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and on behalf of all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA

RYAN CLAY, individually and on behalf
of all others similarly situated,

Plaintiff,

vs.

CONSERVICE, LLC; and DOES 1 through
20, inclusive,

Defendants.

Case No. 21CV391470

**COMPLAINT FOR VIOLATION OF THE
CALIFORNIA LABOR CODE PRIVATE
ATTORNEYS GENERAL ACT OF 2004
(CAL. LAB. CODE §§ 2698, ET SEQ.)**

1 Plaintiff Ryan Clay, individually, and on behalf of other aggrieved employees, alleges
2 as follows:

3 **NATURE OF ACTION AND INTRODUCTORY STATEMENT**

4 1. Plaintiff Ryan Clay (“Plaintiff”) brings this representative action pursuant to the
5 Private Attorneys General Act of 2004, Cal. Lab. Code. § 2698 *et seq.*, against defendants
6 Conservice, LLC, and DOES 1 through 20, inclusive (collectively, “Defendants”), on behalf of
7 himself individually and on behalf of California citizens who are and were employed by
8 Defendants as non-exempt employees throughout California.

9 2. Defendants are in the business of providing utility management.

10 3. Plaintiff is informed and believes, and thereon alleges, that Defendants have
11 increased their profits by violating state wage and hour laws by, among other things:

12 (a) Failing to pay overtime wages at the proper rates;

13 (b) Failing to pay all wages (including minimum wages and overtime
14 wages);

15 (c) Failing to provide lawful meal periods or compensation in lieu thereof;

16 (d) Failing to authorize or permit lawful rest breaks or provide compensation
17 in lieu thereof;

18 (e) Failing to provide accurate itemized wage statements;

19 (f) Failing to pay all wages due upon separation of employment; and

20 (g) Failing to reimburse all business expenses incurred by the employee in
21 direct consequence of the discharge of his or her duties.

22 4. Plaintiff seeks monetary relief against Defendants on behalf of himself and all
23 other aggrieved employees in California to recover, among other things, civil penalties,
24 attorneys’ fees, costs, and expenses.

25 **JURISDICTION AND VENUE**

26 5. This is a representative action pursuant to Private Attorneys General Act of 2004
27 (Cal. Lab. Code §§ 2698, *et seq.*)(“PAGA”). The civil penalties sought by Plaintiff exceeds the
28

1 minimal jurisdictional limits of the Superior Court and will be established according to proof at
2 trial.

3 6. This Court has jurisdiction over this action pursuant to the California
4 Constitution, Article VI, § 10, which grants the Superior Court original jurisdiction in all
5 causes except those given by statutes to other courts. The statutes under which this action is
6 brought do not specify any other basis for jurisdiction.

7 7. This Court has jurisdiction over all Defendants because, upon information and
8 belief, they are citizens of California, have sufficient minimum contacts in California, or
9 otherwise intentionally avail themselves of the California market so as to render the exercise of
10 jurisdiction over them by the California courts consistent with traditional notions of fair play
11 and substantial justice.

12 8. Venue is proper in this Court because, upon information and belief, Defendants
13 reside, transact business, or have offices in this county, and the acts and omissions alleged
14 herein took place in this county.

15 **THE PARTIES**

16 9. Plaintiff is a citizen of California employed by Defendants as a non-exempt
17 employee during the relevant time period in California.

18 10. Plaintiff is informed and believes, and thereon alleges that at all times
19 hereinafter mentioned, Defendants were and are subject to the Labor Code and IWC Wage
20 Orders as employers, whose employees were and are engaged throughout this county and the
21 State of California.

22 11. Plaintiff is unaware of the true names or capacities of the defendants sued herein
23 under the fictitious names DOES 1 through 20, but will seek leave of this Court to amend this
24 Complaint and serve such fictitiously named defendants once their names and capacities
25 become known.

26 12. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 20
27 are or were the partners, agents, owners, shareholders, managers, or employees of Defendants
28 at all relevant times.

13. Plaintiff is informed and believes, and thereon alleges, that each defendant acted in all respects pertinent to this action as the agent of the other defendant, carried out a joint scheme, business plan, or policy in all respects pertinent hereto, and the acts of each defendant are legally attributable to the other defendant. Furthermore, defendants in all respects acted as the employer and/or joint employer of Plaintiff and the other aggrieved employees.

14. Plaintiff is informed and believes, and thereon alleges, that each and all of the acts and omissions alleged herein were performed by, or are attributable to, Defendants and/or DOES 1 through 20, acting as the agent or alter ego for the other, with legal authority to act on the other's behalf. The acts of any and all Defendants were in accordance with, and represent, the official policy of Defendants.

15. At all relevant times, Defendants, and each of them, acted within the scope of such agency or employment, or ratified each and every act or omission complained of herein. At all relevant times, Defendants, and each of them, aided and abetted the acts and omissions of each and all the other Defendants in proximately causing the damages herein alleged.

16. Plaintiff is informed and believes, and thereon alleges, that each of said Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts, omissions, occurrences, and transactions alleged herein.

GENERAL ALLEGATIONS

17. At all relevant times mentioned herein, Defendants employed Plaintiff and other California residents as non-exempt employees at Defendants' California business location(s).

18. Defendants continue to employ non-exempt employees within California.

19. Plaintiff is informed and believes, and thereon alleges, that at all times herein mentioned, Defendants were advised by skilled lawyers, employees, and other professionals who were knowledgeable about California's wage and hour laws, employment and personnel practices, and the requirements of California law.

20. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiff and other aggrieved employees were entitled to receive wages for all time worked (including minimum and overtime wages) and that they were not receiving

1 all wages earned for work that was required to be performed. In violation of the Labor Code
2 and IWC Wage Orders, Plaintiff and other aggrieved employees were not paid all wages
3 (including minimum and overtime wages) for all hours worked at the proper rates of pay.

4 21. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
5 should have known that Plaintiff and other aggrieved employees were entitled to receive
6 overtime wages and that they were not receiving all wages earned for work under Defendants'
7 Alternative Workweek Schedule. Plaintiff believes Defendant either failed to implement a
8 proper alternative workweek or failed to properly pay overtime under a valid Alternative
9 Workweek Schedule and thus owe Plaintiff and other aggrieved employees unpaid overtime.

10 22. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
11 should have known that Plaintiff and other aggrieved employees were entitled to receive all
12 required meal periods or payment of one (1) additional hour of pay at Plaintiff's and other
13 aggrieved employees' regular rate of pay when they did not receive a timely, uninterrupted
14 meal period. In violation of the Labor Code and IWC Wage Orders, Plaintiff and other
15 aggrieved employees did not receive all meal periods or payment of one (1) additional hour of
16 pay at Plaintiff's and other aggrieved employees' regular rate of pay when they did not receive
17 a timely, uninterrupted meal period.

18 23. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
19 should have known that Plaintiff and other aggrieved employees were entitled to receive all rest
20 breaks or payment of one (1) additional hour of pay at Plaintiff's and other aggrieved
21 employees' regular rate of pay when a rest break was missed. In violation of the Labor Code
22 and IWC Wage Orders, Plaintiff and other aggrieved employees did not receive all rest breaks
23 or payment of one (1) additional hour of pay at Plaintiff's and other aggrieved employees'
24 regular rate of pay when a rest break was missed.

25 24. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
26 should have known that Plaintiff and other aggrieved employees were entitled to
27 reimbursement for necessary expenditures incurred in connection with the performance and
28 execution of their job duties. In violation of the California Labor Code, Plaintiff and other

1 aggrieved employees did not receive adequate reimbursement for necessary business expenses,
2 including, but not limited to, reimbursement for cell phone use, home internet, and uniform
3 purchases and maintenance.

4 25. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
5 should have known that the other aggrieved employees were entitled to receive itemized wage
6 statements that accurately showed the gross and net wages earned, total hours worked, all
7 applicable hourly rates in effect, and the number of hours worked at each hourly rate in
8 accordance with California law. In violation of the Labor Code, the other aggrieved employees
9 were not provided with accurate itemized wage statements.

10 26. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
11 should have known that Plaintiff and the other aggrieved employees were entitled to timely
12 payment of wages due upon separation of employment. In violation of the Labor Code, Plaintiff
13 and the other aggrieved employees did not receive payment of all wages within permissible
14 time periods.

15 27. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
16 should have known they had a duty to compensate Plaintiff and other aggrieved employees, and
17 Defendants had the financial ability to pay such compensation but willfully, knowingly, and
18 intentionally failed to do so in order to increase Defendants' profits.

19 28. Therefore, Plaintiff brings this lawsuit seeking civil penalties, attorneys' fees,
20 and costs against Defendants on behalf of himself, the State of California, and all other
21 aggrieved employees.

22 **FIRST CAUSE OF ACTION**

23 **ENFORCEMENT OF LABOR CODE §§ 2698 ET SEQ. ("PAGA")**

24 29. Plaintiff hereby re-alleges and incorporates by reference the previous paragraphs
25 as though fully set forth herein.

26 30. Pursuant to Labor Code § 2699(a), any provision of the Labor Code that provides
27 for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency
28 ("LWDA") or any of its departments, divisions, commissions, boards, agencies, or employees for

1 violation of the Labor Code may, as an alternative, be recovered through a civil action brought by
2 an aggrieved employee on behalf of himself or herself and other current or former employees
3 pursuant to the procedures specified in Labor Code § 2699.3.

4 31. For all provisions of the Labor Code except those for which a civil penalty is
5 specifically provided, Labor Code § 2699(f) imposes upon Defendants a penalty of one hundred
6 dollars (\$100.00) for each aggrieved employee per pay period for the initial violation and two
7 hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent pay
8 period in which Defendants violated these provisions of the Labor Code.

9 32. Defendants' conduct violates numerous Wage Order and Labor Code sections,
10 including, but not limited to, the following:

- 11 a. violation of Labor Code §§ 201, 202, 203, 204, 210, 510, 511, 558,
12 1182.12, 1194, 1197, and 1198 for failure to timely pay all earned wages
13 (including minimum wage and overtime wages) owed to Plaintiff and
14 other aggrieved employees during employment and upon separation of
15 employment as herein alleged;
- 16 b. violation of Labor Code §§ 226.7 and 512 for failure to provide meal
17 periods to Plaintiff and other aggrieved employees and failure to pay
18 premium wages for missed meal periods as herein alleged;
- 19 c. violation of Labor Code § 226.7 for failure to permit rest breaks to
20 Plaintiff and other aggrieved employees and failure to pay premium wages
21 for missed rest periods as herein alleged;
- 22 d. violation of Labor Code § 226 for failure to provide accurate itemized
23 wage statements to Plaintiff and other aggrieved employees as herein
24 alleged;
- 25 e. violation of Labor Code §§ 1174 and 1174.5 for failure to maintain
26 accurate and complete records showing, among other things, the hours
27 worked daily by and the wages paid to aggrieved employees; and
28

1 f. violation of Labor Code §§ 2800 and 2802 for failure to reimburse
2 Plaintiff and other aggrieved employees of business expenses as herein
3 alleged.

4 33. Plaintiff is an “aggrieved employee” because he was employed by the alleged
5 violator and had one or more of the violations committed against him, and therefore is properly
6 suited to represent the interests of all other aggrieved employees.

7 34. Plaintiff has exhausted the procedural requirements under Labor Code § 2699.3 as
8 to Defendants and is therefore able to pursue a claim for penalties on behalf of himself and all
9 other aggrieved employees under PAGA.

10 35. Pursuant to Labor Code §§ 2699(a), 2699.3 and 2699.5, Plaintiff is entitled to
11 recover civil penalties, in addition to other remedies, for violations of the Labor Code sections
12 cited above.

13 36. For bringing this action, Plaintiff is entitled to attorney’s fees and costs incurred
14 herein.

15 **PRAYER FOR RELIEF**

16 Plaintiff, on his own behalf and on behalf of all other aggrieved employees, prays for
17 relief and judgment against Defendants, jointly and severally, as follows:

18 1. For civil penalties against Defendant on behalf of all aggrieved employees and
19 the LWDA pursuant to Labor Code § 2698, *et seq.*;

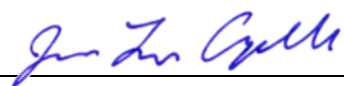
20 2. For reasonable attorneys’ fees, costs of suit, and interest to the extent permitted
21 by law, including, but not limited to, Code of Civil Procedure § 1021.5 and Labor Code §§
22 226(e), 1194, 2802(c), and 2698 *et seq.*; and

23 3. For such other relief as the Court deems just and proper.

24 Dated: December 7, 2021

AEGIS LAW FIRM, PC

25
26 By: _____



27 Jessica L. Campbell
28 Attorneys for Plaintiff Ryan Clay