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SUPERIOR COURT-STOCKTON

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on behalf of himself and similarly situated employees

SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SAN JOAQUIN

81V 373 / 435

FRANK ORTEGON-RAMIREZ,
individually and as an aggrieved employee
pursuant to the Private Attorneys General
Act (PAGA),

Plaintiffs,

vs.

ECLIPSE RTO, LLC; STAFFPAY, INC,
dba EMPLICIT; Does 1 through 20,
inclusive,

Defendants.

Case No. STK-CV-VOE -2023- 2114

COMPLAINT FOR DAMAGES:

1. Failure to Pay Minimum Wage for All Hours Worked;
2. Failure to Provide Accurate Wage Statements;
3. Waiting Time Penalties;
4. Failure to Pay Overtime Wages;
5. Violation of California Unfair Competition Law (Business & Professions Code § 17200 et seq. ;
6. Civil Penalties Pursuant to Private Attorney General Act, Labor Code § 2698 et seq.

JURY TRIAL DEMANDED

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PLAINTIFF'S COMPLAINT FOR DAMAGES

FILE BY FAX

1 Plaintiff FRANK ORTEGO-RAMIREZ ("Plaintiff"), on behalf of himself and all other
2 similarly situated employees hereby files this Complaint against Defendants ECLIPSE RTO, LLC;
3 STAFFPAY, INC, dba EMPLICIT; Does 1 through 20 (collectively referred to as "Defendants").
4 Plaintiff alleges the following:

5 **INTRODUCTION**

6 1. This complaint is brought by Plaintiff seeking individual damages and PAGA
7 penalties for failure to provide accurate wage statements, missed meal and rest periods, unpaid
8 minimum and overtime wages, and derivative civil and statutory penalties. Plaintiff seeks these
9 damages and penalties, plus interest and attorney's fees, on behalf of himself and similarly situated
10 employees.

11 2. During all relevant times, Plaintiff and similarly situated employees worked for
12 Defendants as non-exempt employees.

13 **JURISDICTION AND VENUE**

14 3. The San Joaquin County Superior Court has jurisdiction in this matter due to alleged
15 violations of California Labor Code §§ 201, 203, 226, 226.3, 213, 2698 *et seq.*, Business and
16 Professions Code § 17200 *et seq.*

17 4. Venue is proper pursuant to Civil Procedure Code §§ 395(a) and 395.5, in that some
18 of the wrongful acts and violations of law asserted herein occurred within San Joaquin County.

19 **PARTIES**

20 5. Plaintiff FRANK ORTEGO-RAMIREZ is over the age of eighteen (18) and is a
21 resident of the State of California and a former employee of Defendants.

22 6. Plaintiff is informed and believes, and thereupon alleges, that Defendant ECLIPSE
23 RTO, LLC is now and/or at all times mentioned in this Complaint a Texas Limited Liability
24 Company and the owner and operator of an industry, business and/or facility licensed to do business
25 and actually doing business in the State of California.

26 7. Plaintiff is informed and believes, and thereupon alleges, that Defendant STAFFPAY,
27 INC. dba EMPLICIT is now and/or at all times mentioned in this Complaint a California
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1 corporation and the owner and operator of an industry, business and/or facility licensed to do
2 business and actually doing business in the State of California.

3 8. Plaintiff is informed and believes, and based thereon alleges, that Defendants, jointly
4 and severally, have acted with deliberate indifference and conscious disregard to the rights of all
5 employees. Plaintiff is further informed and believes, and based thereon alleges, that Defendants
6 were at all relevant times advised by skilled California employment law attorneys and knew the
7 requirements of the California Labor Code with respect to employee wage statements, payment of
8 wages, calculation of overtime wages, and provision of meal and rest periods.

9 9. Defendants proximately caused Plaintiff and similarly situated employees to be
10 subjected to the unlawful practices, wrongs, complaints, injuries, and/or damages alleged in this
11 Complaint.

12 10. Plaintiff is further informed and believes, and thereon alleges, that each of the
13 Defendants herein was, at all times relevant to this action, the agent, employee, or joint employer or
14 joint venturer of the remaining defendants and was acting within the course and scope of that
15 relationship. Plaintiff is further informed and believes, and thereon alleges, that each of the
16 Defendants herein gave consent to, ratified and authorized the acts alleged herein to each of the
17 remaining defendants. The true names and capacities of the defendants named herein Does 1 through
18 20, inclusive, whether individual, corporate, associate, or otherwise are unknown to Plaintiff, who
19 therefore sues such defendants by fictitious names pursuant to California Code of Civil Procedure
20 section 474. Plaintiff will amend this complaint to show such true names and capacities of Does 1
21 through 20, inclusive, when they have been determined.

22 11. On March 2, 2023, Plaintiff filed his Labor Code § 2699.3 Private Attorney General
23 Act ("PAGA") notice with the California Labor & Workforce Development Agency ("LWDA"). If
24 the LWDA does not inform Plaintiff that it intends to investigate Plaintiff's PAGA claims within the
25 statutory period, Plaintiff may proceed in this Court to collect civil penalties.

26 **GENERAL ALLEGATIONS**

27 12. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 11 as
28 though fully set forth herein.

1 13. Plaintiff worked for Defendants from approximately September 2020 through
2 approximately September 2022 as a credit manager/ assistant manager. Plaintiff was paid an
3 hourly rate, plus a non-discretionary bonus based on the profitability of the store in which he
4 worked. During his employment, Plaintiff, and other similarly situated employees, were made to
5 suffer numerous violations of the California Labor Code.

6 14. Defendants own and run a number of furniture and appliance rent-to-own stores
7 under the brand name Rent-A-Center.

8 15. Defendants did not allow Plaintiff and similarly situated employees to take their
9 statutorily required rest periods. Defendants failed to provide rest periods to Plaintiff and
10 similarly situated employees for every 4 hours worked or major fraction thereof.

11 16. Defendants' management staff were aware this was occurring and did not ensure
12 meal and/ or rest periods were provided to Plaintiff and similarly situated employees in
13 compliance with California law. Defendants also failed to pay the missed rest period premiums
14 of one hour of pay at the employees' regular rate of pay.

15 17. Although Plaintiff and similarly situated employees frequently worked over 8
16 hours in a day or 40 hours in a workweek, Defendants failed to pay overtime hours at the regular
17 rate of pay by failing to include bonus pay in the regular ate calculation. Moreover, Defendants
18 failed to pay accrued sick leave to Plaintiff and similarly situated employees at the regular rate of
19 pay in violation of the California Healthy Workplaces Healthy Families Act ("HWHFA") and the
20 Labor Code.

21 18. As a result, Defendants did not provide Plaintiff and similarly situated employees
22 legally compliant wage statements noting, among other things, total hours worked, gross wages
23 earned, the applicable hourly rates in effect during the pay period and the corresponding number
24 of hours worked at each hourly rate. The regular wage statements made it impossible for
25 Plaintiff, and similarly aggrieved employees, to determine whether they were paid correctly, or
26 what their correct regular rate of pay was. *See Magadia v. Wal-Mart Assocs., Inc.*, 319 F. Supp.
27 3d 1180, 1190–91 (N.D. Cal. 2018).

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1 19. Defendants also did not provide Plaintiff and similarly situated aggrieved
2 employees all wages owed upon their termination or within seventy-two (72) hours of their
3 separation from employment

4 20. Plaintiff is informed and believes that Defendants committed numerous other
5 violations of the California Labor Code, including but not limited to those identified in this letter.
6 Pursuant to *Huff v. Securitas Sec. Servs. USA, Inc.*, 23 Cal. App. 5th 745 (2018), Plaintiff intends
7 to seek civil penalties for all violations of the California Labor Code, whether he experienced
8 them personally or not.

9 21. Defendants' uniform policies and practices not to provide Plaintiff and similarly
10 situated employees with compliant wage statements, not to provide meal and rest periods, and not
11 to reimburse employees for business expenses incurred are evidenced by Defendants' business
12 records.

13 22. Upon information and belief, all transactions regarding hiring, terminations,
14 promotions, pay increases, etc. relating to Defendants' California employees were submitted to
15 and processed by Defendants' HR department in its corporate headquarters. Additionally, on
16 information and belief, Defendants' corporate records, in particular HR and pay records
17 pertaining to Defendants' California employees, are also maintained at Defendants' corporate
18 headquarters.

19 23. Upon information and belief, Defendants maintain a central Payroll department at
20 their corporate headquarters, which processes payroll for all Defendants' employees, including
21 Plaintiff and similarly situated, aggrieved employees.

22 24. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
23 should have known that Plaintiff and other similarly situated aggrieved employees were entitled
24 to receive all overtime and minimum wages earned, all rest periods, paid sick leave at the regular
25 rate of pay, compliant wage statements, and timely payment of all wages earned upon
26 termination of employment. In violation of the California Labor Code, Plaintiff and other
27 similarly situated, aggrieved employees, did not receive these payments.

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25. At all times herein set forth, PAGA provides that any provision of law under the Labor Code and applicable IWC Wage Order that provides for a civil penalty to be assessed and collected by the LWDA for violations of the California Labor Code and applicable IWC Wage Order may, as an alternative, be recovered by aggrieved employees in a civil action brought on behalf of themselves and other current or former employees pursuant to procedures outlined in California Labor Code section 2699.3.

26. PAGA defines an aggrieved employee in Labor Code section 2699(c) as “any person who was employed by the alleged violator and against whom one or more of the alleged violation was committed.”

27. Plaintiff and other current and former employees of Defendants are aggrieved employees as defined by the Labor Code in that they are all Defendants' current or former employees and one or more of the alleged violations was committed against them.

FIRST CAUSE OF ACTION

(Failure to Pay Minimum Wage for All Hours Worked)

28. Plaintiff hereby incorporates by reference Paragraphs 1 through 27 of this Complaint as if fully set forth herein and for a cause of action alleges as follows:

29. Defendants were required to compensate Plaintiff with at least the State's minimum wage for all hours worked. See Cal. Labor Code § 1194; MW Order-2014; MW Order-2017.

30. Defendants were aware of their obligation to pay the minimum wages but failed to do so.

31. Defendants' conduct described herein violates California Labor Code section 1194, and Wage Orders. As a proximate result of Defendants' conduct, Plaintiff has been damaged and deprived of minimum wages, in an amount to be established at trial. Plaintiff now seeks these wages, liquidated damages pursuant to California Labor Code section 1194.2, attorney's fees and costs, and interest pursuant to California Labor Code section 1194.

SECOND CAUSE OF ACTION
(Failure to Provide Accurate Wage Statements)

32. Plaintiff incorporates by reference and re-allege paragraphs 1 through 31 as though fully set forth herein.

33. According to Labor Code section 226(a), an employer must provide an itemized statement to an employee, semi-monthly or at the time of each payment of wages, showing:

gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. The deductions made from payment of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement and the record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California.

34. Plaintiff alleges that Defendants intentionally and knowingly failed to provide an itemized statement or failed to provide an accurate and complete itemized statement showing the requirements set forth in Labor Code section 226(a). Defendants also failed to list on the wage statements provided to Plaintiff all hours worked and the correct regular rate for overtime purposes, including by failing to include nondiscretionary bonuses earned in the calculation of the regular rate.

35. Additionally, Plaintiff alleges he suffered injury as a result of Defendants' failure to provide accurate and complete information as required by any one or more of items (1) to (9), inclusive, of Labor Code section 226, subdivision (a), and Plaintiff cannot promptly and easily

1 determine (i.e. a reasonable person in each Plaintiff's position would not be able to readily
2 ascertain the information without reference to other documents or information) from the wage
3 statement alone.

4 36. Plaintiff is entitled to, and does hereby seek, injunctive relief requiring Defendants
5 to comply with Labor Code §§ 226(a) and 1174(d), and all applicable damages and civil
6 penalties.

7 **THIRD CAUSE OF ACTION**
8 **(Waiting Time Penalties)**

9 37. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 36 as
10 though fully set forth herein.

11 38. An employer must pay an employee who is terminated all unpaid wages
12 immediately upon termination. Labor Code § 201.

13 39. An employer must pay an employee who resigns all unpaid wages within seventy-
14 two (72) hours of resignation. Labor Code § 202.

15 40. An employer who willfully fails to pay an employee wages in accordance with
16 Labor Code sections 201 and/or 202 must pay the employee a waiting time penalty of up to thirty
17 (30) days. Labor Code § 203.

18 41. Plaintiff did not receive all wages, including minimum and overtime wages and
19 meal and rest period premiums, at his termination or separation from employment. Specifically,
20 Defendants failed to pay Plaintiff all wages owed at the time of termination.

21 42. Defendants knew of their obligation to pay Plaintiff for all hours worked because
22 they had knowledge Plaintiff was, at all times, a non-exempt employee, worked over eight (8)
23 hours a day and/or forty (40) hours a week. Such conduct shows Defendants' knowledge of
24 their obligation to pay all wages owed upon termination and willful refusal.

25 43. As a proximate result of the Defendants' conduct, Plaintiff has been damaged and
26 deprived of his wages and thereby seeks his daily rate of pay multiplied by thirty (30) days for
27 Defendants' failure to pay all wages due in an amount to be established at trial.
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1 prohibited by Chapter 1 (commencing with Section 17500) of Part 3 of Division 7 of the
2 Business and Professions Code. *See* Cal. Bus. and Prof. Code §§ 17200 *et seq.*

3 52. Defendants committed numerous violations of the California Labor Code
4 throughout the employment relationship.

5 53. Plaintiff is also informed and believes and thereon alleges that such actions and/or
6 conduct constitute a violation of the California Unfair Competition Law ("UCL") (Business and
7 Professions Code section 17200 *et seq.*) pursuant to *Cortez v. Purolator Air Filtration Products*
8 *Co.*, 23 Cal. 4th 163 (2000).

9 54. As a direct and legal result of Defendant's conduct, as alleged herein, pursuant to
10 the UCL (including B&P Code §17203), Plaintiff and similarly situated employees are entitled to
11 restitution as a result of its unfair business practices, including, but not limited to, public
12 injunctive relief, pursuant to B&P Code § 17203, and interest and penalties pursuant to B&P §§
13 17203, 17208, violations of Labor Code §§ 1194, 226, and 226.7, all in an amount as yet
14 unascertained but subject to proof at trial, for four (4) years from the filing of this Action.

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16 **SIXTH CAUSE OF ACTION**
(Civil Penalties Pursuant to PAGA § 2698 *et seq.*)

17 55. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 54 as
18 though fully set forth herein.

19 56. Plaintiff brings this cause of action as a proxy for the State of California and in
20 this capacity, seeks penalties on behalf of all Aggrieved Employees for Defendants' violations of
21 the California Labor Code, including but not necessarily limited to, those Labor Code violations
22 identified above.

23 57. Defendants' conduct, as alleged herein, violated various sections of the California
24 labor Code, including but not limited to, the following:

25 58. Labor Code section 226 requires employers to furnish to employees with "an
26 accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by
27 the employee, . . . (3) the number of piece-rate units earned and any applicable piece rate if the
28 employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on

1 written orders of the employee may be aggregated and shown as one item, (5) net wages earned,
2 (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee
3 and only the last four digits of his or her social security number or an employee identification
4 number other than a social security number, (8) the name and address of the legal entity that is
5 the employer . . . and (9) all applicable hourly rates in effect during the pay period and the
6 corresponding number of hours worked at each hourly rate by the employee . . .” For the
7 reasons stated above, Defendants failed to comply with these requirements with respect to
8 Plaintiff and similarly situated employees in violation of the Labor Code.

9 59. Labor Code sections 510 and 1194 require employers to pay employees overtime
10 for any work in excess of eight (8) hours in one workday and any work in excess of forty (40)
11 hours in any one workweek. Employers must also pay overtime for the first eight (8) hours
12 worked on the seventh day of work in any one workweek. Finally, employers must pay double
13 time for all hours worked in excess of twelve (12) hours in any workday and for all hours worked
14 in excess of eight (8) hours on the seventh day of work in any one workweek. As stated above,
15 Plaintiff and similarly situated employees worked over eight (8) hours per day and forty (40)
16 hours per week and were not paid correct overtime wages. Plaintiff and all similarly situated
17 employees are entitled to recover all unpaid overtime wages. Failure to pay such wages is
18 against the law.

19 60. Labor Code sections 201–203 require that all wages be paid to employees upon
20 separation and/or termination of employment. Here, for the reasons stated above, Defendant’s
21 employees did not receive all final wages due and owing to them at the time of termination or
22 seventy-two (72) hours thereafter as required by Labor Code sections 201–203. This is in
23 violation of the Labor Code.

24 61. Labor Code section 226.7 and IWC Wage Order No. 5-2001, section 12(A)
25 require employers to provide employees paid off-duty rest periods of ten (10) minutes per four
26 (4) hours or major fraction thereof worked. For the reasons stated above, Plaintiff and similarly
27 situated employees were not authorized and permitted to take legally compliant rest periods
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1 pursuant to California law in violation of the Labor Code. Defendants also failed to pay rest
2 period premiums for their failure to provide rest periods.

3 62. Labor Code section 1174(d) requires employers to keep “payroll records showing
4 the hours worked daily by and the wages paid to . . . employees . . . These records shall be kept in
5 accordance with rules established for this purpose by the commission, but in any case, shall be
6 kept on file for not less than three years.” Defendants did not keep accurate information
7 regarding all hours worked by and wages paid to Plaintiff and similarly situated employees,
8 largely by failing to accurately record the correct rates of pay. This was in violation of the Labor
9 Code.

10 63. Labor Code section 246 requires paid sick leave to be calculated at the regular rate
11 of pay. Defendant failed to pay paid sick leave at the employees’ regular rate of pay by failing to
12 include all forms of nondiscretionary remuneration such as bonus pay. This practice is in
13 violation of the Labor Code.

14 64. During the period Plaintiff and similarly situated employees were employed by
15 Defendants they were entitled to be paid at least the State’s minimum wage rate for each hour
16 that they worked. *See, e.g.,* IWC Wage Order MW-2014, MW-2017; IWC Wage Order No. 5-
17 2001, section (4); Cal. Lab. Code §§ 1194, 1197.1. For the reasons stated above, Defendants did
18 not pay Plaintiff and similarly situated employees at least minimum wage for all hours worked.
19 Thus, Plaintiff and similarly situated employees were not paid at least the applicable state
20 minimum wage for all hours worked in violation of the Labor Code

21 65. On or about March 2, 2023, Plaintiff sent written notice to the LWDA regarding
22 Defendant’s violations of the California Labor Code, pursuant to Labor Code section 2698, *et*
23 *seq.*, PAGA. If the LWDA does not inform Plaintiff that it intends to investigate Plaintiff’s
24 PAGA claims within the statutory period, Plaintiff may proceed in this Court to collect civil
25 penalties.

26 66. Plaintiff is thus entitled to recover civil penalties on behalf of the State of
27 California and all Aggrieved Employees for all violations of the Labor Code from March 2,
28 2022, through trial on this matter.

67. Pursuant to *Huff v. Securitas Sec. Servs. USA, Inc.*, 23 Cal. App. 5th 745, 761, 233 Cal. Rptr. 3d 502, 513 (Ct. App. 2018), reh'g denied (June 13, 2018), review denied (Aug. 8, 2018), Plaintiff intends to seek civil penalties for all violations of the California Labor Code, whether he experienced them personally or not.

DAMAGES

WHEREFORE Plaintiff requests relief as follows:

1. A jury trial;
2. For penalties and liquidated damages under the California Labor Code according to proof allowed by law;
3. For compensatory damages, including, but not limited to, unpaid wages, plus interest, according to proof allowed by law;
4. For an award to Plaintiff of costs of suit incurred herein and reasonable attorney's fees;
5. For injunctive relief;
6. For an award of prejudgment and post-judgment interest; and
7. For an award to Plaintiff of such other and further relief as the Court deems just and proper.

Dated: March 3, 2023

Castle Law: California Employment Counsel

By: Kent L. Bradbury
 Kent L. Bradbury
 Timothy B. Del Castillo
 Attorneys for Plaintiff FRANK ORTEGON-RAMIREZ

JURY TRIAL DEMAND

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Plaintiff hereby demands a trial by jury.

Dated: March 3, 2023

Castle Law: California Employment Counsel

By: 
Kent L. Bradbury
Timothy B. Del Castillo
Attorneys for Plaintiff FRANK ORTEGON-RAMIREZ