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18 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

19 **FOR THE COUNTY OF SACRAMENTO**

20 MIKE BRAZIL, TIMOTHY GORHAM,
ENRIQUE SERRANO, MELISSA
21 SERRANO, on behalf of themselves and all
22 “aggrieved employees” pursuant to Labor
Code § 2698 et seq.,

23 Plaintiffs,

24 v.

25 BACO REALTY CORPORATION,
26 a California corporation, and DOES 1 through
27 10, inclusive,

28 Defendants.

CASE NO. 23CV010056

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

6 **I.**

7 **INTRODUCTION AND FACTUAL BACKGROUND**

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

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

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

1 indicating the start and end time of each shift. This separately violates Labor Code §§ 1174,
2 1174.5, and 1198 and IWC Wage Order 4-2001;

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

15 c. Failing to pay proper premium wages to Plaintiffs and other Aggrieved
16 Employees who were denied meal periods, in violation of Labor Code §§ 226.7, 512, and 558,
17 and IWC Wage Order 4-2001. Plaintiffs and other Aggrieved Employees were routinely
18 denied, and not authorized to take, a proper, timely, uninterrupted, 30-minute meal period for
19 every shift worked that exceeds five hours, or a second proper, timely, uninterrupted, 30-
20 minute meal period for every shift worked that exceeds ten hours, but were not paid premium
21 wages of one hour's pay for each missed first or second meal period. Plaintiffs and Aggrieved
22 Employees were simply denied their entitled meal periods. This violates Labor Code §§ 226.7,
23 512, 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 f. Failing to pay Plaintiff Brazil, Plaintiff Enrique Serrano, Plaintiff Melissa
14 Serano, and Aggrieved Employees all wages due at the separation of their employment based
15 on the time frames required by Labor Code §§ 201 and 202. As stated above, Plaintiff Brazil,
16 Plaintiff Enrique Serrano, Plaintiff Melissa Serrano, and Aggrieved Employees were not paid
17 all wages due during the course of their employment and, as a result of this failure, they were
18 not timely paid all wages due at the separation of their employment. This violates Labor Code
19 §§ 201-202 and is alleged on behalf of Plaintiff Brazil, Plaintiff Enrique Serrano, Plaintiff
20 Melissa Serrano, and certain Aggrieved Employees no longer employed by Defendants.

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

23 4. Venue is proper in this judicial district, pursuant to Code of Civil Procedure § 395
24 because Defendants employed Plaintiffs Brazil and Gorham 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 7. Plaintiff ENRIQUE SERRANO was employed by Defendants from February 2017
9 through April 2023 as a non-exempt employee in Contra Costa County, California.

10 8. Plaintiff MELISSA SERRANO was employed by Defendants from February 2017
11 through April 2023 as a non-exempt employee in Contra Costa County, California.

12 **B. Defendant**

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

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

23 11. Plaintiffs are informed and believe, and based thereon allege, that each Defendant
24 acted in all respects pertinent to this action as the agent of the other Defendant, carried out a joint
25 scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are
26 legally attributable to the other Defendants.

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

IV.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

PLAINTIFFS AND ALL AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS
CIVIL 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

13. Plaintiffs incorporate paragraphs 1 through 12 of this Complaint as though fully set forth herein.

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

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

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

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

17. On July 18, 2023, the Plaintiffs Serrano filed a PAGA Notice with the LWDA, alleging various violations of the Labor Code by Defendant. On August 9, 2023, Plaintiffs Brazil and Gorham sent a letter, by online submission to the LWDA and by certified mail, return receipt requested, to Defendants setting forth the facts and theories of the violations alleged against Defendants, as

1 prescribed by Labor Code § 2698 et seq. Pursuant to Labor Code § 2699.3(a)(2)(A), no notice was
2 received by Plaintiffs from the LWDA within sixty-five (65) calendar days of August 9, 2023.
3 Plaintiffs may therefore commence this action to seek civil penalties pursuant to Labor Code § 2698
4 et seq.

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

7 V.

8 **RELIEF REQUESTED**

9 WHEREFORE, Plaintiffs pray for the following relief:

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

17 Dated: October 7, 2024

Respectfully submitted,

18 COUNSELONE, PC

19
20 By: 
21 Anthony J. Orshansky
22 Attorneys for Plaintiffs Brazil and Gorham

23 CASTLE LAW: CALIFORNIA EMPLOYMENT
24 COUNSEL, PC

25 By: /s/ Kent L. Bradbury
26 Timothy B. Del Castillo
27 Kent L. Bradbury
28 Attorneys for Plaintiffs Enrique and Melissa
Serrano

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

3 I am employed in the County of Los Angeles, State of California. I am over the age of 18
4 and not a party to the within action. My business address is 9465 Wilshire Boulevard, Suite 300,
Beverly Hills, California 90212, lanie@counselonegroup.com

5 On October 7, 2024, I served the document(s) described as **FIRST AMENDED**
6 **REPRESENTATIVE ACTION COMPLAINT** to the entities and/or individuals listed below:

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Attorneys for Enrique Serrano and Melissa
Serrano

14 [] (BY MAIL) I am "readily familiar" with the firm's practice for collection and
15 processing correspondence for mailing. Under that practice it would be deposited
with the U.S. Postal Service on that same day with postage thereon fully prepaid at
16 Los Angeles, California in the ordinary course of business. I am aware that on
motion of the party served, service is presumed invalid if postal cancellation date or
17 postage meter date is more than one day after date of deposit for mailing in affidavit.

18 [] (PERSONAL) I caused _____ to personally serve the
addressee(s).

19 [X] (BY ELECTRONIC SERVICE) Based on a court order or an agreement of the parties
20 to accept service by electronic transmission, I caused the documents to be sent to the
persons listed above through One Legal. I did not receive, within a reasonable time
21 after the transmission, any electronic message or other indication that the
transmission was unsuccessful.

22 Executed on October 7, 2024, in Los Angeles, California.

23 [X] (STATE) I declare under penalty of perjury under the laws of the State of
24 California that the above is true and correct.

25
26 
27 Lanie Lim
28