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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

JUL 13 2020

BY Alma Vallejo Garcia
ALMA VALLEJO GARCIA, DEPUTY

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA

15 COUNTY OF SAN BERNARDINO CIV DS 2013809

16 HERIBERTO APARICIO, individually and
17 on behalf of others similarly situated,

18 Plaintiff,

19 vs.

20 ADVANTAGE PAINTING SOLUTIONS,
21 INC., a California corporation; and DOES 1
22 through 50, inclusive,

23 Defendants.

Case No.:

~~CIV DS 2001309~~ ALN

24 REPRESENTATIVE ACTION
25 COMPLAINT

26 DEMAND FOR TRIAL BY JURY

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

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

5 **JURISDICTION AND VENUE**

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

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

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

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

26 **PARTIES**

27 5. Plaintiff HERIBERTO APARICIO is an individual residing in the County of San
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1 Bernardino, State of California.

2 6. Defendant ADVANTAGE PAINTING SOLUTIONS, INC. is and at all times
3 herein mentioned was, a limited liability company organized and existing under the laws of the
4 State of Colorado.

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

16 8. Defendants are and at all times herein mentioned were, (a) conducting business in
17 the County of San Bernardino, State of California, and (b) the employer of Plaintiff consistent
18 with the California Labor Code and Industrial Welfare Commission Wage Orders ("Wage
19 Orders").

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

24 **GENERAL ALLEGATIONS**

25 10. Defendants are a full-service painting company that provide services throughout
26 Southern California.

27 11. Defendants employed Plaintiff to work as a foreman from approximately March
28 2019 to February 2020.

1 12. At all relevant times set forth herein, Defendants employed Plaintiff and
2 Aggrieved Employees as hourly-paid or non-exempt employees.

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

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

10 15. Plaintiff is informed and believes, and thereon alleges that Defendants engaged in
11 an ongoing and systematic scheme of wage abuse against their hourly-paid or non-exempt
12 employees. As set forth in more detail below, this scheme involved, *inter alia*, regularly requiring
13 Plaintiff and Aggrieved Employees to work off the clock without compensation, thereby failing
14 to pay them for all hours worked, including minimum and overtime wages. Defendants also
15 implemented time rounding practices that resulted in the systematic underpayment of wages to
16 Plaintiff and the Aggrieved Employees, including minimum and overtime wages. Defendants also
17 implemented policies that prohibited Plaintiff and the Aggrieved Employees from accurately
18 recording the actual time worked, resulting in a failure to pay Plaintiff and the Aggrieved
19 Employees all wages owed. Moreover, and as a matter of policy and/or practice, Employer failed
20 to pay overtime to Plaintiff and the Aggrieved Employees for all overtime hours worked based
21 on regular rates of pay correctly calculated to include all applicable remuneration. In addition,
22 Defendants routinely failed to permit Plaintiff and the Aggrieved Employees to take timely and
23 duty-free meal periods and rest periods in violation of California law. Defendants also failed to
24 reimburse Plaintiff and the Aggrieved Employees for all necessary business-related expenses.

25 16. Throughout the time period involved in this case, Defendants have implemented
26 policies and practices which failed to provide Plaintiff and the Aggrieved Employees with timely
27 and duty-free meal periods. Defendants routinely failed to relieve Plaintiff and the Aggrieved
28 Employees of all duties during their meal periods, regularly failed to relinquish control over

1 Plaintiff and the Aggrieved Employees during their meal periods, regularly failed to permit
2 Plaintiff and the Aggrieved Employees a reasonable opportunity to take their meal periods, and
3 regularly impeded or discouraged Plaintiff and the Aggrieved Employees from taking thirty (30)
4 minute uninterrupted meal breaks no later than the end of their fifth hour of work and/or from
5 taking a second thirty (30) minute uninterrupted meal break no later than their tenth hour of work
6 for shifts lasting more than ten (10) hours. Defendants also failed to maintain accurate records of
7 meal periods taken by Plaintiff and the Aggrieved Employees.

8 17. Throughout the time period involved in this case, Defendants did not adequately
9 inform Plaintiff and the Aggrieved Employees of their right to take meal periods under California
10 law. Moreover, Defendants systematically disregarded their own written policies regarding the
11 provision and timing of meal periods for Plaintiff and the Aggrieved Employees. Instead,
12 Defendants' actual policy and practice was to schedule Plaintiff and the Aggrieved Employees in
13 a way the prohibited them from taking timely and duty-free meal periods, and to require Plaintiff
14 and the Aggrieved Employees to work through their meal periods, for which they were not
15 compensated. In addition, Defendant required Plaintiff and the Aggrieved Employees to remain
16 on-call and respond to work-related requests at all times, including during meal periods, which
17 included monitoring and responding to telephone calls, radios or other communication devices,
and responding to in-person verbal interruption.

18 18. Throughout the time period involved in this case, Defendants failed to pay Plaintiff
19 and the Aggrieved Employees premium wages for meal periods that were missed, late,
20 interrupted, or shortened in violation of California law. Defendants knew or should have known
21 that Plaintiff and the Aggrieved Employees were entitled to receive all meal periods or payment
22 of one additional hour of pay at their regular rate of pay when a meal period was missed, short,
23 late, and/or interrupted. Notwithstanding this knowledge, Defendants routinely failed to provide
24 legally compliant meal periods to Plaintiff and the Aggrieved Employees, and routinely failed
25 pay one additional hour of pay to Plaintiff and the Aggrieved Employees at their regular rate of
26 pay when a meal period was missed, short, late, and/or interrupted.

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

7 20. Throughout the time period involved in this case, Defendants did not adequately
8 inform Plaintiff and the Aggrieved Employees of their right to take rest periods under California
9 law. Moreover, Defendants systematically disregarded their own written policies regarding the
10 provision and timing of rest periods for Plaintiff and the Aggrieved Employees. Instead,
11 Defendants' actual policy and practice was to schedule Plaintiff and the Aggrieved Employees in
12 a way that regularly prohibited them from taking timely and duty free rest periods, and to regularly
13 require Plaintiff and the Aggrieved Employees to work through their rest periods. In addition,
14 Defendant required Plaintiff and the Aggrieved Employees to remain on-call and respond to
15 work-related requests at all times, including during rest periods, which included monitoring and
16 responding to telephone calls, radios or other communication devices, and responding to in-
person verbal interruption.

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

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

4 23. Throughout the time period involved in this case, Defendants employed a time
5 rounding policy that was not neutral and designed to consistently round time in Defendants' favor,
6 ensuring that Plaintiff and the Aggrieved Employees were oftentimes not paid for all time worked.

7 24. Throughout the time period involved in this case, Defendants implemented policies
8 that prohibited Plaintiff and the Aggrieved Employees from accurately recording the actual time
9 worked, resulting in a failure to pay Plaintiff and the Aggrieved Employees all wages owed.

10 25. Throughout the time period involved in this case, Plaintiff and the Aggrieved
11 Employees worked more than eight (8) hours in a day, and/or forty (40) hours in a week.

12 26. Throughout the time period involved in this case, Defendants regularly failed to
13 pay overtime compensation to Plaintiff and the Aggrieved Employees when they worked in
14 excess of eight (8) hours in a single work day and/or forty (40) hours in a single work week.
15 Defendants knew or should have known that Plaintiff and the Aggrieved Employees were entitled
16 to receive certain wages for overtime compensation and that they were not receiving wages for
17 overtime compensation.

18 27. Throughout the time period involved in this case, Defendants regularly failed to
19 pay Plaintiff and the Aggrieved Employees at least minimum wages for all hours worked.
20 Defendants knew or should have known that Plaintiff and the Aggrieved Employees were entitled
21 to receive at least minimum wages for all hours worked and that they were not receiving at least
22 minimum wages for all hours worked. Defendants' failure to pay minimum wages included, *inter*
23 *alia*, failing to pay Plaintiff and the Aggrieved Employees at the required minimum wage pursuant
24 to California law, requiring Plaintiff and the Aggrieved Employees to perform work off the clock,
25 implementing time rounding policies that resulted in the systematic underpayment of wages to
26 Plaintiff and the Aggrieved Employees, and failing to accurately record all actual time worked by
27 Plaintiff and the Aggrieved Employees, which resulted in a failure to pay Mr. Aparicio and
28 Aggrieved Employees for all hours actually worked, including minimum wages, straight time

1 wages and overtime wages.

2 28. Throughout the time period involved in this case, Defendants regularly failed to
3 pay overtime to Plaintiff and the Aggrieved Employees for all overtime hours worked based on
4 regular rates of pay correctly calculated to include all applicable remuneration.

5 29. Throughout the time period involved in this case, Defendants regularly failed to
6 pay Plaintiff and the Aggrieved Employees all wages owed to them upon discharge or resignation.
7 Defendant knew or should have known that Plaintiff and the Aggrieved Employees were entitled
8 to receive all wages owed to them upon termination within the time permissible under California
9 Labor Code section 202. Plaintiff and the Aggrieved Employees did not receive payment of all
10 final wages owed to them upon discharge or resignation, including overtime compensation and
11 minimum wages within any time permissible under California Labor Code section 202.

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

19 31. Throughout the time period involved in this case, Defendants regularly failed to
20 provide complete or accurate wage statements to Plaintiff and the Aggrieved Employees.
21 Defendants knew or should have known that Plaintiff and the Aggrieved Employees were entitled
22 to receive complete and accurate wage statements in accordance with California law, but, in fact,
23 they did not receive complete and accurate wage statements from Defendants. The deficiencies
24 included, *inter alia*, the failure to include the total number of hours worked and the actual gross
25 wages earned.

26 32. Throughout the time period involved in this case, Defendants regularly failed to
27 keep complete or accurate payroll records for Plaintiff and the Aggrieved Employees. Defendants
28 knew or should have known that Defendants were required keep complete and accurate payroll

1 records for Plaintiff and the Aggrieved Employees in accordance with California law, but, in fact,
2 did not keep complete and accurate payroll records.

3 33. Throughout the time period involved in this Case, Defendants failed to reimburse
4 Plaintiff and the Aggrieved Employees for all necessary business-related expenses, including but
5 not limited to use of their personal cell phones for work-related purposes. Defendants knew or
6 should have known that Defendants were required to reimburse Plaintiff and the Aggrieved
7 Employees for all necessary business-related expenses and costs, but, in fact, failed to do so in
8 violation of California law.

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

14 35. On or about May 11, 2020, Plaintiff notified Defendants via certified mail and
15 filed an online PAGA claim notice with the California Labor and Workforce Development
16 Agency ("LWDA") identifying Defendants' violations of the California Labor Code identified in
17 this Complaint and Plaintiff's intent to bring a claim for civil penalties under California Labor
18 Code section 2698 *et seq.* in accord with Cal. Lab. Code section 2699.3. More than 65 days has
19 passed since the submission of the PAGA claim notice, and the LWDA has not responded to
20 Plaintiff's PAGA claim notice.

21 **FIRST CAUSE OF ACTION**

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

23 **(Against All Defendants)**

24 36. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and
25 every allegation set forth above.

26 37. Plaintiff brings his first cause of action as a representative action on behalf of
27 herself and similarly Aggrieved Employees in the capacity as a private attorney general pursuant
28 to the Private Attorneys General Act of 2004, California Labor Code section 2698, et seq.

1 (“PAGA”).

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

10 39. Plaintiff was employed by Defendants and the Labor Code violations alleged above
11 were committed against him during his time of employment. Plaintiff and the other non-exempt
12 employees of Defendants are therefore “aggrieved employees” as defined by California Labor
13 Code section 2699(c) in that they are all current or former employees of Defendants, and one or
14 more of the alleged violations were committed against them.

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

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

- e. Failing to timely pay Plaintiff and the Aggrieved Employees all wages at end of their employment in violation of Labor Code § 203.
- f. Failing to timely pay Plaintiff and the Aggrieved Employees all wages owed during employment in violation of Labor Code § 204.
- g. Failing to furnish Plaintiff and the Aggrieved Employees with complete, accurate, itemized wage statements in violation of Labor Code § 226;
- h. Failing to maintain accurate records relating to Plaintiff and the Aggrieved Employees' work periods, meal periods, total daily hours, hours per pay period, and applicable pay rates in violation of Labor Code § 1174(d) and the applicable IWC Wage Order.
- i. Failing to reimburse Plaintiff and the Aggrieved Employees for necessary business-related expenses in violation of Labor Code §§ 2800 and 2802

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

42. Plaintiff has exhausted his administrative remedies pursuant to Labor Code § 2699.3. On May 11, 2020, Plaintiff, through his counsel of record, by online filing with the Labor and Workforce Development Agency ("LWDA") and by certified mail to the Defendants, notified Defendants and the LWDA of the specific provisions of the Labor Code and IWC Wage Orders that Defendants have violated, including the facts and theories to support the violations, and of Plaintiff's intent to bring a claim for civil penalties under PAGA. Plaintiff also paid the filing fee

1 required under Labor Code § 2699.3. As of the filing of this Complaint, more than 65 days have
2 elapsed since the mailing of Plaintiff's May 11, 2020 notice, and the Labor and Workforce
3 Development Agency has not indicated that it intends to investigate the violations discussed in the
4 notice. Accordingly, Plaintiff may commence a civil action to recover penalties for himself and
5 other Aggrieved Employees pursuant to Labor Code § 2699.3.

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

10 **PRAYER FOR RELIEF**

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

14 **As to the First Cause of Action**

- 15 1. For statutory attorneys' fees and costs pursuant to 2699(g)(1) of California Labor
16 Code;
17 2. For the imposition of civil penalties pursuant to California Labor Code §§ 2699,
18 210, 558, 226, 226.3, 1174.5, 1197.1, 2802 and all other penalties allowed by the California Labor
19 Code and/or other applicable statutes; and
20 3. For such other relief as the Court deems just and proper

21 Dated: July 16, 2020

PROTECTION LAW GROUP

22
23 By: 

24 Heather Davis
25 Amir Nayebdadash
26 S. Emi Minne

27 Attorneys for Plaintiff
28 HERIBERTO APARICIO

DEMAND FOR TRIAL BY JURY

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

Dated: July 16, 2020

PROTECTION LAW GROUP

By: 

Heather Davis
Amir Nayebdadash
S. Emi Minne

Attorneys for Plaintiff
HERIBERTO APARICIO