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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

ROBNEY COOPER, on behalf of himself and
all others similarly situated,

Plaintiff,

vs.

BIRTCHER ANDERSON & DAVIS
ASSOCIATES, INC., a California corporation;
and DOES 1 through 100, Inclusive,
Defendants.

Case No. 30-2023-01303804-CU-OE-CXC

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT FOR:**

- (1) WAGE STATEMENT VIOLATIONS
(LABOR CODE § 226, et seq.)**
- (2) CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS GENERAL
ACT (LABOR CODE § 2698, et seq.)**

**DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

1 Plaintiff Robney Cooper (“Plaintiff”), on behalf of himself and all others similarly
2 situated, hereby brings this Class and Representative Action Complaint against Birtcher Anderson
3 & Davis Associates, Inc., a California corporation; and Does 1 through 100, inclusive
4 (collectively, “Defendants”), and on information and belief alleges as follows:

5 **JURISDICTION**

6 1. Plaintiff, on behalf of himself and all others similarly situated, hereby brings this
7 class action for recovery of penalties under California Labor Code §§ 226, 2698 *et seq*; and
8 Industrial Welfare Commission Wage Order No. 5 (“Wage Order 5”), in addition to seeking
9 declaratory relief and restitution. This class and representative action is brought pursuant to
10 California Code of Civil Procedure § 382. This Court has jurisdiction over Defendants’ violations
11 of the California Labor Code because the amount in controversy exceeds this Court’s
12 jurisdictional minimum.

13 **VENUE**

14 2. Venue is proper in this judicial district pursuant to California Code of Civil
15 Procedure §§ 395(a) and 395.5, as at least some of the acts and omissions complained of herein
16 occurred in Orange County. Defendants own, maintain offices, transact business, have an agent
17 or agents within Orange County, and/or otherwise are found within Orange County, and
18 Defendants are within the jurisdiction of this Court for purposes of service of process.

19 **PARTIES**

20 3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
21 Plaintiff was, and currently is, a California resident. Within the statute of limitations periods
22 applicable to each cause of action pled herein, Plaintiff was employed by Defendants as a non-
23 exempt employee. Plaintiff was, and is, a victim of Defendants’ policies and/or practices
24 complained of herein, lost money and/or property, and has been deprived of the rights guaranteed
25 by California Labor Code §§ 226, 2698 *et seq*, and Wage Order 5, which sets employment
26 standards for employees in the public housekeeping industry, which includes operators and
27 employees of hotels, motels, apartment houses, rooming houses, camps, clubs, trailer parks, office
28 or loft buildings, and similar establishments offering housing and/or maintenance services.

1 4. Plaintiff is informed and believes, and based thereon alleges, that during the
2 relevant statute of limitations period and continuing to the present, Defendants did (and do)
3 business as a property management company, and that they employed Plaintiff and other similarly
4 situated non-exempt employees within Orange County and the state of California.

5 5. Plaintiff does not know the true names or capacities, whether individual, partner,
6 or corporate, of the defendants sued herein as DOES 1 through 100, and for that reason, said
7 defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to
8 amend this Complaint when such true names and capacities are discovered. Plaintiff is informed
9 and believes, and thereon alleges, that each of said fictitious defendants, whether individual,
10 partners, or corporate, were responsible in some manner for the acts and omissions alleged herein,
11 and proximately caused Plaintiff and the Class (as defined in Paragraph 11) to be subject to the
12 unlawful employment practices, wrongs, injuries, and damages complained of herein.

13 6. Plaintiff is informed and believes, and based thereon alleges, that at all times
14 mentioned herein, Defendants were and are the employers of Plaintiff and all Class members.

15 7. At all times herein mentioned, each of said Defendants participated in the acts
16 herein alleged to have been done by the named Defendants; and furthermore, the Defendants, and
17 each of them, were the agents, servants, and employees of each of the other Defendants, as well
18 as the agents of all Defendants, and at all times herein mentioned were acting within the course
19 and scope of said agency and employment. Defendants, and each of them, approved of, condoned,
20 and/or otherwise ratified each of the acts or omissions alleged herein.

21 8. At all times mentioned herein, Defendants, and each of them, were members of
22 and engaged in a joint venture, partnership, and common enterprise, and acting within the course
23 and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further,
24 Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and all Class
25 Members (as defined in Paragraph 11).

26 **GENERAL FACTUAL ALLEGATIONS**

27 9. Plaintiff was employed by Defendants as a non-exempt employee from
28 approximately April 2022 until approximately June 2022.

10. During Plaintiff's employment with Defendants, Defendants regularly issued facially deficient wage statements to Plaintiff and other non-exempt employees, in that the wage statements failed to list the correct total hours worked and therefore, failed to comply with Labor Code § 226(a)(2). Specifically, the wage statements issued by Defendants included a line item titled "Total Hrs Worked," and the wage statements would include the hours paid as meal period premiums and/or other non-working hours as "hours worked," even though such hours do not actually reflect hours worked. For example, Plaintiff's wage statement dated April, 22, 2022 reported a total of 42.80 "Total Hours," of which 32.97 were listed as "Regular Hours," 1.00 hour as "Meal Premium," 0.83 hours as "Overtime," and 8.00 hours as "Holiday." Plaintiff's wage statement then listed his "Total Hrs Worked" as 34.80, correctly removing the "Holiday" hours from this calculation but including Plaintiff's "Meal Premium" hour in this calculation, which is not a payment for hours worked. Similarly, in the following pay period on Plaintiff's wage statement dated May 6, 2022, the wage statement listed 77.43 hours of "Regular," 2.00 hours of "Meal Premium," and 0.40 hours of "Overtime," and included all three categories when reporting "Total Hrs Worked" of 79.83 hours. As another example, on Plaintiff's wage statement dated June 3, 2022, the 5.00 hours listed as "Meal Premium" and the 1.6 hours listed as "Comp Time" were included in the "Total Hrs Worked" reported on the wage statement, even though, on information and belief, neither of those categories of wages represents payment for hours worked. Thus, the wage statements issued by Defendants during pay periods when employees were paid meal premiums, Comp Time, and/or other categories of non-hours worked but that were nonetheless counted among "Total Hrs Worked" on the wage statement, failed to accurately report employees' total hours worked, and in fact reported total hours worked inaccurately, in violation of Labor Code § 226(a)(2).

CLASS ACTION ALLEGATIONS

11. Class Definition: Plaintiff brings this action on behalf of himself and the following Class pursuant to Section 382 of the Code of Civil Procedure:

- a. The Wage Statement Class consists of all of the Defendants' current and former non-exempt employees in California who were issued at least one wage statement that

counted meal period premiums and/or other non-working hours in its calculation of “Total Hrs Worked,” at any time from one year immediately preceding the filing of this action through the present.

12. **Numerosity/Ascertainability:** The members of the Classes are so numerous that joinder of all members would be unfeasible and impracticable. The membership of the Classes is unknown to Plaintiff at this time; however, it is estimated that the Classes number greater than fifty (50) individuals in each Class. The identity of such membership is readily ascertainable via Defendants’ employment records.

13. **Common Questions of Law and Fact Predominate/Well Defined Community of Interest:** There are common questions of law and fact as to Plaintiff and all other similarly situated employees, which predominate over questions affecting only individual members including, without limitation to:

- i. Whether Defendants furnished legally compliant wage statements to members of the Wage Statement Class pursuant to Labor Code § 226.

14. **Predominance of Common Questions:** Common questions of law and fact predominate over questions that affect only individual members of the Class. The common questions of law set forth above are substantial and stem from Defendants’ wage statement policies and/or practices applicable to each class member. As such, the common questions predominate over individual questions concerning each individual class member’s showing as to his or her eligibility for recovery or as to the amount of his or her damages.

15. **Typicality:** Plaintiff’s claims are typical of the Class’s claims because Plaintiff was employed by Defendants as a non-exempt employee in California during the statute(s) of limitation applicable to each cause of action pled in this Complaint. As alleged herein, Plaintiff, like the members of the Class, was furnished with inaccurate wage statements.

16. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps to represent fairly and adequately the interests of the members of the Class. Moreover, Plaintiff’s attorneys are ready, willing, and able to fully and adequately represent the members of the Class and Plaintiff. Plaintiff’s attorneys have prosecuted numerous wage-and-hour class

actions in state and federal courts in the past and are committed to vigorously prosecuting this action on behalf of the members of the Class.

17. **Superiority:** The California Labor Code is broadly remedial in nature and serves an important public interest in establishing minimum working conditions and standards in California. These laws and labor standards protect the average working employee from exploitation by employers who have the responsibility to follow the laws and who may seek to take advantage of superior economic and bargaining power in setting onerous terms and conditions of employment. The nature of this action, and the format of laws available to Plaintiff and Class members, make the class action format a particularly efficient and appropriate procedure to redress the violations alleged herein. If each employee were required to file an individual lawsuit, Defendants would necessarily gain an unconscionable advantage since they would be able to exploit and overwhelm the limited resources of each individual plaintiff with their vastly superior financial and legal resources. Moreover, requiring each Class member to pursue an individual remedy would discourage the assertion of lawful claims by employees who would be disinclined to file an action against their former and/or current employer for real and justifiable fear of retaliation and permanent damages to their careers at subsequent employment. Further, the prosecution of separate actions by the individual class members, even if possible, would create a substantial risk of inconsistent or varying verdicts or adjudications with respect to the individual class members against Defendants herein; and which would establish potentially incompatible standards of conduct for Defendants. Further, the claims of the individual members of the Class are not sufficiently large to warrant vigorous individual prosecution considering all of the concomitant costs and expenses attending thereto. As such, the Class identified in Paragraph 11 is maintainable under Code Civ. Proc. § 382 of the Code of Civil Procedure.

FIRST CAUSE OF ACTION

WAGE STATEMENT VIOLATIONS

(AGAINST ALL DEFENDANTS)

18. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

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1 19. Plaintiff is informed and believes, and based thereon alleges, that Defendants
2 knowingly and intentionally, as a matter of uniform policy and practice, failed to furnish Plaintiff
3 and the Wage Statement Class with accurate and complete itemized wage statements that
4 included, among other requirements, an accurate representation of total hours worked, in violation
5 of Labor Code § 226.

6 20. Defendants' failure to furnish Plaintiff and Wage Statement Class members with
7 complete and accurate itemized wage statements resulted in injury, as said failure created
8 confusion over the total number of hours actually worked.

9 21. Defendants' failures create an entitlement to recovery by Plaintiff and members of
10 the Wage Statement Class in a civil action for all damages and/or penalties pursuant to Labor
11 Code § 226, including statutory penalties, civil penalties, and reasonable attorneys' fees and costs
12 of suit according to California Labor Code §§ 226 and 226.3.

13 **SECOND CAUSE OF ACTION**

14 **PRIVATE ATTORNEYS GENERAL ACT**

15 **(AGAINST ALL DEFENDANTS)**

16 22. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

17 23. Defendants have committed several Labor Code violations against Plaintiff and
18 other aggrieved employees. Plaintiff is an "aggrieved employee" within the meaning of Labor
19 Code § 2698 et seq. Plaintiff, acting on behalf of himself and other aggrieved employees, brings
20 this representative action against Defendants to recover the civil penalties due to Plaintiff, other
21 aggrieved employees, and the State of California according to proof pursuant to Labor Code §§
22 558 and 2699 (a) and (f) including, but not limited to, \$250.00 for each initial violation of Labor
23 Code § 226 and \$1,000.00 for each subsequent violation, pursuant to Labor Code § 226.3, per
24 employee per pay period; and/or \$100.00 for each initial violation and \$200.00 for each
25 subsequent violation per employee per pay period for those violations of the Labor Code for which
26 no civil penalty is specifically provided, based on the following Labor Code violations:

- 27 a. Failing to furnish Plaintiff and other aggrieved employees with accurate and
28 complete itemized wage statements, in violation Labor Code §§ 226 and 1198.

24. On or about January 24, 2023, Plaintiff notified Defendant Birtcher Anderson & Davis Associates, Inc., via certified mail, and the California Labor and Workforce Development Agency (“LWDA”) via its website, of Defendants’ violations of the California Labor Code and Plaintiff’s intent to bring a claim for civil penalties under California Labor Code § 2698 et seq. with respect to the violations of the California Labor Code identified in paragraph 23 (a) above. Now that sixty-five days have passed from Plaintiff’s notifying Defendants and the LWDA of these violations, Plaintiff has exhausted his administrative requirements for bringing a claim under the Private Attorneys General Act with respect to these violations.

25. Plaintiff was compelled to retain the services of counsel to file this court action to protect his interests and the interests of other aggrieved employees, and to assess and collect the civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys’ fees and costs, which he is entitled to recover under California Labor Code § 2699(g).

PRAYER

WHEREFORE, Plaintiff prays for judgment for himself and for all others on whose behalf this suit is brought against Defendants, as follows:

1. For an order certifying the proposed Class;
2. For an order appointing Plaintiff as representative of the Class;
3. For an order appointing counsel for Plaintiff as counsel for the Class;
4. Upon the First Cause of Action, for statutory penalties pursuant to Labor Code § 226, *et seq.*;
5. Upon the Second Cause of Action, for civil penalties due to Plaintiff, other aggrieved employees, and the State of California according to proof pursuant to Labor Code § 2699, including, but not limited to, \$250.00 for each initial violation of Labor Code § 226 and \$1,000.00 for each subsequent violation, pursuant to Labor Code § 226.3 per employee per pay period; and/or \$100.00 for each initial violation and \$200.00 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided, pursuant to Labor Code § 2699(f);

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1 6. On all causes of action, for attorneys' fees and costs as provided by Labor Code §§
2 226(e), 2699(g); and

3 7. For such other and further relief the Court may deem just and proper.

4
5 Date: March 31, 2023

Respectfully submitted,
ABRAMSON LABOR GROUP

6
7 By: _____


Tuvia Korobkin
Attorneys for Plaintiff

8 **DEMAND FOR JURY TRIAL**

9 Plaintiff hereby demands a jury trial with respect to all issues triable by jury.

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11
12 Dated: March 31, 2023

Respectfully submitted,
ABRAMSON LABOR GROUP

13
14 By: _____


Tuvia Korobkin
Attorneys for Plaintiff