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a representative of other aggrieved employees

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

BERNABE PARRILLA, individually and on
behalf of all others similarly situated,

Plaintiff,

vs.

MONSTER ENERGY COMPANY, a
Delaware corporation; DOES 1 through 25,

Defendants.

Case No.: 21STCV25855
Assigned to Hon. Elihu M. Berle
Dept. SSC-6

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT FOR:**

- 1. Violation of Labor Code §510
(Failure to Pay Overtime)**
- 2. Violation of Labor Code §§226.7
and 512 (Failure to Provide Meal
and Rest Breaks)**
- 3. Violation of Labor Code § 226(a)
(Inaccurate Wage Statements)**
- 4. Violation of Labor Code §§201 and
202 (Failure to Pay Unpaid Wages
at Time of Discharge)**
- 5. Violation of Business & Professions
Code §§ 17200 *et seq.***
- 6. Recovery of Civil Penalties under
PAGA**

Jury Trial Demanded.

Action filed: July 14, 2021

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2. Defendant Monster Energy Company is a Delaware corporation, headquartered in Corona, California. Defendant manufactures and sells energy drinks and other beverages.

4. The relief sought by Plaintiff on behalf of himself and the Class defined below exceeds the minimal jurisdictional limits of the Superior Court and will be established according to proof at trial. The Court has personal jurisdiction over each of the parties because they are either citizens of this State, doing business in this State or otherwise have minimum contacts with this State.

6. At all times relevant hereto, Defendants employed persons and conducted business operations in California. Defendants are therefore subject to the provisions of the California Labor Code, the applicable IWC Wage Order(s), California Business and Professions Code Sections 17200 *et seq.* (“Unfair Competition Law” or “UCL”) and other relevant California law.

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7. Plaintiff is informed and believes and based thereon, alleges that the Defendants were at all times relevant hereto members of, and engaged in, a joint venture, partnership, association or common enterprise, and acting within the course and scope of, and in pursuance of, said joint venture, partnership, association or common enterprise. Furthermore, Plaintiff is informed and believes and based thereon, alleges that at all times relevant hereto Defendants conspired together in, aided and abetted, contributed to, and/or acted as agents or employees of each other with respect to, the commission of the acts complained of herein. Defendants are therefore jointly and severally liable for the injuries complained of herein.

CLASS ALLEGATIONS

8. Plaintiff brings this action pursuant to California Code of Civil Procedure Section 382 on behalf of himself and the Class described below.

9. The Class is comprised of and defined as: all non-exempt California employees of Defendant who worked as field representatives, club field representatives, and other similar positions, from the date that is four years prior to the filing of this action through the date of class certification.

10. There exists a well-defined community of interest among the Class, and the Class is readily ascertainable.

11. The members of the Class are so numerous that joinder of all members in a single action would not be feasible or practical, and the amount of individual damages is not large enough to make individual lawsuits by each class member practical or feasible.

12. Plaintiff is informed and believes and based upon such information and belief alleges that there are in excess of 50 members of the Class.

13. Plaintiff's claims are typical of the claims of the rest of the Class, and Plaintiff will fairly and adequately represent the interests of the Class.

14. Common issues of fact and/or law predominate in this action over any allegedly individual issues. Specifically, the following common questions of fact or law predominate and make this action superior to individual actions:

1 a. whether Plaintiff and the rest of the Class are entitled to recover
2 damages, penalties, injunctive relief or other equitable relief on the grounds that Defendants
3 have used uniform policies and procedures that have, from time to time, violated California
4 labor laws and regulations and caused Plaintiff and the rest of the Class to suffer the same or
5 similar injuries;

6 b. whether Defendants failed to compensate Plaintiff and the rest of the
7 Class for overtime worked, in violation of Labor Code section 510;

8 c. whether Defendants failed to provide Plaintiff and the rest of the
9 Class with timely, uninterrupted meal and rest breaks, as required by the Wage Order and
10 Labor Code sections 226.7 and 512;

11 d. whether Defendants failed to pay wage premiums to Plaintiff and the
12 rest of the Class for missed or non-compliant meal and rest breaks, as required by Labor
13 Code section 226.7.

14 e. whether Defendants failed to provide accurate, itemized wage
15 statements, as required by Labor Code Section 226(a);

16 f. whether Defendants failed to compensate Plaintiff and the rest of the
17 Class for all amounts due at the time of discharge, in violation of Labor Code sections 201
18 and 202; and

19 g. whether Defendants' practices constitute unfair, fraudulent, or illegal
20 business practices under Business and Professions Code sections 17200 *et seq.*

21 15. California labor laws under which Plaintiff asserts the following causes of
22 action on behalf of himself and the rest of the Class are broadly remedial in nature. These
23 labor laws serve an important public interest in establishing minimum working conditions
24 and standards in California. They furthermore protect employees from exploitation by
25 employers who may seek to take advantage of their superior economic and bargaining power
26 in setting onerous terms and conditions of employment. The class action mechanism is a
27 particularly efficient and appropriate procedure to redress the injuries alleged herein. If each
28 employee in the Class was required to file an individual action, Defendants would be able to

1 use their superior financial and legal resources to gain an unfair advantage over each
2 individual class member. Moreover, requiring each class member to pursue an individual
3 action would also discourage the assertion of meritorious causes of action by employees
4 who would likely be disinclined to file such individual actions due to a justifiable fear of
5 retaliation and damage to their careers at subsequent employment.

6 16. In addition, even if feasible, individual actions by each Class member would
7 create a substantial risk (i) of inconsistent or varying adjudications with respect to the claims
8 of each Class member against Defendants, that in turn could establish potentially
9 incompatible standards of conduct for Defendants, and/or (ii) of adjudications with respect
10 to individual Class members that would, as a practical matter, be dispositive of the interests
11 of the other Class members. Furthermore, the claims of each individual Class member are
12 not sufficiently large enough to make it economically feasible to bring each Class member's
13 claims on an individual basis.

14 **FIRST CAUSE OF ACTION**

15 **FOR VIOLATION OF LABOR CODE SECTION 510**

16 (Against all Defendants)

17 17. Plaintiff re-alleges and incorporates herein by this reference each of the
18 allegations set forth in Paragraph 1- 16, inclusive.

19 18. During the Class period, Labor Code Section 510 applied to Defendants'
20 employment of Plaintiff and the rest of the Class. At all times relevant hereto, Labor Code
21 Section 510 required Defendants to compensate Plaintiff and the Class, who are non-exempt
22 employees, at no less than one and one-half times their regular rate of pay for any hours
23 worked in excess of eight (8) hours in any day and forty (40) hours in any one week.

24 19. Plaintiff and other members of the Class were paid a weekly salary that was
25 the same regardless of the number of hours worked. These salaried class members regularly
26 worked more than eight hours in a day and/or more than 40 hours in a week. Yet Defendants
27 never paid them overtime premium wages specified in Labor Code section 510.

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20. Accordingly, Plaintiff and the rest of the Class are entitled to recover from Defendants unpaid and underpaid overtime that they incurred within the applicable limitations period until the date that the Class is certified, interest thereon, plus reasonable attorneys' fees and costs.

SECOND CAUSE OF ACTION

FOR VIOLATION OF LABOR CODE SECTIONS 226.7(b) AND 512(a)

(Against all Defendants)

21. Plaintiff re-alleges and incorporates herein by this reference each of the allegations set forth in Paragraphs 1-20, inclusive.

22. During the Class period, Labor Code sections 226.7(b) and 512(a) applied to Defendants' employment of Plaintiff and the rest of the Class.

23. At all times relevant hereto, Labor Code Section 226.7(b) provided that employers such as Defendants could not require employees such as the Class members to work during any meal or rest period mandated by an applicable order of the IWC.

24. At all times relevant hereto, Labor Code Section 512(a) and the applicable IWC Order also required Defendants, every time Plaintiff and the Class worked a period of five (5) or more hours per day, to permit Plaintiff and the Class the opportunity to take a thirty (30) minute uninterrupted meal break during which Plaintiff and the Class were and are free to leave the premises and were and are relieved of all duty.

25. Furthermore, at all times relevant hereto, Labor Code Section 512(a) and the applicable IWC Wage Order provided that employers such as Defendants could not require or permit employees such as Plaintiff or a member of the Class to work a period of more than ten (10) hours per day without providing the employee with a second uninterrupted meal period of not less than thirty (30) minutes.

26. At all relevant times, the applicable Industrial Welfare Commission Wage Order has provided that “[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period” and that the “rest period time shall be based on the total hours worked daily at the rate of ten (10)

1 minutes net rest per four (4) hours or major fraction thereof” unless the total daily work time
2 in less than three and one-half (3 ½) hours.

3 27. At times during the Class period, Plaintiff and the rest of the Class were
4 required by Defendants to work more than five (5) hours per day before they were given the
5 opportunity to take a thirty (30) minute uninterrupted meal break. Additionally, as a result of
6 Defendants’ policies and procedures, Plaintiff and the Class Members did not receive any
7 meal breaks during their shifts at times during the Class period.

8 28. Furthermore, at times during the Class period, Plaintiff and the Class were
9 required by Defendants to work more than ten (10) hours per day without receiving a second
10 meal period of not less than thirty (30) minutes.

11 29. At times during the Class Period, as a result of Defendants’ policies and
12 procedures, Defendants failed to provide Plaintiff and the rest of the Class with required rest
13 periods in violation of Labor Code Section 226.7(b).

14 30. During the Class Period, Defendants failed to compensate Plaintiff and the
15 rest of the Class for non-compliant or missed meal and rest periods and thereby violated
16 Labor Code Sections 226.7(c).

17 31. Accordingly, pursuant to Labor Code Section 226.7(c), Plaintiff and the rest
18 of the Class are entitled to recover from Defendants one additional hour of pay at the Class
19 members’ regular rate of compensation for each work day that a compliant meal or rest
20 period was not provided, plus their reasonable attorneys’ fees and costs.

21 **THIRD CAUSE OF ACTION**

22 **FOR VIOLATION OF LABOR CODE SECTION 226(a)**

23 (Against all Defendants)

24 32. Plaintiff re-alleges and incorporates herein by this reference each of the
25 allegations set forth in Paragraphs 1-31, inclusive.

26 33. During the Class period, Labor Code Section 226(a) applied to Defendants’
27 employment of Plaintiff and the rest of the Class. At all times relevant hereto, Labor Code
28 Section 226(a) required that employers such as Defendants furnish to their employees, semi-

1 monthly or at the time of each payment of wages, an accurate itemized statement in writing
2 showing such matters as the name and address of the legal entity that is the employer, gross
3 wages earned, the total hours worked, the net wages earned, all applicable hourly rates and
4 the number of hours worked at each pay rate during the pay period.

5 34. Plaintiff is informed and believes and based thereon, alleges that during the
6 Class period, Defendants knowingly and intentionally failed to provide such accurate
7 itemized wage statements to Plaintiff and the members of the Class. Therefore, Defendants
8 violated Labor Code Section 226(a).

9 35. Plaintiff and the rest of the Class suffered injury as a result of Defendants'
10 failure to comply with Labor Code Section 226(a).

11 36. Accordingly, pursuant to Labor Code Section 226(e), Plaintiff and each
12 member of the Class are entitled to recover from Defendants the greater of their actual
13 damages or fifty dollars (\$50) for the initial violation of Labor Code Section 226(a) and one
14 hundred dollars (\$100) for each subsequent violation during the applicable limitations
15 period, up to a maximum of \$4,000 per Class member, plus their reasonable attorneys' fees
16 and costs.

17 **FOURTH CAUSE OF ACTION**

18 **FOR VIOLATION OF LABOR CODE SECTIONS 201 and 202**

19 (Against all Defendants)

20 37. Plaintiff re-alleges and incorporates herein by this reference each of the
21 allegations set forth in Paragraphs 1-36, inclusive.

22 38. During the Class period, Labor Code Sections 201 and 202 applied to
23 Defendants' employment of Plaintiff and the rest of the Class. At all times relevant hereto,
24 Labor Code Section 201 provided that, if an employer such as Defendants discharged an
25 employee such as a member of the Class, the wages earned and unpaid at the time of
26 discharge were due and payable immediately. Furthermore, at all relevant times, Labor
27 Code Section 202 provided and provides that, if an employee such as a member of the Class
28 voluntarily leaves his or her employment, the wages earned and unpaid must be paid by the

1 employer within seventy-two (72) hours thereafter, unless the employee has given seventy-
2 two (72) hours previous notice of his or her intention to leave, in which case the employee is
3 entitled to receive his or her wages immediately at the time of quitting.

4 39. Plaintiff and other members of the Class left their positions of employment at
5 Defendants' business during the Class period. However, Defendants did not pay Plaintiff
6 and the Class all of the wages that were due to them within the time required by sections 201
7 and 202. Plaintiff is informed and believes and, based thereon, alleges that, during the Class
8 period, Defendants willfully failed to pay Plaintiff and the members of the Class who are
9 former employees their earned and unpaid wages, either at the time of their discharge or
10 within seventy-two (72) hours of their quitting. Defendants therefore violated Labor Code
11 Section 201 and 202.

12 40. During the Class period, Labor Code Section 203 provided that if an
13 employer such as Defendants fails to pay any wages of an employee who is discharged or
14 who quits, the wages of the employee shall continue as a penalty from the due date thereof
15 at the same rate until paid or until an action therefore is commenced, but the wages shall not
16 continue for more than thirty (30) days. Accordingly, Plaintiff and the members of the Class
17 who were discharged or who resigned during the Class period are entitled to receive their
18 wages for each day they were not paid, at their regular rate of pay, up to a maximum of
19 thirty (30) days, plus interest, costs and reasonable attorneys' fees.

20 **FIFTH CAUSE OF ACTION**

21 **FOR VIOLATION OF BUSINESS AND PROFESSIONS CODE**

22 **SECTIONS 17200 *ET SEQ.***

23 (Against all Defendants)

24 41. Plaintiff re-alleges and incorporates herein by this reference each of the
25 allegations in Paragraphs 1-40, inclusive.

26 42. During the Class period, Defendants' violations of the California Labor
27 Code, as alleged above, have been and continue to be illegal, and harmful to Plaintiff, the
28 rest of the Class and the general public. Defendants' above-alleged violations of the

1 California Labor Code therefore also constitute violations of Business and Professions Code
2 Sections 17200 *et seq.* Specifically, a practice that violates any state law or regulation may
3 constitute the basis of an unlawful business practice prohibited by Business and Professions
4 Code Sections 17200 *et seq.*

5 43. The following practices of Defendants, as alleged above, constitute unfair
6 business practices:

7 a. Defendants' failure to compensate Plaintiff and the Class for their
8 overtime work at the rates required by Labor Code Section 510 in violation of Labor Code
9 section 510; and

10 b. Defendants' failure to pay wage premiums to Plaintiff and Class
11 members for missed or non-compliant meal and rest breaks in violation of Labor Code
12 section 226.7(c).

13 44. Accordingly, pursuant to Business and Professions Code Section 17200
14 *et seq.*, Plaintiff and the rest of the Class are entitled to restitution of wages and other
15 property held by Defendants.

16 45. Plaintiff meets the standing requirements for seeking relief pursuant to
17 Business and Professions Code Section 17203, in that he has suffered an injury in fact and
18 has lost money as a result of Defendants' policies, practices and procedures, as more fully
19 set forth elsewhere in this pleading.

20 **SIXTH CAUSE OF ACTION**

21 **RECOVER OF CIVIL PENALTIES UNDER PAGA**

22 46. Plaintiff re-alleges and incorporates herein by this reference, the allegations
23 in Paragraphs 1 through 45, inclusive.

24 47. Plaintiff brings this claim on behalf of the Labor and Workforce Development
25 Agency ("LWDA") under the California Labor Code Private Attorneys General Act of 2004
26 ("PAGA"), California Labor Code §§ 2698-2699.5. In pursuing his PAGA claim, Plaintiff
27 represents the same legal right and interest as state labor law enforcement agencies. PAGA
28

1 permits Plaintiff to recover civil penalties that otherwise would have been assessed and
2 collected by the LWDA and other state agencies.

3 48. Plaintiff has complied with the notice requirements of Labor Code section
4 2699.3. On July 14, 2021, Plaintiff's representatives notified the LWDA of the Labor Code
5 violations alleged herein. The LWDA has not responded to Plaintiff's initial notice. Pursuant
6 to section 2699.3(a)(2)(A), Plaintiff is now entitled to seek recovery civil penalties for
7 Defendants' violations against all of Defendant's aggrieved employees.

8 49. As alleged herein, such are:

- 9 a. Violations of Labor Code §510 (Failure to Pay Overtime)
- 10 b. Violation of Labor Code §§226.7 and 512(a) (Failure to
11 Provide Meal and Rest Breaks)
- 12 c. Violation of Labor Code §226 (non-compliant wage
13 statements)
- 14 d. Violation of Labor Code §§201 and 202 (Failure to Pay
15 Unpaid Wages at Time of Discharge)

16 50. Accordingly, on behalf of all aggrieved employees, Plaintiff seeks recovery
17 of civil penalties owed by Defendant as result of such violations pursuant to Labor Code
18 section 2699, in addition to reasonable attorney's fees and costs of suit.

19 **PRAYER**

20 WHEREFORE, Plaintiff prays for judgment on behalf of himself and the rest of the
21 Class against all Defendants, as follows:

22 **ON THE FIRST CAUSE OF ACTION**

- 23 1. For underpaid overtime wages, as required by law;
- 24 2. For prejudgment interest; and
- 25 3. For reasonable attorneys' fees and costs under Labor Code Section 218.5.

26 **ON THE SECOND CAUSE OF ACTION**

- 27 1. For unpaid wage premiums pursuant to Labor Code section 226.7(c);
- 28 2. For prejudgment interest; and

3. For reasonable attorneys' fees under Code of Civil Procedure section 1021.5 and costs.

ON THE THIRD CAUSE OF ACTION

1. For damages under Labor Code Section 226(e) for the failure to provide accurate wage statements in accordance with Labor Code §226(a);

2. For prejudgment interest; and

3. For reasonable attorneys' fees and costs under Labor Code §226(e)(1).

ON THE FOURTH CAUSE OF ACTION

1. For the wages of each Class member who is no longer employed by Defendant at their regular daily rate up to a maximum of thirty (30) days;

2. For prejudgment interest; and

3. For reasonable attorneys' fees.

ON THE FIFTH CAUSE OF ACTION

1. For restitution of all unpaid wages, overtime and other monies withheld from Plaintiff and the rest of the Class as a result of Defendants' unfair, unlawful or fraudulent business practices; and

2. For reasonable attorneys' fees and costs under Code of Civil Procedure Section 1021.5.

ON THE SIXTH CAUSE OF ACTION

1. For civil penalties; and

2. For reasonable attorney's fees and costs pursuant to California Labor Code section 2699(g).

ON ALL CAUSES OF ACTION

1. For certification of the First through Fifth Causes of Action as a class action;

2. For attorneys' fees pursuant to Civil Procedure Section 1021.5, the "common fund" theory, the "substantial benefit" theory and/or any other applicable theory or doctrine; and

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3. For such further relief as the Court may deem appropriate.

DATED: September 14, 2021

GUNDZIK GUNDZIK HEEGER LLP

By: 
Aaron C. Gundzik
Attorneys for Plaintiff Bernabe Parrilla,
individually and on behalf of all others
similarly situated and as a representative of
other aggrieved employees

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury on all claims so triable.

DATED: September 14, 2021

GUNDZIK GUNDZIK HEEGER LLP



By: _____

Aaron C. Gundzik
Attorneys for Plaintiff Bernabe Parrilla,
individually and on behalf of all others
similarly situated and as a representative of
other aggrieved employees

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen (18) and not a party to the within action. My business address is 14011 Ventura Blvd., Suite 206E, Sherman Oaks, CA 91423.

On September 14, 2021, I served the following document described as

- **FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT**

on the interested parties in this action:

(X) by serving () the original (X) true copies thereof as follows:

Please see attached service list

() BY MAIL I caused such envelope to be deposited in the mail at Los Angeles, California. The envelope was mailed with postage thereon fully prepaid. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. It is deposited with U.S. postal service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one (1) day after date of deposit for mailing in affidavit.	() BY FACSIMILE TRANSMISSION I caused said document(s) to be transmitted by facsimile transmission to the name(s) and facsimile telephone number(s) of the person(s) named on the attached service list. The facsimile machine telephone number of the sending facsimile machine was (818) 918-2316. A transmission report was issued by the sending facsimile machine confirming that the transmission was completed without error. A true and correct copy of said transmission report is attached hereto.
() BY OVERNIGHT DELIVERY Said document was placed in an envelope designated by the express service center and placed for collection in a box regularly maintained by said carrier with whom we have a direct billing account, to be delivered to the office of the addressee listed above on the next business day.	(XX) BY ELECTRONIC TRANSMISSION I caused the above-described document to be electronically served through Case Anywhere pursuant to the Court's Order Authorizing Electronic Service dated _____, to the names and email addresses listed on the Service List attached hereto.

(X) STATE I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

() FEDERAL I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

(X) EXECUTED on September 14, 2021, at Sherman Oaks, California.



Nicole Salazar

Case Anywhere Electronic Service List

Case Name: **Parrilla, et al. v. Monster Energy Company, et al.**

Case Info: **21STCV25855, Los Angeles Superior Court**

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