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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF SAN BERNARDINO**

10
11 JORGE ROMERO and CAROLINA
12 MENDOZA, individually, and on behalf of all
others similarly situated,

13 Plaintiff,

14 vs.
15

16 ALL-WAYS PACIFIC, LLC, a limited liability
company; BUBBA SMART SOLUTIONS, INC.,
17 a California corporation; and DOES 1 through
18 10, inclusive,

Case No.:

**REPRESENTATIVE ACTION
COMPLAINT UNDER CALIFORNIA
LABOR CODE § 2699**

1. Civil Penalties Under PAGA [Cal. Lab.
Code § 2699, et seq.].

DEMAND FOR JURY TRIAL

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1 Plaintiffs Jorge Romero (“Plaintiff Romero”) and Carolina Mendoza (“Plaintiff
2 Mendoza”) (together, the “Plaintiffs”), based upon facts that either have evidentiary support or
3 are likely to have evidentiary support after a reasonable opportunity for further investigation and
4 discovery, allege as follows:

5 **INTRODUCTION & PRELIMINARY STATEMENT**

6 1. Plaintiffs bring this action against Defendants All-Ways Pacific, LLC, Bubba
7 Smart Solutions, Inc., and Does 1 through 10 (collectively referred to as “Defendants”) for
8 California Labor Code violations stemming from Defendants’ failure to pay minimum wages,
9 failure to pay overtime wages, failure to provide meal periods, failure to authorize and permit
10 rest periods, failure to maintain accurate records of hours worked and meal periods, failure to
11 timely pay all wages to terminated employees, failure to indemnify necessary business expenses,
12 and failure to furnish accurate wage statements.

13 2. For over 50 years, California’s courts and legislature have recognized that this
14 State’s wage-and-hour laws serve a compelling public interest of fostering a stable job market.
15 Wages are not ordinary debts. Because of the economic position of the average worker and his
16 or her family, it is essential to the public welfare that employers obey the wage-and-hour laws so
17 that employees are promptly paid the minimum/overtime wages that the Legislature has required
18 for employees. So fundamental are California’s wage-and-hour laws that the Legislature has
19 criminalized certain types of violations. In extending extra protection to deter violations of these
20 underlying statutes—since Plaintiffs are not seeking general and/or special damages, restitution
21 or other damages other than civil penalties—California has enacted the PAGA to permit an
22 individual to bring an action for PAGA penalties only, which is the precise and sole nature of this
23 action.

24 3. All non-exempt California employees of Defendants beginning October 25, 2023,
25 to the present, are “Aggrieved Employees.”

26 4. Plaintiffs bring this action against Defendants seeking only to recover penalties on
27 behalf of all Aggrieved Employees that worked for Defendants, and on behalf of the State of
28 California. Plaintiffs do not seek to recover anything other than penalties as permitted by California

1 Labor Code Section 2699 by way of this complaint. To the extent that statutory violations are
2 mentioned for wage violations, Plaintiffs do not seek underlying general and/or special damages
3 for those violations, but simply penalties as permitted by California Labor Code Section 2699,
4 declaratory relief, and injunctive relief for themselves and all aggrieved employees as permitted
5 by the PAGA.

6 5. Defendants own/owned and operate/operated an industry, business, and
7 establishment within the State of California, including San Bernardino County. As such, and
8 based upon all the facts and circumstances incident to Defendants' business in California,
9 Defendants are subject to the California Labor Code and Wage Orders issued by the Industrial
10 Welfare Commission ("IWC").

11 6. Despite these requirements, throughout the statutory period Defendants
12 maintained a systematic, company-wide policy and practice of:

- 13 (a) Failing to pay employees for all hours worked, including all minimum
14 wages, and overtime wages in compliance with the California Labor Code
15 and IWC Wage Orders;
- 16 (b) Failing to provide employees with timely and duty-free meal periods in
17 compliance with the California Labor Code and IWC Wage Orders, failing
18 to maintain accurate records of all meal periods taken or missed, and
19 failing to pay an additional hour's pay for each workday a meal period
20 violation occurred;
- 21 (c) Failing to authorize and permit employees to take timely and duty-free rest
22 periods in compliance with the California Labor Code and IWC Wage
23 Orders, and failing to pay an additional hour's pay for each workday a rest
24 period violation occurred;
- 25 (d) Failing to indemnify employees for necessary business expenses incurred;
- 26 (e) Willfully failing to pay employees all minimum wages, overtime wages,
27 meal period premium wages, and rest period premium wages due within
28 the time period specified by California law when employment terminates;

- 1 (f) Failing to maintain accurate records of the hours that employees worked;
2 and
3 (g) Failing to provide employees with accurate, itemized wage statements
4 containing all the information required by the California Labor Code and
5 IWC Wage Orders.

6 7. On information and belief, Defendants, and each of them were on actual and
7 constructive notice of the improprieties alleged herein and intentionally refused to rectify their
8 unlawful policies. Defendants' violations, as alleged above, during all relevant times herein were
9 willful and deliberate.

10 8. At all relevant times, Defendants were and are legally responsible for all of the
11 unlawful conduct, policies, practices, acts and omissions as described in each and all of the
12 foregoing paragraphs as the employer of Plaintiffs and Aggrieved Employees. Further,
13 Defendants are responsible for each of the unlawful acts or omissions complained of herein under
14 the doctrine of "respondeat superior".

15 **THE PARTIES**

16 **A. Plaintiffs**

17 9. Plaintiff Jorge Romero is a California resident who worked for Defendant All-
18 Ways Pacific, LLC in the County of San Bernardino, State of California, as a forklift driver from
19 approximately October 2022 to October 2023, and was placed at All-Ways Pacific, LLC through
20 a staffing agency, Bubba Smart Solutions, Inc.

21 10. Plaintiff Carolina Mendoza is a California resident who worked for Defendant All-
22 Ways Pacific, LLC in the County of San Bernardino, State of California, as a supervisor from
23 approximately 2015 to December 2023, and was a direct-hire employee of All-Ways Pacific,
24 LLC.

25 11. Plaintiffs reserve the right to seek leave to amend this complaint to add new
26 plaintiffs, if necessary, in order to establish suitable representative(s) pursuant to *La Sala v.*
27 *American Savings and Loan Association* (1971) 5 Cal.3d 864, 872, and other applicable law.
28

1 **B. Defendants**

2 12. Plaintiffs are informed and believe, and based upon that information and belief
3 allege, that Defendants are:

- 4 (a) Business entities with their principal places of business in San Bernardino,
5 California.
- 6 (b) Business entities conducting business in numerous counties throughout the
7 State of California, including in San Bernardino County;
- 8 (c) The former employers of Plaintiffs, and the current and/or former
9 employers of Aggrieved Employees. Defendants suffered and permitted
10 Plaintiffs and Aggrieved Employees to work, and/or controlled their
11 wages, hours, or working conditions; and
- 12 (d) At all times mentioned herein, Defendants are and were the joint employers
13 of Plaintiffs and Aggrieved Employees.

14 13. Plaintiffs do not currently know the true names or capacities of the persons or
15 entities sued herein as Does 1-10, inclusive, and therefore sues said Defendants by such fictitious
16 names. Each of the Doe Defendants were in some manner legally responsible for the damages
17 suffered by Plaintiffs and Aggrieved Employees as alleged herein. Plaintiffs will amend this
18 complaint to set forth the true names and capacities of these Defendants when they have been
19 ascertained, together with appropriate charging allegations, as may be necessary.

20 14. At all times mentioned herein, the Defendants named as Does 1-10, inclusive, and
21 each of them, were residents of, doing business in, availed themselves of the jurisdiction of,
22 and/or injured a significant number of the Plaintiffs and Aggrieved Employees in the State of
23 California.

24 15. Plaintiffs are informed and believe and thereon allege that at all relevant times
25 each Defendant, directly or indirectly, or through agents or other persons, employed Plaintiffs
26 Aggrieved Employees and exercised control over their wages, hours, and working conditions.
27 Plaintiffs are informed and believe and thereon allege that, at all relevant times, each Defendant
28 was the principal, agent, partner, joint venturer, officer, director, controlling shareholder,

1 subsidiary, affiliate, parent corporation, successor in interest and/or predecessor in interest of
2 some or all of the other Defendants, and was engaged with some or all of the other Defendants in
3 a joint enterprise for profit, and bore such other relationships to some or all of the other
4 Defendants so as to be liable for their conduct with respect to the matters alleged below.
5 Plaintiffs are informed and believe and thereon allege that each Defendant acted pursuant to and
6 within the scope of the relationships alleged above, that each Defendant knew or should have
7 known about, and authorized, ratified, adopted, approved, controlled, aided and abetted the
8 conduct of all other Defendants.

9 **ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

10 16. Plaintiffs are California residents who worked for Defendants in the County of San
11 Bernardino, State of California within the statutory period. During the statutory time period,
12 Plaintiffs were typically scheduled to work at least 5 days in a workweek, and typically in excess
13 of 8 hours in a single workday.

14 17. Throughout the statutory period, Defendants failed to pay Plaintiffs for all hours
15 worked (including minimum wages and overtime wages), failed to provide Plaintiffs with
16 uninterrupted meal periods, failed to authorize and permit Plaintiffs to take uninterrupted rest
17 periods, failed to indemnify Plaintiffs for necessary business expenses, failed to timely pay all
18 final wages to Plaintiffs when Defendants terminated Plaintiffs' employment, and failed to
19 furnish accurate wage statements to Plaintiffs. As discussed below, Plaintiffs' experience
20 working for Defendants was typical and illustrative.

21 18. Throughout the statutory period, Defendants maintained a policy and practice of
22 not paying Plaintiffs and Aggrieved Employees for all hours worked, including all overtime
23 wages. Throughout the statutory period, Plaintiffs and Aggrieved Employees were required to
24 work "off the clock" and uncompensated. For example, Plaintiffs and Aggrieved Employees
25 were required to wait in line in order to clock into work, and when returning from meal breaks,
26 leading to off the clock work, uncompensated. Also, they were required to undergo security
27 checks after clocking out of work, which included a metal detector and a bag check, leading to
28 off the clock work, uncompensated. Further, there was a security check of vehicles, which

1 created a line after clocking out of work, leading to off the clock work, uncompensated. Also
2 during the statutory period, Plaintiffs and Aggrieved Employees received non-discretionary
3 bonuses, gift cards, and other remuneration. However, Defendants failed to calculate all
4 remuneration when calculating the correct overtime rate of pay, sick pay rate of pay, and meal
5 break premium rate of pay, leading to underpayment to Plaintiffs and Aggrieved Employees.

6 19. Throughout the statutory period, Defendants have wrongfully failed to provide
7 Plaintiffs and Aggrieved Employees with legally compliant meal periods. Defendants
8 sometimes, but not always, required Plaintiffs and Aggrieved Employees to work in excess of
9 five consecutive hours a day without providing 30-minute, continuous and uninterrupted, duty-
10 free meal period for every five hours of work, or without compensating Plaintiffs and Aggrieved
11 Employees for meal periods that were not provided by the end of the fifth hour of work or tenth
12 hour of work. Defendants also did not adequately inform Plaintiffs and Aggrieved Employees of
13 their right to take a meal period by the end of the fifth hour of work, or, for shifts greater than 10
14 hours, by the end of the tenth hour of work. Accordingly, Defendants' policy and practice was to
15 not provide meal periods to Plaintiffs and Aggrieved Employees in compliance with California
16 law.

17 20. Throughout the statutory period, Defendants have wrongfully failed to authorize
18 and permit Plaintiffs and Aggrieved Employees to take timely and duty-free rest periods.
19 Defendants sometimes, but not always, required Plaintiffs and Aggrieved Employees to work in
20 excess of four consecutive hours a day without Defendants authorizing and permitting them to
21 take a 10-minute, continuous and uninterrupted, rest period for every four hours of work (or
22 major fraction of four hours), or without compensating them for rest periods that were not
23 authorized or permitted. Defendants also did not adequately inform Plaintiffs and Aggrieved
24 Employees of their right to take a rest period. Moreover, Defendants did not have adequate
25 policies or practices permitting or authorizing rest periods for Plaintiffs and Aggrieved
26 Employees, nor did Defendants have adequate policies or practices regarding the timing of rest
27 periods. Accordingly, Defendants' policy and practice was to not authorize and permit Plaintiffs
28 and Aggrieved Employees to take rest periods in compliance with California law.

1 21. Throughout the statutory period, Defendants wrongfully required Plaintiffs and
2 Aggrieved Employees to pay expenses that they incurred in direct discharge of their duties for
3 Defendants without reimbursement. For example, they were required to purchase additional
4 aprons (after the first free one). Further, Plaintiffs and Aggrieved Employees were required to
5 use their personal cellular telephone for work purposes. Plaintiffs and Aggrieved Employees
6 were also required to occasionally use personal vehicles for work purposes, without
7 reimbursement.

8 22. Throughout the statutory period, Defendants willfully failed and refused to timely
9 pay Plaintiffs and Aggrieved Employees at the conclusion of their employment all wages for all
10 minimum wages, overtime wages, meal period premium wages, and rest period premium wages.
11 Further, Defendants did not pay Plaintiffs and Aggrieved Employees their final paychecks
12 immediately upon termination.

13 23. Throughout the statutory period, Defendants failed to furnish Plaintiffs and
14 Aggrieved Employees with accurate, itemized wage statements showing all applicable hourly
15 rates, and all gross and net wages earned (including correct hours worked, correct wages earned
16 for hours worked, correct overtime hours worked, correct wages for meal periods that were not
17 provided in accordance with California law, correct wages for rest periods that were not
18 authorized and permitted to take in accordance with California law, and Defendants' address).
19 Further, the wage statements do not show Defendants' address as required by California law. As
20 a result of these violations of California Labor Code § 226(a), the Plaintiffs and Aggrieved
21 Employees suffered injury because, among other things:

- 22 (a) the violations led them to believe that they were not entitled to be paid
23 minimum wages, overtime wages, meal period premium wages, and rest
24 period premium wages to which they were entitled, even though they were
25 entitled;
- 26 (b) the violations led them to believe that they had been paid the minimum,
27 overtime, meal period premium, and rest period premium wages, even
28 though they had not been;

- 1 (c) the violations led them to believe they were not entitled to be paid
2 minimum, overtime, meal period premium, and rest period premium wages
3 at the correct California rate even though they were;
- 4 (d) the violations led them to believe they had been paid minimum, overtime,
5 meal period premium, and rest period premium wages at the correct
6 California rate even though they had not been;
- 7 (e) the violations hindered them from determining the amounts of minimum,
8 overtime, meal period premium, and rest period premium owed to them;
- 9 (f) in connection with their employment before and during this action, and in
10 connection with prosecuting this action, the violations caused them to have
11 to perform mathematical computations to determine the amounts of wages
12 owed to them, computations they would not have to make if the wage
13 statements contained the required accurate information;
- 14 (g) by understating the wages truly due them, the violations caused them to
15 lose entitlement and/or accrual of the full amount of Social Security,
16 disability, unemployment, and other governmental benefits;
- 17 (h) the wage statements inaccurately understated the wages, hours, and wages
18 rates to which Plaintiffs and Aggrieved Employees were entitled, and
19 Plaintiffs and Aggrieved Employees were paid less than the wages and
20 wage rates to which they were entitled.

21 Thus, Plaintiffs and Aggrieved Employees are owed the amounts provided for in California
22 Labor Code § 226(e), including actual damages.

23 **FIRST CAUSE OF ACTION**

24 **(Against all Defendants for Civil Penalties Under the Private Attorneys General Act of**
25 **2004, Cal. Lab. Code § 2698 et seq.)**

26 24. Plaintiffs incorporate by reference and re-allege as if fully stated herein paragraphs
27 1 through 23 in this Complaint.

1 25. At all times herein mentioned, Defendants were subject to the Labor Code of the
2 State of California and the applicable Industrial Welfare Commission Orders.

3 26. California Labor Code § 2699(a) specifically provides for a private right of action to
4 recover penalties for violations of the Labor Code: “Notwithstanding any other provision of law,
5 any provision of this code that provides for a civil penalty to be assessed and collected by the Labor
6 and Workforce Development Agency or any of its departments, divisions, commissions, boards,
7 agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a
8 civil action brought by an aggrieved employee on behalf of himself or herself and other current or
9 former employees pursuant to the procedures specified in Section 2699.3.”

10 27. Plaintiffs have exhausted their administrative remedies pursuant to California Labor
11 Code § 2699.3. On December 25, 2023, Plaintiffs gave written notice by online filing to the Labor
12 and Workforce Development Agency and by certified mail to Defendants of the specific provisions
13 of the Labor Code that Defendants have violated against Plaintiffs and current and former
14 aggrieved employees, including the facts and theories to support the violations. At the time of this
15 filing, 65 days has elapsed since Plaintiffs provided notice, but the Labor and Workforce
16 Development Agency has not indicated that it intends to investigate Defendants’ Labor Code
17 violations discussed in the notice. Accordingly, Plaintiffs may commence a civil action to recover
18 penalties under Labor Code § 2699 pursuant to § 2699.3 for the violations of the Labor Code
19 described in this Complaint. These penalties include, but are not limited to, penalties under
20 California Labor Code §§ 210, 226.3, 558, 1197.1, and 2699(f)(2).

21 28. In addition, Plaintiffs seek penalties for Defendants’ violation of California Labor
22 Code § 1174(d). Pursuant to California Labor Code § 1174.5, any person, including any entity,
23 employing labor who willfully fails to maintain accurate and complete records required by
24 California Labor Code § 1174 is subject to a penalty under § 1174.5. Pursuant to the applicable
25 IWC Order § 7(A)(3), every employer shall keep time records showing when the employee begins
26 and ends each work period. Meal periods, and total hours worked daily shall also be recorded.
27 Additionally, pursuant to the applicable IWC Order § 7(A)(5), every employer shall keep total
28 hours worked in the payroll period and applicable rates of pay.

29. During the time period of employment for Plaintiffs and the Aggrieved Employees, Defendants failed to maintain records pursuant to the Labor Code and IWC Orders by failing to maintain accurate records showing meal periods, and accurate records showing when employees begin and end each work period. Defendants' failure to provide and maintain records required by the Labor Code IWC Wage Orders deprived Plaintiffs and Aggrieved Employees the ability to know, understand and question the accuracy and frequency of meal periods, and the accuracy of their hours worked stated in Defendants' records. Therefore, Plaintiffs and Aggrieved Employees had no way to dispute the resulting failure to pay wages, all of which resulted in an unjustified economic enrichment to Defendants. As a direct result, Plaintiffs and Aggrieved Employees have suffered and continue to suffer, substantial losses related to the use and enjoyment of such wages, lost interest on such wages and expenses and attorney's fees in seeking to compel Defendants to fully perform its obligation under state law, all to their respective damage in amounts according to proof at trial. Because of Defendants' knowing failure to comply with the Labor Code and applicable IWC Wage Orders, Plaintiffs and Aggrieved Employees have also suffered an injury in that they were prevented from knowing, understanding, and disputing the wage payments paid to them.

30. Based on the conduct described in this Complaint, Plaintiffs are entitled to an award of civil penalties on behalf of themselves, the State of California, and similarly Aggrieved Employees of Defendants. The exact amount of the applicable penalties, in all, is in an amount to be shown according to proof at trial. These penalties are in addition to all other remedies permitted by law.

31. In addition, Plaintiffs seek an award of reasonable attorney’s fees and costs pursuant to California Labor Code § 2699(g)(1), which states, “Any employee who prevails in any action shall be entitled to an award of reasonable attorney’s fees and costs.”

PRAYER FOR RELIEF

Plaintiffs, on behalf of themselves, the State of California, and similarly Aggrieved Employees of Defendants, pray for relief and judgment against Defendants, jointly and severally, as follows:

As to the First Cause of Action

32. That the Court declare, adjudge and decree that Defendants violated the California Labor Code by failing to pay wages for all hours worked (including minimum, regular rate, and overtime wages), failing to provide meal periods, failing to maintain accurate records of meal periods, failing to authorize and permit rest periods, failing to maintain accurate records of all hours worked and meal periods, failing to pay final wages at termination, and failing to furnish accurate wage statements;

33. For all civil penalties pursuant to California Labor Code § 2699, et seq., and all other applicable Labor Code Provisions;

34. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to California Labor Code § 2699;

35. For such other and further relief as the Court may deem equitable and appropriate.

Dated: October 25, 2024

Respectfully submitted,

MOON LAW GROUP, PC

By: 

Kane Moon
Lilit Ter-Astvatsatryan
Nichelle Christopherson

Attorneys for Plaintiffs

DEMAND FOR JURY TRIAL

Plaintiffs demand a trial by jury as to all causes of action triable by jury.

Dated: October 25, 2024

MOON LAW GROUP, PC

By: 

Kane Moon
Lilit Ter-Astvatsatryan
Nichelle Christopherson
Attorneys for Plaintiffs