

JUSTICE FOR WORKERS, P.C.

Young K. Park, SB# 287589

E-Mail: young@justiceforworkers.com

William C. Sung, SB# 280792

E-Mail: william@justiceforworkers.com

3600 Wilshire Boulevard, Suite 1815

Los Angeles, CA 90010

Tel: 323-922-2000

Fax: 323-922-2000

Attorneys for Plaintiff DAVID NGUYEN

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

DAVID NGUYEN, an aggrieved employee
and on behalf of other aggrieved employees;

Plaintiff,

vs.

BAXTER HEALTHCARE CORPORATION,
a Delaware corporation; KELLY SERVICES
GLOBAL, LLC, a Michigan limited liability
company; and DOES 1 through 50,

Defendants.

Case No.:

**REPRESENTATIVE ACTION
COMPLAINT FOR VIOLATION OF THE
CALIFORNIA PRIVATE ATTORNEYS
GENERAL ACT (LABOR CODE §§ 2698,
et seq.)**

Plaintiff DAVID NGUYEN (“Plaintiff”), on behalf of himself as an aggrieved employee, the State of California, and other aggrieved employees, hereby brings this Representative Action Complaint (“Complaint”) against Defendants BAXTER HEALTHCARE CORPORATION, a Delaware corporation; KELLY SERVICES GLOBAL, LLC, a Michigan limited liability company; and DOES 1 to 50 inclusive (collectively “Defendants”), and on information and belief alleges as follows:

JURISDICTION AND VENUE

1. Plaintiff brings this Complaint for recovery of civil penalties under the California Private Attorneys General Act, California Labor Code §§ 2698, *et seq.* (“PAGA”), for Defendants’ violations of the Labor Code and Industrial Welfare Commission (“IWC”) Wage Order 1-2001

(“Wage Order 1”), including Labor Code §§ 201-204, 226, 226.7, 246, 432, 510, 512, 516, 558, 558.1, 1182.12, 1174, 1194, 1194.2, 1197, 1198, 1198.5, 2802. This Court has jurisdiction over Defendants’ violations of the Labor Code because the amount in controversy exceeds \$25,000.

2. Venue is proper in this judicial district because Defendants maintain offices, have agents, and/or transact business in the State of California, including Orange County, and some of the acts and omissions complained of herein occurred in Orange County. Furthermore, Plaintiff was employed by Defendants within Orange County.

PARTIES

3. Plaintiff is, and at all times relevant herein was, an individual over the age of eighteen (18) and is a California resident. Within the statute of limitations periods applicable to each cause of action pled herein, Plaintiff was employed by Defendants as a non-exempt employee. Plaintiff was, and is, a victim of Defendants' policies, practices, and/or customs complained of herein and has been deprived of the rights guaranteed by Labor Code §§ 201-204, 226, 226.7, 246, 432, 510, 512, 516, 558, 558.1, 1182.12, 1174, 1194, 1194.2, 1197, 1198, 1198.5, 2802, and Wage Order 1.

4. Plaintiff is informed and believes, and based thereon alleges, that during the applicable statute of limitations for each cause of action pled herein and continuing to the present, Defendants engaged in and continue to engage in business, and employed Plaintiff and other, similarly-situated non-exempt employees within Orange County, and the State of California and, therefore, were (and are) doing business in Orange County and the State of California.

5. Plaintiff does not know the true names or capacities, whether individual, partner, or corporate, of the defendants sued herein as DOES 1 to 50, inclusive, and for that reason, said defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to amend this Complaint when such true names and capacities are discovered. Plaintiff is informed, and believes, and based thereon alleges, that each of said fictitious defendants, whether individual, partners, or corporate, was responsible in some manner for the acts and omissions alleged herein, and proximately caused Plaintiff and aggrieved employees to be subject to the unlawful employment practices, wrongs, injuries, and damages complained of herein.

1 6. At all times herein mentioned, each of said Defendants participated in the doing of
2 the acts hereinafter alleged to have been done by the named Defendant; and furthermore,
3 Defendants, and each of them, were the agents, servants, and employees of each of the other
4 defendants, as well as the agents of all Defendants, and at all times herein mentioned, were acting
5 within the course and scope of said agency and employment.

6 7. Plaintiff is informed and believes, and based thereon alleges, that at all times
7 material hereto, each of the Defendants named herein was the agent, employee, alter ego and/or
8 joint venturer of, or working in concert with each of the other co-Defendants and was acting within
9 the course and scope of such agency, employment, joint venture, or concerted activity. To the extent
10 said acts, conduct, and omissions were perpetrated by certain Defendants, each of the remaining
11 Defendants confirmed and ratified said acts, conduct, and omissions of the acting Defendants.

12 8. At all times herein mentioned, Defendants, and each of them, were members of, and
13 engaged in, a joint venture, partnership, and common enterprise, and acting within the course and
14 scope of, and in pursuance of, said joint venture, partnership, and common enterprise.

15 9. At all times herein mentioned, the acts and omissions of various Defendants, and
16 each of them, concurred and contributed to the various acts and omissions of each and all of the
17 other Defendants in proximately causing the injuries and damages as herein alleged.

18 **FACTUAL ALLEGATIONS**

19 10. Defendant BAXTER HEALTHCARE CORPORATION owns, operates, or
20 otherwise manages a medical device manufacturing facility in Irvine, California. Defendant KELLY
21 SERVICES GLOBAL, LLC owns, operates, or otherwise manages a staffing agency. Defendant
22 BAXTER HEALTHCARE CORPORATION employed Plaintiff as an hourly-paid, non-exempt
23 employee via Defendant KELLY SERVICES GLOBAL, LLC, a staffing agency, from
24 approximately February 2023 to August 2023 as an assembler at its Irvine facility.

25 11. The “aggrieved employees” that Plaintiff seeks civil penalties on behalf of are all
26 current and former hourly-paid or non-exempt direct-hire or staffing agency employees who worked
27 Defendant BAXTER HEALTHCARE CORPORATION within the State of California.

28 ///

1 12. Labor Code §§ 1194, 1197, and Wage Order 1, § 4 entitle employees to receive no
2 less than the minimum wage fixed by the comission or by any applicable state or local law for all
3 hours worked. Labor Code §§ 510, 1198, and Wage Order 1, § 3 provide that non-exempt
4 employees are entitled to all overtime wages at the regular rate of pay. During the relevant time
5 period, Defendants' timekeeping and/or payroll policies and practices resulted in Plaintiff and other
6 aggrieved employees not being compensated for all hours actually worked. Plaintiff and other
7 aggrieved employees regularly worked more than eight hours in a workday or 40 hours in a
8 workweek. Upon information and belief, Defendants required Plaintiff and other aggrieved
9 employees to perform work before their scheduled shifts, after their scheduled shifts, and/or during
10 off-the-clock meal breaks, and failed to compensate employees for this time. Upon information and
11 belief, Defendants also subjected Plaintiff and other aggrieved employees to unlawful time-shaving
12 and/or time rounding practices and failed to compensate them for all hours they actually worked. As
13 a result, Plaintiff and other aggrieved employees were not compensated for all earned minimum and
14 overtime wages.

15 13. Labor Code §§ 226.7, 512, and Wage Order 1, § 11 require employers to provide
16 non-exempt employees with compliant meal periods or pay premiums at the regular rate of
17 compensation. During the relevant time period, Defendants failed to provide Plaintiff and other
18 aggrieved employees with all legally compliant meal periods due to Defendants' meal period
19 policies/practices, which have frequently resulted in late (commencing after the fifth hour of work),
20 short (less than 30 minutes), and/or missed meal periods. Upon information and belief, Plaintiff and
21 other aggrieved employees were not able to take their legally compliant meal breaks due to work
22 demands imposed by Defendants and time spent donning and doffing their personal protective
23 equipment. Upon information and belief, Defendants also subjected Plaintiff and other aggrieved
24 employees to unlawful time-shaving and/or time rounding practices and failed to compensate them
25 for all hours they actually worked. On those occasions when Plaintiff and other aggrieved
26 employees were not provided with all legally compliant meal periods to which they were entitled,
27 Defendants failed to compensate Plaintiff and other non-exempt employees with the required meal
28 period premium(s) for each workday there was a meal period violation as mandated by Labor Code

1 § 226.7. Upon information and belief, Defendants maintained no mechanism for the payment of
2 meal period premium payments as required by Labor Code § 226.7 in the event that a legally
3 compliant meal period was not provided to their employees.

4 13. Labor Code §§ 226.7 and Wage Order 1, § 12 require employers to authorize and
5 permit non-exempt employees to take compliant rest periods or pay premiums at the regular rate of
6 compensation. During the relevant time period, Plaintiff and other aggrieved employees were not
7 authorized and permitted to take all required rest periods due to Defendants' unlawful rest period
8 policies/practices, which failed to authorize and permit a net 10-minute rest period for every four
9 hours worked, or major fraction thereof. Upon information and belief, Plaintiff and other aggrieved
10 employees were not able to take their legally compliant meal breaks due to work demands imposed
11 by Defendants and time spent donning and doffing their personal protective equipment. On those
12 occasions when Plaintiff and other aggrieved employees were not authorized and permitted to take
13 all legally compliant rest periods to which they were entitled, Defendants failed to compensate them
14 with the required rest period premium(s) for each workday there was a rest period violation as
15 mandated by Labor Code § 226.7. Upon information and belief, Defendants maintained no
16 mechanism for the payment of rest period premium payments as required by Labor Code § 226.7, in
17 the event that a legally compliant rest period was not authorized and permitted to their non-exempt
18 employees.

19 14. As a result of Defendants' failure to pay all minimum and overtime wages, failure to
20 pay all meal and rest period premium wages, and unlawful timekeeping and payroll practices as
21 alleged above, Defendants maintained inaccurate payroll records and issued inaccurate wage
22 statements to Plaintiff and other aggrieved employees. As a further result of Defendants' failure to
23 pay all minimum and overtime wages, and meal and rest period premium wages, Defendants failed
24 to timely pay all final wages to Plaintiff and other aggrieved employees upon their separation of
25 employment from Defendants.

26 15. Additionally, upon information and belief, Defendants required aggrieved employees
27 to incur necessary business expenses and failed to reimburse aggrieved employees.

28 ///

1 16. On or about August 25, 2023, Plaintiff submitted a request for inspection or copy of
2 his/her personnel file, payroll and time records, and all documents she signed relating to the
3 obtaining or holding of employment under Labor Code §§ 226(b), 432, and 1198.5 to Defendants
4 via certified mail. As of the date of this Complaint, Defendants have failed to permit Plaintiff to
5 inspect or copy his/her employment records.

6 17. On or about August 25, 2023, Plaintiff notified Defendants via certified mail, and
7 notified the California Labor and Workforce Development Agency (“LWDA”) via its website, of
8 Defendants’ violations of the Labor Code and Plaintiff’s intent to bring a claim for civil penalties
9 under Labor Code § 2698, *et seq.* with respect to the violations of the Labor Code identified in the
10 preceding paragraph. Now that 33 days and 65 days have passed from Plaintiff notifying
11 Defendants and the LWDA of these violations, Defendants have not cured any curable violations,
12 and the LWDA has not provided notice that it intends to investigate the violations, Plaintiff has
13 exhausted administrative requirements for bringing a claim under the Private Attorneys General Act
14 with respect to these violations.

15 **FIRST CAUSE OF ACTION**

16 **PRIVATE ATTORNEYS GENERAL ACT**

17 **(Against All Defendants)**

18 18. Plaintiff re-alleges and incorporates by reference all preceding paragraphs as though
19 fully set forth herein.

20 19. Plaintiff, an “aggrieved employee” within the meaning of Labor Code § 2698, *et*
21 *seq.*, acting on behalf of himself and other aggrieved employees (collectively, “Aggrieved
22 Employees”), brings this representative action against Defendants to recover the civil penalties due
23 to Plaintiff and other Aggrieved Employees, and the State of California according to proof pursuant
24 to Labor Code § 558 and § 2699(a) and (f) including, but not limited to: (1) \$100.00 for each initial
25 violation for each failure to pay each employee and \$200 for each subsequent violation or willful or
26 intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25%
27 of the amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100 for each
28 subsequent violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100 for each

1 initial violation and \$250 for each subsequent violation pursuant to Labor Code § 1197.1 per
2 employee per pay period; (4) \$250 for each initial violation and \$1,000 for each subsequent
3 violation pursuant to Labor Code § 226.3 per employee per pay period; (5) pursuant to Labor Code
4 section 256, a civil penalty in an amount not exceeding 30 days per former employee as waiting
5 time under the terms of Labor Code § 203; and/or (6) \$100 for each initial violation and \$200 for
6 each subsequent violation per employee per pay period for those violations of the Labor Code for
7 which no civil penalty is specifically provided, based on the following Labor Code violations:

- 8 a. Failing to pay minimum wages for all hours worked to Aggrieved Employees in
9 violation of Labor Code § 558, 1182.12, 1194, 1194.2, 1197, and 1198;
- 10 b. Failing to pay Aggrieved Employees all earned overtime compensation in violation
11 of Labor Code §§ 204, 510, 558, 1194, and 1198;
- 12 c. Failing to provide all legally required meal periods, and failure to pay meal period
13 premium wages, to Aggrieved Employees at the regular rate of compensation in
14 violation of Labor Code §§ 226.7, 512, 558, and 1198;
- 15 d. Failing to authorize and permit all legally required rest periods, and failure to pay
16 rest period premium wages, to Aggrieved Employees at the regular rate of
17 compensation in violation of Labor Code §§ 226.7, 516, 558, and 1198;
- 18 e. Failing to furnish Aggrieved Employees with complete, accurate, itemized wage
19 statements in violation of Labor Code § 226;
- 20 f. Failing to timely pay all final wages and compensation earned by Aggrieved
21 Employees at the time of separation in violation of Labor Code §§ 201-202;
- 22 g. Failure to reimburse Aggrieved Employees for all necessary business expenses in
23 violation of Labor Code § 2802;
- 24 h. Failing to pay Aggrieved Employees all earned wages at least twice during each
25 calendar month in violation of Labor Code § 204;
- 26 i. Failure to permit Aggrieved Employees' inspection of employment records in
27 violation of Labor Code §§ 226, 432, 1198; and
- 28 j. Failing to maintain accurate records on behalf of Aggrieved Employees in violation

1 of Labor Code §§ 1174 and 1198.

2 20. Plaintiff has incurred attorneys' fees and costs, which Plaintiff is entitled to receive
3 under California Labor Code § 2699(g).

4 **PRAYER FOR RELIEF**

5 WHEREFORE, Plaintiff prays for judgment for himself and for all others on whose behalf
6 this suit is brought against Defendants, as follows:

7 1. Upon the First Cause of Action, for civil penalties due to Plaintiff, other Aggrieved
8 Employees, and the State of California according to proof pursuant to Labor Code §§ 558 and
9 2699(a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for each failure to
10 pay each employee and \$200 for each subsequent violation or willful or intentional violation
11 pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount
12 unlawfully withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent violation
13 pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial violation
14 and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per employee per pay
15 period; (4) \$250.00 for each initial violation and \$1,000.00 for each subsequent violation pursuant
16 to Labor Code § 226.3 per employee per pay period; (5) pursuant to Labor Code section 256, a civil
17 penalty in an amount not exceeding 30 days per former employee as waiting time under the terms of
18 Labor Code § 203; and/or (6) \$100.00 for each initial violation and \$200 for each subsequent
19 violation per employee per pay period for those violations of the Labor Code for which no civil
20 penalty is specifically provided;

21 2. On all causes of action, for attorneys' fees and costs as provided by Labor Code §
22 2699(g) and Code of Civil Procedure § 1021.5; and

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

1 3. For such other and further relief, the Court may deem just and proper.

2

3 DATED: October 30, 2023

JUSTICE FOR WORKERS, P.C.

4

5

By: 

6

Young K. Park

7

William C. Sung

8

Attorneys for Plaintiff DAVID NGUYEN

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28