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EDWARD GNAT, on behalf of himself and all similarly aggrieved employees

SUPERIOR COURT OF CALIFORNIA

COUNTY OF MONTEREY

EDWARD GNAT, on behalf of himself and
all similarly aggrieved employees,

Plaintiff,

v.

QUINN COMPANY; and DOES 1 through
50, inclusive,

Defendants.

Case No. 20CV003431

REPRESENTATIVE ACTION

**COMPLAINT FOR CIVIL PENALTIES
(Labor Code § 2698 *et seq.*)**

COMES NOW Plaintiff EDWARD GNAT on behalf of himself and all current and
former aggrieved employees (collectively referred to as the “employees”), who complains and
alleges against the above-captioned Defendants as follows:

1. Plaintiff EDWARD GNAT (“Plaintiff”) is a competent adult who is, and at all
times mentioned in this complaint has been, a resident of Monterey County, California. Plaintiff
has been employed by Defendants from approximately July 2001 through the present, pursuant to
an unwritten contract, some of the terms of which were the product of an oral agreement, with
other terms implied from or incorporated from written materials and policies maintained by
Defendants and from the conduct of the parties. The terms of this contract included working as a

1 non-exempt employee, and at all times as an employee not exempted from the California Labor
2 Code. Plaintiff is, and at all relevant times was, an individual as defined in Business and
3 Professions Code §§ 17201 and 17204.

4 2. Defendant QUINN COMPANY is, and at all times mentioned in this complaint
5 has been, a corporation incorporated under the laws of the State of California. Plaintiff is
6 informed and believes and thereon alleges that QUINN COMPANY is authorized to and does
7 conduct business in numerous counties throughout the State of California, has purposefully
8 availed itself of the privileges and benefits of doing business in the County of Monterey, State
9 of California, and thus is subject to jurisdiction in the County of Monterey, in the State of
10 California.

11 3. Plaintiff is ignorant of the true names, identities, capacities and relationships of the
12 Defendants sued herein as DOES 1 through 50, inclusive, and therefore sues these Defendants by
13 such fictitious names. Plaintiff is informed and believes, and thereon alleges, that each of these
14 fictitiously named Defendants are responsible in some manner for the occurrences herein
15 alleged, and that Plaintiff's damages as herein alleged were proximately caused by DOES 1
16 through 50. Plaintiff will amend this Complaint to allege the true names and capacities of said
17 DOE Defendants when such information is ascertained. Each reference to "Defendants," and
18 each reference to any particular Defendant herein, shall be construed to refer to all Defendants,
19 including, but not limited to, all of those fictitiously named herein as a "DOE" Defendant, and
20 each of them.

21 4. Plaintiff is informed and believes, and thereon alleges, that each of the
22 Defendants herein was at all times relevant to this action the agent, employee, representative,
23 partner, and/or joint venturer of the remaining Defendants, and each of them, and that each of
24 the Defendants herein was at all times acting within the course and scope of that relationship.
25 Plaintiff is further informed and believes, and thereon alleges, that each of the Defendants
26 herein consented to, ratified, and/or authorized the acts of each of the remaining Defendants
27 herein. The conduct of each of the Defendants was at all times herein in accordance with and
28 represents the official policy of Defendants. Additionally, at all times herein mentioned,

1 Defendants, and each of them, aided and abetted the acts and omissions of each and all of the
2 other Defendants, which proximately caused the damages herein alleged. Plaintiff is further
3 informed and believes, and thereon alleges, that all of the Defendants jointly employed the
4 Plaintiff herein and/or carried out a joint scheme, business plan and/or uniform policy, and the
5 acts and omissions of each Defendant are legally attributable to the other Defendants such that
6 they are deemed a single integrated enterprise and agents of one another so that all Defendants
7 are each jointly and severally liable for the acts and omissions hereinafter alleged.

8 5. Defendants QUINN COMPANY, and DOES 1 through 50 (collectively referred
9 to herein as “Defendants”) are, and at all times herein were, “persons” as defined in California
10 Business and Professions Code § 17201.

11 6. At all times herein, Defendants directly or indirectly, or through an agent or
12 representative, exercised control over the wages, hours and/or working conditions of the
13 Plaintiff and the employees, and directly or indirectly or through an agent or other person
14 engaged, suffered, or permitted Plaintiff and the employees to work.

15 **JURISDICTION AND VENUE**

16 7. This Court has jurisdiction over this action pursuant to Article VI, section 10 of the
17 California Constitution. Plaintiff brings this Complaint for violations of California law occurring
18 in the County of Monterey, including without limitation violations of the California Labor Code,
19 Business and Professions Code, Civil Code and common law, and the amount in controversy
20 exceeds the minimum jurisdictional amount of the Superior Court. Based on information and
21 belief, Defendants have intentionally availed themselves of the benefits and privileges available
22 within this State, economic or otherwise, so as to render the exercise of jurisdiction over them by
23 the courts of the State of California consistent with traditional notations of fair play and substantial
24 justice. Accordingly, this Court has jurisdiction over the parties and claims in this matter.

25 8. Pursuant to Code of Civil Procedure § 395(a), venue is proper in this judicial district
26 because Defendants now, and all times relevant herein, reside and/or transact business in the
27 County of Monterey. The conduct alleged herein and the damages resulting therefrom occurred in
28 the County Monterey, and at all times herein Defendants maintained their principal place of

1 business in the County of Monterey, California.

2 **ADMINISTRATIVE PROCEEDINGS**

3 9. Pursuant to California Labor Code § 2699.3, Plaintiff gave written notice on
4 October 7, 2020, by electronic filing with the Labor and Workforce Development Agency, and by
5 certified mail to Defendant QUINN COMPANY, of factual and legal basis for the labor law
6 violations alleged in this Complaint. Prior to filing this Complaint, Plaintiff allowed 65 days to
7 lapse for the Labor and Workforce Development Agency to investigate such violations.

8 10. Pursuant to California Labor Code § 2699.3, Plaintiff seeks all applicable penalties
9 for violations which the Labor and Workforce Development Agency has failed or elected not to
10 investigate and/or failed or elected not to issue a citation. Plaintiff has exhausted all administrative
11 remedies required by the Labor and Workforce Development Agency as a prerequisite to filing
12 this action.

13 **GENERAL ALLEGATIONS**

14 11. Defendants now, and at all times relevant herein, did, own, operate and control a
15 business or establishment that employ persons within the meaning of all applicable wage
16 orders, including, but not limited to, IWC Wage Order No. 4-2001 (California Code of
17 Regulations, title 8, section 11040).

18 12. Defendants now, and at all times during the relevant period did, recruit, solicit,
19 hire, employ and furnish employment, and qualify as an employer pursuant to all applicable
20 wage orders, including, but not limited to, IWC Wage No. 4-2001 (hereinafter referred to as
21 “the Wage Order”), which applies to professional, technical, clerical, mechanical and similar
22 occupations.

23 13. At all times relevant herein, Plaintiff and the employees were employees of
24 Defendants under the California Labor Code and were protected by to the provisions of the Wage
25 Order.

26 14. At all times relevant herein, Plaintiff and the employees worked for Defendants
27 without the provision of being compensated for all hours worked, without being paid overtime
28 premium wages for all overtime hours worked, without being paid all wages on time, working

1 without meal or rest breaks as required by law, without being compensated for missed meal
2 and rest breaks, without being paid the full payment of wages owed at the end of their
3 employment, and without having been provided with complete and accurate wage statements
4 as required by law.

5 15. At all times relevant herein, Defendants maintained and enforced a uniform
6 policy by which they regularly and consistently required Plaintiff and the employees to keep
7 their personal cell phones on their person at all times and respond to work-related calls and
8 text messages off-the-clock.

9 16. At all times relevant herein, Defendants maintained and enforced a uniform
10 policy by which they regularly and consistently required Plaintiff and the employees to report to
11 a scheduled shift but were not permitted to work. In addition, whenever Plaintiff and the
12 employees reported to work but not permitted to work, Defendants failed to pay Plaintiff and
13 the employees reporting time pay as required by law.

14 17. At all times relevant herein, Defendants maintained and enforced a uniform
15 policy by which they regularly and consistently precluded Plaintiff and the employees from
16 leaving the work premises during their rest periods. As such, Plaintiff and the employees were
17 not provided with off-duty rest periods as they were still subject to Defendant's control.

18 18. At all times relevant herein, Defendants maintained and enforced a uniform
19 policy of requiring Plaintiff and the employees to work shifts of five hours or more within a
20 single workday without providing a thirty (30) minute uninterrupted duty-free meal period
21 within five (5) hours of the beginning of their shift. Defendants also failed to pay Plaintiff and
22 the employees one hour of pay at Plaintiff and the employees' regular rate of compensation as
23 required by California Labor Code § 226.7 and the Wage Order for each meal period that was
24 not provided.

25 19. Likewise, at all times relevant herein, Defendants maintained and enforced a
26 uniform policy by which they repeatedly failed to authorize, permit and provide Plaintiff and
27 the employees with paid duty-free rest periods of at least ten (10) consecutive uninterrupted
28 minutes during which Plaintiff and the employees were relieved of all duties for every four (4)

1 hours worked or major fraction thereof and which were counted as hours worked for which
2 there would be no deduction from wages, and failed to compensate Plaintiff and the employees
3 one (1) hour of wages at their regular rate of compensation as required by California Labor
4 Code § 226.7 and the Wage Order for each rest period not provided.

5 20. As a result of Defendant's policies and practices referenced above, including its
6 requirement that Plaintiff and the employees to keep their personal cell phones on their person
7 at all times and respond to work-related calls and text messages off-the-clock, Plaintiff and the
8 employees worked unpaid hours in excess of eight (8) in a day and forty (40) in a week.
9 Consequently, Defendants failed to pay Plaintiff and the employees overtime premium wages
10 of one and one-half times the employee's regular rate of pay for all hours worked over eight
11 (8) hours in a single workday and/or more than forty (40) hours in a single workweek, as
12 required by California Labor Code §§ 510 and 1194 and the Wage Order.

13 21. At all times relevant herein, Defendants maintained and enforced a uniform
14 policy by which they regularly and consistently failed to provide Plaintiff and the employees
15 with complete and accurate itemized wage statements stating the total hours worked, regular
16 and overtime hours worked, gross wages earned, net wages earned, all applicable rates of pay
17 and the corresponding number of hours worked under each rate, all deductions, wages owed
18 for missed rest and meal periods, and accurate accounting for all wages paid to Plaintiff and the
19 employees. Defendants also failed to record in ink or other identifiable form all deductions
20 from wages showing the month, day and year, and failed to keep a copy of the statements and
21 records of deductions for three years at the place of employment or at a central location in the
22 State of California. Defendants also failed to keep accurate information with respect to each
23 employee, including full name, home address, occupation, birth date, time records showing
24 when the employee begins and ends each work period, meal periods, total daily hours worked
25 and total wages paid each payroll period, including value of board, lodging, or other
26 compensation actually furnished to the employee.

27 22. At all times relevant herein, Defendants maintained and enforced a uniform
28 policy by which they regularly and consistently violated California Labor Code §§ 201, 202,

204, 216, 218, 221, 223, 1194, 1198 and the Wage Order by unlawfully refusing to pay wages to Plaintiff and the employees.

23. At all times relevant herein, Defendants maintained and enforced a uniform policy by which they regularly and consistently violated California Labor Code §§ 201, 202, and 203 by failing to pay Plaintiff and the employees all owing and unpaid wages for work performed by them during their employment and at the end of their employment.

24. At all times relevant herein, Defendants maintained and enforced a uniform policy by which they regularly and consistently violated California Labor Code §§ 201, 202, 204, 218, 1194, 1198, 1199 and the Wage Order by failing to pay Plaintiff and the employees for all hours worked, minimum wage for all hours worked, overtime premium wages for all overtime hours worked, and compensation for missed meal and rest periods.

25. Plaintiff and the employees are informed and believe, and thereon allege, that at all times herein mentioned, Defendants were advised by skilled lawyers and other professionals, employees and advisors knowledgeable about California labor and wage law, employment and personnel practices, and about the requirements of California law. Plaintiff and the employees are informed and believe, and thereon allege, that at all times relevant herein, Defendants knew or should have known that they had a duty to compensate Plaintiff and the employees, and that Defendants had the financial ability to pay such compensation, but willfully, knowingly and intentionally failed to do so, and falsely represented to Plaintiff and the employees that they were properly denied wages, all in order to increase Defendants' profits.

26. California Labor Code § 218 states that nothing in Article I of the Labor Code shall limit the right of any wage claimant to "sue directly . . . for any wages or penalty due to him under this Article."

FIRST CAUSE OF ACTION

California Labor Code Private Attorneys General Act of 2004 (California Labor Code § 2698) (Plaintiff and the Employees against Defendant QUINN COMPANY)

27. Plaintiff alleges and incorporates by reference all of the allegations contained in the preceding paragraphs as though fully set forth herein.

1 28. California Labor Code §§ 2698, et seq. (“PAGA”) permits Plaintiff to recover
2 civil penalties for the violation(s) of the Labor Code Sections enumerated in Labor Code
3 Section 2699.5.

4 29. Plaintiff is an “aggrieved employee” pursuant to Labor Code § 2699, as Plaintiff
5 has suffered violations including, but not limited to, Labor Code §§ 201, 201.3, 202, 203, 204,
6 207, 208, 209, 216, 218, 218.5, 218.6, 223, 225.5, 226, 226.7, 510, 512, 558, 1174, 1194,
7 1197, 1197.1, 1198, 1199, 2698 et seq., and 2699(f) and (g), and the Wage Order.

8 30. Pursuant to PAGA, and in particular California Labor Code §§ 2699(a), 2699.3,
9 and 2699.5, Plaintiff, acting in the public interest as a private attorney general, seeks
10 assessment and collection of civil penalties for Plaintiff and the employees, and the State of
11 California against Defendants for the time period from June 21, 2019, through the present, on
12 behalf of himself and the employees.

13 31. WHEREFORE, Plaintiff requests relief as hereinafter prayed for.

14 **AS TO THE FIRST CAUSE OF ACTION**

15 1. That the Court declare, adjudge and decree that Defendants violated the
16 California Labor Code Private Attorneys General Act of 2004 and Labor Code § 2698 et seq.,
17 as a consequence of their failure to provide meal and rest periods, failure to pay agreed wages
18 and compensation for work, failure to pay overtime wages, failure to pay at least minimum
19 wage, failure to provide accurate wage statements, failure to pay all wages earned, and failure
20 to pay wages when due, all of which violate the Labor Code and give rise to statutory penalties
21 as a result of such conduct, including but not limited to, penalties as provided by Labor Code
22 §§ 203, 204, 210, 1197.1, and 2699(f) and (g), and the Wage Order.

23 2. That the Court grant an award to Plaintiff and the employees, of civil penalties
24 as prescribed by the Labor Code Private Attorneys General Act of 2004, including but not
25 limited to, statutory penalties for Plaintiff and the employees of Defendants against whom one
26 or more violations of the Labor Code was committed;

27 3. For statutory penalties pursuant to California Labor Code § 2699(f);

28 4. For all civil penalties and reasonable attorneys’ fees and costs of suit incurred

1 herein pursuant to California Labor Code § 2699(g); and

2 5. For such other further relief as the Court may deem equitable and appropriate

3 Date: December 17, 2020

FITZPATRICK & SWANSTON
DIVERSITY LAW GROUP, P.C.

7 By: /s/ B. James Fitzpatrick

8 B. James Fitzpatrick
9 Larry W. Lee
10 Attorneys for Plaintiff,
11 EDWARD GNAT, on behalf of
12 himself and all similarly aggrieved
13 employees
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