

SUMMONS (CITACION JUDICIAL)

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**

Kforce Inc.; and Does 1-50, inclusive,

**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

Bernardo Buchsbaum, on behalf of himself and all other
similarly aggrieved employees,

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

09/03/2020 at 03:31:13 PM

Clerk of the Superior Court
By Linda Sheffa, Deputy Clerk

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is: Hall of Justice
(El nombre y dirección de la corte es):

330 West Broadway San Diego, CA 92101

CASE NUMBER:
(Número del Caso):

37-2020-00030994-CU-OE-CTL

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Jonathan M. Lebe, 777 S. Alameda Street, 2nd Floor, Los Angeles, CA 90021

DATE: 09/04/2020
(Fecha)

Clerk, by
(Secretario)

L. Sheffa
L. Sheffa

, Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):
3. ☐ on behalf of (specify):

under: ☐ CCP 416.10 (corporation)	☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation)	☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership)	☐ CCP 416.90 (authorized person)
☐ other (specify):	
4. ☐ by personal delivery on (date):

[SEAL]



Jonathan M. Lebe (State Bar No. 284605)
Jon@lebelaw.com
LEBE LAW, APLC
777 S. Alameda Street, Second Floor
Los Angeles, CA 90021
Telephone: (213) 358-7046

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
09/03/2020 at 03:31:13 PM
Clerk of the Superior Court
By Linda Sheffa, Deputy Clerk

Attorneys for Plaintiff Bernardo Buchsbaum, on
behalf of himself and all other similarly aggrieved
employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO

Bernardo Buchsbaum, on behalf of himself and
all other similarly aggrieved employees,

Plaintiff,

vs.

Kforce Inc.; and Does 1-50, inclusive,
Defendants.

CASE NO.: 37-2020-00030994-CU-OE-CTL

**REPRESENTATIVE COMPLAINT
FOR RECOVERY OF CIVIL
PENALTIES PURSUANT TO THE
PRIVATE ATTORNEYS GENERAL
ACT ("PAGA")**

(1) PAGA Civil Penalties for
Violations of Labor Code §§ 204, 210
and the Applicable Wage Order for
Failure to Pay All Wages;

(2) PAGA Civil Penalties for
Violations of Labor Code §§ 1194,
1197.1 and the Applicable Wage Order
for Failure to Pay All Minimum Wages;

(3) PAGA Civil Penalties for
Violations of Labor Code §§ 510, 1194,
1198 and the Applicable Wage Order for
Failure to Pay All Overtime Wages;

(4) PAGA Civil Penalties for
Violations of Labor Code §§ 226.7, 512
and the Applicable Wage Order for
Failure to Provide Timely and Compliant
Meal Periods;

(5) PAGA Civil Penalties for Violations of Labor Code § 226.7, and the Applicable Wage Order for Failure to Provide Timely and Compliant Rest Periods;

(6) PAGA Civil Penalties for Violations of Labor Code § 2802 and the Applicable Wage Order for Failure to Reimburse All Reasonable and Necessary Business Expenses;

(7) PAGA Civil Penalties for Violations of Labor Code §§ 226(a), 226.3 and the Applicable Wage Order for Failure to Provide Accurate and Itemized Wage Statements; and

(8) PAGA Civil Penalties for Violations of Labor Code §§ 201-203, 227.3 for Failure to Pay Unused Vested Vacation Wages.

DEMAND FOR JURY TRIAL

Plaintiff Bernardo Buchsbaum (hereinafter “Plaintiff”) on behalf of himself and all others similarly aggrieved brings this Private Attorneys General Act (“PAGA”) Representative Action Complaint against Defendant Kforce Inc. (hereinafter “Defendant Kforce”) and Does 1 through 50 (collectively referred to as “Defendants”), for violations of the California Labor Code, including without limitation, failure to pay all minimum and overtime wages owed, failure to provide off-duty meal periods, failure to provide off-duty rest breaks, failure to reimburse business expenses, failure to pay vested vacation wages, and failure to provide accurate itemized wage statements, as follows:

INTRODUCTION

1. Plaintiff brings this PAGA representative action against Defendant Kforce, a business which provides staffing and recruiting services to companies. Plaintiff is a former employee of Defendants. Plaintiff seeks to recover civil penalties for all California-based

1 “aggrieved employees” during the “Relevant Time Period” (defined as April 6, 2019¹ up to and
2 including the date of commencement of trial) who incurred wage and hour violations and losses
3 as hereinafter described. Attached hereto as Exhibit 1 is a true and correct copy of the Plaintiff’s
4 PAGA notice.

5 2. Pursuant to Labor Code § 2699.3, on June 26, 2020, Plaintiff gave written notice
6 of Defendants’ violations of Labor Code §§ 201-204, 226(a), 226.3, 226.7, 227.3, 558, 510, 512,
7 1174, 1194, 1197, 1197.1, and 2802 to the California Labor and Workforce Development Agency
8 (“LWDA”). Plaintiff also gave written notice of said Labor Code violations to Defendants via
9 certified mail. As of the date of the filing of this Complaint, Plaintiff has not received any response
10 from the LWDA indicating that it intends to investigate these claims. Accordingly, Plaintiff has
11 exhausted all notice requirements under the PAGA.

12 3. Defendants failed to provide Plaintiff and other employees all their earned wages, in
13 violation of, among others, Labor Code §§ 204, 210, 1194 and the applicable Industrial Welfare
14 Commission Wage Order (“the applicable Wage Order”), as well as pay liquidated damages owed
15 under Labor Code § 1194.2. Defendants failed to maintain a policy that compensates its employees
16 for all hours worked, including overtime. Many aggrieved employees were misclassified by
17 Defendants as exempt from overtime. Those misclassified aggrieved employees earned a salary and
18 were not paid any overtime. Additionally, Defendants have failed to pay hourly aggrieved
19 employees for all overtime hours worked, including off-the-clock work which Defendants required
20 their employees to perform during meal periods. Further, Defendants failed to pay Plaintiff and
21 aggrieved employees all overtime and double-time wages earned at the correct regular rate because
22 they failed to include commissions and other non-discretionary performance-based pay in the regular
23 rate of pay.

24 4. Defendants employed Plaintiff and other similarly aggrieved employees for work
25 periods of more than five hours without a meal period of not less than thirty (30) minutes, and
26

27 ¹ The statute of limitations for this matter was tolled pursuant to Cal. Rules of Court, Appendix I,
28 Emergency Rule No. 9.

1 failed to compensate Plaintiff and other similarly aggrieved employees for these missed and/or
2 noncompliant meal periods, in violation of Labor Code §§ 201-203, 226.7, 512(a), 1198, and the
3 applicable Wage Order. Plaintiff and other similarly aggrieved employees consistently worked
4 through their meal periods, regularly had their meal periods interrupted, were provided with meal
5 periods that were often less than thirty minutes, and/or were regularly provided with meal periods
6 after the end of the fifth hour of their shifts.

7 5. Defendants employed Plaintiff and other similarly aggrieved employees for work
8 periods of four hours, or major fraction thereof, without rest breaks of ten (10) minutes' net rest
9 time, and failed to compensate Plaintiff and other aggrieved employees for missed and/or
10 noncompliant rest periods, in violation of Labor Code §§ 201-203, 226.7, 1198 and the applicable
11 Wage Order. On information and belief, Plaintiff alleges that Plaintiff and other similarly aggrieved
12 employees almost never received rest periods. On occasions when Plaintiff and other similarly
13 aggrieved employees took rest breaks, they were regularly untimely, interrupted, less than ten
14 minutes, and/or were on duty. In lieu of the missed and/or noncompliant rest breaks, Plaintiff and
15 other aggrieved employees were not provided with any premium compensation as required by the
16 Labor Code.

17 6. In order to perform their jobs for Defendants, Plaintiff and other similarly aggrieved
18 employees were required to make use of their own home-internet connection and use their personal
19 cellphones for business-related purposes and other home office expenses, including without
20 limitation, to coordinate and communicate with customers and with other employees. However,
21 Defendants failed to reimburse Plaintiff and other aggrieved employees for said business-related
22 expenses in violation of Labor Code § 2802, and the applicable Wage Order.

23 7. Defendants failed to provide Plaintiff and other similarly aggrieved employees with
24 accurate itemized wage statements, in violation of Labor Code §§ 226(a), 1174(d), 1198 and the
25 applicable Wage Order. As a result of Defendants' wage and hour violations alleged above,
26 Defendants failed to provide accurate itemized wage statements to Plaintiff and other aggrieved
27 employees that identified the correct wages earned, all hours worked at each applicable hourly rate,
28 all meal and rest periods premiums, gross and net wages earned, total hours worked, and the correct

1 calculation of overtime wages.

2 8. Defendants failed to provide Plaintiff and other similarly aggrieved employees their
3 accrued, unused vacation wages upon cessation of employment in violation of Labor Code §§ 201-
4 203 and 227.3.

5 9. Pursuant to Labor Code § 2699(a), Plaintiff is an “aggrieved employee” because he
6 was employed by the alleged violator and had one or more of the alleged violations committed
7 against him. Therefore, Plaintiff is properly suited to represent the interests of all other aggrieved
8 employees.

9 10. Plaintiff is informed and believes, and based thereon alleges, that because the
10 Defendants used identical procedures for all employees, there are many other aggrieved employees
11 who suffered the above violations including underpayment of wages, non-compliant meal periods
12 and rest breaks, failure to maintain proper timekeeping records and provide accurate itemized wage
13 statements, failure to reimburse business expenses, and failure to pay unused vested vacation
14 wages, for which recovery under PAGA is owed.

15 **JURISDICTION AND VENUE**

16 11. The relief sought by Plaintiff on behalf of himself and the aggrieved employees
17 below exceeds the minimal jurisdictional limits of the Superior Court and will be established
18 according to proof at trial. The Court has personal jurisdiction over each of the parties because
19 they are either citizens of this State, doing business in this State or otherwise have minimum
20 contacts with this State.

21 12. The Court has jurisdiction over the violations of California Labor Code §§ 201-
22 204, 226(a), 226.7, 227.3, 510, 512, 1194, 1197, 1197.1, 2698, *et seq.*, and 2802.

23 13. Based on information and belief, Plaintiff allege that this entire action arises solely
24 under the laws of the State of California and applicable regulations of the health, safety and wages
25 of the employees residing in the State of California. Plaintiff allege, on information and belief,
26 that no federal question is raised. Moreover, PAGA civil penalty actions are not subject to federal
27 jurisdiction.

14. Venue is proper in San Diego County because, upon information and belief, Defendants reside, transact business, and/or have offices in this County, and the acts and omissions alleged herein took place in this County.

PARTIES

Plaintiff

15. Plaintiff is a former employee of Defendants. Plaintiff was employed by Defendants as a recruiter or similar position within the past year.

Defendants

16. Defendant Kforce is a corporation organized under the laws of the state of Florida. Defendant Kforce provides staffing and recruiting services to companies.

17. Plaintiff is unaware of the true names or capacities of the defendants sued herein under the fictitious names Does 1 through 50 but will seek leave of this Court to amend this Complaint and serve such fictitiously named defendants once their names and capacities become known.

18. Plaintiff is informed and believes, and thereon alleges, that each defendant acted in all respects pertinent to this action as the agent of the other defendant, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each defendant are legally attributable to the other defendant. Furthermore, defendants in all respects acted as the employer and/or joint employer of Plaintiff and the class members.

19. Plaintiff is informed and believes, and thereon alleges, that each and all of the acts and omissions alleged herein were performed by, or are attributable to, Defendants and/or Does 1 through 50, acting as the agent or alter ego for the other, with legal authority to act on the other's behalf. The acts of any and all Defendants were in accordance with, and represent, the official policy of Defendants.

20. At all relevant times, Defendants, and each of them, acted within the scope of such agency or employment, or ratified each and every act or omission complained of herein. At all relevant times, Defendants, and each of them, aided and abetted the acts and omissions of each and all the other Defendants in proximately causing the damages herein alleged.

21. Plaintiff is informed and believes, and thereon alleges, that each of said Defendants is in some manner intentionally, negligently or otherwise responsible for the acts, omissions, occurrences and transactions alleged herein.

FIRST CAUSE OF ACTION

**PAGA CIVIL PENALTIES FOR VIOLATIONS OF LABOR CODE § 204, 210 AND THE
APPLICABLE WAGE ORDER FOR FAILURE TO PAY ALL WAGES
(BY PLAINTIFF AND ALL AGGRIEVED EMPLOYEES AGAINST ALL
DEFENDANTS)**

22. Plaintiff incorporate the preceding paragraphs of this Complaint expressly herein by this reference as if all prior paragraphs were set forth in full, including the Notice to the LWDA dated June 26, 2020.

23. Labor Code section 204(a) provides: “All wages, other than those mentioned in Section 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the Employers as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month.”

24. Labor Code section 210(a) provides: “(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 Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, and 1197.5, 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, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.” [Emphasis added.]

25. This statute is listed in Labor Code section 2699.5 as a statute for which violation of has been established to be subject to the default civil penalty provisions in Labor Code section 2699(f)(2). That section provides: “(f) For all provisions of this code except those for which a civil

1 penalty is specifically provided, there is established a civil penalty for a violation of these
2 provisions, as follows: ... (2) If, at the time of the alleged violation, the person employs one or
3 more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee per
4 pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee
5 per pay period for each subsequent violation.”

6 26. Here, based on the foregoing, Defendants deprived Plaintiff and other similarly
7 aggrieved employees of their rightfully earned compensation, including overtime compensation
8 and hours at the minimum wage rate, as a direct and proximate result of Defendants’ failure to pay
9 said compensation. Consequently, Plaintiff, on behalf of himself and other aggrieved employees,
10 intend to seek civil penalties pursuant to the PAGA for the alleged violations.

11 27. Defendants also regularly required Plaintiff and other aggrieved employees to work
12 off-the-clock during meal and rest periods, and did not pay Plaintiff and other aggrieved employees
13 for this compensable time.

14 28. Accordingly, Plaintiff and the aggrieved employees seek recovery of any and all
15 applicable civil penalties on behalf of the State of California pursuant to the PAGA, Labor Code
16 § 2699, *et seq.* Plaintiff also seeks recovery of attorneys’ fees pursuant to Labor Code § 2699(g)
17 and/or Code of Civil Procedure § 1021.5 to the extent enforcement of California labor laws and
18 applicable regulations is determined to be in the public interest and consistent with the Legislative
19 intent stated in Labor Code § 90.5, in an amount according to proof and subject to Court approval.

20 **SECOND CAUSE OF ACTION**

21 **PAGA CIVIL PENALTIES FOR VIOLATIONS OF LABOR CODE §§ 1194,**
22 **1197.1 AND THE APPLICABLE WAGE ORDER FOR**
23 **FAILURE TO PAY ALL MINIMUM WAGES**
24 **(BY PLAINTIFF AND ALL AGGRIEVED EMPLOYEES AGAINST ALL**
25 **DEFENDANTS)**

26 29. Plaintiff incorporates the preceding paragraphs of this Complaint expressly herein
27 by this reference as if all prior paragraphs were set forth in full, including the Notice to the LWDA
28 dated June 26, 2020.

1 30. The Labor Code and the Wage Order provide that in the State of California an
2 employer must pay a minimum wage to an employee, which is eight dollars (\$8.00) per hour for
3 all hours worked effective January 1, 2008, nine dollars (\$9.00) per hour for all hours worked
4 effective July 1, 2014, ten dollars (\$10.00) per hour for all hours worked effective January 1, 2016,
5 ten dollars and fifty cents (\$10.50) per hour for all hours worked effective January 1, 2017, eleven
6 dollars (\$11.00) per hour for all hours worked effective January 1, 2018, twelve dollars (\$12.00)
7 per hour for all hours worked effective January 1, 2019, and thirteen dollars (\$13.00) per hour for
8 all hours worked effective January 1, 2020.

9 31. Labor Code section 1194 states: “Notwithstanding any agreement to work for a
10 lesser wage, any employee receiving less than the legal minimum wage or the legal overtime
11 compensation applicable to the employee is entitled to recover in a civil action the unpaid balance
12 of the full amount of this minimum wage or overtime compensation, including interest thereon,
13 reasonable attorney’s fees, and costs of suit.”

14 32. Here, based on the foregoing, Defendants deprived Plaintiff and other similarly
15 aggrieved employees of their rightfully earned minimum wage compensation, including overtime
16 compensation at the minimum wage rate, as a direct and proximate result of Defendants’ failure
17 to pay said compensation.

18 33. Additionally, as Plaintiff and aggrieved employees have yet to receive their earned
19 wages upon separation of employment, Defendants have also violated Labor Code §§ 201-203.

20 34. Consequently, Plaintiff, on behalf of himself and other aggrieved employees, intend
21 to seek civil penalties pursuant to the PAGA for the alleged violations.

22 35. Accordingly, Plaintiff and the aggrieved employees seek recovery of any and all
23 applicable civil penalties on behalf of the State of California pursuant to the PAGA, Labor Code
24 § 2699, *et seq.* Plaintiff also seeks recovery of attorneys’ fees pursuant to Labor Code § 2699(g)
25 and/or Code of Civil Procedure § 1021.5 to the extent enforcement of California labor laws and
26 applicable regulations is determined to be in the public interest and consistent with the Legislative
27 intent stated in Labor Code § 90.5, in an amount according to proof and subject to Court approval.

28 ///

THIRD CAUSE OF ACTION

**PAGA CIVIL PENALTIES FOR VIOLATIONS OF LABOR CODE §§ 510,
1194, 1198 AND THE APPLICABLE WAGE ORDER FOR
FAILURE TO PAY ALL OVERTIME WAGES
(BY PLAINTIFF AND ALL AGGRIEVED EMPLOYEES AGAINST ALL
DEFENDANTS)**

36. Plaintiff incorporate the preceding paragraphs of this Complaint expressly herein by this reference as if all prior paragraphs were set forth in full, including the Notice to the LWDA dated June 26, 2020.

37. Labor Code section 510(a) states in pertinent part that: "Eight hours of labor constitutes a day's work. 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. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee."

38. Labor Code section 1194 states: "Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit."

39. Each of these statutes is listed in Labor Code section 2699.5 as a statute for which violation of has been established to be subject to the default civil penalty provisions in Labor Code section 2699(f)(2). That section provides: "(f) For all provisions of this code except those for which a civil penalty is specifically provided, there is established a civil penalty for a violation of these provisions, as follows: ... (2) If, at the time of the alleged violation, the person employs one or more employees, the civil penalty is 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."

1 40. Here, based on the foregoing, Defendants deprived Plaintiff and other similarly
2 aggrieved employees of their rightfully earned overtime compensation as a direct and proximate
3 result of Defendants' failure to pay said compensation.

4 41. Specifically, Defendants have maintained a policy that fails to adhere to the
5 California Labor Code, and by its own terms only provides overtime pay for time worked over
6 forty (40) hours in a given week, instead of providing overtime pay for both hours worked over
7 eight (8) in a given day, and for hours worked over forty (40) in a given week. In addition,
8 Defendants have also failed to pay Plaintiff and other aggrieved employees for all overtime hours
9 worked, including all off-the-clock work performed during meal periods.

10 42. Additionally, as Plaintiff and aggrieved employees have yet to receive their earned
11 wages upon separation of employment, Defendants have also violated Labor Code §§ 201-203.

12 43. Consequently, Plaintiff, on behalf of himself and other aggrieved employees, intend
13 to seek civil penalties pursuant to the PAGA for the alleged violations.

14 44. Accordingly, Plaintiff and the aggrieved employees seek recovery of any and all
15 applicable civil penalties on behalf of the State of California pursuant to the PAGA, Labor Code
16 § 2699, *et seq.* Plaintiff also seeks recovery of attorneys' fees pursuant to Labor Code § 2699(g)
17 and/or Code of Civil Procedure § 1021.5 to the extent enforcement of California labor laws and
18 applicable regulations is determined to be in the public interest and consistent with the Legislative
19 intent stated in Labor Code § 90.5, in an amount according to proof and subject to Court approval.

20 **FOURTH CAUSE OF ACTION**

21 **PAGA CIVIL PENALTIES FOR VIOLATIONS OF LABOR CODE §§ 226.7, 512**

22 **AND THE APPLICABLE WAGE ORDER FOR FAILURE TO PROVIDE**

23 **TIMELY AND COMPLIANT MEAL PERIODS**

24 **(BY PLAINTIFF AND ALL AGGRIEVED EMPLOYEES AGAINST ALL**

25 **DEFENDANTS)**

26 45. Plaintiff incorporate the preceding paragraphs of this Complaint expressly herein
27 by this reference as if all prior paragraphs were set forth in full, including the Notice to the LWDA
28 dated June 26, 2020.

1 46. Because Plaintiff and other similarly aggrieved employees were non-exempt
2 employees, the Defendants were required to comply with Labor Code sections 226.7 and 512, and
3 the applicable Wage Order.

4 47. Labor Code section 226.7(b) provides: “An Employers shall not require an
5 employee to work during a meal or rest or recovery period mandated pursuant to an applicable
6 statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the
7 Occupational Safety and Health Standards Board, or the Division of Occupational Safety and
8 Health.”

9 48. Labor Code section 226.7(c) provides: “If an Employers fails to provide an
10 employee a meal or rest or recovery period in accordance with a state law, including, but not
11 limited to, an applicable statute or applicable regulation, standard, or order of the Industrial
12 Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of
13 Occupational Safety and Health, the Employers shall pay the employee one additional hour of pay
14 at the employee’s regular rate of compensation for each workday that the meal or rest or recovery
15 period is not provided.”

16 49. Labor Code section 512(a) provides: “(a) An Employers shall not employ an
17 employee for a work period of more than five hours per day without providing the employee with
18 a meal period of not less than 30 minutes, except that if the total work period per day of the
19 employee is no more than six hours, the meal period may be waived by mutual consent of both the
20 Employers and employee. An Employers shall not employ an employee for a work period of more
21 than 10 hours per day without providing the employee with a second meal period of not less than
22 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period
23 may be waived by mutual consent of the Employers and the employee only if the first meal period
24 was not waived.”

25 50. Here, based on the foregoing, Defendants employed Plaintiff and aggrieved
26 employees for work periods of more than five hours without a timely meal period of not less than
27 thirty (30) minutes, where they were free from employer control, and failed to compensate them
28 for such meal periods, as required by Labor Code § 226.7 and the applicable Wage Order.

1 51. Specifically, Plaintiff and other aggrieved employees were regularly required to
2 consistently work through their meal periods, regularly had their meal periods interrupted, were
3 provided with meal periods that were often less than thirty minutes, and/or were regularly provided
4 with meal periods after the end of the fifth hour of their shifts. Defendants failed to pay premium
5 compensation in lieu of these missed and/or noncompliant meal periods,

6 52. Additionally, as Plaintiff and aggrieved employees have yet to receive their unpaid
7 meal period premium compensation upon separation of employment, Defendants have also
8 violated Labor Code §§ 201-203.

9 53. Labor Code sections 226.7 and 512 are statutes specifically listed in Labor Code
10 section 2699.5 as statutes for which violations of have been established to be subject to the default
11 civil penalty provisions in Labor Code section 2699(f)(2). That section provides: “(f) For all
12 provisions of this code except those for which a civil penalty is specifically provided, there is
13 established a civil penalty for a violation of these provisions, as follows: ... (2) If, at the time of
14 the alleged violation, the person employs one or more employees, the civil penalty is one hundred
15 dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred
16 dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.” Thus,
17 Defendants are subject to assessment of civil penalties pursuant to Labor Code section 2699(f)(2).

18 54. Accordingly, Plaintiff and the aggrieved employees seek recovery of any and all
19 applicable civil penalties on behalf of the State of California pursuant to the PAGA, Labor Code
20 § 2699, *et seq.* Plaintiff also seeks recovery of attorneys’ fees pursuant to Labor Code § 2699(g)
21 and/or Code of Civil Procedure § 1021.5 to the extent enforcement of California labor laws and
22 applicable regulations is determined to be in the public interest and consistent with the Legislative
23 intent stated in Labor Code § 90.5, in an amount according to proof and subject to Court approval.

24 ///

25 ///

26 ///

27 ///

28 ///

FIFTH CAUSE OF ACTION

**PAGA CIVIL PENALTIES FOR VIOLATIONS OF LABOR CODE § 226.7 AND THE
APPLICABLE WAGE ORDER, FOR FAILURE TO PROVIDE TIMELY
AND COMPLIANT REST PERIODS
(BY PLAINTIFF AND ALL AGGRIEVED EMPLOYEES AGAINST ALL
DEFENDANTS)**

55. Plaintiff incorporate the preceding paragraphs of this Complaint expressly herein by this reference as if all prior paragraphs were set forth in full, including the Notice to the LWDA dated June 26, 2020.

56. Because Plaintiff and other similarly aggrieved employees were non-exempt employees, the Defendants were required to comply with Labor Code section 226.7, and the applicable Wage Order.

57. Labor Code section 226.7(b) provides: “An Employers shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.”

58. Labor Code section 226.7(c) provides: “If an Employers fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the Employers shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each workday that the meal or rest or recovery period is not provided.”

59. Here, based on the foregoing, Defendants employed Plaintiff and aggrieved employees for work periods of four hours or major fraction thereof without timely rest periods of ten minutes where they were free of employer control, and failed to compensate them for such rest periods, as required by Labor Code section 226.7 and the applicable Wage Order.

1 60. Specifically, Plaintiff and aggrieved employees almost never received rest periods.
2 On occasions when Plaintiff and aggrieved employees were provided with rest breaks, they were
3 regularly untimely, interrupted, less than ten minutes, and/or were on duty. In lieu of the missed
4 and/or noncompliant rest breaks, Plaintiff and other aggrieved employees were not provided with
5 any premium compensation as required by the Labor Code.

6 61. Additionally, as Plaintiff and aggrieved employees have yet to receive their unpaid
7 rest period premium compensation upon separation of employment, Defendants have also violated
8 Labor Code §§ 201-203.

9 62. Labor Code sections 226.7 is a statute specifically listed in Labor Code section
10 2699.5 as statutes for which violations of have been established to be subject to the default civil
11 penalty provisions in Labor Code section 2699(f)(2). That section provides: “(f) For all provisions
12 of this code except those for which a civil penalty is specifically provided, there is established a
13 civil penalty for a violation of these provisions, as follows: ... (2) If, at the time of the alleged
14 violation, the person employs one or more employees, the civil penalty is one hundred dollars
15 (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars
16 (\$200) for each aggrieved employee per pay period for each subsequent violation.” Thus,
17 Defendants are subject to assessment of civil penalties pursuant to Labor Code section 2699(f)(2).

18 63. Accordingly, Plaintiff and the aggrieved employees seek recovery of any and all
19 applicable civil penalties on behalf of the State of California pursuant to the PAGA, Labor Code
20 § 2699, *et seq.* Plaintiff also seeks recovery of attorneys’ fees pursuant to Labor Code § 2699(g)
21 and/or Code of Civil Procedure § 1021.5 to the extent enforcement of California labor laws and
22 applicable regulations is determined to be in the public interest and consistent with the Legislative
23 intent stated in Labor Code § 90.5, in an amount according to proof and subject to Court approval.

24 ///

25 ///

26 ///

27 ///

28 ///

SIXTH CAUSE OF ACTION

**PAGA CIVIL PENALTIES FOR VIOLATIONS OF LABOR CODE § 2802 AND THE
APPLICABLE IWC WAGE ORDER FOR FAILURE TO REIMBURSE ALL
REASONABLE AND NECESSARY BUSINESS EXPENSES
(BY PLAINTIFF AND ALL AGGRIEVED EMPLOYEES AGAINST ALL
DEFENDANTS)**

64. Plaintiff incorporates the preceding paragraphs of this Complaint expressly herein by this reference as if all prior paragraphs were set forth in full, including the Notice to the LWDA dated March 4, 2020.

65. California Labor Code section 2802(a) provides: “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, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.”

66. California Labor Code section 2802(b) provides: “All awards made by a court or by the Division of Labor Standards Enforcement for reimbursement of necessary expenditures under this section shall carry interest at the same rate as judgments in civil actions. Interest shall accrue from the date on which the employee incurred the necessary expenditure or loss.”

67. California Labor Code section 2802(c) provides: “For purposes of this section, the term ‘necessary expenditures or losses shall include all reasonable costs, including, but not limited to, attorney’s fees incurred by the employee enforcing the rights granted by this section.”

68. Business expenses incurred by employees for work are not waivable, and Defendants are liable if the expenses were required in order to perform work. Here, Plaintiff and aggrieved employees were required to use their personal cellphones and home internet for business-related purposes, including without limitation, to coordinate and communicate with clients and other employees. Plaintiff and aggrieved employees incurred expenses in connection with the use of such for business-related purposes. However, Defendants failed to reimburse said business-related expenses in violation of Labor Code § 2802.

1 69. Accordingly, Defendants are subject to assessment of civil penalties pursuant to
2 Labor Code section 2699(f)(2).

3 70. Accordingly, Plaintiff and the aggrieved employees seek recovery of any and all
4 applicable civil penalties on behalf of the State of California pursuant to the PAGA, Labor Code
5 § 2699, *et seq.* Plaintiff also seeks recovery of attorneys' fees pursuant to Labor Code § 2699(g)
6 and/or Code of Civil Procedure § 1021.5 to the extent enforcement of California labor laws and
7 applicable regulations is determined to be in the public interest and consistent with the Legislative
8 intent stated in Labor Code § 90.5, in an amount according to proof and subject to Court approval.

9 **SEVENTH CAUSE OF ACTION**

10 **PAGA CIVIL PENALTIES FOR LABOR CODE §§ 226(a), 226.3 AND**
11 **THE APPLICABLE WAGE ORDER FOR FAILURE TO PROVIDE ACCURATE AND**
12 **ITEMIZED WAGE STATEMENTS**
13 **(BY PLAINTIFF AND ALL AGGRIEVED EMPLOYEES AGAINST ALL**
14 **DEFENDANTS)**

15 71. Plaintiff incorporate the preceding paragraphs of this Complaint expressly herein
16 by this reference as if all prior paragraphs were set forth in full, including the Notice to the LWDA
17 dated June 26, 2020.

18 72. Labor Code section 226(a) provides in pertinent part: “(a) An employer,
19 semimonthly or at the time of each payment of wages, shall furnish to his or her employee, either
20 as a detachable part of the check, draft, or voucher paying the employee’s wages, or separately if
21 wages are paid by personal check or cash, an accurate itemized statement in writing showing (1)
22 gross wages earned, (2) total hours worked by the employee. . . (3) the number of piece-rate units
23 earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions,
24 provided that all deductions made on written orders of the employee may be aggregated and shown
25 as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is
26 paid, . . . (8) the name and address of the legal entity that is the employer . . . and (9) all applicable
27 hourly rates in effect during the pay period and the corresponding number of hours worked at each
28 hourly rate by the employee...”

1 73. Labor Code section 226.3 provides in pertinent part: “Any employer who violates
2 subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty
3 dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000)
4 per employee for each violation in a subsequent citation, for which the employer fails to provide
5 the employee a wage deduction statement or fails to keep the records required in subdivision (a)
6 of Section 226. The civil penalties provided for in this section are in addition to any other penalty
7 provided by law...”

8 74. Here, as a result of Defendants’ wage and hour violations as alleged herein,
9 Defendants failed to provide Plaintiff and aggrieved employees with accurate itemized wage
10 statements showing, among other things, the correct wages earned, all hours worked at each
11 applicable hourly rate, all meal and rest periods premiums, gross and net wages earned, total hours
12 worked, and the correct calculation of overtime wages.

13 75. Defendants systemically failed to provide such wage statements with accurate
14 information and engaged in a policy of failing to pay for all hours actually worked.

15 76. The aforementioned conduct violated Labor Code section 226(a). It also violated
16 the applicable Wage Order on required recordkeeping.

17 77. For violations of the PAGA predicated on Labor Code section 226(a), the penalty
18 provision of Labor Code section 226.3 applies. *Magadia v. Wal-Mart Asscs., Inc.*, 384 F.Supp.3d
19 1058, 1109 (N.D. Cal. 2019); *Raines v. Coastal Pac. Food Dist., Inc.*, 23 Cal. App. 5th 667, 675
20 (2018). Labor Code section 226.3 provides, in pertinent part, that “[a]ny employer who violates
21 subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty
22 dollars (\$ 250) per employee per violation in an initial citation...for which the employer fails to
23 provide the employee with a wage deduction statement or fails to keep the records required in
24 subdivision (a) of Section 226.”

25 78. Consequently, Plaintiff, on behalf of himself and other aggrieved employees, seek
26 to recover civil penalties pursuant to the PAGA and Labor Code section 226.3 for the alleged
27 violations.

28 79. Plaintiff will also seek recovery of attorneys’ fees and litigation expenses pursuant

1 to Labor Code section 2699(g) and/or Code of Civil Procedure section 1021.5 to the extent
2 enforcement of California labor laws and applicable regulations is determined to be in the public
3 interest and consistent with the Legislative intent stated in Labor Code section 90.5, in an amount
4 according to proof and subject to Court approval.

5 **EIGHTH CAUSE OF ACTION**

6 **PAGA CIVIL PENALTIES FOR VIOLATIONS OF LABOR CODE §§ 201-203, 227.3**

7 **FOR FAILURE TO PAY UNUSED, VESTED VACATION WAGES**

8 **(BY PLAINTIFF AND ALL AGGRIEVED EMPLOYEES AGAINST ALL**

9 **DEFENDANTS)**

10 80. Plaintiff incorporate the preceding paragraphs of this Complaint expressly herein
11 by this reference as if all prior paragraphs were set forth in full, including the Notice to the LWDA
12 dated June 26, 2020.

13 81. Labor Code section 201 provides in part: "If an employer discharges an employee,
14 the wages earned and unpaid at the time of discharge are due and payable immediately."

15 82. Labor Code section 202 provides in part: " If an employee not having a written
16 contract for a definite period quits his or her employment, his or her wages shall become due and
17 payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice
18 of his or her intention to quit, in which case the employee is entitled to his or her wages at the time
19 of quitting.

20 83. Labor Code section 203 provides: "If an employer willfully fails to pay, without
21 abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any
22 wages of an employee who is discharged or who quits, the wages of the employee shall continue
23 as a penalty from the due date thereof at the same rate until paid or until an action therefor is
24 commenced; but the wages shall not continue for more than 30 days. An employee who secretes
25 or absents themselves to avoid payment to him or her, or who refuses to receive the payment when
26 fully tendered to him or her, including any penalty then accrued under this section, is not entitled
27 to any benefit under this section for the time during which he or she so avoids payment."

28 84. Labor Code section 203 is a statute listed under Labor Code section 2699.5 for

1 which civil penalties may be recovered under the default civil penalty scheme outlined in Labor
2 Code section 2699(f)(2), cited above.

3 85. Labor Code § 227.3 provides that where an employee is terminated without having
4 taken off his or her vested vacation time, all vested vacation shall be paid to said employee as
5 wages at the final rate of pay upon termination.

6 86. Here, Plaintiff and other similarly aggrieved employees accrued vacation time
7 during their employment with Defendants. Plaintiff and other similarly aggrieved employees did
8 not use all vested vacation time during their employment, and thus have unused vested vacation
9 wages remaining. However, upon the cessation of their employment, Defendants failed to pay
10 Plaintiff and other similarly aggrieved employees their unused accrued vacation wages. Such
11 conduct is a violation of Labor Code § 227.3.

12 87. Accordingly, Plaintiff and the aggrieved employees seek recovery of any and all
13 applicable civil penalties on behalf of the State of California pursuant to the PAGA, Labor Code
14 § 2699, *et seq.* Plaintiff also seeks recovery of attorneys' fees pursuant to Labor Code § 2699(g)
15 and/or Code of Civil Procedure § 1021.5 to the extent enforcement of California labor laws and
16 applicable regulations is determined to be in the public interest and consistent with the Legislative
17 intent stated in Labor Code § 90.5, in an amount according to proof and subject to Court approval.

18 **PRAYER FOR RELIEF**

19 WHEREFORE, Plaintiff prays for judgment for himself and for all aggrieved current and
20 former employees against Defendants, jointly and severally, as follows:

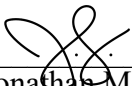
- 21 1. On the First Cause of Action, Plaintiff seeks the full amount of civil penalties
22 pursuant to Labor Code § 2699(f):
- 23 i. \$100 for each aggrieved employee per pay period for the initial violation;
 - 24 and
 - 25 ii. \$200 for each aggrieved employee per pay period for each subsequent
26 violation; and
- 27 2. On the Second Cause of Action, Plaintiff seeks the full amount of civil penalties
28 pursuant to Labor Code § 1197.1:

- 1 i. \$100 for each aggrieved employee per pay period for the initial violation;
2 and
3 ii. \$250 for each aggrieved employee per pay period for each subsequent
4 violation;
- 5 3. On the Third Cause of Action, Plaintiff seeks the full amount of civil penalties
6 pursuant to Labor Code § 2699(f):
7 i. \$100 for each aggrieved employee per pay period for the initial violation;
8 and
9 ii. \$200 for each aggrieved employee per pay period for each subsequent
10 violation;
- 11 4. On the Fourth Cause of Action, Plaintiff seeks the full amount of civil penalties
12 pursuant to Labor Code § 2699(f):
13 i. \$100 for each aggrieved employee per pay period for the initial violation;
14 and
15 ii. \$200 for each aggrieved employee per pay period for each subsequent
16 violation;
- 17 5. On the Fifth Cause of Action, Plaintiff seeks the full amount of civil penalties
18 pursuant to Labor Code § 2699(f):
19 i. \$100 for each aggrieved employee per pay period for the initial violation;
20 and
21 ii. \$200 for each aggrieved employee per pay period for each subsequent
22 violation;
- 23 6. On the Sixth Cause of Action, Plaintiff seeks the full amount of civil penalties
24 pursuant to Labor Code § 2699(f):
25 i. \$100 for each aggrieved employee per pay period for the initial violation;
26 and
27 ii. \$200 for each aggrieved employee per pay period for each subsequent
28 violation;

- 1 7. On the Seventh Cause of Action, Plaintiff seeks the full amount of civil penalties
2 pursuant to Labor Code § 226.3:
- 3 i. \$250 per employee per violation for an initial citation; and
4 ii. \$1,000 per employee for each violation for subsequent citation;
- 5 8. On the Eighth Cause of Action, Plaintiff seeks the full amount of civil penalties
6 pursuant to Labor Code § 2699(f):
- 7 i. \$100 for each aggrieved employee per pay period for the initial violation;
8 and
9 ii. \$200 for each aggrieved employee per pay period for each subsequent
10 violation.
- 11 9. On all causes of action, for reasonable attorneys' fees under the California Labor
12 Code and any other statutes, including California Labor Code of Civil Procedure §
13 1021.5 and/or California Labor Code § 2699(g);
- 14 10. For costs of the suit incurred herein;
- 15 11. For pre- and post-judgment interest at the prevailing statutory rate;
- 16 12. For civil penalties as described above pursuant to PAGA, 75% of which will be
17 paid to the Labor Workforce Development Agency and 25% of which will be
18 distributed to the aggrieved employees; and
- 19 13. For such other relief as the Court may deem proper.

20
21 DATED: September 3, 2020

LEBE LAW, APLC

22
23
24 By:  _____
Jonathan M. Lebe

25 Attorney for Plaintiff Bernardo Buchsbaum,
26 individually and on behalf of all others similarly
27 situated
28

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury on all claims so triable.

DATED: September 3, 2020

LEBE LAW, APLC

By: _____
Jonathan M. Lebe

Attorney for Plaintiff Bernardo Buchsbaum,
individually and on behalf of all others similarly
situated



☎ (213) 358-7046 🖨 (310) 820-1258 ✉ jon@lebelaw.com 📍 777 S. Alameda Street, 2nd Floor, Los Angeles, CA 90021

June 26, 2020

Notice Via Online Submission and Fee Via Certified Mail

Department of Industrial Relations, Accounting Unit
455 Golden Gate Avenue, 10th Floor
San Francisco, California 94102
<https://dir.tfaforms.net/128>

**Re: Notice pursuant to California Labor Code section 2698, *et seq.*,
the Private Attorney General Act regarding claims Bernarndo
Buchsbaum, individually and on behalf of all aggrieved
employees of Kforce Inc.**

Dear PAGA Administrator:

Please be advised that Bernarndo Buchsbaum (“Claimant”) has retained Lebe Law, A Professional Law Corporation to represent him individually and on behalf of the other aggrieved employees for wage and hour claims against their current and former employer Kforce, Inc., any related entities, and their managers, agents, officers and directors (“Employer”).

Employer has violated several Labor Code provisions and is therefore liable for civil penalties under California Labor Code §§ 2698, *et seq.* We request your agency investigate the claims against Employer. This letter will serve as notice of these allegations pursuant to the Private Attorney Generals Act of 2004 (“PAGA”). (Cal. Lab. Code § 2699.3.)

Unlawful Failure to Pay Overtime

Employer has failed to maintain a policy that compensates its employees for all hours worked, including overtime. Many aggrieved employees were misclassified by Employer as exempt from overtime. Those misclassified aggrieved employees earned a salary and were not paid any overtime. Additionally, Employer has failed to pay hourly

aggrieved employees for all overtime hours worked, including off-the-clock work which Employer required its employees to perform during meal periods. Further, Employer failed to pay Claimant and aggrieved employees all overtime and double-time wages earned at the correct regular rate because they failed to include commissions and other non-discretionary performance-based pay in the regular rate of pay. As a result of violations of California Labor Code §§ 510, 1194 and the applicable Industrial Welfare Commission Wage Orders for failure to pay overtime, Employer is liable for civil penalties pursuant to California Labor Code §§ 558 and 2698 *et seq.*

Unlawful Failure to Pay Minimum Wage

Employer has failed to maintain a policy that compensates aggrieved employees an amount equal to or greater than the minimum wage for all hours worked, as required by California Labor Code §§ 1194, 1197, 1197.1 and the Wage Order. All hours must be paid at the statutory or agreed rate and no part of this rate may be used as a credit against a minimum wage obligation. Employer did not compensate Claimant and the aggrieved employees at the minimum wage for work that it required them to perform during meal breaks. As a result of violations of California Labor Code §§ 1194, 1197, 1197.1 and the Wage Order for failure to pay minimum wage, Employer is liable for civil penalties pursuant to California Labor Code §§ 558, 1197.1, and 2698 *et seq.*

Unlawful Failure to Pay All Earned Wages

Employer failed to properly compensate Claimant and the aggrieved employees for all hours worked. For example, Employer failed to maintain an overtime policy in accordance with California Labor Code §§ 510, 1194 and the applicable Industrial Welfare Commission Wage Orders, and failed to properly track all overtime hours actually worked. Also, Employer required Claimant and aggrieved employees to work off-the-clock during meal periods and did not pay Claimant and aggrieved employees for this compensable time. Further, Employer failed to pay Claimant and aggrieved employees for all double-time wages earned at the correct regular rate. As a result, Employer failed to pay Claimants all earned wages. Accordingly, Employer violated California Labor Code § 204(a), which requires that employers pay “all wages ... twice during each calendar month on days designated in advance by the employer as the regular paydays.” As a result, Employer is liable for civil penalties pursuant to California Labor Code §§ 558, 210 and 2698 *et seq.*

Unlawful Failure to Provide Uninterrupted Off-Duty Meal Periods

Employer has failed to maintain a policy that provides its employees with off-duty meal periods as required by California law. Claimant and the other aggrieved employees regularly worked in excess of five (5) hours a day without being provided at least half-

hour meal periods in which they were relieved of all duties, as required by Labor Code §§ 226.7, 512, and the Wage Order. Instead, Employer regularly required its employees to perform work off-the-clock during their meal periods, and employees relieved of all duties as required by the Labor Code and the Wage Order. Employer also failed to pay Claimant and the other aggrieved employees the premium compensation mandated by Labor Code §§ 201-203 and 226.7(b). As a result of violations of California Labor Code §§ 201-203, 226.7 and 512 and the Wage Order, Employer is liable for civil penalties pursuant to California Labor Code §§ 558 and 2698 *et seq.*

Unlawful Failure to Provide Uninterrupted Off-Duty Rest Periods

Employer has failed to maintain a policy that provides aggrieved employees with off-duty rest periods as required by California law. Claimant and the other aggrieved employees regularly worked in excess of four (4) hours or major fraction thereof during workdays without being provided at least a ten (10) minute rest period in which they were relieved of all duties, as required by Labor Code §§ 226.7, 512 and the Wage Order. In lieu of the missed off-duty rest periods, Employer also failed to pay Claimant and aggrieved employees the premium compensation mandated by Labor Code §§ 201-203 and 226.7(b). As a result of violations of California Labor Code §§ 226.7, 512 and the Wage Order, Employer is liable for civil penalties pursuant to California Labor Code §§ 558 and 2698 *et seq.*

Unlawful Failure to Reimburse Business Expenses

Employer has violated California Labor Code § 2802 by willfully failing to reimburse Claimant and other aggrieved employees for their reasonable and necessary business expenses. Reasonable and necessary business expenses must be reimbursed to an employee by an employer under Labor Code § 2802 which 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, or of his or her obedience to the directions of the employer.” Employer failed to fully reimburse, for example, Claimant and other aggrieved employees for the use of their personal smartphone, home office expenses, and home internet expenses as they related to their employment. As a result of violations of California Labor Code § 2802, Employer is liable for civil penalties pursuant to California Labor Code §§ 558, 2698 *et seq.*

Unlawful Failure to Furnish Wage Statements

Employer has violated California Labor Code § 226(a) by willfully failing to furnish Claimant and the aggrieved employees with accurate, itemized wage statements. As a result of the violations identified above, Employer has provided wage statements to Claimant and aggrieved employees that fail to provide the correct wages earned, all hours

worked at the applicable hourly rate, all meal and rest period premiums required by the Labor Code, gross and net wages earned, and a correct calculation of overtime wages. Additionally, the hours stated on the wage statements, if any, did not reflect the actual hours worked by aggrieved employees. As a result of violations of California Labor Code § 226(a), Employer is liable for civil penalties pursuant to California Labor Code Labor Code §§ 226.3 and 2698 *et seq.*

Unlawful Failure to Pay Vacation Wages

Employer have violated California Labor Code §§ 201-203 and 227.3 by failing to pay all vested unused vacation wages to Claimant and other aggrieved employees upon cessation of employment. Labor Code § 227.3 provides that where an employee is terminated without having taken off vested vacation time, all vested vacation wages must be paid to that employee at his or her final rate of pay upon separation of employment. Specifically, Claimant and other aggrieved employees accrued unused vacation time during their employment with Employer. However, at the time of their separation of employment, Employer failed to pay the accrued unused vacation wages to Claimant and other aggrieved employees. For example, Claimant's last day of employment was in April 2020 but he was not paid his vacation wages until June 15, 2020. As such, Defendants are liable for civil penalties pursuant to California Labor Code § 2698 *et seq.*

Unlawful Failure to Pay Wages Due Upon Termination

Based on the allegations set forth above, Employer has violated California Labor Code §§ 201 and 202 by willfully failing to pay all compensation due and owing to Claimants and aggrieved employees at the time their employment was terminated. Employer willfully failed to pay aggrieved employees who are no longer employed by it all compensation due upon termination of employment as required under California Labor Code §§ 201 and 202. For example, Claimant's last day of employment was in April 2020 but he was not paid his final wages until June 15, 2020. Additionally, because Employer violated California Labor Code §§ 201, 201 and 203 of the Labor Code, they are liable for civil penalties pursuant to California Labor Code §§ 558, 2698 *et seq.*

Unlawful Failure to Maintain Payroll Records

Employer has violated California Labor Code § 1174 by willfully failing to maintain Claimant and aggrieved employees' payroll records. Labor Code § 1174(d) provides that employers must, "[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments." Employer willfully failed to keep payroll records which showed when

Claimant and aggrieved employees actually reported to work, the times at which they actually began and ended work, and their total hours of work. As a result of violations of California Labor Code § 1174, Employer is liable for civil penalties pursuant to California Labor Code §§ 1174.5 and 2698 *et seq.*

Conclusion

Employer has violated or has caused to be violated numerous California wage and hour laws. Claimant reserves the right to amend this notice as it learns additional facts and theories that relate to the claims above. Claimant requests that the agency investigate the above allegations and provide notice of the allegations pursuant to PAGA's provisions. Alternatively, Claimant requests the agency inform them if it does not intend to investigate these violations so that they may bring a PAGA suit against Employer on behalf of himself and the other aggrieved employees.

Sincerely,



Jonathan M. Lebe, Esq.

Attorney for Bernarndo Buchsbaum,

Individually and on behalf of Aggrieved Employees

Copied by Certified Mail:

KForce Inc.
1001 E Palm Avenue
Tampa, FL 33605

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Jonathan M. Lebe (SBN 284605) Lebe Law, APLC 777 S. Alameda Street, 2nd Floor, Los Angeles, CA 90021		FOR COURT USE ONLY ELECTRONICALLY FILED Superior Court of California, County of San Diego 09/03/2020 at 03:31:13 PM Clerk of the Superior Court By Linda Sheffa, Deputy Clerk	
TELEPHONE NO.: (213) 358-7046 FAX NO.: ATTORNEY FOR (Name): Bernardo Buchsbaum			
SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Diego STREET ADDRESS: 1100 Union St MAILING ADDRESS: 1100 Union St CITY AND ZIP CODE: San Diego, CA 92101 BRANCH NAME: Central Courthouse			
CASE NAME: Bernardo Buchsbaum v. Kforce Inc.			
CIVIL CASE COVER SHEET ☒ Unlimited (Amount demanded exceeds \$25,000) ☐ Limited (Amount demanded is \$25,000 or less)		Complex Case Designation ☐ Counter ☐ Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	CASE NUMBER: 37-2020-00030994-CU-0E-CTL
		JUDGE: Judge Timothy Taylor DEPT:	

Items 1–6 below must be completed (see instructions on page 2).

1. Check **one** box below for the case type that best describes this case:

Auto Tort ☐ Auto (22) ☐ Uninsured motorist (46) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort ☐ Asbestos (04) ☐ Product liability (24) ☐ Medical malpractice (45) ☐ Other PI/PD/WD (23) Non-PI/PD/WD (Other) Tort ☐ Business tort/unfair business practice (07) ☐ Civil rights (08) ☐ Defamation (13) ☐ Fraud (16) ☐ Intellectual property (19) ☐ Professional negligence (25) ☐ Other non-PI/PD/WD tort (35) Employment ☐ Wrongful termination (36) ☒ Other employment (15)	Contract ☐ Breach of contract/warranty (06) ☐ Rule 3.740 collections (09) ☐ Other collections (09) ☐ Insurance coverage (18) ☐ Other contract (37) Real Property ☐ Eminent domain/Inverse condemnation (14) ☐ Wrongful eviction (33) ☐ Other real property (26) Unlawful Detainer ☐ Commercial (31) ☐ Residential (32) ☐ Drugs (38) Judicial Review ☐ Asset forfeiture (05) ☐ Petition re: arbitration award (11) ☐ Writ of mandate (02) ☐ Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400–3.403) ☐ Antitrust/Trade regulation (03) ☐ Construction defect (10) ☐ Mass tort (40) ☐ Securities litigation (28) ☐ Environmental/Toxic tort (30) ☐ Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment ☐ Enforcement of judgment (20) Miscellaneous Civil Complaint ☐ RICO (27) ☐ Other complaint (not specified above) (42) Miscellaneous Civil Petition ☐ Partnership and corporate governance (21) ☐ Other petition (not specified above) (43)
---	--	--

2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--|--|
| a. ☐ Large number of separately represented parties | d. ☐ Large number of witnesses |
| b. ☐ Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. ☐ Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. ☐ Substantial amount of documentary evidence | f. ☐ Substantial postjudgment judicial supervision |
3. Remedies sought (check all that apply): a. ☒ monetary b. ☐ nonmonetary; declaratory or injunctive relief c. ☐ punitive
4. Number of causes of action (specify):
5. This case ☐ is ☒ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: September 3, 2020
 Jonathan M. Lebe

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on **all** other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you **must** complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort

Auto (22)—Personal Injury/Property Damage/Wrongful Death
Uninsured Motorist (46) (*if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto*)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)
Asbestos Property Damage
Asbestos Personal Injury/Wrongful Death
Product Liability (*not asbestos or toxic/environmental*) (24)
Medical Malpractice (45)
Medical Malpractice—Physicians & Surgeons
Other Professional Health Care Malpractice
Other PI/PD/WD (23)
Premises Liability (e.g., slip and fall)
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
Intentional Infliction of Emotional Distress
Negligent Infliction of Emotional Distress
Other PI/PD/WD

Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)
Civil Rights (e.g., discrimination, false arrest) (*not civil harassment*) (08)
Defamation (e.g., slander, libel) (13)
Fraud (16)
Intellectual Property (19)
Professional Negligence (25)
Legal Malpractice
Other Professional Malpractice (*not medical or legal*)
Other Non-PI/PD/WD Tort (35)

Employment

Wrongful Termination (36)
Other Employment (15)

Contract

Breach of Contract/Warranty (06)
Breach of Rental/Lease Contract (*not unlawful detainer or wrongful eviction*)
Contract/Warranty Breach—Seller Plaintiff (*not fraud or negligence*)
Negligent Breach of Contract/Warranty
Other Breach of Contract/Warranty
Collections (e.g., money owed, open book accounts) (09)
Collection Case—Seller Plaintiff
Other Promissory Note/Collections Case
Insurance Coverage (*not provisionally complex*) (18)
Auto Subrogation
Other Coverage
Other Contract (37)
Contractual Fraud
Other Contract Dispute

Real Property

Eminent Domain/Inverse Condemnation (14)
Wrongful Eviction (33)
Other Real Property (e.g., quiet title) (26)
Writ of Possession of Real Property
Mortgage Foreclosure
Quiet Title
Other Real Property (*not eminent domain, landlord/tenant, or foreclosure*)

Unlawful Detainer

Commercial (31)
Residential (32)
Drugs (38) (*if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential*)

Judicial Review

Asset Forfeiture (05)
Petition Re: Arbitration Award (11)
Writ of Mandate (02)
Writ—Administrative Mandamus
Writ—Mandamus on Limited Court Case Matter
Writ—Other Limited Court Case Review
Other Judicial Review (39)
Review of Health Officer Order
Notice of Appeal—Labor
Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)
Construction Defect (10)
Claims Involving Mass Tort (40)
Securities Litigation (28)
Environmental/Toxic Tort (30)
Insurance Coverage Claims (*arising from provisionally complex case type listed above*) (41)

Enforcement of Judgment

Enforcement of Judgment (20)
Abstract of Judgment (Out of County)
Confession of Judgment (*non-domestic relations*)
Sister State Judgment
Administrative Agency Award (*not unpaid taxes*)
Petition/Certification of Entry of Judgment on Unpaid Taxes
Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

RICO (27)
Other Complaint (*not specified above*) (42)
Declaratory Relief Only
Injunctive Relief Only (*non-harassment*)
Mechanics Lien
Other Commercial Complaint Case (*non-tort/non-complex*)
Other Civil Complaint (*non-tort/non-complex*)

Miscellaneous Civil Petition

Partnership and Corporate Governance (21)
Other Petition (*not specified above*) (43)
Civil Harassment
Workplace Violence
Elder/Dependent Adult Abuse
Election Contest
Petition for Name Change
Petition for Relief From Late Claim
Other Civil Petition

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN DIEGO	
STREET ADDRESS: 330 W Broadway	
MAILING ADDRESS: 330 W Broadway	
CITY AND ZIP CODE: San Diego, CA 92101-3827	
BRANCH NAME: Central	
TELEPHONE NUMBER: (619) 450-7072	
PLAINTIFF(S) / PETITIONER(S): Bernardo Buchsbaum	
DEFENDANT(S) / RESPONDENT(S): Kforce Inc.	
BUCHSBAUM VS KFORCE INC [IMAGED]	
NOTICE OF CASE ASSIGNMENT and CASE MANAGEMENT CONFERENCE	CASE NUMBER: 37-2020-00030994-CU-OE-CTL

CASE ASSIGNED FOR ALL PURPOSES TO:

Judge: Timothy Taylor

Department: C-72

COMPLAINT/PETITION FILED: 09/03/2020

TYPE OF HEARING SCHEDULED	DATE	TIME	DEPT	JUDGE
Civil Case Management Conference	04/23/2021	09:45 am	C-72	Timothy Taylor

Due to the COVID-19 pandemic, all hearings will be conducted remotely until further notice. Absent an order of the court, personal appearances at the hearing will not be allowed. For information on arranging telephonic or video appearances, contact CourtCall at (888)882-6878, or at www.courtcall.com. Please make arrangements with CourtCall as soon as possible.

A case management statement must be completed by counsel for all parties or self-represented litigants and timely filed with the court at least 15 days prior to the initial case management conference. (San Diego Local Rules, Division II, CRC Rule 3.725).

All counsel of record or parties in pro per shall appear at the Case Management Conference, be familiar with the case, and be fully prepared to participate effectively in the hearing, including discussions of ADR* options.

IT IS THE DUTY OF EACH PLAINTIFF (AND CROSS-COMPLAINANT) TO SERVE A COPY OF THIS NOTICE WITH THE COMPLAINT (AND CROSS-COMPLAINT), THE ALTERNATIVE DISPUTE RESOLUTION (ADR) INFORMATION FORM (SDSC FORM #CIV-730), A STIPULATION TO USE ALTERNATIVE DISPUTE RESOLUTION (ADR) (SDSC FORM #CIV-359), AND OTHER DOCUMENTS AS SET OUT IN SDSC LOCAL RULE 2.1.5.

ALL COUNSEL WILL BE EXPECTED TO BE FAMILIAR WITH SUPERIOR COURT RULES WHICH HAVE BEEN PUBLISHED AS DIVISION II, AND WILL BE STRICTLY ENFORCED.

TIME STANDARDS: The following timeframes apply to general civil cases and must be adhered to unless you have requested and been granted an extension of time. General civil cases consist of all civil cases except: small claims proceedings, civil petitions, unlawful detainer proceedings, probate, guardianship, conservatorship, juvenile, parking citation appeals, and family law proceedings.

COMPLAINTS: Complaints and all other documents listed in SDSC Local Rule 2.1.5 must be served on all named defendants.

DEFENDANT'S APPEARANCE: Defendant must generally appear within 30 days of service of the complaint. (Plaintiff may stipulate to no more than 15 day extension which must be in writing and filed with the Court.) (SDSC Local Rule 2.1.6)

JURY FEES: In order to preserve the right to a jury trial, one party for each side demanding a jury trial shall pay an advance jury fee in the amount of one hundred fifty dollars (\$150) on or before the date scheduled for the initial case management conference in the action.

COURT REPORTERS: Court reporters are not provided by the Court in Civil cases. See policy regarding normal availability and unavailability of official court reporters at www.sdcourt.ca.gov.

*ALTERNATIVE DISPUTE RESOLUTION (ADR): THE COURT ENCOURAGES YOU TO CONSIDER UTILIZING VARIOUS ALTERNATIVES TO TRIAL, INCLUDING MEDIATION AND ARBITRATION, PRIOR TO THE CASE MANAGEMENT CONFERENCE. PARTIES MAY FILE THE ATTACHED STIPULATION TO USE ALTERNATIVE DISPUTE RESOLUTION (SDSC FORM #CIV-359).



Superior Court of California County of San Diego

NOTICE OF ELIGIBILITY TO eFILE AND ASSIGNMENT TO IMAGING DEPARTMENT

This case is eligible for eFiling. Should you prefer to electronically file documents, refer to General Order in re procedures regarding electronically imaged court records, electronic filing, and access to electronic court records in civil and probate cases for rules and procedures or contact the Court's eFiling vendor at www.onelegal.com for information.

This case has been assigned to an Imaging Department and original documents attached to pleadings filed with the court will be imaged and destroyed. Original documents should not be filed with pleadings. If necessary, they should be lodged with the court under California Rules of Court, rule 3.1302(b).

On August 1, 2011 the San Diego Superior Court began the Electronic Filing and Imaging Pilot Program ("Program"). As of August 1, 2011 in all new cases assigned to an Imaging Department all filings will be imaged electronically and the electronic version of the document will be the official court file. The official court file will be electronic and accessible at one of the kiosks located in the Civil Business Office and on the Internet through the court's website.

You should be aware that the electronic copy of the filed document(s) will be the official court record pursuant to Government Code section 68150. The paper filing will be imaged and held for 30 days. After that time it will be destroyed and recycled. **Thus, you should not attach any original documents to pleadings filed with the San Diego Superior Court. Original documents filed with the court will be imaged and destroyed except those documents specified in California Rules of Court, rule 3.1806.** Any original documents necessary for a motion hearing or trial shall be lodged in advance of the hearing pursuant to California Rules of Court, rule 3.1302(b).

It is the duty of each plaintiff, cross-complainant or petitioner to serve a copy of this notice with the complaint, cross-complaint or petition on all parties in the action.

On all pleadings filed after the initial case originating filing, all parties must, to the extent it is feasible to do so, place the words **"IMAGED FILE"** in all caps immediately under the title of the pleading on all subsequent pleadings filed in the action.