

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

MAY 21 2021

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BY


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Employees*

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

VICTOR A. CHAVEZ MATA, individually,
and on behalf of all other aggrieved
employees,

Plaintiff,

v.

PREFERRED PALLETS, INC., a California
corporation; and DOES 1 through 50,
inclusive,

Defendants.

CASE NUMBER:

CIV SB 2115694

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

[California Labor Code § 2698 *et seq.*]

By Fax

1 This is a representative action brought by Victor A. Chavez Mata ("Plaintiff"), on behalf
2 of all other aggrieved employees and the State of California, relating to systemic violations of
3 California wage and hour laws by his employer Preferred Pallets, Inc. (hereinafter referred to as
4 "Preferred Pallets" or "Defendant"). Plaintiff makes the following allegations on information and
5 belief, except as to allegations pertaining to Plaintiff individually, which are based on his
6 personal knowledge.

7 INTRODUCTION

8 1. Defendant operates a pallet repair facility doing business as Preferred Pallets,
9 Inc., located in Bloomington, California.

10 2. In an effort to conserve labor costs, and thereby maximize profits, Defendant has
11 implemented policies and practices that have resulted in systematic violations of California's
12 wage and hour laws.

13 3. For example, Defendant has implemented unlawful policies with respect to meal
14 and rest breaks. Defendant requires its non-exempt employees, who are informed that the needs
15 of the businesses take top priority, to work through meal and rest breaks, to take untimely meal
16 periods and to remain on call during such breaks. As a result, Plaintiff and other aggrieved
17 employees have been denied the ability to take the meal and rest breaks that they were and are
18 legally entitled to take.

19 4. Further, Plaintiff and the other aggrieved employees are compensated on a piece
20 rate basis based upon the number of pallets repaired. Plaintiff and the other aggrieved employees
21 were not provided for paid rest periods and were forced to take on-duty rest periods.

22 5. Moreover, Defendant has uniformly failed to pay Plaintiff and other aggrieved
23 employees proper overtime wages due the fact that it willfully turns a blind eye to off-the-clock
24 work that Plaintiff and other non-exempt employees perform as a direct consequence of
25 Defendant's understaffing and imposition of an unreasonable workload.

26 6. Defendant also fails to indemnify Plaintiff and the other aggrieved employees for
27 all business expenses incurred as a result of the discharge of their duties. In particular, Plaintiff
28 and the other aggrieved employees are required to wear which get extremely dirty and covered in

1 filth due to the nature of their work and Defendant does not reimburse Plaintiff or the other
2 aggrieved employees for the upkeep and costs of maintenance of their attire or for safety gear
3 such as glasses, pants and work shoes.

4 **JURISDICTION AND VENUE**

5 7. The Superior Court of the State of California has jurisdiction in this matter
6 because Plaintiff is a resident of the State of California, and Defendant is licensed to do business
7 under the laws of the State of California. No federal question is at issue because Plaintiff's
8 claims are based solely on California law.

9 8. Venue is proper in this judicial district and the County of San Bernardino because
10 Defendant maintains its facility in the County of San Bernardino and Plaintiff worked for
11 Defendant at a location located in the County of San Bernardino. Many other aggrieved
12 employees also worked for Defendant at its facility located in the County of San Bernardino.

13 **THE PARTIES**

14 9. During the statute of limitations period, Plaintiff was employed by Defendant as a
15 Nailer at its location in Bloomington, California.

16 10. Plaintiff is informed and believes, and thereon alleges, that Defendant is, and at
17 all times relevant hereto was, a corporation organized and existing under the laws of the State of
18 California.

19 11. The true names and capacities of DOES 1 through 50, inclusive, are unknown to
20 Plaintiff at this time, and Plaintiff therefore sues such defendants under fictitious names. Plaintiff
21 is informed and believes, and thereon alleges, that each defendant designated as a DOE is in
22 some manner highly responsible for the occurrences alleged herein, and that Plaintiff and other
23 aggrieved employees' injuries and damages, as alleged herein, were proximately caused by the
24 conduct of such DOE defendants. Plaintiff will seek leave of the Court to amend this Complaint
25 to allege the true names and capacities of such DOE defendants when ascertained.

26 **PAGA REPRESENTATIVE ACTION ALLEGATIONS**

27 12. On March 16, 2021, Plaintiff gave written notice by certified mail pursuant to
28 California Labor Code § 2699.3, to the California Labor and Workforce Development Agency

1 (“LWDA”) and Preferred Pallets, of the specific provisions of the California Labor Code and
2 IWC Wage Order alleged to have been violated, including the facts and theories to support the
3 alleged violations. Plaintiff has not received any response from the LWDA. As Plaintiff has
4 waited more than sixty-five (65) days from the March 16, 2021 postmark date of his written
5 notice before filing this action, Plaintiff has complied with all of the requirements set forth in
6 California Labor Code § 2699.3 to commence a representative action under the California
7 Private Attorneys General Act of 2004 (“PAGA”).

8 13. Pursuant to the PAGA, California Labor Code §§ 2698-2699.5, Plaintiff brings
9 this action on behalf of the State of California, and all other aggrieved employees (e.g., current
10 and former non-exempt employees of Defendant and performed work for Defendant in the State
11 of California at any time within the period beginning one (1) year prior to the March 16, 2021
12 notice Plaintiff provided to the LWDA and Defendant, and ending at the time this action
13 proceeds to final judgment (“statute of limitations period”).

14 **FACTUAL ALLEGATIONS**

15 **Failure to Provide Required Meal Periods**

16 14. During the statute of limitations period, as part of Defendant’s illegal policies and
17 practices to minimize labor costs and maximize corporate profits, Defendant has required,
18 permitted or otherwise suffered Plaintiff and aggrieved employees to perform work during their
19 meal periods, to completely skip their meal periods, to take late and short meal periods, and
20 Defendant has otherwise failed to provide the required meal periods to Plaintiff and aggrieved
21 employees as required under California Labor Code §§ 226.7, 512 and § 11 of the applicable
22 IWC Order.

23 15. Defendant has implemented several practices that have caused Plaintiff and
24 aggrieved employees to systematically miss and otherwise take non-compliant meal periods.
25 Defendant systematically understaff its job sites such that non-exempt employees are given so
26 much work to complete that they regularly miss or otherwise take non-compliant meal periods.
27 As a direct consequence of this understaffing, Plaintiff and aggrieved employees have so much
28 work to complete within their scheduled shifts that they are forced to skip their meal periods

altogether, to take them after working longer than five (5) hours, to perform work during their meal periods, or return to work after taking less than a thirty (30) minute meal period.

16. There are also frequent occasions when Plaintiff and aggrieved employees need to perform other duties immediately before the time during which they are legally entitled to take a meal period. Pursuant to Defendant's policies, Plaintiff and aggrieved employees cannot simply drop their job duties and leave their areas to take a meal period. At other times Plaintiff and the other aggrieved employees were too busy repairing pallets to stop their work in the middle of an order. Consequently, Plaintiff and aggrieved employees regularly miss meal periods, take late meal periods, return early from meal periods, and even clock out for meal periods but continue working.

17. Moreover, Plaintiff and other aggrieved employees need to secure permission before taking a meal period, which is often denied by supervisors. Plaintiff and aggrieved employees often cannot simply stop taking the order from a customer to take their meal period, and their inability to secure coverage regularly causes them to regularly miss and otherwise take non-compliant meal periods, in addition to other violations yet to be discovered.

18. Despite the foregoing, Defendant has implemented a policy and practice of actively discouraging the issuance of meal period premium payments, and in the process, Defendant has violated California Labor Code §§ 226.7 and § 11 of the applicable IWC Wage Order, by failing to compensate Plaintiff and aggrieved employees who were not authorized and permitted to take a complete, timely, uninterrupted meal period, one additional hour of compensation at the proper regular rate of pay for each workday that such a meal period was not authorized or permitted.

Failure to Provide Required Rest Breaks

19. During the statute of limitations period, as part of Defendant's illegal policies and practices to minimize labor costs and maximize corporate profits, Defendant has failed to authorize and permit Plaintiff and other aggrieved employees to take rest breaks as required under California Labor Code §§ 226.7 and 512, and § 12 of the applicable IWC Wage Order.

20. The same or similar policies and practices that deprive Plaintiff and other

1 aggrieved employees from taking their meal periods, as alleged herein, similarly deprive them of
2 their ability to take their first, second and third rest breaks. As alleged herein, Defendant
3 understaffs its facility, which creates so much work for Plaintiff and other aggrieved employees
4 that they are frequently unable to take rest breaks. Moreover, Plaintiff and aggrieved employees
5 often cannot simply stop work to take a rest break as they are too busy.

6 21. Defendant also does not provide adequate training regarding its legal obligations
7 with respect to the provision of rest breaks, does not implement a schedule regarding rest breaks
8 for non-exempt employees, and often interrupts staff who try to take rest periods. In short,
9 Defendant essentially has a non-existent rest break policy, as there is no guidance or
10 specification as to when Plaintiff and other aggrieved employees are authorized and permitted to
11 take rest breaks during their shifts.

12 22. Defendant also compensated Plaintiff and the other aggrieved employees on a
13 piece-rate basis for each pallet repaired, but did not separately compensate Plaintiff and the other
14 aggrieved employees for rest breaks even though they were on duty at all times during their
15 shifts. As a result of this common policy and practice, Plaintiff the other aggrieved employees
16 were denied their right to take rest breaks.

17 23. Defendant also violated California Labor Code § 226.7, and § 12 of the applicable
18 IWC Order, by failing to pay Plaintiff and other aggrieved employees who were not provided
19 with a rest break, in accordance with the applicable wage order, one additional hour of
20 compensation at the proper regular rate of pay for each workday that a rest break was not
21 provided.

22 **Failure to Pay Overtime Wages**

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

1 on the seventh consecutive day of work in any workweek.

2 25. During the statute of limitations period, Defendant failed to compensate Plaintiff
3 and other aggrieved employees for all overtime hours worked as required under the foregoing
4 provisions of the California Labor Code and IWC Wage Order by, among other methods: failing
5 to pay overtime at one and one-half (1 ½) or double the regular rate of pay as provided by
6 California Labor Code §§ 510, 1194 and § 3 of the applicable IWC Order, requiring, permitting
7 or suffering Plaintiff and other aggrieved employees to work off-the-clock, and to work through
8 meal and rest breaks, but not compensating them for this time, improperly calculating the regular
9 rate of pay based on bonuses, commissions, and other remuneration, and other methods to be
10 discovered.

11 26. In a short-sighted attempt to maximize profits, Defendant has understaffed its job
12 site or simply failed to pay overtime wages for hours worked by Plaintiff and the other aggrieved
13 employees. Not only has this practice resulted in widespread missed meal and rest breaks, but it
14 has also caused Plaintiff and other aggrieved employees to perform work while off-the-clock or
15 they were not paid wages at the correct overtime rate of pay. Defendant has actual or
16 constructive knowledge of this off-the-clock work and subtly condone it. On information and
17 belief, Plaintiff and other aggrieved employees routinely arrive to work early so that they are
18 prepared and ready to begin performing their duties promptly at the start of their shifts, as they
19 must be pursuant to the requirements of Defendant. Defendant knows that Plaintiff and other
20 aggrieved employees perform this work off-the-clock.

21 27. Defendant has knowingly and willfully refused to perform its obligations to
22 compensate Plaintiff and other aggrieved employees for all wages earned and all hours worked in
23 violation of California Labor Code §§ 510, 1194 and 1198, and § 3 of the applicable IWC Order.

24 **Failure to Pay Minimum Wages**

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

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

1 29. During the statute of limitations period, the hourly rates for Plaintiff and other
2 aggrieved employees were precisely at California minimum wage. Based on this common
3 practice, Defendant failed to pay Plaintiff and other aggrieved employees minimum wages for all
4 hours worked by requiring, permitting or suffering Plaintiff and other aggrieved employees to
5 work off the clock, such as requiring them to work through meal and rest breaks but not
6 compensating them for this time, and failing to include this time in all hours worked, and other
7 methods to be discovered.

8 30. Defendant's conduct described herein violates Cal. Lab. Code §§ 1194, 1197, and
9 § 4 of the applicable IWC Wage Order. As a proximate result of the aforementioned violations,
10 Plaintiff and other aggrieved employees have been damaged in an amount according to proof at
11 trial. Therefore, pursuant to California Labor Code §§ 200, 203, 226, 1194, 1197.1, and any
12 other applicable law, Plaintiff and other aggrieved employees are entitled to recover the unpaid
13 balance of wages owed to them by Defendant, plus interest, penalties, attorneys' fees, expenses,
14 and costs of suit.

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

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

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

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

28 34. During the statute of limitations period, Defendant has willfully failed to pay

1 accrued wages and other compensation to Plaintiff and other aggrieved employees in accordance
2 with California Labor Code §§ 201 and 202. On information and belief, Defendant does not have
3 a sufficient policy to provide Plaintiff and other aggrieved employees with their final paychecks
4 within the timeframes required under California law. Further, Plaintiff's employment ended on
5 or about May of 2020, Defendant failed and continues to fail to properly compensate Plaintiff
6 and other aggrieved employees for all hours worked when due, overtime wages, and
7 compensation for non-compliant meal and rest breaks, Defendant also willfully failed and
8 continues to fail to pay accrued wages and other compensation to Plaintiff and other aggrieved
9 employees in accordance with California Labor Code §§ 201 and 202.

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

11 35. During the statute of limitations period, Defendant has routinely failed to provide
12 Plaintiff and other aggrieved employees with timely and accurate itemized wage statements.
13 Defendant's pay stubs have violated California Labor Code § 226. Defendant's wage statements
14 failed to provide accurate total hours worked and accurate rate of compensation for Plaintiff and
15 the other aggrieved employees. Moreover, Defendant was and is not providing Plaintiff and
16 other aggrieved employees with proper meal periods and rest breaks but intentionally fails to
17 include in their wage statements one (1) additional hour of compensation at their regular rates of
18 pay for each non-compliant meal periods or rest breaks. Defendant also failed to pay Plaintiff
19 and the other aggrieved employees premium pay to employees who missed rest periods based
20 upon being paid on a per diem basis. Defendant has failed to pay proper overtime and minimum
21 wages to Plaintiff and other aggrieved employees and its wage statements therefore fail to reflect
22 the correct hourly rates worked by Plaintiff and other aggrieved employees. Finally, Defendant
23 also failed to reimburse Plaintiff and the other aggrieved employees for employment related
24 expenses resulting in inaccurate wage statements.

25 36. In order to conceal its wage theft, Defendant knowingly and intentionally failed to
26 provide Plaintiff and other aggrieved employees with timely and accurate itemized wage
27 statements in accordance with Labor Code § 226(a) and § 7 of the applicable IWC Order.

28 37. Plaintiff and other aggrieved employees suffered injury as a result of the failure of

1 Defendant to provide timely and accurate itemized wage statements because it prevented them
2 from discovering the scope and extent of Defendant's violations of California wage and hour
3 laws, prevented them from being able to accurately determine the gross wages earned, the total
4 hours worked, all deductions made, the net wages earned, all applicable hourly rates in effect
5 during each pay period and the corresponding number of hours worked at each hourly rate, and
6 business expenses were incurred by unreimbursed by Defendant.

7 **Failure to Maintain Required Records**

8 38. During the statute of limitations period, as part of Defendant's illegal payroll
9 policies and practices to deprive Plaintiff and other aggrieved employees of all wages earned and
10 due, Defendant knowingly and intentionally failed to maintain records as required under
11 California Labor Code §§ 226(a) and 1174(d) and § 7 of the applicable IWC Order, including but
12 not limited to the following records: total daily hours worked by each employee; applicable rates
13 of pay; all deductions; meal periods; premium payments for on-duty rest periods; time records
14 showing when each employee begins and ends each work period; and accurate itemized
15 statements. Defendant had knowledge that it was not providing its non-exempt employees with
16 proper meal and rest periods, but knowingly failed to include in the wage statements one (1)
17 extra hour of compensation for each missed meal and rest period. Defendant also illegally and
18 inaccurately recorded the time in which Plaintiff and other aggrieved employees worked.
19 Defendant failed to maintain records regarding employee reimbursements.

20 **Failure to Indemnify Employees for Necessary Expenditures Incurred in**

21 **Discharge of Duties**

22 39. California Labor Code § 2802(a) requires an employer to indemnify an employee
23 for all necessary expenditures or losses incurred by the employee in direct consequence of the
24 discharge of his or her duties, or of his or her obedience to the directions of the employer.

25 40. Defendant has failed to properly indemnify Plaintiff and the other aggrieved
26 employees for maintenance of their work uniforms. These uniforms get extremely dirty and
27 covered in filth due to the nature of the work environment. As a result, Plaintiff and the other
28 aggrieved employees are required to pay for their own safety glasses, clothing and shoes and

1 Defendant did not reimburse Plaintiff and the other aggrieved employees for such expenses.

2 **FIRST CAUSE OF ACTION**

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

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

5 **(On Behalf of Plaintiff and the Aggrieved Employees Against Defendant)**

6 41. Plaintiff incorporates herein by specific reference, as though fully set forth, the
7 allegations in paragraphs 1 through 40 above.

8 42. Plaintiff is an “aggrieved employee” within the meaning of California Labor Code
9 § 2699(c), and a proper representative to bring a civil action on behalf of himself and other
10 aggrieved employees pursuant to the procedures specified in California Labor Code § 2699.3,
11 because Plaintiff was employed by Defendant and one or more of the alleged California Labor
12 Code violations was committed against Plaintiff during the statute of limitations period.

13 43. A plaintiff has standing to represent all aggrieved employees for all of his asserted
14 violations of the California Labor Code under PAGA. See *Huff v. Securitas Security Services*
15 *USA, Inc.* (2018) 23 Cal.App.5th 745, 757 (“For PAGA standing a plaintiff need only have been
16 employed by the violator and affected by ‘one or more’ of the alleged violations. (Sec. 2699,
17 subds. (a), (c).)).

18 44. Plaintiff seeks to recover civil penalties through a representative action permitted
19 by PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal.4th 969.
20 Thus, class certification is not required.

21 45. Pursuant to California Labor Code §§ 2698-2699.5, Plaintiff seeks to recover civil
22 penalties from Defendant in a representative action for the violations set forth above, including
23 but not limited to, violations of California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 510,
24 512, 1174, 1194, 2802 and for the violations of the applicable IWC Wage Order alleged above.

25 46. Pursuant to California Labor Code § 2699(a), Plaintiff seeks to recover civil
26 penalties against Defendant for violations of California Labor Code provisions for which a civil
27 penalty is specifically provided, including but not limited to, the following:

28 a. Pursuant to California Labor Code § 226.3, for violations of California

1 Labor Code § 226(a), Defendant is subject to a civil penalty in the amount
2 of two hundred and fifty dollars (\$250) per aggrieved employee for the
3 initial pay period where a violation occurs and one thousand dollars
4 (\$1,000) per aggrieved employee for violations in subsequent pay periods.

5 b. Pursuant to California Labor Code § 1174.5, for violations of California
6 Labor Code § 1174(d), Defendant is subject to a civil penalty of five
7 hundred dollars (\$500).

8 47. California Labor Code § 2699(f) provides that for all California Labor Code
9 violations for which a civil penalty is not specifically provided, the following civil penalties are
10 established: one hundred dollars (\$100) for each aggrieved employee per pay period for the
11 initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for
12 each subsequent violation.

13 48. Plaintiff seeks to recover such civil penalties under California Labor Code §
14 2699(f) for Defendant's violations of California Labor Code provisions for which a civil penalty
15 is not specifically provided, including but not limited to, California Labor Code §§ 201, 202,
16 203, 226.7, 1197, 1024.5, and for the violations of the applicable IWC Wage Order alleged
17 above.

18 49. All civil penalties sought and recovered under this action will be allocated as
19 follows: seventy-five (75) percent to the State of California and twenty-five (25) percent to
20 Plaintiff and aggrieved employees.

21 50. Plaintiff additionally seeks reasonable attorneys' fees and costs pursuant to
22 California Labor Code § 2699(g)(1) and California Code of Civil Procedure § 1021.5.

23 **PRAYER FOR RELIEF**

24 WHEREFORE, Plaintiff, individually and on behalf of all other aggrieved employees,
25 prays for relief against Defendant, as follows:

- 26 1. For civil penalties according to proof;
- 27 2. For reasonable attorneys' fees and costs pursuant to California Labor Code §
- 28 2699(g), California Code of Civil Procedure § 1021.5, and/or any other applicable provisions

1 providing for attorneys' fees and costs; and

2 3. For such further relief that the Court may deem just and proper.

3 DATED: May 20, 2021

LAW OFFICE OF SCOTT E. WHEELER

4
5 By: 
6 SCOTT ERNEST WHEELER

7 *Attorney for Plaintiff and the other*
8 *Aggrieved Employees*