

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Stephanie Bowick

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

ALEJANDRO PANUCO; ADRIAN
DELGADO ROSALES; NOE SILVA,

Plaintiffs,

vs.

BEACON SALES ACQUISITION, INC.
and DOES 1 to 25, inclusive,

Defendants.

CASE NO.: **21STCV18970**

COMPLAINT FOR DAMAGES FOR:

**1) PRIVATE ATTORNEYS GENERAL
ACT ("PAGA");**

COMES NOW Plaintiffs, ALEJANDRO PANUCO, ADRIAN DELGADO

ROSALES, and NOE SILVA (hereinafter collectively "Plaintiffs"), and allege as follows:

PARTIES, JURISDICTION, VENUE

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2 1. Jurisdiction and Venue are proper in this Court and this action is properly filed in the
3 County of Los Angeles in this judicial district because Defendants BEACON SALES
4 ACQUISITION, INC. and DOES 1 to 25, inclusive, do business in the County of Los Angeles
5 and because Defendants' obligations and liabilities arise therein, and because the work that was
6 performed by Plaintiffs in the County of Los Angeles is the subject of this action. Moreover,
7 Plaintiff's damages sought herein exceed \$25,000.

8 2. Plaintiff ALEJANDRO PANUCO ("Plaintiff Panuco" or "Panicu") is a male resident
9 of the County of Los Angeles, State of California.

10 3. Plaintiff ADRIAN DELGADO ROSALES ("Plaintiff Rosales" or "Rosales") is a male
11 resident of the County of Los Angeles, State of California.

12 4. Plaintiff NOE SILVA ("Plaintiff Silva" or "Silva") is a male resident of the County of
13 Los Angeles, State of California.

14 5. Plaintiffs are informed and believe that at all times herein mentioned, Defendant
15 BEACON SALES ACQUISITION, INC. (hereinafter "BEACON") is and was a Delaware
16 corporation, with its principal place of business in Virginia, and which employed Plaintiffs as
17 laborers in Commerce, California.

18 6. Plaintiffs are ignorant of the true names and capacities, whether individual, corporate,
19 or associate of those defendants fictitiously sued as DOES 1 to 25, inclusive, and so Plaintiffs
20 sue them by these fictitious names. Plaintiffs are informed and believe that each of the DOE
21 defendants, numbers 1 to 25, reside in the State of California and are in some manner
22 responsible for the conduct alleged herein. Upon discovering the true names and capacities of
23 these fictitiously named defendants, Plaintiffs will amend this complaint to show the true
24 names and capacities of these fictitiously named defendants.

25 7. Unless otherwise alleged in this complaint, Plaintiffs are informed, and on the basis of
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1 that information and belief, allege that at all times herein mentioned, each of the remaining
2 codefendants, in doing the things hereinafter alleged, were acting within the course, scope, and
3 under the authority of their agency, employment, or representative capacity, with the consent
4 of his/her codefendants.

5 **GENERAL ALLEGATIONS**

6 8. Plaintiff Panuco started working for BEACON approximately 5 years ago and is still
7 currently employed there. Plaintiff Panuco was hired as a “loader” or “signal man”. Plaintiff
8 Panuco works out of the Commerce Yard and is classified as an hourly, non-exempt employee.
9 Plaintiff Panuco’s hourly rate is \$16.75 per hour. Plaintiff Panuco would generally get “on call
10 texts” to his personal cell phone in the evening hours wherein he would be ordered to report to
11 work early in the morning. Plaintiff Panuco would generally work 125 hours in a two-week
12 period and would work 15 to 16-hour days.

13 9. Plaintiff Rosales started working for BEACON approximately 4 years ago and is still
14 currently employed there. Plaintiff Rosales was hired as a “loader” or “signal man”, however,
15 that job title recently changed to “Delivery Helper”. Plaintiff Rosales works out of the Commerce
16 yard and is classified as an hourly, non-exempt employee who earns \$16.75 per hour. Plaintiff
17 Rosales would generally get “on call texts” to his personal cell phone as late as 5pm to 7pm
18 wherein he would be ordered to report to work as early as 5am or 6am the following day. Plaintiff
19 Rosales would generally work 110 hours in a two-week period.

20 10. Plaintiff Silva started working for BEACON on or around January 2, 2019 and is still
21 currently employed at BEACON. Plaintiff Silva was hired as a “loader”. Plaintiff Silva works
22 out of the Commerce Yard and is classified as an hourly, non-exempt employee. Plaintiff Silva’s
23 hourly rate is \$16.12. Plaintiff Silva would generally get “on call texts” to his personal cell phone
24 in the evening hours wherein he would be ordered to report to work early in the morning. Plaintiff
25 Silva’s duties included tying down materials on the trucks, setting up the cranes and using them
26 to transport materials, climbing onto the roof to deliver and organize the materials (including
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1 putting the materials in specific areas to prevent the roof from collapsing), talk to the foreman
2 regarding moving the materials, working on the roof, and other such tasks.

3 11. It is Plaintiffs' position that BEACON has committed numerous labor code violations
4 against Plaintiffs other similarly situated aggrieved employees.

5 12. BEACON did not provide Plaintiffs and other similarly situated aggrieved employees
6 with the minimum wages to which they were entitled for all work performed and did not
7 compensate him and others for all hours worked pursuant to California Labor Code sections
8 1194, 1197 and 1197.1. Plaintiffs and others were not paid for all hours worked and
9 consistently worked "off the clock". This is so because employees such as Plaintiffs and others
10 worked through their meal periods as they were not compensated for that time, which would be
11 akin to a minimum wage violation. As will be alluded to below, BEACON's management
12 would ask Plaintiffs and others to clock out for their meal period so that it appears that a meal
13 period was taken and to then clock in after 30-minutes without actually taking a meal period
14 and continuing to work. Additionally, there was an issue with rounding work hours down and
15 time shaving to the detriment of employees such as Plaintiffs, who was not being paid for all
16 hours worked.

17 13. Furthermore, BEACON was subject to the prevailing wage laws of the State of California
18 pursuant to Labor Code § 1771, regarding work undertaken on public construction projects.
19 Under Labor Code § 1771, the only legal wage which may be paid to workers on public works
20 projects is the prevailing wage. BEACON compensated Plaintiffs and other similarly situated
21 aggrieved employees for their labor on public improvement, or public works construction
22 projects, at a rate of pay below the general prevailing rate of per diem wages for work of a similar
23 character in the locality in which the public work is performed, and less than the general
24 prevailing rate of per diem wages for holiday and overtime work.

25 14. BEACON was subject to the prevailing wage laws of the State of California pursuant to
26 Labor Code § 1774, regarding work undertaken on public construction projects. BEACON
27 violated Labor Code § 1774, because it paid its employees, including Plaintiffs, less than the
28 specific prevailing rates of wages to all workmen employed in the execution of the contract of

1 the projects. Plaintiffs others similarly situated worked on public works projects, including Metro
2 station, Montebello Town Hall, Downey Courthouse, schools in San Diego, the U.S. Postal
3 Service, etc. In fact, BEACON itself hires a company called Nacho's Delivery Service to do the
4 same work as Plaintiffs and other similarly situated aggrieved employees and those employees
5 do in fact receive the prevailing wage for working on Public Works projects. Plaintiff Panuco
6 and Plaintiff Rosales both complained to BEACON management about the fact that they were
7 working on prevailing wage projects but were not getting compensated the prevailing wage. The
8 excuse and justification given by BEACON management was that Plaintiffs and others were just
9 "delivery" workers, however, the truth of the matter is that Plaintiffs and others would actually
10 go on the roof and do manual labor, load materials on the roof, operate cranes, and operate other
11 heavy equipment.

12 15. Pursuant to Labor Code Section 1772, "Workmen employed by contractors or
13 subcontractors in the execution of any contract for public work are deemed to be employed upon
14 public work." It is Plaintiffs' position that the roofing materials that they delivered and hauled
15 were immediately incorporated into the public works site and NOT stockpiled for later re-
16 handling. As such, these specific roofing materials and the delivery of these roofing materials
17 was an integrated aspect of the flow process of construction on these public works projects, such
18 that Plaintiffs and others were performing "work under the contract" and should have been
19 entitled to the prevailing wage. Since the roofing materials were immediately distributed and
20 integrated into the project, Plaintiffs' and others' tasks were functionally related to the process
21 of construction, and thus, were heavily involved in the execution of the contract for public work.

22 16. Due to the above "off the clock" violations, BEACON violated Labor Code §510 because
23 it failed to pay Plaintiffs and other similarly situated aggrieved employees overtime, even though
24 they worked more than 8 hours per day, 12 hours per day, and/or 40 hours per week throughout
25 their employment. Plaintiffs' and others' actual work hours, which included the "off the clock"
26 work as described above, entitled them to overtime, however, it was not company policy to keep
27 accurate track of all hours worked and to pay employees the correct amount of overtime.
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Moreover, employee bonuses were not taken into account in calculating the overtime rate of pay. Furthermore, since Plaintiffs were not paid the prevailing wage on the public works projects, they were also not paid the corresponding prevailing wage overtime rate of pay.

17. BEACON also violated Labor Code §§ 512 and 226.7 along with the applicable Industrial Welfare Commission Wage Order (Wage Order no. 16) because it failed to provide Plaintiffs and other similarly situated aggrieved employees the requisite 30-minute, uninterrupted meal periods for every five (5) hours of work throughout their employment, and Plaintiffs did not validly waive said meal periods. BEACON did not completely relieve Plaintiffs of all duty during said meal periods. BEACON did not pay to Plaintiffs one additional hour of pay at Plaintiffs' regular rate of compensation for each workday that one or more statutory meal periods was not provided. It was not company policy and not part of the culture for employees such as Plaintiffs and others to take timely, uninterrupted meal breaks. As such, the culture at BEACON did not lend itself to the employees receiving timely statutory breaks wherein they were relieved of all work duties. Plaintiffs and others would consistently receive their meal breaks after the 5th hour worked and they would not be compensated with premium wage for their missed, interrupted, late, or short meal periods. Furthermore, to the extent Plaintiffs and others worked a 10-hour shift or longer, there was no second or third meal period provided. In addition, and as mentioned above, Plaintiffs were regularly asked to clock out for their meal breaks but to continue working. BEACON management was only concerned with making it seem like meal breaks were taken on paper.

18. BEACON also violated Labor Code § 226.7 along with the applicable Industrial Welfare Commission Wage Order (Wage Order No. 16) because it failed to provide Plaintiffs and other similarly situated aggrieved employees 10-minute rest periods for every four hours of work, or majority portion thereof, throughout their employment. BEACON did not completely relieve Plaintiffs of all duty during said rest periods. BEACON did not pay to Plaintiffs one additional hour of pay at Plaintiffs' regular rate of compensation for each workday that one or more

1 statutory rest periods was not provided. Like the situation with meal breaks, Plaintiffs and others
2 did not take timely, uninterrupted rest breaks wherein they were relieved of all duty. It was not
3 company policy and not part of the culture for employees such as Plaintiffs and others to take
4 rest breaks for the same reasons as described above, especially because Plaintiffs and other
5 similarly situated employees were too busy and understaffed. It was the normal practice and
6 custom of BEACON not to authorize, permit, and enforce statutory rest periods.

7 19. Furthermore, during the relevant time period and due to the labor code violations as
8 discussed above, BEACON failed to pay Plaintiffs and other similarly situated aggrieved
9 employees all wages due to them, including the prevailing wage, within any time period specified
10 by California Labor Code section 204. BEACON was also in violation of California Labor Code
11 section 226(a), by failing to include accurate, pertinent information on the wage statements,
12 including but not limited to, all hours worked, overtime hours worked, all applicable hourly rates
13 (including the prevailing wage rate), the correct legal name and correct address of the employer,
14 gross wages earned, all deductions, net wages earned, reimbursement for business expenses, the
15 correct start and end of the applicable pay period, the employee ID numbers or social security
16 numbers, among other items. As such, BEACON did not provide Plaintiffs and other similarly
17 situated aggrieved employees with complete, accurate itemized wage statements. Furthermore,
18 Plaintiffs and others did not have access to their paystubs through the cell phone application.

19 20. BEACON violated Labor Code § 203 because it willfully failed to pay other similarly
20 situated aggrieved employees earned and due wages upon separation of employment, either
21 immediately upon involuntary termination, or within 72 hours of resignation. These earned but
22 unpaid wages include compensation for all hours worked, minimum wages, overtime wages and
23 meal/rest period compensation described above.

24 21. During the relevant time period, BEACON also failed to keep accurate and complete
25 payroll records showing the actual hours worked per day and the wages paid to Plaintiffs and
26 other aggrieved employees pursuant to California Labor Code sections 1174(d).

27 22. During the relevant time period, Plaintiffs and other aggrieved employees incurred
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1 necessary, business-related expenses and costs that were not reimbursed by BEACON. These
2 costs include, but are not limited to, use of personal cell phones for work purposes as Plaintiffs
3 and others would receive “on call” texts on their personal cell phones regarding when they would
4 be reporting to work. Moreover, Plaintiffs and others would use their personal cell phones for
5 timekeeping (application on their cell phone), calling, texting, as well as taking picture and
6 videos of work-related events. Accordingly, BEACON was in violation of California Labor Code
7 sections 2800 and 2802.

8 **FIRST CAUSE OF ACTION**

9 **PRIVATE ATTORNEYS GENERAL ACT**

10 **Individual and Representative Claim for PAGA penalties under California Labor Code**
11 **sections 201, 202, 203, 204 and/or 204b, 210, 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5,**
1194, 1197, 1198, 1771, 1774, 1776, 1777.5, 2802

12 **(Against All Named Defendants and all DOE Defendants)**

13 23. Plaintiffs re-allege and incorporate by reference each and every allegation in
14 paragraphs 1 through 22, inclusive, of this Complaint as though fully set forth herein.

15 24. Pursuant to law, Plaintiffs provided the required written notice to the LWDA and
16 Defendants of the specific violations of the California Labor Code that Defendants
17 and DOE defendants have violated and continue to violate.

18 25. Pursuant to California Labor code section 2699.3, no response was received from the
19 LWDA within 65 days of the postmark date of the above-alleged letter.

20 26. Plaintiffs therefore have exhausted all administrative remedies required of them under
21 California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute this
22 cause of action and pursue penalties in a representative action for Defendants’ violations of the
23 Labor Code.

24 27. Pursuant to California Labor Code section 2699, any provisions of the Labor Code
25 that provides for a civil penalty to be assessed and collected by the LWDA or any of its
26 departments, divisions, commissions, boards, agencies, or employees for violation of the code
27 may, as an alternative, be recovered through a civil action brought by an aggrieved employee
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1 on behalf of himself or herself and other current or former employees pursuant to the
2 procedures specified in California Labor Code section 2699.3.

3 28. Each Plaintiff is an “aggrieved employee” because each Plaintiff was employed by the
4 alleged violator and had one or more of the alleged violations committed against him, and
5 therefore, is properly suited to represent the interests of other current and former hourly, non-
6 exempt employees who worked for BEACON in the State of California at any and all locations
7 during the PAGA period.

8 29. Based on the acts alleged above, Plaintiffs, on behalf of themselves and others, seek
9 penalties under California Labor Code sections 2698 and 2699 because of Defendants’
10 violations of numerous provisions of the California Labor Code as alleged in this Complaint.

11 30. Plaintiffs therefore have exhausted all administrative remedies required of them under
12 California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute this
13 cause of action and pursue penalties in a representative action for Defendants’ violations of the
14 Labor Code.

15 31. California Labor Code section 2699 et seq. imposes penalties upon culpable
16 Defendants for violating the Labor Code.

17 32. California Labor Code section 558 establishes a civil penalty as follows: Any
18 employer or other person action on behalf of an employer who violates, or causes to be
19 violated, a section of this chapter or any provision regulating hours and days of work in any
20 order of the Industrial Welfare Commission (including the “Hours and Days of Work” section
21 of the Wage Order) shall be subject to a civil penalty of (1) for any initial violation, fifty
22 dollars (\$50) for each underpaid employee for each pay period for which the employee was
23 underpaid ...; (2) for each subsequent violation, one hundred dollars (\$100) for each underpaid
24 employee for each pay period for which the employee was underpaid ...;

25 33. Plaintiffs seek penalties for Defendants’ misconduct as alleged herein as permitted by
26 law, but only those penalties that are required to be shared with the LWDA as Plaintiffs are not
27 seeking individual/victim specific relief or underpaid wages under this particular cause of
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1 action.

2 34. Specifically, Plaintiffs seek penalties under California Labor Code section 2699, for
3 the following:

4 Violations of California Labor Code sections 201, 202, 203, 204 and/or 204b, 210,
5 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1197, 1198, 1771, 1774, 1776,
6 1777.5, and 2802, via 2698 and 2699 any other Labor Codes and Wage Orders (including
7 no. 16) violated on the facts alleged in this Complaint.

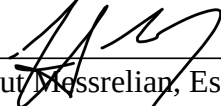
8 35. Pursuant to Labor Code section 2698 et seq., Plaintiffs seek to recover attorney's fees,
9 costs, and civil penalties on behalf of Plaintiffs and other current and former aggrieved
10 employees as alleged herein in an amount to be shown according to proof at trial and within the
11 jurisdictional limits of this Court.

12 **WHEREFORE**, Plaintiffs pray for Judgment against Defendants and each of them, as
13 follows:

- 14 1. For the imposition of civil penalties;
- 15 2. For maximum civil penalties available under Labor Code Section 2699
16 against Defendants in a manner and amount authorized by that statute, as described
17 more particularly in the Complaint and representative PAGA claims;
- 18 3. For all costs and disbursements incurred in this suit;
- 19 4. Reasonable attorney's fees where available by law, including but not limited to,
20 pursuant to Labor Code section 2698 et seq., Code of Civil Procedure section 1021.5,
21 and/or other applicable laws; and
- 22 5. For such other and further relief as this Court may deem proper.
- 23

24 DATED: May 19, 2021

MESSRELIAN LAW INC.

26 By 
27 Harout Messrelian, Esq.
28 Attorneys for Plaintiffs