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8 Counsel for Plaintiff LUIS A. MARTINEZ TRUJILLO

Assigned to Judicial Officer
John P Bianco

For All Purposes

9 **SUPERIOR COURT OF CALIFORNIA**
10 **IN AND FOR THE COUNTY OF TULARE**

11 LUIS A. MARTINEZ TRUJILLO, on behalf
12 of all others similarly aggrieved,

13 Plaintiff,

14 vs. FORD SPRAYING, INC., a California
15 corporation, and DOES 1 through 50,
16 inclusive,

17 Defendants.

CASE NO. VCU298017

Case Management Conference

09/01/2023 08:30 AM - Department 02

REPRESENTATIVE COMPLAINT UNDER
THE PRIVATE ATTORNEYS GENERAL
ACT, LABOR CODE SECTION 2698, *et seq.*

JURY TRIAL DEMANDED

GENERAL ALLEGATIONS

1. Plaintiff LUIS A. MARTINEZ TRUJILLO is an individual residing in the State of California.

2. On information and belief, defendant FORD SPRAYING, INC. is a California corporation duly licensed to conduct business in the State of California.

3. Plaintiff is unaware of the names and capacities of those defendants sued as DOES 1 through 10 but will amend this complaint when that information becomes known. Plaintiff is informed and believes and thereon alleges that, at all relevant times, each of the defendants, including the DOE defendants, was the officer, director, employee, agent, representative, alter ego, or co-conspirator of each of the other defendants, and in engaging in the conduct alleged herein, was acting in the course and scope of, and in furtherance of, such relationship. Unless otherwise specified, Plaintiff will refer to all defendants as “Defendant,” and each allegation pertains to each defendant.

4. This court possesses original subject matter jurisdiction over this matter. Venue is proper in this judicial district because Defendant transacts business in this district, and some of the complained of conduct occurred in this judicial district.

5. Defendant employed Plaintiff in California as a non-exempt employee during the relevant time period until his employment terminated in and around December 2022. Plaintiff brings his complaint under the Private Attorneys General Act of 2004, Labor Code sections 2698, *et seq.*, (“PAGA”), as a representative action on behalf of the State of California regarding violations of the Labor Code as to all similarly aggrieved individuals employed by Defendant as a non-exempt employee, however titled, in the State of California, from the date one year prior to submission of Plaintiff’s PAGA notice letter. This action is brought solely under PAGA and seeks no relief beyond that available under PAGA.

6. During the one year period preceding the filing of the required PAGA notice with the Labor Workforce & Development Agency, and continuing through the present, as alleged herein, Defendant violated Labor Code sections 201-203, 204, 210, 221-223, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, 1199, and all applicable Wage Orders, as to Plaintiff and all other

1 similarly aggrieved employees employed by Defendant in California. These violations subject
2 Defendant to civil penalties as set forth in the foregoing statutes as well as other provisions of
3 the Labor Code, including without limitation Labor Code sections 203, 210, 225.5, 226.3,
4 256, 1174.5, 1194.2, 1197.1, and 2699, and section 20 of all applicable IWC Wage Orders.

5 FIRST CAUSE OF ACTION

6 (Violation of Private Attorneys General Act – Labor Code §§ 2698, et seq.)

7 7. Plaintiff incorporates all preceding paragraphs as if fully alleged herein.

8 8. California law mandates that employees in California be paid for all hours worked,
9 up to 40 per week or 8 per day, at a regular time rate no less than the mandated minimum wage.
10 Defendant violated California minimum wage laws by requiring, suffering or permitting Plaintiff
11 and other aggrieved employees to work without compensation in part by requiring them to arrive
12 at work before the scheduled start of their shifts in order to prepare for the day's work and be
13 ready to start exactly on time, and which pre-shift work was not recorded or compensated.
14 Accordingly, Plaintiff and similarly aggrieved employees were not paid for all hours worked
15 causing minimum wage violations pursuant to Labor Code sections 1194-1199, and all applicable
16 Wage Orders, including Wage Order 14-2001. These violations subject Defendant to civil
17 penalties under the foregoing Labor Code sections and other applicable Labor Code sections,
18 including without limitation Labor Code sections 1197.1 and 2699, and Sections 18 or 20 of the
19 applicable Wage Orders. Each violation of each Labor Code section and Wage Order provision
20 results in a separate civil penalty, for each aggrieved employee, for each pay period during which
21 the referenced statutes and Wage Order provisions were violated.

22 9. California law requires employers to pay overtime equal to one and one-half times the
23 regular hourly rate of pay for each hour worked beyond eight (8) hours per workday and each hour
24 worked beyond forty (40) hours per work week. Employers must pay overtime equal to double the
25 regular hourly rate of pay for each hour worked beyond twelve (12) hours per workday and for all
26 hours worked in excess of eight (8) hours on the seventh consecutive day or work in a work week
27 Plaintiff and other aggrieved employees regularly worked more than 8 hours per day and/or more than
28 40 hours per week for which they were not paid at the applicable overtime wage because Defendant

1 failed to include all non-discretionary pay, such as shift differentials for “night work pay,” in the
2 regular rate of pay for purposes of calculating the correct overtime rate. Accordingly, Defendant
3 failed to pay Plaintiff and other aggrieved employees for all overtime hours worked at the correct
4 premium rate. These violations subject Defendant to civil penalties under the foregoing Labor
5 Code sections and other applicable Labor Code sections, including without limitation Labor Code
6 sections 510, 1194-1199, and Wage Order 14-2001, sections 3-4 and 18, and any other applicable
7 Wage Order. Each violation of each Labor Code section and Wage Order provision results in a
8 separate civil penalty, for each aggrieved employee, for each pay period during which the
9 referenced statutes and Wage Order provisions were violated.

10 10. California law requires employers to provide employees a duty-free, uninterrupted
11 thirty (30) minute meal period when an employee works more than five (5) hours in a workday,
12 and it must be provided within the first five (5) hours the employee works. Employers must also
13 provide employees with a second duty-free, uninterrupted thirty (30) minute meal period when an
14 employee works more than (10) hours in a workday, and it must be provided before the end of the
15 10th hour of work. Meal periods can be waived, but only under the following circumstances: (1)
16 if an employee’s total work period in a day is over five (5) hours but no more than six (6) hours,
17 the required meal period may be waived by mutual consent of the employer and employee, and
18 (2) if an employee’s total work period in a day is over ten (10) hours but no more than twelve
19 (12) hours, the required second meal period may be waived by mutual consent of the employer
20 and employee, but only if the first meal period was not waived Plaintiff and the class members
21 regularly worked periods of more than five hours in a workday without being provided mandatory
22 thirty-minute, duty-free meal periods before the end of the fifth hour of work. Upon information
23 and belief, Defendant failed to maintain a company meal period policy compliant with California
24 law. Plaintiff and similarly aggrieved employees were not provided with second meal periods on
25 shifts lasting 10-12 hours because they were required as a condition of employment to sign a waiver
26 their right to second meal period. Further, Plaintiff and other aggrieved employees were not permitted
27 to leave the work premises while on their meal periods and thus their meal periods were not
28 completely free from employer control. Defendant also failed to pay Plaintiff and other aggrieved

1 employees an additional hour of wages at their regular rates of compensation for each workday a
2 meal period was not provided, or was late, short or interrupted. This conduct results in violations
3 of Labor Code sections 512, 226.7, and IWC Wage Order 14-2001 (and all applicable Wage
4 Orders), § 12(A). These violations subject Defendant to civil penalties under Labor Code section
5 2699, and Wage Order 14-2001 (and all applicable Wage Orders), section 18. Each violation of
6 each Labor Code section and Wage Order provision results in a separate civil penalty, for each
7 aggrieved employee, for each pay period during which the referenced statutes and Wage Order
8 provisions were violated.

9 11. California law requires employers to provide employees a paid, duty-free ten (10)
10 minute rest period for each four (4) hours worked, or major fraction thereof. IWC Wage Order 14-
11 2001, section 12. Employers must pay employees an additional hour of wages at the employee's
12 regular rate of pay for each missed or improper (e.g., less than 10 minutes, interrupted rest period, rest
13 period(s) at improper time(s) during shift(s)) rest period. Defendant did not maintain a company rest
14 period policy and/or practice compliant with California law, and Defendant did not provide Plaintiff
15 and other aggrieved employees with all required rest periods. Per Defendant's policy and/or practice,
16 Plaintiff and other aggrieved employees were not adequately informed and instructed about, and
17 thereby were not afforded an adequate opportunity to take, proper rest breaks per California law and,
18 in particular, Plaintiff and other aggrieved employees were not permitted and/or were not able to take
19 third rest breaks on shifts lasting longer than 10 hours. Further, Defendant failed to pay

20 12. California law provides that, at the time of each payment of wages, employers
21 must provide each employee with an itemized statement showing, inter alia, gross wages earned,
22 total hours worked, all deductions taken, net wages earned, the inclusive dates for which the
23 employee is being paid, the employee's name and last four digits of their social security number,
24 the name and address of the legal entity that it is the employer, and all applicable hourly rates in
25 effect during the pay period and all hours worked at each rate. Defendant further is required to
26 with the required with the amount of sick leave available on their wage statements or in any other
27 separate writing at the time of payment of wages.

28 13. Defendant knowingly and intentionally failed to provide Plaintiff and other

1 similarly situated and aggrieved employees with proper, itemized wage statements as the wage
2 statements provided by Defendant do not accurately reflect, inter alia, gross wages earned, total
3 hours worked, and net wages earned. Given that Defendant failed to calculate and pay overtime at
4 the correct regular rate of pay and underpaid Plaintiff and the aggrieved employees accordingly,
5 the wage statements are inaccurate on their face and do not accurately reflect all applicable hourly
6 rates in effect during the pay period. Further, the wage statements do not accurately state the total
7 hours worked because certain hours, such as night work pay, are double-counted resulting in an
8 incorrect tabulation of total hours worked. Finally, the wage statements do not inform Plaintiff
9 and other aggrieved employees of the amount of sick leave available nor were they provided with
10 in any other separate writing at the time of payment of wages informing them of the amount of
11 sick leave available. Within the meaning of Labor Code section 226, Defendants knowingly and
12 intentionally failed to provide Plaintiff and the class members with proper, itemized wage
13 statements Accordingly, Defendant has violated Labor Code section 226 as to Plaintiff and all
14 similarly aggrieved employees. These violations subject Defendant to civil penalties under the
15 Labor Code, including without limitation Labor Code sections 226, 226.3, 246(h), and 2699. Each
16 violation of each Labor Code section and Wage Order provision, for each aggrieved employee,
17 results in a separate civil penalty.

18 14. California law requires employers to keep “accurate and complete” payroll records
19 showing, among other things, the hours worked daily by all non-exempt employees. The
20 applicable IWC Wage Order similarly requires employers to keep time records showing, inter
21 alia, when the employees begins and end each work period and reflecting the times during which
22 all owed meal periods are provided each day. At all relevant times, Defendant has failed, and
23 continues to fail, to keep the required time records by, including but not limited to, by failing to
24 accurately record hours worked before the scheduled start of shifts.

25 15. Defendant’s failure to keep “accurate and complete” payroll records for Plaintiff
26 and other similarly aggrieved employees violates Labor Code sections 1174, 1198-99, and Wage
27 Order 14-2001 (and all applicable Wage Orders), section 7. These violations subject Defendant
28 to civil penalties under the Labor Code, including without limitation sections 1174.5 and 2699,

1 and Wage Order 14-2001, section 18. Each violation of each Labor Code section and Wage
2 Order provision, for each aggrieved employee, results in a separate civil penalty.

3 16. Labor Code sections 1198 and 1199 make it unlawful to employ any individual
4 under conditions of labor prohibited by the Wage Orders, and any violation, refusal, or neglect to
5 comply with any provision within Part 4, Chapter 1 of the Labor Code, including sections 1174,
6 1197, and 1198, or other order or ruling of the IWC. Defendant's violations with respect to
7 minimum wages and/or overtime wages, as alleged herein, result in separate violations of Labor
8 Code sections 1198 and 1199, and subject Defendant to civil penalties under the Labor Code,
9 including without limitation Labor Code sections 1197.1 and 2699. Each violation of each Labor
10 Code section and Wage Order provision, for each aggrieved employee, results in a separate civil
11 penalty.

12 17. California Labor Code section 204 requires an employer to pay employees all
13 wages due and payable at least twice each calendar month. For reasons discussed herein,
14 Defendant failed to comply with Labor Code section 204 by failing to timely pay twice during
15 each calendar month all wages due and payable to Plaintiff and other similarly aggrieved
16 employees. Defendant's violations of Labor Code section 204 subject Defendant to civil
17 penalties, including but not limited to the penalties set forth in California Labor Code sections
18 210 and 2699. Each violation results in a separate civil penalty, for each aggrieved employee for
19 each pay period during which the statutory provisions were violated.

20 18. Labor Code section 201 requires employers to pay all wages earned and unpaid at
21 the time of discharge, immediately upon discharge. Labor Code section 202 states similar
22 provisions with respect to employees who resign. Upon information and belief, Defendant has a
23 policy and practice of failing to timely pay wages upon discharge, and Plaintiff still has not
24 received her final check despite repeated requests. Further, for Plaintiff and all aggrieved
25 employees no longer employed by Defendant, Defendant still has not paid such aggrieved
26 employees all wages earned and unpaid at the time of discharge, in that Defendant has not paid
27 for all minimum wages and overtime wages for the reasons alleged above. These violations
28 subject Defendant to civil penalties under the Labor Code, including without limitation Labor

Code sections 203, 256 and 2699. Each violation results in a separate civil penalty, for each aggrieved employee for each pay period during which the statutory provisions were violated.

19. California Labor Code section 2802 provides an employer shall fully indemnify an employee for all reasonable and necessary expenses incurred in the performance of the employee's job duties. Plaintiff and other aggrieved employees incurred expenses as they were required by Defendant to use their personal mobile phones for work purposes, such as communicating with management during shifts, taking pictures for work purposes, etc., and were not provided with any reimbursement by Defendant therefor. This conduct results in violations of Labor Code section 2802 and subjects Defendant to civil penalties under the Labor Code, including without limitation Labor Code sections 2802 and 2699. Each violation results in a separate civil penalty, for each aggrieved employee for each pay period during which the statutory provisions were violated.

20. Plaintiff complied with the procedures for bringing suit specified in Labor Code Sections 2699.3 and 2699.5. By letter dated and postmarked February 23, 2023, Plaintiff gave written notice to the California Labor & Workforce Development Agency ("LWDA") via electronic submission at PAGAfilings@dir.ca.gov, and via certified mail to Defendant, of the specific provisions of the Labor Code and Wage Orders allegedly violated, including the facts and theories to support the alleged violations.

21. Under Labor Code Section 2699.3, the LWDA must give written notice by certified mail to the parties it intends to investigate the alleged violations within 65 days of the date of the Plaintiff's written notice. As of the filing of this Complaint, the LWDA has not provided the parties any notice of its intention to investigate Plaintiff's claims on behalf of himself and other aggrieved employees. As of the filing of this complaint, Defendant has not responded to Plaintiff's PAGA notice in an attempt to cure any of the alleged violations. Plaintiff accordingly has exhausted all administrative remedies required by law.

22. Under Labor Code Section 2699(g), Plaintiff is entitled to an award of reasonable attorney's fees and costs in connection with her claims for civil penalties.

PRAYER

WHEREFORE, Plaintiff prays for judgment against each Defendant, jointly and severally,

1 as follows:

- 2 1. For civil penalties according to proof;
- 3 2. For reasonable attorney's fees and costs of suit; and
- 4 3. For such other and further relief as the Court deems just and proper.

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6 Dated: May 4, 2023

LAW OFFICES OF J. KIRK DONNELLY, APC

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8 
9 J. Kirk Donnelly
Attorneys for Plaintiff Luis A. Martinez Trujillo

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11 DEMAND FOR JURY TRIAL

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13 Plaintiff hereby demands a trial by jury on all claims so triable.

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15 Dated: May 4, 2023

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16
17 
18 J. Kirk Donnelly
Attorneys for Plaintiff Luis A. Martinez Trujillo