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Attorneys for Plaintiffs Dirk Hernandez and Nelson Vazquez,
on behalf of themselves and all “aggrieved employees”
pursuant to Labor Code § 2698 *et seq.*

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

DIRK HERNANDEZ, NELSON VAZQUEZ,
on behalf of themselves and all “aggrieved
employees” pursuant to Labor Code § 2698 *et*
seq.,

Plaintiffs,

v.

UNWIRED BROADBAND LLC, a California
limited liability company, and DOES 1 through
10, inclusive,

Defendants.

CASE NO: 24CV-04398

**REPRESENTATIVE ACTION COMPLAINT
FOR PENALTIES PURSUANT TO LABOR
CODE § 2699(f) FOR VIOLATIONS OF LABOR
CODE §§ 201, 202, 226(a), 226.7, 227.3, 246, 510,
512, AND 1194 AND PURSUANT TO LABOR
CODE § 2699(a) FOR VIOLATIONS OF LABOR
CODE §§ 226.3 AND 558**

1 Plaintiffs DIRK HERNANDEZ and NELSON VAZQUEZ (“Plaintiffs”), on behalf of
2 themselves and others as “aggrieved employees” under the Labor Code Private Attorneys General
3 Act of 2004, complain of UNWIRED BROADBAND LLC, a California limited liability company,
4 and any subsidiaries or affiliated companies (hereinafter referred to as “Defendants”) as follows:

5 **I.**

6 **INTRODUCTION AND FACTUAL BACKGROUND**

7 1. This is a Representative Action, pursuant to Labor Code § 2698 *et seq.*, on behalf of
8 Plaintiffs and other non-exempt California employees who currently work or formerly worked for
9 Defendants (“Aggrieved Employees”).

10 2. For at least one (1) year prior to the filing of this action and at least one (1) year prior
11 to the date Plaintiffs began the process of exhausting the administrative requirements, pursuant to
12 Labor Code § 2698 *et seq.*, and continuing to the present (the “liability period”), Defendants have had
13 consistent policies of:

14 a. Failing to pay Plaintiffs and Aggrieved Employees all minimum and overtime
15 wages earned, in violation of Labor Code §§ 510, 558, and 1194. Plaintiffs and Aggrieved
16 Employees were required to work off-the-clock and without compensation because
17 Defendants did not compensate them for all hours worked—they would be required to drive
18 the work truck from their home to work and back without any compensation from Defendants.
19 An employer is obligated to pay the wages of an hourly employee for all time that the
20 employee is under the control of the employer, and this includes all the time the employee is
21 suffered or permitted to work, whether or not required to do so. When Plaintiffs and Aggrieved
22 Employees worked off-the-clock, they were under the control of Defendants and required to
23 be compensated for all hours worked. Defendants also failed to pay Plaintiffs and Aggrieved
24 Employees for time driving Defendants’ trucks to and from their homes—these hours went
25 entirely uncompensated. This violates Labor Code §§ 510, 558, and 1194;

26 b. Failing to properly blend bonuses, commissions, and other non-base hourly
27 wages, earned by Plaintiffs and other Aggrieved Employees into their regular rate of pay for
28 purposes of paying them meal and rest period premiums, overtime wages, vacation wages,

1 and sick pay wages at the correct rates, in violation of Labor Code §§ 226.7, 227.3, 246, 510,
2 512, 558, and 1194. Defendants paid Plaintiffs and other Aggrieved Employees bonuses,
3 commissions, and other non-base hourly wages; Defendants, however, failed to properly blend
4 these wages, and instead paid Plaintiffs and other Aggrieved Employees meal and rest period
5 premiums, overtime wages, vacation wages, and sick pay wages based only on the base hourly
6 rate of pay, thus depriving Plaintiffs and other Aggrieved Employees of all meal and rest
7 period premiums, overtime wages, vacation wages, and sick pay wages earned. This violates
8 Labor Code §§ 226.7, 227.3, 246, 510, 512, 558, and 1194;

9
10 c. Failing to pay correct premium wages to Plaintiffs and other Aggrieved
11 Employees who were denied proper meal periods, in violation of Labor Code §§ 226.7, 512,
12 and 558, and IWC Wage Order 4-2001. Plaintiffs and other Aggrieved Employees were
13 routinely denied, and not authorized to take, a timely, uninterrupted, 30-minute meal period
14 for every shift worked that exceeded five hours, or a second timely, uninterrupted, 30-minute
15 meal period for every shift worked that exceeded ten hours, but were not paid premium wages
16 of one hour's pay at the proper rate of pay for each missed first or second meal period. In
17 practice, Plaintiffs' meal periods were routinely late, and no meal period premium wages were
18 ever paid in lieu thereof. This violates Labor Code §§ 226.7, 512, and 558 and IWC Wage
19 Order 4-2001;

20
21 d. Failing to pay correct premium wages to Plaintiffs and other Aggrieved
22 Employees who were denied rest periods, in violation of Labor Code § 226.7 and IWC Wage
23 Order No. 4-2001. Plaintiffs and other Aggrieved Employees were routinely unable to take a
24 10-minute rest period for every four (4) hours of work or major fraction thereof, but were not
25 paid premium wages of one hour's pay for each missed rest period. Plaintiffs were simply
26 denied and not authorized to take their legally entitled rest periods and was never paid
27 premium wages for missed rest periods. This violates Labor Code § 226.7 and IWC Wage
28 Order No. 4-2001;

1 e. Failing to provide Plaintiffs and other Aggrieved Employees with wage
2 statements that fully and accurately itemized the requirements set forth in Labor Code §§
3 226(a) and 226.3. Plaintiffs and other Aggrieved Employees are not paid all wages due, as
4 stated above. As such, the wage statements provided by Defendants fail to accurately state all
5 gross wages earned, in violation of Labor Code §§ 226(a)(1) and 226.3, total hours worked,
6 in violation of Labor Code §§ 226(a)(2) and 226.3, net wages earned, in violation of Labor
7 Code §§ 226(a)(5) and 226.3, and all applicable hourly rates in effect during the pay period
8 and the corresponding number of hours worked, in violation of Labor Code §§ 226(a)(9) and
9 226.3; and
10

11 f. Failing to pay Plaintiff Dirk Hernandez and Aggrieved Employees all wages
12 due at the separation of their employment based on the time frames required by Labor Code
13 §§ 201 and 202. As stated above, Plaintiff Dirk Hernandez and other Aggrieved Employees
14 were not paid all wages due during the course of their employment and, as a result of this
15 failure, they were not timely paid all wages due at the separation of their employment. This
16 violates Labor Code §§ 201-202 and is alleged on behalf of Plaintiff Dirk Hernandez and
17 certain Aggrieved Employees no longer employed by Defendants.
18

19 3. Plaintiffs, on behalf of themselves and all Aggrieved Employees pursuant to Labor
20 Code § 2698 *et seq.*, seek civil penalties for Defendants' violations of the California Labor Code.

21 4. Venue is proper in this judicial district, pursuant to Code of Civil Procedure § 395.
22 The Labor Code violations alleged against Defendants herein arose in Merced County, California.
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II.
PARTIES

A. Plaintiffs

5. Plaintiff DIRK HERNANDEZ was employed by Defendants from April 2022 through May 2024 in Merced County, California.

6. Plaintiff NELSON VAZQUEZ has been employed by Defendants since January 2024 in Merced County, California.

B. Defendant

7. Defendant UNWIRED BROADBAND LLC is a California limited liability company that employed Plaintiffs and Aggrieved Employees in Merced County, California.

8. The true names and capacities, whether individual, corporate, associate, or otherwise, of Defendants sued herein as DOES 1 to 10, inclusive, are currently unknown to Plaintiffs, who therefore sues Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiffs are informed and believe, and based thereon allege, that each of the Defendants designated herein as a DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiffs will seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendants designated hereinafter as DOES when such identities become known.

9. Plaintiffs are informed and believe, and based thereon allege, that each Defendant acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendants is legally attributable to the other Defendants.

10. The Defendants named herein as DOE 1 through DOE 10 are and are persons acting on behalf of, or acting jointly with, Defendants, who violated, or caused to be violated, one or more provisions of the California Labor Code as alleged herein.

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III.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

**PLAINTIFFS AND ALL AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS
CIVIL PENALTIES PURSUANT TO LABOR CODE § 2699(f) FOR VIOLATIONS OF
LABOR CODE §§201, 202, 226(a), 226.7, 227.3, 246, 510, 512, AND 1194 AND PURSUANT TO
LABOR CODE § 2699(a) FOR VIOLATIONS OF LABOR CODE §§ 226.3 AND 558**

11. Plaintiffs incorporates paragraphs 1 through 10 of this Complaint as though fully set forth herein.

12. As a result of the acts alleged above, including the Labor Code violations set forth in paragraph 2 above, Plaintiffs seek civil penalties pursuant to Labor Code §§ 2698 *et seq.*

13. For each such violation, Plaintiffs and all other Aggrieved Employees are entitled to civil penalties subject to the following formula:

- a. Pursuant to Labor Code § 2699(f), \$100 for each initial violation and \$200 for each subsequent violation of Labor Code §§ 201, 202, 226(a), 226.7, 227.3, 246, 510, 512, and 1194; and
- b. Pursuant to Labor Code § 2699(a), the civil penalties as authorized by Labor Code §§ 226.3 and 558.

14. Civil penalties recovered will be allocated 75% to the Labor and Workforce Development Agency, and 25% to the affected employees.

15. On June 13, 2024, Plaintiffs sent a letter, by online submission to the LWDA and by certified mail, return receipt requested, to Defendants setting forth the facts and theories of the violations alleged against Defendants, as prescribed by Labor Code § 2698 *et seq.* Pursuant to Labor Code § 2699.3(a)(2)(A), no notice was received by Plaintiffs from the LWDA within sixty-five (65) calendar days of June 13, 2024. Plaintiffs may therefore commence this action to seek civil penalties pursuant to Labor Code § 2698 *et seq.*

Wherefore, Plaintiffs and the Aggrieved Employees they seek to represent request relief as described below.

V.

RELIEF REQUESTED

WHEREFORE, Plaintiffs pray for the following relief:

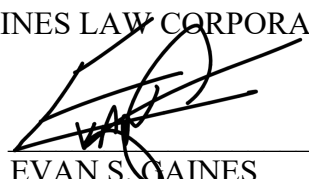
1. For civil penalties pursuant to Labor Code § 2698 *et seq.* for Plaintiffs and all other Aggrieved Employees;
2. An award providing for payment of costs of suit pursuant to Labor Code § 2699(g)(1) and other applicable law;
3. An award of attorneys' fees pursuant to Labor Code §§ 2699(g)(1) and other applicable law; and
4. Such other and further relief as this Court may deem just and proper.

Dated: August 20, 2024

Respectfully submitted,

GAINES LAW CORPORATION

By:


EVAN S. GAINES
Attorneys for Plaintiffs