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17 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
18 **COUNTY OF SAN FRANCISCO**
19

20 ISMAEL VIERA, individually and on behalf
21 of aggrieved employees and the State of
22 California,

22 Plaintiff,

23 v.

24 CRANE ACQUISITION, INC., dba CRANE
25 PEST CONTROL, ROLLINS, INC., ORKIN,
26 LLC, and DOES 1-20, inclusive,

27 Defendants.
28

ELECTRONICALLY
FILED

Superior Court of California,
County of San Francisco

01/27/2022
Clerk of the Court
BY: KAREN VALDES
Deputy Clerk

CGC-22-597870

Case No.

**COMPLAINT FOR VIOLATIONS OF
THE PRIVATE ATTORNEYS
GENERAL ACT OF 2004 (LABOR
CODE SECTION 2698, *ET SEQ.*)**

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1 another company or solicit any customers of Defendants after their employment with Defendants
2 ended.

3 7. Plaintiff seeks, on behalf of himself, all aggrieved employees, and the State of
4 California, PAGA civil penalties based on the violations set forth in this Complaint and attorneys'
5 fees and costs through a representative action.

6 **PARTIES**

7 8. Plaintiff is a resident of Pittsburg, Contra Costa County, California. In October
8 2019, Plaintiff began working for Defendants as a Commercial Initial Start Specialist based out of
9 Crane Pest Control's home office location at 2700 Geary Boulevard, San Francisco, CA 94118.
10 Plaintiff brings this action on behalf of the State of California and all aggrieved employees.

11 9. Upon information and belief, Crane Acquisition, Inc. does business as Crane Pest
12 Control and does business as and/or jointly with Rollins, Inc., a Delaware Corporation with its
13 principal place of business in Atlanta, Georgia. Crane Acquisition, Inc.'s home office in
14 California is located at 2700 Geary Boulevard San Francisco, CA 94118. Client is informed and
15 believes that Rollins, Inc. does business as, or jointly with, Orkin, LLC, a Delaware Limited
16 Liability Company.

17 10. At all times relevant, Defendants maintained offices and conducted business in the
18 County of San Francisco in the State of California.

19 11. Does 1 through 20, inclusive, are sued pursuant to California Code of Civil
20 Procedure section 474. Plaintiff is ignorant of the true names or capacities of these defendants,
21 and therefore sues these defendants by such fictitious names. Plaintiff will amend this complaint
22 to allege their true names and capacities when ascertained. Plaintiff is informed and believes that
23 each of the fictitiously-named Doe defendants, including any such defendants that may be the
24 agents, representatives, parents or subsidiary corporations of the named defendants, is responsible
25 in some manner for the occurrences, events, transactions, and injuries alleged herein and that the
26 harm suffered by Plaintiff and current and former aggrieved employees were proximately caused
27 by them in addition to Defendants.
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1 12. Plaintiff is informed and believes and thereon alleges that each of the Defendants,
2 including the Doe defendants, acted in concert with each and every other Defendant, intended to
3 and did participate in the events, acts, practices and courses of conduct alleged herein, and was a
4 proximate cause of damage and injury thereby to Plaintiff as alleged herein.

5 13. Plaintiff is informed and believes and thereon alleges that with respect to the
6 employment policies at issue in this case, Defendants and each of the DOE defendants
7 participated in a single integrated or joint enterprise.

8 14. Plaintiff is informed and believes and thereon alleges that at all times herein
9 Defendants and each of the DOE defendants were Plaintiff's and aggrieved employees'
10 employer(s), and/or agents, servants, employees, partners, joint venturers, alter egos, aiders and
11 abettors, and/or co-conspirators of one or more of their co-Defendants, and, in committing the
12 acts alleged herein, were acting within the course and scope of said agency, employment,
13 partnership, joint venture, and/or conspiracy, or were aiding and abetting their co-defendants.
14 Plaintiff is informed and believes and thereon alleges Defendants and each of the DOE
15 Defendants are legally responsible for all of the unlawful conduct, policies, practices, acts and
16 omissions as described in this Complaint.

17 15. At all material times, Defendants employed Plaintiff and aggrieved employees or
18 acted on behalf of Plaintiff's and aggrieved employees' employer, within the meaning of
19 California Labor Code sections 558 and 558.1.

20 **JURISDICTION AND VENUE**

21 16. This case is properly before this Court because it involves issues of state law, and
22 all Defendants maintain offices and/or do business in San Francisco County. The Court has
23 jurisdiction pursuant to Labor Code section 2699.3 and Civil Code section 395.

24 17. Venue is proper in the Superior Court of San Francisco County because
25 Defendants maintain offices and do business in this County, and the acts and omissions alleged
26 herein took place in this County.

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19. Plaintiff, via counsel, sent a copy of the July 30, 2021 notice to Defendants via certified mail.

21. Therefore, Plaintiff has exhausted the administrative requirements as required under the PAGA.

- a. The action involves allegations of violations of provisions of the California Labor Code that provide for a civil penalty to be assessed and collected by the LWDA or any departments, divisions, commissions, boards, agencies or employees;

c. Plaintiff has satisfied the procedural requirements of Labor Code section 2699.3, as set forth above.

FACTUAL ALLEGATIONS

1 Defendants' employees, including Plaintiff and all aggrieved employees, perform various
2 functions either in support of or directly involved in pest control.

3 25. On information and belief, current and former employees of Defendants were
4 subject to Labor Code violations by Defendants, specifically by Defendants' violations of Labor
5 Code sections 212-213, 223, 227.3, and 432.5.

6 26. For example, as Defendants' employee, Plaintiff was involved in the assessment of
7 and treatment of pest issues in commercial spaces. Plaintiff visited worksites throughout the Bay
8 Area and provided extermination and pest prevention services.

9 27. On October 16, 2019, Defendants informed Plaintiff that he was hired as a full-
10 time hourly employee based out of Crane Acquisition, Inc.'s principal office location in San
11 Francisco, California.

12 28. At the time Plaintiff began his employment, Defendants required him to execute an
13 employment agreement. The employment agreement is a standardized agreement provided to
14 Defendants' employees on a non-negotiable basis throughout California.

15 29. The employment agreement includes an unlawful non-competition and non-
16 solicitation clause.

17 30. On October 21, 2019, Plaintiff started working for Defendants as an hourly
18 employee.

19 31. Plaintiff was paid on an hourly and/or piece rate basis as a non-exempt employee
20 during his employment with Defendants.

21 32. Between October 2019 and January 2020, Defendants paid Plaintiff by paper bank
22 checks which were mailed to Defendant Crane Acquisition, Inc. from Rollins, Inc. in Atlanta,
23 Georgia to Crane's office in San Francisco, CA. From there, Crane either required Plaintiff to
24 pick up his check in person or mailed the check to his home via U.S. mail.

25 33. Starting in or around February 2020, Defendants issued Plaintiff a payroll debit card,
26 which replaced paper bank checks as Defendants' method of hourly wage payment. Plaintiff did
27 not consent to receive his pay via payroll debit card, nor was he offered any alternative means to
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1 receive his wages. In fact, Plaintiff protested receiving payment via the payroll debit card and
2 requested that his wages continue to be delivered to him via physical check. He was informed that
3 they payroll debit card was the only way he could receive his wages.

4 34. Typically, employers who use payroll debit cards deposit employee payroll by
5 direct deposit into individual employee accounts at an FDIC-member bank. Each employee is
6 then given a bank card connected to their account. On payday, employees have access to their
7 wages by using the card at an ATM or a point-of-sale.

8 35. Labor Code Section 212 requires that employers pay wages using forms of
9 payment that are “negotiable and payable in cash, on demand, without discount, at some
10 established place of business in the state, the name and address of which must appear on the
11 instrument and at the time of its issuance and for a reasonable time thereafter, which must be at
12 least 30 days, the maker or drawer has sufficient funds in, or credit, arrangement, or
13 understanding with the drawee for its payment.”

14 36. Labor Code Section 213 authorizes an employer to deposit wages due in an
15 account at any bank, savings and loan association, or credit union of the employee’s choice with a
16 place of business in the state.

17 37. Upon information and belief, a user of a payroll debit card may incur various fees.

18 38. When Plaintiff attempted to access his earned wages from Defendants through his
19 payroll debit card, he incurred fees. For example, in August 2020, he incurred \$10.50 in fees.

20 39. Plaintiff did not voluntarily sign up or agree to receive his wages through the
21 payroll debit card—instead he protested and requested that he be able to continue to receive his
22 wages by physical check.

23 40. Upon information and belief, Defendants also required other aggrieved employees
24 to receive their wages through a payroll debit card without obtaining their consent.

25 41. Using the payroll debit card was burdensome and costly for Plaintiff.

26 42. Plaintiff was charged fees for withdrawing his wages using the debit card, which
27 decreased his monthly income and made it difficult for him to afford necessities and pay his bills.
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1 43. Between February 2020 and August 13, 2020, Defendants paid Plaintiff
2 exclusively via a payroll debit card. Upon information and belief, Defendants paid other
3 aggrieved employees via a payroll debit card during the same time period.

4 44. Plaintiff continued to work for Defendants until August 13, 2020, at which time
5 Defendants terminated Plaintiff as an employee.

6 45. Defendants paid Plaintiff his final pay on a debit card. Upon information and
7 belief, Defendants also paid other aggrieved employees who separated from employment their
8 final pay on a debit card. Upon information and belief, Defendants selected this method of
9 payment without obtaining employees' consent to use of such method.

10 46. Defendants failed to promptly pay Plaintiff and all aggrieved employees who were
11 separated from employment with Defendants all wages owed as required under Labor Code
12 sections 201-203, including vested vacation wages as required under Labor Code section 227.3.

13 **CAUSE OF ACTION**

14 **Private Attorneys General Act, Labor Code § 2698 *et seq.***
15 **On Behalf of the State of California, Plaintiff, and All Aggrieved Employees**

16 47. Plaintiff incorporates by reference as though fully set forth herein the preceding
17 paragraphs of this Complaint.

18 48. Plaintiff is an "aggrieved employee," as that term is defined in Labor Code section
19 2699(a), and Plaintiff therefore bring this action on behalf of himself, all aggrieved employees, and
20 the State of California.

21 49. Pursuant to Labor Code section 2699.3(a), prior to filing this Complaint, on July 30,
22 2021, Plaintiff gave written notice by certified mail, return receipt requested, to Defendants and
23 online to the LWDA of the factual and legal bases for the Labor Code violations alleged in this
24 Complaint. The LWDA did not take action within the relevant period related to the violations
25 alleged. Therefore, Plaintiff has exhausted his administrative remedies and is entitled to proceed as
26 a private attorney general on behalf of himself and all current and former aggrieved employees of
27 Defendants in California.

28 50. Defendants violated the California Labor Code by committing the acts described

1 above, specifically by:

- 2 a. Requiring employees to agree to an unlawful non-compete and non-solicitation
- 3 clause in their employment contracts, in violation of Labor Code section 432.5;
- 4 b. Failing to pay wages via a lawful form of payment, as required by Labor Code
- 5 sections 212 and 213;
- 6 c. Paying a lower wage than the wage designated by contract, in violation of Labor
- 7 Code section 223; and
- 8 d. Failing to timely pay all wages due upon termination or separation as required
- 9 under Labor Code sections 201-203, including vested vacation wages, in violation
- 10 of Labor Code section 227.3.

11 51. Plaintiff alleges that all of Defendants' employees in the State of California were
12 subject to the Labor Code violations suffered by Plaintiff and described herein.

13 52. Plaintiff, on behalf of himself and all aggrieved employees, requests civil penalties
14 against Defendants for violations of the Labor Code above, as provided under the applicable
15 sections or alternatively under Labor Code sections 2699(f) and 2699.5, plus reasonable
16 attorneys' fees and costs, as provided under Labor Code section 2699(g)(1), in amounts to be
17 proved at trial.

18 53. Pursuant to Labor Code section 2699(i), 25% of all civil penalties recovered
19 pursuant to this cause of action shall be payable to Plaintiff and all aggrieved employees, and
20 75% of the civil penalties recovered pursuant to this cause of action shall be payable to the
21 LWDA for enforcement of labor laws and education of employers and employees about their
22 rights and responsibilities under the Labor Code.

23 54. Defendants are liable for these civil penalties, and for reasonable attorneys' fees
24 and costs under California Labor Code section 2699 *et seq.* Enforcement of statutory provisions
25 to protect workers and to ensure proper and prompt payment of wages is a fundamental public
26 interest. Plaintiff's successful enforcement of important rights affecting the public interest will
27 confer a significant benefit upon the general public. Private enforcement of these rights is
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1 necessary, as no public agency has pursued enforcement. Plaintiff is incurring a financial burden
2 in pursuing this action, and it would be against the interest of justice to require the payment of
3 attorneys' fees and costs from any recovery obtained, pursuant to, *inter alia*, Labor Code section
4 2699.

5 **PRAYER FOR RELIEF**

6 Wherefore, Plaintiff prays for the following relief for himself and on behalf of all aggrieved
7 employees and the State of California:

8 i. An award of civil penalties pursuant to the PAGA in an amount according to
9 proof, with 75% of the penalties to be remitted to the LWDA and 25% of the penalties to be
10 remitted to Plaintiff and the aggrieved employees;

11 ii. Entry of an injunction enjoining Defendants from continuing to violate the
12 California Labor Code provisions and IWC Wage Order provisions set forth herein;

13 iii. An award of reasonable attorneys' fees and expenses pursuant to Labor Code
14 section 2699(g)(1) and Code of Civil Procedure § 1021.5; and

15 iv. Any other relief the Court deems just and proper.
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1 Dated: January 27, 2022

Respectfully submitted,

2 By: 
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