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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF KERN

ROLANDO TORRES, an individual, for  
himself and those similarly situated,

Plaintiffs,

vs.

KEY ENERGY SERVICES, LLC, a Texas  
limited liability company; and DOES 1  
through 100, inclusive,

Defendants.

CASE NO: S-1500-CV-282362 DRL

**CLASS ACTION**

**FIRST AMENDED COMPLAINT FOR:**

- (1) **Wages Owed;**
- (2) **Violation of Labor Code § 226;**
- (3) **Violation of Business & Professions Code § 17200; and**
- (4) **Civil Penalties Under the Private Attorneys General Act of 2004**

**TO ALL INTERESTED PARTIES AND TO THEIR ATTORNEYS OF RECORD:**

Plaintiff ROLANDO TORRES ("TORRES"), on behalf of himself, current and past employees, alleges the following against defendant KEY ENERGY SYSTEMS, LLC, a Texas limited liability company (hereinafter referred to as "KES" or "EMPLOYER") and DOES 1 through 100, and each of them:

**THE PARTIES AND VENUE**

- 1. At all times herein mentioned, TORRES was and is an individual and is a resident



1 return to the yard, where they unload the trucks. Given that many workdays require the  
2 employees in question to remain on site for over eight hours, DEFENDANTS' failure to count  
3 their employees' travel time results in substantial unpaid overtime and doubletime, as well as  
4 unpaid minimum wage, since DEFENDANTS typically do not pay the employees anything for  
5 their travel time.

6 6. Additionally, DEFENDANTS do not relieve TORRES and his coworkers of all  
7 duties during each of their legally mandated meal periods.

8 7. Additionally, the itemized wage statements given TORRES and his nonexempt co-  
9 workers do not accurately reflect the hours worked because of the failure of the company to count  
10 travel time as hours worked.

### 11 CLASS ALLEGATIONS

12 8. TORRES brings this action on his own behalf, and on behalf of all persons  
13 similarly situated. The Class represents and consists of all nonexempt employees of  
14 DEFENDANTS in California who have traveled in company-owned vehicles to remote worksites  
15 at any time from June 24, 2010 to the present (hereinafter the "Class"). The Class represents  
16 over 100 persons (hereinafter the "Class Members") and is so numerous that the joinder of each  
17 member of the Class is impracticable.

18 9. There is a well-defined community of interest in the questions of law and fact  
19 affecting the Class TORRES represents. The Class Members' claims have common facts in that  
20 each was or has been employed by DEFENDANTS in California and subjected to the same  
21 unlawful policies (i.e., the failure to pay for travel time, provide off-duty meal periods, or record  
22 all hours worked on itemized wage statements, all as mandated by California law). The Class  
23 Members' claims against DEFENDANTS involve questions of common or general interest, such  
24 as whether the conduct in question violates California law and warrants legal and/or equitable  
25 relief. These questions are such that proof of a state of facts common to the members of the Class  
26 will entitle each member of the Class to the relief requested in this Complaint.

27 10. The members of the Class TORRES represents have no plain, speedy, or adequate  
28 remedy at law against DEFENDANTS, other than by maintenance of this class action, because

1 TORRES is informed and believes, and on such information and belief alleges, that the damage  
2 to each member of the Class is relatively small such that it would be economically infeasible to  
3 seek recovery against DEFENDANTS other than by a Class action.

4 11. TORRES will fairly and adequately represent the interest of the Class, because  
5 TORRES is a member of the Class and TORRES's claims are typical of those in the Class.

6 **FIRST CAUSE OF ACTION**

7 **(Action Brought By TORRES And All Others Similarly Situated**

8 **For Failure To Pay Wages Owed Against KES**

9 **And DOES 1 Through 100)**

10 12. TORRES and the Class refer to paragraphs 1 through 11 and incorporates same by  
11 reference as though fully set forth at length.

12 13. TORRES and the aforementioned putative Class are employees who have worked  
13 for DEFENDANTS within the four years prior to the date of filing the original Complaint in this  
14 matter (together, the "PLAINTIFFS" herein). TORRES and the Class worked as non-exempt  
15 employees for DEFENDANTS.

16 14. Unfortunately, during their employment with DEFENDANTS, TORRES and the  
17 Class were not paid all wages, including straight-time, overtime, and/or doubletime wages, as  
18 required by law. Such unpaid time includes, but is not limited to, meal periods, regular time,  
19 overtime and doubletime hours, minimum wages owed (pursuant to *Armenta v. Osmose* (2005)  
20 135 Cal.App.4<sup>th</sup> 314), preparatory time and travel time.

21 15. Further, TORRES and the Class worked through specific meal periods in violation  
22 of California law. It is alleged that DEFENDANTS intentionally denied TORRES and the Class  
23 wages that should have been paid and violated California Labor Code section 512. Defendant  
24 did not permit TORRES and the Class to take all lawful meal periods to which they are entitled,  
25 including at times a second meal period as required by law when an employee works more than  
26 10 hours.

27 16. Labor Code section 200 defines "wages" as including all amounts for labor  
28 performed by employees of every description, whether the amount is fixed or ascertained by the

1 standard of time, task, piece, commission basis, or other method of calculation.

2 17. Labor Code section 201 makes all wages due and payable on the date on which an  
3 employee is terminated. Section 202 provides that all wages shall become due and payable not  
4 later than 72 hours after the employee provides notice of his intention to quit. In this case, on  
5 information and belief it is alleged that DEFENDANTS, and each of them, have refused and  
6 continue to refuse certain of the TORRES's and the Class's wages in accordance with sections  
7 201 and 202.

8 18. Thus, pursuant to Labor Code section 203, it is alleged that DEFENDANTS have  
9 willfully failed to pay without abatement or reduction, in accordance with Labor Code sections  
10 201 and 202 all of the wages owed to plaintiffs. DEFENDANTS are aware that they owe the  
11 wages claimed, yet have willfully failed to make payment. As a result, plaintiffs seek wages and  
12 penalties pursuant to Labor Code section 203.

13 19. TORRES and the Class have each been available, and ready, to receive wages owed  
14 to them, including overtime wages.

15 20. TORRES and the Class have never refused to receive any payment, nor have  
16 TORRES and the Class been absent from their regular place of residence.

17 21. DEFENDANTS' failure to pay the wages due and owing PLAINTIFFS, as  
18 indicated in prior paragraphs, was willful in that DEFENDANTS have knowingly refused to pay  
19 any portion of the amount due and owing PLAINTIFFS.

20 22. Pursuant to Labor Code sections 218.5 and 1194, TORRES and the Class request  
21 the court to award their reasonable attorney fees and costs incurred in this action. TORRES and  
22 the Class also request all unpaid wages, waiting time penalties and interest.

23 WHEREFORE, TORRES and the Class demand judgment against the DEFENDANTS,  
24 and each of them, as follows:

- 25 1. For wages owed according to proof;
- 26 2. For prejudgment interest at the statutory rate;
- 27 3. For statutory penalties pursuant to law, including, penalties pursuant to Labor Code  
28 section 203 and liquidated damages pursuant to Labor Code 1194.2;

- 1 4. For reasonable attorneys' fees pursuant to Labor Code sections 218.5 and 1194;  
2 5. For costs of suit; and  
3 6. For any other and further relief that the Court considers just and proper.

4 **SECOND CAUSE OF ACTION**

5 **(Action Brought By TORRES And All Others Similarly Situated**  
6 **For Violation Of Labor Code § 226**  
7 **Against KES And DOES 1 Through 100)**

8 23. TORRES and the Class refer to paragraphs 1 through 22 above, and incorporates  
9 same by reference as though fully set forth at length.

10 24. California Labor Code section 226 provides:

11 "Every employer shall, semimonthly or at the time of each payment of wages,  
12 furnish each of his or her employees, either as a detachable part of the check, draft,  
13 or voucher paying the employee's wages, or separately when wages are paid by  
14 personal check or cash, an itemized statement in writing showing (1) gross wages  
15 earned, (2) total hours worked by the employee, except for any employee whose  
16 compensation is solely based on a salary and who is exempt from payment of  
17 overtime under subdivision (a) of Section 515 or any applicable order of the  
18 Industrial Welfare Commission, (3) the number of piece-rate units earned and any  
19 applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions,  
20 provided, that all deductions made on written orders of the employee may be  
21 aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of  
22 the period for which the employee is paid, (7) the name of the employee and his or  
23 her social security number, (8) the name and address of the legal entity that is the  
24 employer, and (9) all applicable hourly rates in effect during the pay period and the  
25 corresponding number of hours worked at each hourly rate by the employee."

26 25. In this case, the DEFENDANTS have failed to provide wage deduction statements  
27 that comply with the requirements of Labor Code section 226. Pursuant to Labor Code section  
28 226(e), damages are appropriate. At this time, TORRES and the Class allege that the exact  
amount of damages under Labor Code section 226(e) will not be fully ascertained until discovery  
is completed. Until DEFENDANTS produce the necessary documents for an accounting,  
TORRES and the Class are unable to determine the exact amount of damages under Labor Code  
section 226(e).



1 DEFENDANTS profited. TORRES and the Class seek disgorgement of these unlawfully  
2 obtained benefits.

3 31. Business and Professions Code section 17203, under the authority of which a  
4 restitutionary order may be made, provides:

5 "Any person who engages, has engaged, or proposes to engage in unfair  
6 competition may be enjoined in any court of competent jurisdiction. The court may  
7 make such orders or judgments, including the appointment of a receiver, as may be  
8 necessary to prevent the use of employment by any person of any practice which  
9 constitutes unfair competition, as defined in this chapter, or as may be necessary to  
10 restore to any person in interest any money or property, real or personal, which may  
11 have been acquired by means of such unfair competition. Any person may pursue  
12 representative claims or relief on behalf of others only if the claimant meets the  
standing requirements of Section 17204 and complies with Section 282 of the Code  
of Civil Procedure, but these limitations do not apply to claims brought under his  
chapter by the Attorney General, or any district attorney, county counsel, city  
attorney, or city prosecutor in this state."

13 32. As a result of the alleged aforesaid actions, TORRES and the Class have suffered  
14 injury in fact and have lost money as a result of such unfair competition.

15 33. In this case, it is requested that this Court order such restitution and issue an  
16 injunction enjoining DEFENDANTS from continuing the unlawful acts outlined herein.

17 WHEREFORE, TORRES and the Class demand judgment against DEFENDANTS, and  
18 each of them, as follows:

- 19 1. For an equitable order, ordering DEFENDANTS to pay all former and current non-  
20 exempt employees all wages, interest, and penalties they are owed;
- 21 2. For an appointment of a receiver to be perform an accounting of all monies owed  
22 to these employees;
- 23 3. For any and all injunctive relief this court deems necessary pursuant to Business  
24 and Professions Code Section 17203;
- 25 4. For attorney's fees and costs;
- 26 5. For prejudgment interest pursuant to Civil Code sections 3288 and 3291 on all  
27 amounts claimed; and
- 28 6. For any other and further relief that the Court considers proper.



**FOURTH CAUSE OF ACTION**

**(Action for brought by TORRES for Civil Penalties Under the Private Attorneys General Act of 2004 Against KES And DOES 1 Through 100)**

34. TORRES refer to paragraphs 1 through 33, and incorporate same by reference as though fully set forth at length.

35. It is alleged that DEFENDANTS intentionally denied TORRES and his similarly situated co-workers wages that should have been paid and have violated Labor Code provisions and applicable IWC wage orders.

36. Pursuant to Labor Code sections 2698 et seq., TORRES is entitled to recover civil penalties on behalf of himself and other persons who are or were employed by the alleged violator and against whom one or more of the alleged violations was committed. TORRES is therefore pursuing civil penalties for violations of the Labor Code sections set forth herein.

37. One or more of the alleged violations set forth herein was committed against TORRES, and TORRES is therefore an "aggrieved employee" under Labor Code Section 2699(c), which provides in relevant part, "(c) For purposes of this part, "aggrieved employee" means any person who was employed by the alleged violator and against whom one or more of the alleged violations was committed."

38. Labor Code section 200 defines "wages" as including all amounts for labor performed by employers of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis, or other method of calculation.

39. Labor Code section 201 requires immediate payment of all wages owed at the termination of employment. It is alleged that within the last year, DEFENDANTS employees in California have been terminated and have not received all wages owed at their termination. There is no civil penalty associated with violation of section 201, but TORRES seeks civil penalties on behalf of himself and all others similarly situated under Labor Code section 2699, subd. (f).

40. Labor Code section 202 requires payment of all wages owed within 72 hours of the resignation of an employee, unless the employee gives more than 72-hours notice, in which case wages are owed at the employee's resignation. It is alleged that within the last year,

1 DEFENDANTS employees in California have resigned and have not received all overtime  
2 premium pay owed in a timely fashion after their resignation. There is no civil penalty associated  
3 with violation of section 202, but TORRES seeks civil penalties on behalf of himself and all  
4 others similarly situated under Labor Code section 2699, subd. (f).

5 41. Labor Code section 203 establishes a statutory penalty for willful violations of  
6 Labor Code sections 201 or 202. There has been a willful violation of Labor Code sections 201  
7 and 202 because, in part, DEFENDANTS cannot hide behind their ignorance of the California's  
8 wage and hour law. TORRES seeks civil penalties on behalf of himself and all others similarly  
9 situated under Labor Code section 256.

10 42. Labor Code section 204 makes wages due no less frequently than twice a month  
11 for non-exempt employees for work performed each pay period. DEFENDANTS have violated  
12 section 204 with respect to TORRES and his similarly situated coworkers by not paying them all  
13 wages due for work performed each pay period. TORRES seeks civil penalties on behalf of  
14 himself and all other similarly situated under Labor Code section 210.

15 43. Labor Code section 219 provides that an employer may not circumvent by way of  
16 private agreement the requirements of the wage-and-hour laws of the Labor Code. To the extent  
17 that DEFENDANTS will argue that these employees agreed to forfeit their travel time and/or  
18 other wages, DEFENDANTS will have violated Labor Code section 219. There is no civil  
19 penalty associated with violation of section 219, but TORRES seeks civil penalties on behalf of  
20 himself and all others similarly situated under Labor Code section 2699, subd. (f).

21 44. Labor Code section 226, subdivision (a), requires a California employer to include  
22 very specific information on an employee's paycheck stub. The required information includes  
23 the total number of overtime hours worked and the correct rates of pay. Lab. Code § 226(a).  
24 Subdivision (e) sets forth statutory penalties for the violation of section 226(a). TORRES seeks  
25 to recover said penalties on behalf of himself and all others similarly situated.

26 45. Labor Code section 226.3 sets forth civil penalties for violation of section 226,  
27 subdivision (a). TORRES seeks said penalties against DEFENDANTS on behalf of himself and  
28 all other similarly situated employees for violation of section 226, subdivision (a).

1           46. Labor Code section 226.7 provides that an employer must compensate a non-  
2 exempt employee with one hour of pay for each required meal period that it does not provide.  
3 DEFENDANTS violated this statute by not paying this meal period premium pay to TORRES  
4 and his co-workers when they were not provided with 30-minute, off-duty meal periods.

5           47. Labor Code section 510 provides that an employer shall pay overtime premium  
6 wages to non-exempt employees who work over eight hours in a workday or over 40 hours in a  
7 workweek. DEFENDANTS violated Labor Code section 510 by not paying overtime premium  
8 wages to non-exempt employees who worked over eight hours in a day and Labor Code section  
9 510.

10           48. Labor Code section 512 provides that an employer shall provide its non-exempt  
11 employees with one off-duty meal period for each five-hour work period. DEFENDANTS  
12 violated Labor Code section 512 by not providing off-duty meal periods to its non-exempt  
13 employees for every five-hour work period.

14           49. Labor Code section 558 provides for civil penalties against an employer who  
15 violates sections 510 and 512. TORRES seeks said penalties against DEFENDANTS on behalf  
16 of himself and all other similarly situated employees for violation of sections 510 and 512.

17           50. Labor Code section 1197 requires that employers may not pay less than the  
18 mandated minimum wage. DEFENDANTS violated section 1197 by not paying TORRES and  
19 his similarly situated coworkers at least the minimum wage for all hours worked. The civil  
20 penalty for violations of section 1197 is enumerated in Labor Code section 1197.1. TORRES  
21 seeks said penalties against DEFENDANTS on behalf of himself and all other similarly situated  
22 employees for violations of section 1197.

23           51. TORRES also seeks any civil penalties allowable under the Labor Code that arise  
24 out of the same set of operative facts as the claims made in this complaint.

25           52. TORRES has fully complied with the statutory requirements of Labor Code section  
26 2699.3. TORRES gave notice by a letter dated June 19, 2014 and delivered by certified mail to  
27 the California Labor and Workforce Development Agency and the employer of the specific  
28 provisions of the Labor Code alleged to have been violated, including the facts and theories to

1 support the alleged violations. More than 33 days have passed since TORRES gave written  
2 notice, yet TORRES has not yet received notice that the Labor and Workforce Development  
3 Agency intends to pursue an action for penalties against DEFENDANTS.

4 53. DEFENDANTS' failure to pay wages due and owing to TORRES and those  
5 similarly situated, as indicated in prior paragraphs, was willful. DEFENDANTS have knowingly  
6 refused to pay any portion of the amount due and owing PLAINTIFFS. Further, DEFENDANTS  
7 have not taken any actions to "cure" the Labor Code violations pursuant to California Labor Code  
8 section 2699 et seq.

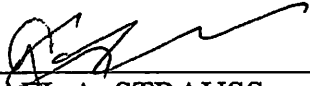
9 54. By failing to pay TORRES and the current and past aggrieved employees,  
10 DEFENDANTS have violated numerous California Labor Code and Wage Order provisions, all  
11 as set forth hereinabove. Civil penalties are therefore appropriate.

12 WHEREFORE, TORRES demands judgment against DEFENDANTS, and each of them,  
13 as follows:

- 14 1. For civil penalties for each aggrieved employee, for each violation alleged
- 15 aforesaid, to be distributed in accordance with Labor Code section 2699;
- 16 2. For attorneys' fees and costs pursuant to Labor Code section 2699(g);
- 17 3. For any other and further relief that the Court considers just and proper.

18 Dated: July 29, 2014

**PALAY LAW FIRM**  
**A Professional Corporation**

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