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ELECTRONICALLY
FILED

Superior Court of California,
County of San Francisco

02/05/2021
Clerk of the Court

BY: RONNIE OTERO
Deputy Clerk

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 FOR THE COUNTY OF SAN FRANCISCO

CGC-21-589650

10 UNLIMITED JURISDICTION

11 DANIEL LLAMAS, on behalf of himself and
12 all other aggrieved employees,

13 *Plaintiff,*

14 vs.

15 ADVANTAGE WORKFORCE SERVICES,
16 LLC, a California corporation; INSTAWORK,
a business entity of unknown form; and DOES
17 1 through 50, inclusive,

18 *Defendants.*

Case No.

COMPLAINT FOR:

1. Civil Penalties (Lab. Code §§ 2698 *et seq.*);

JURY TRIAL DEMANDED

1 Plaintiff DANIEL LLAMAS ("Plaintiff"), on behalf of himself, all other aggrieved
2 employees, the State of California, and the general public, complains and alleges as follows:

3 **INTRODUCTION**

4 1. Plaintiff brings this representative action against Defendants ADVANTAGE
5 WORKFORCE SERVICES, LLC, a California corporation; INSTAWORK, a business entity of
6 unknown form; and DOES 1 through 50, inclusive, (collectively referred to as "Defendants") for
7 alleged violations of the Labor Code. As set forth below, Plaintiff alleges that Defendants have:

8 (1) failed to provide him and all other aggrieved employees with meal periods;

9 (2) failed to provide them with rest periods;

10 (3) failed to pay them premium wages for missed meal and/or rest periods;

11 (4) failed to properly record their meal and rest breaks;

12 (5) failed to provide them with accurate written wage statements;

13 (6) failed to reimburse them for necessary business expenditures incurred; and

14 (7) failed to pay them all of their final wages following separation of employment;

15 2. Based on these alleged Labor Code violations, Plaintiff now brings this representative
16 action for civil penalties on behalf of himself, all others similarly situated aggrieved employees
17 ("Aggrieved Empliyees"), the state of California, and the general public.

18 **JURISDICTION AND VENUE**

19 3. This Court has subject matter jurisdiction to hear this case because the monetary
20 damages and restitution sought by Plaintiff from Defendants conduct exceeds the minimal jurisdiction
21 of the Superior Court of the State of California.

22 4. Venue is proper in the County of San Francisco pursuant to Code of Civil Procedure
23 sections 395(a) and 395.5 in that liability arose this county because at least some of the transactions
24 that are the subject matter of this Complaint occurred therein and/or each defendant is found,
25 maintains offices, transacts business and/or has an agent therein.

26 5. Venue is proper in San Francisco County because Defendants' have at all times
27 alleged herein, conducted business in San Francisco County, and throughout California. As such,
28 venue is proper in any county in California.

1 **PARTIES**

2 6. Plaintiff was employed by Defendant in the State of California as an hourly, non-exempt
3 employee from approximately November 2019 through December 2019.

4 7. Defendant ADVANTAGE WORKFORCE SERVICES, LLC, is a California Corporation
5 and does business throughout the State of California.

6 8. Defendant INSTAWORK, is an unknown business entity which Plaintiff believes does
7 business throughout the State of California.

8 9. Plaintiff is ignorant of the true names and capacities of the defendants sued herein as
9 DOES 1 through 50, inclusive, and therefore sues these defendants by such fictitious names. Plaintiff
10 will amend this Complaint to allege the true names and capacities of the DOE defendants when
11 ascertained. Plaintiff is informed and believes, and thereupon alleges that each of the fictitiously
12 named defendants are responsible in some manner for the occurrences, acts and omissions alleged
13 herein and that Plaintiff's alleged damages were proximately caused by these defendants, and each of
14 them. Plaintiff will amend this complaint to allege both the true names and capacities of the DOE
15 defendants when ascertained.

16 10. Plaintiff is informed and believes, and thereupon alleges that, at all relevant times
17 mentioned herein, some or all of the defendants were the representatives, agents, employees, partners,
18 directors, associates, joint venturers, joint employers, principals or co-participants of some or all of
19 the other defendants, and in doing the things alleged herein, were acting within the course and scope
20 of such relationship and with the full knowledge, consent and ratification by such other defendants.

21 11. Plaintiff is informed and believes, and thereupon alleges that, at all relevant times
22 mentioned herein, some of the defendants pursued a common course of conduct, acted in concert and
23 conspired with one another, and aided and abetted one another to accomplish the occurrences, acts
24 and omissions alleged herein.

25 **GENERAL ALLEGATIONS**

26 12. Plaintiff worked for Defendants as a non-exempt, hourly employee from
27 approximately from November 2019 through December 2019.

28 13. Aggrieved employees were not provided with meal periods of at least thirty (30)

1 minutes for each five (5) hour work period due to (1) Defendants' policy of not scheduling each meal
2 period as part of each work shift; (2) no formal written meal policy that encouraged employees to
3 take their meal periods, or that advised aggrieved employees of their meal and rest period rights; and
4 (3) Defendants' practice of requiring aggrieved employees to continue working through their meal
5 and rest periods due to the excessive workload. Additionally, Plaintiff and aggrieved employees' meal
6 periods were consistently taken after the completion of their fifth hour of work. Moreover, Plaintiff
7 and aggrieved employees were never afforded the opportunity to take second meal periods when they
8 worked in excess of ten (10) hours a day.

9 14. Aggrieved employees were not provided with rest periods of at least ten (10) minutes
10 for each four (4) hour work period, or major fraction thereof, due to (1) Defendants' policy of not
11 scheduling each rest period as part of each work shift; (2) no formal written rest period policy that
12 encouraged employees to take their rest periods, or that advised aggrieved employees of their meal
13 and rest period rights; and (3) Defendants' practice of requiring aggrieved employees to continue
14 working through their rest breaks due to the excessive workload..

15 15. Defendants also implemented a common policy and practice of failing to reimburse
16 Plaintiff and aggrieved employees for necessary expenditures incurred in executing their duties under
17 Defendants employ. Specifically, Plaintiff and aggrieved employees were required to use their
18 personal cell phones in the course of their duties, including, but not limited to, clocking their hours
19 worked and meal periods remotely with the web-based application on their phones. Defendant never
20 reimbursed Plaintiff and aggrieved employees for their necessary cell phone costs in executing their
21 work-related duties.

22 16. Plaintiff and the aggrieved employees were not provided with accurate wage
23 statements as mandated by law pursuant to Labor Code section 226.

24 17. Defendants failed to comply with Labor Code section 226(a)(1) as "gross wages
25 earned" were not accurately reflected in that: all hours worked, including overtime, were not included.

26 18. Defendants failed to comply with Labor Code section 226(a)(2) as "total hours worked
27 by the employee" were not accurately reflected in that: all hours worked, including overtime, were
28 not included.

19. Defendants failed to comply with Labor Code section 226(a)(5) as “net wages earned” were not accurately reflected in that: all hours worked, including overtime, were not included.

20. Defendants failed to comply with Labor Code section 226(a)(9) as “all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee” were not accurately reflected in that: all hours worked, including overtime, were not included.

21. Defendants failed to reimburse Plaintiff and aggrieved employees for necessary expenditures incurred in executing their duties under Defendants’ employ. Specifically, Defendants required Plaintiff and aggrieved employees to maintain uniforms provided to them as a necessary condition of employment. Plaintiff and the aggrieved employees were required to maintain uniforms that consisted of a long-sleeve shirt as well as a hat and/or beanie, and were not reimbursed for such expenditures.

22. Additionally, Defendants also required Plaintiff and aggrieved employees to use their personal cell phones for work-related tasks, and were not reimbursed for such expenditures. As such, Defendants failed to indemnify Plaintiff and aggrieved employees for such expenses both during and after their employment ended.

FIRST CAUSE OF ACTION

CIVIL PENALTIES

(Lab. Code §§ 2698 *et seq.*)

(Plaintiff Against All Defendants)

23. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged herein.

24. At all relevant times, Plaintiff and the aggrieved employees have been non-exempt employees of Defendants entitled to the full meal period protections of both the Labor Code and the applicable Industrial Welfare Commission Wage Order.

25. Labor Code section 512 and Section 11 of the applicable Industrial Welfare Commission Wage Order impose an affirmative obligation on employers to provide non-exempt employees with uninterrupted, duty-free meal periods of at least thirty minutes for each work period

1 of five hours, and to provide them with two uninterrupted, duty-free meal periods of at least thirty
2 minutes for each work period of ten hours.

3 26. Labor Code section 226.7 and Section 11 of the applicable Industrial Welfare
4 Commission Wage Order ("Wage Order") both prohibit employers from requiring employees to work
5 during required meal periods and require employers to pay non-exempt employees an hour of
6 premium wages on each workday that the employee is not provided with the required meal period.

7 27. Compensation for missed meal periods constitutes wages within the meaning of Labor
8 Code section 200.

9 28. Labor Code section 1198 makes it unlawful to employ a person under conditions that
10 violate the applicable Wage Order.

11 29. Section 11 of the applicable Wage Order states:

12 "No employer shall employ any person for a work period of more than five (5)
13 hours without a meal period of not less than 30 minutes, except that when a
14 work period of not more than six (6) hours will complete the day's work the
15 meal period may be waived by mutual consent of the employer and employee.
16 Unless the employee is relieved of all duty during a 30 minute meal period, the
17 meal period shall be considered an 'on duty' meal period and counted as time
worked. An 'on duty' meal period shall be permitted only when the nature of
the work prevents an employee from being relieved of all duty and when by
written agreement between the parties an on-the-job paid meal period is agreed
to. The written agreement shall state that the employee may, in writing, revoke
the agreement at any time."

18 30. Furthermore, California Code of Regulations, Title 8, § 11040(7)(A)(3)
19 provides:

20
21 (A) Every employer shall keep accurate information with respect to each
22 employee including the following: . . . (3) Time records showing when the
23 employee begins and ends each work period. Meal periods, split shift intervals
and total daily hours worked shall also be recorded. Meal periods during which
operations cease and authorized rest periods need not be recorded.

24 31. Labor Code section 1198 makes it unlawful for employers to employ employees under
25 conditions that violate the applicable Wage Order.

26 32. Plaintiff alleges that, at all relevant times during the applicable limitations period,
27 Defendants maintained a policy or practice of not providing Plaintiff and aggrieved employees with
28

1 uninterrupted, duty-free meal periods for at least thirty (30) minutes for each five (5) hour work
2 period, as required by Labor Code section 512 and the applicable Wage Order. Aggrieved employees
3 were not provided with meal periods of at least thirty (30) minutes for each five (5) hour work period
4 due to (1) Defendants' policy of not scheduling each meal period as part of each work shift; (2) no
5 formal written meal policy that encouraged employees to take their meal periods, or that advised
6 aggrieved employees of their meal and rest period rights; and (3) Defendants' practice of requiring
7 aggrieved employees to continue working through their meal and rest periods due to the excessive
8 workload. Additionally, Plaintiff and aggrieved employees' meal periods were consistently taken
9 after the completion of their fifth hour of work. Moreover, Plaintiff and aggrieved employees were
10 never afforded the opportunity to take second meal periods when they worked in excess of ten (10)
11 hours a day.

12 33. Defendants also failed to properly record and track the meal periods owed to Plaintiff
13 and aggrieved employees as required by Labor Code § 1174, California Code of Regulations, Title 8,
14 §11040(7)(A)(3), and applicable Wage Orders. Labor Code section 1198 makes it unlawful for
15 employers to employ employees under conditions that violate the applicable Wage Order.

16 34. Aggrieved employees were not subject to valid on-duty meal period agreements with
17 Defendant. California law requires that meal period waivers be documented in a written agreement
18 that is voluntarily signed by both the employee and employer. The written agreement must state that
19 the employee may, in writing, revoke the agreement at any time. 8 Cal. Code Regs. § 11040(11).
20 Plaintiff and the aggrieved employees did not execute lawful meal period waivers in accordance with
21 California law.

22 35. Section 12 of the applicable Wage Order imposes an affirmative obligation on
23 employers to permit and authorize employees to take required rest periods at a rate of no less than ten
24 minutes of net rest time for each four hour work period, or major fraction thereof, that must be in the
25 middle of each work period insofar as practicable.

26 36. Labor Code section 226.7 and Section 12 of the applicable Wage Order both prohibit
27 employers from requiring employees to work during required rest periods and require employers to
28 pay non-exempt employees an hour of premium wages at the employees' regular rates of pay, on each

workday that the employee is not provided with the required rest period(s).

37. Compensation for missed rest periods constitutes wages within the meaning of Labor Code section 200.

38. Plaintiff alleges that, at all relevant times during the applicable limitations period, Defendants maintained a policy or practice of not providing Plaintiff and aggrieved employees with net rest periods of at least ten minutes for each four hour work period, or major fraction thereof, as required by the applicable Wage Order. Aggrieved employees were not provided with rest periods of at least ten (10) minutes for each four (4) hour work period, or major fraction thereof, due to (1) Defendants' policy of not scheduling each rest period as part of each work shift; (2) no formal written rest period policy that encouraged employees to take their rest periods, or that advised aggrieved employees of their meal and rest period rights; and (3) Defendants' practice of requiring aggrieved employees to continue working through their rest breaks due to the excessive workload..

39. At all relevant times, Defendants failed to pay Plaintiff and aggrieved employees additional premium wages when required meal and rest periods were not provided.

40. Labor Code section 226(a) states:

"An employer, semimonthly or at the time of each payment of wages, shall furnish to his or her employee, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately if wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except as provided in subdivision (j), (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, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of 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 and, beginning July 1, 2013, if the employer is a temporary services employer as defined in Section 201.3, the rate of pay and the total hours worked for each temporary services assignment. The deductions made from payment of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement and the record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California. For purposes of this subdivision, 'copy' includes a duplicate of the itemized statement provided to an employee or a computer-generated record that accurately shows all of the information required by this subdivision."

1 41. The Division of Labor Standards Enforcement (“DLSE”) has sought to harmonize the
2 “detachable part of the check” provision and the “accurate itemized statement in writing” provision
3 of Labor Code section 226(a) by allowing for electronic wage statements so long as each employee
4 retains the right to elect to receive a written paper stub or record and that those who are provided with
5 electronic wage statements retain the ability to easily access the information and convert the electronic
6 statements into hard copies at no expense to the employee. (DLSE Opinion Letter July 6, 2006).

7 42. Plaintiff is informed and believes that, at all relevant times during the applicable
8 limitations period, Defendants have failed to provide aggrieved employees with written wage
9 statements as described above.

10 43. Plaintiff is informed and believes that Defendants’ failure to provide him and
11 aggrieved employees with accurate written wage statements were intentional in that Defendants have
12 the ability to provide them with accurate wage statements but have intentionally provided them with
13 written wage statements that Defendants have known do not comply with Labor Code section 226(a).

14 44. In addition, inaccurate information on their wage statements have prevented
15 immediate challenges to Defendants’ unlawful pay practices, has required discovery and
16 mathematical computations to determine the amount of wages owed, has caused difficulty and
17 expense in attempting to reconstruct time and pay records, and/or has led to the submission of
18 inaccurate information about wages and deductions to federal and state government agencies.

19 45. At all relevant times, Plaintiff and aggrieved employees have been entitled, upon the
20 end of their employment with Defendants, to timely payment of all wages earned and unpaid before
21 termination or resignation.

22 46. At all relevant times, pursuant to Labor Code section 201, employees who have been
23 discharged have been entitled to payment of all final wages immediately upon termination.

24 47. At all relevant times, pursuant to Labor Code section 202, employees who have
25 resigned after giving at least seventy-two (72) hours notice of resignation have been entitled to
26 payment of all final wages at the time of resignation.

27 48. At all relevant times, pursuant to Labor Code section 202, employees who have
28

1 resigned after giving less than seventy-two (72) hours notice of resignation have been entitled to
2 payment of all final wages within seventy-two (72) hours of giving notice of resignation.

3 49. During the applicable limitations period, Defendants failed to pay Plaintiff all of his
4 final wages in accordance with the Labor Code by failing to timely pay him all of his final wages.

5 50. Plaintiff is informed and believes that, at all relevant time during the applicable
6 limitations period, Defendants have failed to timely pay aggrieved employees all of their final wages
7 in accordance with the Labor Code.

8 51. Plaintiff is informed and believes that, at all relevant times during the applicable
9 limitations period, Defendants have maintained a policy or practice of paying aggrieved employees
10 their final wages without regard to the requirements of Labor Code sections 201 or 202 by failing to
11 timely pay them all final wages.

12 52. Plaintiff is informed and believes and thereupon alleges that Defendants' failure to
13 timely pay all final wages to him and aggrieved employees have been willful in that Defendants have
14 the ability to pay final wages in accordance with Labor Code sections 201 and/or 202 but have
15 intentionally adopted policies or practices that are incompatible with those requirements.

16 53. Labor Code section 2802(a) states:

17 "An employer shall indemnify his or her employee for all necessary expenditures or
18 losses incurred by the employee in direct consequence of the discharge of his or her
19 duties, or of his or her obedience to the directions of the employer, even though
unlawful, unless the employee, at the time of obeying the directions, believed them to
be unlawful."

20 54. Defendants failed to reimburse Plaintiff and aggrieved employees for necessary
21 expenditures incurred in executing their duties under Defendants' employ. Specifically, Plaintiff and
22 aggrieved employees were required to use their personal cell phones in the course of their duties,
23 including, but not limited to, clocking their hours worked and meal periods remotely with the web-
24 based application on their phones. Defendant never reimbursed Plaintiff and aggrieved employees for
25 their necessary cell phone costs in executing their work-related duties.

26 55. Plaintiff is informed and believes, and thereupon alleges that the reimbursement paid
27 by Defendants was insufficient to indemnify Plaintiff and Aggrieved Employees for all necessary
28 expenses incurred in the discharge of their duties.

1 56. At all relevant times during the applicable limitations period, Defendants required
2 Plaintiff and aggrieved employees to pay for expenses and/or losses caused by Defendants' want of
3 ordinary care. Defendants failed to indemnify Plaintiff and Aggrieved employees for all such
4 expenditures.

5 57. During the applicable limitations period, Defendants have violated Labor Code
6 sections 201, 202, 203, 204, 223, 226(a), 226.7, 227.3, , 512, 1174, and 2802, Code of Regulations,
7 Title 8, 11040(7)(A)(3), and the applicable Wage Orders.

8 58. Labor Code sections 2699(a) and (g) authorize an aggrieved employee, on behalf of
9 herself and other current and former employees, to bring a representative civil action to recover civil
10 penalties pursuant to the procedures set forth in Labor Code section 2699.3 that may, but need not,
11 be brought or maintained as a class action pursuant to Code of Civil Procedure section 382.

12 59. Plaintiff, a former employee against who Defendants committed one or more of the
13 alleged Labor Code violations during the applicable limitations period, is an aggrieved employee
14 within the meaning of Labor Code section 2699(c).

15 60. Plaintiff has complied with the procedures for bringing suit specified in Labor Code
16 section 2699.3.

17 61. Pursuant to Labor Code sections 2699(a) and (f), Plaintiff seeks the following civil
18 penalties for Defendants' violations of Labor Code sections 201, 202, 203, 204, 221, 223, 226(a),
19 226.7, 227.3, , 512, 1174, and 2808, and Code of Regulations, Title 8, 11040(7)(A)(3), and the
20 applicable Wage Orders

21 A. For violations of Labor Code sections 201, 202, 203, 212, 226.7, 512, 1174,
22 1194, 1198, and 2802, \$100 for each employee per pay period for each initial
23 violation and \$200 for each employee per pay period for each subsequent
24 violation (penalties set by Labor Code section 2699(f)(2));

25 B. For violations of Labor Code section 203, a penalty in an amount not exceeding
26 thirty days pay as waiting time (penalties set by Labor Code section 256);

27 C. For violations of Labor Code section 204, \$100 for each employee for each
28 initial violation that was neither willful nor intentional, \$200 for each

1 employee, plus 25% of the amount unlawfully withheld from each employee,
2 for each initial violation that was either willful or intentional, and \$200 for
3 each employee, plus 25% of the amount unlawfully withheld from each
4 employee, for each subsequent violation, regardless of whether the subsequent
5 violation was either willful or intentional (penalties set by Labor Code section
6 210);

7 D. For violations of Labor Code section 223, \$100 for each employee for each
8 initial violation that was neither willful nor intentional, \$200 for each
9 employee, plus 25% of the amount unlawfully withheld from each employee,
10 for each initial violation that was either willful or intentional, and \$200 for
11 each employee, plus 25% of the amount unlawfully withheld from each
12 employee, for each subsequent violation, regardless of whether the subsequent
13 violation was either willful or intentional (penalties set by Labor Code section
14 225.5);

15 E. For violations of Labor Code section 226(a), if this action is deemed to be an
16 initial citation, \$250 for each employee for each violation. Alternatively, if an
17 initial citation or its equivalent occurred before the filing of this action, \$1,000
18 for each employee for each violation (penalties set by Labor Code section
19 226.3);

20 F. Pursuant to Labor Code section 2699(g), Plaintiff seeks award of reasonable
21 attorneys' fees and costs in connection with her claims for civil penalties.

22 **PRAYER FOR RELIEF**

23 WHEREFORE, Plaintiff, on behalf of himself, the state of California, the general public, and
24 all other aggrieved employees, prays for relief and judgment against Defendants as follows:

- 25 (1) Pre-judgment interest;
26 (2) Civil penalties;
27 (3) Costs of suit;
28 (4) Reasonable attorneys' fees; and

1 (5) Such other relief as the Court deems just and proper.

2 **DEMAND FOR JURY TRIAL**

3 Plaintiff, on behalf of himself, the State of California, the general public, all other aggrieved
4 employees, hereby demands a jury trial on all issues so triable.

5
6 Dated: February 4, 2021

SETAREH LAW GROUP

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12 Attorneys for Plaintiff
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