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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ERIC WILLIAM OLIVERIO-STILL, individually and on behalf of others similarly,

Plaintiffs,

vs.

AVMAC LLC, a Virginia limited liability company,

Defendant.

Case No. 3:24-cv-00870-L-DEB

FIRST AMENDED COLLECTIVE ACTION COMPLAINT

1. Failure to Pay All Overtime Wages Owed (FLSA, 29 U.S.C. § 201 *et seq.*)
2. Failure to Pay for All Hours Worked (FLSA, 29 U.S.C. §§ 201 *et seq.*)

Plaintiff ERIC WILLIAM OLIVERIO-STILL, individually and on behalf of all others similarly situated ("Plaintiff") brings this FIRST AMENDED COLLECTIVE ACTION COMPLAINT against Defendant AVMAC LLC ("Defendant" and "AVMAC"), alleging as follows:

INTRODUCTION

1. This is a collective action regarding AVMAC's wage and hour violations.

2. Defendant underpaid the collective members' wages by failing to include all forms of remuneration, including cash in lieu of fringe benefits payments paid under the obligation of the Service Contract Act, into the regular rate of pay calculation for their hourly overtime, sick, and premium wages.

3. Defendant failed to maintain compliant meal and rest period practices, resulting in a failure to pay all wages and premiums owed to the Collective Members at the lawful rate.

4. Defendant failed to pay Plaintiff and the Collective Members for all hours worked due to off-the-clock work and unauthorized time editing.

5. Defendant's employment policies, practices, and payroll administration systems enabled and facilitated these violations on a company-wide basis with respect to the collective members.

6. Defendant committed the same overtime violations with respect to a nationwide collective of employees, who Plaintiff seeks to represent under the Fair Labor Standards Act.

JURISDICTION & VENUE

7. This Court has original federal question jurisdiction under 28 U.S.C. § 1331 because this case is brought under the Fair Labor Standards Act ("FLSA"), 29 U.S.C. §§ 201, *et seq.*, along with jurisdiction under 29 U.S.C. § 216(b) (FLSA actions "may be maintained against any employer … in any Federal or State court of competent jurisdiction").

8. Venue is proper in this district under 28 U.S.C. § 1391(b) because a substantial part of the events giving rise to the claims arose in this district.

PARTIES

A. Plaintiff Eric William Oliverio-Still

9. Plaintiff Oliverio-Still is an individual over 18 years of age who worked for Defendant in California as a non-exempt employee from about July 2019 to April 2024.

10. Plaintiff worked as a Hazardous Material Coordinator.

11. Plaintiff worked in San Diego County as an employee of AVMAC LLC.

12. Defendant paid various forms of remuneration to Plaintiff during his employment, including cash in lieu of benefits.

13. A written consent form for Plaintiff is attached hereto as Exhibit 1.

B. Defendant

14. Throughout the respective statutory periods, AVMAC was a legal employer of Plaintiff and the collective members.

15. Defendant AVMAC LLC is a Virginia limited liability company that maintains operations and conducts business throughout the State of California, including in this county.

16. Plaintiff is informed, believes, and alleges that during the previous three-year period, AVMAC has employed collective members throughout the United States, including but not limited to California.

17. Upon information and belief, AVMAC is an employer, co-employer, joint employer, and/or part of an integrated employer enterprise, as it exercised control over the wages, hours, and working conditions of the employees, suffered and permitted them to work, and otherwise engaged them as employees under state and federal laws.

18. Upon information and belief, AVMAC acted in all respects pertinent to this action as an alter-ego, agent, servant, joint employer, joint venturer, co-conspirator, partner, in an integrated enterprise, or in some other capacity on behalf of all other co-

defendants, such that the acts and omissions of each defendant may be legally attributable to all others.

GENERAL ALLEGATIONS

19. Plaintiff and the collective members worked for Defendant and were compensated on an hourly basis as nonexempt employees.

20. In addition to earning hourly compensation, Defendant paid Plaintiff and the collective members other forms of non-discretionary remuneration, including fringe health and welfare cash payments.

21. These payments are designated as line items on wage statements for Collective Members, including Plaintiff, with the label "HEALTH & WELF," an abbreviation for health and welfare benefits and are paid as cash in lieu of benefits and are not payments to third parties or outside benefit providers.

22. AVMAC paid these health and welfare payments to Plaintiff and Collective Members to discharge its obligation to furnish fringe benefits to Plaintiff and the collective under the Service Contract Act.

23. Instead of furnishing the fringe benefits to Plaintiff and other Collective Members, AVMAC instead elected to furnish the cash equivalent, which is calculated by multiplying certain hours worked by the hourly rate for such "HEALTH & WELF" payments.

24. The cash payments were paid directly by AVMAC and not by a third party or trustee and are not excluded from the regular rate of pay calculation under federal law. *See Bonner v. Metropolitan Security Services, Inc.* (W.D. Tex. Mar. 15, 2011) Case No. SA-10-CV-937-XR (holding that cash health and welfare payments made directly by an employer to an employee under a contract governed by the Service Contract Act are not excludable from the "regular rate of pay").

25. AVMAC was required to include these health and welfare payments in the regular rate of pay for purposes of calculating and paying overtime to Plaintiff and Collective Members during the Statutory Periods. *See, e.g., Flores v. City of San*

Gabriel, 824 F. 3d 890, 901 (9th Cir. 2016) (affirming "cash-in-lieu of benefits payments are not properly excluded" from the regular rate of pay): *Bonner v. Metropolitan Security Services, Inc.*, 2011 U.S. Dist. LEXIS 26251, Case No. SA-10-CV-937-XR (W.D. Tex., Mar. 15, 2011).

26. AVMAC did not include these health and welfare benefit payments in the "regular rate of pay" for purposes of calculating and paying overtime wages to Plaintiff or the Collective Members during the Statutory Periods.

27. For example, in the pay period of 1/16/2024 to 1/31/2024 Plaintiff earned $707.84 as a benefits cash payment and 16 hours of overtime, however, Plaintiff's overtime was paid at 1.5 times his base hourly rate. Defendant failed to factor in the benefits payment in the overtime rate.

28. Defendant additionally failed to pay Plaintiff and the Collective Members at the lawful minimum wage rate for all hours worked, resulting in unpaid minimum wages.

29. First, Plaintiff and the Collective Members were required to enter and undergo security checks on the Marine Corps Air Station Miramar base in order to get to their worksite. Plaintiff and the Collective Members were not compensated for the time spent waiting and undergoing these security checks and driving to the worksite from there.

30. Under *Freklin*, "time spent on the employer's premises waiting for an undergoing, required exit searches of packages, bags, or personal technology devices voluntarily brought to work purely for personal convenience was compensable as 'hours worked' within the meaning of wage order No. 7-2001" reasoning that "[a]ccording to the 'hours worked" control clause in the wage orders such employee[s] must be paid. *Freklin v. Apple Inc.* (2020) 8 Cal. 5th 1038.

31. Additionally, the California Supreme Court recently held, "an employee's time spent on an employer's premises awaiting and undergoing an employer-mandated exit procedure that includes the employer's visual inspection of the employee's personal

vehicle is compensable as 'hours worked' within the meaning of Wage Order No. 16, section 2(J)." *Huerta v. CSI Elec. Contractors*, 15 Cal. 5th 908, 544 P.3d 1118, 1122 (2024).

32. Further, "the time that an employee spends traveling between the Security Gate and the employee parking lots is compensable as "employer-mandated travel" under Wage Order No. 16, section 5(A)." *Id.*

33. Plaintiff and the Collective Members regularly waited 5-10 minutes in the line to undergo a security check and spent another 5-10 minutes driving to the flight line (or otherwise designated work site). Plaintiff and the Collective Members were not permitted to clock-in until arriving to their designated work site where there was a face scanner.

34. As a result, Plaintiff and the Collective Members were not properly compensated for all hours worked.

35. Second, Defendants engaged in an unlawful policy and practice of editing Plaintiff's and the Collective Members' time records to reflect less hours worked.

36. Finally, Defendants engaged in a policy of automatically deducting 30-minute meal periods each day, regardless of Plaintiff's and the Collective Members' ability to take a compliant meal period.

37. Each time Plaintiff and the Collective Members engaged in off-the-clock work due to time spent waiting for and completing security checks or working through their unpaid, automatically-deducted meal periods, this practice resulted in unpaid hours worked.

38. Each time Defendant unlawfully removed hours actually worked by Plaintiff and the Collective Members, this resulted in unpaid hours worked.

39. To the extent these unlawful policies and practices resulted in unpaid hours 40 hours in a week, this resulted in unpaid overtime hours. To the extent that these hours were earned in the same pay period Defendant paid health and welfare fringe benefits or other additional non-excludable remuneration this resulted in an

underpayment due to their policy of failing to pay overtime at the regular rate of compensation.

40. Defendant maintained an unlawful policy and practice of deducting wages and earnings from Plaintiff and the California Collective Members.

41. Plaintiff's signed employment agreement stated he was supposed to be paid $32.42 as his starting rate (to be increased by a set percentage each year).

42. For example, in 2022, Plaintiff should have been paid at a rate of $38.19 per hour, however, was paid only at $34.19 per hour.

43. The underpayments continued throughout his employment, which ended in 2024.

FLSA COLLECTIVE ACTION

44. Plaintiff brings the First Cause of Action individually and on behalf of all others similarly situated pursuant to 29 U.S.C. § 216(b) to recover unpaid overtime wages, liquidated damages, and other damages related to AVMAC's violation of the FLSA.

45. Plaintiff pursues the requested relief on behalf of the following FLSA Collective:

a. All current and former non-exempt hourly employees of AVMAC LLC who worked in the United States of America at any time during the three years preceding the filing of this action through the present date (hereinafter, the "FLSA Collective" and the "FLSA Period").

46. Plaintiff is a member of the FLSA Collective he seeks to represent because he worked in the United States of America within the past three years for AVMAC LLC and he was paid overtime wages in the same pay period in which he was paid cash in lieu of benefits.

47. Although Plaintiff and the FLSA Collective may have had different job titles, worked in different states or at different locations, and received different hourly

rates of pay, this action may be properly maintained as a collective action because Plaintiff and the FLSA Collective were similarly situated as follows:

a. Plaintiff and the FLSA Collective were all hourly, non-exempt employees.

b. Plaintiff and the FLSA Collective were subject to AVMAC's policies, practices, and directives with respect to regular and overtime pay.

c. Plaintiff and the FLSA Collective were paid regular and overtime wages.

d. Plaintiff and the FLSA Collective were paid cash-in-lieu of benefits and differentials and other forms of non-excludable remuneration.

e. Regardless of their job title or location, AVMAC did not pay Plaintiff and the FLSA Collective at an overtime rate of at least 1.5x their regular rate of pay for all overtime hours.

48. Plaintiff estimates that the FLSA Collective, including current and former employees during the FLSA Period, will exceed one hundred members, though the precise number of individuals in the FLSA Collective should be readily available from AVMAC's personnel file records and other personnel and pay records they are required to keep and maintain under state and federal laws.

49. The First Cause of Action is properly brought and maintained as an opt-in collective action. 29 U.S.C. 216(b). The FLSA Collective can be provided notice by first class mail and/or email to the last addresses known to their employer.

50. The Second of Action is properly brought and maintained as an opt-in collective action. 29 U.S.C. 216(b). The FLSA Collective can be provided notice by first class mail and/or email to the last addresses known to their employer.

FIRST CAUSE OF ACTION

FAILURE TO PAY ALL OVERTIME WAGES

FLSA - 29 U.S.C. §§ 201 *et seq.*

(Plaintiff and the FLSA Collective Against AVMAC LLC)

51. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

52. AVMAC has been, and continues to be, an "employer" engaged in "interstate commerce" within the meaning of 29 U.S.C. § 203.

53. AVMAC has employed, and continues to employ, the FLSA Collective as "employee[s]" within the meaning of the FLSA.

54. AVMAC knowingly, willfully, and intentionally, failed to compensate Plaintiff and the FLSA Collective all overtime wages due under the FLSA, as mandated by 29 U.S.C. § 207(a).

55. AVMAC employed Plaintiff and the FLSA Collective to work, and they did work, in excess of forty (40) hours per week.

56. Further, AVMAC paid Plaintiff and the FLSA Collective cash benefits, cash in lieu of benefits, differentials, and other forms of remuneration that were not subject to exclusion from the regular rate of pay under the FLSA.

57. AVMAC failed to pay Plaintiff and the FLSA Collective at one-and-one half times the regular rate of pay, inclusive of the aforementioned forms of remuneration, for hours in excess of forty (40) per week during the FLSA Period.

58. Plaintiff and the FLSA Collective have been harmed as a direct and proximate result of AVMAC's unlawful conduct because they have been deprived of overtime wages owed for time worked more than 40 hours per week (i.e., due to the regular rate underpayments).

59. AVMAC's violations of the FLSA, as described in this Complaint, have been willful and intentional.

60. AVMAC failed to make a good faith effort to comply with the FLSA with respect to the compensation of Plaintiff and other similarly situated current and former employees, despite the unambiguous language of 29 U.S.C. § 207(a)(1) and the unambiguous eight allowable exclusions set forth in 29 U.S.C. § 207(e)(1) through (8).

61. Because AVMAC's violations of the FLSA have been willful, a three-year statute of limitations applies, pursuant to 29 U.S.C. § 255.

62. As a result of the unlawful acts of AVMAC, Plaintiff and other similarly situated current and former employees have been deprived of overtime compensation in amounts to be determined at trial, and are entitled to recovery of such amounts, liquidated damages, prejudgment interest, attorneys' fees, costs, and other compensation pursuant to 29 U.S.C. § 216(b).

SECOND CAUSE OF ACTION

FAILURE TO PAY FOR ALL HOURS WORKED

FLSA - 29 U.S.C. §§ 201 *et seq.*

(Plaintiff and the FLSA Collective Against AVMAC LLC)

63. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

64. At all relevant times, Defendant has been, and continues to be, an "employer" engaged in "interstate commerce" within the meaning of FLSA, 29 U.S.C. § 203, and Defendant has employed, and continues to employ the Covered Employees as "employee[s]" within the meaning of the FLSA.

65. Defendant knowingly, willfully, and intentionally, failed to compensate Plaintiff and the FLSA Collective all wages under the FLSA, including agreed upon wages and the applicable minimum wage, as mandated by 29 U.S.C § 206(a).

66. Defendant failed to pay Plaintiff and the FLSA Collective for all hours worked as a result of its policies of requiring off-the-clock work (including, but not limited to unpaid security checks) and automatically deducting 30-minute meal periods regardless of the collective's ability to take one.

67. This practice resulted in Plaintiff and the FLSA collective being deprived of their regular wages.

PRAYER

Plaintiff prays for judgment as follows:

a. For certification of this action as an FLSA collective action;

b. For appointment of Plaintiff as the representative of the collective;

c. For appointment of above-captioned counsel for Plaintiff as Collective Counsel;

d. For recovery of damages in amount according to proof;

e. For all recoverable pre- and post-judgment interest;

f. For recovery of all civil and statutory penalties and liquidated damages;

g. For disgorgement of all amounts wrongfully obtained;

h. For restitution and injunctive relief;

i. For reasonable attorneys' fees and costs of suit, including expert fees, to the extent permitted by law, including (without limitation) under 29 U.S.C. § 216(b); and

j. For such other relief the Court deems just and proper.

Dated: July 26, 2024

Respectfully submitted,
Ferraro Vega Employment Lawyers, Inc.

By: *s/ Nicholas J. Ferraro*
Nicholas J. Ferraro
Attorneys for Plaintiff Eric William Oliverio-Still