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SANTAMARIA SR. on behalf of himself
and all other aggrieved employees

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Superior Court of California
County of Sacramento
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SUPERIOR COURT OF CALIFORNIA

COUNTY OF SACRAMENTO

JOSE CORTEZ SANTAMARIA SR., on
behalf of himself and all other aggrieved
employees,

Plaintiff,

v.

BEACON SALES ACQUISITION, INC., a
Delaware corporation; and DOES 1 to 10,
inclusive,

Defendants.

CASE NO. 24CV007559

**REPRESENTATIVE ACTION COMPLAINT
FOR:**

- 1. Civil Penalties Pursuant to PAGA Labor
Code §§ 2698, et seq.**

1 Plaintiff, JOSE CORTEZ SANTAMARIA SR. (hereinafter "Plaintiff") hereby brings this
2 civil law enforcement action under the California Private Attorneys General Act ("PAGA") against
3 Defendants BEACON SALES ACQUISITION, INC, a Delaware and DOES 1 to 10 (hereinafter
4 referred to as "Defendants") on behalf of himself and Aggrieved Employees of Defendants as
5 follows:

6 **NATURE OF THE CASE**

7 1. This is law enforcement and representative action under the Private Attorneys
8 General Act of the California Labor Code arising out of Defendants' failure to provide their non-
9 exempt employees with all wages and meal and rest periods in compliance with the applicable wage
10 order and/or the California Labor Code, by failing to provide relief from the heat, by failing to
11 reimburse business expenses and by failing to comply with the applicable wage order and/or the
12 Labor Code regarding the payment of wages.

13 2. Defendants own and operate a commercial roofing company with a location in
14 Sacramento County, California. At all relevant times, Defendants issued and maintained uniform,
15 standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid
16 employees in California, including Plaintiff and others similarly situated, regardless of their
17 location or position.

18 3. Defendants have maintained practices which have failed and continue to fail to pay
19 Plaintiff and other non-exempt employees all wages. Specifically, Defendants have a company-
20 wide policy of subjecting Plaintiff and other non-exempt employees to work well after the fifth
21 hour and take late and or interrupted meal breaks. Further, Plaintiff and other non-exempt
22 employees were not able to take a rest break and were required to remain on the premises during
23 their rest breaks. Defendants also failed to provide its employees adequate shade, resulting in heat
24 exposure to Plaintiff and other non-exempt employees. Additionally, employees were not
25 reimbursed for business expenses.

26 4. In light of the foregoing, Defendants have failed to provide accurate wage
27 statements and wage statements fail to list total hours worked. Defendants have also failed to timely
28 pay wages during employment and upon separation of employ. Moreover, Defendants fail to

1 provide any seating for Plaintiff and other non-exempt employees, and employees are required to
2 stand for the duration of their shifts. Defendants also fail to reimburse business expenses, including
3 but not limited to cellphone and boots expenses.

4 5. Plaintiff, on behalf of himself and all other aggrieved employees, seeks civil
5 penalties under PAGA based on Defendant's Labor Code violations.

6 6. Labor Code §§ 2698 et seq. grants California employees the right to bring a civil
7 action for violation of any provision of the Labor Code on behalf of themselves and other current
8 and former employees to recover civil penalties. In passing PAGA, the California Legislature
9 "declared that adequate financing of labor law enforcement was necessary to achieve maximum
10 compliance with state labor law, that staffing levels for labor law enforcement agencies had
11 declined and were unlikely to keep pace with future growth of the labor market, and that it was
12 therefore in the public interest to allow aggrieved employees, acting as private attorneys general, to
13 recover civil penalties for Labor Code violations." *Arias v. Super Ct.* (2009) 46 Cal. 4th 969, 980.

14 7. PAGA permits aggrieved employees to collect the civil penalties authorized by law
15 and normally collected by the Labor and Workforce Development Agency ("LWDA") or any of its
16 departments or division. See Lab. Code § 2699(a). However, because the action is brought on
17 behalf of the state, 75% of the fees collected are distributed to the LWDA for the enforcement of
18 labor laws and for the education of employers and employees. The remaining 25% is shared
19 between aggrieved employees. See Lab. Code § 2699(i).

20 8. PAGA provides that any civil penalty assessed and collected by the LWDA for
21 violation of applicable provisions of the California Labor Code may, as an alternative, be recovered
22 through a civil action brought by an aggrieved employee on behalf of herself or herself and other
23 current or former employees pursuant to procedure outlined in California Labor Code § 2699.3.

24 9. Pursuant to Labor Code § 2699.3(a)(1)(A), before commencing a civil action, an
25 aggrieved employee must first give notice by online filing with the LWDA and by certified mail to
26 the employer of the alleged violations, including facts and theories to support the allegations. If the
27 LWDA fails to investigate the alleged violations within 65 calendar days of the date of the notice,
28 the aggrieved employee may then file a civil action to seek penalties.

1 10. On November 21, 2023, Plaintiff provided written notice of the violations alleged in
2 this Complaint, including the facts and theories supporting his allegations, to the LWDA via online
3 submission, with a certified copy mailed to Defendant. Accordingly, Plaintiff has satisfied the
4 administrative prerequisites under California Labor Code section 2699.3(a) to recover civil
5 penalties against Defendant for violations of California Labor Code identified in this Complaint.

6 11. Plaintiff on behalf of himself and all others similarly situated, also requests
7 reasonable attorneys' fees and costs pursuant to, inter alia, California Labor Code § 2699 (g).

8 **PARTIES**

9 12. Plaintiff, Jose Cortez Santamaria, Sr. is an individual over the age of eighteen (18)
10 and is now, and/or at all relevant times mentioned in this Complaint was, a resident and domiciliary
11 of the State of California. During the relevant time period, Plaintiff worked for Defendants in
12 Sacramento, California from approximately July 23 through September 26, 2023. Plaintiff worked
13 as a loader and earned approximately \$21 per hour. Plaintiff's job duties included but were not
14 limited to loading and unloading roof materials.

15 13. Plaintiff is informed and believes, and based thereon alleges, that Defendant Beacon
16 Supply Acquisitions, Inc is a Delaware corporation. Plaintiff is further informed and believes that at
17 all times relevant hereto, Defendant has transacted, and continues to transact, business throughout
18 the State of California.

19 14. Plaintiff is informed and believes and based thereon alleges that at all times herein
20 mentioned Defendants and DOES 1 through 10, are and were corporations, business entities,
21 individuals, and partnerships, licensed to do business and actually doing business in the State of
22 California.

23 15. Plaintiff does not know the true names or capacities, whether individual, partner or
24 corporate, of the Defendants sued herein as DOES 1 through 10, inclusive, and for that reason, said
25 Defendants are sued under such fictitious names, and Plaintiff prays for leave to amend this
26 complaint when the true names and capacities are known. Plaintiff is informed and believes and
27 based thereon alleges that each of said fictitious Defendants were responsible in some way for the
28 matters alleged herein and proximately caused Plaintiff and members of the general public and

1 aggrieved employees to be subject to the illegal employment practices, wrongs and injuries
2 complained of herein.

3 16. Aggrieved employees and Plaintiff named herein, have been employed during the
4 Relevant Time Period in California. The practices and policies which are complained of by way of
5 this Complaint are enforced throughout the State of California.

6 **JURISDICTION AND VENUE**

7 17. The Court has jurisdiction over this representative action pursuant to article 6,
8 section 10 of the California Constitution and Code of Civil Procedure section 410.10.

9 18. The Court also has jurisdiction over Plaintiff's and Aggrieved Employees' claims
10 for penalties pursuant to the Private Attorneys General Act of 2004, Labor Code sections 2698-99,
11 as well as pursuant to the applicable provisions.

12 19. The Court has jurisdiction over Defendants because they are authorized to do
13 business in the State of California and are registered with the California Secretary of State.
14 Defendants do sufficient business with sufficient minimum contacts in California, and/or otherwise
15 intentionally avails itself of the California market through the advertising, marketing and sale of
16 goods and services, to render the exercise of jurisdiction over Defendants by the California court
17 consistent with traditional notions of fair play and substantial justice.

18 20. Venue is proper in Sacramento County because the acts which give rise to this
19 litigation occurred in this county and because Defendants have employed aggrieved employees in
20 this county and transacts business in this county.

21 **FACTUAL ALLEGATIONS**

22 21. Plaintiff incorporates all preceding paragraphs as though fully set forth herein.

23 22. During the Relevant Time Period, upon information and belief, Defendants had, and
24 continue to have, a company-wide policy of discouraging and impeding Plaintiff and members of
25 the Aggrieved Employees from recording hours worked that were outside of their scheduled shifts
26 in order to limit the amount of overtime employees could accrue. On information and belief, this
27 policy of limiting overtime led Plaintiff and Aggrieved Employees to work off-the-clock during
28 their meal periods as alleged further below.

1 23. Because Plaintiff and Aggrieved Employees worked shifts of eight (8) hours a day
2 or more or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime
3 premium pay.

4 a. Defendants also fail to provide compliant meal and rest breaks.
5 Specifically, meal breaks were late or missed. As a result, Plaintiff
6 and Aggrieved Employees were forced to work in excess of five (5)
7 hours before taking a meal period. Further, when meal periods are
8 not provided, Defendants do not pay Plaintiff and Aggrieved
9 Employees meal premiums. Plaintiff and Aggrieved Employees did
10 not sign valid meal period waivers on days where they were entitled
11 to meal periods and were not relieved of all duties.

12 24. Rest breaks are missed or not provided. Moreover, Defendants maintain a non-
13 compliant rest break policy and require Plaintiff and Aggrieved Employees to remain on the
14 premises during rest breaks. Thus, Defendants regularly failed to authorize and permit Plaintiff and
15 Aggrieved Employees to take a ten (10) minute rest period per each four (4) hour period worked or
16 major fraction thereof.

17 25. During the relevant time period, Defendants have knowingly and intentionally
18 provided Plaintiff and Aggrieved Employees with uniform, incomplete, and inaccurate wage
19 statements. For example, Defendants issued uniform wage statements to Plaintiff and Aggrieved
20 Employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; and
21 all applicable hourly rates in effect during the pay period, including rates of pay for overtime
22 wages and/or meal and rest period premiums, and the corresponding number of hours worked at
23 each hourly rate.

24 26. Because Defendants did not record the time Plaintiff and Aggrieved Employees
25 spent working off-the-clock and deducted time from their meal periods that were short (and
26 therefore time for which they should have been paid), Defendants did not list the correct amount of
27 gross wages and net wages earned by Plaintiff and Aggrieved Employees in compliance with Labor
28 Code sections 226(a)(1) and 226(a)(5), respectively.

1 27. For the same reason, Defendants failed to accurately list the total number of hours
2 worked by Plaintiff and Aggrieved Employees, and failed to list the applicable hourly rates of pay
3 in effect during the pay period and the corresponding accurate number of hours worked at each
4 hourly rate. Defendants also failed to provide compliant wage statements because total hours
5 worked is not provided on wage statements.

6 28. Because Defendants failed to provide the correct net and gross wages earned,
7 applicable rates of pay, and number of total hours worked on wage statements, Plaintiff and
8 Aggrieved Employees have been prevented from verifying, solely from information on the wage
9 statements themselves, that they were paid correctly and in full. Instead, Plaintiff and Aggrieved
10 Employees have had to look to sources outside of the wage statements themselves and reconstruct
11 time records to determine whether in fact they were paid correctly and the extent of underpayment,
12 thereby causing them injury.

13 29. Defendant failed to provide proper cool down rest periods by not providing shade or
14 a place where Plaintiff and other non-exempt employees could seek relief.

15 30. Labor Code section 204 requires that all wages earned by any person in any
16 employment between the 1st and the 15th days, inclusive, of any calendar month, other than those
17 wages due upon termination of an employee, are due and payable between the 16th and the 26th
18 day of the month during which the labor was performed, and that all wages earned by any person in
19 any employment between the 16th and the last day, inclusive, of any calendar month, other than
20 those wages due upon termination of an employee, are due and payable between the 1st and the
21 10th day of the following month.

22 31. Labor Code section 204 also requires that all wages earned for labor in excess of the
23 normal work period shall be paid no later than the payday for the next regular payroll period.
24 Alternatively, Labor Code section 204 provides that the requirements of this section are deemed
25 satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are
26 paid not more than seven (7) calendar days following the close of the payroll period.

27 32. During the Relevant Time period, Defendants willfully failed to pay Plaintiff and
28 Aggrieved Employees all wages due including, but not limited to, meal and rest period premiums

1 pursuant to Labor Code section 210, within the time periods specified by Labor Code section 204.

2 33. During the Relevant Time period, Defendants had a company-wide policy of
3 requiring Plaintiff and Aggrieved Employees to use their personal cellphones for job-related duties
4 but, Defendants failed to reimburse them for these costs. Instead, Defendants passed these
5 operating costs off onto Plaintiff and Aggrieved Employees.

6 ***Facts Regarding Willfulness***

7 34. Plaintiff is informed and believes, and based thereon alleges, that Defendants are
8 and were advised by skilled lawyers, other professionals, employees with human resources
9 background and advisors with knowledge of the requirements of California wage and hour laws
10 and that at all relevant times, Defendants knew or should have known, that the Aggrieved
11 Employees, including Plaintiff, were entitled to receive one hour of pay at the employee's regular
12 rate of compensation for each day that a meal and rest period was not provided and were and are
13 entitled to receive pay for all hours worked, accurate itemized wage statements, and pay in a timely
14 manner.

15 35.

16 ***Plaintiff's Exhaustion of Administrative Remedies***

17 36. Plaintiff is currently complying with the procedures for bringing suit specified in
18 Labor Code section 2699.3.

19 37. By letter dated November 21, 2023, required notice was provided to the Labor and
20 Workforce Development Agency ("LWDA") and Defendants, of the specific provisions of the
21 Labor Code alleged to have been violated, including the facts and theories to support the alleged
22 violations.

23 38. More than sixty-five (65) days have passed since the date the notice was mailed to
24 Defendants and the LWDA, and Plaintiff has received no response from the LWDA indicating that
25 it plans to investigate.

26 39. Accordingly, Plaintiff has satisfied the administrative prerequisites under California
27 Labor Code Section 2699.3(a) to recover civil penalties against Defendant for violations of
28 California Labor Code identified in this Representative Action Complaint.

1 **FIRST CAUSE OF ACTION**

2 **Civil Penalties Pursuant to PAGA (Labor Code §§ 2698, et seq.)**

3 **(On Behalf of All Aggrieved Employees Against Defendants)**

4 40. Plaintiff re-alleges and incorporates all preceding paragraphs as though fully set
5 forth herein.

6 41. At all times set forth herein, the Private Attorneys General Act of 2004 (PAGA,
7 California Labor Code §§ 2698-99) applied to Defendants' employment of Plaintiff and aggrieved
8 employees.

9 42. At all times set forth herein, California Labor Code § 2699(a) has provided that any
10 provision of law under the California Labor Code that provides for a civil penalty to be assessed
11 and collected by the Labor and Workforce Development Agency (LWDA) for violations of the
12 California Labor Code may, as an alternative, be recovered through a civil action brought by an
13 aggrieved employee on behalf of himself and other current or former employees pursuant to
14 procedures outlined in California Labor Code § 2699.3.

15 43. At all times set forth herein, the PAGA has also provided that for the violation of
16 any Labor Code provision that does not itself contain a civil penalty, there are established civil
17 penalties of \$100 for each aggrieved employee per pay period for the initial violation and \$200 for
18 each aggrieved employee per pay period for each subsequent violation. Cal. Lab. C. § 2699(f).

19 44. A civil action under PAGA may be brought by an "aggrieved employee," any
20 person that was employed by the alleged violator and against whom one or more of the alleged
21 violations was committed.

22 45. Defendants have been committing, and continue to commit, violations of the
23 California Labor Code, including, but not limited to:

- 24 a. violations of Labor Code sections 510, 1198;
25 b. violations of Labor Code sections 221, 223, 1182.11-1182.12, 1194, 1194.2, 1197,
26 1198;
27 c. violations of Labor Code sections 226.7, 512, 516, and 1198;
28 d. violations of Labor Code sections 226, 1174

- e. violations of Labor Code sections 246;
- f. violations of Labor Code section 204;
- g. violations of Labor Code section 201-203;
- h. violations of Labor Code section 1198;
- i. violations of Labor Code section 2802;

46. Plaintiff was employed by Defendants and the alleged violations have been committed against him during his time of employment and he is, therefore, an aggrieved employee. Plaintiff and other employees are “aggrieved employees” as defined by California Labor Code §2699(c) in that they are all current or former employees of Defendants, and one or more of the alleged violations were committed against them.

47. Pursuant to California Labor Code § 2699.3, aggrieved employees, including Plaintiff, may pursue a civil action arising under the PAGA after the following requirements have been met:

- a. The aggrieved employee shall give written notice (hereinafter “Employee’s Notice”) to the LWDA and the employer of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations;
- b. The LWDA shall provide notice (hereinafter “LWDA Notice”) to the employer and the aggrieved employee by certified mail that it does not intend to investigate the alleged violations sixty (60) calendar days of the postmark date of the Employee’s Notice. Upon receipt of the LWDA Notice, or if the LWDA Notice is not provided within sixty-five (65) calendar days of the postmark date of the Employee’s Notice, the aggrieved employee may commence a civil action pursuant to California Labor Code §2699 to recover civil penalties in addition to any other penalties to which the employee may be entitled.

48. On November 21, 2023, Plaintiff provided written notice to the LWDA and by certified mail to Defendants of the specific provisions of the California Labor Code alleged to have been violated, including the facts and theories to support the alleged violations.

49. More than 65 calendar days have passed since the date notice was provided to the LWDA and Defendant. Accordingly, Plaintiff has satisfied the administrative prerequisites under California Labor Code Section 2699.3(a) to recover civil penalties against Defendants for violations of California Labor Code identified in this Complaint.

50. Accordingly, Plaintiff and the other aggrieved employees are entitled to and seek to recover civil penalties for Defendants' violations of the Labor Code during the applicable limitations period.

51. Pursuant to California Labor Code Section 2699(g), Plaintiff, on behalf of himself and the other aggrieved employees, is entitled to an award of reasonable attorneys' fees and costs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, and the Aggrieved Employees pray for judgment as follows:

1. That the Court find that Defendant has been in violation of Labor Code §§ 200-204, 210, 221, 223, 226, 246, 510, 512, 516, 1182, 1194, 1197, 1198, 2802, 6300, 6310, 6400;
2. Prejudgment interest under Cal. Civ. C. § 3287, and other applicable law;
3. That the Court award to Plaintiff and the Aggrieved Employees civil penalties as provided herein, including but not limited to Labor Code §§ 2699(a) and 2699(f);
4. That Plaintiff and other Aggrieved Employees be awarded reasonable attorneys' fees and costs pursuant to Labor Code § 2699(g)(1), Code of Civil Procedure § 1021.5, and/or other applicable law;
5. Any and all applicable civil penalties, as provided by law; and
6. For such other and further relief as this Court deems just and proper.

DATED: April 17, 2024

BRADLEY/GROMBACHER, LLP

By: _____

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