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Superior Court of California,

County of San Diego

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Clerk of the Superior Court

By M. Estrada, Deputy Clerk

Attorneys for Plaintiff,
MARK OUKO on behalf of
himself, all aggrieved employees, and the State
of California as a Private Attorneys General

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

MARK OUKO, an individual, on behalf of himself, all aggrieved employees, and the State of California as a Private Attorneys General,

Plaintiff,

VS.

OUTDOOR ELEMENTS, a California corporation, and DOES 1-50, inclusive,

Defendant.

Case No.: 25CU035057C

REPRESENTATIVE ACTION

Violation of the Private Attorneys General Act of 2004, Cal. Labor Code §2698 *et seq.*

Plaintiff MARK OUKO brings this PAGA representative action complaint on behalf of himself, all aggrieved employees, and the State of California as a Private Attorneys General, and alleges as follows:

NATURE OF THE ACTION

1. Plaintiff MARK OUKO worked as an hourly nonexempt employee for Defendant OUTDOOR ELEMENTS and Does 1-50 (collectively “Defendant”) during the statutory period.

1 Defendant designs and manufactures custom metal landscape products. Plaintiff MARK OUKO is
2 a former employee of Defendant, where he worked as a machinist at a facility in Escondido,
3 California. Plaintiff brings this action pursuant to the Private Attorneys General Act of 2004
4 (“PAGA”), Cal. Labor Code §2698 *et seq.*, on a representative basis. All current and former hourly,
5 nonexempt employees of Defendant within one year of serving notice on the LWDA to the present
6 are aggrieved employees.

7 2. Defendant failed to comply with California Labor Code requirements due to erroneous,
8 willful and intentional employment practices and policies. Plaintiff brings this representative
9 action on behalf of himself, all other similarly situated aggrieved employees, and the State of
10 California, based upon the claims articulated below. Plaintiff provided notice of his claims
11 pursuant to §2698 *et. seq.*, to the Labor and Workforce and Development Agency (“LWDA”) as
12 illustrated by the attached Exhibit, the content of which is expressly incorporated herein. The
13 LWDA has not provided any notice to Plaintiff following the exhaustion of the 65-day notice
14 period required by 2699.3(a)(2)(B). Accordingly, Plaintiff now brings this Complaint for civil
15 penalties under the Private Attorneys General Act (“PAGA”), Labor Code §2698 *et seq.*

16 3. Defendant has had a consistent policy and/or practice of: (1) failing to pay for all hours
17 worked, including overtime hours worked; (2) failing to pay minimum wage; (3) failing to pay
18 wages due upon termination; (4) failing to provide timely meal breaks; (5) failing to provide timely
19 rest breaks; and (5) failing to provide accurate itemized wage statements and violating record
20 keeping requirements. Defendant is therefore liable for civil penalties under the Cal. Labor Code,
21 including the Private Attorney General Act (“PAGA”), Labor Code §2698 *et seq.*, as described
22 more fully herein.

23 THE PARTIES

24 4. Plaintiff MARK OUKO is a resident of the State of California and is a former employee
25 of Defendant, where he has worked as a machinist at Defendant’s Escondido location.

26 5. Defendant OUTDOOR ELEMENTS is a California corporation authorized to do
27 business and doing business in California with the capacity to sue and to be sued, and doing
28 business, in the county of San Diego, State of California.

6. Plaintiff is unaware of the true names, capacities, relationships, and extent of participation in the conduct alleged herein, of the Defendant sued as DOES 1 through 50, but is informed and believes and thereon alleges that said Defendant is legally responsible for the wrongful conduct alleged herein and therefore sues Defendant by such fictitious names, Plaintiff will amend this complaint when their true names and capabilities are ascertained.

7. Plaintiff is informed and believes and thereon alleges that each Defendant, directly or indirectly, or through agents or other persons, employed Plaintiff and other aggrieved employees of the representative class, and exercised control over their wages, hours, and working conditions. Plaintiff is informed and believes and thereon allege that each Defendant acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant is legally attributable to the other Defendants.

JURISDICTION AND VENUE

8. Venue is proper in this judicial district because Defendant conducts business in this county and each Defendant has legal obligations to Plaintiff and many of the aggrieved employees in this case that arose in this county.

9. The statutory penalties sought by Plaintiff exceed the minimal jurisdictional limits of the Superior Court and will be established according to proof at trial. Based on information, investigation and analysis, Plaintiff alleges that the amount in controversy, including claims for monetary damages, penalties and attorney's fees is more than thirty-five thousand dollars (\$35,000).

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

1 **PAGA REPRESENTATIVE ACTION ALLEGATIONS**

2 11. During the relevant time-period, Defendant committed various violations of the
3 California Labor Code as alleged below in more detail. Defendant enforces multiple policies that
4 violate state law, which are intended to increase profits to the detriment of aggrieved employees.

5 12. This representative action represents over fifty current and former aggrieved
6 employees.

7 13. For at least one (1) year prior to the date of service notice on the LWDA, and continuing
8 to the present, Defendant engaged in unlawful employment practices that resulted in violations of
9 numerous Labor Code sections, as set forth more fully below.

10 14. Plaintiff and all current and former hourly, nonexempt employees within one year of
11 filing this action to the present are aggrieved employees within the meaning of Labor Code 2699,
12 *et seq.* (See Labor code §2699(c).)

13 15. Plaintiff was personally subjected to and observed the unlawful wage and hour
14 practices complained of herein. For example, Plaintiff was required to work through meal and rest
15 periods without compensation, received pay stubs that failed to accurately reflect his hours and
16 premium wages, and was not paid final wages upon separation. These violations occurred pursuant
17 to uniform policies implemented by Defendant across its workforce.

18 16. Defendant, and each of them, have committed the following violations of the California
19 Labor Code:

20 **Failure to Pay For All Hours Worked, Including Overtime Hours Worked**

21 (Cal. Labor Code § 204(a), 218, 226.7, 510, 512, 558, 1194, 1197, 1198, 1199, 2698 *et seq.*,
22 IWC Wage Orders)

23 17. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
24 incorporates said paragraphs herein by reference.

25 18. The Wage Orders define “hours worked” as “the time during which an employee is
26 subject to the control of an employer, and including all the time the employee is suffered or
27 permitted to work, whether or not required to do so.” Defendant has been engaged in many
28 unlawful employment practices which resulted in underpayment for hours worked each pay period,

1 including overtime hours worked, as more fully set forth below. Defendant has also failed to pay
2 the required minimum wage for all hours worked, and failed to pay overtime, sick pay, premium
3 wages, and vacation wages at the correct regular rate of pay.

4 19. Work Performed During Unpaid Meal Periods. Defendant failed to permit Plaintiff and
5 others to take timely, off-duty, meal breaks of “not less than 30 minutes” for each five consecutive
6 hours of work in violation of Labor Code §§226.7 and 512. Defendant routinely interrupted
7 Plaintiff and his coworkers with work matters while they were off the clock.

8 20. When employees earning minimum wage do not receive payment for all hours worked,
9 including off-the-clock and overtime hours worked, the result is that they are earning less than the
10 statutory minimum wages for all hours worked, in violation of Labor Code §1197.

11 21. Failure to Pay all Wages Owed Twice Per Month. Defendant was required to pay
12 Plaintiff and aggrieved employees all wages earned twice during each calendar month pursuant to
13 Labor Code §204(a). Defendant failed to pay all wages earned to employees as a result of the
14 unlawful employment policies and practices discussed herein. As a result of these practices,
15 Employees were underpaid for hours worked, including penalty wages, and this underpayment
16 resulted in a failure to pay all wages owed twice per month. Defendant failed to properly calculate
17 the regular rate of pay by excluding non-discretionary bonuses and other forms of compensation,
18 which resulted in the underpayment of overtime and premium wages.

19 22. Plaintiff and aggrieved employees have been employed under conditions prohibited by
20 the wage order, and thus Defendant has also violated §§1198 and 1199. Defendant is liable for
21 civil penalties pursuant to Labor Code §§558 and 2699 *et seq.*

22 **Failure to Pay Minimum Wage**

23 (Cal. Lab. Code §§200, 218.5, 226, 558, 1194, 1194.2, 1197, 1197.2, 1198,
24 1199, and 2698 *et seq.*)

25 23. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
26 incorporates said paragraphs herein by reference.
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1 24. Pursuant to Labor Code sections 1194, 1194.2, and 1197, it is unlawful for an employer
2 to suffer or permit a California employee to work without paying wages at the proper minimum
3 wage for all time worked as required by the applicable IWC Wage Order.

4 25. Defendant failed to pay all wages earned to employees as a result of the unlawful
5 employment policies and practices discussed herein. As a result of these practices, employees were
6 underpaid for hours worked, including overtime and penalty wages, and this underpayment
7 resulted in a failure to pay all wages owed twice per month.

8 26. Defendant failed to pay Plaintiff and aggrieved employees for all hours worked as a
9 result of Defendant's practices described above. Based on Defendant's unlawful conduct described
10 above, Defendant's failure to pay for all hours worked, including overtime, resulted in a payment
11 of less than the minimum wage for all hours worked, in violation of Labor Code §1197, 1197.1,
12 1199 and the Wage Order. Defendant is liable for civil penalties pursuant to Labor Code §§558
13 and 2699 et seq.

14 **Failure to Pay Wages Due Upon Termination**

15 (Cal. Lab. Code §§201, 202, 203, 256, and 2698 et seq.)

16 27. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
17 incorporates said paragraphs herein by reference.

18 28. An employee who is discharged must be paid all of his or her wages, including accrued
19 vacation, penalty wages, and underpaid regular and overtime wages, immediately at the time of
20 termination. (Labor Code Sections 201 and 227.3.) Defendant willfully failed to pay employees
21 who are no longer employed by it all compensation due upon termination of employment as
22 required by Cal. Lab. Code §§201 and 202.

23 29. Aggrieved employees are now entitled to recover up to thirty (30) days pay as waiting
24 time under the terms of §203. Moreover, Defendant is liable for civil penalties pursuant to Cal.
25 Lab. Code § 2698 et. seq.

Failure to Provide Timely Meal Breaks

(Cal. Lab. Code §§226 (a), 226.7, 512, 558, 1198, 2698 et seq., Wage Order)

30. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and incorporates said paragraphs herein by reference.

31. Labor Code §512 provides, “[a]n employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes...” Labor Code §226.7(a) provides, “[n]o employer shall require an employee to work during any meal... period mandated by an applicable order of the Industrial Welfare Commission.” Paragraph 11 of the Wage Order provides, in pertinent part, “[u]nless an employee is relieved of all duty during a 30-minute meal period, the meal period shall be considered an ‘on duty’ meal period and counted as time worked.”

32. In this case, Plaintiff and his coworkers experienced interrupted and shortened meal periods because employees were interrupted with work during off the clock meal periods. Additionally, employees were not permitted to leave the premises for meal periods, so they were not relieved of all duties or the Defendant’s control. Instead of recording actual start and stop times, Defendant automatically deducted meal periods from employee time sheets, unlawfully rounding meal period time entries.

33. The Wage Orders require employers to authorize and permit employees to take an uninterrupted 30-minute meal period after no more than 5 hours of work. Pursuant to Labor Code §1198, “the employment of any employee... under conditions of labor prohibited by the order is unlawful.” Defendant failed to permit Plaintiff and others to take timely, off-duty, meal breaks of “not less than 30 minutes” for each five consecutive hours of work in violation of Labor Code §§226.7 and 512. Defendant never paid penalty pay to Plaintiff or aggrieved employees for noncompliant meal periods at the required regular rate of pay. As a derivative claim, Plaintiff alleges that pay statements were inaccurate, failing to include required meal period penalties, thus failing the requirements of Labor Code §226(a). As a result of these violations, Defendant is liable for civil penalties pursuant to Cal. Labor Code §558 and §2698 et. seq.

Failure to Provide Rest Breaks

(Cal. Labor Code §§226, 226.7, 512, 558, 1198, 2698 et seq., Wage Orders)

34. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and incorporates said paragraphs herein by reference.

35. Defendant failed to maintain a compliant rest period policy and practice that provides its employees with off-duty rest periods as required by California law.

36. Plaintiff explains that he and his coworkers would often miss rest periods due to Defendant's failure to schedule and integrate rest breaks into daily shifts. For example, Plaintiff was required to be relieved before he could go on break, and Defendant failed to provide relief workers numerous times per week. Although this policy created numerous first meal break violations, it was increasingly problematic for second meal periods.

37. Defendant failed to pay Plaintiff and similarly situated employees the premium compensation (one hour of pay at the employee's regular rate of pay for missed or untimely rest periods) mandated by Labor Code §226.7 (b) for these noncompliant rest periods. Rest period violations occurred daily, however no rest period penalty pay is listed on any paystubs.

38. The rest period requirement obligates employers to permit and authorize employees to take off-duty rest periods, meaning employers must relieve employees of all duties and relinquish control over how employees spend their time. *Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5th 257, 269. Employers must pay employees an additional hour of wages at the employee's regular rate of pay for each missed or improper rest period (e.g., less than 10 minutes, interrupted rest period, rest period(s) at improper time(s) during shift(s). Lab. Code §226.7; applicable IWC Wage Order, §12(B) ("If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each work day that the rest period is not provided"). Moreover, under California law rest periods must be a "net" ten minutes in a suitable rest area. (*Id.* at 268) (relying on January 3, 1986 and February 22, 2002 DLSE Letters wherein the DLSE ruled that the net ten-minute language for rest periods means ten minutes of time in a rest area and cannot include time it takes to get to and from the rest area). The employer must show

1 that it clearly articulates the right to a net ten minutes, which means it must clearly communicate
2 what “net” ten minutes means (i.e., regardless of what happens along the way to and from a rest
3 area, employees are entitled to a full ten minutes of rest in the rest area). Id.; see also, Bufile v.
4 Dollar Fin. Grp., Inc., (2008) 162 Cal. App. 4th 1193, 1199 (the “onus is on the employer to clearly
5 communicate the authorization and permission [to take rest periods] to their employees.”).

6 39. Defendant did not authorize or permit all of its hourly employees to take at least a ten
7 minute rest period in which they were relieved of all duties, for every 4 hours of work, or major
8 fraction thereof, as required by Cal. Lab. Code §226.7, §512 and the Wage Orders. When breaks
9 were missed Defendant failed to pay the 1-hour penalty, as required. Because Defendant violated
10 the Wage Order, Defendant is liable under Labor Code §1198.

11 40. As a result of these violations, Defendant is liable for civil penalties pursuant to Cal.
12 Labor Code §2698 et. Seq.

13 **Failure to Provide Accurate Itemized Wage Statements & Violation of Record Keeping**

14 **Requirements**

15 (Cal. Labor Code §§ 226, 1174, 2699 *et seq.*)

16 41. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
17 incorporates said paragraphs herein by reference.

18 42. Defendant knowingly and intentionally failed to provide timely, accurate, itemized
19 wage statements to Plaintiff and the aggrieved employees in accordance with Labor Code §§ 226
20 and keep accurate records as required by §1174(d).

21 43. The statements provided to Plaintiff and aggrieved employees, and the records
22 maintained by Defendant, have not accurately reflected actual gross wages earned, including pay
23 for all hours worked due to Defendant’s rounding practice. They also failed to state meal and rest
24 period premium payments. Such failures caused injury to Plaintiff and others, by, among other
25 things, impeding them from knowing the total hours worked and the amount of wages to which
26 they are and were entitled.

27 44. §226 (a) requires:
28

1 A. An employer, semimonthly or at the time of each payment
2 of wages, shall furnish to his or her employee, either as a detachable part
3 of the check, draft, or voucher paying the employee's wages, or
4 separately if wages are paid by personal check or cash, an accurate
5 itemized statement in writing showing (1) gross wages earned, (2) total
6 hours worked by the employee, except as provided in subdivision (j),
7 (3) the number of piece-rate units earned and any applicable piece rate
8 if the employee is paid on a piece-rate basis, (4) all deductions, provided
9 that all deductions made on written orders of the employee may be
10 aggregated and shown as one item, (5) net wages earned, (6) the
11 inclusive dates of the period for which the employee is paid, (7) the
12 name of the employee and only the last four digits of his or her social
13 security number or an employee identification number other than a
14 social security number, (8) the name and address of the legal entity that
15 is the employer and, if the employer is a farm labor contractor, as
16 defined in subdivision (b) of Section 1682, the name and address of the
17 legal entity that secured the services of the employer, and (9) all
18 applicable hourly rates in effect during the pay period and the
19 corresponding number of hours worked at each hourly rate by the
20 employee...

21 45. Such failures called injury to Plaintiff and others, by, among other things, impeding
22 them from knowing the total hours worked, and the amount of wages to which they are and were
23 entitled. Defendant knowingly and intentionally failed to accurately itemize the gross wages
24 earned, net wages earned, and total hours worked.

25 46. Defendant is liable for civil penalties pursuant to Labor Code § 2698 *et seq.*

26 **FIRST CAUSE OF ACTION**

27 **Against Defendant for Violation of the Private Attorneys General Act ("PAGA")**

28 **(California Labor Code §2698 *et seq.*)**

1 47. Plaintiff reasserts and realleges all preceding paragraphs as if fully set forth and
2 incorporates said paragraphs herein by reference.

3 48. Plaintiff is an “aggrieved employee” under PAGA, as he was employed by Defendant
4 during the applicable statutory period and suffered one or more of the Labor Code violations set
5 forth herein. Accordingly, Plaintiff seeks to recover on behalf of himself and all other current and
6 former aggrieved employees of Defendant, the civil penalties provided by PAGA, plus reasonable
7 attorneys’ fees and costs.

8 49. Plaintiff seeks to recover the PAGA civil penalties through a representative action
9 permitted by PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal.
10 4th 969. Therefore, class certification of the PAGA claims brought herein is not required.

11 50. Plaintiff seeks civil penalties pursuant to PAGA for violations of the following Labor
12 Code provisions:

- 13 a. Failure to Pay For All Hours Worked, Including Overtime Hours Worked (Cal.
14 Labor Code §§, 204(a), 218, 226.7, 510, 512, 558, 1194, 1197, 1198, 1199, 2698 *et*
15 *seq.*, IWC Wage Orders);
- 16 b. Failure to Pay Minimum Wage (Cal. Lab. Code §§200, 218.5, 226, 558, 1194,
17 1194.2, 1197, 1197.2, 1198, 1199, and 2698 *et seq.*);
- 18 c. Failure to Pay Wages Due Upon Termination (Cal. Lab. Code §§201, 202, 203, 256
19 and 2698 *et seq.*)
- 20 d. Failure to Provide Timely Meal Breaks (Cal. Labor Code §§226 (a), 226.7, 512,
21 558, 1198, 2698 *et seq.*, Wage Order)
- 22 e. Failure to Provide Timely Rest Breaks (§226, 226.7, 512, 558, 1198, 2698 *et seq.*,
23 Wage Orders)
- 24 f. Failure to Provide Accurate Itemized Wage Statements & Violation of Record
25 Keeping Requirements (Cal. Labor Code §§ 226, 1174, 2699 *et seq.*);

26 51. With respect to violations of Labor Code §226(a), Labor Code §226.3 imposes a civil
27 penalty in addition to any other penalty provided by law of two hundred fifty dollars (\$250) per
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aggrieved employee for the first violation, and one thousand dollars (\$1,000) per aggrieved employee for each subsequent violation of Labor Code §226(a).

52. With respect to violations of Labor Code §512, Labor Code §558 imposes a civil penalty in addition to any other penalty provided by law of fifty dollars (\$50) for initial violations for each underpaid employee for each pay period for which the employee was underpaid, and one hundred dollars (\$100) for subsequent violations for each underpaid employee for each pay period for which the employee was underpaid.

53. Labor Code §2698 *et seq.* imposes a civil penalty of one hundred dollars (\$100) per pay period, per aggrieved employee for initial violations, and two hundred dollars (\$200) per pay period, per aggrieved employee for subsequent violations for all Labor Code provisions for which a civil penalty is not specifically provided.

54. Plaintiff and the other current and former employees of Defendant are aggrieved employees. They were or are employed by Defendant, and each of them, and the violations alleged herein were committed against them. Plaintiff brings this action on behalf of himself and all other current and former aggrieved employees.

55. At the time of each violation, Defendant employed one or more employees.

56. As a result of the aforesaid wrongful and illegal conduct of Defendant, and each of them, Plaintiff and aggrieved employees are entitled to civil penalties in an amount to be determined at trial, pre-judgment interest, costs and attorneys' fees.

57. Plaintiff has complied with all procedural requirements of Labor Code §2699.3 prior to filing this Complaint. By the Notice attached as Exhibit 1, submitted online to the Labor and Workforce Development Agency ("LWDA") and served by certified mail upon Defendant, Plaintiff through counsel notified the LWDA and Defendant of the specific Labor Code provisions that Defendant has violated. The LWDA did not respond to Plaintiff's Notice within the statutory timeframe, and Plaintiff has therefore exhausted administrative remedies. Pursuant to Labor Code §2699.3, Plaintiff may now pursue their PAGA claims in this action on behalf of aggrieved employees and the State of California.

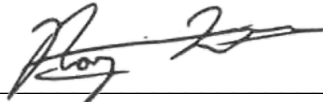
PRAYER FOR RELIEF

1 WHEREFORE, Plaintiff, individually and on behalf of the aggrieved employees, prays for
2 judgement against Defendant as follows:

- 3 1. An award of civil penalties pursuant to PAGA and the Cal. Labor Code in an amount to be
4 determined at trial, but at least the jurisdictional amount of this Court;
- 5 2. An award of reasonable attorneys' fees and costs pursuant to California Labor Code §2699(g)
6 and/or other applicable law;
- 7 3. For civil penalties as provided under Labor Code §§226.3 and 558, and/or other applicable
8 law;
- 9 4. Pre-judgement and post-judgement interest as provided by law; and
- 10 5. Such other and further relief that the Court may deem just and proper.

11
12 DATED: July 2, 2025

KOUL LAW FIRM, APC

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15 BY: Nazo Koulloukian, Esq.
16 Attorneys for Plaintiff MARK OUKO, and all
17 aggrieved employees
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