

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

JUN 23 2020

BY Justin Manassee
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 10 himself and all other aggrieved employees.

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

12 **FOR THE COUNTY OF SAN BERNARDINO**

13 ARTHUR BARNES, on behalf of himself and
 14 all other aggrieved employees,

15 Plaintiff,

16 vs.

17 TARGET CORPORATION, a Minnesota
 Corporation; and DOES 1 through 10,
 18 inclusive,

19 Defendant.

) Case No.

CIV DS 2012750

) **COMPLAINT FOR PAGA PENALTIES**

) **1. PRIVATE ATTORNEY GENERAL**
) **ACTION COMPLAINT FOR**
) **VIOLATION OF LABOR CODE**
) **§ 2698, ET SEQ.**

) **DEMAND FOR JURY TRIAL**

) **200710-0129 \$435**

BY FAX

1 Plaintiff ARTHUR BARNES (“Representative Plaintiff”) alleges as follows:

2 1. This is a civil action seeking only the recovery of penalties for Plaintiff and all other
3 Aggrieved Employees, plus attorneys’ fees and costs under California Labor Code section 2698 *et*
4 *seq.* stemming from the following violations of the Labor Code as noted in the Private Attorney
5 General Act Section 2699.5: 201, 202, 203, 204, 223, 510, 558, 1194, 1198, and 1199.

6 2. Representative Plaintiff is unaware of the true names and capacities, whether
7 corporate or individual, or otherwise, of defendants named as DOES 1 through 10, inclusive.
8 Pursuant to California Code of Civil Procedure section 474, Representative Plaintiff will seek leave
9 of court to amend this complaint to state said defendants’ true names and capacities when the same
10 have been ascertained. Representative Plaintiff is informed and believes and based on such
11 information and belief alleges that said fictitiously-named defendants are responsible in some
12 manner for the injuries and damages to Representative Plaintiff and the other Aggrieved
13 Employees as further alleged herein.

14 3. The defendant Target Corporation (hereinafter “Defendant”) operates and, at all
15 times during the relevant liability period (one years prior to the filing of the notice with the LWDA
16 in this matter (March 2, 2019)), has done business as an retail business in San Bernardino County
17 and throughout the State of California. In its endeavor, the Defendant operates a number of
18 distribution centers (DCs) in California in which they hire thousands of employees to work as
19 warehouse workers. This lawsuit challenges Defendant’s wage and hour practices as they concern
20 its hourly California DC employees at its Rialto, T-3806 California Distribution Center.

21 4. Mr. Barnes (hereinafter “PAGA Representative”), as well as the other current and
22 former non-exempt employees that worked for Defendant throughout California (hereinafter the
23 “Aggrieved Employees”) during the PAGA liability period were: (1) not paid overtime in violation
24 of Labor Code §§ 204, 1194, 510, 515, 1198 and 1999; (2) not paid for all wages in violation of
25 Labor Code §§ 201, 202, 203, 204, 223, 510, 1194, 1198 through the Industrial Welfare
26 Commission (“IWC”) Wage Orders; (3) not provided accurate itemized wage statements in
27 violation of Labor Code §§ 226, 1174, and 1175; and (4) not paid all wages due at the time of
28 termination in violation of Labor Code § 203 while employed by Defendant.

1 5. From March 21, 2019 through August 11, 2019, Defendant had a consistent policy
2 of failing to provide to its T-3806 Distribution Center non-exempt hourly employees in California,
3 itemized wage statements that included the correct gross wages earned, the correct net wages
4 earned, and the correct hourly rates in effect during the pay period and the corresponding correct
5 number of hours worked at each hourly rate, including straight, overtime and double time hours
6 and rates.

7 6. The PAGA Representative challenges the validity of Defendant's alternative
8 workweek schedules ("AWS") that it relied upon for the Aggrieved Employees that worked under
9 an AWS at Defendant's T-3806 facility in California. Employees that worked pursuant to an AWS
10 at T-3806 for Defendant were improperly denied overtime after 8 hours in a day as required by
11 state law.

12 7. The PAGA Representative believes that Defendant's AWS is invalid because
13 Defendant cannot establish that it properly held the required election due to the extensive use of
14 absentee ballots and methods of voting away from the workplace, not during the election, or that it
15 timely provided the required written disclosures in a non-English language. Defendant will also be
16 unable to show that there were proper elections where at least two-thirds (2/3) of the employees
17 that were in the defined work unit for the AWS election voted in favor of the proposed AWS,
18 which as a matter of law invalidates the election.

19 8. An employer has the burden of establishing all of the required elements if it seeks to
20 rely on an AWS to evade its obligation to pay employees overtime after 8 hours of work in a day.
21 Maldonado v. Epsilon Plastics, Inc., 22 Cal. App. 5th 1308 (2018). First, the proposal for the AWS
22 must be in the form of a written agreement and must designate a regularly scheduled alternative
23 workweek in which the specified number of workdays and work hours are regularly recurring. Id.;
24 IWC Wage Orders § 3(C)(1). The employer may propose a single work schedule that would
25 become the standard schedule for workers in the work unit, or a menu of work schedule options,
26 from which each employee in the unit would be entitled to choose. Wage Orders § 3(C)(1). If the
27 employer proposes a menu of work schedule options, the employee may, with the approval of the
28 employer, move from one menu option to another. Wage Orders § 3(C)(1). In order to be valid,

1 the proposed AWS must be adopted in a secret ballot election, before the performance of work, by
2 at least a two-thirds (2/3) vote of the affected employees in the work unit. Id.; Wage Orders
3 § 3(C)(2), see also Labor Code § 511. The PAGA Representative contends that Defendant failed to
4 follow all of these requirements.

5 9. Prior to the secret ballot vote, the employer is required to make a disclosure in
6 writing to the affected employees, which must include the effects of the proposed arrangement on
7 the employees' wages, hours and benefits. Wage Orders § 3(C)(3). The disclosure shall include
8 meetings, duly noticed and held at least 14 days prior to voting, for the specific purpose of
9 discussing the effects of the alternative work week schedule. Id., Wage Orders § 3(C)(3). The
10 employer must also provide the disclosure "in a non-English language, as well as in English, if at
11 least 5% of the affected employees primarily speak that non-English language." Wage Orders
12 § 3(C)(3). The employer shall mail the written disclosures to employees who do not attend the
13 meeting. The Wage Order clearly provides that the employer's "failure to comply with this
14 paragraph shall make the election null and void." Wage Orders § 3(C)(3). The PAGA
15 Representative contends that Defendant failed to follow all of these requirements as well.

16 10. The Wage Orders and Labor Code § 511 also provide that only secret ballots may
17 be cast by affected employees in the work unit, and the results of the election must be reported by
18 the employer to the Office of Policy, Research and Legislation within 30 days after results are
19 final. Additionally, the employer cannot intimidate or coerce employees to vote either in support
20 of or in opposition to the proposed alternative work week. Wage Orders § 3(C)(8).

21 11. The PAGA Representative's claim for violation of Labor Code § 203 is derivative
22 of the unpaid wages and overtime Labor Code violations. It is a fundamental policy of California
23 that employees who are discharged or who resign are owed their final wages immediately, or
24 within 72 hours, as prescribed by Labor Code Sections 201 and 202. (Davis v. Morris,
25 37 Cal.App.2d 269, 274 (1940).) Labor Code Section 203 provides for a penalty of daily wages for
26 up to 30 calendar days. This 30-day period is calculated using a daily rate of pay – and multiplying
27 by 30. (Mamika v. Barca, 68 Cal.App.4th 487, 493-94 (1998).) Section 203 does not require that
28 the employer intended the action; merely that the action occurred and was within the employer's

1 control. (8 C.C.R. § 13520; see also Davis v. Morris, 37 Cal.App.2d 269 (1940).) In other words,
2 the PAGA Representative need not establish that Defendant intended to underpay its employees.
3 Rather, the PAGA Representative need only prove that Defendant could have paid him all unpaid
4 wages earned and failed to do so. For the reasons set forth above, Defendant could have and
5 should have paid the Aggrieved Employees all wages due for the time that they were under its
6 control, premiums for late unprovided meal periods, and overtime after 8 hours of work in a day
7 and/or 40 hours in a week, including double time when applicable.

8 12. Plaintiff, on behalf of himself and all other Aggrieved Employees current and
9 former employees of Defendant, through this action seek payment of penalties under the Private
10 Attorney General Act (“PAGA”) and attorneys’ fees, interest, and costs pursuant to the PAGA
11 statute.

12 VENUE AND JURISDICTION

13 13. The California Superior Court has jurisdiction in this matter due to Defendant’s
14 violations of the Labor Code. The California Superior Court also has jurisdiction in this matter
15 because penalties sought herein exceed the minimal jurisdictional limits of the Superior Court and
16 will be established at trial, according to proof.

17 14. Venue as to Defendant is proper in San Bernardino County and in this judicial
18 district, pursuant to California Code of Civil Procedure sections 395(a) and 395.5 because
19 Defendant operates extensively in San Bernardino County, many of the breaches occurred and
20 liability for the acts complained of herein arose in the County of San Bernardino and in this judicial
21 district. Defendant provided hundreds of employees to clients in this County, including the named
22 Representative Plaintiff, including engaging in the conduct giving rise to the penalties in this action
23 and because Defendant is conducting business within the County of San Bernardino.

24 STATEMENT OF FACTS

25 15. Representative Plaintiff Barnes was hired by Defendant as a Warehouse Worker in
26 Defendant’s T-3806 “Distribution Center” located in Rialto, California. Representative Plaintiff
27 worked for Target as a Warehouse Worker in the T-3806 Distribution Center during the PAGA
28 Period.

16. During the entire period of his employment with Defendant, Representative Plaintiff was a dedicated and exemplary employee, and performed his duties for Defendant in a diligent and thorough manner.

17. While employed with Defendant, Representative Plaintiff and the Aggrieved Employees were regularly required to work shifts in excess of 8 hours without the payment of overtime after 8 hours of work in day/shift during the PAGA Period.

18. Defendant has had a consistent policy during the of failing to pay for overtime hours after 8 hours of work in a day/shift by the Defendants' non-exempt hourly T-3806 DC employees in California in violation of California law.

19. Furthermore, Defendant's wage statements that were issued for all work performed between March 21, 2019 and August 11, 2019 listed the incorrect rates of pay, hours worked and incorrect earnings as a result of their failure to pay overtime after 8 hours of work in a day/shift. Thus, the total gross and net earnings, as well as straight time and overtime hours listed on the employees' pay stubs are incorrect as they do not include the correct number of straight or overtime hours as the Defendant did not pay overtime after 8 hours in a day/shift even though employees were regularly scheduled to work 10 hour and 12 hour shifts.

FIRST CAUSE OF ACTION

VIOLATION OF CALIFORNIA LABOR CODE SECTION 2698 ET. SEQ.

(By Representative Plaintiff Against Defendant Target Corporation and Does 1 through 10, inclusive)

20. Representative Plaintiff hereby re-alleges and incorporates all preceding paragraphs as though fully set forth herein.

21. For part of the one (1) year period preceding the filing of notice with the LWDA on March 2, 2020 (“PAGA Period”) Defendant had a uniform practice and procedure of failing to pay the Aggrieved Employees for hours worked over 8 hours per day or 40 hours in a week as well as applicable double-time, in violation of Labor Code sections 1194, 1198, and 510.

22. Defendant had a consistent policy of failing to pay overtime wages to its hourly non-exempt Distribution Center employees at its T-3806 Rialto, California DC in violation of California state wage and hour laws by having employees work without the payment of overtime

1 after 8 hours of work in a day/shift. Defendant in part utilize unlawful alternative workweek
2 schedules in order to avoid paying lawfully earned overtime, including double time. This practice
3 systematically undercompensated the Representative Plaintiff and the Aggrieved Employees
4 throughout the PAGA Period.

5 23. As a result of the unlawful acts of Defendant, Representative Plaintiff and the
6 Aggrieved Employees have been deprived of their full overtime wages in violation of Labor Code
7 sections 218.5, 510, 558, 1194, and 1198.

8 24. Section 226(a) of the California Labor Code requires Defendant to provide itemized
9 wage statements at the time of payment of wages which include but are not limited to the
10 following: the correct gross wages earned; the correct total hours worked by the employee; the
11 correct net wages earned; the inclusive dates of the period for which the employee is paid; and all
12 applicable hourly rates in effect during the pay period and the corresponding correct number of
13 hours worked at each hourly rate by the employee.

14 25. Representative Plaintiff contends that they and the Aggrieved Employees have been
15 injured by Defendant's failure to provide all of the requisite information on its itemized wage
16 statements under Labor Code § 226(a) in that such failure, *inter alia*, masks possible and actual
17 underpayments to Defendant's employees; and make it difficult for Defendant's employees to
18 verify that they have in fact been paid the proper amounts owing for all hours worked.

19 26. California Labor Code section 201 requires an employer who discharges an
20 employee to pay all compensation due and owing to that employee immediately upon discharge.

21 27. California Labor Code section 203 provides that if an employer willfully fails to
22 pay compensation promptly upon separation from employment, as required by either Sections 201
23 or 202, then the employer is liable for waiting time penalties in the form of continued
24 compensation for up to 30 work days.

25 28. Defendant willfully failed and refused to timely pay overtime compensation to
26 Representative Plaintiff and Aggrieved Employees whose employment terminated. As a result,
27 Defendants are liable for PAGA penalties for violations of Labor Code section 203 as well.

28 ///

29. As a result of Defendant's unlawful conduct, Representative Plaintiff and the Aggrieved Employees have suffered damages in an amount, subject to proof, as they were not paid all wages due.

PRAAYER

WHEREFORE, Plaintiff and all other Aggrieved Employees pray for judgment and penalties against Defendant as follows:

1. For all statutory penalties available under Labor Code section 2698 et seq.;
2. For costs of suit incurred herein and reasonable attorneys' fees pursuant to the referenced PAGA statute; and
3. For such other and further relief as the Court may deem just and proper under PAGA.

Dated: June 23, 2020

BECERRA LAW FIRM
JOSEPH R. BECERRA

By: Joseph R. Becerra
Attorneys for Representative
Plaintiff ARTHUR BARNES

Dated: June 23, 2020

GLEASON & FAVAROTE, LLP
TOREY JOSEPH FAVAROTE

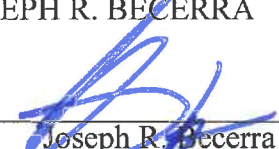
By: Torey Joseph Favarote
Attorneys for Representative
Plaintiff ARTHUR BARNES

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury.

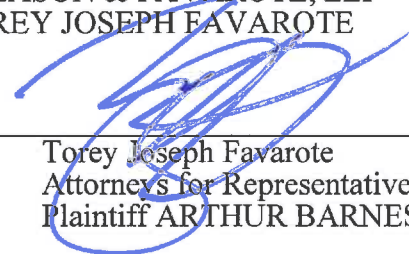
Dated: June 23, 2020

BECERRA LAW FIRM
JOSEPH R. BECERRA

By: 
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Plaintiff ARTHUR BARNES

Dated: June 23, 2020

GLEASON & FAVAROTE, LLP
TOREY JOSEPH FAVAROTE

By: 
Torey Joseph Favarote
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Plaintiff ARTHUR BARNES