

Assigned for all purposes to: Chatsworth Courthouse, Judicial Officer: Stephen Pfahler

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

ALFREDO SILVA, on behalf of the State
of California, as a private attorney general,

Plaintiff,

vs.

WOODWARD HRT, INC., a Corporation;
and DOES 1 through 50, inclusive,

Defendants.

Case No. 21CHCV00939

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, 227.3, 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 Alfredo Silva (“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 Woodward HRT, Inc. (referred to as
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 Woodward HRT, Inc. (“DEFENDANT”) is a corporation that at all
24 relevant times mentioned herein conducted and continues to conduct substantial business in the
25 state of California.

26 5. DEFENDANT Woodward Hrt, Inc. designs and manufactures relays and
27 industrial controls. The Company offers range of products including hydraulic controls, smart
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1 actuators, electromechanical systems, photonic controls, electro-hydraulic, turret control and
2 stabilization systems.

3 6. PLAINTIFF has been employed by DEFENDANT in California since 1996 and
4 has been at all times classified by DEFENDANT as a non-exempt employee, paid on an hourly
5 basis, and entitled to the legally required meal and rest periods and payment of minimum and
6 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 who were classified as non exempt employees ("AGGRIEVED EMPLOYEES")
12 during the time period of August 30, 2020 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, 221, 226(a), 226.7, 227.3,
18 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title
19 8, 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

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13 11. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
14 required to pay PLAINTIFF and other 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 requires PLAINTIFF
17 and other AGGRIEVED EMPLOYEES to work without paying them for all the time they are
18 under DEFENDANT's control. Among other things, DEFENDANT requires PLAINTIFF to
19 work while clocked out during what is supposed to be PLAINTIFF's off-duty meal break.
20 PLAINTIFF is from time to time interrupted by work assignments while clocked out for what
21 should be PLAINTIFF's off-duty meal break. PLAINTIFF and other AGGRIEVED
22 EMPLOYEES also worked off the clock with respect to time spent undergoing mandatory drug
23 testing or any other testing and/or examination required as a condition of employment.
24 DEFENDANT, as a matter of established company policy and procedure, administers a uniform
25 practice of rounding the actual time worked and recorded by PLAINTIFF and other
26 AGGRIEVED EMPLOYEES, always to the benefit of DEFENDANT, so that during the course
27 of their employment, PLAINTIFF and other AGGRIEVED EMPLOYEES are paid less than
28 they would have been paid had they been paid for actual recorded time rather than "rounded"

1 time. Additionally, DEFENDANT engages in the practice of requiring PLAINTIFF and other
2 AGGRIEVED EMPLOYEES to perform work off the clock in that DEFENDANT, as a
3 condition of employment, required these employees to submit to mandatory temperature checks
4 and symptom questionnaires for COVID-19 screening prior to clocking into DEFENDANT's
5 timekeeping system for the workday. As a result, PLAINTIFF and other AGGRIEVED
6 EMPLOYEES forfeit minimum wage, overtime wage compensation, and off-duty meal breaks
7 by working without their time being correctly recorded and without compensation at the
8 applicable rates. DEFENDANT's policy and practice not to pay PLAINTIFF and other
9 AGGRIEVED EMPLOYEES for all time worked, is evidenced by DEFENDANT's business
10 records.

11 12. State law provides that employees must be paid overtime and meal and rest break
12 premiums at one-and-one-half times their "regular rate of pay." PLAINTIFF and other
13 AGGRIEVED EMPLOYEES are compensated at an hourly rate plus incentive pay that is tied
14 to specific elements of an employee's performance.

15 13. The second component of PLAINTIFF's and other AGGRIEVED EMPLOYEES'
16 compensation is DEFENDANT's non-discretionary incentive program that paid PLAINTIFF
17 and other AGGRIEVED EMPLOYEES incentive wages based on their performance for
18 DEFENDANT. The non-discretionary incentive program provided all employees paid on an
19 hourly basis with incentive compensation when the employees met the various performance
20 goals set by DEFENDANT. However, when calculating the regular rate of pay in order to pay
21 overtime and meal and rest break premiums to PLAINTIFF and other AGGRIEVED
22 EMPLOYEES, DEFENDANT failed to include the incentive compensation as part of the
23 employees' "regular rate of pay" for purposes of calculating overtime pay and meal and rest
24 break premium pay. Management and supervisors described the incentive program to potential
25 and new employees as part of the compensation package. As a matter of law, the incentive
26 compensation received by PLAINTIFF and other AGGRIEVED EMPLOYEES must be
27 included in the "regular rate of pay." The failure to do so has resulted in a underpayment of
28 overtime compensation and meal and rest break premiums to PLAINTIFF and other

1 AGGRIEVED EMPLOYEES by DEFENDANT.

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

14 15. During the PAGA PERIOD, PLAINTIFF and other AGGRIEVED EMPLOYEES
15 are also required from time to time to work in excess of four (4) hours without being provided
16 ten (10) minute rest periods. Further, these employees are denied their first rest periods of at
17 least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours from time to
18 time, a first and second rest period of at least ten (10) minutes for some shifts worked of
19 between six (6) and eight (8) hours from time to time, and a first, second and third rest period
20 of at least ten (10) minutes for some shifts worked of ten (10) hours or more from time to time.
21 PLAINTIFF and other AGGRIEVED EMPLOYEES are also not provided with one hour wages
22 in lieu thereof. DEFENDANT did not have a policy or practice which paid for off-duty rest
23 periods to PLAINTIFF and other AGGRIEVED EMPLOYEES. As a result, DEFENDANT's
24 failure to provide PLAINTIFF and the AGGRIEVED EMPLOYEES with all the legally
25 required paid rest periods is evidenced by DEFENDANT's business records. Additionally, the
26 applicable California Wage Order requires employers to provide employees with off-duty rest
27 periods, which the California Supreme Court defined as time during which an employee is
28 relieved from all work related duties and free from employer control. In so doing, the Court

1 held that the requirement under California law that employers authorize and permit all
2 employees to take rest period means that employers must relieve employees of all duties and
3 relinquish control over how employees spend their time which includes control over the
4 locations where employees may take their rest period. Employers cannot impose controls that
5 prohibit an employee from taking a brief walk - five minutes out, five minutes back. Here,
6 DEFENDANT's policy restricts PLAINTIFF and other AGGRIEVED EMPLOYEES from
7 unconstrained walks and is unlawful based on DEFENDANT's rule which states PLAINTIFF
8 and other AGGRIEVED EMPLOYEES cannot leave the work premises during their rest period.

9 16. During the PAGA PERIOD, DEFENDANT fails to accurately record and pay
10 PLAINTIFF and other AGGRIEVED EMPLOYEES for the actual amount of time these
11 employees work. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT
12 is required to pay PLAINTIFF and other AGGRIEVED EMPLOYEES for all time worked,
13 meaning the time during which an employee was subject to the control of an employer,
14 including all the time the employee was permitted or suffered to permit this work.
15 DEFENDANT requires these employees to work off the clock without paying them for all the
16 time they are under DEFENDANT's control. As such, DEFENDANT knew or should have
17 known that PLAINTIFF and other AGGRIEVED EMPLOYEES are under compensated for all
18 time worked. As a result, PLAINTIFF and other AGGRIEVED EMPLOYEES forfeit time
19 worked by working without their time being accurately recorded and without compensation at
20 the applicable minimum wage and overtime wage rates. To the extent that the time worked off
21 the clock does not qualify for overtime premium payment, DEFENDANT fails to pay minimum
22 wages for the time worked off-the-clock in violation of Cal. Lab. Code §§ 1194, 1197, and
23 1197.1.

24 17. From time to time, DEFENDANT also fails to provide PLAINTIFF and other
25 AGGRIEVED EMPLOYEES with complete and accurate wage statements which failed to
26 show, among other things, the correct gross and net wages earned. Cal. Lab. Code § 226
27 provides that every employer shall furnish each of his or her employees with an accurate
28 itemized wage statement in writing showing, among other things, gross wages earned and all

1 applicable hourly rates in effect during the pay period and the corresponding amount of time
2 worked at each hourly rate. Aside, from the violations listed above in this paragraph,
3 DEFENDANT fails to issue to PLAINTIFF an itemized wage statement that lists all the
4 requirements under California Labor Code 226 *et seq.* As a result, DEFENDANT from time to
5 time provides PLAINTIFF and other AGGRIEVED EMPLOYEES with wage statements which
6 violated Cal. Lab. Code § 226.

7 18. Cal. Lab. Code § 204(d) provides, the requirements of this section shall be
8 deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the
9 wages are paid not more than seven calendar days following the close of the payroll period.
10 Cal. Lab. Code § 210 provides:

11 [I]n addition to, and entirely independent and apart from, any other penalty provided in
12 this article, every person who fails to pay the wages of each employee as provided in
13 Sections. . . 204. . . shall be subject to a civil penalty as follows: (1) For any initial
14 violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For each
subsequent violation, or any willful or intentional violation, two hundred dollars (\$200)
for each failure to pay each employee, plus 25 percent of the amount unlawfully
withheld.

15 19. DEFENDANT from time to time fails to pay PLAINTIFF and other
16 AGGRIEVED EMPLOYEES within seven (7) days of the close of the payroll period in
17 accordance with Cal. Lab. Code § 204(d), including but not limited to the “Retro Pay Flat” wage
18 payment.

19 20. DEFENDANT underpays sick pay wages to PLAINTIFF and other AGGRIEVED
20 EMPLOYEES by failing to pay such wages at the regular rate of pay in violation of Cal. Lab.
21 Code Section 246. Specifically, PLAINTIFF and other non-exempt employees earn non-
22 discretionary remuneration, including but not limited to, incentives, shift differential pay, and
23 bonuses. Rather than pay sick pay at the regular rate of pay, DEFENDANT underpays sick pay
24 to PLAINTIFF and other AGGRIEVED EMPLOYEES at their base rates of pay.

25 21. Cal. Lab. Code Section 246(1)(2) requires that paid sick time for nonexempt
26 employees be calculated by dividing the employee’s total wages, not including overtime
27 premium pay, by the employee’s total hours worked in the full pay periods of the prior 90 days
28 of employment.

1 22. DEFENDANT violated Cal. Lab. Code Section 246 by failing to pay sick pay at
2 the regular rate of pay. PLAINTIFF and other AGGRIEVED EMPLOYEES routinely earned
3 non-discretionary incentive wages, including but not limited to, incentives, shift differential
4 pay, and bonuses, which increased their regular rate of pay. However, when sick pay was paid,
5 it was paid at the base rate of pay for PLAINTIFF and other AGGRIEVED EMPLOYEES, as
6 opposed to the correct, higher regular rate of pay, as required under Cal. Lab. Code Section 246.

7 23. As a pattern and practice, DEFENDANT regularly failed to pay AGGRIEVED
8 EMPLOYEES their correct wages and accordingly owe waiting time penalties pursuant to Cal.
9 Lab. Code Section 203. Further, PLAINTIFF is informed and believes and based thereon alleges
10 that such failure to pay sick pay at regular rate was willful, such that AGGRIEVED
11 EMPLOYEES whose employment has separated are entitled to waiting time penalties pursuant
12 to Cal. Lab. Code Sections 201-203.

13 24. Pursuant to Cal. Lab. Code Section 221, "It shall be unlawful for any employer
14 to collect or receive from an employee any part of wages theretofore paid by said employer to
15 said employee." DEFENDANT fails to pay all compensation due to PLAINTIFF and other
16 AGGRIEVED EMPLOYEES, makes unlawful deductions from compensation payable to
17 PLAINTIFF and other AGGRIEVED EMPLOYEES, fails to disclose all aspects of the
18 deductions from compensation payable to PLAINTIFF and other AGGRIEVED EMPLOYEES,
19 and thereby fails to pay these employees all wages due at each applicable pay period and upon
20 termination.

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

1 the employer, even though unlawful, unless the employee, at the time of obeying the directions,
2 believed them to be unlawful."

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

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

18 **JURISDICTION AND VENUE**

19 28. This Court has jurisdiction over this Action pursuant to California Code of Civil
20 Procedure, Section 410.10.

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

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

3 34. The policies, acts and practices heretofore described were and are an unlawful
4 business act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the
5 other AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to properly
6 record and provide legally required meal and rest periods, (c) failed to pay minimum wages,
7 (d) failed to pay overtime wages and sick pay wages, and (e) failed to reimburse employees
8 for required expenses, all in violation of the applicable Labor Code sections listed in Labor
9 Code §§ 201, 202, 203, 204 *et seq.*, 210, 221, 226(a), 226.7, 227.3, 510, 512, 558(a)(1)(2),
10 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040,
11 Subdivision 5(A)-(B), and the applicable Wage Order(s), and thereby gives rise to civil
12 penalties as a result of such conduct.¹ PLAINTIFF hereby seeks recovery of only civil
13 penalties as prescribed by the Labor Code Private Attorney General Act of 2004 as the
14 representative of the State of California for the illegal conduct perpetrated on PLAINTIFF
15 and the other AGGRIEVED EMPLOYEES.

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17 **PRAYER FOR RELIEF**

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

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

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

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

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

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Dated: November 19, 2021

BLUMENTHAL NORDREHAUG BHOWMIK DE
BLOUW LLP

By: /s/ Norman Blumenthal
Norman B. Blumenthal
Attorneys for Plaintiff