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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO**

MARTIN HERNANDEZ, on behalf of
himself and all others similarly situated and
on behalf of the general public,

Plaintiffs,

v.

TOWN OF APPLE VALLEY, a public entity,
and DOES 1 through 10, inclusive,

Defendants.

CASE NO: CIVVS2502186

**CLASS AND COLLECTIVE ACTION
COMPLAINT FOR:**

- 1. FAILURE TO PAY ALL WAGES DUE
(FLSA 29 U.S.C. §§ 206 AND 207);**
- 2. FAILURE TO PAY ALL MINIMUM
WAGES DUE (LABOR CODE §§ 200,
218.5, 558, 1194, 1194.2, 1997, 1197.1 AND
1198);**
- 3. PENALTIES PURSUANT TO LABOR
CODE § 2699(a) (FOR VIOLATIONS OF
LABOR CODE § 558).**

DEMAND FOR JURY TRIAL

Plaintiff Martin Hernandez (“Plaintiff”), on behalf of himself and all others similarly situated (the “Class” or “Plaintiff’s Class”), and on behalf of the general public, complains of the Town of Apple Valley, a public entity, (“Defendant”) as follows:

I.

INTRODUCTION AND FACTUAL BACKGROUND

1. This is a Class and Collective Action, pursuant to Code of Civil Procedure § 382 and 29 U.S.C. §§ 206 and 207 *et seq.*, on behalf of Plaintiff and certain individuals who currently work, or formerly worked, for Defendant within the State of California and within the United States.

2. The Fair Labor Standards Act of 1938, as amended 29 U.S.C. §§ 201 *et seq.*, (hereinafter referred to as “FLSA”) provides for minimum standards for both wages and overtime entitlement, and details administrative procedures by which covered work time must be compensated. The provisions of the FLSA provide the Courts with substantial authority to stamp out abuses of child labor, equal pay, portal-to-portal activities as well as the overtime pay provisions at issue in this Action.

3. The California Labor Code provides for more protective, more rigid, and more extensive labor standards which apply to all California employees.

4. From no less than four years prior to the filing of this action and continuing to the present (the “liability period”), Defendant has had consistent policies of failing to pay all wages due, and failing to pay the legally required minimum wage.

5. Plaintiff, on behalf of himself and members of each Class (as defined below), bring this action pursuant to Labor Code §§ 200, 201, 202, 203, 218.5, 226, 558, 1194, 1194.2, 1197.1, 1198, and 29 U.S.C. §§ 206 and 207 seeking compensation for all unpaid wages, penalties, interest, injunctive and other equitable relief, and reasonable attorneys' fees and costs.

6. Plaintiff, on behalf of himself and all proposed Class members, pursuant to FLSA §§ 6 and 7, 29 U.S.C. §§ 206 and 207, also seeks liquidated damages for Defendant's failure to pay all overtime wages due.

7. Plaintiff complied with all Tort Claims Act requirements.

8. Venue as to Defendant is proper in this judicial district, pursuant to Code of Civil Procedure § 395. Defendant operates within California. The violations alleged herein occurred within San Bernardino County, State of California.

II.

PARTIES

A. Plaintiff

1 9. Plaintiff Martin Hernadez worked for Defendant from August 2023 through August 9,
2 2024 as a non-exempt employee. Plaintiff performed work for Defendant in San Bernardino County,
3 California.

4 10. During his work with Defendant, Plaintiff was:

- 5 a. Willfully denied the payment of all wages due during employment; and
6 b. Willfully denied payment of the legally required minimum wage.

7 **B. Defendant**

8 11. Defendant the Town of Apple Valley is a public entity as defined in Government
9 Code §811.2, and is organized, recognized and existing under, and by virtue of, the laws of the State
10 of California. The Town of Apple Valley operates in California and employed Plaintiff and
11 similarly situated individuals in San Bernardino County, California.

12 12. The true names and capacities, whether individual, corporate, associate, or otherwise,
13 of Defendants sued herein as DOES 1 to 10, inclusive, are currently unknown to Plaintiff, who
14 therefore sues Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiff is
15 informed and believes, and based thereon, allege that each of the Defendants designated herein as a
16 DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will seek
17 leave of court to amend this Complaint to reflect the true names and capacities of the Defendants
18 designated hereinafter as DOES when such identities become known.

19 13. Plaintiff is informed and believes, and based thereon alleges, that Defendants acted in
20 all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme,
21 business plan or policy in all respects pertinent hereto, and the acts of each Defendant are legally
22 attributable to the other Defendants.

23 14. The Defendants named herein as DOE 1 through DOE 10 are and were persons acting
24 on behalf of, or acting jointly with, Defendants, who violated, or caused to be violated, one or more
25 provisions of the California Labor Code as alleged herein.

26 **III.**

27 **CLASS ACTION ALLEGATIONS**

1 15. Plaintiff brings this action on behalf of himself, and all others similarly situated as a
2 Class Action pursuant to § 382 of the Code of Civil Procedure. Plaintiff seeks to represent classes
3 composed of and defined as follows:
4

5 **THE FLSA CLASS**

6 All persons employed by Defendant as non-exempt employees in the
7 United States during the period three years prior to the filing of this
8 Action and continuing to the present.

9 **THE CALIFORNIA CLASS**

10 All persons employed by Defendant as non-exempt employees in the
11 State of California during the period four years prior to the filing of this
12 Action and continuing to the present.

13 16. Plaintiff reserves the right under Rule 3.765, California Rules of Court, to amend or
14 modify these class descriptions with greater specificity or further division into subclasses or limitation
15 to particular issues.

16 17. This action has been brought and may properly be maintained as a class action under
17 the provisions of § 382 of the Code of Civil Procedure because there is a well-defined community of
18 interest in the litigation and the proposed Classes are easily ascertainable.

19 **A. Numerosity**

20 18. The potential members of each Class as defined are so numerous that joinder of all the
21 members of each Class is impracticable. While the precise number of each Class has not been
22 ascertained at this time, Plaintiff is informed and believes, and based thereon alleges, that Defendant
23 currently employs, and during the relevant time periods employed, over 50 persons who fall within
24 each Class definition.

25 19. Accounting for employee turnover during the relevant periods necessarily increases
26 this number. Plaintiff alleges Defendant's records would provide information as to the number and
27 location of members of each Class. Joinder of the members of each Class is not practicable.

28 **B. Commonality**

20. There are questions of law and fact common to each Class that predominate over any questions affecting only individual class members. These common questions of law and fact include, without limitation:

- a. Whether Defendant failed to pay Plaintiff and California and FLSA Class Members all wages due during employment, in violation of Labor Code §§ 200, 218.5, 558, 1194, 1194.2, 1197.1, 1198 and the FLSA, 29 U.S.C. §§ 206 and 207;
- b. Whether Defendant failed to pay Plaintiff and California Class Members with the legally required minimum wage;

C. Typicality

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

D. Adequacy of Representation

22. Plaintiff will fairly and adequately represent and protect the interests of members of each Class. Counsel who represents Plaintiff are competent and experienced in litigating large employment class actions.

E. Superiority of Class Action

23. A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all proposed members of each Class is not practicable, and questions of law and fact common to the proposed Classes predominate over any questions affecting only individual members of the proposed Classes. Each member of the proposed Classes has been damaged and is entitled to recovery by reason of Defendant's illegal policies and practices.

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

1 IV.

2 **CAUSES OF ACTION**

3 **FIRST CAUSE OF ACTION**

4 **PLAINTIFF AND THE FLSA CLASS AGAINST DEFENDANT**

5 **FAILURE TO PAY ALL WAGES DUE**

6 **(FLSA, 29 U.S.C. §§ 206 AND 207)**

7 25. Plaintiff incorporates paragraphs 1 through 24 of this Complaint as though fully set
8 forth herein.

9 26. Plaintiff brings this cause of action as a collective action under Section 16(b) of the
10 FLSA.

11 27. This cause of action arises from Defendant's violation of the FLSA, 29 U.S.C. § 201
12 *et seq.*, for their failure to pay all wages due to Plaintiff and FLSA Class Members. At all relevant
13 times hereto, Defendant has been an "enterprise engaged in commerce or in the production of goods
14 for commerce," as defined under 29 U.S.C. § 203(s)(1).

15 28. Defendant is Plaintiff's "employer" as defined by the FLSA.

16 29. Defendant is an "enterprise" as defined by Section 3(r)(1) of the FLSA, 29 U.S.C. §
17 203(r)(1).

18 30. Defendant is an enterprise engaged in commerce or in the production of goods for
19 commerce within the meaning of Section 3(s)(1)(A) of the FLSA, 29 U.S.C. § 203(s)(1)(A).

20 31. Defendant's annual gross volume of sales made, or business done, individual and
21 collectively, has exceeded \$500,000 in each of the last three calendar years.

22 32. Plaintiff is an "employee" of Defendant as defined by the FLSA.

23 33. During the entire course of their employment by Defendant, Plaintiff and FLSA Class
24 Members have not been exempt from the overtime wage provisions of the FLSA.

25 34. Plaintiff is informed and believes, and based thereon alleges, that Defendant has
26 required, or require, FLSA Class Members, as part of their employment, to work without all additional
27 overtime wages, pursuant to 29 U.S.C § 207(a)(1). That section provides the following:
28

1 “Except as otherwise provided in this section, no employer shall
2 employ any of his employees . . . for a workweek longer than forty
3 hours unless such employee receives compensation for his employment
4 in excess of the hours above specified at a rate which is not less than
5 one and one-half times the regular rate at which he is employed.”

6 35. Defendant automatically deducted a 30-minute meal period from Plaintiff and FLSA
7 Class Members’ wages whether or not they took meal periods. Further, Plaintiff and FLSA Class
8 Members received a “Cafeteria Allowance” every pay period in lieu of receiving health insurance.
9 However, this additional wage was not blended into their regular rate of pay for purposes of paying
10 overtime at the correct rates. Thus, Plaintiff and FLSA Class Members did not receive all overtime
11 wage compensation for the work, labor and services they provided to Defendant, as required by the
12 FLSA, 29 U.S.C. §§ 206 and 207. Specifically, they were not paid for overtime wages at the correct
13 rate of pay.

14 36. The precise amount of unpaid overtime wages will be proven at trial.

15 37. Plaintiff proposes to undertake appropriate proceedings to have FLSA Class Members
16 aggrieved by Defendant’s unlawful conduct notified of the pendency of this action and join this action
17 as plaintiffs, pursuant to 29 U.S.C. § 216(b), by filing written consents to joinder with the Court.

18 38. Defendant’s violations of the FLSA were willful within the meaning of the statute and
19 interpretive case law.

20 39. As a result of the foregoing, Plaintiff seeks judgment against Defendants on his own
21 behalf, and on behalf of FLSA Class Members similarly situated who file written consents to joinder
22 in this action, for all unpaid wages owed by Defendant to Plaintiff and FLSA Class Members,
23 pursuant to 29 U.S.C. §§ 206 and 207, together with an award of an additional equal amount as
24 liquidated damages, and costs, interest, and reasonable attorneys’ fees, as provided for under 29
25 U.S.C. § 216(b).

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28 //

V.

SECOND CAUSE OF ACTION

PLAINTIFF AND THE CALIFORNIA CLASS AGAINST DEFENDANT

FAILURE TO PAY ALL MINIMUM WAGES DUE

(LABOR CODE §§ 200, 218.5, 558, 1194, 1194.2, 1197.1, 1198)

40. Plaintiff incorporates paragraphs 1 through 39 of this Complaint as though fully set forth herein.

41. During the liability period, Defendant failed to properly compute “Cafeteria Allowance”, and other non-base hourly wages earned by Plaintiff and California Class Members’ into their regular rate of pay for purposes of paying them overtime wages at the correct rates of pay, in violation of Labor Code §§ 200, 201, 202, 203, 218.5, 226, 558, 1194, 1194.2, 1197.1, 1198. Defendant failed to properly blend “Cafeteria Allowance” and/or other non-base hourly wages and instead paid Plaintiff and California Class Members overtime wages based *only* on the base hourly rate of pay, thus depriving paid Plaintiff and California Class Members of all overtime wages earned. This violates Labor Code §§ 200, 201, 202, 203, 218.5, 226, 558, 1194, 1194.2, 1197.1, 1198.

42. As a result of the unlawful acts of Defendant in willfully failing to pay all overtime wages, Plaintiff and California Class Members have been deprived of wages in amounts to be determined at trial, and are entitled to restitution and recovery of such amounts, plus interest thereon, attorneys’ fees, and costs pursuant to Labor Code § 1194.

43. Wherefore, Plaintiff and each Class he seeks to represent request relief as described below.

VI.

THIRD CAUSE OF ACTION

PLAINTIFF AND ALL AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS

**PENALTIES PURSUANT TO LABOR CODE § 2699(a) (FOR VIOLATIONS OF LABOR
CODE § 558)**

44. Plaintiff incorporates the above paragraphs of this complaint above as though fully set forth herein.

45. Aggrieved Employees are composed of all persons employed as non-exempt law enforcement officers by Defendants in California at any time since the date one (1) year preceding the filing of this action.

46. As a result of the acts alleged above, including the Labor Code violations set forth in above, Plaintiff seeks civil penalties pursuant to Labor Code sections 2698, *et seq.*

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

a. Pursuant to Labor Code section 2699, subdivision (a), \$50 for each initial violation and \$100 for each subsequent violation of Labor Code section 558.

48. Civil penalties recovered will be allocated 75% to the Labor and Workforce Development Agency, and 25% to the affected employees.

RELIEF REQUESTED

WHEREFORE, Plaintiff prays for the following relief:

1. 1. For recovery of all unpaid wages and liquidated damages, pursuant to the FLSA (29 U.S.C. §§ 201, *et seq.*), with respect to Plaintiff and FLSA Class Members;

2. For compensatory damages and liquidated damages pursuant to Labor Code sections 1194 and 1194.2, and IWC Wage Order 4-2001 in the amount of all unpaid minimum wages due to Plaintiff and California Class Members;

3. For civil penalties and wages pursuant to Labor Code sections 2698, *et seq.*, for Plaintiff and all other Aggrieved Employees;

4. An award providing for payment of costs of suit pursuant to Labor Code section 1194 and other applicable law;

5. An award of attorneys' fees pursuant to Labor Code section 1194 and other applicable laws;

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

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

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DEMAND FOR JURY TRIAL

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

Respectfully submitted,

LIPELES LAW GROUP, APC

Date: February 13, 2025

By: 

Thomas H. Schelly
Attorneys for Plaintiff
Martin Hernandez