

SUMMONS (CITACION JUDICIAL)

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

NOTICE TO DEFENDANT: DAC SERVICE, INC. dba FOUR C'S
(AVISO AL DEMANDADO): CONSTRUCTION, a California corporation, DOES 1 through 10, inclusive

ELECTRONICALLY FILED
Merced Superior Court
7/1/2021 2:09 PM
Amanda Toste
Clerk of the Superior Court
By: Tawn Saephanh, Deputy

YOU ARE BEING SUED BY PLAINTIFF: NATHAN ARELLANO, on behalf
(LO ESTÁ DEMANDANDO EL DEMANDANTE): of himself and all
"aggrieved employees" pursuant to Labor Code § 2698 et
seq.

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es):
Superior Court of California, County of Merced
2260 N Street
Merced, California 95340

CASE NUMBER:
(Número del Caso): 21CV-02115

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is: Alex P. Katofsky, Esq. #202754
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Gaines & Gaines, APLC
27200 Agoura Road, Suite 101, Calabasas, CA 91301

818-703-8985

DATE: 7/1/2021 2:09 PM
(Fecha)

Amanda Toste
(Secretario)

Clerk, by
(Secretario)

(Signature)

, Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

[SEAL]



NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of *(specify)*:

3. ☐ on behalf of *(specify)*:

- under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other *(specify)*:

4. ☐ by personal delivery on *(date)*:

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Alex P. Katofsky, Esq. SBN: 202754 Gaines & Gaines, APLC 27200 Agoura Road, Suite 101, Calabasas, CA 91301 TELEPHONE NO.: 818-703-8985 FAX NO.: 818-703-8984 ATTORNEY FOR (Name): Plaintiff, Nathan Arellano		FOR COURT USE ONLY ELECTRONICALLY FILED Merced Superior Court 7/1/2021 2:09 PM Amanda Toste Clerk of the Superior Court By: Tawn Saephanh, Deputy
SUPERIOR COURT OF CALIFORNIA, COUNTY OF MERCED STREET ADDRESS: 2260 N Street MAILING ADDRESS: 627 W. 21st Street CITY AND ZIP CODE: Merced, 95340 BRANCH NAME: Main Merced Courthouse		
CASE NAME: Arellano v. DAC Service, Inc., et al.		
CIVIL CASE COVER SHEET ☒ Unlimited (Amount demanded exceeds \$25,000)	☐ Limited (Amount demanded is \$25,000 or less)	Complex Case Designation ☐ Counter ☐ Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)
		CASE NUMBER: 21CV-02115 JUDGE: DEPT:

Items 1–6 below must be completed (see instructions on page 2).

1. Check **one** box below for the case type that best describes this case:

Auto Tort ☐ Auto (22) ☐ Uninsured motorist (46) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort ☐ Asbestos (04) ☐ Product liability (24) ☐ Medical malpractice (45) ☐ Other PI/PD/WD (23) Non-PI/PD/WD (Other) Tort ☐ Business tort/unfair business practice (07) ☐ Civil rights (08) ☐ Defamation (13) ☐ Fraud (16) ☐ Intellectual property (19) ☐ Professional negligence (25) ☐ Other non-PI/PD/WD tort (35) Employment ☐ Wrongful termination (36) ☒ Other employment (15)	Contract ☐ Breach of contract/warranty (06) ☐ Rule 3.740 collections (09) ☐ Other collections (09) ☐ Insurance coverage (18) ☐ Other contract (37) Real Property ☐ Eminent domain/Inverse condemnation (14) ☐ Wrongful eviction (33) ☐ Other real property (26) Unlawful Detainer ☐ Commercial (31) ☐ Residential (32) ☐ Drugs (38) Judicial Review ☐ Asset forfeiture (05) ☐ Petition re: arbitration award (11) ☐ Writ of mandate (02) ☐ Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400–3.403) ☐ Antitrust/Trade regulation (03) ☐ Construction defect (10) ☐ Mass tort (40) ☐ Securities litigation (28) ☐ Environmental/Toxic tort (30) ☐ Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment ☐ Enforcement of judgment (20) Miscellaneous Civil Complaint ☐ RICO (27) ☐ Other complaint (<i>not specified above</i>) (42) Miscellaneous Civil Petition ☐ Partnership and corporate governance (21) ☐ Other petition (<i>not specified above</i>) (43)
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2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--|--|
| a. ☐ Large number of separately represented parties | d. ☐ Large number of witnesses |
| b. ☐ Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve | e. ☐ Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court |
| c. ☐ Substantial amount of documentary evidence | f. ☐ Substantial postjudgment judicial supervision |
3. Remedies sought (*check all that apply*): a. ☒ monetary b. ☐ nonmonetary; declaratory or injunctive relief c. ☐ punitive
4. Number of causes of action (*specify*): One (1)
5. This case ☐ is ☒ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (*You may use form CM-015.*)

Date: 7/1/21

Alex P. Katofsky, Esq.

(TYPE OR PRINT NAME)



Alex P. Katofsky

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on **all** other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you **must** complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort

Auto (22)—Personal Injury/Property Damage/Wrongful Death
Uninsured Motorist (46) (*if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto*)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)
Asbestos Property Damage
Asbestos Personal Injury/Wrongful Death
Product Liability (*not asbestos or toxic/environmental*) (24)
Medical Malpractice (45)
Medical Malpractice—Physicians & Surgeons
Other Professional Health Care Malpractice
Other PI/PD/WD (23)
Premises Liability (e.g., slip and fall)
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
Intentional Infliction of Emotional Distress
Negligent Infliction of Emotional Distress
Other PI/PD/WD

Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)
Civil Rights (e.g., discrimination, false arrest) (*not civil harassment*) (08)
Defamation (e.g., slander, libel) (13)
Fraud (16)
Intellectual Property (19)
Professional Negligence (25)
Legal Malpractice
Other Professional Malpractice (*not medical or legal*)
Other Non-PI/PD/WD Tort (35)

Employment

Wrongful Termination (36)
Other Employment (15)

Contract

Breach of Contract/Warranty (06)
Breach of Rental/Lease Contract (*not unlawful detainer or wrongful eviction*)
Contract/Warranty Breach—Seller Plaintiff (*not fraud or negligence*)
Negligent Breach of Contract/Warranty
Other Breach of Contract/Warranty
Collections (e.g., money owed, open book accounts) (09)
Collection Case—Seller Plaintiff
Other Promissory Note/Collections Case
Insurance Coverage (*not provisionally complex*) (18)
Auto Subrogation
Other Coverage
Other Contract (37)
Contractual Fraud
Other Contract Dispute

Real Property

Eminent Domain/Inverse Condemnation (14)
Wrongful Eviction (33)
Other Real Property (e.g., quiet title) (26)
Writ of Possession of Real Property
Mortgage Foreclosure
Quiet Title
Other Real Property (*not eminent domain, landlord/tenant, or foreclosure*)

Unlawful Detainer

Commercial (31)
Residential (32)
Drugs (38) (*if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential*)

Judicial Review

Asset Forfeiture (05)
Petition Re: Arbitration Award (11)
Writ of Mandate (02)
Writ—Administrative Mandamus
Writ—Mandamus on Limited Court Case Matter
Writ—Other Limited Court Case Review
Other Judicial Review (39)
Review of Health Officer Order
Notice of Appeal—Labor
Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)
Construction Defect (10)
Claims Involving Mass Tort (40)
Securities Litigation (28)
Environmental/Toxic Tort (30)
Insurance Coverage Claims (*arising from provisionally complex case type listed above*) (41)

Enforcement of Judgment

Enforcement of Judgment (20)
Abstract of Judgment (Out of County)
Confession of Judgment (*non-domestic relations*)
Sister State Judgment
Administrative Agency Award (*not unpaid taxes*)
Petition/Certification of Entry of Judgment on Unpaid Taxes
Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

RICO (27)
Other Complaint (*not specified above*) (42)
Declaratory Relief Only
Injunctive Relief Only (*non-harassment*)
Mechanics Lien
Other Commercial Complaint Case (*non-tort/non-complex*)
Other Civil Complaint (*non-tort/non-complex*)

Miscellaneous Civil Petition

Partnership and Corporate Governance (21)
Other Petition (*not specified above*) (43)
Civil Harassment
Workplace Violence
Elder/Dependent Adult Abuse
Election Contest
Petition for Name Change
Petition for Relief From Late Claim
Other Civil Petition

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Amanda Toste
Clerk of the Superior Court
By: Tawn Saepanh, Deputy

8 Attorneys for Plaintiff Nathan Arellano, on behalf of himself and all "aggrieved employees"
9 pursuant to Labor Code § 2698 *et seq.*

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF MERCED**

12 NATHAN ARELLANO, on behalf of himself
13 and all "aggrieved employees" pursuant to
Labor Code § 2698 *et seq.*,

14 Plaintiff,

15 v.

16 DAC SERVICE, INC. dba FOUR C'S
17 CONSTRUCTION, a California corporation,
DOES 1 through 10, inclusive,

18 Defendants.
19

CASE NO: 21CV-02115

**REPRESENTATIVE ACTION
COMPLAINT FOR PENALTIES
PURSUANT TO LABOR CODE § 2699(f)
FOR VIOLATIONS OF LABOR CODE
§§ 201-202, 226(a), 226.7, 510, 512, 1174,
1174.5 AND 1194 AND PURSUANT TO
LABOR CODE § 2699(a) FOR
VIOLATIONS OF LABOR CODE §§ 226.3
AND 558**

20
21 Plaintiff NATHAN ARELLANO ("Plaintiff"), on behalf of himself and others as an
22 "aggrieved employee" under the Labor Code Private Attorneys General Act of 2004, complains of
23 DAC SERVICE, INC. dba FOUR C'S CONSTRUCTION, a California corporation, and/or any
24 subsidiaries or affiliated companies (hereinafter referred to as "Defendant"), as follows:

25 \\\n

26 \\\n

27 \\\n

28 \\\n

I.

INTRODUCTION AND FACTUAL BACKGROUND

1. This is a Representative Action, pursuant to Labor Code § 2698 *et seq.*, on behalf of Plaintiff and other non-exempt California employees who currently work or formerly worked for Defendant (“Aggrieved Employees”).

2. For at least one (1) year prior to the filing of this action and at least one (1) year prior to the date Plaintiff began the process of exhausting the administrative requirements, pursuant to Labor Code § 2698 *et seq.*, and continuing to the present (the “liability period”), Defendant has had consistent policies of:

a. Failing to properly compute bonus wages and other non-base hourly wages earned by Plaintiff and other Aggrieved Employees into their regular rate of pay for purposes of paying them overtime wages at the correct rates, in violation of Labor Code §§ 510, 558 and 1194. Defendant failed to properly blend these bonus wages and other non-base hourly wages and instead paid Plaintiff and other Aggrieved Employees overtime based only on the base hourly rate of pay, thus depriving Plaintiff and other Aggrieved Employees of all overtime wages earned, in violation of Labor Code §§ 510, 558 and 1194.

b. Failing to pay Plaintiff and other Aggrieved Employees all overtime wages due because it failed to use the “weighted average” method to incorporate prevailing wages into the regular rate of pay for purposes of computing the proper overtime rates, in violation of Labor Code §§ 510, 558 and 1194. When an employee earns two or more rates by the same employer during a workweek (here a base hourly rate and a prevailing wage rate), the regular rate used to determine the proper overtime rate is calculated by dividing the employee’s total earnings for the workweek, including earnings during overtime hours, by the total hours worked during the workweek, including the overtime hours. Instead, when Plaintiff and other Aggrieved Employees earned prevailing wages, Defendant improperly paid overtime wages based only upon the base hourly rate of pay instead of weighted average of the prevailing wage rate and base hourly rate. This violates Labor Code §§ 510, 558 and 1194.

1 c. Failing to pay Plaintiff and Aggrieved Employees all minimum and overtime
2 wages earned during the course of employment, in violation of Labor Code §§ 510, 558, 1194 and
3 1194.2, and IWC Wage Order 16, when it rounded down the hours reflected on Plaintiff's and other
4 Aggrieved Employees' time records to pay fewer hours than were actually worked. On a weekly
5 basis, this rounding deprived Plaintiff and other Aggrieved Employees of significant hours worked.
6 Defendant also failed to pay all minimum and overtime wages due at the correct rates of pay when it
7 failed to pay Plaintiff and Aggrieved Employees for time spent traveling from their home to distant
8 jobsites and between jobsites. Pursuant to IWC Wage Order 16, "all employer-mandated travel that
9 occurs after the first location where the employee's presence is required by the employer shall be
10 compensated at the employee's *regular rate of pay*...." Defendant violated IWC Wage Order 16
11 because it compensated Plaintiff and Aggrieved Employees at the minimum wage, instead of their
12 regular rate of pay, for travel time to distant jobsites and between job sites. As a result, wages were
13 unpaid and are due. These failures to pay all minimum and overtime wages due constitute violations
14 of Labor Code §§ 510, 558, 1194 and 1194.2, and IWC Wage Order 16.

15 d. Failing to pay premium wages to Plaintiff and Aggrieved Employees who were
16 denied rest periods, in violation of Labor Code § 226.7 and IWC Wage Order No. 16-2001. Plaintiff
17 and Aggrieved Employees were routinely unable to take an off-duty 10-minute rest period for every
18 four (4) hours of work or major fraction thereof, but were not paid premium wages of one hour's pay
19 for each missed rest period. When they were able to take a rest period, they were improperly combined
20 with their meal period into a single hour-long break. This violates Labor Code §§ 226.7, 558, and
21 1174.5 and IWC Wage Order No. 16-2001.

22 e. Failing to pay premium wages to Plaintiff and other Aggrieved Employees who
23 were denied meal periods, in violation of Labor Code §§ 226.7, 512, 558 and IWC Wage Order 16-
24 2001. Plaintiff and Aggrieved Employees were routinely denied, and not authorized to take, a timely,
25 uninterrupted, 30-minute meal period for every shift worked that exceeded five hours in duration, or
26 a second timely, uninterrupted, 30-minute meal period for every shift worked that exceeded ten hours
27 in duration, but were not paid premium wages of one hour's pay for each missed first or second meal
28 period. When they were able to take a meal period, they were improperly combined with their rest

1 periods into a single hour-long break. Defendant would also automatically deduct 30-minutes of pay
2 to account for its employees' off-duty meal period, thereby rendering Defendant's meal period
3 records deficient. This violates Labor Code §§ 226.7, 512, 558, 1174, and 1174.5 and IWC Wage
4 Order No. 16-2001.

5 f. Failing to provide Plaintiff and other Aggrieved Employees with wage
6 statements that fully and accurately itemized the requirements set forth in Labor Code § 226(a).
7 Plaintiff and other Aggrieved Employees were not paid all minimum and overtime wages due and
8 meal and rest period premium wages due. As such, the wage statements provided by Defendant failed
9 to accurately state all gross wages earned, in violation of Labor Code §§ 226(a)(1) and 226.3, total
10 hours worked, in violation of Labor Code §§ 226(a)(2) and 226.3, net wages earned, in violation of
11 Labor Code §§ 226(a)(5) and 226.3, and all applicable hourly rates in effect during the pay period
12 and the corresponding number of hours worked, in violation of Labor Code §§ 226(a)(9) and 226.3.

13 g. Failing to pay Plaintiff and separated Aggrieved Employees all wages due at
14 the separation of their employment based on the time frames required by Labor Code §§ 201 and 202.
15 As stated above, Plaintiff and other Aggrieved Employees were not paid all wages due during the
16 course of their employment and, as a result of this failure, they were not timely paid all wages due at
17 the separation of their employment. This violates Labor Code §§ 201-202 and is alleged on behalf of
18 Plaintiff and separated Aggrieved Employees.

19 3. Plaintiff, on behalf of himself and all Aggrieved Employees pursuant to Labor Code §
20 2698 *et seq.*, seeks civil penalties for Defendant's violations of the California Labor Code.

21 4. Venue is proper in this judicial district, pursuant to Code of Civil Procedure § 395.
22 Some of the Labor Code violations alleged against Defendant herein arose in Merced County,
23 California.

24 II.

25 PARTIES

26 A. Plaintiff

27 5. Plaintiff NATHAN ARELLANO was employed by Defendant from June 2020
28 through January 2021 as a non-exempt field installer in Merced County, California.

1 **B. Defendants**

2 6. Defendant DAC SERVICE, INC. dba FOUR C'S CONSTRUCTION is a California
3 corporation. Defendant employed Plaintiff and Aggrieved Employees throughout the State of
4 California, including Merced County, California.

5 7. The true names and capacities, whether individual, corporate, associate, or otherwise,
6 of Defendants sued herein as DOES 1 to 10, inclusive, are currently unknown to Plaintiff, who
7 therefore sues Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiff is
8 informed and believes, and based thereon alleges, that each of the Defendants designated herein as a
9 DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will
10 seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendants
11 designated hereinafter as DOES when such identities become known.

12 8. Plaintiff is informed and believes, and based thereon alleges, that each Defendant acted
13 in all respects pertinent to this action as the agent of the other Defendant, carried out a joint scheme,
14 business plan or policy in all respects pertinent hereto, and the acts of each Defendant is legally
15 attributable to the other Defendants.

16 9. The Defendants named herein as DOE 1 through DOE 10 are and were persons acting
17 on behalf of, or acting jointly with, Defendants, who violated, or caused to be violated, one or more
18 provisions of the California Labor Code as alleged herein.

19 **III.**

20 **TOLLING AGREEMENT**

21 10. Plaintiff and Defendant entered into an agreement to toll the statute of limitations,
22 pursuant to California Code of Civil Procedure § 360.5, from May 14, 2021 through and including
23 July 1, 2021. As such, all periods of limitation (statutory or otherwise) affecting any and all claims
24 or causes of actions which Plaintiff may have against Defendant have been tolled between May 14,
25 2021 and July 1, 2021.

26 \\\

27 \\\

28 \\\

IV.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

**PLAINTIFF AND ALL AGGRIEVED EMPLOYEES AGAINST DEFENDANT
PENALTIES PURSUANT TO LABOR CODE § 2699(f) FOR VIOLATIONS OF LABOR
CODE §§ 201-202, 226(a), 226.7, 510, 512, 1174, 1174.5, AND 1194 AND PURSUANT TO
LABOR CODE § 2699(a) FOR VIOLATIONS OF LABOR CODE §§ 226.3 AND 558**

11. Plaintiff incorporates paragraphs 1 through 10 of this Complaint as though fully set forth herein.

12. As a result of the acts alleged above, including the Labor Code violations set forth in paragraph 2 above, Plaintiff seeks civil penalties pursuant to Labor Code §§ 2698 *et seq.*

13. For each such violation, Plaintiff and all other Aggrieved Employees are entitled to penalties and other relief in an amount to be shown at the time of trial subject to the following formula:

a. Pursuant to Labor Code § 2699(f), \$100 for each initial violation and \$200 for each subsequent violation of Labor Code §§ 201-202, 226(a), 226.7, 510, 512, 1174, 1174.5, and 1194; and

b. Pursuant to Labor Code § 2699(f), the penalties as authorized by Labor Code §§ 226.3 and 558.

14. Civil penalties recovered will be allocated 75% to the Labor and Workforce Development Agency, and 25% to the affected employees.

15. On March 10, 2021, Plaintiff sent a letter, by online submission to the LWDA and by certified mail, return receipt requested, to Defendant setting forth the facts and theories of the violations alleged against Defendant, as prescribed by Labor Code § 2698 *et seq.* Pursuant to Labor Code § 2699.3(a)(2)(A), no notice was received by Plaintiff from the LWDA within sixty-five (65) calendar days of March 10, 2021. Plaintiff may therefore commence this action to seek civil penalties pursuant to Labor Code § 2698 *et seq.*

Wherefore, Plaintiff and the Aggrieved Employees he seeks to represent request relief as described below.

V.

RELIEF REQUESTED

WHEREFORE, Plaintiff prays for the following relief:

1. For civil penalties pursuant to Labor Code § 2698 *et seq.* for Plaintiff and all other Aggrieved Employees;
2. An award providing for payment of costs of suit pursuant to Labor Code § 2699(g)(1) and other applicable law;
3. An award of attorneys' fees pursuant to Labor Code § 2699(g)(1) and other applicable law; and
4. Such other and further relief as this Court may deem just and proper.

Dated: July 1, 2021

Respectfully submitted,

GAINES & GAINES
A Professional Law Corporation

By: 
DANIEL F. GAINES
SEPIDEH ARDESTANI
Attorneys for Plaintiff

SUPERIOR COURT OF CALIFORNIA COUNTY OF MERCED 627 W. 21st Street Merced CA 95340 209-725-4100	<i>Reserved for Clerk's-File Stamp</i>
Nathan Arellano vs Dac Service, Inc.	FILED 2021 JUL -6 PM 3:42 <i>Tawn Saephanh</i> CLERK OF THE SUPERIOR COURT
NOTICE OF CASE MANAGEMENT CONFERENCE NOTICE OF INCLUSION IN DELAY REDUCTION PROGRAM	Case No. 21CV-02115

To All Parties and their Attorneys of Record:

Please take notice that the above-entitled action has been included in this Court's Delay Reduction Program. Local Rule 4 will hereafter apply to this action. You are required to comply with the guidelines for program cases as set forth in the above referenced Local Rule and the applicable California Rules of Court (CRC), including Rules 3.714(b)(1), 3.720-3.735.

Please note: Local Rules and ADR Packet may be reviewed on-line at www.merced.courts.ca.gov.

You are further advised that a Case Management Conference (CMC) in the above action has been scheduled, per Local Rule 4(B)(1)(a), for:

January 31, 2022 at 10:00 AM in Courtroom 8

Located at 627 West 21st Street Merced, CA 95340

Honorable Judge Brian McCabe, presiding.

Plaintiff must serve this Notice on all Parties to this action at the same time the Complaint is served. Failure to do so may cause unnecessary delay to this action.

Parties desiring to appear telephonically at the CMC shall comply with CRC, Rule 3.670 and Local Rule 4, and are responsible for making timely arrangements with CourtCall, LLC. CourtCall, LLC may be reached at (888) 882-6878. Notices of Telephonic Appearance may be placed on the CMC Statement or may be filed independently with the Court NOT LESS THAN THREE (3) COURT DAYS prior to the CMC. A Notice of Telephonic Appearance is deemed valid on any subsequent, continued CMCs.

PURSUANT TO CRC, RULE 3.724, THE PARTIES MUST MEET AND CONFER NO LATER THAN 30 DAYS PRIOR TO THE CMC.

A **CMC Statement** shall be filed with the Court no later than **15 days** prior to the date set for the **CMC**. Parties shall use **Judicial Council form CM-110** (CRC 3.725). This form is available at the Court Clerks Office or on-line at www.courtinfo.ca.gov.

If you have any further questions regarding this Notice, please contact the undersigned at the number indicated above.

Alex P Katofsky
 27200 Agoura Road Suite 101
 Agoura Hills CA 91301
 Date: 7/6/2021

Amanda Toste, Court Executive Officer

Tawn Saephanh
 Printed Name

By: *Tawn Saephanh*
 Deputy Clerk