

12/8/2023 10:59 AM

By: Sylvia Guajardo, DEPUTY

1 **JUSTICE FOR WORKERS, P.C.**

Young K. Park, SB# 287589

2 E-Mail: young@justiceforworkers.com

3 William C. Sung, SB# 280792

E-Mail: william@justiceforworkers.com

4 3600 Wilshire Boulevard, Suite 1815

Los Angeles, CA 90010

5 Tel: 323-922-2000

6 Fax: 323-922-2000

7 Attorneys for Plaintiff JOSE JAVIER HERNANDEZ

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **FOR THE COUNTY OF SAN BERNARDINO**

10 JOSE JAVIER HERNANDEZ, an individual
11 and on behalf of all others similarly situated;

12 Plaintiff,

13 vs.

14 GENLABS, a California corporation; ELITE
15 STAFFING GROUP, a California corporation;
16 and DOES 1 through 50,

17 Defendants.

Case No.: CIVSB2325052

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT:**

- (1) **MINIMUM WAGE VIOLATIONS
(LABOR CODE §§ 1182.12, 1194,
1194.2, 1197);**
- (2) **OVERTIME WAGE VIOLATIONS
(LABOR CODE §§ 204, 510, 1194,
1198);**
- (3) **MEAL PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 512, 558);**
- (4) **REST PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 516, 558);**
- (5) **WAGE STATEMENT PENALTIES
(LABOR CODE § 226);**
- (6) **WAITING TIME PENALTIES
(LABOR CODE §§ 201-203);**
- (7) **UNFAIR COMPETITION (BUS &
PROF CODE §§ 17200, *et seq.*);**
- (8) **FAILURE TO PERMIT
INSPECTION OF EMPLOYMENT
RECORDS (LABOR CODE §§ 1198.5
& 226(b)); AND**
- (9) **CIVIL PENALTIES UNDER THE
CALIFORNIA PRIVATE**

**ATTORNEYS GENERAL ACT
(LABOR CODE §§ 2698, *et seq.*)
DEMAND FOR JURY TRIAL**

Plaintiff JOSE JAVIER HERNANDEZ (“Plaintiff”), on behalf of himself and all others similarly situated, hereby brings this Class and Representative Action Complaint (“Complaint”) against Defendants GENLABS, a California corporation; ELITE STAFFING GROUP, a California corporation; and DOES 1 to 50 inclusive (collectively “Defendants”), and on information and belief alleges as follows:

JURISDICTION AND VENUE

1. Plaintiff, on behalf of himself and all others similarly situated, hereby brings this Complaint for recovery of unpaid wages and penalties under California Business and Professions Code § 17200, *et seq.*, Labor Code §§ 201-204, 226, 226.7, 246, 432, 510, 512, 516, 558, 1182.12, 1194, 1194.2, 1197, 1198, 1198.5, 2802, 2698, *et seq.*, and Industrial Welfare Commission (“IWC”) Wage Order 1-2001 and 7-2001 (the “Wage Orders”), in addition to seeking injunctive relief, declaratory relief, and restitution. This Complaint is brought pursuant to California Code of Civil Procedure § 382. This Court has jurisdiction over Defendants’ violations of the Labor Code because the amount in controversy exceeds \$25,000.

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

PARTIES

3. Plaintiff is, and at all times relevant herein was, an individual over the age of eighteen (18) and is a California resident. Within the statute of limitations periods applicable to each cause of action pled herein, Plaintiff was jointly employed by Defendants as a non-exempt employee. Plaintiff was, and is, a victim of Defendants’ policies, practices, and/or customs complained of herein and has been deprived of the rights guaranteed by Business and Professions Code § 17200, *et seq.*, Labor Code §§ 201-204, 226, 226.7, 246, 432, 510, 512, 516, 558, 1182.12,

1 1194, 1194.2, 1197, 1198, 1198.5, 2802, 2698, *et seq.*, and The Wage Orders.

2 4. Plaintiff is informed and believes, and based thereon alleges, that during the
3 applicable statute of limitations for each cause of action pled herein and continuing to the present,
4 Defendants engage in and continue to engage in business, and jointly employed Plaintiff and other,
5 similarly-situated non-exempt employees within San Bernardino County, and the State of California
6 and, therefore, were (and are) doing business in San Bernardino County and the State of California.

7 5. Plaintiff does not know the true names or capacities, whether individual, partner, or
8 corporate, of the defendants sued herein as DOES 1 to 50, inclusive, and for that reason, said
9 defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to
10 amend this Complaint when such true names and capacities are discovered. Plaintiff is informed,
11 and believes, and based thereon alleges, that each of said fictitious defendants, whether individual,
12 partners, or corporate, was responsible in some manner for the acts and omissions alleged herein,
13 and proximately caused Plaintiff, the Classes (as defined below), and Aggrieved Employees (as
14 defined below) to be subject to the unlawful employment practices, wrongs, injuries, and damages
15 complained of herein.

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

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

27 8. At all times herein mentioned, Defendants, and each of them, were members of, and
28 engaged in, a joint venture, partnership, and common enterprise, and acting within the course and

1 scope of, and in pursuance of, said joint venture, partnership, and common enterprise.

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

5 **FACTUAL ALLEGATIONS**

6 10. Defendant GENLABS owns, operates, or otherwise manages a janitorial and
7 specialty chemical formulating, labeling, filling, and packaging business in Chino, California.
8 Defendant ELITE STAFFING GROUP is a staffing agency. Defendant ELITE STAFFING
9 GROUP employed and placed Plaintiff with Defendant GENLABS, and Defendant GENLABS
10 employed Plaintiff, as an hourly paid, non-exempt employee from June 2023 to July 2023.

11 11. Throughout Plaintiff's employment with Defendants, Defendants' timekeeping
12 and/or payroll policies and practices resulted in Plaintiff and other non-exempt employees not being
13 compensated for all hours actually worked. Plaintiff and other non-exempt employees regularly
14 worked more than eight hours in a workday or 40 hours in a workweek. Defendants required
15 Plaintiff and other non-exempt employees to perform work before their scheduled shifts, after their
16 scheduled shifts, and/or during off-the-clock meal breaks, such as waiting in line for several
17 minutes to clock in and out, and failed to compensate employees for this time. Upon information
18 and belief, Defendants also failed to incorporate multiple rates of pay and/or all non-discretionary
19 remuneration into the regular rate of pay. As a result, Plaintiff and other non-exempt employees
20 were not compensated for all earned minimum and overtime wages.

21 12. Defendants failed to provide Plaintiff and other non-exempt employees with all
22 legally compliant meal periods due to Defendants' meal period policies/practices, which have
23 frequently resulted in late (commencing after the fifth hour of work), short (less than 30 minutes),
24 and/or missed meal periods. Plaintiff and other non-exempt employees were not able to take their
25 legally compliant meal breaks due to work demands imposed by Defendants, such as waiting in line
26 for several minutes to clock in and out and requiring them to walk several minutes from the time
27 clock to the breakroom. Upon information and belief, Defendants do not keep accurate records of
28 Plaintiff's and other non-exempt employees' hours worked, including accurate time records

1 showing when employees take their meal periods. On those occasions when Plaintiff and other non-
2 exempt employees were not provided with all legally compliant meal periods to which they were
3 entitled, Defendants failed to compensate Plaintiff and other non-exempt employees with the
4 required meal period premium(s) for each workday there was a meal period violation as mandated
5 by Labor Code § 226.7. Upon information and belief, Defendants maintained no mechanism for the
6 payment of meal period premium payments as required by Labor Code § 226.7 in the event that a
7 legally compliant meal period was not provided to their non-exempt employees.

8 13. Plaintiff and other non-exempt employees were not authorized and permitted to take
9 all required rest periods due to Defendants' unlawful rest period policies/practices, which failed to
10 authorize and permit a net 10-minute rest period for every four hours worked, or major fraction
11 thereof. Plaintiff and other non-exempt employees were not able to take their legally compliant rest
12 breaks due to work demands imposed by Defendants, such as requiring them to walk several
13 minutes from their work area to the breakroom and unlawfully combining their second rest period
14 with their meal period and thereby failing to authorize and permit a second rest period. On those
15 occasions when Plaintiff and other non-exempt employees were not authorized and permitted to
16 take all legally compliant rest periods to which they were entitled, Defendants failed to compensate
17 them with the required rest period premium(s) for each workday there was a rest period violation as
18 mandated by Labor Code § 226.7. Upon information and belief, Defendants maintained no
19 mechanism for the payment of rest period premium payments as required by Labor Code § 226.7, in
20 the event that a legally compliant rest period was not authorized and permitted to their non-exempt
21 employees.

22 14. Additionally, upon information and belief, Defendants violated Labor Code § 246 by
23 failing to incorporate multiple rates of pay and/or all non-discretionary remuneration into the paid
24 sick leave pay rate.

25 15. As a result of Defendants' failure to pay all minimum and overtime wages, failure to
26 pay all meal and rest period premium wages, and unlawful timekeeping and payroll practices as
27 alleged above, Defendants maintained inaccurate payroll records and issued inaccurate wage
28 statements to Plaintiff and other non-exempt employees. As a further result of Defendants' failure to

1 pay all minimum and overtime wages, sick leave wages, and meal and rest period premium wages,
2 Defendants failed to timely pay all final wages to Plaintiff and other former non-exempt employees
3 upon their separation of employment from Defendants.

4 16. Labor Code section 1198 provides: “The employment of any employee ... under
5 conditions of labor prohibited by the [Industrial Wage Orders] is unlawful.” Section 15 of the Wage
6 Orders provide: “(A) The temperature maintained in each work area shall provide reasonable
7 comfort consistent with industry-wide standards for the nature of the process and the work
8 performed. (B) If excessive heat or humidity is created by the work process, the employer shall take
9 all feasible means to reduce such excessive heat or humidity to a degree providing reasonable
10 comfort. Where the nature of the employment requires a temperature of less than 60° F, a heated
11 room shall be provided to which employees may retire for warmth, and such room shall be
12 maintained at not less than 68° F. (C) A temperature of not less than 68° F shall be maintained in
13 the toilet rooms, resting rooms, and change rooms during hours of use. (D) Federal and State energy
14 guidelines shall prevail over any conflicting provision of this section.” California law requires an
15 employer to endeavor to provide a safe and healthy workplace. (Cal. Code Regs., tit. 8, §3203.)
16 Labor Code section 6720 required the California Division of Occupational Safety and Health
17 (“Cal/OSHA”) to propose an indoor heat illness standard by January 1,2019. (Lab. Code, § 6720.)
18 Cal/OSHA’s draft standard applies its proposed regulations to “all indoor work areas where the
19 temperature equals or exceeds 82 degrees Fahrenheit when employees are present.” During the
20 relevant time period, Defendant GENLABS owns, operates, or otherwise manages a facility in
21 Chino, California. Defendant GENLABS failed to provide Plaintiff and other employees with
22 reasonable comfort by maintaining the indoor temperature within the range of industry standards
23 by, inter alia, providing adequate heating, air conditioning, and/or ventilation and failed to maintain
24 a temperature of not less than 68° F in toilet rooms and breakrooms for Plaintiff and other
25 employees.

26 17. On May 25, 2023, Plaintiff submitted a request for inspection or copy of his
27 personnel file, payroll and time records, and all documents he signed relating to the obtaining or
28 holding of employment under California Labor Code §§ 226(b), 432, and 1198.5 to Defendant

1 ELITE STAFFING GROUP. As of the date of this notice, Defendant ELITE STAFFING GROUP
2 has failed to permit Plaintiff to inspect or copy his employment records.

3 **CLASS ACTION ALLEGATIONS**

4 18. **Class Definitions:** Plaintiff brings this action on behalf of himself and the following
5 Classes pursuant to § 382 of the California Code of Civil Procedure:

- 6 a. Minimum Wage Class: All current and former non-exempt employees of Defendants
7 in the State of California who were subject to Defendants' timekeeping and payroll
8 policies and/or practices, during the four years immediately preceding the filing of
9 this action through the present.
- 10 b. Overtime Class: All current and former non-exempt employees of Defendants in the
11 State of California who worked more than eight hours per day and/or 40 hours per
12 week and were subject to Defendants' timekeeping policies and/or practices, during
13 the four years immediately preceding the filing of this action through the present.
- 14 c. Meal Period Class: All current and former non-exempt employees of Defendants in
15 the State of California who: (i) worked at least one shift in excess of 5.0 hours;
16 and/or (ii) worked at least one shift in excess of 10.0 hours, during the four years
17 immediately preceding the filing of this action through the present.
- 18 d. Rest Period Class: All current and former non-exempt employees of Defendants in
19 the State of California who worked at least one shift of 3.5 or more hours, during the
20 four years immediately preceding the filing of this action through the present.
- 21 e. Wage Statement Class: All current and former non-exempt employees of Defendants
22 in the State of California who received a wage statement, during the one year
23 immediately preceding the filing of this action through the present.
- 24 f. Waiting Time Penalty Class: All of Defendants' formerly employed members of the
25 Minimum Wage Class, Overtime Class, Rest Period Class, and/or Meal Period Class
26 during the three years immediately preceding the filing of this action through the
27 present.

28 ///

1 19. **Numerosity/Ascertainability:** The members of the Classes are so numerous that
2 joinder of all members would be impractical, if not impossible. The membership of the Classes is
3 unknown to Plaintiff at this time; however, it is estimated that the members of the Classes number
4 greater than 50 individuals. The identity of such membership is readily ascertainable via inspection
5 of Defendants' employment records, including payroll records.

6 20. **Common Questions of Law and Fact Predominate/Well-Defined Community of**
7 **Interest:** There are predominant common questions of law and fact as to Plaintiff and members of
8 the Classes, which predominate over questions affecting only individual members including,
9 without limitation to:

- 10 a. Whether Defendants properly paid all overtime wages to members of the Overtime
11 Class;
- 12 b. Whether Defendants paid at least the minimum wage for all hours worked to
13 members of the Minimum Wage Class;
- 14 c. Whether Defendants provided all legally compliant meal periods or paid meal period
15 premium wages due to members of the Meal Period Class pursuant to Labor Code §§
16 226.7 and 512;
- 17 d. Whether Defendants authorized and permitted all legally compliant rest periods or
18 paid all rest period premium wages due to members of the Rest Period Class
19 pursuant to Labor Code §§ 226.7 and 516;
- 20 e. Whether Defendants furnished legally compliant wage statements to members of the
21 Wage Statement Class pursuant to Labor Code § 226; and
- 22 f. Whether Defendants timely paid all final wages to members of the Waiting Time
23 Class at the time of their separation of employment pursuant to Labor Code §§ 201
24 and 202.

25 These common questions of law and fact set forth above are numerous and substantial and
26 stem from Defendants' policies and/or practices applicable to each individual class member. As
27 such, the common questions predominate over individual questions concerning each individual
28 class member's showing as to their eligibility for recovery or as to the amount of their damages.

1 21. **Typicality:** The claims of Plaintiff are typical of the claims of the Classes because
2 Plaintiff was employed by Defendants as a non-exempt employee in California during the statute(s)
3 of limitations period applicable to each cause of action pled in the Complaint. As alleged herein,
4 Plaintiff, like the members of the Classes, was not paid all minimum and overtime wages owed due
5 to Defendants' timekeeping and payroll policies/practices, was not provided all required meal
6 periods, was not authorized and permitted all rest periods, did not receive premium pay for non-
7 compliant meal and rest periods, was not paid all final wages upon separation of employment, and
8 was not provided with accurate, compliant, itemized wage statements.

9 22. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps
10 to represent fairly and adequately the interests of the members of the Classes. Moreover, Plaintiff's
11 attorneys are ready, willing and able to fully and adequately represent the members of the Classes
12 and Plaintiff. Plaintiff's attorneys have litigated numerous wage-and-hour class actions in state and
13 federal courts in the past and are committed to vigorously prosecuting this action on behalf of the
14 members of the Classes.

15 23. **Superiority:** The Labor Code is broadly remedial in nature and serves an important
16 public interest in establishing minimum working conditions and standards in California. These laws
17 and labor standards protect the average working employee from exploitation by employers who
18 have the responsibility to follow the laws and who may seek to take advantage of superior economic
19 and bargaining power in setting onerous terms and conditions of employment. The nature of this
20 action and the format of laws available to Plaintiff and members of the Classes make the class
21 action format a particularly efficient and appropriate procedure to redress the violations alleged
22 herein. If each employee were required to file an individual lawsuit, Defendants would necessarily
23 gain an unconscionable advantage since they would be able to exploit and overwhelm the limited
24 resources of each individual plaintiff with their vastly superior financial and legal resources.

25 24. Moreover, requiring each member of the Class(es) to pursue an individual remedy
26 would also discourage the assertion of lawful claims by employees who would be disinclined to file
27 an action against their former and/or current employer for real and justifiable fear of retaliation and
28 permanent damages to their careers at subsequent employment. The claims of the individual

1 members of the Class are not sufficiently large to warrant vigorous individual prosecution
2 considering all of the concomitant costs and expenses attending hereto.

3 25. Furthermore, the prosecution of separate actions by the individual class members,
4 even if possible, would create a substantial risk of inconsistent or varying verdicts or adjudications
5 with respect to the individual class members against Defendants herein; and which would establish
6 potentially incompatible standards of conduct for Defendants; and/or legal determinations with
7 respect to individual class members which would, as a practical matter, be dispositive of the interest
8 of the other class members not parties to adjudications or which would substantially impair or
9 impede the ability of the class members to protect their interests. As such, the Classes identified
10 hereinabove are maintainable as classes under § 382 of the Code of Civil Procedure.

11 **FIRST CAUSE OF ACTION**

12 **MINIMUM WAGE VIOLATIONS**

13 **(Against All Defendants)**

14 26. Plaintiff re-alleges and incorporates by reference all preceding paragraphs as though
15 fully set forth herein.

16 27. Labor Code §§ 1182.12, 1197, and the Wage Orders, § 4 establish the right of
17 employees to be paid minimum wages for all hours worked, in amounts set by state or local law.
18 Labor Code §§ 1194(a) and 1194.2(a) provide that an employee who has not been paid the legal
19 minimum wage as required by Labor Code § 1197 may recover the unpaid balance together with
20 attorneys' fees and costs of suit, as well as liquidated damages in an amount equal to the unpaid
21 wages and interest accrued thereon. At all relevant times herein, Defendants failed to conform its
22 pay practices to the requirements of the law by failing to pay Plaintiff and members of the
23 Minimum Wage Class for all hours worked, including, but not limited to, all hours they were
24 subject to the control of Defendants and/or suffered or permitted to work under the Labor Code and
25 the Wage Orders.

26 28. Labor Code § 1198 makes unlawful the employment of an employee under
27 conditions that the IWC prohibits. California Labor Code § 1194(a) and 1194.2(a) provide that an
28 employer who has failed to pay its employees the legal minimum wage is liable to pay those

1 employees the unpaid balance of the unpaid wages as well as liquidated damages in an amount
2 equal to the wages due and interest thereon.

3 29. As a consequence of Defendants' non-payment of minimum wages, Plaintiff and
4 members of the Minimum Wage Class seek recovery of the balance of unpaid wages, including
5 interest thereon, statutory penalties, attorneys' fees, and costs of suit according to Labor Code §§
6 218.6, 558, 1194, 1194.2, and 1199, Code of Civil Procedure § 1021.5; and Civil Code §§ 3287 and
7 3289.

8 **SECOND CAUSE OF ACTION**
9 **OVERTIME WAGE VIOLATIONS**
10 **(Against All Defendants)**

11 30. Plaintiff re-alleges and incorporates by reference all preceding paragraphs as though
12 fully set forth herein.

13 31. This cause of action is brought pursuant to Labor Code §§ 204, 510, 1194, 1198, and
14 the Wage Orders, § 3, which provide that non-exempt employees are entitled to all overtime wages
15 and compensation for all overtime hours worked and provide a private right of action for the failure
16 to pay all overtime compensation for overtime work performed.

17 32. At all times relevant herein, Defendants were required to properly compensate non-
18 exempt employees, including Plaintiff and members of the Overtime Class, for all overtime hours
19 worked pursuant to Labor Code § 1194 and the Wage Orders. the Wage Orders, § 3 requires an
20 employer to pay an employee one and one-half (1½) times and two times the employee's regular
21 rate of pay for overtime and double time hours work. Defendants caused Plaintiff and members of
22 the Overtime Class to work overtime hours but failed to compensate these employees for all
23 overtime hours actually worked.

24 33. As a consequence of Defendants' non-payment of overtime wages, Plaintiff and
25 members of the Overtime Class seek recovery of the balance of unpaid overtime wages, including
26 interest thereon, statutory penalties, attorneys' fees, and costs of suit according to Labor Code §§
27 204, 210, 216, 218.6, 510, 1194, and 1198; Code of Civil Procedure § 1021.5; and Civil Code §§
28 3287 and 3289.

THIRD CAUSE OF ACTION
MEAL PERIOD VIOLATIONS
(Against All Defendants)

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

35. Plaintiff is informed and believes, and based thereon alleges, that Defendants failed in their affirmative obligation to provide all of their non-exempt employees in California, including Plaintiff and members of the Meal Period Class, with all legally compliant meal periods in accordance with the mandates of the Labor Code and the Wage Orders, § 11.

36. Despite Defendants' violations, Defendants did not pay an additional hour of pay to Plaintiff and members of the Meal Period Class at their respective regular rates of compensation, in accordance with California Labor Code §§ 204, 210, 226.7, and 512.

37. As a consequence of Defendants' unlawful meal period practices, Plaintiff and members of the Meal Period Class seek recovery of unpaid premium wages for meal period violations including interest thereon, statutory penalties, and costs of suit, pursuant to Labor Code §§ 226.7, 512, 558, the Wage Orders, and Civil Code §§ 3287 and 3289.

FOURTH CAUSE OF ACTION
REST PERIOD VIOLATIONS
(Against All Defendants)

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

39. Labor Code §§ 226.7, 516, 558, and the Wage Orders, § 12 and establish the right of employees to be provided with a rest period of at least 10 minutes for each four-hour period worked, or major fraction thereof. Plaintiff is informed and believes, and based thereon alleges, that despite Defendants' failure to authorize and permit Plaintiff and members of the Rest Period Class to take all legally compliant rest periods as alleged herein, Defendants did not pay these individuals an additional hour of pay at their respective regular rate for the rest periods that they failed to authorize and permit them to take, as required by Labor Code § 226.7.

1 40. As a consequence of Defendants' unlawful rest period practices, Plaintiff and
2 members of the Rest Period Class seek recovery of unpaid premium wages for rest period violations
3 including interest thereon, statutory penalties, and costs of suit, statutory penalties, attorneys' fees,
4 and costs of suit according to Labor Code §§ 226.7, 516, 558, the Wage Orders, and Civil Code §§
5 3287 and 3289.

6 **FIFTH CAUSE OF ACTION**
7 **WAGE STATEMENT PENALTIES**
8 **(Against All Defendants)**

9 41. Plaintiff re-alleges and incorporates by reference all preceding paragraphs as though
10 fully set forth herein.

11 42. Plaintiff is informed and believes, and based thereon alleges, that Defendants
12 knowingly and intentionally, as a matter of uniform policy and practice, failed to furnish Plaintiff
13 and members of the Wage Statement Class with accurate and complete, itemized wage statements
14 that included, among other requirements, all hours worked, total gross wages earned, all rates of pay
15 and corresponding number of hours worked, total net wages earned, the inclusive dates of the pay
16 period, and/or the correct name and address of the legal entity that is the employer in violation of
17 Labor Code § 226.

18 43. Defendants' failure to furnish Plaintiff and members of the Wage Statement Class
19 with accurate and complete, itemized wage statements resulted in actual injury, as said failures led
20 to, among other things, the non-payment of minimum and overtime wages and meal and rest period
21 premium wages owed and deprived them of the information necessary to identify the discrepancies
22 in Defendants' reported payroll data.

23 44. As a consequence of Defendants' unlawful wage statement practices, Plaintiff and
24 members of the Wage Statement Class seek damages and/or statutory penalties, reasonable
25 attorneys' fees, and costs of suit according to California Labor Code § 226.

26 ///

27 ///

28 ///

SIXTH CAUSE OF ACTION
WAITING TIME PENALTIES
(Against All Defendants)

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

46. This cause of action is brought pursuant to Labor Code §§ 201-203, which require an employer to pay all wages immediately at the time of separation of employment in the event the employer discharges the employee or the employee provides at least 72 hours of notice of their intent to quit. In the event the employee provides less than 72 hours of notice of their intent to quit, said employee's wages become due and payable not later than 72 hours upon said employee's last date of employment.

47. Plaintiff is informed and believes, and based thereon alleges, that Defendants failed to timely pay Plaintiff and members of the Waiting Time Class all final wages due to them at their separation from employment, including unpaid minimum and overtime wages as well as unpaid meal and rest period premium wages.

48. Furthermore, Plaintiff is informed and believes, and based thereon alleges, that as a matter of uniform policy and practice, Defendants continue to fail to pay Plaintiff and members of the Waiting Time Class all earned wages at the end of employment in a timely manner pursuant to the requirements of Labor Code §§ 201-202.

49. Defendants' failure to pay all final wages was willful within the meaning of Labor Code § 203. Defendants' willful failure to timely pay Plaintiff and the members of the Waiting Time Class their earned wages upon separation from employment results in continued payment of daily wages up to thirty days from the time the wages were due.

50. As a consequence of Defendants' unlawful practices, Plaintiff and members of the Waiting Time Class seek statutory penalties, and costs of suit according to California Labor Code § 203.

///

///

1 **SEVENTH CAUSE OF ACTION**

2 **UNFAIR COMPETITION**

3 **(Against All Defendants)**

4 51. Plaintiff re-alleges and incorporates by reference all preceding paragraphs as though
5 fully set forth herein.

6 52. Defendants have engaged and continue to engage in unfair and/or unlawful business
7 practices in California in violation of Business and Professions Code § 17200, *et seq.*, by:

- 8 a. failing to pay Plaintiff and members of the Minimum Wage Class all minimum
9 wages due;
- 10 b. failing to pay Plaintiff and members of the Overtime Class all overtime wages due;
- 11 c. failing to provide Plaintiff and members of the Meal Period Class with all meal
12 periods to which they are entitled, and failing to pay them all meal period premium
13 wages due;
- 14 d. failing to authorize and permit Plaintiff and members of the Rest Period Class all rest
15 periods to which they are entitled, and failing to pay them all rest period premium
16 wages due;
- 17 e. failing to issue accurate and itemized wage statements to Plaintiff and members of
18 the Wage Statement Class;
- 19 f. failing to timely pay all final wages to Plaintiff and members of the Waiting Time
20 Penalty Class; and
- 21 g. failing to reimburse all necessary business expenses to Plaintiff and members of the
22 Expense Reimbursement Class.

23 53. Defendants' utilization of these unfair and/or unlawful business practices deprived
24 Plaintiff and continues to deprive members of the Classes of compensation to which they are legally
25 entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage over
26 Defendants' competitors who have been and/or are currently employing workers and attempting to
27 do so in honest compliance with applicable wage and hour laws.

28 ///

1 54. Because Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged
2 herein, Plaintiff for himself and on behalf of the members of the Classes, seeks full restitution of
3 monies, as necessary and according to proof, to restore any and all monies withheld, acquired
4 and/or converted by Defendants pursuant to Business and Professions Code §§ 17203 and 17208.

5 55. The acts complained of herein occurred within the last four years immediately
6 preceding the filing of the Complaint in this action.

7 **EIGHTH CAUSE OF ACTION**

8 **FAILURE TO PERMIT INSPECTION OF EMPLOYMENT RECORDS**

9 **(Against Defendant ELITE STAFFING GROUP)**

10 56. Plaintiff re-alleges and incorporates by reference all preceding paragraphs as though
11 fully set forth herein.

12 57. Labor Code § 226 requires an employer to "afford current and former employees the
13 right to inspect or copy records pertaining to their employment" within 21 calendars from the date
14 of the request; provides that "a failure by an employer to permit a current or former employee to
15 inspect or copy records within the time set forth . . . entitles the current or former employee . . . to
16 recover a seven-hundred-fifty-dollar (\$750) penalty from the employer"; and authorizes recovery of
17 attorneys' fees and costs.

18 58. Labor Code § 1198.5 requires an employer to "make the contents of . . . personnel
19 records available for inspection to the current or former employee, or his or her representative, at
20 reasonable intervals and at reasonable times, but not later than 30 calendar days from the date the
21 employer receives a written request . . ."; provides that the failure to comply with this statute
22 entitles the employee to recover a penalty of \$750; and authorizes recovery of attorneys' fees and
23 costs.

24 59. Defendants failed to permit Plaintiff to inspect or copy records pertaining to his
25 employment in violation of Labor Code §§ 226 and 1198.5. As a consequence of Defendants'
26 unlawful practices, Plaintiff and seek statutory penalties, attorneys' fees, and costs of suit according
27 to Labor Code §§ 226 and 1198.5.

28 ///

NINTH CAUSE OF ACTION
PRIVATE ATTORNEYS GENERAL ACT
(Against All Defendants)

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

61. Plaintiff, an “aggrieved employee” within the meaning of Labor Code § 2698, *et seq.*, acting on behalf of himself and other aggrieved employees (collectively, “Aggrieved Employees”), brings this representative action against Defendants to recover the civil penalties due to Plaintiff and other Aggrieved Employees, and the State of California according to proof pursuant to Labor Code § 558 and § 2699(a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200 for each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully withheld; (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 for each initial violation and \$250 for each subsequent violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250 for each initial violation and \$1,000 for each subsequent violation pursuant to Labor Code § 226.3 per employee per pay period; (5) pursuant to Labor Code section 256, a civil penalty in an amount not exceeding 30 days per former employee as waiting time under the terms of Labor Code § 203; and/or (6) \$100 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 minimum wages for all hours worked to Aggrieved Employees in violation of Labor Code § 558, 1182.12, 1194, 1194.2, 1197, and 1198;
- b. Failing to pay Aggrieved Employees all earned overtime compensation in violation of Labor Code §§ 204, 510, 558, 1194, and 1198;
- c. Failing to provide all legally required meal periods, and failure to pay meal period premium wages, to Aggrieved Employees at the regular rate of compensation in violation of Labor Code §§ 226.7, 512, 558, and 1198;

- d. Failing to authorize and permit all legally required rest periods, and failure to pay rest period premium wages, to Aggrieved Employees at the regular rate of compensation in violation of Labor Code §§ 226.7, 516, 558, and 1198;
- e. Failing to furnish Aggrieved Employees with complete, accurate, itemized wage statements in violation of Labor Code § 226;
- f. Failing to timely pay all final wages and compensation earned by Aggrieved Employees at the time of separation in violation of Labor Code §§ 201-202;
- g. Failure to reimburse Aggrieved Employees for all necessary business expenses in violation of Labor Code § 2802;
- h. Failing to pay Aggrieved Employees all earned wages at least twice during each calendar month in violation of Labor Code § 204;
- i. Failing to maintain accurate records on behalf of Aggrieved Employees in violation of Labor Code §§ 1174 and 1198; and
- j. Failure to permit inspection of employment records in violation of Labor Code §§ 226, 432, 1198.

62. On or about October 4, 2023, Plaintiff notified Defendants via certified mail, and notified the California Labor and Workforce Development Agency (“LWDA”) via its website, of Defendants’ violations of the Labor Code and Plaintiff’s intent to bring a claim for civil penalties under Labor Code § 2698, *et seq.* with respect to the violations of the Labor Code identified in the preceding paragraph. Now that sixty-five (65) days have passed from Plaintiff notifying Defendants and the LWDA of these violations, and the LWDA has not provided notice that it intends to investigate the violations, Plaintiff has exhausted administrative requirements for bringing a claim under the Private Attorneys General Act with respect to these violations.

63. Plaintiff has incurred attorneys’ fees and costs, which Plaintiff is entitled to receive under California Labor Code § 2699(g).

PRAYER FOR RELIEF

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

1. For an order certifying the proposed Classes;
2. For an order appointing Plaintiff as representative of the Classes;
3. For an order appointing Counsel for Plaintiff as Counsel for the Classes;
4. Upon the First Cause of Action, for payment of minimum wages, liquidated damages, and penalties according to proof pursuant to Labor Code §§ 1182.12, 1194, 1194.2, and 1197;
5. Upon the Second Cause of Action, for payment of overtime wages and penalties according to proof pursuant to Labor Code §§ 204, 510, 558, 1194, and 1198;
6. Upon the Third Cause of Action, for meal period premium wages according to proof pursuant to Labor Code §§ 226.7, 512, and 558;
7. Upon the Fourth Cause of Action, for rest period premium wages according to proof pursuant to Labor Code §§ 226.7, 516, and 558;
8. Upon the Fifth Cause of Action, for statutory penalties pursuant to Labor Code § 226;
9. Upon the Sixth Cause of Action, for statutory penalties pursuant to Labor Code § 203;
10. Upon the Seventh Cause of Action, for restitution to Plaintiff and members of the Classes of all money and/or property unlawfully acquired by Defendants by means of any acts or practices declared by this Court to be in violation of Business and Professions Code §§ 17200, *et seq.*;
11. Upon the Eighth Cause of Action, for statutory penalties pursuant to Labor Code §§ 226 and 1198.5;
12. Upon the Ninth Cause of Action, for civil penalties due to Plaintiff, other Aggrieved Employees, and the State of California according to proof pursuant to Labor Code §§ 558 and 2699(a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200 for each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent violation

1 pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial violation
2 and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per employee per pay
3 period; (4) \$250.00 for each initial violation and \$1,000.00 for each subsequent violation pursuant
4 to Labor Code § 226.3 per employee per pay period; (5) pursuant to Labor Code section 256, a civil
5 penalty in an amount not exceeding 30 days per former employee as waiting time under the terms of
6 Labor Code § 203; and/or (6) \$100.00 for each initial violation and \$200 for each subsequent
7 violation per employee per pay period for those violations of the Labor Code for which no civil
8 penalty is specifically provided;

9 13. Prejudgment interest on all due and unpaid wages pursuant to Labor Code § 218.6
10 and Civil Code §§ 3287 and 3289;

11 14. On all causes of action, for attorneys' fees and costs as provided by Labor Code §§
12 218.5, 226, 1194, 2699(g), and Code of Civil Procedure § 1021.5; and

13 15. For such other and further relief, the Court may deem just and proper.

14 **DEMAND FOR JURY TRIAL**

15 Plaintiff hereby demands a trial by jury on all claims.

16
17 DATED: December 8, 2023

JUSTICE FOR WORKERS, P.C.

18
19 By: 

20 Young K. Park
21 William C. Sung
22 Attorneys for Plaintiff
23 JOSE JAVIER HERNANDEZ
24
25
26
27
28