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Attorneys for Plaintiff BRITTANY FORTE,
on behalf of herself and current and former aggrieved employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ALAMEDA

BRITTANY FORTE, on behalf of herself and
current and former aggrieved employees

Plaintiff,

vs.

ATLAS COPCO COMPRESSORS LLC; and
DOES 1 to 100, inclusive,

Defendants.

Case No.: **24CV069727**

PAGA ACTION

**PLAINTIFF BRITTANY FORTE'S
COMPLAINT FOR:**

- CIVIL PENALTIES PURSUANT
TO THE PRIVATE ATTORNEYS
GENERAL ACT OF 2004
("PAGA"), LABOR CODE
SECTIONS 2698, ET SEQ.**

COMES NOW Plaintiff BRITTANY FORTE ("Plaintiff"), who alleges and complains
against Defendants ATLAS COPCO COMPRESSORS LLC; and DOES 1 to 100, inclusive
(collectively "Defendants") as follows:

I. INTRODUCTION

1. This is a Private Attorneys General Act of 2004, Labor Code §§ 2698, *et seq.*
("PAGA") representative action brought by Plaintiff on behalf of the State of California, herself
and other current and former aggrieved employees of Defendants who worked as hourly non-
exempt employees in California during the relevant time period seeking civil penalties associated
with Defendants' violation of the Labor Code based on Defendants' failure to pay wages for all

1 hours worked at the employees' overtime rate, failure to provide all legally required and legally
2 compliant meal periods, failure to pay wages for accrued paid sick time at the regular rate of pay,
3 failure to timely pay earned wages during employment, failure to provide complete and accurate
4 wage statements, failure to timely pay all unpaid wages following separation of employment.
5 Plaintiff seeks on a representative basis, following notice to the Labor and Workforce
6 Development Agency, civil penalties, reasonable attorneys' fees pursuant to Labor Code section
7 2699(g)(1) and costs brought on behalf of Plaintiff, the State of California, and others aggrieved.

8 **II. JURISDICTION AND VENUE**

9 2. This Court has jurisdiction over the claims of Plaintiff and all other current and
10 former aggrieved California-based hourly non-exempt employees because Plaintiff's lawsuit seeks
11 civil penalties on behalf of herself, all other current and former aggrieved California-based hourly
12 non-exempt employees, and the State of California in excess of twenty-five thousand dollars
13 (\$25,000); Defendants employed Plaintiff and all other current and former aggrieved California-
14 based hourly non-exempt employees; and the injuries to Plaintiff and all other current and former
15 aggrieved California-based hourly non-exempt employees occurred in locations throughout
16 California, including but not limited to Alameda County, at 48430 Milmont Drive, Fremont, CA
17 94538.

18 **III. PARTIES**

19 3. Plaintiff brings this action as a representative of the Labor and Workforce
20 Development Agency on behalf of herself and other current and former employees subject to
21 violations of the Labor Code. The named Plaintiff and the persons on whose behalf this action is
22 filed include current, former and/or future employees of Defendants who work, worked, or will
23 work for Defendants as direct employees as well as temporary employees employed through temp
24 agencies as hourly non-exempt employees in California. At all times mentioned herein, the
25 currently named Plaintiff is and was domiciled and a resident and citizen of California and was
26 employed by Defendants in an hourly position at Defendants' location in Fremont from
27 approximately March 17, 2019 until on or about November 7, 2023.

28 4. Plaintiff is informed and believes and thereon alleges that Defendant ATLAS

1 COPCO COMPRESSORS LLC is authorized to do business within the State of California and is
2 doing business in the State of California and/or that Defendants DOES 1-50 are, and at all times
3 relevant hereto were persons acting on behalf of Defendant ATLAS COPCO COMPRESSORS
4 LLC in the establishment of, or ratification of, the aforementioned illegal wage and hour practices
5 or policies. Defendant ATLAS COPCO COMPRESSORS LLC operates in Alameda County and
6 employed Plaintiff and aggrieved employees in Alameda County, including but not limited to, at
7 48430 Milmont Drive, Fremont, CA 94538.

8 5. Plaintiff is informed and believes and thereon alleges that Defendants DOES 1
9 through 50 are corporations, or are other business entities or organizations of a nature unknown to
10 Plaintiff that employed Plaintiff and aggrieved California non-exempt employees, permitted
11 Plaintiff and aggrieved employees to work, and exercised control over the wages, hours and
12 working conditions of employment of Plaintiff and aggrieved employees.

13 6. Plaintiff is informed and believes and thereon alleges that Defendants DOES 51
14 through 100 are individuals unknown to Plaintiff. Each of the individual defendants is sued
15 individually and in his or her capacity as an agent, shareholder, owner, representative, manager,
16 supervisor, independent contractor and/or employee of each defendant who violated or caused to
17 be violated the minimum wage and overtime provisions of the Labor Code and/or any provision of
18 the Industrial Welfare Commission's wage orders regulating hours and days of work.

19 7. Plaintiff is unaware of the true names of Defendants DOES 1 through 100. Plaintiff
20 sues said defendants by said fictitious names, and will amend this complaint when the true names
21 and capacities are ascertained or when such facts pertaining to liability are ascertained, or as
22 permitted by law or by the Court. Plaintiff is informed and believes that each of the fictitiously
23 named defendants is in some manner responsible for the events and allegations set forth in this
24 complaint.

25 8. Plaintiff makes the allegations in this complaint without any admission that, as to
26 any particular allegation, Plaintiff bears the burden of pleading, proving, or persuading and
27 Plaintiff reserves all of Plaintiff's right to plead in the alternative.
28

1 **FIRST CAUSE OF ACTION**

2 **CIVIL PENALTIES PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT OF**
3 **2004, LABOR CODE SECTIONS 2698, ET SEQ.**

4 **(Against all Defendants by Plaintiff)**

5 9. Plaintiff incorporates all paragraphs above as though fully set forth herein.

6 10. During Plaintiff's employment and continuing through the present, Plaintiff alleges
7 Defendants violated Labor Code sections 201, 202, 203, 204, 223, 226, 226.7, 246, 510, 512,
8 1194, 1198, and the applicable Wage Orders.

9 11. Specifically, Defendants have committed the following violations of California
10 Labor Code:

11 12. **Failure to pay wages for overtime hours worked at the overtime rate of pay:**
12 Defendants employed many of their employees, including Plaintiff, as hourly non-exempt
13 employees. In California, an employer is required to pay hourly employees for all "hours worked,"
14 which includes all time that an employee is under control of the employer and all time the
15 employee is suffered and permitted to work. This includes the time an employee spends, either
16 directly or indirectly, performing services that inure to the benefit of the employer.'

17 13. Labor Code sections 510 and 1194 require an employer to compensate employees a
18 higher rate of pay for hours worked in excess of eight (8) hours in a workday, in excess of forty
19 (40) hours in a workweek, and on any seventh consecutive day of work in a workweek:

20 Any work in excess of eight (8) hours in one workday, any work in excess of forty (40)
21 hours in any one (1) workweek, and the first eight (8) hours worked on the seventh day of
22 work in any one (1) workweek, shall be compensated at the rate of no less than one-and-
23 one-half (1.5) times the regular rate of pay for an employee. Any work in excess of twelve
24 (12) hours in one (1) day shall be compensated at the rate of no less than twice the regular
rate of pay for an employee. In addition, any work in excess of eight (8) hours on any
seventh day of a workweek shall be compensated at the rate of no less than twice the
regular rate of pay of an employee.

25 Labor Code section 510.

26 14. In this case, Defendants failed to pay Plaintiff and other current and former
27 aggrieved California-based hourly non-exempt employees overtime wages for all overtime hours
28 worked due to Defendants' policies, practices, and/or procedures.

1 15. Overtime is based upon an employee's regular rate of pay. "The regular rate at
2 which an employee is employed shall be deemed to include all remuneration for employment paid
3 to, or on behalf, of the employee." See Division of Labor Standards Enforcement – Enforcement
4 Policies and Interpretations Manual, Section 49.1.2.

5 16. In this case, Plaintiff alleges that when she and other current and former aggrieved
6 California-based hourly non-exempt employees earned overtime wages, Defendants failed to pay
7 them overtime wages at the proper overtime rate of pay due to Defendants' failure to include all
8 remuneration when calculating the overtime rate of pay. Specifically, Defendants maintained a
9 policy, practice, and/or procedure of failing to include all remuneration such as "Variable
10 Comp.," for example, when calculating Plaintiff's and other current and former aggrieved
11 California-based hourly non-exempt employees' regular rate of pay for the purpose of paying
12 overtime.

13 17. The foregoing policies, practices, and/or procedures resulted in time during each
14 workday that Plaintiff and other current and former aggrieved California-based hourly non-exempt
15 employees were under the control of Defendants but were not compensated. To the extent that the
16 foregoing uncompensated time occurred when Plaintiff and other current and former aggrieved
17 California-based hourly non-exempt employees worked more than eight (8) hours in a workday,
18 more than forty (40) hours in a workweek, and/or seven (7) days in a workweek, Defendants failed
19 to pay them at their overtime rate of pay for overtime hours worked, in violation of Labor Code
20 sections 510, 1194 and 1198, and the applicable Wage Order.

21 18. **Failure to pay wages to hourly non-exempt employees for workdays that**
22 **Defendants failed to provide legally required and compliant meal periods:** Plaintiff and other
23 current and former aggrieved California-based hourly non-exempt employees regularly worked
24 shifts of more than five (5) hours in length and shifts of more than ten (10) hours in length.

25 19. California law requires an employer to authorize or permit an employee an
26 uninterrupted meal period of no less than thirty (30) minutes in which the employee is relieved of
27 all duties and the employer relinquishes control over the employee's activities prior to the
28 employee's sixth hour of work. Labor Code sections 226.7, 512 and 1198; Wage Order 4 at §11;

1 *Brinker Rest. Corp. v. Super Ct. (Hohnbaum)* (2012) 53 Cal.4th 1004. An employer may not
2 employ an employee for a work period of more than ten (10) hours per day without providing the
3 employee with a second such meal period of not less than thirty (30) minutes prior to the start of
4 the eleventh hour of work. *Id.* If the employee is not relieved of all duty during a meal period, the
5 meal period shall be considered an “on duty” meal period and counted as time worked. A paid “on
6 duty” meal period is only permitted when: (1) the nature of the work prevents an employee from
7 being relieved of all duty; and (2) the parties have a written agreement agreeing to on-duty meal
8 periods.

9 20. If an employer fails to provide an employee a meal period in accordance with the
10 law, the employer must pay the employee one (1) hour of pay at the employee’s regular rate of pay
11 for each workday that a legally required and compliant meal period was not provided. Labor Code
12 sections 226.7 and 1198; Wage Order 4 at §11.

13 21. In this case, Defendants failed to authorize or permit legally required and compliant
14 meal periods to Plaintiff and other current and former aggrieved California-based hourly non-
15 exempt employees due to Defendants’ policies, practices, and/or procedures.

16 22. Additionally, Plaintiff alleges that Defendants maintained a policy, practice, and/or
17 procedure of failing to compensate Plaintiff and other current and former aggrieved California-
18 based hourly non-exempt employees one (1) hour of pay at their regular rate of pay for each
19 workday that Plaintiff and other current and former aggrieved California-based hourly non-exempt
20 employees did not receive legally required and compliant meal periods, in violation of Labor Code
21 section 226.7.

22 23. Finally, on occasions when Defendants paid Plaintiff and other current and former
23 aggrieved California-based hourly non-exempt employees a “premium” wage for late, missed,
24 short, on-premise, on-duty, and/or interrupted meal periods, Defendants failed to pay the one (1)
25 additional hour of pay at Plaintiff’s and other current and former aggrieved California-based
26 hourly non-exempt employees’ regular rate of compensation. Specifically, Defendants maintained
27 a policy, practice, and/or procedure of failing to include all remuneration such as “Variable
28 Comp.,” for example, when calculating Plaintiff’s and other current and former aggrieved

1 California-based hourly non-exempt employees' regular rate of pay for the purpose of paying meal
2 period premium wages.

3 24. Defendants' foregoing policies, practices, and/or procedures resulted in Plaintiff
4 and other current and former aggrieved California-based hourly non-exempt employees not
5 receiving wages to compensate them for workdays during which Defendants did not provide them
6 with meal periods in compliance with California law.

7 25. **Failure to pay wages for accrued paid sick days at the regular rate of pay:**
8 Defendants had a policy and/or procedure where Plaintiff and other current and former aggrieved
9 California-based hourly non-exempt employees accrued paid sick time.

10 26. Labor Code section 246, subdivision (a), states in relevant part "[a]n employee
11 who...works in California for the same employer for 30 or more days within a year from the
12 commencement of employment is entitled to paid sick days." Additionally, an employee accrues
13 paid sick days at the rate of no-less-than one (1) hour per every thirty (30) hours worked,
14 beginning at the commencement of employment. Labor Code section 246(b).

15 27. Here, Plaintiff and other current and former aggrieved California-based hourly non-
16 exempt employees were employed by Defendants for 30 or more days and were entitled to paid
17 sick days. Also, Plaintiff and other current and former aggrieved California-based hourly non-
18 exempt employees began accruing paid sick days since the beginning of each of their respective
19 employment with Defendants.

20 28. Labor Code section 246, subdivision (l), provides that an employer shall calculate
21 the paid sick time for non-exempt employees in the same manner as the regular rate of pay for the
22 workweek in which the employee elected to use paid sick time. "The regular rate at which an
23 employee is employed shall be deemed to include all remuneration for employment paid to, or on
24 behalf, of the employee." See Division of Labor Standards Enforcement – Enforcement Policies
25 and Interpretations Manual, Section 49.1.2.

26 29. In this case, Plaintiff alleges that when she and other current and former aggrieved
27 California-based hourly non-exempt employees elected to use paid sick time, Defendants failed to
28 pay them sick time wages at the proper sick time rate of pay due to Defendants' failure to include

1 all remuneration when calculating the sick time rate of pay. Specifically, Defendants maintained a
2 policy, practice, and/or procedure of failing to include all remuneration such as “Variable
3 Comp.,”, for example, when calculating Plaintiff’s and other current and former aggrieved
4 California-based hourly non-exempt employees’ regular rate of pay for the purpose of paying sick
5 time.

6 30. Defendants’ foregoing policy, practice, and/or procedure resulted in Defendants
7 failing to pay Plaintiff and similarly situated employees at their sick time regular rate of pay for all
8 sick time accrued, in violation of Labor Code section 246.

9 31. **Failure to timely pay earned wages during employment:** In California, wages
10 must be paid at least twice during each calendar month on days designated in advance by the
11 employer as regular paydays, subject to some exceptions. Labor Code section 204(a). Wages
12 earned between the 1st and 15th days, inclusive, of any calendar month must be paid between the
13 16th and the 26th day of that month and wages earned between the 16th and the last day,
14 inclusive, of any calendar month must be paid between the 1st and 10th day of the following
15 month. *Id.* Other payroll periods such as those that are weekly, biweekly, or semimonthly, must be
16 paid within seven (7) calendar days following the close of the payroll period in which wages were
17 earned. Labor Code section 204(d).

18 32. As a derivative of Plaintiff’s claims above, Plaintiff alleges that Defendants failed
19 to timely pay Plaintiff’s and other current and former aggrieved California-based hourly non-
20 exempt employees’ earned wages (including overtime wages, meal period premium wages, and
21 sick pay wages), in violation of Labor Code section 204. Defendants’ aforementioned policies,
22 practices, and/or procedures resulted in their failure to pay Plaintiff’s and other current and former
23 aggrieved California-based hourly non-exempt employees’ their earned wages within the
24 applicable time frames outlined in Labor Code section 204.

25 33. **Secret payment of lower wages than designated by statute:** Labor Code section
26 223 provides that, where any statute or contract requires an employer to maintain the designated
27 wage scale, it shall be unlawful to secretly pay a lower wage while purporting to pay the wage
28 designated by statute or contract. By engaging in the unlawful conduct alleged herein, including

1 by failing to: pay overtime wages at the applicable legal overtime rate, meal break premiums and
2 lawful sick pay at the employees' regular rate of pay, as established by Labor Code sections 226.7,
3 246, 510, 1194 and sections 11 and 12 of the applicable IWC Wage Orders, as incorporated by
4 Labor Code section 1198, the Defendant secretly paid a lower wage than designated by statute
5 while purporting to pay the wages designated by statute, in violation of Labor Code section 223.

6 **34. Failure to provide complete and accurate wage statements:** Labor Code section
7 226, subdivision (a). Labor Code section 226(a) provides, *inter alia*, that, upon paying an
8 employee his or her wages, the employer must "furnish each of his or her employees ... an
9 itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the
10 employee, except for any employee whose compensation is solely based on a salary and who is
11 exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of
12 the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable
13 piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided, that all
14 deductions made on written orders of the employee may be aggregated and shown as one item, (5)
15 net wages earned, (6) the inclusive dates of the pay period for which the employee is paid, (7) the
16 name of the employee and his or her social security number, (8) the name and address of the legal
17 entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and
18 the corresponding number of hours worked at each hourly rate by the employee."

19 **35.** As a derivative of Plaintiff's allegations above, Defendants' failure to pay Plaintiff
20 and other current and former aggrieved California-based hourly non-exempt employees all wages
21 earned (including overtime wages, meal period premium wages, and sick pay wages), rendered
22 Plaintiff's and other current and former aggrieved California-based hourly non-exempt employees'
23 wage statements inaccurate, in violation of Labor Code section 226(a)(1, 2, 5 & 9).

24 **36. Failure to pay employees all wages due at time of termination/resignation:** An
25 employer is required to pay all unpaid wages timely after an employee's employment ends. The
26 wages are due immediately upon termination (Labor Code section 201) or within seventy-two (72)
27 hours of resignation (Labor Code section 202).

28 **37.** As a derivative of Plaintiff's allegations above, because Defendants failed to pay

1 Plaintiff and other current and former aggrieved California-based hourly non-exempt employees
2 all their earned wages (including overtime wages, meal period premium wages, and sick pay
3 wages), Defendants failed to pay those employees timely after each employee's termination and/or
4 resignation, in violation of Labor Code sections 201, 202, and 203.

5 38. Labor Code sections 2699, subdivisions (a) and (g) authorize an aggrieved
6 employee, on behalf of himself or herself and other current or former employees, to bring a civil
7 action to recover civil penalties against all Defendants pursuant to the procedures specified in
8 Labor Code section 2699.3.

9 39. Plaintiff has complied with the procedures for bringing suit specified in Labor
10 Code section 2699.3. On January 23, 2024, Plaintiff filed a PAGA Claim Notice with the LWDA
11 and provided notice to Defendants by certified mail which provided notice of the specific
12 provisions of the Labor Code alleged to have been violated, including the facts and theories to
13 support the violations alleged.

14 40. Pursuant to Labor Code section 2699.3, the LWDA must give written notice by
15 certified mail to the parties that it intends to investigate the alleged violations of the Labor Code
16 within 60 days of the date of the complainant's written notice. The LWDA failed to provide the
17 parties notice within 60 days of the date of Plaintiff's PAGA Claim Notice that the LWDA intends
18 to investigate Plaintiff's claims.

19 41. Pursuant to Labor Code sections 2699(a) and (f), Plaintiff is entitled to recover civil
20 penalties for Defendants' violations of Labor Code sections 201, 202, 203, 204, 223, 226(a),
21 226.7, 246, 510, 512, 1194, and 1198. During Plaintiff's employment and continuing through the
22 present, preceding Plaintiff sending the initial PAGA Claim Notice to the LWDA to the present, in
23 the following amounts:

24 a. For violations of Labor Code sections 201, 202, 203, 226.7, 246, 1194 and
25 1198; one hundred dollars (\$100) for each aggrieved employee per pay period for the initial
26 violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each
27 subsequent violation [penalty amounts established by Labor Code section 2699(f)(2)].

28 b. For violations of Labor Code section 226(a), alternatively, two hundred

1 fifty dollars (\$250) for each employee for each pay period for the initial violation, and for each
2 subsequent violation, one thousand dollars (\$1000) for each underpaid employee for each pay
3 period [penalty amounts established by Labor Code section 226.3].

4 c. For violations of Labor Code section 510 and 512, fifty dollars (\$50) for
5 each employee for each pay period for the initial violation, and for each subsequent violation, one
6 hundred dollars (\$100) for each underpaid employee for each pay period [penalty amounts
7 established by Labor Code section 558].

8 d. For violations of Labor Code section 204, one hundred dollars (\$100) for
9 each failure to pay each employee in any initial violation, and for each subsequent violation, or
10 any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each
11 employee, plus 25 percent of the amount unlawfully withheld [penalty amounts established by
12 Labor Code section 210].

13 e. For violations of Labor Code section 223, one hundred dollars (\$100) for
14 each failure to pay each employee in any initial violation, and for each subsequent violation, or
15 any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each
16 employee, plus 25 percent of the amount unlawfully withheld [penalty amounts established by
17 Labor Code section 225.5].

18 42. Pursuant to Labor Code section 2699(g), Plaintiff is entitled to an award of
19 reasonable attorneys' fees and costs in connection with her claims for civil penalties.

20 **PRAYER FOR RELIEF**

21 **WHEREFORE, PLAINTIFF, ON BEHALF OF HERSELF AND ON OTHER**
22 **AGGRIEVED EMPLOYEES, PRAYS AS FOLLOWS:**

23 **ON THE FIRST CAUSE OF ACTION:**

24 1. That Defendants be found to have violated the provisions of the Labor Code and
25 the IWC Wages Orders as to the Plaintiff and aggrieved employees;

26 2. For any and all legally applicable penalties during the relevant statute of limitations
27 subject to any permissible tolling, including but not limited to those recoverable under the
28 California Labor Code, including but not limited to sections 210, 225.5, 226.3, 558, and 2699(f);

1 3. For attorneys' fees and costs of suit, including but not limited to those recoverable
2 under California Labor Code section 2699(g); and

3 4. For such and other further relief, in law and/or equity, as the Court deems just or
4 appropriate

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6 Dated: March 29, 2024

Respectfully submitted,
LAVI & EBRAHIMIAN, LLP

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8 By: 
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