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8 Attorneys for Plaintiff Kevin McDade, Jr.,
9 on behalf of himself and all “aggrieved employees”
10 pursuant to Labor Code § 2698 *et seq.*

Assigned to Hon. Jeffrey B. Jones Trial To:

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Superior Court of California,
County of Imperial
07/07/2025 at 08:51:39 AM
By: Mariana Gutierrez, Deputy Clerk

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF IMPERIAL**

11 KEVIN MCDADE, JR., on behalf of himself
12 and all “aggrieved employees” pursuant to
Labor Code § 2698 *et seq.*,

13 Plaintiff,

14 v.

15 FREE ENERGY SAVINGS COMPANY,
16 LLC, a Delaware limited liability company,
17 and DOES 1 through 10, inclusive,

18 Defendants.

CASE NO: ECU004176

**REPRESENTATIVE ACTION
COMPLAINT FOR PENALTIES
PURSUANT TO LABOR CODE § 2699(f)
FOR VIOLATIONS OF LABOR CODE
§§ 201, 202, 204, 216, 226(a), 226.7, 510, 512,
1174, 1174.5, 1175, 1194, 1199, AND 2802
AND PURSUANT TO LABOR CODE §
2699(a) FOR VIOLATIONS OF LABOR
CODE §§ 210, 226.3 AND 558**

1 Plaintiff KEVIN MCDADE, JR. ("Plaintiff"), on behalf of himself and others as an "aggrieved
2 employee" under the Labor Code Private Attorneys General Act of 2004, complains of FREE
3 ENERGY SAVINGS COMPANY, LLC, a Delaware limited liability company, and any subsidiaries
4 or affiliated companies (hereinafter referred to as "Defendants") as follows:

5 **I.**

6 **INTRODUCTION AND FACTUAL BACKGROUND**

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

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

14 a. Failing to pay all minimum and overtime wages due and owing to certain
15 Aggrieved Employees because it misclassified them as exempt and, therefore, ineligible for
16 overtime wages or meal and rest periods, in violation of Labor Code §§ 510, 558, 1194, and
17 1199. Aggrieved Employees, however, did not meet any applicable exemption. Thus, when
18 they worked in excess of eight (8) hours in a workday and/or over forty (40) hours in a
19 workweek, they were entitled to premium overtime pay of one-and-one-half times the regular
20 rate of pay for all overtime hours worked, yet Defendant failed to pay applicable overtime
21 wages or minimum wages when they exceeded their salaried hours. Plaintiff alleges this claim
22 on behalf of all Aggrieved Employees misclassified as exempt;

24 b. Failing to pay correct premium wages to Plaintiff and other Aggrieved
25 Employees who are denied proper meal periods, in violation of Labor Code §§ 226.7, 512,
26 and 558, and IWC Wage Order 4-2001. Plaintiff and other Aggrieved Employees are routinely
27 denied, and not authorized to take, a timely, uninterrupted, 30-minute meal period for every
28 shift worked that exceeds five hours, or a second timely, uninterrupted, 30-minute meal period

1 for every shift worked that exceeds ten hours, but are not paid premium wages of one hour's
2 pay at the proper rate of pay for each missed first or second meal period. Plaintiff and other
3 Aggrieved Employees rarely (if ever) received a second meal period when they worked shifts
4 in excess of 10 hours in duration. Defendants also failed to maintain accurate records showing
5 the start and stop time of meal periods since Defendants did not require Plaintiff and
6 Aggrieved Employee to clock out for their meal periods. This violates Labor Code §§ 226.7,
7 512, 558, 1174, and 1174.5 and IWC Wage Order 4-2001;

8
9 c. Failing to pay correct premium wages to Plaintiff and other Aggrieved
10 Employees who are denied rest periods, in violation of Labor Code § 226.7 and IWC Wage
11 Order No. 4-2001. Plaintiff and other Aggrieved Employees are routinely unable to take a 10-
12 minute rest period for every four (4) hours of work or major fraction thereof, but are not paid
13 premium wages of one hour's pay for each missed rest period. They were simply denied and
14 not authorized to take their legally entitled rest periods and were never paid premium wages
15 for missed rest periods. This violates Labor Code § 226.7 and IWC Wage Order No. 4-2001;

16 d. Failing to reimburse Plaintiff and other Aggrieved Employees for necessary
17 business expenses incurred in direct consequence of the discharge of their duties, in violation
18 of Labor Code § 2802, including, but not limited to, cellular phone expenses and personal
19 hand and power tools (including impact drill, meter, and multimeter). Specifically, Plaintiff
20 and Aggrieved Employees were required to use their cellular phone to clock in and out for
21 their shifts and use their own personal hand and power tools to perform work for Defendant,
22 but were not reimbursed for these expenses. Labor Code § 2802 states that an employer must
23 indemnify its employees for all necessary expenditures or losses incurred by the employee in
24 direct consequence of the discharge of their duties. These instances violate Labor Code §
25 2802;
26

27 e. Failing to provide Plaintiff and other Aggrieved Employees with wage
28 statements that fully and accurately itemized the requirements set forth in Labor Code §§

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

9 f. Failing to pay Plaintiff all wages due at the separation of Plaintiff's
10 employment based on the time frames required by Labor Code §§ 201, 202, 204, 210, and
11 216. As stated above, Plaintiff and other Aggrieved Employees were not paid all wages due
12 during the course of their employment and, as a result of this failure, they were not timely
13 paid all wages due at the separation of their employment. This violates Labor Code §§ 201,
14 202, 204, 210, and 216 and is alleged on behalf of Plaintiff and certain Aggrieved Employees
15 no longer employed by Defendants.

16 3. Plaintiff, on behalf of himself and all Aggrieved Employees pursuant to Labor Code §
17 2698 *et seq.*, seeks civil penalties for Defendants' violations of the California Labor Code.

18 4. Venue is proper in this judicial district, pursuant to Code of Civil Procedure § 395.
19 The Labor Code violations alleged against Defendants herein arose throughout California, including
20 in Imperial County.

21 III.

22 PARTIES

23 A. Plaintiff

24 5. Plaintiff KEVIN MCDADE, JR. was employed by Defendants from January 2024
25 through November 2024 as a non-exempt employee in California.

26 B. Defendant

27 6. Defendant FREE ENERGY SAVINGS COMPANY, LLC, is a Delaware limited
28 liability company that employed Plaintiff and Aggrieved Employees throughout California.

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

8 8. Plaintiff is informed and believes, and based thereon alleges, that each Defendant acted
9 in all respects pertinent to this action as the agent of the other Defendant, carried out a joint scheme,
10 business plan or policy in all respects pertinent hereto, and the acts of each Defendants is legally
11 attributable to the other Defendants.

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

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IV.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

**PLAINTIFF AND ALL AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS
CIVIL PENALTIES PURSUANT TO LABOR CODE § 2699(f) FOR VIOLATIONS OF
LABOR CODE §§ 201, 202, 204, 216, 226(a), 226.7, 510, 512, 1174, 1174.5, 1175, 1194, 1199,
AND 2802 AND PURSUANT TO LABOR CODE § 2699(a) FOR VIOLATIONS OF LABOR
CODE §§ 210, 226.3 AND 558**

10. Plaintiff incorporates paragraphs 1 through 9 of this Complaint as though fully set forth herein.

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

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

- a. Pursuant to Labor Code § 2699(f), \$100 for each initial violation and \$200 for each subsequent violation of Labor Code §§ 201, 202, 204, 216, 226(a), 226.7, 510, 512, 1174, 1174.5, 1175, 1194, 1199, and 2802; and
- b. Pursuant to Labor Code § 2699(a), the civil penalties as authorized by Labor Code §§ 210, 226.3, and 558.

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

14. On November 15, 2024 and April 7, 2025, Plaintiff sent letters, by online submission to the LWDA and by certified mail, return receipt requested, to Defendants setting forth the facts and theories of the violations alleged against Defendants, as prescribed by Labor Code § 2698 *et seq.* Pursuant to Labor Code § 2699.3(a)(2)(A), no notice was received by Plaintiff from the LWDA within sixty-five (65) calendar days of November 15, 2024 and April 7, 2025. Plaintiff may therefore commence this action to seek civil penalties pursuant to Labor Code § 2698 *et seq.*

Wherefore, Plaintiff and the Aggrieved Employees he seeks to represent request relief as described below.

V.

RELIEF REQUESTED

WHEREFORE, Plaintiff prays for the following relief:

1. For civil penalties pursuant to Labor Code § 2698 *et seq.* for Plaintiff and all other Aggrieved Employees;

2. An award providing for payment of costs of suit pursuant to Labor Code § 2699(g)(1) and other applicable law;

3. An award of attorneys' fees pursuant to Labor Code §§ 2699(g)(1) and other applicable law; and

4. Such other and further relief as this Court may deem just and proper.

Dated: July 7, 2025

Respectfully submitted,

GAINES LAW CORPORATION

By:

EVAN S. GAINES
Attorneys for Plaintiff