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8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 FOR THE COUNTY OF SANTA CLARA
11 UNLIMITED JURISDICTION

12 SERGIO VIDAL, on behalf of himself and all
13 others similarly situated aggrieved employees,

14 *Plaintiff,*

15 v.

16 UNIVERSAL SITE SERVICES, INC., a
17 California corporation; and DOES 1 through
50, inclusive,

18 *Defendants.*
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21CV392817

Case No.

REPRESENTATIVE ACTION

COMPLAINT

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

JURY TRIAL DEMANDED

1 Plaintiff SERGIO VIDAL ("Plaintiff"), on behalf of himself, all other similarly situated
2 aggrieved employees, and the State of California complains and alleges as follows:

3 INTRODUCTION

4 1. Plaintiff brings this representative action against defendants UNIVERSAL SITE
5 SERVICES, INC., a California corporation; and DOES 1 through 50, inclusive, (collectively
6 referred to as "Defendants") for alleged violations of the Labor Code and Business and Professions
7 Code. As set forth below, Plaintiff alleges that Defendants have

8 (1) failed to provide Plaintiff and all other similarly situated individuals with meal
9 periods;

10 (2) failed to provide them with rest periods;

11 (3) failed to pay them premium wages for missed meal and/or rest periods;

12 (4) failed to pay them premium wages for missed meal and/or rest periods at the regular
13 rate of pay;

14 (5) failed to pay them at least minimum wage for all hours worked;

15 (6) failed to pay them for all vested vacation pay;

16 (7) failed to reimburse them for all necessary business expenses;

17 (8) failed to provide them with accurate written wage statements; and

18 (9) failed to pay them all of their final wages following separation of employment.

19 Based on these alleged violations, Plaintiff now brings this representative action to recover
20 penalties, and related relief on behalf of himself, all others similarly situated aggrieved employees,
21 and the State of California.

22 JURISDICTION AND VENUE

23 2. This Court has subject matter jurisdiction to hear this case because the penalties sought
24 by Plaintiff from Defendants exceeds the minimal jurisdictional limits of the Superior Court of the
25 State of California.

26 3. Venue is proper in the County of Santa Clara pursuant to Code of Civil Procedure §§
27 395(a) and 395.5 in that liability arose there, because at least some of the transactions that are the
28 subject matter of this Complaint occurred therein and/or each defendant is found, maintains offices,

1 transacts business, and/or has an agent therein.

2 **PARTIES**

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

5 5. Plaintiff is informed and believes, and thereupon alleges, that Defendant
6 UNIVERSAL SITE SERVICES, INC. is, and at all relevant times mentioned herein was, a
7 California corporation doing business in the State of California.

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

16 7. Plaintiff is informed and believes, and thereupon alleges that, at all relevant times
17 mentioned herein, some or all of the defendants were the representatives, agents, employees,
18 partners, directors, associates, joint venturers, joint employers, principals, or co-participants of some
19 or all of the other defendants, and, in doing the things alleged herein, were acting within the course
20 and scope of such relationship and with the full knowledge, consent, and ratification by such other
21 defendants. Plaintiff's representation of "aggrieved employees" is brought with the information and
22 belief that Defendants' labor code violations are systematic, ongoing, repeated, and will continue.

23 **GENERAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

24 8. Plaintiff worked for Defendants as an hourly, non-exempt employee during the
25 applicable statutory period.

26 **Improper Rounding Practices**

27 9. Defendants utilize a rounding practice that is not and was not "fair and neutral" and
28 that results and resulted in a failure to pay Plaintiff and the aggrieved employees over a period of

1 time.

2 10. Defendants have not, did not, and do not keep records of actual hours worked by
3 Plaintiff and the aggrieved employees. In the absence of records showing actual hours worked,
4 Plaintiff and the aggrieved employees are unable to ascertain whether (1) Defendants' rounding
5 practices comply with California law; (2) whether Defendants' rounding practices resulted in failure
6 to compensate Plaintiff and the aggrieved employees properly for all the time they actually worked
7 over a period of time; and (3) whether Plaintiff and the aggrieved employees were properly paid for
8 all hours worked.

9 **Off-the-Clock Work**

10 11. Plaintiff and the aggrieved employees were not paid all wages earned as Defendants
11 directed, permitted, or otherwise encouraged Plaintiff and the aggrieved employees to perform off-
12 the-clock work.

13 12. During the applicable limitations period, Plaintiff and the aggrieved employees had
14 to work off-the-clock because they were not paid for all hours worked including, but not limited to,
15 automatically deducting time out of their paychecks whether or not they took meal periods,
16 improper rounding practices and/or not recording the hours that employees actually worked.

17 13. Plaintiff and the aggrieved employees were paid out for 80.00 hours worked during
18 their pay period regardless of the actual hours they worked. If Plaintiff and the aggrieved employees
19 missed two workdays during a pay period, Defendants simply paid them for an even 64.00 hours of
20 work during that pay period without taking into account the actual hours of work performed. It's
21 unclear how Defendants kept track of the time worked since Plaintiff and the aggrieved employees
22 were not clocking in or out for their shifts. When, and if, Plaintiff and the aggrieved employees
23 clocked in for their shifts, their time was rounded to even numbers that did not represent the actual
24 time worked by Plaintiff and the aggrieved employees.

25 14. Plaintiff and the aggrieved employees typically began their shifts at 5:30 a.m. and
26 usually finished their shifts on or around 2:30 p.m. Despite this fact, Defendants only credited
27 Plaintiff and the aggrieved employees with a standard 8.00 hours of work. This resulted in
28 substantial amounts of time that Plaintiff and the aggrieved employees were not being paid for,

1 although they were performing work with the direct knowledge of their supervisors and managers.

2 15. Defendants were aware of this practice and directed, permitted, or otherwise
3 encouraged Plaintiff and the aggrieved employees to perform off-the-clock work.

4 16. As a result of Defendants' policies and practices, Plaintiff and the aggrieved
5 employees were not paid for all hours worked.

6 **Late Meal Periods and Auto-Deduct Policy and/or Practice**

7 17. Plaintiff and the aggrieved employees were not provided with meal periods of at
8 least thirty (30) minutes for each five (5) hour work period due to (1) Defendants' policy of not
9 scheduling each meal period as part of each work shift; (2) chronically understaffing each work
10 shift with not enough workers; and (3) imposing so much work on each employee such that it made
11 it unlikely that an employee would be able to take their breaks if they wanted to finish their work
12 on time.

13 18. Defendants have a policy and/or practice of requiring Plaintiff and the aggrieved
14 employees to take their meal periods after the fifth hour of work. Plaintiff and the aggrieved
15 employees began their work shifts at approximately 5:30 a.m. and did not take a meal period until
16 12:00 p.m. or later. Also, Plaintiff and the aggrieved employees did not clock out for their meal
17 periods. On information and belief, Defendants simply automatically deducted 30 minutes from
18 their time sheets regardless of whether they were able to take their meal period and regardless of
19 whether their meal period was shortened by work duties or travel.

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

25 **Missed Rest Periods**

26 20. Plaintiff and the aggrieved employees were not provided with rest periods of at least
27 ten (10) minutes for each four (4) hour work period, or major fraction thereof, due to (1)
28 Defendants' policy of not scheduling each rest period as part of each work shift; (2) chronically

1 understaffing each work shift with not enough workers; (3) imposing so much work on each
2 employee such that it made it unlikely that an employee would be able to take their breaks if they
3 wanted to finish their work on time; and (4) no formal written meal and rest period policy that
4 encouraged employees to take their meal and rest periods.

5 21. Defendants have a policy and/or practice of systematically denying rest breaks to
6 Plaintiff and the aggrieved employees. Plaintiff and the aggrieved employees routinely worked
7 throughout the duration of their shifts without any rest breaks. Plaintiff and the aggrieved
8 employees were told by their managers and supervisors, including but not limited to Oscar
9 [surname unknown], that the time they spent driving in between job site locations was their rest
10 break. Even if Plaintiff and the aggrieved employees were to use the restroom, they were scolded
11 by their managers and supervisors and told to hurry up so that they could continue their work and
12 drive to the next location.

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

18 **Expense Reimbursement**

19 23. Plaintiff and the aggrieved employees members were required to purchase and utilize
20 safety glasses, gloves, and/or ear plugs.

21 24. Additionally, Plaintiff and the aggrieved employees were required to utilize their
22 own personal cell phones to communicate regularly with their supervisors and/or management.

23 25. Plaintiff and the aggrieved employees members were not reimbursed for business
24 expenses incurred in purchasing the items necessary to do their job and/or for using personal cell
25 phones for work related purposes.

26 26. In addition, Plaintiff and the aggrieved employees members were not paid at least
27 two times the minimum wage for all hours worked. Defendants failed to reimburse Plaintiff and the
28 aggrieved employees for such necessary business expenses incurred by them.

Wage Statements

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

29. Defendants failed to comply with Labor Code 0167 226(a)(1) as “gross wages earned” were not accurately reflected in that all hours worked, including overtime and “off-the-clock” work were not included.

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

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

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

33. 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.

34. 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.

FIRST CAUSE OF ACTION

CIVIL PENALTIES

(Lab. Code §§ 2698 *et seq.*)

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

36. During the applicable limitations period, Defendants have violated Labor Code §§ 201, 202, 203, 204, 223, 226(a), 226.7, 510, 512, 1194, 1197, 1198, and 2802.

37. Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on behalf of

1 himself and other current and former employees, to bring a representative civil action to recover
2 civil penalties pursuant to the procedures set forth in Labor Code § 2699.3 that may, but need not,
3 be brought or maintained as a class action pursuant to Code of Civil Procedure section 382.

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

7 39. Plaintiff has complied with the procedures for bringing suit specified in Labor Code
8 § 2699.3. Notice was provided to the California Labor & Workforce Development Agency
9 (“LWDA”) and 65 days have elapsed without the LWDA providing Plaintiff with any notice of an
10 intent to investigate.

11 40. Pursuant to Labor Code sections 2699(a) and (f), Plaintiff seeks the following civil
12 penalties for Defendants’ violations of Labor Code §§ 201, 202, 203, 204, 223, 226(a), 226.7, 510,
13 512, 1194, 1197, 1198 and 2802:

- 14 i. For violations of Labor Code §§ 201, 202, 203, 212, 226.7, 1194, 1198 and
15 2802, one hundred dollars (\$100) for each employee per pay period for each
16 initial violation and two hundred dollars (\$200) for each employee per pay
17 period for each subsequent violation (penalties set by Labor Code §
18 2699(f)(2));
- 19 ii. For violations of Labor Code § 203, a penalty in an amount not exceeding
20 thirty (30) days’ pay as waiting time (penalties set by Labor Code § 256);
- 21 iii. For violations of Labor Code § 204, one hundred dollars (\$100) for each
22 employee for each initial violation that was neither willful nor intentional,
23 two hundred dollars (\$200) for each employee, plus 25% of the amount
24 unlawfully withheld from each employee, for each initial violation that was
25 either willful or intentional, and two hundred dollars (\$200) for each
26 employee, plus twenty-five percent (25%) of the amount unlawfully withheld
27 from each employee, for each subsequent violation, regardless of whether the
28 subsequent violation was either willful or intentional (penalties set by Labor

Code § 210);

- iv. For violations of Labor Code § 223, one hundred dollars (\$100) for each employee for each initial violation that was neither willful nor intentional, 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 other similarly situated aggrieved employees, and the State of California, prays for relief and judgment against Defendants as follows:

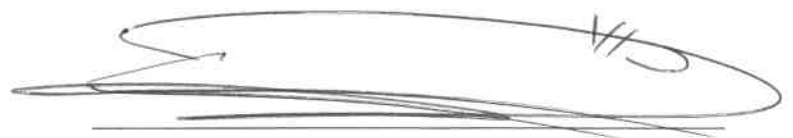
- (1) Pre-judgment interest;
- (2) Civil penalties;
- (3) Costs of suit;
- (4) Reasonable attorneys' fees; and
- (5) Such other relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff, on behalf of himself, all other similarly situated, hereby demands a jury trial on all issues so triable.

Dated: December 29, 2021

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