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E-FILED

7/1/2025 12:13 PM

Clerk of Court

Superior Court of CA,

County of Santa Clara

25CV469710

Reviewed By: J. Nguyen

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA CLARA

LUCUS DRISCOLL, on behalf of the State of
California and other aggrieved persons,

Plaintiff,

vs.

ALUMAWALL, INC., a California corporation;
and DOES 1 through 10, inclusive,

Defendants.

Case No.: 25CV469710

**PAGA REPRESENTATIVE ACTION
COMPLAINT:**

1. Civil Penalties Under PAGA [Cal. Lab.
Code §§ 2699, et seq.]

1 Plaintiff LUCUS DRISCOLL (“Plaintiff”), based upon facts that either have evidentiary
2 support or are likely to have evidentiary support after a reasonable opportunity for further
3 investigation and discovery, alleges as follows:

4 **INTRODUCTION & PRELIMINARY STATEMENT**

5 1. Plaintiff brings this action against Defendant ALUMAWALL, INC., and DOES 1
6 through 10 are hereinafter collectively referred to as “Defendants”) for civil penalties under the
7 Private Attorneys General Act of 2004, California Labor Code §§ 2698, *et seq.* (“PAGA”)
8 stemming from Defendants’ failure to pay for all hours worked (minimum, straight time, and
9 overtime wages), failure to provide legally compliant meal periods, failure to authorize and
10 permit legally compliant rest periods, failure to pay all earned wages twice per month, failure to
11 maintain accurate records of hours worked and meal periods, failure to timely pay final wages at
12 termination, failure to furnish accurate wage statements, and failure to indemnify employees for
13 expenditures.

14 2. For over 50 years, California’s courts and legislature have recognized that this
15 State’s wage-and-hour laws serve a compelling public interest in fostering a stable job market.
16 Wages are not ordinary debts. Because of the economic position of the average worker and his
17 or her family, it is essential to the public welfare that employers obey the wage-and-hour laws so
18 that employees are promptly paid the minimum/overtime wages that the Legislature has required
19 for employees. So fundamental are California’s wage-and-hour laws that the Legislature has
20 criminalized certain types of violations. In extending extra protection to deter violations of these
21 underlying statutes—since Plaintiff is not seeking general and/or special damages, restitution or
22 other damages, other than civil penalties—California has enacted the PAGA to permit an
23 individual to bring an action for PAGA penalties only, which is the precise and sole nature of this
24 action.

25 3. All California employees during the relevant statutes of limitations who are or
26 were harmed by Defendants’ unlawful practices are “Aggrieved Employees.” The Aggrieved
27 Employees worked for Defendants as hourly-paid and/or non-exempt employees within the
28 applicable statutory period.

4. Plaintiff brings this action against Defendants seeking only to recover penalties on behalf of all Aggrieved Employees that worked for Defendants, and on behalf of the State of California. Plaintiff does not presently seek to recover other than penalties as permitted by California Labor Code Section 2699. To the extent that statutory violations are mentioned for wage violations, Plaintiff does not seek underlying general and/or special damages for those violations, but simply penalties as permitted by California Labor Code Section 2699, declaratory relief, and injunctive relief for himself and all Aggrieved Employees as permitted by the PAGA.

5. Defendants own/owned and operate/operated an industry, business, and establishment within the State of California, including in Santa Clara County. As such and based upon all the facts and circumstances incident to Defendants' business in California, Defendants are subject to the California Labor Code (hereinafter "Labor Code"), Wage Orders issued by the Industrial Welfare Commission ("IWC"), and the California Business & Professions Code.

6. On information and belief, Defendants, and each of them were on actual and constructive notice of the improprieties alleged herein and intentionally refused to rectify their unlawful policies. Defendants' violations, as alleged above, during all relevant times herein were willful and deliberate.

7. At all relevant times, Defendants were and are legally responsible for all of the unlawful conduct, policies, practices, acts and omissions as described in each and all of the foregoing paragraphs as the employers of Plaintiff and the Aggrieved Employees. Further, Defendants are responsible for each of the unlawful acts or omissions complained of herein under the doctrine of “respondeat superior”.

THE PARTIES

A. Plaintiff

8. Plaintiff LUCUS DRISCOLL worked for Defendants in California as an hourly-paid, non-exempt employee from approximately December 2023 to approximately July 2024.

B. Defendants

9. Plaintiff is informed and believes, and based upon that information and belief alleges, that Defendant ALUMAWALL, INC. is and at all times herein mentioned was:

- 1 (a) A business entity qualified to do business and actually conducting business
2 in numerous counties throughout the State of California, including in Santa
3 Clara County; and,
- 4 (b) The former employer of Plaintiff and the current and/or former employer
5 of the Aggrieved Employees because Defendant ALUMAWALL, INC.
6 suffered and permitted Plaintiff and the Aggrieved Employees to work,
7 and/or controlled their wages, hours, or working conditions.

8 10. Plaintiff does not know the true names or capacities of the persons or entities sued
9 herein as Does 1-10, inclusive, and therefore sues said Defendants by such fictitious names.
10 Each of the Doe Defendants was in some manner legally responsible for the damages suffered by
11 Plaintiff and the Aggrieved Employees as alleged herein. Plaintiff will amend this complaint to
12 set forth the true names and capacities of these Defendants when they have been ascertained,
13 together with appropriate charging allegations, as may be necessary.

14 11. At all times mentioned herein, the Defendants named as Does 1-10, inclusive, and
15 each of them, were residents of, doing business in, availed themselves of the jurisdiction of,
16 and/or injured Plaintiff and the Aggrieved Employees in California.

17 12. Plaintiff is informed and believes and thereon alleges that at all relevant times
18 each Defendant, directly or indirectly, or through agents or other persons, employed Plaintiff and
19 the other Aggrieved Employees and exercised control over their wages, hours, and working
20 conditions. Plaintiff is informed and believes and thereon alleges that at all relevant times each
21 Defendant was the principal, agent, partner, joint venturer, officer, director, controlling
22 shareholder, subsidiary, affiliate, parent corporation, successor in interest and/or predecessor in
23 interest of some or all of the other Defendants, and was engaged with some or all of the other
24 Defendants in a joint enterprise for profit, and bore such other relationships to some or all of the
25 other Defendants so as to be liable for their conduct with respect to the matters alleged herein.
26 Plaintiff is informed and believes and thereon alleges that each Defendant acted pursuant to and
27 within the scope of these relationships and knew or should have known about, and authorized,
28 ratified, adopted, approved, controlled, aided and abetted the conduct of all other Defendants.

1 **ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

2 13. Plaintiff worked for Defendants in California as an hourly-paid, non-exempt
3 employee from approximately December 2023 to approximately July 2024. During Plaintiff's
4 employment for Defendants, Defendants paid Plaintiff an hourly wage and classified him as non-
5 exempt from overtime. Defendant typically scheduled Plaintiff to work at least five days in a
6 workweek and at least eight hours per day, but Plaintiff mostly worked more than eight hours in
7 a workday and more than forty (40) hours in a workweek.

8 14. Throughout Plaintiff's employment, Defendants failed to pay for all hours worked
9 (including minimum, straight time, and overtime wages), failed to provide Plaintiff with legally
10 compliant meal periods, failed to authorize and permit Plaintiff to take legally compliant rest
11 periods, failed to timely pay all final wages to Plaintiff when Defendants terminated his
12 employment, failed to furnish accurate wage statements to Plaintiff, and failed to indemnify
13 Plaintiff for expenditures. As discussed below, Plaintiff's experience working for Defendants
14 was typical and illustrative.

15 **A. Failure to Pay for All Hours Worked, Including Minimum, Straight Time, and**
16 **Overtime Wages**

17 15. Under California law, an employer must pay for all hours worked by an employee.
18 "Hours worked" is the time during which an employee is subject to the control of an employer,
19 and includes all the time the employee is suffered or permitted to work, whether or not required
20 to do so.

21 16. In addition, Labor Code § 510 provides that employees in California shall not be
22 employed more than eight hours in any workday or forty (40) hours in a workweek unless they
23 receive additional compensation beyond their regular wages in amounts specified by law.

24 17. Labor Code §§ 1194 and 1198 also provide that employees in California shall not
25 be employed more than eight hours in any workday unless they receive additional compensation
26 beyond their regular wages in amounts specified by law. Additionally, Labor Code § 1198 states
27 that the employment of an employee for longer hours than those fixed by the IWC is unlawful.

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1 18. Throughout the statutory period, Defendants maintained a policy and practice of
2 not paying Plaintiff and the Aggrieved Employees for all hours worked, including minimum,
3 straight time, and overtime wages. Defendants required Plaintiff and the Aggrieved Employees
4 to work “off-the-clock”, uncompensated, by, for example, requiring Plaintiff and the Aggrieved
5 Employees to perform work prior to clocking in for the workday, during meal periods, and after
6 clocking out for the workday. Some of this unpaid work should have been paid at the overtime
7 rate. In failing to pay for all hours worked, Defendants also failed to maintain accurate records
8 of the hours Plaintiff and the Aggrieved Employees worked.

9 **B. Failure to Provide Meal Periods**

10 19. Under California law, employers have an affirmative obligation to relieve
11 employees of all duty in order to take their first 30-minute, duty-free meal period no later than
12 the start of sixth hour of work in a workday, and to allow employees to take their second 30-
13 minute, duty-free meal period no later than the start of the eleventh hour of work in the workday.
14 Further, employees are entitled to be paid one hour of additional wages for each workday they
15 were not provided with all required meal period(s).

16 20. Despite these legal requirements, Defendants wrongfully failed to provide Plaintiff
17 and the Aggrieved Employees with their legally mandated 30-minute, uninterrupted, and duty-
18 free meal periods. Defendants regularly, but not always, required Plaintiff and the Aggrieved
19 Employees to work in excess of five consecutive hours a day without providing a 30-minute,
20 uninterrupted, and duty-free meal period for every five hours of work, or without compensating
21 Plaintiff and the Aggrieved Employees for meal periods that were not provided by the end of the
22 fifth hour of work or tenth hour of work. Instead, Defendants continued to assert control over
23 Plaintiff and the Aggrieved Employees by requiring, pressuring, or encouraging them to perform
24 work tasks which could not be completed without working in lieu of taking mandatory meal
25 periods, or by denying Plaintiff and the Aggrieved Employees permission to take a meal period.
26 Defendants also never informed Plaintiff of his right to or permitted him to take a second meal
27 period when Plaintiff worked at least ten hours of work in a workday. Accordingly, Defendants’
28 policy and practice was to not provide meal periods in compliance with California law.

1 21. Plaintiff and the Aggrieved Employees are thus entitled to be paid one hour of
2 additional wages for each workday they were not provided with all required meal periods.
3 Defendants, however, regularly failed to pay Plaintiff and the Aggrieved Employees the
4 additional wages to which they were entitled for meal periods that were not provided or
5 otherwise non-compliant.

6 **C. Failure to Authorize and Permit Rest Periods**

7 22. Employers are required by California law to authorize and permit breaks of ten
8 uninterrupted minutes for each four hours of work or major fraction of four hours (i.e. more than
9 two hours). Thus, for example, if an employee's work time is six hours and ten minutes, the
10 employee is entitled to, and the employer must authorize and permit, two rest breaks. Each
11 failure to authorize rest breaks as required is itself a violation of California's rest break laws.

12 23. Throughout the statutory period, Defendants have wrongfully failed to authorize
13 and permit Plaintiff and the Aggrieved Employees to take legally compliant rest periods.
14 Defendants regularly required Plaintiff and the Aggrieved Employees to work in excess of four
15 consecutive hours in a workday without Defendants authorizing and permitting them to take a
16 10-minute, uninterrupted, duty-free rest period for every four hours of work (or major fraction of
17 four hours), or without compensating Plaintiff and the Aggrieved Employees for rest periods that
18 were not authorized or permitted or otherwise non-compliant. Instead, Defendants continued to
19 assert control over Plaintiff and the Aggrieved Employees by requiring, pressuring, or
20 encouraging them to perform work tasks which could not be completed without working in lieu
21 of taking mandatory rest periods, or by denying Plaintiff and the Aggrieved Employees
22 permission to take a rest period. Accordingly, Defendants' policy and practice was to not
23 authorize and permit rest periods in compliance with California law.

24 24. Plaintiff and the Aggrieved Employees are thus entitled to be paid one hour of
25 additional wages for each workday they were not authorized and permitted to take all required
26 rest periods. Defendants, however, regularly failed to pay Plaintiff and the Aggrieved
27 Employees the additional wages to which they were entitled for rest periods and that they were
28 not authorized and permitted to take.

1 **D. Failure to Pay All Earned Wages Twice Per Month**

2 25. Based on Defendants' failure to pay Plaintiff and the Aggrieved Employees for all
3 wages as alleged herein, Defendants also violated Labor Code § 204.

4 26. Labor Code § 204 requires employers to pay employees all earned wages two
5 times per month. Throughout the statute of limitations period applicable to this claim, employees
6 were entitled to be paid twice a month at their regular rate of pay, including all meal period
7 premium wages owed, rest period premium wages owed, and wages owed for overtime hours
8 worked. However, during all such times, Defendants systematically failed to pay the employees
9 all wages due and further failed to pay all wages due twice a month, in that employees were not
10 paid all wages for all meal periods not provided by Defendants, all wages for all rest periods not
11 authorized and permitted by Defendants, and all wages for all hours worked. As a result,
12 Defendants owe employees the legally required wages for unpaid wages, and Plaintiff and the
13 Aggrieved Employees suffered damages in those amounts.

14 **E. Failure to Maintain Accurate Records of Hours Worked and Meal Periods**

15 27. Plaintiff seeks penalties under California Labor Code § 1174(d). Pursuant to
16 Labor Code § 1174.5, any person, including any entity, employing labor who willfully fails to
17 maintain accurate and complete records required by Labor Code § 1174 is subject to a penalty
18 under § 1174.5. Pursuant to the applicable IWC Order § 7(A)(3), every employer shall keep time
19 records showing when the employee begins and ends each work period. Meal periods and total
20 hours worked daily must also be recorded.

21 28. Defendants, however, failed to maintain accurate records of hours worked and all
22 meal periods taken or missed by Plaintiff and the Aggrieved Employees.

23 29. Defendants' failure to provide and maintain records required by the Labor Code
24 and applicable IWC Wage Orders deprived Plaintiff and the Aggrieved Employees of the ability
25 to know and be informed regarding their hours worked and meal periods as stated and/or
26 reflected in Defendants' records. Therefore, Plaintiff and the Aggrieved Employees had no way
27 to dispute the resulting failures by Defendants to maintain compliant records and pay all wages
28 due, all of which resulted in an unjustified economic enrichment to Defendants to the direct

1 detriment of Plaintiff and the Aggrieved Employees. As a direct result, Plaintiff and the
2 Aggrieved Employees have suffered and continue to suffer substantial losses related to the use
3 and enjoyment of such wages, lost interest on such wages and expenses and attorney's fees in
4 seeking to compel Defendants to fully perform their obligations under California law, all to their
5 respective damage in amounts according to proof at trial. As a result of Defendants' knowing
6 failure to comply with the Labor Code and applicable IWC Wage Orders, Plaintiff and the
7 Aggrieved Employees have also suffered an injury in that they were prevented from knowing,
8 understanding, and disputing the wage payments paid to them.

9 **F. Failure to Timely Pay All Wages at Termination**

10 30. Labor Code §§ 201 and 202 provide that if an employer discharges an employee,
11 the wages earned and unpaid at the time of discharge are due and payable immediately, and that
12 if an employee voluntarily leaves his or her employment, his or her wages shall become due and
13 payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-
14 two (72) hours previous notice of his or her intention to quit, in which case the employee is
15 entitled to his or her wages at the time of quitting.

16 31. Within the applicable statute of limitations, the employment of Plaintiff and many
17 other Aggrieved Employees ended, i.e., was terminated by resigning or being discharged, and the
18 employment of others will be terminated. However, during the relevant time period, Defendants
19 failed and continue to fail to pay Plaintiff and terminated Aggrieved Employees, without
20 abatement, all wages required to be paid by Labor Code §§ 201 and 202, either at the time of
21 discharge or within seventy-two (72) hours of their leaving Defendants' employment. These
22 unpaid wages include wages for unpaid work time (including minimum, straight time, and
23 overtime wages), missed meal period premium wages, and missed rest period premium wages.

24 32. Defendants' conduct violates Labor Code §§ 201 and 202. Labor Code § 203
25 provides that if an employer willfully fails to pay wages owed, in accordance with sections 201
26 and 202, then the wages of the employee shall continue as a penalty wage from the due date, and
27 at the same rate until paid or until an action is commenced; but the wages shall not continue for
28 more than thirty (30) days.

33. Accordingly, Plaintiff and the Aggrieved Employees are entitled to recover from Defendants their additionally accruing wages for each day they were not paid, at their regular hourly rate of pay, up to thirty (30) days maximum pursuant to Labor Code § 203.

G. Failure to Furnish Accurate Itemized Wage Statements

34. Labor Code § 226(a) provides that every employer shall furnish each of his or her employees an accurate itemized wage statement in writing showing nine pieces of information, including: (1) gross wages earned, (2) total hours worked by the employee, (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 the last four digits of his or her social security number or an employee identification number other than a 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. An employee is presumed to suffer an injury if this information is missing. (Labor Code § 226(e)(2)(B)(iii).)

35. The statute further 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.” (Labor Code § 226(e)(1).)

36. Throughout the statutory period, Defendants failed to furnish Plaintiff and the Aggrieved Employees with accurate, itemized wage statements showing all applicable hourly rates, and all gross and net wages earned (including correct hours worked, correct wages for meal periods that were not provided in accordance with California law, and correct wages for rest periods that were not authorized and permitted to be taken in accordance with California law).

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1 37. Because Defendants violated Labor Code § 226, Plaintiff and other Aggrieved
2 Employees suffered injury and damage to their statutorily protected rights. Accordingly,
3 Plaintiff and other Aggrieved Employees are entitled to recover from Defendants the greater of
4 their actual damages caused by Defendants' failure to comply with Labor Code § 226(a), or an
5 aggregate penalty not exceeding four thousand dollars (\$4,000) per employee.

6 **H. Failure to Indemnify for Necessary Expenditures**

7 38. Labor Code § 2802(a) provides that employers shall indemnify his or her
8 employees for all necessary business expenditures or losses that have been incurred by the
9 employees in direct discharge of his or her duties. Throughout the statute of limitations period
10 applicable to this claim, Defendants wrongfully required Plaintiff and the Aggrieved Employees
11 to pay expenses that they incurred in direct discharge of their duties for Defendants. Plaintiff and
12 the Aggrieved Employees regularly paid out-of-pocket for necessary employment-related
13 expenses, including, without limitation, personal cell phone usage and work equipment. Plaintiff
14 and the Aggrieved Employees incurred substantial expenses as a direct result of performing their
15 job duties for Defendants, but Defendants failed to indemnify Plaintiff and the Aggrieved
16 Employees for these necessary employment-related expenses.

17 **FIRST CAUSE OF ACTION**

18 **(Against All Defendants for Civil Penalties Under the Private Attorneys**

19 **General Act of 2004, Cal. Lab. Code §§ 2698, *et seq.*)**

20 39. Plaintiff incorporates by reference and re-alleges all preceding paragraphs as
21 though fully set forth herein.

22 40. At all times herein mentioned, Defendants were subject to the Labor Code of the
23 State of California and the applicable IWC Wage Orders.

24 41. Labor Code § 2699(a) specifically provides for a private right of action to recover
25 penalties for violations of the Labor Code: "Notwithstanding any other provision of law, any
26 provision of this code that provides for a civil penalty to be assessed and collected by the Labor
27 and Workforce Development Agency or any of its departments, divisions, commissions, boards,
28 agencies, or employees, for a violation of this code, may, as an alternative, be recovered through

1 a civil action brought by an aggrieved employee on behalf of himself or herself and other current
2 or former employees pursuant to the procedures specified in Section 2699.3.”

3 42. Plaintiff has exhausted his administrative remedies pursuant to Labor Code §
4 2699.3. On October 18, 2024, Plaintiff gave written notice by online filing to the Labor and
5 Workforce Development Agency (“LWDA”) and by certified mail to Defendants of the specific
6 provisions of the Labor Code that Defendants are alleged to have violated as against Plaintiff and
7 the Aggrieved Employees, including the facts and theories to support the violations. Plaintiff also
8 paid the filing fee. Plaintiff’s PAGA case number is LWDA-CM-1057053-24.

9 43. The statute of limitations is tolled while a plaintiff exhausts his or her
10 administrative remedies with California’s LWDA prior to suit, which is required by the statute.
11 (*See* Labor Code § 2699.3(d).)

12 44. More than sixty-five (65) days have elapsed since Plaintiff provided notice and the
13 LWDA has not indicated that it intends to investigate Defendants’ Labor Code violations set
14 forth in the notice. Accordingly, Plaintiff may commence a civil action to recover penalties
15 under Labor Code § 2699 pursuant to § 2699.3 for the Labor Code violations as alleged in this
16 complaint. These penalties include, but are not limited to, penalties under Labor Code §§ 210,
17 226.3, 1174.5, 1197.1, and 2699(f)(2).

18 45. Based on the conduct described in this complaint, Plaintiff is entitled to an award
19 of civil penalties on behalf of the State of California and similarly Aggrieved Employees of
20 Defendants. The exact amount of the applicable penalties, in all, is in an amount to be shown
21 according to proof at trial. These penalties are in addition to all other remedies permitted by law.

22 46. In addition, Plaintiff seeks an award of reasonable attorney’s fees and costs
23 pursuant to Labor Code § 2699(g)(1), which states, “Any employee who prevails in any action
24 shall be entitled to an award of reasonable attorney’s fees and costs.”

25 **PRAYER FOR RELIEF**

26 Plaintiff, on behalf of all similarly Aggrieved Employees, prays for relief and judgment
27 against Defendants, jointly and severally, as follows:

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1. That the Court declare, adjudge and decree that Defendants violated the California Labor Code by failing to pay for all hours worked (minimum, straight time, and overtime wages), failing to provide meal periods, failing to authorize and permit rest periods, failing to pay all earned wages twice per month, failing to maintain accurate records of hours worked and meal periods, failing to timely pay final wages at termination, failing to furnish accurate wage statements, and failing to indemnify for necessary business expenditures;

2. An award of civil penalties on behalf of himself and all similarly Aggrieved Employees pursuant to the PAGA;

3. Pre-judgment and post-judgment interest at the maximum rate allowed;

4. Attorney's fees and costs reasonably incurred;

5. Injunctive and declaratory relief to the extent allowed by the PAGA; and,

6. Such other and further relief that the Court deems proper.

Respectfully submitted,

Dated: July 1, 2025

WILSHIRE LAW FIRM

By:

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