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JOSE RODRIGUEZ

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF RIVERSIDE

JOSE RODRIGUEZ, an individual,
Plaintiff,
vs.

CO BROTHERS LLC, a California Limited
Liability Company, DAVID LUO, an
individual, AN BANG LUO, an individual;
and DOES 1 TO 50,
Defendants

CASE NO.: **CVRI 2401596**

COMPLAINT FOR:

- 1. RETALIATION – LABOR CODE § 98.6**
- 2. WRONGFUL DISCHARGE – PUBLIC POLICY**
- 3. CIVIL PENALTIES – PRIVATE ATTORNEYS GENERAL ACT (PAGA)**

[UNLIMITED CIVIL JURISDICTION]

INTRODUCTION

1. Plaintiff Jose Rodriguez (“Plaintiff”) was employed by Defendants Co Brothers, LLC, David Luo, and An Bang Luo as a construction worker. Plaintiff suffered multiple violations of the Labor Code during his employment, including unpaid overtime wages, wage statement violations, and willful misclassification as an independent contractor.

2. In September 2023, Plaintiff filed a Class Action Complaint against Defendants Co Brothers, LLC, David Luo, and An Bang Luo, and in October 2023, Plaintiff

submitted and served a notice to the Labor & Workforce Development Agency under Labor Code § 2699. In November 2023, and in retaliation for Plaintiff's filing of a Complaint and submission and service of a notice under Labor Code § 2699, Defendants' terminated Plaintiff's employment in violation of Labor Code 98.6.

3. Plaintiff brings this action under California's Labor Code Private Attorney General Act ("PAGA") on behalf of the State of California to recover penalties for Defendants' rampant, willful, and egregious violations of the Labor Code. In addition, Plaintiff brings this action for wrongful discharge in violation of public policy and wrongful discharge in violation of Labor Code § 98.6.

4. Plaintiff seeks all available damages and penalties against Defendants, including but not limited to a \$25,000 penalty per employee for engaging in a pattern and practice of willful misclassification, a \$1,000 penalty per employee per pay period for failure to issue wage statements, and a \$10,000 penalty for violation of Labor Code § 98.6. In addition, Plaintiff seeks an award of attorney's fees and costs.

PARTIES

5. Defendant Co Brothers, LLC is a construction company with its principal place of business located in Riverside County.

6. Defendant An Bang Luo, is an individual, resides in California and regularly conducts business in Riverside County.

7. Defendant David Luo is an individual, resides in California and regularly conducts business in Riverside County.

8. Plaintiff is ignorant of the true names and capacities of the defendants sued under the fictitious names of Does 1 through 50. Plaintiff will amend this Complaint to show their true names and capacities when the same have been ascertained. Plaintiff is informed and believe that each of the fictitiously named Doe Defendants is legally responsible in some manner for the occurrences alleged and that Plaintiff's injuries and damages, as alleged, were proximately caused by these Doe Defendants' actions.

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9. Defendants Co Brothers, LLC, An Bang Luo, David Luo, and Doe Defendants 1 through 50, inclusive, are referred to herein collectively as “Defendants”. Plaintiff is informed and believe and thereon allege that at all times pertinent hereto, each Defendant was the agent and employee of each of its co-Defendants, and in doing the things described herein, was acting within the course and scope of his/her authority as such agent and employee, and each Defendant ratified and approved the acts of his/her agents and employees. Defendants acted as Plaintiff’s “employer” and are responsible for any and all damages claimed by Plaintiff in this action under Labor Code section 558.1.

FACTUAL ALLEGATIONS

10. Plaintiff Jose Rodriguez was hired by Defendants as a construction worker in or around June 2022. In an effort to avoid compliance with wage and hour requirements, Defendants misclassified Plaintiff and all construction workers as independent contractors, compensated them in cash, and failed to provide them with itemized wage statements.

11. During his employment with Defendants, and among other violations of the Labor Code, Plaintiff was required to work overtime hours without payment of overtime wages, he was willfully misclassified as an independent contractor, he was not provided with itemized wage statements, and he was required to use his personal phone without reimbursement. Plaintiff’s coworkers suffered similar or the same Labor Code violations.

12. On September 6, 2023, Plaintiff filed a Class Action Complaint against Defendants in Riverside County Superior Court for, among other claims, wage and hour violations and unpaid wages. The Class Action Complaint was based upon, or related to, rights under the jurisdiction of the Labor Commissioner. On October 8, 2023, Plaintiff submitted a Private Attorney General Act (“PAGA”) Notice to the Labor and Workforce Development Agency (“LWDA”) and served a copy on Defendants. A true and correct copy of the above referenced PAGA Notice is attached hereto as Exhibit A.

13. In or around late November 2023, Defendants terminated Plaintiff’s employment. Plaintiff suffered violations of the Labor Code, for example Defendants failure to issue itemized wage statements, throughout his employment, including through

1 November 2023. The termination took place within 90-days of the filing of the Class Action
2 Complaint and within 90-days of the submission and service of the PAGA Notice.
3 Defendants' termination of Plaintiff's employment was retaliatory and based upon
4 Plaintiff's filing of the above referenced complaint and/or service and submission of the
5 PAGA Notice. Plaintiff is therefore entitled to a rebuttable presumption on his claims under
6 Labor Code § 98.6.

7 **NOTICE OF DAMAGES**

8 14. For notice purposes, and should Defendants fail to respond to this
9 Complaint, Plaintiff will seek a default judgment against Defendants, and each of them, in
10 an amount up to \$1,000,000 for compensatory damages, an equivalent amount in
11 liquidated damages, and \$3,000,000 in civil penalties in accordance with proof at the time
12 of the default hearing. This notice is provided in order to comply with due process
13 requirements for the purpose of a default judgment. If Defendants respond to this
14 Complaint and appear in this action, Plaintiff will seek damages in accordance with proof
15 at the time of trial.

16 **FIRST CAUSE OF ACTION**
17 **RETALIATION – LABOR CODE § 98.6**
18 **(Against All Defendants)**

19 15. Plaintiff incorporates by reference all other paragraphs of this Complaint as
20 if they were re-alleged and set forth herein.

21 16. Plaintiff was employed by Defendants. Defendants retaliated against Plaintiff
22 in violation of Labor Code section 98.6 and otherwise engaged in conduct towards Plaintiff
23 that was in violation of Labor Code section 98.6. The retaliation occurred within 90 days
24 of Plaintiff's engagement in protected activity and, consequently, there is a rebuttable
25 presumption in favor of Plaintiff.

26 17. Plaintiff was harmed by the retaliation described herein, and among other
27 damages, Plaintiff suffered economic and non-economic damages. Plaintiff is entitled to
28 and seeks, among other remedies, a civil penalty in the amount of \$10,000 against
Defendants, and each of them, as provided by law.

SECOND CAUSE OF ACTION
WRONGFUL DISCHARGE – PUBLIC POLICY
(Against All Defendants)

18. Plaintiff incorporates by reference all other paragraphs of this Complaint as if they were re-alleged and set forth herein.

19. Plaintiff was employed by Defendants. Defendants discharged Plaintiff from employment. As further alleged herein, a substantial motivating reason for Plaintiff's discharge was in violation of public policy.

20. Defendants' discharge of Plaintiff was a substantial factor in causing Plaintiff was harmed by the discharge in that, and among other damages, Plaintiff to suffer harm and damages.

THIRD CAUSE OF ACTION
VIOLATION OF LABOR CODE PRIVATE ATTORNEYS GENERAL ACT ("PAGA")
(Plaintiff against All Defendants)

21. Plaintiff incorporates by reference all other paragraphs of this Complaint as if they were re-alleged and set forth herein.

22. Plaintiff brings this cause of action on behalf of himself and all other aggrieved current and former employees of Defendants and seeks civil penalties for each and every violation alleged herein. Plaintiff has filed a claim with the California Labor and Workforce Development Agency (hereafter, "LWDA") and provided a copy by certified mail to Defendants.

23. Plaintiff complied with all procedural requirements of Labor Code § 2699.3 before filing this Complaint. LWDA did not respond to his notice of the alleged violations within the statutory timeframe, and Plaintiff has therefore exhausted administrative remedies. Plaintiff is an aggrieved employee. Plaintiff was employed by Defendants and the violations alleged herein were committed against Plaintiff. Plaintiff brings this action on behalf of Plaintiff and all other current and former aggrieved employees. At the time of each violation, Defendants employed one or more employees.

24. As a result of the aforesaid wrongful and illegal conduct of the Defendants, and each of them, Plaintiff is entitled to civil penalties in an amount to be determined at

trial, costs, and attorney's fees against Defendants.

DEMAND FOR JURY TRIAL

25. Plaintiff hereby demands trial by jury against Defendants.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

1. For compensatory damages in an amount to be proven at trial;
2. General and special damages, in an amount to be proven at trial;
3. For statutory damages and penalties, including but not limited to, all penalties authorized under PAGA;
4. For temporary, preliminary, and permanent injunction;
5. Attorney's fees and costs of suit;
6. For punitive and exemplary damages;
7. Pre-judgment interest on any damages or other amounts deemed payable;
8. Other or further relief as the Court deems just and proper;

Dated: March 25, 2024

HAULK & HERRERA LLP

By: 

Matthew A. Haulk, Esq.
Jose M. Herrera, Esq.
Attorneys for Plaintiff
JOSE RODRIGUEZ

EXHIBIT A



H A U L K & H E R R E R A L L P

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October 8, 2023

VIA ONLINE SUBMISSION

Labor & Workforce Development Agency
Attn: PAGA Administrator
455 Golden Gate Avenue, 9th Floor
San Francisco, California 94102

Re: **Private Attorney General Act Notice**

Dear PAGA Administrator:

This firm represents Jose Rodriguez ("Plaintiff") with respect to his claims against Co Brothers LLC, David Luo, and An Bang Luo (collectively, "Defendants") arising out of violations of numerous provisions of the applicable California Labor Code and IWC Wage Order committed against all of Defendants' non-exempt employees in California.

This letter shall serve as written notice, pursuant to California Labor Code section 699.3(a) (1), of Defendants' violations of the provisions of the Labor Code and Wage Order set forth below. Plaintiff is informed and believes that David Luo and An Bang Luo personally promulgated and enforced the unlawful policies and practices described herein, and therefore they caused the violations at issue within the meaning of Labor Code section 558. As such, David Luo and An Bang Luo are personally liable for penalties under that section.

Plaintiff Jose Rodriguez was hired by Defendants as a construction worker in or around June 2022. In an effort to avoid compliance with wage and hour requirements, Defendants misclassified Plaintiff and all employees as independent contractors. Throughout his tenure, Plaintiff's compensation was structured on a fixed day rate of \$160 per day, irrespective of the actual hours worked. Plaintiff's general work schedule consisted from 7:00 AM to 4:00 PM. However, Plaintiff was regularly required to perform labor both before and after his scheduled shifts, but was not compensated for such time. Furthermore, Plaintiff was regularly prevented from taking timely meal/rest periods due to work demands imposed by Defendants.

Plaintiff alleges that Defendants engaged in a pattern of knowingly violating numerous Labor Code sections, including 201, 202, 203, 204, 206, 221, 223, 224, 226, 226.3, 226.7,



510, 512, 1194 et seq., 2810.5 and 1198. In particular, Defendants violated California's wage and hour laws by:

a) Willfully misclassifying Plaintiff (and similarly aggrieved individuals) as an independent contractor and failing to pay Plaintiff (and other non-exempt employees) for all hours worked (including overtime), in violation of the applicable Wage Order and Labor Code sections 226.8, 204, 510, 1194 et seq. Under California Labor Code 226.8 (b): If a court issues a determination that a person or employer has willfully misclassified an individual as an independent contractor, as is the case here, the person or employer shall be subject to a civil penalty of not less than five thousand dollars (\$5,000) and not more than fifteen thousand dollars (\$15,000) for each violation, in addition to any other penalties or fines permitted by law.

b) Failing to permit non-exempt employees to take timely meal/rest breaks in violation of Labor Code sections 226.7 and 512 and the applicable Wage Order.

c) Failing to pay premium pay for missed or untimely meal breaks, in violation of Labor Code sections 226.7 and 512. A review of Plaintiff's payroll records indicate that Plaintiff was not compensated for Plaintiff's missed meal/rest breaks.

d) Failing to pay overtime in violation of the applicable Wage Order and Labor Code section 510, 1194 et seq., and 1198. As described above, Plaintiff was not compensated for any hours in excess of 8 in one day or 40 in one week.

e) Failing to pay all earned wages (including overtime compensation, and premium pay for missed meal and rest breaks) at least twice a month in violation of Labor Code section 204. By failing to properly compensate Plaintiff, as described above, Defendants violated this provision.

f) Failing to pay all earned wages (including overtime compensation and premium pay for missed meal breaks) at the time of termination or within 72 hours of resignation in violation of Labor Code sections 201, 202, 203, and 206. As described above, Defendant systematically failed to pay all overtime compensation and premium pay owed to non-exempt employees; as such, aggrieved employees' earned wages were not timely paid in full following separation from Defendant.

g) Failing to maintain and furnish accurate, itemized statements of hours worked, gross and net wages earned all applicable hourly rates in effect during the pay period and the number of hours worked at each hourly rate, and deductions in violation of the applicable Wage Order and Labor Code sections 226 and 226.3. Defendant did not keep accurate records of non-exempt employees' hours worked (e.g., overtime hours worked).

As an aggrieved employee, Plaintiff is able to bring a PAGA claim on behalf of all non-exempt employees of Defendants, and is entitled to recover penalties for all violations, as well as his attorneys' fees. This notice is based on the facts currently known to Plaintiff and



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is made without prejudice to his right to seek all available remedies for any and all additional violations that may subsequently be discovered or identified.

Please advise this office within 60 days of the post-mark date of this notice whether the Labor & Workforce Development Agency intends to investigate the above-noted Labor Code and Wage Order violations. Thank you for your attention to this matter.

Very truly yours,

Jose M. Herrera

cc: Co Brothers LLC, David Luo, and An Bang Luo, *via Certified Mail*

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Sent to

Go Brothers LLC, David Luo + An Luo

Street and Apt. No., or PO Box No.

6602 Doolittle Ave.

City, State, ZIP+4®

Riverside, CA 92503

PS Form 3800, April 2015 PSN 7530-02-000-9047

See Reverse for Instructions

OFFICIAL USE

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