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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

CHRISTOPHOR HORN, on behalf of himself
and all others similarly situated,

Plaintiff,

v.

GRANT & BOWMAN, INC., a California
Corporation; a Delaware Limited Liability
Corporation; DOES 1-50, inclusive.

Defendants.

CASE NO.: **24STCV09064**

**REPRESENTATIVE ACTION
COMPLAINT:**

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

UNLIMITED CIVIL CASE

1 Plaintiff Christophor Horn (“Plaintiff”), on behalf of the State of California, hereby brings
2 this PAGA Representative Action Complaint (“Complaint”) against Defendants Grant & Bowman,
3 Inc., and DOES 1 to 50 (collectively “Defendants”) and each of them, as follows:

4 **INTRODUCTION**

5 1. Defendant Grant & Bowman is a licensor and global distributor that emphasizes
6 children-focused brands and value retail channels.

7 2. Plaintiff brings this PAGA representative action solely on behalf of the State of
8 California against Defendants for alleged violations of the California Labor Code.

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

17 4. Based on these alleged Labor Code violations, Plaintiff now brings this class action
18 and representative action to recover unpaid wages, restitution, penalties, and other related relief for
19 himself and all other similarly situated aggrieved employees.

20 **JURISDICTION**

21 5. Plaintiff, on behalf of the State of California, brings this representative action pursuant
22 to Labor Code § 2699, et seq., seeking penalties for Defendants’ violation of California Labor Code
23 §§ 201-203, 204, 210, 221, 226(a), 226(e), 226.3, 226.7, 227.3, 246, 510, 512, 516, 1174, 1174.4,
24 1199, 2802-2804, and applicable Industrial Welfare Commission Wage Orders (“Wage Orders”).

25 6. Based upon the foregoing, Plaintiff and all aggrieved employees are aggrieved
26 employees within the meaning of Labor Code §2699, *et seq.*

27 7. This Court has jurisdiction over Defendants because, upon information and belief,
28 Defendants have sufficient minimum contacts in California, or otherwise intentionally avail

1 themselves to the State of California to render the exercise of jurisdiction over them by California
2 courts consistent with the traditional notions of fair play and substantial justice.

3 **VENUE**

4 8. Venue is proper in this judicial district pursuant to California Code of Civil Procedure
5 §§ 395(a) and 395.5, as most of the acts and omissions complained of herein occurred in the County
6 of Los Angeles. Defendants own, maintain offices, transact business, have an agent or agents within
7 the County of Los Angeles, and/or otherwise are found within the County of Los Angeles, and
8 Defendants are within the jurisdiction of this Court for purposes of service of process.

9 **PARTIES**

10 9. At all relevant times herein, Plaintiff, who is over the age of 18, was and currently is a
11 California resident residing in the State of California. Defendants employed Plaintiff as an aggrieved
12 employee.

13 10. Plaintiff is informed and believes and thereon alleges that Defendants are authorized to
14 do business within the County of Los Angeles and is and/or was the legal employer of Plaintiff and
15 the Class Members during the applicable statutory periods. Plaintiff was, and is, a victim of
16 Defendants' policies and/or practices complained of herein and has been deprived of the rights
17 guaranteed to him by California Labor Code §§ 201-203, 204, 210, 226, 226(a), 226(e), 226.3, 226.7,
18 227.3, 246, 510, 512, 516, 1174, 1174.4, 1199, 2802-2804, and the California Business and
19 Professions Code § 17200 *et seq.*, and applicable Wage Orders.

20 11. Plaintiff is informed and believes, and based thereon alleges, that during the four years
21 preceding the filing of the Complaint and continuing to the present, Defendants did (and continue to
22 do) business in the State of California, County of Los Angeles.

23 12. Plaintiff does not know the true names or capacities, whether individual, partner, or
24 corporate, of the Defendants sued herein as DOES 1 to 50, inclusive, and for that reason, said
25 Defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to
26 amend this Complaint when such true names and capacities are discovered. Plaintiff is informed, and
27 believes, and thereon alleges, that each of said fictitious Defendants, whether individual, partners, or
28 corporate, were responsible in some manner for the acts and omissions alleged herein, and

1 proximately caused Plaintiff and the Classes to be subject to the unlawful employment practices
2 alleged herein.

3 13. Plaintiff is informed, and believes, and thereon alleges, that at all times mentioned
4 herein, Defendants were and are the employers of Plaintiff and all members of the Classes. At all
5 times herein mentioned, each of said Defendants participated in the doing of the acts hereinafter
6 alleged to have been done by the named Defendants; and furthermore, the Defendants, and each of
7 them, were the agents, servants, and employees of each and every one of the other Defendants, as
8 well as the agents of all Defendants, and at all times herein mentioned were acting within the course
9 and scope of said agency and employment. Defendants, and each of them, approved of, condoned,
10 and/or otherwise ratified each and every one of the acts or omissions complained of herein.

11 14. At all times mentioned herein, Defendants, and each of them, were members of and
12 engaged in a joint venture, partnership, and common enterprise, and acting within the course and
13 scope of and in pursuance of said joint venture, partnership, and common enterprise. Further, Plaintiff
14 alleges that all Defendants were joint employers for all purposes of Plaintiff and all members of the
15 Classes.

16 **PAGA REPRESENTATIVE ACTION ALLEGATIONS**

17 15. Defendant Grant & Bowman, Inc. is a licensor and distributor emphasizing children-
18 focused brands and value retail channels. Plaintiff was employed by Defendants as a non-exempt
19 employee with the title of “Forklift Driver.”

20 16. Plaintiff began working for Defendants on May 22, 2023, until his separation from
21 employment on October 25, 2023. Plaintiff and other aggrieved employees (including, but not limited
22 to, Warehouse Workers, Technicians, Account Support Representatives, and all other aggrieved
23 positions) were responsible for all aspects of Defendants’ business in California. However, in these
24 roles, Plaintiff and other aggrieved employees were often not afforded all protections and rights
25 conferred under the California Labor Code and applicable Wage Orders.

26 17. At all relevant times, Plaintiff and other aggrieved employees regularly worked
27 various shifts, many of which were in excess of 8.0 hours in a workday and 40.0 hours in a workweek.
28 Plaintiff alleges that other aggrieved employees were also subjected to the same policies, procedures,

1 and practices, working conditions, and corresponding wage and hour violations to which he was
2 subjected during his employment.

3 18. First, at all relevant times, Plaintiff and other aggrieved employees worked regular
4 shifts that lasted longer than 8.0 hours in a workday and resulted aggrieved employees regularly
5 working more than 40 hours in a workweek. However, Plaintiff and other aggrieved employees were
6 not properly paid at the correct overtime rate for all overtime hours worked due to Defendants'
7 uniform failure to include all forms of compensation/renumeration, including, but not limited to,
8 commissions, incentives, non-discretionary bonuses, and all other forms of renumeration in
9 calculating the "regular rate of pay" for purposes of overtime compensation.

10 19. Under the California Labor Code (as well as the FLSA), courts have consistently held
11 that regularly paid non-discretionary bonuses (and other forms of pay) must be included in
12 determining an employee's "regular rate of pay" for purposes of calculating overtime. (See *Haber v.*
13 *The Americana Corp.* 378 F. 2d 854, 855-856 (9th Cir. 1967) [holding that regularly paid efficiency
14 bonuses must be included in calculating the "regular rate"]; *Wang v. Chinese Daily News, Inc.* 435 F.
15 Supp. 2d 1042, 1055-1057 (C.D. Cal. 2006) [granting summary judgement to Plaintiff under
16 California and federal law on the grounds, that Defendants improperly calculated overtime by
17 excluding annual bonuses paid to employees from the "regular rate of compensation"]; see *Walling*
18 *v. Youngerman-Reynolds Hardwood Co.* (1945) 65 S.Ct. 1242, 1245. ("The regular rate by its very
19 nature must reflect all payments which the parties have agreed shall be received regularly during the
20 workweek, exclusive of overtime payments. It is not an arbitrary label chosen by the parties; it is an
21 actual fact. Once the parties have decided upon the amount of wages and the mode of payment the
22 determination of the regular rate becomes a matter of mathematical computation, the result of which
23 is unaffected by any designation of a contrary 'regular rate' in the contracts."); see also 29 CFR §§
24 778.110 ("production bonus").

25 20. Labor Code § 510 requires an employer to compensate an employee who works more
26 than eight (8.0) hours in one workday, forty (40) hours in a workweek, and for the first eight (8.0)
27 hours worked on the seventh consecutive day, no less than one and one-half times (1 1/2) the regular
28 rate of pay. In addition, Labor Code § 510 obligates employers to compensate employees at no less

1 than twice the regular rate of pay when an employee works more than twelve (12) hours in a workday
2 or more than eight (8.0) hours on the seventh consecutive day of work. Pursuant to Section 3 of the
3 applicable Wage Orders, aggrieved employees shall not be employed more than eight (8.0) hours in
4 any workday or more than 40.0 hours in any workweek, unless the employee receives one and one-
5 half (1 1/2) times such employee's regular rate of pay for all hours, worked over 40 hours in the
6 workweek.

7 21. By requiring Plaintiff and the other aggrieved employees to work in excess of eight
8 (8.0) hours in a workday and/or forty (40.0) hours in a workweek without compensating them at the
9 lawful rate of one-half (1 1/2) their regular rate of pay, Defendants willfully violated the provisions
10 of Labor Code § 510 and the applicable Wage Orders.

11 22. Accordingly, through PAGA and to the extent permitted by law, Plaintiff and other
12 aggrieved employees are entitled to recover penalties for violations of Labor Code §§ 204, 210, 510,
13 1194, 1197.1, 1199 1197.1 under Labor Code § 1197.1, 1199, or Labor Code § 2699(f)(2), and for
14 attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

15 23. Furthermore, at all relevant times, Defendants also failed in their obligation to provide
16 Plaintiff and other aggrieved employees the legally required paid sick days at the legal rate pursuant
17 to Labor Code §§ 246(a),(b), which requires that "[a]n employee who, on or after July 1, 2015, works
18 in California for the same employer for 30 or more days within a year from the commencement of
19 employment is entitled to paid sick days. . . at the rate of not less than one hour per every 30 hours
20 worked, beginning at the commencement of employment." Labor Code § 246(l)(1) provides that paid
21 sick time for aggrieved employees must be "calculated in the same manner as the regular rate of pay
22 for the workweek in which the employee uses paid sick time, whether or not the employee actually
23 works overtime in that workweek."

24 24. Additionally, Labor Code § 246(l)(2) states that the paid sick time must be "calculated
25 by dividing the employee's total wages, not including overtime premium pay, by the employee's total
26 hours worked in the full pay periods of the prior 90 days of employment." Finally, Labor Code §246(i)
27 requires employers to "provide an employee with written notice that sets forth the amount of paid
28 sick leave available, or paid time off leave an employer provides in lieu of sick leave, for use on either

1 the employee's itemized wage statement described in Section 226 or in a separate writing provided
2 on the designated pay date with the employee's payment of wages."

3 25. Here, at all relevant times, Defendants failed in their obligation to provide Plaintiff
4 and other aggrieved employees the legally required paid sick days at the legal rate, including all forms
5 of compensation, pursuant to Labor Code §§ 246(a), (b). As such, Defendants paid sick time below
6 the "regular rate of pay" as required by Labor Code §§ 246(l) (1-2). Based on the foregoing Labor
7 Code violations, Plaintiff seeks all civil and statutory penalties available and applicable under Labor
8 Code § 2699(f)(2), and for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

9 26. Moreover, at all relevant times, Plaintiff and other aggrieved employees were denied
10 compliant and timely 30-minute off-duty meal periods as mandated by California law. Due to
11 Defendants' uniform meal period policies/practices, operational requirements, and work demands,
12 Plaintiff and other aggrieved employees often could not take timely and uninterrupted net 30-minute
13 first meal periods before the end of the fifth hour of work. Further, when Plaintiff and other aggrieved
14 employees worked more than 10.0 hours in a shift, they were not allowed and permitted to take a
15 mandated second meal period before the end of the tenth hour of work in violation of the Labor Code
16 and applicable Wage Orders. Indeed, Plaintiff's and other aggrieved employees' meal periods were
17 often interrupted and lasted fewer than 30 minutes due to Defendants' meal period policies/practices,
18 operational requirements, and work demands.

19 27. In addition, for each missed or non-compliant meal period, Defendants failed and
20 continues to fail to maintain a mechanism by which aggrieved employees were paid meal period
21 premiums at the "regular rate of pay" pursuant to *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11
22 5th 858 and Labor Code § 226.7.

23 28. Accordingly, due to Defendants' uniform meal period practices, aggrieved employees
24 were also regularly denied legally compliant meal periods in violation of Labor Code §§ 226.7, 510,
25 516, and applicable Wage Orders and would be entitled to penalties under Labor Code § 2698 *et seq.*

26 29. Next, at all relevant times, Plaintiff and other aggrieved employees were not provided
27 with all uninterrupted 10-minute rest periods for every four hours worked, or a major fraction thereof
28 due to Defendants' uniform rest period policies/practices, operational requirements, and work

1 demands. As a result, Plaintiff and other aggrieved employees were and are often unable to take a net
2 10-minute duty-free rest period for every major fraction of four hours worked. This includes a second
3 rest period for shifts in excess of six hours and a third rest period for shifts in excess of 10 hours in a
4 workday.

5 30. By not relieving all aggrieved employees of all duties during rest periods, Defendants
6 failed to provide legally compliant rest periods. See *Augustus v. ABM Security Services, Inc.* (2016)
7 2 Cal. 5th 257, 269 [concluding that “during rest periods employers must relieve employees of all
8 duties and relinquish control over how employees spend their time.”] (Emphasis added). In *Augustus*,
9 the California Supreme Court expressly rejected the employer’s assertion that it could provide an on-
10 duty rest period to employees who worked as security guards and further explained: “that employers
11 [must] relinquish any control over how employees spend their break time and relieve their employees
12 of all duties.” *Id.* at 273. Each time aggrieved employees could not take a compliant rest period,
13 Defendants failed and continue to fail to adequately pay rest period premium payments at the “regular
14 rate of pay” as required by Labor Code § 226.7.

15 31. Accordingly, due to Defendants’ uniform rest period policies/practices, aggrieved
16 employees were regularly denied legally compliant rest breaks in violation of Labor Code §§ 226.7,
17 512, and applicable Wage Orders, and would be entitled to penalties under Labor Code § 2698 *et seq.*

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

24 33. Labor Code § 226.3 provides that “[a]ny employer who violates subdivision (a) of
25 Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per
26 employee per violation in an initial violation and one thousand dollars (\$1,000) per employee for
27 each violation in a subsequent citation, for which the employer fails to provide the employee a wage
28 deduction statement or fails to keep the required in subdivision (a) of Section 226.”

34. Thus, for the violations of Labor Code section 226 described above, Plaintiff and other aggrieved employees may also recover Labor Code § 226.3 penalties for Defendants' violations of Labor Code § 226(a). Consequently, because Defendants failed to comply with Labor Code § 226(a), Plaintiff and other aggrieved employees would be entitled to recover penalties under Labor Code §§ 226(e) and/or 2698 *et seq.*

35. Moreover, because of Defendants' failure to pay all overtime and sick pay wages, and meal and rest period premiums at the "regular rate of pay," Defendants also failed and continues to fail to pay the aggrieved employees all wages owed at their time of separation from employment in violation of Labor Code §§ 201-203. Thus, Plaintiff and other aggrieved employees would be entitled to recover penalties under Labor Code §§ 201-203 and/or 2698 *et seq.*

36. Finally, at all relevant times, Defendants required Plaintiff and other aggrieved employees to incur necessary business expenses but did not reimburse aggrieved employees adequately for these necessary expenditures in violation of Labor Code §§ 2802-2804. See *Cochran v. Schwan's Home Service, Inc.*, (2014) 228 Cal.App.4th 1137, 1144 [“[i]f an employee is required to make work-related calls on a personal cell phone, then he or she is incurring an expense for the purposes of section 2802. It does not matter whether the phone bill is paid for by a third person, or at all...To show liability under section 2802, an employee need only show that he or she was required to use a personal cell phone to make work-related calls, and he or she was not reimbursed”].

37. Here, Defendants uniformly failed to reimburse aggrieved employees for the necessary costs incurred, in the discharge of their duties for those aggrieved employees. Accordingly, due to Defendants' uniform failure to adequately reimburse for necessary business expenditures in violation of Labor Code §§ 2800-2802 and applicable Wage Orders. Plaintiff and other aggrieved employees would be entitled to civil penalties under Labor Code § 2698 *et seq.*

FIRST CAUSE OF ACTION

PRIVATE ATTORNEYS GENERAL ACT

(Plaintiff and Similarly Aggrieved Employees Against All Defendants)

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

1 39. Defendants have committed several Labor Code violations against Plaintiff and other
2 similarly aggrieved employees. Plaintiff, an “aggrieved employee” within the meaning of Labor Code
3 § 2698 *et seq.*, acting on behalf of the State of California, brings this representative action against
4 Defendants to recover the civil penalties due to Plaintiff, other similarly aggrieved employees, and
5 the State of California according to proof pursuant to Labor Code § 2699 (a) and (f) including, but
6 not limited to (1) \$100 for each initial violation and \$200 for each subsequent violation per employee
7 per pay period for those violations of the Labor Code for which no civil penalty is specifically
8 provided based on the following Labor Code violations:

9 a) Defendants’ failure to pay all overtime wages at the “regular rate of pay” because
10 Defendants failed to include all forms of compensation, including, but not limited to, shift
11 differentials, non-discretionary bonuses, incentive pay, and other forms of remuneration;

12 b) Defendants’ failure to pay all sick pay at the “regular rate of pay”;

13 c) Defendants’ failure to allow and permit legally compliant meal periods or compensation
14 at the “regular rate of pay” in lieu thereof;

15 d) Defendants’ failure to allow and permit legally compliant rest periods or compensation
16 at the “regular rate of pay” in lieu thereof;

17 e) Defendants’ failure to furnish legally compliant wage statements pursuant to Labor
18 Code § 226(a);

19 f) Defendants’ failure to pay all wages in a timely fashion in violation of Labor Code §
20 204;

21 g) Defendants’ failure to timely pay final wages to aggrieved employees at the time of
22 separation from employment was unlawful; and

23 h) Defendants’ failure to reimburse aggrieved employees for all necessary business
24 expenses in violation of Labor Code §§ 2802-2804.

25 40. On or about November 16, 2023, Plaintiff notified Defendants Grant & Bowman, Inc.
26 via certified mail and the California Labor and Workforce Development Agency (“LWDA”) via its
27 website of Defendants’ violations of the California Labor Code § 2698 *et. seq.* with respect to
28 violations of the California Labor Code identified in Paragraph 40 (a)-(i). Now that sixty-five days

1 (65) have passed from Plaintiff notifying Defendants of these violations, Plaintiff has exhausted his
2 administrative requirements for bringing a claim under the Private Attorneys General Act with respect
3 to these violations.

4 41. Plaintiff was compelled to retain counsel to file this court action to protect his interests
5 and the interests of other similarly aggrieved employees and to assess and collect the civil penalties
6 owed by Defendants. Plaintiff has, therefore, incurred attorneys' fees and costs, which he is entitled
7 to receive under California Labor Code § 2699.

8 **PRAYER FOR RELIEF**

9 **WHEREFORE**, Plaintiff prays for judgment on behalf of the State of California against
10 Defendants, as follows:

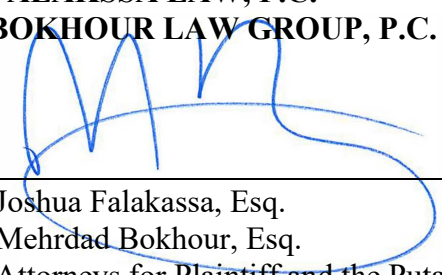
11 1. Upon the First Cause of Action, for civil penalties due to similarly aggrieved
12 employees, and the State of California according to proof pursuant to Labor Code § 2699 (a) and (f)
13 including, but not limited to: (1) \$100 for each initial violation and \$200 for each subsequent violation
14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

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

18 3. For such other relief that the Court may deem just and proper.
19

20 Dated: April 10, 2024

FALAKSSA LAW, P.C.
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21
22
23 By: 

24 Joshua Falakassa, Esq.
25 Mehrdad Bokhour, Esq.
26 Attorneys for Plaintiff and the Putative Classes
27
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