

MATERN LAW GROUP, PC
MATTHEW J. MATERN (SBN 159798)
LAUNA ADOLPH (SBN 227743)
DEANNA S. LEIFER (SBN 265840)
1230 Rosecrans Avenue, Suite 200
Manhattan Beach, CA 90266
Tel: (310) 531-1900
Facsimile: (310) 531-1901

Attorneys for Plaintiff MOISES DE LEON,
individually and on behalf of all other
aggrieved employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF RIVERSIDE

MOISES DE LEON, individually and on
behalf of all other aggrieved employees

Plaintiff,

vs.

GARY D. NELSON ASSOCIATES, INC., a
California corporation; and DOES 1 through 50,
inclusive,

Defendants

CASE NO.: **RIC1905472**

**COMPLAINT FOR VIOLATION OF
THE CALIFORNIA LABOR CODE
PRIVATE ATTORNEYS GENERAL
ACT OF 2004**

[California Labor Code § 2698, et seq.]

DEMAND FOR JURY TRIAL

1 Plaintiff MOISES DE LEON ("PLAINTIFF"), individually and on behalf of all other
2 aggrieved employees, hereby alleges as follows:

3 **INTRODUCTION**

4 1. PLAINTIFF brings this action on behalf of himself and all other aggrieved
5 employees of defendants GARY D. NELSON ASSOCIATES, INC. ("GDNA"), and DOES 1
6 through 50, inclusive (collectively, "DEFENDANTS"), in the State of California during the
7 relevant statutory period to recover penalties arising from DEFENDANTS' failure to provide
8 employees meal and rest periods (or compensation therefor) as required under California law,
9 unpaid minimum and overtime wages, and unreimbursed business expenses.

10 **JURISDICTION AND VENUE**

11 2. The Superior Court of the State of California has jurisdiction in this matter because
12 PLAINTIFF is a resident of the State of California, and DEFENDANTS are qualified to do
13 business in California and regularly conduct business in California. Further, no federal question is at
14 issue because the claims are based solely on California law.

15 3. Venue is proper in this judicial district and the County of Riverside, California
16 because DEFENDANTS maintain offices and facilities and transact business in the County of
17 Riverside, and DEFENDANTS' illegal policies and practices which are the subject of this action
18 were applied, at least in part, to PLAINTIFF and other aggrieved employees in the County of
19 Riverside.

20 **THE PARTIES**

21 4. PLAINTIFF is a citizen and resident of the State of California. During the
22 relevant statutory period, PLAINTIFF was employed by DEFENDANTS in the State of California
23 as a non-exempt employee. PLAINTIFF worked for DEFENDANTS as a fork-lift driver in
24 Riverside, California from approximately May 17, 2018 through January 20, 2019.

25 5. PLAINTIFF is informed and believes, and thereon alleges, that GDNA is, and at
26 all times relevant hereto was, a corporation organized and existing under the laws of the State of
27 California. PLAINTIFF is further informed and believes, and thereon alleges, that GDNA is
28 authorized to conduct business, and does conduct business, in the State of California.

Specifically, GDNA maintains offices and facilities, conducts business, and engages in illegal policies or practices in the County of Riverside.

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

7. At all relevant times herein, DEFENDANTS were the joint employers of PLAINTIFF and other aggrieved employees. PLAINTIFF is informed and believes, and thereon alleges, that at all relevant times DEFENDANTS were the alter egos, divisions, affiliates, integrated enterprises, joint employers, subsidiaries, parents, principals, related entities, co-conspirators, authorized agents, partners, joint venturers, and/or guarantors, actual or ostensible, of each other. Each defendant was completely dominated by his, her, or its co-defendant, and each was the alter ego of the other.

8. At all relevant times, PLAINTIFF and other aggrieved employees were employed by DEFENDANTS under employment agreements that were partly written, partly oral, and partly implied. In perpetrating the acts and omissions alleged herein, DEFENDANTS, and each of them, acted pursuant to, and in furtherance of, their policies and practices of not paying PLAINTIFF and other aggrieved employees all wages earned and due, through methods and schemes which include, but are not limited to, failing to provide meal periods; failing to authorize and permit rest breaks; failing to pay minimum and overtime wages; failing to provide accurate itemized statements; failing to maintain required records; and failing to compensate PLAINTIFF and other aggrieved employees for necessary expenditures, in violation of the California Labor Code and the applicable Industrial Welfare Commission ("IWC") Wage Order.

1 9. PLAINTIFF is informed and believes, and thereon alleges, that each and every one
2 of the acts and omissions alleged herein were performed by, and/or attributable to, all
3 DEFENDANTS, each acting as agents and/or employees, and/or under the direction and control
4 of each of the other defendants, and that said acts and failures to act were within the course and
5 scope of said agency, employment and/or direction and control.

6 10. As a direct and proximate result of DEFENDANTS' unlawful actions,
7 PLAINTIFF and other aggrieved employees have suffered, and continue to suffer, from loss of
8 earnings in amounts as yet unascertained, but subject to proof at trial, and within the jurisdiction
9 of this Court.

10 **PAGA REPRESENTATIVE ACTION ALLEGATIONS**

11 11. Pursuant to the California Private Attorneys General Act of 2004 ("PAGA"), Labor
12 Code §§ 2698-2699.5, PLAINTIFF brings this action on behalf of himself and all current and
13 former non-exempt aggrieved employees of DEFENDANTS in the State of California at any time
14 within the period beginning one (1) year and sixty-five (65) days prior to the filing of this action,
15 and ending at the time this action settles or proceeds to final judgment ("PENALTY PERIOD").

16 12. Pursuant to California Labor Code §§ 2699.3, PLAINTIFF gave written notice on
17 June 5, 2019 by online filing to the California Labor and Workforce Development Agency
18 ("LWDA") and by certified mail to DEFENDANTS of the specific provisions of the California
19 Labor Code and IWC Wage Orders alleged to have been violated, including the facts and theories
20 to support the alleged violations. More than sixty-five (65) days have passed and the LWDA has
21 not provided notice to PLAINTIFF that it intends to investigate the alleged violations.

22 13. Therefore, PLAINTIFF has complied with all of the requirements set forth in
23 California Labor Code § 2699.3 to commence a representative action under PAGA.

24 ///

25 ///

26 ///

27 ///

28 ///

1 **FACTUAL ALLEGATIONS**

2 **Failure to Provide Meal Periods**

3 **[Labor Code §§ 226.7, 512; IWC Wage Order No. 9-2001 § 11]**

4 **(Against all DEFENDANTS)**

5 14. During the PENALTY PERIOD, DEFENDANTS had, and continue to have, a
6 policy and practice of failing to provide PLAINTIFF and other aggrieved employees full and
7 timely meal periods as required by California Labor Code §§ 226.7 and 512 and IWC Wage
8 Order No. 9-2001 § 11.

9 15. As a result of DEFENDANTS' policies and practices as alleged herein,
10 PLAINTIFF and other aggrieved employees regularly were denied, and continue to be denied, the
11 opportunity to take full, uninterrupted, and timely meal periods as required under California
12 Labor Code §§ 226.7 and 512 and IWC Wage Order No. 9-2001 § 11.

13 16. DEFENDANTS further violated, and continue to violate, California Labor Code §
14 226.7 and IWC Wage Order No. 9-2001 § 11 by failing to compensate PLAINTIFF and other
15 aggrieved employees who were not provided a meal period, in accordance with the applicable
16 Wage Order, one (1) additional hour of compensation at each employee's regular rate of pay for
17 each workday that a meal period was not provided.

18 **Failure to Authorize and Permit Rest Periods**

19 **[Labor Code § 226.7; IWC Wage Order No. 9-2001 § 12]**

20 17. During the PENALTY PERIOD, DEFENDANTS had, and continue to have, a
21 policy and practice of failing to authorize and permit PLAINTIFF and other aggrieved employees
22 to take rest breaks as required by California Labor Code § 226.7 and IWC Wage Order No. 9-
23 2001 § 12. As a result of DEFENDANTS' policies and practices as alleged herein, PLAINTIFF
24 and other aggrieved employees regularly were denied, and continue to be denied, the opportunity
25 to take full, uninterrupted, and timely rest periods as required under California Labor Code §
26 226.7 and IWC Wage Order No. 9-2001 § 12.

27 18. DEFENDANTS further violated, and continue to violate, California Labor Code §
28 226.7 and IWC Wage Order No. 9-2001 § 12 by failing to pay PLAINTIFF and other aggrieved

1 employees who were not provided a rest period, in accordance with the applicable Wage Order,
2 one (1) additional hour of compensation at each employee's regular rate of pay for each workday
3 that a rest period was not provided.

4 **Failure to Pay Minimum Wages**

5 **[Labor Code §§ 1194, 1197; IWC Wage Order No. 9-2001 § 4]**

6 19. Pursuant to California Labor Code §§ 1194 and 1197 and IWC Wage Order No. 9-
7 2001 § 4, payment to an employee of less than the applicable minimum wage for all hours
8 worked in a payroll period is unlawful.

9 20. During the PENALTY PERIOD, DEFENDANTS failed to, and continue to fail to,
10 pay PLAINTIFF and other aggrieved employees minimum wages for all hours worked by, among
11 other things: requiring, suffering or permitting PLAINTIFF and other aggrieved employees to
12 work off the clock; requiring, suffering or permitting PLAINTIFF and other aggrieved employees
13 to work through meal breaks without compensation; illegally and inaccurately recording time
14 worked by PLAINTIFF and other aggrieved employees; and other methods to be discovered.

15 **Failure to Pay Overtime Wages**

16 **[Labor Code §§ 510, 1194, 1198; IWC Wage Order No. 9-2001 § 3]**

17 21. Pursuant to California Labor Code §§ 510 and 1194 and IWC Wage Order No. 9-
18 2001 § 3, DEFENDANTS are required to compensate PLAINTIFF and other aggrieved
19 employees for all overtime at a rate of one and one-half (1 ½) times the regular rate of pay for all
20 hours worked in excess of eight (8) hours per day and/or forty (40) hours per week, and for the
21 first eight (8) hours on the seventh consecutive workday and at a rate of twice the regular rate of
22 pay for all hours worked in excess of twelve (12) hours in any workday and for all hours worked
23 in excess of eight (8) hours on the seventh consecutive day of work in any workweek.

24 22. PLAINTIFF and other aggrieved employees are current and former non-exempt
25 employees entitled to the protections of California Labor Code §§ 510 and 1194 and IWC Wage
26 Order No. 9-2001. During the PENALTY PERIOD, DEFENDANTS failed, and continue to fail,
27 to compensate PLAINTIFF and other aggrieved employees for all overtime hours worked as
28 required under the foregoing provisions of the California Labor Code and IWC Wage Order by,

1 among other things: failing to pay overtime at one and one-half (1 ½) times or double the regular
2 rate of pay as provided by California Labor Code §§ 510 and 1194 and IWC Wage Order No. 9-
3 2001 § 3; requiring, suffering or permitting PLAINTIFF and other aggrieved employees to work
4 off the clock; requiring, suffering or permitting PLAINTIFF and other aggrieved employees to
5 work through meal breaks without compensation; illegally and inaccurately recording time in
6 which PLAINTIFF and other aggrieved employees worked; and other methods to be discovered.

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

8 **[Labor Code § 204]**

9 23. Pursuant to California Labor Code § 204, for all labor performed between the 1st
10 and 15th days of any calendar month, DEFENDANTS are required to pay their nonexempt
11 employees between the 16th and 26th day of the month during which the labor was performed.
12 California Labor Code § 204 also provides that for all labor performed between the 16th and 26th
13 days of any calendar month, DEFENDANTS are required to pay their nonexempt employees
14 between the 1st and 10th day of the following calendar month. In addition, California Labor
15 Code § 204 provides that all wages earned for labor in excess of the normal work period shall be
16 paid no later than the payday of the next regular payroll period.

17 24. During the PENALTY PERIOD, DEFENDANTS failed, and continue to fail, to
18 timely pay PLAINTIFF and other aggrieved employees all the wages for labor performed by the
19 next regular payroll period as required by California Labor Code § 204.

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

21 **[Labor Code §§ 201, 202]**

22 25. Pursuant to California Labor Code §§ 201 and 202, DEFENDANTS are required
23 to timely pay all earned and unpaid wages to an employee upon separation.

24 26. California Labor Code § 201 mandates that if an employer discharges an
25 employee, the employee's wages accrued and unpaid at the time of discharge are due and payable
26 immediately.

27 27. Pursuant to California Labor Code § 202, DEFENDANTS are required to pay all
28 accrued wages due to an employee no later than 72 hours after the employee quits his or her

1 employment, unless the employee provided 72 hours previous notice of his or her intention to
2 quit, in which case the employee is entitled to his or wages at the time of quitting.

3 28. During the PENALTY PERIOD, DEFENDANTS failed, and continue to fail, to
4 pay accrued wages and other compensation to PLAINTIFF and other aggrieved employees in
5 accordance with California Labor Code §§ 201 and 202.

6 **Failure to Maintain Required Records**

7 **[Labor Code §§ 226, 1174; IWC Wage Order No. 9-2001 § 7]**

8 29. During the PENALTY PERIOD, as part of DEFENDANTS' illegal payroll
9 policies and practices to deprive PLAINTIFF and other aggrieved employees of all wages earned
10 and due, DEFENDANTS failed, and continue to fail, to maintain records as required under
11 California Labor Code §§ 226 and 1174 and IWC Wage Order No. 9-2001 § 7, including but not
12 limited to the following records: total daily hours worked by each employee; applicable rates of
13 pay; all deductions; meal periods; time records showing when each employee begins and ends
14 each work period; and accurate itemized statements.

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

16 **[Labor Code § 226; IWC Wage Order No. 9-2001 § 7]**

17 30. During the PENALTY PERIOD, DEFENDANTS failed to provide PLAINTIFF
18 and other aggrieved employees with timely and accurate itemized wage statements in writing
19 showing each employee's gross wages earned, total hours worked, all deductions made, net
20 wages earned, the name and address of the legal entity or entities employing PLAINTIFF and
21 other aggrieved employees, and all applicable hourly rates in effect during each pay period and
22 the corresponding number of hours worked at each hourly rate, in violation of California Labor
23 Code § 226 and IWC Wage Order No. 9-2001 § 7.

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

26 **[Labor Code § 2802]**

27 31. California Labor Code § 2802(a) requires an employer to indemnify an employee
28 for all necessary expenditures or losses incurred by the employee in direct consequence of the

1 discharge of her his or her duties, or of his or her obedience to the directions of the employer.

2 32. During the PENALTY PERIOD, DEFENDANTS failed, and continue to fail, to
3 indemnify PLAINTIFF and other aggrieved employees for all business expenses and/or losses
4 incurred in direct consequence of the discharge of their duties while working under the direction
5 of DEFENDANTS, including but not limited to expenses for cell phones, and other employment-
6 related expenses, in violation of California Labor Code § 2802.

7 **FIRST CAUSE OF ACTION**

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

9 **[Labor Code §§ 2698–2699.5]**

10 **(Against all DEFENDANTS)**

11 33. PLAINTIFF incorporates herein by specific reference, as though fully set forth, the
12 allegations in paragraphs 1 through 32.

13 34. PLAINTIFF is an “aggrieved employee” within the meaning of California Labor
14 Code § 2699(c), and a proper representative to bring a civil action on behalf of himself and other
15 current and former non-exempt employees of DEFENDANTS pursuant to the procedures
16 specified in California Labor Code § 2699.3, because PLAINTIFF was employed by
17 DEFENDANTS and one or more of the alleged violations of the California Labor Code were
18 committed against PLAINTIFF during the PENALTY PERIOD.

19 35. Pursuant to Labor Code §§ 2698–2699.5, PLAINTIFF seeks to recover civil
20 penalties for the violations set forth herein, including but not limited to violations of California
21 Labor Code §§ 201, 202, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, and 2802.
22 PLAINTIFF and other aggrieved employees are also entitled to an award of reasonable attorneys’
23 fees and costs pursuant to California Labor Code § 2699(g)(1).

24 36. Pursuant to Labor Code § 2699(a), PLAINTIFF seeks civil penalties for
25 DEFENDANTS’ violations of Labor Code provisions for which a civil penalty is specifically
26 provided, including but not limited to the following:

- 27 a. Pursuant to Labor Code § 210, for violations of Labor Code § 204,
28 DEFENDANTS are subject to a civil penalty in the amount of one hundred

1 dollars (\$100) for the initial violation for each failure to pay each employee
2 and two hundred dollars (\$200) per employee for violations in subsequent
3 pay periods.

4 b. Pursuant to Labor Code § 226.3, for violations of Labor Code § 226(a),
5 DEFENDANTS are subject to a civil penalty in the amount of two hundred
6 and fifty dollars (\$250) per aggrieved employee for the initial pay period
7 where a violation occurs and one thousand dollars (\$1,000) per aggrieved
8 employee for violations in subsequent pay periods.

9 c. Pursuant to Labor Code § 558(a), “[a]ny employer or other person acting
10 on behalf of an employer who violates, or causes to be violated, a section
11 of this chapter or any provision regulating hours and days of work in any
12 order of the Industrial Welfare Commission,” including Labor Code §§ 510
13 and 512, shall be subject to a civil penalty, in addition to any other penalty
14 provided by law, of fifty dollars (\$50) for initial violations for each
15 underpaid employee for each pay period for which the employee was
16 underpaid and one hundred dollars (\$100) for each subsequent violation for
17 each underpaid employee for each pay period for which the employee was
18 underpaid.

19 d. Pursuant to Labor Code § 1174.5, for violations of Labor Code § 1174(d),
20 DEFENDANTS are subject to a civil penalty of five hundred dollars
21 (\$500).

22 e. Pursuant to Labor Code § 1197.1, an employer who pays or causes to be
23 paid to any employee a wage less than the minimum fixed by an order of
24 the commission, shall be subject to a civil penalty as follows: for any initial
25 violation that is intentionally committed, one hundred dollars (\$100) for
26 each underpaid employee for each pay period for which the employee is
27 underpaid; and for each subsequent violation of the same offense, two
28 hundred fifty dollars (\$250) for each underpaid employee for each pay

1 period for which the employee is underpaid regardless of whether the
2 initial violation was intentionally committed.

3 37. Labor Code § 2699(f) provides that for all Labor Code violations for which a civil
4 penalty is not specifically provided, the following civil penalties are established: one hundred
5 dollars (\$100) for each aggrieved employee per pay period for the initial violation and two
6 hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.
7 PLAINTIFF seeks such civil penalties under Labor Code § 2699(f) for DEFENDANTS'
8 violations of Labor Code provisions for which a civil penalty is not specifically provided,
9 including but not limited to Labor Code §§ 201, 202, 226.7, 1194, 1197, 1198, and 2802.

10 **PRAYER FOR RELIEF**

11 WHEREFORE, PLAINTIFF, individually and on behalf of all other aggrieved employees,
12 respectfully prays for relief against DEFENDANTS, and each of them, as follows:

13 1. For civil penalties according to proof, and all penalties authorized by the Labor
14 Code §§ 210, 226.3, 558, 1174.5, 1197.1, and 2699(a) and (f);

15 2. For interest at the legal rate pursuant to Labor Code §§ 218.6, 1194, 2802,
16 California Civil Code §§ 3287, 3288, and/or any other applicable provision providing for pre-
17 judgment interest;

18 3. For reasonable attorney's fees and costs pursuant to Labor Code § 2699(g) and/or
19 any other applicable provisions providing for attorney's fees and costs; and

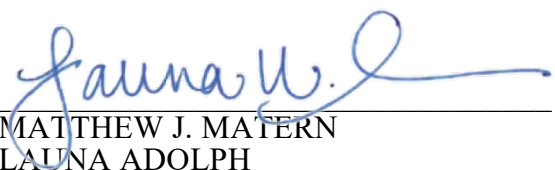
20 4. For such further relief that the Court may deem just and proper.

21
22 DATED: October 30, 2019

Respectfully submitted,

23 **MATERN LAW GROUP, PC**

24
25 By:


26 MATTHEW J. MATERN
LAUNA ADOLPH
27 DEANNA S. LEIFER
Attorneys for Plaintiff MOISES DE LEON,
28 individually and on behalf of all other aggrieved
employee

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

COMPLAINT