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Superior Court of California,
Sacramento
02/02/2024
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By _____, Deputy
23CV008590

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RICARDO TREJO ANAYA

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SACRAMENTO

RICARDO TREJO ANAYA, an individual,

Plaintiff,

vs.

HARB VENTURES LLC, a California
Limited Liability Company, and DOES 1 TO
50,

Defendants.

CASE NO.: 23CV008590

FIRST AMENDED COMPLAINT FOR:

1. UNPAID WAGES AND OVERTIME
2. FAILURE TO PROVIDE MEAL PERIODS
3. FAILURE TO PROVIDE REST PERIODS
4. FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS
5. WAITING TIME PENALTY FOR NONPAYMENT OF WAGES
6. VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTION 17200
7. VIOLATION OF LABOR CODE PRIVATE ATTORNEYS GENERAL ACT ("PAGA")

DEMAND FOR TRIAL BY JURY

[UNLIMITED CIVIL JURISDICTION]

INTRODUCTION

1. Plaintiff Ricardo Trejo Anaya ("Plaintiff") brings this action on behalf of himself for Defendants' failure to pay regular and overtime wages, failure to provide timely meal periods, failure to provide rest periods, failure to pay premium wages for

BY FAX

missed/delayed meal and rest periods, failure to furnish wage statement, and failure to pay all wages due upon separation of employment. As a result of these acts or omissions, Defendants have violated California statutory laws as described below.

PARTIES

2. Plaintiff Ricardo Trejo Anaya ("Plaintiff") is a natural person and is domiciled in Los Angeles County, California.

3. Defendant Harb Ventures, LLC, a California limited liability company dba Enviro-Master of Sacramento (EMS) was at all relevant times doing business in Sacramento County, California.

4. Plaintiff is ignorant of the true names and capacities of the defendants sued under the fictitious names of Does 1 through 50. Plaintiff will amend this Complaint to show their true names and capacities when the same have been ascertained. Plaintiff is informed and believe that each of the fictitiously named Doe Defendants is legally responsible in some manner for the occurrences alleged and that Plaintiff's injuries and damages, as alleged, were proximately caused by these Doe Defendants' actions.

5. Harb Ventures LLC dba Enviro-Master of Sacramento, and Doe Defendants 1 through 50, inclusive, are referred to herein collectively as "Defendants". Plaintiff is informed and believe and thereon allege that at all times pertinent hereto, each Defendant was the agent and employee of each of its co-Defendants, and in doing the things described herein, was acting within the course and scope of his/her authority as such agent and employee, and each Defendant ratified and approved the acts of his/her agents and employees. Defendants acted as Plaintiff's "employer" and are responsible for any and all damages claimed by Plaintiff in this action under Labor Code section 558.1.

FACTUAL ALLEGATIONS

6. Harb Ventures LLC dba Enviro-Master of Sacramento (EMS) provides commercial cleaning services across Sacramento. In or around January 15, 2019, EMS hired Plaintiff as a Utility Tech. From approximately June 2020 through July 2023, Plaintiff was compensated on a commission-only basis.

7. Plaintiff generally received 30% commission of invoiced totals. Pursuant to piece-rate pay obligations, EMS was required to compensate Plaintiff for all non-productive time (i.e., time spent traveling to work sites), and separately compensate Plaintiff for rest breaks. Yet, Plaintiff received only his 30% commission on a bi-weekly basis, irrespective of the hours worked.

8. In an attempt to avoid piece-rate obligations, EMS perpetuates the falsehood that it pays its employees an hourly rate by issuing wage statements reflecting an “hourly wage”. However, EMS actually subtracts the hourly pay from the 30% commissions earned by employees. As a result, employees receive only their piece rate earnings and do not receive separate compensation for non-productive time in violation of Labor Code Section 226.2. EMS also failed to include commissions earned into Plaintiff’s regular rate of pay for purposes of overtime compensation.

9. In addition, Plaintiff was obligated to retrieve and return a company vehicle at the EMS office daily, yet he received no compensation for the time spent traveling. Instead, EMS remunerated Plaintiff solely for his time upon reaching and departing from work sites.

NOTICE OF DAMAGES

10. For notice purposes, and should Defendants fail to respond to this Complaint, Plaintiff will seek a default judgment against Defendants, and each of them, in an amount up to \$1,000,000 for compensatory damages, an equivalent amount in liquidated damages, and \$1,000,000 in civil penalties in accordance with proof at the time of the default hearing. This notice is provided in order to comply with due process requirements for the purpose of a default judgment. If Defendants respond to this Complaint and appear in this action, Plaintiff will seek damages in accordance with proof at the time of trial.

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FIRST CAUSE OF ACTION
UNPAID REGULAR WAGES AND OVERTIME
(Against All Defendants)

11. Plaintiff incorporates by reference all other paragraphs of this Complaint as if they were re-alleged and set forth herein.

12. Under Labor Code §§ 204, 215, 216, 218.5, 510, 1194, 1194.2, 1197, 1199, and the applicable IWC Wage Order, it is unlawful for an employer to suffer or permit an employee to work without paying wages for all hours worked. "Hours worked" is defined to include the time an employee is suffered or permitted to work, whether or not required to do so. At all relevant times, Defendants have failed to pay Plaintiff for all hours worked and/or have regularly and consistently maintained policies and practices of refusing to pay Plaintiff for all hours worked.

13. **Unpaid Regular Wages:** Plaintiff should have received regular wages according to the hours worked during Plaintiff's employment. Defendants owe Plaintiff regular wages and have failed and refused, and continue to fail and refuse, to pay Plaintiff the amounts owed as regular wages.

14. **Unpaid Overtime Wages:** Plaintiff was entitled to overtime compensation for all overtime hours worked during Plaintiff's employment. During Plaintiff's employment, Defendants failed to pay Plaintiff for all hours worked, including Plaintiff's overtime hours, and Plaintiff is therefore entitled to the amounts owed as overtime wages.

15. **Liquidated Damages:** Plaintiff is entitled to liquidated damages under Labor Code section 1194.2(a) and, separately, liquidated damages under The Fair Labor Standards Act ("FLSA"), See 29 U.S.C. 216(b). To the extent Plaintiff does not recover liquidated damages under both provisions, or is not entitled to recover liquidated damages under both provisions, Plaintiff seeks the greater award of liquidated damages.

16. As a direct and proximate result of Defendants' conduct, as set forth herein, Plaintiff has sustained damages and been deprived of wages and overtime compensation that are owed in amounts to be proven at trial. Plaintiff is entitled to recovery of such amounts, plus interest, liquidated damages, and attorneys' fees and costs.

SECOND CAUSE OF ACTION
FAILURE TO PROVIDE MEAL PERIODS
(Against All Defendants)

17. Plaintiff incorporates by reference all other paragraphs of this Complaint as if they were re-alleged and set forth herein.

18. California Labor Code § 512 provides, in pertinent part, as follows: "An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and the employee".

19. Pursuant to Defendants' policies, the demands of Plaintiff's duties, and Plaintiff's misclassification status, Plaintiff was required to, and actually did, forego the meal periods required to be provided to Plaintiff. By failing to provide Plaintiff with these meal periods, Defendants violated California Labor Code sections 512 and 226.7 and the applicable IWC Wage Order. As a result of the unlawful acts of Defendants set forth herein, Plaintiff is entitled to additional wages for the missed and delayed meal periods.

THIRD CAUSE OF ACTION
FAILURE TO PROVIDE REST PERIODS
(Against All Defendants)

20. Plaintiff incorporates by reference all other paragraphs of this Complaint as if they were re-alleged and set forth herein.

21. The applicable IWC Wage Order authorizes and requires employees to take paid rest periods based on the total hours worked daily at the rate of ten minutes rest per four hours or major fraction thereof. Cal. Labor Code § 226.7(a) provides: "No employer shall require an employee to work during any . . . rest period mandated by an applicable order of the Industrial Welfare Commission."

22. Pursuant to Defendants' policies, the demands of Plaintiff's duties, and Plaintiff's misclassification status, Plaintiff routinely was required to take delayed rest periods and/or to skip rest periods. By requiring and permitting Plaintiff to miss these rest periods, or take delayed rest periods, Defendants violated California Labor Code section

226.7 and the applicable IWC Wage Order and California Labor Code section 226.7. As a result of the unlawful acts of Defendants set forth herein, Plaintiff is entitled to additional wages for the missed and delayed rest periods.

FOURTH CAUSE OF ACTION
FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS
(Against All Defendants)

23. Plaintiff incorporates by reference all other paragraphs of this Complaint as if they were re-alleged and set forth herein.

24. Defendants knowingly and intentionally failed to provide timely, accurate, itemized wage statements in accordance with Cal. Lab. Code §226(a) and the applicable IWC Wage Order. Such failure caused injury to Plaintiff by, among other things, impeding Plaintiff from knowing the amount of wages to which Plaintiff is and was legally entitled. At all times relevant herein, Defendants have failed to maintain records of hours worked by Plaintiff as required under Labor Code §1174(d).

25. Prior to the completion of discovery, and to the best of Plaintiff's knowledge at the time of filing this Complaint, Plaintiff's good faith estimate of the number of pay periods in which Defendants have failed to provide accurate itemized wage statements to Plaintiff in each and every pay period during Plaintiff's employment. Plaintiff seeks the amount provided under Cal. Lab. Code §226(e), including the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurred and one hundred dollars (\$100) for each violation in a subsequent pay period.

FIFTH CAUSE OF ACTION
WAITING-TIME PENALTY FOR NONPAYMENT OF WAGES
(Against All Defendants)

26. Plaintiff incorporates by reference all other paragraphs of this Complaint as if they were re-alleged and set forth herein.

27. Plaintiff separated from employment with Defendants as further alleged herein. Upon separation, and within the statutorily required timeline, Defendants willfully failed to pay Plaintiff all wages when due.

28. Plaintiff seeks waiting time penalties as authorized by law, including Labor Code sections 203 and 218.

SIXTH CAUSE OF ACTION
VIOLATION OF BUSINESS & PROFESSIONS CODE § 17200
(Against All Defendants)

29. Plaintiff incorporates by reference all other paragraphs of this Complaint as if they were re-alleged and set forth herein.

30. Defendants' violations of the Labor Code and other laws and regulations as alleged by this Complaint, and other wrongful, tortious and illegal acts and omissions, all constitute unfair business practices in violation of the Unfair Competition Law, Business and Professions Code § 17200 et seq.

31. As a result of Defendants' unfair business practices, Defendants have reaped unfair benefits and illegal profits at the expense of Plaintiff and members of the public. Defendants' utilization of such unfair business practices constitutes unfair competition and provides an unfair advantage over Defendants' competition. Defendants should be made to disgorge the ill-gotten gains and restore such monies to Plaintiff.

32. Defendants' unfair business practices entitles Plaintiff to seek preliminary and permanent injunctive relief, including but not limited to orders that Defendants account for, disgorge and restore to Plaintiff any compensation unlawfully withheld from Plaintiff, and for which Defendants were unjustly enriched.

SEVENTH CAUSE OF ACTION
VIOLATION OF LABOR CODE PRIVATE ATTORNEYS GENERAL ACT ("PAGA")
(Against All Defendants)

33. Plaintiff incorporates by reference all other paragraphs of this Complaint as if they were re-alleged and set forth herein.

34. Plaintiff brings this cause of action on behalf of himself and all other aggrieved current and former employees of Defendants and seeks civil penalties for each and every violation alleged herein. Plaintiff has filed a claim with the California Labor and Workforce Development Agency (hereafter, "LWDA") and provided a copy by certified mail to Defendants.

35. Plaintiff complied with all procedural requirements of Labor Code § 2699.3 before filing this Complaint. LWDA did not respond to his notice of the alleged violations within the statutory timeframe, and Plaintiff has therefore exhausted administrative remedies. Plaintiff is an aggrieved employee. Plaintiff was employed by Defendants and the violations alleged herein were committed against Plaintiff. Plaintiff brings this action on behalf of Plaintiff and all other current and former aggrieved employees. At the time of each violation, Defendants employed one or more employees.

36. As a result of the aforesaid wrongful and illegal conduct of the Defendants, and each of them, Plaintiff is entitled to civil penalties in an amount to be determined at trial, costs, and attorney's fees against Defendants.

DEMAND FOR JURY TRIAL

37. Plaintiff hereby demands trial by jury against all Defendants of his claims against Defendants.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

1. For compensatory damages, including but not limited to, unpaid regular wages, overtime wages, and premium pay for missed or delayed meal and rest periods;
2. For statutory damages and penalties, including but not limited to, all penalties authorized under PAGA;
3. For temporary, preliminary, and permanent injunction;
4. Attorney's fees and costs of suit;
5. For liquidated damages as provided by law, including but not limited to, under the Fair Labor Standards Act ("FLSA");
6. Pre-judgment interest on any damages or other amounts deemed payable;

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7. Other or further relief as the Court deems just and proper;

Dated: January 10, 2024

HAULK & HERRERA LLP

By: 

Matthew A. Haulk, Esq.
Jose M. Herrera, Esq.
Attorneys for Plaintiff
RICARDO TREJO ANAYA

PROOF OF SERVICE

Ricardo Trejo Anaya v. Harb Ventures LLC
Sacramento County Superior Court Case No.: 23CV008590

1.	At the time of service, I was at least 18 years of age and not a party to this legal action.	
2.	My business address is 100 Pine Street, Suite 1250, San Francisco, CA 94111	
3.	I served copies of the following document(s): FIRST AMENDED COMPLAINT FOR: 1. UNPAID WAGES AND OVERTIME 2. FAILURE TO PROVIDE MEAL PERIODS 3. FAILURE TO PROVIDE REST PERIODS 4. FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS 5. WAITING TIME PENALTY FOR NONPAYMENT OF WAGES 6. VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTION 17200 7. VIOLATION OF LABOR CODE PRIVATE ATTORNEYS GENERAL ACT ("PAGA") DEMAND FOR TRIAL BY JURY	
4.	I served the documents listed above in Item 3 on the following persons at the addresses listed: Jonathan R Babione, Esq. Jennifer R. Lucas, Esq. Adam Nathaniel Arce, Esq. FERBER LAW 2603 Camino Ramon, Suite 385 San Ramon, California 94583 Telephone: (925) 355-9800 Email: jbabione@ferberlaw.com jucas@ferberlaw.com aarce@ferberlaw.com cpierce@ferberlaw.com <i>Attorney for Defendant Harb Ventures, LLC</i>	
5.	a.	By Personal Service. I personally delivered the documents on the date shown below to the person(s) at the addresses listed above in Item 4. (1) For a party represented by an attorney, delivery was made to the attorney or at the attorney's office by leaving the documents in an envelope or package clearly labeled to identify the attorney being served with a receptionist or an individual in charge of the office. (2) For a party delivery was made to the party or by leaving the documents in the party's residence between the hours of eight in the morning and six in the evening with some person not less than 18 years of age.

	b.	By United States Mail. I enclosed the documents in a sealed envelope or package, in the mail at San Rafael, California, where I am a resident or employee in the County of Marin where the mailing occurred. I addressed the sealed envelope or package to the persons at the addresses in Item 4 and (specify one):
	(1)	Deposited the sealed envelope in a United States Postal Service mailbox with the postage fully prepaid on the date shown below
	(2)	Placed the envelope for collection and mailing on the date shown below, following our ordinary business practices and I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.
	c.	By Overnight Delivery. Pursuant to California Rules of Court, Rule 8.25, I enclosed the documents on the date shown below in an envelope or package provided by an overnight delivery carrier and addressed to the person at the addresses in Item 4. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.
	d.	By Messenger Service. I served the documents on the date shown below by placing them in an envelope or package addressed to the person on the addresses listed in Item 4 and providing them to a professional messenger service for service.
	e.	By Fax Transmission. Based on an agreement to accept service by fax transmission, I faxed the documents on the date shown below to the fax numbers of persons listed in Item 4. No error was reported by the fax machine that I used
	f. X	By Electronic Transmission. I caused the documents to be sent on the date shown below to the persons at the electronic service address listed above in Item 4. I did not receive within a reasonable time after the transmission any electronic message or other indication that the transmission was unsuccessful.
6.	I served the documents by the means described above on February 2, 2024	

I declare under penalty of perjury that this document is signed in Los Angeles, California under the laws of the State of California and that the foregoing is true and correct.

February 2, 2024	Toni Gesin	
Date	(Type or Print Name)	(Signature of Declarant)