

CIV-200925-CIV-DS2020848-CASEEN-083702



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Complaint and Party information entered



NEW FILE

SEP 25 2020

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Attorney for Plaintiff and the aggrieved employees

BY MELISSA PEREZ, DEPUTY

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO**

By Fax

MARIA VILLEGAS, individually, and on
behalf of all others similarly situated,

Plaintiff,

v.

MYOJO USA, INC., a corporation; and DOES
1 through 50, inclusive,

Defendants.

CASE NO. CIV DS 2020848

**COMPLAINT FOR VIOLATION OF THE
CALIFORNIA LABOR CODE PRIVATE
ATTORNEYS GENERAL ACT OF 2004
("PAGA")**

DEMAND FOR JURY TRIAL

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1. As private, for-profit businesses, Defendant has implemented common policies and practices that have resulted in systematic violations of California's wage and hour laws. Defendant is jointly and severally liable for all of the violations of the California Labor Code alleged herein.

3. Defendant also uniformly failed to pay Plaintiff and other aggrieved employees proper overtime and minimum wages due the fact that they willfully turn a blind eye to off-the-clock work that Plaintiff and other non-exempt employees perform as a direct consequence of Defendant's understaffing and imposition of an unreasonable workload.

JURISDICTION AND VENUE

5. The Superior Court of the State of California has jurisdiction in this matter because Plaintiff is a resident and citizen of California, Defendant Myojo USA, Inc. is a California corporation that is qualified to do business in California and regularly conducts business in

1 California. All aggrieved employees are citizens of California. No federal question is at issue
2 because Plaintiff's claims are based solely on California law.

3 6. Venue is proper in this judicial district and the County of San Bernardino because
4 Myjo USA, Inc. conducts business in, and their principal place of business is located in, the
5 County of San Bernardino. Myjo USA, Inc.'s principal office is located at 6220 Prescott Court,
6 Chino, California 91710.

7 THE PARTIES

8 7. Plaintiff is a resident and citizen of the State of California and a former employee
9 of Defendant. At all relevant times herein, Plaintiff was employed by Defendant as a packer at
10 Myjo USA, Inc.'s business located in Chino, California.

11 8. Myjo USA, Inc. operates a ramen noodle manufacturing and retail business.
12 These products are then shipped throughout Southern California. Plaintiff and aggrieved
13 employees are employed by Defendant in the State of California.

14 9. Myjo USA, Inc. hired and employed Plaintiff and aggrieved employees and
15 employs them to work at their business. Myjo USA, Inc. exercises control over the wages, hours,
16 and working conditions of Plaintiff and aggrieved employees.

17 10. The true names and capacities of DOES 1 through 50, inclusive, are unknown to
18 Plaintiff at this time, and Plaintiff therefore sues such DOE Defendants under fictitious names.
19 Upon information and belief, each Defendants designated as a DOE is in some manner highly
20 responsible for the occurrences alleged herein, and Plaintiff and other non-exempt employees'
21 injuries and damages, as alleged herein, were proximately caused by the conduct of such DOE
22 Defendants. Plaintiff will seek leave of the Court to amend this Complaint to allege the true names
23 and capacities of such DOE Defendants when ascertained.

24 PAGA REPRESENTATIVE ACTION ALLEGATIONS

25 11. Pursuant to the California Private Attorneys General Act of 2004 ("PAGA"),
26 California Labor Code §§ 2698-2699.5, Plaintiff brings this action on behalf of aggrieved
27 employees, i.e., all non-exempt employees of Defendant who are California citizens and who
28

1 performed work for Defendant in the State of California at any time during the applicable statute
2 of limitations period.

3 12. On June 17, 2020, Plaintiff gave written notice by certified mail pursuant to
4 California Labor Code § 2699.3, to the California Labor and Workforce Development Agency
5 ("LWDA") and Defendant, of the specific provisions of the California Labor Code and IWC Wage
6 Order alleged to have been violated, including the facts and theories to support the alleged
7 violations. To date, Plaintiff has not received any response from the LWDA. As Plaintiff has
8 waited more than sixty-five (65) days from the June 17, 2020 postmark date of her written notice
9 before filing this action, Plaintiff has complied with all of the requirements set forth in California
10 Labor Code § 2699.3 to commence a representative action under PAGA.

11 **FACTUAL ALLEGATIONS**

12 **Failure to Provide Required Meal Periods**

13 **[Cal. Lab. Code §§ 226.7, 512; § 11 of the Applicable IWC Wage Order]**

14 13. During the statute of limitations period, Defendant has required, permitted or
15 otherwise suffered Plaintiff and aggrieved employees to work through their meal periods and to
16 completely skip their meal periods, and have failed to otherwise provide the required meal periods
17 to Plaintiff and aggrieved employees pursuant to Cal. Lab. Code § 226.7, 512, and § 11 of IWC
18 Wage Order No. 1, and any other applicable IWC Wage Order.

19 14. Defendant did not properly notify Plaintiff and other aggrieved employees of their
20 rights under California law to take full, timely, uninterrupted meal periods. Defendant also failed
21 to implement adequate policies or procedures to provide meal periods to their non-exempt
22 employees. Among other things, Plaintiff and other aggrieved employees were given so much
23 work to complete during their shifts, as a result of understaffing, that they felt pressured to skip
24 meal periods and take late meal periods. Defendant also did not properly notify Plaintiff and other
25 aggrieved employees of their rights under California law to take timely, uninterrupted meal
26 periods (including the right to second meal periods during shifts of longer than ten hours), and
27 thus, aggrieved employees like Plaintiff were left in the dark as to when or for how long they
28 could take their meal periods. Defendant also implemented an unlawful meal period policy by

1 compensating employees who experienced interrupted meal periods only for their actual work
2 time, as opposed to paying them legally required premiums.

3 15. Defendant did not provide any written meal period policies in Spanish for Plaintiff
4 and other aggrieved employees who only speak Spanish to understand. Further, Defendant's
5 policies and procedures were to actively discourage such meal periods by regularly requiring
6 Plaintiff and other aggrieved employees to skip their meal periods, take their meal periods after
7 working longer than five (5) hours, to perform work during their meal periods, return to work after
8 taking less than a thirty (30) minute meal period or miss their meal periods entirely.

9 16. Defendant has also violated Cal. Lab. Code §§ 226.7 and 512, § 11 of IWC Wage
10 Order No. 1, and any other applicable IWC Wage Order, by failing to compensate Plaintiff and
11 other aggrieved employees who were not authorized and permitted to take a timely, uninterrupted
12 meal period, in accordance with the applicable wage order, one additional hour of compensation at
13 the proper regular rate of pay for each workday that such a meal period was not authorized or
14 permitted.

15 **Failure to Provide Required Rest Breaks**

16 **[Cal. Lab. Code §§ 226.7, 512; § 12 of the Applicable IWC Wage Order]**

17 17. During the statute of limitations period, Defendant has failed to permit Plaintiff and
18 aggrieved employees to take rest breaks as required under Cal. Lab. Code §§ 226.7 and 512, and §
19 12 of IWC Wage Order No. 1, and any other applicable IWC Wage Order.

20 18. Defendant failed to implement adequate policies or procedures to provide rest
21 breaks, and consequently, Plaintiff and other aggrieved employees did not take rest breaks when
22 they were entitled to take them.

23 19. In addition, Plaintiff and other aggrieved employees were not properly informed of
24 their rights under California law. Defendant did not provide written rest break policies in Spanish
25 for Plaintiff and other aggrieved employees to understand. Defendant also did not provide
26 adequate training regarding their legal obligations with respect to the provision of rest breaks for
27 Spanish speaking employees, nor did they implement a schedule regarding rest breaks for non-
28 exempt employees. Plaintiff and other aggrieved employees were also given so much work to

1 complete during their shifts, as a result of understaffing, that they felt pressured to skip rest breaks
2 altogether. These common policies (or lack thereof) have caused widespread missed rest breaks
3 and systematic violations of California Labor Code §§ 226.7 and 512, and IWC Order No. 1-2001,
4 § 12 and all other applicable IWC wage orders.

5 20. Defendant further violated Cal. Lab. Code § 226.7, § 12 of IWC Wage Order No. 1,
6 and any other applicable IWC Wage Order, by failing to pay Plaintiff and aggrieved employees
7 who were not provided with a rest break, in accordance with the applicable wage order, one
8 additional hour of compensation at the proper regular rate of pay for each workday that a rest
9 break was not provided.

10 **Failure to Pay Overtime Wages**

11 **[Cal. Lab. Code §§ 510, 1194, 1198; § 3 of the Applicable IWC Wage Order]**

12 21. Pursuant to California Labor Code §§ 510, 1194, and § 3 of the applicable IWC
13 Order, Defendant is required to compensate Plaintiff and other aggrieved employees for all
14 overtime, which is calculated at one and one-half (1 ½) times the regular rate of pay for all hours
15 worked in excess of eight (8) hours per day and/or forty (40) hours per week, and for the first eight
16 (8) hours on the seventh consecutive workday, with double time for all hours worked in excess of
17 twelve (12) hours in any workday and for all hours worked in excess of eight (8) hours on the
18 seventh consecutive day of work in any workweek.

19 22. During the statute of limitations period, Defendant has failed to compensate
20 Plaintiff and other aggrieved employees for all overtime hours worked as required under the
21 foregoing provisions of the California Labor Code and IWC Wage Order by, among other
22 methods, failing to pay overtime at one and one-half (1 ½) or double the regular rate of pay as
23 provided by California Labor Code §§ 510, 1194 and § 3 of the applicable IWC Order, requiring,
24 permitting or suffering Plaintiff and other aggrieved employees to work off-the-clock, and to work
25 through meal and rest breaks, but not compensating them for this time, improperly calculating the
26 regular rate of pay based on shift differential and other remuneration, implementing an unlawful
27 rounding policy, and other methods to be discovered.

28 23. In a short-sighted attempt to maximize profits, Defendant has understaffed their

1 facilities. Not only has this practice resulted in widespread missed meal and rest breaks, but it has
2 also caused Plaintiff and other aggrieved employees to perform work while off-the-clock.
3 Defendant has actual or constructive knowledge of this off-the-clock work and subtly condone it.
4 Plaintiff and other aggrieved employees routinely arrive to work early to check so that they are
5 prepared and ready to begin performing their duties promptly at the start of their shifts. Defendant
6 knows or should know that Plaintiff and other aggrieved employees perform this work off-the-
7 clock.

8 **Failure to Pay Minimum Wages**

9 **[Cal. Lab. Code §§ 1194, 1197; § 4 of the Applicable IWC Wage Orders]**

10 24. Pursuant to Cal. Lab. Code §§ 1194, 1197, and § 4 of the applicable IWC Wage
11 Order, payment to an employee of less than the applicable minimum wage for all hours worked in
12 a payroll period is unlawful.

13 25. During the statute of limitations period, Defendant failed to pay Plaintiff and other
14 aggrieved employees minimum wages for all hours worked by requiring, permitting or suffering
15 Plaintiff and other aggrieved employees to work off-the-clock, requiring them to work through
16 meal and rest breaks but not compensating them for this time and failing to include this time in all
17 hours worked, implementing an unlawful rounding practice, and other methods to be discovered.

18 26. In addition, Defendant has failed to pay reporting time pay as required under IWC
19 Wage Order No. 1-2001, § 5. Specifically, for each workday an employee is required to report to
20 work, but is not put to work or is furnished with less than half of his or her usual or scheduled
21 day's work, the employee must be paid for half the usual or scheduled day's work, but in no event
22 for less than two hours nor more than four hours, at his or her regular rate of pay.

23 **Failure to Pay All Wages Due to Discharged and Quitting Employees**

24 **[Cal. Lab. Code §§ 201 - 203]**

25 27. Pursuant to California Labor Code § 201, 202 and 203, Defendant is required to
26 pay all earned and unpaid wages to an employee who is discharged. California Labor Code § 201
27 mandates that if an employer discharges an employee, the employee's wages accrued and unpaid
28 at the time of discharge are due and payable immediately.

1 28. Furthermore, pursuant to California Labor Code § 202, Defendant is required to
2 pay all accrued wages due to an employee no later than 72 hours after the employee quits his or
3 her employment, unless the employee provided 72 hours previous notice of his or her intention to
4 quit, in which case the employee is entitled to his or her wages at the time of quitting.

5 29. California Labor Code § 203 provides that if an employer willfully fails to pay, in
6 accordance with Labor Code §§ 201 and 202, any wages of an employee who is discharged or who
7 quits, the employer is liable for waiting time penalties in the form of continued compensation to
8 the employee at the same rate for up to 30 workdays.

9 30. During the statute of limitations period, Defendant has willfully failed to pay
10 accrued wages and other compensation to Plaintiff and other aggrieved employees in accordance
11 with California Labor Code §§ 201 and 202. Defendant does not have a sufficient policy to
12 provide Plaintiff and other aggrieved employees with their final paychecks within the timeframes
13 required under California law. In addition, because Defendant has failed and continues to fail to
14 properly compensate Plaintiff and other aggrieved employees for all hours worked when due,
15 overtime wages, and compensation for non-compliant meal and rest breaks, Defendant has also
16 willfully failed and continues to fail to pay accrued wages and other compensation to Plaintiff and
17 other aggrieved employees in accordance with California Labor Code §§ 201 and 202.

18 **Failure to Pay Timely Wages**

19 **[Cal. Lab. Code §§ 204, 210]**

20 31. Cal. Lab. Code § 204 provides that all wages earned by any person in any
21 employment between the 1st and 15th days, inclusive, of any calendar month, other than those
22 wages due upon termination of an employee, are due and payable between the 16th and 26th day
23 of the month during which the labor was performed. Cal. Lab. Code § 204 further provides that all
24 wages earned by any person in any employment between the 16th and the last day, inclusive, of
25 any calendar month, other than those wages due upon termination of an employee, are due and
26 payable between the 1st and the 10th day of the following month. Cal. Lab. Code § 204 further
27 provides that all wages eared for labor in excess of the normal work period shall be paid no later
28 than the payday for the next regular payroll period.

1 32. During the statute of limitations period, Defendant, among other things, willfully
2 failed to pay Plaintiff and aggrieved employees all wages earned and due to them, including but
3 not limited to, meal and rest period premiums, overtime and minimum wages, and payment for
4 work performed off-the-clock, within any time period permissible under Cal. Lab. Code § 204.

5 **Failure to Maintain Required Records**

6 **[Cal. Lab. Code §§ 226, 1174; § 7 of the Applicable IWC Wage Order]**

7 33. During the statute of limitations period, as part of Defendant's illegal payroll
8 policies and practices to deprive Plaintiff and aggrieved employees of all wages earned and due,
9 Defendant knowingly and intentionally failed to maintain records as required under California
10 Labor Code §§ 226, 1174, and § 7 of IWC Wage Order No. 1, and any other applicable IWC
11 Wage Order, including but not limited to, the following records: total daily hours worked by each
12 non-exempt employee; applicable rates of pay; all deductions; meal periods; time records showing
13 when each non-exempt employee begins and ends each workday; and accurate itemized
14 statements. Moreover, Defendant had knowledge that they were not providing their non-exempt
15 employees with proper meal, rest, and recovery periods, but knowingly failed to include in the
16 wage statements one (1) extra hour of compensation for each missed meal and rest period,
17 resulting in inaccurate wage statements.

18 **Failure to Furnish Accurate Itemized Wage Statements**

19 **[Cal. Lab. Code § 226; § 7 of the Applicable IWC Wage Order]**

20 34. During the statute of limitations period, Defendant routinely failed and continue to
21 fail to provide Plaintiff and aggrieved employees with timely and accurate itemized wage
22 statements. Defendant's wage statements violate Cal. Lab. Code § 226(a) on their face because
23 they do not list the inclusive dates of the period for which the employee is paid.

24 35. The wage statements also violate Cal. Lab. Code § 226(a) because Defendant failed
25 to provide accurate and itemized wage statements to Plaintiff and the other aggrieved employees
26 which included the accurate legal name and address of Defendant, itemized hours worked, rate of
27 pay, sick leave, failed to provide Plaintiff and other aggrieved employees with proper meal and
28 rest periods and other items to be discovered. Defendant also intentionally failed to include in their

1 wage statements one (1) additional hour of compensation at their regular rates of pay for each non-
2 compliant meal or rest period and failed to include reporting pay to Plaintiff and other aggrieved
3 employees. These unlawful practices have also resulted in inaccurate wage statements to the extent
4 wage statements do not reflect the actual time worked by Plaintiff and other aggrieved employees.
5 Defendant knowingly failed to provide Plaintiff and the other aggrieved employees with wage
6 statements and/or accurate wage statements so as to conceal their wage theft.

7 **Failure to Indemnify Employees for Necessary Expenditures**

8 **[Cal. Lab. Code § 2802]**

9 36. Cal. Lab. Code § 2802(a) requires an employer to indemnify an employee for all
10 necessary expenditures or losses incurred by the employee in direct consequence of the discharge
11 of his or her duties, or of his or her obedience to the directions of the employer.

12 37. During the statute of limitations period, and in violation of Cal. Lab. Code § 2802,
13 Defendant failed to indemnify Plaintiff and other aggrieved employees for all business expenses
14 and/or losses incurred in direct consequence of the discharge of their duties, including but not
15 limited to, expenses for their uniforms and uniform maintenance.

16 **Failure to Provide Notice of Employer-Related Information**

17 **[Cal. Lab. Code § 2810.5]**

18 38. Cal. Lab. Code § 2810.5 requires an employer in California to provide written
19 notice at the time of hiring of certain employment-related information, as follows:

- 20 “(A) The rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week,
21 salary, piece, commission, or otherwise, including any rates for overtime, as applicable.
22 (B) Allowances, if any, claimed as part of the minimum wage, including meal or lodging
23 allowances.
24 (C) The regular payday designated by the employer in accordance with the requirements of
25 this code.
26 (D) The name of the employer, including any “doing business as” names used by the
27 employer.
(E) The physical address of the employer’s main office or principal place of business, and
a mailing address, if different.
(F) The telephone number of the employer.
(G) The name, address, and telephone number of the employer’s workers’ compensation
insurance carrier.

1 the use of accrued paid sick leave; and has the right to file a complaint against an employer
2 who retaliates.

(I) Any other information the Labor Commissioner deems material and necessary."

3 39. Defendant has failed to comply with Cal. Lab. Code § 2810.5 because they did not
4 provide Plaintiff and other aggrieved employees with notice of the requirements set forth above.
5 More specifically, the notice forms provided to Plaintiff and other aggrieved employees contained
6 none of the required information, such as the legal name of the hiring employer, rate of pay, etc.

7 **FIRST CAUSE OF ACTION**

8 **VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT**

9 **[Cal. Lab. Code § 2698 *et seq.*]**

10 **(On Behalf of Aggrieved Employees against Defendant)**

11 40. Plaintiff incorporates herein by specific reference, as though fully set forth, the
12 allegations in paragraphs 1 through 39.

13 41. Plaintiff is an "aggrieved employee" within the meaning of California Labor Code
14 § 2699(c), and a proper representative to bring a civil action on behalf of other non-exempt
15 employees of Defendant pursuant to the procedures specified in Cal. Lab. Code § 2699.3, because
16 Plaintiff was employed by Defendant and one or more of the alleged California Labor Code
17 violations was committed against Plaintiff during the statute of limitations period.

18 42. Pursuant to Cal. Lab. Code § 2699(a), Plaintiff seeks to recover civil penalties only
19 from Defendant in a representative action for the violations of the California Labor Code set forth
20 above.

21 43. Cal. Lab. Code § 2699(f) provides that for all California Labor Code violations for
22 which a civil penalty is not specifically provided, the following civil penalties are established: one
23 hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and
24 two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent
25 violation.

26 **PRAYER FOR RELIEF**

27 **WHEREFORE**, Plaintiff, on behalf of other aggrieved employees, respectfully prays for
28 relief against Defendant and DOES 1 through 50, inclusive, and each of them, as follows:

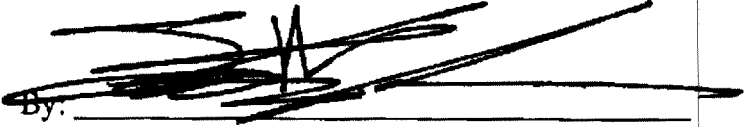
- 1 1. For civil penalties pursuant to California Labor Code § 2699(f);
2 2. For reasonable attorneys' fees and costs pursuant to California Labor Code § 2699,
3 California Civil Code § 1021.5, and/or any other applicable provisions providing for attorneys'
4 fees and costs; and
5 3. For such further relief that the Court may deem just and proper.

6 **DEMAND FOR JURY TRIAL**

7 Plaintiff, on behalf of other aggrieved employees, hereby demands a jury trial with respect
8 to all issues triable of right by jury.

9
10 DATED: September 21, 2020

THE LAW OFFICE OF SCOTT ERNEST WHEELER

11
12 By: 

13 Scott E. Wheeler

14 *Attorney for Plaintiff*
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