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13 and on behalf of the general public.

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN JOAQUIN

JOSHUA MCBRIDE, individually and on
behalf of all the general public,

Plaintiff,

vs.

ACRT PACIFIC, LLC; ACRT, INC.; and
DOES 1 through 20, inclusive,

Defendants.

Case No.:

STK-CV-~~VOE~~-2021- 5101

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

FILED
21 JUN -4 PM 4:09
BRANDON F. RILEY, CLERK
BY JESSICA CAYO
DEPUTY

BY FAX

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

3 **NATURE OF ACTION AND INTRODUCTORY STATEMENT**

4 1. Plaintiff Joshua McBride (“Plaintiff”) brings this representative action pursuant to
5 California Code of Civil Procedure section 382, on behalf of Plaintiff individually and on behalf of
6 other aggrieved employees employed by, or formerly employed by, ACRT Pacific, LLC; ACRT,
7 Inc.; and DOES 1 through 20, inclusive (collectively, “Defendants”) within the State of California.

8 2. Defendants are in the business of utility vegetation management.

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

11 (a) Failing to pay minimum wage and overtime wages;

12 (b) Failing to provide meal periods or compensation in lieu thereof;

13 (c) Failing to authorize or permit rest breaks or provide compensation in lieu
14 thereof;

15 (d) Willfully failing to provide accurate, semi-monthly itemized wage
16 statements; and

17 (e) Failing to pay all wages due upon separation of employment.

18 4. Plaintiff seeks monetary relief against Defendants on behalf of himself and all
19 others aggrieved employees in California to recover, among other things, civil penalties pursuant
20 to Labor Code §§ 2698 *et seq.*, interest, attorneys’ fees, costs and expenses.

21 **JURISDICTION AND VENUE**

22 6. This is a representative action pursuant to Private Attorneys General Act of 2004
23 (Cal. Lab. Code §§ 2698, *et seq.*)(“PAGA”). The civil penalties sought by Plaintiff exceeds the
24 minimal jurisdictional limits of the Superior Court and will be established according to proof at
25 trial.

26 7. This Court has jurisdiction over this action pursuant to the California Constitution,
27 Article VI, § 10, which grants the Superior Court original jurisdiction in all causes except those
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1 given by statutes to other courts. The statutes under which this action is brought do not specify any
2 other basis for jurisdiction.

3 8. This Court has jurisdiction over all Defendants because, upon information and
4 belief, they are citizens of California, have sufficient minimum contacts in California or otherwise
5 intentionally avail themselves of the California market so as to render the exercise of jurisdiction
6 over them by the California courts consistent with traditional notions of fair play and substantial
7 justice.

8 **THE PARTIES**

9 9. Plaintiff Joshua McBride is a resident of California. Plaintiff was employed by
10 Defendants during the relevant time period in California.

11 10. Plaintiff is informed and believes, and thereon alleges, that Defendants were and
12 are corporations doing business in California and, at all times hereinafter mentioned, were and are
13 employers as defined in and subject to the Labor Code and IWC Wage Orders, whose employees
14 are engaged throughout this county and the State of California.

15 11. Plaintiff is unaware of the true names or capacities of the Defendants sued herein
16 under the fictitious names DOES 1 through 20, but will seek leave of this Court to amend this
17 Complaint and serve such fictitiously named Defendants once their names and capacities become
18 known.

19 12. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 20 are
20 the partners, agents, owners, shareholders, managers or employees of Defendants, at all relevant
21 times.

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

27 14. At all relevant times, Defendants, and each of them, acted within the scope of such
28 agency or employment, or ratified each and every act or omission complained of herein. At all

1 relevant times, Defendants, and each of them, aided and abetted the acts and omissions of each and
2 all the other Defendants in proximately causing the damages herein alleged.

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

6 **GENERAL ALLEGATIONS**

7 16. At all relevant times mentioned herein, Defendants employed Plaintiff and other
8 persons as non-exempt employees.

9 17. Defendants employed Plaintiff in a non-exempt position at Defendants' California
10 business location(s) during the relevant time period.

11 18. Defendants continue to employ non-exempt employees within California.

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

16 20. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
17 should have known that Plaintiff and other aggrieved employees were entitled to receive at least
18 minimum wage and, when applicable, overtime compensation for all hours worked. In violation of
19 the Labor Code and IWC Wage Orders, Plaintiff and other aggrieved employees were not properly
20 paid all earned wages because Defendants rounded Plaintiff's and other aggrieved employees' time
21 punches to Defendants' advantage, required Plaintiff and other aggrieved employees to work while
22 clocked out, and failed to include incentive pay in the overtime rate paid to Plaintiff and other
23 aggrieved employees, among other violations.

24 21. 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 certain
26 wages for overtime compensation. In violation of the Labor Code and IWC Wage Orders, Plaintiff
27 and other aggrieved employees were not properly paid for all of their overtime because Defendants
28 required Plaintiff and other aggrieved employees to work outside of their regularly scheduled

1 alternative workweek schedule and failed to pay them proper overtime compensation.
2 Alternatively, Defendants failed to implement a proper alternative workweek and thus owe Plaintiff
3 and other aggrieved employees unpaid overtime.

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

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

18 24. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
19 should have known that Plaintiff and other aggrieved employees were entitled to timely payment
20 of wages due upon separation of employment. In violation of the Labor Code, Plaintiff and other
21 aggrieved employees did not receive payment of all wages including, but not limited to, unpaid
22 overtime compensation, within permissible time periods.

23 25. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
24 should have known that Plaintiff and other aggrieved employees were entitled to receive complete
25 and accurate wage statements in accordance with California law. In violation of the California
26 Labor Code, Plaintiff and other aggrieved employees were not furnished with complete and
27 accurate wage statements showing their accurate gross and net wages, and the number of hours
28 worked at each applicable hourly rate, among other things.

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

5 **FIRST CAUSE OF ACTION**

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

7 27. Plaintiff re-alleges and incorporates by reference the previous paragraphs as though
8 fully set forth herein.

9 28. Pursuant to Labor Code § 2699(a), any provision of the Labor Code that provides
10 for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency
11 ("LWDA") or any of its departments, divisions, commissions, boards, agencies, or employees for
12 violation of the Labor Code may, as an alternative, be recovered through a civil action brought by
13 an aggrieved employee on behalf of himself or herself and other current or former employees
14 pursuant to the procedures specified in Labor Code § 2699.3.

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

20 30. Defendants' conduct violates numerous Labor Code sections, including, but not
21 limited to, the following:

22 (a) violation of Labor Code §§ 201, 202, 203, 204, 510, 511, 1194, and 1198 for
23 failure to timely pay all earned wages (including overtime wages) owed to Plaintiff and
24 other aggrieved employees during employment and upon separation of employment as
25 herein alleged;

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

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

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

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

9 31. Plaintiff is an “aggrieved employee” because he was employed by the alleged
10 violator and had one or more of the violations committed against him, and therefore is properly
11 suited to represent the interests of all other aggrieved employees.

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

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

18 34. For bringing this action, Plaintiff is entitled to attorneys’ fees and costs incurred
19 herein.

20 **PRAYER FOR RELIEF**

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

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

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

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

Dated: June 2, 2021

AEGIS LAW FIRM, PC

By: 

Jessica L. Campbell
Attorneys for Plaintiff Joshua McBride