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16 Attorneys for Plaintiff KATHLEEN S. HERNANDEZ,
17 on behalf of the general public as private attorney general

18 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
19 **FOR THE COUNTY OF FRESNO**

20 KATHLEEN S. HERNANDEZ, on behalf of the
21 general public as private attorney general,

22 Plaintiff,

23 v.

24 ENVIRONMENTAL ALTERNATIVES; and
25 DOES 1-50, inclusive,

26 Defendants.

E-FILED
11/13/2024 9:38 AM
Superior Court of California
County of Fresno
By: Layla Whipple, Deputy

**PAGA REPRESENTATIVE ACTION
COMPLAINT PURSUANT TO THE
PRIVATE ATTORNEYS GENERAL ACT
(Labor Code §§ 2698 *et seq.*)**

24CECG04969

COMES NOW, KATHLEEN S. HERNADEZ (“Plaintiff”), on behalf the general public and all non-exempt aggrieved employees, acting on behalf of the California Attorney General as private attorney general, asserts claims against Defendants ENVIRONMENTAL ALTERNATIVES; and DOES 1-50, inclusive (collectively “Defendants”) as follows:

I. INTRODUCTION

1. This is a representative action for recovery of penalties under the Private Attorneys General Act of 2004 (“PAGA”), Cal. Lab. Code sections 2698 *et seq.* PAGA permits “aggrieved employees” to bring a lawsuit as a representative action on behalf of the general public as private attorney general and all other current and former aggrieved employees, to recover civil penalties and address an employer’s violations of the California Labor Code.

2. In this case, Defendants violated various provisions of the California Labor Code. As set forth below, Defendants implemented policies and practices which led to the following Labor Code violations which include but are not limited to: (a) failure to pay wages including overtime, (b) failure to provide meal periods for every work period exceeding more than ten (10) hours per day and failure to pay an additional hour’s of pay or accurately pay an additional hour’s of pay in lieu of providing a meal period; (c) failure to provide rest breaks for every four hours or major fraction thereof worked and failure to pay an additional hour’s of pay or accurately pay an additional hour’s of pay in lieu of providing a rest period; (d) failing to pay all wages earned and owed upon separation from Defendant’s employ; (e) failing to provide accurate itemized wage statements; and (f) failing to reimburse expenses. As a result, Plaintiff seeks penalties under Labor Code 2698, *et. seq.* on behalf of the general public as private attorney general and all other aggrieved employees.

II. JURISDICTION AND VENUE

3. The California Superior Court has jurisdiction over this action pursuant to California Constitution Article VI, Section 10, which grants the Superior Court “original jurisdiction in all cases except those given by statute to other trial courts.” The statutes under which this action is brought do not give jurisdiction to any other court.

4. This Court has jurisdiction over Defendants because, upon information and belief,

1 each Defendant either has sufficient minimum contacts in California, or otherwise intentionally
2 avails itself of the California market so as to render the exercise of jurisdiction over it by the
3 California Courts consistent with traditional notions of fair play and substantial justice.

4 5. Venue as to each Defendant is proper in this judicial district pursuant to Code of
5 Civil Procedure section 395. Defendants are doing business throughout California, including but
6 not limited to San Francisco County, and each Defendant is within the jurisdiction of this Court
7 for service of process purposes. The unlawful acts alleged herein have a direct effect on Plaintiff
8 and all other aggrieved employees within the State of California. Defendants employ numerous
9 aggrieved employees in in the State of California.

10 6. On information and belief, Defendants have conducted business within the State of
11 California during the purported liability period and continue to conduct business throughout the
12 State of California. The unlawful acts alleged herein have had a direct effect on Plaintiff, and the
13 similarly situated non-exempt aggrieved employees within California.

14 7. The California Superior Court also has jurisdiction in this matter because on
15 information and belief there are no federal questions at issue, as the issues herein are based solely
16 on California statutes and law, including the California Labor Code, the IWC Wage Orders, the
17 California Code of Civil Procedure, the California Civil Code, and the California Business and
18 Professions Code.

19 8. On information and belief, during the statutory liability period and continuing to
20 the present ("liability period"), Defendant consistently maintained and enforced against
21 Defendant's Non-Exempt Aggrieved Employees, among others, the following unlawful practices
22 and policies, in violation of California state wage and hour laws: (a) failure to pay wages including
23 overtime, (b) failure to provide meal periods for every work period exceeding more than ten (10)
24 hours per day and failure to pay an additional hour's of pay or accurately pay an additional hour's
25 of pay in lieu of providing a meal period; (c) failure to provide rest breaks for every four hours or
26 major fraction thereof worked and failure to pay an additional hour's of pay or accurately pay an
27 additional hour's of pay in lieu of providing a rest period; (d) failing to pay all wages earned and
28 owed upon separation from Defendant's employ; (e) failing to provide accurate itemized wage

1 statements; and (f) failing to reimburse expenses.

2 9. Plaintiff on behalf of the general public as private attorney general and all other
3 aggrieved employees bring this action pursuant to Labor Code 2698, et. seq. for violations
4 enumerated under 2699.5 as follows: sections 201-203, 510, 226.3, 226.7, 226, 226.3, 227.3, 246,
5 510, 512, 1174, 1174.5, 1175, 1194, 1197, 1197.1, 1198, 2802, and seeking penalties, interest,
6 attorneys' fees and costs.

7 **III. PARTIES**

8 **A. Plaintiff**

9 10. Plaintiff KATHLEEN S. HERNANDEZ was at all times relevant to this action a
10 resident of California. Plaintiff was employed by Defendants in approximately September 8, 2021,
11 as a Non-Exempt Employee with the title of Office Manager and worked during the liability
12 period for Defendants until Plaintiff's separation from Defendants' employ in approximately
13 November 6, 2023. Plaintiff's duties included, but were not limited to conducting intake and
14 payroll, recruiting clients, onboarding, directly managed two employees, and oversaw two offices
15 spaces in the complex.

16 11. As Defendants' employees, Plaintiffs, and all other aggrieved employees were
17 regularly required to and subsequently suffered:

- 18 a. perform work subject to the control of the employer without being compensated all
19 wages including overtime, all in violation of California labor laws, regulations, and
20 the Industrial Welfare Commission Wage Order ("IWC");
- 21 b. work in excess of five and ten hours per day without being provided meal periods
22 and not compensated one (1) hour of pay at the regular rate of compensation for
23 each workday that a meal period was not provided, all in violation of California
24 labor laws, regulations, and the Industrial Welfare Commission Wage Orders
25 ("IWC");
- 26 c. not reimbursed for business expenses incurred; and
- 27 d. not provided accurate itemized wage statements.

28 12. On information and belief, Defendants willfully failed to pay all earned wages in

1 the form regular wages and overtime wages, and meal and rest period premium wages, to its Non-
2 Exempt Employees and members of the Representative Group; nor have Defendants returned to
3 Plaintiff or members of the Representative Group, upon or after separation from employment with
4 Defendants, all wages earned and owing. Plaintiff seeks penalties under Labor Code 2698, *et. seq.*
5 on behalf of the general public as private attorney general and all other aggrieved employees.

6 **20. Defendant**

7 13. Defendants ENVIRONMENTAL ALTERNATIVES operates as a family
8 placement agency business. Plaintiff estimates there are in excess of 100 Non-Exempt Employees
9 who work or have worked for Defendants over the last four years.

10 14. Other than identified herein, Plaintiff is unaware of the true names, capacities,
11 relationships and extent of participation in the conduct alleged herein, of the defendants sued as
12 DOES 1 through 50, but is informed and believes and thereon alleges that said defendants are
13 legally responsible for the wrongful conduct alleged herein and therefore sues these defendants by
14 such fictitious names. Plaintiff will amend this complaint when their true names and capabilities
15 are ascertained.

16 15. Plaintiff is informed and believes and thereon alleges that each Defendant, directly
17 or indirectly, or through agents or other persons, employed Plaintiff and other members of the
18 Representative Group, and exercised control over their wages, hours, and working conditions.
19 Plaintiff is informed and believes and thereon alleges that each defendant acted in all respects
20 pertinent to this action as the agent of the other defendants, carried out a joint scheme, business
21 plan or policy in all respects pertinent hereto, and the acts of each defendant are legally
22 attributable to the other defendants.

23 **IV. GENERAL ALLEGATIONS**

24 16. At all times set forth herein, Defendant employed Plaintiff and other persons in the
25 capacity of non-exempt positions, however titled, throughout the state of California.

26 17. Plaintiff is informed and believes Aggrieved Employees have at all times pertinent
27 hereto been Non-Exempt within the meaning of the California Labor Code and the implementing
28 rules and regulations of the IWC California Wage Orders.

1 18. Defendant continues to employ Non-Exempt Employees, however titled, in
2 California and implement a uniform set of policies and practices to all non-exempt employees, as
3 they were all engaged in the generic job duties of family placement agencies.

4 19. Plaintiff is informed and believes, and thereon alleges, that Defendants are and
5 were advised by skilled lawyers and other professionals, employees, and advisors with knowledge
6 of the requirements of California's wage and employment laws.

7 20. On information and belief, during the relevant time frame, Plaintiff and Aggrieved
8 Employees frequently worked well over eight (8) hours in a day and forty (40) hours in a work
9 week.

10 21. Defendants also failed to properly calculate Plaintiff's and the Aggrieved
11 Employees' regular rate of pay including but not limited to by failing to include all forms of
12 compensation/remuneration in the regular rate including but not limited to bonuses, incentives,
13 commissions, shift differential pay and other compensation for overtime calculation purposes.

14 22. Plaintiff is informed and believes, and thereon alleges, that Defendants also
15 inaccurately calculated the "regular rate of pay" by paying bonuses of \$300-400 exactly once per
16 month for client count during the same pay period.

17 23. Plaintiff is informed and believes, and thereon alleges, that Defendants also
18 required Plaintiff and Aggrieved Employees to work overtime by working over 8 hours in one day
19 or over 40 hours in one week, and then take a paid day off or some hours off to balance for the
20 unpaid overtime work performed. This "Flexing" was in violation of California law and such day
21 for a day exchange would result in underpayment of minimum wages, with approximately 4 or
22 more hours worked being unpaid each month. Additionally, Plaintiff's role as office manager
23 prohibited her from taking the equivalent number of hours off as she had actually worked.

24 24. Additionally, Defendants failed to pay Plaintiff and Aggrieved Employees overtime
25 at 1.5 times the regular rate of pay. For instance, in lieu of overtime wages, Plaintiff and
26 Aggrieved Employees were allowed to take an equivalent number of hours off later in the week or
27 the following week instead of taking Comp time or "Flexing." The "Comp Time" hours provided
28 to cover the overtime hours actually worked were not calculated at 1.5 comp time hours per hour

1 of overtime worked, but instead at 1:1 – straight time.

2 25. Further, Defendants failed to maintain accurate records because Comp Time was
3 not accurately logged or recorded. The additional overtime hours Plaintiff worked were not
4 separately recorded or tabulated to ensure payment.

5 26. During the relevant time, as a consequence of Defendants’ staffing and scheduling
6 practices, work demands, and Defendants’ policies and practices, Defendants frequently failed to
7 provide Plaintiff and Aggrieved Employees timely, legally complaint uninterrupted 30-minute
8 meal periods on shifts over five hours as required by law. Plaintiff’s meal periods were interrupted
9 as she and other employees were required to carry their cell phones during work hours and keep
10 them on at all times, even during meal and rest breaks. Plaintiff was on-duty on her cell phone
11 during her meal periods, despite never signing an on-call meal agreement.

12 27. Plaintiff and Aggrieved Employees missed meal breaks several times and had late
13 or interrupted meal breaks. Meal breaks were interrupted and lasted for less than the 30 minutes
14 required by law. Defendant failed to pay premium wages for missed, short or late meal breaks.

15 28. Indeed, during the relevant time, as a consequence of Defendants’ staffing and
16 scheduling practices, lack of coverage, work demands, and Defendants’ policies and practices,
17 Defendants frequently failed to provide Plaintiff and the Aggrieved Employees timely, legally
18 complaint uninterrupted 30-minute meal periods on shifts over five hours as required by law.

19 29. Similarly, as a consequence of Defendants’ staffing and scheduling practices, lack
20 of coverage, work demands, and Defendants’ policies and practices, Defendants frequently failed
21 to provide Plaintiff and the Aggrieved Employees legally compliant second meal periods on shifts
22 over ten hours as required by law.

23 30. Plaintiff and Aggrieved Employees were prohibited from leaving the premises
24 during meal periods.

25 31. On information and belief, Plaintiff and Aggrieved Employees did not waive their
26 rights to meal periods under the law.

27 32. Plaintiff and the Aggrieved Employees were not provided with valid lawful on-duty
28 meal periods.

1 33. Despite the above-mentioned meal period violations, Defendants failed to
2 compensate Plaintiff, and on information and belief, failed to compensate Aggrieved Employees,
3 one additional hour of pay at their regular rate as required by California law when meal periods
4 were not timely or lawfully provided in a compliant manner.

5 34. Plaintiff is informed and believes, and thereon alleges, that Defendants know,
6 should know, knew, and/or should have known that Plaintiff and the other Aggrieved Employees
7 were entitled to receive premium wages based on their regular rate of pay under Labor Code
8 §226.7 but were not receiving such compensation.

9 35. In addition, during the relevant time frame, Plaintiff and the Non-Exempt
10 Employees were systematically not authorized and permitted to take one net ten-minute paid, rest
11 period for every four hours worked or major fraction thereof, which is a violation of the Labor
12 Code and IWC wage order.

13 36. Defendants maintained and enforced scheduling practices, policies, and imposed
14 work demands that frequently required Plaintiff and Aggrieved Employees to forego their lawful,
15 paid rest periods of a net ten minutes for every four hours worked or major fraction thereof. Such
16 requisite rest periods were not timely authorized and permitted as a result of Defendants' failure to
17 provide relief for Plaintiff and Aggrieved Employees to take their lawfully required breaks.

18 37. Despite the above-mentioned rest period violations, Defendants did not compensate
19 Plaintiff, and on information and belief, did not pay Aggrieved Employees one additional hour of
20 pay at their regular rate as required by California law, including Labor Code section 226.7 and the
21 applicable IWC wage order, for each day on which lawful rest periods were not authorized and
22 permitted.

23 38. Plaintiff was required to keep her cell phone on and available during her rest
24 periods, as she remained on duty to keep the office open and attend to clients and phone calls.

25 39. Plaintiff and Aggrieved Employees were prohibited from leaving the premises
26 during rest breaks.
27
28

1 40. Plaintiff is informed and believes that Plaintiff and Aggrieved Employees were not
2 compensated for all time worked as Plaintiff and Aggrieved Employees as a result of off-the-clock
3 work performed. For instance, Plaintiff, and on information and belief Aggrieved Employees,
4 were required to keep their personal and work cell phones on and remain on-call during meal and
5 rest periods. Additionally, Plaintiff and Aggrieved Employees were required to keep their work
6 cell phone on at all times, including during meal and rest periods.

7 41. Plaintiff is informed and believes that Plaintiff and Aggrieved Employees were not
8 compensated for all time worked as Plaintiff would frequently work off-the-clock to respond to
9 work related phone calls from supervisors or co-workers. For instance, Defendant informed
10 Plaintiff that the Company was like family and sometimes, she would need to respond to off-shift
11 phone calls during off-hours.

12 42. Defendants also failed to provide accurate, lawful itemized wage statements to
13 Plaintiff and the Aggrieved Employees in part because of the above specified violations. In
14 addition, upon information and belief, Defendants omitted an accurate itemization of total hours
15 worked, including premiums due and owing for overtime pay, gross pay, and net pay figures from
16 Plaintiff and the Aggrieved Employees' wage statements.

17 43. Defendants also failed to provide accurate, lawful itemized wage statements to
18 Plaintiff and the Aggrieved Employees in part because of the above specified violations including
19 Defendants' failure to identify the hourly rate of pay and the hours worked to calculate Plaintiff's
20 and Aggrieved Employees' compensation. In addition, upon information and belief, Defendants
21 omitted an accurate itemization of the premiums due and owing for meal period violations and
22 also gross pay and net pay figures from Plaintiff and the Aggrieved Employees' wage statements.

23 44. Defendants failed to maintain accurate records as Plaintiff's "Comp Time" was not
24 accurately logged or recorded. For instance, in lieu of overtime wages, Plaintiff and Aggrieved
25 Employees were allowed to take an equivalent number of hours off at a later date to compensate
26 them for the extra hours worked. However, "Comp Time" hours provided to cover the overtime
27 worked were not calculated at 1.5 times the regular rate, but instead, 1:1 straight time.
28

1 45. On information and belief, during the relevant time frame, Defendants failed to
2 adequately reimburse Plaintiffs and Aggrieved Employees for business expenditures incurred for
3 the use of personal cellphones as Plaintiff and Aggrieved Employees used their personal
4 cellphones to stay in contact with Supervisors regarding work matters on a daily basis, throughout
5 the entirety of their shifts. Such business expenditures incurred were incurred in direct
6 consequence of Plaintiff's and Aggrieved Employees' duties pursuant to Labor Code § 2802.

7 46. Furthermore, Defendants failed to adequately reimburse Plaintiffs and Aggrieved
8 Employees for home internet and supplies when Plaintiff would work from home. Plaintiff and
9 Aggrieved Employees were forced to pay for internet and supplies out-of-pocket to work from
10 home and Defendants failed to reimburse employees for these necessary business expenses.

11 47. Plaintiff is informed and believes, and thereon alleges, that at all times herein
12 mentioned, Defendants knew that at the time of termination of employment (or within 72 hours
13 thereof for resignations without prior notice as the case may be) they had a duty to accurately
14 compensate Plaintiff and Aggrieved Employees for all wages owed including minimum wages,
15 meal period premiums, and that Defendants had the financial ability to pay such compensation,
16 but willfully, knowingly, recklessly, and/or intentionally failed to do so in part because of the
17 above-specified violations.

18 48. Defendants failed to timely pay Plaintiff her final wages. Plaintiff received news of
19 her termination in person on November 6, 2023 and she received her final pay 9 days later, on
20 November 15, 2023. Defendants did not pay Plaintiff waiting time penalties for the late final pay.

21 49. Upon information and belief, Defendants knew and or should have known that it is
22 improper to implement policies and commit unlawful acts such as:

23 (a) requiring employees to work in excess of five (5) hours or ten (10) hours per day
24 without being provided an uninterrupted thirty-minute meal period and/or a second meal period,
25 and without compensating employees with one (1) hour of pay at the regular rate of compensation
26 for each workday that such a meal period was not provided;

27 (b) failing to pay Plaintiff and Aggrieved Employees for all wages including overtime
28 wages owed;

- (c) failing to timely pay Plaintiff and Aggrieved Employees;
- (d) failing to maintain accurate records;
- (e) failing to provide accurate itemized wage statements; and
- (f) failing to reimburse business expenses.

50. In addition to the violations above, and on information and belief, Defendants knew they had a duty to compensate Plaintiff and Aggrieved Employees for the allegations asserted herein and that Defendants had the financial ability to pay such compensation, but willfully, knowingly, recklessly, and/or intentionally failed to do so.

V. REPRESENTATIVE CLAIMS

THE PRIVATE ATTORNEYS GENERAL ACT- LABOR CODE §§ 2698 *et seq.*

51. Plaintiff incorporates by reference and re-alleges each and every allegation contained above, as though fully set forth herein.

52. On September 6, 2024, Plaintiff complied with notice requirements pursuant to Labor Code section 2699.3. A copy of the letter sent to the LWDA is attached hereto as **Exhibit A**, indicating that the LWDA and Defendants were put on notice of the claims alleged here and that the notice requirement has been satisfied. Sixty-five days have passed and the LWDA has not indicated intent to investigate the claims. Therefore, Plaintiff may proceed with this action in a representative capacity. The substance and violations set forth in this Complaint of which the LWDA was provided timely notice, Plaintiff has also sent a copy of this PAGA Representative Action Complaint to the LWDA.

53. Plaintiff is an aggrieved employee as defined in Labor Code Section 2699(a). Plaintiff brings this cause of action on behalf of all current and former California Non-Exempt Employees of Defendants.

54. Pursuant to Labor Code section 2699(a) Plaintiff seek to recover civil penalties for which Defendants are liable due to numerous Labor Code violations as set forth in this Complaint, including without limitation Labor Code section 201-203, 510, 221, 223, 226.7, 226, 226.3, 246, 512, 1174, 1174.5, 1175, 1194, 1197, 1197.1, 2802, and 2698 *et seq.*, applicable IWC Wage Orders and California Code of Regulations, Title 8, section 11000 *et. seq.*

1 55. At all times relevant, Plaintiff and all other aggrieved employees regularly
2 performed non-exempt work in excess of 50% of the time, and thus, were subject to the meal and
3 rest break requirements of the applicable IWC wage order and the Labor Code.

4 56. Defendants violated Labor Code section 200, 558, 1194, 1197, by failing to
5 accurately pay at least minimum wages due as a result as a result of the methodology of
6 Defendants' piece-rate payment scheme, and for Defendants' failure to compensate Plaintiff and
7 Aggrieved Employees for the off-the-clock work performed as discussed above.

8 57. Defendants violated Labor Code section 510, and 1194 by failing to accurately pay
9 overtime wages owed as discussed above Defendants' failure to account for work time performed
10 off-the-clock by Plaintiff and Aggrieved Employees and due to Defendants' piece-rate payment
11 scheme. Defendants also failed to include all forms of remuneration into the regular rates of pay
12 for overtime calculation purposes as discussed above. Therefore, Defendants violated section 510,
13 and 1194 by not compensating its Non-Exempt Employees for work performed in excess of eight
14 (8) hours in a day or forty (40) hours in a work week. Section 510 of the Labor Code codifies the
15 right to overtime compensation at the rate of one and one-half times the regular rate of pay for all
16 hours worked in excess of eight (8) hours in a day or forty (40) hours in a work week and to
17 overtime compensation twice the regular rate of pay for hours worked in excess of twelve (12)
18 hours in a day or in excess of eight (8) hours in a day on the seventh day of work in a particular
19 work week

20 58. Defendants failed to provide Plaintiff and all other aggrieved employees
21 uninterrupted duty-free meal periods of not less than thirty (30) minutes. Defendants implemented
22 and enforced policies of on duty meal period practices which required employees to work during
23 their meal periods, to forego their meal periods, and/or to return to work from meal periods prior
24 to thirty (30) uninterrupted minutes. As a proximate result of the aforementioned violations,
25 Plaintiff and all other aggrieved employees have been damaged in an amount according to proof at
26 time of trial.

27 59. Plaintiff, and on information and belief, all aggrieved employees, were
28 systematically not permitted or authorized to take ten-minute rest periods for every four hours

1 worked or major fraction thereof, which is a violation of the Labor Code and IWC wage order.
2 Plaintiff and on information and belief, aggrieved employees, were not compensated with one
3 hour of wages for every day in which a rest period was missed or untimely as a result of
4 Defendants' policies, practices, or work demands. By failing to authorize and permit a ten-minute
5 rest period for every four hours or major fraction thereof worked per day by its Non-Exempt
6 Employees, and by failing to provide compensation for such non-provided or shortened rest
7 periods, as alleged above, Defendants willfully violated the provisions of Labor Code sections
8 226.7, 512 and the applicable IWC Wage Order.

9 60. Defendants also willfully violated Labor Code sections 201-203 by failing to
10 provide all owed wages at separation from employment. Labor Code sections 201 and 202 require
11 Defendants to pay their employees all wages due either at time of firing, or within seventy-two
12 (72) hours of voluntary separation, if not sooner. Section 203 of the Labor Code provides that if
13 an employer willfully fails to timely pay such wages the employer must, as a penalty, continue to
14 pay the subject employee's wages until the back wages are paid in full or an action is commenced.
15 The penalty cannot exceed 30 days of wages.

16 61. Plaintiff and all other aggrieved employees who were separated from employment
17 are entitled to compensation for all forms of wages earned, including but not limited to
18 compensation regular and overtime wages, and for non-provided meal periods, but to date have
19 not received such compensation, therefore entitling them to penalties under PAGA for violations
20 of Labor Code sections 201-203.

21 62. On information and belief, Defendants willfully failed to pay all wages due and
22 owing upon separation from employment. These wages include regular and overtime wages, and
23 meal and rest period premiums.

24 63. On information and belief, Defendants failed to provide accurate itemized wage
25 statements which failed to include the rate of pay and total hours worked per pay period, failed to
26 account for all hours worked, including overtime, and lastly the accurate accounting of, the lawful
27 meal and rest period premiums due and owing to Plaintiff and the aggrieved employees, pursuant
28 to Labor Code section 226(a).

1 64. Defendants have failed to provide Plaintiff and Aggrieved Employees rates of pay
2 and the hours for which they worked for any given pay period.

3 65. Defendants have failed to accurately record all time worked.

4 66. Defendants have also failed to accurately record the meal period premiums owed
5 and all wages owed per pay period.

6 67. Plaintiff and Aggrieved Employees have been injured as they were unable to
7 determine whether they had been paid correctly for all hours worked per pay period among other
8 things.

9 68. Pursuant to Labor Code section 226.3, any employer who violates subdivision (a)
10 of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250)
11 per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee
12 for each violation in a subsequent citation, for which the employer fails to provide the employee a
13 wage deduction statement or fails to keep the records required in subdivision (a) of Section 226.

14 69. On information and belief, Defendants failed to reimburse Plaintiff and Aggrieved
15 Employees for business expenses incurred as described above. Labor Code § 2802 requires
16 Defendants to indemnify Plaintiff and Aggrieved Employees for necessary expenditures incurred
17 in direct consequences of the discharge of his or her duties. Despite these realities of the job,
18 Defendants failed to provide reimbursements.

19 70. Labor Code §2804 states in pertinent part: “Any contract or agreement, express or
20 implied, made by any employee to waive the benefits of this article or any part thereof is null and
21 void, and this article shall not deprive any employee or his or her personal representative of any
22 right or remedy to which he is entitled under the laws of this State.

23 71. Labor Code section 1197 makes it unlawful to pay an employee less than the
24 minimum wage as established by the Industrial Welfare Commission.

25 72. Labor Code section 1198 provides that the maximum hours of work and the
26 standard conditions of labor fixed by the commission shall be the maximum hours of work and the
27 standard conditions of labor by the commission shall be the maximum hours of work and the
28 standard conditions of labor for employees. The employment of any employee for longer hours

1 than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

2 73. Additionally, Defendants have no accurate records relating to aggrieved
3 employees' work periods, meal periods, total daily hours worked, total hours worked per payroll
4 period and applicable pay rates, in violation of Wage Order. Similarly, Defendants failed to
5 maintain accurate records relating to hours worked daily in violation of Labor Code sections
6 1174(d), 1174.5.

7 74. As a result of Defendants' unlawful conduct, Plaintiff and Aggrieved employees are
8 entitled to penalties to the extent they were not paid at the prevailing wage rate for all hours
9 worked.

10 75. Plaintiff and the Representative Aggrieved Employees are entitled to recover
11 Penalties and attorneys' fees and costs under Labor Code section 2698 et. seq.

12 **PRAYER FOR RELIEF**

13 WHEREFORE, Plaintiff prays for judgment against Defendants, as follows:

- 14 1. For penalties according to proof, pursuant to Labor Code §§ 2698 et seq.;
- 15 2. For reasonable attorneys' fees and costs; and
- 16 3. For such other and further relief as the Court deems proper.

17
18
19 Dated: November 13, 2024

JAMES HAWKINS APLC

20
21 

22 By: _____

23 JAMES R. HAWKINS, ESQ.
24 GREGORY MAURO, ESQ.
25 MICHAEL CALVO, ESQ.
26 LAUREN FALK, ESQ.
27 AVA ISSARY, ESQ.
28 Attorneys for Plaintiff KATHLEEN S.
HERNANDEZ, on behalf of the general
public as private attorney general

EXHIBIT A

JAMES *JH* HAWKINS

A PROFESSIONAL LAW CORPORATION

9880 RESEARCH DRIVE, SUITE 200, IRVINE, CALIFORNIA 92618
TELEPHONE (949) 387-7200; FACSIMILE (949) 387-6676

September 6, 2024

Via LWDA Website

Labor and Workforce Development Agency
Attn: PAGA Administrator
1515 Clay Street, Suite 801
Oakland, CA 94612
<http://www.dir.ca.gov/Private-Attorneys-General-Act>

Via Certified Mail

ENVIRONMENTAL ALTERNATIVES
Agent for Service of Process:
Melody A. King
350 Main Street
Quincy, CA 95971
Receipt No.: 9589 0710 5270 1738 0511 63

Re: NOTICE PURSUANT TO LABOR CODE SECTIONS 2698, *et seq.*

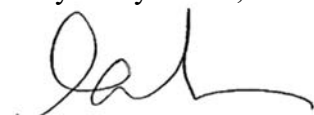
To Whom It May Concern:

PLEASE TAKE NOTICE that plaintiff KATHLEEN S. HERNANDEZ, individually and on behalf of all similarly situated representative aggrieved employees, gives NOTICE to commence and/or amend a civil action pursuant to California Labor Code Sections 2698, *et seq.* Plaintiff hereby gives written notice by certified mail to the Labor and Workforce Development Agency, ENVIRONMENTAL ALTERNATIVES, through its Agent for Service of Process.

Plaintiff hereby attaches a copy of the Proposed PAGA Representative Action Complaint to be filed in the Fresno County Superior Court, as though fully set forth herewith setting out the specific provisions of the Labor Code Plaintiff alleges have been violated, including the facts and theories. All labor provisions in the Proposed PAGA Representative Action Complaint alleged to have been violated pertain to all entities and individuals named in the Complaints, even if not expressly specified.

Please advise within sixty (60) days of the post mark on this letter if the LWDA intends to investigate these claims. Thank you, and if you have any questions, please do not hesitate to contact me.

Very Truly Yours,



Gregory Mauro

Enclosure: Proposed PAGA Representative Action Complaint