

Filed
Superior Court of California,
Sacramento
10/17/2023
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By _____, Deputy
23CV010056

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Attorneys for Plaintiffs Mike Brazil and Timothy Gorham, on behalf of themselves and all
“aggrieved employees” pursuant to Labor Code § 2698 *et seq.*

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

MIKE BRAZIL, TIMOTHY GORHAM,
on behalf of themselves and all “aggrieved
employees” pursuant to Labor Code § 2698 *et*
seq.,

Plaintiffs,

v.

BACO REALTY CORPORATION,
a California corporation, and DOES 1 through
10, inclusive,

Defendants.

CASE NO:

**REPRESENTATIVE ACTION
COMPLAINT FOR PENALTIES
PURSUANT TO LABOR CODE § 2699(f)
FOR VIOLATIONS OF LABOR CODE
§§ 201, 202, 226(a), 226.7, 246, 510, 512,
1174, 1174.5, 1194, AND 1198 AND
PURSUANT TO LABOR CODE § 2699(a)
FOR VIOLATIONS OF LABOR CODE §§
226.3 AND 558**

1 Plaintiffs MIKE BRAZIL and TIMOTHY GORHAM (“Plaintiffs”), on behalf of themselves
2 and others as “aggrieved employees” under the Labor Code Private Attorneys General Act of 2004,
3 complain of BACO REALTY CORPORATION, a California corporation, and/or any subsidiaries or
4 affiliated companies (hereinafter referred to as “Defendants”), as follows:

5 **I.**

6 **INTRODUCTION AND FACTUAL BACKGROUND**

7 1. This is a Representative Action, pursuant to Labor Code § 2698 *et seq.*, on behalf of
8 Plaintiffs and other non-exempt California employees who currently work or formerly worked for
9 Defendants (“Aggrieved Employees”).

10 2. For at least one (1) year prior to the filing of this action and at least one (1) year prior
11 to the date Plaintiffs began the process of exhausting the administrative requirements, pursuant to
12 Labor Code § 2698 *et seq.*, and continuing to the present (the “liability period”), Defendants have had
13 consistent policies of:

14 a. Failing to pay Plaintiffs and other Aggrieved Employees all minimum and
15 overtime wages due when they failed to pay for all time spent on-call, under Defendants’
16 control, in violation of Labor Code §§ 510, 558, and 1194 and IWC Wage Order 4-2001.
17 Defendants required Plaintiffs and Aggrieved Employees to be on on-call after hours and to
18 respond to calls from customers (including in the middle of the night), yet they were never
19 paid for this on-call time. An employer is obligated to pay the wages of an hourly employee
20 for all time that the employee is under the control of the employer, and this includes all the
21 time the employee is suffered or permitted to work, whether or not required to do so. When
22 Plaintiffs and other Aggrieved Employees were on-call, they were under the control of
23 Defendants and were required to be compensated for all hours worked. Defendant, however,
24 failed to do so. This deprived Plaintiffs and other Aggrieved Employees of significant hours
25 worked and minimum and overtime wages due, and constitutes the violation of Labor Code
26 §§ 510, 558, and 1194 and IWC Wage Order 4-2001. Defendants also fail to maintain records
27 indicating the start and end time of each shift. This separately violates Labor Code §§ 1174,
28 1174.5, and 1198 and IWC Wage Order 4-2001;

1 b. Failing to properly compute bonuses, commission wages, and/or other non-
2 base hourly wages earned by Plaintiffs and other Aggrieved Employees into their regular rate
3 of pay for purposes of paying them meal and rest period premiums, overtime wages, vacation
4 wages, and sick pay wages at the correct rates, in violation of Labor Code §§ 226.7, 246, 510,
5 512, 558, and 1194. Defendants paid Plaintiffs and other Aggrieved Employees various non-
6 base hourly wages, including, but not limited to, a rental credit to live on Defendants'
7 property; however, Defendants failed to properly blend these non-base hourly wages into the
8 regular rate of pay, and instead paid Plaintiffs and other Aggrieved Employees meal and rest
9 period premiums, overtime wages, vacation wages, and sick pay wages based only on the base
10 hourly rate of pay (with no adjustment), if at all, thus depriving Plaintiffs and other Aggrieved
11 Employees of all meal and rest period premiums, overtime wages, vacation wages, and sick
12 pay wages earned. This violates Labor Code §§ 226.7, 246, 510, 512, 558, and 1194;

14 c. Failing to pay proper premium wages to Plaintiffs and other Aggrieved
15 Employees who were denied meal periods, in violation of Labor Code §§ 226.7, 512, and 558,
16 and IWC Wage Order 4-2001. Plaintiffs and other Aggrieved Employees were routinely
17 denied, and not authorized to take, a proper, timely, uninterrupted, 30-minute meal period for
18 every shift worked that exceeds five hours, or a second proper, timely, uninterrupted, 30-
19 minute meal period for every shift worked that exceeds ten hours, but were not paid premium
20 wages of one hour's pay for each missed first or second meal period. Plaintiffs and Aggrieved
21 Employees were simply denied their entitled meal periods. This violates Labor Code §§ 226.7,
22 512, and 558, and IWC Wage Order 4-2001;

24 d. Failing to pay proper premium wages to Plaintiffs and other Aggrieved
25 Employees who were denied rest periods, in violation of Labor Code §§ 226.7 and 558 and
26 IWC Wage Order No. 4-2001. Plaintiffs and Aggrieved Employees were routinely unable to
27 take a 10-minute, off-duty rest period for every four (4) hours of work or major fraction
28 thereof, but were not paid premium wages of one hour's pay for each missed rest period.

1 Plaintiffs were simply denied and not authorized to take their legally entitled rest periods and
2 were never paid premium wages for missed rest periods. This violates Labor Code § 226.7
3 and IWC Wage Order No. 4-2001;

4 e. Failing to provide Plaintiffs and all other Aggrieved Employees with wage
5 statements that fully and accurately itemized the requirements set forth in Labor Code §
6 226(a). Plaintiffs and other Aggrieved Employees were not paid all wages due, as stated
7 above. As such, the wage statements provided by Defendants failed to accurately state all
8 gross wages earned, in violation of Labor Code §§ 226(a)(1) and 226.3, total hours worked,
9 in violation of Labor Code §§ 226(a)(2) and 226.3, net wages earned, in violation of Labor
10 Code §§ 226(a)(5) and 226.3, and all applicable hourly rates in effect during the pay period
11 and the corresponding numbers of hours worked at each rate, in violation of Labor Code §§
12 226(a)(9) and 226.3; and
13

14 f. Failing to pay Plaintiff Brazil and Aggrieved Employees all wages due at the
15 separation of their employment based on the time frames required by Labor Code §§ 201 and
16 202. As stated above, Plaintiff Brazil and Aggrieved Employees were not paid all wages due
17 during the course of their employment and, as a result of this failure, they were not timely
18 paid all wages due at the separation of their employment. This violates Labor Code §§ 201-
19 202 and is alleged on behalf of Plaintiff Brazil and certain Aggrieved Employees no longer
20 employed by Defendants.
21

22 3. Plaintiffs, on behalf of themselves and all Aggrieved Employees pursuant to Labor
23 Code § 2698 *et seq.*, seek civil penalties for Defendants' violations of the California Labor Code.

24 4. Venue is proper in this judicial district, pursuant to Code of Civil Procedure § 395
25 because Defendants employed Plaintiffs in Sacramento County, California.

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1 II.

2 PARTIES

3 A. Plaintiffs

4 5. Plaintiff MIKE BRAZIL was employed by Defendants from June 2023 through July
5 2023 as a non-exempt employee in Sacramento County, California.

6 6. Plaintiff TIMOTHY GORHAM has been employed by Defendants since June 2023 as
7 a non-exempt employee in Sacramento County, California.

8 B. Defendant

9 7. Defendant BACO REALTY CORPORATION is a California corporation that
10 employed Plaintiffs and Aggrieved Employees throughout the State of California, including
11 Sacramento County, California.

12 8. The true names and capacities, whether individual, corporate, associate, or otherwise,
13 of Defendants sued herein as DOES 1 to 10, inclusive, are currently unknown to Plaintiffs, who
14 therefore sue Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiffs
15 are informed and believe, and based thereon allege, that each of the Defendants designated herein as
16 a DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiffs will
17 seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendants
18 designated hereinafter as DOES when such identities become known.

19 9. Plaintiffs are informed and believe, and based thereon allege, that each Defendant
20 acted in all respects pertinent to this action as the agent of the other Defendant, carried out a joint
21 scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant is
22 legally attributable to the other Defendants.

23 10. The Defendants named herein as DOE 1 through DOE 10 are and were persons acting
24 on behalf of, or acting jointly with, Defendants, who violated, or caused to be violated, one or more
25 provisions of the California Labor Code as alleged herein.

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1 IV.

2 CAUSES OF ACTION

3 FIRST CAUSE OF ACTION

4 **PLAINTIFFS AND ALL AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS**
5 **CIVIL PENALTIES PURSUANT TO LABOR CODE § 2699(f) FOR VIOLATIONS OF**
6 **LABOR CODE §§ 201, 202, 226(a), 226.7, 246, 510, 512, 1174, 1174.5, 1194, AND 1198 AND**
7 **PURSUANT TO LABOR CODE § 2699(a) FOR VIOLATIONS OF**
8 **LABOR CODE §§ 226.3 AND 558**

9 11. Plaintiffs incorporate paragraphs 1 through 10 of this Complaint as though fully set
10 forth herein.

11 12. As a result of the acts alleged above, including the Labor Code violations set forth in
12 paragraph 2 above, Plaintiffs seek civil penalties pursuant to Labor Code §§ 2698 *et seq.*

13 13. For each such violation, Plaintiffs and all other Aggrieved Employees are entitled to
14 civil penalties subject to the following formula:

- 15 a. Pursuant to Labor Code § 2699(f), \$100 for each initial violation and \$200 for
16 each subsequent violation of Labor Code §§ 201, 202, 226(a), 226.7, 246, 510,
17 512, 1174, 1174.5, 1194, and 1198; and
18 b. Pursuant to Labor Code § 2699(a), the civil penalties as authorized by Labor
19 Code §§ 226.3 and 558.

20 14. Civil penalties recovered will be allocated 75% to the Labor and Workforce
21 Development Agency, and 25% to the affected employees.

22 15. On August 9, 2023, Plaintiffs sent a letter, by online submission to the LWDA and by
23 certified mail, return receipt requested, to Defendants setting forth the facts and theories of the
24 violations alleged against Defendants, as prescribed by Labor Code § 2698 *et seq.* Pursuant to Labor
25 Code § 2699.3(a)(2)(A), no notice was received by Plaintiffs from the LWDA within sixty-five (65)
26 calendar days of August 9, 2023. Plaintiffs may therefore commence this action to seek civil penalties
27 pursuant to Labor Code § 2698 *et seq.*
28

Wherefore, Plaintiffs and the Aggrieved Employees they seek to represent request relief as described below.

V.

RELIEF REQUESTED

WHEREFORE, Plaintiffs pray for the following relief:

1. For civil penalties pursuant to Labor Code § 2698 *et seq.* for Plaintiffs and all other Aggrieved Employees;
2. An award providing for payment of costs of suit pursuant to Labor Code § 2699(g)(1) and other applicable law;
3. An award of attorneys' fees pursuant to Labor Code § 2699(g)(1) and other applicable law; and
4. Such other and further relief as this Court may deem just and proper.

Dated: October 17, 2023

Respectfully submitted,

GAINES & GAINES
A Professional Law Corporation

By: Evan S. Gaines
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