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Assigned for All Purposes
Judge Randall J. Sherman
Dept. CX105

Attorneys for Plaintiff JULIE ANN BARNES,
on behalf of herself and current and former aggrieved employees,

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE COUNTY

JULIE ANN BARNES, on behalf of herself and
current and former aggrieved employees,

Plaintiff,

vs.

ARMSTRONG GARDEN CENTERS INC.; and
DOES 1 to 100, inclusive,

Defendants.

Case No.: 30-2023-01354017-CU-OE-CXC

PAGA ACTION

**PLAINTIFF JULIE ANN BARNES'
COMPLAINT FOR:**

- CIVIL PENALTIES PURSUANT
TO THE PRIVATE ATTORNEYS
GENERAL ACT OF 2004
("PAGA"), LABOR CODE
SECTIONS 2698, ET SEQ.**

COMES NOW Plaintiff JULIE ANN BARNES ("Plaintiff"), who alleges and complains
against Defendants ARMSTRONG GARDEN CENTERS INC.; and DOES 1 to 100, inclusive
(collectively "Defendants") as follows:

I. INTRODUCTION

1. This is a Private Attorneys General Act of 2004, Labor Code §§ 2698, *et seq.*
("PAGA") representative action brought by Plaintiff on behalf of the State of California, herself
and other current and former aggrieved employees of Defendants who worked as hourly non-
exempt employees in California during the relevant time period seeking civil penalties associated
with Defendants' violation of the Labor Code based on Defendants' failure to pay wages for all

overtime hours worked at the proper overtime rate of pay; failure to authorize or permit all legally required and compliant meal periods, pay meal period premium wages, and/or pay meal period premium wages at the proper rate; failure to authorize or permit all legally required and compliant rest periods, pay rest period premium wages, and/or pay rest period premium wages at the proper rate; failure to timely pay earned wages during employment; statutory penalties for failure to provide accurate wage statements; statutory waiting time penalties in the form of continuation wages for failure to timely pay employees all wages due upon separation of employment. Plaintiff seeks on a representative basis, following notice to the Labor and Workforce Development Agency, civil penalties, reasonable attorneys' fees pursuant to Labor Code section 2699(g)(1) and costs brought on behalf of Plaintiff, the State of California, and others aggrieved.

II. JURISDICTION AND VENUE

2. This Court has jurisdiction over the claims of Plaintiff and all other current and former aggrieved California-based hourly non-exempt employees because Plaintiff's lawsuit seeks civil penalties on behalf of herself, all other current and former aggrieved California-based hourly non-exempt employees, and the State of California in excess of twenty-five thousand dollars (\$25,000); Defendants employed Plaintiff and all other current and former aggrieved California-based hourly non-exempt employees; and the injuries to Plaintiff and all other current and former aggrieved California-based hourly non-exempt employees occurred in locations throughout California, including but not limited to Orange County at 2123 Newport Boulevard, Costa Mesa, CA 92627

3. In response to the COVID-19 pandemic, the Judicial Council of California enacted Emergency Rule 9 to the California Rules of Court, which provided that, notwithstanding any other law, the statutes of limitations and repose for civil causes of action that exceed 180 days are tolled from April 6, 2020, until October 1, 2020.

III. PARTIES

4. Plaintiff brings this action as a representative of the Labor and Workforce Development Agency on behalf of herself and other current and former employees subject to violations of the Labor Code. The named Plaintiff and the persons on whose behalf this action is

1 filed include current, former and/or future employees of Defendants who work, worked, or will
2 work for Defendants as direct employees as well as temporary employees employed through temp
3 agencies as hourly non-exempt employees in California. At all times mentioned herein, the
4 currently named Plaintiff is and was domiciled and a resident and citizen of California and was
5 employed by Defendants in an hourly position at Defendants' location in Costa Mesa from
6 approximately January 2020, until on or about October 17, 2022.

7 5. Plaintiff is informed and believes and thereon alleges that Defendant
8 ARMSTRONG GARDEN CENTERS INC. is authorized to do business within the State of
9 California and is doing business in the State of California and/or that Defendants DOES 1-50 are,
10 and at all times relevant hereto were persons acting on behalf of Defendant ARMSTRONG
11 GARDEN CENTERS INC. in the establishment of, or ratification of, the aforementioned illegal
12 wage and hour practices or policies. Defendant ARMSTRONG GARDEN CENTERS INC.
13 operates in Orange County and employed Plaintiff and aggrieved employees in Orange County,
14 including but not limited to, at 2123 Newport Boulevard, Costa Mesa, California 92627.

15 6. Plaintiff is informed and believes and thereon alleges that Defendants DOES 1
16 through 50 are corporations, or are other business entities or organizations of a nature unknown to
17 Plaintiff that employed Plaintiff and aggrieved California non-exempt employees, permitted
18 Plaintiff and aggrieved employees to work, and exercised control over the wages, hours and
19 working conditions of employment of Plaintiff and aggrieved employees.

20 7. Plaintiff is informed and believes and thereon alleges that Defendants DOES 51
21 through 100 are individuals unknown to Plaintiff. Each of the individual defendants is sued
22 individually and in his or her capacity as an agent, shareholder, owner, representative, manager,
23 supervisor, independent contractor and/or employee of each defendant who violated or caused to
24 be violated the minimum wage and overtime provisions of the Labor Code and/or any provision of
25 the Industrial Welfare Commission's wage orders regulating hours and days of work.

26 8. Plaintiff is unaware of the true names of Defendants DOES 1 through 100. Plaintiff
27 sues said defendants by said fictitious names, and will amend this complaint when the true names
28 and capacities are ascertained or when such facts pertaining to liability are ascertained, or as

1 permitted by law or by the Court. Plaintiff is informed and believes that each of the fictitiously
2 named defendants is in some manner responsible for the events and allegations set forth in this
3 complaint.

4 9. Plaintiff makes the allegations in this complaint without any admission that, as to
5 any particular allegation, Plaintiff bears the burden of pleading, proving, or persuading and
6 Plaintiff reserves all of Plaintiff's right to plead in the alternative.

7 **FIRST CAUSE OF ACTION**

8 **CIVIL PENALTIES PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT OF**
9 **2004, LABOR CODE SECTIONS 2698, ET SEQ.**

10 **(Against all Defendants by Plaintiff)**

11 10. Plaintiff incorporates all paragraphs above as though fully set forth herein.

12 11. During Plaintiff's employment and continuing through the present, Plaintiff alleges
13 Defendants violated Labor Code sections 201, 202, 203, 204, 226, 226.7, 510, 512, 1194 and the
14 applicable Wage Orders.

15 12. Specifically, Defendants have committed the following violations of California
16 Labor Code:

17 13. **Failure to pay wages for overtime hours worked at the overtime rate of pay:**
18 Defendants employed many of their employees, including Plaintiff, as hourly non-exempt
19 employees. In California, an employer is required to pay hourly employees for all "hours worked,"
20 which includes all time that an employee is under control of the employer and all time the
21 employee is suffered and permitted to work. This includes the time an employee spends, either
22 directly or indirectly, performing services that inure to the benefit of the employer.'

23 14. Labor Code sections 510 and 1194 require an employer to compensate employees a
24 higher rate of pay for hours worked in excess of eight (8) hours in a workday, in excess of forty
25 (40) hours in a workweek, and on any seventh consecutive day of work in a workweek:

26 Any work in excess of eight (8) hours in one workday, any work in excess of forty (40)
27 hours in any one (1) workweek, and the first eight (8) hours worked on the seventh day of
28 work in any one (1) workweek, shall be compensated at the rate of no less than one-and-
one-half (1.5) times the regular rate of pay for an employee. Any work in excess of twelve
(12) hours in one (1) day shall be compensated at the rate of no less than twice the regular
rate of pay for an employee. In addition, any work in excess of eight (8) hours on any

seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

Labor Code section 510.

15. Overtime is based upon an employee's regular rate of pay. "The regular rate at which an employee is employed shall be deemed to include all remuneration for employment paid to, or on behalf, of the employee." *See* Division of Labor Standards Enforcement – Enforcement Policies and Interpretations Manual, Section 49.1.2.

16. In this case, Plaintiff alleges that when she and other current and former aggrieved California-based hourly non-exempt employees earned overtime wages, Defendants failed to pay them overtime wages at the proper overtime rate of pay due to Defendants' failure to include all remuneration when calculating the overtime rate of pay. Specifically, Defendants maintained a policy, practice, and/or procedure of failing to include all remuneration such as quarterly bonuses, for example, when calculating Plaintiff's and other current and former aggrieved California-based hourly non-exempt employees' regular rate of pay for the purpose of paying overtime.

17. The foregoing policies, practices, and/or procedures resulted in time during each workday that Plaintiff and other current and former aggrieved California-based hourly non-exempt employees were under the control of Defendants but were not compensated. To the extent that the foregoing uncompensated time occurred when Plaintiff and other current and former aggrieved California-based hourly non-exempt employees worked more than eight (8) hours in a workday, more than forty (40) hours in a workweek, and/or seven (7) days in a workweek, Defendants failed to pay them at their overtime rate of pay for overtime hours worked, in violation of Labor Code sections 510 and 1194 and the applicable Wage Order.

18. **Failure to pay wages to hourly non-exempt employees for workdays that Defendants failed to provide legally required and compliant meal periods:** Plaintiff and other current and former aggrieved California-based hourly non-exempt employees regularly worked shifts of more than five (5) hours in length and shifts of more than ten (10) hours in length.

19. California law requires an employer to authorize or permit an employee an uninterrupted meal period of no less than thirty (30) minutes in which the employee is relieved of all duties and the employer relinquishes control over the employee's activities prior to the

1 employee's sixth hour of work. Labor Code sections 226.7, 512; Wage Order 7 at §11; *Brinker*
2 *Rest. Corp. v. Super Ct. (Hohnbaum)* (2012) 53 Cal.4th 1004. An employer may not employ an
3 employee for a work period of more than ten (10) hours per day without providing the employee
4 with a second such meal period of not less than thirty (30) minutes prior to the start of the eleventh
5 hour of work. *Id.* If the employee is not relieved of all duty during a meal period, the meal period
6 shall be considered an "on duty" meal period and counted as time worked. A paid "on duty" meal
7 period is only permitted when: (1) the nature of the work prevents an employee from being
8 relieved of all duty; and (2) the parties have a written agreement agreeing to on-duty meal periods.

9 20. If an employer fails to provide an employee a meal period in accordance with the
10 law, the employer must pay the employee one (1) hour of pay at the employee's regular rate of pay
11 for each workday that a legally required and compliant meal period was not provided. Labor Code
12 section 226.7; Wage Order 7 at §11.

13 21. In this case, Defendants failed to authorize or permit legally required and compliant
14 meal periods to Plaintiff and other current and former aggrieved California-based hourly non-
15 exempt employees due to Defendants' policies, practices, and/or procedures, including but not
16 limited to failing to provide Plaintiff and other current and former aggrieved California-based
17 hourly non-exempt employees with timely, uninterrupted, duty-free 30-minute meal breaks after
18 every five (5) hours worked.

19 22. Finally, on occasions when Defendants paid Plaintiff and other current and former
20 aggrieved California-based hourly non-exempt employees a "premium" wage for late, missed,
21 short, on-premise, on-duty, and/or interrupted meal periods, Defendants failed to pay the one (1)
22 additional hour of pay at Plaintiff's and other current and former aggrieved California-based
23 hourly non-exempt employees' regular rate of compensation. Specifically, Defendants maintained
24 a policy, practice, and/or procedure of failing to include all remuneration such as quarterly
25 bonuses, for example, when calculating Plaintiff's and other current and former aggrieved
26 California-based hourly non-exempt employees' regular rate of pay for the purpose of paying meal
27 period premium wages.

28 23. Additionally, Plaintiff alleges that Defendants maintained a policy, practice, and/or

1 procedure of failing to compensate Plaintiff and other current and former aggrieved California-
2 based hourly non-exempt employees one (1) hour of pay at their regular rate of pay for each
3 workday that Plaintiff and other current and former aggrieved California-based hourly non-exempt
4 employees did not receive legally required and compliant meal periods, in violation of Labor Code
5 section 226.7.

6 24. Defendants' foregoing policies, practices, and/or procedures resulted in Plaintiff
7 and other current and former aggrieved California-based hourly non-exempt employees not
8 receiving wages to compensate them for workdays during which Defendants did not provide them
9 with meal periods in compliance with California law.

10 25. **Failure to pay wages to hourly non-exempt employees for workdays that**
11 **Defendants failed to provide legally required and compliant rest periods:** Plaintiff and other
12 current and former aggrieved California-based hourly non-exempt employees regularly worked
13 shifts of more than three-and-a-half (3.5) hours.

14 26. California law requires every employer to authorize and permit an employee a rest
15 period of ten (10) net minutes for every four (4) hours worked or major fraction thereof. Labor
16 Code section 226.7; Wage Order 7 at §12. Under California law, "[e]mployees are entitled to 10
17 minutes' rest for shifts from three and one-half to six hours in length, 20 minutes for shifts of more
18 than six hours up to 10 hours, 30 minutes for shifts of more than 10 hours up to 14 hours, and so
19 on." *Brinker Restaurant Corp. v. Sup. Ct. (Hohnbaum)* (2012) 53 Cal.4th 1004, 1029; Labor Code
20 section 226.7; Wage Order 7 at §12. Rest periods, insofar as practicable, shall be in the middle of
21 each work period. Wage Order 7 at §12. Additionally, the rest period requirement "obligates
22 employers to permit – and authorizes employees to take – off-duty rest periods." *Augustus v. ABM*
23 *Security Services, Inc.*, (2016) 5 Cal.5th 257, 269. That is, during rest periods employers must
24 relieve employees of all duties and relinquish control over how employees spend their time. *Id.*

25 27. If the employer fails to authorize or permit a required rest period, the employer
26 must pay the employee one (1) hour of pay at the employee's regular rate of pay for each workday
27 the employer did not authorize or permit a legally required rest period. Labor Code section 226.7;
28 Wage Order 7 at § 12.

1 28. In this case, Defendants failed to authorize or permit all legally required and
2 compliant rest periods to Plaintiff and other current and former aggrieved California-based hourly
3 non-exempt employees due to Defendants' policies, practices, and/or procedures including, but not
4 limited to failing to provide Plaintiff and similarly situated employees timely, uninterrupted, duty-
5 free net 10-minute rest breaks for every four (4) hours worked or major fraction thereof.

6 29. Additionally, Plaintiff alleges that Defendants maintained a policy, practice, and/or
7 procedure of failing to compensate Plaintiff and other current and former aggrieved California-
8 based hourly non-exempt employees with one (1) hour of pay at their regular rate of pay for each
9 workday they did not receive legally required and compliant rest periods, in violation of Labor
10 Code section 226.7.

11 30. Finally, on occasions when Defendants did pay Plaintiff and other current and
12 former aggrieved California-based hourly non-exempt employees a "premium" wage for late,
13 missed, short, on-premise, on-duty, and/or interrupted rest periods, Defendants failed to pay the
14 one (1) additional hour of pay at Plaintiff's and other current and former aggrieved California-
15 based hourly non-exempt employees' regular rate of compensation. Specifically, Defendants
16 maintained a policy, practice, and/or procedure of failing to include all remuneration such as
17 quarterly bonuses, for example, when calculating Plaintiff's and other current and former
18 aggrieved California-based hourly non-exempt employees' regular rate of pay for the purpose of
19 paying rest period premiums.

20 31. Defendants' foregoing policies, practices, and/or procedures resulted in Plaintiff
21 and other current and former aggrieved California-based hourly non-exempt employees not
22 receiving wages to compensate them for workdays in which Defendants did not provide them with
23 rest periods in compliance with California law.

24 32. **Failure to timely pay earned wages during employment:** In California, wages
25 must be paid at least twice during each calendar month on days designated in advance by the
26 employer as regular paydays, subject to some exceptions. Labor Code section 204(a). Wages
27 earned between the 1st and 15th days, inclusive, of any calendar month must be paid between the
28 16th and the 26th day of that month and wages earned between the 16th and the last day,

1 inclusive, of any calendar month must be paid between the 1st and 10th day of the following
2 month. *Id.* Other payroll periods such as those that are weekly, biweekly, or semimonthly, must be
3 paid within seven (7) calendar days following the close of the payroll period in which wages were
4 earned. Labor Code section 204(d).

5 33. As a derivative of Plaintiff's claims above, Plaintiff alleges that Defendants failed
6 to timely pay Plaintiff's and other current and former aggrieved California-based hourly non-
7 exempt employees' earned wages (including overtime wages, meal period premium wages, and/or
8 rest period premium wages), in violation of Labor Code section 204. Defendants'
9 aforementioned policies, practices, and/or procedures resulted in their failure to pay Plaintiff's and
10 other current and former aggrieved California-based hourly non-exempt employees' their earned
11 wages within the applicable time frames outlined in Labor Code section 204.

12 34. **Failure to provide complete and accurate wage statements:** Labor Code section
13 226, subdivision (a). Labor Code section 226(a) provides, *inter alia*, that, upon paying an
14 employee his or her wages, the employer must "furnish each of his or her employees ... an
15 itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the
16 employee, except for any employee whose compensation is solely based on a salary and who is
17 exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of
18 the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable
19 piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided, that all
20 deductions made on written orders of the employee may be aggregated and shown as one item, (5)
21 net wages earned, (6) the inclusive dates of the pay period for which the employee is paid, (7) the
22 name of the employee and his or her social security number, (8) the name and address of the legal
23 entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and
24 the corresponding number of hours worked at each hourly rate by the employee."

25 35. As a derivative of Plaintiff's allegations above, Defendants' failure to pay Plaintiff
26 and other current and former aggrieved California-based hourly non-exempt employees all wages
27 earned (including overtime wages, meal period premium wages, and/or rest period premium
28 wages) rendered Plaintiff's and other current and former aggrieved California-based hourly non-

1 exempt employees' wage statements inaccurate, in violation of Labor Code section 226.

2 **36. Failure to pay employees all wages due at time of termination/resignation:** An
3 employer is required to pay all unpaid wages timely after an employee's employment ends. The
4 wages are due immediately upon termination (Labor Code section 201) or within seventy-two (72)
5 hours of resignation (Labor Code section 202).

6 37. As a derivative of Plaintiff's allegations above, because Defendants failed to pay
7 Plaintiff and other current and former aggrieved California-based hourly non-exempt employees
8 all their earned wages (including overtime wages, meal period premium wages, and/or rest period
9 premium wages), Defendants failed to pay those employees timely after each employee's
10 termination and/or resignation, in violation of Labor Code sections 201, 202, and 203.

11 38. Labor Code sections 2699, subdivisions (a) and (g) authorize an aggrieved
12 employee, on behalf of himself or herself and other current or former employees, to bring a civil
13 action to recover civil penalties against all Defendants pursuant to the procedures specified in
14 Labor Code section 2699.3.

15 39. Plaintiff has complied with the procedures for bringing suit specified in Labor
16 Code section 2699.3. On July 28, 2023, Plaintiff filed a PAGA Claim Notice with the LWDA and
17 provided notice to Defendants by certified mail which provided notice of the specific provisions of
18 the Labor Code alleged to have been violated, including the facts and theories to support the
19 violations alleged.

20 40. Pursuant to Labor Code section 2699.3, the LWDA must give written notice by
21 certified mail to the parties that it intends to investigate the alleged violations of the Labor Code
22 within 60 days of the date of the complainant's written notice. The LWDA failed to provide the
23 parties notice within 60 days of the date of Plaintiff's PAGA Claim Notice that the LWDA intends
24 to investigate Plaintiff's claims.

25 41. Pursuant to Labor Code sections 2699(a) and (f), Plaintiff is entitled to recover civil
26 penalties for Defendants' violations of Labor Code sections 201, 202, 203, 204, 226, 226.7, 510,
27 512, and 1194, During Plaintiff's employment and continuing through the present, preceding
28 Plaintiff sending the initial PAGA Claim Notice to the LWDA to the present, in the following

amounts:

a. For violations of Labor Code sections 201, 202, 203, 204, 226.7, and 512; one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation [penalty amounts established by Labor Code section 2699(f)(2)].

b. For violations of Labor Code section 226, two hundred fifty dollars (\$250) for each employee for each pay period for the initial violation, and for each subsequent violation, one thousand dollars (\$1000) for each underpaid employee for each pay period [penalty amounts established by Labor Code section 226.3].

c. For violations of Labor Code section 510, fifty dollars (\$50) for each employee for each pay period for the initial violation, and for each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period [penalty amounts established by Labor Code section 558].

d. For violations of Labor Code section 1194, one hundred dollars (\$100) for each underpaid employee for each pay period for the initial violation, and for each subsequent violation, two hundred fifty dollars (\$250) for each underpaid employee for each pay period [penalty amounts established by Labor Code section 1197.1].

42. Pursuant to Labor Code section 2699(g), Plaintiff is entitled to an award of reasonable attorneys' fees and costs in connection with her claims for civil penalties.

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF, ON BEHALF OF HERSELF AND ON OTHER AGGRIEVED EMPLOYEES, PRAYS AS FOLLOWS:

ON THE FIRST CAUSE OF ACTION:

1. That Defendants be found to have violated the provisions of the Labor Code and the IWC Wages Orders as to the Plaintiff and aggrieved employees;

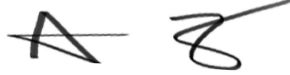
2. For any and all legally applicable penalties during the relevant statute of limitations subject to any permissible tolling, including but not limited to those recoverable under the California Labor Code, including but not limited to section 2699(f);

1 3. For attorneys' fees and costs of suit, including but not limited to those recoverable
2 under California Labor Code section 2699(g); and

3 4. For such and other further relief, in law and/or equity, as the Court deems just or
4 appropriate

5
6 Dated: October 2, 2023

Respectfully submitted,
LAVI & EBRAHIMIAN, LLP

7
8 By: 

Joseph Lavi, Esq
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JULIE ANN BARNES,
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aggrieved employees