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JUAN IBARRA, and all others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA
(UNLIMITED JURISDICTION)

22CV403986

JUAN IBARRA,

Plaintiff,

vs.

ZANKER ROAD RESOURCE
MANAGEMENT, LTD.; ZANKER ROAD
RESOURCE MANAGEMENT, LLC; and DOES
1 to 25, inclusive,

Defendants.

Case No.:

COMPLAINT FOR DAMAGES FOR:

- 1) PRIVATE ATTORNEYS
GENERAL ACT (“PAGA”);**

COMES NOW, Plaintiff, JUAN IBARRA (hereafter “Plaintiff”), and alleges as follows:

PARTIES, JURISDICTION, VENUE

1. Jurisdiction and Venue are proper in this Court and this action is properly filed in the County of Santa Clara in this judicial district because Defendants ZANKER ROAD RESOURCE MANAGEMENT, LTD., ZANKER ROAD RESOURCE MANAGEMENT, LLC, and DOES 1 to 25, inclusive, do business in the County of Santa Clara and because Defendants’ obligations and liabilities arise therein, and because the work that was performed by Plaintiff in the County of Santa Clara is the subject of this action. Moreover, Plaintiff’s damages sought herein exceed \$25,000.

2. Plaintiff is a male resident of the County of Santa Clara, State of California.

3. Plaintiff is informed and believes that at all times herein mentioned, Defendant ZANKER ROAD RESOURCE MANAGEMENT, LTD. is and was a California limited liability partnership, doing business in Santa Clara County, California, and which employed Plaintiff.

4. Plaintiff is informed and believes that at all times herein mentioned, Defendant ZANKER ROAD RESOURCE MANAGEMENT, LLC is and was a Delaware limited liability company, doing business in Santa Clara County, California, and which employed Plaintiff. ZANKER ROAD RESOURCE MANAGEMENT, LTD and ZANKER ROAD RESOURCE MANAGEMENT, LLC are hereinafter collectively referred to as Defendants or “ZANKER.”

5. The “Aggrieved Employees” are all current and former non-exempt or hourly paid employees who worked for Defendants at any of their California locations during the relevant time period pursuant to California Labor Code section 2698, et. seq., the Labor Code Private Attorneys General Act of 2004 (“PAGA”).

6. Plaintiff is ignorant of the true names and capacities, whether individual, corporate, or associate of those defendants fictitiously sued as DOES 1 to 25, inclusive, and so Plaintiff sues them by these fictitious names. Plaintiff is informed and believes that each of the DOE defendants, numbers 1 to 25, reside in the State of California and are in some manner responsible for the conduct alleged herein. Upon discovering the true names and capacities of these fictitiously named defendants, Plaintiff will amend this complaint to show the true names

1 and capacities of these fictitiously named defendants.

2 7. Unless otherwise alleged in this complaint, Plaintiff is informed, and on the basis
3 of that information and belief, alleges that at all times herein mentioned, each of the remaining
4 codefendants, in doing the things hereinafter alleged, were acting within the course, scope, and
5 under the authority of their agency, employment, or representative capacity, with the consent of
6 his/her codefendants.

7 **GENERAL ALLEGATIONS**

8 8. Plaintiff started working for ZANKER over 12 years ago. Plaintiff was classified
9 as an hourly, non-exempt employee. Plaintiff is no longer employed at ZANKER. Plaintiff's
10 typical schedule involved 6 days per at approximately 12-hours per day.

11 9. It is Plaintiff's position that ZANKER has committed the following labor code
12 violations against Plaintiff and other similarly situated Aggrieved Employees.

13 10. ZANKER did not provide Plaintiff and other aggrieved employees with
14 compensation for all hours worked and did not pay Plaintiff and others the minimum wages to
15 which they were entitled for work performed pursuant to California Labor Code sections 1194,
16 1197 and 1197.1. This is so because ZANKER had a policy of rounding down the hours worked
17 by Plaintiff and other aggrieved employees which translated to Plaintiff and others not being paid
18 for all hours worked, including minimum wages. In addition, and to the extent Plaintiff and others'
19 meal breaks were interrupted and they had to work through meal periods, that time was "off the
20 clock" and was not compensated in violation of California's minimum wage laws.

21 11. Due to the above "off the clock" hours, ZANKER also violated Labor Code §510
22 because it failed to pay Plaintiff and other aggrieved employees the correct amount of overtime,
23 even though they worked more than 8 hours per day, 12 hours per day, and/or 40 hours per week
24 throughout their employment. Plaintiff's and other aggrieved employees' actual work hours
25 entitled them to overtime compensation, however, ZANKER did not compensate its hourly, non-
26 exempt employees with the correct amount of overtime and did not include bonuses/incentive pay
27 in calculating the regular rate of pay for purposes of deciphering the overtime rate of pay.

28 12. ZANKER also violated Labor Code § 226.7 and the appropriate Industrial Welfare

1 Commission Wage Order nos. 1/4 because it failed to provide Plaintiff and others with 10-minute
2 rest periods for every four hours of work, or majority portion thereof, throughout their
3 employment. ZANKER did not completely relieve Plaintiff and others of all duty during said rest
4 periods. ZANKER did not pay to Plaintiff and others one additional hour of pay at Plaintiff's
5 regular rate of compensation for each workday that one or more statutory rest periods was not
6 provided. It was not part of the company policy for employees such as Plaintiff and others to
7 consistently take uninterrupted rest breaks every 4 hours worked. As such, the culture at
8 ZANKER did not lend itself to the employees consistently receiving statutory rest breaks wherein
9 they were relieved of all work duties. As such, the environment at ZANKER was not conducive
10 to receiving statutory rest breaks under California law and timely, statutory rest breaks were not
11 authorized or enforced.

12 13. ZANKER violated Labor Code §§ 512 and 226.7 along with Industrial Welfare
13 Commission Wage Order nos. 1/4 because it failed to provide hourly, non-exempt employees,
14 including Plaintiff and others, the requisite 30-minute, uninterrupted meal periods for every five
15 (5) hours of work throughout their employment. ZANKER did not completely relieve employees
16 of all duty during said meal periods. ZANKER did not pay to Plaintiff and its hourly, non-exempt
17 employees one additional hour of pay at their regular rate of compensation for each workday that
18 one or more statutory meal periods was not provided. Like the rest breaks, consistently receiving
19 a timely, uninterrupted thirty-minute uninterrupted meal break was not part of the company
20 culture and was not enforced by ZANKER. There were instances wherein Plaintiff would not
21 receive his meal period before the 5th hour worked. As such, it was the normal practice and
22 custom of ZANKER not to consistently authorize, permit, and enforce timely, uninterrupted
23 statutory meal periods. As such, Plaintiff and others would have to deal with late, short, or
24 interrupted meal periods.

25 14. Furthermore, during the relevant time period, and due to the labor code violations
26 cited above, ZANKER failed to pay Plaintiff and others all wages due to them within any time
27 period specified by California Labor Code section 204. ZANKER was also in violation of
28 California Labor Code section 226(a), by failing to include pertinent information on the wage

1 statements, including but not limited to, the full and correct name of the legal employer along
2 with the employer's address, all hours worked (including "off the clock" hours and overtime), all
3 applicable hourly rates, gross wages earned, net wages earned, the correct start and end time of
4 the pay period, all deductions, the employee's identifying information, and premium pay for the
5 missed meal and rest breaks. As such, ZANKER did not provide Plaintiff and other similarly
6 situated aggrieved employees with complete, accurate itemized wage statements.

7 15. During the relevant time period, ZANKER also failed to keep accurate and
8 complete payroll records showing the actual hours worked per day and the wages paid to Plaintiff
9 and others pursuant to California Labor Code sections 1174(d).

10 16. ZANKER also violated Labor Code § 203 because it willfully failed to pay
11 Plaintiff and other similarly situated aggrieved employees earned and due wages upon separation
12 of employment, either immediately upon involuntary termination, or within 72 hours of
13 resignation. These earned but unpaid wages include payment for all hours worked (including the
14 minimum wage), overtime compensation, and premium pay for missed meal and rest breaks.

15 17. Also, during the relevant time period, Plaintiff and other aggrieved employees
16 incurred necessary, business-related expenses and costs that were not reimbursed by ZANKER.
17 These costs include, but are not limited to, uniforms, including boots. Accordingly, ZANKER
18 was in violation of California Labor Code sections 2800 and 2802.

19 **FIRST (AND ONLY) CAUSE OF ACTION**

20 **PRIVATE ATTORNEYS GENERAL ACT**

21 **Representative Claim for PAGA penalties under California Labor Code sections 201, 202,**
22 **203, 204 and/or 204b, 210, 226, 226.3, 226.7, 510, 512, 558, 558.1, 1174, 1174.5, 1194,**
23 **1194.2, 1197, 1197.1, 1198, 2698, 2699, 2800, 2802, and the applicable Industrial Welfare**
24 **Commission Wage Order Nos. 1/4-2001**

25 **(Against All Named Defendants and all DOE Defendants)**

26 18. Plaintiff re-alleges and incorporates by reference each and every allegation in
27 paragraphs 1 through 17, inclusive, of this Complaint as though fully set forth herein.

28 19. Pursuant to law, Plaintiff provided the required written notice to the California
Labor & Workforce Development Agency (LWDA) and Defendants of the specific violations of
the California Labor Code that Defendants and DOE defendants have violated and continue to

1 violate.

2 20. Pursuant to California Labor code section 2699.3, no response was received from
3 the LWDA within 65 days of the postmark date of the above-alleged letter.

4 21. Plaintiff therefore has exhausted all administrative remedies required of him under
5 California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute this cause
6 of action and pursue penalties in a representative action for Defendants' violations of the Labor
7 Code.

8 22. Pursuant to California Labor Code section 2699, any provisions of the Labor Code
9 that provides for a civil penalty to be assessed and collected by the LWDA or any of its
10 departments, divisions, commissions, boards, agencies, or employees for violation of the code
11 may, as an alternative, be recovered through a civil action brought by an aggrieved employee
12 on behalf of himself or herself and other current or former employees pursuant to the procedures
13 specified in California Labor Code section 2699.3.

14 23. Plaintiff is an "aggrieved employee" because Plaintiff was employed by the
15 alleged violator and had one or more of the alleged violations committed against him, and
16 therefore is properly suited to represent the interests of all current and former non-exempt or
17 hourly paid employees who worked for Defendants at any of their California locations during the
18 relevant time period.

19 24. Based on the acts alleged above, Plaintiff, on behalf of himself and others, seeks
20 penalties under California Labor Code sections 2698 and 2699 because of Defendants' violations
21 of numerous provisions of the California Labor Code as alleged in this Complaint.

22 25. Plaintiff therefore has exhausted all administrative remedies required of him under
23 California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute this cause
24 of action and pursue penalties in a representative action for Defendants' violations of the Labor
25 Code.

26 26. California Labor Code section 2699 et seq. imposes penalties upon culpable
27 Defendants for violating the Labor Code.

28 27. California Labor Code section 558 establishes a civil penalty as follows: Any

1 employer or other person action on behalf of an employer who violates, or causes to be violated,
2 a section of this chapter or any provision regulating hours and days of work in any order of the
3 Industrial Welfare Commission (including the “Hours and Days of Work” section of the Wage
4 Order) shall be subject to a civil penalty of (1) for any initial violation, fifty dollars (\$50) for each
5 underpaid employee for each pay period for which the employee was underpaid ...; (2) for each
6 subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay
7 period for which the employee was underpaid ...;

8 28. Plaintiff seeks penalties for Defendants’ misconduct as alleged herein as permitted
9 by law, but only those penalties that are required to be shared with the LWDA as Plaintiff is not
10 seeking individual/victim specific relief or underpaid wages under this particular cause of action.

11 29. Specifically, Plaintiff seeks penalties under California Labor Code section 2699,
12 for the following:

13 Violations of California Labor Code sections 201, 202, 203, 204 and/or 204b, 210, 226,
14 226.3, 226.7, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 2800,
15 and 2802 via 2698 and 2699, and any other Labor Codes and Wage Orders (including nos.
16 1/4) violated on the facts alleged in this Complaint.

17 30. Pursuant to Labor Code section 2698 et seq., Plaintiff seeks to recover attorney’s
18 fees, costs, and civil penalties on behalf of Plaintiff and other current and former Aggrieved
19 Employees as alleged herein in an amount to be shown according to proof at trial and within the
20 jurisdictional limits of this Court.

21 WHEREFORE, Plaintiff prays for Judgment against Defendants and each of them, as
22 follows:

- 23 1. For the imposition of civil penalties;
- 24 2. For maximum civil penalties available under Labor Code Section 2699 against
25 Defendants in a manner and amount authorized by that statute, as described more
26 particularly in the Complaint and representative PAGA claims;
- 27 3. For all costs and disbursements incurred in this suit;
- 28 4. Reasonable attorney’s fees where available by law, including but not limited to,

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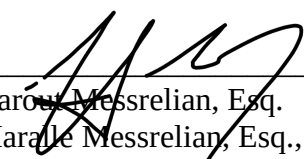
pursuant to Labor Code section 2698 et seq., Code of Civil Procedure section 1021.5, and/or other applicable laws; and

5. For such other and further relief as this Court may deem proper.

Respectfully submitted,

MESSRELIAN LAW INC.

Dated: September 1, 2022

By 
Harold Messrelian, Esq.
Maralle Messrelian, Esq., Of Counsel
Attorneys for Plaintiff, JUAN IBARRA