

ELECTRONICALLY FILED
Merced Superior Court
3/16/2023 3:43 PM
Amanda Toste
Clerk of the Superior Court
By: Brandon Chow, Deputy

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 Plaintiff Paul Arias

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF MERCED**

PAUL ARIAS, an individual,

Plaintiff,

v.

OPUS CONSULTING SOLUTIONS, INC., a
Delaware corporation, and DOES 1 through
10, inclusive,

Defendants.

CASE NO: 23CV-00068

FIRST AMENDED COMPLAINT FOR:

- 1. FAILURE TO PAY ALL WAGES DUE (LABOR CODE §§ 510 AND 1194; IWC WAGE ORDER 4-2001)**
- 2. FAILURE TO PROVIDE REST PERIODS OR COMPENSATION IN LIEU THEREOF (LABOR CODE § 226.7; IWC WAGE ORDER 4-2001)**
- 3. FAILURE TO PROVIDE MEAL PERIODS OR COMPENSATION IN LIEU THEREOF (LABOR CODE §§ 226.7 AND 512; IWC WAGE ORDER 4-2001)**
- 4. FAILURE TO TIMELY PAY WAGES DUE DURING EMPLOYMENT (LABOR CODE § 204)**
- 5. KNOWING AND INTENTIONAL FAILURE TO COMPLY WITH ITEMIZED EMPLOYEE WAGE STATEMENT PROVISIONS (LABOR CODE § 226(a), (e))**
- 6. FAILURE TO PAY WAGES DUE AT SEPARATION OF EMPLOYMENT (LABOR CODE §§ 201-203)**
- 7. VIOLATION OF BUSINESS AND PROFESSIONS CODE § 17200**
- 8. PENALTIES PURSUANT TO LABOR CODE § 2699(f) FOR VIOLATIONS OF**

**LABOR CODE §§ 201-202, 204, 226(a),
226.7, 510, 512, AND 1194 AND
PURSUANT TO LABOR CODE § 2699(a)
FOR VIOLATIONS OF LABOR CODE §§
210, 226.3, AND 558**

DEMAND FOR JURY TRIAL

Complaint Filed: January 6, 2023

Plaintiff PAUL ARIAS (“Plaintiff”), individually, on behalf of himself, complains of OPUS CONSULTING SOLUTIONS, INC., a Delaware corporation, and/or any subsidiaries or affiliated companies (hereinafter referred to as “Defendants”), as follows:

I.

INTRODUCTION AND FACTUAL BACKGROUND

1. For at least four (4) years prior to the filing of this action and continuing through the present (the “liability period”) Defendants have had a consistent policy of voluntarily and knowingly failing to pay all wages due to Plaintiff; failing to provide legally compliant meal and rest periods or compensation in lieu thereof to Plaintiff; failing to timely pay Plaintiff all wages due during employment; and failing to provide accurately itemized wage statements to Plaintiff.

2. Plaintiff brings this action pursuant to Labor Code §§ 201-203, 204, 210, 226(a), 226.7, 510, 512, 558, and 1194 seeking compensation for all unpaid wages, civil and statutory penalties, injunctive and other equitable relief, and reasonable attorneys’ fees and costs.

3. Plaintiff, on behalf of himself pursuant to Business & Professions Code §§ 17200-17208, also seeks injunctive relief, restitution, and disgorgement of all benefits Defendants enjoyed from their failure to him pay all wages due.

4. Venue is proper in this judicial district, pursuant to Code of Civil Procedure § 395 because Defendants employed Plaintiff in Merced County, California.

///

///

///

///

///

1 **II.**

2 **PARTIES**

3 **A. Plaintiff**

4 5. Plaintiff PAUL ARIAS was employed by Defendants from July 2021 through January
5 2023 as an exempt-classified employee in Merced County, California.

6 6. During his work with Defendants, Plaintiff was:

- 7 a. Willfully denied the payment of all wages due;
8 b. Willfully denied rest periods or compensation in lieu thereof;
9 c. Willfully denied meal periods or compensation in lieu thereof;
10 d. Willfully denied the timely payment of wages during employment; and
11 e. Willfully denied accurately itemized wage statements.

12 **B. Defendants**

13 7. Defendant OPUS CONSULTING SOLUTIONS, INC. is a Delaware corporation.
14 Defendant employs Plaintiff in Merced County, California.

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

23 9. 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 Defendants, carried out a joint scheme,
25 business plan or policy in all respects pertinent hereto, and the acts of each Defendant are legally
26 attributable to the other Defendants.

27 ///

28 ///

CAUSES OF ACTION

PLAINTIFF AGAINST ALL DEFENDANTS

FAILURE TO PAY ALL WAGES DUE

(LABOR CODE §§ 510 AND 1194; IWC WAGE ORDER 4-2001)

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

12. During the liability period, Defendants misclassified Plaintiff as an overtime and meal and rest period exempt employee even though he does not perform the requisite job duties or meet any exempt classification, as required by Labor Code §§ 510 and 1194 and IWC Wage Order 4-2001. Plaintiff alleges that Defendants misclassified him as exempt because his primary job duties did not consist of managing employees or performing primarily administrative, executive, or professional tasks, or otherwise qualify for any other exemption, including the inside or outside sales exemptions. As a result of his misclassification, when Plaintiff worked in excess of eight (8) hours in a workday and in excess of forty (40) hours in a workweek, he was not paid proper overtime wages of one-and-one-half times the regular rate of pay, nor was he paid twice the regular rate of pay for all hours worked in excess of twelve (12) in a workday. These failures to pay all wages due constitute violations of Labor Code §§ 510 and 1194 and IWC Wage Order 4-2001.

13. Plaintiff further alleges that Defendants failed to pay all commission wages due, in violation of Labor Code §§ 510 and 1194, and IWC Wage Order No. 4-2001. Labor Code § 200(a) defines wages to include “all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis, or other method of calculation.” Plaintiff earned commission wages based on meeting sales goals; however,

1 Defendants did not pay him all commission wages earned. This violates Labor Code §§ 510 and 1194
2 and IWC Wage Order 4-2001

3 14. As a result of the unlawful acts of Defendants in willfully failing to pay all wages due,
4 Plaintiff has been deprived of wages in amounts to be determined at trial, and is entitled to restitution
5 and recovery of such amounts, plus interest thereon, attorneys' fees, and costs, pursuant to Labor
6 Code § 1194.

7 Wherefore, Plaintiff requests relief as described below.

8 **IV.**

9 **SECOND CAUSE OF ACTION**

10 **PLAINTIFF AGAINST ALL DEFENDANTS**

11 **FAILURE TO PROVIDE REST PERIODS OR COMPENSATION IN LIEU THEREOF**

12 **(LABOR CODE § 226.7; IWC WAGE ORDER 4-2001)**

13 15. Plaintiff incorporates paragraphs 1 through 14 of this Complaint as though fully set
14 forth herein.

15 16. Plaintiff is entitled to one hour of pay for each day that Defendants failed to properly
16 provide one or more rest periods as set forth in Labor Code § 226.7.

17 17. Plaintiff was routinely unable to take a 10-minute rest period for every four (4) hours
18 of work or major fraction thereof, but was not paid premium wages of one hour's pay for each missed
19 rest period. Plaintiff was denied and not authorized to take his legally entitled rest periods and was
20 never paid premium wages for missed rest periods. This practice violates Labor Code § 226.7 and
21 IWC Wage Order No. 4-2001.

22 18. Pursuant to Labor Code § 226.7, Plaintiff seeks the payment of all rest period
23 compensation which he is owed for four years preceding the filing of this Action, according to proof.

24 Wherefore, Plaintiff requests relief as described below.

25 ///

26 ///

27 ///

28 ///

V.

THIRD CAUSE OF ACTION

PLAINTIFF AGAINST ALL DEFENDANTS

FAILURE TO PROVIDE MEAL PERIODS OR COMPENSATION IN LIEU THEREOF

(LABOR CODE §§ 226.7 AND 512; IWC WAGE ORDER 4-2001)

19. Plaintiff incorporates paragraphs 1 through 18 of this Complaint as though fully set forth herein.

20. Plaintiff is entitled to one hour of pay for each day that Defendants fails to properly provide one or more meal periods as set forth in Labor Code §§ 226.7 and 512.

21. Plaintiff was 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 was not paid premium wages of one hour's pay for each missed first or second meal period. This violates Labor Code §§ 226.7 and 512 and IWC Wage Order 4-2001.

22. Pursuant to Labor Code §§ 226.7 and 512, Plaintiff seeks the payment of all meal period compensation which he is owed for four years preceding the filing of this Action, according to proof.

Wherefore, Plaintiff requests relief as described below.

VI.

FOURTH CAUSE OF ACTION

PLAINTIFF AGAINST ALL DEFENDANTS

FAILURE TO TIMELY PAY WAGES DUE DURING EMPLOYMENT

(LABOR CODE § 204)

23. Plaintiff incorporates paragraphs 1 through 22 of this Complaint as though fully set forth herein.

24. Plaintiff was not timely paid his wages due during his employment, in violation of Labor Code § 204. Labor Code § 204 requires employers – like Defendants – to pay their employees on a weekly, bi-weekly or semimonthly basis and issue such wages on strict timelines thereafter.

1 Defendants paid Plaintiff on a semi-monthly basis, but failed to issue him all his wages for work
2 “performed between the 1st and 15th days” no later than the 26th and for work “performed between
3 the 16th and the last day, inclusive, of any calendar month” no later than the 10th day of the following
4 month as required by Labor Code § 204(a). This subjects Defendant to penalties as authorized by
5 Labor Code §§ 204 and 210.

6 Wherefore, Plaintiff requests relief as described below.

7 **VII.**

8 **FIFTH CAUSE OF ACTION**

9 **PLAINTIFF AGAINST ALL DEFENDANTS**

10 **KNOWING AND INTENTIONAL FAILURE TO COMPLY WITH ITEMIZED**

11 **EMPLOYEE WAGE STATEMENT PROVISIONS**

12 **(LABOR CODE § 226(a), (e))**

13 25. Plaintiff incorporates paragraphs 1 through 24 of this Complaint as though fully set
14 forth herein.

15 26. Section 226(a) of the California Labor Code requires Defendants to provide wage
16 statements to employees. In those wage statements, Defendants must provide an accurate itemized
17 statement in writing showing (1) gross wages earned, (2) total hours worked by the employee..., (3)
18 the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-
19 rate basis, (4) all deductions, provided that all deductions made on written orders of the employee
20 may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period
21 for which the employee is paid, (7) the name of the employee and only the last four digits of his or
22 her social security number or an employee identification number other than a social security number,
23 (8) the name and address of the legal entity that is the employer..., and (9) all applicable hourly rates
24 in effect during the pay period and the corresponding number of hours worked at each hourly rate by
25 the employee. Defendants have knowingly and intentionally failed to comply with Labor Code §
26 226(a).

27 27. Defendants failed to provide Plaintiff with wage statements that fully and accurately
28 itemized the requirements set forth in Labor Code §§ 226(a). Plaintiff was not paid all wages due, as

1 stated above. As such, the wage statements provided by Defendants failed to accurately state all gross
2 wages earned, in violation of Labor Code § 226(a)(1), total hours worked, in violation of Labor Code
3 § 226(a)(2), net wages earned, in violation of Labor Code § 226(a)(5), and all applicable hourly rates
4 in effect during the pay period and the corresponding number of hours worked, in violation of Labor
5 Code § 226(a)(9).

6 28. As a consequence of Defendants' willful conduct in failing to provide Plaintiff with
7 accurate itemized wage statements, Plaintiff has been injured because he is not paid all wages due
8 and is issued wage statements which do not reflect, and fail to state, all information required by Labor
9 Code § 226(a). The missing information cannot be discerned at all from the face of the wage
10 statements themselves. As a result, Plaintiff is entitled to penalties pursuant to Labor Code § 226(e)
11 to recover the greater of all actual damages or \$50 for the initial pay period in which a violation occurs
12 and \$100 per employee for each violation in a subsequent pay period, not exceeding an aggregate
13 penalty of \$4,000 per employee, and are entitled to an award of costs and reasonable attorneys' fees
14 pursuant to Labor Code § 226(h).

15 Wherefore, Plaintiff requests relief as described below.

16 **VIII.**

17 **SIXTH CAUSE OF ACTION**

18 **PLAINTIFF AGAINST ALL DEFENDANTS**

19 **FAILURE TO PAY WAGES DUE AT SEPARATION OF EMPLOYMENT**

20 **(LABOR CODE §§ 201-203)**

21 29. Plaintiff incorporates paragraphs 1 through 28 of this Complaint as though fully set
22 forth herein.

23 30. California Labor Code § 201 and § 202 require Defendants to pay employees all wages
24 due within 72 hours after resignation of employment or the day of termination of employment. Labor
25 Code § 203 provides that if an employer willfully fails to timely pay such wages, the employer must,
26 as a penalty, continue to pay the subject employee's daily wages until the back wages are paid in full
27 or an action is commenced. The penalty cannot exceed 30 days of wages.

28 ///

33. As a consequence of Defendants' willful conduct in not paying wages owed timely upon separation of employment, Plaintiff is entitled to up to 30 days' wages as a penalty under Labor Code § 203 for Defendants' failure to timely pay legal wages at separation of employment.

IX.

PLAINTIFF AGAINST ALL DEFENDANTS

BUSINESS & PROFESSIONS CODE § 17200 ET SEQ.

35. This is an Action for Unfair Business Practices. Plaintiff brings this claim pursuant to Business & Professions Code § 17200 *et seq.* The conduct of all Defendants as alleged in this Complaint has been and continues to be unfair, unlawful, and harmful to Plaintiff. Plaintiff seeks to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure § 1021.5.

37. Business & Professions Code § 17200 *et seq.* prohibits unlawful and unfair business practices.

38. Wage and hour laws express fundamental public policies. Properly providing employees with all wages due is a fundamental public policy of this State and of the United States.

1 Labor Code § 90.5(a) articulates the public policies of this State to enforce vigorously minimum labor
2 standards, to ensure that employees are not required or permitted to work under substandard and
3 unlawful conditions, and to protect law-abiding employers and its employees from competitors who
4 lower their costs by failing to comply with minimum labor standards.

5 39. Defendants have violated statutes and public policies. Through the conduct alleged
6 in this Complaint, Defendants, and each of them, have acted contrary to these public policies, have
7 violated specific provisions of the Labor Code, and have engaged in other unlawful and unfair
8 business practices in violation of Business & Professions Code § 17200 *et seq.* depriving Plaintiff and
9 all interested persons of rights, benefits, and privileges guaranteed to all employees under law.

10 40. Defendants' conduct, as alleged herein, constitutes unfair competition in violation of
11 §17200 *et seq.* of the Business & Professions Code.

12 41. Defendants, by engaging in the conduct herein alleged, either knew or in the exercise
13 of reasonable care should have known that the conduct was unlawful. As such, it is a violation of §
14 17200 *et seq.* of the Business & Professions Code.

15 42. As a proximate result of the above-mentioned acts of Defendants, Plaintiff has been
16 damaged in a sum as may be proven.

17 43. Unless restrained by this Court, Defendants will continue to engage in the unlawful
18 conduct, as alleged above. Pursuant to Business & Professions Code § 17200 *et seq.*, this Court
19 should make such orders or judgments, including the appointment of a receiver, as may be necessary
20 to prevent the use or employment, by Defendants, its agents, or employees, of any unlawful or
21 deceptive practice prohibited by the Business & Professions Code, and/or, including but not limited
22 to, disgorgement of profits which may be necessary to restore Plaintiff the money Defendants have
23 unlawfully failed to pay.

24 ///

25 ///

26 ///

27 ///

28 ///

X.

EIGHTH CAUSE OF ACTION

PLAINTIFF AGAINST ALL DEFENDANTS

PENALTIES FOR VIOLATIONS OF LABOR CODE §§ 201-202, 204, 226(a), 226.7, 510, 512, AND 1194 AND PURSUANT TO LABOR CODE § 2699(a) FOR VIOLATIONS OF LABOR CODE §§ 210, 226.3, AND 558

44. Plaintiff incorporates paragraphs 1 through 43 of this Complaint as though fully set forth herein.

45. As a result of the acts alleged above, including the Labor Code violations set forth herein, Plaintiff seeks penalties pursuant to Labor Code § 2698 *et seq.*

46. For each such violation, Plaintiff is entitled to penalties 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, 204, 226(a), 226.7, 510, 512, and 1194; and

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

47. Penalties recovered will be allocated 75% to the Labor and Workforce Development Agency, and 25% to the affected employees.

48. On December 14, 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) calendar days of December 14, 2022. Plaintiff may therefore commence this action to seek civil penalties pursuant to Labor Code § 2698 *et seq.*

Wherefore, Plaintiff requests relief as described below.

///

///

1
2 **RELIEF REQUESTED**

3 WHEREFORE, Plaintiff prays for the following relief:

- 4 1. For compensatory damages pursuant to Labor Code §§ 510 and 1194 in the amount
5 of all unpaid wages due to Plaintiff;
- 6 2. For compensatory damages in the amount of one hour of wages for each day on which
7 a meal and/or rest period was not properly provided, pursuant to Labor Code § 226.7;
- 8 3. For penalties pursuant to Labor Code § 226(e);
- 9 4. For penalties pursuant to Labor Code §§ 204 and 210;
- 10 5. For penalties pursuant to Labor Code § 203;
- 11 6. For civil penalties pursuant to Labor Code § 2698 *et seq.* for Plaintiff and the State of
12 California;
- 13 5. An award of prejudgment and post-judgment interest;
- 14 6. For restitution for unfair competition pursuant to Business & Professions Code §
15 17200 *et seq.*;
- 16 7. An award providing for payment of costs of suit pursuant to Labor Code §§ 226(h),
17 1194, 2699(g)(1), and other applicable law;
- 18 8. An award of attorneys' fees pursuant to Labor Code §§ 226(h), 1194, 2699(g)(1), and
19 other applicable law; and
- 20 9. Such other and further relief as this Court may deem just and proper.

21 Dated: March 16, 2023

Respectfully submitted,

22 GAINES & GAINES
23 A Professional Law Corporation

24 By: 
25 DANIEL F. GAINES
26 EVAN S. GAINES
27 Attorneys for Plaintiff
28

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial of his claims by jury to the extent authorized by law.

Dated: March 16, 2023

Respectfully submitted,

GAINES & GAINES
A Professional Law Corporation

By: 
DANIEL F. GAINES
EVAN S. GAINES
Attorneys for Plaintiff

1 **PROOF OF SERVICE AND CERTIFICATION**

2 I am employed in the County of VENTURA, State of California. I am over the age of 18 and not a party to the
3 within action; my business address is 4550 East Thousand Oaks Blvd., Suite 100, Westlake Village, CA 91362.

4 _____ (For messenger) my business address is:

5 On March 16, 2023, I served the foregoing document described as **FIRST AMENDED COMPLAINT** on the
6 interested parties in this action by placing a true copy thereof enclosed in sealed envelopes addressed as follows:

7 **Sean Andrade, Esq.**
8 **ANDRADE GONZALEZ LLP**
9 **634 South Spring Street, Top Floor**
10 **Los Angeles, CA 90014**

11 X

12 (BY x U.S. MAIL/ BY ☐ CERTIFIED MAIL, RETURN RECEIPT REQUESTED) The sealed envelope was
13 mailed with postage thereon fully prepaid. I am "readily familiar" with the firm's practice of collection
14 and processing correspondence for mailing. It is deposited with United States postal service on that same
15 day in the ordinary course of business. I am aware that on motion of party served, service is presumed
16 invalid if postal cancellation date or postage meter date is more that one day after date of deposit for
17 mailing in affidavit.

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

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

23 _____ (BY PERSONAL SERVICE) I delivered such envelope by hand to the offices of the addressee.

24 _____ (BY ELECTRONIC SERVICE) The above-stated document was submitted for service by electronic
25 transmission via email on the counsel of record listed above.

26 I certify that the above document was printed on recycled paper.

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

28 Executed on March 16, 2023, at Westlake Village, California.

Katherine Soriano

Katherine Soriano