

FILED
 SUPERIOR COURT OF CALIFORNIA
 COUNTY OF SAN BERNARDINO
 SAN BERNARDINO CIVIL DIVISION

FEB 10 2021

BY *Sylvia Guajardo*
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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

FREDERICK SIMMONDS, an aggrieved
 employee, on behalf of himself and other
 current and former employees,

Plaintiff,

v.

SAW ENTERPRISES, INC., an unknown
 entity; MARY CONOVER, an individual; and
 DOES 1 through 50, inclusive,

Defendants.

Case No.:

CIV SB 2104810

**COMPLAINT FOR DAMAGES FOR
 VIOLATION OF LABOR CODE
 SECTION 2698 *et seq.***

DEMAND FOR JURY TRIAL

COMPLAINT FOR DAMAGES

By Fax

1 Plaintiff Frederick Simmonds ("Plaintiff") hereby submits his Complaint for Damages
2 against Defendants Saw Enterprises Inc., Mary Conover, and DOES 1 through 50, inclusive
3 (collectively, "Defendants"), on behalf of himself and other similarly situated aggrieved
4 employees of Defendants for failure to provide meal periods and rest breaks, failure to pay all
5 minimum and overtime wages, failure to maintain accurate wage statements, failure to pay all
6 wages due and owing upon termination of employment, and failure to reimburse necessary
7 work-related expenses as follows:

8 **INTRODUCTION**

9 1. This representative action is brought pursuant to Labor Code § 2698 *et seq.* (the
10 Private Attorneys General Act of 2004 ("PAGA")) for Defendant's violations of California
11 Labor Code §§ 201 to 204, 226, 226.7, 510, 512, 1194, 1197, 1197.1, 1198, 2802, and the
12 applicable Industrial Welfare Commission ("IWC") Wage Order (codified as California Code
13 of Regulations, title 8, § 11000).

14 2. This Complaint challenges Defendants' systemic illegal employment practices
15 resulting in violations of the stated provisions of the Labor Code and corresponding IWC
16 Wage Order against the group of aggrieved employees.

17 3. Plaintiff is informed and believes and thereon alleges Defendants joint and
18 severally acted intentionally and with deliberate indifference and conscious disregard to the
19 rights of all employees in (1) failing to pay all rest break wages, (2) failing to pay all minimum
20 and overtime wages, (3) failing to provide accurate wage statements, (4) failing to pay all
21 wages due and owing upon termination of employment; and (5) failing to reimburse all
22 necessary work-related expenses.

23 **JURISDICTION AND VENUE**

24 4. This representative action is brought pursuant to PAGA. The monetary
25 damages sought by Plaintiff exceed the minimal jurisdictional limits of the Superior Court and
26 will be established according to proof at trial.

27 5. This Court has jurisdiction over this action pursuant to California Constitution,
28 Article VI, Section 10, which grants the Superior Court original jurisdiction in all causes

except those given by statute to other courts. The statutes under which this action is brought do not specify any other basis for jurisdiction.

6. This Court has jurisdiction over the violations of Labor Code §§ 201 to 204, 226, 226.7, 510, 512, 1194, 1197, 1197.1, 1198, 2802, and the applicable IWC Wage Order.

7. This Court has jurisdiction over all Defendants because, upon information and belief, each party has sufficient minimum contacts in California, or otherwise intentionally avails itself of California law so as to render the exercise of jurisdiction over it by the California courts consistent with traditional notions of fair play and substantial justice.

8. Venue is proper in this Court because, upon information and belief, the named Defendants transact business and/or have offices in this county, and the acts and omissions alleged herein took place in this county.

PARTIES

9. Plaintiff Frederick Simmonds is an individual residing in the State of California. Plaintiff was formerly employed by Defendants in a non-exempt position during the relevant time period.

10. Plaintiff is informed and believes and thereon alleges that Defendant SAW Enterprises Inc. is an unknown entity known to do business and actually doing business in the States of California, including the County of San Bernardino.

11. Plaintiff is informed and believes and thereon alleges that Defendant Mary Conover is an officer of SAW Enterprises Inc. On information and belief, Ms. Conover does business in the States of California, including the County of San Bernardino.

12. Plaintiff does not know the true names or capacities, whether individual, partner or corporate, of Defendants sued herein as DOES 1 through 50, inclusive, and for that reason, said Defendants are sued under such fictitious names, and Plaintiff prays for leave to amend this complaint when the true names and capacities are known. Plaintiff is informed and believes and thereon alleges that each of Defendants designated as a DOE was responsible in some way for the matters alleged herein and proximately caused Plaintiff and members of the general public and the group of aggrieved employees to be subject to the illegal employment

1 practices, wrongs and injuries complained of herein.

2 **13.** At all times herein mentioned, Defendants, and each of them, were agents,
3 partners, joint venturers, representatives, servants, employees, successors-in-interest, co-
4 conspirators and assigns, each of the other, and at all times relevant hereto were acting within
5 the course and scope of their authority as such agents, partners, joint venturers, representatives,
6 servants, employees, successors, co-conspirators and assigns, and that all acts or omissions
7 alleged herein were duly committed with ratification, knowledge, permission, encouragement,
8 authorization and consent of each Defendant designated herein.

9 **14.** As such, and based upon all the facts and circumstances incident to Defendants'
10 business in California, Defendants are subject to Labor Code §§ 201 to 204, 226, 226.7, 510,
11 512, 1194, 1197, 1197.1, 1198, 2802 and the applicable IWC Wage Order.

12 **CAUSE OF ACTION**

13 **FOR VIOLATION OF PAGA**

14 **(AGAINST ALL DEFENDANTS BY PLAINTIFF ON BEHALF OF ALL AGGRIEVED**
15 **EMPLOYEES)**

16 **15.** Plaintiff re-alleges and incorporates by reference paragraphs 1 through 15 as
17 though fully set forth herein.

18 **16.** PAGA expressly establishes that any provision of the California Labor Code
19 which provides for a civil penalty to be assessed and collected by the LWDA, or any of its
20 departments, divisions, commissions, boards, agencies or employees for a violation of the
21 California Labor Code, may be recovered through a civil action brought by an aggrieved
22 employee on behalf of himself or herself, and other current or former employees.

23 **17.** On December 7, 2020, Plaintiff provided written notice to the LWDA and
24 Defendants of the specific provisions of the Labor Code he contends were violated, and the
25 theories supporting his contentions. To date, he has not received a response.

26 **18.** Plaintiff and the other non-exempt employees are "aggrieved employees" as
27 defined by California Labor Code § 2699(c) in that they are all current or former employees of
28 Defendants, and one or more of the alleged violations was committed against them.

1 **Failure to Pay Minimum and Overtime Wages**

2 **19.** At all times relevant herein, Defendants were required to compensate their non-
3 exempt employees minimum wages for all hours worked and overtime wages for all hours
4 worked in excess of eight (8) hours in a workday and forty (40) hours in a workweek, pursuant
5 to the mandate of Labor Code §§ 510, 1194, 1197, 1197.1, and 1198.

6 **20.** As a pattern and practice, Defendants failed to compensate Plaintiff and other
7 similarly-situated current and former employees for all hours of work performed. Specifically,
8 Defendants failed to pay Plaintiff and other aggrieved employees for all hours actually worked,
9 including all time in which he and other aggrieved employees were performing work duties but
10 were not actively servicing a customer. This unpaid time includes waiting time and any client
11 communication or preparation before entering a customer's house to perform work.
12 Additionally, Defendants also failed to compensate for aggrieved employees with all actual
13 hours worked while traveling to customers, instead relying on inaccurate predetermined
14 estimates of anticipated travel time.

15 **Failure to Provide Meal Periods and Rest Breaks**

16 **21.** In accordance with the mandates of the California Labor Code and the
17 applicable IWC Wage Order, Plaintiff and other aggrieved employees had the right to take a
18 10-minute rest break for every four (4) hours worked or major fraction thereof, and a 30-
19 minute meal period for every five (5) hours worked.

20 **22.** As a pattern and practice, Defendants regularly failed to provide Plaintiff and
21 other aggrieved employees their duty-free meal periods and rest breaks and routinely required
22 Plaintiff and other aggrieved employees to work through, cut short, or altogether skip breaks.
23 Despite these facts, Defendants did not provide proper compensation for this failure.

24 **Failure to Timely Pay Wages Upon Termination**

25 **23.** At all times relevant herein, Defendants were required to pay their employees
26 all wages owed in a timely fashion at the end of employment pursuant to California Labor
27 Code §§ 201 to 204.

28 **24.** As a result of Defendants' Labor Code violations alleged above, Defendants

1 failed to pay Plaintiff and the other similarly-situated former employees their final wages
2 pursuant to Labor Code §§ 201 to 204 and accordingly owe waiting time penalties pursuant to
3 Labor Code § 203.

4 **Failure to Provide Complete and Accurate Wage Statements**

5 25. At all times relevant herein, Defendants were required to keep *accurate* records
6 regarding their California employees pursuant to the mandate of Labor Code §§ 226 and
7 1174(d).

8 26. As a result of Defendants' various Labor Code violations, Defendants failed to
9 keep accurate records regarding Plaintiff and other similarly-situated current and former
10 employees. For example, Defendants failed in their affirmative obligation to keep accurate
11 records regarding Plaintiff and other similarly-situated current and former employees' gross
12 wages earned, total hours worked, net wages earned, and all applicable hourly rates and the
13 number of hours worked at each hourly rate.

14 **Failure to Reimburse Necessary Work-Related Expenses**

15 27. At all times relevant herein, Defendants were required to indemnify their
16 employees for all necessary expenditures or losses incurred in direct consequence of the
17 discharge of the employees' duties, or of the employees' obedience to the directions of the
18 employer pursuant to California Labor Code § 2802.

19 28. As a pattern and practice, Defendants failed to reimburse Plaintiff and other
20 aggrieved employees for all necessary work-related expenses, including, but not limited to,
21 expenses incurred in the use of their personal mobile telephones for work purposes, and
22 expenses for supplies and tools necessary to perform repairs for customers.

23 **Damages**

24 1. Pursuant to California Labor Code § 2699, Plaintiff, individually and on behalf
25 of other current and former aggrieved employees, requests and is entitled to recover from
26 Defendants, and each of them, unpaid wages, civil penalties, interest, attorneys' fees and costs
27 pursuant, as well as all statutory penalties against Defendants, and each of them, including but
28 not limited to:

1 2. Penalties under California Labor Code § 2699 in the amount of a hundred
2 dollars (\$100) for each aggrieved employee per pay period for the initial violation, and two
3 hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent
4 violation;

5 3. Penalties under California Labor Code § 210 in the amount of a hundred dollars
6 (\$100) for each aggrieved employee per pay period for the initial violation, and two hundred
7 dollars (\$200) for each aggrieved employee per pay period for each subsequent violation, plus
8 25% of the amount unlawfully withheld;

9 4. Penalties under Labor Code § 256 in the amount of 30 days' pay per aggrieved
10 former employee;

11 5. Penalties under Labor Code § 226.3 in the amount of two hundred fifty dollars
12 (\$250) per employee per initial violation and one thousand dollars (\$1,000) per employee for
13 each subsequent violation;

14 6. Penalties under Labor Code § 558 in the amount of fifty dollars (\$50) for each
15 aggrieved employee per pay period for the initial violation, and one hundred dollars (\$100) for
16 each aggrieved employee per pay period for each subsequent violation;

17 7. Penalties under Labor Code § 1197.1 in the amount of a hundred dollars (\$100)
18 for each aggrieved employee per pay period for the initial violation, and two hundred fifty
19 dollars (\$250) for each aggrieved employee per pay period for each subsequent violation;

20 8. Any and all additional penalties and sums as provided by the Labor Code and/or
21 other statutes; and

22 9. Attorneys' fees and costs pursuant to Labor Code §§ 210, 1194, 2699, 2802, and
23 any other applicable statute.

24 **PRAYER FOR RELIEF**

25 WHEREFORE, Plaintiff prays for judgment for himself and all others on whose behalf
26 this suit is brought against Defendants, jointly and severally, as follows:

27 1. Upon the Cause of Action, for civil penalties pursuant to statute as set forth in
28 Labor Code § 2698 *et seq.*, for Defendants' violations of Labor Code §§ 201,

1 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 558, 1194, 1197.1, 1198, and
2 2802;

- 3 2. On all causes of action for attorneys' fees, interest, and costs as provided by
4 California Labor Code §§ 210, 218.6, 226, 1194, 2699, 2802, and Code of Civil
5 Procedure § 1021.5, and for such other and further relief the Court may deem
6 just and proper.

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8 DATED: February 10, 2021

YOON LAW, APC

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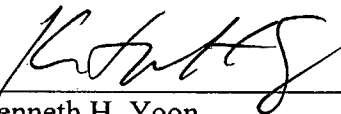
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DEMAND FOR JURY TRIAL

15 Plaintiff, for himself and the aggrieved employees, hereby demands a jury trial as
16 provided by California law.

17 DATED: February 10, 2021

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