

COHELAN KHOURY & SINGER
605 C Street, Suite 200
San Diego, CA 92101

COHELAN KHOURY & SINGER

Michael D. Singer, Esq. (SBN 115301)

msinger@ckslaw.com

Marta Manus (SBN 260132)

mmanus@ckslaw.com

605 C Street, Suite 200

San Diego, CA 92101

Telephone: (619) 595-3001/Facsimile: (619) 595-3000

D.LAW, INC.

Emil Davtyan (SBN 299363)

emil@d.law

400 N. Brand Blvd., 7th Floor

Glendale, CA 91203

Telephone: (818) 875-2008/Facsimile: (818) 722-3974

Attorneys for Plaintiff JOSEPH RUBIO JR., on behalf of himself
and all others similarly situated and aggrieved employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN JOAQUIN

JOSEPH M. RUBIO JR., on behalf of
himself and all others similarly situated,

Plaintiff,

v.

STOCKTON UNIFIED SCHOOL
DISTRICT; and DOES 1 through 10,
Inclusive,

Defendants.

Case No. STK-CV-UOE-2023-0009666

**FIRST AMENDED CLASS ACTION AND
PRIVATE ATTORNEYS GENERAL ACT
("PAGA") REPRESENTATIVE ACTION
COMPLAINT**

1. Failure to Pay Minimum Wages (Lab.
Code §§ 1194, 1194.2, 1197, 1197.1 and the
applicable IWC Wage Order, § 4)

2. PAGA Civil Penalties for Failure to Pay
Minimum Wages (Lab. Code §§ 2698, *et seq.*)

DEMAND FOR JURY TRIAL

FILED

2023 OCT 27 AM 10:17

STEPHANIE BOHRER, CLERK

LISA VEGHAY

1 Plaintiff JOSEPH M. RUBIO JR. (“Plaintiff”), on behalf of himself and all others
2 similarly situated and aggrieved employees, and the general public, alleges as follows:

3 **I.**

4 **INTRODUCTION**

5 1. Plaintiff brings this action as a Class Action pursuant to California Code of Civil
6 Procedure section 382 on behalf of himself and other current and former non-exempt employees
7 of STOCKTON UNIFIED SCHOOL DISTRICT (“SUSD” or “Defendant”) and DOES 1
8 through 10, inclusive (collectively “Defendants”). Plaintiff brings this action for: payment of
9 minimum wages; and statutory and civil penalties, interest and attorneys’ fees and costs, under
10 California Labor Code sections 1194, 1194.2, 1197, and 1197.1.

11 2. Defendants have engaged in a systematic pattern of wage and hour abuse
12 towards Plaintiff and other current and former non-exempt employees by denying them specific
13 rights afforded to them under California law, including the California Labor Code and rules
14 promulgated by the Industrial Welfare Commission (“IWC”) Wage Orders.

15 3. At all relevant times, Defendants maintained a uniform and consistent policy and
16 practice of failing to pay Plaintiff and similarly-situated non-exempt employees minimum
17 wages for all hours worked, in violation of California state wage and hour laws.

18 4. Plaintiff, on behalf of himself and all similarly-situated employees in the State of
19 California, brings this action pursuant to Labor Code sections 1194, 1194.2, 1197, 1197.1,
20 seeking unpaid wages, penalties, interest, and reasonable attorneys’ fees and costs.

21 5. Plaintiff also brings this representative action under the Private Attorneys
22 General Act of 2004 (“PAGA”), Labor Code sections 2698, *et seq.*, on behalf of himself and all
23 other aggrieved employees against Defendants for Defendants’ failure to pay minimum wages,
24 including due to rounding time entries.

25 6. Plaintiff gave written notice of these claims to the California Labor and
26 Workforce Development Agency (“LWDA”) on August 22, 2023 (“the PAGA notice”) per
27 Labor Code section 2699.3, and there has been no LWDA intervention within 65 days of this
28 notice. Plaintiff seeks civil penalties under the PAGA as a representative of the State of

1 California and has standing as an aggrieved employee. Plaintiff seeks to represent all
2 Defendants' non-exempt employees in the State of California who suffered one or more of the
3 violations alleged ("aggrieved employees") during the "PAGA Period" (from the date of the
4 filing of this complaint until the start of trial). Labor Code §§ 2698, *et seq.*, 2699.3(a)(2)(C).

5 7. Labor Code section 2699(a) provides: "Notwithstanding any other provision of
6 law, any provision of this code that provides for a civil penalty to be assessed and collected by
7 the Labor and Workforce Development Agency or any of its departments, divisions,
8 commissions, boards, agencies, or employees, for a violation of this code, may, as an
9 alternative, be recovered through a civil action brought by an aggrieved employee on behalf of
10 himself or herself and other current or former employees pursuant to the procedures specified in
11 Section 2699.3."

12 8. Labor Code section 2699(f)(2) states: "For all provisions of this code except
13 those for which a civil penalty is specifically provided, there is established a civil penalty for a
14 violation of these provisions, as follows... (2) If, at the time of the alleged violation, the person
15 employs one or more employees, the civil penalty is one hundred dollars (\$100) for each
16 aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for
17 each aggrieved employee per pay period for each subsequent violation."

18 9. Plaintiff, as a representative of the general public, will and does seek to recover
19 any and all civil penalties for each and every violation of the Labor Code shown to exist or to
20 have occurred, in an amount according to proof, as to those penalties that are otherwise only
21 available in public agency enforcement actions. Funds recovered will be distributed in
22 accordance with the PAGA, with 75% of the penalties recovered being reimbursed to the
23 LWDA on behalf of the State of California.

24 II.

25 JURISDICTION AND VENUE

26 10. Venue as to each Defendant is proper in this judicial district pursuant to Code of
27 Civil Procedure section 395(a). Defendants conduct business in San Joaquin County, and each
28 Defendant is within the jurisdiction of this Court for service of process purposes. Defendants

maintain offices, transact business, and/or have an agent in San Joaquin County and Defendants are otherwise within this Court's jurisdiction for purposes of service of process. The unlawful acts alleged herein arose in San Joaquin County and have a direct effect on Plaintiff and other similarly-situated employees within the State of California and within San Joaquin County. Defendants employed Plaintiff and numerous similarly-situated employees and committed the alleged violations in San Joaquin County.

11. The California Superior Court also has jurisdiction in this matter because individual members of the classes are under the seventy-five thousand dollar (\$75,000.00) jurisdictional threshold for Federal Court. There is no federal question at issue, as the issues are based solely on California law, including the Labor Code, IWC Wage Orders, Code of Civil Procedure, and Civil Code.

12. Furthermore, this Court has jurisdiction over Plaintiff's and other aggrieved employees' claims under Labor Code sections 2698, *et seq.* and PAGA civil penalty actions are not subject to federal jurisdiction.

III.

THE PARTIES

A. The Plaintiff

13. Plaintiff JOSEPH M. RUBIO JR. is, and at all relevant times, was a resident of Stockton in San Joaquin County, California, and has been employed by Defendants in San Joaquin County as Custodian for SUSD since approximately 2016, working at various locations throughout San Joaquin County.

B. The Defendants

14. Plaintiff is informed and believes and thereon alleges that STOCKTON UNIFIED SCHOOL DISTRICT is comprised of four comprehensive high schools, seven alternative education high schools, and forty-two K-8 schools. They currently serve over 38,000 students in the Stockton community, and was the employer of Plaintiff and the members of Class and aggrieved employees, during the relevant time period. Defendants' conduct, as herein alleged, occurred in the County of San Joaquin, California. Plaintiff is informed and believes

1 and thereon alleges that Defendants are, and at all relevant times, were authorized to do business
2 and doing business in the State of California, and were employers as defined in and subject to
3 specific provisions of the California Labor Code and applicable Industrial Welfare Commission
4 Wage Order.

5 15. The true names and capacities, whether individual, corporate, associate, or
6 otherwise, of Defendants sued here in as DOES 1 through 10, inclusive, are currently unknown
7 to Plaintiff, who therefore sues Defendants by such fictitious names under Code of Civil
8 Procedure section 474. Plaintiff is informed and believes, and based on that alleges, each of the
9 Defendants designated as a DOE is legally responsible in some manner for the unlawful acts
10 alleged. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and
11 capacities of the Defendants designated as DOES when those identities become known.

12 16. Plaintiff is informed, believes, and alleges each Defendant acted in all respects
13 pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business
14 plan or policy in all pertinent respects, and the acts of each Defendant are legally attributable to
15 the other Defendants.

16 IV.

17 GENERAL ALLEGATIONS

18 17. During all, or a portion of the Class and PAGA Periods, Plaintiff, each member
19 of the Class, and each aggrieved employee were employed by Defendants and each of them, in
20 the State of California.

21 18. Plaintiff commenced his employment with Defendants in approximately 2016 as
22 custodian in Stockton, California. Plaintiff is currently employed with Defendants.

23 19. California Labor Code section 1194 provides that notwithstanding any
24 agreement to work for a lesser wage, and employee receiving less than the legal minimum wage
25 is entitled to recover in a civil action the full amount of the minimum wages, including interest
26 thereon, reasonable attorneys' fees, and costs of suit. Labor Code section 1194.2 provides for
27 liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon
28 when an employer fails to pay the minimum wage fixed by an order of the commission or

1 statute.

2 20. Plaintiff and similarly-situated and aggrieved employees were non-exempt
3 employees covered under one or more Industrial Welfare Commission (“IWC”) Wage Orders,
4 including section 4 of the applicable Wage Order and Labor Code sections 1194 and 1197, and
5 each Class Member and aggrieved employee was not subject to an exemption for executive,
6 administrative, professional employees, or any other exemption, which imposed an obligation
7 on the part of the Defendants to pay Plaintiff and similarly-situated and aggrieved employees all
8 lawful wages.

9 21. During all, or portions, of the Class and PAGA Periods, Defendants failed to pay
10 Plaintiff and other similarly-situated and aggrieved employees minimum wages for all hours
11 worked, in violation of Labor Code sections 1194 and 1197, and section 4 of the applicable IWC
12 Wage Order. Plaintiff and other similarly-situated and aggrieved employees were required to
13 wait in line for, and undergo, mandatory COVID-19 screenings before commencing work but
14 did not receive compensation of all applicable minimum wages for this time spent under the
15 direction and control of Defendants.

16 22. During all, or portions, of the Class and PAGA Periods, Defendants required
17 their employees, including Plaintiff, to complete COVID-19 questionnaires prior to the start of
18 each shift while off-the-clock. Plaintiff and others similarly situated and aggrieved were not
19 paid for all the time spent completing the questionnaire. Plaintiff and other similarly-situated
20 and aggrieved employees were at all relevant times paid on their scheduled shift time and not
21 paid for all hours actually worked.

22 23. During all, or portions, of the Class and PAGA Periods, Defendants required
23 their employees, including Plaintiff, to complete COVID-19 tests once a week. Plaintiff and
24 others similarly situated and aggrieved were not paid for all the time spent taking the tests,
25 which were required to be taken off-the-clock. Plaintiff and other similarly-situated and
26 aggrieved employees were at all relevant times paid on their scheduled shift time and not paid
27 for all hours actually worked including time spent taking weekly COVID-19 tests.

28 ///

24. During all, or portions, of the Class and PAGA Periods, Defendants required their employees, including Plaintiff, to undergo training related to their employment, including sexual harassment training. Due to the demands of the job, Plaintiff and other similarly-situated and aggrieved employees were not able to complete the mandatory training while working and thus had to complete mandatory training off-the-clock. Defendants did not pay any for this time spent completing mandatory training.

25. During all, or portions, of the Class and PAGA Periods, Defendants paid Plaintiff and similarly-situated and aggrieved employees on scheduled shift time as opposed to actual hours worked. Defendants failed to record the hours worked by Plaintiff and similarly-situated and aggrieved employees and paid on rounded hours based on the number of hours per the employees' scheduled shift.

26. Accordingly, Plaintiff and other similarly-situated and aggrieved employees were not paid all minimum wages for all hours worked, including the time spent waiting to undergo COVID-19 screenings, time spent completing COVID-19 questionnaires and weekly testing, and the time spent completing mandatory employment training. As a result, Defendants have failed to pay all minimum wages for all hours worked.

V.

CLASS ACTION ALLEGATIONS

27. Plaintiff brings this action on behalf of himself and all others similarly situated as a class action pursuant to Code of Civil Procedure section 382. The Class Plaintiff seeks to represent are defined as:

Plaintiff Class

All non-exempt employees employed by Defendants in the State of California at any time since the four years preceding the filing of this Complaint.

28. Plaintiff seeks to certify a Subclass of employees defined as follows:

Subclass One: All non-exempt employees employed by Defendants in the State of California who were required to complete COVID-19 questionnaires prior to the beginning of their workday at any time since the four years preceding the filing of this Complaint.

29. Plaintiff seeks to certify a Subclass of employees defined as follows:

Subclass Two: All non-exempt employees employed by Defendants in the State of California who were required to undergo mandatory COVID-19 testing at any time since the four years preceding the filing of this Complaint.

30. Plaintiff seeks to certify a Subclass of employees defined as follows:

Subclass Three: All non-exempt employees employed by Defendants in the State of California who were required to complete mandatory employment training at any time since the four years preceding the filing of this Complaint.

31. Plaintiff seeks to certify a Subclass of employees defined as follows:

Subclass Four: All non-exempt employees employed by Defendants in the State of California who were paid on rounded hours instead of actual hours worked at any time since the four years preceding the filing of this Complaint.

32. Plaintiff reserves the right under California Rules of Court, Rule 3.765(b) and other applicable law to amend or modify the class definition with greater specificity or further division into subclasses or limitation to particular issues. Plaintiff is a member of the proposed Class.

33. This action has been brought and may be maintained as a class action pursuant to Code of Civil Procedure section 382 because there is a well-defined common interest of many persons and it is impractical to bring them all before the court.

34. **Ascertainable Class:** The potential members of the Class are ascertainable because they can be identified and located using Defendants' payroll and personnel records.

35. **Numerosity:** The potential members of the Class, defined above, are so numerous that joinder of all members would be unfeasible and impractical. The disposition of their claims through this class action will benefit both the parties and this Court. The number of members of the Class is unknown to Plaintiff but is estimated to be in excess of 100 individuals. The number and identity of members can be readily ascertained using Defendants' records.

36. **Typicality:** The claims of Plaintiff are typical of the claims of all members of the Class because all members of the Class sustained similar injuries and damages arising out of

Defendants' common course of conduct in violation of law and the injuries and damages of all members of the Class were caused by Defendants' wrongful conduct in violation of law, as alleged.

37. **Adequacy:** Plaintiff is an adequate representative of the Class, will fairly protect the interests of the members of the Class, has no interests antagonistic to the members of the Class, and will vigorously pursue this suit. Plaintiff's attorneys are competent, skilled, and experienced in litigating large employment law class actions.

38. **Superiority:** A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all Class Members is not practicable, and questions of law and fact common to the Class predominate over questions affecting only individual Class Members. Each Class Member has been damaged and is entitled to recovery by reason of Defendants' illegal policy and/or practice of failing to pay minimum wages. A class action will allow those similarly situated to litigate their claims in the most efficient and economical manner for the parties and the judicial system. Plaintiff is unaware of any difficulties likely to be encountered in the management of this action that precludes its maintenance as a class action.

39. The predominating common questions of law and fact include, without limitation: Whether Defendants compensated Class Members for all hours worked, including minimum wages, pursuant to Labor Code sections 1194 and 1197, and section 4 of the applicable IWC Wage Order.

VI.

CAUSES OF ACTION **FIRST CAUSE OF ACTION**

Failure to Pay Minimum Wages

**[Labor Code §§ 1194, 1194.2, 1197, 1197.1, and § 4 of the applicable IWC Wage Order]
(By Plaintiff and the Class against each Defendant)**

40. Plaintiff hereby incorporates all preceding paragraphs of this Complaint.

41. Labor Code section 1194 states: "Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid

1 balance of the full amount of his minimum wage or overtime compensation, including interest
2 thereon, reasonable attorney's fees and costs of suit."

3 42. Labor Code section 1194.2 states: "In any action under Section 98, 1193.6, 1194,
4 or 1197.1 to recover wages because of the payment of a wage less than the minimum wage
5 fixed by an order of the commission or by statute, an employee shall be entitled to recover
6 liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon."

7 43. Labor Code section 1197 states: "The minimum wage for employees fixed by the
8 commission is the minimum wage to be paid to employees, and the payment of a less wage than
9 minimum wage so fixed is unlawful."

10 44. The applicable IWC Wage Order, section 4 provides that an employer may not
11 pay employees less than the applicable minimum wage for all hours worked. Plaintiff and other
12 similarly-situated employees are not exempt from Section 4 of the applicable IWC Wage Order,
13 which requires employers to pay minimum wages for all hours worked.

14 45. At all times relevant to this action, Defendants failed to pay Plaintiff and other
15 similarly-situated employees minimum wages for all hours worked, in violation of Labor Code
16 sections 1194 and 1197, and Section 4 of the applicable IWC Wage Order.

17 46. Defendants' unlawful acts deprived Plaintiff and members of the Class Plaintiff
18 seeks to represent of minimum wages in amounts to be determined at trial, and they are entitled
19 to recover these amounts, along with liquidated damages for unpaid regular or minimum wages,
20 interest, attorneys' fees, and costs.

21 47. Plaintiff seeks to recover in a civil action the unpaid balance of the full amount
22 of the unpaid wages resulting from Defendants' minimum wage violations including interest
23 thereon, reasonable attorney's fees and costs of suit, penalties, and liquidated damages to the
24 fullest extent permissible including those permitted pursuant to Labor Code sections 218.6,
25 1194, 1194.2, and 1197.1, and Code of Civil Procedure section 1021.5.

26 48. Plaintiff, on behalf of himself and the members of the Class, requests relief as
27 described below.

28 ///

SECOND CAUSE OF ACTION
PAGA Civil Penalties for Failure to Pay Minimum Wages
[Labor Code §§ 2698, *et seq.*]
(By Plaintiff and Aggrieved Employees against Each Defendant)

49. Plaintiff hereby incorporates all preceding paragraphs of this Complaint.

50. “[A]ny provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Section 2699.3.” Labor Code § 2699(a).

51. “For all provisions of this code except those for which a civil penalty is specifically provided, there is established a civil penalty for a violation of these provisions [] (2) If, at the time of the alleged violation, the person employs one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.” Labor Code § 2699(f)(2).

52. Section 2699.3(a) applies to any alleged violation of Labor Code sections 1194 and 1197.1 and allows for recovery of PAGA civil penalties. Labor Code § 2699.5.

53. By rounding time worked and by failing to pay for time worked off-the-clock, Defendants failed to pay minimum wages, entitling Plaintiff and aggrieved employees to civil penalties under the PAGA premised on violations of Labor Code sections 1194 and 1197.1.

54. Plaintiff will seek \$100 for the initial pay period an employee was underpaid, and \$200 for each subsequent violation. Funds recovered will be distributed in accordance with the PAGA, with 75% of the civil penalties provided to the LWDA on behalf of the State of California. The amount of the applicable penalty will be proven at trial.

VII.

PRAYER FOR RELIEF

Plaintiff, on behalf of himself and all others similarly situated and aggrieved, prays for

1 relief and judgment against Defendants, jointly and severally, as follows:

- 2 1. For certification of this action as a class action;
- 3 2. For appointment of Plaintiff as the representative of the Class;
- 4 3. For appointment of counsel for Plaintiff as Class Counsel;
- 5 4. For unpaid minimum wages pursuant to Labor Code section 1194;
- 6 5. Liquidated damages pursuant to Labor Code section 1194.2;
- 7 6. That this action be maintained as a PAGA Representative Action, and Plaintiff
8 and her counsel be provided with enforcement capability as if the action were brought by the
9 DLSE;
- 10 7. For recovery of all civil penalties as permitted by Labor Code section 2699, for
11 unpaid minimum wages owed pursuant to Labor Code section 1194;
- 12 8. For all civil penalties to be distributed 75% to the LWDA and 25% to the
13 aggrieved employees, pursuant to Labor Code section 2699(i);
- 14 9. For Plaintiff to be recognized as a Representative of the LWDA and an
15 “aggrieved employee,” and that she be awarded enhanced compensation for bringing this action
16 should she prevail and provide benefit to California or other “aggrieved employees”;
- 17 10. Reasonable attorneys’ fees and costs pursuant to Labor Code section 1194;
- 18 11. Reasonable attorneys’ fees and costs of suit pursuant to the PAGA and Labor
19 Code section 1021.5;
- 20 12. For such other relief the Court deems just and proper.

21 COHELAN KHOURY & SINGER
22 D.LAW, INC.

23 Dated: October 26, 2023

24 By: _____

Michael Singer, Esq.

Marta Manus, Esq.

25 Attorneys for Plaintiff JOSEPH M. RUBIO JR., on
26 behalf of himself and all others similarly situated
and aggrieved employees

27 ///

28 ///

DEMAND FOR JURY TRIAL

Plaintiff demands a jury trial of all claims triable as of right by jury.

COHELAN KHOURY & SINGER
D.LAW, INC.

Dated: October 26, 2023

By: _____


Michael Singer, Esq.

Marta Manus, Esq.

Attorneys for Plaintiff JOSEPH M. RUBIO JR., on
behalf of himself and all others similarly situated
and aggrieved employees