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Attorneys for Plaintiff BIELMAN LOPEZ

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF KERN

BIELMAN LOPEZ, an individual, on behalf
of himself and other similarly Aggrieved
Employees and the State of California,

Plaintiff,

vs.

LANDSCAPE DEVELOPMENT, INC.; a
California Corporation and **DOES 1-50**,

Defendants.

Unlimited Jurisdiction

Case No.: BCV-21-102890

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

1 Plaintiff Bielman Lopez (“Plaintiff”), on behalf of himself and 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 Landscape Development, Inc.
7 (“Defendant” or “Landscape Development”). On behalf of himself and other aggrieved employees,
8 Plaintiff seeks to recover civil penalties (75% payable to the Labor & Workforce Development
9 Agency (“LWDA”) and 25% payable to aggrieved employees) owed by Defendant under Labor
10 Code Section 2699 for failure to pay minimum and overtime wages; failure to pay overtime at the
11 correct regular rate of pay; failure to produce time, pay and personnel records as required by Labor
12 Code Sections 226(b)-(c), 1198.5 and 432 and the applicable Industrial Wage Commission’s Wage
13 Order, including Wage Order 5-2001; failure to provide compliant rest and meal breaks; failure to
14 pay rest and meal break premiums at the correct regular rate of compensation, prohibiting the use
15 of paid sick leave when eligible to use it, failure to maintain complete and accurate records, failure
16 to timely pay all wages during employment, and failure to timely pay all wages upon cessation of
17 employment.

18 **JURISDICTION AND VENUE**

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

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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 the LWDA, Plaintiff was employed by Defendants in California as
6 an hourly paid non-exempt landscaper based out of Defendant's facility located in Bakersfield,
7 California. Plaintiff rendered landscaping services to Defendant's clients throughout Kern County,
8 among other places. Defendants employed Plaintiff from sometime in 2018 until September 2021.
9 Plaintiff and other similarly aggrieved employees earned non-discretionary bonuses (noted on the
10 employee's wage statement as "Commission").

11 5. As such, Plaintiff appears in this action on behalf of himself and on behalf of all
12 other similarly situated aggrieved employees and the State of California.

13 **B. Defendants**

14 6. Plaintiff is informed and believes, and thereon alleges, that Defendant Landscape
15 Development, Inc. is a California Corporation that has its corporate headquarters in Los Angeles
16 County. Defendant Landscape Development Inc. provides landscape services, including site
17 design, maintenance, and construction throughout California, including in Kern and Los Angeles
18 Counties.

19 7. Plaintiff is ignorant of the true names, capacities, relationships, and extent of
20 participation in the conduct herein alleged, of the Defendants sued herein as DOES, but is informed
21 and believes and thereon alleges that said Defendants are legally responsible for the wrongful
22 conduct alleged herein and therefore sues these Defendants by such fictitious names. Plaintiff will
23 amend this complaint to allege the true names and capacities of the DOE Defendants when
24 ascertained. Defendant Landscape Development Inc. and the DOE Defendants are collectively
25 referred to herein as "Defendants."

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

3 **FACTS RELEVANT TO PLAINTIFF'S CLAIMS**

4 ***Facts Relevant to Minimum and Overtime Wages Violations***

5 9. At all relevant times, Defendants employed Plaintiff and other similarly aggrieved
6 employees subject to Labor Code Sections 510, 1194, 1197 and the applicable Industrial Welfare
7 Commission ("IWC") Wage Orders, including Wage Order 5.

8 10. Under Labor Code Section 1197 and the applicable IWC Wage Order, including
9 Wage Order 5, Plaintiff and other similarly aggrieved employees were entitled to receive minimum
10 wages for all hours worked. Defendants failed to pay minimum wages for all hours worked in
11 violation of Labor Code Section 1197 and Section 4 of Wage Order 5.

12 11. Under Labor Code Section 510 and the applicable IWC Wage Order, including
13 Wage Order 5, Plaintiff and other similarly aggrieved employees were entitled to receive overtime
14 wages for all hours worked in excess of 8 hours in a day or 40 hours in a week. Defendants failed
15 to pay overtime wages for all hours worked in violation of Labor Code Section 510 and Section 3
16 of Wage Order 5.

17 12. At all times during the relevant period, Plaintiff regularly worked 8-hour shifts.
18 Plaintiff and other similarly aggrieved employees all worked in crews. Each crew consisted of
19 general landscape workers such as Plaintiff and one crew leader. At the direction of the crew
20 leader, Plaintiff and other similarly aggrieved employees were suffered or permitted and
21 encouraged to work past their scheduled shift time in order to avoid leaving unfinished tasks for
22 the following day or if the crew was scheduled to be at a different job site the following day. The
23 crew leader would record this time. However, Defendants did not pay Plaintiff and other similarly
24 aggrieved employees for the time they worked past their scheduled shift time and instead only paid
25 them for their scheduled shift time. Therefore, Defendants failed to compensate Plaintiff and other
26 similarly aggrieved employees minimum wages for all hours worked and overtime wages for all
27 hours worked in excess of 8 hours in a day or 40 hours in a week.

1 13. In addition, Plaintiff was required to unload supplies from supply trucks as soon as
2 the trucks arrived, including if Plaintiff was on his meal break. Defendants did not compensate
3 Plaintiff and other similarly aggrieved employees for this off-the-clock work. As a result,
4 Defendants owe Plaintiff and other similarly aggrieved employees minimum wages or overtime
5 wages (if the time to unload the supply truck caused their total work time to exceed 8 hours for
6 that day or 40 hours for that week) for those meal periods in which he performed work.

7 14. During the relevant period, on occasions when Plaintiff and other aggrieved
8 employees earned and Defendants paid overtime wages to them, Plaintiff and other aggrieved
9 employees also were paid bonuses and other non-discretionary remuneration (noted on their wage
10 statements as “Commission”) that are not excludable under California law when calculating an
11 employee’s regular rate.

12 15. Defendants failed to factor into their regular rate of pay for the calculation of the
13 overtime wages.

14 16. Despite Defendants’ payment of non-discretionary remuneration, such as
15 “Commissions”, to Plaintiff and other aggrieved employees, Defendant failed to include these
16 forms of non-discretionary remuneration when calculating Plaintiff’s and others’ regular rate of
17 pay, thereby causing them to be underpaid all of their required overtime wages.

18 ***Facts Relevant to Violations of Labor Code §§ 226(b)-(c), 1198.5 and 432 and Wage***
19 ***Order 5-2001 § 7.***

20 *Time and Pay Records*

21 17. At all relevant times, Defendants employed Plaintiff and other similarly aggrieved
22 employees subject to Labor Code Section 226 and Wage Order 5-2001. Labor Code Section 226
23 and Wage Order 5 Section 7 require that employers keep the following information on file for each
24 employee for a minimum of three years:

- 25 • The employee’s dates of employment.
- 26 • The employee’s hourly rates and the corresponding number of hours
27 worked by the employee at each hourly rate.
- 28 • When the employee begins and ends each work period (including meal
 periods and split shift intervals).
- Total hours worked by the employee.
- All deductions.

- Gross wages earned.
- Net wages earned.

18. Section (b) of Labor Code Section 226 further requires employers to “afford current and former employees the right to inspect or receive a copy of records pertaining to their employment, upon reasonable request to the employer.” Section (c) of Labor Code Section 226 provides that, “an employer who receives a written or oral request to inspect or receive a copy of records pursuant to subdivision (b) pertaining to a current or former employee shall comply with the request as soon as practicable, but no later than 21 calendar days from the date of the request. A violation of this subdivision is an infraction.”

Personnel Records

19. At all relevant times, Defendants employed Plaintiff and other similarly aggrieved employees subject to Labor Code Sections 1198.5 and 432. Pursuant to Labor Code Section 1198.5, employees and their representatives have the right to inspect and receive a copy of their personnel files. This statute applies to both former and current employees. Section 432 of the Labor Code further specifies that employers must furnish copies of all employment records bearing the employee’s signature.

20. Labor Code Section 1198.5 also requires that the file be made available for inspection or receipt within a “reasonable” amount of time, “but not later than 30 calendar days from the date the employer receives a written request.”

Facts Relevant to the Above Labor Code Violations

21. On June 7, 2021, Plaintiff through his counsel, mailed a request for Plaintiff’s employment records to Defendant Landscape Development Inc.’s Agent for Service of Process as listed on the California’s Secretary of State website.

22. As discussed above, Landscape Development had 21 days to provide Plaintiff’s pay records and 30 days to provide Plaintiff’s personnel records. After not receiving any documents from Landscape Development within the time prescribed by statute, on July 15, 2021, Plaintiff’s counsel called Landscape Development’s Human Resources Department and was directed to Carla Olsson. Upon speaking with Ms. Olsson, she confirmed that Landscape Development was in

1 receipt of Plaintiff's request for his employment records. Ms. Olsson stated that she would send
2 the responsive documents via email to Plaintiff's counsel later that day. After not receiving the
3 responsive documents from Landscape Development on July 15, 2021, Plaintiff's counsel called
4 Landscape Development's Human Resources Department on July 16, 2021. Again, Plaintiff's
5 counsel was directed to Ms. Olsson. Plaintiff's counsel was not able to speak with Ms. Olsson and,
6 therefore, left a voice message identifying Plaintiff and requesting that Landscape Development
7 send the responsive documents or at the very least return Plaintiff's counsel's call.

8 23. Since the date of filing this complaint, far more than 21 days from the date
9 Defendant Landscape Development's Agent for Service of Process received Plaintiff's original
10 letter request and more than 148 days after Plaintiff's counsel spoke with Ms. Olsson about
11 producing the responsive employment records, Landscape Development still has not responded
12 with regard to Plaintiff. As such, Defendants have violated Labor Code Sections 226(b), (c),
13 1198.5(a),(b), 432 and Section 7 of Wage Order 5-2001 and is liable for the civil penalties set forth
14 in Sections 226(f) and 1198.5(k).

15 ***Violations of California Meal and Rest Period Requirements***

16 24. Throughout Plaintiff's employment with Defendants, including during the one-year
17 period before Plaintiff notified Defendants and the LWDA of his claims, Defendants employed
18 Plaintiff and other similarly aggrieved employees subject to Labor Code Sections 226.7 and 512
19 and Section 11 of the applicable Wage Orders, including Wage Order 5.

20 25. Under Labor Code Sections 226.7 and 512 and Section 11 of the applicable Wage
21 Orders, including Wage Order 5, Plaintiff and other similarly aggrieved employees were entitled
22 to an uninterrupted meal period of at least 30 minutes for each workday they worked more than 5
23 hours in any workday. Defendants were required to allow Plaintiff and other similarly aggrieved
24 employees to take their meal break before the 5th hour of work. Labor Code Section 226.7 and the
25 applicable Wage Orders, including Wage Order 5, further entitle Plaintiff and other similarly
26 aggrieved employees to rest periods of at least 10 minutes for each four-hour period of work, or a
27 major fraction thereof. Additionally, "If an employer fails to provide an employee a meal period
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1 in accordance with the applicable provisions of this order, the employer shall pay the employee
2 one (1) hour of pay at the employee's *regular rate of compensation* for each workday that the meal
3 period is not provided." Wage Order 5-2001(11)(B), (12)(B) (same re rest periods) (emphasis
4 added); see also Labor Code Section 226.7(c) ("If an employer fails to provide an employee a meal
5 or rest or recovery period in accordance with a state law, ..., the employer shall pay the employee
6 one additional hour of pay at the employee's *regular rate of compensation* for each work day that
7 the meal or rest period is not provided." (Emphasis added)).

8 26. During the relevant period, Defendants required Plaintiff to unload landscaping
9 supplies from a supply truck as soon as it arrived at a job site, including during times in which
10 Plaintiff was taking his rest or meal breaks. Once Plaintiff finished unloading the supply truck,
11 Plaintiff's break, whether a rest or a meal period, was effectively over. Defendants did not pay
12 Plaintiff and other similarly aggrieved employees one hour of pay at the employee's regular rate
13 of pay for violations of California's meal and rest break laws when this occurred.

14 27. However, on those occasions when Defendants paid a meal break premium,
15 Defendants did not factor non-discretionary bonuses (noted on the employee's wage statement as
16 "Commission") which were required to be factored into the employee's regular rate of
17 compensation during periods in which the Commission pay was earned and meal violation
18 occurred. *Ferra v. Loews Hollywood Hotel, LLC* (Cal. July 15, 2021) --- P.3d ---- (holding that
19 when employers pay one-hour meal and rest period premiums to employees who report that they
20 were not provided compliant meal or rest periods, the pay is not at the employee's normal "base"
21 hourly rate but must be at the same "regular rate" that is used to calculate overtime premiums). On
22 information and belief, Defendants did not factor the "Commission" pay earned into Plaintiff's or
23 other aggrieved employees' regular rate of compensation.

24 ***Violations of California Paid Sick Leave***

25 28. Throughout Plaintiff's employment with Defendants, including during the one-year
26 period before Plaintiff notified Defendants and the LWDA of his claims, Plaintiff and other
27 similarly aggrieved employees were entitled to "paid sick days" pursuant to the California Healthy
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1 Workplaces, Healthy Families Act of 2014, California Labor Code Sections 245, et seq. An
2 employee is entitled to use accrued paid sick leave on the 90th day of employment. Labor Code
3 Section 246.

4 29. During the relevant period, Plaintiff and other similarly aggrieved employees
5 accrued paid sick leave. However, Plaintiff was not allowed to use his accrued paid sick leave until
6 a year into his employment with Defendants. Accordingly, Defendants violated California's paid
7 sick leave law by prohibiting Plaintiff from using accrued paid sick leave when Plaintiff was
8 eligible to use it under the law in violation of Labor Code Sections 233 and 245 et seq.

9 ***Violations of Labor Code § 204***

10 30. At all relevant times, Defendants employed Plaintiff and other similarly aggrieved
11 employees subject to Labor Code Section 204. California Labor Code § 204, subdivision (a), states
12 that all wages earned are due and payable twice during each calendar month on days designated in
13 advance by the employers.

14 31. Defendants did not pay Plaintiff and other similarly aggrieved employees all
15 minimum and overtime wages. Defendants also failed to pay premium wages for meal and rest
16 break violations discussed above. On information and believe, Defendants also failed to include
17 non-discretionary remuneration when determining the "regular rate of pay" for these employees
18 when they were paid overtime and incentive bonuses or premium wages and incentive bonuses in
19 the same pay period. Defendants willfully failed to timely pay Plaintiff and other aggrieved
20 employees all wages due for work performed and this failure continued through the time in which
21 they were employed by Defendants. As a result, Defendants violated California Labor Code
22 Section 204.

23 ***Violations of Labor Code §§ 1174(d), 1174.5, 1198 and § 7 of Wage Order 5***

24 32. Labor Code Section 1174 states, "[e]very person employing labor in this state
25 shall...(d) [k]eep, at a central location in the state or at the plants or establishments at which
26 employees are employed, payroll records showing the hours worked daily by and the wages paid
27 to, ..., employees employed at the respective plants or establishments." The "Records" section of
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1 the applicable IWC Wage Order states that every employer shall keep accurate information with
2 respect to each one of its employees, including time records showing when the employee begins
3 and ends each work period and meal period, total hours worked in the payroll period and applicable
4 rates of pay, and total wages paid each payroll period. (See Wage Order 5-2001(7); Lab. Code
5 1198 [allowing Plaintiff to enforce provisions of a wage order]).

6 33. Defendants failed to keep accurate information with respect to Plaintiff's and other
7 similarly aggrieved employees payroll, including the applicable rates of pay and total wages earned
8 (such as factoring in off-the-clock work to the total wages earned and factoring non-discretionary
9 remuneration when determining the regular rate of compensation for the payment of meal and rest
10 break premiums and overtime wages) each payroll period as required by the "Records" section of
11 the applicable IWC Wage Order. Therefore, Defendants knowingly and intentionally failed to keep
12 and maintain accurate records as required by Labor Code Sections 1174, 1198 and the Wage Order.

13 ***Violations of Labor Code §§ 201-203***

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

20 35. Plaintiff (and others) have ceased their employment by Defendants. Plaintiff left
21 his employment with Defendants in September 2021. Upon the cessation of that employment
22 relationship (and as prescribed by statute), Plaintiff (and others) did not receive all wages owed.
23 Namely, said former employees (including Plaintiff) did not receive all wages due to Defendants'
24 failure to account for all minimum and overtime wages and failure to pay all premium wages for
25 missed rest and meal periods. Plaintiff and those similarly situated, upon termination, did not
26 receive all owed wages on the date of termination, or within 72 hours if they resigned. Therefore,
27 Defendants have violated and continues to violate Labor Code Sections 201 and 202, because it
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1 has not paid the aforementioned wages and has violated Section 203 because it has not paid the
2 waiting time penalties for its failure to pay the final wages at the cessation of employment.

3 36. As a result of these violations, Plaintiff seeks on behalf of himself and all other
4 similarly aggrieved employees, penalties under PAGA.

5 **FIRST CAUSE OF ACTION**

6 **CIVIL PENALTIES UNDER PAGA**

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

8 37. Plaintiff re-alleges and incorporates by reference the foregoing allegations as
9 though set forth herein.

10 38. At all times relevant to this action, Plaintiff and other aggrieved employees were
11 “aggrieved employees” within the meaning of Labor Code Section 2699.

12 39. Defendants’ conduct as described herein, arising from Defendants’ for failure to
13 pay minimum and overtime wages; failure to pay overtime at regular rate of pay; failure to produce
14 time, pay and personnel records; failure to provide compliant rest and meal breaks; failure to pay
15 rest and meal break premiums at the correct regular rate of compensation; prohibiting the use of
16 pay paid sick when eligible to use it; failure to maintain complete and accurate records; failure to
17 timely pay all wages during employment; and failure to timely pay all wages upon cessation of
18 employment, constitute violations of Labor Code Sections 201-204, 226(b)-(c), 226.7, 233, 245,
19 246(l), 432, 510, 512, 1174(d), 1174.5, 1194, 1197, 1198, 1198.5 and the applicable IWC Wage
20 Orders, including Sections 3,4, 7, 11, and 12 of Wage Order 5-2001.

21 40. Labor Code Sections 2699(a) and (g) authorize an aggrieved employee, on behalf
22 of himself and other current or former employees, to bring a civil action to recover civil penalties
23 pursuant to the procedures specified in Labor Code Section 2699.3.

24 41. Plaintiff has complied with the procedures for bringing suit specified in Labor Code
25 Section 2699.3. By letter dated October 5, 2021, Plaintiff gave written notice to the LWDA via its
26 online filing system and by certified mail to Defendants of the specific provisions of the Labor
27 Codes alleged to have been violated, including the facts and theories to support the alleged
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1 violations. To date, more than 65 days after the postmark date of October 5, 2021, the LWDA has
2 not advised Plaintiff that it intends to investigate Plaintiff's allegations.

3 42. Pursuant to Labor Code Sections 2699(a) and (f), Plaintiff and other aggrieved
4 employees are entitled to civil penalties for Defendants' violations of the Labor Code and the
5 applicable IWC Wage Orders, including Wage Order 5-2001, in the amount of one hundred dollars
6 (\$100) for each aggrieved employee per pay period for the initial violation, and two hundred
7 dollars (\$200) for each aggrieved employee per pay period for each subsequent violation. Pursuant
8 to Labor Code Section 2699(i), 75% of the civil penalties recovered shall be distributed to the
9 LWDA, and 25% shall be distributed to the aggrieved employees.

10 43. Labor Code Section 1174.5 imposes a civil penalty of \$500 for an employer's
11 failure to maintain accurate and complete records. This civil penalty is in addition to the civil
12 penalty of \$100 per pay period, per aggrieved employee that would be imposed pursuant to Labor
13 Code Section 2699 for a violation of Labor Code Section 1174(d).

14 44. Defendants' failure to maintain accurate and complete records constitutes an injury
15 as defined under Labor Code Section 1174. Therefore, Plaintiff and other similarly aggrieved
16 employees have suffered an injury for purposes of Labor Code Sections 1174.5 and 2699 and are
17 entitled to recover the greater of all actual damages or the amount specified in Sections 1174.5 and
18 2699 per violation.

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

21 **PRAYER FOR RELIEF**

22 WHEREFORE, Plaintiff on behalf of himself and all others similarly aggrieved
23 employees, prays for relief and judgment against Defendants as follows:

- 24 1. Civil penalties under Labor Code Section 2699 (75% payable to the LWDA and
25 25% payable to aggrieved employees);
26 2. Costs;
27 3. Reasonable attorney's fees; and
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1 4. Such other and further relief as this Court may deem just and proper.

2 Dated: December 10, 2021

MOSS BOLLINGER, LLP

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By: 

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Attorneys for Plaintiff BIELMAN LOPEZ

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