

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Richard Burdge

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

ESTUARDO GOMEZ, as an individual and
on behalf of all others similarly situated,

Plaintiff,

vs.

S BRAVO SYTEMS, INC., a California
corporation; and DOES 1 through 100,

Defendants.

Case No.: **20STCV46255**

**REPRESENTATIVE ACTION
COMPLAINT:**

**(1) CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS GENERAL
ACT (LABOR CODE § 2698, et seq.)**

UNLIMITED CIVIL CASE

1 Plaintiff Estuardo Gomez ("Plaintiff"), on behalf of himself, all other aggrieved
2 employees, and the State of California, hereby brings this Representative Action Complaint
3 ("Complaint") against S. Bravo Systems, Inc., a California corporation, and DOES 1 to 100,
4 inclusive (collectively, "Defendants"), and on information and belief allege as follows:

5 **JURISDICTION**

6 1. Plaintiff, on behalf of himself, all other aggrieved employees, and the State of
7 California, hereby brings this Complaint for recovery of civil penalties under the Private
8 Attorneys General Act, Labor Code § 2698, *et seq.* ("PAGA"), and Industrial Welfare
9 Commission Wage Order 1 ("Wage Order 1"). The monetary damages that Plaintiff seeks exceed
10 this Court's jurisdictional minimum.

11 **VENUE**

12 2. Venue is proper in this judicial district pursuant to California Code of Civil
13 Procedure §§ 395(a) and 395.5, as at least some of the acts and omissions complained of herein
14 occurred in Los Angeles County. Defendants own, maintain offices, transact business, have an
15 agent or agents within Los Angeles County, and/or otherwise are found within Los Angeles
16 County, and Defendants are within the jurisdiction of this Court for purposes of service of process.

17 **PARTIES**

18 3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
19 Plaintiff was, and currently is, a California resident. Within the statute of limitations periods
20 applicable to each cause of action pled herein, Plaintiff was employed by Defendants as a non-
21 exempt employee.

22 4. Plaintiff is informed and believes, and based thereon alleges, that within the statute
23 of limitations period applicable to each cause of action pled herein and continuing to the present,
24 Defendants did (and continue to do) business of manufacturing secondary containment fiberglass
25 products, and employed Plaintiff and other non-exempt employees within Los Angeles County
26 and the state of California and, therefore, were (and are) doing business in Los Angeles County
27 and the State of California.

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1 5. Plaintiff does not know the true names or capacities, whether individual, partner,
2 or corporate, of the defendants sued herein as DOES 1 to 100, inclusive, and for that reason, said
3 defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to
4 amend this Complaint when such true names and capacities are discovered. Plaintiff is informed,
5 and believes, and based thereon alleges, that each of said fictitious defendants, whether individual,
6 partners, or corporate, were responsible in some manner for the acts and omissions alleged herein,
7 and proximately caused Plaintiff and other aggrieved employees to be subject to the unlawful
8 employment practices, wrongs, injuries and damages complained of herein.

9 6. Plaintiff is informed and believes, and thereon alleges, that at all times mentioned
10 herein, Defendants were and are the employers of Plaintiff and other aggrieved employees.

11 7. At all times herein mentioned, each of said Defendants participated in the doing
12 of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the
13 Defendants, and each of them, were the agents, servants, and employees of each and every one of
14 the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned
15 were acting within the course and scope of said agency and employment. Defendants, and each
16 of them, approved of, condoned, and/or otherwise ratified each and every one of the acts or
17 omissions complained of herein.

18 8. At all relevant times, Defendants, and each of them, were members of and engaged
19 in a joint venture, partnership, and common enterprise, and acted within the course and scope of
20 and in pursuance of said joint venture, partnership, and common enterprise. Further, all
21 Defendants were joint employers for all purposes of Plaintiff and other aggrieved employees.

22 **REPRESENTATIVE ACTION ALLEGATIONS**

23 9. Defendants are in the business of manufacturing secondary containment fiberglass
24 products. Plaintiff has worked for Defendants as a non-exempt employee from approximately
25 2016 through the present, although Plaintiff has been on a medical leave since approximately
26 November 26, 2019. As a non-exempt production employee, Plaintiff's primary job duties
27 included manufacturing fiberglass tanks for fuel companies, such as Chevron and Shell.

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1 10. Pursuant to California Judicial Council Emergency Rule 9, statutes of limitations
2 of more than 180 days were suspended from April 6, 2020 through October 1, 2020. As described
3 below, Plaintiff submitted his PAGA notice on September 23, 2020. Accordingly, the relevant
4 time period for the violations described herein is based on the tolled statute of limitations date of
5 April 6, 2020. The “aggrieved employees” whom Plaintiff seeks to represent include all non-
6 exempt employees who worked for Defendant in California from April 6, 2019 (i.e., one year
7 prior to the beginning of the emergency tolling) to the present.

8 11. During Plaintiff’s tenure, Defendants failed to compensate Plaintiff and other
9 aggrieved employees for all minimum and overtime wages. Specifically, Defendants maintained
10 an unlawful policy/practice of requiring Plaintiff and other aggrieved employees to arrive at the
11 facility approximately 15 minutes prior to the scheduled start of their shift to don mandatory
12 protective gear, such as a full body suit, filter, gloves, and glasses. However, Defendants
13 expressly instructed employees to clock in for their shift *after* they completed donning their
14 protective gear. Accordingly, Defendants’ timekeeping system did not capture the time Plaintiff
15 and other aggrieved employees spent donning their protective gear, including on occasions where
16 they worked over 8 hours in a workday or over 40 hours in a workweek. Therefore, Defendants
17 failed to compensate for all minimum and overtime wages earned.

18 12. Plaintiff and other aggrieved employees were also not provided with all required
19 meal periods due to Defendants’ meal period policies/practices, which fail to provide a timely
20 meal period of at least 30-minutes in duration, commencing before the conclusion of the fifth
21 hour of work due to, *inter alia*, work demands and the need for employees to finish up the task
22 they were working on before they could begin a meal period. For instance, on September 26,
23 2019, Plaintiff clocked in for his shift at 4:56 a.m. and did not clock out for his meal period until
24 10:05 a.m., which was after the conclusion of the fifth hour of work. Further, Defendants required
25 Plaintiff and/or other aggrieved employees to doff their mandatory protective gear after
26 employees clocked out for their meal period, and don their mandatory protective gear prior to
27 clocking back in from their meal period. Given that Defendants required Plaintiff and/or other
28 aggrieved employees to don and doff their protective gear during their meal period, and that

1 donning and doffing are compensable activities during which employees are subject to
2 Defendants' control, Defendants failed to provide a net 30-minutes for said meal period, resulting
3 in "short" meal periods.

4 13. Defendants also failed to authorize and permit rest periods of a net 10 minutes, as
5 Defendants would require Plaintiff and/or other aggrieved employees to doff and don their
6 protective equipment, or portions thereof, during their 10-minute rest periods, and therefore failed
7 to authorize and permit a full net 10 minutes of rest time for rest periods. Upon information and
8 belief, Defendants maintained no payroll code for paying rest period premiums under Labor Code
9 § 226.7 when it failed to authorize and permit rest periods in accordance with California law.

10 14. Additionally, Defendants required Plaintiff and aggrieved employees to work in
11 excess of 8.0 hours per workday and/or 40.0 hours per workweek, but otherwise failed to
12 compensate employees for all overtime hours worked at the regular rate of pay. Specifically,
13 Plaintiff and other aggrieved employees earned incentive pay, denoted as "Incentive" on the wage
14 statements, and other non-discretionary remuneration ("Incentive Pay"). However, Defendants
15 failed to factor in the value of Incentive Pay into the regular rate of pay for purposes of paying
16 overtime. Therefore, Defendants failed to pay for all overtime hours worked at the correct regular
17 rate of pay.

18 15. As a result of Defendants' failure to compensate Plaintiff and other aggrieved
19 employees for all minimum and overtime wages, as well as meal and rest period premium wages
20 earned, Defendant maintained inaccurate payroll records and issued inaccurate wage statements
21 to Plaintiff and other aggrieved employees that, among other things, failed to include all wages
22 earned, fail to accurately include all applicable hourly rates of pay, the corresponding number of
23 hours worked at each rate, total hours worked, and failed to reflect meal and rest period premium
24 pay for all meal and rest period violations.

25 16. Further, as a result of Defendants' failure to compensate its non-exempt employees
26 for all wages owed and meal and rest period premiums, Defendants also failed to pay all final
27 wages owed to aggrieved former employees upon their respective separations of employment.

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17. Based on the foregoing, Plaintiff seeks to represent himself and other aggrieved employees, as defined by Labor Code § 2699(c), who have been aggrieved by the Labor Code violations discussed herein. As noted above, pursuant to California Judicial Council Emergency Rule 9, statutes of limitations of more than 180 days were suspended for 178 days, from April 6, 2020 through October 1, 2020. Accordingly, for purposes of this Complaint, “aggrieved employees” refers to all of Defendants’ non-exempt employees in California from April 6, 2019 (one year preceding the emergency tolling period) through the present.

FIRST CAUSE OF ACTION

PRIVATE ATTORNEYS GENERAL ACT

(AGAINST ALL DEFENDANTS)

18. Plaintiff re-alleges and incorporates by reference all prior paragraphs as though fully set forth herein.

19. Defendants have committed Labor Code violations against Plaintiff and other aggrieved employees. Plaintiff is an “aggrieved employee” within the meaning of the PAGA and, acting on behalf of himself, other aggrieved employees, and the State of California, brings this representative action against Defendants to recover the civil penalties due to Plaintiff and other aggrieved employees against whom one or more of the violations has been committed, and the State of California according to proof, pursuant to Labor Code § 2699, including, but not limited to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200.00 for each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent violation pursuant to Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each initial violation of Labor Code § 226 and \$1,000.00 for each subsequent violation, pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for each initial violation and \$200.00 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided pursuant to Labor Code §

2699(f), based on the following Labor Code violations:

- a. Failing to pay Plaintiff and other aggrieved employees the statutory minimum wage for all hours worked in violation of Labor Code §§ 1182.12, 1194, 1194.2, 1197, and 1198;
- b. Failing to compensate Plaintiff and other aggrieved employees all overtime wages earned in violation of Labor Code §§ 204, 510, 558, 1194, and 1198;
- c. Failing to provide all legally required meal periods, and failing to pay meal period premium pay, to Plaintiff and other aggrieved employees in violation of Labor Code §§ 226.7, 512, 558, and 1198;
- d. Failing to authorize and permit all legally required rest periods, and failing to pay rest period premiums, to Plaintiff and other aggrieved employees in violation of Labor Code §§ 226.7, 516, 558, and 1198;
- e. Failing to furnish Plaintiff and other aggrieved employees with complete, accurate, itemized wage statements in violation of Labor Code § 226;
- f. Failing to timely pay all final wages and compensation earned by aggrieved former employees at the time of separation of employment, in violation of Labor Code §§ 201-203;
- g. Failing to pay Plaintiff and other aggrieved employees all earned wages at least twice during each calendar month, in violation of Labor Code § 204; and
- h. Failing to maintain accurate records on behalf of Plaintiff and other aggrieved employees, in violation of Labor Code § 1174.

20. On September 23, 2020, Plaintiff notified Defendant S. Bravo Systems, Inc., via certified mail, and the California Labor and Workforce Development Agency (“LWDA”) via its website, of Defendants’ violations of the California Labor Code and Plaintiff’s intent to bring a claim for civil penalties under PAGA with respect to violations of the California Labor Code identified in Paragraph 19 (a)-(h) above. Now that sixty-five days have passed from Plaintiff’s notifying Defendants and the LWDA of these violations, Plaintiff has exhausted his administrative requirements for bringing a claim under the PAGA with respect to these violations.

21. Plaintiff was compelled to retain the services of counsel to file this court action to protect his interests and the interests of other aggrieved employees, and to assess and collect the

1 civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys' fees and costs, which
2 he is entitled to recover under California Labor Code § 2699(g).

3 **PRAYER**

4 WHEREFORE, Plaintiff prays for judgment for himself and for all others on whose behalf
5 this suit is brought against Defendants, jointly and severally, as follows:

6 22. Upon the First Cause of Action, for civil penalties due to Plaintiff, other aggrieved
7 employees, and the State of California according to proof pursuant to Labor Code § 2699,
8 including, but not limited to: (1) \$100.00 for each initial violation for each failure to pay each
9 employee and \$200.00 for each subsequent violation or willful or intentional violation pursuant
10 to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully
11 withheld; (2) \$50.00 for each initial violation and \$100 for each subsequent violation pursuant to
12 Labor Code § 558 per employee per pay period; (3) \$100.00 for each initial violation and \$250.00
13 for each subsequent violation pursuant to Labor Code § 1197.1 per employee per pay period; (4)
14 \$250.00 for each initial violation of Labor Code § 226 and \$1,000.00 for each subsequent
15 violation, pursuant to Labor Code § 226.3 per employee per pay period; and/or (5) \$100.00 for
16 each initial violation and \$200.00 for each subsequent violation per employee per pay period for
17 those violations of the Labor Code for which no civil penalty is specifically provided, pursuant to
18 Labor Code § 2699(f);

19 23. On all causes of action, for attorneys' fees and costs as provided by Labor Code §
20 2699(g) and Code of Civil Procedure § 1021.5; and

21 24. For such other and further relief the Court may deem just and proper.

22 Dated: November 30, 2020

Respectfully submitted,
HAINES LAW GROUP, APC

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24 By:



Paul K. Haines
Attorneys for Plaintiff