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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 FOR THE COUNTY OF LOS ANGELES

10 UNLIMITED JURISDICTION
11

12 JASON JOHNSON, on behalf of himself and
13 all others similarly situated, and the general
public,

14 *Plaintiff,*

15 v.

16 ABC LEGAL SERVICES, LLC, a
Washington limited liability company; and
17 DOES 1 through 50, inclusive,

18 *Defendants.*
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Case No. 22STCV35360

REPRESENTATIVE ACTION

COMPLAINT

Civil Penalties (Lab. Code § 2698, *et seq.*)

1 Plaintiff JASON JOHNSON (“Plaintiff”), on behalf of himself and all others similarly
2 situated, and the general public, complains and alleges as follows:

3 **INTRODUCTION**

4 1. Plaintiff brings this representative action against defendants ABC LEGAL
5 SERVICES, LLC, a Washington limited liability company; and DOES 1 through 50, inclusive,
6 (collectively referred to as “Defendants”) for alleged violations of the Labor Code. As set forth
7 below, Plaintiff alleges that Defendants have:

- 8 (1) failed to provide Plaintiff and all other similarly situated individuals with meal
9 periods;
- 10 (2) failed to provide them with rest periods;
- 11 (3) failed to pay them premium wages for missed meal and/or rest periods;
- 12 (4) failed to pay them premium wages for missed meal and/or rest periods at the regular
13 rate of pay;
- 14 (5) failed to pay them at least minimum wage for all hours worked;
- 15 (6) failed to reimburse them for all necessary business expenses;
- 16 (7) failed to provide them with accurate written wage statements; and
- 17 (8) failed to pay them all of their final wages following separation of employment.

18 Based on these alleged violations, Plaintiff now brings this representative action to recover civil
19 penalties, and related relief on behalf of himself and all others similarly situated, all other
20 aggrieved employees, and the State of California.

21 **JURISDICTION AND VENUE**

22 2. This Court has subject matter jurisdiction to hear this case because the unpaid wages,
23 actual damages, liquidated damages, restitution, and penalties sought by Plaintiff from Defendants
24 exceeds the minimal jurisdictional limits of the Superior Court of the State of California.

25 3. Venue is proper in the County of Los Angeles pursuant to Code of Civil Procedure
26 §§ 393(a), 395(a) and 395.5 in that liability arose there, because at least some of the transactions that
27 are the subject matter of this Complaint occurred therein and/or each defendant is found, maintains
28 offices, transacts business, and/or has an agent therein.

1 **PARTIES**

2 4. Plaintiff is and was, and at all relevant times mentioned herein, an individual
3 residing in the State of California.

4 5. Plaintiff is informed and believes, and thereupon alleges, that Defendant ABC
5 LEGAL SERVICES, LLC is, and at all relevant times mentioned herein, a Washington limited
6 liability company doing business in the State of California.

7 6. Plaintiff is ignorant of the true names and capacities of the defendants sued herein as
8 DOES 1 through 50, inclusive, and therefore sues these defendants by such fictitious names.
9 Plaintiff will amend this Complaint to allege the true names and capacities of the DOE defendants
10 when ascertained. Plaintiff is informed and believes, and thereupon alleges, that each of the
11 fictitiously named defendants are responsible in some manner for the occurrences, acts and
12 omissions alleged herein and that Plaintiff's alleged damages were proximately caused by these
13 defendants, and each of them. Plaintiff will amend this complaint to allege both the true names and
14 capacities of the DOE defendants when ascertained.

15 7. Plaintiff is informed and believes, and thereupon alleges that, at all relevant times
16 mentioned herein, some or all of the defendants were the representatives, agents, employees,
17 partners, directors, associates, joint venturers, joint employers, principals, or co-participants of some
18 or all of the other defendants, and, in doing the things alleged herein, were acting within the course
19 and scope of such relationship and with the full knowledge, consent, and ratification by such other
20 defendants.

21 **GENERAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

22 8. Plaintiff worked for Defendants as an hourly, non-exempt employee during the
23 applicable statutory period.

24 **Willful Misclassification As An "Independent Contractor"**

25 9. Plaintiff is an individual who was hired as a Process Server to provide services to
26 Defendants. Defendants provide legal process serving and document delivery services for their
27 customers and clients. At all relevant times, Defendants employed persons, conducted business in,
28 and engaged in illegal labor and payroll practices and policies in California.

1 10. As a Process Server, Plaintiff was responsible for printing legal documents on his
2 personal printer, driving his personal vehicle to various locations to serve legal documents.
3 Plaintiff's duties also included, but are in no way limited to identifying the person to be served,
4 recording dates and times of services, and personal delivery of legal documents.

5 11. Although Plaintiff and aggrieved employees were classified as "independent
6 contractors" and entered into written agreements as such. However, Plaintiff and aggrieved
7 employees were employees of Defendants.

8 12. Defendants maintained significant control over Plaintiff and aggrieved employees'
9 working conditions in the following ways.

10 13. First, Defendants set the pay structure for Plaintiff and aggrieved employees.
11 Although Defendants did not expressly dictate the starting and ending times for each process
12 server's shift, each process server was paid per job/task completed and paid on a piece rate basis
13 which varied depending on the job/task completed. The pay rates for each job/task were set by
14 Defendants. Due to the amount of work assigned to him, Plaintiff worked solely for Defendants and
15 no other companies. The documents, service locations, and job descriptions were all supplied to
16 Plaintiff and aggrieved employees by Defendants. Plaintiff and aggrieved employees were expected
17 to complete their jobs/tasks within the timeframe defined by Defendants. Plaintiff and aggrieved
18 employees had no control over which jobs they could accept or reject. Plaintiff and aggrieved
19 employees were given legal documents by Defendants with cover sheets on top that said ABC Legal
20 Services in prominent text. Defendants controlled which service jobs were give to Plaintiff and
21 aggrieved employees, and required Plaintiff and aggrieved employees to print the documents and
22 deliver them according to the instructions supplied by Defendants.

23 14. Defendants paid Plaintiff and the other aggrieved employees a flat rate per job
24 completed that did not take into account the actual number of hours worked. The rate varied only as
25 to the type of job/task completed, for instance whether Plaintiff and aggrieved employees were
26 servicing a "rush" order, were conducting a "stake out," or were serving documents related to an
27 unlawful detainer or other action.

28 15. Defendants had the power to train, discipline, supervise, and fire process servers.

1 Plaintiff and aggrieved employees were frequently in contact with Defendants managers and
2 employees to report different issues related to their job status. For instance, Plaintiff and aggrieved
3 employees would alert Defendants if a site manager or tenant at the job site had informed them that
4 the person they were trying to serve was not located there. Defendants had strict requirements that a
5 service job be attempted a specific number of times, for instance 7 times, before the service was
6 “bad addressed” or logged as a failed attempt. Defendants maintained control over the number of
7 times Plaintiff and aggrieved employees attempted service, and required that the job be attempted a
8 specific number of times.

9 16. Also, the work performed by Plaintiff and aggrieved employees required no
10 specialized skill. Furthermore, the work performed by Plaintiff and aggrieved employees, *ie.*
11 process serving, is an essential part of the regular business of Defendants. Plaintiff and aggrieved
12 employees did not form or operate under a contracting business entities’ name, rather they worked
13 for Defendant as individuals in their own capacity.

14 17. Despite Defendants’ characterization to the contrary, at all relevant times, Plaintiff
15 and aggrieved employees have been employees of Defendants and, as such, have been entitled to
16 the protections of the California Labor Code and Wage Order.

17 18. Defendants willfully misclassified Plaintiff and aggrieved employees as independent
18 contractors. Defendants have been made aware through previous lawsuits that their employment
19 practices are unlawful, Defendants are sophisticated and sizable entities with access to legal advice.
20 Therefore, Defendants’ misclassification of Plaintiff and aggrieved employees is willful. At all
21 relevant times, they have engaged in a pattern and/or practice of misclassifying Plaintiff and
22 aggrieved employees.

23 19. Plaintiff and aggrieved employees are “employees” within the meaning of Section 2
24 of the applicable Industrial Welfare Commission Wage Order (the “Wage Order”) and “aggrieved
25 employees” within the meaning of Labor Code section 2699(c). At all relevant times, Plaintiff and
26 aggrieved employees have been non-exempt employees entitled to the full protections of both the
27 Labor Code and the Wage Order. Plaintiff’s representation of “aggrieved employees” is brought
28 with the information and belief that the labor code violations discussed in this notice are systematic,

1 ongoing, repeated, and will continue.

2 **Off-the-clock Work**

3 20. Plaintiff and aggrieved employees were not paid all wages earned as Defendants
4 directed, permitted, or otherwise encouraged Plaintiff and aggrieved employees to perform off-the-
5 clock work.

6 21. During the applicable limitations period, Plaintiff and aggrieved employees had to
7 work significant off-the-clock hours because they were not paid for all hours worked. Plaintiff and
8 aggrieved employees were paid on a piece rate basis and were only compensated when they
9 completed a serve. On many occasions, Plaintiff and aggrieved employees were required to attempt
10 service seven times, even when they informed Defendants that the person they were attempting to
11 serve did not maintain a residence at the location anymore. Defendants required Plaintiff and
12 aggrieved employees to attempt the service again regardless – and attempt service until the set
13 minimum number of attempts was achieved and recorded. Plaintiff and aggrieved employees were
14 not compensated when their attempts at service resulted in a failure, through no fault of their own.
15 Defendants also failed to pay Plaintiff and aggrieved employees for time spent traveling.

16 22. On several occasions, Plaintiff and aggrieved employees worked all day long over
17 the course of many hours without any pay whatsoever, and at considerable expense to themselves
18 because they were forced to pay for their own gas and mileage even on failed attempts at service.
19 Defendants knew that Plaintiff and aggrieved employees were attempting service and diligently
20 working under the control of Defendants, and yet Defendants did not compensate Plaintiff and
21 aggrieved employees for the work they performed.

22 23. As a result of performing off-the-clock work that was directed, permitted, or
23 otherwise encouraged by Defendants, Plaintiff and aggrieved employees should have been paid for
24 this time.

25 24. Defendants knew or should have known that Plaintiff and aggrieved employees were
26 performing off-the-clock work and failed to pay Plaintiff and aggrieved employees for these hours.

27 25. Defendants were aware of this practice and directed, permitted, or otherwise
28 encouraged Plaintiff and aggrieved employees to perform off-the-clock work.

26. As a result of Defendants' policies and practices, Plaintiff and aggrieved employees were not paid for all hours worked.

Missed Meal Periods

27. Plaintiff and aggrieved employees were not provided with meal periods of at least thirty (30) minutes for each five (5) hour work period due to (1) Defendants' policy of not scheduling each meal period as part of each work shift; (2) chronically understaffing each work shift with not enough workers; (3) imposing so much work on each employee such that it made it unlikely that an employee would be able to take their breaks if they wanted to finish their work on time; and (4) no formal written meal and rest period policy that encouraged employees to take their meal and rest periods.

28. Plaintiff and aggrieved employees regularly took a break to eat after the fifth hour of work. Doing so was necessary so they could timely complete their assigned process serving jobs within Defendants time constraints. Accordingly, Plaintiff and aggrieved employees were not provided with legally mandated uninterrupted meal periods of at least thirty minutes pursuant to California law. Defendants failed to record the times that Plaintiff and aggrieved employees took any meal periods, to the extent that they were even able to do so.

29. As a result of Defendants' policies and/or practice, Plaintiff and aggrieved employees were regularly not provided with uninterrupted meal periods of at least thirty (30) minutes for each five (5) hours worked due to complying with Defendants' productivity requirements that required Plaintiff and aggrieved employees to work through their meal periods in order to complete their assignments on time.

Missed Rest Periods

30. Plaintiff and aggrieved employees were not provided with rest periods of at least ten (10) minutes for each four (4) hour work period, or major fraction thereof, due to (1) Defendants' policy of not scheduling each rest period as part of each work shift; (2) chronically understaffing each work shift with not enough workers; (3) imposing so much work on each employee such that it made it unlikely that an employee would be able to take their breaks if they wanted to finish their work on time; and (4) no formal written meal and rest period policy that encouraged employees to

1 take their meal and rest periods.

2 31. Defendants had no written rest break policies. Defendants have a practice of
3 requiring Plaintiff and aggrieved employees to work through their rest breaks so they can finish
4 their serve jobs within Defendants' time constraints

5 32. As a result of Defendants' policy, Plaintiff and aggrieved employees were regularly
6 not provided with uninterrupted rest periods of at least ten (10) minutes for each four (4) hours
7 worked due to complying with Defendants' productivity requirements that required Plaintiff and
8 aggrieved employees to work through their rest periods in order to complete their assignments on
9 time.

10 **Expense Reimbursement**

11 33. Plaintiff and aggrieved employees members were required to utilize their own
12 personal tools to perform their job duties.

13 34. At all relevant times during the applicable limitations period, Defendants required
14 Plaintiff and aggrieved employees to incur expenses which Defendants failed and/or refused to
15 reimburse them for including, but not limited to, gas, mileage, personal cell phone usage, a printer,
16 ink, paper and other costs associated with printing large amount of documents

17 35. Plaintiff and aggrieved employees members were not reimbursed for business
18 expenses incurred in executing their job duties.

19 **Wage Statements**

20 36. Plaintiff and aggrieved employees were not provided with accurate wage statements
21 as mandated by law pursuant to Labor Code § 226.

22 37. Defendants failed to comply with Labor Code section 226(a)(1) as "gross wages
23 earned" were not accurately reflected in that all hours worked, including overtime and "off-the-
24 clock" work were not included.

25 38. Defendants failed to comply with Labor Code section 226(a)(2) as "total hours
26 worked by the employee" were not accurately reflected in that all hours worked, including overtime
27 and "off-the-clock" work were not included.

28 39. Defendants failed to comply with Labor Code section 226(a)(3) as "the number of

1 piece-rate units earned and any applicable piece rate” were not accurately reflected in that
2 unsuccessful attempts at service were not included.

3 40. Defendants failed to comply with Labor Code section 226(a)(5) as “net wages
4 earned” were not accurately reflected in that all hours worked, including overtime and “off-the-
5 clock” work were not included.

6 41. Defendants failed to comply with Labor Code section 226(a)(9) as “all applicable
7 hourly rates in effect during the pay period and the corresponding number of hours worked at each
8 hourly rate by the employee” were not accurately reflected in that all hours worked, including
9 overtime and “off-the-clock” work were not included.

10 **FIRST CAUSE OF ACTION**

11 **CIVIL PENALTIES**

12 **(Lab. Code §§ 2698 *et seq.*)**

13 42. Plaintiff incorporates the preceding paragraphs as if fully alleged herein.

14 43. During the applicable limitations period, Defendants have violated Labor Code §§
15 201, 202, 203, 204, 223, 226(a), 226.7, 227.3, 510, 512, 1194, 1197, 1198, and 2802.

16 44. Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on behalf of
17 himself and other current and former employees, to bring a representative civil action to recover
18 civil penalties pursuant to the procedures set forth in Labor Code § 2699.3 that may, but need not,
19 be brought or maintained as a class action pursuant to Code of Civil Procedure section 382.

20 45. Plaintiff, a former employee against whom Defendants committed one or more of the
21 alleged Labor Code violations during the applicable limitations period, is an aggrieved employee
22 within the meaning of Labor Code § 2699(c).

23 46. Plaintiff has complied with the procedures for bringing suit specified in Labor Code
24 § 2699.3. Notice was provided to the California Labor & Workforce Development Agency
25 (“LWDA”) and 65 days have elapsed without the LWDA providing Plaintiff with any notice of an
26 intent to investigate.

27 47. Pursuant to Labor Code sections 2699(a) and (f), Plaintiff seeks the following civil
28 penalties for Defendants’ violations of Labor Code §§ 201, 202, 203, 204, 223, 226(a), 226.7,

1 226.8, 510, 512, 1194, 1197, 1198 and 2802:

- 2 i. For violations of Labor Code §§ 201, 202, 203, 212, 226.7, 226.8, 1194, 1198
3 and 2802, one hundred dollars (\$100) for each employee per pay period for
4 each initial violation and two hundred dollars (\$200) for each employee per
5 pay period for each subsequent violation (penalties set by Labor Code §
6 2699(f)(2));
- 7 ii. For violations of Labor Code § 203, a penalty in an amount not exceeding
8 thirty (30) days' pay as waiting time (penalties set by Labor Code § 256);
- 9 iii. For violations of Labor Code § 204, one hundred dollars (\$100) for each
10 employee for each initial violation that was neither willful nor intentional,
11 two hundred dollars (\$200) for each employee, plus 25% of the amount
12 unlawfully withheld from each employee, for each initial violation that was
13 either willful or intentional, and two hundred dollars (\$200) for each
14 employee, plus twenty-five percent (25%) of the amount unlawfully withheld
15 from each employee, for each subsequent violation, regardless of whether the
16 subsequent violation was either willful or intentional (penalties set by Labor
17 Code § 210);
- 18 iv. For violations of Labor Code § 223, one hundred dollars (\$100) for each
19 employee for each initial violation that was neither willful nor intentional,
20 two hundred dollars (\$200) for each employee, plus twenty-five percent
21 (25%) of the amount unlawfully withheld from each employee, for each
22 initial violation that was either willful or intentional, and two hundred dollars
23 (\$200) for each employee, plus twenty-five percent (25%) of the amount
24 unlawfully withheld from each employee, for each subsequent violation,
25 regardless of whether the subsequent violation was either willful or
26 intentional (penalties set by Labor Code § 225.5);
- 27 v. For violations of Labor Code § 226(a), if this action is deemed to be an initial
28 citation, two hundred and fifty dollars (\$250) for each employee for each

1 violation. Alternatively, if an initial citation or its equivalent occurred before
2 the filing of this action, one thousand dollars (\$1,000) for each employee for
3 each violation (penalties set by Labor Code § 226.3);

4 vi. For violation of Labor Code §§ 510 and 512, fifty dollars (\$50) for each
5 employee for each initial pay period for which the employee was underpaid,
6 and one hundred dollars (\$100) for each employee for each subsequent pay
7 period for which the employee was underpaid (penalties set by Labor Code §
8 558);

9 vii. For violations of Labor Code § 1197, one hundred dollars (\$100) for each
10 aggrieved employee for each initial violation of Labor Code § 1197 that was
11 intentional and two hundred and fifty dollars (\$250) for each aggrieved
12 employee per pay period for each subsequent violation of Labor Code §
13 1197, regardless of whether the initial violation was intentional (penalties set
14 by Labor Code § 1197.1);

15 viii. Pursuant to Labor Code § 2699(g), Plaintiff seeks an award of reasonable
16 attorneys' fees and costs in connection with Plaintiff's claims for civil
17 penalties.

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- (1) Pre-judgment interest;
- (2) Civil penalties;
- (3) Costs of suit;
- (4) Reasonable attorneys' fees; and
- (5) Such other relief as the Court deems just and proper.

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