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SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES

ENRIQUE HERNANDEZ, an individual, on behalf of himself, other aggrieved employees, and the State of California,

Plaintiff,

vs.

MCQUADE HOLDINGS LLC DBA MILLENIUM INDUSTRIAL TIRE and DOES 1 through 50, inclusive,

Defendants.

25TRCV01860

Case No.

PAGA ACTION

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

Plaintiff ENRIQUE HERNANDEZ ("Plaintiff"), individually and on behalf of other aggrieved employees and the State of California, hereby brings this Complaint ("Complaint") pursuant to the Private Attorneys General Act ("PAGA"), California Labor Code Sections 2698, *et seq*., against Defendants MCQUADE HOLDINGS LLC dba MILLENIUM INDUSTRIAL TIRE. and DOES 1 through 50, inclusive (collectively "Defendants"), and alleges as follows:

INTRODUCTION

1. This representative PAGA action, pursuant to Labor Code Sections 2698, *et seq*., is brought by Plaintiff on behalf of all current and former employees of Defendants employed in California during the PAGA Period (collectively the "Aggrieved Employees"). The term PAGA Period is defined as one (1) year prior to the submission of Plaintiff's notice of Labor Code violations to the Labor and Workforce Development Agency ("LWDA") and certified mail to Defendants until resolution.

2. Plaintiff and Aggrieved Employees were employed by Defendants and performed work for Defendants throughout California including in Los Angeles County.

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

4. Plaintiff is informed and believes, and thereon alleges, that during the PAGA Period, Defendants had a consistent policy of violating state wage and hour laws by, among other things: failing to pay all wages (including sick pay, minimum, regular, and overtime wages), failing to provide meal, rest, and recovery periods or compensation in lieu thereof, failing to timely pay all wages due upon separation of employment, failing to provide accurate itemized wage statements, failing to maintain accurate records of hours worked, and failing to reimburse business expenses.

5. Plaintiff's representative PAGA action is brought under, *inter alia*, the California Industrial Welfare Commission ("IWC") Wage Orders and applicable provisions of the California Code of Regulations, California Code of Civil Procedure Section 1021.5, and California Labor Code Sections 96, 201, 202, 203, 204, 206, 210, 221, 223, 226, 226.2, 226.3, 226.7, 227.3, 232, 232.5, 233, 234, 246, 510, 512, 558, 558.1, 1171, 1174, 1174.5, 1811, 1815, 1194, 1194.2, 1197, 1197.5(k), 1198, 1199, 2800 and 2802.

6. Plaintiff brings this representative action seeking monetary relief against Defendants on behalf of himself and other Aggrieved Employees to recover, among other things, penalties, attorneys' fees, and costs pursuant to Labor Code Sections 2698, *et seq*.

JURISDICTION AND VENUE

7. This Court has jurisdiction over all causes of action asserted herein pursuant to the California Constitution, Article VI, Section 10, which grants the Superior Court original jurisdiction in all cases except those given to other trial courts. All claims alleged herein arise under California law for which Plaintiff seeks relief authorized by California law. Further, this is a representative PAGA action and the monetary damages, restitution, penalties, and other amounts sought by Plaintiff exceeds the minimal jurisdictional limits of the Superior Court and will be established according to proof at trial.

8. This Court has jurisdiction over all Defendants because each Defendant is a citizen of California, a corporation or association organized under the laws of the State of California, an association authorized to do business in California and registered with the California Secretary of State, does sufficient business in California, has sufficient minimum contacts with California, and/or intentionally avails itself of the laws and markets of California through the promotion, sale, marketing and distribution of its products and/or services in California to render the exercise of jurisdiction by the California courts permissible. In addition, PAGA penalties cannot be aggregated to meet the jurisdictional threshold for diversity jurisdiction in federal court.

9. Venue is proper under California Business & Professions Code Section 17203 and California Code of Civil Procedure Section 395.5 because a substantial part of Defendants' unlawful conduct, acts, and omissions alleged herein occurred in this County, Defendants had and have ongoing projects in this County, Defendants conduct substantial business in this County, Defendants' liability arose in this County, and/or Defendants reside, transact business, maintain offices, and/or have an agent or agents in this county. The relief requested is within the jurisdiction of this Court.

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PARTIES

10. Plaintiff is a California citizen. Defendants employed Plaintiff as a non-exempt hourly employee during the PAGA Period and Plaintiff's employment with Defendants ended within one (1) year of the filing of this action. Plaintiff's job duties included, but were not limited to, supervising of tire production, machinery, coordinating orders, and preparation of equipment. Plaintiff performed work for Defendants during the PAGA Period at Defendants' worksites in Los Angeles County.

11. Plaintiff is informed, believes and thereon alleges that, at all relevant times, Defendant MCQUADE HOLDINGS LLC dba MILLENIUM INDUSTRIAL TIRE ("MCQUADE.") was and is a California corporation doing business in the State of California. MCQUADE regularly conducts business within the State of California and derives substantial revenues from services performed in California. MCQUADE is, and at all relevant times was, an employer subject to California state wage and hour laws. Plaintiff is informed, believes, and thereon alleges that the practices and policies of MCQUADE that are complained of by way of this Complaint were implemented during the PAGA Period. MCQUADE was a "client employer" within the meaning of Labor Code Section 2810.3.

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

13. Plaintiff is unaware of the true names and capacities of those Defendants identified as DOES 1 through 50. Therefore, Plaintiff identifies those Defendants fictitiously. Plaintiff is informed, believes and thereon alleges that at all relevant times each DOE Defendant was a parent, sister, or related corporate entity of Defendants, or an owner, employee or agent of Defendants, and each related entity, and was acting with the knowledge and authorization of each of the other Defendants. Plaintiff will seek to amend this Complaint to allege the true names and capacities of each DOE Defendant when their names have been ascertained and identified. Plaintiff is informed, believes and thereon alleges that each of the Defendants sued as DOES 1 through 50 participated in, received the benefit of, or was in some way responsible for one or more of the wrongful acts and omissions and some portion of the damages alleged herein.

14. Plaintiff is informed, believes and thereon alleges that at all times material hereto, each Defendant acted in all respects pertinent to this action as the agent of the other Defendant, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant

are legally attributable to the other Defendant. Furthermore, Defendants in all respects acted as the employer and/or joint employer of Plaintiff and the Aggrieved Employees.

15. Plaintiff is informed, believes and thereon alleges that Defendants, each and all of them, at all times material hereto, were the joint employers, parent companies, successor companies, predecessors in interest, affiliates, agents, employees, servants, joint venturers, directors, fiduciaries, representatives, and/or co-conspirators of each of the remaining Defendants. Defendants, unless otherwise alleged, at all times material hereto, performed all acts and omissions alleged herein within the course and scope of said relationship(s), and are a proximate cause of Plaintiff's damages as herein alleged.

16. Plaintiff is informed, believes and thereon alleges, that there exists a unity of interest in ownership between Defendants and DOES 1 through 50, inclusive, such that any individuality and separateness between the individual and the corporation does not exist, as Defendants, and DOES 1 through 50, inclusive, are alter egos, in that: (1) Defendants are and at all times mentioned herein were mere shells, instrumentalities and conduits through which DOES 1 through 50, inclusive, carried out their business in the business name, exercising complete control and dominance over such business; (2) that Defendants were conceived, intended and used by DOES 1 through 50, inclusive, as devices to avoid individual liability and in place of Defendants, and DOES 1 through 50, inclusive, and were without the financial solvency and responsibility required by law; and (3) that all of the assets of the Defendants have been transferred to DOES 1 through 50, inclusive, or some other individual or entity which he or she owns or controls, with the intent to hinder, delay or defraud creditors of Defendants, leaving Defendants with no assets. Further, Plaintiff is informed, believes and thereon alleges, that there exists a principal-agency relationship between and among Defendants.

17. At all relevant times herein, Defendants were agents of each other and acting within the course and scope of their agency.

GENERAL ALLEGATIONS

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

19. Plaintiff is informed and believes, and thereon alleges, that at all times mentioned

herein, Defendants were advised by skilled lawyers, employees and other professionals who were knowledgeable about California wage and hour law, employment and personnel practices, and the requirements of California.

20. Through this action, Plaintiff alleges Defendants have consistently maintained and enforced against Plaintiff and Aggrieved Employees unlawful employment practices and policies which violate the California Labor Code and IWC Wage Orders.

21. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known they had a duty to compensate Plaintiff and Aggrieved Employees, and Defendants had the financial ability to pay such compensation but willfully, knowingly and intentionally failed to do so all in order to increase Defendants' profits.

22. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiff and Aggrieved Employees were entitled to receive at least minimum, straight time, and overtime wages, and that they were not receiving minimum, straight time, and overtime wages for all work that was required to be performed. During the PAGA Period, Plaintiff and other Aggrieved Employees regularly worked more than eight (8) hours per workday, 10 and/or 12 hours per workday, and/or over 40 hours per workweek, and/or seven straight workdays in a workweek. In violation of the Labor Code, Defendants required Plaintiff and other Aggrieved Employees to complete work-related tasks off the clock, such as communicating with Defendants and working through meal periods. Defendants did not compensate Plaintiff and other Aggrieved Employees for all hours worked because Plaintiff and other Aggrieved Employees were regularly on-duty during their meal and/or rest periods. Defendants also regularly required Plaintiff and other Aggrieved Employees to remain on the premises and complete work-related duties after Plaintiff and other aggrieved employees had clocked out of their shifts. Finally, Defendants failed to accurately calculate the regular rate of pay by, among other things, failing to include a remuneration when calculating the rate of pay for overtime, double time, meal and rest period premiums, sick pay, and vacation pay. Accordingly, Defendants failed to pay Plaintiff and other Aggrieved Employees the proper minimum, regular, overtime, and double time wages for all hours worked, sick pay, and vacation pay.

23. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should

have known that Plaintiff and Aggrieved Employees were entitled to receive a timely, off-duty, uninterrupted 30-minute meal period for every five (5) hours of work, or payment of one (1) additional hour of pay at their regular rate of pay when they did not receive a compliant meal period. In violation of the Labor Code and IWC Wage Orders, Plaintiff and Aggrieved Employees did not receive compliant meal periods due to Defendants' workload, understaffing, policies, and practices. Specifically, Plaintiff and other Aggrieved Employees regularly had their meal periods shortened, interrupted, late, restricted to the worksite, rounded, auto-deducted, and/or missed altogether due to Defendants' policy and practice of prioritizing work demands over taking compliant meal breaks, understaffing, and failing to implement a compliant meal period policy and practice. Further, Plaintiff and other Aggrieved Employees were also required by Defendants to carry and answer their cell phone, pager, walkie talkie or radio during their purported meal periods. Defendants also failed to provide second meal periods when Aggrieved Employees worked in excess of 10 hours in a workday. Defendants failed to compensate Plaintiff and other Aggrieved Employees with an additional hour of pay at their regular rate for every day in which they suffered a meal period violation.

24. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiff and Aggrieved Employees were entitled to receive a 10-minute, off-duty, uninterrupted rest period for every four (4) hours worked, or major fraction thereof, or payment of one additional hour of pay at their regular rate of pay when they were not permitted to take a compliant rest period. In violation of the Labor Code and IWC Wage Orders, Plaintiff and Aggrieved Employees were not permitted to take compliant rest breaks due to Defendants' understaffing, busy workload, policies, and practices as explained above. Further, Plaintiff and other Aggrieved Employees were also required by Defendants to carry and answer their cell phone, pager, walkie talkie or radio during their purported rest periods. Defendants also failed to adopt and implement a practice of providing third rest breaks when Plaintiff and other Aggrieved Employees worked over 10 hours. Defendants failed to compensate Plaintiff and other Aggrieved Employees with an additional hour of pay at their regular rate for every day in which they suffered a rest period violation.

25. Plaintiff is informed and believes, and thereon alleges, that Defendants implemented policies, practices, and rules to restrict Plaintiff and other Aggrieved Employees speech, protected

activity, and the disclosure of information beyond the limited categories of information protected by law.

26. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiff and Aggrieved Employees were entitled to reimbursements for their necessary work-related business expenses. In violation of the Labor Code and IWC Wage Orders, Defendants required Plaintiff and Aggrieved Employees to purchase their own tools and safety equipment without reimbursement to carry out their job duties.

27. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiff and Aggrieved Employees who separated from their employment with Defendants during the statutory period were entitled to timely payment of all wages due. In violation of the Labor Code, Plaintiff and formerly employed Aggrieved Employees did not receive payment of all wages owed upon separation within the permissible time period due to, *inter alia*, Defendants' failure to pay all wages including sick pay, minimum, regular, and overtime wages, failure to provide meal and rest period premiums, and failure to reimburse expenses to Plaintiff and Aggrieved Employees.

28. Plaintiff is informed and believes, and thereon alleges that Defendants knew or should have known that Plaintiff and Aggrieved Employees were entitled to receive complete and accurate wage statements. In violation of the Labor Code and IWC Wage Orders, Plaintiff and Aggrieved Employees were not furnished with complete and accurate wage statements that show all of the information required by Labor Code section 226, including, but not limited to, the gross and net wages earned, the total hours worked, all applicable hourly rates in effect during the pay period, and the corresponding number of hours worked at each hourly rate.

29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Defendants were required to keep accurate records of the hours worked by Plaintiff and Aggrieved Employees. In violation of the California Labor Code, Defendants failed to maintain accurate records of hours worked by Plaintiff and Aggrieved Employees due to the unlawful practices mentioned above.

30. Plaintiff is informed, believes, and thereon alleges that Defendants' actions as

described throughout this Complaint were willful.

FIRST CAUSE OF ACTION

VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT OF 2004

(CAL. LAB. CODE §§ 2698, *ET SEQ.*)

(Against All Defendants)

31. Plaintiff incorporates by reference all previous paragraphs of this Complaint as though fully set forth herein.

32. California Labor Code Section 2699(a) specifically provides for a private right of action to recover penalties for violations of the Labor Code: "Notwithstanding any other provision of law, any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Section 2699.3."

33. Plaintiff gave written notice of the specified provisions alleged to have been violated by Defendants including the facts and theories to support the alleged violations, as required by Labor Code section 2699.3 and paid the filing fee. This written notice was provided via certified mail to Defendants and to the LWDA by electronically filing the notice via the Department of Industrial Relations' website. In this civil action, Plaintiff seeks to recover penalties under Labor Code Section 2699 pursuant to Section 2699.3 for the violations of the Labor Code described in this Complaint. These penalties include, but are not limited to, penalties under California Labor Code Sections 210, 226.3, 558(a), 1197.1, and 2699(f)(2).

34. The statute of limitations is tolled while a plaintiff exhausts his or her administrative remedies with the LWDA prior to suit, which is required by Labor Code Section 2699.3(d).

35. In addition, Plaintiff seeks penalties for Defendants' violation of California Labor Code Section 1174(d). Pursuant to California Labor Code Section 1174.5, any person, including any entity, employing labor who willfully fails to maintain accurate and complete records required by California Labor Code Section 1174 is subject to a penalty under Section 1174.5. Pursuant to the applicable IWC

Order Section 7(A)(3), every employer shall keep time records showing when the employee begins and ends each work period. Meal periods, and total hours worked daily shall also be recorded. Additionally, pursuant to the applicable IWC Order Section 7(A)(5), every employer shall keep total hours worked in the payroll period and applicable rates of pay.

36. Defendants' conduct violates numerous Labor Code sections, including, but not limited to, the following:

(a) Violation of Labor Code Sections 201-204, 206, 210, 221, 223, 227.3, 246, 510, 558, 1194, 1197, 1197.1, and 1198 for failure to timely pay all sick pay, vacation pay, and earned wages (including minimum, regular, overtime, and double time wages) owed to Plaintiff and other aggrieved employees during employment and upon separation of employment;

(b) Violation of Labor Code Sections 226.7 and 512 for failure to provide meal periods to Plaintiff and other aggrieved employees and failure to pay premium wages for missed meal periods as herein alleged;

(c) Violation of Labor Code Section 226.7 for failure to permit rest breaks to Plaintiff and other aggrieved employees and failure to pay premium wages for missed rest periods as herein alleged;

(d) Violation of Labor Code Section 226.7 and 1198 for failure to provide recovery periods to Plaintiff and other aggrieved employees and failure to pay premium wages for missed rest periods as herein alleged;

(e) Violation of Labor Code Sections 226 and 226.3 for failure to provide accurate itemized wage statements to Plaintiff and other aggrieved employees as herein alleged;

(f) Violation of Labor Code sections 226, 226.3, 1174, and 1174.5 for failure to calculate sick pay at the regular rate of pay for the workweek in which Plaintiff and other Aggrieved Employees used paid sick time, or by dividing the Plaintiff and other Aggrieved Employees' total wages, not including overtime premium pay, by the Plaintiff and other Aggrieved Employees' total hours worked in the full pay periods of the prior 90 days of employment, in violation of Labor Code Sections 246, 246.5, 247,

247.5, and 248.5 and the Healthy Workplaces, Healthy Families Act of 2014;

(g) Violation of Labor Code sections 233 and 234 for failure to permit Plaintiff and Aggrieved Employees to use in any calendar year the employee's accrued and available sick leave entitlement;

(h) Violation of Labor Code sections 227.3 for failure to provide to Plaintiff and Aggrieved Employees accrual of vacation wages and failure to pay to Plaintiff and/or Aggrieved Employees vested vacation wages;

(i) Violation of Labor Code sections 221 and 223 for secretly paying Plaintiff and Aggrieved Employees less than the statutory or contractual rate;

(j) Violation of Labor Code Sections 1174 and 1174.5 for failure to maintain accurate records regarding the employment of Plaintiff and other aggrieved employees as herein alleged;

(k) Violation of Labor Code sections 1198 and 1199 for failure to provide suitable seating to Plaintiff and other Aggrieved Employees during working hours and when the nature of their work reasonably permitted the use of seats; and

(l) Violation of Labor Code Sections 2800 and 2802 for failure to reimburse business expenses to Plaintiff and other aggrieved employees as herein alleged;

37. Pursuant to Labor Code Section 2699(c)(1), Plaintiff is an "aggrieved employee" because he was employed by the alleged violators and personally suffered each of the alleged violations committed against him, and therefore is properly suited to represent the interests of all other aggrieved employees.

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

39. For bringing this action, Plaintiff is entitled to attorney's fees and costs incurred herein pursuant to Labor Code Section 2699(g)(1).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of himself, the Aggrieved Employees, and the State of

California, prays for judgment and the following specific relief against Defendants, jointly and severally, as follows:

1. For civil penalties against Defendants on behalf of all Aggrieved Employees pursuant to, *inter alia*, Labor Code Sections 210, 226.3, 558, 1174.5, 1197.1, and 2698, *et seq.*;

2. For reasonable attorneys' fees and costs of suit to the extent permitted by law, including pursuant to California Labor Code Sections 2699(g), 2802(c) and California Code of Civil Procedure Section 1021.5; and

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

Dated: June 6, 2025

TORUS LLP

By: _____

David Alami
Daniel J. Hyun
Attorneys for Plaintiff ENRIQUE HERNANDEZ