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FILED
Superior Court of California
County of Los Angeles
03/18/2021

Sherri R. Carter, Executive Officer / Clerk of Court

By: L. Naphen Deputy

9 **SUPERIOR COURT OF CALIFORNIA**
10 **COUNTY OF LOS ANGELES**

12 RIDEL LOPEZ, as an individual and on behalf
13 of all others similarly aggrieved,

14 Plaintiffs,

15 vs.

17 FRITO-LAY, INC., a Delaware corporation;
18 and DOES 1 to 100, inclusive,

19 Defendants.
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CASE NO. 21STCV01652

**FIRST AMENDED PRIVATE
ATTORNEYS GENERAL ACT
("PAGA") REPRESENTATIVE
COMPLAINT**

JURY TRIAL DEMANDED

1 Plaintiff RIDEL LOPEZ (“Plaintiff”), an individual, on behalf of himself and all other
2 similarly aggrieved employees (“Aggrieved Employees”), hereby files this First Amended
3 Complaint against Defendant FRITO-LAY, INC., a Delaware corporation and DOES 1 to 100,
4 inclusive. Plaintiff alleges as follows:

5 **THE PARTIES**

6 1. Plaintiff is, and at relevant times was, an individual domiciled in the State of California
7 and a citizen of the State of California who worked as a non-exempt employee for Defendant in the
8 State of California, for approximately eight (8) months until his last day worked, on or about
9 November 18, 2019.

10 2. Defendant FRITO-LAY, INC. (“Defendant”) is a Delaware corporation that, at all
11 relevant times, was authorized to do business within the State of California and is doing business
12 in the State of California.

13 3. The true names and capacities of the DOE Defendants sued herein as DOES 1 through
14 100, inclusive, are currently unknown to Plaintiff, who therefore sues each such Defendant by said
15 fictitious names. Each of the Defendants designated herein as a DOE is legally responsible for the
16 unlawful acts alleged herein. Plaintiff will seek leave of Court to amend this Complaint to reflect
17 the true names and capacities of the Doe Defendants when such identities become known.

18 4. Plaintiff is further informed and believes that, at all relevant times, each Defendant
19 was the principal, agent, partner, joint venturer, joint employer, officer, director, controlling
20 shareholder, subsidiary, affiliate, parent corporation, successor in interest and/or predecessor in
21 interest of some or all of the other Defendants, and was engaged with some or all of the other
22 defendants in a joint enterprise for profit, and bore such other relationships to some or all of the
23 other Defendants so as to be liable for their conduct with respect to the matters alleged in this
24 complaint. Plaintiff is further informed and believes and thereon alleges that each Defendant acted
25 pursuant to and within the scope of the relationships alleged above, and that at all relevant times,
26 each Defendant knew or should have known about, authorized, ratified, adopted, approved,
27 controlled, aided and abetted the conduct of all other Defendants.

28 5. At all relevant times, Defendant was and is legally responsible for all of the unlawful

1 conduct, policies, practices, acts and omissions complained of herein. Further, Defendant is
2 responsible for each of the unlawful acts or omissions complained of herein under the doctrine of
3 respondent superior. The conduct of Defendant's managers and supervisors was at all relevant
4 times undertaken as employees of Defendant, acting within the scope of their employment or
5 authority in all of the unlawful activities described herein.

6 6. Whenever and wherever reference is made in this complaint to any act or failure to act by
7 a Defendant or co-Defendant, such allegations and references shall also be deemed to mean the acts
8 and/or failures to act by each Defendant acting individually, jointly and severally.

9 **JURISDICTION AND VENUE**

10 7. This court possesses original subject matter jurisdiction over this matter. Venue is proper
11 in Los Angeles County, California, because Defendant transacts business in Los Angeles County
12 and some of the complained of conduct occurred in this judicial district.

13 **FACTUAL ALLEGATIONS**

14 8. During the one-year and sixty-five day period preceding filing of this Complaint,
15 Plaintiff was employed by Defendant as a non-exempt employee in the State of California.
16 Defendant, at all relevant times, exercised control over Plaintiff and suffered and/or permitted
17 Plaintiff to work.

18 9. Plaintiff worked for Defendant as a non-exempt warehouse worker. Plaintiff's job duties
19 included but were not limited to, loading and unloading tractor-trailers outdoors, transferring
20 materials throughout Defendant's warehouse, and general upkeep of Defendant's warehouse.
21 Plaintiff typically worked four (4) days a week and approximately thirty hours per week. Plaintiff
22 was paid an hourly rate plus shift differential pay.

23 10. Section 15(A-B) of all applicable Industrial Wage Commission ("IWC") Wage Orders
24 states that the temperature maintained in each work area shall provide reasonable comfort and
25 requires employers to "take all feasible means" to reduce excessive heat or humidity to a degree
26 "providing reasonable comfort." Defendant violated Section 15(A-B) by requiring Plaintiff to
27 work in extreme heat conditions during the summer months without taking "all feasible means" to
28 reduce excessive heat. Plaintiff reports that from June through August, the warehouse

1 temperature was typically 95 plus degrees. Defendant did not equip the warehouse with artificial
2 air conditioning whatsoever and required all doors and windows of the warehouse to remain
3 closed at all times to avoid any potential contamination of the product. Plaintiff reports being
4 regularly required to load and unload big-rig trailers outdoors, with temperatures reaching over
5 100 degrees in the summer months. Moreover, during the winter months, when temperatures
6 would drop to around 40 degrees, Defendant failed to provide a heated room to which employees
7 could retire for warmth, in violation of Section 15(B) of all applicable IWC Wage Orders.
8 Together, Labor Code sections 1198 and 1199 make unlawful any employment of any employee
9 under conditions of labor prohibited by the Wage Orders, and any violation, refusal, or neglect to
10 comply with any provision within Part 4, Chapter 1 of the Labor Code, including sections 1174,
11 1197, and 1198, or order or ruling of the commission. Therefore, Defendant's violations with
12 respect to excessive heat and cold result in separate violations of sections 1198 and 1199, which
13 subject Defendant to civil penalties under Labor Code sections 1197.1 and 2699.

14 11. Additionally, Defendant failed to provide wage statements in compliance with Labor
15 Code section 226. Among other things, Plaintiff's wage statements do not accurately reflect, inter
16 alia, gross wages earned, total hours worked, net wages earned, all applicable hourly rates in
17 effect during each pay period and all hours worked at each applicable hourly rate. Notably,
18 Defendant's wage statements do not provide an accurate overtime rate because instead of
19 multiplying the regular rate of pay by one and one-half, the wage statements provide two
20 overtime rate categories with each provide corresponding rates that are either the same as the
21 regular rate or list no separate rate for the overtime requiring Plaintiff to perform extensive
22 calculations to determine what his pay rate was for each corresponding hour worked. See, e.g.,
23 *McKenzie v. Fedex*, 765 F. Supp. 2d 1222 (C.D. Cal. 2011). Defendant further failed to provide
24 complete and accurate wage statements in that the wage statements provided Plaintiff do not
25 accurately reflect all gross and net wages earned due to Defendant's failure to incorporate all shift
26 differential pay into the calculation of owed overtime wages. Accordingly, Defendant has
27 violated Labor Code section 226 as to Plaintiff.

28 12. Plaintiff brings this complaint under the Private Attorneys General Act of 2004, Labor

1 Code sections 2698, *et seq.*, (“PAGA”), as a representative action on behalf of the State of
2 California, regarding violations of the Labor Code as to all similarly aggrieved individuals
3 employed by Defendants in the State of California as a non-exempt employee. This action is
4 brought solely pursuant to PAGA and seeks no relief beyond that available under PAGA.

5 13. During the period beginning one year preceding the filing of the required PAGA
6 notice with the Labor Workforce and Development Agency, and continuing through the present, as
7 alleged herein, Defendant violated Labor Code sections 226, 1198, 1199, and all relevant
8 sections of the applicable Wage Orders, including but not limited to, Section 15(A-B) as to
9 Plaintiff and all Aggrieved Employees employed by Defendant who worked as non-exempt
10 employees. These violations subject Defendants to civil penalties as set forth in the foregoing
11 statutes as well as other provisions of the Labor Code, including without limitation Labor
12 Code section 2699.

13 **THE “AGGRIEVED EMPLOYEES”**

14 14. Plaintiff brings this action on behalf of himself and all similarly situated aggrieved
15 employees. The other Aggrieved Employees shall be defined as follows: “All persons employed
16 by Defendant and/or any staffing agencies and/or any other third parties in hourly or non-exempt
17 positions in California during the period of one year and sixty-five days from filing of the
18 Complaint.”

19 **FIRST CAUSE OF ACTION**

20 **VIOLATION OF PRIVATE ATTORNEYS GENERAL ACT,** 21 **LABOR CODE SECTIONS 2698, ET SEQ.**

22 15. Plaintiff incorporates all preceding paragraphs as if fully alleged herein.

23 16. California law provides that, at the time of each payment of wages, the employer must
24 provide each employee with an itemized statement showing, inter alia, gross wages earned, total
25 hours worked, all deductions taken, net wages earned, the inclusive dates for which the employee
26 is being paid, the employee’s name and last four digits of their social security number, the name
27 and address of the legal entity that it is the employer, all applicable hourly rates in effect during the
28 pay period and all hours worked at each applicable hourly rate. Defendant knowingly and

1 intentionally failed to provide Plaintiff and the Aggrieved Employees with proper, itemized wage
2 statements as the wage statements provided by Defendant do not accurately reflect, inter alia, all
3 gross wages earned, all net wages earned, all applicable hourly rates in effect during each pay period
4 and all hours worked at each applicable hourly rate. Notably, Defendant's wage statements do not
5 provide an accurate overtime rate because instead of multiplying the regular rate of pay by one and
6 one-half, the pay stubs provide two overtime rate categories with each providing corresponding
7 rates that are either the same as the regular rate or list no separate rate for the overtime requiring
8 Plaintiff and the Aggrieved Employees to perform extensive calculations to determine what their
9 pay rate was for each corresponding hour worked. Accordingly, Defendant has violated Labor
10 Code section 226 as to Plaintiff and the Aggrieved Employees. See, e.g., *McKenzie v. Fedex*, 765
11 F. Supp. 2d 1222 (C.D. Cal. 2011). Defendant further failed to provide complete and accurate wage
12 statements in that the wage statements provided Plaintiff and the Aggrieved Employees do not
13 accurately reflect all gross and net wages earned due to Defendant's failure to incorporate all shift
14 differential pay into the calculation of owed overtime wages. These violations subject Defendant
15 to civil penalties under the Labor Code, including without limitation Labor Code sections 226 and
16 2699. Each violation of each Labor Code section and Wage Order provision, for each aggrieved
17 employee, results in a separate civil penalty.

18 17. Section 15(A-B) of all applicable Industrial Wage Commission ("IWC") Wage Orders
19 states that the temperature maintained in each work area shall provide reasonable comfort and
20 requires employers to "take all feasible means" to reduce excessive heat or humidity to a degree
21 "providing reasonable comfort." Defendant violated Section 15(A-B) by requiring Plaintiff and
22 the Aggrieved Employees to work in extreme heat conditions during the summer months without
23 taking "all feasible means" to reduce excessive heat. Plaintiff reports that from June through
24 August, the warehouse temperature was typically 95 plus degrees. Defendant did not equip the
25 warehouse with artificial air conditioning whatsoever and required all doors and windows of the
26 warehouse to remain closed at all times to avoid any potential contamination of the product.
27 Plaintiff reports being regularly required to load and unload big-rig trailers outdoors, with
28 temperatures reaching over 100 degrees in the summer months. Moreover, during the winter

1 months, when temperatures would drop to around 40 degrees, Defendant failed to provide a
2 heated room to which employees could retire for warmth, in violation of Section 15(B) of all
3 applicable IWC Wage Orders. Together, Labor Code sections 1198 and 1199 make unlawful any
4 employment of any employee under conditions of labor prohibited by the Wage Orders, and any
5 violation, refusal, or neglect to comply with any provision within Part 4, Chapter 1 of the Labor
6 Code, including sections 1174, 1197, and 1198, or order or ruling of the commission. Therefore,
7 Defendant's violations with respect to excessive heat and cold result in separate violations of
8 sections 1198 and 1199, which subject Defendants to civil penalties under Labor Code sections
9 1197.1 and 2699.

10 18. Under the provisions of PAGA and Labor Code sections 226, 1197, 1198, 1199, and all
11 relevant sections of the applicable Wage Orders, including but not limited to, Section 15(A-B), as
12 well as all interpretations of these laws by California Courts and administrative bodies, as well as
13 any other law that is enforceable through PAGA, Defendant is liable for all statutorily-specified
14 penalties recoverable under PAGA as enumerated in the relevant California Labor Code
15 provisions listed herein, or for default PAGA penalties under Labor Code Section 2699(f) for any
16 violation of a Labor Code section without a specified civil penalty.

17 19. Plaintiff complied with the procedures for bringing suit specified in Labor Code sections
18 2699.3 and 2699.5. Plaintiff gave written notice to the California Labor and Workforce
19 Development Agency ("LWDA") via electronic mail at PAGAfilings@dir.ca.gov and to
20 Defendants via certified mail 65 days prior to this Complaint of the specific provisions of the
21 Labor Code and Wage Orders allegedly violated, including the facts and theories to support the
22 alleged violations.

23 20. Under Labor Code section 2699.3, the LWDA must give written notice by certified mail to
24 the parties it intends to investigate the alleged violations within 65 days of the date of Plaintiff's
25 written notice. As of the expiration of the statutory exhaustion period, the LWDA has not
26 provided the parties any notice of its intention to investigate Plaintiff's claims on behalf of the
27 State of California and the Aggrieved Employees. As of the filing of this Complaint, Defendant
28 has not responded to Plaintiff's PAGA notice in an attempt to cure. Accordingly, Plaintiff has

1 exhausted all administrative remedies required by law.

2 21. Pursuant to Labor Code section 2699(g), and/or any and all other applicable laws,
3 Plaintiff is entitled to recover civil penalties plus reasonable attorney's fees and costs, all in an
4 amount to be proved.

5 **PRAYER**

6 WHEREFORE, Plaintiff prays for judgment against each Defendant, jointly and severally,
7 as follows:

- 8 1. For civil penalties according to proof;
9 2 For reasonable attorney's fees and costs of suit; and
10 3. For such other and further relief as the Court deems just and proper.

11
12 Dated: March 18, 2021

CROSNER LEGAL, P.C.

13 

14 Michael R. Crosner
15 Zachary M. Crosner
16 Blake R. Jones
Attorneys for Plaintiff RIDEL LOPEZ

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18 **DEMAND FOR JURY TRIAL**

19 Plaintiff RIDEL LOPEZ demand a trial by jury on all claims so triable.

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21 Dated: March 18, 2021

CROSNER LEGAL, P.C.

22 

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