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7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF SAN FRANCISCO
10 UNLIMITED JURISDICTION

ELECTRONICALLY
FILED
Superior Court of California,
County of San Francisco

10/07/2021
Clerk of the Court
BY: RONNIE OTERO
Deputy Clerk

CGC-21-595842

11 SAMUEL GONZALES, on behalf of himself
12 and all others similarly situated, and the
13 general public,

Plaintiff,

14 v.

15 SRG OPERATING, INC., a Delaware
16 corporation; and DOES 1 through 50,
17 inclusive,

Defendants.

Case No.

REPRESENTATIVE ACTION

COMPLAINT

1. Civil Penalties (Lab. Code § 2698, *et seq.*)

1 Plaintiff SAMUEL GONZALES ("Plaintiff"), on behalf of himself and all others similarly
2 situated aggrieved employees, the general public, and the State of California complains and alleges
3 as follows:

4 **INTRODUCTION**

5 1. Plaintiff brings this representative action against defendant SRG OPERATING,
6 INC., a Delaware corporation; and DOES 1 through 50, inclusive, (collectively referred to as
7 "Defendants") for alleged violations of the Labor Code. As set forth below, Plaintiff alleges that
8 Defendants have

- 9 (1) failed to provide Plaintiff and all other similarly situated individuals with meal
10 periods;
- 11 (2) failed to provide them with rest periods;
- 12 (3) failed to pay them premium wages for missed meal and/or rest periods;
- 13 (4) failed to pay them premium wages for missed meal and/or rest periods at the regular
14 rate of pay;
- 15 (5) failed to pay them at least minimum wage for all hours worked;
- 16 (6) failed to pay them overtime wages at the correct rate;
- 17 (7) failed to pay them double time wages at the correct rate;
- 18 (8) failed to pay them overtime and/or double time wages by failing to include all
19 applicable remuneration in calculating the regular rate of pay;
- 20 (9) failed to pay them for all vested vacation pay;
- 21 (10) failed to reimburse them for all necessary business expenses;
- 22 (11) failed to provide them with accurate written wage statements; and
- 23 (12) failed to pay them all of their final wages following separation of employment.

24 Based on these alleged violations, Plaintiff now brings this representative action to recover
25 civil penalties, and related relief on behalf of himself, all other aggrieved employees, and the State
26 of California.

27 **JURISDICTION AND VENUE**

- 28 2. This Court has subject matter jurisdiction to hear this case because the penalties sought

1 by Plaintiff from Defendants exceeds the minimal jurisdictional limits of the Superior Court of the
2 State of California.

3 3. Venue is proper in the County of San Francisco pursuant to Code of Civil Procedure
4 §§ 393(a), 395(a) and 395.5 in that liability arose there, because at least some of the transactions that
5 are the subject matter of this Complaint occurred therein and/or each defendant is found, maintains
6 offices, transacts business, and/or has an agent therein.

7 **PARTIES**

8 4. Plaintiff is and was, and at all relevant times mentioned herein, an individual
9 residing in the State of California.

10 5. Plaintiff is informed and believes, and thereupon alleges, that Defendant SRG
11 OPERATING, INC. is, and at all relevant times mentioned herein, a Delaware corporation doing
12 business in the State of California.

13 6. Plaintiff is ignorant of the true names and capacities of the defendants sued herein as
14 DOES 1 through 50, inclusive, and therefore sues these defendants by such fictitious names.
15 Plaintiff will amend this Complaint to allege the true names and capacities of the DOE defendants
16 when ascertained. Plaintiff is informed and believes, and thereupon alleges, that each of the
17 fictitiously named defendants are responsible in some manner for the occurrences, acts and
18 omissions alleged herein and that Plaintiff's alleged damages were proximately caused by these
19 defendants, and each of them. Plaintiff will amend this complaint to allege both the true names and
20 capacities of the DOE defendants when ascertained.

21 7. Plaintiff is informed and believes, and thereupon alleges that, at all relevant times
22 mentioned herein, some or all of the defendants were the representatives, agents, employees,
23 partners, directors, associates, joint venturers, joint employers, principals, or co-participants of some
24 or all of the other defendants, and, in doing the things alleged herein, were acting within the course
25 and scope of such relationship and with the full knowledge, consent, and ratification by such other
26 defendants.

27 **GENERAL ALLEGATIONS**

28 8. Plaintiff worked for Defendants as an hourly, non-exempt employee during the

1 applicable statutory period.

2 **Missed and/or Shortened Meal Periods**

3 9. Plaintiff and the aggrieved employees were not provided with meal periods of at
4 least thirty (30) minutes for each five (5) hour work period due to (1) Defendants' policy of not
5 scheduling each meal period as part of each work shift; (2) chronically understaffing each work
6 shift with not enough workers; (3) imposing so much work on each employee such that it made it
7 unlikely that an employee would be able to take their breaks if they wanted to finish their work on
8 time; and (4) no formal written meal and rest period policy that encouraged employees to take their
9 meal and rest periods.

10 10. Plaintiff and the aggrieved employees were not provided legally mandated
11 uninterrupted meal periods of at least thirty minutes for every 5-hour period of work. Plaintiff and
12 the aggrieved employees were required to work through their meal period and perform work related
13 duties before they were finally allowed to take a meal break if possible.

14 11. Plaintiff and the aggrieved employees were not provided the opportunity to take their
15 meal periods prior to the completion of their fifth hour of work, or second meal periods prior to the
16 completion of their tenth hour of work for the reasons described above.

17 12. As a result of Defendants' policy and/or practice, Plaintiff and the aggrieved
18 employees were regularly not provided with uninterrupted meal periods of at least thirty (30)
19 minutes for each five (5) hours worked due to complying with Defendants' productivity
20 requirements that required Plaintiff and the aggrieved employees to work through their meal periods
21 in order to complete their assignments on time.

22 **Missed Rest Periods**

23 13. Plaintiff and the aggrieved employees were not provided with rest periods of at least
24 ten (10) minutes for each four (4) hour work period, or major fraction thereof, due to (1)
25 Defendants' policy of not scheduling each rest period as part of each work shift; (2) chronically
26 understaffing each work shift with not enough workers; and (3) imposing so much work on each
27 employee such that it made it unlikely that an employee would be able to take their breaks if they
28 wanted to finish their work on time.

14. Due to the heavy workload, Plaintiff and the aggrieved employees were not provided the opportunity to take duty-free rest periods, of at least 10-minutes, every four hours of major fraction thereof. Plaintiff and the aggrieved employees were required to work through their rest breaks which they were systemically denied.

15. As a result of Defendants' policy, Plaintiff and the aggrieved employees were regularly not provided with uninterrupted rest periods of at least ten (10) minutes for each four (4) hours worked due to complying with Defendants' productivity requirements that required Plaintiff and the aggrieved employees to work through their rest periods.

Vacation Pay

16. Plaintiff and the aggrieved employees accrued vacation wages during their employment with Defendants.

17. Vacation wages are considered a form of wages under Labor Code § 200. Vested vacation pay and other similar forms of paid time off earned based on labor performed are considered wages that cannot be subject to forfeiture without compensation for forfeited days at the applicable rates required by law.

18. At all relevant times, Defendants maintained policies that provide for the unlawful forfeiture of vested vacation pay in violation of Labor Code § 227.3 and *Suastez v. Plastic Dress-Up Co.*, (1982) 31 Cal. 3d 774.

19. Plaintiff and the aggrieved employees are entitled to vacation accrued during their employment with Defendants. Upon termination and/or separation of employment, Plaintiff and the aggrieved employees were not paid all accrued vacation pay accord and owed.

Regular Rate of Pay

20. The regular rate of pay under California law includes all remuneration for employment paid to, on behalf of, the employee. This requirement includes, but is not limited to, commissions and non-discretionary bonuses.

21. At all relevant times, Defendants violated the above-referenced Labor Code sections by failing to pay Plaintiff and the aggrieved employees for all hours worked, including, but not limited to, overtime hours and/or meal and/or rest premiums. While employed by Defendants,

1 Plaintiff and the aggrieved employees received hourly wages and other remuneration, including,
2 but not limited to, non-discretionary bonuses and/or other applicable remuneration that must be
3 included when calculating their regular rates of pay for purposes of overtime, meal premiums,
4 and/or rest premiums.

5 22. However, Defendants consistently failed to include all applicable forms of
6 remuneration when calculating their regular rates of pay. As a result, any overtime wages, meal
7 premiums, and/or rest premiums paid to Sanchez and the aggrieved employees were not paid at the
8 regular rate of pay.

9 23. During the applicable limitations period, Defendants violated the rights of Plaintiff
10 and the aggrieved employees under the above-referenced Labor Code sections by failing to pay
11 them overtime wages for all overtime hours worked in violation of Labor Code §§ 510, 1194, and
12 1198 as a result of not correctly calculating their regular rate of pay to include all applicable
13 remuneration, including, but not limited to, non-discretionary bonuses.

14 Wage Statements

15 24. Plaintiff and the aggrieved employees were not provided with accurate wage
16 statements as mandated by law pursuant to Labor Code § 226.

17 25. Defendants failed to comply with Labor Code section 226(a)(1) as “gross wages
18 earned” were not accurately reflected in that all hours worked, including overtime and “off-the-
19 clock” work, were not included.

20 26. Defendants failed to comply with Labor Code section 226(a)(2) as “total hours
21 worked by the employee” were not accurately reflected in that all hours worked, including overtime
22 and “off-the-clock” work, were not included.

23 27. Defendants failed to comply with Labor Code section 226(a)(4) as “all deductions”
24 were not accurately reflected in that deductions, even “aggregated and shown as one item,” were not
25 included.

26 28. Defendants failed to comply with Labor Code section 226(a)(5) as “net wages
27 earned” were not accurately reflected in that all hours worked, including overtime and “off-the-
28 clock” work, were not included.

29. Defendants failed to comply with Labor Code section 226(a)(6) as “the inclusive dates of the period for which the employee is paid” were not included.

30. Defendants failed to comply with Labor Code section 226(a)(7) as “the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number” were not accurately reflected.

31. Defendants failed to comply with Labor Code section 226(a)(8) as “the name and address of the legal entity that is the employer” were not accurately reflected.

32. Defendants failed to comply with Labor Code section 226(a)(9) as “all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee” were not accurately reflected in that all hours worked, including overtime and “off-the-clock” work, were not included.

Exhaustion of Labor & Workforce Development Agency (“LWDA”) Investigatory Period

Plaintiff uploaded a PAGA letter via online submission to the LWDA on July 2, 2021. Plaintiff likewise sent notice to Defendants via certified mail on the same date. Plaintiff has exhausted the 65-day period and has received no notice from the LWDA that they intend to investigate; therefore, this civil action is properly commenced after adequately providing notice to the LWDA and exhausting the 65 day period designed to allow the LWDA to review the notice and make a decision.

FIRST CAUSE OF ACTION

CIVIL PENALTIES

(Lab. Code §§ 2698 *et seq.*)

33. Plaintiff incorporates the preceding paragraphs as if fully alleged herein.

34. During the applicable limitations period, Defendants have violated Labor Code §§ 201, 202, 203, 204, 223, 226(a), 226.7, 227.3, 510, 512, 1174, 1194, 1197, and 1198, and applicable Wage Orders.

35. Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on behalf of himself and other current and former employees, to bring a representative civil action to recover civil penalties pursuant to the procedures set forth in Labor Code § 2699.3 that may, but need not,

1 be brought or maintained as a class action pursuant to Code of Civil Procedure section 382.

2 36. Plaintiff, a former employee against whom Defendants committed one or more of the
3 alleged Labor Code violations during the applicable limitations period, is an aggrieved employee
4 within the meaning of Labor Code § 2699(c).

5 37. Plaintiff has complied with the procedures for bringing suit specified in Labor Code
6 § 2699.3.

7 38. Pursuant to Labor Code sections 2699(a) and (f), Plaintiff seeks the following civil
8 penalties for Defendants' violations of Labor Code §§ 201, 202, 203, 204, 223, 226(a), 226.7,
9 227.3, 510, 512, 1174, 1194, 1197, and 1198:

- 10 i. For violations of Labor Code §§ 201, 202, 203, 212, 226.7, 227.3, 1174,
11 1194, and 1198, one hundred dollars (\$100) for each employee per pay
12 period for each initial violation and two hundred dollars (\$200) for each
13 employee per pay period for each subsequent violation (penalties set by
14 Labor Code § 2699(f)(2));
- 15 ii. For violations of Labor Code § 203, a penalty in an amount not exceeding
16 thirty (30) days' pay as waiting time (penalties set by Labor Code § 256);
- 17 iii. For violations of Labor Code § 204, one hundred dollars (\$100) for each
18 employee for each initial violation that was neither willful nor intentional,
19 two hundred dollars (\$200) for each employee, plus 25% of the amount
20 unlawfully withheld from each employee, for each initial violation that was
21 either willful or intentional, and two hundred dollars (\$200) for each
22 employee, plus twenty-five percent (25%) of the amount unlawfully withheld
23 from each employee, for each subsequent violation, regardless of whether the
24 subsequent violation was either willful or intentional (penalties set by Labor
25 Code § 210);
- 26 iv. For violations of Labor Code § 223, one hundred dollars (\$100) for each
27 employee for each initial violation that was neither willful nor intentional,
28 two hundred dollars (\$200) for each employee, plus twenty-five percent

(25%) of the amount unlawfully withheld from each employee, for each initial violation that was either willful or intentional, and two hundred dollars (\$200) for each employee, plus twenty-five percent (25%) of the amount unlawfully withheld from each employee, for each subsequent violation, regardless of whether the subsequent violation was either willful or intentional (penalties set by Labor Code § 225.5);

v. For violations of Labor Code § 226(a), if this action is deemed to be an initial citation, two hundred and fifty dollars (\$250) for each employee for each violation. Alternatively, if an initial citation or its equivalent occurred before the filing of this action, one thousand dollars (\$1,000) for each employee for each violation (penalties set by Labor Code § 226.3);

vi. For violation of Labor Code §§ 510 and 512, fifty dollars (\$50) for each employee for each initial pay period for which the employee was underpaid, and one hundred dollars (\$100) for each employee for each subsequent pay period for which the employee was underpaid (penalties set by Labor Code § 558);

vii. For violations of Labor Code § 1197, one hundred dollars (\$100) for each aggrieved employee for each initial violation of Labor Code § 1197 that was intentional and two hundred and fifty dollars (\$250) for each aggrieved employee per pay period for each subsequent violation of Labor Code § 1197, regardless of whether the initial violation was intentional (penalties set by Labor Code § 1197.1);

viii. Pursuant to Labor Code § 2699(g), Plaintiff seeks an award of reasonable attorneys' fees and costs in connection with Plaintiff's claims for civil penalties.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of himself, all others similarly situated, and the general public, prays for relief and judgment against Defendants as follows:

- (1) Pre-judgment interest;
- (2) Civil penalties;
- (3) Costs of suit;
- (4) Reasonable attorneys' fees; and
- (5) Such other relief as the Court deems just and proper.

Dated: September 13, 2021

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