

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Monica Bachner

Joseph Lavi, Esq. (SBN 209776)
Vincent C. Granberry, Esq. (SBN 276483)
Danielle Montero, Esq. (SBN 333945)
LAVI & EBRAHIMIAN, LLP
8889 W. Olympic Boulevard, Suite 200
Beverly Hills, California 90211
Telephone: (310) 432-0000
Facsimile: (310) 432-0001
Email: jlavi@lelawfirm.com
vgranberry@lelawfirm.com
dmontero@lelawfirm.com
wht2@lelawfirm.com

Attorneys for Plaintiff JONATHAN O. SANCHEZ,
on behalf of himself and current and former aggrieved employees

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES-CENTRAL DISTRICT**

JONATHAN O. SANCHEZ, on behalf of
himself and other aggrieved employees,

Plaintiff,

vs.

EMPIRE WORKFORCE SOLUTIONS;
AMERICAN INTERNATIONAL
INDUSTRIES, INC.; and DOES 1 to 100,
inclusive,

Defendants.

Case No.: **22STCV34832**

PAGA ACTION

**PLAINTIFF JONATHAN O.
SANCHEZ'S COMPLAINT FOR:**

- 1. CIVIL PENALTIES PURSUANT
TO THE PRIVATE ATTORNEYS
GENERAL ACT OF 2004
("PAGA"), LABOR CODE
SECTIONS 2698, ET SEQ.**

COMES NOW Plaintiff JONATHAN O. SANCHEZ("Plaintiff"), who alleges and
complains against Defendants EMPIRE WORKFORCE SOLUTIONS; AMERICAN
INTERNATIONAL INDUSTRIES, INC.; and DOES 1 to 100, inclusive (collectively
"Defendants") as follows:

I. INTRODUCTION

1. This is a Private Attorneys' General Act of 2004, Lab. Code §§ 2698, *et seq.*
("PAGA") representative action brought by Plaintiff on behalf of the State of California, himself
and other current and former aggrieved employees of Defendants who worked as hourly non-

1 exempt employees in California during the relevant time period seeking civil penalties associated
2 with Defendants' violation of the Labor Code based on Defendants' failure to pay wages for all
3 hours worked at minimum wage; all overtime hours worked at the overtime rate of pay; failure to
4 authorize or permit all legally required and/or legally compliant meal periods or pay meal period
5 premium wages; statutory penalties for failure to timely pay earned wages; statutory penalties for
6 failure to provide accurate wage statements; waiting time penalties in the form of continuation
7 wages for failure to timely pay employees all wages due upon separation of employment. Plaintiff
8 seeks on a representative basis, following notice to the Labor and Workforce Development
9 Agency, civil penalties, reasonable attorneys' fees pursuant to Labor Code section 2699(g)(1) and
10 costs brought on behalf of Plaintiff, the State of California, and others aggrieved.

11 **II. JURISDICTION AND VENUE**

12 2. This Court has jurisdiction over the claims of Plaintiff and all other current and
13 former aggrieved California-based hourly non-exempt employees because Plaintiff's lawsuit seeks
14 civil penalties on behalf of herself, all other current and former aggrieved California-based hourly
15 non-exempt employees, and the State of California in excess of twenty-five thousand dollars
16 (\$25,000); Defendants employed Plaintiff and all other current and former aggrieved California-
17 based hourly non-exempt employees; and the injuries to Plaintiff and all other current and former
18 aggrieved California-based hourly non-exempt employees occurred in locations throughout
19 California, including but not limited to Los Angeles County at 2220 Gaspar Ave., Commerce, CA
20 90040.

21 3. In response to the COVID-19 pandemic, the Judicial Council of California enacted
22 Emergency Rule 9 to the California Rules of Court, which provided that, notwithstanding any
23 other law, the statutes of limitations and repose for civil causes of action that exceed 180 days are
24 tolled from April 6, 2020, until October 1, 2020.

25 **III. PARTIES**

26 1. Plaintiff brings this action as a representative of the Labor and Workforce
27 Development Agency on behalf of himself and other current and former employees subject to
28 violations of the Labor Code. The named Plaintiff and the persons on whose behalf this action is

1 filed include current, former and/or future employees of Defendants who work, worked, or will
2 work for Defendants as direct employees as well as temporary employees employed through temp
3 agencies as hourly non-exempt employees in California. At all times mentioned herein, the
4 currently named Plaintiff is and was domiciled and a resident and citizen of California and was
5 employed by Defendants in an hourly position at Defendants' location in Los Angeles from in or
6 around January 2019 through present.

7 2. Plaintiff is informed and believes and thereon alleges that Defendant EMPIRE
8 WORKFORCE SOLUTIONS is authorized to do business within the State of California and is
9 doing business in the State of California and/or that Defendants DOES 1-25 are, and at all times
10 relevant hereto were persons acting on behalf of Defendant EMPIRE WORKFORCE
11 SOLUTIONS in the establishment of, or ratification of, the aforementioned illegal wage and hour
12 practices or policies. Defendant EMPIRE WORKFORCE SOLUTIONS operates in Los Angeles
13 County and employed Plaintiff and putative class members in Los Angeles County, including but
14 not limited to, at 2220 Gaspar Ave., Commerce, CA 90040.

15 3. Plaintiff is informed and believes and thereon alleges that Defendant AMERICAN
16 INTERNATIONAL INDUSTRIES, INC. is authorized to do business within the State of
17 California and is doing business in the State of California and/or that Defendants DOES 26-50 are,
18 and at all times relevant hereto were persons acting on behalf of Defendant AMERICAN
19 INTERNATIONAL INDUSTRIES, INC. in the establishment of, or ratification of, the
20 aforementioned illegal wage and hour practices or policies. Defendant AMERICAN
21 INTERNATIONAL INDUSTRIES, INC. operates in Los Angeles County and employed Plaintiff
22 and putative class members in Los Angeles County, including but not limited to, at 2220 Gaspar
23 Ave., Commerce, CA 90040.

24 4. Plaintiff is informed and believes and thereon alleges that Defendants DOES 1
25 through 50 are corporations, or are other business entities or organizations of a nature unknown to
26 Plaintiff that employed Plaintiff and aggrieved California non-exempt employees, permitted
27 Plaintiff and aggrieved employees to work, and exercised control over the wages, hours and
28 working conditions of employment of Plaintiff and aggrieved employees.

1 5. Plaintiff is informed and believes and thereon alleges that Defendants DOES 51
2 through 100 are individuals unknown to Plaintiff. Each of the individual defendants is sued
3 individually and in his or her capacity as an agent, shareholder, owner, representative, manager,
4 supervisor, independent contractor and/or employee of each defendant who violated or caused to
5 be violated the minimum wage and overtime provisions of the Labor Code and/or any provision of
6 the Industrial Welfare Commission's wage orders regulating hours and days of work.

7 6. Plaintiff is unaware of the true names of Defendants DOES 1 through 100. Plaintiff
8 sues said defendants by said fictitious names, and will amend this complaint when the true names
9 and capacities are ascertained or when such facts pertaining to liability are ascertained, or as
10 permitted by law or by the Court. Plaintiff is informed and believes that each of the fictitiously
11 named defendants is in some manner responsible for the events and allegations set forth in this
12 complaint.

13 7. Plaintiff makes the allegations in this complaint without any admission that, as to
14 any particular allegation, Plaintiff bears the burden of pleading, proving, or persuading and
15 Plaintiff reserves all of Plaintiff's right to plead in the alternative.

16 **FIRST CAUSE OF ACTION**

17 **CIVIL PENALTIES AND WAGES PURSUANT TO THE PRIVATE ATTORNEYS**

18 **GENERAL ACT OF 2004, LABOR CODE SECTIONS 2698, ET SEQ.**

19 **(Against all Defendants by Plaintiff)**

20 8. Plaintiff incorporates all paragraphs above as though fully set forth herein.

21 9. During the period beginning one (1) year preceding Plaintiff sending the initial
22 PAGA Claim Notice to the LWDA to the present, Defendants violated Labor Code sections 201,
23 202, 203, 204, 226, 226.7, 510, 512, 1194, 1197, and Sections 14 and 15 of the applicable Wage
24 Orders.

25 10. Specifically, Defendants have committed the following violations of California
26 Labor Code:

27 11. **Failure to pay wages for all hours worked at the legal minimum wage:**
28 Defendants employed many of their employees, including Plaintiff, as hourly non-exempt

1 employees. In California, an employer is required to pay hourly employees for all “hours worked,”
2 which includes all time that an employee is under control of the employer and all time the
3 employee is suffered and permitted to work. This includes the time an employee spends, either
4 directly or indirectly, performing services which inure to the benefit of the employer.

5 12. Labor Code sections 1194 and 1197 require an employer to compensate employees
6 for all “hours worked” at least at a minimum wage rate of pay as established by the IWC and the
7 Wage Orders.

8 13. In this case, Plaintiff and other current and former aggrieved California-based
9 hourly non-exempt employees worked more minutes per shift than Defendants credited them with
10 having worked. Specifically, Defendants failed to pay Plaintiff and other current and former
11 aggrieved California-based hourly non-exempt employees all wages at the applicable minimum
12 wage for all hours worked due to Defendants’ policies, practices, and/or procedures including, but
13 not limited to:

14 (a) “Rounding down” or “shaving down” Plaintiff and other current and former
15 aggrieved California-based hourly non-exempt employees punches, including punches for meal
16 breaks, to the nearest quarter of an hour to the benefit of Defendants without paying Plaintiff and
17 other current and former aggrieved California-based hourly non-exempt employees for this time;
18 and

19 (b) Since August of 2021, automatically deducting 30 minutes from Plaintiff and other
20 current and former aggrieved California-based hourly non-exempt employees daily hours worked
21 and attributing that time to a meal break despite that Defendants routinely failed to provide timely,
22 uninterrupted, duty-free meal breaks of less than 30 minutes.

23 14. Therefore, Defendants suffered, permitted, and required Plaintiff and other current
24 and former aggrieved California-based hourly non-exempt employees to be subject to Defendants’
25 control without paying wages for that time. This resulted in Plaintiff and other current and former
26 aggrieved California-based hourly non-exempt employees working time for which they were not
27 compensated any wages, in violation of Labor Code sections 1194 and 1197 and the applicable
28 Wage Order.

1 15. **Failure to pay wages for overtime hours worked at the overtime rate of pay:**
2 Defendants employed many of their employees, including Plaintiff, as hourly non-exempt
3 employees. In California, an employer is required to pay hourly employees for all “hours worked,”
4 which includes all time that an employee is under control of the employer and all time the
5 employee is suffered and permitted to work. This includes the time an employee spends, either
6 directly or indirectly, performing services that inure to the benefit of the employer.’

7 16. Labor Code sections 510 and 1194 require an employer to compensate employees a
8 higher rate of pay for hours worked in excess of eight (8) hours in a workday, in excess of forty
9 (40) hours in a workweek, and on any seventh consecutive day of work in a workweek:

10 Any work in excess of eight (8) hours in one workday, any work in excess of forty (40)
11 hours in any one (1) workweek, and the first eight (8) hours worked on the seventh day of
12 work in any one (1) workweek, shall be compensated at the rate of no less than one-and-
13 one-half (1.5) times the regular rate of pay for an employee. Any work in excess of twelve
14 (12) hours in one (1) day shall be compensated at the rate of no less than twice the regular
rate of pay for an employee. In addition, any work in excess of eight (8) hours on any
seventh day of a workweek shall be compensated at the rate of no less than twice the
regular rate of pay of an employee.

15 Labor Code section 510.

16 17. In this case, Defendants failed to pay Plaintiff and other current and former
17 aggrieved California-based hourly non-exempt employees overtime wages for all overtime hours
18 worked due to Defendants’ policies, practices, and/or procedures including, but not limited to:

19 (a) “Rounding down” or “shaving down” Plaintiff and other current and former
20 aggrieved California-based hourly non-exempt employees punches, including punches for meal
21 breaks, to the nearest quarter of an hour to the benefit of Defendants without paying Plaintiff and
22 other current and former aggrieved California-based hourly non-exempt employees for this time;
23 and

24 (b) Since August of 2021, automatically deducting 30 minutes from Plaintiff and other
25 current and former aggrieved California-based hourly non-exempt employees daily hours worked
26 and attributing that time to a meal break despite that Defendants routinely failed to provide timely,
27 uninterrupted, duty-free meal breaks of less than 30 minutes.

28 18. The foregoing policies, practices, and/or procedures resulted in time during each

workday that Plaintiff and other current and former aggrieved California-based hourly non-exempt employees were under the control of Defendants but were not compensated. To the extent that the foregoing uncompensated time occurred when Plaintiff and other current and former aggrieved California-based hourly non-exempt employees worked more than eight (8) hours in a workday, more than forty (40) hours in a workweek, and/or seven (7) days in a workweek, Defendants failed to pay them at their overtime rate of pay for overtime hours worked, in violation of Labor Code sections 510 and 1194 and the applicable Wage Order.

19. **Failure to pay wages to hourly non-exempt employees for workdays that Defendants failed to provide legally required and compliant meal periods:** Plaintiff and other current and former aggrieved California-based hourly non-exempt employees regularly worked shifts of more than five (5) hours in length and shifts of more than ten (10) hours in length.

20. California law requires an employer to authorize or permit an employee an uninterrupted meal period of no less than thirty (30) minutes in which the employee is relieved of all duties and the employer relinquishes control over the employee's activities prior to the employee's sixth hour of work. Labor Code sections 226.7, 512; Wage Order 1 at §11; *Brinker Rest. Corp. v. Super Ct. (Hohnbaum)* (2012) 53 Cal.4th 1004. An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second such meal period of not less than thirty (30) minutes prior to the start of the eleventh hour of work. *Id.* If the employee is not relieved of all duty during a meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. A paid "on duty" meal period is only permitted when: (1) the nature of the work prevents an employee from being relieved of all duty; and (2) the parties have a written agreement agreeing to on-duty meal periods.

21. If an employer fails to provide an employee a meal period in accordance with the law, the employer must pay the employee one (1) hour of pay at the employee's regular rate of pay for each workday that a legally required and compliant meal period was not provided. Labor Code section 226.7; Wage Order 1 at §11.

22. In this case, Defendants failed to authorize or permit legally required and compliant meal periods to Plaintiff and other current and former aggrieved California-based hourly non-

1 exempt employees due to Defendants' policies, practices, and/or procedures, including but not
2 limited to:

3 (a) Defendants "rounded down" or "shaved down" Plaintiff and other current and
4 former aggrieved California-based hourly non-exempt employees punches to the nearest quarter of
5 an hour at the time they clocked in and out for meal periods resulting in meal periods of less than
6 30 minutes;

7 (b) Since August of 2021, automatically deducting 30 minutes from Plaintiff and other
8 current and former aggrieved California-based hourly non-exempt employees daily hours worked
9 and attributing that time to a meal break despite that Defendants routinely failed to provide timely,
10 uninterrupted, duty-free meal breaks of less than 30 minutes.

11 23. Additionally, Plaintiff alleges that Defendants maintained a policy, practice, and/or
12 procedure of failing to compensate Plaintiff and other current and former aggrieved California-
13 based hourly non-exempt employees one (1) hour of pay at their regular rate of pay for each
14 workday that Plaintiff and other current and former aggrieved California-based hourly non-exempt
15 employees did not receive legally required and compliant meal periods, in violation of Labor Code
16 section 226.7.

17 24. Defendants' foregoing policies, practices, and/or procedures resulted in Plaintiff
18 and other current and former aggrieved California-based hourly non-exempt employees not
19 receiving wages to compensate them for workdays during which Defendants did not provide them
20 with meal periods in compliance with California law.

21 25. **Failure to timely pay earned wages during employment:** In California, wages
22 must be paid at least twice during each calendar month on days designated in advance by the
23 employer as regular paydays, subject to some exceptions. Labor Code section 204(a). Wages
24 earned between the 1st and 15th days, inclusive, of any calendar month must be paid between the
25 16th and the 26th day of that month and wages earned between the 16th and the last day,
26 inclusive, of any calendar month must be paid between the 1st and 10th day of the following
27 month. *Id.* Other payroll periods such as those that are weekly, biweekly, or semimonthly, must be
28 paid within seven (7) calendar days following the close of the payroll period in which wages were

1 earned. Labor Code section 204(d).

2 26. As a derivative of Plaintiff's claims above, Plaintiff alleges that Defendants failed
3 to timely pay Plaintiff's and other current and former aggrieved California-based hourly non-
4 exempt employees' earned wages (including minimum wages, overtime wages, and/or meal period
5 premium wages) in violation of Labor Code section 204. Defendants' aforementioned policies,
6 practices, and/or procedures resulted in their failure to pay Plaintiff's and other current and former
7 aggrieved California-based hourly non-exempt employees' their earned wages within the
8 applicable time frames outlined in Labor Code section 204.

9 27. **Failure to provide complete and accurate wage statements:** Labor Code section
10 226, subdivision (a). Labor Code section 226(a) provides, *inter alia*, that, upon paying an
11 employee his or her wages, the employer must "furnish each of his or her employees ... an
12 itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the
13 employee, except for any employee whose compensation is solely based on a salary and who is
14 exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of
15 the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable
16 piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided, that all
17 deductions made on written orders of the employee may be aggregated and shown as one item, (5)
18 net wages earned, (6) the inclusive dates of the pay period for which the employee is paid, (7) the
19 name of the employee and his or her social security number, (8) the name and address of the legal
20 entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and
21 the corresponding number of hours worked at each hourly rate by the employee."

22 28. As a derivative of Plaintiff's allegations above, Defendants' failure to pay Plaintiff
23 and other current and former aggrieved California-based hourly non-exempt employees all wages
24 earned (including minimum wages, overtime wages, and/or meal period premium wages) rendered
25 Plaintiff's and other current and former aggrieved California-based hourly non-exempt employees'
26 wage statements inaccurate, in violation of Labor Code section 226.

27 29. **Failure to pay employees all wages due at time of termination/resignation:** An
28 employer is required to pay all unpaid wages timely after an employee's employment ends. The

1 wages are due immediately upon termination (Labor Code section 201) or within seventy-two (72)
2 hours of resignation (Labor Code section 202).

3 30. As a derivative of Plaintiff's allegations above, because Defendants failed to pay
4 Plaintiff and other current and former aggrieved California-based hourly non-exempt employees
5 all their earned wages (including minimum wages, overtime wages, and/or meal period premium
6 wages) Defendants failed to pay those employees timely after each employee's termination and/or
7 resignation, in violation of Labor Code sections 201, 202, and 203.

8 31. Defendants' violations of Wage Order 1 constituted violations of Labor Code
9 section 1198, which prohibits employment under conditions of labor that violate the Wage Orders.

10 32. Labor Code sections 2699, subdivisions (a) and (g) authorize an aggrieved
11 employee, on behalf of himself or herself and other current or former employees, to bring a civil
12 action to recover civil penalties against all Defendants pursuant to the procedures specified in
13 Labor Code section 2699.3.

14 33. Plaintiff has complied with the procedures for bringing suit specified in Labor
15 Code section 2699.3. On July 15, 2022, Plaintiff filed a PAGA Claim Notice with the LWDA and
16 provided notice to Defendants by certified mail which provided notice of the specific provisions of
17 the Labor Code alleged to have been violated, including the facts and theories to support the
18 violations alleged.

19 34. Pursuant to Labor Code section 2699.3, the LWDA must give written notice by
20 certified mail to the parties that it intends to investigate the alleged violations of the Labor Code
21 within 60 days of the date of the complainant's written notice. The LWDA failed to provide the
22 parties notice within 60 days of the date of Plaintiff's PAGA Claim Notice that the LWDA intends
23 to investigate Plaintiff's claims.

24 35. Pursuant to Labor Code sections 2699(a) and (f), Plaintiff is entitled to recover civil
25 penalties for Defendants' violations of Labor Code sections 201, 202, 203, 204, 226, 226.7, 510,
26 512, 1194, and 1197, beginning one (1) year preceding Plaintiff sending the initial PAGA Claim
27 Notice to the LWDA to the present, in the following amounts:

28 a. For violations of Labor Code sections 201, 202, 203, 204, 226.7, 2802, 512,

1 and 1198; one hundred dollars (\$100) for each aggrieved employee per pay period for the initial
2 violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each
3 subsequent violation [penalty amounts established by Labor Code section 2699(f)(2)].

4 b. For violations of Labor Code section 226, two hundred fifty dollars (\$250)
5 for each employee for each pay period for the initial violation, and for each subsequent violation,
6 one thousand dollars (\$1000) for each underpaid employee for each pay period [penalty amounts
7 established by Labor Code section 226.3].

8 c. For violations of Labor Code section 510, fifty dollars (\$50) for each
9 employee for each pay period for the initial violation, and for each subsequent violation, one
10 hundred dollars (\$100) for each underpaid employee for each pay period [penalty amounts
11 established by Labor Code section 558] and any unpaid wages.

12 d. For violations of Labor Code section 1194 and 1197, one hundred dollars
13 (\$100) for each underpaid employee for each pay period for the initial violation, and for each
14 subsequent violation, two hundred fifty dollars (\$250) for each underpaid employee for each pay
15 period [penalty amounts established by Labor Code section 1197.1] and any unpaid wages.

16 36. Pursuant to Labor Code section 2699(g), Plaintiff is entitled to an award of
17 reasonable attorneys' fees and costs in connection with his claims for civil penalties.

18 **PRAYER FOR RELIEF**

19 **WHEREFORE, PLAINTIFF, ON BEHALF OF HIMSELF AND ON OTHER**
20 **AGGRIEVED EMPLOYEES, PRAYS AS FOLLOWS:**

21 **ON THE FIRST CAUSE OF ACTION:**

22 1. That Defendants be found to have violated the provisions of the Labor Code and
23 the IWC Wages Orders as to the Plaintiff and aggrieved employees;

24 2. For any and all legally applicable penalties during the relevant statute of limitations
25 subject to any permissible tolling, including but not limited to those recoverable under the
26 California Labor Code, including but not limited to section 2699(f);

27 3. For attorneys' fees and costs of suit, including but not limited to those recoverable
28 under California Labor Code section 2699(g); and

1 4. For such and other further relief, in law and/or equity, as the Court deems just or
2 appropriate

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4 Dated: November 1, 2022

Respectfully submitted,
LAVI & EBRAHIMIAN, LLP

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6 By: 
7 Joseph Lavi, Esq.
8 Vincent C. Granberry, Esq.
9 Danielle E. Montero, Esq.
10 Attorneys for Plaintiff
11 JONATHAN O. SANCHEZ,
12 on behalf of himself and current and former
13 aggrieved employees
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