

Filed
Superior Court of California,
Sacramento
10/30/2023
johnsok
By _____, Deputy
23CV010770

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8 **SUPERIOR COURT OF CALIFORNIA**
9 **FOR THE COUNTY OF SACRAMENTO**

10 ALBERT CARR, individually and on behalf
11 of all other similarly situated employees,

12 Plaintiff,

13 vs.

14 WAVEDIVISION HOLDINGS, LLC, a
15 Delaware Limited Liability Company;
16 OH WDH HOLDCO, LLC, a Delaware
17 Limited Liability Company; and
DOES 1 to 100, inclusive,

18 Defendants.
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Case No.

COMPLAINT FOR CIVIL PENALTIES:

1. Private Attorneys General Act

1 Plaintiff ALBERT CARR ("Plaintiff"), on behalf of himself and other Aggrieved Employees,
2 hereby files this Complaint against Defendants WAVEDIVISION HOLDINGS, LLC, a Delaware
3 Limited Liability Company; OH WDH HOLDCO, LLC, a Delaware Limited Liability Company;
4 and DOES 1 to 100, inclusive (hereinafter all collectively referred to as "Defendants"). On
5 information and belief, Plaintiff alleges the following:

6 **JURISDICTION AND VENUE**

7 1. The Sacramento County Superior Court has jurisdiction in this matter pursuant to
8 California Code of Civil Procedure section 410.10 to determine alleged violations of the California
9 Labor Code and Wage Order No. 16.

10 2. Venue is proper pursuant to Civil Procedure Code §§ 395(a), 395.2, and 395.5, in that
11 Defendant are foreign entities and have not designated any county in California as being where they
12 maintain their principal offices. In addition, some of the wrongful acts and violations of law asserted
13 herein occurred within Sacramento County, and Defendants' obligation to pay wages arose in
14 Sacramento County pursuant to *Madera Police Officers Assn. v. City of Madera*, 36 Cal.3d 403, 414
15 (1984).

16 3. Plaintiff sought permission pursuant to Labor Code section 2699 *et seq.* to pursue the
17 claims set forth in this Complaint against Defendants as a Private Attorney General on behalf of himself
18 and other similarly situated employees. Pursuant to Labor Code section 2699.3, Plaintiff gave written
19 notice via online submission to the Labor and Workforce Development Agency ("LWDA") on
20 approximately July 25, 2023. Plaintiff provided facts and legal bases for his claims within the notice to
21 the LWDA on all violations asserted under the Private Attorneys General Act cause of action. Plaintiff
22 submitted the \$75.00 filing fee. The July 25, 2023 notice was also sent via certified mail to Defendants
23 on the same day. Plaintiff is informed and believes, that to date, the LWDA has not provided any
24 response to Plaintiff's notice correspondence. Accordingly, Plaintiff is informed and believes that he
25 has exhausted all administrative remedies pursuant to the Private Attorneys General Act and may bring
26 this action on behalf of himself and all Aggrieved Employees. *See* Cal. Labor Code § 2699.3(a)(2)(A),
27 (c)(3); *Caliber Bodyworks, Inc. v. Sup. Ct.*, 134 Cal.App.4th 365, 383 n.18, 385 n.19 (2005). Aggrieved
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1 Employees includes all individuals who have, or continue to, work for WaveDivision Holdings, LLC in
2 California as non-exempt employees from July 25, 2022 to the present.

3 **PARTIES**

4 4. ALBERT CARR is an individual over the age of eighteen (18) and is a resident of the
5 State of California.

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

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

14 7. On information and belief, Plaintiff alleges, OH WDH HOLDCO, LLC, is now and/or
15 at all times mentioned in this Complaint was a Delaware Limited Liability Company and the owner
16 and operator of an industry, business and/or facility doing business in the State of California.

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

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

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

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11. 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.

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

GENERAL ALLEGATIONS

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

14. Plaintiff and Aggrieved Employees worked for Defendants within the claim period as non-exempt employees. Plaintiff and Aggrieved Employees regularly worked over eight (8) hours in a day and/or forty (40) hours in a week.

15. Defendants were understaffed and required Plaintiff and Aggrieved Employees to perform work off-the-clock to avoid paying them overtime wages. Defendants were aware that Plaintiff and Aggrieved Employees were working additional hours that were not being paid. For example, Plaintiff's supervisor turned off the GPS on Plaintiff's truck in order to avoid tracking the additional hours Plaintiff worked. Plaintiff estimates he and similarly situated employees worked several hours of time off-the-clock each week. As a result, Defendants owe Plaintiff and Aggrieved Employees minimum and overtime wages.

16. Defendants paid Plaintiff and Aggrieved Employees an hourly rate in addition to incentive pay such as pay for being on call, etc., and nondiscretionary bonuses. However, Defendants failed to incorporate the value of these additional payments into Plaintiff's and Aggrieved Employees' regular rates of pay for the purpose of paying overtime wages, meal period premiums, rest period premiums, and paid sick time. For example, during Defendants' 2/12/23 to 2/17/23 pay period, Plaintiff's paystub reflects that Defendants paid Plaintiff \$350 for being on call, four meal period premiums, and 20.16 hours of overtime. Defendants paid Plaintiff's overtime wages at exactly 1.5x his base hourly rate and Plaintiff's meal premiums at exactly his base hourly rate, which does not include any adjustment for the value of the payments he earned for working on call. This practice of Defendants not to incorporate the value of incentive pay and nondiscretionary bonuses into the regular rates of pay

1 resulted in unpaid overtime, unpaid meal period premiums, unpaid rest period premiums, and unpaid
2 sick leave for Plaintiff and Aggrieved Employees.

3 17. Defendants did not authorize and permit Plaintiff and Aggrieved Employees to take all
4 meal and rest periods owed to them. Defendants employed Plaintiff and Aggrieved Employees for work
5 for periods of more than five hours without providing them an off-duty meal period of at least 30
6 minutes. Defendants did not have a policy or practice to provide Plaintiff and Aggrieved Employees
7 with second meal periods when they worked shifts longer than ten (10) hours. Defendants employed
8 Plaintiff and Aggrieved Employees for periods of more than 3.5 hours without providing them 10-
9 minute rest periods. Defendants did not have a policy or practice to provide Plaintiff and Aggrieved
10 Employees with a second rest period or third rest period when they worked shifts longer than ten (10)
11 hours. Defendants regularly were understaffed and had a large amount of work for Plaintiff and
12 Aggrieved Employees to complete which prevented them from being able to take all meal and rest
13 periods they were entitled to. For example, Defendants received hundreds of calls from customers about
14 service interruptions that were time sensitive. Plaintiff estimates that about 98% of his meal and rest
15 periods were late or he was unable to take them. Plaintiff believes Aggrieved Employees missed a
16 similar percentage of meal and rest periods due to their workload and the understaffing. Defendants did
17 not pay Plaintiff and Aggrieved Employees all missed meal and rest period premiums they were owed.

18 18. In addition, Defendants failed to keep accurate time records for Plaintiff and Aggrieved
19 Employees Defendants would modify Plaintiff's and Aggrieved Employees' time records to avoid
20 paying all meal premiums owed.

21 19. Defendants unlawfully deducted wages from Plaintiff and Aggrieved Employees. For
22 example, on or about June 6, 2023, Defendants deducted \$1,302.27 from wages they previously paid to
23 Plaintiff.

24 20. Defendants failed to provide Plaintiff and Aggrieved Employees with accurate wage
25 statements. The wage statements Defendants provided did not accurately itemize employees' gross and
26 net wages, meal period premiums, rest period premiums, paid sick time, and all applicable hourly rates
27 in effect during the pay period, total hours worked, and the corresponding number of hours worked at
28 each hourly rate.

21. At the time of Plaintiff's and Aggrieved Employees' termination or separation, Plaintiff and Aggrieved Employees had overtime, sick time, and meal and rest period premiums owing to them. To date, Defendants have not paid Plaintiff and Aggrieved Employees these wages they are owed.

CAUSES OF ACTION

FIRST CAUSE OF ACTION
PRIVATE ATTORNEYS GENERAL ACT
(As to all Defendants)

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

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

- Violation of Labor Code §§ 1194, 1197.1; IWC Wage Order 16, § 4 (Failure to Pay Minimum Wages)
- Violation of Labor Code §§ 510, 1194; IWC Wage Order 16, § 3 (Failure to Pay Overtime Wages)
- 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 §§ 558, 558.1 (Provisions Regulating Hours and Days of Work in Any Industrial Welfare Commission Order)
- Violation of Labor Code §§ 226.7, 512; IWC Wage Order 16, §§ 11(A) and 11(B) (Failure to Provide Meal Periods or Pay Premiums in Lieu Thereof)
- Violation of Labor Code § 226.7; IWC Wage Order 16, § 12(A) (Failure to Provide Rest Periods or Pay Premiums in Lieu Thereof)
- Violation of Labor Code §§ 221, 223, 225 (Failure to Pay Contract Wages and Unlawful Deductions)
- Violation of Labor Code § 226.3, 1174 (Failure to Maintain Accurate Records)
- Violation of Labor Code § 246, 246.5, 248.5 (Failure to Provide Paid Sick Leave)

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DAMAGES

WHEREFORE Plaintiff requests relief as follows:

1. As to the First Cause of Action:

- a. For civil penalties as provided for in the Labor Code for each enumerated violation in an amount to be proven at trial;
- b. For those Labor Code sections, the violation of which there is no civil penalty provided, 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;
- c. Reasonable attorney's fees and costs pursuant to Labor Code section 2699; and
- d. For any other remedies as allowed by law and/or deemed appropriate by the Court.

Dated: October 30, 2023

Shimoda & Rodriguez Law, PC

By: *Brittany Berzin*
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Justin P. Rodriguez
Brittany V. Berzin
Attorneys for Plaintiff