

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Robert Draper

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

STATE OF CALIFORNIA ex rel.
PAUL VARGAS, as Private Attorney
General,

Plaintiff,

v.

ECONO-WEST, INC.; and DOES 1-25,
inclusive,

Defendants.

Case No. **22STCV40464**

Assigned for All Purposes to:

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

Trial Date: None

Complaint filed:

COMES NOW Plaintiff STATE OF CALIFORNIA ex rel. PAUL VARGAS as Private Attorney General ("Plaintiff"), who asserts claims against ECONO-WEST, INC. and DOES 1-25, inclusive (collectively "Defendants" or "Employer") as follows:

INTRODUCTION

1. Plaintiff brings this action under the Labor Code Private Attorneys General Act of 2004 ("PAGA"), Labor Code sections 2698, *et seq.*, on behalf of himself, approximately more than 50 similarly situated current and former aggrieved employees employed by Employer throughout California between October 20, 2021 ("Statutory Period") and the resolution of this

action, and the People of the State of California (hereinafter collectively “Employees”) against Employer.

2. PAGA, specifically Section 2699, subdivision (a) of the California Labor Code, permits an aggrieved employee to recover civil penalties set forth within the California Labor Code for violations of the California Labor Code. In addition, Section 2699(f) establishes civil penalties for violations of California Labor Code provisions that do not contain their own civil penalties. Employees bring this civil action to recover civil penalties for the violations identified below, including civil penalties pursuant to Section 2699, subdivision (f) as well as those civil penalties specifically set forth within the text of the California Labor Code. Those civil penalties are sought for violations committed against Employees of Employers.

3. Plaintiff has filed an exhaustion letter with the California Labor and Workforce Development Agency (“LWDA”) providing notice of his intent to bring a private attorneys general action for recovery of penalties under the PAGA. The LWDA has not investigated within the time set forth by statute and Plaintiff is now authorized to bring the present action.

JURISDICTION AND VENUE

4. This Court has jurisdiction over this action pursuant to the California Constitution, Article VI, §10.

5. Venue is proper in this Court because Defendant ECONO-WEST, INC. is domiciled in Tulare County.

PARTIES

6. For all times relevant herein, PAUL VARGAS was an adult individual residing in the State of California. Mr. Vargas is not suing in his individual capacity; he is proceeding herein solely under the PAGA, on behalf of the State of California for all aggrieved employees, including himself and other aggrieved employees.

7. For all times relevant herein, Plaintiff is informed and believes, and on that basis alleges, that Defendant ECONO-WEST, INC. was and is a corporation with its principal place of business in Los Angeles County, California.

8. Whenever in this Complaint reference is made to any act, deed, or conduct of Defendants, the allegation means that Defendants engaged in the act, deed, or conduct by or through one or more of its agents, employees, or representatives, who was actively engaged in the management, direction, control, or transaction of the business and affairs of Defendants.

9. Plaintiff is ignorant of the true names and capacities, whether individual, corporate, associate, or otherwise, of the defendants sued herein as Does 1 through 25, inclusive, and therefore sues said defendants (the “Doe Defendants”) by such fictitious names. Plaintiff will amend this Complaint to insert the true names and capacities of the Doe Defendants at such time as the identities of the Doe Defendants are ascertained.

10. Plaintiff is informed and believes, and based thereon alleges, that the Doe Defendants are the partners, agents, or principals and co-conspirators of Defendants, and of each other; that Defendants and the Doe Defendants performed the acts and conduct herein alleged directly, aided and abetted the performance thereof, or knowingly acquiesced in, ratified, and accepted the benefits of such acts and conduct, and therefore each of the Doe Defendants is liable to the extent of the liability of Defendants as alleged herein.

11. Plaintiff is further informed and believe, and thereon allege, that at all times herein material, each Defendant was completely dominated and controlled by its co-Defendant(s) and each was the alter ego of the other. Whenever and wherever reference is made in this Complaint to any conduct by Defendants, or any of them, such allegations and references shall also be deemed to mean the conduct of each of the Defendants, acting individually, jointly, and severally. Whenever and wherever reference is made to individuals who are not named as defendants in this Complaint, but were employees and/or agents of Defendants, such individuals at all relevant times acted on behalf of Defendants named in this Complaint within the scope of their respective employment or agency with Defendants.

GENERAL ALLEGATIONS

12. Mr. Vargas worked for Employer as a technician, installing furnaces and water heaters from approximately March 2, 2021, through November 29, 2021. Although Mr. Vargas performed work under the control and director of Employer, and although performed work within

1 the usual course of Employer's business, the Employer misclassified Mr. Vargas (and others
2 similarly situated) as a contractor. As a result, Employer failed to provide Mr. Vargas basic
3 employment rights, including meal-and-rest breaks, overtime, and reimbursement of business
4 expenses. Although Employer called Mr. Vargas into work on his days off, Employer did not pay
5 for this time; Employer failed to pay Mr. Vargas for work performed "off the clock," outside of
6 his scheduled hours, which was required regularly. When Mr. Vargas pressed these issues with
7 the Employer, the Employer retaliated against Mr. Vargas by terminating his employment.

8 **FIRST COUNT**

9 **Misclassification of Employees**

10 **(By Plaintiff against All Defendants)**

11 13. Plaintiff incorporates by reference and realleges each and every allegation
12 contained above, as though fully set forth herein.

13 14. Pursuant to Labor Code section 226.8: (a) It is unlawful for any person or
14 employer to engage in any of the following activities: (1) Willful misclassification of an
15 individual as an independent contractor. (2) Charging an individual who has been willfully
16 misclassified as an independent contractor a fee, or making any deductions from compensation,
17 for any purpose, including for goods, materials, space rental, services, government licenses,
18 repairs, equipment maintenance, or fines arising from the individual's employment where any of
19 the acts described in this paragraph would have violated the law if the individual had not been
20 misclassified. (b) If the Labor and Workforce Development Agency or a court issues a
21 determination that a person or employer has engaged in any of the enumerated violations of
22 subdivision (a), the person or employer shall be subject to a civil penalty of not less than five
23 thousand dollars (\$5,000) and not more than fifteen thousand dollars (\$15,000) for each violation,
24 in addition to any other penalties or fines permitted by law. (c) If the Labor and Workforce
25 Development Agency or a court issues a determination that a person or employer has engaged in
26 any of the enumerated violations of subdivision (a) and the person or employer has engaged in or
27 is engaging in a pattern or practice of these violations, the person or employer shall be subject to a
28 civil penalty of not less than ten thousand dollars (\$10,000) and not more than twenty-five

1 thousand dollars (\$25,000) for each violation, in addition to any other penalties or fines permitted
2 by law.

3 15. The law presumes “all workers to be employees, and permits workers to be
4 classified as independent contractors only if the hiring business demonstrates that the worker in
5 question satisfies each of three conditions: (a) that the worker is free from the control and direction
6 of the hirer in connection with the performance of the work, both under the contract for the
7 performance of the work and in fact; and (b) that the worker performs work that is outside the
8 usual course of the hiring entity's business; and (c) that the worker is customarily engaged in an
9 independently established trade, occupation, or business of the same nature as that involved in the
10 work performed.” *Dynamex Operations West, Inc. v. Superior Court* (2018) 4 Cal.5th 903, 955-
11 956 (emphasis omitted); Lab. Code, sec. 2775, subd.(b)(1).

12 16. Throughout the Statutory Period, Employer required Employees to conduct
13 Employer’s business operations under the guise of a fraudulent independent contractor scheme.
14 Employer unlawfully shifted its risk and business expenses to Employees, who were required to be
15 paid regular wages and overtime wages based on the amount of hours worked.

16 17. Employer recruited Employees to work for Employer. Employer regularly
17 directed Employees’ work. Employees were classic production-level workers within the core of
18 Employer’s business (heating, air, and plumbing). Employees were not engaged in any
19 independently established trade, occupation, or business. This was not accidental. Employer
20 willfully classified its Employees as independent contractors. Employer engaged in a pattern or
21 practice of these violations, and is subject to civil penalties as a result.

22 18. Employer is guilty of violating the foregoing statutes and is subject to civil
23 penalties.

24 **SECOND COUNT**

25 **Failure to Pay for All Hours Worked**

26 **(By Plaintiff against All Defendants)**

27 19. Plaintiff incorporates by reference and realleges each and every allegation
28 contained above, as though fully set forth herein.

1 20. Section 1197 provides that “[t]he minimum wage for employees fixed by the
2 commission or by any applicable state or local law, is the minimum wage to be paid to employees,
3 and the payment of a lower wage than the minimum so fixed is unlawful.” “[O]n and after
4 January 1, 2016, the minimum wage for all industries shall be not less than ten dollars (\$10) per
5 hour.” Cal. Lab. Code, § 1182.12, subd. (a). “[T]he minimum wage for all industries shall not be
6 less than the amounts set forth in this subdivision (1) For any employer who employs 26 or
7 more employees, the minimum wage shall be as follows: (A) From January 1, 2017, to December
8 31, 2017, inclusive,—ten dollars and fifty cents (\$10.50) per hour. (B) From January 1, 2018, to
9 December 31, 2018, inclusive,—eleven dollars (\$11) per hour. (C) From January 1, 2019, to
10 December 31, 2019, inclusive,—twelve dollars (\$12) per hour. (D) From January 1, 2020, to
11 December 31, 2020, inclusive,—thirteen dollars (\$13) per hour.” Cal. Lab. Code, § 1182.12,
12 subd. (b).

13 21. “The maximum hours of work and the standard conditions of labor fixed by the
14 commission shall be the maximum hours of work and the standard conditions of labor for
15 employees. The employment of any employee for longer hours than those fixed by the order or
16 under conditions of labor prohibited by the order is unlawful.” Cal. Lab. Code, § 1198.

17 22. Pursuant to the applicable Industrial Welfare Commission Wage Order, employees
18 shall not be employed more than eight (8) hours in any workday or more than 40 hours in any
19 workweek unless the employee receives one and one-half (1 1/2) times such employee's regular
20 rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor
21 constitutes a day's work. Employment beyond eight (8) hours in any workday or more than six (6)
22 days in any workweek is permissible provided the employee is compensated for such overtime at
23 not less than: (a) One and one-half (1 1/2) times the employee's regular rate of pay for all hours
24 worked in excess of eight (8) hours up to and including 12 hours in any workday, and for the first
25 eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek; and (b)
26 Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any
27 workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day
28 of work in a workweek. (c) The overtime rate of compensation required to be paid to a nonexempt

full-time salaried employee shall be computed by using the employee's regular hourly salary as one-fortieth (1/40) of the employee's weekly salary.

23. “Any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.” Cal. Lab. Code, § 558, subd. (a).

24. Throughout the Statutory Period, the Employer failed to pay wages for all hours worked at the applicable minimum, overtime, and double overtime wage rates.

25. Employer paid zero dollars for “off the clock” or unscheduled hours, and is subject to civil penalties as a result.

THIRD COUNT

Failure to Provide Compliant Meal and Rest Periods

(By Plaintiff against All Defendants)

26. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

27. “An 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, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.” Cal. Lab. Code, § 512, subd. (a). Pursuant to Labor Code sections 226.7 and 512, and the applicable Wage Order, duty-

free meal periods of no less than thirty (30) minutes are required for all non-exempt employees who work at least five (5) hours in a work period per day. The employee must be free to leave the employer's premises. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes. Time records of meal periods must be kept. Meal periods must be paid when the employee is not relieved of all duties or free to leave the premises. An employer who fails to provide a duty-free meal period must pay the employee an additional one (1) hour regular pay for each day in which a duty-free meal period is not provided.

28. Pursuant to the applicable Industrial Welfare Commission Wage Order, employers must provide non-exempt employees a ten (10) minute duty-free rest period for every four (4) hours worked or major fraction thereof. Duty-free rest periods must be paid. An employer who fails to provide a duty-free rest period must pay the employee an additional one (1) hour of regular pay for each day in which a duty-free rest period is not provided. Cal. Lab. Code, § 226.7, subd. (c).

29. Throughout the Statutory Period, as a result of the misclassification, Employer maintained an illegal practice of not providing Employees with any sanctioned rest periods. Thus, Employees were not provided a first, second, and third rest period, as required by law. Moreover, although Employees were entitled to a meal period within the first five (5) hours of work, Employer provided no meal periods to Employees. Employer also failed to provide a second meal period for hours worked in excess of 10 hours each workday. Employer is subject to additional civil penalties as a result.

FOURTH COUNT

Inaccurate Wage Statements

(By Plaintiff against All Defendants)

30. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

31. "An employer, semimonthly or at the time of each payment of wages, shall furnish to his or her employee, either as a detachable part of the check, draft, or voucher paying the

employee's wages, or separately if wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except as provided in subdivision (j), (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee...." Cal. Lab. Code, § 226, subd. (a).

32. Throughout the Statutory Period, Employer failed to furnish Employees with accurate (or any) itemized statements at the time of each payment of wages showing the correct gross wages earned, correct total hours worked, correct net wages earned, and the corresponding correct number of hours worked at each applicable hourly rate. Rather than providing statements of actual time worked and a correct payment of wages based thereon, Employer failed to capture and pay Employees for all also worked including hours worked, and also failed to capture and pay premium pay for missed meal and rest periods. Employer regularly paid Employees in cash. Consequently, Employer failed to provide Employees accurate itemized wages statements as required by Section 226.

FIFTH COUNT

Untimely Payment of Wages

(By Plaintiff against All Defendants)

33. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

34. Generally, “[a]ll wages, other than those mentioned in Section 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month.” Cal. Lab. Code, § 204, subd. (a).

35. Generally, “[l]abor performed by a weekly-paid employee during any calendar week and prior to or on the regular payday shall be paid for not later than the regular payday of the employer for such weekly-paid employee falling during the following calendar week. Labor performed by a weekly-paid employee during any calendar week and subsequent to the regular payday shall be paid for not later than seven days after the regular payday of the employer for such weekly-paid employee falling during the following calendar week.” Cal. Lab. Code, § 204b.

36. Rather than timely paying Employees all wages due within the periods set forth above, throughout the Statutory Period, Employer failed to timely pay Employees for all bonuses earned, all hours worked, and all premium wages.

SIXTH COUNT

Failure to Pay Wages at Termination

(By Plaintiff against All Defendants)

37. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

38. “If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.” Cal. Lab. Code, § 201, subd. (a). “If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days. An employee who secretes or absents himself or herself to avoid payment to him or her, or

1 who refuses to receive the payment when fully tendered to him or her, including any penalty then
2 accrued under this section, is not entitled to any benefit under this section for the time during
3 which he or she so avoids payment.” Cal. Lab. Code, § 203, subd. (a).

4 39. Throughout the Statutory Period, Employer failed to pay Employees at least
5 minimum wage, overtime, and all premium wages for all time worked. These wages were owed
6 and due to those Employees who were terminated at the time of their termination or within 72
7 hours of resignation. Employer did not provide these payments to Employees at the time of
8 termination or within a sufficient time of resignation as required by law. Employer’ failure to
9 timely pay these wages at the time of termination, and failure to pay Employees’ continued wages
10 for the 30-day period thereafter, constitutes a violation of Sections 201 and 203.

11 **SEVENTH COUNT**

12 **Failure to Keep Accurate Records of Hours Worked**

13 **(By Plaintiff against All Defendants)**

14 40. Plaintiff incorporates by reference and realleges each and every allegation
15 contained above, as though fully set forth herein.

16 41. Pursuant to Labor Code section 1174, employers are mandated to “[k]eep, at a
17 central location in the state or at the plants or establishments at which employees are employed,
18 payroll records showing the hours worked daily by and the wages paid to, and the number of
19 piece-rate units earned by and any applicable piece rate paid to, employees employed at the
20 respective plants or establishments.” “Any person employing labor who willfully fails to maintain
21 the records required by subdivision (c) of Section 1174 or accurate and complete records required
22 by subdivision (d) of Section 1174, or to allow any member of the commission or employees of
23 the division to inspect records pursuant to subdivision (b) of Section 1174, shall be subject to a
24 civil penalty of five hundred dollars (\$500).” Cal. Lab. Code, § 1174.5.

25 42. Throughout the Statutory Period, Employer failed to keep accurate records showing
26 the hours worked daily by Employees.

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1 **EIGHTH COUNT**

2 **Failure to Reimburse Expenses**

3 **(By Plaintiff against All Defendants)**

4 43. Plaintiff incorporates by reference and realleges each and every allegation
5 contained above, as though fully set forth herein.

6 44. Labor Code section 2802 provides: “(a) An employer shall indemnify his or her
7 employee for all necessary expenditures or losses incurred by the employee in direct consequence
8 of the discharge of his or her duties.... ... (d) In addition to recovery of penalties under this
9 section in a court action or proceedings pursuant to Section 98, the commissioner may issue a
10 citation against an employer or other person acting on behalf of the employer who violates
11 reimbursement obligations for an amount determined to be due to an employee under this section.
12 The procedures for issuing, contesting, and enforcing judgments for citations or civil penalties
13 issued by the commissioner shall be the same as those set forth in Section 1197.1. Amounts
14 recovered pursuant to this section shall be paid to the affected employee.”

15 45. Although Employer required Employees to use their personal property, including
16 vehicles, to perform their job duties, Employer failed to reimburse Employees for these expenses
17 incurred.

18 46. Employer is subject to additional civil penalties as provided by law.

19 **NINTH COUNT**

20 **Retaliation**

21 **(By Plaintiff against All Defendants)**

22 47. Plaintiff incorporates by reference and realleges each and every allegation
23 contained above, as though fully set forth herein.

24 48. “A person shall not discharge an employee or in any manner discriminate, retaliate,
25 or take any adverse action against any employee or applicant for employment because the
26 employee or applicant engaged in any conduct delineated in this chapter, including the conduct
27 described in subdivision (k) of Section 96, and Chapter 5 (commencing with Section 1101) of Part
28 3 of Division 2, or because the employee or applicant for employment has filed a bona fide

1 complaint or claim or instituted or caused to be instituted any proceeding under or relating to his
2 or her rights that are under the jurisdiction of the Labor Commissioner, made a written or oral
3 complaint that he or she is owed unpaid wages, or because the employee has initiated any action or
4 notice pursuant to Section 2699, or has testified or is about to testify in a proceeding pursuant to
5 that section, or because of the exercise by the employee or applicant for employment on behalf of
6 himself, herself, or others of any rights afforded him or her.” Lab. Code, sec. 98.6, subd. (a).

7 49. The Employer violated Mr. Vargas’s rights by retaliating against him for exercising
8 his right to insist that the Employer comply with various requirements of the Labor Code as
9 concerns the employer-employee relationship, including his right to reimbursement for expenses.
10 After Mr. Vargas began to ask for statutory employment recognition and benefits such as
11 reimbursement of expenses, the Employer terminated him.

12 **PRAYER**

13 WHEREFORE, Plaintiff and Employees pray for judgment against Defendants, as follows:

- 14 1. For civil penalties pursuant to Labor Code sections 2698, *et seq.* in an amount to
15 be ascertained at trial exceeding \$25,000.
- 16 2. For reasonable costs and attorneys’ fees; and
- 17 3. For such other and further relief as the Court deems proper.

18 DATED: December 27, 2022

WORKWORLD LAW CORP.
A Professional Corporation

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21 By: 
22 **RUBEN ESCOBEDO**
23 Attorneys for PAUL VARGAS
24 as Private Attorney General
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