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SUPERIOR COURT OF CALIFORNIA

COUNTY OF ALAMEDA

ROBERT SKELLEY, On Behalf of the State of
California and Aggrieved Employees,

Plaintiff,

vs.

FREEDOM FOREVER, LLC,

Defendant.

Case No. **24CV097793**

**COMPLAINT FOR PENALTIES
PURSUANT TO SECTIONS 2699(a) and (f)
OF THE CALIFORNIA LABOR CODE
PRIVATE ATTORNEYS GENERAL ACT**

1 Plaintiff Robert Skelley (“Plaintiff”), on behalf of the State of California and Aggrieved
2 Employees, complains and alleges as follows:

3 **INTRODUCTION**

4 1. Plaintiff, individually and on behalf the State of California and the Aggrieved Employees,
5 brings this enforcement action pursuant to the Labor Code Private Attorneys General Act of 2004
6 (“PAGA”) against Defendant Freedom Forever, LLC (“FFL”) on behalf of FFL’s current and former
7 non-exempt tower technicians, tower foremen, solar technicians, solar panel installers, and others with
8 similar job duties since one year and 65 days before the filing of this Complaint until final resolution of
9 the action (the “Aggrieved Employees”).

10 2. FFL employs Plaintiff and Aggrieved Employees in various locations throughout
11 California. FFL employs Aggrieved Employees in and around Livermore, California.

12 3. FFL does not pay Plaintiff and Aggrieved Employees for all hours worked.

13 4. FFL instead instructs Plaintiff and Aggrieved Employees to forego tracking their hours
14 worked before they clock in for the day and after they clock out for the day.

15 5. As a result, Plaintiff and Aggrieved Employees are not paid for all straight time wages
16 owed, nor are they paid all overtime and double time wages owed during such “off-the-clock” work.

17 6. In addition to its failure to pay Plaintiff and Aggrieved Employees all wages owed, FFL
18 also fails to provide these workers with compliant meal and rest periods.

19 7. Instead, FFL uniformly requires Plaintiff and Aggrieved Employees to remain on-duty and
20 to perform compensable work throughout their shifts and fails to provide them with bona fide, timely,
21 and compliant meal and rest periods.

22 8. Despite depriving Plaintiff and Aggrieved Employees of their required meal and rest
23 periods, FFL uniformly fails to pay these employees the required one hour of premium pay (at their
24 regular rates) for each day FFL denies them a fully compliant and/or timely meal period.

25 9. FFL likewise fails to provide Plaintiff and Aggrieved Employees with compliant itemized
26 wage statements.

10. As a consequence of FFL's failure to pay all wages owed and all premium payments owed, FFL likewise fails to pay Plaintiff and the Aggrieved Employees who are FFL's former employees all wages owed following separation from their employment with FFL.

11. Plaintiff brings these claims on behalf of the State of California pursuant to the PAGA to challenge FFL's policies and practices of: (1) failing to pay Plaintiff and Aggrieved Employees all wages owed; (2) failing to pay Plaintiff and Aggrieved Employees overtime and double time wages; (3) failing to compensate Plaintiff and Aggrieved Employees for non-compliant meal periods; (4) failing to compensate Plaintiff and Aggrieved Employees for non-compliant rest periods; (5) failing to pay Plaintiff and Aggrieved Employees all wages owed upon separation from employment; and (6) failing to provide Plaintiff and Aggrieved Employees accurate, itemized wage statements.

12. Plaintiff seeks to remedy the sweeping illegal pay practices FFL has implemented for their workers in California, which have deprived Plaintiff and Aggrieved Employees of their lawfully-earned wages.

JURISDICTION & VENUE

13. This Court has jurisdiction over these PAGA claims pursuant to the California Constitution, Article VI, section 10, which grants the Superior Court “original jurisdiction on all other causes” except those given by statute to other courts. The statute under which this Action is brought does not specify any other basis for jurisdiction.

14. FFL employs Aggrieved Employees in California, including within this County.

15. Venue is proper in this judicial district pursuant to Code of Civil Procedure §§ 393 and/or 395.5.

16. FFL conducts business, employs Aggrieved Employees, and therefore liability under PAGA arose in this County.

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PARTIES

17. Plaintiff was employed by FFL as a non-exempt solar panel installer in and around Los Angeles, California from approximately February 2023 to September 2023.

18. FFL required Plaintiff and others like him to work while “off-the-clock” without compensation, including during days/weeks in which such off-the-clock work constituted overtime hours.

19. Further, throughout his employment, FFL failed to provide Plaintiff with compliant meal and rest periods.

20. But FFL failed to pay Plaintiff the required one hour of premium pay (at his regular rate) each day FFL denied him a compliant or timely meal and/or rest period.

21. Throughout his employment with FFL, FFL failed to provide Plaintiff with accurate, itemized wage statements.

22. FFL likewise failed to pay Plaintiff all of his wages owed at the end/separation of his employment.

23. Plaintiff brings this action on behalf of himself, the State of California, and the Aggrieved Employees to recover civil penalties owed pursuant to PAGA.

24. The Aggrieved Employees are defined as:

All of FFL’s current and former non-exempt technicians (including solar panel installers, solar technicians, service, and others with similar job duties) at any time starting 1 year and 65 days before the filing of this Lawsuit until final resolution of this Action.

25. FFL is a Delaware limited liability company that maintains its headquarters in Temecula, California.

26. FFL is registered to do business in the State of California.

27. FFL may be served with process by serving its registered agent: **CSC – Lawyers Incorporating Service, 2710 Gateway Oaks Drive, Suite 150N, Sacramento, California 95833**

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1 **FACTUAL ALLEGATIONS**

2 28. FFL provides solar panel installation, energy storage, and maintenance services for its
3 residential customers around the country, including throughout California.

4 29. To meet its business objectives, FFL hires technicians and installers, like Plaintiff and the
5 Aggrieved Employees, who it assigns to provide services to its residential clients.

6 30. FFL pays Plaintiff and the Aggrieved Employees on an hourly basis.

7 31. FFL routinely schedules Plaintiff and the Aggrieved Employees to work more than 8 hours
8 in a day and 40 hours a week.

9 32. But FFL does not pay Plaintiff and Aggrieved Employees for all the hours they work.

10 33. Instead, FFL requires Plaintiff and Aggrieved Employees to routinely perform pre-shift
11 and post-shift work that is uncompensated.

12 34. For example, FFL required Plaintiff to conduct pre-shift work including conducting
13 inventory, safety inspections, and conducting pre-calls with customers before he was allowed to clock in
14 each workday. On average, this pre-shift work amounted to approximately 15-to-45 minutes every shift.

15 35. Similarly, FFL required Plaintiff to conduct post-shift work including reviewing the jobs
16 for the next day, calling clients to ensure no scheduling problems, and answering emails and calls from
17 FFL supervisors after clocking out for his shift each workday. On average, this post-shift work amounted
18 to approximately 15-to-45 minutes on average.

19 36. FFL requires Plaintiff and Aggrieved Employees to suffer this uncompensated “off-the-
20 clock” work during days and/or weeks in which such “off-the-clock” work incurs overtime and double
21 time hours.

22 37. While exact job titles and job duties may differ, these employees are subjected to the same
23 or similar illegal timekeeping and pay practice for similar work.

24 38. For example, Plaintiff worked for FFL as a solar panel installer in and around Los Angeles,
25 California from approximately February 2023 until September 2023.

26 39. As a solar panel installer, Plaintiff’s primary responsibilities included installing solar panels
27

1 on FFL's client's residential premises, performing maintenance on residential solar panels, preparing for
2 such installations, and cleaning up following completion of the solar panel installations.

3 40. FFL classified Plaintiff as non-exempt from overtime and paid him on an hourly rate basis
4 of approximately \$25 per hour.

5 41. FFL required Plaintiff to perform substantial amounts of work pre-shift and post-shift
6 that were not captured on Plaintiff's timekeeping records and/or were not compensated by FFL.

7 42. FFL requires all Aggrieved Employees to record the number of hours they work each day
8 and each week.

9 43. However, FFL instructed Plaintiff and Aggrieved Employees not to record their pre-shift
10 and post-shift hours worked.

11 44. Plaintiff and the Aggrieved Employees regularly work more than 8 hours in a workday and
12 40 hours in a workweek.

13 45. Indeed, Plaintiff and the Aggrieved Employees typically work 10-to-11 hours a day and 5-
14 to-6 days per week (on average, between 50 to 66 hours per week).

15 46. Plaintiff and the Aggrieved Employees work in accordance with the schedule set by FFL.

16 47. When Plaintiff and Aggrieved Employees work fewer than 8 hours in a workday or fewer
17 than 40 hours in a workweek, FFL does not pay them for all "straight time" hours worked.

18 48. When Plaintiff and the Aggrieved Employees work more than 8 hours in a workday or 40
19 hours in a workweek, FFL does not pay them overtime at rates not less than 1.5 times their regular rates
20 of pay for all overtime hours worked.

21 49. Likewise, when Plaintiff and the Aggrieved Employees work more than 12 hours in a
22 workday or 8 hours on their seventh consecutive workday, FFL does not pay them double time at rates
23 not less than 2 times their regular rates of pay for all double time hours worked.

24 50. Instead, FFL regularly requires Plaintiff and the Aggrieved Employees to forego tracking
25 their hours worked before they clock in for the day and after they clock out for the day.
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27

violation of California law.

62. Further, FFL's common course of wage-and-hour abuses includes routinely failing to maintain true and accurate records for Plaintiff and the Aggrieved Employees.

63. In particular, FFL fails to properly track all of the hours worked by Plaintiff and Aggrieved Employees each day and each week, and likewise fails to track/record the premium pay owed to Plaintiff and Aggrieved Employees for their non-compliant meal and rest periods.

64. Thus, FFL uniformly fails to provide Plaintiff and the Aggrieved Employees with accurate, itemized wage statements that accurately reflect their wages actually earned (as well as their meal and rest period premium pay) in violation of California law.

65. Finally, due to FFL's failure to pay for off-the-clock work and premium pay for non-compliant meal and rest periods, FFL uniformly fails to provide the Aggrieved Employees who have left their employment with FFL (like Plaintiff) with full payment of all wages owed at the end of their employment in violation of California law.

66. As these Aggrieved Employees are owed unpaid straight time wages, overtime wages, double time wages, and premium wages when their employment ends, and these amounts remain unpaid under FFL's uniform policies and practices, FFL uniformly fails to pay all wages due upon termination in violation of California law.

67. As a result, FFL is subject to waiting time penalties.

68. FFL's violations of California law were willful, carried out in bad faith, and caused significant damage to Plaintiff and the Aggrieved Employees.

COUNT I
PENALTIES PURSUANT TO LABOR CODE § 2699(a)

69. Plaintiff incorporates by reference the allegations in the preceding paragraphs.

70. Labor Code § 2699(a) provides:

Notwithstanding any other provision of law, any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies or employees, for a violation of this code, may, as an alternative, be recovered through a civil action

brought by an aggrieved employee on behalf of himself or herself and other current or former employees.

71. Labor Code § 203 provides, in relevant part:

If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.5, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced; but the wages shall not continue for more than 30 days.

72. Labor Code § 226(a) provides:

Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and his or her social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

73. Labor Code § 226(e)(1) provides:

An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's fees.

74. Labor Code § 226.3 provides:

Any employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the records required in subdivision (a) of Section 226. The civil penalties provided for in this section are in addition to any other penalty provided by law. In enforcing this section, the Labor Commissioner shall take into

consideration whether the violation was inadvertent, and in his or her discretion, may decide not to penalize an employer for a first violation when that violation was due to a clerical error or inadvertent mistake.

75. Labor Code § 226.7 provides:

(a) No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.

(b) If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided.

76. Labor Code § 512(a) provides:

An employer shall not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee.

An employer shall not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

77. Labor Code § 558(a) and (c) provide:

(a) Any employer [] who violates, or causes to be violated, a section of this chapter or any provisions regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. . . . (c) The civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law.

78. Plaintiff seeks civil penalties pursuant to Labor Code § 2699(a) for each failure by FFL, as alleged above, to timely pay all wages owed to Aggrieved Employees in compliance with Labor Code §§ 201-202 in the amounts established by Labor Code § 203. Plaintiff seeks such penalties as an alternative to the penalties available to individual litigants under Labor Code § 203 where applicable, as prayed for herein.

79. Plaintiff also seeks civil penalties pursuant to Labor Code § 2699(a) for each failure by FFL, alleged above, to provide Plaintiff and Aggrieved Employees compliant and timely meal and rest periods in violation of Labor Code §§ 226.7 and 512.

80. Plaintiff also seeks civil penalties pursuant to Labor Code § 2699(a) for each failure by FFL, alleged above, to provide Plaintiff and Aggrieved Employees an accurate, itemized wage statement in compliance with Labor Code § 226(a) in the amounts established by Labor Code § 226(e).

81. Plaintiff also seeks civil penalties in the amounts described under Labor Code § 558 pursuant to Labor Code § 2699(a) for each pay period in which FFL, as alleged above, failed to pay Plaintiff and Aggrieved Employees for all overtime wages and double wages owed.

82. Pursuant to Labor Code § 2699.3(a)(1) and (2), Plaintiff provided the Labor and Workforce Development Agency (“LWDA”) with notice of his intention to file this claim. More than sixty-five (65) calendar days have passed without notice from the LWDA. As such, Plaintiff satisfied the administrative prerequisites to commence this civil action in compliance with § 2699.3(a).

83. Plaintiff seeks the aforementioned penalties on behalf of the State, other Aggrieved Employees, and himself as set forth in Labor Code § 2699(g)(i).

84. FFL is liable to Plaintiff, Aggrieved Employees, and the State of California for the civil penalties set forth in this Complaint, with interest thereon. Plaintiff is also entitled to an award of attorneys' fees and costs as set forth below.

85. Wherefore, Plaintiff and the Aggrieved Employees request relief as hereinafter provided.

COUNT II
PENALTIES PURSUANT TO LABOR CODE § 2699(f)

86. Plaintiff incorporates by reference the allegations in the preceding paragraphs.

87. Labor Code § 2699(f) provides:

For all provisions of this code except those for which a civil penalty is specifically provided, there is established a civil penalty for a violation of these provisions, as follows: . . . (2) If, at the time of the alleged violation, the person employs one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.

1 88. Labor Code § 200 defines wages as “all amounts of labor performed by employees of every
2 description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission
3 basis or other method of calculation.” All such wages are subject to California’s overtime requirements,
4 including those set forth above.

5 89. Labor Code § 204(a) provides that “[a]ll wages . . . earned by any person in any employment
6 are due and payable twice during each calendar month[.]”

7 90. Labor Code § 510(a) provides as follows:

8 Eight hours of labor constitutes a day’s work. Any work in excess of
9 eight hours in one workday and any work in excess of 40 hours in any
10 one workweek and the first eight hours worked on the seventh day of
11 work in any one workweek shall be compensated at the rate of no less
12 than one and one-half times the regular rate of pay for an employee.
13 Any work in excess of 12 hours in one day shall be compensated at the
14 rate of no less than twice the regular rate of pay for an employee.

15 91. IWC Wage Order 4-2001(3)(A)(1), & (3) states that employees:

16 ...shall not be employed more than eight (8) hours in any workday or
17 more than 40 hours in any workweek unless the employee receives one
18 and one-half (1 ½) times such employee’s regular rate of pay for all
19 hours worked over 40 hours in the workweek. Eight (8) hours of labor
20 constitutes a day’s work. Employment beyond eight (8) hours in any
21 workday or more than six (6) days in any workweek is permissible
22 provided the employee is compensated for such overtime at not less
23 than ... [o]ne and one-half (1½) times the employee’s regular rate of
24 pay for all hours worked in excess of eight (8) hours up to and
25 including 12 hours in any workday, and for the first eight (8) hours
26 worked on the seventh (7th) consecutive day of work in a
27 workweek....

28 92. Labor Code § 1194(a) provides as follows:

 Notwithstanding any agreement to work for a lesser wage, any
employee receiving less than the legal minimum wage or the legal
overtime compensation applicable to the employee is entitled to
recover in a civil action the unpaid balance of the full amount of this
minimum wage or overtime compensation, including interest thereon,
reasonable attorneys’ fees, and costs of suit.

 93. Labor Code § 1198 makes it unlawful for employers to employ employees under
conditions that violate the Wage Order.

 94. To the extent that any violation alleged herein does not carry penalties under Labor Code

§ 2699(a), Plaintiff seeks civil penalties pursuant to Labor Code § 2699(f) for Plaintiff and Aggrieved Employees for each pay period in which he/she was aggrieved, in the amounts established by Labor Code § 2699(f). Plaintiff seeks civil penalties under Labor Code § 2699(f) for FFL's violations of Labor Code §§ 510, 1194, 1194.2, 1194.5, and 1198.

95. Pursuant to Labor Code § 2699.3(a)(1) and (2), Plaintiff has provided the LWDA with notice of his intention to file this claim. More than sixty-five (65) calendar days have passed without notice from the LWDA. Plaintiff satisfied the administrative prerequisites to commence this civil action in compliance with § 2699.3(a).

96. Plaintiff seeks the aforementioned penalties on behalf of the State of California, other Aggrieved Employees, and himself as set forth in Labor Code § 2699(g)(i).

97. FFL's violations of the Labor Code are not isolated, nor did they occur over less than 30 days or 4 consecutive pay periods.

98. FFL's conducts was malicious, fraudulent, and/or oppressive.

99. Labor Code § 2699(f)(2) provides a civil penalty of one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation of a Labor Code provision that does not provide a civil penalty if, at the time of the violation, the employer employs one or more employees. Labor Code § 2699(f)(2) provides a civil penalty of two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation of a Labor Code provision that does not provide a civil penalty if, at the time of the violation, the employer employs one or more employees.

100. FFL is liable to Plaintiff, the State of California, and Aggrieved Employees for the civil penalties set forth in this Complaint. Plaintiff is also entitled to an award of attorneys' fees and costs as set forth below.

101. Wherefore, Plaintiff and the Aggrieved Employees request relief as hereinafter provided.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of the State of California and Aggrieved Employees, requests the following relief:

1. For an order awarding civil penalties to the full extent provided for by the PAGA;
2. For an award of reasonable attorneys' fees as provided by the California Labor Code, including Labor Code § 2699(g)(1); California Code of Civil Procedure §1021.5; and/or any other applicable law;
3. For all costs of suit;
4. For interest on any penalties awarded, as provided by applicable law; and
5. For such other and further relief as this Court deems just and proper.

Respectfully submitted,



Date: October 31, 2024

William M. Hogg

JOSEPHSON DUNLAP LLP

*Attorneys for Plaintiff, on behalf of the
State of California and Aggrieved Employees*