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12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

13 **IN AND FOR THE COUNTY OF SAN DIEGO**

14 EDMUNDO HOLGUIN, on behalf of the
15 State of California, as a private attorney
16 general,

17 Plaintiff,

18 vs.

19 HAWTHORNE MACHINERY CO., a
20 California Corporation; and DOES 1
21 through 50, inclusive,

22 Defendants.

Case No. 37-2021-00003107-CU-OE-CTL

REPRESENTATIVE ACTION COMPLAINT
FOR:

1. Civil Penalties Pursuant to Labor Code
§ 2699, *et seq.* for violations of Labor
Code §§ 201, 202, 203, 204 *et seq.*, 210,
226(a), 226.7, 351, 510, 512, 558(a)(1)(2),
1194, 1197, 1197.1, 1198, 2802,
California Code of Regulations, Title 8,
Section 11040, Subdivision 5(A)-(B).

1 Plaintiff Edmundo Holguin (“PLAINTIFF”), on behalf of the people of the State of
2 California and as an “aggrieved employee” acting as a private attorney general under the Labor
3 Code Private Attorney General Act of 2004, § 2699, *et seq.* (“PAGA”) only, alleges on
4 information and belief, except for his own acts and knowledge which are based on personal
5 knowledge, the following:

6 **INTRODUCTION**

7 1. PLAINTIFF brings this action against Defendant Hawthorne Machinery Co.
8 (“DEFENDANT”) seeking only to recover PAGA civil penalties for himself, and on behalf of
9 all current and former aggrieved employees that worked for DEFENDANT. PLAINTIFF does
10 **not seek to recover anything other than penalties as permitted by California Labor Code**
11 **§ 2699**. To the extent that statutory violations are mentioned for wage violations, PLAINTIFF
12 does not seek underlying general and/or special damages for those violations, but simply the
13 civil penalties permitted by California Labor Code § 2699.

14 2. California has enacted the PAGA to permit an individual to bring an action on
15 behalf of himself and on behalf of others for PAGA penalties *only*, which is the precise and sole
16 nature of this action.

17 3. Accordingly, PLAINTIFF seeks to obtain all applicable relief for
18 DEFENDANT’s violations under PAGA and solely for the relief as permitted by PAGA – that
19 is, penalties and any other relief the Court deems proper pursuant to the PAGA. Nothing in this
20 complaint should be construed as attempting to obtain any relief that would not be available in
21 a PAGA-only action.

22 **THE PARTIES**

23 4. Defendant Hawthorne Machinery Co. (“DEFENDANT”) is a California
24 corporation that at all relevant times mentioned herein conducted and continues to conduct
25 substantial business in the state of California. Defendant is headquartered in San Diego County,
26 California.
27

28 5. DEFENDANT manufactures industrial machinery. DEFENDANT offers new and

1 used equipment, including heavy and compact equipment, generators, lighting, welders,
2 compressors, and dump trucks.

3 6. PLAINTIFF was employed by DEFENDANT in California from November of
4 2015 to May of 2020 and was at all times classified by DEFENDANT as a non-exempt
5 employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and
6 payment of minimum and overtime wages due for all time worked.

7 7. PLAINTIFF, and such persons that may be added from time to time who satisfy
8 the requirements and exhaust the administrative procedures under the Private Attorney General
9 Act, brings this Representative Action on behalf of the State of California with respect to
10 himself and all individuals who are or previously were employed by DEFENDANT in
11 California and classified as non-exempt employees ("AGGRIEVED EMPLOYEES") during
12 the time period of August 21, 2019 until a date as determined by the Court (the "PAGA
13 PERIOD").

14 8. PLAINTIFF, on behalf of himself and all AGGRIEVED EMPLOYEES presently
15 or formerly employed by DEFENDANT during the PAGA PERIOD, brings this representative
16 action pursuant to Labor Code § 2699, *et seq.* seeking fixed civil penalties for DEFENDANT's
17 violation of California Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 226(a), 226.7, 351, 510,
18 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8,
19 Section 11040, Subdivision 5(A)-(B), and the applicable Wage Order(s). Based upon the
20 foregoing, PLAINTIFF and all AGGRIEVED EMPLOYEES are aggrieved employees within
21 the meaning of Labor Code § 2699, *et seq.*

22 9. The true names and capacities, whether individual, corporate, subsidiary,
23 partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently
24 unknown to PLAINTIFF who therefore sues these Defendants by such fictitious names pursuant
25 to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this Complaint to allege
26 the true names and capacities of Does 1 through 50, inclusive, when they are ascertained.
27 PLAINTIFF is informed and believes, and based upon that information and belief alleges, that
28 the Defendants named in this Complaint, including DOES 1 through 50, inclusive, are

1 responsible in some manner for one or more of the events and happenings that proximately
2 caused the injuries and damages hereinafter alleged.

3 10. The agents, servants and/or employees of the Defendants and each of them acting
4 on behalf of the Defendants acted within the course and scope of his, her or its authority as the
5 agent, servant and/or employee of the Defendants, and personally participated in the conduct
6 alleged herein on behalf of the Defendants with respect to the conduct alleged herein.
7 Consequently, the acts of each Defendant are legally attributable to the other Defendants and
8 all Defendants are jointly and severally liable to PLAINTIFF and the other AGGRIEVED
9 EMPLOYEES, for the loss sustained as a proximate result of the conduct of the Defendants'
10 agents, servants and/or employees.

11 THE CONDUCT

12
13 11. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
14 required to pay PLAINTIFF and AGGRIEVED EMPLOYEES for all their time worked,
15 meaning the time during which an employee is subject to the control of an employer, including
16 all the time the employee is suffered or permitted to work. DEFENDANT required PLAINTIFF
17 and AGGRIEVED EMPLOYEES to work without paying them for all the time they were under
18 DEFENDANT's control. Specifically, DEFENDANT required PLAINTIFF to work while
19 clocked out during what was supposed to be PLAINTIFF's off-duty meal break. PLAINTIFF
20 was from time to time interrupted by work assignments while clocked out for what should have
21 been PLAINTIFF's off-duty meal break. Further, PLAINTIFF and the other AGGRIEVED
22 EMPLOYEES from time to time were not paid wages for all time worked, including overtime
23 wages, such that in the aggregate employees were underpaid wages as a result of
24 DEFENDANT's pattern and practice of unevenly rounding time worked by its employees.
25 Also, DEFENDANT underpaid sick pay wages to PLAINTIFF and other AGGRIEVED
26 EMPLOYEES by failing to pay such wages at the regular rate of pay. Specifically, PLAINTIFF
27 and other non-exempt employees regularly earn non-discretionary remuneration, including but
28 not limited to, incentives, shift differential pay, and bonuses. Rather than pay sick pay at the

1 regular rate of pay, DEFENDANT underpaid sick pay to PLAINTIFF and other AGGRIEVED
2 EMPLOYEES at their base rates of pay. DEFENDANT's uniform policy and practice not to pay
3 PLAINTIFF and other AGGRIEVED EMPLOYEES for all time worked, is evidenced by
4 DEFENDANT's business records.

5 12. As a result of their rigorous work schedules, PLAINTIFF and other AGGRIEVED
6 EMPLOYEES were from time to time unable to take thirty (30) minute off duty meal breaks
7 and were not fully relieved of duty for their meal periods. PLAINTIFF and other AGGRIEVED
8 EMPLOYEES were required from time to time to perform work as ordered by DEFENDANT
9 for more than five (5) hours during some shifts without receiving a meal break. Further,
10 DEFENDANT from time to time failed to provide PLAINTIFF and AGGRIEVED
11 EMPLOYEES with a second off-duty meal period for some workdays in which these employees
12 were required by DEFENDANT to work ten (10) hours of work. PLAINTIFF and other
13 AGGRIEVED EMPLOYEES therefore forfeited meal breaks without additional compensation
14 and in accordance with DEFENDANT's strict corporate policy and practice.

15 13. During the PAGA PERIOD, PLAINTIFF and other AGGRIEVED EMPLOYEES
16 were also required from time to time to work in excess of four (4) hours without being provided
17 ten (10) minute rest periods. Further, these employees were denied their first rest periods of at
18 least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours from time to
19 time, a first and second rest period of at least ten (10) minutes for some shifts worked of
20 between six (6) and eight (8) hours from time to time, and a first, second and third rest period
21 of at least ten (10) minutes for some shifts worked of ten (10) hours or more from time to time.
22 PLAINTIFF and other AGGRIEVED EMPLOYEES were also not provided with one hour
23 wages in lieu thereof. Additionally, the applicable California Wage Order requires employers
24 to provide employees with off-duty rest periods, which the California Supreme Court defined
25 as time during which an employee is relieved from all work related duties and free from
26 employer control. In so doing, the Court held that the requirement under California law that
27 employers authorize and permit all employees to take rest period means that employers must
28 relieve employees of all duties and relinquish control over how employees spend their time

1 which includes control over the locations where employees may take their rest period.
2 Employers cannot impose controls that prohibit an employee from taking a brief walk - five
3 minutes out, five minutes back. Here, DEFENDANT's uniform policy restricted PLAINTIFF
4 and other AGGRIEVED EMPLOYEES from unconstrained walks and was unlawful based on
5 Defendant's rule which stated PLAINTIFF and other AGGRIEVED EMPLOYEES could not
6 leave the work premises during their rest period.

7 14. During the PAGA PERIOD, DEFENDANT failed to accurately record and pay
8 PLAINTIFF and other AGGRIEVED EMPLOYEES for the actual amount of time these
9 employees worked. Pursuant to the Industrial Welfare Commission Wage Orders,
10 DEFENDANT is required to pay PLAINTIFF and other AGGRIEVED EMPLOYEES for all
11 time worked, meaning the time during which an employee was subject to the control of an
12 employer, including all the time the employee was permitted or suffered to permit this work.
13 DEFENDANT required these employees to work off the clock without paying them for all the
14 time they were under DEFENDANT's control. As such, DEFENDANT knew or should have
15 known that PLAINTIFF and the other AGGRIEVED EMPLOYEES were under compensated
16 for all time worked. As a result, PLAINTIFF and other AGGRIEVED EMPLOYEES forfeited
17 time worked by working without their time being accurately recorded and without compensation
18 at the applicable minimum wage and overtime wage rates. To the extent that the time worked
19 off the clock did not qualify for overtime premium payment, DEFENDANT failed to pay
20 minimum wages for the time worked off-the-clock in violation of Cal. Lab. Code §§ 1194,
21 1197, and 1197.1.

22 15. DEFENDANT intentionally and knowingly failed to reimburse and indemnify
23 PLAINTIFF and the other AGGRIEVED EMPLOYEES for required business expenses
24 incurred by PLAINTIFF and other AGGRIEVED EMPLOYEES in direct consequence of
25 discharging their duties on behalf of DEFENDANT. Under California Labor Code Section
26 2802, employers are required to indemnify employees for all expenses incurred in the course
27 and scope of their employment. Cal. Lab. Code § 2802 expressly states that "an employer shall
28 indemnify his or her employee for all necessary expenditures or losses incurred by the employee

1 in direct consequence of the discharge of his or her duties, or of his or her obedience to the
2 directions of the employer, even though unlawful, unless the employee, at the time of obeying
3 the directions, believed them to be unlawful."

4 16. In the course of their employment PLAINTIFF and other AGGRIEVED
5 EMPLOYEES as a business expense, were required by DEFENDANT to use their own personal
6 cellular phones as a result of and in furtherance of their job duties as employees for
7 DEFENDANT but were not reimbursed or indemnified by DEFENDANT for the cost
8 associated with the use of their personal cellular phones for DEFENDANT's benefit. As a
9 result, in the course of their employment with DEFENDANT, PLAINTIFF and other
10 AGGRIEVED EMPLOYEES incurred unreimbursed business expenses which included, but
11 were not limited to, costs related to the use of their personal cellular phones all on behalf of and
12 for the benefit of DEFENDANT.

13 17. From time to time, DEFENDANT also failed to provide PLAINTIFF and the
14 other AGGRIEVED EMPLOYEES with complete and accurate wage statements which failed
15 to show, among other things, the correct gross and net wages earned. Cal. Lab. Code § 226
16 provides that every employer shall furnish each of his or her employees with an accurate
17 itemized wage statement in writing showing, among other things, gross wages earned and all
18 applicable hourly rates in effect during the pay period and the corresponding amount of time
19 worked at each hourly rate. Aside, from the violations listed above in this paragraph,
20 DEFENDANT failed to issue to PLAINTIFF an itemized wage statement that lists all the
21 requirements under California Labor Code 226 *et seq.* As a result, DEFENDANT from time to
22 time provided PLAINTIFF and the other AGGRIEVED EMPLOYEES with wage statements
23 which violated Cal. Lab. Code § 226.

24 18. In violation of the applicable sections of the California Labor Code and the
25 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as
26 a matter of company policy, practice and procedure, intentionally, knowingly and systematically
27 failed to compensate PLAINTIFF and the other AGGRIEVED EMPLOYEES for missed meal
28 and rest periods. This uniform policy and practice of DEFENDANT is intended to purposefully

1 avoid the payment for all time worked as required by California law which allows
2 DEFENDANT to illegally profit and gain an unfair advantage over competitors who complied
3 with the law. To the extent equitable tolling operates to toll claims by the AGGRIEVED
4 EMPLOYEES against DEFENDANT, the PAGA PERIOD should be adjusted accordingly.

5 19. By reason of this uniform conduct applicable to PLAINTIFF and all
6 AGGRIEVED EMPLOYEES, DEFENDANT engaged in a company-wide policy and procedure
7 which failed to accurately calculate and record all missed meal and rest periods by PLAINTIFF
8 and other AGGRIEVED EMPLOYEES. The proper recording of these employees' missed
9 meal and rest breaks is the DEFENDANT's burden. As a result of DEFENDANT's intentional
10 disregard of the obligation to meet this burden, DEFENDANT failed to properly calculate
11 and/or pay all required compensation for work performed by the AGGRIEVED EMPLOYEES
12 and violated the California Labor Code and regulations promulgated thereunder as herein
13 alleged.

14 20. All of the conduct and violations alleged herein occurred during the PAGA
15 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect
16 PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations that
17 affected other AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.* 2018
18 AJDAR 12157 (Certified for Publication 12/19/18).

19 20 **JURISDICTION AND VENUE**

21 21. This Court has jurisdiction over this Action pursuant to California Code of Civil
22 Procedure, Section 410.10.

23 22. Venue is proper in this Court pursuant to California Code of Civil Procedure,
24 Sections 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANT and
25 DEFENDANT (i) currently maintains and at all relevant times maintained offices and facilities
26 in this County and/or conducts substantial business in this County, and (ii) committed the
27 wrongful conduct herein alleged in this County against PLAINTIFF and the AGGRIEVED
28 EMPLOYEES.

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1 now commence a representative civil action under PAGA pursuant to Section 2699 as the
2 proxy of the State of California with respect to all AGGRIEVED EMPLOYEES as herein
3 defined.

4 27. The policies, acts and practices heretofore described were and are an unlawful
5 business act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the
6 other AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to
7 properly record and provide legally required meal and rest periods, (c) failed to pay overtime
8 wages, (d) failed to pay minimum wages, (e) failed to reimburse for required expenses, and
9 (f) failed to provide wages when due, all in violation of the applicable Labor Code sections
10 listed in Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 226(a), 226.7, 351, 510, 512,
11 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8,
12 Section 11040, Subdivision 5(A)-(B), and the applicable Industrial Wage Order(s), and
13 thereby gives rise to civil penalties as a result of such conduct.¹ PLAINTIFF hereby seeks
14 recovery of only civil penalties as prescribed by the Labor Code Private Attorney General
15 Act of 2004 as the representative of the State of California for the illegal conduct
16 perpetrated on PLAINTIFF and the other AGGRIEVED EMPLOYEES.

17
18 **PRAYER FOR RELIEF**

19 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and
20 severally, as follows:

- 21 1. On behalf of the State of California and with respect to all AGGRIEVED
22 EMPLOYEES:

23 A) Recovery of civil penalties as prescribed by the Labor Code Private
24 Attorneys General Act of 2004; and,

25 ///

26 ///

27 _____
28 ¹Plaintiff specifically excludes and/or does not allege any claims under California Labor
Code §558(a)(3).

B) An award of attorneys' fees and cost of suit, as allowable under the law, including, but not limited to, pursuant to Labor Code §2699.

Dated: January 22, 2021 **BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP**

By: /s/ Norman Blumenthal
Norman B. Blumenthal

Attorneys for Plaintiff