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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SACRAMENTO

JOSE HERNANDEZ,

Plaintiff,

vs.

**SPARE-TIME, INC.; LAWRENCE
GILZEAN; and DOES 1 to 25, inclusive,**

Defendants.

CASE NO.: 24CV009437

COMPLAINT FOR DAMAGES FOR:

**1) PRIVATE ATTORNEYS GENERAL
ACT ("PAGA");**

COMES NOW Plaintiff, JOSE HERNANDEZ (hereinafter "Plaintiff"), and alleges as follows:

PARTIES, JURISDICTION, VENUE

1. Jurisdiction and Venue are proper in this Court and this action is properly filed in the County of Sacramento in this judicial district because Defendants SPARE-TIME, INC.; LAWRENCE GILZEAN; and DOES 1 to 25, inclusive, do business in the County of Sacramento. Moreover, Plaintiff's damages sought herein exceed \$35,000.

2. Plaintiff is a male resident of the State of California.

3. Plaintiff is informed and believes that at all times herein mentioned, Defendant SPARE-TIME, INC. is a California Corporation, doing business in Sacramento County, California, and which employed Plaintiff.

4. Plaintiff is informed and believes that at all times herein mentioned, Defendant LAWRENCE GILZEAN is a male resident of the State of California, and the owner, managing agent, and/or director SPARE-TIME, INC. LAWRENCE GILZEAN is being included in this lawsuit pursuant to Labor Code Section 558.1 in that he was and is involved in the day-to-day operations of the business, including the wage and hour practices and policies, and as such, he controlled the hours, wages, and/or working conditions of Plaintiff and other hourly, non-exempt employees. Defendants SPARE-TIME, INC. and LAWRENCE GILZEAN are collectively referred to herein as "Defendant(s)" (unless otherwise noted) or "SPARE TIME".

5. Plaintiff is ignorant of the true names and capacities, whether individual, corporate, or associate of those defendants fictitiously sued as DOES 1 to 25, inclusive, and so Plaintiff sues them by these fictitious names. Plaintiff is informed and believes that each of the DOE

1 defendants, numbers 1 to 25, reside in the State of California and are in some manner
2 responsible for the conduct alleged herein. Upon discovering the true names and capacities of
3 these fictitiously named defendants, Plaintiff will amend this complaint to show the true names
4 and capacities of these fictitiously named defendants.

5 6. Unless otherwise alleged in this complaint, Plaintiff is informed, and on the basis of
6 that information and belief, alleges that at all times herein mentioned, each of the remaining
7 codefendants, in doing the things hereinafter alleged, were acting within the course, scope, and
8 under the authority of their agency, employment, or representative capacity, with the consent
9 of his/her codefendants.

11 **GENERAL ALLEGATIONS**

12 7. Plaintiff started working at SPARE TIME in Sales on or around 2022 in the
13 maintenance department. Plaintiff was classified as an hourly, non-exempt employee.
14 Plaintiff's employment ended on or around February 2024.

15 8. In the case of Huff v. Securitas Sec. Servs. USA, Inc., 23 Cal. App. 5th 745 (2018),
16 Plaintiff, Huff, was employed as a security guard for the Defendant Employer, Securitas
17 Security Services USA, Inc., an onsite security provider. After about a year of employment,
18 Huff resigned. Huff then filed suit against Securitas under PAGA. In his claim, Huff
19 specifically alleged violations to the Labor Code requiring immediate payment of wages upon
20 termination of employment and weekly payment of wages to temporary employees. The trial
21 court determined Huff was not a temporary employee, and therefore, lacked standing to bring
22 the claim. Thus, Securitas was granted a motion for summary judgement. Later, the trial court
23 granted Huff a new trial. Securitas then appealed the grant of a new trial. On appeal, the issue
24 was whether Huff could bring a PAGA claim and sue for Labor Code violations that did not
25 directly affect him. Securitas unsuccessfully argued that the PAGA statute only allows the
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1 PAGA representative to sue for violations that the representative has personally suffered. The
2 PAGA statute states that an “aggrieved employee” is able to file suit on behalf of themselves
3 and others. The statute also states that an “aggrieved employee” is “any person who was
4 employed by the alleged violator and against whom one or more of the alleged violations was
5 committed.” Because at least one of the violations that Huff had alleged had affected him
6 personally, the Court of Appeal denied Securitas’ motion.

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8 9. In sum, since PAGA allows Plaintiffs to bring suit on behalf of both themselves and
9 other employees, it allows for suits broader than the specific violations the named employee
10 experienced. Therefore, even if the employee did not personally experience the Labor Code
11 violations, the employer may still be liable to under PAGA. Consequently, it is Plaintiff’s
12 position that Plaintiff can equivocally bring the following labor code violations on behalf of all
13 other employees, including ALL hourly, non-exempt employees, irrespective of job title or job
14 duties.

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16 10. It is Plaintiff’s position that SPARE TIME has violated the following Labor Code \
17 Sections against Plaintiff and other similarly situated aggrieved employees, who include all
18 non-exempt, hourly employees who worked for SPARE TIME at ALL of their locations in the
19 State of California during the relevant PAGA period.

20 11. SPARE TIME violated Labor Code § 1194, 1194.2, 1197, and 1197.1 because it failed
21 to pay Plaintiff and other similarly situated aggrieved employees for all hours worked,
22 including the statutory minimum wage for all hours worked and for “off the clock” work. This
23 is so because SPARE TIME had a company policy wherein, they would disproportionately
24 round down the number of hours worked, resulting in “time shaving” and further resulting in
25 aggrieved employees not being paid for all hours worked. Furthermore, to the extent that
26 Plaintiff and others worked through their meal periods while “off the clock” and while clocked
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1 out, they were not compensated for all hours worked, which would be akin to a minimum wage
2 violation. Furthermore, SPARE TIME did not pay proper reporting time pay to employees.

3 12. Due to the above "off the clock" violations, SPARE TIME also violated Labor Code
4 §510 because it failed to pay Plaintiff and other aggrieved employees overtime compensation,
5 even though they worked more than 8 hours per day, 12 hours per day, and/or 40 hours per
6 week throughout their employment. Plaintiff's and other aggrieved employees' actual work
7 hours, including the "off the clock" work and time shaving, entitled them to overtime
8 compensation, however, SPARE TIME did not compensate its hourly, non-exempt employees
9 with the correct amount of overtime due to the "off the clock" work and time shaving as
10 described above. Furthermore, SPARE TIME failed to include bonuses/incentive payments in
11 calculating employees' regular rate of pay for use in deciphering the correct overtime rate of
12 pay. Additionally, the incentive and bonus payments were also not factored into employees'
13 regular rate for purposes of receiving meal and rest break premiums per the Ferra v. Loews
14 case.
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17 13. SPARE TIME also violated Labor Code § 226.7 and the appropriate Industrial
18 Welfare Commission Wage Order no. 4/10 because it failed to provide Plaintiff and other
19 similarly situated aggrieved employees with 10-minute rest periods for every four hours of
20 work, or majority portion thereof, throughout their employment. SPARE TIME did not
21 completely relieve Plaintiff and others of all duty during said rest periods. SPARE TIME did
22 not pay to Plaintiff and others one additional hour of pay at Plaintiff's regular rate of
23 compensation for each workday that one or more statutory rest periods was not provided. It
24 was not part of the company policy for employees such as Plaintiff to consistently and always
25 take at least two, full uninterrupted rest breaks per shift. As such, the culture as well as the
26 policies and procedures of SPARE TIME did not lend itself to the employees receiving
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1 consistent statutory rest breaks wherein, they were relieved of all work duties. The
2 environment at SPARE TIME was not conducive to receiving multiple statutory rest breaks
3 under California law and timely, statutory rest breaks were not authorized or enforced.

4 14. SPARE TIME violated Labor Code §§ 512 and 226.7 and the appropriate Industrial
5 Welfare Commission Wage Order no. 4/10 because it failed to provide hourly, non-exempt
6 employees, including Plaintiff and others, the requisite 30-minute, uninterrupted meal periods
7 for every five (5) hours of work throughout their employment. SPARE TIME did not
8 completely relieve Plaintiff and other employees of all duty during said meal periods. SPARE
9 TIME did not pay to Plaintiff and its hourly, non-exempt employees one additional hour of pay
10 at their regular rate of compensation for each workday that one or more statutory meal periods
11 was not provided. The hourly, non-exempt employees would not always be able to receive
12 timely meal periods before the 5th hour worked that were actually uninterrupted. Like the rest
13 breaks, receiving a thirty-minute uninterrupted and timely meal break was not always enforced
14 by SPARE TIME. Consequently, it was the normal practice and custom of SPARE TIME not
15 to authorize, permit, and enforce timely statutory meal periods. If SPARE TIME had Plaintiff
16 sign a meal period waiver, it would not be valid and enforceable since Plaintiff and others
17 generally worked more than a 6-hour shift. Even if Plaintiff's and others' shifts were less than
18 6 hours, Plaintiff did not sign a meal period waiver wherein he was able to revoke the
19 agreement. If SPARE TIME had Plaintiff sign an on-duty meal period agreement wherein
20 Plaintiff agreed to work through the meal periods, it would be invalid and unenforceable
21 because the nature of Plaintiff's job as a cleaner does not and did not prevent him from taking a
22 meal period and the company could have hired "breakers" to relieve Plaintiff of his job duties
23 so that he can actually take a timely, uninterrupted meal period. Moreover, any such "on duty"
24 meal period agreement did not allow Plaintiff and others to revoke such an agreement even if it
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1 was signed. As such, Plaintiff and others did not receive statutory, timely meal periods during
2 their employment. To the extent that SPARE TIME argues that employees receive meal break
3 premium pay for missed meal periods, that argument is inconsequential for PAGA penalty
4 purposes since the PAGA penalties are for the violations themselves, irrespective of whether
5 an employee received the premium payment for a missed, short, or interrupted meal period. In
6 *Kirby v. Immoos Fire Protection, Inc.*, the Court stated, “section 226.7 does not give employers
7 a lawful choice between providing *either* meal and rest breaks *or* an additional hour of pay.”
8 *See Kirby v. Immoos Fire Protection, Inc.*, (2012) 53 Cal.4th 1244, 1256 (emphasis in
9 original). Thus, the extra hour of pay does not excuse the violation; the employer has still
10 committed a violation even if the remedy for the violation has been paid. *See Wert v. U.S.*
11 *Bancorp*, (S.D. Cal. Mar. 22, 2016, 2016 WL 1110302 at *4). As such, the work environment
12 and culture at SPARE TIME was not conducive to receiving consistent, timely, statutory meal
13 breaks under California law. Moreover, any meal or rest break premiums paid were not
14 compensated at the weighted average regular rate, inclusive of bonuses and/or incentive
15 payments as well as overtime compensation.
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18 15. Furthermore, during the relevant time period, and due to the above labor code
19 violations, SPARE TIME failed to pay Plaintiff and other similarly situated aggrieved
20 employees all wages due to them within any time period specified by California Labor Code
21 section 204. Since Plaintiff was personally not compensated for all hours worked and did not
22 receive all meal and rest break premium payments for missed, late, or short meal/rest periods,
23 SPARE TIME would have certainly violated section 204 as to Plaintiff. SPARE TIME was
24 also in violation of California Labor Code section 226(a) by failing to include pertinent
25 information on the wage statements, including but not limited to, the correct hourly rate, all
26 hours worked, overtime hours worked, correct overtime pay, gross wages earned, net wages
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1 earned, premium pay for missed meal and rest breaks, all deductions, the correct start and end
2 of the pay period, all employee identifying information, the correct and complete name and
3 address of the legal employer, and reimbursement for business expenses, among others. As
4 such, SPARE TIME did not provide Plaintiff and other similarly situated aggrieved employees
5 with complete, accurate itemized wage statements.

6 16. During the relevant time period, SPARE TIME also failed to keep accurate and
7 complete payroll records showing the actual hours worked per day and the wages paid to
8 Plaintiff and others pursuant to California Labor Code sections 1174(d).

9 17. SPARE TIME also violated Labor Code § 203 because it willfully failed to pay
10 Plaintiff and other similarly situated aggrieved employees earned and due wages upon
11 separation of employment, either immediately upon involuntary termination, or within 72
12 hours of resignation. These earned but unpaid wages include compensation for all hours
13 worked, including minimum wages, overtime compensation, and premium pay for missed meal
14 and rest breaks.

15 18. During the relevant time period, Plaintiff and other aggrieved employees
16 incurred necessary, business-related expenses and costs that were not fully reimbursed by
17 SPARE TIME. These costs include, but are not limited to, use of personal cell phones for
18 work purposes and uniforms. Accordingly, SPARE TIME was in violation of California Labor
19 Code sections 2800 and 2802.

20 19. Furthermore, SPARE TIME did not provide proper and correct/accurate sick pay that
21 was also delineated on employee pay stubs and also failed to provide proper sick leave in
22 violation of Labor Code sections 233 and 246. Moreover, SPARE TIME violated the
23 applicable Industrial Welfare Commission Wage Order no. 4-2001/10-2001, sections 13 and 14
24 in that there was no adequate rest break facilities and seating for the employees.
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FIRST CAUSE OF ACTION

PRIVATE ATTORNEYS GENERAL ACT

Representative Claim for PAGA penalties under California Labor Code sections 201, 202, 203, 204 and/or 204b, 210, 226, 226.3, 226.7, 233, 246, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 2800, 2802 and IWC 4-2001/10-2001)

(Against All Named Defendants and all DOE Defendants)

20. Plaintiff re-alleges and incorporates by reference each and every allegation in paragraphs 1 through 19, inclusive, of this Complaint as though fully set forth herein.

21. Pursuant to law, Plaintiff provided the required written notice to the LWDA and Defendants of the specific violations of the California Labor Code that Defendants and DOE defendants have violated and continue to violate.

22. Pursuant to California Labor code section 2699.3, no response was received from the LWDA within 65 days of the postmark date of the above-alleged letter.

23. Plaintiff therefore has exhausted all administrative remedies required of him under California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute this cause of action and pursue penalties in a representative action for Defendants' violations of the Labor Code.

24. Pursuant to California Labor Code section 2699, any provisions of the Labor Code that provides for a civil penalty to be assessed and collected by the LWDA or any of its departments, divisions, commissions, boards, agencies, or employees for violation of the code may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of other current or former employees pursuant to the procedures specified in California Labor Code section 2699.3.

25. Plaintiff is an "aggrieved employee" because Plaintiff was employed by the alleged violators and had one or more of the alleged violations committed against him, and therefore is

1 properly suited to represent the interests of other current and former hourly, non-exempt
2 employees who worked for SPARE TIME at any and all locations in the State of California
3 during the relevant time period.

4 26. Based on the acts alleged above, Plaintiff, on behalf of others, seeks
5 penalties under California Labor Code sections 2698 and 2699 because of Defendants'
6 violations of numerous provisions of the California Labor Code as alleged in this Complaint.

7 27. Plaintiff therefore has exhausted all administrative remedies required of him under
8 California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute this
9 cause of action and pursue penalties in a representative action for Defendants' violations of the
10 Labor Code.

11 28. California Labor Code section 2699 et seq. imposes penalties upon culpable
12 Defendants for violating the Labor Code.

13 29. California Labor Code section 558 establishes a civil penalty as follows: Any
14 employer or other person action on behalf of an employer who violates, or causes to be violated,
15 a section of this chapter or any provision regulating hours and days of work in any order of the
16 Industrial Welfare Commission (including the "Hours and Days of Work" section of the Wage
17 Order) shall be subject to a civil penalty of (1) for any initial violation, fifty dollars (\$50) for
18 each underpaid employee for each pay period for which the employee was underpaid ...; (2) for
19 each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay
20 period for which the employee was underpaid ...;

21 30. Plaintiff seeks penalties for Defendants' misconduct as alleged herein as permitted
22 by law, but only those penalties that are required to be shared with the LWDA as Plaintiff is not
23 seeking individual/victim specific relief or underpaid wages under this particular cause of action.

24 31. Plaintiff seeks penalties for Defendants' misconduct as alleged herein as permitted
25 by law. Specifically, Plaintiff seeks penalties under California Labor Code section 2699, for
26 the following:
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Violations of California Labor Code sections 201, 202, 203, 204 and/or 204b, 210, 226, 226.3, 226.7, 233, 246, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 2800, 2802 via 2698 and 2699, and any other Labor Codes and Industrial Welfare Commission Wage Order (Order Nos. 4/10) violated based on the facts alleged in this Complaint.

32. Pursuant to Labor Code section 2698 et seq., Plaintiff seeks to recover attorney's fees, costs, and civil penalties on behalf of Plaintiff and other current and former Aggrieved Employees as alleged herein in an amount to be shown according to proof at trial and within the jurisdictional limits of this Court.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for Judgment against Defendants and each of them, as follows:

1. For the imposition of civil penalties;
2. For maximum civil penalties available under Labor Code Section 2699 against Defendants in a manner and amount authorized by that statute, as described more particularly in the Complaint and representative PAGA claims;
3. For all costs and disbursements incurred in this suit;
4. Reasonable attorney's fees where available by law, including but not limited to, pursuant to Labor Code section 2698 et seq., Code of Civil Procedure section 1021.5, and/or other applicable laws; and
5. For such other and further relief as this Court may deem proper.

DATED: May 14, 2024

MESSRELIAN LAW INC.

By 
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