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ELECTRONICALLY FILED
Superior Court of California,
County of Placer
11/06/2023 at 09:50:35 AM
By: Robin Hall
Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF PLACER

FELIPE HERNANDEZ, an aggrieved
employee and on behalf of other aggrieved
employees;

Plaintiff,

vs.

VOLKSWAGEN GROUP OF AMERICA,
INC., a New Jersey corporation; and DOES 1
through 50,

Defendants.

Case No.: S-CV-0051588

**REPRESENTATIVE ACTION
COMPLAINT FOR VIOLATION OF THE
CALIFORNIA PRIVATE ATTORNEYS
GENERAL ACT (LABOR CODE §§ 2698,
et seq.)**

Plaintiff FELIPE HERNANDEZ (“Plaintiff”), on behalf of himself as an aggrieved employee, the State of California, and other aggrieved employees, hereby brings this Representative Action Complaint (“Complaint”) against Defendants VOLKSWAGEN GROUP OF AMERICA, INC., a New Jersey corporation, and DOES 1 to 50 inclusive (collectively “Defendants”), and on information and belief alleges as follows:

JURISDICTION AND VENUE

1. Plaintiff brings this Complaint for recovery of civil penalties under the California Private Attorneys General Act, California Labor Code §§ 2698, *et seq.* (“PAGA”), for Defendants’ violations of the Labor Code and applicable Industrial Welfare Commission (“IWC”) Wage Orders (the “Wage Orders”), including Labor Code §§ 201-204, 212, 226, 226.7, 246, 510, 512, 516, 558,

1 558.1, 1182.12, 1174, 1194, 1194.2, 1197, 1198, 2802. This Court has jurisdiction over Defendants'
2 violations of the Labor Code because the amount in controversy exceeds \$25,000.

3 2. Venue is proper in this judicial district because Defendants maintain offices, have
4 agents, and/or transact business in the State of California, including Placer County, and some of the
5 acts and omissions complained of herein occurred in Placer County. Furthermore, Plaintiff was
6 employed by Defendants within Placer County.

7 **PARTIES**

8 3. Plaintiff is, and at all times relevant herein was, an individual over the age of
9 eighteen (18) and is a California resident. Within the statute of limitations periods applicable to
10 each cause of action pled herein, Plaintiff was employed by Defendants as a non-exempt employee.
11 Plaintiff was, and is, a victim of Defendants' policies, practices, and/or customs complained of
12 herein and has been deprived of the rights guaranteed by Labor Code §§ 201-204, 212, 226, 226.7,
13 246, 510, 512, 516, 558, 558.1, 1182.12, 1174, 1194, 1194.2, 1197, 1198, 2802, and the Wage
14 Orders.

15 4. Plaintiff is informed and believes, and based thereon alleges, that during the
16 applicable statute of limitations for each cause of action pled herein and continuing to the present,
17 Defendants engaged in and continue to engage in business, and employed Plaintiff and other,
18 similarly-situated non-exempt employees within Placer County, and the State of California and,
19 therefore, were (and are) doing business in Placer County and the State of California.

20 5. Plaintiff does not know the true names or capacities, whether individual, partner, or
21 corporate, of the defendants sued herein as DOES 1 to 50, inclusive, and for that reason, said
22 defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to
23 amend this Complaint when such true names and capacities are discovered. Plaintiff is informed,
24 and believes, and based thereon alleges, that each of said fictitious defendants, whether individual,
25 partners, or corporate, was responsible in some manner for the acts and omissions alleged herein,
26 and proximately caused Plaintiff and aggrieved employees to be subject to the unlawful
27 employment practices, wrongs, injuries, and damages complained of herein.

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1 6. At all times herein mentioned, each of said Defendants participated in the doing of
2 the acts hereinafter alleged to have been done by the named Defendant; and furthermore,
3 Defendants, and each of them, were the agents, servants, and employees of each of the other
4 defendants, as well as the agents of all Defendants, and at all times herein mentioned, were acting
5 within the course and scope of said agency and employment.

6 7. Plaintiff is informed and believes, and based thereon alleges, that at all times
7 material hereto, each of the Defendants named herein was the agent, employee, alter ego and/or
8 joint venturer of, or working in concert with each of the other co-Defendants and was acting within
9 the course and scope of such agency, employment, joint venture, or concerted activity. To the extent
10 said acts, conduct, and omissions were perpetrated by certain Defendants, each of the remaining
11 Defendants confirmed and ratified said acts, conduct, and omissions of the acting Defendants.

12 8. At all times herein mentioned, Defendants, and each of them, were members of, and
13 engaged in, a joint venture, partnership, and common enterprise, and acting within the course and
14 scope of, and in pursuance of, said joint venture, partnership, and common enterprise.

15 9. At all times herein mentioned, the acts and omissions of various Defendants, and
16 each of them, concurred and contributed to the various acts and omissions of each and all of the
17 other Defendants in proximately causing the injuries and damages as herein alleged.

18 **FACTUAL ALLEGATIONS**

19 10. Defendants own and operate Volkswagen parts distribution centers, research and
20 technical centers, corporate offices, and other facilities in the State of California. Plaintiff has been
21 employed by Defendants as a non-exempt warehouse technician at its parts distribution center in
22 Rockwell, California within the last 12 months.

23 11. Labor Code §§ 1194, 1197, and the Wage Orders, § 4 entitle employees to receive no
24 less than the minimum wage fixed by the commission or by any applicable state or local law for all
25 hours worked. Labor Code §§ 510, 1198, and the Wage Orders, § 3 provide that non-exempt
26 employees are entitled to all overtime wages at the regular rate of pay. Upon information and belief,
27 during the relevant time period, Defendants' timekeeping and/or payroll policies and practices
28 resulted in Plaintiff and other aggrieved employees not being compensated for all hours actually

1 worked. Plaintiff and other aggrieved employees regularly worked more than eight hours in a
2 workday or 40 hours in a workweek. Defendants required Plaintiff and other aggrieved employees
3 to perform work before their scheduled shifts, after their scheduled shifts, and/or during off-the-
4 clock meal breaks, including unlawful rounding of their time punches, and failed to compensate
5 employees for all hours they actually worked. Defendants also failed to incorporate multiple rates of
6 pay and/or all non-discretionary remuneration, including but not limited to incentive compensation,
7 and the value of employer-provided vehicles, into the regular rate of pay. As a result, Plaintiff and
8 other aggrieved employees were not compensated for all earned minimum and overtime wages.

9 12. Labor Code §§ 226.7, 512, and the Wage Orders, § 11 require employers to provide
10 non-exempt employees with compliant meal periods or pay premiums at the regular rate of
11 compensation. Upon information and belief, during the relevant time period, Defendants failed to
12 provide Plaintiff and other aggrieved employees with all legally compliant meal periods due to
13 Defendants' meal period policies/practices, including unlawful rounding of meal period punches,
14 which have resulted in late (commencing after the fifth hour of work), short (less than 30 minutes),
15 and/or missed meal periods. On those occasions when Plaintiff and other aggrieved employees were
16 not provided with all legally compliant meal periods to which they were entitled, Defendants failed
17 to compensate Plaintiff and other non-exempt employees with the required meal period premium(s)
18 for each workday there was a meal period violation as mandated by Labor Code § 226.7.

19 Alternatively, Defendants failed to incorporate multiple rates of pay and/or all non-discretionary
20 remuneration, including but not limited to shift differentials, incentive compensation, and the value
21 of employer-provided vehicles, into the regular rate of compensation.

22 13. Labor Code §§ 226.7 and the Wage Orders, § 12 require employers to authorize and
23 permit non-exempt employees to take compliant rest periods or pay premiums at the regular rate of
24 compensation. Upon information and belief, during the relevant time period, Plaintiff and other
25 aggrieved employees were not authorized and permitted to take all required rest periods due to
26 Defendants' unlawful rest period policies/practices, which failed to authorize and permit a net 10-
27 minute rest period for every four hours worked, or major fraction thereof. On those occasions when
28 Plaintiff and other aggrieved employees were not authorized and permitted to take all legally

1 compliant rest periods to which they were entitled, Defendants failed to compensate them with the
2 required rest period premium(s) for each workday there was a rest period violation as mandated by
3 Labor Code § 226.7. Upon information and belief, Defendants maintained no mechanism for the
4 payment of rest period premium payments as required by Labor Code § 226.7, in the event that a
5 legally compliant rest period was not authorized and permitted to their non-exempt employees.
6 Alternatively, Defendants failed to incorporate multiple rates of pay and/or all non-discretionary
7 remuneration, including but not limited to shift differentials, incentive compensation, and the value
8 of employer-provided vehicles, into the regular rate of compensation.

9 14. Additionally, upon information and belief, Defendants violated Labor Code § 246 by
10 failing to incorporate multiple rates of pay and/or all non-discretionary remuneration, including but
11 not limited to shift differentials, incentive compensation, and the value of employer-provided
12 vehicles, into the paid sick leave pay rate.

13 15. Labor Code § 212 provides: “No person, or agent or officer thereof, shall issue in
14 payment of wages due, or to become due, or as an advance on wages to be earned: (1) Any order,
15 check, draft, note, memorandum, or other acknowledgment of indebtedness, unless it is negotiable
16 and payable in cash, on demand, without discount, at some established place of business in the state,
17 the name and address of which must appear on the instrument, and at the time of its issuance and for
18 a reasonable time thereafter, which must be at least 30 days, the maker or drawer has sufficient
19 funds in, or credit, arrangement, or understanding with the drawee for its payment.” On information
20 and belief, Defendants violated Labor Code § 212 by paying Plaintiff and other aggrieved
21 employees through direct deposits or pay cards only without the option of a physical paycheck.

22 16. Labor Code §§ 221 and 224 protect employees against unlawful deductions of their
23 earned wages. Labor Code § 221 provides: “It shall be unlawful for any employer to collect or
24 receive from an employee any part of wages theretofore paid by said employer to said employee.”
25 Labor Code § 224 authorizes certain deductions that an employee “expressly authorize[s] in
26 writing,” but forbids deductions that amount to a “rebate or deduction from the standard wage . . .
27 pursuant to wage agreement or statute.” On or around March 17, 2023, Defendants unlawfully
28 deducted wages paid to Plaintiff for alleged overpayment in the amount of \$65.12 without obtaining

1 his express authorization in writing. On information and belief, Defendants employed the same
2 unlawful deduction practice against other aggrieved employees.

3 17. As a result of Defendants' failure to pay all minimum and overtime wages, failure to
4 pay all meal and rest period premium wages, and unlawful timekeeping and payroll practices as
5 alleged above, Defendants maintained inaccurate payroll records and issued inaccurate wage
6 statements to Plaintiff and other aggrieved employees. As a further result of Defendants' failure to
7 pay all minimum and overtime wages, sick leave wages, and meal and rest period premium wages,
8 Defendants failed to timely pay all final wages to Plaintiff and other aggrieved employees upon
9 their separation of employment from Defendants.

10 18. Labor Code § 1198 provides: "The employment of any employee ... under conditions
11 of labor prohibited by the [Industrial Wage Orders] is unlawful." The applicable Industrial Wage
12 Orders provide that: "(A) The temperature maintained in each work area shall provide reasonable
13 comfort consistent with industry-wide standards for the nature of the process and the work
14 performed. (B) If excessive heat or humidity is created by the work process, the employer shall take
15 all feasible means to reduce such excessive heat or humidity to a degree providing reasonable
16 comfort. Where the nature of the employment requires a temperature of less than 60° F, a heated
17 room shall be provided to which employees may retire for warmth, and such room shall be
18 maintained at not less than 68° F. (C) A temperature of not less than 68° F shall be maintained in
19 the toilet rooms, resting rooms, and change rooms during hours of use. (D) Federal and State energy
20 guidelines shall prevail over any conflicting provision of this section." California law requires an
21 employer to endeavor to provide a safe and healthy workplace. (Cal. Code Regs., tit. 8, § 3203.)
22 Labor Code § 6720 required the California Division of Occupational Safety and Health
23 ("Cal/OSHA") to propose an indoor heat illness standard by January 1, 2019. (Lab. Code, § 6720.)
24 Cal/OSHA's draft standard applies its proposed regulations to "all indoor work areas where the
25 temperature equals or exceeds 82 degrees Fahrenheit when employees are present." During the
26 relevant time period, Defendants own, operate, or otherwise manage two distribution centers in
27 Rocklin and Ontario, California, as well as other facilities in California. Defendants failed to
28 provide Plaintiff and other aggrieved employees at the Rocklin distribution center and, on

1 information and belief, at the other distribution center and facilities with reasonable comfort by
2 maintaining indoor temperature within the range of industry standards by, *inter alia*, providing
3 adequate heating, air conditioning, and/or ventilation, and failed to maintain toilet rooms, resting
4 rooms, and changing rooms at a temperature of not less than 68° F during hours of use.

5 19. On or about September 1, 2023, Plaintiff notified Defendants via certified mail, and
6 notified the California Labor and Workforce Development Agency (“LWDA”) via its website, of
7 Defendants’ violations of the Labor Code and Plaintiff’s intent to bring a claim for civil penalties
8 under Labor Code §§ 2698, *et seq.* with respect to the violations of the Labor Code identified in the
9 preceding paragraph. Now that 33 days and 65 days have passed from Plaintiff notifying
10 Defendants and the LWDA of these violations, Defendants have not cured any curable violations,
11 and the LWDA has not provided notice that it intends to investigate the violations, Plaintiff has
12 exhausted administrative requirements for bringing a claim under the Private Attorneys General Act
13 with respect to these violations.

14 **FIRST CAUSE OF ACTION**

15 **PRIVATE ATTORNEYS GENERAL ACT**

16 **(Against All Defendants)**

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

19 21. Plaintiff, an “aggrieved employee” within the meaning of Labor Code §§ 2698, *et*
20 *seq.*, acting on behalf of himself and other aggrieved employees (collectively, “Aggrieved
21 Employees”), brings this representative action against Defendants to recover the civil penalties due
22 to Plaintiff and other Aggrieved Employees, and the State of California according to proof pursuant
23 to Labor Code §§ 558 and 2699(a) and (f) including, but not limited to: (1) \$100.00 for each initial
24 violation for each failure to pay each employee and \$200 for each subsequent violation or willful or
25 intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25%
26 of the amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100 for each
27 subsequent violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100 for each
28 initial violation and \$250 for each subsequent violation pursuant to Labor Code § 1197.1 per

1 employee per pay period; (4) \$250 for each initial violation and \$1,000 for each subsequent
2 violation pursuant to Labor Code § 226.3 per employee per pay period; (5) pursuant to Labor Code
3 § 256, a civil penalty in an amount not exceeding 30 days per former employee as waiting time
4 under the terms of Labor Code § 203; and/or (6) \$100 for each initial violation and \$200 for each
5 subsequent violation per employee per pay period for those violations of the Labor Code for which
6 no civil penalty is specifically provided, based on the following Labor Code violations:

- 7 a. Failing to pay minimum wages for all hours worked to Aggrieved Employees in
8 violation of Labor Code § 558, 1182.12, 1194, 1194.2, 1197, and 1198;
- 9 b. Failing to pay Aggrieved Employees all earned overtime compensation in violation
10 of Labor Code §§ 204, 510, 558, 1194, and 1198;
- 11 c. Failing to provide all legally required meal periods, and failure to pay meal period
12 premium wages, to Aggrieved Employees at the regular rate of compensation in
13 violation of Labor Code §§ 226.7, 512, 558, and 1198;
- 14 d. Failing to authorize and permit all legally required rest periods, and failure to pay
15 rest period premium wages, to Aggrieved Employees at the regular rate of
16 compensation in violation of Labor Code §§ 226.7, 516, 558, and 1198;
- 17 e. Failing to furnish Aggrieved Employees with complete, accurate, itemized wage
18 statements in violation of Labor Code § 226;
- 19 f. Failing to timely pay all final wages and compensation earned by Aggrieved
20 Employees at the time of separation in violation of Labor Code §§ 201-202;
- 21 g. Failing to pay Aggrieved Employees all earned wages at least twice during each
22 calendar month in violation of Labor Code § 204;
- 23 h. Failing to provide Aggrieved Employees with reasonable comfort by maintaining
24 indoor temperature as prescribed by the Wage Orders in violation of Labor Code §
25 1198;
- 26 i. Failing to pay Aggrieved Employees all paid sick leave wages in violation of Labor
27 Code § 246;

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- 1 j. Unlawfully deducting wages from Aggrieved Employees without their written
2 consent in violation of Labor Code §§ 221 and 224;
- 3 k. Failing to provide Aggrieved Employees with the option to receive their wages by a
4 physical paycheck in violation of Labor Code § 212; and
- 5 l. Failing to maintain accurate records on behalf of Aggrieved Employees in violation
6 of Labor Code §§ 1174 and 1198.
- 7 22. Plaintiff has incurred attorneys' fees and costs, which Plaintiff is entitled to receive
8 under California Labor Code § 2699(g).

9 **PRAYER FOR RELIEF**

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

12 1. Upon the First Cause of Action, for civil penalties due to Plaintiff, other Aggrieved
13 Employees, and the State of California according to proof pursuant to Labor Code §§ 558 and
14 2699(a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for each failure to
15 pay each employee and \$200 for each subsequent violation or willful or intentional violation
16 pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount
17 unlawfully withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent violation
18 pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial violation
19 and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per employee per pay
20 period; (4) \$250.00 for each initial violation and \$1,000.00 for each subsequent violation pursuant
21 to Labor Code § 226.3 per employee per pay period; (5) pursuant to Labor Code § 256, a civil
22 penalty in an amount not exceeding 30 days per former employee as waiting time under the terms of
23 Labor Code § 203; and/or (6) \$100.00 for each initial violation and \$200 for each subsequent
24 violation per employee per pay period for those violations of the Labor Code for which no civil
25 penalty is specifically provided;

26 2. On all causes of action, for attorneys' fees and costs as provided by Labor Code §
27 2699(g) and Code of Civil Procedure § 1021.5; and

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

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3 DATED: November 2, 2023

JUSTICE FOR WORKERS, P.C.

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By: 

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Young K. Park

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William C. Sung

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Attorneys for Plaintiff FELIPE HERNANDEZ

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