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Attorneys for Plaintiff
DAVID GOMEZ

Assigned for all purposes:
Judge Lon F. Hurwitz
Dept. CX103

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

DAVID GOMEZ, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

STRAUB DISTRIBUTING COMPANY,
LTD, a California limited partnership; and
DOES 1 through 100, inclusive,

Defendants.

Case No.: 30-2024-01376270-CU-OE-CXC

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

- (1) FAILURE TO PROVIDE
ACCURATE, ITEMIZED WAGE
STATEMENTS (LABOR CODE
§ 226 *et seq.*)**
- (2) CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS GENERAL
ACT (LABOR CODE § 2698 *et seq.*)**

**DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

1 Plaintiff David Gomez (“Plaintiff”), on behalf of himself and all others similarly situated,
2 hereby brings this First Amended Class and Representative Action Complaint (“FAC”) against
3 Straub Distributing Company, LTD, a California limited partnership; and DOES 1 through 100,
4 inclusive, (collectively “Defendants”), and on information and belief alleges as follows:

5 **JURISDICTION**

6 1. Plaintiff, on behalf of himself and all others similarly situated, hereby brings this
7 FAC for recovery of penalties under Labor Code § 226 *et seq.* and 2698 *et seq.* This FAC is
8 brought pursuant to California Code of Civil Procedure § 382. This Court has jurisdiction over
9 Defendants’ violations of the California Labor Code because the amount in controversy exceeds
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 Orange. Defendants own, maintain offices, transact business, have agent(s) within the
15 County of Orange, and/or otherwise are found within the County of Orange, 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. During the four years immediately preceding
20 the filing of the Complaint in this action and within the statute of limitations periods applicable
21 to each cause of action pled herein, Plaintiff was employed by Defendants as a non-exempt
22 employee. Plaintiff was, and is, a victim of Defendants’ policies and/or practices complained of
23 herein and has been deprived of the rights guaranteed by Labor Code § 226 *et seq.* and 2698 *et*
24 *seq.*

25 4. Plaintiff is informed and believes, and based thereon alleges, that during the one
26 year preceding the filing of the FAC and continuing to the present, Defendants did (and continue
27 to do) business by distributing beverages to its clients. Defendants employed Plaintiff and other,
28 similarly-situated non-exempt employees within, among other counties, Orange County and the

1 state of California and, therefore, were (and are) doing business in Orange County and the State
2 of California.

3 5. Plaintiff does not know the true names or capacities, whether individual, partner,
4 or corporate, of the defendants sued herein as DOES 1 to 100, inclusive, and for that reason, said
5 defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to
6 amend this Complaint when such true names and capacities are discovered. Plaintiff is informed,
7 and believes, and based thereon alleges, that each of said fictitious defendants, whether individual,
8 partners, or corporate, were responsible in some manner for the acts and omissions alleged herein,
9 and proximately caused Plaintiff and the Class (as defined in Paragraph 11) to be subject to the
10 unlawful employment practices, wrongs, injuries and damages complained of herein.

11 6. Plaintiff is informed, and believes, and thereon alleges, that at all times mentioned
12 herein, Defendants were and are the employers of Plaintiff and all members of the Classes.

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

20 8. At all times mentioned herein, Defendants, and each of them, were members of
21 and engaged in a joint venture, partnership, and common enterprise, and acting within the course
22 and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further,
23 Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and all
24 members of the Classes.

25 **GENERAL FACTUAL ALLEGATIONS**

26 9. Plaintiff, a current employee, has been employed by Defendants since
27 approximately May 2022 as a Commercial Delivery Driver.

28 10. Throughout Plaintiff's employment, Defendants failed to provide Plaintiff and

other drivers with accurate, itemized wage statements, in violation of Labor Code section 226. Specifically, the wage statements Defendants provided to their drivers failed to include the units and rates for the “Dimes” line item on the paystubs issued, in violation of California law.

CLASS ACTION ALLEGATIONS

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

a. The Wage Statement Class consists of all current and former drivers in California who received a wage statement, during the one year immediately preceding the filing of the lawsuit through the present.

12. Plaintiff reserves the right under Rule 3.765(b) of the California Rules of Court, to amend or modify the description of the various classes with greater specificity or further division into subclasses or limitation to particular issues.

13. **Numerosity/Ascertainability:** The members of the Class are so numerous that joinder of all members would be unfeasible and not practicable. The membership of the Class is unknown to Plaintiff at this time; however, it is estimated that the members of the Class number greater than one hundred (100) individuals. The identity of such membership is readily ascertainable via inspection of Defendants’ employment records.

14. **Common Questions of Law and Fact Predominate/Well Defined Community of Interest:** There are common questions of law and fact as to Plaintiff and all other similarly situated employees, which predominate over questions affecting only individual members. Those common questions include, without limitation:

i. Whether Defendants provided accurate, itemized wage statements to members of the Class.

15. **Predominance of Common Questions:** Common questions of law and fact predominate over questions that affect only individual members of the Class. The common questions of law set forth above are numerous and substantial and stem from Defendants’ policies and/or practices applicable to each individual class member, such as Defendants’ wage statement policies/practices. As such, the common questions predominate over individual questions

concerning each individual class member's showing as to their eligibility for recovery or as to the amount of their damages.

16. **Typicality:** The claims of Plaintiff are typical of the claims of the Class because Plaintiff was employed by Defendants as a non-exempt employee in California during the statute(s) of limitations period applicable to each cause of action pled in the Complaint. As alleged herein, Plaintiff, like the members of the Class, was not provided with accurate, itemized wage statements.

17. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps to represent fairly and adequately the interests of the members of the Class. Moreover, Plaintiff's attorneys are ready, willing and able to fully and adequately represent the members of the Class and Plaintiff. Plaintiff's attorneys have prosecuted and defended numerous wage-and-hour class actions in state and federal courts in the past and are committed to vigorously prosecuting this action on behalf of the members of the Class.

18. **Superiority:** The California Labor Code is broadly remedial in nature and serves an important public interest in establishing minimum working conditions and standards in California. These laws and labor standards protect the average working employee from exploitation by employers who have the responsibility to follow the laws and who may seek to take advantage of superior economic and bargaining power in setting onerous terms and conditions of employment. The nature of this action and the format of laws available to Plaintiff and members of the Class make the class action format a particularly efficient and appropriate procedure to redress the violations alleged herein. If each employee were required to file an individual lawsuit, Defendants would necessarily gain an unconscionable advantage since they would be able to exploit and overwhelm the limited resources of each individual plaintiff with their vastly superior financial and legal resources. Moreover, requiring each member of the Class to pursue an individual remedy would also discourage the assertion of lawful claims by employees who would be disinclined to file an action against their former and/or current employer for real and justifiable fear of retaliation and permanent damages to their careers at subsequent employment. Further, the prosecution of separate actions by the individual class members, even

1 if possible, would create a substantial risk of inconsistent or varying verdicts or adjudications
2 with respect to the individual class members against Defendants herein; and which would
3 establish potentially incompatible standards of conduct for Defendants; and/or legal
4 determinations with respect to individual class members which would, as a practical matter, be
5 dispositive of the interest of the other class members not parties to adjudications or which would
6 substantially impair or impede the ability of the class members to protect their interests. Further,
7 the claims of the individual members of the Class are not sufficiently large to warrant vigorous
8 individual prosecution considering all of the concomitant costs and expenses attending thereto.
9 As such, the Classes identified in Paragraph 11 are maintainable as a Class under § 382 of the
10 Code of Civil Procedure.

11 **FIRST CAUSE OF ACTION**

12 **FAILURE TO PROVIDE ACCURATE, ITEMIZED WAGE STATEMENTS**
13 **(AGAINST ALL DEFENDANTS)**

14 19. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

15 20. Plaintiff is informed and believes, and based thereon alleges, that Defendants
16 knowingly and intentionally, as a matter of uniform practice and policy, failed to furnish Plaintiff
17 and the Wage Statement Class Members with accurate, itemized wage statements that included
18 among other requirements, all applicable hourly rates in effect during the pay period, and the
19 total hours worked by the employee in violation of Labor Code § 226 *et seq.*

20 21. Defendants' failure to furnish Plaintiff and the members of the Wage Statement
21 Class with complete and accurate, itemized wage statements resulted in actual injury and deprived
22 them of the information necessary to identify discrepancies in Defendants' reported data, among
23 other things.

24 22. Defendants' failures created an entitlement to Plaintiff and members of the Wage
25 Statement Class in a civil action for damages and/or penalties pursuant to Labor Code § 226,
26 including statutory penalties civil penalties, reasonable attorneys' fees, and costs according to suit
27 pursuant to Labor Code § 226 *et seq.*
28

LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF 2004
(AGAINST ALL DEFENDANTS)

24. Defendants have committed several Labor Code violations against Plaintiff and Aggrieved Employees. Plaintiff, an “Aggrieved Employee” within the meaning of Labor Code § 2698 et seq., acting on behalf of himself and other Aggrieved Employees, brings this representative action against Defendants to recover the civil penalties due to Plaintiff, the other aggrieved employees, and the State of California according to proof pursuant to Labor Code § 2698(a) and (f) including, but not limited to \$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, based on the following Labor Code violations:

25. On January 26, 2024, Plaintiff notified Defendants via certified mail, and the California Labor and Workforce Development Agency (“LWDA”) via e-mail, of Defendants’ violations of the California Labor Code and Plaintiff’s intent to bring a claim for civil penalties under California Labor Code § 2698 et seq. with respect to violations of the California Labor Code identified in Paragraph 24(a). Attached hereto as **Exhibit 1** is a true and correct copy of the January 26, 2024 correspondence. Now that sixty-five days have passed from Plaintiff notifying Defendants of these violations, Plaintiff has exhausted his administrative requirements for bringing a claim under the Labor Code Private Attorneys General Act with respect to these violations.

//

1 **PRAYER**

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

- 4 1. For an order certifying the proposed Class;
5 2. For an order appointing Plaintiff as representative of the Class;
6 3. For an order appointing Counsel for Plaintiff as Counsel for the Class;
7 4. Upon the First Cause of Action, for penalties pursuant to Labor § 226;
8 5. Upon the Second Cause of Action, for civil penalties due to Plaintiff, other
9 aggrieved employees, and the State of California according to proof pursuant to Labor Code §
10 2699 (a) and (f) including, but not limited to \$100.00 for each initial violation and \$200.00 for
11 each subsequent violation per employee per pay period for those violations of the Labor Code for
12 which no civil penalty is specifically provided, based on the Labor Code violations cited in
13 Paragraph 24 (a) above.
14 6. Prejudgment interest pursuant to Civil Code §§ 3287 and 3289;
15 7. On all causes of action, for attorneys' fees and costs as provided by Code of Civil
16 Procedure § 1021.5, the Labor Code and all other applicable statutes; and
17 8. For such other and further relief the Court may deem just and proper.

18 Dated: April 2, 2024
19 Respectfully submitted,
LIDMAN LAW, APC

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21 By: 
22 Milan Moore
23 Attorneys for Plaintiff
DAVID GOMEZ

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Dated: April 2, 2024

By:

Milan Moore
Attorneys for Plaintiff
DAVID GOMEZ

EXHIBIT 1

EXHIBIT 1

LIDMAN LAW

2155 CAMPUS DRIVE, SUITE 150, EL SEGUNDO, CA 90245

OFFICE: (424) 322-4772

FAX: (424) 322-4775

January 26, 2024

VIA LWDA WEBSITE

Labor and Workforce Development Agency
Attn: PAGA Administrator
1515 Clay Street, Suite 801
Oakland, CA 94612

**VIA U.S. CERTIFIED MAIL – RETURN
RECEIPT REQUESTED**

Straub Distributing Company, LTD.
c/o Mark Danner, Registered Agent
4633 East La Palma Avenue
Anaheim, CA 92807

Re: *David Gomez v. Straub Distributing Company, LTD*

To Whom It May Concern:

Please be advised that this law firm represents David Gomez in claims arising from his employment with Straub Distributing Company, LTD, a California limited partnership (“Defendant”). Mr. Gomez is an “aggrieved employee” as defined by Labor Code sections 2699, *et seq.* due to Defendant’s numerous violations of the Labor Code as set forth below. The purpose of this letter is to comply with Labor Code section 2699.3, which requires aggrieved employees to notify their employer and the Labor and Workforce Development Agency (“LWDA”) of the specific provisions of the Labor Code allegedly violated.

For purposes of this letter, an “aggrieved employee” should be considered to include all current and former hourly-paid drivers in California who worked, at least in part, during the one year immediately preceding the date of this letter through the date of trial, the date judgment is entered, the date of settlement and/or other date approved by the Court.

Mr. Gomez, a current employee, has been employed by Defendant since approximately May 2022 as a Commercial Delivery Driver.

Throughout Mr. Gomez’s employment, Defendant failed to provide him and other drivers with accurate, itemized wage statements, in violation of Labor Code section 226. Specifically, the wage statements Defendant provided to their drivers failed to include the units and rates for the “Dimes” line item on the paystubs issued, in violation of California law.

As described above, Defendant committed the following violations of the Labor Code:

Wage Statement Violations

Defendant knowingly and intentionally, as a matter of uniform practice and policy, failed to furnish Mr. Gomez and other aggrieved employees with accurate and complete, itemized wage statements that included the units and rates for the “Dimes”, all in violation of Labor Code § 226 *et seq.* Defendant’s failure to furnish Mr. Gomez and other aggrieved employees with complete and accurate, itemized wage statements resulted in actual injury, as said failures deprived them of the information necessary to identify potential discrepancies in Defendant’s reported data.

As an “aggrieved employee,” Mr. Gomez will initiate a civil action on behalf of himself and other aggrieved employees to recover damages, statutory penalties, and civil penalties resulting from the wage statement violations alleged herein. Based on Mr. Gomez’s own investigation, and on information and belief, Defendant committed the following Labor Code violations:

- a) Defendant violated Labor Code § 226 by failing to furnish Mr. Gomez and other aggrieved employees with accurate and compliant itemized wage statements.

Pursuant to Labor Code section 2699.3(a)(2)(A), please notify us and Defendant if the LWDA intends to investigate these alleged violations of the Labor Code. Please contact me should you require additional information.

Very truly yours,
LIDMAN LAW, APC



Scott M. Lidman