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9 AUSTIN HERBAUGH, and all others similarly situated

San Luis Obispo Superior Court

By: 
Amilia Espinoza, Deputy Clerk

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **FOR THE COUNTY OF SAN LUIS OBISPO**
12 **(UNLIMITED JURISDICTION)**

13 AUSTIN HERBAUGH, as an “aggrieved
14 employee” on behalf of himself and other
15 similarly situated “aggrieved employees” under
16 the Labor Code Private Attorneys General Act
17 of 2004,

18 *Plaintiff,*

19 vs.

20 SCRIPPS MEDIA, INC. d/b/a KSBY-TV;
21 and DOES 1 to 25, inclusive,

22 *Defendants.*

Case No.

**COMPLAINT FOR VIOLATIONS
OF THE LABOR CODE AND CIVIL
PENALTIES UNDER THE LABOR
CODE PRIVATE ATTORNEYS
GENERAL ACT OF 2004, LABOR
CODE §§ 2698, ET SEQ.**

JURY TRIAL DEMANDED

1 Plaintiff, Austin Herbaugh (hereafter “Plaintiff” or “Herbaugh”), on behalf of himself, the
2 State of California, and the other Aggrieved Employees, complains and alleges as follows:

3 **INTRODUCTION**

4 1. Plaintiff brings this representative action under the Labor Code Private Attorneys
5 General Act of 2004, § 2698, *et seq.* (“PAGA”) based on alleged violations of the California
6 Labor Code and Industrial Welfare Commission Order No. 4-2001 (hereafter “the Wage Order”),
7 against Defendant Scripps Media, Inc. d/b/a KSBY-TV, a Delaware corporation, and DOES 1 to
8 25, inclusive (collectively “KSBY” or “Defendants”).

9 2. As set forth in more detail below, Plaintiff alleges that Defendants are liable to
10 him, the State of California, and the Aggrieved Employees (defined below), for civil penalties
11 and other related relief. These claims are based on Defendants’ failures to: 1) pay all wages,
12 including minimum, regular, overtime and doubletime wages, earned for all hours worked at the
13 correct rates of pay; 2) provide meal periods or pay correctly-calculated premium wages in lieu
14 thereof; 3) authorize and permit rest periods or pay correctly-calculated premium wages in lieu
15 thereof; 4) indemnify for business expenses; 5) issue only accurate and complete itemized wage
16 statements; 6) timely pay wages during employment; 7) timely pay wages upon separation from
17 employment; and 8) maintain accurate employment records. Accordingly, Plaintiff now seeks to
18 recover civil penalties and related relief through this representative action.

19 **JURISDICTION AND VENUE**

20 3. Jurisdiction and Venue are proper in this Court and this action is properly filed in
21 the County of San Luis Obispo in this judicial district because Defendant Scripps Media Inc. d/b/a
22 KSBY-TV, and DOES 1 to 25, inclusive do business in the County of San Luis Obispo and
23 because Defendants’ obligations and liabilities arise therein, and because the work that was
24 performed by Plaintiff and the Aggrieved Employees in the County of San Luis Obispo is the
25 subject of this action. Moreover, the aggregate claims of Plaintiff and the Aggrieved Employees,
26 inclusive of all relief, place more than \$25,000 in controversy.

27 **THE PARTIES**

28 4. Plaintiff Austin Herbaugh is resident of California.

1 5. Defendant Scripps Media Inc. d/b/a KSBY-TV is a corporation organized and
2 existing under the laws of Delaware and also a citizen of California based on Plaintiff's
3 information and belief.

4 6. Plaintiff is ignorant of the true names, capacities, relationships, and extents of
5 participation in the conduct alleged herein of the Defendants sued as DOES 1-25, inclusive, but
6 is informed and believes and thereon alleges that said Defendants are legally responsible for the
7 wrongful conduct alleged herein and therefore sues these Defendants by such fictitious names.
8 Plaintiff will amend the Complaint to allege the true names and capacities of the DOE Defendants
9 when ascertained.

10 7. The "Aggrieved Employees" are all individuals the Defendants have employed or
11 otherwise contracted with in California as hourly, nonexempt employers, during the period
12 beginning one year before the Plaintiff's notice of August 18, 2023 to the California Labor and
13 Workforce Development Agency("LWDA") and ending on the date judgment is entered.

14 8. Plaintiff is informed and believes and thereon alleges that, at all relevant times
15 herein, all Defendants were the agents, employees and/or servants, masters or employers of the
16 remaining defendants, and in doing the things hereinafter alleged, were acting within the course
17 and scope of such agency or employment, and with the approval and ratification of each of the
18 other Defendants.

19 9. At all relevant times, in perpetrating the acts and omissions alleged herein,
20 Defendants, and each of them, acted pursuant to and in furtherance of a policy, practice, or a lack
21 of a practice which resulted in Defendants not paying Plaintiff and the other Aggrieved
22 Employees in accordance with applicable California labor laws as alleged herein.

23 10. Plaintiff is informed and believes and thereon alleges that each and every one of
24 the acts and omissions alleged herein were performed by, and/or attributable to, all Defendants,
25 each acting as agents and/or employees, and/or under the direction and control of each of the other
26 defendants, and that said acts and failures to act were within the course and scope of said agency,
27 employment, and/or direction and control.

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1 **FACTUAL ALLEGATIONS**

2 11. IWC Wage Order 4-2001 (“the Wage Order”) applies to “all persons employed in
3 professional, technical, clerical, mechanical, and similar occupations whether paid on a time,
4 piece rate, commission, or other basis[.]” Wage Order, § 1. At all relevant times during the
5 applicable limitations period, Defendants, Herbaugh, and all of the Aggrieved Employees were
6 covered by the Wage Order because KSBY was involved in newspaper publishing and TV
7 broadcast and employed Herbaugh and the Aggrieved Employees as journalists, reporters, and in
8 similar positions. Accordingly, Herbaugh and all of the other Aggrieved Employees are entitled
9 to the protections the Wage Order provides.

10 12. KSBY first employed Plaintiff to work for its station in San Luis Obispo,
11 California, on or around February 21, 2022. During his employment tenure, Plaintiff’s job title
12 was “Multi-Media Journalist.” During his tenure, Plaintiff was classified as an hourly, non-
13 exempt employee, generally worked five days a week from approximately 2:30 p.m. to 11:00
14 p.m., and his latest rate of pay was approximately \$19.00 per hour. Plaintiff’s employment ended
15 on or around July 21, 2023.

16 13. At all relevant times, KSBY paid Plaintiff and the other Aggrieved Employees on
17 a bi-weekly basis at an hourly rate of pay. At all relevant times, KSBY classified Plaintiff and the
18 other Aggrieved Employees as non-exempt employees entitled to the protections of both the
19 Labor Code and the Wage Order.

20 14. KSBY failed to pay Plaintiff and other Aggrieved Employees for all time worked
21 or subject to its control. Plaintiff performed tasks prior to the start of his shift, including but not
22 limited to, conducting zoom interviews, researching stories, and sending inquiry emails, in order
23 to meet KSBY’s tight deadlines. KSBY did not compensate Plaintiff for this “off the clock” work.
24 Moreover, KSBY staff and management, including manager Kathrene (last name unknown),
25 would often text Plaintiff about work-related matters before he had clocked in for work and/or
26 after clocking out at the end of his shifts. Additionally, to the extent that Plaintiff and others
27 worked during and through their meal periods, they were not paid for that time since they were
28 “off the clock”, which is akin to a minimum wage violation. Furthermore, KSBY paid Plaintiff

1 and the other Aggrieved Employees based on rounded times, which led to time shaving and
2 Plaintiff and others not being paid for all hours worked.

3 15. Due to the above “off the clock” violations, KSBY failed to pay Plaintiff and the
4 Aggrieved Employees properly-calculated overtime wages. The Aggrieved Employees’ actual
5 work hours, which included the “off the clock” work as described above, entitled them to
6 overtime, however, it was not company policy to keep accurate track of all hours worked and to
7 pay employees the accurate amount of overtime, especially since the “off the clock” work was
8 not factored into the equation. Furthermore, any incentive payments and/or bonus payments were
9 not factored into employees’ regular rate of pay for purposes of deciphering the correct overtime
10 rate of pay. In addition, any bonus and/or incentive payments were not factored into the correct
11 meal and rest break premium pay per *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal. 5th
12 858, 863.

13 16. KSBY failed to provide Plaintiff and the other Aggrieved Employees the requisite
14 30-minute, uninterrupted meal periods for every five (5) hours of work throughout their
15 employment, and Plaintiff did not validly waive said meal periods. KSBY did not completely
16 relieve Plaintiff and the other Aggrieved Employees of all duties during said meal periods. Due
17 to the workload, tight deadlines, and pressure from management, Plaintiff and the Aggrieved
18 Employees were not able to take compliant meal periods. Plaintiff and others would often clock
19 out for their meal periods using the timekeeping system “Worklife” and continue working. For
20 example, Plaintiff’s timecards would always state: 2:30 p.m.- 6:30 p.m., out for meal, then 7:00
21 p.m.-11:00 p.m. Moreover, even when Plaintiff and other Aggrieved Employees would try to take
22 a meal period, KSBY staff/management would frequently interrupt them with questions, in person
23 or via text. It was not company policy and not part of the culture for employees such as Plaintiff
24 and others to take timely, uninterrupted meal breaks. As such, the culture at KSBY did not lend
25 itself to the employees receiving timely statutory breaks wherein they were relieved of all work
26 duties. On information and belief, KSBY did not pay premium wages to Plaintiff and the other
27 Aggrieved Employees for these meal period violations; if KSBY did provide premium wages,
28 they were not paid at the correct rate, as explained above. Furthermore, any argument by KSBY

1 that the employees signed an “On Duty Meal Period Agreement” would not hold water since the
2 nature of their job did not prevent them from being relieved of all work duties.

3 17. KSBY failed to provide Plaintiff and the Aggrieved Employees 10-minute rest
4 periods for every four hours of work, or majority portion thereof, throughout their employment.
5 KSBY did not completely relieve Plaintiff of all duty during said rest periods. Similar to meal
6 periods, due to the workload and the fast pace of the newsroom, taking rest breaks was not
7 possible. It was not company policy and not part of the culture for employees such as Plaintiff
8 and others to take uninterrupted rest breaks since it was the normal practice and custom of KSBY
9 not to authorize, permit, and enforce statutory rest periods. On information and belief, KSBY did
10 not pay premium wages to Plaintiff and the other Aggrieved Employees for these rest period
11 violations; if KSBY did provide premium wages, they were not paid at the correct rate, as
12 explained above.

13 18. KSBY failed to reimburse Plaintiff and the other Aggrieved Employees for
14 business expenses they incurred in direct consequence of the discharge of their duties. These costs
15 include, but are not limited to, supplies, such as memory cards for computers, and use of personal
16 cell phones to communicate with office staff concerning work matters. Although work phones
17 were provided to employees, KSBY management would still communicate with Plaintiff and
18 others on their personal phones. Moreover, there were instances that Plaintiff had to pay for gas
19 because the gas card was not working. KSBY did not reimburse Plaintiff and the others for these
20 business expenses. Accordingly, KSBY was in violation of California Labor Code sections 2800
21 and 2802.

22 19. KSBY failed to pay its employees all wages due to them within any time period
23 specified by California Labor Code section 204, including the minimum wages and overtime as
24 described above as well as meal/rest break premiums. KSBY did not provide Plaintiff and other
25 Aggrieved Employees accurate, itemized wage statements. Wage statements must include, among
26 other things, total hours worked by the employee. Labor Code § 226(a)(2). KSBY issued wage
27 statements that inaccurately reflected total hours worked, gross and net wages earned, and the
28 number of hours worked at each hourly rate because of KSBY’s failure to properly pay wages as

1 explained herein. Labor Code §§ 226(a)(1), (2), (5), (9). KSBY' failure to maintain accurate
2 records as to the hours worked daily by employees also constitutes a violation of Labor Code
3 section 1174(d).

4 20. Finally, because KSBY did not properly pay all wages earned as explained herein,
5 KSBY also failed to pay final wages owed to Plaintiff and other Aggrieved Employees in violation
6 of Labor Code section 203. These earned but unpaid wages include minimum wages and
7 compensation for all hours worked, overtime compensation, premium pay for missed meal and
8 rest breaks, and business expense reimbursement, among others.

9 21. For the reasons herein, on behalf of himself and the Aggrieved Employees,
10 Plaintiff alleges that KSBY committed the following violations of the California Labor Code and
11 the Wage Order: 1) failed to pay wages for all time worked or subject to KSBY' control, including
12 correctly-calculated overtime wages; 2) failed to provide meal periods or pay correctly-calculated
13 premium wages in lieu thereof; 3) failed to authorize and permit rest periods or pay correctly-
14 calculated premium wages in lieu thereof; 4) failed to reimburse reasonably necessary business
15 expenses; 5) failed to provide compliant wage statements; 6) failed to maintain accurate records;
16 and 7) failed to timely pay all wages owed during and upon separation of employment.

17 22. Accordingly, Plaintiff now seeks civil penalties on behalf of himself and the
18 Aggrieved Employees based on Defendants' alleged violations of the California Labor Code and
19 the Wage Order.

20 **FIRST (AND ONLY) CAUSE OF ACTION**

21 **CIVIL PENALTIES**

22 **(Lab. Code §§ 2698, *et seq.*)**

23 **(By Plaintiff, on behalf of himself and the other Aggrieved Employees, against all**
24 **Defendants)**

25 23. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

26 24. At all relevant times, Plaintiff and the Aggrieved Employees have been non-
27 exempt employees entitled to the protections of both the Labor Code and the Wage Order.

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1 **A. FAILURE TO PAY ALL WAGES EARNED FOR ALL HOURS WORKED AT**
2 **THE CORRECT RATES OF PAY**

3 25. Section 2 of the Wage Order defines “hours worked” as “the time during which an
4 employee is subject to the control of an employer, and includes all the time the employee is
5 suffered or permitted to work, whether or not required to do so.”

6 26. Section 3 of the Wage Order states:

7 The following overtime provisions are applicable to employees 18 years of age or
8 over and to employees 16 or 17 years of age who are not required by law to attend
9 school and are not otherwise prohibited by law from engaging in the subject work.
10 Such employees shall not be employed more than eight (8) hours in any workday
11 or more than 40 in a workweek unless the employee receives one and one half
12 (1½) times such employee’s regular rate of pay for all hours worked over 40 hours
13 in the workweek. Eight (8) hours of labor constitutes a day’s work. Employment
14 beyond eight (8) hours in any workday or more than six (6) days in any workweek
15 is permissible provided the employee is compensated for such overtime at not less
16 than:

- 17 (a) One and one-half (1½) times the employee’s regular rate of pay for all
18 hours worked in excess of eight (8) hours up to and including twelve (12)
19 hours in any workday, and for the first eight (8) hours worked on the
20 seventh (7th) consecutive day of work in a workweek;
- 21 (b) Double the employee’s regular rate of pay for all hours worked in excess
22 of 12 hours in any workday and for all hours worked in excess of eight (8)
23 hours on the seventh (7th) consecutive day of work in a workweek. The
24 overtime rate of compensation required to be paid to a nonexempt full-
25 time salaried employee shall be computed by using the employee’s regular
26 hourly salary as one fortieth (1/40) of the employee’s weekly salary.

27 27. Section 4 of the Wage Order requires an employer to pay non-exempt employees
28 at least the minimum wage set forth therein for all hours worked, which consists of all hours that
an employer has actual or constructive knowledge that employees are working.

29 28. Labor Code section 510 states:

Eight hours of labor constitutes a day’s work. Any work in excess of eight hours
in one workday and any work in excess of 40 hours in any one workweek and the
first eight hours worked on the seventh day of work in any one workweek shall be
compensated at the rate of no less than one and one-half times the regular rate of
pay for an employee. Any work in excess of 12 hours in one day shall be
compensated at the rate of no less than twice the regular rate of pay for an
employee. In addition, any work in excess of eight hours on any seventh day of a
workweek shall be compensated at the rate of no less than twice the regular rate of

1 pay of an employee. Nothing in this section requires an employer to combine more
2 than one rate of overtime compensation in order to calculate the amount to be paid
to an employee for any hour of overtime work.

3 29. Labor Code section 1194 invalidates any agreement between an employer and an
4 employee to work for less than the minimum wage required under the applicable Wage Order.

5 30. Labor Code section 1197 makes it unlawful for an employer to pay an employee
6 less than the minimum wage required under the applicable Wage Order for all hours worked
7 during a payroll period.

8 31. Labor Code section 1198 makes it unlawful for an employer to employ an
9 employee under conditions that violate the Wage Order.

10 32. In conjunction, these provisions of the Labor Code require employers to pay non-
11 exempt employees no less than their agreed-upon or statutorily mandated wage rates for all hours
12 worked, including unrecorded hours when the employer knew or reasonably should have known
13 that employees were working during those hours. (See *Morillion v. Royal Packing Co.* (2000) 22
Cal.4th 575, 585.)

14 33. At all relevant times during the applicable limitations period, Defendants failed to
15 compensate Plaintiff and the Aggrieved Employees for all hours worked, including, but not
16 limited to overtime wages for all overtime hours they worked at the correct rates of pay.

17 34. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
18 Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants'
19 failure to compensate Plaintiff and the other Aggrieved Employees for all hours worked as
20 required by California law.

21 **B. FAILURE TO PROVIDE MEAL PERIODS**

22 35. In relevant part, California Labor Code § 1198 states:

23 The maximum hours of work and the standard conditions of labor fixed by the
24 commission shall be the maximum hours of work and the standard conditions of
labor for employees. The employment of any employee for longer hours than those
fixed by the order or under conditions of labor prohibited by the order is unlawful.

25 36. In relevant part, In relevant part, California Labor Code § 512 states:

26 An employer shall not employ an employee for a work period of
27 more than five hours per day without providing the employee with
28 a meal period of not less than 30 minutes, except that if the total
work period per day of the employee is no more than six hours, the

meal period may be waived by mutual consent of both the employer and employee.

An employer shall not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

37. In relevant part, Section 11 of the Wage Order states:

Meal Periods:

- (A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee.
- (B) An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.
- (C) Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. An "on duty" meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.
- (D) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.
- (E) In all places of employment where employees are required to eat on the premises, a suitable place for that purpose shall be designated.

38. In relevant part, California Labor Code § 226.7 states:

1 (b) An employer shall not require an employee to work during
2 a meal or rest period mandated pursuant to an applicable
3 statute, or applicable regulation, standard, or order of the
4 Industrial Welfare Commission, the Occupational Safety
and Health Standards Board, or the Division of
Occupational Safety and Health.

5 (c) If an employer fails to provide an employee a meal period
6 or rest period in accordance with a state law, including, but
7 not limited to, an applicable statute or applicable
8 regulation, standard, or order of the Industrial Welfare
9 Commission, the Occupational Safety and Health
10 Standards Board, or the Division of Occupational Safety
and Health, the employer shall pay the employee one
11 additional hour of pay at the employee's regular rate of
compensation for each work day that the meal or rest
period is not provided.

12 39. Pursuant to California Labor Code § 512 and the Wage Order, Plaintiff and the
13 Aggrieved Employees were entitled to uninterrupted meal periods of at least 30 minutes for each
14 day they worked five or more hours. Pursuant to California Labor Code § 512, they were also
15 entitled to a second 30-minute meal period when they worked more than 10 hours in a workday.

16 40. Defendants intentionally failed to provide Plaintiff and the Aggrieved Employees
17 with all required timely 30-minute meal periods free from any work duties in accordance with the
Wage Order.

18 41. At all relevant times, Defendants failed to provide Plaintiff and the Aggrieved
19 Employees with all timely and uninterrupted meal periods. Furthermore, Defendants failed to pay
20 premium wages for days on which they failed to provide Plaintiff and the other Aggrieved
21 Employees with timely meal periods.

22 42. Plaintiff is informed and believes and thereon alleges that, at all relevant times
23 within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy
24 which resulted in Defendants not providing the and the Aggrieved Employees with all off-duty
meal periods required by California law.

25 **C. FAILURE TO AUTHORIZE AND PERMIT REST BREAKS**

26 43. In relevant part, California Labor Code § 1198 states:

27 The maximum hours of work and the standard conditions of labor
28 fixed by the commission shall be the maximum hours of work and
the standard conditions of labor for employees. The employment

1 of any employee for longer hours than those fixed by the order or
2 under conditions of labor prohibited by the order is unlawful.

3 44. In relevant part, Section 12 of the Wage Order states:

4 Rest Periods:

5 (A) Every employer shall authorize and permit all employees to take
6 rest periods, which insofar as practicable shall be in the middle of
7 each work period. The authorized rest period time shall be based
8 on the total hours worked daily at the rate of ten (10) minutes net
9 rest time per four (4) hours or major fraction thereof. However, a
10 rest period need not be authorized for employees whose total daily
11 work time is less than three and one-half (3 ½) hours. Authorized
12 rest period time shall be counted as hours worked for which there
13 shall be no deduction from wages.

14 (B) If an employer fails to provide an employee a rest period in
15 accordance with the applicable provisions of this order, the
16 employer shall pay the employee one (1) hour of pay at the
17 employee's regular rate of compensation for each workday
18 that the rest period is not provided.

19 45. In relevant part, California Labor Code § 226.7 states:

20 (b) An employer shall not require an employee to work during
21 a meal or rest period mandated pursuant to an applicable
22 statute, or applicable regulation, standard, or order of the
23 Industrial Welfare Commission, the Occupational Safety
24 and Health Standards Board, or the Division of
25 Occupational Safety and Health.

26 (c) If an employer fails to provide an employee a meal period
27 or rest period in accordance with a state law, including, but
28 not limited to, an applicable statute or applicable
regulation, standard, or order of the Industrial Welfare
Commission, the Occupational Safety and Health
Standards Board, or the Division of Occupational Safety
and Health, the employer shall pay the employee one
additional hour of pay at the employee's regular rate of
compensation for each work day that the meal or rest
period is not provided.

26 46. Pursuant to the Wage Order, Plaintiff and the Aggrieved Employees were entitled
27 to be authorized and permitted to take net rest breaks of at least ten minutes for each four-hour
28 period of work, or major fraction thereof.

1 47. Defendants intentionally failed to authorize and permit Plaintiff and the Aggrieved
2 Employees to take all 10-minute rest periods free from any work duties in accordance with the
3 Wage Order.

4 48. At all relevant times, Defendants failed to authorize and permit Plaintiff and the
5 Aggrieved Employees to take all timely rest periods. Furthermore, Defendants failed to pay
6 premium wages to Plaintiff and the Aggrieved Employees for days on which they failed to
7 authorize and permit Plaintiff and the other Aggrieved Employees to take timely rest periods.

8 49. At all relevant times, due to high workload, Defendants failed to authorize and
9 permit Plaintiff and the Aggrieved Employees to take ten-minute, paid, duty-free rest breaks every
10 four hours worked or major fraction thereof. Defendants did not seek an exemption from the rest
11 period protections of the Wage Order from the California Division of Labor Standards
12 Enforcement. Moreover, Defendants failed to pay Plaintiff and the Aggrieved Employees
13 premium wages on workdays they failed to authorize and permit them to take 10-minute rest
14 periods every four hours worked or major fraction thereof.

15 50. Plaintiff is informed and believes and thereon alleges that, at all relevant times
16 within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy
17 which resulted in Defendants not authorizing and permitting Plaintiff and the Aggrieved
18 Employees to take all rest breaks required by California law.

19 **D. FAILURE TO INDEMNIFY**

20 51. In pertinent part, California Labor Code section 2802(a) states, “An employer shall
21 indemnify his or her employee[s] for all necessary expenditures incurred by the employee in direct
22 consequence of the discharge of his or her duties.”

23 52. Labor Code section 1198 prohibits employers from employing their employees
24 under conditions prohibited by the Wage Order.

25 53. At all relevant times during the applicable limitations period, as a condition for
26 employment, Defendants required Plaintiff and the Aggrieved Employees to incur certain
27 business expenses. These costs include, but are not limited to, supplies, such as memory cards for
28 computers, and use of personal cell phones to communicate with office staff concerning work
matters. Although work phones were provided to employees, KSBY management would still
communicate with Plaintiff and others on their personal phones. Moreover, there were instances
that Plaintiff had to pay for gas because the gas card was not working. KSBY did not reimburse

1 Plaintiff and the others for these business expenses.

2 54. Therefore, Defendants failed to indemnify Plaintiff and the Aggrieved Employees
3 for expenditures incurred as a direct consequence of discharging their duties in violation of
4 California Labor Code sections 2800 and 2802.

5 55. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
6 Defendants maintained a policy and/practice, or lack thereof, which resulted in Defendants'
7 failure to indemnify Plaintiff and the Aggrieved Employees for the reasonable expenses they
8 incurred during the course of performing their duties.

9 **E. FAILURE TO PROVIDE ACCURATE AND COMPLETE WRITTEN WAGE**
10 **STATEMENTS**

11 56. Pursuant to California Labor Code § 226(a), Plaintiff and the Aggrieved
12 Employees were entitled to receive, bi-weekly or at the time of each payment of wages, an
13 accurate itemized statement showing: a) gross wages earned; b) net wages earned; c) all applicable
14 hourly rates in effect during the pay period; and d) the corresponding number of hours worked at
15 each hourly rate by the employee.

16 57. Pursuant to California Labor Code § 226, an employee is deemed to suffer injury
17 if the employer fails to provide a wage statement. Also, an employee is deemed to suffer injury if
18 the employer fails to provide accurate and complete information as required by California Labor
19 Code § 226(a) and the employee cannot “promptly and easily determine” from the wage statement
20 alone one or more of the following:

21 A. The amount of the gross wages or net wages paid to the employee during
22 the pay period or any of the other information required to be provided on the itemized wage
23 statement pursuant to California Labor Code § 226(a);

24 B. Which deductions the employer made from gross wages to determine the
25 net wages paid to the employee during the pay period;

26 C. The name and address of the employer and, if the employer is a farm labor
27 contractor, as defined in subdivision (b) of Section 1682 of the California Labor Code, the name
28 and address of the legal entity that secured the services of the employer during the pay period;

D. The name of the employee and only the last four digits of his or his social
security number or an employee identification number other than a social security number; and

E. The number of piece-rate units earned and the piece rate.

1 58. “Promptly and easily determine,” as stated in California Labor Code § 226(e),
2 means a reasonable person would be able to readily ascertain the information without reference
3 to other documents or information.

4 59. As alleged herein, at all relevant times during the applicable limitations period,
5 Defendants violated California Labor Code section 226 because they did not properly and
6 accurately itemize each employee’s gross wages earned, net wages earned, the total hours worked,
7 the corresponding number of hours worked at each rate by the employee and other requirements
8 of California Labor Code section 226. Defendants failed to state in the wage statements they
9 issued to Plaintiff and the other Aggrieved Employees all their hours worked and wages earned,
10 including, but not limited to, regular and overtime wages for work they performed off-the-clock
(as described above).

11 60. Defendants’ failure to provide Plaintiff and the other Aggrieved Employees with
12 accurate wage statements was knowing and intentional. Defendants had the ability to provide
13 Plaintiff and the other Aggrieved Employees with accurate wage statements but intentionally
14 provided wage statements that Defendants knew were not accurate.

15 61. As a result of being provided with inaccurate wage statements by Defendants,
16 Plaintiff and the other Aggrieved Employees have suffered injury. Their legal rights to receive
17 accurate wage statements were violated and they were misled about the amount of wages they
18 had actually earned and were owed. In addition, the absence of accurate information on their wage
19 statements prevented immediate challenges to Defendants’ unlawful pay practices, has required
20 discovery and mathematical computations to determine the amounts of wages owed, has caused
21 difficulty and expense in attempting to reconstruct time and pay records and/or has led to the
22 submission of inaccurate information about wages to state and federal government agencies.
23 Further, Plaintiff and the other Aggrieved Employees were not able to ascertain from the wage
statements whether Defendants complied with their obligations under California Labor Code
section 226(a).

24 **F. UNTIMELY WAGES DURING EMPLOYMENT**

25 62. Labor Code § 204 states:

- 26 (a) All wages, other than those mentioned in Section 201,
27 201.3, 202, 204.1, or 204.2, earned by any person in any
28 employment are due and payable twice during each
calendar month, on days designated in advance by the

1 employer as the regular paydays. Labor performed
2 between the 1st and 15th days, inclusive, of any calendar
3 month shall be paid for between the 16th and the 26th day
4 of the month during which the labor was performed, and
5 labor performed between the 16th and the last day,
6 inclusive, of any calendar month, shall be paid for
7 between the 1st and 10th day of the following month. ...

8 (b) (1) Notwithstanding any other provision of this
9 section, all wages earned for labor in excess of the normal
10 work period shall be paid no later than the payday for the
11 next regular payroll period.

12 (2) An employer is in compliance with the
13 requirements of subdivision (a) of Section 226
14 relating to total hours worked by the employee, if
15 hours worked in excess of the normal work period
16 during the current pay period are itemized as
17 corrections on the paystub for the next regular pay
18 period. Any corrections set out in a subsequently
19 issued paystub shall state the inclusive dates of
20 the pay period for which the employer is
21 correcting its initial report of hours worked.

22 (c) However, when employees are covered by a collective
23 bargaining agreement that provides different pay
24 arrangements, those arrangements shall apply to the
25 covered employees.

26 (d) The requirements of this section shall be deemed satisfied
27 by the payment of wages for weekly, biweekly, or
28 semimonthly payroll if the wages are paid not more than
seven calendar days following the close of the payroll
period.

63. Defendants failed to compensate Plaintiff and the Aggrieved Employees for all
hours worked at the correct rates of pay, including overtime. Defendants failed to provide Plaintiff
and the Aggrieved Employees with all meal and rest periods in compliance with California laws.
Defendants also failed to provide Plaintiff and the Aggrieved Employees with all premium wages
on workdays they failed to provide them with one or more meal or rest periods in compliance
with California laws. As a result, Defendants failed to timely pay all earned minimum, overtime,
and premium wages due during employment within the time periods set by California Labor Code
section 204.

1 **G. UNTIMELY FINAL WAGES**

2 64. Labor Code § 201 provides that all earned and unpaid wages of an employee who
3 is discharged are due and payable immediately at the time of discharge.

4 65. Labor Code § 202 provides that all earned and unpaid wages of an employee who
5 quits after providing at least 72-hours notice before quitting are due and payable at the time of
6 quitting and that all earned and unpaid wages of an employee who quits without providing at least
7 72-hours notice before quitting are due and payable within 72 hours.

8 66. By failing to pay earned minimum and premium wages to Plaintiff and the
9 Aggrieved Employees, Defendants failed to timely pay them all earned and unpaid wages in
10 violation of Labor Code § 201 or § 202.

11 67. Plaintiff is informed and believes that Defendants' failures to timely pay Plaintiff
12 and the Aggrieved Employees all of their earned and unpaid wages (described above) have been
13 willful in that, at all relevant times, Defendants have deliberately maintained policies and
14 practices that violate the requirements of the Labor Code and the Wage Order, even though at all
15 relevant times, they have had the ability to comply with those legal requirements.

16 **H. FAILURE TO MAINTAIN ACCURATE EMPLOYMENT RECORDS**

17 68. Labor Code § 1174 states:

18 Every person employing labor in this state shall:

19 ...

20 (c) Keep a record showing the names and addresses of all employees
21 employed and the ages of all minors.

22 (d) Keep, at a central location in the state or at the plants or establishments
23 at which employees are employed, payroll records showing the hours
24 worked daily by and the wages paid to, and the number of piece-rate
25 units earned by and any applicable piece rate paid to, employees
26 employed at the respective plants or establishments. These records shall
27 be kept in accordance with rules established for this purpose by the
28 commission, but in any case shall be kept on file for not less than three
years. An employer shall not prohibit an employee from maintaining a
personal record of hours worked, or, if paid on a piece-rate basis, piece-
rate units earned.

69. Labor Code § 1174.5 states:

Any person employing labor who willfully fails to maintain the records required
by subdivision (c) of Section 1174, or to allow any member of the commission

1 or employees of the division to inspect records pursuant to subdivision (b) of
2 Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).

3 70. Section 7 of the Wage Order states:

4 (A) Every employer shall keep accurate information with respect to
5 each employee including the following:

- 6 (1) Full name, home address, occupation and social security
7 number.
- 8 (2) Birth date, if under 18 years, and designation as a minor.
- 9 (3) Time records showing when the employee begins and ends
10 each work period. Meal periods, split shift intervals and
11 total daily hours worked shall also be recorded. Meal
12 periods during which operations cease and authorized rest
13 periods need not be recorded.
- 14 (4) Total wages paid each payroll period, including value of
15 board, lodging, or other compensation actually furnished to
16 the Employee.
- 17 (5) Total hours worked in the payroll period and applicable
18 rates of pay. This information shall be made readily
19 available to the employee upon reasonable request.
- 20 (6) When a piece rate or incentive plan is in operation, piece
21 rates or an explanation of the incentive plan formula shall
22 be provided to employees. An accurate production record
23 shall be maintained by the employer.

24 71. Labor Code § 1198 prohibits employers from employing their employees under
25 conditions prohibited by the Wage Order.

26 72. On information and belief, Defendants have willfully failed to maintain the records
27 required by § 1174 and Wage Order, including, but not limited to, the total premium wages earned
28 for missed meal and rest periods, and records pertaining to all unpaid hours worked by Plaintiff
and the Aggrieved Employees.

Accordingly, Plaintiff seeks an award of civil penalties against the Defendants on
behalf of himself and all of the other Aggrieved Employees as follows: (1) \$500 for each
aggrieved employee for each violation of Labor Code section 1174 (penalties set by Labor Code
section 1174.5); and (2) \$100 for each aggrieved employee for each initial violation of Labor

Code section 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

I. CIVIL PENALTIES SOUGHT

74. During the applicable time period, Defendants violated California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, 2802, and related Labor Code statutes.

75. California Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on behalf of themselves and other current or former employees, to bring a civil action to recover civil penalties pursuant to the procedures specified in California Labor Code § 2699.3.

76. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff and the Aggrieved Employees are entitled to recover civil penalties for each of the Defendants' violations of California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, and 2802 during the applicable limitations period in the following amounts:

A. For violations of California Labor Code § 204, one hundred dollars (\$100.00) for each aggrieved employee for each initial violation and two hundred dollars (\$200.00) for each aggrieved employee for each subsequent, willful or intentional violation (penalty amounts established by California Labor Code § 210).

B. For violations of California Labor Code § 226, two hundred fifty dollars (\$250.00) per employee for initial violation and one thousand dollars (\$1,000.00) per employee for each subsequent violation (penalty amounts established by California Labor Code § 226.3).

C. For violations of California Labor Code §§ 510 and 512, fifty dollars (\$50.00) for each aggrieved employee for each initial violation for pay period for which the employee was underpaid and one hundred dollars (\$100.00) for each underpaid employee for each pay period for which the employee was underpaid (penalty amounts established by California Labor Code § 558).

D. For violations of California Labor Code § 1174, five hundred dollars (\$500.00) for each Aggrieved Employee for each initial violation (penalty amounts established by Labor Code § 1174.5).

E. For violations of California Labor Code § 1197, one hundred dollars (\$100.00) for each Aggrieved Employee for each initial and intentional violation and two hundred fifty dollars (\$250.00) for each Aggrieved Employee for each subsequent violation, per pay period

(regardless of whether the initial violations were intentionally committed) (penalty amounts established by California Labor Code § 1197.1).

F. For violations of California Labor Code §§ 201, 202, 203, 226.7, 1194, 1198, and 2802, one hundred dollars (\$100.00) for each aggrieved employee per pay period for each initial violation and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent violation (penalty amounts established by California Labor Code § 2699(f)(2)).

J. NOTICE TO THE STATE OF CALIFORNIA AND DEFENDANTS

77. Plaintiff has complied with the procedures for bringing suit specified in California Labor Code § 2699.3. By letter dated August 18, 2023, Plaintiff gave written notice by certified mail to the Labor and Workforce Development Agency (“LWDA”) and Defendants of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations. The LWDA has failed to take action in response within 65 days of Plaintiff’s notice.

78. Pursuant to California Labor Code § 2699(g), Plaintiff and the Aggrieved Employees are entitled to an award of civil penalties, reasonable attorneys’ fees, and costs in connection with their claims for civil penalties.

PRAYER FOR RELIEF

79. WHEREFORE, Plaintiff, on behalf of himself and the Aggrieved Employees, prays for relief and judgment against Defendants as follows:

- A. Civil penalties;
- B. Costs of suit;
- C. Reasonable attorneys’ fees; and
- D. Such other relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff, on behalf of himself and all other Aggrieved Employees, hereby demands a jury trial on all issues so triable.

Respectfully submitted,

MM LAW, APC

Dated: November 16, 2023

By: 
Maralle Messrelan, Esq.
Attorney for Plaintiff,
AUSTIN HERBAUGH, and all others
similarly situated