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VENTURA SUPERIOR COURT

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9 David Bucci, et al.

10 SUPERIOR COURT OF CALIFORNIA

11 COUNTY OF VENTURA

12 DAVID BUCCI, ADAM RENDON,

13 Plaintiffs,

14 v.

15 POWER MACHINERY CENTER, and DOES 1 to
16 100,

17 Defendants.

) NO. 2023CUOE015557

) COMPLAINT

-) 1. PAGA Penalties
) 2. Commissions Violations
) 3. Rest Period Violations
) 4. Meal Period Violations
) 5. Overtime Violations
) 6. Wage Statement Penalties
) 7. Waiting Time Penalties
) 8. Violation of Unfair Competition Law
) 9. Retaliation in Violation of Labor Code
1102.5
) 10. Recovery Period Violations
) 11. Work Expense Violations

B. T. A.

18 PRELIMINARY ALLEGATIONS

- 19 1. Plaintiff David Bucci is a resident of Ventura County.
20 2. Plaintiff Adam Rendon is a resident of Kern County.
21 3. Defendant Power Machinery Center is a corporation based in Ventura County.
22 4. Plaintiff does not know the true names and capacities of Does 1 to 100 and therefore uses
23 fictitious names. Plaintiff will amend the complaint pursuant to Code of Civil Procedure section
24 474 to allege the true names and capacities when ascertained.
25 5. The named and Doe defendants are collectively referred to as "Defendants."
26 6. Plaintiff is informed and believes that each of the Defendants was the agent or employee of

1 the other defendants and acted in the scope of agency or employment.

2 7. Bucci worked for Defendants from July 2020 to May 2023.

3 8. Rendon worked for Defendants from January 2018 to May 2023.

4 9. Plaintiffs' job duties comprised inside sales for Defendants' equipment locations, with
5 Bucci working out of the Oxnard location and Rendon working out of the Bakersfield location.

6 10. While working for Defendants, Plaintiffs were not paid for all earned commissions. Rather,
7 Defendant's agent/employee Andy Ryan worked to exclude commissions payments to Plaintiffs.

8 11. Further, Plaintiffs could not take compliant meal and rest breaks while working for
9 Defendants.

10 12. Both Plaintiffs were constructively discharged when Andy Ryan's abusive behavior was too
11 much to bear.

12 13. On August 3, 2023 Bucci sent a PAGA notice to Power Machinery Center and uploaded the
13 letter to the LWDA website. Since it has been more than 65 days since the letter was sent, Bucci
14 may now request PAGA penalties.

15 14. On August 28, 2023 Rendon sent an amended PAGA notice to Power Machinery Center
16 that included Rendon, and uploaded the letter to the LWDA website. If the LWDA does not
17 intercede, Plaintiff plans to amend to include PAGA allegations on Rendon's behalf after 65 days.

18
19 FIRST CAUSE OF ACTION

20 PAGA Penalties

21 By Bucci and All Aggrieved Employees Against Power Machinery Center

22 15. Bucci incorporates by reference paragraphs 1 to 14 of the complaint.

23 16. Bucci may now pursue PAGA penalties on behalf of himself and aggrieved employees
24 since Bucci has complied with Labor Code section 2699.3.

25 17. The PAGA penalties for the rest and recovery violations are contained in Labor Code
26 sections 1197.1 and 2699.

27 18. The PAGA penalties for the meal period violations are contained in Labor Code sections
28 558 and 2699.

1 19. The PAGA penalties for the rest break violations are contained in Labor Code 2699.

2 20. The PAGA penalties for the work expenditure violations are contained in Labor Code 2699.

3 21. The PAGA penalties for the wage statement violations are contained in Labor Code
4 sections 226.3 and 2699.

5 22. The PAGA penalties for the waiting time penalties are in Labor Code section 2699.

6 23. The PAGA penalties for not paying biweekly are in Labor Code section 210.

7 24. Plaintiff is entitled to attorney fees under Labor Code section 2699.

8
9 SECOND CAUSE OF ACTION

10 Commissions Violations

11 Against All Defendants

12 25. Plaintiffs incorporate by reference paragraphs 1 to 14 of the complaint.

13 26. As explained above, Plaintiffs earned commissions for sales that were not paid when
14 earned, and are still unpaid.

15 27. Therefore, Plaintiffs seek the balance of unpaid commissions, as well as attorney fees under
16 Labor Code 218.5 and interest under Labor Code 218.6.

17
18 THIRD CAUSE OF ACTION

19 Rest Period Violations

20 Against All Defendants

21 28. Plaintiffs incorporate by reference paragraphs 1 to 14 of the complaint.

22 29. Pursuant to CACI No. 2761, Plaintiffs worked for Defendants on one or more workdays for
23 at least 3.5 hours.

24 30. However, Defendants did not authorize and permit Plaintiffs to take 10-minute rest periods.

25 31. As a result, Plaintiffs are entitled to one additional hour at the regular rate of pay for each
26 day a rest break was missed.

27 ///

28 ///

1 FOURTH CAUSE OF ACTION

2 Meal Period Violations

3 Against All Defendants

4 32. Plaintiffs incorporate by reference paragraphs 1 to 14 of the complaint.

5 33. Pursuant to CACI No. 2766A, Plaintiff worked for Defendants for one or more workdays
6 for periods lasting more than five hours.

7 34. Defendants did not provide the opportunity to take uninterrupted meal breaks of 30 minutes.

8 35. As a result, Plaintiff is entitled to one additional hour at the regular rate of pay for each day
9 a rest break was missed.

10
11 FIFTH CAUSE OF ACTION

12 Overtime Violations

13 Against All Defendants

14 36. Plaintiff incorporates by reference paragraphs 1 to 14 of the complaint.

15 37. Pursuant to Labor Code section 1194 and CACI No. 2702, Plaintiff worked overtime hours
16 off the clock that were unpaid.

17 38. Defendants knew Plaintiffs were performing work off the clock, but did not pay for it.

18 39. Therefore, Plaintiffs are entitled to payment of the unpaid wages for off the clock work,
19 interest, attorney fees, and costs.

20
21 SIXTH CAUSE OF ACTION

22 Wage Statement Penalties

23 Against All Defendants

24 40. Plaintiff incorporates by reference paragraphs 1 to 14 of the complaint.

25 41. Pursuant to Labor Code section 226, wage statements must contain nine discrete items.

26 42. Plaintiffs' wage statements did not comply with this statute since they intentionally did not
27 accurately list the total hours worked, did not include premium pay for missed breaks, did not list
28 the total earned commissions, and did not have lines for rest and recovery periods.

1 48. Plaintiffs are entitled to wage statement penalties of \$4,000 each and attorney fees.

2
3 SEVENTH CAUSE OF ACTION

4 Waiting Time Penalties

5 Against All Defendants

6 49. Plaintiffs incorporate by reference paragraphs 1 to 14 of the complaint.

7 50. Plaintiff were still owed commissions, overtime wages, and premium pay when they
8 stopped working for Defendants.

9 51. Therefore under Labor Code section 203, Plaintiffs are entitled to waiting time penalties
10 which are thirty days of wages each.

11
12 EIGHTH CAUSE OF ACTION

13 Violation of Unfair Competition Law

14 Against All Defendants

15 52. Plaintiffs incorporate by reference paragraphs 1 to 14 of the complaint.

16 53. The Unfair Competition Law prohibits unfair, unlawful, and fraudulent business practices.

17 54. This claim is being brought under the unlawful prong of the UCL.

18 55. Defendants violated the Labor Code and IWC Wage Order by not paying all wages due.

19 56. Plaintiff is entitled to restitution for the above.

20 57. Under Code of Civil Procedure section 1021.5, Plaintiff is entitled to attorney fees

21
22 NINTH CAUSE OF ACTION

23 Retaliation in Violation of Labor Code 1102.5

24 Against All Defendants

25 58. Plaintiffs incorporate by reference paragraphs 1 to 14 of the complaint.

26 59. Labor Code section 1102.5(b) provides that an employer shall not retaliate against an
27 employee for disclosing information, or because the employer believes that the employee disclosed
28 or may disclose information, to a government or law enforcement agency, to a person with

1 authority over the employee or another employee who has the authority to investigate, discover, or
2 correct the violation or noncompliance, or for providing information to, or testifying before, any
3 public body conducting an investigation, hearing, or inquiry, if the employee has reasonable cause
4 to believe that the information discloses a violation of state or federal statute, or a violation of or
5 noncompliance with a local, state, or federal rule or regulation, regardless of whether disclosing the
6 information is part of the employee's job duties.

7 60. Plaintiffs made complaints about Defendants' government procurements, and as a result
8 Plaintiffs were targeted with abusive rhetoric to the point they were constructively discharged.

9 61. Pursuant to Labor Code 1102.5(f), penalties of \$10,000 per plaintiff apply.

10 62. An employee who is constructively discharged is also entitled to general damages.

11 63. Finally, Plaintiffs are entitled to attorney fees under Labor Code 1102.5(j).

12
13 TENTH CAUSE OF ACTION

14 Recovery Period Violations

15 Against All Defendants

16 64. Plaintiffs incorporate by reference paragraphs 1 to 14 of the complaint.

17 65. Labor Code section 226.2(a) provides that employees who are paid on a piece rate basis,
18 including commissions, shall be compensated for rest and recovery periods and other
19 nonproductive time separate from any piece-rate compensation.

20 65. The rest and recovery periods must be included on wage statements.

21 66. Defendants did not pay for missed rest and recovery periods, so Plaintiffs are entitled to
22 premium pay at the regular rate of pay for each missed rest and recovery period.

23
24 ELEVENTH CAUSE OF ACTION

25 Work Expense Violation

26 Against All Defendants

27 67. Plaintiffs incorporate by reference paragraphs 1 to 14 of the complaint.

28 68. Labor Code section 2802 provides an employer shall indemnify his or her employee for all

1 necessary expenditures or losses incurred by the employee in direct consequence of the discharge
2 of his or her duties.

3 69. Plaintiff had to incur expenses while working for Defendants, but Plaintiffs were no
4 reimbursed for the expenses.

5 70. As a result, Plaintiffs are entitled to reimbursement for the work expenses, in addition to
6 attorney fees.

7
8 PRAYER

9 First Cause of Action

- 10 1. All applicable PAGA penalties
11 2. Attorney fees
12 3. Other relief the court deems proper

13
14 Second Cause of Action

- 15 1. Payment of unpaid commissions
16 2. Interest
17 3. Attorney fees
18 4. Other relief the court deems proper

19
20 Third Cause of Action

- 21 1. Premium pay at the correct regular rate of pay
22 2. Interest
23 3. Other relief the court deems proper

24
25 Fourth Cause of Action

- 26 1. Premium pay at the correct regular rate of pay
27 2. Interest
28 3. Other relief the court deems proper

1 Fifth Cause of Action

2 1. Payment of overtime at the correct regular rate

3 2. Interest

4 3. Other relief the court deems proper

5

6 Sixth Cause of Action

7 1. Wage statement penalties

8 2. Attorney fees and costs

9

10 Seventh Cause of Action

11 1. Waiting time penalties

12

13 Eighth Cause of Action

14 1. Restitution of unpaid wages, commissions, and premium pay

15 2. Attorney fees

16 3. Other relief the court deems proper

17

18 Ninth Cause of Action

19 1. Penalties under Labor Code 1102.5

20 2. General damages

21 3. Attorney fees

22

23 Tenth Cause of Action

24 1. Premium pay for each missed rest and recovery period

25

26 Eleventh Cause of Action

27 1. Reimbursement for work expenditures

28 2. Attorney fees

1 Date: October 14, 2023

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5 Attorney for Plaintiffs
6 David Bucci and Adam Rendon
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