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SUPERIOR COURT
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DEPUTY

SUPERIOR COURT OF CALIFORNIA

FOR THE COUNTY OF SAN JOAQUIN

ERICK HOLMBERG, individually and on behalf of all other similarly situated employees,

Plaintiff,

vs.

CASTLE TIRE DISPOSAL, LLC, a Delaware Limited Liability Company; and DOES 1 to 100, inclusive,

Defendants.

Case No. STK-CV-UOE-2023-0006565

CLASS ACTION

FIRST AMENDED COMPLAINT FOR DAMAGES:

1. **Failure to Pay Overtime Wages**
2. **Failure to Pay Minimum Wages**
3. **Meal Period Violations**
4. **Rest Period Violations**
5. **Wage Statement Violations**
6. **Waiting Time Penalties**
7. **Failure to Reimburse Expenses**
8. **Unfair Competition**
9. **Violation of Labor Code § 1102**
10. **Private Attorneys General Act**

DEMAND FOR JURY TRIAL

Plaintiff ERICK HOLMBERG ("Plaintiff"), on behalf of himself and all other similarly situated employees, hereby files this First Amended Complaint against Defendants CASTLE TIRE DISPOSAL, LLC, a Delaware Limited Liability Company; and DOES 1 to 100, inclusive (hereinafter all collectively referred to as "Defendants"). On information and belief, Plaintiff allege the following:

FILE BY FAX

INTRODUCTION

1. This is a class action, an individual, and a Private Attorneys General Act ("PAGA") lawsuit brought by Plaintiff for failure to provide overtime wages, failure to provide minimum wages, meal and rest period violations, wage statement violations, waiting time penalties, failure to reimburse expenses, unfair competition, and violation of Labor Code section 1102.

JURISDICTION AND VENUE

2. The San Joaquin County Superior Court has jurisdiction in this matter pursuant to California Code of Civil Procedure section 410.10 to determine alleged violations of the California Labor Code, California Business and Professions Code, and Wage Order No. 4.

3. Venue is proper pursuant to Civil Procedure Code §§ 395(a), and 395.5, in wrongful acts and violations of law asserted herein occurred within San Joaquin County, and Defendants' obligation to pay wages arose in San Joaquin County pursuant to *Madera Police Officers Assn. v. City of Madera,* 36 Cal.3d 403, 414 (1984).

4. Plaintiff sought permission pursuant to California Labor Code section 2699 *et seq.* to pursue the claims set forth in this Complaint against Defendants as a Private Attorney General on behalf of himself and other similarly situated employees. Pursuant to California Labor Code section 2699.3, Plaintiff gave written notice via online submission to the Labor and Workforce Development Agency ("LWDA") on approximately June 16, 2023. Plaintiff provided facts and legal bases for his claims within the notice to the LWDA on all violations asserted under the Private Attorneys General Act cause of action. Plaintiff also submitted the $75.00 filing fee. The June 16, 2023, notice was also sent via certified mail to Defendants on the same day. To date, the LWDA has not provided any response to Plaintiff's notice correspondence. Accordingly, Plaintiff has exhausted all administrative remedies pursuant to the Private Attorneys General Act ("PAGA") and may bring this action on behalf of himself and all similarly situated employees, *i.e.* Aggrieved Employees. *See* Cal. Lab. Code § 2699.3(a)(2)(A), (c)(3); *Caliber Bodyworks, Inc., v. Sup. Ct.*, 134 Cal. App. 4th 365, 383 n.18, 385 n.19 (2005). Aggrieved Employees include, but is not limited to the following: all non-exempt employees who worked for Defendants in California at any time from June 16, 2022 to the present.

PARTIES

5. ERICK HOLMBERG is an individual over the age of eighteen (18) and is a resident of the State of California.

6. On information and belief, Plaintiff alleges, CASTLE TIRE DISPOSAL, LLC, is now and/or at all times mentioned in this Complaint was a Delaware Limited Liability Company and the owner and operator of an industry, business and/or facility doing business in the State of California.

7. Defendants DOES 1 through 100 are affiliates, subsidiaries and related entities and the alter egos of each of the other Defendants named herein, corporate or otherwise, who participated in and are liable for the actions herein alleged. Plaintiff will seek to amend this Complaint to allege the true names and capacities of these DOE Defendants when they are ascertained.

8. At all times mentioned herein, each Defendant was the agent or employee of each of the other Defendants and was acting within the course and scope of such agency or employment. The Defendants are jointly and severally liable to Plaintiff.

9. Defendants, and each of them, are now and/or at all times mentioned in this Complaint were members of and/or engaged in a joint employment, joint venture, partnership and common enterprise, and were acting within the course and scope of, and in pursuance of said joint employment, joint venture, partnership and common enterprise.

10. Defendants, and each of them, now and/or at all times mentioned in this Complaint approved, ratified, acquiesced, aided or abetted the acts and omissions alleged in this Complaint.

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

CLASS ALLEGATIONS

12. Plaintiff brings the First through Eighth Causes of Action on behalf of himself and all others similarly situated as a class action pursuant to California Code of Civil Procedure section 382. The class which Plaintiff seeks to represent is composed of, and defined, as follows:

> All non-exempt employees who worked for Defendants in California at any time between June 27, 2019, to the present.

13. This action has been brought and may be properly maintained as a class action, pursuant to the provision of California Code of Civil Procedure section 382, because there is a well-defined community of interests in the litigation and the proposed class is easily ascertainable.

(a) Numerosity: The putative class is so numerous that the individual joinder of all members is impracticable under the circumstances of this case. While the exact number of class members is unknown to Plaintiff at this time, Plaintiff is informed and believes that Defendants have employed as many as five hundred (500) individuals falling within the above stated class definition throughout the State of California during the applicable statute of limitations, who were subjected to the policies and practices outlined in this Complaint. As such, joinder of all members of the putative class is not practicable.

(b) Common Questions Predominate: Common questions of law and fact exist as to all members of the putative class and predominate over questions that affect only individual members of the class. These common questions of law and fact include, without limitation, the following:

(1) Whether Defendants maintained accurate payroll records;

(2) Whether, as a result of Defendants' policies and practices, Plaintiff and putative class members were not paid all overtime wages owed;

(3) Whether Defendants failed to correctly calculate the regular rate of pay for premium wage purposes such as overtime, double time, meal and rest period premiums, and sick leave wages;

(4) Whether Defendants failed to pay meal and rest period premiums for meal and rest period violations;

(5) Whether as a result of Defendants' policies and practices Plaintiff's and putative class members received all wages, due and owing, at the time of their termination or separation; and

(6) Whether Defendants provided Plaintiff's and putative class members with wage statements that complied with Labor Code section 226.

(c) Typicality: Plaintiff's claims are typical of the claims of the members of the putative class. The putative class also sustained damages arising out of Defendants' common course of conduct in violation of the law as complained of herein. Plaintiff and all members of the putative class were non-exempt employees who were not paid all overtime wages owed, meal and rest period premiums, as a result of Defendants' policies and practices resulting in inaccurate wage statements that did not itemize the accurate overtime wages owed, meal and rest period premiums, and sick leave wages. Additionally, Defendants issued Plaintiff and all members of the putative class wage statements that did not comply with Labor Code section 226. As a result, Plaintiff and each member of the putative class will have suffered the same type of harm and seek the same type of recovery based on the same legal theories.

(d) Adequacy: Plaintiff will fairly and adequately protect the interests of the members of the putative class. For all relevant times, Plaintiff resided in California and worked for Defendants in California. Moreover, Plaintiff is an adequate representative of the putative class as Plaintiff has no interests that are adverse to those of putative class members. Additionally, Plaintiff has retained counsel who has substantial experience in complex civil litigation and wage and hour matters.

(e) Superiority: A class action is superior to other available means for the fair and efficient adjudication of the controversy since individual joinder of all members of the putative class is impracticable. Class action treatment will permit a larger number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of effort and expense that numerous individual actions would engender. Further, as damages suffered by each individual member of the class may be relatively small, the expenses and burden of the individual litigation would make it difficult or impossible for individual members of the class to redress the wrongs done to them, and an important public interest will be served by addressing the matter as a class action. The cost to the court system of adjudication of such individualized litigation would be substantial. Individualized litigation would also present the potential for inconsistent or contradictory judgments.

14. Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this action that would preclude its maintenance as a class action.

GENERAL ALLEGATIONS

15. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 14 as though fully set forth herein.

16. Plaintiff began working for Defendants on March 16, 2021, as a non-exempt employee. Defendants operate a tire recycling and resale business with locations in Stockton, Clear Lake, Redding, Los Angeles, and West Sacramento. Over the course of their employment Plaintiff and similarly situated employees held various positions relating to the processing of used tires, including, but not limited to, Laborer/Material Handler, Trailer Unloader/Processing, Route Helper, and Yard Dog. At all times, Plaintiff and similarly situated employees were paid a base hourly rate plus various non-discretionary incentives relating to the processing of tires and the type of shifts worked. For example, Plaintiff and similarly situated employees were paid $10 per trailer they filled with tires for resale. Plaintiff and similarly situated employees also received yearly bonuses that Defendants labeled as profit sharing. However, the shares ultimately paid to Plaintiff and similarly situated employees were based on factors such as attendance, quality and quantity of work, the rate of production by an employee, and the employee's continued employment. Defendants also paid shift differentials depending on the type of shift (*e.g.* day, swing, night) that employees worked. Although Defendants paid these non-discretionary amounts to Plaintiff and similarly situated employees in addition to their base hourly rates, Defendants failed to include the value of this extra compensation when calculating Plaintiff and similarly situated employees regular rate of pay for premium wage payments. This included the failure to pay the correct rate for overtime, meal and/or rest period premiums, and sick leave wages. There were also several occasions where Defendants simply refused to pay the incentive compensation even though Plaintiff and similarly situated employees had performed the required tasks, such as loading the requisite amount of trailers.

17. Defendants utilized rounding when calculating Plaintiff's and similarly situated employees' hours worked. Although Defendants had the ability to, and in fact did, record the amount of time Plaintiff and similarly situated employees worked down to the minute, it paid in increments of a quarter hour. Defendants maintained policies and procedures that prohibited Plaintiff and similarly situated employees from clocking in prior to seven minutes before the start of their shift, resulting in the systematic rounding down of Plaintiff's and similarly situated employees hours worked.

18. Defendants failed to authorize and permit all legally required meal and rest periods for Plaintiff and similarly situated employees. Defendants did not track when Plaintiff and similarly situated employees took meal periods or even if they did for the day. Instead, Defendants automatically deducted 30 minutes each day from Plaintiff's and similarly situated employees total hours worked. There were many occasions where Plaintiff and similarly situated employees were unable to take a full, 30-minute meal period before the completion of the fifth hour worked. Defendants' time keeping practices attempted to conceal the failure to provide timely meal periods and also resulted in unpaid hours worked as Plaintiff and similarly situated employees would return to work before the full 30-minute period elapsed. When Plaintiff and similarly situated employees worked more than 6 hours in a day, but less than 8 total, Defendants did not provide any opportunity for Plaintiff and similarly situated employees to take a second rest period. Similarly, when Plaintiff and similarly situated employees worked longer than 10 hours, Defendants did not provide for the taking of a second meal period or third rest period for the day. However, Defendants would still automatically deduct the additional 30-minute meal period from Plaintiff's and similarly situated employees' total daily hours worked. Defendants did not pay Plaintiff and similarly situated employees all meal and rest period premiums they were due as a result of their unlawful practices.

19. Defendants did not provide cell phones to Plaintiff and similarly situated employees. Instead, Defendants required Plaintiff and similarly situated employees to utilize their personal cell phones to maintain communication regarding the status of their work, their schedules, and various other work-related communications that needed to be made during the day while Plaintiff and similarly situated employees were stationed all over the processing facilities, trailers, and/or warehouses. The

communications occurred throughout the day and Defendants did not reimburse Plaintiff and similarly situated employees for any portion of their cell phone bills.

20. As a result of Defendants' policies and practices, Plaintiff and similarly situated employees were not paid for all wages due, including minimum wages, overtime wages, meal and rest period premiums, and sick leave wages. These amounts were not paid to similarly situated employees at the time of their separation and remain unpaid to date. Additionally, the unlawful practices identified above resulted in Defendants issuing inaccurate paystubs to Plaintiff and similarly situated employees. The paystubs did not accurately itemize the gross wages earned, total hours worked, applicable rates of pay, the number of piece rate units earned and their individual rates, and the net wages earned.

21. On June 16, 2023, Plaintiff inquired with Defendants' Human Resources Department about the recent lack of bonus payments despite Plaintiff fulfilling the requirements necessary to earn the payments. Plaintiff had made several prior complaints to Human Resources about the lack of payments contrary to the terms of his and similarly situated employees' hiring. Plaintiff reminded them that he and other employees depended on these payments, and he just wanted what he had earned. Defendants' Human Resources had given varied explanations in the past about the lack of payment, including Mr. Mahon being on vacation and being unable to process them when due. Failing to receive the payments or a response that clarified why the bonuses were not being paid, on June 16, 2023, Plaintiff asked that Mr. Mahon or Defendants' Vice President, Norman, contact him to explain what was happening. That afternoon, Norman called Plaintiff. Rather than explain the delay in bonus payments, Norman immediately accused Plaintiff of harassing Human Resources about the bonuses. Plaintiff denied any harassment and explained he was just continuing to follow up since he was not receiving any payments or explanations. Contrary to Defendants' established pay practices, Plaintiff's employment agreement, and Defendants' job postings as of June 2023 saying that monthly and annual bonuses were part of an employee's compensation package, Norman stated there was no bonus program. Plaintiff reminded Norman about his pay history and the agreement he entered into when hired containing the bonus provisions. Plaintiff informed Norman that, because the employee portal did not allow him to pull any information dating back to his hire date, he could not show Norman any documents regarding the bonus. Norman began yelling, "There's no bonus program! You're a fucking at will employee! If

you don't like it, you can leave! You're an at-will employee! You can go fuck yourself!" Plaintiff stated he did not want to quit and asked if Norman was firing him. Norman replied, still yelling "Yup! Go fuck yourself Erick! Go fuck yourself!" Plaintiff was then sent home.

CAUSES OF ACTION

FIRST CAUSE OF ACTION
FAILURE TO PAY OVERTIME WAGES
(Plaintiff, on behalf of himself and Class Members, vs. all Defendants)

22. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 21 as though fully set forth herein.

23. During the period Plaintiff was employed by Defendants, Defendants were required to compensate Plaintiff at one and one-half (1½) times the regular rate of pay for hours worked in excess of eight (8) hours per day and/or forty (40) hours per week, and two (2) times the regular rate of pay for hours worked in excess of twelve (12) hours per day. *See, e.g.*, IWC Wage Order No. 4, section (3)(A); Cal. Lab. Code §§ 510, 1194.

24. Plaintiff and similarly situated employees worked in excess of eight (8) hours per day and/or forty (40) hours per week on several occasions while employed by Defendants. However, Defendants failed to compensate Plaintiff and similarly situated employees for all overtime hours worked at their regular rate of pay.

25. Plaintiff and similarly situated employees were not exempt from overtime protections employees under the California Wage Orders and Labor Code.

26. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

SECOND CAUSE OF ACTION
FAILURE TO PAY MINIMUM WAGES
(Plaintiff, on behalf of himself and Class Members, vs. all Defendants)

27. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 26 as though fully set forth herein.

28. For the period preceding the filing of this Complaint, Defendants were required to compensate Plaintiff and similarly situated employees with at least California's applicable minimum for

every hour worked. *See* MW-Order 2019; IWC Wage Order, No. 4, section 4(A); Cal. Lab. Code § 1194.

29. Plaintiff was not exempt to the State's Minimum Wage Order. Defendants were aware of their obligation to pay the minimum wage for each hour worked but failed to do so.

30. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

THIRD CAUSE OF ACTION
MEAL PERIOD VIOLATIONS
(Plaintiff, on behalf of himself and Class Members, vs. all Defendants)

31. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 30 as though fully set forth herein.

32. An employer must provide an employee a meal period in accordance with the applicable Wage Order, and California Labor Code sections 226.7 and 512.

33. California Labor Code sections 226.7 and 512 and IWC Wage Order No. 4, section 11(A) require an employer to provide an uninterrupted meal period of not less than thirty (30) minutes for each work period of more than five (5) hours.

34. California Labor Code section 512 and Wage Order No. 4 section 11(B) further provide that employers may not employ employees for a work period for more than ten (10) hours per day without providing the employee with a second meal period of at least thirty (30) minutes. However, if the total hours worked is no more than twelve (12) hours, the second meal period may be waived so long as there was no waiver as to the first meal period. Employees are entitled to one (1) hour of pay at their regular rate of compensation for each meal period not provided.

35. Defendants employed Plaintiff and similarly situated employees for periods of more than five (5) hours without providing meal breaks of at least thirty (30) minutes or a second meal period of at least thirty (30) minutes when Plaintiff and similarly situated employees worked more than ten (10) hours in a day. Defendants also failed to allow Plaintiff and similarly situated employees to take their first meal period before the completion of their fifth hour of work and failed to allow Plaintiff and similarly situated employees to take their second meal period before the

completion of their tenth hour of work. Plaintiff and similarly situated employees did not waive their rights to all meal periods throughout their employment.

36. Defendants further failed to pay Plaintiff and similarly situated employees the applicable meal period premiums for any such missed meal breaks.

37. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

FOURTH CAUSE OF ACTION
REST PERIOD VIOLATIONS
(Plaintiff, on behalf of himself and Class Members, vs. all Defendants)

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

39. An employer must provide an employee a rest period in accordance with the applicable Wage Order and California Labor Code section 226.7.

40. California Labor Code section 226.7 and Wage Order No. 4, section 12(A) require an employer to provide a rest period of not less than ten (10) minutes for each work period of more than four (4) hours or a major fraction thereof.

41. Plaintiff alleges that Defendants failed to authorize and permit Plaintiff and similarly situated employees to take paid rest periods of at least ten (10) minutes for each work period that they worked more than four (4) hours or a major fraction thereof.

42. Defendants further failed to pay Plaintiff and similarly situated employees the applicable rest period premiums for any such missed rest periods.

43. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

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FIFTH CAUSE OF ACTION
WAGE STATEMENT VIOLATIONS
(Plaintiff, on behalf of himself and Class Members, vs. all Defendants)

44. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 43 as though fully set forth herein.

45. Pursuant to California Labor Code section 226(a), an employer must provide an itemized statement to an employee, semimonthly or at the time of each payment of wages, showing:

> *(1) 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.*

46. 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 California Labor Code section 226(a). Specifically, Defendants did not accurately itemize all applicable hourly rates in effect during the pay period, all regular, overtime and double time hours worked and corresponding rates of pay, and gross and net wages earned. The paystubs also did not accurately itemize Plaintiff's and similarly situated employees' total hours worked due to Defendants' rounding policy and meal policy where Defendants automatically deducted 30 minutes for meal periods without keeping track of Plaintiff's and similarly situated employees' meal periods. Plaintiff and similarly situated employees were not able to promptly and easily determine their total hours worked from their paystubs alone. Additionally, Plaintiff and similarly situated employees suffered confusion over whether they received all wages owed and were prevented from effectively challenging information on their wage statements.

47. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

SIXTH CAUSE OF ACTION
WAITING TIME PENALTIES
(Plaintiff, on behalf of himself and Class Members, vs. all Defendants)

48. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 47 as though fully set forth herein.

49. An employer must pay an employee who is terminated all unpaid wages immediately upon termination. *See* Cal. Lab. Code § 201.

50. An employer must pay an employee who resigns all unpaid wages within seventy-two (72) hours of their resignation. *See* Cal. Lab. Code § 202.

51. Plaintiff and similarly situated employees did not receive all wages, including minimum and overtime wages, meal and rest period premiums, or all sick leave pay owed at their termination or within the required time after their separation from employment.

52. An employer who willfully fails to pay an employee wages in accordance with California Labor Code sections 201 and/or 202 must pay the employee a waiting time penalty of up to thirty (30) days. *See* Cal. Lab. Code § 203.

53. Defendants knew of their obligation to pay Plaintiff's and similarly situated employees' their final wages when their employment terminated. Indeed, Defendants had knowledge that Plaintiff and similarly situated employees were not paid for all their hours worked because of Defendants' rounding policy. Defendants also knew that Plaintiff and similarly situated employees were not taking full compliant meal periods because Plaintiff and similarly situated employees would return to work before the 30-minute meal period had elapsed. In fact, Defendants' time keeping practices attempted to conceal the failure to provide timely meal periods and also resulted in unpaid hours worked. Such conduct shows Defendants had knowledge of earned, but unpaid wages at the time of separation, yet Defendants still refused to pay the remaining wages owed.

54. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees have been damaged and deprived of their wages and thereby seek their daily rate of pay multiplied by thirty (30) days for Defendants' failure to pay all wages due.

SEVENTH CAUSE OF ACTION
FAILURE TO REIMBURSE EXPENSES
(Plaintiff, on behalf of himself and Class Members, vs. all Defendants)

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

56. California Labor Code section 2802(a) states that "An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful."

57. Defendants required Plaintiff and similarly situated employees to use their personal cell phones to maintain communication regarding the status of their work, their schedules, and various other work-related communications that needed to be made during the day while Plaintiff and similarly situated employees were stationed all over the processing facilities, trailers, and/or warehouses. The communications occurred throughout the day and Defendants did not reimburse Plaintiff and similarly situated employees for such use.

58. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

EIGHTH CAUSE OF ACTION
UNFAIR COMPETITION
(Plaintiff, on behalf of himself and Class Members, vs. all Defendants)

59. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 58 as though fully set forth herein.

60. Unfair competition shall mean and include any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by Chapter 1

(commencing with Section 17500) of Part 3 of Division 7 of the Business and Professions Code. *See* California Business and Professions ("B&P") Code § 17200.

61. Plaintiff and similarly situated employees were not paid all wages owed, including minimum and overtime wages, and meal and rest period premiums, paid sick leave, or reimbursed for business expenses, during their employment or any time thereafter. Moreover, through Defendants conduct Plaintiff and similarly situated employees were denied statutory protections regarding meal and rest periods.

62. Plaintiff further alleges that such actions and/or conduct constitute a violation of the California Unfair Competition Law ("UCL") (Business and Professions Code 17200 *et seq.*) pursuant to *Cortez v. Purolator Air Filtration Products Co.*, 23 Cal. 4th 163 (2000).

63. As a direct and legal result of the Defendants' conduct, as alleged herein, pursuant to the UCL (including B&P Code §17203), Plaintiff and similarly situated employees are entitled to restitution, including, but not limited to, interest and penalties pursuant to Business & Professions Code sections 17203, 17208, violations of California Labor Code sections 226.7, 245 et seq, 510, 512, and 1194 all in an amount as yet unascertained but subject to proof at trial, for <u>four (4) years</u> from the filing of this Action.

NINTH CAUSE OF ACTION
VIOLATION OF LABOR CODE SECTION 1102.5
(Plaintiff, as an Individual, vs. all Defendants)

64. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 63 as though fully set forth herein.

65. Labor Code section 1102.5(a) states that an employer may not "make, adopt, or enforce any rule, regulation, or policy preventing an employee from disclosing information to a . . . person with authority over the employee, or to another employee who has authority to investigate, discover, or correct the violation or noncompliance, . . . if the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation, regardless of whether disclosing the information is part of the employee's job duties."

66. An employer also may not "retaliate against an employee for disclosing information, or because the employer believes that the employee disclosed or may disclose information, to a government or law enforcement agency, to a person with authority over the employee or another employee who has the authority to investigate, discover, or correct the violation or noncompliance, . . . if the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation, regardless of whether disclosing the information is part of the employee's job duties." Labor Code § 1102.5(b).

67. Lastly, an employer may "not retaliate against an employee for refusing to participate in an activity that would result in a violation of state or federal statute, or a violation or noncompliance with a state or federal rule or regulation." Labor Code § 1102.5(c).

68. Defendants unlawfully retaliated against Plaintiff after he complained about the failure to pay him wages owed. When Plaintiff inquired when Defendants would pay him his bonuses, Defendant's Vice President, Norman called him and yelled at him and said to Plaintiff that "there is no bonus program", "you are a fucking at will employee", "if you don't like it, you can leave", "you can go fuck yourself." Plaintiff stated he did not want to quit and asked if Norman was firing him. Norman replied, still yelling "Yup! Go fuck yourself Erick! Go fuck yourself!" Defendants then sent Plaintiff home.

69. Plaintiff had a reasonable, good faith belief that Defendant's work practices violated the law.

70. Defendant's aforesaid acts in retaliating against Plaintiff for reporting unlawful activity were illegal and a reckless disregard for the rights and sensibilities of Plaintiff.

71. Defendant's acts were wanton, willful, intentional, malicious and were a conscious and reckless disregard for the rights and sensibilities of Plaintiff and, therefore, warrant punitive damages.

72. As a proximate result of Defendants' conduct, Plaintiff has been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

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TENTH CAUSE OF ACTION
PRIVATE ATTORNEYS GENERAL ACT
(Plaintiff, on behalf of the LWDA and Aggrieved Employees vs. all Defendants)

73. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 72 as though fully set forth herein.

74. Plaintiff has alleged to the Labor Commissioner that Defendants have violated the following provisions of the Labor Code in their dealings with Plaintiff and other similarly situated current and former employees:

- Violation of Labor Code §§ 510, 1194; IWC Wage Order 4, § 3 (Failure to Pay Overtime Wages)
- Violation of Labor Code §§ 1194, 1197.1; IWC Wage Order 4, § 4 (Failure to Pay Minimum Wages)
- Violation of Labor Code §§ 226.7, 512 and Wage Order No. 4, §§ 11(A) and 11(B) (Failure to Provide Meal Periods or Pay Premiums in Lieu Thereof)
- Violation of Labor Code § 226.7 and Wage Order No. 4, § 12(A) (Failure to Provide Rest Periods or Pay Premiums in Lieu Thereof)
- Violation of Labor Code §§ 226, 226.3 (Failure to Provide Accurate Wage Statements)
- Violation of Labor Code §§ 201-203, 256 (Failure to Pay Final Wages)
- Violation of Labor Code § 2802 (Failure to Pay Reimbursements for Expenses)
- Violation of Labor Code §§ 558, 558.1 (Provisions Regulating Hours and Days of Work in Any Industrial Welfare Commission Order)
- Violation of Labor Code §§ 223, 225 (Failure to Pay Contract Wages)
- Violation of Labor Code §§ 246, 246.5, 248.5 (Failure to Provide Paid Sick Leave)
- Violation of Labor Code §§ 226.3, 1174 (Failure to Maintain Accurate Records)
- Violation of Labor Code §§ 204, 210 (Untimely Payment of Wages)
- Violation of Labor Code § 1102 (Whistleblower Retaliation)

75. Plaintiff seeks civil penalties against Defendants as provided in the California Labor Code, or, if no civil penalty is provided, default penalties pursuant to California Labor Code section 2699(f)(2).

76. Plaintiff seeks these civil penalties from Defendants pursuant to California Labor Code sections 2699(a) and 2699.3.

77. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

DAMAGES

WHEREFORE Plaintiff requests relief as follows:

1. A jury trial;
2. As to the First Cause of Action:
   a. Wages in an amount to be proven at trial;
   b. Interest for the wages due pursuant to California Labor Code section 1194;
   c. For reasonable attorney's fees and costs incurred pursuant to California Labor Code section 1194;
3. As to the Second Cause of Action:
   a. Wages in an amount to be proven at trial;
   b. Interest for the wages due pursuant to California Labor Code section 1194;
   c. For reasonable attorney's fees and costs incurred pursuant to California Labor Code section 1194;
   d. Liquidated damages pursuant to California Labor Code section 1194.2;
4. As to the Third Cause of Action:
   a. Wages in an amount to be proven at trial;
   b. Attorney's fees, costs and interest pursuant to California Code of Civil Procedure section 1021.5;
5. As to the Fourth Cause of Action:
   a. Wages in an amount to be proven at trial;
   b. Attorney's fees, costs and interest pursuant to California Code of Civil Procedure section 1021.5;
6. As to the Fifth Cause of Action:

a. Penalties as provided for in Labor Code section 226, including the greater of all actual damages or fifty dollars ($50.00) for the initial pay period in which the violation occurred and one hundred dollars ($100.00) per employee for each violation in the subsequent pay periods, but not to exceed four thousand dollars ($4,000.00);

b. For reasonable attorney's fees and costs incurred pursuant to Labor Code section 226(e);

7. As to the Sixth Cause of Action:

a. For any initial violations, $100 for each failure to pay each employee;

b. For each subsequent violation or any willful or intentional violations $200 for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld;

8. As to the Seventh Cause of Action:

a. An amount to be proven at trial;

b. For attorney's fees, interest, and costs pursuant to Labor Code section 2802(c);

9. As to the Ninth Causes of Action

a. For compensatory damages, including lost wages, earnings, retirement benefits, and other employee benefits, and all other sums of money, together with interest on these amounts;

b. For a money judgment for mental pain and anguish and emotional distress;

c. For an award of punitive damages, according to proof;

d. For attorneys fees and costs as allowed by law;

10. As to the Tenth Cause of Action:

c. For civil penalties as provided in the Labor Code for each enumerated violation;

d. For those Labor Code sections where there is no civil penalty provided for their violation, the default penalty provided in Labor Code section 2699(f): for any initial violation, one hundred dollars ($100) for each aggrieved employee per pay period; For any subsequent violation, two hundred dollars ($200) for each aggrieved employee per pay period;

e. Reasonable attorney's fees and costs pursuant to Labor Code section 2699;

f. For any other remedies as allowed by law and/or deemed appropriate by the Court;

11. For such other and further relief as this Court may deem just and proper, including, but not limited to:

a. Wages as proved at trial;

b. Injunctive and Declaratory relief;

c. Attorney's fees and costs as provided for by law; and

d. Interest.

Dated: October 12, 2023

Shimoda & Rodriguez Law, PC

By: ______________________

Galen T. Shimoda
Justin P. Rodriguez
Renald Konini
Attorneys for Plaintiff

Holmberg v. Castle Tire Disposal LLC et al
San Joaquin County Superior Court of California, Case No. STK-CV-UOE-2023-0006565

PROOF OF SERVICE — CCP §§ 1013a and 2015.5
and California Rules of Court, Rule 1.21 and Rule 2.150

I, Elias Tapia, declare that:

I am a citizen of the United States and am over the age of eighteen years and not a party to the within above-entitled action.

On October 24, 2023, I served the following documents on the party below:

- FIRST AMENDED COMPLAINT FOR DAMAGES

Heather B. Dillion Dorsey & Whitney LLP 600 Anton Boulevard Costa Mesa, CA 92626 Telephone: 714-800-1404 Facsimile: 714-800-1499 Email: Heather Dillion - Dillion.Heather@dorsey.com Melonie Jordan – Jordan.Melonie@dorsey.com Stephanie Machado - Machado.Stephanie@dorsey.com Kim Massure – Massure.Rayson.Kim@dorsey.com	

[ ] [By Certified Mail] I am familiar with my employer's practice for the collection and processing of correspondence for mailing with the United States Postal Service and that each day's mail is deposited with the United States Postal Service that same day in the ordinary course of business. On the date set forth above, I served the aforementioned document(s) on the parties in said action by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, for collection and mailing on this date, following ordinary business practices, at Elk Grove, California, addressed as set forth above.

[ ] [By Personal Service] By personally delivering a true copy thereof to the office of the addressee above.

[XXX] [By Electronic Mail] I e-mailed the documents(s) to the person(s) shown above. No error was reported by the e-mail service that I used.

[ ] [By Overnight Courier] By causing a true copy and/or original thereof to be personally delivered via the following overnight courier service:__________.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on October 24, 2023, at Elk Grove, California.

E Tapia
____
Elias Tapia