

Kane Moon (SBN 249834)
E-mail: kmoon@moonlawgroup.com
Daniel J. Park (SBN 274973)
E-mail: dpark@moonlawgroup.com
Michael Citrin (SBN 335033)
E-mail: mcitrin@moonlawgroup.com
MOON LAW GROUP, PC
1055 W. Seventh St., Suite 1880
Los Angeles, California 90017
Telephone: (213) 232-3128
Facsimile: (213) 232-3125

Attorneys for Plaintiff
SANJUANA DELGADILLO PENA

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

SANJUANA DELGADILLO PENA,
individually, and on behalf of all others
similarly situated,

Plaintiff,

vs.

MILLER CASTINGS, INC., a California
corporation; and DOES 1 through 10,
inclusive,

Defendants

Case No. 23STCV22696

[Assigned For All Purposes To The
Hon. David S. Cunningham, Dept. 11]

**FIRST AMENDED COMPLAINT FOR
CIVIL PENALTIES FOR VIOLATION
OF LABOR CODE § 2698 *et seq.*
(PRIVATE ATTORNEYS GENERAL
ACT OF 2004)**

Date Action Filed: September 19, 2023
Trial Date: Not Yet Set

FILED
Superior Court of California
County of Los Angeles

02/07/2024

David W. Slayton, Executive Officer / Clerk of Court

By: M. Arellanes Deputy

1 Plaintiff SANJUANA DELGADILLO PENA ("Plaintiff") hereby submits his Complaint
2 against Defendants MILLER CASTINGS, INC; and DOES 1 through 10, inclusive;
3 (collectively, "Defendants"), on behalf of herself and other current and former aggrieved
4 employees of Defendants for penalties as follows:

5 **INTRODUCTION**

6 1. This representative action brought pursuant to Labor Code § 2698 *et seq.*
7 (the Private Attorneys General Act of 2004 ("PAGA")) for Defendants' violations of Labor Code
8 §§ 201, 202, 203, 204, 218.5, 221, 226(a), 226.3, 226.7, 510, 512(a), 558, 1174(d), 1194, 1197,
9 1197.1, 1198, 2800 and 2802.

10 2. This Complaint challenges Defendants' systemic illegal employment
11 practices resulting in violations of the stated provisions of the Labor Code against the identified
12 group of employees.

13 3. Plaintiff is informed and believes and thereon alleges Defendants jointly
14 and severally acted intentionally and with deliberate indifference and conscious disregard to the
15 rights of all employees in (1) failing to pay all meal period wages and rest break wages, (2)
16 failing to properly calculate and pay all minimum and overtime wages, (3) failing to provide
17 compliant wage statements, (4) failing to pay all wages due and owing during employment and
18 upon termination of employment, (5) causing employees to work on seven consecutive days per
19 week without rest, and (6) failing to reimburse necessary business expenses.

20 **JURISDICTION AND VENUE**

21 4. This action is brought pursuant to PAGA. The civil penalties sought by
22 Plaintiff exceed the minimal jurisdiction limits of the Superior Court and will be established
23 according to proof at trial.

24 5. This Court has jurisdiction over this action pursuant to California
25 Constitution, Article VI, Section 10, which grants the Superior Court original jurisdiction in all
26 causes except those given by statute to other courts. The statutes under which this action is
27 brought do not specify any other basis for jurisdiction.

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1 **6.** This Court has jurisdiction over the violations of PAGA and Labor Code
2 §§ 201, 202, 203, 204, 218.5, 221, 226(a), 226.3, 226.7, 510, 512(a), 558, 1174(d), 1194, 1197,
3 1197.1, 1198, 2800 and 2802.

4 **7.** This Court has jurisdiction over all Defendants because, upon information
5 and belief, each party has sufficient minimum contacts in California, or otherwise intentionally
6 avails itself of California law so as to render the exercise of jurisdiction over it by the California
7 courts consistent with traditional notions of fair play and substantial justice.

8 **8.** Venue is proper in this Court because, upon information and belief, the
9 named Defendants transact business and/or have offices in this county, and the acts and
10 omissions alleged herein took place in this county. Moreover, this action is brought on behalf
11 of the State of California as a private attorney general and has jurisdiction in this venue.

12 **PARTIES**

13 **9.** Plaintiff Sanjuana Delgadillo Pena is an individual residing in the State of
14 California. Plaintiff was employed by Defendants within the statutory time period.

15 **10.** Plaintiff is informed and believes and thereon alleges that Defendants are
16 licensed to do business and actually doing business in the State of California, including the
17 County of San Diego.

18 **11.** Plaintiff does not know the true names or capacities, whether individual,
19 partner or corporate, of Defendants sued herein as DOES 1 through 10, inclusive, and for that
20 reason, said Defendants are sued under such fictitious names, and Plaintiff prays for leave to
21 amend this complaint when the true names and capacities are known. Plaintiff is informed and
22 believes and thereon alleges that each of Defendants designated as a DOE was responsible in
23 some way for the matters alleged herein and proximately caused Plaintiff and other current and
24 former aggrieved employees to be subject to the illegal employment practices, wrongs and
25 injuries complained of herein.

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1 **12.** At all times herein mentioned, Defendants, and each of them, were agents,
2 partners, joint venturers, representatives, servants, employees, successors-in-interest, co-
3 conspirators and assigns, each of the other, and at all times relevant hereto were acting within
4 the course and scope of their authority as such agents, partners, joint venturers, representatives,
5 servants, employees, successors, co-conspirators and assigns, and that all acts or omissions
6 alleged herein were duly committed with ratification, knowledge, permission, encouragement,
7 authorization and consent of each Defendant designated herein.

8 **13.** As such, and based upon all the facts and circumstances incident to
9 Defendants' business in California, Defendants are subject to PAGA and Labor Code §§ 201,
10 202, 203, 204, 218.5, 221, 226(a), 226.3, 226.7, 510, 512(a), 551, 552, 558, 1174(d), 1194, 1197,
11 1197.1, 1198, 2800 and 2802.

12 **CAUSE OF ACTION**

13 **VIOLATION OF PAGA**

14 **(AGAINST ALL DEFENDANTS BY PLAINTIFF)**

15 **14.** Plaintiff re-alleges and incorporate by reference paragraphs 1 through 13
16 as though fully set forth herein.

17 **15.** PAGA expressly establishes that any provision of the California Labor
18 Code which provides for a civil penalty to be assessed and collected by the LWDA, or any of its
19 departments, divisions, commissions, boards, agencies or employees for a violation of the
20 California Labor Code, may be recovered through a civil action brought by an aggrieved
21 employee on behalf of himself or herself, and other current or former employees.

22 **16.** On September 9, 2023, Plaintiff provided written notice to the LWDA and
23 Defendants of the specific provisions of the Labor Code he contends were violated, and the
24 theories supporting his contentions. Attached hereto as **Exhibit 1** and incorporated by reference
25 is a copy of the September 9, 2023 written notice to the LWDA. Plaintiff believes that on or
26 about November 13, 2023, the sixty-five (65) day notice period expired as to all Defendants, and
27 the LWDA did not take any action to investigate or prosecute this matter. Therefore, Plaintiff
28 has exhausted the statutory time period to bring this action.

1 17. Plaintiff and the other hourly-paid or non-exempt employees are
2 “aggrieved employees” as defined by California Labor Code § 2699(c) in that they are all current
3 or former employees of Defendants who worked for Defendants at any time during the period
4 from September 9, 2022 to the present, and one or more of the alleged violations was committed
5 against them.

6 **Failure to Pay Minimum and Overtime Wages**

7 18. At all times relevant herein, Defendants were required to compensate their
8 non-exempt employees minimum wages for all hours worked and overtime wages for all hours
9 worked in excess of eight (8) hours in a day or forty (40) hours in a workweek, pursuant to the
10 mandate of Labor Code §§ 510, 1194, 1197, and 1198.

11 19. As a pattern and practice, Defendants failed to compensate Plaintiff and
12 other aggrieved current and former employees for all hours worked, resulting in a failure to pay
13 all minimum wages and overtime wages, where applicable.

14 **Failure to Provide Meal Periods and Rest Breaks**

15 20. In accordance with the mandates of Labor Code §§ 226.7 and 512,
16 Defendants were required to authorize and permit their non-exempt employees to take a 10-
17 minute rest break for every four (4) hours worked or major fraction thereof, and were further
18 required to provide their non-exempt employees with a 30-minute meal period for every five (5)
19 hours worked.

20 21. As a pattern and practice, Defendants failed to provide Plaintiff and other
21 aggrieved current and former employees with legally-mandated meal periods and rest breaks and
22 failed to pay proper compensation for this failure.

23 **Failure to Timely Pay Wages During Employment**

24 22. At all times relevant herein, Defendants were required to pay their
25 employees within a specified time period pursuant to the mandate of Labor Code § 204.

26 23. As a pattern and practice, Defendants failed to pay Plaintiff and other
27 aggrieved current and former employees all wages due and owing them within the required time
28 period.

1 **Failure to Timely Pay Wages Upon Termination**

2 **24.** At all times relevant herein, Defendants were required to pay their
3 employees all wages owed in a timely fashion at the end of employment pursuant to California
4 Labor Code §§ 201 to 204.

5 **25.** As a result of Defendants' Labor Code violations alleged above,
6 Defendants failed to pay Plaintiff and the other aggrieved former employees their final wages
7 pursuant to Labor Code §§ 201 to 204 and accordingly owe waiting time penalties pursuant to
8 Labor Code § 203.

9 **Failure to Provide Complete and Accurate Wage Statements**

10 **26.** At all times relevant herein, Defendants were required to keep *accurate*
11 records regarding their California employees pursuant to the mandate of Labor Code §§ 226 and
12 1174.

13 **27.** As a result of Defendants' various Labor Code violations, Defendants
14 failed to keep accurate records regarding Plaintiff and other aggrieved current and former
15 employees. For example, Defendants failed in their affirmative obligation to keep accurate
16 records regarding Plaintiff and other aggrieved current and former employees' gross wages
17 earned, total hours worked, all deductions, net wages earned, and all applicable hourly rates and
18 the number of hours worked at each hourly rate.

19 **Failure to Reimburse Business Expenses**

20 **30.** At all times relevant herein, Defendants were required to reimburse its
21 employees for any and all necessary expenditures or losses incurred by the employees in direct
22 consequences of the discharge or his or her duties pursuant to the mandate of Labor Code §§
23 2800 and 2802.

24 **31.** As a pattern and practice, Defendants regularly failed to pay Plaintiff and
25 other aggrieved current and former employees all business expenses incurred and owing them
26 within the required time period.

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Penalties

32. Pursuant to California Labor Code § 2699, Plaintiff, individually, and on behalf of other current and former aggrieved employees, requests and is entitled to recover from Defendants, and each of them, civil penalties, interest, attorneys' fees and costs pursuant, against Defendants, and each of them, including but not limited to:

33. Penalties under California Labor Code § 2699 in the amount of a 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;

34. Penalties under California Code of Regulations Title 8 § 11040 in the amount of fifty dollars (\$50) for each aggrieved employee per pay period for the initial violation, and one hundred dollars (\$100) for each aggrieved employee per pay period for each subsequent violation;

35. Penalties under California Labor Code § 210 in addition to, and entirely independent and apart from, any other penalty provided in the California Labor Code in the amount of a 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;

36. Penalties under Labor Code § 1197.1 in the amount of a hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation, and two hundred fifty dollars (\$250) for each aggrieved employee per pay period for each subsequent violation;

37. Any and all additional penalties as provided by the Labor Code and/or other statutes; and

38. Attorneys' fees and costs pursuant to Labor Code §§ 210, 1194, and 2699, and any other applicable statute.

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1. Upon the Cause of Action, for civil penalties pursuant to statute as set forth in Labor Code § 2698 *et seq.*, for Defendants' violations of Labor Code §§ 201, 202, 203, 204, 218.5, 221, 226(a), 226.3, 226.7, 510, 512(a), 558, 1174(d), 1194, 1197, 1197.1, 1198, and 2802.
2. Upon the Cause of Action, for costs and attorneys' fees pursuant to Labor Code §§ 210, 218.5, 1194, and 2699, and any other applicable statute; and
3. For such other and further relief the court may deem just and proper.

JUSTICE LAW CORPORATION

Kane Moon
Daniel Park
Michael Citrin
Attorneys for Plaintiff

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the State of California, County of Los Angeles. I am over the age of 18 and not a party to the within suit; my business address is 1055 W. 7th Street, Suite 1880, Los Angeles, CA 90017.

On the date indicated below, I served the document described as: **FIRST AMENDED COMPLAINT FOR CIVIL PENALTIES FOR VIOLATION OF LABOR CODE § 2698 et seq (PRIVATE ATTORNEYS GENERAL ACT OF 2004)** on the interested parties in this action by sending ☐ the original [or] ☒ a true copy thereof ☒ to interested parties as follows [or] ☐ as stated on the attached service list:

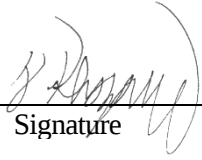
Lyne A. Richardson, CA Bar No. 143566
David J. Zimmerman, CA Bar No. 303861
OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C.
19191 S. Vermont Avenue, Suite 950
Torrance, CA 90502
Telephone: 310-217-8191
Facsimile: 310-217-8184
lyne.richardson@ogletree.com
david.zimmerman@ogletree.com

Attorneys for Defendant
MILLER CASTINGS, INC.

☒ **BY U.S. MAIL:** I deposited such envelope in the mail at Los Angeles, California. The envelope was mailed with postage thereon fully prepaid. I am “readily familiar” with the firm’s practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this **February 7, 2024** at Los Angeles, California.

Jason Khozam
Type or Print Name



Signature