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County of San Diego

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Clerk of the Superior Court
By E. Noriega ,Deputy Clerk

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8 **SUPERIOR COURT OF CALIFORNIA**
9 **COUNTY OF SAN DIEGO**
10

11 ANTONIO GARIBAY, an individual, on behalf
of himself, other aggrieved employees, and the
12 State of California,

13 Plaintiff,

14 vs.

15 HAKES SASH & DOOR, INC.; and DOES 1
through 50, inclusive,

16 Defendants.
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Case No. 24CL012195C

PAGA ACTION

**REPRESENTATIVE ACTION
COMPLAINT FOR VIOLATION OF THE
PRIVATE ATTORNEYS GENERAL ACT
OF 2004 (CAL. LAB. CODE §§ 2698, *ET
SEQ.*)**

1 Plaintiff ANTONIO GARIBAY (“Plaintiff”), individually and on behalf of other aggrieved
2 employees and the State of California, hereby brings this Complaint (“Complaint”) pursuant to the
3 Private Attorneys General Act (“PAGA”), California Labor Code Sections 2698, *et seq.*, against
4 Defendants HAKES SASH & DOOR, INC. and DOES 1 through 50, inclusive (collectively
5 “Defendants”), and alleges as follows:

6 **INTRODUCTION**

7 1. This representative PAGA action, pursuant to Labor Code Sections 2698, *et seq.*, is
8 brought by Plaintiff on behalf of all current and former employees of Defendants employed in
9 California during the PAGA Period (collectively the “Aggrieved Employees”). The term PAGA
10 Period is defined as one (1) year prior to the submission of Plaintiff’s notice of Labor Code violations
11 to the Labor and Workforce Development Agency (“LWDA”) and certified mail to Defendants until
12 resolution.

13 2. Plaintiff is informed and believes, and thereon alleges, that Defendant HAKES SASH
14 & DOOR, INC. is a production finish carpentry supplier specializing in residential and light
15 commercial production projects. HSD supplies and installs materials including doors, moldings,
16 hardware, and windows in the State of California.

17 3. Plaintiff and Aggrieved Employees were employed by Defendants and performed work
18 for Defendants throughout California including in San Diego County.

19 4. Through this action, Plaintiff is alleging that Defendants have engaged in a systematic
20 pattern of wage and hour violations under the California Labor Code (“Labor Code”).

21 5. Plaintiff is informed and believes, and thereon alleges, that during the PAGA Period,
22 Defendants had a consistent policy of violating state wage and hour laws by, among other things:
23 failing to pay all wages (including sick pay, minimum, regular, and overtime wages), failing to provide
24 meal, rest, and recovery periods or compensation in lieu thereof, failing to timely pay all wages due
25 upon separation of employment, failing to provide accurate itemized wage statements, failing to
26 maintain accurate records of hours worked, and failing to reimburse business expenses.

27 6. Plaintiff’s representative PAGA action is brought under, *inter alia*, the California
28 Industrial Welfare Commission (“IWC”) Wage Orders and applicable provisions of the California

1 Code of Regulations, California Code of Civil Procedure Section 1021.5, and California Labor Code
2 Sections 201, 202, 203, 204, 206, 210, 226, 226.3, 226.7, 246, 246.5, 248.5, 256, 510, 512, 558, 1174,
3 1174.5, 1194, 1197, 1197.1, 1198, 2698 *et seq.*, 2699.3, 2699.5, 2800, and 2802.

4 7. Plaintiff brings this representative action seeking monetary relief against Defendants
5 on behalf of himself and other Aggrieved Employees to recover, among other things, penalties,
6 attorneys' fees, and costs pursuant to Labor Code Sections 2698, *et seq.*

7 **JURISDICTION AND VENUE**

8 8. This Court has jurisdiction over all causes of action asserted herein pursuant to the
9 California Constitution, Article VI, Section 10, which grants the Superior Court original jurisdiction
10 in all cases except those given to other trial courts. All claims alleged herein arise under California
11 law for which Plaintiff seeks relief authorized by California law. Further, this is a representative
12 PAGA action and the monetary damages, restitution, penalties, and other amounts sought by Plaintiff
13 exceeds the minimal jurisdictional limits of the Superior Court and will be established according to
14 proof at trial.

15 9. This Court has jurisdiction over all Defendants because each Defendant is a citizen of
16 California, a corporation or association organized under the laws of the State of California, an
17 association authorized to do business in California and registered with the California Secretary of
18 State, does sufficient business in California, has sufficient minimum contacts with California, and/or
19 intentionally avails itself of the laws and markets of California through the promotion, sale, marketing
20 and distribution of its products and/or services in California to render the exercise of jurisdiction by
21 the California courts permissible. In addition, PAGA penalties cannot be aggregated to meet the
22 jurisdictional threshold for diversity jurisdiction in federal court.

23 10. Venue in San Diego County is proper under California Business & Professions Code
24 Section 17203 and California Code of Civil Procedure Section 395.5 because a substantial part of
25 Defendants' unlawful conduct, acts, and omissions alleged herein occurred in this County, Defendants
26 had and have ongoing projects in this County, Defendants conduct substantial business in this County,
27 Defendants' liability arose in this County, and/or Defendants reside, transact business, maintain
28 offices, and/or have an agent or agents in this county. The relief requested is within the jurisdiction

1 of this Court.

2 **PARTIES**

3 11. Plaintiff is a California citizen. Defendants employed Plaintiff as a non-exempt hourly
4 employee during the PAGA Period and Plaintiff's employment with Defendants ended within one (1)
5 year of the filing of this action. Plaintiff's job duties included, but were not limited to, installing doors,
6 frames, and hardware. Plaintiff performed work for Defendants during the PAGA Period at
7 Defendants' worksites in San Diego County including in Escondido.

8 12. Plaintiff is informed, believes and thereon alleges that, at all relevant times, Defendant
9 Hakes Sash & Door, Inc. ("HSD") was and is a California corporation doing business in the State of
10 California. HSD is a production finish carpentry supplier specializing in residential and light
11 commercial production projects. HSD supplies and installs materials including doors, moldings,
12 hardware, and windows in the State of California and maintains job sites in San Diego County. HSD
13 regularly conducts business within the State of California and derives substantial revenues from
14 services performed in California. HSD is, and at all relevant times was, an employer subject to
15 California state wage and hour laws. Plaintiff is informed, believes, and thereon alleges that the
16 practices and policies of HSD that are complained of by way of this Complaint were implemented
17 during the PAGA Period.

18 13. Defendants continue to employ non-exempt employees within California.

19 14. Plaintiff is unaware of the true names and capacities of those Defendants identified as
20 DOES 1 through 50. Therefore, Plaintiff identifies those Defendants fictitiously. Plaintiff is informed,
21 believes and thereon alleges that at all relevant times each DOE Defendant was a parent, sister, or
22 related corporate entity of Defendants, or an owner, employee or agent of Defendants, and each related
23 entity, and was acting with the knowledge and authorization of each of the other Defendants. Plaintiff
24 will seek to amend this Complaint to allege the true names and capacities of each DOE Defendant
25 when their names have been ascertained and identified. Plaintiff is informed, believes and thereon
26 alleges that each of the Defendants sued as DOES 1 through 50 participated in, received the benefit
27 of, or was in some way responsible for one or more of the wrongful acts and omissions and some
28 portion of the damages alleged herein.

1 15. Plaintiff is informed, believes and thereon alleges that at all times material hereto, each
2 Defendant acted in all respects pertinent to this action as the agent of the other Defendant, carried out
3 a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant
4 are legally attributable to the other Defendant. Furthermore, Defendants in all respects acted as the
5 employer and/or joint employer of Plaintiff and the Aggrieved Employees.

6 16. Plaintiff is informed, believes and thereon alleges that Defendants, each and all of them,
7 at all times material hereto, were the joint employers, parent companies, successor companies,
8 predecessors in interest, affiliates, agents, employees, servants, joint venturers, directors, fiduciaries,
9 representatives, and/or co-conspirators of each of the remaining Defendants. Defendants, unless
10 otherwise alleged, at all times material hereto, performed all acts and omissions alleged herein within
11 the course and scope of said relationship(s), and are a proximate cause of Plaintiff's damages as herein
12 alleged.

13 17. Plaintiff is informed, believes and thereon alleges, that there exists a unity of interest
14 in ownership between Defendants and DOES 1 through 50, inclusive, such that any individuality and
15 separateness between the individual and the corporation does not exist, as Defendants, and DOES 1
16 through 50, inclusive, are alter egos, in that: (1) Defendants are and at all times mentioned herein were
17 mere shells, instrumentalities and conduits through which DOES 1 through 50, inclusive, carried out
18 their business in the business name, exercising complete control and dominance over such business;
19 (2) that Defendants were conceived, intended and used by DOES 1 through 50, inclusive, as devices
20 to avoid individual liability and in place of Defendants, and DOES 1 through 50, inclusive, and were
21 without the financial solvency and responsibility required by law; and (3) that all of the assets of the
22 Defendants have been transferred to DOES 1 through 50, inclusive, or some other individual or entity
23 which he or she owns or controls, with the intent to hinder, delay or defraud creditors of Defendants,
24 leaving Defendants with no assets. Further, Plaintiff is informed, believes and thereon alleges, that
25 there exists a principal-agency relationship between and among Defendants.

26 18. At all relevant times herein, Defendants were agents of each other and acting within
27 the course and scope of their agency.

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GENERAL ALLEGATIONS

19. At all relevant times herein, Defendants employed Plaintiff and other persons as non-exempt employees.

20. Plaintiff is informed and believes, and thereon alleges, that at all times mentioned herein, Defendants were advised by skilled lawyers, employees and other professionals who were knowledgeable about California wage and hour law, employment and personnel practices, and the requirements of California.

21. Through this action, Plaintiff alleges Defendants have consistently maintained and enforced against Plaintiff and Aggrieved Employees unlawful employment practices and policies which violate the California Labor Code and IWC Wage Orders.

22. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known they had a duty to compensate Plaintiff and Aggrieved Employees, and Defendants had the financial ability to pay such compensation but willfully, knowingly and intentionally failed to do so all in order to increase Defendants' profits.

23. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should have known that Plaintiff and Aggrieved Employees were entitled to receive at least minimum, straight time, and overtime wages, and that they were not receiving minimum, straight time, and overtime wages for all work that was required to be performed. During the PAGA Period, Plaintiff and other Aggrieved Employees regularly worked more than eight (8) hours per workday, 10 hours per workday, and/or over 40 hours per workweek. In violation of the Labor Code, Defendants failed to provide Plaintiff and Aggrieved Employees with paid sick days. Defendants also required Plaintiff and Aggrieved Employees to travel to and from worksites that were further than their normal commute to Defendants' headquarters without compensation for travel time. Defendants further failed to provide reporting time pay when Plaintiff and Aggrieved Employees arrived at worksites only to be turned away due to the weather (e.g., rain) without proper compensation or work for that day. In addition, Defendants would regularly only pay Plaintiff and Aggrieved Employees for their schedule start and end times, and did not compensate employees for off-the-clock work such as working outside of their scheduled shifts to timely complete tasks and receiving work-related communications while off-the-

1 clock. Further, Defendants rounded Plaintiff's and Aggrieved Employees' time worked, and
2 Defendants' rounding policy and practice primarily benefited Defendants to the detriment of the
3 employees.

4 24. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should
5 have known that Plaintiff and Aggrieved Employees were entitled to receive a timely, off-duty,
6 uninterrupted 30-minute meal period for every five (5) hours of work, or payment of one (1) additional
7 hour of pay at their regular rate of pay when they did not receive a compliant meal period. In violation
8 of the Labor Code and IWC Wage Orders, Plaintiff and Aggrieved Employees did not receive
9 compliant meal periods due to Defendants' workload, understaffing, policies, and practices.
10 Specifically, Plaintiff and other Aggrieved Employees regularly had their meal periods shortened,
11 interrupted, late, restricted to the worksite, rounded, auto-deducted, and/or missed altogether due to
12 Defendants' policy and practice of prioritizing work demands over taking compliant meal breaks,
13 understaffing, and failing to implement a compliant meal period policy and practice. For example,
14 Plaintiff's and Aggrieved Employees' meal periods were regularly taken after the fifth hour of work
15 due to late deliveries and/or scheduling. Defendants also failed to provide second meal periods when
16 Aggrieved Employees worked in excess of 10 hours in a workday. Defendants failed to compensate
17 Plaintiff and other Aggrieved Employees with an additional hour of pay at their regular rate for every
18 day in which they suffered a meal period violation.

19 25. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should
20 have known that Plaintiff and Aggrieved Employees were entitled to receive a 10-minute, off-duty,
21 uninterrupted rest period for every four (4) hours worked, or major fraction thereof, or payment of one
22 additional hour of pay at their regular rate of pay when they were not permitted to take a compliant
23 rest period. In violation of the Labor Code and IWC Wage Orders, Plaintiff and Aggrieved Employees
24 were not permitted to take compliant rest breaks due to Defendants' understaffing, busy workload,
25 policies, and practices as explained above. Specifically, two (2) 15-minute rest breaks were
26 consolidated with a 30-minute meal period for a single one (1) hour break per workday per employee.
27 As such, Defendants failed to provide second rest breaks when Plaintiff and Aggrieved Employees
28 worked over six (6) hours per workday and third rest breaks when they worked over 10 hours per

1 workday. Defendants failed to compensate Plaintiff and other Aggrieved Employees with an additional
2 hour of pay at their regular rate for every day in which they suffered a rest period violation.

3 26. During the PAGA Period, Defendants failed to authorize or permit Plaintiff and
4 Aggrieved Employees from taking recovery periods. In violation of the Labor Code and IWC Wage
5 Orders, Plaintiff and Aggrieved Employees were required to work outdoors at various construction
6 sites during hot days, including during summer, without access to shade or recovery periods to cool
7 down and prevent heat illness.

8 27. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should
9 have known that Plaintiff and Aggrieved Employees were entitled to reimbursements for their
10 necessary work-related business expenses. In violation of the Labor Code and IWC Wage Orders,
11 Defendants required Plaintiff and Aggrieved Employees to use their personal cell phones for work
12 related communications, to record their time worked on a timekeeping phone application per
13 Defendants' instructions, to navigate to worksites, and to document their work (e.g., taking and
14 sending pictures of completed work) without reimbursement for a reasonable portion of their cell
15 phone bills. In addition, Defendants required Plaintiff and Aggrieved Employees to use their personal
16 vehicles to travel to various worksites that were regularly further than their normal commute to work
17 without reimbursement. Further, Defendants required Plaintiff and other Aggrieved Employees to
18 purchase and/or maintain their own tools and safety equipment without reimbursement (e.g., drills,
19 cutters, hammers, meters, cutters, levels, helmets, gloves, etc.). In addition, Defendants required
20 Plaintiff and Aggrieved Employees to separately launder and maintain their heavily soiled uniforms,
21 which displayed Defendants' logo, without reimbursement. Defendants also failed to provide per diem
22 compensation to Plaintiff and Aggrieved Employees for out-of-pocket costs for travel to distant
23 worksites, and meals and lodging.

24 28. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should
25 have known that Plaintiff and Aggrieved Employees who separated from their employment with
26 Defendants during the statutory period were entitled to timely payment of all wages due. In violation
27 of the Labor Code, Plaintiff and formerly employed Aggrieved Employees did not receive payment of
28 all wages owed upon separation within the permissible time period due to, *inter alia*, Defendants'

1 failure to pay all wages including sick pay, minimum, regular, and overtime wages, failure to provide
2 meal and rest period premiums, and failure to reimburse expenses to Plaintiff and Aggrieved
3 Employees.

4 29. Plaintiff is informed and believes, and thereon alleges that Defendants knew or should
5 have known that Plaintiff and Aggrieved Employees were entitled to receive complete and accurate
6 wage statements. In violation of the Labor Code and IWC Wage Orders, Plaintiff and Aggrieved
7 Employees were not furnished with complete and accurate wage statements that show all of the
8 information required by Labor Code section 226, including, but not limited to, the gross and net wages
9 earned, the total hours worked, all applicable hourly rates in effect during the pay period, and the
10 corresponding number of hours worked at each hourly rate.

11 30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should
12 have known that Defendants were required to keep accurate records of the hours worked by Plaintiff
13 and Aggrieved Employees. In violation of the California Labor Code, Defendants failed to maintain
14 accurate records of hours worked by Plaintiff and Aggrieved Employees due to the unlawful practices
15 mentioned above.

16 31. Plaintiff is informed, believes, and thereon alleges that Defendants' actions as
17 described throughout this Complaint were willful.

18 **FIRST CAUSE OF ACTION**

19 **VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT OF 2004**

20 **(CAL. LAB. CODE §§ 2698, *ET SEQ.*)**

21 **(Against All Defendants)**

22 32. Plaintiff incorporates by reference all previous paragraphs of this Complaint as though
23 fully set forth herein.

24 33. California Labor Code Section 2699(a) specifically provides for a private right of
25 action to recover penalties for violations of the Labor Code: "Notwithstanding any other provision of
26 law, any provision of this code that provides for a civil penalty to be assessed and collected by the
27 Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards,
28 agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a

1 civil action brought by an aggrieved employee on behalf of himself or himself and other current or
2 former employees pursuant to the procedures specified in Section 2699.3.”

3 34. On August 16, 2024, Plaintiff gave written notice of the specified provisions alleged to
4 have been violated by Defendants including the facts and theories to support the alleged violations, as
5 required by Labor Code section 2699.3 and paid the filing fee. This written notice was provided via
6 certified mail to Defendants and to the LWDA by electronically filing the notice via the Department
7 of Industrial Relations’ website. In this civil action, Plaintiff seeks to recover penalties under Labor
8 Code Section 2699 pursuant to Section 2699.3 for the violations of the Labor Code described in this
9 Complaint. These penalties include, but are not limited to, penalties under California Labor Code
10 Sections 210, 226.3, 558(a), 1197.1, and 2699(f)(2).

11 35. The statute of limitations is tolled while a plaintiff exhausts his or her administrative
12 remedies with the LWDA prior to suit, which is required by Labor Code Section 2699.3(d).

13 36. In addition, Plaintiff seeks penalties for Defendants’ violation of California Labor Code
14 Section 1174(d). Pursuant to California Labor Code Section 1174.5, any person, including any entity,
15 employing labor who willfully fails to maintain accurate and complete records required by California
16 Labor Code Section 1174 is subject to a penalty under Section 1174.5. Pursuant to the applicable IWC
17 Order Section 7(A)(3), every employer shall keep time records showing when the employee begins
18 and ends each work period. Meal periods, and total hours worked daily shall also be recorded.
19 Additionally, pursuant to the applicable IWC Order Section 7(A)(5), every employer shall keep total
20 hours worked in the payroll period and applicable rates of pay.

21 37. Defendants’ conduct violates numerous Labor Code sections, including, but not limited
22 to, the following:

23 (a) Violation of Labor Code Sections 201-204, 206, 210, 256, 510, 558, 1194, 1197,
24 1197.1, and 1198 for failure to timely pay all earned wages (including minimum,
25 regular, and overtime wages) owed to Plaintiff and other aggrieved employees during
26 employment and upon separation of employment as herein alleged;

27 (b) Violation of Labor Code Sections 226.7 and 512 for failure to provide meal periods to
28 Plaintiff and other aggrieved employees and failure to pay premium wages for missed

meal periods as herein alleged;

(c) Violation of Labor Code Section 226.7 for failure to permit rest breaks to Plaintiff and other aggrieved employees and failure to pay premium wages for missed rest periods as herein alleged;

(d) Violation of Labor Code Section 226.7 and 1198 for failure to provide recovery periods to Plaintiff and other aggrieved employees and failure to pay premium wages for missed rest periods as herein alleged;

(e) Violation of Labor Code Sections 226 and 226.3 for failure to provide accurate itemized wage statements to Plaintiff and other aggrieved employees as herein alleged;

(f) Violation of Labor Code Sections 1174 and 1174.5 for failure to maintain accurate records regarding the employment of Plaintiff and other aggrieved employees as herein alleged; and

(g) Violation of Labor Code Sections 2800 and 2802 for failure to reimburse business expenses to Plaintiff and other aggrieved employees as herein alleged;

38. Pursuant to Labor Code Section 2699(c)(1), Plaintiff is an “aggrieved employee” because he was employed by the alleged violators and personally suffered each of the alleged violations committed against him, and therefore is properly suited to represent the interests of all other aggrieved employees.

39. Pursuant to Labor Code Sections 2699(a), 2699.3 and 2699.5, Plaintiff is entitled to recover civil penalties, in addition to other remedies, for violations of the Labor Code sections cited above.

40. For bringing this action, Plaintiff is entitled to attorney’s fees and costs incurred herein pursuant to Labor Code Section 2699(g)(1).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of himself, the Aggrieved Employees, and the State of California, prays for judgment and the following specific relief against Defendants, jointly and severally, as follows:

1. For civil penalties against Defendants on behalf of all Aggrieved Employees pursuant

1 to, *inter alia*, Labor Code Sections 210, 226.3, 558, 1174.5, 1197.1, and 2698, *et seq.*;

2 2. For reasonable attorneys' fees and costs of suit to the extent permitted by law, including
3 pursuant to California Labor Code Sections 2699(g), 2802(c) and California Code of Civil Procedure
4 Section 1021.5; and

5 3. For such other relief as the Court deems just and proper.

7 Dated: September 19, 2024

TORUS LLP

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9 By:  _____

Daniel J. Hyun

10 David Alami

11 Attorneys for Plaintiff ANTONIO GARIBAY
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