

SUMMONS (CITACION JUDICIAL)

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

NOTICE TO DEFENDANT: WILL TIESIERA FORD, INC., a
(AVISO AL DEMANDADO): California corporation, and DOES 1
through 10, inclusive

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

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 Tulare
221 S. Mooney Blvd.
Visalia, California 93291

CASE NUMBER:
(Número del Caso):

285296 -

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is: Alex P. Katofsky, Esq.; SBN 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, Salinas, CA 91301

DATE:

(Fecha)

DEC 08 2020

Stephanie Cameron
Clerk by

(Secretario)

NICOLE RENTERIA 8-703-8985
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]

COURT 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 416.60 (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):

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, Juan Andrade		FOR COURT USE ONLY FILED TULARE COUNTY SUPERIOR COURT VISALIA DIVISION DEC 08 2020 STEPHANIE CAMELON, CLERK NICOLE RENTERIA BY: _____	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF TULARE STREET ADDRESS: 221 S. Mooney Blvd. MAILING ADDRESS: 221 S. Mooney Blvd. CITY AND ZIP CODE: Visalia, 93291 BRANCH NAME: County Civic Center		CASE NUMBER: 285296 - JUDGE: _____ DEPT: _____	
CASE NAME: Andrade v. Will Tiesiera Ford, 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)	

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

BY FAX

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)
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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): 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: 12/4/2020

Alex P. Katofsky, Esq.

(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

Assigned to Judicial Officer David C. Mathias

For All Purposes

FILED
TULARE COUNTY SUPERIOR COURT
VISALIA DIVISION

DEC 08 2020

STEPHANIE CAMELON, CLERK
BY: NICOLE RENTERIA

DANIEL F. GAINES, ESQ. SBN 251488
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Attorneys for Plaintiff Juan Andrade on behalf of himself and all "aggrieved employees" pursuant to Labor Code § 2698 *et seq.*

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF TULARE

JUAN ANDRADE, on behalf of himself and
all "aggrieved employees" pursuant to Labor
Code § 2698 *et seq.*,

Plaintiffs,

v.

WILL TIESIERA FORD, INC., a California
corporation, and DOES 1 through 10,
inclusive,

Defendants.

CASE NO:

285296 -

**REPRESENTATIVE ACTION
COMPLAINT FOR PENALTIES
PURSUANT TO LABOR CODE § 2699(f)
FOR VIOLATIONS OF LABOR CODE
§§ 201, 202, 212, 226(a), 226.7, 510, 512,
AND 1194 AND PURSUANT TO LABOR
CODE § 2699(a) FOR VIOLATIONS OF
LABOR CODE §§ 225.5, 226.3 AND 558**

BY FAX

CASE MANAGEMENT CONFERENCE

Hearing Date: 4/14/2021

Time: 8:30

Department: 1

1 Plaintiff JUAN ANDRADE (“Plaintiff”), on behalf of himself and others as an “aggrieved
2 employee” under the Labor Code Private Attorneys General Act of 2004, complains of WILL
3 TIESIERA FORD, INC., a California corporation, and/or any subsidiaries or affiliated companies
4 (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 other of Defendants’ non-exempt California employees, including those paid on a
9 piece-rate or commission basis (“Aggrieved Employees”).

10 2. For at least one (1) year prior to the filing of this action and at least one (1) year prior
11 to the date Plaintiff began the process of exhausting the administrative requirements, pursuant to
12 Labor Code § 2698 *et seq.*, and continuing to the present (the “liability period”), Defendants have had
13 consistent policies of:

14 a. Failing to properly compute bonus wages and other non-base hourly wages
15 earned by Plaintiff and other Aggrieved Employees into their regular rate of pay for purposes of
16 paying them overtime at the correct rates, in violation of Labor Code §§ 510, 558 and 1194.
17 Defendants failed to properly blend these non-base wages and instead paid Plaintiff and other
18 Aggrieved Employees overtime based *only* on the base hourly rate of pay, thus depriving Plaintiff
19 and other Aggrieved Employees of all overtime and double time wages earned. Defendants also
20 failed to blend bonus wages and other non-base hourly base hourly wages earned by Plaintiff and
21 other Aggrieved Employees into their sick pay rate yielding an underpayment, in violation of Labor
22 Code §§ 510, 558 and 1194;

23 b. Failing to pay premium wages to Plaintiff and Aggrieved Employees who were
24 denied rest periods, in violation of Labor Code §§ 226.7 and 558 and IWC Wage Order No. 7-2001.
25 Plaintiff and Aggrieved Employees were routinely unable to take an off-duty 10-minute rest period
26 for every four (4) hours of work or major fraction thereof, but were not paid premium wages of one
27 hour’s pay for each missed rest period. When they were able to take a rest period, they were oftentimes
28

late, cut short, interrupted, or on-duty, and subject to the employer's control, in violation Labor Code §§ 226.7 and 558 and IWC Wage Order No. 7-2001;

c. Failing to pay premium wages to Plaintiff and other Aggrieved Employees who were denied meal periods, in violation of Labor Code §§ 226.7, 512 and 558 and IWC Wage Order 7-2001. Plaintiff and Aggrieved Employees were routinely denied, and not authorized to take, a timely, uninterrupted, 30-minute meal period for every shift worked that exceeded five hours in duration, or a second timely, uninterrupted, 30-minute meal period for every shift worked that exceeded ten hours in duration, but were not paid premium wages of one hour's pay for each missed first or second meal period. This violates Labor Code §§ 226.7, 512 and 558 and IWC Wage Order 7-2001;

d. Failing to provide Plaintiff and other Aggrieved Employees with wage statements that fully and accurately itemized the requirements set forth in Labor Code §§ 226(a) and 226.3. Plaintiff and other Aggrieved Employees were not paid all overtime wages due and meal and rest period premium wages due. As such, the wage statements provided by Defendants failed to accurately state all gross wages earned, in violation of Labor Code §§ 226(a)(1) and 226.3, total hours worked, in violation of Labor Code §§ 226(a)(2) and 226.3, net wages earned, in violation of Labor Code §§ 226(a)(5) and 226.3, and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked, in violation of Labor Code §§ 226(a)(9) and 226.3;

f. Issuing their California employees' wages by paychecks drawn on an account at Citizens Bank, which charges all non-account holders check cashing fees, including Plaintiff and Defendant's California employees. Plaintiff and other California employees do not have a bank account with Citizens Bank, such that they were forced to incur check cashing fees at Citizens Bank to obtain their wages. Further, there was no California business address listed on their paychecks where they could be cashed without any fees, violating the express requirements of Labor Code section 212. By not making arrangements with Citizens Bank to allow employees to cash their paychecks without paying a fee, Defendants have violated Labor Code §§ 212 and 225.5; and

g. Failing to pay Plaintiff all wages due at the separation of his employment based on the time frames required by Labor Code §§ 201 and 202. As stated above, Plaintiff and other

1 Aggrieved Employees were not paid all wages due, during the course of their employment and, as a
2 result of this failure, they were not timely paid all wages due at the separation of their employment.
3 This violates Labor Code §§ 201-202 and is alleged on behalf of Plaintiff and certain Aggrieved
4 Employees no longer employed by Defendants.

5 3. Plaintiff, on behalf of himself and all Aggrieved Employees pursuant to Labor Code §
6 2698 *et seq.*, seeks civil penalties for Defendants' violations of the California Labor Code.

7 4. Venue is proper in this judicial district, pursuant to Code of Civil Procedure § 395.
8 The Labor Code violations alleged against Defendants herein arose in Tulare County, California.

9 II.

10 PARTIES

11 A. Plaintiff

12 5. Plaintiff JUAN ANDRADE was employed by Defendants from July 2015 through
13 March 2020 as non-exempt employee in Tulare County, California.

14 B. Defendant

15 6. Defendant WILL TIESIERA FORD, INC. is a Delaware corporation. Defendant
16 WILL TIESIERA FORD, INC. employed Plaintiff and Aggrieved Employees throughout the State
17 of California, including Amador County, California.

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

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

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

III.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

**PLAINTIFF AND ALL AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS
PENALTIES PURSUANT TO LABOR CODE § 2699(f) FOR VIOLATIONS OF LABOR
CODE §§ 201, 202, 212, 226(a), 226.7, 510, 512, AND 1194 AND PURSUANT TO LABOR
CODE § 2699(a) FOR VIOLATIONS OF LABOR CODE §§ 225.5, 226.3 AND 558**

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

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

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

a. Pursuant to Labor Code § 2699(f), \$100 for each initial violation and \$200 for each subsequent violation of Labor Code §§ 201, 202, 212, 226(a), 226.7, 510, 512, and 1194; and

b. Pursuant to Labor Code § 2699(f), the penalties as authorized by Labor Code §§ 225.5, 226.3 and 558.

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

14. On September 15, 2020, Plaintiff sent a letter, by online submission to the LWDA and by certified mail, return receipt requested, to Defendants setting forth the facts and theories of the violations alleged against Defendants, as prescribed by Labor Code § 2698 *et seq.* Pursuant to Labor Code § 2699.3(a)(2)(A), no notice was received by Plaintiff from the LWDA within sixty-five (65)

1 calendar days of September 15, 2020. Plaintiff may therefore commence this action to seek civil
2 penalties pursuant to Labor Code § 2698 *et seq.*

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

5 **IV.**

6 **RELIEF REQUESTED**

7 WHEREFORE, Plaintiff prays for the following relief:

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

15 Dated: December 4, 2020

Respectfully submitted,

16 GAINES & GAINES
17 A Professional Law Corporation

18 By: Daniel F. Gaines
19 DANIEL F. GAINES
20 EVAN S. GAINES
21 Attorneys for Plaintiff
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23
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25
26
27
28



Superior Court of the State of California

COUNTY OF TULARE

CIVIL LEGAL PROCESSING
221 S. Mooney Blvd., Room 201
Visalia, California 93291
Telephone: (559) 730-5000

ALTERNATIVE DISPUTE RESOLUTION PACKAGE

This is Tulare County Superior Court's Alternative Dispute Resolution (ADR) Package. The package contains:

1. The court's current ADR Referral List;
2. Tulare County Superior Court's Local Rule 600 on Case Management Conferences;
3. Information about ADR.

At the time a civil complaint is filed, the clerk will issue a hearing date and time for the Case Management Conference (CMC). This information is placed on the front page of the complaint. Plaintiff must serve notice of the CMC hearing and this ADR Package on each defendant with the summons and complaint.

All parties appearing in the action are ordered to meet and confer prior to the CMC date regarding an agreed upon mediator and mediation date and time under Local Rule 600(a)(5).

Each party must file and serve a CMC statement on Judicial Council form CM-110 no later than 15 calendar days before the CMC hearing under California Rules of Court, rule 3.725 and Local Rule 600(a)(6).

Counsel and unrepresented parties are required to be present, either in person or by CourtCall (See Local Rule 108 regarding CourtCall), at the CMC hearing and have authority to enter into a mediation agreement if the parties have agreed to mediate. Each party appearing shall also have sufficient information and understanding of the case in order to evaluate it accurately.

Please be advised that monetary and/or terminating sanctions shall be imposed against parties and counsel who fail to comply with state and local rules regarding case management conferences without good cause.

ADR REFERRAL LIST
January 2018

NAME	HOURLY RATE	PROFILE INFORMATION
Honorable Howard R. Broadman (Ret.) 300 N. Willis Visalia, CA. 93291 Phone: (559) 738-1800 Fax: (559) 738-1102 Email: judgebroadman@judgebroadman.com	\$475.00 per hour	Click Here Resume on file
Kenneth M. Byrum 5080 California Ave #200 Bakersfield, CA 93309 Phone: (661) 861-6191 Fax: (661) 861-6190 Email: ken@kmbmediation.com	\$300.00 per hour	Click Here Resume on file
Russell D. Cook 1233 West Shaw, Suite 100 Fresno, CA 93711 Phone: (559) 225-2510 Fax: (559) 229-3941 Email: rdcook@rdcooklaw.com	\$285.00 per hour	Click Here Resume on file
Valerie V. Flugge 45406 South Fork Drive Three Rivers, CA 93271 Phone: (559)802-4234 Email: Valerie@sequoiamediation.com	\$250.00 per hours	Click Here Resume on file
Donald H. Glasrud Dietrich, Glasrud, Mallek & Aune 5250 North Palm Ave, Suite 402 Fresno, CA 93704 Phone: (559) 435-5250 Fax: (559) 435-8776 Email: dhg@dgmLaw.com	\$375.00 per hour	Click Here Resume on file
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Lee M. Jacobson 1690 W. Shaw Avenue, Suite 201 Fresno, CA 93711	\$290.00 per hour	Click Here Resume on file

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Daniel O. Jamison 8080 North Palm Avenue Fresno, CA 93711 Phone: (559)432-4500 Fax: (559)432-4590 Email: djamison@daklaw.com	\$320 per hour including travel time	Click Here Resume on file
Honorable Patrick J. O'Hara (Ret.) 300 N. Willis Visalia, CA. 93291 Phone: (559) 429-4570 Fax: (559) 429-4575 Email: judgeohara@judgeohara.com Website: www.judgeohara.com	\$475.00 per hour	Click Here Resume on file
Richard B. Isham 3814 W. Robinwood P.O. Box 8139 Visalia, CA. 93290 Phone: (559) 733-2257 Cell: (559)738-3963 Email: rbisham@att.net	\$300.00 per hour	Click Here Resume on file
Leah Catherine Launey 42490 Kaweah River Drive Three Rivers, CA 93271 Phone: (559) 561-4270 Fax: (559) 561-4273 Email: lclauney@lanneymediation.com	\$175.00 per hour 2 hour minimum	Click Here Resume on file
Kevin G. Little 1099 E. Champlain Drive, Suite A-124 Fresno, CA 93720 Phone: (559)708-4750 Fax: (559)420-0830 Email: kevinglittle@yahoo.com	\$200.00 per hour 2 hour minimum	Click Here Resume on file
Linda Luke 632 W. Oak Avenue Visalia, CA. 93291 Phone: (559) 733-9505 Fax: (559) 733-3910 Email: linda.luke@icloud.com	\$275.00 per hour	Click Here Resume on file
John T. Nagel	\$245.00 per hour	Click Here

1233 W. Shaw Avenue, #100 Fresno, CA 93711 Phone: (559)225-2510 Fax: (559) 225-2389 Email: johntnagel@comcast.net		Resume on file
Douglas E. Noll P.O. Box 2336 Clovis, CA. 93613 Phone: 800-785-4487 Fax: 877-765-1353 Email: doug@nollassociates.com	\$400 per hour 4 hour minimum	Click Here Resume on file
Honorable Robert. H. Oliver (Ret.) 5260 N. Palm Ave, Fourth Floor Fresno, CA 93704 Fax: (559) 432-5620 Email: roliver@bakermanock.com	\$400.00 per hour (2 Hour Minimum)	Click Here Resume on file
James M. Phillips 8080 N. Palm Ave, Suite 101 Fresno, CA 93711 Phone: (559) 261-9340 Fax: (888) 974-4321 Email: phillipsgp@aol.com	\$340.00 per hour	Click Here Resume on file
Michael Renberg 1540 E. Shaw Ave, Suite 123 Fresno, CA 93710 Phone: (559) 431-6300 Fax: (559) 432-1018 Email: mrenberg@prcelaw.com	\$240.00 per hour	Click Here Resume on file
Laurie Quigley Saldana 791 Price Street. #323 Pismo Beach, CA. 93449 Phone: (559) 730-1812 Email: laurie@mediationcentral.net	\$350.00 per hour	Click Here Resume on file
Tom Simonian 1100 W. Center Ave Visalia, CA. 93291 Phone: (559) 732-7111 Fax: (559)732-1540	\$290.00 per hour	Click Here Resume on file
Andrew R. Weiss 7109 North Fresno Street, Suite 250 Fresno, CA 93720	\$300.00 per hour	Click Here Resume on file

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CHAPTER 6 – MANAGING CIVIL CASES

Rule 600 – Case Management Conference

- (a) The Judicial Council has implemented state rules for the management of civil cases (Cal. Rules of Court, Chapter 2 Trial Court Management of Civil Cases, rules 10.900, et. Seq.).

In recognition of the state rules requiring the court to implement a case management Plan, the court elects to follow California Rules of Court, rule 3.714.

- (1) At the time the complaint is filed, the clerk will issue a hearing date for the Case Management Conference (CMC) to plaintiff that is no less than 120 days after the filing of the complaint. The clerk will also provide the Plaintiff with the court's Alternative Dispute Resolution (ADR) package including the list of the names of the mediators who have applied and met the court's mediation/arbitration qualifications pursuant to the program adopted by the court under California Rules of Court, rule 10.781. Plaintiff must serve a Notice of CMC and the ADR package on each defendant along with the summons and complaint.
- (2) Any party who files and serves a cross-complaint prior to the CMC must serve on each cross-defendant who is a new party to the action, a copy of the Notice of CMC and the ADR package along with the summons and cross-complaint. If a new cross-defendant is served after the initial CMC, the cross-complainant must serve the new cross-defendant with notice of any pending CMC, any assigned mediation date, trial, or settlement conference dates, and any other dates set by the court or orders made at the CMC.
- (3) If the plaintiff adds a new defendant or identifies a fictitiously named defendant after the initial CMC, along with the summons and complaint, plaintiff must serve the newly named defendant with notice of any pending CMC, any pending mediation date, any assigned trial and settlement conference dates, and any other dates set by the court or orders made at the CMC.
- (4) Proof of service of Notice of the CMC must be filed with the court within 60 days from the date the complaint is filed and may be included in the proof of service of the summons and complaint or cross-complaint.
- (5) This court has found that mediation is highly desirable and orders the parties to meet and confer prior to the CMC date regarding an agreed upon mediator and mediation date and time. A list of mediators and their fees are provided by the court in its ADR package. The mediator must be agreed upon before the CMC and the mediation date and time cleared with the mediator so the court may enter the date in the court's minute order.

- (6) Under California Rules of Court, rule 3.725, no later than 15 calendar days before the date set for the CMC, each party must file a CMC statement and serve it on all other parties in the case. Parties must use the mandatory CMC Statement (Judicial Council form CM-110). All applicable items on the form must be completed.
- (7) In lieu of each party's filing a separate case management statement, any two or more parties may file a joint statement.
- (b) Presence Required – Counsel and unrepresented parties are required to be present, either in person or by telephonic appearance pursuant to The Superior Court of Tulare County, Local Rules, rule 108, and must have: (1) sufficient information and understanding of the case to evaluate it accurately, and (2) sufficient authority to enter into binding agreements such as the diversion of the case to arbitration, including binding arbitration, the setting of a trial date and mandatory settlement conference date, the dismissal of doe defendants or other parties, and the setting of a further case management conference.
- (c) Compliance – Failure to attend the case management conference will result in the court making whatever orders and imposing whatever sanctions as may be necessary and appropriate to obtain compliance with these rules, including but not limited to, a waiver of the right to a jury trial and a waiver of the right to object to a referral to arbitration or other alternate dispute resolution procedure.
- (d) Waiver of Notice – When all parties are present at the case management conference and a trial date and settlement conference dates are agreed to by the parties or ordered by the court, such presence is an effective waiver of a separate or formal notice of settlement conference and trial date. (01/01/03) (Revised 01/01/07, 01/01/09) (07/01/11)

Alternative Dispute Resolution

There are different processes available to settle lawsuits without having to go to trial. The most common forms of ADR are Mediation, Arbitration, and Case Evaluation. In ADR, a trained, impartial person decides disputes or helps the parties reach resolutions of their disputes for themselves. The persons are neutrals who are normally chosen by the disputing parties or by the court. Neutrals can help parties resolve disputes without having to go to court.

Advantages of ADR

- Often quicker than going to trial, a dispute may be resolved in a matter of days or weeks instead of months or years.

- Often less expensive, saving the litigants court costs, attorney's fees and expert fees.
- Can permit more participation, allowing the parties the opportunity to tell their side of the story with more control over the outcome.
- Allows for flexibility in choice of ADR processes and resolution of the dispute.
- Fosters cooperation by allowing the parties to work together with the neutral to resolve the dispute and mutually agree to a remedy.
- Often less stressful than litigation. Most people have reported a high degree of satisfaction with ADR.

Because of these advantages, many parties choose ADR to resolve disputes instead of filing a lawsuit. Even after a lawsuit has been filed, the court can refer the dispute to a neutral before the lawsuit becomes costly. ADR has been used to resolve disputes even after trial, when the result is appealed.

Disadvantages of ADR

ADR may not be suitable for every dispute.

If ADR is binding, the parties normally give up most court protections, including a decision by a judge or jury under formal rules of evidence and procedure, and review for legal error by an appellate court. ADR may not be effective if it takes place before the parties have sufficient information to resolve the dispute. The neutral may charge a fee for his or her services. If the dispute is not resolved through ADR, the parties may then have to face the usual and traditional costs, such as attorney's fees and expert fees.

Lawsuits must be brought within specified periods of time, known as Statutes of Limitations. Parties must be careful not to let a Statute of Limitation run while a dispute is in an ADR process.

The Most Common Types of ADR

Mediation

In mediation, the mediator (a neutral) assists the parties in reaching a mutually acceptable resolution of their dispute. Unlike lawsuits or some other types of ADR, the mediator does not decide how the dispute is to be resolved. The parties do. It is a cooperative process in which the parties work together toward a resolution that tries to meet everyone's interests, instead of working against each other. Mediation normally leads to better relations between the parties and to lasting resolutions. It is particularly effective when parties have a continuing relationship, such as neighbors or businesses. It also is very effective where personal feelings are getting in the way of a resolution. Mediation normally gives the parties a chance to freely express their

positions. Mediation can be successful for victims seeking restitution from offenders. When there has been violence between the parties, a mediator can meet separately with the parties.

Arbitration

In arbitration, the arbitrator (a neutral) reviews evidence, hears arguments, and makes a decision (award) to resolve the dispute. This is very different from mediation whereby the mediator helps the parties reach their own resolution. Arbitration normally is more informal, quicker, and less expensive than a lawsuit. In a matter of hours, an arbitrator often can hear a case that otherwise may take a week in court to try. This is because the evidence can be submitted by documents rather than by testimony.

There are Two Types of Arbitration in California

1. **Private arbitration** by agreement of the parties involved in the dispute. This type takes place outside of the court and normally is binding. In most cases, “binding” means that the arbitrator’s decision (award) is final and there will not be a trial or an opportunity to appeal the decision.
2. **Judicial arbitration** ordered by the court. The arbitrator’s decision is not binding unless the parties agree to be bound. A party who does not like the award may file a request for trial with the court within a specified time. However, if that party does not receive a more favorable result at trial, the party may have to pay a penalty.