

SUMMONS (CITACION JUDICIAL)

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

NOTICE TO DEFENDANT: CYXTERA TECHNOLOGIES, INC., a
(AVISO AL DEMANDADO): Delaware corporation, and DOES 1
through 10, inclusive

E-FILED
11/23/2020 1:21 PM
Clerk of Court
Superior Court of CA,
County of Santa Clara
20CV373926
Reviewed By: R. Tien
Envelope: 5348392

YOU ARE BEING SUED BY PLAINTIFF: DEVENDRA PRASAD, on behalf
(LO ESTÁ DEMANDANDO EL DEMANDANTE): of 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 Santa Clara
191 North First Street
San Jose, California 95113

CASE NUMBER:
(Número del Caso):
20CV373926

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is: Alex P. Katofsky, Esq. #20754
(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

818-703-8985

DATE: 11/23/2020 1:21 PM Clerk of Court Clerk, by R. Tien, Deputy
(Fecha) **(Secretario)** **(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 416.60 (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, Devendra Prasad		FOR COURT USE ONLY Electronically Filed by Superior Court of CA, County of Santa Clara, on 12/7/2020 11:58 AM Reviewed By: R. Walker Case #20CV373926 Envelope: 5421759
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA STREET ADDRESS: 191 North First Street MAILING ADDRESS: 191 North First Street CITY AND ZIP CODE: San Jose, 95113 BRANCH NAME: Downtown Superior Court		
CASE NAME: Prasad v. Cyxtera Technologies, 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)	CASE NUMBER: 20CV373926 JUDGE: DEPT:
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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 (<i>not specified above</i>) (42) Miscellaneous Civil Petition ☐ Partnership and corporate governance (21) ☐ Other petition (<i>not specified above</i>) (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: 11/23/2020

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 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

DANIEL F. GAINES, ESQ. SBN 251488
daniel@gaineslawfirm.com
ALEX P. KATOFISKY, ESQ. SBN 202754
alex@gaineslawfirm.com
EVAN S. GAINES, ESQ. SBN 287668
evan@gaineslawfirm.com
GAINES & GAINES, APLC
27200 Agoura Rd., Suite 101
Calabasas, CA 91301
Telephone: (818) 703-8985
Facsimile: (818) 703-8984

Attorneys for Plaintiff Devendra Prasad, 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 SANTA CLARA

DEVENDRA PRASAD, on behalf of himself
and all “aggrieved employees” pursuant to
Labor Code § 2698 *et seq.*,

Plaintiffs,

v.

CYXTERA TECHNOLOGIES, INC., a
Delaware corporation, and DOES 1 through
10, inclusive,

Defendants.

CASE NO: 20CV373926

**REPRESENTATIVE ACTION
COMPLAINT FOR PENALTIES
PURSUANT TO LABOR CODE § 2699(f)
FOR VIOLATIONS OF LABOR CODE
§§ 201, 202, 226(a), 246, 510, 512, AND 1194
AND PURSUANT TO LABOR CODE §
2699(a) FOR VIOLATIONS OF LABOR
CODE §§ 226.3 AND 558**

DEMAND FOR JURY TRIAL

Plaintiff DEVENDRA PRASAD (“Plaintiff”), on behalf of himself and others as an “aggrieved employee” under the Labor Code Private Attorneys General Act of 2004, complains of CYXTERA TECHNOLOGIES, INC., a Delaware corporation, and/or any subsidiaries or affiliated companies (hereinafter referred to as “Defendants”), as follows:

I.

INTRODUCTION AND FACTUAL BACKGROUND

1. This is a Representative Action, pursuant to Labor Code § 2698 *et seq.*, on behalf of Plaintiff and all of Defendants’ non-exempt California employees (“Aggrieved Employees”).

\\

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

5 a. Failing to properly compute shift differential wages and other non-base hourly
6 wages earned by Plaintiff and other Aggrieved Employees into their regular rate of pay for purposes
7 of paying them overtime at the correct rates, in violation of Labor Code §§ 510, 558 and 1194.
8 Defendant failed to properly blend shift differential wages and other non-base hourly wages and
9 instead paid Plaintiff and other Aggrieved Employees overtime based *only* on the base hourly rate of
10 pay, thus depriving Plaintiff and other Aggrieved Employees of all overtime and double time wages
11 earned. Defendant also failed to blend commission wages and other non-base hourly wages earned
12 by Plaintiff and other Aggrieved Employees into their sick pay rate, yielding an underpayment, in
13 violation of Labor Code §§ 246, 510, 558 and 1194. Defendant also failed to properly blend shift
14 differential wages and other non-base hourly wages and instead paid Plaintiff and other Aggrieved
15 Employees meal period premium wages based *only* on the base hourly rate of pay, thus depriving
16 Plaintiff and other Aggrieved Employees of all wages earned, in violation of Labor Code §§ 510, 512,
17 558 and 1194. Defendant also failed to blend shift differential wages and other non-base hourly wages
18 earned by Plaintiff and other Aggrieved Employees into their sick pay rate, yielding an underpayment
19 of wages, in violation of Labor Code §§ 246, 510, 558 and 1194;

20 b. Failing to provide Plaintiff and other Aggrieved Employees with wage
21 statements that fully and accurately itemized the requirements set forth in Labor Code §§ 226(a) and
22 226.3. Plaintiff and other Aggrieved Employees were not paid all overtime and double-time wages
23 due and meal period premium wages due. As such, the wage statements provided by Defendant failed
24 to accurately state all gross wages earned, in violation of Labor Code §§ 226(a)(1) and 226.3, total
25 hours worked, in violation of Labor Code §§ 226(a)(2) and 226.3, net wages earned, in violation of
26 Labor Code §§ 226(a)(5) and 226.3, and all applicable hourly rates in effect during the pay period
27 and the corresponding number of hours worked, in violation of Labor Code §§ 226(a)(9) and 226.3.
28 Separately, the wage statements issued to Plaintiff and other Aggrieved Employees failed to set forth

1 the accurate total hours worked, in violation of Labor Code §§ 226(a)(2) and 226.3 as the hours
2 worked set forth on the wage statements reflect an incorrect total, often twice as many hours than
3 were actually worked; and

4 c. Failing to pay Plaintiff all wages due at the separation of his employment based
5 on the time frames required by Labor Code §§ 201 and 202. As stated above, Plaintiff and other
6 Aggrieved Employees were not paid all wages due during the course of their employment and, as a
7 result of this failure, they were not timely paid all wages due at the separation of their employment.
8 This violates Labor Code §§ 201-202 and is alleged on behalf of Plaintiff and certain Aggrieved
9 Employees no longer employed by Defendant.

10 3. Plaintiff, on behalf of himself and all Aggrieved Employees pursuant to Labor Code §
11 2698 *et seq.*, seeks civil penalties for Defendants' violations of the California Labor Code.

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

14 II.

15 PARTIES

16 A. Plaintiff

17 5. Plaintiff Devendra Prasad was employed by Defendants from April 2017 through May
18 2020 as non-exempt employee in Santa Clara County, California.

19 B. Defendant

20 6. Defendant CYXTERA TECHNOLOGIES, INC., is a Delaware corporation.
21 Defendant CYXTERA TECHNOLOGIES, INC. employed Plaintiff and Aggrieved Employees
22 throughout the State of California, including Santa Clara County, California.

23 7. The true names and capacities, whether individual, corporate, associate, or otherwise,
24 of Defendants sued herein as DOES 1 to 10, inclusive, are currently unknown to Plaintiff, who
25 therefore sues Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiff is
26 informed and believes, and based thereon alleges, that each of the Defendants designated herein as a
27 DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will
28

1 seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendants
2 designated hereinafter as DOES when such identities become known.

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

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

10 **III.**

11 **CAUSES OF ACTION**

12 **FIRST CAUSE OF ACTION**

13 **PLAINTIFF AND ALL AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS**
14 **PENALTIES PURSUANT TO LABOR CODE § 2699(f) FOR VIOLATIONS OF LABOR**
15 **CODE §§ 201, 202, 226(a), 246, 510, 512, AND 1194 AND PURSUANT TO LABOR CODE §**
16 **2699(a) FOR VIOLATIONS OF LABOR CODE §§ 226.3 AND 558**

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

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

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

- 23 a. Pursuant to Labor Code § 2699(f), \$100 for each initial violation and \$200 for
24 each subsequent violation of Labor Code §§ 201, 202, 226(a), 246, 510, 512,
25 and 1194; and
26 b. Pursuant to Labor Code § 2699(f), the penalties as authorized by Labor Code
27 §§ 226.3 and 558.

28 \\\

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

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

IV.

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: November 23, 2020

Respectfully submitted,

GAINES & GAINES
A Professional Law Corporation

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

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial of his claims by jury to the extent authorized by law.

Dated: November 23, 2020

Respectfully submitted,

GAINES & GAINES

A Professional Law Corporation

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

CIVIL LAWSUIT NOTICE

Superior Court of California, County of Santa Clara
191 North First St., San José, CA 95113

CASE NUMBER: 20CV373926

PLEASE READ THIS ENTIRE FORM

PLAINTIFF (the person suing): Within 60 days after filing the lawsuit, you must serve each Defendant with the *Complaint*, *Summons*, an *Alternative Dispute Resolution (ADR) Information Sheet*, and a copy of this *Civil Lawsuit Notice*, and you must file written proof of such service.

DEFENDANT (The person sued): You must do each of the following to protect your rights:

1. You must file a written response to the *Complaint*, using the proper legal form or format, in the Clerk's Office of the Court, within 30 days of the date you were served with the *Summons* and *Complaint*;
2. You must serve by mail a copy of your written response on the Plaintiff's attorney or on the Plaintiff if Plaintiff has no attorney (to "serve by mail" means to have an adult other than yourself mail a copy); and
3. You must attend the first Case Management Conference.

Warning: If you, as the Defendant, do not follow these instructions, you may automatically lose this case.

RULES AND FORMS: You must follow the California Rules of Court and the Superior Court of California, County of <_CountyName_> Local Civil Rules and use proper forms. You can obtain legal information, view the rules and receive forms, free of charge, from the Self-Help Center at 201 North First Street, San José (408-882-2900 x-2926).

- State Rules and Judicial Council Forms: www.courtinfo.ca.gov/forms and www.courtinfo.ca.gov/rules
- Local Rules and Forms: <http://www.sccsuperiorcourt.org/civil/rule1toc.htm>

CASE MANAGEMENT CONFERENCE (CMC): You must meet with the other parties and discuss the case, in person or by telephone at least 30 calendar days before the CMC. You must also fill out, file and serve a *Case Management Statement* (Judicial Council form CM-110) at least 15 calendar days before the CMC.

You or your attorney must appear at the CMC. You may ask to appear by telephone – see Local Civil Rule 8.

Your Case Management Judge is: Hon. Sunil R. Kulkarni Department: 1

The 1st CMC is scheduled for: (Completed by Clerk of Court)

Date: 3/18/21 Time: 2:30 pm in Department: 1

The next CMC is scheduled for: (Completed by party if the 1st CMC was continued or has passed)

Date: _____ Time: _____ in Department: _____

ALTERNATIVE DISPUTE RESOLUTION (ADR): If all parties have appeared and filed a completed *ADR Stipulation Form* (local form CV-5008) at least 15 days before the CMC, the Court will cancel the CMC and mail notice of an ADR Status Conference. Visit the Court's website at www.sccsuperiorcourt.org/civil/ADR/ or call the ADR Administrator (408-882-2100 x-2530) for a list of ADR providers and their qualifications, services, and fees.

WARNING: Sanctions may be imposed if you do not follow the California Rules of Court or the Local Rules of Court.

Reset Form

FILED

MAY 06 2020

Clerk of the Court
Superior Court of CA County of Santa Clara
BY David K. Walker DEPUTY

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SANTA CLARA**

**GENERAL ORDER RE: COVID-19 EMERGENCY ORDER REGARDING COMPLEX
CIVIL ACTIONS**

On March 30, 2020 the Chief Justice of California issued an order, which states in pertinent part:

“I find good cause to...support courts in making use of available technology, when possible, to conduct judicial proceedings and court operations remotely, suspend any rule in the California Rules of Court to the extent such rule would prevent a court from using technology to conduct judicial proceedings and court operations remotely, in order to protect the health and safety of the public, court personnel, judicial officers, litigants, and witnesses. This is consistent with the Governor’s order, which also provides for the suspension of related statutes that impose limitations on the subject of these emergency orders.”

Emergency rule 3, adopted by the Judicial Council of California effective April 6, 2020, states in pertinent part:

“Notwithstanding any other law, in order to protect the health and safety of the public, including court users, both in custody and out of custody defendants, witnesses, court personnel, judicial officers, and others, courts must conduct judicial proceedings and court operations as follows:

1 (1) Courts may require that judicial proceedings and court operations be conducted
2 remotely.

3 (2) * * *

4 (3) Conducting proceedings remotely includes, but is not limited to, the use of video,
5 audio, and telephonic means for remote appearances; the electronic exchange and authentication
6 of documentary evidence; e-filing and e-service; the use of remote interpreting; and the use of
7 remote reporting and electronic recording to make the official record of an action or proceeding.”

8 Given that County health officials have deemed professional legal services “essential
9 businesses” and the operation of the court an “essential service” to be conducted consistent with
10 “social distancing protocols”;

11 IT IS HEREBY ORDERED that the following applies to all complex civil actions:

12 **1. Sunset of Order and Procedures.** This Order and the procedures set forth herein
13 shall apply and be followed until ten (10) calendar days after the Governor declares that the state
14 of emergency related to the COVID-19 pandemic is lifted, or until amended or lifted by further
15 order of this Court.

16 **2. Electronic Service.** Pursuant to Code of Civil Procedure Section 1010.6(c),
17 California Rules of Court, rule 2.253(c) and rule 2.251(c), and Emergency rule 12, all parties
18 represented by counsel and all self-represented parties who have consented in writing to
19 electronic service shall serve all documents electronically and shall accept service of documents
20 electronically, in conformity with Code of Civil Procedure Section 1010.6 and the California
21 Rules of Court, except when personal service is required by statute. Counsel for the parties shall
22 meet and confer, agree upon, and keep updated, an e-service list for each civil action. The
23 parties are reminded that electronic service of documents may extend time periods for response
24 by two (2) court days, pursuant to Code of Civil Procedure Section 1010.6(a)(4)(B).

25 **3. Electronic Filing.** As previously established by Local Rules, pursuant to
26 California Rules of Court, rule 2.253(b), all parties shall file all documents electronically.

27 **4. Judicial Holiday Extensions Only For Filings.** Pursuant to authority granted by
28 the Chief Justice, the Presiding Judge of this Court has issued orders providing that the dates

1 from March 17, 2020 to May 29, 2020, are “holidays” for “purposes of computing time for filing
2 papers with the Court under Code of Civil Procedure Sections 12 and 12a” As specifically
3 stated in the Order, such emergency “holidays” only pertain to the deadlines for *filing* papers
4 with the Court, and do not pertain to dates and deadlines regarding service of papers between the
5 parties, such as discovery requests and discovery responses.

6 **5. Discovery.** All discovery requests and responses (C.C.P. § 2019.010), including
7 but not limited to notice of deposition, special interrogatories, form interrogatories, requests for
8 production of documents, and requests for admissions, shall be served electronically by all
9 represented by counsel and all self-represented parties who have consented in writing to
10 electronic service. Production of documents shall be provided in electronic form unless the
11 parties agree otherwise in writing. If not previously established, counsel for the parties shall
12 meet and confer regarding possible establishment of a joint electronic document depository for
13 the uploading and downloading of electronic document productions.

14 **6. Depositions.** Code of Civil Procedure Section 2025.310 provides that all persons,
15 except the deponent and the court reporter, may attend a deposition remotely. Emergency rule 11
16 (a) states: “Notwithstanding any other law, including Code of Civil Procedure section
17 2025.310(a) and (b), and rule 3.1010(c) and (d), a party or non-party deponent, at their election
18 or the election of the deposing party, is not required to be present with the deposition officer at
19 the time of the deposition.”

20 **a.** All notices of deposition, including by subpoena duces tecum, of any party or
21 non-party, shall be served upon all parties electronically.

22 **b.** Unless otherwise stipulated in writing by the parties, or unless technologically
23 infeasible, any or all of an oral deposition may be conducted remotely, in that the deponent, the
24 court reporter, any interpreter, the video operator, the attorney for any party, or any party, may
25 “attend” the deposition remotely by appropriate audio-video conference method – which method
26 shall be selected and identified by the noticing party. The deponent and his/her attorney may
27 choose to be in the same location for the deposition, if they conduct themselves consistent with
28 “social distancing protocols”, but the deponent is not required to wear any face covering while

1 giving deposition testimony. As professional legal services have been deemed “essential
2 businesses” and the operation of the court an “essential service”, it is the Court’s expectation that
3 the deponent and his/her attorney can prepare for the deposition consistent with “social
4 distancing protocols”.

5 c. All communications with the deponent during the deposition shall be on the
6 record, other than communications between the deponent and his/her attorney of record during
7 breaks. During the deposition there shall not be direct or indirect electronic communications
8 with the deponent, including but not limited to text, email, chat, instant message, etc.

9 d. If the notice of deposition or subpoena includes a request for production of
10 documents at any oral deposition, such documents shall be produced electronically by the
11 deponent to counsel for all parties at least three (3) business days before the deposition date,
12 unless otherwise agreed by counsel for the parties and for the deponent in writing.

13 **7. Remote Appearances.** All appearances for informal discovery conferences, case
14 management conferences, law and motion and other hearings shall be conducted remotely on a
15 media platform the Court will designate when it schedules a hearing.

16 **8. Informal Discovery Conferences.**

17 a. Pursuant to Code of Civil Procedure Section 2016.080 and the Court’s Complex
18 Guidelines, no party may move to compel discovery, or file any other discovery motion,
19 including any motion for non-remote deposition, until the parties have had an informal discovery
20 conference with the Court. Counsel must have exhausted all meet and confer obligations before
21 the informal discovery conference. To request an informal discovery conference, counsel should
22 contact the Complex Coordinator by email, which must be contemporaneously copied to counsel
23 for all parties to the action. Pursuant to Code of Civil Procedure Section 2016.080(c)(2), the
24 time for bringing any motion to compel is tolled starting on the date a party makes the email
25 request for an informal discovery conference to the Court.

26 b. If the discovery dispute is not resolved following the discovery conference, any
27 party may proceed to file a motion. Any such motion must be filed within ten (10) court days of
28 the conference, or within the 45-day statutory time, whichever date is later, unless otherwise

specifically ordered by the Court.

c. The procedures outlined above apply to parties. With regard to discovery disputes with non-parties, the non-parties may elect to participate in this procedure, but are not required to do so.

9. Case Management Conferences. Any party who believes their case warrants a case management conference earlier than currently set is encouraged to contact the Complex Coordinator by email to secure an earlier case management conference, including any disputes regarding briefing schedules or deadlines due to emergency court “holidays.”

10. Law and Motion in Complex Civil Cases. No supplemental briefing will be allowed, except as specifically ordered by the Court, on motions originally set for hearing between March 17, 2020 and May 29, 2020, which have been fully briefed and continued to a new date. In all other matters previously filed but not fully briefed, counsel shall meet and confer and agree on a stipulation and proposed order for a new briefing schedule that provides that all papers on the motion are filed at least 14 calendar days in advance of the continued hearing date.

11. Trials. All trials, and related Mandatory Settlement Conferences and Pre-trial Conferences, originally scheduled between March 17, 2020 and July 30, 2020 are hereby vacated and will be re-scheduled to a Trial Setting Conference.

12. Pre-trial Deadlines. In any case in which the trial originally scheduled between March 17, 2020 and July 30, 2020 was continued or vacated, all pre-trial deadlines will track the new trial date, absent a showing of good cause.

13. Five-Year Dismissal (C.C.P. § 583.310). In any case in which the initial complaint was filed on or before May 1, 2016, the parties are ordered to meet and confer on the subject of the date on which the five-year period in Code of Civil Procedure Section 583.310 ends, including consideration of any stays, whether directly ordered or automatic. If the parties agree on that date, they shall submit a stipulation and proposed order setting forth the agreed-upon date. If the parties cannot agree on that date, they shall file within thirty (30) days of the date of this order a joint statement of no greater than five (5) pages setting forth each party’s position as to the relevant date and the reasons therefor.

1 **14. Three-Year Limitation for New Trial (C.C.P. § 583.320).** In any case where a
2 mistrial was granted or new trial granted prior to May 1, 2018, and no new trial date is presently
3 set, the parties are ordered to meet and confer on the subject of the date on which the three-year
4 period in Code of Civil Procedure Section 583.320 ends, including consideration of any stays,
5 whether directly ordered or automatic. If the parties agree on that date, they shall submit a
6 stipulation and proposed order setting forth the agreed-upon date. If the parties cannot agree on
7 that date, they shall file within thirty (30) days of the date of this order a joint statement of no
8 greater than five (5) pages setting forth each party's position as to the relevant date and the
9 reasons therefor.

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11 THIS ORDER IS EFFECTIVE IMMEDIATELY.

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13 Dated: May 6, 2020

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15 Presiding Judge Deborah A. Ryan
16 Santa Clara County Superior Court
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