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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

EDUARDO TOVAR, on behalf of himself,
other aggrieved employees, and the State of
California,

Plaintiff,

vs.

SUNSHINE COMMUNICATIONS, INC., an
Arizona corporation; and DOES 1 through 100,

Defendants.

Case No. 37-2020-00042998-CU-OE-CTL

**REPRESENTATIVE ACTION
COMPLAINT:**

**(1) CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS GENERAL
ACT (LABOR CODE § 2698, et seq.)**

UNLIMITED CIVIL CASE

1 Plaintiff Eduardo Tovar ("Plaintiff"), on behalf of himself, other aggrieved employees,
2 and the State of California, hereby brings this Representative Action Complaint ("Complaint")
3 against Sunshine Communications, Inc., an Arizona corporation; and DOES 1 to 100, inclusive
4 (collectively, "Defendants"), and on information and belief alleges as follows:

5 **JURISDICTION**

6 1. Plaintiff, on behalf of himself, other aggrieved employees, and the State of
7 California, hereby brings this Complaint for recovery of civil penalties under the California Labor
8 Code Private Attorneys General Act ("PAGA"), Labor Code § 2698, *et seq.* This Court has
9 jurisdiction over Defendants, because the amount in controversy exceeds this Court's
10 jurisdictional minimum and upon information and belief, Defendants have made sufficient
11 minimum contacts in California, or have otherwise intentionally availed themselves to the
12 California market so as to render the exercise of jurisdiction over them by the California courts
13 consistent with the traditional notions of fair play and substantial justice.

14 **VENUE**

15 2. Venue as to each Defendant is proper in this judicial district pursuant to California
16 Code of Civil Procedure §§ 395(a) and 395.5, as at least some of the acts and omissions
17 complained of herein occurred in the County of San Diego. Further, at all times relevant herein,
18 Defendants own and/or maintain offices, transact business, have agent(s) within the County of
19 San Diego, and/or are otherwise found within the County of San Diego, and Defendants are within
20 the jurisdiction of this Court for purposes of service of process.

21 **PARTIES**

22 3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
23 Plaintiff was, and currently is, a California resident. During the one year immediately preceding
24 Plaintiff's giving of the required notice under the PAGA, and within the statute of limitations
25 periods applicable to each cause of action pled herein, Plaintiff was employed by Defendants in
26 the County of San Diego.

27 4. Plaintiff is informed and believes, and based thereon alleges, that during the one
28 year preceding April 6, 2020, and continuing to the present, Defendants did (and continue to do)

1 business providing installation and construction services to the cable television industry, and
2 employed Plaintiff and other non-exempt employees within San Diego County and the State of
3 California and, therefore, were (and are) doing business in San Diego County and the State of
4 California.

5 5. Plaintiff does not know the true names or capacities, whether individual, partner,
6 or corporate, of the defendants sued herein as DOES 1 through 100, and for that reason, said
7 defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to
8 amend this Complaint when such true names and capacities are discovered. Plaintiff is informed
9 and believes, and based thereon alleges, that each of said fictitious defendants, whether individual,
10 partner, or corporate, were responsible in some manner for the acts and omissions alleged herein,
11 and proximately caused Plaintiff and other aggrieved employees to be subject to the unlawful
12 employment practices, wrongs, injuries, and damages complained of herein.

13 6. Plaintiff is informed, and believes, and thereon alleges, that at all times mentioned
14 herein, Defendants were and are the employers of Plaintiff and other aggrieved employees.

15 7. At all times herein mentioned, each of said Defendants participated in the doing
16 of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the
17 Defendants, and each of them, were the agents, servants, and employees of each and every one of
18 the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned
19 were acting within the course and scope of said agency and employment. Defendants, and each
20 of them, approved of, condoned, and/or otherwise ratified each and every one of the acts or
21 omissions complained of herein.

22 8. At all times mentioned herein, Defendants, and each of them, were members of
23 and engaged in a joint venture, partnership, and common enterprise, and acting within the course
24 and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further,
25 Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and other
26 aggrieved employees.

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10. During his employment with Defendants, Plaintiff recorded his hours worked to the minute using an application on his company-provided smart phone. During the relevant time period, Defendants utilized a timekeeping system which resulted in Plaintiff not being compensated for all hours actually worked, by time-shaving or rounding, such that Plaintiff was only paid in increments of fifteen (15) minutes. Defendants regularly, systematically, and impermissibly rounded the time worked by Plaintiff and other non-exempt employees in Defendants' favor, such that the time shaving/rounding practice utilized by Defendants was not even-handed over time and would round and shave in Defendants' favor such that Plaintiff was routinely underpaid for his time worked. Due to Defendants' timekeeping policies and practices that fail to compensate for all hours worked, Plaintiff and other non-exempt employees were deprived of all required minimum wages. On occasions when Plaintiff worked over eight hours in a day and/or forty hours in a workweek, this process of time-shaving or rounding also deprived his of all overtime wages owed. Based on the foregoing, Plaintiff and other non-exempt employees were not compensated for all required minimum and overtime wages.

11. During Plaintiff's employment with Defendants as an "Installation Technician," Plaintiff and other non-exempt employees were paid on a commission/piece-rate pay plans, whereby they were paid a commission and/or a piece-rate based on completed installations, reboots, and/or other jobs. Plaintiff and other non-exempt employees clocked-in and clocked-out at the beginning and end of each workday, however, they were only paid the applicable hourly minimum wage if their earned commissions did not exceed their minimum wages in a pay period. Because Defendants' pay system is simply a subterfuge for a commission and/or piece-rate compensation system, on those occasions when Plaintiff and other non-exempt employees were paid a piece rate or commission (i.e., when their commissions or piece rate earnings exceeded the

1 minimum wage floor), Plaintiff and other non-exempt employees paid pursuant to Defendants’
2 commission/piece-rate pay plans were not separately compensated for time spent working on
3 tasks that were not compensated on a piece-rate or commission basis, including but not limited
4 to, hours spent attending weekly meetings and traveling in between job sites (i.e., non-productive
5 time). As a result, Plaintiff and other non-exempt employees were not paid at least the minimum
6 wage for all hours worked. This violates California law, which requires employers to pay piece
7 rate workers separately for all nonproductive time. *See Gonzalez v. Downtown LA Motors, LP*,
8 215 Cal.App.4th 36 (2013) (holding that where employer pays workers either a minimum wage
9 “floor” or a piece rate if the piece rate exceeds the floor, the employer must separately for
10 nonproductive time when employees are paid a piece rate); Labor Code § 226.2 (requiring
11 employers to pay piece rate employees separately for nonproductive time).

12 12. While working on a commission and/or piece-rate only basis, Plaintiff and other
13 non-exempt employees worked shifts in excess of 3.5 hours but were not provided with an
14 uninterrupted 10-minute paid rest period for every 4-hour period worked, or major fraction
15 thereof, due to Defendants’ commission and/or piece-rate compensation plan, which failed to
16 separately compensate Plaintiff and other aggrieved employees for required rest periods. *See*
17 *Vaquero v. Stoneledge Furniture LLC*, 9 Cal.App.5th 98 (2017); *Bluford v. Safeway Inc.*, 216
18 Cal.App.4th 864 (2013) (“There is no dispute that Safeway’s activity-based compensation system
19 did not separately compensate drivers for their rest periods.”); Labor Code § 226.2(a)(1)
20 (requiring employers to pay piece rate employees separate for rest periods and other
21 nonproductive time). Specifically, Defendants’ “Pay Rate Acknowledgement” specifies the
22 commission and/or piece-rate compensation plans for Plaintiff and other non-exempt employees;
23 however, the plans do not make any reference to separate compensation for rest periods. As a
24 result, Plaintiff and other aggrieved were not provided with compensated rest periods as required
25 by Labor Code §§ 226.7, 516 1198 and Industrial Welfare Commission (“IWC”), Wage Order 4,
26 § 12(A).

27 13. Moreover, throughout the entirety of Plaintiff’s employment with Defendant,
28 Defendant maintained an unlawful written rest period policy which only permits and authorizes

1 Plaintiff and other non-exempt employees to take 10-minute rest period “within each 4 hours
2 worked,” instead of every 4 hours or a major fraction thereof, in violation of Labor Code § 226.7
3 and Wage Order 4, § 12, which requires employers to authorize and permit a 10-minute paid rest
4 period for every 4 hours worked or major fraction thereof. Thus, Sunshine failed to authorize and
5 permit the proper number of rest periods on “major fraction” shifts, including one rest period on
6 shifts of 3.5-3.99 hours, 2 rest periods on shifts of 6.01-7.99 hours, and 3 rest periods on shifts of
7 10.01-11.99 hours.

8 14. As a result of Defendant’s failure to provide all legally required rest period and its
9 unlawful rest period policy, Defendant failed to compensate their employees with the required
10 rest period premium for each workday in which Plaintiff and other non-exempt employees
11 experienced a rest period violation, and failed to compensate Plaintiff and other non-exempt
12 employees for all minimum and overtime wages that should have been earned during paid rest
13 periods. Upon information and belief, during at least a portion of the relevant time period,
14 Sunshine maintained no payroll code for paying rest period premiums under Labor Code § 226.7.

15 15. Plaintiff and other non-exempt employees were not provided with all legally
16 compliant meal periods because Defendants’ meal period policies/practices failed to provide them
17 with a timely, duty-free, and uninterrupted 30-minute meal period commencing before the end of
18 the fifth hour of work, and/or a second 30-minute meal period for shifts of over 10.0 hours.
19 Specifically, because Plaintiff and other non-exempt employees were required to provide
20 installation services at numerous different locations per shift, Plaintiff and other non-exempt
21 employees were often required to take a meal period after the fifth hour of work and/or take a
22 meal period that was less than 30-minutes. For instance, although Plaintiff’s shift regularly began
23 at 7:00 am, Plaintiff was regularly not provided with a meal period until after 12:00 pm, or after
24 the fifth hour of work. Plaintiff and other non-exempt employees were also often required to take
25 their meal periods while traveling in between jobs and were not provided with a second meal
26 period when they worked shifts over ten hours. On those workdays when Defendants failed to
27 provide all legally required meal periods, Defendants failed to compensate their employees with
28 the required meal period premium for each workday in which employees experienced a meal

period violation. Upon information and belief, during at least a portion of the relevant time period, Defendants maintained no payroll code for paying meal period premiums under Labor Code § 226.7.

16. Defendants also failed to reimburse Plaintiff and other non-exempt employees for all reasonable and necessary work expenditures, including but not limited to, car insurance, mileage, parking fees, and other personal vehicle expenses. Specifically, Defendants required Plaintiff and other technicians to purchase large vehicle in order to transport a 28” ladder and other equipment needed to assist Cox Communication’s customers, without reimbursing technicians for the costs associated with the purchase or use of such a large vehicle. Defendants also required Plaintiff and other non-exempt employees to use their personal vehicles to travel in between job locations and to pick up and drop off equipment, without properly compensating them for all mileage, parking fees, or other expenses incurred. Further, Defendants required Plaintiff and other non-exempt employees to purchase and maintain an insurance policy with a minimum coverage of: Bodily Injury - \$100,000 per person/\$300,000 per accident; Property Damages - \$100,000 per accident or \$400,000 combined single limit per accident, without reimbursing the costs of such a comprehensive insurance policy. Additionally, when non-exempt employees did get in on-the-job motor vehicle accidents, Defendants failed to reimburse employees for costs associated with the accident. Instead, Defendants has a written policy and practice which requires employees to “indemnify [Defendants] and its owners against any and all claims, losses, damages and expenses, including legal fees, which the company may incur up to the minimum insurance requirements” when employees get in an on-the-job accident. As a result of Defendants’ failure to reimburse Plaintiff and other non-exempt employees for these necessary work expenditures, Plaintiff and other non-exempt employees are entitled to reimbursement pursuant to Labor Code § 2802.

17. Defendants also unlawfully deducted the costs of broken tools from employee wages in violation of California Labor Code §§ 221-223. *See Hudgins v. Nieman Marcus Group, Inc.*, (1995) 34Cal.App.4th 1109, 1118 (“As interpreted by the Industrial Welfare Commission (IWC) and the California courts, section 221 has long been held to prohibit deductions from an

1 employee's wages for cash shortages, breakage, loss of equipment, and other business losses that
2 may result from the employee's simple negligence.”); *see also* Wage Order 4, § 8 (prohibiting
3 deductions from employee wages for, *inter alia*, “breakage, or loss of equipment”).

4 18. As a result of the aforementioned violations, Defendants have also issued
5 inaccurate wage statements that fail to include all minimum, overtime wages earned, as well as
6 meal and rest period premium pay for all meal and rest period violations. Additionally, for at
7 least a portion of the relevant time period, Defendants have issued facially noncompliant wage
8 statements to Plaintiff and other non-exempt employees by failing to list the number of piece-rate
9 units earned and any applicable piece rate, in violation of Labor Code § 226(a)(3); failing to list
10 all applicable hourly rates in effect during the pay period (including but not limited to the overtime
11 rate of pay) and the corresponding number of hours worked at each hourly rate by the employee,
12 in violation of § 226(a)(9); failing to list the total hours of compensable rest and recovery periods
13 and the corresponding rate of compensation and gross wages for those periods, in violation of
14 Labor Code § 226.2(a)(2)(A); and failing to state the total hours of nonproductive time along with
15 the corresponding rate of compensation and gross wages for non-productive time worked in
16 violation of Labor Code § 226.2(a)(2)(B).

17 19. Because of the above violations, Defendants also failed to timely pay Plaintiff and
18 other non-exempt employees all wages owed at the time of their respective separations from
19 employment.

20 20. Based on the foregoing, Plaintiff seeks to represent himself and other aggrieved
21 employees, as defined by Labor Code § 2699(c), who have been aggrieved by the Labor Code
22 violations discussed herein, including all non-exempt employees who have worked for
23 Defendants in California at any time from April 6, 2019 through the present.

24 **FIRST CAUSE OF ACTION**

25 **PRIVATE ATTORNEYS GENERAL ACT**

26 **(AGAINST ALL DEFENDANTS)**

27 21. Plaintiff re-alleges and incorporates by reference all prior paragraphs as though
28 fully set forth herein.

22. Defendants have committed Labor Code violations against Plaintiff and other aggrieved employees. Plaintiff is an “aggrieved employee” within the meaning of Labor Code § 2698 *et seq.*, and acting on behalf of himself, other aggrieved employees, and the State of California, brings this representative action against Defendants to recover the civil penalties due to Plaintiff and other aggrieved employees against whom one or more of the violations has been committed, and the State of California, according to proof, pursuant to Labor Code § 2699, including, but not limited to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200.00 for each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each initial violation; and \$1,000.00 for each subsequent violation, of Labor Code § 226, pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for each initial violation and \$200.00 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided, based on the following Labor Code violations:

- a. Failing to pay Plaintiff and other aggrieved employees at least the statutory minimum wage for all hours worked, in violation of Labor Code §§ 204, 226.2, 558, 1182.12, 1194, 1194.2, 1197, and 1198;
- b. Failing to pay Plaintiff and other aggrieved employees all overtime and/or double-time compensation earned, in violation of Labor Code §§ 204, 226.2, 510, 558, 1194, and 1198;
- c. Failing to provide all legally required meal periods and failing to pay meal period premiums to Plaintiff and other aggrieved employees at these employees’ respective regular rates of compensation for meal period violations, in violation of Labor Code §§ 226.7, 512, 558, and 1198;

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- d. Failing to authorize and permit all legally required rest periods and by failing to pay rest period premiums to Plaintiff and other aggrieved employees at these employees' respective regular rates of compensation for rest period violations, in violation of Labor Code §§ 226.7, 226.2, 516, 558, and 1198;
- e. Failing to reimburse Plaintiff and other aggrieved employees for all necessary expenditures incurred, in violation of Labor Code §§ 2802 and 2804;
- f. Failing to furnish Plaintiff and other aggrieved employees with complete, accurate, itemized wage statements, in violation of Labor Code §§ 226 and 226.2;
- g. Taking unlawful deductions from Plaintiff's and other aggrieved employees' wages, in violation of Labor Code §§ 221-223;
- h. Failing to timely pay all final wages and compensation earned by Plaintiff and other aggrieved former employees at the time of separation of employment, in violation of Labor Code §§ 201-203;
- i. Failing to pay Plaintiff and other aggrieved employees all earned wages at least twice during each calendar month, in violation of Labor Code § 204; and
- j. Failing to maintain accurate records on behalf of Plaintiff and other aggrieved employees, in violation of Labor Code §§ 1174, 1198 and 1199.

23. On September 17, 2020, Plaintiff notified Defendant Sunshine Communications, Inc. via certified mail, and the California Labor and Workforce Development Agency ("LWDA") via its website, of Defendants' violations of the California Labor Code and Plaintiff's intent to bring a claim for civil penalties under California Labor Code § 2698, *et seq.* with respect to violations of the California Labor Code identified in Paragraph 22 (a)-(j), above. Now that sixty-five days have passed from Plaintiff's notifying Defendants of these violations, Plaintiff has exhausted his administrative requirements for bringing a claim under the PAGA with respect to these violations. In addition, the statute of limitations on all causes of action of more than 180 days was suspended from April 6, 2020 to October 1, 2020, per Judicial Council Emergency Rule 9. Consequently, the statute of limitations on Plaintiff's cause of action for PAGA penalties, brought on behalf of himself, other aggrieved employees, and the State of California, was tolled

as of April 6, 2019 per Emergency Rule 9, and was further tolled during the required PAGA notice period, per Labor Code § 2699.3(d). Accordingly, Plaintiff seeks to represent himself, the State of California and other aggrieved employees from April 6, 2019 (i.e., one year prior to the commencement of the tolling period under Emergency Rule 9) through the present.

24. Plaintiff was compelled to retain the services of counsel to file this court action to protect his interests and the interests of other aggrieved employees, and to assess and collect the civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys' fees and costs, which he is entitled to receive under California Labor Code § 2699(g).

PRAYER

WHEREFORE, Plaintiff prays for judgment for himself and for all others on whose behalf this suit is brought against Defendants, jointly and severally, as follows:

1. Upon the First Cause of Action, for civil penalties due to Plaintiff, other aggrieved employees, and the State of California according to proof pursuant to Labor Code § 2699, including, but not limited to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200.00 for each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each initial violation and \$1,000.00 for each subsequent violation of Labor Code § 226, pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for each initial violation and \$200.00 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided;

2. On all causes of action, for attorneys' fees and costs as provided by Labor Code § 2699(g) and Code of Civil Procedure § 1021.5; and

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1 3. For such other and further relief the Court may deem just and proper.

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3 Dated: November 23, 2020

Respectfully submitted,
HAINES LAW GROUP, APC

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5 By: _____



Paul K. Haines
Attorneys for Plaintiff