

2/20/2024 12:00 AM

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO**

DE LA ROSA, SALVADOR, an individual,

Plaintiff,

v.

JSC LOGISTICS, INC., a California
corporation; and DOES 1 through 10,
inclusive;

Defendants.

CASE NO.: CIVSB2331942

FIRST AMENDED COMPLAINT FOR:

- (1) Retaliation (Labor Code § 1102.5);**
- (2) Wrongful Termination;**
- (3) Failure to Pay Minimum Wages [Labor Code §§ 1194, 1194.2, 1197.1];**
- (4) Failure to Pay Overtime [Labor Code §§ 510, 1194, 1198];**
- (5) Failure to Provide Meal Periods [Labor Code §§ 226.7, 512]**
- (6) Failure to Provide Rest Periods [Labor Code § 226.7]**
- (7) Waiting Time Penalties [Labor Code §§ 201-203]**
- (8) Failure to Provide Accurate Wage Statements [Lab. Code § 226(a)]**
- (9) Failure to Reimburse Business Expenses [Labor Code § 2802]; and**
- (10) Violations of the California Private Attorneys General Act [Labor Code § 2698 et seq.]**

JURY TRIAL DEMANDED

Hon. Jessica Morgan
Dept: S26-SBJC

1 Plaintiff Salvador de la Rosa alleges as follow:

2 **INTRODUCTION**

3 1. This action arises from Plaintiff's employment with Defendant JSC LOGISTICS,
4 INC.

5 2. Plaintiff seeks to recover compensatory and punitive damages, statutory penalties,
6 attorney's fees and pre-judgement interest.

7 **JURISDICTION AND VENUE**

8 3. The amount in controversy exceeds the jurisdictional minimum of this Court.
9 Venue as to each Defendant is proper in this County pursuant to Code of Civil Procedure 395(a).
10 At all times relevant herein, Defendants resided in, and conducted business in, this County; and,
11 Defendants employed Plaintiff in, and committed the acts and omissions giving rise to this lawsuit
12 in, this County.

13 **THE PARTIES**

14 4. Plaintiff is, and at all relevant times, was a resident of Riverside County, California.

15 5. Defendant JSC Logistics, Inc., owns and operates a trucking and logistics company
16 located at 3042 E Via Fiano, Ontario, California 91764.

17 6. The true names and capacities of Defendants sued herein as DOES 1-10, inclusive,
18 are currently unknown to Plaintiff, who therefore sues them by such fictitious names under Code of
19 Civil Procedure section 474. Plaintiff is informed and believes that each of the Defendants
20 designated as a DOE is legally responsible in some manner for the unlawful acts alleged. Plaintiff
21 will seek leave of court to amend this Complaint to reflect the true names and capacities of
22 Defendants designated as DOES when those identities become known.

23 7. At all relevant times, each Defendant acted as an agent, servant, employee, co-
24 conspirator, alter-ego and/or joint venturer of the other Defendants, and in doing the things alleged
25 herein acted within the course and scope of such agency, employment, alter-ego and/or in
26 furtherance of the joint venture. Each of the Defendant's acts alleged herein was done with the
27 permission and consent of each of the other Defendants.

1 **GENERAL ALLEGATIONS**

2 8. Misclassification of workers occurs when an employer improperly classifies their
3 employees as independent contractors so that they do not have to pay payroll taxes, minimum wages
4 or overtime, or comply with other wage and hour law requirements such as providing meal periods
5 and rest breaks. Misclassification, or labeling a worker as an independent contractor when they
6 should be an employee, undermines businesses who play by the rules and basic worker protections
7 like minimum wage, paid sick days, and the safety of workplaces. Additionally, the misclassified
8 worker has no workers' compensation coverage if injured on the job, no right to family leave, no
9 unemployment insurance, no legal right to organize or join a union, and no protection against
10 employer retaliation. This is a form of fraud.

11 9. Under California law, a person providing labor or services for remuneration is
12 presumed to be an employee rather than an independent contractor unless the hiring entity satisfies
13 three criteria, commonly referred to as the "ABC" test. (Labor Code § 2775(b)(1).)

14 10. Plaintiff was hired by Defendants as truck driver in January 2023.

15 11. When he was hired, Defendants misclassified Plaintiff as an "independent
16 contractor."

17 12. As a result, Defendants did not pay Plaintiff minimum wages for all hours worked,
18 did not pay him overtime for the overtime hours he worked, did not provide him with meal and rest
19 periods, did not provide him with wage statements, did not reimburse him for business expenses,
20 and did not afford him any of the benefits and protections enjoyed by employees in the State of
21 California.

22 13. In September 2023, Plaintiff was dispatched to pick up/drop off goods at a
23 customer's facility. Plaintiff was told he had to wait until the customer was finished
24 loading/unloading other trucks. Plaintiff notified Defendants of the delay. At approximately 10 p.m.,
25 the owner of JSC Logistics, Inc., Jagmeet Singh, called Plaintiff and inquired what was going on.
26 Plaintiff explained that he was waiting for the customer, had been in touch with dispatch, and would
27 need to be paid overtime for his time spent waiting. In response, Singh told Plaintiff that he would

1 not pay him any overtime. Plaintiff advised Singh that it was illegal not to pay him for the overtime
2 hours he worked. Shortly thereafter, Singh sent Plaintiff a text message terminating his employment
3 and directing him to pick up his final paycheck. Defendants terminated Plaintiff in retaliation for
4 demanding that he be paid in accordance with California law.

5 14. As consequence of Defendants' conduct, Plaintiff has suffered and will suffer harm,
6 including economic and non-economic damages, emotional distress, humiliation in amounts to be
7 established at trial.

8 15. Defendants' conduct constitutes oppression, fraud, and/or malice under California
9 Civil Code section 3294, thereby entitling Plaintiff to an award of exemplary/punitive damages.

10 **CAUSES OF ACTION**

11 **FIRST CAUSE OF ACTION** 12 **(Retaliation – Labor Code § 1102.5)**

13 16. Plaintiff incorporates each of the preceding paragraphs of this Complaint.

14 17. California Labor Code section 1102.5(a) prohibits an employer from retaliating
15 against an employee, because the employee has disclosed information to the employer if the
16 employee has reasonable cause to believe that the information discloses a violation of law.

17 18. Plaintiff complained to Defendants that its refusal to pay him overtime was illegal.

18 19. Plaintiff reasonably believed that Defendants refusal to pay him overtime was
19 illegal.

20 20. Defendants terminated Plaintiff's employment in retaliation for his complaints
21 concerning his overtime.

22 21. As a proximate result of Defendants' conduct, Plaintiff has suffered and will suffer
23 economic damages, including loss of income and employment benefits, and emotional distress.

24 **SECON CAUSE OF ACTION** **(Wrongful Termination in Violation of Public Policy)**

25 22. Plaintiff incorporates each of the preceding paragraphs of this Complaint.

26 23. It is violation of California public policy and statute to terminate an employee's
27 employment in retaliation for asking for payment of wages that are due to the employee. (See,
28

1 e.g., Labor Code § 98.6)

2 24. Defendants terminated Plaintiff's employment in retaliation for demanding
3 payment for wages that he was due.

4 25. As a proximate result of Defendants' conduct, Plaintiff has suffered and will suffer
5 economic damages, including loss of income and employment benefits, and emotional distress.

6 **THIRD CAUSE OF ACTION**
7 **(Failure to Pay Minimum Wages for All Hours Worked)**

8 26. Plaintiff incorporates each of the preceding paragraphs of this Complaint.

9 27. California Labor Code section 1194 provides that "[n]otwithstanding any
10 agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or
11 the legal overtime compensation applicable to the employee is entitled to recover in a civil action
12 the unpaid balance of the full amount of this minimum wage or overtime compensation, including
13 interest thereon, reasonable attorney's fees, and costs of suit."

14 28. California Labor Code section 1197.1 provides in relevant part that "[i]n any action
15 under Section 98, 1193.6, 1194, or 1197.1 to recover wages because of the payment of a wage less
16 than the minimum wage fixed by an order of the commission or by statute, an employee shall be
17 entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and
18 interest thereon."

19 29. Defendants failed to pay Plaintiff minimum wages for all hours worked. Instead,
20 Defendants paid him a daily rate.

21 30. As a result, Plaintiff has been damages and has not been paid minimum wages for
22 all hours he worked.

23 **FOURTH CAUSE OF ACTION**
24 **(Failure to Pay Overtime)**

25 31. Plaintiff incorporates each of the preceding paragraphs of this Complaint.

26 32. California Labor Code section 510(a) provides in relevant part that "[e]ight hours
27 of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work
28 in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of

1 work in any one workweek shall be compensated at the rate of no less than one and one-half times
2 the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be
3 compensated at the rate of no less than twice the regular rate of pay for an employee. In addition,
4 any work in excess of eight hours on any seventh day of a workweek shall be compensated at the
5 rate of no less than twice the regular rate of pay of an employee.”

6 33. California Labor Code section 1198 provides that “[t]he maximum hours of work
7 and the standard conditions of labor fixed by the commission shall be the maximum hours of work
8 and the standard conditions of labor for employees. The employment of any employee for longer
9 hours than those fixed by the order or under conditions of labor prohibited by the order is
10 unlawful.”

11 34. The applicable IWC Wage Order, Section 3(A) requires employers to pay non-
12 exempt employees (1) one and one half times the employee’s regular rate of pay for all hours
13 worked in excess of eight hours up to and including twelve hours in any workday, and for the first
14 eight hours worked on the seventh consecutive day of work in a workweek, and (2) double the
15 employee’s regular rate of pay for all hours worked in excess of twelve hours in any workday and
16 for all hours worked in excess of eight hours on the seventh consecutive day of work in a
17 workweek.

18 35. Defendants failed to pay Plaintiff overtime. Instead, Defendants paid Plaintiff by
19 the day.

20 36. As a result, Plaintiff has been injured and has not been paid overtime for all of the
21 overtime hours that he worked.

22 **FIFTH CAUSE OF ACTION**
23 **(Failure to Provide Meal Periods)**

24 37. Plaintiff incorporates each of the preceding paragraphs of this Complaint.

25 38. Labor Code section 512(a) provides “[a]n employer shall not employ an employee
26 for a work period of more than five hours per day without providing the employee with a meal
27 period of not less than 30 minutes, except that if the total work period per day of the employee is
28 no more than six hours, the meal period may be waived by mutual consent of both the employer

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

6 39. The applicable IWC Wage Order, section 11(A) similarly provides that “[n]o
7 employer shall employ any person for a work period of more than five (5) hours without a meal
8 period of not less than 30 minutes, except that when a work period of not more than six (6) hours
9 will complete the day’s work the meal period may be waived by mutual consent of the employer
10 and the employee. Unless the employee is relieved of all duty during a 30-minute meal period, the
11 meal period shall be considered an “on duty” meal period and counted as time worked. An “on
12 duty” meal period shall be permitted only when the nature of the work prevents an employee from
13 being relieved of all duty and when by written agreement between the parties an on-the- job paid
14 meal period is agreed to. The written agreement shall state that the employee may, in writing,
15 revoke the agreement at any time.”

16 40. The applicable IWC Wage Order, section 11(B) provides that “[i]f an employer
17 fails to provide an employee a meal period in accordance with the applicable provisions of this
18 order, the employer shall pay the employee one (1) hour of pay at the employee’s regular rate of
19 compensation for each workday that the meal period is not provided.”

20 41. Labor Code section 226.7(a) provides that “[n]o employer shall require any
21 employee to work during any meal or rest period mandated by an applicable order of the Industrial
22 Welfare Commission.”

23 42. Labor Code section 226.7(b) provides that “[i]f an employer fails to provide an
24 employee a meal period or rest period in accordance with an applicable order of the Industrial
25 Welfare Commission, the employer shall pay the employee one additional hour of pay at the
26 employee s regular rate of compensation for each work day that the meal or rest period is not
27 provided.”

1 43. Defendants failed to provide Plaintiff with an opportunity to take compliant meal
2 periods. Instead, Defendants misclassified him as independent contractor and did not provide any
3 meal periods whatsoever.

4 44. Defendants did not pay Plaintiff premium pay for these non-compliant meal
5 periods.

6 45. As a result, Plaintiff has been injured and did not receive the meal period premium
7 pay to which he is entitled.

8 **SIXTH CAUSE OF ACTION**
9 **(Failure to Provide Rest Periods)**

10 46. Plaintiff incorporates each of the preceding paragraphs of this Complaint.

11 47. The applicable IWC Wage Order section 12(A) provides that “[e]very employer
12 shall authorize and permit all employees to take rest periods, which insofar as practicable shall be
13 in the middle of each work period. The authorized rest period time shall be based on the total
14 hours worked daily at the rate often (10) minutes net rest time per four (4) hours or major fraction
15 thereof. However, a rest period need not be authorized for employees whose total daily work time
16 is less than three and one-half (3½) hours. Authorized rest period time shall be counted as hours
17 worked for which there shall be no deduction from wages.”

18 48. The applicable IWC Wage Order section 12(B) provides that “[i]f an employer fails
19 to provide an employee a rest period in accordance with the applicable provisions of this order, the
20 employer shall pay the employee one (1) hour of pay at the employee’s regular rate of
21 compensation for each workday that the rest period is not provided.”

22 49. Labor Code section 226.7(a) provides that “[n]o employer shall require any
23 employee to work during any meal or rest period mandated by an applicable order of the Industrial
24 Welfare Commission.”

25 50. Labor Code section 226.7(b) provides that “[i]f an employer fails to provide an
26 employee a meal period or rest period in accordance with an applicable order of the Industrial
27 Welfare Commission, the employer shall pay the employee one additional hour of pay at the
28 employee s regular rate of compensation for each work day that the meal or rest period is not

provided.”

51. Defendants failed to provide Plaintiff with an opportunity to take compliant rest periods.

52. Defendant did not pay Plaintiff premium pay for these non-compliant rest periods.

53. As a result, Plaintiff has been injured and did not receive the rest period premium pay to which he is entitled.

SEVENTH CAUSE OF ACTION
(Waiting Time Penalties)

54. Plaintiff incorporates the preceding paragraphs of the Complaint.

55. California Labor Code section 201(a) provides in relevant part that “if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.”

56. California Labor Code section 202(a) provides in relevant part that “if an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.”

57. California Labor Code section 203(a) provides that where an employer willfully fails to timely pay an employee his or her final wages in compliance with these statutes, 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 therefor is commenced; but the wages shall not continue for more than 30 days.”

58. Defendants failed to timely pay Plaintiff all wages that he earned upon termination of employment, including minimum wages and overtime he was owed.

59. Plaintiff is informed and believes that Defendants acted willfully in failing to timely pay Plaintiff his final wages as Defendants did so intentionally without any good faith dispute regarding the timing or amount of such final wages.

60. As a result, Plaintiff is entitled to recover waiting time penalties pursuant to Labor Code section 203.

EIGHTH CAUSE OF ACTION
(Failure to Provide Accurate Wage Statements)

61. Plaintiff incorporates the preceding paragraphs of the Complaint.

62. An employer, semimonthly or at the time of each payment of wages, shall furnish to his or her employee, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately if 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 as provided in subdivision (j), (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 only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of 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 and, beginning July 1, 2013, if the employer is a temporary services employer as defined in Section 201.3, the rate of pay and the total hours worked for each temporary services assignment. (Labor Code § 226(a).)

63. An employee suffering injury as a result of a knowing and intentional failure by an employer to provide wage statements 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. (Labor Code § 226(e).)

64. Defendants failed to provide Plaintiff with wage statements in violation of Labor Code section 226(a).

65. As a result, Plaintiff was injured as he could not promptly and easily determine the

1 total hours he worked or the other information required by Labor Code section 226(a).

2 66. Accordingly, Plaintiff is entitled to recover penalties pursuant to Labor Code
3 section 226(e).

4 **NINTH CAUSE OF ACTION**
5 **(Failure to Reimburse Business Expenses)**

6 67. Plaintiff incorporates the preceding paragraphs of the Complaint.

7 68. Labor Code section 2802(a) provides that “[a]n employer shall indemnify his or her
8 employee for all necessary expenditures or losses incurred by the employee in direct consequence
9 of the discharge of his or her duties, or of his or her obedience to the directions of the employer,
10 even though unlawful, unless the employee, at the time of obeying the directions, believed them to
11 be unlawful.”

12 69. Defendants failed to reimburse Plaintiff for business expenses, including use of his
13 vehicle and cellular phone for work and for mileage.

14 70. As a result, Plaintiff has suffered damages in amount to be determined at trial.

15 **ELEVENTH CAUSE OF ACTION**
16 **(Violation of the Private Attorneys General Act)**

17 71. Plaintiff incorporates the preceding paragraphs of the Complaint.

18 72. During the PAGA period (one year and sixty-five days from the filing of this First
19 Amended Complaint), Defendants subjected Plaintiff and similarly situated non-exempt
20 Aggrieved Employees to the same unlawful wage and hour, Labor Code/Wage Order practices as
21 discussed herein. Defendants committed the same wage and hour violations discussed above
22 against the Aggrieved Employees.

23 73. Under California law, it is unlawful for an employer to willfully misclassify an
24 individual as an independent contractor; or to charge a person who has been willfully misclassified
25 a fee, or making any deductions from compensation, for any purpose, including for goods,
26 materials, space rental, services, government licenses, repairs, equipment maintenance, or fines
27 arising from the individual's employment where any of the acts described in this paragraph would
28 have violated the law if the individual had not been misclassified. (Labor Code § 226.8)(a).)

1 74. Defendants violated this statute by willfully misclassifying Plaintiff and the
2 Aggrieved Employees as “independent contractors” and making unlawful deductions from their
3 compensation. Accordingly, Employer is liable for penalties under Labor Code section 226.8(b) or
4 (c).

5 75. Under California law, an employer must maintain accurate time and pay records,
6 including (1) time records showing when employees begin and ends each work periods, meal
7 periods, split shift intervals, and total hours worked, and (2) pay records showing its employees’
8 hours worked and applicable rates of pay during each pay period. (Labor Code § 1174 and IWC
9 Wage Orders § 7). Defendant failed to maintain these records. Defendant failed to keep records of
10 all hours worked for Plaintiff and similarly situated Aggrieved Employees, including meal periods
11 and hours worked.

12 76. Labor Code section 204 requires an employer to pay all wages that are due and
13 owing to employees twice during each calendar month on days designated in advance by the
14 employer as regular paydays. Defendants violated this statute by failing to pay Plaintiff and
15 Aggrieved Employees all wages that are due and owing during their employment, including wages
16 for “off-the-clock” work and meal and rest period premiums. Defendants are therefore subject to
17 civil penalties under labor Code section 2699.

18 77. California law requires an employer to provide paid sick days to employees. (Labor
19 Code § 246.) Paid sick leave must be calculated as set forth in Labor Code section 246(l).

20 78. Defendants failed to provide Plaintiff and the Aggrieved Employees with required
21 sick days or to accrue sick days for them at the required rate. Defendants also failed to pay
22 Plaintiff and the Aggrieved Employees sick pay at the correct rates. Defendant are therefore
23 subject to penalties under Labor Code §§2699(a)/(f) and or/ 558.

24 79. Labor Code section 432.5 provides that no employer shall require an employee to
25 agree in writing to a term or condition which is known by the employer to be prohibited by the
26 law.

27 80. Defendants required Plaintiff and the Aggrieved Employees to enter into unlawful
28

1 agreements that purport to classify them as “independent contractors.” Defendants knew these
2 agreements were illegal. Defendants are therefore liable for civil penalties under Labor Code §
3 2699.

4 81. In sum, during the PAGA period, Defendants violated Labor Code sections 201-
5 203, 204, 210, 226, 226.3, 226.7, 226.8, 246, 510, 512, 516, 558, 1174, 1174.5, 1194, 1197,
6 1197.1, 1198, 2802 and the applicable Wage Order, Sections 3, 4, 7, 11, 12, and 20. These
7 violations subject Defendants to civil penalties as set forth in, *inter alia*, Labor Code section 2699.

8 82. Plaintiff complied with the procedures for bringing suit specified in Labor Code
9 sections 2699.3 and 2699.5 by letter dated October 30, 2023. Plaintiff gave written notice to the
10 LWDA via electronic submission, and via certified mail to all Defendants, of the specific
11 provisions of the Labor Code and applicable Wage Order allegedly violated, including the facts
12 and theories to support the alleged violations.

13 83. Under Labor Code section 2699.3, the LWDA must give written notice to the
14 parties it intends to investigate the alleged violations within 60 days of the date of the Plaintiff's
15 written notice. As of the filing of this complaint, the LWDA has not provided the parties with any
16 notice of its intention to investigate these claims.

17 84. Under Labor Code section 2699.3, Defendants has 33 days after the date of written
18 notice to cure the alleged violations. As of the filing of this complaint, Defendant has not
19 responded to Plaintiff's PAGA notice in an attempt to cure.

20 85. Plaintiff seeks civil penalties in the amounts set forth in the Labor Code for each of
21 the aforesaid violations and/or default penalties as provided by Labor Code section 2699.

22 86. Under Labor Code section 2699(g), Plaintiff is also entitled to an award of
23 reasonable attorney's fees and costs in connection with his claims for civil penalties.

24 **PRAYER FOR RELIEF**

25 WHEREFORE, Plaintiff prays for relief as follows:

- 26 (1) for compensatory damages according to proof;
27 (2) for statutory and other available penalties according to proof;

- 1 (3) for punitive and exemplary damages according to proof;
2 (4) for civil penalties according to proof;
3 (4) for prejudgment interest as permitted by law;
4 (5) for attorney's fees and costs incurred in prosecuting this action; and,
5 (6) for such further relief that the Court deems appropriate.

6
7 Dated: February 18, 2024

BLAKE JONES LAW, PC.

8
9 By: 
10 Blake R. Jones
11 Attorneys for Plaintiff

12 **DEMAND FOR JURY TRIAL**

13 Plaintiff hereby demands a trial by jury on claims where a jury is allowed.
14

15 Dated: February 18, 2024

BLAKE JONES LAW, PC.

16
17 By: 
18 Blake R. Jones
19 Attorneys for Plaintiff
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