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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

FEB 04 2021

V. Alvarado

Attorneys for Plaintiff Ryan Cherry, on behalf of himself and on behalf of all similarly situated individuals

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE**

RYAN CHERRY, on behalf of himself and on
behalf of all similarly situated individuals,

Plaintiff,

v.

NEWBASIS WEST, LLC, a Delaware limited
liability company, and DOES 1 through 10,
inclusive,

Defendants.

CASE NO: CVRI2000701

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT FOR:**

- 1. FAILURE TO PROVIDE REST PERIODS OR COMPENSATION IN LIEU THEREOF (LABOR CODE §§ 226.7 AND 558; IWC WAGE ORDER 1-2001)**
- 2. FAILURE TO PROVIDE MEAL PERIODS OR COMPENSATION IN LIEU THEREOF (LABOR CODE §§ 226.7, 512 AND 558; IWC WAGE ORDER 1-2001)**
- 3. KNOWING AND INTENTIONAL FAILURE TO COMPLY WITH ITEMIZED EMPLOYEE WAGE STATEMENT PROVISIONS (LABOR CODE § 226(a), (e))**
- 4. FAILURE TO TIMELY PAY WAGES DUE AT SEPARATION OF EMPLOYMENT (LABOR CODE §§ 201-203)**
- 5. VIOLATION OF BUSINESS AND PROFESSIONS CODE § 17200**
- 6. PENALTIES PURSUANT TO LABOR CODE § 2699(f) FOR VIOLATIONS OF LABOR CODE §§ 201-202, 226(a), 226.7, AND 512 AND PURSUANT TO LABOR CODE § 2699(a) FOR VIOLATIONS OF LABOR CODE §§ 226.3 AND 558**

DEMAND FOR JURY TRIAL

Complaint Filed: December 23, 2020

Plaintiff RYAN CHERRY (“Plaintiff”), individually and on behalf of all similarly situated individuals (the “Class” or “Plaintiff Class”), and on behalf of the general public, and as an “aggrieved employee” under the Labor Code Private Attorneys General Act of 2004, complains of Defendants, and each of them, as follows:

I.

INTRODUCTION AND FACTUAL BACKGROUND

1. This is a Class Action and Representative Action, pursuant to Code of Civil Procedure § 382 and Labor Code § 2698 *et seq.*, on behalf of Plaintiff and the Class of individuals described in detail below against NEWBASIS WEST, LLC, a Delaware limited liability company, and/or any subsidiaries or affiliated companies (hereinafter collectively referred to as “Defendants”) within the State of California.

2. For at least four (4) years prior to the filing of this action and continuing to the present (the “liability period”), Defendants have had a consistent policy of failing to provide legally compliant meal and rest periods, or compensation in lieu thereof; failing to pay all wages due upon separation of employment; and failing to issue accurately itemized wage statements.

3. Plaintiff, on behalf of himself members of the Class, brings this action pursuant to Labor Code §§ 201-203, 226(a), 226.7, 512, and 558 seeking compensation for all unpaid wages, meal and rest period premium wages, civil and statutory penalties, injunctive and other equitable relief, and reasonable attorneys’ fees and costs.

4. Plaintiff, on behalf of himself and Class Members, pursuant to Business & Professions Code §§ 17200-17208, also seeks injunctive relief, restitution, and disgorgement of all benefits Defendants enjoyed from their failure to pay all wages due.

5. Plaintiff, on behalf of himself and all aggrieved employees pursuant to Labor Code §§ 2698 *et seq.*, seeks penalties for Defendants’ various violations of the California Labor Code.

6. Venue is proper in this judicial district, pursuant to Code of Civil Procedure § 395 because Defendants employed Plaintiff and members of the Class in Riverside County, California.

1 II.

2 **PARTIES**

3 **A. Plaintiff**

4 7. Plaintiff RYAN CHERRY was employed by Defendants since October 2019 to May
5 2020 as a non-exempt employee and performed work for Defendants in Riverside County, California.

6 8. During his work with Defendants, Plaintiff was:

7 a. Willfully denied all meal and rest periods or compensation in lieu thereof;

8 b. Willfully denied accurately itemized wage statements; and

9 c. Denied the timely payment of all wages upon separation of her employment.

10 **B. Defendants**

11 9. Defendant NEWBASIS WEST, LLC, a Delaware limited liability company.
12 Defendant NEWBASIS WEST, LLC employed Plaintiff in Riverside County, California.

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

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

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

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1 **III.**

2 **CLASS ACTION ALLEGATIONS**

3 13. Plaintiff brings this action on behalf of himself and all others similarly situated as a
4 Class Action pursuant to § 382 of the Code of Civil Procedure. Plaintiff seeks to represent the
5 following class composed of and defined as follows:

6 **THE CLASS**

7 All persons employed as non-exempt employees by Defendants in
8 California at any time since the date four years preceding the filing of
9 this Action.

10 14. Plaintiff reserves the right under Rule 3.765, California Rules of Court, to amend or
11 modify this class description with greater specificity or further division into subclasses or limitation
12 to particular issues.

13 15. This action has been brought and may properly be maintained as a class action under
14 the provisions of § 382 of the Code of Civil Procedure because there is a well-defined community of
15 interest in the litigation and each proposed Class is easily ascertainable.

16 **A. Numerosity**

17 16. The potential members of the Class as defined are so numerous that joinder of all class
18 members is impracticable. While the precise number of members of the Class has not been
19 ascertained at this time, Plaintiff is informed and believes, and based thereon alleges, that Defendants
20 currently employ, and during the relevant time periods employed, over 50 persons in the State of
21 California who fall within the Class definition.

22 17. Accounting for employee turnover during the relevant period necessarily increases this
23 number. Plaintiff alleges Defendants' employment records would provide information as to the
24 number and location of members of the Class. Joinder of members of the Class is not practicable.

25 **B. Commonality**

26 18. There are questions of law and fact common to the Class that predominate over any
27 questions affecting only individual class members. These common questions of law and fact include,
28 without limitation:

- a. Whether Defendants failed to properly provide rest periods, or compensation in lieu thereof to Plaintiff and Class Members, in violation of Labor Code §§ 226.7 and 558, and IWC Wage Order 1-2001;
- b. Whether Defendants failed to properly provide meal periods, or compensation in lieu thereof to Plaintiff and Class Members, in violation of Labor Code §§ 226.7, 512, and 558, and IWC Wage Order 1-2001;
- c. Whether Defendants failed to provide Plaintiff and Class Members with accurately itemized wage statements, in accordance with Labor Code § 226(a) and (e);
- d. Whether Defendants failed to timely Plaintiff and pay members of the Class all wages due and owing at the separation of their employment, in violation of Labor Code §§ 201-203; and
- e. Whether Plaintiff and members of the Class are entitled to equitable relief pursuant to Business & Professions Code § 17200 *et seq.*

C. Typicality

19. The claims of the named Plaintiff are typical of the claims of members of the Class. Plaintiff and members of the Class sustained injuries and damages arising out of and caused by Defendants' common course of conduct in violation of laws, regulations that have the force and effect of law, and statutes as alleged herein.

D. Adequacy of Representation

20. Plaintiff will fairly and adequately represent and protect the interests of members of the Class. Counsel who represents Plaintiff are competent and experienced in litigating large employment class actions.

E. Superiority of Class Action

21. A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all proposed members of the Class is not practicable, and questions of law and fact common to the proposed Class predominate over any questions affecting

1 only individual members of the proposed Class. Each member of the proposed Class has been
2 damaged and is entitled to recovery by reason of Defendants' illegal policies and/or practices.

3 22. Class action treatment will allow those similarly situated persons to litigate their
4 claims in the manner that is most efficient and economical for the parties and the judicial system.
5 Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this
6 action that would preclude its maintenance as a class action.

7 **IV.**

8 **CAUSES OF ACTION**

9 **FIRST CAUSE OF ACTION**

10 **PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS**

11 **FAILURE TO PROVIDE REST PERIODS OR COMPENSATION IN LIEU THEREOF**
12 **(LABOR CODE §§ 226.7 AND 558 AND IWC WAGE ORDER 1-2001)**

13 23. Plaintiff incorporates paragraphs 1 through 22 of this Complaint as though fully set
14 forth herein.

15 24. Plaintiff and Class Members are entitled to one hour of pay for each day that
16 Defendants failed to properly provide one or more rest periods as set forth in Labor Code §§ 226.7
17 and 558 and IWC Wage Order 1-2001.

18 25. Defendants failed to pay premium wages to Plaintiff and Class Members who were
19 denied rest periods, in violation of Labor Code §§ 226.7 and 558 and IWC Wage Order 1-2001.
20 Plaintiff and Class Members were routinely unable to take a 10-minute rest period for every four (4)
21 hours of work or major fraction thereof, but were not paid premium wages of one hour's pay for each
22 missed rest period. When Plaintiff and Class Members were provided with a rest period, they were
23 not permitted to leave the work premises, resulting in impermissible on-duty rest periods, which were
24 not free from employer control, or they would be interrupted in the middle of such rest periods and
25 would be required to continue working. This violates Labor Code §§ 226.7 and 558 and IWC Wage
26 Order 1-2001.

26. Pursuant to Labor Code §§ 226.7 and 558 and IWC Wage Order 1-2001, Plaintiff seeks the payment of all rest period compensation which he and Class Members are owed for four years preceding the filing of this Action, according to proof.

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

V.

SECOND CAUSE OF ACTION

PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS

FAILURE TO PROVIDE MEAL PERIODS OR COMPENSATION IN LIEU THEREOF

(LABOR CODE §§ 226.7, 512, AND 558 AND IWC WAGE ORDER 1-2001)

27. Plaintiff incorporates paragraphs 1 through 26 of this Complaint as though fully set forth herein.

28. Plaintiff and Class Members are entitled to one hour of pay for each day that Defendants failed to properly provide one or more meal periods as set forth in Labor Code §§ 226.7, 512, and 558 and IWC Wage Order 1-2001.

29. Defendants failed to pay premium wages to Plaintiff and Class Members who were denied meal periods, in violation of Labor Code §§ 226.7, 512, and 558 and IWC Wage Order 1-2001. Plaintiff and Class Members were routinely denied, and not authorized to take, an uninterrupted, 30-minute meal period for every shift worked that exceeded five hours in duration, and a second meal period when they worked shifts greater than ten hours, but were not paid premium wages of one hour's pay for each missed meal period. When Plaintiff and Class Members did receive meal periods, they would typically be late (commencing after the fifth hour of work) or short (less than 30 minutes in duration). This violates Labor Code §§ 226.7, 512, and 558, and IWC Wage Order 1-2001.

30. Pursuant to Labor Code §§ 226.7, 512, and 558 and IWC Wage Order 1-2001, Plaintiff seeks the payment of all meal period compensation which Class Members are owed for four years preceding the filing of this Action, according to proof.

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

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VI.
THIRD CAUSE OF ACTION
PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS
KNOWING AND INTENTIONAL FAILURE TO COMPLY WITH ITEMIZED
EMPLOYEE WAGE STATEMENT PROVISIONS
(LABOR CODE § 226(a), (e))

31. Plaintiff incorporates paragraphs 1 through 30 of this Complaint as though fully set forth herein.

32. Section 226(a) of the California Labor Code requires Defendants to provide wage statements to employees. In those wage statements, Defendants must provide an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee..., (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer..., and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Defendants have knowingly and intentionally failed to comply with Labor Code § 226(a).

33. Defendants failed to issue Plaintiff and Class Members wage statements that fully and accurately itemized the requirements set forth in Labor Code § 226(a). As stated above, Plaintiff and Class Members were not paid for all meal and rest period premium wages. 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 net wages earned, in violation of Labor Code §§ 226(a)(5).

34. As a consequence of Defendants' willful conduct in failing to provide Class Members with accurate itemized wage statements, Plaintiff and Class Members have been injured because they have not been paid all wages due and were issued wage statements which do not reflect, and fail to

1 state, all information required by Labor Code § 226(a). The missing information cannot be discerned
2 at all from the face of the wage statements themselves. Plaintiff and Class Members are entitled to
3 penalties pursuant to Labor Code § 226(e) to recover the greater of all actual damages or \$50 for the
4 initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent
5 pay period, not exceeding an aggregate penalty of \$4,000 per employee, and are entitled to an award
6 of costs and reasonable attorneys' fees pursuant to Labor Code § 226(h).

7 Wherefore, Plaintiff and the Class he seeks to represent request relief as described below.

8 **VII.**

9 **FOURTH CAUSE OF ACTION**

10 **PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS**

11 **FAILURE TO TIMELY PAY WAGES DUE AT**

12 **SEPARATION OF EMPLOYMENT (LABOR CODE §§ 201-203)**

13 35. Plaintiff incorporates paragraphs 1 through 34 of this Complaint as though fully set
14 forth herein.

15 36. California Labor Code § 201 and § 202 require Defendants to pay employees all wages
16 due within 72 hours after resignation of employment or the day of termination of employment. Labor
17 Code § 203 provides that if an employer willfully fails to timely pay such wages, the employer must,
18 as a penalty, continue to pay the subject employee's daily wages until the back wages are paid in full
19 or an action is commenced. The penalty cannot exceed 30 days of wages.

20 37. Defendants paid Plaintiff and members of the Class their final wages beyond the time
21 frames set forth in Labor Code §§ 201 and 202 in violation of Labor Code § 203. Plaintiff and
22 members of the Class were not paid all wages due and owing throughout the course of their
23 employment, including all premium wages for missed and denied meal and rest periods, as detailed
24 above. Consequently, at the time of their separation from employment with Defendants, they were
25 not paid all final wages due and owing for the entirety of their employment.

26 38. More than 30 days have passed since Plaintiff and certain members of the Class have
27 left Defendants' employ.
28

39. As a consequence of Defendants' willful conduct in not paying wages owed timely upon separation of employment, Plaintiff and members of the Class are entitled to up to 30 days' wages as a penalty under Labor Code §§ 203 for Defendants' failure to timely pay legal wages (including vacation wages) at separation of employment.

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

VIII.

FIFTH CAUSE OF ACTION

PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS

UNFAIR COMPETITION PURSUANT TO

BUSINESS & PROFESSIONS CODE § 17200 ET SEQ.

40. Plaintiff incorporates paragraphs 1 through 39 of this Complaint as though fully set forth herein.

41. This is a Class Action for Unfair Business Practices. Plaintiff, on his own behalf and on behalf of the general public, and on behalf of others similarly situated, brings this claim pursuant to Business & Professions Code § 17200 *et seq.* The conduct of all Defendants as alleged in this Complaint has been and continues to be unfair, unlawful, and harmful to Plaintiff, the general public, and members of the Class. Plaintiff seeks to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure § 1021.5.

42. Plaintiff is a “person” within the meaning of Business & Professions Code § 17204, and therefore has standing to bring this cause of action for injunctive relief, restitution, and other appropriate equitable relief.

43. Business & Professions Code § 17200 *et seq.* prohibits unlawful and unfair business practices.

44. Wage and hour laws express fundamental public policies. Properly providing employees with all wages due is a fundamental public policy of this State and of the United States. Labor Code § 90.5(a) articulates the public policies of this State to enforce vigorously minimum labor standards, to ensure that employees are not required or permitted to work under substandard and

1 unlawful conditions, and to protect law-abiding employers and its employees from competitors who
2 lower their costs by failing to comply with minimum labor standards.

3 45. Defendants have violated statutes and public policies. Through the conduct alleged
4 in this Complaint, Defendants, and each of them, have acted contrary to these public policies, have
5 violated specific provisions of the Labor Code, and have engaged in other unlawful and unfair
6 business practices in violation of Business & Professions Code § 17200 *et seq.* depriving Plaintiff,
7 and all persons similarly situated, and all interested persons of rights, benefits, and privileges
8 guaranteed to all employees under law.

9 46. Defendants' conduct, as alleged herein, constitutes unfair competition in violation of
10 §17200 *et seq.* of the Business & Professions Code.

11 47. Defendants, by engaging in the conduct herein alleged, either knew or in the exercise
12 of reasonable care should have known that the conduct was unlawful. As such, it is a violation of §
13 17200 *et seq.* of the Business & Professions Code.

14 48. As a proximate result of the above-mentioned acts of Defendants, Plaintiff and others
15 similarly situated have been damaged in a sum as may be proven.

16 49. Unless restrained by this Court, Defendants will continue to engage in the unlawful
17 conduct, as alleged above. Pursuant to Business & Professions Code § 17200 *et seq.*, this Court
18 should make such orders or judgments, including the appointment of a receiver, as may be necessary
19 to prevent the use or employment, by Defendants, its agents, or employees, of any unlawful or
20 deceptive practice prohibited by the Business & Professions Code, and/or, including but not limited
21 to, disgorgement of profits which may be necessary to restore Plaintiff and members of the Class to
22 the money Defendants have unlawfully failed to pay.

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IX.

SIXTH 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, 226(a), 226.7, AND 512 AND PURSUANT TO LABOR CODE §
2699(a) FOR VIOLATIONS OF LABOR CODE §§ 226.3 AND 558**

50. Plaintiff incorporates paragraphs 1 through 49 of this Complaint as though fully set forth herein.

51. As a result of the acts alleged above, including the Labor Code violations set forth herein, Plaintiff seeks penalties pursuant to Labor Code § 2698 *et seq.*

52. For each such violation, Plaintiff and all other aggrieved employees are entitled to penalties 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, 226(a), 226.7, and 512; and
- b. Pursuant to Labor Code § 2699(a), the civil penalties as authorized by Labor Code §§ 226.3 and 558.

53. Penalties recovered will be allocated 75% to the Labor and Workforce Development Agency, and 25% to the affected employees.

54. On November 23, 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 November 23, 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.

RELIEF REQUESTED

WHEREFORE, Plaintiff prays for the following relief:

1. For compensatory damages in the amount of one hour of wages for each day on which a meal and/or rest period was not properly provided to Plaintiff and Class Members, pursuant to Labor Code § 226.7;
2. For penalties pursuant to Labor Code § 226(e) for Plaintiff and Class Members;
3. For restitution for unfair competition pursuant to Business & Professions Code § 17200 *et seq.* for Plaintiff and Class Members;
4. An award providing for payment of costs of suit pursuant to Labor Code § 226(h) and other applicable law;
5. An award of attorneys' fees pursuant to Labor Code § 226(h) and other applicable law;
6. For civil penalties pursuant to Labor Code § 2698 *et seq.* for Plaintiff and all other Aggrieved Employees;
7. An award of prejudgment and post-judgment interest; and
8. Such other and further relief as this Court may deem just and proper.

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1 Dated: February 3, 2021

Respectfully submitted,

2 GAINES & GAINES
3 A Professional Law Corporation

4 By: Daniel F. Gaines
5 DANIEL F. GAINES
6 EVAN S. GAINES
7 Attorney for Plaintiff

8 **DEMAND FOR JURY TRIAL**

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

10 Dated: February 3, 2021

Respectfully submitted,

11 GAINES & GAINES
12 A Professional Law Corporation

13 By: Daniel F. Gaines
14 DANIEL F. GAINES
15 EVAN S. GAINES
16 Attorney for Plaintiff