

HAINES LAW GROUP, APC

Paul K. Haines (SBN 248226)
phaines@haineslawgroup.com
Fletcher W. Schmidt (SBN 286462)
fshmidt@haineslawgroup.com
Andrew J. Rowbotham (SBN 301367)
arowbotham@haineslawgroup.com
2155 Campus Drive, Suite 180
El Segundo, California 90245
Tel: (424) 292-2350
Fax: (424) 292-2355
Attorneys for Plaintiff

VENTURA
SUPERIOR COURT
FILED

APR 09 2021

MICHAEL D. PLANET
Executive Officer and Clerk

BY: _____, Deputy

MARIANA SUAZO

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF VENTURA

RICARDO TREJO, an individual, on behalf of
himself and all others similarly situated,

Plaintiff,

vs.

TOTAL DISTRIBUTION SERVICE, INC., a
California Corporation, and DOES 1 through
100,

Defendants.

CASE NO. 56-2021-00553039-CU-OE-VTA

**REPRESENTATIVE ACTION
COMPLAINT:**

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

COPY

1 Plaintiff Ricardo Trejo (hereinafter “Plaintiff”) on behalf of himself and all others
2 similarly situated, hereby brings this Representative Action Complaint against Total Distribution
3 Service, Inc., a California Corporation, and DOES 1 to 100, inclusive (collectively “Defendants”),
4 and on information and belief alleges as follows:

5 **JURISDICTION**

6 1. Plaintiff, on behalf of himself and all similarly aggrieved employees, hereby brings
7 this representative action for recovery of civil penalties under Labor Code § 2698 *et seq.* This
8 Court has jurisdiction over Defendants’ violations of the California Labor Code because the
9 amount in controversy exceeds this Court's jurisdictional minimum.

10 **VENUE**

11 2. Venue as to each Defendant is proper in this judicial district pursuant to California
12 Code of Civil Procedure §§ 395(a) and 395.5, as at least some of the acts and omissions
13 complained of herein occurred in the County of Ventura.

14 **PARTIES**

15 3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
16 Plaintiff was and currently is, a California resident. During the statute of limitations periods,
17 Plaintiff was employed by Defendants as a non-exempt employee.

18 4. Plaintiff is informed and believes, and based thereon alleges, that during the one
19 year preceding the filing of this Representative Action Complaint and continuing to the present,
20 Defendants did (and do) business by providing trucking services including hauling heavy-
21 equipment or other materials within Ventura County and the State of California, and employed
22 Plaintiff and other, similarly-situated non-exempt employees to perform work within Ventura
23 County and the State of California. Defendants, therefore, were (and are) doing business in
24 Ventura County and the State of California. *See Crestwood Behavioral Health, Inc. v. Superior*
25 *Court of Alameda County* (2021) 60 Cal.App.5th 1069 (holding that venue is proper in a PAGA
26 representative action “in any county in which an aggrieved employee worked and Labor Code
27 violations allegedly occurred”)
28

1 5. Plaintiff does not know the true names or capacities, whether individual, partner,
2 or corporate, of the defendants sued herein as DOES 1 to 100, inclusive, and for that reason, said
3 defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to
4 amend this Representative Action Complaint when such true names and capacities are discovered.
5 Plaintiff is informed, and believes, and thereon alleges, that each of said fictitious defendants,
6 whether individual, partners, or corporate, were responsible in some manner for the acts and
7 omissions alleged herein, and proximately caused Plaintiff and the aggrieved employees to be
8 subject to the unlawful employment practices, wrongs, injuries and damages complained of
9 herein.

10 6. Plaintiff is informed, and believes, and thereon alleges, that at all times mentioned
11 herein, Defendants were and are the employers of Plaintiff and the aggrieve employees (as defined
12 herein).

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

20 8. At all times mentioned herein, Defendants, and each of them, were members of
21 and engaged in a joint venture, partnership, and common enterprise, and acting within the course
22 and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further,
23 Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and the
24 aggrieved employees, (as defined herein).

25 **REPRESENTATIVE ACTION ALLEGATIONS**

26 9. Plaintiff worked for Defendants as a “commercial truck driver” from
27 approximately 2015 to June 2020. Defendants are in the trucking business and provide several
28 services including hauling a wide variety of items such as fertilizer, televisions, and other products

1 for companies such as Amazon and Costco. Plaintiff's job duties consisted of making local
2 intrastate deliveries on behalf of various companies to pick up and drop off cargo containers.
3 Plaintiff's regular shift began at approximately 4:30 a.m. and ended at approximately 4:30 p.m.
4 Monday through Friday. On occasions, Mr. Trejo and other aggrieved employees worked on
5 weekends.

6 10. Throughout Plaintiff's employment with Defendants, Defendants have maintained
7 unlawful meal period policies/practices that fail to provide timely, duty-free 30-minute meal
8 periods commencing before the end of the fifth hour of work, as well as second meal periods for
9 shifts in excess of 10.0 hours. Specifically, Defendants have failed to schedule meal periods
10 throughout the workday and Plaintiff's driving schedule does not accommodate for 30-minute
11 duty-free meal periods. Furthermore, Plaintiff and other non-exempt employees were required to
12 clock-out for a meal period before reaching the end of their sixth hour of work, even if they were
13 unable to actually take a duty-free meal period. For example, on many occasions Plaintiff and
14 other non-exempt employees were in their trucks waiting in line to enter facilities at the Port of
15 Long Beach when it was time to take their meal period, but because they could not exit their
16 vehicle, they had to clock out for a non-existent meal period while remaining on duty, and had to
17 either forgo or postpone their meal period until later in their shift. On occasions when Plaintiff
18 and other non-exempt employees were not provided with all lawful meal periods to which they
19 were entitled, Defendants have failed to pay Plaintiff and other non-exempt employees an
20 additional hour of premium pay at their respective regular rates of pay for each workday in which
21 a meal period violation occurred, as required by Labor Code § 226.7.

22 11. Defendants' policy/practice of requiring Plaintiff and other non-exempt
23 employees to clock-out for meal periods, when no such duty-free meal periods were actually
24 provided, has also resulted in the underpayment of all minimum and overtime wages earned. *See*
25 *Kaanaana, et al. v. Barrett Business Services, Inc., et al.*, 29 Cal. App. 5th 778, 808 (2018)
26 (finding that time worked during meal periods results in liability for both "premium pay for the
27 meal period violation and payment of minimum wages for all time worked.") As a result of these
28

1 unlawful policies/practices, Plaintiff and other non-exempt employees were not paid all minimum
2 and overtime wages owed to them.

3 12. As a result of Defendants' failure to pay all overtime and minimum wages and
4 meal period premium wages, Defendants maintained inaccurate payroll records and issued
5 inaccurate wage statements to Plaintiff, and failed to pay Plaintiff all wages earned at the time of
6 his separation of employment.

7 13. Based on the foregoing, Plaintiff seeks to represent himself and all aggrieved
8 employees, as defined by Labor Code § 2699(c), which includes all of Defendants' non-exempt
9 employees who worked for Defendants in California from February 2, 2020 through the present.

10 **FIRST CAUSE OF ACTION**

11 **PRIVATE ATTORNEYS GENERAL ACT**

12 **(AGAINST ALL DEFENDANTS)**

13 14. Plaintiff re-alleges and incorporates by reference all prior paragraphs as though
14 fully set forth herein.

15 15. Defendants have committed several Labor Code violations against Plaintiff and
16 other similarly aggrieved employees. Plaintiff is an "aggrieved employee" within the meaning of
17 Labor Code § 2698 *et seq.*, and acting on behalf of himself and other similarly aggrieved
18 employees, brings this representative action against Defendants to recover the civil penalties due
19 to Plaintiff, other similarly aggrieved employees, and the State of California according to proof
20 pursuant to Labor Code § 2699 including, but not limited to: (1) \$100.00 for each initial violation
21 and \$200 for each subsequent violation or willful or intentional violation pursuant to Labor
22 Code § 210 for each failure to pay each employee; (2) \$50.00 for each initial violation and \$100
23 for each subsequent violation pursuant to Labor Code § 558 per employee per pay period; (3)
24 \$100.00 for each initial violation and \$250.00 for each subsequent violation pursuant to Labor
25 Code § 1197.1 per employee per pay period; (4) \$250.00 for each initial violation and \$1,000.00
26 for each subsequent violation pursuant to Labor Code § 226.3 per employee per pay period;
27 and/or (5) \$100.00 for each initial violation and \$200 for each subsequent violation per employee
28

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

- a. Failing to pay Plaintiff and other aggrieved employees the statutory minimum wage for all hours worked in violation of Labor Code §§ 204, 1182.12, 1194, 1194.2, 1197, and 1198;
- b. Failing to pay Plaintiff and other aggrieved employees all earned overtime compensation in violation of Labor Code §§ 204, 510, 558, 1194, and 1198;
- c. Failing to provide Plaintiff and other aggrieved employees all legally required meal periods, and failure to pay meal period premium wages to Plaintiff and other aggrieved employees at the regular rate of compensation, in violation of Labor Code §§ 226.7, 512, 558, and 1198;
- d. Failing to furnish Plaintiff and other aggrieved employees with complete, accurate, itemized wage statements, in violation of Labor Code § 226;
- e. Failing to pay Plaintiff and other aggrieved employees all final wages upon their separation of employment, in violation of Labor Code §§ 201, 202, and 203;
- f. Failing to pay Plaintiff and other aggrieved employees all earned wages at least twice during each calendar month, in violation of Labor Code § 204; and
- g. Failing to maintain accurate records on behalf of Plaintiff and other aggrieved employees, in violation of Labor Code §§ 558 and 1174.

16. On February 2, 2021, Plaintiff notified Defendants via certified mail, and the California Labor and Workforce Development Agency (“LWDA”) via electronic submission of Defendants’ violations of the California Labor Code and Plaintiff’s intent to bring a claim for civil penalties under California Labor Code § 2698 *et seq.* with respect to violations of the California Labor Code identified in Paragraph 15 (a)-(g). Now that sixty-five days have passed from Plaintiff notifying Defendants of these violations, Plaintiff has exhausted his administrative requirements for bringing a claim under the Private Attorneys General Act with respect to these violations.

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

PRA YER

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

1. Upon the First Cause of Action, for civil penalties due to Plaintiff, other similarly aggrieved employees, and the State of California according to proof pursuant to Labor Code § 2699 including, but not limited to: (1) \$100.00 for each initial violation and \$200 for each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each failure to pay each employee; (2) \$50.00 for each initial violation and \$100 for each subsequent violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each initial violation and \$1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for each initial violation and \$200 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided, based on the following Labor Code violations.

2. On all causes of action, for attorneys' fees and costs as provided by Labor Code § 2699 and Code of Civil Procedure § 1021.5; and

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

Dated: April 9, 2021

Respectfully submitted,
HAINES LAW GROUP, APC

By:

Fletcher W. Schmidt
Attorney for Plaintiff