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SUPERIOR COURT OF CALIFORNIA

IN AND FOR THE COUNTY OF RIVERSIDE

MARTHA LARRETA, on behalf of all others similarly aggrieved, Plaintiff, vs. EPE INDUSTRIES U.S.A., INC., a California corporation, J.C. INTERNATIONAL STAFFING SERVICES, INC., a California corporation, JOSE LUIS CRUZ, an individual, and DOES 1 through 50, Defendants.	CASE NO. CVRI2402071 FIRST AMENDED CLASS ACTION AND REPRESENTATIVE COMPLAINT JURY TRIAL DEMANDED

GENERAL ALLEGATIONS

1. Plaintiff MARTHA LARRETA is an individual residing in the State of California.

2. Defendant EPE INDUSTRIES U.S.A., INC. is a California corporation is duly licensed to conduct business in California.

3. Defendant J.C. INTERNATIONAL STAFFING SERVICES, INC. is a California corporation duly licensed to conduct business in California.

4. Defendant JOSE LUIS CRUZ is an individual residing in the State of California and is, and at all relevant times has been, the Chief Executive Officer of defendant J.C. INTERNATIONAL STAFFING SERVICES, INC., owns, operates, and/or manages J.C. INTERNATIONAL STAFFING SERVICES, INC., and had direct control and power over the working conditions and the violations at issue in this Complaint. On information and belief, JOSE LUIS CRUZ devised and implemented the policies at issue in this complaint and "caused" these violations as that term is used in Labor Code §§ 558 and 1197.l. Pursuant to Labor code §§ 558 and 1197.1, JOSE LUIS CRUZ is individually liable as a person who "caused" the violations to occur.

5. Plaintiff is unaware of the names and capacities of those defendants sued as DOES 1 through 50 but will amend this complaint when that information becomes known. Plaintiff is informed and believes and thereon alleges that, at all relevant times, each of the defendants, including the DOE defendants, was the officer, director, employee, agent, representative, alter ego, or co-conspirator of each of the other defendants, and in engaging in the conduct alleged herein, was acting in the course and scope of, and in furtherance of, such relationship. Unless otherwise specified, Plaintiff will refer to all defendants as "Defendants," and each allegation pertains to each defendant.

6. This court possesses original subject matter jurisdiction over this matter. Venue is proper in this judicial district because Defendant transacts business in this district, and some of the complained of conduct occurred in this judicial district.

CLASS ACTION ALLEGATIONS

7. Defendants jointly employed Plaintiff in California as a non-exempt employee

during the relevant time period. Plaintiff seeks to bring this action as a class action under Code of Civil Procedure section 382. The class Plaintiff seeks to represent is defined as follows: "all individuals employed by Defendant EPE INDUSTRIES U.S.A., INC., either directly, jointly with defendant J.C. INTERNATIONAL STAFFING SERVICES, INC., or jointly with any other labor contractor, as a non-exempt employee who worked at 11310 Harrel St., Jurupa Valley, California, 1111 E. Citrus St., Riverside, California, or any other location in the State of California, during the period commencing on the date that is four years preceding the filing of the initial complaint."

8. All applicable statutes of limitations were tolled from April 6 to October 1, 2020 under Emergency Order No. 9.

9. Ascertainable Class. The proposed class is ascertainable as its members can be identified and located using information in Defendants' payroll and personnel records.

10. Common Questions of Law and Fact. This lawsuit is suitable for class treatment because common questions of law and fact predominate over individual issues. Common questions include, but are not limited to, the following: (1) whether Defendants properly calculated and paid all amounts due to the class members for wages earned, including minimum and overtime wages, under California law, (2) whether Defendants violated the California Labor Code and/or IWC Wage Orders by withholding wages, including minimum and overtime wages, from the class members, (3) whether Defendants provided the class members with all required meal periods on a fully-compliant basis, or compensation in lieu thereof; (4) whether Defendants provided the class members with all required rest periods on a fully-compliant basis, or compensation in lieu thereof; (5) whether Defendants provided the class members with accurate itemized wage statements containing all information required by Labor Code section 226(a); (6) whether Defendants timely paid the class members all wages due upon separation of employment, (7) whether Defendants' failure to timely pay all wages due upon termination of employment was willful; and (9) whether Defendants violated California Business and Professions Code sections 17200, et seq.

11. Numerosity. The plaintiff class is so numerous that the individual joinder of all

members is impractical under the circumstances of this case. While the exact number of class members is unknown to Plaintiff, Plaintiff is informed and believes the class consists of at least 100 individuals.

12. Typicality. Plaintiff's claims are typical of the claims of the class members. Plaintiff suffered a similar injury as the other class members as a result of Defendants' common practices regarding the calculation and payment of wages, including minimum and overtime wages, failure to provide all required meal and rest periods on a fully compliant basis; provision of non-compliant wage statements, and untimely payment of wages due upon termination. In addition, Plaintiff will fairly and adequately protect the interests of the class members. Plaintiff has no interests adverse to the interests of the other class members.

13. Superiority. A class action is superior to other available means for the fair and efficient adjudication of this controversy since individual joinder of all members of the class is impractical. Class action treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of effort and expense that numerous individual actions would engender. Furthermore, as the damages suffered by each individual member of the class may be relatively small, the expenses and burden of individual litigation would make it difficult or impossible for individual members of the class to redress the wrongs done to them, while an important public interest will be served by addressing the matter as a class action. The cost to the court system of adjudication of such individualized litigation would be substantial. Individualized litigation would also present the potential for inconsistent or contradictory judgments. Finally, the alternative of filing a claim with the California Labor Commissioner is not superior, given the lack of discovery in such proceedings, the fact that there are fewer available remedies, and the losing party has the right to a trial de novo in the Superior Court.

FIRST CAUSE OF ACTION

(Recovery of Unpaid Minimum Wages and Liquidated Damages – Labor Code §§ 1194 and 1194.2)

14. Plaintiff incorporates all preceding paragraphs as if fully alleged herein.

15. California law mandates that employees in California be paid for all hours worked, up to 40 per week or 8 per day, at a regular time rate no less than the mandated minimum wage. Defendants violated California minimum wage laws by requiring, suffering or permitting Plaintiff and other aggrieved employees worked hours for which they were not paid at least the applicable minimum wage, including without limitation hours worked being rounded off, and working "off the clock," such that Plaintiff and other aggrieved employees lost compensation. Accordingly, Plaintiff and similarly aggrieved employees were not paid for all hours worked causing minimum wage and/or overtime violations under the Labor Code applicable Wage Orders.

16. Pursuant to Labor Code Sections 1194 and 1194.2, Plaintiff and the similarly situated individuals are entitled to recover all unpaid minimum wages and liquidated damages, plus attorneys' fees and costs, in an amount to be proved at trial.

SECOND CAUSE OF ACTION

(Recovery of Unpaid Overtime Wages – Labor Code §§ 1194)

17. Plaintiff incorporates all preceding paragraphs as if fully alleged herein.

18. California law mandates that employees in California be paid for all hours worked over 40 per week, over 8 per day, or for the first 8 hours on the seventh consecutive day of work at a premium rate of one and a half times the regular rate of pay, and two times the regular rate of pay for all hours worked over 12 per day or over 8 hours on the seventh consecutive day of work. Defendants violated California overtime wage laws by requiring, suffering or permitting Plaintiff and other aggrieved employees to work overtime hours for which they were not paid the premium rate, including without limitation hours worked that were rounded off, and working "off the clock," such that Plaintiff and other class members lost overtime compensation.

19. Pursuant to Labor Code Section 1194, Plaintiff and the class members are entitled to recover all unpaid overtime wages, plus attorneys' fees and costs, in an amount to be proved at trial.

THIRD CAUSE OF ACTION

(Failure to Provide Meal Periods or Compensation in Lieu thereof – Labor Code § 226.7)

20. Plaintiff incorporates all preceding paragraphs as if fully alleged herein.

21. Under the Labor Code and IWC Wage Orders, Defendants were required to provide Plaintiff and similarly situated and aggrieved employees with one 30-minute meal period free from all duties for all shifts longer than 5 hours, and a second 30-minute meal period free from all duties for all shifts longer than 10 hours. Meal periods can be waived, but only under the following circumstances: (1) if an employee's total work period in a day is over five (5) hours but no more than six (6) hours, the required meal period may be waived by mutual consent of the employer and employee, and (2) if an employee's total work period in a day is over ten (10) hours but no more than twelve (12) hours, the required second meal period may be waived by mutual consent of the employer and employee, but only if the first meal period was not waived. Employers covered by the Wage Orders have an obligation to both (1) relieve their employees for at least one meal period for shifts over five hours (see above), and (2) to record having done so. If the employer fails to properly record a valid meal period, it is presumed no meal period was provided.

22. Plaintiff and the class members regularly worked periods of more than five hours in a workday without being provided mandatory thirty-minute, duty-free meal periods before the end of the fifth hour of work, failed to maintain a company meal period policy compliant with California law and failed to provide Plaintiff and other aggrieved employees with all required meal periods, and/or meal periods were not provided until after the start of the fifth hour work. Plaintiffs and other aggrieved employees were not permitted to leave the premises during meal periods. Defendants also failed to pay Plaintiff and other aggrieved employees an additional hour of wages at their regular rates of compensation for each workday a required meal period was not provided, or was late, short or interrupted.

23. As a result, under Labor Code section 226.7, Plaintiff and the class members are entitled to one additional hour of pay at the regular rate of compensation for each day a meal period was missed or was non-compliant, all in an amount to be proved at trial.

FOURTH CAUSE OF ACTION

(Failure to Provide Rest Periods or Compensation in Lieu thereof – Labor Code § 226.7)

24. Plaintiff incorporates all preceding paragraphs as if fully alleged herein.

25. California law requires an employer to authorize or permit an employee to take a rest period of ten net minutes for every four hours worked, or major fraction thereof, and such rest periods must be in the middle of the four-hour period insofar as practicable. If the employer fails to provide any required rest periods, or fails to provide a fully compliant rest break for a net 10 minutes wherein the employee is fully relieved of all duties and all employer control, the employer must pay the employee one hour of pay at the employee's regular rate of compensation for each workday the employer did not provide a legally required and/or fully compliant rest period.

26. Defendants did not maintain a company rest period policy and/or practice compliant with California law, and Defendants frequently did not provide Complainant and other aggrieved employees with appropriate rest periods, particularly as to third rest periods on shifts exceeding 10 hours. Per Employer's policy and/or practice, Complainant and other aggrieved employees were not adequately informed and instructed about, and thereby were not afforded an adequate opportunity to take, proper rest breaks per California law. Further, Employer failed to pay Complainant and other aggrieved employees with an additional hour of pay at Complainant's and other aggrieved employees' regular rates of pay for each missed or improper rest period. Because Employer failed to fully and accurately calculate and record time, it also failed to provide Complainant and other aggrieved employees with all rest breaks required under California law. Employer failed to pay them premiums for such missed rest breaks in violation of California law.

27. As a result, under Labor Code section 226.7, Plaintiff and the similarly situated employees are entitled to one additional hour of pay at the regular rate of compensation for each day a rest period was missed or was non-compliant, all in an amount to be proved at trial.

FIFTH CAUSE OF ACTION

(Failure to Provide Accurate Itemized Wage Statements – Labor Code § 226)

28. Plaintiff incorporates all preceding paragraphs as if fully alleged herein.

29. The California Labor Code provides that, at the time of each payment of wages, the employer must provide each employee, as a detachable part of the check, draft, or voucher paying the employee's wages, with an itemized statement showing, inter alia, gross wages earned,

total hours worked, all deductions taken, net wages earned, the inclusive dates for which the employee is being paid, the employee's name and last four digits of their social security number or employee ID number, the name and address of the legal entity that it is the employer, and all applicable hourly rates in effect during the pay period and all hours worked at each rate.

30. For the reasons set forth above, Defendants knowingly and intentionally failed to provide Plaintiff and similarly situated employees with proper, itemized wage statements. Further, the wage statements issued by Defendants violate Section 226 on their face because they do not state the name of the legal entity that is the employer.

31. Accordingly, under Labor Code Section 226, Plaintiff and the similarly situated employees each are entitled to penalties in the amount of $50.00 for the initial pay period in which a violation occurred, and $100.00 for each subsequent pay period in which a violation occurred, up to an aggregate penalty of $4,000.00 per employee, plus attorney's fees and costs, all in an amount to be proved at trial.

SIXTH CAUSE OF ACTION

(Waiting Time Penalties – Labor Code §§ 201, *et seq.*)

32. Plaintiff incorporates all preceding paragraphs as if fully alleged herein.

33. The California Labor Code provides that, at the time of termination of employment, the employer must pay an employee all wages due and owing within the time frames set forth in Labor Code Sections 201, *et seq.* For the reasons set forth above, Defendants willfully failed to pay Plaintiff and similarly situated employees who no longer are employed with Defendants all wages due and owing within the deadlines set forth in Labor Code Sections 201, *et seq.*

34. Under Labor Code Section 203, Plaintiff and similarly situated employees who no longer are employed with Defendants are entitled to recover waiting time penalties of up to 30 days' pay, plus attorney's fees and costs, in an amount to be proved at trial.

SEVENTH CAUSE OF ACTION

(Failure to Produce Employment Records - Labor Code §§ 226 and 1198.5)

35. Plaintiff incorporates by reference the allegations contained in the preceding

paragraphs as though fully set forth herein.

36. Pursuant to Labor Code Sections 226(b) and 1198.5(b), an employer must provide an employee with access to his or her personnel file and payroll records. Under Labor Code Sections 226(c), an employer that receives a written or verbal request to inspect or copy records from a former employee must comply with the request as soon as possible but not later than 21 calendar days from the date of the request, or within 30 calendar days for non-payroll related documents per Labor Code Section 1198.5. If the employer fails to comply with the requirements of Labor Code Sections 226 and 1198.5, the employee may recover from the employer a statutory penalty in the amount of $750.00 for each violation. Plaintiff made a written demand to Defendants to inspect or copy her personnel file and payroll records under Labor Code Sections 226(b), 1198.5(b), and 432. Defendants failed to respond to Plaintiff's written demand.

37. Under Labor Code Sections 226(f) and 1198.5(k), Plaintiff and all other similarly situated class members are entitled to statutory penalties in the amount of $1,500.00, plus attorney's fees and costs, in an amount to be proved at trial.

EIGHTH CAUSE OF ACTION

(Unfair Competition – Business & Professions Code Sections 17200, *et seq*.)

38. Plaintiff incorporates all preceding paragraphs as if fully alleged herein.

39. Defendants' failure, inter alia, to pay all minimum wages earned, failure to pay all overtime earned and failure to pay premium wages in lieu of missed/non-compliant meal and rest breaks, all in violation of the Labor Code and Wage Orders, constitutes an unlawful, unfair or fraudulent business act or practice, in violation of Business & Professions Code sections 17200, *et seq.*

40. Pursuant to Business & Professions Code section 17203, Plaintiff is entitled to restitution of all unpaid wages and other sums owed, plus attorney's fees and costs, in an amount to be proved at trial.

NINTH CAUSE OF ACTION

(Violation of Private Attorneys General Act – Labor Code §§ 2698, et seq.)

41. Plaintiff incorporates all preceding paragraphs as if fully alleged herein.

42. Plaintiff also brings this complaint under the Private Attorneys General Act of 2004, Labor Code sections 2698, *et seq.*, ("PAGA"), as a representative action on behalf of the State of California regarding violations of the Labor Code as to all similarly aggrieved individuals employed by Defendants as non-exempt employees, however titled, in the State of California, from the date one year prior to submission of Plaintiff's PAGA notice letter plus tolling.

43. During the one-year period, plus applicable tolling, preceding the filing of the required PAGA notice with the Labor Workforce & Development Agency, and continuing through the present, as alleged herein, Defendant violated Labor Code sections 201-203, 204, 210, 221-223, 226, 226.7, 510, 512, 1174, 1194, 1197, 1198, 1199, and all applicable Wage Orders and all applicable Wage Orders, as to Plaintiff and all other aggrieved employees employed by Defendant in California during the applicable time frame. All of these violations subject Defendant to civil penalties as set forth in the foregoing statutes as well as other provisions of the Labor Code, including without limitation Labor Code sections 203, 210, 225.5, 226.3, 256, 1174.5, 1194.2, 1197.1, and 2699, and section 18 or 20 of all applicable IWC Wage Orders.

44. Plaintiff complied with the procedures for bringing suit specified in Labor Code Sections 2699.3 and 2699.5. By letter dated and postmarked February 2, 2024, Plaintiff gave written notice to the California Labor & Workforce Development Agency ("LWDA") via electronic submission at PAGAfilings@dir.ca.gov, and via certified mail to Defendants, of the specific provisions of the Labor Code and Wage Orders allegedly violated, including the facts and theories to support the alleged violations.

45. Under Labor Code Section 2699.3, the LWDA must give written notice by certified mail to the parties it intends to investigate the alleged violations within 65 days of the date of the complainant's written notice. As of the filing of the initial Complaint, the LWDA had not provided the parties any notice of its intention to investigate Plaintiff's claims on behalf of herself and other aggrieved employees, nor did Defendants respond to Plaintiff's PAGA notice in an attempt to cure. Accordingly, Plaintiff has exhausted all administrative remedies required by law.

46. Under Labor Code Section 2699(g), Plaintiff is entitled to an award of reasonable attorney's fees and costs in connection with his claims for civil penalties.

PRAYER

WHEREFORE, Plaintiff prays for judgment against each Defendant, jointly and severally, as follows:

1. For compensatory damages, liquidated damages, and statutory penalties according to proof;

2. For an order requiring Defendants to make restitution of all amounts wrongfully withheld from Plaintiff and the class;

3. For civil penalties according to proof;

4. For pre-judgment interest as permitted by law;

5. For reasonable attorney's fees and costs of suit; and

6. For such other and further relief as the Court deems just and proper.

Dated: January 15, 2025

LAW OFFICES OF J. KIRK DONNELLY, APC

J. Kirk Donnelly

J. Kirk Donnelly
Attorneys for Plaintiff Martha Larreta

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all claims so triable.

Dated: January 15, 2025

LAW OFFICES OF J. KIRK DONNELLY, APC

J. Kirk Donnelly

J. Kirk Donnelly
Attorneys for Plaintiff Martha Larreta