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Attorneys for Plaintiff Troy Cruse, 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 BUTTE**

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

Plaintiff,

v.

DUBUG NO. 7, INC., a California corporation,
and DOES 1 through 10, inclusive,

Defendants.

CASE NO: **23CV00216**

**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 AND 558**

1 Plaintiff TROY CRUSE (“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 DUBUG NO. 7, INC., a California corporation, and/or any subsidiaries or
4 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 non-exempt California employees 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. Failing to properly compute bonus, commission, and other non-base hourly
15 wages earned by Plaintiff and other Aggrieved Employees into their regular rate of pay for purposes
16 of paying them meal period premiums, rest period premiums, overtime, and double-time wages at the
17 correct rates of pay, in violation of Labor Code §§ 226.7, 510, 512, 558, and 1194 and IWC Wage
18 Order No. 4-2001. Defendants failed to properly blend bonus, commission, and/or other non-base
19 hourly wages and instead paid Plaintiff and other Aggrieved Employees meal period premiums, rest
20 period premiums, overtime, and double-time wages based only on the base hourly rate of pay, thus
21 depriving Plaintiff and other Aggrieved Employees of all meal period premiums, rest period
22 premiums, overtime, and double-time wages earned. This violates Labor Code §§ 226.7, 510, 512,
23 558, and 1194 and IWC Wage Order No. 4-2001;

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

1 compliant rest period, and were never paid a premium wage for any missed rest period. This violates
2 Labor Code § 226.7 and IWC Wage Order No. 4-2001;

3 c. Failing to pay correct premium wages to Plaintiff and Aggrieved Employees
4 who were denied proper meal periods, in violation of Labor Code §§ 226.7, 510, 512, 558, and 1194
5 and IWC Wage Order 4-2001. Plaintiff and Aggrieved Employees were routinely denied, and not
6 authorized to take, a proper, timely, uninterrupted, 30-minute meal period for every shift worked that
7 exceeded five hours, or a second proper, timely, uninterrupted, 30-minute meal period for every shift
8 worked that exceeded ten hours, but were not paid proper premium wages of one hour's pay for each
9 missed first or second meal period. They were rarely, if ever, provided with a legally compliant meal
10 period, and were never paid a premium wage for any missed meal period. This violates Labor Code
11 §§ 226.7, 512, and 558 and IWC Wage Order 4-2001;

12 d. Failing to provide Plaintiff and other Aggrieved Employees with wage
13 statements that fully and accurately itemized the requirements set forth in Labor Code § 226(a).
14 Plaintiff and other Aggrieved Employees were not paid all wages due, as stated above. As such, the
15 wage statements provided by Defendants failed to accurately state all gross wages earned, in violation
16 of Labor Code §§ 226(a)(1) and 226.3, total hours worked, in violation of Labor Code §§ 226(a)(2)
17 and 226.3, net wages earned, in violation of Labor Code §§ 226(a)(5) and 226.3, and all applicable
18 hourly rates in effect during the pay period and the corresponding number of hours worked at each
19 hourly rate, in violation of Labor Code §§ 226(a)(9) and 226.3. Furthermore, and independent of the
20 above allegations, when overtime or double-time hours were worked, the wage statements issued to
21 Plaintiff and Aggrieved Employees failed to set forth the correct total hours worked, in violation of
22 Labor Code §§ 226(a)(2) and 226.3, and accurately state all applicable hourly rates in effect during
23 the pay period and the corresponding number of hours worked at each hourly rate, in violation of
24 Labor Code §§ 226(a)(9) and 226.3. The wage statements set forth the incorrect total hours worked
25 by overstating the regular hours worked and set forth the incorrect overtime and double-time rates of
26 pay when those such hours are worked; and

27 e. Failing to pay Plaintiff and certain Aggrieved Employees all wages due at the
28 separation of their employment based on the time frames required by Labor Code §§ 201 and 202. As

1 stated above, Plaintiff and other Aggrieved Employees were not paid all wages due during the course
2 of their employment and, as a result of this failure, they were not timely paid all wages due at the
3 separation of their employment. This violates Labor Code §§ 201-202 and is alleged on behalf of
4 Plaintiff and certain Aggrieved Employees no longer employed by Defendants.

5 3. Plaintiff, on behalf of himself and all Aggrieved Employees pursuant to Labor Code §
6 2698 *et seq.*, seeks civil penalties for Defendants' violations of the California Labor Code.

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

10 II.

11 PARTIES

12 A. Plaintiff

13 5. Plaintiff TROY CRUSE was employed by Defendants as a non-exempt employee
14 from June 2019 through October 2022 in Butte County, California.

15 B. Defendants

16 6. Defendant DUBUG NO. 7, INC. is a California corporation that employed Plaintiff
17 and Aggrieved Employees in Butte County, California.

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

25 8. Plaintiff is informed and believes, and based thereon alleges, that each Defendant acted
26 in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme,
27 business plan or policy in all respects pertinent hereto, and the acts of each Defendant is legally
28 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, 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, 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 November 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 November 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 he 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: January 23, 2023

Respectfully submitted,

16 GAINES & GAINES
17 A Professional Law Corporation

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