5, inclusive,

Defendants.

Case No.: BCV-20-101552

COMPLAINT FOR:

- 1. Private Attorneys General Act**
- 2. Failure to Provide Compliant Itemized Wage Statements**

DEMAND FOR JURY TRIAL

Plaintiff, SAUL DEL TORO, alleges as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction to hear the subject matter of this complaint. This Court also has jurisdiction over each defendant, as the unlawful business acts alleged herein occurred in California. Plaintiff's claims arise out of and are related to all Defendants' contacts with California.

2. Venue is proper in this Court because all or some of the violations of law and unlawful practices alleged herein occurred and are occurring in the County of Kern.

PARTIES

- Plaintiff is an individual who, at all relevant times, has resided in the State of California.
- Defendant GOLDEN STATE DRILLING, INC. ("GSD"), is a corporation that conducted, and is conducting, business in the State of California. GSD registered the address 3500

1 Fruitvale Avenue, Bakersfield, CA 93308 with the California Secretary of State as its principal place of
2 business in California.

3 5. Plaintiff is ignorant of the true names and capacities of the defendants sued herein as
4 DOES 1-5, inclusive, and therefore sues these defendants by such fictitious names and capacities.
5 Plaintiff will seek leave to amend this Complaint to allege their true names and capacities when
6 ascertained. Plaintiff is informed and believes and on that basis alleges that each fictitiously named
7 Defendants are responsible in some manner for the occurrences herein alleged, and that Plaintiff's
8 injuries were proximately caused by the conduct of such defendant.

9 6. All of the Defendants, including DOES 1-5, are alleged to be co-conspirators with each
10 other, in that each agreed to participate, and participated in, the furtherance of the objective of civil
11 wrongs as alleged in this Complaint.

12 7. Plaintiff is informed and believes and thereupon alleges that each Defendant entered into
13 a conspiracy and agreement with the other Defendants and/or subsequently joined said conspiracy and
14 ratified the prior acts and conduct of the Defendants who had previously entered into said conspiracy.
15 Plaintiff is currently unaware of when each Defendant joined said conspiracy and, upon information and
16 belief, alleges that all Defendants have knowingly, maliciously, and willfully entered into said
17 conspiracy, which continues until this day. The purposes of this ongoing conspiracy include, but are not
18 limited to, the wrongs alleged herein. All Defendants acts and failures to act as alleged herein were
19 perpetrated in furtherance of the ongoing conspiracy.

20 8. Plaintiff is informed and believes and thereupon alleges that at all times material herein,
21 each defendant was completely dominated and controlled by its, his or her co-Defendants, each was the
22 agent, representative, and alter ego of the others, and all aided and abetted the wrongful acts of the
23 others.

24 9. Plaintiff is informed and believes and thereupon alleges that at all times material herein,
25 each of the Defendants was the agent, employee and/or joint venturer of, or working in concert with, co-
26 Defendants and was acting within the course and scope of such agency, employment, and/or joint
27 venture or concerted activity. To the extent that said conduct and omissions were perpetrated by certain
28 Defendants, Plaintiff is informed and believes and thereupon alleges that the remaining Defendant

1 and/or Defendants confirmed and ratified said conduct and omissions.

2 10. Whenever and wherever reference is made to individuals who are not named as
3 defendants in this Complaint but are or were employees and/or agents of Defendants, such references
4 shall be deemed to mean that such individuals at all relevant times acted on behalf of the Defendant
5 within the scope of their employment.

6 11. Plaintiff is informed and believes and on that basis alleges that at all times relevant herein,
7 the Defendants, and each of them, had the right to control, and controlled, Plaintiff's wages, hours and
8 working conditions, and they had the right to control the manner in which Plaintiff performed his work
9 duties, including but not limited supervision of his work, and they were joint employers or co-employers
10 of Plaintiff at all times during his employment.

11 12. Plaintiff is informed and believes and on that basis alleges that at all times relevant herein,
12 the Defendant, and each of them, were an integrated enterprise in that they had an interrelation of
13 operations, centralized control of labor relations, common management, and common ownership or
14 financial control.

15 **GENERAL ALLEGATIONS**

16 13. Plaintiff worked for Defendant until on or about January 3, 2020. Defendant failed to
17 provide Plaintiff and all other employees itemized wage statements showing the last four digits of their
18 respective social security numbers or employee identification numbers other than a social security number.
19 Defendant also failed to keep itemized wage statement records of the foregoing required compliant wage
20 statements. Defendant is continuing this practice because Defendant contends that it provides a unique
21 employee identifier in the form of stating the last name plus the first initial of its employees. For example,
22 for Plaintiff, Defendant listed "DELTOROS" on the wage statement. This position is contrary to the
23 statute and the English language of what constitutes a "number." Letters are not numbers. See Exhibit 1.

24 **FIRST CAUSE OF ACTION**

25 **PRIVATE ATTORNEYS GENERAL ACT**
26 **(AGAINST ALL DEFENDANTS AND DOES 1-5)**

27 14. Plaintiff incorporates each allegation set forth in all of the preceding paragraphs as though
28 set forth herein in full again.

15. Pursuant to the California Labor Code Private Attorneys General Act (“PAGA”), “Notwithstanding any other provision of law, any provision of [the California Labor Code] that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Section 2699.3.” Lab. Code § 2699(a). “For all provisions of [the California Labor Code] except those for which a civil penalty is specifically provided, there is established a civil penalty for a violation of these provisions.” Lab. Code § 2699(f).

16. This PAGA suit “is fundamentally a law enforcement action.” *Arias v. Super. Ct.*, 46 Cal. 4th 969, 986 (2009); *Iskanian v. CLS Transportation Los Angeles, LLC*, 59 Cal.4th 348, 386-387 (2014) (“[E]very PAGA action, whether seeking penalties for Labor Code violations as to only one aggrieved employee—the plaintiff bringing the action—or as to other employees as well, is a representative action on behalf of the state.”); *Williams v. Super. Ct.*, 3 Cal. 5th 531, 538 (2017) (“a PAGA suit, essentially a qui tam action filed on behalf of the state to assist it with labor law enforcement”).

17. A PAGA “violation” includes, and is used in these allegations to mean, a failure to comply with any requirement of the Labor Code. Lab. Code § 22. Under the PAGA, an “aggrieved employee” means any person who was employed by the alleged violator and against whom only one of the alleged violations was committed. Lab. Code § 2699(c). Plaintiff is an “aggrieved employee.”

Labor Code Violations: § 226(a)

§ 226(a)

18. “An employer, semimonthly or at the time of each payment of wages, shall furnish to his or her employee, either as a detachable part of the check, draft, or voucher paying the employee’s wages, or separately if wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except as provided in subdivision (j), (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the

1 employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the
2 period for which the employee is paid, (7) the name of the employee and only the last four digits of his
3 or her social security number or an employee identification number other than a social security number,
4 (8) the name and address of the legal entity that is the employer . . . , and (9) all applicable hourly rates in
5 effect during the pay period and the corresponding number of hours worked at each hourly rate by the
6 employee.” Lab. Code § 226(a).

7 19. Defendant failed to provide Plaintiff and all other employees with itemized wage
8 statements showing: the last four digits of their social security number or employee identification
9 numbers other than a social security number. Defendant also failed to keep itemized wage statement
10 records of the foregoing.

11 20. “Any employer or other person acting on behalf of an employer, who violates, or causes
12 to be violated, any provision regulating minimum wages or hours and days of work in any order
13 of the IWC, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may
14 be held liable as the employer for such violation.” Lab. Code § 558.1(a). It is currently unknown who
15 caused Defendant to violate the Labor Code § 226.

16 21. Labor Code § 226 does not provide for its own self-contained “civil” penalty within the
17 statute. Thus, Labor Code § 2699(f)(2) applies to provide a civil penalty of \$100 for each
18 aggrieved employee per pay period for the initial violation and \$200 for each aggrieved employee per
19 pay period for each subsequent violation.

20 ***Labor Code Violations Providing Civil Penalties Pursuant to 2699(a): § 226.3***
21 ***§ 226.3***

22 22. “Any employer who violates subdivision (a) of section 226 shall be subject to a civil
23 penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation
24 and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which
25 the employer fails to provide the employee a wage deduction statement or fails to keep the records
26 required in subdivision (a) of Section 226.” Lab. Code § 226.3. This section “sets out a civil penalty for
27 all violations of section 226.” *Raines v. Coastal Pacific Food Distribs., Inc.*, 23 Cal. App. 5th 667, 675
28

(2018). Because Defendant violated California Labor Code section 226(a), Defendant is subject to civil penalties under section 226.3 applicable to Plaintiff and other current and former aggrieved employees.

Exhaustion of Administrative Remedies

32. On March 11, 2020, Plaintiff provided notice to the California Labor and Workforce Development Agency (“LWDA”), pursuant to Labor Code § 2699.3, detailing the specific provisions of the foregoing Labor Code sections that have been violated, including the facts and theories to support the violations. The LWDA file number is LWDA-CM-777828-20. The notice was sent to Defendant by certified mail on or about March 11, 2020 (7019 0140 0000 7526 8439). Plaintiff submitted a \$75.00 fee to the LWDA.

33. The LWDA has not, within 33 days of Plaintiff’s Notice of violations of the Labor Code, sent Plaintiff notice that it intends to investigate the violations. Defendants have not sent any notice to the LWDA attempting to cure the alleged violations of Labor Code §§ 226(a)(8) and 226.3. Thus, Plaintiff has exhausted his administrative remedies, pursuant to Labor Code section 2699.3(c), as a prerequisite to assert a civil action, for civil penalties pursuant to Labor Code section 2699.

SECOND CAUSE OF ACTION

FAILURE TO PROVIDE COMPLIANT ITEMIZED WAGE STATEMENTS

(AGAINST ALL DEFENDANTS AND DOES 1-5)

34. Plaintiff incorporates each allegation set forth in all of the preceding paragraphs as though set forth herein in full again.

35. “An employer, semimonthly or at the time of each payment of wages, shall furnish to his or her employee, either as a detachable part of the check, draft, or voucher paying the employee’s wages, or separately if wages are paid by personal check or cash, an accurate itemized statement in writing showing . . . (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number” Lab. Code § 226(a). Relevant Wage Orders of IWC, applicable to Defendant, such as Wage Order No. 4-2001 section 7(B), provide that “Every employer shall semimonthly or at the time of each payment of wages furnish each employee, either as a detachable part of the check, draft, or voucher paying the employee’s wages, or separately, an itemized statement in writing showing: (1) all deductions; (2) the

1 inclusive dates of the period for which the employee is paid; (3) the name of the employee or the
2 employee's social security number; and (4) the name of the employer, provided all deductions made on
3 written orders of the employee may be aggregated and shown as one item."

4 36. "Any employer or other person acting on behalf of an employer, who violates, or causes
5 to be violated, any provision regulating minimum wages or hours and days of work in any order of the
6 IWC, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held
7 liable as the employer for such violation." Lab. Code § 558.1(a).

8 37. Defendant knowingly and intentionally failed to provide an itemized statement in writing
9 showing accurate: the last four digits of his social security number or an employee identification number
10 other than a social security number.

11 38. "An employee suffering injury as a result of a knowing and intentional failure by an
12 employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty
13 dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per
14 employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four
15 thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's fees." Lab.
16 Code § 226(e)(1).

17 39. An employee is deemed to suffer injury for purposes of section 226(e) if the employer
18 fails to provide an itemized wage statement showing the last four digits of his social security number or
19 an employee identification number other than a social security number, and the employee cannot
20 promptly and easily determine from the wage statement alone the last four digits of his social security
21 number or an employee identification number other than a social security number. Lab. Code §
22 226(e)(2)(B)(iv).

23 40. As a result of the knowing and intentional failure to provide compliant wage statements,
24 Plaintiff has suffered an injury pursuant to section 226(e). As a result, Defendant is liable to Plaintiff for
25 the amounts provided by California Labor Code § 226(e). Specifically, for non-compliant wage
26 statements issued from March 2019 to the end of his employment.

27 41. Pursuant to California Labor Code § 226(e), Plaintiff is also entitled to an award of
28 reasonable attorneys' fees and costs.

42. On March 17, 2020, this Court deemed March 18, 2020, to March 30, 2020, a holiday for purposes of computing the time for filing papers with the Court under Code of Civil Procedure sections 12 and 12a.

43. On March 17, 2020, this Court deemed March 18, 2020, to March 30, 2020, a holiday for purposes of computing the time for filing papers with the Court under Code of Civil Procedure sections 12 and 12a. On April 1, 2020, this Court deemed April 1, 2020, through April 30, 2020, a holiday for purposes of computing the time for filing papers with the Court under Code of Civil Procedure sections 12 and 12a, if the pandemic substantially interferes with the public's ability to file papers in a court facility. On April 6, 2020, the California Judicial Council implemented Emergency Rule 9, which, as amended, provides that notwithstanding any other law, the statutes of limitations for civil causes of action that are 180 days or less are tolled from April 6, 2020, until August 3, 2020.

PRAYER

WHEREFORE, Plaintiff prays:

1. For civil penalties pursuant to the California Labor Code §§ 2698 *et seq.*
2. For statutory penalties pursuant to the California Labor Code § 226.
3. For an order of injunctive relief ordering the issuance of compliant itemized wage statements pursuant to Labor Code section 226(h).
4. For reasonable attorneys' fees pursuant to the Labor Code and Code of Civil Procedure.
5. For costs of suit including expert witness fees.
6. For prejudgment interest.
7. For such other and further relief as the Court may deem proper.

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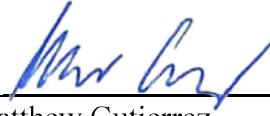
DEMAND FOR JURY TRIAL

Plaintiff SAUL DEL TORO hereby demands a trial by jury.

Dated: July 6, 2020

GUTIERREZ DERHAM LAW FIRM LLP

By: _____



Matthew Gutierrez
Attorneys for Plaintiff, SAUL DEL TORO,
individually and as a proxy for the State of
California

EXHIBIT 1

DELTOROS - Saul Del Toro

Rig: 30

Ref: DD44152

3/17/2019

3/30/2019

Earnings Detail		Check DD44152 Summary		YTD Summary	
40.50 Reg @ 25.50	1,032.76	Earnings	1,819.89	Earnings	15,772.41
19.50 OT @ 38.25	745.88	FWH	(128.68)	FWH	(1,416.74)
0.25 OT @ 18.00	4.50	California-SWH	(50.01)	California-SWH	(609.73)
0.25 DT @ 51.00	12.75	SSec/Emp	(112.86)	SSec/Emp	(978.07)
1.00 DT @ 24.00	24.00	MCare/Emp	(26.40)	MCare/Emp	(228.81)
		401K Employee Share	(54.59)	401K Employee Share	(283.30)
		California-SDI/Emp	(18.19)	California-SDI/Emp	(157.65)
61.50 TOTAL	1,819.89	NET	1,429.16	NET	12,098.11

Available Sick Hours 36.00

Defendant claims
these letters are
numbers.



GOLDEN STATE DRILLING, INC.

3500 Fruitvale Ave.
Bakersfield, CA 93308
Ph. 661-589-0730

DD44152

April 05, 2019

\$ 1,429.16

ONE THOUSAND FOUR HUNDRED TWENTY-NINE AND 16 / 100*****

Saul Del Toro

[Redacted signature]