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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF SAN FRANCISCO

ELECTRONICALLY
FILED
Superior Court of California,
County of San Francisco

09/16/2021
Clerk of the Court
BY: JACKIE LAPREVOTTE
Deputy Clerk

CGC-21-595246

10
11 MATTHEW CORNELL, individually and on
behalf of other persons similarly situated,

12 PLAINTIFF,

13 v.

14 UNITED PARCEL SERVICE, INC., an Ohio
15 corporation, and DOES 1 through 50,
inclusive,

16 DEFENDANT.
17

Case No.

**COMPLAINT FOR CIVIL PENALTIES
UNDER THE PRIVATE ATTORNEYS
GENERAL ACT (PAGA)**

JURY TRIAL DEMANDED

18 Plaintiff MATTHEW CORNELL ("PLAINTIFF"), on behalf of himself and all others
19 similarly situated including all current and former non-exempt employees of DEFENDANT
20 (collectively, "Aggrieved Employees"), allege against Defendant UNITED PARCEL SERVICE,
21 INC. and DOES 1-50, and each of them (collectively, "DEFENDANT"), as follows.

22 **JURISDICTION AND VENUE**

23 1. The Superior Court of the State of California has jurisdiction in this matter because
24 PLAINTIFF is a resident of the State of California, and Defendant UNITED PARCEL SERVICE,
25 INC., an Ohio corporation, is a foreign corporation registered in California and regularly doing
26 business in California.

27 2. Venue is proper in this judicial district and the County of Madera, California, because
28 PLAINTIFF and the Aggrieved Employees, performed work for DEFENDANT in the County of San

1 Francisco, DEFENDANT maintains an office and/or facilities in the County of San Francisco,
2 transacts business in the County of San Francisco, and because DEFENDANT'S illegal payroll
3 policies and practices that are the subject of this action were applied, at least in part, to Aggrieved
4 Employees in the County of San Francisco.

5 3. PLAINTIFF is an individual who, at all times relevant herein, was residing in the
6 State of California, and is a former employee of DEFENDANT.

7 **GENERAL ALLEGATIONS**

8 4. PLAINTIFF, on behalf of himself and the Aggrieved Employees of DEFENDANT
9 in the State of California at any time during the one year preceding the filing of this action and
10 continuing while this action is pending, brings this collective action to recover, among other things,
11 penalties from unpaid wages earned and due, including but not limited to unpaid minimum wages,
12 unpaid and illegally calculated overtime compensation, failure to pay all wages due to discharged
13 and quitting employees, failure to indemnify employees for necessary expenditures and/or losses
14 incurred in discharging their duties, failure to provide accurate itemized wage statements, failure to
15 maintain required records, failure to provide sick pay, failure to provide COVID-19 supplemental
16 sick pay, and interest, attorneys' fees, costs, and expenses.

17 5. PLAINTIFF brings this action on behalf of himself and the Aggrieved Employees of
18 DEFENDANTS in the State of California at any time within the period beginning one year prior to
19 the filing of this action and ending at the time this action settles or proceeds to final judgment.
20 Plaintiff reserves the right to name additional class representatives.

21 6. The true names and capacities of DOES 1 through 50, inclusive, are unknown to
22 PLAINTIFF at this time, and PLAINTIFF therefore sues such Doe defendants under fictitious
23 names. PLAINTIFF is informed and believes, and thereon alleges, that each defendant designated
24 as a Doe is in some manner highly responsible for the occurrences alleged herein, and that
25 PLAINTIFF and Aggrieved Employees' injuries and damages, as alleged herein, were
26 proximately caused by the conduct of such Doe defendants. PLAINTIFF will seek leave of court
27 to amend this Complaint to allege their true names and capacities of such Doe defendants when
28 ascertained.

1 7. PLAINTIFF is informed and believes, and thereon alleges, that the DEFENDANT
2 named herein, including each of the Doe defendants, were acting at all relevant times herein, as the
3 agent, ostensible agent, joint venturer, joint employer, alter ego, servant, employee, co-conspirator,
4 or associate of each other, and were at all times acting within the course and scope of said agency,
5 servitude, employment, joint venture, association, or conspiracy and with the permission and
6 consent of each other.

7 8. PLAINTIFF is informed and believes, and thereon alleges that, at all times relevant
8 to this Complaint, DEFENDANT, including each of the Doe defendants, were or are the joint
9 employers of PLAINTIFF and all aggrieved employees, in that DEFENDANT exercised sufficient
10 control over PLAINTIFF's and the Aggrieved Employees' wages, hours, and working conditions,
11 or suffered or permitted PLAINTIFF and the Aggrieved Employees to work, so as to be considered
12 the joint employers of PLAINTIFF. As such, DEFENDANT, including Doe defendants, and each
13 of them, are directly liable for the violations of law alleged herein.

14 9. At all relevant times herein, PLAINTIFF and the Aggrieved Employees were
15 employed by DEFENDANT under written employment agreements. In perpetrating the acts and
16 omissions alleged herein, PLAINTIFF is informed and believes, and thereon alleges, DEFENDANT
17 acted pursuant to, and in furtherance of, its policies and practices of not paying PLAINTIFF and the
18 Aggrieved Employees all wages earned and due, through methods and schemes which include, but
19 are not limited to, failing to pay overtime premiums; failing to provide rest and meal periods; failing
20 to properly maintain records; failing to provide accurate itemized statements for each pay period;
21 failing to pay all accrued sick leave wages; failing to provide COVID-19 supplemental paid sick
22 leave; and requiring, permitting, or suffering the employees to work off the clock, in violation of
23 the California Labor Code and the applicable Industrial Welfare Commission ("IWC") Orders.

24 10. PLAINTIFF is informed and believes, and thereon alleges, that each and every one
25 of the acts and omissions alleged herein were performed by, or attributable to, DEFENDANT and
26 each Doe defendant, each acting as agents or employees, or under the direction and control of, each
27 other, and that said acts and failures to act were within the course and scope of said agency,
28 employment, or direction and control.

11. As a direct and proximate result of the unlawful actions of DEFENDANT, PLAINTIFF and the Aggrieved Employees have suffered, and will continue to suffer, from loss of earnings in amounts as yet ascertained but subject to proof at trial, and within the jurisdiction of this Court.

ADMINISTRATIVE PREREQUISITES

12. PLAINTIFF timely filed a request for the Labor and Workforce Development Agency (“LWDA”) to conduct an investigation into his wage and hour allegations against DEFENDANT. The LWDA did not respond within the requisite time frame and DEFENDANT did not seek to cure its deficiencies within the allotted time frame.

13. PLAINTIFF has complied with all prerequisites to jurisdiction of this Court under California Government Code section 12900, *et seq.*, and has, therefore, exhausted his administrative remedies.

FIRST CAUSE OF ACTION

Civil Penalties

(Labor Code Private Attorneys General Act of 2004)

**(PLAINTIFF, Individually and on Behalf of All Aggrieved Employees, Against
DEFENDANT)**

15. PLAINTIFF incorporates herein by specific reference, as though fully set forth herein, the allegations in the foregoing paragraphs.

16. At all relevant times, DEFENDANT was subject to the provisions of the California Labor Codes mentioned herein.

17. California Labor Code section 2699(a) specifically provides for a private right of action to recover penalties for violations of the Labor Code:

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 himself and other current or former employees.

1 18. California Labor Code section 2699.3(a) states:

2 A civil action by an aggrieved employee pursuant to subdivision (a)
3 or (f) of Section 2699 alleging a violation of any provision listed in
4 Section 2699.5 shall commence only after the following requirements
5 have been met: (1) The aggrieved employee or representative shall
6 give written notice by certified mail to the Labor and Workforce
7 Development Agency and the employer of the specific provisions of
8 this code alleged to have been violated, including the facts and
9 theories to support the alleged violation. 2(A) The agency shall notify
10 the employer and the aggrieved employee or the representative by
11 certified mails that it does not intend to investigate the alleged
 violation within 30 calendar days of the postmark date of the notice
 received pursuant to paragraph (1). Upon receipt of that notice or if
 no notice is provided within 33 calendar days of the postmark date the
 notice given pursuant to paragraph (1), the aggrieved employee may
 commence a civil action pursuant to Section 2699.

12 19. PLAINTIFF has exhausted his administrative remedies pursuant to California Labor
13 Code section 2699.3.

14 20. PLAINTIFF is entitled to recover these penalties for himself and the Aggrieved
15 Employees through a civil action filed on his own behalf. These penalties are in addition to all other
16 remedies permitted by law.

17 21. DEFENDANT set the policies for, established, controlled, consented to, approved,
18 or ratified the non-payment of the wages due to PLAINTIFF and the Aggrieved Employees in
19 violation of the California Labor Code and the applicable Wage Order.

20 22. DEFENDANT failed to comply with several California Labor Code sections
21 including, but not limited to, 201-204, 221, 224, 226, 246, 248.1, 248.2, 510, 1194, 1194.2, 1197,
22 and 2810.5 by, amongst other violations: failing to pay PLAINTIFF and the other Aggrieved
23 Employees minimum wages due for each hour worked; by failing to pay PLAINTIFF and the other
24 Aggrieved Employees at the correct hourly rate for those hours worked in excess of eight (8) in a
25 workday, in excess of forty (40) in a workweek, or for hours worked on the seventh day of a
26 workweek as required under California law; by failing to provide PLAINTIFF and the other
27 Aggrieved Employees with itemized wage statements to which PLAINTIFF and the other
28 Aggrieved Employees were entitled under California law; by failing to provide PLAINTIFF and the

1 other Aggrieved Employees with a writing indicating the sick leave accrued each pay period, by
2 failing to provide PLAINTIFF and the other Aggrieved Employees with a writing indicating the
3 COVID-19 supplemental sick leave available to each respective employee each pay period, by
4 refusing to allow employees to take COVID-19 supplemental paid sick leave, by failing to provide
5 PLAINTIFF and the other Aggrieved Employees with all wages earned due and payable twice
6 during each calendar month, on days designated in advance by the employer as the regular paydays
7 to which PLAINTIFF and the other Aggrieved Employees were entitled under California law; by,
8 having the ability to pay, willfully refusing to pay wages due and payable upon demand, or denying
9 the amount or validity thereof, or that the same is due, with intent to secure for itself, or other person,
10 any discount upon such indebtedness, or with intent to annoy, harass, oppress, hinder, delay, or
11 defraud PLAINTIFF and the other Aggrieved Employees to whom such indebtedness is due; and
12 by failing to provide PLAINTIFF and other former aggrieved employees with wages due upon
13 termination of their employment.

14 23. PLAINTIFF is therefore entitled to the penalties set forth in the California Labor
15 Code including, but not limited to, the penalties set forth in California Labor Code sections 210,
16 225.5, 558, and 1197.1, on behalf of himself and the Aggrieved Employees, for each and every pay
17 period that DEFENDANT violated California Labor Code sections 1194, 1194.2, and 1197, or to
18 those penalties set forth in California Labor Code sections 2699(f) if it is determined that there is no
19 established civil penalty for violation of the foregoing provisions of the California Labor Code.

20 24. In addition, PLAINTIFF seeks an award of reasonable attorneys' fees and costs
21 pursuant to California Labor Code section 2699(g)(1), which states, "Any employee who prevails
22 in any action shall be entitled to an award of reasonable attorney's fees and costs, including any
23 filing fee"

24 25. Pursuant to California Labor Code section 218.6, "[i]n any action brought for the
25 nonpayment of wages, the court shall award interest on all due and unpaid wages at the rate of
26 interest specified in subdivision (b) of Section 3289 of the Civil Code [currently 10 percent per
27 annum], which shall accrue from the date that the wages were due and payable[.]" PLAINTIFF and
28 the Aggrieved Employees are therefore entitled to said interest.

1 **PRAYER**

2 WHEREFORE, PLAINTIFF and the Aggrieved Employees pray for judgment and relief
3 against DEFENDANT as follows:

4 1. For civil penalties pursuant to California Labor Code sections 2699(a), (f), and (g),
5 costs, expenses, and attorneys' fees for violation of California Labor Code sections 201, 202, 203,
6 204, 221, 224, 226, 226.7, 246, 248.1, 248.2, 510, 512, 1174, 1194, 1197, 1197.1, 1198, 2800, and
7 2802; and

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

9 **DEMAND FOR JURY TRIAL**

10 PLAINTIFF hereby demands a jury trial with respect to all issues triable of right by jury.

11 Dated: September 16, 2021

RAIMONDO & ASSOCIATES

12
13
14 By: _____

Anthony Raimondo

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Attorneys for PLAINTIFF and
Aggrieved Employees