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*Attorneys for Plaintiff and Aggrieved Employees,
on behalf of the State of California*

SUPERIOR COURT OF CALIFORNIA

COUNTY OF ALAMEDA

ERWIN ANTONIO LEON LOPEZ, on behalf
of the State of California and Aggrieved
Employees,

Plaintiff,

vs.

KELLERMEYER BERGENSONS
SERVICES, LLC, and DOES 1 through 50,
inclusive,

Defendant.

Case No.

RG21106490

**COMPLAINT FOR PENALTIES
PURSUANT TO SECTIONS 2699(a)
and (f) OF THE CALIFORNIA
PRIVATE ATTORNEYS GENERAL
ACT**

Plaintiff Erwin Antonio Leon Lopez ("Plaintiff"), on behalf of the State of California and
Aggrieved Employees, and complains and alleges as follows:

INTRODUCTION

1. Plaintiff brings this Labor Code Private Attorneys General Act ("PAGA")
enforcement action behalf of the State of California to collect statutory penalties as a result of
Defendant Kellermeyer Bergensons Services, LLC ("Defendant") systematic violations of

Filed By Fax

ENDORSED
FILED
ALAMEDA COUNTY

JUN 10 2021

CLERK OF THE SUPERIOR COURT

By ALICIA ESPINOZA Deputy

1 California labor law with respect to Defendant's current and former non-exempt hourly workers
2 in the State of California ("Aggrieved Employees").

3 2. This PAGA action against Defendant challenges its policies and practices of (1)
4 failing to compensate employees for all hours worked; (2) failing to provide employees accurate,
5 itemized wage statements; (3) failing to timely pay employees wages owed upon the termination
6 of employment; and (4) engaging in unfair business practices in violation of California Business
7 and Professions Code §§ 17200, *et seq.*

8 3. Plaintiff and Aggrieved Employees are current and former hourly, non-exempt
9 employees who have worked for Defendant in California. Kellermeyer Bergensons Services,
10 LLC ("KBS") is headquartered in Oceanside, California and is North America's largest
11 privately-owned facility services provider. KBS has locations throughout the state of California
12 and is licensed to conduct business in California. On information and belief, Defendant KBS
13 has over 75,000 client locations and over 4,000 total employees on a national scale with
14 approximately eighty-five locations in California.

15 4. Plaintiff worked as a non-exempt janitor in San Jose, California from
16 approximately September 2020 until February 2021. Plaintiff's hourly rate of pay was \$18.00
17 per hour. While his shifts varied in length, Plaintiff typically was scheduled to work
18 approximately eight (8) hours per shift and five (5) shifts per week. On average, Plaintiff was
19 scheduled to work 40 hours per week.

20 5. Pursuant to a uniform, company-wide policy and practice, Defendant denied
21 Plaintiff and the Aggrieved Employees proper compensation for all hours worked. Plaintiff and
22 Aggrieved Employees were regularly required to spend at least approximately one to three
23 minutes before the beginning of every shift going through temperature and identification ("ID")
24 checks and then walking to a phone to clock in for his scheduled shift, all while off-the-clock.
25 This time spent undergoing temperature and ID checks, and spent walking to and from the
26 temperature and ID check to the time-clock phone located approximately 25-30 feet away from
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1 those temperature and security check points, goes unrecorded and uncompensated, giving rise to
2 minimum wage violations. Upon information and belief, Defendant institutes a similar policy
3 and practice of requiring Plaintiff and Aggrieved Employees to undergo temperature checks and
4 ID checks and spend time walking while off-the-clock that results in Aggrieved Employees being
5 unpaid for time spent subject to the control of Defendant while off-the-clock.

6 6. As this time spent undergoing temperature checks, ID checks and walking to
7 clock-in is performed off-the-clock, all of this time goes uncompensated.

8 7. Furthermore, Plaintiff and the Aggrieved Employees were not paid for any of their
9 work performed during the month of January 2021, including their time spent working on-the-
10 clock. Plaintiff and other Aggrieved Employees asked KBS on several occasions when they
11 were going to be paid for the work they had performed. On information and belief, KBS assured
12 them the pay would be issued as soon as possible; however, approximately four (4) weeks went
13 by from when Plaintiff notified Defendant that he had not received any pay for his hours worked
14 in January 2021 until Plaintiff's termination of employment in February 2021. On information
15 and belief, to date, Plaintiff and Aggrieved Employees still have not been paid all wages owed
16 for their time worked during this time period.

17 8. Plaintiff, on behalf of the State of California, seeks to recover penalties and
18 reasonable attorneys' fees for violations of California law as alleged herein, pursuant to Sections
19 2699(a).

20 **PARTIES**

21 9. Plaintiff and Aggrieved Employees are current and former non-exempt employees
22 working for Defendant throughout the State of California.

23 10. Plaintiff is an individual over the age of eighteen, and at all times mentioned in
24 this Complaint was a resident of the State of California.
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11. Plaintiff was employed by KBS from approximately September 2020 until February 2021. Plaintiff worked for Defendant as a janitor in San Jose in the County of Santa Clara.

12. Defendant Kellermeyer Bergensons Services, LLC (“KBS”) is an Ohio corporation with its headquarters located in Oceanside, CA, and is registered to do business in California.

13. Defendant does business in the State of California, including but not limited to their reliance on California's labor market to secure the services of hourly workers. Plaintiff is informed, believes, and thereon alleges that Defendant employs non-exempt employees throughout California.

14. During the relevant times, Defendant has employed Plaintiff and the Aggrieved Employees.

15. At all relevant times, Defendant has done business under the laws of California, and have employed Aggrieved Employees in this judicial district. Defendant is a “person” as defined in Labor Code § 18 and Business and Professions Code § 17201. Defendant is also an “employer” as that term is used in the Labor Code and the applicable IWC Wage Order.

JURISDICTION AND VENUE

16. This Court has jurisdiction over Plaintiff's claims for penalties pursuant to the PAGA. The Court also has jurisdiction over Defendant because Defendant does business in the State of California, is authorized to do business in California, and is registered with the California Secretary of State.

17. Venue is proper in this judicial district pursuant to Code of Civil Procedure §§ 393 and/or 395.5. Defendant conducts business, employs Aggrieved Employees, and has jobsites in this County, namely in San Leandro, CA. Venue is proper in this County pursuant to Code of Civil Procedure § 395(a). On information and belief, Defendant resides in the State of California.

1 **FACTUAL ALLEGATIONS**

2 18. Defendant owns and operates facility service and commercial cleaning services
3 throughout the United States with approximately eighty-five locations in California. Defendant
4 provides janitorial services including contract cleaning, floor care, technical services, and
5 integrated facility support services. On information and belief, Defendant employs thousands of
6 hourly non-exempt workers similarly situated to Plaintiff across these facilities.

7 19. Plaintiff worked as a non-exempt janitor in San Jose, California from
8 approximately September 2020 until February 2021. His duties included general cleaning and
9 sanitizing throughout the building.

10 20. Defendant employs non-managerial employees in the State of California and
11 uniformly classifies them as non-exempt.

12 21. Pursuant to a uniform, company-wide policy and practice, Defendant denied
13 Plaintiff and the Aggrieved Employees proper compensation for all hours worked. Plaintiff and
14 Aggrieved Employees were required to spend time before the beginning of every shift going
15 through temperature and ID checks and then walk to a phone to clock-in for his scheduled shift,
16 all while off-the-clock. This time spent undergoing temperature and ID checks and spent
17 walking to clock-in goes unrecorded and uncompensated, even though it should be compensated
18 at minimum wage rates under California law, giving rise to minimum wage violations.

19 22. Upon information and belief, Defendant institutes a similar policy across other
20 locations where employees are regularly required to spend time before the beginning of every
21 shift going through temperature and ID checks and then walking to a phone to clock-in for their
22 scheduled shifts. Such off-the-clock time is subject to the control of Defendant. This time spent
23 undergoing temperature and ID checks and spent walking to clock-in goes unrecorded and
24 uncompensated, giving rise to minimum wage violations.

25 23. Furthermore, Plaintiff and the Aggrieved Employees were not paid for any of their
26 work performed during the month of January 2021. On information and belief, Plaintiff and
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1 other Aggrieved Employees asked KBS on several occasions when they were going to be paid
2 for the work they had performed. On information and belief, KBS assured them the pay would
3 be issued as soon as possible; however, approximately four (4) weeks went by from when
4 Plaintiff notified Defendant that he had not received any pay for his hours worked in January
5 2021 until Plaintiff's termination of employment in February 2021. On information and belief,
6 to date, Plaintiff and Aggrieved Employees still have not been paid all wages owed for their time
7 worked during this time period.

8 24. As a result of this off-the-clock work, Plaintiff and Aggrieved Employees are not
9 adequately compensated for all hours worked at their regular rate.

10 25. Defendant fails to account for "off-the-clock" work in the total hours worked in a
11 given work week.

12 26. This time spent undergoing Defendant's temperature and ID checks benefits
13 Defendant because it ensures employees work in a safe, healthy, and productive environment and
14 guards against theft, liability, and/or other security concerns that may impact Defendant's overall
15 production. Plaintiff and Aggrieved Employees have been harmed as a direct and proximate result
16 of Defendants' unlawful conduct because they have been deprived of wages owed for work they
17 performed and from which Defendants derived a direct and substantial benefit.

18 27. Plaintiff is informed, believes, and thereon alleges that the same temperature and
19 ID check system and timekeeping policies and practices are used across all of Defendant's
20 facilities.

21 28. Defendant's failure to record all hours worked also results in a failure to provide
22 Aggrieved Employees, including Plaintiff, accurate itemized wage statements as required by
23 California law. The wage statements are inaccurate because they do not include all hours worked
24 and all wages properly owed.

25 29. Further, Defendant has not provided Aggrieved Employees, including Plaintiff,
26 whose employment has ended, with full payment of all wages owed at the end of their
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1 employment. As these workers are owed wages for off-the-clock work performed, and these
2 amounts remain unpaid following Plaintiff and Aggrieved Employee's separation from
3 employment, Defendant fails to pay all wages due upon termination.

4 30. Defendant's method of paying Plaintiff and Aggrieved Employees was willful and
5 was not based on a good faith and reasonable belief that their conduct complied with California
6 law.

7 31. Defendant's conduct was willful, carried out in bad faith, and caused significant
8 damages to non-exempt hourly employees in an amount to be determined at trial.

9 32. On March 15, 2021, pursuant to Labor Code § 2699.3(a)(1) and (2), Plaintiff
10 served the California Labor and Workforce Development Agency with notice of his intention to
11 file a PAGA action for violations of Labor Code §§ 204 (failure to compensate for all hours
12 worked); 226.3 (failure to provide timely and compliant itemized wage statements); 201-203,
13 225.5, and 256 (failure to timely pay all wages owed during employment and following separation
14 from employment), and California Business and Professions Code §§ 17200, *et seq* (engaging in
15 unfair business practices). More than sixty-five days have passed without notice from the LWDA.
16 Plaintiff satisfied the administrative prerequisites to commence this civil action in compliance
17 with Labor Code § 2699.3(a).

18 33. Pursuant to Section 2699(a), Plaintiff will seek civil penalties pursuant to each
19 provision of the Code that provides for a civil penalty to be assessed and collected by the Labor
20 and Workforce Development Agency or any of its departments, divisions, commissions, boards,
21 agencies, or employees, including but not limited to those Labor Code provisions referenced
22 above, as well as Sections 225.5, 226.3, and 256 of the California Labor Code. To the extent a
23 provision of the Labor Code does not provide for a civil penalty, the Plaintiff will seek civil
24 penalties pursuant to California Labor Code Section 2699(f). Plaintiff served Defendant's
25 registered agent with a courtesy copy of the notice via certified mail.
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FIRST CAUSE OF ACTION
Penalties Pursuant to § 2699(a) of the Private Attorneys General Act

34. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth herein.

35. Labor Code § 2699(a) provides:

Notwithstanding any other provision of law, any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies or employees, for a violation of this code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees.

36. Labor Code §§ 201 and 202 require employers to immediately pay wages earned and unpaid to an employee that is discharged, and to pay an employee who quits within 72 hours after he or she quits, at the latest.

37. Labor Code § 203 provides, in relevant part:

If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.5, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced; but the wages shall not continue for more than 30 days.

38. Labor Code § 256 provides: "The Labor Commissioner shall impose a civil penalty in an amount not exceeding 30 days pay as waiting time under the terms of Section 203."

39. Labor Code § 225.5 provides that every person who unlawfully withholds wages due any employee in violation of Section 212, 216, 221, 222, or 223 shall be subject to a civil penalty of \$100 for any initial violation for each failure to pay each employee and \$200 for each subsequent violation, or any willful or intentional violation, for each failure to pay each employee.

40. Labor Code § 226(a) provides:

Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or

1 separately when wages are paid by personal check or cash, an accurate
2 itemized statement in writing showing (1) gross wages earned, (2) total
3 hours worked by the employee, except for any employee whose
4 compensation is solely based on a salary and who is exempt from
5 payment of overtime under subdivision (a) of Section 515 or any
6 applicable order of the Industrial Welfare Commission, (3) the number
7 of piece-rate units earned and any applicable piece rate if the employee
8 is paid on a piece-rate basis, (4) all deductions, provided that all
9 deductions made on written orders of the employee may be aggregated
10 and shown as one item, (5) net wages earned, (6) the inclusive dates of
11 the period for which the employee is paid, (7) the name of the employee
12 and his or her social security number, (8) the name and address of the
13 legal entity that is the employer, and (9) all applicable hourly rates in
14 effect during the pay period and the corresponding number of hours
15 worked at each hourly rate by the employee. The deductions made from
16 payments of wages shall be recorded in ink or other indelible form,
17 properly dated, showing the month, day, and year, and a copy of the
18 statement or a record of the deductions shall be kept on file by the
19 employer for at least four years at the place of employment or at a central
20 location within the State of California.

21 41. Labor Code § 226.3 provides:

22 Any employer who violates subdivision (a) of Section 226 shall be
23 subject to a civil penalty in the amount of two hundred fifty dollars
24 (\$250) per employee per violation in an initial citation and one thousand
25 dollars (\$1,000) per employee for each violation in a subsequent citation,
26 for which the employer fails to provide the employee a wage deduction
27 statement or fails to keep the records required in subdivision (a) of
28 Section 226. The civil penalties provided for in this section are in
addition to any other penalty provided by law.

42. Plaintiff seeks civil penalties pursuant to Labor Code § 2699(a) for each failure by
Defendant, as alleged above, to timely pay all wages owed to Plaintiff and Aggrieved Employees
in compliance with Labor Code §§ 201-202, and to pay wages owed at the end of employment to
Plaintiff and Aggrieved Employees in compliance with Labor Code § 203.

43. Plaintiff also seeks civil penalties pursuant to Labor Code § 2699(a) for each
failure by Defendant, alleged above, to provide Plaintiff and Aggrieved Employees an accurate,
itemized wage statement in compliance with Labor Code § 226(a).

1 44. Pursuant to Labor Code § 2699.3(a)(1) and (2), on March 15, 2021, Plaintiff
2 provided the Labor and Workforce Development Agency (“LWDA”) with notice of his intention
3 to file this claim. More than sixty-five days have passed without notice from the LWDA. Plaintiff
4 satisfied the administrative prerequisites to commence this civil action in compliance with
5 § 2699.3(a).

6 45. Plaintiff seeks the aforementioned penalties on behalf of the State, other
7 Aggrieved Employees, and himself as set forth in Labor Code § 2699(g)(i).

8 46. Defendant is liable to Plaintiff, Aggrieved Employees, and the State of California
9 for the civil penalties set forth in this Complaint, with interest thereon. Plaintiff is also entitled
10 to an award of attorneys’ fees and costs as set forth below.

11 47. Wherefore, Plaintiff requests relief as hereinafter provided.

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13 **SECOND CAUSE OF ACTION**
14 **Penalties Pursuant to § 2699(f) of the Private Attorneys General Act**

15 48. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set
16 forth herein.

17 49. Labor Code § 2699(f) provides:

18 For all provisions of this code except those for which a civil penalty is
19 specifically provided, there is established a civil penalty for a violation of
20 these provisions, as follows: . . . (2) If, at the time of the alleged violation,
21 the person employs one or more employees, the civil penalty is one
22 hundred dollars (\$100) for each aggrieved employee per pay period for
23 the initial violation and two hundred dollars (\$200) for each aggrieved
24 employee per pay period for each subsequent violation.

25 50. Labor Code § 200 defines wages as “all amounts for labor performed by
26 employees of every description, whether the amount is fixed or ascertained by the standard of
27 time, task, piece, commission basis or method of calculation.”

28 51. Labor Code § 204(a) provides that “[a]ll wages ... earned by any person in any
employment are due and payable twice during each calendar month....”

 52. IWC Wage Order 5-2001(2)(K) defines hours worked as “the time during which

an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.”

53. Labor Code § 1198 makes it unlawful for employers to employ employees under conditions that violate the Wage Order.

54. To the extent than any violation alleged herein does not carry penalties under Labor Code § 2699(a), Plaintiff seeks civil penalties pursuant to Labor Code § 2699(f) for Plaintiff and Aggrieved Employees each pay period in which he or she was aggrieved, in the amounts established by Labor Code § 2699(f). Plaintiff seeks civil penalties under Labor Code § 2699(f) for Defendant’s violations of Labor Code §§ 201-203, 204, 225.5, 226.3, and 256.

55. Pursuant to Labor Code § 2699.3(a)(1) and (2), on March 15, 2021, Plaintiff provided the LWDA with notice of his intention to file this claim. More than sixty-five days have passed without notice from the LWDA. Plaintiff satisfied the administrative prerequisites to commence this civil action in compliance with § 2699.3(a).

56. Plaintiff seeks the aforementioned penalties on behalf of the State, other Aggrieved Employees, and himself as set forth in Labor Code § 2699(g)(i).

57. Defendant is liable to Plaintiff, Aggrieved Employees, and the State of California for the civil penalties set forth in this Complaint, with interest thereon. Plaintiff is also entitled to an award of attorneys’ fees and costs as set forth below.

58. Wherefore, Plaintiff requests relief as hereinafter provided.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief as follows:

1. For the Court to declare, adjudge, and decree that Defendant has violated the California Labor Code as alleged herein;
2. For an order awarding the State of California, Plaintiff, and Aggrieved Employees civil penalties provided under the PAGA;
3. For an award of reasonable attorneys’ fees as provided by the California Labor

Code § 2699(g)(1); California Code of Civil Procedure §1021.5; and/or any other applicable law;

4. For interest on penalties awarded as provided by applicable law;
5. For all costs of suit; and
6. For such other and further relief as this Court deems just and proper.

Dated: June 9, 2021

Respectfully submitted,



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