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VENTURA SUPERIOR COURT

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF VENTURA**

NOEL OCHOA, on behalf of himself, the  
State of California, and all Aggrieved  
Employees,

Plaintiff,

vs.

C&W FACILITY SERVICES, INC., a  
corporation; and DOES 1 through 100,  
Inclusive,

Defendants.

Case No.: 2024CUOE019002

**REPRESENTATIVE ACTION  
COMPLAINT:**

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

**UNLIMITED CIVIL CASE**

1 Plaintiff Noel Ochoa (hereinafter “Plaintiff”), on behalf of himself, the State of California,  
2 and other aggrieved employees, hereby brings this Representative Action Complaint  
3 (“Complaint”) against C&W Facility Services, Inc.; and DOES 1 to 100, inclusive (collectively  
4 “Defendants”), and on information and belief allege as follows:

5 **JURISDICTION**

6 1. Plaintiff, on behalf of himself, all other aggrieved employees, and the State of  
7 California, hereby brings this Complaint for recovery of civil penalties under the Private  
8 Attorneys General Act, Labor Code § 2698, *et seq.* (“PAGA”), and Industrial Welfare  
9 Commission Wage Order 4 (“Wage Order 4”). The monetary damages that Plaintiff seeks exceed  
10 this Court’s jurisdictional minimum.

11 **VENUE**

12 2. Venue is proper in this judicial district pursuant to Cal. Code of Civ. Proc. §§  
13 395(a) and 395.5, as at least some of the acts and omissions complained of herein occurred in the  
14 County of Ventura. Defendants own, maintain offices, transact business, have agent(s) within the  
15 County of Ventura, and/or otherwise are found within the County of Ventura, and Defendants are  
16 within the jurisdiction of this Court for purposes of service of process.

17 **PARTIES**

18 3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,  
19 Plaintiff was and currently is, a California resident. Plaintiff was employed by Defendants within  
20 the statute of limitations periods applicable to each cause of action pled herein.

21 4. Plaintiff is informed and believes, and based thereon alleges, that during the statute  
22 of limitations periods applicable to this action through the present, Defendants did (and continue  
23 to do) business and employed Plaintiff and other aggrieved employees within, among other  
24 counties, Ventura County and the state of California and, therefore, were (and are) doing business  
25 in Ventura County and the State of California.

26 5. Plaintiff does not know the true names or capacities, whether individual, partner,  
27 or corporate, of the defendants sued herein as DOES 1 to 100, inclusive, and for that reason, said  
28 defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to

1 amend this Complaint when such true names and capacities are discovered. Plaintiff is informed  
2 and believes, and based thereon alleges, that each of said fictitious defendants, whether individual,  
3 partners, or corporate, were responsible in some manner for the acts and omissions alleged herein,  
4 and proximately caused Plaintiff and the other aggrieved employees to be subject to the unlawful  
5 employment practices, wrongs, injuries and damages complained of herein.

6 6. Plaintiff is informed and believes, and thereon alleges, that at all times mentioned  
7 herein, Defendants were and are the employers of Plaintiff and the other aggrieved employees.

8 7. At all times herein mentioned, each of said Defendants participated in the doing  
9 of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the  
10 Defendants, and each of them, were the agents, servants, and employees of each and every one of  
11 the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned  
12 were acting within the course and scope of said agency and employment. Defendants, and each  
13 of them, approved of, condoned, and/or otherwise ratified each and every one of the acts or  
14 omissions complained of herein.

15 8. At all times mentioned herein, Defendants, and each of them, were members of  
16 and engaged in a joint venture, partnership, and common enterprise, and acting within the course  
17 and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further,  
18 Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and the other  
19 aggrieved employees.

20 **REPRESENTATIVE ACTION ALLEGATIONS**

21 9. Plaintiff worked for Defendants as a non-exempt employee from approximately  
22 November 2019 to November 2022.

23 10. During at least a portion of Plaintiff's employment with Defendants, Defendants  
24 required Plaintiff and other non-exempt employees to work shifts of 10 hours with no overtime  
25 compensation, pursuant to a purported alternative workweek schedule ("AWS"). However, upon  
26 information and belief, the AWS was not properly instituted because, prior to any AWS election,  
27 Defendants failed to follow the notice/disclosure procedures required by Wage Order 4, § 3,  
28 and/or failed to report the purported AWS to the State of California. Defendants' failure to

properly enact an AWS has resulted in Plaintiff and other non-exempt employees to be underpaid the overtime wages due to them.

11. In addition to paying employees unlawfully pursuant to an AWS, Defendants also under-paid Plaintiff's and other non-exempt employees' overtime wages when they paid them bonuses and/or other non-discretionary payments that may not be excluded from the "regular rate" of pay (collectively, these forms of pay are referred to herein as "Incentive Pay"). Specifically, in or about February of each year, Defendants issued a "BONUS FLD" payment to Plaintiff but failed to incorporate the value of the bonus into Plaintiff's "regular rate" of pay. For example, Defendants issued Plaintiff a "BONUS FLD" payment on February 8, 2021, and in the same bonus earning pay period Plaintiff's wage statement reflects that he worked 11.50 hours of overtime at a rate of \$45.76 per hour (i.e., 1.5 times Plaintiff's base hourly rate of \$30.51). Nor, on information and belief, did Defendants' "true up" any of Plaintiff's other overtime wages that were earned in the same time period that he earned the bonus mentioned above. In calculating Plaintiff's and other non-exempt employees' overtime and/or double-time wages, Defendants failed to incorporate Incentive Pay into the "regular rate" of pay, resulting in Plaintiff and other non-exempt employees being underpaid their overtime and/or double-time wages.

12. Defendants also utilized a timekeeping system which resulted in Plaintiff and other non-exempt employees not being compensated for all hours worked. Specifically, Plaintiff and other non-exempt employees were required to clock in and out for their shifts, and although, on information and belief, Defendants recorded Plaintiff's clock-in and clock-out times to the minute, Defendants only paid Plaintiff in quarter-hour increments. Defendants' rounding of time to the quarter-hour was not even-handed and has resulted in Plaintiff and other non-exempt employees not being compensated for all hours worked. As a result of these policies/practices, Plaintiff and other non-exempt employees were underpaid for wages due, including overtime wages and minimum wages.

13. Moreover, Plaintiff and other non-exempt employees were not paid at least the minimum wage for all of their hours worked. Specifically, for at least a portion of the relevant time period, Plaintiff and other non-exempt employees were required to go through security

1 checks prior to entering and/or exiting certain work facilities. These security checks were  
2 performed before Plaintiff and other non-exempt employees clocked in for the day (and/or after  
3 they had clocked out for the day), and therefore Plaintiff and other non-exempt employees were  
4 not paid for the time undergoing these checks. In addition, Plaintiff and other non-exempt  
5 employees were not permitted to clock in to work at the entrance of the warehouses they worked  
6 in, and instead Defendants required them to walk from the entrance to the “cage” where they were  
7 then permitted to clock in. Defendants failed to pay Plaintiff for the time he spent walking from  
8 the warehouse entrance to the “cage,” even though Plaintiff was under Defendants’ control during  
9 such time. Thus, Plaintiff and other non-exempt employees were not paid for all hours worked,  
10 resulting in unpaid minimum wages and overtime wages.

11       14. In addition, Defendants failed to pay Plaintiff and other non-exempt employees all  
12 travel time pay owed to them. Specifically, Plaintiff was required to travel to different facilities  
13 other than his homebase facility. These other facilities were further in distance than Plaintiff’s  
14 homebase facility, resulting in extra travel time that Plaintiff would not have otherwise incurred  
15 in his normal commute. Although Defendants paid some travel time pay to Plaintiff on rare  
16 occasion, Defendants failed to pay all travel time pay owed to Plaintiff and other non-exempt  
17 employees. Defendants’ failure to pay all travel time pay to Plaintiff and other non-exempt  
18 employees has resulted in unpaid minimum wages and overtime wages.

19       15. Defendants also failed to provide Plaintiff and other non-exempt employees with  
20 all statutorily mandated meal periods. Specifically, the workload imposed by Defendants often  
21 made it impracticable for Plaintiff and other non-exempt employees to take a 30-minute off-duty  
22 meal period prior to the end of the fifth hour of work, and as a result Plaintiff’s meal periods were  
23 often short (less than 30 minutes), late (commencing after five hours of work), or missed.  
24 Defendants also failed to provide Plaintiff with a second meal period on shifts of over 10.0 hours.  
25 For example, Plaintiff’s time record from October 26, 2022 reflects that Plaintiff received a meal  
26 period at 6.25 hours into his shift and worked an additional 4.75 hours upon returning from his  
27 meal period, for a total of 11.0 hours – with no indication of a second meal period. As another  
28 example, Plaintiff’s time records from October 27, 2022 and November 1, 2022 reflect that

1 Plaintiff did not receive a meal period until his 6<sup>th</sup> hour of work. In those instances that Defendants  
2 failed to provide Plaintiff and other non-exempt employees with a legally compliant meal period,  
3 Defendants failed to pay the meal period premiums required by Labor Code § 226.7. Upon  
4 information and belief, during at least a portion of the putative class period, Defendants  
5 maintained no payroll code or other mechanism for paying meal period premiums when  
6 Defendants failed to provide a legally compliant meal period.

7 16. Defendants have also failed to authorize and permit compliant rest periods to  
8 Plaintiff and other non-exempt employees. Specifically, Plaintiff and other non-exempt  
9 employees were frequently unable to take all rest periods to which they were entitled as a result  
10 of the workload imposed by Defendants, as described above. Despite failing to authorize and  
11 permit legally compliant rest periods to Plaintiff and other non-exempt employees, Defendants  
12 failed to pay the rest period premiums required by Labor Code § 226.7. Upon information and  
13 belief, during at least a portion of the putative class period, Defendants maintained no payroll  
14 code or other mechanism for paying rest period premiums when Defendants failed to authorize  
15 and permit a legally compliant rest period.

16 17. As a result of Defendants' failure to pay all overtime wages, minimum wages, and  
17 meal and rest period premium wages, Defendants failed to pay all wages to Plaintiff and other  
18 formerly employed non-exempt employees at the separation of their employment.

19 18. As a further result of Defendants' failure to pay all overtime wages, minimum  
20 wages, and meal and rest period premium wages, Defendants maintained inaccurate payroll  
21 records, and issued inaccurate wage statements to Plaintiff and other non-exempt employees.

22 19. Defendants also failed to reimburse all reasonable business expenses incurred by  
23 Plaintiff and other non-exempt employees. As mentioned above, Plaintiff often was required to  
24 travel to warehouses that were farther away than his homebase warehouse and therefore were  
25 beyond Plaintiff's normal commute. However, Defendants failed to provide reimbursement for  
26 the miles Plaintiff drove in his personal vehicle to and from those faraway worksites.

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1 **FIRST CAUSE OF ACTION**

2 **PRIVATE ATTORNEY GENERAL ACT**

3 **(AGAINST ALL DEFENDANTS)**

4 20. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

5 21. Defendants have committed several Labor Code violations against Plaintiff and  
6 other aggrieved employees. Plaintiff is an “aggrieved employee” within the meaning of Labor  
7 Code § 2698 *et seq.*, and, acting on behalf of himself and other aggrieved employees, brings this  
8 representative action against Defendants to recover the civil penalties due to Plaintiff, other  
9 aggrieved employees, and the State of California according to proof pursuant to Labor Code §§  
10 558 and 2699 (a) and (f) including, but not limited to: (1) \$100.00 for each initial violation for  
11 each failure to pay each employee and \$200.00 for each subsequent violation or willful or  
12 intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus  
13 25% of the amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100.00 for each  
14 subsequent violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for  
15 each initial violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1  
16 per employee per pay period; (4) \$250.00 for each initial violation of Labor Code § 226 and  
17 \$1,000.00 for each subsequent violation, pursuant to Labor Code § 226.3, per employee per pay  
18 period; and/or (5) \$100.00 for each initial violation and \$200.00 for each subsequent violation per  
19 employee per pay period for those violations of the Labor Code for which no civil penalty is  
20 specifically provided, based on the following Labor Code violations:

21 a. Failing to pay Plaintiff and other aggrieved employees all overtime  
22 compensation earned in violation of Labor Code §§ 204, 510, 511, 558, 1194,  
23 and 1198;

24 b. Failing to pay Plaintiff and other aggrieved employees at least the minimum  
25 wage for all hours worked in violation of Labor Code §§ 204, 558, 1182.12,  
26 1194, 1194.2, 1197, and 1198;

27 c. Failing to provide all legally required meal periods and by failing to pay meal  
28 period premiums to Plaintiff and other aggrieved employees at the employees’

1                    respective regular rates of compensation for meal period violations in violation  
2                    of Labor Code §§ 226.7, 512, 516, 558, and 1198;

3                    d. Failing to authorize and permit all legally required rest periods and failing to  
4                    pay rest period premiums to Plaintiff and other aggrieved employees at the  
5                    employees' respective regular rates of compensation for rest period violations  
6                    in violation of Labor Code §§ 226.7, 516, 558, and 1198;

7                    e. Failing to reimburse Plaintiff and other aggrieved employees all necessary  
8                    business expenditures in violation of Labor Code §§ 2802, 2804, and 1198;

9                    f. Failing to provide Plaintiff and other aggrieved employees with complete,  
10                    accurate, itemized wage statements in violation of Labor Code §§ 226 and  
11                    1198;

12                    g. Failing to pay all wages owed to Plaintiff and other aggrieved former  
13                    employees at their separation of employment in violation of Labor Code § 201-  
14                    203;

15                    h. Failing to maintain accurate records in violation of Labor Code § 1174; and

16                    i. Failing to timely pay all wages due to Plaintiff and other aggrieved  
17                    employees during their employment in violation of Labor Code § 204.

18                    22.     On or about October 26, 2023, Plaintiff notified Defendants via certified mail and  
19                    notified the California Labor and Workforce Development Agency ("LWDA") via its website, of  
20                    Defendants' violations of the California Labor Code and Plaintiffs' intent to bring a claim for  
21                    civil penalties under California Labor Code § 2698 *et seq.* with respect to the violations of the  
22                    California Labor Code identified in Paragraph 21 (a)-(i). Now that sixty-five (65) days have  
23                    passed from Plaintiff notifying Defendants of these violations, and the LWDA has not provided  
24                    notice that it intends to investigate the violations, Plaintiff has exhausted his administrative  
25                    requirements for bringing a claim under the Private Attorneys General Act with respect to these  
26                    violations.

27                    23.     Based on the foregoing, Plaintiff seeks to represent himself, the State of California,  
28                    and all aggrieved employees, as defined by Labor Code § 2699(c), which includes all current and



former employees who worked for Defendants in California at any time from one year prior to the submission of Plaintiff's PAGA notice to the present.

24. Plaintiff was compelled to retain the services of counsel to file this court action to protect his interest and the interests of other 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 recover under California Labor Code § 2699(g).

**PRAYER**

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

25. Upon the First Cause of Action, for civil penalties due to Plaintiff, other 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 for each failure to pay each employee and \$200.00 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) \$100.00 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 of Labor Code § 226 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 \$200.00 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided, pursuant to Labor Code § 2699(f);

26. On all causes of action, for attorney's fees and costs as provided by Labor Code § 2699(g) and Code of Civil Procedure § 1021.5; and

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

Dated: January 2, 2024

Respectfully submitted,  
ABRAMSON LABOR GROUP

By:

  
Tuvia Korobkin  
Attorneys for Plaintiff