

CODY PAYNE, SBN 282342

cody@paynellp.com

KIM NGUYEN, SBN 293906

kim@paynellp.com

PAYNE NGUYEN, LLP

4640 Admiralty Way, Suite 500

Marina del Rey, CA 90292

Telephone: (310) 360 – 9882

Facsimile: (310) 928 – 7469

Attorneys for Plaintiff

MARIAH BARAJAS

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

MARIAH BARAJAS, individually and as a
private attorney general;

Plaintiff,

vs.

SHIPYARD STAFFING, LLC, a Virginia
limited liability company; RIGUP, INC., a
Delaware corporation; L3 TECHNOLOGIES,
INC., a Delaware corporation; and DOES 1
through 50, inclusive,

Defendants.

Case No.: 37-2021-00021342-CU-OE-CTL

Assigned for all purposes to Hon. Kenneth J.
Medel, Dept. C-66

FIRST AMENDED COMPLAINT FOR:

**(1) PRIVATE ATTORNEY
GENERAL ACT, LABOR CODE
§2698 ET SEQ**

Complaint Filed: May 13, 2021

Trial: None Set

1 Plaintiff MARIAH BARAJAS (“Plaintiff”), as an individual, and as a private attorney
2 general alleges as follows:

3 **THE PARTIES, JURISDICTION AND VENUE**

4 1. Plaintiff is, and at all relevant times mentioned herein was, a resident of the County of
5 San Diego, State of California.

6 2. Defendant SHIPYARD STAFFING, LLC (“Shipyard Staffing”) is, and at all times
7 mentioned herein was, a limited liability company organized and existing under the laws of the
8 State of Virginia, doing business in the County of San Diego, California.

9 3. Defendant RIGUP, INC. (“RigUp”) is, and at all times mentioned herein was, a
10 corporation organized and existing under the laws of the State of Delaware, doing business in the
11 County of San Diego, California.

12 4. Shipyard Staffing and Rig Up at all times herein mentioned were, (a) conducting
13 business in the County of San Diego, State of California; (b) the employer of Plaintiff consistent
14 with California Labor Code and Industrial Welfare Commission Wage Orders; and (c) Plaintiff’s
15 employer as defined under Government Code section 12926 subsection (c).

16 5. The acts alleged herein arose in San Diego County, within the State of California.

17 6. Plaintiff is ignorant of the identities of defendants Does 1 through 50, inclusive, and
18 therefore sues these defendants by such fictitious names. The Doe defendants may be individuals,
19 partnerships, or corporations. Plaintiff is informed and believes, and thereon alleges, that at all
20 times mentioned herein, each of the Doe defendants was the parent, subsidiary, agent, servant,
21 employee, co-venturer, and/or co-conspirator of each of the other defendants and was at all times
22 mentioned, acting within the scope, purpose, consent, knowledge, ratification and authorization of
23 such agency, employment, joint venture and conspiracy. Plaintiff will amend this Complaint to
24 allege their true names and capacities when ascertained. Plaintiff is informed and believes and
25 thereon alleges that each of the fictitiously named Doe defendants is responsible in some manner
26 for the occurrences herein alleged, and that Plaintiff’s damages as herein alleged was proximately
27 caused by its conduct. Doe Defendants 1 through 50, Shipyard Staffing, and RigUp are herein
28 collectively referred to as “Defendants.”

GENERAL ALLEGATIONS

7. Plaintiff was employed by Defendants from approximately October 2019 through approximately May 2020 in California as a laborer in ship building and ship repair.

8. Plaintiff was scheduled to work at least five days per week and required to work at least eight (8) hours per day and sometimes in excess of twelve (12) hours per day.

9. Plaintiff's responsibilities included in part, general labor and running cable throughout a ship.

10. Plaintiff and similarly aggrieved current and former non-exempt employees ("Aggrieved Employees") were required to wait in line for roll call to start or end of their shift and for the start or end of their meal period without compensation.

11. Plaintiff and Aggrieved Employees were also required to regularly work more than five (5) hours without being provided a meal period and to work more than ten (10) hours without being provided with a second meal period. In fact, Plaintiff was reprimanded for taking or attempting to take an uninterrupted 30-minute meal period. Further, Defendants forced Plaintiff and Aggrieved employees to take their lunch after six (6) hours of working.

12. Plaintiff and Aggrieved Employees never waived their rights to a meal period when they worked six (6) or more hours.

13. Plaintiff and Aggrieved Employees never received a second lunch period.

14. Plaintiff and Aggrieved Employees never received payment of one (1) additional hour of pay at their regular rate of pay when a meal period was missed or interrupted.

15. Because of Defendants' policies and practices, Plaintiff and Aggrieved Employees were never able to take an uninterrupted ten (10) minute rest break and Plaintiff was reprimanded every time she asked for one or attempted to take one.

16. Plaintiff and Aggrieved Employees never received payment of one (1) additional hour of pay at their regular rate of pay when a rest break was missed or interrupted.

17. Defendants employed a time rounding policy that was not neutral and designed to consistently round time in Defendants' favor, ensuring that Plaintiff and the Aggrieved Employees were not paid for all time worked.

1 18. Furthermore, Defendants often requested Plaintiff and Aggrieved Employees to work
2 prior to clocking-in or to keep working after they clocked-out for the day to finish their assigned
3 work. Defendants failed to pay Plaintiff and Aggrieved Employees for time worked off the clock
4 prior to and at the end of their respective shifts.

5 19. Plaintiff and Aggrieved Employees regularly worked more than eight (8) hours in a
6 day, and/or forty (40) hours in a week during their employment with Defendants.

7 20. Plaintiff and Aggrieved Employees did not receive payment of all wages, including
8 overtime and minimum wages and meal and rest period premiums, within any time permissible
9 under California Labor Code section 204.

10 21. Plaintiff and Aggrieved Employees were entitled to receive complete and accurate
11 wage statements in accordance with California law, but, in fact, they did not receive complete and
12 accurate wage statements from Defendants. The deficiencies included, inter alia, the failure to
13 include the legal entity on the wage statement, failure to include the total number of hours worked
14 by Plaintiff and Aggrieved Employees and the failure to include premium pay for missed and/or
15 interrupted rest and meal breaks.

16 22. On numerous occasions, Plaintiff requested that her supervisors, to provide her with a
17 ten (10) minute uninterrupted rest break and/or a thirty (30) minute uninterrupted meal period, and
18 an accurate wage statement due to missing wages, however such requests were denied and met
19 with hostile retaliation.

20 23. Additionally, Defendants terminated Plaintiff in direct retaliation for her complaints to
21 Defendants regarding Defendants' failure to properly investigate Plaintiff's claims that an
22 employee assaulted her and continued to create unsafe working conditions. Defendants terminated
23 Plaintiff in direct response to her complaints.

24 24. In or about May 2020, Defendants terminated Plaintiff.

25 25. Plaintiff never received the missing wages earned upon termination of her employment.

26 26. On or about July 15, 2020, Plaintiff notified Defendants via certified mail and filed an
27 online PAGA claim notice with the California Labor and Workforce Development Agency
28 ("LWDA") identifying Defendants' violations of the California Labor Code identified in this

1 Complaint and Plaintiff's intent to bring a claim for civil penalties under California Labor Code
2 section 2698 et seq.

3 **FIRST CAUSE OF ACTION**

4 **(Violation of Labor Code § 2698, et seq.)**

5 **(Against All Defendants)**

6 27. Plaintiff re-alleges and incorporates herein by reference each and every allegation set
7 forth above.

8 28. Plaintiff brings this claim as an individual employee and in her capacity as a private
9 attorney general pursuant to the Private Attorneys General Act of 2004, California Labor Code
10 section 2698, et seq. ("PAGA").

11 29. On or about July 15, 2020, Plaintiff notified Defendants via certified mail and filed an
12 online PAGA claim notice with the California Labor and Workforce Development Agency
13 ("LWDA") identifying Defendants' violations of the California Labor Code identified in this
14 Complaint and Plaintiff's intent to bring a claim for civil penalties under California Labor Code
15 section 2698 et seq. The LWDA assigned Plaintiff's case number LWDA-CM-797122-20.
16 Plaintiff also submitted a filing fee of seventy-five (\$75.00) to the LWDA in accordance with
17 Labor Code section 2699.3(a)(1)(B). Sixty-five days have passed from the date of Plaintiff's
18 notice to the LWDA, and thus Plaintiff has exhausted her administrative remedies, thereby
19 allowing Plaintiff to commence a civil action against Defendants pursuant to Labor Code section
20 2699.

21 30. During all relevant times for this action, Defendants regularly required Plaintiff and
22 Aggrieved Employees to work more than eight (8) hours per day and forty (40) hours per week.
23 However, Plaintiff and Aggrieved Employees were not paid wages, including minimum wages
24 and/or overtime wages, for such time worked. Instead, Plaintiff and Aggrieved Employees were
25 paid for just eight (8) hours in a day or forty (40) hours in a week.

26 31. During all relevant times for this action, Defendants failed to provide uninterrupted
27 meal periods to Plaintiff and Aggrieved Employees when they worked more than five (5) hours
28 per day and ten (10) hours per day because Defendants required Plaintiff and Aggrieved

Employees to stay on duty and never provided an uninterrupted first or second meal break.

32. In addition, Defendants failed to permit Plaintiff and Aggrieved Employees to take uninterrupted rest breaks for any shift exceeding four (4) hours of work or a major fraction thereof.

33. Although Defendants failed to provide uninterrupted meal and rest breaks as required by California law, Defendants failed to pay Plaintiff and Aggrieved Employees premium pay for those days in which they were not permitted to take a meal and/or rest break which was duty free.

34. Further, Defendants failed to provide Plaintiff and other similarly Aggrieved Employees with the amount of sick leave available, or paid time off leave provided in lieu of sick leave and further failed to accurately include such information on itemized wage statements.

35. In addition, Defendants failed to pay Plaintiff and similarly Aggrieved Employees for all earned and unused and accrued vacation time at their final rate of pay at the time of termination of their employment.

36. In addition, Defendants failed to provide Plaintiff and Aggrieved Employees with properly itemized wage statements including because Defendants failed to include the actual hours worked, the correct rate of pay and the meal and rest period premiums owed.

37. Further, during Plaintiff and Aggrieved Employees' employment, Defendants were required to pay all wages earned for labor in excess of the normal work period not later than the payday for the next regular payroll period. However, Defendants failed to pay Plaintiff and Aggrieved Employees all wages due to them within the time period specified by California Labor Code section 204, including premiums owed.

38. Additionally, Defendants failed to timely pay Plaintiff and other similarly Aggrieved Employees all wages at the end of employment.

39. Further, during all relevant times for this action, Plaintiff complained to Defendants regarding not receiving rest and meal periods, not being paid for all time worked, and not being paid in a timely manner, but Plaintiff was ignored.

40. Additionally, Defendants terminated Plaintiff in direct retaliation for her complaints to Defendants regarding Defendants' failure to properly investigate Plaintiff's claims that an

1 employee assaulted her and continued to create unsafe working conditions. Defendants terminated
2 Plaintiff in direct response to her complaints.

3 41. In response to Plaintiff's complaints, Defendant terminated Plaintiff's employment.

4 42. Plaintiff, as an "Aggrieved Employee" within the meaning of Labor Code § 2698 *et*
5 *seq.*, acting on behalf of herself and other similarly Aggrieved Employees, brings this
6 representative action against Defendants to recover the civil penalties due to Plaintiff, other
7 similarly Aggrieved Employees, and the State of California according to proof pursuant to Labor
8 Code § 2699 (a) and (f) including, but not limited to \$100.00 for each initial violation and \$200.00
9 for each subsequent violation per employee per pay period for the following Labor Code
10 violations:

- 11 a. Failing to pay Plaintiff and other similarly Aggrieved Employees all earned
12 minimum wage compensation in violation of Labor Code §§ 1194 and 1198 *et seq.*;
- 13 b. Failing to pay Plaintiff and other similarly Aggrieved Employees all earned
14 overtime compensation in violation of Labor Code §§ 204, 510, 1194, and 1198 *et*
15 *seq.*;
- 16 c. Failing to pay Plaintiff and other similarly Aggrieved Employees an additional hour
17 of premium pay for meal period violations in violation of Labor Code §§ 226.7 and
18 512;
- 19 d. Failing to pay Plaintiff and other similarly Aggrieved Employees an additional hour
20 of premium pay for rest period violations in violation of Labor Code §§ 226.7 and
21 512;
- 22 e. Failing to timely pay Plaintiff and other similarly Aggrieved Employees all wages
23 at end of employment in violation of Labor Code § 203;
- 24 f. Failing to timely pay Plaintiff and other similarly Aggrieved Employees all wages
25 owed during employment;
- 26 g. Failing to furnish Plaintiff and other similarly Aggrieved Employees with
27 complete, accurate, itemized wage statements in violation of Labor Code § 226;
- 28 h. Failing to maintain accurate records relating to Plaintiff and other similarly

Aggrieved Employees work periods, meal periods, total daily hours, hours per pay period, and applicable pay rates;

- i. Failing to provide Plaintiff and other similarly Aggrieved Employees with the amount of sick leave available, or paid time off leave provided in lieu of sick leave and further failed to accurately include such information on itemized wage statements in violation of Labor Code §§ 245.5, 246, and 226;
- j. Failing to pay Plaintiff and similarly Aggrieved Employees for all earned and unused and accrued vacation time at their final rate of pay at the time of termination of their employment in violation of Labor Code § 227.3;
- k. Failing to timely pay Plaintiff and other similarly Aggrieved Employees all wages at the end of employment in violation of Labor Code § 203;
- l. Defendants' unlawful retaliation against Plaintiff and termination of employment after Plaintiff complained about violations under California's Labor Code in violation of California Labor Code §§ 1102.5(b) and 1102.5(f); and
- m. Defendants' unlawful retaliation against Plaintiff and termination of employment after Plaintiff complained about violations under California's Labor Code in violation of California Labor Code §§ 98.6(a) and 98.6(b)(3).

43. Plaintiff was compelled to retain the services of counsel to file this court action to protect her interests and other similarly aggrieved employees, and to assess and collect the civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys' fees and costs, which they are entitled to recover under California Labor Code § 2699.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays judgment against Defendants as follows:

1. For statutory civil penalties pursuant to Labor Code section 2698, *et seq.*, and as allowed by law and according to proof;

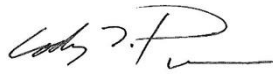
2. For statutory attorneys' fees and costs pursuant to Labor Code sections 2698, *et seq.*, and as allowed by law and according to proof;

1 3. For pre- and post-judgment interest at the maximum legal rate on all amounts claimed;
2 and

3 4. For such other and further relief as the Court may deem just and proper.

4
5 DATED: July 12, 2021

PAYNE NGUYEN, LLP

6
7
8 By: 

Cody Payne
Kim Nguyen
Attorneys for Plaintiff
MARIAH BARAJAS