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Individually and on behalf of all aggrieved employees

ELECTRONICALLY FILED

Superior Court of California,
County of Alameda

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By: Suzanne Pesko, Deputy Clerk

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA**

Rowdy Barron, individually and on behalf
of all aggrieved employees,

Plaintiff,

vs.

Ross Distribution Company, LLC;
EmployBridge Holding Company; Real
Time Staffing Services, LLC dba Select
Staffing; and Does 1 through 20, inclusive,

Defendants.

Case No. **21CV002664**

**REPRESENTATIVE ACTION COMPLAINT
FOR:**

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

1 Plaintiff Randy Barron, individually and on behalf of other aggrieved employees, hereby
2 alleges as follows:

3 **NATURE OF ACTION AND INTRODUCTORY STATEMENT**

4 1. Plaintiff Randy Barron (“Plaintiff”) brings this representative action against
5 Defendants Ross Distribution Company, LLC, Employbridge Holding Company, and Real Time
6 Staffing Services, LLC dba Select Staffing, and Does 1 through 20, inclusive (collectively,
7 “Defendants”), on behalf of himself individually and all other aggrieved employees employed
8 by Defendants throughout California. Plaintiff seeks to recover civil penalties for all California-
9 based “aggrieved employees” during the “Relevant Time Period” (defined as one year and 179
10 days¹ before Plaintiff gave notice of these claims to the California Labor and Workforce
11 Development Agency (“LWDA”) up to and including the date of commencement of trial) who
12 incurred wage and hour violations and losses as hereinafter described.

13 2. Defendant Ross Distribution Company, LLC distributes products throughout the
14 United States and is headquartered in California.

15 3. Defendant Employbridge Holding Company is a nationwide staffing company
16 doing business in California.

17 4. Defendant Real Time Staffing Services, LLC dba Select Staffing is a staffing
18 company doing business in California.

19 5. Through this action, Plaintiff alleges that Defendants have engaged in a
20 systematic pattern of wage and hour violations under the California Labor Code (“Labor Code”).

21 6. Plaintiff is informed and believe, and thereon alleges, during the relevant time
22 period, Defendants had a consistent policy of violating state wage and hour laws by, among other
23 things:

- 24 (a) failing to pay minimum wages for all hours worked;
- 25 (b) failing to pay overtime wages for all hours worked;
- 26 (c) failing to pay sick pay correctly;

27
28 ¹ The statute of limitations was tolled pursuant to Cal. Rules of Court, Appendix I, Emergency Rule No. 9.

- (d) failing to provide lawful meal periods or compensation in lieu thereof;
- (e) failing to authorize or permit lawful rest breaks or provide compensation in lieu thereof;
- (f) failing to provide accurate itemized wage statements;
- (g) failing to reimburse all business expenses; and
- (h) failing to produce all employment records.

7. Plaintiff brings this representative action seeking monetary relief against Defendants on behalf of himself and other aggrieved employees to recover, among other things, penalties, attorney's fees, costs and expenses pursuant to the Private Attorneys General Act of 2004, Labor Code §§ 2698, *et seq.* ("PAGA").

JURISDICTION AND VENUE

8. The monetary relief sought by Plaintiff exceeds the minimal jurisdictional limits of the Superior Court and will be established according to proof at trial.

9. The Superior 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.

10. The Superior 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.

11. Venue is proper in the Superior 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

12. Plaintiff is a citizen of California and worked for Defendants in California during the relevant time periods as alleged herein.

1 13. Plaintiff is informed and believe, and thereon alleges, that Defendants are
2 corporations doing business throughout the State of California, and at all times hereinafter
3 mentioned, an employer as defined in and subject to the California Labor Code and Industrial
4 Welfare Commission ("IWC") Wage Orders, whose employees are and were engaged throughout
5 this county and the State of California.

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

10 15. Plaintiff is informed and believe, and thereon alleges, that Does 1 through 20 are
11 or were the partners, agents, owners, shareholders, managers, or employees of Defendants at all
12 relevant times.

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

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

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

1 19. Plaintiff is informed and believe, and thereon allege, that each of said Defendants
2 is in some manner intentionally, negligently, or otherwise responsible for the acts, omissions,
3 occurrences, and transactions alleged herein.

4 **GENERAL ALLEGATIONS**

5 20. At all relevant times mentioned herein, Defendants employed Plaintiff and other
6 persons as non-exempt employees.

7 21. Defendants employed Plaintiff during the relevant time period.

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

12 23. Through this action, Plaintiff alleges that Defendants have engaged in a
13 systematic pattern of wage and hour violations under the California Labor Code and IWC Wage
14 Orders.

15 24. Plaintiff is informed and believe, and thereon alleges, that Defendants knew or
16 should have known that Plaintiff and other aggrieved employees were entitled to receive wages
17 for all time worked (including minimum wages and overtime wages) and that they were not
18 receiving all wages earned for work that was required to be performed. For example, Defendants
19 required Plaintiff and aggrieved employees to work off-the-clock before the beginning of their
20 shifts, during health screenings and security screenings when Plaintiff and aggrieved employees
21 were under Defendants' control. Plaintiff and aggrieved employees were also subject to illegal
22 time rounding which resulted in underpayment of wages. Moreover, Defendants failed to pay
23 overtime and sick pay correctly based on its failure to include bonuses and all other remuneration
24 in the regular rate of pay. In violation of the Labor Code and IWC Wage Orders, Plaintiff and
25 other aggrieved employees were not paid all wages (including minimum wages and overtime
26 wages) for all hours worked.

27 25. Plaintiff is informed and believe, and thereon alleges, that Defendants knew or
28 should have known that aggrieved employees were entitled to receive all required meal periods

1 or payment of one (1) additional hour of pay at the aggrieved employees' regular rate of pay
2 when they did not receive a timely, uninterrupted meal period. In violation of the Labor Code
3 and IWC Wage Orders, aggrieved employees did not receive all meal periods or payment of one
4 (1) additional hour of pay at the aggrieved employees' regular rate of pay when they did not
5 receive a timely, uninterrupted meal period. Moreover, Plaintiff and other aggrieved employees
6 were forced to sign meal period waivers as a condition of employment; therefore, such waivers
7 were not voluntary and contrary to law.

8 26. Plaintiff is informed and believe, and thereon alleges, that Defendants knew or
9 should have known that aggrieved employees were entitled to receive all rest breaks or payment
10 of one (1) additional hour of pay at the aggrieved employees' regular rate of pay when a rest
11 break was missed. In violation of the Labor Code and IWC Wage Orders, aggrieved employees
12 did not receive all rest breaks or payment of one (1) additional hour of pay at the aggrieved
13 employees' regular rate of pay when a rest break was missed, interrupted, or on-duty.

14 27. Plaintiff is informed and believe, and thereon alleges, that Defendants knew or
15 should have known that Plaintiff and aggrieved employees were entitled to receive itemized wage
16 statements that accurately showed the following information pursuant to the Labor Code: (1)
17 gross wages earned; (2) total hours worked by the employee; (3) the number of piece-rate units
18 earned and any applicable piece rate if the employee is paid on a piece-rate basis; (4) all
19 deductions, provided that all deductions made on written orders of the employee may be
20 aggregated and shown as one item; (5) net wages earned; (6) the inclusive dates of the period for
21 which the employee is paid; (7) the name of the employee and only the last four digits of his or
22 her social security number or an employee identification number other than a social security
23 number; (8) the name and address of the legal entity that is the employer; and (9) all applicable
24 hourly rates in effect during the pay period and the corresponding number of hours worked at
25 each hourly rate by the employee. The deficiencies include, among other things, the failure to
26 correctly state the gross wages earned, net wages earned, and all total hours worked by Plaintiffs
27 and aggrieved employees. In violation of the Labor Code, Plaintiff and aggrieved employees
28 were not provided with accurate itemized wage statements.

28. Plaintiff is informed and believe, and thereon allege, that Defendants knew or should have known that Plaintiff and aggrieved employees were entitled to timely payment of wages during their employment. In violation of the Labor Code, Plaintiff and aggrieved employees did not receive payment of all wages within permissible time periods.

29. Plaintiff is informed and believe, and thereon alleges, that Defendants were required to indemnify and reimburse Plaintiff other aggrieved employees for all expenditures or losses caused by the employer's want of ordinary care and/or incurred in direct consequent of the discharge of their duties but failed to indemnify and reimburse Plaintiffs and other aggrieved employees. For example, Defendants failed to reimburse Plaintiff and other aggrieved employees for personal cellular device for work related purposes. Defendants also failed to reimburse Plaintiff and other aggrieved employees for the cost of masks, gloves, and other personal protective equipment ("PPE"). Thus, in violation of the Labor Code, Plaintiff and aggrieved employees did not receive reimbursements for all business expenses.

30. Plaintiff is informed and believe, and thereon alleges, that Defendants knew or should have known that Plaintiff and aggrieved employees who requested the contents of their personnel records must be provided. However, Defendant failed to provide Plaintiff his time records upon request. Thus, in violation of the Labor Code, Plaintiff and other aggrieved employees are entitled to civil penalties.

FIRST CAUSE OF ACTION

ENFORCEMENT OF LABOR CODE § 2698 ET SEQ. (“PAGA”)

31. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as though fully set forth herein.

32. Pursuant to Labor Code § 2699(a), any provision of the Labor Code that provides for a civil penalty to be assessed and collected by the LWDA or any of its departments, divisions, commissions, boards, agencies or employees for violation of the code may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of themselves or herself and other current or former employees pursuant to the procedures specified in Labor Code § 2699.3.

1 33. For all provisions of the Labor Code except those for which a civil penalty is
2 specifically provided, Labor Code § 2699(f) imposes upon Defendants a penalty of one hundred
3 dollars (\$100.00) for each aggrieved employee per pay period for the initial violations and two
4 hundred dollars (\$200.000) for each aggrieved employee per pay period for each subsequent pay
5 period in which Defendants violated these provisions of the Labor Code.

6 34. Defendants' conduct with respect to Plaintiffs and other aggrieved employees
7 violates numerous Labor Code sections including, but not limited to, the following:

- 8 a. Violation of Labor Code §§ 2013-203, 210, 246, 510, 1194, 1194.2, 1197,
9 1198, and the IWC Wage Orders for failure to timely pay all earned wages
10 (including minimum and overtime wages) and failure to pay overtime wages
11 and sick pay at the regular rate of pay owed to Plaintiff and other aggrieved
12 employees during employment as herein alleged;
- 13 b. Violation of Labor Code §§ 226.7 and 512 for failure to provide meal periods
14 to Plaintiff and other aggrieved employees and failure to pay premium wages
15 for missed meal periods as herein alleged;
- 16 c. Violation of Labor Code § 226.7 for failure to permit paid rest breaks to
17 Plaintiff and other aggrieved employees and failure to pay premium wages for
18 missed rest periods as herein alleged;
- 19 d. Violation of Labor Code §§ 1174 and 1174.5 for failure to maintain accurate
20 and complete records showing the hours worked daily by Plaintiff and other
21 aggrieved employees as herein alleged;
- 22 e. Violation of Labor Code §§ 2800 and 2802 for failure to reimburse Plaintiff
23 and other aggrieved employees for all reasonable and necessary business
24 expenses as herein alleged; and
- 25 f. Violation of Labor Code § 226 for failure to provide accurate itemized wage
26 statements to Plaintiff and other aggrieved employees as herein alleged.

35. Plaintiff is an “aggrieved employee” because he was employed by the alleged violator and had one or more of the alleged violations committed against him, and therefore are properly suited to represent the interests of all other aggrieved employees.

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

37. Pursuant to Labor Code §§ 2699(a), 2699.3 and 2699.5, Plaintiff is entitled to recover civil penalties for violations of the Labor Code sections cited above.

38. For bringing this action, Plaintiff is entitled to attorney's fees and costs incurred herein.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of all other aggrieved employees, pray for judgment against Defendants as follows:

1. For civil penalties against Defendants on behalf of all aggrieved employees.

2. For reasonable attorney's fees and costs of suit to the extent permitted by law, including pursuant to California Labor Code §§ 2699(g) and California Code of Civil Procedure § 1021.5; and

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

Dated: October 19, 2021

LEBE LAW, APLC

By:

Jonathan M. Lebe

Attorney for Plaintiff Rowdy Barron