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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

DEC 15 2021

BY
JACQUELINE HARNESS, DEPUTY

Attorneys for Plaintiff Elias J. Sampson, individually,
And on behalf of all others similarly situated.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

ELIAS J. SAMPSON, individually and on
behalf of all others similarly situated

Plaintiff,

vs.

ARCTIC GLACIER U.S.A., INC.; and
DOES 1 through 20, inclusive,

Defendants.

Case No. **CIV SB 2134579**

**COMPLAINT FOR VIOLATION OF THE
CALIFORNIA LABOR CODE PRIVATE
ATTORNEYS GENERAL ACT OF 2004
(CAL. LAB. CODE §§ 2698, ET SEQ.)**

1 Plaintiff Elias J. Sampson, individually and on behalf of others similarly situated,
2 alleges as follows:

3 **NATURE OF ACTION AND INTRODUCTORY STATEMENT**

4 1. Plaintiff Elias J. Sampson (“Plaintiff”) brings this representative action against
5 Defendant Arctic Glacier U.S.A., Inc., (“Defendant”) and DOES 1 through 20, inclusive
6 (collectively, “Defendants”), on behalf of himself individually and on behalf of other aggrieved
7 employees who are and were employed by Defendants as non-exempt employees throughout
8 California.

9 2. Defendant is in the business of distributing ice and ice equipment.

10 3. Through this action, Plaintiff alleges that Defendants have engaged in a
11 systematic pattern of wage and hour violations under the California Labor Code and Industrial
12 Welfare Commission (“IWC”) Wage Orders, all of which contribute to Defendants’ deliberate
13 unfair competition.

14 4. Plaintiff is informed and believes, and thereon alleges, that Defendants have
15 increased their profits by violating state wage and hour laws by, among other things:

16 (a) Failing to pay all wages for all hours worked, including minimum and overtime
17 wages;

18 (b) Failing to pay overtime wages at the proper rates;

19 (c) Failing to timely pay all earned wages;

20 (d) Failing to provide meal periods or compensation in lieu thereof;

21 (e) Failing to authorize or permit rest breaks or provide compensation in lieu thereof;

22 (f) Failing to provide accurate itemized wage statements;

23 (g) Failing to pay all wages due upon separation of employment; and

24 (h) Failing to reimburse all business expenses incurred by employees in direct
25 consequence of the discharge of his or her duties.

26 5. Plaintiff seeks monetary relief against Defendants on behalf of himself and all
27 others aggrieved employees in California to recover, among other things, civil penalties
28 pursuant to Labor Code §§ 2698 *et seq.*, interest, attorneys’ fees, costs and expenses.

JURISDICTION AND VENUE

6. This is a representative action pursuant to Private Attorneys General Act of 2004 (Cal. Lab. Code §§ 2698, *et seq.*)(“PAGA”). The civil penalties sought by Plaintiff exceeds the minimal jurisdictional limits of the Superior Court and will be established according to proof at trial.

7. This Court has jurisdiction over this action pursuant to the California Constitution, Article VI, § 10, which grants the Superior Court original jurisdiction in all causes except those given by statutes to other courts. The statutes under which this action is brought do not specify any other basis for jurisdiction.

8. This Court has jurisdiction over all Defendants because, upon information and belief, they are citizens of California, have sufficient minimum contacts in California or otherwise intentionally avail themselves of the California market so as to render the exercise of jurisdiction over them by the California courts consistent with traditional notions of fair play and substantial justice.

9. Venue is proper in this Court because, upon information and belief, Defendants reside, transact business or have offices in this county and the acts and omissions alleged herein took place in this county.

THE PARTIES

10. Plaintiff is a citizen of California. Plaintiff was employed by Defendants during the relevant time period in California.

11. Plaintiff is informed and believes, and thereon alleges, that Defendants at all times hereinafter mentioned, were and are employers as defined in and subject to the Labor Code and IWC Wage Orders, whose employees were and are engaged throughout this county and the State of California.

12. Plaintiff is unaware of the true names or capacities of the defendants sued herein under the fictitious names DOES 1 through 20, but will seek leave of this Court to amend this Complaint and serve such fictitiously named defendants once their names and capacities become known.

13. Plaintiff is informed and believes, and thereon alleges, that each defendant acted in all respects pertinent to this action as the agent of the other defendant, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each defendant are legally attributable to the other defendant. Furthermore, defendants in all respects acted as the employer and/or joint employer of Plaintiff and the aggrieved employees.

14. Plaintiff is informed and believes, and thereon alleges, that each and all of the acts and omissions alleged herein were performed by, or are attributable to, Defendants and/or DOES 1 through 20, acting as the agent or alter ego for the other, with legal authority to act on the other's behalf. The acts of any and all Defendants were in accordance with, and represent, the official policy of Defendants.

15. At all relevant times, Defendants, and each of them, acted within the scope of such agency or employment, or ratified each and every act or omission complained of herein. At all relevant times, Defendants, and each of them, aided and abetted the acts and omissions of each and all the other Defendants in proximately causing the damages herein alleged.

16. Plaintiff is informed and believes, and thereon alleges, that each of said Defendants is in some manner intentionally, negligently or otherwise responsible for the acts, omissions, occurrences and transactions alleged herein.

GENERAL ALLEGATIONS

17. At all relevant times mentioned herein, Defendants employed Plaintiff and other persons as exempt or non-exempt employees throughout California.

18. Plaintiff is informed and believes, and thereon alleges, that at all times herein mentioned, Defendants were advised by skilled lawyers, employees and other professionals who were knowledgeable about California's wage and hour laws, employment and personnel practices and the requirements of California law.

19. Plaintiff is informed and believe, and thereon alleges, that Defendants knew or should have known that Plaintiff and aggrieved employees should have been classified as “non-exempt” employees, and afforded the protections of the California Labor Code and applicable IWC Wage Order. Plaintiff and other aggrieved employees do not meet the requirements to be

1 classified as “exempt” under the salary test or duties tests and should have been classified as
2 nonexempt employees and afforded the protections of the California Labor Code and applicable
3 IWC Wage Order.

4 20. Plaintiff is informed and believes, and thereon alleges, that as a result of
5 misclassifying Plaintiff and other similarly situated employees as exempt, Defendant failed to
6 pay Plaintiff and other aggrieved employees’ wages for all hours worked, including minimum
7 and overtime wages, failed to provide legally compliant meal and rest periods, failed to provide
8 accurate itemized wage statements, and failed to pay all wages due and owed during and upon
9 separation of employment.

10 21. Plaintiff is informed and believe, and thereon alleges, that Defendants knew or
11 should have known that Plaintiff and other aggrieved employees were entitled to receive wages
12 for all hours worked and that they were not receiving all wages earned for work that was
13 required to be performed. In violation of the Labor Code and IWC Wage Orders, Plaintiff and
14 other aggrieved employees were not paid all wages earned, including for off-the-clock work.
15 Because Plaintiff and other aggrieved employees worked shifts of eight hours or more, this
16 unpaid time qualified for overtime premium payment. Further, Defendants failed to pay
17 Plaintiff and other aggrieved employees all overtime and double-time wages earned at the
18 correct regular rate because they failed to include commissions and other non-discretionary
19 performance-based pay in the regular rate of pay.

20 22. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
21 should have known that Plaintiff and other aggrieved employees were entitled to receive
22 itemized wage statements that accurately showed their gross and net wages earned, total hours
23 worked and all applicable hourly rates in effect and the number of hours worked at each hourly
24 rate in accordance with California law, among the other items required by Labor Code section
25 226. However, Defendants failed to accurately provide the information required by Labor
26 Code section 226.

27 23. Plaintiff is informed and believes, and thereon alleges, Defendants failed to
28 provide Plaintiff and other aggrieved employees timely, uninterrupted, off-duty meal periods of

1 no less than thirty minutes for each five hours of work. Plaintiff and other aggrieved
2 employees would also often be required to work through meal periods. These policies, among
3 others, have resulted in a denial of these employees' rights to 30-minute meal periods in
4 violation of California law.

5 24. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
6 should have known that Plaintiff and other aggrieved employees were entitled to receive all
7 required meal periods or payment of one (1) additional hour of pay at Plaintiff and other
8 aggrieved employees' regular rate of pay when they did not receive a timely meal period. In
9 violation of the Labor Code and IWC Wage Orders, Plaintiff and other aggrieved employees
10 did not receive all timely meal periods or payment of one (1) additional hour of pay at Plaintiff
11 and other aggrieved employees' regular rate of pay when they did not receive a timely,
12 uninterrupted meal periods.

13 25. Plaintiff is informed and believes, and thereon alleges, Defendants failed to
14 provide Plaintiff and other aggrieved employees timely, uninterrupted, on-the-clock rest
15 periods of no less than ten minutes for every four hours worked, or every major fraction
16 thereof. Instead, Defendants would often require Plaintiff and other aggrieved employees to
17 work through their rest periods or Defendants fail to provide an opportunity to take compliant
18 rest periods. These policies, among others, have resulted in a denial of these employees' rights
19 to a ten-minute rest period in violation of California law.

20 26. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
21 should have known that Plaintiff and other aggrieved employees were entitled to receive all rest
22 breaks or payment of one (1) additional hour of pay at Plaintiff and other aggrieved employees'
23 regular rate of pay when a rest break was missed. In violation of the Labor Code and IWC
24 Wage Orders, Plaintiff and other aggrieved employees did not receive all rest breaks or
25 payment of one (1) additional hour of pay at Plaintiff and other aggrieved employees' regular
26 rate of pay when a rest break was missed.

27 27. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
28 should have known that Plaintiff and aggrieved employees were entitled to timely payment of

1 wages due upon separation of employment. In violation of the Labor Code, Plaintiff and
2 aggrieved employees did not receive payment of all wages within permissible time periods.

3 28. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
4 should have known that Plaintiff and other aggrieved employees were entitled to
5 reimbursement for necessary expenditures incurred in connection with the performance and
6 execution of their job duties. In violation of the California Labor Code, Plaintiff and other
7 aggrieved employees did not receive adequate reimbursement for necessary business expenses,
8 including but not limited to reimbursement for use of their personal cell phones, masks, gloves,
9 and purchase of gas.

10 29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
11 should have known they had a duty to compensate Plaintiff and other aggrieved employees, and
12 Defendants had the financial ability to pay such compensation but willfully, knowingly and
13 intentionally failed to do so all in order to increase Defendants' profits.

14 **FIRST CAUSE OF ACTION**

15 **ENFORCEMENT OF LABOR CODE §§ 2698 ET SEQ. ("PAGA")**

16 30. Plaintiff re-alleges and incorporates by reference the previous paragraphs as
17 though fully set forth herein.

18 31. Pursuant to Labor Code § 2699(a), any provision of the Labor Code that provides
19 for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency
20 ("LWDA") or any of its departments, divisions, commissions, boards, agencies, or employees for
21 violation of the Labor Code may, as an alternative, be recovered through a civil action brought by
22 an aggrieved employee on behalf of himself or herself and other current or former employees
23 pursuant to the procedures specified in Labor Code § 2699.3.

24 32. For all provisions of the Labor Code except those for which a civil penalty is
25 specifically provided, Labor Code § 2699(f) imposes upon Defendants a civil penalty of one
26 hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and
27 two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent pay
28 period in which Defendants violated these provisions of the Labor Code.

1 33. Defendants' conduct violates numerous Labor Code sections, including, but not
2 limited to, the following:

3 (a) violation of Labor Code §§ 201, 202, 203, 204, 210, 510, 1194, 1197, and 1198
4 for failure to timely pay all earned wages owed to Plaintiff and other aggrieved
5 employees during employment and upon separation of employment as herein alleged;

6 (b) violation of Labor Code §§ 226.7 and 512 for failure to provide meal periods to
7 Plaintiff and other aggrieved employees and failure to pay premium wages for missed
8 meal periods as herein alleged;

9 (c) violation of Labor Code § 226.7 for failure to permit rest breaks to Plaintiff and
10 other aggrieved employees and failure to pay premium wages for missed rest periods as
11 herein alleged;

12 (d) violation of Labor Code §§ 226 and 226.3 for failure to provide accurate
13 itemized wage statements to Plaintiff and other aggrieved employees as herein alleged;

14 (e) violation of Labor Code §§ 1174 and 1174.5 for failure to maintain accurate and
15 complete records showing, among other things, the hours worked daily and the wages
16 paid to aggrieved employees as herein alleged; and

17 (f) violation of Labor Code §§ 2800 and 2802 for failure to reimburse Plaintiff and
18 other aggrieved employees for necessary business expenses as herein alleged.

19 34. Plaintiff is an "aggrieved employee" because he was employed by the alleged
20 violator and had one or more of the violations committed against him, and therefore is properly
21 suited to represent the interests of all other aggrieved employees.

22 35. Plaintiff has exhausted the procedural requirements under Labor Code § 2699.3
23 as to Defendants and is therefore able to pursue a claim for penalties on behalf of himself and
24 all other aggrieved employees under PAGA.

25 36. Pursuant to Labor Code §§ 2699(a), 2699.3 and 2699.5, Plaintiff is entitled to
26 recover civil penalties in addition to other remedies, for violation of the Labor Code sections
27 cited above.

1 37. For bringing this action, Plaintiff is entitled to attorneys' fees and costs incurred
2 herein.

3 **PRAYER FOR RELIEF**

4 Plaintiff, on his own behalf and on behalf of all others similarly situated, pray for relief
5 and judgment against Defendants, jointly and severally, as follows:

6 1. For civil penalties against Defendants on behalf of all aggrieved employees and
7 the LWDA pursuant to Labor Code § 2698, *et seq.*;

8 2. For reasonable attorneys' fees, costs of suit, and interest to the extent permitted
9 by law, including, but not limited to, Code of Civil Procedure § 1021.5 and Labor Code § 2698
10 *et seq.*; and ;

11 3. For such other relief as the Court deems just and proper.

12
13 Dated: December 15, 2021

AEGIS LAW FIRM, PC

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15 By: _____


16 Jessica L. Campbell
17 Attorney for Plaintiff Elias J. Sampson,
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