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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE

LUIS CHRISTIAN LOPEZ, an individual and as
a representative of aggrieved employees pursuant
to the Private Attorneys General Act (PAGA),

Plaintiff,

vs.

SWIFT HEALTH SYSTEMS INC., a
corporation; and DOES 1 through 10 inclusive,

Defendant.

Case No. 30-2024-01383013-CU-OE-CXC

PLAINTIFF'S COMPLAINT:

**1. PRIVATE ATTORNEY'S GENERAL ACT
(LABOR CODE SECTION 2698)**

Assigned for All Purposes
Judge Randall J. Sherman
Dept. CX105

1 Plaintiff Luis Christian Lopez (“Plaintiff”) alleges and complains against Defendants Swift Health
2 Systems Inc. and Does 1 through 10 (collectively, “Defendant”) as follows:

3 **PARTIES | JURISDICTION | VENUE**

4 1. Plaintiff, at all times relevant hereto, is and has been a resident of the State of California.

5 2. Defendant Swift Health Systems Inc., doing business as “Inbrace,” manufactures and sells
6 a tooth straightening technology directly to consumers. Defendant is headquartered at 111 Academy,
7 Suite 150 Irvine, California 92617.

8 3. Defendant conducts business in the State of California.

9 4. Under California Code of Civil Procedure section 395(a), venue is proper in this County
10 because Defendant resides in this County and/or Plaintiff’s alleged injuries herein occurred in this County.

11 5. The true names and capacities of the defendants named herein as Does 1 through 10,
12 inclusive, whether individual, corporate, associate or otherwise, are unknown to Plaintiff who therefore
13 sues such defendants by fictitious names pursuant to California Code of Civil Procedure section 474.
14 Plaintiff believes that all of the Doe defendants are California residents. Plaintiff will amend this
15 Complaint to show such true names and capacities when they have been determined. Defendant and Doe
16 Defendants are collectively referred to as “Defendant,” “Defendants” or “Defendant Employers.”

17 6. Plaintiff believes that, at all times relevant herein, each defendant designated, including
18 Does 1 through 10, was the agent, managing agent, principal, owner, partner, joint venturer, representative,
19 manager, servant, employee, and/or co-conspirator of each of the other defendants, and was at all times
20 mentioned herein acting within the course and scope of said agency and employment, and that all acts or
21 omissions alleged herein were duly committed with the ratification, knowledge, permission,
22 encouragement, authorization, and consent of each defendant designated herein.

23 7. Defendant, and each of them, acted in concert with one another to commit the wrongful
24 acts alleged herein, and aided, abetted, incited, compelled and/or coerced one another in the wrongful acts
25 alleged herein, and/or attempted to do so, including pursuant to Government Code section 12940(i).
26 Defendant, and each of them, formed and executed a conspiracy or common plan pursuant to which they
27 would commit the unlawful acts alleged herein, with all such acts alleged herein done as part of and
28 pursuant to said conspiracy, intended to cause and actually causing Plaintiff harm.

ALTER EGO | AGENCY | JOINT EMPLOYER

8. There exists such a unity of interest and ownership between Defendant Employers that the individuality and separateness of Defendant Employers have ceased to exist. At all times relevant hereto, Defendant Employers, and each of them, were the agents, employees, managing agents, supervisors, coconspirators, parent corporation, joint employers, alter egos, successors, and/or joint ventures of the other Defendant Employers, and each of them, and in doing the things alleged herein, were acting at least in part within the course and scope of said agency, employment, conspiracy, joint employer, alter ego status, successor status and/or joint venture and with the permission and consent of each of the other Defendant Employers. Whenever and wherever reference is made in this complaint to any act or failure to act by a defendant or co-defendant, such allegations and references shall also be deemed to mean the acts and/or failures to act by each defendant acting individually, jointly and severally.

9. Plaintiff believes Defendant Employers were both Plaintiff's joint employer and are liable under the joint employer and single enterprise theories. *See Laird v. Capital Cities* (1998) 68 Cal.App.4th 727, 737-38 (four factors to prove single enterprise are "interrelation of operations, common management, centralized control of labor relations, and common ownership or financial control. ... Although courts consider the four factors together, they often deem centralized control of labor relations the most important."); *see also Vernon v. State of California* (2004) 116 Cal.App.4th 114, 128 (separate entities can also be deemed a "joint employer" by having the right to control the employment relationship, as evaluated by focusing on "an examination of defendant's role with respect to the right to hire, fire, transfer, promote, discipline, set the terms, conditions and privileges of employment, train and pay the plaintiff.")).

10. Defendant Employers were Plaintiff's employers, joint employers and/or special employers within the meaning of Government Code sections 12926 (d), 12940 (a),(h),(1), (h)(3)(A), (i), and, 12950, and regularly employ five (5) or more persons and are therefore subject to the jurisdiction of this Court. Defendant Employers were Plaintiff's employers, joint employers and/or special employers within the meaning of the Labor Code and the applicable Industrial Welfare Commission Order, and are each an "employer or other person acting on behalf of an employer" as such term is used in Labor Code sections 558 and/or 558.1, and liable to Plaintiff on that basis. Defendant Employers are Plaintiff's joint employers by virtue of a joint enterprise, and that Plaintiff was an employee of Defendant Employers.

1 Plaintiff performed services for each and every one of Defendant Employers, and to the mutual benefit
2 of all Defendant Employers, and all Defendant Employers shared control of Plaintiff as an employee,
3 either directly or indirectly, and the manner in which Defendant Employers' business was and is
4 conducted.

5 11. Labor Code section 558.1 provides that an employer or "other person acting on behalf of
6 an employer" who violates certain California wage and hour laws "may be held liable as the employer for
7 such violation." Labor Code section 558.1 defines "other person acting on behalf of an employer" as a
8 "natural person who is an owner, director, officer, or managing agent" of the employer. Labor Code
9 section 558.1(b). *See* Labor Code section 558(a) (authorizing civil penalties against "any employer or
10 other person acting on behalf of an employer" who causes overtime pay violations to occur."); *see Atempa*
11 *v. Pedrazzani*, 27 Cal.App.5th 809, 823-824 (2018); Labor Code section 1197.1 ("Any employer or other
12 person acting either individually or as an officer, agent, or employee of another person" for failure to pay
13 minimum wages."); *see Reynolds v. Bement*, 36 Cal.4th 1075, 1089 (2005) ("aggrieved employees may
14 ... maintain civil actions to recover such penalties"); *see Reynolds v. Bement*, 36 Cal.4th 1075, 1089, fn.
15 10 (2005) (alter ego doctrine may be used in wage claim actions to impose liability on controlling directors
16 and shareholders); *see* Government Code section 12925(d) (defining "Person" as one *or more* individuals,
17 partnerships, associations, corporations, limited liability companies, legal representatives, trustees,
18 trustees in bankruptcy, and receivers or other fiduciaries).

19 12. Despite the formation of purported corporate existence, Defendant Employers are, in
20 reality, one and the same, including, but not limited to because: (a) Defendant Employers are completely
21 dominated and controlled by one another, who personally committed the frauds and violated the laws as
22 set forth in this complaint, and who have hidden and currently hide behind Defendant Employers to
23 perpetrate frauds, circumvent statutes, or accomplish some other wrongful or inequitable purpose; (b)
24 Defendant Employers derive actual and significant monetary benefits by and through one another's
25 unlawful conduct, and by using one another as the funding source for their own personal expenditures;
26 (c) Defendant Employers, while really one and the same, were segregated to appear as though separate
27 and distinct for purposes of perpetrating a fraud, circumventing a statute, or accomplishing some other
28 wrongful or inequitable purpose; (d) Defendant Employers does not comply with all requisite corporate

1 formalities to maintain a legal and separate corporate existence; (e) the business affairs of Defendant
2 Employers are, and at all times relevant were, so mixed and intermingled that the same cannot
3 reasonably be segregated, and the same are in inextricable confusion. Defendant Employers are, and at
4 all times relevant hereto were, used by one another as a mere shell and conduit for the conduct of certain
5 of Defendant Employers' affairs, and are, and were, the alter ego of one another. The recognition of
6 the separate existence of each of the Defendant Employers would not promote justice, in that it would
7 permit Defendant Employers to insulate themselves from liability to Plaintiff for violations of the law.
8 The corporate existence of Defendant Employers should each be disregarded in equity and for the ends of
9 justice because such disregard is necessary to avoid fraud and injustice to Plaintiff herein. Accordingly,
10 Defendant Employers constitute the alter ego of one another, and the fiction of their separate corporate
11 existence must be disregarded.

12 **ADMINISTRATIVE EXHAUSTION**

13 13. Plaintiff exhausted administrative requirements for Plaintiff's claims.

14 14. On December 22, 2023, Plaintiff's counsel gave written notice by online filing with the
15 California Labor & Workforce Development Agency ("LWDA") and by sending via certified mail to
16 Defendants a letter specifying the California Labor Code provisions Defendants violated, including the
17 facts and theories supporting the alleged violations. More than sixty-five (65) days have passed since
18 Plaintiff's counsel submitted the letter to the LWDA and certified-mailed the letter to Defendants, and the
19 LWDA has not provided notice of intent to investigate the alleged violations, nor have Defendants
20 provided notice of intent or any efforts to cure. Accordingly, the statutory period for any investigation or
21 response has concluded and Plaintiff may commence this lawsuit pursuant to Labor Code section 2699,
22 as provided by subsection 2699.3.

23 **FACTUAL ALLEGATIONS**

24 15. Defendant "recently raised over \$100MM in its Series D financing from funds and accounts
25 managed by BlackRock, Endeavour Vision, Farallon Capital Management, Marshall Wace LLP, MVM
26 Partners, Novo Holdings, RTW Investments, LP., Soleus Capital, venBio and Vivo Capital."¹

27 16. **Plaintiff's Hire.** On or about September 16, 2019, Defendant hired Plaintiff Luis Christian
28

¹ <https://www.prnewswire.com/news-releases/clint-carnell-named-ceo-of-inbrace-301509184.html>

Lopez as an employee in the job position of Design Tech.

17. **Plaintiff's Job Details.** Plaintiff's job duties included using design software to make tooth movements according to treatment plans, and to complete a certain quota per day.

18. Defendant classified Plaintiff as a "non-exempt" employee, at first paid \$18 per hour. Plaintiff performed so well that he received pay increases all the way to \$25 per hour

19. Plaintiff's set work schedule was Monday through Friday 6:00am to 2:30pm.

20. Initially, Plaintiff reported to Supervisor Vinnie Patel. Then in June 2022, Amy Nguyen supervised Plaintiff until Smile Design Supervisor Ioannis Deliannis² in January 2023.

21. **Defendant Overworks Plaintiff But Refuses To Pay Overtime.** Once Ioannis Deliannis took over, the micromanagement and productivity demands increased. But, Defendant did not permit Plaintiff more time to complete the required job tasks. Instead, Defendant prohibited Plaintiff from working or recording any overtime, even though they demanded that Plaintiff complete work that required overtime to do safely. For instance, often times designs would need approvals before Plaintiff could complete his work on the designs, which were on an end-of-day deadline. Plaintiff's daily quota was raised to five to six cases per day.

22. Plaintiff did his very best to keep up without working overtime, but it was always possible. On February 2, 2023, Defendant issued Plaintiff a written warning for working unapproved overtime. Plaintiff complained to Ioannis Deliannis that it was impossible to safely keep up with the quote without incurring overtime. Ioannis Deliannis told Plaintiff to "get it done."

23. Plaintiff continued to do his best to get his required work done without incurring overtime. To do so, Plaintiff worked as hard as he could within safety guidelines and the restraints and resources given, but still had to work off-the-clock after clocking out to get the work done. Other similarly-situated non-exempt employees did the same.

24. In mid-June 2023, Ioannis Deliannis praised Plaintiff's performance, messaging him "Good Job!!" Exhibit 1.

25. **Plaintiff Blows The Whistle To The State Labor Commissioner.** At the beginning of July 2023, Plaintiff contacted the Department of Labor and then submitted a formal complaint about

² <https://www.linkedin.com/in/ioannis-deliannis-379448aa>

Defendant's unreasonable expectations and refusal to pay overtime. In response, Defendant fired him on July 7, 2023.

26. **Off-The-Clock Work.** Defendant failed to pay Plaintiff for all time worked. The off-the-clock work included, among other things according to proof: working during breaks, such as carrying on with work during a meal break; reviewing or responding to emails or texts from a mobile device or after hours; illegally "rounding" employee time at the beginning and/or end of meal breaks.

27. **Overtime Work.** Defendant failed to pay Plaintiff for work in excess of eight (8) hours in a day or more than forty (40) hours in a workweek at the rate of time-and-one-half (1.5) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek, and for work in excess of twelve (12) hours in a day overtime compensation at a rate of two (2) times the regular rate of pay.

28. **Meal Break Violations.** Defendant failed to provide Plaintiff with first or second timely, uninterrupted 30-minute meal break as required by law, according to proof. For instance, among other things according to proof: Plaintiff did not get meal breaks at all; Plaintiff was forced to work throughout Plaintiff's meal breaks; Plaintiff was "on-call" during meal breaks; Defendant automatically deducted unpaid meal break time from Plaintiff's time worked even though Plaintiff performed work during such time; Defendant rounded Plaintiff's clock in and out times for the start and end of meal breaks; Plaintiff's meal breaks were not timely; Plaintiff's meal breaks were interrupted; Plaintiff's meal breaks were less than the full 30 minutes; and/or Defendant required Plaintiff to remain on premises at the worksite during meal breaks. *Only once did Defendant pay to Plaintiff a meal period premium penalty.*

29. **Rest Break Violations.** Defendant failed to authorize and permit Plaintiff to take a 10-minute rest break per each four (4) hour period worked or a major fraction thereof, according to proof. For instance, among other things according to proof: Plaintiff did not get rest breaks at all; Plaintiff was forced to work throughout Plaintiff's rest breaks; Plaintiff was "on-call" during rest breaks; Plaintiff's rest breaks were not timely; Plaintiff's rest breaks were interrupted; Plaintiff's rest breaks were less than the full 10 minutes; and/or Defendant required Plaintiff to remain on premises at the worksite during rest breaks. *Defendant never paid to Plaintiff a rest period premium penalty.*

30. **Wage Statements.** Defendant knowingly and intentionally failed to provide Plaintiff with

uniform, complete, and accurate wage statements because the wage statements provided to Plaintiff failed to list the: accurate totals of the hours worked; number of hours worked at each hourly rate; net wages earned; and/or gross wages earned.

31. **Final Pay.** Defendant failed to pay Plaintiff all wages owed to Plaintiff immediately upon Plaintiff's termination of employment, including earned and unpaid wages, such as: *accrued but unused "floating" time off*; minimum wages; overtime wages; meal and/or rest period premium wages; and/or all wages owed for the final day of work.

FIRST CAUSE OF ACTION

PAGA REPRESENTATIVE ACTION FOR PENALTIES PURSUANT TO LABOR CODE SECTION 2698

32. Plaintiff incorporates by reference all preceding and subsequent paragraphs.

33. Under the California Private Attorneys General Act of 2004 ("PAGA"), Labor Code sections 2698-2699.5, private parties may recover civil penalties for violations of the Labor Code. These penalties are in addition to any other relief available under the Labor Code. As set forth above, Defendant has committed numerous violations of the Labor Code against Plaintiff, including but not limited to:

- **Labor Code §§ 201, 201.5, 202, 203.** Failure to pay all wages immediately upon termination or within 72 hours after notice of separation.
- **Labor Code § 204.** Failure to pay all earned wages within the time prescribed in Labor Code §§ 204(a) and 204(b).
- **Labor Code § 206.** Failure to pay all undisputedly owed wages.
- **Labor Code § 210.** Failure to pay wages as required by Labor Code §§ 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, 227.3, and/or 1197.5.
- **Labor Code § 212.** Failure to include the name and address of established place of business in the state on pay checks to cash or deposit pay checks.
- **Labor Code § 213.** Unauthorized payment of final wages via direct deposit.
- **Labor Code § 221.** Failure to not collect and receive owed wages.

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- 1 • **Labor Code § 226.** Failure to provide timely and accurate wage statements.³
- 2 • **Labor Code § 226.3.** Failure to comply with Labor Code § 226(a).
- 3 • **Labor Code § 226.7.** Failure to provide rest periods and failure to provide an additional hour of
- 4 pay at the regular rate of compensation in lieu of the rest periods.
- 5 • **Labor Code §§ 226.7 and 512.** Failure to provide meal periods and failure to provide an
- 6 additional hour of pay at the regular rate of compensation in lieu of the meal periods.
- 7 • **Labor Code § 256.** Failure to pay all wages immediately upon termination or within 72 hours
- 8 after notice of separation.
- 9 • **Labor Code §§ 510 and 1194.** Failure to pay overtime and double time compensation.
- 10 • **Labor Code §§ 510, 1194, 1194.2, and 1197.** Failure to pay minimum wages, including overtime
- 11 and double time compensation at the minimum wage rate.
- 12 • **Labor Code § 558.** Violation of a section of the chapter of the Labor Code starting with Labor
- 13 Code § 500, *et seq.*, or any provision regulating hours and days of work in any order of the
- 14 Industrial Welfare Commission.
- 15 • **Labor Code § 558.1.** Violation any provision regulating minimum wages or hours and days of
- 16 work in any order of the Industrial Welfare Commission, and violating Labor Code §§ 203, 226,
- 17 226.7, 1193.1, and/or 1194.
- 18 • **Labor Code § 1174.** Failure to maintain compliant employee and payroll records.
- 19 • **Labor Code § 1197.1.** Failure to pay minimum wage.
- 20 • **Labor Code § 1199.** Violation of an order of the Industrial Welfare Commission.
- 21 • **Labor Code § 1198.** Violation of the following sections of orders of the Industrial Welfare
- 22 Commission for conditions of labor prohibited by such:
 - 23 a. **Wage Order 1-2001 (or other applicable Wage Order), Section 3,** requiring an
 - 24 employer to pay overtime and double time compensation.
 - 25 b. **Wage Order 1-2001 (or other applicable Wage Order), Section 4,** requiring an
 - 26 employer to pay minimum wages, including overtime and double time compensation at the
 - 27

28 ³ *Bernstein v. Virgin America, Inc.*, 3 F.4th 1127 (9th Cir. 2021) (awarding nearly \$4.4 million in statutory Labor Code § 226 penalties and an additional \$5 million in PAGA civil penalties for Labor Code § 226 violations).

1 minimum wage rate.

2 c. **Wage Order 1-2001 (or other applicable Wage Order), Section 7**, requiring an
3 employer to maintain accurate information with respect to each employee; provide
4 employees with thorough and accurate itemized wage statements; and, provide clocks
5 within a reasonable distance from employees' work areas.

6 d. **Wage Order 1-2001 (or other applicable Wage Order), Section 11**, requiring an
7 employer to provide its employees with adequate meal periods and an additional hour of
8 pay at the regular rate of compensation in lieu of the rest periods.

9 e. **Wage Order 1-2001 (or other applicable Wage Order), Section 12**, requiring an
10 employer to provide its employees with adequate rest periods and an additional hour of pay
11 at the regular rate of compensation in lieu of the rest periods.

12 34. Plaintiff is an “aggrieved employee” within the meaning of California Labor Code section
13 2699(c), and a proper representative to bring a civil action on behalf of Plaintiff and other current and
14 former employees of Defendant pursuant to the procedures specified in California Labor Code section
15 2699.3, because Plaintiff is employed by Defendant and the alleged violations of the California Labor
16 Code were committed against Plaintiff.

17 35. Pursuant to California Labor Code section 2699.3, Plaintiff gave written notice on
18 December 22, 2023, by online filing to the California Labor and Workforce Development Agency
19 (“LWDA”) and by certified mail to Defendant of the specific provisions of the California Labor Code and
20 IWC Wage Orders alleged to have been violated, including the facts and theories to support the alleged
21 violations. More than 65 days have passed since Plaintiff provided written notice to the LWDA. The
22 LWDA has not provided notice that it intends to investigate Plaintiff’s claims.

23 36. Pursuant to California Labor Code section 2699.3, Plaintiff served Defendant with the
24 aforementioned LWDA notice via certified mail by December 26, 2023. More than 33 days have passed
25 since that date. Defendant has not provided Plaintiff with notice that it cured any of the violations
26 alleged therein.

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28 ///

1 37. Per the tolling provision in Labor Code section 2699.3(g), the period of liability under
2 Plaintiff's PAGA claim extends one year and sixty-five days before the filing of this complaint (the
3 "PAGA Liability Period").

4 38. Accordingly, Plaintiff has complied with all of the requirements set forth in California
5 Labor Code section 2699.3 to commence a representative action under PAGA.

6 39. Pursuant to PAGA, Plaintiff seeks civil penalties due to Plaintiff, other aggrieved
7 employees, and the State of California according to proof, pursuant to the California Labor Code,
8 including California Labor Code sections 2699(a) and 2699(f), which provides for \$100 for each initial
9 violation and \$200 for each subsequent violation per employee pay period. In addition, pursuant to PAGA,
10 Plaintiff seeks to recover civil penalties, including but not limited to penalties under Labor Code sections
11 210, 225.5, 226.3, 558, 1174.5, 1197.1, and 1199 from Defendant in a representative action for the
12 violations set forth above. Plaintiff is entitled to an award of reasonable attorneys' fees and costs pursuant
13 to Labor Code section 2699(g)(1).

14 **JURY TRIAL DEMANDED**

15 Plaintiff demands a jury to the extent a jury is permitted for PAGA claims.

16 **PRAYER FOR RELIEF**

17 WHEREFORE, Plaintiff prays judgment against Defendant as follows:

- 18 a. For penalties where provided by law;
19 b. For punitive damages where allowed by law;
20 c. For prejudgment interest pursuant to California Labor Code section 218.6, California
21 Civil Code section 3287 and/or California Civil Code section 3288 and/or any other
22 provision of law providing for prejudgment interest;
23 d. For attorneys' fees where allowed by law;
24 e. For costs of suit incurred herein; and

25 ///

26 ///

27 ///

28 ///

f. For such other and further relief as deemed just and proper.

DATED: February 27, 2024

COLBY LAW FIRM, PC



By: _____

AARON N. COLBY
ZOE YUZNA

Attorneys for Plaintiff
LUIS CHRISTIAN LOPEZ

EXHIBIT 1

4 initial, 4 DE's, 1 revision, 2 internal revisions

Ioannis Deliannis 6/13 4:06 PM

Hi Christian, Just letting you know a couple things:

- The list of cases I need are only cases that have been completed, not cases that are still in create initial smile design or records verification.
- I went ahead and approved your time punch correction from 6:11 AM to 6:00 AM, but by doing so it put you into a meal penalty. It is important that you take your lunch before your 5th hour. Please don't let this happen again.



1

Wednesday, June 14

6/14 7:21 AM

Good morning, I went ahead and adjusted the times so it doesn't reflect the penalty. Thank you for catching that 🙏



1

Ioannis Deliannis 6/14 8:36 AM

No worries! These things happen 🙌



1

6/14 8:38 AM

Also, the list of cases yesterday were of all completed cases - not in initial or records verification 🙌

Ioannis Deliannis 6/14 8:38 AM

Oh damn! so you completed 8 cases yesterday?

6/14 8:39 AM

Yes sir, lol

Ioannis Deliannis 6/14 8:39 AM

Damn bro! Good job!!



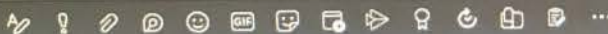
1

Tuesday, June 20

6/20 10:27 AM

Good morning! My ESL has been down all morning so far, im unable to upload any cases to the server so im unable to work - I let Trinn know and I submitted a ticket to software I've been waiting for a response from them just letting us know for

Type a new message



Search

