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14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15 **FOR THE COUNTY OF LOS ANGELES**

16 **Marco Villasenor**, individually and on behalf
17 of all similarly situated individuals,

18 Plaintiff,

19 vs.
20

21 **J.G. Boswell Company**, a California
22 Corporation; and **Does 1-10**, inclusive;

23 Defendants.
24
25
26
27
28

CASE NO. **24STCV26669**

REPRESENTATIVE COMPLAINT FOR:

1) **PAGA Penalties (Labor Code §§ 2698,
et seq.)**

1 Plaintiff Marco Villasenor, on behalf of the State of California, solely in his representative
2 capacity as a private attorney general under the Private Attorney General Act of 2004, Labor Code
3 § 2699, *et seq.* (“PAGA”), hereby brings this action on behalf of all “aggrieved employees” and
4 alleges as follows, by and through his counsel of record:

5 **PAGA ONLY ACTION**

6 1. PAGA authorizes “an aggrieved employee, acting as a proxy or agent of the state
7 Labor and Workforce Development Agency, to bring a civil action against an employer on behalf of
8 himself or herself and other current or former employees to recover civil penalties for Labor Code
9 violations they have sustained.” *Adolph v. Uber Techs.*, 14 Cal.5th 1104, 1113 (Cal. 2023).

10 2. “PAGA is designed primarily to benefit the general public, not the party bringing
11 the action.” *Id.*, at 1117. “A PAGA claim for civil penalties is fundamentally a law enforcement
12 action. The government entity on whose behalf the plaintiff files suit is the real party in interest.”
13 *Id.* PAGA’s default civil penalties are thus calculated to punish the employer’ for wrongdoing and
14 to deter violations rather than “compensate employees for actual losses incurred.” *Id.*

15 3. Under the authority expressed in *Adolph* and *Balderas v. Fresh Start Harvesting, Inc.*,
16 No. B326759, at *1 (Cal. Ct. App. Mar. 20, 2024), Mr. Villasenor does not bring suit in his individual
17 capacity and does not seek to recover anything through this suit other than civil penalties as
18 permitted under PAGA—he brings this action solely in his representative capacity under the
19 PAGA, on behalf of the State of California, the public, and all aggrieved employees of J.G. Boswell.

20 4. To the extent that statutory violations are mentioned for wage violations, Mr.
21 Villasenor does not seek underlying general and/or special damages for those violations, but only
22 references those predicate violations as part of the State’s claim for civil penalties under PAGA.

23 5. Nothing in this complaint is—or should be construed—as an attempt to seek any
24 relief that would not be available in a PAGA-only proceeding.

25 **THE PARTIES**

26 6. Plaintiff **Marco Villasenor** (“Plaintiff”) is a resident of the County of Kings in the
27 State of California. Mr. Villasenor was employed by Defendants as an hourly, non-exempt employee
28 of Defendants from in or around June 2022 to on or around April 1, 2024.

1 7. Defendant **J.G. Boswell Company** (“J.G. Boswell” or “Defendant”) is a California
2 Corporation with its principal place of business at 101 West Walnut Street, Pasadena, California
3 91103. Upon information and belief, the J.G. Boswell employs at least 100 employees.

4 8. The true names and capacities of the defendants named herein as Does 1 through 10,
5 inclusive, are unknown to Plaintiff at this time. Accordingly, Plaintiff brings this suit against them
6 by fictitious names pursuant to California Code of Civil Procedure section 474. Plaintiff believes
7 that each of the Doe Defendants is a California resident and/or does substantial business in the State
8 of California. At all relevant times, Does 1 through 10 were acting within the course and scope of
9 their employment and agency with Defendants. Plaintiff is informed and believes that each Doe
10 Defendant is responsible for the injuries and damages alleged herein. Plaintiff will amend this
11 complaint to reflect Does 1 through 10’s true names and capacities when they have been
12 determined.

13 9. Except as otherwise noted herein, Defendants participated in the acts alleged herein
14 and/or were the agents, servants, employees, or representatives of the other Defendants. At all
15 times relevant to this complaint, Defendants were acting within the course, scope, and authority of
16 their agency and employment such that the acts of one defendant are legally attributable to the other
17 Defendants. Defendants, in all respects, acted as employers and/or joint employers of Plaintiff and
18 Aggrieved Employees in that each of them exercised control over the wages, hours, and/or working
19 conditions of Defendants’ hourly non-exempt employees.

20 **JURISDICTION AND VENUE**

21 10. The court has jurisdiction over all causes of action in this complaint pursuant to
22 Article VI, section 10 of the California Constitution. No federal question is at issue; Plaintiff relies
23 solely on California statutes and law, including the Labor Code, IWC Wage Orders, Code of Civil
24 Procedure, and the Business & Professions Code.

25 11. Venue as to Defendants is proper in this Superior Court pursuant to California Code
26 of Civil Procedure section 395. The unlawful acts alleged have directly affected Plaintiff and
27 similarly situated employees within and throughout Los Angeles County.
28

12. At all times relevant to this complaint, Defendants have consistently denied their non-exempt employees the opportunities to take compliant 30-minute meal periods in accordance with California's Labor Code. Upon information and belief, Aggrieved Employees, including Plaintiff, were required to skip or interrupt their meal and/or rest periods to service machinery, answer phone calls, otherwise interrupt or cut short their meal and/or rest periods, or remain on duty and under Defendants' control during their meal and/or rest periods to perform other tasks at Defendants' directions due to Defendants' policies and practices, including their scheduling and staffing practices and policies. Accordingly, Defendants failed to authorize and permit compliant meal periods as required by law.

13. In the same manner, and as a matter of uniform and systemic policy, Defendant requires non-exempt employees to continue working during their rest periods by servicing machinery, answering phone calls, otherwise interrupting or cut short their rest periods, or remain on duty and under Defendants' control during their rest periods to perform other tasks at Defendants' directions due to Defendants' policies and practices, including their scheduling and staffing practices and policies. Accordingly, Defendants failed to authorize and permit compliant rest periods as required by law.

14. In failing to authorize and/or permit meal and rest periods, Defendants have also implemented a uniform policy of denying compensation in lieu of meal and rest periods to its non-exempt employees, notwithstanding its actual knowledge that such employees were uniformly denied compliant meal and rest periods.

15. Defendants further failed to compensate employees for all time worked time when employees were forced to interrupt and/or work through their meal periods but were clocked out under Defendants' time-keeping system (and therefore treated as not working). This resulted in employees being denied both straight time and overtime pay, where applicable, for the time during which they were on call or under Defendants' control despite being off the clock for timekeeping purposes.

16. As a matter of uniform and systemic policy, Defendants required non-exempt

1 employees to utilize their personal cell phones for work-related purposes, including answering texts
2 and calls from their supervisors while at work or on a break, for purposes of scheduling and re-
3 scheduling future work, being assigned tasks, and general administrative matters. Defendants fur-
4 ther failed to compensate their non-exempt employees for reasonable costs associated with utilizing
5 their personal cell phones for work-related purposes.

6 17. In the same manner, and as a matter of uniform and systemic policy Defendants re-
7 quired non-exempt employees to purchase work-related equipment, including drills and gloves,
8 necessary for performance of their work duties without reimbursing those employees for the costs
9 associated with their equipment purchases.

10 18. As a matter of uniform and systemic policy, Defendants failed to provide its non-
11 exempt employees with accurate itemized wage statements in accordance with California's Labor
12 Code. Upon information and belief, Defendants failed to furnish Plaintiff, or Aggrieved Employees,
13 either semimonthly or at the time of each payment of wages, either as a detachable part of the check
14 or separately, an accurate, itemized statement in writing showing sick pay, gross wages earned, all
15 deductions, and the net wages earned by Plaintiff for the inclusive dates for which the Plaintiff
16 worked, including the unpaid premium payments owed to Plaintiff and the Aggrieved Employees
17 for their missed meal and rest breaks.

18 **FIRST CAUSE OF ACTION**

19 ***California Labor Code §2699, et seq.***

20 ***Private Attorneys General Act ("PAGA") Penalties***

21 **(Plaintiff and Aggrieved Employees Against Defendants)**

22 19. Standing. Under the California Private Attorneys General Act ("PAGA"), Labor
23 Code § 2698, *et seq.*, an aggrieved employee may bring a representative action as a private attorney
24 general, on behalf of himself and other current or former employees to recover penalties for an em-
25 ployer's violations of the Labor Code and IWC Wage Orders.

26 20. Mr. Villasenor, by nature of his employment with Defendants, is an aggrieved em-
27 ployee for purposes of this Complaint with standing to bring an action under PAGA.

28 21. Plaintiff, on behalf of the State of California and all Aggrieved Employees, brings this

1 representative action pursuant to Labor Code § 2699, *et seq.*, seeking civil penalties for Defendants’
2 violation of Labor Code §§ 201, 202, 203, 204, 206.5 226, 226.3, 226.7, 510, 512, 558, 1182.12, 1174,
3 1194, 1194.2, 1197, 1197.1, 1199, 1401, and 2802 as described herein, plus attorneys’ fees and costs.

4 22. Mr. Villasenor does not bring suit in his individual capacity and does not seek to
5 recover anything through this suit other than civil penalties as permitted under PAGA—he brings
6 this action solely in his representative capacity under the PAGA on behalf of the State of California
7 and aggrieved employees of J.G. Boswell.

8 23. Entitlement to Penalties. Under the California Private Attorneys General Act
9 (“PAGA”), Labor Code § 2698, *et seq.*, an aggrieved employee may bring a representative action as
10 a private attorney general, on behalf of himself and other current or former employees, against
11 whom a violation of the same provision(s) was committed, as well as the general public, to recover
12 penalties for an employer’s violations of the Labor Code and IWC Wage Orders within one year of
13 filing a notice to the Labor and Workforce Development Agency. These penalties are in addition to
14 any other relief available under the Labor Code and are allocated sixty-five percent to the Labor and
15 Workforce Development Agency and thirty-five percent to the affected employees.

16 24. These penalties may be “stacked” separately for each of Defendants’ violations of
17 the Labor Code subject to the exceptions enumerated in Labor Code section 2698(i). *See, e.g., Her-*
18 *nandez v. Towne Park, Ltd.*, No. CV 12-02972, 2012 WL 2373372, at *17 n.77 (C.D. Cal. June 22,
19 2012); *see also O’Connor v. Uber Techs., Inc.*, No. 13-CV-03826-EMC, 2016 WL 3548370, at *7 (N.D.
20 Cal. June 30, 2016); Labor Code § 2698(i).

21 25. The Aggrieved Employees are entitled to civil penalties under PAGA arising from
22 the following predicate violations of the Labor Code.¹

23 26. *Failure to Pay Minimum Wage for All Hours Worked.* California law requires
24 employers to compensate employees for all time that an employee is “suffered or permitted to
25 work,” which includes all time “when any employer ‘directs, commands or restrains’ an
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27 ¹ To the extent that statutory violations are mentioned for wage violations, Plaintiff does not seek
28 underlying general and/or special damages for those violations, but only references them as part of
the State’s claim for civil penalties under PAGA for those predicate violations.

1 employee.” See, e.g., *Morillion v. Royal Packing Co.*, 22 Cal. 4th 575, 583 (2000).

2 27. Defendants failed to compensate Plaintiff and the Aggrieved Employees for all hours
3 worked because Defendants had a policy and/or practice whereby they required and/or pressured
4 Aggrieved Employees to work under Defendants’ control while off-the-clock, including but not
5 limited to forcing or requiring Aggrieved Employees to work while they were clocked out for their
6 meal periods.

7 28. Defendants further failed to pay Plaintiff and Aggrieved Employees any wages for
8 time engaged in this off-the-clock work.

9 29. *Failure to Pay Required Overtime.* California Labor Code §§ 510 and 1198 provide that
10 it is unlawful to employ persons without compensating them at a rate of pay either time-and-one-
11 half or two-times that person’s regular rate of pay, depending on the number of hours worked by
12 the person on a daily or weekly basis.

13 30. Plaintiff and Aggrieved Employees who work more than eight hours in a day or more
14 than forty hours in a workweek are to be paid at the rate of time and one-half (1½) for all hours
15 worked in excess of eight hours in a day or more than forty hours in a workweek. An employee’s
16 regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee,
17 including commissions, non-discretionary bonuses and incentive pay. *Alvarado v. Dart Container*
18 *Corp.*, 4 Cal. 5th 542, 573 (2018), as modified (Apr. 25, 2018).

19 31. Plaintiff and other Aggrieved Employees were not paid overtime premiums for all of
20 the hours they worked in excess of eight hours in a day, in excess of twelve hours in a day, in excess
21 of eight hours on the seventh consecutive day of work in a workweek, and in excess of forty hours
22 in a week.

23 32. *Failure to Provide Compliant Meal Periods.* Labor Code section 226.7, 512(a), and 1198
24 provide that no employer shall require an employee to work during any meal period mandated by
25 an applicable order of the IWC. “An off-duty meal period, therefore, is one in which the employee
26 is relieved of all duty during the 30-minute meal period . . .an employer’s obligation is to provide an
27 off-duty meal period: an uninterrupted 30–minute period during which the employee is relieved of
28 all duty.” *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1035 (2012).

33. Defendants' policies and practices served to deprive the Aggrieved Employees of legally compliant 30-minute breaks free of employer control and/or relieved of all duties.

34. Upon information and belief, employees were required to skip breaks, interrupt their breaks, cut them short, take them after the fifth hour of work, work through them, or remain under Defendant's control during breaks due to Defendants' policies and practices.

35. *Failure to Provide Compliant Rest Periods.* Labor Code § 226.7, 512(a), and 1198 provide that no employer shall require an employee to work during any rest or meal period mandated by an applicable order of the IWC.

36. Employers must authorize and permit employees to be relieved of all duty during their rest and meal periods: "A rest period, in short, must be a period of rest."² *Augustus v. ABM Sec. Servs., Inc.*, 2 Cal.5th 257, 273 (2016).

37. Employees must also be free to leave the employer's premises during their rest period. *See id.* at 270; *see also* Department of Industrial Relations, "Rest Periods," *available at* https://www.dir.ca.gov/dlse/FAQ_RestPeriods.htm ("Q. Can my employer require that I stay on the work premises during my rest period? A. No, your employer cannot impose any restraints not inherent in the rest period requirement itself.").

38. On information and belief, Defendants failed to authorize or permit all required compliant paid rest periods for shifts worked by Aggrieved Employees by requiring them to skip rest periods, interrupt rest periods, work through rest periods, or remain on the premises during rest periods.

39. *Failure to Provide and Maintain Compliant Wage Statements.* Labor Code § 226 requires employers to furnish employees with an accurate, itemized statement in writing showing, among other things, (1) gross wages earned; (2) total hours worked by the employee (for hourly-paid, non-exempt employees); (3) all deductions; (4) net wages earned; (5) the inclusive dates of

² Employees must also be free to leave the premises. *Augustus*, 2 Cal. 5th at 270; *see also* Department of Industrial Relations, "Rest Periods/Lactation Accommodations," *available at* https://www.dir.ca.gov/dlse/FAQ_RestPeriods.htm ("Q. Can my employer require that I stay on the work premises during my rest period? A. No, your employer cannot impose any restraints not inherent in the rest period requirement itself.")

1 the period for which the employee is paid; (6) the name of the employee and the last four digits of
2 his or his social security number; (7) the name and address of the legal entity that is the employer;
3 and (8) all applicable hourly rates in effect during the pay period and the corresponding number of
4 hours worked at each hourly rate by the employee.

5 40. At all times relevant to this complaint, Defendants' failure to pay premium wages
6 for missed meal and/or rest periods further ensured that Plaintiff and Aggrieved Employees' wage
7 statements inaccurately reflected gross and net wages earned. Defendants' failure to compensate
8 all hours worked, earned premium pay, and/or all required overtime hours and rates further left the
9 wage statements they provided to employees to be inaccurate.

10 41. Defendants have also failed to keep accurate payroll records for Plaintiff and
11 Aggrieved Employees in accordance with Labor Code § 1174. Defendants' failure to keep and
12 maintain accurate payroll records reflecting hours worked and wages earned has impeded Plaintiff
13 and Aggrieved Employees' ability to calculate unpaid wages earned.

14 42. Defendants knowingly and intentionally failed to comply with Labor Code § 226,
15 causing injury and damages to Plaintiffs and Aggrieved Employees.

16 43. *Failure to Reimburse Necessary Business Expenses.* Labor Code § 2802 provides that
17 "[a]n employer shall indemnify his or his employee for all necessary expenditures or losses incurred
18 by the employee in direct consequence of the discharge of his or his duties, or of his or his obedience
19 to the directions of the employer." Lab. Code § 2802.

20 44. On information and belief, Defendants required Aggrieved Employees to use their
21 personal cellphones in the regular course of employment by answering texts and/or calls from their
22 supervisors for purposes of scheduling and re-scheduling future work, being assigned tasks, and
23 general administrative matters but failed to reimburse them for this usage. *See Cochran v. Schwan's*
24 *Home Serv., Inc.*, 228 Cal. App. 4th 1137, 1144 ("We hold that when employees must use their
25 personal cell phones for work related calls, Labor Code section 2802 requires the employer to
26 reimburse them. Whether the employees have cell phone plans with unlimited minutes or limited
27 minutes, the reimbursement owed is a reasonable percentage of their cell phone bills.").

28 45. On information and belief, Defendants required Aggrieved Employees to purchase

1 work-related equipment, including drills and gloves, necessary for performance of their work duties
2 without reimbursing those employees for the costs associated with their uniform purchases.

3 46. Procedural Requirements Met. On August 6, 2024, Plaintiff electronically filed a
4 notice of claims with the LWDA and sent a copy to Defendants by certified mail. Plaintiff did not
5 receive notice from the LWDA that it would be investigating the complaint, nor did Plaintiff receive
6 notice from the LWDA that it was declining to investigate with the 65-day period under Labor Code
7 § 2699.3. On October 10, 2024, the sixty-five-day notice period expired as to all defendants. Since
8 the LWDA took no steps within the prescribed time to intervene, Plaintiff has exhausted all required
9 administrative remedies required to seek penalties under PAGA. *See* Lab. Code § 2699.3(a)(2). A
10 true and correct copy of Plaintiff's PAGA Notice is attached herein as **Exhibit A**.

11 47. Plaintiff—solely as a representative of the People of the State of California—is
12 entitled to seek any and all penalties otherwise capable of being collected by the Labor Commission
13 or Department of Labor Standards Enforcement (“DLSE”) on behalf of the State of California
14 through this Action.

15 **PRAYER FOR RELIEF**

16 WHEREFORE, Plaintiff respectfully prays for judgment as follows:

- 17 A. For civil penalties under PAGA to be determined by trial;
18 B. For pre- and post-judgment interest as allowed;
19 C. For preliminary and permanent injunctive relief;
20 D. For reasonable attorney's fees and costs and expert fees and costs; and
21 E. For such other relief as this Court deems just and proper.

22
23 Dated: October 11, 2024

Respectfully submitted,

24 **KING & SIEGEL LLP**

25
26 By: Elliot J. Siegel
27 Elliot J. Siegel
28 Attorneys for Plaintiff

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Dated: October 11, 2024

BARAHMAND LAW GROUP

By: /s/ Navid Barahmand
Navid Barahmand
Attorneys for Plaintiff

Exhibit A

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August 6, 2024

Original filed online via the LWDA's PAGA Claim Notice Portal

Labor & Workforce Development Agency
1515 Clay Street, Ste. 801
Oakland, CA 94612

Copy Sent via certified mail to:

J.G. BOSWELL COMPANY
c/o Elaine Selan - Agent for Service of Process
416 W San Ysidro Boulevard, L-1958
San Ysidro, California 92173

Re: Marco Villasenor v. J.G. Boswell Company et al.

To Whom it May Concern:

We represent Marco Villasenor against defendant J.G. Boswell Company (referred to as "Defendant") in a lawsuit soon to be filed against Defendant in Los Angeles County Superior Court (the "Action"). A copy of the proposed PAGA Representative Complaint to be filed in the Action is enclosed as **Exhibit A**.

Together with this correspondence, the enclosed Complaint serves as notice pursuant to Labor Code § 2699.3, *et seq.* that we intend to prosecute representative claims for civil penalties under the Private Attorney's General Act ("PAGA") on behalf of those of Defendant's employees employed from one year prior to filing of this Notice through trial (the "Aggrieved Employees") for the Labor Code violations asserted in the Complaint. *See* Cal. Lab. Code §§ 2699, *et seq.*

As set forth in greater detail in the Complaint, Defendant violated their obligations under the California Labor Code by (1) failing to pay minimum wage for all hours worked; (2) failing to pay required overtime pursuant to Lab. Code §§ 510, 1198 (3-4) failing to provide rest and meal breaks

pursuant to Lab. Code § 226.7(b); (5) failing to reimburse employees for business expenditures pursuant to Lab. Code §2802; and (6) failing to provide and maintain records under Lab. Code §§ 226, 432, and 1198.5 due to Defendant's practices and policies.

Please feel free to contact us with any questions.

Sincerely,

A handwritten signature in cursive script that reads "Elliot J. Siegel".

Elliot J. Siegel
KING & SIEGEL LLP