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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **FOR THE COUNTY OF STANISLAUS**

12 TAO SILVA, on behalf of himself and all others
13 similarly situated,

14 Plaintiff,

15 v.

16 CLARK PEST CONTROL, INC, a California
17 Corporation; CLARK PEST CONTROL OF
STOCKTON, INC., a California Corporation;
18 and DOES 1-50, inclusive.

19 Defendants.
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Superior Court of California
County of Stanislaus
Clerk of the Court
By: Alecsandra McDonald, Deputy

\$1,000 PAID

\$435 PAID

CASE NO.: CV-23-007505

**PAGA REPRESENTATIVE ACTION
COMPLAINT:**

(1) **CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS GENERAL
ACT (LABOR CODE § 2698 et seq.)**

Sandhu, Sonny S.

This case has been assigned to Judge _____
Dept. 24
Department _____, for all purposes including Trial.

1 Plaintiff Tao Silva (“Plaintiff”), on behalf of the State of California, hereby brings this PAGA
2 Representative Action Complaint against defendants Clark Pest Control, Inc. and Clark Pest Control
3 of Stockton, Inc. and DOES 1 to 50 (collectively, “Defendants”) and each of them, as follows:

4 **INTRODUCTION**

5 1. Defendants are one of the largest pest control companies in the United States and the
6 biggest in the west. They offer various pest control, termite control, weed control, and lawn and
7 garden services.

8 2. Plaintiff brings this PAGA representative action solely on behalf of the State of
9 California against Defendants for alleged violations of the California Labor Code and applicable
10 Wage Orders of the IWC.

11 3. As set forth below, Plaintiff alleges that Defendants failed to pay all overtime
12 compensation and sick pay wages at the proper legal rates by failing to properly calculate the “regular
13 rate of pay.” In addition, Plaintiff alleges that Defendants’ meal and rest period policies and practices
14 failed to allow and permit non-exempt employees to take all compliant and timely meal and rest
15 periods or pay premium wages at the “regular rate of pay” in lieu thereof. Plaintiff further alleges that
16 Defendants failed to provide non-exempt employees with accurate written itemized wage statements
17 in violation of Labor Code § 226(a) and failed to timely pay all final wages upon separation of
18 employment in violation of Labor Code §§ 201-203.

19 **JURISDICTION**

20 4. This is a representative action brought pursuant to Labor Code § 2698 *et seq.* on
21 behalf of the State of California and the group of aggrieved employees defined as follows: “All
22 individuals who are or were employed as hourly, non-exempt employees by Defendants, or their
23 predecessors or merged entities, in the State of California from October 13, 2022, and continuing to
24 the present (“aggrieved employees).”

25 5. Plaintiff, on behalf of the State of California brings this representative action pursuant
26 to Labor Code § 2698, *et seq.* seeking penalties for Defendants’ violation of California Labor Code
27 §§ 201-203, 204, 210, 221, 226(a), 226(e), 226.3, 226.7, 227.3, 246, 510, 512, 516, 1174, 1174.4,
28 1199, and all applicable IWC Wage Orders.

6. Based upon the foregoing, Plaintiff and all aggrieved employees are aggrieved employees within the meaning of Labor Code §2698, *et seq.*

7. This Court has jurisdiction over Defendants because, upon information and belief, Defendants have sufficient minimum contacts in California or otherwise intentionally avail themselves to the State of California to render the exercise of jurisdiction over them by California courts consistent with the traditional notions of fair play and substantial justice.

VENUE

8. Venue is proper in this judicial district pursuant to California Code of Civil Procedure §§ 395(a) and 395.5, as most of the acts and omissions complained of herein occurred in the County of Stanislaus. Defendants own, maintain offices, transact business, have an agent or agents within the County of Stanislaus, and/or otherwise are found within the County of Stanislaus. Defendants are within this Court's jurisdiction for service of process.

9. In determining the proper venue for a PAGA Action, a Plaintiff is not limited to the county/counties in which he or she suffered Labor Code violations but may file suit in any county where an allegedly aggrieved employee suffered a Labor Code violation. (*See Crestwood Behavioral Health v. Superior Court* (2021) 60 Cal.App.5th 1069.

PARTIES

10. At all relevant times herein, Plaintiff, who is over 18, was and currently is a California resident residing in the State of California.

11. Plaintiff is informed and believes and thereon alleges that Defendant Bottega Veneta, Inc., is a Minnesota corporation authorized to do business in California and is and/or was the legal employer of Plaintiff and the aggrieved employees during the applicable statutory periods. Plaintiff was, and is, a victim of Defendants' policies and/or practices complained of herein and has been deprived of the rights guaranteed to him by California Labor Code §§ 201-203, 204, 210, 221, 226(a), 226(e), 226.3, 226.7, 227.3, 246, 510, 512, 516, 1174, 1174.4, 1199, and applicable Wage Orders.

12. Plaintiff is informed and believes, and based thereon alleges, that at all relevant times preceding the filing of the Complaint and continuing to the present, Defendants did (and continue to do) business in the State of California, County of Stanislaus.

1 13. Plaintiff does not know the true names or capacities, whether individual, partner, or
2 corporate, of the defendants sued herein as DOES 1 to 50, inclusive, and for that reason, said
3 Defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to
4 amend this Complaint when such true names and capacities are discovered. Plaintiff is informed, and
5 believes, and thereon alleges, that each of said fictitious defendants, whether individual, partners, or
6 corporate, were responsible in some manner for the acts and omissions alleged herein, and
7 proximately caused Plaintiff and the aggrieved employees to be subject to the unlawful employment
8 practices alleged herein.

9 14. Plaintiff is informed, and believes, and thereon alleges, that at all times mentioned
10 herein, Defendants were and are the employers of Plaintiff and the aggrieved employees. At all times
11 herein mentioned, each of the Defendants participated in the doing of the acts hereinafter alleged to
12 have been done by the named Defendants.

13 15. Furthermore, the Defendants, and each of them, were the agents, servants, and
14 employees of each and every one of the other Defendants, as well as the agents of all Defendants, and
15 at all times herein mentioned, were acting within the course and scope of said agency and
16 employment. Defendants, and each of them, approved of, condoned, and/or otherwise ratified each
17 and every one of the acts or omissions complained of herein.

18 16. At all times mentioned herein, Defendants, and each of them, were members of and
19 engaged in a joint venture, partnership, and common enterprise and acting within the course and
20 scope of and in pursuance of said joint venture, partnership, and common enterprise.

21 17. Further, Plaintiff alleges that all Defendants were joint employers for all purposes of
22 Plaintiff and the aggrieved employees.

23 **PAGA REPRESENTATIVE ACTION ALLEGATIONS**

24 18. Defendants offer a variety of pest control, termite control, weed control, and lawn and
25 garden services.

26 19. Defendants employed the Plaintiff as a non-exempt employee with the title of “Service
27 Technician.” Plaintiff began working for Defendants on November 1, 2021, until his separation from
28 employment on September 12, 2023.

1 20. Plaintiff and other non-exempt employees (including, but not limited to, Termite
2 Repair Technician, Home Wellness Sales Inspector, Carpenter, Pest Control Technician,
3 Receiving/Delivery Driver, and all other non-exempt positions) were responsible for all aspects of
4 Defendants’ business in the State of California. However, in these roles Plaintiff and other non-
5 exempt employees were often not afforded all protections and rights conferred under the California
6 Labor Code and applicable Wage Orders.

7 21. At all relevant times, Plaintiff and other aggrieved employees regularly worked
8 various shifts, many of which were in excess of 8.0 hours in a workday and 40.0 hours in a workweek.
9 Plaintiff alleges that other aggrieved employees were also subjected to the same policies, procedures,
10 and practices, working conditions, and corresponding wage and hour violations to which she was
11 subjected during her employment.

12 22. First, at all relevant times, Plaintiff and other aggrieved employees worked regular
13 shifts that lasted longer than 8.0 hours in a workday and resulted in aggrieved employees regularly
14 working more than 40 hours in a workweek. However, Plaintiff and other aggrieved employees were
15 not properly paid at the correct overtime rate for all overtime hours worked due to Defendants’
16 uniform failure to include all forms of compensation/remuneration, including, but not limited to,
17 commissions, incentives, bonuses, and all other forms of remuneration in calculating the “regular rate
18 of pay” for purposes of overtime compensation.

19 23. Under the California Labor Code (as well as the FLSA), courts have consistently held
20 that regularly paid non-discretionary bonuses (and other forms of pay) must be included in
21 determining an employee’s “regular rate of pay” for purposes of calculating overtime. (See *Haber v.*
22 *The Americana Corp.* 378 F. 2d 854, 855-856 (9th Cir. 1967) [holding that regularly paid efficiency
23 bonuses must be included in calculating the “regular rate”]; *Wang v. Chinese Daily News, Inc.* 435 F.
24 Supp. 2d 1042, 1055-1057 (C.D. Cal. 2006) [granting summary judgement to Plaintiff under
25 California and federal law on the grounds, that Defendants improperly calculated overtime by
26 excluding annual bonuses paid to employees from the “regular rate of compensation”]; see *Walling*
27 *v. Youngerman-Reynolds Hardwood Co.* (1945) 65 S.Ct. 1242, 1245. (“The regular rate by its very
28 nature must reflect all payments which the parties have agreed shall be received regularly during the

1 workweek, exclusive of overtime payments. It is not an arbitrary label chosen by the parties; it is an
2 actual fact. Once the parties have decided upon the amount of wages and the mode of payment the
3 determination of the regular rate becomes a matter of mathematical computation, the result of which
4 is unaffected by any designation of a contrary ‘regular rate’ in the contracts.”); see also 29 CFR §§
5 778.110 (“production bonus”) and 778.111 (“piece-rate”).)

6 24. Labor Code § 510 requires an employer to compensate an employee who works more
7 than eight (8.0) hours in one workday, forty (40) hours in a workweek, and for the first eight (8.0)
8 hours worked on the seventh consecutive day, no less than one and one-half times (1 1/2) the regular
9 rate of pay. In addition, Labor Code § 510 obligates employers to compensate employees at no less
10 than twice the regular rate of pay when an employee works more than twelve (12) hours in a workday
11 or more than eight (8.0) hours on the seventh consecutive day of work. Pursuant to Section 3 of the
12 applicable Wage Orders, non-exempt employees shall not be employed more than eight (8.0) hours
13 in any workday or more than 40.0 hours in any workweek unless the employee receives one and one-
14 half (1 1/2) times such employee’s regular rate of pay for all hours worked over 40 hours in the
15 workweek.

16 25. By their policy of requiring Plaintiff and the other non-exempt employees to work in
17 excess of eight (8.0) hours in a workday and/or forty (40.0) hours in a workweek without
18 compensating them at the lawful rate of one-half (1 1/2) their regular rate of pay, Defendants willfully
19 violated the provisions of Labor Code § 510 and the applicable Wage Orders.

20 26. Based on the foregoing Labor Code violations, Plaintiff seeks all civil and statutory
21 penalties available and applicable under Labor Code § 2699(f)(2), and for attorneys’ fees and costs
22 pursuant to Labor Code § 2699(g)(1).

23 27. Furthermore, at all relevant times, Defendants also failed in its obligation to provide
24 Plaintiff and other aggrieved employees the legally required paid sick days at the legal rate pursuant
25 to Labor Code §§ 246(a),(b), which requires that “[a]n employee who, on or after July 1, 2015, works
26 in California for the same employer for 30 or more days within a year from the commencement of
27 employment is entitled to paid sick days. . . at the rate of not less than one hour per every 30 hours
28 worked, beginning at the commencement of employment.” Labor Code § 246(l)(1) provides that paid

1 sick time for non-exempt employees must be “calculated in the same manner as the regular rate of
2 pay for the workweek in which the employee uses paid sick time, whether or not the employee
3 actually works overtime in that workweek.”

4 28. Additionally, Labor Code § 246(l)(2) states that the paid sick time must be “calculated
5 by dividing the employee’s total wages, not including overtime premium pay, by the employee’s total
6 hours worked in the full pay periods of the prior 90 days of employment.” Finally, Labor Code §246(i)
7 requires employers to “provide an employee with written notice that sets forth the amount of paid
8 sick leave available, or paid time off leave an employer provides in lieu of sick leave, for use on either
9 the employee’s itemized wage statement described in Section 226 or in a separate writing provided
10 on the designated pay date with the employee’s payment of wages.”

11 29. Here, at all relevant times, Defendants failed in its obligation to provide Plaintiff and
12 other non-exempt employees the legally required paid sick days at the legal rate, including all forms
13 of compensation, pursuant to Labor Code §§ 246(a), (b). As such, Defendants paid sick time below
14 “regular rate of pay” as required by Labor Code §§ 246(l) (1-2). Based on the foregoing Labor Code
15 violations, Plaintiff seeks all civil and statutory penalties available and applicable under Labor Code
16 § 2699(f)(2), and for attorneys’ fees and costs pursuant to Labor Code § 2699(g)(1).

17 30. Furthermore, at all relevant times, Plaintiff and other aggrieved employees were
18 denied compliant and timely 30-minute off-duty meal periods as mandated by California law. Due to
19 Defendants’ uniform meal period policies/practices and work demands, Plaintiff and other aggrieved
20 employees often could not take timely and uninterrupted net 30-minute first meal periods before the
21 end of the fifth hour of work. In addition, Plaintiff and other aggrieved employees often could not
22 take a second 30-minute uninterrupted and timely meal period for shifts in excess of 10.0 hours. In
23 addition, for each missed or non-compliant meal period, Defendants failed and continues to fail to
24 maintain a mechanism by which aggrieved employees were paid meal period premiums at the
25 “regular rate of pay” pursuant to *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 5th 858 and Labor
26 Code § 226.7.

27 31. Accordingly, due to Defendants uniform meal period practices, non-exempt
28 employees were also regularly denied legally compliant meal periods in violation of Labor Code §§

1 226.7, 510, 516, and applicable Wage Orders.

2 32. Moreover, at all relevant times, Plaintiff and other non-exempt employees were not
3 provided with all uninterrupted 10-minute rest periods for every four hours worked, or a major
4 fraction thereof, due to Defendants' uniform rest period policies/practices and work demands. As a
5 result, other non-exempt employees were and are often unable to take a net 10-minute duty-free rest
6 period for every major fraction of four hours worked. This includes a second rest period for shifts
7 over 7.0 hours and a third rest period for shifts over 10.5 hours in a workday.

8 33. By not relieving all non-exempt employees of all duties during rest periods,
9 Defendants failed to provide legally compliant rest periods. See *Augustus v. ABM Security Services,*
10 *Inc.* (2016) 2 Cal. 5th 257, 269 [concluding that "during rest periods employers must relieve
11 employees of all duties and relinquish control over how employees spend their time."] (Emphasis
12 added). In *Augustus*, the California Supreme Court expressly rejected the employer's assertion that it
13 could provide an on-duty rest period to employees who worked as security guards and further
14 explained: "that employers [must] relinquish any control over how employees spend their break time
15 and relieve their employees of all duties." *Id.* at 273. Each time non-exempt employees could not take
16 a compliant rest period, Defendants failed and continue to fail to adequately pay rest period premium
17 payments at the "regular rate of pay" as required by Labor Code § 226.7.

18 34. Accordingly, due to Defendants uniform rest period policies/practices, non-exempt
19 employees were regularly denied legally compliant rest breaks in violation of Labor Code §§ 226.7,
20 512, and applicable Wage Orders.

21 35. As a result of Defendants' failure to pay Plaintiff and other aggrieved employees for
22 all hours they were subject to the control of Defendants, including all overtime, sick pay wages, and
23 Defendants' failure to pay for meal and rest period premiums at the "regular rate of pay," Defendants
24 issued wage statements which failed to identify the gross wages earned accurately, the total hours
25 worked, the net wages earned, and the correct corresponding number of hours worked at each hourly
26 rate, in violation of Labor Code § 226(a)(1, 2, 5, and 9).

27 36. Labor Code § 226.3 provides that "[a]ny employer who violates subdivision (a) of
28 Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per

1 employee per violation in an initial violation and one thousand dollars (\$1,000) per employee for
2 each violation in a subsequent citation, for which the employer fails to provide the employee a wage
3 deduction statement or fails to keep the required in subdivision (a) of Section 226.”

4 37. Thus, for the violations of Labor Code section 226 described above, Plaintiff and other
5 aggrieved employees may also recover Labor Code § 226.3 penalties for Defendants violations of
6 Labor Code § 226(a). Consequently, because Defendants failed to comply with Labor Code § 226(a),
7 Plaintiff and other aggrieved employees would be entitled to recover penalties under Labor Code §§
8 226(e).

9 38. Finally, because of Defendants' failure to pay all overtime, sick pay wages, and meal
10 and rest period premiums at the “regular rate of pay,” Defendants also failed and continue to fail to
11 pay the aggrieved employees all wages owed at their time of separation from employment in violation
12 of Labor Code §§ 201-203. Thus, aggrieved employees would be entitled to recover penalties under
13 Labor Code §§ 201-203.

14 **FIRST CAUSE OF ACTION**

15 **PRIVATE ATTORNEYS GENERAL ACT**

16 *(Plaintiff and Aggrieved Employees Against All Defendants)*

17 39. Plaintiff re-alleges and incorporates by reference each and every allegation set forth
18 in the preceding paragraphs.

19 40. Defendants have committed several Labor Code violations against Plaintiff and other
20 similarly situated aggrieved employees. Plaintiff, an “aggrieved employee” within the meaning of
21 Labor Code § 2698 *et seq.*, acting on behalf of the State of California, brings this representative action
22 against Defendants to recover the civil penalties due to Plaintiff, other similarly aggrieved employees,
23 and the State of California according to proof pursuant to Labor Code § 2699 (a) and (f) including,
24 but not limited to (1) \$100 for each initial violation and \$200 for each subsequent violation per
25 employee per pay period for those violations of the Labor Code for which no civil penalty is
26 specifically provided based on the following Labor Code violations:

27 (a) Defendants’ failure to pay all overtime wages at the “regular rate of pay” because
28 Defendants failed to include all forms of compensation, including, but not limited to, shift

1 differentials, non-discretionary bonuses, incentive pay, and other forms of remuneration.

2 (b) Defendants' failure to pay all wages in a timely fashion in violation of Labor Code §§
3 204 and 210;

4 (c) Defendants' failure to pay all sick pay at the "regular rate of pay";

5 (d) Defendants' failure to allow and permit legally compliant meal periods or compensation
6 at the "regular rate of pay" in lieu thereof;

7 (e) Defendants' failure to allow and permit legally compliant rest periods or compensation
8 at the "regular rate of pay" in lieu thereof;

9 (f) Defendants' failure to furnish legally compliant wage statements pursuant to Labor
10 Code § 226(a); and

11 (g) Defendants' failure to pay final wages to aggrieved employees in a timely manner at the
12 time of separation from employment was unlawful.

13 41. On or about October 13, 2023, Plaintiff notified Defendants Clark Pest Control, Inc. and
14 Clark Pest Control of Stockton, Inc. via certified mail and the California Labor and Workforce
15 Development Agency ("LWDA") via its website of Defendant's violations of the California Labor
16 Code § 2698 *et. seq.* with respect to violations of the California Labor Code identified in Paragraph
17 45 (a)-(g).

18 42. Now that sixty-five days (65) have passed since Plaintiff notified Defendant of these
19 violations, Plaintiff has exhausted his administrative requirements for bringing a claim under the
20 Private Attorneys General Act with respect to these violations.

21 43. Plaintiff was compelled to retain the services of counsel to file this court action to protect
22 his interests and the interests of other similarly aggrieved employees and to assess and collect the
23 civil penalties owed by Defendants. Plaintiff has, therefore, incurred attorneys' fees and costs, which
24 he is entitled to receive under California Labor Code § 2698 *et seq.*

25 **PRAYER FOR RELIEF**

26 **WHEREFORE**, Plaintiff prays for judgment on behalf of the State of California against
27 Defendants, as follows:
28

1 1. Upon the First Cause of Action, for civil penalties due to Plaintiff, other similarly
2 aggrieved employees, and the State of California according to proof pursuant to Labor Code § 2699
3 (a) and (f) including, but not limited to (1) \$100 for each initial violation and \$200 for each subsequent
4 violation per employee per pay period for those violations of the Labor Code for which no civil
5 penalty is specifically provided under the Labor Code;

6 2. For attorneys' fees and costs as provided by Labor Code § 2698 *et seq.*, and Code
7 of Civil Procedure §1021.5; and

8 3. For such other and further relief, the Court may deem just and proper.
9

10 Dated: December 20, 2023

FALAKSSA LAW, P.C.
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12
13 By: _____

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