

Joseph Lavi, Esq. (SBN 209776)
Vincent C. Granberry, Esq. (SBN 276483)
Danielle E. Montero, Esq. (SBN 333945)
Joshua Gillins, Esq. (SBN 338662)
LAVI & EBRAHIMIAN, LLP
8889 W. Olympic Blvd., Suite 200
Beverly Hills, California 90211
Telephone: (310) 432-0000
Facsimile: (310) 432-0001
Email: jlavi@lelawfirm.com
vgranberry@lelawfirm.com
dmontero@lelawfirm.com
jgillins@lelawfirm.com
WHT2@lelawfirm.com

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Attorneys for Plaintiff JOSE BUSTAMONTE ROBLES,
on behalf of herself and current and former aggrieved employees

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

JOSE BUSTAMONTE ROBLES, on behalf of
himself and other aggrieved employees,

Plaintiff,

vs.

TRADEMARK CONSTRUCTION CO., INC.
d/b/a J.M.W. TRUSS AND COMPONENTS;
and DOES 1 to 100, inclusive,

Defendants.

Case No.: 37-2022-00042322-CU-OE-CTL

PAGA ACTION

**PLAINTIFF JOSE BUSTAMONTE
ROBLES COMPLAINT FOR:**

- CIVIL PENALTIES PURSUANT
TO THE PRIVATE ATTORNEYS
GENERAL ACT OF 2004
("PAGA"), LABOR CODE
SECTIONS 2698, ET SEQ.**

COMES NOW Plaintiff JOSE BUSTAMONTE ROBLES ("Plaintiff"), who alleges and
complains against Defendants TRADEMARK CONSTRUCTION CO., INC. d/b/a J.M.W.
TRUSS AND COMPONENTS; and DOES 1 to 100, inclusive (collectively "Defendants") as
follows:

I. INTRODUCTION

1. This is a Private Attorneys' General Act of 2004, Lab. Code §§ 2698, *et seq.*
("PAGA") representative action brought by Plaintiff on behalf of the State of California, himself

1 and other current and former aggrieved employees of Defendants who worked as hourly non-
2 exempt employees in California during the relevant time period seeking civil penalties associated
3 with Defendants' violation of the Labor Code based on Defendants' failure to pay wages for all
4 hours worked at minimum wage; failure to authorize or permit all legally required and/or
5 compliant meal periods and/or pay meal period premium wages; failure to authorize or permit all
6 legally required and/or compliant rest periods and/or pay rest period premium wages;
7 indemnification for all necessary expenditures or losses incurred by employees in direct
8 consequence of discharging their duties; statutory penalties for failure to timely pay earned wages
9 during employment; statutory penalties for failure to provide accurate wage statements; statutory
10 waiting time penalties in the form of continuation wages for failure to timely pay employees all
11 wages due upon separation of employment. Plaintiff seeks on a representative basis, following
12 notice to the Labor and Workforce Development Agency, civil penalties, reasonable attorneys'
13 fees pursuant to Labor Code section 2699(g)(1) and costs brought on behalf of Plaintiff, the State
14 of California, and others aggrieved.

15 **II. JURISDICTION AND VENUE**

16 2. This Court has jurisdiction over the claims of Plaintiff and all other current and
17 former aggrieved California-based hourly non-exempt employees because Plaintiff's lawsuit seeks
18 civil penalties on behalf of himself, all other current and former aggrieved California-based hourly
19 non-exempt employees, and the State of California in excess of twenty-five thousand dollars
20 (\$25,000); Defendants employed Plaintiff and all other current and former aggrieved California-
21 based hourly non-exempt employees; and the injuries to Plaintiff and all other current and former
22 aggrieved California-based hourly non-exempt employees occurred in locations throughout
23 California, including but not limited to San Diego County, at 15916 Bernardo Center Drive, San
24 Diego, California 92127.

25 3. In response to the COVID-19 pandemic, the Judicial Council of California enacted
26 Emergency Rule 9 to the California Rules of Court, which provided that, notwithstanding any
27 other law, the statutes of limitations and repose for civil causes of action that exceed 180 days are
28 tolled from April 6, 2020, until October 1, 2020.

1 **III. PARTIES**

2 4. Plaintiff brings this action as a representative of the Labor and Workforce
3 Development Agency on behalf of herself and other current and former employees subject to
4 violations of the Labor Code. The named Plaintiff and the persons on whose behalf this action is
5 filed include current, former and/or future employees of Defendants who work, worked, or will
6 work for Defendants as direct employees as well as temporary employees employed through temp
7 agencies as hourly non-exempt employees in California. At all times mentioned herein, the
8 currently named Plaintiff is and was domiciled and a resident and citizen of California and was
9 employed by Defendants in an hourly position at Defendants' location in San Bernardino from in
10 or around June 2017, until on or about July 2021.

11 5. Plaintiff is informed and believes and thereon alleges that Defendant
12 TRADEMARK CONSTRUCTION CO., INC. d/b/a J.M.W. TRUSS AND COMPONENTS is
13 authorized to do business within the State of California and is doing business in the State of
14 California and/or that Defendants DOES 1-50 are, and at all times relevant hereto were persons
15 acting on behalf of Defendant TRADEMARK CONSTRUCTION CO., INC. d/b/a J.M.W.
16 TRUSS AND COMPONENTS in the establishment of, or ratification of, the aforementioned
17 illegal wage and hour practices or policies. Defendant TRADEMARK CONSTRUCTION CO.,
18 INC. d/b/a J.M.W. TRUSS AND COMPONENTS operates in San Diego County and employed
19 Plaintiff and putative class members in San Diego County, including but not limited to, at 15916
20 Bernardo Center Drive, San Diego, California 92127.

21 6. Plaintiff is informed and believes and thereon alleges that Defendants DOES 1
22 through 50 are corporations, or are other business entities or organizations of a nature unknown to
23 Plaintiff that employed Plaintiff and aggrieved California non-exempt employees, permitted
24 Plaintiff and aggrieved employees to work, and exercised control over the wages, hours and
25 working conditions of employment of Plaintiff and aggrieved employees.

26 7. Plaintiff is informed and believes and thereon alleges that Defendants DOES 51
27 through 100 are individuals unknown to Plaintiff. Each of the individual defendants is sued
28 individually and in his or her capacity as an agent, shareholder, owner, representative, manager,

supervisor, independent contractor and/or employee of each defendant who violated or caused to be violated the minimum wage and overtime provisions of the Labor Code and/or any provision of the Industrial Welfare Commission's wage orders regulating hours and days of work.

8. Plaintiff is unaware of the true names of Defendants DOES 1 through 100. Plaintiff sues said defendants by said fictitious names and will amend this complaint when the true names and capacities are ascertained or when such facts pertaining to liability are ascertained, or as permitted by law or by the Court. Plaintiff is informed and believes that each of the fictitiously named defendants is in some manner responsible for the events and allegations set forth in this complaint.

9. Plaintiff makes the allegations in this complaint without any admission that, as to any particular allegation, Plaintiff bears the burden of pleading, proving, or persuading and Plaintiff reserves all of Plaintiff's right to plead in the alternative.

FIRST CAUSE OF ACTION

CIVIL PENALTIES AND WAGES PURSUANT TO THE PRIVATE ATTORNEYS

GENERAL ACT OF 2004, LABOR CODE SECTIONS 2698, ET SEQ.

(Against all Defendants by Plaintiff)

10. Plaintiff incorporates all paragraphs above as though fully set forth herein.

11. During the period beginning one (1) year preceding Plaintiff sending the initial PAGA Claim Notice to the LWDA to the present, Defendants violated Labor Code sections 201, 202, 203, 204, 226, 226.7, 512, 1194, 1197, 2802 and Sections 14 and 15 of the applicable Wage Orders.

12. Specifically, Defendants have committed the following violations of California Labor Code:

13. **Failure to pay wages for all hours worked at the legal minimum wage:** Defendants employed many of their employees, including Plaintiff, as hourly non-exempt employees. In California, an employer is required to pay hourly employees for all "hours worked," which includes all time that an employee is under control of the employer and all time the employee is suffered and permitted to work. This includes the time an employee spends, either

1 directly or indirectly, performing services which inure to the benefit of the employer.

2 14. Labor Code sections 1194 and 1197 require an employer to compensate employees
3 for all “hours worked” at least at a minimum wage rate of pay as established by the IWC and the
4 Wage Orders.

5 15. In this case, Plaintiff and other current and former aggrieved California-based
6 hourly non-exempt employees worked more minutes per shift than Defendants credited them with
7 having worked. Specifically, Defendants failed to pay Plaintiff and other current and former
8 aggrieved California-based hourly non-exempt employees all wages at the applicable minimum
9 wage for all hours worked due to Defendants’ policies, practices, and/or procedures including, but
10 not limited to:

11 (a) Designing and maintaining a compensation system in which Plaintiff and other
12 current and former aggrieved California-based hourly non-exempt employees were paid based on
13 converting piece rate production into hours worked at a particular rate, but simultaneously failing
14 to consider in their wage calculations any non-productive time (for example, time spent in
15 meetings or trainings)during which Plaintiff and other current and former aggrieved California-
16 based hourly non-exempt employees were subject to the control and direction of Defendants;

17 (b) Requiring Plaintiff and other current and former aggrieved California-based hourly
18 non-exempt employees to work beyond hours scheduled for them by Defendants but only
19 compensating Plaintiff and other current and former aggrieved California-based hourly non-
20 exempt employees based on the hours scheduled;

21 (c) Requiring Plaintiff and other similarly situated employees to travel between
22 worksites as a condition of their employment yet failing to compensate Plaintiff and other
23 similarly situated employees for the time spent traveling between worksites; and

24 (d) Automatically deducting thirty (30) minutes from the total daily hours worked by
25 Plaintiff and other similarly situated employees and attributing those deductions to a meal period
26 despite Defendants routinely failing to provide Plaintiff and other current and former aggrieved
27 California-based hourly non-exempt employees with meal periods which are duty-free,
28 uninterrupted, and/or at least thirty (30) minutes as required by law.

1 16. Therefore, Defendants suffered, permitted, and required Plaintiff and other current
2 and former aggrieved California-based hourly non-exempt employees to be subject to Defendants'
3 control without paying wages for that time. This resulted in Plaintiff and other current and former
4 aggrieved California-based hourly non-exempt employees working time for which they were not
5 compensated any wages, in violation of Labor Code sections 1194 and 1197 and the applicable
6 Wage Order.

7 17. **Failure to pay wages to hourly non-exempt employees for workdays that**
8 **Defendants failed to provide legally required and compliant meal periods:** Plaintiff and other
9 current and former aggrieved California-based hourly non-exempt employees regularly worked
10 shifts of more than five (5) hours in length and shifts of more than ten (10) hours in length.

11 18. California law requires an employer to authorize or permit an employee an
12 uninterrupted meal period of no less than thirty (30) minutes in which the employee is relieved of
13 all duties and the employer relinquishes control over the employee's activities prior to the
14 employee's sixth hour of work. Labor Code sections 226.7, 512; Wage Order 16 at §11; *Brinker*
15 *Rest. Corp. v. Super Ct. (Hohnbaum)* (2012) 53 Cal.4th 1004. An employer may not employ an
16 employee for a work period of more than ten (10) hours per day without providing the employee
17 with a second such meal period of not less than thirty (30) minutes prior to the start of the eleventh
18 hour of work. *Id.* If the employee is not relieved of all duty during a meal period, the meal period
19 shall be considered an "on duty" meal period and counted as time worked. A paid "on duty" meal
20 period is only permitted when: (1) the nature of the work prevents an employee from being
21 relieved of all duty; and (2) the parties have a written agreement agreeing to on-duty meal periods.

22 19. If an employer fails to provide an employee a meal period in accordance with the
23 law, the employer must pay the employee one (1) hour of pay at the employee's regular rate of pay
24 for each workday that a legally required and compliant meal period was not provided. Labor Code
25 section 226.7; Wage Order 16 at §11.

26 20. In this case, Defendants failed to authorize or permit legally required and compliant
27 meal periods to Plaintiff and other current and former aggrieved California-based hourly non-
28 exempt employees due to Defendants' policies, practices, and/or procedures, including but not

1 limited to:

2 (a) Automatically deducting thirty (30) minutes from the total daily hours worked by
3 Plaintiff and other current and former aggrieved California-based hourly non-exempt employees
4 and attributing those deductions to a meal period despite Defendants routinely failing to provide
5 Plaintiff and other current and former aggrieved California-based hourly non-exempt employees
6 with meal periods which are duty-free, uninterrupted, and/or at least thirty (30) minutes as
7 required by law; and

8 (b) Failing to Plaintiff and other current and former aggrieved California-based hourly
9 non-exempt employees a second uninterrupted duty-free meal period of no less than thirty (30)
10 minutes for each five-hour period of work as required by law.

11 21. Additionally, Plaintiff alleges that Defendants maintained a policy, practice, and/or
12 procedure of failing to compensate Plaintiff and other current and former aggrieved California-
13 based hourly non-exempt employees one (1) hour of pay at their regular rate of pay for each
14 workday that Plaintiff and other current and former aggrieved California-based hourly non-exempt
15 employees did not receive legally required and compliant meal periods, in violation of Labor Code
16 section 226.7.

17 22. Defendants' foregoing policies, practices, and/or procedures resulted in Plaintiff
18 and other current and former aggrieved California-based hourly non-exempt employees not
19 receiving wages to compensate them for workdays during which Defendants did not provide them
20 with meal periods in compliance with California law.

21 23. **Failure to pay wages to hourly non-exempt employees for workdays that**
22 **Defendants failed to provide legally required and compliant rest periods:** Plaintiff and other
23 current and former aggrieved California-based hourly non-exempt employees regularly worked
24 shifts of more than three-and-a-half (3.5) hours.

25 24. California law requires every employer to authorize and permit an employee a rest
26 period of ten (10) net minutes for every four (4) hours worked or major fraction thereof. Labor
27 Code section 226.7; Wage Order 16 at §12. Under California law, "[e]mployees are entitled to 10
28 minutes' rest for shifts from three and one-half to six hours in length, 20 minutes for shifts of more

1 than six hours up to 10 hours, 30 minutes for shifts of more than 10 hours up to 14 hours, and so
2 on.” *Brinker Restaurant Corp. v. Sup. Ct. (Hohnbaum)* (2012) 53 Cal.4th 1004, 1029; Labor Code
3 section 226.7; Wage Order 16 at §12. Rest periods, insofar as practicable, shall be in the middle of
4 each work period. Wage Order 16 at §12. Additionally, the rest period requirement “obligates
5 employers to permit – and authorizes employees to take – off-duty rest periods.” *Augustus v. ABM*
6 *Security Services, Inc.*, (2016) 5 Cal.5th 257, 269. That is, during rest periods employers must
7 relieve employees of all duties and relinquish control over how employees spend their time. *Id.*

8 25. If the employer fails to authorize or permit a required rest period, the employer
9 must pay the employee one (1) hour of pay at the employee’s regular rate of pay for each workday
10 the employer did not authorize or permit a legally required rest period. Labor Code section 226.7;
11 Wage Order 16 at § 12.

12 26. In this case, Defendants failed to authorize or permit all legally required and
13 compliant rest periods to Plaintiff and other current and former aggrieved California-based hourly
14 non-exempt employees due to Defendants’ policies, practices, and/or procedures including, but not
15 limited to:

16 (a) Failing to provide Plaintiff and other current and former aggrieved California-based
17 hourly non-exempt employees with duty-free rest periods of at least net ten (10) minutes for every
18 four (4) hours worked or major fraction thereof.

19 27. Additionally, Plaintiff alleges that Defendants maintained a policy, practice, and/or
20 procedure of failing to compensate Plaintiff and other current and former aggrieved California-
21 based hourly non-exempt employees with one (1) hour of pay at their regular rate of pay for each
22 workday they did not receive legally required and compliant rest periods, in violation of Labor
23 Code section 226.7.

24 28. Defendants’ foregoing policies, practices, and/or procedures resulted in Plaintiff
25 and other current and former aggrieved California-based hourly non-exempt employees not
26 receiving wages to compensate them for workdays in which Defendants did not provide them with
27 rest periods in compliance with California law.

28 29. **Failure to Indemnify for Losses and Expenditures Incurred as Part of**

1 **Employment:** California law requires that every employer must indemnify its employees for all
2 necessary expenditures or losses incurred by the employee in discharge of his or her duties or at
3 the obedience of the directions of the employer. Moreover, an employer is prohibited from passing
4 the ordinary business expenses and losses of the employer onto the employee. (Lab. Code, §
5 2802.)

6 30. Defendants have violated Labor Code Section 2802 by failing to indemnify
7 Plaintiff and other current and former aggrieved California-based non-exempt hourly employees'
8 necessary expenditures they incurred in the discharge of their duties. Specifically, Defendants
9 employed a policy, practice, and procedure include, but were not limited to:

10 (a) Requiring Plaintiff and other current and former aggrieved California-based non-
11 exempt hourly employees' to drive between work sites using their personal vehicles. Plaintiff and
12 other current and former aggrieved California-based non-exempt hourly employees' were not
13 compensated for the costs associated with use of their personal vehicles including, but not limited
14 to, necessary repairs and maintenance, diminution in value of the vehicle, and fuel costs.

15 31. Moreover, Defendants employed policies and procedures which ensured Plaintiff
16 and aggrieved employees would not receive indemnification for their employment related
17 expenses. This practice resulted in Plaintiff and aggrieved employees not receiving such
18 indemnification in compliance with California law.

19 32. Therefore, Defendants are liable to Plaintiff and aggrieved employees for their
20 employment related expenses, including but not limited to costs related to use of their personal
21 cell phones and costs associated with their uniforms pursuant to Labor Code section 2802.

22 33. **Failure to timely pay earned wages during employment:** In California, wages
23 must be paid at least twice during each calendar month on days designated in advance by the
24 employer as regular paydays, subject to some exceptions. Labor Code section 204(a). Wages
25 earned between the 1st and 15th days, inclusive, of any calendar month must be paid between the
26 16th and the 26th day of that month and wages earned between the 16th and the last day,
27 inclusive, of any calendar month must be paid between the 1st and 10th day of the following
28 month. *Id.* Other payroll periods such as those that are weekly, biweekly, or semimonthly, must be

1 paid within seven (7) calendar days following the close of the payroll period in which wages were
2 earned. Labor Code section 204(d).

3 34. As a derivative of Plaintiff's claims above, Plaintiff alleges that Defendants failed
4 to timely pay Plaintiff's and other current and former aggrieved California-based hourly non-
5 exempt employees' earned wages (including minimum wages, meal period premium wages and/or
6 rest period premium wages), in violation of Labor Code section 204. Defendants' aforementioned
7 policies, practices, and/or procedures resulted in their failure to pay Plaintiff's and other current
8 and former aggrieved California-based hourly non-exempt employees' their earned wages within
9 the applicable time frames outlined in Labor Code section 204.

10 35. **Failure to provide complete and accurate wage statements:** Labor Code section
11 226, subdivision (a). Labor Code section 226(a) provides, *inter alia*, that, upon paying an
12 employee his or her wages, the employer must "furnish each of his or her employees ... an
13 itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the
14 employee, except for any employee whose compensation is solely based on a salary and who is
15 exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of
16 the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable
17 piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided, that all
18 deductions made on written orders of the employee may be aggregated and shown as one item, (5)
19 net wages earned, (6) the inclusive dates of the pay period for which the employee is paid, (7) the
20 name of the employee and his or her social security number, (8) the name and address of the legal
21 entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and
22 the corresponding number of hours worked at each hourly rate by the employee."

23 36. As a derivative of Plaintiff's allegations above, Defendants' failure to pay Plaintiff
24 and other current and former aggrieved California-based hourly non-exempt employees all wages
25 earned (including minimum wages, meal period premium wages, and/or rest period premium
26 wages) rendered Plaintiff's and other current and former aggrieved California-based hourly non-
27 exempt employees' wage statements inaccurate, in violation of Labor Code section 226.

28 37. **Failure to pay employees all wages due at time of termination/resignation:** An

1 employer is required to pay all unpaid wages timely after an employee's employment ends. The
2 wages are due immediately upon termination (Labor Code section 201) or within seventy-two (72)
3 hours of resignation (Labor Code section 202).

4 38. As a derivative of Plaintiff's allegations above, because Defendants failed to pay
5 Plaintiff and other current and former aggrieved California-based hourly non-exempt employees
6 all their earned wages (including minimum wages, meal period premium wages, and/or rest period
7 premium wages), Defendants failed to pay those employees timely after each employee's
8 termination and/or resignation, in violation of Labor Code sections 201, 202, and 203.

9 39. Defendants' violations of Wage Order 16 constituted violations of Labor Code
10 section 1198, which prohibits employment under conditions of labor that violate the Wage Orders.

11 40. Labor Code sections 2699, subdivisions (a) and (g) authorize an aggrieved
12 employee, on behalf of himself or herself and other current or former employees, to bring a civil
13 action to recover civil penalties against all Defendants pursuant to the procedures specified in
14 Labor Code section 2699.3.

15 41. Plaintiff has complied with the procedures for bringing suit specified in Labor
16 Code section 2699.3. On January 27, 2022, Plaintiff filed a PAGA Claim Notice with the LWDA
17 and provided notice to Defendants by certified mail which provided notice of the specific
18 provisions of the Labor Code alleged to have been violated, including the facts and theories to
19 support the violations alleged.

20 42. Pursuant to Labor Code section 2699.3, the LWDA must give written notice by
21 certified mail to the parties that it intends to investigate the alleged violations of the Labor Code
22 within 60 days of the date of the complainant's written notice. The LWDA failed to provide the
23 parties notice within 60 days of the date of Plaintiff's PAGA Claim Notice that the LWDA intends
24 to investigate Plaintiff's claims.

25 43. Pursuant to Labor Code sections 2699(a) and (f), Plaintiff is entitled to recover civil
26 penalties for Defendants' violations of Labor Code sections 201, 202, 203, 204 226, 226.7, 512,
27 1194, 1197, and 2802, beginning one (1) year preceding Plaintiff sending the initial PAGA Claim
28 Notice to the LWDA to the present, in the following amounts:

1 Dated: October 21, 2022

Respectfully submitted,
LAVI & EBRAHIMIAN, LLP

2
3 By: 

4 Joseph Lavi, Esq.
5 Vincent C. Granberry, Esq.
6 Danielle E. Montero, Esq.
7 Joshua Gillins, Esq.
8 Attorneys for Plaintiff
9 JOSE BUSTAMONTE ROBLES,
10 on behalf of himself and current and former
11 aggrieved employees
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