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FILED
Superior Court of California
County of Los Angeles
12/20/2021

Sherri R. Carter, Executive Officer / Clerk of Court

By: M. Gomez-Barriento Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

ROMULO GOMEZ, an individual, on behalf
of himself and others similarly situated,

Plaintiff,

vs.

HYDROFORM USA INCORPORATED;
and DOES 1 to 50, inclusive,

Defendants.

Case No.: 21STCV37693

**FIRST AMENDED CLASS ACTION
COMPLAINT**

1. Failure to Pay Wages and/or Overtime Under Labor Code §§ 510, 1194, and 1199
2. Failure to Provide Meal Periods Pursuant to Labor Code §§ 226.7 and 512
3. Failure to Provide Rest Periods Pursuant to Labor Code § 226.7
4. Violation of Labor Code § 226(a)
5. Penalties Pursuant to Labor Code § 203
6. Violation of Business & Professions Code § 17200
7. Penalties Pursuant to Labor Code § 2699, *et seq.*

JURY TRIAL DEMANDED

1 Plaintiff ROMULO GOMEZ, an individual, on behalf of himself, all others similarly
2 situated, complains of Defendant HYDROFORM USA INCORPORATED (“Defendant”) and
3 each of them, as follows:

4 **I**

5 **INTRODUCTION**

6 1. This is a Class Action, pursuant to Code of Civil Procedure § 382, on behalf of
7 Plaintiff and a Proposed Class defined as:

8 All persons who are employed or have been employed as an
9 hourly employee by HYDROFORM USA INCORPORATED
10 in the State of California since four (4) years prior to the filing
of this action to the present.

11 2. From at least four (4) years prior to the filing of this action continuing to the
12 present, Defendant has had a consistent policy of failing to pay wages and/or overtime to all
13 hourly employees for all work perform at the proper rate of compensation. Defendant issues
14 bonus pay to Plaintiff and the aggrieved employees. However, Defendant failed to include any
15 such bonus pay in Plaintiff’s and the Proposed Class’ regular rate of pay in pay periods where
16 they also worked overtime. In addition, Defendant maintained an improper rounding policy that
17 resulted only compensating Plaintiff and the Proposed Class for the scheduled shift and not the
18 actual hours worked. Rather than paying Plaintiff and the Proposed Class for all hours and
19 minutes they actually worked, Defendant followed a uniform policy and practice of improperly
20 rounding, changing, adjusting and/or modifying and paying per scheduled shift, and generally
21 did so to the detriment of the employees. This resulted in underpayment of wages and/or
22 overtime. As a result of Defendant’s unlawful policies, Plaintiff and the Proposed Class were
23 paid at a regular rate less than the rate required under California law.

24 3. For at least four (4) years prior to the filing of this action and continuing to the
25 present, Defendant has had a consistent policy of failing to inform employees of their right to
26 take meal periods and requiring employees within the State of California, including Plaintiff, to
27 work at least five (5) hours without a meal period and failing to pay such employees one (1)
28 hour of pay at the employees’ regular rate of compensation for each workday that the meal

1 period is not provided or provided after five (5) hours, as required by California state wage and
2 hour laws.

3 4. For at least four (4) years prior to the filing of this action and continuing to the
4 present, Defendant has had a consistent policy of failing to inform employees of their right to
5 take rest periods and of failing to provide employees within the State of California, including
6 Plaintiff, rest periods of at least ten (10) minutes per four (4) hours worked or major fraction
7 thereof and failing to pay such employees one (1) hour of pay at the employees regular rate of
8 compensation for each workday that the rest period was not provided, as required by California
9 state wage and hour laws.

10 5. For at least four (4) year prior to the filing of this action continuing to the
11 present, Defendant has failed to comply with Labor Code § 226(a) by failing to include
12 necessary and required information on wage statements provided to Plaintiff and the Proposed
13 Class. Defendant failed to include the total hours worked, the beginning and ending date of the
14 pay period, the address of the legal entity that is the employer, all applicable hourly rates in
15 effect during the pay period, and the corresponding number of hours worked at each hourly rate
16 by the employee, the beginning and ending date of the pay period, and the name and address of
17 the legal entity that is the employer.

18 6. Based on the allegations alleged above, from at least four (4) years prior to the
19 filing of this action continuing to the present, Defendant has failed to pay all wages due at the
20 time of termination or resignation to Plaintiff and the Proposed Class.

21 7. Plaintiff, on behalf of himself and all Proposed Class Members brings this action
22 pursuant to Labor Code §§ 203, 226(a), 226.7, 510, 512, 1194, 1197, 1199; Wage Order 4-2001;
23 and California Code of Regulations, Title 8, Section 11040, seeking unpaid wages and/or
24 overtime, meal break premiums, rest break premiums, penalties for accurate itemized wage
25 statements, wages upon termination or resignation, other penalties, injunctive and other
26 equitable relief, and reasonable attorney's fees and costs.

27 8. Plaintiff, on behalf of himself and all Proposed Class Members, pursuant to
28 Business & Professions Code §§ 17200-17208, also seeks injunctive relief, restitution, and

1 disgorgement of all benefits Defendant enjoyed from its unlawful conduct as described herein.

2 9. Plaintiff, on behalf of himself and all members of the Proposed Class, brings this
3 representative action pursuant to Labor Code § 2699, *et seq.* seeking penalties for Defendant's
4 violation of California Labor Code §§ 203, 226(a), 226.7, 510, 512, 1194, and 1199.

5 **II**

6 **JURISDICTION AND VENUE**

7 10. This Court has subject matter jurisdiction over all causes of action asserted
8 herein pursuant to Article VI, § 10 of the California Constitution and California Code of Civil
9 Procedure § 410.10 by virtue of the fact that this is a civil action in which the matter in
10 controversy, exclusive of interest, exceeds \$25,000, and because each cause of action asserted
11 arises under the laws of the State of California or is subject to adjudication in the courts of the
12 State of California.

13 11. This Court has personal jurisdiction over Defendant because Defendant has
14 caused injuries in the County of Los Angeles and the State of California through their acts, and
15 by their violation of the California Labor Code, California state common law, and California
16 Business & Professions Code § 17200, *et seq.*

17 12. Venue as to each Defendant is proper in this judicial district, pursuant to Code of
18 Civil Procedure § 395. Defendant operates within California and does business within the
19 County of Los Angeles. The unlawful acts alleged herein have a direct effect on Plaintiff and
20 all Proposed Class Members within the State of California and the County of Los Angeles.

21 13. This case should be classified as complex according to Rule 3.400 of the
22 California Rules of Court, and assigned to a complex litigation judge and department, as it will
23 involve substantial documentary evidence, a large number of witnesses, and is likely to involve
24 extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
25 and would require substantial post judgment judicial supervision.

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III

PARTIES

A. PLAINTIFF

14. Plaintiff ROMULO GOMEZ is a resident of California.

15. Plaintiff and the Proposed Class Members were regularly required to:

- a. Work without being paid for all hours worked at the proper rate;
- b. Work without being provided their meal periods;
- c. Work without being provided their rest periods; and
- d. Work without Defendant maintaining accurate time records showing

when the employee begins and ends each work period, meal periods, and total daily hours worked and work without being provided an accurate itemized wage statement that reflects all deductions from payment of wages and accurately report total hours worked, including when the employee begins and ends each work period, meal periods, and total daily hours worked, the applicable rates of pay by Plaintiff and Proposed Class Members, the beginning and ending date of the pay period, and the name and address of the legal entity that is the employer.

16. Defendant willfully failed to compensate Plaintiff and all Proposed Class Members for wages at the termination of their employment with Defendant.

17. As a result of this conduct, Defendant has engaged in unfair competition and unlawful business practices.

18. Plaintiff, on behalf of himself and all members of the Proposed Class, brings this representative action pursuant to Labor Code § 2699, *et seq.* seeking penalties for Defendant's violation of California Labor Code §§ 203, 226(a), 226.7, 510, 512, 1194, and 1199.

B. DEFENDANTS

19. Defendant HYDROFORM USA INCORPORATED is believed to be a California corporation operating within the State of California. Defendant's corporate address is believed to be 2848 E 208 St., Carson, CA 90810. Upon information and belief, Defendant employed Plaintiff and similarly situated persons as employees within California. Defendant has done and does business throughout the State of California.

20. The true names and capacities, whether individual, corporate, associate, or otherwise, of Defendants sued herein as DOES 1 to 50, inclusive, are currently unknown to Plaintiff, who therefore sues Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants designated herein as a DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendants designated hereinafter as DOES when such identities become known.

21. Plaintiff is informed and believes, and based thereon alleges, that each Defendant acted in all respects pertinent to this action as the agent of the other Defendants, 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 Defendants. Furthermore, Defendants in all respects acted as the employer and/or joint employer of Plaintiff and the Proposed Class Members.

IV

FACTUAL BACKGROUND

22. Plaintiff and the Proposed Class are, and at all times pertinent hereto, have been classified as employees by Defendant.

23. Upon information and belief, Plaintiff and the Proposed Class are covered by California Industrial Welfare Commission Occupational Wage Order No. 4-2001 (Title 8 Cal. Code of Regs. § 11040).

24. On a regular and consistent basis, Plaintiff and the Proposed Class were not paid at the proper rate of compensation. Defendant issues bonus pay to Plaintiff and the Proposed Class. However, Defendant failed to include any such bonus pay in Plaintiff's and the Proposed Class' regular rate of pay in pay periods where they also worked overtime. In addition, Defendant maintained an improper rounding policy that resulted only compensating Plaintiff and the Proposed Class for the scheduled shift and not the actual hours worked. Rather than paying Plaintiff and the Proposed Class for all hours and minutes they actually worked,

1 Defendant followed a uniform policy and practice of improperly rounding, changing, adjusting
2 and/or modifying and paying per scheduled shift, and generally did so to the detriment of the
3 employees. This resulted in underpayment of minimum wages and/or overtime. As a result of
4 Defendant's unlawful policies, Plaintiff and the Proposed Class were paid at a regular rate less
5 than the rate required under California law.

6 25. Plaintiff and the Proposed Class Members have been forced by Defendant to
7 work over five (5) hours in one day without being provided a thirty (30) minute uninterrupted
8 meal break and not being compensated one (1) hour of pay at the regular rate of compensation
9 for each workday that a meal period was not provided or provided after five (5) hours, all in
10 violation of California labor laws, regulations, and Industrial Welfare Commission Wage
11 Orders. Additionally, Defendant failed to inform Plaintiff and the Proposed Class of their right
12 to take meal periods by way of a lawful policy.

13 26. Plaintiff and the Proposed Class have been required to work four-hour
14 increments (or major fractions thereof) without being provided with a ten (10) minute rest
15 period. Additionally, Defendant failed to inform Plaintiff and the Proposed Class of their right
16 to take rest periods by way of a lawful policy.

17 27. Defendant has failed to provide accurate itemized wage statements in compliance
18 with Labor Code § 226(a) by failing to maintain time records showing when the employee
19 begins and ends each work period, meal periods, total daily hours worked by itemizing in wage
20 statements all deductions from payment of wages, accurately reporting total hours and
21 applicable rates of pay for Plaintiff and the Proposed Class, the beginning and ending date of the
22 pay period, and the name and address of the legal entity that is the employer.

23 28. Defendant willfully failed to pay wages and compensation, when Plaintiff and
24 Proposed Class Members quit or were discharged. Defendant failed to pay the wages described
25 above at the time of termination or resignation. This failure was willful, without legal
26 justification, and interfered with Plaintiff's and the Proposed Class Members' rights.

27 29. As a result of the facts alleged above, Defendant has engaged in unfair
28 competition and unlawful business practices.

30. As a result of the acts alleged herein, Defendant violated Labor Code § 2699, *et seq.*

V

CLASS ACTION ALLEGATIONS

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

All persons who are employed or have been employed as a non-exempt employee by HYDROFORM USA INCORPORATED in the State of California since four (4) years prior to the filing of this action to the present.

32. Plaintiff reserves the right under Rule 3.765(b) of the California Rules of Court to amend or modify the class description with greater specificity, by division into subclasses, or by limitation to particular issues.

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

A. Numerosity

34. The potential members of the Proposed Class as defined are so numerous that joinder of all the members of the Proposed Class is impracticable. While the precise number of Proposed Class Members has not been determined at this time, Plaintiff is informed and believes that Defendant currently employ, and during the relevant time periods employed 50 to 99 members of the Proposed Class at any given time.

35. Plaintiff alleges that Defendant's employment records would provide information as to the number and location of all Proposed Class Members. Joinder of all members of the Proposed Class is not practicable.

B. Commonality

36. There are questions of law and fact common to the Proposed Class that predominate over any questions affecting only individual Proposed Class Members. These

common questions of law and fact include, without limitation:

a. Whether Defendant failed to pay wages to Plaintiff and the Proposed Class as required by the Labor Code and Wage Orders under Labor Code §§ 510, 1194, 1197, and 1199;

b. Whether Defendant failed to provide all lawful meal periods or pay one hour of wages in lieu thereof statements to Plaintiff and the Proposed Class;

c. Whether Defendant failed to provide all lawful rest periods or pay one hour of wages in lieu thereof statements to Plaintiff and the Proposed Class;

d. Whether Defendant violated Labor Code § 226(a) and Wage Order 4-2001 or other applicable IWC Wage Orders, and Cal. Code Regs., Title 8, Section 11040 by failing to issue accurate and complete itemized wage statements;

e. Whether Defendant violated §§ 201-203 of the Labor Code by failing to pay compensation due and owing at the time that any Proposed Class Member's employment with Defendant terminated;

f. Whether Defendant violated § 17200, *et seq.* of the Business & Professions Code by engaging in the acts previously alleged;

g. Whether Plaintiff and the members of the Proposed Class are entitled to equitable relief pursuant to Business & Professions Code § 17200, *et seq.*; and

h. Whether Defendant violated Labor Code § 2699, *et seq.* by engaging in the acts alleged herein.

C. Typicality

37. The claims of Plaintiff are typical of the claims of the Proposed Class. Plaintiff and all members of the Proposed Class sustained injuries and damages arising out of and caused by Defendant's common course of conduct in violation of laws, regulations that have the force and effect of law, and statutes as alleged herein.

D. Adequacy of Representation

38. Plaintiff will fairly and adequately represent and protect the interests of the members of the Proposed Class. Counsel who represent Plaintiff and the Proposed Class are

competent and experienced in litigating large employment class actions.

E. Superiority of Class Action

39. A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all Proposed Class Members is not practicable, and questions of law and fact common to the Proposed Class predominate over any questions affecting only individual members of the Proposed Class. Each member of the Proposed Class has been damaged and is entitled to recovery by reason of Defendant's illegal policy and/or practice of failing to pay wages for all hours worked, failing to provide meal periods, failing to provide rest periods, failing to provide accurate itemized wage statements, and failing to pay all wages upon resignation or termination.

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

VI

FIRST CAUSE OF ACTION

FAILURE TO PAY WAGES/OVERTIME

VIOLATION OF LABOR CODE §§ 510, 1194, 1197, AND 1199

41. Plaintiff incorporates each and every allegation set forth in all of the foregoing paragraphs as if fully set forth herein.

42. Labor Code § 510(a) states that eight hours of labor constitutes a day's work and any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek must be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Labor Code §§ 1194 and 1199 require an employer to pay its employees the legal minimum wage and the legal overtime compensation applicable. California law also requires that any compensation, including a bonus, must be included in the regular rate of pay.

43. On a regular and consistent basis, Plaintiff and the Proposed Class were not paid

1 at the proper rate of compensation. Defendant issues bonus pay to Plaintiff and the Proposed
2 Class. However, Defendant failed to include any such bonus pay in Plaintiff's and the Proposed
3 Class' regular rate of pay in pay periods where they also worked overtime. In addition,
4 Defendant maintained an improper rounding policy that resulted only compensating Plaintiff
5 and the Proposed Class for the scheduled shift and not the actual hours worked. Rather than
6 paying Plaintiff and the Proposed Class for all hours and minutes they actually worked,
7 Defendant followed a uniform policy and practice of improperly rounding, changing, adjusting
8 and/or modifying and paying per scheduled shift, and generally did so to the detriment of the
9 employees. This resulted in underpayment of minimum wages and/or overtime. As a result of
10 Defendant's unlawful policies, Plaintiff and the Proposed Class were paid at a regular rate less
11 than the rate required under California law.

12 44. Plaintiff and the Proposed Class were forced to work on a regular and consistent
13 basis without receiving compensation for all hours worked at the proper rate. Specifically,
14 Plaintiff and the Proposed Class were not paid at the proper overtime rate when they were
15 working more than eight (8) hours in one day or forty (40) hours in one week.

16 45. By their policy of requiring Plaintiff and the Proposed Class to work in excess of
17 eight (8) hours in a workday and/or forty (40) hours in a workweek without compensating them
18 at the rate of one-half (1 1/2) their regular rate of pay, Defendant willfully violated the
19 provisions of Labor Code §§ 510, 1194 and 1199.

20 46. As a result of the unlawful acts of Defendant, Plaintiff and the Proposed Class
21 have been deprived of wages and overtime in amounts to be determined at trial, and are entitled
22 to recovery of such amounts, plus interest and penalties thereon, attorney's fees, and costs.

23 VII

24 **SECOND CAUSE OF ACTION**

25 **FAILURE TO PROVIDE MEAL PERIODS PURSUANT TO LABOR CODE § 226.7**

26 **AND LABOR CODE § 512**

27 47. Plaintiff incorporates each and every allegation set forth in all of the foregoing
28 paragraphs as if fully set forth herein.

48. Labor Code §§ 226.7 and 512 require an employer to pay an additional hour of compensation for each meal period the employer fails to provide. Employees are entitled to a first meal period of at least thirty (30) minutes for shifts over five (5) hours, to be provided within the first five (5) hours of the shift. Defendant failed to maintain a policy informing Plaintiff and the Proposed Class of these rights.

49. Plaintiff and the Proposed Class consistently worked shifts over five (5) hours.

50. Defendant failed to provide Plaintiff and the Proposed Class with proper meal periods of not less than thirty (30) minutes as required by the Labor Code during the relevant time period. When Defendant provided these meal periods, they were often less than thirty (30) minutes in length.

51. Pursuant to Labor Code § 226.7, Plaintiff and the Proposed Class are entitled to damages in an amount equal to one (1) hour of wages per missed meal break, per day in a sum to be proven at trial.

VIII

THIRD CAUSE OF ACTION

FAILURE TO ALLOW REST PERIODS PURSUANT TO LABOR CODE § 226.7

52. Plaintiff incorporates each and every allegation set forth in all of the foregoing paragraphs as if fully set forth herein.

53. Labor Code § 226.7 require an employer to pay an additional hour (1) of compensation for each rest period the employer fails to provide. Employees are entitled to a paid ten (10) minute rest break for every four (4) hours worked (or major fraction thereof). Defendant failed to maintain a policy informing Plaintiff and the Proposed Class of this right.

54. Plaintiff and the Proposed Class consistently worked shifts with no rest breaks or with only some of their required rest breaks, and Defendant failed to maintain an accurate policy advising Plaintiff and the Proposed Class of these rest breaks and failed to provide Plaintiff and the Proposed Class with rest breaks of not less than ten (10) minutes as required by the Labor Code during the relevant time period.

55. Pursuant to Labor Code § 226.7, Plaintiff and the Proposed Class are entitled to

1 damages in an amount equal to one (1) hour of wages per missed rest period, in a sum to be
2 proven at trial.

3 **IX**

4 **FOURTH CAUSE OF ACTION**

5 **VIOLATION OF LABOR CODE § 226(a)**

6 56. Plaintiff incorporates each and every allegation set forth in all of the foregoing
7 paragraphs as if fully set forth herein.

8 57. California Labor Code § 226(a) requires employers to itemize in wage statements
9 all deductions from payment of wages, the appropriate rates of pay, and to accurately report
10 total hours worked by Plaintiff and the Proposed Class.

11 58. Labor Code § 226(a)(2) requires that the itemized wage statement properly state
12 the total hours worked by the employee. Plaintiff and the Proposed Class are issued wage
13 statements that do not state the total hours worked during the pay period.

14 59. Labor Code § 226(a)(6) specifically requires that the wage statement include the
15 dates of the period for which the employee is paid. Defendant's employees are issued wage
16 statements that do not properly reflect the pay period beginning and ending date.

17 60. Labor Code § 226(a)(8) requires that the wage statement include the name and
18 address of the legal entity that is the employer. Defendant's employees are issued wage
19 statements that do not properly indicate the address of the legal entity that is the employer.

20 61. Labor Code § 226(a)(9) requires that every employer shall semimonthly or at the
21 time of each payment of wages, furnish each of his or her employees, an accurate itemized
22 statement in writing showing all applicable hourly rates in effect during the pay period and the
23 corresponding number of hours worked at each hourly rate by the employee. Plaintiff and the
24 Proposed Class are issued wage statements that do not include all applicable hourly rates in
25 effect during the pay period and the corresponding number of hours worked at each hourly rate
26 by the employee.

27 62. Defendant's failure to provide accurate itemized wages statements according to
28 Labor Code § 226(a) was all done on a regular and consistent basis.

63. An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with Labor Code § 226(a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's fees.

X

FIFTH CAUSE OF ACTION

WAITING TIME PENALTIES UNDER LABOR CODE § 203

64. Plaintiff incorporates each and every allegation set forth in all of the foregoing paragraphs as if fully set forth herein.

65. Numerous members of the Proposed Class including the Plaintiff are no longer employed by Defendant. They were either fired or quit Defendant's employ.

66. Defendant's failure to pay wages, as alleged above was willful in that Defendant knew wages to be due but failed to pay them, thus entitling Plaintiff and the Proposed Class to penalties under Labor Code § 203, which provides that an employee's wages shall continue as a penalty until paid for a period of up to thirty (30) days from the time they were due.

67. Defendant has failed to pay Plaintiff and others a sum certain at the time of termination or within seventy-two (72) hours of their resignation, and have failed to pay those sums for thirty (30) days thereafter. Pursuant to the provisions of Labor Code § 203, Plaintiff and the Proposed Class are entitled to a penalty in the amount of Plaintiff's and the Proposed Class Members' daily wage multiplied by thirty (30) days.

XII

SIXTH CAUSE OF ACTION

UNFAIR COMPETITION PURSUANT TO

BUSINESS & PROFESSIONS CODE § 17200

68. Plaintiff incorporates each and every allegation set forth in all of the foregoing paragraphs as if fully set forth herein.

1 69. This is a Class Action for Unfair Business Practices. Plaintiff, on behalf of
2 himself, on behalf of the general public, and on behalf of the Proposed Class, brings this claim
3 pursuant to Business & Professions Code § 17200, *et seq.* The conduct of Defendant as alleged
4 in this Complaint has been and continues to be unfair, unlawful, and harmful to Plaintiff, the
5 general public, and the Proposed Class. Plaintiff seeks to enforce important rights affecting the
6 public interest within the meaning of Code of Civil Procedure § 1021.5.

7 70. Plaintiff is a “person” within the meaning of Business & Professions Code
8 § 17204, and therefore has standing to bring this cause of action for injunctive relief, restitution,
9 and other appropriate equitable relief.

10 71. Business & Profession Code § 17200, *et seq.* prohibits unlawful and unfair
11 business practices.

12 72. California’s wage and hour laws express fundamental public policies. Providing
13 employees with proper wages and compensation are fundamental public policies of this State
14 and of the United States. Labor Code § 90.5(a) articulates the public policies of this State to
15 enforce vigorously minimum labor standards, to ensure that employees are not required or
16 permitted to work under substandard and unlawful conditions, and to protect law-abiding
17 employers and their employees from competitors who lower their costs by failing to comply
18 with minimum labor standards.

19 73. Defendant has violated statutes and public policies as alleged herein. Through
20 the conduct alleged in this Complaint, Defendant has acted contrary to these public policies,
21 have violated specific provisions of the Labor Code, and have engaged in other unlawful and
22 unfair business practices in violation of Business & Profession Code § 17200, *et seq.*, depriving
23 Plaintiff, and all persons similarly situated, and all interested persons of rights, benefits, and
24 privileges guaranteed to all employees under law.

25 74. Defendant’s conduct, as alleged hereinabove, constitutes unfair competition in
26 violation of § 17200, *et seq.* of the Business & Professions Code.

27 75. Defendant, by engaging in the conduct herein alleged, either knew or in the
28 exercise of reasonable care, should have known that the conduct was unlawful. As such it is a

violation of § 17200, *et seq.* of the Business & Professions Code.

76. As a proximate result of the above-mentioned acts of Defendant, Plaintiff and others similarly situated have been damaged in a sum as may be proven.

77. Unless restrained, Defendant will continue to engage in the unlawful conduct as alleged above. Pursuant to the Business & Professions Code, this court should make such orders or judgments, including the appointment of a receiver, as may be necessary to prevent the use or employment by Defendant, its agents, or employees, of any unlawful or deceptive practices prohibited by the Business & Professions Code, and/or, including but not limited to, restitution and disgorgement of profits which may be necessary to restore Plaintiff and the Proposed Class the money Defendant has unlawfully failed to pay.

XII

SEVENTH CAUSE OF ACTION

PENALTIES PURSUANT TO LABOR CODE § 2699, ET SEQ.

78. Plaintiff incorporates each and every allegation set forth in all of the foregoing paragraphs as if fully set forth herein.

79. As a result of the acts alleged above, Plaintiff seeks penalties under Labor Code § 2699, *et seq.* because of Defendant's violation of Labor Code §§ 203, 226(a), 226.7, 510, 512, 1194, and 1199, which call for civil penalties.

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

- a. \$100 for the initial violation per employee per pay period; and
- b. \$200 for each subsequent violation per employee per pay period.

81. These penalties will be allocated 75% to the Labor Workforce Development Agency and 25% to the affected employees.

82. On October 13, 2021, in compliance with Labor Code § 2699.3(a)(1), Plaintiff gave written notice by online filing to the LWDA, setting forth the facts and theories of the violations alleged against Defendant ("Notice Letter", see Exhibit "1") and paid the filing fee. Plaintiff also mailed notice to Defendant by certified mail, return receipt requested, to the

1 address listed on the California Secretary of State's website as the entity address for Defendant
2 HYDROFORM USA INCORPORATED, 2848 E 208 St., Carson, CA 90810. (See Exhibit
3 "2").

4 83. Pursuant to Labor Code § 2699.3(a)(2)(A), no notice was received by Plaintiff
5 from the LWDA evidencing its intention to investigate within sixty-five (65) calendar days of
6 October 13, 2021. Therefore, Plaintiff is entitled to commence a civil action as though the
7 LWDA has chosen not to investigate. Plaintiff will also provide the LWDA with a filed-
8 stamped copy of the First Amended Complaint immediately.

9 **RELIEF REQUESTED**

10 **WHEREFORE**, Plaintiff prays for the following relief:

11 1. For compensatory damages in the amount of unpaid wages and/or overtime not
12 paid to Plaintiff and each Proposed Class Member from at least four (4) years prior to the filing
13 of this action to the present as may be proven;

14 2. For compensatory damages in the amount of Plaintiff's and each Proposed Class
15 Members' hourly wage for each meal period missed or taken late from at least four (4) years
16 prior to the filing of this action to the present as may be proven;

17 3. For compensatory damages in the amount of Plaintiff's and each Proposed Class
18 Members' hourly wage for each rest period missed or taken late from at least four (4) years prior
19 to the filing of this action to the present as may be proven;

20 4. For penalties pursuant to Labor Code § 226(e) for violation of Labor Code
21 § 226(a) in the amount of fifty dollars (\$50) for the initial pay period in which a violation occurs
22 and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not
23 exceeding an aggregate penalty of four thousand dollars (\$4,000);

24 5. For penalties pursuant to Labor Code § 203 for all employees who were
25 terminated or resigned equal to their daily wage times thirty (30) days;

26 6. An award of prejudgment and post judgment interest;

27 7. An order enjoining Defendant and its agents, servants, and employees, and all
28 persons acting under, in concert with, or for it from providing Plaintiff and the Proposed Class

1 with proper wages and/or overtime, meal periods, rest periods, accurate itemized wage
2 statements, and wages upon termination/resignation pursuant to Labor Code §§ 203, 226(a),
3 226.7, 510, 512, 1194, 1197, 1199, and IWC 4-2001;

4 8. For restitution for unfair competition pursuant to Business & Professions Code
5 § 17200, *et seq.*, including disgorgement or profits, in an amount as may be proven;

6 9. For penalties and other relief pursuant to Labor Code § 2699, *et seq.*;

7 10. An award providing for payment of costs of suit;

8 11. An award of attorney's fees; and

9 12. Such other and further relief as this Court may deem proper and just.

10 **DEMAND FOR JURY TRIAL**

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

12 DATED: December 20, 2021

KINGSLEY & KINGSLEY, APC

13
14 By: 

DARREN M. COHEN

Attorneys for Plaintiff and the Proposed Class

EXHIBIT 1

From: noreply@salesforce.com on behalf of LWDA DO NOT REPLY
<lwdadonotreply@dir.ca.gov>
Sent: Wednesday, October 13, 2021 12:42 PM
To: Service Email
Subject: Thank you for submission of your PAGA Case.

External Email!

10/13/2021

LWDA Case No. LWDA-CM-848443-21
Law Firm : Kingsley & Kingsley
Plaintiff Name : Romulo Gomez
Employer: Hydroform USA Incorporated
Filing Fee : \$75.00
IFP Claimed : No

Item submitted: Initial PAGA Notice

Thank you for your submission to the Labor and Workforce Development Agency. Please make a note of the LWDA Case No. above as you may need this number for future reference when filing any subsequent documents for this Case.

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

KINGSLEY & KINGSLEY

| L A W Y E R S |

October 13, 2021

PAGAfilings@dir.ca.gov
<https://dir.tfaforms.net/308>

LABOR & WORKFORCE DEVELOPMENT AGENCY
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

HYDROFORM USA INCORPORATED
2848 E 208 St.
Carson, CA 90810
Certified Mailing: # 7018 1130 0001 5815 3684

Re: Romulo Gomez v. Hydroform USA Incorporated
California Labor Code § 2699 Penalties

Gentlepersons:

This office represents Romulo Gomez (“Plaintiff”) for the violations of California Labor Code §§ 203, 226(a), 226.7, 510, 512, 1194, 1199. The purpose of this letter is to comply with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698, *et seq.* We herein set forth the facts and theories of California Labor Code violations, which we allege Hydroform USA Incorporated (“Defendant”) engaged in with respect to our client and all of their California employees.

Plaintiff wishes to bring a representative action on behalf of himself and the State of California as well as on behalf of a group of aggrieved employees defined as: All persons who are employed or have been employed as an hourly employee by Hydroform USA Incorporated, in the State of California who worked one or more pay periods since one (1) year prior to the date of this letter and continuing to the present plus any additional time during which the statutes of limitation for the causes of action herein were tolled pursuant to Emergency Rule 9 of the California Rules of Court, the ‘Emergency Rules Related to COVID-19’ (“aggrieved employees”).

Any limitations period referenced in this letter is extended pursuant to Emergency Rule 9 (a) of the “Emergency Rules Related to COVID-19,” Appendix I to the California Rules of Court, adopted effective April 6, 2020, which provides that the statutes of limitation that exceed 180 days for civil actions are tolled from April 6, 2020 until October 1, 2020 [“Notwithstanding any other law, the statutes of limitations and repose for civil causes of action that exceed 180 days are tolled from April

6, 2020 until October 1, 2020.”]. Any reference to the relevant time period or statute of limitations referenced in this letter is extended into the past by the number of days in which this tolling was in effect.

Specifically, Defendant has violated Labor Code §§ 510, 1194 and 1199. These statutes require an employer to compensate its employees at the minimum wage rate for all hours worked and at a rate of no less than one and one-half times the regular rate of pay for any work in excess of eight (8) hours in one workday and any work in excess of forty (40) hours in any one workweek. Defendant has had a consistent policy of failing to pay wages and/or overtime to Plaintiff and the aggrieved employees for all hours worked. Defendant issues bonus pay to Plaintiff and the aggrieved employees. However, Defendant failed to include any such bonus pay in Plaintiff’s and the aggrieved employees’ regular rate of pay in pay periods where they also worked overtime. In addition, Defendant maintained an improper rounding policy that resulted only compensating Plaintiff and the aggrieved employees for the scheduled shift and not the actual hours worked. Rather than paying Plaintiff and the aggrieved employees for all hours and minutes they actually worked, Defendant followed a uniform policy and practice of improperly rounding, changing, adjusting and/or modifying and paying per scheduled shift, and generally did so to the detriment of the employees. This resulted in underpayment of minimum wages and/or overtime. As such, Plaintiff and the aggrieved employees were not paid for all hours worked at the proper rate.

Also, Defendant has violated Labor Code § 512. Labor Code § 512 states that an employer may not employ an employee for a work period of more than five (5) hours per day without providing the employee with a meal period of not less than thirty (30) minutes. Additionally, an employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than thirty (30) minutes. Pursuant to Labor Code § 226.7(c), if an employer fails to provide an employee with a lawful meal period, the employer must pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that a thirty-minute uninterrupted meal period was not provided, was not provided in full, or was not provided in a timely manner. Defendant failed to apprise Plaintiff and the aggrieved employees of their rights associated with meal periods and failed to provide compliant meal periods. Defendant required Plaintiff and the aggrieved employees to work shifts without providing them with meal periods. When employees were required to work through meal periods, Defendant failed to pay such employees one hour of pay at their regular rate of compensation.

Further, IWC Wage Order 4, ¶ 7 imposes on employers an obligation to record and maintain accurate records of “meal periods.” Labor Code § 1199 prohibits an employer from causing any employee to work under conditions of labor prohibited by an order of the IWC or from violating, refusing, or neglecting to comply with any order of the commission’s orders regarding wages, hours, and working conditions. Defendant does not maintain accurate records of meal periods for Plaintiff and the aggrieved employees. As such, Defendant has violated this statute and the Wage Order by failing to keep accurate records.

Further, pursuant to Labor Code § 226.7 and Wage Order 4-2001, Defendant failed to provide Plaintiff and the aggrieved employees with rest breaks of not less than ten (10) minutes per four (4) hour work period, or major fraction thereof. Defendant failed to provide Plaintiff and the aggrieved employees with these rest periods and failed to inform them of their right to rest periods. Further, Plaintiff and the aggrieved employees were not compensated with one (1) hour of wages at their regular rate of compensation for each missed rest period as required by Labor Code § 226.7.

Defendant engaged in a practice of failing to provide accurate itemized wage statements in violation of Labor Code § 226(a), which requires that every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, an accurate itemized statement in writing showing a number of specific items. Labor Code § 226(a)(2) requires that the itemized wage statement properly state the total hours worked by the employee. Plaintiff and the aggrieved employees are issued wage statements that do not state the total hours worked during the pay period. Labor Code § 226(a)(6) specifically requires that the wage statement include the dates of the period for which the employee is paid. Defendant's employees are issued wage statements that do not properly reflect the pay period beginning and ending date. Labor Code § 226(a)(8) requires that the wage statement include the name and address of the legal entity that is the employer. Defendant's employees are issued wage statements that do not properly indicate the address of the legal entity that is the employer. Labor Code § 226(a)(9) requires that the itemized wage statement properly state all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Plaintiff and the aggrieved employees are issued wage statements that do not include the applicable regular rate, overtime rate, and double time rates. In addition, Plaintiff and the aggrieved employees are issued wage statements that do not include the correct number of hours worked at each applicable hourly rate and do not include meal/rest period premiums. Thus, Plaintiff is an aggrieved employee within the meaning PAGA and Defendant has violated Labor Code § 226(a) with respect to Plaintiff and the aggrieved employees.

Lastly, Labor Code § 203 provides that if "an employer willfully fails to pay...any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days." Here, Plaintiff and all aggrieved employees were not timely paid all wages due upon their separation from Defendant's employ as required. As such, Plaintiff is an aggrieved employee and Defendant failed to pay Plaintiff and all aggrieved employees all wages due at the time of termination or within seventy-two (72) hours of their resignation and have failed to pay those sums for thirty (30) days thereafter in violation of Labor Code § 203.

Defendant's failure to provide wages and/or overtime, failure to provide meal and rest periods, failure to provide compliant itemized wage statements, and failure to pay all wages upon termination/resignation were all done on a regular and consistent basis.

We are constrained to move forward with the filing of this complaint alleging causes of action pursuant to Labor Code §§ 203, 226(a), 226.7, 510, 512, 1194, and 1199, with or without the PAGA claim. Thus, any action by the LWDA would not resolve the entirety of the case, and the interest of judicial economy will be served by allowing the case to proceed as a cohesive whole.

Very truly yours,

KINGSLEY & KINGSLEY, APC

By: 
DARREN M. COHEN

DMC/mt

LWDA Filed Electronic Submission via <https://dir.tfaforms.net/308>
VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED
HYDROFORM USA INCORPORATED # 7018 1130 0001 5815 3684

EXHIBIT 2

SENDER: COMPLETE THIS SIDE

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT
OF THE RETURN ADDRESS. FOLD AT DOTTED LINE

ERY

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Hydroform USA Incorporated
2848 E 208 Street
Carson, CA 90010



9590 9402 6094 0125 0624 70

2. Article Number (Transfer from service label)

7018 1130 0001 5815 3684

A. Signature

X

B. Received by (Printed Name)

☐ Agent☐ Addressee

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

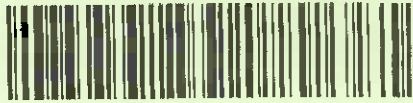
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PS Form 3811, July 2015 PSN 7530-02-000-9053

Domestic Return Receipt

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Hydroform USA - PAGA

United States
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KINGSLEY & KINGSLEY, APC
16133 VENTURA BLVD.
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