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

JUN 07 2021

BY Anthony Martinez
ANTHONY MARTINEZ, DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

MICHAEL FENSKE, individually and on
behalf of all others similarly situated,

Plaintiff,

vs.

FRESENIUS USA MANUFACTURING,
INC.; and DOES 1 through 20, inclusive,

Defendants.

Case No. **CIV SB 2115114**

**COMPLAINT FOR VIOLATION OF THE
CALIFORNIA LABOR CODE PRIVATE
ATTORNEYS GENERAL ACT OF 2004
(CAL. LAB. CODE §§ 2698, ET SEQ.)**

1 Plaintiff Michael Fenske, individually, and on behalf of other aggrieved employees,
2 alleges as follows:

3 **NATURE OF ACTION AND INTRODUCTORY STATEMENT**

4 1. Plaintiff Michael Fenske ("Plaintiff") brings this representative action against
5 defendants Fresenius USA Manufacturing, Inc., and DOES 1 through 20, inclusive
6 (collectively, "Defendants"), on behalf of himself individually and other aggrieved employees
7 who are California citizens who are and were employed by Defendants as non-exempt
8 employees throughout California, except drivers subject to Department of Transportation
9 regulations.

10 2. Defendants are in the kidney dialysis centers and medical supply industry.

11 3. Through this action, Plaintiff alleges that Defendants have engaged in a
12 systematic pattern of wage and hour violations under the California Labor Code and Industrial
13 Welfare Commission ("IWC") Wage Orders, all of which contribute to Defendants' deliberate
14 unfair competition.

15 4. Plaintiff is informed and believes, and thereon alleges, that Defendants have
16 increased their profits by violating state wage and hour laws by, among other things:

17 (a) failing to pay all wages (including minimum wages and overtime
18 wages);

19 (b) failing to provide lawful meal periods or compensation in lieu thereof;

20 (c) failing to authorize or permit lawful rest breaks or provide compensation
21 in lieu thereof;

22 (d) failing to provide accurate itemized wage statements;

23 (e) failing to pay all wages due upon separation of employment.

24 5. Plaintiff seeks monetary relief against Defendants on behalf of himself and all
25 others aggrieved employees in California to recover, among other things, civil penalties
26 pursuant to Labor Code §§ 2698 *et seq.*, interest, attorneys' fees, costs and expenses.

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13. Plaintiff is informed and believes, and thereon alleges, that each defendant acted in all respects pertinent to this action as the agent of the other defendant, carried out a joint scheme, business plan, or policy in all respects pertinent hereto, and the acts of each defendant are legally attributable to the other defendant. Furthermore, defendants in all respects acted as the employer and/or joint employer of Plaintiff and the aggrieved employees.

14. Plaintiff is informed and believes, and thereon alleges, that each and all of the acts and omissions alleged herein were performed by, or are attributable to, Defendants and/or DOES 1 through 20, acting as the agent or alter ego for the other, with legal authority to act on the other's behalf. The acts of any and all Defendants were in accordance with, and represent, the official policy of Defendants.

15. At all relevant times, Defendants, and each of them, acted within the scope of such agency or employment, or ratified each and every act or omission complained of herein. At all relevant times, Defendants, and each of them, aided and abetted the acts and omissions of each and all the other Defendants in proximately causing the damages herein alleged.

16. Plaintiff is informed and believes, and thereon alleges, that each of said Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts, omissions, occurrences, and transactions alleged herein.

GENERAL ALLEGATIONS

17. At all relevant times mentioned herein, Defendants employed Plaintiff and other California residents as non-exempt employees at Defendants' California business location(s).

18. Defendant employed Plaintiff as a non-exempt employee at Defendants' California business location.

19. Defendants continue to employ non-exempt employees within California.

20. Plaintiff is informed and believes, and thereon alleges, that at all times herein mentioned, Defendants were advised by skilled lawyers, employees, and other professionals who were knowledgeable about California's wage and hour laws, employment and personnel practices, and the requirements of California law.

1 21. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
2 should have known that Plaintiff and other aggrieved employees were entitled to receive wages
3 for all time worked (including minimum wages and overtime wages) and that they were not
4 receiving all wages earned for work that was required to be performed. In violation of the
5 Labor Code and IWC Wage Orders, Plaintiff and other aggrieved employees were not paid all
6 wages (including minimum wages and overtime wages) for all hours worked at the correct rate
7 due to failing to pay reporting time pay, failing to pay for required off-the-clock work, and
8 failing to properly include incentive pay in the overtime rate, among other issues.

9 22. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
10 should have known that Plaintiff and other aggrieved employees were entitled to receive all
11 required meal periods or payment of one (1) additional hour of pay at Plaintiff's and other
12 aggrieved employees' regular rate of pay when they did not receive a timely, uninterrupted
13 meal period. In violation of the Labor Code and IWC Wage Orders, Plaintiff and other
14 aggrieved employees did not receive all meal periods or payment of one (1) additional hour of
15 pay at Plaintiff's and other aggrieved employees' regular rate of pay when they did not receive
16 a timely, uninterrupted meal period.

17 23. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
18 should have known that Plaintiff and other aggrieved employees were entitled to receive all rest
19 breaks or payment of one (1) additional hour of pay at Plaintiff's and other aggrieved
20 employees' regular rate of pay when a rest break was missed. In violation of the Labor Code
21 and IWC Wage Orders, Plaintiff and other aggrieved employees did not receive all rest breaks
22 or payment of one (1) additional hour of pay at Plaintiff's and other aggrieved employees'
23 regular rate of pay when a rest break was missed.

24 24. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
25 should have known that Plaintiff and other aggrieved employees were entitled to receive
26 itemized wage statements that accurately showed the following information pursuant to the
27 Labor Code: (1) gross wages earned; (2) total hours worked by the employee; (3) the number of
28 piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate

1 basis; (4) all deductions, provided that all deductions made on written orders of the employee
2 may be aggregated and shown as one item; (5) net wages earned; (6) the inclusive dates of the
3 period for which the employee is paid; (7) the name of the employee and only the last four
4 digits of his or her social security number or an employee identification number other than a
5 social security number; (8) the name and address of the legal entity that is the employer; and
6 (9) all applicable hourly rates in effect during the pay period and the corresponding number of
7 hours worked at each hourly rate by the employee. In violation of the Labor Code, Plaintiff and
8 other aggrieved employees were not provided with accurate itemized wage statements.

9 25. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
10 should have known that the aggrieved employees was entitled to timely payment of wages due
11 upon separation of employment. In violation of the Labor Code, the aggrieved employees did
12 not receive payment of all wages within permissible time periods.

13 26. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
14 should have known they had a duty to compensate Plaintiff and other aggrieved employees, and
15 Defendants had the financial ability to pay such compensation but willfully, knowingly, and
16 intentionally failed to do so in order to increase Defendants' profits.

17 27. Therefore, Plaintiff brings this lawsuit seeking monetary and injunctive relief
18 against Defendants on behalf of himself and all other aggrieved employees to recover, among
19 other things, unpaid wages (including minimum wages and overtime wages), unpaid meal
20 period premium payments, unpaid rest period premium payments, interest, attorneys' fees,
21 penalties, costs, and expenses.

22 **FIRST CAUSE OF ACTION**

23 **ENFORCEMENT OF LABOR CODE §§ 2698 *ET SEQ.* ("PAGA")**

24 28. Plaintiff re-alleges and incorporates by reference the previous paragraphs as
25 though fully set forth herein.

26 29. Pursuant to Labor Code § 2699(a), any provision of the Labor Code that provides
27 for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency
28 ("LWDA") or any of its departments, divisions, commissions, boards, agencies, or employees for

1 violation of the Labor Code may, as an alternative, be recovered through a civil action brought by
2 an aggrieved employee on behalf of himself or herself and other current or former employees
3 pursuant to the procedures specified in Labor Code § 2699.3.

4 30. For all provisions of the Labor Code except those for which a civil penalty is
5 specifically provided, Labor Code § 2699(f) imposes upon Defendants a civil penalty of one
6 hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and
7 two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent pay
8 period in which Defendants violated these provisions of the Labor Code.

9 31. Defendants' conduct violates numerous Labor Code sections, including, but not
10 limited to, the following:

11 (a) violation of Labor Code §§ 201, 202, 203, 204, 510, 1194, and 1198 for failure
12 to timely pay all earned wages (including overtime wages) owed to Plaintiff and other
13 aggrieved employees during employment and upon separation of employment as herein
14 alleged;

15 (b) violation of Labor Code §§ 226.7 and 512 for failure to provide meal periods to
16 Plaintiff and other aggrieved employees and failure to pay premium wages for missed
17 meal periods as herein alleged;

18 (c) violation of Labor Code § 226.7 for failure to permit rest breaks to Plaintiff and
19 other aggrieved employees and failure to pay premium wages for missed rest periods as
20 herein alleged;

21 (d) violation of Labor Code § 226 for failure to provide accurate itemized wage
22 statements to Plaintiff and other aggrieved employees as herein alleged; and

23 (e) violation of Labor Code §§ 1174 and 1174.5 for failure to maintain accurate and
24 complete records showing, among other things, the hours worked daily and the wages
25 paid to aggrieved employees.

26 32. Plaintiff is an "aggrieved employee" because he was employed by the alleged
27 violator and had one or more of the violations committed against him, and therefore is properly
28 suited to represent the interests of all other aggrieved employees.

33. Plaintiff has exhausted the procedural requirements under Labor Code § 2699.3 as to Defendants and is therefore able to pursue a claim for penalties on behalf of himself and all other aggrieved employees under PAGA.

34. Pursuant to Labor Code §§ 2699(a), 2699.3 and 2699.5, Plaintiff is entitled to recover civil penalties in addition to other remedies, for violation of the Labor Code sections cited above.

35. For bringing this action, Plaintiff is entitled to attorneys' fees and costs incurred herein.

PRAYER FOR RELIEF

Plaintiff, on his own behalf and on behalf of all others similarly situated, prays for relief and judgment against Defendants, jointly and severally, as follows:

1. For civil penalties against Defendants on behalf of all aggrieved employees and the LWDA pursuant to Labor Code § 2698, *et seq.*;

2. For reasonable attorneys' fees, costs of suit, and interest to the extent permitted by law, including, but not limited to, Code of Civil Procedure § 1021.5 and Labor Code § 2698 *et seq.*; and;

3. For such other relief as the Court deems just and proper.

Dated: June 7, 2021

AEGIS LAW FIRM, PC

By: 

 Jessica L. Campbell
 Attorneys for Plaintiff Michael Fenske