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County of Los Angeles
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David W. Slayton,
Executive Officer/Clerk of Court,
By S. Ruiz, Deputy Clerk

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

ANDREW ROSAS, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

MALCOLM DRILLING COMPANY, INC., a
California corporation; and DOES 1 through
100,

Defendants.

Case No.: 23STCV30574

**REPRESENTATIVE ACTION
COMPLAINT:**

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

1 Plaintiff Andrew Rosas (“Plaintiff”) on behalf of himself and all others similarly situated,
2 hereby brings this Representative Action Complaint against Defendants Malcolm Drilling
3 Company, Inc., a California corporation, and DOES 1 to 100, inclusive (collectively
4 “Defendants”), and on information and belief alleges as follows:

5 **JURISDICTION**

6 1. Plaintiff, on behalf of himself and all similarly aggrieved employees, hereby brings
7 this representative action for recovery of civil penalties under Labor Code § 2698 *et seq.* This
8 Court has jurisdiction over Defendants’ violations of the California Labor Code because the
9 amount in controversy exceeds this Court’s jurisdictional minimum.

10 **VENUE**

11 2. Venue is proper in this judicial district pursuant to California Code of Civil
12 Procedure §§ 395(a) and 395.5, as at least some of the acts and omissions complained of herein
13 occurred in the County of Los Angeles. Defendants transact business within the County of Los
14 Angeles and/or otherwise are found within the County of Los Angeles, and Defendants are within
15 the jurisdiction of this Court for purposes of service of process.

16 **PARTIES**

17 3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
18 Plaintiff was and currently is, a California resident. During the statute of limitations periods,
19 Plaintiff was employed by Defendants as a non-exempt employee.

20 4. Plaintiff is informed and believes, and based thereon alleges, that during the one
21 year preceding the filing of this Representative Action Complaint and continuing to the present,
22 Defendants did (and do) business by operating a construction drilling company with locations
23 within Los Angeles County and the State of California, and employed Plaintiff and other,
24 similarly-situated non-exempt employees to perform work within Los Angeles County and the
25 State of California. Defendants, therefore, were (and are) doing business in Los Angeles County
26 and the State of California. *See Crestwood Behavioral Health, Inc. v. Superior Court of Alameda*
27 *County* (2021) 60 Cal.App.5th 1069 (holding that venue is proper in a PAGA representative action
28

1 “in any county in which an aggrieved employee worked and Labor Code violations allegedly
2 occurred”)

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

12 6. Plaintiff is informed and believes, and based thereon alleges, that at all times
13 mentioned herein, Defendants were and are the employers of Plaintiff and the aggrieved
14 employees (as defined herein).

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

22 8. At all times mentioned herein, Defendants, and each of them, were members of
23 and engaged in a joint venture, partnership, and common enterprise, and acting within the course
24 and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further,
25 Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and the
26 aggrieved employees, (as defined herein).

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10. During Plaintiff's employment with Defendants, Defendants failed to compensate Plaintiff and other non-exempt employees for all hours actually worked, resulting in unpaid minimum wages and additional unpaid overtime wages. Specifically, Defendants did not maintain accurate timekeeping records, but instead Defendants' foremen personally maintained paper timesheets, or sometimes an iPad, on which they would document employees' shifts. Plaintiff and other non-exempt employees were rarely provided the opportunity to either record or verify their hours worked. Moreover, Defendants foremen held pre-shift safety meetings, commencing before Plaintiff's 6:00 a.m. shift start time, that Plaintiff and other non-exempt employees were not compensated for but required to attend. Further, Defendants failed to provide duty-free meal periods, resulting in Plaintiff and other non-exempt employees performing off-the-clock work during their purported meal periods. Defendants' foremen, however, manually deducted 30-minutes from Plaintiff's timecards for meal periods, without verifying if Plaintiff received timely and uninterrupted meal periods. Defendants also rounded and/or time-shaved Plaintiff and other non-exempt employees' hours to the nearest quarter hour, which resulted in Plaintiff and other non-exempt employees not being compensated for all hours actually worked. Due to Defendants' timekeeping policies and practices that fail to compensate for all hours worked, Plaintiff and other non-exempt employees were deprived of all required minimum wages. *See Camp v. Home Depot U.S.A., Inc.*, (2022) 84 Cal.App.5th 638, 654 ("[I]f an employer, as in this case, can capture and has captured the exact amount of time an employee has worked during a shift, the employer must pay the employee for "all the time" worked."). Further, on occasions when Plaintiff worked over eight hours in a day and/or forty hours in a workweek, this process of time-shaving or rounding also deprived him of all overtime wages owed. As such, Plaintiff and other non-exempt employees were not credited with all hours actually worked and were not paid all minimum and

1 overtime wages earned.

2 11. Defendants also failed to provide Plaintiff and other non-exempt employees with
3 all legally-compliant meal periods due to Defendants' unlawful meal period policies/practices
4 that failed to provide timely, duty-free 30-minute first meal periods commencing before the end
5 of the fifth hour of work. As discussed above, Defendants' foremen manually recorded and
6 deducted 30-minute meal periods from Plaintiff's and other non-exempt-employees' hours
7 without verifying if Plaintiff and other non-exempt-employees received timely and uninterrupted
8 meal periods. Moreover, Defendants frequently failed to provide any meal periods when Plaintiff
9 worked 8-hour shifts. In the event Defendants provided meal periods, they were frequently
10 provided after the fifth hour of work and often interrupted. Specifically, Defendants' foremen
11 interrupted Plaintiff and other non-exempt employees' meal periods with work related tasks, such
12 as unloading cement trucks. On occasions when Plaintiff and other non-exempt employees were
13 not provided with all lawful meal periods to which they were entitled, Defendants failed to pay
14 Plaintiff and other non-exempt employees an additional hour of premium pay at their respective
15 regular rates of pay for each workday in which a meal period violation occurred, as required by
16 Labor Code section 226.7. Upon information and belief, during at least a portion of the relevant
17 time period, Defendants failed to maintain pay codes for the payment of meal period premium
18 payments as required by Labor Code section 226.7.

19 12. Defendants failed to authorize and permit Plaintiff and other non-exempt
20 employees to take all duty-free 10-minute rest periods for every four hours worked, or major
21 fraction thereof, due to Defendants' unlawful rest period policies/practices. Specifically,
22 Defendants failed to authorize and permit Plaintiff and other non-exempt employees to take *any*
23 rest periods during their workday. On occasions when Plaintiff and other non-exempt employees
24 were not authorized and permitted to take all legally-compliant rest periods to which they were
25 entitled, Defendants failed to compensate Plaintiff and other non-exempt employees with an
26 additional hour of premium pay at their respective regular rates of pay for each workday in which
27 a rest period violation occurred, as required by Labor Code § 226.7. Upon information and belief,
28 during at least a portion of the relevant time period, Defendants failed to maintain pay codes for

1 the payment of rest period premium payments as required by Labor Code section 226.7.

2 13. During their respective employments with Defendants, Plaintiff and other non-
3 exempt employees were not reimbursed for all necessary business expenses pursuant to Labor
4 Code § 2802. Specifically, Plaintiff and other non-exempt employees used their personal cellular
5 phones to communicate with Defendants' foremen throughout the workday regarding their job
6 duties. Moreover, Plaintiff and other non-exempt employees were required to purchase and cover
7 repair costs for tools necessary to complete their job duties, including pliers and tire wire wheels,
8 among other items. As such, Defendants failed to reimburse Plaintiff and other non-exempt
9 employees for all necessary business expenses associated with using their personal cellular
10 phones and the purchase of necessary tools, in violation of Labor Code § 2802. Defendants were
11 also mandated by *Cochran v. Schwan's Home Service, Inc.*, (2014) 228 Cal. App. 4th 1137, to
12 reimburse Plaintiff for a reasonable portion of his cellular phone expenses.

13 14. As a result of Defendants' failure to pay all overtime wages, minimum wages, and
14 meal and rest period premium wages owed, Defendants also maintained inaccurate payroll
15 records, issued inaccurate wage statements to Plaintiff and other non-exempt employees, and
16 failed to pay all final wages owed to Plaintiff and other non-exempt employees upon their
17 respective separations from employment.

18 15. Based on the foregoing, Plaintiff seeks to represent himself and all aggrieved
19 employees, as defined by Labor Code § 2699(c), which includes all of Defendants' non-exempt
20 employees who worked for Defendants in California from October 9, 2022 through the present.

21 **FIRST CAUSE OF ACTION**

22 **PRIVATE ATTORNEYS GENERAL ACT**

23 **(AGAINST ALL DEFENDANTS)**

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

26 17. Defendants have committed several Labor Code violations against Plaintiff and
27 other similarly aggrieved employees. Plaintiff is an "aggrieved employee" within the meaning of
28 Labor Code § 2698 *et seq.*, and acting on behalf of himself and other similarly aggrieved

employees, brings this representative action against Defendants to recover the civil penalties due to Plaintiff, other similarly aggrieved employees, and the State of California according to proof pursuant to Labor Code § 2699 including, but not limited to: (1) \$100.00 for each initial violation and \$200 for each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each failure to pay each employee; (2) \$50.00 for each initial violation and \$100 for each subsequent violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$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 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 pay Plaintiff and other aggrieved employees all earned overtime compensation in violation of Labor Code §§ 204, 510, 558, 1194, and 1198;
- b. Failing to pay Plaintiff and other aggrieved employees the statutory minimum wage for all hours worked in violation of Labor Code §§ 1182.12, 1194, 1194.2, and 1197;
- c. Failing to provide Plaintiff and other aggrieved employees all legally required meal periods, and failure to pay meal period premium wages to Plaintiff and other aggrieved employees at their regular rate of pay, in violation of Labor Code §§ 226.7, 512, and 558;
- d. Failing to authorize and permit Plaintiff and other aggrieved employees to take all lawful rest periods to which they are entitled, and failing to pay rest period premium wages to Plaintiff and other aggrieved employees at their regular rate of pay, in violation of Labor Code §§ 226.7, 516, and 558;
- e. Failing to reimburse Plaintiff and other aggrieved employees for all necessary business expenses incurred pursuant to Labor Code §§ 2802 and 2804;

- f. Failing to furnish Plaintiff and other aggrieved employees with complete, accurate, itemized wage statements, in violation of Labor Code § 226;
- g. Failing to timely pay final wages to Plaintiff and other aggrieved employees in violation of Labor Code §§ 201-203;
- h. Failing to maintain accurate records on behalf of Plaintiff and other aggrieved employees, in violation of Labor Code §§ 558 and 1174; and
- i. Failing to pay Plaintiff and other aggrieved employees all earned wages at least twice during each calendar month, in violation of Labor Code § 204.

18. On October 9, 2023, Plaintiff notified Defendants via certified mail, and the California Labor and Workforce Development Agency (“LWDA”) via electronic submission 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 above. Now that sixty-five days have passed from Plaintiff notifying Defendants of these violations, Plaintiff has exhausted his administrative requirements for bringing a claim under the Private Attorneys General Act with respect to these violations.

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

PRAYER

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

1. Upon the First Cause of Action, for civil penalties due to Plaintiff, other similarly aggrieved employees, and the State of California according to proof pursuant to Labor Code § 2699 including, but not limited to: (1) \$100.00 for each initial violation and \$200 for each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each failure to pay each employee; (2) \$50.00 for each initial violation and \$100 for each subsequent violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial

1 violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per
2 employee per pay period; (4) \$250.00 for each initial violation and \$1,000.00 for each subsequent
3 violation pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for
4 each initial violation and \$200 for each subsequent violation per employee per pay period for
5 those violations of the Labor Code for which no civil penalty is specifically provided, based on
6 the following Labor Code violations.

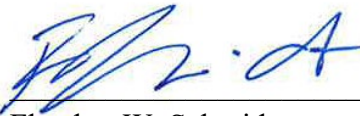
7 2. On all causes of action, for attorneys' fees and costs as provided by Labor
8 Code § 2699 and Code of Civil Procedure § 1021.5; and

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

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11 Dated: December 14, 2023

Respectfully submitted,
HAINES LAW GROUP, APC

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13 By:



14 Fletcher W. Schmidt
15 Attorney for Plaintiff
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