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Superior Court of California
County of Fresno
By: Rosemary Brace, Deputy

Attorneys for Plaintiff Diane Gil, on behalf of herself and all “aggrieved employees” pursuant to Labor Code § 2698 *et seq.*

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF FRESNO

DIANE GIL, on behalf of herself and all
“aggrieved employees” pursuant to Labor
Code § 2698 *et seq.*,

Plaintiff,

v.

ELECTRONIC RECYCLERS OF AMERICA,
LLC, a California limited liability company,
and DOES 1 through 10, inclusive,

Defendants.

CASE NO: **22CECG03745**

**REPRESENTATIVE ACTION
COMPLAINT FOR PENALTIES
PURSUANT TO LABOR CODE § 2699(f)
FOR VIOLATIONS OF LABOR CODE
§§ 201, 202, 226(a), 226.7, 246, 432.5, 510,
512, AND 1194 AND PURSUANT TO
LABOR CODE § 2699(a) FOR
VIOLATIONS OF LABOR CODE §§ 226.3
AND 558**

1 Plaintiff DIANE GIL (“Plaintiff”), on behalf of herself and others as an “aggrieved employee”
2 under the Labor Code Private Attorneys General Act of 2004, codified as Labor Code §§ 2698 *et seq.*,
3 complains of ELECTRONIC RECYCLERS OF AMERICA, LLC, a California limited liability
4 company, and/or any subsidiaries or affiliated companies (hereinafter referred to as “Defendants”),
5 as follows:

6 **I.**

7 **INTRODUCTION AND FACTUAL BACKGROUND**

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

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

15 a. Failing to pay Plaintiff and other Aggrieved Employees all minimum and
16 overtime wages earned, in violation of Labor Code §§ 510, 558, and 1194. Plaintiff and Aggrieved
17 Employees worked off-the-clock, without compensation: they were required to undergo mandatory
18 COVID-19 temperature and health screenings before clocking in for their shift, resulting in a
19 significant underpayment of minimum and overtime wages. These failures to pay all minimum and
20 overtime wages at the proper rates of pay constitute violations of Labor Code §§ 510, 558, and 1194;

21 b. Failing to properly compute bonuses, commissions, and other non-base hourly
22 wages earned by Plaintiff and other Aggrieved Employees into their regular rate of pay for purposes
23 of paying them meal period premiums, sick pay, overtime, and double-time wages at the correct rates,
24 in violation of Labor Code §§ 226.7, 510, 512, 558 and 1194 and IWC Wage Order No. 4-2001.
25 Defendants failed to properly blend bonuses, commissions, and other non-base hourly wages and
26 instead paid Plaintiff and other Aggrieved Employees meal period premiums, sick pay wages,
27 overtime wages, and double-time wages based only on the base hourly rate of pay, thus depriving
28 Plaintiff and other Aggrieved Employees of all meal period premiums, sick pay wages, overtime, and

double-time wages earned. This violates Labor Code §§ 226.7, 246, 510, 512, 558 and 1194 and IWC Wage Order No. 4-2001;

c. Failing to pay proper premium wages to Plaintiff and other Aggrieved Employees who were denied proper meal periods, in violation of Labor Code §§ 226.7, 512, and 558 and IWC Wage Order 4-2001. Plaintiff and other Aggrieved Employees were routinely denied, and not authorized to take, a timely, uninterrupted, 30-minute meal period for every shift worked that exceeded five hours, or a second timely, uninterrupted, 30-minute meal period for every shift worked that exceeded ten hours, but were not paid premium wages of one hour's pay for each missed first or second meal period. This violates Labor Code §§ 226.7, 512, and 558 and IWC Wage Order 4-2001;

d. Requiring Plaintiff and Aggrieved Employees to agree to employment contract terms that are prohibited by law, in violation of Labor Code § 432.5. Defendant improperly required Plaintiff and Aggrieved Employees to agree to illegal terms as a condition of their employment including, but not limited to, non-competition and indemnity agreements (relating to confidentiality). Labor Code § 432.5 provides that "No employer . . . shall require any employee or applicant for employment to agree, in writing, to any term or condition which is known by such employer . . . thereof to be prohibited by law."

e. Failing to provide Plaintiff and Aggrieved Employees with wage statements that fully and accurately itemized the requirements set forth in Labor Code § 226(a). Plaintiff and Aggrieved Employees are not paid all wages due, as stated above. As such, the wage statements provided by Defendants fail to accurately state all gross wages earned, in violation of Labor Code §§ 226(a)(1) and 226.3, total hours worked, in violation of Labor Code §§ 226(a)(2) and 226.3, net wages earned, in violation of Labor Code §§ 226(a)(5) and 226.3, and all applicable hourly rates in effect during the pay period and the corresponding numbers of hours worked at each rate, in violation of Labor Code §§ 226(a)(9) and 226.3; and

f. Failing to pay Plaintiff and certain Aggrieved Employees all wages due at the separation of their employment based on the time frames required by Labor Code §§ 201 and 202. As stated above, Plaintiff and certain Aggrieved Employees were not paid all wages due during the course of their employment and, as a result of this failure, they were not timely paid all wages due at the

1 separation of their employment. This violates Labor Code §§ 201-202 and is alleged on behalf of
2 Plaintiff and Aggrieved Employees who have left their employment with Defendants.

3 3. Plaintiff, on behalf of herself and all Aggrieved Employees pursuant to Labor Code §
4 2698 *et seq.*, seeks civil penalties for Defendants' violations of the California Labor Code.

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

8 II.

9 PARTIES

10 A. Plaintiff

11 5. Plaintiff DIANE GIL was employed as a non-exempt employee by Defendants from
12 February 2016 through March 2022 in Fresno County, California.

13 B. Defendant

14 6. Defendant ELECTRONIC RECYCLERS OF AMERICA, LLC is a California limited
15 liability company that employed Plaintiff and Aggrieved Employees in Fresno County, California.

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

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

9. 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.

III.

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, 246, 432.5, 510, 512, AND 1194 AND PURSUANT TO
LABOR CODE § 2699(a) FOR VIOLATIONS OF LABOR CODE §§ 226.3 AND 558**

10. Plaintiff incorporates paragraphs 1 through 9 of this Complaint as though fully set forth herein.

11. 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.*

12. 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, 246, 432.5, 510, 512, and 1194; and

b. Pursuant to Labor Code § 2699(f), the penalties as authorized by Labor Code §§ 226.3 and 558.

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

14. On September 15, 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)

1 calendar days of September 15, 2022. Plaintiff may therefore commence this action to seek civil
2 penalties pursuant to Labor Code § 2698 *et seq.*

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

5 **IV.**

6 **RELIEF REQUESTED**

7 WHEREFORE, Plaintiff prays for the following relief:

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

15 Dated: November 22, 2022

Respectfully submitted,

16 GAINES & GAINES
17 A Professional Law Corporation

18 By: Daniel F. Gaines
19 DANIEL F. GAINES
20 EVAN S. GAINES
21 Attorneys for Plaintiff
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