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11 SUPERIOR COURT OF CALIFORNIA
12 COUNTY OF KERN
13

14 SELVIN RAMIREZ BATRES, on behalf of) NO. BCV-23-102686
15 himself and all aggrieved employees,)
16 Plaintiff,) COMPLAINT
17 v.) 1. PAGA PENALTIES
18) 2. WRONGFUL TERMINATION
19) 3. WAGE AND HOUR VIOLATIONS
20 LEE MECHANICAL CONTRACTORS, INC.,) 4. MEAL PERIOD VIOLATIONS
21 and DOES 1 to 100,) 5. REST PERIOD VIOLATIONS
22 Defendants.) 6. WAGE STATEMENT VIOLATIONS
23) 7. WAITING TIME PENALTY
24) 8. UNFAIR COMPETITION LAW
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27
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29 PRELIMINARY ALLEGATIONS

- 30 1. Plaintiff Selvin Ramirez Batres is a resident of Pennsylvania.
31 2. Defendant Lee Mechanical Contractors, Inc. is a Missouri corporation that is authorized to
32 do business in California.
33 3. Plaintiff does not know the names and capacities of Does 1 to 100 and therefore use
34 fictitious names. Plaintiff will amend pursuant to Code of Civil Procedure section 474 when the
35 names and capacities of the Doe defendants are known.
36 4. The named and Doe defendants are referred to collectively as Defendants.
37 5. Plaintiff worked for Defendants in Lebec; therefore venue is proper in Kern County since
38 the obligation/liability arose in Kern County pursuant to Code of Civil Procedure section 395.5.

6. Defendants provide construction-based services and employ workers such as Plaintiff in the construction industry; nonetheless there was no collective bargaining agreement so the exemption in Labor Code section 2699.6 does not apply.

7. On May 30, 2023 Plaintiff sent Lee Mechanical Contractors, Inc. a PAGA notice and uploaded the notice to the LWDA website. Since it has been more than 65 days since the notice was sent, Plaintiff may now request PAGA penalties on behalf of himself and all aggrieved employees.

8. The aggrieved employees comprise all nonexempt workers of Defendants who worked California who worked anytime from May 30, 2022 through the date of disposition of this case.

9. Additionally, on April 19, 2023 Plaintiff sent Defendants a request for a copy of his personnel file pursuant to Labor Code sections 226 and 1198.5—Defendants did not respond.

10. Wage Order 16 applies to workers in the construction industry.

11. As stated in the PAGA letter, Defendants did not pay for work performed off the clock including overtime hours and did not keep accurate track of time worked, did not provide compliant meal and rest breaks, and related wage statement penalties.

12. Further, while working in Lebec, Plaintiff was physically threatened and inappropriately insulted by his supervisor, David Guerrero on March 15, 2023.

13. Plaintiff made a written complaint to Defendants about the incident the same day.

14. In retaliation for making the complaint an in violation of Labor Code section 1102.5 which is statewide public policy, Defendants wrongfully terminated Plaintiff on March 18, 2023.

FIRST CAUSE OF ACTION

PAGA PENALTIES

Against All Defendants

15. Plaintiff incorporates by reference paragraphs 1 to 12 of the complaint.

16. The PAGA penalties for the off the clock violations are contained in Labor Code sections 1197.1 and 2699.

16. The PAGA penalties for the overtime violations are found in Labor Code section 558.

- 1 17. The PAGA penalties for the meal break violations are in Labor Code section 558
2 18. The PAGA penalties for the rest break violations are in Labor Code section 2699.
3 19. The PAGA penalties for the wage statement violations are in Labor Code 2699.
4 20. Further, Plaintiff is entitled to attorney fees and costs under Labor Code section 2699.

5
6 SECOND CAUSE OF ACTION

7 WRONGFUL TERMINATION IN VIOLATION OF FEHA

8 Against All Defendants

- 9 21. Plaintiff incorporates by reference paragraphs 1 to 12 of the complaint.
10 22. Pursuant to Government Code section 12940(h), it is unlawful for any employer to
11 discharge or discriminate against any person for opposing any practices forbidden under FEHA.
12 23. Plaintiff opposed the discriminatory practice of his supervisor, David Guerrero, who made
13 unrelenting jokes about gay people.
14 24. When Plaintiff told David Guerrero to stop, David Guerrero physically threatened and
15 insulted Plaintiff.
16 25. When Plaintiff claimed to Defendants about the above, he was terminated in retaliation.
17 26. When a supervisor engages in conduct in violation of FEHA, strict liability applies.
18 27. On August 14, 2023 Plaintiff obtained a right-to-sue letter.
19 28. For wrongful termination in violation of FEHA, Plaintiff is entitled to back pay, front pay,
20 general damages, and attorney fees.

21
22 THIRD CAUSE OF ACTION

23 WAGE AND HOUR VIOLATIONS

24 Against All Defendants

- 25 29. Plaintiff incorporates by reference paragraphs 1 to 12 of the complaint.
26 30. Labor Code section 1194 provides that any employee receiving less than minimum wage or
27 the legal overtime compensation applicable to the employee is entitled to recover the unpaid
28 balance of the full amount of this minimum wage or overtime compensation, including interest,

1 reasonable attorney's fees, and costs of suit.

2 31. Plaintiff was not paid for all hours worked during employment with Defendants; this is
3 substantiated by Defendants' time-rounding practice.

4 32. Therefore Plaintiff seeks payment of unpaid wages, interest, and attorney fees.
5

6 FOURTH CAUSE OF ACTION

7 MEAL PERIOD VIOLATIONS

8 Against All Defendants

9 33. Plaintiff incorporates by reference paragraphs 1 to 12 of the complaint.

10 34. Pursuant to Labor Code section 512 and paragraph 10 of Wage Order 16, employees are
11 entitled to meal periods of 30 minutes for every five hours of work; employees must be relieved of
12 all duties during meal periods.

13 35. Defendants did not provide duty-free meal periods since Plaintiff was not relieved of all
14 duties during any alleged meal periods.

15 36. As a result, Plaintiff is entitled to premium pay under Labor Code section 226.7(c), which is
16 one additional hour of pay at the regular rate of pay.
17

18 FIFTH CAUSE OF ACTION

19 REST PERIOD VIOLATIONS

20 Against All Defendants

21 37. Plaintiff incorporates by reference paragraphs 1 to 12 of the complaint.

22 38. Pursuant to paragraph 11 of Wage Order 16, employees are entitled to rest periods of 10
23 minutes for every four hours of work; employees must be relieved of all duties during any alleged
24 rest periods.

25 39. Defendants did not provide duty-free meal periods since Plaintiff was not relieved of all
26 duties during any alleged meal periods.

27 40. As a result, Plaintiff is entitled to premium pay under Labor Code section 226.7(c), which is
28 one additional hour of pay at the regular rate of pay.

1 SIXTH CAUSE OF ACTION

2 WAGE STATEMENT VIOLATIONS

3 Against All Defendants

4 41. Plaintiff incorporates by reference paragraphs 1 to 12 of the complaint.

5 42. Labor Code section 226 provides that that wage statements must have nine discrete
6 categories of information.

7 43. Plaintiff's wage statements were inaccurate since they intentionally did not list all time
8 worked, as Plaintiff's time was rounded, and they did not list premium pay for missed breaks.

9 44. As a result, Plaintiff is entitled to up to \$4,000 as a wage statement penalty.

10 45. Plaintiff is also entitled to attorney fees.

11 46. Plaintiff is also entitled to a \$750 penalty since Defendants did not provide copies of
12 Plaintiff's wage statements when requested.

13
14 SEVENTH CAUSE OF ACTION

15 WAITING TIME PENALTY

16 Against All Defendants

17 47. Plaintiff incorporates by reference paragraphs 1 to 12 of the complaint.

18 48. Plaintiff was still owed wages for unpaid hours and premium pay when he stopped working
19 for Defendants.

20 49. Defendants willfully did not pay the unpaid wages after the wrongful termination.

21 50. Therefore the waiting time penalty applies under Labor Code section 203, which is 30 days'
22 of Plaintiff's wages.

23
24 EIGHTH CAUSE OF ACTION

25 UNFAIR COMPETITION LAW

26 Against All Defendants

27 51. Plaintiff incorporates by reference paragraphs 1 to 12 of the complaint.

28 52. The Unfair Competition Law prohibits, unlawful, unfair, and fraudulent business practices.

1 53. This case is being brought under the unlawful prong based on not paying all wages owed.

2 54. Pursuant to Business and Professions Code section 17203, Plaintiff seeks restitution of all
3 unpaid wages, including but not limited to overtime and premium pay.

4 55. Plaintiff also seeks attorney fees under Code of Civil Procedure section 1021.5.

5

6 PRAYER

7 First Cause of Action

8 1. All applicable PAGA penalties

9 2. Attorney fees and costs

10 3. Other relief the court deems proper

11

12 Second Cause of Action

13 1. Back pay

14 2. Front pay

15 3. General damages

16 4. Attorney fees

17 5. Other relief the court deems proper

18

19 Third Cause of Action

20 1. Payment of unpaid wages

21 2. Interest

22 3. Attorney fees

23 4. Other relief the court deems proper

24

25 Fourth Cause of Action

26 1. Premium pay for missed breaks

27 2. Interest

28 3. Other relief the court deems proper

1 Fifth Cause of Action

- 2 1. Premium pay for missed breaks
3 2. Interest
4 3. Other relief the court deems proper
5

6 Sixth Cause of Action

- 7 1. Wage statement penalty up to \$4,000
8 2. Penalty of \$750 for not providing copies
9 3. Attorney fees
10 4. Other relief the court deems proper
11

12 Seventh Cause of Action

- 13 1. Waiting time penalty
14 2. Other relief the court deems proper
15

16 Eighth Cause of Action of Action

- 17 1. Restitution of unpaid wages
18 2. Attorney fees
19 3. Other relief the court deems proper
20

21 Date: August 14, 2023

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