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Noe Ponce Ceja

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO

NOE PONCE CEJA, individually and on behalf
of all others similarly situated,

Plaintiff,

v.

VENTURE DYNAMICS ENTERPRISES, INC.,
and DOES 1 to 100,

Defendants.

Case No.: 37-2022-00004908-CU-OE-CTL
Hon. Katherine Bacal
Dept. C-69

CLASS ACTION

THIRD AMENDED COMPLAINT

- 1. Violation of B&PC §17200, et seq.**
- 2. Violation of Labor Code §§ 204, 510, 1194, and 1198**
- 3. Inaccurate Wage Statements (LC §226)**
- 4. Failure to Provide Meal Periods**
- 5. Failure to Provide Rest Periods**
- 6. Work Expenditure Reimbursements**
- 7. Waiting Time Penalties**
- 8. Penalties Under PAGA Labor Code §2698, et seq.**
- 9. Failure to Pay Wages Under the Fair Labor Standards Act**

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1 venture, partnership, and common enterprise.

2 9. Defendants approved of, condoned, and/or otherwise ratified each and every one
3 of the acts or omissions complained of herein. At all times herein mentioned, Defendants, and
4 each of them, aided and abetted the acts and omissions of the other Defendants, thereby
5 proximately causing the damages, as herein alleged.

6 10. Defendants are temporary services employers under Labor Code section 201.3.

7 11. For Ponce, Defendants assigned him to work at shipyards in San Diego.

8 12. Ponce and the class members had to go through entrance and exit security
9 checkpoints, but they were not paid for this time.

10 13. Further, Ponce and the class members did not receive meal or rest breaks.

11 14. Defendants deducted work expenses from Ponce's and the class members' wages,
12 but they were not reimbursed. Also, Ponce and the class members had to pay to receive a check
13 in lieu of direct deposit (for wages) but were not reimbursed for this cost.

14 15. The wage statements were inaccurate since they did not list each temporary
15 services assignment as required by Labor Code section 226(a)(9), and the wage statements did
16 not list all the hours worked.

17 16. On January 17, 2022 Plaintiff sent a PAGA letter by certified mail to Defendant
18 and uploaded the letter to the PAGA website. Plaintiff can request PAGA penalties 65 days after
19 the PAGA letter was sent.

20 17. The California Superior Court also has jurisdiction in this matter because during
21 his employment with Defendant, Plaintiff herein was a California citizen and Defendant has
22 owned and operated its business within California. Further, there is no federal question at issue,
23 as the issues herein are based solely on California statutes and law. Individual claims of the
24 members of the Classes including plaintiff's pro rata share of attorneys' fees and all other
25 requested relief herein are under the seventy-five thousand dollar (\$75,000.00) jurisdictional
26 threshold for Federal Court and the aggregate claim including attorneys' fees and costs, and all
27 other requested relief are under the five million dollar (\$5,000,000.00) threshold of the Class
28 Action Fairness Act of 2005 exclusive of PAGA. The issues herein are based solely on

1 California statutes and law, including the Labor Code, IWC Wage Order(s), CCP, California
2 Civil Code (“CC”) and B&PC.

3 **UNFAIR COMPETITION ALLEGATIONS**

4 **(BUSINESS & PROFESSIONS CODE § 17200)**

5 18. Plaintiff on behalf himself and all similarly situated employees as well as
6 aggrieved employees, filed this cause of action acting as a private attorney general on behalf of
7 the general public to challenge and remedy the business practices of Defendant alleged herein.

8 19. B&PC §17200, et seq., often referred to as the Unfair Competition Law, prohibits
9 unfair competition, which is defined to include any unlawful, unfair, or fraudulent business act or
10 practices. Defendant has instituted and implemented unlawful wage-and-hour policies, which
11 constitute unfair, unlawful, or fraudulent business acts or practices within the State of California.
12 Any person that has suffered injury may initiate an action to enforce B&PC §17200. The Court
13 is authorized to order injunctive relief, declaratory relief, and restitution to affected members of
14 the general public as remedies for any violations of B&PC §17200.

15 20. Plaintiff is entitled to an award of attorneys’ fees and costs in prosecuting this
16 action as a private attorney general against Defendant under CCP §1021.5 based in part on the
17 following:

18 a. A successful outcome in this action will result in the enforcement of
19 important rights affecting the public interest by maintaining the integrity of entities that employ
20 employees;

21 b. This action will result in a significant benefit to the general public by
22 ceasing unlawful, unfair and deceptive activity, and by causing the return of ill-gotten gains
23 obtained by Defendant through its failure to properly pay its employees;

24 c. Unless this action is prosecuted, members of the general public will not
25 recover monies wrongfully taken from them, and many employees would not be aware that they
26 were victimized by Defendant’s wrongful acts and practices; and unless attorneys’ fees and costs
27 are awarded against Defendant, the general public will not be made whole.

1 **PLAINTIFF CLASSES**

2 21. Ponce worked in the position of non-exempt hourly employee or other similar title
3 while employed by Defendants within the State of California. At all times mentioned herein,
4 Ponce and the entirety of the class identified herein are current and former California resident
5 employees of Defendant who worked for Defendants' temporary services assignments in
6 California

7 **CLASS ACTION ALLEGATIONS**

8 22. Plaintiff brings this action on behalf of himself and all others similarly situated
9 California hourly employees as a class action pursuant to CCP §382. The classes which Plaintiff
10 seeks to represent are composed of and defined as follows:

11 **Class 1:**

12 All hourly non-exempt California employees of worked at Defendants' for more than
13 eight (8) hours in a day or more than forty (40) hours in a week from four years from the date of
14 filing through the date of certification who did not receive wages and/or premium pay for missed
15 rest and meal breaks at the correct regular rate of pay. (Regular Rate Class)

16 **Class 2:**

17 All hourly non-exempt California employees who worked for Defendants at some point
18 from three years from the date of filing of this action through the date of certification who are no
19 longer employed with Defendant. (Waiting Time Penalty Class)

20 **Class 3:**

21 All non-exempt hourly California employees who worked for Defendants from four years
22 from the date of filing through certification who were not provided a 30-minute uninterrupted
23 meal period within the first five hours of their shift. (Meal Break Class)

24 **Subclass 1:**

25 All non-exempt hourly California employees who worked for Defendants from four years
26 from the date of filing through certification who were not provided a second 30-minute
27 uninterrupted meal period on shifts in excess of 10 hours. (Second Meal Break Subclass)

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Class 4:

All non-exempt hourly California employees who worked for Defendants from one year from the date of filing of this action through certification who were provided a paystub (wage statement) from Defendants. (Pay Stub Class)

Class 5:

All current and former hourly non-exempt California employees who work or worked for Defendants at any time from four years from the date of filing through preliminary approval or judgment who were not authorized or permitted to take a duty-free rest period of at least ten (10) consecutive minutes for each four (4) hours or major fraction thereof pursuant to California law. (Rest Period Class)

Subclass 2:

All current and former hourly non-exempt California employees who work or worked for Defendants at any time from four years from the date of filing through certification who were required to remain on-premises for their rest breaks. (On-Premises Rest Period Subclass).

Class 6:

All current and former hourly non-exempt California employees who work or worked for Defendants at any time from four years from the date of filing through certification who were required to go through security checkpoints while off the clock. (Security Checkpoint Class).

Class 7:

All hourly non-exempt California employees of Defendants' that have worked for more than eight (8) hours in a day or more than forty (40) hours in a week from four years from the date of filing through the date of certification who were not paid all wages owed to them. (Unpaid Wages Class).

The members of the classes are so numerous that joinder of all members would be unfeasible and not practicable. The membership of the classes is unknown to Plaintiff at this time; however, it is estimated that the classes number greater than 200 individuals. The identity of such membership is readily ascertainable via inspection of employment records.

23. There are common questions of law and fact as to Plaintiff and all others similarly

1 situated which predominate over questions affecting only individual members including, without
2 limitation to:

- 3 i. Whether Defendant improperly calculated the regular rate of pay for
4 payment of premium pay and overtime;
- 5 ii. Whether Defendant violated the applicable Labor Code provisions
6 including §§ 510, 1194, and 203 by requiring substantial overtime work
7 and not paying for said work according to the overtime laws of the State of
8 California, without statutory exemptions;
- 9 iii. Whether Defendant failed to pay overtime premium or meal and rest
10 period premiums to the class based on the correct regular rate of pay;
- 11 iv. Whether Defendant improperly retained, appropriated or deprived Plaintiff
12 of the use of monies or sums to which Plaintiff was legally entitled;
- 13 v. Whether Defendant engaged in unfair business practices;
- 14 vi. Whether Defendant, and each of them, was/were participants in the
15 alleged unlawful conduct;
- 16 vii. Whether Defendant's conduct was willful or reckless;
- 17 viii. The effect upon and the extent of injuries suffered by Plaintiff and all
18 others similarly situated and the appropriate amount of compensation;
- 19 ix. The appropriate amount of monetary penalties allowed by Labor Code
20 §201, et. seq.;
- 21 x. Whether Defendant discouraged, dissuaded, or impeded non-exempt
22 employees from receiving legally compliant meal periods;
- 23 xi. Whether Defendant violated Labor Code §226 and by failing to
24 accurately report total hours worked at all applicable hourly rates by
25 Plaintiff and the members of the class;
- 26 xii. Whether Defendant knowingly and intentionally failed to maintain records
27 for Plaintiff and members of the class as required by Labor Code § 1174
28 and IWC Order, 9-2001;

1 xiii. Whether Defendant is subject to civil penalties pursuant to
2 Labor Code §§2699, et seq.; and

3 xiv. Whether Defendant is subject to civil penalties pursuant to
4 Labor Code §§2699, et seq.

5 24. Plaintiff's claims are typical of the claims of all members of the classes and
6 subclasses mentioned herein. Plaintiff, as a representative party, will fairly and adequately
7 protect the interest of the classes by vigorously pursuing this suit through his attorneys who are
8 skilled and experienced in handling matters of this type. Plaintiff has no claim or interest that is
9 antagonistic to any class member.

10 25. The nature of this action and the nature of laws available to the members of the
11 classes and subclasses identified herein make use of the class action format a particularly
12 efficient and appropriate procedure to afford relief to Plaintiff for the wrongs alleged herein.
13 Further, this claim involves large corporate employers and many individual employees with
14 many relatively small claims with common issues of law and fact. If each employee were
15 required to file an individual lawsuit, the corporate Defendants would necessarily gain an
16 unconscionable advantage since they would be able to exploit and overwhelm the limited
17 resources of each individual Plaintiff with its vastly superior financial and legal resources.
18 Requiring each class member to pursue an individual remedy would also discourage the assertion
19 of lawful claims by employees who would be disinclined to pursue an action against their present
20 and/or former employer for an appreciable and justifiable fear of retaliation and permanent
21 damage to their careers at present and/or subsequent employment. Proof of a common business
22 practice or factual pattern, of which the named Plaintiff experienced, is representative of the
23 class mentioned herein and will establish the right of each of the members of the named class to
24 recovery on the causes of action alleged herein.

25 26. The prosecution of separate actions by the individual class members, even if
26 possible, would create a substantial risk of inconsistent or varying verdicts or adjudications with
27 respect to the individual class members against Defendants; and which would establish
28 potentially incompatible standards of conduct for Defendants; and/or (b) legal determinations

1 with respect to individual class members which would, as a practical matter, be dispositive of the
2 interest of the other class members not parties to adjudications or which would substantially
3 impair or impede the ability of the class members to protect their interests. Further, the claims of
4 the individual members of the class are not sufficiently large to warrant vigorous individual
5 prosecution considering all of the concomitant costs and expenses attending thereto.

6 **FIRST CAUSE OF ACTION**

7 **Violation of Business & Professions Code §17200, et seq.**

8 **Against All Defendants**

9 27. Plaintiff re-alleges and incorporates by reference herein the allegations of all
10 preceding paragraphs as though fully set forth herein.

11 28. Beginning on an exact date unknown to Plaintiff but believed to have occurred at
12 least four (4) years preceding the filing of this action, Defendant has engaged in a pattern and
13 practice of acts of unfair competition in violation of B&PC §17200.

14 29. Defendants have engaged in the practice of paying their employees, including all
15 hourly employees in a fashion that circumvents California wage laws.

16 **FAILURE TO PAY PROPER WAGES, PREMIUM PAY AND OVERTIME**

17 **COMPENSATION BASED ON THE CORRECT REGULAR RATE OF PAY**

18 30. Plaintiff is informed and believe and thereon allege that as part of Defendant's
19 ongoing unfair business practices, Defendant's non-exempt hourly employees were and are
20 employed and scheduled as a matter of established company policy to work, and in fact, worked
21 shifts in excess of eight (8) hours a day, including but not limited to shifts lasting ten (10) hours
22 and twelve (12) hours.

23 31. Defendant's policy is to pay straight time for all hours worked in excess of eight
24 (8) hours per day, both straight time (first eight (8) hours) and overtime (last four (4) hours) pay
25 is paid at the base hourly rate which is lower than required by law due to Defendant's failure to
26 pay daily overtime hours at time-and-a-half of the employees' correct regular rate of pay. The
27 mathematical result of this practice is that employees are underpaid their earned statutory
28 overtime premium wages. Defendant's mathematical scheme is in violation of the Labor Code.

1 Defendant's employees are not paid proper overtime compensation at the correct rate. The
2 "regular rate" means "the hourly rate actually paid for the normal, non-overtime workweek."
3 (See *Walling v. Youngerman-Reynolds Hardwood Co.*, 325 U.S. 419, 424 (1945) ("[T]he regular
4 rate refers to the hourly rate actually paid the employee for the normal, non-overtime workweek
5 for which he is employed.") (emphasis added); *United States v. Rosenwasser*, 323 U.S. 360, 364
6 (1945) (defining the "regular rate" is defined as "the hourly rate actually paid for the normal,
7 non-overtime workweek.") (quotation omitted) (emphasis added); *Huntington Memorial Hosp. v.*
8 *Superior Court*, (2005) 131 Cal.App.4th 893, 905 (regular rate is the hourly rate paid for a non-
9 overtime workweek); *Brunozzi v. Cable Communications, Inc.*, 851 F.3d 990, 996 (9th Cir.
10 2017) (To determine the regular rate, "we must first determine what the parties agreed [the
11 employee] is to be paid in a normal, non-overtime workweek.") (emphasis added).) "Wage
12 divided by hours equals regular rate." (*Bay Ridge*, 334 U.S. at 461 (quotation omitted).) The
13 employer may not "compute the regular rate in a wholly unrealistic and artificial manner so as to
14 negate the statutory purposes." (*Walling*, 325 U.S. at 424.) The regular rate "must reflect all
15 payments which the parties have agreed shall be received regularly during the workweek,
16 exclusive of overtime payments." (*Id.*) The regular rate "is not an arbitrary label chosen by the
17 parties; it is an actual fact. Once the parties have decided upon the amount of wages and the
18 mode of payment the determination of the regular rate becomes a matter of mathematical
19 computation" (*Id.* at 244-45.) "The regular hourly rate of pay of an employee is determined
20 by dividing his total remuneration for employment (except statutory exclusions) in any
21 workweek by the total number of hours actually worked by him in that workweek for which such
22 compensation was paid." (29 C.F.R. § 778.109.)

23 32. Plaintiff believes and thereon alleges that Defendant fails to include all
24 remuneration into the calculation of the regular rate for overtime, meal and rest period premium
25 payments, including but not limited to, differentials, bonuses, and other pay.

26 **VIOLATION OF MEAL PERIOD PROVISIONS**

27 33. Defendant's improper meal policies are in violation of California law including,
28 but not limited to Labor Code § 226.7, 512, and IWC Wage Order 9-2001. Plaintiff and all

1 others similarly situated these classes are entitled to wages at their regular rate of pay for each
2 violation where Defendants violated the meal break provisions and failed to provide a compliant
3 meal period due to an invalid waiver and no exemption. Plaintiff and the class are entitled to 1
4 hour of pay for each meal break violation at the correct regular rate of pay.

5 **FAILURE TO PERMIT AND AUTHORIZE REST PERIOD BREAKS**

6 34. Plaintiff and other members of the Rest Period Class are entitled to the benefits of
7 Labor Code § 226.7 and Order 9-2001 of the Industrial Welfare Commission. Pursuant to Labor
8 Code § 226.7 and Wage Order 9-2001, Plaintiff and the other members of the Rest Period Class
9 were entitled to separate rest periods of at least 10 minutes for each four-hour period of work or
10 major fraction thereof, and one hour of additional pay for every shift a rest period was not
11 provided in conformance with this obligation.

12 35. Plaintiff is informed and believes, and thereon allege that Defendants consistently
13 compelled Plaintiff and other members of the Rest Period Class employed for shifts of more than
14 four (4) hours, to take only one (1) rest break during their shifts, instead of two (2) or three (3)
15 rest breaks required depending on shift length. Further, Plaintiff alleges Defendant failed to
16 provide duty-free rest periods and off-site rest periods to Plaintiff and the class.

17 36. Plaintiff, and all persons similarly situated, and all persons in interest, are entitled
18 to and do seek such relief as may be necessary to restore to them the money and property which
19 Defendant has acquired, or of which Plaintiff and class members have been deprived by means
20 of the herein described unfair, unlawful, and/or fraudulent business practices.

21 37. Plaintiff, and all persons similarly situated, and all persons in interest, are further
22 entitled to and do seek a declaration that the above-described business practices are unfair,
23 unlawful, and/or fraudulent, and injunctive relief restraining Defendant from engaging in any of
24 the herein described unfair, unlawful, and/or fraudulent business practices at all times in the
25 future.

26 38. Plaintiff seeks restitution for said violations.

27 **FAILURE TO PAY FOR ALL TIME WORKED (OFF THE CLOCK)**

28 39. Plaintiff is informed and believes and thereon alleges, that at all times herein

1 mentioned, Defendant engaged in unlawful, unfair, and fraudulent business practices prohibited
2 by California B&PC §17200, by failing to pay for time worked off the clock. Defendant suffered
3 or permitted Plaintiff to work off the clock.

4 40. Further, Plaintiff is informed and believes and thereon alleges, that Plaintiff and
5 the Class were required to perform work off-the-clock. Despite recording time on the clock,
6 Defendant failed to pay Plaintiff and the Class for all time worked, including but not limited to
7 straight time, overtime and standby time.

8 41. Plaintiff is informed and believes and thereon alleges that at all times herein
9 mentioned, Defendants have engaged in unlawful, deceptive, and unfair business practices
10 prohibited by California B&PC §17200, thereby depriving their employees and the putative class
11 the minimum working condition, standards and conditions due to them under the California
12 Labor Laws and Industrial Welfare Commission wage orders as specifically described herein.
13 Plaintiff further seeks an order requiring Defendant to identify by full name, telephone number,
14 and last known address employees who worked or still work for Defendant from four (4) years
15 preceding the filing of the original Complaint through the date of judgment; Plaintiff further
16 seeks an order requiring Defendant to timely pay restitution to all current and former employees,
17 including back wages, and interest.

18 42. Plaintiff requests attorney's fees and costs pursuant to Code of Civil Procedure
19 §1021.5 since this action is brought to vindicate important rights of a large class and the public.

20 **SECOND CAUSE OF ACTION**

21 **RECOVERY OF UNPAID WAGES & PENALTIES**

22 **(Violation of Labor Code §§ 204, 510, 1194 and 1198)**

23 **Against All Defendants**

24 43. Plaintiff re-alleges and incorporate by reference herein the allegations of all
25 preceding paragraphs as though fully set forth herein.

26 44. Plaintiff and all others similarly situated identified herein were and are employed
27 and scheduled as a matter of established company policy to work and in fact worked as non-
28 exempt hourly employees in excess of eight (8) hours per day and/or in excess of forty (40)

1 hours per pay period, including shifts that last ten (10) hours or twelve (12) hours without daily
2 overtime paid for the hours worked in excess of eight (8) in a day at the correct regular rate.
3 Labor Code § 204 establishes the fundamental right of all employees in the state of California to
4 be paid the proper amount of wages in a timely fashion for their work, including overtime.

5 45. Pursuant to Labor Code §§ 218 and 1194(a), Plaintiff may bring a civil action for
6 overtime wages directly against the employer without first filing a claim with the Division of
7 Labor Standards Enforcement (hereinafter "DLSE") and may recover such wages, together with
8 interest thereon, penalties, attorneys' fees and costs.

9 46. At all times relevant hereto, Defendant has failed to pay to Plaintiff and all
10 persons similarly situated wages when due as required by Labor Code § 204.

11 47. Pursuant to Labor Code § 1198, it is unlawful to employ persons for longer than
12 the hours set by the IWC or under conditions prohibited by the applicable IWC Wage Orders.
13 IWC Wage Order No. 9, as amended, applies to Plaintiff.

14 48. At all times relevant hereto, Plaintiff is informed and believes and thereon alleges
15 that Defendant has treated Plaintiff and all other similarly situated hourly employees as hourly
16 non-exempt employees. Despite this classification, Defendants have willfully and wrongfully
17 underpaid overtime premiums at the regular rate in order to avoid payment of overtime wages
18 and other benefits in violation of the Labor Code and the orders issued by the IWC, thereby
19 Defendant is able to reduce its overhead and operating expenses and gain an unfair advantage
20 over competing companies complying with state law.

21 49. Plaintiff is informed and believes and thereon alleges that the hourly non-exempt
22 class was under paid premium overtime compensation at a lower rate of pay than the regular rate
23 when Defendant paid overtime. The "regular rate" means "the hourly rate actually paid for the
24 normal, non-overtime workweek." (*Id.* (emphasis added); see also *Walling v. Youngerman-*
25 *Reynolds Hardwood Co.*, 325 U.S. 419, 424 (1945) ("[T]he regular rate refers to the hourly rate
26 actually paid the employee for the normal, non-overtime workweek for which he is employed.")
27 (emphasis added); *United States v. Rosenwasser*, 323 U.S. 360, 364 (1945) (defining the "regular
28 rate" is defined as "the hourly rate actually paid for the normal, non-overtime workweek."))

(quotation omitted) (emphasis added); *Huntington Memorial Hosp. v. Superior Court*, (2005) 131 Cal.App.4th 893, 905 (regular rate is the hourly rate paid for a non-overtime workweek); *Brunozzi v. Cable Communications, Inc.*, 851 F.3d 990, 996 (9th Cir. 2017) (To determine the regular rate, "we must first determine what the parties agreed [the employee] is to be paid in a normal, non-overtime workweek.") (emphasis added).) "Wage divided by hours equals regular rate." (*Bay Ridge*, 334 U.S. at 461 (quotation omitted).) The employer may not "compute the regular rate in a wholly unrealistic and artificial manner so as to negate the statutory purposes." (*Walling*, 325 U.S. at 424.) The regular rate "must reflect all payments which the parties have agreed shall be received regularly during the workweek, exclusive of overtime payments." (*Id.*) The regular rate "is not an arbitrary label chosen by the parties; it is an actual fact. Once the parties have decided upon the amount of wages and the mode of payment the determination of the regular rate becomes a matter of mathematical computation" (*Id.* at 244-45.) "The regular hourly rate of pay of an employee is determined by dividing his total remuneration for employment (except statutory exclusions) in any workweek by the total number of hours actually worked by him in that workweek for which such compensation was paid." (29 C.F.R. § 778.109.)

50. Plaintiff is informed and believes and thereon alleges that Defendant consistently administered a corporate policy regarding both staffing levels and duties and responsibilities of the members of the classes which required the entirety of all classes to work overtime without proper premium pay at the correct regular rate. This included a uniform corporate policy and practice of allocating straight time only hourly rate for all hours worked in a day in excess of eight (8) hours and for carrying out a policy that fails to pay overtime premiums. This corporate policy and pattern of conduct was/is accomplished with the advance knowledge and design of all Defendants herein. Thus, Plaintiff and all others similarly situated routinely, regularly and customarily performed overtime work. Accordingly, Plaintiff and all others similarly situated are entitled to overtime compensation under California law.

51. Defendants have willfully failed to pay the earned and unpaid wages of such individuals, including, but not limited to premium pay at the correct rate, and other wages earned

1 and remaining uncompensated according to amendment, or proof.

2 52. Further, Ponce and the class members had to go through entrance and exit security
3 checkpoints, but they were not paid for that time in violation of Labor Code 510 and 1194.

4 53. The pattern, practice and uniform administration of corporate policy regarding
5 illegal employee compensation as described herein is unlawful and creates an entitlement to
6 recovery by Plaintiff and all others similarly situated, in a civil action, for the unpaid balance of
7 the full amount of the all wages owing, including the proper calculation of the regular rate,
8 including interest thereon, willful penalties, reasonable attorneys' fees, and costs of suit
9 according to the mandate of Labor Code § 1194, et. seq.

10 54. Likewise, Defendant has a pattern, practice and uniform administration of
11 corporate policy regarding failure to comply with the required provisions of Labor Code § 226.7,
12 in failing to pay Plaintiff and the class the meal and rest break violation payment at the regular
13 rate.

14 **THIRD CAUSE OF ACTION**

15 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

16 **PURSUANT TO LABOR CODE §226**

17 **Against All Defendants**

18 55. Plaintiff re-alleges and incorporates by reference herein the allegations of all
19 preceding paragraphs as though fully set forth herein. Labor Code section 226 provides:

20 Every employer shall semimonthly or at the time of each payment of wages
21 furnish each employee, either as a detachable part of the check, draft, or voucher
22 paying the employee's wages, or separately, an itemized statement in writing
23 showing: (1) all deductions; (2) the inclusive dates of the period for which the
24 employee is paid; (3) the name of the employee or the employee's social security
25 number; and (4) the name of the employer, provided all deductions made on
26 written orders of the employee may be aggregated and shown as one item.
27 Subsection (e) provides: "Any employee suffering injury as a result of a knowing
28 and intentional failure by an employer to comply with subdivision (a) shall be
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 shall be entitled to an
award of costs and reasonable attorney's fees."

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2 56. During the Class Period, Defendants knowingly and intentionally failed to
3 provide the Class Members, including Plaintiff, with timely and accurate wage statements
4 showing gross wages earned, total hours worked, all deductions made, net wages earned, the
5 name and address of the legal entity employing that Class Member, the inclusive dates of the
6 period for which the employee is paid, and all applicable hourly rates in effect during each pay
7 period and the corresponding number of hours worked at each hourly rate by that Class Member.

8 57. Defendants thus required the Class Members, including Plaintiff, to work under
9 conditions prohibited by order of the Industrial Welfare Commission, in violation of those
10 orders.

11 58. The Class Members, including Plaintiff, suffered injury as a result of Defendants'
12 knowing and intentional failure to provide the Class Members, including Plaintiff, with the wage
13 and hour statements required by law.

14 59. Further, since Defendants are temporary services employers, they needed to list
15 the earnings for each temporary service assignment as required by Labor Code section 226(a)(9).
16 The wage statements did not contain this information, leading to wage statement penalties.

17 60. Based on Defendants' conduct as alleged herein, Defendants are liable for actual
18 damages, statutory damages and/or statutory penalties pursuant to Labor Code §226, attorney's
19 fees and costs.

20 **FOURTH CAUSE OF ACTION**

21 **FAILURE TO PROVIDE MEAL BREAKS**

22 **Against All Defendants**

23 61. Plaintiff incorporates by reference as if fully set forth herein, the allegations of
24 paragraphs above.

25 62. Labor Code §226.7(c) requires an employer to pay an additional hour of
26 compensation for each meal period the employer fails to provide. Plaintiff alleges that
27 Defendant failed to provide legally compliant meals in addition to impeding, discouraging and/or
28 dissuading employees from taking legally compliant meal periods. Employees are entitled to a

1 meal period of at least thirty (30) minutes per five (5) hour work period. Plaintiff and the class
2 consistently worked over five (5) hour shifts without meal periods due to Defendant's policy of
3 discouraging, dissuading and/or impeding Plaintiff and the class from taking meal periods.
4 Plaintiff and the class are entitled to a meal period of not less than thirty (30) minutes prior to
5 exceeding five (5) hours of employment, and a second meal period for hours worked over ten
6 (10) in a day.

7 63. Defendant failed to provide, impeded and/or discouraged Plaintiff and others from
8 taking timely meal breaks of not less than thirty (30) minutes as required by the Labor Code
9 during the relevant class period and/or failed to obtain legal waivers waiving the first or second
10 meal period.

11 64. Further, even if meal premiums were paid, they were not paid at the correct
12 regular rate.

13 65. Pursuant to Labor Code §226.7, Plaintiff and the class are entitled to damages in
14 an amount equal to one (1) hour of wages at the employee's regular rate per missed meal break.

15 **FIFTH CAUSE OF ACTION**

16 **FAILURE TO ALLOW REST BREAKS PURSUANT TO LABOR CODE §226.7**

17 **(Against All Defendants)**

18 66. Plaintiff re-alleges and incorporates by reference as if fully set forth herein, the
19 aforementioned allegations.

20 67. The Plaintiff alleges that Defendants have violated Labor Code §§226.7 & the
21 applicable Wage Order. Section 226.7 of the Labor Code requires an employer to pay an
22 additional hour (1) of compensation for each rest period the employer fails to provide. Hourly
23 non-exempt employees are entitled to a paid ten (10) minute rest break for every four (4) hours
24 worked or major fraction thereof. The Defendant's policy discourages, dissuades, and prevents
25 all hourly non-exempt employees from taking a duty-free rest period break for any work period
26 that is greater than two (2) hours up to four (4) hours. Plaintiff and the class consistently
27 worked over four (4) hours per shift with no duty-free, off-premises rest breaks, due to
28

1 Defendant's policy of discouraging, dissuading and/or preventing hourly employees from taking
2 said breaks off-premises.

3 68. Further, even if rest premiums were paid, they were not paid at the correct
4 regular rate.

5 69. Pursuant to Labor Code §226.7, Plaintiff and the class are entitled to damages in
6 an amount equal to one (1) hour of wages at the hourly non-exempt regular rate of pay per rest
7 break violation, in a sum to be proven at trial.

8 **SIXTH CAUSE OF ACTION**

9 **WORK EXPENDITURE REIMBURSEMENTS**

10 **(Against All Defendants)**

11 70. Plaintiff re-alleges and incorporate each and every one of the allegations of all
12 preceding paragraphs.

13 71. Labor Code section 2802(a) requires an employer to indemnify their employees
14 for all necessary expenditures or losses in the direct discharge of their duties.

15 72. Defendants have a uniform policy that requires Ponce and the class members to
16 pay for hard copies of paychecks in lieu of direct deposit but did not reimburse for that.

17 73. Also, Defendants made actual deductions for work-related expenses that were
18 never reimbursed.

19 74. As a result, Ponce and the class members are entitled to reimbursement for all
20 the above expenses, as well as attorney fees.

21 **SEVENTH CAUSE OF ACTION**

22 **WAITING TIME PENALTIES**

23 **(Against All Defendants)**

24 75. Plaintiff re-alleges and incorporates by reference as if fully set forth herein, the
25 allegations of the preceding paragraphs.

26 76. Labor Code §§ 200, et. seq., provides that an employer is required to pay an
27 employee all wages (including accrued vacation), within twenty four (24) hours of the
28 employees' involuntary separation from employment; within twenty four (24) hours of his or her

1 voluntary separation if the employee gave at least seventy two (72) hours' notice, and within
2 seventy two (72) hours, if the employee voluntarily separated, but did not give at least seventy
3 two (72) hours' notice.

4 77. Plaintiff and other former employees of Defendant employed in the State of
5 California separated from employment with defendant. Plaintiff and all others similarly situated
6 did not timely receive a final pay check from Defendant in violation of Labor Code §§
7 200, et seq. Plaintiff is informed and believes and thereon alleges that defendant also violated
8 the mandates of Labor Code §§ 200, et seq., as to other employees whose employment ended
9 during the period of time covered by this action.

10 78. Pursuant to Labor Code §§ 200, et. seq., each member of the class that no longer
11 works for defendant, and who was not timely paid is entitled to one (1) day of pay in penalties
12 for each day that he or she was paid late, until payment was made, up on a maximum of thirty
13 (30) days.

14 79. Based on the willful nonpayment of wages as described above, the waiting time
15 penalty applies to Ponce and members of the waiting time penalty subclass, which is 30 days of
16 each class members' wages at their regular rate of pay.

17 **EIGHTH CAUSE OF ACTION**

18 **CIVIL PENALTIES UNDER LABOR CODE §§ 2698-2699**

19 80. Plaintiff re-alleges and incorporates each and every one of the allegations of all
20 preceding paragraphs contained in paragraphs, inclusive of this Complaint, as if fully set forth
21 herein.

22 81. Labor Code §§2698 - 2699, the Labor Code Private Attorney General Act of
23 2004, provides for a civil penalty to be assessed and collected by the Labor and Workforce
24 Development Agency (LWDA), or any of its departments, divisions, commissions, boards,
25 agencies or employees for a violation of the Labor Code, may be recovered through a civil
26 action by an aggrieved employee on behalf of himself or herself, and collectively on behalf of
27 all other current or former employees.

28 82. Whenever the LWDA, or any of its departments, divisions, commissions, boards

1 agencies or employees, has discretion to assess a civil penalty, a court in a civil action is
2 authorized to exercise the same discretion, subject to the same limitations and conditions to
3 assess a civil penalty.

4 83. Plaintiff, and all hourly non-exempt employees of Defendants are "aggrieved
5 employees" as defined by Labor Code §2699, in that they are all current or former employees of
6 Defendants, and one or more of the alleged violations was committed against them

7 84. Prior to filing this First Amended Complaint, Plaintiff gave written notice to the
8 LWDA on January 17, 2022, via mandatory online filing through the State of California
9 LWDA/ Department of Industrial Relations website with a copy to the employer via certified
10 mail, of the specific provisions of this code alleged to have been violated, including listing some
11 facts and some theories to support the alleged violations as required by Labor Code §2699.3; A
12 true and correct copy of the letter is attached hereto as **Exhibit 1**. Plaintiff alleges that he has
13 exhausted all administrative remedies and filed the herein complaint 65 days after mailing said
14 notice. At the date of filing this Complaint, the LWDA has not responded with any intention to
15 investigate. As such, Plaintiff has exhausted his administrative requirements pursuant to LC
16 §2699.3(a)(1) and (2) (A-C).

17 85. California Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on
18 behalf of themselves and other current or former employees, to bring a civil action to recover
19 civil penalties pursuant to the procedures specified in California Labor Code § 2699.3.

20 86. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff and the aggrieved
21 employees are entitled to recover civil penalties for each of the Defendant's violations of
22 California Labor Code §§ 201, 201.3, 202, 203, 204, 226, 226.7, 510, 512, and 1194, 1197, and
23 1198 during the applicable limitations period in the following amounts:

- 24 a. For violations of California Labor Code § 204, one hundred dollars (\$100.00) for
25 each aggrieved employee for each initial violation and two hundred dollars
26 (\$200.00) for each aggrieved employee plus twenty-five percent (25%) of the
27 amount unlawfully withheld from each aggrieved employee for each subsequent,
28 willful or intentional violation (penalty amounts established by California Labor

Code § 210).

- b. For violations of California Labor Code § 226(a), two hundred fifty dollars (\$250.00) per employee for initial violation and one thousand dollars (\$1,000.00) per employee for each subsequent violation (penalty amounts established by California Labor Code § 226.3).
- c. For violations of California Labor Code § 512, fifty dollars (\$50.00) for each aggrieved employee for each initial violation for pay period for which the employee was underpaid in addition to an amount sufficient to recover unpaid wages and one hundred dollars (\$100.00) for each underpaid employee for each pay period for which the employee was underpaid (penalty amounts established by California Labor Code § 558).
- d. For violations of California Labor Code § 1197, one hundred dollars (\$100.00) for each aggrieved employee for each initial and intentional violation per pay period (regardless of whether the initial violations were intentionally committed) and two hundred fifty dollars (\$250.00) for each aggrieved employee for each subsequent violation per pay period (regardless of whether the initial violations were intentionally committed), in addition to an amount sufficient to recover unpaid wages, liquidated damages pursuant to California Labor Code § 1194.2, and applicable penalties imposed pursuant to California Labor Code § 203.
- e. For violations of California Labor Code §§ 201, 202, 203, and 226.7, one hundred dollars (\$100.00) for each aggrieved employee per pay period for each initial violation and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent violation (penalty amounts established by California Labor Code § 2699(f)(2)).
- f. Penalties under Code of Regulations, Title 8 §11070 or other applicable Code of Regulations in the amount of \$50 for each aggrieved employee per pay period for the initial violation, and \$100 for each aggrieved employee per pay period for each subsequent violation;

- 1 g. Penalties under Labor Code §210, in addition to and entirely independent and
2 apart from other penalty provided in the Labor Code, in the amount of \$100 for
3 each aggrieved employee per pay period for each violation, and \$200 for each
4 aggrieved employee per pay period for each subsequent violation, plus 25% of
5 the wage wrongly withheld;
- 6 h. Penalties under Labor Code §256, in addition to and entirely independent and
7 apart from other penalty provided in the Labor Code, including Labor Code
8 §2699, et seq., for any aggrieved employee who was discharged or quit, and was
9 not paid all earned wages at termination in accordance with Labor Code §§201,
10 201.1, 201.5, 202, and 205.5, in the amount of a civil penalty of one day of pay,
11 at the same rate, for each day that he or she was paid late, until payment was/is
12 made, up to a maximum of thirty (30) days;
- 13 i. Penalties under Labor Code §558, in addition to and entirely independent and
14 apart from other penalty provided in the Labor Code, in the amount of \$50 for
15 each underpaid aggrieved employee for each pay period the aggrieved employee
16 was underpaid, and \$100 for each subsequent violation for each underpaid
17 employee for each pay period for which the employee was underpaid pursuant to
18 Labor Code §558 provided to the affected employees;
- 19 j. Penalties under Labor Code §226.3, in addition to and entirely independent and
20 apart from other penalty provided in the Labor Code, in the amount of \$250 for
21 each aggrieved employee per pay period for each violation, and \$1,000 for each
22 aggrieved employee per pay period for each subsequent violation;
- 23 k. Any and all additional penalties and sums as provided by the Cal. Labor Code
24 and/or other statutes.
- 25 l. Penalties under Labor Code sections 201.3 and 210 for the weekly pay
26 violations.
- 27 87. Pursuant to California Labor Code §2699(g), Plaintiff and the aggrieved
28 employees are entitled to an award of civil penalties, reasonable attorney's fees and costs in

1 connection with their claims for civil penalties.

2 **NINTH CAUSE OF ACTION**

3 **UNPAID WAGES AND OVERTIME WAGES UNDER THE FLSA**

4 **29 U.S.C. §§206, 207(a)**

5 **(Collective Action for Unpaid Wages by All Plaintiffs Against All Defendants)**

6 88. Plaintiff re-alleges and incorporates by reference herein the allegations of all
7 preceding paragraphs as though fully set forth herein.

8 89. Plaintiff brings this action on behalf of himself and other members of the
9 proposed FLSA Class as a collective action pursuant to 29 U.S.C. § 216(b), under the FLSA, 29
10 U.S.C. § 201 et seq.

11 90. At all relevant times, each Defendant has been, and continues to be, an
12 “employer” engaged in interstate “commerce” within the meaning of the FLSA, 29 U.S.C. §
13 203. At all relevant times, Defendant has employed all members of the proposed FLSA Class
14 as “employees” within the meaning of the FLSA, 29 U.S.C. § 203. Plaintiff is informed and
15 believes, and thereon alleges, at all relevant times, each Defendant has had gross operating
16 revenues in excess of \$100,000.

17 91. 29 C.F.R. §778.500(a) states: "Since the regular rate is defined to include all
18 remuneration for employment...the overtime provisions of the Act cannot be avoided by setting
19 an artificially low hourly rate upon which overtime pay is to be based and making up the
20 additional compensation due to employees by other means. The established hourly rate is the
21 'regular rate' to an hourly employee only if the hourly earnings are the sole source of his
22 compensation. Payment for overtime on the basis of an artificial 'regular rate' will not result in
23 compliance with the overtime provisions of the Act." Subsection (b) of 29 C.F.R. §778.500
24 states: "the hourly rate paid for the identical work during the hours in excess of the applicable
25 maximum hours standard cannot be lower than the rate paid for the non-overtime hours nor can
26 the hourly rate vary from week to week inversely with the length of the workweek."

27 92. 29 C.F.R. §778.315 states: "Overtime compensation, at a rate of not less than
28 one and one-half times the regular rate of pay must be paid for each hour worked in the

workweek in excess of the applicable maximum hours standard. This extra compensation for the excess hours of overtime work under the Act cannot be said to have been paid to an employee unless all straight time compensation due him for the non-overtime hours under his contract (express or implied) or under any applicable statute has been paid."

93. The Defendant is liable for engaging in a subterfuge or an artifice designed to evade the overtime laws. That is the class members allege and will prove that they are entitled to payment based on the proper and legal regular rate which will include all damages that flow from this calculation.

94. At all relevant times, Defendant willfully, regularly and repeatedly failed to make, keep and preserve accurate records required by the FLSA with respect to Plaintiff and the other FLSA Class Members', including records sufficient to accurately determine the wages and hours of employment pertaining to Plaintiff and the other FLSA Class Members.

95. Pursuant to 29 U.S.C. § 216(b), to become members of this FLSA collective action, the putative class members of the FLSA Class are required to opt in to this action by filing their consents with the Court. This process is also satisfied when individuals subject to a Rule 23 class action file a claim form in connection with a settlement of the action. (Murillo v. Pacific Gas & Electric Co., (E.D.Cal.2010) 266 F.R.D. 468, 472-473).

96. Pursuant to 29 U.S.C. §§ 206, 207(a) and 216(b), Plaintiff and the other members of the FLSA are entitled to damages in the amount of their respective unpaid wages, including unpaid minimum wages, unpaid overtime compensation, and liquidated damages as provided by the FLSA, attorney's fees and costs of action, injunctive relief requiring Defendant to cease and desist from their violations of the FLSA described herein and to comply with the FLSA, and such other legal and equitable relief as the Court deems just and proper.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray:

1. That the Court determines this action may be maintained as a class action;

As to the First Cause of Action:

2. For an order, preliminarily and permanently enjoining Defendant from engaging in the practices challenged herein;

3. An order for full restitution of all monies, as necessary and according to proof, to restore any and all monies withheld by the Defendant by means of the unfair practice complained of herein. Plaintiff seeks, on behalf of the putative class, the appointment of a receiver, as necessary. The restitution includes all monies retained as wages, as defined in Labor Codes §§ 201, 202, 510 1194, 1194.2, and interest, and attorneys' fees as a result of the unfair business practices;

4. For an order for full restitution of all wages withheld due to Defendant's unfair and fraudulent business practices;

5. For an order finding and declaring that Defendant's acts and practices as challenged herein are unlawful, and unfair and/or fraudulent;

6. For an accounting, under administration of Plaintiff and subject to Court Review, to determine the amount to be returned by Defendant and the amounts to be refunded to members who are or were not paid all their wages due to Defendant's unfair business practices;

7. For the creation of an administrative process wherein each injured current and former employee receives his or her back wages in the form of overtime pay or alternatively that each current or former eligible employee may submit a claim in order to receive his/her money;

8. For an order requiring Defendant to make full restitution and payment pursuant to B&PC §§17200, et seq.;

9. For all other appropriate declaratory and equitable relief;

10. For pre-judgment interest to the extent permitted by law and the California Constitution;

11. For an order requiring Defendant to identify, by name, address and telephone number of each person who worked as an hourly exempt employee for Defendant from four (4) years preceding the filing of this action through the time of judgment;

As to the Second Cause of Action:

12. For damages according to proof, as set forth in Labor Code §§ 510, 1194, and

1 1194.2, et. seq., (and the applicable California Industrial Welfare Commission wage orders)
2 regarding wages due and owing.

3 13. For pre-judgment interest as allowed by Labor Code § 1194 and California Civil
4 Code § 3287(b), for waiting time penalties as authorized by Labor Code § 203, and for
5 reasonable attorneys' fees;

6 14. For recovery of the unpaid balance of the full amount of unpaid minimum wage
7 or overtime and double time compensation, per Labor Code §§ 204, 218, 510, 1194, 1194.2,
8 1197, and 1198 due and owing, according to proof;

9 15. For liquidated damages in an amount equal to the wages unlawfully unpaid and
10 interest thereon for the uncompensated non-overtime hours of work, as authorized by Labor
11 Code §1194.2(a);

12 16. For pre-judgment interest as allowed by Labor Code §218.6, Labor Code
13 §1194(a) and CC §3287;

14 17. For an award of reasonable attorneys' fees and costs pursuant to Labor Code
15 §218.5 and/or Labor Code §1194(a);

16 **As to the Third Cause of Action:**

17 18. For recovery as authorized by Labor Code §226(e);

18 19. For an award of costs and reasonable attorneys' fees pursuant to Labor Code
19 §226(e) and/or §226(h);

20 **As to the Fourth Cause of Action:**

21 20. One (1) hour of pay at each of the employees' regular rate of compensation for
22 each workday that a meal break was not provided, impeded, discouraged and/or dissuaded;

23 **As to the Fifth Cause of Action:**

24 21. One (1) hour of pay at each of the employees' regular rate of compensation for
25 each workday that a rest break was not remitted or authorized, or was impeded, discouraged
26 and/or dissuaded.

27 **As to the Sixth Cause of Action:**

28 22. Reimbursement of all deductions from wages related to expenses;

1 23. Reimbursement for all fees relating to obtaining physical checks;

2 24. Attorney fees and costs;

3 **As to the Seventh Cause of Action:**

4 25. Waiting time penalties;

5 **As to the Eighth Cause of Action:**

6 26. On behalf of all current and former employees, for all civil penalties authorized
7 by Labor Code Private Attorney General Act of 2004 as specified in California Labor Code §558
8 plus Labor Code §1197.1 for former or current employees who are due wage payments;

9 27. For civil penalties per Labor Code §226.3 in the amount of \$250 for each
10 aggrieved employee per pay period for each violation, and \$1,000 for each aggrieved employee
11 per pay period for each subsequent violation;

12 28. For civil penalties per Labor Code §256 in the amount of one day of pay, at the
13 same rate, for each day that an aggrieved employee was paid late, at the time of termination, until
14 payment was/is made, up to a maximum of thirty (30) days;

15 29. For civil penalties, pursuant to Labor Code § 558 as follows:

16 (1) For any initial violation, fifty dollars (\$50) for each underpaid employee
17 for each pay period for which the employee was underpaid;

18 (2) For each subsequent violation, one hundred dollars (\$100) for each
19 underpaid employee for each pay period for which the employee was underpaid;

20 30. For civil penalties under Labor Code §210, in addition to and entirely independent
21 and apart from other penalty provided in the Labor Code, in the amount of \$100 for each
22 aggrieved employee per pay period for each violation, and \$200 for each aggrieved employee per
23 pay period for each subsequent violation, plus 25% of the wage wrongly withheld;

24 31. For civil penalties under Labor Code §2699(f), in addition to and entirely
25 independent and apart from other penalty provided in the Labor Code and for Labor Code
26 violations without a specific civil penalty, in the amount of \$100 for each aggrieved employee
27 per pay period for each violation, and \$200 for each aggrieved employee per pay period for each
28

subsequent violation.

As to Ninth Cause of Action:

32. For recovery of the unpaid balance of the full amount of compensation due and owing, according to proof;

33. For liquidated damages pursuant to 29 U.S.C. § 216(b);

34. For an award of attorneys' fees and costs pursuant to 29 U.S.C. § 216(b)

35. For pre-judgment interest as allowed by law;

As to All Causes of Action:

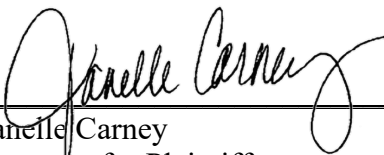
36. For reasonable costs incurred;

37. For such other and further relief as this Court may deem just and proper.

Date: February 19, 2024

JANELLE CARNEY – ATTORNEY AT LAW, APC
FRONTIER LAW CENTER

By:



Janelle Carney
Attorney for Plaintiff
Noe Ponce Ceja

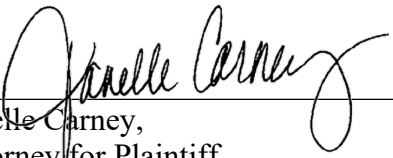
JURY TRIAL DEMAND

Plaintiff NOE PONCE CEJA hereby demands a jury trial on all issues so triable.

Date: February 19, 2024

JANELLE CARNEY – ATTORNEY AT LAW, APC
FRONTIER LAW CENTER

By:



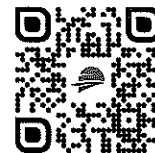
Janelle Carney,
Attorney for Plaintiff
Noe Ponce Ceja

Exhibit 1



Adam Rose | Attorney

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January 17, 2022

Via Online Filing

<http://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html>

Via Certified Mail

Venture Dynamics Enterprises
904 Loudon Ave.
Portsmouth, VA 23707

Venture Dynamics Enterprises
1465 30th St., Suite C
San Diego, CA 92154

Subject: *Noe Ponce v. Venture Dynamics Enterprises*

Dear Representative:

This office represents Noe Ponce in connection with Labor Code violation claims related to employment with Venture Dynamics Enterprises ("Employer"). Employer is a temporary services employer that assigns workers to provide ship maintenance.

Mr. Ponce intends to seek PAGA penalties on behalf of himself and all other non-exempt employees of Employer in California who were subject to any of the Labor Code violations during the PAGA Period ("Aggrieved Employees"). The PAGA Period begins one year prior to the date of this letter.

Overtime Violations

Labor Code sections 510 and 1194 and the applicable Wage Order, which is Wage Order 4, requires an employer to pay 1.5 times an employee's regular rate for all hours over eight. Here, Employer required Mr. Ponce and the Aggrieved Employees to work off the clock. This led to underpayment of wages—the wage statements stated eight hours of work a day, but Mr. Ponce and the Aggrieved Employees worked more than eight hours a day.

Mr. Ponce and the Aggrieved Employees should have received overtime pay for work after the eighth hour, but they did not receive overtime. As a result, the PAGA penalties in Labor Code sections 1194.2 and 1197.1 apply.

Unpaid Security Checks

Mr. Ponce and the Aggrieved Employees were required to go through entrance and exit security checkpoints before and after their shifts, but they were not paid for this time in violation of Labor Code section 1194 and *Frlekin v. Apple, Inc.* (2020) 8 Cal.5th 1038. As a result of these security check violations, PAGA penalties apply.

Meal Break Violations

Labor Code section 512 and the applicable Wage Order provide that an employer shall not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, or more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes. Meal periods must be uninterrupted, and the employee must be relieved of all duty.

Labor Code section 226.7 further provides that an employee is entitled to one hour of pay at their regular rate of pay for each day that a compliant meal period was not provided. Mr. Ponce and the Aggrieved Employees could not take meal periods at all; thus they should have received premium pay for each missed break. Nonetheless, no premium pay was paid, and as a result PAGA penalties apply.

Rest Break Violations

The applicable Wage Order requires employers to authorize and permit its employees to take rest periods based on the total hours worked daily at the rate of 10 minutes net per four hours or major fraction thereof. Employees must be relieved of all duties during their rest breaks.

Labor Code section 226.7 further provides that an employee is entitled to one hour of pay at their regular rate of pay for each day that a compliant rest break was not provided. Further, an employer may not place restrictions on its employees during their rest breaks, such as requiring its employees to remain on the premises and subject to the employer's control. In fact, the Division of Labor Standards and Enforcement has provided the following guidance on its website:

Q. Can my employer require that I stay on the work premises during my rest period?

A. No, your employer cannot impose any restraints not inherent in the rest period requirement itself. In *Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5th 257, 269, the California Supreme Court held that the rest period requirement "obligates employers to permit-and authorizes employees to take-off-duty rest periods. That is, during rest periods employers must relieve employees of all duties and relinquish control over how employees spend their time." (citation omitted) As a practical matter, however, if an employee is provided a ten minute

rest period, the employee can only travel five minutes from a work post before heading back to return in time.

Here, since the Aggrieved Employees were not allowed to leave the work premises at all, so they were subject to Employer's control during the rest breaks. Thus, the Aggrieved Employees were not provided with compliant rest breaks and PAGA penalties apply.

Unreimbursed Work Expenses

Labor Code section 2802 requires an employer to "indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties." Here, the Aggrieved Employees incurred out of pocket expenses in connection with their employment, including but not limited to out-of-pocket expenses for receiving a hard copy pay check as opposed to direct deposit. These expenses were not reimbursed. Employer notified Employees in writing that work expenses would be deducted from their wages and would never get reimbursed. As a result, PAGA penalties apply.

Wage Statement Violations

When the employer is a temporary services employer, pursuant to Labor Code 226(a)(9), the wage statement must list the rate of pay and the total hours worked for each temporary services assignment. The wage statements of Mr. Ponce and the Aggrieved Employees did not contain this information, and as a result PAGA penalties apply.

Additionally, because Employer's paystubs do not reflect all the hours worked due to the off the clock issues mentioned supra, the paystubs are not compliant for failing to list all hours worked since the paystubs omit the off the clock work. Labor Code section 226, subdivision (a) states:

Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security may be shown on the itemized statement, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the

employee. The deductions made from payments of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement or a record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California.

The paystubs do not accurately reflect all the hours worked, due to the fact numerous hours of work are missing.

Mr. Ponce and other employees are entitled to recover civil penalties pursuant to section 226.3, which states in relevant part: "Any employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of...(\$250) per employee per violation in an initial citation and...(\$1,000) per employee for each violation in a subsequent citation, for...fail[ing] to keep the records required in subdivision (a) of Section 226."

Waiting Time Penalties

The unpaid overtime wages described above were still due when Mr. Ponce and the Aggrieved Employees stopped working for Employer. Because Employer did not pay the Aggrieved Employees all wages owed during their employment, it follows that the Aggrieved Employees were also never paid these wages after the conclusion of their employment. Thus, Employer had an obligation to pay waiting time penalties, but intentionally failed to do so and did not pay waiting time penalties. Thus, PAGA penalties apply.

Reservation of Rights

The facts and claims contained herein are based on the information available at the time of this writing. Therefore, if through discovery and/or expert review, Mr. Ponce becomes aware of additional compensation owed or losses incurred by Mr. Ponce or by any other aggrieved employee Mr. Ponce expressly reserves the right to revise these facts and/or add any new claims by amending the claim letter or by adding applicable causes of action to the complaint which will relate back to the date of this letter.

Please advise the undersigned if the agency intends to investigate the alleged violations. If not, Mr. Ponce intends to pursue his claims and those of the aggrieved employees under PAGA in a civil lawsuit. Please also consider this letter as providing notice on behalf of other aggrieved employees working for the employer that were subject to the same Labor Code violations described above.

Sincerely,

/s/ Adam Rose

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF SAN BERNARDINO

I am employed in the County of San Bernardino, State of California. I am over the age of eighteen (18) and not a party to the within action; my business address is 14758 Pipeline Avenue, Suite E, Second Floor, Chino Hills, CA 91709-6025.

On February 19, 2024, I served the foregoing document described as:

THIRD AMENDED COMPLAINT

on INTERESTED PARTIES in this action as stated below:

Julie O'Dell
ARMSTRONG TEASDALE
19800 MacArthur Boulevard, Suite 300
Irvine, CA 92612
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ccruz@atllp.com

Manny Starr
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Calabasas, CA 91302
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eservice@frontierlawcenter.com

XX BY E-MAIL: I electronically served the above-mentioned document to each of the above recipients at their respective e-mail addresses. My e-address is: Jerin@JanelleCarneyLaw.com

Executed on February 19, 2024, at Chino Hills, California.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.



Jerin Wilkinson