

FILED
Superior Court Of California,
Sacramento
12/27/2022
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By _____, Deputy
Case Number:
34-2022-00331924

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8 **SUPERIOR COURT OF CALIFORNIA**
9 **IN AND FOR THE COUNTY OF SACRAMENTO**
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11 JESUS ISGUERRA, individually, and on
12 behalf of all others similarly situated and
aggrieved,

13 Plaintiff,

14 vs. TRANSPORTATION SUPPORT
15 SERVICES, INC., a California corporation,
T&S INTERMODAL MAINTENANCE,
16 INC., a California corporation;
TRANSPORTATION LOAD SERVICES,
17 INC., a California corporation, SAMMY
COX, an individual, and DOES 1 through 20,
18 inclusive,

19 Defendants.
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CASE NO.

CLASS ACTION COMPLAINT

JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

BY FAX

GENERAL ALLEGATIONS

1. Plaintiff JESUS ISGUERRA is an individual residing in the State of California.

2. On information and belief, defendant TRANSPORTATION SUPPPORT SERVICES, INC. ("TSS") is a California corporation duly licensed to conduct business in the State of California.

3. On information and belief, defendant T&S INTERMODAL MAINTENANCE, INC. ("T&S") is a California corporation duly licensed to conduct business in the State of California.

4. On information and belief, defendant TRANSPORTATION LOAD SERVICES, INC. ("TLS") is a California corporation duly licensed to conduct business in the State of California.

5. On information and belief, Defendant SAMMY COX is an individual residing in the State of California and is, and at all relevant times has been, the Chief Executive Officer of defendants TSS, T&S, and TLS, owns, operates, and/or manages defendants TSS, T&S, and TLS, and had direct control and power over the working conditions and the violations at issue in this Complaint. On information and belief, defendant COX devised and implemented the policies at issue in this complaint and "caused" these violations as that term is used in Labor Code §§ 558 and 1197.1. Pursuant to Labor code §§ 558 and 1197.1, SAMMY COX is individually liable as a person who "caused" the violations to occur.

6. Upon information and belief, TSS, T&S, and TLS operated/operate as a single integrated enterprise, and under California law two or more companies may be treated as a single integrated enterprise for purposes of enforcing claims under the California Labor Code. Among other things, TSS, T&S, and TLS are owned and operated by the same three individuals,, they all share the same physical location at 6540 Austin Road, Stockton, California, they utilize the same policies and procedures at issue in this lawsuit, on email communications, ownership use one email address and indicate they represent all three entities in their email signature blocks, and Plaintiff's personnel file contains forms reflecting all three entities, and he received wages from multiple entities for the same work.

7. Plaintiff is unaware of the names and capacities of those defendants sued as DOES 1 through 20 but will amend this complaint when that information becomes known. Plaintiff is informed and believes and thereon alleges that, at all relevant times, each of the defendants, including the DOE defendants, was the officer, director, employee, agent, representative, alter ego, or co-conspirator of each of the other defendants, and in engaging in the conduct alleged herein, was acting in the course and scope of, and in furtherance of, such relationship. Unless otherwise specified, Plaintiff will refer to all defendants as “Defendants,” and each allegation pertains to each defendant.

8. This court possesses original subject matter jurisdiction over this matter. Venue is proper in this judicial district because Defendants transact business in this district, and some of the complained of conduct occurred in this judicial district, as Plaintiff performed job duties in the County of Sacramento, for which she was not properly compensated by Defendants as alleged herein.

CLASS ACTION ALLEGATIONS

9. Plaintiff worked for Defendants as a non-exempt employee, and was jointly employed by Defendants. Plaintiff seeks to bring this action as a class action under Code of Civil Procedure section 382. The class Plaintiff seeks to represent is defined as follows: “All individuals employed by Defendants, jointly or otherwise, as a non-exempt employee, in the State of California during the period commencing on the date that is four years preceding the filing of this complaint, plus applicable tolling under Emergency Order 9.”

10. All applicable statutes of limitations were tolled from April 6 to October 1, 2020 under Emergency Order No. 9.

11. Ascertainable Class. The proposed class is ascertainable as its members can be identified and located using information in Defendant's payroll and personnel records.

12. Common Questions of Law and Fact. This lawsuit is suitable for class treatment because common questions of law and fact predominate over individual issues. Common questions include, but are not limited to, the following: (1) whether Defendants properly calculated and paid all amounts due to the class members for wages earned, including minimum

1 and overtime wages, under California law, (2) whether Defendants violated the California Labor
2 Code and/or IWC Wage Orders by withholding wages, including minimum and overtime wages,
3 from the class members, (3) whether Defendants provided the class members with all required
4 meal periods on a fully-compliant basis, or compensation in lieu thereof; (4) whether Defendants
5 provided the class members with all required rest periods on a fully-compliant basis, or
6 compensation in lieu thereof; (5) whether Defendants provided the class members with accurate
7 itemized wage statements; (6) whether Defendants timely paid the class members all wages due
8 upon separation of employment, (7) whether Defendants' failure to timely pay all wages due upon
9 termination of employment was willful; and (8) whether Defendants violated California Business
10 and Professions Code sections 17200, et seq.

11 13. Numerosity. The plaintiff class is so numerous that the individual joinder of all
12 members is impractical under the circumstances of this case. While the exact number of class
13 members is unknown to Plaintiff, Plaintiff is informed and believes the class consists of at least
14 100 individuals.

15 14 Typicality. Plaintiff's claims are typical of the claims of the class members.
16 Plaintiff suffered a similar injury as the other class members as a result of Defendant's common
17 practices regarding the calculation and payment of wages, including minimum overtime wages,
18 meal and rest periods, provision of wage statements, payment of wages due upon termination, and
19 reimbursement of business expenses. In addition, Plaintiff will fairly and adequately protect the
20 interests of the class members. Plaintiff has no interests adverse to the interests of the other class
21 members.

22 15. Superiority. A class action is superior to other available means for the fair and
23 efficient adjudication of this controversy since individual joinder of all members of the class is
24 impractical. Class action treatment will permit a large number of similarly situated persons to
25 prosecute their common claims in a single forum simultaneously, efficiently, and without the
26 unnecessary duplication of effort and expense that numerous individual actions would engender.
27 Furthermore, as the damages suffered by each individual member of the class may be relatively
28 small, the expenses and burden of individual litigation would make it difficult or impossible for

individual members of the class to redress the wrongs done to them, while an important public interest will be served by addressing the matter as a class action. The cost to the court system of adjudication of such individualized litigation would be substantial. Individualized litigation would also present the potential for inconsistent or contradictory judgments. Finally, the alternative of filing a claim with the California Labor Commissioner is not superior, given the lack of discovery in such proceedings, the fact that there are fewer available remedies, and the losing party has the right to a trial de novo in the Superior Court.

FIRST CAUSE OF ACTION

(Recovery of Unpaid Minimum Wages – Labor Code §§ 1194 and 1194.2)

16. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 15.

17. California law provides employees in California must be paid for all hours worked, up to 40 per week or 8 per day, at a regular time rate no less than the mandated minimum wage. Plaintiff and the class members worked hours for which they were not paid at least the applicable minimum wage, including without limitation hours worked before/after clocking in/out for a shift, as they were required to be at the company yard prior to the scheduled start of their shift to pick up a company vehicle, but were not compensated for this time. Plaintiff and class members also were “on call” on weekends and if required to report for duty and undertake a service call, they only were paid for 2 hours of time regardless of how many hours they actually worked. Additionally, Defendants round time punches off such that Plaintiff and class members lost substantial amounts of hours worked due to the rounding.

18. Pursuant to Labor Code Section 1194, Plaintiff and the class members are entitled to recover all unpaid minimum wages and liquidated damages, plus attorney’s fees and costs, in an amount to be proved at trial.

SECOND CAUSE OF ACTION

(Recovery of Unpaid Overtime – Labor Code § 1194)

19. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 18.

1 20. California law provides employees in California must be paid overtime, equal to
2 1.5 times the employee's regular rate of pay, for all hours worked in excess of 40 per week or 8
3 per day, unless they are exempt. Plaintiff and the class members, all of whom were non-exempt,
4 regularly worked more than 40 hours per week and/or 8 per day, but were not paid all overtime
5 wages due and owing under California law, as Plaintiff and the class members worked hours for
6 which they were not paid the applicable overtime wage, including without limitation hours worked
7 before/after clocking in/out for a shift, as they were required to be at the company yard prior to the
8 scheduled start of their shift to pick up a company vehicle, but were not compensated for this time.
9 Plaintiff and class members also were "on call" on weekends and if required to report for duty and
10 undertake a service call, they only were paid for 2 hours of time regardless of how many hours they
11 actually worked. Additionally, Defendants round time punches off such that Plaintiff and class
12 members lost substantial amounts of hours worked due to the rounding. Plaintiff and the class
13 members also received non-discretionary bonuses and other non-discretionary, non-hourly pay that
14 was not factored into the calculation of the regular rate of pay and, as a result, they were not paid for
15 overtime at the correct rate.

16 21. Pursuant to Labor Code Section 1194, Plaintiff and the class members are entitled
17 to recover all unpaid overtime wages, plus attorney's fees and costs, in an amount to be proved at
18 trial.

19 THIRD CAUSE OF ACTION

20 (Failure to Provide Meal Periods or Compensation in Lieu thereof – Labor Code § 226.7)

21 22. Plaintiff incorporates by reference the allegations contained in paragraphs 1
22 through 21.

23 23. Under the Labor Code and IWC Wage Orders, Defendants were required to
24 provide Plaintiff and similarly situated and aggrieved employees with one 30-minute meal period
25 free from all duties for all shifts longer than 5 hours, and a second 30-minute meal period free
26 from all duties for all shifts longer than 10 hours. Meal periods can be waived, but only under the
27 following circumstances: (1) if an employee's total work period in a day is over five (5) hours but
28 no more than six (6) hours, the required meal period may be waived by mutual consent of the

1 employer and employee, and (2) if an employee's total work period in a day is over ten (10) hours
2 but no more than twelve (12) hours, the required second meal period may be waived by mutual
3 consent of the employer and employee, but only if the first meal period was not waived.
4 Employers covered by the Wage Orders have an obligation to both (1) relieve their employees for
5 at least one meal period for shifts over five hours (see above), and (2) to record having done so. If
6 the employer fails to properly record a valid meal period, it is presumed no meal period was
7 provided.

8 24. Plaintiff and the class members regularly worked periods of more than five hours
9 in a workday without being provided mandatory thirty-minute, duty-free meal periods. Upon
10 information and belief, Defendant did not advise Plaintiff and other similarly situated employees
11 of their right to, timing, or number of meal periods. Defendants provided meal periods on an "on
12 duty" basis even though the nature of the work did not prevent Plaintiff and the class members from
13 being relieved of all duty nor did they enter into a written agreement for on-the-job paid meal periods,
14 and/or meal periods started after the fifth hour work and/or did not last a net 30 minutes. If Plaintiff
15 and the class members did not receive a meal period they frequently were told to change their daily
16 work log to reflect they took a meal period even they did not, or if they received a meal period lasting
17 less than 30 minutes they were told to change their handwritten time log to reflect a 30 minute break.
18 Per Defendants' improper meal period policy/practice, Defendants further failed to pay Plaintiff
19 and the class members an additional hour of wages at their regular rates of pay for each workday
20 a meal period was not provided or was not compliant with all requirements of the Labor Code
21 and/or Wage Orders.

22 25. Defendant failed to provide Plaintiff and the class members with all required meal
23 periods, or with compensation in lieu thereof. As a result, under Labor Code section 226.7,
24 Plaintiff and the class members are entitled to one additional hour's pay at the regular rate of
25 compensation for each day a meal period was missed, late or interrupted, all in an amount to be
26 proved at trial.

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1 FOURTH CAUSE OF ACTION

2 (Failure to Provide Rest Periods or Compensation in Lieu thereof – Labor Code § 226.7)

3 26. Plaintiff incorporates by reference the allegations contained in paragraphs 1
4 through 25.

5 27. California law requires an employer to authorize or permit an employee to
6 take a rest period of ten net minutes for every four hours worked, or major fraction
7 thereof, and such rest periods must be in the middle of the four-hour period insofar as
8 practicable. If the employer fails to provide any required rest periods, or fails to provide a
9 fully compliant rest break for a net 10 minutes wherein the employee is fully relieved of
10 all duties and all employer control, the employer must pay the employee one hour of pay
11 at the employee's regular rate of compensation for each workday the employer did not
12 provide a legally required and/or fully compliant rest period.

13 28. Defendant failed to provide Plaintiff and similarly situated employees all required
14 and/or fully compliant rest periods, or compensation in lieu thereof. Defendant employed policies
15 and procedures that ensured Plaintiff and other aggrieved employees would not receive all legally
16 required rest periods, maintained a non-compliant written rest period policy, and Defendant did
17 not authorize and permit all required rest periods in strict accordance to, and in compliance with,
18 the timing requirements of all applicable Wage Orders. Defendant never properly advised
19 Plaintiff and other similarly situated and aggrieved employees of their right to, timing, or amount
20 of rest breaks. Defendant further employed policies and procedures ensuring that Plaintiff and
21 similarly situated and aggrieved employees did not receive premium wages to compensate them
22 for workdays they did not receive all legally required and fully compliant rest periods.

23 29. Defendant failed to provide Plaintiff and the class members with all required rest
24 periods, or with compensation in lieu thereof. As a result, under Labor Code section 226.7,
25 Plaintiff and the class members are entitled to one additional hour's pay at the regular rate of
26 compensation for each day a rest break was missed, late or interrupted, all in an amount to be
27 proved at trial

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1 FIFTH CAUSE OF ACTION

2 (Failure to Provide Accurate Itemized Wage Statements – Labor Code § 226)

3 30. Plaintiff incorporates by reference the allegations contained in paragraphs 1
4 through 29.

5 31. The California Labor Code provides that, at the time of each payment of wages,
6 the employer must provide each employee with an itemized statement showing, inter alia, gross
7 wages earned, total hours worked, all deductions taken, net wages earned, the inclusive dates for
8 which the employee is being paid, the employee's name and last four digits of their social security
9 number, the name and address of the legal entity that it is the employer, and all applicable hourly
10 rates in effect during the pay period and all hours worked at each rate.

11 32. For the reasons set forth above, Defendants knowingly and intentionally failed to
12 provide Plaintiff and the class members with proper, itemized wage statements.

13 33. Accordingly, under Labor Code Section 226, Plaintiff and the class members each
14 are entitled to statutory penalties in the amount of \$50.00 for the initial pay period in which a
15 violation occurred, and \$100.00 for each subsequent pay period in which a violation occurred, up
16 to an aggregate penalty of \$4,000.00 per employee, plus attorney's fees and costs, all in an
17 amount to be proved at trial.

18 SIXTH CAUSE OF ACTION

19 (Waiting Time Penalties – Labor Code §§ 201, et seq.)

20 34. Plaintiff incorporates by reference the allegations contained in paragraphs 1
21 through 33.

22 35. The California Labor Code provides that, at the time of termination of
23 employment, the employer must pay an employee all wages due and owing within the time
24 frames set forth in Labor Code Sections 201, et seq. Defendants willfully failed to pay Plaintiff
25 and the class members who no longer are employed with Defendants all wages due and owing
26 within the deadlines set forth in Labor Code Sections 201, et seq.

27 36. Under Labor Code Section 203, Plaintiff and the class members who no longer are
28 employed with Defendants are entitled to recover waiting time penalties of up to 30 days' pay,

1 plus attorney's fees and costs, in an amount to be proved at trial.

2 SEVENTH CAUSE OF ACTION

3 37. Plaintiff incorporates by reference the allegations contained in paragraphs 1
4 through 36.

5 38 Defendants' failure, inter alia, to pay all wages earned, failure to pay premium
6 wages for meal and rest period violations, and failure to reimburse business expenses, all in
7 violation of the Labor Code and Wage Orders, constitutes an unlawful, unfair or fraudulent
8 business act or practice, in violation of Business & Professions Code Sections 17200, et seq.

9 39. Pursuant to Business & Professions Code Section 17203, Plaintiff and the class
10 members are entitled to restitution of all unpaid wages and other sums owed, plus attorney's fees
11 and costs, in an amount to be proved at trial.

12 EIGHTH CAUSE OF ACTION

13 (Violation of Private Attorneys General Act – Labor Code §§ 2698, et seq.)

14 40. Plaintiff incorporates by reference the allegations contained in paragraphs 1
15 through 39.

16 41. During the period beginning one-year period preceding the filing of the initial
17 complaint in this action, Defendants violated Labor Code Sections 201-203, 204, 216, 221-
18 224, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, 1199, 2810.5, and all applicable Wage
19 Orders. These violations subject Defendants to civil penalties as set forth in the foregoing
20 statutes as well as Labor Code Section 2699.

21 42. Plaintiff complied with the procedures for bringing suit specified in Labor Code
22 Sections 2699.3 and 2699.5. By letters dated and postmarked September 29, 2022, Plaintiff
23 gave written notice to the California Labor & Workforce Development Agency ("LWDA") via
24 electronic submission, and via certified mail to all Defendants, of the specific provisions of
25 the Labor Code and Wage Orders allegedly violated, including the facts and theories to support
26 the alleged violations.

27 43. Under Labor Code Section 2699.3, the LWDA must give written notice by
28 certified mail to the parties it intends to investigate the alleged violations within 65 days of the

1 date of the complainant's written notice. As of the filing of the initial complaint, the LWDA had
2 not provided the parties any notice of its intention to investigate Plaintiff's claims on behalf of
3 himself and other aggrieved employees. As of the filing of the initial complaint, Defendants
4 have not responded to Plaintiff's PAGA notices in an attempt to cure.

5 44. The violations alleged herein subject Defendants to civil penalties as set forth
6 in the foregoing statutes, which Plaintiff seeks on his behalf and on behalf of other aggrieved
7 employees. Plaintiff seeks civil penalties in the amounts set forth in each statute allegedly
8 violated or, for all statutes that lack a specified penalty, Plaintiff seeks default penalties as
9 provided by Labor Code Section 2699.

10 45. Under Labor Code Section 2699(g), Plaintiff is entitled to an award of
11 reasonable attorney's fees and costs in connection with his claims for civil penalties.

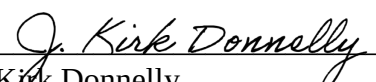
12 PRAYER

13 WHEREFORE, Plaintiff prays for judgment against each Defendant, jointly and severally,
14 as follows:

- 15 1. For compensatory damages, liquidated damages, and statutory penalties according
16 to proof;
- 17 2. For an order requiring Defendants to make restitution of all amounts wrongfully
18 withheld from Plaintiff and the class;
- 19 3. For civil penalties according to proof;
- 20 4. For pre-judgment interest as permitted by law;
- 21 5. For reasonable attorney's fees and costs of suit; and
- 22 6. For such other and further relief as the Court deems just and proper.

23 Dated: December 16, 2022

LAW OFFICES OF J. KIRK DONNELLY, APC

25 
26 J. Kirk Donnelly
27 Attorneys for Plaintiff JESUS ISGUERRA
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DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all claims so triable.

Dated: December 16, 2022

LAW OFFICES OF J. KIRK DONNELLY, APC



J. Kirk Donnelly
Attorneys for Plaintiff JESUS ISGUERRA