

PIMENTEL LAW, P.C.

For All Purposes

ELECTRONICALLY FILED

Superior Court of California,
County of Tulare

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JUAN GARCIA

Case Management Conference

07/10/2024 08:30 AM - Department 02

IN THE SUPERIOR COURT OF CALIFORNIA

COUNTY OF TULARE, COUNTY CIVIC CENTER

JUAN GARCIA, an individual,

Case No. VCU306822

Plaintiff,

COMPLAINT FOR:

vs.

TETRA PROPERTY MANAGMENT, INC., a
California corporation, PHILLIP HAMMOND,
and DOES 1 through 20 inclusive,

1. Failure to Indemnify for Necessary
Expenditures in Violation of Labor Code §
2802;

2. Failure to Timely Pay Wages in Violation of
Labor Code § 204;

3. Willful Failure to Pay Wages in Violation of
Labor Code §§ 201-203;

4. Civil Penalties in Violation of Labor Code
§§ 2698, et seq.;

Defendant.

Jury Trial Demanded

1. Plaintiff JUAN GARCIA is informed and believes and thereon alleges as follows:

PARTIES, VENUE AND JURISDICTION

2. Plaintiff JUAN GARCIA was at all times relevant hereto a resident of Hanford,
California.

3. At all relevant times herein, Defendant TETRA PROPERTY MANAGMENT, INC.

1 was a California Corporation with its principal place of business in Visalia, California.

2 4. Defendant PHILLIP HAMMOND was at all times relevant herein the principal of
3 TETRA PROPERTY MANAGMENT, INC.

4 5. Plaintiff is informed and believes, and based thereon alleges, that there exists such a
5 unity of interest and ownership between TETRA PROPERTY MANAGMENT, INC., PHILLIP
6 HAMMOND, and DOES 1-20 that the individuality and separateness of defendants have ceased to
7 exist.

8 6. Plaintiff is informed and believes, and based thereon alleges, that despite the formation
9 of purported corporate existence, TETRA PROPERTY MANAGMENT, INC., PHILLIP HAMMOND
10 and DOES 1-20 are, in reality, one and the same.

11 7. TETRA PROPERTY MANAGMENT, INC., PHILLIP HAMMOND, and DOES 1-20
12 do not comply with all requisite corporate formalities to maintain a legal and separate existence.

13 8. The business affairs of TETRA PROPERTY MANAGMENT, INC., PHILLIP
14 HAMMOND, and DOES 1-20 are, and at all times relevant were, so mixed and intermingled that the
15 same cannot reasonably be segregated, and the same are in inextricable confusion. TETRA
16 PROPERTY MANAGMENT, INC. is, and at all times relevant hereto was, used by DOES 1-20 and
17 PHILLIP HAMMOND as a mere shell and conduit for the conduct of certain of Defendants' affairs,
18 and is, and was, the alter ego of DOES 1-20. The recognition of the separate existence of TETRA
19 PROPERTY MANAGMENT, INC. would not promote justice, in that it would permit Defendants to
20 insulate themselves from liability to Plaintiff for violations of state law. The corporate existence of
21 TETRA PROPERTY MANAGMENT, INC. and DOES 1-20 should be disregarded in equity and for
22 the ends of justice because such disregard is necessary to avoid fraud and injustice to Plaintiff herein.

23 9. Accordingly, TETRA PROPERTY MANAGMENT, INC., PHILLIP HAMMOND,
24 and DOES 1-20 are the alter egos of one another, and the fiction of their separate corporate existence
25 must be disregarded.

26 10. As a result of the aforementioned facts, Plaintiff is informed and believes, and based
27 thereon alleges that TETRA PROPERTY MANAGMENT, INC., PHILLIP HAMMOND, and DOES
28 1-20 are joint employers by virtue of a joint enterprise, and that the employees and agents of TETRA

1 PROPERTY MANAGMENT, INC. were also employees of PHILLIP HAMMOND and DOES 1-20.
2 TETRA PROPERTY MANAGMENT, INC. employees performed services for each and every one of
3 Defendants, and to the mutual benefit of all Defendants, and all Defendants shared control of them as
4 employees, either directly or indirectly, and the manner in which Defendants' business was and is
5 conducted.

6 11. The true names and capacities, whether individual, corporate, associate, or otherwise,
7 of the Defendants named herein as DOES 1-20, inclusive, are unknown to Plaintiff at this time and
8 therefore these Defendants are sued by such fictitious names. Plaintiff will seek leave to amend this
9 Complaint to insert the true names and capacities of these Defendants when they become known to
10 Plaintiff. Plaintiff is informed and believes and based thereupon alleges, that each of the fictitiously
11 named Defendant is responsible for the wrongful acts alleged herein and are therefore liable to
12 Plaintiff as alleged hereinafter.

13 12. Plaintiff is informed and believes and based thereupon alleges, that at all times relevant
14 hereto, Defendants were the agents, employees, managing agents, supervisors, coconspirators, parent
15 corporation, joint employers, alter egos, successors, and/or joint ventures of the other Defendant, and
16 each of them, and in doing the things alleged herein, were acting at least in part within the course and
17 scope of said agency, employment, conspiracy, joint employer, alter ego status, successor status
18 and/or joint venture and with the permission and consent of each of the other Defendant.

19 13. Plaintiff is informed and believes and based thereupon alleges, that Defendant,
20 including those defendants named as DOES 1-20 acted in concert with one another to commit the
21 wrongful acts alleged herein, and aided, abetted, incited, compelled and/or coerced one another in the
22 wrongful acts alleged herein, and/or attempted to do so. Plaintiff is further informed and believes, and
23 based thereupon alleges, that Defendant, including those defendants named as DOES 1-20 formed
24 and executed a conspiracy or common plan pursuant to which they would commit the unlawful acts
25 alleged herein, with all such acts alleged herein done as part of and pursuant to said conspiracy,
26 intended to cause and actually causing Plaintiff's harm.

27 14. Whenever and wherever reference is made in this Complaint to any act or failure to
28 act by a Defendant or co-Defendant, such allegations and references shall also be deemed to mean

1 the acts and/or failures to act by each Defendant acting individually, jointly and severally.

2 **FACTUAL ALLEGATIONS**

3 15. JUAN GARCIA worked as a Maintenance Technician for Defendants from
4 approximately September 2021 to March 2023.

5 16. Plaintiff's job duties included ensuring the grounds of Country Club Apartments,
6 Mountain View, and Kings River were free of trash. Additionally, Plaintiff completed work orders
7 which included fixing cabinets and doors, doing electrical repairs, plumbing and minor paint jobs.

8 17. Plaintiff worked Monday through Friday from 6:00 a.m. to 2:30 p.m. and was paid
9 \$19.25 per hour.

10 18. During Plaintiff's employment, Defendants failed to provide the necessary tools to
11 adequately perform his job duties. While some of the apartment complexes had minimal tools, like a
12 vacuum cleaner, the available tools were not sufficient to allow him to perform any work orders.
13 Therefore, Plaintiff was forced to use his own tools, which were valued at approximately \$3,000. To
14 date Plaintiff has not been reimbursed by Defendants for the use of his tools.

15 19. At all times relevant herein, Defendants provided Plaintiff and other employees with
16 an insufficient quantity of tools to adequately perform their job duties. The tools provided by
17 Defendants were insufficient to allow a single technician to perform their job. As such, technicians
18 and other employees were required to incur thousands of dollars in tool expenditures, which
19 Defendants have not reimbursed. Defendants' practice of failing to reimburse non-double minimum
20 wage-earning technicians for the purchase of their hand tools and equipment is violation of Labor
21 Code § 2802.

22 20. During Plaintiff's employment, Plaintiff was required to drive to and from the
23 apartment complexes he serviced in his personal vehicle but was not reimbursed for mileage.

24 21. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should
25 have known that Plaintiff was entitled to receive full reimbursement for all business-related expenses
26 and costs he incurred in direct consequence of the discharge of his duties and that he did not receive
27 full reimbursement of applicable business-related expenses and costs incurred.

1 **FIRST CAUSE OF ACTION**
2 **FAILURE TO INDEMNIFY FOR NECESSARY EXPENDITURES**
3 **IN VIOLATION OF LABOR CODE § 2802**
4 **(AGAINST ALL DEFENDANTS)**

5 22. Plaintiff incorporates, by reference, all allegations in the foregoing paragraphs as
6 though fully set forth herein.

7 23. An employer shall indemnify his or her employee for all necessary expenditures or
8 losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his
9 or her obedience to the directions of the employer.

10 24. From approximately September 2021 to the present date, Plaintiff has been required
11 by Defendants to purchase tools, and in fact did purchase tools in order to perform his duties.

12 25. From approximately September 2021 to the present date, Defendants failed to pay
13 Plaintiff less than twice the minimum wage in contravention of IWC Wage Order 4-2001, § 9(B), 8
14 CAL. CODE REGS. § 11040, § 9(B), and California Labor Code §§ 1182, 1194, 1194.2, and 1197.

15 26. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
16 Defendants have maintained a policy, practice, or a lack of policy, which resulted in their failure to
17 indemnify Plaintiff for the reasonable expenses he incurred in the course of performing his duties.

18 27. As a result of the foregoing, Plaintiff is entitled to recover all sums incurred by his for
19 the purchase of the tools that were necessary for the performance of his job and which he was required
20 to purchase in an amount according to proof at trial.

21 28. As a result of the foregoing, Plaintiff is further entitled to an award of interest at the
22 same rate as judgments in civil actions, accruing from the date on which Plaintiff incurred the
23 necessary expenditures or loses and all reasonable costs, including attorney's fees incurred by him
24 enforcing the rights granted by Labor Code § 2802.

25 **SECOND CAUSE OF ACTION**
26 **FAILURE TO TIMELY PAY WAGES**
27 **IN VIOLATION OF LABOR CODE § 204**

28 29. Plaintiff incorporates, by reference, all allegations in the foregoing paragraphs as

1 though fully set forth herein.

2 30. "All wages ... earned by any person in any employment are due and payable twice
3 during each calendar month, on days designated in advance by the employer as the regular paydays
4 ... (d) The requirements of this section shall be deemed satisfied by the payment of wages for weekly,
5 biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following
6 the close of the payroll period." Lab. Code § 204.

7 31. "In addition to, and entirely independent and apart from, any other penalty provided
8 in this article, every person who fails to pay the wages of each employee as provided in Sections ...
9 204 ... shall be subject to a penalty as follows: (1) For any initial violation, one hundred dollars (\$100)
10 for each failure to pay each employee. (2) For each subsequent violation, or any willful or intentional
11 violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the
12 amount unlawfully withheld." Lab. Code § 210.

13 32. At all times relevant herein, Defendants engaged in a practice of failing to pay Plaintiff
14 by the seventh calendar day following the close of the payroll period. Indeed, as discussed above,
15 Plaintiff is owed wages for unpaid minimum wage, meal periods and unreimbursed business
16 expenses. At no time during his employment were these outstanding sums ever paid to him. Instead,
17 these outstanding sums continued to accumulate every pay period. Therefore, Plaintiff was not paid
18 all wages earned by the seventh calendar day following the close of his pay periods.

19 33. As a direct and proximate result of Defendants' failure to timely pay wages, Plaintiff
20 is entitled to penalties under Labor Code § 210 in an amount subject to proof at trial.

21 **THIRD CAUSE OF ACTION**

22 **WILLFUL FAILURE TO PAY WAGES**

23 **IN VIOLATION OF LABOR CODE §§ 201-203**

24 34. Plaintiff incorporates, by reference, all allegations in the foregoing paragraphs as
25 though fully set forth herein.

26 35. "If an employer discharges an employee, the wages earned and unpaid at the time of
27 discharge are due and payable immediately." Lab. Code § 201.

28 36. "If an employee not having a written contract for a definite period quits his or her

1 employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless
2 the employee has given 72 hours previous notice of his or her intention to quit, in which case the
3 employee is entitled to his or her wages at the time of quitting.” Lab. Code § 202.

4 37. “If an employer willfully fails to pay any wages of an employee who is discharged or
5 who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same
6 rate until paid or until an action therefor is commenced.” Lab. Code § 203.

7 38. Plaintiff was not exempt from the requirements of Labor Code §§ 201-203.

8 39. At no time since Plaintiff's separation of employment did Defendants pay him wait-
9 time penalties as required by Labor Code § 203.

10 40. As a direct and proximate result of Defendants' willful failure to pay Plaintiff's wages
11 upon his separation of employment, Plaintiff incurred wait-time penalties in an amount equal to his
12 daily rate of pay over the period that the wages were not paid in an amount subject to proof at trial.

13 **FOURTH CAUSE OF ACTION**

14 **CIVIL PENALTIES IN VIOLATION OF**

15 **LABOR CODE § 2699, ET SEQ.**

16 **(AGAINST ALL DEFENDANTS)**

17 41. Plaintiff incorporates, by reference, all allegations in the foregoing paragraphs as
18 though fully set forth herein.

19 42. Under Labor Code §2698, et seq., Plaintiff, as a aggrieved employee, may bring an
20 action against Defendants, on behalf of himself and other current or former employees, seeking civil
21 penalties for defendants' violations of the California Labor Code.

22 43. Plaintiff was an aggrieved employee within the meaning of Labor Code §2698, et seq.
23 by virtue of the numerous Labor Code violations she was subjected to as plead herein.

24 44. Defendants also subjected the aggrieved employees on whose behalf Plaintiff brings
25 this enforcement action to all of the Labor Code violations plead herein, including failing to reimburse
26 for necessary business expenditures in violation of Labor Code § 2802, failure to timely pay wages
27 in violation of Labor Code § 204 and willful failure to pay wages in violation of Labor Code § 201-
28 203.

45. On October 10, 2023, Plaintiff provided written notice by online filing with the Labor and Workforce Development Agency and by certified mail to Defendants of the specific provisions of the Labor Code alleged to have been violated including the facts and theories to support the alleged violation, as required by Labor Code § 2699.3 (a) (1) (A).

46. As of the filing of this Complaint, Plaintiff has received no notice from the Labor and Workforce Development Agency of its intent to pursue an action against Defendants.

47. As a direct and proximate result of Defendants' California Labor Code violations as set forth herein, Plaintiff is entitled to civil penalties of \$100 for each aggrieved employee per pay period for the initial violation, and \$200 for each aggrieved employee per pay period for each subsequent violation, pursuant to Labor Code §2699 (f), for those Labor Code sections not expressly providing for a penalty, and civil penalties provided by the specific Labor Code sections that do expressly provide for a penalty.

48. Plaintiff is also entitled to reasonable attorney's fees and costs, and 25% of the recovered civil penalties.

PRAYER FOR RELIEF

Plaintiff prays for relief and judgment against Defendant as follows:

1. For damages, unpaid wages, penalties, injunctive relief, and attorneys' fees in excess of \$25,000, exclusive of interest and costs.

**As to the First Cause of Action
(Unreimbursed Business Expenses)**

2. That the Court adjudge, declare and decree that Defendants violated Labor Code § 2802 by willfully failing to reimburse business expenses incurred by Plaintiff and the Class;

3. For unreimbursed business expenses and for all actual, consequential, and incidental losses and damages, according to proof;

4. For interest at the same rate as judgments in civil actions, accruing from the date on which Plaintiff and the Class incurred the necessary expenditures or losses pursuant to Labor Code § 2802:

5. For all reasonable costs and attorney's fees incurred by Plaintiff's enforcement of the

rights granted by Labor Code § 2802 pursuant to Labor Code § 2802 (c); and

6. For such other relief that the Court deems just and appropriate.

As to the Second Cause of Action

(Failure to Timely Pay Wages)

7. That the Court declare, adjudge, and decree that Defendants violated California Labor Code § 204, applicable IWC Wage Orders and Codes of Regulation by willfully failing to timely pay wages to Plaintiff and class members;

8. For penalties pursuant to Labor Code § 210, plus 25 percent of amounts unlawfully withheld from Plaintiff and class members;

9. For all actual, consequential, and incidental losses and damages, according to proof;

10. For pre-judgment interest on any unpaid wages from the date such amounts were due, or as otherwise provided by law;

11. For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5, or as otherwise provided by law; and

12. For such other relief that the Court deems just and appropriate.

As to the Third Cause of Action

(Willful Failure to Pay Wages)

13. That the Court declare, adjudge, and decree that Defendants violated California Labor Code § 201-203, applicable IWC Wage Orders and Codes of Regulation by willfully failing to pay minimum wages, overtime wages, and meal and rest premiums owed to Plaintiff either upon discharge or within 72 hours of their resignation;

14. For wait time penalties pursuant to Labor Code § 203;

15. For all actual, consequential, and incidental losses and damages, according to proof;

16. For pre-judgment interest on any unpaid wages from the date such amounts were due, or as otherwise provided by law;

17. For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5, or as otherwise provided by law; and

18. For such other relief that the Court deems just and appropriate.

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As to the Fourth Cause of Action
(Civil Penalties under the PAGA)

19. That the Court declare, adjudge, and decree that Defendants violated all California Labor Code sections plead herein, including Labor Code §§ 201-204, and 2802;

20. For civil penalties pursuant to 210, 2699 (a) and/or 2699 (a), (f) and (g), for violations of all California Labor Code sections plead herein, including Labor Code §§ 201-204, and 2802;

21. For attorneys' fees and costs pursuant to California Labor Code § 2699 (g) (1), and any and all other relevant statutes, for Defendants' violations of all California Labor Code sections plead herein, including Labor Code §§ 201-204, and 2802;

22. For pre-judgment and post-judgment interest as provided by law; and

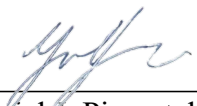
23. For such other and further relief as the Court deems just and appropriate.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues.

PIMENTEL LAW, P.C.

Dated: March 6, 2024

By: 

Gabriel J. Pimentel, Esq.
Yesenia L. Rodriguez, Esq.
Attorneys for Plaintiff