

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Anthony Mohr

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individually and as a proxy for the State of California

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES
[UNLIMITED CIVIL]

ALFREDO CRESCI, an individual, and as a
proxy for the State of California,

Plaintiff,

vs.

COX ENTERPRISES, INC., a foreign
corporation; COX AUTOMOTIVE
CORPORATE SERVICES, LLC, a foreign
limited liability company; and DOES 1 through
5, inclusive,

Defendants.

Case No.: 20STCV22982

COMPLAINT FOR:

- 1. Failure to Pay Overtime Wages in Violation of Labor Code § 510**
- 2. Unpaid Overtime Wages**
- 3. Labor Code § 203 Waiting Time Penalties**
- 4. Failure to Reimburse and Indemnify for Expenditures**
- 5. Private Attorneys General Act**

DEMAND FOR JURY TRIAL

Plaintiff, ALFREDO CRESCI, 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 Los Angeles.

PARTIES

3. Plaintiff is an individual who, at all relevant times, has resided in the State of California.

1 4. Defendant COX ENTERPRISES, INC., (“COX”) is a foreign corporation that conducted,
2 and is conducting, business in the State of California without a registration filed with the Secretary of
3 State.

4 5. Defendant COX AUTOMOTIVE CORPORATE SERVICES, LLC, (“CAC”) is a
5 division of COX that conducted, and is conducting, business in the State of California without a
6 registration filed with the Secretary of State.

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

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

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

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

28 10. Plaintiff is informed and believes and thereupon alleges that at all times material herein,

1 each of the Defendants was the agent, employee and/or joint venturer of, or working in concert with, co-
2 Defendants and was acting within the course and scope of such agency, employment, and/or joint
3 venture or concerted activity. To the extent that said conduct and omissions were perpetrated by certain
4 Defendants, Plaintiff is informed and believes and thereupon alleges that the remaining Defendant
5 and/or Defendants confirmed and ratified said conduct and omissions.

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

10 12. Plaintiff is informed and believes and on that basis alleges that at all times relevant
11 herein, the corporate Defendants, and each of them, had the right to control, and controlled, Plaintiff's
12 wages, hours and working conditions, and has the right to control the manner in which Plaintiff
13 performed work duties, including but not limited to supervision of work, engaged Plaintiff, suffered and
14 permitted Plaintiff to work, and they were employers, joint employers, or co-employers of Plaintiff at all
15 relevant times alleged herein.

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

20 GENERAL ALLEGATIONS

21 14. Plaintiff worked for Defendant, from his home in Long Beach, as a remote Account
22 Manager from February 7, 2018 to January 14, 2020.

23 15. During Plaintiff's employment, Plaintiff worked over eight (8) hours per day and over
24 forty (40) hours a week, without being paid overtime wages. Plaintiff also used his personal cell phone,
25 at the direction of Defendants, for work related purposes. Defendants failed to reimburse Plaintiff for
26 cell phone use. Other account managers also worked over eight (8) hours per day and over forty (40)
27 hours or more hours a week, without being paid overtime wages. Other account managers used their
28 personal cell phone for work related purposes and Defendants failed to reimburse them.

FIRST CAUSE OF ACTION

FAILURE TO PAY OVERTIME WAGES IN VIOLATION OF LABOR CODE § 510

(AGAINST ALL DEFENDANTS AND DOES 1-5)

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

17. Any employee receiving less than the California legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of overtime compensation including interest and reasonable attorney's fees. Lab. Code § 1194(a).

18. "Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee." Lab. Code § 510(a). California Labor Code section 1198 provides that the maximum hours of work fixed by the commission shall be the maximum hours of work for employees. California Labor Code section 1173 defines commission as Industrial Welfare Commission ("IWC"). Further, the "employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful." Lab. Code § 1198. Sections 3(A)(1) of IWC Order Nos. 1-2001, 2-2001, 3-2001, 4-2001, 5-2001, 6-2001, 7-2001, 8-2001, 9-2001, 10-2001, 11-2001, 12-2001, 13-2001, 16-200, and Section 4 of IWC Order No. 17-2001, provide that "employees shall not be employed more than eight (8) hours in any workday or more than 40 in a workweek unless the employee receives one and one half (1 1/2) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek." Section 7(A) requires every employer to keep accurate time records showing when the employee begins and ends each work period and the total hours worked in the payroll period.

19. During Plaintiff's employment, he worked more than eight hours per workday and more than 40 hours per workweek and was not compensated for those overtime hours worked more than eight per day and 40 per week. As such, Defendant violated Labor Code Sections 510 and 1198 because it violated the above-referenced as Industrial Welfare Commission Orders, as applicable.

20. "Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the

IWC, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.” Lab. Code § 558.1(a).

21. If the defendant does not keep accurate records of the hours worked by the plaintiff, then the plaintiff may prove the number of overtime hours worked by making a reasonable estimate of those hours. CACI 2703. As a direct and proximate result of the violations of law by Defendant, Plaintiff has worked a substantial number of hours without receiving overtime compensation, at the applicable rate, from Defendant, in accordance with California law.

22. Plaintiff has been damaged in an amount equal to the compensation to which he was entitled but was unlawfully deprived by Defendant, subject to proof at trial.

23. Pursuant to California Labor Code section 1194(a) Plaintiff is entitled to interest at the legal rate on the overtime wages owed to Plaintiff by Defendant.

24. Pursuant to California Labor Code section 1194(a), Plaintiff is entitled to an award of attorneys’ fees, and costs.

SECOND CAUSE OF ACTION

UNPAID OVERTIME WAGES

(AGAINST ALL DEFENDANTS AND DOES 1-5)

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

26. Any employee receiving less than the legal overtime compensation, pursuant to the Fair Labor Standards Act at 29 United States Code section 201, *et seq.*, applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of overtime compensation including liquidated damages and reasonable attorney’s fees. 29 U.S.C. § 216(b). Thus, Plaintiff is also entitled to liquidated damages in amount equal to unpaid overtime wages.

THIRD CAUSE OF ACTION

LABOR CODE § 203 WAITING TIME PENALTIES

(AGAINST ALL DEFENDANTS AND DOES 1-5)

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

28. “If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced.” Lab. Code § 203(a).

29. Defendant failed to timely pay Plaintiff his overtime wages within 72 hours of his last date of work, in violation of Labor Code § 202, and failed to pay his the additional continuing wages as a penalty from the original due date, in violation of Labor Code § 203.

30. Plaintiff has been harmed by Defendant’s conduct and is entitled to a statutory waiting time penalty, in an amount according to proof at trial, interest thereon, and an award of attorneys’ fees, and costs.

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

THIRD CAUSE OF ACTION

FAILURE TO REIMBURSE AND INDEMNIFY FOR EXPENDITURES

(AGAINST ALL DEFENDANTS AND DOES 1-5)

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

33. California Labor Code § 2802(a) provides that “An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties”

34. Labor Code “Section 2802 is designed to prevent employers from passing their operating expenses on to their employees.” *Gattuso v. Harte-Hanks Shoppers, Inc.*, 42 Cal. 4th 554, 562 (2007).

35. Defendants violated Labor Code Section 2802 by passing on their operating expenses to Plaintiff, in violation of Labor Code § 2802(a). Defendants required Plaintiff to use his cell phone for work related calls.

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36. Plaintiff has been damaged by Defendants' failure to reimburse in an amount according to proof at trial.

37. Pursuant to California Labor Code § 2802, and other applicable statutes, Plaintiff is entitled to reimbursement of expenditures, in an amount according to proof at trial, interest thereon, and an award of attorneys' fees, and costs.

FOUR CAUSE OF ACTION

FAILURE TO REIMBURSE AND INDEMNIFY FOR EXPENDITURES

(AGAINST ALL DEFENDANTS AND DOES 1-5)

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

39. California Labor Code § 2802(a) provides that "An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties"

40. Labor Code "Section 2802 is designed to prevent employers from passing their operating expenses on to their employees." *Gattuso v. Harte-Hanks Shoppers, Inc.*, 42 Cal. 4th 554, 562 (2007).

41. Defendants violated Labor Code Section 2802 by passing on their operating expenses to Plaintiff, in violation of Labor Code § 2802(a). Defendants required Plaintiff to use his cell phone for work related calls.

42. Plaintiff has been damaged by Defendants' failure to reimburse in an amount according to proof at trial.

43. Pursuant to California Labor Code § 2802, and other applicable statutes, Plaintiff is entitled to reimbursement of expenditures, in an amount according to proof at trial, interest thereon, and an award of attorneys' fees, and costs.

FIFTH CAUSE OF ACTION

PRIVATE ATTORNEYS GENERAL ACT

(AGAINST ALL DEFENDANTS AND DOES 1-5)

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

45. 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).

46. 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”).

47. 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 Providing Civil Penalties Established Pursuant to 2699(f)(2): §§ 2802, 510, 204, 1198, 226(a), 1174
§ 2802

48. “An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer.” Lab. Code § 2802(a). In *Cochran v. Schwan’s*, the court held:

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1 If an employee is required to make work-related calls on a personal cell phone,
2 then he or she is incurring an expense for purposes of section 2802. It does not
3 matter whether the phone bill is paid for by a third person, or at all. In other
4 words, it is no concern to the employer that the employee may pass on the
5 expense to a family member or friend, or to a carrier that has to then write off a
6 loss. It is irrelevant whether the employee changed plans to accommodate
7 work-related cell phone usage. Also, the details of the employee's cell phone
8 plan do not factor into the liability analysis. Not only does our interpretation
9 prevent employers from passing on operating expenses, it also prevents them
10 from digging into the private lives of their employees to unearth how they
11 handle their finances vis-à-vis family, friends and creditors. To show liability
12 under section 2802, an employee need only show that he or she was required to
13 use a personal cell phone to make work-related calls, and he or she was not
14 reimbursed.

15 *Cochran v. Schwan's Home Serv., Inc.*, 228 Cal. App. 4th 1137, 1144–45 (2014), review denied (Nov.
16 25, 2014).

17 49. Here, like in *Cochran*, if an employee is required to do work-related activities on a
18 personal cell phone, then she is incurring an expense for purposes of section 2802. Here, as in *Cochran*,
19 to show liability under section 2802, an employee need only show that she was required or directed to
20 use a personal cell phone to do work-related activities and was not reimbursed.

21 50. Plaintiff and aggrieved employees were required or directed to use personal cell phones
22 to do work-related activities and were not reimbursed for any portion of their cell phone expenses, in
23 violation of Labor Code § 2802(a).

24 51. “Any employer or other person acting on behalf of an employer, who violates, or causes
25 to be violated, any provision regulating minimum wages or hours and days of work in any order of the
26 Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6,
27 1194, or 2802, may be held liable as the employer for such violation.” Lab. Code § 558.1(a). It is
28 currently unknown who caused Defendant to violate Labor Code § 2802.

52. Labor Code § 2802 does not have a civil penalty specifically provided. Thus, Labor
Code § 2699(f) is applicable to impose civil penalties of one hundred dollars (\$100) for each aggrieved
employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved
employee per pay period for each subsequent violation.

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1 **§ 510**

2 53. Labor Code § 510(a) provides that “Any work in excess of eight hours in one workday and
3 any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day
4 of work in any one workweek shall be compensated at the rate of no less than one and one-half times the
5 regular rate of pay for an employee.”

6 54. As set forth above, Plaintiff, and co-workers, worked over eight (8) hours per day and
7 over forty (40) hours per week, without being paid overtime wages in violation of Labor Code § 510(a).
8 Labor Code § 510 does not provide for its own self-contained civil penalty within the statute. Thus,
9 Labor Code § 2699(f)(2) applies to provide a civil penalty of \$100 for each aggrieved employee per pay
10 period for the initial violation and \$200 for each aggrieved employee per pay period for each subsequent
11 violation.

12 55. “Any employer or other person acting on behalf of an employer, who violates, or causes
13 to be violated, any provision regulating minimum wages or hours and days of work in any order of the
14 [IWC], or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be
15 held liable as the employer for such violation.” Lab. Code § 558.1(a). It is currently unknown who
16 caused Defendant to violate Labor Code § 510.

17 **§ 204**

18 56. Labor Code § 204(b)(1) provides that “all wages earned for labor in excess of the normal
19 work period shall be paid no later than the payday for the next regular payroll period.”

20 57. As set forth above, Plaintiff, and the other co-workers, worked over eight (8) hours per
21 day and over forty (40) hours per week, without being paid overtime wages. Defendant violated Labor
22 Code § 204(b)(1) by failing to pay Plaintiff and her co-workers for all the overtime wages that they
23 earned which were in excess of the normal work period, by the next payday which followed the
24 overtime work. Labor Code § 204 does not provide for its own self-contained civil penalty within the
25 statute. Thus, Labor Code § 2699(f)(2) applies to provide a civil penalty of \$100 for each aggrieved
26 employee per pay period for the initial violation and \$200 for each aggrieved employee per pay period
27 for each subsequent violation.

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1 **§ 1198**

2 58. Labor Code § 1198 provides that the maximum hours of work and the standard conditions
3 of labor fixed by the IWC shall be the maximum hours of work and the standard conditions of labor for
4 employees. Further, the “employment of any employee for longer hours than those fixed by the order or
5 under conditions of labor prohibited by the order is unlawful.” Lab. Code § 1198.

6 59. Sections 3(A)(1) of IWC Order Nos. 1-2001, 2-2001, 3-2001, 4-2001, 5-2001, 6-2001, 7-
7 2001, 8-2001, 9-2001, 10-2001, 11-2001, 12-2001, 13-2001, 16-200, and Section 4 of IWC Order No.
8 17-2001, provide that “employees shall not be employed more than eight (8) hours in any workday or
9 more than 40 in a workweek unless the employee receives one and one half (1 1/2) times such employee’s
10 regular rate of pay for all hours worked over 40 hours in the workweek.”

11 60. As set forth above, Plaintiff, and the other co-workers, worked over eight (8) hours per
12 day and over forty (40) hours per week, without being paid overtime wages in violation of IWC Wage
13 Orders. As such, Defendants violated California Labor Code section 1198 by violating relevant Wage
14 Orders of the IWC.

15 61. Labor Code § 1198 does not provide for its own self-contained civil penalty within the
16 statute. Thus, Labor Code § 2699(f)(2) applies to provide a civil penalty of \$100 for each aggrieved
17 employee per pay period for the initial violation and \$200 for each aggrieved employee per pay period
18 for each subsequent violation.

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

24 63. Other aggrieved employees are any current or former California employees who worked
25 more than eight hours per day or forty hours per week without being paid all overtime compensation.

26 **§ 226(a)**

27 64. “An employer, semimonthly or at the time of each payment of wages, shall furnish to his
28 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 employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (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, (8) the name and address of the legal entity that is the employer . . . , and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.” Lab. Code § 226(a).

65. Defendant failed to provide Plaintiff and the other co-workers with *accurate* itemized wage statements showing (a) total hours worked and (b) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate. Defendant also failed to keep itemized wage statement records of the foregoing.

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

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

§ 1174(d)

68. Labor Code Section 1174(d) provides that every person employing labor in this state shall keep payroll records showing the hours worked daily by and the wages paid to employees employed for not less than three years. “Person” means any person, association, organization, partnership, business trust, limited liability company, or corporation. Lab. Code § 18.

69. Defendant failed to maintain records showing the actual and accurate hours worked by Plaintiff and the other co-workers, in violation of Labor Code Section 1174. Labor Code Section 1174 does not provide for its own self-contained civil penalty within the statute. Thus, Labor Code Section 2699(f)(2) applies to provide a civil penalty of \$100 for each aggrieved employee per pay period for the initial violation and \$200 for each aggrieved employee per pay period for each subsequent violation.

Labor Code Violations Providing Civil Penalties Pursuant to 2699(a): §§ 558, 210, 226.3,

1174.5

§ 558

70. Pursuant to Labor Code § 558(a) any employer or other person acting on behalf of an employer who violates, or causes to be violated, [Labor Code section 510, 512] or any provision regulating hours and days of work in any order of the IWC shall be subject to a civil penalty as follows:

(1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.

(2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.

71. As set forth above, Defendant violated Labor Code §§ 510, 512 and 1198, and violated the above-referenced as IWC wage orders as applicable. As such, Defendant is subject to civil penalties for the initial violation and subsequent violations. Those subject to Labor Code § 558 penalties include any “person acting on behalf of” Defendant who caused Defendant to violate the Labor Code. *Reynolds v. Bement*, 36 Cal. 4th 1075, 1094 (2005); *Atempa v. Pedrazzani*, 27 Cal. App. 5th 809 (2018).

§ 210

72. Pursuant to Labor Code § 210(a), in addition to, and entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Section 204 shall be subject to a civil penalty as follows:

(1) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee.

(2) For each subsequent violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.

73. As set forth above, Defendant violated Labor Code § 204. As such, Defendant is subject to civil penalties “plus 25 percent of the amount unlawfully withheld,” as civil penalties pursuant to Section 210(a).

§ 226.3

74. “Any employer who violates subdivision (a) of section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the records required in subdivision (a) of Section 226.” Lab. Code § 226.3. This section “sets out a civil penalty for all violations of section 226.” *Raines v. Coastal Pacific Food Distribs., Inc.*, 23 Cal. App. 5th 667, 675 (2018). Because Defendants violated California Labor Code section 226(a), Defendants are subject to civil penalties under section 226.3 applicable to Plaintiff and other current and former aggrieved employees.

§ 1174.5

75. Pursuant to Labor Code Section 1174.5, any person employing labor who willfully fails to maintain accurate and complete records required by subdivision (d) of Section 1174 shall be subject to a civil penalty of five hundred dollars (\$500). As discussed above, Defendant violated Labor Code Labor Code Section 1174(d). Defendant willfully failed to maintain records showing the accurate hours worked daily by Plaintiff and other coworkers. Thus, Defendant is subject to civil penalties.

Exhaustion of Administrative Remedies

76. On April 1, 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-782952-20. The notice was sent by certified mail on or about April 1, 2020, to COX, Sandy Schwartz, CEO (7019 0140 0000 7526 8640) and CAC, Alexander C. Taylor, CEO (7019 0140 0000 7526 8453). Plaintiff submitted a fee waiver to the LWDA.

77. The LWDA has not, within 65 days of Plaintiff’s Notice of violations of the Labor Code, sent Plaintiff notice that it intends to investigate the violations. Thus, Plaintiff has exhausted Plaintiff’s

administrative remedies, pursuant to Labor Code section 2699.3(a), as a prerequisite to assert a civil action, for civil penalties pursuant to Labor Code section 2699. Defendant has not sent any notice to the LWDA attempting to cure any alleged violations of Labor Code statutes not enumerated in Labor Code section 2699.5. Thus, Plaintiff has exhausted Plaintiff's 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.

PRAYER

WHEREFORE, Plaintiff prays:

1. For civil penalties pursuant to the California Labor Code §§ 2698 *et seq.*
2. For compensatory damages, in an amount according to proof at the time of trial.
3. For statutory penalties pursuant to the California Labor Code.
4. For liquidated damages pursuant to the Fair Labor Standards Act at 29 United States Code section 201 *et seq.*
5. For reimbursement and indemnification for all work-related expenditures, in an amount according to proof at the time of trial.
6. For reasonable attorneys' fees pursuant to the California Labor Code and Code of Civil Procedure.
7. For costs of suit including expert witness fees.
8. For prejudgment interest.
9. For such other and further relief as the Court may deem proper.

DEMAND FOR JURY TRIAL

Plaintiff ALFREDO CRESCI hereby demands a trial by jury.

Dated: June 18, 2020

GUTIERREZ DERHAM LAW FIRM LLP

By: _____

Matthew Gutierrez
Attorneys for Plaintiff, ALFREDO CRESCI,
individually and as a proxy for the State of
California