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ELECTRONICALLY
FILED
Superior Court of California,
County of San Francisco

07/22/2024
Clerk of the Court
BY: WILLIAM TRUPEK
Deputy Clerk

SUPERIOR COURT OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN FRANCISCO

ALEJANDRO MORENO and ANDRES
MEDINA, individually, and on behalf of all
others similarly situated,

Plaintiffs,

vs. ALLSITE CORP GOODS/SERVICE
CONSTRUCTION, a California corporation,
TIMOTHY W. WHEELER, an individual,
and DOES 1 through 50, inclusive,

Defendants.

CASE NO. CGC-24-614967

FIRST AMENDED COMPLAINT

JURY TRIAL DEMANDED

GENERAL ALLEGATIONS

1. Plaintiff ALEJANDRO MORENO is an individual residing in the State of California.

2. Plaintiff ANDRES MEDINA is an individual residing in the State of California.

3. On information and belief, defendant ALLSITE CORP GOODS/SERVICE CONSTRUCTION is a California corporation duly licensed to conduct business in the State of California.

4. On information and belief, defendant TIMOTHY W. WHEELER is an individual residing in the State of California, and at all relevant times has been, the Chief Executive Officer of defendant ALLSITE CORP GOODS/SERVICE CONSTRUCTION, owns, operates, and/or manages ALLSITE CORP GOODS/SERVICE CONSTRUCTION, and had direct control and power over the working conditions and the violations at issue in this Complaint. On information and belief, TIMOTHY W. WHEELER devised and implemented the policies at issue in this complaint and “caused” these violations as that term is used in Labor Code §§ 558 and 1197.1. Pursuant to Labor code §§ 558 and 1197.1, TIMOTHY W. WHEELER is individually liable as a person who “caused” the violations to occur.

5. Plaintiffs are 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. Plaintiffs are informed and believes and thereon allege 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, Plaintiffs 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 Defendants transact business in this district, and some of the complained of conduct occurred in this judicial district.

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1 CLASS ACTION ALLEGATIONS

2 7. Plaintiff MORENO works for Defendants as a non-exempt employee. Plaintiff
3 MEDINA worked for Defendants as a non-exempt employee until his employment terminated in
4 and around April 2024. Plaintiffs seek to bring this action as a class action under Code of Civil
5 Procedure section 382. The class Plaintiffs seek to represent is defined as follows: “All
6 individuals employed by Defendants as a non-exempt employee, however titled, in the State of
7 California during the period commencing on the date that is four years preceding the filing of this
8 complaint.”

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

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

13 10. Common Questions of Law and Fact. This lawsuit is suitable for class treatment
14 because common questions of law and fact predominate over individual issues. Common
15 questions include, but are not limited to, the following: (1) whether Defendants properly
16 calculated and paid all amounts due to the class members for wages earned, including minimum
17 and overtime wages, under California law, (2) whether Defendants violated the California Labor
18 Code and/or IWC Wage Orders by withholding wages, including minimum and overtime wages,
19 from the class members, (3) whether Defendants provided the class members with all required
20 meal periods on a fully-compliant basis, or compensation in lieu thereof; (4) whether Defendants
21 provided the class members with all required rest periods on a fully-compliant basis, or
22 compensation in lieu thereof; (5) whether Defendants provided full reimbursement for reasonable
23 and necessary business expenses; (6) whether Defendants provided the class members with
24 accurate itemized wage statements containing all information required by Labor Code section
25 226(a); (7) whether Defendants timely paid the class members all wages due upon separation of
26 employment, (8) whether Defendants’ failure to timely pay all wages due upon termination of
27 employment was willful; and (9) whether Defendants violated California Business and
28 Professions Code sections 17200, et seq.

1 11. Numerosity. The plaintiff class is so numerous that the individual joinder of all
2 members is impractical under the circumstances of this case. While the exact number of class
3 members is unknown to Plaintiffs, Plaintiffs are informed and believe the class consists of at least
4 50 individuals.

5 12. Typicality. Plaintiffs' claims are typical of the claims of the class members.
6 Plaintiffs suffered a similar injury as the other class members as a result of Defendants' common
7 practices regarding the calculation and payment of wages, including minimum and overtime
8 wages, failure to provide all required meal and rest periods on a fully compliant basis; provision
9 of non-compliant wage statements, payment of wages due upon termination, and failure to fully
10 reimburse for reasonable and necessary business expenses. In addition, Plaintiffs will fairly and
11 adequately protect the interests of the class members. Plaintiffs have no interests adverse to the
12 interests of the other class members.

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

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1 FIRST CAUSE OF ACTION

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

4 14. Plaintiffs incorporate by reference the allegations contained in the preceding
5 paragraphs as though fully set forth herein.

6 15. California law provides employees in California must be paid for all hours worked,
7 up to 40 per week or 8 per day, at a regular time rate no less than the mandated minimum wage.
8 Plaintiffs and similarly situated individuals regularly worked hours for which they were not
9 compensated by Defendants as required by California law, as Defendants violated California
10 minimum wage laws by requiring Plaintiffs and other similarly situated employees to travel to
11 and from distant job sites in company vehicles and subject to employer control without being
12 compensated for such travel time. Defendants also used a time rounding system that, as applied,
13 worked to detrimentally shave and round time off from Plaintiffs' and the class members' work
14 days. Specifically, Plaintiffs allege on information and belief that through the operation of
15 Defendants' rounding system, Plaintiffs and similarly situated employees would systematically be
16 deprived of compensable time because the time recording system implemented by Defendants
17 resulted in understating actual compensable work time due to the rounding. Plaintiffs further
18 allege they worked on public projects subject to prevailing wage requirements but Defendants
19 failed to pay them the required prevailing wage. Accordingly, Plaintiffs and the similarly situated
20 employees were not paid for all hours worked, up to 40 per week or 8 per day, at a rate no less
21 than the mandated minimum or prevailing wage.

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

25 SECOND CAUSE OF ACTION

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

27 17. Plaintiffs incorporate by reference the allegations contained in the preceding
28 paragraphs as though fully set forth herein.

18. California law provides employees in California must be paid overtime, equal to 1.5 times the employee's regular rate of pay, for all hours worked in excess of 40 per week or 8 per day, unless they are exempt. Plaintiffs and similarly situated individuals, all of whom were non-exempt, regularly worked more than 40 hours per week and/or 8 per day, but were not paid all overtime wages due and owing under California law as Defendants violated California overtime wage laws by requiring Plaintiffs and other similarly situated employees to travel to and from distant job sites in company vehicles and subject to employer control without being compensated for such travel time. Defendants also used a time rounding system that, as applied, worked to detrimentally shave and round time off from Plaintiffs' and the class members' work days. Specifically, Plaintiffs allege on information and belief that through the operation of Defendants' rounding system, Plaintiffs and similarly situated employees would systematically be deprived of compensable time because the time recording system implemented by Defendants resulted in understating actual compensable work time due to the rounding. Plaintiffs and other similarly situated employees regularly worked over 40 hours per week but were not paid weekly overtime wages, and regularly worked over 8 hours per day but were not paid daily overtime wages. Accordingly Plaintiffs and the similarly situated employees were not paid at the correct overtime rate for all hours worked over 40 per week or over 8 per day.

19. Pursuant to Labor Code Section 1194, Plaintiffs and the class members are entitled to recover all unpaid overtime wages, plus attorney's 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. Plaintiffs incorporate by reference the allegations contained in the preceding paragraphs as though fully set forth 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

1 following circumstances: (1) if an employee's total work period in a day is over five (5) hours but
2 no more than six (6) hours, the required meal period may be waived by mutual consent of the
3 employer and employee, and (2) if an employee's total work period in a day is over ten (10) hours
4 but no more than twelve (12) hours, the required second meal period may be waived by mutual
5 consent of the employer and employee, but only if the first meal period was not waived.
6 Employers covered by the Wage Orders have an obligation to both (1) relieve their employees for
7 at least one meal period for shifts over five hours (see above), and (2) to record having done so. If
8 the employer fails to properly record a valid meal period, it is presumed no meal period was
9 provided.

10 22. Plaintiffs and similarly situated employees regularly worked periods of more than
11 five and ten hours in a workday without being provided mandatory thirty-minute, duty-free meal
12 periods. Upon information and belief, Defendants did not advise Plaintiffs and other similarly
13 situated employees of their right to, timing, or number of meal periods. For example, Plaintiffs
14 and similarly situated employees did not receive all required first meal periods, or received them
15 on a non-compliant basis as meal periods regularly were not scheduled to start and in fact did not
16 start until later than the fifth hour of work, and/or were less than a net 30 minutes. Per
17 Defendants' illegal meal period policy/practice, Defendants further failed to pay Plaintiffs and
18 similarly situated employees an additional hour of wages at their regular rates of pay for each
19 workday a meal period was not provided or was not compliant with all requirements of the Labor
20 Code and/or Wage Orders.

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

24 FOURTH CAUSE OF ACTION

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

26 24. Plaintiffs incorporate by reference the allegations contained in the preceding
27 paragraphs as though fully set forth herein.

28 25. California law requires an employer to authorize or permit an employee to take a

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

8 26. Defendants failed to provide Plaintiffs and similarly situated employees all
9 required and/or fully compliant rest periods, or compensation in lieu thereof. Defendants
10 employed policies and procedures that ensured Plaintiffs and other similarly situated employees
11 would not receive all legally required rest periods, maintained a non-compliant written rest period
12 policy, and Defendants did not authorize and permit all required rest periods in strict accordance
13 to, and in compliance with, the timing requirements of all applicable Wage Orders. Defendants
14 never properly advised Plaintiffs and other similarly situated employees of their right to, timing,
15 or amount of rest breaks. Defendants further employed policies and procedures ensuring that
16 Plaintiffs and similarly situated employees did not receive premium wages to compensate them
17 for workdays they did not receive all legally required and fully compliant rest periods.

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

21 FIFTH CAUSE OF ACTION

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

23 28. Plaintiff incorporates by reference the allegations contained in the preceding
24 paragraphs as though fully set forth herein.

25 29. The California Labor Code provides that, at the time of each payment of wages,
26 the employer must provide each employee, as a detachable part of the check, draft, or voucher
27 paying the employee's wages, with an itemized statement showing, inter alia, gross wages earned,
28 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 include the last four digits of the employee's social security number or employee identification number.

31. Accordingly, under Labor Code Section 226, Plaintiffs 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. Plaintiffs incorporate by reference the allegations contained in the preceding paragraphs as though fully set forth 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 Plaintiffs 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, Plaintiffs 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.

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(Failure to Reimburse Expenses – Labor Code § 2802)

34. Plaintiffs incorporate by reference the allegations contained in the preceding paragraphs as though fully set forth herein

35. California Labor Code section 2802 provides an employer shall fully reimburse an employee for all reasonable and necessary expenses incurred in the performance of the employee's job duties. Plaintiffs and similarly situated employees regularly incurred expenses in the performance of their job duties including without limitation using their personal cell phones for work purposes, which expenses were not fully reimbursed by Defendants.

36. Pursuant to Labor Code section 2802, Plaintiffs and similarly situated employees are entitled to recover their unreimbursed business expenses, plus attorney's fees and costs, in an amount to be proved at trial.

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37. Plaintiffs incorporate by reference the allegations contained in the preceding paragraphs as though fully set forth herein.

38. During the period beginning one-year period preceding the submission of Plaintiffs' notice letter, Defendants violated Labor Code Sections 201-203, 204, 204b, 216, 221-224, 226, 226.7, 450, 510, 512, 514, 1174, 1194, 1197, 1198, 1198.5, 1199, 2802, 2810.5, and all applicable Wage Orders. These violations subject Defendants to civil penalties as set forth in the foregoing statutes as well as Labor Code Section 2699.

39. Plaintiffs complied with the procedures for bringing suit specified in Labor Code Sections 2699.3 and 2699.5. By letter dated and postmarked May 16, 2024, Plaintiffs gave written notice to the California Labor & Workforce Development Agency (“LWDA”) via electronic submission, 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.

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1 certified mail to the parties it intends to investigate the alleged violations within 65 days of the
2 date of the complainant's written notice. As of the filing of this amended complaint, the LWDA
3 has not provided the parties any notice of its intention to investigate Plaintiffs' claims on
4 behalf of themselves and other aggrieved employees. As of the filing of this amended
5 complaint, Defendants have not responded to Plaintiffs' PAGA notice in an attempt to cure.

6 41. The violations alleged herein subject Defendants to civil penalties as set forth
7 in the foregoing statutes, which Plaintiffs seek on their behalf and on behalf of other
8 aggrieved employees. Plaintiffs seeks civil penalties in the amounts set forth in each statute
9 allegedly violated or, for all statutes that lack a specified penalty, Plaintiffs seek default
10 penalties as provided by Labor Code Section 2699.

11 42. Under Labor Code Section 2699(g), Plaintiffs are entitled to an award of
12 reasonable attorney's fees and costs in connection with their claims for civil penalties.

13 PRAYER

14 WHEREFORE, Plaintiffs pray for judgment against each Defendant, jointly and severally,
15 as follows:

- 16 1. For compensatory damages, liquidated damages, and statutory penalties according
17 to proof;
- 18 2. For an order requiring Defendants to make restitution of all amounts wrongfully
19 withheld from Plaintiff and the class;
- 20 3. For civil penalties according to proof;
- 21 4. For pre-judgment interest as permitted by law;
- 22 5. For reasonable attorney's fees and costs of suit; and
- 23 6. For such other and further relief as the Court deems just and proper.

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25 Dated: July 22, 2024

LAW OFFICES OF J. KIRK DONNELLY, APC

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28 J. Kirk Donnelly
Attorneys for Plaintiffs ALEJANDRO MORENO
and ANDRES MEDINA

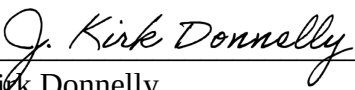
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DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury on all claims so triable.

Dated: July 22, 2024

LAW OFFICES OF J. KIRK DONNELLY, APC



J. Kirk Donnelly
Attorneys for Plaintiffs ALEJANDRO MORENO
and ANDRES MEDINA