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Assigned for All Purposes

Judge Melissa R. McCormick

CX-104

Attorney for Plaintiff
Julio Crisostomo

SUPERIOR COURT OF CALIFORNIA

COUNTY OF ORANGE

JULIO CRISOSTOMO, individually and on behalf
of all similarly situated individuals,

Plaintiff,

v.

EARTHCO COMMERCIAL LANDSCAPE, and
DOES 1 to 100,

Defendants.

NO. 30-2024-01394751-CU-OE-CXC
CLASS ACTION
COMPLAINT
1. Minimum Wage Violations
2. Overtime Violations
3. Meal Period Violations
4. Rest Period Violations
5. Wage Statement Penalties
6. Waiting Time Penalties
7. Violation of Unfair Competition Law
8. PAGA Penalties

PRELIMINARY ALLEGATIONS

1. Plaintiff Julio Crisostomo ("Plaintiff") is a resident of Orange County.
2. Defendant Earthco Commercial Landscape ("Earthco") is a business entity form unknown based in Orange County.
3. Earthco operates a landscape services business, and Plaintiff worked as an irrigation technician from March 2021 to November 2023.
4. Plaintiff does not know the true names and capacities of Does 1 to 100 and therefore uses fictitious names. Plaintiff will amend the complaint pursuant to Code of Civil Procedure section 474 to allege the true names and capacities when ascertained.
5. The named and Doe defendants are collectively referred to as "Defendants."

6. Plaintiff is informed and believes that each of the Defendants was the agent or employee of the other defendants and acted in the scope of agency or employment.

7. Defendants employed Plaintiff and the class members as landscape service workers, including irrigation. Therefore, Wage Order 5 applies.

8. Plaintiff worked out of Defendants' office in Santa Ana, therefore venue is proper in Orange County.

9. Plaintiff and the class members were not exempt since they did not customarily and regularly exercise discretion and independent judgment.

10. Throughout Plaintiff's and the class members' employment, they did not receive compliant meal and rest periods, did not receive overtime at the correct regular rate, did not receive at least the minimum wage for work off the clock, did not receive accurate wage statements, and did not receive applicable waiting time penalties.

11. On February 6, 2024 Plaintiff sent a letter by certified mail to Defendant and uploaded the letter to the LWDA portal. Since it has been more than 65 days, Plaintiff may now request PAGA penalties.

12. Further, on January 10, 2024 Plaintiff sent a request to Defendant to review a copy of the personnel file, and Defendant never responded to the request.

CLASS ACTION ALLEGATIONS

13. The class is defined as the following: "All non-exempt employees who worked for Defendants as from four years prior to filing the case to the date of certification or judgment, whichever is earlier."

14. There is a well-defined community of interest, and the proposed class is ascertainable from Defendants' employment records. Further, the following apply to show the viability of a class action pursuant to Code of Civil Procedure section 382:

- a. Numerosity: The members of the class as defined are so numerous that joinder of all class members is impracticable.
- b. Commonality: This action involves common questions of law and fact to the

- 1 class because the action focuses on Defendants' systematic course of conduct
2 with respect to violating the Labor Code and IWC Wage Order.
- 3 c. Typicality: The claims are typical of the claims of the class. Plaintiff was
4 subjected to the same violations and seeks the same types of damages,
5 restitution, and other relief on the same as those of the members of the class.
- 6 d. Adequacy of Representation: Plaintiff will fairly and adequately represent and
7 protect the interests of the class. Plaintiff understands the obligations as a class
8 representative and is willing and able to fulfill them. Plaintiff's counsel is
9 competent and experienced in litigating large employment class actions and
10 complex litigation matters, including wage and hour cases like this.
- 11 e. Superiority of Class Action: A class action is superior to other available means
12 for efficient adjudication. Class action treatment will allow similarly situated
13 persons to pursue the claims in a manner that is most efficient and economical.
- 14 15. There are common questions of law and fact including but not limited to:
- 15 a. Whether Defendants did not pay overtime at the correct regular rate of pay in
16 violation of Labor code sections 510 and 1194;
- 17 b. Whether Defendants violated Labor Code sections 510 and 1194 for not paying
18 at least the minimum wage for work off the clock;
- 19 c. Whether Defendants violated Labor Code section 512 and Wage Order 4 by not
20 providing meal breaks;
- 21 d. Whether Defendants violated Wage Order 4 for not providing rest breaks;
- 22 e. Whether Defendants violated Labor Code section 226 for wage statements;
- 23 f. Whether Defendants violated Labor Code section 203 for not providing
24 applicable waiting time penalties;
- 25 g. Whether Defendants violated Labor Code section 226.7 by not paying premium
26 pay for missed meal and rest breaks;
- 27 h. Whether Defendants engaged in unfair competition; and
- 28 i. The amount of damages, wages, and penalties owed.

1 FIRST CAUSE OF ACTION

2 Minimum Wage Violations

3 Against All Defendants

4 16. Plaintiff incorporates by reference paragraphs 1 to 15 of the complaint.

5 17. Plaintiff and the class members were required to work off the clock; this time should have
6 been paid at least the minimum wage.

7 18. As a result, Plaintiff and the class members are owed reimbursement for unpaid wages,
8 interest, and attorney fees.

9
10 SECOND CAUSE OF ACTION

11 Overtime Violations

12 Against All Defendants

13 19. Plaintiff incorporates by reference paragraphs 1 to 15 of the complaint.

14 20. Plaintiff and the class members were required to work over eight hours in a day and/or 40
15 hours in a week without being compensated for all overtime in violation of Labor Code 510.

16 21. The reason for the violations is that Plaintiff and the class members were not paid overtime
17 at the correct regular rate of pay. At times Plaintiff and the class members were required to work at
18 Defendants' other restaurants but not paid for that time.

19 22. The remedy for the overtime violations is payment of the unpaid overtime at the correct
20 regular rate of pay, plus interest and attorney fees, pursuant to Labor Code section 1194.

21
22 THIRD CAUSE OF ACTION

23 Meal Period Violations

24 Against All Defendants

25 23. Plaintiff incorporates by reference paragraphs 1 to 15 of the complaint.

26 24. Pursuant to Wage Order 5 every employer shall authorize and permit employees to take
27 meal periods of thirty minutes for every five hours worked.

28 25. Pursuant to Labor Code section 226.7(c) and IWC Wage Order 4, when the employer does

1 not provide an employee with the required meal period, the employer shall pay the employee one
2 hour of pay at the employee's regular rate of compensation for each workday that a rest period is
3 not provided.

4 26. Plaintiff and the class members were denied meal periods as rest periods were not provided.

5 27. As a result of Defendants' rest period violations, Plaintiff and the class members are
6 entitled to premium pay which is one additional hour of compensation for each missed break.

7
8 FOURTH CAUSE OF ACTION

9 Rest Period Violations

10 Against All Defendants

11 28. Plaintiff incorporates by reference paragraphs 1 to 15 of the complaint.

12 29. Pursuant to Wage Order 4 every employer shall authorize and permit employees to take rest
13 periods of ten minutes for every four hours worked.

14 30. Pursuant to Labor Code section 226.7(c) and IWC Wage Order 4, when the employer does
15 not provide an employee with the required rest period, the employer shall pay the employee one
16 hour of pay at the employee's regular rate of compensation for each workday that a rest period is
17 not provided.

18 31. As a result of Defendants' rest period violations, Plaintiff and the class members are
19 entitled to premium pay which is one additional hour of compensation for each missed break.

20
21 FIFTH CAUSE OF ACTION

22 Wage Statement Penalties

23 Against All Defendants

24 32. Plaintiff incorporates by reference paragraphs 1 to 15 of the complaint.

25 33. Defendants' wage statements violated Labor Code section 226 since they did not list the
26 work performed off the clock, did not list the correct regular rates of pay for overtime, and did not
27 list premium pay for missed breaks at the regular rates of pay.

28 34. The remedy is wage statement penalties up to \$4,000 for each, and attorney fees.

1 SIXTH CAUSE OF ACTION

2 Waiting Time Penalties

3 Against All Defendants

4 35. Plaintiff incorporates by reference paragraphs 1 to 15 of the complaint.

5 36. Plaintiff and the class members who no longer work for Defendants were still owed
6 overtime and premium pay at the correct regular rate of pay when they stopped working.

7 37. Therefore, Plaintiff and each of the class members who no longer work for Defendants are
8 owed the waiting time penalty, which is 30 days of wages.

9
10 SEVENTH CAUSE OF ACTION

11 Violation of Unfair Competition Law

12 Against All Defendants

13 38. Plaintiff incorporates by reference paragraphs 1 to 15 of the complaint.

14 39. The Unfair Competition Law prohibits unfair, unlawful, and fraudulent business practices.

15 40. This claim is being brought under the unlawful prong of the UCL.

16 41. Defendants violated the Labor Code and IWC Wage Order by not paying all wages due,
17 including minimum wage, and overtime and premium pay at the correct regular rate.

18 42. Plaintiff and the class members are entitled to restitution.

19 43. Under Code of Civil Procedure section 1021.5, Plaintiffs are entitled to attorney fees.

20
21 EIGHTH CAUSE OF ACTION

22 PAGA Penalties

23 Against All Defendants

24 44. Plaintiff incorporates by reference paragraphs 1 to 15 of the complaint.

25 45. The PAGA penalties discussed in the PAGA letter relate to the following: 1) minimum
26 wage violations, 2) overtime violations, 3) meal break violations, 4) rest break violations, 5) wage
27 statement violations, and 6) waiting time violations.

28 46. The PAGA penalties for the minimum wage violations are in Labor Code 1197.1.

- 1 47. The PAGA penalties for the overtime violations are contained in Labor Code 558.
2 48. The PAGA penalties for the meal break violations are contained in Labor Code 558.
3 49. The PAGA penalties for the rest break violations are contained in Labor Code 2699.
4 50. The PAGA penalties for the unreimbursed work expenses are contained in Labor Code
5 section 2699.
6 51. The PAGA penalties for the wage statement violations are contained in Labor Code 226.3.
7 52. The PAGA penalties for the waiting time violations are in Labor Code 210 and 2699.
8 53. Also, Plaintiff is entitled to attorney fees and costs under Labor Code section 2699.

9

10 PRAYER

11 For All Causes of Action

- 12 1. That the court determine that this action may be maintained as a class action
13 2. That Plaintiff serves as representative of the class
14 3. That Counsel for Plaintiff is appointed as class counsel

15

16 First Cause of Action

- 17 1. Payment of all unpaid wages
18 2. Interest
19 3. Attorney fees
20 4. Other relief the court deems proper

21

22 Second Cause of Action

- 23 1. Payment of overtime at the correct regular rate
24 2. Interest
25 3. Attorney fees
26 4. Other relief the court deems proper

27 ///

28 ///

1 Third Cause of Action

2 1. Premium pay at the correct regular rate of pay

3 2. Interest

4 3. Other relief the court deems proper

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6 Fourth Cause of Action

7 1. Premium pay at the correct regular rate of pay

8 2. Interest

9 3. Other relief the court deems proper

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11 Fifth Cause of Action

12 1. Wage statement penalties

13 2. Attorney fees and costs

14 3. Other relief the court deems proper

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16 Sixth Cause of Action

17 1. Waiting time penalties

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19 Seventh Cause of Action

20 1. Restitution

21 2. Attorney fees

22 3. Other relief the court deems proper

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24 Eighth Cause of Action

25 1. All applicable PAGA penalties

26 2. Attorney fees and costs

27 3. Other relief the court deems proper

28 ///

1 Date: April 15, 2024

FRONTIER LAW CENTER

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Adam Rose

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Attorney for Plaintiff

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Julio Crisostomo

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