

1 Manny Starr (319778)
manny@frontierlawcenter.com
2 Dan Ginzburg (327338)
Dan@frontierlawcenter.com
3 Joseph A. Gross (332258)
Joseph@frontierlawcenter.com
4 Frontier Law Center
23901 Calabasas Road, #2074
5 Calabasas, CA 91302
Telephone: (818) 914-3433
6 Facsimile: (818) 914-3433

7 Attorneys for Plaintiff
8 DARWIN VASQUEZ individually and on behalf of all
Aggrieved Employees

10 SUPERIOR COURT OF CALIFORNIA
11 COUNTY OF SACRAMENTO

12 DARWIN VASQUEZ, individually and on behalf) NO.
13 of all Aggrieved Employees)
14 Plaintiff(s),) COMPLAINT
15 v.) 1. PAGA Penalties
16 ANTON DEVCO, INC. a California Corporation;)
17 and DOES 1 to 100, inclusive,)
18 Defendants.)

BY FAX

21 PRELIMINARY ALLEGATIONS

- 22 1. Plaintiff DARWIN VASQUEZ ("Plaintiff") is a resident of Alameda County.
23 2. Defendant ANTON DEVCO, INC. ("Defendant") is a California Corporation with a
24 principal place of business located in Sacramento County.
25 3. Because Plaintiff and the Aggrieved Employees' claims arise from the conduct of
26 Defendant in California, this Court has specific jurisdiction over this case.
27 4. Because Plaintiff and the Aggrieved Employees' claims arise out of Defendant's conduct in
28 Sacramento County, venue is proper in Sacramento County.

1 5. Plaintiff does not know the true names and capacities of Does 1 to 100 and therefore uses
2 fictitious names. Plaintiff will amend the complaint pursuant to Code of Civil Procedure section
3 474 to allege the true names and capacities when ascertained.

4 6. Plaintiff is informed and believes that each of the Defendants was the agent or employee of
5 the other Defendants and acted in the scope of agency or employment.

6 7. Defendant and all Doe defendants are collectively referred to as "Defendants."

7 8. On July 26, 2021, Plaintiff sent a PAGA letter via certified mail to Defendants and
8 uploaded the letter to the Labor and Workforce Development Agency ("LWDA") website (LWDA
9 Case No. LWDA-CM-839253-21

10 9. The required 65 days waiting period elapsed.

11 10. Pursuant to Labor Code section 2698, et. seq., Plaintiff seeks to represent all other
12 nonexempt employees employed by Defendants in California during the PAGA Period.
13 ("Aggrieved Employees")

14 11. The PAGA Period is defined as July 26, 2020, through the date of settlement approval or
15 judgment.

16 12. Defendants employed Plaintiff from approximately August 2019 through the present.

17 13. Defendants employed Plaintiff and the Aggrieved Employees to perform tasks requiring
18 technical knowledge or clerical skills in California. Therefore, Industrial Welfare Commission
19 Wage Order 4 applies.

20 14. Defendants employed an unlawful time rounding policy which resulted in the Aggrieved
21 Employees consistently being paid for less time than they actually worked.

22 15. Specifically, Defendants' time rounding policy was not neutral as applied because
23 Defendants' time and attendance policies caused the Aggrieved Employees to more frequently lose
24 time than gain time as a result of the time rounding.

25 16. Therefore, Defendants employed a non-neutral rounding policy, which had the effect of
26 depriving Plaintiff and the Aggrieved Employees of compensation for all hours worked.

27 17. Therefore, Defendants failed to provide Plaintiff and the Aggrieved Employees with
28 minimum wage for all hours worked, in violation of Labor Code section 1194.

1 18. Defendants employed the same non-neutral rounding policy when it came to Plaintiff and
2 the Aggrieved Employees' meal periods. Therefore, late and short meal periods were rounded to
3 appear compliant, resulting in Defendants' failure to pay meal period premiums for non-compliant
4 meal periods.

5 19. Moreover, during these purported meal periods, Plaintiff and the Aggrieved Employees
6 were required to remain on call and on-site throughout their "meal periods."

7 20. Therefore, Plaintiff and the Aggrieved Employees failed to receive compliant meal periods
8 in violation of Labor Code section 512.

9 21. Plaintiff and the Aggrieved Employees were also required to remain on call and on-site
10 throughout their "rest breaks", resulting in non-compliant rest breaks in violation of Labor Code
11 section 226.7.

12 22. Notwithstanding their failure to provide compliant meal and rest periods, Defendants failed
13 to provide Plaintiff and the Aggrieved Employees with premium pay for those non-compliant
14 breaks, as required by law.

15 23. Therefore, Defendants violated Labor Code section 226.7 everyday Plaintiff and the
16 Aggrieved Employees were employed.

17 24. Defendants employed a policy requiring Plaintiff and the Aggrieved Employees to utilize
18 their cell phones as part of their job functions.

19 25. Specifically, Defendants required Plaintiff and the Aggrieved Employees to send, and
20 respond to, calls and text messages from supervisors and co-workers throughout their shifts.

21 26. Defendants failed to compensate Plaintiff and the Aggrieved Employees for the use of their
22 cell phones, in compliance with Defendants' policies.

23 27. Therefore, Defendants are in violation of Labor Code section 2802.

24 28. Defendants' failure to compensate Plaintiff and the Aggrieved Employees in compliance
25 with Labor Code sections 226.7 and 1194 necessarily means Defendants failed to provide Plaintiff
26 and the Aggrieved Employees with accurate wage statements, in violation of Labor Code section
27 226.

28 29. Moreover, Defendants failed to list Plaintiff and the Aggrieved Employees' actual hours

1 worked, as opposed to their rounded hours worked, on their wage statements.

2 30. In order to determine whether they were being properly compensated for their hours
3 worked, Plaintiff and the Aggrieved Employees would necessarily be required to turn to outside
4 documents, and engage in complex mathematical analysis to determine if Defendants were
5 compensating them for all hours worked.

6 31. Defendants' failure to list Plaintiff and the Aggrieved Employees' actual hours worked
7 caused their wage statements to be inaccurate as a matter of law.

8 32. Defendants' failure to compensate Plaintiff, the Aggrieved Employees in compliance with
9 Labor Code sections 226.7 and 1194 necessarily means Defendants failed to provide the Aggrieved
10 Employees with all wages due and payable upon termination or within seventy-two (72) hours of
11 resignation, in violation of Labor Code sections 201-202.

12 33. Therefore, Defendants are subject to the penalties set forth in Labor Code §203.

13 **FIRST CAUSE OF ACTION**

14 **PRIVATE ATTORNEY GENERAL ACT**

15 **By Plaintiff and the Aggrieved Employees Against All Defendants**

16 34. Plaintiff and the Aggrieved Employees re-allege and incorporate by reference each and
17 every allegation contained in the paragraphs above and, to the extent necessary, plead this cause of
18 action in the alternative.

19 35. PAGA permits Plaintiff and the Aggrieved Employees to recover civil penalties for the
20 violation(s) of the Labor Code Sections enumerated in Labor Code section 2699.

21 36. As alleged herein, Defendants' conduct violates numerous sections of the California Labor.

22 37. With respect to violations of Labor Code sections 226.7 and 512(a) for Defendants' failure
23 to provide Plaintiff and the Aggrieved Employees with meal and rest periods or compensation in
24 lieu thereof, the penalties in Labor Code section 2699 apply.

25 38. With respect to violations of Labor Code section 1194, for failure to provide minimum
26 wage for all hours worked, the penalties in Labor Code sections 558 and 1197.1 apply.

27 39. With respect to violations of Labor Code section 226(a) for failure to provide accurate wage
28 statements to Plaintiff and the Aggrieved Employees, the penalties in Labor Code sections 226.3 or

1 2699 apply.

2 40. With respect to violations of Labor Code sections 201 and 202 for failure to timely pay
3 all wages to Plaintiff and the Aggrieved Employees upon the conclusion of employment, the
4 penalties in Labor Code section 2699 apply.

5 41. Additionally, Plaintiff and the Aggrieved Employees are entitled to reasonable attorney's
6 fees and costs pursuant to Labor Code section 2699(g).

7 **PRAYER**

8 **First Cause of Action**

9 1. For penalties pursuant to Labor Code sections 226.3, 558, 1197.1, and 2699

10 2. Attorney's fees and costs

11 3. Other relief the court deems proper

12

13 Date: October 27, 2021

FRONTIER LAW CENTER

14

15 /s/ Daniel Ginzburg, Esq.
16 Daniel Ginzburg, Esq.
17 Attorney for Plaintiff
18 Darwin Vasquez

17

18

19

20

21

22

23

24

25

26

27

28