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County of Sacramento
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**SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF SACRAMENTO**

WILLIAM CLEE III,

Plaintiff,

vs.

BENSON INDUSTRIES, INC., a Delaware
Corporation; MITEK INC., a Missouri
Corporation; and DOES 1 to 100, inclusive,

Defendants.

Case No. **24CV003779**

COMPLAINT FOR CIVIL PENALTIES:

1. Private Attorneys General Act

Plaintiff WILLIAM CLEE III ("Plaintiff"), on behalf of himself and aggrieved employees, hereby files this Complaint against Defendants BENSON INDUSTRIES, INC., a Delaware Corporation; MITEK INC., a Missouri Corporation; and DOES 1 to 100, inclusive (hereinafter all collectively referred to as "Defendants"). On information and belief, Plaintiff allege the following:

INTRODUCTION

1. This is a Private Attorneys General Act ("PAGA") lawsuit brought by Plaintiff based on the following violations of the California Labor Code including failure to provide overtime wages, failure to provide minimum wages, meal and rest period violations, failure to provide accurate wage

1 statements, failure to pay final wages, failure to pay reimbursement for expenses, violation of Labor
2 Code section 558, failure to maintain accurate records, and failure to provide paid sick leave.

3 **JURISDICTION AND VENUE**

4 2. The Sacramento County Superior Court has jurisdiction in this matter pursuant to
5 California Code of Civil Procedure section 410.10 to determine alleged violations of the California
6 Labor Code and Wage Order No. 16.

7 3. Venue is proper pursuant to Civil Procedure Code §§ 395(a), and 395.5, in that some of
8 the wrongful acts and violations of law asserted herein occurred within Sacramento County, and
9 Defendants' obligation to pay wages arose in Sacramento County pursuant to *Madera Police Officers*
10 *Assn. v. City of Madera*, 36 Cal.3d 403, 414 (1984).

11 4. Thus, Plaintiff has sought permission pursuant to California Labor Code section 2699 *et*
12 *seq.* to pursue the claims set forth in this Complaint against Defendants as a Private Attorney General on
13 behalf of himself and other similarly situated employees. Pursuant to California Labor Code section
14 2699.3, Plaintiff gave written notice via online submission to the Labor and Workforce Development
15 Agency ("LWDA") on approximately December 18, 2023. Plaintiff provided facts and legal basis for
16 his claims within the notice to the LWDA on all violations asserted under the Private Attorneys General
17 Act cause of action. Plaintiff also submitted the \$75.00 filing fee. The December 18, 2023, notice was
18 also sent via certified mail to Defendants on the same day. To date, the LWDA has not provided any
19 response to Plaintiff's notice correspondence. Accordingly, Plaintiff has exhausted all administrative
20 remedies pursuant to the Private Attorneys General Act ("PAGA") and may bring this action on behalf
21 of himself and all similarly situated employees, *i.e.* Aggrieved Employees. *See* Cal. Lab. Code §
22 2699.3(a)(2)(A), (c)(3); *Caliber Bodyworks, Inc., v. Sup. Ct.*, 134 Cal. App. 4th 365, 383 n.18, 385 n.19
23 (2005). Aggrieved Employees include, but is not limited to, the following: all non-exempt employees
24 who worked or continue to work for Defendants in California at any time between December 18, 2022
25 to the present.

26 **PARTIES**

27 5. WILLIAM CLEE III is an individual over the age of eighteen (18) and is a resident of
28 the State of California.

6. On information and belief, Plaintiff alleges, BENSON INDUSTRIES, INC., is now and/or at all times mentioned in this Complaint was a Delaware Corporation and the owner and operator of an industry, business and/or facility doing business in the State of California.

7. On information and belief, Plaintiff alleges, MITEK INC., is now and/or at all times mentioned in this Complaint was a Missouri Corporation and the owner and operator of an industry, business and/or facility doing business in the State of California.

8. Defendants DOES 1 through 100 are affiliates, subsidiaries and related entities and the alter egos of each of the other Defendants named herein, corporate or otherwise, who participated in and are liable for the actions herein alleged. Plaintiff will seek to amend this Complaint to allege the true names and capacities of these DOE Defendants when they are ascertained.

9. At all times mentioned herein, each Defendant was the agent or employee of each of the other Defendants and was acting within the course and scope of such agency or employment. The Defendants are jointly and severally liable to Plaintiff.

10. Defendants, and each of them, are now and/or at all times mentioned in this Complaint were members of and/or engaged in a joint employment, joint venture, partnership and common enterprise, and were acting within the course and scope of, and in pursuance of said joint employment, joint venture, partnership and common enterprise.

11. Defendants, and each of them, now and/or at all times mentioned in this Complaint approved, ratified, acquiesced, aided or abetted the acts and omissions alleged in this Complaint.

12. Defendants proximately caused Plaintiff to be subjected to the unlawful practices, wrongs, complaints, injuries and/or damages alleged in this Complaint.

GENERAL ALLEGATIONS

13. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 12 as though fully set forth herein.

14. Plaintiff was employed by Defendants again from October 31, 2022, to August 28, 2023, as an hourly, non-exempt employee. Plaintiff and Aggrieved Employees' hourly rates depended on where they worked and what shift of the day they worked. Plaintiff and Aggrieved Employees often worked more than one type of shift and/or at more than one job site within a given week, causing them

1 to earn varying rates of pay within the same workweek. Depending on the location, the rate of pay
2 could be less than 130% of the California minimum wage. Plaintiff worked as a journeyman and his
3 duties included but were not limited to installing glass panels and metal, rigging and hoisting, hooking
4 up materials and calling the crane to pick up the materials.

5 15. Plaintiff and Aggrieved Employees worked over eight (8) hours per day and forty (40)
6 hours per week. Defendants required new hires such as Plaintiff and Aggrieved Employees to drive to
7 their offices to fill out hiring documents. However, Defendants did not pay Plaintiff or Aggrieved
8 Employees for the time that they spent at the Defendants' office filling out hiring paperwork.

9 16. Defendants required Plaintiff and Aggrieved Employees to drive from one job site to
10 another during the same shift. However, Defendants did not pay Plaintiff and Aggrieved Employees for
11 any travel time between job sites during their workday. Also, Plaintiff and Aggrieved Employees would
12 arrive at work early several times per week and would start working five (5) to ten (10) minutes prior to
13 their scheduled start time. Plaintiff is informed and believes that Aggrieved Employees also arrived early
14 at times and started working prior to the start of their shift. Plaintiff and Aggrieved Employees would
15 also work past the end of their shift to finish tasks that were scheduled to be completed on that day. For
16 example, Defendants required Plaintiff to draft a daily report called a "Dailys" and send it to supervisors
17 or managers. Plaintiff spent approximately forty-five (45) minutes per day after his shift drafting the
18 "Dailys" report because he had to include all the tasks completed during the workday, send pictures of
19 the job progress, and provide a list of parts, supplies, and tasks that were needed for the next day.
20 Defendants did not pay Plaintiff and Aggrieved Employees for this time worked after the scheduled end
21 of their shifts. Defendants did not pay Plaintiff and Aggrieved Employees for working off-the-clock pre
22 or post shift. Furthermore, Defendants' managers, supervisors and Plaintiff co-workers would call, text,
23 and email Plaintiff after work hours. Defendants required Plaintiff and Aggrieved Employees to respond
24 and communicate regarding work issues after work hours. Plaintiff is informed and believes that other
25 Defendants emailed, texted, or called other Aggrieved Employees after work hours. Defendants did not
26 pay Plaintiff and Aggrieved Employees for the time that they spent reading and responding to work
27 related texts, emails, and phone calls after work hours.

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1 17. Plaintiff and Aggrieved Employees were not paid for all hours worked, including
2 minimum wages and overtime, due unauthorized deductions to their hours worked by managers and
3 supervisors. Specifically, Defendants would erase hours from Plaintiff's and Aggrieved Employees
4 timesheets to decrease the hours and/or wages that they had to pay to Plaintiff and Aggrieved
5 Employees. Defendants used handwritten timesheets for timekeeping. Aggrieved Employees would
6 handwrite the in and out times for their shifts. Sometimes, supervisors would also enter the times in the
7 timesheets. Supervisors would review the timesheets and would cut Plaintiff's and Aggrieved
8 Employees' hours when they disagreed with the documented time worked. Supervisors would erase the
9 handwritten time written by Aggrieved Employees and would write a different time. For example, on
10 one occasion, Plaintiff added extra time for work that he had performed after the end of his shift.
11 However, Defendants did not pay Plaintiff for the extra time. Other co-workers informed Plaintiff that
12 his supervisor had erased the extra time from his timesheet in front of them. Plaintiff complained to Mr.
13 Pitts regarding the unpaid time, but Mr. Pitts ignored his complaint.

14 18. Defendants also failed to pay Plaintiff and Aggrieved Employees all overtime wages due.
15 On numerous occasions, Defendants paid Plaintiff and Aggrieved Employees less than 1.5x their base
16 hourly rate of pay even where there were not multiple rates of pay earned in the same workweek.
17 Additionally, in several workweeks Plaintiff worked jobs at two different rates of pay. Rather than
18 blend the two rates when calculating the regular rate of pay for overtime premiums due, Defendants only
19 paid overtime at the lesser rate of pay.

20 19. Defendants further did not authorize and permit Plaintiff and Aggrieved Employees to
21 take all meal and rest periods owed to them. Plaintiff and Aggrieved Employees did not receive all
22 uninterrupted thirty (30) minute meal periods every five (5) hours and ten (10) minute rest periods every
23 four (4) hours or major fraction thereof. Defendants did not keep track of meal periods and did not
24 authorize Plaintiff and Aggrieved Employees to take (30) minute uninterrupted meal periods. Plaintiff
25 and Aggrieved Employees worked through the workday without a proper thirty (30) minute meal period.
26 They ate while working or after they completed certain tasks. Plaintiff and Aggrieved Employees would
27 take several minutes to eat something when they had a chance. Most of the time, Plaintiff and Aggrieved
28 Employees ate after the fifth hour of work. Despite not taking compliant meal periods, Defendants

1 automatically deducted thirty (30) minutes each day from Plaintiff and Aggrieved Employees hours to
2 create an illusion that Plaintiff and Aggrieved Employees had taken their meal periods. However,
3 Plaintiff and Aggrieved Employees did not take thirty (30) minute meal periods. Instead of paying meal
4 period premiums, Defendants deducted thirty (30) minutes' worth of wages from Plaintiff's and
5 Aggrieved Employees' pay. Defendants were aware that Plaintiff and Aggrieved Employees were not
6 taking compliant meal periods because Defendants' supervisors were present at the job sites and did not
7 require Plaintiff and Aggrieved Employees to clock in and out for meal periods or to take meal periods
8 but instead required them to work. Additionally, Defendants did not authorize or permit Plaintiff and
9 Aggrieved Employees to take a second meal period or a third rest period when they worked over ten
10 (10) or twelve (12) hours in a day. Plaintiff and Aggrieved Employees did not take a ten (10) minute
11 rest period before the completion of the fourth hour of work and did not take a second rest period when
12 they worked eight (8) or over eight (8) hours in a day. Plaintiff complained many times to his supervisor
13 regarding Defendants' failure to provide compliant meal and rest periods to Plaintiff and Aggrieved
14 Employees. However, Defendants did not do anything to correct these violations and to provide
15 Plaintiff and Aggrieved Employees with compliant meal and rest periods. Defendants did not pay
16 Plaintiffs and Aggrieved Employees missed meal or rest period premiums.

17 20. Furthermore, Defendants also did not have a policy to reimburse Plaintiff and Aggrieved
18 Employees for the use of their personal cell phones for work purposes. Defendants required Plaintiff and
19 Aggrieved Employees to use their cell phone to communicate regarding work issues, send pictures of
20 projects and job progress, obtain work schedules, to communicate with supervisor and co-workers
21 regarding work issues. Plaintiff estimates that his cell phone monthly bill is approximately \$75 per
22 month and that he used his cell phone 35% of the time for work purposes. Defendants did not reimburse
23 Plaintiff and Aggrieved Employees for using their cell phones for work purposes.

24 21. Finally, Defendants failed to provide Plaintiff and Aggrieved Employees with all their
25 earned sick pay based on the hours worked because Defendants did not consider Plaintiff's and
26 Aggrieved Employees' off-the-clock hours worked in calculating the sick pay accrual for them. As a
27 result of such policies, Defendants prevented Plaintiff and Aggrieved Employees from taking all their
28 earned sick days.

22. As a result of Defendants' failure to pay Plaintiff and Aggrieved Employees all minimum wages, overtime wages, meal and rest period premiums owed, and sick leave wages, the wage statements Defendants issued were inaccurate. The paystubs that Defendants issued did not accurately itemize all hours worked, the accurate rates of pay, minimum and overtime wages earned, the number of meal and rest period premiums owed, the accurate accrued sick leave pay, and the accurate gross and net wages earned.

23. As of this date of this letter, Defendants have not paid Plaintiff and Aggrieved Employees all the minimum wages, overtime wages, meal and rest period premiums, and sick leave wages.

CAUSES OF ACTION

FIRST CAUSE OF ACTION **PRIVATE ATTORNEY'S GENERAL ACT** **(As to all Defendants)**

24. Plaintiff incorporates by reference and re-alleges paragraphs 1 through 23 as though fully set forth herein.

25. Plaintiff has alleged to the Labor Commissioner that Defendants have violated the following provisions of the Labor Code in their dealings with Plaintiff and other similarly situated current and former employees:

- Violation of Labor Code §§ 510, 1194; IWC Wage Order 16, § 3 (Failure to Pay Overtime Wages)
- Violation of Labor Code §§ 1194, 1197.1; IWC Wage Order 16, § 4 (Failure to Pay Minimum Wages)
- Violation of Labor Code §§ 226.7, 512 and Wage Order No. 16, §§ 11(A) and 11(B) (Failure to Provide Meal Periods or Pay Premiums in Lieu Thereof)
- Violation of Labor Code § 226.7 and Wage Order No. 16, § 12(A) (Failure to Provide Rest Periods or Pay Premiums in Lieu Thereof)
- Violation of Labor Code §§ 226, 226.3 (Failure to Provide Accurate Wage Statements)
- Violation of Labor Code §§ 201-203, 256 (Failure to Pay Final Wages)
- Violation of Labor Code § 2802 (Failure to Pay Reimbursements for Expenses)

- Violation of Labor Code §§ 558, 558.1 (Provisions Regulating Hours and Days of Work in Any Industrial Welfare Commission Order)
- Violation of Labor Code §§ 226.3, 1174 (Failure to Maintain Accurate Records)
- Violation of Labor Code §§ 246, 246.5, 248.5 (Failure to Provide Paid Sick Leave)

26. Plaintiff seeks civil penalties against Defendants as provided in the California Labor Code, or, if no civil penalty is provided, default penalties pursuant to California Labor Code section 2699(f)(2).

27. Plaintiff seeks these civil penalties from Defendants pursuant to California Labor Code sections 2699(a) and 2699.3.

28. As a proximate result of Defendants' conduct, Plaintiff and similarly situated employees have been damaged as stated in the section below entitled "DAMAGES," which is incorporated here to the extent pertinent as if set forth here in full.

DAMAGES

WHEREFORE Plaintiff requests relief as follows:

1. As to the First Cause of Action:

- a. For civil penalties as provided for in the Labor Code for each enumerated violation;
- b. For those Labor Code sections, the violation of which there is no civil penalty provided, the default penalty provided in Labor Code section 2699(f): for any initial violation, one hundred dollars (\$100) for each aggrieved employee per pay period; For any subsequent violation, two hundred dollars (\$200) for each aggrieved employee per pay period;
- c. Reasonable attorney's fees and costs pursuant to Labor Code section 2699; and

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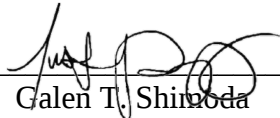
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d. For any other remedies as allowed by law and/or deemed appropriate by the Court.

Dated: February 29, 2024

Shimoda & Rodriguez Law, PC

By: _____


Galen T. Shimoda
Justin P. Rodriguez
Renald Konini
Attorneys for Plaintiff