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individually and on behalf of all others similarly situated

8
9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
FOR THE COUNTY OF LOS ANGELES

10 VANESSA BAZA, individually and on behalf
11 of all others similarly situated,

12 Plaintiff,

13 v.

14 IMPERFECT FOODS, INC., a California
Corporation; PEOPLE FIRST
15 EMPLOYMENT, INC., a California
Corporation; and DOES 1 through 50,
16 inclusive,

17 Defendants.

Case No.
Assigned for all Purposes to:
Hon.
Dept.

**PAGA REPRESENTATIVE ACTION
COMPLAINT PURSUANT TO THE
PRIVATE ATTORNEYS GENERAL
ACT (LABOR CODE §§2698 *et seq*)**

COMES NOW Plaintiff VANESSA BAZA (“Plaintiff”), on behalf the general public and all non-exempt aggrieved employees, acting on behalf of the California Attorney General as private attorney general, asserts claims against Defendants IMPERFECT FOODS, INC., PEOPLE FIRST EMPLOYMENT, INC., and Does 1-50, inclusive (collectively “Defendants”) as follows:

I. INTRODUCTION

1. This is a representative action for recovery of penalties under the Private Attorneys General Act of 2004 (“PAGA”), Cal. Lab. Code sections 2698 *et seq.* PAGA permits “aggrieved employees” to bring a lawsuit as a representative action on behalf of the general public as private attorney general and all other current and former aggrieved employees, to recover civil penalties and address an employer’s violations of the California Labor Code.

2. In this case, Defendants violated various provisions of the California Labor Code. As set forth below, Defendants implemented policies and practices which led to unpaid wages resulting from Defendant’s: (a) failure to accurately pay overtime wages, (b) failure to pay minimum wages (c) failure to authorize and permit rest breaks for every four hours or major fraction thereof worked and failure to pay an additional hour’s of pay in lieu of providing a rest period; (d) failing to pay all wages earned and owed upon separation from Defendant’s employ; and (e) failing to provide accurate itemized wage statement. As a result, Plaintiff seeks penalties under Labor Code 2698, *et. seq.* on behalf of the general public as private attorney general and all other aggrieved employees.

II. JURISDICTION AND VENUE

3. The California Superior Court has jurisdiction over this action pursuant to California Constitution Article VI, Section 10, which grants the Superior Court “original jurisdiction in all cases except those given by statute to other trial courts.” The statutes under which this action is brought do not give jurisdiction to any other court.

4. This Court has jurisdiction over Defendants because, upon information and belief, each Defendant either has sufficient minimum contacts in California, or otherwise intentionally avails itself of the California market so as to render the exercise of jurisdiction over it by the

1 California Courts consistent with traditional notions of fair play and substantial justice.

2 5. Venue as to each Defendant is proper in this judicial district pursuant to Code of
3 Civil Procedure section 395. Defendants are operating and doing business throughout, California,
4 and each Defendant is within the jurisdiction of this Court for service of process purposes. The
5 unlawful acts alleged herein have a direct effect on Plaintiff and all other aggrieved employees
6 within the State of California and within Orange County and elsewhere in California. Defendants
7 employ numerous aggrieved employees throughout California.

8 6. Defendants operate at various retail locations throughout the state of California.
9 On information and belief, Defendants have conducted business within the State of California
10 during the purported liability period and continue to conduct business throughout the State of
11 California. The unlawful acts alleged herein have had a direct effect on Plaintiff, and the
12 similarly situated non-exempt aggrieved employees within Los Angeles County and throughout
13 the State of California..

14 7. The California Superior Court also has jurisdiction in this matter because on
15 information and belief there are no federal questions at issue, as the issues herein are based solely
16 on California statutes and law, including the California Labor Code, the IWC Wage Orders, the
17 California Code of Civil Procedure, the California Civil Code, and the California Business and
18 Professions Code.

19 8. On information and belief, during the statutory liability period and continuing to
20 the present ("liability period"), Defendant consistently maintained and enforced against
21 Defendant's Non-Exempt Employees ("Aggrieved Employees"), among others, the following
22 unlawful practices and policies, in violation of California state wage and hour laws (a) failure to
23 accurately pay overtime wages, (b) failure to pay minimum wages (c) failure to authorize and
24 permit rest breaks for every four hours or major fraction thereof worked and failure to pay an
25 additional hour's of pay in lieu of providing a rest period; (d) failing to pay all wages earned and
26 owed upon separation from Defendant's employ; and (e) failing to provide accurate itemized
27 wage statement.

28 9. On information and belief, during the statutory liability period and continuing to

1 the present, Defendants have had a consistent policy of failing to provide its Non-Exempt
2 Employees within the State of California, including Plaintiff, unfettered, uninterrupted, duty free
3 rest periods of at least (10) minutes per four (4) hours worked or major fraction thereof and
4 failing to pay such employees one (1) hour of pay at the employees regular rate of compensation
5 for each workday that the rest period is not provided, as required by California state wage and
6 hour laws.

7 10. On information and belief, during the statutory liability period and continuing to
8 the present, Defendants have had a consistent policy of failing to provide accurate itemized wage
9 statements.

10 11. Plaintiff on behalf of the general public as private attorney general and all other
11 aggrieved employees bring this action pursuant to Labor Code 2698, et. seq. for violations
12 enumerated under 2699.5 as follows: sections 201-203, 226, 266.3, 226.7, 510, 558, 512, 1174,
13 1174.5, 1175, 1194, 1197, and 1197.1, seeking penalties, interest, attorneys' fees and costs.

14 **III. PARTIES**

15 **A. Plaintiff**

16 12. Plaintiff, was at all times relevant to this action, a resident of California. Plaintiff
17 was employed by Defendants in approximately April 2020 as a non-exempt employee working as
18 warehouse worker, until her separation from Defendants' employ in approximately April 2020.

19 13. As Defendants' employee, Plaintiff, and all other aggrieved employees were
20 regularly required to and subsequently suffered:

21 (a) work without being permitted or authorized a minimum ten-minute rest period for
22 every four hours or major fraction thereof worked and not compensated one (1) hour
23 of pay at her regular rate of compensation for each workday that a rest period was not
24 provided, all in violation of California labor laws, regulations, and the Industrial
25 Welfare Commission Wage Orders ("IWC");

26 (b) Not paid for all hours worked resulting in an underpayment of regular and overtime
27 wages;

28 (c) not provided accurate itemized wage statements; and

1 (d) not timely paid.

2 14. Plaintiff seeks penalties under Labor Code 2698, *et. seq.* on behalf of the general public as
3 private attorney general and all other aggrieved employees.

4 **B. Defendants**

5 15. Defendant IMPERFECT FOODS, INC., is engaged in the ownership and
6 operation of a grocery item delivery business which packages various meat, vegetable, and fruit
7 items for home delivery to customers across the United States and California.

8 16. Defendant PEOPLE FIRST EMPLOYMENT, INC., own and operate as a
9 workforce staffing agency, providing services to various businesses to meet their staffing needs.

10 17. Plaintiff estimates there are in excess of one hundred aggrieved employees who
11 work or have worked for Defendants over the last year.

12 18. Other than identified herein, Plaintiff is unaware of the true names, capacities,
13 relationships and extent of participation in the conduct alleged herein, of the defendants sued as
14 DOES 1 through 50, but is informed and believes and thereon alleges that said defendants are
15 legally responsible for the wrongful conduct alleged herein and therefore sues these defendants by
16 such fictitious names. Plaintiff will amend this complaint when their true names and capabilities
17 are ascertained

18 19. Plaintiff is informed and believes and thereon alleges that each Defendant, directly
19 or indirectly, or through agents or other persons, employed Plaintiff and other members of the
20 Representative Group , and exercised control over their wages, hours, and working conditions.
21 Plaintiff is informed and believes and thereon alleges that each defendant acted in all respects
22 pertinent to this action as the agent of the other defendants, carried out a joint scheme, business
23 plan or policy in all respects pertinent hereto, and the acts of each defendant are legally
24 attributable to the other defendants.

25 **IV. GENERAL ALLEGATIONS**

26 20. At all times set forth herein, Defendants employed Plaintiff and other persons in
27 the capacity of non-exempt positions, however titled, throughout the state of California.

28 21. Plaintiff is informed and believe Aggrieved Employees have at all times pertinent

1 hereto been Non-Exempt within the meaning of the California Labor Code and the implementing
2 rules and regulations of the IWC California Wage Orders.

3 22. Plaintiff is informed and believes that all Aggrieved Employees are citizens of the
4 state of California.

5 23. Defendants continue to employ Non-Exempt Employees, however titled, in
6 California and implement a uniform set of policies and practices to all non-exempt employees.

7 24. Plaintiff and Aggrieved Employees were assigned duties regarding the various
8 stages of product packaging. For instance, as orders would come in, Plaintiff would be charged
9 with filling various packages with ice. These packages would then be filled with vegetables,
10 meats, and fruits according to what customers have ordered.

11 25. Plaintiff are informed and believe, and thereon alleges, that Defendants are and
12 were advised by skilled lawyers and other professionals, employees, and advisors with knowledge
13 of the requirements of California's wage and employment laws.

14 26. On information and belief, Defendants compensated Plaintiff and Aggrieved
15 Employees based upon an hourly rate.

16 27. On information and belief, Plaintiff and Aggrieved Employees typically worked
17 five days a week Sunday through Thursday Plaintiff was typically scheduled to work from 4 a.m.
18 to 12:30 p.m.

19 28. Plaintiff are informed and believe that the Aggrieved Employees were required to
20 keep similar schedules.

21 29. On information and belief, Plaintiff and Aggrieved Employees would typically
22 arrive early to work by approximately 15 to 20 minutes. Plaintiff and Aggrieved Employees were
23 permitted to clock in prior to their scheduled start time and did so. For instance, Plaintiff would
24 clock in around 3:40 a.m. or 3:45 a.m. and begin her work. However, Defendants would not
25 account any work time Plaintiff and Aggrieved Employees performed prior to their scheduled
26 start time and would unlawfully round their times to reflect only their scheduled start time.
27 Defendants' unlawful rounding policies resulted over time, in an underpayment of wages and
28 overtime wages.

1 30. In addition, Plaintiff and the Non-Exempt Employees were systematically not
2 authorized and permitted to take one net ten-minute paid, rest period for every four hours worked
3 or major fraction thereof, which is a violation of the Labor Code and IWC wage order.

4 31. Defendants maintained and enforced scheduling practices, policies, and imposed
5 work demands that frequently required Plaintiff and Aggrieved Employees to forego their lawful,
6 paid rest periods of a net ten minutes for every four hours worked or major fraction thereof. Such
7 requisite rest periods were not timely authorized and permitted.

8 32. In addition, Plaintiffs and the Aggrieved Employees were not allowed to leave the
9 premises during rest breaks.

10 33. Despite the above-mentioned rest period violations, Defendants did not
11 compensate Plaintiff, and on information and belief, did not pay Aggrieved Employees one
12 additional hour of pay at their regular rate as required by California law, including Labor Code
13 section 226.7 and the applicable IWC wage order, for each day on which lawful rest periods were
14 not authorized and permitted.

15 34. Defendants also failed to provide accurate, lawful itemized wage statements to
16 Plaintiff and the Aggrieved Employees in part because of the above specified violations. In
17 addition, upon information and belief, Defendants omitted an accurate itemization of total hours
18 worked, including premiums due and owing for rest period violations, gross pay and net pay
19 figures from Plaintiff and the Aggrieved Employees' wage statements.

20 35. Plaintiff are informed and believe, and thereon alleges, that at all times herein
21 mentioned, Defendants knew that at the time of termination of employment (or within 72 hours
22 thereof for resignations without prior notice as the case may be) they had a duty to accurately
23 compensate Plaintiff and Aggrieved Employees for all wages owed including minimum wages,
24 rest period premiums, and that Defendants had the financial ability to pay such compensation, but
25 willfully, knowingly, recklessly, and/or intentionally failed to do so in part because of the above-
26 specified violations.

27 36. Defendants' also failed to maintain accurate records in accordance with Labor
28 Code § 1174.5.

37. Upon information and belief, Defendants knew and or should have known that it is improper to implement policies and commit unlawful acts such as:

(a) Failing to compensate Plaintiff and Aggrieved Employees for regular and overtime wages for all hours worked.

(b) requiring employees to work four (4) hours or a major fraction thereof without being provided a minimum ten (10) minute rest period and without compensating the employees with one (1) hour of pay at the employees' regular rate of compensation for each workday that a rest period was not provided;

(c) failing to provide accurate itemized wage statements; and

(d) failing to timely pay wages.

38. In addition to the violations above, and on information and belief, Defendants knew they had a duty to compensate Plaintiff and aggrieved employees for the allegations asserted herein, and that Defendants had the financial ability to pay such compensation, but willfully, knowingly, recklessly, and/or intentionally failed to do so.

V. REPRESENTATIVE CLAIMS

THE PRIVATE ATTORNEYS GENERAL ACT- LABOR CODE §§ 2698 et seq.

39. Plaintiff incorporates by reference and re-alleges each and every allegation contained above, as though fully set forth herein.

40. On June 19, 2020, Plaintiff complied with notice requirements pursuant to Labor Code section 2699.3. A copy of the letter sent to the LWDA is attached hereto as **Exhibit A**, indicating that the LWDA and Defendants were put on notice of the claims alleged here and that the notice requirement has been satisfied. Sixty five days have passed and the LWDA has not indicated intent to investigate the claims. Therefore, Plaintiff may proceed with this action in a representative capacity. The substance and violations set forth in this Complaint of which the LWDA was provided timely notice, Plaintiff has also sent a copy of this PAGA Representative Action Complaint to the LWDA.

41. Plaintiff is an aggrieved employee as defined in Labor Code Section 2699(a).

1 Plaintiff brings this cause of action on behalf the general public and all non-exempt aggrieved
2 employees, acting on behalf of the California Attorney General as private attorney general.

3 42. Pursuant to Labor Code section 2699(a) Plaintiffs seek to recover civil penalties
4 for which Defendants are liable due to numerous Labor Code violations as set forth in this
5 Complaint, including without limitation Labor Code section 201-203, 226, 266.3, 226.7, 510,
6 558, 512, 1174, 1174.5, 1175, 1194, 1197, 1197.1, and 2698 *et seq.*, applicable IWC Wage
7 Orders and California Code of Regulations, Title 8, section 11000 *et. seq.*

8 43. Defendants violated Labor Code section 510, and 1194 by failing to accurately pay
9 overtime wages owed as a result of Defendants' unlawful rounding policies discussed above..
10 Therefore, Defendants violated section 510, 558, and 1194 by not compensating its Non-Exempt
11 Employees for work performed in excess of eight hours (8) in a day or forty hours in a work week
12 (40). Section 510 of the Labor Code codifies the right to overtime compensation at the rate of one
13 and one-half times the regular rate of pay for all hours worked in excess of eight (8) hours in a
14 day or forty (40) hours in a work week and to overtime compensation twice the regular rate of
15 pay for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a
16 day on the seventh day of work in a particular work week.

17 44. Defendants also violated Labor Codes sections 200, 558, 1194, and 1197 for
18 failing to pay minimum wages as described above. Labor Code §1197 provides that employees
19 are to be paid minimum wage for each hour worked, and cannot be averaged the minimum and
20 the payment of a lesser wage than the established is unlawful.

21 45. Defendants also violated Cal. Code Regs., tit. 8 § 11070 by failing to compensate
22 Plaintiff and Aggrieved Employees for reporting time as discussed above.

23 46. At all times relevant, Plaintiff and all other aggrieved employees regularly
24 performed non-exempt work in excess of 50% of the time, and thus, were subject to the meal and
25 rest break requirements of the applicable IWC wage order and the Labor Code.

26 47. Plaintiff, and on information and belief, all aggrieved employees, were
27 systematically not permitted or authorized to take one ten minute rest period for every four hours
28 worked or major fraction thereof, which is a violation of the Labor Code and applicable IWC

1 wage orders. On shifts where Plaintiff worked in excess of three and half hours they were
2 routinely not permitted and authorized to take lawful rest periods. Plaintiff and on information
3 and belief, aggrieved employees, were not compensated with one hour of wages for every day in
4 which a rest period was missed or untimely as a result of Defendants' policies, practices, or work
5 demands. By failing to authorize and permit a ten-minute rest period for every four hours or
6 major fraction thereof worked per day, and by failing to provide compensation for such
7 unprovided rest periods as alleged above, Defendants willfully violated the provisions of Labor
8 Code sections 226.7, 512 and the applicable IWC Wage Order.

9 48. Additionally, Defendants have no accurate records relating to aggrieved
10 employees' work periods, total daily hours worked, total hours worked per payroll period and
11 applicable pay rates, in violation of Wage Order. Similarly, Defendants failed to maintain
12 accurate records relating to hours worked daily in violation of Labor Code sections 1174(d),
13 1174.

14 49. On information and belief, Defendants failed to provide accurate itemized wage
15 statements which failed to accurately record all hours worked by Plaintiff and aggrieved
16 employees, and failing to accurately record rest period premiums owed.

17 50. Plaintiff and the Representative Aggrieved Employees are entitled to recover
18 Penalties and attorneys' fees and costs under Labor Code section 2698, et. seq.

19 **PRAYER FOR RELIEF**

20 WHEREFORE, Plaintiff prays for judgment against Defendants, as follows:

- 21 1. For penalties according to proof, pursuant to Labor Code §§ 2698 et seq.;
- 22 2. For reasonable attorneys' fees and costs; and
- 23 3. For such other and further relief as the Court deems proper.

24 **DEMAND FOR JURY TRIAL**

25 Plaintiff and aggrieved employees request a jury trial in this matter.

26

27

28

1 Dated: June 19, 2020

JAMES HAWKINS APLC

2
3 By: 

JAMES R. HAWKINS, ESQ.

GREGORY MAURO, ESQ.

MICHAEL CALVO, ESQ.

Attorneys for Plaintiff VANESSA BLAZA,
and the general public

EXHIBIT A

JAMES *JH* HAWKINS

A PROFESSIONAL LAW CORPORATION

9880 RESEARCH DRIVE, SUITE 200, IRVINE, CALIFORNIA 92618

TELEPHONE (949) 387-7200; FACSIMILE (949) 387-6676

June 19, 2020

Via LWDA Website

Labor and Workforce Development Agency
Attn: PAGA Administrator
1515 Clay Street, Ste 801
Oakland, CA 94612
<http://www.dir.ca.gov/Private-Attorneys-General-Act>

Via Certified Mail

IMPERFECT FOODS, INC.

Agent for Service of Process: CT Corporation System
818 West Seventh Street, Suite 930
Los Angeles, CA 90017
Receipt No.: 7018 1130 0001 8270 4968

PEOPLE FIRST EMPLOYMENT, INC.

Agent for Service of Process: Ramona Rodriguez Mendez
350 10th Ave
San Diego, CA 92101
Receipt No.: 7018 1130 0001 8270 4975

Re: NOTICE PURSUANT TO LABOR CODE SECTIONS 2698, *et seq.*

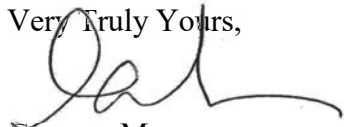
To Whom It May Concern:

PLEASE TAKE NOTICE that plaintiff VANESSA BAZA, individually and on behalf of all similarly situated representative aggrieved employees, gives NOTICE to commence and/or amend a civil action pursuant to California Labor Code Sections 2698, *et seq.* Plaintiff hereby gives written notice by certified mail to the Labor and Workforce Development Agency, IMPERFECT FOODS, INC., and PEOPLE FIRST EMPLOYMENT, INC.

Plaintiff hereby attaches a copy of the Proposed PAGA Representative Action Complaint to be filed in the Los Angeles County Superior Court, as though fully set forth herewith setting out the specific provisions of the Labor Code Plaintiff alleges have been violated, including the facts and theories. All labor provisions in the Proposed PAGA Representative Action Complaint alleged to have been violated pertain to all entities and individuals named in the Complaints, even if not expressly specified.

Please advise within sixty (60) days of the post mark on this letter if the LWDA intends to investigate these claims. Thank you, and if you have any questions, please do not hesitate to contact me.

Very Truly Yours,



Gregory Mauro

Enclosure: Proposed PAGA Representative Action Complaint