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8 **SUPERIOR COURT OF CALIFORNIA**
9 **IN AND FOR THE COUNTY OF SANTA CLARA**
10

11 ALFREDO PERALTA, on behalf of all
12 others similarly aggrieved,

13 Plaintiff,

14 vs. MAVERICK PAINTING, INC., a
California corporation, MICHAEL SOUZA,
15 an individual, and DOES 1 through 50,
inclusive,

16 Defendants.
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CASE NO. **23CV417330**

COMPLAINT FOR VIOLATION OF
PRIVATE ATTORNEYS GENERAL ACT

JURY TRIAL DEMANDED

E-FILED
6/12/2023 6:54 AM
Clerk of Court
Superior Court of CA,
County of Santa Clara
23CV417330
Reviewed By: R. Walker

GENERAL ALLEGATIONS

1. Plaintiff ALFREDO PERALTA is an individual residing in the State of California.

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

3. On information and belief, defendant MICHAEL SOUZA is an individual residing in the State of California and is, and at all relevant times has been, the Chief Executive Officer of defendant MAVERICK PAINTING, INC., owns, operates, and/or manages MAVERICK PAINTING, INC., and had direct control and power over the working conditions and the violations at issue in this Complaint. On information and belief, MICHAEL SOUZA devised and implemented the policies at issue in this complaint and “caused” these violations as that term is used in Labor Code §§ 558, 1197.1 and 2699(f). Pursuant to Labor code §§ 558, 1197.1, 2699(f), MICHAEL SOUZA is individually liable as a person who “caused” the violations to occur

4. Plaintiff is unaware of the names and capacities of those defendants sued as DOES 1 through 50 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.

5. 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.

6. 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

1 non-exempt employees, however titled, in the State of California, from the date one year prior to
2 submission of Plaintiff's PAGA notice letter. This action is brought solely under PAGA and
3 seeks no relief beyond that available under PAGA.

4 7. During the period beginning one-year period preceding the filing of the required
5 PAGA notice with the Labor Workforce & Development Agency, and continuing through the
6 present, as alleged herein, Defendant violated Labor Code sections 201-203, 204, 216, 221-224,
7 226, 226.7, 510, 512, 514, 1174, 1194, 1197, 1197.1, 1198, 1198.5, 1199, 2802, 2810.5, and all
8 applicable Wage Orders, as to Plaintiff and all other similarly aggrieved employees employed by
9 Defendant in California. These violations subject Defendant to civil penalties as set forth in the
10 foregoing statutes as well as other provisions of the Labor Code, including without limitation
11 Labor Code sections 203, 210, 225.5, 226.3, 256, 1174.5, 1194.2, 1197.1, and 2699, and
12 section 20 of all applicable IWC Wage Orders.

13 FIRST CAUSE OF ACTION

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

15 8. Plaintiff incorporates by reference the allegations contained in paragraphs 1
16 through 7.

17 9. California law mandates that employees in California be paid for all hours worked,
18 up to 40 per week or 8 per day, at a regular time rate no less than the mandated minimum wage.
19 Defendant violated California minimum wage laws by requiring Plaintiff and aggrieved
20 employees to work hours for which they were not paid at least the applicable minimum wage,
21 including without limitation hours worked after clocking out for a shift that were spent unloading
22 equipment and supplies. Further Plaintiff and other aggrieved employees were required to record that
23 their shift ended exactly at the scheduled time even though they regularly worked additional time
24 beyond the scheduled end of their shift, resulting in "off the clock" work. Further, Defendant rounds
25 employee time punches such that Plaintiff and other aggrieved employees lost compensable hours
26 worked. Further, Defendant did not pay for compensable time spent traveling to and from distant job
27 sites. Accordingly, Plaintiff and similarly aggrieved employees were not paid for all hours worked
28 causing minimum wage violations pursuant to Labor Code sections 1194-1199, and all applicable

1 Wage Orders. These violations subject Defendant to civil penalties under the foregoing Labor
2 Code sections and other applicable Labor Code sections, including without limitation Labor Code
3 sections 1197.1 and 2699. Each violation of each Labor Code section and Wage Order provision,
4 for each aggrieved employee, results in a separate civil penalty.

5 10. California law requires employers to pay overtime equal to one and one-half times
6 the regular hourly rate of pay for each hour worked beyond eight (8) hours per workday and each
7 hour worked beyond forty (40) hours per work week. Employers must pay overtime equal to
8 double the regular hourly rate of pay for each hour worked beyond twelve (12) hours per workday
9 and for all hours worked in excess of eight (8) hours on the seventh consecutive day or work in a
10 work week.

11 11. Defendant has violated California's overtime laws by, among other things,
12 requiring Plaintiff and aggrieved employees to work hours for which they were not paid at least the
13 applicable minimum wage, including without limitation hours worked after clocking out for a shift
14 that were spent unloading equipment and supplies. Further Plaintiff and other aggrieved employees
15 were required to record that their shift ended exactly at the scheduled time even though they regularly
16 worked additional time beyond the scheduled end of their shift, resulting in "off the clock" work.
17 Further, Defendant rounds employee time punches such that Plaintiff and other aggrieved employees
18 lost compensable hours worked. Further, Defendant rounds employee time punches such that Plaintiff
19 and other aggrieved employees lost compensable hours worked. Further, Defendant did not pay for
20 compensable time spent traveling to and from distant job sites. As a result, Defendant failed to pay
21 Plaintiff and the aggrieved employees for all overtime hours worked at the appropriate premium
22 rate. Plaintiff and similarly aggrieved employees often worked more than 8 hours in a day and/or
23 40 hours in a week for which they were not properly compensated. This conduct results in
24 violations of Labor Code sections 510, 1198-1199, and IWC Wage Order 16-2001 (and all
25 applicable Wage Orders), § 12(A). These violations subject Defendant to civil penalties under
26 Labor Code section 2699, and Wage Order 16-2001 (and all applicable Wage Orders), § 20. Each
27 violation of each Labor Code section and Wage Order provision results in a separate civil penalty,
28 for each aggrieved employee, for each pay period during which the referenced statutes and Wage

1 Order provisions were violated.

2 12. Under the Labor Code and IWC Wage Orders, Defendant was required to provide
3 Plaintiff and similarly aggrieved employees with one 30-minute meal period free from all duties
4 for all shifts longer than 5 hours, and a second 30-minute meal period free from all duties for all
5 shifts longer than 10 hours. Meal periods can be waived, but only under the following
6 circumstances: (1) if an employee's total work period in a day is over five (5) hours but no more
7 than six (6) hours, the required meal period may be waived by mutual consent of the employer
8 and employee, and (2) if an employee's total work period in a day is over ten (10) hours but no
9 more than twelve (12) hours, the required second meal period may be waived by mutual consent
10 of the employer and employee, but only if the first meal period was not waived. Employers
11 covered by the Wage Orders have an obligation to both (1) relieve their employees for at least one
12 meal period for shifts over five hours (see above), and (2) to record having done so. If the
13 employer fails to properly record a valid meal period, it is presumed no meal period was
14 provided.

15 13. Plaintiff and similarly aggrieved employees regularly worked periods of more than
16 five and ten hours in a workday without being provided mandatory thirty-minute, duty-free meal
17 periods. Upon information and belief, Defendant failed to maintain a company meal period policy
18 compliant with California law and failed to provide Plaintiff and other aggrieved employees with
19 proper meal periods, and/or meal periods were not provided until after the start of the fifth hour work.
20 Plaintiff and other aggrieved employees had their meal periods interrupted by work or otherwise cut
21 short and Defendant improperly combined meal periods and rest periods into one break. Per
22 Defendant's illegal meal period policy/practice, Plaintiff and similarly aggrieved employees were
23 not always relieved of their duties for purposes of taking meal periods. Defendant also failed to
24 pay Plaintiff and similarly aggrieved employees an additional hour of wages at their regular rates
25 of compensation for each workday a meal period was not provided, or was late, short or
26 interrupted. These violations subject Defendant to civil penalties under Labor Code section 2699,
27 and Wage Order 16-2001 (and all applicable Wage Orders), § 20. Each violation of each Labor
28 Code section and Wage Order provision results in a separate civil penalty, for each aggrieved

1 employee, for each pay period during which the referenced statutes and Wage Order provisions
2 were violated.

3 14. Defendant failed to provide Plaintiff and similarly aggrieved employees all
4 required and/or fully compliant rest periods, or compensation in lieu thereof. Defendant employed
5 policies and procedures that ensured Plaintiff and other aggrieved employees would not receive
6 all legally required rest periods, as Defendant did not authorize and permit all required rest
7 periods in strict accordance to, and in compliance with, the timing requirements of all applicable
8 Wage Orders. Plaintiff and other aggrieved employees were not provided proper rest breaks
9 because purported rest breaks were short, interrupted, untimely, and/or on duty. Defendant further
10 employed policies and procedures ensuring Plaintiff and similarly aggrieved employees did not
11 receive premium wages to compensate them for workdays they did not receive all legally required
12 and fully compliant rest periods. These violations subject Defendant to civil penalties under
13 Labor Code section 2699, and Wage Order 16-2001 (and all applicable Wage Orders), § 20. Each
14 violation of each Labor Code section and Wage Order provision results in a separate civil penalty,
15 for each aggrieved employee, for each pay period during which the referenced statutes and Wage
16 Order provisions were violated.

17 15. California law provides that, at the time of each payment of wages, the employer
18 must provide each employee with an itemized statement showing, inter alia, gross wages earned,
19 total hours worked, all deductions taken, net wages earned, the inclusive dates for which the
20 employee is being paid, the employee's name and last four digits of their social security number,
21 the name and address of the legal entity that it is the employer, and all applicable hourly rates in
22 effect during the pay period and all hours worked at each rate.

23 16. Defendant knowingly and intentionally failed to provide Plaintiff and other
24 aggrieved employees with proper, itemized wage statements as the wage statements provided by
25 Defendant do not accurately reflect, inter alia, gross wages earned, total hours worked, net wages
26 earned, and all applicable hourly rates in effect during each pay period and all hours worked at
27 each applicable hourly rate, for all the reasons herein mentioned. Because Defendant rounds
28 employee time off, the wage statements do not provide the precise amount of hours worked by

1 each employee during the pay period and therefore violate Labor Code section 226 on their face.
2 Accordingly, Defendant has violated Labor Code section 226 as to Plaintiff and all similarly
3 aggrieved employees. These violations subject Defendant to civil penalties under the Labor Code,
4 including without limitation Labor Code sections 226.3 and 2699. Each violation of each Labor
5 Code section and Wage Order provision, for each aggrieved employee, results in a separate civil
6 penalty.

7 17. California law requires employers to keep “accurate and complete” payroll records
8 showing, among other things, the hours worked daily by all non-exempt employees. The
9 applicable IWC Wage Order similarly requires employers to keep time records showing, inter
10 alia, when the employees begins and end each work period and reflecting the times during which
11 all owed meal periods are provided each day. At all relevant times, Defendant has failed, and
12 continues to fail, to keep the required time records by, including but not limited to, adopting and
13 maintaining an unlawful time rounding system that as applied worked to detrimentally shave and
14 round time off from Plaintiff and similarly aggrieved employees’ workdays. Plaintiff alleges on
15 information and belief that through the operation of Defendant’s rounding system, Plaintiff and
16 similarly aggrieved employees would systematically be deprived of compensable time because
17 the time recording system implemented by Defendant would almost always, if not always,
18 understate actual compensable work time due to the rounding. This time shaving and
19 manipulation of the time clock resulted in record-keeping violations. Defendant also failed to
20 record the start and end times of meal periods in violation of the Labor Code and Wage Orders.

21 18. Defendant’s failure to keep “accurate and complete” payroll records for Plaintiff
22 and other similarly aggrieved employees violates Labor Code sections 1174, 1198-99, and Wage
23 Order 16-2001 (and all applicable Wage Orders), section 7. These violations subject Defendant
24 to civil penalties under the Labor Code, including without limitation sections 1174.5 and 2699.
25 Each violation of each Labor Code section and Wage Order provision, for each aggrieved
26 employee, results in a separate civil penalty.

27 19. Labor Code sections 1198 and 1199 make it unlawful to employ any individual
28 under conditions of labor prohibited by the Wage Orders, and any violation, refusal, or neglect to

1 comply with any provision within Part 4, Chapter 1 of the Labor Code, including sections 1174,
2 1197, and 1198, or other order or ruling of the IWC. Defendant's violations with respect to
3 minimum wages and/or overtime wages, as alleged herein, result in separate violations of Labor
4 Code sections 1198 and 1199, and subject Defendant to civil penalties under the Labor Code,
5 including without limitation Labor Code sections 1197.1 and 2699. Each violation of each Labor
6 Code section and Wage Order provision, for each aggrieved employee, results in a separate civil
7 penalty.

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

16 21. Labor Code section 201 requires employers to pay all wages earned and unpaid at
17 the time of discharge, immediately upon discharge. Labor Code section 202 states similar
18 provisions with respect to employees who resign. For all aggrieved employees no longer
19 employed by Defendant, Defendant still has not paid such aggrieved employees all wages earned
20 and unpaid at the time of discharge, in that Defendant has not paid for, all minimum and overtime
21 wages. These violations subject Defendant to civil penalties under the Labor Code, including
22 without limitation Labor Code sections 203, 256 and 2699. Each violation results in a separate
23 civil penalty, for each aggrieved employee for each pay period during which the statutory
24 provisions were violated.

25 22. Under Labor Code section 2802, California law requires an employer to reimburse
26 employees for all necessary expenditures or losses incurred by the employee in direct
27 consequence of the discharge of their duties. Accordingly, an employer must fully reimburse
28 employees for, inter alia, all expenses incurred by the employee for using his or her personal

1 mobile phone in furtherance of their job duties. Defendant did not fully and accurately record and
2 reimburse all of Plaintiff and aggrieved employees expenses incurred using their personal mobile
3 phones for work purposes, such as using their personal phone to communicate with management
4 during shifts, navigate to job sites, etc. Defendant did not reimburse Plaintiff and other aggrieved
5 employees for driving their personal vehicles to and from assigned work locations, and in
6 particular Plaintiff and other aggrieved employees frequently worked at distant job sites but were
7 not reimbursed for any mileage incurred driving to and from such distant job sites. Plaintiff and
8 other aggrieved employees also were required to purchase tools and other supplies for use on the
9 job, such as gas used to power machinery used to perform their jobs, for which they received no
10 reimbursement from Defendant. The aforementioned conduct results in violations of Labor Code
11 section 2802 and subjects Defendant to civil penalties under Labor Code section 2699. Each
12 violation of each Labor Code section and Wage Order provision results in a *separate* civil
13 penalty, for each aggrieved employee for each pay period during which the referenced statutes
14 were violated

15 23. Pursuant to Labor Code sections 226(b) and 1198.5(b), an employer must provide
16 an employee with access to his or her personnel file and payroll records. Under Labor Code
17 Sections 226(c), an employer that receives a written or verbal request to inspect or copy records
18 from a former employee must comply with the request as soon as possible but not later than 21
19 calendar days from the date of the request, or within 30 calendar days for non-payroll related
20 documents per Labor Code Section 1198.5. On or about January 25, 2023, Plaintiff made a
21 written demand to Defendant to inspect or copy her personnel file and payroll records under
22 Labor Code Sections 226(b) and 1198.5(b). Defendant failed to respond to Plaintiff's written
23 demand at all, much less within the mandated deadlines. The aforementioned conduct results in
24 violations of Labor Code sections 226 and 1198.5, and subjects Defendant to civil penalties under
25 Labor Code sections 226, 1198.5, and 2699. Each violation of each Labor Code section and Wage
26 Order provision results in a *separate* civil penalty, for each aggrieved employee for each
27 violation.

28 24. Plaintiff complied with the procedures for bringing suit specified in Labor Code

1 Sections 2699.3 and 2699.5. By letter dated and postmarked March 22, 2023 Plaintiff gave
2 written notice to the California Labor and Workforce Development Agency ("LWDA") via
3 electronic mail at PAGAfilings@dir.ca.gov, and via certified mail to all Defendants, of the
4 specific provisions of the Labor Code and Wage Orders allegedly violated, including the facts
5 and theories to support the alleged violations.

6 25. Under Labor Code Section 2699.3, the LWDA must give written notice by
7 certified mail to the parties it intends to investigate the alleged violations within 65 days of the
8 date of the Plaintiff's written notice. As of the filing of this Complaint, the LWDA has not
9 provided the parties any notice of its intention to investigate Plaintiff's claims on behalf of
10 himself and other aggrieved employees, nor have Defendants responded to Plaintiff's PAGA
11 notices in an attempt to cure. According, Plaintiff has exhausted all administrative remedies
12 required by law.

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

15 PRAYER

16 WHEREFORE, Plaintiff prays for judgment against each Defendant, jointly and severally,
17 as follows:

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

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22 Dated: June 12, 2023

LAW OFFICES OF J. KIRK DONNELLY, APC

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25 J. Kirk Donnelly
26 Attorneys for Plaintiff ALFREDO PERALTA
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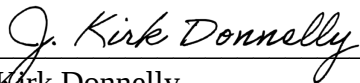
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DEMAND FOR JURY TRIAL

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

Dated: June 12, 2023

LAW OFFICES OF J. KIRK DONNELLY, APC



J. Kirk Donnelly
Attorneys for Plaintiff ALFREDO PERALTA