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Clerk of Court
Superior Court of CA,
County of Santa Clara
23CV426594
Reviewed By: R. Walker

13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

14 **FOR THE COUNTY OF SANTA CLARA**

15 GRACIELA LOPEZ, on behalf of all other
16 aggrieved employees,

17 Plaintiff,

18 vs.

19 KELLERMEYER BERGENSONS
20 SERVICES, LLC, a Delaware limited liability
21 company; and DOES 1 through 100,

22 Defendants.

Case No. **23CV426594**

**REPRESENTATIVE ACTION
COMPLAINT:**

**(1) CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS GENERAL
ACT (LABOR CODE § 2698 *et seq.*)**

UNLIMITED CIVIL CASE

1 Plaintiff Graciela Lopez (“Plaintiff”), hereby brings this Representative Action Complaint
2 against Defendant Kellermeyer Bergensons Services, LLC, Delaware limited liability company;
3 and DOES 1 to 100, inclusive (collectively “Defendants”), solely as a representative action under
4 the Private Attorneys General Act (“PAGA”) on behalf of aggrieved employees and the State of
5 California, and on information and belief alleges as follows:

6 **JURISDICTION**

7 1. Plaintiff, on behalf of all other aggrieved employees and the State of California,
8 hereby brings this representative action for recovery of civil penalties under California Labor
9 Code §§ 2698 *et seq.*

10 2. This Court has jurisdiction over Defendants because, upon information and belief,
11 Defendants are citizens of California, Defendants have sufficient minimum contacts in California,
12 or otherwise intentionally avail themselves to the California market so as to render the exercise
13 of jurisdiction over them by the California courts consistent with the traditional notions of fair
14 play and substantial justice.

15 **VENUE**

16 3. Venue as to each Defendant is proper in this judicial district pursuant to California
17 Code of Civil Procedure §§ 395(a) and 395.5 in that liability arose in this county because at least
18 some of the transactions that are the subject of this Complaint occurred therein and/or each
19 Defendant is found, maintains offices, transacts business, or has an agent therein.

20 **PARTIES**

21 4. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
22 Plaintiff was, and currently is, a California resident. During the one year immediately preceding
23 Plaintiff’s giving of the required notice under the PAGA, and within the statute of limitations
24 periods applicable to the cause of action pled herein, Plaintiff was employed by Defendants as an
25 hourly non-exempt employee.

26 5. Plaintiff is informed and believes, and based thereon alleges, that during the one
27 year preceding Plaintiff’s giving of the required notice under the PAGA and continuing to the
28 present, Defendants did (and do) business by providing facility sanitation services to various

1 industries, and employed Plaintiff and other similarly-situated hourly non-exempt employees
2 within the County of Santa Clara and, therefore, were (and are) doing business in the County of
3 Santa Clara and the State of California.

4 6. Plaintiff is informed and believes, and thereon alleges, that at all times mentioned
5 herein, Defendants were licensed to do business in California and the County of Santa Clara, and
6 were the employers of Plaintiff and the Aggrieved Employees (as defined in Paragraph 17).

7 7. Plaintiff does not know the true names or capacities, whether individual, partner,
8 or corporate, of the defendants sued herein as DOES 1 to 100, inclusive, and for that reason, said
9 defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to
10 amend this Representative Action Complaint when such true names and capacities are
11 discovered. Plaintiff is informed, and believes, and thereon alleges, that each of said fictitious
12 defendants, whether individual, partners, or corporate, were responsible in some manner for the
13 acts and omissions alleged herein, and proximately caused Plaintiff and the Aggrieved
14 Employees (as defined in Paragraph 17) to be subject to the unlawful employment practices,
15 wrongs, injuries, and damages complained of herein.

16 8. Plaintiff is informed, and believes, and thereon alleges, that at all times mentioned
17 herein, Defendants were and are the employers of Plaintiff and the Aggrieved Employees (as
18 defined in Paragraph 17).

19 9. At all times herein mentioned, each of said Defendants participated in the doing
20 of the acts hereinafter alleged to have been done by the named Defendant; and furthermore, the
21 Defendants, and each of them, were the agents, servants, and employees of each and every one
22 of the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned
23 were acting within the course and scope of said agency and employment. Defendants, and each
24 of them, approved of, condoned, and/or otherwise ratified each and every one of the acts or
25 omissions complained of herein.

26 10. At all times mentioned herein, Defendants, and each of them, were members of
27 and engaged in a joint venture, partnership, and common enterprise, and acting within the course
28 and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further,

Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and the Aggrieved Employees (as defined in Paragraph 17).

REPRESENTATIVE ACTION ALLEGATIONS

11. Plaintiff was employed by Defendants as a non-exempt janitorial employee from approximately May 9, 2023, until approximately July 27, 2023. Plaintiff was placed to primarily perform services at an Amazon facility located in Visalia, California, and her work duties included mopping, dusting, cleaning, vacuuming, and general maintenance. The “aggrieved employees” whom Plaintiff seeks to represent are all current and former non-exempt employees of Defendants who performed work for Defendants in the State of California during the one year immediately preceding the date of this letter through the present. Plaintiff does not bring this action to pursue an individual claim under the PAGA and, although Plaintiff is an aggrieved employee as alleged herein, the “Aggrieved Employees” that Plaintiff seeks to represent does not include Plaintiff.

12. Throughout Plaintiff’s employment with Defendants, Plaintiff was not provided with all legally compliant meal periods due to Defendants’ meal period policies/practices, which have resulted in late (commencing after the fifth hour of work), short (less than 30 minutes of net rest) and missed meal periods. Specifically, Defendants failed to provide Plaintiff and other aggrieved employees with 30 minutes of net rest in an area appropriate for rest away from the workstation. Additionally, Defendants required Plaintiff and other aggrieved employees to carry their walkie talkies at all times, resulting in on-duty meal periods. Although Plaintiff was not provided with all legally compliant meal periods to which she was entitled, Defendants failed to compensate Plaintiff with the required meal period premium for each workday in which she experienced a meal period violation as mandated by Labor Code § 226.7. Upon information and belief during at least a portion of the relevant period, Defendants maintained no payroll code or other mechanism for the payment of meal period premium payments under Labor Code § 226.7 in the event that a legally compliant meal period was not provided to their aggrieved employees.

13. Plaintiff was also not authorized and permitted to take all required rest periods due to Defendants’ rest period policies/practices. Defendants’ rest period policies/practices fail

1 to authorize and permit a 10-minute net rest period in areas away from the workstation
2 appropriate for rest. Additionally, Defendants required Plaintiff and other aggrieved employees
3 to carry their walkie talkies at all times, resulting in on-duty rest periods. On those occasions
4 when Plaintiff was not authorized and permitted to take all legally compliant rest periods to
5 which she was entitled, Defendants failed to compensate Plaintiff with the required rest period
6 premium for each workday in which she experienced a rest period violation as mandated by
7 Labor Code § 226.7. Further, upon information and belief during at least a portion of the relevant
8 period, Defendants maintained no payroll code or other mechanism for the payment of rest
9 period premium payments under Labor Code § 226.7 in the event that a legally compliant rest
10 period was not provided to their aggrieved employees.

11 14. Plaintiff further alleges that Defendants failed to provide Plaintiff and other
12 aggrieved employees with written notice that sets forth the amount of COVID-19 supplemental
13 paid sick leave that Plaintiff or other aggrieved employees had used as required by Labor Code
14 Section 248.6(d)(2). Moreover, Plaintiff alleges that she was not paid or offered any COVID-19
15 supplemental paid sick leave when she was forced to miss work due to contracting COVID-19,
16 in violation of California law. Defendants also failed to list zero hours used if Plaintiff or other
17 aggrieved employees did not use any COVID-19 supplemental paid sick leave.

18 15. During Plaintiff's employment with Defendants, Plaintiff was required to clock
19 in and out for using a cellphone application on her personal cellular phone. As Plaintiff worked
20 in the field at Defendants' customers' locations, she was necessarily required to use her personal
21 cellular phone to speak with her supervisors and keep track of her time. Thus, it was necessary
22 for Plaintiff to use her personal cellular phone for a variety of required work activities, including,
23 but not limited to clocking in and out for her shifts and meal periods, contacting customers and
24 contacting her supervisor if necessary. Defendants knew or should have known that Plaintiff was
25 necessarily incurring expenses due to the use of her personal cellular phone in the direct
26 discharge of her duties. Yet, despite the necessity of Plaintiff using her personal cellular phone
27 for work activities and Defendants knowing about or duty to know about same, Plaintiff was
28 never reimbursed for a reasonable portion of her cellular phone expenses by Defendants.

16. As a result of Defendants' failure to pay all meal and rest period premium wages, failure to pay COVID-19 supplemental paid sick leave, and failure to reimburse all necessary business expenditures, Defendants failed to pay all wages owed to Plaintiff upon her separation of employment from Defendants in violation of Labor Code § 203. These acts also resulted in Defendants failing to provide Plaintiff with accurate, itemized wage statements.

17. Based on the foregoing, Plaintiff seeks to represent other aggrieved employees, as defined by Labor Code § 2699(c), who have been aggrieved by the Labor Code violations discussed herein.

FIRST CAUSE OF ACTION

PRIVATE ATTORNEYS GENERAL ACT

(AGAINST ALL DEFENDANTS)

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

19. Defendants have committed several Labor Code violations against Plaintiff and other aggrieved employees. Plaintiff, an “aggrieved employee” within the meaning of Labor Code § 2698 *et seq.*, acting on behalf of other aggrieved employees, brings this representative action against Defendants to recover the civil penalties due to other aggrieved employees and the State of California according to proof, including, but not limited to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200.00 for each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent violation pursuant to Labor Code § 558 per employee per pay period; (3) \$250.00 for each initial violation and \$1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for each initial violation and \$200.00 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided, based on the following Labor Code violations:

a. Failing to provide all legally required meal periods, or to pay premium pay in lieu thereof, to other aggrieved employees at the regular rate of pay in violation of

Labor Code §§ 226.7, 512, and 558;

- b. Failing to authorize and permit all legally required rest periods, or to pay premium pay in lieu thereof, to other aggrieved employees at the regular rate of pay in violation of Labor Code §§ 226.7, 558, and 1198;
- c. Failing to reimburse other aggrieved employees for necessary work expenditures in violation of Labor Code §§ 2802 and 2804;
- d. Failing to timely pay all final wages due to other aggrieved employees at the separation from employment, including meal and rest period premium wages and COVID-19 supplemental paid sick leave in violation of Labor Code §§ 203;
- e. Failing to furnish other aggrieved employees with complete, accurate, itemized wage statements in violation of Labor Code § 226;

20. On or about September 25, 2023, Plaintiff notified Defendant Kellermeyer Bergensons Services, LLC, via certified mail, and the California Labor and Workforce Development Agency (“LWDA”) via its website, of Defendants’ violations of the California Labor Code and Plaintiff’s intent to bring a claim for civil penalties under California Labor Code § 2698 *et seq.* with respect to violations of the California Labor Code identified in Paragraph 19 (a)-(e). Now that sixty-five days have passed from Plaintiff notifying Defendants of these violations, Plaintiff has exhausted her administrative requirements for bringing a claim under the Private Attorneys General Act with respect to these violations.

21. Plaintiff was compelled to retain the services of counsel to file this court action to protect her interests and the interests of other aggrieved employees, and to assess and collect the civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys’ fees and costs, which she is entitled to receive under California Labor Code § 2699.

PRAYER

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

- 1. Upon the First Cause of Action, for civil penalties due to other aggrieved employees and the State of California according to proof pursuant to Labor Code §§ 558 and

2699(a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200 for each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent violation pursuant to Labor Code § 558 per employee per pay period; (3) \$250.00 for each initial violation and \$1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per employee per pay period; and/or (4) \$100.00 for each initial violation and \$200 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided, based on the Labor Code violations identified in Paragraph 19 (a)-(e);

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

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

Dated: November 30, 2023

Respectfully submitted,
HAINES LAW GROUP, APC

By:



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