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15 on behalf of himself and current and former aggrieved employees

16 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
17 **FOR THE COUNTY OF SAN BERNARDINO**

18 VINCENT ESCARCEGA, on behalf of himself
19 and current and former aggrieved employees

20 Plaintiff,

21 vs.

22 BASS PRO OUTDOOR WORLD LLC; and
23 DOES 1 to 100, inclusive,

24 Defendants.

ELECTRONICALLY FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

5/23/2024 4:26 PM

By: Grace Powell, DEPUTY

CIVSB2417568

Case No.:

PAGA ACTION

**PLAINTIFF VINCENT
ESCARCEGA'S COMPLAINT FOR:**

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

COMES NOW Plaintiff VINCENT ESCARCEGA (“Plaintiff”), who, on behalf of himself and current and former aggrieved employees, alleges and complains against Defendants BASS PRO OUTDOOR WORLD 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, himself 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 overtime hours worked at the overtime rate of pay; failure to authorize or permit all legally required and/or compliant meal periods or pay meal period premium wages; failure to pay wages for accrued paid sick time at the regular rate of pay; statutory penalties for failure to timely pay earned wages during employment; statutory penalties for failure to provide accurate wage statements; statutory waiting time penalties in the form of continuation wages for failure to timely pay employees all wages due upon separation of employment. Plaintiff seeks on a representative basis, following notice to the Labor and Workforce Development Agency, civil penalties, reasonable attorneys’ fees pursuant to Labor Code section 2699(g)(1) and costs brought on behalf of Plaintiff, the State of California, and others aggrieved.

II. JURISDICTION AND VENUE

2. This Court has jurisdiction over the claims of Plaintiff and all other current and former aggrieved California-based hourly non-exempt employees because Plaintiff’s lawsuit seeks civil penalties on behalf of herself, all other current and former aggrieved California-based hourly non-exempt employees, and the State of California in excess of thirty-five thousand dollars (\$35,000); Defendants employed Plaintiff and all other current and former aggrieved California-based hourly non-exempt employees; and the injuries to Plaintiff and all other current and former aggrieved California-based hourly non-exempt employees occurred in locations throughout California, including but not limited to San Bernardino County, at 7777 Victoria Gardens Lane,

1 Rancho Cucamonga, CA 91739.

2 **III. PARTIES**

3 1. Plaintiff brings this action as a representative of the Labor and Workforce
4 Development Agency on behalf of himself and other current and former employees subject to
5 violations of the Labor Code. The named Plaintiff and the persons on whose behalf this action is
6 filed include current, former and/or future employees of Defendants who work, worked, or will
7 work for Defendants as direct employees as well as temporary employees employed through temp
8 agencies as hourly non-exempt employees in California. At all times mentioned herein, the
9 currently named Plaintiff is and was domiciled and a resident and citizen of California and was
10 employed by Defendants in an hourly position at Defendants' location in San Bernardino County
11 from in or around December 28, 2007 until on or about December 11, 2023.

12 2. Plaintiff is informed and believes and thereon alleges that Defendant BASS PRO
13 OUTDOOR WORLD LLC is authorized to do business within the State of California and is doing
14 business in the State of California and/or that Defendants DOES 1-50 are, and at all times relevant
15 hereto were persons acting on behalf of Defendant BASS PRO OUTDOOR WORLD LLC in the
16 establishment of, or ratification of, the aforementioned illegal wage and hour practices or policies.
17 Defendant BASS PRO OUTDOOR WORLD LLC operates in San Bernardino County and
18 employed Plaintiff and aggrieved employees in San Bernardino County, including but not limited
19 to, at 7777 Victoria Gardens Lane, Rancho Cucamonga, CA 91739.

20 3. Plaintiff is informed and believes and thereon alleges that Defendants DOES 1
21 through 50 are corporations, or are other business entities or organizations of a nature unknown to
22 Plaintiff that employed Plaintiff and aggrieved California non-exempt employees, permitted
23 Plaintiff and aggrieved employees to work, and exercised control over the wages, hours and
24 working conditions of employment of Plaintiff and aggrieved employees.

25 4. Plaintiff is informed and believes and thereon alleges that Defendants DOES 51
26 through 100 are individuals unknown to Plaintiff. Each of the individual defendants is sued
27 individually and in his or her capacity as an agent, shareholder, owner, representative, manager,
28 supervisor, independent contractor and/or employee of each defendant who violated or caused to

1 be violated the minimum wage and overtime provisions of the Labor Code and/or any provision of
2 the Industrial Welfare Commission's wage orders regulating hours and days of work.

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

9 6. Plaintiff makes the allegations in this complaint without any admission that, as to
10 any particular allegation, Plaintiff bears the burden of pleading, proving, or persuading and
11 Plaintiff reserves all of Plaintiff's right to plead in the alternative.

12 **FIRST CAUSE OF ACTION**

13 **CIVIL PENALTIES PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT OF**
14 **2004, LABOR CODE SECTIONS 2698, ET SEQ.**

15 **(Against all Defendants by Plaintiff on behalf of Themselves, the State of California, and**
16 **Other Current and Former Aggrieved Employees)**

17 7. Plaintiff incorporates all paragraphs above as though fully set forth herein.

18 8. During Plaintiff's employment and continuing through the present, Plaintiff alleges
19 Defendants violated Labor Code sections 201, 202, 203, 204, 223, 226, 226.7, 246, 510, 512,
20 1194, and the applicable Wage Orders.

21 9. Specifically, Defendants have committed the following violations of California
22 Labor Code:

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

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

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

12 Labor Code section 510.

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

16 13. Furthermore, overtime is based upon an employee's regular rate of pay. "The
17 regular rate at which an employee is employed shall be deemed to include all remuneration for
18 employment paid to, or on behalf, of the employee." See Division of Labor Standards
19 Enforcement – Enforcement Policies and Interpretations Manual, Section 49.1.2.

20 14. In this case, Plaintiff alleges that when he and other current and former aggrieved
21 California-based hourly non-exempt employees earned overtime wages, Defendants failed to pay
22 them overtime wages at the proper overtime rate of pay due to Defendants' failure to include all
23 remuneration when calculating the overtime rate of pay. Specifically, Defendants maintained a
24 policy, practice, and/or procedure of failing to include all remuneration such as "Gift Card
25 Special" and "Gift Card Star AOM," for example, when calculating Plaintiff's and other current
26 and former aggrieved California-based hourly non-exempt employees' regular rate of pay for the
27 purpose of paying overtime.

28 15. The foregoing policies, practices, and/or procedures resulted in time during each
workday that Plaintiff and other current and former aggrieved California-based hourly non-exempt
employees were under the control of Defendants but were not compensated. To the extent that the
foregoing uncompensated time occurred when Plaintiff and other current and former aggrieved

1 California-based hourly non-exempt employees worked more than eight (8) hours in a workday,
2 more than forty (40) hours in a workweek, and/or seven (7) days in a workweek, Defendants failed
3 to pay them at their overtime rate of pay for overtime hours worked, in violation of Labor Code
4 sections 510, 1194 and 1198, and the applicable Wage Order.

5 16. **Failure to pay wages to hourly non-exempt employees for workdays that**
6 **Defendants failed to provide legally required and compliant meal periods and/or failure to**
7 **pay period premium wages:** Plaintiff and other current and former aggrieved California-based
8 hourly non-exempt employees regularly worked shifts of more than five (5) hours in length and
9 shifts of more than ten (10) hours in length.

10 17. California law requires an employer to authorize or permit an employee an
11 uninterrupted meal period of no less than thirty (30) minutes in which the employee is relieved of
12 all duties and the employer relinquishes control over the employee's activities prior to the
13 employee's sixth hour of work. Labor Code sections 226.7, 512, and 1198; Wage Order 4 at §11;
14 *Brinker Rest. Corp. v. Super Ct. (Hohnbaum)* (2012) 53 Cal.4th 1004. An employer may not
15 employ an employee for a work period of more than ten (10) hours per day without providing the
16 employee with a second such meal period of not less than thirty (30) minutes prior to the start of
17 the eleventh hour of work. *Id.* If the employee is not relieved of all duty during a meal period, the
18 meal period shall be considered an "on duty" meal period and counted as time worked. A paid "on
19 duty" meal period is only permitted when: (1) the nature of the work prevents an employee from
20 being relieved of all duty; and (2) the parties have a written agreement agreeing to on-duty meal
21 periods.

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

26 19. In this case, Defendants failed to authorize or permit legally required and compliant
27 meal periods to Plaintiff and other current and former aggrieved California-based hourly non-
28 exempt employees due to Defendants' policies, practices, and/or procedures.

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

7 21. Finally, on occasions when Defendants paid Plaintiff and other current and former
8 aggrieved California-based hourly non-exempt employees a “premium” wage for late, missed,
9 short, on-premise, on-duty, and/or interrupted meal periods, Defendants failed to pay the one (1)
10 additional hour of pay at Plaintiff’s and other current and former aggrieved California-based
11 hourly non-exempt employees’ regular rate of compensation. Specifically, Defendants maintained
12 a policy, practice, and/or procedure of failing to include all remuneration such as “Gift Card
13 Special” and “Gift Card Star AOM,” for example, when calculating Plaintiff’s and other current
14 and former aggrieved California-based hourly non-exempt employees’ regular rate of pay for the
15 purpose of paying meal period premium wages.

16 22. Defendants’ foregoing policies, practices, and/or procedures resulted in Plaintiff
17 and other current and former aggrieved California-based hourly non-exempt employees not
18 receiving wages to compensate them for workdays during which Defendants did not provide them
19 with meal periods in compliance with California law.

20 23. **Failure to provide sick pay wages:** Defendants had a policy and/or procedure
21 where Plaintiff and other current and former aggrieved California-based hourly non-exempt
22 employees accrued paid sick time.

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

28 25. Here, Plaintiff and other current and former aggrieved California-based hourly non-

1 exempt employees were employed by Defendants for 30 or more days and were entitled to paid
2 sick days. Defendants, however, lacked a policy, practice, and/or procedure whereby Plaintiffs and
3 other current and former aggrieved California-based hourly non-exempt employees who were
4 employed by Defendants for 30 days or more could accrue paid sick days at the rate of no-less-
5 than one (1) hour per every thirty (30) hours worked, beginning at the commencement of
6 employment as required by Labor Code section 246(b).

7 26. In this case, Plaintiff alleges that when he and other current and former aggrieved
8 California-based hourly non-exempt employees elected to use paid sick time, Defendants failed to
9 pay them sick time wages at the proper sick time rate of pay due to Defendants' failure to include
10 all remuneration when calculating the sick time rate of pay. Specifically, Defendants maintained a
11 policy, practice, and/or procedure of failing to include all remuneration including but not limited
12 to as "Gift Card Special" and "Gift Card Star AOM," for example, when calculating Plaintiff and
13 other current and former aggrieved California-based hourly non-exempt employees' regular rate of
14 pay for the purpose of paying sick time.

15 27. Defendants' foregoing policy, practice, and/or procedure resulted in Defendants
16 failing to provide Plaintiff and other current and former aggrieved California-based hourly non-
17 exempt employees' paid sick days, in violation of Labor Code section 246.

18 28. **Failure to timely pay earned wages during employment:** In California, wages
19 must be paid at least twice during each calendar month on days designated in advance by the
20 employer as regular paydays, subject to some exceptions. Labor Code section 204(a). Wages
21 earned between the 1st and 15th days, inclusive, of any calendar month must be paid between the
22 16th and the 26th day of that month and wages earned between the 16th and the last day,
23 inclusive, of any calendar month must be paid between the 1st and 10th day of the following
24 month. *Id.* Other payroll periods such as those that are weekly, biweekly, or semimonthly, must be
25 paid within seven (7) calendar days following the close of the payroll period in which wages were
26 earned. Labor Code section 204(d).

27 29. As a derivative of Plaintiff's claims above, Plaintiff alleges that Defendants failed
28 to timely pay Plaintiff's and other current and former aggrieved California-based hourly non-

1 exempt employees' earned wages (including overtime wages, and/or meal period premium
2 wages), in violation of Labor Code section 204. Defendants' aforementioned policies, practices,
3 and/or procedures resulted in their failure to pay Plaintiff's and other current and former aggrieved
4 California-based hourly non-exempt employees' their earned wages within the applicable time
5 frames outlined in Labor Code section 204.

6 30. **Secret payment of lower wages than designated by statute:** Labor Code section
7 223 provides that, where any statute or contract requires an employer to maintain the designated
8 wage scale, it shall be unlawful to secretly pay a lower wage while purporting to pay the wage
9 designated by statute or contract. By engaging in the unlawful conduct alleged herein, including
10 by failing to: pay overtime wages at the applicable legal overtime rate, meal break premiums and
11 lawful sick pay at the employees' regular rate of pay, as established by Labor Code sections 226.7,
12 246, 510, 1194 and sections 11 of the applicable IWC Wage Orders, as incorporated by Labor
13 Code section 1198, the Defendant secretly paid a lower wage than designated by statute while
14 purporting to pay the wages designated by statute, in violation of Labor Code section 223.

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

28 32. Defendants committed direct violations of Labor Code section 226, through their

1 policies, practices, and/or procedures, including, but not limited to failing to provide Plaintiff and
2 other current and former aggrieved California-based hourly non-exempt employees accurate
3 itemized wage statements showing,

4 (a) during pay periods, additional remuneration gross wages earned was inaccurate
5 because bonuses were paid on separate payroll check;

6 (b) during pay periods, meal period premium wages are paid (coded as “meal
7 exceptions”), employees’ paystubs reflect in an inaccurate rate of pay;

8 33. As a derivative of Plaintiff’s allegations above, Defendants’ failure to pay Plaintiff
9 and other current and former aggrieved California-based hourly non-exempt employees all wages
10 earned (including overtime wages and/or meal period premium wages) rendered Plaintiff’s and
11 other current and former aggrieved California-based hourly non-exempt employees’ wage
12 statements inaccurate, in violation of Labor Code section 226(a)(1, 2, 5 & 9).

13 34. **Failure to pay employees all wages due at time of termination/resignation:** An
14 employer is required to pay all unpaid wages timely after an employee’s employment ends. The
15 wages are due immediately upon termination (Labor Code section 201) or within seventy-two (72)
16 hours of resignation (Labor Code section 202).

17 35. As a derivative of Plaintiff’s allegations above, because Defendants failed to pay
18 Plaintiff and other current and former aggrieved California-based hourly non-exempt employees
19 all their earned wages (including overtime wages and/or meal period premium wages), Defendants
20 failed to pay those employees timely after each employee’s termination and/or resignation, in
21 violation of Labor Code sections 201, 202, and 203.

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

26 37. Plaintiff has complied with the procedures for bringing suit specified in Labor
27 Code section 2699.3. On March 18, 2024, Plaintiff filed a PAGA Claim Notice with the LWDA
28 and provided notice to Defendants by certified mail which provided notice of the specific

1 provisions of the Labor Code alleged to have been violated, including the facts and theories to
2 support the violations alleged.

3 38. Pursuant to Labor Code section 2699.3, the LWDA must give written notice by
4 certified mail to the parties that it intends to investigate the alleged violations of the Labor Code
5 within 60 days of the date of the complainant's written notice. The LWDA failed to provide the
6 parties notice within 60 days of the date of Plaintiff's PAGA Claim Notice that the LWDA intends
7 to investigate Plaintiff's claims.

8 39. Pursuant to Labor Code sections 2699(a) and (f), Plaintiff is entitled to recover civil
9 penalties for Defendants' violations of Labor Code sections 201, 202, 203, 204, 223, 226(a),
10 226.7, 246, 510, and 1194, During Plaintiff's employment and continuing through the present,
11 preceding Plaintiff sending the initial PAGA Claim Notice to the LWDA to the present, in the
12 following amounts:

13 a. For violations of Labor Code sections 201, 202, 203, 226(a), and 226.7; one
14 hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and
15 two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent
16 violation [penalty amounts established by Labor Code section 2699(f)(2)].

17 b. For violations of Labor Code section 226(a), alternatively, two hundred
18 fifty dollars (\$250) for each employee for each pay period for the initial violation, and for each
19 subsequent violation, one thousand dollars (\$1000) for each underpaid employee for each pay
20 period [penalty amounts established by Labor Code section 226.3].

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

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

Labor Code section 210].

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

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

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF, ON BEHALF OF HIMSELF AND ON OTHER AGGRIEVED EMPLOYEES, PRAYS AS FOLLOWS:

ON THE FIRST CAUSE OF ACTION:

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

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

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

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

Dated: May 23, 2024

Respectfully submitted,
LAVI & EBRAHIMIAN, LLP

By:



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