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PER LOCAL RULE, THIS
CASE IS ASSIGNED TO
DEPT 39, FOR ALL
PURPOSES

FILED
FEB 25 2021

K. BIEKER CLERK OF THE COURT
SUPERIOR COURT OF CALIFORNIA
COUNTY OF CONTRA COSTA

By A. Stewart, Deputy Clerk

IMMONS ISSUED

Attorneys for Plaintiff SCOTT RUSSO, as representative of the State of California and the Labor and Workforce Development Agency, and on behalf of himself and other current and former employees.

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF CONTRA COSTA**

SCOTT RUSSO, on behalf of himself and all
others aggrieved employees,

Plaintiff,

v.

HILLTOP COMMUNITY PARTNERS, LLC, a
Corporation Doing Business in California; and
DOES 1- 50, Inclusive,

Defendant,

Case No.

C21 - 00374

**REPRESENTATIVE ACTION
COMPLAINT FOR CIVIL FINES**

1. Civil Penalties under the Private Attorneys General Act (PAGA)

DEMAND FOR JURY TRIAL

Plaintiff, Scott Russo, as a representative of the State of California and the Labor and Workforce Development Agency (LWDA), and on behalf of Plaintiff and other current and former employees, complains and alleges as follows:

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1 **INTRODUCTION**

2 1. This is a representative action brought by Plaintiff, as a representative of the State
3 of California and the LWDA, and on behalf of Plaintiff and other aggrieved employees, to collect
4 civil penalties for Defendant's Labor Code violations.

5 2. Defendant and employer, Hilltop Community Partners, LLC violated numerous
6 wage and hour laws with respect to Plaintiff and other aggrieved employees by failing to provide,
7 for example: accurate and itemized wages statements, payment for all hours worked (including
8 regular wages and overtime), failure to provide a minimum wage lawful meal periods, lawful
9 rest periods, timely payment during employment, failure to reimburse for expenses incurred
10 during the course and scope of employment, and payment upon separation of employment.

11 **PARTIES**

12 **The Plaintiff**

13 3. Plaintiff is, and at all times herein mentioned was, a resident of the County of
14 Contra Costa.

15 **The Defendant**

16 4. Defendant Hilltop Community Partners, LLC is a corporation which, at all-time
17 relevant hereto, existing, doing business and employing individuals in the County of Contra
18 Costa, State of California.

19 5. The true names and capacities, whether individual, corporate, associate, or
20 otherwise of Defendants named herein as DOES 1-50, inclusive, are unknown to Plaintiff at this
21 time and therefore said Defendants are sued by such fictitious names. Plaintiff will seek leave to
22 amend this Complaint to insert the true names and capacities of said Defendants when the same
23 become known to Plaintiff. Plaintiff is informed and believes and thereupon alleges that each of
24 the fictitiously-named Defendants are responsible for the wrongful acts alleged herein and is
25 therefore liable to Plaintiff as alleged hereinafter.

26 6. Plaintiff is informed and believes, and based thereupon alleges, that at all times
27 relevant hereto, Defendants, and each of them, were the agents, employees, managing agents,
28 supervisors, conspirators, parent corporation, joint employers, alter ego, and/or joint ventures of

1 the other Defendants, and each of them, and in doing the things alleged herein, were acting at
2 least in part within the course and scope of said agency, employment, conspiracy, joint
3 employment, alter ego status, and/or joint venture and with the permission and consent of each of
4 the other Defendants.

5 7. Plaintiff is informed and believes, and based thereupon alleges, that Defendants,
6 and each of them, including those Defendants named DOES 1-50, acted in concert with one
7 another to commit the wrongful acts alleged therein, and aided, abetted, incited, compelled,
8 and/or coerced one another in the wrongful acts alleged herein, and/or attempted to do so.
9 Plaintiff is further informed and believes, and based thereupon alleges, that the Defendants, and
10 each of them, including those Defendants named as DOES 1-50, formed and executed a
11 conspiracy or common plan pursuant to which they would commit the unlawful acts alleged
12 herein, with all such acts alleged herein done as part of and pursuant to said conspiracy, intended
13 to and actually causing Plaintiff harm.
14

15 8. Whenever and wherever reference is made in this Complaint to any act or failure
16 to act by a defendant or co-defendant, such allegations and references shall also be deemed to
17 mean the acts and/or failures to act by each defendant acting individually, jointly and severally.

18 **JURISDICTION AND VENUE**

19 9. Venue is proper in Contra Costa County, because Defendants maintain its
20 locations and transacts business in this county, the obligations and liability primarily arise in this
21 county, and work was primarily performed by Plaintiff and other aggrieved employees in this
22 county.

23 10. The California Superior Court has jurisdiction over this matter. The individual
24 claims are under the seventy-five thousand dollar (\$75,000.00) jurisdictional threshold for
25 federal court and PAGA penalties cannot be aggregated to meet the minimum jurisdictional
26 amount required for diversity removal. Further, there is no federal question at issue as the issues
27 herein are based solely on California statutes and law, including, but not limited to, the California
28 Labor Code, Industrial Welfare Commission Wage Orders, California Code of Civil Procedure,

and California Rules of Court.

GENERAL ALLEGATIONS

11. Defendant employed Plaintiff as a delivery driver from July 9, 2020 to July 20, 2020.

12. Plaintiff and Aggrieved Employees were compensated at a rate of approximately \$16 per hour. Plaintiff and Aggrieved Employees' job duties did not involve independent judgment or discretion. Job duties consisted only of providing delivery service to clients.

13. On many occasions, Plaintiff and aggrieved employees would work more than 8 hours per day or 40 hours per week without overtime pay.

14. Employer regularly did not have enough employees to provide sufficient coverage to maintain their business operations so Plaintiff and similarly aggrieved employees could not take complete, timely and uninterrupted meal and rest breaks.

15. Pursuant to Labor Code section 2699, subdivision (a), any provision of the Labor Code that provides for a civil penalty to be assessed and collected by the LWDA or any of its departments, divisions, commissions, boards, agencies or employees for violation of the code may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Labor Code section 2699.3.

16. For all provisions of the Labor Code except those for which a civil penalty is specifically provided, Labor Code section 2699, subdivision (f) imposes upon Defendant a penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent pay period in which Defendant violated these provisions of the Labor Code.

17. Defendant's conduct during the PAGA period with respect to Plaintiff and the aggrieved employees violates numerous Labor Code sections as detailed herein.

18. Plaintiff alleges that Defendant has engaged in a systematic pattern of wage and hour violations under the California Labor Code and IWC Wage Orders.

1 19. At all relevant times herein, Defendant employed Plaintiff and other aggrieved
2 employees as non-exempt employees.

3 20. Plaintiff is informed and believes, and based thereon alleges, that Defendant knew
4 or should have known that Plaintiff and aggrieved employees were entitled to receive wages for
5 all hours worked, including the applicable minimum, regular, and overtime wages, and that they
6 were not receiving all wages earned for work that was required to be performed. In violation of
7 the Labor Code and IWC Wage Orders, Defendant failed to pay Plaintiff and aggrieved
8 employees for all hours worked. Accordingly, Defendant failed to pay Plaintiff and aggrieved
9 employees all earned minimum, regular, and/or overtime compensation.

10 21. Plaintiff is informed and believes, and based thereon alleges, that Defendant knew
11 or should have known that Plaintiff and aggrieved employees were entitled to receive all required
12 meal periods or payment of one (1) additional hour of pay at Plaintiff and aggrieved employees'
13 regular rate of pay when they did not receive a timely, uninterrupted off-duty meal period. In
14 violation of the Labor Code and IWC Wage Orders, Defendant had a pattern, practice, and policy
15 of not providing timely meal periods. Defendant failed to pay an additional hour of pay to
16 Plaintiff and aggrieved employees for late meal periods. As a result of Defendant's unlawful
17 policy and practice, Plaintiff and aggrieved employees did not receive all meal periods or
18 payment of one (1) additional hour of pay at Plaintiff's and aggrieved employees' regular rate of
19 pay when they did not receive a timely, uninterrupted 30 minute off-duty meal period.

20 22. Plaintiff is informed and believes, and based thereon alleges, that Defendant knew
21 or should have known that Plaintiff and aggrieved employees were entitled to receive all required
22 rest periods or payment of one (1) additional hour of pay at Plaintiff and aggrieved employees'
23 regular rate of pay when they did not receive a timely, uninterrupted off-duty rest period. In
24 violation of the Labor Code and IWC Wage Orders, Defendant had a pattern, practice, and policy
25 of not providing timely rest periods. Defendant failed to pay an additional hour of pay to Plaintiff
26 and aggrieved employees for each rest periods was not provided or was interrupted. As a result
27 of Defendant's unlawful policy and practice, Plaintiff and aggrieved employees did not receive
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1 all required rest periods or payment of one (1) additional hour of pay at Plaintiff's and aggrieved
2 employees' regular rate of pay when they did not receive a timely, uninterrupted 10 minute off-
3 duty rest period.

4 23. Plaintiff is informed and believes, and based thereon alleges, that Defendant knew
5 or should have known that Plaintiff and certain aggrieved employees were entitled to timely
6 payment of wages due upon separation of employment. In violation of the Labor Code, Plaintiff
7 and certain aggrieved employees did not receive payment of all wages due, within permissible
8 time periods, upon separation of employment.

9 24. Plaintiff is informed and believes, and based thereon alleges, that Defendant knew
10 or should have known that Plaintiff and aggrieved employees were entitled to receive itemized
11 wage statements that accurately showed their actual hours worked, total hours worked, number
12 of hours worked at each hourly rate, gross and net wages earned, and correct employer
13 information in accordance with California law. In violation of the Labor Code, Plaintiff and
14 aggrieved employees were not provided with accurate itemized wage statements that accurately
15 reported their gross and net wages earned, total hours worked, each applicable rate of pay in
16 effect during the pay period with the corresponding number of hours worked, and the address of
17 the legal entity that is the employer, among other things.

18 25. Plaintiff is informed and believes, and thereon alleges, that Defendant knew or
19 should have known that Defendant was required to maintain accurate records of the hours
20 worked by Plaintiff and aggrieved employees. In violation of the Labor Code, Defendant failed
21 to maintain accurate records of hours worked by Plaintiff and aggrieved employees due to its
22 unfair rounding practices, among other things.

23 26. Plaintiff is informed and believes, and based thereon alleges, that Defendant knew
24 or should have known that Plaintiff and aggrieved employees were entitled to receive business
25 reimbursements for necessary expenditures incurred in connection with the performance and
26 execution of their job duties. Defendant required Plaintiff and aggrieved employees to use their
27 personal mobile phones to conduct company business. In violation of the Labor Code, Defendant
28

1 failed to reimburse Plaintiff and aggrieved employees for these business-related expenditures.

2
3 **FIRST CAUSE OF ACTION**

4 **(Civil Penalties Under the Private Attorneys General Act,**
5 **Labor Code § 2699 et seq., For Violations of the Labor Code)**

6 27. By this complaint, Plaintiff brings this case as a representative action seeking
7 penalties for himself, the aggrieved employees, and the State of California in a representative
8 capacity, as provided by the PAGA, Labor Code sections 2698 et seq. Plaintiff is an aggrieved
9 employee who was employed by Defendant and subject to at least one of the Labor Code
10 violations set forth in Labor Code section 2699.5. Plaintiff specifically alleged the following in
11 his notice to the LWDA and Defendants: violation of Labor Code sections 201, 202, 203, 204,
12 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, and 1198.

13 28. Under Labor Code section 2699.3, subdivision (a), a plaintiff may bring a cause
14 of action under PAGA only after giving the LWDA and the employer notice of the Labor Code
15 sections alleged to have been violated, and after receiving notice from the LWDA of its intention
16 not to investigate, or after 65 days have passed without notice from the LWDA.

17 29. Prior to filing this complaint, on November 19, 2020, Plaintiff gave written notice
18 of the specific provisions alleged to have been violated, including the facts and theories to
19 support the alleged violations, as required by Labor Code section 2699.3. The written notice was
20 given via certified mail to Defendants, and the LWDA by electronically filing the notice via the
21 Department of Industrial Relations website. Plaintiff was given an LWDA case number of
22 LWDA-CM-813138-20. A true and correct copy of Plaintiff's notice to the LWDA and
23 Defendant(s), dated November 19, 2020, is attached hereto as Exhibit A.

24 30. The LWDA has not provided Plaintiff with any notice that it intends to investigate
25 the violations as alleged in Plaintiff's November 19, 2020 notice, and more than 65 calendar
26 days have elapsed since the postmark date on the notice.

27 31. California Labor Code §§2698-2699.5, in relevant part provides, "any provision
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1 of this code that provides for a civil penalty to be assessed and collected by the Labor and
2 Workforce Development Agency...for a violation of this code, may, as an alternative, be
3 recovered through a civil action brought by an aggrieved employee on behalf of himself or
4 herself and other current or former employees pursuant to the procedures specified in Section
5 2699.3.”

6 32. As an aggrieved employee, Plaintiff brings this civil action to recover civil
7 penalties for Defendant’s Labor Code violations.

8 **FIRST VIOLATION**

9 **(Failure to Provide Meal Periods, in Violation of Labor Code Section 512)**

10 33. Under California Labor Code §512(a), “An employer may not employ an
11 employee for a work period of more than five hours per day without providing the employee
12 with a meal period of not less than 30 minutes, except that if the total work period per day of the
13 employee is no more than six hours, the meal period may be waived by mutual consent of both
14 the employer and employee.”

15 34. Defendant violated Labor Code § 512 by failing to provide Plaintiff, and other
16 qualifying employees who worked shifts of greater than five hours, meal periods within the first
17 five hours of the shifts worked. Defendant failed to pay Plaintiff one hour’s pay at Plaintiff’s
18 regular rate of pay for each day Defendant failed to provide a meal period in compliance with
19 section 512.

20 **SECOND VIOLATION**

21 **(Failure to Provide Rest Periods, in Violation of Labor Code Section 226.7)**

22 35. Under California Labor Code §226.7(b), “An employer shall not require an
23 employee to work during a meal or rest or recovery period mandated pursuant to an applicable
24 statute, or applicable regulation, standard, or order of the Industrial Welfare Commission”

25 36. Industrial Welfare Commission (IWC) provides, “Every employer shall authorize
26 and permit all employees to take rest periods, which insofar as practicable shall be in the middle
27 of each work period. The authorized rest period time shall be based on the total hours worked
28

1 daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.”

2 37. Defendant failed to authorize and permit Plaintiff and other employee to take rest
3 periods and mandated by the Wage Order.

4 38. Under §226.7(c), an employer who violates §226.7(b), “...shall pay the employee
5 one additional hour of pay at the employee’s regular rate of compensation for each workday that
6 the meal or rest or recovery period is not provided.”

7 39. Defendant failed to pay Plaintiff and other employees who were not provided rest
8 periods one hour of pay at their regular rate of pay.

9
10 **THIRD VIOLATION**

11 **(Failure to Provide Complete and Accurate Wage Statements,**
12 **in Violation of Labor Code Section 226)**

13 40. Under California Labor Code §226(a), an employer is legally obligated to provide
14 its employees, semi-monthly or at the time of payment of wages, “an accurate itemized statement
15 in writing...”

16 41. Plaintiff, on behalf of the State of California and the LWDA, seeks civil penalties
17 for Defendant’s Labor Code violations alleged herein, as well as attorney’s fees and costs, under
18 Labor Code § 2699.

19 **FOURTH VIOLATION**

20 **(Failure to Pay Overtime Wages)**

21 42. Pursuant to California Labor Code §§ 510, 1194, and IWC Wage Orders, an
22 employer is required to compensate employees for all overtime, which is calculated at one and
23 one-half (1½) times the regular rate of pay for all hours worked in excess of eight (8) hours per
24 day and/or forty (40) hours per week, and for the first eight (8) hours on the seventh consecutive
25 workday, with double time for all hours worked in excess of twelve (12) hours in any workday
26 and for all hours worked in excess of eight (8) hours on the seventh consecutive day of work in
27 any workweek.

28 43. Plaintiff, on behalf of the State of California and the LWDA, seeks civil penalties

1 for Defendant's Labor Code violations alleged herein, as well as attorney's fees and costs, under
2 Labor Code § 2699.

3
4 **FIFTH VIOLATION**

5 **(Failure to Pay Minimum Wages)**

6 44. Pursuant to California Labor Code §§ 1194, 1197, and IWC Wage Orders,
7 payment to an employee of less than the applicable minimum wage for all hours worked in a
8 payroll period is unlawful.

9 45. Plaintiff, on behalf of the State of California and the LWDA, seeks civil penalties
10 for Defendant's Labor Code violations alleged herein, as well as attorney's fees and costs, under
11 Labor Code § 2699.

12 **SIXTH VIOLATION**

13 **(Failure to Timely Pay Wages During Employment)**

14 46. Pursuant to California Labor Code § 204, for all labor performed between the 1st
15 and 15th days of any calendar month, an employer is required to pay its employees between the
16 16th and 26th day of the month during which the labor was performed. California Labor Code §
17 204 also provides that for all labor performed between the 16th and 26th days of any calendar
18 month, Defendants are required to pay their employees between the 1st and 15th day of the
19 following calendar month. In addition, California Labor Code § 204 provides that all wages
20 earned for labor in excess of the normal work period shall be paid no later than the payday of the
21 next regular payroll period.

22 47. Plaintiff, on behalf of the State of California and the LWDA, seeks civil penalties
23 for Defendant's Labor Code violations alleged herein, as well as attorney's fees and costs, under
24 Labor Code § 2699.

25 **SEVENTH VIOLATION**

26 **(Failure to Pay All Wages Due to Discharged and Quitting Employees)**

27 48. Pursuant to California Labor Code § 201, 202, and 203, Defendants are required
28

1 to pay all earned and unpaid wages to an employee who is discharged. California Labor Code §
2 201 mandates that if an employer discharges an employee, the employee's wages accrued and
3 unpaid at the time of discharge are due and payable immediately.

4 49. Plaintiff, on behalf of the State of California and the LWDA, seeks civil penalties
5 for Defendant's Labor Code violations alleged herein, as well as attorney's fees and costs, under
6 Labor Code § 2699.

7 **EIGHTH VIOLATION**

8 **(Failure to Reimburse Business Expenses)**

9 (Plaintiff realleges and incorporates by reference the allegations in paragraphs 1 through 68.)
10

11 50. Labor Code section 2802 provides that an employer shall indemnify his or her
12 employee for all necessary expenditures or losses incurred by the employee in direct
13 consequence of the discharge of his or her duties, or of his or her obedience to the directions of
14 the employer.

15 51. Defendant failed to indemnify Plaintiff and aggrieved employees for all necessary
16 expenditures or losses incurred by Plaintiff and aggrieved employees in direct consequence of
17 the discharge of their duties. Specifically, Defendant failed to indemnify Plaintiff and aggrieved
18 employees for expenditures they incurred on their behalf, including, but not limited to use of
19 their personal mobile phones to conduct company business. In violation of the Labor Code,
20 Defendant failed to reimburse Plaintiff and aggrieved employees for these business-related
21 expenditures.

22 52. Furthermore, Plaintiff and aggrieved employees were required to use their
23 personal cellphones in the course and scope of their employment to carry out their employment
24 duties, including without limitation contacting clients and communicating with their supervisors
25 for instructions or to provide status reports. Plaintiff and aggrieved employees were not provided
26 reimbursement for the reasonable usage of their personal cellphone by Defendant.
27

28 53. By virtue of Defendant's unlawful actions, Plaintiff and the aggrieved employees
have suffered, and will continue to suffer, damages in amounts which are presently unknown,

1 but will be ascertained according to proof at trial.

2 54. Plaintiff seeks recovery of civil penalties individually, on behalf of the aggrieved
3 employees and the State of California for violations of Labor Code section 2802 during the
4 PAGA period, in a sum as provided by the Labor Code and/or other statutes.

5 55. Plaintiff, individually and on behalf of the aggrieved employees and the State of
6 California also seeks attorneys' fees and costs pursuant to Labor Code section 2699, subdivision
7 (g) and Code of Civil Procedure section 1021.5.
8

9
10 **PRAYER FOR RELIEF**

11 **WHEREFORE,** Plaintiff prays for the following relief:

- 12 1. For penalties in an amount according to proof;
13 2. For reasonable attorney's fees and costs pursuant to the PAGA; and
14 3. For such other and further relief as this Court may deem just and proper.

15 Respectfully Submitted,

16 Dated: February 24, 2021

WORK LAWYERS, PC

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19 By:



20 Justin Lo, Esq.
21 Attorney for Plaintiff
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