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Attorneys for Plaintiff Darryl Thrower, on behalf of himself and all “aggrieved employees” pursuant to Labor Code § 2698 *et seq.*

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

DARRYL THROWER, on behalf of himself
and all “aggrieved employees” pursuant to
Labor Code § 2698 *et seq.*,

Plaintiff,

v.

ATLANTIC LABS LB, a California
corporation, and DOES 1 through 10,
inclusive,

Defendants.

CASE NO: **22LBCV01023**

**REPRESENTATIVE ACTION
COMPLAINT FOR PENALTIES
PURSUANT TO LABOR CODE § 2699(f)
FOR VIOLATIONS OF LABOR CODE
§§ 201, 202, 226(a), 226.7, 510, 512, AND
1194 AND PURSUANT TO LABOR CODE
§ 2699(a) FOR VIOLATIONS OF LABOR
CODE §§ 226.3, 226.8, AND 558**

1 Plaintiff DARRYL THROWER (“Plaintiff”), on behalf of himself and others as an “aggrieved
2 employee” under the Labor Code Private Attorneys General Act of 2004, codified as Labor Code §§
3 2698 *et seq.*, complains of ATLANTIC LABS LB, a California corporation, and/or any subsidiaries
4 or affiliated companies (hereinafter referred to as “Defendants”), as follows:

5 **I.**

6 **INTRODUCTION AND FACTUAL BACKGROUND**

7 1. This is a Representative Action, pursuant to Labor Code § 2698 *et seq.*, on behalf of
8 Plaintiff and other misclassified independent contractors who currently work or formerly worked for
9 Defendants in California (“Aggrieved Employees”).

10 2. For at least one (1) year prior to the filing of this action and at least one (1) year prior
11 to the date Plaintiff began the process of exhausting the administrative requirements, pursuant to
12 Labor Code § 2698 *et seq.*, and continuing to the present (the “liability period”), Defendants have had
13 consistent policies of:

14 a. Misclassifying Plaintiff and certain Aggrieved Employees as independent
15 contractors, instead of non-exempt employees, in violation of Labor Code § 226.8. Defendants
16 controlled their wages, hours and working conditions. Specifically, Defendants paid Plaintiff and
17 Aggrieved Employees an hourly wage and provided them with a set hourly schedule. Defendants
18 controlled Aggrieved Employees’ working hours—including, among other things, the number of
19 hours they were permitted to work and their work schedule. Defendants also controlled their working
20 conditions—including, among other things, requiring Aggrieved Employees to report to a specific
21 post for a specific shift and specific hours worked. As Defendants had control over Aggrieved
22 Employees’ wages, hours and working conditions, Aggrieved Employees were improperly classified
23 as independent contractors and instead should have been classified as non-exempt employees;

24 b. Failing to pay Plaintiff and other Aggrieved Employees all wages earned, in
25 violation of Labor Code §§ 510, 558, and 1194. Plaintiff and other Aggrieved Employees were not
26 paid for time spent on-call. An employer is obligated to pay the wages of an hourly employee for all
27 the time the employee is under the control of the employer, and includes all the time the employee is
28 suffered or permitted to work, whether or not required to do so. Plaintiff and Aggrieved Employees

1 were not paid premium overtime wages of one-and-one-half times the regular rate of pay for all hours
2 worked over eight hours in a workday and over forty hours in a workweek when they worked on-call
3 hours. These failures to pay all wages due at the proper rates of pay constitute violations of Labor
4 Code §§ 510, 558, and 1194;

5 c. Failing to pay premium wages to Plaintiff and Aggrieved Employees who were
6 denied proper meal periods, in violation of Labor Code §§ 226.7, 512, 558 and IWC Wage Order 4-
7 2001. Plaintiff and Aggrieved Employees were routinely denied, and not authorized to take, a proper,
8 timely, uninterrupted, 30-minute meal period for every shift worked that exceeded five hours, or a
9 second proper, timely, uninterrupted, 30-minute meal period for every shift worked that exceeded ten
10 hours, but were not paid premium wages of one hour's pay for each missed first or second meal
11 period. When they were able to take a meal period, they were cut short, late or on-duty, in violation
12 of Labor Code §§ 226.7, 512 and 558 and IWC Wage Order 4-2001;

13 d. Failing to pay premium wages to Plaintiff and other Aggrieved Employees who
14 were denied on-the-clock rest periods, in violation of Labor Code § 226.7 and IWC Wage Order No.
15 4-2001. Plaintiff and Aggrieved Employees were routinely unable to take a 10-minute rest period for
16 every four (4) hours of work or major fraction thereof, but were not paid premium wages of one
17 hour's pay for each missed rest period. When they were able to take a rest period, they were oftentimes
18 late, cut short or on-duty, in violation of Labor Code § 226.7 and IWC Wage Order No. 4-2001;

19 e. Failing to provide Plaintiff and Aggrieved Employees with wage statements,
20 in violation of Labor Code §§ 226(a) and 226.3. Defendants did not provide any wage statements to
21 Plaintiff and Aggrieved Employees; and

22 f. Failing to pay Plaintiff and certain Aggrieved Employees all wages due at the
23 separation of their employment based on the time frames required by Labor Code §§ 201 and 202. As
24 stated above, Plaintiff and other Aggrieved Employees were not paid all wages due during the course
25 of their employment and, as a result of this failure, they were not timely paid all wages due at the
26 separation of their employment. This violates Labor Code §§ 201-202 and is alleged on behalf of
27 Plaintiff and certain Aggrieved Employees no longer employed by Defendants.
28

3. Plaintiff, on behalf of himself and all Aggrieved Employees pursuant to Labor Code § 2698 *et seq.*, seeks civil penalties for Defendants' violations of the California Labor Code.

4. Venue is proper in this judicial district, pursuant to Code of Civil Procedure § 395. The Labor Code violations alleged against Defendants herein arose throughout California, including in Los Angeles County.

II.

TOLLING AGREEMENT

5. Plaintiff and Defendants entered into an agreement to toll the statute of limitations, pursuant to California Code of Civil Procedure § 360.5, from October 24, 2022 through December 3, 2022. As such, all periods of limitation (statutory or otherwise) affecting any and all claims or causes of actions which Plaintiff may have against Defendants has been tolled between October 24, 2022 and December 3, 2022.

III.

PARTIES

A. Plaintiff

6. Plaintiff DARRYL THROWER was contracted by Defendants from July 2019 through February 2021 in Los Angeles County, California.

B. Defendants

7. Defendant ATLANTIC LABS LB is a California corporation that contracted with Plaintiff and Aggrieved Employees in Los Angeles County, California.

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

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

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

IV.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

**PLAINTIFF AND ALL AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS
PENALTIES PURSUANT TO LABOR CODE § 2699(f) FOR VIOLATIONS OF LABOR
CODE §§ 201, 202, 226(a), 226.7, 510, 512, AND 1194 AND PURSUANT TO LABOR CODE
§ 2699(a) FOR VIOLATIONS OF LABOR CODE §§ 226.3, 226.8, AND 558**

11. Plaintiff incorporates paragraphs 1 through 10 of this Complaint as though fully set forth herein.

12. As a result of the acts alleged above, including the Labor Code violations set forth in paragraph 2 above, Plaintiff seeks civil penalties pursuant to Labor Code §§ 2698 *et seq.*

13. 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 § 2699(f), \$100 for each initial violation and \$200 for each subsequent violation of Labor Code §§ 201, 202, 226(a), 226.7, 510, 512, and 1194; and
- b. Pursuant to Labor Code § 2699(f), the penalties as authorized by Labor Code §§ 226.3, 226.8, and 558.

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

15. On August 17, 2022, Plaintiff sent a letter, by online submission to the LWDA and by certified mail, return receipt requested, to Defendants setting forth the facts and theories of the violations alleged against Defendants, as prescribed by Labor Code § 2698 *et seq.* Pursuant to Labor Code § 2699.3(a)(2)(A), no notice was received by Plaintiff from the LWDA within sixty-five (65) calendar days of August 17, 2022. Plaintiff may therefore commence this action to seek civil penalties pursuant to Labor Code § 2698 *et seq.*

Wherefore, Plaintiff and the Aggrieved Employees he seeks to represent request relief as described below.

IV.

RELIEF REQUESTED

WHEREFORE, Plaintiff prays for the following relief:

1. For civil penalties pursuant to Labor Code § 2698 *et seq.* for Plaintiff and all other Aggrieved Employees;
2. An award providing for payment of costs of suit pursuant to Labor Code § 2699(g)(1) and other applicable law;
3. An award of attorneys' fees pursuant to Labor Code § 2699(g)(1) and other applicable law; and
4. Such other and further relief as this Court may deem just and proper.

Dated: December 20, 2022

Respectfully submitted,

GAINES & GAINES
A Professional Law Corporation

By: Daniel F. Gaines
DANIEL F. GAINES
EVAN S. GAINES
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