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Individually and on behalf of all aggrieved employees

ELECTRONICALLY FILED

Superior Court of California,
County of San Diego

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Clerk of the Superior Court
By Armando Villasenor, Deputy Clerk

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

Mario Balderrama, individually and on
behalf of all aggrieved employees,

Plaintiff,

vs.

Ecolab, Inc.; and Does 1 through 20,
inclusive,

Defendants.

Case No. 37-2022-00028433-CU-OE-CTL

**REPRESENTATIVE ACTION COMPLAINT
FOR:**

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

1 Plaintiff Mario Balderrama, individually and on behalf of all aggrieved employees,
2 hereby alleges as follows:

3 **NATURE OF ACTION AND INTRODUCTORY STATEMENT**

4 1. Plaintiff Mario Balderrama ("Plaintiff") brings this representative action against
5 Defendant Ecolab, Inc., on behalf of himself individually and all other aggrieved employees
6 employed by Defendants throughout California, defined as all non-exempt employees employed
7 by Defendants in the State of California from one year before the date Plaintiff gave notice of
8 these claims to the California Labor and Workforce Development Agency ("LWDA"), plus any
9 applicable tolling, to the date of trial.

10 2. Defendant Ecolab, Inc. in the business of providing cleaning, sanitizing, water,
11 energy, and infection prevention services to customers throughout California.

12 3. Through this action, Plaintiff alleges that Defendants have engaged in a
13 systematic pattern of wage and hour violations under the California Labor Code ("Labor Code").

14 4. Plaintiff is informed and believes, and thereon alleges, during the relevant time
15 period, Defendants had a consistent policy of violating state wage and hour laws by, among other
16 things:

- 17 (a) failing to pay minimum wages for all hours worked;
- 18 (b) failing to pay overtime wages for all hours worked;
- 19 (c) failing to provide lawful meal periods or compensation in lieu thereof;
- 20 (d) failing to authorize or permit lawful rest breaks or provide compensation
21 in lieu thereof;
- 22 (e) failing to provide accurate itemized wage statements;
- 23 (f) failing to reimburse all business expenses;
- 24 (g) failing to timely pay all wages during employment; and
- 25 (h) failing to pay all wages due upon separation of employment.

26 5. Plaintiff brings this representative action seeking monetary relief against
27 Defendants on behalf of himself and all aggrieved employees to recover, among other things,
28 penalties, attorney's fees, costs, and expenses pursuant to the Private Attorneys General Act of

1 2004, Labor Code §§ 2698, *et seq.* (“PAGA”).

2 **JURISDICTION AND VENUE**

3 6. The monetary relief sought by Plaintiff exceeds the minimal jurisdictional limits
4 of the Superior Court and will be established according to proof at trial.

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

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

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

17 **THE PARTIES**

18 10. Plaintiff is a citizen of California and worked for Defendants in California during
19 the relevant time period as alleged herein.

20 11. Plaintiff is informed and believes, and thereon alleges, that Defendants are
21 corporations doing business throughout the State of California, and at all times hereinafter
22 mentioned, an employer as defined in and subject to the California Labor Code and Industrial
23 Welfare Commission (“IWC”) Wage Orders, whose employees are and were engaged throughout
24 this county and the State of California.

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

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

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

9 15. Plaintiff is informed and believes, and thereon alleges, that each and all of the acts
10 and omissions alleged herein were performed by, or are attributable to, Defendants and/or DOES
11 1 through 20, acting as the agent or alter ego for the other, with legal authority to act on the
12 other's behalf. The acts of any and all Defendants were in accordance with, and represent, the
13 official policy of Defendants.

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

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

21 **GENERAL ALLEGATIONS**

22 18. At all relevant times mentioned herein, Defendants employed Plaintiff and other
23 persons as non-exempt employees.

24 19. Defendants employed Plaintiff during the relevant time period.

25 20. Plaintiff worked for Defendant in San Diego, California from approximately
26 September 2006 until June of 2021.

27 21. Plaintiff is informed and believes, and thereon alleges, that at all times mentioned
28 herein, Defendants were advised by skilled lawyers, employees, and other professionals who

1 were knowledgeable about California's wage and hour laws, employment and personnel
2 practices, and the requirements of California law.

3 22. Through this action, Plaintiff alleges that Defendants have engaged in a
4 systematic pattern of wage and hour violations under the California Labor Code and IWC Wage
5 Orders.

6 23. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
7 should have known that Plaintiff and other aggrieved employees were entitled to receive wages
8 for all time worked (including minimum wages and overtime wages) and that they were not
9 receiving all wages earned for work that was required to be performed. For instance, Defendants
10 required Plaintiff and other aggrieved employees to work off-the-clock to communicate with
11 Defendants' customers in order to resolve issues related to maintaining sanitation and cleaning
12 equipment at commercial establishments. These communications from Defendants' customers
13 were often sporadic and unexpected, including afterhours, on weekends, and after Plaintiff and
14 other aggrieved employees were already clocked out. In violation of the Labor Code and IWC
15 Wage Orders, Plaintiff and aggrieved employees were not paid all wages (including minimum
16 wages and overtime wages) for all hours worked when Defendants failed to pay for time spent
17 for working during rest breaks, among other things.

18 24. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
19 should have known that Plaintiff and other aggrieved employees were entitled to receive overtime
20 wages at the correct regular rate of pay. However, Defendants failed to properly calculate the
21 regular rate of pay for Plaintiff and aggrieved employees. For example, Defendants failed to pay
22 Plaintiff and other aggrieved employees the proper overtime and doubletime rate by failing to
23 include bonuses and other incentive payments in the regular rate of pay. In violation of the Labor
24 Code and IWC Wage Orders, Defendants failed to properly compensate Plaintiff and aggrieved
25 employees for overtime pay.

26 25. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
27 should have known that Plaintiff and aggrieved employees were entitled to receive all required
28 meal periods or payment of one (1) additional hour of pay at the aggrieved employees' regular

1 rate of pay when they did not receive a timely, uninterrupted meal period. Plaintiff and aggrieved
2 employees did not receive compliant meal periods in that they were often late, skipped, or
3 interrupted. In addition, Plaintiff and aggrieved employees were not relieved of their work duties
4 during meal periods because they were required to be responsive to calls from Defendants'
5 customers during breaks. In violation of the Labor Code and IWC Wage Orders, Plaintiff and
6 aggrieved employees did not receive all meal periods or payment of one (1) additional hour of
7 pay at the aggrieved employees' regular rate of pay when they did not receive a timely,
8 uninterrupted meal period.

9 26. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
10 should have known that Plaintiff and aggrieved employees were entitled to receive all rest breaks
11 or payment of one (1) additional hour of pay at the aggrieved employees' regular rate of pay
12 when a rest break was missed. Plaintiff and aggrieved employees did not receive compliant rest
13 breaks in that they were often late, skipped, or interrupted. In addition, Plaintiff and aggrieved
14 employees were not relieved of their work duties during rest breaks because they were required
15 to be responsive to calls from Defendants' customers during breaks. In violation of the Labor
16 Code and IWC Wage Orders, Plaintiff and aggrieved employees did not receive all rest breaks
17 or payment of one (1) additional hour of pay at their regular rate of pay when a rest break was
18 missed, interrupted, or on-duty.

19 27. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
20 should have known that Plaintiff and aggrieved employees were entitled to receive complete and
21 accurate wage statements in accordance with California law. Plaintiff and aggrieved employees
22 were not furnished with complete and accurate wage statements showing their correct number of
23 total hours worked, correct number of hours worked at each hourly rate, correct overtime rates,
24 and correct gross and net wages, among other things. In violation of the California Labor Code,
25 Plaintiff and aggrieved employees were not provided with accurate and itemized wage
26 statements.

27 28. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
28 should have known that Plaintiff and aggrieved employees were entitled to reimbursement for

1 necessary expenditures incurred in connection with the performance and execution of their job
2 duties. In violation of the California Labor Code, Plaintiff and aggrieved employees did not
3 receive adequate reimbursement for necessary business expenses, including but not limited to
4 reimbursement for use of their personal cell phones for business purposes including to
5 communicate with commercial customers about maintaining and installing Defendants' products,
6 and to record their work hours. In addition, Plaintiff and aggrieved employees were required to
7 purchase masks, hand sanitizer, and personal protective equipment ("PPE") without being
8 reimbursed for the costs.

9 29. Furthermore, Plaintiff and other aggrieved employees were required to work
10 remotely, and as a result, incurred the additional costs of having to use their home internet for
11 work-related purposes without reimbursement for a reasonable percentage of their home internet
12 costs, equipment, and fees. For example, while working remotely, Plaintiff and other aggrieved
13 employees relied on use of their home internet to maintain and manage customer accounts,
14 communicate with Defendants' customers, and to communicate with supervisors and co-workers
15 related to their work duties, among other things. Thus, in violation of the Labor Code, Plaintiff
16 and aggrieved employees did not receive reimbursements for all business expenses.

17 30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
18 should have known that Plaintiff and aggrieved employees were entitled to timely payment of
19 wages during their employment. In violation of the Labor Code, Plaintiff and aggrieved
20 employees did not receive payment of all wages within permissible time periods.

21 31. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
22 should have known that Plaintiff and aggrieved employees who separated from Defendants were
23 entitled to timely payment of wages upon separation of employment. In violation of the
24 California Labor Code, Plaintiff and aggrieved employees did not receive payment of all wages
25 including, but not limited to, unpaid minimum and overtime wages, meal periods premiums, and
26 rest break premiums within permissible time periods.

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1 **FIRST CAUSE OF ACTION**

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

3 32. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
4 though fully set forth herein.

5 33. Pursuant to Labor Code § 2699(a), any provision of the Labor Code that provides
6 for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency
7 ("LWDA") or any of its departments, divisions, commissions, boards, agencies or employees for
8 violation of the code may, as an alternative, be recovered through a civil action brought by an
9 aggrieved employee on behalf of himself and other current or former employees pursuant to the
10 procedures specified in Labor Code § 2699.3.

11 34. For all provisions of the Labor Code except those for which a civil penalty is
12 specifically provided, Labor Code § 2699(f) imposes upon Defendants a penalty of one hundred
13 dollars (\$100.00) for each aggrieved employee per pay period for the initial violations and two
14 hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent pay
15 period in which Defendants violated these provisions of the Labor Code.

16 35. Defendants' conduct with respect to Plaintiff and other aggrieved employees
17 violates numerous Labor Code sections including, but not limited to, the following:

- 18 a. Violation of Labor Code §§ 201-204, 210, 510, 1194, 1194.2, 1197, 1197.1,
19 1198, and the IWC Wage Orders for failure to timely pay all earned wages
20 (including minimum and overtime wages) owed to Plaintiff and other
21 aggrieved employees during employment and upon separation of employment
22 as herein alleged;
- 23 b. Violation of Labor Code §§ 226.7 and 512 for failure to provide meal periods
24 to Plaintiff and other aggrieved employees and failure to pay premium wages
25 for missed meal periods as herein alleged;
- 26 c. Violation of Labor Code § 226.7 for failure to permit paid rest breaks to
27 Plaintiff and other aggrieved employees and failure to pay premium wages for
28 missed rest periods as herein alleged;

- 1 d. Violation of Labor Code §§ 226 and 226.3 for failure to provide accurate
2 itemized wage statements to Plaintiff and other aggrieved employees as herein
3 alleged;
- 4 e. Violation of Labor Code §§ 1174 and 1174.5 for failure to maintain accurate
5 and complete records showing the hours worked daily by Plaintiff and other
6 aggrieved employees as herein alleged;
- 7 f. Violation of Labor Code §§ 2800 and 2802 for failure to reimburse Plaintiff
8 and other aggrieved employees for all reasonable and necessary business
9 expenses as herein alleged;

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

13 37. On April 4, 2022, Plaintiff submitted notice to the LWDA and Defendant. To date,
14 the LWDA has not provided notice of its intent to investigate. Plaintiff has exhausted the
15 procedural requirements under Labor Code § 2699.3 as to Defendants and is therefore able to
16 pursue a claim for penalties on behalf of himself and all other aggrieved employees under the
17 PAGA.

18 38. Pursuant to Labor Code §§ 2699(a), 2699.3 and 2699.5, Plaintiff is entitled to
19 recover civil penalties for violations of the Labor Code sections cited above.

20 39. For bringing this action, Plaintiff is entitled to attorney’s fees and costs incurred
21 herein.

22 **PRAYER FOR RELIEF**

23 WHEREFORE, Plaintiff, individually and on behalf of all aggrieved employees, prays
24 for judgment against Defendants as follows:

- 25 1. For civil penalties against Defendants on behalf of all aggrieved employees;
- 26 2. For reasonable attorney’s fees and costs of suit to the extent permitted by law,
27 including pursuant to California Labor Code §§ 2699(g) and California Code of Civil Procedure
28 § 1021.5; and

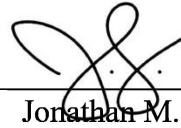
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3. For such other relief as the Court deems just and proper.

Dated: July 19, 2022

LEBE LAW, APLC

By: _____



Jonathan M. Lebe

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Attorneys for Plaintiff Mario Balderrama