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7/11/2024 11:12:10
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and JOSE L. GUZMAN

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9 **SUPERIOR COURT OF CALIFORNIA**
10 **IN AND FOR THE COUNTY OF SAN JOAQUIN**

11
12 EDUARDO CERVANTES and JOSE L.
13 GUZMAN, on behalf of all others similarly
aggrieved,

14 Plaintiffs,

15 vs.

16 WESCO GRAPHICS, INC., a California
17 corporation, JIM ESTES, an individual, and
DOES 1 through 50, inclusive,

18 Defendants.
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CASE NO.

STK-CV-JOE -2024- 10546

REPRESENTATIVE COMPLAINT FOR
VIOLATION OF PRIVATE ATTORNEYS
GENERAL ACT, CAL. LABOR CODE
SECTIONS 2698, *et seq.*

JURY TRIAL DEMANDED

BY FAX

GENERAL ALLEGATIONS

1. Plaintiff EDUARDO CERVANTES is an individual residing in the State of California.

2. Plaintiff JOSE L. GUZMAN is an individual residing in the State of California.

3. On information and belief, defendant WESCO GRAPHICS, INC. is a California corporation duly licensed to conduct business in the State of California.

4. On information and belief, defendant JIM ESTES is an individual residing in the State of California and is, and at all relevant times has been, the Chief Executive Officer of defendant WESCO GRAPHICS, INC, owns, operates, and/or manages WESCO GRAPHICS, INC., and had direct control and power over the working conditions and the violations at issue in this Complaint. On information and belief, JIM ESTES devised and implemented the policies at issue in this complaint and “caused” these violations as that term is used in Labor Code §§ 558 and 1197.1. Pursuant to Labor code §§ 558 and 1197.1, JIM ESTES is individually liable as a person who “caused” the violations to occur.

5. Plaintiffs are unaware of the names and capacities of those defendants sued as DOES 1 through 10 but will amend this complaint when that information becomes known. Plaintiffs are informed and believe and thereon allege that, at all relevant times, each of the defendants, including the DOE defendants, was the officer, director, employee, agent, representative, alter ego, or co-conspirator of each of the other defendants, and in engaging in the conduct alleged herein, was acting in the course and scope of, and in furtherance of, such relationship.

6. This court possesses original subject matter jurisdiction over this matter. Venue is proper in this judicial district because Defendants transact business in this district, and some of the complained of conduct occurred in this judicial district, as Plaintiffs performed job duties on Defendants’ behalf in the County of San Joaquin.

7. Plaintiffs both were employed by Defendants as a non-exempt employee. Plaintiffs brings this complaint under the Private Attorneys General Act of 2004, Labor Code sections 2698, *et seq.*, (“PAGA”), as a representative action on behalf of the State of California and all

1 individuals employed by Defendants as a non-exempt employee in the State of California in the
2 one year preceding Plaintiffs' submission of notice of PAGA violations to the Labor &
3 Workforce Development Agency (LWDA"), regarding violations of the Labor Code as to
4 aggrieved employees employed by Defendants. This action is brought solely pursuant to PAGA
5 and seeks no relief beyond that available under PAGA.

6 8. During the period beginning one-year period preceding the filing of the required
7 PAGA notice with the Labor Workforce and Development Agency ("LWDA"), and continuing
8 through the present, as alleged herein, Defendants violated Labor Code sections 201-203, 204,
9 226, 226.7, 558, 1174, 1194, 1197-99, 2810.5, and all applicable Wage Orders, as to Plaintiffs
10 and other similarly aggrieved employees. These violations subject Defendants to civil penalties
11 as set forth in the foregoing statutes as well as other provisions of the Labor Code, including
12 without limitation Labor Code sections 210, 558, 1174.5, 1197.1 and 2699.

13 **FIRST CAUSE OF ACTION**

14 **VIOLATION OF PRIVATE ATTORNEYS GENERAL ACT,**
15 **LABOR CODE SECTIONS 2698, ET SEQ.**

16 9. Plaintiffs incorporates all preceding paragraphs as though fully alleged herein.

17 10. California law provides employees in California must be paid for all hours worked,
18 up to 40 per week or 8 per day, at a regular time rate no less than the mandated minimum wage.
19 California law also provides employees in California must be paid overtime, equal to 1.5 times
20 the employee's regular rate of pay, for all hours worked in excess of 40 per week or 8 per day.
21 Plaintiffs and other aggrieved employees worked hours for which they were not paid at least the
22 applicable minimum wage, as Plaintiffs rounded off time punches such that Plaintiffs and other
23 aggrieved employees lost compensable hours worked and corresponding pay, and Plaintiffs and
24 other aggrieved employees further worked "off the clock" as they had to arrive several minutes
25 early to turn on printing machines and prepare for the job. By requiring Plaintiffs and other
26 similarly aggrieved employees to perform "off the clock" work without counting such time as
27 hours worked and without compensating Plaintiffs and all similarly aggrieved employees for such
28 "off the clock" work via its rounding policy, and by failing to pay for overtime hours at the

1 correct rate, Defendants violated Labor Code sections 1194-1199, and Wage Order 1-2001,
2 section 7, as to Plaintiffs and all other similarly aggrieved employees. These violations subject
3 Defendants to civil penalties under the foregoing Labor Code sections and other applicable Labor
4 Code sections, including without limitation Labor Code sections 558, 1197.1 and 2699. Each
5 violation of each Labor Code section and Wage Order provision, for each aggrieved employee,
6 results in a separate civil penalty.

7 11. Under the Labor Code and IWC Wage Orders, Defendants were required to
8 provide Plaintiffs and similarly aggrieved employees with one 30-minute meal period free from
9 all duties for all shifts longer than 5 hours, and a second 30-minute meal period free from all
10 duties for all shifts longer than 10 hours. Meal periods can be waived, but only under the
11 following circumstances: (1) if an employee's total work period in a day is over five (5) hours but
12 no more than six (6) hours, the required meal period may be waived by mutual consent of the
13 employer and employee, and (2) if an employee's total work period in a day is over ten (10) hours
14 but no more than twelve (12) hours, the required second meal period may be waived by mutual
15 consent of the employer and employee, but only if the first meal period was not waived.
16 Employers covered by the Wage Orders have an obligation to both (1) relieve their employees for
17 at least one meal period for shifts over five hours (see above), and (2) to record having done so. If
18 the employer fails to properly record a valid meal period, it is presumed no meal period was
19 provided.

20 12. Defendants failed to maintain a company meal period policy compliant with
21 California law and failed to provide Plaintiffs and other aggrieved employees with proper meal
22 periods, meal periods were not provided until after the start of the fifth hour work, meal periods
23 lasted less than 30 minutes, and/or meal periods were not free from all employer control.
24 Because Defendants failed to maintain a compliant written meal period policy, failed to provide
25 Plaintiffs and other aggrieved employees with all required meal periods, and failed to provide
26 Plaintiffs and other aggrieved employees with timely and otherwise compliant meal periods,
27 Defendants also failed to provide Plaintiffs and other aggrieved employees with all meal breaks
28 required under California law. Defendants also failed to pay them premiums for such missed meal

breaks in violation of California law. These violations subject Defendants to civil penalties under the foregoing Labor Code sections and other applicable Labor Code sections, including without limitation Labor Code sections 226.7 and 2699. Each violation of each Labor Code section and Wage Order provision, for each aggrieved employee, results in a separate civil penalty.

13. Under the Labor Code and IWC Wage Orders, Defendants were required to provide Plaintiffs and similarly aggrieved employees with one 10-minute paid rest period free from all duties for each 3.5 hours worked, or major fraction thereof. Defendants did not maintain a company rest period policy and/or practice compliant with California law, and Defendants frequently did not provide Plaintiffs and other aggrieved employees with appropriate rest periods. Per Defendants' policy and/or practice, Plaintiffs and other aggrieved employees were not adequately informed and instructed about, and thereby were not afforded an adequate opportunity to take, proper rest breaks per California law. Further, Defendants failed to pay Plaintiffs and other aggrieved employees with an additional hour of pay at their regular rates of pay for each missed or improper rest period. These violations subject Defendants to civil penalties under the foregoing Labor Code sections and other applicable Labor Code sections, including without limitation Labor Code sections 226.7 and 2699. Each violation of each Labor Code section and Wage Order provision, for each aggrieved employee, results in a separate civil penalty.

14. California law provides that, at the time of each payment of wages, an employer must provide each employee with an itemized statement showing, inter alia, gross wages earned, total hours worked, all deductions taken, net wages earned, the inclusive dates for which the employee is being paid, the employee's name and last four digits of their social security number, the name and address of the legal entity that it is the employer, and all applicable hourly rates in effect during the pay period and all hours worked at each rate. For the reasons alleged above, Defendants knowingly and intentionally failed to provide Plaintiffs and other aggrieved employees with proper, itemized wage statements as the wage statements provided by Defendants do not accurately reflect, inter alia, gross wages earned, total hours worked, net wages earned, and all applicable hourly rates in effect during each pay period and all hours worked at each applicable hourly rate. Defendants' wage statements also violate Labor Code section 226(a) on

1 their face because they do not list the address of the entity that is employer, and further violate
2 Labor Code section 245(i) because they do inform employees of the amount of sick pay available.
3 Accordingly, Defendants have violated Labor Code section 226 as to Plaintiffs and all similarly
4 aggrieved employees. These violations subject Defendants to civil penalties under the Labor
5 Code, including without limitation Labor Code sections 226 and 2699. Each violation of each
6 Labor Code section and Wage Order provision, for each aggrieved employee, results in a separate
7 civil penalty.

8 15. California law requires employers to keep “accurate and complete” payroll records
9 showing, among other things, the hours worked daily by all non-exempt employees. IWC Wage
10 Order 1-2001, section 7, similarly requires Defendants to keep time records showing, inter alia,
11 when the employees begin and end each work period. At all relevant times, Defendants failed,
12 and continue to fail, to keep the required time records, as Defendants did not accurately provide
13 and/or record all of Plaintiffs’ and other similarly aggrieved employees’ hours worked, as alleged
14 herein, and further did not record the start and end times for meal periods. Defendants’ failure to
15 keep “accurate and complete” payroll records for Plaintiffs and other similarly aggrieved
16 employees violates Labor Code sections 1174, 1198-99, and Wage Order 1-2001, section 7.
17 These violations subject Defendants to civil penalties under the Labor Code, including without
18 limitation sections 1174.5 and 2699. Each violation of each Labor Code section and Wage Order
19 provision, for each aggrieved employee, results in a separate civil penalty.

20 16. Together, Labor Code sections 1198 and 1199 make unlawful employment of any
21 individual under conditions of labor prohibited by the Wage Orders, and any violation, refusal, or
22 neglect to comply with any provision within Part 4, Chapter 1 of the Labor Code, including
23 sections 1174, 1197, and 1198, or other order or ruling of the IWC. Defendants’ violations with
24 respect to minimum wages and/or overtime wages, as alleged herein, result in separate violations
25 of Labor Code sections 1198 and 1199, and subject Defendants to civil penalties under the Labor
26 Code, including without limitation Labor Code sections 1197.1 and 2699. Each violation of each
27 Labor Code section and Wage Order provision, for each aggrieved employee, results in a separate
28 civil penalty.

1 17. California Labor Code section 204 requires an employer to pay employees all
2 wages due and payable at least twice each calendar month. Defendants failed to comply with
3 Labor Code section 204 by failing to timely pay twice during each calendar month all wages due
4 and payable to Plaintiffs and other similarly aggrieved employees. Defendants' violations of
5 Labor Code section 204 subject Defendants to civil penalties, including but not limited to the
6 penalties set forth in California Labor Code sections 210 and 2699. Each violation results in a
7 separate civil penalty, for each aggrieved employee for each pay period during which the
8 statutory provisions were violated

9 18. Labor Code section 201 requires employers to pay all wages earned and unpaid at
10 the time of discharge, immediately upon discharge. Labor Code section 202 states similar
11 provisions with respect to employees who resign. For Plaintiffs and all aggrieved employees no
12 longer employed by Defendants, Defendants still have not paid such aggrieved employees all
13 wages earned and unpaid at the time of discharge for the reasons alleged herein. These violations
14 subject Defendants to civil penalties under the Labor Code, including without limitation Labor
15 Code sections 203, 256 and 2699. Each violation results in a separate civil penalty, for each
16 aggrieved employee for each pay period during which the statutory provisions were violated.

17 19. Plaintiffs complied with the procedures for bringing suit specified in Labor
18 Code sections 2699.3 and 2699.5. By letter dated and postmarked June 12, 2024, Plaintiffs
19 gave written notice to the LWDA via electronic mail at PAGAfilings@dir.ca.gov, and via
20 certified mail to all Defendants, of the specific provisions of the Labor Code and Wage Orders
21 allegedly violated, including the facts and theories to support the alleged violations.

22 20. Under Labor Code section 2699.3, the LWDA must give written notice by
23 certified mail to the parties it intends to investigate the alleged violations within 65 days of the
24 date of the Plaintiffs' written notice. As of the filing of this complaint, the LWDA has not
25 provided the parties any notice of its intention to investigate Plaintiffs' claims on behalf of
26 themselves and other similarly aggrieved employees. As of the filing of this complaint,
27 Defendants have not responded to Plaintiffs' PAGA notice in an attempt to cure.
28 Accordingly, Plaintiffs have exhausted all administrative remedies required by law.

1 PRAYER

2 WHEREFORE, Plaintiffs pray for judgment against each Defendant, jointly and severally,
3 as follows:

- 4 1. For civil penalties according to proof;
5 2 For reasonable attorney's fees and costs of suit; and
6 3. For such other and further relief as the Court deems just and proper.

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8 Dated: August 23, 2024

LAW OFFICES OF J. KIRK DONNELLY, APC

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11 J. Kirk Donnelly
12 Attorneys for Plaintiffs EDUARDO CERVANTES
13 and JOSE L. GUZMAN

14 DEMAND FOR JURY TRIAL

15 Plaintiffs hereby demand a trial by jury on all claims so triable.

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17 Dated: August 23, 2024

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22 and JOSE L. GUZMAN
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