

SUMMONS (CITACION JUDICIAL)

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

NOTICE TO DEFENDANT: DIAL GENERAL ENGINEERING, a
(AVISO AL DEMANDADO): California general partnership, and
DOES 1 through 10, inclusive

ELECTRONICALLY FILED
Merced Superior Court
3/1/2022 3:51 PM
Amanda Toste
Clerk of the Superior Court
By: Tawn Saepanh, Deputy

YOU ARE BEING SUED BY PLAINTIFF: LORENZO CALLEROS, on
(LO ESTÁ DEMANDANDO EL DEMANDANTE): behalf of himself and
all "aggrieved employees" pursuant to Labor Code § 2698
et seq.

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. **¡AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es):
Superior Court of California, County of Merced
627 West 21st Street, Merced, CA 95340

CASE NUMBER: 22CV-00720
(Número del Caso):

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is: Alex P. Katofsky, Esq.
(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es): SBN:202754
Gaines & Gaines, APLC
27200 Agoura Road, Suite 101, Calabasas, CA 91301
818-703-8985

DATE: 3/1/2022 3:51 PM Amanda Toste Clerk, by
(Fecha) *(Secretario)*  Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010))

[SEAL]



NOTICE TO THE PERSON SERVED: You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of *(specify)*:
3. ☐ on behalf of *(specify)*:
under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other *(specify)*:
4. ☐ by personal delivery on *(date)*:

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):

Alex P. Katofsky, Esq. SBN: 202754
 Gaines & Gaines, APLC
 27200 Agoura Road, Suite 101, Calabasas, CA 91301
 TELEPHONE NO.: 818-703-8985 FAX NO. (Optional): 818-703-8984
 E-MAIL ADDRESS: alex@gaineslawfirm.com
 ATTORNEY FOR (Name): Plaintiff/Lorenzo Calleros

FOR COURT USE ONLY

ELECTRONICALLY FILED
 Merced Superior Court
 3/1/2022 3:51 PM
 Amanda Toste
 Clerk of the Superior Court
 By: Tawn Saepanh, Deputy

SUPERIOR COURT OF CALIFORNIA, COUNTY OF MERCED

STREET ADDRESS: 627 West 21st Street
 MAILING ADDRESS: 627 West 21st Street
 CITY AND ZIP CODE: Merced, CA 95340
 BRANCH NAME: Old Merced Courthouse (21st Street Building)

CASE NAME: Calleros v. Dial General Engineering, et al.

CIVIL CASE COVER SHEET

☒ **Unlimited** ☐ **Limited**
 (Amount (Amount
 demanded demanded is
 exceeds \$25,000) \$25,000 or less)

Complex Case Designation

☐ Counter ☐ Joinder
 Filed with first appearance by defendant
 (Cal. Rules of Court, rule 3.402)

CASE NUMBER: 22CV-00720

JUDGE:
 DEPT.:

Items 1–6 below must be completed (see instructions on page 2).

1. Check **one** box below for the case type that best describes this case:

Auto Tort

☐ Auto (22)
☐ Uninsured motorist (46)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

☐ Asbestos (04)
☐ Product liability (24)
☐ Medical malpractice (45)
☐ Other PI/PD/WD (23)

Non-PI/PD/WD (Other) Tort

☐ Business tort/unfair business practice (07)
☐ Civil rights (08)
☐ Defamation (13)
☐ Fraud (16)
☐ Intellectual property (19)
☐ Professional negligence (25)
☐ Other non-PI/PD/WD tort (35)

Employment

☐ Wrongful termination (36)
☒ Other employment (15)

Contract

☐ Breach of contract/warranty (06)
☐ Rule 3.740 collections (09)
☐ Other collections (09)
☐ Insurance coverage (18)
☐ Other contract (37)

Real Property

☐ Eminent domain/Inverse condemnation (14)
☐ Wrongful eviction (33)
☐ Other real property (26)

Unlawful Detainer

☐ Commercial (31)
☐ Residential (32)
☐ Drugs (38)

Judicial Review

☐ Asset forfeiture (05)
☐ Petition re: arbitration award (11)
☐ Writ of mandate (02)
☐ Other judicial review (39)

Provisionally Complex Civil Litigation
(Cal. Rules of Court, rules 3.400–3.403)

☐ Antitrust/Trade regulation (03)
☐ Construction defect (10)
☐ Mass tort (40)
☐ Securities litigation (28)
☐ Environmental/Toxic tort (30)
☐ Insurance coverage claims arising from the above listed provisionally complex case types (41)

Enforcement of Judgment

☐ Enforcement of judgment (20)

Miscellaneous Civil Complaint

☐ RICO (27)
☐ Other complaint (not specified above) (42)

Miscellaneous Civil Petition

☐ Partnership and corporate governance (21)
☐ Other petition (not specified above) (43)

2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

- a. ☐ Large number of separately represented parties d. ☐ Large number of witnesses
 b. ☐ Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve e. ☐ Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
 c. ☐ Substantial amount of documentary evidence f. ☐ Substantial postjudgment judicial supervision

3. Remedies sought (check all that apply): a. ☒ monetary b. ☐ nonmonetary; declaratory or injunctive relief c. ☐ punitive

4. Number of causes of action (specify): Two (2)

5. This case ☒ is ☐ is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: 03/01/2022

Alex P. Katofsky, Esq.

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you **must** complete and file, along with your first paper, the Civil Case Cover Sheet contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the Civil Case Cover Sheet to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort

Auto (22)–Personal Injury/Property Damage/Wrongful Death
Uninsured Motorist (46) (*if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto*)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)
Asbestos Property Damage
Asbestos Personal Injury/
Wrongful Death
Product Liability (*not asbestos or toxic/environmental*) (24)
Medical Malpractice (45)
Medical Malpractice–
Physicians & Surgeons
Other Professional Health Care
Malpractice
Other PI/PD/WD (23)
Premises Liability (e.g., slip and fall)
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
Intentional Infliction of
Emotional Distress
Negligent Infliction of
Emotional Distress
Other PI/PD/WD

Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)
Civil Rights (e.g., discrimination, false arrest) (*not civil harassment*) (08)
Defamation (e.g., slander, libel) (13)
Fraud (16)
Intellectual Property (19)
Professional Negligence (25)
Legal Malpractice
Other Professional Malpractice (*not medical or legal*)
Other Non-PI/PD/WD Tort (35)

Employment

Wrongful Termination (36)
Other Employment (15)

Contract

Breach of Contract/Warranty (06)
Breach of Rental/Lease
Contract (*not unlawful detainer or wrongful eviction*)
Contract/Warranty Breach–Seller Plaintiff (*not fraud or negligence*)
Negligent Breach of Contract/
Warranty
Other Breach of Contract/Warranty
Collections (e.g., money owed, open book accounts) (09)
Collection Case–Seller Plaintiff
Other Promissory Note/Collections Case
Insurance Coverage (*not provisionally complex*) (18)
Auto Subrogation
Other Coverage
Other Contract (37)
Contractual Fraud
Other Contract Dispute

Real Property

Eminent Domain/Inverse
Condemnation (14)
Wrongful Eviction (33)
Other Real Property (e.g., quiet title) (26)
Writ of Possession of Real Property
Mortgage Foreclosure
Quiet Title
Other Real Property (*not eminent domain, landlord/tenant, or foreclosure*)

Unlawful Detainer

Commercial (31)
Residential (32)
Drugs (38) (*if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential*)

Judicial Review

Asset Forfeiture (05)
Petition Re: Arbitration Award (11)
Writ of Mandate (02)
Writ–Administrative Mandamus
Writ–Mandamus on Limited Court Case Matter
Writ–Other Limited Court Case Review
Other Judicial Review (39)
Review of Health Officer Order
Notice of Appeal–Labor
Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)
Construction Defect (10)
Claims Involving Mass Tort (40)
Securities Litigation (28)
Environmental/Toxic Tort (30)
Insurance Coverage Claims (*arising from provisionally complex case type listed above*) (41)

Enforcement of Judgment

Enforcement of Judgment (20)
Abstract of Judgment (Out of County)
Confession of Judgment (*non-domestic relations*)
Sister State Judgment
Administrative Agency Award (*not unpaid taxes*)
Petition/Certification of Entry of Judgment on Unpaid Taxes
Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

RICO (27)
Other Complaint (*not specified above*) (42)
Declaratory Relief Only
Injunctive Relief Only (*non-harassment*)
Mechanics Lien
Other Commercial Complaint Case (*non-tort/non-complex*)
Other Civil Complaint (*non-tort/non-complex*)

Miscellaneous Civil Petition

Partnership and Corporate Governance (21)
Other Petition (*not specified above*) (43)
Civil Harassment
Workplace Violence
Elder/Dependent Adult Abuse
Election Contest
Petition for Name Change
Petition for Relief From Late Claim
Other Civil Petition

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By: Tawn Saepanh, Deputy

Attorneys for Plaintiff Lorenzo Calleros, on behalf of himself and all “aggrieved employees” pursuant to Labor Code § 2698 *et seq.*

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF MERCED**

LORENZO CALLEROS, on behalf of himself
and all “aggrieved employees” pursuant to
Labor Code § 2698 *et seq.*

Plaintiff,

v.

DIAL GENERAL ENGINEERING, a
California general partnership, and DOES 1
through 10, inclusive,

Defendants.

CASE NO: 22CV-00720

CLASS ACTION

**CLASS AND REPRESENTATIVE
ACTION COMPLAINT FOR:**

**1. KNOWING AND INTENTIONAL
FAILURE TO COMPLY WITH
ITEMIZED EMPLOYEE WAGE
STATEMENT PROVISIONS (LABOR
CODE § 226(a), (e), AND 558.1)**

**2. PENALTIES PURSUANT TO LABOR
CODE § 2699(f) FOR VIOLATIONS OF
LABOR CODE §§ 226(a), AND
PURSUANT TO LABOR CODE § 2699(a)
FOR VIOLATIONS OF LABOR CODE §§
226.3 AND 558.1**

DEMAND FOR JURY TRIAL

1 Plaintiff LORENZO CALLEROS (“Plaintiff”), individually and on behalf of all similarly
2 situated individuals (the “Class” or “Plaintiff Class”), and on behalf of the general public, and as an
3 “aggrieved employee” under the Labor Code Private Attorneys General Act of 2004, complains of
4 Defendants, and each of them, as presented herein.

5 **I.**

6 **INTRODUCTION AND FACTUAL BACKGROUND**

7 1. This is a Class Action and Representative Action, pursuant to Code of Civil Procedure
8 § 382 and Labor Code § 2698 *et seq.*, on behalf of Plaintiff and all other non-exempt employees who
9 work or formerly worked for DIAL GENERAL ENGINEERING, a California General Partnership
10 (hereinafter “Defendant”) within the State of California.

11 2. Plaintiff contends that from August 23, 2020 through March 26, 2022, Defendant has
12 had a consistent policy of not providing accurately itemized wage statements to Class Members.

13 3. Plaintiff, on behalf of himself and members of the Class, brings this action pursuant to
14 Labor Code §§ 226(a), 226.3, and 558.1, seeking statutory and civil penalties, injunctive and other
15 equitable relief, and reasonable attorneys’ fees and costs.

16 4. Plaintiff, on behalf of himself and members of the Class, also brings this action for
17 violations of sections 7 and 20 of IWC Wage order 5-2001 and any other applicable Wage Order.

18 5. Plaintiff, on behalf of himself and all aggrieved employees pursuant to Labor Code §§
19 2698 *et seq.*, seeks penalties for Defendants’ various violations of the California Labor Code.

20 6. Venue is proper in this judicial district, pursuant to Code of Civil Procedure § 395
21 because Defendants employed Plaintiff and Class Members in Merced County, California.

22 **II.**

23 **TOLLING AGREEMENT**

24 7. Plaintiff and Defendant entered into an agreement to toll the statute of limitations,
25 pursuant to California Code of Civil Procedure § 360.5, from October 29, 2021 through and including
26 the date Plaintiff files this Complaint. As such, all periods of limitation (statutory or otherwise)
27 affecting any and all claims or causes of actions which Plaintiff may have against Defendant have
28 been tolled between October 29, 2021 and the present.

//

1 **III.**

2 **PARTIES**

3 **A. Plaintiff**

4 8. Plaintiff LORENZO CALLEROS was employed by Defendant from 2020 through
5 May 2021 as a non-exempt employee in Merced County, California.

6 9. During his work with Defendant, Plaintiff was willfully denied accurately itemized
7 wage statements.

8 **B. Defendants**

9 10. Defendant DIAL GENERAL ENGINEERING, (“Defendant”) is a California general
10 partnership. Defendant employed Plaintiff and Class Members throughout the State of California,
11 including Merced County, California.

12 11. The true names and capacities, whether individual, corporate, associate, or otherwise,
13 of Defendants sued herein as DOES 1 to 10, inclusive, are currently unknown to Plaintiff, who
14 therefore sues Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiff is
15 informed and believes, and based thereon alleges, that each of the Defendants designated herein as a
16 DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will
17 seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendants
18 designated hereinafter as DOES when such identities become known.

19 12. Plaintiff is informed and believes, and based thereon alleges, that each Defendants
20 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint
21 scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are
22 legally attributable to the other Defendants.

23 13. The Defendants named herein as DOE 1 through DOE 10 are and were persons acting
24 on behalf of, or acting jointly with, Defendants, who violated, or caused to be violated, one or more
25 provisions of the California Labor Code as alleged herein.

26 //

27 //

28 //

1 IV.

2 **CLASS ACTION ALLEGATIONS**

3 14. Plaintiff brings this action on behalf of himself and all others similarly situated as a
4 Class Action pursuant to § 382 of the Code of Civil Procedure. Plaintiff seeks to represent the
5 following class composed of and defined as follows:

6 **THE CLASS**

7 All current and former non-exempt, hourly California employees of
8 Defendant employed from August 23, 2020 through March 26, 2022.

9 15. Plaintiff reserves the right under Rule 3.765, California Rules of Court, to amend or
10 modify this class description with greater specificity or further division into subclasses or limitation
11 to particular issues.

12 16. This action has been brought and may properly be maintained as a class action under
13 the provisions of § 382 of the Code of Civil Procedure because there is a well-defined community of
14 interest in the litigation and the proposed Class is easily ascertainable.

15 **A. Numerosity**

16 17. The potential members of the Class as defined are so numerous that joinder of all the
17 members the Class is impracticable. While the precise number of members of the Class has not been
18 ascertained at this time, Plaintiff is informed and believes, and based thereon alleges, that Defendants
19 currently employ, and during the relevant time periods employed, more than 35 persons in the State
20 of California who fall within the Class definition.

21 18. Accounting for employee turnover during the relevant period necessarily increases this
22 number. Plaintiff alleges Defendants' employment records would provide information as to the
23 number and location of members of the Class. Joinder of members of the Class is not practicable.

24 **B. Commonality**

25 19. The common question of law and fact that predominate over any questions affecting
26 only individual Class Members include, without limitation: Whether Defendants failed to provide
27 Plaintiff and members of the Class with accurately itemized wage statements, in accordance with
28 Labor Code § 226(a) and (e).

1 **C. Typicality**

2 20. The claims of the named Plaintiff are typical of the claims of members of the Class.
3 Plaintiff and members of the Class sustained injuries and damages arising out of and caused by
4 Defendant's common course of conduct in violation of laws, regulations having the force and effect
5 of law, and statutes as alleged herein.

6 **D. Adequacy of Representation**

7 21. Plaintiff will fairly and adequately represent and protect the interests of members of
8 the Class. Counsel who represents Plaintiff are competent and experienced in litigating large
9 employment class actions.

10 **E. Superiority of Class Action**

11 22. A class action is superior to other available means for the fair and efficient adjudication
12 of this controversy. Individual joinder of all proposed members of the Class is not practicable, and
13 questions of law and fact common to the proposed Class predominate over any questions affecting
14 only individual members of the proposed Class. Each member of the proposed Class has been
15 damaged and is entitled to recovery by reason of Defendant's illegal policies and/or practices.

16 23. Class action treatment will allow those similarly situated persons to litigate their
17 claims in the manner that is most efficient and economical for the parties and the judicial system.
18 Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this
19 action that would preclude its maintenance as a class action.

20 **V.**

21 **CAUSES OF ACTION**

22 **FIRST CAUSE OF ACTION**

23 **PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS**

24 **KNOWING AND INTENTIONAL FAILURE TO COMPLY WITH ITEMIZED**

25 **EMPLOYEE WAGE STATEMENT PROVISIONS**

26 **(LABOR CODE §§ 226(a), (e), AND 558.1)**

27 24. Plaintiff incorporates paragraphs 1 through 23 of this Complaint as though fully set
28 forth herein.

1 25. Section 226(a) of the California Labor Code requires Defendant to provide wage
2 statements to employees. In those wage statements, Defendant must provide an accurate itemized
3 statement in writing showing (1) gross wages earned, (2) total hours worked by the employee..., (3)
4 the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-
5 rate basis, (4) all deductions, provided that all deductions made on written orders of the employee
6 may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period
7 for which the employee is paid, (7) the name of the employee and only the last four digits of his or
8 her social security number or an employee identification number other than a social security number,
9 (8) the name and address of the legal entity that is the employer..., and (9) all applicable hourly rates
10 in effect during the pay period and the corresponding number of hours worked at each hourly rate by
11 the employee. Defendant has knowingly and intentionally failed to comply with Labor Code § 226(a).

12 26. Defendant failed to issue Plaintiff and Class Members wage statements that fully and
13 accurately itemized the requirements set forth in Labor Code § 226(a). For example, the wage
14 statements provided to Plaintiff and Class Members did not include Defendant's proper name or
15 address. As such, the wage statements provided by Defendant failed to accurately note the name and
16 address of the legal entity that is the employer, in violation of Labor Code §226(a)(8).

17 27. Defendant's willful conduct in failing to provide Class Members with accurate
18 itemized wage statements caused Plaintiff and members of the Class to be injured by being issued
19 wage statements which do not reflect all information required by Labor Code § 226(a). As a result,
20 Plaintiff and members of the Class are entitled to penalties pursuant to Labor Code § 226(e) to recover
21 the greater of all actual damages or \$50 for the initial pay period in which a violation occurs and \$100
22 per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of
23 \$4,000 per employee, and are entitled to an award of costs and reasonable attorneys' fees pursuant to
24 Labor Code § 226(h).

25 28. Labor Code Section 558.1 provides that, "Any employer or other person acting on
26 behalf of an employer, who violates, or causes to be violated, any provision regulating minimum
27 wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or
28 causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the

1 employer for such violation.” As such, Plaintiff alleges that Defendants violated Labor Code § 558.1
2 when they issued incomplete wage statements, as required by Labor Code § 226.

3 Wherefore, Plaintiff and the Class he seeks to represent request relief as described below.

4
5 **SECOND CAUSE OF ACTION**

6 **PLAINTIFF AND ALL AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS**
7 **PENALTIES PURSUANT TO LABOR CODE § 2699(f) FOR VIOLATIONS OF**
8 **LABOR CODE § 226(a), AND PURSUANT TO LABOR CODE § 2699(a) FOR**
9 **VIOLATIONS OF LABOR CODE §§ 226.3 AND 558.1**

10 29. Plaintiff incorporates paragraphs 1 through 28 of this Complaint as though fully set
11 forth herein.

12 30. As a result of the acts alleged above, including the Labor Code violations set forth
13 herein, Plaintiff seeks penalties pursuant to Labor Code § 2698 *et seq.*

14 31. For each such violation, Plaintiff and all other aggrieved employees are entitled to
15 penalties in an amount to be shown at the time of trial subject to the following formula:

- 16 a. Pursuant to Labor Code § 2699(f), \$100 for each initial violation and \$200 for each
17 subsequent violation of Labor Code §§ 201, 202, 226(a), 226.7, 512, 2802; and
18 b. Pursuant to Labor Code § 2699(f), the civil penalties as authorized by Labor Code
19 §§ 226.3 and 558, excluding the recovery of any and all underpaid or unpaid
20 wages. (*ZB, N.A. v. Superior Court of San Diego County (Lawson)* (2019) 8
21 Cal.5th 175 [“We agree with the Court of Appeal that section 558 has no private
22 right of action. Nor can employees recover unpaid wages described in section 558
in a PAGA claim”].)

23 32. Penalties recovered will be allocated 75% to the Labor and Workforce Development
24 Agency, and 25% to the affected employees.

25 33. On August 23, 2021, Plaintiff sent a letter by online submission to the LWDA and by
26 certified mail, return receipt requested, to Defendants setting forth the facts and theories of the
27 violations alleged against Defendants, as prescribed by Labor Code § 2698 *et seq.* Pursuant to Labor
28 Code § 2699.3(a)(2)(A), no notice was received by Plaintiff from the LWDA within sixty-five (65)

1 calendar days of August 23, 2021. Plaintiff may therefore commence this action to seek civil penalties
2 pursuant to Labor Code § 2698 *et seq.*

3 Wherefore, Plaintiff and the aggrieved employees he seeks to represent request relief as
4 described below.

5 **VI.**

6 **RELIEF REQUESTED**

7 WHEREFORE, Plaintiff prays for the following relief:

- 8 1. For penalties pursuant to Labor Code § 226(e) for Plaintiff and members of the Class;
- 9 2. For civil penalties pursuant to Labor Code § 2698 *et seq.* for Plaintiff and all other
10 Aggrieved Employees;
- 11 3. A Class Representative enhancement award;
- 12 4. An award providing for payment of costs of suit pursuant to Labor Code § 2699(g)(1)
13 and other applicable law;
- 14 5. An award of attorneys' fees pursuant to Labor Code § 2699(g)(1) and other applicable
15 law; and
- 16 6. Such other and further relief as this Court may deem just and proper.

17
18 Dated: March 1, 2022

Respectfully submitted,

19
20 GAINES & GAINES
A Professional Law Corporation

21
22 By: Daniel F. Gaines
23 DANIEL F. GAINES
24 EVAN S. GAINES
25 Attorney for Plaintiff
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27
28

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial of his claims by jury to the extent authorized by law.

Dated: March 1, 2022

Respectfully submitted,

GAINES & GAINES
A Professional Law Corporation

By: *Daniel F. Gaines*
DANIEL F. GAINES
EVAN S. GAINES
Attorney for Plaintiff

SUPERIOR COURT OF CALIFORNIA COUNTY OF MERCED 627 W. 21st Street Merced CA 95340 209-725-4100	<i>Reserved for Clerk's File Stamp</i> FILED Merced County Superior Court 03/17/2022  Clerk of the Court
Lorenzo Calleros VS Dial General Engineering	
NOTICE OF CASE MANAGEMENT CONFERENCE NOTICE OF INCLUSION IN DELAY REDUCTION PROGRAM	Case No. 22CV-00720

To All Parties and their Attorneys of Record:

Please take notice that the above-entitled action has been included in this Court's Delay Reduction Program. Local Rule 4 will hereafter apply to this action. You are required to comply with the guidelines for program cases as set forth in the above referenced Local Rule and the applicable California Rules of Court (CRC), including Rules 3.714(b)(1), 3.720-3.735.

Please note: Local Rules and ADR Packet may be reviewed on-line at www.merced.courts.ca.gov.

You are further advised that a Case Management Conference (CMC) in the above action has been scheduled, per Local Rule 4(B)(1)(a), for:

October 31, 2022 at 10:00 AM in Courtroom 8

Located at 627 West 21st Street Merced, CA 95340

Honorable Judge Brian McCabe, presiding.

Plaintiff must serve this Notice on all Parties to this action at the same time the Complaint is served. Failure to do so may cause unnecessary delay to this action.

Parties desiring to appear telephonically at the CMC shall comply with CRC, Rule 3.670 and Local Rule 4, and are responsible for making timely arrangements with CourtCall, LLC. CourtCall, LLC may be reached at (888) 882-6878. Notices of Telephonic Appearance may be placed on the CMC Statement or may be filed independently with the Court NOT LESS THAN THREE (3) COURT DAYS prior to the CMC. A Notice of Telephonic Appearance is deemed valid on any subsequent, continued CMCs.

PURSUANT TO CRC, RULE 3.724, THE PARTIES MUST MEET AND CONFER NO LATER THAN 30 DAYS PRIOR TO THE CMC.

A **CMC Statement** shall be filed with the Court no later than **15 days** prior to the date set for the **CMC**. Parties shall use **Judicial Council form CM-110** (CRC 3.725). This form is available at the Court Clerks Office or on-line at www.courtinfo.ca.gov.

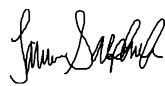
If you have any further questions regarding this Notice, please contact the undersigned at the number indicated above.

Alex P Katofsky
 27200 Agoura Rd Suite 101
 Calabasas CA 91301

Date: 3/17/2022

Amanda Toste, Court Executive Officer

Tawn Saepanh
 Printed Name

By: 
 Deputy Clerk