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

SUPERIOR COURT OF CALIFORNIA
COUNTY OF LOS ANGELES

KEVIN LEMUS, an individual; on behalf of
himself and all Aggrieved Employees,

Plaintiff,

v.

ALLTIME MAINTENANCE, INC., a
California corporation;
JOSEPH ULLMAN, an individual; and
DOES 1-100, inclusive,

Defendants.

Case No.: **24STCV14397**

REPRESENTATIVE COMPLAINT FOR:

1. Civil Penalties Pursuant to Private Attorneys
General Act of 2004 (Labor Code §2698 *et*
seq.);

Plaintiff KEVIN LEMUS alleges and avers as follows:

NATURE OF ACTION

1. Plaintiff KEVIN LEMUS (“LEMUS” or “Plaintiff”), on behalf of himself and all other “Aggrieved Employees” (as defined herein), brings this action against Defendants ALLTIME MAINTENANCE, INC., a California corporation (“ALLTIME MAINTENANCE”); JOSEPH ULLMAN, an individual; and DOES 1-100, inclusive, (collectively “Defendants”) seeking civil penalties for violations of the Labor Code Private Attorneys General Act of 2004 (“PAGA”).

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2. At all times herein mentioned Plaintiff has resided in the County of Los

3. Defendant ALLTIME MAINTENANCE's registered address is located in Los

4. Plaintiff is informed, believes, and thereon alleges, that at all times herein

5. The true names and capacities of the Defendants sued herein as DOES 1 through

6. Plaintiff is informed, believes, and thereon alleges, that, at all times herein

7. Plaintiff is informed, believes, and based thereon alleges, that Defendant

1 Defendant JOSEPH ULLMAN is individually, jointly, and severally liable for the violations
2 and all damages alleged herein.

3 8. Plaintiff is further informed, believes, and based thereon alleges, that JOSEPH
4 ULLMAN controls ALLTIME MAINTENANCE's day-to-day operations, including its
5 employee pay practices, that there exists a unity of interest between ALLTIME
6 MAINTENANCE and JOSEPH ULLMAN such that the corporate formalities of ALLTIME
7 MAINTENANCE have been disregarded, that ALLTIME MAINTENANCE and JOSEPH
8 ULLMAN operated as an integrated enterprise, and that ALLTIME MAINTENANCE and
9 JOSEPH ULLMAN were joint employers of Plaintiff and other Aggrieved Employees. Thus,
10 in the interests of justice, ALLTIME MAINTENANCE and JOSEPH ULLMAN should be
11 held jointly and severally liable for the wage and hour violations asserted herein under joint
12 employer, integrated enterprise, and/or alter ego theories of liability.

13 9. During the period of Plaintiff's employment, Defendants conducted their
14 businesses in association with each other and shared control over the wages, hours and
15 working conditions of Plaintiff.

16 10. At all relevant times, Defendants were the "employers" of Plaintiff within the
17 meaning of all applicable state laws and statutes.

18 11. From approximately January 2023 until approximately September 2023,
19 Plaintiff was employed and worked as a handyman for Defendants' maintenance company, at
20 different job locations throughout southern California.

21 12. Defendants willfully misclassified Plaintiff and other Aggrieved Employees as
22 independent contractors.

23 13. Defendants failed to pay Plaintiff and other Aggrieved Employees at least
24 minimum wage for all hours worked.

25 14. Plaintiff regularly worked more than twelve (12) hours per day, six (6) days per
26 week. Defendants refused to allow Plaintiff and other Aggrieved Employees to record
27

1 their work hours and refused to compensate Plaintiff and other Aggrieved Employees for all
2 hours worked.

3 15. Defendants failed to pay Plaintiff and the other Aggrieved Employees one and
4 one-half (x1.5) times their regular rate of pay for those hours worked in excess of eight (8)
5 hours per day and/or forty (40) hours per week and two times (x2) their regular rate of pay for
6 those hours worked in excess of twelve (12) hours in a workday.

7 16. Defendants failed to provide Plaintiff and other Aggrieved Employees with at
8 least a 30-minute duty-free meal period before the end of their fifth (5th) hour of work when
9 working more than six (6) hours in a workday, or a second 30-minute duty-free meal period
10 before the end of their tenth (10th) hour of work when working more than ten (10) hours in a
11 workday.

12 17. As Defendants refused to record the start and end times of meal periods,
13 Defendants have no record as to whether Plaintiff and other Aggrieved Employees were
14 provided a first meal period when they worked more than five (5) hours, or a second meal
15 period when Plaintiff and other Aggrieved Employees worked more than ten (10) hours, much
16 less whether a meal period was short, delayed, or not provided at all.

17 18. Defendants failed to pay one additional hour of pay at Plaintiff's and the other
18 Aggrieved Employees' regular rate of compensation for each day that a meal period violation
19 occurred.

20 19. Defendants did not authorize or permit Plaintiff and the other Aggrieved
21 Employees to take legally complaint rest periods.

22 20. Defendants failed to pay one additional hour of pay at Plaintiff's and the other
23 Aggrieved Employees' rate of compensation for each day that a rest period violation occurred.

24 21. Defendants failed to issue Plaintiff and the other Aggrieved Employees wage
25 statements.

26 22. Defendants required Plaintiff and other Aggrieved Employees to utilize their
27 personal cellphones and data for work-related duties, such as keeping Defendants apprised of

1 work progress, and navigating to job locations. Defendants failed to reimburse Plaintiff and the
2 other Aggrieved Employees for these necessary business expenses incurred in the discharge of
3 their work-related duties.

4 23. Defendants willfully failed to pay Plaintiff and other Aggrieved Employees all
5 of the wages they were due upon their separation from Defendants' employment, including but
6 not limited to minimum wages, and overtime.

7 24. Defendants intentionally and willfully failed to pay Plaintiff and the other
8 Aggrieved Employees all wages due to them within the specific pay periods required under
9 California Labor Code § 204. For example, Defendants failed to pay all minimum wages and
10 overtime wages owed "no later than the payday for the next regular payroll period."

11 25. Defendants failed to keep complete and accurate payroll records showing the
12 hours worked daily and the wages paid to Plaintiff and the other Aggrieved Employees.

13 26. Among other violations, Defendants refused to allow Plaintiff and the other
14 Aggrieved Employees to record their work hours, failed to include all time worked by Plaintiff
15 and the other Aggrieved Employees on their payroll records, and failed to record the times that
16 Plaintiff and the other Aggrieved Employees began and ended meal periods.

17 **JURISDICTION AND VENUE**

18 27. Pursuant to Article VI, §10 of the California Constitution, subject matter
19 jurisdiction is proper in the Superior Court of California, County of Los Angeles, State of
20 California.

21 28. Pursuant to §§395 and 395.5 of the California Code of Civil Procedure, venue is
22 proper in the Superior Court of California for the County of Los Angeles, State of California,
23 because this is where Plaintiff was employed, it is where the alleged violations occurred, and it
24 is where Defendants do business.

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1 **FIRST CAUSE OF ACTION**

2 **PRIVATE ATTORNEYS GENERAL ACT of 2004 (“PAGA”)**

3 **[Cal. Labor Code § 2698, et seq.]**

4 **(Against All Defendants)**

5 29. Plaintiff re-alleges and incorporates into this cause of action each of the
6 preceding paragraphs.

7 30. The Private Attorneys General Act of 2004 (California Labor Code §§ 2698, et
8 seq.) (“PAGA”) expressly establishes that any provision of the California Labor Code which
9 provides for a civil penalty to be assessed and collected by the Labor and Workforce
10 Development Agency (“LWDA”), or any of its departments, divisions, commissions, boards,
11 agencies or employees for a violation of the California Labor Code, may be recovered through
12 a civil action brought by an aggrieved employee on behalf of himself or himself, and other
13 current or former employees.

14 31. On or about November 6, 2023, pursuant to Labor Code § 2699.3, Plaintiff filed
15 notice with California’s Labor and Workforce Development Agency (“LWDA”) and posted by
16 certified mail to Defendants notice of alleged violations of the Labor Code, including the facts
17 and theories to support the allegations (the “PAGA Notice”).

18 32. In the PAGA Notice, Plaintiff alleged claims for civil penalties under the Private
19 Attorneys General Act, Labor Code § 2698 *et seq.* predicated on Plaintiff’s allegations that
20 Defendants: (1) failed to pay minimum wage for all hours worked; (2) failed to pay overtime
21 and/or double-time wages; (3) failed to provide meal periods; (4) failed to provide rest periods;
22 (5) failure to provide complete and accurate wage statements; (6) failed to indemnify or
23 reimburse necessary business expenses; (7) failed to pay wages owed at separation; (8) failed
24 to produce employment records; (9) failed to timely pay wages during employment; (10) failed
25 to keep complete and accurate records; (11) violations of IWC Wage Order 5-2011; and (12)
26 retaliation for engaging in protected activity, and including claims for PAGA civil penalties for
27 violations of Labor Code §§ 98.6, 201, 202, 203, 204, 204(b)(1), 226, 226(a), 226(b), 226.7,

226.7(c), 510, 512, 558, 558.1, 1102.5, 1174(d), 1194, 1197, 1197.1, 1198, 1198.5, 1199(c), and 2802, and IWC Wage Order 5-2011 §§3, 4, 7, 9, 11, 12, and 20.

33. Plaintiff and the other Aggrieved Employees are “Aggrieved Employees” as defined by California Labor Code section 2699(c), in that they are all current and former non-exempt employees who worked for Defendants and worked at least one shift in the State of California during the PAGA Period, i.e., from November 6, 2022, through April 18, 2024.

34. Pursuant to California Labor Code section 2699, Plaintiff, in an individual and representative capacity on behalf of himself and all Aggrieved Employees, requests and is entitled to recover from Defendants and each of them, civil penalties according to proof, interest, attorneys’ fees and costs.

35. Pursuant to California Labor Code section 2699, subdivision (i), civil penalties recovered by Aggrieved Employees shall be distributed as follows: seventy-five percent (75%) to the Labor and Workforce Development Agency for the enforcement of labor laws and education of employers and employees about their rights and responsibilities and twenty-five percent (25%) to the Aggrieved Employees.

36. As described in greater detail *supra*, at all times relevant to this action, Defendants devised, formulated, implemented, and enforced, the following policies and procedures in violation of California Law, including but not limited to the provisions of the California Labor Code and Industrial Welfare Commission (“IWC”) Wage Order 5, which give rise to PAGA civil penalties under California Labor Code § 2698, *et seq.*:

Civil Penalties for Failure to Pay Minimum Wage for All Hours Worked

37. Through their policies and practices, Defendants failed to pay Plaintiff and the other Aggrieved Employees at least the applicable minimum wage for all hours, in violation of Labor Code §§ 1194, 1197, 1197.1, and IWC Wage Order 5.

Civil Penalties for Failure to Pay to Pay Overtime and/or Double-Time Wages

38. While employed by Defendants, Plaintiff and the other Aggrieved Employees were required, suffered, and permitted to work overtime hours.

1 39. Through their policies and practices, Defendants failed to pay Plaintiff and the
2 other Aggrieved Employees overtime pay, in violation of Labor Code §§510, 1194, 1198, and
3 IWC Wage Order 5.

4 **Civil Penalties for Failure to Provide Meal Periods**

5 40. Through their policies and practices, Defendants failed to provide Plaintiff and
6 the other Aggrieved Employees with legally compliant meal periods, in violation of Labor
7 Code §§226.7, 512, and IWC Wage Order 5.

8 **Civil Penalties for Failure to Provide Rest Periods**

9 41. Through their policies and practices, Defendants failed to authorize and permit
10 Plaintiff and the other Aggrieved Employees to take legally compliant rest periods, in violation
11 of Labor Code §§226.7, and IWC Wage Order 5.

12 **Civil Penalties for Failure to Provide Complete and Accurate Wage Statements**

13 Through their policies and practices, Defendants failed to provide Plaintiff and the other
14 Aggrieved Employees with wage statements in violation of California Labor Code section 226.3.

15 **Civil Penalties for Failure to Indemnify or Reimburse Necessary Business Expenses**

16 42. Through their policies and practices, Defendants failed to indemnify or
17 reimburse Plaintiff and the other Aggrieved Employees for necessary business expenses
18 incurred in the discharge of their work duties, in violation of Labor Code §2802, and IWC
19 Wage Order 5.

20 **Civil Penalties for Failure to Pay Wages Owed At Separation**

21 43. Through their policies and practices, Defendants failed to timely pay Plaintiff
22 and the other Aggrieved Employees all wages due upon separation from their employment in
23 violation of California Labor Code sections 201, 202, and 203.

24 44. Further, even though Defendants failed to timely pay employees all wages due
25 upon separation, Defendants also failed to pay Plaintiff and the other Aggrieved Employees
26 continuing wages under Labor Code section 203.

1 **Civil Penalties for Failure to Keep Complete and Accurate Records**

2 45. Through their policies and practices, Defendants failed to keep complete and
3 accurate records for Plaintiff and the other Aggrieved Employees in violation of California
4 Labor Code Section 1174(d).

5 **Civil Penalties for Violations of IWC Wage Order 5-2011**

6 46. Labor Code section 1199(c) makes it a misdemeanor, punishable by monetary
7 fine, for employers that, among other things, violate the provisions of the IWC Wage Orders.
8 As described herein, Defendants violated Wage Order 5 in many respects, including without
9 limitation the failure to pay minimum wages, the failure to pay overtime, the failure to provide
10 legally compliant meal periods, the failure to authorize and permit rest periods, the failure to
11 provide itemized accurate wage statements, the failure to reimburse all necessary business
12 expenses incurred in the discharge of work-related duties, the failure to pay continuing wages
13 penalties, the failure to timely pay wages during employment, and the failure to keep complete
14 and accurate records.

15 **Civil Penalties for Retaliation for Engaging in a Protected Activity**

16 47. Through their policies and practices, Defendants retaliation against Plaintiff for
17 engaging in activities that were protected under the law. As such Defendants violated Labor
18 Code § 98.6.

19 **Civil Penalties for Willful Misclassification as to Independent Contractor Status**

20 48. Through their policies and practices, Defendants willfully misclassified Plaintiff
21 and the other Aggrieved Employees as independent contractors, in violation of Labor Code §
22 226.8.

23 **Civil Penalties for Failure to Provide Sick Pay**

24 49. Through their policies and practices, Defendants failure to provide Plaintiff and
25 the other Aggrieved Employees sick pay, in violation Labor Code §§ 246, 246.5, 247, 247.5,
26 and 248.5.

1 **Civil Penalties for Various Violations of The Labor Code**

2 50. Through their policies and practices, Defendants violated various Labor Code
3 provisions including but not limited to §§ 98.6, 201, 202, 203, 204, 204(b)(1), 226, 226(a),
4 226(b), 226.7, 226.7(c), 226.3, 226.8, 246, 246.5, 247, 247.5, 248.5, 510, 512, 558, 558.1,
5 1102.5, 1174(d), 1194, 1197, 1197.1, 1198, 1198.5, 1199(c), and 2802, and IWC Wage Order
6 5-2011 §§3, 4, 7, 9, 11, 12, and 20.

7 **Exhaustion of Administrative Remedies under PAGA**

8 51. On or about November 6, 2023, pursuant to Labor Code § 2699.3, Plaintiff filed
9 with the LWDA and posted by certified mail to Defendants a PAGA Notice alleging violations
10 of the Labor Code, including the facts and theories to support such allegations.

11 52. The LWDA has failed to notify Plaintiff of its intent to investigate these penalty
12 claims within sixty-five (65) days.

13 53. Thus, Plaintiff has exhausted administrative remedies under PAGA’s Labor
14 Code § 2699.3(a)(2)(A).

15 54. Pursuant to Labor Code Section 2698 et seq., Plaintiff is entitled to recover civil
16 penalties in connection with Plaintiff, and in connection with each and every Aggrieved
17 Employee of Defendants, for each and every pay period in which a Labor Code violation or
18 applicable IWC Wage Order violation occurred, in an amount according to proof at trial.

19 55. Plaintiff and the other Aggrieved Employees are also entitled to reasonable
20 attorney’s fees and costs pursuant to Labor Code §§ 2699(g), and any other applicable statute,
21 which are hereby demanded, in an amount to be proven at trial.

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1 **PRAYER**

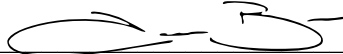
2 WHEREFORE Plaintiff prays judgment be entered against Defendants, and each of them,
3 as follows:

4 **ON THE FIRST CAUSE OF ACTION**

- 5 1. For civil penalties, attorney's fees, and costs pursuant to California Labor Code
6 sections 2698 et seq.; and
7 2. For such other and further relief as the court may deem just and proper.

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9 Dated: June 10, 2024 _____

THE BYRNE LAW GROUP

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12 _____
13 Adrian C. Byrne
14 Attorneys for Plaintiff
15 and all Aggrieved Employees
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