

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Gregory Keosian

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Attorneys for Plaintiff, ESMERALDA BELTRAN,
individually and as a proxy for the State of California

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES
[UNLIMITED CIVIL]

ESMERALDA BELTRAN, an individual, and
as a proxy for the State of California,

Plaintiff,

vs.

HENIN SERVICES LIMITED, a corporation;
and DOES 1 through 5, inclusive,

Defendants.

Case No.: **21STCV41784**

COMPLAINT FOR:

- 1. Private Attorneys General Act**
- 2. Cal. Lab. Code § 510 Overtime Wage Violations**
- 3. FLSA Unpaid Overtime Wages**
- 4. Violation of Unfair Competition Law**

DEMAND FOR JURY TRIAL

Plaintiff, ESMERALDA BELTRAN, alleges as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction to hear the subject matter of this complaint. This Court also has jurisdiction over each defendant, as the unlawful business acts alleged herein occurred in California. Plaintiff's claims arise out of and are related to all Defendant's contacts with California.

2. Venue is proper in any county in which an aggrieved employee worked and Labor Code violations allegedly occurred. Venue is proper in this Court because all or some of the violations of law and unlawful practices alleged herein occurred and are occurring in the County of Los Angeles.

PARTIES

3. Plaintiff is an individual who, at all relevant times, has resided in the State of California.

1 4. Defendant HENIN SERVICES LIMITED (“HENIN”) is a corporation that conducted,
2 and is conducting, business in the State of California.

3 5. Plaintiff is ignorant of the true names and capacities of the defendants sued herein as
4 DOES 1-5, inclusive, and therefore sues these defendants by such fictitious names and capacities.
5 Plaintiff will seek leave to amend this Complaint to allege their true names and capacities when
6 ascertained. Plaintiff is informed and believes and on that basis alleges that each fictitiously named
7 Defendants are responsible in some manner for the occurrences herein alleged, and that Plaintiff’s
8 injuries were proximately caused by the conduct of such defendant.

9 6. All of the Defendants, including DOES 1-5, are alleged to be co-conspirators with each
10 other, in that each agreed to participate, and participated in, the furtherance of the objective of civil
11 wrongs as alleged in this Complaint.

12 7. Plaintiff is informed and believes and thereupon alleges that at all times material herein,
13 each defendant was completely dominated and controlled by its, his or her co-Defendants, each was the
14 agent, representative, and alter ego of the others, and all aided and abetted the wrongful acts of the
15 others.

16 8. Plaintiff is informed and believes and thereupon alleges that at all times material herein,
17 each of the Defendants was the agent, employee and/or joint venturer of, or working in concert with, co-
18 Defendants and was acting within the course and scope of such agency, employment, and/or joint
19 venture or concerted activity. To the extent that said conduct and omissions were perpetrated by certain
20 Defendants, Plaintiff is informed and believes and thereupon alleges that the remaining Defendant
21 and/or Defendants confirmed and ratified said conduct and omissions.

22 9. Plaintiff is informed and believes and on that basis alleges that at all times relevant
23 herein, the corporate Defendants, and each of them, had the right to control, and controlled, Plaintiff’s
24 wages, hours and working conditions, and has the right to control the manner in which Plaintiff
25 performed work duties, including but not limited to supervision of work, engaged Plaintiff, suffered and
26 permitted Plaintiff to work, and they were employers, joint employers, or co-employers of Plaintiff at all
27 relevant times alleged herein.

10. Plaintiff is informed and believes and on that basis alleges that at all times relevant herein, the Defendant, and each of them, were an integrated enterprise in that they had an interrelation of operations, centralized control of labor relations, common management, and common ownership or financial control.

GENERAL ALLEGATIONS

11. Defendant employed Plaintiff, as an hourly non-exempt worker, from at least around May 20, 2015, to November 16, 2020. Defendant failed to pay Plaintiff for all wages earned. Defendant also employed Plaintiff's son, Richard Cruz, up until March 30, 2020. On July 10, 2020, Plaintiff's son initiated a PAGA lawsuit against Defendant on behalf of all non-exempt employees. On August 19, 2020, Defendant's agent for service of process was personally served with Plaintiff's son's PAGA lawsuit. A campaign of retaliation ensued against Plaintiff because of her son's protected activity that was conducted on behalf of others including Plaintiff. On November 16, 2020, Defendant retaliated against Plaintiff because of her son's protected activity by terminating Plaintiff's employment.

FIRST CAUSE OF ACTION

PRIVATE ATTORNEYS GENERAL ACT

(AGAINST HENIN AND DOES 1-5)

12. Plaintiff incorporates each allegation set forth in all of the preceding paragraphs as though set forth herein in full again.

13. Pursuant to the California Labor Code Private Attorneys General Act ("PAGA"), "Notwithstanding any other provision of law, any provision of [the California Labor Code] that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Section 2699.3." Lab. Code § 2699(a). "For all provisions of [the California Labor Code] except those for which a civil penalty is specifically provided, there is established a civil penalty for a violation of these provisions." Lab. Code § 2699(f).

14. This PAGA suit “is fundamentally a law enforcement action.” *Arias v. Super. Ct.*, 46 Cal. 4th 969, 986 (2009); *Iskanian v. CLS Transportation Los Angeles, LLC*, 59 Cal.4th 348, 386-387 (2014) (“[E]very PAGA action, whether seeking penalties for Labor Code violations as to only one aggrieved employee—the plaintiff bringing the action—or as to other employees as well, is a representative action on behalf of the state.”); *Williams v. Super. Ct.*, 3 Cal. 5th 531, 538 (2017) (“a PAGA suit, essentially a qui tam action filed on behalf of the state to assist it with labor law enforcement”). An employee who brings such an action is acting as an agent of state enforcement agencies. *Kim v. Reins Intl. Cal., Inc.*, 9 Cal.5th 73, 81 (2020).

20. A PAGA “violation” includes, and is used in these allegations to mean, a failure to comply with any requirement of the Labor Code. Lab. Code § 22. Under the PAGA, an “aggrieved employee” means any person who was employed by the alleged violator and against whom only one of the alleged violations was committed. Lab. Code § 2699(c). Plaintiff is an “aggrieved employee.”

15. This PAGA action is intended to “remediate present violations and deter future ones.” *Williams*, 3 Cal. 5th at 546. The relevant period for the following PAGA allegations in this cause of action is from September 8, 2020, to present and ongoing.

Labor Code Violations §§ 1102.5 and 98.6

§ 1102.5

16. “An employer, or any person acting on behalf of the employer, shall not retaliate against an employee for disclosing information, or because the employer believes that the employee disclosed or may disclose information, to a government or law enforcement agency, to a person with authority over the employee or another employee who has the authority to investigate, discover, or correct the violation or noncompliance, or for providing information to, or testifying before, any public body conducting an investigation, hearing, or inquiry, if the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation, regardless of whether disclosing the information is part of the employee’s job duties.” Lab. Code § 1102.5(b).

17. Plaintiff’s son, Richard Cruz, disclosed information, to a government or law enforcement agency (*i.e.*, LWDA), information that he had reasonable cause to believe discloses a violation of state

or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation. Defendant discharged Plaintiff because of her son's disclosures to the LWDA and filing of the PAGA lawsuit. This was a violation of Labor Code section 1102.5(b) as associational retaliation. Thus, Defendant is liable for a civil penalty not exceeding ten thousand dollars (\$10,000). Lab. Code § 1102.5(f). Other aggrieved employees are any other employees who complained about violations of the Labor Code and were terminated within two weeks.

§ 98.6

18. "A person shall not . . . in any manner discriminate, retaliate, or take any adverse action against any employee or applicant for employment . . . because of the exercise by the employee or applicant for employment on behalf of himself, herself, or others of any rights afforded him or her." Lab. Code § 98.6(a).

19. Defendant discharged Plaintiff because of her son's exercise of rights on behalf of others. This was a violation of Labor Code section 98.6 as associational retaliation. Thus, Defendant is each liable for a civil penalty not exceeding ten thousand dollars (\$10,000) for each violation of this section. Lab. Code § 98.6(b)(3). Other aggrieved employees are any other employees who exercised rights afforded to them on behalf of himself, herself, or others and were discharged or constructively discharged.

Exhaustion of Administrative Remedies

20. On August 10, 2021, Plaintiff provided notice to the California Labor and Workforce Development Agency ("LWDA"), pursuant to Labor Code § 2699.3, detailing the specific provisions of the foregoing Labor Code sections that have been violated, including the facts and theories to support the violations. The LWDA file number is LWDA-CM-840990-21. The notice was sent by certified mail on or about August 10, 2021, to HENIN, certified mail no. 7019 0140 0000 7526 8965. Plaintiff submitted a \$75.00 fee to the LWDA.

21. The LWDA has not, within 65 days of Plaintiff's Notice of violations of the Labor Code, sent Plaintiff notice that it intends to investigate the violations. Thus, Plaintiff has exhausted Plaintiff's administrative remedies, pursuant to Labor Code section 2699.3(a), as a prerequisite to assert a civil action, for civil penalties pursuant to Labor Code section 2699. Defendant has not sent any notice to

the LWDA attempting to cure the alleged violations of Labor Code statutes not enumerated in Labor Code section 2699.5. Thus, Plaintiff has exhausted Plaintiff's administrative remedies, pursuant to Labor Code section 2699.3(c), as a prerequisite to assert a civil action, for civil penalties pursuant to Labor Code section 2699.

SECOND CAUSE OF ACTION

CAL. LAB. CODE § 510 OVERTIME WAGE VIOLATIONS

(AGAINST ALL DEFENDANTS AND DOES 1-5)

22. Plaintiff incorporates each allegation set forth in all of the preceding paragraphs as though set forth herein in full again.

23. Any employee receiving less than the California legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of overtime compensation including interest and reasonable attorney's fees. Cal. Lab. Code § 1194(a).

24. "Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee." Cal. Lab. Code § 510(a).

25. Plaintiff worked more than eight hours per workday and more than 40 hours per workweek and was not compensated for all those overtime hours worked more than eight per day and 40 per week. As such, Defendant violated California Labor Code Sections 510 and 1198 because it violated the above-referenced as Industrial Welfare Commission Orders, as applicable.

26. Plaintiff has been damaged in an amount equal to the compensation to which he was entitled but was unlawfully deprived by Defendant, subject to proof at trial.

27. Pursuant to California Labor Code section 1194(a) Plaintiff is entitled to interest at the legal rate on the overtime wages owed to Plaintiff by Defendants.

28. Pursuant to California Labor Code section 1194(a), Plaintiff is entitled to an award of attorneys' fees, and costs.

THIRD CAUSE OF ACTION

FLSA UNPAID OVERTIME WAGES

(AGAINST ALL DEFENDANTS AND DOES 1-5)

29. Plaintiff incorporates each allegation set forth in all of the preceding paragraphs as though set forth herein in full again.

30. Any employee receiving less than the legal overtime compensation, pursuant to the Fair Labor Standards Act at 29 United States Code section 201, *et seq.*, applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of overtime compensation including liquidated damages and reasonable *attorney's fees*. 29 U.S.C. § 216(b). Thus, Plaintiff is also entitled to liquidated damages in amount equal to unpaid overtime wages.

FOURTH CAUSE OF ACTION

VIOLATION OF UNFAIR COMPETITION LAW

(AGAINST ALL DEFENDANTS AND DOES 1-5)

31. Plaintiff incorporates each allegation set forth in all of the preceding paragraphs as though set forth herein in full again.

32. Defendant's conduct, as alleged in this Complaint, has been and continues to be unfair, unlawful, and harmful to Plaintiff and Defendant's competitors. Defendant's activities as alleged herein are violations of California law and the FLSA, and constitute unlawful business acts and practices in violation of California's Unfair Competition Law ("UCL") Business and Professions Code Section 17200 *et seq.*

33. A violation of Business and Professions Code Section 17200 *et seq.* may be predicated on the violation of any state or federal law including violations of the Labor Code. *Cortez v. Purolator Air Filtration Prods. Co.*, 23 Cal. 4th 163, 178 (2000). Business and Professions Code Section 17200 *et seq.* defines unfair competition to include any unlawful, unfair or fraudulent business act or practice.

34. "Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee." Lab. Code § 510(a).

35. During Plaintiff's employment, he regularly worked more than ten hours per workday and more than 40 hours per workweek, as alleged above, and was not compensated for those overtime hours worked more than eight per day and 40 per week. As such, Defendant violated Labor Code section 510 and the FLSA.

36. As a result of the herein described violations of law, Defendant unlawfully gained an unfair advantage over other businesses. As a result of the herein described violations of law, Defendant has unjustly enriched itself at the expense of Plaintiff and the general public. Such conduct by Defendant constitutes unfair competition and unfair business practices, as such terms are described in Business and Professions Code section 17200, *et seq.*

37. Plaintiff is informed, believe and thereon allege that Defendant has continued and still threaten to, unless restrained and ordered to disgorge all profits derived from said unfair business practices as restitution to Plaintiff, violate the Unfair Competition Law by engaging in business practices violative of California law and the FLSA labor law as detailed hereinabove.

38. Plaintiff and others have been personally injured and continue to be injured by Defendant's unlawful business acts and practices as alleged herein, including, but not limited to, the loss of money and/or property at a sum according to proof at trial.

39. Pursuant to Business and Professions Code § 17203, the court is authorized to make such orders or judgments as may be necessary to prevent the use or employment by any such person or entity of any such practice which constitutes unfair competition or as may be necessary to restore to any person in interest any money or property which may have been acquired by means of such unfair competition.

40. Pursuant to Business and Professions Code Section 17200 *et seq.*, Plaintiff is entitled to restitution of the wages and other monies wrongfully withheld and retained by Defendant, for the period commencing from four years preceding the filing of the Complaint.

41. "Unless otherwise expressly provided, the remedies or penalties provided by [Business and Professions Code Section 17200 *et seq.*] are cumulative to each other and to the remedies or penalties available under all other laws of [California].

PRAYER

WHEREFORE, Plaintiff prays:

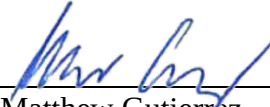
1. For civil penalties pursuant to the California Labor Code §§ 2698 *et seq.*
2. For compensatory special damages, in an amount according to proof at the time of trial.
3. For liquidated damages pursuant to the Fair Labor Standards Act and California Labor Code.
4. For reasonable attorneys' fees pursuant to the California Labor Code.
5. For costs of suit including expert witness fees.
6. For prejudgment interest.
7. For such other and further relief as the Court may deem proper.

DEMAND FOR JURY TRIAL

Plaintiff ESMERALDA BELTRAN hereby demands a trial by jury.

Dated: November 12, 2021

GUTIERREZ DERHAM LAW FIRM LLP

By: 

Matthew Gutierrez

Attorneys for Plaintiff, ESMERALDA

BELTRAN, individually and as a proxy for the
State of California