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Attorneys for Plaintiff STEVE GUTIERREZ,
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

STEVE GUTIERREZ, on behalf of himself and
other aggrieved employees,

Plaintiff,

vs.

CONSOLIDATED DISPOSAL SERVICE,
L.L.C.; and DOES 1 to 100, inclusive,

Defendants.

Case No.: **22STCV33092**

PAGA ACTION

**PLAINTIFF STEVE GUTIERREZ'S
COMPLAINT FOR:**

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

COMES NOW Plaintiff STEVE GUTIERREZ ("Plaintiff"), who alleges and complains
against Defendants CONSOLIDATED DISPOSAL SERVICE, L.L.C.; and DOES 1 to 100,
inclusive (collectively "Defendants") as follows:

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1 **I. INTRODUCTION**

2 1. This is a Private Attorneys' General Act of 2004, Lab. Code §§ 2698, *et seq.*
3 ("PAGA") representative action brought by Plaintiff on behalf of the State of California, himself
4 and other current and former aggrieved employees of Defendants who worked as hourly non-
5 exempt employees in California during the relevant time period seeking civil penalties associated
6 with Defendants' violation of the Labor Code based on Defendants' failure to pay wages for all
7 hours worked at the employees' minimum wage rate, failure to provide all legally required and
8 legally compliant meal and rest periods, failure to timely pay earned wages during employment,
9 failure to produce requested employment records failure to provide complete and accurate wage
10 statements, and failure to timely pay all unpaid wages following separation of employment.
11 Plaintiff seeks on a representative basis, following notice to the Labor and Workforce
12 Development Agency, civil penalties, reasonable attorneys' fees pursuant to Labor Code section
13 2699(g)(1) and costs brought on behalf of Plaintiff, the State of California, and others aggrieved.

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

18 **II. JURISDICTION AND VENUE**

19 3. This Court has jurisdiction over the claims of Plaintiff and all other current and
20 former aggrieved California-based hourly non-exempt employees because Plaintiff's lawsuit seeks
21 civil penalties on behalf of herself, all other current and former aggrieved California-based hourly
22 non-exempt employees, and the State of California in excess of twenty-five thousand dollars
23 (\$25,000); Defendants employed Plaintiff and all other current and former aggrieved California-
24 based hourly non-exempt employees; and the injuries to Plaintiff and all other current and former
25 aggrieved California-based hourly non-exempt employees occurred in locations throughout
26 California, including but not limited to Los Angeles County at 4133 Bandini Blvd., Vernon, CA
27 90058.

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1 **III. PARTIES**

2 4. Plaintiff brings this action as a representative of the Labor and Workforce
3 Development Agency on behalf of himself and other current and former employees subject to
4 violations of the Labor Code. The named Plaintiff and the persons on whose behalf this action is
5 filed include current, former and/or future employees of Defendants who work, worked, or will
6 work for Defendants as direct employees as well as temporary employees employed through temp
7 agencies as hourly non-exempt employees in California. At all times mentioned herein, the
8 currently named Plaintiff is and was domiciled and a resident and citizen of California and was
9 employed by Defendants in an hourly position at Defendants' location in Los Angeles County
10 from approximately 2008 until on or about October 7, 2021.

11 5. Plaintiff is informed and believes and thereon alleges that Defendant
12 CONSOLIDATED DISPOSAL SERVICE, L.L.C. is authorized to do business within the State of
13 California and is doing business in the State of California and/or that Defendants DOES 1-50 are,
14 and at all times relevant hereto were persons acting on behalf of Defendant CONSOLIDATED
15 DISPOSAL SERVICE, L.L.C. in the establishment of, or ratification of, the aforementioned illegal
16 wage and hour practices or policies. Defendant CONSOLIDATED DISPOSAL SERVICE, L.L.C.
17 operates in Los Angeles County and employed Plaintiff and aggrieved employees in Los Angeles
18 County, including but not limited to, at 4133 Bandini Blvd., Vernon, CA 90058.

19 6. Plaintiff is informed and believes and thereon alleges that Defendants DOES 1
20 through 50 are corporations, or are other business entities or organizations of a nature unknown to
21 Plaintiff that employed Plaintiff and aggrieved California non-exempt employees, permitted
22 Plaintiff and aggrieved employees to work, and exercised control over the wages, hours and
23 working conditions of employment of Plaintiff and aggrieved employees.

24 7. Plaintiff is informed and believes and thereon alleges that Defendants DOES 51
25 through 100 are individuals unknown to Plaintiff. Each of the individual defendants is sued
26 individually and in his or her capacity as an agent, shareholder, owner, representative, manager,
27 supervisor, independent contractor and/or employee of each defendant who violated or caused to
28 be violated the minimum wage and overtime provisions of the Labor Code and/or any provision of

1 the Industrial Welfare Commission's wage orders regulating hours and days of work.

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

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

11 **FIRST CAUSE OF ACTION**

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

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

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

15 10. Plaintiff incorporates all paragraphs above as though fully set forth herein.

16 11. During the period beginning one (1) year preceding Plaintiff sending the initial
17 PAGA Claim Notice to the LWDA to the present, Defendants violated Labor Code sections 201,
18 202, 203, 204, 226, 226.7, 510, 512, 1194, 1197, and Sections 14 and 15 of the applicable Wage
19 Orders.

20 12. Specifically, Defendants have committed the following violations of California
21 Labor Code:

22 13. **Failure to pay wages for all hours worked at the legal minimum wage:**
23 Defendants employed many of their employees, including Plaintiff, as hourly non-exempt
24 employees. In California, an employer is required to pay hourly employees for all "hours worked,"
25 which includes all time that an employee is under control of the employer and all time the
26 employee is suffered and permitted to work. This includes the time an employee spends, either
27 directly or indirectly, performing services which inure to the benefit of the employer.

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

4 15. In this case, Plaintiff and other current and former aggrieved California-based
5 hourly non-exempt employees worked more minutes per shift than Defendants credited them with
6 having worked. Specifically, Defendants failed to pay Plaintiff and other current and former
7 aggrieved California-based hourly non-exempt employees all wages at the applicable minimum
8 wage for all hours worked due to Defendants’ policies, practices, and/or procedures including, but
9 not limited to, requiring Plaintiff and other current and former aggrieved California-based hourly
10 non-exempt employees to put on personal protective equipment (“PPE”) prior to clocking in for
11 their shifts and remove the equipment after clocking out. The required PPE was kept in an on-site
12 locker and included, but was not limited to, a hard hat, gloves, and safety glasses. The equipment
13 also included steel toe boots which Plaintiff and other current and former aggrieved California-
14 based hourly non-exempt employees cannot wear into their homes because the boots become
15 contaminated by hazardous materials at the worksite. Following the outbreak of COVID-19,
16 Defendants eliminated access to the lockers and required that Plaintiff and other aggrieved
17 employees keep all of their PPE in their personal vehicles and put on the equipment prior to every
18 shift. At the end of each shift, Plaintiff and other aggrieved employees remove all of their PPE for
19 storage in their personal vehicles.

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

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

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

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

20 20. In this case, Defendants failed to authorize or permit legally required and compliant
21 meal periods to Plaintiff and other current and former aggrieved California-based hourly non-
22 exempt employees due to Defendants' policies, practices, and/or procedures, including but not
23 limited to, failing to authorize or permit a second meal period to Plaintiff and other current and
24 former aggrieved California-based hourly non-exempt employees when they worked more than
25 ten (10) hours in a workday.

26 21. Additionally, Plaintiff alleges that Defendants maintained a policy, practice, and/or
27 procedure of failing to compensate Plaintiff and other current and former aggrieved California-
28 based hourly non-exempt employees one (1) hour of pay at their regular rate of pay for each

1 workday that Plaintiff and other current and former aggrieved California-based hourly non-exempt
2 employees did not receive legally required and compliant meal periods, in violation of Labor Code
3 section 226.7.

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

8 23. **Failure to pay wages to hourly non-exempt employees for workdays that**
9 **Defendants failed to provide legally required and compliant rest periods:** Plaintiff and other
10 current and former aggrieved California-based hourly non-exempt employees regularly worked
11 shifts of more than three-and-a-half (3.5) hours.

12 24. California law requires every employer to authorize and permit an employee a rest
13 period of ten (10) net minutes for every four (4) hours worked or major fraction thereof. Labor
14 Code section 226.7; Wage Order 1 at §12. Under California law, "[e]mployees are entitled to 10
15 minutes' rest for shifts from three and one-half to six hours in length, 20 minutes for shifts of more
16 than six hours up to 10 hours, 30 minutes for shifts of more than 10 hours up to 14 hours, and so
17 on." *Brinker Restaurant Corp. v. Sup. Ct. (Hohnbaum)* (2012) 53 Cal.4th 1004, 1029; Labor Code
18 section 226.7; Wage Order 1 at §12. Rest periods, insofar as practicable, shall be in the middle of
19 each work period. Wage Order 1 at §12. Additionally, the rest period requirement "obligates
20 employers to permit – and authorizes employees to take – off-duty rest periods." *Augustus v. ABM*
21 *Security Services, Inc.*, (2016) 5 Cal.5th 257, 269. That is, during rest periods employers must
22 relieve employees of all duties and relinquish control over how employees spend their time. *Id.*

23 25. If the employer fails to authorize or permit a required rest period, the employer
24 must pay the employee one (1) hour of pay at the employee's regular rate of pay for each workday
25 the employer did not authorize or permit a legally required rest period. Labor Code section 226.7;
26 Wage Order 1 at § 12.

27 26. In this case, Defendants failed to authorize or permit all legally required and
28 compliant rest periods to Plaintiff and other current and former aggrieved California-based hourly

1 non-exempt employees due to Defendants' policies, practices, and/or procedures including, but not
2 limited to, failing to authorize or permit a third rest period to Plaintiff and other current and
3 former aggrieved California-based hourly non-exempt employees when they worked more than
4 ten (10) hours in a workday.

5 27. Additionally, Plaintiff alleges that Defendants maintained a policy, practice, and/or
6 procedure of failing to compensate Plaintiff and other current and former aggrieved California-
7 based hourly non-exempt employees with one (1) hour of pay at their regular rate of pay for each
8 workday they did not receive legally required and compliant rest periods, in violation of Labor
9 Code section 226.7.

10 28. Defendants' foregoing policies, practices, and/or procedures resulted in Plaintiff
11 and other current and former aggrieved California-based hourly non-exempt employees not
12 receiving wages to compensate them for workdays in which Defendants did not provide them with
13 rest periods in compliance with California law.

14 29. **Failure to timely pay earned wages during employment:** In California, wages
15 must be paid at least twice during each calendar month on days designated in advance by the
16 employer as regular paydays, subject to some exceptions. Labor Code section 204(a). Wages
17 earned between the 1st and 15th days, inclusive, of any calendar month must be paid between the
18 16th and the 26th day of that month and wages earned between the 16th and the last day,
19 inclusive, of any calendar month must be paid between the 1st and 10th day of the following
20 month. *Id.* Other payroll periods such as those that are weekly, biweekly, or semimonthly, must be
21 paid within seven (7) calendar days following the close of the payroll period in which wages were
22 earned. Labor Code section 204(d).

23 30. Plaintiff alleges that Defendants failed to timely pay Plaintiff's and other current
24 and former aggrieved California-based hourly non-exempt employees' earned wages because
25 Defendants recalculated and adjusted overtime wages on subsequent paystubs issued weeks and/or
26 months after such overtime wages were earned, in direct violation of Labor Code § 204.

27 31. Further, as a derivative of Plaintiff's claims above, Plaintiff alleges that Defendants
28 failed to timely pay Plaintiff's and other current and former aggrieved California-based hourly

1 non-exempt employees' earned wages (including minimum wages, meal period premium wages
2 and/or rest period premium wages), in violation of Labor Code section 204. Defendants'
3 aforementioned policies, practices, and/or procedures resulted in their failure to pay Plaintiff's and
4 other current and former aggrieved California-based hourly non-exempt employees' their earned
5 wages within the applicable time frames outlined in Labor Code section 204.

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

19 **33.** Defendants committed direct violations of Labor Code § 226 through their policies,
20 practices, and/or procedures. Because Defendants failed to provide Plaintiff and other current and
21 former aggrieved California-based hourly non-exempt employees with itemized wage statements
22 accurately showing the overtime rate of pay, they failed to provide Plaintiff and other aggrieved
23 employees with itemized wage statements accurately showing: (1) gross wages earned; (2) net
24 wages earned; and (3) all applicable hourly rates in effect during the pay period and the
25 corresponding number of hours worked at each hourly rate by the employee.

26 **34.** As a derivative of Plaintiff's allegations above, Defendants' failure to pay Plaintiff
27 and other current and former aggrieved California-based hourly non-exempt employees all wages
28 earned (including minimum wages, meal period premium wages, and/or rest period premium

wages) rendered Plaintiff's and other current and former aggrieved California-based hourly non-exempt employees' wage statements inaccurate, in violation of Labor Code section 226.

35. **Failure to pay employees all wages due at time of termination/resignation:** An employer is required to pay all unpaid wages timely after an employee's employment ends. The wages are due immediately upon termination (Labor Code section 201) or within seventy-two (72) hours of resignation (Labor Code section 202).

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

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

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

39. Plaintiff has complied with the procedures for bringing suit specified in Labor Code section 2699.3. On July 12, 2022, Plaintiff filed a PAGA Claim Notice with the LWDA and provided notice to Defendants by certified mail which provided notice of the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support the violations alleged.

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

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

a. For violations of Labor Code sections 201, 202, 203, 204, 226.7, and 512; one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation [penalty amounts established by Labor Code section 2699(f)(2)].

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

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

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

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

PRAYER FOR RELIEF

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

ON THE FIRST CAUSE OF ACTION:

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

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

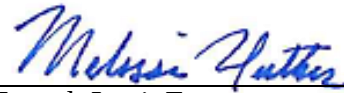
3. For attorneys' fees and costs of suit, including but not limited to those recoverable under California Labor Code section 2699(g); and

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

Dated: October 7, 2022

Respectfully submitted,
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