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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

ALBERT FEDERICO, on behalf of aggrieved
employees and the State of California under the
Private Attorneys General Act,

Plaintiffs,

vs.

A.S.I. HASTINGS, INC. and DOES 1 through
50, inclusive,

Defendants.

Case No. 37-2023-00012941-CU-OE-CTL

**REPRESENTATIVE ACTION
COMPLAINT**

1. Civil Penalties under the Private Attorneys
General Act (Labor Code §§ 2698 *et seq.*)

1 Plaintiff ALBERT FEDERICO, individually and on behalf of all aggrieved employees and the
2 State of California under the Private Attorneys General Act (“Plaintiff”) brings this
3 REPRESENTATIVE ACTION COMPLAINT against Defendants A.S.I. HASTINGS, INC. a/k/a
4 “The White Glove Guys” and DOES 1 through 50, inclusive (collectively “Defendants”), alleging as
5 follows:

6 **INTRODUCTION**

7 1. This action challenges A.S.I.’s policy and practice of not including all forms of
8 remuneration in the sick pay hourly rate, along with associated penalties for untimely payment of all
9 wages earned. Additionally, this action challenges inaccurate wage statements issued by A.S.I.

10 2. Through this action, Plaintiff seeks to settle or prosecute the underlying Labor Code
11 violations on behalf of the aggrieved employees, to recover civil penalties, and to compel compliance
12 and correction of the foregoing policies and practices.

13 **JURISDICTION & VENUE**

14 3. Jurisdiction of this action is proper in this Court under Article VI, Section 10 of the
15 California Constitution as the causes of action are premised upon violations of California law.

16 4. The monetary damages and restitution sought exceed the minimal jurisdiction limits of
17 the Superior Court.

18 5. This Court has jurisdiction over Defendants because, upon information and belief,
19 Defendants have sufficient minimum contacts in California, or otherwise intentionally avail
20 themselves to the California economy so as to render the exercise of jurisdiction over them by the
21 California courts consistent with traditional notions of fair play and substantial justice.

22 6. Venue is proper in this Court under Code of Civil Procedure sections 393(a), 395,
23 and/or 395.5 because, upon information and belief, Defendants conduct business and committed some
24 of the alleged violations in this county.

PARTIES

A. Plaintiff Albert Federico

7. Plaintiff Federico is an individual over 18 years of age who worked for Defendants in California as a non-exempt employee from about April 2018 to September 2022. Plaintiff worked as a Plumbing Service Tech.

8. The State of California, via the Labor and Workforce Development Agency (“LWDA”), is the real party in interest in this action. (*Kim v. Reins Int’l California, Inc.* (2020) 9 Cal. 5th 73, 81 [The “government entity on whose behalf the plaintiff files suit is always the real party in interest.”])

B. Defendants

9. Defendant A.S.I. Hastings, Inc. is a California corporation that maintains operations and conducts business throughout the State of California, including in this county.

10. The true names and capacities, whether individual, corporate, or otherwise, of the parties sued as DOES 1 through 50, are presently unknown, unascertainable, or uncertain, and are sued by such fictitious names under Code of Civil Procedure section 474. Upon information and belief, each of DOES 1 through 50 constitutes a legal employer or is otherwise legally responsible in some manner for the acts and omissions alleged herein. This Complaint may be amended to reflect their true names and capacities once ascertained.

11. Upon information and belief, Defendants in this action are employers, co-employers, joint employers, and/or part of an integrated employer enterprise, as each of the Defendants exercised control over the wages, hours, and working conditions of the employees, suffered and permitted them to work, and otherwise engaged them as employees under California law.

12. Upon information and belief, at least some of the Defendants have common ownership, common management, interrelationship of operations, and centralized control over labor relations and are therefore part of an integrated enterprise and thus jointly and severally responsible for the acts and omissions alleged herein, including pursuant to Labor Code sections 558, 558.1, and 1197.1.

13. Upon information and belief, Defendants acted in all respects pertinent to this action as an alter-ego, agent, servant, joint employer, joint venturer, co-conspirator, partner, in an integrated

enterprise, or in some other capacity on behalf of all other co-defendants, such that the acts and omissions of each defendant may be legally attributable to all others.

GENERAL ALLEGATIONS

14. A.S.I. paid aggrieved employees like Plaintiff additional forms of remuneration, such as bonuses, incentives, differentials, and commissions, and other non-excludable forms of pay.

15. According to compensation plans applicable to these additional forms of remuneration, the earnings were non-discretionary in nature, based on objective metrics and goals, and not subject to a statutory exclusion from the regular rate calculation.

16. Under Labor Code § 246 through 248.7, sick pay must be paid according to one of the specific statutory methods, which requires a calculation over and above the base hourly rate, inclusive of all forms of non-excludable remuneration.

17. A.S.I. violated Labor Code §§ 246 through 248.7 by failing to include the bonuses, incentives, differentials, and commissions, and other non-excludable forms of pay, including in the hourly sick pay rate, resulting in underpayments of sick pay.

18. As a result of this practice of underpaying sick pay, wage statements issued to aggrieved employees under Labor Code § 226(a) incorrectly stated the gross and net wages earned and the accurate hourly rate in effect for sick pay, in violation of subsections (a)(1), (5), and (9).

19. As a separate and additional wage statement violation, A.S.I. issued wage statements to aggrieved employees like Plaintiff which listed the incorrect “Total Hours Worked” in violation of Labor Code § 226(a). Instead of listing the actual total hours worked by the aggrieved employees in these pay periods, A.S.I. erroneously totaled all *units* of compensation (rather than simply hours worked) and then stated that total number as the hours worked. This rendered the total hours stated in accurate and occurred in pay periods in which employees earned regular wages plus other forms of pay such as meal and rest period premiums, holiday pay, and sick pay.

20. Furthermore, A.S.I. violated Labor Code §§ 201 through 203 and 204 *et seq.*, due to the sick pay underpayments, by failing to pay all wages owed to the respective aggrieved employees each pay day or upon separation of employment.

1 **FIRST CAUSE OF ACTION**

2 **CIVIL PENALTIES UNDER THE PRIVATE ATTORNEYS GENERAL ACT**

3 **Violation of Labor Code §§ 2698 *et seq.***

4 **(By Plaintiff on Behalf of the State and the Aggrieved Employees Against All Defendants)**

5 21. All outside paragraphs of this Complaint are incorporated into this section.

6 22. Plaintiff brings this cause of action as a proxy for the State of California on behalf of
7 the following “aggrieved employees” pursuant to the Private Attorneys General Act (“PAGA”),
8 codified as Labor Code section 2698 *et seq.*:

9 a. All current and former non-exempt employees who [1] worked for Defendants
10 in California at any time from one year prior to the postmark date of the initial
11 PAGA notice through date of trial and [2] earned bonuses, incentives,
12 differentials, and commissions, and other non-excludable forms of pay.

13 b. For the Labor Code § 226(a)(2) total hours wage statement claim, the aggrieved
14 employees include all current and former non-exempt employees who
15 [1] worked for Defendants in California at any time from one year prior to the
16 postmark date of the initial PAGA notice through date of trial and [2] earned
17 meal and rest period premiums, holiday pay, sick pay, or other forms of
18 compensation reflected on the wage statements as a unit of earnings listed in
19 the Hours column, in the same pay period in which they earned regular hourly
20 wages.

21 23. Plaintiff reserves the right to amend, supplement, or add to this description of the
22 aggrieved employees, according to proof.

23 24. The State of California, via the Labor and Workforce Development Agency
24 (“LWDA”), is the real party in interest in this action with respect to this cause of action. (*Kim v. Reins*
25 *Int’l California, Inc.* (2020) 9 Cal. 5th 73, 81 [The “government entity on whose behalf the plaintiff
26 files suit is always the real party in interest.”])

27 25. Labor Code section 2699(a) provides: “Notwithstanding any other provision of law,,
28 any provision of this code that provides for a civil penalty to be assessed and collected by the Labor

1 and Workforce Development Agency or any of its departments, divisions, commissions, boards,
2 agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil
3 action brought by an aggrieved employee on behalf of himself or herself and other current or former
4 employees pursuant to the procedures specified in Section 2699.3. “

5 26. Labor Code section 2699(f) provides: “For all provisions of this code except those for
6 which a civil penalty is specifically provided, there is established a civil penalty for a violation of these
7 provisions, as follows: ... (2) If, at the time of the alleged violation, the person employs one or more
8 employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay period
9 for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for
10 each subsequent violation.”

11 27. Any allegations regarding violations of the IWC Wage Orders are enforceable as
12 violations of Labor Code section 1198, which states: “[t]he employment of any employee for longer
13 hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

14 28. Labor Code section 2699.3 sets forth the procedure for commencing an action for civil
15 penalties under the PAGA.

16 29. On or about **January 19, 2023**, Plaintiff paid the requisite PAGA filing fee and
17 provided written notice (by online electronic filing with the LWDA and by certified mail to
18 Defendants) of Defendants’ alleged Labor Code violations, including the facts and theories to support
19 the alleged violations.

20 30. To date, neither Plaintiff nor Plaintiff’s counsel has received a response to Plaintiff’s
21 written PAGA notice from the LWDA.

22 31. Within 33 calendar days of the postmark date of the notice sent by Plaintiff, neither
23 Plaintiff nor Plaintiff’s counsel has received written notice by certified mail from any defendant
24 providing a description of any actions taken to cure the alleged violations.

25 32. Now that at least 65 days have passed from Plaintiff notifying Defendants of these
26 violations, without notice of cure from Defendants or notice from the LWDA of its intent to investigate
27 the alleged allegations and issue the appropriate citations to Defendants, Plaintiff exhausted all
28 prerequisites and commenced this civil action under Labor Code section 2699 *et seq.*

33. Plaintiff seeks to recover all recoverable civil penalties based exclusively upon the following violations set forth in the PAGA notice:

- a. ***Unpaid Paid Sick Leave.*** Violation of Labor Code §§ 246 through 248.7.
- b. ***Untimely Payment of Wages During Employment.*** Violation of Labor Code §§ 204, 204b, 210.
- c. ***Untimely Payment of Wages Upon Separation of Employment.*** Violation of Labor Code §§ 201, 202, 203, 256.
- d. ***Non-Compliant Wage Statements.*** Violation of Labor Code § 226.

34. Plaintiff seeks to collect all recoverable civil penalties for the Labor Code violations alleged in this Complaint against Defendants pursuant to Labor Code section 2699(a) and (f), in addition to attorneys' fees, costs, and interest to the extent permitted by law, including under Labor Code section 2699(g).

PRAYER

Plaintiff prays for judgment as follows:

- a. For this action to be maintained as a representative action under the PAGA;
- b. For Plaintiff and counsel of record to be provided with all enforcement capability as if the action were brought by the State of California or the California Division of Labor Enforcement;
- c. For recovery of all civil penalties and other recoverable amounts under the PAGA;
- d. For restitution and injunctive relief;
- e. For reasonable attorneys' fees and costs of suit, including expert fees, to the extent permitted by law, including (without limitation) under Labor Code § 2699 and Code of Civil Procedure section 1021.5; and
- f. For such other relief the Court deems just and proper.

Dated: March 29, 2023

Ferraro Vega Employment Lawyers, Inc.



Nicholas J. Ferraro

Attorneys for Plaintiff Albert Federico