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FILED
Superior Court Of California,
Sacramento
09/24/2020
Istewart1
By _____, Deputy
Case Number:
34-2020-00285675

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO

TIM BLACKWELL, an aggrieved employee,
on behalf of himself and other current and
former employees,

Plaintiff,

v.

COMMERCIAL REFRIGERATION
SPECIALISTS, INC., a California corporation,
CLIMATE PROS LLC, a limited liability
company; and DOES 1 through 50, inclusive,

Defendants.

Case No.:

**COMPLAINT FOR PENALTIES FOR
VIOLATION OF LABOR CODE
SECTION 2698 *et seq.***

DEMAND FOR JURY TRIAL

1 Plaintiff Tim Blackwell ("Plaintiff") hereby submits his Complaint for Penalties against
2 Defendants Commercial Refrigeration Specialists, Inc., Climate Pros LLC, and DOES 1
3 through 50, inclusive (collectively, "Defendants"), on behalf of themselves and other similarly
4 situated aggrieved employees of Defendants for failure to provide meal periods and rest breaks,
5 failure to pay all minimum and overtime wages, failure to maintain accurate wage statements,
6 and failure to pay all wages due and owing in a timely fashion, as follows:

7 **INTRODUCTION**

8 1. This representative action is brought pursuant to Labor Code § 2698 *et seq.* (the
9 Private Attorneys General Act of 2004 ("PAGA")) for Defendant's violations of California
10 Labor Code §§ 201 to 204, 226, 226.3, 226.7, 256, 510, 512, 558, 1174, 1194, 1194.2, 1194.5,
11 1197, 1197.1, 1198, 2802, and the applicable Industrial Welfare Commission ("IWC") Wage
12 Order.

13 2. This Complaint challenges Defendants' systemic illegal employment practices
14 resulting in violations of the stated provisions of the Labor Code and corresponding IWC
15 Wage Order against the group of aggrieved employees.

16 3. Plaintiff is informed and believes and thereon alleges Defendants joint and
17 severally acted intentionally and with deliberate indifference and conscious disregard to the
18 rights of all employees in (1) failing to pay all meal period wages and rest break wages, (2)
19 failing to pay all overtime wages and minimum wages, (3) failing to provide accurate wage
20 statements, (4) failing to timely pay all wages due and owing upon termination of employment,
21 and (5) failing to reimburse all necessary work-related expenses.

22 **JURISDICTION AND VENUE**

23 4. This representative action is brought pursuant to PAGA. The monetary damages
24 sought by Plaintiff exceed the minimal jurisdictional limits of the Superior Court and will be
25 established according to proof at trial.

26 5. This Court has jurisdiction over this action pursuant to California Constitution,
27 Article VI, Section 10, which grants the Superior Court original jurisdiction in all causes
28 except those given by statute to other courts. The statutes under which this action is brought

1 do not specify any other basis for jurisdiction.

2 6. This Court has jurisdiction over the violations of Labor Code §§ 201 to 204,
3 226, 226.3, 226.7, 256, 510, 512, 558, 1174, 1194, 1194.2, 1194.5, 1197, 1197.1, 1198, 2802,
4 and the applicable Industrial Welfare Commission ("IWC") Wage Order.

5 7. This Court has jurisdiction over all Defendants because, upon information and
6 belief, each party has sufficient minimum contacts in California, or otherwise intentionally
7 avails itself of California law so as to render the exercise of jurisdiction over it by the
8 California courts consistent with traditional notions of fair play and substantial justice.

9 8. Venue is proper in this Court because, upon information and belief, the named
10 Defendants transact business and/or have offices in this county, and the acts and omissions
11 alleged herein took place in this county.

12 **PARTIES**

13 9. Plaintiff Tim Blackwell is an individual residing in the State of California.
14 Plaintiff was formerly employed by Defendants in a non-exempt position during the relevant
15 time period.

16 10. Plaintiff is informed and believes and thereon allege that Defendant
17 Commercial Refrigeration Specialists, Inc. is a corporation licensed to do business and actually
18 doing business in the State of California, including the County of Sacramento.

19 11. Plaintiff is informed and believes and thereon allege that Defendant Climate
20 Pros LLC is a limited liability company licensed to do business and actually doing business in
21 the State of California, including the County of Sacramento.

22 12. Plaintiff does not know the true names or capacities, whether individual, partner
23 or corporate, of Defendants sued herein as DOES 1 through 50, inclusive, and for that reason,
24 said Defendants are sued under such fictitious names, and Plaintiff prays for leave to amend
25 this complaint when the true names and capacities are known. Plaintiff is informed and
26 believes and thereon alleges that each of Defendants designated as a DOE was responsible in
27 some way for the matters alleged herein and proximately caused Plaintiff and members of the
28 general public and the group of aggrieved employees to be subject to the illegal employment

1 practices, wrongs and injuries complained of herein.

2 **13.** At all times herein mentioned, Defendants, and each of them, were agents,
3 partners, joint venturers, representatives, servants, employees, successors-in-interest, co-
4 conspirators and assigns, each of the other, and at all times relevant hereto were acting within
5 the course and scope of their authority as such agents, partners, joint venturers, representatives,
6 servants, employees, successors, co-conspirators and assigns, and that all acts or omissions
7 alleged herein were duly committed with ratification, knowledge, permission, encouragement,
8 authorization and consent of each Defendant designated herein.

9 **14.** As such, and based upon all the facts and circumstances incident to Defendants'
10 business in California, Defendants are subject to Labor Code §§ 201 to 204, 226, 226.3, 226.7,
11 256, 510, 512, 558, 1174, 1194, 1194.2, 1194.5, 1197, 1197.1, 1198, 2802, and the applicable
12 Industrial Welfare Commission ("IWC") Wage Order.

13 **CAUSE OF ACTION**

14 **FOR VIOLATION OF PAGA**

15 **(AGAINST ALL DEFENDANTS BY PLAINTIFF ON BEHALF OF**

16 **ALL AGGRIEVED EMPLOYEES)**

17 **15.** Plaintiff re-alleges and incorporates by reference paragraphs 1 through 14 as
18 though fully set forth herein.

19 **16.** PAGA expressly establishes that any provision of the California Labor Code
20 which provides for a civil penalty to be assessed and collected by the LWDA, or any of its
21 departments, divisions, commissions, boards, agencies or employees for a violation of the
22 California Labor Code, may be recovered through a civil action brought by an aggrieved
23 employee on behalf of himself or herself, and other current or former employees.

24 **17.** Plaintiff seeks to recover all applicable and available PAGA remedies pursuant
25 to Labor Code § 2699, as well as attorneys' fees, costs, and/or other damages as permitted by
26 PAGA through a representative action pursuant to the PAGA and the California Supreme
27 Court in *Arias v. Superior Court*, 46 Cal. 4th 969 (2009). Therefore, Plaintiff is not required
28 to, nor does he, seek class certification of the PAGA claims under Code of Civil Procedure §

1 382.

2 18. On July 21, 2020, Plaintiff provided written notice to the LWDA and
3 Defendants of the specific provisions of the Labor Code he contends were violated, and the
4 theories supporting his contentions. To date, he has not received a response.

5 19. Plaintiff and the other non-exempt employees are "aggrieved employees" as
6 defined by California Labor Code § 2699(c) in that they are all current or former employees of
7 Defendants, and one or more of the alleged violations was committed against them.

8 **Failure to Pay Minimum and Overtime Wages**

9 20. At all times relevant herein, Defendants were required to compensate their non-
10 exempt employees minimum wages for all hours worked and overtime wages for all hours
11 worked in excess of eight (8) hours in a workday and forty (40) hours in a workweek, pursuant
12 to the mandate of Labor Code §§ 510, 558, 1194, 1194.2, 1197, 1197.1, and 1198.

13 21. As a pattern and practice, Defendants failed to compensate Plaintiff and other
14 aggrieved employees for all hours of work performed, and failed to pay overtime wages for all
15 hours worked exceeding 8 in a day or 40 in a week. Specifically, Defendant failed to
16 compensate Plaintiff and other aggrieved employees for off-the-clock hours worked, including
17 all time spent talking to clients on the telephone prior to any physical service repairs, and for
18 all commuting time in excess of a regular commute. Additionally, Defendant did not provide
19 aggrieved employees with the minimum wages to which they were entitled despite constructive
20 and actual knowledge of work during supposed meal and rest breaks. Thus, Defendant failed
21 to provide aggrieved employees with wages for all hours worked and for all overtime wages
22 earned despite constructive and actual knowledge of the hours of work being performed.

23 22. This resulted in a failure to compensate Plaintiff and other aggrieved employees
24 minimum and overtime wages at the applicable rate for all hours worked.

25 **Failure to Provide Meal Periods and Rest Breaks**

26 23. In accordance with the mandates of the California Labor Code and the
27 applicable IWC Wage Order, Plaintiff and other aggrieved employees had the right to take a
28 10-minute rest break for every four (4) hours worked or major fraction thereof, and a 30-

1 minute meal period for every five (5) hours worked.

2 **24.** As a pattern and practice, Defendant failed to provide aggrieved employees the
3 opportunity to take the requisite number of lawful meal and rest breaks and routinely required
4 Plaintiff and other aggrieved employees to work through and/or delay their meal periods and/or
5 rest breaks to complete their daily workload in an efficient and timely manner, and comply
6 with Defendants' expectations. Despite these facts, Defendants did not compensate premium
7 wages to Plaintiff and other aggrieved employees as required.

8 **Failure to Timely Pay Wages During and Upon Termination of Employment**

9 **25.** At all times relevant herein, Defendants were required to pay their employees in
10 a timely fashion pursuant to the mandate of Labor Code §§ 201 to 204.

11 **26.** As a result of Defendants' Labor Code violations alleged above, Defendants
12 failed to pay Plaintiff and the other aggrieved employees all wages due them within the time
13 periods specified by Labor Code §§ 201-204 during and upon termination of employment.

14 **Failure to Provide Complete and Accurate Wage Statements**

15 **27.** At all times relevant herein, Defendants were required to keep *accurate* records
16 regarding their California employees pursuant to the mandate of Labor Code §§ 226 and
17 1174(d).

18 **28.** As a result of Defendants' various Labor Code violations, Defendants failed to
19 keep accurate records regarding Plaintiff and other similarly-situated current and former
20 employees. For example, Defendants failed in their affirmative obligation to keep accurate
21 records regarding Plaintiff and other similarly-situated current and former employees' gross
22 wages earned, total hours worked, net wages earned, and all applicable hourly rates and the
23 number of hours worked at each hourly rate.

24 **Failure to Reimburse Necessary Work-Related Expenses**

25 **29.** At all times relevant herein, Defendants were required to indemnify their
26 employees for all necessary expenditures or losses incurred in direct consequence of the
27 discharge of the employees' duties, or of the employees' obedience to the directions of the
28 employer pursuant to California Labor Code § 2802.

1 **30.** As a pattern and practice, Defendants failed to reimburse Plaintiff and other
2 aggrieved employees for all necessary work-related expenses, including, but not limited to,
3 expenses associated with the use of personal mobile phones for work-related purposes.

4 **Damages**

5 **31.** Pursuant to Labor Code § 2699, Plaintiff, individually and on behalf of other
6 current and former aggrieved employees, requests and is entitled to recover from Defendants,
7 and each of them, civil penalties, interest, attorneys' fees and costs pursuant, as well as all
8 statutory penalties against Defendants, and each of them, including but not limited to:

9 **32.** Penalties under Labor Code § 2699 in the amount of a hundred dollars (\$100)
10 for each aggrieved employee per pay period for the initial violation, and two hundred dollars
11 (\$200) for each aggrieved employee per pay period for each subsequent violation;

12 **33.** Penalties under Labor Code § 210 in the amount of a hundred dollars (\$100) for
13 each aggrieved employee per pay period for the initial violation, and two hundred dollars
14 (\$200) for each aggrieved employee per pay period for each subsequent violation, plus 25% of
15 the amount unlawfully withheld;

16 **34.** Penalties under Labor Code § 256 in the amount of 30 days pay per aggrieved
17 former employee;

18 **35.** Penalties under Labor Code § 226.3 in the amount of two hundred fifty dollars
19 (\$250) per employee per initial violation and one thousand dollars (\$1,000) per employee for
20 each subsequent violation;

21 **36.** Penalties under Labor Code § 558 in the amount of fifty dollars (\$50) for each
22 aggrieved employee per pay period for the initial violation, and one hundred dollars (\$100) for
23 each aggrieved employee per pay period for each subsequent violation;

24 **37.** Penalties under Labor Code § 1197.1 in the amount of one hundred dollars
25 (\$100) for each aggrieved employee per pay period for the initial violation, and two hundred
26 fifty dollars (\$250) for each aggrieved employee per pay period for each subsequent violation;

27 **38.** Any and all additional penalties and sums as provided by the Labor Code and/or
28 other statutes; and

1 39. Attorneys' fees and costs pursuant to Labor Code §§ 210, 1194, 2699, and any
2 other applicable statute

3 **PRAYER FOR RELIEF**

4 WHEREFORE, Plaintiff prays for judgment for himself and all others on whose behalf
5 this suit is brought against Defendants, jointly and severally, as follows:

- 6 1. Upon the Cause of Action, for civil penalties pursuant to statute as set forth in
7 Labor Code § 2698 *et seq.*, for Defendants' violations of Labor Code §§ 201,
8 202, 203, 204, 210, 226, 226.3, 226.7, 256, 510, 512, 558, 1194, 1197.1, 1198,
9 and 2802;
- 10 2. On all causes of action for attorneys' fees, interest, and costs as provided by
11 California Labor Code §§ 210, 218.6, 226, 1194, 2699, 2802, and Code of Civil
12 Procedure § 1021.5, and for such other and further relief the Court may deem
13 just and proper.

14
15 DATED: September 23, 2020

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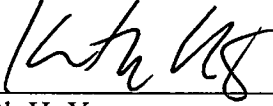
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18 Kenneth H. Yoon
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20 **DEMAND FOR JURY TRIAL**

21 Plaintiff, for himself and the aggrieved employees, hereby demand a jury trial as
22 provided by California law.

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24 DATED: September 23, 2020

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