

SUMMONS (CITACION JUDICIAL)

NOTICE TO DEFENDANT: FREMOUW ENVIRONMENTAL SERVICES,
(AVISO AL DEMANDADO): INC., a California corporation, and
DOES 1 through 10, inclusive

YOU ARE BEING SUED BY PLAINTIFF: WAYNE OSBORNE, on behalf
(LO ESTÁ DEMANDANDO EL DEMANDANTE): of himself and all
"aggrieved employees" pursuant to Labor Code § 2698 et
seq.

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

FILED
JULY 11 2021
2021 MAR 11 PM 2:10
BRANDON E. RILEY, CLERK
JESSICA CAYO
BY _____
DEPUTY

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:

(El nombre y dirección de la corte es):

Superior Court of California, County of San Joaquin
180 E. Weber Avenue
Stockton, California 95202

CASE NUMBER:
(Número del Caso):

STK-CV- UOF -2021- 1780

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is: Alex P. Katofsky, Esq. #202754
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Gaines & Gaines, APLC

27200 Agoura Road, Suite 101, Calabasas, CA 91301

DATE:

(Fecha) MAR 01 2021

BRANDON E. RILEY

Clerk, by

(Secretario)

JESSICA CAYO

, 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)).

[SEAL]

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 416.20 (defunct corporation)

☐ CCP 416.40 (association or partnership)

☐ other (specify):

4. ☐ by personal delivery on (date):

☐ CCP 416.60 (minor)

☐ CCP 416.70 (conservatee)

☐ CCP 416.90 (authorized person)

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Alex P. Katofsky, Esq. SBN: 202754 Gaines & Gaines, APLC 27200 Agoura Road, Suite 101, Calabasas, CA 91301 TELEPHONE NO.: 818-703-8985 FAX NO.: 818-703-8984 ATTORNEY FOR (Name): Plaintiff, Wayne Osborne		FOR COURT USE ONLY FILED 2021 MAR -1 PM 2:17 BRANDON E. RILEY, CLERK BY JESSICA CAYO DEPUTY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN JOAQUIN STREET ADDRESS: 180 E. Weber Avenue MAILING ADDRESS: 180 E. Weber Avenue CITY AND ZIP CODE: Stockton, 95202 BRANCH NAME: Stockton Courthouse		CASE NUMBER: STK-CV-1006-2021-1780 DEPT:
CASE NAME: Osborne v. Fremouw Environmental Services, Inc., et al.		
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)

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
b. ☐ Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
c. ☐ Substantial amount of documentary evidence | d. ☐ Large number of witnesses
e. ☐ Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
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): One (1)
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: 2/26/21

Alex P. Katofsky, Esq.

(TYPE OR PRINT NAME)

Alex P. Katofsky

(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 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.

FILE BY FAX

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

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6 Facsimile: (818) 703-8984

7 Attorneys for Plaintiff Wayne Osborne, on behalf of himself and all "aggrieved employees"
8 pursuant to Labor Code § 2698 *et seq.*

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF SAN JOAQUIN**

11 WAYNE OSBORNE, on behalf of himself
12 and all "aggrieved employees" pursuant to
13 Labor Code § 2698 *et seq.*,

14 Plaintiffs,

15 v.

16 FREMOUW ENVIRONMENTAL
SERVICES, INC., a California corporation,
17 and DOES 1 through 10, inclusive,

18 Defendants.
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CASE NO: STK-CV-006-2021-1780

**REPRESENTATIVE ACTION
COMPLAINT FOR PENALTIES
PURSUANT TO LABOR CODE § 2699(f)
FOR VIOLATIONS OF LABOR CODE
§§ 201, 202, 221, 226(a), 226.7, 510, 512,
1194, AND 2802 AND PURSUANT TO
LABOR CODE § 2699(a) FOR
VIOLATIONS OF LABOR CODE §§ 226.3
AND 558**

FILED
SUPERIOR COURT - STOCKTON
2021 MAR -1 PM 2:17
BRANDON E. RILEY, CLERK
BY JESSICA CAYO
DEPUTY

1 Plaintiff WAYNE OSBORNE (“Plaintiff”), on behalf of himself and others as an “aggrieved
2 employee” under the Labor Code Private Attorneys General Act of 2004, complains of FREMOUW
3 ENVIRONMENTAL SERVICES, INC., INC., a California corporation, and/or any subsidiaries or
4 affiliated companies (hereinafter referred to as “Defendants”), as follows:

5 **I.**

6 **INTRODUCTION AND FACTUAL BACKGROUND**

7 1. This is a Representative Action, pursuant to Labor Code § 2698 *et seq.*, on behalf of
8 Plaintiff and all non-exempt truck drivers employed by Fremouw Environmental Services, Inc. in
9 California between August 12, 2019 and January 20, 2021 (“Aggrieved Employees”).

10 2. From August 12, 2019 through February 15, 2021, Defendants have had consistent
11 policies of:

12 a. Failing to pay premium wages to Plaintiff and Aggrieved Employees who were
13 denied rest periods, in violation of Labor Code §§ 226.7 and 558 and IWC Wage Order 9-2001.
14 Plaintiff and Aggrieved Employees were routinely unable, and not authorized, to take a 10-minute
15 rest period for every four (4) hours of work or major fraction thereof, but were not paid premium
16 wages of one hour’s pay for each missed rest period. When they were provided with a rest period,
17 they were not permitted to leave their truck unattended and were required to take all rest periods with
18 the truck, resulting in a significant amount of employer control, and therefore, impermissible on-duty
19 rest periods. This violates Labor Code §§ 226.7 and 558 and IWC Wage Order 9-2001;

20 b. Failing to pay premium wages to Plaintiff and Aggrieved Employees who were
21 denied meal periods, in violation of Labor Code §§ 226.7 and 512 and IWC Wage Order 9-2001.
22 Plaintiff and all other Aggrieved Employees were routinely denied, and not authorized to take, a
23 timely, uninterrupted, 30-minute meal period for every shift worked that exceeded five hours in
24 duration, or a second uninterrupted, 30-minute meal period for every shift worked that exceeded ten
25 hours in duration, but were not paid premium wages of one hour’s pay for each missed meal period.
26 When they were provided with a meal period, as with rest periods, they were not permitted to leave
27 their truck unattended and were required to take all meal periods with the truck, resulting in a
28

1 significant amount of employer control, and therefore, impermissible on-duty meal periods. This
2 violates Labor Code §§ 226.7 and 512 and IWC Wage Order 9-2001;

3 c. Failing to reimburse Plaintiff and other Aggrieved Employees for necessary
4 business expenses incurred in direct consequence of the discharge of their duties, in violation of Labor
5 Code § 2802, including, but not limited to, the use of their personal cellular phone or other mobile
6 device, while working for Defendant. Labor Code § 2802 states that an employer must indemnify its
7 employees for all necessary expenditures or losses incurred by the employee in direct consequence
8 of the discharge of their duties;

9 d. Making made illegal deductions from Plaintiff's and Aggrieved Employees'
10 wages, in violation of Labor Code §§ 221, 510 and 1194. Defendants made deductions from
11 Plaintiff's wages for unspecified reasons, but they are presumed to be for auto vehicle accidents.
12 Plaintiff alleges this on behalf of himself and other Aggrieved Employees of Defendants;

13 e. Failing to provide Plaintiff and non-exempt Aggrieved Employees with wage
14 statements that fully and accurately itemized the requirements set forth in Labor Code §§ 226(a) and
15 226.3. As Defendants failed to compensate Plaintiff and Aggrieved Employees with all wages due,
16 as detailed above, their wage statements failed to accurately state all gross wages earned, in violation
17 of Labor Code §§ 226(a)(1) and 226.3, total hours worked, in violation of Labor Code §§ 226(a)(2)
18 and 226.3, net wages earned, in violation of Labor Code §§ 226(a)(5) and 226.3, and all applicable
19 hourly rates in effect during the pay period and the corresponding number of hours worked at each
20 rate, in violation of Labor Code §§ 226(a)(9) and 226.3. Moreover, and independent of the above
21 allegations, the wage statements issued to Plaintiff and all California employees fail to set forth all
22 applicable hourly rates in effect during the pay period and the corresponding number of hours worked
23 at each rate, in violation of Labor Code §§ 226(a)(9) and 226.3—the double time hours are listed at
24 the regular rate of pay instead of the correct rate. Further, and also independent of the above
25 allegations, the wage statements issued to Plaintiff and all California employees of Defendants fail to
26 set forth the proper name and address of the employing entity, in violation of Labor Code §§ 226(a)(8)
27 and 226.3; and
28

1 c. Failing to timely pay Plaintiff and non-exempt Aggrieved Employees all wages
2 due at the separation of their employment based on the time frames required by Labor Code §§ 201
3 and 202. As Plaintiff and other Aggrieved Employees of Defendants were not paid all wages due and
4 owing throughout the course of their employment, as detailed above, at the time of their separation
5 they were not paid all final wages due and owing for the entirety of their employment. Furthermore,
6 when Plaintiff was terminated from his position, he was not issued his wages at the time of his
7 termination; rather, he was issued his final wages 10 days later on the next regularly scheduled pay
8 date. This violates Labor Code §§ 201-203 and is alleged on behalf of all California employees.

9 3. Plaintiff, on behalf of himself and all Aggrieved Employees pursuant to Labor Code §
10 2698 *et seq.*, seeks civil penalties for Defendants' violations of the California Labor Code.

11 4. Venue is proper in this judicial district, pursuant to Code of Civil Procedure § 395.
12 The Labor Code violations alleged against Defendants herein arose in San Joaquin County,
13 California.

14 II.

15 TOLLING AGREEMENT

16 5. Plaintiff and Defendants entered into an agreement to toll the statute of limitations,
17 pursuant to California Code of Civil Procedure § 360.5, from October 16, 2020 through and including
18 February 15, 2021. As such, all periods of limitation (statutory or otherwise) affecting any and all
19 claims or causes of actions which Plaintiff may have against Defendants have been tolled between
20 October 16, 2020 and February 15, 2021.

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1 **III.**

2 **PARTIES**

3 **A. Plaintiff**

4 6. Plaintiff WAYNE OSBORNE was employed by Defendants from July 2019 through
5 December 2019 as a non-exempt employee in San Joaquin County, California.

6 **B. Defendant**

7 7. Defendant FREMOUW ENVIRONMENTAL SERVICES, INC., is a California
8 corporation. Defendant FREMOUW ENVIRONMENTAL SERVICES, INC. employed Plaintiff and
9 Aggrieved Employees throughout the State of California, including San Joaquin County, California.

10 8. The true names and capacities, whether individual, corporate, associate, or otherwise,
11 of Defendants sued herein as DOES 1 to 10, inclusive, are currently unknown to Plaintiff, who
12 therefore sues Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiff is
13 informed and believes, and based thereon alleges, that each of the Defendants designated herein as a
14 DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will
15 seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendants
16 designated hereinafter as DOES when such identities become known.

17 9. Plaintiff is informed and believes, and based thereon alleges, that each Defendant acted
18 in all respects pertinent to this action as the agent of the other Defendant, carried out a joint scheme,
19 business plan or policy in all respects pertinent hereto, and the acts of each Defendant is legally
20 attributable to the other Defendants.

21 10. The Defendants named herein as DOE 1 through DOE 10 are and were persons acting
22 on behalf of, or acting jointly with, Defendants, who violated, or caused to be violated, one or more
23 provisions of the California Labor Code as alleged herein.

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1 IV.

2 CAUSES OF ACTION

3 FIRST CAUSE OF ACTION

4 **PLAINTIFF AND ALL AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS**
5 **PENALTIES PURSUANT TO LABOR CODE § 2699(f) FOR VIOLATIONS OF LABOR**
6 **CODE §§ 201, 202, 221, 226(a), 226.7, 510, 512, 1194, AND 2802 AND PURSUANT TO**
7 **LABOR CODE § 2699(a) FOR VIOLATIONS OF LABOR CODE §§ 226.3 AND 558**

8 11. Plaintiff incorporates paragraphs 1 through 10 of this Complaint as though fully set
9 forth herein.

10 12. As a result of the acts alleged above, including the Labor Code violations set forth in
11 paragraph 2 above, Plaintiff seeks civil penalties pursuant to Labor Code §§ 2698 *et seq.*

12 13. For each such violation, Plaintiff and all other Aggrieved Employees are entitled to
13 penalties and other relief in an amount to be shown at the time of trial subject to the following formula:

14 a. Pursuant to Labor Code § 2699(f), \$100 for each initial violation and \$200 for
15 each subsequent violation of Labor Code §§ 201, 202, 221, 226(a), 226.7, 510,
16 512, 1194, and 2802; and

17 b. Pursuant to Labor Code § 2699(f), the penalties as authorized by Labor Code
18 §§ 226.3 and 558.

19 14. Civil penalties recovered will be allocated 75% to the Labor and Workforce
20 Development Agency, and 25% to the affected employees.

21 15. On August 12, 2020, Plaintiff sent a letter, by online submission to the LWDA and by
22 certified mail, return receipt requested, to Defendants setting forth the facts and theories of the
23 violations alleged against Defendants, as prescribed by Labor Code § 2698 *et seq.* Pursuant to Labor
24 Code § 2699.3(a)(2)(A), no notice was received by Plaintiff from the LWDA within sixty-five (65)
25 calendar days of August 12, 2020. Plaintiff may therefore commence this action to seek civil penalties
26 pursuant to Labor Code § 2698 *et seq.*

27 Wherefore, Plaintiff and the Aggrieved Employees he seeks to represent request relief as
28 described below.

V.

RELIEF REQUESTED

WHEREFORE, Plaintiff prays for the following relief:

1. For civil penalties pursuant to Labor Code § 2698 *et seq.* for Plaintiff and all other Aggrieved Employees;
2. An award providing for payment of costs of suit pursuant to Labor Code § 2699(g)(1) and other applicable law;
3. An award of attorneys' fees pursuant to Labor Code § 2699(g)(1) and other applicable law; and
4. Such other and further relief as this Court may deem just and proper.

Dated: February 26, 2021

Respectfully submitted,

GAINES & GAINES
A Professional Law Corporation

By: Daniel F. Gaines
DANIEL F. GAINES
EVAN S. GAINES
Attorneys for Plaintiff

SUPERIOR COURT OF CALIFORNIA

County of San Joaquin
180 E Weber Avenue
Stockton, CA 95202

NOTICE OF CASE ASSIGNMENT AND NOTICE OF HEARING

Case Number: **STK-CV-UOE-2021-0001780**

A Case Management Conference has been scheduled for your case as indicated below. A copy of this information must be provided with the complaint or petition, and with any cross-complaint that names a new party to the underlying action. Disregard hearing date if that date has expired.

Hearing: Case Management Conference	Date: 08/30/2021	Time: 8:45 AM Department: 10D
JUDGE	COURT LOCATION	PHONE Numbers:
THIS CASE HAS BEEN ASSIGNED TO JUDGE BARBARA KRONLUND IN DEPARTMENT 10D FOR ALL PURPOSES, INCLUDING TRIAL.	Stockton	Stockton: 209-992-5693 Lodi: 209-992-5522

[X] ADR & Scheduling Information is available on court website @ sjcourts.org/self-help

1. You must:

- Serve** all named defendant's and file proofs of service on those defendants with the court Within 60 days of the filing of the complaint. (CRC 3.110)
- File and serve** a completed Case Management Conference Statement (use of JC form CM-110 is mandatory) at least 15 days before the Case Management Conference.
- Meet and Confer**, in person or by telephone, to consider each of the issues identified in CRC 3.727 no later than 30 calendar days before the date set for the Case Management Conference. (CRC 3.724)
- Collection cases** are managed pursuant to CRC 3.740.

2. As of May 4, 2020, all civil hearings scheduled in Departments 10A, 10B, 10C, 10D and 11B will be held remotely by telephone using the court's system until further notice. Requests to appear telephonically for civil hearings in other departments may be made by contacting the Clerks Office. For mandatory telephonic appearance information and instructions visit @ <https://www.sjcourts.org/how-to-appear-remotely-civil/>.

3. If this case was eFiled, the plaintiff/petitioner or their attorney must access their copy of this notice and the issued summons for service from the court's case management system at the following link: cms.sjcourts.org/fullcourtweb/start.do. Disregard hearing date if that date has expired.

4. **Courtesy Copies:** Courtesy copies are required for all Motions for Summary Judgment, Summary Adjudication and for all CEQA cases. Individual Judges/Departments have additional requirements for courtesy copies. Please review this information located on the public website @ <https://www.sjcourts.org/divisions/civil/>.

Visit our website @ www.sjcourts.org for more information regarding civil cases, local rules and forms.

Date: 03/01/2021

Jessica Cayo, Deputy Clerk

NOTICE OF CASE ASSIGNMENT AND NOTICE OF HEARING