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ELECTRONICALLY FILED

Superior Court of California,
County of Placer

07/14/2022 at 12:09:04 PM

By: Cristina Vallan-Brown
Deputy Clerk

10 **SUPERIOR COURT OF CALIFORNIA**
11 **FOR THE COUNTY OF PLACER**

12 _____)
13 ALFONSO ORTEGA, individually, and)
14 as an aggrieved employee pursuant to the)
Private Attorneys General Act (PAGA),)

15 Plaintiff,)

17 vs.)

18 _____)
19 HOOKED ON SOLAR, INC.; and DOES)
20 1 to 20, inclusive,)

21 Defendants)
22 _____)
23

Case No. S-CV-0048541

**FIRST AMENDED COMPLAINT FOR
DAMAGES:**

1. **Failure to Provide Accurate Wage Statements;**
2. **Failure to Pay Minimum Wage for All Hours Worked;**
3. **Failure to Provide Meal and Rest Periods;**
4. **Waiting Time Penalties;**
5. **Failure to Pay Overtime Wages;**
6. **Civil Penalties Pursuant to Private Attorney General Act, Labor Code § 2698 et seq.**

1 Plaintiff ALFONSO ORTEGA (“Plaintiff”) hereby files this Complaint against
2 Defendant HOOKED ON SOLAR, INC., and DOES 1 to 20, inclusive, (hereinafter collectively
3 referred to as “Defendants”). Plaintiff alleges the following:

4 **PARTIES AND JURISDICTION**

5 1. Plaintiff ALFONSO ORTEGA is an individual over the age of eighteen (18) and is now
6 and/or at all times mentioned in this Complaint was a resident of the State of California.

7 2. Plaintiff is a former employee of Defendants, providing services as a non-exempt solar
8 installer in California.

9 3. This is an action brought by Plaintiff seeking damages for failure to pay employees at the
10 correct regular rate of pay for overtime and double time, failure to provide meal and rest periods,
11 inaccurate wage statements, and derivative civil and statutory penalties. Plaintiff seeks these
12 damages and penalties, plus interest and attorney’s fees, as well as PAGA penalties on behalf of
13 similarly situated employees.

14 4. During all relevant times, Plaintiffs and similarly situated employees worked for
15 Defendant as non-exempt employees. Defendant issued wage statements to Plaintiff and similarly
16 situated employees that did not comply with California law because, among other things, they did
17 not include all hours worked, and the regular rate of pay. As a matter of policy and practice,
18 Defendants failed to provide Plaintiffs and similarly situated employees meal and rest periods, and
19 failed to pay Plaintiffs and similarly situated employees all wages due, including overtime, which is
20 in violation of the California Labor Code.
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22 5. This is also an enforcement action under the Labor Code Private Attorneys General Act
23 of 2004 (“PAGA”), California Labor Code section 2698, *et seq.* to recover civil penalties and any
24 other available relief on behalf of Plaintiff, the State of California, and other current and former
25 employees who worked for Defendants in California and who suffered at least one violation of the
26 Labor Code as set forth in this complaint, at any time between February 17, 2021, and judgement.
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1 6. Plaintiff is informed and believes, and thereon alleges, that Defendant HOOKED ON
2 SOLAR, INC. is a California Corporation with its principal place of business in Rocklin, California.
3 Defendant is engaged in the business of selling and installing solar power installations.

4 7. Plaintiff is further informed and believes, and thereon alleges, that each of the Defendants
5 herein was, at all times relevant to this action, the agent, employee, or joint employer or joint
6 venturer of the remaining defendants and was acting within the course and scope of that relationship.
7 Plaintiff is further informed and believes, and thereon alleges, that each of the Defendants herein
8 gave consent to, ratified and authorized the acts alleged herein to each of the remaining defendants.
9 The true names and capacities of the defendants named herein Does 1 through 20, inclusive, whether
10 individual, corporate, associate, or otherwise are unknown to Plaintiff, who therefore sues such
11 defendants by fictitious names pursuant to California Code of Civil Procedure section 474. Plaintiff
12 will amend this complaint to show such true names and capacities of Does 1 through 20, inclusive,
13 when they have been determined.

14 8. The Placer County Superior Court has jurisdiction in this matter under due to alleged
15 violations of California Labor Code §§ 226, 226.3, 213, and Business and Professions Code § 17200
16 *et seq.*

17 9. Venue is proper pursuant to Civil Procedure Code §§ 395(a) and 395.5, in that some of
18 the wrongful acts and violations of law asserted herein occurred within Placer County.

19 10. On February 17, 2022, Plaintiff filed his Labor Code § 2699.3 Private Attorney General
20 Act (“PAGA”) notice with the California Labor & Workforce Development Agency (“LWDA”).
21 The LWDA did not respond to Plaintiff’s PAGA notice within 65 days.

22 **FACTS COMMON TO ALL CAUSES OF ACTION**

23 11. Plaintiff and similarly situated employees worked for Defendant(s) as non-exempt
24 employees in California. Plaintiff and similarly situated employees were paid on an hourly basis
25 plus bonuses for each solar panel installed.

26 12. Defendant failed to pay Plaintiff and similarly aggrieved employees overtime and double
27 time hours at the correct regular rate of pay. Plaintiff and similarly aggrieved employees received
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1 nondiscretionary bonuses based on production levels. All of these non-discretionary bonuses were
2 paid to Plaintiff and similarly aggrieved employees on a regular basis. However, Defendant failed to
3 pay all overtime and double time hours at the regular rate of pay by failing to include non-
4 discretionary bonuses in the calculation of the regular rate paid for all overtime and double time
5 hours worked.

6 13. Moreover, Defendant failed to pay accrued sick leave to Plaintiff and similarly situated
7 employees at the regular rate of pay in violation of the California Healthy Workplaces Healthy
8 Families Act (“HWHFA”), by again failing to include all forms of nondiscretionary remuneration
9 into the calculation of the regular rate of pay.

10 14. As a result, Defendants did not provide Plaintiff and similarly situated employees legally
11 compliant wage statements noting, among other things, total hours worked, gross wages earned, the
12 applicable hourly rates in effect during the pay period and the corresponding number of hours
13 worked at each hourly rate. The wage statements received by Plaintiff, and similarly aggrieved
14 employees, did not accurately list all applicable hourly rates, including the overtime rate of pay.

15 15. The regular wage statements do not factor non-discretionary payments, such as bonuses
16 other forms of nondiscretionary remuneration, into the overtime rate of pay, and the manner in
17 which overtime, regular wages, and other rates of pay are reported on the wage statements made it
18 impossible for Plaintiff, and similarly aggrieved employees, to determine whether they were paid
19 correctly, or what their correct regular rate of pay, or overtime rate of pay was. *See Magadia v. Wal-*
20 *Mart Assocs., Inc.*, 319 F. Supp. 3d 1180, 1190–91 (N.D. Cal. 2018).

21 16. Plaintiff and similarly situated employees were required to incur business-related
22 expenses and were not reimbursed. Plaintiff and similarly situated employees were required to use
23 their personal cell phones for business purposes such as clocking in and out for their shifts, and
24 documenting progress or completion of installation projects. Defendant required Plaintiff and
25 similarly situated employees to clock in and out using an app called Intuit that Defendant required its
26 employees to download onto the personal cell phone.
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1 17. Defendant also required Plaintiff and similarly situated employees to download an app
2 for documenting progress on and completion of installation projects, and Plaintiff and similarly
3 situated employees were required to enter data into the app as well as take photos of a project for
4 entry into the app. Plaintiff and similarly situated employees were also required to use their personal
5 cell phones for frequent phone communication with Defendant's management and other employees
6 of Defendant. Plaintiff and similarly situated employees were not reimbursed for this frequent
7 business use of their personal cell phones.

8 18. Plaintiff and similarly situated employees were also not reimbursed for the business-
9 related use of their personal vehicles. Plaintiff and similarly situated employees frequently had to
10 travel between job sites, or from Defendant's location to job sites. On nearly every installation, one
11 of the members of the installation crew was required to drive their personal vehicle to the job site, or
12 between job sites during the workday. In August, 2021, Defendant notified its employees that it
13 would not provide mileage reimbursement to its employees. Even before this date, not all mileage
14 incurred for business purposes by Plaintiff and similarly situated employees was reimbursed.

15 19. Defendant also did not provide Plaintiff and similarly situated aggrieved employees all
16 wages owed upon their termination or within seventy-two (72) hours of their separation from
17 employment.

18 20. Plaintiff is informed and believes that Defendant committed numerous other violations of
19 the California Labor Code, including but not limited to those identified in this letter. Pursuant to
20 *Huff v. Securitas Sec. Servs. USA, Inc.*, 23 Cal. App. 5th 745 (2018), Plaintiff intends to seek civil
21 penalties for all violations of the California Labor Code, whether he experienced them personally or
22 not.

23 21. Upon information and belief, all transactions regarding hiring, terminations, promotions,
24 pay increases, etc. relating to Defendant's California employees were submitted to and processed by
25 Defendant's HR department in its corporate headquarters. Additionally, on information and belief,
26 Defendants' corporate records, in particular HR and pay records pertaining to Defendants' California
27 employees, are also maintained at Defendant's corporate headquarters.
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1 22. Upon information and belief, Defendant maintains a central Payroll department at its
2 corporate headquarters, which processes payroll for all Defendant's employees, including Plaintiff
3 and similarly situated, aggrieved employees.

4 23. Plaintiff is informed and believes, and thereon alleges, that Defendant knew or should
5 have known that Plaintiff and other similarly situated aggrieved employees were entitled to overtime
6 pay, minimum wages, reimbursement for business-related expenses, and timely payment of all
7 wages earned upon termination of employment. In violation of the California Labor Code, Plaintiff
8 and other similarly situated, aggrieved employees, did not receive these payments.

9 24. At all times herein set forth, PAGA provides that any provision of law under the Labor
10 Code and applicable IWC Wage Order that provides for a civil penalty to be assessed and collected
11 by the LWDA for violations of the California Labor Code and applicable IWC Wage Order may, as
12 an alternative, be recovered by aggrieved employees in a civil action brought on behalf of
13 themselves and other current or former employees pursuant to procedures outlined in California
14 Labor Code section 2699.3.

15 25. PAGA defines an aggrieved employee in Labor Code section 2699(c) as "any person who
16 was employed by the alleged violator and against whom one or more of the alleged violation was
17 committed."

18 26. Plaintiff and other current and former employees of Defendant are aggrieved employees
19 as defined by the Labor Code in that they are all Defendant's current or former employees and one
20 or more of the alleged violations was committed against them.

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22 **FIRST CAUSE OF ACTION**

23 **(Failure to Provide Accurate Wage Statements)**

24 27. Plaintiff incorporates by reference and re-allege paragraphs 1 through 26 as though fully
25 set forth herein.

26 28. According to Labor Code section 226(a), an employer must provide an itemized
27 statement to an employee, semi-monthly or at the time of each payment of wages, showing:
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1 (1) gross wages earned, (2) total hours worked by the employee,
2 except for any employee whose compensation is solely based on a
3 salary and who is exempt from payment of overtime under
4 subdivision (a) of Section 515 or any applicable order of the
5 Industrial Welfare Commission, (3) the number of piece-rate units
6 earned and any applicable piece rate if the employee is paid on a
7 piece-rate basis, (4) all deductions, provided that all deductions
8 made on written orders of the employee may be aggregated and
9 shown as one item, (5) net wages earned, (6) the inclusive dates of
10 the period for which the employee is paid, (7) the name of the
11 employee and the last four digits of his or her social security number
12 or an employee identification number other than a social security
13 number, (8) the name and address of the legal entity that is the
14 employer and, if the employer is a farm labor contractor, as defined
15 in subdivision (b) of Section 1682, the name and address of the legal
16 entity that secured the services of the employer, and (9) all
17 applicable hourly rates in effect during the pay period and the
18 corresponding number of hours worked at each hourly rate by the
19 employee. The deductions made from payment of wages shall be
20 recorded in ink or other indelible form, properly dated, showing the
21 month, day, and year, and a copy of the statement and the record of
22 the deductions shall be kept on file by the employer for at least three
23 years at the place of employment or at a central location within the
24 State of California.

25 29. Defendant failed to provide an itemized statement or failed to provide an accurate and
26 complete itemized statement showing the requirements set forth in Labor Code section 226(a).
27 Defendant failed to list on the wage statements provided to Plaintiff wage statements listing all hours
28 worked and the applicable rates of pay and overtime rate.

30. Additionally, Plaintiff alleges he suffered injury as a result of Defendant's knowing and
intentional failure to provide accurate and complete information as required by any one or more of
items (1) to (9), inclusive, of Labor Code section 226, subdivision (a), and Plaintiff cannot promptly
and easily determine (*i.e.* a reasonable person in each Plaintiff's position would not be able to readily
ascertain the information without reference to other documents or information) from the wage
statement alone. Cal. Lab Code § 226(e)(2)(B)(iv).

31. As a proximate cause of Defendant's failure to provide accurate statements, Plaintiff was
damaged and is entitled to statutory and civil penalties under the Labor Code, and attorney's fees
and costs, in an amount to be proven at trial.

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32. Plaintiff hereby incorporates by reference Paragraphs 1 through 31 of this Complaint as if fully set forth herein and for a cause of action alleges as follows:

34. Defendant was aware of its obligation to pay the minimum wages but failed to do so.

THIRD CAUSE OF ACTION
(Failure to Provide Meal and Rest Periods)

(Failure to Provide Meal and Rest Periods)

37. An employer must provide an employee a meal period and/or rest period in accordance with the applicable Wage Order and Labor Code sections 226.7 and 512.

39. Labor Code section 510 and Wage Order 16-2001 section 11(A) require an employer to provide a rest period of not less than ten (10) minutes for each work period of more than four (4) hours or a major fraction thereof.

1 40. Plaintiff alleges that Defendant failed to provide Plaintiff with meal breaks of at least
2 thirty (30) minutes for several work periods that Plaintiff worked more than five (5) hours in a day,
3 or to take a second meal break of at least thirty (30) minutes for several work periods that Plaintiff
4 worked more than ten (10) hours in a day.

5 41. Plaintiff further alleges that Defendant failed to provide rest breaks of at least ten (10)
6 minutes for each work period that he worked for four (4) hours or major fraction thereof.

7 42. Plaintiff further alleges that, in the instances in which Defendant did provide a missed
8 meal or rest period premium, Defendant failed to pay the premium at one hour of pay at the
9 employees' regular rate of pay.

10 43. As a proximate cause of Defendant's failure to provide meal and rest periods, Plaintiff is
11 entitled to one (1) hour of pay at the regular rate of compensation for each meal period or rest period
12 not provided, as a wage, from three (3) years of the filing of this action, in an amount to be
13 established at trial. See Labor Code § 226.7 and Wage Order 1-2001 §§ 10(F), 11(D).

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15 **FOURTH CAUSE OF ACTION**
16 **(Waiting Time Penalties)**

17 44. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 43 as though fully
18 set forth herein.

19 45. An employer must pay an employee who is terminated all unpaid wages immediately
20 upon termination. California Labor Code § 201.

21 46. An employer who willfully fails to pay an employee wages in accordance with California
22 Labor Code sections 201 and/or 202 must pay the employee a waiting time penalty of up to thirty
23 (30) days. California Labor Code § 203.

24 47. Defendant failed to pay its employees all wages owed at their termination or separation
25 from employment, including, but not limited to, unpaid overtime and minimum wages, and unpaid
26 meal and rest period penalties.

1 48. Defendant knew of its obligation to pay Plaintiff and Defendant's failure to pay all wages
2 was in complete disregard of its obligations. Such conduct shows Defendant's knowledge of its
3 obligation to pay all wages owed upon termination and willful refusal.

4 49. As a proximate result of the Defendant's conduct, Plaintiff has been damaged and
5 deprived of his wages and thereby seeks his daily rate of pay multiplied by thirty (30) days for
6 Defendant's failure to pay all wages due.

7 **FIFTH CAUSE OF ACTION**
8 **(Failure to Pay Overtime Wages)**

9 50. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 49 as though fully
10 set forth herein.

11 51. During the period Plaintiff was employed by Defendant, Defendant was required to
12 compensate him one and one-half (1½) times the regular rate of pay for hours worked in excess of
13 eight (8) hours per day and/or forty (40) hours per week, and two (2) times the regular rate of pay for
14 hours worked in excess of twelve (12) hours per day. See California Labor Code §§ 510, 1194.
15 Although Plaintiff regularly worked in excess of eight (8) hours a day and/or forty (40) hours per
16 week, Defendant failed to pay all overtime wages owed.

17 52. Plaintiff was a non-exempt employee under the administrative, executive, or professional
18 exemptions of the applicable Wage Order and California Labor Code section 510.

19 53. Defendant purposefully failed to pay all overtime wages owed to Plaintiff in order to
20 avoid overtime and other wage and hour requirements under the Labor Code.

21 54. Defendant's conduct described herein violates California Labor Code sections 510 and
22 1194, and Wage Orders. As a proximate result of Defendant's conduct, Plaintiff has been damaged
23 and deprived of overtime wages, in an amount to be established at trial. Plaintiff now seeks these
24 wages, attorney's fees and costs, and interest pursuant to California Labor Code sections 1194.
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SIXTH CAUSE OF ACTION
(Civil Penalties Pursuant to PAGA § 2698 et seq.)

55. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 54 as though fully set forth herein.

56. Plaintiff brings this cause of action as a proxy for the State of California and in this capacity, seeks penalties on behalf of all Aggrieved Employees for Defendant's violations of the California Labor Code, including but not necessarily limited to, those Labor Code and Wage Order violations identified above.

57. On or about February 17, 2022, Plaintiff, through counsel, sent written notice to the LWDA regarding Defendant's violations of the California Labor Code, pursuant to Labor Code section 2698, *et seq.*, PAGA. As of the date of the filing of this Complaint, the LWDA has not informed Plaintiff whether the LWDA intends to investigate Plaintiff's PAGA claims. As such, Plaintiff has exhausted his administrative remedies under PAGA and may proceed in this Court.

58. Plaintiff is thus entitled to recover civil penalties on behalf of the State of California and all aggrieved employees for all violations of the Labor Code from February 17, 2021, through trial on this matter.

59. Defendant's conduct, as alleged herein, violated various sections of the California labor Code, including but not limited to, the following:

60. During the period Plaintiff and similarly situated employees were employed by Defendants they were entitled to be paid at least the State's minimum wage rate for each hour that they worked. See, e.g., IWC Wage Order MW-2014, MW-2017; IWC Wage Order No. 5-2001, section (4); Cal. Lab. Code §§ 1194, 1197.1. For the reasons stated above, Defendant did not pay Plaintiff and similarly situated employees at least minimum wage for all hours worked. Thus, Plaintiff and similarly situated employees were not paid at least the applicable state minimum wage for all hours worked in violation of the Labor Code.

61. Labor Code section 1174(d) requires employers to keep "payroll records showing the hours worked daily by and the wages paid to . . . employees . . . These records shall be kept in

1 accordance with rules established for this purpose by the commission, but in any case shall be kept
2 on file for not less than three years.” Defendant did not keep accurate information regarding all
3 hours worked by Plaintiff and similarly situated employees, largely by failing to accurately record
4 the correct rates of pay. This was in violation of the Labor Code.

5 62. Labor Code section 226 requires employers to furnish to employees with “an accurate
6 itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the
7 employee, . . . (3) the number of piece-rate units earned and any applicable piece rate if the
8 employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on
9 written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6)
10 the inclusive dates of the period for which the employee is paid, (7) the name of the employee and
11 only the last four digits of his or her social security number or an employee identification number
12 other than a social security number, (8) the name and address of the legal entity that is the employer .
13 . . and (9) all applicable hourly rates in effect during the pay period and the corresponding number
14 of hours worked at each hourly rate by the employee . . .” For the reasons stated above, Defendants
15 failed to comply with these requirements with respect to Plaintiff and similarly situated employees in
16 violation of the Labor Code.

17 63. Labor Code sections 510 and 1194 require employers to pay employees overtime for any
18 work in excess of eight (8) hours in one workday and any work in excess of forty (40) hours in any
19 one workweek. Employers must also pay overtime for the first eight (8) hours worked on the
20 seventh day of work in any one workweek. Finally, employers must pay double time for all hours
21 worked in excess of twelve (12) hours in any workday and for all hours worked in excess of eight (8)
22 hours on the seventh day of work in any one workweek. As stated above, Plaintiff and similarly
23 situated employees worked over eight (8) hours per day and forty (40) hours per week and were not
24 paid correct overtime wages. Plaintiff and all similarly situated employees are entitled to recover all
25 unpaid overtime wages. Failure to pay such wages is against the law.

26 64. Labor Code sections 201–203 require that all wages be paid to employees upon
27 separation and/or termination of employment. Here, for the reasons stated above, Defendant’s
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1 employees did not receive all final wages due and owing to them at the time of termination or
2 seventy-two (72) hours thereafter as required by Labor Code sections 201–203. This is in violation
3 of the Labor Code.

4 65. Pursuant to *Huff v. Securitas Sec. Servs. USA, Inc.*, 23 Cal. App. 5th 745, 761, 233 Cal.
5 Rptr. 3d 502, 513 (2018), Plaintiff seeks civil penalties on behalf of the State of California and all
6 aggrieved employees for all violations of the California Labor Code, whether he experienced them
7 personally or not.

8 **DAMAGES**

9 WHEREFORE, Plaintiff prays for judgment against Defendant as follows:

- 10 1. A jury trial;
- 11 2. For civil and statutory penalties and liquidated damages under the California Labor
- 12 Code according to proof allowed by law;
- 13 3. For compensatory damages, including, but not limited to, unpaid wages, plus interest,
- 14 according to proof allowed by law;
- 15 4. For an award to Plaintiff of costs of suit incurred herein and reasonable attorney's
- 16 fees;
- 17 5. For injunctive relief;
- 18 6. For an award of prejudgment and post-judgment interest; and
- 19 7. For an award to Plaintiff of such other and further relief as the Court deems just and
- 20 proper.
- 21

22 Dated: July 14, 2022

23 **Castle Law: California Employment Counsel**

24 By: _____



25 Timothy B. Del Castillo

26 Kent L. Bradbury

27 Attorneys for Plaintiff ALFONSO ORTEGA

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Plaintiff hereby demands a trial by jury.

Dated: July 14, 2022

Castle Law: California Employment Counsel

By: 
Kent L. Bradbury
Timothy B. Del Castillo
Attorneys for Plaintiff ALFONSO ORTEGA