

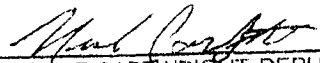
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8 Attorneys for Plaintiff ESTEBAN MARTINEZ

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

JAN 31 2022

BY 
NICOLE CARTWRIGHT, DEPUTY

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11 **SUPERIOR COURT OF CALIFORNIA**
12 **IN AND FOR THE COUNTY OF SAN BERNARDINO**
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14
15 ESTEBAN MARTINEZ, on behalf of all others
similarly aggrieved,

16 Plaintiff,

17 vs.

18 'T' MCGEE ELECTRIC, INC., a California
corporation; TRENT MCGEE, an Individual;
19 and DOES 1-20, Inclusive,

20 Defendants.
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CASE NO. CIVSB2114427

Assigned for All Purposes to:
Hon. David Cohn
Dept. S-26

~~[PROPOSED]~~ FIRST AMENDED CLASS
ACTION AND REPRESENTATIVE
COMPLAINT

JURY TRIAL DEMANDED

1 GENERAL ALLEGATIONS

2 1. Plaintiff ESTEBAN MARTINEZ (“Plaintiff”) is an individual residing in the State
3 of California.

4 2. On information and belief, Defendant ‘T’ MCGEE ELECTRIC, INC. (“MCGEE
5 ELECTRIC”) is a California corporation that is duly licensed to conduct business in the State of
6 California.

7 3. On information and belief, Defendant TRENT MCGEE is an individual residing in
8 the State of California, and is and is, and at all relevant times has been, the Chief Executive
9 Officer of defendant MCGEE ELECTRIC, owns, operates, and/or manages MCGEE ELECTRIC,
10 and had direct control and power over the working conditions and the violations at issue in this
11 Complaint. On information and belief, TRENT MCGEE devised and implemented the policies at
12 issue in this complaint and “caused” these violations as that term is used in Labor Code §§ 558,
13 1197.1 and 2699(f). Pursuant to Labor code §§ 558, 1197.1, 2699(f), TRENT MCGEE is liable as
14 a person who “caused” the violations to occur

15 4. Plaintiff is unaware of the names and capacities of those defendants sued as DOES
16 1 through 20, but will amend this complaint when that information becomes known. Plaintiff is
17 informed and believes and thereon alleges that, at all relevant times, each of the defendants,
18 including the DOE defendants, was the officer, director, employee, agent, representative, alter
19 ego, or co-conspirator of each of the other defendants, and in engaging in the conduct alleged
20 herein, was acting in the course and scope of, and in furtherance of, such relationship. Unless
21 otherwise specified, Plaintiff will refer to all defendants as “Defendant,” and each allegation
22 pertains to each defendant.

23 5. This court possesses original subject matter jurisdiction over this matter.
24 Defendant has sufficient minimum contacts in California and has intentionally availed itself of the
25 California market so as to render the exercise of jurisdiction proper. Venue is proper in this
26 judicial district because some of the complained of conduct occurred in this judicial district.

27 CLASS ALLEGATIONS

28 6. Defendant employed Plaintiff in California as a non-exempt employee from

1 approximately September 2019 to approximately April 2020. Plaintiff normally worked 5 days a
2 week, 8 or more hours a day. Plaintiff brings this action as a class action under Code of Civil
3 Procedure section 382 on behalf of himself and all others similarly situated. The class Plaintiff
4 seeks to represent is defined as follows: “All individuals employed by Defendant as a non-exempt
5 employee in California at any time within the four years prior to the filing of the initial
6 complaint.”

7 7. Common Questions of Law and Fact. This lawsuit is suitable for class treatment
8 because common questions of law and fact predominate over individual issues. Common
9 questions include, but are not limited to, the following: (1) whether Defendant properly calculated
10 and paid all amounts due to Plaintiff and the class members for wages earned, including overtime
11 wages, under California law; (2) whether Defendant violated the California Labor Code and/or
12 IWC Wage Orders by withholding wages, including minimum and overtime wages, from Plaintiff
13 and the class members; (3) whether Defendant provided Plaintiff and the class members with all
14 required meal periods or premium compensation in lieu thereof, under California law; (4) whether
15 Defendant provided Plaintiff and the class members with all required rest periods, or
16 compensation in lieu thereof, under California law; (5) whether Defendant provided Plaintiff and
17 the class members with proper, itemized wage statements; (6) whether Defendant timely paid
18 Plaintiff and the class members all wages due upon termination of employment; (7) whether
19 Defendant’s failure to timely pay all wages due upon termination of employment was willful; and
20 (8) whether Defendant violated California Business and Professions Code sections 17200, *et seq.*

21 8. Ascertainable Class. The proposed class is ascertainable as its members can be
22 identified and located using information in Defendants’ business, payroll and personnel records.

23 9. Numerosity. The plaintiff class is so numerous that the individual joinder of all
24 members is impractical under the circumstances of this case. While the exact number of class
25 members is unknown to Plaintiff, Plaintiff is informed and believes the class consists of at least
26 100 individuals.

27 10. Typicality. Plaintiff’s claims are typical of the claims of the class members.
28 Plaintiff suffered a similar injury as the other class members as a result of Defendant’s common

1 practices regarding, inter alia, calculation and payment of wages, including overtime wages,
2 failure to provide proper meal and rest periods or premium compensation in lieu thereof,
3 provision of wage statements, and payment of wages due upon termination. In addition, Plaintiff
4 will fairly and adequately protect the interests of the class members. Plaintiff has no interests
5 adverse to the interests of the other class members.

6 11. Superiority. A class action is superior to other available means for the fair and
7 efficient adjudication of this controversy since individual joinder of all members of the class is
8 impractical. Class action treatment will permit a large number of similarly situated persons to
9 prosecute their common claims in a single forum simultaneously, efficiently, and without the
10 unnecessary duplication of effort and expense that numerous individual actions would engender.
11 Furthermore, as the damages suffered by each individual member of the class may be relatively
12 small, the expenses and burden of individual litigation would make it difficult or impossible for
13 individual members of the class to redress the wrongs done to them, while an important public
14 interest will be served by addressing the matter as a class action. The cost to the court system of
15 adjudication of such individualized litigation would be substantial. Individualized litigation
16 would also present the potential for inconsistent or contradictory judgments. Finally, the
17 alternative of filing a claim with the California Labor Commissioner is not superior, given the
18 lack of discovery in such proceedings, the fact that there are fewer available remedies, and the
19 losing party has the right to a trial de novo in the Superior Court.

20 **FIRST CAUSE OF ACTION**

21 (Recovery of Unpaid Minimum Wages and Liquidated Damages -
22 Labor Code §§ 1194 and 1194.2)

23 12. Plaintiff incorporates all preceding paragraphs as if fully alleged herein.

24 13. California law mandates that employees in California be paid for all hours worked,
25 up to 40 per week or 8 per day, at a regular time rate no less than the mandated minimum wage.
26 Defendant violated California minimum wage laws by requiring, suffering or permitting Plaintiff
27 and other similarly situated and aggrieved employees to work without compensation in part by
28 using a rounding system that, as applied, systematically deprived them of compensable hours

1 worked because the time recording system implemented by Defendant resulted in understating
2 actual compensable hours worked due to the rounding. Accordingly, Plaintiff and similarly
3 situated and aggrieved employees were not paid for all hours worked causing minimum wage
4 violations pursuant to Labor Code sections 1194-1199, and all applicable Wage Orders. 14.

5 Pursuant to Labor Code sections 1194 and 1194.2, Plaintiff and the class members are
6 entitled to recover all unpaid minimum time wages and liquidated damages thereon, plus
7 attorney's fees and costs, in an amount to be proved at trial.

8 SECOND CAUSE OF ACTION

9 (Recovery of Unpaid Overtime – Labor Code § 1194)

10 15. Plaintiff incorporates all preceding paragraphs as if fully alleged herein.

11 16. California law requires employers to pay overtime equal to one and one-half times
12 the regular hourly rate of pay for each hour worked beyond eight (8) hours per workday and each
13 hour worked beyond forty (40) hours per work week. Lab. Code § 510; IWC Wage Order 4-2001
14 (and all applicable Wage Orders), § 3. Employers must pay overtime equal to double the regular
15 hourly rate of pay for each hour worked beyond twelve (12) hours per workday and for all hours
16 worked in excess of eight (8) hours on the seventh consecutive day or work in a work week. Id.

17 17. Defendant has violated California's overtime laws by, among other things, failing
18 to correctly calculate, or record at all, the total number of hours worked by Plaintiff and similarly
19 situated and aggrieved employees and not paying proper overtime for all overtime worked (as
20 discussed above). Based on employees' regular work schedules, Plaintiff and similarly aggrieved
21 employees often worked more than 8 hours in a day and/or 40 hours in a week for which they
22 were not properly compensated. 18.

23 19. Pursuant to Labor Code section 1194, Plaintiff and the class members are entitled
24 to recover all unpaid overtime wages, plus attorney's fees and costs, in an amount to be proved at
25 trial.

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1 THIRD CAUSE OF ACTION

2 (Failure to Provide Meal Periods or Compensation in Lieu Thereof --

3 Labor Code § 226.7)

4 20. Plaintiff incorporates all preceding paragraphs as if fully alleged herein.

5 21. Under the Labor Code and IWC Wage Orders, Defendant was required to provide
6 Plaintiff and similarly situated and aggrieved employees with one 30-minute meal period free
7 from all duties for all shifts longer than 5 hours, and a second 30-minute meal period free from all
8 duties for all shifts longer than 10 hours. Meal periods can be waived, but only under the
9 following circumstances: (1) if an employee's total work period in a day is over five (5) hours but
10 no more than six (6) hours, the required meal period may be waived by mutual consent of the
11 employer and employee, and (2) if an employee's total work period in a day is over ten (10) hours
12 but no more than twelve (12) hours, the required second meal period may be waived by mutual
13 consent of the employer and employee, but only if the first meal period was not waived.
14 Employers covered by the Wage Orders have an obligation to both (1) relieve their employees for
15 at least one meal period for shifts over five hours (see above), and (2) to record having done so. If
16 the employer fails to properly record a valid meal period, it is presumed no meal period was
17 provided.

18 22. Plaintiff and similarly situated and aggrieved employees regularly worked periods
19 of more than five and ten hours in a workday without being provided mandatory thirty-minute,
20 duty-free meal periods. Upon information and belief, Defendant did not advise Plaintiff and other
21 similarly situated and aggrieved employees of their right to, timing, or number of meal periods.
22 For example, Defendant regularly provided meal periods that started after the fifth hour of work,
23 and in fact scheduled Plaintiff and other similarly situated and aggrieved employees to start their
24 meal periods after the fifth hour work. Defendant further did not provide mandatory meal periods
25 to Plaintiff and other similarly situated and aggrieved employees on shifts longer than 10 hours.
26 Per Defendant's illegal meal period policy/practice, Plaintiff and similarly situated and aggrieved
27 employees did not receive all the meal periods to which they were entitled and/or did not receive
28 meal periods on a fully compliant basis, and Defendant further failed to pay Plaintiff and

1 similarly situated and aggrieved employees an additional hour of wages at their regular rates of
2 pay for each workday a meal period was not provided or was not compliant with all requirements
3 of the Labor Code and/or Wage Orders.

4 23. Defendant failed to provide Plaintiff and the class members with all required meal
5 periods, or with compensation in lieu thereof. As a result, under Labor Code section 226.7,
6 Plaintiff and the class members are entitled to one additional hour's pay at the regular rate of
7 compensation for each day a meal period was missed, late or interrupted, all in an amount to be
8 proved at trial.

9 FOURTH CAUSE OF ACTION

10 (Failure to Provide Rest Periods or Compensation in Lieu Thereof --

11 Labor Code § 226.7)

12 24. Plaintiff incorporates all preceding paragraphs as if fully alleged herein.

13 25. California law requires an employer to authorize or permit an employee to take a
14 rest period of ten net minutes for every four hours worked, or major fraction thereof, and such rest
15 periods must be in the middle of the four-hour period insofar as practicable. If the employer fails
16 to provide any required rest periods, or fails to provide a fully compliant rest break for a net 10
17 minutes wherein the employee is fully relieved of all duties and all employer control, the
18 employer must pay the employee one hour of pay at the employee's regular rate of compensation
19 for each workday the employer did not provide a legally required and/or fully compliant rest
20 period.

21 26. Defendant failed to provide Plaintiff and similarly situated and aggrieved
22 employees all required and/or fully compliant rest periods, or compensation in lieu thereof.
23 Defendant employed policies and procedures that ensured Plaintiff and other aggrieved
24 employees would not receive all legally required rest periods, maintained a non-compliant written
25 rest period policy, and Defendant did not authorize and permit all required rest periods in strict
26 accordance to, and in compliance with, the timing requirements of all applicable Wage Orders.
27 Defendant never properly advised Plaintiff and other similarly situated and aggrieved employees
28 of their right to, timing, or amount of rest breaks. Defendant further employed policies and

1 procedures ensuring that Plaintiff and similarly situated and aggrieved employees did not receive
2 premium wages to compensate them for workdays they did not receive all legally required and
3 fully compliant rest periods.

4 27. Defendant failed to provide Plaintiff and the class members with all required rest
5 periods, or with compensation in lieu thereof. As a result, under Labor Code section 226.7,
6 Plaintiff and the class members are entitled to one additional hour's pay at the regular rate of
7 compensation for each day a rest break was missed, late or interrupted, all in an amount to be
8 proved at trial.

9 FIFTH CAUSE OF ACTION

10 (Failure to Provide Accurate Wage Statements – Labor Code § 226)

11 28. Plaintiff incorporates all preceding paragraphs as if fully alleged herein.

12 29. California law provides that, at the time of each payment of wages, the
13 employer must provide each employee with an itemized statement showing, inter alia, gross
14 wages earned, total hours worked, all deductions taken, net wages earned, the inclusive dates for
15 which the employee is being paid, the employee's name and last four digits of their social security
16 number, the name and address of the legal entity that it is the employer, and all applicable hourly
17 rates in effect during the pay period and all hours worked at each rate.

18 30. Defendant knowingly and intentionally failed to provide Plaintiff and other
19 similarly situated and aggrieved employees with proper, itemized wage statements as the wage
20 statements provided by Defendant do not accurately reflect, inter alia, gross wages earned, total
21 hours worked, and net wages earned. Given that Defendant rounded employee time punches to
22 the employees' detriment and underpaid them accordingly, the wage statements are inaccurate on
23 their face. Defendant also failed to include on its wage statements the correct address of the legal
24 entity that was the employer of Plaintiff and the class members.

25 31. Within the meaning of Labor Code section 226, Defendants knowingly and
26 intentionally failed to provide Plaintiff and the class members with proper, itemized wage
27 statements and Plaintiff and class members are deemed to have suffered actual injury as a result.
28 Accordingly, under Labor Code section 226, Plaintiff and the class members each are entitled to

1 statutory penalties in the amount of \$50.00 for the initial pay period in which a violation
2 occurred, and \$100.00 for each subsequent pay period in which a violation occurred, up to an
3 aggregate penalty of \$4,000.00 per employee, plus attorney's fees and costs, all in an amount to
4 be proved at trial.

5 SIXTH CAUSE OF ACTION

6 (Waiting Time Penalties – Labor Code §§ 201, et seq.)

7 32. Plaintiff incorporates all preceding paragraphs as if fully alleged herein.

8 33. The California Labor Code provides that, at the time of termination of
9 employment, the employer must pay an employee all wages due and owing within the time
10 frames set forth in Labor Code sections 201, et seq. Defendants willfully failed to pay Plaintiff
11 and other similarly situated and aggrieved employees who no longer are employed with
12 Defendants all wages due and owing within the deadlines set forth in Labor Code sections 201, et
13 seq.

14 34. Under Labor Code section 203, Plaintiff and the class members who no longer are
15 employed with Defendants are entitled to recover waiting time penalties of up to 30 days' pay,
16 plus attorney's fees and costs, in an amount to be proved at trial.

17 SEVENTH CAUSE OF ACTION

18 (Violation of Unfair Competition Law – Bus. & Prof. Code §§ 17200, et seq.)

19 35. Plaintiff incorporates all preceding paragraphs as if fully alleged herein.

20 36. Defendants' failure, inter alia, to pay all wages earned and failure to pay all
21 overtime wages earned, failure to provide all required meal and rest breaks or compensation in
22 lieu thereof, all in violation of the Labor Code and Wage Orders, constitutes an unlawful, unfair
23 or fraudulent business act or practice, in violation of Business & Professions Code sections
24 17200, et seq.

25 37. Pursuant to Business & Professions Code section 17203, Plaintiff and the class
26 members are entitled to restitution of all unpaid wages and other sums owed, plus attorney's fees
27 and costs, in an amount to be proved at trial.

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1 EIGHTH CAUSE OF ACTION

2 (Violation of Private Attorneys General Act of 2004 – Labor Code §§ 2698, et seq.)

3 38. Plaintiff incorporates all preceding paragraphs as if fully alleged herein

4 39. During the period beginning one-year period preceding the filing of the required
5 PAGA notice with the Labor Workforce and Development Agency, and continuing through the
6 present, as alleged herein, Defendant violated Labor Code sections 201-202, 201.3, 204, 216, 221-
7 223, 226, 226.7, 226.8, 245-248.5, 510, 511, 512, 558, 558.1, 1174, 1194, 1197, 1198, 1199, 2810.5,
8 and all applicable Wage Orders, as to Plaintiff and all other similarly aggrieved employees
9 employed by Defendant in California. These violations subject Defendant to civil penalties as
10 set forth in the foregoing statutes as well as other provisions of the Labor Code, including
11 without limitation Labor Code sections 203, 210, 225.5, 226.3, 256, 558, 558.1, 1174.5,
12 1194.2, 1197.1, and 2699, and section 20 of all applicable Wage Orders

13 40. Plaintiff is an “Aggrieved Employee” under PAGA, as he was employed by
14 Defendant during the applicable statutory limitations period and suffered one or more of the
15 Labor Code violations set forth herein. Plaintiff seeks to represent all individuals employed by
16 Defendant as a non-exempt employee in California at any time from March 17, 2019 to the
17 present. Plaintiff seeks to recover, on behalf of himself and all other current and former
18 Aggrieved Employees, the civil penalties provided by PAGA, plus reasonable attorney's fees and
19 costs.

20 41. Therefore, under the provisions of PAGA and Labor Code sections 201, 202, 203,
21 204, 210, 216, 221, 222, 223, 225.5, 226, 226.3, 226.7, 226.8, 256, 432.5, 510, 512, 558, 558.1,
22 1174, 1174.5, 1194, 1197, 1197.1, 1198, 1199, 2699, and all applicable Wage Orders as well as
23 all interpretations of these laws by California Courts and administrative bodies, as well as any
24 other law that is enforceable through PAGA, Defendants are also liable for the following
25 penalties: (i) all statutorily-specified penalties recoverable under PAGA as enumerated in the
26 relevant California Labor Code provisions listed herein only if permitted by the PAGA statute;
27 and (ii) default PAGA penalties for any violation of the enumerated list of Labor Code violations
28 without a civil penalty recoverable under the PAGA, all in the default amounts provided by Labor

1 Code section 2699(f).

2 42. The proper measure of penalties under PAGA is the number of violations, whether
3 those violations were committed as against Plaintiff or any Aggrieved Employee, whether a party
4 to this action or not.

5 43. Plaintiff complied with the procedures for bringing suit specified in Labor Code
6 sections 2699.3 and 2699.5. Plaintiff gave written notice to the California Labor & Workforce
7 Development Agency (“LWDA”) via electronic submission at PAGAfiling@dir.ca.gov on
8 or about January 22, 2021, and via certified mail to Defendant on January 19, 2021, of the
9 specific provisions of the Labor Code and Wage Orders allegedly violated, including the facts
10 and theories to support the alleged violations.

11 44. Under Labor Code section 2699.3, the LWDA must give written notice by
12 certified mail to the parties it intends to investigate the alleged violations within 65 days of the
13 date of the Plaintiff's written notice. As of the date of this Complaint, the LWDA has not
14 provided the parties any notice of its intention to investigate Plaintiff’s claims on behalf of
15 himself and other similarly aggrieved employees. Moreover, as of the date of this Complaint,
16 Defendants have not responded to Plaintiff’s PAGA notice in an attempt to cure.
17 Accordingly, Plaintiff has exhausted all administrative remedies required by law.

18 45. Pursuant to Labor Code section 2699(g), and/or any and all other applicable laws,
19 Plaintiff is entitled to recover civil penalties, costs, and attorney’s fees, all in an amount to be
20 proved at trial.

21 PRAYER

22 WHEREFORE, Plaintiff prays for judgment against each Defendant, jointly and severally,
23 as follows:

- 24 1. For compensatory and liquidated damages according to proof;
25 2. For an order requiring Defendants to make restitution of all amounts wrongfully
26 withheld from Plaintiff and the class;
27 3. For pre-judgment interest as permitted by law;
28 4. For civil penalties according to proof;

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- 5 For reasonable attorney's fees and costs of suit; and
6. For such other and further relief as the Court deems just and proper.

Dated: January 31, 2022

LAW OFFICES OF J. KIRK DONNELLY, APC



J. Kirk Donnelly
Attorneys for Plaintiff
ESTEBAN MARTINEZ

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DEMAND FOR JURY TRIAL

Plaintiff ESTEBAN MARTINEZ demands a trial by jury on all claims so triable.

Dated: January 31, 2022

LAW OFFICES OF J. KIRK DONNELLY, APC



J. Kirk Donnelly
Attorneys for Plaintiff
ESTEBAN MARTINEZ

1 PROOF OF SERVICE
2 *ESTEBAN MARTINEZ VS. 'T' MCGEE ELECTRIC, INC. et al.*
3 *San Bernardino Superior Court Case No. CIVSB2114427*

4 At the time of service, I was over 18 years of age and not a party to this action. I am
5 employed in the County of Los Angeles, State of California. My business address is 9440 Santa
6 Monica Blvd., Ste. 301, Beverly Hills, CA 90210.

7 On January 31, 2022, I served true copies of the following document(s) described as

8 **[PROPOSED] FIRST AMENDED CLASS ACTION AND REPRESENTATIVE**
9 **COMPLAINT JURY TRIAL DEMANDED**

10 on the interested parties in this action as follows:

11 SEE ATTACHED SERVICE LIST

12 ☒ BY ELECTRONIC TRANSMISSION. I transmitted copies of the above-referenced
13 document(s) on the interested parties in this action by electronic transmission. Said electronic
14 transmission was reported as complete and without error.

15 I declare under penalty of perjury under the laws of the United States of America that the foregoing
16 is true and correct and that I am employed in the office of a member of the bar of this Court at
17 whose direction the service was made.

18 Executed on January 31, 2022, at Los Angeles, California.

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20 _____
21 Maria Monterrey
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PROOF OF SERVICE

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SERVICE LIST
ESTEBAN MARTINEZ VS. 'T' MCGEE ELECTRIC, INC. et al.
San Bernardino Superior Court Case No. CIVSB2114427

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