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SUPERIOR COURT-STOCKTON

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN JOAQUIN**

RAFAEL MARTINEZ, an individual, on
behalf of himself, other similarly Aggrieved
Employees and the State of California,

Plaintiff,

vs.

GUY YOCOM CONSTRUCTION, INC.;
and **DOES 1-50,**

Defendants.

Unlimited Jurisdiction

Case No.:

STK-CV-1181 2021-1181

**COMPLAINT FOR CIVIL PENALTIES
UNDER THE PRIVATE ATTORNEYS
GENERAL ACT OF 2004**

COMPLAINT

FILE BY FAX

1 Plaintiff Rafael Martinez (“Plaintiff”), on behalf of himself, all other similarly Aggrieved
2 Employees and the State of California, complains and alleges as follows:

3 **INTRODUCTION**

4 1. Plaintiff, as a proxy for the State of California, brings a representative law
5 enforcement action under the Private Attorneys General Act of 2004 (“PAGA”), Labor Code
6 Section 2698 et seq., to recover civil penalties against Defendant Guy Yocom Construction, Inc.
7 On behalf of himself and other Aggrieved Employees, Plaintiff seeks to recover civil penalties
8 (75% payable to the Labor Workforce Development Agency and 25% payable to Aggrieved
9 Employees) owed by Defendants under Labor Code Section 2699 for failing to keep accurate
10 records in violation of Industrial Welfare Commission (“IWC”) Wage Order 16, failing to provide,
11 authorize, and/or permit Plaintiff and other similarly situated employees meal periods within the
12 first five hours of work and failing to provide a second meal period on shifts that lasted more than
13 ten hours in violation of Labor Code §§ 512, 226.7 and Wage Order 16, failing to provide and
14 make rest periods available to Plaintiff and others similarly situated in violation of Labor Code §
15 226.7 and Wage Order 16, failing to pay all minimum and overtime wages in violation of Labor
16 Code §§ 510, 1197 and Wage Order 16, and failure to timely pay all wages upon cessation of
17 employment in violation of Labor Code §§ 201-203.

18 **JURISDICTION AND VENUE**

19 2. Venue is proper in the County of San Joaquin because work was performed by
20 Plaintiff and other Aggrieved Employees for Defendants in the County of San Joaquin, including
21 in Manteca, California, and the legal obligations of Defendants to Plaintiff and other Aggrieved
22 Employees were breached throughout California, including in San Joaquin County.

23 3. The California Superior Court has jurisdiction in this matter because Plaintiff is a
24 resident of California, Defendants are qualified to do business in California and Defendants
25 regularly conduct business in California. Further, there is no federal question at issue as the claims
26 herein are based solely on California law.

1 **THE PARTIES**

2 **A. Plaintiff**

3 4. Plaintiff is over the age of eighteen, and at times mentioned in this complaint, was
4 a resident of California. During the one-year period preceding the notification of his claims under
5 the PAGA to Defendants and Labor Workforce and Development Agency (the "LWDA"), Plaintiff
6 was employed by Defendants in California as a non-union hourly paid non-exempt construction
7 site employee for Defendants helping to build commercial warehouses from August 2020 through
8 September 25, 2020.

9 5. Plaintiff seeks to represent similarly situated persons who are Aggrieved
10 Employees. Aggrieved Employees are persons who, at any time since the date one year before the
11 date of Plaintiff's letter notifying Defendants and the LWDA of the alleged violations, were
12 employed by Defendants to perform work at construction sites in California and subjected to the
13 following violations of California law: Labor Code Sections 201-203, 226.7, 510, 512, 1197, 1198
14 and the applicable Industrial Welfare Commission ("IWC") Wage Orders, including Wage Order
15 16-2001.

16 6. As such, Plaintiff appears in this action on behalf of himself and on behalf of all
17 other similarly situated Aggrieved Employees and the State of California.

18 **B. Defendants**

19 7. Plaintiff is informed and believes, and thereon alleges, that Defendant Guy Yocom
20 Construction, Inc. is a California corporation that does business in California, including in San
21 Joaquin County, among others. Guy Yocom Construction, Inc. is a commercial construction
22 service company.

23 8. Plaintiff is ignorant of the true names, capacities, relationships, and extent of
24 participation in the conduct herein alleged, of the Defendants sued herein as DOES, but is informed
25 and believes and thereon alleges that said Defendants are legally responsible for the wrongful
26 conduct alleged herein and therefore sues these Defendants by such fictitious names. Plaintiff will
27 amend this complaint to allege the true names and capacities of the DOE Defendants when
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1 ascertained. Defendant Guy Yocom Construction, Inc. and the DOE Defendants are collectively
2 referred to herein as “Defendants.”

3 9. Plaintiff is informed and believes and thereon alleges that each Defendant acted in
4 all respects pertinent to this action as the agent of one or more of the other Defendants, carried out
5 a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each
6 Defendant are legally attributable to one or more of the other Defendants.

7 **FACTS RELEVANT TO PLAINTIFF’S CLAIMS**

8 10. At all relevant times, Defendants employed Plaintiff and other similarly employed
9 individuals subject to the conditions of employment set forth in IWC Wage Order 16. Section 6 of
10 Wage Order 16 provides in relevant part: “(A) Every employer who has control over wages, hours,
11 or working conditions shall keep accurate information with respect to each employee, including
12 the following: (1) ... Time records showing when the employee begins and ends each work period.
13 Meal periods, split shift intervals, and total daily hours worked shall also be recorded....” Labor
14 Code 1198 requires employers to adhere to the conditions of employment, including timekeeping
15 conditions set forth in IWC Wage Orders.

16 11. Defendants’ time records for Plaintiff indicate that he took meal periods when he
17 did not take them. For instance, on September 23, 2020, Plaintiff’s time records show that he began
18 work at 5:51 am and ended at 2:54 pm. The timecard also shows that thirty minutes were deducted
19 between the hours 2:23 pm and 2:53 pm, as though he took a 30-minute meal period during that
20 time. However, that is not the case. Plaintiff and other employees he worked with on that particular
21 day were not afforded the opportunity to take meal breaks at all. Defendants, at relevant times and
22 at least as to some employees, recorded meal breaks as being taken when none were taken; and, at
23 times when meal breaks were taken, Defendants did not record the correct times. The timekeeping
24 system employed by Defendants for the Aggrieved Employees during the relevant period did not
25 accurately capture the time meal breaks were taken, and inaccurately recorded times for meal
26 breaks that were never taken. Given the foregoing, Defendants’ time records not only failed to
27 properly record meal periods, but also failed to accurately record, as required by the Wage Order,
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1 the Aggrieved Employees' work periods.. As a result, Defendants violated section 6 of Wage Order
2 16 and thereby Labor Code § 1198.

3 12. At all relevant times, Defendants employed Plaintiff and other similarly Aggrieved
4 Employees subject to Labor Code Sections 510, 226.7 and the applicable Wage Orders, including
5 Wage Order 16(11) and (12). Labor Code Section 512 requires that employers provide their
6 employees working shifts of more than five hours with a meal period within the first five hours of
7 work, and that employees working shifts of more than ten hours be provided with a second meal
8 period. Lab. Code § 512; Wage Order 16(11). Labor Code Section 226.7 (emphasis added) states,
9 in relevant part: "If an employer fails to provide an employee a meal or rest or recovery period in
10 accordance with a state law, ... , the employer shall pay the employee one additional hour of pay
11 at the employee's regular rate of compensation for each work day that the meal or rest period is
12 not provided." See also Wage Order 16(11)(B).

13 13. During Plaintiff's employment by Defendants, including within the year prior to
14 Plaintiff giving notice of his claims, Defendants regularly failed to provide, authorize, and/or
15 permit Plaintiff and other similarly situated employees meal periods within the first five hours of
16 work and failed to provide a second meal period on shifts that lasted more than ten hours, as
17 required by California law. Plaintiff and other Aggrieved Employees were required to work shifts
18 lasting over five hours, entitling them to a meal break. Plaintiff and other similarly situated hourly
19 employees typically worked more than six hours in a workday and, therefore, were not able to
20 waive their first meal periods. Plaintiff and other similarly situated hourly employees took their
21 meal periods at the direction of their supervisor. However, during Plaintiff's employment,
22 including within the year prior to Plaintiff giving notice of his claims, Plaintiff's supervisor failed
23 to provide, authorize, and/or permit Plaintiff and other Aggrieved Employees timely 30-minute
24 meal periods, as required by California law. At the times relevant to this lawsuit, when Defendants
25 failed to provide the compliant meal periods, Defendants failed to pay Plaintiff and other
26 Aggrieved Employees a meal period premium for each late or missed meal period as required by
27 Labor Code Sections 512, 226.7, and Wage Order 16(11)(B).

1 14. California law requires that employers authorize and permit non-exempt employees
2 to take a rest period that must, insofar as practicable, be taken in the middle of each work period.
3 The rest period is based on the total hours worked daily and must be at the minimum rate of a net
4 ten consecutive minutes for each four-hour work period, or major fraction thereof. In *Brinker*
5 *Restaurant Corp. v. Superior Court*, 53 Cal.4th 1004 (2012), the California Supreme Court held
6 that employees are entitled to a 10-minute paid rest period for shifts from 3½ to 6 hours in length,
7 two 10-minute rest periods for shifts more than 6 hours up to 10 hours, and three 10-minute rest
8 periods for shifts of more than 10 hours up to 14 hours. (*Id.* at 1029.)

9 15. Within the one-year period prior to Plaintiff giving notice of his claims, Defendants
10 failed to provide and make rest periods available to Plaintiff and others similarly situated in
11 compliance with California law. Plaintiff and other Aggrieved Employees took their rest breaks at
12 the direction of their supervisor. Plaintiff's supervisor required him and other Aggrieved
13 Employees to work their full shifts without any or the requisite number of compliant rest breaks.
14 Defendants knew or were on constructive notice of when Plaintiff and others had worked shifts
15 entitling them to at least two rest breaks, and sometimes three rest breaks. When said rest breaks
16 were not authorized permitted and/or made available, Defendants did not pay rest break premium
17 wages, as required by California Labor Code Section 226.7 and the applicable Wage Order,
18 including Wage Order 16(12).

19 16. At all relevant times, Defendants employed Plaintiff and other similarly employed
20 individuals subject to Labor Code Sections 1197 and 510, and the applicable Wage Orders,
21 including Wage Order 16(3)(A), (4). Under Labor Code Section 1197 and Wage Order 16(4),
22 Plaintiff and other similarly situated employees were entitled to receive minimum wages for all
23 hours worked. Pursuant to Labor Code Section 510 and Wage Order 16(3)(A), Plaintiff and other
24 similarly situated employees were entitled to receive overtime wages for all hours worked over 8
25 hours in a day or 40 hours in a workweek. Plaintiff is informed and believes, based on the lack of
26 clarity in his wage statements and timecards collectively, that Defendants did not properly pay
27 Plaintiff and other similarly situated employees for all hours worked, including minimum and
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1 overtime wages.

2 17. Pursuant to Labor Code Section 201 and 202, Defendants are required to
3 immediately pay all wages owed in the case of a discharge or resignation when the resigning
4 employee provided at least three days' notice of resignation or within 72 hours for those employees
5 who resign and provide less than 3 days' notice. Labor Code Section 203 provides for continuation
6 of wages, from the day earned and unpaid were due upon termination until paid, for a maximum
7 of 30 days.

8 18. Plaintiff and other Aggrieved Employees have ceased their employment with
9 Defendants. Upon the cessation of that employment relationship (and as prescribed by statute),
10 they did not receive all wages owed. Namely, said former employees (including Plaintiff) did not
11 receive all wages due to Defendants' failure to pay all minimum, overtime and premium wages
12 due. Plaintiff and those similarly situated, upon termination, did not receive all owed wages on
13 the date of termination, or within 72 hours if they resigned. Therefore, Defendants have violated
14 and continue to violate Labor Code Sections 201 and 202, because they have not paid the
15 aforementioned wages and have violated Section 203 because they have not paid the waiting time
16 penalties for their failure to pay the final wages at the cessation of employment.

17 19. As a result of these violations, Plaintiff seeks on behalf of himself and all other
18 similarly Aggrieved Employees, penalties under PAGA.

19 **FIRST CAUSE OF ACTION**

20 **CIVIL PENALTIES UNDER PAGA**

21 **(By Plaintiff, Aggrieved Employees and the State of California against Defendants)**

22 20. Plaintiff re-alleges and incorporates by reference the foregoing allegations as
23 though set forth herein.

24 21. At all times relevant to this action, Plaintiff and other Aggrieved Employees were
25 "Aggrieved Employees" within the meaning of Labor Code Section 2699.

26 22. Defendants' conduct as described herein, arising from Defendants' failure to keep
27 accurate records, failing to provide compliant meal and rest periods and pay the required premiums

1 for failure to do so, failure to pay all minimum and overtime wages and failure to timely pay all
2 wages upon cessation of employment, constitute violations of Labor Code Sections 201, 202, 203,
3 226.7, 510, 512, 1197, 1198 and the applicable IWC Wage Orders, including Sections 3, 4, 6, 11,
4 and 12 of Wage Order 16.

5 23. Labor Code Sections 2699(a) and (g) authorize an Aggrieved Employee, on behalf
6 of himself and other current or former employees, to bring a civil action to recover civil penalties
7 pursuant to the procedures specified in Labor Code Section 2699.3.

8 24. Plaintiff has complied with the procedures for bringing suit specified in Labor Code
9 Section 2699.3. By letter dated September 23, 2021, Plaintiff gave written notice to the LWDA
10 via its online filing system and by certified mail to Defendant Guy Yocom Construction, Inc. of
11 the law violations, including the facts and theories to support the alleged violations. To date, more
12 than 65 days after the postmark date of September 23, 2021 letter, the LWDA has not advised
13 Plaintiff that it intends to investigate Plaintiff's allegations.

14 25. Pursuant to Labor Code Sections 2699(a) and (f), Plaintiff and other aggrieved
15 employees are entitled to civil penalties for Defendants' violations of the Labor Code and the
16 applicable IWC Wage Orders, including Wage Order 16, in the amount of one hundred dollars
17 (\$100) for each aggrieved employee per pay period for the initial violation, and two hundred
18 dollars (\$200) for each aggrieved employee per pay period for each subsequent violation. Pursuant
19 to Labor Code Section 2699(i), 75% of the civil penalties recovered shall be distributed to the
20 LWDA, and 25% shall be distributed to the Aggrieved Employees.

21 26. Pursuant to Labor Code Section 2699(g), Plaintiff is entitled to an award of
22 reasonable attorney's fees and costs in connection with his claims for civil penalties.

23 **PRAYER FOR RELIEF**

24 WHEREFORE, Plaintiff on behalf of himself and all others similarly Aggrieved
25 Employees, prays for relief and judgment against Defendants as follows:

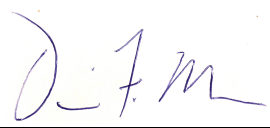
26 1. Civil penalties under Labor Code Section 2699 (75% payable to the LWDA and
27 25% payable to aggrieved employees);

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2. Costs;
3. Reasonable attorney's fees; and
4. Such other and further relief as this Court may deem just and proper.

Dated: December 9, 2021

MOSS BOLLINGER, LLP

By: 

Jeremy F. Bollinger
Dennis F. Moss
Ari E. Moss
Jorge A. Flores
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