

HAINES LAW GROUP, APC
Paul K. Haines (SBN 248226)
phaines@haineslawgroup.com
Fletcher W. Schmidt (SBN 286462)
fschmidt@haineslawgroup.com
Matthew K. Moen (SBN 305956)
mmoen@haineslawgroup.com
Mossamat N. Karim (SBN 329711)
nkarim@haineslawgroup.com
2155 Campus Drive, Suite 180
El Segundo, California 90245
Tel: (424) 292-2350
Fax: (424) 292-2355

E-FILED
9/25/2020 10:55 AM
Superior Court of California
County of Fresno
By: C. York, Deputy

Attorneys for Plaintiff

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

JUAN MELENDREZ, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

S. STAMOULES, INC., a California
Corporation; and DOES 1 through 100,

Defendants.

CASE NO: 20CECG02103

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT:**

- (1) WAGE STATEMENT PENALTIES
(LABOR CODE §§ 226, *et seq.*); AND**
- (2) CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS GENERAL
ACT (LABOR CODE § 2698 *et seq.*)**

**DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

1
2 Plaintiff Juan Melendrez (“Plaintiff”), on behalf of himself and all others similarly
3 situated, hereby brings this First Amended Class and Representative Action Complaint
4 (“Complaint”) against S. Stamoules, Inc., a California Corporation; and Does 1 through 100,
5 inclusive (collectively “Defendants”), and on information and belief allege as follows:

6 **JURISDICTION**

7 1. Plaintiff, on behalf of himself and all others similarly situated, hereby brings this
8 action for recovery of unpaid penalties under California Labor Code §§ 226 and 2698 *et seq.*, in
9 addition to seeking declaratory relief and restitution. This class action is brought pursuant to
10 California Code of Civil Procedure § 382. This Court has jurisdiction over Defendants’ violations
11 of the California Labor Code because the amount in controversy exceeds this Court’s
12 jurisdictional minimum.

13 **VENUE**

14 2. Venue is proper in this judicial district pursuant to California Code of Civil
15 Procedure §§ 395(a) and 395.5, as Defendants’ principal place of business is located in the County
16 of Fresno. Defendants own, maintain offices, transact business, have an agent or agents within
17 the County of Fresno, and/or otherwise are found within the County of Fresno, and Defendants
18 are within the jurisdiction of this Court for purposes of service of process.

19 **PARTIES**

20 3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
21 Plaintiff was, and currently is, a California resident, residing in the County of Fresno. During the
22 one year immediately preceding the filing of the Complaint in this action, and within the statute
23 of limitations periods applicable to each cause of action pled herein, Plaintiff was employed by
24 Defendants as a non-exempt employee in the County of Fresno. Plaintiff was, and is, a victim of
25 Defendants’ policies and/or practices complained of herein, lost money and/or property, and has
26 been deprived of the rights guaranteed by California Labor Code §§ 226 and 2698 *et seq.*

27 4. Plaintiff is informed and believes, and based thereon alleges, that during the one
28 year preceding the filing of the Complaint and continuing to the present, Defendants did (and do)

business by operating a produce company, specifically in the County of Fresno, and therefore, were (and are) doing business in the County of Fresno and the State of California.

5. Plaintiff does not know the true names or capacities, whether individual, partner, or corporate, of the defendants sued herein as DOES 1 through 100, and for that reason, said defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to further amend this Complaint when such true names and capacities are discovered. Plaintiff is informed and believes, and based thereon alleges, that each of said fictitious defendants, whether individual, partner, or corporate, were responsible in some manner for the acts and omissions alleged herein, and proximately caused Plaintiff and the Class (as defined in Paragraph 11) to be subject to the unlawful employment practices, wrongs, injuries, and damages complained of herein.

6. Plaintiff is informed and believes, and based thereon alleges, that at all times mentioned herein, Defendants were and are the employers of Plaintiff and all similarly situated employees.

7. At all times herein mentioned, each of said Defendants participated in the doing of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the Defendants, and each of them, were the agents, servants, and employees of each and every one of the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned were acting within the course and scope of said agency and employment. Defendants, and each of them, approved of, condoned, and/or otherwise ratified each and every one of the acts or omissions complained of herein.

8. At all times mentioned herein, Defendants, and each of them, were members of and engaged in a joint venture, partnership, and common enterprise, and acting within the course and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further, Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and all members of the Class (as defined in Paragraph 11).

GENERAL FACTUAL ALLEGATIONS

9. Plaintiff was employed by Defendants as a non-exempt agriculture employee from

1 approximately 2015 until October 2019. Plaintiff's job duties consisted primarily of harvesting
2 cantaloupes and packing them into boxes.

3 10. Defendants are governed by Labor Code § 226 (a)(7), which requires Defendants'
4 wage statements to include only the last 4 digits of the employees' social security numbers.
5 Defendants issued facially non-compliant wage statements to Plaintiff and other employees, which
6 listed their entire 9-digit social security numbers, in violation of Labor Code § 226 (a)(7), exposing
7 Plaintiff and other employees to unnecessary risk of identity theft.

8 **CLASS ACTION ALLEGATIONS**

9 11. **Class Definitions:** Plaintiff brings this action on behalf of himself and the
10 following Class pursuant to Section 382 of the Code of Civil Procedure:

11 a. The Wage Statement Class consists of all current and former employees
12 who received a wage statement from Defendants from April 6, 2019¹ through the present.

13 12. **Numerosity/Ascertainability:** The members of the Class are so numerous that
14 joinder of all members would be unfeasible and not practicable. The membership of the Class is
15 unknown to Plaintiff at this time; however, it is estimated that the Class numbers greater than one
16 hundred (100) individuals. The identity of such membership is readily ascertainable via inspection
17 of Defendants' employment records.

18 13. **Common Questions of Law and Fact Predominate/Well Defined Community**
19 **of Interest:** There are common questions of law and fact as to Plaintiff and all other similarly
20 situated employees, which predominate over questions affecting only individual members
21 including, without limitation to:

22 i. Whether Defendants furnished legally compliant wage statements to
23 members of the Wage Statement Class pursuant to Labor Code § 226.

24
25
26 ¹ Pursuant to California Judicial Council Emergency Rule 9, statutes of limitations of more than
27 180 days are suspended from April 6, 2020 through October 1, 2020. Accordingly, the relevant
28 liability period for each cause of action pled herein has been calculated based on a tolling date of
April 6, 2020.

1 14. **Predominance of Common Questions:** Common questions of law and fact
2 predominate over questions that affect only individual members of the Class. The common
3 questions of law set forth above are numerous and substantial and stem from Defendants' policies
4 and/or practices applicable to each individual class member, such as Defendants' uniform wage
5 statement policies/practices. As such, the common questions predominate over individual
6 questions concerning each individual class member's showing as to his or her eligibility for
7 recovery or as to the amount of his or her damages.

8 15. **Typicality:** Plaintiff's claims are typical of the claims of the Class because
9 Plaintiff was employed by Defendants in California during the applicable statute of limitations
10 period. As alleged herein, Plaintiff, like the members of the Class, was furnished with non-
11 compliant wage statements.

12 16. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary
13 steps to represent fairly and adequately the interests of the members of the Class. Moreover,
14 Plaintiff's attorneys are ready, willing, and able to fully and adequately represent the members of
15 the Class and Plaintiff. Plaintiff's attorneys have prosecuted and defended numerous wage and
16 hour class actions in state and federal courts in the past, and are committed to vigorously
17 prosecuting this action on behalf of the members of the Class.

18 17. **Superiority:** The California Labor Code is broadly remedial in nature and serves
19 an important public interest in establishing minimum working conditions and standards in
20 California. These laws and labor standards protect the average working employee from
21 exploitation by employers who have the responsibility to follow the laws, and who may seek to
22 take advantage of superior economic and bargaining power in setting onerous terms and
23 conditions of employment. The nature of this action and the format of laws available to Plaintiff
24 and members of the Class make the class action format a particularly efficient and appropriate
25 procedure to redress the violations alleged herein. If each employee was required to file an
26 individual lawsuit, Defendants would necessarily gain an unconscionable advantage since they
27 would be able to exploit and overwhelm the limited resources of each individual plaintiff with
28 their vastly superior financial and legal resources. Moreover, requiring each member of the

1 Class(es) to pursue an individual remedy would also discourage the assertion of lawful claims by
2 employees who would be disinclined to file an action against their former and/or current employer
3 for real and justifiable fear of retaliation and permanent damages to their careers at subsequent
4 employment. Further, the prosecution of separate actions by the individual class members, even
5 if possible, would create a substantial risk of inconsistent or varying verdicts or adjudications
6 with respect to the individual class members against Defendants herein; and which would
7 establish potentially incompatible standards of conduct for Defendants; and/or legal
8 determinations with respect to individual class members which would, as a practical matter, be
9 dispositive of the interest of the other class members not parties to adjudications or which would
10 substantially impair or impede the ability of the class members to protect their interests. Further,
11 the claims of the individual members of the Class are not sufficiently large to warrant vigorous
12 individual prosecution considering all of the concomitant costs and expenses attending thereto.
13 As such, the Class identified in Paragraph 11 is maintainable under Section 382 of the Code of
14 Civil Procedure.

15 **FIRST CAUSE OF ACTION**

16 **WAGE STATEMENT PENALTIES**

17 **(AGAINST ALL DEFENDANTS)**

18 18. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

19 19. Plaintiff is informed and believes, and based thereon allege, that Defendants
20 knowingly and intentionally, as a matter of uniform policy and practice, furnished Plaintiff and
21 the Wage Statement Class with wage statements that included the employees' entire 9-digit social
22 security number in violation of Labor Code § 226(a)(7).

23 20. Defendants' failure to furnish Plaintiff and members of the Wage Statement Class
24 with compliant wage statements resulted in actual injury, as said failures unnecessarily exposed
25 them to a heightened risk of identity theft and related offenses.

26 21. Defendants' failures create an entitlement to recovery by Plaintiff and members of
27 the Wage Statement Class in a civil action for all damages and/or penalties pursuant to Labor
28 Code § 226 *et. seq.*, including statutory penalties, civil penalties, reasonable attorneys' fees, and

costs of suit according to California Labor Code § 226 *et. seq.*

SECOND CAUSE OF ACTION

PRIVATE ATTORNEYS GENERAL ACT

(AGAINST ALL DEFENDANTS)

22. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

23. Defendants have committed several Labor Code violations against Plaintiff, members of the Classes, and other aggrieved employees. Plaintiff, as an “aggrieved employee” within the meaning of Labor Code § 2698 *et seq.*, acting on behalf of himself and other aggrieved employees, brings this representative action against Defendants to recover the civil penalties due to Plaintiff, the members of the Classes, other aggrieved employees, and the State of California according to proof pursuant to Labor Code § 2699(a) including, but not limited to: \$250 per employee for each initial violation and \$1,000 per employee for each subsequent violation of Labor Code § 226(a) pursuant to Labor Code § 226.3, based on the following Labor Code violations:

- a. Failing to furnish Plaintiff and other aggrieved employees with compliant itemized wage statements in violation of Labor Code § 226(a).

24. On or around July 20, 2020, Plaintiff notified Defendants via certified mail, and notified the California Labor and Workforce Development Agency (“LWDA”) via its website, of Defendants’ violations of the California Labor Code and Plaintiff’s intent to bring a claim for civil penalties under California Labor Code § 2698 *et seq.* with respect to the violations of the California Labor Code identified in Paragraph 23 (a). Now that sixty-five days have passed from Plaintiff notifying Defendants and the LWDA of these violations, and the LWDA has not provided notice that it intends to investigate the violations, Plaintiff has exhausted his administrative requirements for bringing a claim under the Private Attorneys General Act with respect to these violations.

25. Based on the foregoing, Plaintiff seeks to represent himself and all Aggrieved Employees, as defined by Labor Code § 2699(c), which includes all current and former non-exempt employees who worked for Defendants in California between April 6, 2019 and the

1 present.

2 26. Plaintiff was compelled to retain the services of counsel to file this court action to
3 protect his interests and the interests of other aggrieved piece rate employees, and to assess and
4 collect the civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys' fees and
5 costs, which he is entitled to recover under California Labor Code § 2699.

6 **PRAYER**

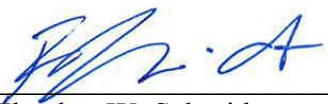
7 WHEREFORE, Plaintiff prays for judgment for himself and for all others on whose behalf
8 this suit is brought against Defendants, as follows:

- 9 1. For an order certifying the proposed Class;
10 2. For an order appointing Plaintiff as representative of the Class;
11 3. For an order appointing counsel for Plaintiff as counsel for the Class;
12 4. Upon the First Cause of Action, for statutory penalties pursuant to Labor Code
13 § 226, *et seq.*;
14 5. Upon the Second Cause of Action, for civil penalties due to Plaintiff, other aggrieved
15 employees, and the State of California according to proof pursuant to Labor Code § 2699(a)
16 including, but not limited to: \$250.00 for each initial violation and \$1,000.00 for each subsequent
17 violation pursuant to Labor Code § 226.3 per employee per pay period, based on the violations of
18 Labor Code sections identified in Paragraph 23 (a) above.
19 6. On all causes of action, for attorneys' fees and costs as provided by Labor Code §
20 226, and Code of Civil Procedure § 1021.5, and 2698 *et seq.*; and
21 7. For such other and further relief the Court may deem just and proper.

22
23 Dated: September 25, 2020

Respectfully submitted,
HAINES LAW GROUP, APC

24
25 By:



Fletcher W. Schmidt
Attorney for Plaintiff

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

Dated: September 25, 2020

Respectfully submitted,
HAINES LAW GROUP, APC

Respectfully submitted,
HAINES LAW GROUP, APC


Fletcher W. Schmidt
Attorney for Plaintiff

PROOF OF SERVICE

Juan Melendrez v. S. Stamoules, Inc.

Fresno County Superior Court Case No. 20CECG02103

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is [X] 2155 Campus Drive, Suite 180, El Segundo, California 90245.

On September 25, 2020, I served the foregoing document(s) described as:

FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT

on the interested party(ies) in this action as follows:

Todd B. Barsotti, Esq.
TODD B. BARSOTTI, A PROFESSIONAL LAW CORPORATION
6780 N. West Avenue, Suite 102
Fresno, CA 93711
Attorneys for STAMOULES, INC.

[X] (BY MAIL) I am "readily familiar" with Haines Law Group, APC's practice of collection and processing correspondence for mailing. I enclosed the document(s) in a sealed envelope or package addressed to the persons at the address(es) listed above. Under the practice the correspondence would be deposited with the U.S. postal service on the same day with postage thereof fully prepaid at El Segundo, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postage cancellation date or postage date is more than one day after date of deposit for mailing in affidavit.

[X] (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on September 25, 2020, at El Segundo, California.


Jonathan Ramirez