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8 Attorneys for Plaintiff Luis Ochoa,
9 on behalf of himself and all “aggrieved employees”
10 pursuant to Labor Code § 2698 *et seq.*

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **FOR THE COUNTY OF KINGS**

13 LUIS OCHOA, on behalf of himself and all
14 “aggrieved employees” pursuant to Labor
15 Code § 2698 *et seq.*,

16 Plaintiff,

17 v.

18 AGUSA, a California corporation, and DOES
19 1 through 10, inclusive,

20 Defendants.

CASE NO: 24CU0042

**REPRESENTATIVE ACTION
COMPLAINT FOR PENALTIES
PURSUANT TO LABOR CODE § 2699(f)
FOR VIOLATIONS OF LABOR CODE
§§ 201, 202, 226(a), 226.7, 227.3, 510, 512,
1174, 1174.5, 1175, AND 1194 AND
PURSUANT TO LABOR CODE § 2699(a)
FOR VIOLATIONS OF LABOR CODE §§
226.3 AND 558**

ELECTRONICALLY

FILED

BY SUPERIOR COURT OF CALIFORNIA,
COUNTY OF KING'S COUNTY

02/02/2024

NOCIONA SOBOLESKI, CLERK OF THE COURT
SANDRA ACEVEDO, DEPUTY



1 Plaintiff LUIS OCHOA (“Plaintiff”), on behalf of himself and others as an “aggrieved
2 employee” under the Labor Code Private Attorneys General Act of 2004, complains of AGUSA, a
3 California corporation, and any subsidiaries or affiliated companies (hereinafter referred to as
4 “Defendants”) as follows:

5 **I.**

6 **INTRODUCTION AND FACTUAL BACKGROUND**

7 1. This is a Representative Action, pursuant to Labor Code § 2698 *et seq.*, on behalf of
8 Plaintiff and other non-exempt California employees who currently work or formerly worked for
9 Defendants (“Aggrieved Employees”).

10 2. For at least one (1) year prior to the filing of this action and at least one (1) year prior
11 to the date Plaintiff began the process of exhausting the administrative requirements, pursuant to
12 Labor Code § 2698 *et seq.*, and continuing to the present (the “liability period”), Defendants have had
13 consistent policies of:

14 a. Failing to pay all minimum and overtime wages earned during the course of
15 employment, in violation of Labor Code §§ 510, 558, and 1194. Plaintiff and other Aggrieved
16 Employees worked off-the-clock, without compensation: Defendants adjusted their hours,
17 such that they are not being compensated for all hours actually worked. Furthermore, as a
18 result of Defendants’ failure to pay all wages due for off-the-clock work, Plaintiff and other
19 Aggrieved Employees were not paid premium overtime wages due for shifts worked in excess
20 of eight (8) hours in a workday and in excess of forty (40) hours in a workweek. These failures
21 to pay all minimum and overtime wages due constitute violations of Labor Code §§ 510, 558,
22 and 1194 and IWC Wage Order 4-2001;

23 b. Failing to pay correct premium wages to Plaintiff and other Aggrieved
24 Employees who were denied proper meal periods, in violation of Labor Code §§ 226.7, 512,
25 and 558, and IWC Wage Order 4-2001. Plaintiff and other Aggrieved Employees were
26 routinely denied, and not authorized to take, a timely, uninterrupted, 30-minute meal period
27 for every shift worked that exceeded five hours, or a second timely, uninterrupted, 30-minute
28 meal period for every shift worked that exceeded ten hours, but were not paid premium wages

1 of one hour's pay at the proper rate of pay for each missed first or second meal period. When
2 they did receive a meal period, it would routinely be late, short, on-duty due to lack of staffing,
3 or they would have to clock out and continue working, resulting in uncompensated time and
4 a separate failure to maintain accurate records showing the start and stop times of meal
5 periods. This violates Labor Code §§ 226.7, 510, 512, 558, 1174, 1174.5, 1175, and 1194 and
6 IWC Wage Order 4-2001;

7
8 c. Failing to pay correct premium wages to Plaintiff and other Aggrieved
9 Employees who were denied rest periods, in violation of Labor Code § 226.7 and IWC Wage
10 Order No. 4-2001. Plaintiff and other Aggrieved Employees were routinely unable to take a
11 10-minute rest period for every four (4) hours of work or major fraction thereof, but were not
12 paid premium wages of one hour's pay for each missed rest period. When they did receive a
13 rest period, it would on-duty and would have to work through them due to lack of staffing.
14 This violates Labor Code § 226.7 and IWC Wage Order No. 4-2001;

15 d. Failing to provide Plaintiff and all other Aggrieved Employees with wage
16 statements that fully and accurately itemized the requirements set forth in Labor Code §
17 226(a). Plaintiff and other Aggrieved Employees were not paid all wages due, as stated above.
18 As such, the wage statements provided by Defendants failed to accurately state all gross wages
19 earned, in violation of Labor Code §§ 226(a)(1) and 226.3, total hours worked, in violation of
20 Labor Code §§ 226(a)(2) and 226.3, net wages earned, in violation of Labor Code §§ 226(a)(5)
21 and 226.3, and all applicable hourly rates in effect during the pay period and the corresponding
22 numbers of hours worked at each rate, in violation of Labor Code §§ 226(a)(9) and 226.3; and

23
24 e. Failing to pay Plaintiff and other Aggrieved Employees all wages due,
25 including all accrued, but unused vacation wages, at the separation of their employment based
26 on the time frames required by Labor Code §§ 201-202 and 227.3. As stated above, Plaintiff
27 and other Aggrieved Employees were not paid all wages due during the course of their
28 employment and, as a result of this failure, they were not timely paid all wages due at the

1 separation of their employment, including vacation wages. This violates Labor Code §§ 201-
2 202 and 227.3 and is alleged on behalf of Plaintiff and certain Aggrieved Employees no longer
3 employed by Defendants.

4 3. Plaintiff, on behalf of himself and all Aggrieved Employees pursuant to Labor Code §
5 2698 *et seq.*, seeks civil penalties for Defendants' violations of the California Labor Code.

6 4. Venue is proper in this judicial district, pursuant to Code of Civil Procedure § 395.
7 The Labor Code violations alleged against Defendants herein arose throughout California, including
8 in Kings County.

9 III.

10 PARTIES

11 A. Plaintiff

12 5. Plaintiff LUIS OCHOA was employed by Defendants from February 2021 through
13 October 2023 as a non-exempt employee in Kings County, California.

14 B. Defendant

15 6. Defendant AGUSA is a California corporation that employed Plaintiff and Aggrieved
16 Employees throughout California, including Kings County.

17 7. The true names and capacities, whether individual, corporate, associate, or otherwise,
18 of Defendants sued herein as DOES 1 to 10, inclusive, are currently unknown to Plaintiff, who
19 therefore sues Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiff is
20 informed and believes, and based thereon alleges, that each of the Defendants designated herein as a
21 DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will
22 seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendants
23 designated hereinafter as DOES when such identities become known.

24 8. Plaintiff is informed and believes, and based thereon alleges, that each Defendant acted
25 in all respects pertinent to this action as the agent of the other Defendant, carried out a joint scheme,
26 business plan or policy in all respects pertinent hereto, and the acts of each Defendants is legally
27 attributable to the other Defendants.
28

9. The Defendants named herein as DOE 1 through DOE 10 are and are persons acting on behalf of, or acting jointly with, Defendants, who violated, or caused to be violated, one or more provisions of the California Labor Code as alleged herein.

IV.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

PLAINTIFF AND ALL AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS
CIVIL PENALTIES PURSUANT TO LABOR CODE § 2699(f) FOR VIOLATIONS OF
LABOR CODE §§ 201, 202, 226(a), 226.7, 227.3, 510, 512, 1174, 1174.5, 1175, AND 1194 AND
PURSUANT TO LABOR CODE § 2699(a) FOR VIOLATIONS OF
LABOR CODE §§ 226.3 AND 558

10. Plaintiff incorporates paragraphs 1 through 9 of this Complaint as though fully set forth herein.

11. As a result of the acts alleged above, including the Labor Code violations set forth in paragraph 2 above, Plaintiff seeks civil penalties pursuant to Labor Code §§ 2698 *et seq.*

12. For each such violation, Plaintiff and all other Aggrieved Employees are entitled to civil penalties subject to the following formula:

a. Pursuant to Labor Code § 2699(f), \$100 for each initial violation and \$200 for each subsequent violation of Labor Code §§ 201, 202, 226(a), 226.7, 227.3, 510, 512, 1174, 1174.5, 1175, and 1194; and

b. Pursuant to Labor Code § 2699(a), the civil penalties as authorized by Labor Code §§ 226.3 and 558.

13. Civil penalties recovered will be allocated 75% to the Labor and Workforce Development Agency, and 25% to the affected employees.

14. On November 28, 2023, Plaintiff sent a letter, by online submission to the LWDA and by certified mail, return receipt requested, to Defendants setting forth the facts and theories of the violations alleged against Defendants, as prescribed by Labor Code § 2698 *et seq.* Pursuant to Labor Code § 2699.3(a)(2)(A), no notice was received by Plaintiff from the LWDA within sixty-five (65)

1 calendar days of November 28, 2023. Plaintiff may therefore commence this action to seek civil
2 penalties pursuant to Labor Code § 2698 *et seq.*

3 Wherefore, Plaintiff and the Aggrieved Employees he seeks to represent request relief as
4 described below.

5 V.

6 **RELIEF REQUESTED**

7 WHEREFORE, Plaintiff prays for the following relief:

8 1. For civil penalties pursuant to Labor Code § 2698 *et seq.* for Plaintiff and all other
9 Aggrieved Employees;

10 2. An award providing for payment of costs of suit pursuant to Labor Code § 2699(g)(1)
11 and other applicable law;

12 3. An award of attorneys' fees pursuant to Labor Code §§ 2699(g)(1) and other
13 applicable law; and

14 4. Such other and further relief as this Court may deem just and proper.

15 Dated: February 2, 2024

Respectfully submitted,

16 GAINES LAW CORPORATION

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18 By: 

19 EVAN S. GAINES
20 Attorneys for Plaintiff
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