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**SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF EL DORADO**

SHAWN BUCHANAN,

Plaintiff

vs.

GRAHAM COUNTY LAND COMPANY
LLC, a North Carolina Limited Liability
Company; DOES 1 to 20, inclusive,

Defendants

Case No. PC20190559

**FIRST AMENDED COMPLAINT FOR
DAMAGES:**

- 1. Failure to Pay Minimum Wage for All Hours Worked;**
- 2. Failure to Provide Accurate Wage Statements;**
- 3. Waiting Time Penalties;**
- 4. Failure to Pay Overtime Wages;**
- 5. Failure to Provide Payroll Records;**
- 6. Failure to Provide Personnel Records Upon Request;**
- 7. Failure to Reimburse Business Expenses**
- 8. Unfair Competition (Business & Professions Code § 17200 *et seq.*)**
- 9. Civil Penalties Pursuant to Private Attorney General Act, Labor Code § 2698 *et seq***

JURY TRIAL DEMANDED

Complaint Filed: October 23, 2019

1 Plaintiff SHAWN BUCHANAN (“Plaintiff”) hereby files this First Amended Complaint
2 against Defendants GRAHAM COUNTY LAND COMPANY LLC, a North Carolina Limited
3 Liability Company; DOES 1 to 20, inclusive, (hereinafter collectively referred to as “Defendants”).
4 Plaintiff alleges as follows:

5 **PARTIES AND JURISDICTION**

6 1. At all times relevant in this Complaint, Plaintiff was over the age of eighteen and
7 resided in the State of California.

8 2. Plaintiff is informed and believes, and thereon allege, that GRAHAM COUNTY
9 LAND COMPANY LLC, is a North Carolina Limited Liability Company with its principal place of
10 business in North Carolina. Plaintiff is further informed and believes, and thereon allege, that
11 GRAHAM COUNTY LAND COMPANY LLC has contact with the State of California, including
12 but not necessarily limited to, because it employs numerous individuals in California and enters into
13 contracts in California.

14 3. Plaintiff is further informed and believes, and thereon allege, that each of the
15 Defendants herein was, at all times relevant to this action, the agent, employee, or joint employer or
16 joint venturer of the remaining defendants and was acting within the course and scope of that
17 relationship. Plaintiff are further informed and believe, and thereon allege, that each of the
18 Defendants herein gave consent to, ratified and authorized the acts alleged herein to each of the
19 remaining defendants. The true names and capacities of the defendants named herein Does 1 through
20 20, inclusive, whether individual, corporate, associate, or otherwise are unknown to Plaintiff, who
21 therefore sue such defendants by fictitious names pursuant to California Code of Civil Procedure
22 section 474. Plaintiff will amend this complaint to show such true names and capacities of Does 1
23 through 20, inclusive, when they have been determined.

24 4. The El Dorado Superior Court has jurisdiction in this matter due to alleged violations
25 of California Labor Code §§ 203, 226, 510, 512, 1194 Business and Professions Code § 17200 *et*
26 *seq.*, and the applicable Wage Order(s).

5. Venue is proper pursuant to Civil Procedure Code §§ 395(a) and 395.5, in that some of the wrongful acts and violations of law asserted herein occurred within El Dorado County, specifically Plaintiff performed work for Defendants in El Dorado County.

6. On February 17, 2020, Plaintiff filed his Labor Code § 2699.3 Private Attorney General Act (“PAGA”) notice with the California Labor & Workforce Development Agency (“LWDA”). The LWDA did not respond within 65 days of filing of the PAGA notice.

BACKGROUND

7. Plaintiff worked for Defendants as a Certified Utility Forester, at various times from approximately June 2018 to July 2019.

8. During his employment, Plaintiff was made to suffer numerous violations of the California Labor Code. Defendants suffered and permitted Plaintiff to regularly perform work off the clock and Plaintiff was not compensated for this time.

9. Defendants failed to keep accurate time records of the hours worked by Plaintiff.

10. Plaintiff regularly worked over eight (8) hours a day and/or forty (40) hours a week. Defendant did not pay Plaintiff all overtime and/or minimum wages earned during his employment.

11. On information and belief, Defendants also failed to accurately calculate the applicable regular rate of pay for purposes of paying overtime.

12. Defendants also failed to regularly provide wage statements to Plaintiff altogether, provided them late, or provided inaccurate information, at least because Plaintiff was not accurately paid for all hours worked.

13. Defendants regularly paid Plaintiff late.

14. Plaintiff was required to use his personal cell phone for business purposes, but was not reimbursed for that expense. Defendants also reimbursed Plaintiff on a flat rate for mileage expenses, which did not adequately compensate Plaintiff for his mileage expenses.

15. Plaintiff made requests for his pay records, but was ignored. After suffering these numerous violations related to his pay, Plaintiff had no choice but to quit his employment with Defendants. Plaintiff gave Defendants his two-week notice, but Defendant decided to terminate

1 Plaintiff immediately. On information and belief, Plaintiff's immediate termination was based on
2 his numerous complaints about wage and hour violations.

3 16. On August 8, 2019, Plaintiff, through his counsel, sent a request to Defendants for
4 personnel and payroll records pursuant to Labor Code sections 1198.5, 432, 226, and 247.5, via
5 certified mail. Defendants did not provide any response or make the records available within the
6 statutorily-required timeframe. This is a violation of the Labor Code.

7
8 **FIRST CAUSE OF ACTION**
(Failure to Pay Minimum Wage for All Hours Worked)

9 17. Plaintiff hereby incorporates by reference Paragraphs 1 through 16 of this Complaint
10 as if fully set forth herein and for a cause of action alleges as follows:

11 18. Defendants were required to compensate Plaintiff with at least the State's minimum
12 wage for all hours worked. See Cal. Labor Code § 1194; MW Order-2014; MW Order-2017.

13 19. Defendants were aware of their obligation to pay the minimum wages but failed to do
14 so.

15 20. Defendants' conduct described herein violates California Labor Code section 1194,
16 and Wage Orders. As a proximate result of Defendants' conduct, Plaintiff has been damaged and
17 deprived of minimum wages, in an amount to be established at trial. Plaintiff now seeks these
18 wages, liquidated damages pursuant to California Labor Code section 1194.2, attorney's fees and
19 costs, and interest pursuant to California Labor Code section 1194.
20

21 **SECOND CAUSE OF ACTION**
22 **(Failure to Provide Accurate Wage Statements)**

23 21. Plaintiff incorporates by reference and re-allege paragraphs 1 through 20 as though
24 fully set forth herein.

25 22. According to Labor Code section 226(a), an employer must provide an itemized
26 statement to an employee, semi-monthly or at the time of each payment of wages, showing:

27 *gross wages earned, (2) total hours worked by the employee, except for any*
28 *employee whose compensation is solely based on a salary and who is*
exempt from payment of overtime under subdivision (a) of Section 515 or

1 any applicable order of the Industrial Welfare Commission, (3) the number
2 of piece-rate units earned and any applicable piece rate if the employee is
3 paid on a piece-rate basis, (4) all deductions, provided that all deductions
4 made on written orders of the employee may be aggregated and shown as
5 one item, (5) net wages earned, (6) the inclusive dates of the period for
6 which the employee is paid, (7) the name of the employee and the last four
7 digits of his or her social security number or an employee identification
8 number other than a social security number, (8) the name and address of
9 the legal entity that is the employer and, if the employer is a farm labor
10 contractor, as defined in subdivision (b) of Section 1682, the name and
11 address of the legal entity that secured the services of the employer, and (9)
12 all applicable hourly rates in effect during the pay period and the
13 corresponding number of hours worked at each hourly rate by the
14 employee. The deductions made from payment of wages shall be recorded
15 in ink or other indelible form, properly dated, showing the month, day, and
16 year, and a copy of the statement and the record of the deductions shall be
17 kept on file by the employer for at least three years at the place of
18 employment or at a central location within the State of California.

12 23. Plaintiff alleges that Defendants intentionally and knowingly failed to provide an
13 itemized statement or failed to provide an accurate and complete itemized statement showing the
14 requirements set forth in Labor Code section 226(a). Defendants also failed to list on the wage
15 statements provided to Plaintiff all hours worked.

16 24. Additionally, Plaintiff alleges he suffered injury as a result of Defendants' failure to
17 provide accurate and complete information as required by any one or more of items (1) to (9),
18 inclusive, of Labor Code section 226, subdivision (a), and Plaintiff cannot promptly and easily
19 determine (i.e. a reasonable person in each Plaintiff' position would not be able to readily ascertain
20 the information without reference to other documents or information) from the wage statement
21 alone.

22 25. Plaintiff is entitled to, and does hereby seek, injunctive relief requiring Defendants to
23 comply with Labor Code §§ 226(a) and 1174(d), and all applicable damages and civil penalties.

24
25 **THIRD CAUSE OF ACTION**
26 **(Waiting Time Penalties)**

26 26. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 25 as though
27 fully set forth herein.
28

1 27. An employer must pay an employee who is terminated all unpaid wages immediately
2 upon termination. Labor Code § 201.

3 28. An employer must pay an employee who resigns all unpaid wages within seventy-two
4 (72) hours of resignation. Labor Code § 202.

5 29. An employer who willfully fails to pay an employee wages in accordance with Labor
6 Code sections 201 and/or 202 must pay the employee a waiting time penalty of up to thirty (30)
7 days. Labor Code § 203.

8 30. Plaintiff did not receive all wages, including minimum and overtime wages and meal
9 and rest period premiums, at her termination or separation from employment. Specifically,
10 Defendants failed to pay Plaintiff all wages owed at the time of termination.

11 31. Defendants knew of their obligation to pay Plaintiff for all hours worked because they
12 had knowledge Plaintiff was, at all times, a non-exempt employee, worked over eight (8) hours a day
13 and/or forty (40) hours a week. Such conduct shows Defendants' knowledge of their obligation to
14 pay all wages owed upon termination and willful refusal.

15 32. As a proximate result of the Defendants' conduct, Plaintiff has been damaged and
16 deprived of his wages and thereby seeks his daily rate of pay multiplied by thirty (30) days for
17 Defendants' failure to pay all wages due in an amount to be established at trial.

18
19 **FOURTH CAUSE OF ACTION**
20 **(Failure to Pay Overtime Wages)**

21 33. Plaintiff incorporates by reference and re-allege paragraphs 1 through 32 as though
22 fully set forth herein.

23 34. During the period Plaintiff was employed by Defendants, Defendants were required
24 to compensate him one and one-half (1½) times the regular rate of pay for hours worked in excess of
25 eight (8) hours per day and/or forty (40) hours per week, and two (2) times the regular rate of pay for
26 hours worked in excess of twelve (12) hours per day. See California Labor Code §§ 510, 1194.
27 Although Plaintiff regularly worked in excess of eight (8) hours a day and/or forty (40) hours per
28 week, Defendants failed to pay all overtime wages owed to him.

1 35. Plaintiff was a non-exempt employee under the administrative, executive, or
2 professional exemptions of the applicable Wage Order and California Labor Code section 510.

3 36. On information and belief, Defendants did not calculate the regular rate of pay
4 correctly for purposes of paying overtime, thus Plaintiff and other employees in California were
5 underpaid overtime wages.

6 37. Defendants' conduct described herein violates California Labor Code sections 510
7 and 1194, and Wage Orders. As a proximate result of Defendants' conduct, Plaintiff has been
8 damaged and deprived of overtime wages, in an amount to be established at trial. Plaintiff now seek
9 these wages, attorney's fees and costs, and interest pursuant to California Labor Code sections 1194.
10

11 **FIFTH CAUSE OF ACTION**
12 **(Failure to Provide Payroll Records Upon Request)**

13 38. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 37 as though
14 fully set forth herein.

15 39. California Labor Code section 226(f) provides that if an employer failed to allow an
16 employee to inspect or copy records within twenty-one (21) days of the request for such records, the
17 employee is entitled to recover a \$750.00 penalty from the employer.

18 40. On August 8, 2019, Plaintiff requested his records, pursuant to California Labor Code
19 section 226(a), from Defendants. Defendants did not provide the records or make them available.

20 41. Plaintiff seeks an injunction ordering Defendants to produce such records.

21 42. As a proximate cause of Defendants' failure to provide the requested records in a
22 timely manner, Plaintiff was damaged and is entitled to recover a \$750.00 penalty pursuant to
23 California Labor Code section 226(f), and an award of costs and reasonable attorney's fees pursuant
24 to California Labor Code section 226(h).

25 **SIXTH CAUSE OF ACTION**
26 **(Failure to Provide Personnel Records Upon Request)**

27 43. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 42 as though
28 fully set forth herein.

1 44. California Labor Code section 1198.5(k), (b) provides that if an employer failed to
2 allow an employee to inspect or copy records within thirty (30) days of the request for such records,
3 the employee is entitled to recover a \$750.00 penalty from the employer.

4 45. On August 7, 2019, Plaintiff requested his records, pursuant to California Labor Code
5 section 1198.5, from Defendants. However, Defendants did not provide the records or make them
6 available until September 23, 2019, well after the statutorily-required deadline.

7 46. Plaintiff seeks an injunction ordering Defendants to produce such records.

8 47. As a proximate cause of Defendants' failure to provide the requested records in a
9 timely manner, Plaintiff was damaged and is entitled to recover a \$750.00 penalty pursuant to
10 California Labor Code section 1198.5(k), and an award of costs and reasonable attorney's fees
11 pursuant to California Labor Code section 1198.5(l).
12

13 **SEVENTH CAUSE OF ACTION**
14 **(Failure to Reimburse Business Expenses)**

15 48. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 47 as though
16 fully set forth herein.

17 49. Labor Code section 2802(a) states that "An employer shall indemnify his or her
18 employee for all necessary expenditures or losses incurred by the employee in direct consequence of
19 the discharge of his or her duties, or of his or her obedience to the directions of the employer, even
20 though unlawful, unless the employee, at the time of obeying the directions, believed them to be
21 unlawful."

22 50. Defendants knew that Plaintiff used his personal cell phone for work purposes,
23 including for calls and texts required for work purposes. Defendants also knew that Plaintiff
24 incurred mileage expenses beyond those for which he was reimbursed. However, Defendants did
25 not reimburse Plaintiff for these expenses.

26 51. Defendants' conduct described herein violated California Labor Code section 2802.
27 As a proximate result of Defendants' conduct, Plaintiff has been damaged in an amount to be
28

1 established at trial, and is entitled to recover these damages, as well as interest and reasonable
2 attorney's fees and costs, pursuant to statute.

3
4 **EIGHTH CAUSE OF ACTION**
(Unfair Competition)

5 52. Plaintiff incorporates by reference and re-allege paragraphs 1 through 51 as though
6 fully set forth herein.

7 53. Unfair competition shall mean and include any unlawful, unfair or fraudulent
8 business act or practice and unfair, deceptive, untrue or misleading advertising and any act
9 prohibited by Chapter 1 (commencing with Section 17500) of Part 3 of Division 7 of the California
10 Business and Professions Code. See California Business and Professions ("B&P") Code § 17200.

11 54. Plaintiff was not paid all wages owed during his employment. Defendants also failed
12 to provide legally compliant paystubs to Plaintiff throughout the employment relationship.

13 55. Plaintiff is also informed and believe and thereon allege that such actions and/or
14 conduct constitute a violation of the California Unfair Competition Law ("UCL") (California
15 Business and Professions Code 17200 *et seq.*), pursuant to *Cortez v. Purolator Air Filtration Prods.*
16 *Co.*, 23 Cal. 4th 163 (2000).

17 56. As a direct and legal result of the Defendants' conduct, as alleged herein, pursuant to
18 the UCL (including B&P Code §17203), Plaintiff is entitled to restitution as a result of Defendants'
19 unfair business practices, including, but not limited to, public injunctive relief, pursuant to B&P
20 Code § 17203, and interest and penalties pursuant to B&P §§ 17203, 17208, violations of Labor
21 Code §§ 1194, 226, all in an amount as yet unascertained but subject to proof at trial, for up to four
22 (4) years from the filing of this Action.
23

24 **NINTH CAUSE OF ACTION**
25 **CIVIL PENALTIES PURSUANT TO PAGA § 2698 ET SEQ.**

26 57. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 56 as though
27 fully set forth herein.
28

1 58. Plaintiff brings this cause of action as a proxy for the State of California and in this
2 capacity, seeks penalties on behalf of all Aggrieved Employees for Defendants' violations of the
3 California Labor Code, including but not necessarily limited to, those Labor Code violations
4 identified above.

5 59. On or about February 17, 2020, Plaintiff sent written notice to the LWDA regarding
6 Defendant's violations of the California Labor Code, pursuant to Labor Code section 2698, *et seq.*,
7 PAGA. As of the date of the filing of this First Amended Complaint, the LWDA has not informed
8 Plaintiff whether the LWDA intends to investigate Plaintiff's PAGA claims. As such, Plaintiff has
9 exhausted his administrative remedies under PAGA and may proceed in this Court.

10 60. Plaintiff is thus entitled to recover civil penalties on behalf of the State of California
11 and all Aggrieved Employees for all violations of the Labor Code from January 15, 2019, through
12 trial on this matter.
13

14 **DAMAGES**

15 WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

- 16 1. A jury trial;
- 17 2. For penalties and liquidated damages under the California Labor Code according to
18 proof allowed by law;
- 19 3. For compensatory damages, including, but not limited to, unpaid wages, plus
20 interest, according to proof allowed by law;
- 21 4. For an award to Plaintiff' of costs of suit incurred herein and reasonable attorney's
22 fees;
- 23 5. For injunctive relief;
- 24 6. For an award of prejudgment and post-judgment interest; and
- 25 7. For an award to Plaintiff of such other and further relief as the Court deems just and
26 proper.
27
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1 Dated: May 29, 2020

2 **Castle Law: California Employment Counsel**

3 By: _____

4 Timothy B. Del Castillo

5 Kent L. Bradbury

6 Attorneys for Plaintiff SHAWN BUCHANAN

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JURY TRIAL DEMAND

Plaintiff hereby demands a trial by jury.

Dated: May 29, 2020

Castle Law: California Employment Counsel

By: _____


Timothy B. Del Castillo

Kent L. Bradbury

Attorneys for Plaintiff SHAWN BUCHANAN