

ENDORSED
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ALAMEDA COUNTY

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CLERK OF THE SUPERIOR COURT

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ALAMEDA

JUAN REBULLOZA, an individual, on behalf
of the State of California, as a private attorney
general, and on behalf of all others similarly
situated,

Plaintiff,

v.

ACOSTA EMPLOYEE HOLDCO LLC, a
Florida Limited Liability Company; and DOES
1-50, inclusive,

Defendants.

CASE NO.:

Rg 21087775
**REPRESENTATIVE PAGA ACTION
COMPLAINT:**

**(1) CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS GENERAL
ACT (LABOR CODE § 2698 *et seq.*)**

**DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**



1 Plaintiff Juan Rebulloza (“Plaintiff”) on behalf of himself, and all others similarly aggrieved
2 employees, hereby brings this Private Attorneys General Act (“PAGA”) Representative Action
3 Complaint (“Complaint”) against Defendant Acosta Employee Holdco, LLC (“Defendant”), and
4 DOES 1 through 50, inclusive (collectively “Defendants”), and on information and belief alleges as
5 follows:

6 **JURISDICTION**

7 1. Plaintiff, on behalf of himself and all others similarly aggrieved employees hereby
8 brings this Complaint for recovery of civil penalties under California Labor Code §§ 2698 *et. seq.*

9 2. This Court has jurisdiction over Defendants because, upon information and belief,
10 Defendants are citizens of California, and/or Defendants have sufficient minimum contacts in
11 California, or otherwise intentionally avail themselves to the State of California so as to render the
12 exercise of jurisdiction over them by California courts consistent with the traditional notions of fair
13 play and substantial justice.

14 **VENUE**

15 3. Venue is proper in this judicial district pursuant to California Code of Civil Procedure
16 §§ 395(a) and 395.5, as most of the acts and omissions complained of herein occurred in the County
17 of Alameda. Defendants own, maintain offices, transact business, have an agent or agents within the
18 County of Alameda, and/or otherwise are found within the County of Alameda, and Defendants are
19 within the jurisdiction of this Court for purposes of service of process.

20 **PARTIES**

21 4. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
22 Plaintiff was and currently is, a California resident. During the one-year immediately preceding
23 Plaintiff giving PAGA Notice to the Labor and Workforce Development Agency (“LWDA”) and
24 within the statute of limitations periods applicable to each cause of action pled herein, Defendants
25 employed Plaintiff as an hourly non-exempt employee.

26 5. Defendant Acosta Employee Holdco, LLC, is a Florida limited liability company with
27 local places of business in Alameda County. Plaintiff is informed and believes, and based thereon
28 alleges, that during the one-year preceding Plaintiff giving PAGA Notice to the LWDA and

1 continuing to the present, Defendants did (and continue to do) business by providing sales and
2 marketing services for consumer-packaged goods companies within Alameda County and the State
3 of California, and therefore, were (and are) doing business in Alameda County and the State of
4 California.

5 6. Plaintiff is informed and believed, and thereon alleges, that at all times mentioned
6 herein, Defendants were licensed to do business in California and County of Alameda and were the
7 employees of Plaintiff and the aggrieved employees.

8 7. Plaintiff does not know the true names or capacities, whether individual, partner, or
9 corporate, of the defendants sued herein as DOES 1 to 50, inclusive, and for that reason, said
10 Defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to
11 amend this Complaint when such true names and capacities are discovered. Plaintiff is informed, and
12 believes, and thereon alleges, that each of said fictitious defendants, whether individual, partners, or
13 corporate, were responsible in some manner for the acts and omissions alleged herein, and
14 proximately caused Plaintiff and the aggrieved employees to be subject to the unlawful employment
15 practices, wrongs, injuries and damages complained of herein.

16 8. Plaintiff is informed, and believes, and thereon allege, that at all times mentioned
17 herein, Defendants were and are the employers of Plaintiff and the aggrieved employees.

18 9. At all times herein mentioned, each of said Defendants participated in the doing of the
19 acts hereinafter alleged to have been done by the named Defendants; and furthermore, the Defendants,
20 and each of them, were the agents, servants, and employees of each one of the other Defendants, as
21 well as the agents of all Defendants, and at all times herein mentioned were acting within the course
22 and scope of said agency and employment. Defendants, and each of them, approved of, condoned,
23 and/or otherwise ratified each and every one of the acts or omissions complained of herein.

24 10. At all times mentioned herein, Defendants, and each of them, were members of and
25 engaged in a joint venture, partnership, and common enterprise, and acting within the course and
26 scope of and in pursuance of said joint venture, partnership, and common enterprise. Further, Plaintiff
27 alleges that all Defendants were joint employers for all purposes of Plaintiff and the Aggrieved
28 Employees.

1 **PAGA REPRESENTATIVE ACTION ALLEGATIONS**

2 11. Plaintiff wishes to bring a representative action on behalf of himself, the State of
3 California, and the following group of “Aggrieved Employees”:

4 All non-exempt employees who work or worked for Defendants in California, during the one
5 year immediately preceding the filing of the Notice Letter through the date of trial.
6 (“Aggrieved Employees”)

7 12. Defendants are a full-service sales and marketing company for consumer-packaged
8 goods companies with more than 100 offices around the world, including California, and over 20,000
9 associates. Defendants’ channels are club, convenience, drug, e-commerce, electronics, foodservice,
10 grocery, home improvement, mass merchandisers, military, natural/specialty foods,
11 telecommunications, and value. Plaintiff worked for Defendants as a non-exempt employee Retail
12 Coverage Merchandiser in the Northern California region. Plaintiff and other Aggrieved Employees
13 were responsible for various roles in all aspects of Defendants’ California operations.

14 13. In performing their job duties, Plaintiff and other Aggrieved Employees were
15 regularly required to work long hours, both before and after his schedule shifts, without payment for
16 all hours worked. From at least one year ago and continuing until the present, Defendants required
17 Plaintiff and other Aggrieved Employees to go through a security checkpoint process when entering
18 the work facility at the beginning of each shift. Defendants’ security checkpoint would often be
19 crowded with long lines resulting in delays. Nonetheless, Defendants required Plaintiff and other
20 Aggrieved Employees to go through the security checkpoint before clocking in for payroll purposes
21 at the beginning of their shift. Despite being subject to Defendants’ control while waiting to go
22 through the security checkpoints, Defendants did not provide any compensation for the time it took
23 to complete this process.

24 14. Moreover, in light of the COVID-19 pandemic, Defendants instituted a uniform
25 policy/practice of conducting temperature checks for Aggrieved Employees prior to entering the work
26 premises. These temperature checks occurred at the same time Aggrieved Employees went through
27 the security checkpoint and resulted in additional time Aggrieved Employees did not receive
28 compensation. As a result of Defendants’ security checkpoint and COVID-19 temperature checks,

1 Plaintiff and other Aggrieved Employees were not fully compensated for all minimum and overtime
2 wages as required by the California Labor Code and applicable Wage Orders. Defendants have no
3 valid defense to this claim given the California Supreme Court's recent unanimous decision in *Frlekin*
4 *v. Apple, Inc.* (2020) S243805 at *23, which held that employees "must be paid" during security
5 checks since "it is clear that [employees] are subject to [the employer's] control while awaiting, and
6 during, [the] exit searches."

7 15. As a result, Plaintiff and other Aggrieved Employees were not properly paid for all
8 hours worked in violation of Cal. Labor Code §204, 510, 1194, 1197.1, 1199, and applicable Wage
9 Orders. Additionally, Plaintiff and other Aggrieved Employees were not properly paid at the correct
10 overtime rate for hours worked in excess of eight hours per shift.

11 16. Labor Code § 1197.1 authorizes employees who are paid less than the minimum fixed
12 by an applicable state or local law, or by an order of the commission a civil penalty, restitution of
13 wages, and liquidate damages as follows: (1) for any initial violation that is intentionally committed,
14 one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee
15 is underpaid....[and] (2) [f]or each subsequent violation for the same specific offense, two hundred
16 fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is
17 underpaid regardless of whether the initial violation is intentionally committed. As set forth above,
18 Defendants failed to compensate Plaintiff and other Aggrieved Employees for all hours worked.
19 Accordingly, through PAGA and to the extent permitted by law Plaintiff and other Aggrieved
20 Employees are entitled to recover liquidated damages for violations of Labor Code § 1197.1. Based
21 upon these same factual allegations, Plaintiff and other Aggrieved Employees are entitled to penalties
22 under Labor Code § 1199.

23 17. Furthermore, at all relevant times, Plaintiff and other Aggrieved Employees regularly
24 worked shifts in excess of 6.0 hours and 10.0 hours, but were not always provided with legally
25 complaint off-duty first meal periods of at least thirty (30) minutes before the end of the fifth hour
26 and a second meal period before the end of the tenth hour of work due to Defendants' unlawful meal
27 period policies/practices and work requirements that prevented Plaintiff and other Aggrieved
28 Employees from taking timely and complaint meal periods. As a result, Plaintiff and other Aggrieved

1 Employees would often be unable to take compliant meal breaks and had to resort to eating lunch
2 while on the road. Despite knowing that Plaintiff and other Aggrieved Employees were often unable
3 to take a meal period, Defendants failed to inform and permit Aggrieved Employees from taking
4 complaint meal periods. Defendants also failed to have a mechanism that paid Aggrieved Employees
5 meal period premiums for missed or non-complaint meal periods in violation of Labor Code § 226.7.

6 18. As such, the applicable Wage Order obligates Defendants to provide Plaintiff and
7 other Aggrieved Employees “one (1) hour of pay at the employee’s regular rate of compensation for
8 each workday that the meal period is not provided.” Accordingly, for each day that Plaintiff and other
9 Aggrieved Employees did not receive compliant meal periods, they are entitled to receive meal period
10 premiums pursuant to Labor Code § 226.7 and the applicable Wage Order. As a result of Defendants’
11 unlawful meal period policy/practices and work requirements, Plaintiff seeks to recover on behalf of
12 himself and all Aggrieved Employees meal period premiums and penalties under Labor Code § 226.7
13 and § 512. Defendants would also be liable for civil penalties pursuant to Labor Code § 2698.

14 19. Moreover, Plaintiff and other Aggrieved Employees were also not provided with rest
15 periods of at least ten (10) ten minutes for each four (4) hour work period, or major fraction thereof
16 due to Defendants’ failure to provide rest periods at the workplace and Defendants’ job requirements
17 enforced on Plaintiff and other Aggrieved Employees. Similar to the meal period violations above,
18 Defendants deprived Plaintiff and other Aggrieved Employees of fully compliant uninterrupted (10)
19 minutes for each four (4) hour work period. As a result, Plaintiff and other Aggrieved Employees
20 were unable to take compliant rest periods, and were not “relinquished from all duties,” as required
21 by Labor Code § 226.7. Additionally, Defendants also failed to maintain any mechanism for the
22 payment of rest period premium payments as required by Labor Code § 226.7. Therefore, Plaintiff
23 seeks to recover on behalf of himself and other aggrieved employees rest period premiums and
24 penalties. Consequently, Defendants has violated Labor Code §§ 226.7, 512 and applicable Wage
25 Orders. Altec would also be liable for civil penalties pursuant to Labor Code § 2698.

26 20. Moreover, Defendants also failed to adequately reimburse Plaintiff and other
27 Aggrieved Employees for necessary expenditures incurred as a direct consequence and requirement
28 of performing their job duties, including, but not limited to, the cost of driving their own personal

1 vehicles and using personal cell phones for business purposes. Indeed, as listed in Plaintiff's wage
2 statements during his employment, Defendants only provided \$5.00 in reimbursements for each pay
3 period. Consequently, since Defendants failed to comply with Labor Code § 2802 and applicable
4 Wage Orders, Plaintiff and other Aggrieved Employees would be entitled to recover penalties under
5 Labor Code §§ 2802 and 2698.

6 21. As a result of Defendants' failure to pay Plaintiff and other Aggrieved Employees for
7 all pre-shift time, failure to provide all timely, compliant and uninterrupted meal and rest periods, and
8 failure to reimburse necessary business expenditures, Defendants have also failed to pay Plaintiff and
9 other Aggrieved Employees all wages owed at their time of separation from employment with
10 Defendants in violation of Labor Code §§ 201-203 and applicable Wage Orders. As such, Plaintiff
11 and other aggrieved employees would be entitled to recover penalties under Labor Code § 203 and
12 2698.

13 23. Finally, as to Plaintiff and other Aggrieved Employees, Defendants also failed to
14 provide accurate itemized wage statements in accordance with Labor Code § 226(a)(1, 2, 5, and 9).
15 Labor Code § 226 obligates employers, semi-monthly or at the time of each payment to furnish an
16 itemized wage statement in writing showing:

- 17 (1) gross wages earned;
- 18 (2) total hours worked by the employee;
- 19 (3) the number of piece-rate units earned and any applicable piece rate if the
20 employee is paid on a piece rate;
- 21 (4) all deductions, provided that all deductions made on written orders of the employee may
22 be aggregated and shown as one item;
- 23 (5) net wages earned;
- 24 (6) the inclusive dates of the period for which the employee is paid;
- 25 (7) the name of the employee and only the last four digits of his or her social security number
26 or an employee identification number other than a social security number;
- 27 (8) the name and address of the legal entity that is the employer...; and
28 (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.

24. In light of Defendants' violations outlined above, the wage statements issued by Defendants does not indicate the correct amount of gross wages earned, total hours worked, net wages earned, or the applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate in violation of Labor Code § 226(a)(1), (2), (5) and (9). Additionally, the wage statements issued by Defendants also uniformly fail to include the inclusive dates of the period for which Aggrieved Employees are paid in violation of Labor Code § 226(a)(6). Thus, Plaintiff is an Aggrieved employee within the meaning of PAGA and Defendants has violated Labor Code §226(a)(1), (2), (5), (6), and (9) with respect to Plaintiff and other Aggrieved Employees.

25. Labor Code § 226.3 provides that “[a]ny employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial violation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the required in subdivision (a) of Section 226.”

26. As explained in detail above, Defendants failed to provide Plaintiff and other Aggrieved Employees with accurate itemized wage statements. Accordingly, Plaintiff and other aggrieved employees may also recover Labor Code § 226.3 penalties from Defendants for violations of Labor Code § 226(a).

FIRST CAUSE OF ACTION

PRIVATE ATTORNEYS GENERAL ACT

(Plaintiff and Similarly Aggrieved Employees Against All Defendants)

27. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in the preceding paragraphs.

28. Defendants have committed several Labor Code violations against Plaintiff and other Aggrieved Employees. Plaintiff, an “Aggrieved Employee” within the meaning of Labor Code § 2698 *et. seq.*, acting on behalf of himself and other similarly Aggrieved Employees, brings this representative action against Defendants to recover the civil penalties due to Plaintiff, other Aggrieved Employees, and the State of California according to proof pursuant to Labor Code § 2699 (a) and (f) including, but not limited to (1) \$100 for each initial violation and \$200 for each subsequent

1 violation per employee per pay period for those violations of the Labor Code for which no civil
2 penalty is specifically provided based on the following Labor Code violations:

3 a. Failing to Pay Plaintiff and other aggrieved employees all earned minimum wage and
4 overtime compensation in violation of Labor Code §§ 204, 510, 1194, and 1198 *et seq.*;

5 b. Failing to provide Plaintiff and other aggrieved employees with all of their statutorily
6 mandated meal periods in violation of Labor Code §§ 204, 510, 1194 and 1198;

7 c. Failing to authorize and permit Plaintiff and other aggrieved employees with all of
8 their statutorily mandated rest periods in violation of Labor Code §§ 226.7 and 516.

9 d. Failing to furnish Plaintiff and other aggrieved employees with complete, accurate,
10 itemized wage statements in violations of Labor Code § 226 *et seq.*;

11 e. Failing to compensate Plaintiff and other aggrieved employees with all earnings at
12 their separation of employment in violation of Labor Code §§ 201-203;

13 f. Failing to adequately reimburse Plaintiff and other aggrieved employees for necessary
14 business expenditures incurred as a direct consequence and requirement of performing their job duties
15 in violation of Labor Code § 2802; and

16 g. Failing to maintain accurate records on behalf of Plaintiff and other aggrieved
17 employees in violation of Labor Code § 1174.

18 29. On or about January 28, 2021, Plaintiff notified Defendant Acosta Employee Holdco
19 LLC via certified mail, and the California Labor and Workforce Development Agency (“LWDA”)
20 via its website of Defendants’ violations of the California Labor Code § 2698 *et. seq.* with respect to
21 violations of the California Labor Code identified in Paragraph 28 (a)-(g) for bringing a claim under
22 the Private Attorneys General Act with respect to these violations. Therefore, once more than sixty-five
23 (65) days have passed since that date, Plaintiff will have fully satisfied the administrative prerequisites to
24 suit under the PAGA and this Complaint will be deemed amended to include the PAGA allegations
25 enumerated below. Once this occurs, Plaintiff seeks to recover all applicable and available PAGA
26 remedies pursuant to Labor Code § 2699, as well as attorneys’ fees, costs, and/or other damages as
27 permitted by PAGA through a representative action pursuant to the PAGA and the California Supreme
28 Court in *Arias v. Superior Court* (2009) 46 Cal. 4th 969. Plaintiff is not required to, nor does he, seek

1 class certification of the PAGA claims under Code of Civil Procedure § 382.

2 30. Plaintiff was compelled to retain the services of counsel to file this court action to
3 protect his interests and the interests of other aggrieved employees, and to assess and collect the civil
4 penalties owed by Defendants. Plaintiff has therefore incurred attorneys' fees and costs, which he is
5 entitled to receive under California Labor Code § 2699.

6 **PRAYER FOR RELIEF**

7 **WHEREFORE**, Plaintiff prays for judgment for himself and for all others on whose behalf
8 this suit is brought against Defendants, as follows:

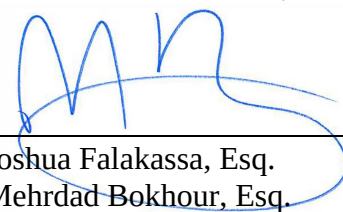
9 1. Upon the First Cause of Action, for civil penalties due to Plaintiff, other Aggrieved
10 Employees, and the State of California according to proof pursuant to Labor Code § 2699 (a) and (f)
11 including, but not limited to: (1) \$100.00 for each initial violation and \$200 for each subsequent
12 violation per employee per pay period for those violations of the Labor Code for which no civil
13 penalty is specifically provided under the Labor Code;

14 2. Upon the First Cause of Action, for attorneys' fees and costs as provided by Labor
15 Code § 2698 *et seq.*, and Code of Civil Procedure §1021.5; and

16 3. For such other and further relief, the Court may deem just and proper.

17
18 Dated: February 1, 2021

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19
20
21 By: 

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