

1. Check one box below for the case type that best describes this case:

Auto Tort ☐ Auto (22) ☐ Uninsured motorist (46) Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort ☐ Asbestos (04) ☐ Product liability (24) ☐ Medical malpractice (45) ☐ Other PI/PD/WD (23) Non-PI/PD/WD (Other) Tort ☐ Business tort/unfair business practice (07) ☐ Civil rights (08) ☐ Defamation (13) ☐ Fraud (16) ☐ Intellectual property (19) ☐ Professional negligence (25) ☐ Other non-PI/PD/WD tort (35) Employment ☐ Wrongful termination (36) ☒ Other employment (15)	Contract ☐ Breach of contract/warranty (06) ☐ Rule 3.740 collections (09) ☐ Other collections (09) ☐ Insurance coverage (18) ☐ Other contract (37) Real Property ☐ Eminent domain/Inverse condemnation (14) ☐ Wrongful eviction (33) ☐ Other real property (26) Unlawful Detainer ☐ Commercial (31) ☐ Residential (32) ☐ Drugs (38) Judicial Review ☐ Asset forfeiture (05) ☐ Petition re: arbitration award (11) ☐ Writ of mandate (02) ☐ Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400–3.403) ☐ Antitrust/Trade regulation (03) ☐ Construction defect (10) ☐ Mass tort (40) ☐ Securities litigation (28) ☐ Environmental/Toxic tort (30) ☐ Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment ☐ Enforcement of judgment (20) Miscellaneous Civil Complaint ☐ RICO (27) ☐ Other complaint (<i>not specified above</i>) (42) Miscellaneous Civil Petition ☐ Partnership and corporate governance (21) ☐ Other petition (<i>not specified above</i>) (43)
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William M. Hogg

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

FILED/ENDORSED
Clerk of the Superior Court

OCT 10 2023
A. Amaral

By _____
DEPUTY CLERK

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ASSIGNED TO
JUDGE Christine Carringer
FOR ALL PURPOSES

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SOLANO

RUDY CASTILLO, On Behalf of the State of
California and Aggrieved Employees,

Plaintiffs,

vs.

NES GLOBAL, LLC,

Defendant.

Case No. **CU23-04554**

COMPLAINT FOR PENALTIES
PURSUANT TO SECTIONS 2699(a) and (f)
OF THE CALIFORNIA LABOR CODE
PRIVATE ATTORNEYS GENERAL ACT
AND DEMAND FOR JURY TRIAL

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SUPERIOR COURT OF CALIFORNIA

COUNTY OF SOLANO

RUDY CASTILLO, On Behalf of the State of
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PURSUANT TO SECTIONS 2699(a) and (f)
OF THE CALIFORNIA LABOR CODE
PRIVATE ATTORNEYS GENERAL ACT
AND DEMAND FOR JURY TRIAL**

1 Plaintiff Rudy Castillo (“Plaintiff”), on behalf of the State of California and Aggrieved Employees,
2 complains and alleges as follows:

3 **INTRODUCTION**

4 1. Plaintiff, individually and on behalf the State of California and the Aggrieved Employees,
5 brings this enforcement action pursuant to the Labor Code Private Attorneys General Act of 2004
6 (“PAGA”) against Defendant NES Global, LLC (“NES”) on behalf of individuals who have worked for
7 NES who were paid straight time for overtime hours worked during any workweek since one year and
8 65 days before the filing of this Complaint until final resolution of the action (the “Aggrieved
9 Employees”).

10 2. NES employs Plaintiff and Aggrieved Employees in various locations throughout
11 California.

12 3. Plaintiff and Aggrieved Employees regularly work more than 40 hours per week.

13 4. But NES does not pay Plaintiff and Aggrieved Employees overtime when they work more
14 than 8 hours in a day or 40 hours in a week.

15 5. NES likewise does not pay Plaintiff and Aggrieved Employees double time when they
16 work more than 12 hours in a day or after 8 on their seventh consecutive workday.

17 6. Instead, NES pays Plaintiff and Aggrieved Employees the same hourly rate for all hours
18 worked, including overtime and double time hours (*i.e.*, “straight time for overtime”).

19 7. NES uniformly misclassifies Plaintiff and Aggrieved Employees as exempt from overtime
20 (and double time).

21 8. But NES does not pay Plaintiff and Aggrieved Employees on a salary rate basis.

22 9. In addition to its failure to pay Plaintiff and Aggrieved Employees premium overtime (and
23 double time) wages, NES also uniformly fails to provide these workers with compliant meal and rest
24 periods.

25 10. Instead, NES uniformly requires Plaintiff and Aggrieved Employees to remain on-duty
26 and to perform compensable work throughout their shifts and fails to provide them with bona fide,
27

1 timely, and compliant meal and rest periods.

2 11. Despite depriving Plaintiff and Aggrieved Employees of their required meal and rest
3 periods, NES uniformly fails to pay these employees the required one hour of premium pay (at their
4 regular rates) for each day NES denies them a fully compliant and/or timely meal period.

5 12. Plaintiff and Aggrieved Employees bring these claims pursuant to the PAGA to challenge
6 NES's policies and practices of: (1) failing to pay Plaintiff and Aggrieved Employees all overtime wages
7 owed; (2) failing to pay Plaintiff and Aggrieved Employees double time wages; (3) failing to compensate
8 Plaintiff and Aggrieved Employees for non-compliant meal periods; (4) failing to compensate Plaintiff
9 and Aggrieved Employees for non-compliant rest periods; (5) failing to pay Plaintiff and Aggrieved
10 Employees all wages owed upon separation from employment; and (6) failing to provide Plaintiff and
11 Aggrieved Employees accurate, itemized wage statements.

12 13. Plaintiff files this action to recover all civil penalties and other PAGA damages on behalf
13 of himself, the State of California and the Aggrieved Employees.

14 14. Plaintiff seeks to remedy the sweeping illegal pay practices NES has implemented for their
15 workers in California, which have deprived Plaintiff and Aggrieved Employees of their lawfully-earned
16 wages.

17 JURISDICTION & VENUE

18 15. This Court has jurisdiction over Plaintiff's claims for civil penalties pursuant to the PAGA.
19 The Court also has jurisdiction over NES because NES does business in the State of California, has
20 offices in California, is authorized to do business in California, and is registered with the California
21 Secretary of State.

22 16. NES employs Aggrieved Employees in California, including within this County.

23 17. Venue is proper in this judicial district pursuant to Code of Civil Procedure §§ 393 and/or
24 395.5.

25 18. NES conducts business, employs Aggrieved Employees, and therefore liability under
26 PAGA arose in this County.

PARTIES

19. Plaintiff worked for NES as a Commissioning Manager in and around Bakersfield, California from approximately February 2022 to November 2022.

20. Throughout his employment, NES classified Plaintiff as exempt from overtime (and double time).

21. But NES never paid Plaintiff on a “salary basis.”

22. Instead, NES paid Plaintiff straight time for overtime.

23. Further, throughout his employment, NES failed to provide Plaintiff with compliant meal and rest periods.

24. But NES failed to pay Plaintiff the required one hour of premium pay (at his regular rate) each day NES denied him a compliant or timely meal and/or rest period.

25. Throughout his employment with NES, NES failed to provide Plaintiff with accurate, itemized wage statements.

26. Plaintiff brings this action on behalf of himself, the State of California, and the Aggrieved Employees to recover civil penalties owed pursuant to PAGA.

27. The Aggrieved Employees are defined as:

All employees who worked for, or on behalf of, NES in California who were paid straight time for overtime at any time starting 1 year and 65 days before the filing of this Lawsuit until final resolution of this Action.

28. NES is a Florida limited liability company that maintains its headquarters in Houston, Texas.

29. NES has offices in the State of California.

30. NES is registered to do business in the State of California.

31. NES may be served with process by serving its registered agent: **CT Corporation System, 330 North Brand Boulevard, Glendale, California 91203.**

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1 **FACTUAL ALLEGATIONS**

2 32. NES is a staffing company that provides recruitment services to its oil and gas,
3 construction, and energy industry clients across the country, including in California.

4 33. To meet its business objectives, NES hires workers, like Plaintiff and the Aggrieved
5 Employees, who it assigns to provide services to its clients.

6 34. NES pays Plaintiff and the Aggrieved Employees on an hourly basis.

7 35. NES routinely schedules Plaintiff and the Aggrieved Employees to work more than 40
8 hours a week.

9 36. Instead of paying Plaintiff and the Aggrieved Employees at 1.5 times their regular rates of
10 pay for hours worked over 8 in a workday or after 40 in a workweek, NES pays them same hourly rate
11 for all hours worked.

12 37. Similarly, NES does not pay Plaintiff and the Aggrieved Employees double time wages
13 when they work more than 12 hours in a day or in excess of 8 on the seventh consecutive day of work
14 and instead pays them the same hourly rate for all hours worked.

15 38. While exact job titles and job duties may differ, these employees are subjected to the same
16 or similar illegal pay practice for similar work.

17 39. For example, Plaintiff worked for NES as a Commissioning Manager in and around
18 Bakersfield, California from approximately February 2022 until November 2022.

19 40. As a Commissioning Manager, Plaintiff's primary responsibilities included overseeing the
20 work of contractors at sites post-construction to ensure they are operating in accordance with NES's
21 clients' policies, procedures, and specifications, as well as applicable industry standards and regulations.

22 41. NES misclassified Plaintiff as exempt from overtime.

23 42. NES paid him under its illegal straight time for overtime pay scheme.

24 43. Specifically, NES paid Plaintiff approximately \$90/hour for all hours worked, including
25 those after 8 in a workday and 40 in a workweek.

26 44. NES requires all Aggrieved Employees to record the number of hours they work.
27

58. The Aggrieved Employees' primary duties are not management.

59. The Aggrieved Employees' primary duties do not require the exercise of independent judgment or discretion with respect to matters of significance.

60. Rather, the Aggrieved Employees' primary duties are routine and largely governed by standardized plans, procedures, and checklists created by NES and/or its clients.

61. Virtually every job function is predetermined by NES and/or its clients, including the tools and equipment used at the job site, the data to compile, the schedule of work, and related work duties.

62. In sum, Plaintiff and the Aggrieved Employees are non-exempt employees and, therefore, entitled to overtime (and double time) wages.

63. But NES does not pay these non-exempt employees, including Plaintiff and the Aggrieved Employees, overtime wages when they work more than 8 hours in a workday or 40 hours in a workweek.

64. Likewise, NES does not pay Plaintiff and the Aggrieved Employees double time wages when they work more than 12 hours in a workday or 8 hours on their seventh consecutive workday.

65. In addition to depriving Plaintiff and the Aggrieved Employees of overtime and double time wages, NES also uniformly fails to provide these employees with compliant, off-duty, *bona fide* meal and rest periods.

66. Indeed, NES simply assumes Plaintiff and the Aggrieved Employees receive *bona fide* meal and rest breaks each shift they work.

67. But NES fails to provide Plaintiff and the Aggrieved Employees with *bona fide* meal and rest periods.

68. And Plaintiff and the Aggrieved Employees do not actually receive *bona fide* meal or rest periods.

69. Instead, NES uniformly requires Plaintiff and the Aggrieved Employees to remain on-duty and perform compensable work throughout their shifts, including during any attempted meal and/or rest periods.

70. Indeed, during any attempted meal or rest period, Plaintiff and the Aggrieved Employees

s are not free to engage in personal activities.

71. Rather, during any attempted “meal break” or “rest break,” Plaintiff and the Aggrieved Employees are necessarily forced to substantially perform their regular duties and responsibilities.

72. Thus, Plaintiff and the Aggrieved Employees routinely spend their “meal breaks” and “rest breaks” performing work for NES’s—not these employees’—predominant benefit.

73. Despite knowing it fails to provide these employees with compliant meal and rest periods, NES also uniformly fails to pay Plaintiff and the Aggrieved Employees the mandatory one hour of premium pay (at their regular rates) for each day they are denied compliant meal and/or rest periods in violation of California law.

74. Further, NES’s common course of wage-and-hour abuses includes routinely failing to maintain true and accurate records for Plaintiff and the Aggrieved Employees.

75. In particular, NES fails to pay Plaintiff and the Aggrieved Employees overtime and double time due to NES’s illegal straight time for overtime pay scheme.

76. Thus, NES uniformly fails to provide Plaintiff and the Aggrieved Employees with accurate, itemized wage statements that accurately reflect their wages actually earned (as well as their meal and rest period premium pay) in violation of California law.

77. Finally, due to NES’s uniform straight time for overtime pay scheme, NES uniformly fails to provide the Aggrieved Employees who have left their employment with NES (like Plaintiff) with full payment of all wages owed at the end of their employment in violation of California law.

78. As these Aggrieved Employees are owed unpaid overtime wages and premium wages when their employment ends, and these amounts remain unpaid under NES’s uniform policies and practices, NES uniformly fails to pay all wages due upon termination in violation of California law.

79. As a result, NES is subject to waiting time penalties.

80. NES’s violations of California law were willful, carried out in bad faith, and caused significant damage to Plaintiff and the Aggrieved Employees.

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COUNT I
PENALTIES PURSUANT TO LABOR CODE § 2699(a)

81. Plaintiff incorporates by reference the allegations in the preceding paragraphs.

82. Labor Code § 2699(a) provides:

Notwithstanding any other provision of law, any 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.

83. Labor Code § 203 provides, in relevant part:

If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.5, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced; but the wages shall not continue for more than 30 days.

84. Labor Code § 226(a) provides:

Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and his or her social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

85. Labor Code § 226(e)(1) provides:

An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's fees.

90. Plaintiff seeks civil penalties pursuant to Labor Code § 2699(a) for each failure by NES, as alleged above, to timely pay all wages owed to Aggrieved Employees in compliance with Labor Code §§ 201-202 in the amounts established by Labor Code § 203. Plaintiff seeks such penalties as an alternative to the penalties available to individual litigants under Labor Code § 203 where applicable, as prayed for herein.

91. Plaintiff also seeks civil penalties pursuant to Labor Code § 2699(a) for each failure by NES, alleged above, to provide Plaintiff and Aggrieved Employees compliant and timely meal and rest periods in violation of Labor Code §§ 226.7 and 512.

92. Plaintiff also seeks civil penalties pursuant to Labor Code § 2699(a) for each failure by NES, alleged above, to provide Plaintiff and Aggrieved Employees an accurate, itemized wage statement in compliance with Labor Code § 226(a) in the amounts established by Labor Code § 226(e).

93. Plaintiff also seeks civil penalties in the amounts described under Labor Code § 558 pursuant to Labor Code § 2699(a) for each pay period in which NES, as alleged above, failed to pay Plaintiff and Aggrieved Employees for all overtime wages and double wages owed due to NES's straight-time-for-overtime pay scheme.

94. Pursuant to Labor Code § 2699.3(a)(1) and (2), Plaintiff provided the Labor and Workforce Development Agency (“LWDA”) with notice of his intention to file this claim. More than sixty-five (65) calendar days have passed without notice from the LWDA. As such, Plaintiff satisfied the administrative prerequisites to commence this civil action in compliance with § 2699.3(a).

95. Plaintiff seeks the aforementioned penalties on behalf of the State, other Aggrieved Employees, and himself as set forth in Labor Code § 2699(g)(i).

96. NES is liable to Plaintiff, Aggrieved Employees, and the State of California for the civil penalties set forth in this Complaint, with interest thereon. Plaintiff is also entitled to an award of attorneys' fees and costs as set forth below.

97. Wherefore, Plaintiff and the Aggrieved Employees request relief as hereinafter provided.

/ / /

COUNT II
PENALTIES PURSUANT TO LABOR CODE § 2699(f)

98. Plaintiff incorporates by reference the allegations in the preceding paragraphs.

99. Labor Code § 2699(f) provides:

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, as follows: . . . (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.

100. Labor Code § 200 defines wages as “all amounts of labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis or other method of calculation.” All such wages are subject to California’s overtime requirements, including those set forth above.

101. Labor Code § 204(a) provides that “[a]ll wages . . . earned by any person in any employment are due and payable twice during each calendar month[.]”

102. Labor Code § 510(a) provides as follows:

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.

103. IWC Wage Order 4-2001(3)(A)(1), & (3) states that employees:

...shall not be employed more than eight (8) hours in any workday or more than 40 hours in any workweek unless the employee receives one and one-half (1 ½) times such employee’s regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day’s work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than ... [o]ne and one-half (1½) times the employee’s regular rate of pay for all hours worked in excess of eight (8) hours up to and including 12 hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek....

1 104. Labor Code § 1194(a) provides as follows:

2 Notwithstanding any agreement to work for a lesser wage, any
3 employee receiving less than the legal minimum wage or the legal
4 overtime compensation applicable to the employee is entitled to
5 recover in a civil action the unpaid balance of the full amount of this
6 minimum wage or overtime compensation, including interest thereon,
7 reasonable attorneys' fees, and costs of suit.

8 105. Labor Code § 1198 makes it unlawful for employers to employ employees under
9 conditions that violate the Wage Order.

10 106. To the extent that any violation alleged herein does not carry penalties under Labor Code
11 § 2699(a), Plaintiff seeks civil penalties pursuant to Labor Code § 2699(f) for Plaintiff and Aggrieved
12 Employees for each pay period in which he/she was aggrieved, in the amounts established by Labor
13 Code § 2699(f). Plaintiff seeks civil penalties under Labor Code § 2699(f) for NES's violations of Labor
14 Code §§ 510, 1194, 1194.2, 1198, and 2802.

15 107. Pursuant to Labor Code § 2699.3(a)(1) and (2), Plaintiff has provided the LWDA with
16 notice of his intention to file this claim. More than sixty-five (65) calendar days have passed without
17 notice from the LWDA. Plaintiff satisfied the administrative prerequisites to commence this civil action
18 in compliance with § 2699.3(a).

19 108. Plaintiff seeks the aforementioned penalties on behalf of the State of California, other
20 Aggrieved Employees, and himself as set forth in Labor Code § 2699(g)(i).

21 109. Labor Code § 2699(f)(2) provides a civil penalty of one hundred dollars (\$100) for each
22 aggrieved employee per pay period for the initial violation of a Labor Code provision that does not
23 provide a civil penalty if, at the time of the violation, the employer employs one or more employees.
24 Labor Code § 2699(f)(2) provides a civil penalty of two hundred dollars (\$200) for each aggrieved
25 employee per pay period for each subsequent violation of a Labor Code provision that does not provide
26 a civil penalty if, at the time of the violation, the employer employs one or more employees.

27 110. NES is liable to Plaintiff, the State of California, and Aggrieved Employees for the civil
28 penalties set forth in this Complaint. Plaintiff is also entitled to an award of attorneys' fees and costs as
29 set forth below.

111. Wherefore, Plaintiff and the Aggrieved Employees request relief as hereinafter provided.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of the State of California and Aggrieved Employees, requests the following relief:

1. For an order awarding civil penalties to the full extent provided for by the PAGA;
2. For an award of reasonable attorneys' fees as provided by the California Labor Code, including Labor Code § 2699(g)(1); California Code of Civil Procedure §1021.5; and/or any other applicable law;
3. For all costs of suit;
4. For interest on any penalties awarded, as provided by applicable law; and
5. For such other and further relief as this Court deems just and proper.

Respectfully submitted,



Date: October 9, 2023

William M. Hogg

JOSEPHSON DUNLAP LLP

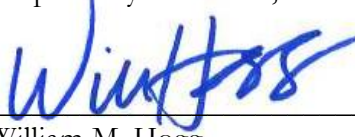
Attorneys for Plaintiff, on behalf of the State of California and Aggrieved Employees

1 **DEMAND FOR JURY TRIAL**

2 Plaintiff hereby demands a jury trial on all claims and issues for which Plaintiff is entitled to a
3 jury.

4 Respectfully submitted,

5 Date: October 9, 2023

6 

7 William M. Hogg

8 **JOSEPHSON DUNLAP LLP**

9 *Attorneys for Plaintiff, on behalf of the State of*
10 *California and Aggrieved Employees*