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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ORANGE**

MARK MORRISON, individually, and on
behalf of all other aggrieved employees,

Plaintiff,

v.

FAIR RESTORATION, INC., a California
corporation; and DOES 1 through 50,
inclusive,

Defendants.

CASE NO.: 30-2020-01144774-CU-OE-CXC

**COMPLAINT FOR VIOLATION OF THE
PRIVATE ATTORNEYS GENERAL ACT
OF 2004**

[California Labor Code § 2698 *et seq.*]

Assigned for All Purposes

Judge Glenda Sanders

CX-101

1 This is a representative action brought by Mark Morrison, individually and on behalf of all other
2 aggrieved employees ("Plaintiff"), alleging systematic violations of California wage and hour laws
3 committed by his former employer, Fair Restoration, Inc. ("Defendant"). Plaintiff makes the following
4 allegations on information and belief, except as to allegations pertaining to Plaintiff individually, which
5 are based on his personal knowledge.

6 **INTRODUCTION**

7 1. At all relevant times herein, Defendant has implemented policies and practices that have
8 resulted in systematic violations of California's wage and hour laws. Defendant engages in these
9 unlawful practices to maximize profits.

10 2. Defendant maximizes profits at the expense of its employees by cutting labor costs
11 through understaffing, denying meal and rest breaks, cheating non-exempt employees out of wages and
12 premiums, and related violations of California wage and hour laws.

13 3. For example, Defendant has implemented unlawful policies with respect to meal and
14 rest breaks. Defendant requires its non-exempt employees to routinely work through meal and rest
15 breaks while failing to pay them the legally-required premium pay for these missed and non-complaint
16 meal and rest breaks.

17 4. Plaintiff seeks civil penalties and other statutorily available relief for himself and other
18 current and former non-exempt employees of Defendant during the applicable limitations period to
19 compensate these workers for the wages Defendant has stolen from them and to protect workers from
20 being subjected to similar unlawful working conditions perpetrated by Defendant.

21 **JURISDICTION AND VENUE**

22 5. The Superior Court of the State of California has jurisdiction in this matter because
23 Plaintiff is a resident and citizen of the State of California, and Defendant regularly conducts business
24 in the State of California. No federal question is at issue because Plaintiff's claims are based solely on
25 California law.

26 6. Venue is proper in this judicial district and the County of Orange because Plaintiff and
27 other aggrieved employees performed work for Defendant in the County of Orange and many of
28 Defendant's unlawful actions and omissions, as set alleged herein, occurred in the County of Orange.

1 In addition, Defendant's corporate office is in San Juan Capistrano, which is located in the County of
2 Orange.

3 THE PARTIES

4 7. Plaintiff is a resident and citizen of the State of California and a former employee of
5 Defendant. Plaintiff was employed by Defendant as a field technician, a non-exempt position, during
6 the time period of 2019 to 2020.

7 8. Plaintiff, on behalf of himself and all other aggrieved employees, brings this
8 representative action to recover wages and penalties for among other things, Defendant's failure to
9 provide legally compliant meal periods and rest breaks and failure to provide proper compensation for
10 missed and otherwise unlawful meal periods and rest breaks, unpaid and illegally calculated regular
11 and overtime compensation, Defendant's failure to pay all wages due to discharged or quitting non-
12 exempt employees, Defendant's failure to reimburse employees for necessary business expenses, and
13 Defendant's failure to maintain required records and failure to provide accurate itemized wage
14 statements, among other violations of California wage and hour laws as alleged herein.

15 9. Defendant, which does business as Flood Pro, provides water and sewer damage clean-
16 up, mold detection, and other home repair services. Defendant is, and at all times relevant herein was,
17 a California corporation authorized to conduct business in the state of California.

18 10. The true names and capacities of DOES 1 through 50, inclusive, are unknown to
19 Plaintiff at this time, and Plaintiff therefore sues such defendants under fictitious names. Plaintiff is
20 informed and believes, and thereon alleges, that each defendant designated as a DOE is in some manner
21 highly responsible for the occurrences alleged herein, and that Plaintiff and other aggrieved employees'
22 injuries and damages, as alleged herein, were proximately caused by the conduct of such DOE
23 defendants. Plaintiff will seek leave of the Court to amend this Complaint to allege the true names and
24 capacities of such DOE defendants when ascertained.

25 PAGA REPRESENTATIVE ACTION ALLEGATIONS

26 11. Pursuant to the Private Attorneys General Act of 2004 ("PAGA"), California Labor
27 Code §§ 2698-2699.5, Plaintiff brings this action on behalf of himself and all other aggrieved
28 employees – i.e., all current and former non-exempt employees who worked for Defendant in the State

1 of California at any time during the statute of limitations period.

2 12. On April 7, 2020, Plaintiff gave written notice by certified mail, pursuant to California
3 Labor Code § 2699.3, to the California Labor and Workforce Development Agency (“LWDA”) and
4 Defendant, of the specific provisions of the California Labor Code and IWC Wage Order alleged to
5 have been violated, including the facts and theories to support the alleged violations. As of the date of
6 this filing, Plaintiff has not received any response from the LWDA. As Plaintiff has waited more than
7 sixty-five (65) days from the postmark date of his written notice before filing this action, Plaintiff has
8 complied with all of the requirements set forth in California Labor Code § 2699.3 to commence a
9 representative action under PAGA.

10 **FACTUAL ALLEGATIONS**

11 **Failure to Provide Required Meal Periods**

12 **[Cal. Lab. Code §§ 226.7, 512; IWC Wage Order No. 4-2001, § 11]**

13 13. During the statute of limitations period, Defendant has required, permitted or otherwise
14 suffered Plaintiff and aggrieved employees to perform work during their meal periods, to completely
15 skip their meal periods, to take late and short meal periods, and Defendant has otherwise failed to
16 provide the required meal periods to Plaintiff and aggrieved employees as required under California
17 Labor Code §§ 226.7, 512, and § 11 of the applicable IWC Order.

18 14. Defendant has implemented several policies and practices that have caused Plaintiff and
19 aggrieved employees to systematically miss and otherwise take non-compliant meal periods.
20 Defendant implements a skeletal staffing policy such that Plaintiff and aggrieved employees are given
21 so much work to complete that they regularly miss or take non-compliant meal periods. For example,
22 Defendant employs field technicians, like Plaintiff, who are sent on their own out into the field to
23 perform home repair services. Plaintiff and aggrieved employees are so busy that Defendant has a
24 policy that requires them to bring a “sack lunch” with them and “break at the job” for their meal period.
25 As a direct consequence of these policies and practices, Plaintiff and aggrieved employees have so
26 much work to complete within their scheduled shifts that they are forced to skip their meal periods
27 altogether, to take them after working longer than five (5) hours, to perform work during their meal
28 periods, or return to work after taking less than a thirty (30) minute meal period.

1 15. Further, Defendant's policy is to not inform Plaintiff and aggrieved employees that they
2 are able to take meal periods before the fifth hour of work. This policy, combined with an unreasonable
3 workload, results in systematic late meal periods taken by Plaintiff and aggrieved employees.

4 16. Defendant also has no policy to provide second meal periods when Plaintiff and
5 aggrieved employees work shifts longer than ten hours. This is in direct contravention of California
6 law. *See Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1041 ("We conclude that,
7 absent waiver, section 512 requires a first meal period no later than the end of an employee's fifth hour
8 of work, and a second meal period no later than the end of an employee's 10th hour of work.")

9 17. Defendant also requires Plaintiff and aggrieved employees to carry a phone on their
10 person at all times, even during meal periods. These phones enable supervisors to call Plaintiff and
11 aggrieved employees regarding work-related matters. Plaintiff and aggrieved employees must respond
12 immediately to these calls, regardless of whether they are taking a meal period. In this respect, and
13 others, Plaintiff and aggrieved employees are routinely required to work interrupted meal periods.

14 18. Moreover, Defendant has engaged in a systematic practice of automatically deducting
15 meal periods for Plaintiff and aggrieved employees, regardless of whether they actually took them or
16 not.

17 19. Defendant essentially implemented a written on-duty meal period policy which is
18 unlawful. Defendant implemented a policy which required employees "... to bring a sack lunch to
19 work ..." requiring Plaintiff and the aggrieved employees to take their meal periods on the worksite
20 and they were unable to leave. Moreover, there was no way for Plaintiff and the other aggrieved
21 employees to revoke the agreement. This is the equivalent to an "on-duty" meal period and Plaintiff
22 and the aggrieved employees should have been compensated for their time.

23 20. Despite work conditions that systematically result in missed and non-compliant meal
24 periods, and in order to keep labor costs down, Defendant has implemented a policy and practice of
25 not paying meal period premium payments that are owed and due. This policy is in direct contravention
26 of California law, which requires Defendant to pay one hour at the employee's regular rate of pay for
27 a missed or interrupted meal period.

28 21. In sum, Defendant has violated California Labor Code §§ 226.7, § 11 of the applicable

1 IWC Wage Order, by failing to compensate Plaintiff and aggrieved employees who were not authorized
2 and permitted to take a complete, timely, uninterrupted meal period, one additional hour of
3 compensation at the proper regular rate of pay for each workday that such a meal period was not
4 authorized or permitted. Defendant further violated California Labor Code sections 226.7, 510, 1194,
5 1197, and § 11 of the applicable IWC Wage Order by failing to compensate Plaintiff and Class
6 members for all hours worked during their meal periods.

7 **Failure to Provide Required Rest Breaks**

8 **[Cal. Lab. Code §§ 226.7, 512; IWC Wage Order No. 4-2001, § 12]**

9 22. During the statute of limitations period, Defendant has failed to authorize and permit
10 Plaintiff and other aggrieved employees to take rest breaks as required under California Labor Code §§
11 226.7 and 512, and IWC Wage Order No. 4-2001, § 12.

12 23. As with meal periods, Defendant's policies and practices caused Plaintiff and other
13 aggrieved employees to miss or otherwise take non-compliant rest periods by, among other things,
14 giving them unreasonable amounts of work that had to be completed within their shift, and relatedly,
15 engaging in gross understaffing and setting unrealistic project goals, such that rest periods as a practical
16 matter could not be taken. For example, Plaintiff would be so busy with a project that he could not
17 complete within the deadlines set by Defendant without skipping his rest breaks.

18 24. In addition, as alleged herein, Defendant requires Plaintiff and other aggrieved
19 employees to carry phones on their person at all times. Plaintiff and aggrieved employees must respond
20 immediately to calls from supervisors, regardless of whether they are taking a rest break.

21 25. Defendant further violated California Labor Code § 226.7, IWC Wage Order No. 4-
22 2001, § 11, by failing to pay Plaintiff and other aggrieved employees who were not provided with a
23 rest break, in accordance with the applicable wage order, one additional hour of compensation at the
24 proper regular rate of pay for each workday that a rest break was not provided.

25 **Failure to Pay Overtime Wages**

26 **[Cal. Lab. Code §§ 510, 1194, 1198; IWC Wage Order No. 4-2001, § 3]**

27 26. Pursuant to California Labor Code §§ 510, 1194, and IWC Wage Order No. 4-2001, §
28 3, Defendant is required to compensate Plaintiff and other aggrieved employees for all overtime, which

1 is calculated at one and one-half (1 ½) times the regular rate of pay for all hours worked in excess of
2 eight (8) hours per day and/or forty (40) hours per week, and for the first eight (8) hours on the seventh
3 consecutive workday, with double time for all hours worked in excess of twelve (12) hours in any
4 workday and for all hours worked in excess of eight (8) hours on the seventh consecutive day of work
5 in any workweek.

6 27. Plaintiff and other aggrieved employees are current and former non-exempt employees
7 entitled to the protections of California Labor Code §§ 510, 1194, and IWC Wage Order No. 4-2001.
8 During the statute of limitations period, Defendant failed to compensate Plaintiff and other aggrieved
9 employees for all overtime hours worked as required under the foregoing provisions of the California
10 Labor Code and IWC Wage Order by, among other methods, failing to pay overtime at one and one-
11 half (1 ½) or double the regular rate of pay as provided by California Labor Code §§ 510, 1194 and
12 IWC Wage Order No. 4-2001, § 3, requiring, permitting or suffering Plaintiff and other aggrieved
13 employees to work off-the-clock, and to work through meal periods and rest breaks, but not
14 compensating them for this time, and other methods to be discovered.

15 28. Defendant has knowingly and willfully refused to perform its obligations to compensate
16 Plaintiff and other aggrieved employees for all wages earned and all hours worked in violation of
17 California Labor Code §§ 510, 1194 and 1198 and IWC Wage Order No. 4-2001, § 3.

18 **Failure to Timely Pay Wages During Employment**

19 **[Cal. Lab. Code § 204]**

20 29. Pursuant to California Labor Code § 204, for all labor performed between the 1st and
21 15th days of any calendar month, Defendant is required to pay its nonexempt employees between the
22 16th and 26th day of the month during which the labor was performed. California Labor Code § 204
23 also provides that for all labor performed between the 16th and 26th days of any calendar month,
24 Defendant is required to pay its non-exempt employees between the 1st and 10th day of the following
25 calendar month. In addition, California Labor Code § 204 provides that all wages earned for labor in
26 excess of the normal work period shall be paid no later than the payday of the next regular payroll
27 period.

28 30. During the statute of limitations period, Defendant has knowingly and willfully failed

1 to timely pay Plaintiff and other aggrieved employees all the wages for labor performed by the next
2 regular payroll period as required by California Labor Code § 204.

3 **Failure to Pay All Wages Due to Discharged and Quitting Employees**

4 **[Cal. Lab. Code §§ 201, 202, 203]**

5 31. Pursuant to California Labor Code § 201, 202 and 203, Defendant is required to pay all
6 earned and unpaid wages to an employee who is discharged. California Labor Code § 201 mandates
7 that if an employer discharges an employee, the employee's wages accrued and unpaid at the time of
8 discharge are due and payable immediately.

9 32. Furthermore, pursuant to California Labor Code § 202, Defendant is required to pay all
10 accrued wages due to an employee no later than 72 hours after the employee quits his or her
11 employment, unless the employee provided 72 hours previous notice of his or her intention to quit, in
12 which case the employee is entitled to his or wages at the time of quitting.

13 33. California Labor Code § 203 provides that if an employer willfully fails to pay, in
14 accordance with Labor Code §§ 201 and 202, any wages of an employee who is discharged or who
15 quits, the employer is liable for waiting time penalties in the form of continued compensation to the
16 employee at the same rate for up to 30 workdays.

17 34. During the statute of limitations period, Defendant has willfully failed to pay accrued
18 wages and other compensation to Plaintiff and other aggrieved employees in accordance with
19 California Labor Code §§ 201 and 202. Because Defendant has failed and continues to fail to properly
20 compensate Plaintiff and other aggrieved employees for all hours worked when due, overtime and
21 minimum wages, and compensation for non-compliant meal periods and rest breaks, Defendant has
22 also willfully failed and continues to fail to pay accrued wages and other compensation to Plaintiff and
23 other aggrieved employees in accordance with California Labor Code §§ 201 and 202.

24 **Failure to Maintain Required Records**

25 **[Cal. Lab. Code §§ 226(a), 1174(d); IWC Wage Order No. 4-2001, § 7]**

26 35. During the statute of limitations period, as part of Defendant's illegal payroll policies
27 and practices to deprive Plaintiff and other aggrieved employees of all wages earned and due,
28 Defendant knowingly and intentionally failed to maintain records as required under California Labor

1 Code §§ 226(a) and 1174(d) and IWC Wage Order No. 4-2001, § 7, including but not limited to the
2 following records: total daily hours worked by each employee; applicable rates of pay; all deductions;
3 meal periods; time records showing when each employee begins and ends each work period; and
4 accurate itemized wage statements. Among other things, Defendant has systematically failed to
5 maintain records of when Plaintiff and aggrieved employees take meal periods (when they are able to
6 take them). In addition, Defendant had knowledge that it was not providing its non-exempt employees
7 with proper meal and rest periods, but knowingly failed to include in the wage statements one (1) extra
8 hour of compensation for each missed meal and rest period. Defendant also illegally and inaccurately
9 recorded the time in which Plaintiff and other aggrieved employees worked.

10 **Failure to Furnish Accurate Itemized Wage Statements**

11 **[Cal. Lab. Code § 226(a); IWC Wage Order No. 4-2001, § 7]**

12 36. During the statute of limitations period, Defendant has routinely failed to provide
13 Plaintiff and other aggrieved employees with timely and accurate itemized wage statements.
14 Defendant's pay stubs violate California Labor Code § 226 on their face by, among other things, not
15 providing Plaintiff and other aggrieved employees with proper meal periods and rest breaks but
16 intentionally fails to include in their wage statements one (1) additional hour of compensation at their
17 regular rates of pay for each non-compliant meal period or rest break.

18 37. In order to conceal its wage theft, Defendant knowingly and intentionally failed to
19 provide Plaintiff and other aggrieved employees with timely and accurate itemized wage statements in
20 accordance with Labor Code § 226(a) IWC Wage Order No. 4-2001 § 7.

21 38. Plaintiff and other aggrieved employees suffered injury as a result of Defendant's failure
22 to provide timely and accurate itemized wage statements because it prevented them from discovering
23 the scope and extent of Defendant's violations of California wage and hour laws, prevented them from
24 being able to determine the gross wages earned, the total hours worked, all deductions made, the net
25 wages earned, all applicable hourly rates in effect during each pay period and the corresponding number
26 of hours worked at each hourly rate, or even the name of the legal entity that employed them.

1 **Failure to Indemnify Employees for Necessary Expenditures Incurred in Discharge of Duties**

2 **[Cal. Lab. Code § 2802]**

3 39. California Labor Code § 2802(a) requires an employer to indemnify an employee for all
4 necessary expenditures or losses incurred by the employee in direct consequence of the discharge of
5 her his or her duties, or of his or her obedience to the directions of the employer.

6 40. Plaintiff and other aggrieved employees are required utilize their personal cellular
7 phones for work. For example, Plaintiff's supervisors regularly called Plaintiff on his personal cellular
8 phone for work purposes while he was out in the field. The same is true for aggrieved employees.
9 Despite this practice, Defendant does not compensate Plaintiff and other aggrieved employees for their
10 cellular phone usage. In addition, Plaintiff and other aggrieved employees were required to pay for the
11 costs of maintaining their uniforms, which got extremely dirty in the field, without reimbursement.

12 **Failure To Provide Mandatory Sick Leave**

13 39. Pursuant to California Labor Code §246, any employee who works in the State of
14 California and who works more than "30 or more days within a year ... is entitled to be paid sick days
15 ..." Labor Code §246(i) requires an employer to provide an employee with "written notice" that sets
16 for the "amount of sick leave available" on the employee's wage statement pursuant to Labor Code
17 §226 or "..., in a separate writing provided on the designated pay date with the employee's payment
18 of wages."

19 40. Defendant failed to comply with Labor Code Section §246 by not providing Plaintiff
20 and the other aggrieved employees with sick pay. Defendant also failed to comply with Labor Code
21 §246(i) by not providing Plaintiff and the other aggrieved employees with their available sick leave
22 and balance of sick leave. As such, Defendant has violated California Labor Code § 246.

23 **FIRST CAUSE OF ACTION**

24 **VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT**

25 **[Cal. Lab. Code § 2698 *et seq.*]**

26 ***(On Behalf of Plaintiff and Aggrieved Employees against all Defendants)***

27 41. Plaintiff incorporates herein by specific reference, as though fully set forth, the
28 allegations in paragraphs 1 through 40.

1 42. Plaintiff is an “aggrieved employee” within the meaning of California Labor Code §
2 2699(c), and a proper representative to bring a civil action on behalf of himself and other aggrieved
3 employees pursuant to the procedures specified in California Labor Code § 2699.3, because Plaintiff
4 was employed by Defendant and one or more of the alleged California Labor Code violations was
5 committed against Plaintiff during the statute of limitations period.

6 43. Plaintiff seeks to recover civil penalties through a representative action permitted by
7 PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal.4th 969. Thus, class
8 certification is not required.

9 44. Pursuant to California Labor Code §§ 2698-2699.5, Plaintiff seeks to recover civil
10 penalties from Defendant in a representative action for the violations set forth above, including but not
11 limited to violations of California Labor Code §§ 201, 202, 203, 204, 226(a), 226.7, 510, 512, 1174(d),
12 1194, 1197, 1198, and 2802.

13 45. Pursuant to California Labor Code § 2699(a), Plaintiff seeks to recover civil penalties
14 for Defendant’s violations of California Labor Code provisions for which a civil penalty is specifically
15 provided, including but not limited to, the following:

16 a. Pursuant to California Labor Code § 210, for violations of California Labor Code §
17 204, Defendant is subject to a civil penalty in the amount of one hundred dollars
18 (\$100) for the initial violation for each failure to pay each employee, and two
19 hundred dollars (\$200) per employee for violations in subsequent pay periods.

20 b. Pursuant to California Labor Code § 226.3, for violations of California Labor
21 Code § 226(a), Defendant is subject to a civil penalty in the amount of two
22 hundred and fifty dollars (\$250) per aggrieved employee for the initial pay period
23 where a violation occurs and one thousand dollars (\$1,000) per aggrieved
24 employee for violations in subsequent pay periods.

25 c. Pursuant to California Labor Code § 558(a), “[a]ny employer or other person
26 acting on behalf of an employer who violates, or causes to be violated, a section of
27 this chapter or any provision regulating hours and days of work in any order of the
28

1 Industrial Welfare Commission,” including California Labor Code §§ 510 and
2 512, shall be subject to a civil penalty, in addition to any other penalty provided by
3 law, of fifty dollars (\$50) for initial violations for each underpaid employee for
4 each pay period for which the employee was underpaid and one hundred dollars
5 (\$100) for each subsequent violation for each underpaid employee for each pay
6 period for which the employee was underpaid. In addition, Plaintiff seeks civil
7 penalties in the amount sufficient to recover unpaid wages owed to aggrieved
8 employees pursuant to California Labor Code § 558(a).

9 d. Pursuant to California Labor Code § 1174.5, for violations of California Labor
10 Code § 1174(d), Defendant is subject to a civil penalty of five hundred dollars
11 (\$500).

12 46. California Labor Code § 2699(f) provides that for all California Labor Code violations
13 for which a civil penalty is not specifically provided, the following civil penalties are established: one
14 hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two
15 hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.

16 47. Plaintiff seeks to recover penalties pursuant to California Labor Code § 2699 for
17 Defendant’s violations of the California Labor Code provisions for which a civil penalty is not
18 specifically provided, including but not limited to, California Labor Code §§201, 202, 203, 226.7,
19 1198 and 2802. All penalties sought and recovered under this action will be allocated as follows: 75
20 percent to the state of California and 25 percent to aggrieved employees.

21 48. Plaintiff additionally seeks reasonable attorneys’ fees and costs pursuant to California
22 Labor Code § 2699(g)(1), California Code of Civil Procedure § 1021.5, and any other applicable
23 laws, rules, or doctrines.

24 **PRAYER FOR RELIEF**

25 WHEREFORE, Plaintiff, individually and on behalf of all other aggrieved employees, prays
26 for relief against Defendant as follows:

27 1. For civil penalties according to proof, including but not limited to, the amount of any
28 unpaid wages of Plaintiff and the other aggrieved employees and all penalties authorized by California

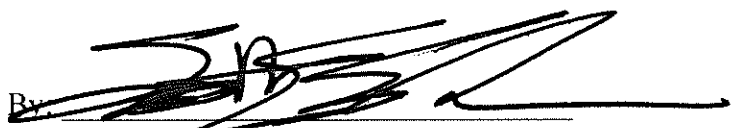
1 Labor Code §§210, 226.3, 558, 1174.5, and 2699(a) and (f);

2 2. For reasonable attorneys' fees and costs pursuant to California Labor Code § 2699(g),
3 California Code of Civil Procedure § 1021.5, and/or any other applicable provisions providing for
4 attorneys' fees and costs; and

5 3. For such further relief that the Court may deem just and proper.

6
7 DATED: June ~~22~~ 22, 2020

LAW OFFICE OF SCOTT E. WHEELER

8
9 By 

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