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on behalf of himself and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA

KEVIN RIVAS on behalf of himself and all
others similarly situated

Plaintiff,

vs.

SKY CHEFS, INC., a Delaware corporation,
and DOES 1 through 50, inclusive,

Defendants.

Case No.
ASSIGNED FOR ALL PURPOSES TO:
JUDGE:
DEPT:

**REPRESENTATIVE ACTION
PURSUANT TO THE PRIVATE
ATTORNEYS GENERAL ACT OF 2004,
("PAGA") CAL. LAB. CODE sections
2698 et. seq.**

Plaintiff KEVIN RIVAS (hereinafter "Plaintiff"), on behalf of the general public and all
Aggrieved employees, acting on behalf of the California Attorney General as private attorney
general, assert claims against Defendants SKY CHEFS, INC., and DOES 1-50, inclusive
(collectively "Defendants") as follows:

1 **I. INTRODUCTION**

2 1. This is a representative action for recovery of penalties under the Private Attorneys
3 General Act of 2004 (“PAGA”), California Labor Code sections 2968 *et. seq.* PAGA permits
4 “Aggrieved Employees” to bring a lawsuit as a representative action on behalf of the general public
5 as private attorney general and all other current and former aggrieved employees, to recover civil
6 penalties and address an employer’s violations of the California Labor Code.

7 2. In this case, it is alleged Defendants violated California Labor Code sections 202, 203,
8 226, 512 by failing to provide compliant meal periods; failing to timely pay wages, and failing to
9 provide accurate itemized wage statements. Plaintiff seeks penalties under Labor Code Section
10 2698, *et. seq.* on behalf of the general public as private attorney general and all other Aggrieved
11 Employees.

12 **II. JURISDICTION AND VENUE**

13 3. This representative action is brought pursuant to California Code of Civil Procedure
14 sections 2699.3, *et. seq.* The penalties sought by Plaintiff exceed the minimum jurisdiction limits
15 of the California Superior Court and will be established according to proof at trial.

16 4. This Court has jurisdiction over this action pursuant to the California Constitution
17 Article VI §10, which grants the California Superior Court original jurisdiction in all causes except
18 those given by statute to other courts. The statutes here do not give jurisdiction to any other court.

19 5. This Court has jurisdiction over Defendants because, upon information and belief,
20 they have either sufficient minimum contacts in California, or otherwise intentionally avails
21 itself of the California market so as to render the exercise of jurisdiction over it by the California
22 Courts consistent with traditional notions of fair play and substantial justice.

23 6. Venue is proper in this judicial district because Defendants conduct substantial and
24 continuous business activities in Alameda County and are within the jurisdiction of this Court
25 for service of process purposes. The unlawful acts alleged herein have a direct effect on Plaintiff
26 and all other aggrieved employees within the Alameda County and the State of California.

1 Defendants employ numerous aggrieved employees in Alameda and other Counties throughout
2 California.

3 7. The California Superior Court also has jurisdiction in this matter because there is not
4 federal question at issue, as the issues herein are based solely on California statutes and law,
5 including the Labor Code, IWC Wage Orders, the California Code of Civil Procedure, the
6 California Civil Code, and the California Business and Professions Code.

7 8. The California Superior Court also has jurisdiction in this matter because PAGA
8 claims are not subject to any alleged arbitration agreement.

9 **III. PARTIES**

10 9. Plaintiff is, and at all times mentioned in this complaint was, a resident of
11 Pleasanton, California.

12 10. Upon information and belief, Defendants are in the business of airline catering,
13 train catering and hospitality service providers. Plaintiff believes Defendants are qualified to do
14 business in California and continue to do so.

15 11. The true names and capacities of Defendants, whether individual, corporate,
16 associate, or otherwise, sued herein as DOES 1 through 50, inclusive, are currently unknown to
17 Plaintiff, who therefore sues Defendants by such fictitious names under Code of Civil Procedure
18 section 474. Plaintiff is informed and believes, and based thereon alleges that each of the
19 Defendants designated herein as a DOE is legally responsible in some manner for the unlawful
20 acts referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true
21 names and capacities of the Defendants designated hereinafter as DOES when such identities
22 become known.

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

1 **IV. FACTUAL BACKGROUND**

2 13. Plaintiff was employed by Defendants, from on or about January 8, 2020 until about
3 March 6, 2020. While employed by Defendants, his job duties included, but not limited to, driving
4 between the San Jose and Oakland Airports to obtain catering supplies, loading trucks, stocking
5 planes with food crates, and unloading crates from planes.

6 14. During the liability period, due to the demands of work shifts, Plaintiff and Non-
7 Exempt Employees were required to work in excess of five (5) hours without being provided an
8 uninterrupted thirty (30) minute meal period by the end of the fifth hour. Plaintiff and Aggrieved
9 were not compensated one (1) hour of pay at their regular rate of compensation for each workday
10 that a lawful meal period was not provided, in violation of California labor laws, regulations and
11 IWC Wage Order.

12 15. During the liability period, Defendants failed to pay Plaintiff and Aggrieved
13 Employees all earned wages in a timely manner; nor have they paid, upon or after termination, all
14 compensation due, including but not limited to all wages owed and compensation for having failed
15 to provide compliant meal periods.

16 16. During the liability period, Defendants also failed to maintain accurate itemized
17 records reflecting total hours worked and have failed to provide Plaintiff and Aggrieved
18 Employees with accurate itemized wage statements reflecting total hours worked and appropriate
19 rates of pay.

20 17. Upon information and belief, during the relevant period, Defendants employed
21 over fifty (50) Aggrieved employees in California.

22 18. Aggrieved Employees employed by Defendants all times pertinent hereto, have been
23 Non-exempt employees within the meaning of the California Labor Code, and the
24 implementing rules and regulations of the IWC California Wage Orders.

25
26 **V.**
27 **PAGA REPRESENTATIVE ALLEGATIONS**

28 19. Plaintiff gave timely written notice by certified mail of Defendants violation

1 of various provisions of the California Labor Code as alleged in this complaint to the Labor and
2 Workforce Development Agency (“LWDA”) and Defendants.

3 20. The LWDA did not provide notice of its intention to investigate Defendants’
4 alleged violations within the 60-day statutory period. See Cal. Lab. Code section 2699.3.

5 21. Plaintiff brings this action on his own behalf as an aggrieved employee, as well
6 as on behalf of each and every other aggrieved employee pursuant to California Labor Code section
7 2699.

8 22. All claims alleged herein arise under California law for which Plaintiff seeks relief
9 as authorized by California law.

10 23. Plaintiff and the aggrieved employees are covered by applicable California IWC
11 Wage Orders and corresponding applicable provisions of the California Labor Code, Code of
12 Regulations, Title 8, section 11010 *et. seq.*

13 24. Pursuant to Labor Code section 512, an employer must provide an employee who
14 works more than five (5) hours in a work shift with a meal break of not less than 30 minutes.

15 25. During the liability period, Defendants failed to provide Aggrieved Employees a thirty
16 (30) minute uninterrupted meal periods by the end of the fifth hour for days which Plaintiff and
17 Class Members worked in excess of five (5) hours. Defendants did not pay Plaintiff an hour of
18 wage for each day that a meal period violation occurred.

19 26. Section 226 of the California Labor Code requires Defendants to itemize in wage
20 statements total hours worked and all compensation earned by Plaintiff and Aggrieved Employees.
21 By failing to provide correct wages for hours worked and premium wages owed, Defendants have
22 knowingly and intentionally failed to comply with Labor Code section 226. Such violations
23 therefore flow directly from Defendants’ improper policies and practices, their implementation
24 and enforcement by Defendants, and the violations alleged in this complaint.

25 27. Plaintiff and Aggrieved Employees were also injured because the wage statements
26 failed to accurately state that the Aggrieved Employees were being paid one hour of pay at their
27 regular rate for days in which they were not provided with each of their authorized meal periods.
28

1 Defendants have made it impossible to properly calculate important information from the wage
2 statements provided throughout the liability period.

3 28. Labor Code section 202 requires Defendants to pay its employees all wages due within
4 seventy-two (72) hours of separation of employment. Section 203 provides that if an employer
5 willfully fails to timely pay such wages the employer must, as a penalty, continue to pay the subject
6 employee's wage until the balance wages are paid in full or an action is commenced. The penalty
7 cannot exceed 30 day of wages.

8 29. Plaintiff and Aggrieved Employees are entitled to compensation for all forms of wages
9 earned, including but not limited to wages, premium meal compensation, but to date have not
10 received such compensation, therefore entitling them to Labor Code section 203 penalties.

11 30. More than 30 days have passed since Plaintiff and affected Aggrieved Employees left
12 Defendants' employ and, on information and belief, they have not received payment pursuant to
13 Labor Code section 203.

14 31. Plaintiff seeks civil penalties pursuant to California Labor Code section 2698, *et seq.*
15 for violations of the Labor Code, including sections 202, 226, and 512.

16 32. Enforcement of statutory provisions to protect workers and to ensure proper and
17 prompt payment of wages is a fundamental public interest. Plaintiff's successful enforcement of
18 important rights affecting the public interest will confer a significant benefit upon the general
19 public. Private enforcement of these rights are necessary, as no public agency has pursued
20 enforcement. Plaintiff is incurring a financial burden in pursuing this action, and it would be
21 against the interest of justice to require the payment of attorneys' fees and costs from any recovery
22 obtained, pursuant to, *inter alia*, California Labor Code section 2699.

23 24 **VI. PRAYER**

25 WHEREFORE, Plaintiff requests entry of judgment, for himself and other aggrieved
26 employees, as follows:

- 27 1. For penalties;
28 2. For attorneys' fees and costs of suit; and

3. For such other and further relief as the Court deems proper.

Dated: October 6, 2020

JAMES HAWKINS, APLC


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KEVIN RIVAS