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16 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

17 **COUNTY OF SAN BERNARDINO**

18 **SAN BERNARDINO JUSTICE CENTER**

19 CARMEN J. SANTIZO, individually, and on
20 behalf of all other aggrieved employees,

21 Plaintiff,

22 v.

23 BPS TACTICAL, INC., a California
24 corporation; and DOES 1 through 50,
25 inclusive,

26 Defendants.

CASE NO.:

CIV DS 2018001

**COMPLAINT FOR VIOLATION OF THE
PRIVATE ATTORNEYS GENERAL ACT
OF 2004**

[California Labor Code § 2698 *et seq.*]

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

AUG 27 2020

BY


ELISABETH MARTINEZ DEPUTY

1 This is a representative action brought by Carmen J. Santizo, individually and on behalf of all
2 other aggrieved employees ("Plaintiff"), alleging systematic violations of California wage and hour
3 laws committed by her former employer, BPS Tactical, Inc. ("Defendant"). Plaintiff makes the
4 following allegations on information and belief, except as to allegations pertaining to Plaintiff
5 individually, which are based on his personal knowledge.

6 **INTRODUCTION**

7 1. At all relevant times herein, Defendant has implemented policies and practices that have
8 resulted in systematic violations of California's wage and hour laws. Defendant engages in these
9 unlawful practices to maximize profits.

10 2. Defendant maximizes profits at the expense of its employees by cutting labor costs
11 through understaffing, denying meal and rest breaks, cheating non-exempt employees out of wages and
12 premiums, and related violations of California wage and hour laws.

13 3. For example, Defendant has implemented unlawful policies with respect to meal and
14 rest breaks. Defendant requires its non-exempt employees to routinely work through meal and rest
15 breaks while failing to pay them the legally-required premium pay for these missed and non-complaint
16 meal and rest breaks. In addition, Defendant does not maintain accurate records relating to the hours
17 worked by Plaintiff and the other aggrieved employees.

18 4. Plaintiff seeks civil penalties and other statutorily available relief for himself and other
19 current and former non-exempt employees of Defendant during the applicable limitations period to
20 compensate these workers for the wages Defendant has stolen from them and to protect workers from
21 being subjected to similar unlawful working conditions perpetrated by Defendant.

22 **JURISDICTION AND VENUE**

23 5. The Superior Court of the State of California has jurisdiction in this matter because
24 Plaintiff is a resident and citizen of the State of California, and Defendant regularly conducts business
25 in the State of California. No federal question is at issue because Plaintiff's claims are based solely on
26 California law.

27 6. Venue is proper in this judicial district and the County of San Bernardino because
28 Plaintiff and other aggrieved employees performed work for Defendant in the County of San

1 Bernardino and many of Defendant's unlawful actions and omissions, as set alleged herein, occurred
2 in the County of San Bernardino. In addition, Defendant's corporate office is locating in Redlands,
3 California which is located in the County of San Bernardino.

4 **THE PARTIES**

5 7. Plaintiff is a resident and citizen of the State of California and a former employee of
6 Defendant. Plaintiff was employed by Defendant as a seamstress and assembler, a non-exempt position,
7 during the time period of February 2019 to May 2020.

8 8. Plaintiff, on behalf of herself and all other aggrieved employees, brings this
9 representative action to recover wages and penalties for among other things, Defendant's failure to
10 provide legally compliant meal periods and rest breaks and failure to provide proper compensation for
11 missed and otherwise unlawful meal periods and rest breaks, unpaid and illegally calculated regular
12 and overtime compensation, Defendant's failure to pay all wages due to discharged or quitting non-
13 exempt employees, Defendant's failure to maintain required records, failure to provide accurate
14 itemized wage statements, and failure to comply with the requirements of California Labor Code
15 §2810.5 regarding wage theft and other violations of California wage and hour laws as alleged herein.

16 9. Defendant, which does business as BPS Tactical, manufactures Law Enforcement
17 products with an emphasis on custom manufacturing of Tactical Equipment and Nylon Duty Gear, and
18 at all times relevant herein was, a California corporation authorized to conduct business in the state of
19 California.

20 10. The true names and capacities of DOES 1 through 50, inclusive, are unknown to
21 Plaintiff at this time, and Plaintiff therefore sues such defendants under fictitious names. Plaintiff is
22 informed and believes, and thereon alleges, that each defendant designated as a DOE is in some manner
23 highly responsible for the occurrences alleged herein, and that Plaintiff and other aggrieved employees'
24 injuries and damages, as alleged herein, were proximately caused by the conduct of such DOE
25 defendants. Plaintiff will seek leave of the Court to amend this Complaint to allege the true names and
26 capacities of such DOE defendants when ascertained.

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1 them after working longer than five (5) hours, to perform work during their meal periods, or return to
2 work after taking less than a thirty (30) minute meal period.

3 15. Further, Defendant's policy is to not inform Plaintiff and aggrieved employees that they
4 are able to take meal periods before the fifth hour of work. This policy, combined with an unreasonable
5 workload, results in systematic late meal periods taken by Plaintiff and aggrieved employees.

6 16. Defendant also has no policy to provide second meal periods when Plaintiff and
7 aggrieved employees work shifts longer than ten hours. This is in direct contravention of California
8 law. *See Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1041 ("We conclude that,
9 absent waiver, section 512 requires a first meal period no later than the end of an employee's fifth hour
10 of work, and a second meal period no later than the end of an employee's 10th hour of work.")

11 17. Despite work conditions that systematically result in missed and non-compliant meal
12 periods, and in order to keep labor costs down, Defendant has implemented a policy and practice of
13 not paying meal period premium payments that are owed and due. This policy is in direct contravention
14 of California law, which requires Defendant to pay one hour at the employee's regular rate of pay for
15 a missed or interrupted meal period.

16 18. In sum, Defendant has violated California Labor Code §§ 226.7, § 11 of the applicable
17 IWC Wage Order, by failing to compensate Plaintiff and aggrieved employees who were not authorized
18 and permitted to take a complete, timely, uninterrupted meal period, one additional hour of
19 compensation at the proper regular rate of pay for each workday that such a meal period was not
20 authorized or permitted. Defendant further violated California Labor Code sections 226.7, 510, 558,
21 1194, 1197, and § 11 of the applicable IWC Wage Order by failing to compensate Plaintiff and Class
22 members for all hours worked during their meal periods.

23 **Failure to Provide Required Rest Breaks**

24 **[Cal. Lab. Code §§ 226.7, 512; IWC Wage Order No. 7-2001, § 12**

25 **and all other applicable IWC Wage Orders]**

26 19. During the statute of limitations period, Defendant has failed to authorize and permit
27 Plaintiff and other aggrieved employees to take rest breaks as required under California Labor Code §§
28 226.7 and 512, and IWC Wage Order No. 7-2001, § 12 and all other applicable IWC Wage Orders.

20. As with meal periods, Defendant's policies and practices caused Plaintiff and other aggrieved employees to miss or otherwise take non-compliant rest periods by, among other things, giving them unreasonable amounts of work that had to be completed within their shift, and relatedly, engaging in gross understaffing and setting unrealistic project goals, such that rest periods as a practical matter could not be taken. For example, Plaintiff would be so busy with a project that he could not complete within the deadlines set by Defendant without skipping his rest breaks.

21. Defendant further violated California Labor Code § 226.7, IWC Wage Order No. 7-2001, § 11 and all other applicable IWC Wage Orders, by failing to pay Plaintiff and other aggrieved employees who were not provided with a rest break, in accordance with the applicable wage order, one additional hour of compensation at the proper regular rate of pay for each workday that a rest break was not provided.

Failure to Pay Overtime Wages

[Cal. Lab. Code §§ 510, 1194, 1198; IWC Wage Order No. 7-2001, § 3

and all other applicable IWC Wage Orders]

22. Pursuant to California Labor Code §§ 510, 1194, and IWC Wage Order No. 7-2001, § 3, and all other applicable IWC Wage Orders, Defendant is required to compensate Plaintiff and other aggrieved employees for all overtime, which is calculated at one and one-half (1 ½) times the regular rate of pay for all hours worked in excess of eight (8) hours per day and/or forty (40) hours per week, and for the first eight (8) hours on the seventh consecutive workday, with double time for all hours worked in excess of twelve (12) hours in any workday and for all hours worked in excess of eight (8) hours on the seventh consecutive day of work in any workweek.

23. Plaintiff and other aggrieved employees are current and former non-exempt employees entitled to the protections of California Labor Code §§ 510, 1194, and IWC Wage Order No. 7-2001 and all other IWC Wage Orders. During the statute of limitations period, Defendant failed to compensate Plaintiff and other aggrieved employees for all overtime hours worked as required under the foregoing provisions of the California Labor Code and IWC Wage Order by, among other methods, failing to pay overtime at one and one-half (1½) or double the regular rate of pay as provided by California Labor Code §§ 510, 1194 and IWC Wage Order No. 7-2001, § 3 and all other applicable

1 IWC Wage Orders, requiring, permitting or suffering Plaintiff and other aggrieved employees to work
2 off-the-clock, and to work through meal periods and rest breaks, but not compensating them for this
3 time, and other methods to be discovered.

4 24. Defendant has knowingly and willfully refused to perform its obligations to compensate
5 Plaintiff and other aggrieved employees for all wages earned and all hours worked in violation of
6 California Labor Code §§ 510, 1194 and 1198 and IWC Wage Order No. 7-2001, § 3 and all other
7 applicable IWC Wage Orders.

8 **Failure to Timely Pay Wages During Employment**

9 **[Cal. Lab. Code § 204]**

10 25. Pursuant to California Labor Code § 204, for all labor performed between the 1st and
11 15th days of any calendar month, Defendant is required to pay its nonexempt employees between the
12 16th and 26th day of the month during which the labor was performed. California Labor Code § 204
13 also provides that for all labor performed between the 16th and 26th days of any calendar month,
14 Defendant is required to pay its non-exempt employees between the 1st and 10th day of the following
15 calendar month. In addition, California Labor Code § 204 provides that all wages earned for labor in
16 excess of the normal work period shall be paid no later than the payday of the next regular payroll
17 period.

18 26. During the statute of limitations period, Defendant has knowingly and willfully failed
19 to timely pay Plaintiff and other aggrieved employees all the wages for labor performed by the next
20 regular payroll period as required by California Labor Code § 204.

21 **Failure to Pay All Wages Due to Discharged and Quitting Employees**

22 **[Cal. Lab. Code §§ 201, 202, 203]**

23 27. Pursuant to California Labor Code § 201, 202 and 203, Defendant is required to pay all
24 earned and unpaid wages to an employee who is discharged. California Labor Code § 201 mandates
25 that if an employer discharges an employee, the employee's wages accrued and unpaid at the time of
26 discharge are due and payable immediately.

27 28. Furthermore, pursuant to California Labor Code § 202, Defendant is required to pay all
28 accrued wages due to an employee no later than 72 hours after the employee quits his or her

1 employment, unless the employee provided 72 hours previous notice of his or her intention to quit, in
2 which case the employee is entitled to his or wages at the time of quitting.

3 29. California Labor Code § 203 provides that if an employer willfully fails to pay, in
4 accordance with Labor Code §§ 201 and 202, any wages of an employee who is discharged or who
5 quits, the employer is liable for waiting time penalties in the form of continued compensation to the
6 employee at the same rate for up to 30 workdays.

7 30. During the statute of limitations period, Defendant has willfully failed to pay accrued
8 wages and other compensation to Plaintiff and other aggrieved employees in accordance with
9 California Labor Code §§ 201 and 202. Because Defendant has failed and continues to fail to properly
10 compensate Plaintiff and other aggrieved employees for all hours worked when due, overtime and
11 minimum wages, and compensation for non-compliant meal periods and rest breaks, Defendant has
12 also willfully failed and continues to fail to pay accrued wages and other compensation to Plaintiff and
13 other aggrieved employees in accordance with California Labor Code §§ 201 and 202.

14 **Failure to Maintain Required Records**

15 **[Cal. Lab. Code §§ 226(a), 1174(d); IWC Wage Order No. 7-2001, § 7**

16 **and all other applicable IWC Wage Orders]**

17 31. During the statute of limitations period, as part of Defendant's illegal payroll policies
18 and practices to deprive Plaintiff and other aggrieved employees of all wages earned and due,
19 Defendant knowingly and intentionally failed to maintain records as required under California Labor
20 Code §§ 226(a) and 1174(d) and IWC Wage Order No. 7-2001, § 7 and all applicable IWC Wage
21 Orders, including but not limited to the following records: total daily hours worked by each aggrieved
22 employee; applicable rates of pay; all deductions; meal periods; time records showing when each
23 employee begins and ends each work period; and accurate itemized wage statements. Among other
24 things, Defendant has systematically failed to maintain records of when Plaintiff and aggrieved
25 employees take meal periods (when they are able to take them). In addition, Defendant had knowledge
26 that it was not providing its non-exempt employees with proper meal and rest periods, but knowingly
27 failed to include in the wage statements one (1) extra hour of compensation for each missed meal and
28 rest period. Defendant also illegally and inaccurately recorded the time in which Plaintiff and other

1 aggrieved employees worked.

2 **Failure to Furnish Accurate Itemized Wage Statements**

3 **[Cal. Lab. Code § 226(a); IWC Wage Order No. 7-2001, § 7**

4 **and all other applicable IWC Wage Orders]**

5 32. During the statute of limitations period, Defendant has routinely failed to provide
6 Plaintiff and other aggrieved employees with timely and accurate itemized wage statements.
7 Defendant's pay stubs violate California Labor Code § 226 on their face by, among other things, by
8 not including the legal name and address of Defendant and not providing Plaintiff and other aggrieved
9 employees with proper meal periods and rest breaks but intentionally failing to include in their wage
10 statements one (1) additional hour of compensation at their regular rates of pay for each non-compliant
11 meal period or rest break.

12 33. In order to conceal its wage theft, Defendant knowingly and intentionally failed to
13 provide Plaintiff and other aggrieved employees with timely and accurate itemized wage statements in
14 accordance with Labor Code § 226(a) IWC Wage Order No. 7-2001 § 7 and all other applicable IWC
15 Wage Orders.

16 34. Plaintiff and other aggrieved employees suffered injury as a result of Defendant's failure
17 to provide timely and accurate itemized wage statements because it prevented them from discovering
18 the scope and extent of Defendant's violations of California wage and hour laws, prevented them from
19 being able to determine the gross wages earned, the total hours worked, all deductions made, the net
20 wages earned, all applicable hourly rates in effect during each pay period and the corresponding number
21 of hours worked at each hourly rate, or even the name of the legal entity that employed them.

22 **Failure to Provide Notice of Employer-Related Information**

23 **[Cal. Lab. Code § 2810.5]**

24 35. Cal. Lab. Code § 2810.5 requires an employer in California to provide written notice at
25 the time of hiring of certain employment-related information, as follows:

26 “(A) The rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week,
27 salary, piece, commission, or otherwise, including any rates for overtime, as applicable.
28

1 (B) Allowances, if any, claimed as part of the minimum wage, including meal or lodging
2 allowances.

3 (C) The regular payday designated by the employer in accordance with the requirements
4 of this code.

5 (D) The name of the employer, including any “doing business as” names used by the
6 employer.

7 (E) The physical address of the employer’s main office or principal place of business, and
8 a mailing address, if different.

9 (F) The telephone number of the employer.

10 (G) The name, address, and telephone number of the employer’s workers’ compensation
11 insurance carrier.

12 (H) That an employee: may accrue and use sick leave; has a right to request and use accrued
13 paid sick leave; may not be terminated or retaliated against for using or requesting the use
14 of accrued paid sick leave; and has the right to file a complaint against an employer who
15 retaliates.

16 (I) Any other information the Labor Commissioner deems material and necessary.”

17 36. Defendants have failed to comply with Cal. Lab. Code § 2810.5 because they did not
18 provide Plaintiff and other aggrieved employees with notice of the requirements set forth above. More
19 specifically, the notice forms provided to Plaintiff and other aggrieved employees contained none of
20 the required information, such as the legal name of the hiring employer, rate of pay, etc.

21 **FIRST CAUSE OF ACTION**

22 **VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT**

23 **[Cal. Lab. Code § 2698 *et seq.*]**

24 ***(On Behalf of Plaintiff and Aggrieved Employees against all Defendants)***

25 37. Plaintiff incorporates herein by specific reference, as though fully set forth, the
26 allegations in paragraphs 1 through 36.

27 38. Plaintiff is an “aggrieved employee” within the meaning of California Labor Code §
28 2699(c), and a proper representative to bring a civil action on behalf of himself and other aggrieved
employees pursuant to the procedures specified in California Labor Code § 2699.3, because Plaintiff
was employed by Defendant and one or more of the alleged California Labor Code violations was

1 committed against Plaintiff during the statute of limitations period.

2 39. Plaintiff seeks to recover civil penalties through a representative action permitted by
3 PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal.4th 969. Thus, class
4 certification is not required.

5 40. Pursuant to California Labor Code §§ 2698-2699.5, Plaintiff seeks to recover civil
6 penalties from Defendant in a representative action for the violations set forth above, including but not
7 limited to violations of California Labor Code §§ 201, 202, 203, 204, 226(a), 226.7, 510, 512, 558,
8 1174(d), 1194, 1197, and 1198.

9 41. Pursuant to California Labor Code § 2699(a), Plaintiff seeks to recover civil penalties
10 for Defendant's violations of California Labor Code provisions for which a civil penalty is specifically
11 provided, including but not limited to, the following:

- 12 a. Pursuant to California Labor Code § 210, for violations of California Labor Code §
13 204, Defendant is subject to a civil penalty in the amount of one hundred dollars
14 (\$100) for the initial violation for each failure to pay each employee, and two
15 hundred dollars (\$200) per employee for violations in subsequent pay periods.
- 16 b. Pursuant to California Labor Code § 226.3, for violations of California Labor
17 Code § 226(a), Defendant is subject to a civil penalty in the amount of two
18 hundred and fifty dollars (\$250) per aggrieved employee for the initial pay period
19 where a violation occurs and one thousand dollars (\$1,000) per aggrieved
20 employee for violations in subsequent pay periods.
- 21 c. Pursuant to California Labor Code § 558(a), "[a]ny employer or other person
22 acting on behalf of an employer who violates, or causes to be violated, a section of
23 this chapter or any provision regulating hours and days of work in any order of the
24 Industrial Welfare Commission," including California Labor Code §§ 510 and
25 512, shall be subject to a civil penalty, in addition to any other penalty provided by
26 law, of fifty dollars (\$50) for initial violations for each underpaid employee for
27 each pay period for which the employee was underpaid and one hundred dollars
28

1 (\$100) for each subsequent violation for each underpaid employee for each pay
2 period for which the employee was underpaid. In addition, Plaintiff seeks civil
3 penalties in the amount sufficient to recover unpaid wages owed to aggrieved
4 employees pursuant to California Labor Code § 558(a).

5 d. Pursuant to California Labor Code § 1174.5, for violations of California Labor
6 Code § 1174(d), Defendant is subject to a civil penalty of five hundred dollars
7 (\$500).

8 42. California Labor Code § 2699(f) provides that for all California Labor Code violations
9 for which a civil penalty is not specifically provided, the following civil penalties are established: one
10 hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two
11 hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.

12 43. Plaintiff seeks to recover penalties pursuant to California Labor Code § 2699 for
13 Defendant's violations of the California Labor Code provisions for which a civil penalty is not
14 specifically provided, including but not limited to, California Labor Code §§201, 202, 203, 226.7 and
15 1198. All penalties sought and recovered under this action will be allocated as follows: 75 percent to
16 the state of California and 25 percent to aggrieved employees.

17 44. Plaintiff additionally seeks reasonable attorneys' fees and costs pursuant to California
18 Labor Code § 2699(g)(1), California Code of Civil Procedure § 1021.5, and any other applicable
19 laws, rules, or doctrines.

20 **PRAYER FOR RELIEF**

21 WHEREFORE, Plaintiff, individually and on behalf of all other aggrieved employees, prays
22 for relief against Defendant as follows:

23 1. For civil penalties according to proof, including but not limited to, the amount of any
24 unpaid wages of Plaintiff and the other aggrieved employees and all penalties authorized by California
25 Labor Code §§210, 226.3, 558, 1174.5, and 2699(a) and (f);

26 2. For reasonable attorneys' fees and costs pursuant to California Labor Code § 2699(g),
27 California Code of Civil Procedure § 1021.5, and/or any other applicable provisions providing for
28 attorneys' fees and costs; and

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

2 DATED: August 24, 2020

LAW OFFICE OF SCOTT E. WHEELER

3
4 By 

5 Scott E. Wheeler

6 THE WAND LAW FIRM, P.C.
7 Aubry Wand

8 *Attorneys for Plaintiff*
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