

DIVERSITY LAW GROUP, P.C.
Larry W. Lee (State Bar No. 228175)
lwlee@diversitylaw.com
Simon L. Yang (State Bar No. 260286)
sly@diversitylaw.com
515 South Figueroa Street, Suite 1250
Los Angeles, California 90071
Telephone: (213) 488-6555
Facsimile: (213) 488-6554

DAVID LEE LAW, APC
David J. Lee, Esq., State Bar No. 296294
david@davidjeelaw.com
777 S. Alameda St., 2nd Fl.
Los Angeles, California 90021
Telephone: (213) 731-1402
Facsimile: (866) 658-4722

Attorneys for Plaintiff

ELECTRONICALLY FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT
11/13/2024 12:21 PM
By: Alyssa Leber, DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

NELSON MENDIETA, as a private attorney
general,

Plaintiff,

vs.

WILLIAMS SCOTSMAN, INC., a Maryland
corporation; and DOES 1 through 50, inclusive,

Defendants.

Case No. CIVSB2434232

**REPRESENTATIVE ACTION COMPLAINT
UNDER THE LABOR CODE PRIVATE
ATTORNEYS GENERAL ACT OF 2004**

DEMAND OVER \$25,000.00

1 As a proxy for the State of California, Plaintiff, Nelson Mendieta, submits this representative
2 action Complaint against Defendant, Williams Scotsman, Inc., and Does 1 through 50 (collectively,
3 “Defendants”).

4 INTRODUCTION

5 1. Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code §§ 2698
6 et seq. (“PAGA”), this representative action Complaint seeks penalties and other relief for Defendants’
7 violations of the California Labor Code. Defendants’ systemic employment practices have deprived
8 aggrieved employees of the benefits and protections of Labor Code sections 201-204, 210, 226, 226.3,
9 226.7, 233, 246, 510, 512, 558, 1194, and 1198, among other provisions.¹

10 2. Plaintiff is informed and believes that Defendants have jointly and severally acted
11 intentionally and with deliberate indifference and conscious disregard to the rights of employees by
12 failing to provide meal periods and rest periods, failing to pay an additional hour of regular rate wages
13 for missed, late, short, or interrupted meal periods and rest periods, failing to pay all overtime wages,
14 failing to pay all sick pay wages, failing to timely pay all wages during employment or upon
15 termination of employment, and by failing to provide complete and accurate itemized wage statements.

16 3. Plaintiff and other non-exempt employees regularly work shifts of at least 3.5 hours
17 requiring rest periods and shifts of more than 5.0 hours requiring meal periods. Defendants, however,
18 fail to provide lawful meal and rest periods that are instead not provided, provided late, short, or
19 interrupted. Moreover, Plaintiff and other non-exempt employees also earn non-base hourly wages or
20 other non-hourly, non-discretionary remuneration, including for example incentives and bonuses.
21 Defendants fail to consider such earnings when Plaintiff and other non-exempt employees’ meal periods
22 and rest periods are missed, late, short, or interrupted. Specifically, rather than pay an additional hour of
23 regular rate wages for a missed, late, short, or interrupted meal period or rest period, Defendants
24 routinely underpay the additional hour of wages to Plaintiff and other non-exempt employees at their
25 base hourly rates of pay.

26 4. Plaintiff and other non-exempt employees also regularly work more than 8.0 hours in a
27 day or 40.0 hours in a workweek. Defendants fail to consider Plaintiff and other non-exempt

28

¹ Except as otherwise noted, all “Section” references are to the Labor Code.

1 employees' non-base hourly wages or other non-hourly, non-discretionary remuneration, including for
2 example incentives and bonuses, when calculating their overtime rates of pay. Defendants thus routinely
3 underpay overtime wages to Plaintiff and other non-exempt employees.

4 5. Defendants also fail to pay sick pay wages at the regular rate of pay. As discussed above,
5 Plaintiff and other non-exempt employees earn non-base hourly wages or other non-hourly, non-
6 discretionary remuneration, including for example incentives and bonuses. Defendants fail to consider
7 such wages when paying sick pay wages. Rather than pay sick pay wages at the regular rate of pay,
8 Defendants underpay sick pay wages to Plaintiff and other non-exempt employees at their base rates of
9 pay.

10 6. Because Plaintiff and other non-exempt employees are not paid an additional hour of
11 wages at their regular rates, are not paid overtime at the proper multiple of their regular rates, and are
12 not paid sick pay wages at their regular rates, Defendants routinely fail to timely pay Plaintiff and other
13 non-exempt employees all wages during employment or upon separation of employment. Moreover,
14 Defendants also routinely fail to furnish wage statements that accurately show and itemize all applicable
15 hourly rates in effect during the pay period, gross wages earned, and net wages earned.

16 7. The Labor Code is broadly remedial in nature. Its laws serve an important public interest
17 in establishing minimum working conditions and requirements in California. These labor standards
18 protect employees from onerous terms and conditions of employment or exploitation by employers who
19 have superior economic and bargaining power.

20 JURISDICTION AND VENUE

21 8. The Complaint seeks relief exceeding \$25,000.00. The Court has jurisdiction of
22 Defendants' violations of Sections 201-204, 226, 226.7, 233, 246, 510, 512, and 1198.

23 9. Venue is proper in the County of Santa Barbara. Plaintiff worked for Defendants in Santa
24 Barbara, California.

25 PARTIES

26 10. In 2015 Plaintiff began working for Defendants as a lead driver and worked in California
27 for Defendants for 30 or more days within a year. Until his employment ended in July of 2024, Plaintiff
28 was paid on an hourly basis as a non-exempt employee and earned non-base hourly wages or other non-

1 hourly, non-discretionary remuneration, including for example incentives and bonuses. When Plaintiff
2 worked 3.5 hours in a workday, he regularly was not provided lawful rest periods. Likewise, when
3 Plaintiff worked more than 5.0 hours in a workday, he regularly was not provided lawful meal periods.
4 Plaintiff also was regularly not provided an additional hour of regular rate wages for a missed, late,
5 short, or interrupted meal period or rest period but instead paid an additional hour of wages at his base
6 hourly rate of pay. When Plaintiff worked more than 8.0 hours in a day or 40.0 hours in a workweek,
7 Plaintiff was not paid overtime wages at the proper multiple of his regular rate. Throughout his
8 employment, Plaintiff also accrued and actually used sick leave. When sick leave was used in
9 workweeks that Plaintiff earned non-base hourly wages or other non-hourly, non-discretionary
10 remuneration in addition to his base hourly wages, sick pay wages were paid at Plaintiff's base rate of
11 pay rather than his regular rate of pay. Plaintiff was not timely paid all due wages during employment or
12 upon separation of employment and also was not provided with accurate itemized wage statements.

13 11. Plaintiff is informed and believes that Williams Scotsman, Inc. was and is a Maryland
14 corporation. Plaintiff is informed and believes that at all times herein mentioned named defendants and
15 Does 1 through 50, were and are corporations, business entities, individuals, or partnerships that are and
16 were licensed to do business and actually doing business in the State of California. Based upon all the
17 facts and circumstances incident to Defendants' business, Defendants are subject to Sections 201-204,
18 226, 226.7, 233, 246, 510, 512, and 1198.

19 12. Plaintiff does not know the true names or capacities of the defendants sued herein as
20 Does 1 through 50, whether individual, partner, or corporate, and for that reason, said defendants are
21 sued under such fictitious names. Plaintiff prays for leave to amend this Complaint when the true names
22 and capacities are known. Plaintiff is informed and believes that each of said fictitious defendants was
23 responsible in some way for the matters alleged herein and proximately caused the illegal employment
24 practices, wrongs, and injuries complained of herein.

25 13. At all times mentioned herein, each of said Defendants participated in the doing of the
26 acts alleged herein. Defendants, and each of them, were the agents, servants, or employees of each of
27 the other Defendants, as well as the agents of all Defendants, and were acting within the course and
28 scope of said agency and employment.

14. Plaintiff is informed and believes that at all times material hereto, each of said Defendants was the agent, employee, alter ego, or joint venturer of, or was working in concert with, each of the other Defendants and was acting within the course and scope of such agency, employment, joint venture, or concerted activity. To the extent said acts, conduct, or omissions were perpetrated by certain Defendants, each of the remaining Defendants confirmed and ratified said acts, conduct, or omissions of the acting Defendants.

15. Plaintiff is informed and believes that at all times material hereto each of the Defendants (i) aided and abetted the acts and omissions of each of the other Defendants in proximately causing the alleged harms, or (ii) were members of, engaged in, and acting within the course and scope of, and in pursuance of, a joint venture, partnership, or common enterprise.

PAGA ALLEGATIONS

16. Pursuant to PAGA, Plaintiff sues as a proxy for the State of California. Plaintiff seeks penalties for Defendants' violations of Sections 201-204, 226, 226.7, 233, 246, 510, 512, and 1198 committed against all aggrieved employees since August 2, 2024.

17. On or about August 2, 2024, Plaintiff sent written notice to the Labor & Workforce Development Agency (“LWDA”) of Defendants’ violations of Sections 201-204, 226, 226.7, 233, 246, 510, 512, and 1198. Plaintiff simultaneously sent written notices to Defendants via certified mail. The LWDA has not elected to investigate the allegations. As such, pursuant to Section 2699(a), (f), and (g), Plaintiff seeks recovery of all applicable penalties for Defendants’ violations against all aggrieved employees for the period described above.

FIRST CAUSE OF ACTION

Penalties for Labor Code Violation (Lab. Code §§ 2698 et seq.)

(By Plaintiff as a Proxy for the State Against All Defendants)

18. The preceding paragraphs are re-alleged and incorporated by this reference.

19. **Failure to Provide Meal Periods:** Because Plaintiff and aggrieved employees were non-exempt employees, Defendants were required to comply with Sections 226.7 and 512 and the applicable IWC Wage Order. Section 512(a) generally prohibits employment of an individual for a work period of more than five hours per day without providing the employee with an uninterrupted, duty-free meal

1 period of at least 30 minutes. Section 226.7(b) provides that an employer shall not require an employee
2 to work during a meal period. Section 226.7(c) states that “the employer shall pay the employee one
3 additional hour of pay at the employee’s regular rate of compensation for each workday that the meal or
4 rest or recovery period is not provided.”

5 20. As a matter of policy and practice, Defendants fail to provide lawful meal periods that are
6 instead not provided, provided late, short, or interrupted. Moreover, as a matter of policy and practice,
7 whenever Defendants pay an additional hour of wages to Plaintiff and aggrieved employees for missed,
8 late, short, or interrupted meal periods, Defendants pay an additional hour of wages at the base hourly
9 rate of pay. As a matter of policy and practice, in workweeks in which Plaintiff and aggrieved
10 employees earn non-base hourly wages or other non-hourly, non-discretionary remuneration, including
11 for example incentives and bonuses, Defendants fail to consider such wages when calculating the
12 regular rate of pay for purposes of paying the additional hour of wages. Defendants thus underpaid meal
13 premiums and violated Sections 226.7 and 512.

14 21. **Failure to Provide Rest Periods:** Because Plaintiff and aggrieved employees were non-
15 exempt employees, Defendants were required to comply with Section 226.7 and the applicable IWC
16 Wage Order. Section 1198 makes unlawful conditions of labor that are prohibited by the applicable IWC
17 Wage Order. The applicable laws generally require an employer to provide a duty-free, 10-minute rest
18 period for every four hours worked, or major fraction thereof. Section 226.7(b) provides that an
19 employer shall not require an employee to work during a rest period. Section 226.7(c) states that “the
20 employer shall pay the employee one additional hour of pay at the employee’s regular rate of
21 compensation for each workday that the meal or rest or recovery period is not provided.”

22 22. As a matter of policy and practice, Defendants fail to provide lawful rest periods that are
23 instead not provided, provided late, short, or interrupted. Moreover, as a matter of policy and practice,
24 whenever Defendants pay an additional hour of wages to Plaintiff and aggrieved employees for missed,
25 late, short, or interrupted rest periods, Defendants pay an additional hour of wages at the base hourly rate
26 of pay. As a matter of policy and practice, in workweeks in which Plaintiff and aggrieved employees
27 earn non-base hourly wages or other non-hourly, non-discretionary remuneration, including for example
28 incentives and bonuses, Defendants fail to consider such wages when calculating the regular rate of pay

1 for purposes of paying the additional hour of wages. Defendants thus underpaid rest premiums and
2 violated Section 226.7.

3 23. **Failure to Pay Overtime:** Section 510 and the applicable IWC Wage Order provide that
4 “[a]ny work in excess of eight hours in one workday and any work in excess of 40 hours in any one
5 workweek and the first eight hours worked on the seventh day of work in any one workweek shall be
6 compensated at the rate of no less than one and one-half times the regular rate of pay for an employee”
7 and that “[a]ny work in excess of 12 hours in one day shall be compensated at the rate of no less than
8 twice the regular rate of pay for an employee.” Section 1198 makes unlawful conditions of labor that are
9 prohibited by the applicable IWC Wage Order.

10 24. Plaintiff and aggrieved employees regularly work more than 8.0 hours in a day or 40.0
11 hours in a workweek. As a matter of policy and practice, when Plaintiff and aggrieved employees work
12 hours entitled to overtime wages, Defendants fail to pay lawful overtime wages for all hours exceeding
13 8.0 hours in a day or 40.0 in a workweek. Specifically, whenever Plaintiff and aggrieved employees are
14 paid non-base hourly wages or other non-hourly, non-discretionary remuneration, including for example
15 incentives and bonuses, Defendants fail to consider such earnings when paying overtime wages and thus
16 fail to pay the required overtime rates of pay. Defendants thus underpaid overtime and violated Sections
17 510 and 1198.

18 25. **Failure to Pay Sick Pay Wages:** Section 233 provides that an employer must permit an
19 employee to use accrued sick leave in accordance with Section 246.5 at the employee’s then current rate
20 of entitlement. Section 246 provides that an employee is entitled to sick pay wages for use of accrued
21 sick leave pursuant to Section 246.5. Specifically, once accrued sick leave is used as paid sick time, an
22 employee has a vested right to sick pay wages, which an employer must calculate and compensate based
23 on one of two calculations: (i) “Paid sick time for nonexempt employees shall be calculated in the same
24 manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether
25 or not the employee actually works overtime in that workweek,” or (ii) “Paid sick time for nonexempt
26 employees shall be calculated by dividing the employee’s total wages, not including overtime premium
27 pay, by the employee’s total hours worked in the full pay periods of the prior 90 days of employment.”
28 Under Sections 204, 218, and 233, employees may sue to recover underpaid sick pay wages as damages.

1 26. As a matter of policy and practice, Defendants pay sick pay wages to Plaintiff and
2 aggrieved employees at the incorrect rate of pay. Plaintiff and aggrieved employees regularly use
3 accrued sick leave in workweeks in which they also earn non-base hourly wages or other non-hourly,
4 non-discretionary remuneration, including for example incentives and bonuses. As a matter of policy
5 and practice, Defendants pay sick pay wages to Plaintiff and aggrieved employees at the base hourly rate
6 of pay, as opposed to the regular rate of pay, which would consider all non-base hourly wages or other
7 non-hourly, non-discretionary remuneration in addition to base hourly wages, or the rate resulting from
8 dividing the employee's total wages, not including overtime premium pay, by the employee's total hours
9 worked in the full pay periods of the prior 90 days of employment. Defendants thus underpay sick pay
10 wages and violate Section 246.

11 27. **Failure to Timely Pay Wages:** All owing wages must be paid timely. Section 204
12 provides that wages are generally due and payable no later than seven days after the end of a pay period
13 or at least twice during each calendar month, on days designated in advance as the regular paydays.
14 Section 201 provides that if an employer discharges an employee, the wages earned and unpaid at the
15 time of discharge are due and payable immediately. Section 202 provides that an employee is entitled to
16 receive all unpaid wages no later than 72 hours after an employee quits his or her employment, unless
17 the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which
18 case the employee is entitled to his or her wages at the time of quitting. Section 203 provides that if an
19 employer willfully fails to pay wages owed in accordance with Sections 201 and 202, then the wages of
20 the employee shall continue as a penalty from the due date, and at the same rate until paid, but the wages
21 shall not continue for more than thirty (30) days. Consistent with Section 204, Section 246 also provides
22 that an employer shall provide payment for sick leave taken by an employee no later than the payday for
23 the next regular payroll period after the sick leave was taken.

24 28. Based on Defendants' underpayments of an additional hour of regular rate wages for
25 missed, late, short, or interrupted meal periods, underpayments of overtime, and underpayments of sick
26 pay wages, Defendants fail to timely pay Plaintiff and aggrieved employees all due wages. On
27 information and belief, Defendants were advised by skilled lawyers and knew, or should have known, of
28 the mandates of the Labor Code as it relates to Plaintiff's allegations (especially since the California

Supreme Court has explained that “[c]ourts have recognized that ‘wages’ also include those benefits to which an employee is entitled as a part of his or her compensation, including money, room, board, clothing, vacation pay, *and sick pay.*”). *Murphy v. Kenneth Cole Prods., Inc.*, 40 Cal. 4th 1094, 1103 (2007) (emphasis added). Because Defendants willfully fail to timely pay Plaintiff and aggrieved employees all wages due, Defendants thus violate Sections 201-204 by not timely paying all due wages.

29. **Failure to Provide Accurate Itemized Wage Statements:** Section 226(a) requires an employer to furnish to its employees itemized wage statements that show accurate information, including without limitation, all applicable hourly rates in effect during the pay period, gross wages earned, and net wages earned.

30. Defendants fail to provide accurate itemized wage statements to Plaintiff and aggrieved employees. Because of the above violations and as a matter of policy and practice, Defendants fail to furnish Plaintiff and aggrieved employees with wage statements that accurately show the applicable hourly rates in effect during the pay period, gross wages earned, and net wages earned.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment for himself as a proxy for the State against Defendants, jointly and severally, as follows:

1. Upon the First Cause of Action for penalties according to proof pursuant to Section 2699(a), (f), and (g), and for costs and attorneys’ fees;

2. Upon each cause of action for attorneys’ fees and costs as provided by the Labor Code, Code of Civil Procedure section 1021.5, and any other applicable laws; and

3. For such other and further relief that the Court may deem just and proper.

DATED: November 12, 2024

DIVERSITY LAW GROUP, P.C.

By: 

Larry W. Lee
Simon L. Yang
Attorneys for Plaintiff