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15 individually and on behalf of all others similarly situated.

16
17 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
18 **FOR THE COUNTY OF SAN BERNARDINO**
19

20 EARNELL WORTHY, individually and on
21 behalf of all others similarly situated,

22 Plaintiff,

23 v.

24 KUEHNE + NAGEL INC, a New York
25 Corporation; LOUIS VUITTON NORTH
26 AMERICA, INC., a Delaware Corporation;
27 MANPOWERGROUP US INC., a Wisconsin
28 Corporation; MANPOWER US INC., a
Delaware Corporation; and DOES 1-50,
inclusive,

Defendants.

CASE NO.:

ASSIGNED FOR ALL PURPOSES TO:
JUDGE:
DEPT:

PAGA REPRESENTATIVE ACTION
COMPLAINT PURSUANT TO THE
PRIVATE ATTORNEYS GENERAL ACT
(Labor Code §§ 2698 *et seq.*)

COMES NOW Plaintiff EARNELL WORTHY (“Plaintiff”), on behalf the general public and all non-exempt aggrieved employees, acting on behalf of the California Attorney General as private attorney general, and asserts claims against Defendants KUEHNE + NAGEL INC, a New York Corporation; LOUIS VUITTON NORTH AMERICA, INC., a Delaware Corporation; MANPOWERGROUP US INC., a Wisconsin Corporation; MANPOWER US INC., a Delaware Corporation; and DOES 1-50, inclusive (collectively “Defendants”) as follows:

I. INTRODUCTION

1. This is a representative action for recovery of penalties under the Private Attorneys General Act of 2004 (“PAGA”), Cal. Lab. Code sections 2698 *et seq.* PAGA permits “aggrieved employees” to bring a lawsuit as a representative action on behalf of the general public as private attorney general and all other current and former aggrieved employees, to recover civil penalties and address an employer’s violations of the California Labor Code.

2. In this case, Defendants violated various provisions of the California Labor Code. As set forth below, Defendants implemented policies and practices which led to Defendant’s: (a) failure to pay wages including overtime, (b) failure to provide meal periods for every work period exceeding more than ten (10) hours per day and failure to pay an additional hour’s of pay or accurately pay an additional hour’s of pay in lieu of providing a meal period; (c) failing to pay all wages earned and owed upon separation from Defendant’s employ, (d) failing to provide accurate itemized wage statements, and (e) failing to reimburse expenses. As a result Plaintiff seeks penalties under Labor Code section 2698, *et. seq.* on behalf of the general public as private attorney general and all other aggrieved employees.

II. JURISDICTION AND VENUE

3. The California Superior Court has jurisdiction over this action pursuant to California Constitution Article VI, Section 10, which grants the Superior Court “original jurisdiction in all cases except those given by statute to other trial courts.” The statutes under which this action is brought do not give jurisdiction to any other court.

4. This Court has jurisdiction over Defendants because, upon information and belief, each Defendant either has sufficient minimum contacts in California, or otherwise intentionally

1 avails itself of the California market so as to render the exercise of jurisdiction over it by the
2 California Courts consistent with traditional notions of fair play and substantial justice.

3 5. Venue as to each Defendant is proper in this judicial district pursuant to Code of
4 Civil Procedure section 395. Defendants are doing business throughout California, including but
5 not limited to San Bernardino County, and each Defendant is within the jurisdiction of this Court
6 for service of process purposes. The unlawful acts alleged herein have a direct effect on Plaintiff
7 and all other aggrieved employees within the State of California. Defendants employ numerous
8 aggrieved employees in in the State of California.

9 6. On information and belief, Defendants have conducted business within the State of
10 California during the purported liability period and continue to conduct business throughout the
11 State of California. The unlawful acts alleged herein have had a direct effect on Plaintiff, and the
12 similarly situated non-exempt aggrieved employees within California.

13 7. The California Superior Court also has jurisdiction in this matter because on
14 information and belief there are no federal questions at issue, as the issues herein are based solely
15 on California statutes and law, including the California Labor Code, the IWC Wage Orders, the
16 California Code of Civil Procedure, the California Civil Code, and the California Business and
17 Professions Code.

18 8. On information and belief, during the statutory liability period and continuing to
19 the present ("liability period"), Defendant consistently maintained and enforced against
20 Defendant's Non-Exempt Aggrieved Employees, among others, the following unlawful practices
21 and policies, in violation of California state wage and hour laws: (a) failure to pay wages
22 including overtime, (b) failure to provide meal periods for every work period exceeding more than
23 ten (10) hours per day and failure to pay an additional hour's of pay or accurately pay an
24 additional hour's of pay in lieu of providing a meal period; (c) failing to pay all wages earned and
25 owed upon separation from Defendant's employ, (d) failing to provide accurate itemized wage
26 statements, and (e) failing to reimburse expenses.

27 9. Plaintiff on behalf of the general public as private attorney general and all other
28 aggrieved employees brings this action pursuant to Labor Code section 2698, *et. seq.* for violations

1 enumerated under 2699.5 as follows: sections 201-203, 510, 512, 558, 226, 226.3, 226.7, 1174,
2 1174.5, 1175, 1194, 1197, 1197.1, 1198, and 2802, and seeking penalties, interest, attorneys' fees
3 and costs.

4 **III. PARTIES**

5 **A. Plaintiff**

6 10. Plaintiff EARNELL WORTHY, was at all times relevant to this action, a resident
7 of California. Plaintiff was employed by Defendants in approximately July 2020 as a Non-Exempt
8 Employee with the title of Forklift Operator and worked during the liability period for Defendants
9 until Plaintiff's separation from Defendants' employ in approximately February 2021. Plaintiff's
10 duties included but were not limited to operating a forklift in the warehouse of the facility.

11 11. As Defendants' employee, Plaintiff, and all other aggrieved employees, were
12 regularly required to and subsequently suffered:

- 13 a. Perform work subject to the control of the employer without being compensated all
14 wages including overtime, all in violation of California labor laws, regulations, and
15 the Industrial Welfare Commission Wage Order ("IWC");
- 16 b. Work in excess of six and ten hours per day without being provided meal periods
17 and not compensated one (1) hour of pay at the regular rate of compensation for
18 each workday that a meal period was not provided, all in violation of California
19 labor laws, regulations, and the Industrial Welfare Commission Wage Orders
20 ("IWC");
- 21 c. Not reimbursed for business expenses incurred; and
- 22 d. Not provided accurate itemized wage statements.

23 12. On information and belief, Defendants willfully failed to pay all earned wages in
24 the form of regular wages and overtime wages, and meal period premium wages, to its Non-
25 Exempt Employees and members of the Representative Group; nor have Defendants returned to
26 Plaintiff or members of the Representative Group, upon or after separation from employment with
27 Defendants, all wages earned and owing. Plaintiff seeks penalties under Labor Code 2698, *et seq.*
28 on behalf of the general public as private attorney general and all other aggrieved employees.

1 **B. Defendants**

2 13. Defendant KUEHNE + NAGEL INC, a New York Corporation, operates as a
3 logistics company. Plaintiff estimates there are in excess of 100 Non-Exempt Employees who
4 work or have worked for Defendant over the last year.

5 14. Defendant LOUIS VUITTON NORTH AMERICA, INC., a Delaware Corporation,
6 operates as an apparel and fashion company. Plaintiff estimates there are in excess of 100 Non-
7 Exempt Employees who work or have worked for Defendant over the last year.

8 15. Defendant MANPOWERGROUP US INC., a Wisconsin Corporation, operates as a
9 staffing firm. Plaintiff estimates there are in excess of 100 Non-Exempt Employees who work or
10 have worked for Defendant over the last year.

11 16. Defendant MANPOWER US INC., a Delaware Corporation, operates as a staffing
12 firm. Plaintiff estimates there are in excess of 100 Non-Exempt Employees who work or have
13 worked for Defendant over the last year.

14 17. Other than identified herein, Plaintiff is unaware of the true names, capacities,
15 relationships, and extent of participation in the conduct alleged herein, of the Defendants sued as
16 DOES 1 through 50, but is informed and believes and thereon alleges that said defendants are
17 legally responsible for the wrongful conduct alleged herein and therefore sues these defendants by
18 such fictitious names. Plaintiff will amend this complaint when their true names and capacities are
19 ascertained.

20 18. Plaintiff is informed and believes and thereon alleges that each defendant, directly
21 or indirectly, or through agents or other persons, employed Plaintiff and other members of the
22 Representative Group, and exercised control over their wages, hours, and working conditions.
23 Plaintiff is informed and believes and thereon alleges that each Defendant acted in all respects
24 pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business
25 plan or policy in all respects pertinent hereto, and the acts of each Defendant are legally
26 attributable to the other defendants.

27 **IV. GENERAL ALLEGATIONS**

28 19. At all times set forth herein, Defendants employed Plaintiff and other persons in the

1 capacity of non-exempt positions, however titled, throughout the state of California.

2 20. Plaintiff is informed and believes Aggrieved Employees have at all times pertinent
3 hereto been Non-Exempt within the meaning of the California Labor Code and the implementing
4 rules and regulations of the IWC California Wage Orders.

5 21. Defendants continue to employ Non-Exempt Employees, however titled, in
6 California and implement a uniform set of policies and practices to all non-exempt employees, as
7 they were all engaged in the generic job duties related to Defendants' logistics of apparel and
8 fashion companies.

9 22. Plaintiff is informed and believes, and thereon alleges, that Defendants are and
10 were advised by skilled lawyers and other professionals, employees, and advisors with knowledge
11 of the requirements of California's wage and employment laws.

12 23. On information and belief, during the relevant time frame, Plaintiff and Aggrieved
13 Employees frequently worked well over eight (8) hours in a day and forty (40) hours in a work
14 week.

15 24. During the relevant time frame, Defendants compensated Plaintiff and Aggrieved
16 Employees based upon an hourly rate.

17 25. On information and belief, during the relevant time frame, Plaintiff and Aggrieved
18 Employees typically worked five (5) to six (6) days a week.

19 26. Plaintiff is informed and believes that the Aggrieved Employees were required to
20 keep similar schedules.

21 27. In addition, the Aggrieved Employees frequently worked in excess of eight (8)
22 hours a day and/or over forty (40) hours in a workweek, but were not properly paid for such time
23 at the employee's correct rate of pay per hour for overtime.

24 28. Defendants also failed to properly calculate Plaintiff's and the Aggrieved
25 Employees' regular rate of pay by failing to include all forms of compensation/remuneration in the
26 regular rate including but not limited to bonuses, incentives, commissions, and other compensation
27 for overtime calculation purposes.

28 29. Plaintiff and the Aggrieved Employees were regularly required to work shifts in

1 excess of five hours without being provided a lawful meal period and over ten hours in a day
2 without being provided a second lawful meal period as required by law.

3 30. Plaintiff and Aggrieved Employees were required to use their personal cellphones
4 for work-related purposes during work hours, including but not limited to using them to take
5 photographs of damaged pallets received in the warehouse.

6 31. Indeed, during the relevant time, as a consequence of Defendants' staffing and
7 scheduling practices, work demands, and Defendants' policies and practices, Defendants
8 frequently failed to provide Plaintiff and the Aggrieved Employees timely, legally complaint
9 uninterrupted 30-minute meal periods on shifts over five hours as required by law.

10 32. Similarly, as a consequence of Defendants' staffing and scheduling practices, work
11 demands, and Defendants' policies and practices, Defendants frequently failed to provide Plaintiff
12 and the Aggrieved Employees legally compliant second meal periods on shifts over ten hours as
13 required by law.

14 33. On information and belief, Plaintiff and Aggrieved Employees did not waive their
15 rights to meal periods under the law.

16 34. Plaintiff and the Aggrieved Employees were not provided with valid lawful on-duty
17 meal periods.

18 35. Despite the above-mentioned meal period violations, Defendants failed to
19 compensate Plaintiff, and on information and belief, failed to compensate Aggrieved Employees,
20 one additional hour of pay at their regular rate as required by California law when meal periods
21 were not timely or lawfully provided in a compliant manner.

22 36. Further, Defendants failed to calculate bonuses and other forms of remuneration
23 into the regular rate of pay when calculating premium wages for non-compliant meal periods.

24 37. On information and belief, Defendants also automatically deducted 30 minutes of
25 time from Plaintiff and Aggrieved Employees for meal periods that were not provided, late,
26 interrupted or cut short. This resulted in an underpayment of minimum and overtime wages

27 38. Plaintiff are informed and believe, and thereon alleges, that Defendants know,
28 should know, knew, and/or should have known that Plaintiff and the other Aggrieved Employees

1 were entitled to receive premium wages based on their regular rate of pay under Labor Code
2 §226.7 but were not receiving such compensation.

3 39. Defendants also failed to reimburse Plaintiff and Aggrieved Employees for
4 business expenses incurred pursuant to Labor Code section 2802. For instance, Plaintiff and
5 Aggrieved Employees were required to use their personal cellphones during work shifts to take
6 photographs of damaged pallets received in the warehouse.

7 40. Defendants also failed to provide accurate, lawful itemized wage statements to
8 Plaintiff and the Aggrieved Employees in part because of the above specified violations. In
9 addition, upon information and belief, Defendants omitted an accurate itemization of total hours
10 worked, including premiums due and owing for meal period violations, gross pay and net pay
11 figures from Plaintiff and the Aggrieved Employees ' wage statements.

12 41. Plaintiff is informed and believes, and thereon alleges, that at all times herein
13 mentioned, Defendants knew that at the time of termination of employment (or within 72 hours
14 thereof for resignations without prior notice as the case may be) they had a duty to accurately
15 compensate Plaintiff and Aggrieved Employees for all wages owed including minimum wages,
16 meal period premiums, and that Defendants had the financial ability to pay such compensation,
17 but willfully, knowingly, recklessly, and/or intentionally failed to do so in part because of the
18 above-specified violations.

19 42. Upon information and belief, Defendants knew and or should have known that it is
20 improper to implement policies and commit unlawful acts such as:

21 (a) requiring employees to work in excess of five (5) hours or ten (10) hours per day
22 without being provided an uninterrupted thirty minute meal period and/or a second meal period,
23 and without compensating employees with one (1) hour of pay at the regular rate of compensation
24 for each workday that such a meal period was not provided;

25 (b) failing to pay minimum and overtime wages;

26 (c) failing to provide accurate itemized wage statements;

27 (d) failing to timely pay Plaintiff and Aggrieved Employees; and

28 (e) failure to reimburse business expenses.

1 43. In addition to the violations above, and on information and belief, Defendants knew
2 they had a duty to compensate Plaintiff and Aggrieved Employees for the allegations asserted
3 herein, and that Defendants had the financial ability to pay such compensation, but willfully,
4 knowingly, recklessly, and/or intentionally failed to do so.

5 **V. REPRESENTATIVE CLAIMS**

6 **THE PRIVATE ATTORNEYS GENERAL ACT –**

7 **LABOR CODE §§ 2698 *et seq.***

8 44. Plaintiff incorporates and re-alleges each and every allegation contained above as
9 though fully set forth herein.

10 45. On or about July 26, 2021, Plaintiff complied with notice requirements pursuant to
11 Labor Code section 2699.3. A copy of the letter sent to the LWDA is attached hereto as **Exhibit**
12 **A**, indicating that the LWDA and Defendants were put on notice of the claims alleged here and
13 that the notice requirement has been satisfied. Sixty-five days have passed and the LWDA has not
14 indicated intent to investigate the claims. Therefore, Plaintiff may proceed with this action in a
15 representative capacity. The substance and violations set forth in this Complaint of which the
16 LWDA was provided timely notice, Plaintiff has also sent a copy of this PAGA Representative
17 Action Complaint to the LWDA.

18 46. Plaintiff is an aggrieved employee as defined in Labor Code Section 2699(a).
19 Plaintiff brings this cause of action on behalf of all current and former California Non-Exempt
20 Employees of Defendants.

21 47. Pursuant to Labor Code section 2699(a) Plaintiff seek to recover civil penalties for
22 which Defendants are liable due to numerous Labor Code violations as set forth in this Complaint,
23 including without limitation Labor Code section 201-203, 510, 512, 558, 226, 226.3, 226.7, 1174,
24 1174.5, 1175, 1194, 1197, 1197.1, 1198, 2802, and 2698 *et seq.*, applicable IWC Wage Orders and
25 California Code of Regulations, Title 8, section 11000 *et. seq.*

26 48. At all times relevant, Plaintiff and all other aggrieved employees regularly
27 performed non-exempt work in excess of 50% of the time, and thus, were subject to the meal
28 break requirements of the applicable IWC wage order and the Labor Code.

1 49. Defendants violated Labor Code section 200, 558, 1194, 1197, by failing to
2 accurately pay at least minimum wages due as a result of Defendants' automatic deductions of 30-
3 minutes of time for meal periods that were not provided, late, cut/short, or interrupted.

4 50. Defendants violated Labor Code section 510 and 1194 by failing to accurately pay
5 overtime wages owed as discussed above due to Defendants' failure to incorporate bonuses and
6 other forms of remuneration as described above into the regular rate of pay for overtime
7 calculation purposes. Therefore, Defendants violated section 510, and 1194 by not compensating
8 its Non-Exempt Employees for work performed in excess of eight hours (8) in a day or forty hours
9 in a work week (40). Section 510 of the Labor Code codifies the right to overtime compensation at
10 the rate of one and one-half times the regular rate of pay for all hours worked in excess of eight (8)
11 hours in a day or forty (40) hours in a work week and to overtime compensation twice the regular
12 rate of pay for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours
13 in a day on the seventh day of work in a particular work week.

14 51. Defendants failed to provide Plaintiff and all other aggrieved employees
15 uninterrupted duty free meal periods of not less than thirty (30) minutes. Defendants implemented
16 and enforced policies of on duty meal period practices which required employees to work during
17 their meal periods, to forego their meal periods, and/or to return to work from meal periods prior
18 to thirty (30) uninterrupted minutes. As a proximate result of the aforementioned violations,
19 Plaintiff and all other aggrieved employees have been damaged in an amount according to proof at
20 time of trial.

21 52. Defendants also willfully violated Labor Code sections 201-203 by failing to
22 provide all owed wages at separation from employment. Labor Code sections 201 and 202 require
23 Defendants to pay their employees all wages due either at time of firing, or within seventy-two
24 (72) hours of voluntary separation, if not sooner. Section 203 of the Labor Code provides that if
25 an employer willfully fails to timely pay such wages the employer must, as a penalty, continue to
26 pay the subject employee's wages until the back wages are paid in full or an action is commenced.
27 The penalty cannot exceed 30 days of wages.

28 53. Plaintiff and all other aggrieved employees who were separated from employment

1 are entitled to compensation for all forms of wages earned, including but not limited to
2 compensation regular and overtime wages, and for non-provided meal periods, but to date have
3 not received such compensation, therefore entitling them to penalties under PAGA for violations
4 of Labor Code sections 201-203.

5 54. On information and belief, Defendants willfully failed to pay all wages due and
6 owing upon separation from employment. These wages include regular and overtime wages, and
7 meal period premiums.

8 55. On information and belief, Defendants failed to provide accurate itemized wage
9 statements which failed to include the rate of pay and total hours worked per pay period, failed to
10 account for all hours worked, including overtime, and lastly the accurate accounting of, the lawful
11 meal period premiums due and owing to Plaintiff and the aggrieved employees, pursuant to Labor
12 Code section 226(a).

13 56. Defendants have failed to provide Plaintiff and Aggrieved Employees rates of pay
14 and the hours for which they worked for any given pay period.

15 57. Defendants have failed to accurately record all time worked.

16 58. Defendants have also failed to accurately record the meal period premiums owed
17 and all wages owed per pay period.

18 59. Plaintiff and Aggrieved Employees have been injured as they were unable to
19 determine whether they had been paid correctly for all hours worked per pay period among other
20 things.

21 60. Pursuant to Labor Code section 226.3, any employer who violates subdivision (a)
22 of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250)
23 per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee
24 for each violation in a subsequent citation, for which the employer fails to provide the employee a
25 wage deduction statement or fails to keep the records required in subdivision (a) of Section 226.

26 61. On information and belief, Defendants failed to reimburse Plaintiff and Aggrieved
27 Employees for business expenses incurred as described above. Labor Code § 2802 requires
28 Defendants to indemnify Plaintiff and Aggrieved Employees for necessary expenditures incurred

1 in direct consequences of the discharge of his or her duties. Despite these realities of the job,
2 Defendants failed to provide reimbursements.

3 62. Labor Code §2804 states in pertinent part: “Any contract or agreement, express or
4 implied, made by any employee to waive the benefits of this article or any part thereof is null and
5 void, and this article shall not deprive any employee or his or her personal representative of any
6 right or remedy to which he is entitled under the laws of this State.”

7 63. Additionally, Defendants have no accurate records relating to aggrieved
8 employees’ work periods, meal periods, total daily hours worked, total hours worked per payroll
9 period and applicable pay rates, in violation of Wage Order. Similarly, Defendants failed to
10 maintain accurate records relating to hours worked daily in violation of Labor Code sections
11 1174(d), 1174.5.

12 64. As a result of Defendants' unlawful conduct, Plaintiff and Aggrieved employees are
13 entitled to penalties to the extent they were not paid at the prevailing wage rate for all hours
14 worked.

15 65. Plaintiff and the Representative Aggrieved Employees are entitled to recover
16 penalties and attorneys’ fees and costs under Labor Code section 2698, et. seq.

17 **PRAYER FOR RELIEF**

18 WHEREFORE, Plaintiff prays for judgment against Defendants, as follows:

- 19 1. For penalties according to proof, pursuant to Labor Code §§ 2698 et seq.;
- 20 2. For reasonable attorneys’ fees and costs; and
- 21 3. For such other and further relief as the Court deems proper.

22 Dated: July 26, 2021

JAMES HAWKINS APLC

24 By: _____

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