

Assigned for all purposes to: Michael Antonovich Antelope Valley Courthouse, Judicial Officer: Stephen Morgan

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

DENNIS BELTRAN, on behalf of the State
of California, as a private attorney
general,

Plaintiff,

vs.

GRANITE CONSTRUCTION COMPANY, a
Corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No. 21AVCV00561

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, 221,
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 Dennis Beltran (“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 Granite Construction
8 Company (referred to as “DEFENDANT”) seeking only to recover PAGA civil penalties for
9 himself, and on behalf of all current and former aggrieved employees that worked for
10 DEFENDANT. PLAINTIFF does **not seek to recover anything other than penalties as**
11 **permitted by California Labor Code § 2699**. To the extent that statutory violations are
12 mentioned for wage violations, PLAINTIFF does not seek underlying general and/or special
13 damages for those violations, but simply the civil penalties permitted by California Labor
14 Code § 2699.

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

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

23 **THE PARTIES**

24 4. Defendant Granite Construction Company (“DEFENDANT”) is a corporation that
25 at all relevant times mentioned herein conducted and continues to conduct substantial business
26 in the state of California.

27 5. DEFENDANT is a heavy civil general contractor and is based in California.
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1 6. PLAINTIFF was employed by DEFENDANT from March of 2020 to February
2 21, 2021 and was at all times classified by DEFENDANT as a non-exempt employee, paid on
3 an hourly basis, and entitled to the legally required meal and rest periods and payment of
4 minimum and overtime wages due for all time worked.

5 7. PLAINTIFF, and such persons that may be added from time to time who satisfy
6 the requirements and exhaust the administrative procedures under the Private Attorney General
7 Act, brings this Representative Action on behalf of the State of California with respect to
8 himself and all individuals who are or previously were employed by DEFENDANT in
9 California and who were classified as non-exempt employees ("AGGRIEVED EMPLOYEES")
10 during the time period of April 22, 2020 until a date as determined by the Court (the "PAGA
11 PERIOD").

12 8. PLAINTIFF, on behalf of himself and all AGGRIEVED EMPLOYEES presently
13 or formerly employed by DEFENDANT during the PAGA PERIOD, brings this representative
14 action pursuant to Labor Code § 2699, *et seq.* seeking fixed civil penalties for DEFENDANT's
15 violation of California Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 221, 226(a), 226.7, 351,
16 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title
17 8, Section 11040, Subdivision 5(A)-(B), and the applicable Wage Order(s). Based upon the
18 foregoing, PLAINTIFF and all AGGRIEVED EMPLOYEES are aggrieved employees within
19 the meaning of Labor Code § 2699, *et seq.*

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

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

THE CONDUCT

11. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT is required to pay PLAINTIFF and the other AGGRIEVED EMPLOYEES for all their time worked, meaning the time during which an employee is subject to the control of an employer, including all the time the employee is suffered or permitted to work. DEFENDANT required PLAINTIFF and the other AGGRIEVED EMPLOYEES to work from time to time while they were clocked out for what was supposed to be their off duty meal break. DEFENDANT required PLAINTIFF and the AGGRIEVED EMPLOYEES to work off the clock without paying them for all the time they performed duties while on their meal break, specifically by failing to provide enough labor hours to accomplish all the job tasks that DEFENDANT expected PLAINTIFF and the other AGGRIEVED EMPLOYEES to complete on a daily and/or weekly basis. Further, PLAINTIFF and other AGGRIEVED EMPLOYEES from time to time were not paid wages for all time worked, including overtime wages, such that in the aggregate employees were underpaid wages as a result of DEFENDANT's pattern and practice of unevenly rounding time worked by its employees. As a result, PLAINTIFF and the other AGGRIEVED EMPLOYEES forfeited minimum wage and overtime compensation by from time to time working without their time being accurately recorded and without compensation at the applicable minimum wage and overtime rates. DEFENDANT's policy and practice not to pay PLAINTIFF and the other AGGRIEVED EMPLOYEES for all time worked is evidenced

1 by DEFENDANT's business records.

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

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

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

6 14. State law provides that employees must be paid overtime at one-and-one-half
7 times their "regular rate of pay." PLAINTIFF and other AGGRIEVED EMPLOYEES were
8 compensated at an hourly rate plus incentive pay that was tied to specific elements of an
9 employee's performance.

10 15. The second component of PLAINTIFF's and other AGGRIEVED EMPLOYEES'
11 compensation was DEFENDANT's non-discretionary incentive program that paid PLAINTIFF
12 and other AGGRIEVED EMPLOYEES incentive wages based on their performance for
13 DEFENDANT, including but not limited to shift differential wages for working undesirable
14 shifts, cash in lieu of benefits, and other non-discretionary incentive bonus wages. The non-
15 discretionary incentive program provided all employees paid on an hourly basis with incentive
16 compensation when the employees met the various performance goals set by DEFENDANT.
17 However, when calculating the regular rate of pay in order to pay overtime to PLAINTIFF and
18 other AGGRIEVED EMPLOYEES, DEFENDANT failed to include the incentive
19 compensation as part of the employees' "regular rate of pay" for purposes of calculating
20 overtime pay. Management and supervisors described the incentive program to potential and
21 new employees as part of the compensation package. As a matter of law, the incentive
22 compensation received by PLAINTIFF and other AGGRIEVED EMPLOYEES must be
23 included in the "regular rate of pay." The failure to do so has resulted in an underpayment of
24 overtime compensation to PLAINTIFF and other AGGRIEVED EMPLOYEES by
25 DEFENDANT.

26 16. DEFENDANT also failed to provide PLAINTIFF and the other AGGRIEVED
27 EMPLOYEES with complete and accurate wage statements which failed to show, among other
28 things, the correct gross and net wages earned. Cal. Lab. Code § 226 provides that every

1 employer shall furnish each of his or her employees with an accurate itemized wage statement
2 in writing showing, among other things, gross wages earned and all applicable hourly rates in
3 effect during the pay period and the corresponding amount of time worked at each hourly rate.
4 Specifically, PLAINTIFF and the other AGGRIEVED EMPLOYEES were paid on an hourly
5 basis. As such, the wage statements should reflect all applicable hourly rates during the pay
6 period and the total hours worked, and the applicable pay period in which the wages were
7 earned pursuant to California Labor Code Section 226(a). The wage statements DEFENDANT
8 provided to PLAINTIFF and the other AGGRIEVED EMPLOYEES failed to identify such
9 information. More specifically, the wage statements failed to identify the accurate total hours
10 worked each pay period. When the hours shown on the wage statements were added up, they
11 did not equal the actual total hours worked during the pay period. Additionally, DEFENDANT
12 violated Cal. Lab. Code Section 226(a)(6) by failing to correctly list the inclusive dates for the
13 “Retro Reg.” and “Retro 2.0” payments of regular wages that were paid in later pay periods in
14 which they were earned. Aside, from the violations listed above, DEFENDANT failed to issue
15 to PLAINTIFF an itemized wage statement that lists all the requirements under California Labor
16 Code 226 *et seq.* As a result, DEFENDANT from time to time provided PLAINTIFF and the
17 other AGGRIEVED EMPLOYEES with wage statements which violated Cal. Lab. Code § 226.

18 17. Cal. Lab. Code § 204 provides that “[a]ll wages. . . earned by any person in any
19 employment are due and payable twice during each calendar month, on days designated in
20 advance by the employer as the regular paydays.” Further, Cal. Lab. Code § 204(d) expressly
21 requires employers to pay employees all wages owed within seven (7) days of the close of the
22 payroll period. DEFENDANT from time to time failed to pay PLAINTIFF and other
23 AGGRIEVED EMPLOYEES all wages owed to them within seven (7) days of the close of the
24 payroll period, including but not limited to for the “Retro Reg” and “Retro 2.0” wage payments.

25 18. Pursuant to Cal. Lab. Code Section 221, “It shall be unlawful for any employer
26 to collect or receive from an employee any part of wages theretofore paid by said employer to
27 said employee.” DEFENDANT failed to pay all compensation due to PLAINTIFF and other
28 AGGRIEVED EMPLOYEES, made unlawful deductions from compensation payable to

1 PLAINTIFF and the AGGRIEVED EMPLOYEES, failed to disclose all aspects of the
2 deductions from compensation payable to PLAINTIFF and the AGGRIEVED EMPLOYEES,
3 and thereby failed to pay these employees all wages due at each applicable pay period and upon
4 termination. PLAINTIFF and the AGGRIEVED EMPLOYEES seek recovery of all illegal
5 deductions from wages according to proof, related penalties, interest, attorney fees and costs.

6 19. DEFENDANT underpaid sick pay wages to PLAINTIFF and other AGGRIEVED
7 EMPLOYEES by failing to pay such wages at the regular rate of pay. Specifically, PLAINTIFF
8 and other non-exempt employees earn non-discretionary remuneration. Rather than pay sick
9 pay at the regular rate of pay, DEFENDANT underpaid sick pay to PLAINTIFF and other
10 AGGRIEVED EMPLOYEES at their base rates of pay.

11 20. DEFENDANT intentionally and knowingly failed to reimburse and indemnify
12 PLAINTIFF and the other AGGRIEVED EMPLOYEES for required business expenses
13 incurred by PLAINTIFF and other AGGRIEVED EMPLOYEES in direct consequence of
14 discharging their duties on behalf of DEFENDANT. Under California Labor Code Section
15 2802, employers are required to indemnify employees for all expenses incurred in the course
16 and scope of their employment. Cal. Lab. Code § 2802 expressly states that "an employer shall
17 indemnify his or her employee for all necessary expenditures or losses incurred by the employee
18 in direct consequence of the discharge of his or her duties, or of his or her obedience to the
19 directions of the employer, even though unlawful, unless the employee, at the time of obeying
20 the directions, believed them to be unlawful."

21 21. In the course of their employment PLAINTIFF and other AGGRIEVED
22 EMPLOYEES as a business expense, were required by DEFENDANT to use their own personal
23 cellular phones and personal vehicles as a result of and in furtherance of their job duties as
24 employees for DEFENDANT but were not reimbursed or indemnified by DEFENDANT for the
25 cost associated with the use of their personal cellular phones and personal vehicles for
26 DEFENDANT's benefit. Specifically, PLAINTIFF and other AGGRIEVED EMPLOYEES
27 were required by DEFENDANT to use their personal cellular phones to respond to managers
28 while off the clock (which also results in minimum wage and overtime violations). As a result,

1 in the course of their employment with DEFENDANT, PLAINTIFF and other AGGRIEVED
2 EMPLOYEES incurred unreimbursed business expenses which included, but were not limited
3 to, costs related to the use of their personal cellular phones all on behalf of and for the benefit
4 of DEFENDANT.

5 22. In violation of the applicable sections of the California Labor Code and the
6 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as
7 a matter of company policy, practice and procedure, intentionally and knowingly failed to
8 compensate PLAINTIFF and the other AGGRIEVED EMPLOYEES for missed meal and rest
9 periods. This policy and practice of DEFENDANT is intended to purposefully avoid the
10 payment for all time worked as required by California law which allows DEFENDANT to
11 illegally profit and gain an unfair advantage over competitors who complied with the law. To
12 the extent equitable tolling operates to toll claims by the AGGRIEVED EMPLOYEES against
13 DEFENDANT, the PAGA PERIOD should be adjusted accordingly.

14 23. By reason of this conduct applicable to PLAINTIFF and all AGGRIEVED
15 EMPLOYEES, DEFENDANT engaged in a company-wide policy and procedure which fails
16 to accurately calculate and record all missed meal and rest periods and failed to pay all
17 minimum and overtime wages due to PLAINTIFF and other AGGRIEVED EMPLOYEES. The
18 proper recording of these employees' missed meal and rest breaks is the DEFENDANT's
19 burden. As a result of DEFENDANT's intentional disregard of the obligation to meet this
20 burden, DEFENDANT fails to properly calculate and/or pay all required compensation for work
21 performed by the and violated the California Labor Code and regulations promulgated
22 thereunder as herein alleged.

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

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1 Act, brings this Representative Action on behalf of the State of California with respect to
2 himself and all individuals who are or previously were employed by DEFENDANT in
3 California and who were classified as non-exempt employees ("AGGRIEVED EMPLOYEES")
4 during the time period of April 22, 2020 until a date as determined by the Court (the "PAGA
5 PERIOD").

6 30. On April 22, 2021, PLAINTIFF gave written notice by electronic mail to the
7 Labor and Workforce Development Agency (the "Agency") and by certified mail to the
8 employer of the specific provisions of this code alleged to have been violated as required by
9 Labor Code § 2699.3. The statutory waiting period for PLAINTIFF to add these allegations to
10 the Complaint has expired. As a result, pursuant to Section 2699.3, PLAINTIFF may now
11 commence a representative civil action under PAGA pursuant to Section 2699 as the proxy of
12 the State of California with respect to all AGGRIEVED EMPLOYEES as herein defined.

13 31. The policies, acts and practices heretofore described were and are an unlawful
14 business act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the other
15 AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to properly record
16 and provide legally required meal and rest periods, (c) failed to pay minimum wages, (d) failed
17 to pay overtime and sick pay wages, (e) failed to reimburse employees for required expenses,
18 and (f) failed to provide wages when due, all in violation of the applicable Labor Code sections
19 listed in Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 221, 226(a), 226.7, 351, 510, 512,
20 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section
21 11040, Subdivision 5(A)-(B), and the applicable Wage Order(s), and thereby gives rise to civil
22 penalties as a result of such conduct.¹ PLAINTIFF hereby seeks recovery of only civil penalties
23 as prescribed by the Labor Code Private Attorney General Act of 2004 as the representative of
24 the State of California for the illegal conduct perpetrated on PLAINTIFF and the other
25 AGGRIEVED EMPLOYEES.

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

1 **PRAYER FOR RELIEF**

2 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and
3 severally, as follows:

4 1. On behalf of the State of California and with respect to all AGGRIEVED
5 EMPLOYEES:

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

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

10 Dated: July 9, 2021 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP
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12 By: /s/ Norman Blumenthal
13 Norman B. Blumenthal
14 Attorneys for Plaintiff
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