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Assigned for all Purposes

Judge Glenda Sanders

CX-101

Attorneys for Plaintiff EDGAR HERRERA
individually, and on behalf of other
aggrieved employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

EDGAR HERRERA, individually, and on
behalf of others similarly situated

Plaintiff,

vs.

P.W. STEPHENS ENVIRONMENTAL, INC.,
a corporation; and DOES 1 through 50,
inclusive,

Defendants.

CASE NO.: 30-2021-01222533-CU-OE-CXC

**[COMPLAINT FOR VIOLATION OF
THE CALIFORNIA LABOR CODE
PRIVATE ATTORNEYS GENERAL
ACT OF 2004**

[California Labor Code § 2698, *et seq.*]

DEMAND FOR JURY TRIAL

1 PLAINTIFF EDGAR HERRERA (“PLAINTIFF”), individually and on behalf of all other
2 aggrieved employees, demanding a jury trial, hereby alleges as follows:

3 **INTRODUCTION**

4 1. PLAINTIFF brings this action on behalf of himself and all other aggrieved
5 employees of Defendants P.W. STEPHENS ENVIRONMENTAL, INC., a corporation, and DOES
6 1 through 50, inclusive (collectively “DEFENDANTS”) to recover penalties arising from unpaid
7 wages earned and due, including but not limited to unpaid and illegally calculated overtime
8 compensation, illegal meal and rest period policies, failure to pay all wages due to discharged or
9 quitting employees, failure to maintain required records, failure to provide accurate itemized
10 wage statements, failure to timely pay wages during employment, failure to indemnify employees
11 for necessary expenditures and/or losses incurred in discharging their duties.

12 **JURISDICTION AND VENUE**

13 2. The Superior Court of the State of California has jurisdiction in this matter because
14 PLAINTIFF is a resident of the State of California and DEFENDANTS are citizens and residents
15 of, and/or regularly conduct business in California. Further, no federal question is at issue
16 because the claims are based solely on California law.

17 3. Venue is proper in this judicial district and the County of Orange, California
18 because PLAINTIFF and other aggrieved employees performed work for DEFENDANTS in the
19 County of Orange and many of DEFENDANTS’ unlawful actions and omissions, as set forth
20 herein, occurred in the County of Orange.

21 **PARTIES**

22 4. PLAINTIFF is a resident of the State of California. At times material to this
23 complaint, PLAINTIFF was employed by DEFENDANTS as a non-exempt employee within the
24 State of California.

25 5. PLAINTIFF is informed and believes, and thereon alleges, that DEFENDANT
26 P.W. STEPHENS ENVIRONMENTAL, INC is, and at all times relevant hereto was, a corporation
27 authorized to conduct business in the State of California, and does conduct business in the State
28 of California. Specifically, upon information and belief, DEFENDANT P.W. STEPHENS

1 ENVIRONMENTAL, INC. maintains offices and conducts business in the County of Orange,
2 State of California.

3 6. The true names and capacities of DOES 1 through 50, inclusive, are unknown to
4 PLAINTIFF at this time, and PLAINTIFF therefore sues such Defendants under fictitious names.
5 PLAINTIFF is informed and believes, and thereon alleges, that each Defendant designated as a
6 DOE is in some manner highly responsible for the occurrences alleged herein, and that
7 PLAINTIFF and other aggrieved employees' injuries and damages, as alleged herein, were
8 proximately caused by the conduct of such DOE Defendants. PLAINTIFF will seek leave of the
9 court to amend this complaint to allege the true names and capacities of such DOE Defendants
10 when ascertained.

11 7. At all relevant times herein, DEFENDANTS were the joint employers of
12 PLAINTIFF and other aggrieved employees. PLAINTIFF is informed and believes, and thereon
13 alleges, that at all times material to this complaint DEFENDANTS were the alter egos, divisions,
14 affiliates, integrated enterprises, joint employers, subsidiaries, parents, principals, related entities,
15 co-conspirators, authorized agents, partners, joint venturers, and/or guarantors, actual or
16 ostensible, of each other. Each defendant was completely dominated by his, her, or its co-
17 defendant, and each was the alter ego of the other.

18 8. At all relevant times herein, PLAINTIFF and other aggrieved employees were
19 employed by DEFENDANTS under employment agreements that were partly written, partly oral,
20 and partly implied. In perpetrating the acts and omissions alleged herein, DEFENDANTS, and
21 each of them, acted pursuant to, and in furtherance of, their policies and practices of not paying
22 PLAINTIFF and other aggrieved employees all wages earned and due, through methods and
23 schemes which include, but are not limited to, failing to pay overtime premiums; failing to
24 provide rest and meal periods; failing to properly maintain records; failing to provide accurate
25 itemized statements for each pay period; failing to timely pay wages during employment; failing
26 to properly compensate PLAINTIFF and other aggrieved employees for necessary expenditures;
27 and requiring, permitting or suffering the employees to work off the clock, in violation of the
28 California Labor Code ("Labor Code") and the applicable Industrial Welfare Commission

1 (“IWC”) Wage Order.

2 9. PLAINTIFF is informed and believes, and thereon alleges, that each and every one
3 of the acts and omissions alleged herein were performed by, and/or attributable to, all
4 DEFENDANTS, each acting as agents and/or employees, and/or under the direction and control
5 of, each of the other DEFENDANTS, and that said acts and failures to act were within the course
6 and scope of said agency, employment and/or direction and control.

7 10. Pursuant to California Labor Code § 558.1, DEFENDANTS and any person acting
8 on behalf of any of the DEFENDANTS, are liable for violating, or causing to violate, any
9 provision regulating minimum wages or hours and days of work in any order of the Industrial
10 Welfare Commission, or Labor Code §§ 203, 226, 226.7, 1193.6, 1194, or 2802.

11 **PAGA REPRESENTATIVE ACTION ALLEGATIONS**

12 11. Pursuant to the California Private Attorneys General Act of 2004 (“PAGA”),
13 Labor Code §§ 2698-2699.5, PLAINTIFF brings this action on behalf of himself and all current
14 and former non-exempt aggrieved employees of DEFENDANTS in the State of California at any
15 time within the period beginning one (1) year and sixty five (65) days prior to the filing of this
16 action, and ending at the time this action settles or proceeds to final judgment (“PENALTY
17 PERIOD”).

18 12. Pursuant to Labor Code § 2699.3, PLAINTIFF gave written notice on May 14,
19 2021 by online submission to the California Labor and Workforce Development Agency
20 (“LWDA”) and by certified mail to DEFENDANTS of the specific provisions of the Labor Code
21 and IWC Wage Orders alleged to have been violated, including the facts and theories to support
22 the alleged violations. PLAINTIFF has not received any response from the LWDA. As
23 PLAINTIFF has waited more than sixty-five (65) days from the May 14, 2021 date of
24 PLAINTIFF’S written notice before filing this action, PLAINTIFF has complied with all of the
25 requirements set forth in Labor Code § 2699.3 to commence a representative action under PAGA.

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1 **FACTUAL ALLEGATIONS**

2 **Failure to Provide Required Meal Periods**

3 **[Cal. Labor Code §§ 226.7, 510, 512, 1194, 1197; IWC Wage Order No. 16-2001, § 11]**

4 13. During the PENALTY PERIOD, as part of DEFENDANTS' illegal policies and
5 practices to deprive their current and former non-exempt employees all wages earned and due,
6 DEFENDANTS required, suffered or permitted PLAINTIFF and other aggrieved employees to
7 take less than the 30-minute meal period, or to work through them, and have failed to otherwise
8 provide the required meal periods to PLAINTIFF and other aggrieved employees pursuant to
9 Labor Code §§ 226.7 and 512 and IWC Order No. 13-2001, § 11.

10 14. DEFENDANTS further violated Labor Code §§ 226.7 and 512 and IWC Wage
11 Order No. 16-2001, § 11 by failing to compensate PLAINTIFF and other aggrieved employees
12 who were not provided with a meal period, in accordance with the applicable IWC Wage Order,
13 one additional hour of compensation at each employee's regular rate of pay for each workday that
14 a meal period was not provided.

15 15. DEFENDANTS further violated California Labor Code §§ 226.7, 510, 1194,
16 1197, and IWC Wage Order No. 16-2001 by failing to compensate PLAINTIFF and other
17 aggrieved employees for all hours worked during their meal periods

18 **Failure to Provide Required Rest Periods**

19 **[Cal. Labor Code §§ 226.7, 512; IWC Wage Order No. 16-2001, § 12]**

20 16. At all times relevant herein, as part of DEFENDANTS' illegal policies and
21 practices to deprive their current and former non-exempt employees all wages earned and due,
22 DEFENDANTS failed to provide rest periods to PLAINTIFF and other aggrieved employees as
23 required under Labor Code § 226.7, and IWC Wage Order No. 16-2001, § 12.

24 17. DEFENDANTS further violated Labor Code § 226.7 and IWC Wage Order No.
25 16-2001, § 12 by failing to pay PLAINTIFF and other aggrieved employees who were not
26 provided with a rest period, in accordance with the applicable IWC Wage Order, one additional
27 hour of compensation at each employee's regular rate of pay for each workday that a rest period
28 was not provided.

1 **Failure to Pay Overtime Wages**

2 **[Cal. Labor Code §§ 510, 1194, 1198; IWC Wage Order No. 16-2001, § 3]**

3 18. Pursuant to Labor Code §§ 510 and 1194 and IWC Wage Order No. 16-2001, § 3,
4 DEFENDANTS are required to compensate PLAINTIFF and other aggrieved employees for all
5 overtime, which is calculated at one and one-half (1 ½) times the regular rate of pay for all hours
6 worked in excess of eight (8) hours per day and/or forty (40) hours per week, and for the first
7 eight (8) hours on the seventh consecutive workday, with double time for all hours worked in
8 excess of twelve (12) hours in any workday and for all hours worked in excess of eight (8) hours
9 on the seventh consecutive day of work in any workweek.

10 19. PLAINTIFF and other aggrieved employees are current and former non-exempt
11 employees of DEFENDANTS entitled to the protections of Labor Code §§ 510 and 1194 and
12 IWC Wage Order No. 16-2001. During the PENALTY PERIOD, DEFENDANTS failed to
13 compensate PLAINTIFF and other aggrieved employees for all overtime hours worked as
14 required under the foregoing provisions of the Labor Code and IWC Wage Order by, among other
15 things: failing to pay overtime at one and one-half (1 ½) or double the regular rate of pay as
16 provided by Labor Code §§ 510, 1194, and IWC Wage Order No. 16-2001, § 3; requiring,
17 suffering or permitting PLAINTIFF and other aggrieved employees to work off the clock;
18 requiring, permitting or suffering PLAINTIFF and other aggrieved employees to work through
19 meal breaks; illegally and inaccurately recording time in which PLAINTIFF and other aggrieved
20 employees worked; failing to properly maintain PLAINTIFF'S and other aggrieved employees'
21 records; failing to provide accurate itemized wage statements to PLAINTIFF and other aggrieved
22 employees for each pay period; and other methods to be discovered.

23 20. DEFENDANTS have knowingly and willfully refused to perform their obligations
24 to compensate PLAINTIFF and other aggrieved employees for all wages earned and all hours
25 worked in violation of Labor Code §§ 510, 1194 and 1198 and IWC Wage Order No. 16-2001, §
26 3.

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1 **Failure to Pay Minimum Wages**

2 **[Cal Labor Code §§ 1194, 1197; IWC Wage Order No. 16-2001, § 4]**

3 21. Pursuant to California Labor Code §§ 1194 and 1197 and IWC Wage Order No.
4 16-2001, § 4, payment to an employee of less than the applicable minimum wage for all hours
5 worked in a payroll period is unlawful.

6 22. During the PENALTY PERIOD and in violation of California Labor Code §§ 1194
7 and 1197 and IWC Wage Order No. 16-2001, § 4, DEFENDANTS failed to pay PLAINTIFF and
8 other aggrieved employees the applicable minimum wages for all hours worked in a payroll
9 period by, among other things: requiring, suffering or permitting PLAINTIFF and other aggrieved
10 employees to work off the clock; requiring, suffering or permitting PLAINTIFF and other
11 aggrieved employees to work through meal breaks; illegally and inaccurately recording time in
12 which PLAINTIFF and other aggrieved employees worked; failing to properly maintain
13 PLAINTIFF's and other aggrieved employees' records; failing to provide accurate itemized wage
14 statements to PLAINTIFF and other aggrieved employees for each pay period; and other methods
15 to be discovered.

16 **Failure to Timely Pay Wages During Employment**

17 **[Cal. Labor Code § 204]**

18 23. Pursuant to California Labor Code § 204, for all labor performed between the 1st
19 and 15th days of any calendar month, DEFENDANTS are required to pay their nonexempt
20 employees between the 16th and 26th day of the month during which the labor was performed.
21 California Labor Code § 204 also provides that for all labor performed between the 16th and 26th
22 days of any calendar month, DEFENDANTS are required to pay their nonexempt employees
23 between the 1st and 10th day of the following calendar month. In addition, California Labor
24 Code § 204 provides that all wages earned for labor in excess of the normal work period shall be
25 paid no later than the payday of the next regular payroll period.

26 24. During the PENALTY PERIOD, DEFENDANTS knowingly and willfully failed
27 to timely pay PLAINTIFF and other aggrieved employees all the wages for labor performed by
28 the next regular payroll period as required by California Labor Code § 204.

1 **Failure to Pay All Wages Due to Discharged and Quitting Employees**

2 **[Cal. Labor Code §§ 201, 202, 203]**

3 25. Pursuant to Labor Code § 201, 202 and 203, DEFENDANTS are required to pay
4 all earned and unpaid wages to an employee who is discharged. Labor Code § 201 mandates that
5 if an employer discharges an employee, the employee's wages accrued and unpaid at the time of
6 discharge are due and payable immediately.

7 26. Furthermore, pursuant to Labor Code § 202, DEFENDANTS are required to pay
8 all accrued wages due to an employee no later than 72 hours after the employee quits his or her
9 employment, unless the employee provided 72 hours previous notice of his or her intention to
10 quit, in which case the employee is entitled to his or wages at the time of quitting.

11 27. Labor Code § 203 provides that if an employer willfully fails to pay, in accordance
12 with Labor Code §§ 201 and 202, any wages of an employee who is discharged or who quits, the
13 employer is liable for waiting time penalties in the form of continued compensation to the
14 employee at the same rate for up to 30 workdays.

15 28. During the PENALTY PERIOD and in violation of Labor Code §§ 201 and 202,
16 DEFENDANTS willfully failed to timely pay accrued wages and other compensation to
17 aggrieved employees who were discharged or quit their employment.

18 **Failure to Maintain Required Records**

19 **[Cal. Labor Code §§ 226(a), 1174; IWC Wage Order No. 16-2001, § 7]**

20 29. During the PENALTY PERIOD, as part of DEFENDANTS' illegal payroll
21 policies and practices to deprive PLAINTIFF and other aggrieved employees of all wages earned
22 and due, DEFENDANTS knowingly and intentionally failed to maintain records as required
23 under Labor Code §§ 226(a) and 1174 and IWC Wage Order No. 16-2001, § 7, including but not
24 limited to the following records: total daily hours worked by each employee; applicable rates of
25 pay; all deductions; meal periods; time records showing when each employee begins and ends
26 each work period; and accurate itemized statements.

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1 **Failure to Furnish Accurate Itemized Wage Statements**

2 **[Cal. Labor Code § 226(a), 1174; IWC Wage Order No. 16-2001, § 7]**

3 30. During the PENALTY PERIOD, DEFENDANTS routinely failed and continue to
4 fail to provide PLAINTIFF and other aggrieved employees with timely and accurate itemized
5 wage statements in writing showing each employee's gross wages earned, total hours worked, the
6 number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-
7 rate basis, all deductions made, net wages earned, the inclusive dates of the period for which the
8 employee is paid, the name of the employee and only the last four digits of his or her social
9 security number or employee identification number, the name and address of the legal entity or
10 entities employing PLAINTIFF and other aggrieved employees, and all applicable hourly rates in
11 effect during each pay period and the corresponding number of hours worked at each hourly rate,
12 in violation of California Labor Code § 226(a) and IWC Wage Order No. 16-2001 § 7.

13 31. During the PENALTY PERIOD, DEFENDANTS knowingly and intentionally
14 failed to provide PLAINTIFF and other aggrieved employees with timely and accurate itemized
15 wage statements in accordance with Labor Code § 226(a).

16 32. During the PENALTY PERIOD, PLAINTIFF and other aggrieved employees
17 suffered injury as a result of DEFENDANTS' failure to provide timely and accurate itemized
18 wage statements as PLAINTIFF and other aggrieved employees could not promptly and easily
19 determine from the wage statement alone one or more of the following: the gross wages earned,
20 the total hours worked, all deductions made, the net wages earned, the name and address of the
21 legal entity or entities employing PLAINTIFF and other aggrieved employees, and/or all
22 applicable hourly rates in effect during each pay period and the corresponding number of hours
23 worked at each hourly rate.

24 **Failure to Indemnify for Necessary Expenditures Incurred in Discharge of Duties**

25 **[Cal. Labor Code § 2802]**

26 33. Labor Code § 2802(a) requires an employer to indemnify an employee for all
27 necessary expenditures or losses incurred by the employee in direct consequence of the discharge
28 of his or her duties, or of his or her obedience to the directions of the employer.

34. During the PENALTY PERIOD, DEFENDANTS knowingly and willfully failed to indemnify PLAINTIFF and other aggrieved employees for all business expenses and/or losses incurred in direct consequence of the discharge of their duties while working under the direction of DEFENDANTS, including but not limited to expenses for specialty equipment, uniforms, laundry and cleaning costs (including those illegally directly withdrawn from PLAINTIFF and other aggrieved employees' paychecks), and other employment-related expenses, in violation of Labor Code § 2802.

FIRST CAUSE OF ACTION

VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT

[Cal. Labor Code § 2698, *et seq.*]

(Against All DEFENDANTS)

35. PLAINTIFF incorporates herein by specific reference, as though fully set forth, the allegations in paragraphs 1 through 33.

36. PLAINTIFF is an “aggrieved employee” within the meaning of Labor Code § 2699(c), and a proper representative to bring a civil action on behalf of himself and other current and former non-exempt employees of DEFENDANTS pursuant to the procedures specified in Labor Code § 2699.3, because PLAINTIFF was employed by DEFENDANTS and one or more of the alleged Labor Code violations was committed against PLAINTIFF during the PENALTY PERIOD.

37. PLAINTIFF seeks to recover civil penalties through a representative action permitted by PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal.4th 969. Thus, class certification is not required.

38. Pursuant to Labor Code §§ 2698-2699.5, PLAINTIFF seeks to recover civil penalties from DEFENDANTS in a representative action for the violations set forth above, including but not limited to violations of Labor Code §§ 201, 202, 203, 204, 226(a), 226.7, 510, 512, 1174(d), 1194, 1197, 1198, and 2802.

39. Pursuant to Labor Code § 2699(a), PLAINTIFF seeks civil penalties for DEFENDANTS' violations of Labor Code provisions for which a civil penalty is specifically

1 provided, including but not limited to the following:

- 2 a. Pursuant to Labor Code § 210, for violations of Labor Code § 204,
3 DEFENDANTS are subject to a civil penalty in the amount of one hundred
4 dollars (\$100) for the initial violation for each failure to pay each employee
5 and two hundred dollars (\$200) per employee for violations in subsequent
6 pay periods.
- 7 b. Pursuant to Labor Code § 226.3, for violations of Labor Code § 226(a),
8 DEFENDANTS are subject to a civil penalty in the amount of two hundred
9 and fifty dollars (\$250) per aggrieved employee for the initial pay period
10 where a violation occurs and one thousand dollars (\$1,000) per aggrieved
11 employee for violations in subsequent pay periods.
- 12 c. Pursuant to Labor Code § 558(a), “[a]ny employer or other person acting
13 on behalf of an employer who violates, or causes to be violated, a section
14 of this chapter or any provision regulating hours and days of work in any
15 order of the Industrial Welfare Commission,” including Labor Code §§ 510
16 and 512, shall be subject to a civil penalty, in addition to any other penalty
17 provided by law, of fifty dollars (\$50) for initial violations for each
18 underpaid employee for each pay period for which the employee was
19 underpaid and one hundred dollars (\$100) for each subsequent violation for
20 each underpaid employee for each pay period for which the employee was
21 underpaid. In addition, PLAINTIFF seeks civil penalties in the amount
22 sufficient to recover unpaid wages owed to aggrieved employees pursuant
23 to Labor Code § 558(a).
- 24 d. Pursuant to Labor Code § 1174.5, for violations of Labor Code § 1174(d),
25 DEFENDANTS are subject to a civil penalty of five hundred dollars
26 (\$500).
- 27 e. Pursuant to Labor Code § 1197.1, an employer who pays or causes to be
28 paid to any employee a wage less than the minimum fixed by an order of

1 the commission, shall be subject to a civil penalty as follows: for any initial
2 violation that is intentionally committed, one hundred dollars (\$100) for
3 each underpaid employee for each pay period for which the employee is
4 underpaid; and for each subsequent violation of the same offense, two
5 hundred fifty dollars (\$250) for each underpaid employee for each pay
6 period for which the employee is underpaid regardless of whether the
7 initial violation was intentionally committed.

8 40. Labor Code § 2699(f) provides that for all Labor Code violations for which a civil
9 penalty is not specifically provided, the following civil penalties are established: one hundred
10 dollars (\$100) for each aggrieved employee per pay period for the initial violation and two
11 hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.
12 PLAINTIFF seeks such civil penalties under Labor Code § 2699(f) for DEFENDANTS'
13 violations of Labor Code provisions for which a civil penalty is not specifically provided,
14 including but not limited to Labor Code §§ 201, 202, 203, 226.7, 1194, 1197, 1198, and 2802.

15 41. PLAINTIFF additionally seeks reasonable attorney's fees and costs pursuant to
16 Labor Code § 2699(g)(1).

17 **PRAYER FOR RELIEF**

18 WHEREFORE, PLAINTIFF, individually and on behalf of all other aggrieved employees,
19 pray for relief against DEFENDANTS as follows:

20 1. For civil penalties according to proof, including but not limited to the amount of
21 any unpaid wages of PLAINTIFF and other aggrieved employees and all penalties authorized by
22 the Labor Code §§ 210, 226.3, 558, 1174.5, 1197.1, and 2699(a) and (f);

23 2. For interest at the legal rate pursuant to Labor Code §§ 218.6, 1194, 2802,
24 California Civil Code §§ 3287, 3288, and/or any other applicable provision providing for pre-
25 judgment interest;

26 3. For reasonable attorney's fees and costs pursuant to Labor Code § 2699(g) and/or
27 any other applicable provisions providing for attorney's fees and costs; and

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4. For such further relief that the Court may deem just and proper.

DATED: September 20, 2021

Respectfully submitted,

MATERN LAW GROUP, PC

By: 

Matthew J. Matern
Tagore O. Subramaniam
Attorneys for Plaintiff
EDGAR HERRERA, individually, and on
behalf of other aggrieved employees

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DATED: September 20, 2021

MATERN LAW GROUP, PC

True Love !!

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