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**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**FOR THE COUNTY OF ALAMEDA**

JIMMY LEE ALEXANDER, JR., on behalf of  
himself and all others similarly situated,

Plaintiff,

v.

TOTAL SAFETY U.S., INC., a Delaware  
Corporation; and DOES 1-50, inclusive.

Defendants.

CASE NO.: 22CV010594

**SECOND AMENDED PAGA  
REPRESENTATIVE ACTION  
COMPLAINT:**

(1) **CIVIL PENALTIES UNDER THE  
PRIVATE ATTORNEYS GENERAL  
ACT (LABOR CODE § 2698 *et seq.*)**

1 Plaintiff Jimmy Lee Alexander (“Plaintiff”), on behalf of the State of California, hereby brings  
2 this PAGA Representative Action Complaint (“Complaint”) against defendant Total Safety U.S., Inc.  
3 and DOES 1 to 50 (collectively “Defendants”) and each of them, as follows:

#### 4 **INTRODUCTION**

5 1. Defendant Total Safety U.S., Inc. is a supplier and renter of safety equipment, tools,  
6 and compliance solutions throughout the U.S.A. and across California.

7 2. Plaintiff brings this PAGA representative action solely on behalf of the State of  
8 California against Defendants for alleged violations of the California Labor Code and applicable  
9 Wage Orders of the IWC.

10 3. As set forth below, Plaintiff alleges that Defendants failed to pay for all hours worked  
11 as a result of Defendants’ unlawful Alternative Workweek Schedule and rounding policy and  
12 procedures, which resulted in Plaintiff and other similarly situated employees not being paid for all  
13 hours worked including overtime hours. Plaintiff further alleges that Defendants’ meal and rest period  
14 policies and practices did not provide aggrieved employees with all compliant/timely meal and rest  
15 periods or premium wages at the “regular rate of pay” in lieu thereof.

16 4. Additionally, Plaintiff alleges that Defendants failed to provide aggrieved employees  
17 with accurate written itemized wage statements and failed to timely pay all final wages upon  
18 separation of employment. Finally, Plaintiff alleges that Defendants failed to reimburse all necessary  
19 business expenses.

20 5. Based on these alleged Labor Code violations, Plaintiff now brings this class and  
21 PAGA representative action to recover penalties and other related relief for himself and all others  
22 similarly situated.

#### 23 **JURISDICTION**

24 6. This is a representative action brought pursuant to Labor Code § 2698 *et seq.* on  
25 behalf of the State of California and the group of aggrieved employees defined as follows: “All  
26 individuals who are or were employed as hourly, aggrieved employees by Defendants, or their  
27 predecessors or merged entities, in the State of California from April 28, 2021, and continuing to the  
28 present (“aggrieved employees).”

1           7.       Plaintiff, of behalf of the State of California brings this representative action pursuant  
2 to Labor Code § 2698, *et seq.* seeking penalties for Defendants' violation of California Labor Code  
3 §§ 201-203, 204, 210, 226, 226(a), 226(e), 226.3, 226.7 510, 512, 516, 1194, 1197.1, 1199, 2800-  
4 2802, 2698, and all applicable IWC Wage Orders.

5           8.       Based upon the foregoing, Plaintiff and all aggrieved employees are aggrieved  
6 employees within the meaning of Labor Code §2698, *et seq.*

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

#### 11                               VENUE

12           10.      Venue is proper in this judicial district pursuant to California Code of Civil Procedure  
13 §§ 395(a) and 395.5, as most of the acts and omissions complained of herein occurred in the County  
14 of Alameda. Defendants own, maintain offices, transact business, have an agent or agents within the  
15 County of Alameda, and/or otherwise are found within the County of Alameda, and Defendants are  
16 within the jurisdiction of this Court for purposes of service of process.

17           11.      In determining the proper venue for a PAGA Action, a Plaintiff is not limited to the  
18 county/counties in which he or she suffered Labor Code violations but may file suit in any county  
19 where an allegedly aggrieved employee suffered a Labor Code violation.

#### 20                               PARTIES

21           12.      At all relevant times herein, Plaintiff, who is over 18, was and currently is a California  
22 resident residing in the State of California.

23           13.      Plaintiff is informed and believes and thereon alleges that Defendant Total Safety U.S.,  
24 Inc., is a Minnesota corporation authorized to do business in California and is and/or was the legal  
25 employer of Plaintiff and the aggrieved employees during the applicable statutory periods. Plaintiff  
26 was, and is, a victim of Defendants' policies and/or practices complained of herein and has been  
27 deprived of the rights guaranteed to her by California Labor Code §§ 201-203, 204, 210, 226, 226(a),  
28 226(e), 226.3, 226.7 510, 512, 516, 1194, 1197.1, 1199, 2800-2802, 2698 *et seq.*, and applicable

1 Wage Orders.

2 14. Plaintiff is informed and believes, and based thereon alleges, that at all relevant times  
3 preceding the filing of the Complaint and continuing to the present, Defendants did (and continue to  
4 do) business in the State of California, County of Alameda.

5 15. Plaintiff does not know the true names or capacities, whether individual, partner, or  
6 corporate, of the defendants sued herein as DOES 1 to 50, inclusive, and for that reason, said  
7 Defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to  
8 amend this Complaint when such true names and capacities are discovered. Plaintiff is informed and  
9 believes, and thereon alleges, that each of said fictitious defendants, whether individual, partners, or  
10 corporate, were responsible in some manner for the acts and omissions alleged herein and proximately  
11 caused Plaintiff and the aggrieved employees to be subject to the unlawful employment practices  
12 alleged herein.

13 16. Plaintiff is informed, and believes, and thereon alleges, that at all times mentioned  
14 herein, Defendants were and are the employers of Plaintiff and the aggrieved employees. At all times  
15 herein mentioned, each of said Defendants participated in the doing of the acts hereinafter alleged to  
16 have been done by the named Defendants; and furthermore, the Defendants, and each of them, were  
17 the agents, servants, and employees of each and every one of the other Defendants, as well as the  
18 agents of all Defendants, and at all times herein mentioned were acting within the course and scope  
19 of said agency and employment. Defendants, and each of them, approved of, condoned, and/or  
20 otherwise ratified each and every one of the acts or omissions complained of herein.

21 17. At all times mentioned herein, Defendants, and each of them, were members of and  
22 engaged in a joint venture, partnership, and common enterprise and acting within the course and  
23 scope of and in pursuance of said joint venture, partnership, and common enterprise. Further, Plaintiff  
24 alleges that all Defendants were joint employers for all purposes of Plaintiff and the aggrieved  
25 employees.

26 **PAGA REPRESENTATIVE ACTION ALLEGATIONS**

27 18. Defendants are suppliers and renters of safety equipment, tools, and compliance  
28 solutions throughout the U.S.A. and across California, with locations in Fremont, Fairfield, Martinez,

1 and Rancho Dominguez.

2 19. Defendants employed Plaintiff as a non-exempt driver employees in California.  
3 Plaintiff began working on or about April 24, 2018, until his separation from employment on or about  
4 December 31, 2021.

5 20. Plaintiff and other aggrieved employees (including, but not limited to, technicians,  
6 drivers, attendants, mechanics, warehouse associates, and other non-exempt positions) were  
7 responsible for all aspects of Defendants' business in California. However, in these roles Plaintiff and  
8 other aggrieved employees were often not afforded all protections and rights conferred under the  
9 California Labor Code and applicable Wage Orders.

10 21. First, at all relevant times, Defendants have had a consistent practice/policy of  
11 unevenly rounding/shaving Plaintiff's and other aggrieved employees' time entries. As a result of this  
12 practice, over a period of time, Plaintiff and other aggrieved employees are not compensated for all  
13 the hours that they work and all of the overtime hours they work, in violation of Labor Code §§ 204,  
14 510, 1194, 1197.1, 1199, and applicable Wage Orders.

15 22. California courts have consistently held that rounding time policies can be lawful "if  
16 the rounding policy is fair and neutral on its face and 'it is used in such a manner that it will not result,  
17 over a period of time, in failure to compensate the employees properly for all the time they have  
18 worked'" (*See's Candy Shops v. Superior Court* (2012) 210 Cal.App.4th 889, 907.)."

19 23. Here, Defendants' policy/practice is not neutral on its face or in its application as  
20 Plaintiff and other aggrieved employees are subject to discipline, including termination for being  
21 tardy in reporting to work, or returning from a meal or rest period. Moreover, because Defendants are  
22 capable of tracking the time worked by aggrieved employees to the minute, the policy itself exists  
23 not for the convenience or benefit of the employees who are trying to accurately report their time, but  
24 for Defendants' benefit. As a result, the policy is not neutral on its face, and over a period of time,  
25 Plaintiff and other aggrieved employees were not properly paid for all hours worked in violation of  
26 Labor Code §§ 204, 210, 510, 1194, 1197.1, 1199, and applicable Wage Orders.

27 24. Labor Code § 1197.1 authorizes employees who are paid less than the minimum fixed  
28 by an applicable state or local law, or by an order of the commission a civil penalty, restitution of

1 wages, and liquidate damages as follows: (1) for any initial violation that is intentionally committed,  
2 one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee  
3 is underpaid....[and] (2) [f]or each subsequent violation for the same specific offense, two hundred  
4 fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is  
5 underpaid regardless of whether the initial violation is intentionally committed.

6         25. Additionally, Labor Code § 510 requires an employer to compensate an employee who  
7 works more than eight (8) hours in one workday, forty (40) hours in a workweek, and for the first  
8 eight (8) hours worked on the seventh consecutive day, no less than one and one-half times (1 1/2) the  
9 regular rate of pay. In addition, Labor Code § 510 obligates employers to compensate employees at  
10 no less than twice the regular rate of pay when an employee works more than twelve (12) hours in a  
11 workday or more than eight (8) hours on the seventh consecutive day of work. Pursuant to Section 3  
12 of the applicable Wage Orders, aggrieved employees shall not be employed more than eight (8) hours  
13 in any workday or more than 40 hours in any workweek unless the employee receives one and one-  
14 half (1 1/2) times such employee's regular rate of pay for all hours worked over 40 hours in the  
15 workweek.

16         26. Accordingly, to the extent permitted by law, Plaintiff and other aggrieved employees  
17 are entitled to recover liquidated damages for violations of Labor Code § 1197.1. Based upon these  
18 same factual allegations, Plaintiff and the other aggrieved employees are entitled to unpaid wages  
19 and penalties under Labor Code §§ 510 and 1199.

20         27. Furthermore, at all relevant times, Plaintiff and other aggrieved employees were not  
21 paid all overtime wages based on Defendants' invalid and unlawful Alternative Workweek Schedule.

22         28. Next, at all relevant times, the aggrieved employees were denied compliant and timely  
23 30-minute off-duty meal periods as mandated by California law. As a result of Defendants' uniform  
24 meal period policies/practices and work demands, aggrieved employees were often unable to take  
25 timely and uninterrupted 30-minute first meal periods before the end of the fifth hour of work.  
26 Further, when other aggrieved employees worked in excess of 10.0 hours in a shift, they were not  
27 always allowed and permitted to take a mandated second meal period before the end of the tenth hour  
28 of work in violation of the Labor Code and applicable Wage Orders.

1           29. Additionally, aggrieved employees were not properly paid meal period premiums for  
2 missed or non-compliant meal periods at the “regular rate of pay” pursuant to *Ferra v. Loews*  
3 *Hollywood Hotel, LLC* (2021) 11 5th 858.

4           30. Accordingly, due to Defendants’ uniform meal period policies/practices, aggrieved  
5 employees were also regularly denied legally compliant meal periods in violation of Labor Code §§  
6 226.7, 510, 516, and applicable Wage Orders.

7           31. Furthermore, at all relevant times, aggrieved employees were also not provided with  
8 all 10-minute rest periods for every four hours worked, or major fraction thereof due to Defendants’  
9 uniform rest period policies/practices and work demands. As a result, other aggrieved employees  
10 were and are routinely unable to take a net 10-minute duty free rest periods for every major fraction  
11 of four hours worked. This includes a second rest period for shifts in excess of six hours, and a third  
12 rest period for shifts in excess of 10 hours in a workday. Notably, Defendants have had a rest break  
13 policy which provides as follows: “[a]lthough you are free of any duties during your rest breaks, the  
14 Company requires you to stay in close proximity to its business operation while on a rest break.”  
15 Despite Defendants’ claim that all employees are relieved of all duties during their rest breaks,  
16 Defendants still exerts control on aggrieved employees by, amongst other things, requiring them to  
17 “stay in close proximity”.

18           32. By not relieving all aggrieved employees of all duties during rest periods, Defendants  
19 failed to provide legally compliant rest periods. See *Augustus v. ABM Security Services, Inc.* (2016)  
20 2 Cal. 5th 257, 269 [concluding that “during rest periods employers must relieve employees of all  
21 duties and relinquish control over how employees spend their time.”] (emphasis added). In *Augustus*,  
22 the California Supreme Court expressly rejected the employers’ assertion that it could provide an on-  
23 duty rest period to employees who worked as security guards and further explained “that employers  
24 [must] relinquish any control over how employees spend their break time and relieve their employees  
25 of all duties.” *Id.* at 273.

26           33. Each time aggrieved employees were unable to take a compliant rest period,  
27 Defendants failed and continue to fail to adequately pay rest period premium payments at the “regular  
28 rate of pay” as required by Labor Code § 226.7.

1           34. Accordingly, due to Defendants' uniform rest period policies/practices, aggrieved  
2 employees were regularly denied legally compliant rest breaks in violation of Labor Code §§ 226.7,  
3 512, and applicable Wage Orders.

4           35. As a result of Defendants' failure to pay Plaintiff and other aggrieved employees for  
5 all hours they were subject to the control of Defendants, including all minimum and overtime wages,  
6 and Defendants' failure to adequately pay for all meal and rest period premiums at the "regular rate  
7 of pay", Defendants issued wage statements which failed to accurately identify the gross wages  
8 earned, the total hours worked, the net wages earned, and the correct corresponding number of hours  
9 worked at each hourly rate, in violation of Labor Code § 226(a)(1, 2, 5, and 9).

10           36. Labor Code § 226.3 provides that "[a]ny employer who violates subdivision (a) of  
11 Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per  
12 employee per violation in an initial violation and one thousand dollars (\$1,000) per employee for  
13 each violation in a subsequent citation, for which the employer fails to provide the employee a wage  
14 deduction statement or fails to keep the required in subdivision (a) of Section 226."

15           37. Thus, for the violations of Labor Code section 226 described above, Plaintiff and other  
16 aggrieved employees may also recover Labor Code § 226.3 penalties for Defendants' violations of  
17 Labor Code § 226(a). As such, the wage statements Defendants issued to Plaintiff and other aggrieved  
18 employees are in violation of Labor Code § 226(a).

19           38. Moreover, because of Defendants' failure to pay all minimum and overtime wages, and  
20 meal and rest period premiums at the "regular rate of pay", Defendants also failed and continue to  
21 fail to pay the aggrieved employees all wages owed at their time of separation from employment in  
22 violation of Labor Code §§ 201-203. Thus, aggrieved employees would be entitled to recover  
23 penalties under Labor Code §§ 201-203.

24           39. Finally, at all relevant times, Defendants required Plaintiff and other aggrieved  
25 employees to incur necessary business expenses including, but not limited to, costs associated with  
26 tools, cell phones, and other business expenses but did not sufficiently reimburse aggrieved  
27 employees for these necessary expenditures. See *Cochran v. Schwan's Home Service, Inc.*, (2014)  
28 228 Cal.App.4th 1137, 1144.

1 **FIRST CAUSE OF ACTION**

2 **PRIVATE ATTORNEYS GENERAL ACT**

3 *(Plaintiff and Similarly Aggrieved Employees Against All Defendants)*

4 40. Plaintiff re-alleges and incorporates by reference each and every allegation set forth  
5 in the preceding paragraphs.

6 41. Defendants have committed several Labor Code violations against Plaintiff and other  
7 similarly aggrieved employees. Plaintiff, an “aggrieved employee” within the meaning of Labor Code  
8 § 2698 *et seq.*, acting on behalf of the State of California, brings this representative action against  
9 Defendants to recover the civil penalties due to Plaintiff, other similarly aggrieved employees, and  
10 the State of California according to proof pursuant to Labor Code § 2699 (a) and (f) including, but  
11 not limited to (1) \$100 for each initial violation and \$200 for each subsequent violation per employee  
12 per pay period for those violations of the Labor Code for which no civil penalty is specifically  
13 provided based on the following Labor Code violations:

14 (a) Defendants’ failure to pay all minimum and overtime wages to the aggrieved employees;

15 (b) Defendants’ failure to pay all overtime wages at the “regular rate of pay” because  
16 Defendants failed to include all forms of compensation, including, but not limited to, shift  
17 differentials, non-discretionary bonuses, incentive pay, and other forms of remuneration.

18 (c) Defendants’ failure to pay all wages in a timely fashion in violation of Labor Code §§  
19 204 and 210;

20 (d) Defendants’ failure to pay all sick pay at the “regular rate of pay”;

21 (e) Defendants’ failure to allow and permit legally compliant meal periods or compensation  
22 at the “regular rate of pay” in lieu thereof;

23 (f) Defendants’ failure to allow and permit legally compliant rest periods or compensation  
24 at the “regular rate of pay” in lieu thereof;

25 (g) Defendants’ failure to furnish legally compliant wage statements pursuant to Labor  
26 Code § 226(a); and

27 (h) Defendants’ failure to timely pay final wages to aggrieved employees at the time of  
28 separation from employment were unlawful.

42. On or about April 28, 2022, Plaintiff notified Defendants via certified mail and the California Labor and Workforce Development Agency (“LWDA”) via its website of Defendant’s violations of the California Labor Code § 2698 *et. seq.* with respect to violations of the California Labor Code identified in Paragraph 45 (a)-(g).

43. Now that sixty-five days (65) have passed since Plaintiff notified Defendant of these violations, Plaintiff has exhausted her administrative requirements for bringing a claim under the Private Attorneys General Act with respect to these violations.

44. Plaintiff was compelled to retain the services of counsel to file this court action to protect her interests and the interests of other similarly aggrieved employees and to assess and collect the civil penalties owed by Defendants. Plaintiff has therefore incurred attorneys' fees and costs, which he is entitled to receive under California Labor Code § 2698 *et seq.*

## **PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff prays for judgment on behalf of the State of California against Defendants, as follows:

1. Upon the First Cause of Action, for civil penalties due to Plaintiff, other similarly aggrieved employees, and the State of California according to proof pursuant to Labor Code § 2699 (a) and (f) including, but not limited to (1) \$100 for each initial violation and \$200 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided under the Labor Code;

2. For attorneys' fees and costs as provided by Labor Code § 2698 *et seq.*, and Code of Civil Procedure §1021.5; and

3. For such other and further relief, the Court may deem just and proper.

Dated: January 10, 2024

**FALAKASSA LAW, P.C.**  
**BOKHOUR LAW GROUP, P.C.**

By:

Joshua Falakassa, Esq.  
Mehrddad Bokhour, Esq.  
Attorneys for Plaintiff and the Aggrieved Employees

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**PROOF OF SERVICE**

**STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

I am employed in the County of Los Angeles, State of California. I am over the age of eighteen years and not a party to the within action; my business address is 1901 Avenue of the Stars, Suite 450, Los Angeles, California 90067.

On February 28 2024, I served the following document(s) described as

**1. SECOND AMENED PAGA REPRESENTATIVE ACTION COMPLAIN**

on the interested parties in this action by placing true copies thereof enclosed in sealed envelopes addressed as follows:

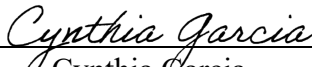
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**Attorneys for Defendant Total Safety U.S., Inc.,**

**BY ELECTRONIC SERVICE:** I transmitted the above-referenced document(s) via electronic service provider First Legal to the person(s) identified above at the email address(es) indicated and did not, within a reasonable time after transmission, receive any message or communication indicating that delivery failed or that any other error had occurred which would delay or caused failure in transmission and delivery of the document and/or any attachments thereto.

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

Executed on February 28, 2024, in Los Angeles, California.

  
Cynthia Garcia