



DANIEL F. GAINES, ESQ. SBN 251488  
daniel@gaineslawfirm.com  
ALEX P. KATOFISKY, ESQ. SBN 202754  
alex@gaineslawfirm.com  
EVAN S. GAINES, ESQ. SBN 287668  
evan@gaineslawfirm.com  
**GAINES & GAINES, APLC**  
4550 East Thousand Oaks Boulevard, Suite 100  
Westlake Village, CA 91362  
Telephone: (818) 703-8985  
Facsimile: (818) 703-8984

Attorneys for Plaintiffs Leo Hernandez Sr., Leo Hernandez Jr., Curtis Lupton, Gilberto Dedios, Alejandro Garcia, Justin Robinson, Laura Fernandez, Jose Garcia Martinez, Alma Gonzalez, and Eric Valadez, on behalf of themselves and all "aggrieved employees" pursuant to Labor Code § 2698 *et seq.*

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**FOR THE COUNTY OF SAN BENITO**

LEO HERNANDEZ SR., LEO HERNANDEZ JR., CURTIS LUPTON, GILBERTO DEDIOS, ALEJANDRO GARCIA, JUSTIN ROBINSON, LAURA FERNANDEZ, JOSE GARCIA MARTINEZ, ALMA GONZALEZ, ERIC VALADEZ, on behalf of themselves and all "aggrieved employees" pursuant to Labor Code § 2698 *et seq.*,

Plaintiffs,

v.

WGS GROUP, INC., a Nevada corporation,  
and DOES 1 through 10, inclusive,

Defendants.

CASE NO: CU-22-00225

*Assigned to: Dept. 3*

**FIRST AMENDED REPRESENTATIVE ACTION COMPLAINT FOR PENALTIES PURSUANT TO LABOR CODE § 2699(f) FOR VIOLATIONS OF LABOR CODE §§ 201, 202, 204, 226(a), 226.7, 510, 512, 1194, AND 2802 AND PURSUANT TO LABOR CODE § 2699(a) FOR VIOLATIONS OF LABOR CODE §§ 210, 226.3, AND 558**

*Complaint Filed: November 10, 2022*

1 Plaintiffs LEO HERNANDEZ SR., LEO HERNANDEZ JR., CURTIS LUPTON,  
2 GILBERTO DEDIOS, ALEJANDRO GARCIA, JUSTIN ROBINSON, LAURA FERNANDEZ,  
3 JOSE GARCIA MARTINEZ, ALMA GONZALEZ, and ERIC VALADEZ (collectively,  
4 “Plaintiffs”), on behalf of themselves and others as “aggrieved employees” under the Labor Code  
5 Private Attorneys General Act of 2004, complain of WGS GROUP, INC., a Nevada corporation,  
6 and/or any subsidiaries or affiliated companies (hereinafter referred to as “Defendants”), as follows:

7 **I.**

8 **INTRODUCTION AND FACTUAL BACKGROUND**

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

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

16 a. Failing to pay all minimum and overtime wages earned during the course of  
17 employment to them and other Aggrieved Employees, in violation of Labor Code §§ 510, 558,  
18 and 1194. Plaintiffs and other Aggrieved Employees routinely and frequently worked off-the-  
19 clock, without compensation: they were not paid for time spent waiting for the next worker to  
20 take over their post. Plaintiffs would routinely be required to clock out for their shift at a  
21 scheduled time and then be forced to remain at their posts until the next employee showed up  
22 for work—oftentimes this time was extensive. This results in significant unpaid wages. This  
23 violates Labor Code §§ 510, 558, and 1194;

24 b. Failing to pay premium wages at to Plaintiffs and other Aggrieved Employees  
25 who were denied rest periods, in violation of Labor Code § 226.7 and IWC Wage Order No.  
26 4-2001. Plaintiffs and other Aggrieved Employees were routinely unable to take a 10-minute  
27 rest period for every four (4) hours of work or major fraction thereof, but were not paid  
28 premium wages of one hour’s pay for each missed rest period. Plaintiffs were simply denied

1 and not authorized to take their legally entitled rest periods and were never paid premium  
2 wages for missed rest periods. Plaintiffs and Aggrieved Employees were also impermissibly  
3 required to remain on the company premises, under Defendants' control, during any rest  
4 periods, rendering them impermissibly on-duty. This violates Labor Code § 226.7 and IWC  
5 Wage Order No. 4-2001;

6 c. Failing to pay premium wages to Plaintiffs and other Aggrieved Employees  
7 who were denied proper meal periods, in violation of Labor Code §§ 226.7, 512, and 558 and  
8 IWC Wage Order 4-2001. Plaintiffs and other Aggrieved Employees were routinely denied,  
9 and not authorized to take, a timely, uninterrupted, 30-minute meal period for every shift  
10 worked that exceeded five hours, or a second timely, uninterrupted, 30-minute meal period  
11 for every shift worked that exceeded ten hours, but were not paid premium wages of one  
12 hour's pay for each missed first or second meal period. When meal periods were provided,  
13 Plaintiffs and Aggrieved Employees were also impermissibly required to remain on the  
14 company premises, under Defendants' control, during their meal periods, rendering them  
15 impermissibly on-duty. This violates Labor Code §§ 226.7, 512, 558, and 1194 and IWC  
16 Wage Order 4-2001;

17 d. Failing to reimburse Plaintiffs and other Aggrieved Employees for necessary  
18 business expenses incurred in direct consequence of the discharge of their duties, in violation  
19 of Labor Code § 2802, including, but not limited to, uniform deductions and use of their  
20 personal vehicles. Labor Code § 2802 requires that an employer must indemnify its employees  
21 for all necessary expenditures or losses incurred by the employee in direct consequence of the  
22 discharge of their duties, and Defendants' failure to do so has violated this section;

23 e. Failing to timely pay all wages due during employment, in violation of Labor  
24 Code §§ 204 and 210. Defendants paid Plaintiffs and other Aggrieved Employees on a bi-  
25 weekly basis, but failed to issue them all their wages within seven calendar days of the  
26 conclusion of the payroll period, as required by Labor Code § 204(d); instead, Plaintiffs and  
27  
28

1 other Aggrieved Employees were paid nine or more days after the close of each pay period.  
2 This subjects Defendants to penalties as authorized by Labor Code § 210;

3 f. Failing to provide Plaintiffs and other Aggrieved Employees with wage  
4 statements that fully and accurately itemized the requirements set forth in Labor Code §§  
5 226(a) and 226.3. Plaintiffs and other Aggrieved Employees were not paid all wages due, as  
6 stated above. As such, the wage statements provided by Defendants failed to accurately state  
7 all gross wages earned, in violation of Labor Code §§ 226(a)(1) and 226.3, total hours worked,  
8 in violation of Labor Code §§ 226(a)(2) and 226.3, net wages earned, in violation of Labor  
9 Code §§ 226(a)(5) and 226.3, and all applicable hourly rates in effect during the pay period  
10 and the corresponding number of hours worked, in violation of Labor Code §§ 226(a)(9) and  
11 226.3. Furthermore, and independent of the above allegations, the wage statements issued to  
12 Plaintiffs and other Aggrieved Employees fail to set accurately forth all applicable hourly  
13 rates in effect during the pay period and the corresponding number of hours worked, in  
14 violation of Labor Code §§ 226(a)(9) and 226.3 because, among other reasons, when double-  
15 time wages are earned, the wage statements do not set forth the applicable double-time rate of  
16 pay. Moreover, and independent of the allegations above, Plaintiffs and Aggrieved Employees  
17 were not provided with wage statements or a separate document at the time of the payment of  
18 wages that set forth all accrued sick leave, in violation of Labor Code § 246(i).; and  
19

20 g. Failing to pay Plaintiffs and Aggrieved Employees all wages due at the  
21 separation of their employment based on the time frames required by Labor Code §§ 201 and  
22 202. As stated above, Plaintiffs and other Aggrieved Employees were not paid all wages due  
23 during the course of their employment and, as a result of this failure, they were not timely  
24 paid all wages due at the separation of their employment. Furthermore, when Plaintiffs  
25 separated their employment, they were not issued all of their final wages within 72 hours of  
26 their separation—instead, their final wages were issued seven or more days after their  
27 separation. Plaintiffs allege that Defendants maintain a policy of untimely paying final wages  
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1 to their former employees. This violates Labor Code §§ 201-202 and is alleged on behalf of  
2 Plaintiffs and certain Aggrieved Employees no longer employed by Defendants.

3 3. Plaintiffs, on behalf of themselves and all Aggrieved Employees pursuant to Labor  
4 Code § 2698 *et seq.*, seek 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 San Benito County, California.

## 8 II.

### 9 PARTIES

#### 10 A. Plaintiffs

11 5. Plaintiff LEO HERNANDEZ SR. was employed by Defendants from June 2019  
12 through February 2022 as a non-exempt employee in Oakland, California (Alameda County).

13 6. Plaintiff LEO HERNANDEZ JR. was employed by Defendants from November 2020  
14 through May 2022 as a non-exempt employee in Greenfield, California (Monterey County).

15 7. Plaintiff CURTIS LUPTON was employed by Defendants from October 2021 through  
16 May 2022 as a non-exempt employee in Greenfield, California (Monterey County).

17 8. Plaintiff GILBERTO DEDIOS was employed by Defendants from 2021 through 2022  
18 as a non-exempt employee in Oakland, California (Alameda County).

19 9. Plaintiff ALEJANDRO GARCIA was employed by Defendants from July 2021  
20 through January 2022 as a non-exempt employee in Oakland, California (Alameda County).

21 10. Plaintiff JUSTIN ROBINSON was employed by Defendants from June 2021 through  
22 November 2021 as a non-exempt employee in Oakland, California (Alameda County).

23 11. Plaintiff LAURA FERNANDEZ was employed by Defendants from August 2021  
24 through March 2022 as a non-exempt employee in Hollister, California (San Benito County).

25 12. Plaintiff JOSE GARCIA MARTINEZ was employed by Defendants from January  
26 2021 through May 2022 as a non-exempt employee in Hollister, California (San Benito County).

27 13. Plaintiff ALMA GONZALEZ was employed by Defendants from September 2021  
28 through May 2022 as a non-exempt employee in Hollister, California (San Benito County).

1           14. Plaintiff ERIC VALADEZ was employed by Defendants from February 2020 through  
2 April 2020 as a non-exempt employee in Greenfield, California (Monterey County).

3 **B. Defendant**

4           15. Defendant WGS GROUP, INC. is a Nevada corporation that employed Plaintiffs and  
5 Aggrieved Employees throughout the State of California, including San Benito, California.

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

13           17. Plaintiffs are informed and believe, and based thereon allege, that each Defendant  
14 acted in all respects pertinent to this action as the agent of the other Defendant, carried out a joint  
15 scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant is  
16 legally attributable to the other Defendants.

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

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1 IV.

2 **CAUSES OF ACTION**

3 **FIRST CAUSE OF ACTION**

4 **PLAINTIFFS AND ALL AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS**  
5 **CIVIL PENALTIES PURSUANT TO LABOR CODE § 2699(f) FOR VIOLATIONS OF**  
6 **LABOR CODE §§ 201, 202, 204, 226(a), 226.7, 510, 512, 1194, AND 2802 AND PURSUANT**  
7 **TO LABOR CODE § 2699(a) FOR VIOLATIONS OF**  
8 **LABOR CODE §§ 210, 226.3, AND 558**

9 19. Plaintiffs incorporate paragraphs 1 through 18 of this Complaint as though fully set  
10 forth herein.

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

13 21. For each such violation, Plaintiffs and all other Aggrieved Employees are entitled to  
14 civil penalties subject to the following formula:

15 a. Pursuant to Labor Code § 2699(f), \$100 for each initial violation and \$200 for  
16 each subsequent violation of Labor Code §§ 201, 202, 204, 226(a), 226.7, 510,  
17 512, 1194, and 2802; and

18 b. Pursuant to Labor Code § 2699(a), the civil penalties as authorized by Labor  
19 Code §§ 210, 226.3, and 558.

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

22 23. On September 1, 2022 and October 6, 2022, Plaintiffs sent a letter, by online  
23 submission to the LWDA and by certified mail, return receipt requested, to Defendants setting forth  
24 the facts and theories of the violations alleged against Defendants, as prescribed by Labor Code §  
25 2698 *et seq.* Pursuant to Labor Code § 2699.3(a)(2)(A), no notice was received by Plaintiffs from  
26 the LWDA within sixty-five (65) calendar days of September 1, 2022 or October 6, 2022. Plaintiffs  
27 may therefore commence this action to seek civil penalties pursuant to Labor Code § 2698 *et seq.*  
28

Wherefore, Plaintiffs and the Aggrieved Employees they seek to represent request relief as described below.

V.

**RELIEF REQUESTED**

WHEREFORE, Plaintiffs pray for the following relief:

1. For civil penalties pursuant to Labor Code § 2698 *et seq.* for Plaintiffs 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 12, 2022

Respectfully submitted,

GAINES &amp; GAINES

A Professional Law Corporation

By: Evan S. Gaines  
EVAN S. GAINES  
Attorneys for Plaintiffs

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\_\_\_\_\_ (For messenger) my business address is:

**Agent for Service of Process for WGS Group, Inc.  
Northwest Registered Agent, Inc.  
2108 North Street, Suite N  
Sacramento, CA 95816-5712**

\_\_\_\_ (BY FEDERAL EXPRESS OR OTHER OVERNIGHT SERVICE) I deposited the sealed envelope in a box or other facility regularly maintained by the express service carrier or delivered the sealed envelope to an authorized carrier or driver authorized by the express carrier to receive documents.

\_\_\_\_\_ (BY PERSONAL DELIVERY) By causing a true copy of the within document(s) to be personally hand-delivered to the office(s) of the addressee(s) set forth above, on the date set forth above.

\_\_\_\_ (BY ELECTRONIC SERVICE) The above-stated document was submitted for service by electronic transmission of File & ServeXpress on the counsel of record listed above.

I declare under penalty of perjury that the foregoing is true and correct.

*Katherine Soriano*  
Katherine Soriano