

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

JAN 28 2021

BY Anai Cortez-Ramirez
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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO**

RAKESH RAY, as an individual and on
behalf of all others similarly situated,

Plaintiffs,

vs.

C&W FACILITY SERVICES, INC.,
Massachusetts corporation; and DOES 1
through 50, inclusive,

Defendants.

Case No.:

CIV SB 210132

**CLASS AND REPRESENTATIVE ACTION
COMPLAINT FOR DAMAGES FOR:**

- (1) VIOLATION OF CAL. LABOR CODE § 226;
- (2) VIOLATION OF CAL. LABOR CODE §§ 201, 202 AND 203;
- (3) VIOLATION OF LABOR CODE § 2698, *ET SEQ.*

DEMAND OVER \$25,000.00

1 Plaintiff Rakesh Ray (“Plaintiff”) hereby submits this Class and Representative Action
2 Complaint (“Complaint”) against Defendant C&W Facility Services, Inc. and Does 1 through 50
3 (hereinafter collectively referred to as “Defendants”) on behalf of himself and all other similarly
4 situated current and former employees of Defendants for penalties and/or damages for failure to
5 provide accurate itemized wage statements and pay all wages owed upon separation of
6 employment, as follows:

7 **INTRODUCTION**

8 1. This class and representative action is within the Court’s jurisdiction under
9 California Labor Code sections 201, 202, 203, 226 and 2698, *et seq.* and the applicable Wage
10 Orders of the California Industrial Welfare Commission (“IWC”).

11 2. This complaint challenges systemic illegal employment practices resulting in
12 violations of the California Labor Code against individuals who worked for Defendants.

13 3. Plaintiff is informed and believes, and based thereon alleges, that Defendants,
14 jointly and severally, have acted intentionally and with deliberate indifference and conscious
15 disregard to the rights of all employees by failing to pay all wages owed upon separation of
16 employment and provide accurate itemized wage statements to Plaintiff and the Class.

17 4. Plaintiff is informed and believes, and based thereon alleges, that Defendants
18 have engaged in, among other things a system of willful violations of the California Labor Code
19 and the applicable IWC’s Wage Orders by creating and maintaining policies, practices, and
20 customs that knowingly deny employees the above stated rights and benefits.

21 **JURISDICTION AND VENUE**

22 5. The Court has jurisdiction over the violations of the California Labor Code
23 sections 201, 202, 203, 226 and 2698, *et seq.*

24 6. Venue is proper because Defendants do business in San Bernardino County and
25 maintain a business location in San Bernardino County.

26 **PARTIES**

27 7. Plaintiff was employed by Defendants as a non-exempt employee from in or
28 around August 31, 2020 to on or about December 17, 2020.

1 8. Plaintiff is informed and believes, and based thereon alleges, that at all times
2 herein mentioned C&W Facility Services, Inc. was and is a Massachusetts corporation doing
3 business in the State of California.

4 9. Plaintiff is informed and believes, and based thereon alleges, that at all times
5 herein mentioned Does 1 through 50, are and were corporations, business entities, individuals,
6 and partnerships, licensed to do business and actually doing business in the State of California.

7 10. As such, and based upon all the facts and circumstances incident to Defendants'
8 business, Defendants are subject to California Labor Code sections 201, 202, 203, 226 and 2698,
9 *et. seq.*

10 11. Plaintiff does not know the true names or capacities, whether individual, partner
11 or corporate, of the defendants sued herein as Does 1 through 50, inclusive, and for that reason,
12 said defendants are sued under such fictitious names, and Plaintiff prays for leave to amend this
13 complaint when the true names and capacities are known. Plaintiff is informed and believes and
14 based thereon alleges that each of said fictitious defendants were responsible in some way for the
15 matters alleged herein and proximately caused Plaintiff and members of the class to be subject to
16 the illegal employment practices, wrongs, and injuries complained of herein.

17 12. At all times herein mentioned, each of said Defendants participated in the doing
18 of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the
19 Defendants, and each of them, were the agents, servants, and employees of each of the other
20 Defendants, as well as the agents of all Defendants, and at all times herein mentioned, were
21 acting within the course and scope of said agency and employment.

22 13. Plaintiff is informed and believes, and based thereon alleges, that at all times
23 material hereto, each of the Defendants named herein was the agent, employee, alter ego, and/or
24 joint venturer of, or working in concert with each of the other co-Defendants and was acting
25 within the course and scope of such agency, employment, joint venture, or concerted activity.
26 To the extent said acts, conduct, and omissions were perpetrated by certain Defendants, each of
27 the remaining Defendants confirmed and ratified said acts, conduct, and omissions of the acting
28 Defendants.

1 14. At all times herein mentioned, Defendants, and each of them, were members of,
2 and engaged in, a joint venture, partnership and common enterprise, and acting within the course
3 and scope of, and in pursuance of, said joint venture, partnership and common enterprise.

4 15. At all times herein mentioned, the acts and omissions of various Defendants, and
5 each of them, concurred and contributed to the various acts and omissions of each and all of the
6 other Defendants in proximately causing the injuries and damages as herein alleged. At all times
7 herein mentioned, Defendants, and each of them, ratified each and every act or omission
8 complained of herein. At all times herein mentioned, Defendants, and each of them, aided and
9 abetted the acts and omissions of each and all of the other Defendants in proximately causing the
10 damages as herein alleged.

11 **CLASS ACTION ALLEGATIONS**

12 16. **Definition:** The named individual Plaintiff seeks class certification, pursuant to
13 California Code of Civil Procedure section 382 of the following classes (collectively, “Class”):

- 14 a. All current and former employees of Defendant in the State of California who
15 received wages at any time between August 3, 2019, through the present (the
16 “Wage Statement Class” or “Wage Statement Class Members”); and
17 b. All current and former employees of Defendant in the State of California who
18 whose employment ended at any time between August 3, 2017, through the
19 present (the “Waiting Time Class” or “Waiting Time Class Members”).

20 17. **Numerosity and Ascertainability:** The members of the Class are so numerous
21 that joinder of all members would be impractical, if not impossible. The identity of the members
22 of the Class is readily ascertainable by review of Defendant’s records, including payroll records.
23 Plaintiff alleges that Defendants: (a) failed to provide accurate, itemized wage statements, in
24 violation of Labor Code section 226(a); and (b) failed to pay all wages owed upon separation of
25 employment, in violation of Labor Code sections 201, 202 and 203.

26 18. **Adequacy of Representation:** The named Plaintiff is fully prepared to take all
27 necessary steps to represent fairly and adequately the interests of the Class defined above.

28 Plaintiff’s attorneys are ready, willing, and able to fully and adequately represent the Class and

1 the individual Plaintiff. Plaintiff's attorneys have prosecuted and settled wage-and-hour class
2 actions in the past and currently have a number of wage-and-hour class actions pending in
3 California courts.

4 19. **Common Question of Law and Fact:** There are predominant common questions
5 of law and fact and a community of interest amongst Plaintiff and the claims of the Class
6 concerning Defendant's policy and practice of: a) failing to provide accurate, itemized wage
7 statements, in violation of Labor Code section 226(a); and (b) failing to pay all wages owed upon
8 separation of employment, in violation of Labor Code sections 201, 202 and 203. Plaintiff is
9 informed and believes and based thereon alleges this corporate conduct is accomplished with
10 advance knowledge, intent and willfulness.

11 20. **Typicality:** The claims of Plaintiff are typical of the claims of all members of the
12 Class in that Plaintiff suffered the harm alleged in this Complaint in a similar and typical manner
13 as the Class Members. As with other exempt and non-exempt employees, Plaintiff received
14 itemized wage statements concurrent with the payment of wages. The wage statements provided
15 to Plaintiff and other employees failed to include the inclusive dates of the pay period, in
16 violation of Labor Code section 226(a). Instead, the wage statements only identified the "pay
17 period" as a single date, which did not encompass the period for which wages were being paid.
18 In addition, the wage statements omitted the legal name of the employer and its address.
19 Furthermore, Defendant failed to pay timely wages to Plaintiff and other former employees upon
20 separation of employment. In this respect, Plaintiff's employment ended on December 17, 2020,
21 but to date, Plaintiff has yet to receive his final wages. Thus, Defendant is liable for waiting time
22 penalties under Labor Code section 203. As such, Plaintiff is a member of the Class and has
23 suffered the alleged violations of California Labor Code sections 201, 202, 203 and 226.

24 21. The California Labor Code upon which Plaintiff bases these claims is broadly
25 remedial in nature. These laws and labor standards serve an important public interest in
26 establishing minimum working conditions and standards in California. These laws and labor
27 standards protect the average working employee from exploitation by employers who may seek
28 to take advantage of superior economic and bargaining power in setting onerous terms and

1 conditions of employment.

2 22. The nature of this action and the format of laws available to Plaintiff and
3 members of the Class identified herein make the class action format a particularly efficient and
4 appropriate procedure to redress the wrongs alleged herein. If each employee were required to
5 file an individual lawsuit, the corporate Defendants would necessarily gain an unconscionable
6 advantage since it would be able to exploit and overwhelm the limited resources of each
7 individual plaintiff with their vastly superior financial and legal resources. Requiring each Class
8 Member to pursue an individual remedy would also discourage the assertion of lawful claims
9 by employees who would be disinclined to file an action against their former and/or current
10 employer for real and justifiable fear of retaliation and permanent damage to their careers at
11 subsequent employment.

12 23. The prosecution of separate actions by the individual Class members, even if
13 possible, would create a substantial risk of (a) inconsistent or varying adjudications with respect
14 to individual Class members against the Defendants and which would establish potentially
15 incompatible standards of conduct for the Defendants, and/or (b) adjudications with respect to
16 individual Class members which would, as a practical matter, be dispositive of the interest of the
17 other Class members not parties to the adjudications or which would substantially impair or
18 impede the ability of the Class Members to protect their interests. Further, the claims of the
19 individual members of the Class are not sufficiently large to warrant vigorous individual
20 prosecution considering all of the concomitant costs and expenses.

21 24. Such a pattern, practice and uniform administration of corporate policy regarding
22 illegal employee compensation described herein is unlawful and creates an entitlement to
23 recovery by Plaintiff and the Class identified herein, in a civil action, for any and all applicable
24 penalties and/or damages, reasonable attorneys' fees, and costs of suit according to the mandate
25 of California Labor Code sections 201, 202, 203 and 226, and Code of Civil Procedure section
26 1021.5.

27 25. Proof of a common business practice or factual pattern, which the named Plaintiff
28 experienced and is a representative of, will establish the right of each of the members of the

1 Plaintiff class to recovery on the causes of action alleged herein.

2 26. The Plaintiff class is commonly entitled to a specific fund with respect to the
3 compensation illegally and unfairly retained by Defendants. The Plaintiff class is commonly
4 entitled to restitution of those funds being improperly withheld by Defendants. This action is
5 brought for the benefit of the entire Class and will result in the creation of a common fund.

6 **FIRST CAUSE OF ACTION**

7 **VIOLATION OF LABOR CODE § 226**

8 **(BY PLAINTIFF AND THE WAGE STATEMENT CLASS AGAINST ALL**
9 **DEFENDANTS)**

10 27. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as
11 though fully set forth herein.

12 28. Defendants, as a matter of policy and practice, did not provide accurate records in
13 violation of Labor Code section 226(a) by failing to provide accurate payroll records to
14 employees.

15 29. The wage statements provided to Plaintiff and Wage Statement Class Members
16 failed to include the inclusive dates of the pay period, in violation of Labor Code section
17 226(a)(6). Instead, the wage statements only identified the “pay period” as a single date, which
18 did not encompass the period for which wages were being paid. In addition, the wage statements
19 omitted the legal name of the employer and its address, in violation of Labor Code section
20 226(a)(8).

21 30. Such a pattern, practice and uniform administration of corporate policy as
22 described herein is unlawful and creates an entitlement to recovery by the Plaintiff and the Wage
23 Statement Class, in a civil action, for all damages or penalties pursuant to Labor Code section
24 226, including interest thereon, attorneys’ fees, and costs of suit according to the mandate of
25 California Labor Code section 226.

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1 **SECOND CAUSE OF ACTION**

2 **VIOLATION OF LABOR CODE §§ 201, 202, 203 and 246**

3 **(BY PLAINTIFF AND THE WAITING TIME CLASS AGAINST ALL DEFENDANTS)**

4 31. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as
5 though fully set forth herein.

6 32. Labor Code section 201 provides if an employer discharges an employee, the
7 wages earned and unpaid at the time of discharge are due and payable immediately.

8 33. Labor Code section 202 provides that an employee is entitled to receive all unpaid
9 wages no later than 72 hours after an employee quits his or her employment, unless the employee
10 has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the
11 employee is entitled to his or her wages at the time of quitting.

12 34. Labor Code section 203 provides that if an employer willfully fails to pay wages
13 owed in accordance with Labor Code sections 201 and 202, then the wages of the employee shall
14 continue as a penalty from the due date, and at the same rate until paid, but the wages shall not
15 continue for more than thirty (30) days.

16 35. As a pattern and practice, Defendant regularly and willfully failed to pay all
17 wages due and earned at the time of termination to Waiting Time Class Members. Plaintiff and
18 the Waiting Time Class Members are entitled to recover from Defendant the statutory penalty for
19 each day they were not paid final wages, up to a thirty (30) day maximum pursuant to California
20 Labor Code section 203.

21 36. Such a pattern, practice and uniform administration of corporate policy as
22 described herein is unlawful and creates an entitlement to recovery by the Plaintiff and the
23 Waiting Time Class, in a civil action, for all damages or penalties, including interest thereon,
24 attorneys' fees, and costs of suit according to the mandate of California Labor Code sections
25 201, 202 and 203.

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1 **THIRD CAUSE OF ACTION**

2 **VIOLATION OF LABOR CODE § 2698, *ET SEQ.***

3 **(BY PLAINTIFF, ON BEHALF OF THE STATE AND AGGRIEVED EMPLOYEES,**
4 **AGAINST ALL DEFENDANTS)**

5 37. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as
6 though fully set forth herein.

7 38. Plaintiff brings this cause of action as a proxy for the State of California and in
8 this capacity, seeks penalties on behalf of all Aggrieved Employees from July 18, 2019, through
9 the present, for Defendant's policy and practice of: (a) failing to provide accurate, itemized wage
10 statements, in violation of Labor Code section 226(a); and (b) failing to pay all wages owed upon
11 separation of employment, in violation of Labor Code sections 201, 202 and 203.

12 39. On or about January 12, 2021, Plaintiff sent written notice to the California Labor
13 & Workforce Development Agency ("LWDA") of Defendant's violations of Labor Code
14 sections 201, 202, 203 and 226 pursuant to Labor Code section 2698, *et seq.*, the Private
15 Attorneys General Act ("PAGA"). To date, the LWDA has not responded to Plaintiff's written
16 notice.

17 40. As such, pursuant to Labor Code section 2699(a), Plaintiff seeks recovery of any
18 and all applicable civil penalties for Defendant's violation of Labor Code sections 201, 202, 203,
19 and 226, for the time period described above, on behalf of himself and other Aggrieved
20 Employees.

21 **PRAYER FOR RELIEF**

22 WHEREFORE, Plaintiff prays for judgment as an individual and on behalf of all others
23 that this suit is brought against Defendants, jointly and severally, as follows:

- 24 1. For an order certifying the proposed Classes;
- 25 2. For an order appointing Plaintiff as the representative of the Classes as described
26 herein;
- 27 3. For an order appointing counsel for Plaintiff as Class counsel;
- 28 4. Upon the First Cause of Action, for damages or penalties pursuant to statute as set

1 forth in California Labor Code section 226(a), and for costs and attorneys' fees;

2 5. Upon the Second Cause of Action, for penalties pursuant to statute as set forth in
3 California Labor Code sections 201, 202 and 203, and for costs and attorneys' fees;

4 6. Upon the Third Cause of Action, for civil penalties according to proof pursuant to
5 Labor Code sections 226.3 and 2698, *et seq.*, and for costs and attorneys' fees;

6 7. On all causes of action, for attorneys' fees and costs as provided by California
7 Labor Code sections 226 and 2699, and Code of Civil Procedure section 1021.5; and

8 8. For such other and further relief as the Court may deem just and proper.

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10 DATED: January 28, 2021

DIVERSITY LAW GROUP, P.C.

11
12 By: 

Larry W. Lee

Kristen M. Agnew

13 Attorneys for Plaintiff and the Class
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